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THE  
**REVISED STATUTES**  
OF  
**THE STATE OF NORTH CAROLINA,**

PASSED BY THE

GENERAL ASSEMBLY AT THE SESSION OF 1836—7,

INCLUDING

AN ACT CONCERNING THE REVISED STATUTES AND OTHER PUBLIC ACTS,

PASSED AT THE SAME SESSION ;

TOGETHER WITH

THE SECOND CHARTER GRANTED BY CHARLES THE 2<sup>d</sup> TO THE PROPRIETORS OF CAROLINA—THE GREAT DEED  
OF GRANT FROM THE LORDS PROPRIETORS—THE GRANT FROM GEORGE THE 2<sup>d</sup> TO JOHN LORD  
GRANVILLE—THE BILL OF RIGHTS AND CONSTITUTION OF THE STATE, WITH THE  
AMENDMENTS THERETO—THE CONSTITUTION OF THE UNITED STATES,  
WITH THE AMENDMENTS—THE TREATY OF PEACE OF 1783—THE  
MECKLENBURG DECLARATION OF INDEPENDENCE,  
WITH A SHORT NARRATIVE THEREOF.

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Revised under an Act of the General Assembly, passed at the Session of 1833—4, by  
FREDERICK NASH, JAMES IREDELL AND WILLIAM H. BATTLE.

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PRINTED AND PUBLISHED,

In pursuance of an Act of the General Assembly, passed at the Session of 1836—7, under the supervision and direction of

JAMES IREDELL AND WILLIAM H. BATTLE.

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**IN TWO VOLUMES.**

VOLUME I.

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RALEIGH:  
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## P R E F A C E .

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THE revision and consolidation of the whole public statute law will constitute an important epoch in the legislative history of North Carolina. In presenting this work to the public the undersigned, commissioners for superintending its publication, have thought that some facts, connected with and illustrating that history, might be neither an inappropriate nor uninteresting introduction. Their limits confine them to a brief summary, and compel them to omit much, both of detail and remark, that would be necessary to do justice to the subject.

The first permanent settlement in North Carolina was made about the year 1660, by emigrants from Virginia, on the north side of Albermarle sound, and probably on Durant's neck in Perquimons county, lying between Perquimons and Little rivers. The oldest land title is a conveyance for that neck of land from the king of the Yeopim Indians to George Durant, dated in 1662. On the twentyfourth of March, 1663, King Charles the Second granted to Edward, Earl of Clarendon, and others, as true and absolute Lords Proprietors, all the country from the Atlantic to the Pacific ocean, included between the thirtyfirst and thirtysixth parallels of north latitude ; and on the thirtieth of June, 1665, by a second charter he enlarged the powers of the grantees and extended their boundaries so as to include all the country between the parallels of thirtysix degrees thirty minutes and twentynine degrees north latitude. These grants will be found in the second volume of this work.\* Among other powers which they conferred on the Lords Proprietors was that of enacting laws and constitutions for the people of that province *by and with the advice, assent and approbation of the freemen thereof, or of the greater part of them, or of their delegates or deputies*, who were to be assembled from time to time for that purpose. In the year 1663, George Drummond was appointed by Governor Berkley of

\*2d Vol. p. 1. and 437.



Virginia, in pursuance of instructions from the Lords Proprietors, the first governor of the colony, then known as the county of Albemarle. In October, 1677, Governor Drummond was succeeded by Samuel Stephens who was authorized to grant land, reserving to the Lords Proprietors one half of the gold and silver ore. At this time the first constitution was given to the colony. It directed that the governor should act with the advice of a council of twelve, one half to be appointed by himself, the other half by the assembly, and the assembly was to be composed of the governor, the council and twelve delegates chosen by the freeholders. Historians do not agree as to the precise year in which the first legislative body in North Carolina convened. It was certainly however either in 1666 or 1667. This legislature was called "the Grand Assembly of the County of Albemarle," and on its petition the Lords Proprietors by an instrument, since called the "Great Deed of Grant,"\* directed that lands should be held by the inhabitants of the said county on the same terms and conditions as lands were held by the inhabitants of Virginia. The principal acts of this assembly were such as were believed to be required by the peculiar situation of the country, and were prompted by an anxious desire to increase its population. Suits for any debts created out of the country were prohibited for five years—new settlers were exempted from taxation for one year—the right to a certain quantity of land, acquired by migration, could not be transferred until the owner had remained two years in the country—dealers from abroad were prohibited from trafficking with the Indians; and as there were no regular ministers, marriages might be contracted by a simple declaration by the parties of their mutual consent, made before the governor or a member of the council in the presence of a few neighbors. These laws were transmitted to and approved by the Lords Proprietors, who had reserved to themselves a veto on the acts of the assembly. In July, 1669, the Lords Proprietors adopted a new form of government for their colony. It was styled "The Fundamental Constitutions of Carolina," and was the production of the celebrated John Locke.† Its provisions were so illy adapted to the situation of the country and to the habits, customs and feelings of the people, for whom it was intended, that all the efforts of the proprietors could never carry it into practical operation. After producing great discontent, faction and disorder throughout the colony for more than twenty years, it was finally abrogated in

\* See 2d Vol. p. 13.

† 2d Vol. p. 449.

1693. By one of its provisions the eldest Lord Proprietor was called Palatine, and the style of the enactments by the Grand, or as it was afterwards called the General, Assembly, during the whole of the Proprietary government was thus — “ Be it enacted by his Excellency the Palatine and the rest of the true and absolute Lords Proprietors of Carolina, by and with the advice and consent of the rest of the members of the General Assembly now met at \_\_\_\_\_ for the northeast part of the said province, and it is hereby enacted by the authority of the same.” The acts were signed by the governor, by the deputies of the Lords Proprietors, each proprietor having one deputy, and by the speaker of the house of delegates. No record is to be found in any of our public offices of acts passed prior to the session of “ a General Biennial Assembly, held at the house of Captain Richard Sanderson at Little River, begun the seventeenth day of November 1715 and continued, by several adjournments, until the nineteenth day of January 1716.” It seems that a revision of all the acts of the assembly up to that period had been made under the directions of an act of the preceding session, which is not now extant. A manuscript copy of the acts of 1715, much mutilated, is on file in the office of the secretary of state of North Carolina. Among these acts is one entitled “ An Act for y<sup>e</sup> confirmation of y<sup>e</sup> laws passed this session of Assembly and for repealing all former laws not herein particularly expressed.” After this preamble “ Whereas in pursuance to an Act of Assembly made and ratified y<sup>e</sup> sixth day of November last past the ancient standing laws of this Government have been carefully revised,” it enacts “ That all laws heretofore made within this province, such only excepted as by their particular titles are hereby expressly continued and revived, are and stand hereby repealed, annulled and void, and that all laws now made, passed and confirmed this present session of Assembly, together with such other as are hereafter mentioned to be continued, shall be of full force and shall be henceforward deemed taken and adjudged as the body of the laws of this Government and no other heretofore made.” It then provides for rights acquired under the acts repealed, specifies the acts to be continued in force, and goes on to declare — “ That the chief justice and the clerk of each and every precinct court shall take care that the transcript or book of laws deposited in his or their custody shall be constantly laid open upon the court table during the sitting of the court for the perusal of such members of the court or other persons litigating causes therein as shall have occasion so to do ”— and also “ that the clerk of each court shall at the next court after receipt thereof publicly and in open court read over the same and so yearly at



the first court next following the first day of May under the penalty of five pounds for such neglect." A number of well drawn and important acts were passed at this session, among which may be mentioned one, "An Act concerning old titles of lands and for limitation of actions and for avoiding suits in law," the provisions of which, with slight alterations, have continued in force to the present day.

On the twentyfifth day of July, 1729, seven of the eight proprietors of Carolina, in consideration of seventeen thousand five hundred pounds sterling, conveyed all their rights, privileges and franchises to George the Second, King of Great Britain; and Earl Carteret, afterwards Lord Granville, the eighth lord proprietor, conveyed all his right of jurisdiction over the said province or colony, reserving his one eighth part of the soil and territorial rights. The proprietary government then ceased and the regal government commenced. The last General Assembly held under the proprietary government met at Edenton on the 27th day of November, 1729, and the first under the royal government met at the same place in the year 1734. It may be proper here to remark, (though there is some confusion in history as to this point,) that the division into North and South Carolina had probably been consummated before or about the year 1700. George Burrington was appointed by the king on the twentyninth April, 1730, the first royal governor. His council consisted of seven members, three of whom with the governor formed a quorum. They were appointed by the crown, except that the governor and council might temporarily fill vacancies, and constituted the first branch of the legislature. Burrington having abdicated, Gabriel Johnston was appointed governor, the ablest of all the colonial governors, not less distinguished for his energy and prudence than for his extensive classical and scientific attainments. He continued in office from 1734 till his death in 1752. During this period the style of enactment was as follows — "We pray that it may be enacted and be it enacted by his Excellency Gabriel Johnston, Esq., Governor, by and with the advice and consent of his Majesty's council and General Assembly of this province and it is hereby enacted by the authority of the same." After the death of Governor Johnston, Matthew Rowan first as president, and then successively Arthur Dobbs, William Tryon and Josiah Martin as governors, presided over the province until the revolution in 1776. The style of enactment was changed after the year 1753. It was then "Be it enacted by the Governor, Council and Assembly and by the authority of the same." The acts were signed by the governor, president of the council and speaker of



the assembly, the council and assembly being separate bodies, and were subject to the approval or disapproval of the king in council. At the session of the General Assembly held at Newbern on the seventh day of March, 1746, after a preamble that "Whereas for want of the laws of this Province being revised and printed, the magistrates are often at a loss how to discharge their duty, and the people transgress many of them through want of knowing the same," it is enacted, "That the Honorable Edward Mosely, Esq., Samuel Swann, Esq., the Honorable Enoch Hall, Esq., and Mr Thomas Barker, or the majority of them, be and they are hereby nominated and appointed commissioners to revise and print the several acts of assembly in force in this province." They are required to "revise the said acts of assembly, and compile them into one body, and make an index, marginal notes and references thereto, and to lay the same before the next succeeding General Assembly after they shall have so revised and compiled them, to be ratified and confirmed." By subsequent sections the laws so revised and ratified are to be printed and distributed, and the copies so printed are to be received in evidence before any judicature. This act was passed on the earnest and repeated recommendations of Governor Johnston. Of the commissioners so appointed, Edward Mosely and Samuel Swann alone appear to have acted, and Mosely having died before the completion of the work, Samuel Swann reported to the General Assembly at their session on the sixteenth of October, 1749. At that session an act was passed to confirm this revisal. The preamble states that "Whereas the whole body of the laws of this Province to the seventh day of March in the year of our Lord one thousand seven hundred and fortysix have, in pursuance of the act, &c. &c., been carefully compiled and revised, and the said revisal laid before both houses of this present Assembly and approved of by the said houses." The act then recites the acts revised and confirmed, directs them to be printed and the printed copies to be evidence. It repeals all acts not confirmed, and saves the rights of parties, &c. In pursuance of this act, the code of laws so revised was printed and published at Newbern by James Davis in the year 1752, under the following title: "A Collection of all the public Acts of Assembly of the Province of North Carolina, now in force and use; together with the titles of all such laws as are obsolete, expired or repealed; and also an exact table of the titles of the Acts in force. Revised by Commissioners appointed by an Act of the General Assembly of the said Province for that purpose, and examined with the records and confirmed in full Assembly. Newbern — Printed by James

Davis : MDCCLII." Davis was the first public printer, erected the first printing press, and this was the first book printed, in North Carolina. It is said by Martin in his history that this act confirming Swann's revisal was, through some jealousy of the General Assembly, disapproved by the king in council. Up to this period the acts of the assembly had been promulgated in manuscript copies which were transmitted to the judges and clerks of the several courts, and directed to be read annually openly in each court. Another edition of the public laws was published by James Davis at Newbern in 1765, dedicated to Governor Tryon ; and still another in 1773, dedicated to Governor Martin. These were both on private account. Since the revolution the acts of assembly have been regularly printed and distributed at the end of each session. The last session of the General Assembly under the royal government, whose proceedings are on record, was held at Newbern on the second day of March, 1774, and its acts are signed by Josiah Martin, governor, James Hasell, president, and John Harvey, speaker, on the nineteenth of March, 1774.

The assembly met again in April, 1775 ; but was immediately dissolved by the governor. A meeting of deputies from the different counties had been held in August, 1774, and by adjournment reassembled in April, 1775. The deputies again met in convention in August, 1775, and appointed a provincial council consisting of Samuel Johnston, Cornelius Harnet, Samuel Ashe, Abner Nash, James Coor, Thomas Jones, Whitmill Hill, William Jones, Thomas Jones, Thomas Person, John Kinchen, Samuel Spencer and Waightstill Avery. The revolution was then in full progress. The Mecklenburg Declaration of Independence was signed on the twentieth day of May, 1775. Deputies had been sent to the continental congress in 1774 and 1775. The Declaration of Independence by the United States, on the fourth of July, 1776, was proclaimed at Halifax on the first of August of the same year, by direction of the council of safety. " A congress of the representatives of the freemen of the State of North Carolina, assembled at Halifax the seventeenth day of December, in the year 1776, for the purpose of establishing a constitution or form of government for the said State." Besides adopting the constitution, this congress performed the functions of an ordinary legislature, its legislative acts, however, being generally limited to the end of the next General Assembly. These acts were styled ordinances. Richard Caswell, a distinguished patriot and soldier, was the president. Among others, an ordinance was passed directing " That Thomas Jones, Samuel Johnston, Archibald



Maclaine, James Iredell, Abner Nash, Christopher Neale, Samuel Ashe, Waightstill Avery, Samuel Spencer, Jasper Charlton and John Penn, Esquires, be appointed to revise and consider all such statutes and acts of assembly as are, or have been in force and use in North Carolina, and to prepare such bills to be passed into laws as may be consistent with the genius of a free people, that form of government which we have adopted, and our local situation, and to lay the same before the next General Assembly for their approbation." It is not now known how many of these commissioners accepted this trust, or what share of its execution was borne by any one of them, but the fruits of their labors are manifest in the laws passed in the years immediately succeeding, laws which have received repeated encomiums for the ability and skill and accuracy with which they are drawn. The style of enactment was now changed, so as to read "Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same," which style has ever since been continued.

By an act passed in 1715, it was declared that "the common law is, and shall be in force in this government," except such parts as relate to the practice in courts, which were to be supplied by the general court, subject to the approval of the governor and council. It is also declared that "all statute laws of England providing for the privileges of the people, as also all statute laws made for limitation of actions, and preventing of vexatious law suits, and for preventing immorality and fraud, and confirming inheritances and titles of land, are and shall be in force here, although this province or the plantations in general are not named."

By an act passed in 1749, the statutes of Great Britain which are to be in force are particularly enumerated, and the common law declared to be in force with certain exceptions. And by an act passed in 1778, reciting that "whereas doubts may arise upon the revolution in government whether any, and what laws continue in force here," it is enacted "That all such statutes, and such parts of the common law, as were heretofore in force and use within this territory, and all the acts of the late General Assemblies thereof, or so much of the said statutes, common law and acts of assembly, as are not destructive of, repugnant to, or inconsistent with the freedom and independence of this State and the form of government therein established, and which have not been otherwise provided for, in the whole or in part, not abrogated, repealed, expired or become obsolete, are hereby declared to be in full force in this State."



At the session of the General Assembly in 1787, it was enacted "That James Iredell be, and he is hereby appointed a commissioner to revise and compile the acts of the General Assemblies of the late Province and present State of North Carolina, and to insert the charter from the crown of Great Britain, &c.—and further, the said commissioner is hereby authorized and directed, in revising and collecting said acts, to leave out all laws repealed or obsolete, all private acts, and all other acts on which no question of property can arise: and further, the said commissioner is hereby required to see the said acts printed in the same order and in the same words in which they now stand, with marginal notes of the contents of each section, a marginal reference, and a copious general index with reference to each act, and the contents of each section." This duty was performed by the commissioner appointed, and the laws so revised printed by Hodge and Wills, at Edenton, in 1789, including the acts of 1788. It was approved in every respect by an act passed in 1791, and has since been commonly known as "Iredell's Revisal." In the year 1792, Francois Xavier Martin, in obedience to a resolution of the General Assembly of the preceding year, published a "Collection of the statutes of the Parliament of England in force in the State of North Carolina," of which work in may only be remarked that it was utterly unworthy of the talents and industry of the distinguished compiler, omitting many important statutes, always in force, and inserting many others, which never were, and never could have been in force, either in the Province or in the State of North Carolina. In the year 1794, also in pursuance of a resolution of the General Assembly of the preceding year, the same gentleman published "A collection of the private acts of the General Assembly, from the year 1715 to the year 1790, inclusive, now in force and use." In 1800, John Haywood, one of the judges of the superior courts of law, published "A Manual of the laws of North Carolina, arranged under distinct heads, in alphabetical order; with references from one head to another when a subject is mentioned in any other part of the book than under the distinct head to which it belongs." This work was a great favorite with the public, and passed through several editions. In 1803, it was resolved by the General Assembly "that Francois Xavier Martin collect and revise the public acts passed since the publication of Judge Iredell's Revisal, to the end of the present session inclusive; which said revisal shall connect the acts passed since Judge Iredell's by notes and remarks, adverting to such as appear to have been virtually repealed, and retaining such as are not expressly so, and cause his said revisal to be printed." This revisal was prepared

and published by Mr Martin, and approved by the succeeding legislature. At the session of the General Assembly in 1817, it was enacted, "That a committee of three persons be appointed by joint ballot of both houses, whose duty it shall be to revise and consolidate the public acts, and parts of acts of the General Assembly of this State heretofore passed, or which may be passed before the completion of their work," and also, "That it shall be the duty of said commissioners to enumerate and specify those statutes and parts of statutes of Great Britian, which are in force within this State." The commissioners appointed were John Louis Taylor, chief justice of the supreme court, Henry Potter, judge of the district court of the United States, and Bartlet Yancy, speaker of the senate. The revisal, completed by these gentlemen after the manner of Iredell's revisal, was ordered by the legislature to be published, and was published in 1821, under the superintendence of Judge Potter, the acts of 1820 being included. This work has usually been called "the Revised Code," or the "New Revisal."

In concluding this sketch, the undersigned will offer a brief notice of the revisal now published, which differs in its character from any heretofore executed. At the session of the General Assembly in 1833, it was enacted, "that three commissioners be appointed by the governor of the State to collate, digest and revise, all the public statute laws of this State, commencing with the earliest English statutes now in force, and including those which may be enacted during the present session of this General Assembly; that in the performance of this duty they shall carefully collect and reduce into one act the different acts, and parts of acts, which, from similarity of subject ought, in their judgment, to be so arranged and consolidated, distributing the same under such titles, divisions and sections as they shall think proper, omitting all such acts, and parts of acts before passed as shall have either expired by their own limitation, become obsolete, or been repealed; that in every other respect they shall complete the said revision in such manner as to them shall seem most useful and proper to render said acts more plain and easy to be understood; and that, from time to time they shall lay before the legislature the acts so arranged and revised by them, to be re-enacted, if the legislature shall so determine." This act, though such a measure had long been desired by many intelligent citizens, owed its origin at this period, principally to the exertions of Governor Swain, who, in his annual message to the legislature had earnestly and eloquently urged its importance, and who manifested a deep solicitude for its success.



Soon after the passage of the act, the performance of the important duties which it required, was entrusted to the late Gavin Hogg, Esquire, of the city of Raleigh, in conjunction with the undersigned. At an early period after their appointment, the commissioners held a meeting, in which they made a cursory examination of the acts of assembly, and the British statutes in force in this State, and agreed upon the plan upon which the revisal should be conducted. With these preliminary arrangements, Mr Hogg's connection with the work ceased. Severe and protracted ill health prevented his further discharge of duties, upon the performance of which he had entered with zeal, and which no one was better qualified to perform in a manner creditable to himself and useful to the public. In the winter following, he resigned his commission, and the Hon. Frederic Nash, of Hillsborough, now one of the judges of the superior courts of this State, but then at the bar, was appointed to supply the vacancy. Reports of the plan and progress of the work were made by the commissioners to the governor, and through him to the legislature at its respective sessions in 1834 and 1835. The plan adopted by the commissioners was, in the language of one of their reports, "simply to digest and consolidate into one act, all the various statute laws relating to one subject, occasionally to alter vicious and inadvertent phraseology, and to insert into the body of the statute such new provisions as seemed to them manifestly proper;" and as regarded the British statutes, "to incorporate them in acts distributed according to the subject to which they relate, clothing them in a modern garb." Upon the report made at the session of 1834 no definite action was taken by the legislature, but that submitted at the subsequent session, was referred, together with several revised acts which had accompanied it, to a joint select committee of both houses, who, after having had the subject under consideration, reported that they deemed it inexpedient for the legislature at that session, "to attempt the re-enactment of any portion of the digest which had been completed." They, then, after expressing themselves "from a cursory examination, highly gratified both with the plan of the digest, which had been adopted, and the mode of its execution," recommended that the time for completing the revisal, which in the original act had been limited to two years, should be extended to the first day of December, 1836; that the revised acts which had been submitted by the commissioners should be returned to them, and that when they should have completed the residue, they should procure two hundred copies of the whole to be printed, and have them deposited in the governor's office for the use of the next General Assembly. A bill for that purpose was accordingly introduced, and passed, and at the session of 1836, the whole work was



reported to the legislature, and with the report were transmitted the required number of printed copies of each of the revised acts for the use of the members. These acts, with the accompanying report, were referred to a joint select committee of six members from each house, by whom they were examined and reported from time to time, to one or the other of the houses, with such amendments as the committee thought proper to suggest, and were then passed separately, according to the forms usual in passing bills, except that they were not required to be engrossed after passing one house before they were sent to the other. After the revised statutes had been all acted upon by the legislature, an act entitled "An act concerning the Revised Statutes" was passed, which prescribes the time when they shall go into operation, provides for their publication and distribution, repeals all the British acts, and all the acts of our own legislature, the subjects of which had been revised, and directs that when published, the printed copies shall be received as evidence of the law. From this it will be perceived that the work now presented to the public has the very highest character of authenticity and authority.

It remains only for the undersigned to add a few remarks as to the manner in which their duties as superintendents of publication have been discharged. By reference to the ninth and tenth sections of the "Act concerning the Revised Statutes," will be seen the authority under which they were appointed, and the particular duties prescribed them. They have endeavored to comply strictly with the requisitions of that act. How far they have succeeded, it must be for others to determine. As regards the style of execution, and arrangement of the work, it will show for itself. The "Act concerning the Revised Statutes" has been placed as chapter first of the statutes contained in the first volume, and the revised acts themselves follow in alphabetical order. The other public acts, which were passed at the same session, and required to be inserted in the same volume with the revised statutes, have been either incorporated with them or published as separate chapters under the same general title where similarity of subject admitted, or have been placed under distinct heads but still in their proper alphabetical order. In annexing the references to the decisions of the supreme court, it was intended to place the cases referred to, in the margin opposite to the sections to which they related, but it was found that it could not be done without too much encumbering the page, and the references were therefore placed at the end of the respective chapters, but still noting the particular sections which they are designed to elucidate.

In preparing the materials directed to be published in the second volume, the superintendents found some difficulty in ascertaining and determining what acts

relating to navigation companies were now "in force and use" so as to require their insertion. They were aware that there were several charters of those companies still in legal existence, but they had reasons to believe that the companies were so near a final extinction from nonuser or abandonment, that it was entirely useless to retain them. As they found that this volume when going to press would not be so large as they anticipated, the superintendents have ventured to insert in an appendix several articles which were deemed not inappropriate to such a work. These articles, comprising among others the great charters of English and American liberty, not already inserted, will, it is hoped, be found neither uninteresting nor uninstrucive; and as those of them, which are not entirely new, are not often seen in works easily accessible to the public, it is trusted, that their appearance in their present position will be favorably received.

In the progress of these volumes through the press, one or the other of the superintendents has constantly attended to them, and every sheet has undergone his supervision and correction. With what accuracy this part of their duty has been performed, it is not for them to say. They have anxiously endeavored to have the typographical part of the work perfect, so far as their exertions could contribute towards so desirable an object. But yet from the great desire to have the volumes ready for distribution at as early a day as possible, their publication has been hastened in a manner inconsistent with entire correctness. It is hoped and believed however, that no error will be found, particularly in the body of the work, at all affecting the sense of the passage in which it may occur. It may be proper to mention here that the revised and other public acts contained in the first volume of this work, were regularly ratified in the usual form and signed by Messrs Hugh Waddell, speaker of the senate, and William H. Haywood, Jun., speaker of the house of commons, but the certificate of ratification has not been retained, because as the acts were passed separately, it would have presented a useless repetition.

With these explanations and remarks the "Revised Statutes" are submitted to a generous public, with the hope, that with the corrections and amendments which they received from the legislature and the sanction given to them by that body, they will contribute in some degree at least, to the object for which they were designed, a simplification of the Statute Law and an extension of its knowledge among the people.

JAMES IREDELL.

WILL : H. BATTLE.



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# MECKLENBURG

## DECLARATION OF INDEPENDENCE,

ADOPTED ON THE TWENTIETH OF MAY, 1775.

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### SHORT NARRATIVE.

---

IN the spring of 1775, the leading characters of Mecklenburg county, North Carolina, stimulated by that enthusiastic patriotism which elevates the mind above considerations of individual aggrandizement, and scorning to shelter themselves from the impending storm by submission to lawless power, &c. &c. held several detached meetings, in each of which the individual sentiments were, “that the cause of Boston was the cause of all; that their destinies were indissolubly connected with those of their Eastern fellow-citizens—and that they must either submit to all the impositions which an unprincipled, and to them an unrepresented, parliament might impose—or support their brethren who were doomed to sustain the first shock of that power, which, if successful there, would ultimately overwhelm all in the common calamity.” Conformably to these principles, Colonel T. POLK, through solicitation, issued an order to each captain’s company in the county of Mecklenburg, (then comprising the present county of Cabarrus,) directing each militia company to elect two persons, and delegate to them ample power to devise ways and means to aid and assist their suffering brethren in Boston, and also generally to adopt measures to extricate themselves from the impending storm, and to secure unimpaired their inalienable rights, privileges and liberties, from the dominant grasp of British imposition and tyranny.

In conformity to said order, on the 19th of May, 1775, the said delegation met in Charlotte, vested with unlimited powers; at which time official news, by express, arrived of the battle of Lexington on that day of the preceding month. Every delegate felt the value and importance of the prize, and the awful and solemn

crisis which had arrived—every bosom swelled with indignation at the malice, inveteracy, and insatiable revenge, developed in the late attack at Lexington. The universal sentiment was: let us not flatter ourselves that popular harangues, or resolves, that popular vapour will avert the storm, or vanquish our common enemy—let us deliberate—let us calculate the issue—the probable result; and then let us act with energy, as brethren leagued to preserve our property—our lives—and what is still more endearing, the liberties of America. ABRAHAM ALEXANDER was then elected chairman, and JOHN M'KNITT ALEXANDER, clerk. After free and full discussion of the various objects for which the delegation had been convened, the subjoined resolutions were offered.

A number of by-laws were also added, merely to protect the association from confusion, and to regulate their general conduct as citizens. After sitting in the court house all night, neither sleepy, hungry, nor fatigued, and after discussing every paragraph, they were all passed, sanctioned, and decreed, *unanimously*, about 2 o'clock, A. M., May 20. In a few days, a deputation of said delegation convened, when Capt. JAMES JACK, of Charlotte, was deputed as express to the congress at Philadelphia, with a copy of said resolves and proceedings, together with a letter addressed to our three representatives there, viz. RICHARD CASWELL, WILLIAM HOOPER, and JOSEPH HEWES—under express injunction, personally, and through the State representation, to use all possible means to have said proceedings sanctioned and approved by the general congress. On the return of Captain Jack, the delegation learned that their proceedings were individually approved by the members of congress, but that it was deemed premature to lay them before the house. A joint letter from said three members of congress was also received, complimentary of the zeal in the common cause, and recommending perseverance, order and energy.

The subsequent harmony, unanimity, and exertion in the cause of liberty and independence, evidently resulting from these regulations, and the continued exertion of said delegation, apparently tranquillized this section of the State, and met with the concurrence and high approbation of the council of safety, who held their sessions at Newbern and Wilmington, alternately, and who confirmed the nominations and acts of the delegation in their official capacity.

From this delegation originated the court of inquiry of this county, who constituted and held their first session in Charlotte—they then held their meetings regularly at Charlotte, at Col. James Harris's, and at Col. Phifer's, alternately, one week at each place.



It was a civil court founded on military process. Before this judicature, all suspicious persons were made to appear, who were formally tried and banished, or continued under guard. Its jurisdiction was as unlimited as toryism, and its decrees as final as the confidence and patriotism of the county. Several were arrested and brought before them from Lincoln, Rowan and the adjacent counties.

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## DECLARATION.

### NAMES OF THE DELEGATES PRESENT.

COL. THOMAS POLK,  
EPHRAIM BREVARD,  
HEZEKIAH J. BALCH,  
JOHN PHIFER,  
JAMES HARRIS,  
WILLIAM KENNON,  
JOHN FORD,  
RICHARD BARRY,  
HENRY DOWNS,  
EZRA ALEXANDER,  
WILLIAM GRAHAM,  
JOHN QUEARY,  
ABRAHAM ALEXANDER,

JOHN M'KNITT ALEXANDER,  
HEZEKIAH ALEXANDER,  
ADAM ALEXANDER,  
CHARLES ALEXANDER,  
ZACHEUS WILSON, SEN.  
WAIGHTSTIL AVERY,  
BENJAMIN PATTON,  
MATTHEW M'CLURE,  
NEIL MORRISON,  
ROBERT IRWIN,  
JOHN FLENNIKEN,  
DAVID REESE,  
RICHARD HARRIS, SEN.

ABRAHAM ALEXANDER was appointed chairman, and JOHN M'KNITT ALEXANDER, clerk. The following resolutions were offered, viz.

1. RESOLVED, That whosoever directly or indirectly abetted, or in any way, form or manner, countenanced the unchartered and dangerous invasion of our rights, as claimed by Great Britain, is an enemy to this country, to America, and to the inherent and inalienable rights of man.

2. RESOLVED, That we, the citizens of Mecklenburg county, do hereby dissolve the political bands which have connected us to the mother country, and hereby absolve ourselves from all allegiance to the British crown, and abjure all political connection, contract, or association, with that nation, who have wantonly trampled on our rights and liberties, and inhumanly shed the blood of American patriots at Lexington.

3. RESOLVED, That we do hereby declare ourselves a free and independent people, are, and of right ought to be, a sovereign and self-governing association, under the control of no power other than that of our God and the general government of the congress; to the maintenance of which independence, we solemnly pledge to each other our mutual co-operation, our lives, our fortunes, and our most sacred honor.



## MECKLENBURG DECLARATION OF INDEPENDENCE.

4. RESOLVED, That as we now acknowledge the existence and control of no law or legal officer, civil or military, within this county, we do hereby ordain and adopt as a rule of life, all, each and every of our former laws,—wherein, nevertheless, the crown of Great Britain never can be considered as holding rights, privileges, immunities or authority therein.

5. RESOLVED, That it is further decreed, that all, each and every military officer in this county, is hereby reinstated in his former command and authority, he acting conformably to these regulations. And that every member present, of this delegation, shall henceforth be a civil officer, viz. a justice of the peace, in the character of a “*committee-man*,” to issue process, hear and determine all matters of controversy, according to said adopted laws, and to preserve peace, union and harmony in said county; and to use every exertion to spread the love of country and fire of freedom throughout America, until a more general and organized government be established in this province.

After discussing the foregoing resolves, and arranging by-laws and regulations for the government of a standing committee of public safety, who were selected from these delegates, the whole proceedings were unanimously adopted and signed. A select committee was then appointed to draw a more full and definite statement of grievances, and a more formal declaration of independence. The delegation then adjourned about 2 o'clock, A. M., May 20.

# NAMES OF DELEGATES

TO THE

STATE CONGRESS IN 1776.

---

THE following are the names of the delegates who attended the Congress, which met at Halifax, the 12th of November, 1776, and which formed and adopted the Bill of Rights and Constitution of the State. The seats of those whose names are marked \* were vacated by appointments to office. Those whose names are marked † obtained leave of absence from congress, at various times, previous to the adoption of the Constitution. Those only whose names are not marked were present when the Bill of Rights and Constitution finally passed.

## ANSON COUNTY.

THOMAS WADE,  
DAVID LOVE,  
WM. PICKET.†

## BEAUFORT COUNTY.

JOHN BARROW,†  
THOS. RESPESS,  
THOS. RESPESS, Jun.  
FRANCIS JONES,  
ROBERT TRIPP.

## BERTIE COUNTY.

WM. GRAY,  
NOAH HINTON,  
ZEDEKIAH STONE.

## BLADEN COUNTY.

THOS. ROBESON,  
THOS. OWEN,  
THOS. AMIS,  
JAS. COUNCIL.

## BRUNSWICK COUNTY.

CORNELIUS HARNETT,  
ARCH'D McLEAN,  
LEWIS DUPRE,†  
WM. LORD.

## BUTE COUNTY.

JAS. DENTON,  
THOS. EATON,  
PHILEMON HAWKINS,  
BENJAMIN SEAWELL,  
BENJAMIN WARD.

## CARTERET COUNTY.

SOL'N SHEPPARD,  
BRICE WILLIAMS,  
JNO. EATON,  
THOS. CHADWICK.

## CHOWAN COUNTY.

JAS. BLOUNT,  
THOS. BENBURY,  
THOS. JONES,  
LUKE SUMNER,  
JACOB HUNTER.

## CHATHAM COUNTY.

AMBROSE RAMSEY,  
JNO. BIRDSONG,  
MIAL SCURLOCK,  
JOSIAH HOGAN.

## CRAVEN COUNTY.

WM BRYAN,  
JNO. BRYAN,  
CHRISTOPHER NEALL,  
JNO. TILGHMAN.

## CUMBERLAND COUNTY.

ROBERT ROWAN,  
PHILIP ALSTON,†  
WM. RAND,  
ROBERT COBB.

## CURRITUCK COUNTY.

SAMUEL JARVIS,\*  
JAS. WHITE,  
KEDAR MERCHANT,  
HOLLOWELL WILLIAMS,  
THOS. WILLIAMS.

## DOBBS COUNTY.

RICHARD CASWELL,  
SIMON BRIGHT,  
ABRAHAM SHEPPARD,  
BENJAMIN EXUM,  
ANDREW BASS.

## NAMES OF DELEGATES.

## DUPLIN COUNTY.

JAS. KENAN,  
THOMAS GRAY,†  
WM. DICKSON,  
WM. TAYLOR,  
JAMES GILLESPIE,

## EDGCOMBE COUNTY.

WM. HAYWOOD,  
ELISHA BATTLE,  
JONAS JOHNSTON,  
ISAAC SESSUMS,  
WM. HORN.

## GRANVILLE COUNTY.

THOS. PERSON,  
ROBERT LEWIS,  
MEMUCAN HUNT,  
JOHN OLIVER.

## GUILFORD COUNTY.

DAVID CALDWELL,  
JOSEPH HINES,  
CHARLES BRUCE,  
RALPH GORRELL,  
ISHAM BROWDER.

## HALIFAX COUNTY.

JOHN BRADFORD,  
JAMES HOGAN,\*  
EGBERT HAYWOOD,  
WILLIS ALSTON,  
SAMUEL WELDON,  
BENJAMIN McCULLOCH.

## HARTFORD COUNTY.

LAWRENCE BAKER,†  
WM. MURFREE,  
ROBERT SUMNER,  
DAY RIDLEY,  
JAMES WRIGHT.

## HYDE COUNTY.

JOSEPH HANCOCK,  
JOHN JORDAN,  
BENJAMIN PARMERLE,  
AMBROSE JONES.

## JOHNSTON COUNTY.

NEED'M BRYAN, Jun.  
JOHN STEVENS,  
HENRY RAINS,  
ALEXANDER AVERYT.

## MARTIN COUNTY.

WM. WILLIAMS,  
THOS. HUNTER,  
JNO HARDISON,  
SAMUEL SMITHWICK.

## MECKLENBURG COUNTY.

ROBERT IRWIN,  
ZACHEUS WILSON,  
HEZEKIAH ALEXANDER,†  
WAIGHTSTIL AVERY.

## NEW-HANOVER COUNTY.

JOHN ASHE,  
SAMUEL ASHE,  
JOHN DEVANE,  
SAMPSON MOSELEY,  
JOHN HOLLINGSWORTH.

## NORTHAMPTON COUNTY.

ALLEN JONES,  
JAMES INGRAM,\*  
THOS. PARKER,  
HOWELL EDMUNDS.

## ONSLOW COUNTY.

JOHN SPICER,  
THOS. JOHNSTON,  
BENAJAH DOTY,  
EDWARD STARKEY,  
HENRY RHODES.

## ORANGE COUNTY.

THOS. BURKE,  
NATHANIEL ROCHESTER,  
ALEXANDER MEBANE,  
JOHN BUTLER,  
JOHN McCABE.

## PASQUOTANK COUNTY.

HENRY ABBOT,  
DEVOTION DAVIS,  
ISAAC GREGORY,  
DEMSEY BURGESS,  
LEMUEL SAWYER.†

## PERQUIMONS COUNTY.

BENJAMIN HARVEY,  
MILES HARVEY,  
THOMAS HARVEY,  
WM. SKINNER.

## PITT COUNTY.

BENJAMIN MAY,  
WM. ROBSON,  
JAMES GORHAM,  
GEORGE EVANS,\*  
EDWARD SALTER.

## ROWAN COUNTY.

MATTHEW LOCK,  
GRIFFITH RUTHERFORD,  
WM. SHARPE,  
JAMES SMITH,  
JOHN BREVARD.

## SURRY COUNTY.

ROBERT LANIER,  
WM. HALL,  
CHARLES GORDON,  
JOSEPH WILLIAMS.

## TRYON COUNTY.

JOSEPH HARDEN,  
ROBERT ABERNATHY,  
WM. GRAHAM,  
WM. ALSTON,  
JOHN BARBER.†

## TYRRELL COUNTY.

PETER WYNN,†  
JERE. FRAZIER,  
ISHAM WEBB,  
BENJ. BLOUNT.

## WAKE COUNTY.

TIGNAL JONES,  
JAMES JONES,  
MICHAEL ROGERS,  
JOHN RICE,  
BRITAIN FULLER.†

WASHINGTON DISTRICT,  
*Watauga,*  
*settlement,* { CHAS. ROBESON,  
JOHN CARTER,  
JOHN HAILE,  
JOHN SEVIER.

*Towns of*

BATH, WM. BROWN,  
BRUNSWICK PARKER QUINCE,  
CAMPBELTON, THOMAS HADLEY,  
EDENTON, JOSEPH HEWES,  
HALIFAX, WILLIE JONES,  
NEWBERN, ABNER NASH,  
SALISBURY, DAVID NESBIT.



THE

**DECLARATION OF RIGHTS.**

---

*A Declaration of Rights made by the Representatives of the  
Freemen of the State of North Carolina.*

SECT. 1. That all political power is vested in and derived from the people only.

SECT. 2. That the people of this State ought to have the sole and exclusive right of regulating the internal government and police thereof.

SECT. 3. That no man or set of men are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services.

SECT. 4. That the legislative, executive, and supreme judicial powers of government, ought to be forever separate and distinct from each other.

SECT. 5. That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.

SECT. 6. That elections of members to serve as representatives in General Assembly, ought to be free.

SECT. 7. That in all criminal prosecutions, every man has a right to be informed of the accusation against him, and to confront the accusers and witnesses with other testimony, and shall not be compelled to give evidence against himself.

SECT. 8. That no freeman shall be put to answer any criminal charge, but by indictment, presentment, or impeachment.

SECT. 9. That no freeman shall be convicted of any crime, but by the unanimous verdict of a jury, of good and lawful men, in open court, as heretofore used.

SECT. 10. That excessive bail should not be required, nor excessive fines imposed, nor cruel nor unusual punishments inflicted.

SECT. 11. That general warrants, whereby any officer or messenger may be commanded to search suspected places, without evidence of the fact committed, or to seize any person or persons not named, whose offence is not particularly described and supported by evidence, are dangerous to liberty, and ought not to be granted.

SECT. 12. That no freeman ought to be taken, imprisoned or disseized, of his freehold, liberties, or privileges, or outlawed or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the law of the land.

SECT. 13. That every freeman restrained of his liberty, is entitled to a remedy to inquire into the lawfulness thereof, and to remove the same if unlawful, and that such remedy ought not to be denied or delayed.

SECT. 14. That in all controversies at law, respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and ought to remain sacred and inviolable.

SECT. 15. That the freedom of the press is one of the great bulwarks of liberty, and, therefore, ought never to be restrained.

SECT. 16. That the people of this State ought not to be taxed or made subject to the payment of any impost or duty without the consent of themselves or their representatives in General Assembly, freely given.

SECT. 17. That the people have a right to bear arms for the defence of the State ; and, as standing armies in time of peace, are dangerous to liberty, they ought not to be kept up ; and that the military should be kept under strict subordination to, and governed by, the civil power.

SECT. 18. That the people have a right to assemble together, to consult for their common good, to instruct their representatives, and to apply to the legislature, for redress of grievances.

SECT. 19. That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences.

SECT. 20. That for redress of grievances, and for amending and strengthening the laws, elections ought to be often held.

SECT. 21. That a frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.

SECT. 22. That no hereditary emoluments, privileges or honors, ought to be granted or conferred in this State.



SECT. 23. That perpetuities and monopolies are contrary to the genius of a free State, and ought not to be allowed.

SECT. 24. That retrospective laws, punishing facts committed before the existence of such laws, and by them only declared criminal, are oppressive, unjust and incompatible with liberty, wherefore, no *ex post facto* law ought to be made.

SECT. 25. The property of the soil in a free government, being one of the essential rights of the collective body of the people, it is necessary, in order to avoid future disputes, that the limits of the State should be ascertained with precision ; and as the former temporary line between North and South Carolina was confirmed and extended by commissioners appointed by the legislatures of the two States, agreeable to the order of the late King George the Second, in council, that line, and that only, should be esteemed the southern boundary of this State, as follows : that is to say, beginning on the sea side, at a cedar stake, at or near the mouth of Little River, being the southern extremity of Brunswick county and running from thence, a north-west course through the boundary house, which stands in thirtythree degrees fiftysix minutes, to thirtyfive degrees north latitude ; and from thence a west course, so far as is mentioned in the charter of King Charles the Second, to the late proprietors of Carolina. Therefore, all the territories, seas, water and harbors, with their appurtenances, lying between the line above described, and the southern line of the State of Virginia, which begins on the sea shore in thirtysix degrees thirty minutes north latitude, and from thence runs west, agreeable to said charter of King Charles, are the right and property of the people of this State, to be held by them in sovereignty, any partial line without the consent of the legislature of this State, at any time thereafter directed or laid out, in any wise notwithstanding. Provided always, That this declaration of right shall not prejudice any nation or nations of Indians, from enjoying such hunting grounds, as may have been, or hereafter shall be secured to them by any former or future legislature of this State. And provided also, That it shall not be construed so as to prevent the establishment of one or more governments westward of this State, by consent of the legislature. And provided further, That nothing herein contained, shall affect the titles or possessions of individuals, holding or claiming, under the laws heretofore in force, or grants heretofore made by the late



King George the Third, or his predecessors, or the late lords proprietors or any of them.

December the seventeenth day, Anno Dom. one thousand seven hundred and seventysix, read the third time and ratified in open congress. } R. CASWELL, *Pres.*

JAMES GREEN, JUN., *Secretary.*

THE

## CONSTITUTION OF NORTH CAROLINA.

---

*The Constitution or Form of Government, agreed to and resolved upon by the Representatives of the Freemen of the State of North Carolina, elected and chosen for that particular purpose, in Congress assembled, at Halifax, the eighteenth day of December, in the year of our Lord, one thousand seven hundred and seventysix.*

WHEREAS allegiance and protection are in their nature reciprocal, and the one should of right be refused when the other is withdrawn. And whereas George the Third, King of Great Britain, and late sovereign of the British American colonies hath not only withdrawn from them his protection, but by an act of the British legislature declared the inhabitants of these States out of the protection of the British crown, and all their property found upon the high seas liable to be seized and confiscated to the uses mentioned in the said act. And the said George the Third has also sent fleets and armies to prosecute a cruel war against them, for the purpose of reducing the inhabitants of the said colonies to a state of abject slavery. In consequence whereof all government under the said king within the said colonies, hath ceased, and a total dissolution of government in many of them hath taken place. And whereas the continental congress having considered the premises, and other previous violations of the rights of the good people of America, have therefore declared that the Thirteen United Colonies are, of right, wholly absolved from all allegiance to the British crown, or any other foreign jurisdiction whatsoever, and that the said colonies now are and forever shall be, free and independent States : Wherefore, in our present state, in order to prevent anarchy and confusion, it becomes necessary that a government should be established in this State : Therefore, We, the

representatives of the freemen of North Carolina, chosen and assembled in congress for the express purpose of framing a constitution, under the authority of the people, most conducive to their happiness and prosperity, do declare that a government for this State shall be established in manner and form following, to wit :

SECT. 1. That the legislative authority shall be vested in two distinct branches, both dependent on the people, to wit : a senate and house of commons.

SECT. 2. That the senate shall be composed of representatives *annually* chosen by ballot, one from each *county* in this State.\*

SECT. 3. That the house of commons shall be composed of representatives *annually* chosen by ballot, *two for each county, and one for each of the towns of Edenton, Newbern, Wilmington, Salisbury, Hillsborough and Halifax.*

SECT. 4. That the senate and house of commons, assembled for the purpose of legislation, shall be denominated the General Assembly.

SECT. 5. That each member of the senate shall have usually resided in the *county* in which he is chosen, for one year immediately preceding his election ; and for the same time shall have possessed, and continue to possess, in the *county* which he represents, not less than three hundred acres of land in fee.

SECT. 6. That each member of the house of commons shall have usually resided in the county in which he is chosen, for one year immediately preceding his election, and for six months shall have possessed, and continue to possess, in the county which he represents, not less than one hundred acres of land in fee, or for the term of his own life.

SECT. 7. That all *freemen* of the age of twentyone years, who have been inhabitants of any one *county* within the State twelve months immediately preceding the day of any election, and possessed of a freehold within the same *county*, of fifty acres of land for six months next before and at the day of election, shall be entitled to vote for a member of the senate.

SECT. 8. That all *freemen* of the age of twentyone years, who have been inhabitants of any *county* within this State twelve months immediately preceding the day of any election, and shall have paid public taxes, shall be entitled to vote for members of the house of commons for the county in which he resides.

\* Those sections of the constitution in which material amendments have been made are printed in *italics*.



SECT. 9. *That all persons possessed of a freehold in any town in this State, having a right of representation, and also all freemen who have been inhabitants of any such town twelve months next before and at the day of election, and shall have paid public taxes, shall be entitled to vote for a member to represent such town in the house of commons. Provided always, That this section shall not entitle any inhabitant of such town to vote for members of the house of commons for the county in which he may reside, nor any freholder in such county, who resides without or beyond the limits of such town, to vote for a member for said town.*

SECT. 10. That the senate and house of commons when met, shall each have power to choose a speaker and other their officers, be judges of the qualifications and elections of their members, sit upon their own adjournments from day to day, and prepare bills to be passed into laws. The two houses shall direct writs of elections for supplying intermediate vacancies, and shall also jointly, by ballot, adjourn themselves to any future day and place.

SECT. 11. That all bills shall be read three times in each house before they pass into laws, and be signed by the speaker of both houses.

SECT. 12. That every person who shall be chosen a member of the senate or house of commons, or appointed to any office or place of trust, before taking his seat or entering upon the execution of his office, shall take an oath to the State ; and all officers shall also take an oath of office.

SECT. 13. That the General Assembly shall, by joint ballot of both houses, appoint judges of the supreme courts of law and equity, judges of admiralty, and *attorney general*, who shall be commissioned by the governor, and hold their offices during good behavior.

SECT. 14. *That the senate and house of commons shall have power to appoint the generals and field officers of the militia, and all officers of the regular army of this State.*

SECT. 15. *That the senate and house of commons jointly, at their first meeting after each annual election, shall by ballot elect a governor for one year, who shall not be eligible to that office longer than three years in six successive years : That no person under thirty years of age, and who has not been a resident in this State above five years, and having in the State a freehold in lands and tenements above the value of one thousand pounds, shall be eligible as governor.*

SECT. 16. That the senate and house of commons jointly,

at their first meeting after each *annual* election, shall by ballot elect seven persons to be a council of state for *one year*, who shall advise the governor in the execution of his office ; and that four members shall be a quorum ; their advice and proceedings shall be entered in a journal to be kept for that purpose only, and signed by the members present ; to any part of which any member present may enter his dissent ; and such journal shall be laid before the General Assembly when called for by them.

SECT. 17. That there shall be a seal of this State, which shall be kept by the governor, and used by him as occasion may require, and shall be called the great seal of the State of North Carolina, and be affixed to all grants and commissions.

SECT. 18. That the governor for the time being, shall be captain-general and commander-in-chief of the militia ; and in the recess of the General Assembly, shall have power, by and with the advice of the council of state, to embody the militia for the public safety.

SECT. 19. That the governor for the time being, shall have power to draw for and apply such sums of money as shall be voted by the General Assembly for the contingencies of government, and be accountable to them for the same ; he also may, by and with the advice of the council of state, lay embargoes, or prohibit the exportation of any commodity, for any term not exceeding thirty days at any one time, in the recess of the General Assembly, and shall have the power of granting pardons and reprieves, except where the prosecution shall be carried on by the General Assembly, or the law shall otherwise direct ; in which case, he may, in the recess, grant a reprieve until the next sitting of the General Assembly ; and may exercise all the other executive powers of government, limited and restrained as by this constitution is mentioned, and according to the laws of the State ; and on his death, inability, or absence from the State, the speaker of the senate for the time being, and in case of his death, inability, or absence from the State, the speaker of the house of commons shall exercise the powers of the governor, after such death, or during such absence or inability of the governor or speaker of the senate, *or until a new nomination is made by the General Assembly.*

SECT. 20. That in every case where any officer, the right of whose appointment is, by this constitution, vested in the General Assembly, shall, during their recess, die, or his office by other means become vacant, the governor shall have power, with the advice of the council of state, to fill up such vacancy by granting



a temporary commission, which shall expire at the end of the next session of the General Assembly.

SECT. 21. That the governor, judges of the supreme courts of law and equity, judges of admiralty and attorney general, shall have adequate salaries during their continuance in office.

SECT. 22. That the General Assembly shall, by joint ballot of both houses, *annually* appoint a treasurer or treasurers for this State.

SECT. 23. That the governor and other officers offending against the State, by violating any part of this constitution, mal-administration or corruption, may be prosecuted on the impeachment of the General Assembly, or presentment of the grand jury of any court of supreme jurisdiction in this State.

SECT. 24. That the General Assembly shall, by joint ballot of both houses, *triennially* appoint a secretary for this State.

SECT. 25. That no persons who heretofore have been or hereafter may be, receivers of the public moneys, shall have a seat in either house of General Assembly, or be eligible to any office in this State, until such person shall have fully accounted for and paid into the treasury, all sums for which they may be accountable and liable.

SECT. 26. That no treasurer shall have a seat in either the senate, house of commons, or council of state, during his continuance in that office, or before he shall have finally settled his accounts with the public, for all moneys which may be in his hands, at the expiration of his office, belonging to the State, and hath paid the same into the hands of the succeeding treasurer.

SECT. 27. That no officer in the regular army or navy, in the service and pay of the United States, of this or any other State, or any contractor or agent for supplying such army or navy with clothing or provisions, shall have a seat in either the senate, house of commons, or council of state, or be eligible thereto; and any member of the senate, house of commons, or council of state, being appointed to and accepting of such office, shall thereby vacate his seat.

SECT. 28. That no member of the council of state shall have a seat either in the senate or house of commons.

SECT. 29. That no judge of the supreme court of law or equity, or judge of admiralty, shall have a seat in the senate, house of commons, or council of state.

SECT. 30. That no secretary of this State, attorney general or clerk of any court of record, shall have a seat in the senate, house of commons, or council of state.



SECT. 31. That no clergyman, or preacher of the gospel, of any denomination, shall be capable of being a member of either the senate, house of commons, or council of state, while he continues in the exercise of the pastoral function.

SECT. 32. That no person who shall deny the being of God, or the truth of the *protestant* religion, or the divine authority either of the Old or New Testament, or who shall hold religious principles, incompatible with the freedom and safety of the State, shall be capable of holding any office or place of trust or profit in the civil department, within this State.

SECT. 33. That the justices of the peace, within the respective counties in this State, shall in future be recommended to the governor for the time being by the representatives in General Assembly, and the governor shall commission them accordingly: And the justices, when so commissioned, shall hold their offices during good behavior, and shall not be removed from office by the General Assembly unless for misbehavior, absence, or inability.

SECT. 34. That there shall be no establishment of any one religious church or denomination in this State in preference to any other; neither shall any person, on any pretence whatsoever, be compelled to attend any place of worship, contrary to his own faith or judgment; nor be obliged to pay for the purchase of any glebe, or the building of any house of worship, or for the maintenance of any minister or ministry, contrary to what he believes right, or has voluntarily and personally engaged to perform; but all persons shall be at liberty to exercise their own mode of worship: Provided, that nothing herein contained shall be construed to exempt preachers of treasonable or seditious discourses from legal trial and punishment.

SECT. 35. That no person in the State shall hold more than one lucrative office at any one time. Provided, That no appointment in the militia or to the office of a justice of the peace, shall be considered as a lucrative office.

SECT. 36. That all commissions and grants shall run in the name of the State of North Carolina, and bear test and be signed by the governor. All writs shall run in the same manner, and bear test and be signed by the clerks of the respective courts; indictments shall conclude, against the peace and dignity of the State.

SECT. 37. That the delegates for this State to the continental congress, while necessary, shall be chosen annually by the General Assembly, by ballot, but may be superseded in the mean time,

in the same manner : and no person shall be elected to serve in that capacity for more than three years successively.

SECT. 38. That there shall be a sheriff, coroner or coroners, and constables, in each county within this State.

SECT. 39. That the person of a debtor, where there is not a strong presumption of fraud, shall not be continued in prison after delivering up, *bona fide*, all his estate, real and personal, for the use of his creditors, in such manner as shall be hereafter regulated by law. All prisoners shall be bailable by sufficient sureties, unless for capital offences, when the proof is evident, or presumption great.

SECT. 40. That every foreigner, who comes to settle in this State, having first taken an oath of allegiance to the same, may purchase, or by other just means acquire, hold and transfer land or other real estate ; and after one year's residence, shall be deemed a free citizen.

SECT. 41. That a school or schools shall be established by the legislature for the convenient instruction of youth, with such salaries to the masters, paid by the public, as may enable them to instruct at low prices ; and all useful learning shall be duly encouraged and promoted in one or more universities.

SECT. 42. That no purchase of lands shall be made of the Indian natives, but on behalf of the public, by authority of the General Assembly.

SECT. 43. That the future legislature of this State shall regulate entails in such a manner as to prevent perpetuities.

SECT. 44. That the declaration of rights is hereby declared to be part of the constitution of this State, and ought never to be violated on any pretence whatever.

SECT. 45. That any member of either house of the General Assembly shall have liberty to dissent from, and protest against any act or resolve which he may think injurious to the public or any individual, and have the reasons of his dissent entered on the journals.

SECT. 46. That neither house of the General Assembly shall proceed upon public business, unless a majority of all the members of such house are actually present ; and that upon a motion made and seconded, the yeas and nays upon any question shall be taken and entered on the journals ; and that the journals of the proceedings of both houses of the General Assembly, shall be printed and made public, immediately after their adjournment.

This constitution is not intended to preclude the present congress from making a temporary provision for the well ordering of



this State, until the General Assembly shall establish government agreeable to the mode herein before prescribed.

December the eighteenth, one thousand seven }  
 hundred and seventysix, read the third time } R. CASWELL, *President.*  
 and ratified in open congress. }

JAMES GREEN, JUN., *Secretary.*

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*Amendments proposed by a Convention of Delegates of the People of North Carolina on the eleventh of July, 1835, and ratified by the People on the second Monday of November, in the same year.*

WHEREAS the General Assembly of North Carolina, by an act, passed the sixth day of January, one thousand eight hundred and thirtyfive, entitled “ An act concerning a convention to amend the constitution of the State,” and by an act, supplemental thereto, passed on the eighth day of January, one thousand eight hundred and thirtyfive, did direct that polls should be opened in every election precinct throughout the State, for the purpose of ascertaining whether it was the will of the freemen of North Carolina that there should be a convention of delegates, to consider of certain amendments proposed to be made in the constitution of said State; and did further direct, that if a majority of all the votes polled by the freemen of North Carolina should be in favor of holding such convention, the governor should, by proclamation, announce the fact, and thereupon the freemen aforesaid should elect delegates to meet in convention at the city of Raleigh, on the first Thursday in June, one thousand eight hundred and thirtyfive, to consider of the said amendments : And whereas a majority of the freemen of North Carolina did, by their votes at the polls so opened, declare their will that a convention should be had to consider of the amendments proposed, and the governor did, by proclamation, announce the fact that their will had been so declared, and an election for delegates to meet in convention as aforesaid was accordingly had : Now, therefore, we, the delegates of the good people of North Carolina, having assembled in convention, at the city of Raleigh, on the first Thursday in June, one thousand eight hundred and thirtyfive, and having continued in session from day to day, until the eleventh of July, one thousand eight hundred and thirtyfive, for the more deliberate consideration of said amendments, do now submit to the determination



of all the qualified voters of the State, the following amendments in the constitution thereof, that is to say :

## ARTICLE I.

### SECTION I.

1. The senate of this State shall consist of fifty representatives, biennially chosen by ballot, and to be elected by districts ; which districts shall be laid off by the General Assembly, at its first session after the year one thousand eight hundred and fortyone ; and afterwards, at its first session after the year one thousand eight hundred and fiftyone ; and then every twenty years thereafter, in proportion to the public taxes paid into the treasury of the State by the citizens thereof ; and the average of the public taxes paid by each county into the treasury of the State, for the five years preceding the laying off of the districts, shall be considered as its proportion of the public taxes, and constitute the basis of apportionment : Provided, That no county shall be divided in the formation of a senatorial district. And when there are one or more counties, having an excess of taxation above the ratio to form a senatorial district, adjoining a county or counties deficient in such ratio, the excess or excesses aforesaid shall be added to the taxation of the county or counties deficient ; and if, with such addition, the county or counties receiving it shall have the requisite ratio, such county and counties each shall constitute a senatorial district.

2. The house of commons shall be composed of one hundred and twenty representatives, biennially chosen by ballot, to be elected by counties according to their federal population, that is, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, threefifths of all other persons ; and each county shall have at least one member in the house of commons, although it may not contain the requisite ratio of population.

3. This apportionment shall be made by the General Assembly, at the respective times and periods when the districts for the senate are herein before directed to be laid off ; and the said apportionment shall be made according to an enumeration to be ordered by the General Assembly, or according to the census which may be taken by order of congress, next preceding the period of making such apportionment.

4. In making the apportionment in the house of commons, the ratio of representation shall be ascertained by dividing the amount of federal population of the State, after deducting that comprehended within those counties which do not severally contain the one hundred and twentieth part of the entire federal population aforesaid, by the number of representatives less than the number assigned to the said counties. To each county containing the said ratio, and not twice the said ratio, there shall be assigned one representative; to each county containing twice, but not three times the said ratio, there shall be assigned two representatives, and so on progressively, and then the remaining representatives shall be assigned severally to the counties having the largest fractions.

## SECTION II.

1. Until the first session of the General Assembly which shall be had after the year eighteen hundred and fortyone, the senate shall be composed of members to be elected from the several districts herein after named, that is to say, the 1st district shall consist of the counties of Perquimons and Pasquotank; the 2d district, of Camden and Currituck; the 3d district, of Gates and Chowan; the 4th district, Washington and Tyrrell; the 5th district, Northampton; the 6th district, Hertford; the 7th district, Bertie; the 8th district, Martin; the 9th district, Halifax; the 10th district, Nash; the 11th district, Wake; the 12th district, Franklin; the 13th district, Johnson; the 14th district, Warren; the 15th district, Edgecomb; the 16th district, Wayne; the 17th district, Greene and Lenoir; the 18th district, Pitt; the 19th district, Beaufort and Hyde; the 20th district, Carteret and Jones; the 21st district, Craven; the 22d district, Chatham; the 23d district, Granville; the 24th district, Person; the 25th district, Cumberland; the 26th district, Sampson; the 27th district, New Hanover; the 28th district, Duplin; the 29th district, Onslow; the 30th district, Brunswick, Bladen and Columbus; the 31st district, Robeson and Richmond; the 32d district, Anson; the 33d district, Cabarrus; the 34th district, Moore and Montgomery; the 35th district, Caswell; the 36th district, Rockingham; the 37th district, Orange; the 38th district, Randolph; the 39th district, Guilford; the 40th district, Stokes; the 41st district, Rowan; the 42d district, Davidson; the 43d district, Surry; the 44th district, Wilkes and Ashe; the 45th district, Burke and Yancy; the 46th district, Lincoln; the 47th district, Iredell; the 48th district, Rutherford; the 49th district, Buncombe, Haywood and Macon; and the 50th district, Mecklenburg; each district to be entitled to one senator.



2. Until the first session of the General Assembly after the year eighteen hundred and fortyone, the house of commons shall be composed of members elected from the counties in the following manner, viz: The counties of Lincoln and Orange shall elect four members each. The counties of Burke, Chatham, Granville, Guilford, Halifax, Iredell, Mecklenburg, Rowan, Rutherford, Surry, Stokes, and Wake shall elect three members each. The counties of Anson, Beaufort, Bertie, Buncombe, Cumberland, Craven, Caswell, Davidson, Duplin, Edgecomb, Franklin, Johnston, Montgomery, New Hanover, Northampton, Person, Pitt, Randolph, Robeson, Richmond, Rockingham, Sampson, Warren, Wayne and Wilkes shall elect two members each. The counties of Ashe, Bladen, Brunswick, Camden, Columbus, Chowan, Currituck, Carteret, Cabarrus, Gates, Greene, Haywood, Hertford, Hyde, Jones, Lenoir, Macon, Moore, Martin, Nash, Onslow, Pasquotank, Perquimons, Tyrrell, Washington and Yancy shall elect one member each.

## SECTION III.

1. Each member of the senate shall have usually resided in the district for which he is chosen for one year immediately preceding his election, and for the same time shall have possessed and continue to possess in the district which he represents not less than three hundred acres of land in fee.

2. All free men of the age of twentyone years, (except as is hereinafter declared) who have been inhabitants of any one district within the State twelve months immediately preceding the day of any election, and possessed of a freehold within the same district of fifty acres of land for six months next before and at the day of election, shall be entitled to vote for a member of the senate.

3. No free negro, free mulatto, or free person of mixed blood, descended from negro ancestors to the fourth generation inclusive (though one ancestor of each generation may have been a white person,) shall vote for members of the senate or house of commons

## SECTION IV.

1. In the election of all officers whose appointment is conferred on the General Assembly by the constitution, the vote shall be *viva voce*.

2. The General Assembly shall have power to pass laws regulating the mode of appointing and removing militia officers.



3. The General Assembly shall have power to pass general laws regulating divorce and alimony, but shall not have power to grant a divorce or secure alimony in any individual case.

4. The General Assembly shall not have power to pass any private law, to alter the name of any person, or to legitimate any persons not born in lawful wedlock, or to restore to the rights of citizenship any person convicted of an infamous crime; but shall have power to pass general laws regulating the same.

5. The General Assembly shall not pass any private law, unless it shall be made to appear that thirty days notice of application to pass such law shall have been given, under such directions and in such manner as shall be provided by law.

6. If vacancies shall occur by death, resignation or otherwise, before the meeting of the General Assembly, writs may be issued by the governor, under such regulations as may be prescribed by law.

7. The General Assembly shall meet biennially, and at each biennial session shall elect, by joint vote of the two houses, a secretary of state, treasurer and council of state, who shall continue in office for the term of two years.

## ARTICLE II.

1. The governor shall be chosen by the qualified voters for the members of the house of commons, at such time and places as members of the General Assembly are elected.

2. He shall hold his office for the term of two years from the time of his installation, and until another shall be elected and qualified; but he shall not be eligible more than four years in any term of six years.

3. The returns of every election for governor shall be sealed up and transmitted to the seat of government, by the returning officers, directed to the speaker of the senate, who shall open and publish them in the presence of a majority of the members of both houses of the General Assembly. The person having the highest number of votes, shall be governor; but if two or more shall be equal and highest in votes, one of them shall be chosen governor by joint vote of both houses of the General Assembly.

4. Contested elections for governor shall be determined by both houses of the General Assembly, in such manner as shall be prescribed by law.

5. The governor elect shall enter on the duties of the office on the first day of January next after his election, having previously taken the oaths of office in presence of the members of both branches of the General Assembly, or before the chief justice of the supreme court, who, in case the governor elect should be prevented from attendance before the General Assembly, by sickness or other unavoidable cause, is authorised to administer the same.

### ARTICLE III.

#### SECTION I.

1. The governor, judges of the supreme court, and judges of the superior courts, and all other officers of this State, (except justices of the peace and militia officers,) may be impeached for wilfully violating any article of the constitution, mal-administration or corruption.

2. Judgment, in cases of impeachment, shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under this State ; but the party convicted, may, nevertheless, be liable to indictment, trial, judgment and punishment according to law.

3. The house of commons shall have the sole power of impeachment. The senate shall have the sole power to try all impeachments ; no person shall be convicted upon any impeachment, unless twothirds of the senators present shall concur in such conviction ; and before the trial of any impeachment, the members of the senate shall take an oath or affirmation truly and impartially to try and determine the charge in question according to evidence.

#### SECTION II.

1. Any judge of the supreme court, or of the superior courts, may be removed from office for mental or physical inability, upon a concurrent resolution of twothirds of both branches of the General Assembly. The judge, against whom the legislature may be about to proceed, shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either branch of the General Assembly shall act thereon.

2. The salaries of the judges of the supreme court, or of the superior courts, shall not be diminished during their continuance in office.

## SECTION III.

Upon the conviction of any justice of the peace, of any in famous crime, or of corruption and mal-practice in office, the commission of such justice shall be thereby vacated, and he shall be forever disqualified from holding such appointment.

## SECTION IV.

The General Assembly at its first session after the year one thousand eight hundred and thirtynine, and from time to time thereafter, shall appoint an attorney general, who shall be commissioned by the governor, and shall hold his office for the term of four years ; but if the General Assembly should hereafter extend the term during which solicitors of the State shall hold their offices, then they shall have power to extend the term of office of the attorney general to the same period.

## ARTICLE IV.

## SECTION I.

1. No convention of the people shall be called by the General Assembly, unless by the concurrence of twothirds of all the members of each house of the General Assembly.

2. No part of the constitution of this State shall be altered, unless a bill to alter the same shall have been read three times in each house of the General Assembly, and agreed to by threefifths of the whole number of members of each house respectively ; nor shall any alteration take place until the bill so agreed to shall have been published six months previous to a new election of members to the General Assembly. If, after such publication, the alteration proposed by the preceding General Assembly, shall be agreed to in the first session thereafter by two-thirds of the whole representation in each house of the General Assembly, after the same shall have been read three times on three several days in each house, then the said General Assembly shall prescribe a mode by which the amendment or amendments may be submitted to the qualified voters of the house of commons throughout the State ; and if, upon comparing the votes given in the whole State, it shall appear that a majority of the voters have approved thereof, then, and not otherwise, the same shall become a part of the constitution.



## SECTION II.

The thirtysecond section of the constitution shall be amended to read as follows : No person who shall deny the being of God, or the truth of the Christian religion, or the divine authority of the Old or New Testament, or who shall hold religious principles incompatible with the freedom or safety of the State, shall be capable of holding any office or place of trust or profit in the civil department within this State.

## SECTION III.

1. Capitation tax shall be equal throughout the State upon all individuals subject to the same.

2. All free males over the age of twentyone years, and under the age of fortyfive years, and all slaves over the age of twelve years, and under the age of fifty years, shall be subject to capitation tax, and no other person shall be subject to such tax ; provided that nothing herein contained shall prevent exemptions of taxable polls as heretofore prescribed by law in cases of bodily infirmity.

## SECTION IV.

No person who shall hold any office or place of trust or profit under the United States, or any department thereof, or under this State, or any other state or government, shall hold or exercise any other office or place of trust or profit under the authority of this State, or be eligible to a seat in either house of the General Assembly : Provided, that nothing herein contained shall extend to officers in the militia or justices of the peace.

Ratified in convention, this eleventh day  
of July, in the year of our Lord, one } NATH'L. MACON, *Pres.*  
thousand eight hundred and thirtyfive.

EDMUND B. FREEMAN, *Secretary of the Convention.*

JOSEPH D. WARD, *Assistant Secretary.*

## AN ORDINANCE

TO CARRY INTO EFFECT THE AMENDED CONSTITUTION.

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BE it ordained and declared, by the delegates to this Convention, in convention assembled, and it is hereby ordained by the authority of the same, That the amendments to the constitution of this State, adopted by this convention, be submitted by the governor to the people, on the second Monday in November next, thirty days notice having been given, and that the polls be opened by the respective sheriffs, and kept open for three successive days, at the several election precincts in each and every county in the State, under the same rules and regulations, as now exist, for the election of members to the General Assembly. That the said sheriffs be required to compare and certify the results of the elections, on or before the Monday following, and transmit the same in twenty days thereafter, to the governor of the State. That all persons qualified to vote for members of the house of commons, may vote for or against a ratification of the amendments. Those who wish a ratification of the amendments, voting with a printed or written ticket, "*Ratification*"—those of a contrary opinion, "*Rejection*."

*Further*, That it shall be the duty of the sheriffs to make duplicate statements of the polls in their respective counties, sworn to before the clerk of the county court: one copy of which shall be deposited in said clerk's office, and the other copy transmitted to the governor of the State, at Raleigh.

*Be it further ordained by the authority of the same*, That when the returns aforesaid shall have been received, the same shall be opened by the governor in the presence of the secretary of state and treasurer, and in case a majority of the votes polled shall be in favor of a ratification of the amendments, the same shall be forthwith made known by a proclamation of the governor

to the people of the State. And thereupon, the governor shall cause to be endorsed on the amendments, as enrolled by order of the convention, or shall annex thereunto, a certificate under his signature declaring that the said amendments have been ratified by the people of North Carolina, and the secretary of state shall countersign the said certificate, and annex thereto the great seal of the State, and the said amendments so enrolled with the certificate aforesaid shall be forever kept among the archives of the State in the office of the secretary aforesaid.

*Be it further ordained by the authority aforesaid,* That the amendments thus ratified shall take effect, and be in force, from and after the first day of January, A. D. one thousand eight hundred and thirtysix : Provided, however, that the governor, the council of state, the secretary of state and the public treasurer, who may then be in office, shall severally continue to exercise their respective functions until the governor, council of state, secretary of state and public treasurer appointed under the amended constitution shall enter upon the duties of their office.

Ratified in Convention, this eleventh day  
of July, anno Dom. one thousand eight  
hundred and thirtyfive. } NATH'L. MACON, *Pres.*

EDMUND B. FREEMAN, *Secretary of the Convention.*

JOSEPH D. WARD, *Assistant Secretary.*



C O N S T I T U T I O N

O F

T H E U N I T E D S T A T E S .

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IN GENERAL ASSEMBLY, Nov. 20, 1788.

RESOLVED, That it is the opinion of this house, a new convention be recommended, for the purpose of reconsidering the new constitution held out by the federal convention as a government for the United States.

RESOLVED, That it be recommended to such of the inhabitants of this State as are entitled to vote for members of the house of commons, at the annual election to be held in each county on the third Friday and Saturday in August next, to vote for five persons in each county, and one person in each borough-town having a right of representation agreeable to the constitution of this State, to sit as a State convention, for the purpose of deliberating and determining on the proposed federal constitution for the future government of the United States, and on such amendments, if any, as shall or may be made to the said constitution by a convention of the States previous to the meeting of the said convention of this State ; which election shall be conducted agreeable to the mode, and conformable to the rules and regulations prescribed by law for conducting the elections of members of the General Assembly : and every citizen within this State, being a freeholder, shall be eligible to a seat in the said Convention, sheriffs and returning officers excepted.

RESOLVED, That the sheriffs of the counties in this State, do advertise and notify the people of their counties and borough-towns, of the time, place and purpose of holding said election, at the same time, and in the same manner, as the law requires them to advertise elections for members of the General Assembly.

RESOLVED, That the persons so elected to serve in a State convention, do assemble and meet together on the third Monday in November, at such place as shall be appointed for the meeting of the General Assembly, then and there to deliberate and determine on the said constitution, and on the amendments, if any; and if approved of by them, to confirm and ratify the same on behalf of this State, and make report thereof to congress and to the General Assembly.

RESOLVED, That it be recommended by this Assembly, to the convention which is to meet on the third Monday in November to reconsider the new constitution, that they also consider the propriety of allowing the town of Fayetteville a member to represent the said town, on the same terms with the other district towns in this State.

ALEX. MARTIN, S. S.  
JOHN SITGREAVES, S. C.

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IN CONVENTION, SATURDAY, NOV. 21, 1789.

WHEREAS the general convention which met in Philadelphia, in pursuance of a recommendation of congress, did recommend to the citizens of the United States, a constitution or form of government, in the following words, viz.

WE, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

## ARTICLE I.

### SECTION I.

All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

Legislative powers vested in congress.

### SECTION II.

The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

House of representatives — its members; by whom chosen; qualifications of electors.

A representative to be 25 ; 7 years a citizen of the U. States; and an inhabitant of his state when elected.

Representatives and taxes to be apportioned according to numbers.

Actual enumeration every ten years.

Limitation of the ratio of representation, &c.

First apportionment of representatives.

Writs of election for filling vacancies.

House of representatives to choose speaker &c. and have power of impeachment.

Senators, how chosen : each to have a vote. [See art. 5.]

Senate divided into three classes ; to be chosen every two years.

Executives of states to fill vacancies in the recess of legislatures, &c.

2. No person shall be a representative who shall not have attained to the age of twentyfive years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, threefifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative ; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The house of representatives shall choose their speaker and other officers ; and shall have the sole power of impeachment.

### SECTION III.

1. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years ; and each senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year ; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.



3. No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

A senator aged 30; nine years a citizen of the United States and an inhabitant of his state when chosen.

4. The vice-president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

Vice president to be president of the senate; to vote on an eq. div. only.

5. The senate shall choose their other officers, and also a president *pro tempore*, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

The senate to choose their president *pro tempore*, &c.

6. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside: and no person shall be convicted without the concurrence of twothirds of the members present.

The senate have the sole power to try impeachments, &c.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Extent of judgment in cases of impeachment; but the party further liable by indictment at law.

SECTION IV.

1. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

Times, &c. of holding elections for senators and representatives regulated by the states or by congress.

2. The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December unless they shall by law appoint a different day.

Congress to assemble annually the 1st Monday in Dec. unless, &c.

SECTION V.

1. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Each house judge of the election and qualifications of its own members. Quorum.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of twothirds expel a member.

Each house to form its own rules and punish its members.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in

Journals of each house. Yeas and nays how taken.

their judgment require secrecy ; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Adjournment of both houses.

4. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

#### SECTION VI.

Senators and representatives to be paid, &c. privileged from arrest ; not to be questioned for debate, &c.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same ; and for any speech or debate in either house, they shall not be questioned in any other place.

Concerning the holding of offices by senators and representatives.

2. No senator or representative shall during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time ; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

#### SECTION VII.

Revenue bill to originate in the house of representatives, &c.

1. All bills for raising revenue shall originate in the house of representatives ; but the senate may propose or concur with amendments as on other bills.

Powers of the president and of congress in the enacting of laws and the forms of proceeding on bills in that respect.

2. Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States ; if he approve he shall sign it, but if not he shall return it, with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the



same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States ; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be re-passed by twothirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

Joint resolutions, except for adjournment, to receive the same sanction as bills.

SECTION VIII.

1. The congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States ; but all duties, imposts and excises shall be uniform throughout the United States ;

Congress shall have power, 1st to lay taxes, &c.

2. To borrow money on the credit of the United States ;

2. Bor. money.

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes ;

3. Regulate commerce.

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States ;

4. Establish the rule of naturalization and bankrupt laws.

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures ;

5. Coin money, &c. and fix weights and measures.

6. To provide for the punishment of counterfeiting the securities and current coin of the United States ;

6. Provide for punishing counterfeiters.

7. To establish post offices and post roads ;

7. Establish

8. To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries ;

P. Offices, &c. 8. Patent rights.

9. To constitute tribunals inferior to the supreme court ; to define and punish piracies and felonies committed on the high seas, and offences against the law of nations ;

9. To constitute inferior tribunals, &c.

10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water ;

10. To declare war, &c.

11. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years ;

11. Raise armies, &c.

12. To provide and maintain a navy ;

12. Provide a navy.

13. To make rules for the government and regulation of the land and naval forces ;

13. Make rules for army and navy.

14. To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions ;

14. Provide for calling forth the militia.



15. Provide for organizing the militia, &c.

15. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress ;

16. Exercise exclusive jurisdiction over a district, and places for forts, &c.

16. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings ;—and,

17. Make all laws necessary to the execution of their powers.

17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

#### SECTION IX.

Importation of certain persons not to be prohibited until after 1808. [See article 5.]

1. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

Habeas corpus.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto law. Direct taxes according to census.

3. No bill of attainder or *ex post facto* law shall be passed.

4. No capitation, or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No export duty, nor preference of one state to another in commerce.

5. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another : nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

Public moneys, how drawn, &c.

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law ; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No titles of nobility. No presents, &c.

7. No title of nobility shall be granted by the United States : and no person holding any office of profit or trust under them,

shall, without the consent of congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

SECTION X.

1. No state shall enter into any treaty, alliance, or confederation ; grant letters of marque and reprisal ; coin money ; emit bills of credit ; make any thing but gold and silver coin a tender in payments of debts ; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

Restrictions on the power of the states individually.

2. No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws ; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States ; and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Powers which the states can exercise only under the sanction of congress.

ARTICLE II.

SECTION I.

1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows :

Executive power vested in a president, &c.

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress : but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

Electors of president and vice president.

3. The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each ; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, direct-

Meeting of the electors of president, &c. [This clause is annulled by the amendment article 12.]



ed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be president, if such number be a majority of the whole number of electors appointed ; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president ; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote ; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice-president.

Congress may fix the time of choosing the electors, &c.

4. The congress may determine the time of choosing the electors, and the day on which they shall give their votes ; which day shall be the same throughout the United States.

Qualifications of president.

5. No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of president ; neither shall any person be eligible to that office who shall not have attained to the age of thirtyfive years, and been fourteen years a resident within the United States.

In case of vacancy in the office of president, the vice president to act, &c.

6. In case of the removal of the president from office, or of his death, resignation or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may by law provide for the case of removal, death, resignation or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

Compensation to the president.

7. The president shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

The president to take an oath. Form of the oath.

8. Before he enters on the execution of his office, he shall take the following oath or affirmation :



2. "I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect and defend the constitution of the United States."

SECTION II.

1. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States ; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices ; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

The president is commander-in-chief—he may require opinions of executive officers, and may grant pardons, &c.

2. He shall have power, by and with the advice and consent of the senate, to make treaties, provided twothirds of the senators present concur ; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law : but the congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

He may, by advice of the senate, make treaties, appoint ambassadors and other officers ; but congress may vest certain appointments otherwise.

3. The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

President may fill vacancies in recess.

SECTION III.

He shall from time to time give to the congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient ; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper ; he shall receive ambassadors and other public ministers ; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

President to recommend measures to congress, &c. may convene and adjourn congress on certain occasions, shall receive ambassadors, see the laws executed, and commission officers.

SECTION IV.

The president, vice-president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

President and other officers removable by impeachment.

## ARTICLE III.

## SECTION I.

Judicial power vested in a supreme court &c. judges to hold their offices during good behavior.

The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior ; and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

## SECTION II.

Extent of the judicial power.

1. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority ;—to all cases affecting ambassadors, other public ministers and consuls ;—to all cases of admiralty and maritime jurisdiction ;—to controversies to which the United States shall be a party ;—to controversies between two or more states ;—between a state and citizens of another state ;—between citizens of different states ;—between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.\*

Original and appellate jurisdiction of the supreme court.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

Trial of crimes to be by jury.

The venue.

3. The trial of all crimes, except in cases of impeachment, shall be by jury ; and such trial shall be held in the state where the said crime shall have been committed ; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

## SECTION III.

Definition of treason, &c.

1. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

[\* Amended, see art. 11.]

2. The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

Congress to declare the punishment of treason, &c.

ARTICLE IV.

SECTION I.

Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

Credit to be given in one state to the public acts, &c. of another.

SECTION II.

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.
  2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.
  3. No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.
- Reciprocity of citizenship throughout the states.  
Criminals flying from one state to another to be delivered up.  
Runaway slaves, &c. to be delivered up.

SECTION III.

1. New states may be admitted by the congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the congress.
  2. The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.
- New states may be admitted into the union, &c.  
Congress to have power of territory, &c.

SECTION IV.

The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them

Republican form of government guaranteed to each state, &c.



against invasion ; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

### ARTICLE V.

Mode of amending the constitution.

The congress whenever twothirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of twothirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of threefourths of the several states, or by conventions in threefourths thereof, as the one or the other mode of ratification may be proposed by the congress ; Provided, That no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article ; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

### ARTICLE VI.

Assumption of debts incurred under the confederation.

1. All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

This constitution, acts of congress and treaties, the supreme law — the state judges bound thereby.

2. This constitution, and the laws of the United States which shall be made in pursuance thereof ; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land ; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

Members of congress and of the state legislatures, &c. bound by oath to support this constitution.

3. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution ; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

### ARTICLE VII.

Ratification of nine states, sufficient &c.

The ratification of the conventions of nine states, shall be suf-

ficient for the establishment of this constitution between the states so ratifying the same.

DONE in convention, by the unanimous consent of the states present, the seventeenth day of September in the year of our Lord one thousand seven hundred and eightyseven, and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

GEORGE WASHINGTON,

*President, and deputy from Virginia.*

NEW HAMPSHIRE.

JOHN LANGDON,  
NICHOLAS GILMAN.

MASSACHUSETTS.

NATHANIEL GORHAM,  
RUFUS KING.

CONNECTICUT.

WILLIAM SAMUEL JOHNSON,  
ROGER SHERMAN.

NEW YORK.

ALEXANDER HAMILTON.

NEW JERSEY.

WILLIAM LIVINGSTON,  
DAVID BREARLY,  
WILLIAM PATTERSON,  
JONATHAN DAYTON.

PENNSYLVANIA.

BENJAMIN FRANKLIN,  
THOMAS MIFFLIN,  
ROBERT MORRIS,  
GEORGE CLYMER,  
THOMAS FITZSIMONS,  
JARAD INGERSOLL,  
JAMES WILSON,  
GOVERNEUR MORRIS.

DELAWARE.

GEORGE READ,  
GUNNING BEDFORD, JR.,  
JOHN DICKINSON,  
RICHARD BASSETT,  
JACOB BROOM.

MARYLAND.

JAMES M'HENRY,  
DANIEL OF ST. THOMAS JENIFER,  
DANIEL CARROLL.

VIRGINIA.

JOHN BLAIR,  
JAMES MADISON, JR.

NORTH CAROLINA.

WILLIAM BLOUNT,  
RICHARD DOBBS SPAIGHT,  
HUGH WILLIAMSON.

SOUTH CAROLINA.

J. RUTLEDGE,  
CHAS. COTESWORTH PINCKNEY,  
CHARLES PINCKNEY,  
PIERCE BUTLER.

GEORGIA.

WILLIAM FEW,  
ABR. BALDWIN.

Attest,

WILLIAM JACKSON, *Secretary.*

RESOLVED, That this convention, in behalf of the freemen, citizens and inhabitants of the State of NORTH CAROLINA, do adopt and ratify the said constitution and form of government.

SAMUEL JOHNSTON, *President.*

By order,

J. HUNT, *Secretary.*

IN CONVENTION, MONDAY, SEPTEMBER 17th, 1787.

PRESENT : the states of New Hampshire, Massachusetts, Connecticut, Mr Hamilton from New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

1. RESOLVED, That the preceding constitution be laid before the United States in congress assembled, and that it is the opinion of

Constitution to be laid before congress, &c.

this convention, that it should afterwards be submitted to a convention of delegates chosen in each state by the people thereof, under the recommendation of its legislature, for their assent and ratification ; and that each convention assenting to, and ratifying the same, should give notice thereof to the United States in congress assembled.

Congress to fix a day for appointing electors of president, &c.

2. **RESOLVED**, That it is the opinion of this convention, that as soon as the conventions of nine states shall have ratified this constitution, the United States in congress assembled, should fix a day on which electors should be appointed by the states which shall have ratified the same, and a day on which the electors should assemble to vote for the president, and the time and place for commencing proceedings under this constitution. That after such publication, the electors should be appointed, and the senators and representatives elected. That the electors should meet on the day fixed for the election of the president, and should transmit their votes, certified, signed, sealed, and directed, as the constitution requires, to the secretary of the United States, in congress assembled ; that the senators and representatives should convene at the time and place assigned ; that the senators should appoint a president of the senate, for the sole purpose of receiving, opening, and counting the votes for president ; and, that after he shall be chosen, the congress, together with the president, should, without delay, proceed to execute this constitution.

Mode recommended for carrying the constitution into effect.

By the unanimous order of the convention,

**GEORGE WASHINGTON**, *President*.

**WILLIAM JACKSON**, *Secretary*.

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IN CONVENTION, SEPTEMBER 17th, 1787.

SIR,

Letter from the convention that framed the constitution, to the president of congress.

1. We have now the honor to submit to the consideration of the United States in congress assembled, that constitution which has appeared to us the most advisable.

2. The friends of our country have long seen and desired, that the power of making war, peace, and treaties ; that of levying money, and regulating commerce, and the correspondent executive and judicial authorities, should be fully and effectually vested in the general government of the union : but the impropriety of delegating such extensive trust to one body of men, is evident ; hence results the necessity of a different organization.



3. It is obviously impracticable in the federal government of these states, to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all. Individuals entering into society, must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance, as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered, and those which may be reserved; and on the present occasion, this difficulty was increased by a difference among the several states as to their situation, extent, habits, and particular interests.

4. In all our deliberations on this subject, we kept steadily in our view, that which appears to us the greatest interest of every true American, the consolidation of our union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each state in the convention to be less rigid on points of inferior magnitude, than might have been otherwise expected; and thus the constitution, which we now present, is the result of a spirit of amity, and of that mutual deference and concession, which the peculiarity of our political situation rendered indispensable.

5. That it will meet the full and entire approbation of every state, is not perhaps to be expected; but each will doubtless consider, that had her interest been alone consulted, the consequences might have been particularly disagreeable or injurious to others; that it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish. With great respect, we have the honor to be, sir, your excellency's most obedient and humble servants.

By unanimous order of the convention.

GEORGE WASHINGTON, *President.*

His Excellency the President of Congress.

# AMENDMENTS TO THE CONSTITUTION.

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## ARTICLE I.

Congress prohibited from interfering with religion, with freedom of speech, of the press, and the right of petition.

CONGRESS shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the people peaceably to assemble, and to petition the government for a redress of grievances.

## ARTICLE II.

Right of the people to keep and bear arms, &c.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

## ARTICLE III.

No soldier to be quartered in any house, during peace, without consent, &c.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

## ARTICLE IV.

No search warrant to issue, except on probable cause, oath, &c.

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## ARTICLE V.

No person to be held to answer for a crime, unless on presentment, &c. except in the land or naval forces, nor to answer for the same offence twice, &c.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation ; to be confronted with the witnesses against him ; to have compulsory process for obtaining witnesses in his favor ; and to have the assistance of counsel for his defence.

Assurance of speedy and public trial by jury, &c. in criminal prosecutions.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved ; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Right of trial by jury in suits at common law, above the value of twenty dollars &c.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Excessive bail, and unjust and cruel punishments, prohibited.

ARTICLE IX.

The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Rights enumerated not to disparage those retained.

ARTICLE X.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Powers not delegated, &c. are reserved to the states or people.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Restriction of judicial powers.

ARTICLE XII.

1. The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president ; and they

Mode of electing the president and vice-president of the United States.



shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted: the person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from twothirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president.

2. The person having the greatest number of votes as vice-president, shall be the vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice-president: a quorum for the purpose shall consist of twothirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of president, shall be eligible to that of vice-president of the United States.

**REVISED STATUTES.**





## CHAPTER 1.

# REVISED STATUTES.

### AN ACT CONCERNING THE REVISED STATUTES.

#### SECTION

1. When the revised statutes shall go into operation.
2. Former acts on the subjects embraced in the revised statutes, and all British statutes repealed after the 1st of January, 1838.
3. Effect of such repeal on rights accrued or suits commenced.
4. Effect of such repeal on offences committed or penalties incurred.
5. Effect on suits or prosecutions commenced for offences.
6. No act heretofore repealed shall be revived by such repeal.
7. Effect of the repeal on persons holding offices.

#### SECTION

8. What acts are not included in the repealing clause.
9. How the revised statutes shall be published. What shall be contained in the first volume.
10. What in a second volume.
11. Number of copies to be published — Copy right to be secured to the State.
12. How the copies shall be distributed or disposed of.
13. The governor to make compensation to the superintendents.
14. The copies so printed to be received as evidence.

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 the following acts passed at the present session of this General Assembly, and known as "The Revised Statutes," shall take effect and go into operation on the first day of January next and not sooner, except those as to which a different provision is expressly made therein and the acts concerning courts of justice, the militia, the collection and management of the public revenue, the treasurer of the State and comptroller, pilots and pilotage, salaries and fees, which shall take effect immediately; to wit:

1. An act ascertaining the mode of proving book debts.
2. An act concerning entries and grants of land.
3. An act concerning wrecks and wrecked property.
4. An act concerning the militia of this State.
5. An act concerning public documents.
6. An act concerning the mode of choosing senators and representatives in the congress of the United States.
7. An act concerning bastardy and prescribing the mode of legitimating bastard children in certain cases.
8. An act concerning divorce and alimony.
9. An act concerning attorneys at law.
10. An act concerning constables.
11. An act providing for the support of the poor.

12. An act concerning bail in civil cases.
13. An act concerning executors and administrators.
14. An act concerning coroners.
15. An act concerning the comptroller.
16. An act concerning quarantine and to prevent the introduction and communication of contagious diseases.
17. An act concerning the treasurer of the State.
18. An act to provide for the collection and management of a revenue for this State.
19. An act concerning religious societies and congregations.
20. An act prescribing what shall be evidence in certain cases.
21. An act to prevent the abatement of suits in certain cases.
22. An act to prevent the destruction of oysters in this State.
23. An act concerning the secretary of State.
24. An act concerning mad dogs.
25. An act concerning last wills and testaments.
26. An act for the relief of such persons as have been disabled by wounds or rendered incapable of procuring for themselves and families, subsistence, in the militia service of this State, and providing for the widows and orphans of such as have died.
27. An act concerning overseers.
28. An act for restraining the taking of excessive usury.
29. An act providing for the appointment of electors to vote for a president and vice-president of the United States.
30. An act concerning the action of replevin.
31. An act concerning hunting.
32. An act concerning the currency of this State.
33. An act concerning the draining of lands.
34. An act providing for the appointment of notaries.
35. An act concerning corporations.
36. An act to establish a fund for internal improvement and to create a board for the management thereof.
37. An act prescribing a mode by which partition of real and personal estates may be made among tenants in common, and in what cases such estates may be sold for a division.
38. An act to reduce into one the several acts concerning pilots and commissioners of navigation.
39. An act concerning the attorney general and solicitors for the State.
40. An act concerning strays.
41. An act concerning idiots and lunatics.
42. An act concerning weights and measures.
43. An act authorizing attachments to issue for the recovery of debts and directing the proceedings thereon.
44. An act concerning iron and gold mines.
45. An act concerning fences.
46. An act to regulate descents.
47. An act concerning the appointment and duties of a patrol in each county.
48. An act concerning legacies, filial portions and distributive shares of intestates' estates.

49. An act concerning cattle, horses and hogs.
50. An act for the relief of sick and disabled American seamen.
51. An act concerning the repeal of statutes.
52. An act concerning incorporated towns.
53. An act to enable women in certain cases to maintain actions of slander.
54. An act concerning charities.
55. An act for regulating ordinaries.
56. An act concerning the university of North Carolina.
57. An act for the more effectual suppressing of vice and immorality.
58. An act prescribing the mode of recovering against certain officers therein mentioned and their securities.
59. An act concerning apprentices.
60. An act concerning oaths.
61. An act concerning the governor and council of state.
62. An act concerning the improvement of rivers and creeks and to prevent obstructions to their navigation.
63. An act concerning mills and millers.
64. An act concerning the appointment of guardians and the management of orphans and their estates.
65. An act for the relief of insolvent debtors.
66. An act concerning the supreme court.
67. An act concerning courts of equity.
69. An act concerning the powers and jurisdiction of justices of the peace.
70. An act appointing commissioners to take affidavits.
71. An act to empower the several county courts to establish fairs in their respective counties.
72. An act declaring what parts of the common law shall be in force in this State.
73. An act prescribing the salaries and fees of the several officers in this State.
74. An act concerning offices.
75. An act concerning the burning of woods.
76. An act concerning the seat of government and public buildings.
77. An act concerning surety and principal.
78. An act to create a fund for the establishment of common schools.
79. An act providing for the appointment and directing the duties of county trustees.
80. An act concerning bills, bonds and promissory notes.
81. An act prescribing the mode of subjecting the lands of deceased debtors for the payment of their debts.
82. An act concerning auctions and auctioneers.
83. An act concerning the clerks of the county and superior courts.
84. An act concerning deeds and conveyances of lands and slaves, mortgages and powers of attorney, their execution, probate and registration.



85. An act concerning sheriffs.
86. An act for limiting the time within which actions may be brought and for quieting the title to lands and slaves, and prescribing the time within which presumption of satisfaction may arise.
87. An act concerning waste.
88. An act concerning gaming.
89. An act concerning the processioning of lands.
90. An act concerning courts of justice, practice, pleas and process.
91. An act concerning registers.
92. An act prescribing the disposition of money remaining in the hands of clerks and sheriffs a certain time.
93. An act concerning court houses, prisons and stocks, and prescribing the appointment and duties of the treasurer of public buildings.
94. An act concerning the appointment and duties of clerks and masters in equity.
95. An act concerning county revenue and county charges.
96. An act concerning marriage.
97. An act concerning prisoners.
98. An act for the prevention of frauds and fraudulent conveyances.
99. An act concerning estates.
100. An act concerning crimes and punishments.
101. An act concerning executions and execution sales.
102. An act concerning appeals and proceedings in the nature of appeals.
103. An act concerning the General Assembly of the State of North Carolina.
104. An act concerning the public roads, ferries and bridges in this State.
105. An act concerning slaves and free persons of color.
106. An act concerning forcible entry and detainer.
107. An act concerning writs of quo warranto and mandamus.
108. An act to prohibit the circulation of bank notes under five dollars.
109. An act concerning the amendment of process, pleadings and other proceedings at law.
110. An act concerning widows.
111. An act to prevent the taking away of boats, canoes and pettiaugers from landings or elsewhere without leave.
112. An act concerning the public arms.
113. An act concerning proceedings in criminal cases.
114. An act for the better security of personal liberty.
115. An act for establishing public landings and places of inspection, and for the appointment of inspectors and regulation of inspections.

Former acts on the subjects embraced in the revised statutes, and all British

2. All acts and parts of acts passed before the present session of this General Assembly, the subjects whereof are revised and re-enacted in the revised statutes, or which are repugnant to the provisions therein contained, and all the statutes of England or

Great Britain heretofore in use in this State, are hereby declared to be repealed and of no force and effect from and after the first day of January next, with the exceptions and limitations hereafter mentioned.

statutes repealed after the first of January 1838.

3. The repeal of the acts and statutes mentioned in the next preceding section shall not affect any act done, or any right accruing or accrued or established, or any suit or proceedings had or commenced in any case before the time when such repeal shall take effect, but the proceedings in every such case shall be conformed where necessary to the provisions of the revised statutes.

Effect of such repeal on rights accrued or suits commenced.

4. No offence committed, and no penalties or forfeitures incurred, under any of the acts hereby repealed and before the time when such repeal shall take effect, shall be affected by the repeal, except that when any punishment, penalty, or forfeiture shall have been mitigated by the provisions of the revised statutes, such provisions may be extended and applied to any judgment to be pronounced after the said repeal.

Effect of such repeal on offences committed or penalties incurred.

5. No suit or prosecution pending at the time of the said repeal for any offence committed, or for the recovery of any penalty or forfeiture incurred, under any of the acts hereby repealed, shall be affected by such repeal, except that the proceedings in such suit or prosecution shall be conformed when necessary to the provisions of the revised statutes.

Effect on suits or prosecutions commenced for offences.

6. No act which has heretofore been repealed, shall be revived by the repeal contained in this act, of any of the acts herein before mentioned.

No act heretofore repealed shall be revived by such repeal.

7. All persons who, at the time when the said repeal shall take effect, shall hold any office under any of the acts hereby repealed, shall continue to hold the same according to the tenure thereof, except those offices which may have been abolished, and those as to which a different provision shall have been made by the revised statutes.

Effect of the repeal on persons holding offices.

8. No act of a private or local nature, no act containing a grant of corporate privileges for any purpose, no act granting privileges or imposing duties in any particular county inconsistent with the general provisions of law, no act regulating the time, place and manner of elections, musters or reviews in any county, no act relating to fisheries in any particular section of the country, no act providing for the support of the poor in any county, and no act directed to be published by the tenth section of this act, shall be construed to be repealed by the second section of this act.

What acts are not included in the repealing clause.

9. The revised statutes enumerated in the first section of this act, shall not be published in the usual pamphlet form, (except those hereinbefore directed to take effect immediately,) with the other acts of the present session, but shall be published in a separate volume, under the superintendence and direction of two commissioners to be appointed by the governor, who, in case of vacancy after the appointment, shall fill the same; who shall procure the same to be done in good style upon the most economical terms, giving a preference, when the style and terms of printing are equal, to the printers of this State, and shall take bond, for the

How the revised statutes shall be published.



faithful performance of the work, of those who may undertake the same. They shall be arranged in the publication in alphabetical order, according to their heads or titles, with marginal references as reported by the commissioners of revisal, and also with references to the decisions of the supreme court upon their subject matter, and with a full index. In the same volume shall be published the constitution of the United States, and the constitution and bill of rights of this State, and the Mecklenburg declaration of independence, with a short narrative thereof; there shall also be published in the same volume the acts of a public nature passed at this session, excluding all acts granting corporate privileges.

What shall be contained in the first volume.

What in a second volume.

10. There shall be published in a second volume the second charter of Charles the Second to the lords proprietors of this State, the great deed of grant from the lords proprietors, the grant from George the Second to Earl Granville, and the following acts, to wit:—All the acts relating to the boundary of the State and its several counties, all acts ceding the lands of this State to the general government, all acts incorporating banks, and rail road, turnpike and navigation companies, which are now in force and use, all acts relative to the incorporation or the corporate powers of the trustees of the university, and such other acts now in force and not repealed by this act, as the superintendents may in their discretion think proper to place in the said second volume.

Number of copies to be published.  
Copy right to be secured to the State.

11. There shall be published of the first volume of the said revised statutes five thousand copies, and of the second volume one thousand copies, the copy right whereof shall be secured to this State by the said superintendents, and the expense of preparing, printing, publishing, binding and distributing said copies shall be paid by the public treasurer on the warrant of the governor, founded on requisitions made from time to time by the said superintendents.

How the copies shall be distributed and disposed of.

12. The said copies, when completed, shall be distributed under the direction of the governor, as follows, to wit:—To the library of the congress of the United States ten copies; to the several states and territories three copies each; to the library of the university of North Carolina three copies; to the governor, treasurer, secretary of state, and comptroller, two copies each for the use of their respective offices; to the state library five copies; to the clerks of both houses of the General Assembly, five copies each for the use of their respective houses; to the clerk of the supreme court, and the clerks of the several superior and county courts, one copy each for the use of their respective courts; to the judges of the supreme and superior courts one copy each; to the members of the present General Assembly, who shall not be justices of the peace on the first day of January, one thousand eight hundred and thiryeight, one copy each; and to the justices of the peace of the several counties one copy each of the first volume only. All the remaining copies shall be sold for the benefit of the state by such person, in such manner and upon such terms as the governor shall direct and appoint.



13. The said volumes shall be published as speedily as practicable, and when completed and delivered to the order of the governor, the superintendents shall receive such compensation as to the governor shall seem just and reasonable, to be paid by the public treasurer upon his warrant. The governor to make compensation to the superintendents.

14. The copies of the revised statutes which shall be printed as aforesaid, shall be received as evidence of the law before all tribunals and in all places, in the same manner, to all intents and purposes as the originals in the office of the secretary of state. The copies so printed to be received as evidence.

[Ratified 23d January, 1837.]

CHAPTER 2.

ABATEMENT.

AN ACT TO PREVENT THE ABATEMENT OF SUITS IN CERTAIN CASES.

SECTION

1. Suits not to abate by the death of parties.
2. Nor where a term intervenes between the death of a party and the qualification of his executor or administrator.
3. Nor while a contest is pending for administration or for probate of a will.
4. Nor by the marriage of the plaintiff—Husband made party to give new security for the costs.
5. Nor by the marriage of a feme sole defendant.

SECTION

6. Nor by the death of an executor or administrator, plaintiff or defendant.
7. Action of ejectment on the death of the defendant may be revived against his heirs or devisees.
8. Court may appoint guardians for infant defendants in ejectment.
9. How service to be made when heirs or devisees are out of the State.
10. Actions of detinue or trover, or for injuries to real or personal property, not to abate by the death of either party.
11. Appeals not to abate by the death of either party.

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 and may be lawful for the heirs, executors, or administrators to carry on every suit or action in courts after the death of either plaintiff or defendant, and every such suit or action may be proceeded on by application of the heirs, executors or administrators of either party. Suits not to abate by the death of parties.

2. Where a term of the superior court of law, or the court of equity, or a session of the court of pleas and quarter sessions, shall intervene between the death of any plaintiff or defendant, and qualification of the executors or administrators of such deceased plaintiff or defendant, the intervention of such term or session shall not work any abatement or discontinuance of such suit. Nor where a term intervenes between the death of a party and the qualification of his executor or administrator.

1. 1786, c. 253, s. 1.  
 2. 1789, c. 314, s. 6.

Nor while a contest is pending for administration or for probate of a will.

3. Whenever any plaintiff or defendant in any suit shall die, and there shall be any contest for the administration on the estate of the deceased, or for the probate of any last will and testament of such deceased person, such suit shall be continued from term to term until said contest is determined, and until after the expiration of one term after such determination, when the same may be abated by plea.

Nor by the marriage of the plaintiff.

4. No suit in any court of law or equity, brought or prosecuted, shall abate on account of the plaintiff's marriage, and it shall be lawful for the husband of any woman having a suit depending, to make himself a party thereto, on motion at the next or succeeding term after his marriage, and the suit shall afterwards be carried on as if he and his wife had been originally plaintiffs. *Provided always*, when application is made by any person who has married a feme sole plaintiff, to be plaintiff in the prosecution of any suit brought by his wife before marriage, it shall be the duty of the clerk of said court to take bond and security for the payment of the costs in like manner and form as is usual in other cases; and in case of failure to prosecute with effect, the said husband and his securities shall be held and deemed liable for the payment of costs in the same manner as other plaintiffs who have failed to prosecute, and shall be subject to the same writs of execution, and, upon said bond being executed, the security originally given for the prosecution of the suit shall be discharged from any liability thereon.

Husband made party to give new security for the costs.

Nor by the marriage of a *feme sole* defendant.

5. Whenever a feme sole defendant shall marry pending the suit, her husband may be made party defendant, if the plaintiff shall so choose, and the suit afterwards shall proceed against such feme and her husband.

Nor by the death of an executor or administrator, plaintiff or defendant.

6. No suit to which an executor or administrator is party, plaintiff or defendant, shall abate by the death of such executor or administrator, but the same may be revived by or against the administrator de bonis non, or the executor of the executor of such deceased party, as the same may be revived by the existing law by or against an executor upon the death of his testator, plaintiff, or defendant.

Action of ejectment, on the death of the defendant, may be revived against his heirs or devisees.

7. No action of ejectment shall abate by the death of any defendant in said action, but the same may be revived by serving on the heirs at law, or devisees of said defendant, or the guardian, within two terms after his decease, a copy of the declaration filed in said action, together with a notice to the heirs or devisees, or their guardian if they be minors, to appear and defend said suit, and after such service the suit shall stand revived, and shall be proceeded on in the same manner as if the defendant were living.

Court may appoint guardians for infant defendants in ejectment.

8. Whenever any of the heirs at law, or devisees of such defendant, to whom the land in dispute shall descend or be devised,

3. 1799, c. 532, s. 4.
4. 1793, c. 503, s. 1 and 2.
5. Amendment.
6. 1824, c. 1247.
7. 1799, c. 532, s. 1.
8. 1799, c. 532, s. 2.



shall be minors without guardian, the court wherein the said suit is pending, shall be authorized and empowered, upon application, to appoint a guardian or guardians to defend said suit in behalf of said minor or minors, who shall be next of kin to him or them, or such other person or persons as the court shall approve.

9. Whenever any of the heirs or devisees, or their, or either of their guardians, shall reside out of the State, the sheriff of the county to whom the declaration and notice shall issue, shall upon making his return state the fact, and an alias declaration and notice shall issue, and an advertisement of such notice shall be made in some public gazette of this State, and such as the court shall prescribe, for the space of three months : and if the same return shall be made after such advertisement as aforesaid, the suit may be prosecuted in such manner and to the same effect, as if such declaration and notice had been served.

How service to be made when heirs or devisees are out of the State.

10. No action of detinue, or trover, or action of trespass vi et armis, or trespass on the case, where property, either real or personal, is in contest, or brought to recover damages done to property, real or personal, and which is not merely vindictive, shall, in any cause or court, abate or be discontinued by the death of either party, plaintiff or defendant, but the same shall and may be revived in the manner prescribed for the revival of other actions.

Actions of detinue or trover or for injuries to real or personal property not to abate by the death of either party.

11. No appeal, in any cause or court whatever, shall be abated by the death of either plaintiff or defendant, but may be proceeded on by application of the heirs, executors or administrators of either party.

Appeals not to abate by the death of either party.

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- 9. 1799, c. 532, s. 3.
- 10. 1799, c. 532, s. 5. 1805, c. 679, s. 1.
- 11. 1785, c. 233, s. 2.

Note. — REFERENCES TO ADJUDGED CASES.

- SECT. 1. Hamilton vs. Jones, 1 Murph. 441. Smith vs. Walker, 2 Car. Repos. 244.
- SECT. 4. Gerard vs. Pierce, 1 Murph. 161.
- SECT. 7. Ray vs. Simpson, 2 Car. Repos. 249.
- SECT. 10. Estis vs. Lenox, Conf. 72. McAlester vs. Spillar, ib. 95. Arnold vs. Lanier, 1 Car. Repos. 529. Fellows vs. Fulgham, 3 Murph. 254. Brown vs. Blick, 3 Murph. 511. McClure vs. Miller, 4 Hawks, 133.



## CHAPTER 3.

# A M E N D M E N T .

### AN ACT CONCERNING THE AMENDMENT OF PROCESS, PLEADINGS, AND OTHER PROCEEDINGS AT LAW.

## SECTION

1. General power of courts to amend before judgment.
2. Adverse party to answer amendments in substance.
3. Formal defects may be amended after judgment.
4. Returns by officers, &c., may be amended in matters of form.
5. Certain defects to be disregarded after verdict.

## SECTION

6. Such defects to be supplied and amended.
7. Amendments not to be made without an order of court.
8. Formal defects to be disregarded on general demurrer.
9. Such defects to be amended.
10. The provisions of this act shall extend to all actions and proceedings in any court of law.

General power of courts to amend before judgment.

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 the court in which any action shall be pending, shall have power to amend any process, pleading or proceeding in such action, either in form or substance, for the furtherance of justice on such terms as shall be just, at any time before judgment rendered thereon.

Adverse party to answer amendments in substance.

2. If such amendment be made to any pleading in matter of substance, the adverse party shall be allowed an opportunity, according to the course and practice of the court, to answer the pleading so amended.

Formal defects may be amended after judgment.

3. After judgment rendered in any cause, any defects or imperfections in matter of form, contained in the record, pleadings, process, entries, returns, or other proceedings in such case, may be rectified and amended by the court in affirmance of the judgment, so that said judgment shall not be reversed or annulled, and any variance in the record from any process, pleading or proceeding had in such court, shall be reformed and amended according to such original process, pleading or proceeding.

Returns by officers &c. may be amended in matters of form.

4. All returns made by any sheriff or other officer, or any court, or subordinate tribunal, to any court, may be amended in matter of form, by the court to which such returns shall be made, in their discretion, as well before as after judgment.

Certain defects to be disregarded after verdict.

5. When a verdict shall have been rendered in any cause, the judgment thereon shall not be stayed, nor shall the judgment upon such verdict, or any judgment upon confession, default, *nihil dicit*, or *non sum informatus*, be reversed, impaired, or in any way affected by reason of the following imperfections, defects, matters,

or things, or any of them in the pleadings, process, proceedings or record, namely : for want of any writ, original or judicial ; for any default or defect in process, or for misconceiving any process, or awarding the same to a wrong officer, or for the want of any suggestion for awarding process, or for any insufficient suggestion ; for any imperfect or insufficient return of any sheriff or other officer ; or that the name of such officer is not set to any return actually made by him ; for any variance between the original writ, bill, plaint and declaration, or between either of them ; for any mispleading, miscontinuance or discontinuance, insufficient pleading, or jeofail, or misjoining of issue ; for the want of any warrant of attorney by either party ; for any party under twentyone years of age having appeared by attorney, if the verdict or judgment be for him ; for the want of any allegation or averment, on account of which omission, a special demurrer could have been maintained ; for omitting any allegation or averment of any matter, without proving which, the jury ought not to have given such verdict ; for any mistake in the name of any party or person, or in any sum of money, or in the description of any property, or in the reciting or stating any day, month or year, when the correct name, time, sum or description, shall have been once rightly alleged in any of the pleadings or proceedings ; for a mistake in the name of any juror or officer ; for any informality in entering a judgment, or making up the record thereof, or in any continuance or other entry upon such record ; for any other default or negligence of any clerk, or officer of the court, or of the parties, or their counsellors or attorneys, by which neither party shall have been prejudiced.

6. The omissions, imperfections, defects and variances, in the preceding section enumerated, and all others of the like nature, not being against the right and justice of the matter of the suit, and not altering the issue between the parties or the trial, shall be supplied and amended by the court, where the judgment shall be given ; or by the court, into which such judgment shall be removed by writ of error or appeal.

Such defects to be supplied and amended.

7. No process, pleading or record, shall be amended or impaired by the clerk or other officer of any court, or by any other person, without the order of such court, or some other court of competent authority.

Amendments not to be made without an order of court.

8. When any demurrer shall be entered in any action, and issue be joined thereon, the court shall proceed and give judgment according as the very right of the cause and matter in law shall appear, without regarding any defect or other imperfection in any process or pleading, so as sufficient matter appear in the pleadings to enable the court to give judgment according to the very right of the cause, unless such defect or other imperfection be specially expressed in the demurrer.

Formal defects to be disregarded on general demurrer.

9. After issue shall be joined on any demurrer, the court shall amend every such defect or other imperfection in any process or pleading in the last section mentioned, other than those which the party demurring shall specially express in his demurrer.

Such defects to be amended.



The provisions of this act shall extend to all actions and proceedings in any court of law.

10. The provisions of this act shall extend to all the courts of this State, from the supreme court down to the lower tribunals, and to all actions in the said courts of law, and to all suits for the recovery of any debt due to this State, or for any debt, duty, or revenue, belonging to said State, and also to all actions for penalties and forfeitures, to all writs of mandamus and prohibition, to all informations in the nature of a quo warranto, to writs of scire facias, and to the proceedings thereon, to all writs of error, appeals and proceedings in the nature of appeals.

*Note.*—See the English statutes of 14 Edwd. 3d. c. 6; 9 Hen. 5th, c. 4; 4 Hen. 6th, c. 3; 8 Hen. 6th, c. 12 and 15; 32 Hen. 8th, c. 30; 18 Eliz. c. 14; 27 Eliz. c. 5; 21 Jac. 1st. c. 13; 16 and 17 Car. 2d, c. 8; 4 and 5 Anne, c. 16; 5 Geo. 1st. c. 13; all which are declared to be in force in this State, by the act of 1777, c. 115, sec. 35; see also the act of 1786, c. 253, sec. 3; 1790, c. 318, sec. 2; 1794, c. 414, sec. 16; 1824, c. 1233.

*Note.* — REFERENCES TO ADJUDGED CASES.

Cowper *vs.* Edwards, 1 Hayw. 19. Troxler *vs.* Gibson, *ib.* 465. Faircloth *vs.* Ingram, *ib.* 501. Singleton *vs.* Kenedy, Conf. Rep. 520. Dudley *vs.* Carmolt, 1 Murph. 339. Tear *vs.* White, *ib.* 412. Davis *vs.* Evans, 2 Murph. 202. McLean *vs.* Benton, 1 Car. Repos. 472. Williams *vs.* Leishire, No. Ca. Term. R. 146. Justices *vs.* Sawyer, 2 Hawks 61. Ufford *vs.* Lucas, *ib.* 214. Matlock *vs.* Gray, 4 Hawks 1. Wilson *vs.* Myers, *ib.* 73. Stamps *vs.* Graves, *ib.* 102. Worthington *vs.* Arnold, 2 Dev. 363. State *vs.* Cherry, *ib.* 550. Grist *vs.* Hodges, 3 Dev. 198. West *vs.* Rutledge, 4 Dev. 31.

## CHAPTER 4.

# APPEALS, AND PROCEEDINGS IN THE NATURE OF APPEALS.

### AN ACT CONCERNING APPEALS AND PROCEEDINGS IN THE NATURE OF APPEALS.

#### SECTION

1. Appeal allowed from any sentence, judgment, or decree of the county to the superior court, upon the party's giving security.
2. Appeals allowed from orders of the county court, appointing or removing a guardian—On the probate of wills or granting letters of administration—On the trial of caveats—In cases of petition for damages caused by the erection of public mills—In cases of petition for laying out roads or settling ferries.
3. Duty of the clerk of the county court to file a transcript in the superior

#### SECTION

- court—Appeal to stand for trial at first term.
4. Appellant may procure a transcript and file it in the superior court.
5. How appellant may proceed when there is a vacancy in the office of the superior court clerk.
6. When the appellant fails to file a transcript in the superior court, the appellee may proceed and have the judgment affirmed with double costs to be paid by the appellant.
7. In cases of appeal, the clerk of the county court may issue subpœnas for witnesses.



SECTION

8. Defendant in actions of debt, covenant or assumpsit, appealing, for delay, to pay additional interest.
9. Plaintiff appealing and not recovering a greater sum in the superior court, to have no costs, but may be ordered to pay the same.
10. Bonds for appeal and for prosecuting the suit, to be sent up as a part of the record, and judgment may be entered upon them.
11. Appeal not to be dismissed for want of form.
12. Clerk of the superior court shall, if required, give a receipt for the transcript—Cause to be placed on the trial docket when.
13. Clerk of superior court to issue subpoenas after the transcript is filed.
14. Penalty on clerks for failing to perform their duty in regard to appeals.
15. Persons obtaining writs of recordari, or false judgment, to give security as in cases of appeals.
16. Clerk of the county court to take security from persons obtaining certioraris.

SECTION

17. Superior courts may grant writs of error—Proceedings upon them.
18. Time within which writs of error must be brought.
19. Proviso for persons under disabilities.
20. Time within which writs of error for matters of fact must be brought.
21. Appeals from the superior courts to the supreme court allowed.
22. Supreme court to render judgment upon an inspection of the whole record.
23. Judges of the superior courts may allow appeals from interlocutory judgments.
24. The whole cause not to be removed to supreme court by the allowance of such appeal.
25. In appeals to the supreme court, the appellant must file a transcript within the first seven days of the term.
26. How the appellee may proceed, when the appellant fails to file the transcript within proper time.
27. How judgment for costs be rendered.
28. Appeals to the supreme court allowed in equity causes.

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 when any person, either plaintiff or defendant, or who shall be interested, shall be dissatisfied with the sentence, judgment or decree of any county court, he may pray an appeal from such sentence, judgment or decree, to the superior court of law of the county wherein such county court shall be, but before obtaining the same, shall enter into bond, or cause the same to be entered into with two sufficient securities for prosecuting the same with effect, and for performing the judgment, sentence and decree, which the superior court shall pass or make therein, in case such appellant shall have the case decided against him.

Appeal allowed from any sentence, judgment or decree of the county to the superior court, upon the party's giving security, &c.

2. Appeals shall likewise be granted, upon the same terms as prescribed in the preceeding section, in the following cases.

1st. When any person shall consider himself injured or aggrieved, by order or sentence of the county court, in appointing a guardian to any orphan, or in removing any orphan from the care and tuition of any person who has been appointed such, or on refusing to make such appointment or removal as aforesaid.

Appeals allowed from orders of the county court, appointing or removing a guardian.

2d. When any person, who shall claim a right to execute any will, or to administer to the estate of any intestate, shall think himself injured by order of court for letters testamentary, or of administration.

Also on the probate of wills or granting letters of administration.

1. 1777, c. 115. s. 75.

2. 1762, c. 69. s. 24.—1777, c. 115. s. 53.—1807, c. 720.—1809, c. 773. s. 4.—1813, c. 862, s. 2.

Also on the trials of caveats.

Also in cases of petition for damages caused by the erection of public mills.

Also in cases of petition for laying out roads or settling ferries.

Duty of the clerk of the county court to file a transcript in the superior court. Appeal to stand for trial at first term.

Appellant may procure a transcript and file it in the superior court.

How appellant may proceed when there is a vacancy in the office of the superior court clerk.

3d. In trials of caveats of land, and suspensions of grants of land, where either party is dissatisfied with the verdict of the jury.

4th. Where either is dissatisfied with the judgment of the court, upon the verdict of the jury rendered upon the petition of any person alledging that he is injured by the erection of a public mill.

5th. Where any person is dissatisfied with the judgment, sentence or decree, which the court may pass or pronounce on any petition filed for appointing or settling a ferry, laying out any public roads, or discontinuing, or altering such roads as are now, or shall hereafter be made.

3. Whenever any appeal shall be granted from the county court of pleas and quarter sessions, to the superior court of law, it shall be the duty of the clerk of the county court aforesaid, to file a transcript of the record of the suit on which the appeal shall be granted, on, or before the first day of the term of the next superior court, after the same shall be granted or allowed, if there shall be ten days between the last day of the term of the said county court, and the next term of the said superior court, and the said appeal shall stand for trial at the said next term of the superior court, and if it shall so happen that there shall be less than ten days, then the said appeal shall be continued, and it shall be the duty of the clerk aforesaid to file the transcript of the record aforesaid, on or before the first day of the second term of the superior court next after the appeal granted.

4. Nothing in the preceding section shall prevent the appellant from applying to the clerk of the county court for a transcript of the record, whose duty it shall be, immediately after an appeal shall be granted, to make up a full and perfect record of all the proceedings in the cause: and within ten days after the final adjournment of the term, in which the cause shall be heard, give an attested copy of such record, with the taxation of all costs accrued, to said appellant, if required; and shall endorse on such copy the day or days on which the same may have been demanded, and the day on which it shall be delivered, and sign his name as clerk thereto; and the said appellant shall file the same on or before the first day of the term of the next superior court, under the like restrictions and provisions as in the preceding section.

5. Whenever any appeal shall be had from the county court to the superior court of law, and a vacancy shall have happened in the office of clerk of said superior court, so that the appellant cannot file the transcript of the record within the time prescribed by law, on the appellant's making it appear to the satisfaction of the court to which the said appeal shall be returnable, that he had made application to the clerk of the county court for a transcript of the record, within time to have filed the same within ten days before the sitting of the said superior court, the transcript of the record shall be filed in the said court, and the cause shall stand for trial at the succeeding term.

3. 1821, c. 1117, s. 1.

4. 1821, c. 1117, s. 5.

5. 1816, c. 903, s. 3.



6. When the appellant receives from the clerk the transcript in appeal and refuses or neglects to file the same in the superior court on or before the first day of the term as required by law, or shall fail to appear and prosecute his appeal, the appellee shall be entitled to demand from the clerk a copy of the record, and, on motion in the superior court, the judgment of the court below shall be affirmed with double costs, to be paid by the appellant.

When the appellant fails to file a transcript in the superior court, the appellee may proceed and have the judgment affirmed with double costs to be paid by the appellant.

7. The clerks of the county courts shall have full power and authority to issue writs of subpoena to summon witnesses in all cases of appeals, returnable to the same term of the superior court of law to which such appeals shall be allowed.

In cases of appeal the clerks of the county courts may issue subpoenas for witnesses.

8. When any defendant in any action of debt, covenant, or assumpsit shall appeal from the judgment of any court of pleas and quarter sessions to a superior court, and shall not upon the trial of such appeal diminish the sum recovered by the plaintiff in the court of pleas and quarter sessions, it shall and may be lawful for the said superior court, if it appear that the appeal was taken for the purpose of delay, to give judgment in behalf of the plaintiff, not only for the amount of the verdict rendered in said court, but also for a sum in addition thereto not exceeding four per centum per annum on the principal sum recovered, from the time of judgment in the inferior court to the time of entering up the same in the superior court, which additional sum shall be considered as a penalty, and shall not draw interest in cases where interest is allowed on judgments.

Defendant in actions of debt, covenant or assumpsit, appealing for delay to pay additional interest.

9. When any plaintiff shall appeal from the judgment of any court of pleas and quarter sessions to a superior court, and shall not recover in said superior court a greater sum than that recovered in the court of pleas and quarter sessions, independently of the interest accrued since the former judgment, he shall not recover the costs of the appeal, but shall be liable at the discretion of the superior court to pay the same.

Plaintiff appealing and not recovering a greater sum in the superior court to have no costs, but may be ordered to pay the same.

10. The bonds taken for the prosecution of the appeal with effect shall make part of the record sent up to the superior court, on which judgment may be instanter entered up against the appellant and his securities in all cases where judgment shall be rendered against the appellant, and in all cases of appeal from the county to the superior court, the bond given for prosecuting the suit shall also be made a part of the record and transmitted to the superior court.

Bonds for appeal and for prosecuting the suit to be sent up as part of the record, and judgment may be entered upon them.

11. No appeal shall be dismissed for want of form, if the judge of the superior court shall be of opinion that there appears to be sufficient matter of substance in the transcript of the record and proceedings, to enable him to proceed thereon.

Appeal not to be dismissed for want of form.

12. The clerks of the superior courts respectively, upon receiving a transcript of the record and proceedings in any suit, on

Clerk of the superior court shall, if required, give a receipt for the transcript.

6. 1777, c. 115, s. 77.

7. 1821, c. 1117, s. 2.

8. 1807, c. 713, s. 1.

9. 1807, c. 713, s. 2.—1801, c. 574, s. 4.

10. 1785, c. 233, s. 2.—1831, c. 46, s. 2.

11. 1777, c. 115, s. 81.

12. 1777, c. 115, s. 82.—1821, c. 1117, s. 1.



Cause to be placed on the trial docket when.

which an appeal shall be had, whether such transcript shall be brought up by the clerk of the county court or the party appellant himself, shall if required give a receipt for the same, and immediately endorse thereon the day on which it shall be delivered, and if there shall be ten days between the last day of the county court in which the appeal was granted, and the first day of the next term of the superior courts, he shall enter it upon the docket of causes for trial, and if there be less than ten days between the courts aforesaid, then he shall enter the cause upon the docket for the trial of causes for the ensuing term.

Clerk of the superior court to issue subpoenas after the transcript is filed.

13. The clerks of the superior courts respectively, upon the filing of the transcript of the records and proceedings upon an appeal granted to their court, shall, if required, issue subpoenas for witnesses to attend at the same term, when the cause shall stand for trial.

Penalty on clerks for failing to perform their duty in regard to appeals.

14. If any clerk either of the superior or county court shall fail to perform any of the duties prescribed to them in any of the sections of this act, he shall pay a fine of forty dollars to the party appealing, and shall further be liable to an action on the case on behalf of any person injured by his neglect of duty.

Persons obtaining writs of recordari, or false judgment, to give security as in cases of appeals.

15. When any person shall obtain a writ of *recordari facias loquelam*, or writ of false judgment, to remove any proceedings which shall be had before a magistrate, to any of the superior courts of this State, the person so applying, if the defendant below, shall be required to give bond with good and sufficient security for the payment of judgment and costs, which may be recovered against such person in the superior court; which bond shall be transmitted by the said magistrate with the writ and other papers to the court to which they are returnable, and the magistrate, before whom the cause was tried, is hereby authorized and required to take such security in the same manner as security is taken on appeals to the county court.

Clerk of county court to take security from persons obtaining *certioraris*.

16. In all cases where writs of *certiorari* are directed to the county court, the clerk of the court is hereby required to take security in the same manner and under the same regulations that security is taken on appeals from the county to the superior courts.

Superior courts may grant writs of error. Proceedings upon them.

17. The superior courts shall have power and authority to grant writs of error for correcting the errors of any inferior court, and the party praying such writ, before the same shall issue, shall assign error and give bond and security to the satisfaction of the court to abide by, perform and fulfil the judgment which shall be given therein by such court; and if upon argument of any writ of error or trial of any appeal from any inferior court, the judgment or decree of the inferior court shall be reversed, the superior court shall grant judgment or make such decree thereupon as should have been made up or entered in such inferior court, and shall and

13. 1777, c. 115, s. 82.

14. 1821, c. 1117, s. 3.

15. 1810, c. 793, s. 1.

16. 1810, c. 793, s. 2.

17. 1777, c. 115, s. 47.

may issue execution thereupon without granting a writ of procedendo : and to prevent the obtaining of writs of error by surprise, the party praying such writ in a civil cause shall give notice in writing to the adverse party, at least ten days before motion, of his intention to move for such writ, and no such writ shall be granted without affidavit of such notice.

18. No writ of error shall be allowed, brought or presented, upon any judgment rendered in any of the county courts of this State, but within five years next after the entering such judgment and not after. Time within which writs of error must be brought.

19. If any person or persons who is, are, or shall be entitled to prosecute a writ of error, be, or shall be, at the time of his or their right to bring such writ of error, non compos mentis, imprisoned or beyond the seas, then such person or persons shall be at liberty to bring a writ of error, so as they bring the same within two years after their being of sound memory, at large, returned from beyond the seas, or of age, as other persons having no such impediment might have done. Proviso for persons under disabilities.

20. No writ of error for any matter of fact shall be allowed, brought or prosecuted, upon any judgment rendered in any of the courts of this State, but within five years next after rendering such judgment and not after. Time within which writs of error for matters of fact must be brought.

21. No cause shall be transmitted to the supreme court from the superior court of law, but on appeal of one of the parties thereunto from the sentence, judgment or decree of the said superior court ; and such appeal may take place in any cause either civil or criminal, on giving bond and adequate security to abide the sentence, judgment, or decree of the supreme court, and such bonds may be proceeded on, in the same manner, as in the case of appeals from a county court to a superior court. Appeals from the superior courts to the supreme court allowed.

22. Appeals shall be allowed from any final judgment, sentence or decree of the superior court, and in every case of such appeal the supreme court may render such sentence, judgment or decree as, on the inspection of the whole record, it shall appear to them ought in law to be rendered thereon, and may cause the same to be enforced and executed upon any proper process. Supreme court to render judgment upon an inspection of the whole record.

23. The judges of the superior courts may, whenever it shall seem to them necessary or proper, allow an appeal to the supreme court from any interlocutory judgment at law, at the motion of the party supposing himself aggrieved thereby, upon such terms as the said judges shall deem it just and equitable to prescribe ; and when such appeal shall be allowed, the judge allowing the same shall and may direct so much only of the records and proceedings in the cause to be certified to the supreme court, as he shall think necessary to present the question or matter arising upon such appeal fully to be considered by the said court. Judges of the superior courts may allow appeals from interlocutory judgments.

- 18. 1801, c. 590, s. 1.
- 19. 1801, c. 590, s. 2.
- 20. 1823, c. 4, s. 1.
- 21. 1818, c. 962, s. 4.
- 22. 1818, c. 962, s. 4.
- 23. 1831, c. 34, s. 1.



The whole cause not to be removed to the supreme court by the allowance of such appeal.

24. The allowance of an appeal upon such interlocutory judgment, and the carrying the same up by the appellant, shall not be deemed in law to remove the record of the cause into the supreme court, but the same shall be deemed in law to remain in the court whence the appeal was taken; and the said court shall have power, notwithstanding such appeal, to make all necessary orders for preparing the cause for trial as fully as if the said appeal had not been taken.

In appeals to the supreme court, the appellant must file a transcript within the first seven days of the time.

25. In all cases of appeal to the supreme court it shall be the duty of the appellant to file a transcript of the record of the cause, together with the bond given for the appeal, on or before the seventh day of the term next ensuing said appeal; and the supreme court may render judgment against the securities for an appeal, in the same manner as a superior court may on appeal from the county court.

How the appellee may proceed where the appellant fails to file the transcript within proper term.

26. If the appellant shall fail to file the transcript and bond aforesaid, as is above directed, it shall be lawful for the appellee, either to file the same at any time during that or the next succeeding term, or to obtain a certificate from the clerk of the supreme court, under the seal of the court, of such failure, which certificate of such failure on the part of the appellant, he shall file in the office of the clerk of the court from which the appeal was prayed, and it shall be the duty of the said last mentioned clerk to record the said certificate, and thereupon issue execution, or any other proper process on the judgment rendered in the superior court, as though no appeal had been prayed, taxing double costs against the appellant.

How judgment for costs to be rendered.

27. In all cases of appeal to the supreme court they may render judgment against the appellant or appellee for costs, as in appeals from the county to the superior court and award execution therefor.

Appeals to the supreme court allowed in equity causes.

28. Appeals shall and may be allowed from the final sentence, judgment or decree, or from any interlocutory order, judgment, or decree of the superior court of equity, to the supreme court, upon the same terms and under the same rules, regulations and provisions and restrictions, as in cases of appeals from the superior court of law to the supreme court.

24. 1831, c. 34, s. 2.  
 25. 1818, c. 963, s. 6.—1824, c. 1234, s. 1.  
 26. 1818, c. 963, s. 7.  
 27. 1831, c. 34, s. 4.—Amended.  
 28. 1819, c. 963, s. 4.—1831, c. 34, s. 1.

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Note.—REFERENCES TO ADJUDGED CASES.

SECT. 1. *Cooke vs. Little*, 1 Hay, 19. *Newnan vs. Newnam*, 1 Murph. 178. *State vs. Jones*, 1 Murph. 257. *McGimpsey vs. Vail*, 1 Murph. 408. *Gibson vs. Linch*, 1 Murph. 495. *Forsyth vs. McCormick*, 2 Car. Repos., 472. *Hunt vs. Crowell*, 2 Murph. 424. *State vs. Jackson*, 3 Murph. 230. *Ott vs. McBryde*, 3 Murph. 235. *Sharp vs. Jones*, 3 Murph. 306. *Smith vs. Neal*, 2 Hawks, 14. *McCulloch vs. Tyson*, 2 Hawks, 336. *Medford vs. Harrell*, 3 Hawks, 41. *State vs. Cherry*, 2 Dev. 250. *Hicks vs. Gilliam*, 4 Dev. 217.

SECT. 2. *Horton vs. Horton*, 3 Dev. 441. *Pratt vs. Kitrell*, 4 Dev. 168. *Blunt vs. Moore*, 1 Dev. and Bat. 10.



- SECT. 6. Anon, 1 Hay, 171.
- SECT. 9. Kinchin vs. Brickell, 2 Hay, 49.
- SECT. 10. Yarborough vs. Giles, 1 Hay, 453. Wilson vs. Murchison, 2 Dev. 491.
- SECT. 21. State vs. Robinson, 1 Hawks, 188. State vs. Saunders, 1 Hawks, 355.
- Cherry vs. Slade, 2 Hawks, 400. State Bank vs. Twitty, 2 Dev. 386. State vs. Osborne, 1 Dev. and Bat. 114.
- SECT. 22. Pike vs. Armstead, 2 Dev. Eq., 24.
- SECT. 25. State vs. Dickinson, 1 Dev. and Bat. 349.
- SECT. 26. Manning vs. Sawyer, 1 Hawks, 33.

CHAPTER 5.

APPRENTICES.

AN ACT CONCERNING APPRENTICES.

SECTION

- 1. County courts to bind out orphan children—What orphans to be bound out.
- 2. To what persons, and for what time orphans to be bound.
- 3. Duty of master or mistress of orphan apprentices.
- 4. The binding to be by indenture—Remedy for the apprentice upon the deed of indenture.
- 5. In what cases county courts may bind out free children of color.

SECTION

- 6. To whom free children of color are to be bound, and for what time.
- 7. Master or mistress of children of color to give bond not to remove them out of the county. Proviso for sea-faring persons.
- 8. Remedy for the master or mistress of apprentices who absent themselves from their service after arriving at the age of eighteen years.
- 9. Penalty for harboring orphan children without having them bound out.

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 the several courts of pleas and quarter sessions shall have full power and authority, and it shall be their duty, to bind out, as apprentices, all orphans whose estates are of so small value that no person will educate and maintain him or her for the profits thereof; County courts to bind out orphan children.

also all children under age whose fathers have deserted their families, and have been absent for the term of one year, leaving them without sufficient support, or where application may be made to the wardens of the poor for relief, and the said wardens shall certify the same to the court of pleas and quarter sessions; also all children under age, whose mothers shall have secured to them such property as they may thereafter acquire, provided in this case that the children be not remaining with the father, and the court, in its discretion, thinks it improper to permit such children to remain with the mother; also all free base born children. What orphans to be bound out.

2. Every such apprentice shall be bound to some tradesman, merchant, mariner, or other person approved by the court, until

To what persons, and for what time orphans to be bound.

1. 1762, c. 69, s. 19.—1796, c. 468, s. 1.—1800, c. 567.  
 2. 1762, c. 69, s. 19.

he shall attain the age of twentyone years, and every female to some suitable employment till her age of eighteen years.

Duty of master or mistress of orphan apprentices.

3. The master or mistress of every such apprentice shall find and provide for him or her, diet, clothes, lodging, and accommodations fit and necessary, and shall teach and cause him or her to be taught to read and write, and at the expiration of his or her apprenticeship, shall pay to such apprentice six dollars, and furnish him with a new suit of clothes and a new bible; and if upon complaint made to the court of pleas and quarter sessions, it shall appear that any such apprentice is ill used or not taught the trade, profession and employment to which he or she was bound, it shall be lawful for such court to remove and bind him or her to such other person or persons as they shall think fit.

The binding to be by indenture.

4. The binding of such apprentice by order of the court as aforesaid, shall be by indenture, made in the name of the chairman of the county court of the one part, and of the master or mistress to whom he or she shall be bound, of the other part; which indenture shall be acknowledged or proved before such court and recorded, and a counterpart thereof shall remain and be kept in the clerk's office for the benefit of the apprentice; and any person or persons injured may and shall, at his or her cost and charges, prosecute a suit thereon in the name of the chairman as aforesaid and his successors, and recover all damages which he or she may have sustained by reason of the breach of the covenants therein contained, and if any verdict or judgment shall pass for such master or mistress, he or she shall recover costs.

Remedy for the apprentice upon the deed of indenture.

In what cases county courts may bind out free children of color.

5. The court of pleas and quarter sessions shall likewise have power, where it shall appear expedient, to bind out as apprentices all free base born children of color, and all the children of free negroes and mulattoes where the parents with whom such children may live, do or shall not habitually employ his or her time in some honest, industrious occupation.

To whom free children of color are to be bound, and for what time.

6. All apprentices of color shall be bound to the same persons and employments, and under the same terms and conditions, rules and regulations, as before prescribed for the apprentices, only that the females as well as the males shall be bound until they attain the age of twentyone years, and further it shall not be incumbent upon the master of a colored apprentice to teach him or her to read and write.

Master or mistress of children of color to give bond not to remove them out of the county.

7. When any court of pleas and quarter sessions shall bind any orphan, base born, or other child of color, they shall take bond with sufficient security in the sum of five hundred dollars, payable to the State of North Carolina from the master or mistress, that they shall not remove such child out of the county where he or she is bound and to produce him or her before such court, at any time when the said court may require it; and also to produce such person at the expiration of the term of his or her service;

3. 1762, c. 69, s. 19.

4. 1762, c. 69, s. 20.

5. 1762, c. 69, s. 19.—1826, c. 21, s. 7.

6. 1762, c. 62, s. 19.

7. 1801, c. 583, s. 1 and 3.



and on failure thereof, the county solicitor shall and he is hereby required to bring suit against such persons on said bond, for the benefit and use of the person bound to serve as aforesaid; *Provided, nevertheless*, that nothing herein contained shall subject any seafaring person to the penalties herein mentioned, to whom any person shall be bound in pursuance of this act, if he can make it appear that the person bound to him died on a voyage without the limits of the county, or deserted from his service, so that he could not again procure him for the purpose of complying with the condition of the bond.

Proviso for seafaring persons.

8. If any apprentice, whether colored or otherwise, who shall be well used by his master and who shall have received from his said master not less than six months schooling, shall absent himself after arriving to the age of eighteen years from his master's service, before the term of his apprenticeship shall have expired, every such apprentice shall at any time or times thereafter, whenever he shall be found, be compelled to make satisfaction to the master for the loss he shall have sustained by his absence from his service before the time of his contract shall be fulfilled: and in case any apprentice shall refuse to make such satisfaction to his master, such master may recover by warrant issued and returnable before any justice of the peace, such satisfaction not exceeding sixty dollars, as such justice may determine shall be made to such master by such apprentice; or such master may maintain his action on the case against such apprentice and recover his damages as a jury may award in any court having cognizance thereof: *Provided*, that the judgment of any justice upon a trial under this section, shall be subject to the same rights of appeal or stay of execution as in other cases of judgment by justices of the peace; *Provided, also*, that no apprentice shall be compelled to make any satisfaction to any master after the expiration of seven years next after the end of the term for which such apprentice shall have contracted or shall be bound to serve.

Remedy for the master or mistress of apprentices who absent themselves from their service after arriving to the age of eighteen years.

9. It shall not be lawful for any housekeeper to harbor and conceal or hire any orphan child or children, without first obtaining leave of some justice of the peace, under the penalty of ten dollars, onehalf to the informer and the other half to the poor of the county; and such justice, on granting permission, shall compel the person requiring the same to bring the said orphan child to the next county court, which is hereby required to bind such orphan children, agreeable to law.

Penalty for harboring orphan children without having them bound out.

8. 1812, c. 840.

9. 1734, c. 213, s. 5.

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*Note* — REFERENCES TO ADJUDGED CASES.

SECT. 4. Anon. Hay. 144. Dowd vs. Davis 4, Dev. 61. Mordlin vs. Maurice, 2 Dev. and Bat.



*Arms. 1846.7 - Ch 2 - 3*  
*Arsenal - 1838.9. Ch 1.*  
*vide page 484*

## CHAPTER 6.

## ATTACHMENT.

AN ACT AUTHORIZING ATTACHMENTS TO ISSUE FOR THE RECOVERY OF DEBTS, AND DIRECTING THE PROCEEDINGS THEREON.

## SECTION

1. Attachment may issue against a debtor absconding or concealing himself, so that the ordinary process of law cannot be served upon him.
2. May also issue in favor of a citizen of this State, against a non-resident.
3. Plaintiff before attachment issues to give a bond, which together with the affidavit, must be returned to court.
4. Form of the attachment—Form of the bond.
5. Proceedings on attachments and against garnishees.
6. When a garnishee denies that he has any property, &c. an issue may be made up.
7. Proceedings where an attachment is levied upon property claimed by another person.
8. Specific articles confessed by a garnishee shall be valued by a jury and judgment given for value—In what cases garnishee may exonerate himself by delivery of the articles.
9. When money or specific articles due or deliverable at a future time, conditional judgment to be entered.

## SECTION

10. Persons entering themselves as special bail on replevying property, how far bound.
11. Advertisement to be made.
12. When judicial process may issue.
13. Attachments in cases cognizable by a justice of the peace—Proceedings thereon.
14. How garnishees to be summoned, and proceedings against them.
15. How property attached may be replevied.
16. Specific articles confessed by a garnishee, how to be valued—Judgment to be given for the value—How, and when garnishee may exonerate himself by the delivery of specific articles—Garnishee may have stay of execution.
17. Attachment to be stayed thirty days.
18. Persons entering themselves as special bail on replevying property, how far liable.
19. When justice to direct advertisement to be made, and how long.
20. When real estate is attached and condemned by a justice, the proceedings must be returned to court.

Attachment may issue against a debtor absconding or concealing himself, so that the ordinary process of law cannot be served upon him.

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 upon any complaint being made on oath to any of the judges of the supreme or superior courts or to any justice of any of the county courts, by any person, his attorney, agent or factor, that any person, (indebted to him) hath removed or is removing himself out of the county privately, or so absents or conceals himself that the ordinary process of law cannot be served on such debtor, and if such plaintiff, his attorney, agent or factor further swears to the amount of his debt or demand, to the best of his knowledge and belief, it shall be lawful for such judge or justice, and he is

hereby empowered and required to grant an attachment against the estate of such debtor, wherever the same may be found, or in the hands of any person or persons indebted to, or having any of the effects of the defendant, or so much thereof as shall be of value sufficient to satisfy the debt or demand, and costs of such complaint, which attachment shall be returned to the court where the suit is cognizable, and shall be deemed the leading process in such action, and the same proceedings shall be had thereon as on judicial attachments.

2. When a person, who shall be an inhabitant of any other government, so that he cannot be personally served with process, shall be indebted to any person, a resident of this State, and hath any estate within the same, any of the said judges or justices may grant an attachment against the estate of such foreign person under the rules, restrictions and regulations before mentioned, and the same proceedings may be had thereon.

May also issue in favor of a citizen of this State against a non-resident.

3. Every judge or justice, before granting an attachment, shall take bond and security of the party for whom the same shall be issued, his attorney, agent or factor, payable to the defendant in double the sum for which the complaint shall be made, conditioned for satisfying all costs which shall be awarded to such defendant, in case the plaintiff shall be cast in the suit, and also all damages which shall be recovered of the plaintiff in any suit or suits which may be brought against him for wrongfully suing out such attachment; which bond, together with the affidavit of the party complaining subscribed with his proper name, shall be returned, by the justice taking the same, to the court to which the attachment is returnable, and every attachment issued without bond and affidavit taken and returned as aforesaid shall be abated on the plea of the defendant.

Plaintiff before attachment issues to give a bond, which together with the affidavit must be returned to court.

4. The attachment shall be in the following form, (viz.)

The State of North Carolina,  
county, greeting :

To the sheriff of

Whereas A. B. (or A. B. attorney, agent or factor as the case may be of C. D.) hath complained on oath to esquire, one of the judges of the supreme or superior courts of law, or one of the justices of the county court of that E. F. is justly indebted to him (or to the said A. B.) the amount of and oath having been also made that the said E. F. hath removed or is about to remove himself out of your county, or so absconds or conceals himself that the ordinary process of law cannot be served on him, (or is an inhabitant of another government, if the case is so,) and the said having given bond and security according to the directions of the act of the General Assembly in such cases made and provided : We therefore command you that you attach the estate of the said E. F. if to be found in your county, or so much thereof repleviable on security

Form of the attachment.

2. 1777, c. 115, s. 27.

3. 1777, c. 115, s. 26.

4. 1777, c. 115, s. 31 and 32.



as shall be of value sufficient to satisfy the said debt and costs according to the complaint, and such estate so attached in your hands to secure, or so to provide that the same may be liable to further proceedings thereupon to be had at the court to be held for

of at on the day of next, so as to compel the said E. F. to appear and answer the above complaint of the said when and where you shall make known to the said court how you shall have executed this writ.

Witness esquire, judge or justice of the said court at the day of in the year of American Independence.

And the said attachment shall be signed and sealed by the judge or justice granting the same.

The bond to be given upon obtaining such attachment shall be as follows (to wit :)

Form of the bond.

Know all men by these presents that we all of the county of are held and firmly bound unto in the sum of to be paid to the said his certain attorney, executor, administrator, or assigns; for which payment well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated the day of . The condition of the above obligation is such that whereas the above bounden hath the day of the date hereof prayed an attachment at the suit of against the estate of the above named for the sum of and hath obtained the same returnable to the court to be held at on the day of next ; now if the said shall prosecute his said suit with effect, or in case he fail therein, shall well and truly pay and satisfy to the said all such costs and damages as shall be awarded and recovered against the said his heirs, executors, or administrators in any suit or suits which may be hereafter brought for wrongfully suing out the said attachment, then the above obligation to be void, otherwise to remain in full force and effect. Provided that no attachment shall be abated for want of form if the essential matters expressed in the foregoing precedent be set forth in such attachment.

Proceedings on attachments, and against garnishees.

5. When any goods or other estate shall be attached by virtue of any attachment, whether judicial or original, it shall and may be lawful for the defendant, his or her attorney, agent or factor to replevy the same by giving bond with sufficient security to the sheriff or other officer serving such attachment, which said bond the sheriff or other officer is hereby empowered and required to take, to appear at the court to which such attachment is returnable and to abide by, perform and satisfy the order and judgment of such court ; and the security in said bond shall have all the pow-



ers and be subject to all the liabilities, except as hereinafter provided, of special bail in other civil cases, and when the estate attached shall, by three justices of the county court to be summoned by the sheriff for that purpose, be certified on oath to be perishable, and the person or persons to whom it belongs, his, her or their attorney, agent or factor shall not within sixty days after the serving of such attachment replevy the same, then such estate shall be sold at public vendue by the sheriff or other officer, he having first advertised at the court house and other public places in his county at least ten days before the sale, and the money arising from such sale shall be liable to the judgment obtained upon such attachment and deposited in the hands of the clerk of the court to which the process shall be returnable, there to wait the event of such judgment; and where the sheriff or other officer shall serve an attachment in the hands of any person or persons, supposed to be indebted to, or supposed to have any of the effects of the party absconding or residing out of the State, he shall at the time summon such person or persons as a garnishee or garnishees in writing, to appear at the court to which the attachment shall be returnable within the first four days of the first term thereof, there to answer upon oath what he or she is indebted to the defendant, and what effects of the defendant he or she hath in his or her hands and had at the time of serving such attachment, and what effects or debts of the defendant there are in the hands of any other and what person to his or her knowledge and belief; and when any attachment shall be served in the hands of any garnishee in manner aforesaid, it shall be lawful upon his or her appearance and examination to enter up judgment and award execution against any such garnishee, for all sums of money due to the defendant from him or her and for all effects and estate of any kind belonging to the defendant in his or her possession or custody, for the use of the plaintiff, or so much thereof as shall be sufficient to satisfy the debt and costs, and all charges incident in levying the same, and all goods and effects whatsoever in the hands of any garnishee or garnishees belonging to any defendant shall be liable to satisfy the plaintiff's judgment, and shall be delivered to the sheriff or other officer serving the attachment; and when any garnishee shall be returned by the sheriff or other officer summoned in manner aforesaid and shall fail to appear and discover on oath, as above directed, it shall be lawful for the court, after solemnly calling the garnishee, and such court is hereby authorized and required to enter a conditional judgment against such garnishee, and upon such judgment so entered a *scire facias* shall issue against such garnishee, returnable to the next term, to show cause if any he hath, why final judgment should not be entered against him, and upon such *scire facias* being duly executed and returned, if such garnishee shall fail to appear at the next term and discover on oath in manner aforesaid, the court shall confirm such judgment and award execution for the plaintiff's whole judgment and costs; and if upon examination of any garnishee it shall appear to the court that there is any of the defendant's estate in the hands of

any person or persons, who have not been summoned, such court shall upon motion of the plaintiffs grant a judicial attachment to be levied in the hands of such person or persons, having any of the estate of the defendant in his, her, or their custody or possession, who shall appear and answer, and shall be liable as other garnishees.

When a garnishee denies that he has any property, &c. an issue may be made up.

6. When any garnishee shall be called into court and in his or her garnishment shall deny that he or she owes to or has in his or her hands any property of the defendant, and the party plaintiff in such attachment shall on oath suggest to the court that such garnishee owes to or has property in his or her hands belonging to the defendant, or when any garnishee shall in his or her garnishment make such a statement of facts that the court before whom such garnishment shall be made cannot proceed to give judgment thereon, then in either of these cases the court shall order an issue to be made up, which shall be tried by a jury, and the court shall give judgment on their verdict as in other cases.

Proceedings where an attachment is levied upon property claimed by another person.

7. When any person shall sue out an attachment, and the same shall be levied on property which shall be claimed by any other person, such claimant shall be at liberty to interplead; first giving security for such costs and damages as may be awarded against him, and shall at the same time file a petition in writing, setting forth the particular property claimed and by what right or title he claims the same, a copy of which petition shall be served on the party suing out such attachment, at least ten days before the next court, and at the court to which the return of such petition shall be made, the court shall order a jury to be empanelled to inquire in whom the property is of such article or property as may be so levied upon, and the finding of such jury shall be conclusive as to the parties then in court, and the court shall adjudge accordingly.

Specific articles confessed by a garnishee shall be valued by a jury, and judgment given for the value.

8. Whenever any garnishee shall on oath confess that he or she has in his or her hands any property of the defendant of a specific nature, or is indebted to such defendant by any security or assumption for the delivery of any specific article, (except as hereinafter excepted,) then in either of these cases, the court, before whom such garnishment shall be made, shall immediately order a jury to be empanelled and sworn to enquire of the value of such specific property, and the verdict of such jury shall subject such garnishee to the payment of such valuation or so much thereof as shall be sufficient to satisfy the debt or damages and costs of the party at whose instance such garnishee shall have been summoned—*Provided*, that if such garnishee shall also state in his garnishment that the said specific property was left or deposited in his or her possession by the defendant as a bailment, or shall state in his garnishment that he hath tendered the said specific articles, agreeably to contract, and that they were refused by the defendant, and that he then was and always had been ready to deliver the same, or that he had such specific articles at the time and place

In what cases garnishee may exonerate himself by delivery of the articles.

6. 1793, c. 389, s. 2.

7. 1793, c. 389, s. 3.

8. 1793, c. 389, s. 1.—1794, c. 424, s. 1.



specified in such covenant or agreement ready to be delivered, and that he was still ready to deliver the same, and when such garnishment shall be admitted by the plaintiff or found by a jury, then in any of such cases such garnishee shall and may be exonerated by the delivery of such specific articles to the sheriff, who levied the attachment, who shall proceed as if the attachment had been originally levied on such article or articles.

9. When any garnishee shall declare on his garnishment that the money or specific article due by him or her will become payable or deliverable at a future day, and the same shall be admitted by the plaintiff or found by a jury, then and in such case conditional judgment shall be entered against such garnishee, and the plaintiff may proceed to ascertain his demand by judgment against the defendant, but shall not take final judgment against such garnishee without notice by *scire facias* on which the plaintiff may proceed as in other cases.

Where money or specific articles are due or deliverable at a future time, conditional judgment to be entered.

10. The person or persons, entering themselves as special bail on replevying property attached, shall only be held liable to answer the value of the property which he, she, or they as aforesaid do respectively hold or have returned in the garnishment and no more, but the security replevying shall not avail themselves of paying the value of the property so replevied, unless such security shall at the return term move the court to empanel a jury to ascertain such value by inquiry, which inquiry the court shall have executed on motion made as aforesaid, notice being given to the plaintiff in attachment, his agent or attorney, at least five days before such motion shall be made.

Persons entering themselves as special bail on replevying property how far bound.

11. When any original or judicial attachment shall be returned to any court, as levied upon the goods and chattels, lands and tenements of any person or persons residing without the county in which such attachment has been issued, it shall be the duty of the clerk of such court to cause the same by public advertisement to be made known for six weeks (and longer if the court shall direct) next after the return made as aforesaid, and, until the said six weeks shall have expired, it shall not be lawful for such court to suffer any final judgment to be entered upon any such attachment, and the costs of such advertisement shall be taxed by the clerk in the bill of costs and be paid by the person liable to pay the other costs.

Advertisement to be made.

12. No judicial process shall be issued against the estate of any person residing without the limits of this State, unless such process is grounded on an original attachment, or unless the leading process in the suit has been executed on the person of the defendant when within the State.

Where judicial process may issue.

13. In cases where by law a justice of the peace has jurisdiction, on complaint being made on oath by any person or persons his or their agent, attorney or factor, that any person hath removed, or is removing him or herself out of the country privately,

Attachments in cases cognizable by a justice of the peace. Proceedings thereon.

9. 1794, c. 424, s. 2.

10. 1793, c. 389, s. 5.

11. 1793, c. 389, s. 6—1825, c. 1297—1819, c. 935, s. 1.

12. 1793, c. 389, s. 4.

13. 1777, c. 115, s. 66. 1794, c. 414, s. 7.



or so absconds or conceals him or herself that the ordinary process of law cannot be served on such debtor, or that such debtor is an inhabitant of another government, and if such plaintiff his, her or their agent, attorney or factor, further maketh oath to the amount of his, her or their debt or demand to the best of his, her or their knowledge and belief, it shall and may be lawful for any justice of the peace and he is hereby empowered and required to grant an attachment against the estate of such debtor, wherever the same may be found in his county or in the hands of any person or persons indebted to or having any of the effects of the defendant, or so much thereof as shall be of value sufficient to satisfy the debt or demand and costs of such complaint, which attachment shall be returnable before some justice of the peace on or before thirty days after the date thereof to be proceeded on as hereafter directed. *Provided always*, that every such justice, before granting such attachment, shall take bond with sufficient security of the party for whom the same shall be issued, his, her or their agent, attorney or factor, payable to the defendant in double the sum for which the complaint shall be made, conditioned to satisfy all costs which shall be awarded to such defendant in case the plaintiff shall be cast, and also all damages which may be recovered against the plaintiff in any suit or suits which may be brought against him or her for wrongfully suing out such attachment; which bond, together with the affidavit of the party complaining subscribed with his or her proper name, shall be filed by the justice who shall try the cause with the attachment and other papers relative thereto, and the proceedings thereon shall be had in a summary way, in the same manner as on warrants; and the defendant may replevy the property so attached, by giving bond and security to the officer serving such attachment, conditioned to appear before some justice of the peace, to abide by and perform the order or judgment that shall be made thereon.

How garnishees to be summoned, and proceedings against them.

14. When the sheriff, constable, or other officer, shall serve an attachment in the hands of any person or persons, supposed to be indebted to, or supposed to have any of the effects of the party or parties absconding or residing out of the State, he shall at the same time summon such person as garnishee in writing to appear before the justice, before whom the attachment shall be returned, there to answer on oath relative to what he or she is indebted to the defendant, and what effects of the defendant he or she hath in his or her hands and had at the time of serving such attachment, and what effects or debts of the defendant there are in the hands of any other person, and what person to his or their knowledge or belief. And when any attachment shall be served in the hands of any garnishee in manner aforesaid, it shall be lawful upon his, her or their appearance and examination to enter up judgment and award execution against such garnishee for all sums of money due to the defendant from him or her, and for all the effects or estate of any kind belonging to the defendant in his or her possession or custody, for the use of the plaintiff, or so much thereof as shall be

sufficient to satisfy the debt and costs and all charges incident to levying and securing the same ; and all the goods and effects whatsoever in the hands of any garnishee or garnishees, belonging to any defendant, shall be liable to satisfy the plaintiff's judgment, and shall be delivered to the sheriff or other officer serving the attachment ; and when any garnishee, summoned as aforesaid, shall not appear and discover on oath as by law directed, it shall be lawful for the justice to issue a notice in writing for the said garnishee to appear at such place and on such day as he may appoint, to shew cause why judgment shall not be entered, and execution awarded against him, which notice shall be served by the sheriff, constable or other officer, and upon such notice being duly executed and returned, if the garnishee shall fail to appear and discover upon oath in manner aforesaid, the justice shall give judgment against such garnishee for the plaintiff's full demand with costs, and award execution accordingly. When any property attached as aforesaid shall be claimed by any other person or persons, and to determine the right the intervention of a jury may be necessary, the party claiming such property may appeal to the next county court, where such right upon an issue joined shall be tried by a jury of good and lawful men ; the party claiming first giving bond with sufficient security to pay all costs and charges in case he, she or they shall fail to prosecute the said suit with effect ; and the verdict of the jury in such case shall be conclusive as to the parties then in court, and the court shall give judgment accordingly. When any garnishee shall on his or her garnishment deny that he or she has in his or her possession any property of the defendants, and the plaintiff in such attachment shall on affidavit suggest to the justice that such garnishee owes to or has property in his or her hands belonging to the defendant, or when any garnishee shall on his or her garnishment make such a statement of facts that the justice before whom such garnishment shall be made cannot proceed to give judgment thereon, then in either of these cases, the justice shall return the attachment and other papers to the next county court to be held for his county, and the court shall order an issue or issues to be made up and tried by a jury, and the court shall give judgment on the verdict of the jury as in other cases.

15. When any goods or other estate shall be attached by virtue of any attachment issued agreeably to the directions of the two preceding sections of this act, it shall and may be lawful for the defendant or defendants, his, her or their attorney, agent, or factor, to replevy the same by giving bond with sufficient security to the sheriff, constable or other officer serving such attachment ; which said bond the sheriff, constable or other officer is hereby empowered and required to take to appear before the justice to whom such attachment is returnable, and to abide by, perform and satisfy the order and judgment of such justice ; and when the estate attached shall, by three freeholders of the county, to be summoned by the sheriff, constable, or other officer for that purpose, be

How property attached may be replevied.



certified on oath to be perishable, and the person or persons to whom it belongs his, her or their attorney, agent or factor, shall not within thirty days after the serving such attachment, replevy the same, then such estate shall be sold at public vendue by the sheriff, constable or other officer; he having first advertised such sale at the court house and other public places in the county at least ten days before the sale. And the money arising from such sale, shall be liable to the judgment obtained upon such attachment and shall be retained and kept by the officer to wait the event of such judgment.

Specific articles  
confessed by a  
garnishee how  
to be valued—  
Judgment to be  
given for the  
value.

16. Whenever any garnishee shall on oath confess that he or she has in his or her hands any property of the defendant of a specific nature, or is indebted to the defendant by a security or assumption, for the payment or delivery of tobacco or other specific articles, then in either of those cases, the justice, before whom such garnishment shall be made, shall immediately order three freeholders to be sworn to enquire of the value of such specific property, and their verdict shall subject such garnishee to the payment of such valuation, or so much thereof as shall be sufficient to satisfy the debt and costs of the party at whose instance such garnishee shall have been summoned. *Provided always,*

How and when  
garnishee may  
exonerate him-  
self by the de-  
livery of specif-  
ic articles.

That such garnishee, who may on oath confess that he or she has in his or her hands any specific property of the defendant, as left or deposited in his or her possession, by such defendant, may always exonerate him or herself by delivering such property to the sheriff, constable or other officer who levied such attachment or may levy the execution issued thereon. *Provided always,* That when judgment shall be entered up against any garnishee, declaring as aforesaid, he shall on giving security if required, have the same stay of execution as such garnishee would have been entitled to, had he been original defendant in the suit.

Garnishee may  
have stay of ex-  
ecution.

Attachment to  
be stayed thir-  
ty days.

17. In all suits commenced by attachment as herein directed, which shall be returnable before a justice of the peace, the justice to whom such attachment shall be returned, shall stay all proceedings thereon, for the space of thirty days, unless the defendant to such suit by attachment, his agent or attorney shall replevy the goods, chattels, or property so attached.

Persons enter-  
ing themselves  
as special bail  
on replevying  
property how  
far liable.

18. The person or persons, entering themselves as special bail on replevying property attached, shall only be held liable to answer the value of the property which he, she or they as aforesaid do respectively hold or have returned in the garnishment, and no more; but the security replevying shall not avail themselves of paying the value of the property so replevied, unless such security shall on the return of such attachment to the justice, require that such value should be ascertained by an inquiry, which inquiry the justice shall have executed on request as aforesaid, by three freeholders, by him summoned to assess and value such property on oath, notice being given to the plaintiff in attachment, his

16. 1794, c. 414, s. 12.

17. 1794, c. 414, s. 13.

18. 1794, c. 414, s. 14.



agent or attorney, at least five days before such inquiry shall be executed.

19. When any attachment, issued agreeably to this act, shall be returned to any justice of this State as levied on the goods and chattels, lands and tenements of any person or persons, residing without the county in which such attachment is issued, it shall be the duty of the justice to direct advertisements of the same for the space of thirty days.

When justice to direct advertisement to be made, and how long.

20. When the constable, or other lawful officer, shall attach any real estate, in any cause returnable before a justice of the peace, and the justice shall condemn the same for the satisfaction of the plaintiff's debt, said justice shall return the proceedings to the next county court, which may affirm the judgment of the justice, and issue a *venditioni exponas*, as in other cases of constable's levy on land.

When real estate is attached and condemned by a justice, the proceedings must be returned to court.

19. 1794, c. 414, s. 15.  
20. Amendment.

1838.9 - Ch 2. Def't estate allg may. replevy.

Note—REFERENCES TO ADJUDGED CASES.

SECT. 1. *Oncil vs. Owens*, 1 Hay, 365 *Hawks vs. Fabee*, 2 Hay, 158. *Alston vs. Clay*, ib., 171. *Powell vs. Hampton*, Conf. 86. *Bickerstaff vs. Delozer*, ib., 299. *English vs. Reynolds*, N. C. Term R. 92. *Amyett vs. Backhouse*, 3 Murph 63. *Washington vs. Saunders*, 2 Dev. 343. *Gillis vs. McCoy*, 4 Dev. 172. *Skinner vs. Moore*, 2 Dev. and Bat.

SECT. 2. *Broghill vs. Welborne*, 4 Dev., 511.

SECT. 3. *Summers vs. Parker*, N. C. Term R. 147. *State Bank vs. Hinton*, 1 Dev., 397.

SECT. 5. *Hightower vs. Murray*, 1 Hay, 21. *Mallett vs. London*, 2 Hay, 158. *Welsh vs. Gurley*, ib. 334. *Gee vs. Warrick*, ib. 354 and 358. *Overton vs. Hill*, 1 Murph 47. *Russell vs. Hinton*, ib. 468. *Orr vs. McBryde*, 2 Car. Repos., 257. *Peace vs. Jones*, 3 Murph, 256. *Elliott vs. Newby*, 2 Hawks, 21. *Cowles vs. Oaks*, 3 Dev., 96.

SECT. 6. *Jenkins vs. Langdon*, 2 Hawks, 386.

SECT. 7. *Simpson vs. Harry*, 1 Dev. and Bat. 202.

CHAPTER 7.

ATTORNEY GENERAL AND SOLICITORS.

AN ACT CONCERNING THE ATTORNEY GENERAL AND SOLICITORS FOR THE STATE.

SECTION

1. Attorney general to attend the supreme court, also to prosecute in the third circuit.
2. Six solicitors to be appointed.—To hold office four years, and to prosecute in their respective circuits.

SECTION

3. How vacancies in the office of solicitor during the recess of the legislature to be filled.
4. County solicitors to be appointed by the county courts. Their term of office and duty.

Attorney general to attend the supreme court — also to prosecute in the third circuit.

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 the attorney general shall attend to all the business which is now pending in, or which may hereafter be carried up to the supreme court of the State for adjudication, wherein the State may be concerned or in any manner have any interest therein. He shall also attend and prosecute in behalf of the State in the superior courts comprising the third circuit.

Six solicitors to be appointed. To hold office four years and to prosecute in their respective circuits.

2. In addition to the attorney general, there shall be appointed by joint vote of both houses of the General Assembly, six solicitors, who shall hold their offices for four years and no longer, and who shall attend and prosecute in behalf of the state in the respective circuits for which they shall be appointed.

How vacancies in the office of solicitor during the recess of the legislature, to be filled.

3. Whenever any vacancy shall happen either by the death, removal or resignation of any of the solicitors of this State, in the recess of the legislature, it shall be the duty of the judge, who is next to ride the circuit, wherein such vacancy has happened, to appoint a solicitor *pro tempore*, who shall have all the powers and authorities, receive the same salary and be subject to the performance of all the duties of such office, and be deemed to be in office until the end of the legislature, which shall first happen subsequent to his appointment.

County solicitors to be appointed by the county court. Their term of office and duty.

4. The several courts of pleas and quarter sessions within this State, a majority of the acting justices of the county being present, shall, by a vote of a majority of the justices present, appoint an attorney properly qualified to act for and in behalf of the state in such respective county, who shall hold his office during the term of four years, and shall and may prosecute all matters cognizable in the county court of pleas and quarter sessions, wherein he shall be appointed for, and in behalf of the state.

1. 1809, c. 768.—1806, c. 693, s. 8.

2. 1806, c. 693, s. 7.—1827, c. 14.—1790, c. 318, s. 1.—Amended.

3. 1809, c. 764.

4. 1777, c. 115, s. 62.—1816, c. 901, s. 1.—1822, c. 1149, s. 1.

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## CHAPTER 8.

# ATTORNEYS AT LAW.

### AN ACT CONCERNING ATTORNEYS AT LAW.

#### SECTION

1. Attorneys at law to be licensed by the judges of the supreme court.
2. Persons coming from other States to be licensed where.
3. Attorneys to take oaths,

#### SECTION

4. Attorneys to pay a tax before being permitted to practise.
5. Attorney to pay costs where any suit is dismissed on account of his failing to file a declaration.



SECTION

- 6. Attorney guilty of neglect or fraud to pay double damages.
- 7. Attorneys not to take greater fees than those allowed by law.
- 8. No justice of the peace to practise

SECTION

- as attorney in the county court of his county.
- 9. Attorney upon being appointed a justice must resign his claim to practise in the county court.

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 persons, who may apply for admission to practise as attorneys in any court, shall undergo an examination before two or more of the judges of the supreme court, and on receiving certificates from said judges of their competent law knowledge and upright character, shall be admitted as attorneys in the courts specified in such certificates.

Attorneys at law to be licensed by the judges of the supreme court.

2. No person coming into this State from any other state or from any foreign country, with an intention to practise the law, shall by the said judges be admitted to practise as an attorney, unless he shall have previously resided one year in this State, or unless such person shall produce to the said judges, a testimonial from the chief magistrate of such state or country, or from some other competent authority, that he is of an unexceptionable moral character.

Persons coming from other states to be licensed when.

3. All attorneys before they shall be admitted to practise in any court, shall, in open court before the judges thereof, take the oath prescribed for attorneys, and also the oaths of allegiance to this State, and to support the constitution of the United States, prescribed for all public officers, and, upon such qualification had, and oath taken, may act as attorneys during their good behavior.

Attorneys to take oaths.

4. No attorney shall be permitted to practise in any court of this State until he shall produce the receipt of the proper clerk, shewing that he had paid the tax for his license imposed by law.

Attorneys to pay a tax before being permitted to practise.

5. When a plaintiff in any suit, in any of the courts of this State, shall be compelled to pay the costs of such suit, in consequence of a failure on the part of his attorney to file his declaration in proper time, he may warrant such attorney for all the costs by him so paid, and the receipt of the clerk shall and may be given in evidence in support of such claim, and the justice, before whom such warrant shall be tried, may give judgment and issue execution thereon, and such attorney shall be further liable to the action of such plaintiff for such damages as he may have sustained in consequence of such declaration not having been filed as aforesaid.

Attorney to pay costs where any suit is dismissed on account of his failing to file a declaration.

6. If any practising attorney in any court of record in this State shall neglect to perform his duty in any action in which he shall be retained or commit any fraudulent practice, such attorney shall be liable to an action on the case at common law, in the superior or county courts of this State, to the party injured, and on the verdict

Attorney guilty of neglect or fraud to pay double damages.

- 1. 1818, c. 963, s. 3.
- 2. 1777, c. 115, s. 8.
- 3. 1777, c. 115, s. 8.
- 4. 1806, c. 698.
- 5. 1786, c. 253, s. 6.
- 6. 1743, c. 37.



passing against him, judgment shall be given by the said court for the plaintiff to recover double damages with costs of suit.

Attorneys not to take greater fees than those allowed by law.

7. If any attorney shall presume to ask, take or receive, directly or indirectly, any other or greater fees, than he is by law entitled to in civil cases, it shall be deemed in such attorney a misdemeanor in his office or profession of attorney, and such malpractice being made known to any of the courts within this State, such courts are hereby required to direct the attorney general or solicitors on behalf of the State to carry on a prosecution by indictment for such malpractice, and if any such attorney shall be thereupon convicted, by the verdict of a jury, of taking any greater fees than by law allowed, he shall, by the court in which such conviction shall be had, be thenceforth dismissed from his practice as an attorney for one year in every court of law and equity within this State.

No justice of the peace to practise as attorney in the county court of his county.

8. No court of pleas and quarter sessions in this State shall admit to the bar of the court, as practising attorney, any person who holds the office of a justice of the peace in said county, until he shall first tender to the court a resignation of his said office to be by the said court transmitted to the competent authority.

Attorney upon being appointed a justice must resign his claim to practise in the county court.

9. Whenever any practising attorney in a court of pleas and quarter sessions shall accept of the appointment of a justice of the peace in the county, wherein he so practises, he shall, before he is permitted to take the oath prescribed for a justice of the peace, cause to be entered on the records of said court a resignation of all claim to practise therein as an attorney, so long as he shall keep the office aforesaid, and during the time he shall keep the said office, he shall not be heard or received as an attorney of said court.

7. 1786, c. 253, s. 5.

8. 1803, c. 747, s. 1.

9. 1803, c. 747, s. 2.

## CHAPTER 9.

# AUCTIONS AND AUCTIONEERS.

### AN ACT CONCERNING AUCTIONS AND AUCTIONEERS.

#### SECTION

1. A tax of two and a half per cent. to be paid on goods sold at auction—  
What sales shall be exempt from the tax.
2. What articles shall be exempt from the tax on auctions.
3. Tax to be paid on articles sold by

#### SECTION

- auctioneers at private sale in certain cases.
4. When and how auctioneers to be appointed—Bond to be given and duties to be performed.
5. Commissioners of certain towns to appoint auctioneers.

SECTION

- 6. Commissioners of towns to supply vacancies.
- 7. Auctioneers to pay one per cent. out of the two and a half per cent. to the commissioners of towns.
- 8. Clerks of the county courts to make return to the comptroller of auction duties, and also of the names of the auctioneers and their sureties—

SECTION

- Duty of the comptroller and of the treasurer.
- 9. Penalty on auctioneers for failing to make returns to the clerk, and on clerks for failing to make returns to the comptroller.
- 10. Penalty for acting as auctioneers without appointment—Proviso.
- 11. Auctioneers' compensation.

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 there shall be levied, collected and paid for the use of the State upon all sales by way of auction, as hereinafter described, which shall be made within this State, a rate and duty of two dollars and fifty cents for every hundred dollars of the purchase money arising by sale at auction of goods, wares and merchandise, and the same rate for any greater or less sum, except as hereinafter excepted, the respective rates and duties to be paid by the auctioneer, or person making such sale at auction, out of the money arising from each and every sale: *Provided always*, that nothing in this act contained shall extend to any sale by auction of goods, wares and merchandise, made pursuant to or in execution of any rule, order, decree, sentence or judgment of any court of the United States, or of any court of this State, or made in consequence of any general assignment of property and effects for the benefit of creditors, or made by or on behalf of executors, administrators, or guardians, or made pursuant to the direction of any law of this State, or of the United States, touching the collection of any tax or duty, or of any wrecked goods.

A tax of two and one half per cent. to be paid on goods sold at auction.

What sales shall be exempt from the tax.

2. The provisions of the preceding section shall not extend to any article, the product of the agriculture of this State, in its natural or unmanufactured state, nor to any species of stock or of domestic animals, nor to any articles of household furniture, or farming utensils, which have been in use, but they shall extend only to such articles of goods, wares and merchandise as are the ordinary subject of traffic and sale by merchants and traders.

What articles shall be exempt from the tax on auctions.

3. The duty of two and a half per cent. imposed by the first section on goods, wares and merchandise sold at auction, shall be levied, collected and paid on all goods, wares and merchandise, sold by any auctioneer, whether by public or private sale: *Provided* the price at which such goods, wares and merchandise are sold, is fixed or agreed upon, or governed by the previous sale at auction of any goods, wares or merchandise of the same kind.

Tax to be paid on articles sold by auctioneers at private sale in certain cases.

4. The several courts of pleas and quarter sessions in this State shall annually, at the first term after the first day of April, in each and every county, (a majority of the justices being present,) appoint not more than three persons to exercise the business or

When and how auctioneers to be appointed.

1. 1818, c. 966, s. 1.  
 2. 1819, c. 993.  
 3. 1824, c. 1249, s. 1.  
 4. 1818, c. 966, s. 2.—1824, c. 1249, s. 2.—1833, c. 22.



Bond to be given and duties to be performed.

trade of auctioneer in their respective counties for the term of one year, each of such persons giving bond to the State of North Carolina with one or more securities to the satisfaction of the court, in the sum of two thousand dollars, with condition that he will on the first day of July, October, January and April, in each year while he shall continue to exercise the said trade or business, render to the clerk of his county a true and particular account in writing of the moneys or sums for which any goods, wares, or merchandise, made liable to duty by law, have been sold at every sale at auction, by him made, and at every private sale, wherein the price of the goods, wares and merchandise thus sold at private sale, was fixed or agreed upon, or governed by any previous sale at auction of any goods, wares and merchandise of the same kind ; that the account thus rendered shall contain a statement of the gross amount of sales by him made, for each particular person or company at any one time, the date of each sale, the names of the owner or owners of the goods, wares and merchandise so sold, and the amount of tax due thereon, and also shall pay such sums of money as shall be due to the State, upon the said sales, which sums he is hereby authorized and directed to retain out of the produce of such sales made as aforesaid. The said auctioneer, at rendering his account to the clerks of the courts as herein required, shall take and subscribe an oath on said account, that the same is true to the best of his knowledge and belief, and shall annually, in the month of October, pay to the public treasurer the amount of duties upon sales at auction, and upon such private sales as are specified in the third section, by him made in the preceding year, and shall be entitled to retain a commission of five per cent. upon the amount thereof for his trouble in and about the same.

Commissioners of certain towns to appoint auctioneers.

5. The commissioners of the several towns of Fayetteville, Wilmington, Newbern, Edenton, Elizabeth city, Halifax, and the city of Raleigh, shall have full power to appoint not more than three auctioneers for their respective towns, which auctioneers shall be appointed annually on the first Monday in April, in each and every year, and who shall give bond to be approved by the court of pleas and quarter sessions of the county and otherwise be subject to the rules and regulations prescribed for auctioneers in the preceding sections of this act.

Commissioners of towns to supply vacancies.

6. Whenever any auctioneer for any of the said towns shall die, remove from said town, or resign his appointment as auctioneer, it shall be lawful for the commissioners of said town to supply any vacancy occurring as aforesaid by a new appointment, which shall continue in force until the next annual appointment of auctioneers. And it shall be the duty of the said commissioners to take from the auctioneer so appointed the usual bond, and to return the same to the court of pleas and quarter sessions, which shall be held next after such appointment, for the counties in which the said towns are respectively situated.

5. 1820, c. 1065.

6. 1827, c. 26, s. 1 and 2.



7. The auctioneers in each and every incorporated town in this State shall pay to the commissioners of the town, whereof he is an auctioneer, one per centum out of the two and a half per centum, which is by the preceding sections of this act directed to be paid to the State, as a duty on all goods, wares and merchandise sold by them at auction, and at each private sale, as is specified in the third section. And the said auctioneers shall be governed by the same rules, regulations and provisions and restrictions to the said commissioners for their payment, as they are by the above provisions to the State.

Auctioneers to pay one per cent. out of the two and one half per cent. to the commissioners of towns.

8. The clerks of the several courts of pleas and quarter sessions shall, annually in the month of October, transmit to the comptroller of this State an abstract of the accounts returned to his office by the several auctioneers in the preceding year, also the names of all the auctioneers appointed according to the provisions of the fourth and fifth sections of this act with their respective securities; and also, if no such appointments were made, the clerks aforesaid shall transmit a statement of that fact; and it shall be the duty of the comptroller to charge each auctioneer for the amount of the duty due to the State upon such accounts by the auctioneers respectively, and if any auctioneer shall fail to pay the public treasurer, at the time herein before appointed, the sums due from him to the State upon his accounts as aforesaid, the treasurer is required to move for, and the courts of this State are authorized and required to render judgment against such delinquent auctioneer and his securities, as by law judgment may be had against delinquent revenue officers.

Clerks of the county courts to make return to the comptroller of auction duties, and also of the names of the auctioneers and their sureties.

Duty of the comptroller; and of the treasurer.

9. If any auctioneer shall fail to render his accounts to the clerk of the court of his county, he shall forfeit and pay the sum of fifty dollars for each neglect, and if any clerk of any court of pleas and quarter sessions shall fail to transmit to the comptroller the statement required by the last section, he shall forfeit and pay the sum of one hundred dollars for each and every failure, which forfeitures of the auctioneers and clerks shall be recovered by the treasurer for the use of the State, upon motion as in the preceding section.

Penalty on auctioneers for failing to make returns to the clerk; and on clerks for failing to make returns to the comptroller.

10. No person shall exercise the trade or business of an auctioneer, by selling any goods, wares and merchandise whatsoever by auction, or any other mode of sale, whereby the best or highest bidder is deemed to be the purchaser, unless such person shall be appointed an auctioneer pursuant to the provisions of this act, on pain of forfeiting for every such sale at auction the sum of two hundred dollars: *Provided, however,* that nothing herein contained shall be construed to require sales to be made by auctioneers of any estate, goods, chattels, or other thing, which, by the provisions of this act, are not made liable to duty, or are exempted from duty.

Penalty for acting as auctioneers without appointment.

Proviso.

7. 1824, c. 1249, s. 3 and 4.

8. 1818, c. 966, s. 3.

9. Amendment.

10. 1818, c. 966, s. 4.

Auctioneers' compensation.

11. The auctioneers, appointed under the provisions of this act, shall be entitled to ask and receive from the persons for whom they make sales at auction, as may be agreed on between them, not exceeding two and a half per cent. on the amount of such sales.

11. 1818, c. 966, s. 5.

Note.—REFERENCES TO ADJUDGED CASES.

SECT. 4. Commissioners of Ralcigh vs. Holloway, 3 Dev. 234.

CHAPTER 10.

BAIL IN CIVIL CASES.

AN ACT CONCERNING BAIL IN CIVIL CASES.

SECTION

- 1. How bail bond to be taken and returned—When the sheriff shall be special bail.
- 2. Bail bond to be assigned to the plaintiff—If not assigned sheriff to be special bail.
- 3. When and how the bail may be proceeded against.
- 4. Bail may arrest and surrender principal.

SECTION

- 5. Persons surrendered may give other bail.
- 6. Issue by the bail to be tried the first term—*Non est factum* to be pleaded only on oath.
- 8. Costs to be paid by the bail in certain cases.

1848. ch. 7

How bail bond to be taken and returned.

When the sheriff shall be special bail.

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 when any writ shall issue from any of the superior courts of law, or from the courts of equity in cases where bail may be required, or from any of the county courts of pleas and quarter sessions, whereby any sheriff or other officer shall be commanded to take the body of any person or persons, to answer to any action, bill or petition in any of the said courts, such sheriff (or other officer) shall take bond with sufficient securities in double the sum for which such person or persons shall be held in arrest (executors and administrators excepted,) and shall return such bond with the writ, and in case the sheriff or other officer shall fail or neglect to take such bail, or the bail returned be held insufficient on exception taken and entered the same term, to which such process shall be returnable, the sheriff or other officer, having due notice thereof,

1. 1777, c. 115, s. 16, 69.—1782, c. 177, s. 3.—1831, c. 14. s. 1.



shall be deemed and stand as special bail, and the plaintiff may proceed to judgment according to the rules hereinafter prescribed.

2. All bail bonds, returned to any of the courts named above, shall be assigned by the sheriff or coroner returning the same by an endorsement thereon, in the following form, to wit : I, A. B. sheriff or coroner (as the case may be) of \_\_\_\_\_ county, do hereby assign the within obligation to C. D. the plaintiff therein named, his executors and administrators, to be sued for according to the statute in such cases made and provided. In witness whereof, I have hereunto set my hand and seal the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord \_\_\_\_\_. And every sheriff or other officer, failing to make such assignment, shall be deemed, held and taken as special bail in the same manner as if no bail bond had been returned.

Bail bond to be assigned to the plaintiff.

If not assigned, sheriff to be special bail.

3. All bail, taken according to the directions above prescribed, shall be deemed, held and taken as special bail, and as such liable to the recovery of the plaintiff, but the plaintiff, after final judgment, shall not take out execution against such bail, until an execution be first returned that the defendant is not to be found in his proper county, and until a *scire facias* hath been made known to the bail, which *scire facias* shall not issue till such execution shall have been so returned, and after return of such execution against such principal, and *scire facias* against the bail, execution may issue against the principal and securities or any of them, or any of their estates, unless the bail shall surrender the principal before the return of the first *scire facias*, or shall appear and plead upon the return thereof.

When and how the bail may be proceeded against.

4. The bail shall have liberty, before final judgment obtained against him, to surrender to the court, from which the process issued, or to the sheriff returning such process during the sitting of such court, or to the sheriff in the recess of such court, the principal in discharge of himself; and such bail shall, at any time before such judgment had, have full power and authority to arrest the body of his principal, and secure him until he shall have an opportunity to surrender him to the sheriff who made the arrest, or the court to which the process was returnable, and such sheriff is hereby required to receive such surrender, and hold the body of the defendant in custody, as if bail had never been given.

Bail may arrest and surrender principal.

5. Any person surrendered to the sheriff after the return court, or who shall be committed to the custody of the sheriff upon a surrender in court, shall have liberty, at any time before final judgment rendered against him, to give other bail, and it is hereby declared to be the duty of the said sheriff to take the same and return the bail bond to the succeeding court, and in case the sheriff shall release such person without bail, or the bail returned be held insufficient on exceptions taken and allowed the same term to which such bail bond shall be returned, the sheriff, having due notice thereof, shall be deemed and taken as special bail.

Person surrendered may give other bail.

2. 1777, c. 115, s. 17.  
 3. 1777, c. 115, s. 19.  
 4. 1777, c. 115, s. 20.  
 5. 1827, c. 40.



Issue by the bail to be tried the first term.

6. When any *scire facias* shall by the proper officer be returned to have been made known to the bail, and they in consequence thereof shall appear, they shall be obliged to plead and the issue shall be tried the same term, to which the process shall be returned, unless sufficient cause be shown to the court to the contrary, but the bail shall not be permitted to plead *non est factum*, unless they first file an affidavit of the truth of their plea.

Non est factum to be pleaded only on oath.

When principal is imprisoned on other process, he may be retained.

7. When any sheriff shall return on a *scire facias* to him directed, that the principal is imprisoned by virtue of any process civil or criminal, the court, to which such *scire facias* is returnable, shall, on motion of the plaintiff or bail, order and direct that such principal be retained where he shall be a prisoner, until the plaintiff's judgment and costs shall be paid, or he be otherwise discharged by due course of law, a copy of which order being served on the keeper of such prison, before such prisoner's releasement, shall be a sufficient authority for him to retain such prisoner until such order be complied with, and shall be deemed a surrender of the principal, and a discharge of the bail.

Costs to be paid by the bail in certain cases.

8. Whenever a *scire facias* shall issue against any person, as the bail of any other person, and said bail shall not, at or before the term of the court, at which said bail is bound to appear, or ought to plead, be discharged from his liability as bail by the death or surrender of his principal or otherwise, then and in that case, the bail shall be liable for all the costs that may accrue on said *scire facias*, notwithstanding said bail may be afterwards discharged, as such, by the death or surrender of the principal or otherwise.

6. 1777, c. 115, s. 21.

7. 1777, c. 115, s. 22.

8. 1827, c. 15.

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*Note.* — REFERENCES TO ADJUDGED CASES.

SECT. 1. Swepson *vs.* Whitaker, 1 Hay, 224. Luton *vs.* the sheriff of Wake, ib. 485. Bryan *vs.* Bradley. Tayl. 77. Handy *vs.* Richardson, 2 Hay, 138. Rhodes *vs.* Vaughn, 2 Hawks, 167. Governor *vs.* Jones, ib. 359. Hart *vs.* Lanier, 3 Hawks, 244. Arrenton *vs.* Jordan, 4 Hawks, 98. Gray *vs.* Hoover, 4 Dev. 475.

SECT. 3. Hunter *vs.* Hill, 2 Hay, 223. Benton *vs.* Duffey, Conf. 98. Arrington *vs.* Jordan, 4 Hawks, 98. Finley *vs.* Smith, 3 Dev. 247.

SECT. 4. Davison *vs.* Mull, 1 Hay, 364. Peace *vs.* Person, 1 Murph. 188. Dick *vs.* Stoker, 1 Dev. 91. Granberry *vs.* Pool, 3 Dev. 155. Huggins *vs.* Fonville. ib. 392. Moody *vs.* Stockton, ib. 431.

**CHAPTER 11.**

**BANK NOTES.**

AN ACT TO PROHIBIT THE CIRCULATION OF BANK NOTES UNDER FIVE DOLLARS.

SECTION

1. Notes of the banks of other states, &c. under five dollars not to be circulated in this State.

SECTION

2. Penalty for circulating such notes.

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 not be lawful for any person to pass, circulate or receive in payment, within this State, any bank-note, bill or promissory note for the payment of money, issued by any state or sovereignty, or by any body politic or corporate, not authorized to issue the same in and by any of the laws and statutes of this State, under the denomination of five dollars.

Notes of the banks of other states &c. under five dollars not to be circulated in this State.

2. Any person offending against any of the provisions of the preceding section shall forfeit the nominal amount of such bank note, bill or promissory note with costs of suit, to be recovered in the name and for the use of any person who shall sue for the same, and prosecute such suit to judgment in any jurisdiction having cognizance thereof.

Penalty for circulating such notes.

- 1. 1830, c. 40, s. 1.
- 2. 1830, c. 40, s. 2.

**CHAPTER 12.**

**BASTARD CHILDREN.**

AN ACT CONCERNING BASTARDY AND PRESCRIBING THE MODE OF LEGITIMATING BASTARD CHILDREN IN CERTAIN CASES.

SECTION

1. A single woman being with child, &c. and refusing to declare the father, to pay a fine and give security, &c.—If she declare the father on oath, he shall give security to perform the order of the court thereon.

SECTION

- 2. Person charged to be bound over though the child be not born.
- 3. Process to issue against the person charged and failing to appear.
- 4. Issue may be made up by the party charged to try the fact—If issue found against him or if there be no



SECTION

- issue, he is to be bound for the maintenance of the child and pay the costs.
- 5. Appeal may be taken by the prosecuting attorney.
- 6. Examination must be within three years after birth of the child.

SECTION

- 7. Execution may issue for the maintenance of the bastard.
- 8. Illegitimate children may be legitimated by the county or superior courts.
- 9. Effect of such legitimation.
- 10. Decree to be recorded.

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,*

A single woman being with child, &c. and refusing to declare the father, to pay a fine and give security, &c.

If she declare the father on oath, he shall give security to perform the order of the court thereon.

Person charged to be bound over though the child be not born.

Process to issue against the person charged and failing to appear.

That any two justices of the peace, upon their own knowledge or information made to them, that any single woman within their county is big with child or delivered of a child or children, may cause such woman to be brought before them (or any other two Justices of the county) and to be examined upon oath concerning the father, and if she shall refuse to declare the father she shall pay a fine of five dollars, and give a bond payable to the State of North Carolina with sufficient security to keep such child or children from being chargeable to the county, or shall be committed to prison until she shall declare the same or pay the fine aforesaid and give bond with security aforesaid; but in case such woman shall, upon oath before any two justices aforesaid, accuse any man of being the father of a bastard child or children begotten of her body, such person so accused shall enter into recognizance with sufficient security, before the said justices, for his appearance at the next term of the county court and to stand to and abide by and perform whatever order said court may make for the maintenance of said bastard children, and for the indemnification of the county against any charges for the said maintenance, or shall be committed to prison until he enters into such recognizance aforesaid.

2. Any two justices of the peace aforesaid, at their discretion, may bind to the next county court him that is charged on oath as aforesaid to have begotten a bastard child, which shall not be then born, and the county court may continue such person upon security until the woman shall be delivered, that he may be forthcoming when the child is born.

3. Whenever any two justices of the peace as aforesaid shall bind any person, charged with being the father of any bastard child, to the next county court as above prescribed, and the said person shall not appear agreeably to his said recognizance, or whenever any woman shall swear a child to any man in manner as above prescribed, and the man to whom said child is sworn shall abscond or so conceal himself that the process of said justices cannot be served on him, then it shall and may be lawful for the county court, on the return of the recognizance or other proceedings from the justices of the peace, to order their clerk to issue a *capias* or an attachment, at the discretion of the said court, to any county within this State against the person, so charged with being the father of such bastard child so absconded, and the same proceedings shall

1. 1741, c. 30, s. 10.—1799, c. 531, s. 2.—1832, c. 10.—1832, c. 17.  
 2. 1741, c. 30, s. 11.—1799, c. 531, s. 2.  
 3. 1799, c. 531, s. 1.



be had thereon as in other like cases of a *capias* or an attachment.

4. Whenever any man shall, in the manner above prescribed, be accused by any single woman of being the father of her bastard child or children, the person so accused shall, upon the return to the county court of the recognizance, *capias* or attachment as the case may be, be entitled to have an issue made to try up whether he be the father of such child or children; upon the trial of which issue, the examination of the woman upon oath, taken before two justices of the peace in manner prescribed above and returned to court, shall be *prima facie* evidence only against the person so accused, and if the jury shall, upon the trial of such issue, find that the person so accused is the father of such child or children, he shall stand charged with the maintenance thereof as the court may order, and shall give bond payable to the State of North Carolina, with sufficient security, to perform said order and to indemnify the county, where such child or children shall be born, free from charges for his, her or their maintenance, and may be committed to prison until he find securities for the same, if such security is not by the woman before given, and shall be liable for the costs of such issue; and the like order may be given by the court and the like security required from any man, who stands charged as above and does not apply for an issue to be made up to try the fact of his being the father of such child or children, and in default of such security he may be committed to prison as above prescribed.

Issue may be made up by the party charged to try the fact.

If issue found against him or if there be no issue, he is to be bound for the maintenance of the child and pay the costs.

5. In the trial of all issues under the provisions of the last section, the officer prosecuting on behalf of the county shall, and he is hereby authorized to appeal to the superior court of law in all cases where he shall think that justice has not been obtained.

Appeal may be taken by the prosecuting attorney.

6. All examinations upon oath, to accuse or charge any man of being the father of a bastard child, shall be had and taken within three years next after the birth of said child and not after.

Examination must be within three years after birth of the child.

7. When any county court within this State shall charge the reputed father of any bastard child with the maintenance of the same, in manner above prescribed, and the said reputed father shall refuse or neglect to pay the same, then it shall and may be lawful for such county court, notice being served on the defendant at least ten days before the sitting of said court, or such notice being returned by the sheriff, that the defendant is not to be found, to order an execution against the goods, chattels, lands and tenements of the said reputed father, for such sum as said county court shall adjudge sufficient for the maintenance of said bastard child or children, provided that the party aggrieved by such non-payment shall apply for the same.

Execution may issue for the maintenance of the bastard.

8. The putative father of any illegitimate child or children may apply, by petition in writing, either to the county or superior court of the county, in which such father may reside, praying that the

Illegitimate children may be legitimated by the county or superior courts.

4. 1814, c. 871, s. 1 and 2.—1741, c. 30, s. 10.

5. 1814, c. 871, s. 3.

6. 1814, c. 871, s. 1.

7. 1799, c. 531, s. 3.

8. 1829, c. 19, s. 1.

said child or children be declared legitimate, and if it shall appear to said court from the oath of said petitioner and such other evidence as the court may require, that the petitioner hath intermarried with the mother of said child or children, or that the said mother is dead, or married to another, or lives out of the State, and that such petitioner is reputed the father of said child or children, the said court may thereupon declare and pronounce the said child or children legitimated accordingly.

Effects of such legitimation.

9. The effect of such legitimation shall extend no further, than to impose upon the father all the obligations which fathers owe to their lawful children, and to enable the child, thus legitimated, to inherit, from the father only, lands whereof the father may die seized in fee simple, and to transmit the same in the course of descent, in the same manner as though such child had been born in lawful wedlock, and also to entitle such child to distribution of the personal estate of his or her father, in the same manner as though he or she had been born in lawful wedlock; and in case of death and intestacy, the personal estate of such child shall be distributed, according to the statute of distribution, among those who would be his or her next of kin in case he or she had been born in lawful wedlock.

Decree to be recorded.

10. It shall be the duty of the clerk of the court, where such petition is filed and such decree made, to record the decree of the court thereon; and for said services he shall be entitled to receive a fee of one dollar from the petitioner.

9. 1829, c. 19, s. 3.  
10. 1829, c. 19, s. 2.

1838.9. ch 2. c. 7n  
legitim

*Note*—REFERENCES TO ADJUDGED CASES.

- SECT. 1. *Wilkie vs. West*, 1 Murph. 319. *State vs. Barrow*, 3 Murph. 121. *State vs. Petway*, 3 Hawks, 623.  
SECT. 7. *McPherson vs. McCoy*, 2 Dev. 391. *Shaw vs. Stewart*, 1 Dev. and Bat. 412.

## CHAPTER 13.

# BILLS, BONDS AND PROMISSORY NOTES.

### AN ACT CONCERNING BILLS, BONDS AND PROMISSORY NOTES.

SECTION

1. Promissory notes made negotiable as inland bills of exchange.
2. Orders in writing on third persons good; and the drawer or acceptor

SECTION

- liable—But protest for non-acceptance and notice necessary before a suit will lie against the drawer.
3. All bills, bonds or notes for money



SECTION

SECTION

with or without seal, &c., made negotiable—Endorsee or assignee may have an action on the case or of debt in some cases in his own name.

- 4. Interest on bills, &c. when to accrue.
- 5. Bills, &c. payable on demand—their operation.
- 6. Contracts for the delivery of specific articles to bear interest.
- 7. Bills of exchange from what time to bear interest.

- 8. Damages on protested bills of exchange, what.
- 9. Action on protested bills of exchange may be brought against drawers and endorsers jointly or separately.
- 10. In action against drawer or endorser, protest of notary, &c., shall be evidence of a demand, &c.
- 11. Endorsers of bills, bonds and promissory notes to be held liable as sureties.

1848. c.k.g.

1. BE it enacted by the General Assembly of the State of North Carolina, and is hereby enacted by the authority of the same,

That all notes signed by any person or persons, body politic or corporate, or by the servant or agent of any corporation, banker, merchant or trader, who is or shall be usually intrusted to sign such promissory notes for them, whereby such person or persons, body politic or corporate, or the servant or agent of any corporation, banker, merchant or trader shall promise to pay any person or persons, body politic or corporate, or the servant or agent of any corporation, banker, merchant or trader, or order, the money mentioned in such note, shall be construed to be, by virtue thereof, due and payable to such person or persons, body politic or corporate, or the servant or agent of any corporation, banker, merchant or trader, to whom the same is made payable, and also such note payable to such person or persons, body politic or corporate, or the servant or agent of any corporation, banker, merchant or trader, or order, may be assignable over in like manner as inland bills of exchange are by custom of merchants in England, and the person or persons, body politic or corporate, or the servant or agent of any corporation, banker, merchant, or trader, to whom such money is or shall be payable, may maintain an action for the same, as they might upon such bill of exchange, and the person or persons, body politic or corporate, or the servant or agent of any corporation, banker, merchant or trader, to whom such note so payable to order is assigned or endorsed, may maintain an action against the person or persons, body politic or corporate, or the servant or agent of any corporation, banker, merchant or trader, who signed or shall sign such note, or any who shall or have endorsed the same, as in cases of inland bills of exchange, and recover damages and costs of suit, and in case of nonsuit or a verdict shall pass against the plaintiff, the defendant shall recover costs.

Promissory notes made negotiable as inland bills of exchange.

2. When any person or persons shall, by order in writing signed by his or their proper hand, direct the payment of any sum or sums of money in the hands or possession of any other person or persons to the bearer, or any person or persons whatsoever, the money therein specified shall by virtue thereof, be due and payable to such person or persons, to whom the same is drawn payable, and may be put in suit against the person or persons who

Orders in writing on third persons good; and the drawer or acceptor liable.

1. 1762, c. 70, s. 2.  
2. 1762, c. 70, s. 3 and 4.



But protest for non-acceptance and notice necessary before a suit will lie against the drawer.

All bills, bonds or notes for money with or without seal, &c. made negotiable.

Endorsee or assignee may have an action on the case, or of debt in some cases, in his own name.

Interest on bills, &c. when to accrue.

Bills, &c. payable on demand, their operation.

Contracts for the delivery of specific articles to bear interest.

Bills of exchange, from what time to bear interest.

Damages on protested bills of exchange, what.

shall draw the same, or against the person or persons on whom the same shall be drawn, after the acceptance thereof by him or them by whom the same shall be made payable, and damages may be recovered. *Provided, nevertheless,* that no person or persons whatsoever shall prosecute any suit against any person or persons who shall give such order for the money therein mentioned, before the same shall have been first protested for non-acceptance, and notice given thereof to the drawer, before such suit shall be brought; and if any suit shall be brought on any such order before notice and refusal to pay as aforesaid, the plaintiff or plaintiffs shall be nonsuited and pay costs.

3. All bills, bonds or notes for money, as well those with as those without seal, those which are not expressed to be payable to order or for value received, as those which are expressed to be payable to order and for value received, shall be held and deemed to be negotiable, and all interest and property therein shall be transferable by endorsement in the same manner and under the same rules, regulations and restrictions as notes called promissory or negotiable notes are by the first section of this act. And the endorsee or assignee may have and maintain his action on the case for the recovery of the moneys due him upon such bill, bond or note, notwithstanding any seal thereunto annexed, in his the said endorsee's or assignee's own proper name, as suits have been heretofore had and maintained by endorsees or assignees of notes called promissory or negotiable: *Provided, always,* that the endorsee or assignee of any bill, bond or note under seal may have and maintain an action of debt on the same in his or her own name, as endorsee or assignee, provided the original obligee could have maintained an action of debt on the same bill, bond or note with seal.

4. All bonds, bills, notes, bills of exchange, liquidated and settled accounts, shall bear interest from the time they become due, provided that such liquidated and settled accounts shall be signed by the debtor, unless it shall be specially expressed that interest is not to accrue until a time specially mentioned in the said writings or securities.

5. All bills, bonds or notes made payable on demand, shall be held and deemed to be due on demand made by the creditor, his agent or attorney by suit or request, and shall bear interest from the time of demand.

6. All securities for the payment or delivery of tobacco and all other specific articles, shall bear interest as moneyed contracts; that is to say, the articles shall be rated by a jury at the time they become due, and interest be paid by the debtors accordingly.

7. Bills of exchange which shall be drawn or endorsed in this State, and which may be protested, shall carry interest not from the date thereof, but from the time of payment therein respectively mentioned.

8. The damages on such protested bills shall be as follows:

3. 1786, c. 248, s. 1.—1789, c. 314, s. 3.
4. 1786, c. 248, s. 3.
5. 1786, c. 248, s. 4.
6. 1786, c. 248, s. 5.
7. 1823, c. 2, s. 1.

that is to say, where the bill shall be drawn or endorsed in this State upon any person or body corporate in any other of the United States, or in any of the territories thereof, excepting the state of Louisiana, six per centum upon the principal sum; where such bill shall be drawn or endorsed as aforesaid upon any person or body corporate in any other state or place in North America, or the islands thereof, excepting the North West Coast of America, or in any of the West Indies or Bahama Islands, ten per cent. upon such principal sum; where such bill shall be drawn or endorsed as aforesaid upon any person or body corporate in the island of Madeira, the Canaries, the Azores, the Cape de Verd Islands, or in any other state or place in Europe or South America, fifteen per cent. on such principal sum, and where such bill shall be drawn or endorsed as aforesaid on any person or body corporate in any other part of the world, twenty per cent. on such principal sum.

9. Any person or persons, having a right to demand any sum of money due upon a protested bill of exchange of the description aforesaid, may commence and prosecute an action for principal, interest, damages and charges of protest against the drawers and endorsers jointly, or against either of them separately, and judgment shall and may be given accordingly.

Actions on protested bills of exchange may be brought against drawers and endorsers jointly or separately.

10. In all actions at law wherein it may be necessary to prove a demand upon or notice to the drawer or endorser of a bill of exchange, or promissory note, or other negotiable security, or where it may be necessary to prove a demand upon the acceptor or drawee of a bill of exchange in any action at law against the drawer or endorser of such bill of exchange, the protest of a notary public or, for want of a notary public, of a justice of the peace, clerk of courts of record and clerk and master, setting forth that he has made such demand or given such notice, and the manner in which he has done the same, shall be *prima facie* evidence that such demand was made, or notice given in manner set forth in such protest.

In action against drawer or endorser protest of notary &c. shall be evidence of a demand &c.

11. Whenever any bill, bond or promissory note, made negotiable by this act, shall be endorsed, such endorsement, unless it be otherwise plainly expressed therein, shall render the endorser or endorsers liable as surety or sureties to any holder of such bill, bond, or promissory note, and no demand on the maker shall be necessary previous to an action against the endorser. *Provided*, that nothing herein contained shall in any respect apply to bills of exchange, inland or foreign.

Endorsers of bills, bonds and promissory notes to be held liable as sureties.

1840.1. Ch. 1.

Damages of prot reduced to 3. p

- 8. 1828, c. 2, s. 2.—1741, c. 31.—1796, c. 464, s. 1 and 2.
- 9. 1796, c. 464, s. 3.
- 10. 1812, c. 844.—1819, c. 1003.—1826, c. 15.
- 11. 1827, c. 2.

Note.—REFERENCES TO ADJUDGED CASES.

- SECT. 1. Hodges vs. Clinton, Martin 76.—Jamieson vs. Farr, 1 Hay. 182.
- SECT. 2. — vs. Staunton, 1 Hay. 271.
- SECT. 3. Tindall vs. Johnson, 1 Hay. 372.—Campbell vs. Mourford, ib. 398.
- SECT. 11. Hatcher vs. McMorine, 4 Dev. 122.



CHAPTER 14.

BOATS AND CANOES.

AN ACT TO PREVENT THE TAKING AWAY BOATS, CANOES AND PETTIAGUAS FROM LANDINGS OR ELSEWHERE WITHOUT LEAVE.

SECTION

1. Persons taking boats, canoes, &c. without leave to forfeit two dollars to the owner—Provided that the common law right to sue for damages shall not be taken away.
2. Penalty on slaves for taking boats, &c. without leave—Proviso for

SECTION

- cases where a master orders his slave to take the boat, &c.
3. Penalty not to extend to persons who shall press boats, &c. for the public service, or to the proper owners of such boats, &c.

Persons taking boats, canoes, &c. without leave, to forfeit two dollars to the owner.

Provided that the common law right to sue for damages shall not be taken away.

Penalty on slaves for taking boats, &c. without leave.

Proviso for cases where a master orders his slave to take the boat, &c.

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 any person, who shall take away from any landing, or other place where the same shall be, any boat, canoe, or pettiagua, belonging to or in the custody of any person whatsoever, without the consent and leave of the owner or possessor of such boat, canoe or pettiagua ; or shall loose, unmoor, or turn adrift the same, shall forfeit and pay to the party who shall own, or in whose custody and possession such boat, canoe or pettiagua was, the sum of two dollars ; to be recovered by warrant before any justice of the peace within the county where the offence shall be committed : *Provided*, that nothing herein contained shall debar any person from his action at common law, for any damage sustained by reason of any boat, canoe, or pettiagua, to him belonging, being so taken or unloosed, unmoored, or turned adrift from any landing or other place where the same was left, against any person committing such offence, notwithstanding such person shall have paid the penalty herein inflicted.

2. If any slave shall offend against the provisions of the above section, and be thereof convicted, and the master or mistress of such slave shall refuse to pay the said sum of two dollars, such slave shall suffer correction, by whipping, at the discretion of the magistrate, not exceeding thirtynine lashes : *Provided*, that if any master, mistress or overseer shall order any slave belonging to him or her, or under his care, to take from any landing or other place, any boat, canoe, or pettiagua, contrary to the intent and meaning of this act, such master, mistress, or overseer of such slave so offending, shall be liable to the forfeitures and penalties of this act, as if he or she in his or her proper person had done the same.

1. 1741, c. 29, s. 2 and 3.  
 2. 1741, c. 29, s. 4 and 6.

3. The provisions of this act shall not extend to any person who shall press any boat, canoe or pettiagua by public authority ; or to any person who shall seize his own proper boat, canoe or pettiagua, or to any other person or persons, being lawfully authorized so to do by the owner, from any place or landing, or from any person in whose custody he shall find the same, or to any slave taking any boat, canoe or pettiagua from any landing or other place, by order of his or her master, mistress, or overseer.

Penalty not to extend to persons who shall press boats, &c. for the public service, or to the proper owners of such boats, &c.

3. 1741, c. 29, s. 5.

CHAPTER 15.

BOOK DEBTS.

AN ACT ASCERTAINING THE MODE OF PROVING BOOK DEBTS.

SECTION

SECTION

- 1. In what cases and within what time book accounts may be proved by the plaintiff's own oath.
- 2. In what cases and within what time proved by the oath of an administrator or an executor.
- 3. Copy of the account to be evidence

- unless notice given to produce the original.
- 4. Defendant may contest the evidence.
- 5. No plaintiff to prove by his own oath more than sixty dollars.
- 6. Set-off may be proved in like manner.

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 in any action of debt, or upon the case, where the plaintiff shall declare, upon an *emissit, indebitatus assumsit, quantum meruit, or quantum valebat*, for goods, wares and merchandise, by him sold and delivered, or for work done and performed, he shall file his account with his declaration, and upon the trial of the issue, or executing a writ of inquiry of damages in such action, shall declare upon his corporal oath or solemn affirmation, (as the case may be,) that the matter in dispute is a book account, and that he hath no means to prove the delivery of such articles as he shall then propose to prove by his own oath, or any of them, but by his book ; in that case such book shall and may be given in evidence, if he shall make out by his own oath or affirmation, that such book doth contain a true account of all the dealings or the last settlement of accounts between them, and that all the articles therein contained and by him so proved, were *bona fide* delivered, and that he hath given the defendant all just credits ; and such book and oath or affirmation shall be admitted and received as good evidence for the

In what cases and within what time book accounts may be proved by the plaintiff's own oath.

1. 1756, c. 57, s. 2.



several articles so proved to be delivered, within two years before the said action brought, but not for any article of a longer standing.

In what cases and within what time proved by the oath of an executor or administrator.

2. In all trials at law, where the cause of action may be a book account, and to which executors or administrators may be either plaintiffs or defendants, and two years from the delivery of the articles have not elapsed previous to the death of the deceased; in that case, such executor or administrator, on proving by his own oath or affirmation, that he found the account so stated on the books of the deceased; that there are no witnesses to his knowledge capable of proving the delivery of the several articles which he shall propose to prove by the said book, and that he believes the same to be just, and doth not know of any other or further credit to be given than what is there mentioned; shall be at liberty to give such account in evidence, either when he is plaintiff in the suit, or where such account may be pleaded as a set-off against the demand of the plaintiff, although more than two years may have elapsed previous to the bringing of such action, provided suit is brought thereon or set-off pleaded, within one year after the death of the deceased, or administration granted.

Copy of the account to be evidence unless notice given to produce the original.

3. A copy from the book of accounts, proved in manner above directed, shall and may be given in evidence in any such action as aforesaid and shall be as available as if such book had been produced, unless the defendant or his attorney shall give notice to the plaintiff or his attorney, at the joining of the issue, that he will require the book to be produced at the trial, and in that case no such copy shall be admitted or received as evidence.

Defendant may contest the evidence.

4. The defendant shall be at liberty to contest the plaintiff's evidence, and oppose the same by other legal evidence.

No plaintiff to prove by his own oath more than sixty dollars.

5. No plaintiff shall be at liberty to prove, by his book and oath or affirmation as aforesaid, on the trial of any such action as aforesaid, any article or articles, the amount whereof shall exceed the sum of sixty dollars.

Set-off may be proved in like manner.

6. In all cases where a defendant would be allowed to plead a set-off and his set-off consists of a book debt account, he shall be allowed to prove the same in the same manner and to the same extent, and in all respects shall be subject to the same rules, regulations and restrictions as above set forth and prescribed for actions brought by plaintiffs on book debt accounts.

2. 1796, c. 465.—1756, c. 57, s. 2.

3. 1756, c. 57, s. 3.

4. 1756, c. 57, s. 4.

5. 1756, c. 57, s. 6.

6. 1756, c. 57, s. 7.

Note—REFERENCES TO ADJUDGED CASES.

SECT. 1. *Mitchell vs. Clark*, Martin, 25. *Charlton vs. Sawyer*. *ib.* 26. *Thomague vs. Bell*, *ib.* 44. *Kitchen vs. Tyson*, 3 Murph. 214. *Stevellie vs. Greenlee*, 1 Dev. 317.

CHAPTER 16.

**BURNING WOODS.**

AN ACT CONCERNING THE BURNING OF WOODS.

SECTION

1. No person to set fire to any woods except his own, and then not without giving two days notice.

SECTION

2. Penalty on free persons violating this act.  
3. Penalty on slaves.

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 not be lawful for any person to set fire to any woods except it be his own property, and in that case it shall not be lawful for him to set fire to his own woods without first giving notice to all persons owning lands adjoining to said wood lands intended to be fired, at least two days before the time of setting such woods on fire, and also taking effectual care to extinguish such fire before it shall reach any vacant or patented lands contiguous or adjoining to such lands so fired.

No person to set fire to any woods except his own, and then not without giving two days notice.

2. Every free person, offending against the provisions of this act, shall forfeit and pay for every such offence the sum of fifty dollars, to be recovered before any justice of the peace, to the use of the person suing for the same, and shall also be further liable to the party injured by such unlawful firing of the woods, for all damages that may accrue therefrom.

Penalty on free persons violating this act.

3. If any slave shall violate this act, he shall, on conviction before a single magistrate, receive thirtynine lashes at the public whipping post.

Penalty on slaves.

- 1. 1777, c. 123, s. 2.
- 2. 1782, c. 182.
- 3. 1777, c. 123, s. 3.

*Note.* — REFERENCES TO ADJUDGED CASES.

SECT. 1. Wright vs. Yarborough, N. C. Term R. 263.—Tyson vs. Rasbury, 1 Hawks. 60.

*Cherokee Bonds & Lands. 1840. 1. 2. 3. 4. 5. 6. 7.*



## CHAPTER 17.

**CATTLE, HORSES AND HOGS.**

## AN ACT CONCERNING CATTLE, HORSES AND HOGS.

## SECTION

1. Every owner of stock to have a mark and brand—Mark and brand to be recorded.
2. Penalty for killing cattle or hogs in the woods, and not exhibiting the head, ears and hide within two days.
3. Cattle not to be driven into this State from South Carolina or Georgia between 1st of April and 1st of November.
4. Cattle not to be driven from certain parts of this State into the highland parts thereof between the 1st

## SECTION

- of April and the 1st of November.
5. Persons driving cattle from one part of the State to another, must have a certificate of the place from which they were driven, and of their healthy condition—Justice not to grant a certificate without an affidavit.
6. Stoned horses of two years old not to go at large.
7. Remedy for persons having stock killed upon the rail roads by the engines or cars.

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 every person in this State, who hath any horses, cattle or hogs, shall have an ear mark or brand different from the ear mark and brand of all other persons, which ear mark and brand he shall record with the clerk of the county where his horses, cattle or hogs are, if not already recorded, and he shall brand all horses with the said brand from eighteen months old and upwards, and ear mark all his hogs from six months old and upwards with the said ear mark, and ear mark or brand all his cattle from twelve months old and upwards with the said ear mark or brand. And if any dispute shall arise about any ear mark or brand, the same shall be decided by the book of the clerk of the county court, where such cattle, horses or hogs are.

2. If any person hereafter shall kill any one or more neat cattle or hogs in the woods, he shall, within two days, shew the head and ears of such hog or hogs, and the hide with the ears on of such neat beast or cattle, to the next magistrate, or to two substantial freeholders, under penalty of ten dollars, to be recovered by any person who will sue for the same by action of debt before any justice of the peace.

3. No person whatever shall hereafter drive any cattle into this State between the first day of April and the first day of November in every year, from either the states of South Carolina or Georgia,

Every owner of stock to have a mark and brand. Mark and brand to be recorded.

Penalty for killing cattle or hogs in the woods and not exhibiting the head, ears and hide within two days.

Cattle not to be driven into this State from South Carolina or Georgia between first of April and first of November.

1. 1741, c. 26, s. 6.
2. 1741, c. 26, s. 5.—1803, c. 627, s. 1.
3. 1795, c. 439, s. 1.

under the penalty of four dollars for each and every head of cattle brought into this State contrary to the meaning of this section, to be recovered by any jurisdiction having cognizance thereof, by any person suing for the same, one half to his own use, and the other half to the use of the State.

4. No person shall hereafter drive any cattle from those parts of this State, where the soil is sandy and the natural production or growth of timber is the long leaved pine, into or through any of the highland parts of the State where the soil or growth of timber is of a different kind, between the first day of April and the first day of November in every year, under the penalty of four dollars for each and every head of cattle so driven, to be recovered and applied as before mentioned.

Cattle not to be driven from certain parts of this State into the highland parts thereof between the first of April and first of Nov.

5. No person or persons shall hereafter drive any cattle from any part of this State through any other part thereof, without first obtaining and carrying with him or them a certificate or certificates under the hands and seals of two justices of the peace of the county where such cattle were severally and respectively purchased or collected from range, accompanied with an affidavit or affidavits of the owner or owners of said cattle, setting forth the place or places where said cattle were purchased or had ranged as aforesaid, and describing therein the nature of the soil and growth of timber on such place or places, and also that said cattle were at the time of purchase or removal sound and free from any infectious distemper. And if any justice shall grant such certificate without an affidavit of the owner or owners as aforesaid, it shall be deemed a misdemeanor in office.

Persons driving cattle from one part of the State to another, must have a certificate of the place from which they were driven and of their healthy condition.

Justice not to grant a certificate without an affidavit.

6. No person whatsoever in this State shall suffer or let go at large any stoned horse or horses of two years old or upwards, upon penalty of forfeiting such horse or horses or the sum of two dollars to the taker up of any such stoned horse, provided the same be found running at large not within the confines of any fence, water, marsh or swamp.

Stoned horses of two years old not to go at large.

7. When any cattle or other live stock shall be killed or otherwise injured by the engines or cars running upon any rail road in this State, it shall be lawful for the owner or owners of such live stock to sue out a warrant from any justice of the peace and have the same served on the president, or any director, stockholder, or acting agent for such rail road company, and upon return thereof it shall be the duty of such justice to cause two freeholders to be summoned, who after being duly sworn, which oath said justice may administer, shall hear evidence and upon proof of such injury so complained of, shall assess the amount of damages which the owner or owners of such live stock shall have sustained, and the justice shall enter up judgment for the same against the said rail road company, and issue execution thereon as in other cases ; *Provided, however,* that such judgment shall be subject to the right of appeal.

Remedy for persons having stock killed upon rail roads by the engines or cars.

4. 1795, c. 439, s. 2.

5. 1795, c. 439, s. 3.

6. 1801, c. 594.

7. 1833, c. 28, s. 3.



Citizenship. - how restored - 1840 & 1.

Ch 36

CHAPTER 18.

CHARITIES.

AN ACT CONCERNING CHARITIES.

SECTION

1. Trustees of charities to deliver a full account of their trusts to the clerk of the county court.
2. If trustees fail to render such accounts, or mismanage their trusts, the attorney general or a solicitor shall file a bill in equity against them.

SECTION

3. The attorney general or a solicitor may also bring a suit in equity at the suggestion of two citizens—Court to make necessary orders, &c.
4. The attorney general and solicitors allowed fees in such cases.

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 when real or personal property has been or shall be granted by deed, will, or otherwise for such charitable purposes as are allowed by law, it shall be the duty of those, to whom are confided the management of the property and the execution of the trust, to deliver in writing a full and particular account thereof to the clerk of the court of pleas and quarter sessions of the county, where the charity is to take effect, at the first term of said court, which shall be held after the first day of January in each year, to be filed among the records of the said court.

Trustees of charities to deliver a full account of their trusts to the clerk of the county court.

If trustees fail to render such account, or mismanage their trusts, the attorney general or a solicitor shall file a bill in equity against them.

2. If the foregoing requisition be not complied with, or there be reason to believe that the property has been mismanaged through negligence or fraud, it shall be the duty of the chairman or acting chairman of the aforesaid court to give notice thereof to the attorney general or solicitor, who represents the State in the superior court of law for the aforesaid county; and it shall be his duty to file a bill in equity in the name of the State against the grantees, executors, or trustees of the charitable fund, calling on them to render a full and minute account of their proceedings in relation to the fund and the execution of the trust, under the same rules and regulations as now obtain between private individuals.

The attorney general, or a solicitor may also bring a suit in equity at the suggestion of two citizens.

3. The attorney general or solicitor, may also, at the suggestion of two reputable citizens, commence a suit in equity as aforesaid; and in either case, the court may make such order and decree as shall seem best calculated to enforce the performance of the trust and to effectuate the intention of the donor.

The attorney general and solicitor allowed fees in such cases.

4. The court may allow fees to the solicitor for his services, to be paid by the trustees, the estate, or the county, as shall be ordered by the court.

1. 1832, c. 14, s. 1.—43 Eliz. c. 4.
2. 1832, c. 14, s. 2.
3. 1832, c. 14, s. 3.
4. 1832, c. 14, s. 4.

CHAPTER 19.

**CLERKS OF THE COUNTY AND SUPERIOR COURTS.**

AN ACT CONCERNING THE CLERKS OF THE COUNTY AND SUPERIOR COURTS.

SECTION

1. Clerks of the county and superior courts when and how to be elected.
2. Who qualified to vote for clerks.
3. Who to declare the persons elected—Clerks to hold their offices for four years—Who to decide in the case of a tie, and to decide contested elections.
4. Clerks to give bonds and take oaths—On failure to give bonds, &c. the court to appoint another.
5. How vacancies in the office of superior court clerk shall be supplied—How in that of county court clerk.
6. Judge upon the appointment of a superior court clerk, to make an order for the surrender of the records, &c.
7. Besides the bonds for the collection of taxes, &c. clerks to give bond for keeping the records and the faithful discharge of their duty.
8. How the bonds of the clerks of the respective courts shall be proved and where deposited.
9. Bonds to be registered and copies to be evidence when the originals are lost.

SECTION

10. Bonds to be kept under the same rules as records.
11. Clerks to renew their bonds annually—Must produce receipts for all public moneys paid before renewing.
12. Penalty for acting as clerk before giving bond and qualifying.
13. Clerks to take oaths before entering upon their office.
14. Penalty for violating oath, or misbehavior in office.
15. Clerks' offices to be kept at the court house—Deputies how to be qualified—To act in case of the death of the clerk.
16. To whom clerks shall resign.
17. County courts in certain cases may remove their clerks and appoint others.
18. Twelve months residence out of the county shall vacate the office of clerk.
19. In such case how the clerk is to be proceeded against and removed.
20. Clerks, upon resignation or removal, to deliver over to their successors the records, &c.

1848. Ch. 64-67.

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 at the time of the election of members of congress from this State, in the year one thousand eight hundred and thirtyseven, and at the same time every four years thereafter, a poll shall be opened for the election of a clerk of the superior and county court in each county, by the same persons, in the same manner and under the same rules, regulations and restrictions as polls are opened and held for members of the General Assembly; and in case of the failure of persons or either of them appointed to hold said elections, it shall be competent for a justice of the peace and two freeholders to supply such vacancy.

Clerks of the county and superior courts when and how to be elected.



Who qualified to vote for clerks.

2. All persons qualified to vote for members of the house of commons in the General Assembly of this State shall be entitled to vote for clerks of the county and superior courts in their respective counties.

Who to declare the persons elected.

3. The sheriffs or other persons qualified to hold said elections shall, at the court house or other place of returning and comparing the polls, declare the person or persons having the highest number of votes duly elected clerk of the county or superior court as the case may be, who shall continue in office for the term of four years next after their qualification, and in the event of two or more persons having an equal and the highest number of votes for either of the offices aforesaid, then and in that case the court of pleas and quarter sessions, a majority of the acting justices being present, shall proceed to make the election as prescribed for the election of sheriff under like circumstances; and said court in manner aforesaid shall be a competent tribunal to decide all contested elections under this act.

Clerks to hold their offices for four years.

Who to decide in case of a tie, and to decide contested elections.

Clerks to give bonds and take oaths.

4. The clerks elected under any of the provisions of this act shall at the first term of their respective courts, which shall happen after their election, or at the term when elected if elected by the court, execute and tender to the said courts the bonds, and take the oaths hereinafter mentioned, or such as may be hereafter prescribed by law, and where a vacancy shall be occasioned by failure to give the necessary bonds, refusal or neglect to qualify, death, resignation, removal or otherwise, the court in which such failure may happen, shall proceed to fill the vacancy in the same manner as prescribed in the following section for vacancies occurring after qualification, and the person or persons so appointed shall continue in office until the next regular election and qualification of clerks under this act.

On failure to give bonds &c. the court to appoint another.

How vacancies in the office of superior court clerk shall be supplied.

How in that of the county court clerk.

5. Whenever a clerk of the superior court shall resign or his office shall be in any other manner vacated after his qualification, and before the expiration of his term, the judge of the superior court who may be assigned to ride the circuit in which said vacancy has occurred, shall fill the vacancy for the unexpired portion of his term; and whenever a clerk of the county court shall resign or his office is vacated after his qualification and before the expiration of his term, the justices of the next county court, a majority being present, shall fill the said vacancy for the unexpired portion of said term, and the person appointed under this or the last preceding section clerk of the superior or county court, shall give bond and take the prescribed oaths, as in other elections under this act.

Judge upon the appointment of a superior court clerk, to make an order for the surrender of the records, &c.

6. Whenever any appointment of clerk of the superior court shall be made by any judge, either in vacation or in term time, the judge making the same shall give to the person appointed an order on the person or persons, in whose custody the records of said court shall be, who shall deliver the same in obedience to the said order.

2. 1832, c. 2, s. 2.

3. 1832, c. 2, s. 3.

4. 1832, c. 2, s. 4.

5. 1834, c. 7, s. 2.

6. 1816, c. 903, s. 2.

7. In addition to the bonds required of the clerks of the superior and county courts for the due collecting and accounting for taxes on attorneys' licenses, suits, &c., they shall give bond in the penal sum of ten thousand dollars, payable to the State of North Carolina, conditioned for the safe keeping of the records and the faithful discharge of their duty in office, which may be sued upon by the person injured, in the name of the State, and shall not become void upon the first recovery, or if judgment be given against the plaintiff, but may from time to time be put in suit by action of debt, until the whole penalty shall be recovered.

Besides the bonds for the collection of taxes, &c. clerks to give bond for keeping the records and the faithful discharge of their duty.

8. It shall be the duty of the judges of the superior courts of law to cause the bonds taken by them from the clerks of the respective superior courts to be acknowledged or proved before them, and to endorse thereon a certificate of such acknowledgment or probate, and it shall be the duty of the justices of the courts of pleas and quarter sessions to cause all bonds taken before them of the clerks of their respective courts to be acknowledged or proved in open court, and endorse thereon a certificate of such acknowledgment or probate, which certificate shall be signed by the justice who presides in court at the time such acknowledgment or proof is made, and all bonds so taken, proved and certified shall be deposited in the following offices, viz., bonds of the clerks of the superior courts of law shall be deposited in the offices of the clerks of the county courts of pleas and quarter sessions, and the bonds of the clerks of the county courts of pleas and quarter sessions shall be deposited in the offices of the superior courts of law of the respective counties.

How the bonds of the clerks of the respective courts shall be proved and where deposited.

9. The clerks, in whose offices said bonds shall be deposited, shall cause the same to be immediately registered in the register's office of their respective counties, and on the destruction or loss of the original a certified copy of said bond shall be received in evidence.

Bonds to be registered, and copies to be evidence where the originals are lost.

10. It shall be the duty of the clerks of the respective courts aforesaid safely to keep the bonds deposited in their offices, under the same rules and regulations as are provided by law for the safe keeping of the records of their courts.

Bonds to be kept under the same rules as records.

11. The clerks of the superior and county courts shall and they are hereby required to renew their several bonds for the faithful discharge of their duties in office, with good and sufficient securities, annually at the several and respective terms of the courts at which they were qualified and entered upon the discharge of the duties of their office, and all such of the said officers, as shall refuse or neglect to renew their respective bonds at the time before mentioned, and give other and better securities, when judged necessary by the said courts, shall be considered as having forfeited their respective offices. *Provided always*, that no clerk shall be permitted to renew his bonds, unless he shall produce from the public treasurer, county trustee and wardens of the poor, receipts in

Clerks to renew their bonds annually—must produce receipts for all public moneys paid before renewing.

7. 1777, c. 115, s. 3.—1827, c. 9, s. 1.

8. 1827, c. 9, s. 2.

9. 1829, c. 9, s. 3.

10. 1827, c. 9, s. 4.

11. 1819, c. 990.—1793, c. 354, s. 4.—1806, c. 699, s. 1.



full of all moneys by him received, for the use of the State and county and for which he shall have been accountable.

Penalty for acting as clerk before giving bond and qualifying.

12. No clerk of any superior or county court shall enter on the duties of his office, before he enters into and delivers over to the person authorized to receive the same the bonds required by law, under the penalty of two thousand dollars to be recovered before any jurisdiction having cognizance thereof, onehalf to the use of the person who shall sue for the same, and the other half to the use of the wardens of the poor of the county, in which suit shall be brought and a recovery had.

Clerks to take oaths, before entering upon their office.

13. Each and every clerk of the superior and county court, before entering upon the execution of his office, shall take the oath prescribed for the qualification of public officers and also an oath of office.

Penalty for violating oath, or misbehavior in office.

14. And if it shall be discovered that any of the said clerks, after his appointment, shall have violated his said oath, or wittingly, willingly and corruptly have done any thing contrary to the true intent and meaning thereof, such clerk shall be deemed, upon conviction, guilty of misbehavior in office and shall forever afterwards be incapable of holding any office civil or military within this State.

Clerk's office to be kept at the court house.

15. The clerks of the several superior and county courts shall keep their offices at the court house in their respective counties, where, by themselves or their lawful deputies, they shall give due attendance, and all deputies shall take the oath to support the constitution of the United States and of this State and an oath of office, and in case of the death of the clerk of any court in the vacation, his deputy shall hold the office of clerk until he or another shall be appointed agreeably to law, and shall be entitled to the fees and perquisites of the office until such appointment.

Deputies how to be qualified, to act in case of the death of the clerk.

To whom clerks shall resign.

16. No clerk of the county court shall be allowed to resign after his qualification to any other person or authority, but to the county court of his county, and no clerk of the superior court shall be allowed to resign after his qualification to any other power or authority, but to the judge of said court sitting in court, or to the judge assigned to ride the next circuit in which the county is situate of which he is clerk.

County courts in certain cases may remove their clerks and appoint others.

17. The courts of pleas and quarter sessions shall have full power and authority, on their respective clerks being convicted or found guilty on a bill of indictment for neglect of duty or misdemeanor in office, to remove such clerk and proceed to the election of another, under the rules and regulations above prescribed for filling vacancies in the office of clerk of the county court.

Twelve months residence out of the county shall vacate the office of clerk.

18. It shall not be lawful for any clerk of the court of pleas and quarter sessions in any county of this State to retain his office, after he shall have resided out of the county wherein he was appointed clerk for more than twelve months.

12. 1827, c. 9, s. 5.

13. 1777, c. 115, s. 4 and 61.

14. 1777, c. 115, s. 4.

15. 1777, c. 115, s. 86.

16. 1834, c. 7, s. 3.

17. 1800, c. 563, s. 1.

18. 1820, c. 1042, s. 1

19. When any clerk of the court of pleas and quarter sessions shall have resided out of his county for more than twelve months, it shall be lawful for the court to make a rule on such clerk, returnable to the next court of pleas and quarter sessions of such county, to shew cause, if any he has, why he shall not be removed from his office, for so removing himself out of his county, which rule shall be served on such clerk if he resides in the State, and on the return of such rule, if it shall be made appear to the satisfaction of said court, that such clerk has so removed, it shall be the duty of said court to vacate his office and to elect another as in other cases of vacancy. But in case such clerk resides out of the State, it shall be sufficient service of said rule to have it published by order of the court for two months in any newspaper at the seat of government in this State, which publication being made appear at the next court and proof being made to the satisfaction of said court of such removal, it shall be the duty of said court and they are hereby required to remove such clerk from his office, in the same manner and for the same cause as in case of actual service of the rule.

In such case how the clerk is to be proceeded against, and removed.

20. Upon the resignation or removal from office of any clerk, either of the superior or county court, he is required to transfer and deliver up to his successor in office all records, documents and papers relative to his said office, under the penalty of one thousand dollars, to be recovered by action of debt in the name of the State and applied to the use of the State.

Clerks upon resignation or removal, to deliver over to their successors the records, &c.

19. 1820, c. 1042, s. 2.  
20. 1800, c. 563, s. 2.

1838. 9. Ch 7. - 2. Justices  
to administer oaths  
1. Subr Co Clk.

Note. — REFERENCES TO ADJUDGED CASES.

SECT. 11. Oats vs. Bryan, 3 Dev. 351.  
SECT. 15. Shepard vs. Lowe, 2 Dev. 148.

1844.3. Ch 4. - vacancies  
1846.7. Ch 6 - Bonds.  
1844.5. Ch 5. Co Solicitors to  
examine officers

CHAPTER 20.

CLERKS AND MASTERS IN EQUITY.

AN ACT CONCERNING THE APPOINTMENT AND DUTIES OF CLERKS AND MASTERS IN EQUITY.

SECTION

1. Judges of the courts of equity to appoint clerks and masters, who shall hold their offices for four years.
2. Clerks and masters to give bond and

SECTION

take oaths—Same remedies against them as against clerks of the superior courts.



SECTION

3. Duty of clerks and masters in enrolling bills, answers, decrees, &c.

SECTION

—Clerks and masters may administer oaths.

x

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 the judges of the courts of equity shall appoint some person of skill and probity to act as clerk and master in equity to each of the said courts, and shall fill all vacancies that may happen in any of said courts, such appointment to be made and vacancies filled by the judge of the superior court of law and equity, who may be assigned to ride the circuit in which such appointment is to be made, and the person so appointed shall hold his office for four years from the time of his qualification.

Judges of the courts of equity to appoint clerks and masters who shall hold their offices for four years.

Clerks and masters to give bond and take oaths.

2. Each and every clerk and master shall give the like bonds, with good and sufficient security, and take the same oaths before the judges, as prescribed for the clerks of the superior courts of law, and in all respects shall be subject to the same rules, regulations and restrictions, with respect to the renewals, probate, and deposit of their bonds, as prescribed for clerks of the superior courts of law, except that the bonds of the clerk and master shall be deposited in the office of the superior court clerk, and they shall be liable to the same remedies against them, for a breach of such bonds, or for moneys collected and not paid over, and shall incur the same penalties for acting without qualification, and for misdemeanor in office as clerks of the superior courts.

Same remedies may be had against them as against clerks of the superior courts. Duty of clerks and masters in enrolling bills, answers, decrees, &c.

3. The clerk and master of each and every court of equity shall keep a fair and distinct record of the proceedings of the court of equity to which he may be appointed, and the bills, answers and decrees shall be regularly enrolled in a well bound book, kept for that purpose: *Provided*, that no bill, answer or other paper, or proceedings in any suit in any court of equity in this State, (interlocutory decrees excepted,) shall be enrolled until the cause is finally decreed on, and then only upon motion by the party to take benefit of such decree, and the court shall have power, and are hereby directed to adjudge and determine what papers shall and may be enrolled in any suit on motion as aforesaid. And the said clerk and master in equity is fully empowered and authorized to administer the oath or affirmation to all and every person and persons, either witnesses or others, having business in the court of equity, at all times, in the same manner as masters in chancery do in like cases in Great Britain.

Clerks and masters may administer oaths.

- 1. 1787, c. 278, s. 3.—1806, c. 693, s. 10.—1818, c. 963, s. 11.—1822, c. 1147, s. 1.
- 2. 1787, c. 278, s. 3.—1806, c. 699, s. 1.—1819, c. 990.—1827, c. 9.—1777, c. 115, s. 3.—1819, c. 1002.
- 3. 1787, c. 278, s. 3.—1801, c. 574, s. 3.

x

1842.3. Ch 50. take  
1846.7. Ch 52

Note.—REFERENCES TO ADJUDGED CASES.

SECT. 2. Judges vs. Deans, 2 Hawks, 93.

*Clerk of Gen. Assembly: 1844.5. Ch 3.  
1846.7. Ch 63*

*Coast survey - 1846.7. Ch. 56.*

**CHAPTER 21.**

**COMMISSIONERS OF AFFIDAVITS.**

AN ACT APPOINTING COMMISSIONERS TO TAKE AFFIDAVITS.

SECTION

1. Clerks and clerks and masters appointed commissioners to take and certify affidavits.
2. Governor may appoint commissioners to take and certify affidavits in other states or territories.

SECTION

3. Such commissioners to take an oath.
4. Governor to notify clerks of courts of record of his appointments.
5. Power and authority of such commissioners.

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* the clerks of the courts of pleas and quarter sessions, the clerks of the superior courts of law, and the clerks and masters of the courts of equity, are authorized and empowered to take and certify affidavits, to be used before any justice of the peace, judge or court of this State, and the affidavits so taken are to be certified under the hands of the said clerks and clerks and masters respectively, and, if to be used out of the county where taken, also under the seal of the court of which they are respectively clerks and clerks and masters.

Clerks and clerks and masters appointed commissioners to take and certify affidavits.

2. The governor is hereby authorized to name, appoint and commission one or more commissioners in each or such of the other states in the United States, or in the District of Columbia, or any of the territories, as he may deem expedient, which commissioners shall continue in office during the pleasure of the governor, and shall have authority to take the acknowledgment or proof of any deed, mortgage, or other conveyance, of any lands, tenements or hereditaments, lying or being in this State, and to take the private examination of married women, parties thereto, in the manner now required by law, or of any other writing under seal to be used in this State. And such acknowledgment or proof, taken or made in the manner directed by the laws of this State, and certified by the commissioner before whom the same shall be taken or made, shall have the same force and effect, and be as good and available in law for all purposes, as if the same had been made or taken before one of the justices of the supreme court of the United States, or judge of any court of supreme jurisdiction in any of the United States.

Governor may appoint commissioners to take and certify affidavits in other states, or territories.

3. Every commissioner appointed by the governor as aforesaid, before he shall proceed to perform any duty under or by virtue of

Such commissioners to take an oath.

1, 1818, c. 965, s. 1.  
2. 1830, c. 31, s. 1.  
3. 1830, c. 31, s. 3.



this act, shall take and subscribe an oath or affirmation before a justice of the peace in the city or county in which such commissioner shall reside, well and faithfully to execute and perform all the duties of such commissioner under and by virtue of the laws of North Carolina; which oath or affirmation shall be filed in the office of the secretary of this State.

Governor to notify clerks of courts of record of his appointments.

4. It shall be the duty of the governor to make known to the clerks of the several courts of record in this State, the names and places of residence of such persons as may be appointed by virtue of this act.

Power and authority of such commissioners.

5. Every commissioner, appointed by the governor by virtue of this act, shall have full power and authority to administer an oath or affirmation to any person who shall be willing or desirous to make such oath or affirmation before him, and to take depositions and to examine witnesses under any commission or commissions emanating from any of the courts of this State, relating to any cause depending, or to be brought in any of said courts, and every deposition, affidavit, or affirmation, made before such commissioner, shall, and is hereby declared to be as good and effectual to all intents and purposes, as if taken before any officer resident in this State, and competent to take the same.

4. 1830, c. 31, s. 4.

5. 1830, c. 31, s. 2.

Common Schools - 1840-1-2-3 - superseded by 1844.5. Ch 36  
 CHAPTER 22. 1846.7. ch 106-107.

## COMMON LAW.

AN ACT DECLARING WHAT PARTS OF THE COMMON LAW SHALL BE IN FORCE IN THIS STATE.

Common law declared to be in force.

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 such parts of the common law, as were heretofore in force and use within this State, or so much of the said common law as is not destructive of, or repugnant to, or inconsistent with, the freedom and independence of this State and the form of government therein established, and which has not been otherwise provided for in the whole or in part, not abrogated, repealed, or become obsolete, are hereby declared to be in full force within this State.

1715, c. 5, s. 2, 3.—1778, c. 133.

Note.—REFERENCES TO ADJUDGED CASES.

Sherrod vs. Davis, 1 Hay. 282.

CHAPTER 23.

COMPTROLLER.

AN ACT CONCERNING THE COMPTROLLER.

SECTION

1. Comptroller biennially elected by the General Assembly.
2. Bond to be given.
3. Oaths to be taken.
4. Comptroller to settle all public accounts and keep books.
5. To keep an account with the treasurer.
6. And with individuals.
7. Public moneys recovered by law to be paid to treasurer, and the receipts to be filed with the comptroller.

SECTION

8. Balances of accounts to be stated annually and reported.
9. Comptroller to report annually a printed statement of the accounts of the public treasury.
10. In certain cases may administer an oath.
11. No warrants, &c. to be paid unless first entered in the comptroller's office and certified by him.
12. Instrument for cancelling vouchers to be procured.
13. Comptroller's certificate evidence.

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 a comptroller shall be biennially elected by the General Assembly, in the same manner that the public treasurer is elected; he shall enter into the duties of his office on the first day of January, and continue therein for two years and until his successor is appointed.

Comptroller biennially elected by the General Assembly.

2. The person thus elected comptroller, before entering upon the duties of that appointment, shall give bond with sufficient security, payable to the State of North Carolina, in the sum of twenty thousand dollars, conditioned for the safe keeping of the public books of accounts and all vouchers which may come into his possession, and for the faithful performance of his duty in office, which bond shall be taken by the governor for the time being and deposited in the treasurer's office for safe keeping.

Bond to be given.

3. The comptroller shall also, before entering upon the duties of his appointment, take before some justice of the peace the oaths prescribed by law for the qualification of public officers and also an oath of office.

Oaths to be taken.

4. It shall be the duty of the comptroller to settle and report on all public accounts of the State, and to keep regular books and statements of the same, which he shall do in the manner following, that is to say, he shall report the net amount, which shall annually become due and payable from the respective revenue

Comptroller to settle all public accounts and keep books.

1. 1782, c. 178.—1792, c. 368, s. 9.—1836, c. 50.  
 2. 1792, c. 368, s. 1.  
 3. 1782, c. 178, s. 2.  
 4. 1792, c. 368, s. 2.—1793, c. 397, s. 1, 2.



officers to the treasurer of the State, (to the end he may be informed of the same and enforce the due payment thereof,) first raising an account and debiting in his books each officer so reported against, whom he shall credit by the amount of such receipts as they or any of them shall from time to time produce from the treasurer.

To keep an account with the treasurer.

5. The comptroller shall open an account with the treasurer, in which he shall debit him with the amount of each respective receipt, which the treasurer shall have given, according to the fourteenth section of the act concerning the treasurer, and which pursuant thereto shall have been filed in his office, and credit him by the amount of such warrants and other cash claims as he shall produce and deliver.

And with individuals.

6. It shall also be the duty of the comptroller to raise accounts, and report in like manner, against individuals, who may become chargeable on any of the warrants or vouchers hereafter paid them, as though they were revenue officers, taking care not to blend such reports and accounts with those already raised or made, or which may be hereafter raised and made, on vouchers in the comptroller's office.

Public moneys recovered by law to be paid to the treasurer and the receipts to be filed with the comptroller.

7. All moneys becoming payable to the public, which shall not be paid in due time, but shall be sued for and recovered, when received shall be paid into the treasury by the clerk of the court, in which the recovery shall be had, and the receipts for such payments shall be rendered to the comptroller, charged and filed by him as in other cases.

Balances of accounts to be stated annually and reported.

8. It shall be the duty of the comptroller, on the first day of November biennially, to strike a balance against the treasurer and all other public accountants in arrear, and report a statement of the same to the General Assembly, with whom he shall settle his own accounts for the warrants and other claims received of the public treasurer, and in the year when the General Assembly shall not have a regular session he shall make a like report to the governor.

Comptroller to report annually a printed statement of the accounts of the public treasury.

9. It shall be the further duty of the comptroller, immediately after the first day of November in every year, to prepare the account of the public treasurer of this State with the State, as the same shall appear on the books of the comptroller's office, for the year preceding the first day of November, stating the balance of the money in the treasury at the last settlement, the receipts into the treasury within the year, particularizing the moneys and account from which the same accrued and were received, the amount received from each respectively, and a particular statement of the disbursements from the treasury within the same period, and the money remaining in the treasury; and he shall annex to said account a statement of the revenue from each subject of taxation in every county of the State, of which account and statement the

5. 1792, c. 368, s. 4.

6. 1792, c. 368, s. 5.

7. 1792, c. 368, s. 6.

8. 1792, c. 368, s. 7.

9. 1814, c. 877.

comptroller shall have printed two hundred and fifty copies, before the meeting of the General Assembly next ensuing the first day of November in every other year, and deliver the same within the first week of the session of the General Assembly to the clerk of either house, subject to the disposal of the General Assembly, and in each year, when the General Assembly shall not have its regular session, the comptroller shall, immediately after the first day of November, furnish a like account and statement to the governor, who shall thereupon cause the same to be published in five of the newspapers of this State. And for the printing and publication as aforesaid, the treasurer shall pay a reasonable compensation on the certificate of the comptroller.

10. The comptroller is empowered and authorized to administer an oath or affirmation to accountants and witnesses, in support of the justice of such accounts as may be exhibited to him for liquidation, and certify the same accordingly.

In certain cases may administer an oath.

11. No claim, draft or warrant from the governor or any one else, except the certificates for the service of the members of the General Assembly and their clerks and waiters, and the certificates of the clerks of the superior courts, for the salaries of the judges and the attorney general and solicitors, shall be paid by the treasurer, collector or other receiver of the public revenue or taxes, until such claim, draft, or warrant shall have been entered in the comptroller's office, and charged to the person or persons drawing the same, with the comptroller's order endorsed to the treasurer or other receiver of the public revenue to pay the same, and no claim, warrant, or draft, (except as before excepted) shall be allowed in the settlement of the account of any treasurer, collector or receiver of the public revenue or taxes, but under the foregoing rules and regulations.

No warrants, &c. to be paid unless first entered in the comptroller's office and certified by him.

12. The comptroller is authorized and required to procure an instrument of not less than one and a half inches in diameter, for cancelling papers in such a manner as not to render them illegible, and such instrument shall be hereafter used for the purpose of cancelling the vouchers in the comptroller's office.

Instrument for cancelling vouchers to be procured.

13. An official signed by the comptroller shall be received as evidence in the different courts in this State.

Comptroller's certificate evidence.

10. 1783, c. 192, s. 1.

11. 1787, c. 268.

12. 1817, c. 954.

13. 1792, c. 368, s. 11.

*1844.3 - Ch 17. - Pub. Compt. reports*



CHAPTER 24.

CONSTABLES.

AN ACT CONCERNING CONSTABLES.

SECTION

1. Number of constables in each county.
2. Constables to be elected annually in each captain's district—To qualify before the county court and give bond.
3. Judges of elections how appointed—Notice to be given—Return to be made to the county court.
4. If any failure in the election, county courts to appoint; and to determine in case of a tie or contested election.

SECTION

5. Penalty on persons not qualified voting.
6. Vacancies to be supplied by the county courts.
7. Bond to be given and remedy thereon.
8. Oaths to be taken.
9. Power and duty of constables.
10. Any justice may in certain cases appoint a special constable.
11. Penalty for acting after his term has expired.
12. Constables exempted from working on roads.

1848. Ch 11.

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 there shall not be a greater number of constables in the several counties in this State than one in each captain's district, except the districts including the several county towns, which districts shall be entitled to two constables to be elected as other constables are hereinafter directed to be elected.

Number of constables in each county.

Constable to be elected annually in each captain's district.

2. At any time within one month preceding the first county court, held in the several counties after the first day of January in each and every year, the inhabitants of each captain's district within the several counties, at the usual place of holding the company muster within said district, shall elect, within the bounds of said company, some fit and suitable person to act in the capacity of a constable for the succeeding year, who shall be returned and recommended to the court of pleas and quarter sessions of said county, as hereinafter directed, and, upon such return being made under the certificate of the judges appointed to hold said election, the said court shall proceed to qualify such person, so returned, to act as constable for one year thereafter, he first giving bond with good and sufficient security. *Provided*, that no person shall be entitled to vote for any constable of any such town, except he shall live within the corporate bounds of said town, and no person living within the corporate bounds of such town, shall be entitled to vote for constable for the district in which such town is situated.

To qualify before the county court and give bond.

1. 1833, c. 5, s. 1.  
2. 1833, c. 5, s. 2.

3. The captains of companies within the several counties, and in their absence any justice of the peace within the district, shall, within the time prescribed by the provisions of the last section, annually appoint two discreet and suitable persons to hold said election, who are required to give at least ten days notice of such election in two or more public places in such district, and every free white person having resided for six months next preceding the election within the bounds of said company or district, who is qualified and entitled to vote for members of the house of commons in the State legislature, shall be entitled to vote within the district in which he shall reside in all such elections, and the person receiving the greatest number of votes, shall be considered duly elected, and shall be returned under the certificate of the judges to the first court of pleas and quarter sessions, which shall happen in said county after said election.

Judges of election, how appointed.

Notice to be given.

Return to be made to the county court.

4. Should any person elected as constable, under the provisions of the two last sections, die, or from any other cause fail to qualify and to give the necessary security, or should any of said companies fail in any manner to hold said elections, then it shall be proper for the court which shall next happen as aforesaid, seven justices of the peace being present, to supply any vacancy occasioned by such failure ; and in case there should be a tie in any election as aforesaid, then the court shall in like manner determine ; and also determine in all cases of contested elections.

If any failure in the election, county courts to appoint and to determine in case of a tie or contested election.

5. Any person voting at any such election, who shall not by law be qualified to vote, shall be liable to the same penalty as persons voting at elections for members of the General Assembly of this State, who are not qualified according to law.

Penalty on persons, not qualified, voting.

6. Upon the death or removal of any constable out of the county in which he was elected or appointed constable, it shall be lawful for the justices of the court of pleas and quarter sessions, seven justices being present, to appoint another person to be constable in the room or stead of the constable dead or removing out of his county as aforesaid, who shall be qualified and act until the next election of constables as above prescribed.

Vacancies to be supplied by the county court.

7. The bonds required from constables shall be made payable to the State of North Carolina, in the sum of four thousand dollars, conditioned as well for the faithful discharge of his duty as constable, as for his diligently endeavoring to collect all claims, put into his hands for collection, and faithfully paying over all sums thereon received, either with or without suit, unto the persons to whom the same be due, upon which bonds suits may be brought and remedy be had in the same manner, and under the same rules, regulations and restrictions, as suits may be brought and remedies had upon the official bonds of sheriffs and other officers.

Bond to be given and remedy thereon.

8. All constables, before they shall be qualified to act as such, Oaths to be taken.

3. 1833, c. 5, s. 3.

4. 1833, c. 5, s. 4.

5. 1833, c. 5, s. 6.

6. 1741, c. 24, s. 7.

7. 1818, c. 980, s. 1.—1820, c. 1045, s. 2.—1833, c. 17.

8. 1741, c. 24, s. 2.—1791, c. 342, s. 1, 2.



shall take, before the county courts, the oaths prescribed for the qualification of public officers, and also an oath of office.

Power and duty of constables.

9. Each and every constable, so appointed, is hereby invested with and may execute the same power and authority to all intents and purposes, as constables have been heretofore by law invested with, and have executed. And in the discharge of their duties they shall and may execute all precepts and process to them directed upon any bay, rivers or creeks adjoining their counties, and return the same to the magistrate or magistrates of their respective counties.

Any justice may in certain cases appoint a special constable.

10. For the better executing any precept or mandate in extraordinary cases, it shall and may be lawful for any justice of the peace within this State to direct any such precept or mandate, in the absence of or for want of a constable, to any person, not being a party, who shall be obliged to execute or endeavor in the best manner he can to execute the same, under the like penalty that any constable would be liable to.

Penalty for acting after his term has expired.

11. If any constable, after the expiration of the term for which he has been appointed, shall presume to act as such in any case, wherein he is not by law authorized, he shall be liable as for a misdemeanor, and on conviction thereof shall be fined and imprisoned at the discretion of the court.

Constables exempted from working on roads.

12. Every constable appointed and qualified as above directed shall be, and is hereby exempted from working on the roads for and during the year he shall be constable.

- 9. 1741, c. 24, s. 3.—1790, c. 330, s. 1.
- 10. 1741, c. 24, s. 9.
- 11. 1818, c. 980, s. 3.
- 12. 1741, c. 24, s. 10.

1838. 9. Ch 9. - 20  
When to elect. & Co app.

Note—REFERENCES TO ADJUDGED CASES.

SECT. 7. Dade vs. Morris, 3 Murph. 146. Governor vs. Bailey, 3 Hawks, 463. Governor vs. Franklin, 4 Hawks, 274. Keck vs. Coble, 2 Dev. 489. Governor vs. Davidson, 3 Dev. 361. Governor vs. Caraway, ib. 436.

Contempt of Court-  
1846. 7. Ch. 62

CHAPTER 25.  
CORONERS.

AN ACT CONCERNING CORONERS.

- SECTION
- 1. Coroners to be appointed by the county court.
  - 2. Majority of the justices to be present.
  - 3. Bond to be given and renewed annually.
  - 4. Three justices in certain cases may appoint.

- SECTION
- 5. Oaths to be taken.
  - 6. Duty of the coroner in holding inquests.
  - 7. When there is no sheriff the coroner shall act as sheriff.

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 every county court of pleas and quarter sessions in this State shall and they are hereby empowered to appoint two or more coroners within their county, if they shall be of opinion that more than one will be necessary. Coroners to be appointed by the county court.

2. In the appointment of any coroner or coroners, there shall be present a majority of the acting justices of the peace of the county, and no person shall be deemed duly elected without receiving a majority of the votes of the justices present. Majority of the justices to be present.

3. It shall be the duty of each and every coroner so appointed to give bond and sufficient security in the sum of two thousand dollars, payable to the State of North Carolina, to be approved by the court, and it shall be their further duty to renew their bonds the first court after the first day of April in each year, or they shall be no longer considered capable of holding said office. Bond to be given and renewed annually.

4. Whenever any death shall happen in any county in this State that shall render it necessary for a coroner to act in his official capacity, and there shall be no coroner in such county, it shall be the duty of any three justices of the peace of such county to appoint some fit person to act as coroner, and such person so appointed is hereby empowered so to act, and such person shall moreover be entitled to the same compensation as is allowed by law to a coroner for such service, and shall be subject to the same penalties as other coroners are subject to, and shall hold his office until the next court of pleas and quarter sessions of his county. Three justices in certain cases may appoint.

5. Each and every coroner shall, before entering upon the discharge of the duties of his office, take the prescribed oaths for all public officers, and also an oath of office. Oaths to be taken.

6. It shall be the duty of the several coroners within this State, whenever they have knowledge of themselves or are informed by others that any person is slain or suddenly dead, either by drowning or otherwise, to go to the place where such person is so slain or suddenly dead, and forthwith summon a jury of good and lawful men, whereupon the said coroner, upon oath of said jury at the place where the person is so slain or suddenly dead as aforesaid, shall make inquiry when, how and by what means such deceased person came to his death, and his name if it was known, together with all the material circumstances attending his death; and if it shall appear that the deceased was slain, then who was guilty either as principal or accessory, if known, or in any manner the cause of his death. In like manner it is to be inquired concerning them that be suddenly dead, after such bodies are seen, in what manner, at what time, and by what cause such death was occasioned; and as many persons as are found culpable, by inquisition in any of the manners aforesaid, shall be taken and delivered to the sheriff and committed to jail; and such persons as are found

1. 1777, c. 113, s. 14.  
 2. 1816, c. 901, s. 1.  
 3. 1820, c. 1047, s. 1, 2.  
 4. 1822, c. 1170.  
 5. 1791, c. 342, s. 1, 2.  
 6. 4 Edw. 1, stat. 2.



to know any thing of the matters aforesaid and are not culpable themselves, shall be bound in a recognizance with sufficient security to appear at the next superior court of law to give evidence ; of all which matters and things the coroner aforesaid must note up a record of his inquisition signed by the jurors, and return the same to the next superior court of law of his proper county. If upon any inquest, the jury doubt as to the manner in which death has ensued, and a *post mortem* examination of the body be desired by any one of them, the coroner is empowered to summon a physician for the purpose, who shall be paid by the county for this service.

Where there is no sheriff, the coroner shall act as sheriff.

7. If at any time there shall be no person properly qualified to act as sheriff in any county of this State, then it shall and may be lawful for the coroner of such county, and he is hereby required, to execute all process, civil or criminal, lawfully issuing on judgments, orders or sentences of any court within the same, until some person shall be appointed, properly qualified to act as sheriff in said county, and such coroner shall be under the same rules and regulations, and subject to the same fines and forfeitures as sheriffs are by law for neglect or disobedience of the same duties.

1842.3. Ch 21. Justice to app't & is no fee.

7. 1779, c. 156, s. 2.

CHAPTER 26.

C O R P O R A T I O N S .

AN ACT CONCERNING CORPORATIONS.

SECTION

1. Corporations how to convey lands.
2. In suits against corporations a summons to issue.
3. On whom the summons to be served —How returned.
4. Suits in equity how proceeded on.
5. What execution to issue.
6. When and how an information may be filed against a corporation.
7. Court may require a bond to be given by the relators.
8. How the supreme court may proceed to ascertain facts.
9. Appeal allowed from the superior

SECTION

- court—Judgment of dissolution or forfeiture shall not extinguish debts; but a receiver to be appointed.
10. Attorney general may file a bill in equity to restrain corporations from exercising powers not granted, and to bring certain officers to an account, &c.—Provisos.
11. Corporations how long to exist.
12. What length of non-user to be a forfeiture of corporate privileges.
13. Shares in incorporated joint stock companies to be personal estate.

Corporations how to convey lands.

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 for any corporation to convey lands by deed

1. 1798, c. 514, s. 4.

of bargain and sale, sealed with the common seal of said corporation, and signed by the president or presiding member or trustee of said corporation, and two members or trustees thereof, in the presence of two witnesses ; and such deed, when proved in the usual form prescribed for other conveyances for lands, shall be registered in the register's office of the county where the land lies in like manner with other deeds.

2. In all actions or suits, which may be instituted against any corporation, instead of the process formerly used to compel the appearance of such corporation, it shall be sufficient to issue a summons to the sheriff or other proper officer, reciting the cause of action, and summoning the said corporation to appear and answer the same on the proper return day, which summons shall be returnable in the like manner and subject to the same rules and regulations as other original process.

In suits against corporations, a summons to issue.

3. If a summons be issued as aforesaid against any banking, turnpike, navigation, insurance, or other incorporated company, service on the president or other head, or in his absence on the cashier or treasurer, or in the absence of both the president or chief officer and the cashier or treasurer, then on any director of such company, such president or other officer being at the time of such service in the county in which he usually resides, shall be deemed sufficient service of the summons ; and if the summons be issued against the corporation of any city or town, service on the chief magistrate, or in his absence on any commissioner of such city or town, such chief magistrate or commissioner being at the time of such service within the limits of such corporation, shall be deemed sufficient ; and in like manner the service of such summons on the president, and, in his absence, on any trustee of any incorporated college or academy, or on the chief officer of any other corporation whatever, or for want of such chief officer on any member of such corporation, such president, trustee, chief officer, or other member being at the time of service within the county in which he usually resides, shall be deemed sufficient; and on the return of such summons served in manner aforesaid, in any of the said cases, the same proceedings to a final judgment shall be had against such corporation as are had in other suits at law, after the return of a *capias ad respondendum* executed ; on every summons served as aforesaid, the sheriff or other proper officer shall make return distinctly on whom the same hath been executed, otherwise such service shall not be deemed valid.

On whom the summons to be served.

How returned.

4. Suits in equity against corporations shall commence by subpoena, and the service of such subpoena and all interlocutory orders and decrees shall be made in the same manner and under the same restrictions as is herein before provided for the service of a summons in a suit at law, and the same proceedings to a final decree shall be had against such corporations as are had in other suits in equity.

Suits in equity how proceeded on.

5. If any judgment at law or decree in equity shall be rendered

What execution to issue.

2. 1820, c. 1056, s. 1.

3. 1820, c. 1056, s. 2.

4. 1820, c. 1056, s. 3.

5. 1820, c. 1056, s. 4.



against any corporation, it shall be lawful for the plaintiff or complainant in the suit to sue out either a *distringas* or *feri facias* as he may think proper, and the said writs of *distringas* or *feri facias* may be levied as well on the current money as on the goods, chattels, lands and tenements of the said corporation.

When and how an information may be filed against a corporation.

6. Whenever it may be deemed proper by the legislature of this State, or the governor or attorney general for the time being, that a judicial inquiry shall be instituted to ascertain whether any corporation by non-user or abuser of its franchises, has incurred a forfeiture of its charter, or has been dissolved by the surrender of its franchises, or any other mode, it shall be lawful for the attorney general, in behalf of the State, to file an information either in the supreme court, or in the superior court of law, for the county wherein the general meetings of the members or the officers of such corporation have usually been holden or by law ought to be holden, setting forth briefly and without technical forms the grounds, on which such forfeiture or dissolution is alleged to have been incurred or to have taken place, and thereupon it shall be the duty of the said court to take such order, for enabling those interested in the charter or continuance of the corporation to have due notice of and make defence against such information, and make all such rules for procuring and taking evidence, and having a fair trial of the controverted facts, as shall be deemed just and reasonable.

Court may require a bond to be given by the relators.

7. When the said information shall be filed by the attorney general in consequence of the relation of any individual or individuals, it shall be lawful for the court in its discretion to require bond with approved securities from the relator or relators, to indemnify the corporation against all the costs of such information.

How the supreme court may proceed to ascertain facts.

8. If such information be filed in the supreme court, it shall be lawful for said court, in regard to any facts, upon which the finding of a jury may be necessary, either to cause such jury to be empanelled before the supreme court, or to send the issue to be tried before the judge of the superior court of any county of the State.

Appeal allowed from the superior court.

Judgment of dissolution or forfeiture shall not extinguish debts; but a receiver to be appointed.

9. From the judgment which may be rendered in the superior court, it shall be lawful for either party to appeal to the supreme court; and on a final judgment of dissolution or forfeiture being rendered, such dissolution or forfeiture shall not extinguish the debts due to or from the corporation, but the court rendering such final judgment shall proceed to appoint a receiver or receivers, who shall have full power to collect, in his or their own names, all the debts due to said corporation, to take possession of all its property, and to sell, dispose, and distribute the same in order to pay off the creditors of said corporation, and afterwards to reimburse the stockholders thereof, under such rules, regulations, provisions and restrictions as the court rendering such final judgment shall direct.

6. 1831, c. 24, s. 1.

7. 1831, c. 24, s. 2.

8. 1831, c. 24, s. 3.

9. 1831, c. 24, s. 4.

10. It shall be lawful for the attorney general, as herein before directed, to file a bill in the nature of a bill in equity, either in the supreme court of this State, or in the superior court of equity of the county, as herein before directed, to restrain by injunction any corporation from assuming or exercising any franchise, or transacting any business, not allowed by its charter, to restrain any individuals from exercising corporate franchises not granted, to bring the directors, managers, and officers of a corporation, or the trustees of funds, given for a public or charitable purpose, to an account for the management and disposition of the property confided to their care, to remove such officers or trustees upon proof of gross misconduct, to secure for the benefit of all interested the property or funds aforesaid, to set aside and restrain improper alienations thereof, and generally to compel the faithful performance of duty, to prevent malversation, speculation and waste ; and it shall and may be lawful for the said courts, upon the said bill being filed, to make all such orders, rules and decrees, as may be necessary to accomplish the ends of justice and as are consistent with the usage of a court of equity. *Provided always*, that the decree of a superior court of equity shall be liable to be re-examined on appeal in the same manner as cases between individuals. *And provided also*, that the supreme court shall have the same power to cause a jury to be empanelled, or in directing issues to be tried elsewhere as is herein before provided. *Provided always*, That in case of fraud by the president, directors, managers or stockholders in any corporation, the said court shall have full power to render personally liable to creditors and others injured thereby, such of the directors, managers and stockholders as may have been concerned in such fraud.

Attorney general may file a bill in equity to restrain corporations from exercising powers not granted, and to bring certain officers to an account, &c.

Provisos.

11. No body corporate, hereafter to be established in this State, shall exist for a longer term than thirty years, unless otherwise provided in the act creating the same.

Corporations how long to exist.

12. When any act shall have passed creating a body politic and corporate, and the corporators shall, for the period of two years, neglect or fail to organize the company and carry into effect the intent of the act, or when organized, if they, at any time for two years together, shall cease to act as a body corporate, then such disuse of their corporate privileges and powers shall be considered and taken as a forfeiture of the charter.

What length of non-user to be a forfeiture of corporate privileges.

13. The shares of stock, in all incorporated joint stock companies in this State, shall be and they are hereby declared to be personal estate ; and as such may be held by aliens, and may be transferable, under such rules and regulations as the corporation to which the stock pertains may from time to time establish, the same not being incompatible with the constitution and laws of this State.

Shares in incorporated joint stock companies to be personal estate.

10. 1831, c. 24, s. 5.

11. 1836, c. 10, s. 1.

12. 1836, c. 10, s. 2.

13. 1836, c. 11.



CHAPTER 27.

COUNTY BOUNDARIES.

AN ACT AUTHORIZING COUNTY COURTS TO SETTLE DISPUTED BOUNDARIES BETWEEN COUNTIES.

SECTION

1. In case of disputed lines between counties, the county court of each county may appoint commissioners to settle them.

SECTION

2. Commissioners to be sworn—To be paid.

In case of disputed lines between counties, the county courts of each county may appoint commissioners to settle them.

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 whenever there shall be any dispute concerning the dividing line between counties, it shall be lawful for the county courts of each county, interested in the adjustment of said line, a majority of the justices consenting thereto, to appoint one or more commissioners, on the part of each county, to settle and fix the line in dispute ; and their report, when ratified by a majority of the justices of each county, shall be conclusive of the location of the true line, and shall be recorded in the register's office of each county, and in the office of the secretary of state.

Commissioners to be sworn—To be paid.

2. The commissioners, before entering on the duties assigned them, shall be sworn before a justice of the peace, and shall be allowed a reasonable compensation for their labors.

- 1. 1836, c. 3, s. 1.
- 2. 1836, c. 3, s. 2.

- 1838.9. Ch 10-12.
- 1840.1. Ch 9. 11. 13.
- 1842.3. Ch 7. 8. 10. 12
- 1846.7. Ch. 22. 23. 24. 25

1848. Ch 13. 17. 18. 19. 20. 21. 22. 23. 24  
25. 26 26

CHAPTER 28.

COUNTY REVENUE AND CHARGES.

AN ACT CONCERNING COUNTY REVENUE AND COUNTY CHARGES.

SECTION

1. County courts to lay taxes for county purposes.  
2. County taxes to be collected by the sheriff in like manner as the State taxes.  
3. Sheriff to give bond for the collection of the county and poor taxes.

SECTION

4. All fines, &c. to be paid over to the county trustee.  
5. Tax on attorneys' licenses—to whom to be paid.  
6. Tax on suits at law—how payable.  
7. Tax on suits in equity—how payable.

SECTION

8. Sheriff shall collect and pay over all fines, amercements, &c.
9. Clerk to render an annual statement of fines, &c.
10. Penalty on clerk, sheriff, &c., for failing to pay over county moneys.
11. Clerks and clerks and masters to give bond for the payment of taxes, &c.
12. Costs of State prosecutions to be paid by the counties in certain cases.
13. Witnesses for the State to be paid by the counties in certain cases.
14. County wherein the offence was committed to pay costs—Such county to receive the fines, &c.
15. County to pay the costs of inquests.
16. County courts may make allowances to certain officers for extra services.
17. Clerk shall number all claims, &c. against the county in a book, and furnish the chairman of the court with a copy annually.
18. Penalty on the clerk for failing to number claims, &c.—His compensation for performing this service.
19. A statement of moneys received for county purposes, to be set up in the court house.

SECTION

20. County court may lay taxes for the payment of the patrol.
21. County court may lay taxes for the payment of jurors.
22. Power of the county court in disposing of the county funds.
23. County court may appoint three persons to act as a committee of finance—Duty and powers of such committee.
24. Committee to make investigation of all the financial concerns of the county, and make return to the court at the end of each financial year—Pay of the committee.
25. Any officer failing to settle after receiving ten days notice, to forfeit one hundred dollars.
26. Oath to be taken by the members of the committee.
27. Penalty for refusing to serve on the committee.
28. Officers having claims against the county how to proceed.
29. Clerk to furnish the committee with a statement of the sums allowed by the county court.
30. Committee may institute suit for the recovery of money belonging to the county.
31. County court to fill vacancies in the committee.

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 the justices of the several county courts, a majority of the acting justices of the county being present, shall, at the first county court, which shall happen after the first day of January in each year, lay a tax on the lands with their improvements, and a tax on the other subjects of State taxation, for the purpose of paying the county charges.

2. The county taxes shall be collected by the sheriffs of the respective counties, who shall be entitled to the same commissions and subject to the same rules, regulations and restrictions, in respect to their settlement of the county tax, with the county trustees, as they are in their settlements of the public tax, with the treasurer of the State ; and they shall also settle with the wardens of the poor, and the trustees of their respective counties, for the taxes on the unlisted property in their said counties, under the same rules, regulations and restrictions, as they are bound by law to account with the comptroller of the State.

3. Each and every sheriff within this State, shall enter into

1. 1790, c. 331, s. 1.—1814, c. 872, s. 13.  
 2. 1793, c. 509, s. 2.—1811, c. 823.  
 3. 1793, c. 509, s. 1.

County courts to lay taxes for county purposes.

County taxes to be collected by the sheriff in like manner as the State taxes.

Sheriff to give bond for the collection of the county and poor taxes.



bond, with sufficient security, payable to the State of North Carolina, for the due collecting and accounting for the county and poor tax, as well as the public tax, which said bonds shall be executed previous to their entering on the execution of their office.

All fines, &c. to be paid over to the county trustee.

4. All fines, forfeitures, amercements and tax fees on suits and attorneys' licenses, as well in the superior as county courts, also all tax fees on suits in equity, shall be accounted for and paid to the county trustees, for the purpose of defraying the costs of State prosecutions and the contingent expenses of the county.

Tax on attorneys' licenses—to whom to be paid.

5. The following tax shall be imposed upon attorneys' licenses, to wit: For a license to practise in the superior courts, ten dollars, for a license to practise in the county courts, ten dollars; which tax on attorneys' licenses, shall be paid to the clerk of the court, where the attorney shall first exhibit his license for admittance to practice, to be accounted for by said clerk, under the same rules, regulations and restrictions as he is obliged to account for taxes on suits.

Tax on suits at law how payable.

6. In all civil suits and indictments tried or disposed of, either in the county or superior courts, the party or parties cast or convicted shall pay a tax fee of one dollar, which several sums the respective clerks shall pay over to the county trustee, within three months after the same shall be received by them: *Provided, nevertheless*, the plaintiffs in civil suits shall not be required to pay a tax fee on writs as heretofore.

Tax on suits in equity—how payable.

7. In suits in equity a tax of two dollars shall be assessed and paid for every subpoena to answer any bill in equity, which tax shall be accounted for and paid over to the county trustee by the clerk and master, in like manner as tax fees on suits at law are accounted for and paid over by the clerks of said courts.

Sheriff shall collect and pay over all fines, amercements, &c.

8. The sheriffs of the respective counties shall collect and receive all fines, amercements, forfeited recognizances, and forfeitures on penal statutes, imposed, adjudged or decreed by any of the courts of this State; and all sums of money, by them so collected and received, shall pay over to the respective county trustees or wardens, entitled to receive the same, within three months after such moneys shall be so collected and received, and shall return a transcript, at the time of settlement with the trustees, which shall contain the names of all persons, from whom fines, forfeitures, and amercements shall have been collected, and the amount from each person so received.

Clerk to render an annual statement of fines, &c.

9. The clerks of the several courts shall annually, on or before the first day of January in each and every year, make a full and complete return to the respective county trustees of all tax fees, fines, forfeitures, and amercements, which shall have been imposed, adjudged, or decreed in the preceding year, as well the names of the persons who shall have paid fees as of all those who

4. 1801, c. 587.—1809. c. 769, s. 1.—1810, c. 799, s. 2.

5. 1784, c. 220, s. 2.—1806, c. 693, s. 1.

6. 1830, c. 1, s. 8.

7. 1786, c. 253, s. 10.

8. 1830, c. 1, s. 11 and 12.

9. 1830, c. 1, s. 13.

have been fined, amerced, or adjudged to have forfeited their recognizance.

10. If any clerk of any of the superior or county courts, or any clerk and master in equity, or any sheriff, shall fail or neglect to account for and pay over, to the county trustees or wardens of the poor of their respective counties, any tax fees on attorneys' licenses or suits, or any fines, forfeitures and amercements, as required by this act, or fail or neglect to make the returns specified in this act, the person so offending shall forfeit and pay five hundred dollars, to be recovered by the county trustee for the use of the county.

Penalty on clerk, sheriff, &c. for failing to pay over county moneys.

11. The clerk of each and every county and superior court of law, and the clerk and master in equity, shall give bond with approved security to the court whereof he is clerk, payable to the State of North Carolina, in the sum of four thousand dollars, conditioned for the due performance of the duties enjoined in this act.

Clerks and clerks and masters to give bond for the payment of taxes, &c.

12. In all criminal prosecutions in the county or superior courts, when the defendant shall be acquitted and the court shall not think proper to order the prosecutor to pay the costs, or where the defendant, if convicted, shall be insolvent and incapable to pay costs, the sheriff, clerk or constable, who may be entitled to fees in said prosecutions, shall render to the county court an accurate fee bill, enumerating the costs due each officer; and upon presenting the same to the county court, it shall be and is hereby declared to be the duty of such court to order and decree, that the county trustee shall pay to them and each of them the amount of their respective fees, as contained in the fee bill aforesaid: *Provided*, that the counties shall pay the clerks and sheriffs half their lawful fees only, except in capital and clergiable felonies, or prosecutions for forgery, perjury and conspiracy.

Costs of State prosecutions to be paid by the counties in certain cases.

13. All witnesses, summoned or recognized, on behalf of the State, to attend on any prosecution, either in the superior or county courts, where the defendant by law shall not be bound to pay the same, and the court do not order them to be paid by the prosecutor, shall be paid by the county in which said prosecution was commenced. And in all cases, wherein witnesses may be summoned or recognized to attend any of the superior or county courts, to give evidence in any prosecution in behalf of the State, and the prosecuting officer or the court shall discharge the defendant or defendants, or in cases where the defendant shall break jail and shall not afterwards be retaken, the court may, if under the circumstances it shall appear to be just, order the certificates of attendance to issue to said witnesses, to be paid as other witnesses in such prosecutions are entitled to be paid.

Witnesses for the State to be paid by the counties in certain cases.

14. In all cases where the counties are liable to pay costs, those counties, wherein the offences shall have been charged to be committed, shall pay them. And all fines, forfeitures and amerce-

County where- in the offence was committed to pay costs — Such county to receive the fines, &c.

10. 1808, c. 756.—1809, c. 769.—1813, c. 864.—1830, c. 1, s. 11, 12 and 13.

11. 1786, c. 253, s. 12.

12. 1820, c. 1043.—1830, c. 1, s. 7.

13. 1819, c. 1005.—1821, c. 1253.—1804, c. 665, s. 1, 2 and 3.

14. 1810, c. 799, s. 1.



ments shall be accounted for and paid to the trustee of the county, wherein the offence may have been charged to be committed, whereon such fine, forfeiture, or amercement shall have arisen.

County to pay the costs of inquests.

15. Whenever an inquest shall be held, the county trustee, wherein the same may happen, shall pay off the costs and charges of the same out of the county moneys.

County courts may make allowances to certain officers for extra services.

16. The county courts of the respective counties shall make such allowances to their sheriffs, clerks or county attorneys for extra services, as they may think proper and just, which allowances shall be paid by the county trustee out of the county funds : *Provided*, that in the making of such allowances, or in any allowance of any other claim against the county, a majority of the acting justices belonging to such county shall be present.

Clerk shall number all claims, &c. against the county in a book, and furnish the chairman of the court with a copy annually.

17. It shall be the duty of the clerks of the county courts within the respective counties, if the same shall be thought advisable or necessary and be so ordered by the county court, to number all claims, orders and certificates that may be allowed by the court in which they may act, in a book kept for that purpose, and they shall annually, the day before the county court's proceeding to lay a county tax for the ensuing year, furnish the chairman of the court with a copy of the same : they likewise shall insert the different allowances, agreeably to the number, in the tax list that such clerks supply the sheriffs or collectors with, in order that the same may be collected and paid according to their number and priority.

Penalty on the clerk for failing to number claims, &c.

18. Any county court clerk, neglecting or refusing to perform any part of the duty enjoined by the last section, shall forfeit and pay the sum of twenty dollars for every such offence, recoverable before any jurisdiction having cognizance thereof, onehalf to the use of any person who may commence suit for the same, the other half to be applied toward defraying the county tax. And when any county court shall so direct their clerk to record and number the county claims as aforesaid, such county court shall and may allow the clerk, for all such services, annually, any sum not exceeding four dollars.

His compensation for performing this service.

A statement of moneys received and expended for county purposes to be set up in the court house.

19. The court of each county shall, at the first session after the first day of June in every year, cause the proper officer to publish and set up, in some part of the court house, an account of the moneys received the preceding year, by taxes or otherwise, stating also what application hath been made of the same, to whom paid, and what claims, if any, against the county remain undischarged.

County court may lay taxes for the payment of the patrol.

20. It shall be the duty of the county courts, a majority of the justices being present, at the same term annually at which they appoint patrol committees for their respective counties, as by law directed, to lay a tax of not more than ten cents on each taxable slave in said county, which tax shall be levied and collected by the sheriffs of the several counties in the same manner as other

15. 1803, c. 644.

16. 1790, c. 331, s. 1.—1830, c. 1, s. 17.

17. 1793, c. 337, s. 1.

18. 1793, c. 337, s. 3 and 4.

19. 1786, c. 255, s. 4.

20. 1830, c. 16, s. 2 — 1790, c. 331, s. 1.—1835, c. 22, s. 1.

taxes, and be applied, under the direction of the county courts, to defray the expenses of the patrol ; *Provided*, that in the county of Camden, a tax, of not more than twentyfive cents on each taxable slave in said county, may be levied and collected in the manner and for the purposes aforesaid.

21. The several county courts shall have full power and authority to lay a tax, for the purpose of paying their jurors a sum adequate to their services, which shall not exceed one dollar and fifty cents, nor be less than fifty cents per day, and a sum equal to the daily allowance for every thirty miles travelling to and from said court. *Provided, nevertheless*, that a majority of the justices of said county be present when the said tax shall be laid, and that said tax may be laid on all the real estate and taxable polls in the county, and collected and accounted for as other county taxes are now, or may hereafter be accounted for.

County court may lay taxes for the payment of jurors.

22. The county courts in this State are respectively invested with full power to direct the application of all moneys arising by virtue of this act, to and for the purposes herein mentioned, and to any other good and necessary purpose for the use of the county.

Power of the county court in disposing of the county funds.

23. It shall and may be lawful for the court of pleas and quarter sessions in each and every county, at any court which shall happen after the first day of August in each and every year, a majority of the justices of the peace of said county being present, if such court shall deem it expedient, to appoint three persons of skill and probity to act as a committee of finance, whose duty it shall be to examine all the records, papers and documents which have relation to any county moneys in the offices of the clerks of the county and superior courts, and of the clerks and masters in equity, and to audit and settle all accounts between said counties, and the sheriffs, county trustees, or any other officers or commissioners, who may hold any moneys belonging to said counties ; and the said committee are hereby authorized and empowered to call on each of said clerks, at their offices, to lay before them for inspection such records, documents and papers as aforesaid, and call on such sheriffs, county trustees, and other officers or commissioners of their respective counties, to meet them at the court house of such counties, to audit and settle their respective accounts, at such time as said committee may designate.

County court may appoint three persons to act as a committee of finance.

Duty and powers of such committee.

24. It shall be the duty of said committee to make a full investigation of all the financial concerns of their respective counties, and make a fair and true return to the said courts at the end of each financial year, setting forth a full statement of their investigation, designating therein all moneys due from their respective counties to individuals, as well as those sums due by individuals to the counties ; and each member of said committee shall receive an allowance not exceeding two dollars per day for each day he shall be necessarily

Committee to make investigation of all the financial concerns of the county and make return to the court at the end of each financial year.

Pay of the committee.

21. 1815, c. 891, s. 1.  
 22. 1777, c. 129, s. 4.  
 23. 1831, c. 31, s. 1.  
 24. 1831, c. 31, s. 2.



employed on said committee, to be paid by the county trustee out of any funds of the county ; and all such allowances shall be made upon proof, to the satisfaction of said courts, by the members of said committee, of the number of days they were employed in the duties prescribed in this act.

Any officer failing to settle after receiving ten days notice, to forfeit one hundred dollars.

25. If said clerks, sheriffs, county trustees, or other officers or commissioners, who may hold any county money, shall fail, neglect or refuse duly to account for the same, the committee of finance shall give such person ten days previous notice, in writing, of the time and place at which they will attend to make said settlement, and every officer receiving such notice, as aforesaid, and failing to make settlement, as required by this act, shall forfeit and pay the sum of one hundred dollars, to be recovered by action of debt before said court ; which suit shall be brought in the name of the State, and shall be prosecuted at the expense of the county, unless said county court shall release said officers from said forfeiture, which they are hereby authorized to do.

Oath to be taken by the members of the committee.

26. Every person appointed by virtue of this act a member of the committee of finance, shall, previous to his entering upon the duties thereof, take the following oath, which shall be administered by the courts aforesaid, to wit : I A. B. do solemnly swear or affirm as the case may be, that I will faithfully perform the duties imposed on me by law as a member of the committee of finance for the county of \_\_\_\_\_ in all business that shall come before me, without doing injustice to the county or to individuals, to the best of my knowledge and ability, so help me God.

Penalty for refusing to serve on the committee.

27. If any person, who shall be appointed a member of the committee of finance as aforesaid, shall refuse or neglect to serve or do his duty as a member thereof, he shall be liable to pay a penalty of fifty dollars for his refusal or neglect aforesaid, to be recovered before any jurisdiction having cognizance thereof, to be sued for in the name of the State ; *Provided*, that no person shall be compelled to serve as a member of said committee for a longer time than three years.

Officers having claims against the county how to proceed.

28. It shall be the duty of the several clerks, sheriffs, county trustees, and other officers or commissioners, who may have claims or demands on their respective counties, to deliver the same to the committee of finance for their examination and inspection, whose duty it shall be to make out two fair and correct statements of each settlement by them made by virtue of their appointment, one of which, after having been submitted and passed upon by the court, shall be filed with the clerk of the county court, and the other kept by the committee for their own use.

Clerk to furnish the committee with a statement of the sums allowed by the county court.

29. It shall be the duty of the clerks of the county courts, to furnish said committees with a statement of all sums allowed by the county courts to individuals, setting forth the several amounts and to whom made.

- 25. 1831, c. 31, s. 3.
- 26. 1831, c. 31, s. 4.
- 27. 1831, c. 31, s. 5.
- 28. 1831, c. 31, s. 6.
- 29. 1831, c. 31, s. 7.

30. It shall be the duty of the committee of finance, appointed under this act, and they are here by empowered to institute suits for the recovery of all moneys, found to be due to their respective counties, from any person liable to account as aforesaid, before any jurisdiction having cognizance thereof; which said suit or suits shall be brought in the name of the State, for the use of the county; and in case the plaintiff shall succeed, the defendant shall pay the costs, but if the defendant shall succeed, the county shall pay the costs.

Committee may institute suit for the recovery of money belonging to the county.

31. In case any vacancy in any committee, appointed by said justices as aforesaid, shall be occasioned by the death, removal, or refusal to act, incapacity, or inability of any one or two members appointed to serve on said committee, then it shall be the duty of the next court of pleas and quarter sessions for said county, that shall be holden after such vacancy happens as aforesaid, and the said court, seven justices being present, is hereby authorized to appoint some person or persons to fill such vacancy; which person or persons so appointed shall have the same powers, and be subject to the same penalties, in case of refusal or neglect to serve and do their duty, as those appointed by said justices as aforesaid.

County court to fill vacancies in the committee.

30. 1831, c. 31, s. 8.  
31. 1831, c. 31, s. 9.

*Note.* — REFERENCES TO ADJUDGED CASES.

SEC. 1. Lockhart vs. Harrington, 1 Hawks, 403.  
SEC. 3. Cameron vs. Campbell, 3 Hawks, 285.

CHAPTER 29. *1842.3. ch 6.*

**COUNTY TRUSTEES.**

AN ACT PROVIDING FOR THE APPOINTMENT AND DIRECTING THE DUTIES OF COUNTY TRUSTEES.

SECTION

1. County trustee how to be appointed.
2. How vacancies to be filled.
3. County trustee to give bonds and take oaths.
4. To collect all moneys due his county.
5. To call on the sheriff and clerk for the payment of all moneys in their hands due their counties.
6. Clerk and master to settle with the county trustee for tax fees on suits.
7. County trustee to settle with sheriffs for claims according to number.

SECTION

8. Compensation allowed county trustee.
9. County trustee to settle with courts annually.
10. Penalty on county trustee for neglect of duty.
11. The county court, a majority of the justices being present, may abolish the office of county trustee and devolve the duties of such office on the sheriff.



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 the justices of the several county courts of this State, a majority of the acting justices being present, shall, during the sitting of their respective courts to be held next after the first day of January yearly and every year, appoint one good and proper person to act as a trustee for one year for the purposes herein mentioned, which appointment shall be entered on the records of the said court: *Provided*, that no person shall be considered duly elected without receiving a majority of the votes of the justices present.

County trustees how to be appointed.

How vacancies to be filled.

2. In case of the death, disqualification, neglect or refusal to act of any of the trustees appointed as above, the court of the county, where such death, disqualification, neglect or refusal shall happen, may proceed to appoint one other good and proper person to fill up such vacancy until the next annual appointment, under the rules and regulations before prescribed, and such trustee, during his continuance in that appointment, shall have the same powers and authorities which by this act are given to other county trustees.

County trustees to give bonds and take oaths.

3. The person appointed as trustee for the county shall give bond in such sum, as the court may think sufficient to cover all moneys which may be paid to the said trustee for the use of the county, with sufficient security, for the faithful discharge of his duty, payable to the State of North Carolina, to be sued upon and recoveries to be had thereupon in the same manner and under the same rules, regulations and restrictions as are prescribed for suits and recoveries upon the official bonds of sheriffs and other officers; and such trustees shall take the oaths prescribed for public officers, and also an oath of office.

To collect all moneys due his county.

4. It shall be the duty of the county trustee, after qualifying himself as aforesaid, and he shall have full power and authority to demand, sue for, recover and receive, from the sheriff of the county and from all other persons, all moneys which may be in their hands due and payable to and for the use of such county, which moneys the trustees respectively shall apply as the county court may direct, and to no other use or purpose whatsoever.

To call on the sheriffs and clerks for the payment of all moneys in their hands due their counties.

5. The county trustees shall annually call on the sheriffs and clerks of their respective counties for the payment of all moneys, that may be in their hands due to the trustees; and if any sheriff or clerk shall fail to account for and pay the same, then it shall be the duty of the said trustees, at the first court held for their counties after the first day of May in each and every year, to move for judgment against such sheriff or clerk, failing to settle as above specified, ten days notice being previously given, and the court shall thereupon award immediate execution against such sheriff or clerk and his sureties for the full amount of the taxes or public money due from the said sheriff or clerk; and every sheriff or clerk,

1. 1777, c. 129, s. 3.—1816, c. 901, s. 1.

2. 1777, c. 129, s. 4.

3. 1777, c. 129, s. 3.—1833, c. 17.—1811, c. 824, s. 1.—1791, c. 342, s. 1 and 2.

4. 1777, c. 129, s. 3.

5. 1808, c. 754, s. 1.—1809, c. 769, s. 5.

against whom judgment is so obtained, shall over and above arrearages forfeit and pay the sum of one hundred dollars, to be applied to the use of the county ; and if any trustee shall fail to comply with the requisites of this act, he shall not only be liable for the moneys he may then or thereafter have in possession, but shall be subject to the penalty of one hundred dollars, to be recovered by suit in any court of record, onehalf to the informer and the other half to the use of the county.

6. If any clerk and master in equity within this State shall fail or neglect to pay over to the county trustee the tax fees on suits in equity, in like manner as tax fees on suits at law, such clerk and master in equity, so failing or neglecting, shall forfeit and pay the same sums, as the clerks of the superior courts of law upon failure of the like nature, to be sued for and recovered in the same manner.

Clerk and master to settle with the county trustee for tax fees on suits.

7. The county trustee shall settle with the sheriff or collector of public taxes, only according to the number of claims beginning at the lowest number, and where there is no trustee in the county, the county court may and shall proceed to settle with their sheriff or collector of public taxes in the like manner.

County trustee to settle with sheriffs for claims according to number.

8. The county courts of pleas and quarter sessions shall allow to the trustees of their respective counties a reasonable salary, as a compensation for all such services as have not a specific compensation annexed to them.

Compensation allowed county trustees.

9. At the first court in each respective county, which shall be held after the first of June in each and every year, the county trustees of the respective counties shall make settlement with the courts, in which they shall render an account of the whole of their receipt and expenditures, under the penalty of four hundred dollars to be recovered by action of debt.

County trustee to settle with courts annually.

10. In case any trustee of any county in this State shall neglect or refuse to do and perform the several and respective duties herein enjoined or any of them, the person so offending, refusing or neglecting shall forfeit and pay for every neglect or refusal, where another penalty is not annexed, the sum of ten dollars, to be recovered by action of debt, in the name of the State, to and for the use of the county where the offence was committed.

Penalty on county trustees for neglect of duty.

11. Whenever a majority of the acting justices of the peace of any county shall deem it advisable, they may abolish the office of county trustee ; provided notice thereof has been given by advertisement in pursuance of the order of the county court at the preceding term ; it shall then be the duty of the sheriff of such county to collect all such sums of money as the county trustee may and ought to do, and he shall and may use the same remedies therefor as county trustees ; it shall further be the duty of said sheriff to act as county trustee in the payment of claims, allowed by the

The county court, a majority of the justices being present, may abolish the office of county trustee, and devolve the duties of such office on the sheriff.

6. 1813, c. 864.

7. 1793, c. 387, s. 2.

8. 1777, c. 129, s. 4.

9. 1792, c. 361, s. 1.

10. 1777, c. 129, s. 5.

11. Amendment.



county court, to be governed by the same rules and regulations as county trustees ; and it shall be the further duty of such sheriff, so acting as county trustee, to settle with the county court in the same manner and under the same penalties as county trustees are now required to settle ; and whenever any county court shall abolish the office of county trustee and impose the duties thereof on the sheriff, it shall be the duty of such court to compensate the sheriff of said county for such additional duties.

## CHAPTER 30.

# COURT HOUSES, PRISONS AND STOCKS.

AN ACT CONCERNING COURT HOUSES, PRISONS, AND STOCKS, AND PRESCRIBING THE APPOINTMENT AND DUTIES OF THE TREASURER OF PUBLIC BUILDINGS.

### SECTION

1. County courts to keep court houses, jails and stocks in repair ; and may lay a tax for that purpose.
2. Jails to have four separate apartments.
3. Grand jury at each court shall visit the jail.
4. County court to appoint a treasurer of public buildings—His duty.

### SECTION

5. County court to fill vacancies in such office.
6. Treasurer of public buildings to settle his accounts annually—Penalty for failing to settle, and how to be proceeded against.
7. What to be done when the treasurer of public buildings recommends alterations, repairs, &c.

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 there shall be kept and maintained in good and sufficient repair, in each and every county in this State, a court house, common jail and stocks, the whole expense of building whereof, when there shall be occasion, as well as repairing such as are already built, shall be defrayed by the county, wherein the same are situated, and the courts of the several counties respectively are hereby invested with full power and authority to lay and collect taxes, from year to year as long as may be necessary, for the purpose of building, repairing and furnishing their several court houses, jails and stocks, in such manner as they shall think proper, and from time to time to order and establish such rules and regulations for the preservation of the court houses, and for the government and management of the prisons, as may be conducive to the interests of the public and the security and comfort of the persons confined.

County courts to keep court houses, jails and stocks in repair ; and may lay a tax for that purpose.

2. The common jails of the several counties shall be provided with at least four separate comfortable apartments, one for the confinement of white male criminals, one for the confinement of white female criminals, one for the confinement of debtors, and one other for the confinement of negroes.

Jails to have four separate apartments.

3. It shall be the duty of the grand jury in each county, at every court holden for said county, to visit the jail of said county, and examine the apartments in which prisoners shall be confined, and they shall report to the court the condition of said jail and of the prisoners confined therein, and also shall report to the court the manner in which it shall appear to them the jailer has discharged the duties imposed by law.

Grand jury at each court shall visit the jail.

4. The several county courts, a majority of the acting justices of the county being present, shall annually at the first court which shall be held after the first day of January in each and every year, appoint a suitable person residing within the county to act as treasurer of public buildings, whose duty it shall be after having given bond and satisfactory security payable to the State of North Carolina, in such sum as may be required, for the faithful discharge of the trust reposed in him, to superintend the public buildings, and from time to time report the state and condition thereof; to recommend alterations, repairs or improvements, together with the sums requisite for carrying such alterations, repairs or improvements into effect; to call to account by suit if necessary, and settle with all former commissioners, who may have received county moneys for such purposes; to hear the complaints of persons confined respecting their diet and treatment; to examine into the conduct and character of the jailer, and make information thereof to the court or grand jury of the county as circumstances may require; to apply for and obtain from the clerk all papers and documents, properly attested, which may be necessary for the collection of the taxes laid by the court; to see that the same be collected, accounted for, and applied according to the intentions of and meaning of this act; and the treasurer, so appointed and qualified, shall hold his office during one year, and, as a compensation for all his services, shall be entitled to retain a sum not exceeding five per cent. of the moneys which may pass through his hands.

County court to appoint a treasurer of public buildings. His duty.

5. Whenever the office of treasurer of public buildings shall become vacant by the death, removal, resignation or disqualification of any such officer, the several county courts are hereby directed to make an appointment to fill such vacancy, until the annual term of appointment: *Provided*, That no election authorized by this section shall take place, unless a majority of the acting justices of such county be present at said election.

County court to fill vacancies in such office.

6. The treasurers of public buildings in the several counties shall and they are hereby expressly required, at the term appointed for their election, and previous to the election taking place, to settle

Treasurer of public buildings to settle his accounts annually.

2. 1795, c. 433, s. 4.—1816, c. 911, s. 1.

3. 1816, c. 911, s. 3.

4. 1797, c. 433, s. 1 and 3.—1795, c. 433, s. 2 and 3.

5. 1798, c. 517, s. 2.

6. 1797, c. 433, s. 2.—1795, c. 433, s. 3.



Penalty for failing to settle, and how to be proceeded against.

their accounts with the courts by exhibiting a fair account of their receipts and expenditures, setting forth the moneys received and at what time, the sums expended, to whom paid, for what use and at what time, a complete transcript of which account shall be posted up in the court house for public inspection ; and if any treasurer shall fail, refuse or neglect to exhibit the same, he shall be liable to be sued upon his bond, and also to such fine in addition thereto as the court may think proper to impose, not exceeding one hundred dollars ; and if any treasurer of public buildings shall fail or refuse to settle with the court of his county as above directed, his successor in office, on giving him ten days previous notice, shall have full power and authority and is hereby expressly required to enter up judgment in the court of his county, and award execution against the body, goods and chattels, lands and tenements of such treasurer, for all such sums as can be made appear to the court he has received for the purposes pointed out in the preceding sections of this act, with interest from the day of receiving such sum or sums ; or if, in settling their accounts any of the treasurers of the public buildings shall fail or neglect to pay the balance which shall appear to be due from him, his successor shall have the same power, on giving similar notice, to enter up judgment and award execution against him for such balance.

What to be done when the treasurer of public buildings recommends alterations, repairs, &c.

7. When the treasurer of the public buildings of any county shall, in his report to the court of such county, recommend alterations, repairs or improvements to the court house or jail, and the court shall be satisfied of the utility thereof, it shall be lawful for such court, after having previously estimated the expense, to appoint one or more commissioners, in conjunction with their treasurer, to contract for carrying the same into effect, but, such contract being concluded, the powers of the commissioners shall cease ; and the moneys payable thereon shall be advanced from time to time by the treasurer, who is hereby declared to be solely responsible and accountable to the court, as well for the sufficiency of the work as the disbursements of the money.

7. 1795, c. 433, s. 3.

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*Notc.*—REFERENCES TO ADJUDGED CASES.

SECT. 1. *State vs. Justices of Lenoir*, 4 Hawks, 194.

CHAPTER 31.

**COURTS, COUNTY AND SUPERIOR.**

AN ACT CONCERNING COURTS OF JUSTICE, PRACTICE, PLEAS AND PROCESS.

SECTION

1. Justices of the peace to be judges of the courts of pleas and quarter sessions—At what time the said courts shall be held.
2. Said courts may sit six days, if the business require it.
3. One justice may adjourn the court from day to day not exceeding three days until a sufficient number appear to do business.
4. Justices failing to hold court, not to discontinue the court or any process therein.
5. Three justices to hold the terms of said courts—Their jurisdiction.
6. Court may purchase such books as may be deemed necessary—Said court, a majority of the justices being present, may appoint a special court, &c.
7. Penalty on the clerk for abusing the books purchased, &c.
8. Court may lay a tax for purchasing said books.
9. A superior court of law to be holden in each county.
10. The State to be divided into seven circuits.
11. When the superior courts shall be holden in the first circuit.
12. When in the second circuit.
13. When in the third circuit.
14. When in the fourth circuit.
15. When in the fifth circuit.
16. Anson court may be holden two weeks in the fall.
17. When the superior courts shall be holden in the sixth circuit.
18. When in the seventh circuit.
19. Said courts may be kept open longer than one week for the purpose of closing a trial in a capital case.
20. Said courts to be holden by judges—Their powers and jurisdiction.
21. Oaths to be taken by the judges.

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22. Oaths to be subscribed by the judges and returned to the secretary of state—Penalty on a judge for acting without taking the oaths.
23. Judges to allot the circuits among themselves and publish the same.
24. Judges may exchange circuits.
25. If no judge attend the first day of the term, the sheriff, may adjourn from day to day until the third day.
26. County court to form a jury list from the list of taxables, taking none but persons well qualified—Jury list to continue and be examined every two years.
27. The number of jurors to be drawn for the superior courts, and how they are to be drawn—The number to be drawn for the county courts, and how drawn—Persons having suits in court not to be drawn, nor justices for the county courts.
28. On failure of the county court to draw jurors, the sheriff and clerk assisted by three justices may draw them.
29. County courts may dispense with a jury at two of their terms.
30. Jurors how to be summoned—Shall attend till discharged by court—tales jurors may be summoned when necessary.
31. Penalty on jurors for not attending when summoned—Proviso that jurors shall have till the succeeding term to make excuse—Penalty on tales jurors for not attending.
32. Jurors exempt from service of civil process.
33. Ministers of the gospel and regular physicians exempt from serving as jurors.
34. Grand jury how to be drawn



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35. Quakers competent to serve as jurors in criminal cases.
36. How the petit jury shall be sworn in civil causes—How in State cases not capital—Proviso that the usual challenges shall not be affected.
37. Names of the jurors to be called over in the hearing of the parties before empanelling them.
38. Constable to be sworn to attend juries.
39. Actions where to be brought—Actions otherwise brought to be abated on plea.
40. No suit to be brought in any court for any claim under sixty dollars arising on an unliquidated account, &c.—Nor for a sum under one hundred dollars due by note, &c.
41. If suit be commenced in the county court for a sum under sixty dollars due by account it may be abated—If for a sum under one hundred dollars due by note, &c. it may be dismissed.
42. If commenced in the superior court contrary to the fortieth section, the suit may be dismissed—When the suit is commenced for more and the jury find less to be due, the plaintiff to be nonsuited unless he files an affidavit that more is due—Not to extend to suits on penal bonds.
43. The day when process issues to be marked thereon, and the sheriff to endorse the day when he receives it.
44. Clerk to take security before issuing any writ or other leading process—Otherwise the suit may be dismissed—Proviso in favor of persons suing *in forma pauperis*.
45. Clerks to enter in a book the names of parties to suits and their sureties.
46. Penalty on clerks for issuing process without taking security.
47. Poor persons may sue *in forma pauperis*.
48. When writs may issue to different counties at the same time, returnable to the county or superior court.
49. The real plaintiff in action of ejectment to give a prosecution bond.
50. Persons desiring to be made defendants in ejectment must give a bail bond.
51. When a plaintiff in ejectment makes an affidavit that the defendant entered into the land as his tenant, &c., the defendant shall not plead

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- until he gives bond for the costs and damages—What facts in such case the jury is to find—If they find for the plaintiff they must assess damages for the occupation, &c.—Defendant may rebut plaintiff's affidavit by his own, &c.
52. If plaintiff in ejectment does not give security his suit to be dismissed—Defendant to give bail or be in custody before pleading.
53. Writs and other civil process when to be returned—How long before court to be executed.
54. When sheriff returns that he has defendant in jail, how the plaintiff shall proceed.
55. No female shall be taken or imprisoned for debt.
56. How the plaintiff may proceed when the sheriff returns that the defendant is not to be found—If goods be taken on a judicial attachment and be not replevied, they may be sold on final judgment.
57. When the sheriff returns that the defendant is not an inhabitant of his but some other county, an alias shall issue to the county where the defendant resides.
58. Times at which the sheriff shall not execute civil process.
59. If there be in any county no proper officer to execute process, or he refuse to do so, any judge may direct the sheriff of an adjoining county to do the same.
60. Additional compensation to sheriffs for executing process out of their county.
61. Sheriff failing to execute and return process, to forfeit one hundred dollars and be also liable to indictment.
62. *Rules of court.*—Declaration to be filed within the three first days of the term, or the suit may be dismissed—Defendant to appear and plead or demur at the same term—When special pleading is required the time may be enlarged—Writ of inquiry as to the value of foreign currency to be executed at the same term with the judgment—Plaintiff to reply or demur at the same term—Other pleas to be filed and issues made up at the same term—Time may be allowed to argue demurrer, bill of exceptions, &c.—Parties may enter their own

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- pleas—Clerk to enter proceedings of court in a well bound book—Jury causes to be first tried—Motions in arrest of judgment to be argued when—Argument causes when to be argued—No plea in abatement to be received, but on affidavit or proof—When plea in abatement is overruled, plaintiff shall recover costs—As many pleas as may be thought necessary may be pleaded—A plea since the last continuance not to be a waiver of former pleas—All issues to be tried at the succeeding term after being made up—No cause to be continued but by consent of parties or an affidavit—Courts may order a party continuing a cause to pay costs—Not more than one attorney to speak in any cause—Every attorney appearing in any cause to produce and file a power of attorney if required—When it is necessary for the attorney to retain the power what is to be done—No attorney to enter an appearance until the power is produced if required.
63. In actions upon penal bonds, &c. plaintiff may assign as many breaches as he thinks fit—If judgment be given for the plaintiff on demurrer, &c. he may suggest as many breaches on the roll as he thinks fit—Defendant may pay damages and costs into court, and if so, no execution shall issue—Judgment shall continue and be a security for further breaches.
64. Rules for taking testimony and summoning witnesses—Subpœna for witnesses how to issue—Subpœna returnable immediately, when to issue—How subpœna may be served.
65. Witnesses to attend from term to term till discharged—Penalty on witnesses for non-attendance.
66. Witnesses shall be entitled to pay if they attend after the suit is decided in vacation, unless notified—Witnesses swearing falsely to obtain a ticket, guilty of perjury.
67. How witnesses shall be exonerated from forfeiture and costs for non-attendance.
68. In what cases depositions of witnesses may be taken—Clerk to pass upon all depositions.

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69. Notice to be given to the adverse party of the time and place of taking depositions.
70. Under what circumstances depositions of witnesses may be taken before the cause is put to issue—Notice to be given, &c.
71. Witnesses refusing to give testimony in court or before commissioners to be committed.
72. Witnesses during their attendance to be exempt from the service of all civil process except subpœnas.
73. Pay of witnesses for their attendance.
74. After the removal of a cause, subpœnas and commissions to take testimony may be issued from either court.
75. Witnesses to prove their attendance on each court—How witness may recover his pay for attendance.
76. Witness tickets to be filed with the clerk, to be taxed in the bill of costs—Party cast to pay but for two witnesses to prove the same fact.
77. Costs of publication and postage of letters covering process to be taxed.
78. Subpœnas for witnesses to attend commissioners, &c. how to be issued—Pay of witnesses for attending commissioners, &c.
79. The party in whose favor judgment, &c. is given to recover full costs.
80. Defendant may in certain cases plead a set-off, or give it in evidence under the general issue, upon notice to the plaintiff.
81. Testimony of colored persons incompetent against white persons—Admissible against each other.
82. In what cases in actions of slander and assault and battery the plaintiff shall not recover more costs than damages.
83. In trespass *quare clausum fregit* the defendant may disclaim and plead tender—If the jury find the trespass involuntary and the tender in favor of the defendant, the plaintiff shall be barred.
84. In actions of trespass, &c. if there be more than one defendant and one or more be acquitted, the persons so acquitted shall recover full costs, unless the judge certifies, &c.
85. In what cases a *subpœna duces tecum* may issue.



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86. Court may order either party to produce books or papers—Consequences of a refusal to produce.
87. In petitions for dower or partition the costs are at the discretion of the court.
88. Action may be brought against the maker of a bill, &c. jointly with the endorser, or against all or any one of them.
89. On joint obligations, &c. of copartners, &c. action may be brought against all, any one or more.
90. Joint obligations shall survive against the heirs, executors, &c. of the deceased obligor.
91. How judgment is to be entered when the suit is against the executor, &c. of the deceased obligor and the survivor.
92. When more actions than one are brought on a promissory note, &c. the court may consolidate them.
93. Judgment bonds void as to power to enter judgment, but good as common law or penal bonds.
94. When a defendant to a suit in the county court removes himself or his property, the clerk may issue an execution to any county, &c.
95. In actions for money due by contract, except penal bonds, the jury must distinguish between principal and interest, and the judgment for principal shall carry interest.
96. In an action on a single bill, &c., if defendant makes no defence, clerk may calculate interest without a writ of inquiry.
97. Petitions may be filed in vacation—Clerk to issue a *capias* upon petitioner making affidavit of the amount of his demand.
98. When a petition is served upon one of several defendants, and the others reside out of the State, the court shall order publication to be made for five weeks.
99. Court may order the clerk to audit and settle accounts.
100. Any two justices may take depositions, to be read on petitions.
101. Fees of clerk on petitions.
102. Infants may sue by their next friend.
103. Either party to the suit may tender to the judge a bill of exceptions—Judge to sign and seal the same, or if he refuse, some other present may sign and seal.

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104. Actions of account may be brought against executors and administrators of guardians, &c.
105. If an action for any penalty be brought in good faith and defendant plead a former judgment against him, &c. plaintiff may reply fraud, &c.
106. In an action of debt on a bond, &c. payment may be pleaded.
107. In an action of debt on a bond with a penalty, if the defendant bring into court the principal, interest and costs, the bond shall be deemed discharged, &c.
108. Judgment of a court to stand till reversed.
109. Upon an appeal by a defendant from a justice's judgment or a recordari obtained by a defendant, court may compel plaintiff to give security, &c.
110. Appeals from a justice to be tried first term of the county court—Party cast to pay all costs.
111. If plaintiff appeals from a judgment in his favor it shall be at his costs unless sufficient reason for such appeal is shown.
112. Appeals from the county to the superior courts how to be tried.
113. The increasing day in leap year how to be counted.
114. No execution to issue on a judgment after a year and day without a *scire facias* to revive the same.
115. Plaintiff shall not be nonsuited after verdict.
116. Party committed in execution not to be discharged on habeas corpus.
117. The death of either party between verdict and judgment shall not be assigned for error.
118. Administrator *de bonis non* may have execution on judgment obtained by former administrator.
119. In suits upon the bonds of executors, administrators, guardians, &c. upon motion at the appearance term, a reference may be made to have an account stated.
120. Any cause in the superior court either civil or criminal may be removed on affidavit to an adjoining county for trial.
121. The parties to any suit may remove the same to an adjoining county by consent.
122. Upon the removal of a cause the

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- clerk to send a transcript together with the depositions, &c. filed therein.
- 123. Cause to be removed on affidavit not more than twice.
- 124. In suits involving the question of boundary, the court may order a survey—Proceedings thereupon.
- 125. Clerk not to affix the seal of the court to process to be executed within the county.
- 126. Sheriffs, &c. to serve all notices that may be necessary in any proceeding in law or equity.
- 127. How notices to be served.
- 128. Penalty on officers for failing to serve notices or making a false return.
- 129. Notice may be given and proved as heretofore.
- 130. The return of a sheriff on a *scire facias* that he has executed the same sufficient evidence of the service.

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- 131. Defendants upon trial may shew that they are sureties, and the jury or justices to discriminate the principal from the sureties.
- 132. In such case the officer shall levy first on the property of the principal, &c.—Property of the principal shall be first sold.
- 133. A judgment for the costs may be given against the plaintiff and the sureties to his prosecution bond, upon his failing to prosecute with success.
- 134. A defendant against whom judgment is recovered may pay the money to the clerk before execution issues.
- 135. Clerk to pay over the same to the party entitled to receive it.
- 136. Judge, how to deliver his charge to the jury.
- 137. Quakers may wear their hats in court.

*1848. ch 59. 66.*

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 the justices of the peace within this State shall be judges of the courts of pleas and quarter sessions of the several counties, for which they are appointed, and have all the powers incident to such a jurisdiction. Said courts of pleas and quarter sessions shall be held for their respective counties on the days following, to wit:

Anson county, on the second Monday in January, April, July and October. Justices of the peace to be judges of the courts of pleas and quarter sessions.

Ashe, fourth Monday in February, May, August and November. At what times the said courts shall be held.

Beaufort, first Monday in March, June, September and December.

Bertie, second Monday in February, May, August and November.

Bladen, first Monday in February, May, August and November.

Brunswick, first Monday in March, June, September and December.

Buncombe, second Monday in February, first Monday in July, and the third Monday after the fourth in March and September.

Burke, fourth Monday in January, April, July and October.

Cabarrus, third Monday in January, April, July and October.

Camden, first Monday in February and August, and seventh Monday after the fourth Monday of March and September.

Carteret, third Monday in March, June, September and December.

1. 1773, c. of Davis' Revisal.—1820, c. 1077.—1835, c. 40, 41, 45 and 47.—1834, c. 71.—1833, c. 25, 31, 32, 37 and 42, amendment.



Caswell, first Monday after the fourth Monday of March, June, September and December.

Chatham, second Monday in February, May, August and November.

Chowan, first Monday in do. do. do. and do.

Columbus, second do. in do. do. do. and do.

Craven, do. do. in do. do. do. and do.

Cumberland, first Monday in March, June, September and December.

Currituck, the last Monday in February, May, August and November.

Duplin, third Monday in January, April, July and October.

Davidson, second Monday in February, May, August and November.

Davie, the fourth Monday in February, May, August and November.

Edgecombe, fourth Monday in do. do. do. and do.

Franklin, second Monday in March, June, September and December.

Gates, third Monday in February, May, August and November.

Granville, first Monday in do. do. do. and do.

Greene, second do. in do. do. do. and do.

Guilford, third do. in do. do. do. and do.

Halifax, do. do. in do. do. do. and do.

Haywood, last Monday in January, the first Monday after the fourth Monday in March and September, and the Monday next before the last Monday in June.

Hertford, fourth Monday in February, May, August and November.

Hyde, last Monday in do. do. do. and do.

Iredell, third Monday in February and August, and on the fifth Monday after the fourth in March and September.

Johnston, fourth Monday in February, May, August and November.

Jones, second Monday in March, June, September and December.

Lenoir, first Monday in January, April, July and October.

Lincoln, third Monday in January and July, and the second Monday after the third Monday in February and August.

Martin, second Monday in January, April, July and October.

Mecklenburg, fourth Monday in January, April, July and October.

Montgomery, first Monday in April, July, October and January.

Moore, third Monday in February, August, May and November.

Macon, on the fourth Monday of March and September, and on the Monday before the last Monday of January, and on the second Monday before the last Monday of June.

Nash, second Monday in February, May, August and November.

New Hanover, second Monday in March, June, September and December.

Northampton, first Monday in March, June, September and December.

Onslow, first Monday in February, May, August and November.

Orange, fourth Monday in do. do. do. and do.

Pasquotank, first Monday in March, June, September and December.

Perquimons, second Monday in February, May, August and November.

Person, second Monday in March, June, September and December.

Pitt, first Monday in February, May, August and November.

Randolph, first do. do. do. do. and do.

Richmond, third Monday in January, April, July and October.

Rowan, third Monday in February, May, August and November.

Robeson, fourth Monday do. do. do. and do.

Rockingham, fourth Monday do. do. do. and do.

Rutherford, on the second Monday in January and July, and the fifth Monday after the fourth Monday in March and September.

Sampson, third Monday in February, August, May and November.

Stokes, second Monday in March, June, September and December.

Surry, second Monday in February, May, August and November.

Tyrrel, fourth Monday in January, April, July and October.

Wake, third Monday in February, May, August and November.

Warren, fourth do. in do. do. do. and do.

Washington, third do. in do. do. do. and do.

Wayne, third do. in do. do. do. and do.

Wilkes, first Monday after the fourth Monday of June and July, and the second Monday in March and September.

Yancey, first Monday in February, last Monday in June, and second Monday after the fourth Monday in March and September.

2. If the business of any of the said courts cannot be determined on the first day of the term, the justices may adjourn from day to day, not exceeding six days, at the end of which time the causes and matters, which may be depending before them and not then finally determined, shall be continued to the next succeeding term.

Said court may sit six days, if the business shall require it.

3. If, by reason of indisposition or other inability, bad weather or other accidents, it shall so happen that a sufficient number of justices shall not meet for holding the said courts or any of them on the days by this act appointed, in such case it shall and may be lawful for any one justice to adjourn the court, whereof he shall be a member, from day to day, not exceeding three days, until a sufficient number of justices can attend to hold the court.

One justice may adjourn the court from day to day not exceeding three days, until a sufficient number appear to do business.

4. None of the said county courts nor any process in any of them depending shall be discontinued, for or by reason of the

Justices failing to hold court, not to discontinue the court, or any process therein.

2. 1777, c. 115, s. 53.

3. 1777, c. 115, s. 54.

4. 1777, c. 115, s. 55.



justices failing to hold court upon the day by law appointed, or of any alteration of any of the days appointed for holding the said courts, but in every such case all such process, matters and things depending shall stand continued, and all appearances upon returns of process shall be made, to the next succeeding term in course, in the same manner as if such succeeding term had been the same term to which such process had stood continued or such returns or appearances had been made ; and all recognizances, bonds and obligations for appearances and all returns shall be of the same force and validity, for the appearance of any person or persons at such succeeding term, and all summonses for witnesses as effectual, as if the next succeeding term had been expressly mentioned therein.

Three justices to hold the terms of said courts. Their jurisdiction.

5. The justices of the said county courts, or any three of them, shall be competent to hold the terms thereof, and shall and may take cognizance and have full power and authority and jurisdiction to hear, try and determine all causes of a civil nature whatever at the common law, within their respective counties, where the original jurisdiction is not by any act of the General Assembly confined to a single magistrate or to the supreme or superior courts ; of all penalties to the amount of sixty dollars and upwards, incurred by violation of the penal statutes of this State or of laws passed by the congress of the United States, where, by such law, jurisdiction is given to the courts of the several states ; of suits for dower, partition, filial portions, legacies and distributive shares of intestates' estates and all other matters relating thereto ; to try, hear and determine all matters and things relating to orphans, idiots and lunatics and the management of their estates, in like manner as courts of chancery exercise jurisdiction in such cases ; to try, hear and determine all petit larcenies, assaults and batteries, all trespasses and breaches of the peace and other misdemeanors of what kind soever of an inferior nature ; and of all other criminal cases where the judgment upon conviction shall not extend to life, limb or member ; and in all other cases where jurisdiction and power to act is given by any act of the General Assembly.

Court may purchase such books as may be deemed necessary.

Said court, a majority of the justices being present, may appoint a special court, &c.

6. The justices of said courts shall have power and authority to purchase such books, as they shall deem necessary, to be kept by their clerk in his office for the use of said court : and the said justices, a majority of them being present, at the first term of said courts which may happen after the first day of January in each and every year, may in their discretion appoint five of their number to hold said courts for one year, any three of whom shall have full power and authority to act ; and they shall be entitled to receive, as a compensation for their services, a sum not exceeding three dollars nor less than one dollar per day for each and every day they shall hold said court, which sum shall be fixed by the said court, a majority of the justices being present, and shall be paid out of the funds of said county, upon the certificate of the clerk

5. 1777, c. 115, s. 56.—1785, c. 233, s. 1.—1808, c. 741.—1809, c. 765.—1803, c. 627.—1815, c. 894.—1762, c. 69.—1784, c. 223.

6. 1749, c. 49, s. 1, amended.

of said court showing the number of days each justice has attended.

7. If any county court clerk shall abuse or destroy, or suffer to be abused or destroyed, any of the books so committed to his care, he shall be fined at the discretion of the court for such neglect.

Penalty on the clerk for abusing the books purchased, &c.

8. Said court shall have full power to lay such an additional tax on their respective counties as shall be sufficient to purchase and provide the books aforesaid.

Court may lay a tax for purchasing said books.

9. A superior court shall be held by a judge thereof, at the court house in each county in the State, twice in every year.

A superior court of law to be holden in each county.

10. The State shall be divided into seven circuits:—  
The first circuit to be composed of the counties of Currituck, Camden, Pasquotank, Perquimons, Chowan, Gates, Hertford, Bertie, Washington, and Tyrrel:

The State to be divided into seven circuits.

The second circuit to be composed of the counties of Jones, Carteret, Onslow, Duplin, Wayne, Greene, Lenoir, Craven, Beaufort, and Hyde:

The third circuit to be composed of the counties of Pitt, Edgecombe, Nash, Johnston, Wake, Franklin, Warren, Halifax, Northampton, and Martin:

The fourth circuit to be composed of the counties of Chatham, Randolph, Davidson, Stokes, Rockingham, Guilford, Caswell, Person, Granville, and Orange:

The fifth circuit to be composed of the counties of Montgomery, Anson, Richmond, Moore, Robeson, Cumberland, Bladen, Columbus, Brunswick, New Hanover, and Sampson:

The sixth circuit to be composed of the counties of Surry, Wilkes, Ashe, Lincoln, Iredell, Cabarrus, Mecklenburg, Davie, and Rowan:

And the seventh circuit to be composed of the counties of Macon, Haywood, Yancey, Buncombe, Rutherford, and Burke.

11. The superior courts of law and equity in the first judicial circuit, in the several counties thereof, shall be opened and held at the times hereinafter expressed, and each respective court shall continue in session one week, unless the business of the court shall be sooner determined; viz: In the county of Tyrrel, the said courts shall be held on the first Monday in March and September; in the county of Washington, on the second Monday in March and September; in the county of Bertie, on the third Monday of March and September; in the county of Hertford, on the fourth Monday of March and September; in the county of Gates, on the first Monday after the fourth Monday of March and September; in the county of Chowan, on the second Monday after the fourth Monday of March and September; in the county of Perquimons, on the third Monday after the fourth Monday of March and September; in the county of Pasquotank, on the fourth Monday

When the superior courts shall be holden in the first circuit.

7. 1749, c. 49, s. 2.

8. 1749, c. 49, s. 3.

9. 1806, c. 693, s. 1.

10. 1806, c. 693, s. 2, amended.

11. 1818, c. 937, s. 1.



after the fourth Monday of March and September ; in the county of Camden, on the fifth Monday after the fourth Monday of March and September ; in the county of Currituck, on the sixth Monday after the fourth Monday of March and September.

When in the second circuit.

12. The courts in the counties composing the second circuit shall be held on the following times, to wit : In the county of Onslow, on the first Monday of March and September ; in the county of Jones, on the Wednesday next after the second Monday of March and September ; in the county of Lenoir, on the third Monday of March and September ; in the county of Duplin, on the fourth Monday of March and September ; in the county of Wayne, on the first Monday after the fourth Monday of March and September ; in the county of Greene, on the second Monday after the fourth Monday of March and September ; in the county of Carteret, on the third Monday after the fourth Monday in March and September ; in the county of Craven, on the fourth Monday after the fourth Monday of March and September ; in the county of Beaufort, on the fifth Monday after the fourth Monday of March and September ; in the county of Hyde, on the sixth Monday after the fourth Monday of March and September.

When in the third circuit.

13. The courts in the counties composing the third circuit shall be held on the following times, to wit : In the county of Martin, on the Monday before the first Monday in March and September ; in the county of Pitt, on the first Monday in March and September ; Edgecombe, the second Monday in March and September ; Nash, the third Monday in March and September ; Johnston, the fourth Monday in March and September ; Wake, the first Monday after the fourth Monday in March and September ; Franklin, the second Monday after the fourth Monday in March and September ; Warren, the third Monday after the fourth Monday in March and September ; Halifax, the fourth Monday after the fourth Monday of March and September ; Northampton, the fifth Monday after the fourth Monday of March and September.

When in the fourth circuit.

14. The courts in the counties composing the fourth circuit shall be held on the following times, to wit : In the county of Granville, on the first Monday in March and September ; Orange, the second Monday in March and September ; Chatham, the third Monday in March and September ; Randolph, the fourth Monday in March and September ; Davidson, on the first Monday after the fourth Monday of March and September ; Stokes, the second Monday after the fourth Monday of March and September ; Guilford, the third and fourth Mondays after the fourth Monday of March and September ; Rockingham, the fifth Monday after the fourth Monday of March and September ; Caswell, the sixth Monday after the fourth Monday of March and September ; Person, the seventh Monday after the fourth Monday of March and September.

12. 1806, c. 693, s. 3.—1818, c. 986.—1821, c. 1127, s. 1.—1821, c. 1128.—1830, c. 48, s. 1.—1833, c. 35, s. 1.

13. 1806, c. 693, s. 3.—1821, c. 1128.—1825, c. 1303.

14. 1806, c. 963, s. 3.—1824, c. 1231, s. 1.—1825, c. 1304.

15. The courts in the counties composing the fifth circuit When in the fifth circuit, shall be held on the following times, to wit : In the county of Moore, on the last Monday of February and on the last Monday of August ; Montgomery, on the first Monday in March and the first Monday of September ; Anson, on the second Monday of March and the second Monday of September ; Richmond, on the third Monday of March and the fourth Monday of September ; Robeson, on the fourth Monday of March and the first Monday after the fourth Monday of September ; Bladen, on the first Monday after the fourth Monday of March and the second Monday after the fourth Monday in September ; Columbus, on the second Monday after the fourth Monday in March and on the third Monday after the fourth Monday in September ; Brunswick, on the third Monday after the fourth Monday in March and on the fourth Monday after the fourth Monday of September ; New Hanover, on the fourth Monday after the fourth Monday of March and on the fifth Monday after the fourth Monday of September ; Sampson, on the fifth Monday after the fourth Monday of March and on the sixth Monday after the fourth Monday of September ; Cumberland, on the sixth Monday after the fourth Monday of March and on the seventh Monday after the fourth Monday of September, in each and every year.

16. The term of Anson superior court of law and equity shall continue two weeks successively at the fall term thereof, whenever the business of the said court requires it. Anson court may be holden two weeks in the fall.

17. The courts in the counties composing the sixth circuit shall be held on the following times, to wit : Cabarrus, on the second Monday in February and August ; Mecklenburg, on the third Monday in February and August ; Lincoln, on the second Monday after the third Monday of February and August ; Iredell, on the third Monday after the third Monday in February and August ; Rowan, on the fourth Monday after the third Monday in February and August ; Surry, on the fifth Monday after the third Monday in February and August ; Ashe, on the sixth Monday after the third Monday of February and August ; Wilkes, on the seventh Monday after the third Monday of February and August ; Davie, on the eighth Monday after the third Monday of February and August. And the term of Mecklenburg superior court shall be held two weeks, when necessary. When the superior courts shall be holden in the sixth circuit.

18. The courts in the counties composing the seventh circuit When in the seventh circuit. shall be held on the following times, to wit : Macon, to begin on the fourth Monday of March and September ; Haywood, on the first Monday after the fourth Monday of March and September ; Yancey, on the second Monday after the fourth Monday of March and September ; Buncombe, on the third Monday after the fourth Monday in March and September ; Rutherford, on the fifth Monday after the fourth Monday of March and September ; and Burke, on the seventh Monday after the fourth Monday of March

15. 1822, c. 1179.

16. Amendment.

17. 1833, c. 27.—1834, c. 12.—1834, c. 14.—1836, c. 13.

18. Amendment.—1836, c. 13.



and September, in each and every year hereafter. And the terms of Buncombe, Rutherford and Burke superior courts shall each continue two weeks, when necessary.

Said courts may be kept open longer than one week for the purpose of closing a trial in a capital case.

19. Nothing contained in this act, fixing the duration of, or assigning a period to the close of the term of any superior court, shall prevent the judge holding the same from keeping it open a longer period, when the trial of a capital case shall have been commenced and the jury not have returned their verdict, but in any such case the judge holding the court is hereby authorized to continue said court or adjourn the same from day to day, for the purpose of finishing the trial and the reception of the verdict, and rendering the judgment of the law thereon, in any capital case, the trial whereof may have previously commenced.

Said courts to be holden by judges. Their powers and jurisdiction.

20. The said courts shall be holden by judges, being men of abilities, integrity and learned in the law, who shall have cognizance and legal jurisdiction of all pleas real, personal and mixed, and also all suits and demands relative to legacies, filial portions and estates of intestates; all pleas of the State and criminal matters of what nature, degree or denomination soever, whether brought before them by original or mesne process, or by certiorari, writ of error, appeal from any inferior court or by any other way or means whatsoever; and they are hereby declared to have full power and authority to give judgment and to award execution and all necessary process thereon, and shall have, use, exercise, and enjoy the same powers and authorities, rights, privileges and pre-eminences, as were had, used, exercised and enjoyed by any former judges of the superior courts in this State, except where it is or may be otherwise directed by this or any other act of the legislature.

Oaths to be taken by the judges.

21. The said judges, before they act as such, shall, in open court, or before the governor for the time being, or before one of the judges of the superior courts, or before some justice of the peace, take the oath appointed for the qualification of public officers and also an oath of office.

Oaths taken to be subscribed by the judges and returned to the secretary of state.

Penalty on a judge for acting without taking the oaths.

22. It shall be the duty of the officers or court, before whom such judge or judges shall qualify, to cause such judge or judges to subscribe the oaths, by him or them taken, and having certified the same shall return said oaths to the secretary of state, who shall carefully preserve the same; and if any judge shall act in his office before he shall have taken the oaths hereby directed, he shall forfeit and pay two thousand dollars, to be recovered by action of debt in any of the superior courts, one half to the use of the State and the other half to the person who shall sue for the same.

Judges to allot the circuits among themselves and publish the same.

23. The judges of the superior courts or a majority of them shall allot the circuits among themselves, and it shall be their duty to cause a notification of such allotment to be published in the

19. 1830, c. 22.

20. 1777, c. 115, s. 2.—1807, c. 712, s. 4.—1808, c. 741.—1814, c. 876.—1814, c. 869.—1815, c. 894.—1818, c. 968.—1818, c. 971.—1818, c. 985, s. 3.—1829, c. 19, s. 3.

21. 1777, c. 115, s. 5.—1806, c. 694, s. 13.

22. 1806, c. 694, s. 13.—1774, c. 115, s. 6.

23. 1806, c. 693, s. 6.—1818, c. 963, s. 10.—1821, c. 1079, s. 1.

\* Judges located 1848-9. ch 45

State Gazette, by the first day of February and the first day of August preceding each and every circuit, for which such allotment shall be made, provided that no judge shall be allotted the same circuit twice in succession.

24. The said judges may exchange with each other for any court or courts in their circuits.

Judges may exchange circuits.

25. If some one of the said judges shall not attend and hold each of the superior courts, on the day by law prescribed for holding such courts, the sheriff of the county or his lawful deputy shall open and adjourn such court, from day to day, until one of the said judges shall attend and hold the same, or until the third day appointed for the holding thereof, on which said third day the sheriff or his lawful deputy shall adjourn the same until the next court, to which time all actions, pleas, process and other matters pending in the said court shall be continued and have day as if the said court had been duly held.

If no judge attend the first day of the term, the sheriff may adjourn from day to day till the third day.

26. The courts of pleas and quarter sessions at the first term which shall be holden after the first day of January next, and once at least in every two years thereafter, shall cause their clerk to lay before them the tax returns of the preceding year for their county, from which they shall select the names of such persons only as are freeholders and as are well qualified to act as jurors, a list of which names shall be drawn out by their clerk and constitute the jury list; and if said tax returns shall not contain the names of all the inhabitants of their said county, who in their opinion are well qualified to act as such jurors, they shall cause the names of all such persons to be inserted on their said jury list, provided all such persons so selected shall by law be qualified to act as jurors; which jury list so made up shall continue for two years in its operation, at the end of which time it shall be the duty of the said court and they are hereby required to examine carefully the jury lists already made out, and diligently inquire if any persons qualified to be jurors as abovementioned are omitted, and whether any persons not qualified to be jurors as abovementioned have been inserted, and if they find that any have been omitted they shall add them to the jury list to be drawn as above directed, and if they find that any have been inserted not possessing the requisite qualifications, they shall direct the name of such person to be stricken out from the jury list; and to obtain full information on this subject, the said courts may examine on oath or affirmation any person they may think proper.

County court to form a jury list from the list of taxables, taking none but persons well qualified.

Jury list to continue and be examined every two years.

27. The said courts shall cause the names so contained on their jury list to be written on small scrolls of paper of equal size, and put into a box to be procured for that purpose, which shall have two divisions marked No. 1 and 2, and two locks, the key of one to be safely kept by the sheriff of the county, the other by the chairman of the county court, and the box by the clerk of said court; and the said justices at each and every session of their said court, which shall happen next preceding the sitting of the superior

The number of jurors to be drawn for the superior courts, and how they are to be drawn.

24. 1821, c. 1079, s. 2.

25. 1806, c. 694, s. 2.—1777, c. 115, s. 12.

26. 1806, c. 694, s. 1.—1779, c. 157, s. 2.—1807, c. 712, s. 1 and 3.

27. 1806, c. 694, s. 1.—1817, c. 938.—1810, c. 801.



court of the said county, shall cause to be drawn from the said jury box out of the partition marked No. 1, by a child not more than ten years of age, not more than thirtysix nor less than thirty scrolls, and the persons whose names shall be inscribed on said scrolls shall serve as jurors at the next succeeding superior court to be held for said county. *Provided always*, that whensoever the county court of such county shall be held within fifteen days of the sitting of the superior court of the same, that then the court preceding such county court shall draw the jury as aforesaid: And said court of pleas and quarter sessions, at each term thereof, shall in like manner draw the like number of names of persons, who shall serve as jurors at the next term of said court; and should any of the jurors so drawn have a suit pending and at issue in the superior or county court, or should the name of any justice of the peace be drawn to serve as a juror in the county court, the several scrolls with his or their names shall be returned into the partition No. 1 of the jury box; or if any of said persons so drawn be dead or removed out of the county, the said scrolls with his or their names shall be destroyed; and in all such cases other jurors shall be drawn in his or their stead, and the scrolls drawn as aforesaid shall be put into the partition marked No. 2. *Provided*, that if before the expiration of two years the names of the jurors in the partition No. 1 shall be drawn out, then the whole names shall be put into the partition marked No. 1 and drawn out again as herein first directed: And there shall also be put into the said partition marked No. 1, at the court following the first day of January in each year, the names of such persons as shall appear by the tax list immediately preceding to have become qualified to serve as jurors, since the making out the jury list, and whom said court shall deem fit persons to be jurors.

The number to be drawn for the county courts, and how drawn.

Persons having suits in court not to be drawn, nor justices for the county courts.

On failure of the county court to draw jurors, the sheriff and clerk assisted by three justices may draw them.

County courts may dispense with a jury at two of their terms.

Jurors how to be summoned—shall attend till discharged by court.

28. If any county court shall fail or neglect to draw jurors to attend the superior court of the county, or the succeeding term of said county court, it shall be the duty of the sheriff and the clerk of said county court and they are hereby required, in the presence of and assisted by three of the justices of the peace of the county, to draw from the jury box the same number of jurors, and in the same manner and under the same rules, regulations and restrictions, as prescribed in the preceding sections.

29. Whenever it shall appear to any court of pleas and quarter sessions that the business thereof does not require the attendance of a jury at every term, it shall be in their power, a majority of the acting justices being present, to pass an order dispensing with the attendance of a jury at more than two terms, which order when so made shall not be rescinded but by a court constituted of a majority of the acting justices.

30. The clerk of said court shall deliver the list of such jurors, both of the county and superior courts, to the sheriff of the county, whose duty it shall be to summon the persons therein named to at-

28. 1831, c. 33.

29. 1806, c. 693, s. 9.—1828, c. 15, s. 2 and 3.

30. 1806, c. 694, s. 1.—1779, c. 157, s. 6 and 9.—1830, c. 42.

tend as jurors at such courts respectively, which summons shall be served, personally or by leaving a copy thereof at the house of the juror to be summoned at least ten days before the sitting of the court, when the summons is to attend a superior court, and at least five days before the sitting of the county court to which he may be summoned, at which courts respectively said jurors shall appear and give their attendance until duly discharged ; and that there may not be a defect of jurors, the sheriff may and shall by order of said court summon, from day to day, of the bystanders, other jurors, being freeholders within the county where the court is held, to serve on the petit jury, and on any day the court may discharge those who have served the preceding day.

Tales jurors may be summoned when necessary.

31. Every person on the original venire, summoned to appear as a juror at any of said courts, who shall fail to appear and give his attendance until duly discharged, shall forfeit and pay a sum not exceeding ten dollars nor under four when summoned to attend a county court, and twenty dollars when summoned to attend a superior court, to be assessed by the court to which such person shall be returned as a juror, to be applied towards defraying the county charges : *Provided*, that each delinquent juror shall have until the next succeeding term to make his excuse for his non-attendance, and if he shall render an excuse deemed sufficient by said court, he shall be discharged without costs : And every person so summoned of the bystanders, who shall not appear and serve during the day as a juror, shall be fined in the sum of two dollars, unless he can show sufficient cause to be approved by the court, and the court shall order the clerk forthwith to issue an execution against the body or goods of the delinquent tales juror for such amercement and costs.

Penalty on jurors for not attending when summoned.

Proviso that jurors shall have till the succeeding term to make excuse.

Penalty on tales jurors for not attending.

32. No sheriff or other officer shall serve or execute any writ or other civil process on the body of any juror, during his attendance or going to and returning from any court of record ; any such service shall be void, and the defendant on motion shall be discharged.

Jurors exempt from service of civil process.

33. All regular ministers of the gospel of every denomination, and all regular bred physicians or practitioners of physic and surgery, shall be exempt from serving as jurors either in the county or superior courts.

Ministers of the gospel and regular physicians exempt from serving as jurors.

34. The judges of the superior courts and the justices of the county courts shall direct the names of all the persons returned to serve as jurors, at the terms of their respective courts, to be written on scrolls of paper, which scrolls shall be put into a box or hat and drawn out by a child under ten years of age, and the first eighteen drawn shall be a grand jury for said court ; and the residue of the names in the box or hat shall be the names of those who are to serve as petit jurors for said court.

Grand jury how to be drawn.

35. The people called Quakers shall be competent to serve as grand and petit jurors in the trial of all criminal cases, and be enti-

Quakers competent to serve as jurors in criminal cases.

31. 1779, c. 157, s. 4 and 9.---1783, c. 189, s. 2 and 4.---1804, c. 664.

32. 1779, c. 157, s. 10.

33. 1804, c. 668.—1822, c. 1135.

34. 1779, c. 157, s. 11 amended.

35. 1814, c. 873.



tled to be sworn in the terms of their own religion, as heretofore prescribed by law and observed in the trial of civil cases.

How the petit jurors shall be sworn in civil causes.

36. The clerks of said courts shall, at the beginning of the court, swear or affirm such of the petit jury as are of the original panel well and truly to try all civil causes that shall come before them during the term, according to the evidence given thereon; and if there should not be enough of the original panel, the talesmen shall take the same oath or affirmation to try all such causes as shall come before them during the day; and in the trial of all pleas and prosecutions for offences, not capital, unless in cases where the court shall otherwise direct, petit jurors of the original panel as well as talesmen shall be sworn or affirmed, as the case may be, well and truly to try all issues of traverse that shall come before them during the day. *Provided*, nothing herein contained shall be so construed as to prevent the usual challenges in law to the whole jury so sworn or to any of them; and if by reason of such challenge any juror shall be withdrawn, his place on such jury shall be supplied by any of the original venire, or of the bystanders by law qualified to serve as jurors.

How in State cases not capital.

Proviso, that the usual challenges shall not be affected.

Names of the jurors to be called over in the hearing of the parties before empanelling them.

37. The clerks of the several superior and county courts, before a jury shall be empanelled to try the issue or issues in any civil suit, shall read over the names of the jury upon the panel in the presence and hearing of the parties or their counsel; and it shall be competent for the said parties, or their counsel for them, to challenge peremptorily four jurors upon the said panel, without showing any cause therefor, which challenge shall be allowed by the court.

Constable to be sworn to attend juries.

38. When any constable shall be appointed or summoned to attend any of the superior or county courts (except such as may be appointed to attend the grand jury), it shall be the duty of the clerk, at the time of the first going out of a jury on the trial of any civil cause, to administer an oath to the constable faithfully to attend the several juries that shall or may be put under his care during that term, that shall be charged in the trial of any civil cause; and after the said constable shall be once sworn, as herein mentioned, he shall be considered to all intents and purposes as acting on oath, upon the attendance of every jury that he may be called upon to attend during that term.

X

PRACTICE, PLEAS AND PROCESS.

Actions where to be brought.

39. All real actions, actions of ejectment, trespass *quare clausum fregit*, suits on penal statutes and pleas of the State, shall be commenced in the court of the county wherein the cause of action shall arise, or the offence be committed, and not elsewhere; and all actions of debt, other than on penal statute, all actions of detinue and replevin, actions of account render, assault and battery, and for the unlawful taking of goods, all actions upon the case, and

36. 1790, c. 321.—1822, c. 1133, s. 1.  
 37. 1796, c. 452, s. 2.—1812, c. 833.  
 38. 1801, c. 592, s. 2.  
 39. 1777, c. 115, s. 9.—1806, c. 693.

X

1840.1. ch 44  
 1844.5 ch 13  
 1846.7 ch 61.67

suits for legacies, and for distributive shares of intestates' estates, shall be brought to the court of the county where both parties reside; and where the parties live in different counties, shall be brought to the court of either county, at the option of the plaintiff; and, where the plaintiff shall reside beyond seas, or in a different state or government, shall be brought to the court of the county where the defendant resides: And when any action or suit shall be brought otherwise than is herein directed, such action or suit may be abated on the plea of the defendant.

Actions otherwise brought to be abated on plea.

40. No suit shall be originally commenced in any of the said courts for any debt or demand of less value than sixty dollars, for an unliquidated balance due on any contract or agreement, or for goods, wares and merchandise sold and delivered, or for work and labor done, or for specific articles, whether due by obligation, note or assumpsit, or for any judgment which may have been granted over twelve months by a single magistrate and no execution have issued thereon, or for any forfeiture or penalty incurred by virtue of any act of the congress of the United States or the General Assembly of this State; nor for any sum of less value than one hundred dollars due by bond, promissory note, or liquidated account signed by the party to be charged thereby.

No suit to be brought in any court for any claim under sixty dollars existing on an unliquidated account, &c. — nor for a sum under one hundred dollars due by note, &c.

41. If any suit shall be commenced in any of the said county courts for any sum of less value than sixty dollars, contrary to the provisions of the preceding section, the same shall be abated on the plea of the defendant; and if any suit shall be commenced in any of said courts for any sum of less value than one hundred dollars due by bond, promissory note or liquidated account signed by the party to be charged thereby, the same shall be dismissed by the court.

If suit be commenced in the county court for a sum under sixty dollars due by account, it may be abated — if for a sum under one hundred dollars due by note, &c. it may be dismissed.

42. If any suit shall be commenced, in any of the said superior courts, contrary to the provisions of the fortieth section of this act, the same shall be dismissed by the court; and if any suit shall be commenced in any of said superior courts contrary to the true intent and meaning thereof, or if any person shall demand a greater sum than is due, on purpose to evade the operation of this act or otherwise, and by the verdict of a jury it shall be ascertained that a less sum is due to him in principal and interest than, by the provisions of the said fortieth section, said superior court has jurisdiction of, then and in that case it shall be the duty of the court to nonsuit the plaintiff, and he shall pay all costs. *Provided*, that if the plaintiff, or any other person for him, will make an affidavit, to be filed in the case, that the sum for which his suit is brought is really due, but that for want of proof, or that the time limited for the recovery of any article bars a recovery, then and in that case such plaintiff shall have a verdict and judgment for what appears legally proved, any thing to the contrary notwithstanding.

If commenced in the superior court contrary to the fortieth section the suit may be dismissed.

Where the suit is commenced for more and the jury find less to be due, the plaintiff to be nonsuited unless he files an affidavit that more is due.

*Provided, also*, that nothing herein contained shall extend, or be construed to extend, to suits on bonds, penal bills or other actions

Not to extend to suits on penal bonds, &c.

40. 1803, c. 627, s. 1.—1804, c. 650 —1820, c. 1045, s. 1.—1793, c. 392.—1808, c. 741.—1809, c. 765.—1829, c. 52

41. 1804, c. 650. —1826, c. 12.

42. 1793, c. 392.—1826, c. 12.—1808, c. 741.



of debt grounded on a penalty, when the balance due on such bond or penal bill, or other action of debt, is not of less value than the sums in the said section mentioned to be limited for bringing suits in said courts : *And provided further*, that no original writ for debt shall be issued by any clerk of the said superior court, against any person residing out of the county of said clerk for any sum under one hundred dollars.

The day when process issues to be marked thereon and the sheriff to endorse the day when he receives it.

43. The clerk or attorney, issuing process, shall mark thereon the day on which the same shall be issued, and the sheriff or other officer receiving the same in order to execute, shall in like manner mark on each process the day on which he shall have received it ; and every clerk, attorney, sheriff or other officer, neglecting so to do, shall forfeit and pay the sum of one hundred dollars, to be recovered by action of debt, in any court of record having cognizance thereof, by any person who shall sue for the same, with costs.

Clerks to take security before issuing any writ or other leading process, otherwise the suit may be dismissed.

44. No writ or other leading process, returnable to any of the courts of record within this State, shall be granted or issued by the clerk or his assistant in office, but under the following regulations and restrictions, to wit, that the clerk, either by himself or his deputy, before issuing any writ or other leading process, take sufficient security of the person so applying, conditioned that they will prosecute such suit or suits they may so commence and, in case of failure of such prosecution, pay to the defendant all such costs and damages as may be awarded against him by the court having cognizance thereof ; *Provided* nothing in this section contained shall prevent persons from suing *in forma pauperis* as hereinafter provided, and when any person, applying for a writ or other leading process, shall produce to the clerk an order signed by a judge of the superior court allowing said applicant to sue *in forma pauperis*, it shall be the duty of said clerk to issue such writ or leading process without requiring bond and security : And if any writ or leading process shall be issued without such security being given or such order made, the same shall be dismissed by the court on motion of the defendant.

Proviso in favor of persons suing *in forma pauperis*.

Clerks to enter in a book the names of parties to suits and their sureties.

45. When any clerk, either by himself or his deputy in office, shall issue any writ or other process, or any declaration of ejectment shall be returned into his office and security thereon given as hereinafter directed, he shall enter the same in a book to be kept by him for that purpose, together with the names of the plaintiff and defendant and the place of their abode, the names of the security or securities for obtaining such writ and the place where they live, and have the same before the court, where he may so officiate as clerk, subject to the examination of such court.

Penalty on clerks for issuing process without taking security.

46. If any clerk, either by himself or his assistant in office, shall issue any writ or other leading process otherwise than as by the two preceding sections directed, he shall pay to the defendant the sum of two hundred dollars, to be recovered by action of debt in

43 1777, c. 115, s. 13.

44. 1787, c. 276, s. 1.—11 Hen. 7th, c. 12.

45. 1787, c. 276, s. 2.

46. 1787, c. 276, s. 3.

the court where such offence shall have been so committed, and also shall forfeit and pay the sum of one hundred dollars for every offence, so committed by such clerk or his assistant in office, recoverable in any court of record having cognizance thereof, one-half to the use of the person suing for the same, the other half to the use of the poor of the county.

47. Every poor person or persons, which have or hereafter shall have cause of action or actions against any other person or persons, either in law or equity, shall have, at the discretion of any one of the judges of the supreme or superior courts, a writ or writs at law or writ of subpœna in equity, according to the nature of their causes, paying no costs on the same nor giving any security therefor ; and the courts, to which the said writs may be returnable, shall assign to the said poor person or persons learned counsel or attorneys to attend to their cases, which counsel or attorneys shall attend without fee or reward, and no costs shall be charged to such person or persons by any officer of the court in which such suit shall be brought.

Poor persons may sue in forma pauperis.

48. It shall and may be lawful, in all cases where there may be two or more defendants, for the plaintiff in any suit in the superior courts, or in the county courts where one of the defendants resides in the county, to issue writs directed to the sheriff or coroner of each of the counties, where the defendants are most likely to be found, noting on each process that they are issued in the same suit ; and when the same are returned they shall be docketed in the same manner as if only one had issued ; and in case any defendant or defendants should not be served with such process, the same proceedings shall be had as in cases of other similar process which has not been executed.

When writs may issue to different counties at the same time, returnable to the county or superior court.

49. Upon the return of any writ of ejectment to any court having cognizance thereof, the real plaintiff in said writ, his agent or attorney, at the return court of said writ, shall enter into bond with the clerk of the court, to which said writ shall be returned, with good and sufficient security to prosecute the same with effect, or otherwise to pay all such costs and damages as shall be awarded on failure thereof.

The real plaintiff in action of ejectment to give a prosecution bond.

50. In all actions of ejectment the person or persons, who shall make themselves defendants in said suits, shall on doing the same, either by themselves, their agent or attorney, enter into bond with good and sufficient security to answer such writ or writs of ejectment in the court or courts to which they may be made returnable, and abide by the determination of the same, which defendant or defendants shall be under the same rules and regulations and liable to the same judicial proceedings, as to all costs and damages that may be awarded against him or them, as principal and bail are subjected to in other civil actions of law in said court.

Persons desiring to be made defendants in ejectment must give a bail bond.

51. If the lessor of the plaintiff in any action of ejectment,

Where a plaintiff in ejectment makes an affi-

47. 11 Hen. 7, c. 12.

48. 1789, c. 314, s. 1 and 2.—1831, c. 14, s. 2.

49. 1804, c. 658, s. 1.

50. 1804, c. 658, s. 2.

51. 1823, c. 1184.



davit that the defendant entered into the land as his tenant, &c. the defendant shall not plead until he gives bond for the costs and damages.

his agent or attorney, or if any one of the several lessors, or the agent or attorney of any one lessor, shall, at the return term of the declaration in ejectment, file his or her affidavit that the tenant in possession of the premises sued for, and to whom the notice of the said suit is directed in the process issued, entered into said premises as his or her tenant or as tenant of the person, as whose agent or attorney said affiant deposes, that said tenant's term therein has expired and that said tenant refuses to surrender the possession of said premises to said lessors or any one of them, said person in possession or any other person made defendant shall not be entitled to plead to said suit, and the lessors of the plaintiff shall be entitled to judgment final against the casual ejector at the said return term, unless the said person in possession or other person applying to be made defendant shall enter into bond, in such sum as the court shall direct, with surety to be approved by said court, with condition that said defendant or defendants shall pay the said lessor or lessors all such costs and damages as shall be recovered in said suit ; and it shall be the duty of the jury in such cases, where issue may be joined, to find in their verdict whether the defendant entered into possession of the premises as the tenant of the lessors or of which of them, and whether he refused to surrender the premises after his term therein had expired, and, if such finding shall be in favor of the lessors of the plaintiff, such jury shall assess the damages to which the lessors of the plaintiff shall be entitled, including the value of the occupation of the premises sued for from the expiration of said tenant's term to the rendition of the verdict, and damages for waste and trespass during the time of said holding over, and the court shall render judgment against the defendant and his securities upon their said bond, to be discharged by the payment of the damages assessed as aforesaid and the payment of all costs, judgment upon which verdict shall bar the action for the mesne profits or for the trespass by any of the lessors in said action. *Provided nevertheless*, that it shall be competent for the defendant or tenant in possession to rebut, by his or her affidavit, the facts set forth in the affidavit offered on the part of the lessor of the plaintiff, and the court in such cases shall decide thereon and may in its discretion allow the affidavits on either side to be corroborated by other affidavits or evidence.

What facts in such case the jury are to find.

If they find for the plaintiff they must assess damages for the occupation, &c.

Defendant may rebut plaintiff's affidavit by his own, &c.

If plaintiff in ejectment does not give security his suit to be dismissed. Defendant to give bail or be in custody before pleading.

Writs and other civil process, when to be returned.

52. Whenever any plaintiff in ejectment shall fail to give his bond for prosecuting his suit as before directed, the court shall on motion dismiss the suit ; and whenever any person or persons may be desirous of becoming defendant or defendants in any suit in ejectment, they shall give bond as before directed or be in custody of the sheriff, before they or their attorney shall be permitted to plead.

53. All writs and other civil process, except subpoenas returnable immediately, shall be returned the first day of the term to which the same shall be returnable, and shall be executed at least ten days before the beginning of the term, when returnable to a su-

52. 1804, c. 653, s. 5.

53. 1777, c. 115, s. 14 and 67.

perior court, and at least five days before the beginning of the term, when returnable to the county court ; and if any original or mesne process shall be taken out, within the time above specified, before the beginning of any of the terms of said courts from which they respectively issued, such process shall be made returnable to the term next succeeding that which shall commence within the times above specified after taking out such process, and not otherwise ; and all process, made returnable at any other term, or executed at any other time or in any other manner, than is by this act directed, shall be adjudged void upon the plea of the defendant.

How long before court to be executed.

54. When any sheriff shall return that he hath taken the body of any defendant and committed him to the prison of his county, which is hereby declared to be the proper place for such commitment, the plaintiff may enter the defendant's appearance and he shall be at liberty to plead, as if such appearance had been entered by himself, and the plaintiff may proceed as in other cases as in this act directed ; nevertheless the defendant shall not be discharged out of custody but by putting in bail or by rule of court.

When sheriff returns that he has defendant in jail, how the plaintiff shall proceed.

55. No female whatever shall be taken or imprisoned for debt.

No female shall be taken or imprisoned for debt.

56. When the sheriff shall make return in any civil action that the defendant is not to be found in his county, the plaintiff may, at his election, sue out an attachment against the estate of such defendant, or an *alias*, or *pluries capias* until he be arrested, returnable in the same manner as original process ; and if the sheriff shall return any goods by him attached, the plaintiff shall file his declaration according to the rules of the court, and if the defendant shall fail to appear and plead within the time herein directed, the plaintiff shall be entitled, if in an action of debt, to final judgment, and, if in an action on the case, to an interlocutory judgment, and in consequence thereof, may execute a writ of inquiry the next succeeding term ; and the goods so attached, if not replevied or sold according to the rules prescribed for goods taken on original attachment, shall remain in the custody of the sheriff until final judgment, and then be disposed of in the same manner as goods taken in execution on a writ of *feri facias*, and if the judgment shall not be satisfied by the goods attached, the plaintiff may have execution for the residue.

How the plaintiff may proceed when the sheriff returns that the defendant is not to be found.

If goods be taken on a judicial attachment, and be not replevied, they may be sold on final judgment.

57. And when any defendant, in a writ sued out of a superior court, or out of a county court where there is more than one defendant and one of the defendants resides in such county, shall be a known inhabitant of any other county than that of the sheriff, to whom such process shall be directed, the sheriff shall return the truth of the case, and thereupon an *alias* shall issue directed to the sheriff of the county where such defendant resides, and variance of the addition of the place of abode of the defendant shall not be deemed error or matter of abatement.

When a sheriff returns that the defendant is not an inhabitant of his, but some other county, an *alias* shall issue to the county where the defendant resides.

58. It shall not be lawful for any sheriff or other officer to exe-

Times at which the

54. 1777, c. 115, s. 18.

55. 1823, c. 1209 amended.

56. 1777, c. 115, s. 23 and 71.

57. 1777, c. 113, s. 5.

58. 1777, c. 118, s. 6.



sheriff shall not execute civil process.

cute any writ or other process, upon a Sunday, or upon any person attending his duty at a muster of the militia, or at any election of members of the General Assembly, or of member of congress, or electors of president and vice-president, or of any officer of this State, or upon any person summoned to attend as witness or juror ; and all such services of process are hereby declared illegal and void, unless the same be issued against any person or persons for treason, felony, riot, rescous, breach of the peace, or upon escape out of prison or custody, and such process shall and may be executed at any time or place.

If there be in any county no proper officer to execute process, or he refuse to do so, any judge may direct the sheriff of an adjoining county to execute the same.

59. If at any time there should be no proper officer in any county in this State, to which any process, original, mesne or final, of any court of record shall or ought to be directed, who can lawfully serve or execute the said process, or if there be such officer, who shall refuse or neglect to execute the same, any judge of the superior courts of law and equity, or any judge of the supreme court, the same being made to appear to him, shall authorize and command the sheriff of any county adjoining the one, to which the said process shall or ought to be directed, to serve and execute said process, who shall have the same powers and be subject to the same rules and receive the same fees, as the sheriff of the county should or might have and receive.

Additional compensation to sheriffs for executing process out of their county.

60. Whenever any process shall be directed to any sheriff of an adjoining county, to be served out of the county, in which said sheriff shall reside, such sheriff shall for such service have and receive not only the fees allowed him by law, but as further compensation shall be allowed five cents for every mile he may be compelled to travel in going to and returning from serving the said process : *Provided, nevertheless*, that whenever any writ of *fieri facias* amounting to five hundred dollars or upwards, shall be directed to any sheriff of an adjoining county, under the provisions of this act, then and in that case such sheriff shall not be allowed mileage, but the commissions, to which such sheriff shall be entitled, shall be deemed a sufficient compensation for serving said *fieri facias*.

Sheriff failing to execute and return process to forfeit one hundred dollars, and be also liable to indictment.

61. Every sheriff or coroner, who shall fail duly to execute and return all process to him directed, shall be subject to a penalty of one hundred dollars for each neglect, to be paid to the party grieved, by order of the court, upon motion and proof that the process was delivered to him twenty days before the sitting of the court, to which the same is returnable, unless such sheriff or coroner can show sufficient cause to the court for his failure at the court next succeeding such order ; and said sheriff or coroner, for every such neglect duly to execute and return process delivered to him as aforesaid, shall be further subject to indictment in any court of record, and on conviction shall be fined or imprisoned at the discretion of the court.

59. 1821, c. 1030.—1822, c. 1132, s. 1.—1779, c. 156, s. 3.

60. 1822, c. 1132, s. 2.

61. 1821, c. 1110.

RULES OF COURT.

62. The following rules and methods shall be observed in said courts, to wit : The plaintiff, by himself or his attorney, shall file his declaration in the clerk's office, on or before the third day of the term to which his suit shall be brought ; otherwise the suit shall be dismissed by the court at the costs of the plaintiff.

Rules of court. Declaration to be filed within the three first days of the term, or the suit may be dismissed.

The defendant shall appear and plead or demur at the same term to which the writ shall be returnable ; otherwise the plaintiff may have judgment by default, which in actions of debt shall be final, unless where damages are suggested on the roll, and in that case and in all others not specially provided for, where the recovery shall be in damages, a writ of inquiry shall be executed at the next succeeding term. *Provided*, that where the nature of the

Defendant to appear and plead or demur at the same term.

action requires special pleading, the time for pleading may be enlarged. *And provided further*, that where a plaintiff shall obtain judgment final, at the first term to which the process shall be returned, in an action of debt, it shall be lawful for him to execute his inquiry the same term, as to the value of any foreign currency or money for which the suit may be brought.

When special pleading is required, the time may be enlarged.

Where defendant pleads specially, the plaintiff shall reply or demur at the same term at which the plea or demurrer is filed, or a *non pros.* may be entered by the defendants ; and if the plaintiff replies and in his replication tenders an issue, the defendant shall join issue or demur at the same term, otherwise the plaintiff may have judgment ; and where the defendant rejoins to the plaintiff's replication, he shall file his rejoinder at the same term, or judgment shall go against him, unless the time for pleading shall be enlarged as aforesaid.

Writ of inquiry as to the value of foreign currency to be executed at the same term with the judgment.

When a special verdict shall be found, a case agreed, a demurrer filed, or a bill of exceptions to the evidence tendered, time may be allowed upon motion of either party to the next term to argue the same.

Plaintiff to reply or demur at the same term.

In any matter or suit depending in any of said courts, either plaintiff or defendant may enter his own pleas and defend his own cause ; and no instrument of writing, which contains the substance, shall be lost or destroyed for want of form.

Other pleas to be filed and issues made up at the same term.

For the better preservation of the records of the courts, when any cause is finally determined, the clerk of each court shall enter all the proceedings therein in a book well bound, and an entire and perfect record make thereof.

Time may be allowed to argue demurrer, bill of exceptions, &c.

All jury causes shall be first tried.

Parties may enter their own pleas.

All motions in arrest of judgment shall be argued within the three last days of the term, in which the issue shall be tried, the defendant's attorney first serving the plaintiff's attorney with a copy of the reasons in arrest of judgment, unless upon sufficient cause shown and approved of by the court further time shall be allowed.

Clerk to enter proceedings of court in a well bound book.

Jury causes to be first tried.

Arguments on writs of error, special verdicts, cases agreed,

Motions in arrest of judgment to be argued when.

62. 1777, c. 115, s. 24, 34 and 73.—1779, c. 133, s. 2.—1785, c. 233, s. 3.—1786, c. 253, s. 2, 3 and 6.—1796, c. 451.—1793, c. 496, s. 1 and 2.—4 Anne, c. 16, s. 4.



Argument causes—when to be argued.  
 No plea in abatement to be received, but on affidavit or proof.  
 When plea in abatement is overruled plaintiff shall recover costs.  
 As many pleas as may be thought necessary may be pleaded.  
 A plea since the last continuance, not to be a waiver of former pleas.

All issues to be tried at the succeeding term after being made up.  
 No cause to be continued but by consent of parties or on affidavit.  
 Court may order a party continuing a cause to pay costs.

Not more than one attorney to speak in any cause.

Every attorney appearing in any cause to produce and file a power of attorney if required.

When it is necessary for the attorney to retain the power, what to be done.

No attorney to enter an ap-

demurrers, petitions for legacies and distribution of intestates' estates, shall be heard upon the four last days of the term.

No plea in abatement shall be received in any of the said courts, unless the party offering the same shall by affidavit or otherwise prove the truth of such plea.

Where a plea in abatement shall be pleaded and upon argument the same shall be adjudged insufficient, the plaintiff shall recover against the defendant full costs to the time of overruling such plea, including the costs of court; and the plaintiff in replevin or defendant in any other action may plead as many several matters as may be necessary for his defence, so that he may not be permitted to plead and demur to the whole.

The entering a plea since the last continuance of a suit at law shall in no case whatever be construed a relinquishment of any plea previously entered, but the same shall retain the like force and operation, which it would have had if such plea since the last continuance had not been entered.

All issues, whether general or special, shall be heard and tried the next succeeding term after the issue shall be made up, unless by consent of parties or on sufficient cause shown to the court by affidavit filed such cause should be continued; nor shall any cause be continued at any term but by consent or on affidavit showing sufficient cause.

Whenever it shall be the opinion of the court that the party praying a continuance shall not obtain it without payment of costs, the whole of these costs shall be paid before the continuance is granted, and the party paying such costs shall not be entitled to recover them, although the judgment of the court shall finally be in his favor.

It shall not be lawful for either plaintiff or defendant to employ, in any matter or suit, more than one attorney to speak in such matter or suit in court, and the courts in this State are hereby directed not to suffer more than one attorney, as aforesaid, in any matters whatever, to plead for either plaintiff or defendant to any suit, under penalty of a violation of this section.

Every attorney in any of the courts of law and equity in this State, who shall claim to enter an appearance for any person or persons in any of said courts, shall, upon being required so to do, produce and file in the clerk's office of the court, in which he shall so claim to enter an appearance, a power or authority to that effect signed by the person or persons or some one of them for whom he is about to enter an appearance, or by some person duly authorized in that behalf, provided that when any attorney in any of said courts shall claim to enter an appearance by virtue of a letter to him directed, whether such letter purport a general or particular employment, and it shall be necessary for said attorney to retain said letter in his own possession, he shall, on the production of said letter setting forth such employment, be allowed to enter his appearance, and it shall be the duty of the clerk to note to that effect upon the docket.

No attorney shall be permitted to enter an appearance for his

client or clients, without producing to the court when required such power or letter, and upon his failure to do so, the same proceedings shall be had thereon as in cases where no appearance is entered.

pearance, until the power is produced, if required.

63. In all actions brought in any of said courts on any bond or bonds, or on any penal sum for the non-performance of any covenants or agreements in any indenture, deed or writing contained, the plaintiff or plaintiffs may assign as many breaches as he or they shall think fit, and the jury on the trial of such action or actions shall and may assess, not only such damages and costs as have heretofore been usually done in such cases, but also damages for such of the said breaches, so to be assigned, as the plaintiff upon upon the trial of the issues shall prove to have been broken, and the like judgment shall be entered on such verdict as heretofore hath been usually done in such like actions ; and if judgment shall be given for the plaintiff on a demurrer, or by confession or *nihil dicit*, the plaintiff upon the record may suggest as many breaches of the covenants and agreements as he may think fit, upon which a jury shall be empanelled to inquire of the truth of any one of those breaches and to assess the damages, that the plaintiff shall have sustained thereby, which inquiry by the jury shall be made as in other cases of judgment by default ; and in case the defendant or defendants, after such judgment entered and before execution executed, shall pay into the court, where the action shall be brought, to the use of the plaintiff or plaintiffs or his or their executors or administrators, such damages so to be assessed by reason of all or any of the breaches of such covenant, together with the costs of suit, a stay of execution of said judgment shall be entered on record ; or if by reason of any execution executed, the plaintiff or plaintiffs or his or their executors or administrators shall be fully paid or satisfied all such damages so to be assessed with his or their costs of suit, and all reasonable charges and expenses for executing the said execution, the body, lands or goods of the defendant shall be thereupon forthwith discharged from the said execution, which shall likewise be entered upon the record, but notwithstanding, in each case such judgment shall remain, continue and be as a farther security to answer to the plaintiff or plaintiffs, and his or their executors and administrators, such damages as shall or may be sustained for further breach of any covenants in the same indenture, deed or writing contained, upon which the plaintiff or plaintiffs may have a *scire facias* upon the said judgment, against the defendant or against his heirs or his executors or administrators, suggesting other breaches of the said covenants or agreements, and to summon him or them respectively to shew cause why execution shall not be had or awarded upon the said judgment, upon which there shall be the like proceedings, as were in the action of debt upon the said bond or obligation, for assessing of damages upon trial of issues joined upon such breaches or inquiry thereof upon a writ to be awarded in manner as aforesaid, and upon payment or satisfaction in

In actions upon penal bonds, &c. plaintiff may assign as many breaches as he thinks fit.

If judgment be given for the plaintiff on demurrer, &c. he may suggest as many breaches on the roll as he thinks fit.

Defendant may pay damages and costs into court, and if so no execution shall issue.

Judgment shall continue and be a security for further breaches.



manner as aforesaid of such future damages, costs and charges as aforesaid, all further proceedings on the said judgment are again to be stayed and so *toties quoties*, and the defendant, his body, lands and goods shall be discharged out of execution as aforesaid.

Rules for taking testimony and summoning witnesses.

64. In taking the testimony of witnesses in all causes which may be depending in the superior or county courts, the following rules shall be observed and put in practice, to wit :

Subpœna for witnesses how to issue.

In all suits where witnesses are to appear at any of the said courts, the clerk at the request of the party shall issue a subpœna, directed to the sheriff or other officer of the county where such witness or witnesses are said to reside, mentioning the time and place for his, her or their appearance, the names of the parties to the suit, wherein the testimony is to be given, and the party at whose instance such witness or witnesses is or are summoned.

Subpœna returnable immediately, when to issue.

Every subpœna made returnable immediately, shall be issued only in term time, and shall be personally served on the witness or witnesses therein named.

How subpœna may be served.

A copy of every subpœna issued by the clerks in the vacation, in case the witness or witnesses therein named is or are not to be found, may be left at their usual place of residence ; and such copy, certified by the sheriff or other officer, left as aforesaid, shall be deemed a legal summons, and the person or persons therein named shall be bound to appear in the same manner as if personally summoned.

Witnesses to attend from term to term till discharged.

65. Every witness, being summoned to appear in any of the said courts, in manner as herein before directed, either in a civil suit or in a criminal prosecution or plea of the State, shall appear accordingly and continue to attend from time to time until discharged, when summoned in a civil suit, by the court or the party at whose instance such witness shall be summoned, or when summoned in a criminal prosecution or plea of the State, until discharged by the court, the prosecuting officer, or the party at whose instance he was summoned ; and in default thereof shall forfeit and pay, to the party at whose instance the subpœna issued, the sum of forty dollars, and shall be further liable to the action of said party for the full damages which may be sustained for the want of such witness's testimony, who shall recover the same by *scire facias* with costs ; or, if summoned in a criminal prosecution or plea of the State, shall forfeit and pay the sum of eighty dollars for the use of the State, unless, upon notice issued and made known, sufficient cause be shown at the next court for such failure, in which case his forfeiture shall be remitted and he shall be discharged from all costs.

Penalty on witnesses for non-attendance.

Witnesses shall be entitled to pay, if they attend after the suit is settled in vacation, unless notified.

66. *Provided always*, that if it shall so happen that the civil suit depending shall, in the vacation, be accommodated and settled between the parties, and the party at whose instance such witness was summoned should neglect or omit to discharge him or her

64. 1777, c. 115, s. 36.

65. 1777, c. 115, s. 37 and 43.—1801, c. 591.

66. 1777, c. 115, s. 38.

from further attendance, and he or she for want of such discharge should attend at the next term, then and in that case the witness, upon oath made of the facts, shall be entitled to a ticket from the clerk in the same manner as other witnesses, and shall recover from the party, at whose instance he was summoned, the same allowance which by this act is given to witnesses for their attendance at said court with costs : *Provided, also*, that if any witness shall swear falsely in order to obtain a ticket, he shall upon conviction be adjudged guilty of perjury and suffer as in cases of corrupt and wilful perjury.

Witness swearing falsely to obtain a ticket, guilty of perjury.

67. *And provided further*, that if, at the next succeeding term of said court, sufficient cause be shown by the person so summoned and failing to appear of his or her incapacity to attend at the time and place mentioned in the subpoena, then no forfeiture or penalty shall be incurred by such failure, and said witness so exonerated shall not be subject to any costs which may have accrued ; but, if on notice given by the court, sufficient cause be not shewn at the next succeeding term after such failure, it shall and may be lawful for such court, on motion, to grant judgment and award execution, for the forfeiture before mentioned, against the person so summoned and failing to appear as aforesaid.

How witnesses shall be exonerated from forfeiture and costs for non-attendance.

68. When any person, who may be a witness in any civil cause in any of the said courts, shall reside out of the State, or shall, by reason of age, bodily infirmity or other cause, be incapable of attending to give his testimony in court, or shall be in a dangerous state of health, or about to leave the State, or be a prisoner confined in jail, oath thereof being made, or the truth of the matter otherwise appearing, or when either party to a civil suit shall require the testimony of the governor, the secretary of state, the treasurer, comptroller, or any judge of the superior or supreme courts, or of the attorney general, or any of the solicitors of the State in the trial of said suit, the court wherein such suit is depending shall and may by commission empower such and so many persons as may be thought necessary, to take and receive the deposition of such witness, which being duly taken and returned, as hereinafter is directed, shall be received as legal testimony ; and in all cases, where depositions are taken in a court of law, it shall be lawful for the court to direct the clerk to pass upon such depositions, under the same rules, regulations and restrictions as are observed by clerks and masters in chancery in passing on depositions to be read in chancery.

In what cases depositions of witnesses may be taken.

Clerk to pass upon all depositions.

69. *Provided always* that the party, praying such commission, shall give such notice to the adverse party of the time and place, when and where such commission is to be executed, as the court shall think proper, and the adverse party shall have power to cross-examine any witness whose deposition shall be so taken, and all depositions otherwise taken than as herein directed, unless by consent of parties, shall be void to all intents and purposes.

Notice to be given to the adverse party of the time and place of taking depositions.

67. 1777, c. 115, s. 38.—1799, c. 528.

68. 1777, c. 115, s. 39.—1803, c. 633.—1823, c. 24, s. 1 and 2.—1836, c. 30.

69. 1777, c. 115, s. 40.



Under what circumstances depositions of witnesses may be taken before the cause is put to issue. Notice to be given, &c.

70. If any person, who may be a witness in any cause depending in any of the said courts, shall be under the necessity of leaving the State, before such cause is to be tried or even before such cause shall be at issue, or be in a dangerous state of health, upon oath thereof made before any of the justices of the said courts, such justice is hereby empowered to order the clerk of the court, where such cause is depending, to issue a commission to one or more persons to take the deposition of such witness, notice being first given to the adverse party of the time and place, when and where such deposition is to be taken, as follows, to wit : where the party to be notified does not reside or is not more than ten miles from the place where the deposition is to be taken, three days previous notice of the time and place ; in all other cases one day more for every additional ten miles ; which deposition, when returned taken in manner aforesaid, shall be received as legal evidence.

Witnesses refusing to give testimony in court or before commissioners to be committed.

71. If any person, who shall be summoned as a witness in any of the said courts or before any persons appointed to take depositions as aforesaid, shall refuse to give testimony on oath, such person so refusing shall, by the court or by the commissioners before whom he shall be summoned, be committed to the common prison, there to remain without bail or mainprise, until he shall be willing to give testimony in such manner as the law doth or may direct.

Witnesses during their attendance to be exempt from the service of all civil process except subpoenas.

72. During the attendance of any person, summoned as a witness to any court whatsoever and during the time that such person is going to and returning from the place of such attendance, allowing one day for every twentyfive miles such witness has to travel to and from his place of residence, no sheriff or other officer shall serve or execute on such persons, so attending, going to or returning from said court, any writ or other civil process, warrant, order, judgment or decree in any cause (summons for witness excepted) : and if any such shall be executed the same shall be and is hereby declared null and void.

Pay of witnesses for their attendance.

73. Each person, who shall attend any superior or county court as a witness in any cause therein depending, shall be allowed for each and every day's attendance, and for every thirty miles he may travel going to and returning from said court, sixty cents, provided said witness lives within the county, or the sum of one dollar if the said witness lives without the county. *Provided*, that in counties where witnesses are by law allowed a greater sum than above stated per day for attending county courts they shall continue to be paid as heretofore.

After the removal of a cause, subpoenas and commissions to take testimony may be issued from either court.

74. When any cause shall be removed from the superior court of any county to another, after the order of removal depositions may be taken in the case, and subpoenas for the attendance of witness and commissions to take depositions may issue from either of said courts, under the same rules as if the case had been originally

70. 1777, c. 115, s. 41.—1803, c. 633.

71. 1777, c. 115, s. 42.

72. 1777, c. 115, s. 44.

73. 1777, c. 115, s. 45.—1806, c. 694, s. 9.—1819, c. 1023.

74. 1810, c. 787.—1832, c. 8.

commenced in the court from which the subpoenas or commissions issued.

75. Every person being lawfully summoned, who shall attend any of the superior or county courts of this State as a witness in any suit, (those wherein the State is a party excepted,) shall, at each court before the clerk thereof or his lawful deputy, ascertain by his or her own oath or affirmation the sum due for travelling to and from court, attendance and ferriage, which shall be certified by the clerk or his lawful deputy; and on failure of the party, at whose instance such witness was summoned, to pay off and discharge the same previous to the departure of the witness from the court, it shall be lawful for such witness to sue for and recover the same from the party summoning him or her, at such time as he or she may see proper, before any jurisdiction having cognizance thereof, and the certificate of the clerk or his lawful deputy shall be sufficient evidence of the debt: *Provided always*, that in any case where recovery may be had before a justice of the peace on a witness ticket or certificate, it shall and may be lawful for such justice, having previously defaced such ticket by writing the word judgment in large letters in the face thereof, to deliver the same to the person against whom recovery is had thereon.

Witnesses to prove their attendance at each court.

How witness may recover his pay for attendance.

76. At the court, at which any cause shall be finally determined, the party, in whose favor judgment shall be given, shall file or cause to be filed the certificates of the attendance of witnesses in the clerk's office, the amount whereof shall be taxed in the bill of costs, to be levied and recovered for the benefit of said party. *Provided*, that the party cast shall not be obliged to pay for more than two witnesses to prove any single fact.

Witness tickets to be filed with the clerk to be taxed in the bill of costs.

Party cast to pay for but two witnesses to prove the same fact.

77. The clerks of the several superior courts of law and equity and clerks of the county courts shall tax the party, bound to pay the costs of the suit, with the costs of publications in the newspapers, which have been ordered by the court, and with the postage of all letters which cover the transfer of original or mesne process from one county to another.

Costs of publication and postage of letters covering process to be taxed.

78. In all cases where witnesses are required to attend any commissioners, referees, order of survey, or jury of view, a summons shall be issued by the clerk of the court at the request of either party or their agent, expressing the day and place where they are to appear, the names of the parties to the suit and in whose behalf summoned; and all witnesses, summoned in pursuance of this section, shall be entitled to the same privileges and receive the same pay for their attendance and be subject to the same pains and penalties for non-attendance, as witnesses summoned to attend the courts.

Subpoenas for witnesses to attend commissioners, &c. how to be issued.

Pay of witnesses for attending commissioners, &c.

79. In all actions whatsoever, the party, in whose favor judgment shall be given, or, in case of a nonsuit, dismissal or discon-

The party in whose favor judgment, &c. is given, to recover full costs.

75. 1796, c. 458, s. 1.—1777, c. 115, s. 46.

76. 1796, c. 458, s. 2.—1783, c. 189, s. 3.

77. 1819, c. 995, s. 1 and 2.

78. 1805, c. 685, s. 1 and 2.

79. 1777, c. 115, s. 90.



tinuance, the defendant, shall be entitled to full costs unless when it is or may be otherwise directed by statute.

Defendant may, in certain cases, plead a set off or give it in evidence under the general issue upon notice to the plaintiff.

80. In all cases where there are or shall be mutual debts subsisting between the plaintiff and defendant, or if either party sue or be sued as executor or administrator where there are mutual debts subsisting between the testator or intestate and either party, one debt may be set against the other, either by being pleaded in bar, or given in evidence on the general issue on notice given of the particular sum intended to be set off and on what account the same is due, notwithstanding such debts shall or may be deemed in law to be of a different nature, but if either debt arose by reason of a penalty, the sum intended to be set off shall be pleaded in bar setting forth what is justly due on either side.

Testimony of colored persons incompetent against white persons. Admissible against each other.

81. In all civil cases whatsoever the evidence of all negroes, Indians, mulattoes, and of all persons of mixed blood, descended from negro or Indian ancestors to the fourth generation inclusive, though one ancestor of each generation may have been a white person, whether the person or persons, whose evidence is offered, be bond or free, shall be inadmissible and the witnesses incompetent except against each other.

In what cases in actions of slander and assault and battery, the plaintiff shall not recover more costs than damages.

82. In all actions upon the case for slanderous words and in all actions of assault and battery, if the jury upon the trial of the issue in such action, or the jury that shall inquire of the damages, do find or assess the damages under four dollars, then the plaintiff or plaintiffs in such action or actions shall have and recover only so much costs as the damages so given or assessed shall amount unto, without further increase of the same.

In trespass *quare clausum fregit*, the defendant may disclaim and plead tender, &c.

If the jury find the trespass involuntary and the tender in favor of the defendant, the plaintiff shall be barred.

83. In all actions of trespass *quare clausum fregit*, wherein the defendant or defendants shall disclaim in his or their plea to make any title or claim to the lands, in which the trespass is by the declaration supposed to be done, and the trespass be by negligence or involuntary, the defendant or defendants shall be permitted to plead a disclaimer, and that the trespass was by negligence or involuntary, and a tender or offer of sufficient amends for such trespass brought, whereupon or upon some of them the plaintiff or plaintiffs shall be enforced to join issue, and if the said issue be found for the defendants or the plaintiff shall be nonsuited, the plaintiff shall be clearly barred from the said action and all other suits concerning the same.

In actions of trespass, &c. if there be more than one defendant, and one or more be acquitted, the persons so acquitted shall recover full costs, unless the judge certifies, &c.

84. When several persons are made defendants to any action of trespass, assault and battery, false imprisonment or ejection, and any one or more of them shall upon the trial thereof be acquitted by verdict, every person or persons so acquitted shall have and recover his costs of suit, in like manner as if a verdict had been given against the plaintiff or plaintiffs and acquitted all the defendants, unless the judge before whom such cause shall be tried shall, immediately after the trial thereof, in open court, certify upon

80. 1756, c. 57, s. 7.

81. 1777, c. 115, s. 42.

82. 1715, c. 2, s. 8.—1826, c. 8.

83. 1715, c. 2, s. 7.

84. 8 and 9 Will. 3, c. 11, s. 1.

the record, under his hand, that there was a reasonable cause for making such person or persons a defendant or defendants to such action or plaint.

85. In all causes depending in any of said courts, in which the production of an original paper, lodged in any of the public offices of the State or in any office of a county, superior or supreme court, shall become necessary, the said court shall have power to issue the process of *subpœna duces tecum*, requiring such persons as hold said offices respectively to attend the court, from whence said process issued, with such original paper, in like manner and under the same penalties as witnesses are required to attend in cases of subpœnas to testify.

In what case a *subpœna duces tecum* may issue.

86. The said courts shall have full power in the trial of actions before them, on motion and due notice thereof being given, to require the parties to produce books or writings in their possession or power, which contain evidence pertinent to the issue, in cases and under circumstances where they might be compelled to produce the same by the ordinary rules of proceeding in chancery; and if a plaintiff shall fail to comply with such order to produce books or writing, or shall not satisfactorily account for such failure, it shall be lawful for the said courts respectively on motion to give the like judgment for the defendant as in cases of nonsuit; and if a defendant shall fail to comply with such order to produce books or writings, or shall not satisfactorily account for such failure, it shall be lawful for the said courts respectively on motion as aforesaid to give judgment against him or her by default.

Court may order either party to produce books or papers.

Consequences of a refusal to produce.

87. In all petitions for dower and partition, the court before whom the same may be tried, may, at their discretion, decree by whom and in what manner the costs accrued thereon shall be paid.

In petitions for dower or partition the costs are at the discretion of the court.

88. It shall and may be lawful for any person or persons, bodies politic or corporate, having a right to demand any sum of money due upon any endorsed promissory note, single bill, bond or other writing obligatory, which is, shall or may be negotiable by the laws of this State, to commence and prosecute, at the option of the person or persons, bodies politic or corporate having such right, an action or actions for such sum or sums of money, so due as aforesaid, against the maker or makers of such promissory note, obligor or obligors in such bill, bond or other writing obligatory, and the endorser or endorsers thereof, jointly or against any one or more of such makers or obligors and endorsers, and judgment shall and may be given accordingly.

Action may be brought against the maker of a bill, &c. jointly with the endorsers, or against all or any one of them.

89. In all cases of joint obligations or assumptions of copartners in trade or others, suits may be brought and prosecuted on the same against the whole or any one or more of such persons making such obligations, assumptions or agreements.

On joint obligations, &c. of copartners, &c. action may be brought against all or any one or more.

85. 1797, c. 476.

86. 1821, c. 1095.—1828, c. 7.

87. 1823, c. 25, s. 1.

88. 1796, c. 464, s. 3.—1817, c. 937.

89. 1797, c. 475, s. 2.



Joint obligation shall survive against heirs, executors, &c. of deceased obligor.

90. In case of the death of one or more joint obligor or obligors, the joint debt or contract shall and may survive against the heirs, executors and administrators of the deceased obligor or obligors, as well as against the survivor or survivors, and when all the obligors shall die, the debt or contract shall survive against the heirs, executors and administrators of all the said joint obligors.

How the judgment is to be entered when the suit is against the executor, &c. of the deceased obligor and the survivor.

91. In all cases where an executor or administrator shall be sued with a surviving obligor, and it may be necessary that judgment should be rendered against such executor or administrator, such process and judgment may be awarded against the same as if such executor or administrator had been sued severally, and judgment may be awarded and entered up against the surviving obligor or obligors as is usual in other cases.

When more actions than one are brought on a promissory note, &c. the court may consolidate them.

92. Where there are more obligors or endorsers than one on any promissory note or other negotiable instrument, and the plaintiff shall institute more suits than one upon such promissory note or negotiable instrument against the obligors or endorsers, the suits so brought, on the return of the writs to the court from whence they issued, shall be consolidated, so that but one set of costs shall be incurred thereon, except as to the sheriffs' and clerks' fees for serving and issuing said writs, which shall be the same as in other cases.

Judgment bonds void as to power to enter judgment, but good as common law or penal bonds.

93. All judgment bonds, notes and other writings, with power to any person whatever to confess judgment thereon, shall be and are hereby declared utterly void, as to such power, but the same proceedings shall be had thereon as on common bonds and penal notes.

Where a defendant to a suit in the county court removes himself or his property, the clerk may issue an execution to any county, &c.

94. Where any judgment or decree shall be obtained in any county court of pleas or quarter sessions for any debt, damages, portion, legacy, or distributive share of an intestate's estate, and the person against whom such judgment or decree shall be obtained, shall remove him or herself and effects, or shall reside out of the limits of the jurisdiction of such court, it shall be lawful for the clerk of the court, where such judgment shall be given or decree made, at the request of the plaintiff, to issue execution to any county of this State where the defendant or his goods may be found, and the sheriff or other officer, to whom the same may be directed, is hereby empowered and required to execute the same and make return thereof, in the same manner as is directed for the return of process issuing from the superior courts.

In actions for money due by contract, except penal bonds, the jury must distinguish between principal and interest; and the judgment for principal shall carry interest.

95. In all actions brought to recover money due by contract, except on penal bonds, it shall be the duty of the jury to distinguish by their verdict the sum due as principal from the sum allowed for interest, and the principal sum due on all such contracts shall carry interest from the time of rendering judgment thereon until the same shall be paid and satisfied, and the judgments in such

90. 1789, c. 314, s. 4.—1786, c. 253, s. 1.

91. 1797, c. 475, s. 1.

92. 1820, c. 1046

93. 1783, c. 188, s. 2.

94. 1777, c. 115, s. 70.

95. 1807, c. 721.

actions shall be rendered according to the provisions of this act.

96. Whenever a suit shall be instituted on a single bond, a covenant for the payment of money, a bill of exchange, a promissory note or a signed account, and the defendant shall not plead to issue thereon, it shall and may be lawful upon judgment, without a writ of inquiry, for the clerk of the court to ascertain the interest due by law, and the amount shall be included in the final judgment of the court as damages, which judgment is to be rendered therein in the same manner prescribed by the preceding section.

In an action on a single bill, &c. if defendant makes no defence, clerk may calculate interest, without a writ of inquiry.

97. All petitions to the county or superior courts may be filed during the term or in vacation, and it shall be the duty of the clerks of the courts, in whose offices such petitions may be filed, to endorse thereon the time of filing, and to issue copies and subpoenas to be served as heretofore, but in case the petitioner or petitioners shall specify the amount of his, her, or their debt or demand (as nearly as may be) and shall make oath or affirmation to the same, in open court, or before the clerk of the court, in whose office his, her or their petition is filed, it shall be the duty of said clerk to issue copies of said petition to, and a *capias ad respondendum* against, the defendant or defendants in said petition, whom the petitioner or petitioners, by his, her or their affidavit, shall charge to be his, her or their debtor or debtors, for the amount so charged; and the sheriff is hereby required to execute said *capias ad respondendum* as is now required by law in cases of *capias ad respondendum*, and to take bail in like manner, and the bail, when so taken, shall be liable and proceeded against as bail are now liable and proceeded against at law.

Petitions may be filed in vacation.

Clerk to issue a *capias* upon petitioner making affidavit of the amount of his demand.

98. In all cases of suits by petition, in which a copy of the petition and a subpoena or *capias* shall have been served on one of the defendants, and it shall be shewn to the court by affidavit that the other defendant or defendants is or are not inhabitants of this State, or on diligent inquiry cannot be found, the court shall make an order directing such defendant or defendants to appear to the said suit and make his, her or their defence to the same at the next or some after term or session of the said court, or that the petition will be taken *pro confesso* against him, her or them, and heard accordingly; and if it shall, at the term or sessions so appointed, be proved to the court that the said order was published five weeks successively in the paper nominated by the court, within fifty days after the said order was made, the court may proceed to the trial of the cause and to pass judgment or to decree thereon, which judgment and decree shall bind and conclude such defendant or defendants to the same extent and under the same rules and regulations, as defendants are now bound by like proceedings in the courts of equity.

When a petition is served upon one of several defendants and the others reside out of the State, the court shall order publication to be made for five weeks.

99. When any matter of account shall be involved in a suit by petition, the court may order their clerk to audit and settle the

Court may order the clerk to audit and settle accounts.

96. 1803, c. 746, s. 1.

97. 1831, c. 14, s. 1.—1806. c. 703, s. 3.

98. 1806, c. 703, s. 1.

99. 1806. c. 703, s. 2.



accounts involved in the cause and to report the balance due thereon, in the same manner and under the same rules and regulations as references are made by the courts of equity to the clerk and masters thereof; and the clerk shall be entitled to the same compensation for such services as the clerks and masters are now allowed by law.

Any two justices may take depositions to be read on petitions.

100. Any two justices of the peace may take depositions to be read as evidence in the trial of suits by petition, in the same manner and under the same rules and regulations as depositions are taken to be read in the trial of suits in equity.

Fees of clerk on petitions.

101. The clerk shall take and receive the same fees for the copies and process in suits by petition as the clerks and masters are now entitled to for like services.

Infants may sue by their next friend.

102. All persons within age may sue by their next friend.

Either party to a suit may tender to the judge a bill of exceptions.

103. Whenever a person, plaintiff or defendant in any suit in any of said superior courts, shall except to the opinion of the court trying the cause and the same shall not be allowed, the party making the exception shall commit the same to writing and require the same to be signed and sealed by the court before whom the said exception is taken, and the judge presiding shall sign and seal the same; and if the presiding judge will not sign and seal the said bill of exceptions, it shall be signed and sealed by some other person present at the time of the exception taken; which bill of exception so signed as above shall constitute and be a part of the record, and upon an appeal, the court, before whom the said appeal shall be tried, shall proceed to judgment according to the same exception as it ought to be allowed.

Judge to sign and seal the same, or if he refuse, some other person present may sign and seal it.

Actions of account may be brought against the executors and administrators of guardians, &c.

104. Actions of account shall and may be brought and maintained against the executors and administrators of any guardian, bailiff and receiver, and also by one joint tenant and tenant in common, his executors and administrators against the other as bailiff for receiving more than comes to his just share or proportion, and against the executor and administrator of such joint tenant and tenants in common; and the auditor appointed by the court, where such action shall be pending, shall be and is hereby empowered to administer an oath and examine the parties touching the matter in question, and for his pains and trouble in and taking such accounts have such allowance as the court shall adjudge to be reasonable, to be paid by the party against whom the balance of the account shall appear to be.

If an action for any penalty be brought in good faith, and defendant plead a former judgment against him, &c. plaintiff may reply fraud, &c.

105. If an action be brought in good faith by any person to recover any penalty under any law of this State or of the United States, and the defendant shall plead in bar thereto a former judgment recovered against him or them by any other person for the same cause of action, or a former judgment rendered in his or their favor in a former action brought by any other person for the same cause of action, then the plaintiff in such action, brought in good

100. 1806, c. 703, s. 4.

101. 1806, c. 703, s. 5.

102. 13 Edw. 1, c. 15.

103. 13 Edw. 1, c. 31.

104. 4 Anne, c. 16, s. 27.

105. 4 Hen. 7, c. 20.

faith, may aver that the said former recovery in said popular action was had by covin, or else aver that the former judgment in the said popular action in favor of the defendant or defendants was had by covin; then if afterwards said collusion or covin so averred be lawfully found, the plaintiff or plaintiffs in that action, sued with good faith, shall have recovery according to the nature of the action, and execution upon the same in like manner and effect as if no such judgment had been before had; and no release made by such party, whether before action brought or after, shall be in any wise available or effectual; and every person, pleading such false plea, shall be further liable to indictment, in any court having jurisdiction of the same, and upon conviction shall be imprisoned at the discretion of the court.

106. Where any action of debt shall be brought on any single bill, or when any action of debt or *scire facias* shall be brought on any judgment, if the defendant hath paid the money due upon such bill or judgment, such payment shall and may be pleaded in bar of such action or suit; and when an action of debt is brought upon any bond, which hath a condition or defeasance to make void the same upon payment of a lesser sum at a day or place certain, if the obligor his heirs, executors or administrators have, before the action brought, paid to the obligee, his executors or administrators, the principal and interest due by the defeasance or condition of such bond, though such payment were not made strictly according to the condition or defeasance, yet it shall and may nevertheless be pleaded in bar of such action, and shall be as effectual a bar thereof, as if the money had been paid at the day and place according to the condition or defeasance, and been so pleaded.

In an action of debt on a bond, &c. payment may be pleaded.

107. If at any time pending an action on any such bond with a penalty, the defendant shall bring into court, where the action shall be pending, all the principal money and interest due on such bond, and also all such costs as have been expended in any suit or suits in law or equity upon such bond, the said money, so brought in, shall be deemed and taken to be in full satisfaction and discharge of said bond, and the court shall and may give judgment to discharge every such defendant of and from the same accordingly.

In an action of debt on a bond with a penalty, if the defendant bring into court the principal, interest and costs, the bond shall be deemed discharged, &c.

108. Every judgment given in a court of record, or before a single magistrate having jurisdiction of the subject, shall be and continue in force until reversed according to law.

Judgment of a court to stand till reversed.

109. When an appeal shall be taken by any defendant, from the judgment of a justice, to the county court, the said court shall have power, upon sufficient cause being shown on affidavit filed, to compel the plaintiff to give bond and sufficient security for the costs of said suit in the event of the plaintiff's failing to prosecute the same with effect; and if any judgment, rendered by any justice, be removed at the instance of any defendant to any superior court by writ of *recordari* or otherwise, the said court may, upon

Upon an appeal by a defendant from a justice's judgment or a *recordari* obtained by a defendant, court may compel plaintiff to give security, &c.

106. 4 Anne, c. 16. s. 12.

107. 4 Anne, c. 16, s. 13.

108. 4 Hen. 4, c. 23.

109. 1831, c. 29, s. 1.



sufficient cause shewn by affidavit, compel the plaintiff in such judgment to give bond and sufficient security to pay all costs in the event of the plaintiff's failure to prosecute said suit with success.

Appeals from a justice to be tried the first term of the county court.

Party cast to pay all costs.

If plaintiff appeal from a judgment in his favor, it shall be at his costs unless sufficient cause for such appeal is shewn.

Appeals from the county to the superior court, how to be tried.

The increasing day in leap year, how to be counted.

No execution to issue on a judgment after a year and a day, without a *scire facias* to revive the same.

Plaintiff shall not be nonsuited after verdict. Party committed in execution not to be discharged on *habeas corpus*.

110. When an appeal shall be taken to the county court, the same shall be reheard by the said court, whereupon an issue shall be made up and tried by a jury at the first term, to which it is returned, unless legally continued, and judgment shall be given thereon and the party cast shall pay the costs of all the proceedings, to be taxed by the court; and execution may issue for the same against the principal and securities, when judgment is granted against the plaintiff.

111. *Provided* if judgment be entered for the plaintiff by the justice and he appeal, such appeal shall be at the costs of the plaintiff, unless the court, on the trial, shall be of opinion that there was sufficient cause for such appeal; and in such case plaintiff shall recover his costs, on motion.

112. In all appeals from the county to the superior court, if the trial in the county court was of an issue to the country, a trial *de novo* shall be had; and if on a hearing of a petition for a filial portion, or legacy, or distributive share of an intestate's estate or other matter relating thereto, a rehearing at the superior court without notice given by either party.

113. In every leap year, the increasing day and the day before shall, in all legal proceedings, be accounted as one day.

114. No execution shall issue upon any judgment obtained in any of said courts, after a year and a day from the rendition of such judgment: *Provided*, that whenever execution hath been issued upon said judgment, within the year and day, it shall be lawful for the clerk to issue an execution to enforce said judgment at any time within a year and day from the issuing of the last execution; and when the party claiming the benefit of such judgment, shall come after the year and day as above stated, he shall not be entitled to an execution on his judgment, until he have caused a *scire facias* to be issued to the defendant, wherein the sheriff shall be commanded that he give notice to the party, of whom it is complained, that he appear before the court, in which the judgment is, at a certain day, to show if he have any thing to say why the judgment ought not to have execution; and if he do not come at the day, or do come and say nothing why execution ought not to be done, the sheriff shall be commanded to cause the judgment to be executed.

115. In all cases where a verdict shall pass against a plaintiff, the same plaintiff shall not be nonsuited.

116. When a *certiorari* or writ of *habeas corpus cum causa* shall issue, and the sheriff, or other officer to whom it is directed, shall

110. 1777, c. 115, s. 63—1794, c. 414, s. 1.

111. 1794, c. 414, s. 17.

112. 1777, c. 115, s. 77.

113. 21 Hen. 3.

114. 13 Edw. 1, c. 45.

115. 2 Hen. 4, c. 7.

116. 2 Hen. 5, c. 2.

return upon the same that the prisoner, which is so holden in prison, is condemned by judgment given against him, and held in custody by virtue of an execution issued against him, the said prisoner shall not be let to bail, but shall be presently remanded, where he shall remain until discharged in due course of law.

117. In all actions, the death of either party between the verdict and the judgment, shall not be alleged for error, so as such judgment be entered within two terms after such verdict.

118. When any judgment after a verdict shall be had by or in the name of any executor or administrator, in such case an administrator *de bonis non* may sue forth a *scire facias* and take execution on such judgment.

119. Whenever suit shall be brought upon any bond given by any executor, administrator or guardian for the faithful performance of his or her duty as such, it shall be the duty of the court, at the appearance term of said suit, on motion of either party, to refer the same to any person or persons, to whom both the parties agree to have it referred; and if they cannot agree on persons to whom it shall be referred, then the court may refer it to the clerk or any other person; and such person, persons or clerk, to whom any reference shall be made under this act, shall take an account, under the same rules, regulations and restrictions as are now provided for taking an account in a court of equity, whose report, when confirmed by said court, shall be conclusive evidence of the amount of the plaintiff's demand only as against the then parties; and it shall be the duty of the court to make an allowance for taking such account, in the same manner as is now done in courts of equity, which allowance shall be paid by the plaintiff, or defendant, or both, as the court in its discretion may direct.

120. In all causes in the superior courts, whether civil or criminal, in which it shall be suggested, on oath or affirmation, on behalf of the State or the traverser of the bill of indictment or of the plaintiffs or defendants in said causes, that there are probable grounds that justice cannot be obtained in the county in which said causes shall be pending, then and in that case the judge of said court is hereby authorized to order a copy of the record of said cause to be removed to some adjacent county for trial. *Provided*, that no cause shall be removed on oath or affirmation, unless the oath or affirmation set forth the facts, whereon the deponent or affirmant founds his belief that justice cannot be obtained in the county, wherein the suit is pending, so that the judge may decide upon such facts whether the belief is well grounded.

121. The parties to any suit, in any of the superior courts of law and equity within this State, may remove such suit, by consent, for trial to any convenient county, which removal by consent shall be entered of record, and thereupon it shall be the duty of the clerk to transfer the papers relating to such suit in like manner as

The death of either party between verdict and judgment shall not be assigned for error.

Administrator *de bonis non* may have execution on judgment obtained by former administrator.

In suits upon the bonds of executors, administrators, guardians, &c. upon motion at the appearance term, a reference may be made to have an account stated.

Any cause in the superior court, either civil or criminal, may be removed on affidavit to an adjoining county for trial.

The parties to any suit may remove the same to an adjoining county by consent.

117. 17 Chas. 2, c. 8, s. 1.

118. 17 Chas. 2, c. 8, s. 2.

119. 1826, c. 2.

120. 1806, c. 693, s. 12.—1821, c. 1094.—1808, c. 745.

121. 1813, c. 853.



prescribed for the removal of causes on affidavit of either party, and the court to which such suit shall be removed shall have full power and authority to proceed to hear and determine the same as fully as if the same had been originally commenced in such court.

Upon the removal of a cause, the clerk to send a transcript, together with the depositions, &c. filed therein.

122. Whenever any suit shall be directed to be removed from any of the superior courts agreeably to the above sections of this act, it shall be the duty of the clerk to transmit a transcript of the record of said suit to the court, to which the same is directed to be transmitted, together with any depositions or other written evidences which may be filed therein.

Cause to be removed on affidavit not more than twice.

123. When any application shall be made to remove any cause, whether civil or criminal, to an adjacent county for trial, which cause shall have been before removed, it shall be the duty of the person so applying to set forth on affidavit particularly and in detail the grounds of such application, and the presiding judge may in his discretion remove the same to any adjacent county for trial. *Provided*, that no cause under any circumstances shall be removed more than twice.

In suits involving questions of boundary, the court may order a survey. Proceedings thereupon.

124. In all suits in the county and superior courts, wherein the title or bounds of lands shall come in question, if it shall appear to the court necessary, such court may order two surveyors, one to be named by each party, to attend and run out the lands in dispute, agreeably to the bounds and lines expressed in each party's titles, and make three accurate plans of such surveys, and return the same to such court; which order such surveyors are required to obey, and the allowance for the service rendered is to be taxed in the bill of costs and paid by the party cast. *Provided nevertheless*, if the parties shall agree to have but one surveyor appointed to perform such services, that then and in such cases the court shall order one surveyor only to attend, survey and run out the lands in dispute, who shall return three plans in the same manner, and be entitled to the same allowance, as he would have been entitled to if two surveyors had been appointed.

Clerk not to affix the seal of the court to process to be executed within the county.

125. In all cases where the clerk of the superior or county court issues process to the county of which he is clerk, it shall not be necessary for him to annex the seal of his office thereto, and if any such seal should be notwithstanding annexed, it shall not be lawful to raise any charge in the bill of costs for the same.

Sheriff, &c. to serve all notices that may be necessary in any proceeding in law or equity.

126. It shall be the duty of the sheriff of every county, by himself or his lawful deputy, to serve all notices that may be tendered or delivered to him, or that are or may be required to be given, in any cause, motion or proceeding, either at law or in equity, as well for commencing as for proceeding in the same until the same shall be ended; and in case the sheriff of any county, in which such notice is to be served, shall be a party or interested in the proceedings aforesaid, then it shall be the duty of the coroner of the county, for which said sheriff was appointed, to serve all such notices that are to him tendered or delivered.

122. 1806, c. 694, s. 12.—1810, c. 787.

123. 1822, c. 1130, s. 1.

124. 1779, c. 157, s. 7.—1786, c. 252, s. 1 and 2.

125. 1797, c. 474, s. 5.

126. 1827, c. 20, s. 1.—1815, c. 888, s. 1.—1816, c. 902, s. 1.

127. The said officers shall serve the same by delivering a true copy thereof to the person, to whom the same shall be directed, if he be found in his county, or by leaving a copy thereof at the usual place of abode of such person if in his county, and shall certify on the notice the time when said notice was served or copy left at the place of abode; and such return shall be evidence of the service of the said notice as may be therein stated, and the said officers shall deliver respectively the said notice with his return to the party, his attorney or agent, at whose instance such notice issued, upon demand of the same.

How notices to be served.

128. Any sheriff or coroner, neglecting to execute and return such notice, or making a false return thereon, shall be subject to the same action and penalties as for neglecting to serve or falsely returning process, directed to him from the superior courts of law of this State, to be prosecuted, recovered and applied as actions and penalties are directed to be prosecuted, recovered and applied, for neglecting to serve or falsely returning process issued from the superior courts of this State.

Penalty on officer for failing to serve notices or making a false return.

129. *Provided*, that nothing herein contained shall prevent any person from giving notice and proving the same as heretofore directed.

Notice may be given and proved as heretofore.

130. When any *scire facias* shall issue to the sheriff of any county within this State, the return of the sheriff thereon that the same has been executed shall be deemed sufficient evidence of the service of such *scire facias*, and it shall not be held necessary that the same should be made known in the presence of witnesses.

The return of a sheriff on a *scire facias* that he has executed the same sufficient evidence of the service.

131. At the trial of all actions at law upon contract, it shall be competent for either of the defendants to shew in evidence that he, she or they, is or are surety or sureties, and if it be satisfactorily shown, it shall be the duty of the jury in their verdict, or of the justice of the peace in his judgment, to discriminate the principal and surety, which shall be endorsed on the execution by the clerk or justice of the peace issuing it.

Defendants upon trial may shew that they are sureties, and the jury or justice to discriminate the principal from the sureties.

132. When any execution endorsed as aforesaid shall come into the hands of any officer for collection, it shall be his duty to levy the same on the goods and chattels and lands and tenements of the principal, or so much thereof as shall be necessary to satisfy said execution, and for want of such sufficient property of the principal, also on the goods and chattels, lands and tenements of the surety or sureties, and make sale thereof as the law does or may direct; *Provided, nevertheless*, that in all such levies a sale shall first be had on all the property of the principal levied on, before that of the surety or sureties.

In such case the officer shall levy first on the property of the principal, &c.

133. Whenever any suit shall be brought in any of said courts, in which security shall be given for the prosecution of the suit, or when any case shall be brought up to any of said courts by an appeal from the county courts or otherwise, in which a bond for the

Property of the principal shall be first sold.

A judgment for the costs may be given against the plaintiff and the sureties to

127. 1827, c. 20, s. 3.

128. 1827, c. 20, s. 4.—1815, c. 888, s. 2.

129. 1827, c. 20, s. 6.—1815, c. 888, s. 4.

130. 1799, c. 537.

131. 1826, c. 31, s. 1.

132. 1826, c. 31, s. 2.

133. 1831, c. 46, s. 1 and 2.



his prosecution bond upon his failing to prosecute with success.

prosecution of the suit shall have been given in the court below, and judgment shall be given in the superior court against the plaintiff for the costs of the defendant or defendants, it shall be the duty of the court, upon motion of the defendant, also to give judgment against the surety for the prosecution, for said costs, whereupon execution shall issue jointly against the plaintiff and his security.

A defendant against whom judgment is rendered may pay the money to the clerk before execution issues.

134. It shall and may be lawful for the defendant or defendants, against whom any final judgment or decree for the payment of money shall or may be rendered or made by any court of record in this State, to pay the whole or any part of the judgment or decree to the clerk of the court, in which said judgment or decree shall or may be rendered or made, at any time after the rendering of such judgment or the making of such decree, although no execution shall or may have issued to enforce the payment of such judgment or decree ; and such payment of money shall be as good and available to the party making the same, as if made to the sheriff or other legal officer, under and by virtue of an execution issued on such judgment or decree.

Clerk to pay over the same to the party entitled to receive it.

135. The clerks of courts of record, to whom any money shall or may be paid to satisfy, in whole or in part, any final judgment or decree, shall pay the same to the party or parties entitled to receive the same, under the same rules and penalties, as if the same had been paid into his office under and by virtue of an execution issued on such final judgment or decree.

Judge how to deliver his charge to the jury.

136. It shall not be lawful for any judge, in delivering a charge to the petit jury, to give an opinion whether a fact is fully or sufficiently proved, such matter being the true office and province of the jury ; but it is hereby declared to be the duty of the judge, in such cases to state, in a full and correct manner, the facts given in evidence, and to declare and explain the law arising thereon.

Quakers may wear their hats in court.

137. It shall be lawful for the people called Quakers to wear their hats, as well in courts of judicature as elsewhere, unless otherwise ordered by the court.

- 134. 1823, c. 1212, s. 1.
- 135. 1823, c. 1212, s. 2.
- 136. 1796, c. 452, s. 1.
- 137. 1784, c. 209.

1838-9. Ch 11. 13. 14. 1  
 1840-1. Ch 10. 12. 14. 17. 20. 23  
 1842-3 Ch 13. 26. 18. 19. - Ch 9.  
 1844. 5. Ch 6. 8. 10. 12. 16. 22. 2.  
 1846. 7. Ch 27. 30. 31. 32.

Note—REFERENCES TO ADJUDGED CASES.

- SECT. 26. Sheepshanks vs Jones, 2 Hawks. 211.
- SECT. 30. State vs. Hogg, 2 Murph. 319
- SECT. 39. Green vs. Mangum, 3 Murph. 39. The Yadkin Nav. Co. against Benton, 1 Hawks, 422.
- SECT. 42. Allen vs. Stokes, 1 Hay 122.
- SECT. 44. Muyr vs. Mallett, 2 Hay. 137. Tyler vs. Person, 1 Murph. 498. Wilson vs. Hudspeth, 3 Dev. 57 Brittain vs. Howell, 2 Dev. and Bat.
- SECT. 47. Mc'Clenahan vs. Thomas, 2 Murph. 247. Clark vs. Dupree, 2 Dev. 411.
- SECT. 50. Rise vs. Hayworth, 4 Dev. 584.
- SECT. 62. Anderson vs. Anderson, Martin, 19.
- SECT. 63. Chambers vs. Witherspoon, 3 Hawks, 42.
- SECT. 69. Cherry vs. Slade, 2 Hawks, 400.
- SECT. 73. Peace vs. Person, 1 Murph. 188.
- SECT. 75. Moore vs. Islar, Martin, 78. Thompson vs. Hodges, 3 Hawks, 318.
- SECT. 76. Anon. 2 Hay. 133. Bird vs. Rouse, 1 Car. Repos. 334. Carpenter vs. Taylor, N. C. Term R. 265.

SECT. 79. *Stockstill vs. Shufford*, 1 Murph. 39. *Arrington vs. Coleman*, ib. 102. *Welborne vs. Gordon*, ib. 502. *Porter vs. Know*, 1 Car. R. 521. Superior Court office *vs. Lockman*, 1 Dev. 146. *Darden vs. Maget*, 1 Dev. and Bat. 498.

SECT. 80. *Hogg vs. Ashe*, 1 Hay, 471. *Moore vs. Jones*, 1 Murph. 353. *Worth vs. Fentress*, 1 Dev. 419.

SECT. 90. *Brown vs. Clancey*, 1 Hay. 107. *Davis vs. Wilkerson*, ib. 334. *Smith vs. Fagan*, 2. Dev. 299.

SECT. 92. *Anderson vs. Hunt* 1 Dev. 298.

SECT. 95. *Deloath vs Worke*, 3 Hawks, 36.

SECT. 102. *Howet vs. Alexander*, 1 Dev. 431.

SECT. 112. *Erwin vs. Arthur*, Conf. 490.

SECT. 120. *Smith vs. Osler*, 1 Car. Repos. 518. *Knowis vs. Baker*, 2 Car. R. 98.

SECT. 122. *State vs. Collins*, 3 Dev. 117.

SECT. 123. *State vs. Lewis*, 3 Hawks, 410.

SECT. 125. *Governor vs. Mc'Rae*, 3 Hawks, 226. *Seawell vs. Bank of Cape Fear*, 3 Dev. 279.

SECT. 136. *Orbison vs. Morrison*, 3 Murph. 551. *State vs. Greenlee*, ib. 556. *Sneed vs. Creath*, 1 Hawks, 309. *Reel vs. Reel*, 2 Hawks, 63. *Mc'Neil vs. Massey*, 3 Hawks, 91. *State vs. Morris*, 3 Hawks, 388. *Reid vs. Shank*, 2 Dev. 415. *State vs. Moses*, 2 Dev. 452. *State vs. Lipsey*, 3 Dev. 485. *State vs. Davis*, 4 Dev. 612. *State vs. May*, ib. 328.

## CHAPTER 32.

# COURTS OF EQUITY.

### AN ACT CONCERNING COURTS OF EQUITY.

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1. Courts of equity established.
2. Style of the court.
3. Clerk and master to be appointed.
4. *Rules of court*—Plaintiff may file his bill in vacation—*Capias* to take the body of the defendants, when to issue—Form of the writ—Officer's duty in serving it—Liable as special bail for taking an insufficient bond, or for failing to take any bond—No *capias* to issue against an executor, administrator or heir—Penalty on executor, &c. for not appearing—How to proceed when there are two or more defendants—Copy of the bill and subpoena to be served on the defendant ten days before the return court—Defendant to plead, answer or demur at the return term, or the bill to be taken *pro confesso*—Defendant may show cause within the three first days of the ensuing term—Court to order publication to be made when the defendant cannot be found, or resides out of the State—Publication how to be made—Upon publication being made court may grant plaintiff a decree, unless the defendant appears and

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files his answer, plea or demurrer—Plaintiff in case of such decree to give security for the return of property—If such decree is against a person residing out of the State, a copy of it must be served on such person, if within two years after the decree he comes into the State—If such defendant dies within two years, the copy to be served on his real or personal representatives—Decree to be absolute against a person served with a copy and not petitioning for a rehearing within twelve months—Defendant may petition for a rehearing within twelve months from service of a copy, or within three years when no copy of the decree has been served upon him, and upon paying or giving security for the costs, may answer the bill, &c.—Decree in such case to be final, if no petition for rehearing is filed within three years—Such decree not to be made against a person residing out of the State unless the bill is founded on transactions which took place in this State—Commissions to take testimony to issue—



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—Twenty days notice to be given, unless a longer or shorter time is ordered by the court—Commissions may also issue to take the answer, &c. of the defendant—Judge may issue such commissions in vacation, or may himself examine testimony, &c.—May also grant injunctions and issue writs of *ne exeat*—Court may direct the trial of such issues as it thinks necessary—Court's power as to costs—as to requiring security from the defendant—and as to issuing process to enforce its decrees.

5. Sheriffs to serve notices issuing from clerks and masters.
6. Executions may issue as at law—and have the like binding effect.
7. A decree for the costs of the defendant may be given against the surety for the prosecution as well as against the principal.
8. In case of defendant's death after service, a *sci. fa.* may issue to make his representatives parties.
9. When plaintiff dies his representatives may make themselves parties within two terms thereafter.
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till final decree—Court to direct what papers to be enrolled.

11. No injunction to stay an execution shall issue for a greater sum than plaintiff swears to be just, nor until after security given.
12. No injunction to issue after four months from the judgment at law, except in certain cases.
13. Injunction bonds, after dissolution of the injunction, to be proceeded on like appeal bonds.
14. In what cases injunctions to stay execution on behalf of the State will be allowed.
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17. Time within which bills of review and petitions for rehearing shall lie or be allowed.
18. Clerk and master to make title to property sold under an order of the court.

1848. Ch. 29. 30

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 each superior court of law within this State shall also be and act as a court of equity for the same county, and possess all the powers and authorities within the same that the court of chancery, which was formerly held in this State under the colonial government, used and exercised, and that are properly and rightfully incident to such a court agreeably to the laws in force in this State.

Courts of equity established.

2. Such court, in all equity proceedings, shall be styled and called the court of equity for the county in which it is held.

Style of the court.

3. The judges of said courts of equity shall appoint some person of skill and probity to act as clerk and master in equity to each of said courts.

Clerk and master to be appointed.

4. The rules and methods of proceeding in said courts shall be as follows, to wit: The plaintiff may file his bill in the clerk's office, either during term time or in the vacation, and thereupon the clerk shall issue a writ of subpoena as is usual in cases in chancery, and when the plaintiff shall specially state his debt or damages and make oath or affirmation thereto, either before one of the judges

Rules of court.

Plaintiff may file his bill in vacation.

1. 1782, c. 177, s. 2.—1806, c. 693.  
 2. 1787, c. 278, s. 4.—1782, c. 177, s. 4.  
 3. 1787, c. 278, s. 3.—1806, c. 693, s. 10.  
 4. 1782, c. 177, s. 3.—1787, c. 276, s. 1.—1789, c. 314, s. 1 and 5.—1833, c. 8.—1787, c. 278, s. 1.—1823, c. 1213.

of the superior courts of law and equity, or before one of the judges of the supreme court, or before the clerk and master in equity, the said clerk shall, together with the subpœna, issue a writ directed to the sheriff of the county, where the defendant is supposed to be a resident, as follows, to wit: The State of North Carolina to the sheriff of \_\_\_\_\_ county, greeting.

Capias to take the body of the defendant, when to issue.

You are hereby commanded to take the body of \_\_\_\_\_ late of your county, (if to be found in your county,) and him safely keep so that you have him before the judges of the superior court of law and equity for the county of \_\_\_\_\_ at the town of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_

Form of the writ.

next, or till he shall give you good and sufficient security in the sum of \_\_\_\_\_ dollars, (which sum is hereby directed to be double the damages suggested on oath in the bill,) to appear and answer at the said court on the day aforesaid to a bill in equity filed against him by \_\_\_\_\_ and this you shall in no wise omit at your peril. Witness

\_\_\_\_\_ clerk and master of the said court at the \_\_\_\_\_ day of \_\_\_\_\_ in the

year of the independence of the State.—Which writ the sheriff is hereby directed and required to obey; and when any such writ shall issue to any sheriff or other officer, such sheriff or other officer shall not only be liable as special bail for taking an insufficient bond, on exception taken and entered the same term to which such process shall be returnable, the sheriff or other officer having due notice thereof; but such sheriff or other officer shall also be liable as special bail for failing or neglecting to take from such person or persons, arrested by virtue of such writ, a bond with two sufficient securities in double the sum for which such person or persons shall be arrested, and proceedings shall be had against him under the same rules, regulations and restrictions as in such cases in actions at law: *Provided*, that no such writ shall issue against an executor, administrator or heir at law who is sued as such, but the process against them and each of them shall be by a writ of subpœna, as usual in other cases of chancery, and the penalty for not attending shall be two hundred dollars, but the said penalty shall not be levied nor final judgment given, until the term ensuing that to which the suit is returnable, nor without a *scire facias* having been duly served and proof thereof made to the satisfaction of the court, as in cases at law where *scire facias* is required; and where any other person is made a defendant, together with such executor, administrator or heir at law as aforesaid, a *capias* may issue as above against such other person, and a writ of subpœna against such executor, administrator or heir at law; and in all cases where there are two or more defendants, the plaintiff may issue subpœnas, directed to the sheriff or coroner of each of the counties where the defendants are most likely to be found, noting on each process that they are issued in the same suit, and when the same are returned they shall be docketed as if only one had issued; and in case any defendant should not be served with such process, the

Officer's duty in serving it.

Liable as special bail for taking an insufficient bond, or for failing to take any bond.

No capias to issue against an executor, administrator or heir.

Penalty on executor, &c. for not appearing.

How to proceed when there are two or more defendants.



same proceedings shall be had as in cases of other similar process which has not been executed.

Copy of the bill and subpoena to be served on the defendant ten days before the return court.

No writ shall be served by the sheriff, unless he has a copy of the bill ready to deliver the defendant; he is hereby required to deliver the said copy immediately after the service of the said writ, nor shall any service be valid, unless it be made at least ten days before the term at which the defendant is required to appear; and where the service is by subpoena, the defendant shall be served with a copy of the bill at least ten days before such term; on failure of any of which requisitions the defendant may plead the matter in abatement and the bill shall be dismissed.

Defendant to plead, answer or demur at the return term, or the bill to be taken *pro confesso*.

Upon such writ or subpoena being duly served and a copy of the bill delivered in proper time, proof being made to the satisfaction of the court by the return of the sheriff or by affidavit, the defendant shall appear and put in his answer or plea, agreeably to the practice in chancery, or demur, or on failure thereof the plaintiff's bill shall be taken *pro confesso*, and appointed to be heard

Defendant may shew cause within the three first days of the ensuing term.

*ex parte* at the ensuing term. *Provided*, that if, within the three first days of the ensuing term, the defendant shall offer any satisfactory reason to the court for his not appearing at the first term, the order for the bill being taken *pro confesso* and heard *ex parte* may be discharged, and the defendant then admitted to plead, answer or demur; and such time shall be allowed in this as well as in all other cases for the pleadings on both sides, and such day appointed for the hearing, as the court shall direct; and if any defendant or defendants, against whom any subpoena or other process shall issue, shall not cause his, her or their appearance to be entered on such process, within such time and in such manner, as, according to the rules of the court, the same ought to have been entered, in case such process had been duly served, and an affidavit or affidavits shall be made to the satisfaction of the court that such defendant or defendants resides or reside beyond the limits of the State, or that, upon inquiry at his, her or their usual place of abode, he, she or they could not be found, so as to be served with such process, and that there is just ground to believe that such defendant or defendants is or are gone without the limits of the State, or otherwise absconded to avoid being served with the process of such court, then and in such cases, the court, out of which such process issued, may make an order, directing and appointing such defendant or defendants to appear at a certain day therein to be named, and in cases where such defendant or defendants resides or reside without the limits of the State, a copy of such order shall, within sixty days after such order made, be inserted in some gazette regularly published within this State, for such length of time as the court may order and direct, and they may when they shall think necessary direct such order to be inserted in any gazette of the United States; and in cases where such defendant or defendants shall have withdrawn him, her or themselves beyond the limits of the State, or otherwise absconded to avoid the service of such process, a copy of such order shall, within sixty days after such order made, be inserted in some gazette regularly published

Court to order publication to be made, when the defendant cannot be found or resides out of the State.

Publication how to be made.

within this State, for such length of time as the court shall direct, and shall, within the time aforesaid, be posted up at the door of the court house, where such order shall be made, and also in some public place within the county, where such defendant or defendants respectively made his, her or their usual abode, within thirty days next before such his, her or their absenting; and if the defendant or defendants do not appear within the time limited by such order, or within such further time as the court shall appoint, then, on proof made of such publication of such order as aforesaid, the court, being satisfied of the truth thereof, may order the plaintiff's bill to be taken *pro confesso*, and make decree thereupon as shall be thought just, and may thereupon issue process, as in other cases, to compel the performance of the decree either by execution, as hereinafter provided, to satisfy the demands of the plaintiff or plaintiffs in the said suit, or by causing the possession of the estate and effects demanded by the bill to be delivered to the plaintiff or plaintiffs, or otherwise as the nature of the case may require. First, *Provided, nevertheless*, that such plaintiff or plaintiffs shall first give sufficient security, in such sum as the court shall think proper, to abide such order, touching the restitution of such estate or effects, as the court shall think proper to make concerning the same, upon the defendant or defendants appearing and petitioning to have the said cause reheard, and paying such costs to the plaintiff or plaintiffs as the court shall order. Secondly, that if any decree shall be made, in pursuance of this act, against any person or persons residing without the limits of the State at the time such decree is pronounced, and such person or persons shall, within two years after making such decree, reside within the State, or become publicly visible therein, then, and in such case, he, she or they shall likewise be served with a copy of such decree, within a reasonable time after his, her or their coming into the State, or their public appearance shall be known to the plaintiff or plaintiffs; and in case any defendant or defendants, against whom such decree shall be made, shall, within two years after the making of such decree, happen to die before his or her coming into the State, or appearing openly as aforesaid, or shall within the time last before mentioned die in custody before his or her being served with a copy of such decree, then the heir of such defendant as shall have any real estate, whereof possession shall have been delivered to the plaintiff or plaintiffs, if such heir may be found, or if such heir shall be a *feme covert*, infant, or *non compos mentis*, the husband, guardian or committee of such heir respectively, or if the personal estate of such defendant shall have been levied upon, or possession thereof delivered to the plaintiff or plaintiffs, then his or her executor or administrator, if any such there may be, may and shall be served with a copy of such decree, within a reasonable time after it shall be known to the plaintiff or plaintiffs that the defendant is dead and who is his or her heir, executor or administrator and where he, she or they may respectively be served therewith within the State. Thirdly, *Provided always*, if any person or persons, so served with a copy of such decree, shall not,

Upon publication being made, court may grant plaintiff a decree, unless the defendant appears.

Plaintiff, in case of such decree, to give security for the return of property.

If such decree is against a person residing out of the State, a copy of it must be served on such person, if within two years after the decree, he comes into the State.

If such defendant dies within two years, the copy to be served on his real or personal representatives.



Decree to be absolute against a person served with a copy, and not petitioning for a rehearing within twelve months.

Defendant may petition for a rehearing within twelve months from service of a copy, or within three years when no copy of the decree has been served upon him, and upon paying or giving security for the costs may answer the bill, &c.

Decree in such case to be final if no petition for rehearing is filed within three years.

Such decree not to be made against a person residing out of the State, unless the bill is founded on transactions which took place within this State.

Commissions to take testimony to issue. Twenty days notice to be given unless a longer or shorter time is ordered by the court.

within twelve months after such service, appear and petition to have the said cause reheard, such decree so made as aforesaid shall stand absolutely confirmed against the person or persons so served with a copy thereof, his, her or their respective heirs, executors and administrators, and all persons claiming or to claim by, from or under him, her or them or any of them, by virtue of any act done or to be done subsequent to the commencement of such suit.

Fourthly, *Provided, nevertheless*, that if any person, so served with a copy of such decree, shall within twelve months after such service, or if any person, not being so served, shall within three years next after the making such decree, appear in court and petition to be heard with respect to the matters of such decree, and shall pay down or give security for the payment of such costs as the court shall think reasonable in that behalf, the person or persons so petitioning, his, her or their respective representatives, or any person claiming under him, her or them respectively, by virtue of any act done before the commencement of the suit, may be admitted to answer the bill exhibited, and issue may be joined, and witnesses on both sides examined, and such other proceedings, decree and execution may be had thereon as there might have been in case the same party had originally appeared and the proceedings had then been newly begun, or as if no former decree or proceedings had been in the same cause. Fifthly, *Provided, nevertheless, and be it enacted*, that if any person or persons, against whom such decree shall be made, his, her or their heirs, executors or administrators, shall not, within three years next after the making of such decree, appear and petition to have the cause reheard, and pay down or give security for the payment of such costs, as the court shall think reasonable in that behalf, such decree made as aforesaid shall stand absolutely confirmed against the person and persons against whom such decree shall be made, his, her or their heirs, executors and administrators, and against all persons claiming or to claim by, from or under him, her, them, or any of them, by virtue of any act done or to be done subsequent to the commencement of such suit; and at the end of such three years it shall and may be lawful for the court to make such further order as shall be just and reasonable according to the circumstances of the case. Sixthly, *Provided always*, that this act shall not extend or be construed to extend to warrant or make good any proceedings against any person residing without the State, unless the ground or cause of action, or the transaction on which the bill may be brought, took place within the limits of the State.

Commissions to take testimony may issue directed to any two justices of the peace, who shall have all the powers of commissioners in chancery, and the rules of proceeding in all cases of taking such testimony shall be conformable to the method of proceeding heretofore observed in the courts of chancery in this State; *Provided*, no such testimony shall be taken until at least twenty days notice of the time and place of taking the same be given to the opposite party, unless the court for sufficient reason should appoint any other limited time for the notice, which they may do in

all cases, either by enlarging or shortening the time hereby appointed for taking such testimony, as the case may require.

Commissions may also issue to any justice or justices of the peace to take the plea, answer or demurrer of a defendant, as is accustomed in cases in chancery with respect to commissioners of chancery, and the said justice or justices shall have all the power of such commissioners for that purpose.

Commissions may also issue to take the answer, &c. of the defendant.

Any one judge of the court or judge of the supreme court may in the vacation, if it shall be necessary, grant such commissions as are above mentioned, or may himself examine testimony or take the plea, answer or demurrer of the defendant in like manner; he may also grant injunctions or *ne exeat*, when the necessity of the case will not admit of a delay, but still subject to the control and further order of the court, and no *ne exeat* shall issue where sufficient bail has been taken for the party's appearance.

Judge may issue such commissions in vacation, or may himself examine testimony, &c.

May also grant injunctions and issue writs of *ne exeat*.

It shall be the duty of the said court to direct the trial of such issues, as to the court may appear necessary, according to the rules and practice in chancery in such cases; costs shall be paid by either party at the discretion of the court. The court may at any time during the dependence of the suit require further security from a defendant, or, on failure thereof, make use of such personal process as was formerly used by the court of chancery held in this State and deemed incident to the chancery jurisdiction; and the court shall in all cases have power to order such process to enforce their sentences and decrees, as have usually belonged to courts of chancery.

Court may direct the trial of such issues as it thinks necessary.

Court's power as to costs — as to requiring security from the defendant — and as to issuing process to enforce its decrees.

5. It shall be the duty of the several sheriffs in this State to serve all notices, issuing from clerks and masters in equity, to parties concerned in all references to them made, and for neglect or failure to do the same they shall be subject to the same penalties, as by law provided for omission or neglect in serving other process issuing to them.

Sheriffs to serve notices issuing from clerks and masters.

6. In all cases where decrees shall be made in any suit in equity for any sum or sums of money, it shall and may be lawful for execution to issue thereon against the defendant's body, or against his goods and chattels, lands and tenements, to satisfy such decree and costs, in the same manner as execution may or shall issue at law, and lands and tenements, goods and chattels shall be bound by such decree and execution, in the same manner as lands and tenements, goods and chattels are by judgments and executions at law.

Executions may issue as at law, and have the like binding effect.

7. Whenever any suit shall be brought in any of said courts in equity, in which security shall be given for the prosecution thereof, and a decree shall be entered up against the plaintiff for the costs of the defendant or defendants, it shall be the duty of the court, upon motion of the defendant, also to make a decree for said costs against the security for the prosecution, whereupon execution shall issue jointly against said plaintiff and securities.

A decree for the costs of the defendant may be given against the surety for the prosecution as well as against the principal.

8. Where the defendant or defendants in any case, now de-

5. 1816, c. 902.

6. 1787, c. 278, s. 2.

7. 1831, c. 46, s. 1.

8. 1801, c. 574, s. 1.



pending or hereafter to depend in any of the courts of equity within this State, shall die after the service of a copy of the complainant's bill and subpoena, it shall and may be lawful, on suggesting the death of such defendant or defendants, to issue a *scire facias* against the legal representatives of such deceased person or persons, in the same manner and under the same rules, regulations and restrictions as are used in suits at common law, and service of such writ on the legal representatives shall be as effectual and valid to revive and carry on such suit, as if a bill of revivor had been filed against them and they served with a copy thereof.

In case of defendant's death after service, a *sci. fa.* may issue to make his representatives, parties.

When plaintiff dies, his representatives may make themselves parties within two terms thereafter.

9. Whenever a party complainant in any suit in equity shall die after filing the bill, it shall and may be lawful for the legal representatives of such deceased person to carry on such suit, provided application to that effect be made by such representatives to the court, in which such suit may depend, at or before the second term after the decease of such party and not thereafter.

No bill, answer, &c. to be enrolled till final decree.

10. No bill, answer or other paper or proceedings in any suit in any court of equity in this State, (interlocutory decrees excepted) shall be enrolled, until the cause is finally decreed on, and then only upon motion by the party to take benefit by such decree, and the court shall have power and are hereby directed to adjudge and determine what papers shall and may be enrolled in any suit on motion as aforesaid.

Court to direct what papers to be enrolled.

No injunction to stay an execution shall issue for a greater sum than plaintiff swears to be just, nor until after security given.

11. No injunction, commanding the stay of an execution obtained in any court of this State, except on judgments in actions of detinue, shall be granted by the judges, or any of them, for any other or greater sum than what the complainant or complainants shall on oath declare to be just, and not until such complainant or complainants shall enter into bond with sufficient security, before the master of the court of equity, whence the injunction issues, for the payment into court of the sum complained of and all costs upon the dissolution of the injunction.

No injunction to issue after four months from the judgment at law except in certain cases.

12. No injunction to stay an execution shall issue, but within four months after the judgment at law is obtained, unless it shall appear from the oath of the complainant or complainants to the judge, before whom application is made for an injunction, that such application has been delayed in consequence of the fraud or false promises of the plaintiff at law, practised or made at the time of or after obtaining judgment, or unless it shall appear on oath that the said complainant or complainants was or were out of the State at the time of entering up judgment, so that application could not be made within the time aforesaid.

Injunction bonds, after dissolution of the injunction, to be proceeded on like appeal bonds.

13. In all cases where bonds are given on obtaining an injunction, upon the dissolving of the injunction, said bond shall be proceeded on in the same manner and under the same rules, regulations and restrictions, that bonds given upon appeals from the county to the superior courts are proceeded on.

9. 1801, c. 574, s. 2.
10. 1801, c. 574, s. 3.
11. 1800, c. 551, s. 1.
12. 1800, c. 551, s. 2.
13. 1810, c. 794.

14. No injunction, bill or other process in equity, requiring a stay of any execution obtained against a citizen or citizens on the part of the State, shall be granted by the judges thereof or any of them, until the complainant or complainants shall first produce a receipt from the public treasurer or other public officer, authorized to give the same, shewing the actual payment and discharge in full of all such part of the judgment obtained as aforesaid, as he or they by their bill of complaint shall not on oath declare is unjust.

In what cases injunctions to stay executions on behalf of the State will be allowed.

15. In any of the courts of equity, where any of the parties defendant is an infant or person *non compos* and resides out of this State, having no guardian residing within the State, it shall be lawful for the said courts to appoint a guardian to such infant or person *non compos* to defend his or her interest in the suit, to which he or she may be defendant. *Provided nevertheless*, that the said infant, or person *non compos* may, at any time within three years after the decree shall be made in said suit, appear in said court and petition to be heard with respect to the matter of such decree, and such proceedings, decree and execution may be had thereon, as there might have been in case the proceedings had been then newly begun or as if no former decree or proceedings had been in the same cause.

Court to appoint a guardian for infant or *non compos* defendant residing out of the State. Such infant, &c. to have three years after the decree to appear in court, &c.

16. In any case which now is or hereafter may be pending in any court of equity, it shall and may be lawful for such court, on sufficient cause shown by affidavit rendering such a removal necessary for the purposes of justice, to order the said cause, before a hearing, to be removed into the supreme court: *Provided*, that such removal shall not be permitted until such cause shall have been set down for hearing, nor shall any parol evidence be received in the supreme court, either before the judges thereof or the jury, whom they may cause to be empanelled for the trial of any issues of fact, except witnesses to prove exhibits or other documents.

Cause may, after it is set for hearing, be removed to the supreme court.

17. No bill of review or petition for a rehearing shall lie or be allowed, upon a final decree in any of the courts of equity within this State, but within five years next after such decree shall have been made and not after; saving nevertheless the rights of infants, *feme covert*s and persons *non compos mentis*, so that they avail themselves of the benefit of the writ of error or bill of review within three years after their disabilities shall have been removed.

Time within which bills of review, and petitions for rehearing shall lie or be allowed.

18. In all cases hereafter, where any clerk and master in equity shall sell any real or personal estate, in obedience to a decree of a court of equity, and shall be authorized by said decree to make title to the purchaser or purchasers for the same, the deed of the clerk and master of the court ordering the sale shall be held, deemed and taken as good and sufficient to convey, to the purchaser or purchasers, such title, interest and estate in the real or personal property so sold, as the party of record owning the same had therein.

Clerk and master to make title to property sold under an order of the court.

14. 1792, c. 360, s. 1.  
 15. 1818, c. 982, s. 3.  
 16. 1818, c. 962, s. 5.  
 17. 1828, c. 4, s. 2.  
 18. 1836, c. 31.

1844. 5. Ch - 9 - Sales



Note—REFERENCES TO ADJUDGED CASES.

- SECT. 4. Jones vs. Stokes, Martin, 36. Anon. 1. Hay. 286. Blount vs. Stanley, 2 Hay. 163. Worthington vs. Calhoun, 2 Car. Repos. 68.
- SECT. 9. Anon. 1 Hay. 162.
- SECT. 11. Gully vs. Gully, 1 Hawks, 20. Collier vs. Bank of Newbern, 1 Dev. and Bat. Eq. 323.
- SECT. 12. Pugh vs. Mear, 4 Hawks, 362.
- SECT. 13. Jones vs. Hill, 2 Murph. 131. Carrington vs. Carrington, 2 Hawks, 494. Casey vs. Giles, 1 Dev. and Bat. 1. Collier vs. Bank of Newbern, 1 Dev. and Bat. Eq. 328. Bozman vs. Armstead, N. C. Term R. 153.
- SECT. 16. Lee vs. Norcum, 1 Dev. Eq. 372. Littlejohn vs. Williams, 2 Dev. Eq. 380.

1840.1. ch 15-  
 1842.3. ch 15-  
 1846.7. ch 28.29

**CHAPTER 33.**  
**COURT, SUPREME.**

AN ACT CONCERNING THE SUPREME COURT.

SECTION

1. Three judges of the supreme court to be appointed.
2. Supreme court to be holden in Raleigh twice in each year—Clerk's office to be always kept in Raleigh.
3. Judges to take oaths before acting.
4. In case of sickness, &c. two judges may hold the court.
5. A chief justice to be appointed by the judges—Powers and authorities of the judges.
6. Power and jurisdiction of the court—How execution to issue and be returnable—How the decisions of the court to be transmitted to the court below.
7. Judges to appoint a clerk, who shall give bond with security and take an oath of office.
8. Clerk to record bills, &c. and such other parts of the proceedings as the court shall direct.
9. Clerk's pay for such services.
10. Judges to prescribe rules of practice for the superior courts.
11. Upon appeals from interlocutory

SECTION

- judgments or decrees, what judgment the supreme court shall give, and how it shall be certified.
- 12. Exhibits in equity cases in the supreme court may be proved there by witnesses—Rules as to such witnesses.
- 13. Judges to deliver their opinions in writing—Clerk not to give a certificate, nor to issue execution, till the opinion is filed.
- 14. Power of the court to amend proceedings—May allow the taking further testimony.
- 15. Clerk to transmit to the courts below certificates of the decisions—Execution for costs, how issued.
- 16. Judges shall annually appoint a reporter—His duties and compensation.
- 17. When the clerk shall perform the duties of reporter—His compensation therefor.
- 18. The sheriff of Wake to attend the supreme court—His pay.

Three judges of the supreme court to be appointed.

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 there shall be appointed, by joint vote of the two houses of the General Assembly, three judges, being men of integrity and learning in the law, who shall be styled Judges of the Supreme

Court of North Carolina, shall be commissioned by the governor, and shall hold their offices during good behavior.

2. It shall be the duty of said judges, and of their successors in office, to hold the supreme court of this State, at the city of Raleigh, twice in every year, viz : on the second Monday of June, and on the last Monday of December in each and every year, and they shall continue to sit at each term until all the business on the docket shall be determined, or continued upon good cause shown ; and said court shall bear the name and style of the Supreme Court of North Carolina, and shall be deemed a court of record ; and the papers and records belonging to the clerk's office thereof shall be constantly kept within the city of Raleigh.

Supreme court to be holden in Raleigh twice in each year.

Clerk's office to be always kept in Raleigh.

3. The said judges, before they act as such, shall, before the governor for the time being, or some judicial officer of the State, severally take the oath to support the constitution of the United States, the oath appointed for the qualification of public officers, and also an oath of office.

Judges to take oaths before acting.

4. When any one of the judges of said court is disabled from attending, from sickness or other inevitable cause, two of the judges of the said court shall and may hold the said court, hear and determine causes, and possess and exercise every other authority, which by law may appertain to said court, as fully to all intents and purposes as if all the judges of the said court were present.

In case of sickness, &c. two judges may hold the court.

5. The judges of said court shall appoint one of their number to preside therein, who shall thenceforth be styled Chief Justice of the Supreme Court of North Carolina; and the said chief justice, and each and every of the other judges of the supreme court aforesaid, shall have, use, exercise and enjoy the same powers and authorities, rights, privileges and pre-eminences in every respect, as are now had, exercised, used and enjoyed by the judges respectively of the superior courts of law and equity within this State, except that no judge of the supreme court shall be authorized to hold a superior court ; and for the purpose of carrying such powers and authorities into execution, each of the said chief justice and judges of the supreme court may make any fiat, may order or issue any process, and perform any act, which it is lawful for any judge of the superior courts to make, order, issue or perform.

A chief justice to be appointed by the judges.

Powers and authorities of the judges.

6. The court shall have power to hear and determine all questions at law, brought before it by appeal from a superior court of law, and to hear and determine all cases in equity, brought before it by appeal from a court of equity, or removed there by the parties thereto, and in every case such court may render such sentence, judgment and decree, as on an inspection of the whole record it shall appear to them ought in law to be rendered thereon ; and shall have original and exclusive jurisdiction in repealing letters patent, and shall also have power to issue writs of *certiorari*, *scire facias*, *habeas corpus*, *mandamus*, and all other writs which may

Power and jurisdiction of the court.

2. 1818, c. 962, s. 2.—1823, c. 13.—1805, c. 674, s. 1.—1804, c. 660 s. 2.

3. 1818, c. 963, s. 1.

4. 1834, c. 13.

5. 1818, c. 963, s. 2

6. 1799, c. 520, s. 1 and 3.—1818, c. 962, s. 4.—1830, c. 2, s. 1.—1818, c. 963, s. 4.



How execution to issue and be returnable.

How the decisions of the court to be transmitted to the court below.

Judges to appoint a clerk who shall give bond with security and take an oath of office.

Clerk to record bills, &c. and such other parts of the proceedings as the court shall direct.

Clerk's pay for such services.

Judges to prescribe rules of practice for the superior courts.

be proper and necessary for the exercise of its jurisdiction and agreeable to the principles and usages of law ; and it may, at its discretion, make the writs of execution, which it may issue, returnable either to the said court or to the superior court, from which the same may have been removed : *Provided always*, that when an execution shall be made returnable as last mentioned, a certificate of the final judgment of the supreme court shall always be transmitted to the superior court aforesaid, and there be recorded : *And provided further*, that the said superior court may enforce obedience to the said execution, and in the event of its not being executed, may issue any new or further execution or process thereon, in the same manner as though the first execution had issued from the said superior court : *And provided further*, that in criminal cases the decision of the supreme court shall be certified to the superior court, from which the case was transmitted to the supreme court, which said superior court shall proceed to judgment and sentence agreeably to the decision of the supreme court and the laws of the State.

7. The judges of the supreme court aforesaid shall have power to appoint a clerk of the said court, who shall hold his office for four years, and who, before entering on the duties of his office, shall enter into bond, with sufficient security, payable to the State of North Carolina, in the sum of ten thousand dollars, conditioned for the faithful discharge of his duties and for the safe keeping of all records committed to his custody, which bond shall be lodged with the secretary of state, and who shall also, before said judges, or one of them, take the same oath as is prescribed by law to be taken by the clerks of the superior courts, and shall keep his office in the city of Raleigh in one of the rooms of the state house, and the judges are authorized to hold the court in the state house.

8. It shall be the duty of the said clerk, in all cases in equity now pending in that court or which may hereafter be in said court, to record all bills, answers, pleas, replications and demurrers, with all decrees, whether interlocutory or final, made therein, together with the opinions of the chief justice and judges of said court, and the said clerk shall only record other parts of the proceedings in equity cases, when for sufficient reasons it may be specially ordered by said court: *Provided*, that no account, deposition or commission to take the same shall be ordered to be recorded, except at the expense of the party or parties requiring it to be done.

9. In estimating the allowance to the clerk, for making the record as directed, the judges shall not exceed the sum of thirty cents for each page recorded.

10. The judges of the supreme court shall prescribe and establish, from time to time, rules of practice for the superior courts, which rules the clerk of the supreme court shall certify to the judges of the superior courts, who shall cause the same to be entered on the records of the said courts.

7. 1818, c. 963, s. 5.—1812, c. 829, s. 2.

8. 1831, c. 20, s. 1.

9. 1831, c. 20, s. 2.

10. 1818, c. 963, s. 9.

11. When an appeal shall be taken to the supreme court from any interlocutory judgment at law of a superior court, or any interlocutory order or decree of any court of equity, the supreme court shall not enter any judgment, reversing, affirming or modifying the judgment, order or decree, so appealed from, but shall cause their opinion to be certified to the court below with instructions to proceed upon such order, judgment or decree, or to reverse or modify the same, according to said opinion, and it shall be the duty of the court below to enter upon its records the said opinion at length, and to proceed in the said cause according to said instructions.

Upon appeals from interlocutory judgments or decrees, what judgment the supreme court shall give, and how it shall be certified.

12. All exhibits or other documents, relative to cases in equity now pending or which may be hereafter pending in the supreme court, may be proved by the parol testimony of a witness or witnesses to be examined in said court, in the same manner and under the same rules as such exhibits or documents may be proved in the superior courts; and suitors in said court shall have subpoenae to enforce the attendance of witnesses, who shall be liable to the same penalties and actions for non-attendance and be entitled to the same compensation for travelling, ferriage and attendance, as witnesses in the superior courts: *Provided always*, that the witnesses attending the supreme court shall be taxed in the bill of costs, and paid by the party on whose behalf they may be summoned.

Exhibits in equity cases in the supreme court may be proved there by witnesses.

Rules as to such witnesses.

13. It shall be the duty of the judges of said court to deliver their opinions or judgments in writing, with the reasons at full length upon which they are founded; and it shall not be lawful for the clerk of the said court to make any entry upon the records of the said court, that any cause depending therein is decided, nor to give to any person or persons whatever any certificate of such decision, nor to issue execution for the costs in such suit, until after the chief justice or some judge or judges, members of the said court, shall have delivered, publicly and in open court, the opinion of the said court, stating at length the ground and argument upon which such opinion shall be founded and supported, and shall have also delivered a written copy of the same opinion to the clerk, which shall afterwards be filed among the records of the said court and published in the reports, herein directed by law to be published, of the decisions made by the said court.

Judges to deliver their opinion in writing.

Clerk not to give a certificate, nor to issue execution till the opinion is filed.

14. The supreme court shall have power to make any amendments in any case pending before it, by making the parties thereto which said court may deem necessary and proper for the purposes of justice, and upon such terms as said court shall prescribe, and also, whenever it shall appear to them necessary for the purposes of justice, to allow and direct the taking of further testimony in any case in equity, which may be removed to said court for trial, under such rules and restrictions as the said court may in its discretion prescribe.

Power of the court to amend proceedings.

May allow the taking of further testimony.

11. 1831, c. 34, s. 3.

12. 1820, c. 1043.

13. 1810, c. 785, s. 3.—1811, c. 808, s. 1.

14. 1822, c. 1143.—1825, c. 1286.



Clerk to transmit to the courts below, certificates of the decisions.

Execution for costs, how issued.

Judges shall annually appoint a reporter. His duties and compensation.

15. The clerk of the said court shall, immediately after the rise of each term thereof, transmit to the clerks of the superior courts of law and courts of equity, certificates of the decisions of the supreme court in cases sent from said courts, and thereupon the said clerks respectively shall issue execution for the costs incurred in said cases in the courts from which the same were sent, and the clerk of the supreme court shall issue execution for the costs incurred in said court, including all publications in newspapers made in the progress of the cause in that court, and by order of the same, and all postage of letters, which concern the transfer of original papers.

16. The judges of the supreme court shall annually appoint a reporter of the decisions thereof, whose duty it shall be, within five months after the close of each term, to prepare the decisions of said court for the press, and he shall contract with some printer to print one hundred and one copies, at the expense of the State, which copies shall be distributed as follows, viz: to the secretary of the governor one copy, to retain one copy himself, which copies shall remain in their respective offices, and six copies to be deposited in the public library; and the said reporter shall deliver sixtyfive copies of said reports, to be deposited one in the office of the clerk of the court of pleas and quarter sessions of each county in this State, and twentyeight copies by him to be deposited in the executive office of the State, to be transmitted by the governor to the executive department of each of the states and territories at the expense of the State; and said reporter shall receive, as a compensation for his services, a salary of three hundred dollars, and shall be authorized on his own account and at his own expense to print, publish and vend, and to obtain, under this grant and in conformity with the act of congress, the copyright of said reports of cases determined by said court, which salary shall be paid to him upon satisfactory evidence to the treasurer that the aforesaid copies have been deposited and distributed within the time aforesaid, and not otherwise.

When the clerk shall perform the duties of reporter.

17. Should the office of reporter become vacant and no suitable person offer to fill the same, the judges of the supreme court or either of them shall notify the clerk of said court of such vacancy; and it shall then be the duty of said clerk to prepare the decisions for the press, and at his option either to publish the same on his own account, as the reporter is authorized to publish them, or, as agent for the State, to contract with some printer in this State or in any other state to print the same; and the said clerk for his own services in preparing the decisions of one year for the press and a compensation to the printer to be paid by him for publishing the same, shall be entitled to receive the salary of the reporter; and the clerk, upon depositing with the secretary of state the copies reserved by law for the State, within six months after the term of decision,

His compensation therefor.

15. 1825, c. 1252.—1820, c. 1070.

16. 1822, c. 1143, s. 2.—1831, c. 33, s. 1 and 2.—1818, c. 963, s. 13.—Resolution of 1835.—1821, c. 1091, s. 1.

17. 1821, c. 1091, s. 2.

shall, upon the certificate of the secretary of state to that effect, be entitled to receive the compensation by law allowed to the reporter.

18. It shall be the duty of the sheriff of Wake, by himself or deputy, to attend the said court, and he shall be allowed for each term thereof he may attend, the sum of two dollars per day for every day said court shall be in session, to be paid by the treasurer upon the certificate of the clerk of said court, that the said sheriff had performed said duty.

The sheriff of Wake to attend the supreme court.

18. 1816, c. 933.—1819, c. 136 of pamphlet acts.

*Note.*—REFERENCES TO ADJUDGED CASES.

SECT. 15. Sparks vs. Wood, 1 Dev. and Bat. 489.

CHAPTER 34.

CRIMES AND PUNISHMENTS.

AN ACT CONCERNING CRIMES AND PUNISHMENTS.

SECTION

1. Benefit of clergy taken from murder, burglary, arson and robbery on the highway.
2. And from the accessories to those crimes before the fact.
3. Fighting a duel when one party is killed, felony.
4. Castration with malice aforethought, felony.
5. Rape, &c., felony.
6. Crime against nature, felony.
7. Burning a public building, felony.
8. Felony to break houses in the day time and steal therefrom.
9. Killing a slave, homicide.
10. Stealing slaves, felony.
11. Concealing, &c. a slave, with intent to remove him out of the State, felony.
12. Taking a free person of color from this to another State with intent to sell him, felony.
13. Malicious maiming, how punishable.
14. Bigamy, what shall be, and how punishable.
15. Horse stealing, how punishable.
16. Burning bridges, how punishable.
17. Circulating seditious publications among slaves, how punishable.

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18. Endeavoring to excite insurrection among slaves by words, how punishable.
19. Servants embezzling their master's goods, how punishable.
20. Breaking prison, when a capital offence.
21. Forgery, how punishable.
22. Additional punishment of grand larceny.
23. Robbery of, or stealing bank notes, &c., how punishable.
24. Stealing growing corn, &c., larceny.
25. Benefit of clergy not to be allowed twice.
26. Punishment for clerigiable offences.
27. How offenders to be dealt with after having been allowed their clergy.
28. Benefit of clergy shall not release from an offence, not clerigiable, previously committed.
29. Women entitled to benefit of clergy.
30. Concealing the birth of a bastard child, how punishable.
31. Forfeiture for suicide abolished.
32. Attempt to burn a public building, how punishable.
33. Embezzling records, &c., how punishable.



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34. Buying and selling offices prohibited, and how punishable.
35. Punishment of jurors for taking bribes, and of those who bribe them.
36. Sheriff or other officer suffering a criminal to escape, how punishable.
37. Duty of the attorney general and solicitors in such cases.
38. Breaking up an election, how punishable.
39. Public commissioners becoming contractors, to be guilty of a misdemeanor.
40. Overseers of roads to be indicted for neglect of duty.
41. Owners of water mills subject to be indicted for not keeping up bridges.
42. Persons not keeping lawful fences, liable to indictment.
43. Persons trespassing on the public lands, liable to indictment.
44. Punishment of vagrants.
45. Punishment for hawking and peddling without a license.
46. Fornication and adultery, how punishable.
47. Marrying a female under fifteen without the written consent of her father, indictable.
48. Unlawful maiming without malice, how punishable.
49. Punishment for sending, accepting or bearing a challenge to fight a duel.
50. Perjury, how punishable.
51. Subornation of perjury, how punishable.
52. Proviso as to cutting off ears.
53. Accessories to felonies, how punishable in certain cases.
54. Receivers of stolen goods, &c. how punishable.
55. Altering the mark or mismarking cattle, &c., how punishable.
56. Holding out false lights on the sea coast, how punishable.
57. Counterfeiting gold or silver coins, how punishable.
58. Having in possession instruments for counterfeiting, how punishable.
59. Counterfeiting bank notes, &c., how punishable.
60. Passing, or attempting to pass counterfeit notes, &c., how punishable.
61. Cheating by false tokens, how punishable.
62. Punishment for carrying on lotteries.
63. Punishment for selling tickets, &c., in lotteries.
64. Gaming tables prohibited.

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65. Money staked for betting may be seized.
66. Penalty for opposing the destruction of the tables, or the seizure of the money.
67. Penalty for suffering gaming tables in one's house—Sheriff to sue for the penalty.
68. To keep up gaming tables, or to play at them, indictable.
69. Persons playing cards in a public house, indictable.
70. Tavern keepers and retailers of spirituous liquors indictable for suffering gaming in their houses.
71. Persons stealing or selling free negroes in this State, how punishable.
72. The clerk who issues a license for the marriage of a free negro, &c. with a white person, and the justice, &c. who marries such persons, shall be subject to indictment.
73. Persons harboring runaway slaves, how punishable.
74. Teaching slaves to read or write, the use of figures excepted, indictable.
75. Penalty for trading with slaves for certain articles—Proviso, that such trading may be in the day time, and with the written permit of the master, &c. of such slaves—Proviso, not to extend to spirituous liquors, fire arms, powder, shot or lead.
76. Penalty on masters of vessels for entertaining slaves and free persons of color on board their vessels at certain times without a written permit.
77. Trading with slaves to be indictable.
78. What circumstances shall be taken as presumptive evidence of such trading against the owners of stores and shops.
79. Penalty for fraudulently giving a slave a written permit to trade.
80. Appeals allowed in cases of prosecution or indictment for trading with slaves.
81. Retailing spirituous liquors by the small measure, without a license, indictable.
82. Sheriff to furnish county attorney with a list of those having license to retail, to be laid before the grand jury.
83. Hunting in the woods with a gun, by fire light, indictable.
84. Persons sending their slaves to hunt in the woods, &c., how punishable.

SECTION

- 85. An accomplice in fire hunting, upon giving evidence against his fellow, to be discharged.
- 86. Penalty on any person or corporation for issuing due bills.
- 87. Penalty for passing or receiving due bills.
- 88. Penalty for passing or receiving a check on any bank for any sum less than one dollar.

SECTION

- 89. The issuing, passing or receiving due bills, or the passing or receiving a check on any bank for a sum less than one dollar, to be indictable.
- 90. Any person or corporation, issuing notes to pass for money, without being authorized by law so to do, how punishable.
- 91. Fines and penalties, how appropriated.

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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 no person who shall be convicted, according to due course of law, of any wilful murder of malice prepense, or of any felonious burglary, or of any wilful burning of any dwelling house, or any part thereof, or any barn then having grain or corn in the same, or store house, grist or saw mill house, or any building erected for the purpose of manufacturing any article whatever, or of robbing any person in or near any public highway, shall be admitted to the benefit of his clergy; but every person, so convicted, shall be utterly excluded thereof, and shall suffer death.

Benefit of clergy taken from murder, burglary, arson and robbery on the highway.

2. All and every person and persons, that shall maliciously command, hire or counsel any person or persons to commit or do any wilful murder, or any robbery in or near any highway, or any burglary, or wilfully to burn any dwelling house or any part thereof, or any barn then having any corn or grain in the same, or store house, grist or saw mill house, or any building erected for the purpose of manufacturing any article whatever, being thereof convicted according to due course of law, shall not have the benefit of his, her or their clergy; but shall be utterly excluded thereof, and shall suffer death.

And from the accessories to those crimes before the fact.

3. If any person fights a duel, in consequence of a challenge sent or received, and either of the parties shall be killed, then the survivor, on conviction thereof, shall suffer death without benefit of clergy; and all their aiders or abettors shall be considered accessories before the fact, and likewise suffer death without benefit of clergy.

Fighting a duel when one party is killed, felony.

4. If any person shall hereafter, of malice aforethought, unlawfully castrate any other person, or cut off, maim or disfigure any of the privy members of any person, with intent to murder, maim, disfigure, disable or render impotent such person, the person so offending and his or her counsellors, abettors and aiders, knowing of and privy to the offence as aforesaid, shall, on conviction thereof, be deemed guilty of felony, and shall suffer death without benefit of clergy.

Castration with malice aforethought, felony.

1. 23 Hen. 8, c. 1, s. 3.—25 Hen. 8, c. 3.—1 Edw. 6, c. 12, s. 10.—18 Eliz. c. 7, s. 1, —8 Eliz. c. 4.  
 2. 4 & 5 Phil. and Mary, c. 4.—3 & 4 Will. and Mary, c. 9.  
 3. 1802, c. 603, s.2.  
 4. 1831, c. 40, s. 1.



Rape, &c. felony.

5. Any person, who shall ravish and carnally know any female, of the age of ten years or more, by force or against her will, or who shall unlawfully and carnally know and abuse any female child under the age of ten years, shall be adjudged guilty of felony, and shall suffer death without benefit of clergy.

Crime against nature, felony.

6. Any person who shall commit the abominable and detestable crime against nature, not to be named among christians, with either man or beast, shall be adjudged guilty of felony, and shall suffer death without benefit of clergy.

Burning a public building, felony.

7. If any person or persons shall wilfully or maliciously burn the state house or any of the public offices of this State, or any court house, jail, arsenal, clerk's office, register's office, or any house, belonging to any incorporated town in this State, in which the archives, documents or public papers of such town are kept, he, she or they shall be deemed guilty of felony, and, on conviction thereof, shall suffer death without benefit of clergy.

Felony to break houses in the day and steal therefrom.

8. If any person or persons shall break any dwelling house, shop, warehouse or other out house thereto belonging or therewith used, in the day time, and feloniously take away any money, goods or chattels, of the value of two dollars or upwards, therein being, although no person shall be within such dwelling house, shop, warehouse or other outhouse, or shall comfort, aid or abet, assist, counsel, hire or command any person or persons, to commit such offence, and be thereof lawfully convicted, or being indicted, shall stand mute, or peremptorily challenge more than thirty-five jurors, he, she or they shall suffer death without benefit of clergy.

Killing a slave homicide.

9. The offence of killing a slave shall be denominated and considered homicide, and shall partake of the same degree of guilt, when accompanied with the like circumstances, that homicide now does at common law.

Stealing slaves felony.

10. Any person or persons, who shall steal or shall by violence, seduction or any other means, take or convey away any slave or slaves, the property of another, with an intention to sell or dispose of to another, or appropriate to their own use such slave or slaves, and be thereof legally convicted, shall be adjudged guilty of felony, and shall suffer death without benefit of clergy.

Concealing, &c. a slave, with intent to remove him out of the State, felony.

11. If any person or persons shall wickedly, willingly and feloniously carry, convey or conceal any slave or slaves, the property of any citizen or citizens of this State, without the consent, in writing of the owner or owners, his, her or their guardian or guardians of such slave or slaves, previously obtained, or shall feloniously, wickedly, and willingly take, conceal, or permit or suffer the same to be done, with the intent and for the purpose of carrying and conveying such slave or slaves out of the limits of this State, or with the intent and for the purpose of enabling such slave

5. 18 Eliz. c. 7.

6. 25 Hen. 8, c. 6.—5 Eliz. c. 17.

7. 1830, c. 41, s. 1.

8. 1806, c. 697, s. 1.

9. 1791, c. 335, s. 3.—1801, c. 535.—1817, c. 949.

10. 1779, c. 142, s. 2.

11. 1832, c. 9.—1825, c. 1289, s. 1.—1833, c. 18, s. 1.

or slaves to effect an escape out of this State, every such person or persons, so carrying, conveying and concealing, or so taking, concealing, or causing or permitting the same to be done, with the intent as aforesaid, shall be taken and deemed to be guilty of felony, and shall suffer death, without benefit of clergy.

12. Any person or persons, who shall, by violence or any other means, take or convey any free negro or free negroes or persons of mixed blood, out of this State to another, with an intention to sell or dispose of such free negro, or free negroes, or persons of mixed blood, and be thereof legally convicted, shall be adjudged guilty of felony, and shall suffer death, without benefit of clergy.

Taking a free person of color from this to another state, with intent to sell him, felony.

13. If any person or persons shall, of malice aforethought, unlawfully cut out or disable the tongue, or put out an eye of any person, with intent to murder, maim, or disfigure, the person or persons so offending, their counsellors, abettors and aiders, knowing of and privy to the offence as aforesaid, shall, for the first offence, stand in the pillory for two hours, and receive thirtynine lashes on the bare back : and for the second offence shall be and are hereby declared to be guilty of felony, and shall suffer as in case of felony, without benefit of clergy.

Malicious maiming, how punishable.

14. If any person now married, or who shall be hereafter married, doth take to him or herself another husband or wife, while his or her former wife or husband is still alive, every such offence shall be felony, and the person so offending shall suffer death as in cases of felony : *Provided*, that he or she shall be entitled to the benefit of clergy, as in cases of felony at common law : And if any person shall be convicted of this offence and have the benefit of clergy allowed him or her, it shall and may be lawful for the court, before whom such offender may be convicted, to sentence the offender to be fined and imprisoned, and to receive one or more public whippings, and to be branded on the left cheek with the letter B. *Provided nevertheless*, that if the offender be a woman, it shall be discretionary with the court to inflict all or any of the aforesaid punishments, branding excepted : *Provided always*, that this section shall not extend to any person or persons, whose husband or wife shall continually remain beyond sea for the space of seven years together, nor to any person or persons, whose husband or wife shall absent him or herself in any other manner for the space of seven years together, such person or persons not knowing his or her said husband or wife to be living within that time : *And provided also*, that this section shall not extend to any person or persons, who are or shall be, at the time of such after marriage, divorced according to the mode established or which hereafter shall be established by law, nor to any person or persons whose former marriage is declared by law to be void and of no effect, nor to any person or persons for or by reason of any former marriage had or made within the age of consent.

Bigamy, what shall be, and how punishable.

12. 1779, c. 142, s. 2.

13. 1754, c. 56.—1791, c. 339, s. 1.—1831, c. 12.

14. 1790, c. 323.—1809, c. 733.—1829, c. 9.



Horse stealing,  
how punish-  
able.

15. If any person shall feloniously steal any horse, mare, gelding, jackass, or mule, he shall suffer death, as in other cases of felony: *Provided*, that he shall be entitled to the benefit of his clergy, in the same manner and to the same extent as in cases of felony at common law.

Burning bridges,  
how punishable.

16. If any person or persons shall hereafter wilfully and maliciously set fire to and burn any public bridge, or private toll bridge, with an intent to destroy the same, he, she or they shall be deemed guilty of felony, and shall be punished accordingly.

Circulating se-  
ditionous publica-  
tions among  
slaves, how  
punishable.

17. If any person shall knowingly bring into this State, with an intent to circulate, or knowingly circulate or publish within this State, or shall aid or abet the bringing into this State or the circulation or publication within the State, any written or printed pamphlet or paper, whether written or printed in or out of the State, the evident tendency whereof would be to excite insurrection, conspiracy or resistance in the slaves or free negroes and persons of color within the State, or which shall advise or persuade slaves or free persons of color to insurrection, conspiracy or resistance, such person so offending shall be deemed guilty of felony, and, on conviction thereof in any court having jurisdiction thereof, shall for the first offence be imprisoned not less than one year and be put in the pillory and whipped, at the discretion of the court, and for the second offence shall suffer death without benefit of clergy.

Endeavoring to  
excite insurrec-  
tion among  
slaves by  
words, how  
punishable.

18. If any person shall, by words, endeavor to excite in any slave or slaves, or free negro or person of color, a spirit of insurrection, conspiracy or rebellion, such person shall be deemed guilty of felony, and, on conviction thereof in any court having cognizance thereof, shall be sentenced to receive thirtynine lashes on his or her bare back and be imprisoned for one year, and for the second offence shall suffer death without benefit of clergy.

Servants em-  
bezzling their  
master's goods,  
how punish-  
able.

19. If any servant, to whom any casket, jewels, money, goods or other chattels by his or her master or mistress shall be delivered, safely to be kept to the use of his or her master or mistress, shall withdraw him or herself from his or her master or mistress and go away with the said casket, jewels, money, goods or other chattels, or any part thereof, with intent to steal the same and defraud his or her master or mistress thereof, contrary to the trust and confidence in him or her put by his or her said master or mistress, or else being in the service of his or her master or mistress, without assent or commandment of his or her said master or mistress, he or she embezzle the same casket, jewels, money, goods or other chattels, or any part thereof, or otherwise convert the same to his or her own use with like purpose to steal them, *provided* the said casket, jewels, money, goods or chattels, that any such servant shall so go away with, or which he shall embezzle with purpose to steal as aforesaid, be of the value of ten dollars and upwards, then

15. 1790, c. 324.—1817, c. 934.

16. 1825, c. 1278.

17. 1830, c. 5, s. 1.

18. 1830, c. 5, s. 2.

19. 21 Hen. 8, c. 7, s. 1 and 2.

the same false, fraudulent and untrue act or demeanor, shall be deemed and adjudged felony ; and he or she so offending shall be punished, as other felons are punished for felonies committed by the course of the common law : *Provided*, that nothing in this section contained shall extend to apprentices, or to servants within the age of eighteen years.

20. No person that breaks prison shall have judgment of life or member for the breaking of prison only, unless the crime, for which he was arrested and imprisoned, would have required such judgment, if he had been convicted thereof according to law.

Breaking prison, when a capital offence.

21. If any person or persons, of their own head and imaginations, or by false conspiracy or fraud with others, shall wittingly and falsely forge and make, or shall cause or wittingly assent to be forged or made, or shall shew forth in evidence, knowing the same to be forged, any deed, lease, or will, or any bond, writing obligatory, bill of exchange, promissory note, endorsement or assignment thereof, or any acquittance or receipt for money or goods, or any receipt or release for any bond, note, bill or any other security for the payment of money, or any order for the payment of money or delivery of goods, with intent, in either or any of the said instances, to defraud any person or corporation, and thereof shall be convicted in any of the superior courts of law in this State, such person so offending shall, for the first offence, be adjudged to stand in the pillory one hour, and receive thirtynine lashes on his bare back, and be imprisoned not less than six months, and fined at the discretion of the court ; and for the second offence, shall, on conviction, suffer death, without benefit of clergy.

Forgery, how punishable.

22. When any person shall be convicted of the crime of grand larceny, he or she shall be infamous and deprived of his or her free law, in the same manner as persons now are who are convicted of petit larceny.

Additional punishment of grand larceny.

23. If any person or persons shall feloniously steal, take and carry away, or take by robbery, any bank note, check or order for the payment of money issued by or drawn on any bank, or other society or corporation within this State or within any of the United States, or any treasury warrant, debenture, certificate of stock, or other public security, or any order, bill of exchange, bond, promissory note, or other obligation, either for the payment of money, or for the delivery of specific articles, being the property of any other person or persons, or of any corporation, (notwithstanding any of the said particulars may be termed in law a chose in action) such felonious stealing, taking and carrying away, or taking by robbery, shall be deemed and construed to be felony of the same nature and in the same degree, and with or without benefit of clergy, in the same manner as it would have been, if the offender or offenders had feloniously stolen, or taken by robbery, money, goods or property of like value with the money or specific articles due or expressed on the face of such bank

Robbery of, or stealing bank notes, &c. how punishable.

20. 1 Edw. 2.

21. 1801, c. 572.

22. 1833, c. 20.

23. 1811, c. 314, s. 1.



note, check, order, treasury warrant, debenture, certificate of stock, public security, order, bill of exchange, bond, promissory note, or other obligation, as aforesaid, or secured thereby and remaining unsatisfied ; and such offender or offenders, for each and every such offence, being thereof legally convicted, shall suffer such punishment and be subject to the same pains, penalties and disabilities, as he, she or they should or might have suffered, if such offender or offenders had feloniously stolen or taken by robbery, money, goods, or other property of the like value with the money or specific articles due or expressed on the face of such bank note, check, order, treasury warrant, debenture, certificate of stock, public security, bill of exchange, bond, promissory note, or other obligation, respectively, or secured thereby and remaining unsatisfied.

Stealing growing corn, &c. larceny.

24. The stealing or feloniously taking and carrying away any growing, standing or ungathered indian corn, or wheat, cotton, potatoes or rice shall hereafter be held and deemed larceny ; and any person who shall hereafter steal, or feloniously take, pluck, sever and carry away, any indian corn, or wheat, cotton, potatoes or rice, growing, standing or remaining ungathered in any plantation, field, or other ground, shall, on conviction thereof, be deemed guilty of larceny, and suffer punishment, as in other cases of larceny.

Benefit of clergy not to be allowed twice.

25. No person, who hath once been admitted to the benefit of his clergy, and shall afterward be arraigned or convicted for any clergiable offence, subsequently committed, shall be admitted to have privilege or benefit of his clergy.

Punishment for clergiable offences.

26. Where any person shall, upon conviction of any felony, be allowed his benefit of clergy, he shall, if it be manslaughter, be marked with an M upon the brawn of the left thumb, and if any other felony, with a T on the same place of the thumb — these marks to be made by the sheriff openly in the court before the judge, before such person be discharged ; or it shall be in the power of the court, before which such conviction was had, instead of burning the hand of such convict, to order and adjudge him or her to receive one or more public whippings, or to pay a moderate pecuniary fine, in the discretion of said court under all of the circumstances of the case, the entry of which judgment shall have the same legal effects and consequences, to all intents and purposes, as if the person so convicted had been burned in the hand in presence of the court.

How offenders to be dealt with after having been allowed their clergy.

27. Every person, that shall be allowed or admitted to have the benefit or privilege of his clergy, shall, after such clergy allowed and burning in the hand, or other punishment, according to the preceding section of this act, be forthwith enlarged and delivered out of prison by the court before whom such clergy shall be granted : *Provided nevertheless*, that the court, before whom any such allowance of clergy shall be had, shall and may, for the fur-

24. 1811, c. 816.

25. 4 Hen. 7, c. 13.

26. 4 Hen. 7, c. 13.—1816, c. 918.

27. 18 Eliz. c. 7, s. 2 and 3.

ther correction of such person, to whom such clergy shall be allowed, detain and keep him in prison for such convenient time, as the said court in its discretion shall think proper, so as the same do not exceed one year's imprisonment.

28. Every person, that shall, upon his arraignment for any felony, be admitted to the benefit of his clergy, and shall, before such admission to his clergy, have committed any other offence, whereupon clergy, by the laws of this State, is not allowed, and not being thereof before indicted and acquitted, convicted or pardoned, shall and may be indicted and tried for the same, in the same manner, and the same judgment shall be rendered upon such trial, as though no such admission of clergy had been.

Benefit of clergy shall not release from an offence not cler-gible, previously com-mitted.

29. In every case where a man, being convicted of any felony, may demand the benefit of his clergy, if a woman be convicted of the same or like offence, upon her prayer, judgment of death shall not be given against her, but she shall suffer the same punishment as a man should suffer, who has the benefit of his clergy allowed him in the like case.

Women enti-tled to benefit of clergy.

30. If any woman be delivered of issue of her body, male or female, which, being born alive, should by the laws of this State be a bastard, and she endeavors privately, either by drowning or secret burying thereof, or any other way, either by herself or the procuring of others, so to conceal the death thereof, as that it may not come to light, whether it were born alive or not but be concealed, in every such case, the said mother, so offending, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding five hundred dollars, and an imprisonment not exceeding twelve months; and the superior courts of law within this State shall have exclusive jurisdiction of the offence created by this section : *Provided*, that nothing in this section contained shall be construed to prevent the mother, who shall be guilty of the murder of her illegitimate child, from being liable to prosecution, conviction and punishment thereof, agreeably to the principles of the common law.

Concealing the birth of a bas-tard child, how punishable.

31. No forfeiture shall be incurred by suicide or self murder, but administration may be applied for and granted as in the cases of natural and ordinary death, and debts shall be paid and distribution made agreeably to the laws, that are or may be made and provided for the management and distribution of the estates of persons dying intestate.

Forfeiture for suicide abol-ished.

32. If any person or persons shall wilfully and maliciously attempt to burn, by setting fire thereto, the state house, or any of the public offices of this State, or any court house, jail, arsenal, clerk's office, register's office, fire engine house, or public bridge in this State, or any house used for public purposes, belonging to any incorporated town in this State, he, she, or they shall receive thirty-nine lashes on his or her bare back, stand in the pillory one

Attempt to burn a public building, how punishable.

28. 8 Eliz. c. 4, s. 4.

29. 1806, c. 697, s. 2.

30. 1818, c. 935.

31. 1787, c. 230.

32. 1830, c. 41, s. 2.



hour at least, and be fined and imprisoned at the discretion of the court before whom he or she may be convicted.

Embezzling records, &c. how punishable.

33. If any person shall steal, or shall, for any fraudulent purpose, take from its place of deposit for the time being, or from any person having the lawful custody thereof, or shall unlawfully and maliciously obliterate, injure, or destroy, any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order, or warrant of attorney, or any original document whatsoever, of or belonging to any court of record or relating to any matter, civil or criminal, begun, depending or terminated in any such court, or any bill, answer, interrogatory, deposition, affidavit, order, or decree, or any original document whatsoever, of or belonging to any court of equity, or relating to any cause or matter, begun, depending or terminated in any such court, every such offender shall be guilty of a misdemeanor, and, on conviction, shall be fined, or imprisoned, or both, at the discretion of the court.

Buying and selling offices prohibited, and how punishable.

34. If any person or persons shall bargain or sell any office or offices, or deputation of any office or offices, or any part or parcel of any of them, or receive, have, or take any money, fee, reward, or any other profit, directly or indirectly, for any office or offices, or for the deputation of any office or offices, or any part of any of them, or to the intent that any person should have, exercise or enjoy any office or offices, or the deputation of any office or offices, or any part of any of them, which office or offices, or any part or parcel of them, shall in any wise touch or concern the administration or execution of justice, or the receipt, collection, controlment or disbursement of the public revenue, or which shall concern or touch any clerkship in any court of record, wherein justice is administered—all and every such person and persons, that so bargain and sell any of the said offices or deputations, or that shall take any money, fee, reward or profit for any of the said offices, or deputations of any of the said offices, or any part of any of them, or that shall take any promise, covenant, bond or assurance for any money, reward or profit, to be given for any of the said offices, or deputations of any of the said offices, or any part of any of them, shall lose and forfeit all his and their right, interest and estate, which such person or persons shall then have, of, in or to any of the said offices, or deputations, or any part of any of them, for the which office or offices, or for the deputation or deputations of which office or offices, or for any part of any of them, any such person or persons shall so make any bargain or sale, or take and receive any money, fee, reward or profit, or any promise, covenant or assurance to have or receive any fee, reward, money or profit : and all and every person or persons, that shall give or pay any sum of money, fee or reward, or shall make any promise, agreement, bond or assurance for any of the said offices, or for the deputation or deputations of any of the said offices, or any part of any of them, shall immediately, by and upon the same fee, money or reward given or paid, or upon any such promise, covenant,

33. 8 Hen. 6, c. 12. Amended.

34. 5 and 6 Edw. 6, c. 16, s. 1 and 5.

bond or agreement had or made for any fee, sum of money or reward to be paid as aforesaid, be adjudged a disabled person in the law, to all intents and purposes, to have, occupy or enjoy the said office or offices, deputation or deputations, or any part of any of them, for the which such person or persons shall so give or pay any sum of money, fee or reward, or make any promise, covenant, bond or other assurance to give or pay any sum of money, fee or reward : *Provided*, that if any person or persons do offend in any thing contrary to the intent and effect of this section, yet, notwithstanding, all judgments given, and all other act and acts, executed or done by any such person or persons so offending, by authority or color of the office or deputation, which ought to be forfeited, or not occupied or not enjoyed by the person so offending as is aforesaid, after the offence so by such person committed, and before such person, so offending, for the same offence be removed from the exercise, administration and occupation of the said office or deputation, shall be and remain good and sufficient in law, to all intents, constructions and purposes, in such like manner and form as the same should or ought to have remained and been, if this section of this act had never been passed.

35. If any juror, by himself or others for him, do take any thing from any plaintiff or defendant in a civil suit or others for them, or from any defendant in a state prosecution or others for him, to give his verdict, every such juror, being convicted thereof, shall be fined or imprisoned, or both, at the discretion of the court ; and any person, who shall give any juror any fee or reward to influence his verdict, or induce or procure him to make any gain or profit by his verdict, shall, on conviction of such offence, be fined or imprisoned, or both, at the discretion of the court.

Punishment of jurors for taking bribes, and of those who bribe them.

36. When any person, charged with any crime or misdemeanor whatsoever, shall be legally committed to any sheriff, deputy sheriff, constable or jailer within this State, and such sheriff, deputy sheriff, constable or jailer wilfully or negligently shall suffer such person, so charged and committed, to escape out of his custody, the sheriff, deputy sheriff, constable or jailer, so offending, being thereof lawfully convicted, shall be removed from office, and fined at the discretion of the court before whom the trial may be had : and in all such cases it shall be sufficient, in support of the indictment against such sheriff, deputy sheriff, constable or jailer, to prove that such person so charged was committed to his custody, and it shall lie upon the defendant to show that such escape was not by his consent or negligence, but that he had used all legal means to prevent the same, and acted with proper care and diligence ; and when a sheriff shall, in consequence of conviction under this act, be removed from office, the justices of the court of pleas and quarter sessions of the county, for which such sheriff had been appointed, are hereby authorized, upon such conviction and removal, to elect and nominate a freeholder as required by law, to execute the office of sheriff until the next election : *Provided*, that such removal of

Sheriff or other officer suffering a criminal to escape, how punishable.

35. 5 Edw. 3, c. 10.—34 Edw. 3, c. 8.—38 Edw. 3, c. 12.  
36. 1791, c. 343, s. 1.



a sheriff shall not affect his duty or power as a collector of the public revenue, but he shall proceed on such duty and be accountable as if such conviction and removal had not been had.

Duty of the attorney general and solicitors in such cases.

37. It shall be and it is hereby declared to be a part of the duty of the attorney general, or one of the solicitors, as the case may be, when they shall be informed, or have knowledge of any felon, or person otherwise charged with any crime or offence against the State, having escaped out of the custody of any sheriff, deputy sheriff, constable or jailer, to take the necessary measures to prosecute such sheriff, deputy sheriff, constable or jailer, so offending, and on all indictments in such cases he may endorse the governor for the time being as prosecutor.

Breaking up an election, how punishable.

38. If any person shall by force and violence break up any election, by assaulting the officers thereof, or depriving them of the ballot boxes, such person, his aiders and abettors, shall be judged guilty of a misdemeanor, and upon conviction shall suffer three months confinement in jail, there to remain without bail or mainprize and until he pay such fine as the court, before whom such conviction is made, shall judge, not exceeding one hundred dollars, and all costs and charges.

Public commissioners becoming contractors, to be guilty of a misdemeanor.

39. No person, who now is or hereafter may be appointed a commissioner or director to discharge any trust, wherein the State may be in any manner interested, shall become an undertaker, or make any contract for his own benefit, under such appointment, or be in any manner concerned or interested in making such contract, or in the profits thereof, either privately or openly, singly or jointly with another ; and if such person shall do so, he shall be deemed guilty of a misdemeanor, and, upon conviction by indictment in any court having cognizance thereof, shall be subject to fine and imprisonment at the discretion of the court.

Overseers of roads to be indicted for neglect of duty.

40. Every overseer of a road, who shall be guilty of neglecting or violating the duties imposed upon him by any act of the General Assembly, shall be subject to indictment therefor, and, on conviction, shall be fined at the discretion of the court before whom he is tried.

Owners of water mills subject to indictment for not keeping up bridges.

41. All owners of water mills, whose mill is situated on any public road, who shall refuse or neglect to keep up and repair, or who shall suffer to remain out of repair for the space of ten days, any bridge, which by law they are required to keep up and repair, shall be subject to indictment therefor as for a misdemeanor, and, on conviction, shall be fined at the discretion of the court.

Persons not keeping lawful fences, liable to indictment.

42. All persons neglecting to keep and repair their fences during crop time, in the manner required by an act concerning fences, passed at this present session, shall be liable to be indicted, and, upon conviction for such offence, shall pay such fine as the court shall think proper to impose, not exceeding one hundred

37. 1791, c. 343, s. 2.

38. 1793, c. 382, s. 2.

39. 1826, c. 29.—1825, c. 1269.

40. 1786, c. 256, s. 4.

41. 1819, c. 941, s. 3.

42. 1777, c. 121.—1791, c. 354, s. 1.

dollars, which fine shall be to the use of the wardens of the poor of the county wherein the recovery shall have been had: *Provided*, that the concurring testimony of three indifferent witnesses shall be necessary to conviction.

43. If any person shall erect a building on any public lands in this State, before the same shall have been either sold or granted by the State, or cultivate or remove timber from the same, such person shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined or imprisoned at the discretion of the court; and when any person or persons shall be in possession of any part of said land, it shall be the duty of the sheriff of the county, in which such land is situated, and he is hereby required, to give notice in writing to such person or persons, commanding them to depart therefrom forthwith; and if such person or persons in possession, upon being so notified, shall not, within two weeks after the time of notice, remove therefrom, the sheriff is hereby empowered and required to remove him, her or them immediately, and if it shall be necessary, to summon his *posse-comitatus* to aid and assist him in so doing.

Persons trespassing on the public lands, liable to indictment.

44. If any person or persons, who have no apparent means of subsistence, or neglect applying themselves to some honest calling for the support of themselves and families, shall be found sauntering about, and endeavoring to maintain themselves by gaming or other undue means, it shall and may be lawful for any justice of the peace of the county, wherein such person may be found, on due proof made, to issue his warrant for such offending person, and cause him to be brought before said justice, who is hereby empowered, on conviction, to demand security for his or their good behavior, and in case of refusal or neglect, to commit him or them to the jail of the county for any term not exceeding ten days, at the expiration of which time he shall be set at liberty if nothing criminal appears against him, the said offender paying all charges arising from such imprisonment; and if such person be guilty of the like offence from and after the space of twenty days, he or they so offending shall be deemed a vagrant, and be subject to one month's imprisonment, with all costs accruing thereon, which if he neglects or refuses to pay, he may be continued in prison until the next court of the county, which may proceed to try the said offender, and if found guilty by a verdict of a jury of good and lawful men, said court may proceed to hire the offender for any time, not exceeding the space of six months, to make satisfaction for all costs: but if such person or persons be of ill fame, so that he or they cannot be hired for the costs, nor give sufficient security for the same and his or their future good behavior, in that case it shall and may be lawful for said court to cause the offender or offenders to receive thirtynine lashes on his or their bare back, after which he or they shall be set at liberty, and the costs arising thereon shall become a county charge, which

Punishment of vagrants.

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43. 1823, c. 1190.

44. 1784, c. 213, s. 2.



punishment may be inflicted as often as the person may be guilty, allowing twenty days between the punishment and the offence.

Punishment for hawking and peddling without a license.

45. If any person shall hawk or peddle any goods, wares or merchandise, (books and prints excepted,) or any wooden clock or the machinery or materials thereof, such articles not being of the growth, produce or manufacture of this State, in any county, without having previously paid the tax and obtained the license required by law, or shall refuse or neglect upon the application of the sheriff or his lawful deputy or any justice of the peace to shew such license, he shall be subject to indictment, and, on conviction, shall be fined or imprisoned at the discretion of the court.

Fornication and adultery, how punishable.

46. The crimes of fornication and adultery, where a man shall take a woman into his house or a woman a man, and they shall have one or more children without parting or an entire separation, or where it shall be proved to the satisfaction of the court and jury, before whom it shall be tried, that they bed or cohabit together, shall be deemed and held indictable offences and cognizable before any of the superior or county courts in this State; and any person, legally convicted of either of the aforesaid offences, shall be fined at the discretion of the court before whom he or she may be tried, in any sum not exceeding two hundred dollars. *Provided always*, that the evidence of the person, who may be *particeps criminis*, shall not be admitted to charge any defendant under this section.

Marrying a female under fifteen, without the written consent of her father, indictable.

47. If any person shall marry a female infant under the age of fifteen years, the person so offending shall be deemed guilty of an indictable offence, and on conviction shall be fined at the discretion of the court: *Provided*, that this act shall not extend to cases in which the father of the female shall be living, and shall have, previous to the marrying, consented thereto in writing, and the superior courts of law shall have exclusive jurisdiction of this offence.

Unlawful maiming without malice, how punishable.

48. If any person shall, on purpose and unlawfully but without malice aforethought, cut or slit the nose, bite or cut off a nose or lip, bite or cut off an ear, or disable any limb or member of any other person, or castrate any other person, or cut off, maim or disfigure any of the privy members of any other person, with intent to murder, maim, disfigure, disable or render impotent such person, in any such case the person or persons so offending shall, on conviction thereof, be imprisoned for the space of six months and fined at the discretion of the court, before whom such offence shall be tried.

Punishment for sending, accepting or being the bearer of a challenge to fight a duel.

49. No person sending, accepting or being the bearer of a challenge for the purpose of fighting a duel, though no death ensues, shall ever after be eligible to any office of trust, honor or profit in this State, any pardon or reprieve notwithstanding, and shall further be liable to be indicted, and, on conviction before any

45. 1835, c. 17, s. 3.

46. 1805, c. 684.

47. 1820, c. 1041, s. 1 and 2.

48. 1754, c. 56.—1791, c. 339, s. 2 and 3.—1831, c. 40, s. 2.

49. 1802, c. 608, s. 1.

of the courts of this State having cognizance thereof, shall be fined a sum not exceeding two hundred dollars.

50. If any person shall wilfully and corruptly commit perjury on his or her oath or affirmation, in any suit, controversy, matter or cause depending in any of the courts of this State, or on any oath or affirmation made or in any deposition or affidavit taken pursuant to the laws of this State, every such person, so offending and being thereof convicted, shall be fined not exceeding the sum of one thousand dollars, and shall stand in the pillory for one hour, at the expiration of which time both ears of the person so offending shall be cut off and severed entirely from the head, and the ears so cut off shall be nailed to the pillory by the officer, and there remain until the setting of the sun ; and the person so offending shall be rendered thereafter incapable of giving testimony in any of the courts of this State, or in any case whatsoever, until such time as the judgment so given against the said offender shall be reversed.

Perjury, how punishable.

51. If any person shall, by any means, procure another person to commit corrupt and wilful perjury, on his or her oath or affirmation in any suit, controversy, matter or cause depending in any of the courts of this State, or on any oath or affirmation made or in any affidavit or deposition taken pursuant to the laws of this State, the person, so offending and being thereof convicted, shall stand in the pillory one hour, have his or her right ear cut off, and shall be fined at the discretion of the court, in a sum not exceeding one thousand dollars ; and the person so offending shall be thereafter rendered incapable of giving testimony in any of the courts of this State, or in any case whatsoever, until such time as the judgment so given against the said offender shall be reversed.

Subornation of perjury, how punishable.

52. *Provided*, that it shall not be lawful to sentence the offender to have his ears or either of them cut off, unless the perjury or subornation of perjury, of which he is convicted, shall have been committed upon the trial of some capital offence ; and when otherwise committed than on the trial of any capital case, the offender, on conviction, in lieu of having his ears cut off, shall be sentenced to receive one or more public whippings, not less than thirtynine lashes on his bare back.

Proviso as to cutting off ears.

53. Whereas principal felons frequently escape and elude the process of law, whereby accessories cannot be prosecuted and punished : for remedy whereof, it shall and may be lawful to prosecute and punish any accessory to felony as for a misdemeanor, to be punished by a fine not exceeding one hundred dollars, and corporal punishment not exceeding thirtynine lashes, or standing in the pillory not exceeding two hours, although the principal felon be not before convicted of said felony, which shall exempt the offender from being punished as accessory, if the principal be afterwards convicted.

Accessories to felonies, how punishable in certain cases.

50. 1791, c. 338, s. 1.

51. 1791, c. 338, s. 2.

52. 1831, c. 12.

53. 1797, c. 485, s. 1.



Receivers of  
stolen goods,  
&c. how pun-  
ishable.

54. If any person shall receive or buy any property, that shall be feloniously stolen or taken from any other person, knowing the same to be stolen, or shall harbor or conceal any felon, knowing him, her or them to be so, such person or persons shall be taken and received as accessories to said felony, and may be prosecuted as for a misdemeanor and punished as set forth in the preceding section, although the principal felon be not before convicted of said felony, which shall operate as a bar and prevent the offender from being punished as accessory, if such principal felon shall be afterwards taken and convicted. *Provided always*, that nothing in these two sections shall be so construed as to prevent accessories to felonies from being prosecuted and punished as heretofore directed by law.

Altering the  
mark or mis-  
marking cattle,  
&c. how pun-  
ishable.

55. If any person shall knowingly alter or deface the mark or brand of any other person's neat cattle, sheep or hog, or shall knowingly mismark or brand any unbranded or unmarked neat cattle, sheep or hog, not properly his own, with an intent to defraud any other person, such person or persons, on conviction in a court of record, shall be liable to corporal punishment in the same manner as on conviction of petit larceny.

Holding out  
false lights on  
the sea coast,  
how punish-  
able.

56. Any person who shall make or display or cause to be made or displayed any false light or beacon, on or near the sea coast within the limits of this State, for the purpose of deceiving and misleading masters of vessels, whereby they may be in danger of shipwreck, shall, on conviction thereof, be fined, or fined and imprisoned at the discretion of the court.

Counterfeiting  
gold or silver  
coins, how pun-  
ishable.

57. If any person or persons shall make or cause to be made any counterfeit similitude or likeness of a Spanish milled dollar, or any foreign coin of gold or silver, which is in common use and received in the discharge of contracts by the citizens of this State, or shall utter or pass the same, knowing it to be counterfeit, and shall be legally convicted of either of the said offences in any superior court of law of this State, the person or persons, so found guilty, shall on the first conviction receive thirtynine lashes on his or her bare back, and, on the second conviction of the above described offences or either of them, shall receive thirtynine lashes on his or her bare back and be imprisoned for a length of time not exceeding twelve months, and be branded in the right cheek with the letter C.

Having in pos-  
session instru-  
ments for coun-  
terfeiting, how  
punishable.

58. If any person or persons shall have in his or their possession any instrument or instruments for the purpose of making any counterfeit similitude or likeness of a Spanish milled dollar, or other foreign coin made of gold or silver, which is in common use and received in discharge of contracts by the citizens of this State, and shall be duly convicted thereof in any superior court of law of this State, the person or persons so offending shall receive thirtynine lashes on his or her bare back and be further liable to be fined

54. 1797, c. 485, s. 2.

55. 1741, c. 26, s. 2.—1822, c. 1155.

56. 1831, c. 42.

57. 1811, c. 814, s. 3.

58. 1811, c. 814, s. 4.

at the discretion of the court in the sum of five hundred dollars and be imprisoned not more than twelve months.

59. If any person shall falsely make, forge or counterfeit, or cause or procure to be falsely made, forged or counterfeited, or willingly aid or assist in falsely making, forging or counterfeiting any bill or note in imitation of, or purporting to be a bill or note, issued by order of the president and directors of any bank or corporation within this State, or any of the United States, or any of the territories of the United States, or any order or check on any of the said banks or corporations, or any of the cashiers thereof, or shall pass, utter or publish, or attempt to pass, utter or publish as true any false, forged or counterfeited bill or note, purporting to be a bill or note issued by the order of the president and directors of any bank or corporation within this State, or any of the United States, or any of the territories of the United States, or any order or check on any of the said banks or corporations, or any of the cashiers thereof, knowing the same to be falsely forged or counterfeited, with intention to defraud any corporation, body politic or person, every such person, so offending, shall be deemed and adjudged guilty of felony, and, being thereof convicted by due course of law in any court of competent jurisdiction, shall be punished by fine and imprisonment not exceeding three years, putting in the pillory, public whipping not exceeding thirtynine lashes on his or her bare back, all or any of them at the discretion of the court, due regard being had to the nature and circumstances of the offence.

Counterfeiting  
bank notes, &c.  
how punish-  
able.

60. If any person shall directly or indirectly pass or attempt to pass to any other person, for the sake of gain, any false, forged or counterfeited bill or note, purporting to be a bill or note issued by order of the president and directors of any bank or corporation within this State, or any of the United States, or any of the territories of the United States, or any false, forged or counterfeited order or check upon any of the said banks or corporations, or any of the cashiers thereof (knowing the same to be falsely forged or counterfeited,) every such person so offending shall be deemed and adjudged guilty of felony, and, being thereof convicted by due course of law in any court of competent jurisdiction, shall be punished by a fine to the use of the State, not exceeding five thousand dollars, and be imprisoned, not exceeding three years, standing in the pillory, public whipping, not exceeding thirtynine lashes on his or her bare back, all or any of them at the discretion of the court, due regard being had to the nature and circumstances of the offence.

Passing or at-  
tempting to  
pass counter-  
feit notes, &c.  
how punish-  
able.

61. If any person or persons shall knowingly and designedly, by means of any forged or counterfeited paper in writing or in print, or by any false token, or other false pretence or pretences whatsoever, obtain from any person or persons or corporation within this State any money, goods, property or other thing of value

Cheating by  
false tokens,  
how punish-  
able.

59. 1819, c. 994, s. 1.

60. 1819, c. 994, s. 2.

61. 1811, c. 814, s. 2.



or any bank note, check or order for the payment of money, issued by or drawn on any bank or other society or corporation within this State, or any of the United States, or any treasury warrant, debenture, certificate of stock or other public security, or any order, bill of exchange, bond, promissory note or other obligation, either for the payment of money or for the delivery of specific articles, with intent to cheat or defraud any person or persons, or corporation of the same, such person shall be held and deemed guilty of fraud and deceit, and, being thereof legally convicted in any court of competent jurisdiction, such offender or offenders shall be punished by fine and imprisonment, not exceeding twelve months, putting in the pillory, public whipping, not exceeding thirtynine lashes on his or her bare back, all or any of them at the discretion of the court, due regard being had to the nature and circumstances of the offence.

Punishment for carrying on lotteries.

62. If any person shall open, set on foot, carry on, promote, make or draw, publicly or privately, a lottery, by whatever name, style or title the same may be denominated or known, or if any person, by such ways and means, expose or set to sale any house or houses, lands or real estate, or any goods or chattels, cash, or written evidence of debt, or certificates of claims, or any thing or things of value whatever, every person, so offending, shall, on conviction thereof, be fined in any sum not exceeding two thousand dollars, or be imprisoned not exceeding six months, or both, at the discretion of the court.

Punishment for selling tickets, &c. in lotteries.

63. If any person or persons shall vend, sell, barter or dispose of any lottery ticket or tickets, order or orders for any number or shares in any lottery, or shall in any wise be concerned in such lottery, by acting as agent in this State for or on behalf of any such lottery, to be drawn or paid either out of or within this State, every person shall, upon conviction thereof, be fined in any sum, not exceeding two thousand dollars, or be imprisoned, not exceeding six months, or both at the discretion of the court. *Provided*, that nothing in this act contained shall be so construed as to prevent the drawing of any lottery authorized by the laws of this State or the sale of any tickets in such lottery so authorized to be drawn.

Gaming tables prohibited.

64. All public gaming tables, such as E. O., A. B., and A. B. C., faro banks, pass die tables, and all others of whatever nature or by whatever name or denomination they shall be called, are hereby totally forbidden to be used in this State by any person or persons whatsoever; and all justices of the peace, sheriffs, constables and the commissioners of police in the several towns of this State, are hereby authorized and directed, in case of information made to them or any of them on oath that such gaming table is in the possession and use of some person within the limits of their jurisdiction, to destroy and annihilate the same by every means in their power; and each and every person, who shall offer to keep up or use the same, shall be subject to the penalty

62 1834, c. 19, s. 1.

63. 1834, c. 19, s. 2.

64. 1791, c. 336.—1798, c. 502, s. 2.

of two thousand dollars to be recovered in an action of debt by any person suing for the same, onehalf to the use of the party suing, the other half to the use of the State : *Provided*, that nothing contained in this act in relation to gaming tables, shall be construed to extend to billiard and backgammon tables.

65. All moneys exhibited for the purpose of alluring persons to bet against at any game, and all moneys actually staked or betted whatsoever, and all species of other property, shall be liable to be seized by any justice or justices of the peace, or by any other person or persons under a warrant from a justice of the peace, wheresoever the same may be found ; and all such moneys so seized, shall be accounted for and paid, by the person or persons making the seizure, to the wardens of the poor of the county, wherein the seizure shall be made, and applied by the said wardens in aid of the poor tax, deducting thereout fifty per centum upon all moneys so seized, to be paid to the person or persons making the said seizure.

Money staked for betting may be seized.

66. Any person, who shall oppose the destruction of any of the said tables or the seizure of any such moneys, as above described, by any person or persons so authorized to make it, shall be liable to a penalty of one thousand dollars, to be recovered in any court of record for the use of the State, and shall be further liable to the action of any party grieved by such opposition ; and any person or persons, who shall take or carry away any part of the said money after the said seizure shall be declared, shall be guilty of a misdemeanor, and be liable to be indicted or prosecuted therefor, and on conviction fined at the discretion of the court trying the same.

Penalty for opposing the destruction of the tables, or the seizure of the money.

67. Any person whatsoever, who shall suffer any of the games played at the tables commonly called A. B. C., E. O., or faro bank, or any other gaming table or bank of the same or like kind under any denomination whatever, to be played in his or her house or in a house of which he or she hath at the time the use or possession, shall for every such offence forfeit and pay the sum of two hundred dollars, to be recovered in any court of record ; and it shall be the special duty of the sheriff of the county, in which such offence may be committed, to sue for and recover the said penalty in the name of the governor for the time being, for which services the sheriff, so suing and recovering, shall be allowed twenty per centum, the remainder of the penalty to be accounted for by him and paid into the public treasury in the same manner as he accounts for and settles the public taxes ; and every sheriff, who shall fail or neglect, after information to him made, or after the facts shall come to his knowledge, to perform the duties here required, shall forfeit and pay fifty dollars, to be recovered before any competent jurisdiction to the person suing for the same, and pay the costs of prosecution.

Penalty for suffering gaming tables in one's house.

Sheriff to sue for the penalty.

65. 1798, c. 502, s. 3.

66. 1793, c. 502, s. 4.

67. 1798, c. 502, s. 3.—1800, c. 552.



To keep up gaming tables, or to play at them, indictable.

68. In addition to the penalties herein prescribed, each and every person who shall construct, erect, keep up or use any public gaming table, or place at which games of chance shall be played, by whatever named called, shall be subject to indictment in any court of record having jurisdiction of the offence, and, upon conviction, shall be fined at the discretion of the court not less than two hundred dollars and imprisoned not less than one calendar month; and each and every person, who shall play, at any of the gaming tables forbidden by this act, any game of chance and bet any money or property, whether the same be in stake or not, or who shall bet at any such game, shall be deemed guilty of a misdemeanor, and, upon indictment and conviction in any court of record having jurisdiction of the offence, shall be fined at the discretion of the court not less than ten dollars.

Persons playing cards in a public house, indictable.

69. Every person who shall play at any game of cards in any public house or tavern, or house where spirituous liquors are retailed, or in any out house or store attached thereto, or any part of the premises occupied with such house, and bet any money or property, whether the same be in stake or not, and every person who shall bet on any such game so played, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined a sum not less than ten dollars.

Tavern keepers and retailers of spirituous liquors, indictable for suffering gaming in their houses.

70. If any tavern keeper, ordinary keeper, or keeper of a house of entertainment, or retailer of spirituous liquors, though he or she may not keep entertainment for travellers, shall suffer any game of cards, at which money or other property is bet, whether the same be in stake or not, to be played in his or her dwelling house, out house or store, or any part of the premises wherein he or she lives, or shall furnish persons so playing, with drink, or any thing for their comfort or subsistence during their time of playing, he or she shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined and imprisoned at the discretion of the court: *Provided*, that the said fine shall in no case exceed ten dollars, nor the imprisonment thirty days.

Persons stealing or selling free negroes in this State, how punishable.

71. Any person or persons, who shall steal or sell any free negro or free negroes or persons of mixed blood, knowing the same to be free or stolen, or shall by violence, seduction or any other means, take or convey away any free negro or free negroes or persons of mixed blood from one part of this State to another, with an intention to sell or dispose of such free negro or free negroes or persons of mixed blood, or appropriate the same to his, her or their own use, and be thereof legally convicted, shall, for every such offence, be fined not less than one hundred dollars nor more than one thousand dollars, and imprisoned not less than three months and not more than eighteen months.

The clerk who issues a license for the mar-

72. If any clerk of the court of pleas and quarter sessions shall knowingly issue any license for marriage between any free negro or

68. 1835. c. 3, s. 2 and 3.

69. 1799, c. 526.—1801, c. 531.—1831, c. 26.

70. 1799, c. 526.—1801, c. 531.—1831, c. 26.

51. 1800, c. 562.

72. 1820, c. 4, s. 2.

any free person of color and a white person, he shall be guilty of a misdemeanor, and, upon conviction before any court having jurisdiction, shall be fined and imprisoned at the discretion of the court; and any clergyman, minister of the gospel or justice of the peace, who shall knowingly marry any free negro or free person of color to a white person, shall be guilty of a misdemeanor, and, upon conviction in any court having jurisdiction, shall be fined and imprisoned at the discretion of the court.

73. Any person who shall entice or persuade any slave to absent him or herself from his or her owner's service, or who shall harbor or maintain, under any pretence whatever, any runaway slave, shall, for every such offence, forfeit and pay to the owner of such slave the sum of one hundred dollars, to be recovered by action of debt, before any jurisdiction having cognizance thereof, and be further liable to the said owner in an action for damages; and such person shall also be subject to a penalty of one hundred dollars, to be recovered before any justice of the peace, by any person suing for the same, the one half to the use of the informer, the other half to the use of the wardens of the poor of the county where suit is brought. And the person committing such offence shall, moreover, be subject to indictment therefor, and, upon conviction, shall be fined at the discretion of the court not exceeding one hundred dollars, and imprisoned not exceeding six months.

Persons harboring runaway slaves, how punishable.

74. Any free person who shall hereafter teach, or attempt to teach, any slave within this State to read or write, the use of figures excepted, or shall give or sell to such slave or slaves any books or pamphlets, shall be liable to indictment in any court of record in this State having jurisdiction thereof, and, upon conviction, shall at the discretion of the court, if a white man or woman, be fined not less than one hundred dollars nor more than two hundred dollars, or imprisoned, and if a free person of color, shall be fined, imprisoned or whipped, at the discretion of the court, not exceeding thirtynine lashes, nor less than twenty lashes.

Teaching slaves to read or write, the use of figures excepted, indictable.

75. If any person or persons shall buy of, traffic with, or receive from, any slave or slaves any cotton, tobacco, wheat, rice, oats, corn, rye, pork, bacon, beef, leather, raw hides, iron castings, farming utensils, nails, meal, flour, spirituous liquors or wine, peas, salt fish, flax, flaxseed, hogs, cattle, sheep, wool, lumber, staves, tar, pitch, turpentine, fodder, shingles, hoops, white oak heading, potatoes, mutton, cotton or woollen cloth, yarn, wearing apparel, or gold or silver bullion; or if any person or persons shall sell, barter with or deliver to any slave or slaves, any goods, wares and merchandise, or other article of personal property, every person, so offending, shall, for each offence, forfeit and pay the sum of one hundred dollars, to be recovered by warrant before any justice of the peace, and applied, onehalf to the use of the party suing for the same, the other half to the wardens of the poor of the county: *Provided, however,* that it shall and may be lawful for any person

Penalty for trading with slaves for certain articles.

73. 1741, c. 35, s. 23 —1791, c. 335, s. 4.—1821, c. 1120.—1830, c. 8.

74. 1830, c. 6, s. 1.

75. 1826, c. 13, s. 1.—1828, c. 32, s. 1.—1830, c. 15.—1833, c. 19.



Proviso that such trading may be in the day time, and with the written permit of the master, &c. of such slaves.

Proviso not to extend to spirituous liquors, fire arms, powder, shot or lead.

Penalty on masters of vessels for entertaining slaves and free persons of color on board their vessels at certain times without a written permit.

Trading with slaves to be indictable.

What circumstances shall be taken as presumptive ev-

or persons in the day time only; Sundays excepted, viz : between the rising of the sun and the setting thereof, to buy of, traffic with, or receive from any slave or slaves, any such article or articles, as aforesaid, for which he, she or they may have a permission in writing from his, her or their owner or manager, to dispose of the same : *and further*, it shall and may be lawful for any person or persons in the day time as aforesaid, to sell and deliver to any slave or slaves, any goods, wares or merchandise, or other thing, (always excepting spirituous liquors, fire arms, powder or shot, or lead, unless these articles be for the owner or employers of such slave or slaves, or by the order of the owner or person having the management of the same,) in exchange for, or payment of the money, or article or articles which the said slave or slaves may have been, by the written permission aforesaid, authorized to sell.

76. It shall not be permitted for the master or commander of any vessel to entertain any slave, negro, or mulatto on board such vessel, at any time between sunset and sunrise, nor during the Sabbath day, unless such slave, negro or mulatto as shall belong to the vessel, or shall have a pass from his, her or their master or mistress, or from some justice of the peace, expressing the time when and the business for which they go on board ; and if any slave, negro or mulatto, who has not such pass, or is not stately employed on board the vessel as one of the hands, shall be found on board any vessel in any bay, harbor, creek or river within this State on the Sabbath day or in the night, between sunset and sunrise, he shall be presumed to have been disposing of stolen goods ; and the master or commander of such vessel, on complaint and conviction before any two justices of the peace, shall be subjected to a fine for entertainment of such slave, negro or mulatto, of ten dollars for the first offence, and twenty dollars for every succeeding offence, to be applied to the use of the poor of the county in which conviction shall be had ; but any person, dissatisfied with the judgment of the said two justices, shall have the right of appealing to the court of the county, the determination whereof shall be final, the person appealing to be subject to the same regulations as in cases of other persons appealing from the judgment of a justice.

77. The offences, mentioned in the seventyfifth section, shall moreover be indictable in the county or superior courts of law, and the defendant, on conviction, shall be fined or imprisoned at the discretion of the court ; the fine however not to exceed fifty dollars, or the imprisonment three months ; and if it shall appear on the trial that the defendant is a licensed retailer of spirituous liquors by the small measure, he or she shall also forfeit his or her retailing license, and shall be incapable of taking a new license for the space of two years from and after the date of his or her conviction.

78. If any slave or slaves shall be found in any storehouse, warehouse, tippling shop, or other place fitted up for trading, unless sent by his, her or their owner, overseer or employer, after

76. 1787, c. 267.

77. 1826, c. 13, s. 2.

78. 1826, c. 13, s. 6.

the hour of nine o'clock at night, or before daybreak in the morning, or on the Sabbath day ; or if any slave or slaves shall be found at any time in any of the aforementioned places, unless sent as aforesaid, where he, she or they shall have been permitted to remain for the space of fifteen minutes, with the door of the aforementioned place closed ; or if any slave or slaves shall be seen to carry into the aforementioned places any article or articles supposed for sale, and not bring the same out ; or if he, she or they shall bring out of the said places any article or articles which may have been purchased therein, this shall be taken and received as presumptive evidence against the person or persons owning or keeping the storehouse, warehouse, tippling shop, or other place fitted up for trading, of an unlawful trading with such slave or slaves ; to be rebutted, however, like other presumptions, by other circumstances in favor of the accused.

idence of such trading, against the owners of stores and shops.

79. If any person shall fraudulently give, or cause to be given, to any slave, the property of another, a permission in writing to sell, trade or traffic in any article of personal property, without the consent or authority of the master, owner, or the person having the management of such slave, he, she or they, so offending, shall, upon conviction before any justice of the peace in the county where such offence is committed, forfeit and pay the sum of one hundred dollars, one half to the use of the person suing for the same, and the other half to the use of the wardens of the poor of said county.

Penalty for fraudulently giving to a slave a written permit to trade.

80. Either of the parties, or master of the slave, being dissatisfied with the judgment of the justice or the verdict of the jury, may pray an appeal therefrom, as in other cases : *Provided*, that no suit or indictment shall be prosecuted for any violation of the seventyfifth and seventyninth sections of this act, unless such suit or indictment be commenced within twelve months after such violation.

Appeals allowed in cases of prosecutions or indictment for trading with slaves.

81. If any person shall retail spirituous liquors by the small measure in any other manner than is permitted by law, such person or persons, so offending, shall be subject to indictment, either in the superior or county court, for the same, and, upon conviction, shall be fined at the discretion of said court a sum not less than five dollars for each and every offence.

Retailing spirituous liquors by the small measure without a license, indictable.

82. It shall be the duty of the sheriffs of the several counties of this State, at each and every term of their county courts, to furnish the prosecuting attorneys of their respective counties with a list of all such persons in their county as have, within the term of twelve months last past, obtained a license to retail spirituous liquors by the small measure, which list shall be handed over to the foreman of the grand jury, and the grand jury instructed as to their duty in relation thereto, by the prosecuting attorney.

Sheriff to furnish county attorney with a list of those having licenses to retail, to be laid before the grand jury.

83. If any person shall hunt in the woods with a gun in the night

Hunting in the woods with a gun by firelight, indictable.

79. 1826, c. 13, s. 3.

80. 1826, c. 13, s. 7.

81. 1825, c. 1272, s. 5.

82. 1825, c. 1272, s. 4.

83. 1754, c. 212, s. 1.—1801, c. 595.



time, by fire light, the person, so offending, shall, upon conviction by indictment in any court of record, be fined by such court forty dollars, to be applied to the use of the county where the offence was committed ; and if he shall fail or refuse to pay such fine, he shall be imprisoned by the court not exceeding two months, and shall also stand committed until the costs are paid.

Persons sending their slaves to hunt in the woods, &c. how punishable.

84. If any slave or slaves shall hunt in manner hereinbefore mentioned, the master of such slave or slaves, or the person in whose service he or they may be, shall, upon due conviction of such slave or slaves, before any justice of the peace of the county wherein such offence may be committed, forfeit the sum of ten dollars, to be levied by a warrant, immediately to be issued by such justice, for that purpose ; and if any person shall be duly convicted, as aforesaid, of sending his slave to hunt with a gun in the night, he shall be subject to the same pains as are provided by the preceding section, to be inflicted on fire hunters.

An accomplice in fire hunting, upon giving evidence against his fellow, to be discharged.

85. When more persons than one are engaged in the commission of the offence of fire hunting, it shall and may be lawful for one of them to give evidence against any one or all others concerned ; and his testimony shall be held and deemed to be as effectual, and shall have equal weight, as if given by any person perfectly disinterested and innocent of the offence, giving like information of the same facts, subject in other respects to the general rules of law respecting witnesses ; and such witness, upon giving such information, and after due conviction of one or more such offenders, shall be acquitted and held discharged from all penalties and pains, to which he was subject from his participation in such offence.

Penalty on any person or corporation for issuing due bills.

86. It shall not be lawful, under any pretence whatever, for any person or persons, or any corporation, school or academy within this State, which now is, or hereafter may be established, to issue any bill, order, ticket, promissory note, or any other species of security, whatever may be its form or name, commonly called due bills, with an intention to evade this section, under the penalty of twenty dollars, for each and every bill, order, ticket, promissory note, or other species of security, whatever be its name or form, commonly called due bills so issued.

Penalty for passing or receiving due bills.

87. It shall not be lawful for any person or persons to pass or receive any bill, order, ticket, promissory note, or other species of security, whatever be its name or form, commonly called due bills, issued contrary to the preceding section of this act, or which has been already issued, or is now in circulation, or for any person or persons to pass or receive any bill, order, ticket, promissory note or other species of security, whatever may be its form or name, commonly called due bills, issued by any person or persons, or bodies corporate of another state, under the penalty of twenty dollars for each and every bill, order, ticket, promissory note or other species of security, whatever may be its form or name, commonly called due bills, so passed or received.

84. 1784, c. 212, s. 3.

85. 1774, c. 103.

86. 1809, c. 770.—1816, c. 900, s. 1.

87. 1816, c. 900, s. 2.

88. It shall not be lawful for any person or persons to pass or receive any check or checks, drawn for less than one dollar, on any of the banks of this State, or the various branches or agencies thereof, for the benefit of any academy, school or corporation, or company or private citizen, or any check or checks drawn on any person or persons whatsoever, under the penalty of twenty dollars for each and every check so passed or received.

Penalty for passing or receiving a check on any bank for a sum less than one dollar.

89. If any person or persons shall offend against the provisions of the three preceding sections, he, she or they may be prosecuted at the instance of the State, by way of presentment or indictment, and, on conviction, shall pay the penalty heretofore prescribed, together with all costs of suit.

The issuing, passing or receiving due bills, or the passing or receiving checks on any bank for a sum less than one dollar, to be indictable.

90. If any person or persons, bodies corporate, company or association, shall, without the authority of the legislature first had, issue any promissory notes commonly called bank notes of any value, with intention that the same should circulate and be received as a substitute for money, he, she or they, or the persons composing the aforesaid bodies corporate, company, or association, shall be prosecuted by way of indictment, at the instance of the State, in any of the courts of record thereof, and on conviction shall be fined in the sum of two hundred dollars, and be imprisoned at the discretion of the court, not exceeding six months.

Any person or corporation issuing notes to pass for money, without being authorized by law so to do, how punishable.

91. All fines and penalties, which may arise from convictions for the offences prohibited by the five preceding sections, shall be, and they are hereby appropriated, onehalf to the use of the prosecutor, the other to the use of the county where the offence was committed.

Fines and penalties, how appropriated.

- 88. 1816, c. 900, s. 3.
- 89. 1816, c. 900, s. 4.
- 90. 1816, c. 900, s. 7.
- 91. 1816, c. 900, s. 6.

1838-9. Ch 17. 22.  
 1840-1. Ch 6. 20. ~~29.~~  
 1842-3. Ch - 29 - 53.  
 1844-5. Ch 22  
 1846-7. Ch 42. 70

Note — REFERENCES TO ADJUDGED CASES.

- SECT. 9. State vs. Scott, 1 Hawks, 24.
- SECT. 10. State vs. Hall, Tayl. 126. State vs. Davis, 2 Car. R. 291. State vs. Jernigen, N. C. Term R. 44. State vs. Jernigen, 3 Murph. 12.
- SECT. 11. State vs. Edmund, 4 Dev. 340.
- SECT. 13. State vs. Crawford, 2 Dev. 425.
- SECT. 19. State vs. Higgins, Martin 72.
- SECT. 21. State vs. Dalton, 1 Hawks, 3. State vs. Britt, 3 Dev. 122.
- SECT. 23. State vs. Ronto, 3 Hawks, 618.
- SECT. 26. State vs. Kearney, 1 Hawks, 53. State vs. Yeats, 4 Hawks, 187.
- SECT. 30. State vs. Jeffreys, 3 Murph. 480. State vs. Joynce, 4 Hawks, 350.
- SECT. 40. State vs. Nicholson, 2 Murph. 135.
- SECT. 42. State vs. Sawyer, 2 Dev. 213.
- SECT. 46. State vs. Cox, N. C. Term R. 165. State vs. Aldridge, 3 Dev. 321. State vs. Dickerson, 1 Dev. and Bat. 349.
- SECT. 48. State vs. Erwin, 1 Hay. 112. State vs. Evans, ib. 281. State vs. Orman, 1 Dev. and Bat. 119.
- SECT. 54. State vs. Goode, 1 Hawks, 463.
- SECT. 58. State vs. Collins, 3 Hawks, 191.
- SECT. 61. State vs. Simpson, 3 Hawks, 620.
- SECT. 77. State vs. Blythe, 1 Dev. and Bat. 199. State vs. Shaw, 2 Dev. 193.— State vs. Morrison, 3 Dev. 299.



## CHAPTER 35.

## CRIMINAL PROCEEDINGS.

## AN ACT CONCERNING PROCEEDINGS IN CRIMINAL CASES.

## SECTION

1. Duty of magistrates in committing criminals.
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9. When criminal process may issue and be returnable—Criminal proceedings to be as heretofore in use.
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11. Persons accused entitled to counsel.
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13. In an indictment on a libel, the defendant may give the truth in evidence.
14. When an assault is in one county and the death in another, the offender may be tried where the assault was made.
15. When an assault is made in this State and the death is out of it, the offender may be tried in this State.
16. Plea to be entered for a defendant when he stands mute on a criminal charge.

## SECTION

17. In capital cases the judge may issue a special *venire facias*.
18. Penalty on the sheriff for not executing it, and the jurors for non-attendance.
19. In capital cases defendants may challenge thirtyfive jurors, in others four, and may have the assistance of counsel in making such challenges.
20. In capital cases the State's counsel may challenge four jurors peremptorily.
21. Peremptory challenges beyond the number allowed by law, shall be void.
22. On conviction of a felon, for robbing or stealing goods, &c., the goods shall be restored.
23. Court may, in certain cases, direct the prosecutor to pay costs.
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27. Pay of witnesses in State cases, and how they shall be paid.
28. Judges of the superior courts may mitigate or remit recognizances, both before and after judgment.
29. Clerk to refund when the remitted forfeiture has been paid.
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31. County courts may remit fines; and also forfeitures before judgment—Appeals allowed from judgments on forfeited recognizances.
32. No execution to issue on a forfeited

SECTION  
 recognizance, &c. until after a *scire facias*.  
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 34. How such *scire facias* to be executed.

SECTION  
 35. Such *scire facias* to be entered as one suit against the principal and his surties—One set of costs only to be collected, except when the defendants plead separately.

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 no person within this State shall be committed to prison for any criminal matter, until examination thereof be first had before some magistrate, which magistrate shall admit the party to bail, if bailable, and shall record the examination of the party and also the full matter given in evidence, both against him and for him, with all concurring circumstances, and shall take recognizance with good and sufficient sureties for the informer to appear and prosecute, as the laws of the State direct, and likewise for all witnesses for the State to appear and give evidence against the criminal, at the next court, where the matter is cognizable, ensuing such examination, which examination and recognizance so taken shall be returned to the office of the court wherein the matter is to be tried.

Duty of magistrates in committing criminals.

2. Whenever a felony shall be committed, it shall be the duty of the sheriff, constables and other peace officers forthwith, upon information received by them, to pursue and arrest the person committing such felony, and he or they shall have power to call to his or their aid and assistance so many of the freemen of his or their county, as may be necessary for that purpose; and if any sheriff, constable or other peace officer, shall refuse or wilfully neglect to pursue and use all the means in his power to arrest such felon, or if any person, summoned to aid and assist such sheriff, constable or other peace officer in the pursuit and arrest of such felon, shall refuse or wilfully neglect to render such aid and assistance, every sheriff, constable or other peace officer or other person, so offending, shall be subject to indictment, and upon conviction shall be punished as for a misdemeanor.

Duty of sheriffs and other officers in arresting felons.

3. No person shall be imprisoned by any judge, justice of the peace or other peace officer, but only in the common jail of the county.

No person to be imprisoned but in the common jail.

4. It shall be lawful for the governor for the time being, on information made to him of any person or persons having committed any offence of a capital nature within this State, and of having fled beyond or out of the jurisdiction thereof to any of the United States, either to employ a special agent with a sufficient guard or escort to pursue and apprehend such fugitive or fugitives from punishment, or to issue his proclamation and therein and thereby offer a reward, not exceeding four hundred dollars, according to the nature of the case, as in his opinion may be sufficient for the pur-

Governor may employ an agent, or offer a reward, for the apprehension of fugitives from this State, charged with capital offences.

1. 1715, c. 1.—2 and 3 Phil. and Mary, c. 10.  
 2. 3 Edw. 1, c. 9.  
 3. 5 Hen. 4, c. 10.  
 4. 1800, c. 561.



pose, to be paid to such person or persons as shall apprehend such fugitive or fugitives, and deliver him or them to such person or persons at such place as in said proclamation shall be directed ; and it shall also be lawful for him from time to time to issue his warrants on the public treasurer, for sufficient sums of money to defray the expenses of such special agent and guard or escort, or to pay the reward offered by such proclamation upon the delivery of such fugitive, in manner as therein directed, for which sum or sums of money the treasurer shall be allowed in the settlement of his accounts.

Judges, or any two justices of the peace, may commit fugitives from other states, charged with certain criminal offences.

5. Any judge of the supreme court or of the superior courts of law and equity, or any two justices of the peace, on satisfactory evidence adduced that any fugitive has committed within the United States any petit larceny or other offence, the punishment whereof shall extend to affect life, limb or member, shall have full power and authority to commit such fugitive to any jail within this State for the space of six months, unless sooner demanded agreeably to the directions of an act of congress in such cases made and provided ; and if no demand is made within said term of time, then said fugitive shall again be liberated.

No person to be arrested on a presentment, before indictment found.

6. No person shall be arrested or charged before any court on a presentment made by a grand jury, before the attorney acting for the State shall prepare a bill, and the bill be found by the grand jury to be a true bill.

Name of the grand juror giving information, or of the witness, to be endorsed on a presentment.

7. When any presentment shall be made of any offence by a grand jury, upon the knowledge of one or more of their body, the name or names of such grand juror or jurors, giving information, shall be endorsed on the presentment ; and when any presentment or information shall be made by the grand jury of any offence upon the testimony of a witness, called upon by the grand jury to give testimony, the name of such witness shall likewise be endorsed thereon.

Indictments for misdemeanors, with certain exceptions, must be commenced within two years.

8. In all trespasses and other misdemeanors, except the offences of perjury, forgery, malicious mischief and deceit, the prosecution shall commence within two years after the commission of the said trespasses and misdemeanors, and not after ; and no bill of indictment shall be found or presentment made by the grand jury of any county in this State, where the offences aforesaid shall have been committed two years next before the finding of the said indictment or making the said presentment : *Provided*, that in case any person or persons, committing any of the said offences, shall abscond from the county in which the offence was committed, or conceal him or herself, or the said offences shall have been committed in a secret manner, then the said trespasses and misdemeanors shall and may be prosecuted within two years after the return or apprehension of the offender, or discovery of the offence : *Provided always*, that when any prosecution shall be commenced within the time prescribed by this section, and judgment shall be

Proviso, where the judgment is arrested, or a *nolle prosequi* entered.

- 5. 1810, c. 736, s. 1 and 2.
- 6. 1797, c. 474, s. 3.
- 7. 1797, c. 474, s. 2.
- 8. 1826, c. 11.

arrested for any defect in the indictment, or a *nolle prosequi* shall be entered, the computation of time in such cases shall be made from the time such prosecution shall have terminated and not otherwise.

9. All process, warrants and precepts, issued by any judge or justice of the peace, or clerk of any court, on any criminal prosecution on behalf of the State, may issue at any time, and be made returnable to any day of the term of the court, to which such warrant, process or precept is returnable, and the proceedings on criminal suits and prosecutions shall be agreeable to the practice heretofore in use, except where the same is or may be otherwise directed.

When criminal process may issue and be returnable.

Criminal proceedings to be as heretofore in use.

10. When any sheriff or his legal deputy shall arrest the body of any person, in consequence of the writ of *capias*, issued to him by the clerk of any court of record on an indictment previously found, it shall and may be lawful for said sheriff or deputy, if the crime charged is bailable, to recognize said offender and take bail in nature of a recognizance, for his appearing at the next succeeding court of the county, where such offender ought to answer, and where such bill hath been found, to be guided and directed in this matter by the same rules and regulations as have heretofore governed justices of the peace.

Sheriff to take bail, where the offence is bailable.

11. Every person, accused of any crime or misdemeanor whatever, shall be entitled to counsel in all matters which may be necessary for his defence, as well to facts as to law.

Persons accused, entitled to counsel.

12. In all criminal prosecutions, which may be had by indictment or presentment, it shall be sufficient, for all intents and purposes, that the bill shall contain the charge against the criminal, expressed in a plain, intelligible and explicit manner; and no bill of indictment or presentment shall be quashed, or judgment arrested, for or by reason of any informality or refinement, where there appears to the court sufficient in the face of the indictment to induce them to proceed to judgment.

No indictment to be quashed, or judgment arrested for merely formal objections.

13. It shall and may be lawful for every defendant, who shall be charged by indictment with the publication of a libel, to prove, on the trial for the same, the truth of the facts alleged in the bill of indictment, and upon the introduction of testimony, if it shall appear to the satisfaction of the jury that the facts are true, with the publication whereof the defendant stands charged, such evidence shall be deemed to be a complete justification of the charge.

In an indictment for a libel, the defendant may give the truth in evidence.

14. In all cases of felonious homicide, where the assault shall have been committed in one county within this State and the person assaulted shall die in any other county thereof, the offender shall and may be indicted and punished for the crime in the county where the assault was made.

When an assault is in one county and the death in another, the offender may be tried where the assault was made.

15. In all cases of felonious homicide, when the assault shall

9. 1777, c. 115, s. 15.

10. 1797, c. 474, s. 4.

11. 1777, c. 115, s. 85.

12. 37 Hen. 8, c. 8.—1784, c. 210, s. 2.—1811, c. 809.

13. 1803, c. 632.

14. 1831, c. 22, s. 1.

15. 1831, c. 22, s. 2.



When an assault is made in this State, and the death is out of it, the offender may be tried in this State.

Plea to be entered for a defendant when he stands mute on a criminal charge.

In capital cases, the judge may issue a special *venire facias*.

Penalty on the sheriff for not executing it, and the jurors for non-attendance.

In capital cases defendant may challenge thirtyfive jurors, in others four, and may have the assistance of counsel in making such challenges.

In capital cases the State's counsel may challenge four jurors peremptorily.

have been committed within this State, and the person assaulted shall die without the limits thereof, the offender shall and may be indicted and punished for the crime in the county where the assault was made, in the same manner to all intents and purposes as if the person assaulted had died within the limits of the State.

16. If any person, being arraigned upon or charged with any indictment for felony or misdemeanor, shall stand mute, of malice, or will not answer directly to the indictment, in every such case, it shall and may be lawful for the court to order the proper officer to enter a plea of "not guilty" on behalf of such person; and the plea, so entered, shall have the same force and effect as if such person had actually pleaded the same.

17. Whenever any judge of the superior courts shall deem it necessary to a fair and impartial trial of any person or persons, charged with a capital offence, he is hereby authorized and empowered to issue to the sheriff of the county, in which such court may be, a special writ of *venire facias* commanding him to summon such number of the freeholders of said county, as he the judge may deem sufficient, (such number being designated in said writ,) to appear on some specified day of said term as jurors of said court; and it shall be the duty of the sheriff to proceed forthwith to execute said writ, and return it to the clerk of said court on the day, to which the same shall be returnable, with the names of the jurors he shall have summoned.

18. If any sheriff shall neglect or fail duly to execute and return such writ of *venire facias*, he shall be fined by the court not exceeding one hundred dollars; and all jurors, so summoned, shall attend from day to day until discharged by the court, under the same rules, regulations and penalties as are now prescribed by law for other jurors.

19. Every person on trial for his life may make a peremptory challenge of thirtyfive jurors, and in all trials for crimes and misdemeanors, other than capital, the defendant or defendants shall have the right of challenging peremptorily and without shewing cause the number of four jurors; and to enable the defendants to exercise this right, it shall be the duty of the clerk in all such trials to read over the names of the jurors on the panel, in the presence and hearing of the defendant or defendants, his, her or their counsel, before the jury shall be empanelled to try the issue, and in all cases of trial, whether for capital or inferior offences, the defendant or defendants shall have the aid and assistance of counsel in making challenges to the jury.

20. In all criminal cases of a capital nature, the prosecuting officer on behalf of the State shall have the right of challenging peremptorily four jurors, *Provided* said challenge is made before the juror is tendered to the prisoner; and if he will challenge more than four jurors he shall assign of his challenge a cause cer-

16. Amendment.

17. 1830, c. 27, s. 1.

18. 1830, c. 27, s. 2.

19. 1777, c. 115, s. 85.—1812, c. 833.—1801, c. 592, s. 1.—1826, c. 9.

20. 1827, c. 10.—33 Edw. 1, stat. 4.

tain, and in all other cases of a criminal nature no challenge shall be allowed in behalf of the State, except for a cause certain, and in all cases of challenge for cause certain, the same shall be inquired of according to the custom of the court.

21. If any person, indicted for any felony or misdemeanor, shall challenge peremptorily a greater number of the men returned to be of the jury, than such person is entitled by law so to challenge in any of the said cases, viz. thirtyfive in cases of capital felony and four in other cases, every peremptory challenge, beyond the number allowed by law in any of the said cases, shall be entirely void, and the trial of such person shall proceed as if no such challenge had been made.

Peremptory challenges beyond the number allowed by law, shall be void.

22. Upon the conviction of any felon for robbing or stealing any money, goods or chattels of any description whatever, the person or persons, from whom such goods, money or chattels were robbed or stolen, shall be entitled to restitution thereof; for the more certain effecting of which, it shall be in the power of the court, before whom such conviction is had, to award restitution of the articles so robbed or stolen, and to make all such orders and issue such writs of restitution or otherwise as may be necessary for that purpose.

On conviction of a felon for robbing or stealing goods, &c. the goods shall be restored.

23. When an indictment shall be found by any of the grand jurors within this State and a *nolle prosequi* afterwards entered, it shall and may be lawful, on application, for the court, in which such indictment was preferred, to say and determine whether such prosecution was promoted on frivolous or malicious pretences or grounds; if so, to decree that the prosecutor should be subject to pay and discharge the costs thereof.

Court may, in certain cases, direct the prosecutor to pay costs.

24. The several courts of law are empowered and authorized, upon application of the defendant, to grant new trials in criminal cases, when the defendant or defendants are found guilty, in the same manner and under the same rules, regulations and restrictions as in civil cases.

New trial may be granted by the court when the defendant is convicted.

25. It shall be the duty of the county and superior courts of law to appoint a special day in their respective terms, on which the State's business shall be taken up and disposed of, and no person, recognized or summoned to attend on indictments found; shall be entitled to demand or receive any compensation for attending any time previous thereto: *Provided*, that nothing herein contained shall be construed to prevent the court from proceeding with the State's business on a succeeding day or days, until the whole is finished, and that in capital cases, witnesses and other persons may be required to attend on a day preceding the State's day and be paid accordingly. It shall be the duty of the clerks of the several courts, where an order is made designating the State's day, to give notice thereof by advertisement at the court house and three or more public places in their respective counties, and the clerks

Special days to be appointed for the trial of state cases, of which the clerk must give notice; and must issue subpoenas, &c. accordingly.

21. 22 Hen. 8, c. 14. Amended.

22. 21 Hen. 8, c. 11.

23. 1797, c. 474, s. 1.

24. 1815, c. 895. Amended.

25. 1822, c. 1133, s. 2, 3 and 4.



shall issue subpoenas and take recognizances, conformably to the provisions of this section of this act.

How the petit jurors shall be sworn in cases not capital.

26. In the trial of all pleas and prosecutions for offences not capital, unless in cases where the court may otherwise direct, petit jurors, as well talesmen as those of the original panel, shall be sworn or affirmed (as the case may be) well and truly to try all issues of traverse that shall come before them during the day; nothing herein contained however shall be construed to affect in any degree the usual challenges in law, either to the whole or any of said jurors.

Pay of witnesses in state cases and how they shall be paid.

27. All witnesses, who shall be summoned or recognized to appear in behalf of the State in any prosecution now depending or to depend in any of the superior courts of law and courts of pleas and quarter sessions, and shall attend accordingly, shall be allowed the same pay for their daily attendance and mileage as is allowed to witnesses attending in civil suits, and such fees for attendance shall be paid by the defendant upon conviction only, and if the defendant be acquitted on any charge of an inferior nature, the court may at their discretion order the prosecutor to pay the costs, if such prosecution shall appear to have been frivolous or malicious; but if the court shall be of opinion that such prosecution was not either frivolous or malicious, and a greater number of witnesses have been summoned by such prosecutor, than were in the opinion of such court necessary to support the charge, they may notwithstanding order the prosecutor to pay the attendance of such unnecessary witnesses, if it shall appear that they were summoned at his special instance and request.

Judges of the superior courts may mitigate or remit recognizances, both before and after judgment.

28. The judges of the superior courts, in their respective courts, are fully authorized and empowered to receive, hear and determine on the petition of all persons, who may conceive they merit relief on their recognizances forfeited, and to lessen or absolutely remit the same, and to do all and any thing therein, as they shall deem just and right and consistent with the welfare of the State as well as the persons praying such relief, which power shall extend to the relief of those persons, against whom final judgment hath been entered and execution awarded accordingly.

Clerks to refund when the remitted forfeiture has been paid.

29. It shall be the duty of the clerks of the several superior courts, on the remission of any forfeited recognizance, on which the money hath been collected and paid into their office, to refund and pay back to the person entitled to the same, the full amount of money so paid into his office, or so much thereof as shall be remitted.

County trustee to refund when such remitted forfeiture has been paid over to him.

30. In case the clerk has paid the same to the county trustee, it shall be the duty of the county trustee, and he is hereby required to pay and refund to the person entitled the amount thereof, on his producing an attested copy of the record from the clerk of the court, certifying that such recognizance hath been remitted or mit-

26. 1822, c. 1133, s. 1.

27. 1800, c. 553, s. 1.

28. 1788, c. 292, s. 1.

29. 1795, c. 442, s. 1.

30. 1795, c. 442, s. 2.

igated, signed with his own proper name, with the seal of the court affixed thereto, which certificate shall be a sufficient voucher for the trustee for the amount expressed in the certificate.

31. The several county courts of pleas and quarter sessions shall have power to remit or mitigate all fines by them inflicted, and all forfeitures on recognizances previous to entering final judgment thereon: *Provided* there are seven justices on the bench, three of whom shall have been present when such fine was inflicted, when the remission or mitigation of a fine is prayed for: *Provided also*, that if any person or persons shall be dissatisfied with the judgment or decree of any county court, entering final judgment against him or them on forfeited recognizances, he shall be entitled to an appeal to the superior court of the county, under the same rules and regulations as other appeals, which superior court is hereby authorized to determine on the premises as in other cases in this act directed: *Provided*, that nothing contained in this act shall be construed to debar the county solicitor or attorney for the State from appealing on any judgment given, whenever he shall conceive the State has been injured, but that in all such determinations, he is hereby expressly required to pray an appeal, which the said court shall grant accordingly.

County courts may remit fines; and also forfeitures before judgment.

Appeals allowed from judgments on forfeited recognizances.

32. No execution shall issue upon a forfeited recognizance or to collect a fine imposed, until a *scire facias* has issued against the person, who has forfeited his recognizance or upon whom the fine has been imposed, and judgment thereon.

No execution to issue on a forfeited recognizance, &c. until after a *scire facias*.

33. When any clerk of the superior court of law or court of pleas and quarter sessions shall have occasion or be required to issue *scire facias* or other process, against any person or persons, who shall have forfeited any recognizance or recognizances, entered into as principal in any one case, and who shall have given one or more persons as bail or security in such recognizance or recognizances, or otherwise caused such bail or securities to become bound or recognized for or in behalf of such principal, as aforesaid, in any one case, as aforesaid, and such sureties shall also have forfeited such recognizance or recognizances, so entered into as aforesaid, it shall be the duty of such clerk to issue a joint *scire facias*, or such other joint process as may be deemed legal and necessary, against such principal including such surety or sureties, therein designating who are principals from those who are sureties, also specifying therein the respective sums or penalties which each shall have forfeited and for which they are required to answer by virtue of said process.

Clerks to issue a joint *scire facias* against the principal and his sureties on a recognizance.

34. The sheriff or other officer, who may be authorized and required to serve or execute such *scire facias* or process, shall do so, by serving a copy of such process on each of the defendants, or by leaving a copy at the place of residence of such delinquent or delinquents, or in such other manner as heretofore required by law.

How such *scire facias* to be executed.

31. 1788, c. 292, s. 2.  
 32. 1777, c. 115, s. 48.  
 33. 1812, c. 836, s. 1.  
 34. 1812, c. 836, s. 2.



Such *scire facias* to be entered as one suit against the principal and his sureties.

One set of costs only to be collected except when the defendants plead separately.

35. When the clerk or clerks aforesaid shall enter said suit on the record or records of their respective courts, to which said process or suit shall be returnable, he shall consolidate and enter the same so as to make but one suit, and on which it shall be lawful to recover or otherwise receive but one set of costs, such as was formerly recoverable on a single suit of the description aforesaid, the sheriff's fees for service of process excepted: and should any of the clerks or other persons aforesaid be guilty of charging in their bill of costs or otherwise exacting any higher or greater costs, than by law shall be due on one single suit as aforesaid, he shall be liable to a penalty of one hundred dollars, to be recovered and paid to the use of the person or persons injured: *Provided*, that nothing herein contained shall be construed so as to prevent any defendant in such suits from severing and pleading separately, in which case it shall be at the discretion of the court to award separate costs.

35. 1812, c. 836, s. 3.

*Note.*—REFERENCES TO ADJUDGED CASES.

- SECT. 1. *State vs. Webb*, 1 Hay. 103. *State vs. Irwin*, ib. 112.  
 SECT. 6. *State vs. Cain*, 1 Hawks, 352.  
 SECT. 11. *State vs. Dickens*, 1 Hay. 406.  
 SECT. 12. *State vs. Jeffreys*, Tayl. 216. *State vs. Newmans*, 2 Car. Rep. 74.  
*State vs. Sparrow*, N. C. Term R. 93. *State vs. Cherry*, 3 Murph. 7. *State vs. Farrier*, 1 Hawks, 487. *State vs. Moses*, 2 Dev. 452.  
 SECT. 17. *State vs. Benton*, 2 Dev. and Bat.  
 SECT. 27. *State vs. Stewart*, 1 Car. Rep. 524. *State vs. Lumbrick*, ib. 543. *Office vs. Gray*, 2 Car. Rep. 424.

Custom House  
1844. 5. ch 20.

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CHAPTER 36.

CURRENCY.

AN ACT CONCERNING THE CURRENCY OF THIS STATE.

Currency of the United States recognized—Records, &c. to be kept in dollars and cents.

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 the currency of the United States shall be recognized as the lawful currency of this State, and it shall be lawful for the records and all other papers and proceedings in this State to be kept in dollars and cents. *Provided*, that nothing herein expressed shall operate to prevent any records, papers or proceedings from being kept in the former currency of this State.

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Deaf Mutes & Blind persons. - 1844.5. Ch 37.  
1846.7. Ch 48

CHAPTER 37.

State Deeds - 1848. Ch 37.

**DEEDS AND CONVEYANCES.**

1846.7. Ch 68.

certified copy

AN ACT CONCERNING DEEDS AND CONVEYANCES OF LANDS AND SLAVES, MORTGAGES AND POWERS OF ATTORNEY, THEIR EXECUTION, PROBATE AND REGISTRATION.

SECTION

1. Deeds to be proved or acknowledged and registered in the county where the lands lie—Deeds so registered, to pass lands without livery, &c.
2. Copy of a deed from the register's office, good evidence when the original is lost.
3. Grantees may have witnesses summoned to prove their deeds.
4. County court may issue a commission to take probate when the witnesses or grantor are out of the State.
5. How deeds &c. executed out of the State, but within the United States, may be proved and registered.
6. How proved and registered when made in foreign countries.
7. Further provisions for the probate and registration of such deeds, &c.
8. County court may issue a commission to foreign parts to take probate.
9. How deeds executed by husband and wife shall be proved or acknowledged and registered—Wife to be privately examined.
10. Provision when the wife is sick or resident of another county.
11. Form of the commission to take the private examination of a *feme covert*.
12. Conveyance under a power of attorney from husband and wife valid to pass lands.
13. How deeds and powers of attorney from husband and wife, living out of this State, but in the United States, may be proved and registered.
14. How when husband and wife reside in foreign parts.
15. Powers of attorney for the sale of lands to be proved &c. and registered.

SECTION

16. Other powers of attorney, how to be proved and registered.
17. Gifts of slaves must be in writing attested and registered—Proviso as to advancements to children.
18. Deeds of gift to be proved and registered.
19. All sales of slaves must be in writing attested and registered, except *bona fide* sales accompanied with a transfer of possession.
20. All written transfers of slaves must be registered in the county where the purchaser resides, unless the seller is to retain possession, &c.
21. All written transfers of slaves to be proved on any trial by the subscribing witnesses if to be found.
22. Certain limitations of slaves by deed to be valid.
23. No mortgage or deed in trust good against creditors, unless registered within six months.
24. Mortgage or deed in trust good against creditors, &c. only from the date of the registration.
25. Clerks of the county court authorized to take probate of mortgages and deeds in trust.
26. Register to endorse on each mortgage &c. the day he received it and to register it in the order of delivery.
27. What remedy the last mortgagee shall have when there is more than one mortgage in force at the same time.
23. Where an action is brought to recover money secured by mortgage or for the mortgaged property, the defendant may be discharged by bringing the money due on the mortgage into court—Proviso, where the defendant denies the right of redemption, &c.



SECTION

- 29. Marriage settlements to be proved and registered.
- 30. What marriage settlements shall be good against creditors, &c.
- 31. Infant trustees how to convey lands.

SECTION

- 32. Errors in the registration of deeds, &c. how to be corrected, &c.
- 33. Further time allowed for registering deeds, &c.

1848. ch 39.

Deeds to be proved or acknowledged and registered in the county where the lands lie.

Deeds so registered to pass lands without livery, &c.

Copy of a deed from the register's office good evidence when the original is lost.

Grantees may have witnesses summoned to prove their deeds.

County court may issue a commission to

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 no conveyance, or bill of sale, for land, (other than mortgages,) in what manner or form soever drawn, shall be good and available in law, unless the same shall be acknowledged by the vendor or grantor, or proved by one or more evidences upon oath, either before one of the judges of the supreme court or of the superior court, or in the court of the county where the land lieth, and registered by the public register of the county, where the land lieth, within two years after the date of the said deed ; and that all deeds so done and executed shall be valid and pass estates in land or right to other estate, without livery of seizin, attornment or other ceremony in the law whatsoever.*

2. The registry or copy of the record of any deed or conveyance, registered or recorded as by this act prescribed, and attested by the register, shall and may, where the original deed or conveyance is lost, be given in evidence in any court of record, and shall be held and is hereby declared to be full and sufficient evidence of such deed or conveyance.

3. The grantee or grantees in any deed for land, or in any deed of gift, bill of sale, or mortgage of slaves, or other personal property, requiring registration, shall and may at his or their own expense, on motion to the court of pleas and quarter sessions of the county where the land lies, or where the deed of gift, bill of sale or mortgage of chattels is required to be registered, obtain a summons for any one or more of the subscribing witnesses to such conveyance, which shall be signed by the clerk and directed to the sheriff, commanding him to summon such witness to appear at the next term of said court, and give his evidence concerning the execution of such conveyance, under the penalty of forty dollars, and the sheriff shall and is hereby required to execute the same, at least five days before the term, to which the same is returnable, and make due return thereof ; and if any witness so summoned shall fail to appear, on the return of such summons, the court shall give judgment against him for the penalty aforesaid, for which execution may be taken out, either against his body or goods, by him or them at whose instance he was summoned, unless he show sufficient cause, at the next succeeding term, for not having appeared to give his evidence.

4. Whenever a deed for the conveyance of lands in this State, or of slaves, or other personal property requiring registration, has

1. 1715, c. 7, s. 1.—1818, c. 963, s. 2.—1777, c. 115, s. 2.—1756, c. 58, s. 3.  
 2. 1756, c. 58, s. 3.  
 3. 1756, c. 58, s. 4.  
 4. 1784, c. 203, s. 3.—1810, c. 803, s. 2.

been or may be executed, and the subscribing witness or witnesses, or grantor, are without the State, then and in that case it shall and may be lawful for the court of pleas and quarter sessions of the county, in which such lands lie, or in which such deed of slaves or other personal property is required to be registered, to direct a *dedimus* to two or more commissioners in the State, where the subscribing witness or witnesses reside, or where the grantor resides, empowering them or either of them to take the acknowledgment or probate of such deed, and to return the same, with a certificate of such probate or acknowledgment to said court, whereon such *dedimus* and certificate of probate or acknowledgment and the deed itself shall be admitted to registration, which registration shall be good and effectual to all intents and purposes: *Provided always*, that in case of the death of a subscribing witness or witnesses to any deed or other instrument, requiring registration, satisfactory proof of the handwriting of such deceased witness, together with proof of the handwriting of the grantor, shall be sufficient for that purpose.

take probate when the witnesses or grantor are out of the State.

5. Where any conveyance of lands in this State, or power of attorney for the conveyance of the same, or any bill of sale for slaves, or power of attorney for selling the same, may have been heretofore or shall be hereafter executed by any person or persons, residing in any of the United States other than this State, or in any of the territories of the United States, or in the district of Columbia, and shall be personally acknowledged by the person or persons executing the same, or proved by a subscribing witness thereto, before some one of the judges of supreme jurisdiction, or before some one of the judges of the superior courts of law or circuit courts of law of superior jurisdiction within said state, territory or district, and an attestation of such acknowledgment or probate shall be endorsed or affixed to said deed, bill of sale or power of attorney by the said judge, and a certificate of the governor of said state or territory, or, where the said deed is made in the district of Columbia, a certificate of the secretary of state of the United States, shall be annexed to said deed, bill of sale or power of attorney that the judge, before whom said acknowledgment or probate was taken, was, at the time of taking the same, one of the judges of the courts of supreme jurisdiction or one of the judges of the supreme courts of law or circuit courts of law of superior jurisdiction within said state or territory, or within the district of Columbia, or where such conveyance, bill of sale or power of attorney shall be so acknowledged or proved before any commissioner, appointed by the governor of this State according to law, and certified by him as by law required, such deed, bill of sale or power of attorney, being exhibited in the court of pleas and quarter sessions of the county in which such lands lie or in which the purchaser of such slave or slaves resides or the person empowered to sell such slaves may reside, or to one of the judges of the supreme

How deeds, &c. executed out of the State, but within the United States, may be proved and registered.

5. 1827, c. 18, s. 1.—1830, c. 31, s. 1.



court or of the superior courts of this State, shall be ordered to be registered with the certificates thereto annexed, and such deeds, bills of sale or power of attorney with the certificates thereto annexed having been registered, pursuant to such order, in the county, in which such lands lie, or in which the purchaser of such slave or slaves may reside, shall be valid in law to convey, or to empower to convey, all the estate and title which such person or persons may or shall have in any such lands or slaves thereby conveyed or authorized to be conveyed, and shall be received in evidence in any court of law or equity within this State without further proof thereof.

How proved and registered when made in foreign countries.

6. All deeds and conveyances of land, lying within this State, and all powers of attorney to convey such land, made in foreign parts or in parts beyond the limits of the United States, which shall be remitted hither and proved as prescribed in the first section of this act, or which shall be personally acknowledged or proved before the chief magistrate of any city, town or corporation in the country, in which such deed or conveyance or power of attorney was executed, and an attestation thereof affixed thereto, shall, upon being exhibited to the court of pleas and quarter sessions of the county in which the land lies, or to one of the judges of the supreme or superior courts of this State, be ordered to be registered and shall be registered in the same manner as if such deed or conveyance or power of attorney had been proved as prescribed in the first section of this act, and when so registered shall be good and valid in law to all intents and purposes, and shall be received in evidence without further proof.

Further provisions for the probate and registration of such deeds, &c.

7. Whenever a deed for the conveyance of lands, or negroes or other property, or a letter of attorney for the conveyance thereof, which deed or letter of attorney is by law authorized to be registered, shall be proved or acknowledged in foreign parts before any ambassador, public minister, consul or commercial agent of the United States, and a certificate of such ambassador, public minister, consul or commercial agent shall be thereunto annexed under his official seal, declaring such probate or acknowledgment, or when any *feme covert*, party to such deed or letter of attorney, shall be privately examined before such ambassador, public minister, consul or commercial agent and a certificate of such examination shall be annexed as aforesaid, such probate, acknowledgment and examination being produced before the court of pleas and quarter sessions of the county, wherein the land or other property is situated, may be ordered by said court to be registered, together with the said deed or letter of attorney, and the instrument so registered shall have the same validity as if the probate, acknowledgment and examination had been had in open court.

County court may issue a commission to foreign parts to take probate.

8. Whenever it shall be suggested to the court of pleas and quarter sessions of any county, that a deed for the conveyance of land or other property in such county has been made in foreign

6. 1715, c. 7, s. 3.—1810, c. 791, s. 2 and 3.

7. 1835, c. 13, s. 2.

8. 1835, c. 13, s. 3.

parts, it shall be lawful for such court to issue a commission, returnable at some subsequent term thereof, to a commissioner or commissioners, authorizing him or them or any number of them the court may designate, to take the acknowledgment of the party or parties thereto or the examination of any of the subscribing witnesses thereto, and if any of the parties shall be a *feme covert*, to take also the private examination of such *feme covert*, and the proceedings of the said commissioner or commissioners, so authorized, being returned, the court may proceed to adjudge that said deed or letter of attorney is duly acknowledged or proved and the said examination is in due form; and upon such adjudication, the deed or letter of attorney with the proceedings so had shall be registered, and the same, so registered, shall have the same effect as though all the said proceedings had been had in open court.

9. All conveyances in writing and sealed by husband and wife for any lands, and by them personally acknowledged before one of the judges of the supreme or superior courts, or in the court of the county where the land lieth, the wife being first privily examined before such judge, or some member of the county court, appointed by the said court for that purpose, whether she doth voluntarily assent thereto, and registered according to the laws of this State, shall be as valid in law to convey all the estate and title, which such wife may or shall have in any lands, tenements and hereditaments so conveyed, whether in fee simple, right of dower or other estate, as if done by fine and recovery, or any other ways and means whatsoever.

How deeds executed by husband and wife shall be proved or acknowledged and registered. Wife to be privately examined.

10. *Provided nevertheless*, that where any such conveyance as aforesaid shall be acknowledged by the husband, or proved by the oath of one or more witnesses, before a judge as aforesaid or county court where the land lieth, and it shall be represented to the judge, or county court aforesaid, that the wife is a resident of any other county, or so aged or infirm that she cannot travel to the said judge or county court to make such acknowledgment as aforesaid, it shall and may be lawful for the said judge or county court by his or their order to direct the clerk of the county court, where such land lieth, to issue a commission to two or more commissioners for receiving the acknowledgment of any deed of such *feme covert* for passing her estate in any lands, tenements or hereditaments, and such deed, acknowledged before them, after they have examined her privily and apart from her husband touching her consent, and certified by the county court, to which the commission shall be returnable, shall, by order of the county court, be registered with the commission and returns, and shall be as effectual as if personally acknowledged before the judge or county court by such *feme covert*.

Provision when the wife is sick or resident of another county.

11. The several clerks of the courts of pleas and quarter sessions, shall issue the said commission in the following form, viz :

Form of the commission to take the private

9. 1751, c. 50, s. 2.

10. 1751, c. 50, s. 3.

11. 1751, c. 50, s. 4.



examination of  
a *feme covert*.

State of North Carolina,

To A. B. C. D. and E., greeting :

Whereas F. G. hath produced a deed of conveyance, made to him from H. I. and K. his wife, of a certain tract or parcel of land, lying and being in the county of \_\_\_\_\_ in our State, and procured the same to be proved or acknowledged by the said H. I. before J. K. one of the judges of our supreme or superior court (or in the court of our said county of C., as the case may be) and it being represented to our said judge, (or to our said court) that K. wife of the said H. I. is not an inhabitant of our said State, or is so aged and infirm (here as the case may be) that she cannot travel to our said judge, or court of our said county of \_\_\_\_\_

to be privily examined, as to her free consent in executing the said conveyance, know ye that we, in confidence of your prudence and fidelity, have appointed you and by these presents do give unto you or to any two of you, full power and authority to take the private examination of the said K. wife of the said H. I., concerning her free consent in her executing the said conveyance, and therefore we command you or any two of you that, at such certain day and place as you shall think fit, you go to the said K., if she cannot conveniently come to you, and, privily and apart from her husband, examine her the said K. whether she executed the said conveyance freely and of her own accord, without fear or compulsion of the said H. I. her husband ; the examination being distinctly and plainly wrote on the said deed or on some paper annexed thereto : and when you shall have so taken the said examination, you are to send the same, closed up under the seals of you or any two of you, together with this writ, unto our said court, to be held for the said county, at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ next ensuing. Witness L. M. clerk of our said court at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ anno dom. L. M. cl. c.

Conveyance under a power of attorney from husband and wife, valid to pass lands.

12. All conveyances, which may be made by any person, under a power of attorney from any *feme covert* residing without the State, by her freely executed and jointly with her husband, shall be held good and valid, to all intents and purposes, to pass the estate and title, which such *feme covert* may have in such lands, tenements and hereditaments within this State, as are mentioned or included within such power of attorney, whether in fee simple, right of dower, or otherwise.

How deeds and powers of attorney from husband and wife, living out of this State, but in the United States, may be proved and registered.

13. When any conveyance of lands in this State, or power of attorney for the conveyance of the same, shall be made by husband and wife residing in any of the United States other than this State, or in any of the territories of the United States, or in the district of Columbia, and by them personally acknowledged before some one of the judges of the court of supreme jurisdiction or before some one of the judges of the superior courts of law or circuit courts of law of superior jurisdiction, within said state, territory or district, or where the wife shall personally acknowledge such con-

12. 1793, c. 510.

13. 1810, c. 791, s. 1.—1816, c. 927.—1827, c. 18.—1822, c. 1116.

veyance, before two or more commissioners duly authorized to take such acknowledgment, under a commission issued from some court of record in said state, territory or district, the wife being first privily examined before said judge or commissioner, whether she doth voluntarily assent thereto, and an attestation of such acknowledgment endorsed upon or affixed to said deed, or power of attorney, or commission by the said judge or commissioners, and the certificate of the governor of the said state, or territory, or in the district of Columbia of the secretary of state of the United States, duly authenticated and annexed to said deed, that the judge before whom such acknowledgment was taken, was at the time of taking thereof one of the judges of the courts of supreme or superior jurisdiction in said state, territory or district, or that the court, which issued such commission, is a court of record, and the person signing said commission is clerk of the said court, such deed or power of attorney shall, upon being exhibited to the court of pleas and quarter sessions of the county, where such lands lie, or one of the judges of the supreme or superior courts, be ordered to be registered with the certificates and commission endorsed thereon or annexed thereto, and, when so registered, shall be valid in law to convey all the estate and title, which such *feme covert* may or shall have in any such lands, tenements or hereditaments so conveyed or authorized to be conveyed, and shall be received in evidence in courts of law and equity without further proof.

14. Any deed for the conveyance of lands in this State, or any power of attorney to convey lands in this State, made by husband and wife, who reside in foreign parts or without the limits of the United States, which shall be personally acknowledged before the mayor or other chief magistrate of any city, town or corporation, the wife being first privily examined by such mayor or chief magistrate, whether she doth voluntarily assent thereto, and an attestation thereof endorsed thereon or affixed thereto, shall upon being exhibited to the court of pleas and quarter sessions of the county where such land lies, or one of the judges of the supreme court or the superior courts of this State, be ordered to be registered, and shall be registered in the same manner as if such deed or power had been proved or acknowledged in open court of the county where the lands lie, and shall be valid in law to pass the estate and title of the wife to all such lands, tenements or hereditaments so conveyed or to be conveyed, and when registered as aforesaid shall be received in evidence without further proof.

How when husband and wife reside in foreign parts.

15. When any power of attorney, authorizing the conveyance of lands, is or shall be acknowledged by the person who has executed the same, or proved by one or more witnesses on oath before any judge of the supreme or superior courts in this State or in any court of pleas and quarter sessions of the county, where the land lies or the power was executed, such power of attorney so proved or acknowledged may be registered by the public register of the county where the land lies, at any time within twelve months after the date of said deed.

Powers of attorney for the sale of lands how to be proved, &c. and registered.

14. 1810, c. 791, s. 2.  
15. 1798, c. 514, s. 1.



Other powers of attorney, how to be proved and registered.

16. Every power of attorney, other than those specially provided for in this act, the execution of which is or shall be duly certified under the seal of the notary or tabellion public, or the seal of any mayor or presiding magistrate of any city, town or corporation, or clerk of a court, or duly proved in open court by the oath of a subscribing witness, such power of attorney, so certified and attested, upon being exhibited to any of the judges of the supreme or superior courts, or in any court of pleas and quarter sessions, shall be ordered to be recorded, and thereupon the register shall register the same : *Provided nevertheless*, that nothing herein contained shall extend or be construed to extend to the admission of any power of attorney to registry, which is signed or executed by a *feme covert*, unless she has acknowledged, in the manner required by law for her passing lands, separately and apart from her husband, that she signed the said power of attorney freely, voluntarily, and without fear or the compulsion of her husband, or any other person whatever.

Gifts of slaves must be in writing, attested and registered.

17. No gift hereafter to be made of any slave shall be good or available either in law or equity, unless the same shall be made in writing, signed by the donor and attested by at least one credible witness subscribing ; neither shall such gift be valid unless the writing by which the title, by which any slave is transferred, shall be proved or acknowledged, as conveyances of land, and registered in the office of the public register of the county where the donee resides, within one year after the execution thereof, if the donee be in actual possession of the slave so given and transferred ; but if, under any special agreement made at the time of the gift, the donor shall remain in possession of the slave so given, then the writing transferring or conveying the same slave shall be proved or acknowledged as aforesaid, and registered within the same time, in the county where the donor resides : *Provided*, that when any person shall have put into the actual possession of his or her child or children any slave, and the said slave shall remain in the possession of such child or children at the time of the death of such person, he or she dying intestate, such slave shall be considered as an advancement to such child or children, and be regulated by the laws now in force relating to advancements made to children by a parent in his life time.

Proviso as to advancements to children.

Deeds of gift to be proved and registered.

18. All deeds of gift of any estate of whatever nature shall, within twelve months after the making thereof, be proved in due form and recorded, or otherwise shall be void and of no force whatever.

All sales of slaves must be in writing, attested and registered, except *bona fide* sales accompanied with a transfer of possession.

19. All sales of slaves shall be in writing, attested by at least one credible witness, or otherwise shall not be deemed valid ; and all bills of sale of slaves shall, within twelve months after the making thereof, be proved in due form and recorded, and all bills of sale and deeds of gift not authenticated and perpetuated in manner

16. 1798, c. 514, s. 3 and 4.

17. 1806, c. 701, s. 1 and 3.

18. 1789, c. 315, s. 2.

19. 1784, c. 225, s. 7.—1789, c. 315, s. 2.—1792, c. 363, s. 1.

by this act directed, shall be void and of no force whatever : *Provided*, that all sales of slaves, *bona fide* made and accompanied with the actual delivery of the slave or slaves to the purchaser, and which would be held good but for the provisions contained in this section, shall be and the same are hereby declared good and valid without any bill of sale.

20. When any transfer or conveyance of any slave or slaves shall be in writing, such writing, after being legally proved, shall be registered in the county where the purchaser (he being in actual possession of the slave or slaves so transferred or conveyed) shall reside ; but if, under any special agreement at the time of the sale, the seller shall remain in possession of the slave or slaves sold, then the writing, transferring or conveying the said slave or slaves, shall be registered in the county where the vendor lives.

All written transfers of slaves must be registered in the county where the purchaser resides unless the seller is to retain possession, &c.

21. On all trials at law where a written transfer or conveyance of a slave or slaves, by way of gift, sale or otherwise, shall be introduced to support the title of either party, the due and fair execution of such writing shall be proved by a witness, subscribing and attesting the execution of such writing, but if such witness shall be dead or removed out of the State, then the probate and registration of such writing may be given in evidence.

All written transfers of slaves to be proved on any trial by the subscribing witnesses if to be found.

22. Every limitation by deed or writing of a slave or slaves, which limitation, if contained in a last will and testament, would be good and effectual as an executory devise or bequest, shall be and is hereby declared to be a good and effectual limitation in remainder of such slave or slaves, and any limitation made or reserved to the grantor, vendor or donor, in any such deed or writing of a slave or slaves, shall be good and effectual in law : *Provided* such limitation, had it been made to another person, would be good and effectual according to the preceding clause : *Provided, also*, that all such deeds or writing shall be proved, witnessed and registered as other written conveyances of slaves are or may be by law required to be witnessed, proved and registered.

Certain limitations of slaves by deed to be valid.

23. No mortgage, nor deed or conveyance in trust, for any estate, whether real or personal, shall be good and available in law against creditors or purchasers for a valuable consideration, unless the same shall have been proved and registered, in the manner already prescribed by law in the case of conveyances other than mortgages, within six months after the execution of such mortgage, or deed or conveyance in trust ; but all mortgages, deeds and conveyances in trust, not so proved and registered within the time aforesaid, shall be held and taken as against such creditors or purchasers as utterly null and void.

No mortgage or deed in trust good against creditors unless registered within six months.

24. No deed of trust or mortgage, for real or personal estate, shall be valid at law to pass any property, as against creditors or purchasers for a valuable consideration, from the donor, bargainor or mortgagor, but from the registration of such deed of trust or

Mortgage or deed in trust good against creditors, &c. only from the date of the registration.

20. 1792, c. 363, s. 2.

21. 1792, c. 363, s. 3.—1806, c. 701, s. 2.

22. 1823, c. 1211.

23. 1820, c. 1037.

24. 1829, c. 20, s. 1.



mortgage in the county where the land lieth, or, in case of chattels, where the donor, bargainor or mortgagor resides, or in case the donor, bargainor or mortgagor shall reside out of the State, then in the county where the said chattels or some of them are situate.

Clerks of the county courts authorized to take probate of mortgages and deeds in trust.

25. The clerks of the several courts of pleas and quarter sessions, by themselves or their deputies, shall have authority in their respective counties to take the probate or acknowledgment of deeds of trust or mortgages, at any time, in as full a manner as their respective courts can or may do.

Register to endorse on each mortgage, &c. the day he received it and to register in the order of delivery.

26. The register shall endorse on each deed of trust or mortgage the day on which it is presented and delivered to him for registration, and such endorsement, so made, shall be entered on the register's books and form a part of the registration, and he shall immediately thereafter register the same, in the order of time in which it was presented and delivered to him; and any register, not complying with the provisions and requisitions of this section, shall be liable in an action on the case to the party injured, and also to be indicted in the superior court, and, upon conviction, fined at the discretion of the court.

What remedy the last mortgagee shall have when there is more than one mortgage in force at the same time.

27. In case more than one mortgage shall happen to be made and be in force, at one time, of the same lands and tenements, goods and chattels, the several mortgagees, which have not registered their mortgages, their heirs, executors, administrators or assigns, shall have power to redeem any mortgage or mortgages registered, upon paying the principal debt, interest and costs of suit to the prior mortgagee or mortgagees, their heirs, executors, administrators or assigns; and as a punishment for such intended fraud or covin, every person or persons, which shall mortgage the same lands, tenements, goods or chattels a second time, without notice to the subsequent mortgagee, a former mortgage being in force and not discharged, shall have no power or liberty of redemption in equity or otherwise.

Where an action is brought to recover money secured by mortgage, or for the mortgaged property, the defendant may be discharged by bringing the money due on the mortgage into court.

28. Where any action shall be brought on any bond for the payment of money, secured by a mortgage, or performance of the covenants therein contained, or where any action of ejectment shall be brought, in any of the superior courts of law or courts of pleas and quarter sessions in this State, by any mortgagee or mortgagees, his, her or their heirs, executors, administrators or assigns, for the recovery of the possession of any mortgaged lands, tenements or hereditaments, and no suit shall be then depending in any of the courts of equity in this State touching the foreclosing or redeeming such mortgaged lands, tenements or hereditaments, and who shall appear and become defendant or defendants in such action shall at any time, pending such action, pay unto such mortgagee or mortgagees, or in case of his, her or their refusal, shall bring into court, where such action shall be depending, all the principal moneys and interest due on such mortgage, and also all such costs as have been expended in any suit or suits at law or

25. 1829, c. 20, s. 2.

26. 1829, c. 20, s. 3 and 4.

27. 1715, c. 7, s. 8.

28. 1789, c. 312.

equity upon such mortgage, such money for principal, interest and costs to be ascertained and computed by the court, where such action is or shall be depending, or by the proper officer by such court to be appointed for that purpose, the moneys so paid to such mortgagee or mortgagees, or brought into such court, shall be deemed and taken to be in full satisfaction and discharge of such mortgage ; and the court shall and may discharge every such mortgagor or defendant of and from the same accordingly, and shall and may, by rule or rules of the same court, compel such mortgagee or mortgagees, at the costs and charges of such mortgagor or mortgagors, to assign, surrender or reconvey such mortgaged lands, tenements and hereditaments, and such estate and interest as such mortgagee or mortgagees have or hath therein, and deliver up all deeds, evidences and writings in his, her or their custody, relating to the title of such mortgaged lands, tenements and hereditaments, unto such mortgagor or mortgagors, who shall have paid or brought such moneys into court, his, her or their heirs, executors or administrators, or to such other person or persons as he, she or they shall for that purpose nominate or appoint. *Provided always*, that any thing herein contained shall not extend to any case, where the person or persons, against whom the redemption is or shall be prayed, shall by writing under his, her or their hands, or the hands of his, her or their attorney, agent or solicitor, to be delivered, before the money shall be brought into such court at law, to the attorney or solicitor for the other side, insist, either that the party praying a redemption has not a right to redeem, or that the premises are chargeable with other or different principal sums, than what appear on the face of the mortgage, or shall be admitted on the other side, nor to any case, where the right of redemption to the mortgaged lands and premises in question in any case or suit shall be controverted or questioned by or between different defendants in the same cause or suit, nor shall be any prejudice to any subsequent mortgagee or mortgagees or subsequent incumbrancer.

Proviso where the defendant denies the right of redemption, &c.

29. All marriage settlements and other marriage contracts, whereby any money or other estate shall be secured to the wife or husband, shall be proved, in the same manner as other deeds, within six months after the making thereof, and registered within one month thereafter, and all marriage settlements and other marriage contracts, not proved and registered according to the directions of this act, shall be void against creditors.

Marriage settlements to be proved and registered.

30. No marriage settlement, or other marriage contract, shall be good against creditors, where a greater value is secured to the intended wife and children of the marriage, or either of them, than the portion actually received with the wife in marriage and such estate as the husband at the time of his marriage shall be possessed of, after deducting the just debts by him then due and owing, and in case of any suit upon any such marriage contract, where any creditor or creditors shall be a party, the burden of the proof shall

What marriage settlements shall be good against creditors, &c.

29. 1785, c. 238, s. 1.

30. 1785, c. 233, s. 2.



lie upon the person or persons claiming under such marriage contract: *Provided always*, that if any legacy or legacies shall be given to the wife in general words, and not in trust, or a distributive share or shares of any intestate's estate shall fall to her during her coverture, such legacies and distributive shares (in case the estate of the husband and wife shall not at the time of the marriage be of sufficient value to make good the marriage contract) shall be held, deemed and taken as part of the portion received with the wife, and shall be secured to those claiming under such marriage contract.

Infant trustees  
how to convey  
lands.

31. It shall and may be lawful for any person under the age of twentyone years, having estates in lands, tenements or hereditaments, only in trust for others, or by way of mortgage, by the direction of the court of equity of the county, in which such lands, tenements or hereditaments are situate, signified by an order made upon hearing all parties concerned, on the petition of the person or persons for whom such infant or infants shall be seized or possessed in trust, or of the mortgagor or mortgagors, or guardian or guardians of such infant or infants, or person or persons entitled to the moneys, secured by or upon any lands, tenements or hereditaments, whereof any infant or infants are or shall be seized or possessed by way of mortgage, or of the person or persons entitled to the redemption thereof, to convey and assure any such lands, tenements or hereditaments, in such manner as the said court of equity shall, by such order so to be obtained, direct, to any other person or persons; and such conveyance or assurance, so to be had and made as aforesaid, shall be as good and effectual in law to all intents and purposes whatsoever, as if the said infant or infants were, at the time of making such conveyance or assurance, of the full age of one and twenty years; and all and every such infant or infants, being only trustee or trustees, mortgagee or mortgagees as aforesaid, shall and may be compelled by such order, so as aforesaid to be obtained, to make such conveyance or conveyances, assurance or assurances as aforesaid, in like manner as trustees or mortgagees of full age are compellable to convey or assign their trust estates or mortgages.

Errors in the  
registration of  
deeds, &c. how  
to be corrected,  
&c.

32. Every person who discovers that there is an error in the registration of his grant, mesne conveyance, bill of sale or other instrument of writing, shall be at liberty to prefer a petition to the county court, in the same manner as is directed for petitioners to correct errors in grants or patents, and, on hearing the same, if it appears to the satisfaction of the court that errors have been committed, they are hereby directed and required to order the register of the county to correct such errors, and make the records by him kept conformable to the grant, mesne conveyance, bill of sale or other instrument of writing, in which it appears such mistake has been so made: *Provided*, that a majority of the acting justices of said court shall be present on the hearing of said petition, and that

31. 1821, c. 1116, s. 1 and 2.

32. 1790, c. 326, s. 2, 3 and 4.

such petitioner shall prove to the said court that he has notified every person having lands adjoining those mentioned in the petition, thirty days previous to preferring the same, and that he has notified every person who claims title to the land described in his petition : *And provided also*, that any person who may be dissatisfied with the judgment of the county court on such petition, shall be at liberty to appeal to the superior court of the county, as in other cases, and no such petition shall be set for hearing at the first term : *Provided further*, that in all such cases the same notice shall be given by the petitioner to the grantor in such deed, mesne conveyance, bill of sale or other instrument of writing, and the clerk shall receive fifty cents for his services on each petition and no more.

33. All grants of land in this State, all deeds of mesne conveyance, powers of attorney, under which any lands, tenements or hereditaments have been or may be conveyed, all other powers of attorney which are required to be proved and registered by any act of the General Assembly, all bills of sale, deeds of gift already proved, or which may hereafter be proved, shall and may, within three years after the passage of this act, be admitted to registration, under the same rules, regulations and restrictions as heretofore appointed by law, and said grants, deeds, mesne conveyances, powers of attorney, bills of sale and deeds of gift, shall be as good and valid as if they had been proved and registered within the time heretofore allowed : *Provided*, that nothing herein contained shall be construed to extend to mortgages or to conveyances in trust.

Further time allowed for registering deeds, &c.

33. 1835, c. 9.

*Note.*—REFERENCES TO ADJUDGED CASES.

- SECT. 8. Lucas vs. Cobbs, 1 Dev. and Bat. 228.  
 SECT. 9. Harrel vs. Elliot, Tayl. 139. Hunter vs. Bryan, 2 Murph. 178. Robeson vs. Barfield, ib. 390. Burgess vs. Wilson, 2 Dev. 306. Barfield vs. Combs, 4 Dev. 514. Fenner vs. Jasper. 1 Dev. and Bat. 34.  
 SECT. 10. Sutton vs. Sutton, 1 Dev. and Bat. 582.  
 SECT. 17. Ball vs. Brooks, 3 Murph. 133. Smith vs. Yates, 1 Dev. 302. Palmer vs. Faucet, 2 Dev. 240. Jones vs. Sasser, 3 Dev. 378. Stallings vs. Stallings, 1 Dev. Eq. 298. Vines vs. Brownrigg, 4 Dev. 265. Andrews vs. Shaw, ib. 270. Harris vs. Yarrowborough, ib. 166. Jones vs. Loper, 1 Dev. and Bat. 452. Bennet vs. Flowers, ib. 467. Hamlin vs. Alston, ib. 479. Alston vs. Hamlin, 2 Dev. and Bat. Thompson vs. Todd, ib.  
 SECT. 19. Knight vs. Thomas, 1 Hay. 289. Hancock vs. Hovey, Tayl. 104. Cutler vs. Speller, 2 Hay, 61. Latham vs. Outen, ib. 66. Bateman vs. Bateman, 2 Murph. 97. Cotten vs. Powell, 2 Car. Rep. 431. McRea vs. Houston, 3 Murph. 429. Rhodes vs. Holmes, 2 Hawks, 193. Mushat vs. Brevard, 4 Dev. 73. Bell vs. Culpeper, 2 Dev. and Bat.  
 SECT. 20. Palmer vs. Popleston, 1 Hawks, 307. Carleton vs. Bloodwoth, 1 Murph. 424.  
 SECT. 23. Moore vs. Collins, 3 Dev. 126. Smith vs. Washington, 1 Dev. Eq. 318. Moore vs. Collins, 4 Dev. 384. Walton vs. Stallings, 4 Dev. 56. Gregory vs. Perkins, ib. 50.  
 SECT. 24. McKinnon vs. McLean, 2 Dev. and Bat.  
 SECT. 27. Pike vs. Armstead, 1 Dev. Eq. 110.  
 SECT. 28. Devereux vs. Marsorotti, 3 Hawks, 338.  
 SECT. 32. Jones vs. Physioc, 1 Dev. and Bat. 173.



## CHAPTER 38.

## DESCENTS.

## AN ACT TO REGULATE DESCENTS.

## SECTION

1. Rules of descent.
  - Rule 1. Lineal descent.
  - Rule 2. Females to inherit equally with males, and younger with older children — Proviso as to a child advanced.
  - Rule 3. Lineal descendants to represent their ancestors.
  - Rule 4. Collateral descent where the inheritance has been transmitted from an ancestor.
  - Rule 5. Collateral descent when the inheritance has not been transmitted from an ancestor.
  - Rule 6. Collateral relations of the

## SECTION

- half blood to inherit equally with those of the whole blood—Proviso, where a parent shall take.
- Rule 7. No person to take unless he be born at the death of the person last seized or within ten months afterwards.
- Rule 8. In what case the widow shall take as heir.
- Rule 9. Alien heirs not to prevent other relations, being citizens, from inheriting.
- Rule 10. Illegitimate children may inherit from their mother and from each other.

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 the following rules be and hereby are established for regulating the descent of inheritances.

Rules of descent.

Lineal descent.

Females to inherit equally with males, and younger with older children. Proviso as to a child advanced.

Lineal descendants to represent their ancestor.

**RULE 1.** Inheritances shall lineally descend to the issue of the person, who died last actually or legally seized, forever, but shall not lineally ascend, except as is hereafter provided for.

**RULE 2.** Females shall inherit equally with males, and younger equally with older children: *Provided*, that no child, who shall have lands settled on him or her by his or her deceased parent in fee simple, equal to the share, which shall descend to the other children, shall be entitled to claim any further share of the real estate of such parent by descent, and in case any child shall have lands settled on him or her by his or her deceased parent, not equal to the share which shall descend to such other children, then so much of the lands or other real estate of the deceased shall descend to such child, so provided for, as will make the estates of all the children entitled to the inheritance as nearly equal as can be estimated, and each and every of the children so inheriting shall hold and enjoy in the land so descending such estate as the said deceased had and held in the same at the time of his decease.

**RULE 3.** The lineal descendants of any person deceased shall represent their ancestor and stand in the same place as the person himself would have done had he been living.

- RULE 1.** 1803, c. 739.  
 2. 1803, c. 739.—1734, c. 204, s. 2.  
 3. 1803, c. 739.

**RULE 4.** On failure of lineal descendants, and where the inheritance has been transmitted by descent from an ancestor or has been derived by gift, devise or settlement from an ancestor, to whom the person thus advanced would, in the event of such ancestor's death, have been the heir or one of the heirs, the inheritance shall descend to the next collateral relations of the person last seized, who were of the blood of such ancestor, subject to the two preceding rules.

Collateral descent where the inheritance has been transmitted from an ancestor.

**RULE 5.** On failure of lineal descendants, and where the inheritance has not been transmitted by descent or derived as aforesaid from an ancestor, or where, if so transmitted or derived, the blood of such ancestor is extinct, the inheritance shall descend to the next collateral relations of the person last seized, whether of the paternal or maternal line, subject to the second and third rules.

Collateral descent where the inheritance has not been transmitted from an ancestor.

**RULE 6.** Collateral relations of the half blood shall inherit equally with those of the whole blood, and the degrees of relationship shall be computed according to the rules which prevail in descents at common law: *Provided always*, that in all cases where the person last seized shall have left no issue, nor brother, nor sister, nor the issue of such, the inheritance shall vest, for life only, in the parents of the intestate or in either of them, if one only be living, and, on the death of one of the parents, then in the survivor, and afterwards be transmitted according to the preceding rules.

Collateral relations of the half blood to inherit equally with those of the whole blood. Proviso where a parent shall take.

**RULE 7.** No inheritance shall descend to any person, as heir of the person last seized, unless such person shall be in life at the death of the person last seized, or shall be born within ten months after the death of the person last seized.

No person to take unless he be born at the death of the person last seized or within ten months afterwards.

**RULE 8.** Where any person shall die seized of real estate of inheritance in this State, leaving no person who can claim as heir to him, but leaving a widow, the widow in such case shall be taken and held to be the heir to her husband and inherit his estate as such.

In what case the widow shall take as heir.

**RULE 9.** Where any person shall die seized of real estate of inheritance in this State, leaving descendants or other relations citizens of the United States, who would according to law inherit, were all other nearer descendants or relations extinct, but who, according to the now existing laws, cannot inherit because there may be others, who if citizens would be entitled to inherit, but being aliens cannot hold lands in this State, whereby such estate would escheat, in such case the nearest descendant or relation of the deceased, being a citizen of the United States, shall inherit.

Alien heirs not to prevent other relations, being citizens, from inheriting.

**RULE 10.** Where any woman shall die intestate, leaving children, commonly called illegitimate or natural, born out of wedlock, and no children born in lawful wedlock, all the real estate, whereof she shall die seized, shall descend to and be equally divided among such illegitimate or natural born children and their representatives,

Illegitimate children may inherit from their mother and from each other.

RULE 4. 1808, c. 739.

5. 1808, c. 739.

6. 1803, c. 739.

7. 1823, c. 1210.

8. 1801, c. 575, s. 1.

9. 1801, c. 575, s. 2.

10. 1799, c. 522.



in the same manner as if they had been born in wedlock ; and if any such illegitimate or natural born child shall die intestate, without leaving any child or children, his or her real estate shall descend to and be equally divided among his or her brothers and sisters, born of the body of the same mother, and their representatives, in the same manner and under the same regulations and restrictions as if they had been born in lawful wedlock.

*Note.*—REFERENCES TO ADJUDGED CASES.

Toomer vs. Toomer, 2 Hay, 368 and 375, S. C. 1 Murph. 96. Jones vs. Spaight, 2 Murph. 89. Wilson vs. Hightower, 3 Hawks, 76. Bell vs. Dosier, 1 Dev. 333. Flint-ham vs. Holder, 1 Dev. Eq. 345.

CHAPTER 39.

DIVORCE AND ALIMONY.

custody of  
children

1838.9 - Ch. 16  
1842.3. Ch. 43.

AN ACT CONCERNING DIVORCE AND ALIMONY.

SECTION

1. Courts of law and equity to have jurisdiction of divorce and alimony.
2. Cases in which divorce or alimony may be granted.
3. Other cases in which divorce from bed and board, alimony or separate maintenance may be granted.
4. Alimony may be granted when the husband is a spendthrift, &c.
5. Proceedings to obtain divorce and alimony.
6. Cause of complaint must have existed six months, and petitioner must have resided in the State three years—Proviso.
7. Rules as to depositions and costs.
8. What shall be a bar to a suit for divorce for the cause of adultery.
9. What decree the court may make—Innocent party may marry again—

SECTION

- No decree to render the children illegitimate.
10. Proceedings against the husband when alimony is allowed.
11. In case of divorce from bed and board, the wife shall have all the property she may thereafter acquire, and may sue and be sued alone.
12. The superior courts of law may, on petition of a married woman, decree that the property she afterwards acquires may be secured to her, and that she may sue and be sued as a *feme sole*.
13. Appeal allowed to the supreme court.
14. Party against whom there is a decree of divorce, not permitted to marry again.

Courts of law and equity to have jurisdiction of divorce and alimony.

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 the superior courts of law and the superior courts of equity shall have sole and original jurisdiction in all cases of application

1. 1827, c. 19, s. 1.—1823, c. 44, s. 1.—1834, c. 15.

for divorce, and shall also have jurisdiction of applications for alimony.

2. When a marriage hath been heretofore or shall be hereafter contracted and celebrated between any two persons, and it shall be adjudged in the manner hereinafter mentioned that either party, at the time of the contract, was and still is naturally impotent, or that either party has separated him or herself from the other and is living in adultery, or that any other just cause for a divorce exists, in every such case it shall and may be lawful for the injured person to obtain a divorce, either from bed and board or from the bonds of matrimony, at the discretion of the court, or a decree for alimony only, if no more is demanded, to continue as long as the justice of the case may require.

Cases in which divorce or alimony may be granted.

3. If any person shall either abandon his family, or maliciously turn his wife out of doors, or by cruel or barbarous treatment endanger her life, or offer such indignities to her person as to render her condition intolerable or life burthensome, it shall and may be lawful for the superior court of law or court of equity to grant a divorce from bed and board, and also to allow her such alimony as her husband's circumstances will admit, not exceeding one third part of the annual income or profits of his estate, or of his occupation or labors, or by assigning to her separate use such part of the real and personal estate of the husband as the court shall think fit, not exceeding one third part of the husband's estate, as the justice of the case may require, which shall continue until a reconciliation shall take place between the parties: *Provided always*, that nothing herein contained shall be construed in any wise to affect the rights of any creditor or creditors of the husband.

Other cases in which divorce from bed and board and alimony or separate maintenance may be granted.

4. When a man shall become an habitual drunkard or spendthrift, wasting his substance to the impoverishment of his family, in every such case it shall be lawful for his wife to claim and for the court to decree an alimony as aforesaid: *Provided*, that nothing herein contained shall exempt any property, which he may then possess, from the payment of just claims against him up to the period when alimony shall be granted.

Alimony may be granted when the husband is a spendthrift, &c.

5. The husband or wife claiming to be divorced, or the wife claiming alimony, may exhibit his or her petition or libel to one of the judges of the superior courts of law or courts of equity in this State in term time, or to one of the judges in the vacation, at least thirty days before the next term, setting forth therein particularly and especially the causes of his or her complaint, and shall together with such petition or libel exhibit an affidavit on oath, taken before one of the judges of the superior courts or some justice living in the county where he or she resides, that the facts contained in such petition or libel are true to the best of his or her knowledge and belief, and that the said complaint is not made out of levity or by collusion between the said husband and wife, and, if for divorce,

Proceedings to obtain divorce or alimony.

2. 1814, c. 869, s. 1.—1827, c. 19, s. 1.—1828, c. 44, s. 2.

3. 1814, c. 869, s. 5.

4. 1828, c. 44, s. 3.

5. 1814, c. 869, s. 2.—1824, c. 1248, s. 3.



not for the mere purpose of being freed and separated from each other, but in sincerity and truth for the causes mentioned in the said petition or libel ; bond with sufficient security for the prosecution of the same being first given as required in other cases at law or equity ; and thereupon a subpoena may and shall issue from the said court, directed to the person so complained against, commanding him or her to appear at the next superior court of law or court of equity, to be held for the said county, then and there to plead or answer to the said petition or libel, and upon due proof at the return of the said process that a copy thereof was served, either personally on the said party, or that he or she could not be found and that a copy thereof was left at his or her last place of abode in said county, at least ten days before the day of the said return inclusive, if he or she shall refuse or neglect to appear, then an alias subpoena shall issue, returnable to the first day of the next term, and be served personally in manner aforesaid ; but if he or she cannot be found, then proclamation shall be publicly made by the sheriff at the door of the court house for the party to appear and answer as commanded by the subpoena, and notice thereof shall be given in two newspapers, such as the court may order, for three months, and in the mean time the said court shall and may make such preparatory rules and orders in the cause as may be necessary to prepare the same for trial, when the court may determine *ex parte* if necessary : *Provided always*, that, in all suits commenced under this act, the material facts charged in the said petition or libel shall be submitted to a jury, upon whose verdict, and not otherwise, the court shall decree, any rule or practice to the contrary notwithstanding : *Provided also*, that if the party, so exhibiting his or her petition, shall make oath at the time of filing the same that he or she is not worth the sum of two hundred dollars, bond for the payment of the costs of the suit shall not be required from such party.

Cause of complaint must have existed six months and petitioner must have resided in the State three years.  
 Proviso.

6. No petition shall be sustained under this act, unless the petitioner shall state and swear, that the facts, the ground of his or her complaint, have existed to his or her knowledge at least six months prior to the filing of the petition, nor shall any person be entitled to sue under this act, unless he or she shall have resided within this State three years immediately preceding the exhibition of his or her petition : *Provided*, that the three years' residence required in this section shall not apply to cases brought under the fourth section of this act.

Rules as to depositions and costs.

7. The parties may take testimony by depositions, under the same rules, regulations and restrictions as exist in suits of equity in this State, and the court may award costs to the party in whose behalf the sentence or decree shall pass, or that each party shall pay his or her own costs, as to the court shall appear reasonable.

What shall be a bar to a suit for divorce for the cause of adultery.

8. In any suit for a divorce for the cause of adultery, if it shall be proved that the plaintiff has been guilty of the like crime, or

6. 1814, c. 869, s. 6 and 7.

7. 1814, c. 869, s. 8 and 10.

8. 1814, c. 869, s. 3.

has admitted the defendant into conjugal society or embraces, after he or she knew of the criminal fact, or that the said plaintiff (if the husband) allowed of his wife's prostitution, or exposed her to lewd company, whereby she became ensnared to the crime aforesaid, it shall be a good defence and a perpetual bar against the said suit.

9. It shall and may be lawful for the courts aforesaid, after hearing any cause commenced in virtue of this act, to determine the same as to law and justice shall appertain, by either dismissing the petition or libel, or sentencing and decreeing a divorce and separation from bed and board or from the bonds of matrimony, or that the marriage is null and void, or that the wife shall have alimony agreeably to the prayer thereof; and such court shall have power to decree alimony to the wife in the case of general divorce upon the petition of the wife; and after a sentence nullifying or dissolving the marriage, all and every the duties, rights and claims of the parties, in right of said marriage, shall cease and determine, and the complainant or innocent person shall be at liberty to marry again as if he or she had never been married: *Provided always*, that nothing herein contained shall be construed to extend to affect or render illegitimate any child or children born of the body of the wife during the coverture.

What decree the court may make.

Innocent party may marry again.

No decree to render the children illegitimate.

10. The husband, against whom alimony or separate maintenance may be decreed, shall give good and sufficient security in open court, to be approved by the court, for the faithful performance of the same, and in case of failure shall stand committed until the order or decree of the court is complied with; or the court may direct execution to issue, as in cases at law, for the money thus decreed and a writ of *venire* to the jury to lay off and allot the real or personal estate decreed to the wife.

Proceedings against the husband when alimony is allowed.

11. When the court shall decree a divorce from bed and board, the wife so divorced shall have capacity to acquire, retain and dispose of all such property as may thereafter be procured by her own industry or may accrue to her by descent, devise, gift, bequest, or in any other manner, and the said property shall not be liable to the power, dominion, control, or debts of her husband, but, on her death, without a disposition by her, shall be transmissible in the same manner as though she were unmarried; and the wife may sue and be sued without joining her husband, and may claim redress for and be made liable upon contracts and injuries thereafter made and done, as though she were a *feme sole*.

In case of divorce from bed and board, the wife shall have all the property she may thereafter acquire and may sue and be sued alone.

12. When any married woman shall file her petition in any of the superior courts of law of this State, praying that alimony may be decreed to her and that such property as she may thereafter acquire may be also secured to her, the judges of the said courts may, if they think proper, decree that the petitioner may sue and be sued in her own name, without joining the name of her husband,

The superior courts of law, may, on petition of a married woman, decree that the property she may afterwards acquire may be

9. 1814, c. 869, s. 4.

10. 1814, c. 869, s. 11.

11. 1819, c. 1007.

12. 1828, c. 44, s. 4.—1829, c. 28.



secured to her, and that she may sue and be sued as a *feme sole*, in any court of record or before any justice of the peace in this State, and that all such property as may thereafter be procured by her own industry or may accrue to her by descent, devise, gift, bequest or in any other manner shall be secured to her and shall not be liable to the power, dominion, control or debts of her husband, but, on her death, without a disposition by her, shall be transmissible in the same manner as though she were unmarried and in the same manner as if the petitioner was a *feme sole*.

Appeal allowed to the supreme court.

13. In every case of an application for a divorce or for alimony and a final judgment thereon by the superior court of law or court of equity, it shall be lawful for the party, against whom such judgment is rendered, to appeal therefrom to the supreme court, whose duty it shall be, according to the facts ascertained in the superior court, to make such decree thereon as shall be just, and when an appeal shall be prayed from the judgment of the superior court of law or court of equity, it shall be lawful to grant such appeal without bond or security, if the situation of the party appellant shall render it necessary for the purposes of justice, that an appeal should be thus prosecuted.

Party against whom there is a decree of divorce, not permitted to marry again.

14. No defendant or party offending, who shall be divorced from the bonds of matrimony, under the provisions of any act of the General Assembly of this State, shall ever be permitted to marry again, and if he or she shall offend against the true intent and meaning of this act, he or she shall be subject to all the pains and penalties which are inflicted by law upon persons guilty of bigamy.

13. 1827, c. 19, s. 3 and 4.

14. 1827. c. 19, s. 5.

*Note.*—REFERENCES TO ADJUDGED CASES.

SECT. 2. Scroggins *vs.* Scroggins, 3 Dev., 535. Barden *vs.* Barden, *ib.*, 548. Collier *vs.* Collier, 1 Dev. Eq. 352. Whittington *vs.* Whittington. 2 Dev. and Bat.  
SECT. 3. Long *vs.* Long, 2 Hawks, 189.

## CHAPTER 40.

# DRAINING LOW LANDS.

### AN ACT CONCERNING THE DRAINING OF LOW LANDS.

#### SECTION

1. Mode of proceeding by those desirous of draining their lands—Court to appoint twelve jurors—Their duty—On payment of damages, title of land to vest.

#### SECTION

2. Jury to make a return of their proceedings to court—Their compensation—Proviso.

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 any person or persons, owning pocoson or flat lands, and being desirous to drain the same, but being prevented by the proprietor or proprietors of lands adjoining him or them, it shall be lawful for such person or persons, who are desirous to drain their said pocoson or flat lands, to prefer a petition to the court of the county, wherein the said lands may be situated, setting forth the particular circumstances of his or her case, situation of the lands, and to what stream or water course he or she would wish to drain the same, whereupon the court shall appoint twelve freeholders in the said county, not attached to either party by consanguinity or affinity, who shall go upon the premises and examine the ground so petitioned to be drained, and that through which the canal or ditch shall pass, and also whether such canal or ditch shall appear necessary, and further they shall direct the ditch to be cut in such manner and extent, as in their opinion will most effectually secure the lands, through which it passes, as well as that where it terminates, from inundation ; and the jury aforesaid, shall, upon oath, value and assess what damages the proprietor or proprietors of the land, through which such drain is to be cut, will sustain ; and, where the same shall appear necessary, the damage shall be paid before the petitioner or petitioners proceed to cut a ditch or ditches through or into such proprietor or proprietors' lands, and when the petitioner or petitioners aforesaid shall have so paid to the proprietor or proprietors of such lands, as aforesaid, the damages or injury the jury might judge he or they sustained, he or they, their heirs or assigns, so paying, shall thereafter be vested with a good and sufficient title in fee for the lands so petitioned for.

Mode of proceeding by those desirous of draining their lands.

Court to appoint twelve jurors. Their duty.

On payment of damages, title of land to vest.

2. In all cases where a jury is appointed for the purposes aforesaid, it shall be their duty to make a fair return of their whole proceedings to the next succeeding county court, which shall be recorded in the said courts respectively ; and each of the jury appointed as aforesaid shall be entitled to the sum of eighty cents, for each day that they may necessarily be employed in laying off said ground, which sum shall be paid to each jurymen by the petitioner or petitioners : *Provided, nevertheless*, that nothing in this act shall be construed so as to authorize the running of any ditch or canal through the yard or curtilage of any proprietor, without the consent of such proprietor. *And provided also*, that no such drain or ditch shall be cut, so as to injure any pond or ponds belonging to any mill or mills, which now are or hereafter may be established by law, or to prevent the proprietor or proprietors, through whose lands the said ditch or canal may pass, from putting a fence or bridge across the same : *Provided*, such bridge or fence shall not obstruct the free passage of the water down said canal or ditch.

Jury to make a return of their proceedings to court. Their compensation.

Provisos.

1. 1795, c. 436, s. 1.

2. 1795, c. 436, s. 2.—1835, c. 7.



*Elections - 1838-9. Ch 18. vote for Communes' on one ticket.  
 1840-1. Ch 28. 26. 27  
 1842.3. Ch 29. 30. 31.  
 1844.5. Ch 43. - 61.*

**CHAPTER 41.**

**ELECTORS OF PRESIDENT AND VICE PRESIDENT.**

*1842.3. Ch 26*

AN ACT PROVIDING FOR THE APPOINTMENT OF ELECTORS TO VOTE FOR PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES.

SECTION

1. State divided into fifteen districts for choosing electors to vote for president and vice president of the United States—Time and manner of holding the elections for electors—Certificate and return, by whom to be made—Penalty in case of failure to make returns.
2. Election of electors to be held every four years.
3. When and where the electors shall meet to give their votes.

SECTION

4. The governor shall issue his proclamation for an election in case of a vacancy in both the offices of president and vice president.
5. Penalty on electors for failing to attend—On sheriffs for refusing to take the poll or making false returns, &c.
6. Compensation of electors—Of sheriffs for holding elections, &c.
7. Electors may supply vacancies in their body.

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 this State shall be divided into fifteen districts, for the purpose of choosing electors for a president and vice president of the United States, in the following manner, to wit : The counties of Burke, Buncombe, Rutherford, Haywood, Macon and Yancey shall compose one district : The counties of Wilkes, Iredell, Surry and Ashe shall compose one district : The counties of Mecklenburg, Cabarrus and Lincoln shall compose one district : The counties of Rowan, Davidson, Davie and Montgomery shall compose one district : The counties of Rockingham, Stokes and Caswell shall compose one district : The counties of Randolph, Guilford and Chatham shall compose one district : The counties of Richmond, Anson, Robeson, Moore and Cumberland shall compose one district : The counties of Person, Orange and Granville shall compose one district : The counties of Wake, Johnston and Wayne shall compose one district : The counties of Warren, Franklin, Halifax and Nash shall compose one district : The counties of Bertie, Northampton, Hertford and Martin shall compose one district : The counties of Pasquotank, Gates, Chowan, Perquimons, Camden and Currituck shall compose one district : The counties of Beaufort, Edgcombe, Pitt, Washington, Tyrrel and Hyde shall compose one district : The counties of Craven, Greene, Lenoir, Jones, Carteret and Onslow shall com-

State divided into fifteen districts for choosing electors to vote for president and vice president of the United States.

pose one district : The counties of Bladen, Sampson, Columbus, Duplin, New Hanover and Brunswick, shall compose one district : which said districts shall be denominated electoral districts ; that the persons qualified to vote for members of the house of commons of the General Assembly of this State, in said counties respectively, shall meet on the second Thursday of November, one thousand eight hundred and forty, at the place or places by law established in their several counties for the election of members of the General Assembly, and there give their votes by ballot for fifteen discreet persons, being freeholders, one of whom shall actually reside within each of the electoral districts as herein before laid off ; that the polls shall be held in the same manner and by the same officers, and under the same rules and regulations as the polls for the election of members of the General Assembly ; and in case any ticket should contain two or more names of persons residing in the same electoral district, that one of such persons only, whose name shall be first on said ticket, shall be taken and held as the person duly voted for. And in like manner if two or more of the persons shall be of the fifteen first upon the poll, who shall reside in the same district, he who shall have the greatest number of votes shall be taken and held duly elected ; and the sheriffs of the several counties, or other officers duly authorized, who shall have held the said polls, shall, within two days after the day of holding the said polls, ascertain, by faithful addition and comparison of the number of votes for every person, who shall have been voted for as an elector, and shall certify in words, and not in figures, under their hands, in manner and form following, to wit : I, A. B., sheriff of \_\_\_\_\_ county (or deputy sheriff, or other officer duly authorized as the case may be) do hereby certify that an election was held on the day (or days, as the case may be) and at the place (or places, as the case may be) fixed by law within the said county for this purpose, and that the number of votes herein specified, opposite the names of the several persons following, was given by voters qualified to vote for this purpose, for such persons as electors for the State of North Carolina of president and vice president of the United States : namely, For D. C. (here state the number of voters given for D. C.) for E. F. (here state the number of voters given for E. F.) and so on until the list of such persons so voted for, and of the number of votes shall be complete : Given under my (or our) hand (or hands, as the case may be) this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord eighteen hundred \_\_\_\_\_, and two fair copies of such certificate and return shall be made by the sheriff, deputy sheriff or other officer, as the case may be, under his or their hands, one of which shall be delivered to some one person among the fifteen, who shall have therein the greatest number of votes, given at the election poll so held by the sheriff or other officer so certifying, as the case may be, and the other shall be returned to the governor of this State, within eight days after the day of holding the said polls, under the penalty of four hundred dollars, upon such sheriff, his deputy or other officer holding such election, in the case of his or

Time and manner of holding the elections for electors.

Certificate and return — by whom to be made.

Penalty in case of failure to make return.



their failure in so doing, to be recovered by the attorney general or solicitor, to the use of the State, by an action of debt in any court of record within this State in the name of the governor ; and the governor shall, upon the receipt of such certificates or so many thereof as shall have been transmitted to and received by him, on or before the Monday before the first Wednesday of December next following the day of holding said polls, proceed to ascertain from the said returns the fifteen persons for whom the greatest number of the whole number of votes throughout the State shall have been given, and he shall, on or before the first Wednesday in December next following the day of holding the said polls, make out three lists of the names of the fifteen persons for whom the greatest number of votes shall appear to have been given as aforesaid, and deliver or cause the same to be delivered to the said fifteen persons, so having the greatest number of votes, as directed by the act of congress, and the governor shall lay before the General Assembly, for their inspection, the said certificates so by him received from the several sheriffs as aforesaid.

Election of electors to be held every four years.

2. Four years after the election above described, and every four years thereafter, there shall be, in the several counties of this State, another election of electors to vote for president and vice president of the United States, to be held on such days and at such places as are herein before prescribed ; and all such acts, matters and things as are herein directed to be done and observed at and after the election here directed, by the governor of this State, and by the sheriffs of the several counties, or deputy sheriffs or other officers, shall be done and observed at every subsequent election by the governor for the time being, and by the then sheriffs of the several counties, deputy sheriffs or other officers respectively, under the rules, regulations and penalties herein prescribed and directed.

When and where the electors shall meet to give their votes.

3. The fifteen persons, for whom the greatest number of votes throughout the State shall appear to have been given as aforesaid, shall be and they are hereby declared to be electors, for and on behalf of this State, to vote for president and vice president of the United States ; and shall assemble in the city of Raleigh, on the first Wednesday of December, one thousand eight hundred and forty, and on the first Wednesday of December next after their appointment in each and every year, in which they shall be appointed, and then and there give their votes for president and vice president of the United States.

The governor shall issue his proclamation for an election in case of a vacancy in both the offices of president and vice president

4. Whenever the offices of president and vice president of the United States shall both become vacant, it is hereby declared to be the duty of the governor of this State for the time being, upon receiving a notification of such vacancy from the secretary of state of the United States, forthwith to issue his proclamation, directing the sheriffs of the several counties of this State, or other officers, to hold elections, within their respective counties, for the appoint-

2. 1815, c. 836, s. 2.

3. 1815, c. 886, s. 3.

4. 1815, c. 886, s. 4.

ment of electors of president and vice president of the United States, on the days of the year in which such vacancy may happen, as are herein prescribed for holding the regular and stated elections : *Provided*, there shall be a space of two months between the date of such notification and the said first Wednesday of December : but if there should not be the space of two months between the date of said notification and the said first Wednesday of December, the governor shall specify in his proclamation that the electors shall be appointed or chosen in the year next ensuing the date of such notification, on the days herein before stated, and it is also hereby declared that the electors, appointed in the manner by this section directed, shall meet at the city of Raleigh on the first Wednesday of December after their appointment, and give their votes for a president and vice president of the United States.

5. Each elector, chosen pursuant to this act, with his own consent previously signified, failing to attend and vote for a president and vice president of the United States at the time and place herein directed, shall (except in consequence of sickness or other unavoidable accident) forfeit and pay four hundred dollars, to be recovered by the attorney general or solicitor, to the use of the State, by action of debt, in the name of the governor for the time being, in any court of record.

Penalty on electors for failing to attend.

And any sheriff or other officer, duly authorized for that purpose, refusing to take the poll, when he shall be thereunto required by a person qualified to vote, or making or signifying, or delivering or transmitting a false certificate or return of an election, as here directed, or making any erasure or alteration in the poll books, or refusing to suffer any candidate or person qualified to vote, at his or their own expense, to have a copy of the poll books, shall forfeit and pay two hundred dollars, which may be recovered with costs of suit in any court of record, by any person who will sue for the same in an action of debt, one half to the use of the person first suing therefor, and the other half to the use of the State.

On sheriffs for refusing to take the poll, or making false returns, &c.

6. The electors, appointed in pursuance of this act, shall be allowed for their travelling to and from the city of Raleigh and their attendance, the same compensation, as by law is or may be allowed members of the General Assembly, and shall be entitled to the same privileges as members of the General Assembly : and the same allowances shall be made to the sheriffs or other officers holding said elections, for holding the same and conveying the duplicate certificate to the governor, as is or may be allowed to him or them in the case of an election for members of congress.

Compensation of electors.

Of sheriffs for holding elections, &c.

7. In case any of the electors, chosen as by this act directed, should, by sickness or any other cause, not attend and give their votes as herein prescribed, the other electors then present shall and may by vote appoint some other person or persons, as the case may be, to supply the place or places of the person or persons so not attending as aforesaid ; and the person or persons, so

Electors may supply vacancies in their body.

5. 1815, c. 886, s. 5.  
 6. 1815, c. 886, s. 6.  
 7. 1815, c. 886, s. 7.



appointed by the electors, shall be taken and held to all intents and purposes as an elector or as electors to vote for president and vice president of the United States, and as such shall give his vote or their votes in the same manner as the other electors chosen in the manner herein before prescribed.

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## CHAPTER 42.

# ENTRIES AND GRANTS.

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### AN ACT CONCERNING ENTRIES AND GRANTS OF LAND.

## SECTION

1. What lands subject to entry.
2. Swamp land not exceeding fifty acres.
3. Land in a swamp containing not more than two thousand acres.
4. Appointment of entry takers and surveyors.
5. When a vacancy, clerk of the county court to act as entry taker.
6. Oaths and bonds of entry takers and surveyors.
7. Surveyors may appoint deputies.
8. Every citizen may enter lands.
9. Price at which lands may be entered.
10. When entry money to be paid.
11. On failure to pay, a subsequent enterer entitled.
12. In case of lapse, the same person shall not re-enter within twelve months.
13. How entries to be made and warrants to issue.
14. How surveys to be made and returned.
15. Surveys to be according to priority of entry.
16. When the warrant is lost, duplicate may issue.
17. On the death, &c. of entry taker, successor to issue warrants.
18. How entry takers to make entries for their own use.
19. How surveyors to have surveys made for themselves.
20. Entry takers to make annual returns to the secretary of state.

## SECTION

21. Penalty for failure, how to be recovered.
22. Public treasurer to receive the entry money.
23. When the secretary shall issue grants.
24. How grants to be authenticated—All grants to be registered—Copies may be registered.
25. How the grant to issue on the death of enterer.
26. When a seal to a grant is lost, it may be renewed.
27. Certain grants heretofore issued to surveyors, &c. confirmed.
28. Certain other grants declared valid.
29. Grants made upon entries, extending into two or more counties, confirmed.
30. How to correct mistakes made by surveyors or other officers in perfecting titles to land upon entries.
31. Persons aggrieved by the issuing of patents, how to proceed.
32. Proceedings and judgment of the court in such cases—Copy to be filed in secretary's office.
33. Whenever the State wishes to repeal letters patent or grant, the supreme court to have original jurisdiction.
34. What decree the court may make.
35. Cases now in the superior courts may be removed to the supreme court.
36. Indian reservations not to be entered.
37. Time for paying on certain entries extended.

1844.5. Ch 39.  
1846.7. Ch 33. 34. 35. 36.

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 all vacant and unappropriated lands belonging to this State shall be subject to entry in the manner herein provided, except in the cases hereinafter mentioned. It shall not be lawful for any entry taker to receive an entry for any lands lying to the westward of the line, run by Meigs and Freeman in the year one thousand eight hundred and two, as the then boundary line between this State and the Cherokee nation, except the vacant and unsurveyed lands that have been acquired by treaty from the Cherokee Indians in the years one thousand eight hundred and seventeen and one thousand eight hundred and nineteen; or of any lands covered by the waters of any of the lakes of the State, or of any lands now covered by the waters of a lake that shall be gained therefrom by the recession, draining or diminution of such waters: and every entry made and every grant issued, contrary to the intent and meaning of this enactment, shall be void.

What lands subject to entry.

2. It shall not be lawful for any entry taker to receive any entry of vacant and unappropriated marsh and swamp lands, except in cases where the quantity of land does not exceed fifty acres in one body, and that situate between the lines of tracts heretofore granted; except in the case hereinafter provided.

Swamp land not exceeding fifty acres.

3. It shall be lawful for entry takers to receive entries of marsh or swamp land, when the quantity of land in any one marsh or swamp does not exceed two thousand acres: *Provided*, however, that this act shall not be construed to extend to any swamp or marsh lands, which have been surveyed by engineers in the employment of the State, with a view to the draining and reclaiming the same; and every entry or grant made for marsh or swamp lands, contrary to the intent and meaning of these enactments, shall be void.

Land in a swamp containing not more than two thousand acres.

4. The justices of the peace in every county, at the next court which shall be held after each respective vacancy, may, when they deem it necessary, elect one good and sufficient person to receive entries of claims for lands within such county respectively; and also shall elect not more than two persons properly qualified to be surveyor of lands within the same; at which election, whosoever shall appear to have the majority of votes of the justices then present shall be deemed duly elected, and no other: and every person so duly elected for either of the offices aforesaid shall hold the said offices respectively during the term of four years.

Appointment of entry takers and surveyors.

5. Where a vacancy now exists or shall hereafter happen in the office of entry taker in any county, the clerk of the court of pleas and quarter sessions of the said county shall be bound to act as entry taker, until such vacancy be filled by a regular appointment,

Where a vacancy, clerk of the county court to act as entry taker.

1. 1809, c. 774, s. 1.—1817, c. 950, s. 1.—1827, c. 6, s. 1, 2, 3.—1835, c. 6.

2. 1826, c. 6.

3. 1830, c. 12.

4. 1777, c. 114, s. 2.—1822, c. 1147, s. 1.—1831, c. 6, s. 2.—1834, c. 27, s. 1.

5. 1831, c. 6, s. 3.



to take charge of the books belonging to the office, to discharge all the duties and receive the emoluments, and shall be subject to the rules, restrictions and penalties prescribed by law for entry takers regularly appointed.

Oaths and bonds of entry takers and surveyors.

6. Every entry taker and surveyor, before entering upon the execution of his office, shall take and subscribe in open court the oath prescribed for the qualification of officers, and also an oath that he will well and impartially discharge the several duties of his respective office ; and the surveyor shall enter into bond with sufficient security, to be approved by the county court, in the sum of four thousand dollars, payable to the State of North Carolina, for the faithful discharge of his duties ; and every entry taker shall also give bond in the sum of two thousand dollars, payable to the State of North Carolina, that he will well and truly discharge the duties of his office.

Surveyors may appoint deputies.

7. It shall and may be lawful for each and every surveyor in this State, in his respective county, to appoint a deputy or deputies, who shall, previous to entering on the execution of his or their office, be qualified in a similar manner with the surveyor ; and the surveyor making such appointment shall be liable and accountable for the conduct of such deputy or deputies, in the same manner as for his own conduct in office.

Every citizen may enter lands.

8. It shall and may be lawful for any person, who is or shall hereafter become a citizen of this State, to make with the entry taker of any county within this State a claim for any lands, subject to entry, lying in such county ; every such citizen performing every thing by this act required to be previously done.

Price at which lands may be entered.

9. Five cents on the acre shall be paid to the treasurer for every acre of land which may be entered in this State ; *Provided*, that no person shall enter more than one hundred acres within any one year at the price of five cents per acre : if any person shall enter more than one hundred acres of land, in the same survey or in any one year, he shall pay into the treasury the sum of ten cents on the acre for each and every acre which he may enter.

When entry money to be paid.

10. All entries of land made in the course of any one year shall, in every event, be paid for on or before the thirtyfirst day of December, which shall happen in the second year thereafter ; and all entries of land, not paid for agreeably to this provision, shall become null and void, and the land shall revert to the State, and may be entered by any other person as unappropriated lands.

On failure to pay, a subsequent enterer entitled.

11. Whenever any entry of land shall be made in any entry taker's office in this State, and the enterer shall fail to pay the purchase money for the same, within the time limited by law, it shall and may be lawful for any person who may have made a subsequent entry for the said land, to pay the purchase money into the treasury and have a grant perfected, in the same manner as the

6. 1777, c. 114, s. 13.

7. 1779, c. 140, s. 5.

8. 1777, c. 114, s. 3.

9. 1833, c. 11.

10. 1803, c. 759.

11. 1809, c. 771.

original enterer would have done, had he not failed to pay the same.

12. No lands now entered on the books of the entry takers of this State, or which shall hereafter be entered, and the entries of which shall be suffered to lapse by non-payment of the price thereof, shall be re-entered, within twelve months after the time at which such entry shall lapse, by the person or persons in whose name or names such entries were made, but such re-entries shall be utterly null and void.

In case of lapse, the same person shall not re-enter within twelve months.

13. The claimant of any land shall produce to the entry taker a writing, signed by such claimant, setting forth where the land shall be situated, the nearest water course, mountains and remarkable places, and such water courses and remarkable places as may be therein, the natural boundaries and lines of any other person or persons, if any, which divide it from other lands; and every such writing shall be on one quarter sheet of paper at least, and shall be endorsed by the entry taker with the name of the claimant, and number of acres claimed, and date of the entry, and a copy thereof shall be entered in a book, well bound and ruled with a large margin into spaces of equal distance, every space to contain one entry only, and every entry to be made in the order of time in which it shall be received, and numbered in the margin; and the entry taker shall deliver to the party a copy of the entry with its proper number, and a warrant to the surveyor to survey the same, which warrant shall contain a copy of the entry with its number and date, and shall be delivered to the surveyor in the order of time in which the entry was made.

How entries to be made and warrants to issue.

14. Every county surveyor, upon receiving the copy of the entry and order of survey for any claim of lands, shall, as soon as may be, lay off and survey the same, agreeably to this act, and make thereof two fair plats, the scale whereof shall be mentioned on such plats, and shall set down in words the beginning, angles, distances, marks and water courses and other remarkable places, crossed or touched by or near to the lines of such lands, and also the quantity of acres; and shall transmit the plats to the secretary's office or deliver them to the claimant, within twelve months, together with the warrant or order of survey, one of which, with the warrant, shall be filed by the secretary, and the other annexed to the grant; and no surveys shall be made without chain carriers, who shall actually measure the land surveyed, and shall be paid by the party for whom the survey shall be made, and such chain carriers shall be sworn to measure justly and truly, and to deliver a true account thereof to the surveyor, which oath every surveyor is hereby empowered and required to administer.

How surveys to be made and returned.

15. The surveyor shall survey all entries of land according to the priority of such entry, paying due respect to the number of each warrant, and every grant hereafter to be obtained by any subsequent entry or entries, otherwise than is by this enactment

Surveys to be according to priority of entry.

12. Amendment.

13. 1777, c. 114, s. 5.—1783, c. 185, s. 11.

14. 1777, c. 114, s. 10.

15. 1787, c. 279, s. 1.



directed, shall be and the same is hereby declared void and of no effect : *Provided nevertheless*, that nothing herein contained shall be construed to prevent any person, making a subsequent entry on any lands, from surveying and obtaining a grant, as the law directs, for all such surplus land as shall remain, after the enterer or enterers of such land hath surveyed his, her or their entry or entries as aforesaid.

When the warrant is lost, duplicate may issue.

16. When any person has made or shall hereafter make an entry of lands, as required by law, which entry shall not have become void by lapse of time, and upon which the entry taker has issued or shall issue his warrant of survey, and the same be lost by accident, it shall be lawful for the entry taker, on due proof being made to his satisfaction by affidavit of the claimant or the surveyor or deputy surveyor, to issue a duplicate warrant of survey of the same tenor and date, taking care to set forth in the face of said warrant that the same is a duplicate, in which case such warrant shall be as valid and binding as the original.

On the death, &c. of entry taker, successor to issue warrants.

17. In all cases where an entry shall be made in the office of any entry taker, and such entry taker shall die or resign before a warrant shall be issued thereupon, it shall be the duty of the successor of such entry taker, after being duly appointed and qualified, to issue a warrant upon such entry, in the same manner as the original entry taker might have done, if no vacancy in the office had occurred : *Provided nevertheless*, that nothing herein contained shall be construed to authorize the issuing of warrants in cases prohibited by this act, where the application shall not be made in due time.

How entry takers to make entries for their own use.

18. If any entry taker shall be desirous to make any entry of lands in his own name, such entry shall be made in its proper place, before a justice of the peace of the county, not being a surveyor or assistant, which entry the justice shall return to the county court at their next sitting, and the county court shall insert such entry ; and every entry made by or for such entry taker, in any other manner than as herein directed, shall be illegal and void, and any other person may enter, survey and obtain a grant for the same land.

How surveyors to have surveys made for themselves.

19. When a county surveyor shall wish to have lands surveyed, in the county where he acts as principal surveyor, for the purpose of obtaining a grant to the use of himself from the State for the same, the county court of said county shall appoint some person to make the survey, and the entry taker of lands shall direct his warrant of survey to the person by name authorized by this act to survey ; and all surveys, certificates, and plats of the same, done in pursuance of this act, shall be made under the same regulations as prescribe the duty of the county surveyor in similar cases ; and no other survey than is hereby authorized shall be necessary to enable county surveyors to obtain a grant of land from the State.

16. 1814, c. 878, s. 1.

17. 1835, c. 19.

18. 1777, c. 114, s. 17.

19. 1828, c. 23, s. 1.

20. It shall be part of the official duty of every entry taker to make return to the secretary annually, on the first day of December, of all lands entered with him, under a penalty of two hundred dollars.

Entry takers to make annual returns to secretary of state.

21. It shall be the duty of the secretary of state, and he is hereby required to furnish the attorney general, at every spring term of the superior court of Wake county, with a certificate of failure in every case, where any entry taker shall fail to make return agreeably to law, and it shall be the duty of the attorney general to move for judgment against such entry taker and his securities, and it shall be lawful for the court in every such case to cause judgment to be entered accordingly.

Penalty for failure, how to be recovered.

22. It shall be the duty of the public treasurer to receive the purchase money for vacant and unappropriated lands, upon the presentation to him of the certificate of the secretary of state, setting forth the number and date of the entry, and quantity of acres found by the surveyor to be vacant, as the same may appear to exist by the returns made to him from the surveyor, or entry taker, or from the entry taker's warrant or the plats of survey.

Public treasurer to receive the entry money.

23. No grant shall issue on the treasurer's receipt for the purchase money, countersigned by the comptroller; but it shall be the duty of the comptroller to make out and deliver to the secretary a certificate, conformable to each receipt by him countersigned, on which the secretary is required to issue the grant.

When the secretary shall issue grants.

24. The secretary shall, on application of the claimant, make out grants for all surveys returned to his office, which grants shall be authenticated by the governor, countersigned by the secretary and recorded in his office: the date of the entry shall be inserted in every grant, and no grant shall issue upon any survey, unless the same be signed by the surveyor of the county; and every person obtaining a grant for lands shall, within twelve months after such grant shall be perfected as aforesaid, cause the same to be registered in the register's office of the county where the land shall lie; it shall and may be lawful for any person to cause to be registered in the office of the register of the county, where the lands lie, any certified copy of a grant, from the office of the secretary of state, for the lands lying in such county; and such registration duly made shall have the same effect in law as if the original had been registered.

How grants to be authenticated.

All grants to be registered.

Copies may be registered.

25. In case of the death of any person, who heretofore has made or shall hereafter make an entry of lands, pending the same or before making out the grant, the secretary shall issue the grant in the name of the decedent; and those interested, either as heirs at law, devisees, tenants in dower or by the courtesy, shall have the same estate as if the land had been granted during the life of the decedent.

How the grant to issue on the death of the enterer.

20. 1796, c. 455, s. 9.—1821, c. 1107, s. 1.—1833, c. 15, s. 2.

21. 1833, c. 15, s. 1.

22. 1827, c. 23, s. 1.—1829, c. 30.

23. 1799, c. 525, s. 4.

24. 1783, c. 185, s. 14.—1796, c. 455, s. 1.—1799, c. 525, s. 2.

25. 1715, c. 4, s. 6.—1798, c. 493, s. 6.



When a seal to a grant is lost, it may be renewed.

26. In all cases where the seal annexed to a grant, issued by the State, is or shall be lost or destroyed, then the governor for the time being may, on the certificate of the secretary of state that such grant was fairly obtained, cause the seal of the State to be affixed to such grant, and the same so affixed shall give the said grant the same validity as the seal first affixed thereto.

Certain grants heretofore issued to surveyors, &c. confirmed.

27. Grants of land heretofore made by the State to surveyors and deputy surveyors, upon surveys, plats and certificates of the same, made by them for themselves respectively, without other illegality, and without fraud, and without partiality, the certificates in all cases being signed by the principal surveyor, are hereby confirmed and declared to be good and valid, any law to the contrary notwithstanding.

Certain other grants declared valid.

28. All grants issued by the secretary of state, previous to the year one thousand eight hundred and twenty, on surveys made fairly and without fraud, and signed by the deputy surveyors only, shall be and the same are hereby validated and declared good and effectual to pass all the right of the State in and to said land, in as full and ample a manner as if such returns had been made by the surveyors of the respective counties: *Provided nevertheless*, that nothing herein contained shall affect any entries made or grants obtained on legal returns for such lands previous to the year one thousand eight hundred and twentynine.

Grants made upon entries extending into two or more counties confirmed.

29. Whereas many of the citizens of the State, on making entries of lands near the respective county lines wherein they reside, either for want of proper knowledge of the land laws of the State or not knowing the county lines, have frequently made entries and extended their surveys on such entries into other counties than those wherein they were made, and obtained grants on the same, and whereas doubts have existed with respect to the validity of the titles to lands situated as aforesaid, so far as they extend in other counties than those where the entries were made; for remedy whereof, *Be it enacted, &c.*, That all grants issued on entries made for land situated as aforesaid, when the money has been paid into the public treasury, shall be good and valid against any entries, which may be hereafter made or grants issued thereon.

How to correct mistakes made by surveyors or other officers in perfecting titles to land upon entries.

30. Whenever there has been or hereafter may be, an error by the surveyor in platting or making out the certificate for the secretary's office, or the secretary shall mistake in making out the courses agreeably to said returns, or misname the claimant, or make other mistake, so as such claimant shall be injured thereby, the claimant so injured may prefer a petition to the court of pleas and quarter sessions or the superior court of the county, in which the land lies, setting forth the injury which he, she or they might sustain in consequence of such error or mistake, with all and singular the matters and things relative thereto; and the said court, seven justices being present, if the petition is in the court of pleas and quarter

26. 1807, c. 727.

27. 1823, c. 23, s. 2.

28. 1823, c. 46.

29. 1805, c. 675.—1834, c. 17.

30. 1790, c. 326.—1793, c. 504.—1804, c. 655.—1814, c. 876.

sessions, is hereby authorized to hear testimony respecting the truth of the allegations set forth in the said petition ; and, if it shall appear to them by said testimony, that from the return of the surveyor or the error of the secretary, the patentee of such lands is liable to be injured thereby, such court is hereby required to direct their clerk to certify such facts as appear to their satisfaction to the secretary of state, who shall file the same in his office and correct such error in the patent, and likewise on the records of his office, for which he shall receive forty cents for each and every patent so altered, except where the error was committed by the secretary ; the costs of such suit shall be the same as in all other civil suits originated in such courts, and shall be paid by the petitioner, except when any person may have made himself a party to prevent the prayer of the petitioner being granted, in which case the party failing shall pay the costs as in other suits at law ; the benefits granted by these enactments to the patentees of land shall be extended in all cases to persons claiming by, from or under their grants by descent, devise or purchase. When any error is ordered to be rectified, and the same has been carried through from the grant into mesne conveyances, the court making such order shall direct that a copy thereof be recorded in the register's books of the county : *Provided*, that no petition to correct errors as authorized by these enactments shall be brought, but within three years after the date of the patent, alleged to be erroneous ; and if any petition be brought after the expiration of three years from such date, it shall be the duty of the court to dismiss the same, and all proceedings had thereon shall be deemed null and of no effect : *And provided also*, that nothing in these enactments contained shall affect the rights or interests of any person claiming under a patent issued between the period of the date of the grant alleged to be erroneous, and the *time* of filing the petition, unless such person shall have had due notice of the filing of such petition, by service of a copy thereof, and an opportunity of defending his rights before the court according to the course of the common law.

31. When any person or persons, claiming title to lands in any of the counties of this State, under a grant or patent from the king of Great Britain, any of the lords proprietors of North Carolina, or from the State of North Carolina, shall consider himself or themselves aggrieved by any grant or patent issued or made, since the fourth day of July, one thousand seven hundred and seventysix, to any other person against law or obtained by false suggestions, surprise or fraud, such person so aggrieved may file his petition in the superior court of law for the county in which such land may lie, together with an authenticated copy of said grant or patent, which petition shall briefly state the grounds whereon such patent should be repealed and vacated ; whereupon a writ of *scire facias* shall issue to the grantee, patentee or the person, owner or claimant under such grant or patent, requiring such

Persons aggrieved by the issuing of patents, how to proceed.



grantee, patentee or owner, to show cause why such grant or patent shall not be repealed and vacated.

Proceedings and judgment of the court in such cases.

32. The writ of *scire facias* shall be considered the leading process, and all the proceedings thereon shall conform to the general rules of practice in such cases, except where the *scire facias* cannot be made known to the defendant, in which case the court shall order publication in one or more papers for such time as they may think proper. If, upon verdict or demurrer, the court believe that the patent or grant was made against law, or obtained by fraud, surprise, or upon untrue suggestions, they may vacate the same; and a copy of such judgment, after being entered at large upon record, shall be filed by the petitioner in the secretary's office, where it shall be recorded in a book to be kept for that purpose; and the secretary shall, note in the margin of the original record of the grant, the entry of the judgment with a reference to the record in his office.

Copy to be filed in secretary's office.

Whenever the State wishes to repeal letters patent or grant, supreme court to have original jurisdiction.

33. Whenever it shall be deemed necessary, on the part of the State, to institute proceedings to vacate and repeal any grant or other letters patent for fraud, false suggestions, or other cause, the supreme court shall have original cognizance thereof; and such proceedings shall be by bill in equity, or information in the nature of a bill in equity, to be exhibited in the name of the attorney general for the time being on behalf of the State; and the proceedings thereupon shall be according to the course and practice in equity causes in the courts in this State.

What decree the court may make.

34. When, upon the hearing of such cause, it shall be ascertained that such grant or letters patent have been obtained by fraud, or false suggestion, or against law in any other respect, the said supreme court shall have full power, by its decree, to declare the same repealed, rescinded and annulled; and also to take such order as the court shall deem right and proper for cancelling the enrolment of the same in the office of the secretary of state.

Cases now in the superior courts may be removed to the supreme court.

35. When any such bill in equity or information in nature thereof shall have been already exhibited in any of the superior courts of equity, and may now be pending therein, the same shall at any time, on motion of either party therein, be, by order of the court in which the same is pending, moved into the supreme court; and the said supreme court shall, by such order of removal, acquire and have the same cognizance of the cause, as if it had been originally commenced in said court, according to the provisions of the thirtythird section of this act.

Indian reservations not to be entered.

36. Nothing in this act contained shall be so construed as to authorize or allow the entry of any portion of the Cherokee lands, which were reserved or allotted to any Indian or Indians under the Cherokee treaties, which the State has since acquired by purchase; and the secretary of state is hereby directed to issue no grant for

32. 1798, c. 7. (Iredell's revision.)

33. 1830, c. 2, s. 1.

34. 1830, c. 2, s. 2.

35. 1830, c. 2, s. 3

36. 1836 (Amendment.)

any portion of the lands of the latter description, until the General Assembly shall otherwise order and direct.

37. All entries of lands, for the years one thousand eight hundred and thirtythree, one thousand eight hundred and thirtyfour, and one thousand eight hundred and thirtyfive, the purchase money for which may become due and payable on or before the fifteenth day of December, in the year of our Lord one thousand eight hundred and thirtyseven, may be paid in, and the payment of the same is hereby extended to the fifteenth day of December, in the year of our Lord one thousand eight hundred and thirtyeight, and on that day shall be punctually paid ; any law to the contrary notwithstanding : *Provided always*, that nothing in this section shall be so construed as to prejudice the priority of the entry of land by any person, the payment of the purchase money for which is extended by this section, but that all such entries shall have and possess all the privileges and benefits of the existing laws, as if the purchase money had been paid at the time it became due, and this section had not been passed : *Provided also*, that nothing in this section contained shall be construed so as to interfere with any other person who has made entries before the passage of this act.

Times for paying on certain entries extended.

37. 1836. (Amendment.)

*Note.*—REFERENCES TO ADJUDGED CASES.

SECT. 1. *Sears vs. Parker*, 1 Hay, 126. *Seekright vs. Bogan*, ib., 176. *Dickie vs. Hoodenpile*, ib., 358. *Jones vs. Jones*, ib., 488. *Terrill vs. Mooney*, 1 Murph., 401. *McKenzie vs. Hawlet*, N. C. Term R., 181. *Tatum vs. Sawyer*, 2 Hawks, 226. *Tate vs. Greenlee*, ib., 231. *Ingram vs. Threadgill*, 3 Dev. 59.

SECT. 14. *Avery vs. Walker*, 1 Hawks, 140. *Harris vs. Ewing*, 1 Dev. and Bat. Eq., 369.

SECT. 24. *Hunter vs. Williams*, 1 Hawks, 221. *Van Pelt vs. Pugh*, 1 Dev. and Bat. 210.

SECT. 31. *Terrill vs. Logan*, 3 Hawks, 319. *McRea vs. Alexander*, ib., 322. *Featherston vs. Mills*, 4 Dev. 596. *Crow vs. Holland*, ib., 419.

**CHAPTER 43.**

**ESTATES.**

AN ACT CONCERNING ESTATES.

SECTION

- 1. Estates in tail converted into fee simple.
- 2. In joint tenancy the share of a person dying shall not go to the survivor—Proviso as to partners in trade.

SECTION

- 3. Certain contingent limitations in deeds or wills, how construed.
- 4. In conveyances to uses, the possession shall be transferred to the use without livery of seisin.
- 5. Grantees of reversions to have the



SECTION

- like advantages against the tenants for life or years, as the grantors had.
- 6. Tenants for life or years to have like advantages against the grantees of reversions, as they had against the grantors.
- 7. The buying and selling pretended rights or titles prohibited.
- 8. What warranties shall be void.
- 9. What leases, made by husband and wife, shall be good against the lessors.

SECTION

- 10. What leases, made by husband and wife, shall not be good.
- 11. Tenants for life protected against feigned recoveries.
- 12. Proviso for recoveries by good title.
- 13. Certain recoveries by assent good.
- 14. A termor may falsify for his term.
- 15. Terms for years protected against recoveries.
- 16. Persons having lands by execution protected.

1848. ch 40.

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,

Estates in tail converted into fee simple.

That any person seized of an estate in general or special tail, whether by purchase or descent, shall be held and deemed to be seized of the same in fee simple, fully and absolutely without any condition or limitation whatsoever, to him, his heirs and assigns forever, and shall have full power and authority to sell or devise the same as he shall think proper ; and such estate shall descend under the same rules as other estates in fee simple ; and all sales and conveyances, made *bona fide* and for valuable consideration, since the first day of January, in the year of our Lord one thousand seven hundred and seventyseven, by any tenant in tail in actual possession of any real estate, where such estate hath been conveyed in fee simple, shall be good and effectual in law to bar any tenant or tenants in tail and tenants in remainder, of and from all claim or claims, action and actions and right of entry whatsoever, of, in and to such entailed estate, against any purchaser, his heirs or assigns now in actual possession of such estate, in the same manner as if such tenant in tail had possessed the same in fee simple.

In joint tenancy the share of the person dying shall not go to the survivor.

2. In all estates, real or personal, held in joint tenancy, the part or share of any tenant dying shall not descend or go to the surviving tenant or tenants, but shall descend or be vested in the heirs, executors, or administrators, or assigns respectively of the tenant so dying, in the same manner as estates held by tenancy in common, any law, usage or custom to the contrary notwithstanding : *Provided always*, that estates held in joint tenancy for the purpose of carrying on and promoting trade and commerce, or any other useful work or manufacture, established and pursued with a view of profit to the parties therein concerned, shall be vested in the surviving partner or partners, in order to enable him or them to settle or adjust the partnership business, or pay off the debts which may have been contracted in pursuit of the said joint business ; but as soon as the same shall be effected, the survivor or survivors shall account with, and pay, and deliver to the heirs, executors, administrators and assigns respectively of such deceased partner or partners, all such part, share and sums of money as he or they may be entitled to by virtue of the original agreement, if

Proviso as to partners in trade.

1. 1784, c. 204, s. 5.  
2. 1784, c. 204, s. 6.

any, or according to his or their share or part in the joint concern, in the same manner as partnership stock is usually settled between joint merchants and the representatives of their deceased partners.

3. Every contingent limitation in any deed or will, made to depend upon the dying of any person without heir or heirs of the body, or without issue or issues of the body, or without children, or offspring, or descendant, or other relative, shall be held and interpreted a limitation to take effect, when such person shall die, not having such heir, or issue, or child, or offspring, or descendant, or other relative (as the case may be) living at the time of his death, or born to him within ten months thereafter, unless the intention of such limitation be otherwise, and expressly and plainly declared in the face of the deed or will creating it: *Provided*, that the rule of construction contained in this section shall not extend to any deed or will made and executed before the fifteenth of January, one thousand eight hundred and twentyeight.

Certain contingent limitations in deeds or wills, how construed.

4. By deed of bargain and sale, or by deeds of lease and release, or by covenant to stand seized to use, or deed operating by way of covenant to stand seized to use, the possession of the bargainor, releasor or covenantor shall be deemed heretofore to have been and hereafter to be transferred to the bargainee, releasee, or person entitled to the use, for the estate or interest which such person hath or shall have in the use, as perfectly as if the bargainee, releasee or person entitled to the use had been enfeoffed with livery of seizin of the land, intended to be conveyed by such deed or covenant.

In conveyances to uses, the possession shall be transferred to the use without livery of seizin.

5. Whenever a grant or lease shall be made, by any person or persons or body politic or corporate, of any reversion in lands, rents, tenements or hereditaments, which lands, rents, tenements or hereditaments at the time of such conveyance shall be held, by any other person or persons, body politic or corporate, for a term of life or lives or for a term of years, such grantee or grantees, lessee or lessees, their heirs, executors, administrators, successors and assigns, shall have the like advantages against the tenant for life or lives and against the tenant for years, their executors, administrators, successors and assigns, by entry for non-payment of rent and for doing of waste, and the same benefit and advantage and remedies by action for the not performing of other conditions, covenants or agreements, contained and expressed in the indentures, by which said tenants for life or lives or the said tenants for years hold the same lands, tenements, rents or hereditaments, against said tenants for life or lives and against said tenants for years, their executors, administrators, successors and assigns, as the grantors or lessors themselves or their heirs or successors ought or might have.

Grantees of reversions to have the like advantages against the tenants for life or years, as the grantors had.

6. All lessees and grantees of lands, rents, tenements and hereditaments for term of years, life or lives, their executors, administrators, successors and assigns, shall and may have like

Tenants for life or years to have like advantages

3. 1827, c. 7.

4. 27 Hen. 8, c. 10.

5. 32 Hen. 8, c. 34, s. 1.

6. 32 Hen. 8, c. 34, s. 2.



against the grantees of reversions, as they had against the grantors.

action and advantage and remedy against every person and persons, bodies politic and corporate, their heirs, successors and assigns, which have or shall have any gift or grant from any person or persons of the reversion of the same lands, rents, tenements and hereditaments so letten or any parcel thereof, for any condition, covenant or agreement contained or expressed in the indenture of their lease and leases, as the same lessees or any of them might and should have had against the said lessors and grantors, their heirs and successors.

The buying and selling pretended rights or titles prohibited.

7. No person shall buy, sell or obtain any pretended right or title, or take promise or covenant to have any right or title of any person, in or to any lands or tenements, (except such person as shall sell, covenant or promise the same, or they by whom they claim, have been in possession of the same or of the reversion or remainder thereof, or taken the rents and profits thereof one year next before the bargain made,) upon pain that he that shall make any such sale, promise, covenant or grant, shall forfeit the whole value of the lands so bargained, sold, covenanted or agreed to be sold or granted, and the buyer, knowing the same, shall forfeit also the value of the said lands, the one half to the use of the county where the lands are situated, the other half to the person suing for the same: *Provided*, it shall be lawful for any person, being in the lawful possession, by taking the rents and profits of any tenements, to buy the pretended right of any other person to such tenements.

What warranties shall be void.

8. All warranties, which shall be made by any tenant for life of any lands, tenements or hereditaments, the same descending or coming to any person in reversion or remainder, shall be void and of no effect; and likewise all collateral warranties of any lands, tenements or hereditaments by any ancestor, who has no estate of inheritance in possession in the same, shall be void against his heirs.

What leases made by husband and wife shall be good against the lessors.

9. All leases made of any lands, tenements or hereditaments, by writing indented or deed poll, for term of years or for life, by any person of full age having any estate of inheritance in fee simple in the same, in their own right or in right of their wives or jointly with their wives, shall be good in law against the lessors, their wives and their heirs and every of them: *Provided* the wife be made party to such deed of lease made by her husband of any lands, tenements or hereditaments, being the inheritance of the wife, she being thereto privily examined according to law, and that every such lease be made by indenture in the name of the husband and wife, and she to seal the same, and that the rent be reserved to the husband and wife, and to the heirs of the wife according to her estate, and that the husband shall not alien the rents longer than during the coverture.

What leases made by hus-

10. The above section shall not extend to any grant of any

- 7. 32 Hen. 8, c. 9, s. 2 and 4.
- 8. 4 Anne, c. 16, s. 21.
- 9. 32 Hen. 8, c. 23; s. 1 and 3.
- 10. 32 Hen. 8, c. 23, s. 2.

reversion, nor to any lease to be made without impeachment of waste, nor to any lease to be made above the number of twenty-one years or three lives from the making thereof, and every person to whom the reversion of such lands, tenements and hereditaments shall appertain, after the death of such lessors, shall have the like remedy against the lessees as the lessor might have had.

11. Where persons are seized of lands, as tenants by the courtesy, or otherwise for term of life, or of estates determinable upon life, all recoveries, by agreement of parties or by covin, against any such particular tenant, shall as against such person, to whom any reversion or remainder appertains, be void.

band and wife shall not be good.

Tenants for life protected against feigned recoveries.

12. The above section shall not be prejudicial to any person that shall by good title recover lands by any former title.

Proviso for recoveries by good title.

13. All recoveries of land by assent of any person, to whom any reversion or remainder thereof shall appertain, (so that the same assent appear of record in any court,) shall be in like force against such persons as shall assent as heretofore.

Certain recoveries by assent good.

14. A termor may falsify, for his term, recoveries in such wise as a tenant of the freehold may.

A termor may falsify for his term.

15. The termors, notwithstanding such recovery, shall enjoy their terms, according to their leases, against all such recoveries; and such recoverors, and their heirs and assigns, shall have like remedy against the termors, their executors, administrators and assigns, by action of debt for the rents and services reserved, and also like actions of waste done after the recoveries had, as the lessors might.

Terms for years protected against recoveries.

16. All persons having lands by execution shall have like remedy to falsify recoveries as is provided for lessees for years.

Person having lands by execution protected.

- 11. 14 Eliz. c. 8, s. 2.
- 12. 14 Eliz. c. 8, s. 3.
- 13. 14 Eliz. c. 8, s. 4.
- 14. 21 Hen. 8, c. 15, s. 2.
- 15. 21 Hen. 8, c. 15, s. 3.
- 16. 21 Hen. 8, c. 15, s. 4.

Note—REFERENCES TO ADJUDGED CASES.

SECT. 1. Minge vs. Gilmore, 1 Hay. 279, Car. L. Rep. Wells vs. Newbold, Tay. 166.



CHAPTER 44.

EVIDENCE IN CERTAIN CASES.

AN ACT PRESCRIBING WHAT SHALL BE EVIDENCE IN CERTAIN CASES.

1844.5. Ch

SECTION

1. Evidence necessary to support title under H. E. McCulloch.
2. Grant from the proprietors, or a copy thereof in titles under H. E. McCulloch, sufficient evidence without producing the grant to the proprietors.
3. What shall be evidence of the law of another state.
4. Printed statute book, evidence of private acts.

SECTION

5. Other evidence of private acts.
6. Copies from the secretary's office, of plats of survey, may be read as evidence.
7. What shall be evidence of administration and of returns of administrators in other states.
8. Certified copies of wills or deeds from other states to be received in evidence.

Evidence necessary to support title under H. E. McCulloch.

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 in all actions and suits at law or in equity, wherein it may be necessary for either party to prove title, by virtue of a grant or grants made by the king of Great Britain or Earl Granville to Henry McCulloch, or Henry Eustace McCulloch, it shall be held sufficient for such party, in the usual manner, to give evidence of the grant or conveyance from the king of Great Britain or Earl Granville, to the said Henry McCulloch or Henry Eustace McCulloch, and the mesne conveyances thereafter, without giving any evidence of the deed or deeds of release, relinquishment or confirmation of Earl Granville to the said Henry McCulloch or Henry Eustace Culloch, or of the power or powers of attorney, by which the conveyances from the said Henry McCulloch or Henry Eustace McCulloch purport to have been made.

Grant from the proprietors or a copy thereof in titles under H. E. McCulloch sufficient evidence without producing the grant to the proprietors.

2. In all trials at law, where the title of either plaintiff or defendant shall be derived from Henry Eustace McCulloch or Henry McCulloch, out of their tracts number one and three, it shall not be required of such party to produce, in support of his title, either the original grant from the crown to the proprietors, or a registered copy thereof, but in all such cases the grant or deed executed by such reputed proprietors or by his, her or their lawful attorney, or a certified copy thereof, shall be deemed and held legal and sufficient proof of the title of such proprietors, in as full and absolute manner, as though the said original grants were produced and given in evidence.

1. 1819, c. 1021.  
2. 1807, c. 724.

3. In all suits, wherein it may be necessary for the decision of the case to produce in evidence the law of any of our sister states, it shall and may be lawful for either party to produce in court a copy of the law of such state, drawn off by the secretary of our state, from the copy of the laws of our sister state, deposited in his or the executive office, certified under his hand with the seal of the State of North Carolina attached, and it shall be his duty to furnish said copy when required ; and such copy thus attested shall be held and deemed sufficient evidence of the existence of such law.

What shall be evidence of the law of another state.

4. All private acts, which have been or may hereafter be passed by the General Assembly and printed by the printer of the State, shall and may be read in evidence, in all cases and in all courts of this State, from the printed statute book.

Printed statute book evidence of private acts.

5. Any of the private acts, heretofore passed and published by Francis X. Martin, in his collection of private acts, shall and may be read in evidence from said collection, or a copy of any private act certified by the secretary of state shall likewise be received in evidence, in any of the courts aforesaid.

Other evidence of private acts.

6. Copies of the plats and certificates of survey or their accompanying warrants, which are or may be filed in the secretary's office, when certified as true copies from under the hand of the secretary, shall be as good evidence in any court of record in this State as the original.

Copies from the secretary's office of plats of survey may be read as evidence.

7. When an administration on the goods and chattels of any person deceased, being an inhabitant in another state, has been granted, or a return or inventory of the estate has been made, a copy of the record of administration or of letters of the same, and a copy of the inventory or return of the effects of the deceased, after the same has been granted or made agreeably to the laws of the state, where the same has been done, being properly certified, either according to the act of congress passed in May, A. D. one thousand seven hundred and ninety, or by the proper officers of the said state, and the further testimonial of the governor or commander-in-chief that the person certifying is the proper officer or duly authorized by law, shall be allowed to be read as evidence in the courts of this State, and shall be admitted in the same manner as a copy from any of the clerk's offices in this State.

What shall be evidence of administration and of returns of administrators in other states.

8. In cases where inhabitants of other states, by will or deed, devise or convey property situated in this State, and the original will or deed cannot be obtained, to register in the county where the land lies, or where the property shall be in dispute, a copy of the said will or deed (after the same has been proved and registered or deposited, agreeably to the laws of the state where the persons died or made the same,) being properly certified, either ac-

Certified copies of wills or deeds from other states to be received as evidence.

- 3. 1823, c. 1193, s. 1, 3.
- 4. 1826, c. 7, s. 1.
- 5. 1826, c. 7, s. 2.
- 6. 1822, c. 1154.
- 7. 1834, c. 4.
- 8. 1802, c. 623.



ording to the act of congress passed in May, one thousand seven hundred and ninety, or by the proper officer of the said state, and the further testimonial of the governor or commander-in-chief of said state that the person certifying is the proper officer or duly authorized by law, in such case the said copy shall be read as evidence in the courts of this State, and shall be admitted in the same manner as a copy from any of the register's or clerk's offices therein.

Note—REFERENCES TO ADJUDGED CASES.

SECT. 3. *State vs. Jackson*, 2 Dev. 563.

SECT. 8. *Knight vs. Wall*, 2 Dev. and Bat.

## CHAPTER 45.

# EXECUTIONS.

### AN ACT CONCERNING EXECUTIONS AND EXECUTION SALES.

SECTION

1. Houses, lands and other hereditaments may be taken in execution.
2. All process of execution to issue against lands and tenements, as well as goods and chattels, though the latter are to be first taken.
3. Sheriff may deliver goods, and one half of the lands of the debtor to the plaintiff, until the debt or damages be levied, &c.
4. Execution may be levied upon goods, lands, &c. held in trust for the person against whom the execution issued—Purchaser under such execution, to hold the property discharged of the trust.
5. The equity of redemption and the legal right of redemption in lands, liable to execution.
6. Sheriff to set forth in his deed that the land was under mortgage.
7. What articles shall be exempt from execution.
8. When justices' execution shall be levied on land and returned to court, what to be done.
9. Where the sale of the land does

SECTION

- not satisfy the judgment and costs, the court to grant execution for the balance.
10. How and where sales of land and slaves under execution shall be made.
  11. County court may appoint additional places of public sale.
  12. Sheriff or other officer to give notice of the sale of land, &c. under execution—How and for what length of time advertisement shall be made.
  13. At what time of the day execution sales shall commence.
  14. Penalty on sheriff, &c. for selling contrary to this act.
  15. Sheriff, &c. returning no sale for want of bidders, how to proceed.
  16. Justices' execution to bind personal property only from its levy.
  17. Sheriff or other officer may take bond for the forthcoming of property levied on.
  18. Officer how to proceed upon such bond when broken.
  19. Officer levying a justices' execu-

SECTION

tion on land to give the defendant five days notice before court—Court to direct a notice where none has been given.

- 20. County court to settle the charges of officers for keeping horses, &c. taken in execution.
- 21. Officer to make out his account for keeping horses, &c. and to deliver the debtor a copy thereof, and return the account with the execution.

SECTION

- 22. Purchaser under execution may sue the defendant in the execution, if there be a defect in the title to the thing sold.
- 23. A party, at whose suit any person may be charged in execution, may, after the death of such person in execution, have a new execution against the land and goods of the deceased.

1844.5. ch 34.35.  
1846.7.

1848. ch 53.

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 the houses, lands, and other hereditaments, and real estate, situate and being within this State, belonging to any person indebted, shall be liable to and chargeable with all just debts, duties and demands, of what nature or kind soever, owing by such person, and shall be subject to the like remedies, proceedings and process in any court of law or equity, for seizing, extending, selling or disposing of the same towards the satisfaction of such debts, duties and demands, as personal estates in this State are seized, extended, sold or disposed of in satisfaction of debts.

Houses, lands and other hereditaments may be taken in execution.

2. All process of execution shall issue against lands and tenements, as well as goods and chattels, and when any such execution shall come to the hands of the sheriff, he shall proceed to levy the same upon the goods and chattels of the defendant in the first instance, if any there be ; but if to the best of his knowledge there be no such goods or chattels, or not sufficient to answer the plaintiff's demand, he shall execute the same upon the lands and tenements, to the amount of the whole debt, or of so much as may remain more than the value of the goods and chattels so found, and such lands and tenements shall be liable, under the restrictions aforesaid, to be sold to satisfy the plaintiff's judgment ; and when any sheriff shall have levied process upon lands and tenements in manner aforesaid, he shall not proceed to sell the same, until in the most public place in his county, he shall advertise the same at least forty days.

All process of execution to issue against lands and tenements, as well as goods and chattels ; though the latter are to be first taken.

3. When a debt is recovered or acknowledged in any of said courts, or damages awarded, it shall be in the election of the plaintiff in the action to have a writ of *feri facias* to the sheriff to levy the debt or damages of the lands and goods, or that the sheriff shall deliver to him all the chattels of the debtor (those excepted which are hereinafter exempted from execution) and the one half of his land, until the debt or damages be levied, upon a reasonable extent or price. And if the plaintiff, after being so put into possession of the said land of the debtor, shall be dispossessed there-

Sheriff may deliver goods, and one half of the land of the debtor to the plaintiff, until the debt or damages be levied, &c.

1. 5 Geo. 2, c. 7, s. 4.—1777, c. 115, s. 29.  
2. 1777, c. 115, s. 29.  
3. 13 Edw. 1, c. 18.



of, he shall have his action to recover possession thereof, and also to recover such damages as he may have sustained.

Executions may be levied upon goods, lands, &c. held in trust for the person against whom the execution issued.

4. It shall and may be lawful for any sheriff or other officer, to whom any writ or precept shall be directed at the suit of any person or persons for or upon any judgment, to do, make or declare execution unto the party in that behalf suing of all such goods and chattels, lands, tenements, rents and other hereditaments, as any other person or persons be in any manner or wise seized or possessed or hereafter shall be seized or possessed of in trust for him, her or them against whom execution shall be so issued, as the sheriff or other officer might or ought to have done, if the said party or parties, against whom execution hereafter shall be issued, had been seized or possessed of such goods and chattels, lands and tenements, rents or other hereditaments, of such estate as they be seized or possessed of, in trust for him, her or them, at the time of the said execution sued, which goods and chattels, lands and tenements, rents or other hereditaments, by force and virtue of such execution, shall accordingly be held and enjoyed, freed and discharged from all incumbrances of such person or persons, so seized or possessed in trust for the person or persons against whom such execution shall be sued.

Purchaser under such execution to hold the property discharged of the trust.

The equity of redemption and the legal right of redemption in lands, liable to execution.

5. The equity of redemption, and the legal right of redemption, in all lands, tenements, rents or other hereditaments, which now are or hereafter shall be pledged or mortgaged, shall in like manner be liable to any execution or executions hereafter sued out, or any judgment or judgments now had, or which hereafter shall be had against the mortgagor or mortgagors.

Sheriff to set forth in his deed that the land was under mortgage.

6. It shall be the duty of the sheriff, selling any such lands, tenements, rents or other hereditaments under any execution to him directed, to set forth in the deed to be made by him to the purchaser or purchasers thereof, that the same lands, tenements and hereditaments were under mortgage at the time of the levy on and sale of the same.

What articles shall be exempt from execution.

7. In all executions against the goods and chattels, the wearing apparel, working tools, and arms for muster, one bed and furniture, one wheel and cards, and one loom, one bible and testament, one hymn book, and one prayer book and all necessary school books, the property of the defendant, shall be deemed and held exempt from seizure.

When justice's execution shall be levied on land and returned to court, what to be done.

8. When any justice's execution shall be levied on the lands and tenements of any person or persons and returned to court agreeably to law, it shall be the duty of the court, upon application of the plaintiff therein named, to enter up a judgment for the amount of said recovery and costs.

Where the sale of the land does not satisfy

9. If by the sale of the lands, so levied on and returned to court, a sufficient sum shall not be produced to satisfy the judgment

4. 1812, c. 830, s. 1.

5. 1812, c. 830, s. 2.—1822, c. 1172.

6. 1812, c. 830, s. 3.—1822, c. 1172.

7. 1773, c. 100, s. 1.—1808, c. 746, s. 2.—1810, c. 797.—1880, c. 33.

8. 1822, c. 1138, s. 1.

9. 1822, c. 1138, s. 2.

and costs, the plaintiff is hereby authorized to sue out an execution from the court for the residue thereof, in the same way and under the same rules and regulations as if the judgment had been originally rendered by said court.

the judgment and costs, the court to grant execution for the balance.

10. All sales of lands or slaves made by any sheriff, coroner, constable or by any clerk and master in equity, under any execution or decree, shall be made at the court house of their respective counties, and such sales shall be made on the same Monday in each and every month on which the several courts of pleas and quarter sessions are generally held for their respective counties, always making the Monday of each county court the only sale day in that month, and if on any sale day as aforesaid, the whole of the property taken by virtue of an execution, or if property levied on under other executions cannot be offered, by reason that the sale first commenced is not completed for want of time, or cannot be sold on the same day, the sheriff, constable, or other public officer shall be authorized to postpone the same from day to day until the whole shall be sold, on giving public notice at the court house that such sale will be continued on the ensuing day, and all such sales shall commence between the hours of eleven and four o'clock on such sale day: *Provided, nevertheless*, that nothing herein contained shall be construed to alter in any manner the rules and restrictions, under which sales are by law directed to be conducted and executions required to be returned: *And provided further*, that nothing in this section shall be construed to alter the days of sale in particular counties as now established by law.

How and where sales of land and slaves under execution shall be made.

11. The several courts of pleas and quarter sessions shall have full power and authority, (a majority of the acting justices being present) to establish additional places of public sale in their respective counties.

County court may appoint additional places of public sale.

12. No sheriff, constable, or other officer, shall sell any real estate, equity of redemption or legal right of redemption of any real estate, until he shall have advertised the same at least forty days previous thereto, in three public places in his county, nor shall said sheriff or other officer sell any slave, until he shall have made like advertisement for at least twenty days previous thereto, nor shall said sheriff or other officer sell other personal property, until he shall have made like advertisement for at least ten days previous thereto. And in addition to the three public places above specified, every sale under an execution issuing from a court of record shall be advertised, by the officer making the same, at the court house of his county.

Sheriff or other officer to give notice of the sale of land, &c. under execution.

How and for what length of time advertisement shall be made.

13. No sale under an execution shall commence before ten o'clock in the morning, or after four o'clock in the evening, of the day on which such sale is to be made.

At what time of the day execution sales shall commence.

14. Any sheriff or other officer, who shall make any sale contrary to the true intent and meaning of this act, shall forfeit and

Penalty on sheriff, &c. for selling contrary to this act.

10. 1822, c. 1153, s. 1.—1820, c. 1066.—1821, c. 1096, s. 1.

11. 1832, c. 12, s. 1.

12. 1820, c. 1066, s. 1.—1808, c. 753, s. 2.

13. 1794, c. 413, s. 1.

14. 1820, c. 1066, s. 2.—1822, c. 1153, s. 3.



pay the sum of two hundred dollars, to be recovered by any person suing for the same, one half to his own use, and the other half to the use of the county where the offence is committed.

Sheriff, &c.  
returning no  
sale for want  
of bidders, how  
to proceed.

15. Whenever a sheriff or other officer shall return upon any writ of *feri facias* or *venditioni exponas* to him directed, that he has made no sale for want of bidders, he shall state in his return the several places at which he has advertised the sale of property on which he hath levied, and the places at which he hath offered the same for sale, and any sheriff or coroner, failing to make such specification, shall for every such omission be subject to a fine of forty dollars, and every constable, for a like omission of duty, shall be subject to a fine of ten dollars, for the use and benefit of the plaintiff in the execution on which such failure shall be made,—for which judgment shall, on motion of the plaintiff, be granted by the court before which such execution shall be returned, or, in the case of a justice's execution, by any justice before whom the said execution shall be returned, and the said sheriff or other officer so failing shall be further liable to indictment : *Provided*, nothing contained in this section, or any recovery under the same, shall be a bar to any action for a false return against the sheriff or other officer violating the same.

Justice's execu-  
tion to bind  
personal prop-  
erty only from  
its levy.

16. Where any execution shall be issued by a justice of the peace, and levied on personal property, such property shall be bound by and from the levy of such execution, and not from the *teste* thereof.

Sheriff or other  
officer may  
take bond for  
the forthcom-  
ing of property  
levied on.

17. If any sheriff or other officer, who has levied an execution or other process upon personal property, shall permit the same to remain with the possessor thereof, it shall be lawful for such officer to take a bond for the forthcoming thereof to answer the said execution or process, which bond shall be attested by at least one creditable witness ; but the said officer shall nevertheless remain liable as heretofore in all respects, to the plaintiff's claim.

Officer how to  
proceed upon  
such bond  
when broken.

18. If the condition of any bond, given to any sheriff, coroner or constable for the forthcoming of any property seized or levied on by execution or other process, be broken, it shall be lawful for such sheriff, coroner or constable, on giving ten days previous notice in writing, to the obligor or obligors in such bond, to move for and obtain judgment against such obligor or obligors in a summary manner, before the court of pleas and quarter sessions of the county in which such sheriff, coroner or constable may reside, for all such damages as said sheriff, coroner, or constable may have sustained or be judged liable to sustain, not exceeding the penalty of the bond so taken, which damages shall be ascertained by a jury to be empanelled for that purpose under the direction of the court before which such motion may be made.

Officer levying  
a justice's ex-  
ecution on land a

19. When an officer shall hereafter levy an execution issued by a justice of the peace on the land of the defendant, such officer

15. 1815, c. 887, s. 1.

16. 1823, c. 12, s. 1.

17. 1807, c. 731 s. 3.—1823, c. 12, s. 2.

18. 1822, c. 1141, s. 1.

19. 1823, c. 8, s. 6.

shall serve the defendant with notice in writing, at least five days before the term to which the execution is returned, of the levy aforesaid, and of the term to which it will be returned ; and if it do not appear to the court, when an order of sale is prayed for, that such notice has been given, the said court shall order a notice to issue to the defendant, and shall not proceed to make any order of sale, until such notice be served on the defendant, at least five days previous to the term of said court : *Provided always*, that upon affidavit made that such defendant has absconded, or conceals himself, or has removed out of the county, or is an inhabitant of another state so that the notice cannot be personally served, the court may order such notice as it shall deem reasonable to be given by a publication in some newspaper ; and may, upon proof of such publication, make the order of sale as though the notice had been actually given.

to give the defendant five days notice before court.

Court to direct a notice when none has been given.

20. It shall be the duty of the several courts of pleas and quarter sessions, at the first term which shall be holden in their respective counties after the first day of January in each and every year, to settle the charges of the aforesaid officers for keeping, watering and feeding any horse, cattle, hogs or sheep, taken into their custody under legal process, and in case the court shall not have settled such charges, it shall be lawful for it at any time to fix such compensation as shall be just for the said officers to receive, for keeping and maintaining the property aforesaid and all other property the keeping of which may be chargeable to them, which compensation may be retained by said officers out of the sales of the property, in preference of the satisfaction of the process under which said property may have been seized.

County court to settle the charges of officers for keeping horses, &c. taken in execution.

21. Every officer claiming under the last section shall make out his account, and if required, give the debtor, his agent or factor, a true copy thereof, signed by his own hand, and shall return the said account with the execution or other process, under which the property has been seized, to the justice or the court to whom the said execution or process is returnable, and shall then and there also swear to the correctness of the several items therein set forth ; otherwise he shall not be permitted to make any recovery from the debtor.

Officer to make out his account for keeping horses, &c. and to deliver the debtor a copy thereof, and return the account with the execution.

22. Where any property, either real or personal, shall be sold on any execution of *fieri facias, venditioni exponas*, or order of sale, issued from any court of law or equity in this State, or from any justice of the peace, such justice having jurisdiction and authority to issue the same, by any officer lawfully authorized to make such sale, and the sale be legally and *bona fide* made, and such property so sold be not the proper goods and chattels, lands and tenements (as the case may be) of the person, against whose estate such execution, *venditioni exponas*, or order of sale may have issued, by reason of which the purchaser at such sale may have been deprived of the same property, or may have been

Purchaser under execution may sue the defendant in the execution, if there be a defect in the title to the thing sold.

20. 1807. c. 731, s. 1.  
 21. 1807, c. 731, s. 2.  
 22. 1807, c. 723.



compelled to pay damages in lieu thereof to the real owner, then and in every such case it shall be lawful for such purchaser, his executors or administrators to sue such person, against whom such execution, *venditioni exponas*, or order of sale may have so issued, or the person legally representing him, in an action on the case, in any court of law in this State, and recover such sum as he may have paid for such property, with interest thereon from the time of such payment: *Provided always*, that such property, if the same be personal property, be present at such sale, and actually delivered to such purchaser.

A party, at whose suit any person may be charged in execution, may, after the death of such person in execution, have a new execution against the land and goods of the deceased.

23. Parties at whose suit any person shall stand charged in execution for any debt or damages recovered, their executors or administrators may, after the death of the person so charged and dying in execution, have new execution against the lands and tenements, goods and chattels of the person so deceased, as they might have had if such person had never been in execution: *Provided*, that when a person shall so die in execution, nothing in this section shall give liberty to the plaintiff to have any new execution against any lands, tenements or hereditaments of such party dying in execution, which shall, after the said judgment, be by him *bona fide* sold for the payment of any of his creditors, and the money, which shall be paid for the lands so sold, either paid or secured to any of his creditors in discharge of their debts.

23. 21 James 1, c. 24, s. 2 and 3.

*Note.*—REFERENCES TO ADJUDGED CASES.

- SECT. 1. Bell *vs.* Hill, 1 Hay. 72. State *vs.* Magnis, ib. 99.  
 SECT. 2. Osborne *vs.* Woodson, 1 Hay. 24. McCoy *vs.* Beard, 2 Hawks, 397. Wood *vs.* Harrison, 1 Dev. and Bat. 356.  
 SECT. 3. Jones *vs.* Edmonds, 3 Murph. 43.  
 SECT. 4. McIlvain *vs.* Carraway, N. C. Term R. 194. More *vs.* McDuffie, 3 Hawks, 573. Brown *vs.* Graves, 4 Hawks, 342. Mordecai *vs.* Parker, 3 Dev. 425. Harrison *vs.* Battle, 1 Dev. Eq. 537.  
 SECT. 5. Camp *vs.* Cox, 1 Dev. and Bat. 52.  
 SECT. 8. Erwin *vs.* Sloan, 2 Dev. 349.  
 SECT. 16. McCarson *vs.* Richardson, 1 Dev. and Bat. 561.  
 SECT. 17. Grey *vs.* Bowles, 1 Dev. and Bat. 437.  
 SECT. 22. Saunders *vs.* Saunders, 2 Dev. 193.

CHAPTER 46.

**EXECUTORS AND ADMINISTRATORS.**

AN ACT CONCERNING EXECUTORS AND ADMINISTRATORS.

SECTION

1. County courts shall grant letters testamentary and of administration.
2. To whom administration shall be granted.
3. Executors and administrators to take an oath, and administrators to give bond—Form of the condition.
4. Special administrations may, in certain cases, be granted by three justices.
5. Courts of equity may, in certain cases, grant special administration.
6. Executors residing out of the State to give bond and security within one year.
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9. Bonds, how payable, and remedy on them.
10. Inventory to be returned.
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12. The preceding section not to affect powers under a will.
13. When administration granted to highest creditor, sheriff to sell.
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15. Dignity of debts.
16. Executors and administrators to advertise within two months.
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SECTION

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28. Deeds for lands, contracted to be sold by deceased, may be made by executors and administrators.
29. Commissions to executors and administrators to be allowed by the county courts.
30. Relief for securities of executors and administrators in the county courts.
31. Power of the superior court in such cases.
32. Publication may be made in such cases.
33. In what cases executors of executors shall have actions.
34. When some executors refuse, those accepting the trust may sell lands according to the will.
35. Who chargeable as executor *de son tort*.
36. Executors or administrators of executors or administrators liable for a *devastavit*.
37. When right of action shall survive to executors and administrators, and executors of executors.

1842.3. Ch 37

1846.7. Ch 1. - Sell real Estate



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 all letters testamentary and letters of administration shall be granted in the court of pleas and quarter sessions of the county, where the testator or intestate had his usual residence at the time of his death, or, where the deceased had fixed places of residence in more than one county, then in either; and all letters testamentary and letters of administration shall be signed and issued by the clerk of said court.

County courts shall grant letters testamentary and of administration.

To whom administration shall be granted.

2. When any person shall die intestate, or having made a will and the executor shall refuse to prove the same or qualify as such, administration shall be granted to the widow, and after her to the next of kin, or to both, at the discretion of the court, upon their complying with the requirements of this act; and upon failure of the widow and next of kin to make application or to procure the same, then to the highest creditor residing within the State, proving his debt upon oath before the court granting the same; and when divers persons, claiming the administration, are in equal degree, the court shall be at liberty to grant the administration to any one or more; and in case of the failure of any of the persons aforesaid to apply for the same, or if the person applying shall be deemed incompetent, then the court may grant administration to any discreet person.

Executors and administrators to take an oath, and administrators to give bond.

3. No clerk shall issue any letters testamentary, until the executor or executrix hath been duly qualified in open court, by taking the oath of an executor to execute the will of the deceased; nor letters of administration, until the administrator or administratrix hath in like manner been duly qualified by taking the oath of an administrator, and hath also given sufficient bond with two or more able sureties, to be judged of and taken before the justices holding the court, the penalty of which bond shall be double the supposed amount of the personal estate of the intestate, and the condition in form following:

Form of the condition.

The condition of this obligation is such that if the above bounden A. B., administrator of all and singular the goods and chattels, rights and credits of C. D., deceased, do make or cause to be made a true and perfect inventory, and account of sales, of all and singular the goods and chattels, rights and credits of the said deceased, which have or shall come to the hands, possession or knowledge of him, the said A. B., or into the hands or possession of any other person or persons for him, and the same so made do exhibit, or cause to be exhibited, into the office of the court, where order for administration passed, within ninety days after the date of these presents, and the same goods, chattels and credits, and all other the goods, chattels and credits of the said deceased, at the time of his death, or which at any time after shall come to the hands or possession of the said A. B., or into the hands or possession of any other person or persons for him, do well and truly

1. 1777, c. 115, s. 57.—1789, c. 308, s. 1.

2. 1715, c. 10, s. 6.—1792, c. 364, s. 1.—31 Edw. 3, c. 11.—21 Hen. 8, c. 5, s. 3, 4.

3. 1715, c. 10, s. 5.—1791, c. 341, s. 1.—1805, c. 687.—22 and 23 Charles 2, c. 10, s. 1.

administer according to law, and further do make or cause to be made a true and just account of his said administration within two years after the date of these presents, and all the rest and residue of the said goods, chattels and credits, which shall be found remaining upon the said administrator's account, the same being first examined and allowed of by the court, shall deliver and pay unto such person or persons respectively, as the same shall be due unto, pursuant to the true intent and meaning of this act, and if it shall appear that any last will and testament was made by the deceased, and the executor or executors therein named do exhibit the same into court, making request to have it allowed and approved accordingly, if the said A. B., above bound, being thereunto required, do render and deliver the said letters of administration (probate of such testament being first had and made) in the said court, then this obligation to be void and of no effect : or else to remain in full force and virtue ; which bonds are hereby enacted and declared to be good to all intents and purposes, and pleadable in any courts of justice.

4. Where any person shall die intestate, and his or her estate is in such situation as to require the immediate care of some discreet person, it shall be lawful for any three justices of the peace of the county, in which the deceased had his or her last usual place of residence, to meet together at the clerk's office of the said county, and to grant to some discreet person special letters of administration on the estate of the said deceased, authorizing and empowering said person to collect and take into his or her possession the estate of the said deceased, until the next ensuing court of pleas and quarter sessions of said county, and to expose to public sale, upon a credit of not more than twelve nor less than six months, so much of the crop, stock and provisions on hand as the said three justices may deem advisable, and a schedule of such stock, crop and provisions, so directed to be sold, shall be made out by the said three justices, and a copy thereof, signed by them, shall be filed with the clerk of the said county ; and the said justices, before granting letters of administration as aforesaid, shall require and take from the person, to whom the same shall be granted, bond with approved security in such sum as the said three justices shall order and direct, conditioned for his faithful administration of the said estate until the next ensuing court of pleas and quarter sessions of the said county, and for his or her faithfully accounting for and delivering over the said estate to such person or persons as the said court may appoint as administrator of the said estate, and the said bond shall be filed with the clerk of the said county court for safe keeping ; and the said county court shall proceed to grant general letters of administration to such person or persons as are or may be legally entitled to the same.

Special administration may in certain cases be granted by three justices.

5. When any person shall die intestate, leaving mortgaged personal estate, and there shall be no administration granted upon the estate of such deceased person, then and in that case the court of

Courts of equity may in certain cases grant special administration.

4. 1816, c. 913.

5. 1823, c. 35.



equity for the county, where the mortgagee resides, shall have authority to appoint some proper person a special administrator of such intestate, to the end that such mortgage may be foreclosed or a decree obtained for the sale of the property mortgaged.

Executors residing out of the State, to give bond and security within one year.

6. When a testator or testatrix shall appoint any person, residing out of this State, executor or executrix of his or her last will and testament it shall be the duty of the court of pleas and quarter sessions, before which the said will shall be offered for probate, to cause the executor or executrix named therein, to enter into bond with good and sufficient security for his or her faithful administration of the estate of the said testator or testatrix, and for the distribution thereof in the manner prescribed by law ; the penalty of said bond shall be double the supposed amount of the personal estate of the said testator or testatrix ; and until the said executor or executrix shall enter into such bond, he or she shall have no power nor authority to intermeddle with the estate of the said testator or testatrix, and the court of the county, in which the testator or testatrix had his or her last usual place of residence, shall proceed to grant letters of administration with the will annexed, which shall continue in force until the said executor or executrix shall enter into bond as aforesaid. *Provided nevertheless*, and it is hereby declared, that the said executor or executrix shall enter into bond as by this act directed within the space of one year after the death of the said testator or testatrix, and not afterwards.

A man residing out of the State, or about to remove, marrying an executrix, may be compelled to give bond and security.

7. In all cases where a man, residing out of the State, shall marry a woman who is appointed an executrix to the estate of any deceased person, or where a man shall marry such an executrix, and is about to remove or make away with the estate of the testator, to the injury of the creditors or representatives, it shall be the duty of such man, so marrying such executrix, upon being so required by the court of pleas and quarter sessions of the county where the executrix resides, to give bond with sufficient security for the faithful administration of the estate, as is required by law in cases of administration on the estate of deceased persons, and there shall be the same remedy upon such bond given to the party aggrieved, as upon the bond of an administrator in like cases, and if said man so marrying an executrix, shall, upon due notice from the county courts, refuse or neglect to give such bond, the said courts respectively shall and may order and decree that the power and authority of said executor in right of his wife, and of such executrix as aforesaid, be null ; and thenceforth all the power and authority of such executor and his wife shall cease, and the said courts may then grant letters of administration with the will annexed or otherwise, as the case may require, to such person or persons as they may deem meet.

Penalty for administering before letters granted.

8. No person shall enter upon the administration of any deceased person's estate, until they have obtained letters of administration, under the penalty of one hundred dollars, one half to the informer and the other half to the State. *Provided*, that nothing contained

6. 1807, c. 730, s. 1.—1813, c. 855.

7. 1807, c. 730, s. 1, 2.

8. 1715, c. 10, s. 4.—1796, c. 469.—1816, c. 913.

in this or the preceding sections shall prevent the family of the deceased from using so much of the crop, stock and provisions of the deceased as may be necessary until the granting of a general or special administration. *Provided further*, that such right to use the stock, crop and provisions shall not extend farther, than to the end of the next succeeding court of pleas and quarter sessions of the county, where the intestate died.

9. All bonds, given by any executor or administrator by virtue of this act, shall be made payable to the State of North Carolina, and any person or persons or body politic or corporate injured may and shall commence and prosecute a suit or suits on said bonds, in the name of the said State, against the said obligor or obligors in said bonds and their securities and against the heirs, executors and administrators of each and every of them, and of each and every one of their securities, and shall and may recover all damages which he, she, they or it may have sustained by reason of the breach of the conditions of said bonds or any of them.

Bonds, how payable, and remedy on them.

10. Every executor or administrator shall, at the term of the court of pleas and quarter sessions next succeeding his qualification as executor or executrix, administrator or administratrix, return to the said court on oath a just, true and perfect inventory of all the goods and chattels of the deceased, which have come to his hands or the hands of any other person for him, which inventory shall be signed by the person returning the same, and shall be recorded by the clerk of the said court.

Inventory to be returned.

11. When the estate of any person deceased shall be so far indebted, as that the debts cannot be discharged by the moneys on hand at the death of the testator, or by the sale of the perishable commodities, or when a sale shall be deemed necessary for a just and proper distribution or division of such personal estate, then it is and shall be the duty of every executor or administrator to sell and dispose of the goods and chattels of his or her testator or testatrix or intestate, first obtaining an order of the court of the county for that purpose, for the most that may be gotten for the same by public sale, having first advertised the same at the court house and four other public places within the county, at least twenty days before the sale, and shall, for enhancing the price thereof, give not less than six months credit upon bond and security given; and such executor or administrator shall, after the time of such payment is passed, take and pursue all lawful ways and means to recover and receive the money so due as aforesaid, or otherwise shall be chargeable and answerable for the same; and such moneys, when received, shall be liable for the satisfaction of judgments previously obtained and entered up as judgments when assets should come to the hands of the executor or administrator.

When and how an executor or administrator may sell the personal property.

12. Nothing in the preceding section shall be construed to affect the powers, trusts or authorities of an executor or executrix, derived from the will of his or her testator or testatrix.

The preceding section not to affect powers under a will.

9. 1715, c. 10, s. 5.—1791, c. 341, s. 1.—1833, c. 17.

10. 1723, c. 15, s. 2.—1793, c. 391, s. 2.

11. 1723, c. 15, s. 2 and 3.—1794, c. 415, s. 1.

12. 1794, c. 415, s. 2.



When administration granted to highest creditor, sheriff to sell.

13. Where administration is granted to the highest creditor of the deceased, then and in that case the sale shall be made and conducted by the sheriff of the county, under the same rules and regulations as prescribed for executors and administrators.

Sales, &c. to be at public auction, and between 11 and 4 o'clock.

14. All sales and renting and hiring of the property, both real and personal, of deceased persons, shall be made and done by way of public vendue or auction, and no such sale or renting or hiring shall commence before eleven o'clock in the morning, or after four o'clock in the evening, of the day on which such sale or auction or renting or hiring is to be made; and any sheriff, executor or administrator, who shall make any sale or renting or hiring contrary to the true intent and meaning of this section, shall forfeit and pay the sum of two hundred dollars, to be recovered by any person suing for the same in any court of record within this State. *Provided*, that nothing herein contained shall be construed to extend in any manner to executors, in cases where discretionary powers are vested in them by the will of their testator.

Penalty for selling otherwise.

Proviso as to executors.

Dignity of debts.

15. Executors and administrators, in the payment of the debts of their testators and intestates, shall hereafter hold and consider debts due upon bills, bonds and promissory notes, whether with or without seal, and all settled and liquidated accounts, signed by the debtor, as of equal dignity, and shall pay the same accordingly: *Provided always*, that executors and administrators shall in all other respects, except as aforesaid, have the same right of preference in the payment of creditors which they have heretofore had and held.

Executors and administrators to advertise within two months.

16. Every executor and administrator shall, within two months after being qualified as executor or administrator, advertise at the court house of the county, where the deceased usually dwelt at the time of his death, and other public places in said county, for all persons to bring their accounts and demands of every kind and denomination to the said executor or administrator within the time prescribed by law.

How the advertisements may be proved.

17. Every executor and administrator shall take a copy or copies of the advertisements he shall put up, or cause to be put up, in pursuance of this act, which copy or copies, with an affidavit made thereon before some justice of the peace of the county in which advertisements are herein directed to be made, by some competent witness, stating therein the time and times, and place and places, when and where the said advertisements were seen, shall, at the term of the court next following that in which any last will and testament shall have been admitted to probate, or any administration shall have been granted, be filed in the office of the clerk of said court; and the said copy or copies, attested as aforesaid, shall be considered as a record of said court, and the same, with a certificate of the clerk thereon, certifying that the said copy or copies was or were filed at the time herein required, shall be

13 1793, c. 391, s. 1.

14. 1794, c. 413, s. 1, 2.

15. 1786, c. 248, s. 2.

16. 1789, c. 308, s. 5.

17. 1804, c. 666.

received as evidence in any court of law or equity, or before any jurisdiction in this State: *Provided always*, that nothing herein contained shall be so construed as to preclude any executor or administrator from proving his compliance with the requisites of the sixteenth section of this act, in any other manner which may be deemed competent by the court before whom the evidence may be offered.

18. No executor or administrator shall take, hold or retain in his hands more of the deceased's estate than amounts to his necessary charges and disbursements, and such debts as he shall legally pay within two years after administration granted: but all such estate so remaining shall, immediately after the expiration of two years, be divided, delivered and paid over to such person or persons to whom the same may be due by law or the will of the deceased, such person or persons, or some other for them, giving bond with two or more able sureties, that if any debt, truly owing by the deceased, shall be afterwards sued for and recovered, or otherwise duly made appear, that then and in every such case he or they shall respectively refund and pay each his or her ratable part of that debt or debts, out of the part or share so as aforesaid allotted to him or her, and such bond so taken shall be made payable to the State of North Carolina, which said bond shall be and enure to the sole use and advantage of the creditors, and such creditor or creditors shall and may have a *scire facias* in manner hereinafter directed against the obligors in the said bond, as if the said bond had been drawn and delivered to such creditor or creditors.

Executors and administrators to pay over at the end of two years.

Refunding bond to be given.

Remedy of creditors on such bonds.

19. The bonds, so taken by executors and administrators from legatees or persons entitled to distributive shares of the estate of an intestate, shall by such executor or administrator be brought into court, at the next succeeding term after such bonds are so taken, together with a descriptive list of the property so delivered by them to the legatees or persons entitled to receive the same, and a record shall be made of said bonds and said descriptive list, and the said bonds shall then be lodged in the office of said court with the records of the same; and in all suits, where the executors or administrators of any deceased person shall plead fully administered, no assets or not sufficient assets to satisfy the plaintiff's demand, and such plea shall be found in favor of the defendant, the plaintiff may proceed to ascertain his demand and sign judgment, and on motion a writ or writs of *scire facias* shall and may issue, summoning such persons, who have entered into bond as aforesaid, to shew cause why execution shall not issue against them for the amount of such judgment, and if there shall be judgment against the defendant or defendants to the *scire facias* or any of them, execution shall and may issue thereon against the proper goods and chattels, lands and tenements of such defendant or defendants.

Bonds and descriptive lists of property to be filed among the records of the county court.

When and how the creditors may have a *scire facias* on such bonds.

20. All sums of money or other estate of whatever kind, which shall now remain or shall hereafter remain in the hands or posses-

Estate remaining seven years unclaim-

18. 1789, c. 308, s. 2.

19. 1789, c. 308, s. 4.—1791, c. 351, s. 5.

20. 1784, c. 205, s. 2.—1809, c. 763, s. 1.



ed, to be paid over to trustees of the university.

sion of any executor or administrator for seven years after his qualification as such executor or administrator, unrecovered or unclaimed by suit by the creditors, legatees, next of kin or widow of his testator or intestate, shall by the said executor or administrator be paid over to the trustees of the university of North Carolina.

No debt to be discharged by naming a person executor.

21. The naming or appointing any person executor shall not be considered a discharge of any debt or demand due from the person, so named as executor, to the testator.

Estates for life of another and estates of *cestuy que trust* to be assets.

22. If any person shall die seized of an estate in lands, tenements or hereditaments for the life of another, and shall not by last will have devised the same, and the said estate shall not have come to the heir or heirs at law of the tenant for life by special occupancy, then the said estate shall vest in the executors or administrators of the said tenant for life; and if any *cestuy que trust* shall die leaving any equitable interest in any estate real or personal, which shall come to his executors or administrators, every such estate in lands, tenements and hereditaments for the life of another, and every such equitable interest, shall be deemed personal assets in the hands of said executors and administrators for the benefit of the creditors, legatees and distributees.

Executors and administrators to have nine months to plead.

23. No executor or administrator shall be bound or compelled to plead to any original suit, brought against him in any court, until the expiration of nine calendar months from and after his taking upon himself the office of executor or administrator.

Same privilege in warrants before justices.

24. When an executor or administrator shall be warranted for any demand against his testator or intestate, before the expiration of nine calendar months as aforesaid, it shall be the duty of the magistrate, before whom said warrant shall be returned, to postpone, by an endorsement on the back of the warrant, the trial thereof to some day after the expiration of said time, on which day it may be tried.

Warrant to be returned to court when an executor or administrator pleads no assets.

25. When any executor or administrator shall be warranted and be desirous to avail himself of his want of assets, it shall be his duty on the trial to suggest the same to the magistrate, who shall thereupon endorse the same on the warrant, and if he find the plaintiff's claim to be just he may give a judgment therefor, and shall return the warrant with such endorsement and judgment to the first term of the court of pleas and quarter sessions of his county, when the defendant may plead any plea relative to his assets, which could be pleaded had the suit been instituted returnable to said term: and in all cases so returned, the same costs shall be allowed as in cases of appeals from justices.

Costs in such cases.

No lien created by commencement of a suit.

26. No lien on the goods of a deceased person shall be created by the commencement of a suit or the service of a writ on his executor or administrator, but the executor or administrator shall

21. 1794, c. 415, s. 3.

22. 1812, c. 830, s. 1.—1813, c. 983, s. 2.

23. 1823, c. 8, s. 4.

24. 1823, c. 8, s. 1.

25. 1823, c. 8, s. 2 and 3.

26. 1823, c. 8, s. 9.

be at liberty to sell the goods of his testator or intestate, as if such writ had not been served on him or such suit commenced.

27. When any executor or administrator shall plead fully administered, no assets or not sufficient to pay the plaintiff's debt, notwithstanding that such plea should be found in favor of the defendant or defendants on the trial of the issue, the heirs or devisees shall be permitted to contest the truth thereof, and upon the plea of such heirs or devisees, that the executors or administrators have sufficient assets or have wasted or concealed the same, the court shall order the trial of a collateral issue between the executors or administrators and such heirs or devisees, which if found against the executors or administrators, the original plaintiff shall have execution, not only against the goods and chattels of the deceased debtor, but against the proper goods, chattels, lands and tenements of such executors or administrators; and the said collateral issue shall be tried at or before the next term thereafter of the court, when the same shall be ordered, unless, on a sufficient cause shown to the court, further time shall be given.

Heirs or devisees may contest the plea of no assets.

Proceedings thereon.

28. The executors or administrators of any deceased person are fully authorized and empowered to execute a deed or deeds of conveyance for any lands, that may have been *bona fide* sold by the deceased, and for which he has given to the purchaser a bond or bonds to convey the same: *Provided*, said bond or bonds be first proved in the court of the county, where the said lands are situated, if in this State; if not, the bonds to be proved in the county, where the obligee lives or obligor died, and which bond so proved shall be recorded and registered in the register's books of said county: *And provided*, the deeds thus executed shall not convey other or a greater quantity of land, or higher titles, than were specified in said bonds: And all deeds thus executed shall be as good and valid in law as the same would have been, if executed by the original obligors: *And provided also*, that no executor or administrator shall be authorized under this section to execute titles, previous to the full payment of all the purchase moneys due for said lands, if the bond of performance specifies that the purchase moneys were to be paid before the titles should be made.

Deeds for lands, contracted to be sold by deceased, may be made by executors and administrators.

29. The several courts of pleas and quarter sessions of this State are hereby authorized and directed, in making allowances of commissions to executors and administrators, to take into consideration the trouble and time expended in the management of any deceased person's estate, and shall make an allowance of commissions, not exceeding five per centum for the amount of the receipts and expenditures, which shall appear to be fairly made in the management of any such deceased person's estate, and any allowance made shall be held and deemed a proper and fair charge against the assets in the hands of any such executor or administrator, and he, she or they shall and may retain for the same, as well against any creditor of the deceased as against persons claiming as legatees,

Commissions to executor's and administrators to be allowed by the county courts.

27. 1734, c. 226, s. 5.—1810, e. 792.

28. 1797, c. 478.

29. 1799, c. 536, s. 2.



or as being entitled to distributive shares of such deceased person's estate : *Provided*, that nothing herein contained shall be construed to prevent any executor or administrator from retaining for necessary charges and disbursements, in the same manner as hath heretofore been allowed by law.

Relief for securities of executors and administrators in the county courts.

30. In all cases wherein any person has heretofore, or may hereafter become bound as security for any person as administrator or executor, and shall conceive himself in danger of becoming liable by reason thereof, it shall and may be lawful for the county court, wherein said person so became bound, upon the petition of the party, supported by oath or affidavit, to them exhibited, forthwith to order a summons to issue against the party or parties with and for whom the petitioner or petitioners stand bound, returnable to the next term of the said court, and thereupon compel such party or parties to give other sufficient or counter security to be approved by said court, or to deliver up the estate to said petitioners or to such other person as the court shall direct, and they may and they are hereby authorized and empowered to make such other order or rule thereon, for the relief of the petitioners and better securing such estate, as to them shall seem just and equitable.

*Provided always*, that any person appointed to the management of any estate in the room of any executor or administrator, removed by virtue of this section, shall be accountable to creditors and others interested in the estate to the extent of the assets received, in like manner as executors and administrators by law are liable.

Power of the superior court in such cases.

31. The same relief shall and may be had by petition in the superior court of law. And where the petition shall be in a superior court, it shall be in the power of any judge of said court, either in or out of court, on the petition exhibited therein and containing such allegations, verified by affidavit, as to him shall seem sufficient, to make from time to time such orders as may be necessary to preserve the estate of the testator or intestate, in possession or in action, until the hearing of the petition, and to direct such special writ or writs to issue as may be necessary to carry such orders into effect : *Provided*, that before any such special writ or writs shall issue the petitioner shall perform such terms as said judge shall prescribe, and as justice and equity shall require, by giving security or otherwise.

Publication may be made in such cases.

32. In case it should appear to the court that the summons, directed in the thirtieth section of this act to issue, cannot be personally served on the executor or executors, administrator or administrators, residing out of the State, it shall and may be lawful for said court to order publication to be made by advertisement in some newspaper for such time as the said court may think proper.

In what cases executors of executors shall have actions.

33. Executors of executors shall have actions of debt, account, and for goods of the first testator carried away, in the same manner as the first testator should have had, and they shall answer to others

30. 1822, c. 1137.—1826, c. 23.

31. 1822, c. 1137, s. 2.

32. 1822, c. 1137, s. 3.

33. 25 Edw. 3, stat. 5, c. 5.

for as much as they may have recovered of the goods of the first testator, or ought or might have done, as the first executors should do.

34. Where part of the executors of any person, making a will of lands to be sold by his executors, refuse to take upon them the administration, all bargains and sales, made by them only of the executors that accept such administration, shall be as effectual, as if all the executors named in the will had joined in making the bargain and sale. And when all the executors so appointed die, or refuse to take on them the administration, the administrator with the will annexed shall have full power to sell said lands so devised, and all bargains and sales, so made by such administrators with the will annexed, shall be as effectual as if made by said executors.

When some executors refuse, those accepting the trust may sell lands according to the will.

35. Every person who shall receive goods or debts of any person dying intestate, or any release of any debt due the intestate, upon a fraudulent intent, or without such valuable consideration as shall amount to the value or thereabout, except it be in the satisfaction of some debt, shall be chargeable as executor of his own wrong, so far as such debts and goods, coming to his hands, or whereof he is released, will satisfy, deducting all just debts owing to him by the intestate, and all other payments made by him.

Who chargeable as executor *de son tort*.

36. The executors and administrators of persons who, as rightful executors, or executors in their own wrong, or as administrators, shall waste or convert to their use any estate or assets of any person deceased, shall be chargeable in the same manner as their testator or intestate might have been.

Executors or administrators of executors or administrators liable for a *devastavit*.

37. Executors and administrators, and executors of executors, shall have actions in like manner as the first testator or intestate might have had, for the goods taken or converted, and for arrearages of rent due the first testator or intestate, however due and owing, and for injuries done to the property of said intestate or first testator, either real or personal, where such detainer or conversion happened, or such injury was sustained, or such rent due, in the lifetime of the said intestate or first testator, and when such detainer, or conversion, or injury sustained or rent due, had not been satisfied against the person or persons so detaining or converting such goods, or committing such injuries, or from whom the rent may be due and owing, their and each of their executors, administrators and heirs.

When right of action shall survive to executors and administrators and executors of executors.

34. 21 Hen. 8, c. 4, s. 1.

35. 43 Eliz. c. 8, s. 2.

36. 30 Ch. 2, c. 7, s. 2.—4 and 5 W. and M. c. 24, s. 12.

37. 4 Edw. 3, c. 5.—25 Edw. 3, c. 7.—21 Hen. 8, c. 4, s. 1.

Note.—REFERENCES TO ADJUDGED CASES.

SECT. 1. Ledbetter vs. Loftin, 1 Murph. 224. Collins vs. Turner, N. C. Term R. 105.

SECT. 2. Ritchie vs. McAuslan, 1 Hay. 220. Carthew vs. Webb, 2 Murph. 268.

SECT. 9. Chairman vs. Moore, 2 Murph. 22.

SECT. 10. Anon. 1 Hay. 481.

SECT. 15. Hubbel vs. Thurston, 4 Dev. 502.

SECT. 16. Blount vs. Porterfield, 2 Hay. 161.



- SECT. 18. Cheatham vs. Boykin, N. C. Term R. 238. Mayo vs. Mayo, 2 Hawks, 329. Ralston vs. Telfair, 2 Dev. Eq. 255.  
 SECT. 19. Cheatham vs. Boykin, 2 Murph. 301.  
 SECT. 29. Shaw vs. Shaw, Tayl. 125. Bond vs. Turner, 2 Murph. 331. Potter vs. Stone, 2 Hawks, 30. Hodges vs. Armstrong, 3 Dev. 253. Clark vs. Blount, 2 Dev. Eq. 51.  
 SECT. 34. Miller vs. White, Tayl. 309. Marr vs. Pray, 2 Murph. 84. Wood vs. Sparks, 1 Dev. and Bat. 389.  
 SECT. 35. Norfleet vs. Reddick, 3 Dev. 221. Barnard vs. Gregory, 3 Dev. 223.

CHAPTER 47.

FAIRS.

AN ACT TO EMPOWER THE SEVERAL COUNTY COURTS TO ESTABLISH FAIRS IN THEIR RESPECTIVE COUNTIES.

SECTION

1. County Courts may appoint fairs.
2. Commissioners to be appointed, who may regulate fairs.

SECTION

3. Inhabitants to have free liberty of the fairs.

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 and may be lawful for the several county courts, a majority of the acting justices of the county being present, to appoint a fair or fairs in their respective counties, at such place or places as they may judge most proper for the convenience of the inhabitants, so as to afford an opportunity and give encouragement to industry, by collecting the inhabitants for the purpose of exchanging, bartering and selling all such articles as they may wish or be necessitated to dispose of.

County courts may appoint fairs.

2. When any of the said courts may think proper to establish a fair, they shall nominate and appoint commissioners, a majority of whom shall in all cases be a quorum sufficient to act, to regulate and conduct the same, by drawing up and forming a system of by-laws for the government thereof, to be approved by said court and entered of record; which rules so formed as aforesaid shall be considered as valid and as effectual as if they had been expressed by an act of assembly for that special purpose. *Provided nevertheless,* that said rules shall not be contrary to or inconsistent with the law of the land.

Commissioners to be appointed, who may regulate the fairs.

3. The inhabitants of any county, wherein any fairs shall be established, shall have free liberty and power to attend the same, dispose of, exchange or barter any article or articles whatsoever therein, without any restraint or distinction whatever; subject nevertheless to such rules as the commissioners aforesaid, or a majority of them, shall or may form for the regulation thereof.

Inhabitants to have free liberty of the fairs.

1. 1794, c. 421, s. 1 and 4.
2. 1794, c. 421, s. 2 and 4.
3. 1794, c. 421, s. 3.

**CHAPTER 48.**  
**FENCES.**

AN ACT CONCERNING FENCES.

SECTION

1. Every planter shall keep a sufficient fence around his cleared ground under cultivation.
2. Damages done by stock when fence is sufficient, how ascertained and recovered.
3. Injuries done to stock by persons not having a legal fence, how ascertained and recovered.

SECTION

4. Either party dissatisfied may appeal—Proceedings thereon.
5. Either party may summon witnesses.
6. Penalty on slaves for killing stock contrary to the provisions of this act—Master or overseer to pay the damages sustained.

1848. ch 42.

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 every planter shall make a sufficient fence about his cleared ground, under cultivation, at least five feet high, unless where there shall be some navigable stream or deep water course that may be deemed sufficient instead of a fence as aforesaid. *Provided*, that the northwest branch of Cape Fear river, bordering on the county of Brunswick, shall not be considered such a water course, and all persons cultivating lands on the northeast side of the said northwest branch of Cape Fear river, and neglecting to inclose the same with a sufficient and lawful fence, shall, for every crop so attempted to be made, forfeit and pay one hundred dollars, one half to the poor of the county and the other half to the person suing for the same, to be recovered by action of debt before any jurisdiction having cognizance thereof.

Every planter shall keep a sufficient fence around his cleared ground under cultivation.

2. Upon complaint made by any person to a justice of the peace of any county, of any trespass or damage done by horses, mules or other stock upon his inclosed grounds, such justice is authorized and required to issue a summons, directed to any lawful officer of his county, commanding him to make known to the owner of such horses, mules, or other stock, of such complaint and the time of trial, and also to summon two freeholders, unconnected with either of the parties, to appear before him, who after being sworn by the said justice, together with himself, shall view and examine whether the complainant's fence be a good and sufficient fence as prescribed in the first section, and if it shall appear that the complainant's fence be good and sufficient as aforesaid, to ascertain and assess what damages he has sustained by means of the trespass aforesaid, and certify the same under their hands and seals; and if the own-

Damages done by stock when fence is sufficient, how ascertained and recovered.

1. 1777, c. 121, s. 2 —1791, c. 354, s. 1.  
2. 1831, c. 2, s. 1.—1777, c. 121, s. 3.



er of such horses, mules or other stock shall not make full satisfaction to the party injured, it shall be the duty of the justice of the peace aforesaid to enter judgment against him for the same and issue execution forthwith, unless the defendant stay the same, which he shall have leave to do as in other cases.

3. If any person shall, with guns, dogs or otherwise, unreasonably chase, worry, maim or kill any horses, mules or other stock, or cause the same to be done, when trespassing upon his inclosed grounds, where his fence shall be adjudged insufficient, such person so offending, on complaint being made to any justice of the peace of any county as aforesaid, shall make full satisfaction for all such damages to the party injured, to be ascertained and recovered as provided in the last preceding section.

4. If any person shall think himself aggrieved by the order or determination of the justice of the peace and freeholders aforesaid, he may appeal therefrom to the next county court to be held for his county, he giving security as in other cases of appeal, which court shall be authorized and empowered to take cognizance of the same, as in other cases of appeal from a judgment of a justice of the peace, and the trial shall, in all respects be *de novo*, and the parties shall be permitted to plead and the issues made up as in cases of actions of trespass. *Provided*, that in all cases where proceedings shall be had in counties, in which no jury trials are had in the court of pleas and quarter sessions, the appeal of either party shall be to the superior court of said county.

5. Either party may summon witnesses to appear before the justice of the peace and freeholders, and also in court as in other cases.

6. If any slave shall kill any cattle, hog, or horse, not belonging to his master, in any cultivated field, which is not fenced at all, or which is not under sufficient and lawful fence, he or she shall at any time within six months after, be liable to be apprehended on a warrant from any justice of the peace of the county, and on conviction before two of the neighboring justices shall be subject to and receive thirtynine lashes on his or her bare back, and the owner or overseer of such slave, so offending as aforesaid, shall on proof of the offence committed by such slave, pay such damages as shall be adjudged to have been sustained by the owner of the hog, horse, or cattle, so killed as aforesaid, under the same rules and restrictions as are prescribed in the preceding parts of this act.

3. 1831, c. 2, s. 3.

4. 1831, c. 2, s. 2 and 3.

5. 1831, c. 2, s. 1.

6. 1791, c. 354, s. 2.

*Note.*—REFERENCES TO ADJUDGED CASES.

SECT. 2. Nelson vs. Stewart, 2 Murph. 295.

Injuries done to stock by persons not having a legal fence, how ascertained and recovered.

Either party dissatisfied may appeal. Proceedings thereon.

Either party may summon witnesses.

Penalty on slaves for killing stock contrary to the provisions of this act.

Master or overseer to pay the damages sustained.

*Fisheries. 1844.5. ch 40.*

CHAPTER 49.

**FORCIBLE ENTRY AND DETAINER.**

AN ACT CONCERNING FORCIBLE ENTRY AND DETAINER.

SECTION

1. Forcible entry punishable by indictment.
2. Summary remedy before justices against those who may be guilty of forcible entry and detainer.
3. Justices to have jurors summoned.
4. Penalty on the sheriff and others for failing to assist the justices.

SECTION

5. No restitution to be awarded, when the party has been in possession three years.
6. Remedy extended to tenants for term of years.
7. Record to be made of the proceedings.

*1848. Ch 71.*

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 none shall make any entry into any lands and tenements, but in case where entry is given by the law; and in such case, not with strong hand nor with multitude of people, but only in a peaceable and easy manner: and if any man do the contrary, and be thereof duly convicted, he shall be punished by fine and imprisonment, at the discretion of the court before whom he is tried.

*Forcible entry punishable by indictment.*

2. Where any doth make forcible entry into lands and tenements or other possession, or having entered peaceably doth hold them forcibly, upon complaint being made to any justice or justices of the peace, it shall be the duty of the said justice or justices to take sufficient power of the county, and go to the place where the force is made; and there or at some other convenient place, according to their discretion, whether the persons making such forcible entry or holding forcibly be present, or else departed before the coming of such justice or justices, it shall be the duty of the said justice or justices to inquire of the forcible entry or forcible detainer complained of, by a jury of good and lawful men to be by him or them then and there sworn and empanelled, and if the said jury shall find the force as charged, it shall be the duty of the said justice or justices to recognize the persons convicted of such force to the ensuing superior court, to answer any indictment that may be preferred against them; and it shall further be the duty of the said justice or justices to cause to reseize the land and tenements so entered or holden as aforesaid, and to put the party, so put out, in full possession of the said lands and tenements.

*Summary remedy before justices against those who may be guilty of forcible entry and detainer.*

3. When complaint shall be made as aforesaid, the justice or

*Justices to have jurors summoned.*

1. 5 Rich. 2, c. 8.  
 2. 15 Rich. 2, c. 2.—8 Hen. 6, c. 9.  
 3. 8 Hen. 6, c. 9.



justices to whom the same is made shall issue a warrant or precept, directed to the sheriff or other proper officer of the county, commanding him in the name of the State to cause to come before such justice or justices, at such time and place as shall be therein mentioned, sufficient indifferent freeholders, dwelling near the lands so entered, to inquire as aforesaid of such forcible entry and detainer ; and if the sheriff or other officer shall fail to execute such precept, he shall pay a fine of forty dollars for every default, and moreover be subject to such fine for contempt as the said justice or justices may in their discretion impose ; and each juror summoned as aforesaid shall be subject to a fine of twenty dollars for failing to attend according to his summons.

Penalty on the sheriff and others for failing to assist the justices.

4. The sheriff, and such others as he or the said justice or justices shall order and command for that purpose, shall, upon pain of imprisonment, go and assist the said justice or justices in arresting the offenders against the provisions of this act, and also in causing restitution to be made of the lands and tenements entered or holden by force as aforesaid.

No restitution to be awarded, when the party has been in possession three years.

5. No restitution, upon any indictment or finding of forcible entry or holding with force, shall be made to any person, if the person so indicted hath had the occupation or been in quiet possession for the space of three whole years together, next before the day of such indictment so found, and his estate therein not ended or determined, which the party may allege for stay of restitution, and restitution shall stay till that be tried, if the other party will deny or traverse the same ; and if such allegation be found against the person so indicted, he shall pay such costs and damages to the other party as shall be assessed by the judges or justices before whom the same shall be tried, the said costs and damages to be recovered and levied as is usual for costs and damages in judgments upon other actions.

Remedy extended to tenants for term of years.

6. Tenants for term of years of the lands or tenements, which shall be entered upon by force or holden from them by force, shall have the like remedy, and the proceedings shall be the same in all respects as herein before prescribed for tenants of a freehold estate.

Record to be made of the proceedings.

7. Of all the proceedings before the justice or justices under the provisions of this act, the said justice or justices shall make a record, and return the same to the superior court of law of the county in which the same shall be held, to be kept among the records of the said court.

- 4. 15 Rich. 2, c. 2.
- 5. 31 Eliz. c. 11.
- 6. 21 Jac. 1, c. 15.
- 7. Amendment.

*Note.*—REFERENCES TO ADJUDGED CASES.

- SECT. 2. *State vs. Butler*, Con. 331. *Adam vs. Robinson*, 1 Murph. 393.
- SECT. 6. *State vs. Butler*, Tayl. 262.

CHAPTER 50.

**FRAUDS AND FRAUDULENT CONVEYANCES.**

AN ACT FOR THE PREVENTION OF FRAUDS AND FRAUDULENT CONVEYANCES.

SECTION

1. All conveyances of lands or goods, made to defraud creditors, shall be void.
2. Conveyances made to defraud purchasers shall be void.
3. Penalty on the parties to fraudulent gifts, grants, &c.
4. Conveyances *bona fide* upon good considerations not to be affected.
5. What proceedings may be had when the property of a debtor is fraudulently conveyed to injure his creditors.
6. Where the party fails to appear, judgment may be entered by default.

SECTION

- 1840-1 - ch 28*
- 1844.5 Ch 44.*
7. Mode of proceeding when judgment is given by a justice of the peace.
  8. Contracts for the sale of lands and slaves must be in writing.
  9. Persons removing debtors to hinder, delay or defraud creditors, to be liable for their debts.
  10. Contracts — of executors, &c. to be answerable out of their own estates — or to charge any person with the debt, &c. of another, must be in writing.
  11. Contracts with the Cherokee Indians to be in writing, subscribed by two witnesses.

1. FOR avoiding and abolishing feigned, covinous and fraudulent feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments, and executions, as well of lands and tenements, as of goods and chattels, which have been, and still are, contrived and devised of malice, fraud, covin or collusion, to the end, purpose and intent to delay, hinder and defraud creditors and others of their just and lawful actions, debts and accompts :

*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 and every feoffment, gift, grant, alienation, bargain and conveyance of lands, tenements and hereditaments, goods and chattels, or any of them, by writing or otherwise, and all and every bond, suit, judgment and execution, at any time had or heretofore made, or at any time hereafter to be had or made, to or for any intent or purpose last before declared and expressed, shall be from henceforward deemed and taken (only as against that person or persons, his or their heirs, executors, administrators and assigns, and every of them, whose actions, debts, accounts, damages, penalties and forfeitures shall release by such covinous or fraudulent devices and practices as is aforesaid, or shall or might be in any wise disturbed, hindered, delayed or defrauded) to be clearly and utterly void, frustrate, and of no effect ; any pretence, color, feigned consider-

All conveyances of lands or goods, made to defraud creditors, shall be void.

1. 1715, c. 7, s. 4.—50 Edw. 3, c. 6.—13 Eliz. c. 5, s. 2.



ation, expressing of use or any other matter or thing to the contrary notwithstanding.

Conveyances made to defraud purchasers shall be void.

2. Every conveyance, charge, lease, or incumbrance of any lands or hereditaments, made for the intent to defraud such persons as have purchased or shall purchase, in fee simple, or for lives or years, the same lands or hereditaments, or to defraud such as shall purchase any rent or profit out of the same, shall be deemed (only as against that person, and others claiming under him, which shall purchase for good consideration the same lands or hereditaments, or rents or profits out of the same,) to be utterly void.

Penalty on the parties to fraudulent gifts, grants, &c.

3. And all and every the parties to such feigned, covinous or fraudulent feoffments, gifts, grants, conveyances, bonds, suits, judgments or executions, and being privy and knowing of the same, or any of them, which shall wittingly and willingly put in use, maintain or avow, justify or defend the same, or any of them, as true, simple and done, had or made *bona fide* and upon good consideration, or shall alien or assign any lands, tenements, goods or things before mentioned, to him or them conveyed as is aforesaid, or any part thereof, shall incur the forfeiture of the real value of the lands and tenements, goods and chattels, one moiety thereof to the State, and the other moiety to the party grieved and intended to be defrauded thereby.

Conveyances *bona fide*, upon good consideration, not to be affected.

4. Nothing contained in the first and second sections of this act shall extend to, or be construed to impeach, defeat or make void any conveyance or assurance, interest, limitation of use or uses, of, in, to, or out of any lands or tenements, goods or chattels heretofore at any time had or made, or hereafter to be *bona fide* made, upon and for good considerations, to any person or persons whatsoever, not having notice of such fraud.

What proceedings may be had when the property of a debtor is fraudulently conveyed to injure his creditors.

5. Upon any judgment rendered, or which shall hereafter be rendered, in any court of record in this State, if the plaintiff by himself, his agent or attorney in fact, will make an affidavit stating that the defendant hath no visible property to satisfy the same, or on which an execution can be levied, and that he or she hath good reason to believe that the defendant has fraudulently conveyed his or her property to avoid or delay the payment of his or her just debts, or that some other person or persons is or are in possession of property, belonging to said defendant, and conceals the same, the court, or clerk, in case the said court is not sitting, in which the said judgment hath been or shall be rendered, shall and may at any time while the said judgment is in force, order a *scire facias* or *scire faciases*, as the case may be, to be issued against and served upon the person or persons claiming any estate, real or personal, under any such conveyance, or any person or persons charged in the affidavit with concealing any money, goods or other estate for the use of the defendant, or for the purpose of

2. 27 Eliz. c. 4, s. 2.

3. 1715, c. 7, s. 5.

4. 1715, c. 7, s. 6.—13 Eliz. c. 5, s. 6.

5. 1806, c. 700, s. 1.—1793, c. 389, s. 4.

enabling him or her to avoid or delay the payment of his or her just debts, in which he or they shall be commanded to appear at the next succeeding term, and declare upon oath and in writing, whether he or she holds, or is in possession of or claims title to any money, goods or other estate, real or personal, under any conveyance made by the defendant upon any secret trust, and whether he or she holds or is in possession of any money, goods or other estate, or was, at the time of rendering said judgment, or at any time since, in possession of any money, goods or other estate, under any secret delivery, to hold the same for the use of the defendant or any other person, to enable him or her to avoid the payment of his or her just debts; and if the *scire facias* shall be returned served by delivering a copy to the party against whom it is issued, or by leaving a copy at his or her dwelling, and the party shall appear, the court shall proceed to require a declaration from him or her on oath, as aforesaid, and if the party so called into court, shall acknowledge that he or she does hold or claim property of the defendant in manner aforesaid, the court shall and may order the same to be delivered up or made subject to the judgment of the plaintiff, and in case the same or any part thereof shall be money, or in case any part of the property shall have been used, wasted, or destroyed by the party, the court may give judgment for the plaintiff against such party, for the amount and value of the money then held, or which has been used, as also for the value of any other property (to be ascertained by a jury) used, wasted or destroyed, and acknowledged as aforesaid to have been received, in manner aforesaid, for the use of the defendant or any other person as aforesaid; but in case any person, called into court in manner aforesaid, shall deny that he or she holds, or is in possession of or claims title to any property real or personal, conveyed or delivered for the purpose of enabling the defendant to avoid or delay the payment of his or her just debts, or that he has held any such property and used or wasted the same, the plaintiff may, if he or she think proper, require an issue to be made up and the facts tried by a jury, as in other cases, and judgment shall be given accordingly with costs, and in case any verdict and judgment shall be given in favor of any person called on under any *scire facias*, or in case he or she shall be discharged by his or her declaration on oath, without the trial of any issue, he or she shall be entitled to the same costs as if he or she had been originally sued in said action.

6. In case any *scire facias* shall be returned served in manner herein directed, and the party against whom the same issued shall fail to appear, the plaintiff may enter against him or her a judgment by default, but before executing any writ of inquiry, or entering up any final judgment, a second *scire facias* shall issue to the party, requiring him or her to appear and show cause why final judgment should not be entered up for the amount of the plaintiff's demand,

Where the party fails to appear, judgment may be entered by default.

6. 1806, c. 700, s. 2.



or the amount which the plaintiff shall in his affidavit state to have been in the hands or possession of such party, for which amount upon the service of said *scire facias*, in manner herein directed, the plaintiff may enter up judgment against said party with costs as aforesaid.

Mode of proceeding when judgment is given by a justice of the peace.

7. When any judgment shall be given by any justice of the peace out of court, the plaintiff may make an affidavit, in manner herein directed in courts of record, upon which he shall be entitled to carry up to the next succeeding court of pleas and quarter sessions, to be held for the county in which said judgment is given, with the said affidavit, the warrant, judgment, and all papers relating thereto, and upon which the said court shall and may issue a *scire facias*, in manner herein directed, which shall be proceeded on in the same manner as if the suit had been originally instituted in said court.

Contracts for the sale of land and slaves must be in writing.

8. All contracts to sell or convey any lands, tenements, or hereditaments, or any interest in or concerning them, or any slave or slaves, shall be void and of no effect, unless such contract, or some memorandum or note thereof, shall be put in writing, signed by the party to be charged therewith, or by some other person, by him thereto lawfully authorized, except nevertheless contracts for leases not exceeding in duration the term of three years.

Persons removing debtors to hinder, delay or defraud creditors, to be liable for their debts.

9. If any person or persons shall remove, or shall aid and assist in removing, any debtor or debtors out of any county, in which he, she or they shall have resided for the space of six months or more, with an intent by such removing, aiding or assisting, to delay, hinder or defraud the creditors of such debtor or debtors, or any of them, such person or persons, so removing, aiding or assisting, shall, they and their executors and administrators, be liable to pay all debts, which the debtor or debtors so removed shall or may justly owe in the county from which he was so removed, which debts may be recovered by the creditors respectively, who may be entitled thereunto, their executors or administrators, by an action on the case, provided such suit shall be commenced within three years from and after the time of such removal.

Contracts—of executors, &c. to be answerable out of their own estate—or to charge any person with the debt, &c. of another, must be in writing.

10. No action shall be brought, whereby to charge any executor or administrator upon a special promise to answer damages out of his own estate, or to charge the defendant upon any special promise to answer the debt, default or miscarriage of another person, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing and signed by the party charged therewith, or some other person thereunto by him lawfully authorized.

Contracts with the Cherokee Indians to be

11. All contracts and agreements of every description, made after the eighteenth day of May one thousand eight hundred and

7. 1806, c. 700, s. 3.

8. 1819, c. 1016.

9. 1820, c. 1063.

10. 1826, c. 10.

11. 1836, c. 8.

thirtyeight, with any Cherokee Indian, or any person of Cherokee Indian blood, within the second degree, for an amount equal to ten dollars or more, shall be null and void, unless some note or memorandum thereof be made in writing and signed by such Indian or person of Indian blood, or some other person by him authorized, in the presence of two creditable witnesses, who shall also subscribe the same.

in writing, subscribed by two witnesses.

*Note.*—REFERENCES TO ADJUDGED CASES.

- SECT. 1. *Sherman vs. Russell*, 1 Car. Rep. 467. *O'Daniel vs. Crawford*, 4 Dev. 197. *Jones vs. Young*, 1 Dev. and Bat. 352.  
 SECT. 2. *Bell vs. Blaney*, 2 Murph. 170.  
 SECT. 5. *McEwen vs. Benning*, 1 Hawks, 474. *Wintry vs. Webb*, 3 Dev. 27.  
 SECT. 8. *Choat vs. Wright*, 2 Dev. 239. *Ellis vs. Ellis*, 1 Dev. Eq. 180. *Tate vs. Greenlee*, 4 Dev. 149. *Miller vs. Irvine*, 1 Dev. and Bat. 103. *Baker vs. Carson*, 1 Dev. and Bat. Eq. 331.  
 SECT. 10. *Cooper vs. Chambers*, 4 Dev. 261.

CHAPTER 51.

GAMING CONTRACTS.

AN ACT CONCERNING GAMING.

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 every promise, agreement, note, bill, bond, or other contract to pay, deliver or secure money or other thing, won or obtained by playing at cards, dice, tables, tennis, bowls or other games, or horse racing, or by wagering or betting on either of the parties, who shall play at such games or horse racing, or to repay or secure money or other thing lent or advanced for that purpose, or lent or advanced, at the time of such gaming, playing, betting, horse racing, laying and adventuring, shall be void; and every conveyance or lease of lands, tenements or hereditaments, sold, demised or mortgaged, and every sale, mortgage or other transfer of slaves, or other personal estate, to any person or for his use, to satisfy or secure money so won, lent or advanced, on due proof made before any jurisdiction having cognizance thereof, shall be and is hereby declared void.

Promises, &c. to pay money upon any kind of gaming, or lent for the purpose of gaming, void.

Securities void

1. 1788, c. 284.—1810, c. 796.

*Note.*—REFERENCES TO ADJUDGED CASES.

- Stowell vs. Guthrie*, 2 Hay. 297. *Hodges vs. Pitman*, 2 Car. L. Rep. 394. *Wood vs. Wood*, 3 Murph. 172. *Forrest vs. Hart*, ib. 458. *Turner vs. Peacock*, 2 Dev. 303. *Hedspeth vs. Wilson*, 2 Dev. 372. *Dunn vs. Holloway*, 1 Dev. Eq. 322.



## CHAPTER 52.

## GENERAL ASSEMBLY.

senatorial } 1842-3 - Ch 27. 28  
districts }

## AN ACT CONCERNING THE GENERAL ASSEMBLY OF THE STATE OF NORTH CAROLINA.

## SECTION

1. When and where the election for members of the General Assembly shall be held.
2. The county courts may alter, establish or discontinue separate places of election.
3. Time and place of holding the elections to be advertised by the sheriff.
4. County courts to appoint inspectors for every separate election precinct.
5. Clerk to furnish the sheriff with a list of the inspectors, and the sheriff to notify them—If the court fail to appoint inspectors, or they refuse to act, the vacancies how to be supplied.
6. Sheriff to furnish boxes for receiving the tickets—Tickets how to be received and put into the boxes.
7. Persons qualified to vote how to give in their tickets—List of voters to be kept—How the boxes are to be opened and the tickets counted out.
8. Manner in which the statement of the polls shall be made up, returned, compared, and the persons declared duly elected.
9. Manner in which the statement of the polls shall be made out in the senatorial districts—Where the polls of the different counties composing the district shall be compared—and how the persons elected shall be so declared.
10. Sheriffs' pay for attending to compare the polls in the senatorial districts.
11. Persons offering to vote, may be required to swear to their qualifications, of which the inspectors shall be the sole judges.
12. In case of vacancies occurring before the meeting of the General Assembly, it shall be the duty of the sheriff to notify the governor thereof.
13. Persons elected, and refusing to ac-

## SECTION

- cept, or resigning, to notify the governor.
14. Governor, in such cases, to order a new election.
15. Elections held under a writ from the governor, or speaker of either house, to be held as other elections.
16. Elections, at what time to be opened and closed.
17. Sheriff to furnish persons elected, if requested, with a copy of the list of votes—Penalty on sheriffs for failing to do their duty in regard to elections.
18. Candidate not elected, to be furnished with a statement of the polls, upon paying two dollars for the same.
19. When no sheriff, the coroner to hold the election—When there is neither sheriff nor coroner, three justices may appoint a freeholder for that purpose.
20. Penalty on persons not qualified, for voting at elections.
21. Musters not to be on the day and at the place of any election.
22. Penalty for bribing an elector to give his vote.
23. Penalty for treating at elections.
24. Sheriff to advertise the two preceding sections against bribing and treating at elections.
25. Time of the meeting of the General Assembly.
26. Governor and council may convene the General Assembly at other than its usual meetings.
27. Members of the General Assembly to take oaths to support the constitution of this State and of the United States—Penalty on members for giving any gratuity, &c. to secure their election.
28. Persons elected shall attend at the meeting of the General Assembly.
29. Penalty on persons elected for failing

SECTION

- to perform the duties of their appointment.
- 30. Members to have freedom of speech and to be protected from arrest, &c.
- 31. Sheriffs to make return to the General Assembly, of members elected from their counties to serve therein.
- 32. How any person contesting the seat of a member shall proceed.
- 33. Penalty on witnesses for failing to attend and give evidence in contested elections.

SECTION

- 34. Pay of witnesses for attending in such cases.
- 35. Persons desirous of procuring the passage of a private law, how to proceed.
- 36. Acts of the General Assembly, when to be in force.
- 37. The journals of the two houses to be deposited in the office of the secretary of state, who shall certify copies thereof when required.

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 the election for members to the Senate and House of Commons of the General Assembly shall be held for the respective districts and counties, at the places at which they are now held, or at which they may be directed hereafter to be held, in manner as hereinafter prescribed, on the second Thursday in August, in the year one thousand eight hundred and thirtyeight, and every two years thereafter : *Provided*, that if by any private or local law the time of holding the election for any county is different from that above mentioned, the election shall be held for such county at the time at which it is so prescribed to be held in the year eighteen hundred and thirtyeight, and every two years thereafter.

When and where the election for members of the General Assembly shall be held.

2. The several courts of pleas and quarter sessions shall have full power and authority, a majority of the acting justices of the county being present, to alter, fix, establish, discontinue, or create anew, such separate places of election in their respective counties as the said courts may from time to time deem expedient, thirty days notice having been given in three or more public places and at the court house of the intended application for the same.

The county courts may alter, establish or discontinue separate places of election.

3. The sheriff or other returning officers of the respective counties shall advertise the time and places of election, at the several places where the same is to be held, at least twenty days before such election.

Time and place of holding the elections to be advertised by the sheriff.

4. The court of pleas and quarter sessions for every county, at the court preceding every election, shall appoint one justice of the peace, and as many freeholders as may be deemed necessary, as inspectors to superintend the election, at the several places where the same is to be held, whose duty it shall be to attend, at the places for which they are appointed, on the day of election, and who shall be sworn by the sheriff, or in case of his absence by some justice of the peace, to conduct the election fairly and impartially according to the constitution and laws of the State.

County courts to appoint inspectors for every separate election precinct.

5. The clerk of the court of pleas and quarter sessions shall, immediately after the court preceding the election, furnish the

Clerk to furnish the sheriff

1. 1789, c. 307, amended.  
 2. 1819, c. 1000.—1830, c. 35.—1832, c. 18.  
 3. 1777, c. 116, s. 2.  
 4. 1777, c. 116, s. 3.—1812, c. 842, s. 1.  
 5. 1777, c. 116, s. 3.



with a list of the inspectors, and the sheriff to notify them. If the court fail to appoint inspectors, or they refuse to act, the vacancies how to be supplied.

sheriffs of the respective counties with a list of the persons appointed to act as inspectors of the polls at the several places of election, and the sheriff shall notify such persons of their appointment, at least twenty days before the day of election. Should the court fail to make such appointment, or if the court should not have appointed a sufficient number of inspectors, or those appointed should die or refuse to act, then it may be lawful for the sheriff, with advice of three justices of the peace, or, if none be present, three respectable freeholders, to appoint inspectors to hold the election, who when so appointed and duly sworn shall have the same authority as if appointed by the court.

Sheriff to furnish boxes for receiving the tickets. Tickets how to be received and put into the boxes.

6. The sheriff or the returning officer shall, on the day and at the places for holding each respective election, be provided with small boxes, one for receiving the ballots for the senator, and the other for receiving the ballots for members of the house of commons, and the returning officer or his deputy, which deputy shall in all cases be sworn before proceeding to act, shall receive the tickets in presence of the inspectors, and put each ticket in its proper box; and all the boxes shall be locked or otherwise well secured, until the election shall be finished: *Provided*, that if no returning officer or his deputy shall be present at any separate place of election, the tickets shall be received by one of the inspectors, in the presence of the others, and put into their proper boxes in manner as aforesaid.

Persons qualified to vote, how to give in their tickets.

7. Every person qualified to vote, in manner directed by the constitution of this State, who shall attend for that purpose at any election, shall give to the returning officer in presence of the inspectors, or in the absence of the returning officer to one of the inspectors, a ticket or scroll of paper rolled up, in which shall be written the name or names of the person or persons for whom he intends to vote, which ticket shall be put into the proper box, in manner before directed, and at the same time two of the inspectors shall take down, in separate lists, the name of every person voting, distinguishing those who shall vote for senators in one list, and those for county members in the house of commons in a second, and when the election shall be finished, the returning officer and the inspectors shall, in presence of such of the electors as may choose to attend, open the boxes one after another, and number the ballots of one box before they shall open another, at the same time reading aloud the names of the persons who shall appear in each ticket, and if there shall be two tickets rolled up together, or if any ticket shall contain the names of more persons than such elector has a right to vote for, in either of these cases such ticket shall not be numbered in taking the ballots, but shall be adjudged void.

List of voters to be kept.

How the boxes are to be opened and the tickets counted out.

8. Immediately after the close of the polls at each and every place of election, a correct statement of the number given for each candidate, and also the names of the persons voting, shall be made out and signed by the inspectors, and then sealed and direct-

Manner in which the statement of the polls shall be made up, returned, compared, and the persons declared duly elected.

6. 1777, c. 116, s. 4.—1812, c. 842, s. 2.  
 7. 1777, c. 116, s. 5.  
 8. 1777, c. 116, s. 5, amended.

ed to the sheriff, which shall be handed by some one of the inspectors appointed for the purpose to the sheriff of the county, at the court house of said county, on the next day, between ten o'clock A. M. and four o'clock P. M., and on the returns being made to the sheriff or his deputy, he shall, in the presence of the inspectors, who carried their respective polls, proceed to add the number of votes to him returned, and the persons having the greatest number of votes shall be deemed duly elected; should any two persons have an equal number of votes, the sheriff shall decide by his casting vote the person duly elected.

9. The provisions contained in the last section shall be applicable to all elections for members of the senate, where the senatorial district is composed of not more than one county, as well as to elections for members of the house of commons; but where any senatorial district, as laid off by the amended constitution, is composed of more than one county, the sheriff or other returning officer of each of the counties, composing such senatorial district, shall after receiving the returns from the inspectors, as prescribed in the last section, meet on the third Thursday in August, after each election, at the following places, in their respective districts, for the purpose of comparing the polls in the said district, viz: In the first district, composed of the counties of Pasquotank and Perquimons, at Woodville, on Little river; in the second district, composed of the counties of Camden and Currituck, at Indian Town, Dr Marchant's store; in the third district, composed of the counties of Gates and Chowan, at the house of Thomas J. Miller, in Gates county; in the fourth district, composed of the counties of Washington and Tyrrel, at Columbia, in Tyrrel county; in the seventh district, composed of the counties of Greene and Lenoir, at Snow Hill, in the county of Greene; in the nineteenth district, composed of the counties of Beaufort and Hyde, at Leechville, in Beaufort county; in the twentieth district, composed of the counties of Jones and Carteret, at Buckner Hill's mill, in Carteret county; in the thirtieth district, composed of the counties of Brunswick, Bladen and Columbus, at the house of David Taylor, senior, in Brunswick; in the thirtyfirst district, composed of the counties of Robeson and Richmond, at Dr John Malloy's, in Richmond; in the thirtyfourth district, composed of the counties of Moore and Montgomery, at the house of Daniel Chisholm, in Moore; in the fortyfourth district, composed of the counties of Wilkes and Ashe, at Wilkesborough and Jefferson alternately; in the fortyfifth district, composed of the counties of Burke and Yancey, at David Chandler's, North cove, Burke county; and in the forty ninth district, composed of the counties of Buncombe, Haywood and Macon, at Waynesville, Haywood county. *Provided always*, that if any accident shall happen to either of the returning officers, which may prevent either or any of them from meeting on the day aforesaid, the returns of each and every officer shall be received on the day following. And the sheriff or other returning officer, failing to attend at the time and place above

Manner in which the statement of the polls shall be made out in the senatorial districts. Where the polls of the different counties, composing the districts, shall be compared—and how the persons elected shall be so declared.



mentioned, shall forfeit and pay the sum of five hundred dollars, to be recovered for the use of the State, upon due proof thereof, in any court of law, having jurisdiction thereof, by action of debt in the name of the State, and shall moreover be subject to indictment, and fined at the discretion of the court. And when the sheriffs or other returning officers shall be convened as aforesaid, the poll for the different counties, shall by the said sheriffs or other returning officers, in the presence of three justices of the peace, or if said justices of the peace cannot be conveniently procured, then in the presence of three freeholders, who are to be summoned by the sheriff or other returning officer of the county, where they shall meet for that purpose, be examined and compared, and a certificate under the hands and seals of said returning officers shall be given to the candidate in each district, for whom the greatest number of votes shall have been given in said district. But if two or more candidates shall have an equal number of votes, the said returning officers shall determine which of them shall be the senator; and if no decision is made by them, then they shall decide the same by drawing in like manner as the grand jury is drawn for in the superior court.

Sheriffs' pay for attending to compare the polls in the senatorial districts.

10. Every sheriff or other returning officer shall be allowed the sum of two dollars and a half, for every thirty miles travelling to and returning from the place of comparing the polls, and the same sum for every day he shall necessarily attend for the purpose of comparing the polls, and also his ferriages, which shall be paid by the treasurer of the State on affidavit of the sheriffs or other returning officers, which affidavit may be made before any justice of the peace within the State.

Persons offering to vote may be required to swear to their qualification, of which the inspectors shall be the sole judges.

11. Every person, before he shall be admitted to give his vote at any election, shall, if required by the inspectors or any one of them, swear (or affirm as the case may be) that he is qualified according to the constitution, and that he hath not before voted at such election; and the inspectors at such election shall have the sole and exclusive right to judge of the qualification of voters, except where there is an equal division of opinion between them, in which case the sheriff or other returning officer shall decide.

In case of vacancies occurring before the meeting of the General Assembly, it shall be the duty of the sheriff to notify the governor thereof.

12. If any person, who shall be elected to represent any county or district in the General Assembly of this State, shall, before the meeting of the said General Assembly, die, or from any other cause fail, refuse, or neglect, or delay, to accept of his said appointment, it shall be the duty of the sheriff of the county, in which the said person so elected resides or did reside, to notify the governor of the same forthwith: and the said sheriff, for neglect of duty herein, shall be subject to indictment in any court of record, and on conviction shall be fined or imprisoned at the discretion of the court.

Persons elected and refusing to accept, or resigning, to notify the governor.

13. If any person, who shall be elected to represent any county or district in the General Assembly of this State, shall before the

10. 1835, c. 1, s. 2.

11. 1777, c. 116, s. 7.—1833, c. 9.

12. 1835, c. 5, s. 1.

13. 1835, c. 5, s. 2.

meeting of the said General Assembly resign, refuse or decline to accept and attend the duties of his said appointment, it shall be the duty of such person immediately to notify the governor in writing of such his determination.

14. In all vacancies, that shall occur by death, resignation or otherwise, before the meeting of the General Assembly, it shall be the duty of the governor, upon being notified thereof as aforesaid, to issue a writ of election to the sheriff or sheriffs of the county or district, wherein such vacancies shall have occurred, commanding him or them to hold an election for a member of the General Assembly, to supply such vacancy, at a certain time therein to be specified, and under the same rules and regulations as are prescribed for holding elections at the regular times in said county or district.

Governor, in such cases, to order a new election.

15. Every election, held in pursuance of a writ from the governor, or by virtue of any writ from either house of the General Assembly, shall be conducted in like manner, as the regular biennial elections, so far as the particular case can be governed by the general rules, and shall to all intents and purposes be as legal and valid, and subject the officers and persons elected to the same penalties and liabilities, as if the same had been held at the time, and according to the rules and regulations prescribed for the regular biennial elections.

Elections held under a writ from the governor, or speaker of either house, to be held as other elections.

16. Every election shall begin at ten o'clock, A. M. on the day appointed for such election, and shall close at sunset the same day.

Elections, at what time to be opened and closed.

17. Every sheriff or other returning officer, within ten days after every election, shall at the request of any person elected to serve in the General Assembly, or other persons in his behalf, cause fair copies of the list of votes and the number of ticket ballots for each candidate to be made out and delivered to the person requesting the same, or to his order, which list and numbers shall be signed by the returning officer; and if any officer shall refuse so to do, or shall make elections in any other manner than by this act is directed, or shall neglect or refuse to make returns of the elections, by him to be made or taken, the officer so offending shall forfeit and pay five hundred dollars, to be recovered by action of debt, in any court of record having cognizance thereof, one half for the use of the State, the other half to the use of the person suing for the same.

Sheriff to furnish persons elected, if requested, with a copy of the list of votes.

Penalty on sheriffs for failing to do their duty in regard to elections.

18. The sheriff, or other returning officers, in each county and district of this State, shall, on the payment of the sum of two dollars, make out and furnish any candidate, not elected, with a fair and true copy of the polls, and a just statement of the election, within twenty days after such election, under penalty of two hundred dollars for the use of the State. *Provided, nevertheless,* that such candidate shall make application for such statement or copies

Candidate not elected, to be furnished with a statement of the polls, upon paying two dollars for the same.

14. 1835, c. 5, s. 3.

15. 1777, c. 116, s. 8.

16. 1777, c. 116, s. 9, amended.

17. 1777, c. 116, s. 13.

18. 1799, c. 533.



to the sheriff or other returning officer, within ten days after the election, for which he was a candidate.

When no sheriff, the coroner to hold the election.

When there is neither sheriff nor coroner, three justices may appoint a freeholder for that purpose.

19. If at any time it shall happen, that there shall be no sheriff in any county qualified according to law, the coroner or coroners in such county is and are hereby empowered to hold elections for such county; and where there shall be neither sheriff nor coroner to take the poll at the biennial or any other election, it shall be lawful for three justices of the peace to appoint some reputable freeholder to hold the election, with the same powers, directions and restrictions, as sheriffs by law are invested with and subject to, and such election so made shall be as valid as if taken and held by the sheriff or coroner.

Penalty on persons not qualified, for voting at elections.

20. If any person shall hereafter vote at any election, who by law shall not be entitled to vote at such election, he shall forfeit and pay the sum of four dollars, to be recovered with costs by action of debt before any jurisdiction having cognizance thereof, one half to the use of the county wherein such election shall be held, and the other half to him or them who shall sue for the same; and where any suit shall be brought against any person for voting as aforesaid, without having a right to such vote, the *onus probandi* shall lie upon the defendant.

Musters not to be on the day and at the place of any election.

21. It shall not be lawful to call or direct any regimental, battalion or company muster, or to assemble armed men, on the day of any election, at any place appointed by law to hold elections for members of Congress, or members of the General Assembly within this State, under the penalty of one thousand dollars, to be recovered of any person or persons, who shall call such muster, or assemble such armed men, in the name of the State, and be applied, one half to the use of the informer, and the other half to the use of the State.

Penalty for bribing an elector to give his vote.

22. If any person shall at any time before or after any election, either directly or indirectly, give any money, gift, gratuity or reward to any elector or electors, or to any county or district, in order to be elected, or to procure any other person to be elected as a member of the General Assembly, every person so offending shall forfeit and pay four hundred dollars, to be recovered by action of debt, in any court of record having cognizance thereof, with costs, and shall be incapable to serve as a member during the continuance of that General Assembly, for which such election shall be made as aforesaid.

Penalty for treating at elections.

23. If any person or persons shall treat, with either meat or drink, on any day of election or any day previous thereto, with an intent to influence the election, every person so offending shall forfeit and pay the sum of two hundred dollars, the one half for the use of the county where the same shall be recovered, to be paid to the county trustee, the other half to the use of the person who

19. 1777, c. 116, s. 13.—1781, c. 170, s. 9.

20. 1777, c. 116, s. 10.

21. 1795, c. 431.

22. 1777, c. 116, s. 11.

23. 1801, c. 530, s. 3.

shall sue for the same, to be recovered by action of debt in any court of record having cognizance thereof, with costs.

24. It shall be the duty of the sheriff in each and every county, annually to publish the two preceding sections of this act, by advertising and reading the same at the court house door, on the first and second days of the county court, which shall happen previous to the annual election, and also on the different days of the election, under the penalty of forty dollars for each and every neglect.

Sheriff to advertise the two preceding sections against bribing and treating at elections.

25. The meeting of the General Assembly shall be biennially on the third Monday in November.

Time of the meeting of the Gen. Assembly.

26. The governor may, with the advice of the council of state, call a meeting of the General Assembly, if the same shall be absolutely necessary, at a sooner day than the same may stand adjourned to or appointed to meet.

Governor and council may convene the General Assembly at other than its usual meetings.

27. Every person elected a member of the General Assembly shall, before taking his seat therein, take the oath of allegiance appointed for the qualification of members of the General Assembly and public officers, and also the oath to support the constitution of the United States : and if any person elected a member of the General Assembly shall, by himself or any other person, directly or indirectly, give or cause to be given any gift, gratuity, reward or present whatsoever, or give or cause to be given by himself or any other person any treat or entertainment, either by himself or any other person for him, of meat or drink, at any public meeting or collection of the people, to any person or persons whatsoever, for his or their vote or votes, or to influence him or them in his election, every person violating this section shall, on due proof, be expelled from his seat in the General Assembly.

Members of the General Assembly to take oaths to support the constitution of this State and of the United States.

Penalty on members for giving any gratuity, &c. to secure their election.

28. Every person, who shall be elected to represent any county or district in this State in the General Assembly thereof, shall meet at such time and place as may be appointed for the meeting of the General Assembly, by adjournment or otherwise, on the first day appointed for that purpose, and attend to the public business as occasion may require.

Persons elected shall attend at the meeting of the General Assembly.

29. In case any person, who shall hereafter be elected to represent any county or district in the General Assembly of this State, shall fail, refuse, neglect or delay to attend to the duties of his appointment agreeably to the directions of this act, every such person shall forfeit and pay for non-appearing as aforesaid the sum of ten dollars, and the sum of two dollars for each and every day he may be absent from his duty during the session, which sum or sums of money shall be deducted or taken from his pay or allowance as a member if the same shall be sufficient ; and should the fine or forfeiture exceed the pay or allowance of such member or person elected as aforesaid, then and in that case such excess so remaining due shall

Penalty on persons elected, for failing to perform the duties of their appointment.

24. 1801, c. 580, s. 4.

25. 1826, c. 4, s. 1.

26. 1780, c. 164.

27. 1801, c. 580, s. 2.

28. 1787, c. 277, s. 1.

29. 1787, c. 277, s. 2.



be taken out and deducted from any future allowance which may be made to such person as a member by the General Assembly of this State : *Provided nevertheless*, that a majority of the members of either house of the General Assembly may and shall have power to remit to any person, having incurred the same, the fines and forfeitures aforesaid, or any part thereof, where it shall appear to their satisfaction on oath or affirmation, that the person hath been prevented from attending his duty by sickness, unavoidable hindrance, or other sufficient cause.

Members to have freedom of speech and to be protected from arrest, &c.

30. The members of the General Assembly shall have freedom of speech and debate in the General Assembly, and not be liable to impeachment or question, in any court or place out of the General Assembly, for words therein spoken, and the members are hereby declared protected from all arrest and imprisonment, or attachment of property, during the time of their going to, coming from or attending the General Assembly, agreeably to the certificate of their attendance, except for felony, treason or breach of peace.

Sheriffs to make return to the General Assembly, of members elected from their counties to serve therein.

31. The sheriff of every county and district shall make return to the General Assembly, at their first annual meeting, of the person elected in his county or district to represent the inhabitants in either house of the legislature, and shall therein certify whether the persons so returned were chosen by their own consent, and which of them was so chosen ; and if any person so returned shall fail to attend at any session of the General Assembly which he ought to attend, then such person shall forfeit and pay the sum of fifty dollars, to be recovered in the court of pleas and quarter sessions of the county for which such person was elected, at the suit of the governor for the time being, on the certificate of such failure, issued by the speaker of the house, in which such delinquency happened, unless sufficient excuse for such failure be offered and proved on oath by such delinquent member at the next succeeding Assembly.

How any person contesting the seat of a member shall proceed.

32. It shall not be lawful for any person to vacate the seat of any member of the General Assembly, who has taken his seat in consequence of the return of the sheriff or sheriffs of his county or district, certifying that he is duly elected, unless the person or persons who may intend to dispute such election shall give the member or members, whose election he or they intend to dispute, thirty days notice previous to the meeting of the General Assembly of such his intention, with the ground on which the same will be disputed ; and the same notice of time and place, now required in taking depositions at law, shall also be required and proved on such investigation, and all affidavits taken without due notice as aforesaid shall be deemed improper evidence and not suffered to be read in such investigation.

Penalty on witnesses for failing to attend and give evidence in contested elections.

33. If any person, being legally summoned by any lawful officer by a subpoena issued by a justice of the peace, or any other

- 30. 1787, c. 277, s. 3.
- 31. 1787, c. 277, s. 4.
- 32. 1796, c. 466, s. 1.
- 33. 1800, c. 557, s. 1.

person authorized by law to take depositions, to appear before them or either of them, to give testimony in behalf of either of the parties disputing any election for members of the General Assembly, he or they failing to attend agreeably to the said subpoena, and give testimony as aforesaid, shall forfeit and pay the party grieved the sum of forty dollars, to be recovered by action of debt, before any jurisdiction having cognizance thereof: *Provided*, nothing herein contained shall be construed to extend to the compelling any such witnesses to answer any question tending, directly or indirectly, to discover the person for whom he voted, or to discover his disqualifications as an elector.

34. Any person, being so summoned and appearing and giving testimony as aforesaid, shall be entitled to receive from the person, at whose instance he was summoned, the sum of ten cents for every mile travelling to and from the said place and his ferriages, to be recovered before any justice of the peace in said county.

Pay of witnesses for attending in such cases.

35. Any person or persons, who may desire the passage of any private law, shall give notice of his intention to make such application, by advertisement in some newspaper of this State, which circulates in the county where such applicant or some one of them resides, or in which such private law will operate, or by advertisement at the door of the court house and three other public places in such county, for at least thirty days before such application; and when any private bill shall be presented, a copy of such advertisement, with due proof of its having been so published, shall be produced, before the same shall be read a second time.

Persons desirous of procuring the passage of a private law, how to proceed.

36. All acts of the General Assembly of this State shall be in force, only from and after thirty days after the rise of the session of the General Assembly, in which such acts shall have passed, and not before, unless, in any act or acts, the commencement of the operation of such act or acts shall be expressly otherwise directed.

Acts of the General Assembly, when to be in force.

37. The clerks of the senate and house of commons of this State shall, as soon as may be convenient, after the close of each session of the General Assembly, deposit in the office of the secretary of state the journals of the legislature, and the secretary of state is authorized and directed to make and certify copies of any part or entry of the journals of the legislature of this State, whether heretofore deposited in his office or deposited there hereafter, and the secretary may take and receive for the copy of each entry so made and certified the same fee as for the copy of a grant.

The journals of the two houses to be deposited in the office of the secretary of state, who shall certify copies thereof when required.

34. 1800, c. 557, s. 2.

35. 1835, c. 15.—1796, c. 466, s. 2.

36. 1799, c. 527.

37. 1819, c. 1020.



## CHAPTER 53.

## GOVERNOR AND COUNCIL.

## AN ACT CONCERNING THE GOVERNOR AND COUNCIL OF STATE.

## SECTION

1. Election of governor, when to be held and how conducted.
2. Governor to reside at Raleigh.
3. A house to be provided for him.
4. Governor shall appoint a private secretary, who shall enter letters in a letter book.
5. Letter book to be kept in the executive office.
6. Meetings of the council of state shall be in Raleigh.
7. Governor and council may convene the General Assembly, if necessary.
8. Governor to procure a seal for the State—Also a seal for each court of record.
9. He may procure new seals when necessary.
10. How the seals are to be prepared.
11. Expense of seals, how paid—Seals

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- to be delivered to the proper officers, who are to receipt for the same.
12. When a seal to a grant, &c. is lost, the governor and council may order it to be resealed.
13. Compensation of sheriffs for making returns of the governor's election.
14. How such compensation to be ascertained and paid.
15. Persons intending to contest the election of governor, to give notice, &c.—Proceedings thereon.
16. Sheriffs to transmit a duplicate return of the vote, &c.
17. Penalty on persons for voting who are not qualified.
18. Returns, by whom and when to be opened—How the election to be determined.
19. Depositions may be taken in such contested elections.

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,*

Election of governor, when to be held and how conducted.

That the sheriffs of the several counties of this State shall open polls, at the several election precincts of their respective counties, for the election of a Governor of the State of North Carolina, on the same days in the months of July and August, one thousand eight hundred and thirtyeight, that elections are now held for members of the General Assembly, and biennially thereafter on the same days, and under the same rules, regulations and restrictions that elections are directed to be held for members of the General Assembly of the State, and that the said sheriffs shall make their returns of the said elections, sealed up, to the secretary of state, to be by him delivered to the speaker of the senate on or before the second week of the session of the General Assembly, to be held next thereafter.

Governor to reside at Raleigh.

2. The governor for the time being, shall reside permanently at the city of Raleigh, during his continuance in office.

A house to be provided for him.

3. A convenient and commodious dwelling house, together with such out houses as shall be necessary, shall be provided for the

1. 1835, c. 1, s. 4.
2. 1802, c. 625, s. 1.
3. 1813, c. 854, s. 1.

accommodation of the chief magistrate of this State for the time being.

4. The governor for the time being shall appoint a private secretary, who shall enter, in books for that purpose, all such letters written by and to the governor as are official and important, and such other letters as the governor shall think necessary.

Governor shall appoint a private secretary, who shall enter letters in a letter book.

5. The letter book of the governor shall be deposited in the office of the executive, by the private secretary of the governor, and there carefully preserved, and it shall be the special duty of the governor for the time being, to have the said letter books of himself or any of his predecessors in office produced before the General Assembly, whenever thereto requested.

Letter book to be kept in the executive office.

6. Whenever the governor shall conceive it necessary to convene the council of state, such meeting shall be in the city of Raleigh, unless an invasion, insurrection or contagious disease shall render it advisable to call them elsewhere.

Meetings of the council of state shall be in Raleigh.

7. It shall be lawful for the governor, with the advice of the council of state, to call a meeting of the General Assembly, if the same shall be absolutely necessary, at a sooner day than the same may stand adjourned to, or appointed to meet.

Governor and council may convene the General Assembly, if necessary.

8. The governor shall be authorized and required to procure for the State a seal, which shall be called the Great Seal of the State of North Carolina, to be used for attesting and authenticating grants, proclamations, commissions and other public acts, in such manner as may be directed by law and the usage established in the public offices; also a seal for each of the courts of record, established or to be established in this State, for the purpose of authenticating the papers and records of such court when required.

Governor to procure a seal for the State. Also a seal for each court of record.

9. Whenever the great seal of the State, or any of the seals of the courts of record, shall be lost or so worn or defaced as to render it unfit for use, the governor shall provide a new one to be used for the same purpose as directed in the last section.

He may procure new seals when necessary.

10. The seals provided under the direction of this act shall be prepared with one side only, and calculated to make the impression on the face of such grant, commission, record or other public act; and in cases of new seals provided, instead of former ones lost, worn or defaced, such former seals shall not be used in any case after the new ones are procured.

How the seals are to be prepared.

11. The governor is authorized to issue his warrant on the treasurer for such sum as may be necessary to discharge the expense of procuring the seals aforesaid; and he shall cause the said seals to be delivered to the proper officers, who shall give a receipt for the same and be accountable for the safe keeping thereof.

Expense of seals, how paid—Seals to be delivered to the proper officers, who are to receipt for the same.

4. 1784, c. 224.  
 5. 1806, c. 702, s. 2.  
 6. 1794, c. 410.  
 7. 1780, c. 164.  
 8. 1791, c. 344, s. 1.  
 9. 1834, c. 24.  
 10. 1791, c. 344, s. 2.  
 11. 1791, c. 344, s. 3.



When a seal to a grant, &c. is lost, the governor and council may order it to be resealed.

12. In all cases where any person or persons may find it necessary to have the seal of the State put again to any grant or other public paper, he, she or they may prefer his, her or their petition to the governor and council, who shall, if they shall deem the same proper, after examining such grant or other paper, order and direct the secretary to put the seal of the State thereto, for which he shall be allowed the usual fees.

Compensation of sheriffs for making returns of the governor's election.

13. Each one of the sheriffs of the several counties in this State shall hereafter be entitled to receive the sum of two dollars, for each and every day he may be necessarily engaged in making the returns of the elections for governor in his or their respective counties, according to the provisions of the first section of this act, and in travelling to and from the city of Raleigh by the most usual road from and to his residence.

How such compensation to be ascertained and paid.

14. The said compensation to sheriffs shall be ascertained and certified by the secretary of state ; and the same shall be passed as public accounts and paid by the treasurer.

Person intending to contest the election of governor, to give notice, &c.

15. When any person or persons shall contest the election of any person, who may be elected governor, or may have received the largest number of votes, agreeably to the returns of the respective sheriffs of the State, such person or persons shall in writing give notice to him, whose election he or they intend to contest, of such his or their intention, as well as the specific grounds upon which he or they may intend to contest his election ; setting forth the county or counties, in which he or they allege that spurious or illegal votes were given, or any other invasion of the law or constitution, having relation to the case, shall have taken place, at least thirty days before the first day of December in the year in which such election is held, and also in one or more newspapers published in Raleigh ; and satisfactory proof that such notice has been given shall be required before the General Assembly proceed to inquire into the truth of such allegations : *Provided however*, that if the person whose election is contested is out of the State, or not to be found at the time, thirty days' notice, in one or more of the newspapers published in Raleigh, shall be deemed sufficient.

Proceedings thereon.

Sheriffs to transmit a duplicate return of the vote, &c.

16. The sheriffs of the several counties shall, within thirty days after the election for governor, in addition to the returns now required by the constitution, make out and transmit to the secretary of state, a duplicate of the vote for governor in his county, which the secretary shall keep in his office for the inspection of any person wishing to examine the same ; and every sheriff failing or refusing to make the returns required by the constitution, or to transmit the duplicate as herein required, shall forfeit and pay the sum of one hundred dollars, to be recovered in any court having jurisdiction thereof, in the name of and to the use of the State ; and it is hereby made the duty of the secretary to sue

12. 1791, c. 344, s. 4.

13. 1836, c. 35, s. 1.

14. 1836, c. 35, s. 2.

15. 1836, c. 21, s. 1.

16. 1836, c. 21, s. 2.

for the same ; and such sheriff shall moreover be held and deemed guilty of a misdemeanor, and, upon conviction thereof in any of the superior courts of law in this State, shall be fined at the discretion of the court not exceeding one thousand dollars.

17. Any person who shall vote for governor, other than those specified by the constitution, shall in all cases be liable to the same fines and penalties as persons are now subject to, for voting illegally for members of the house of commons. Penalty on persons for voting, who are not qualified.

18. In future, the speaker of the senate shall open, in the presence of a majority of the two houses, the returns for governor, during the first week in December in which the legislature shall be in session ; and upon a resolution or the suggestion of any member of either house, such house shall proceed to examine, whether the individual returned as having the largest number is duly elected. Each house shall separately determine all such cases ; and unless a majority of each house shall declare the person returned, as having the largest number of votes, is not duly elected, then the speaker of the senate, in presence of both houses, shall pronounce such person duly elected. Returns, by whom and when to be opened. How the election to be determined.

19. It may be lawful for any person to take depositions to be read in such cases, before two magistrates, which depositions shall have the certificate and seal of the clerk of the county court, in which such depositions are taken, setting forth that such persons are acting justices of the peace for the county : *Provided however*, that no such depositions shall be deemed evidence, unless ten days notice shall have been given to the person, whose election is contested ; which notice shall be given in writing, to be proved by the person delivering it, who shall depose before a justice of the peace that such notice was delivered by him, setting forth the date of its delivery. If, however, the person whose election is contested is out of the State or not to be found, fifteen days notice given in a newspaper published in Raleigh shall be sufficient. Depositions may be taken in such contested elections.

17. 1836, c. 21, s. 3.  
 18. 1836, c. 21, s. 4.  
 19. 1836, c. 21, s. 5.

**CHAPTER 54.**

**GUARDIAN AND WARD.**

AN ACT CONCERNING THE APPOINTMENT OF GUARDIANS AND THE MANAGEMENT OF ORPHANS AND THEIR ESTATES.

SECTION

1. A father may, by deed or will, appoint a guardian for his children.
2. The superior and county courts to

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have cognizance of all matters relating to orphans and their estates— to appoint guardians and take bonds

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1840.1 ch 31.  
 1842.3. ch. 38

1844.5. ch 41  
 1846.7 ch. 43.



## SECTION

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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 where any person hath or shall have any child or children under the age of twentyone years, and not married, it shall be lawful for the father of such child or children, whether born at the time of his death, or in *ventre sa mere*, or whether such father be within the age of twentyone years or of full age, by deed executed in his lifetime, or by his last will and testament in writing, in such manner and from time to time as he shall think fit, to dispose of the custody and tuition of such child or children for and during

A father may, by deed or will, appoint a guardian for his children.

such time as he, she, or they shall remain under the age of twentyone years, or for any less time, to any person or persons, and every such disposition shall be good and effectual against all and every person and persons, claiming the custody and tuition of such child or children as guardian in socage, or otherwise, and the person or persons to whom such custody or tuition shall be so disposed or devised, shall have the same powers, rights and privileges, and be subject to the same liabilities, rules and regulations as other guardians.

2. The several superior courts of law, and the courts of pleas and quarter sessions, within their respective counties, shall have full power and authority from time to time to take cognizance of all matters concerning orphans and their estates, and to appoint guardians where none have been appointed by the father, as prescribed in the preceding section, and where to them it shall appear necessary, and shall take good security of all the guardians by them to be appointed for the estate of the orphans by them committed: And if any court shall commit an orphan's estate to the charge or guardianship of any person or persons, without taking good and sufficient security for the same, the justice or justices appointing such guardian shall be liable for all loss and damages sustained by the orphan for the want of such security being taken, to be recovered by action at the common law, in any court of record in which the same is cognizable, at the suit of the party grieved. *Provided always*, that where the securities were good at the time of their being taken or accepted, but afterwards became insolvent, in such case the justice or justices shall not be liable.

The superior and county court, to have cognizance of all matters relating to orphans and their estates — to appoint guardians and take bonds.

Justices liable for taking insufficient security.

Proviso.

3. All bonds taken from guardians shall be taken and made payable to the State of North Carolina, which bonds the court shall cause to be acknowledged before them and recorded; and any person injured may, at his and their proper costs and charges, commence and prosecute a suit against such guardian and his securities, his or their heirs, executors or administrators, and may recover all damages and costs which he, she or they have sustained by reason of the breach of the condition thereof: and if judgment shall be rendered in favor of such guardian or his securities, the person at whose instance such suit shall be commenced or prosecuted shall pay costs.

Guardian bonds how payable, and the remedy upon them.

4. It shall be the duty of the clerks of the county courts, and they are hereby required to make a record of, and enter at large on their dockets, the names of the justices of the court who shall be present at the granting of any guardianship, and approving of the securities to the guardian bond; and it shall also be the duty of the clerk to certify upon the said bond the names of the justices present in court and granting such guardianship; and no justice of the peace, to whom any guardianship shall be committed, shall be permitted to vote or sit on the bench at the time of the said appointment: *Provided always*, that any justice of the peace, present and not con-

Clerks to enter upon their docket the names of the justices on the bench when guardian bonds are taken.

Proviso for a justice present

2. 1762, c. 69, s. 5 and 6.

3. 1762, c. 69, s. 7.—1825, c. 1285, s. 2.—1833, c. 17.

4. 1825, c. 1285, s. 3.



but not concurring.

in the grant of such guardianship, or in the acceptance of the securities offered by the guardian, may require, and on his request the clerk shall record on the minutes and certify on the bond that such justice does not concur in such appointment, or in the acceptance of the sureties offered, and such certificate and entry shall exempt such justice from liability on account of such bond.

Guardians may be appointed to take charge of the property of children whose fathers are alive.

5. The superior and county courts shall and may appoint a fit and proper person to take the care and management of the estates, real and personal, rights and credits, of any person under the age of twentyone years, who shall be seized or possessed of any estate real or personal, or entitled to any such estate, although the father of such minor may be living. And the person so appointed shall enter into bond with surety, as required (by the preceding sections of this act) of guardians of orphans, and shall have the same authority as guardians, and be governed in all respects by the laws relative to guardians and orphans, so far as respects the property and rights of orphans, but shall not have any care of or authority over the person of such minor by virtue of such appointment.

One bond only to be taken from the guardian of orphans who have property in common.

6. When the same person is appointed guardian to two or more minors, possessed of an estate in common, it shall be lawful for the court of pleas and quarter sessions by which he was appointed, should the court deem it proper to accept of said guardian, to take one bond only for the execution of his trust, upon which bond each of the minors or any other person entitled may commence and prosecute the same remedies as though several bonds had been given in trust for each of the said children. And the clerk taking the said bond shall not demand or receive more than a single fee for the same.

Guardian bonds to be renewed once in every three years. Clerk to issue summons to guardians failing to renew.

7. All guardians of every description, from whom bonds are required, shall renew their respective bonds in the several county courts every three years during the continuance of their respective guardianship : and it shall be the duty of the clerks of the several county courts to issue an *ex officio* summons against each and every guardian, in whatsoever county he may reside, who shall fail to comply with the requisitions of this section ; and upon a return made of the service of such summons that the guardian is not to be found, an *alias* shall issue, and if upon the return of such *alias* summons the guardian is not to be found, it shall be the duty of the court to remove such guardian from office and to appoint a successor to him or them so removed, and to take bond with good and sufficient security, to be approved of by the said court, from the succeeding guardian, unless the former guardian shall, at the court to which such summons shall be returned, appear and comply with the requisitions of this section. *Provided always*, that no prosecuting officer shall be entitled to charge a fee in any such case.

Duty of the clerks of the superior courts

8. It shall be the duty of the clerks of the superior courts of law to render to the clerks of the county courts, annually, at the

5. 1806, c. 707, s. 1.

6. 1822, c. 1161, s. 1 and 2.

7. 1820, c. 1039, s. 1 and 2.—1824, c. 1246.

8. 1825, c. 1233, s. 1 and 2.

first court which shall be holden in each and every county after the first day of January, a list of the names, setting forth therein the times of appointment, of all persons who shall have been appointed guardians by the courts of which they are respectively clerks, and who shall not have made a final settlement with his or her ward ; and it shall be the duty of the clerks of the county courts to issue an *ex officio* summons to all guardians, appointed by any of the superior courts, who shall fail to appear and settle their respective accounts and renew their bonds, under such rules, regulations and restrictions as are prescribed above for issuing summonses against delinquent guardians in the county courts.

as to guardians appointed by such courts, and failing to settle their accounts and renew their bonds.

Clerks of the county court to issue notices to such guardians.

9. Every person, to whom the guardianship of any child has been or shall be committed in either of the modes above mentioned, shall take into his possession, for the use of such child or children, the profits of all lands, tenements and hereditaments, and also all the slaves, goods and chattels and other personal estate of such child or children, and may bring such actions in relation thereunto as by law a guardian in common socage might do.

Duty of guardians in taking possession of the estate of their wards.

10. It shall be the duty of every guardian appointed as aforesaid, at the next court after his appointment, to exhibit an account upon oath of all the estate of the child or children committed to his care, which he shall have received into his hands or possession ; and every guardian shall annually exhibit his account and state of the profits and disbursements of the estate of such orphan upon oath, and such accounts so to be exhibited shall be entered by the clerks in particular books to be provided and kept for that purpose only.

Guardians to render an account of the estate of their wards upon oath.

11. The justices of every court of pleas and quarter sessions respectively, shall, on the first day of the court that shall be held next after the first day of January in every year, hold an orphan's court for the purpose aforesaid ; and every guardian, whether appointed by deed or will, or by any court, shall exhibit such account as aforesaid ; and the justices of every court shall at the same court examine into all accounts of guardians, so to be exhibited to them ; and it shall be the duty of the clerk of the court, under the penalty of one hundred dollars to be applied to the use of the ward, to issue *ex officio* summonses, returnable to the next court, against all guardians, whether resident in the same or any other county, who shall fail to appear and exhibit their accounts as aforesaid ; and if any such guardian shall wilfully neglect, after being summoned as aforesaid, to appear, or obstinately refuse to exhibit such account, it shall and may be lawful for the court to issue an attachment for such contempt, and to commit such guardian until he or she shall exhibit such account.

Orphan's court to be held.

All guardians to render accounts annually.

Clerk to issue *ex officio* summonses to guardians failing to render their accounts.

12. The clerk for issuing the summons as in the last section directed, shall be entitled to demand and receive the sum of sixty cents, to be collected by the sheriff or other officer at the time of serving said summons, and accounted for to the clerk at the return

Clerk's fee for issuing summons to guardian, and how collected.

9. 1762, c. 69, s. 3.  
 10. 1762, c. 69, s. 9.  
 11. 1762, c. 69, s. 15.—1816, c. 905, s. 1 and 2.  
 12. 1816, c. 905, s. 3.



of the same. *Provided*, that nothing herein contained shall be construed to subject to payment of costs aforesaid any guardian, who may have, before the return of such summons, finally settled with his ward, or will make it appear to the court that he was prevented by sickness or other unavoidable cause from exhibiting his account as aforesaid.

Guardians, by order of court, to sell the perishable estate of their wards.

13. Every guardian, as soon as conveniently the same may be done, shall, by order of the superior or county courts, sell and dispose of all such goods and chattels of his or her ward as are or may be liable to perish, consume, or be the worse for keeping, (except in the instances hereafter mentioned,) for the most that can be got for the same, by public sale, having first advertised the same at the court house and three other public places in the county, at least twenty days before the sale, in reasonable lots, and shall for enhancing the price thereof give six months credit upon good security given; and such guardian, after the time of such payment is past, shall take and pursue all lawful ways and means to receive and recover the money, upon pain of being answerable for the same; and if the same cannot be received before the orphan entitled to receive such money shall have right to demand it, or such guardian shall be removed from his guardianship, he or she shall and may assign such bond to such orphan, and such assignment shall discharge such guardian for so much against him or her. And where the profits of any orphan's estate shall be more than sufficient to maintain and educate him or her, the guardian of such orphan shall lend the surplus and all other sums of money in his hands, belonging to such orphan, upon bond or note with good and sufficient security to be repaid with interest, which interest such guardian shall account for annually; and to enable him to do so, all the bonds, notes and other obligations which he takes as guardian shall bear compound interest; and when the person or persons to whom such money shall be lent or their securities are likely to become insolvent, such guardian shall use all lawful means to enforce the payment thereof, on pain of being liable for the same as aforesaid; and an assignment of such last mentioned bond in either of the aforementioned cases shall discharge such guardian for so much as is due thereon.

To lend out the money of their wards upon bond or note, to account for interest annually. Bonds to bear compound interest — may be assigned to wards upon their coming of age.

In what cases slaves and stock to be kept on ward's land.

14. Where any orphan shall have lands, and a sufficient number of slaves to cultivate and improve the same, such slaves, unless otherwise ordered by the superior or county courts, shall be employed on the lands and plantations of such orphan; and all necessary horses, cattle, sheep and hogs shall be kept upon such lands and plantations of such orphan until he shall come of age; and he or she shall have the benefit of the increase and shall sustain the loss, if any shall happen. *Provided nevertheless*, that if any such stock grow too numerous, or if it shall be to the advantage of such orphan, his or her guardian shall and may sell, by order of the superior or county court, such part of such stock as such court

Proviso where stock becomes too numerous.

13. 1762, c. 69, s. 10.—1793, c. 391, s. 1.—1816, c. 925.

14. 1762, c. 69, s. 11 and 12.

shall think fit; and all plate shall be preserved and delivered to such orphan, when at age, in kind according to weight and quantity.

15. It shall be the duty of every guardian, where it is not deemed to be the interest of the orphan to employ the slaves of such orphan upon his or her lands and plantations, to hire out the slaves and rent out the lands of such orphan. *Provided always*, that no guardian shall let or farm out any land belonging to any orphan, for a longer term than the orphan be of age, or in other manner than by lease in writing, and that special care be had that the tenant shall improve the plantation, and that he or she keep the houses, orchards and fences thereon, or that shall be erected on the same, in good and sufficient repair, and leave the same so at the expiration of such lease, and that provision be made in such lease for preventing all kind of waste and employing any timber to any other use, than the immediate use of the plantation.

In what cases ward's land and slaves to be rented and hired out.

How land to be rented.

16. All sales, hirings or rentings, made by guardians of their orphans' property, shall be made and conducted in the same manner and under the same rules, regulations and restrictions, and penalties for disobedience, as prescribed for sales of deceased persons' estates made by administrators.

Sales, &c. of ward's estate, how to be made.

17. If the guardian of any orphan shall suffer his or her lands to lapse or become forfeited, or be sold for the non-payment of taxes or other dues, such guardian shall be liable to answer the full value of the lands, so forfeited or sold, unto such orphan at his or her coming of age. And if it shall so happen that any orphan shall not have slaves to cultivate his or her lands, or it is not deemed best that they should do so, and the guardian of such orphan cannot rent the same for sufficient to pay and discharge the taxes and other dues thereof, and there shall not be personal estate sufficient for that purpose, it shall be lawful for such guardian, with the consent of the superior or county court, annually to sell or dispose of, or use so much of the light wood, to box so many pine trees, or to sell so much of the timber on the same, as shall raise sufficient to pay and satisfy the taxes and other dues thereon and no more.

Penalty upon a guardian for suffering his ward's land to lapse or become forfeited by the non-payment of taxes or other dues.

18. When any of the superior or county courts shall know or be informed that any guardian or guardians, by them respectively appointed, or any guardian appointed by will or deed, do waste or convert the money or estate of any orphan to his or their own use, or do in any manner mismanage the same, are about or intend to marry him or her in disparagement, or neglect to educate or maintain any orphan according to his or her degree and circumstances, or where any such guardian or his securities are likely to become insolvent, such court shall have power from time to time, and at all times when they think proper, to make and establish such rules and orders, for the better ordering, managing and securing such estates, and for the better education of and maintaining such orphans, or to appoint another guardian, as they shall think fit and convenient.

Power and duty of the courts, where guardians mismanage their wards' estates, or when they and their sureties are likely to become insolvent.

15. 1762, c. 69, s. 13, amended.  
 16. 1794, c. 413, s. 1 and 2.  
 17. 1762, c. 69, s. 14.  
 18. 1762, c. 69, s. 4, 9 and 16.



Grand jury to present all orphans without guardians, and all abuses of guardians.

19. The grand jury of every county in this State shall, annually at the orphan's court to be holden for their counties respectively, be charged with and present to the justices thereof in writing the names of all orphan children within their county, that they shall know have not guardians appointed them, and are not bound out to some trade or employment, and all abuses, mismanagements and neglect of such guardians as live within their county.

Remedy for sureties of guardians, when such sureties are likely to suffer.

20. Where any person, who is security for the estate of any orphan, shall conceive himself in danger by reason thereof, and petition the court where such security was entered into for relief, it shall be lawful for such court upon petition to them exhibited, forthwith to order summons to issue against the party or parties, with or for whom the petitioner stands bound, returnable to the next court, and thereupon to compel such party or parties to give sufficient other or counter securities, to be approved by the said court, or to deliver the said estate to the said petitioner or such other persons as the court shall direct, or they may and are hereby empowered to make such other order or rule therein, for the relief of the petitioner and better securing such orphan's estate, as to them shall appear just and equitable: *Provided always*, that the court shall take good and sufficient security of the person or persons to whom such estate shall be so committed, in like manner and under the like penalty as is by this act required to be taken of guardians appointed by the court, and every such person shall so exhibit his account and be subject to the rules and orders of the court, in the same manner, to all intents and purposes, as is herein before required of guardians, or they are made subject unto.

Remedy against guardians by petition.

21. In addition to the remedies on their bonds, the same remedies may be had against guardians by petition, either in the superior or county courts, in every respect, as against executors and administrators.

Guardians to be allowed disbursements and expenses, and also commissions.

22. It shall and may be lawful for every guardian to charge in his account all reasonable disbursements and expenses, and if, upon rendering such account, it shall appear to the court that such guardian hath really and *bona fide* disbursed more in one year than the profits of the orphan's estate do amount unto, for the education and maintenance of such orphan, such guardian shall be allowed and paid for the same out of the profits of such orphan's estate in any other year. *Provided always*, that such disbursements be in the opinion of such court suitable to the degree and circumstances of the estate of such orphan. The court shall likewise allow commissions to the guardian for his time and trouble in the management of the orphan's estate, in the same manner and under the same rules, regulations and restrictions as allowances are made to executors and administrators.

Guardians of orphans removing to, or

23. Where any orphan or orphans, residing in any other state or territory, or who may have removed from this to any other

19. 1762, c. 69, s. 17.

20. 1762, c. 69, s. 21 and 22.

21. 1762, c. 69, s. 23.

22. 1762, c. 69, s. 18 and 19.—1799, c. 536, s. 2.

23. 1820, c. 1044, s. 1.

state or territory, shall be entitled to any personal property in this State, by bequest, gift or as the next of kin to any person dying intestate or otherwise, it shall and may be lawful for any guardian or guardians of such orphan or orphans, regularly appointed in the State where they reside, upon producing a copy of his, her or their appointment, properly authenticated, and upon making it appear to the court of the county, in which the property may then be, that security has been given in a sum amply sufficient to cover all the personal estate, to which said orphan or orphans may be entitled, and also the profits of the landed estates if any, to call upon any executor, administrator or guardian, having in his or her possession any personal estate, to which the said orphan or orphans may be legally entitled, or any moneys or debts for which he or she may be liable to account, rents of the landed estate, hire of negroes or otherwise, for a settlement by petition or bill in equity in the usual way, and it shall be the duty of the said executor, administrator or guardian to account with such guardian, so as aforesaid appointed, as fully and completely as they would be bound to account with the orphans themselves were they of lawful age: *Provided*, nothing herein contained shall be construed to compel any executor or administrator to account in a shorter period than they are now by law bound to do, or to exempt such guardians from giving the usual refunding bonds.

residing in other states, how to obtain the personal estate of their wards in this State out of the hands of their guardian in this State.

24. Upon any guardian or guardians producing to the court of the county, in which there may be any personal estate belonging to his or their ward or wards, authenticated copies of his or their appointment by the proper authority of the state or territory, in which the said ward or wards may reside, and it so happens that there is no guardian at the time in the county in which the said estate may then be, it shall be lawful for such guardian or guardians, upon filing in said court authenticated copies of their appointment as guardians, and making it appear to the said court that security has been given as required in the preceding section, to take said property into his or their possession, and to remove it to the state or territory in which their ward or wards may reside.

How to proceed when there is no guardian in this State.

25. Nothing contained in any of the sections of this act shall be construed to restrain or abridge the power of the court of chancery, in any matter or thing relating to orphans or their estates, but the said court may hold, use, exercise and enjoy the same jurisdiction, power and authorities therein, in as full and ample manner to all intents and purposes, as if this act had never been made, any thing herein contained to the contrary notwithstanding.

Power of the court of equity, in relation to orphans and their estates, not to be abridged.

26. It shall be lawful, on application of the guardian of any infant by bill or petition to a court of equity, setting forth facts which, if true, shew that the interest of the infant would be materially and essentially promoted by the sale of any part of such infant's estate, real or personal, for the said court to cause the truth of such facts to be ascertained, and thereupon to decree that a sale be made by

A court of equity may direct a sale of the real or personal estate of infants, if such sale would promote the interest of the infants.

24. 1820, c. 1044, s. 2.

25. 1762, c. 69, s. 26.

26. 1827, c. 33, s. 1.



such person, in such way and on such terms, as the court in its wisdom shall adjudge.

Manner in which such sale shall be made.

How the proceeds to be applied and secured.

27. No sale, made under a decree as aforesaid, shall be valid until the same shall be subsequently ratified by the court ordering the sale ; no conveyance of title shall be made until the said court shall order such conveyance ; the person to make the title shall be designated by the court ; and the proceeds of the sale shall be exclusively applied and secured to such purposes, and on such trusts, as the court, when it ratifies the sale, shall specify and direct : *Provided always*, and it is hereby enacted that whenever, in consequence of a sale as aforesaid, the personal or real estate of the infant is saved from demands, to which in the first instance it might be liable, it shall be the duty of the court to declare and set apart a portion of said personal estate, or real estate thus saved, of equal value to the real and personal estate sold, as property purchased by such sale ; and in all instances of sale under this act, whereby real is substituted by personal, or personal by real property, the beneficial interest in the property acquired shall be enjoyed, alienated, devised and bequeathed, and shall descend and be distributed, as by law the property sold might and would have been, had it not been sold, until a valid disposition, according to the character thus impressed upon it, shall be made thereof by the equitable owner.

27. 1827, c. 33, s. 2.

*Note.*—REFERENCES TO ADJUDGED CASES.

SECT. 1. Long *vs.* Rhymes, 3 Murph. 122.

SECT. 2. Mills *vs.* McAlister, 1 Hay. 303. West *vs.* Kitrell, 1 Hawks, 493. Davis *vs.* Somerville, 4 Dev. 382. Harris *vs.* Richardson, *ib.* 279.

SECT. 11. Branch *vs.* Arrington, 2 Car. Rep. 252. Wood *vs.* Brownrigg, 3 Dev. 420.

SECT. 16. County court of Randolph *vs.* Johnson, 3 Hawks, 238.

SECT. 18. Bray *vs.* Brumsey, 1 Murph. 227.

SECT. 20. Foy *vs.* Bell, 1 Dev. and Bat. 475.

## CHAPTER 55.

# HABEAS CORPUS.

### AN ACT FOR THE BETTER SECURITY OF PERSONAL LIBERTY.

#### SECTION

1. How a writ of habeas corpus may be obtained in vacation.
2. Duty of the officer or other person to whom the writ is directed.
3. Duty of the judge, on the return of the writ.

#### SECTION

4. Application for the writ must be made within two terms after imprisonment.
5. When the superior court is sitting, the writ must be returned in open court.

SECTION

- 6. Penalty on a judge for refusing a writ of habeas corpus.
- 7. Penalty on the officer to whom such writ is directed, for refusing or neglecting to obey it.
- 8. Penalty for again imprisoning a person released on a writ of habeas corpus.

SECTION

- 9. When persons committed for treason or felony shall be entitled to a trial or discharge.
- 10. Same remedy by habeas corpus shall be had by persons imprisoned for other causes than criminal charges.

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 if any person shall stand committed or be detained for any crime, in the vacation time, it shall be lawful for such person, so committed or detained (other than persons convicted, or in execution by legal process,) or any one on his behalf, to complain to one of the judges of the supreme court or to one of the judges of the superior courts of law and equity, and the said judge, on view of the copy of the warrant of commitment, or otherwise on oath that it was denied, is authorized and required, on request in writing by any such person, or any in his behalf, attested and subscribed by two witnesses, who were present at the delivery of the same, to grant a habeas corpus, to be directed to the officer or other persons in whose custody the party shall be, returnable immediately before the said judge.

How a writ of habeas corpus may be obtained in vacation.

2. Whenever any writ of habeas corpus, issued as aforesaid, shall be served on any officer or other person, having in his custody the person in whose behalf such writ is issued, or be left at the jail or prison with any of the under officers, under keepers or deputies of the said officers or keepers, it shall be the duty of the said officer or officers, his or their under officers, under keepers or deputy, or the person having the custody of the person claiming as aforesaid, without delay, unless the commitment were for treason or felony, plainly and specially expressed in the warrant of commitment, to bring or cause to be brought the body of the party so committed or restrained, unto or before the judge of the supreme court or judge of the superior courts of law and equity, by whom the said writ was issued, or such other person, before whom the said writ is made returnable, according to the command thereof, and, in case of the absence of such, before any one of the judges of either of the said courts, together with the true cause of his commitment and detainer or imprisonment.

Duty of the officer or other person to whom the writ is directed.

3. Upon such return being made, within two days after the party being brought before him, the judge before whom the prisoner shall be brought as aforesaid, shall discharge the said prisoner from his imprisonment, as the case may require, either absolutely without bail, or taking his recognizance with one or more sureties in any sum, according to his discretion, having regard to the circumstances of the prisoner and nature of the offence, for his appearance at the next term of the court, wherein the offence is properly cognizable, and then shall certify said writ with the return

Duty of the judge, on the return of the writ.

1. 31 Ch. 2, c. 2, s. 2.  
 2. 31 Ch. 2, c. 2, s. 1.  
 3. 31 Ch. 2, c. 2, s. 3.



thereof, and the recognizance into such court, unless it be made appear to the said judge that the party so committed is detained upon a legal process, order or warrant out of some court that has jurisdiction of criminal matters, or by some warrant, signed and sealed with the hand and seal of any of the judges of the supreme court or the superior courts of law and equity, or some justice or justices of the peace, for such matters or offences for the which by law the prisoner is not bailable.

Application for the writ must be made within two terms after imprisonment.

4. If any person shall have wilfully neglected for the space of two whole terms, after his imprisonment, of the superior court of the county, in which he may be imprisoned, to pray a habeas corpus for his enlargement, he shall not have a habeas corpus to be granted in vacation time in pursuance of this act.

When the superior court is sitting, the writ must be returned in open court.

5. While the superior court of law for the county, where the prisoner is detained, shall be in session, no person shall be removed from the common jail upon any habeas corpus granted in pursuance of this act, but upon such habeas corpus shall be brought before the judge in open court, who shall thereupon do what to justice shall appertain; but after the term of the said court is ended, any person detained may have his habeas corpus according to the directions of this act.

Penalty on a judge for refusing a writ of habeas corpus.

6. If any of the judges of the supreme court or of the superior courts of law, in the vacation time, upon view of the copy of a warrant of commitment or detainer, or on oath made that such copy was denied, shall deny any writ of habeas corpus, by this act required to be granted, being moved for as aforesaid, he shall forfeit to the party grieved two thousand five hundred dollars.

Penalty on the officer to whom such writ is directed, for refusing or neglecting to obey it.

7. If any officer or other person, to whom a writ of habeas corpus shall be directed as aforesaid, shall neglect or refuse to make the returns as aforesaid, or to bring the body of the prisoner according to the command of the said writ, without delay, or shall not, within six hours after demanded, deliver a true copy of the commitment or cause of detainer, he shall, upon conviction by indictment, forfeit for the first offence five hundred dollars, and for the second offence one thousand dollars, and be rendered incapable to hold his office.

Penalty for again imprisoning a person released on a writ of habeas corpus.

8. No person, who shall be set at large upon any habeas corpus, shall be again imprisoned for the same offence by any person whatsoever, other than by the legal order and process of such court, wherein he shall be bound by recognizance to appear, or other court having jurisdiction of the cause, under the penalty of two thousand five hundred dollars, to be recovered by action of debt, in any court having jurisdiction of the same, by the party aggrieved, to his own use.

When persons committed for treason or felony shall be entitled to a trial or discharge.

9. If any person, who shall be committed for treason or felony, plainly and specially expressed in the warrant of commitment,

4. 31 Ch. 2, c. 2, s. 4.
5. 31 Ch. 2, c. 2, s. 8.
6. 31 Ch. 2, c. 2, s. 10.
7. 31 Ch. 2, c. 2, s. 5.
8. 31 Ch. 2, c. 2, s. 6.
9. 31 Ch. 2, c. 2, s. 7.

upon his prayer or petition in open court to be brought to his trial, shall not be indicted some time in the next term (after such commitment) of the court having jurisdiction of his offence, the judge of the said court shall, upon notice in open court the last day of the term, set at liberty the prisoner upon bail, unless it appear upon oath that the witnesses for the State could not be produced the same term; and if such prisoner, upon his prayer or petition as aforesaid, shall not be indicted and tried the second term, he shall be discharged from his imprisonment.

10. When any person shall be imprisoned or otherwise restrained of his liberty, for any other cause than the commission of a criminal offence, unless he shall have been committed in execution upon some legal civil process, or upon some mesne process in a civil action, on which he was liable to be arrested and imprisoned, and on which excessive and unreasonable bail shall not have been required, such person shall be entitled, on application by himself or any person in his behalf, and upon its appearing by affidavit that there is a reasonable ground for the complaint, to the same remedy by writ of habeas corpus, subject to the same rules, regulations and restrictions in every respect, as are prescribed in the preceding section of this act; and the judge, to whom application is so made, and the officer or other person, to whom such writ may be directed, shall be subjected to the same penalties and punishments for refusal or neglect to discharge their several duties as are there prescribed.

Same remedy by habeas corpus shall be had by persons imprisoned for other causes than criminal charges.

10. 56 Geo. 3, c. 100.—Amendment.

*Hotchkiss - 1844.5. Ch 5*

**CHAPTER 56.**

**HUNTING.**

AN ACT CONCERNING HUNTING.

SECTION

1. Not lawful to kill any wild deer between the twentieth of February and the fifteenth of August.

SECTION

2. Not lawful to hunt on the lands of another after advertisement posted up forbidding it—Time within which to sue.

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 not be lawful for any person to kill or destroy any deer, running wild in the woods or unfenced grounds in this State,

Not lawful to kill any wild deer between the 20th of

1. 1784, c. 212, s. 4 and 7.



February and  
the 15th of  
August.

by gun or otherwise, between the twentieth day of February and the fifteenth day of August then next succeeding in each year, unless on his own lands ; and if any person shall kill or otherwise destroy any deer, within the time before described and contrary to the meaning and intent of this act, every such person shall forfeit and pay for each and every deer, so unlawfully killed or destroyed, the sum of four dollars, to be recovered before any justice of the peace, and applied one half to the informer and one half to the poor of the county ; and in case any slave shall kill or destroy any deer, between the twentieth day of February and the fifteenth day of August in any year, the owner of such slave shall be liable to pay the sum of four dollars for each deer so unlawfully killed or destroyed, to be recovered and applied as in the preceding clause of this section.

Not lawful to  
hunt on the  
lands of another  
after advertisement  
posted up forbid-  
ding it.

2. It shall not be lawful for any person to hunt, with a gun or with dogs, on the lands of any other person, without leave obtained from the owner of said land, under the penalty of forfeiting ten dollars for every offence, to be recovered by the owner before any justice of the peace of the county where such offence is committed or the offender resides, and applied one half to his own use and one half to the use of the poor of the county : *Provided*, that no such recovery shall be had for such offence, unless the owner of the land shall, by advertisement posted up in two or more public places, have forbid the person so hunting by name, or all persons generally, to hunt on his land, previous to the commission of the offence : *Provided also*, that no recovery shall be had in any case whatever, unless the prosecution is commenced within one month after the offence is committed.

Time within  
which to sue.

2. 1784, c. 212, s. 5 and 7, amended.

## CHAPTER 57.

# IDIOTS AND LUNATICS.

### AN ACT CONCERNING IDIOTS AND LUNATICS.

#### SECTION

1. County courts to appoint guardians to idiots and lunatics—How idiocy or lunacy to be ascertained.
2. When county court may order a sale of the real estate of idiots or lunatics.
3. For what purpose and in what man-

#### SECTION

- ner the court of equity may order a sale of the real estate of an idiot or lunatic—Provisos.
4. Court of equity may order a sale where the idiot's or lunatic's land is wanted for public purposes—Proviso.

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 and may be lawful for every county court, whenever

1. 1784, c. 223.

any idiot or lunatic, possessed of property either real or personal, shall be within the jurisdiction thereof, to appoint him or her a guardian, taking bond for the faithful administration of the trust reposed in him or her, in the same manner as bonds are taken from the guardians of orphans, and such guardians when so appointed shall continue during the pleasure of the court, and shall have the same powers to all intents, constructions and purposes, and shall be subject to the same rules, orders and restrictions as guardians of orphans appointed by the court, such idiocy or lunacy to be ascertained by the inquisition of a jury, by virtue of a writ to be issued by such court to the sheriff of the county for that purpose.

County courts to appoint guardians to idiots and lunatics.

How idiocy or lunacy to be ascertained.

2. Whenever it shall be made to appear to any of the county courts, (seven justices at least being present) either by the wardens of the county or the guardians of any idiot or lunatic, that the personal estate of such idiot or lunatic in such county has been exhausted, or is insufficient for his or her support, and that such idiot or lunatic is likely to become chargeable on the parish, in either of such cases the said county courts are hereby empowered to make an order for the sale or for the renting of the real estate of such idiot or lunatic, or any part thereof, in such manner and upon such terms as they may deem advisable, and all sales, made in pursuance of this act, shall be valid to all intents and purposes to convey the whole interest and estate directed to be sold by the county courts as aforesaid.

When county court may order a sale of the real estate of idiots or lunatics.

3. Whenever it shall appear to the satisfaction of a court of equity, upon the petition of the guardian of any idiot or lunatic, that a sale of any part of the real or personal estate of such idiot or lunatic is necessary for his or her maintenance, or for the discharge of debts unavoidably incurred for his or her maintenance, or whenever the court shall be satisfied that the interest of the idiot or lunatic would be materially and essentially promoted by the sale of any part of the estate, real or personal, of such idiot or lunatic, it shall be lawful for such court to decree a sale thereof, to be made by such person, in such way and on such terms as the court in its wisdom shall adjudge: *Provided*, that said court may, if it think proper, order said petition to be filed and its order of sale to be suspended until the next of kin or presumptive heirs at law of such idiot or lunatic have been summoned to shew cause against said petition, if any they have, either by summons personally served on them or by advertisement, as in other cases of petition notices and advertisements are ordered to be made: *Provided also*, that no sale, made under a decree as aforesaid, shall be valid until the same shall be subsequently ratified by the court ordering the sale; that no conveyance of title shall be made until the said court shall order it; that the person to make title shall be designated by the court; and that the proceeds of the sale shall be exclusively applied and secured to such purposes and on such trusts as the court, when it ratifies the sale, shall specify and direct: *Provided further*, that whenever in consequence of a sale as afore-

For what purpose and in what manner the court of equity may order a sale of the real estate of an idiot or lunatic.

Provisos.

2. 1801, c. 559.

3. 1817, c. 948, amended.



said the personal or real estate of the idiot or lunatic is saved from demands, to which in the first instance it might be liable, it shall be the duty of the court to declare and set apart a portion of said personal estate, or real estate thus saved, of equal value to the real and personal estate sold, as property purchased by such sale; and in all instances of sale under this act, whereby real is substituted by personal, or personal by real property, the beneficial interest in the property acquired shall be enjoyed, alienated, devised and bequeathed, and shall descend and be distributed, as by law the property sold might and would have been, had it not been sold, until a valid disposition, according to the character thus impressed upon it, shall be made thereof by the equitable owner.

Court of equity may order a sale, where the idiot's or lunatic's land is wanted for public purposes.

4. Whenever the guardian of any person *non compos mentis* shall state by bill or petition, on oath or affirmation, to a court of equity, that the land or lands of his or her ward are required for public purposes, and that the interest of the person so being *non compos mentis* and of all others who may be concerned therein, will be promoted by a sale thereof, the same proceedings shall and may be had, as are directed and prescribed by law in the case of sales ordered to be made on account of any joint tenancy or tenancy in common: *Provided nevertheless*, that the proceeds of the sale of the said real estate shall have all the attributes of said real estate, and shall descend and be distributed as real estate should do.

Proviso.

4. 1819, c. 1022.

## CHAPTER 58.

# INSOLVENT DEBTORS.

### AN ACT FOR THE RELIEF OF INSOLVENT DEBTORS.

#### SECTION

1. Debtors remaining in close prison twenty days, may prefer a petition to two justices, or to the county court, or to a judge of the superior or supreme court, in or out of court—Creditors to be notified—Oath to be taken by such debtors—Debtors to be forever discharged of executions against the body for the debts sued for and costs.
2. Proceedings, when out of court, to be put in writing, returned to court, and recorded.
3. Justices may discharge debtors when committed by process from the court of another county.

#### SECTION

4. Debtors remaining in close prison twenty days, may file a schedule—Proceedings thereon—Oath to be taken by a debtor filing a schedule.
5. Debtors filing schedule and taking the oath, to be discharged.
6. Jailers to furnish debtors with food when required, and if the debtor is unable to pay, may demand his fees for the same of the creditor—Jailers, after twenty days, may notify creditors and demand security for their fees.
7. Debtors taken upon a *ca. sa.*, or in custody by surrender of bail after judgment, for debts contracted since the

1838.9. ch 23. discharged Insol. Prisoners  
 1840.1. ch 29. 32. 33. 34  
 1844.5. ch 31. 32.

SECTION

SECTION

- 1st May, 1823, how to procure their discharge—To give bond, with security for their appearance at court—Proceedings thereupon.
8. Debtor tendering bond, to be discharged.
  9. Surety may surrender his principal.
  10. Debtor, having given ten days' notice, shall, upon motion, be permitted to take the oath for the relief, &c.—If creditor suggests fraud, issue to be made up—Debtor may be examined upon oath—Appeal allowed.
  11. When the jury finds fraud, the debtor to be imprisoned until he makes a full and fair disclosure—Upon making such disclosure, may take the oath.
  12. Debtor to file schedule with the clerk ten days previous to the sitting of the court.
  13. When creditor resides out of this State, to whom and how the debtor may give notice.
  14. Property, debts &c. contained in any

- schedule, to vest in the sheriff of the county where such schedule may be filed—Sheriff's duty thereupon.
15. Court to appoint commissioners to divide the debtor's effects among his creditors.
  16. Debtor, after his discharge, not to be arrested again, but an execution may issue against his property afterwards acquired.
  17. Debtor swearing falsely, to be guilty of perjury.
  18. No female to be imprisoned for debt.
  19. Debtor having taken the benefit of prison bounds, may take the benefit of this act without going into close prison.
  20. Any creditor notified, may suggest fraud, and any other creditor may make himself a party to the issue—Any one or more of the creditors may appeal without the others.
  21. After issue made up, the debtor shall not discharge himself, but by trial or consent.

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 if any person or persons, as well free persons of color as others, shall be taken or charged on mesne process or execution for any debt, and shall have remained in prison by the space of twenty days, it shall be lawful for two justices of the peace, or the county court of pleas and quarter sessions, or any one of the judges of the superior or supreme courts of this State, either in or out of court, upon petition of such prisoner under his or their hands, whereof notice shall be given to the person or persons, his or their executors, administrators, attorneys, or agents, at whose suit such prisoner or prisoners shall be imprisoned, to require the sheriff, jailer or keeper of any prisoner within their respective jurisdictions, to bring before such justices of the peace, county court, or judge of the superior or supreme court issuing such warrant, either in or out of court, the body of any person being in prison as aforesaid, together with a list of the several writs, mesne processes and executions, with which he or they is or are charged in the several jails aforesaid, which warrant every such sheriff, jailer or keeper is hereby commanded to obey, and such prisoner or prisoners coming before the said justices or judges (the creditor or creditors, if resident in this State, at whose suit he is confined, being first personally summoned, according to the directions in this act,) if he or they have no visible estate, real or personal, and shall make oath (or affirmation as the case may be,) before the said justices of the peace, or county court, or judge of the superior or supreme

Debtors remaining in close prison twenty days, may prefer a petition to two justices, or to the county court, or to a judge of the superior or supreme court, in or out of court. Creditors to be notified.

Oath to be taken by such debtors.

1. 1773, c. 100, s. 1.—1810, c. 802.—1808, c. 746, s. 2.—1810, c. 797.—1830, c. 33.



court respectively, issuing such warrant, that he hath not the worth of ten dollars in any worldly substance, either in debts owing to him, or otherwise howsoever, over and above his wearing apparel, one bed and its necessary furniture, one wheel and cards, also one loom, working tools and arms for muster, one bible and testament, one hymn book, and one prayer book, and all necessary school books, and that he hath not at any time since his imprisonment or before, directly or indirectly, sold, assigned, or otherwise disposed of, or made over in trust for himself or otherwise, any part of his real or personal estate, whereby to have or expect any benefit or profit to himself, or to defraud any of his creditors, to whom he is indebted, and if there be no person present that can prove the contrary, then such person, by such court or justices, without form of trial, shall be immediately set at liberty, and shall stand forever discharged of all executions against his body, for such debts so sued for and all costs of suit.

Debtors to be forever discharged of executions against the body for the debts sued for and costs.

Proceedings, when out of court, to be put in writing, returned to court, and recorded.

2. The said justices of the peace and judge of the superior and supreme court respectively, before whom such prisoner or prisoners shall, upon oath or affirmation, have discharged themselves, when the proceedings are before them out of court, shall put the same in writing, under their hands, and return the same into court from whence the mesne process or execution issued, and the proceedings, in case of a discharge from a *ca. sa.* issued by a justice of the peace, shall be returned to the next county court, there to be kept on record, under the penalty of ten dollars for each justice or judge, for such omission and neglect, to be paid to the person injured by order of said court.

Justices may discharge debtors when committed by process from the court of another county.

3. The justices of the peace of any county shall and may legally cause to be brought before them any person confined for debt within the jail of their county, and administer to him the oath prescribed for the relief of insolvent debtors, and grant him a discharge, as well when the execution, under which the person of said debtor is confined, has issued from the court of another county, as where it issued from the court of their own county: *Provided*, that nothing in this section shall be construed to dispense with the notice which the first section of this act requires to be served on the creditor or creditors of such debtor.

Debtors remaining in close prison twenty days, may file a schedule. Proceedings thereupon.

4. If any person or persons shall be taken or charged in mesne process or execution for any sum, and shall have remained in prison by the space of twenty days, and shall have any estate, real or personal, and be minded to deliver up his or their effects to his or their creditors, it shall be lawful for such prisoner to prefer a petition to the court, from whence the process issued, setting forth the cause of imprisonment and an exact account of his or their estate and all circumstances relating thereto, which petition subscribed by him and schedule shall be lodged with the clerk of the said court, from which such process issued, twenty days at least before the next succeeding court. And upon such petition so

2. 1773, c. 100, s. 2.

3. 1816, c. 907.

4. 1773, c. 100, s. 3.—1809, c. 766.

filed, the clerk of the said court shall issue, under his hand and seal, a copy of the said schedule and a notice to the creditor or creditors, at whose suit such prisoner is or shall be confined, setting forth the substance of the said petition and summoning them to attend the next succeeding court, to shew cause, if any they have, why the prayer of the said petitioner should not be granted, which notice being duly served upon the person or persons, his, her or their executors, administrators, attorney or agent, at whose suit such prisoner or prisoners shall be imprisoned, ten days at least before the sitting of the said court, the court shall cause the prisoner or prisoners to be brought before them, and if the said creditor or creditors, at whose suit he is imprisoned, shall appear, or being duly summoned shall fail to appear, the court shall proceed to examine the nature of the said petition in a summary way, and shall tender to such person an oath (or affirmation as the case may be) to the effect following :

“I A. B. in the presence of Almighty God, solemnly swear, (or affirm,) profess and declare that the schedule now delivered, and by me subscribed, doth contain, to the best of my knowledge and remembrance, a full, just, true and perfect account and discovery of all the estate, goods and effects, unto me any wise belonging, and such debts as are to me owing, or to any person in trust for me, and of all securities and contracts, whereby any money may become hereafter payable or any benefit or advantage accrue to me or to my use, or any other person or persons in trust for me, and that I, or any other person or persons in trust for me, have not land, money or stock or any other estate, real or personal, in possession, reversion or remainder, of the value of the debt or debts with which I am charged in execution, and that I have not directly or indirectly sold, lessened or otherwise disposed of in trust, or concealed, all or any part of my lands, money, goods, stock, debts, securities, contracts or estate, whereby to secure the same, to receive or expect any profit or advantage thereof, or to defraud or deceive any creditor or creditors, to whom I am indebted, in any wise howsoever : so help me God.”

Oath to be taken by a debtor filing a schedule.

5. If such prisoner take such oath (or affirmation) and the court be convinced of the truth thereof, the schedule so subscribed being filed with the clerk of the court, for the better information of the creditors of such prisoner, then it shall be lawful for the court, before whom such oath was taken, by warrant, to command the sheriff, jailer or keeper of any prison forthwith to set at liberty such prisoner, which warrant shall be a sufficient discharge to such sheriff, jailer or keeper, and shall indemnify him or them against any escape or escapes, or action or actions whatsoever, which shall or may be brought, commenced, or prosecuted against him or them by reason thereof ; and if any such action shall be commenced against any sheriff or other officer for performing his duty in pursuance of this act, such sheriff or other officer may plead the general issue, and give this act in evidence.

Debtors, filing schedule and taking the oath, to be discharged.



Jailers to furnish debtors with food when required, and if the debtor is unable to pay, may demand his fees for the same of the creditor.

Jailers, after twenty days, may notify creditors, and demand security for their fees.

Debtors taken upon a *ca. sa.* or in custody by surrender of bail after judgment, for debts contracted since the first May, 1823 how to procure their discharge.

To give bond with security for their appearance at court.

Proceedings thereupon.

6. Whenever any debtor shall be actually confined within the walls of a prison, by reason of mesne process for debt, *capias ad satisfaciendum*, or surrender by bail after judgment, it shall be the duty of the jailer to furnish said prisoner with necessary food during his confinement, should the prisoner require the same, and the jailer shall be authorized to demand the same fees therefor, as are allowed by law for keeping other prisoners, and may, if the prisoner be unable to discharge them, recover the same from the party at whose instance such debtor was confined in jail; and when the debtor shall have remained in jail for the space of twenty days, it shall be lawful and sufficient, for the sheriff or jailer to give notice thereof to the plaintiff, his agent or attorney, and to demand security of him for the prison fees, that may arise after the expiration of twenty days, and if he shall fail to give such security, then to discharge such debtor out of custody.

7. When any debtor shall be taken upon any *capias ad satisfaciendum*, or be in custody by surrender of bail after judgment, for any debt, contracted, either by note, bill, bond, open account or otherwise, since the first day of May, 1823, and shall be desirous to take the benefit of the oath for the relief of insolvent debtors, or of rendering a full and fair schedule of his property, it shall and may be lawful for such debtor to tender to the sheriff of the county, his lawful deputy, coroner or any constable, by whom he may have been taken, a bond payable to the party at whose instance the arrest was made, with good and sufficient securities in twice the amount of the debt, conditioned for his appearance at the next court, to which the execution shall be returnable, then and there to stand to and abide by such proceedings as may be had by the court in relation to his taking the benefit of said act, and in case of failure to appear, judgment shall be rendered up *instanter* upon said bond against the principal and his securities, to be discharged upon the payment of the debt and costs, and where an execution issues thereon, neither of the defendants shall be entitled to the benefit of the provisions of this section: *Provided*, that if either of the parties to the said bond shall be desirous to have an issue made up and submitted to a jury, a jury shall be immediately empanelled to try such issue, and the plea of *non est factum* shall only be received upon the party making oath of its verity: *And provided further*, if it shall be made appear satisfactorily to said court that said debtor is prevented from attending court by sickness or other cause, to be judged of by the court, the case shall be continued over to the next court, at which term the same proceedings shall be had as if he had appeared at the first term: *And provided further*, if such debtor shall die in the mean time, it shall be an absolute discharge of said bond: *Provided nevertheless*, that when any debtor shall be taken as aforesaid, within twenty days of the sitting of said court, said bond shall be conditioned for his appearance at the succeeding term of the court aforesaid: *Provided always*, that when any *capias ad satisfaciendum* shall be directed to any con-

6. 1773, c. 100, s. 8 and 9.—1821, c. 1103, amended.

7. 1822, c. 1131, s. 1.—1834, c. 8, s. 2.

stable and he shall take bond as aforesaid, such bond shall be conditioned for the defendant's appearance at the county court of the county in which such constable resides : and it shall be the duty of all officers, having in their possession any such bond, to return the same, together with all the papers they may have appertaining to the case, on or before the second day of the court to which the same is returnable, under the penalty of fifty dollars, to be recovered at the suit and for the benefit of the person aggrieved.

8. Upon such debtor tendering such bond as in the last section mentioned, it shall be the duty of the sheriff, deputy, coroner, or constable, as the case may be, to release him from confinement or custody. Debtor tendering bond, to be discharged.

9. It shall be lawful for the said security to surrender the principal in discharge of himself, in open court of the county to which the *capias ad satisfaciendum* is returnable, or to the sheriff or other officer, as the case may be, of said county. And the security is hereby authorized to exercise all the power, which by law special bail have over their principal. Surety may surrender his principal.

10. Upon the appearance of such debtor at the court aforesaid, it shall be lawful for him, either in person or by attorney, to move the court to be admitted to take the oath prescribed for the relief of insolvent debtors, or to swear to the schedule previously filed with the clerk of said court, agreeably to the provisions of this act hereinafter contained ; and it shall be the duty of said court, upon such debtor making it appear to them that at least ten days' notice before the court has been given in writing to his creditors or their agent or attorney, of the intention to avail himself of the benefit of this act, to administer the oath herein prescribed, or to swear him to the schedule aforesaid, (as the case may be,) and to direct the clerk to make an entry of the same upon his minutes, which shall exempt the body of such debtor from imprisonment for debt, in all cases where notices may have been given to the creditors, which notices shall be filed with the clerk of said court :

*Provided always*, if any creditor or creditors shall suggest any fraud or concealment of any property, money or effects, it shall be the duty of the court to direct an issue to be made up and tried by a jury, at the first term, before such debtor is sworn, and on such trial, it may be lawful for the creditor to have the debtor examined, on oath, before the said jury. *Provided further*, that if either of the parties shall be unprepared for the trial of such issue, the court may continue the same, under the same rules and regulations by which suits at law are now continued. And if the said jury shall find that there is any fraud or concealment, or if said debtor shall fail or refuse to answer upon oath, or if the said debtor shall fail to make it appear to the court that he has given the necessary notice to the creditor or creditors, at whose instance he may have been arrested, or to his or their agent or attorney, then and in that case the said debtor shall be deemed in the custody of the sheriff, and

Debtor, having given ten days' notice, shall, upon motion, be permitted to take the oath for the relief, &c.

If creditor suggests fraud, issue to be made up.

Debtor may be examined upon oath.

8. 1822, c. 1131, s. 2.

9. 1822, c. 1131, s. 3.

10. 1822, c. 1131, s. 4.—1835, c. 12.



the court shall adjudge that he be imprisoned, until a full and fair disclosure of all the money, property or effects be made by said debtor, and until he has given the necessary notice as aforesaid to be judged of by the court, which he may do at the next succeeding court: *Provided*, that if either party to the issue, made up under the provisions of this section, is dissatisfied with the verdict of the jury, he may appeal as in other cases.

Appeal allowed.

When the jury finds fraud, the debtor to be imprisoned until he makes a full and fair disclosure.

Upon making such disclosure, may take the oath.

11. Where any debtor, upon the finding of the jury that there is fraud or concealment, shall be adjudged to be imprisoned until a full and fair disclosure be made, such debtor, upon making a full and fair disclosure in writing of all the money, property or effects, and upon giving the necessary notice, shall be discharged according to the provisions of the last section of this act, by taking the following oath:

“ I, A. B. do solemnly swear that the disclosure, now by me made and subscribed, doth contain a full and true account and discovery of all the estate, goods and effects, unto me in any way belonging, and of all debts unto me owing, or to any person in trust for me, and of all securities or contracts, whereby any money may become payable or any benefit accrue to me, or to any person in trust for me, and that I or any person in trust for me have not any land, money, or other estate in possession, reversion or remainder, not herein fully disclosed, and that I have not, directly or indirectly, sold, assigned or otherwise disposed of in trust, or concealed, any land, money or other estate, not herein fully disclosed, whereby to secure the same, or to expect or receive any profit or advantage: so help me God.” *Provided always*, that should the creditor or creditors, at whose instance the issue aforesaid was made up, think that a full and fair disclosure is not made by said debtor in writing, it shall and may be lawful for the creditor or creditors to have an issue made up, under the direction of the court, and tried in the same manner, as in cases where there is a suggestion of fraud or concealment of property, money or effects; and in the event of the jury finding against the debtor, his imprisonment shall be continued as before.

Debtor to file schedule with the clerk ten days previous to the sitting of the court.

12. When any debtor, taken upon any *capias ad satisfaciendum* or in custody as aforementioned, shall be desirous to render a full and fair schedule of his property, money or effects, he shall file the same with the clerk of the court, at least ten days before the sitting of the court, at which he proposes to avail himself of the benefit of the tenth section of this act, and upon his being permitted to swear to the said schedule, the same proceedings shall be had thereon as may be had on schedules filed under the former provisions of this act.

When creditor resides out of this State, to whom and how the debtor may give notice.

13. When the party, at whose instance any debtor may be arrested or be in prison shall reside out of the State, the notice required by this act to be served upon him may be served on his attorney or agent, or the constable, who has charge of the claim;

11. 1830, c. 26, s. 1 and 4.

12. 1822, c. 1131, s. 5.

13. 1773, c. 100, s. 8, amended.

and in case there be no agent or attorney known to the debtor, who resides in the county, in which said debtor intends to apply for relief under this act, the debtor may advertise in any newspaper in this State ; and such service on the constable, agent or attorney, or advertisement in the newspaper, as aforesaid, shall be sufficient notice as to the creditor or creditors, at whose instance the debtor may be arrested or imprisoned.

14. All the lands, tenements and hereditaments, which shall be contained in any schedule filed under any of the provisions of this act, for such use, interest, right or title as such prisoner or debtor then shall have in the same, which he may lawfully depart withal, and all goods and chattels whatsoever, and all debts and demands due to such debtor, and set forth and described in said schedule, shall vest in the sheriff of the county, where such schedule may be filed ; and such sheriff is hereby authorized and required to sell at public vendue, and convey the said property, real and personal, to any person or persons whatsoever, for the best price that can be got for the same, and to receive the money arising from such sales, and to sue for and collect debts and demands contained in said schedule, in his own name ; and the money so received and collected, the said sheriff shall upon oath pay into the office of the court of pleas and quarter sessions, where the said schedule may be filed, to be distributed as hereinafter mentioned. *Provided always*, that such prisoner or debtor shall be entitled to retain such articles as are excepted in the oath prescribed for insolvent debtors.

Property, debts, &c. contained in any schedule to vest in the sheriff of the county where such schedule may be filed.

Sheriff's duty thereupon

15. The judge of the superior court, or the court of pleas and quarter sessions, where any schedule may be filed as aforesaid, shall appoint two commissioners, who shall have full power to examine into the claims of all and singular the creditors of the person or persons imprisoned, as well those at whose suit he was committed as of all others ; and the said commissioners shall, by advertisement at the court house, or in some newspaper or gazette if they deem it necessary, make known the time at which they propose to examine such claims, which shall be within sixty days after their being appointed, and upon such creditors, their executors or administrators, agents or attorneys appearing before them and satisfying them of the justice of their claims, they shall proceed to make distribution amongst each and every of the creditors so appearing, in proportion to their respective demands ; and the clerk of the said court is hereby directed to pay such moneys, so received from such insolvent's estates, into the hands of the said commissioners for the purposes aforesaid.

Court to appoint commissioners to divide the debtor's effects among his creditors.

16. No person shall be arrested or imprisoned for any debt existing at the time of his discharge from prison, under any of the provisions of this act, where due notice may have been given to the creditor at whose instance he was imprisoned, and proved and filed at the time of his discharge ; and no person, giving bond and

Debtor, after his discharge, not to be arrested again, but an execution may issue against his property afterwards acquired.

14. 1773, c. 100, s. 5.—1827, c. 44.—1830, c. 26, s. 2.

15. 1773, c. 100, s. 6.

16. 1773, c. 100, s. 7.—1822, c. 1131, s. 4.—1793, c. 380, s. 1.



being discharged without commitment to close prison, as prescribed in this act, shall be arrested or imprisoned by any creditor, whose debt existed at the time of his discharge, and who may have had due notice thereof: but in all cases of the discharge of an insolvent debtor, under any of the provisions of this act, execution may issue against any estate afterwards acquired by him.

Debtor swearing falsely, to be guilty of perjury.

17. If any person, who shall take any of the oaths prescribed in this act for the relief of insolvent debtors, shall upon indictment of perjury be convicted thereon, he shall suffer all the pains of wilful perjury, and shall never after have any of the benefits of this act, but may be sued and imprisoned, as though he had never taken the oath of insolvency.

No female to be imprisoned for debt.

18. No female whatever shall be imprisoned for debt.

Debtor having taken the benefit of prison bounds, may take the benefit of this act without going into close prison.

19. Any debtor, who may be in prison on account of debt, whether under mesne process, or otherwise, may take the benefit of the prison bounds, by giving security as required by law, and shall not be compelled to go into close prison in order to avail himself of this act. *Provided however*, and it is hereby expressly declared, that any debtor, against whom an issue is found, or who for other cause is adjudged to be imprisoned until he make a full and fair disclosure of his property, shall not be entitled to the benefit of the prison bounds, but shall remain in close prison, until discharged by being permitted to take the oath of insolvency.

Any creditor notified may suggest fraud, and any other creditor may make himself a party to the issue.

20. Any creditor notified may suggest fraud, and the court may permit as many other of the creditors, who may have been notified, as shall choose, to make themselves parties to the issues, but the debtor shall not be compelled to answer the suggestions of fraud in more than one case: and if any creditor, where there are more creditors than one, shall be dissatisfied with the judgment of the court, he, or as many as choose, may appeal, notwithstanding some of the creditors, who may have made themselves parties to the issues, may decline to appeal, and the suit shall be prosecuted afterwards by the appealing creditors.

Any one or more of the creditors may appeal without the others.

After issue made up, debtor shall not discharge himself, but by trial or consent.

21. After an issue made up, the debtor shall not be at liberty to discharge himself, as to the creditors in that issue, except by trial and verdict in the same, or a discharge by consent.

17. 1793, c. 100, s. 10.

18. 1823, c. 1209.

19. 1818, c. 964, amended.

20. Amendment.

21. Amendment.

*Note.*—REFERENCES TO ADJUDGED CASES.

SECT. 1. *Burton vs. Dickens*, 3 Murph. 103. *Howard vs. Pasteur*, ib. 270. *Jordan vs. James*, 3 Hawks, 110.

SECT. 7. *Williams vs. Yarbrough*, 2 Dev. 12. *Arrington vs. Bass*, 3 Dev. 95. *Speight vs. Wooton*, ib. 327.—*Crain vs. Long*, ib. 371.—*Page vs. Winningham*, 1 Dev. and Bat. 113.

SECT. 9. *Mooring vs. James*, 2 Dev. 254.

SECT. 10. *Folsome vs. Gregory*, 1 Dev. 233.

CHAPTER 59.

INSPECTIONS.

AN ACT FOR ESTABLISHING PUBLIC LANDINGS AND PLACES OF INSPECTION, AND FOR THE APPOINTMENT OF INSPECTORS AND REGULATION OF INSPECTIONS.

SECTION

1. Former places of landing and inspection continued—And county courts may appoint others
2. County courts to appoint inspectors.
3. Inspectors to give bonds—Remedy on the bonds.
4. Inspectors to attend at the times and places appointed.
5. No exporting merchant to be an inspector.
6. Not more than six inspectors to be appointed in any town.
7. No inspector allowed to appoint a deputy—Proviso in favor of flour inspectors.
8. Inspectors to hold their offices during good behavior—Proviso as to Wilmington—How inspectors shall be removed for misbehavior.
9. How vacancies in the office of inspectors to be filled, when the county court is not in session.
10. Penalty for acting as inspector before qualification.
11. Duty of inspectors of tobacco.
12. Inspectors to give a manifest of each hogshead.
13. Owners of condemned tobacco may have it reinspected after a certain time.
14. No tobacco to be exported without inspection.
15. Penalty for falsely branding a hogshead of tobacco.
16. Punishment for forging, &c. a stamp, note, or receipt for tobacco—Manner of proceeding when a note is lost.
17. How a person demanding his tobacco, alleged to have been injured since inspection, shall proceed.
18. County court may appoint turners up and coopers of tobacco.
19. Inspectors to report to court the behavior of turners up, &c. of tobacco

SECTION

- Any person may turn up, &c. his own tobacco.
- 20. County court to appoint pickers of tobacco.
- 21. No tobacco inspector to buy tobacco.
- 22. County courts may build or rent warehouses, &c.
- 23. When a tobacco warehouse is burned, the inspector shall not be liable on his notes, &c.
- 24. County courts to regulate warehouse rent, &c.
- 25. How warehouses may be repaired or rebuilt.
- 26. Private warehouses to have the same rules as to rent, &c.
- 27. No inspector of flour shall sell or trade in flour, or buy, except for his own use.
- 28. Degrees of flour.
- 29. What flour shall pass inspection.
- 30. Penalty on miller, manufacturer or seller, for not complying with the foregoing provisions.
- 31. Inspectors may, in certain cases, unpack the barrels of flour.
- 32. Persons selling barrels of flour, not containing the requisite quantity, to be liable for the deficiency.
- 33. How casks of flour to be inspected.
- 34. Owner of flour, dissatisfied with the inspection, how to obtain a re-examination.
- 35. Penalty for exporting flour not passed by inspector.
- 36. Penalty on master, &c. for receiving on board his ship uninspected flour—Proviso.
- 37. Cask of flour once inspected, not liable to be reinspected in sixty days.
- 38. Cask not to be condemned for short measure in certain cases, if it contain one hundred and ninetysix pounds.

*1840.1 - ch 40-41.*  
*1842.3. 29. 40-41.*  
*1844.5. ch 49.*  
*1846.7. ch 57. 198*



## SECTION

39. Penalty for packing flour in a branded cask.
40. Penalty for altering inspector's brand, &c.
41. Penalty on inspectors of flour for neglect of duty.
42. Flour may be sold in the town of Fayetteville without inspection.
43. Duty of inspectors of beef, &c. and penalties for misconduct.
44. How beef and pork shall be inspected.
45. Hog's lard to be inspected.
46. Rice, how inspected.
47. Fish, how inspected.
48. Pitch and turpentine, how inspected—Tar, how inspected.
49. Inspectors to make a difference between hard and soft turpentine, dippings and scrapings.
50. Makers of tar, pitch and turpentine to brand their barrels with the initials of their names—Inspectors to keep a book for entering the makers' names, &c.
51. Beef, &c. to be reinspected if not exported in sixty days—Tar, pitch or turpentine, in twenty days.
52. No cooper, &c. to make barrels for sale but according to the directions of this act.

## SECTION

53. Seller or exporter of beef, &c. to produce the inspector's certificate, &c.
54. Penalty on masters of vessels for receiving on board any such articles uninspected.
55. Staves, heading and shingles, how inspected.
56. Lumber, how inspected.
57. Saw-mill lumber, how inspected.
58. Steam-mill lumber, on the Cape Fear river, how inspected.
59. Inspector's fees, by whom to be paid.
60. Staves, heading, &c. to be culled.
61. Purchaser of staves or heading, on the Cape Fear, to pay one half price for the refuse.
62. No inspector shall purchase cullings, &c.
63. Penalty for any but a legal inspector of staves, &c. acting as such.
64. How fines and forfeitures under this act to be recovered and applied.
65. Disputes about extra cooperage in the town of Wilmington, how to be determined.
66. Regulations as to the sale of fire-wood in towns.
67. Penalty on inspectors for taking greater fees than the law allows.

1848. ch. 43. 44

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 all such places, as have heretofore been established by law or by the order of any county court within its county as public landings, or as places of inspection, shall be and remain public landings and places of inspection respectively; and the several county courts are hereby authorized to appoint such public landings and such place or places of inspection, within their respective counties, as they may think necessary, proper and convenient: and on any petition for public landings, the said court may order the costs to be paid by the petitioner or by the county.

2. The several county courts, except when herein otherwise directed, are hereby authorized to appoint one or more inspectors, for the place or places of inspection so designated, whose duty it shall be to inspect such article or articles as by law are required to be inspected, which are or may be brought to his place of inspection for that purpose; which inspectors shall reside in the county where appointed and take the oath or oaths required by law.

3. Every inspector so appointed shall, before he enters upon or executes his office, enter into bond with two good and sufficient

Former places of landing and inspection continued — and county courts may appoint others.

County courts to appoint inspectors.

Inspectors to give bonds.

1. 1784, c. 206, s. 4.—1789, c. 303.—1790, c. 331, s. 3.—1793, c. 386.—1822, c. 1139, s. 2.  
 2. 1793, c. 386.—1811, c. 807, s. 6.—1811, c. 812.  
 3. 1784, c. 206, s. 2.—1819, c. 990.

securities, in the penalty of one thousand dollars, for the true and faithful discharge of his office, according to the directions of this act, (which bond and securities every court respectively is hereby empowered and required to demand and take, and cause to be acknowledged before them in open court and recorded,) and the said bond shall be made payable to the State of North Carolina, and shall be in force for the term of three years after such inspector shall be out of office; and in the name of the State any person or persons injured may and shall, at his, her or their costs and charges, commence and prosecute a suit or suits on such bond against the parties therein bound, their executors or administrators, and shall and may recover all damages, which he, she or they may have sustained, by reason of the breach of the condition thereof, and the said bond shall not become void upon the first recovery, or if judgment shall be given against any plaintiff or plaintiffs, who may sue on such bond, but may be put in suit and prosecuted from time to time, for the benefit of the party or parties injured, until the whole penalty expressed in such bond shall be recovered: *Provided always*, that if any verdict or judgment shall pass for such inspector or his security, the person or persons, at whose instance such suit shall be prosecuted, shall pay double costs; and the bond so given shall be annually renewed, under the same rules, regulations and penalties as are prescribed in the case of clerks of courts.

Remedy on the bonds.

4. It shall be the duty of the several inspectors, so appointed, to attend, at the times and places by law established and directed, to inspect, according to the nature of their several appointments, all such tobacco, beef, pork, rice, tar, pitch, turpentine, staves and heading, fish, flour, butter, flaxseed, sawed lumber, ton timber and shingles, as shall be exposed for sale for exportation within their respective counties.

Inspectors to attend at the times and places appointed.

5. No merchant, who shall be concerned in trade and in the purchase of produce for exportation, which the laws require to be inspected, shall be considered qualified to be appointed as inspector of any of the articles of produce, which by law are or shall be required to be inspected. And if any person, receiving an appointment as aforesaid, shall be concerned as a merchant in the exportation of produce, he shall forfeit the sum of sixty dollars, to be recovered by action of debt in the name of the State, in any court of record having jurisdiction thereof, one half to the use of the State, and the other half to the use of the informer: and the person so offending shall moreover be removed from office, by the county court of the county in which he resides, on motion made by the solicitor of the county, and on producing the record of the recovery of the penalty above mentioned: *Provided nevertheless*, that nothing herein contained shall be considered as applying to shopkeepers and others, who do not buy or sell produce for exportation.

No exporting merchant to be an inspector.

6. It shall not be lawful for any of the county courts of this State to appoint in any of the towns more than six inspectors, ex-

Not more than six inspectors to be appointed in any town.

4. 1777, c. 120.—1784, c. 206, s. 2.

5. 1805, c. 681, s. 1 and 2.

6. 1805, c. 681, s. 3.



cept for the purpose of inspecting timber ; in which case the courts respectively may appoint such number as they may consider necessary and proper.

No inspector allowed to appoint a deputy.

7. It shall not be lawful for any person, appointed inspector agreeably to this act, to appoint any person or persons to act in said office of inspection under him or them, but it shall be the duty of every inspector, so appointed, to attend personally to the inspection of all articles or produce, which the said inspector is entitled to inspect. And if any inspector shall employ any person or persons to act as aforesaid, such inspector shall forfeit and pay the sum of two hundred dollars, to be recovered by action of debt in any court of record having cognizance thereof, for every such offence, one half to the use of the State and the other half to the use of the person suing for the same : *Provided*, that if the quantity of flour, brought to any place of inspection within this State, should at any time be so great that the inspector cannot examine the same with sufficient despatch, or if by reason of sickness he should be incapable of discharging the duties of his office, in such cases it shall be lawful for him to appoint one or more persons, of good repute and skill in the quality of flour, to assist him in the execution of his office. Such assistants, having taken the oath or affirmation prescribed by law for the inspectors of flour, shall be authorized to inspect and brand flour in the same manner as the inspector himself might do : *Provided*, that the said inspector shall be liable for all misconduct in office of his said deputies.

Proviso in favor of flour inspectors.

Inspectors to hold their offices during good behavior. Proviso as to Wilmington.

How inspectors shall be removed for misbehavior.

8. All public inspectors of commodities shall hold their office during good behavior : *Provided*, the inspectors of naval stores, provisions, staves, heading and lumber for the town of Wilmington shall be appointed by the county court of New Hanover every two years, at the first court held after the first day of May : *And provided further*, that where any inspector shall be guilty of malpractice or misbehavior in his office, on complaint being made to the county court, they shall issue a citation and cause him or them to appear before the said court, at the ensuing term ; and if the charges shall be supported by good and sufficient testimony, and confirmed by the verdict of a jury, they shall remove such inspector from his said office, and appoint another in his stead, who shall hold his office during good behavior as aforesaid.

How vacancies in the office of inspectors to be filled when the county court is not in session.

9. Whenever there shall be a vacancy in the office of inspector in any county, while the county court is not holding its session, it shall be lawful for any three justices of such court to nominate and appoint some other fit and proper person as inspector, until the next succeeding court for such county, or if any inspector shall be rendered incapable of performing his duty by sickness or other accident, it shall then be lawful for such inspector, by and with the consent of three justices, to appoint some other person as assistant during the said inspector's sickness or other disability, which consent shall be certified under their hands and lodged with the clerk of the court of the county wherein the inspector resides ;

7. 1796, c. 462.—1811, c. 807, s. 2.

8. 1791, c. 345, s. 7.—1831, c. 53.

9. 1784, c. 206, s. 3.—1799, c. 539, s. 2.

and the person so appointed shall take the same oath as inspectors appointed by the courts ; and the inspector shall be liable to the same fines and penalties for the said assistant's bad conduct and misbehavior as he is liable for his own.

10. No person shall act as inspector without being first qualified according to law, under the penalty of forty dollars for every such offence, to be recovered before any jurisdiction having cognizance thereof, one half to the use of the State, the other half to the person suing for the same. Penalty for acting as inspector before qualification.

11. It shall be the duty of inspectors of tobacco to examine well and carefully, by breaking in at one or more places, every hogshead, cask or parcel of tobacco, brought to their respective warehouses for inspection ; and such tobacco as they shall find good, sound and merchantable, and fit for exportation, they shall cause to be immediately headed, hooped and the number, net weight and tare, with the name of the warehouse, stamped or marked thereon ; and for all tobacco, so passed by them in crop hogsheads, they shall give to the owner thereof a receipt or note, containing the warehouse, number, gross, tare and net weight, and the kind of tobacco, and therein oblige themselves to deliver the same tobacco to such owner or his order when demanded ; and for all such tobacco as they shall pass in parcels, they shall give the owner a transfer note ; and all such parcels of tobacco they shall immediately pack and prize into hogsheads, of at least one thousand net weight, to be by them paid in discharge of such transfer notes to the persons, who shall be possessed of them, deducting therefrom, when returned to them, at the rate of two per cent. for the first month, and one per cent. for every month after one, for shrinkage ; and may also charge, out of such transfer notes, thirty pounds of tobacco for the cask ; and where tobacco is offered for inspection, and it appears to them part thereof is only fit to pass, the owner thereof may separate such good tobacco from the bad ; and where the inspectors at any warehouse shall disagree in their opinion of the quality of any hogshead of tobacco, or where the tobacco to be inspected is the property of one of the inspectors, then another sworn inspector from the nearest warehouse, or justice of the peace, shall be called and shall decide, and receive or reject the same. Duty of inspectors of tobacco.

12. Where any tobacco shall be delivered out of a warehouse, the inspectors shall and they are hereby required to give a separate manifest of each hogshead of tobacco, by them so delivered, in which shall be inserted the marks, number and weight of said tobacco. Inspectors to give a manifest of each hogshead.

13. The proprietor of condemned tobacco shall have the privilege of letting said tobacco remain in the warehouse six months after the inspection thereof, and shall be entitled to have such tobacco reinspected, if he think proper. Owners of condemned tobacco may have it reinspected after a certain time.

10. 1799, c. 539, s. 1, amended.

11. 1777, c. 120, s. 3.—1789, c. 302, s. 1.—1817, c. 942, s. 1.

12. 1789, c. 302, s. 3.

13. 1794, c. 425.



No tobacco to be exported without inspection.

14. No tobacco shall be exported out of this State, until the same has been carried to some place of inspection, and there viewed, passed and stamped according to the directions of this act.

Penalty for falsely branding a hogshead of tobacco.

15. If any person shall brand, or cause to be branded, any hogshead of tobacco, which the inspectors had not examined and branded, so as to induce a belief that such hogshead had been lawfully inspected, such person shall forfeit and pay the sum of one hundred dollars, to be recovered before any county court by any person suing for the same to his own proper use.

Punishment for forging, &c. a stamp, note, or receipt for tobacco.

16. If any person shall forge or counterfeit the stamp, note or receipt of any inspector, or offer for sale or payment, or demand of any inspector, tobacco on any such forged notes or receipts, knowing them to be such, or shall cause to be exported any hogshead or cask of tobacco, stamped with a forged or counterfeit stamp, or shall take any staves, plank or heading, out of any hogshead of tobacco stamped as herein directed, after such hogshead shall have been delivered from any of the public warehouses, every person, so offending and being thereof legally convicted, shall be adjudged a felon, and suffer as in cases of felony; and if any inspector's note shall be lost or destroyed, the owner thereof may, on making oath before some magistrate, of the quantity of tobacco mentioned in the same, and that the note is lost or destroyed, and that he or she so making oath is the lawful owner thereof, and entitled to receive the tobacco therein mentioned, obtain a certificate from the justice administering such oath, and shall thereby be entitled to receive the tobacco for which the lost note was given; and if any person shall be convicted of making a false oath, or producing a forged certificate in the above case, and knowing the same to be forged, he shall suffer as in cases of wilful and corrupt perjury: *Provided*, that in all such cases of lost or destroyed notes, the owner thereof, before obtaining a note for the same, shall give bond with approved security to the inspectors, who gave the lost or destroyed note, or their successors, in double the amount of the value of the tobacco, to indemnify the person, who may thereafter produce the original note, the value by him paid for the same; the bond so taken shall be assignable, by the inspectors taking the same, to the persons producing the original notes, who may maintain an action of debt thereupon, and such assignment shall exonerate the inspectors from any claim or demand against them, by virtue of the original note.

Manner of proceeding where a note is lost.

How a person demanding his tobacco, alleged to have been injured since inspection, shall proceed.

17. When any person demands tobacco of any inspector on his notes, and shall have cause to doubt the same hath received damage after inspection, three justices of the county, not being merchants, where the tobacco is, shall, on the application of the person demanding the tobacco, repair immediately to the warehouse, and there (being first sworn by some other justice, who is hereby empowered to administer such oath) well and carefully view

14. 1777, c. 120, s. 5.

15. 1789, c. 302, s. 4.

16. 1777, c. 120, s. 8 -- 1817, c. 942, s. 2.

17. 1777, c. 120, s. 10.

and examine the said tobacco in dispute, and give their opinion thereon, whether the same ought to pass or be rejected, according to the best of their judgment and consciences, without favor or affection : and if in their judgment it is good, sound, and fit for exportation, the tobacco passed shall be a sufficient tender to the party demanding on the notes for the same ; and in that case the party, so calling a review, shall pay and satisfy the justices so attending eighty cents each, but if they reject the tobacco so reviewed, in that case the inspectors shall pay the said justices eighty cents each, and shall be liable to the owner of the notes, for the value of the tobacco, so rejected, and such damages as he may sustain by lying out of the same from the time of demanding.

18. Any number of persons, not exceeding ten, shall be appointed by the court of the county, where there may be an inspection of tobacco established, to turn up and cooper tobacco ; and they shall hold their appointments during good behavior.

County court may appoint turners up and coopers of tobacco.

19. The inspectors at each and every inspection shall be judges of the behavior of the said turners up ; and if they in their opinion find said turner or turners up deficient in his or their duty, the said inspectors shall and they are hereby required to report the said turner or turners up, so misbehaving, to the court of the county in which they are appointed ; and if he or they shall be found guilty of the charge alleged by said inspectors, in that case the court is hereby directed and required to remove such person or persons from said appointment, and appoint another or others in his or their stead : *Provided*, that any person bringing tobacco to any of the said inspectors, is hereby entitled, either by himself or otherwise, to turn up, pick, prize and cooper his own tobacco, and to have free access to any of the prizes erected by the county, where such inspector is, for the purpose of prizing the same. And if any dispute should arise between the parties bringing tobacco to any of the said warehouses, the right of preference to the said prizes shall be determined by the inspectors.

Inspectors to report to court the misbehavior of turners up of tobacco.

Any person may turn up &c. his own tobacco.

20. The county court of each county, where a public inspection of tobacco is established, shall appoint two persons skilled in tobacco to be pickers, who shall be entitled to the compensation and take the oaths, allowed and prescribed by law for pickers of tobacco. And each of the said courts may appoint one of the pickers to act in the room of either of the inspectors, at any time when such inspector may be incapable of attending, who shall take the oath in manner prescribed for inspectors ; and such pickers may be called on to give a casting vote, should the inspectors disagree in the inspection of any tobacco ; and the said pickers, when attending in lieu of either of the inspectors, may receive the allowance of said inspectors, for each hogshead of tobacco he shall inspect : *Provided*, that the picker, by whose voice any tobacco shall be condemned, shall not be allowed to have the picking thereof, and that when the picker is so appointed by the court,

County court to appoint pickers of tobacco.

18. 1787, c. 265, s. 2.

19. 1787, c. 265, s. 3.

20. 1787, c. 265, s. 5.



he shall be invested with the power of inspector, in case of inability of either of the inspectors so appointed, until the next county court, or until the inspector can be present: *Provided nevertheless*, that upon complaint made to any of the said courts against either of the said pickers, the court, where such complaint is lodged, shall and is hereby directed to inquire into the nature of the complaint; and if it shall appear that the picker or pickers, against whom such complaint hath been lodged, hath been guilty of any misbehavior in the execution of his duty, such court shall remove him or them from said appointment and appoint another or others in his or their stead.

No tobacco inspector to buy tobacco.

21. No inspector of tobacco shall, directly or indirectly, buy or receive, by way of barter, loan or exchange, any tobacco whatsoever (payments in tobacco for their own rents excepted) under the penalty of forfeiting his office.

County courts may build or rent warehouses, &c.

22. The justices of any county court, a majority being present, may, at the expense of their county, purchase or rent ground, build or rent warehouses, provide scales and weights, and other matters incident to a tobacco inspection, and allow such salaries to the inspectors as they shall judge proper, to be paid out of the money assessed for the maintenance and support of the county charges; and also shall, at any such inspection, order and limit the time for the attendance of such inspectors at their respective warehouses.

When a tobacco warehouse is burned, the inspector shall not be liable on his notes, &c.

23. If any warehouse, at any of the tobacco inspections in this State, that is or shall be appointed, shall happen to be burned and tobacco therein destroyed, where such accident shall happen no inspector shall be sued by reason of any notes or receipts by them given for tobacco so burned.

County courts to regulate warehouse rent, &c.

24. The justices in each respective county in this State, where in public warehouses for tobacco now stand erected, shall from court to court, as they shall deem fit and proper, regulate and ascertain what shall be paid as warehouse rent for each hogshead of tobacco, by the owner or owners of the same, which shall thereafter be brought to the said warehouse; and the said justices shall and may appoint some fit person to receive moneys, who shall be accountable to them at all times for the appropriation of the same by action of debt before any court having cognizance thereof, wherein the inspector's books shall be proof as to the number of hogsheads received, for the whole of which such person shall be liable to answer, and shall be allowed no protection.

How warehouses may be repaired or rebuilt.

25. The justices, in the respective counties as aforesaid, shall, from time to time as occasion may require, lay out and appropriate any of the remaining part of the aforesaid moneys in repairing or rebuilding their respective warehouses, in such manner as they may think necessary.

Private warehouses to have

26. The same rules and regulations herein before contained shall

- 21. 1777, c. 120, s. 10.
- 22. 1777, c. 120, s. 6.
- 23. 1777, c. 120, s. 9.
- 24. 1779, c. 159, s. 2.
- 25. 1779, c. 159, s. 3.
- 26. 1779, c. 159, s. 4.

be had and taken with respect to warehouses, built by private persons on their own lands, and at which a public inspection has been heretofore held, so far as respects the warehouse rent that shall be paid for each hogshead of tobacco. the same rules as to rent, &c.

27. No inspector of flour or his deputies shall, directly or indirectly, vend, barter, sell, exchange or trade in flour, bread, or other articles made of flour, under the penalty of two hundred dollars, to be recovered by action of debt, by any person who will sue for the same to effect, in any court of record in this State, the one half to the use of the person so suing, and the other half to be paid to the treasurer of the State for public use; and every person, so offending and thereof convicted, shall be and he is hereby disabled from acting thereafter in his said office; and no inspector of flour shall, directly or indirectly, purchase any flour by him condemned, or any other flour whatever, other than for his own use, under the penalty of seven dollars for every barrel by him purchased. No inspector of flour shall sell or trade in flour, or buy, except for his own use.

28. The several degrees of flour shall in future be distinguished as follows, to wit: superfine, fine, and cross middling; and it shall be the duty of inspectors of flour, at the several places of inspection in this State, to conform their inspection, as near as may be, to the inspection of flour observed and in use in the adjacent states. Degrees of flour.

29. Each barrel of flour, exposed to sale in or exported from this State, by land or water, shall contain one hundred and ninety-six pounds; and each half barrel ninetyeight pounds of net flour, well ground, bolted and packed, merchantable and of due fineness, without any mixture of coarse flour or flour of any other grain than wheat; and every barrel shall be made of good seasoned wood, tightened with ten hoops, sufficiently nailed with flour nails in each chime hoop, and three nails in each upper bilge hoop, and the dimensions shall be as follows, to wit: the stave shall be twentyseven inches in length, and the head seventeen and one half inches in diameter; and the half barrel shall be of the following dimensions, to wit: the staves twentythree inches in length, and the head twelve and one half inches in diameter; and every miller or manufacturer of flour for sale or exportation shall provide and keep a distinguishing mark or brand, containing the initials of his christian name, and his surname at length, with which he shall brand every cask of flour, and mark thereon the net and tare weight, before the same shall be removed from the place where it was bolted; and every miller or manufacturer shall receive the sum of ten cents for bolting, packing and nailing every barrel of flour bolted, and that only. What flour shall pass inspection.

30. Every miller or manufacturer of flour, not complying with the provisions of the preceding section, shall be subject to a penalty of forty cents for every cask of flour, not hooped, marked and branded and nailed as aforesaid, to be recovered from such Penalty on miller, manufacturer or seller for not complying with the foregoing provisions.

27. 1811, c. 807, s. 5.—1810, c. 790, s. 11.

28. 1813, c. 852, s. 3.

29. 1791, c. 345, s. 1 and 2.—1807, c. 728, s. 1.—1810, c. 790, s. 4, 5 and 6.

30. 1791, c. 345, s. 2.—1807, c. 728, s. 1.—1810, c. 790, s. 5 and 6.



millers, who shall neglect to comply with the directions of this act, or from the person who shall bring such flour to any of the places aforesaid for sale; and in case said penalty should be recovered from the person bringing such flour for sale, such person shall and may recover the same from the miller or bolter, from whom he purchased or received the same: *Provided*, it appears that he gave notice to said miller or bolter that he intended to carry the same to one of the places aforesaid for sale or exportation, and that he requested said miller or bolter to secure and brand said barrels. And every miller or manufacturer, putting into any cask a less quantity than herein directed, shall forfeit and pay for the deficiency of each pound the sum of ten cents.

Inspectors may, in certain cases, unpack the barrels of flour.

31. The inspector, upon suspicion or at the request of the purchaser, shall and he is hereby required to unpack any cask of flour; and if there shall be a less quantity than above directed, the miller, bolter or seller shall pay the charges of unpacking and repacking, over and above the penalties aforesaid, but otherwise the charges shall be paid by the inspector or by the purchaser if the trial be made at his request.

Persons selling barrels of flour not containing the requisite quantity, to be liable for the deficiency.

32. When a person shall sell any barrel or barrels of flour, not containing the full quantity by law required, the purchaser, unless there shall be a special contract to the contrary, shall be allowed to recover the value of the deficiency in an action on the case for money had and received, before any jurisdiction having cognizance of the same.

How casks of flour to be inspected.

33. Every inspector of flour shall inspect and try each cask, brought to him to be inspected, by boring through the cask from one head, with an instrument not exceeding half an inch in diameter and equal in length with a barrel of flour, to be by him provided for the purpose; and if he shall judge that the same is well packed and merchantable according to the directions of this act, he shall plug up the hole and brand the cask in the quarter, with the name of the place in which he is inspector, with a public brand to be by him provided for that purpose; and shall also brand and mark the degree of fineness, which he on inspection shall determine the same to be of, which degree shall be distinguished as follows, to wit: superfine, fine and cross middling. For which trouble the inspector shall have and receive from the owner of such flour the sum of five cents for every barrel by him thus inspected. And no inspector shall pass any flour, which shall prove on examination to be unmerchantable, agreeably to the true intent and meaning of this act, but shall cause the same to be marked on the bilge condemned, or secure it for further examination if required; and the inspector shall and may demand and receive from the owners thereof the same rate and prices, as if the same had been passed; and every inspector as aforesaid shall, if required, give the owner of the flour, so inspected and branded, a certificate of the same, and shall keep a record or book of inspection of all flour, so inspected and branded as aforesaid, setting

31. 1810, c. 790, s. 7.

32. 1807, c. 723, s. 2.

33. 1791, c. 343, s. 3.—1810, c. 790, s. 8.—1813, c. 852, s. 3.

forth the owner of the flour and miller's name with the quality of each cask.

34. Whenever any person may think himself aggrieved by the improper decision of any inspector of flour within this State, it shall be lawful for the owner thereof, or his agent, to secure it for further examination, which examination he shall cause to be made within sixty days thereof, by applying to a justice, whose duty it shall be to issue a warrant directed to three indifferent persons, well skilled in the manufacture of flour, one of whom shall be named by the owner or possessor of the flour, one by the inspector, and the third by the magistrate; which said three persons, having first taken the oath or affirmation directed to be taken by the inspectors, shall proceed carefully to view and examine said flour; and if they, or any two of them, shall differ from the inspector as to the quality of said flour, it shall be the duty of the inspector to brand and mark the same according to their judgment, and he moreover shall pay all costs attending the said examination; but if they shall be of opinion that the judgment of the inspectors is correct, the owner or possessor of said flour shall pay costs.

Owner of flour, dissatisfied with the inspection, how to obtain a re-examination.

35. It shall not be lawful for any person to export or lade on board of any ship or vessel for exportation out of this State, any barrel of flour marked "*condemned*" by an inspector, or to export, or lade on board any ship or vessel for exportation out of this State, any casks or barrels of flour not inspected or branded as aforesaid, on pain of forfeiting ten dollars for every cask or barrel of flour exported or put on board of any ship or vessel for exportation.

Penalty for exporting flour not passed by inspector.

36. If any master, owner or commander of any ship, vessel, boat or craft shall receive any barrel or barrels of flour on board his ship, vessel, boat or craft for exportation, or transportation from one town or port, being a place of inspection, to another, which is not inspected and branded as herein directed, he shall forfeit and pay the sum of five dollars for each and every cask so received, recoverable in an action of debt before any jurisdiction having cognizance thereof, to the use of the person suing for the same: *Provided*, that the provisions of this section shall not extend or be applied to boats or crafts plying between Fayetteville and Wilmington.

Penalty on master, &c. for receiving on board his ship uninspected flour.

Proviso.

37. Any cask of flour, which has been inspected and branded at any one place of inspection in this State, shall not be subject to re-examination and inspection in another, unless, after such inspection, it shall have remained for the space of sixty days before it is exported, and in all cases the certificate of the inspector shall be conclusive evidence of the time when the flour was inspected.

Cask of flour once inspected, not liable to be reinspected in sixty days.

38. No inspector of flour shall condemn any flour cask for not being precisely of the dimensions required by this act: *Provided*, such cask shall come within one half inch of the length of the stave,

Cask not to be condemned for short measure in certain cases, if it contain 196 pounds.

34. 1811, c. 807, s. 1.

35. 1810, c. 790, s. 8.

36. 1811, c. 807, s. 3 — 1813, c. 852, s. 2.

37. 1811, c. 807, s. 4.

38. 1828, c. 84, s. 2, amended.



and one half inch in the diameter of the head of the measurement required, and shall contain one hundred and ninetysix pounds of flour.

Penalty for packing flour in a branded cask.

39. If any person shall pack flour or meal of any kind whatever in a cask, which has been inspected and branded with the name of a miller, such person shall forfeit and pay the sum of twenty dollars for every barrel so packed for sale, to be recovered before any justice of the peace, one half to the use of the informer, the other half to the use of the miller, who has been injured by such false packing, and be further liable to the action of the party aggrieved.

Penalty for altering inspector's brand, &c.

40. If any person shall alter the mark branded on any cask of flour by an inspector, or shall mark or brand any cask of flour which has not been inspected, with any mark or brand similar to, or in imitation of any inspector's mark or brand, or after an inspector shall have passed any cask of flour as merchantable, shall pack into said cask any other flour, or after any cask of flour shall be branded "*condemned*," shall unpack and repack the same in other casks for exportation, such person shall forfeit and pay the sum of seven dollars for every cask.

Penalty on inspectors of flour for neglect of duty.

41. Every inspector of flour, failing to perform the duties and requisites herein mentioned, shall forfeit and pay the sum of ten dollars for every offence by him so committed, to be recovered by action of debt, before any jurisdiction having cognizance of the same, by any person complaining or informing thereof.

Flour may be sold in the town of Fayetteville without inspection.

42. It shall and may be lawful for any person to sell flour in the town of Fayetteville, either in casks or otherwise, without submitting the same to inspection.

Duty of inspectors of beef, &c. and penalties for misconduct.

43. Every inspector of beef, pork, rice, flaxseed, fish, tar, pitch and turpentine, shall constantly attend at the places for which he shall or may be appointed, and shall provide an iron to brand any of the said commodities, bearing the name of the inspector and his place of residence, and shall find laborers equally with the owners to assist in weighing the several commodities he shall inspect and weigh; and also shall find and provide proper steel-yards or scales of the lawful standard for that purpose; and if any inspector shall neglect his duty, or brand or stamp any of the commodities contrary to this act, or brand any empty barrels, or lend his brand to any person or persons whatsoever, he shall forfeit and pay for every barrel or cask of beef, pork, or rice, fish, flour or flaxseed, twenty dollars, and for every barrel of tar, pitch or turpentine, two dollars, and for branding any empty barrel, or lending his brand, two hundred dollars, to be recovered with costs by action of debt, by and for the use of any person who shall sue for the same, before any jurisdiction having cognizance thereof; and every other person or persons that shall by any ways or means brand, or procure to be branded, any cask or barrel as aforesaid,

39. 1810, c. 790, s. 9.

40. 1810, c. 790, s. 12.—1791, c. 345, s. 4.

41. 1791, c. 345, s. 5.

42. 1835, c. 91.

43. 1784, c. 205, s. 7.

than by the inspector or by his assistant, he or they so offending shall forfeit and pay for every such offence the same fines and penalties, as inspectors are by this section liable to pay for breach of duty or misbehavior.

44. All beef or pork, packed within this State for sale or exportation, shall be put in good and sufficient new, white oak, turkey or water oak casks, which shall not contain more than twentyeight gallons, wine measure, each barrel, and fifteen gallons each half barrel, and all barrels and half barrels shall be made of timber, seasoned at least six months after the riving, the staves not less than half an inch thick when wrought, the head not less than three quarters of an inch thick, and well dowelled, twelve good substantial hoops on each cask, and the whole to be tight, fit to hold pickle and made in a workmanlike manner; and each barrel shall contain at least two hundred pounds of good, sound and clean merchantable meat, well salted and cured, with at least half a bushel of salt to each barrel, and nailed and packed, and no more than two heads in one barrel, and not any boar's flesh in any barrel of pork, or any heads or bull's flesh or more than two shins in any barrel of beef; and each half barrel shall contain one hundred pounds of salted meat, and if beef not more than one shin, and if pork not more than one head.

How beef and pork shall be inspected.

45. It shall be lawful for the inspectors to inspect all hog's lard, which shall be exported in casks, respecting the quality thereof, for which the inspectors shall be entitled to fees, similar to those allowed in pork, respect being had to the size of the cask, and the article of hog's fat or lard shall not hereafter be exported, unless in cypress or juniper casks, and inspected, under the pains and penalties inflicted by law for exporting uninspected pork, beef or any other commodities liable by law to be inspected.

Hog's lard to be inspected.

46. Every cask of rice, intended for sale or exportation, shall be filled with sound and well cleaned rice, and after the same has been inspected and found good and merchantable, every such cask shall be by him branded as aforesaid, and a certificate thereof given to the owner, bearing date, in words at length, the same day such commodity was inspected and passed.

Rice, how inspected.

47. All fish, to be exported from this State, shall be packed in good and sufficient barrels, and shall be inspected by an inspector of the county, where the same may be saved, at the time of shipping the same; each barrel shall be of the following dimensions, to wit: at least twentynine inches in length, and the head at least seventeen inches in diameter, and shall contain thirty gallons, and be made in a workmanlike manner, and full of good sound fish, with a sufficient quantity of salt, and when the barrels of fish shall be of this description, they shall be deemed merchantable on the inspector's marking, branding, &c.; otherwise it shall not be lawful to export any fish from this State. And if any person or persons shall sell or offer to sell, within this State, any fish, in barrels

Fish, how inspected.

44. 1784, c. 206, s. 8.—1784, c. 221, s. 5.—1791, c. 349, s. 1.

45. 1784, c. 221, s. 5.

46. 1784, c. 206, s. 8.

47. 1784, c. 206, s. 9.—1784, c. 221, s. 3.—1796, c. 462, s. 2.—1831, c. 16.



less than the size by this section prescribed, he or they shall forfeit and pay the sum of two dollars for each barrel they may sell or offer to sell, to be recovered by warrant before any justice of the peace in the county where the offence is committed, to be applied to the use of the prosecutor.

Pitch and turpentine, how inspected.

48. Every barrel of pitch or turpentine shall contain thirtytwo gallons, and be free from any fraudulent mixture, and in good and sufficient casks, made of good and seasoned staves, at least three quarters of an inch thick at the chime or crose, and of proportional thickness in the bilge, and not exceeding five inches in breadth, and each barrel to be well secured with twelve good hoops, and the joint of the head placed perpendicularly to the bung; and if pitch or turpentine shall be found by the inspector to be fraudulently mixed, the same shall be condemned and delivered by the inspector to the owner or seller on demand; and every barrel of tar shall be the gauge of thirtytwo gallons wine measure, and every barrel of less size or in bad casks, not being twothirds bound with hoops, shall be put in merchantable order at the expense of the owner, and every barrel of tar, pitch and turpentine after the same shall be inspected, gauged, found clean, well filled, and in merchantable order, shall be by him branded. And forasmuch as it is difficult in warm and rainy weather to separate tar from water: *It is hereby declared*, That water shall not be accounted a fraudulent mixture in any tar, but that in such case the barrel shall not be branded by the inspector, until the same is as free from water as it can be made.

Tar, how inspected.

Inspectors to make a difference between hard and soft turpentine, dippings and scrapings.

49. The inspectors shall make a difference with respect to hard and soft turpentine, and dippings and scrapings, designating the character of each barrel, and the soft shall be branded with the letter S, and the hard with the letter H: *Provided*, it is clean from any fraudulent mixture, so as to render it unmerchantable; and each barrel so inspected and branded shall be held and considered as good clean turpentine. And if any inspector shall give any bill contrary to the directions of this section, he shall forfeit the sum of one hundred dollars, one half to the informant, and the other to the party aggrieved.

Makers of tar, pitch and turpentine to brand their barrels with the initials of their names.

50. Every maker of tar, pitch or turpentine, shall mark or brand every such barrel with the initial letters of his or her name, not less than one inch long, under the penalty of ten cents for every barrel that may not be so branded, and every person so failing or neglecting shall also pay one half cent per barrel to the inspector for marking the same with the initial letters of the maker's name, which fee shall be paid by the person paying the fees of inspection, and by him may be charged to the makers: and every inspector shall keep a book, in which shall be fairly entered the maker's name, and the mark of every barrel of beef, pork, rice, tar, pitch and turpentine, flour, fish and butter, and the number of barrels inspected of the same mark, the merchant or ship-

Inspectors to keep a book for entering the makers' names, &c.

48. 1784, c. 206, s. 10.—1784, c. 221, s. 1 and 2.—1823, c. 1215, s. 1 and 2.

49. 1821, c. 1081.—1833, c. 172.

50. 1784, c. 206, s. 11.

per's name causing the same to be inspected, and the time of inspection; and shall give a certificate of any parcel to any person requiring the same, on payment of ten cents.

51. No beef, pork, rice, fish, flour or butter, shall be shipped on board any ship or vessel for exportation, after the expiration of sixty days from the time the same was inspected, nor any tar, pitch or turpentine, after the expiration of twenty days, until the same shall have been again inspected, and certificate or certificates granted in the same manner, as if such commodities had never been inspected, and every person offending herein shall forfeit one thousand dollars; and the master or commander of such ship or vessel shall be liable to the same penalty, as for taking on board any of the said commodities without being branded.

Beef, &c. to be reinspected if not exported in sixty days.  
Tar, pitch or turpentine in twenty days.

52. No cooper, or any other person whatsoever making casks, shall expose for sale any barrel or half barrel, for the holding of pork or beef, other than such as are by this act directed to be made for that use, under the penalty of two dollars, and every cooper or other person making barrels or half barrels, before they expose the same for sale, shall set his or her proper brand upon the same, which brand shall be recorded in the office of the clerk of the county court, where he or they shall reside, under the penalty of twenty dollars for each and every neglect, and every barrel of tar, pitch and turpentine shall be branded, in the manner aforesaid, by the maker thereof under the penalty of fifty cents.

No cooper, &c. to make barrels for sale, but according to the directions of this act.

53. Every seller or exporter of beef, pork, rice, tar, pitch and turpentine, fish, flour, butter and flaxseed, shall produce the certificate of the inspector, who inspected the same, and make oath or affirmation, if required, before a justice of the peace, on the delivery of the goods, sold or exported, that the several commodities by him to be sold or exported, are the same that were inspected and passed, and do contain the full quantity mentioned in such certificate, without embezzlement to his knowledge, which oath or affirmation the justice shall and he is hereby required to certify on the back of the certificate, which certificate the seller shall deliver to the buyer of such commodities sold, and the person exporting such commodities shall deliver such certificate to the master of the ship or vessel, on board which the same shall be shipped, and if such seller or exporter shall refuse to make oath or affirmation, he shall for every such offence forfeit and pay the sum of two hundred dollars.

Seller or exporter of beef, &c. to produce the inspector's certificate, &c.

54. No master or commander of any vessel or vessels shall take on board his ship or vessel any such cask or barrel or other inspectable commodity as aforesaid, without being inspected and branded as by this act is required, under the penalty of two hundred dollars for each offence, one half to the informer, the other half to the wardens of the county wherein the offence shall be committed to the use of the poor of the said county, to be recovered

Penalty on masters of vessels for receiving on board any such articles uninspected.

51. 1784, c. 206, s. 12.

52. 1784, c. 206, s. 15.

53. 1784, c. 206, s. 16.

54. 1784, c. 206, s. 6.



with costs, by action of debt in any court of record having cognizance thereof.

55. All staves and heading, which shall be sold or shipped for exportation, shall be of the following dimensions, otherwise not merchantable, to wit: butt staves shall be five feet nine inches long, four inches broad and an inch thick on the heart or thin edge, and clear of sap; pipe staves, four feet eight inches long, four inches broad, and three quarters of an inch thick on the heart or thin edge, and clear of sap; white oak hogshead staves shall be three feet six inches long, three inches wide when dressed, clear of sap, and not less than three fourths of an inch thick in any place; rough white oak hogshead staves, shall be three feet six inches long, three and a half inches wide, clear of sap and three fourths of an inch thick on the thin edge; red oak hogshead staves shall be three feet long, three and a half inches wide including sap, and three fourths of an inch thick on the thin edge; barrel staves shall be two feet eight and a half inches long, three inches wide, clear of sap and three fourths of an inch thick on the edge; white oak hogshead heading shall be thirtytwo inches long, six inches broad and one inch thick on the heart or thin edge, and clear of sap; barrel heading shall be nineteen inches long, six inches broad, and three quarters of an inch thick on the heart or the thin edge, and clear of sap; shingles shall not be less than eighteen inches long, four inches broad, and five eighths of an inch thick; all such staves and shingles to be made of good sound timber: should they be larger than the dimensions here mentioned they shall not for that reason, be considered unmerchantable.

56. No boards or plank shall be deemed merchantable or passed by any inspector, that are not free from any split, not less than twelve inches long, have no edge less than half an inch thick, and as near as may be of an equal thickness at each end; and every board, plank, piece of scantling or other square timber, being marked with the number of more superficial feet than are contained therein, shall be forfeited to the wardens of the county for the use of the poor thereof: *Provided nevertheless*, that no staves or heading, shingles, boards, plank, or scantling, shall be inspected unless required by the purchaser.

57. The inspection of saw mill lumber, on the Cape Fear river, and at the several ports belonging to the same, shall hereafter be governed by the following rules, to wit: All well sawed, sound boards and plank with square edges, and one half heart on the sap side, shall be merchantable; also all well sawed boards and plank, with square edges one half heart on the sap side, made of sound timber and clear of splits and wind shakes for three fourths of their lengths, shall be merchantable, deducting therefrom one half their fractured part; all well sawed sound scantling, with square edges, shall be merchantable, and also all well sawed sound scantling with square edges, two thirds of their lengths, and the bark no more

55. 1784, c. 206, s. 13 and 14.—1922, c. 1157.—1826, c. 33.

56. 1784, c. 206, s. 14.

57. 1824, c. 1254, s. 1 and 2.

than one inch wide, shall be merchantable ; and all saw mill lumber, not being of the description aforementioned, shall be deemed refuse ; any inspector or inspectors, who shall at any time hereafter inspect saw mill lumber by any rule or rules different from those prescribed by this section, shall forfeit and pay the sum of one hundred dollars for each and every such offence, one half to the informer, or person suing for the same and the other half to the use of the county where such forfeiture shall be incurred.

58. All steam mill lumber, showing heart one half the length, shall be merchantable, and no inspector, having a stated salary from the proprietors of the steam mills, shall inspect any timber brought to said mills, unless by consent of the seller, under the penalty of fifty dollars, one half to the informer and the other half to the use of the county. Steam mill lumber, how inspected.

59. The fees of inspectors shall in all instances be paid by the purchaser or exporter of the articles inspected. Inspector's fees, by whom to be paid.

60. All staves and heading, shingles, boards, plank and scantling, hereafter inspected, shall be culled, and the refuse separated from the merchantable, except there be an agreement between the purchaser and seller, that the same shall not be done. Staves, heading, &c. to be culled.

61. The purchaser or purchasers of staves or heading, sold and inspected on the Cape Fear river, shall pay to the seller of such staves or heading one half the price for the refuse, which may be stipulated to be paid for the merchantable part of such staves or heading. Purchaser of staves or heading on the Cape Fear, to pay one half price for the refuse.

62. No inspector shall by himself or others purchase any cullings or other articles that do not pass inspection, upon pain of forfeiting one hundred dollars. No inspector shall purchase cullings, &c.

63. Should any person, who is not a legal or sworn inspector of lumber, staves and heading, presume to act as such or as counter thereof, such person shall be deemed guilty of a misdemeanor, and, on legal conviction thereof before any competent jurisdiction, shall be fined the sum of one hundred dollars, one half to the use of the county, where such offence may be committed, and the other half to the use of the informer. Penalty for any but a legal inspector of staves, &c. acting as such.

64. The several fines and forfeitures by this act inflicted, for which no method of recovery or application is herein before directed, shall and may be recovered with costs, by action of debt, before any jurisdiction having cognizance thereof, one half to the use of the prosecutor, and the other half to the county, wherein such penalty shall be incurred, to be applied by the justices of the county court, towards the lessening of the county tax. How fines and forfeitures under this act to be recovered and applied.

65. In case the purchaser and seller cannot agree as to the amount to be allowed for extra cooperage, and defective barrels, it shall be the duty of the inspector of naval stores and provisions Disputes about extra cooperage in the town of Wilmington, how to be determined.

58. 1823, c. 26.

59. 1791, c. 345, s. 6.

60. 1830, c. 32.—1824, e. 1254, s. 4.

61. Amendment.

62. 1784, c. 206, s. 19.

63. 1824, c. 1254, s. 3 amended.

64. 1784, c. 206, s. 13.

65. 1829, c. 50.



in the town of Wilmington, at the instance of either the purchaser or seller, to establish the amount to be allowed for extra coo- perage and defective barrels, and such estimate shall be conclusive ; and it shall not be lawful for any other person to estimate the same, but by the consent of the purchaser and seller ; and should any per- son, contrary to the provisions of this act, estimate the same, he shall forfeit and pay the sum of ten dollars, to be recovered by warrant before any justice of the peace for the county of New Hanover by any person suing for the same.

Regulations as to the sale of fire wood in towns.

66. All fire wood, sold in the incorporated towns of this State, shall be sold by the cord and not otherwise ; and each cord shall contain eight feet in length, four feet in height, and four feet in breadth, and shall be corded by the cutter or seller under the pen- alty of two dollars, for each offence, to be recovered against the owner or seller to the use of the informer.

Penalty on in- spectors for taking greater fees than the law allows.

67. If any of the inspectors, at any of the several inspections of this State, shall take and receive any greater fees than are by law allowed, he so offending shall forfeit and pay the sum of ten dollars for each and every offence, to be recovered by any person suing for the same, for his own use, before any jurisdiction having cognizance thereof.

66. 1784, c. 211.  
67. 1787, c. 265, s. 4.

CHAPTER 60.

INTERNAL IMPROVEMENTS.

AN ACT TO ESTABLISH A FUND FOR INTERNAL IMPROVEMENT, AND TO CREATE A BOARD FOR THE MANAGEMENT THEREOF.

SECTION

1. Fund established.
2. Of what it shall consist.
3. Board of internal improvements in- corporated.
4. Board may appoint a secretary.
5. Power of the board to make rules, &c.
6. Their duty in making contracts.
7. Their power in subscribing to public works.

SECTION

8. Fund to be deposited in the treasury and to be drawn for by the board.
9. The board to keep a record of their proceedings, and report to the Gen- eral Assembly.
10. The State to be a stockholder in any company to the amount she may advance.

Fund estab- lished.

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 a fund shall be and the same is hereby created, to be de-

1. 1819, c., 969, s. 1.

1844.5 - ch. 55 -  
1846.7. ch. 8.

nominated "The Fund for Internal Improvements," and to be applied exclusively to the internal improvement of this State, unless the necessities of the State shall render it necessary for some future legislature to apply the said fund or a part thereof to some other purposes of state.

2. The said fund shall consist of the net proceeds of the sales of the lands lately acquired by treaty from the Cherokee Indians, and also of the dividends of the stock owned by this State in the bank of Cape Fear. Of what it shall consist.

3. For the purpose of preserving and improving this fund, and of disbursing such portions of it as the General Assembly may from time to time direct to be applied to any object of internal improvement, it shall be and the same is hereby vested in a corporate body, to be styled "The President and Directors of the Board of Internal Improvements," in which name they shall have a common seal and perpetual succession, subject to the limitations hereinafter provided, shall be capable of suing and being sued, pleading and being impleaded, and shall have and enjoy all the rights and privileges of a corporation. Board of internal improvements incorporated.

4. The president and directors of the board shall have power to appoint a secretary to record their proceedings, and the person so appointed shall receive for his services the sum of three dollars and no more per diem, for each day the board shall be in actual session, to be paid out of the revenue of the fund for internal improvement. Board may appoint a secretary.

5. The president and directors of the board may, at any of their meetings, enact, alter or amend such rules as to them may seem proper for the purpose of regulating the order of their proceedings; they may adjourn the board for any period not exceeding six months, and shall have power to make and establish by laws, rules and regulations for the better ordering of the conduct of their officers, agents and servants as to them may seem expedient: *Provided* the same be not inconsistent with the constitution and laws of this State and of the United States. Power of the board to make rules, &c.

6. Whenever the legislature shall direct any public improvement in this State, it shall be the duty of the board for internal improvements to let the same out by contract, and take from the person or persons, so contracting, a bond with good and sufficient security, payable to the State of North Carolina, in double the sum paid or contracted to be paid, with the condition that he or they will faithfully perform his or their contract according to the plans or specifications agreed on. Their duty in making contracts.

7. The president and directors of the board shall be and they are hereby authorized to subscribe in behalf of the State to such public works, as the General Assembly may from time to time agree to patronize, such portions of the fund for internal improve- Their power in subscribing to public works.

2. 1819, c. 989, s. 2.—1821, c. 1083.

3. 1819, c. 989, s. 3.

4. 1819, c. 989, s. 7.

5. 1819, c. 989, s. 9.

6. 1825, c. 1294.

7. 1819, c. 989, s. 11.



ment as may be directed by law : *Provided*, that no payment shall be made of any appropriation to any corporation for the purpose of internal improvement, created exclusively by the authority of this State, unless such corporation shall put itself under the direction of the board of internal improvement.

8. The fund for internal improvement, subject to the orders of the president and directors of the board, shall be deposited in the treasury of the State and kept distinct and apart from all public money ; it shall be paid out and delivered by the treasurer of the State to the order of the board, certified and subscribed by the secretary and countersigned by the president ; the treasurer shall keep a fair and regular account of all such disbursements, and carefully preserve the certificates, upon which the same shall have been made, and shall render an account thereof to the General Assembly, at the same time at which he renders his annual account of the disbursements of the ordinary revenue ; once in every year the board of internal improvements shall depute a committee of their body to examine the accounts of all disbursements made by order of the board during the year, and to compare the accounts with the treasurer's books and the certificates giving authority for the payment of the several sums or stock entered thereon.

9. It shall be the duty of the board for internal improvement to keep a fair and accurate record of all their proceedings, which shall at all times be open to the inspection of the members of the General Assembly and of the president and directors and other officers interested therein. They shall report to the General Assembly, at or near the commencement of every session thereof, the exact state of the fund for internal improvement, the progress, condition and net income of all the public works under their charge, the surveys, plans and estimated expense of such new works as they may recommend to the patronage of the General Assembly, together with such other important information, as they may have it in their power to collect, in relation to the objects committed to their trust.

10. When an appropriation shall be made of any part of the aforesaid fund to the improvement of any river, canal or road, the improvement of which has been already or shall hereafter be committed to, and the property therein vested in, a corporation, then and in that case the State shall be considered a stockholder in said company or corporation, and shall have as many shares as may correspond with the amount of the money, thus advanced from and appropriated out of said fund for internal improvement, and the acceptance by any company or corporation, as aforesaid, of such advance of money by the State shall and the same is hereby declared to be the expression of the consent of the said company or corporation to the terms of the advance on the part of the State, as expressed and intended in this section.

8. 1819, c. 989, s. 10.

9. 1819, c. 989, s. 12.

10. 1819, c. 989, s. 12.

CHAPTER 61.

AN ACT TO AID THE INTERNAL IMPROVEMENTS OF THIS STATE.

SECTION

1. The surplus revenue of the United States appropriated to the internal improvement fund.
2. Who to constitute the board of internal improvement.
3. Meetings of the board—Compensation of the members.
4. Public treasurer to keep the accounts — may employ a clerk for that purpose.
5. Moneys belonging to the fund to be deposited in the banks.
6. State, upon certain events, to subscribe to certain rail road companies — Payments upon such subscriptions, how to be made.

SECTION

7. Board to lend out the money until such subscriptions are wanted.
8. In what event the State shall be released from its obligations to subscribe.
9. Surplus revenue of the United States only, pledged for such subscriptions.
10. Governor to cause a publication of the payment of any subscription.
11. Profits of the State subscription to be added to the literary fund.
12. One hundred thousand dollars from the internal improvement fund, to be appropriated to the contingent expenses of the State government.
13. When this act to be in force.

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 besides the funds heretofore set apart for internal improvements, there shall be added and appropriated for that purpose, all the surplus revenue, received by this State from the treasury of the United States, under the late act of congress to regulate the deposits of the public money, after deducting the sum of three hundred thousand dollars, which is to be devoted to the redemption of the public debt of the State ; the sum of three hundred thousand dollars, which is to be paid for stock subscribed in the bank of Cape Fear ; and the portion of said surplus which is to be added to the literary fund, and to be applied to draining the swamp lands, according to the provisions of sundry acts of the present General Assembly.

The surplus revenue received from the United States appropriated to the fund for internal improvement.

2. The board of internal improvements shall hereafter consist of the governor of the State for the time being, who shall be *ex officio* president thereof, and of two commissioners, to be appointed annually by the governor, by and with the advice of the council of state ; any two of whom shall constitute a board for the transaction of business, and the said board shall have the same powers and authority, and be subject to the same duties and restrictions as the board of internal improvements heretofore existing ; and in case of vacancies occurring in said board, the governor and council may fill the same as before directed ; and they may, in like manner, remove any of the commissioners appointed as aforesaid.

Who to constitute the board of internal improvements.

1. 1836, c. 22, s. 1.  
2. 1836, c. 22, s. 2.



Meetings of the board — compensation of the members.

3. The said board may hold its sessions wherever and whenever the governor may direct ; and the said commissioners shall receive for their services the sum of three dollars each per day, and their travelling expenses for the time they may be employed in the public service.

Public treasurer to keep the accounts — may employ a clerk for that purpose.

4. The public treasurer shall keep the accounts of the said board in the same manner as heretofore ; and for that special purpose may employ a clerk at a sum not greater than three dollars per day, for the time he may be engaged as such : *Provided*, that his compensation shall not exceed the sum of five hundred dollars in any one year.

Moneys belonging to the fund, to be deposited in the banks.

5. All the moneys which are hereby appropriated to the fund for internal improvement, as well as any other moneys which may come into the treasury of said board, shall be deposited in the banks of this State, until they shall be disposed of in manner as hereinafter directed.

State, upon certain events, to subscribe to certain rail road companies.

6. Whenever it shall be made to appear to the said board of internal improvement, by a certificate, under the corporate seal of the Wilmington and Raleigh Rail Road Company, signed by their treasurer and countersigned by their president, that at least three fifths of the whole capital stock of said company, which may be necessary to construct said rail road from the town of Wilmington to Weldon, on the Roanoke river, have been subscribed for and taken by individuals or corporations, and that at least one fourth of such private subscriptions, of not less than three fifths of the whole capital as aforesaid, has been actually paid into the hands of the said treasurer, and that the remainder of said subscription is either so paid, or is made by solvent persons fully able to pay, and the said board shall be satisfied of the truth thereof, they shall be, and they are hereby authorized and required to subscribe, on behalf of the State, for the remaining two fifths of the capital of said company ; and said subscription on the part of the State shall be paid in manner following, that is to say : one fourth thereof shall be paid upon such certificate as aforesaid, at the time of subscription ; one other fourth upon a like certificate, that another fourth of such private subscriptions has been paid by the subscribers ; the next fourth upon a like certificate ; and the residue upon a like certificate. And the said board are also authorized and required to subscribe and pay, on behalf of the State, to the Fayetteville and Western Rail Road Company, two fifths of the capital stock which may be necessary to construct said rail road from the town of Fayetteville to the Yadkin river above the Narrows ; which sum shall be ascertained by actual surveys and estimates of a competent engineer. And they shall likewise subscribe and pay on behalf of the State, to the North Carolina Central Rail Road Company, two fifths of the capital stock, which may be necessary to construct the rail road last aforesaid from the port of Beaufort to the town of Fayetteville, which shall be also ascertained by a skil-

Payments upon such subscriptions, how to be made.

3. 1836, c. 22, s. 3.

4. 1836, c. 22, s. 4.

5. 1836, c. 22, s. 5.

6. 1836, c. 22, s. 6.

ful engineer as aforesaid ; the subscriptions and payments to the two latter companies being under the same rules, regulations and restrictions, as are herein before provided as to the rail road company first mentioned : *Provided*, that the said board, by virtue of such subscriptions and payments on behalf of the State, shall appoint two fifths of the whole number of directors of each of the corporations aforesaid ; and that in all general meetings of the stockholders, in any of said companies, the said commissioners of internal improvement, or any other representative of the State, whom the said board may appoint, shall be entitled to two fifths of the whole number of votes, which may be given at such meeting.

7. Until the said funds for internal improvements shall be actually required for the payment of the subscriptions herein directed to be made, or for some other object to which they shall be devoted by the legislature, it shall be the duty of the board aforesaid, and they are hereby authorized and required, to lend the same upon good security, either to individuals or corporations, taking bonds therefor payable semiannually, but capable of renewal should the board not direct otherwise, and bearing interest from date ; which said bonds shall be recorded by the treasurer of the board, in a book kept for that purpose, and shall be deposited as special deposites in one of the banks in this State.

Board to lend out the money until such subscriptions are wanted.

8. If any of the aforesaid incorporated companies should fail to obtain the requisite number of private subscribers to give to such company a corporate existence by the terms of its charter, for one year from and after the adjournment of the present session of the General Assembly, or shall fail to commence the construction of their rail road, and to call in and receive one fourth of the payment on the subscription as aforesaid, before the next regular biennial session of the same, or shall fail to complete the same within the time limited by their acts of incorporation, then the State shall be no longer bound to make or pay the subscriptions aforesaid.

In what event the State shall be released from its obligation to subscribe.

9. No other fund, than the portion of the surplus revenue first aforesaid, shall be considered as pledged for said subscriptions ; and the State may cease to be a subscriber after said surplus is exhausted, but shall be a stockholder to the amount of shares for which she has actually paid in any of said companies.

Surplus revenue of the United States is only pledged for such subscriptions.

10. It shall be the duty of the governor, as president of said board, during the recess of the General Assembly, to cause publication of any subscription or payment, made in pursuance of this act, to be made in one or more public newspapers printed at the city of Raleigh, as soon thereafter as the same can be conveniently done.

Governor to cause a publication of the payment of any subscription.

11. All the profits accruing to the State, from her subscription under this act to internal improvement, and from loans which may be made by the board, shall be added to the literary fund.

Profits of the State's subscription to be added to the literary fund.

12. From the fund set apart and established by this act, to aid

7. 1836, c. 22, s. 7.  
 8. 1836, c. 22, s. 8.  
 9. 1836, c. 22, s. 9.  
 10. 1836, c. 22, s. 10.  
 11. 1836, c. 22, s. 11.  
 12. 1836, c. 36, s. 1.



\$100,000 from the internal improvement fund to be appropriated to the contingent expenses of the State government.

When this act to be in force.

internal improvements in this State, the sum of one hundred thousand dollars shall be and the same is hereby appropriated for defraying the civil and contingent expenses of the State government, if the same shall be deemed necessary and requisite; and in the disbursement of the moneys belonging to said fund, the appropriation hereby made shall be preferred to those herein before designated.

13. This act shall be in operation from and after its ratification.

13. 1836, c. 22, s. 12.—e. 36, s. 2.

*Judges. located 1848. Ch. 45. page 146.*

## CHAPTER 62.

# JUSTICES OF THE PEACE.

### AN ACT CONCERNING THE POWER AND JURISDICTION OF JUSTICES OF THE PEACE.

#### SECTION

1. Within what time a person appointed a justice must take the necessary oaths for qualifying himself—Penalty for acting without qualifying.
2. No justice who is a candidate for the office of sheriff, &c. shall vote or sit on the bench at the election—Penalty for so doing.
3. A justice removing and remaining out of the county twelve months, to lose his office.
4. Power of justices in the counties.
5. Justices not to practise as attorneys in the county courts of their own counties, nor to act as clerk, sheriff, &c.—Accepting such appointments to vacate his office, and he shall not act as a justice without a re-appointment.
6. Justice's jurisdiction in civil matters.
7. Warrants from a justice when returnable—Officer to take bail when required.
8. A defendant arrested and refusing to give bail to be committed—Where warrant to be tried, and duty of the officer in relation thereto.
9. Regulations respecting bail—How they are to be proceeded against.
10. Bail may arrest principal in order to surrender him.

#### SECTION

11. Justice's execution how to issue and be returned—Defendant may stay execution by giving security—How such security to be given.
12. No stay allowed on a former judgment.
13. Justice may upon sufficient cause shown, postpone or continue a trial.
14. Depositions of witnesses, when allowed to be read on a trial.
15. When a judgment is obtained in the absence of a party, within what time and how a new trial may be obtained.
16. Justice's execution when returnable, to whom to issue, and against what property.
17. Justice to direct witnesses to be summoned, which shall be done by the officer—Penalty on witnesses for not attending.
18. Execution against a person removing out of the county, how to be proceeded on.
19. How a judgment of a justice may be removed from one county to another.
20. A justice may accept an appointment under the United States.
21. Justice's process not to abate for want of form.

*1844.5 Ch 42.*

SECTION

- 22. Either party may appeal from a justice's judgment.
- 23. How security for appeal shall be given and proceeded against.
- 24. Justice to return appeals to court on or before the second day of the term, and to summon witnesses.
- 25. How and in what time a party desirous to appeal or stay execution, but is unprovided with his sureties, shall proceed to obtain such appeal or stay of execution—How a party shall proceed who was unable to attend the trial from sickness or other sufficient cause—Duty of the justice and constable, upon such appeal being granted, or stay allowed.
- 26. Execution may issue before the stay or appeal is granted.

SECTION

- 27. Upon security given for the stay or appeal, the officer must return the execution to the justice.
- 28. Justices may restrain rioters and disturbers of the peace.
- 29. Duty of two justices, with the sheriff, in suppressing unlawful assemblies, riots, &c.
- 30. The justices dwelling nearest, to perform this duty.
- 31. All magistrates to act in suppressing riots, &c.
- 32. Constables to serve notices.
- 33. How the notice to be served and returned.
- 34. Penalty on constables for failing to serve notices.
- 35. Notice may be given and proved as heretofore.

1848: CR 46

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 every person appointed a justice of the peace, before entering upon and executing the said office, shall, within twelve months thereafter, and not after that time unless re-appointed, publicly in the court house of his county on a court day, take the oaths appointed or which shall be appointed by the General Assembly for the qualification of public officers, and also an oath of office. And if any person shall presume to execute the office of a justice of the peace, without first qualifying himself in the manner by this act required, he shall for every such offence forfeit and pay the sum of two hundred dollars, one half thereof to the county, the other half to the person suing for the same, to be recovered with costs by action of debt in any court of record within this State where the same is cognizable.

Within what time a person appointed a justice must take the necessary oaths for qualifying himself.

Penalty for acting without qualifying.

2. No justice of the peace, being a candidate for the office of a sheriff, county court clerk, register, entry taker, surveyor, county trustee or ranger of his county, shall vote or sit on the bench at the election of such officer. And if any justice of the peace shall sit on the bench or vote in such election, his vote shall not be counted, and he shall forfeit and pay for every such offence the sum of one hundred dollars, to be recovered by action of debt, one half to the person suing for the same, and the other half to the use of the county.

No justice, who is a candidate for the office of sheriff, &c. shall vote, or sit on the bench at the election.

Penalty for so doing.

3. When any justice of the peace hath or shall remove himself out of the county for which he is or shall be appointed, and shall not return within twelve months to reside therein, his appointment shall be void: and it shall not be lawful for such justice to act as a justice of the peace, unless re-appointed by the General Assem-

A justice removing and remaining out of the county 12 months, to lose his office.

1. 1777, c. 115, s. 52.—1793, c. 382, s. 5.  
 2. 1793, c. 382, s. 3.—1794, c. 418.  
 3. 1793, c. 382, s. 4.



bly, under a penalty of one hundred dollars for every such illegal act, to be recovered by action of debt, one half to the use of the county, the other half to the person suing for the same.

Power of justices in their counties.

4. All justices of the peace shall, within their respective counties, have full power and authority to maintain, keep and preserve the peace, solemnize the rites of matrimony and issue necessary process to enforce the collection of debts and other contracts coming within their jurisdiction.

Justices not to practise as attorneys in the county courts of their own counties, nor to act as clerk, sheriff, &c. Accepting such appointments to vacate his office, and he shall not act as a justice without a re-appointment.

5. No justice of the peace shall practise as an attorney in the courts of pleas and quarter sessions of the county for which he is such justice, nor shall he be appointed or act as clerk or deputy clerk thereof, or as sheriff or deputy sheriff, constable or county trustee, or jailer, within his county. And if any justice shall accept any such appointments, he shall thereby vacate his office as such justice: and if he shall, after the acceptance of any such appointment, act as a justice, without a re-appointment by the General Assembly, he shall for every such act forfeit and pay the sum of one hundred dollars, to be recovered in any court having cognizance thereof, in the name of the wardens of the poor of such county, to be by them applied to the use of the poor.

Justice's jurisdiction in civil matters.

6. All debts and demands due on bonds, notes and liquidated accounts, when said accounts shall be stated in writing and signed by the party from whom the same shall be due, when the principal does not exceed one hundred dollars, although the principal and interest together may exceed that sum, and all debts and demands of sixty dollars and under for a balance due on any special contract, note or agreement, or for goods, wares and merchandise sold and delivered, or for work or labor done, or for specific articles whether due by obligation, note or assumpsit, or for any judgment which may have been granted by a single magistrate and no execution have issued thereon within twelve months, or for any forfeiture or penalty incurred by any act of the General Assembly, shall be cognizable and determinable by any one justice of the peace out of court.

Warrants from a justice, when returnable.

7. All warrants issued by a justice of the peace shall be made returnable on or before thirty days from the date thereof, Sundays excepted, and not after, and when issued against any person, executors and administrators and female debtors excepted, shall command the sheriff, constable or other officer, to take the body of the person therein mentioned as defendant, if to be found in his county, to answer the complaint of the plaintiff in such warrant before some justice of his county; and such officer, when required by the plaintiff, shall take bond with sufficient security of the party arrested in double the sum for which such person shall be held in arrest, (which sum and how due shall be expressed in the warrant,) conditioned for his appearance at a certain time and place, therein to be specified, before some justice of the county where

Officer to take bail when required.

4. 1741, c. 23, s. 1.—1778, c. 134, s. 1.—1777, c. 115, s. 56.  
 5. 1803, c. 747, s. 1, 2 and 3.—1809, c. 767, amended.  
 6. 1777, c. 115, s. 62.—1785, c. 233, s. 4.—1786, c. 253, s. 7.—1794, c. 414, s. 1.—1802, c. 609, s. 1.—1803, c. 627, s. 1.—1820, c. 1045, s. 1.—1823, c. 9.—1829, c. 32.  
 7. 1794, c. 414, s. 2 and 6.—1823, c. 1209.

the warrant issued, which bond shall be assigned by such officer to the plaintiff and returned with the warrant and shall be filed by the justice that shall try the warrant with the other papers in the suit ; and in case the sheriff, constable or other officer shall fail or neglect to take such bond with security as aforesaid, he shall be held and deemed special bail and the plaintiff may proceed to judgment against him according to the rules hereinafter prescribed.

8. When any sheriff, constable or other officer shall serve a warrant on any person or persons, who shall refuse to give bond and security for his or her appearance as aforesaid, such officer is hereby required to commit such person or persons to the jail of his county, in order that he may have such person or persons forthcoming at the day appointed for trial, and it shall be the duty of such officer to produce his prisoner at such trial, and all warrants, whether by summons, arrest or attachment, shall be heard or determined on the day appointed by the officer serving the warrant as aforesaid, which day shall be on or before the return day set forth in the warrant, unless the justice shall for good reasons put off the trial to some other day at his discretion. And in case the plaintiff shall fail to attend or prosecute his suit on the day appointed as aforesaid, the defendant appearing shall be discharged, and it is hereby declared to be the duty of the officer, serving a warrant, to notify the plaintiff of the time and place appointed to try and determine the cause : *Provided*, that when the sheriff, constable or other officer shall have committed any defendant to jail as aforesaid, it shall be the duty of such officer to give immediate notice thereof to some justice in the county, and such justice shall appoint a day for the trial, and notice of the time of such trial shall be given and served on the plaintiff by the officer who served the warrant.

A defendant arrested and refusing to give bail, to be committed.

Where warrants to be tried, and duty of the officer in relation thereto.

9. All bail, taken according to the directions of this act, shall be liable to the recovery of the plaintiff, but the plaintiff after final judgment shall not take out execution against the bail, until an execution against the body of the defendant be first returned by the sheriff, constable or other officer that the defendant is not found in his county, and not until a notice in writing, issued against the bail by the justice who has possession of the papers in the original suit, hath been made known to the bail ; and after the return of such execution against the principal and notice against the bail, execution may issue against the principal and bail or any of them or any of their estates, unless the bail shall make it appear that the principal is dead, or that the judgment has been satisfied, or unless the bail shall surrender the principal, at or before the return of such notice to the officer who served the notice, in which latter case the justice shall commit the principal to the jail of his county until he shall satisfy the judgment and costs.

Regulations respecting bail. How they are to be proceeded against.

10. Such bail shall, at any time before final judgment had against him, have full power and authority to arrest the body of

Bail may arrest principal in order to surrender him.

8. 1794, c. 414, s. 3.  
 9. 1794, c. 414, s. 4.  
 10. 1794, c. 414, s. 5.



his principal, and secure him, until he shall have an opportunity of surrendering him in discharge of himself to the officer, who made the arrest or served the notice, and such officer is hereby required to receive such surrender and hold the body of the defendant in custody, as if bail had never been given.

Justice's execution, how to issue and be returned.

11. When any judgment is given by a single magistrate, it shall be in his power or that of any other justice of the peace to award execution against the goods and chattels, lands and tenements, or body of the party cast, which process shall be executed and returned by the sheriff, constable or other lawful officer to whom the same may be directed, in the same manner as other writs of *fiere facias*, or *capias ad satisfaciendum* are to be executed and returned. *Provided always*, that where a judgment shall be given by a justice of the peace as aforesaid, execution thereon shall be stayed in the following manner, viz: for all sums not exceeding four dollars, twenty days; for all sums above four dollars and not exceeding ten dollars, sixty days; for all sums above ten dollars and not exceeding twenty dollars, one hundred and twenty days; and for all sums above twenty dollars, six months. And for the true and faithful payment thereof with interest and costs, the party praying such stay of execution shall, if required, give sufficient security, and the acknowledgment of such security entered by the justice and signed by the party shall be sufficient to bind him; and if the judgment shall not be discharged, at the time to which the execution has been stayed, then it shall be lawful for the justice, who has possession of the judgment, to issue execution as aforesaid against the principal and security.

Defendant may stay execution by giving security.

How such security to be given.

No stay allowed on a former judgment.

12. When any warrant shall be granted on a former judgment, on the trial of such warrant the former judgment shall be evidence of the debt, subject to such deductions as the defendant may make appear to have been paid, and if judgment in such case passes against the defendant, he shall not be entitled to any stay on the same.

Justice may, upon sufficient cause shown, postpone or continue a trial.

13. Every justice of the peace, before whom a warrant is brought for trial, shall have full power and authority, on sufficient excuse shown on oath by either the plaintiff or defendant, their agent or attorney, to postpone from time to time or continue for trial the same. *Provided*, such continuance or postponement shall in no case exceed thirty days, and it shall be lawful for any justice of the peace to act on said postponement or continuance, the original date of the warrant exceeding thirty days notwithstanding.

Depositions of witnesses, when allowed to be read on a trial.

14. When on the trial of a civil warrant, the testimony of a witness, not resident within the county where the same is pending, is required by either party, the deposition of said witness, taken by a single magistrate of the county where the witness may be, upon reasonable notice to the adverse party of the time and place of taking the same, shall be read in evidence, and the mag-

11. 1794, c. 414, s. 1.—1820, c. 1045, s. 1.

12. 1802, c. 609, s. 2.—1803, c. 627, s. 2.

13. 1803, c. 627, s. 3.

14. 1803, c. 627, s. 7.—1831, c. 9.

istrate, if the deposition is taken within this State, shall have power to issue a summons to compel the attendance of the witness.

15. Whenever a judgment shall be given in the absence of either plaintiff or defendant by any justice of the peace, whether execution hath been issued or not, on application of such absent party, his or her agent or attorney, within ten days after the date of said judgment, to the justice who awarded the same, on sufficient cause shown on oath or affirmation, why he, she or they could not attend the day of trial, it shall be the duty of the said justice to issue his order to the plaintiff, defendant or officer as the case may require, in possession of the papers relative to the suit, to forbear any further proceedings thereon, and immediately to bring the same before him or some other justice for reconsideration: *Provided*, that the applicant shall give sufficient security for his appearance. It shall also be the duty of the justice aforesaid to issue his summons, directed to some proper officer, to cause the parties, with their witnesses, to appear before him or some other justice, at such time and place, not exceeding thirty days as he may think proper, where the case shall undergo a fair investigation, and be subject to the same proceedings as if it had never been acted on; and the officer, to whom the summons may be directed, shall receive, for his trouble in executing the same, the same fees he is entitled to for summoning witnesses, to be taxed against the party at whose instance it issued.

When a judgment is obtained in the absence of a party, within what time and how a new trial may be obtained.

16. All executions, issued by a justice of the peace against the estate of any person or persons, shall be made returnable in three months from the date thereof, and shall be directed to the sheriff, constable or other lawful officer, commanding him that of the goods and chattels of the party cast he make such sum or sums of money therein mentioned, or, for want of such goods and chattels to satisfy said execution, then he levy on lands and tenements of such person or persons and make return thereof to the justice, who issued the same, setting forth on the execution the money he has made of the goods and chattels, and what lands and tenements he has levied on, where situate, on what water course, and whose land it is adjoining; and the justice, to whom the return is made, shall return such execution with all other papers on which the judgment was given, to the next court to be held for his county, which land shall by order of said court be sold by the sheriff of said county, or so much thereof as shall be sufficient to satisfy said judgment, in the same manner as real property is sold by writs of *feri facias* or *venditioni exponas*, issuing from such court; and the clerk of the court, where such papers are returned, shall, in a well bound book kept for that purpose, record the whole of the papers and proceedings had before the justice; and when any execution shall be returned to a justice not fully satisfied and discharged, it shall be lawful for any justice of the peace for said county to issue another execution for the sum so remaining due on the former execution.

Justice's execution, when returnable, to whom to issue, and against what property.

15. 1794, c. 414, s. 19.—1803, c. 627, s. 6.

16. 1794, c. 414, s. 1.—1803, c. 627, s. 6.



Justice to direct witnesses to be summoned, which shall be done by the officer.

Penalty on witnesses for not attending.

Execution against a person removing out of the county, how to be proceeded on.

How a judgment of a justice may be removed from one county to another.

A justice may accept an appointment under the United States.

Justice's process not to abate for want of form.

Either party may appeal from a justice's judgment.

17. Any justice of the peace is hereby authorized and required, on application of either plaintiff or defendant named in any original process, issued by a single justice, to direct the sheriff, constable or other lawful officer, by an order in writing on the process, to summon witnesses to appear and give testimony in such suit, at the time and place appointed for trial ; and each witness, failing to appear and give evidence, shall forfeit and pay the sum of four dollars, to the party at whose instance he was summoned, and further be liable to the action of the party aggrieved for damage sustained by his non-attendance, which fine shall be recovered before any justice of the peace, unless such witness on affidavit or otherwise, shall shew sufficient cause to the contrary, subject to appeal as in other cases.

18. When any execution shall issue to a sheriff, constable or other officer, in virtue of a judgment obtained before any justice of the peace, and the person or persons, against whom such judgment may be obtained, shall remove him or themselves to any other county within this State, and the sheriff or other officer cannot find any property, whereon to levy said execution, then and in such case the said sheriff or other officer shall return such execution to the next court, to be held for said county, and the plaintiff on application shall be entitled to an execution for the whole or any part of said execution which remains unpaid by the return of such officer ; and the clerk, by order of the said court, shall make a record of the same, and issue execution to the county, where the defendant or defendants reside, in the same manner and under the same rules as in cases of judgments obtained in said courts.

19. It shall and may be lawful for any person, having a judgment or execution against any person from a justice of the peace, and the said defendant has no property in the county whereon the same may be levied, to return the execution to the clerk of the county, in which judgment was obtained out of court, and it shall be the duty of the clerk to certify under seal that the justice or justices, who gave judgment, was an acting justice or justices of said county ; on which certificate any justice or justices, in any other county in this State, shall and may award execution, for the sums therein expressed, against such defendant or defendants.

20. It shall and may be lawful for any justice of the peace, who now is or may be hereafter appointed, to accept and exercise any civil office or appointment of profit or trust, under the authority of the United States, the duties of which appointment shall be confined to this State.

21. No process issued by a justice of the peace shall be set aside for the want of form, if the essential matters are set forth therein.

22. If either of the parties to a trial before a justice of the peace

17. 1794, c. 414, s. 21.

18. 1794, c. 414, s. 20.

19. 1797, c. 477.

20. 1811, c. 811.

21. 1794, c. 414, s. 16.

22. 1777, c. 115, s. 63.

shall be dissatisfied with the judgment given thereon, he may appeal to the next term of the court of pleas and quarter sessions, first giving security for prosecuting such appeal with effect.

23. In all cases where appeals shall be granted from the judgment of a justice, the acknowledgment of the security, subscribed by him and attested by the justice, shall be sufficient to bind the security to abide by and perform the judgment of the court, and where judgment shall be against the appellant, the same shall be entered on motion against the security, and execution shall issue against the principal, or against both principal and security, at the option of the appellee.

How security for appeals to be given and proceeded against.

24. When any justice of the peace shall grant an appeal to the county court, it shall be the duty of such justice to return such appeal, on or before the second day of the court, to which it may be returnable, and he is hereby authorized and required, on application of either of the parties, to issue subpœnas, directed to the sheriff or other lawful officer in any county in this State, for witnesses to appear and give testimony at the court, to which such appeal is returnable; and the officer, to whom such subpœna is directed, and the witnesses summoned in consequence thereof, shall be under the same rules and regulations, and subject to the same penalties, and entitled to the same pay, privileges and emoluments as if such subpœnas had issued from the clerk of the court, to which such appeal shall be returnable.

Justice to return appeals to court on or before the second day of the term, and to summon witnesses.

25. When any person, against whom a judgment shall be rendered by a civil magistrate, shall be desirous to appeal to the county court, or to stay the same, and shall be unprovided with security on the day of trial, upon the request of such person, his agent or attorney, it shall be the duty of the justice rendering such judgment to grant such person ten days to give his securities for an appeal or stay of execution, as the case may be, and he shall make an entry thereof on the warrant. And when judgment shall be entered against either plaintiff or defendant in their absence, the person or persons, against whom such judgment hath been given, on making oath within ten days of the rendition of said judgment, before any justice of the county where such judgment may be entered, that he, she or they was or were prevented from attending on the day of trial by bodily infirmity, mistaking the day of trial, or other sufficient cause, and that he, she or they are likely to be injured by such judgment, then and in that case it shall and may be lawful for such justice to grant an appeal to the next county court, or stay of execution, on such person or persons entering into bond with sufficient security, as in other cases of granting appeals or staying of execution from the judgment of the justice; and it shall also be the duty of such justice to give to the party, craving such appeal, a written order to the constable or other person, having such judgment in his or their hands, commanding him to return such judgment together with such other

How and in what time a party desirous to appeal or stay execution, but is unprovided with his sureties, shall proceed to obtain such appeal or stay of execution.

How a party shall proceed who was unable to attend the trial from sickness or other sufficient cause.

Duty of the justice and constable, upon such appeal being granted or stay allowed.

23. 1794, c. 414, s. 17.

24. 1794, c. 414, s. 16.

25. 1812, c. 832, s. 1.—1803, c. 627, s. 5.



papers and documents, as may be in their hands relative to such judgment, to him the said justice before the next county court, and also commanding said officer to give notice to the party, in whose favor such judgment hath been given, of an appeal having been granted thereon; and it shall be the duty of the justice, on receiving such judgment and other papers, to make return thereof, together with the appeal bond and affidavit of the party craving such appeal, to the next ensuing court of his county, to be tried as other appeals from justices' judgments.

Execution may issue before the stay or appeal is granted.

26. Nothing in the preceding section contained shall prevent the party, entitled to the same, from taking out execution, at any time before the same is stayed or an appeal granted.

Upon security given for the stay or appeal, the officer must return the execution to the justice.

27. If any execution shall issue upon any judgment, where the defendant prayed an appeal or stay of execution, before the ten days be expired, upon security being given as by this act directed, such execution shall be returned to the justice of the peace who issued it and shall not be acted on by any officer; and the officer, or other person who has any such execution, shall, due notice being given him in writing from the justice who granted the execution, deliver up the same or be liable to the action of the party grieved.

Justices may restrain rioters and disturbers of the peace.

28. Every justice of the peace, within the county for which he shall be appointed, shall have power to restrain evil doers, rioters and disturbers of the public peace, and to take them and cause them to be imprisoned and punished, and take of them, that be not of good fame, security for their good behavior.

Duty of two justices, with the sheriff, in suppressing unlawful assemblies, riots, &c.

29. If any riot, assembly or rout of people against law be made, any two justices of the peace and the sheriff shall come with the power of the county (if need be) and arrest them, and the same justices and sheriff shall have power to record that which they find done in their presence against law, and if such offenders be departed before the coming of the justices and sheriff, then the same justices and sheriff shall diligently inquire, within a month after, of such riot, rout or unlawful assembly, and shall record the same, and the record, so made by them in either case, said justices shall return to the next succeeding term of the court of pleas and quarter sessions or of the superior court to be held for their county.

The justices dwelling nearest, to perform this duty.

30. It shall be the duty of the justices of the peace, dwelling nearest, when such riot, rout or unlawful assembly shall be made, to execute the provisions of the preceding section.

All magistrates to act in suppressing riots, &c.

31. It shall be the duty of all magistrates to suppress all such riots, routs and unlawful assemblies: and they may, when necessary, use the power of the county for that purpose, and shall take such offenders and put them in prison, to be dealt with according to law.

Constables to serve notices.

32. It shall be the duty of all constables, in each and every

26. 1812, c. 832, s. 1.

27. 1812, c. 832, s. 2.

28. 31 Edw. 3, c. 1.

29. 13 Hen. 4, c. 7, s. 1.

30. 13 Hen. 4, c. 7, s. 4.

31. 17 Rich. 2.

32. 1827, c. 20, s. 2.

county within their respective counties, or upon any bay, river or creek adjoining their counties, to serve all notices, that shall be to them tendered or delivered, which are or may be required by law to be given, for commencing or prosecuting any cause before any justice of the peace out of court.

33. The constable shall serve the same, by delivering a true copy thereof to the person to whom the same should be delivered, if to be found in his county, or by leaving a copy thereof at the usual place of abode of such person, if in his county; and shall certify on the notice, the time when such notice was served, or copy left at the place of abode; and such return shall be evidence of the service of the said notice as may be therein stated; and the said constable shall deliver the said notice, with the return thereon, to the party, his attorney or agent, at whose instance such notice issued, upon demand of the same.

How the notice to be served and returned.

34. Any constable, neglecting or refusing to execute and return such notice, or making a false return thereon, shall be subject to the same action and penalties as for refusing or neglecting to serve, or falsely returning process or precepts, directed to him from a justice of the peace out of court, to be prosecuted, recovered and applied, as actions and penalties are directed to be prosecuted, recovered and applied, for refusing or neglecting to serve, or falsely returning process or precepts issued from a justice of the peace out of court.

Penalty on constables for failing to serve notices.

35. Nothing contained in the three preceding sections, shall prevent any person from giving notice, and proving the same as heretofore.

Notice may be given and proved as heretofore.

- 33. 1827, c. 20, s. 3.
- 34. 1827, c. 20, s. 4.
- 35. 1827, c. 20, s. 5.

Note.—REFERENCES TO ADJUDGED CASES.

SECT. 6. *Kiddie vs. Moore*, 2 Murph. 41. *Hamilton vs. Parish*, 4 Hawks, 283. *O'Dwyer vs. Cutler*, 1 Dev. 312. *Tyer vs. Harper*, ib. 337. *Bell vs. Ballew*, ib. 391. *Ferrel vs. Underwood*, 2 Dev. 111. *Fentress vs. Worth*, ib. 229. *Griffin vs. Ing*, 3 Dev. 358. *Wilson vs. Jennings*, 4 Dev. 90. *Bryan vs. Washington*, ib. 479.

SECT. 7. *Anon.* 1 Hay. 398.

SECT. 11. *Forsythe vs. Sikes*, 2 Hawks, 54. *Weaver vs. Parish*, 1 Hawks, 319. *Governor vs. Bailey*, 3 Hawks, 463. *Humphries vs. Buie*, 1 Dev. 378. *Hamilton vs. Parish*, ib. 415.

SECT. 13. *Shipman vs. Maers*, 4 Dev. 484.

SECT. 16. *Lash vs. Gibson*, 1 Murph. 266. *Ellar vs. Ray*, 2 Hawks, 568. *Nesbitt vs. Ballew*, 3 Hawks, 57.—*Lanier vs. Stone*, 1 Hawks, 329.

SECT. 22. *Dolby vs. Jones*, 2 Dev. 109.

SECT. 23. *Picot vs. Hardison*, 2 Hawks, 532.

SECT. 25. *Lamon vs. Gilchrist*, 1 Dev. 176.



## CHAPTER 63.

## LANDS OF DECEASED DEBTORS.

## AN ACT PRESCRIBING THE MODE OF SUBJECTING THE LANDS OF DECEASED DEBTORS FOR THE PAYMENT OF THEIR DEBTS.

## SECTION

1. In suits against an executor or administrator, upon the plea of fully administered being verified, how the plaintiff shall proceed to subject the real estate in the hands of the heirs or devisees.
2. Heirs and devisees may contest the finding of fully administered, in a collateral issue with the executor or administrator.
3. Such collateral issue to be tried at or before the second term.
4. When an executor or administrator fails to plead fully administered, &c. or the plea is found against him and he becomes insolvent, how the plaintiff shall proceed—Proviso, in cases of collusion.
5. Heirs or devisees may show that the executor or administrator has assets or is not insolvent.
6. Creditor's title to relief in equity not affected.
7. The creditor, on the trial of the *scire facias* against the heirs, &c. shall recover the costs of the original suit.
8. Where an estate is indebted to the executor or administrator, how he shall proceed to subject the real estate when there is no personal estate.
9. The *scire facias*, &c., how to be served when the heir or devisee is a minor.

## SECTION

10. When the heirs or devisees or any of them live out of the State, and have no guardian here, what proceedings shall be had.
11. How a guardian shall proceed when he has notice of a debt or demand against his ward—Execution against the estate of a minor, when and how to issue.
12. What proceedings shall be had to subject the real estate of a deceased debtor in the hands of the university.
13. The president, &c. of the university liable in like manner as heirs and devisees.
14. Lands held for the life of another and coming to the heirs by special occupancy, liable for the debts of the tenant for life.
15. Lands of deceased debtors how long liable for the payment of his debts, and within what time a conveyance by the heir or devisees shall be void, as against the creditors—Provisos.
16. Heirs or devisees selling after two years, to be answerable to the amount of the land descended or devised.
17. Devises of real estate void as to creditors—Creditors may have joint or several actions against the heirs and devisees.

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,

In suits against an executor or administrator, upon the plea of fully administered

That in all suits at law, where the executor or administrator of any deceased person shall plead fully administered, no assets, or not sufficient assets to satisfy the plaintiff's demand, and such plea shall be found in favor of the defendant, the plaintiff may proceed

to ascertain his demand and to sign judgment ; but before taking out execution against the real estate of the deceased debtor, a writ or writs of *scire facias* shall issue, summoning the respective heirs and devisees of such deceased debtor to shew cause, why execution should not issue against the real estate for the amount of such judgment, or so much thereof as there may not be found personal assets sufficient to discharge ; and if judgment shall pass against the heirs or devisees, or any of them, execution shall and may issue against the real estate of the deceased debtor in the hands of such heirs or devisees, against whom judgment shall be given as aforesaid.

being verified, how the plaintiff shall proceed to subject the real estate in the hands of the heirs or devisees.

2. Upon the return of such *scire facias*, the heirs and devisees shall be at liberty to contest the truth of the finding of the issue in favor of the executors or administrators, and upon the plea of such heirs or devisees, that the executors or administrators have sufficient assets, or have wasted or concealed the same, the court shall order the trial of a collateral issue between the executors or administrators and such heirs or devisees, which if found against the executors or administrators, the original plaintiff shall have execution, not only against the goods and chattels of the deceased debtor, but against the proper goods, chattels, lands and tenements of such executors or administrators.

Heirs and devisees may contest the finding of fully administered, in a collateral issue with the executor or administrator.

3. When any collateral issue shall be ordered to be made up, between the executors or administrators, and the heirs or devisees, in pursuance of the preceding section of this act, the same shall be tried at or before the second term thereafter, of the court where the said issue shall be ordered, and in default thereof, judgment shall be rendered against the lands of said deceased debtor, in favor of the original plaintiff, agreeably to the *scire facias*, unless on sufficient cause shown to the court, further time shall be given for the trial of said issue.

Such collateral issue to be tried at or before the second term.

4. Where the executors or administrators of any deceased person shall omit to plead fully administered, no assets, or not sufficient assets to satisfy the plaintiff's demand, or where they shall plead the said pleas or any of them, and the same shall be found against such executors or administrators, and they shall be, or afterwards become insolvent, so that the creditor cannot procure satisfaction for his demand, such creditor shall and may have the same remedy against the real estate of such deceased debtor in the hands of the heirs or devisees, and the same process, as is provided by the first section of this act, and if judgment be rendered against the heirs or devisees, or any of them, execution shall and may issue against the real estate of the deceased debtor, in the hands of such heirs or devisees : *Provided*, that no creditor shall be entitled to the remedy aforesaid against the heir or devisee, who shall be guilty of any negligence or collusion in prosecuting his suit, whereby the executor or administrator shall become insolvent to the detriment of the heir or devisee, which negligence or collusion such heir or de-

When an executor or administrator fails to plead fully administered, &c. or the plea is found against him and he becomes insolvent, how the plaintiff shall proceed.

Provido, in cases of collusion.

2. 1784, c. 226, s. 5.  
3. 1810, c. 792.  
4. 1807, c. 716, s. 1.



visee may shew, on an issue joined under the direction of the said court, before whom the trial shall be had.

Heirs or devisees may show that the executor or administrator has assets or is not insolvent.

5. When any creditor of any deceased person, claims to have judgment against the real estate of such debtor, in the hands of the heirs or devisees, by reason of the executors' or administrators' failing to plead the pleas aforesaid, or on account of the insolvency of the executors or administrators as herein before mentioned, the heirs or devisees of such deceased debtor shall and may be permitted to shew that the executors or administrators have assets, and, on an issue between them and the creditor, that the executors or administrators are not insolvent, but have property to pay part or the whole of the debt demanded and costs; if both the said issues shall be found in whole or in part for the heirs or devisees, judgment shall be rendered accordingly, otherwise for the creditor.

Creditor's title to relief in equity not affected.

6. Nothing in the foregoing provisions of this act contained, shall affect the remedy, which any creditor has or may have in equity, against the real estate of any deceased debtor, or in any manner change the rule of decision in equity in any such case.

The creditor, on the trial of the *sci. fa.* against the heirs, &c. shall recover the costs of the original suit.

7. In all cases, where the plea of fully administered is found in favor of an executor or administrator, and the plaintiff in the original action resorts to a *scire facias* to render the real estate of the deceased debtor liable to the satisfaction of his debt, he shall be entitled to recover all the costs expended in his former suit, and the same shall be assessed by the jury, and judgment rendered therefor, in like manner as for his debt.

Where an estate is indebted to the executor or administrator, how he shall proceed to subject the real estate when there is no personal estate.

8. Whenever the estate of a deceased person shall be indebted to the executor or administrator, and there shall not be personal assets sufficient to satisfy the debts or demands of such executor or administrator, it shall and may be lawful for such executor or administrator thereof, to prefer a petition against the heir or heirs and devisee or devisees of such testator or intestate, for the recovery of such debt or demand, to the court of the county wherein such administration or letters testamentary were granted, or to the court of equity of such county, in the manner and under the regulations prescribed by law for the recovery of legacies, filial portions and distributive shares, therein specially setting forth the nature of said debt or demand and the amount thereof, and praying that the heir or heirs of such deceased person may be made defendant or defendants thereto; and such petition being filed in the clerk's office, the same proceedings shall be had thereon, and the defendant or defendants shall be bound and subject to the same rules, as in cases of petition to recover legacies, filial portions and distributive shares, and if a decree shall be made against such heir or heirs and devisee or devisees, or any of them, execution shall and may issue against the real estate of the deceased debtor, in the possession of such heir or heirs and devisee or devisees, against whom a decree shall be given as aforesaid.

The *sci. fa.* &c. how to be served when the heir or devisee is a minor.

9. When any heir or devisee, against whom a *scire facias* shall

5. 1807, c. 716, s. 3.

6. 1807, c. 716, s. 4.

7. 1832, c. 19.

8. 1789, c. 311, s. 1 and 2.—1806, c. 704.

9. 1784, c. 226, s. 3.—1789, c. 311, s. 4.

issue or petition be filed, shall be a minor and have a guardian, the *scire facias*, or the copy of the petition and subpœna, shall be served on such guardian ; but when the minor has no guardian, then and in that case the court shall appoint a guardian to defend the suit for such minor.

10. When the heirs and devisees of any deceased debtor, or any of them, shall reside out of the State, so that writs of *scire facias* or petition cannot be served on them, and shall have no guardian, on which the same can be executed, then and in that case the sheriff shall return the fact to be so, and another *scire facias*, or a copy of the petition and subpœna shall issue, on which the same return shall be made, if the parties still continue to reside without the limits of this State, on which second return, and likewise on every second return, that the party or parties have been summoned, and no appearance shall be made upon such summons, judgment shall be given against the real estate in the hands of such heirs or devisees.

When the heirs or devisees or any of them live out of the State, and have no guardian here, what proceedings shall be had.

11. When any guardian shall have notice of any debt or demand against the estate of his or her ward, he or she may apply to the county court, wherein such guardianship was granted, for an order to sell so much of the personal or real estate of such ward as may be sufficient to discharge such debt or demand, and such order of the court shall particularly specify what property may be sold ; and such property shall be sold, on the same credit, and under the same regulations, as property sold by executors or administrators is or may be by law, and the proceeds of such sales shall be considered as assets in the hands of the guardian, for the benefit of the creditors, in like manner as assets in the hands of an administrator or executor, after a *scire facias* as by law directed ; and the same proceedings may be had against such guardian with respect to the assets aforesaid, as might be had or taken against an executor or administrator in similar cases : *Provided nevertheless*, that no execution shall be levied on the goods or chattels, lands or tenements of any minor, in the hands of his guardian, until twelve months after judgment obtained on the *scire facias* aforesaid, nor shall execution issue as aforesaid at any time but on motion in open court.

How a guardian shall proceed when he has notice of a debt or demand against his ward.

Execution against the estate of a minor, when and how to issue.

12. In all suits at law, where the executors or administrators of any deceased person shall plead fully administered, no assets, or not sufficient assets to satisfy the plaintiff's demand, and such plea shall be found in favor of the defendant, the plaintiff may proceed to ascertain his demand and to sign judgment ; but before taking out execution against the real estate of such deceased debtor, if there be no heirs or devisees of the estate, upon affidavit made by the plaintiff, that to the best of his knowledge the person deceased died seized of, or entitled to, certain real estate therein to be described, which real estate has since come to the possession of the president and trustees of the university of North Carolina, a writ or writs of *scire facias* shall and may issue against the president and trustees

What proceedings shall be had to subject the real estate of a deceased debtor in the hands of the university.

10. 1784, c. 226, s. 4.

11. 1789, c. 311, s. 5.

12. 1791, c. 352, s. 1.



aforesaid, to be served on their attorneys or agents, or either of them, summoning them to shew cause why execution should not issue against the real estate, for the amount of such judgment, or so much as there may not be personal assets to satisfy : *Provided always*, that the said president and trustees shall, upon such *scire facias*, be let in to contest the merits of the original action, and if judgment shall pass against the said president and trustees, execution shall and may issue against the real estate of the deceased debtor for the amount of such judgment.

The president, &c. of the university liable in like manner as heirs and devisees.

13. The president and trustees of the university of North Carolina shall be subject generally to the same process, judgment and execution, for the whole amount of real estate of any debtor deceased that may come to their hands, that the heirs of such debtor, had he or she left heirs, would have been subject unto, and shall be answerable to creditors out of the funds of the university, for the value of such lands as are by them sold, aliened or made over for the use thereof.

Lands held for the life of another and coming to the heirs by special occupancy, liable for the debts of tenant for life.

14. When any person shall die intestate, seized of any estate in lands, tenements and hereditaments for the life of another person, and such estate shall come to the heir or heirs of the tenant for life by special occupancy, the same shall be chargeable in the hands of such heir or heirs as assets by descent.

Lands of deceased debtors how long liable for the payment of their debts, and within what time a conveyance by the heirs or devisees shall be void, as against the creditors.

15. When any person shall die seized of any lands, and shall be indebted at the time of his or her death, all the lands of which he or she died seized, shall be liable to the payment of his or her debts, for the term of two years after the probate of his or her last will and testament, or, in case he or she shall die intestate, for two years after administration granted on his or her estate ; and all sales, conveyances or alienations of any lands of a deceased debtor, made by any devisee or devisees or heir or heirs at law of such deceased debtor, before the expiration of two years from the probate of the last will and testament of such deceased debtor, or before the expiration of two years after granting letters of administration on the estate of such deceased debtor, shall be utterly null and void, as to the creditors of such deceased debtor ; and the creditor or creditors of the deceased debtor may proceed against his or her real estate, in the same manner as if such conveyance never had been made by the devisee or heir at law of such deceased debtor : *Provided*, that nothing herein contained shall impair, or in any way affect the right of a widow to dower, in the lands of her deceased husband : *And provided also*, that this act shall not impair, or in any way affect the right of any person or persons, to whom any land shall be devised in trust or otherwise, or to whom power to sell land shall be given by any last will and testament, for the purpose of paying the debts of the deviser or testator, to sell or dispose of the same in order to carry into effect the intention of such deviser or testator, but every such person shall have the same power over such land as he or she now has, any thing herein contained to the contrary notwithstanding.

Provisos.

13. 1791, c. 352, s. 2.

14. 1818, c. 983, s. 1.

15. 1830, c. 36.

16. In all cases where any heir at law shall be liable to pay the debts of his or her ancestor, in regard of any lands, tenements or hereditaments descending to him or her, or where any devisee shall be liable to pay the debt of a testator, in regard to any lands devised to him or her, and shall, after the expiration of two years from the probate of the last will and testament or the granting of letters of administration, as set forth in the preceding section, sell, alien or make over the same, such heir at law or devisees shall be answerable for such debt or debts to the value of said land, so by him or them sold, aliened or made over; which value shall be ascertained by the jury empanelled to try the issue joined on the proceedings between the said parties; in which case all creditors shall be preferred, as in actions against executors or administrators, and execution shall be taken out upon any judgment or decree obtained against such heir or devisee, to the value of the said lands, as if the same were his or her own proper debt, saving that the lands, tenements and hereditaments *bona fide* aliened after two years, as herein provided, shall not be liable to such execution.

Heirs or devisees selling after two years, to be answerable to the amount of the land descended or devised.

17. All devises of lands, tenements and hereditaments, or of any rent, profit, term or charge out of the same, made by a debtor, shall be deemed and taken, only as against the creditor or creditors, his, her or their heirs, successors, executors, administrators and assigns, and every of them of such debtor, as null and void; and every such creditor shall and may have and maintain his, her or their action or actions against such devisee or devisees, in all cases and in like manner as such action or actions might or could be brought or maintained against the heir or heirs at law of such deceased debtor, jointly with the heir or heirs at law, or severally.

Devises of real estate void as to creditors. Creditors may have joint or several actions against the heirs and devisees.

- 16. 1789, c. 311, s. 3.—1807, c. 716, s. 2.
- 17. 1789, c. 311, s. 2.

*Note.*—REFERENCES TO ADJUDGED CASES.

- SECT. 1. Gardner *vs.* Ellis, Tayl. 106. Alston *vs.* Sumner, 2 Hay. 404. Cardwell *vs.* Brodie, 1 Murph. 97. Trimble *vs.* Jones, 3 Murph. 579. Bonner *vs.* Tier, 3 Dev. 533. Jeffreys *vs.* Yarbrough, 1 Dev. Eq. 506. Ricks *vs.* Blount, 4 Dev. 128.
- SECT. 11. Bank of Newbern *vs.* Stanly, 2 Dev. 477.
- SECT. 16. Spaight *vs.* Wade, 2 Murph. 295.
- SECT. 17. Dunn *vs.* Keeling, 2. Dev. 234.



CHAPTER 64.

LEGACIES, FILIAL PORTIONS AND DISTRIBUTIVE SHARES.

44.5. Ch. 57. Holchpot

AN ACT CONCERNING FILIAL PORTIONS, LEGACIES AND DISTRIBUTIVE SHARES OF INTESTATES' ESTATES.

SECTION

- 1. Intestates' estates, how to be distributed—Children advanced, but not to full amount, to have their shares made equal.
- 2. Children advanced, to account for the same.
- 3. Child refusing to account, not entitled.
- 4. Illegitimate children entitled to a

SECTION

- share of their mother's personal property—When illegitimate child dies without issue, how his personal property to be distributed.
- 5. Legacies, &c. recoverable by petition to the superior or county court—Rules and method to be observed.
- 6. Power of the court of equity not to be affected.

Intestates' estates, how to be distributed.

Children advanced, but not to full amount, to have their shares made equal.

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 every administrator shall distribute the surplus of the estate of his intestate, in the manner following, to wit : If there are not more than two children, one third part to the wife of the intestate, and all the rest, by equal portions, to and amongst the children of such intestate, and such persons as legally represent such children, in case any of the said children be then dead, other than such child or children, who shall have any estate by the settlement of the intestate, or shall be advanced by the intestate in his life time, by portion or portions equal to the share which shall, by such distribution, be allotted to the other children, to whom such distribution is to be made ; and in case any child, who shall have any estate by settlement from the intestate, or shall be advanced by the intestate in his life time, by portion or portions not equal to the share, which shall be due to the other children by such distribution as aforesaid, then so much of the surplus of the estate of such intestate, to be distributed to such child or children as shall have any estate from the intestate, or were advanced in the life time of the intestate, as shall make the estate of all the said children to be equal, as nearly as can be estimated. And in case there should be no children, nor any legal representatives of them, then one third of the said estate to be allotted to the wife of the intestate, and the residue of the said estate to be distributed equally to every of the next of kin of the intestate, who are in equal degree, and to those who legally represent them : *Provided*, that there be no representatives admitted amongst collaterals after brothers' and sisters' children. If there are more than two children, then such

widow shall share equally with all the children, she being entitled to a child's part ; and in case there be no wife, then all the said estate to be distributed equally to and amongst the children ; and in case there be no child, then to the next of kindred in equal degree of or unto the intestate, and their legal representatives as aforesaid, and in no other manner whatsoever. And if, after the death of the father, any of his children shall die intestate, without wife or children, in the life of the mother, every brother and sister, and the representatives of them, shall have an equal share with the mother, of the estate of the child or children so dying intestate.

2. Where any person shall die intestate, who had in his or her life time given to, or put into the actual possession of, any of his or her children, any personal property of what nature or kind soever, such child or children, possessed as aforesaid, shall cause to be given to the administrator or manager of such estate, an inventory, on oath, setting forth therein the particulars by him or her received of the intestate in his or her life time.

Children advanced, to account for the same.

3. In case any child or children, who had in the life time of the intestate, received a part of said estate, shall refuse to give an inventory as aforesaid, such child or children shall be considered to have had and received his or her full share of the deceased's estate, and shall not be entitled to receive any further part or share thereof.

Child refusing to account, not entitled.

4. Where any woman shall die intestate, leaving children commonly called illegitimate or natural, born out of wedlock, and no children born in lawful wedlock, all such personal estate, whereof she shall die possessed, shall be equally divided among such illegitimate or natural born children and their representatives, in the same manner as if they had been born in wedlock ; and if any such illegitimate or natural born child shall die intestate, without leaving any child or children, his or her personal estate shall be equally divided among his or her brothers and sisters, born of the body of the same mother, and their representatives, in the same manner and under the same regulations and restrictions as if they had been born in lawful wedlock.

Illegitimate children entitled to a share of their mother's personal property. When illegitimate child dies without issue, how his personal property to be distributed.

5. All legacies, filial portions, distributive shares of intestates' estates, sum or sums of money or other estate, due or owing from any person appointed guardian to any orphan, or from any executors or administrators, or other person whatsoever, shall and may be recovered by petition to the superior court of the county or any inferior court of pleas and quarter sessions, respect being had to the jurisdiction of the said court ; and in all suits by petition as aforesaid, and in the said courts respectively, the following rules and methods shall be observed : The petitioner may file his petition in the clerk's office, and thereupon a summons shall be issued by the clerk of the court, and, upon the defendant's being served

Legacies, &c. recoverable by petition to the superior or county court.

Rules and method to be observed.

2. 1792, c. 364, s. 2.

3. 1792, c. 364, s. 3.

4. 1799, c. 522.

5. 1715, c. 15, s. 4.—1762, c. 69, s. 23.



therewith, and with a copy of the said petition, he shall appear and put in his answer or plea upon oath, or demur.

Upon an answer, plea or demurrer being filed as aforesaid, the petitioner may move the court to have the same set for hearing, and immediately argued, and thereupon the court shall proceed to hear and determine the same according as the matter in equity and law shall appear to them, without regard to form or want of form in the petition, process or course of proceedings.

Upon the defendant's being served with a summons and a copy of the petition, ten days before the court, to which such summons is returnable, if he shall fail to appear and plead, answer or demur as aforesaid, the petitioner's petition shall be taken *pro confesso*, and the matter thereof decreed accordingly with costs, unless on special reason shewn to, and approved by the court, time shall be allowed such defendant to file such plea, answer or demurrer.

And if any defendant shall appear on such summons, and shall obstinately refuse to answer the petition of the petitioner, the same shall be taken *pro confesso*, and the matter decreed as aforesaid. Every defendant shall be at liberty to swear to his answer or plea before any justice.

When a plea or demurrer shall be overruled, the defendant shall file his answer the same court. When the petitioner shall be minded to disprove the answer of the defendant, and support his claims, he may reply.

Commissions to examine witnesses may be awarded by the court, after replication filed,—the party taking out such commission giving the adverse party ten days notice of the time and place of executing the same. The court shall have power to make such decree on the final hearing of the cause, both as to the sum decreed to be due and the costs of the cause, as shall seem just and equitable, and to award therefor such execution as may courts of equity in similar cases.

Power of the court of equity not to be affected.

6. Nothing in this act contained shall be construed to restrain or abridge the power of the court of chancery, in any matter or thing relating to orphans or their estate; but the said court shall and may hold, exercise and enjoy the same jurisdiction, power and authorities therein, in as full and ample manner, to all intents and purposes, as if this act had not been made.

6. 1762, c. 69, s. 26.

Note.—REFERENCES TO ADJUDGED CASES.

SECT. 1. *Davis vs. Duke*, Tayl. 213, S. C. Conf., 361. *Anon.* 2 Hay. 62. *Jones vs. Jones*, 2 Murph. 150. *Wilson vs. Hightour*, 3 Hawks, 76. *Grant vs. Bustin*, 1 Dev. and Bat. Eq. 77.

SECT. 4. *Kimrough vs. Davis*, 1 Dev. Eq. 71.

Lessors. 1840.1. Ch 37.

Library. 1840. Ch 46 — 1842.3. Ch 68  
1844.5. Ch 62

CHAPTER 65.  
LIMITATIONS.

AN ACT FOR LIMITING THE TIME WITHIN WHICH ACTIONS MAY BE BROUGHT, AND FOR QUIETING THE TITLES TO LAND AND SLAVES, AND PRESCRIBING THE TIME WITHIN WHICH PRESUMPTION OF SATISFACTION MAY ARISE.

SECTION

1. Persons having right, shall make claim to their lands within seven years, or be forever barred—Proviso, that infants, &c. may bring suit within three years after disability removed—Persons beyond seas, within eight years after their title accrues—Further proviso.
2. Twentyone years' possession of land under color of title, and with known boundaries, to be a bar to the State.
3. Time within which personal actions must be brought.
4. Proviso in cases of writs of error or reversal of judgment—Proviso for infants, *femes covert*, &c.—Proviso when the defendant is beyond sea.
5. This act to apply to bills, &c. after endorsement, in like manner as to promissory notes.
6. Time within which penal actions must be brought.
7. Sureties to guardian bonds to be discharged after three years from the time the orphan comes of age.
8. Suits on the bonds of sheriffs, constables, clerks, and clerks and masters, to be brought within six years.
9. Fees due to clerks, sheriffs, &c. to be collected within three years.
10. Actions on justices' judgments to be brought within seven years.
11. Creditors must claim within seven years from the death of the debtor, or be forever barred.

SECTION

12. Within what time after the qualification of executors or administrators, creditors must present their claims—Proviso for infants, &c.—Proviso, when the delay is at the request of the executor, &c.—Executor, &c. must have advertised.
13. Time within which presumption of payment on judgments, &c. may arise.
14. Time within which presumption of satisfaction of mortgages, &c. may arise.
15. Time within which a *scire facias* against bail on any judgment or decree now existing must be sued out.
16. Time within which a *scire facias* against bail in any suit now existing or hereafter to be brought must be sued out—Proviso, where the plaintiff marries or dies after judgment—Proviso for infants, &c.
17. Time not to be reckoned in case of nonsuit, arrest of judgment or reversal for error.
18. Adverse possession of a slave for three years to give title—Proviso as to parol gifts.
19. Mortgage of personal estate must be redeemed within two years after forfeiture—Proviso, that mortgagees may file their bills to foreclose at any time after forfeiture—Proviso for mortgagors becoming lunatic, &c.

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,* Persons having right, shall make claim to  
That no person or persons nor their heirs, which hereafter shall  
have any right or title to any lands, tenements or hereditaments,

1. 1715, c. 2, s. 3 and 4, amended.



their lands within seven years, or be forever barred.

Proviso, that infants, &c. may bring suit within three years after disability removed.

Persons beyond seas, within eight years after their title accrues.

Further proviso.

Twentyone years possession of land under color of title, and with known boundaries, to be a bar to the State.

Time within which personal actions must be brought.

shall thereunto enter or make claim, but within seven years next after his, her or their right or title descended or accrued, and in default thereof such person or persons, so not entering or making claim, shall be utterly excluded and disabled from any entry or claim thereafter to be made: *Provided nevertheless*, that if any person or persons, that is or hereafter shall be entitled to any right or claim of lands, tenements or hereditaments, shall be, at the time the said right or title first descended, accrued, come or fallen, within the age of twentyone years, *feme covert, non compos mentis*, imprisoned or beyond seas, that then such person or persons shall and may, notwithstanding the said seven years be expired, commence his, her or their suit, or make his, her or their entry, as he, she or they might have done before this act, so as such person or persons shall, within three years next after full age, discovery, coming of sound mind, enlargement out of prison, or persons beyond seas, within eight years after the title or claim becomes due, take benefit and sue for the same, and at no time after the times or limitations herein specified; but that all possessions, held without suing such claim as aforesaid, shall be a perpetual bar against all, and all manner of persons whatsoever, that the expectation of heirs may not, in a short time, leave much land unpossessed, and titles so perplexed, that no man will know of whom to take or buy land. *Provided also*, that if in any action of ejectment for the recovery of any lands, tenements or hereditaments, judgment be given for the plaintiff, and the same be reversed for error, or a verdict pass for the plaintiff, and, upon matter alleged in arrest of judgment, the judgment be given against the plaintiff that he take nothing by his plaint, writ or bill, or a verdict be given against the plaintiff, in all such cases the party plaintiff, his heirs or executors, as the case shall require, may commence a new action or suit from time to time, within one year after such judgment reversed, or judgment given against the plaintiff.

2. Where any person or persons, or the person or persons under whom he, she or they claim, shall have been, or shall continue to be, in possession of any lands, tenements or hereditaments whatsoever, under titles derived from sales, made either by creditors, executors or administrators of any person deceased, or by husbands and their wives, or by endorsement of patents or other colorable title, for the space of twentyone years, all such possessions of lands, tenements or hereditaments, under such title, shall be and are hereby ratified, confirmed and declared to be a good and legal bar, against the entry of any person or persons, under the right or claim of the State, to all intents and purposes whatsoever: *Provided nevertheless*, that the possession so set up shall have been ascertained and identified under known and visible lines or boundaries.

3. All actions of trespass, detinue, actions sur trover and replevin for taking away of goods and chattels, all actions of account and upon the case, all actions of debt for arrearages of rent, all actions

2. 1791, c. 346.

3. 1715, c. 2, s. 5.—1814, c. 879.

of debt grounded upon any lending or contract without speciality, and all actions of assault, menace, battery, wounding and imprisonment, or any of them, which shall be sued or brought, shall be commenced or brought within the time and limitation in this act expressed, and not after; that is to say, actions of account render, actions upon the case, actions of debt for arrearages of rent, actions of debt upon simple contract, actions of detinue, replevin, and trespass either for goods and chattels or *quare clausum fregit*, within three years next after the cause of such action or suit, and not after; except such accompts as concern the trade of merchandise, between merchant and merchant, and their factors, or servants; and the said actions of trespass of assault and battery, wounding, imprisonment or any of them within one year after the cause of such action or suit and not after; and the said actions upon the case for words, within six months after the words spoken, and not after.

4. *Provided nevertheless*, that if, on any of the said actions or suits, judgment be given for the plaintiff, and the same be reversed by error, or a verdict pass for the plaintiff, and upon matter alleged in arrest of judgment, the judgment be given against the plaintiff, that he take nothing by his plaint, writ or bill; or if any of the said actions shall be brought by original writ, and the defendant cannot be attached or legally served with process, in all such cases the party plaintiff, his heirs, executors or administrators, as the case shall require, may commence a new action or suit, from time to time, within a year after such judgment reversed, or such judgment given against the plaintiff, or till the defendant can be attached or served with the process, so as to compel him to appear and answer. *And provided further*, that if any person or persons, that is or shall be entitled to any such action of trespass, detinue, action sur trover, replevin, actions of accompt and upon the case, actions of debt for arrearages of rent, actions of debt grounded upon any lending or contract without specialty, actions of assault, menace, battery, wounding and imprisonment, actions of trespass *quare clausum fregit*, actions upon the case for slanderous words, be, or shall be, at the time of any such cause of action given or accrued, fallen or come, within the age of twentyone years, *feme covert*, *non compos mentis*, imprisoned or beyond the seas, then such person or persons shall be at liberty to bring the same actions, so as they bring the same within such times as are before limited, after their coming to or being of full age, discoverd, of sound memory, at large or returned from beyond seas, as other persons having no such impediment might have done. *And provided further*, that when any person or persons, against whom there is cause of action, shall be beyond sea at the time of such cause of action given or accrued, fallen or come, the person, who shall have such cause of action, may bring his action against them within such time or times, as are herein before limited, for bringing such actions after their return.

Proviso in cases of writs of error or reversal of judgment.

Proviso for infants, *femes covert*, &c.

Proviso when the defendant is beyond sea.



This act to apply to bills, &c. after endorsement, in like manner as to promissory notes.

Time within which penal actions must be brought.

Sureties to guardian bonds to be discharged after three years from the time the orphan comes of age.

Suits on the bonds of sheriffs, constables, clerks, and masters, to be brought within six years.

Fees due to clerks, sheriffs, &c. to be collected within three years.

Actions on justices' judgments to be brought within seven years.

5. The limitation of actions shall apply to all bonds, bills, and other securities made transferable by law, after the assignment or endorsement thereof, in the same manner as it operates against promissory notes.

6. All actions and suits to be brought on any penal act of the General Assembly, for the recovery of the penalty therein set forth, shall be brought within three years after the cause of such action or suit shall or may have accrued, and not after: *Provided*, that this act shall not affect the time of bringing suit on any penal act of the General Assembly, which hath a time limited therein for bringing the same.

7. If any orphan, coming to the age of twentyone years, does not call on his or her guardian within three years from thence, for a full settlement of his guardianship, the securities of such guardian shall be discharged from their securityship, in as full and ample manner as if such security had not been bound: *Provided*, that nothing in this section shall extend to persons imprisoned, beyond the seas, or *non compos mentis*, so that they bring their action within three years after such disability be removed.

8. All suits on the bonds of sheriffs, constables, clerks of the superior courts of law, clerks and masters in equity, and clerks of the courts of pleas and quarter sessions, shall be commenced and prosecuted, within six years after the right of action shall have accrued, and not afterwards; saving, nevertheless, the rights of infants, *femes covert*, and persons *non compos mentis*, so that they sue within three years after their disabilities are removed.

9. All fees, which now are, or hereafter may become due to the clerk of any court of record within this State, or to any sheriff, or any other officer, by sentence, judgment or decree of any court aforesaid, shall be collected, or suit commenced therefor, within three years from the time of such judgment rendered without an execution issued thereon, or within three years from the issuing of the last execution, and not after: *Provided nevertheless*, that this section shall not extend to fees which may be due and owing from persons residing out of this State.

10. All actions of debt, grounded upon the judgment of a justice of the peace, shall be commenced or brought within seven years next after the rendition of such judgment or the teste of the last execution, lawfully issuing on the same, and not after: *Provided nevertheless*, that if any person or persons, that is or shall be entitled to any action of debt upon such justice's judgment, shall be, at the rendition of such judgment or teste of the last execution lawfully issuing on the same, within the age of twentyone years, *feme covert*, *non compos mentis*, or beyond sea, that then such person or persons shall be at liberty to bring said action, within three years after arriving at full age, discoverture, or coming of sound mind, or returning from beyond sea.

5. 1786, c. 243, s. 5.

6. 1808, c. 743.

7. 1795, c. 443.

8. 1810, c. 800.—1826, c. 32.—1828, c. 43.

9. 1811, c. 822.

10. 1825, c. 1296, s. 1 and 2.

11. Creditors of any person deceased, shall make their claim within seven years after the death of such debtor, otherwise such creditor shall be forever barred.

Creditors must claim within seven years from the death of the debtor, or be forever barred.

12. The creditor or creditors of any person deceased, if he or they reside within this State, shall within two years, and if they reside without the limits of this State, shall within three years from the qualification of the executors or administrators, exhibit and make demand of their respective accounts, debts and claims of every kind whatsoever, to such executors or administrators; and if any creditor or creditors shall hereafter fail to demand and bring suit for the recovery of his, her or their debt as above specified, within the aforesaid limited time, he, she or they shall forever be barred from the recovery of his, her or their debt, in any court of law and equity, or before any justice of the peace within this State:

Within what time after the qualification of executors or administrators, creditors must present their claims.

*Provided*, that nothing in this act shall extend to debar infants, persons *non compos* or *femes covert* to bring their several actions after the expiration of the term above mentioned: *Provided*, such action be brought within one year after the coming to lawful age, sound mind or discoverture of such persons: *Provided also*, that if any creditor, after making demand of his debt or claim, shall delay to bring suit at the special request of the executors or administrators, then and in that case the said debt or demand shall not be barred during the time of their indulgence: *And provided also*, that the executor or administrator shall have advertised, within the time and in the manner prescribed by law.

Proviso for infants, &c.

Proviso when the delay is at the request of the executor, &c.

Executor, &c. must have advertised.

13. The presumption of payment or satisfaction on all judgments, contracts and agreements heretofore had or made, or hereafter to be had or made, shall arise within ten years after the right of action on the same shall have accrued, or shall accrue, under the same rules, regulations and restrictions as now exist at law in such cases.

Time within which presumption of payment on judgments, &c. may arise.

14. The presumption of payment, or abandonment of the right of redemption on mortgages and of other equitable interests, shall arise within ten years after the forfeiture of said mortgage or last payment on the same, or the right of action shall have accrued or shall accrue on any equitable interest or claim, under the like rules, regulations and restrictions: *Provided*, that when the right of action or claim on any judgment, contract, agreement, mortgage, or other equitable interest, heretofore had or made, accrued more than ten years ago, the presumption of payment, satisfaction or abandonment of the claim or right, shall arise within thirteen years from the accrual of the right of action on the same, under the like rules, regulations and restrictions.

Time within which presumption of satisfaction of mortgages, &c. may arise.

15. No *scire facias* shall be sued out or prosecuted against the bail of a defendant to any judgment or final decree, now existing in any court, but within four years from the rendition of such judgment, or the entering of such final decree.

Time within which a *scire facias* against bail on any judgment or decree now existing must be sued out.

11. 1715, c. 10, s. 7.—1799, c. 536, s. 1.  
 12. 1789, c. 303, s. 4 and 5.  
 13. 1826, c. 28, s. 1.  
 14. 1826, c. 28, s. 2.  
 15. 1831, c. 18, s. 1.



Time within which a *scire facias* against bail in any suit now existing or hereafter to be brought must be sued out.

Proviso where the plaintiff marries or dies after judgment.

Proviso for infants, &c.

Time not to be reckoned in case of nonsuit, arrest of judgment, or reversal for error.

Adverse possession of a slave for three years to give title.

Proviso as to parol gifts.

Mortgage of personal estate must be redeemed within two years after forfeiture.

16. No *scire facias* shall be sued out or prosecuted against the bail of any defendant to any writ, or action, or suit, now pending, or hereafter to be brought in any of the courts in this State, but within four years after the rendition of a final judgment, or the entering of a final decree in the action or suit to which bail is or shall be given: *Provided however*, that if the plaintiff in the action or suit aforesaid shall marry or die, after a judgment has been rendered or a final decree entered, and it shall therefore become necessary for his or her representative or husband to be made a party to said judgment or decree, before execution thereon can be had, or if the plaintiff to any judgment or decree, now existing, be dead or married, and thereby a like necessity is created, the time which elapses during the pendency of the proceedings that may be had to revive the said judgment or decree, shall not be reckoned: *Provided, nevertheless*, that if any person that is plaintiff in any judgment or decree, already rendered in any court of this State, shall be now an infant under the age of twentyone years, a *feme covert*, *non compos mentis*, imprisoned or beyond seas, then such person shall be at liberty to sue out and prosecute a *scire facias* upon the bail bond aforesaid, if he or she sue out the same, within four years after his or her coming to or being of full age, discover, of sound memory, at large, or returned from beyond seas; and that if any person, that shall be a plaintiff in any judgment or decree, that shall be hereafter rendered, be at the time of rendering the said judgment or entering up the decree, an infant under the age of twentyone years, a *feme covert*, *non compos mentis*, imprisoned or beyond seas, then such person or persons shall be at liberty to sue out and prosecute a *scire facias* upon the bail bond aforesaid, if he, she or they sue out the same, within four years after his, her or their coming to or being of full age, discover, of sound memory, at large, or returned from beyond seas.

17. If the plaintiff shall sue out his *scire facias* upon the bail bond as aforesaid, and shall be therein nonsuited, or obtain judgment against the bail, and such judgment shall be arrested or reversed for error, the time which elapses from the day of issuing such *scire facias*, to the nonsuit, or arrest of judgment, or reversal for error, shall not be reckoned under this act.

18. Whenever any person or persons shall remain in the possession of a slave or slaves, until such possession is protected by the statute of limitations, the person or persons, so in possession, and those claiming under them, shall be deemed and held to have a good and absolute title to such slave or slaves, against all persons whose claim is barred by the said statute: *Provided*, that nothing herein contained shall in any way affect the law now in force, that requires all gifts of slaves to be by deed of gift.

19. Whenever any mortgagor or mortgagors in any mortgage of personal property, executed since the year one thousand eight hundred and thirty, or hereafter to be executed, or his, her or

16. 1831, c. 18, s. 2.

17. 1831, c. 18, s. 3.

18. 1820, c. 1055.

19. 1830, c. 38.

their legal representative or representatives, shall fail to perform the conditions of the mortgage, for the space of two years from the time of performance specified in the mortgage, and shall omit to file a bill in equity, claiming his, her or their equitable right to redeem such personal property, for the space of two years after the forfeiture of the conditions of the mortgage, he, she or they shall be held and deemed forever barred of all claim in equity to the personal property mortgaged as aforesaid: *Provided nevertheless*, that nothing herein contained shall be construed to prevent any mortgagee or mortgagees from filing his, her or their bill in equity, to foreclose any such mortgage, at any time after the forfeiture of the conditions specified in the mortgage: *And provided further*, that if any such mortgagor or mortgagors shall become lunatic, or *non compos mentis*, or removed beyond seas, he, she or they shall be allowed the further time of one year from the removal of such disability, within which he, she or they, or his, her or their legal representative or representatives, may assert in equity his, her or their right to redemption.

Proviso, that mortgagees may file their bills to foreclose at any time after forfeiture. Proviso for mortgagors by coming lunati &c.

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*Note.* — REFERENCES TO ADJUDGED CASES.

SECT. 1. Slade *vs.* Smith, 1 Hay. 248. Andrews *vs.* Mulford, *ib.* 311. Borritz *vs.* Turner, Tayl. 112. Cobham *vs.* Ashe, *ib.* 123. Grant *vs.* Windburn, 2 Hay. 56. Armor *vs.* White, *ib.* 69 and 87. Anon. *ib.* 76. Pendar *vs.* Jones, *ib.* 294. Evans *vs.* Satterfield, 1 Murph. 413. Hill *vs.* Wilton, 2 Murph. 14. Whitlock *vs.* Walton, *ib.* 23. Jones *vs.* Ridley, 2 Car. Rep. 397. Baker *vs.* Evans, *ib.* 614. University *vs.* Blount, N. C. Term. R. 13. Benton *vs.* Murphy, *ib.* 259. Hamilton *vs.* Shepperd, 3 Murph. 115. Reddick *vs.* Legget, *ib.* 539. Jones *vs.* Putney, *ib.* 562. Thompson *vs.* Blair, *ib.* 583. Orbinson *vs.* Morrison, 1 Hawks, 467. Campbell *vs.* McArthur, 2 Hawks, 33. Church *vs.* Academy, *ib.* 233. Tate *vs.* Southard, 3 Hawks, 119. Gilliam *vs.* Jacocks, 4 Hawks, 310. Earle *vs.* Dickson, 1 Dev. 16. McRee *vs.* Alexander, 1 Dev. 321. Blair *vs.* Miller, 2 Dev. 407. Benzein *vs.* Robinett, 1 Dev. Eq. 444. Hoyle *vs.* Logan, 4 Dev. 495. Burton *vs.* Carruth, 1 Dev. and Bat. 2. Spencer *vs.* Weston, *ib.* 213. Gwynn *vs.* Welborn, *ib.* 313. Carson *vs.* Mills, *ib.* 546. Dobson *vs.* Murphy, *ib.* 586. Edwards *vs.* the University, 1 Dev. and Bat. Eq. 325.

SECT. 2. Clinton *vs.* Herring, 1 Murph. 414. Tate *vs.* Southard, 1 Hawks, 45. Graham *vs.* Houston, 4 Dev. 232.

SECT. 3. Billews *vs.* Bogan, 1 Hay. 13. Berry *vs.* Pulliam, *ib.* 16. Fergerson *vs.* Taylor, *ib.* 20. McNaughton *vs.* Norris, *ib.* 216. Anon. *ib.* 243. Elmore *vs.* Mills, *ib.* 359. Toomer *vs.* Long, 2 Hay. 18. Newsom *vs.* Person, *ib.* 242. Pitman *vs.* Casey, *ib.* 293. Vance *vs.* Granger, Conf. 71. Colking *vs.* Thaxter, *ib.* 93. Murphy *vs.* Guion, 2 Murph. 233. Killiam *vs.* Watt, 3 Murph. 167. Vass *vs.* Hicks, *ib.* 493. Riden *vs.* Trion, *ib.* 577. Murray *vs.* Smith, 1 Hawks, 40. Walker *vs.* Campbell, *ib.* 304. McIntire *vs.* Oliver, 2 Hawks, 209. Bank of Newbern *vs.* Sneed, 3 Hawks, 500. Peebles *vs.* Mason, 2 Dev. 367. Morrison *vs.* Morrison, 3 Dev. 402. Ballenger *vs.* Barns, *ib.* 460. Collier *vs.* Poe, 1 Dev. Eq. 55. Wagstaff *vs.* Smith, 2 Dev. Eq. 264. Armstrong *vs.* Dalton, 4 Dev. 568. Sherrod *vs.* Woodard, *ib.* 360. White *vs.* White, 1 Dev. and Bat. 260. Gattling *vs.* Darden, 1 Dev. and Bat. Eq. 72. Green *vs.* Caldclough, 1 Dev. and Bat. 320. Swink *vs.* Fort, 2 Dev. and Bat. Alston *vs.* Hamlin, *ib.*

SECT. 4. Anon. 1 Hay. 416. Anon. 2 Hay. 63. Skillington *vs.* Allison, 2 Hawks, 347. Davis *vs.* Cook, 3 Hawks, 608. Earle *vs.* Dickson, 1 Dev. 16. Morrison *vs.* Connelly, 2 Dev. 233.

SECT. 5. Phifer *vs.* Giles, 2 Dev. 498.

SECT. 6. Clark *vs.* Rutherford, 3 Murph. 237.

SECT. 7. Johnson *vs.* Taylor, 1 Hawks, 271.

SECT. 8. Governor *vs.* Franklin, 3 Murph. 213. Governor *vs.* Hanrahan, 4 Hawks, 44. Governor *vs.* Munroe, 4 Dev. 412.

SECT. 11. Neil *vs.* Hosmer, 1 Murph. 202. Alexander *vs.* Alexander, 1 Car. Rep. 273. Jones *vs.* Brodie, 3 Murph. 594. McIntire *vs.* Carson, 2 Hawks, 544. Rayner *vs.* Watford, 2 Dev. 338. Godley *vs.* Taylor, 3 Dev. 178. Cook *vs.* Streeter, 1 Dev. Eq. 324. Baily *vs.* Shannonhouse, *ib.* 416.

SECT. 12. Bond *vs.* Allen, Martin, 83. Hallowell *vs.* Pope, 2 Murph. 103. Goodman *vs.* Smith, 4 Dev. 450.

SECT. 19. Palmer *vs.* Faucett, 2 Dev. 240. Peterson *vs.* Williamson, *ib.* 326. Freeman *vs.* Perry, 2 Dev. Eq. 243. Hill *vs.* Hughes, 1 Dev. and Bat. 336. Powell *vs.* Powell, 1 Dev. and Bat. 349.



## CHAPTER 66.

## LITERARY FUND.

## AN ACT TO CREATE A FUND FOR THE ESTABLISHMENT OF COMMON SCHOOLS.

## SECTION

1. Of what materials the fund for the support of common schools is to consist.
2. The fund vested in a corporation, and who shall compose the corporation. (Amended by the act of 1836. See *infra* chap. 67.)

## SECTION

3. The board may vest the fund in any of the banks of the State, &c.
4. The fund to be applied to the instruction of such children as the legislature may deem expedient.

Of what materials the fund for the support of common schools is to consist.

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 a fund, for the support of common and convenient schools for the instruction of youth, in the several counties of this State, be and the same is hereby appropriated, consisting of the dividends arising from the stock, now held and which may hereafter be acquired by the State, in the banks of Newbern and Cape Fear, and which have not heretofore been pledged and set apart for internal improvement, the dividends arising from stock, which is owned by the State, in the Cape Fear Navigation Company, the Roanoke Navigation Company, and the Club Foot and Harlow's Creek Canal Company, the tax imposed by law on licenses to retailers of spirituous liquors and auctioneers, the unexpended balance of the agricultural fund, which by the act of the legislature is directed to be paid into the public treasury, all moneys paid to the State for entries of vacant lands, (excepting the Cherokee lands,) the sum of twentyone thousand and ninety dollars which was paid by this State to certain Cherokee Indians for reservations to land secured to them by treaty, and of all the vacant and unappropriated swamp lands in this State, together with such sums of money as the legislature may hereafter find it convenient to appropriate from time to time.

The fund vested in a corporation, and who shall compose that corporation. (Amended by an act passed in 1836. See *infra* chap. 67.)

2. All sums of money, which have accrued since the first day of November, one thousand eight hundred and twentyfive, and now constitute the literary fund, or which may hereafter accrue as aforesaid, shall be and the same are hereby vested in the governor of the State, the chief justice of the supreme court, the speaker of the senate, the speaker of the house of commons, and the treasurer of the State, for the time being, and they and their successors in office are hereby constituted a body corporate and politic, under

1. 1825, c. 1268, s. 1.
2. 1825, c. 1268, s. 2.

the name of "The President and Directors of the Literary Fund," with power to sue and be sued, plead and be impleaded, and to hold real and personal property, and to sell, dispose of and improve the same to effect the purposes of promoting learning, and the instruction of youth. The governor shall be president of the board, and any three of the directors shall constitute a quorum for the transaction of business relative to the said fund, and in the absence of the governor they shall have power to appoint a president for the time of such absence. They shall cause to be kept, by the treasurer of the State, a regular account of all such sums of money as may belong to the said fund, the manner in which the same has been applied and vested, and they shall make a report thereof to the legislature with such recommendations for the improvement of the same as to them shall seem expedient.

3. The president and directors of the fund, hereby created, are authorized to vest any part or the whole of the said fund in the stock of any of the banks of this State or of the United States, or in the stock of the government of the United States, and at all times to change, alter and dispose of the same, and of any real or personal estate belonging to the said fund, in such manner and upon such terms, as may, in their opinion, be best calculated to improve the value thereof.

The board may vest the fund in any of the banks of the State, &c.

4. The fund hereby created shall be applied to the instruction of such children, as it may hereafter be deemed expedient by the legislature to instruct in the common principles of reading, writing and arithmetic; and whenever in the opinion of the legislature the said fund shall have sufficiently accumulated, the proceeds thereof shall be divided among the several counties, in proportion to the free white population of each, to be managed and applied in such way as the legislature shall hereafter authorize and direct.

The fund to be applied to the instruction of such children as the legislature may deem expedient.

- 3. 1825, c. 1268, s. 3.
- 4. 1825, c. 1268, s. 4.

*1840.1. Ch 60. — 1842.3 Ch 59.*  
*1846.7. Ch. 10. -*

**CHAPTER 67.**

**AN ACT TO DRAIN THE SWAMP LANDS OF THIS STATE AND TO CREATE A FUND FOR COMMON SCHOOLS.**

SECTION

- 1. Board of literature to be established —Its style.
- 2. Governor to be president of the board and to appoint the members.
- 3. Swamp lands vested in said board.
- 4. Other property and funds vested in said corporation.
- 5. Duty of the board in having the

SECTION

- swamp lands surveyed, drained, &c.
- 6. Written consent of individuals to be sufficient to vest titles in said corporation.
- 7. When owners of land refuse their consent, what may be done by said corporation.



## SECTION

8. Lands of individuals, improved by canals, &c. to pay a proportion of the costs.
9. Board to appoint an engineer and surveyor, and may adopt rules for surveying, assessing, &c.
10. Said corporation may enter upon any lands for the purpose of surveying.

## SECTION

11. Said corporation may sell reclaimed lands.
12. What money, &c. said corporation shall not expend.
13. Two hundred thousand dollars appropriated to their use.
14. What other rights and powers said corporation shall have.

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 there shall be a board of literature in this State, to be denominated and called by the name of "The President and Directors of the Literary Fund of North Carolina;" and by that name they are incorporated into a body politic and corporate, and shall be capable of suing in any court of record in this State.

Board of literature to be established — Its style.

Governor to be president of the board and to appoint the other members.

2. The governor of this State, by virtue of his office, shall be the president of the said board; and there shall be three other members of the said board, biennially nominated and appointed as such by the governor of this State, under and with the advice of his council; but in case a vacancy occurs, the same shall be filled by the other members of the board.

Swamp lands vested in said board.

3. All the swamp lands of this State, not heretofore duly entered and granted to individuals, shall be vested in the said corporation and successors, in trust as a public fund for education and the establishment of common schools.

Other property and funds vested in said corporation.

4. In addition to the said lands, the following property and funds shall be vested in said corporation, and their successors in trust as aforesaid, to wit: all the shares of stock owned by the State, in the bank of the State of North Carolina, excepting one thousand shares, together with all the shares of stock now held in said bank, in the name of the president and directors of the literary fund, making in all five thousand shares; and also five thousand shares of stock in the capital of the bank of Cape Fear, and the profits and dividends arising from said stock; which profits shall be reinvested by the said president and directors, from time to time as they accrue, for the use of said fund, as they may judge best; subject, however, at all times to the direction and control of the General Assembly.

Duty of the board in having the swamp lands surveyed, drained, &c.

5. The said president and directors of the literary fund shall be and they are hereby invested with full power and authority to adopt all necessary ways and means, for causing so much of the swamp lands aforesaid to be surveyed, as they may think capable of being reclaimed; and after the said lands or any part of them shall be surveyed, to contract with one or more persons to construct canals, ditches and other works, necessary for the purpose of reclaiming the said lands, upon such terms and conditions as may be prescribed by the said corporation; the contractor or contractors in each case giving bond and security for the faithful performance of the agreement.

6. Whenever it shall be necessary to construct any of the works of said corporation on the lands of any individual proprietor, the written consent of such proprietor, without any formal deed of conveyance, for the lands necessary to the work and its future unrestricted enjoyment, shall vest the title thereof in the said corporation forever; and when any infant, or person *non compos mentis*, or *feme covert* shall be owner thereof, the guardian of such infant or person *non compos mentis* shall be and he is hereby authorized to give such consent; and the *feme covert* with her husband may do so, without any separate examination; and the consent so given shall in either case be good and valid to all intents and purposes.

Written consent of individuals to be sufficient to vest titles in said corporation.

7. Whenever the consent of the proprietor aforesaid shall be withheld or refused, it shall be lawful for the said corporation or their agents to enter on the said lands, and lay off so much of the same as may be necessary to be used in said work, the value of which shall be assessed to the proprietor according to the law of the land; and upon the payment thereof, the title of said land shall be vested in the said corporation forever: *Provided*, that in the assessment of said valuation, the benefit that will accrue to the proprietor, by reason of said improvement, may be likewise reckoned and set off against the said damages.

When owners of land refuse their consent, what may be done by said corporation.

8. When there are lands owned by individuals, which can be reclaimed by reason of the canals, ditches, or other works of the said corporation, the said lands owned by individuals, shall be assessed to contribute an equitable proportion of the costs of said works; which assessment shall be made by the said president and directors, or by a board of commissioners appointed by them; and the assessment so made shall be charged on said lands: *Provided however*, that the said corporation may, by contract with individual proprietors agree upon the said assessment, and accept payment thereof in labor or money.

Lands of individuals, improved by canals, &c. to pay a proportion of the costs.

9. The said president and directors shall have power and authority to appoint an engineer, and surveyor and other servants under them to plan the works herein contemplated, upon the most reasonable terms on which they can be procured, and they may enact all necessary rules and regulations for surveying and reclaiming the swamp lands of this State, or any of them; for assessing the lands of individuals which may be improved by the works, and for collecting said assessments; and the assessments so made shall be published weekly for five weeks in one of the newspapers published in Raleigh, and also filed in the office of the clerk of the superior court, where the lands assessed are situate; and if no objections are filed at the court next after such advertisement, the said assessments shall be confirmed by the court, and the lands adjudged liable for the amount, and execution may be issued for the sale of said lands to satisfy the same, on motion to the court for that purpose; and if any reasons be shewn against the said assessments, they shall be heard and determined by the said court, and the said assessments shall be increased or diminished as the court shall adjudge is right.

Board to appoint an engineer and surveyor, and may adopt rules for surveying, assessing, &c.

10. The said corporation, and their officers or agents, shall

Said corporation may enter



upon any lands have a right to enter upon the lands of all and any persons whomsoever, for the purpose of surveying ; and all the grants and deeds for swamp lands, heretofore made, shall be proved and registered in the county, where such lands are situate, within twelve months ; and every such grant or deed, not being so registered within the time aforesaid, shall be utterly void and of no effect, and the title of the proprietor in said lands, shall revert to the State of North Carolina.

Said corporation may sell reclaimed lands.

11. The said corporation may sell and convey any part of the lands, which may be reclaimed, for the best price that can be obtained for the same ; and the title of the purchaser or purchasers shall be good and valid in law and equity. But the corporation shall not sell any canal by them constructed under this act.

What money, &c. said corporation shall not expend.

12. The corporation aforesaid shall not expend any part of the moneys and stocks, herein before vested in them for the purpose of reclaiming the said lands.

Two hundred thousand dollars appropriated to their use.

13. Two hundred thousand dollars shall be, and are hereby appropriated to the use of said president and directors ; and they have power to expend so much thereof, in reclaiming the swamp lands, as can be beneficially applied to that object ; and, if the same shall not be immediately required, the said president and directors shall have power to loan the same, on short credit and good security, or to deposit it with a bank or banks, at a reasonable rate of interest, as they may see fit, until it is required for the work herein provided for.

What other rights and powers said corporation shall have.

14. Besides the powers herein before given, the said president and directors are invested with all the rights and powers heretofore belonging to the president and directors of the literary fund of this State ; and also with all powers and authority necessary and proper for reclaiming the swamp lands of this State, and for obliging the owners of any part of said lands to contribute an equitable share of the expenses, whenever such owners are benefited by the work of the company.

## CHAPTER 68.

### AN ACT TO PROVIDE FOR DRAINING THE MATTAMUSKEET LAKE.

#### SECTION

1. Governor to appoint three commissioners for the purpose of draining Mattamuskeet lake.
2. Commissioners to locate and contract for the cutting a canal.
3. Reclaimed land not to be entered.
4. Pay of the commissioners.

#### SECTION

5. Public treasurer to pay out of the literary fund.
6. Commissioners to contract with individual proprietors for aid.
7. Commissioners to report, &c.
8. Commissioners to give bond.

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 the governor of this State be, and he is hereby authorized and empowered to appoint three commissioners, who shall be and they are hereby constituted a board of commissioners, for the purposes hereafter named. And the governor is hereby authorized to supply any vacancy that may occur by death, resignation, removal or refusal to act.

Governor to appoint three commissioners for the purpose of draining Mattamuskeet lake.

2. The said commissioners are hereby authorized to examine and ascertain the most practicable route for a canal, to lead from Mattamuskeet lake in Hyde county, to some convenient water course, which will drain the said lake. When the said board of commissioners shall have ascertained and fixed upon the route of said canal, they are hereby authorized and empowered, on behalf of the State, to contract with one or more persons to cut or open said canal ; the said contract to be made on such terms and conditions, as the said commissioners may think proper, taking bonds with good securities in double the amount of the contract, conditioned for its due and faithful performance.

Commissioners to locate and contract for the cutting a canal.

3. It shall not be lawful for any person to enter lands that are now vacant, and which may hereafter be reclaimed by the operations of this canal.

Reclaimed land not to be entered.

4. The said commissioners shall be allowed the sum of three dollars per diem for every day they may be engaged in performing the duties enjoined by this act.

Pay of the commissioners.

5. The public treasurer shall be and he is hereby authorized and directed to pay, on the warrant of the said commissioners, a sum not exceeding eight thousand dollars out of any moneys belonging to the literary fund.

Public treasurer to pay out of the literary fund.

6. Said commissioners, before locating the canal shall ascertain what assistance in cutting the same, can be procured from those who may receive benefit therefrom ; and in the location of the said canal, the commissioners shall have reference to such assistance, and are hereby authorized to make with said individuals such contract in behalf of the State, for the purpose aforesaid, as they may deem necessary.

Commissioners to contract with individual proprietors for aid.

7. The said commissioners shall report to the next General Assembly. This act is to be in force from and after its passage.

Commissioners to report, &c.

8. The said commissioners shall give bond for the faithful performance of their duties, which bond shall be taken by the governor, payable to the State of North Carolina.

Commissioners to give bond.



CHAPTER 69.

AN ACT TO REPEAL SO MUCH OF THE ACT, PASSED DURING THE PRESENT SESSION, ENTITLED "AN ACT TO ESTABLISH A FUND FOR INTERNAL IMPROVEMENT, AND TO CREATE A BOARD FOR THE MANAGEMENT THEREOF," AS IS INCONSISTENT WITH AN ACT PASSED AT THE SAME SESSION, ENTITLED "AN ACT TO AID THE INTERNAL IMPROVEMENT OF THIS STATE;" AND ALSO TO REPEAL SO MUCH OF THE ACT PASSED DURING THE PRESENT SESSION, ENTITLED "AN ACT TO CREATE A FUND FOR THE ESTABLISHMENT OF COMMON SCHOOLS," AS IS INCONSISTENT WITH ANOTHER ACT, PASSED DURING THE SAME SESSION, ENTITLED "AN ACT TO DRAIN THE SWAMP LANDS OF THIS STATE AND TO CREATE A FUND FOR COMMON SCHOOLS."

SECTION

1. Certain parts of the revised acts relating to internal improvements and literary fund repealed.
2. Compensation of the members of the literary fund board.

SECTION

3. Board to lend out the moneys, &c. if the Cape Fear bank fails to accept amended charter.
4. When this act to be in force.

1848. ch 56.

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 so much of the act passed during the present session, entitled "An act to establish a fund for internal improvement, and to create a board for the management thereof," as is inconsistent with an act passed at the same session, entitled "An act to aid the internal improvement of this State," and also so much of the act passed during this session, entitled "An act to create a fund for the establishment of common schools," as is inconsistent with another act, passed during the same session, entitled "An act to drain the swamp lands of this State, and to create a fund for common schools," be, and the same are hereby repealed.

Certain parts of the revised acts relating to internal improvement and the literary fund repealed.

2. The persons composing the literary board, created under an act, entitled "An act to drain the swamp lands of this State, and to create a fund for common schools," shall be entitled to receive the same pay, and under the same regulations, as persons composing the board created under an act, entitled "An act to aid the internal improvements of this State."

Compensation of the members of the literary fund board.

3. If the stockholders in the Cape Fear bank shall fail to accept the amendment of their charter, which is made by an act of the present General Assembly, so that the funds of the State cannot be invested in the stock of said bank as by said act is directed, it shall be the duty of the president and directors of the literary fund to loan out the sum so directed to be invested and added to the literary fund, or otherwise to secure and manage the same, so as to cause said fund to accumulate as rapidly as possible.

Board to lend out the moneys, &c. if the Cape Fear bank fails to accept amended charter.

4. This act shall be in force from and after its ratification.

When this act to be in force.

CHAPTER 70.

MAD DOGS.

AN ACT CONCERNING MAD DOGS.

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 whenever the owner of any dog shall know, or have good reason to believe, that his or her dog, or any dog belonging to his or her slave, or other person in his or her employment, has been bitten by a mad dog, and shall neglect or refuse immediately to kill the same, he or she, so refusing or neglecting, shall pay the sum of fifty dollars, to be recovered for the use of him or her, who may sue for the same, in any court having jurisdiction thereof, with costs ; he or she, so refusing or neglecting as aforesaid, shall be further liable to pay all damages which may be sustained by any person or persons whatsoever, by the bite of any dog belonging as aforesaid.

Penalty and liability for damages for not killing any dog bitten by a mad dog.

1817, c. 945.

CHAPTER 71.

MARRIAGE.

AN ACT CONCERNING MARRIAGE.

1838. g. ch. 24  
1844. s. ch. 85.

SECTION

1. Ministers of the gospel, and justices of the peace, to celebrate the rites of matrimony.
2. Clerks of the county courts to issue licenses to marry, upon taking bond.
3. Who may publish the bans of matrimony.
4. Penalty on ministers and justices for celebrating the rites of matrimony contrary to law—Penalty on clerks for issuing licenses contrary to law.
5. White persons prohibited from marrying Indians or persons of color.
6. Penalty on ministers or justices for

SECTION

- marrying a white person to an Indian or person of color.
7. What disposition to be made of the property of an infant female under fifteen years of age, when she has been married contrary to law.
8. The trustees of such infant female's property to give bond—Court's power over them.
9. How to obtain a license when the parent or guardian of an infant female reside out of the State.
10. Penalty on clerks for issuing licenses contrary to the last section.

Provision for Feme Coverts. 1848. Ch 41.



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,

Ministers of the gospel, and justices of the peace, to celebrate the rites of matrimony.

That all regular ministers of the gospel of every denomination having the cure of souls, and all justices of the peace in this State, are hereby authorized and empowered to solemnize the rites of matrimony, according to the rites and ceremonies of their respective churches, and agreeable to the rules in this act prescribed; and the said ministers may demand and take for every couple by them married, if by license, the sum of two dollars, and, if by publication, the sum of one dollar to their use.

Clerks of the county courts to issue licenses to marry, upon taking bond.

2. The clerk of each county court is hereby authorized and empowered to grant marriage licenses to any person applying for the same, first taking bond in the name of the State of North Carolina, with sufficient security, in the sum of one thousand dollars, with condition that there is no lawful cause to obstruct the marriage for which such license is desired, to be recovered in an action of debt, in any court of record having cognizance thereof, by the party grieved, which bond aforesaid shall be taken, and license granted by the clerk of the county in which the *feme* resides, which license shall be directed to any authorized minister or justice of the peace.

Who may publish the bans of matrimony.

3. Every minister of the gospel, qualified as in this act before directed, or any other person appointed by their respective churches as a reader, is hereby authorized and empowered to publish the bans of matrimony between any two persons requesting the same: *Provided*, that every publication shall be made three several Sundays in the congregation, immediately after or during divine worship, and shall give a certificate of such publication, when demanded, directed to any authorized minister or justice of the peace, and may demand and take for his service the sum of forty cents and no more: *Provided*, that the people called quakers, shall retain their former rules and privileges in solemnizing the rites of matrimony in their own church.

Penalty on ministers and justices for celebrating the rites of matrimony contrary to law.

4. If any minister or justice of the peace shall knowingly join together in matrimony any two persons, in any other way or manner than by this act directed, he shall forfeit and pay, for every such offence, the sum of one hundred dollars, to be recovered by action of debt in any court of record, having cognizance thereof, one half to the use of him who will sue for the same, and the other half to the use of the county where such forfeiture ariseth, and be also liable to an action for damages to the party grieved. And if any clerk shall knowingly grant any marriage license, in any way or manner otherwise than by this act directed, he shall forfeit and pay for every such offence, the sum of two hundred dollars, to be recovered and applied as above directed, and be also liable to an action for damages to the party grieved.

Penalty on clerks for issuing licences contrary to law.

White persons prohibited

5. If any white man or woman, being free, shall intermarry with

1. 1778, c. 134, s. 2.—1741, c. 23.
2. 1778, c. 134, s. 3.
3. 1778, c. 134, s. 4.
4. 1778, c. 134, s. 5.
5. 1741, c. 23, s. 4.

an Indian, negro, mustee or mulatto man or woman, or any person of mixed blood to the third generation, bond or free, he shall, by judgment of the county court, forfeit and pay the sum of one hundred dollars to the use of the county.

6. No minister of the gospel, or justice of the peace within this State, shall presume to marry a white man or woman with an Indian, negro, mustee or mulatto woman or man, or any person of mixed blood, as in the preceding section, knowing them to be so, upon pain of forfeiting and paying for every such offence, the sum of one hundred dollars, to be recovered and applied as in the preceding section.

Penalty on ministers or justices for marrying a white person to an Indian or person of color.

7. Upon the conviction of any person for marrying an infant female under fifteen years of age, without the written consent of her father, it shall be the duty of the court, before whom the same is had, to appoint one or more trustees to take charge of the property belonging to the female so married; and the whole estate, both real and personal, vested in the said female, at the time of such marriage, and all the right, title and interest, which she had at such time to any property, either at law or in equity, shall be vested in and belong to the trustee or trustees so appointed by the court, and he, she or they shall have full power and authority to take all such estate into his, her or their possession, and if necessary to sue for and recover the whole or any part of said property, in his, her or their own name, as trustee or trustees aforesaid, and the said trustee or trustees shall hold the said estate and property, so received and recovered, to and for the following use and trust to wit: to the sole and separate use of the said female, during the continuance of the said marriage, free and separate from the control of her husband. And upon the termination of the said marriage, if the said female shall be then living, the said trustee or trustees shall convey the said estate to the said female, absolutely and in fee simple; and if said female shall not be then living, then the said estate shall be conveyed to such child or children, as she may leave surviving her, share and share alike; and in default of such children, then the said estate to be conveyed to such person or persons, as would have been distributees or heirs at law, according to the nature of the estate, if she had died unmarried; and the husband, convicted of the offence of marrying an infant female under fifteen years of age contrary to law, shall in no case be permitted to have, hold, use or enjoy, sell or dispose of any part of the estate, to which his wife was entitled at the time of such marriage; and all sales, dispositions and releases made by him of such property before such conviction, shall be, and are hereby declared to be null and void, nor shall he, in case of the death of his said wife, be entitled to administration on her estate, nor to any distributive share thereof, nor to any right of courtesy therein.

What disposition to be made of the property of an infant female under fifteen years of age, when she has been married contrary to law.

8. The said trustee or trustees shall give bond, payable to the State of North Carolina, with security, in such a sum as the court

The trustees of such infant female's property to give bond.

6. 1741, c. 23, s. 5.  
 7. 1820, c. 1041, s. 3.  
 8. 1820, c. 1041, s. 4.



appointing him, her or them, shall prescribe, for the faithful performance of the trusts reposed in them, and for accounting for all the profits of the estate entrusted to them, and shall be allowed such compensation for his, her or their trouble in the management of such estate, as the court shall direct ; and the superior courts shall have power at any time, when sufficient cause is shown to them, to remove the said trustee or trustees, and appoint others in their stead, who shall have the same powers and authorities, and be governed by the same rules, as the first appointed trustee or trustees.

Court's power over them.

How to obtain a license when the parents or guardian of an infant female reside out of this State.

9. In all cases when a license is applied for to marry a female, whose parents or guardian reside without the limits of this State, it shall be the duty of the person so applying, to produce to the clerk of the county court, or any other person legally authorized to grant license to marry, a certificate in writing from under the hand of the parent or guardian of the said female, as the case may be, stating she has arrived to the full age of fifteen years, and has leave to marry, which certificate shall be filed in the clerk's office, in the county where the license was obtained.

Penalty on clerks for issuing licenses contrary to the last section.

10. If any clerk, or any other person legally authorized to issue license to marry, shall give, grant or issue any license, contrary to the true intent and meaning of the ninth section of this act, he shall forfeit and pay the sum of one thousand dollars, to be recovered in any court of justice having cognizance of the same.

- 9. 1820, c. 1041, s. 5.
- 10. 1820, c. 1041, s. 6.

*Note.*—REFERENCES TO ADJUDGED CASES.

SECT. 4. State vs. Loftin, 2 Dev. and Bat.

**CHAPTER 72.**

**MEMBERS OF CONGRESS.**

*1846.7. Ch 21*

**AN ACT CONCERNING THE MODE OF CHOOSING SENATORS AND REPRESENTATIVES IN THE CONGRESS OF THE UNITED STATES.**

SECTION

- 1. Senators in congress, how to be chosen.
- 2. How to be commissioned.
- 3. The State divided into districts for choosing representatives in con-

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- gress—Each district entitled to one representative.
- 4. Time and manner of conducting the election.
- 5. Governor may order elections at

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other than the regular time in certain cases.

- 6. Penalty on persons for voting more than once at an election—Separate elections in counties, how to be conducted.
- 7. Duty of the returning officer with regard to elections.
- 8. Returning officers of the different counties of the district, to meet and compare the polls, and to give a

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certificate of election to the successful candidate—Provision when there is an equal number of votes for two or more candidates.

- 9. Governor to commission the persons elected representatives.
- 10. Returning officer's allowance for comparing polls.
- 11. How and when elections to be held in cases of vacancy.

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 the legislature of the State shall, whenever a senator or senators in the congress of the United States is or are to be chosen, at such time during their sessions as they shall appoint, elect, by joint vote of both houses of the General Assembly, the vote being *viva voce*, such senator or senators as may be necessary, under the inspection of two members from each house; and it shall be necessary to have a majority of the votes of both houses to elect any person for that purpose.

Senators in congress, how to be chosen.

2. The person or persons, so elected senator or senators, shall obtain a certificate of his or their election signed by the speakers of the two houses, and shall be commissioned by the governor for the time being, with the great seal of the State annexed to the commission.

How to be commissioned.

3. For the purpose of electing representatives to the congress of the United States, this State shall be divided into thirteen districts as follows, to wit: The counties of Perquimons, Chowan, Currituck, Camden, Gates, Pasquotank and Hertford shall compose one district; the counties of Northampton, Bertie, Halifax and Martin shall compose the second district; the counties of Beaufort, Hyde, Edgecombe, Pitt, Tyrrel and Washington shall compose the third district; the counties of Lenoir, Craven, Jones, Carteret, Wayne, Greene and Johnston shall compose the fourth district; the counties of New Hanover, Brunswick, Onslow, Duplin, Sampson, Bladen and Columbus shall compose the fifth district; the counties of Franklin, Granville, Warren and Nash shall compose the sixth district; the counties of Richmond, Anson, Moore, Cumberland, Robeson and Montgomery shall compose the seventh district; the counties of Orange, Wake and Person shall compose the eighth district; the counties of Rockingham, Stokes, Guilford and Caswell shall compose the ninth district; the counties of Randolph, Rowan, Davidson, Davie and Chatham shall compose the tenth district; the counties of Mecklenburg, Cabarrus and Lincoln shall compose the eleventh district; the counties of Buncombe, Rutherford, Haywood, Burke, Macon and Yancey shall compose the twelfth district, and the counties of

The State divided into districts for choosing representatives in congress — each district entitled to one representative.

1. 1789, c. 293, s. 1.

2. 1789, c. 298, s. 2.

3. 1812, c. 831, s. 1.—1833, c. 96.—1836, c. 4.



Wilkes, Surry, Iredell and Ashe shall compose the thirteenth district ; each of which districts shall be entitled to elect and send one representative to the congress of the United States.

Time and manner of conducting the election.

4. The election shall be held on the same days of the year and at the same places, as are now prescribed by law for holding elections for the members to represent the several counties in the General Assembly of this State, at the usual time of election immediately succeeding the termination of each congress ; all of which elections are to be conducted by the sheriffs, or by other persons legally appointed therefor, in like manner as the elections of the State legislature, except that the inspectors of the election, and clerks of the polls, shall be sworn or affirmed to act with justice and impartiality, which oath may be administered by any justice of the peace, or any other person thereunto authorized, and that each qualified voter shall be admitted to give his suffrage only in the county wherein he resides.

Governor may order elections at other than the regular time in certain cases.

5. If any event shall happen to render the meeting of congress necessary, after the expiration of any congress, and before the time fixed for the election then next to ensue, a new congress shall be called, the governor, on receiving information to that effect, is hereby authorized to declare the same by proclamation, and to require the freemen of this State to meet in their respective counties, at the time or times therein to be appointed, and at the places established by law, then and there to give their votes for representatives : which elections, so held in pursuance of the proclamation of the governor, shall be conducted in like manner, and to all intents and purposes, shall be as legal and valid, as if the same had been held at the time or times prescribed in the preceding section.

Penalty on persons for voting more than once at an election.

6. If any person whatsoever shall vote more than once, in any election for a representative in congress for his district, he shall forfeit and pay the sum of one hundred dollars, to be recovered before a single justice of the peace, one half to the use of the county in which the offence is committed, and the other half to the use of the person suing for the same. And in counties, where separate places of elections have been, or shall be established by law, the elections herein directed, shall be conducted in the same manner as elections for members of the General Assembly ; each officer presiding at an election making return of the poll, which has been had before him, unto the sheriff or other returning officer of his county, at the court house thereof, on or before the Monday immediately following the election.

Separate elections in counties, how to be conducted.

Duty of the returning officer with regard to elections.

7. Immediately upon the close of the election in each county, where there is but one place of election, the sheriff or other returning officer shall, in the presence of the inspectors of the election, cast up the scrolls and make out two correct statements of the number of suffrages given in his county to each candidate, one of which statements shall be, by the inspectors, filed in the court of pleas and quarter sessions for said county, after the same is duly

4. 1812, c. 831, s. 2.

5. 1812, c. 831, s. 3.

6. 1812, c. 831, s. 4.

7. 1812, c. 831, s. 5.

certified by the said returning officer and a majority of the inspectors ; and the sheriff or other returning officer, by himself or deputy, shall attend with the other, on the day and at the places mentioned in the next section. And in each county, where separate elections are holden, the presiding officer at each place of election shall, immediately upon the close of the poll, in the presence of the inspectors, cast up the scrolls and make out two correct statements of the number of suffrages given thereat for each candidate, one of which statements shall be, by the inspectors of said poll, filed in the office of the clerk of the court of pleas and quarter sessions of the county, after the same has been duly certified by the said returning officer and a majority of the inspectors, and the other shall be delivered to the sheriff or other returning officer of the county, as prescribed in the preceding section ; and the sheriff or other returning officer as aforesaid shall publicly, at the court house aforesaid, ascertain by fair addition of the suffrages, the return of the whole number received for each candidate in the county, and thereof shall make two statements under his hand, one of which he shall file in the office of the clerk of the court of pleas and quarter sessions of his county, and with the other by himself [or deputy shall attend on the day and at the place mentioned in the next section.

8. The sheriffs, or other returning officers, of the counties of each district, shall meet, on the Thursday next after each election, at the court house of the county first mentioned in their respective districts : *Provided always*, that if any accident shall happen to either of the returning officers, which may prevent any or either of them from meeting on the day aforesaid, the returns of each and every officer shall be received on the day following ; and the sheriff or other returning officer, failing to attend at the time and place above mentioned, as required, shall forfeit and pay the sum of one thousand dollars, to be recovered for the use of the State, upon due proof thereof in any court of law within this State, by an action of debt in the name of the treasurer of the State for the time being. And when the sheriffs or other returning officers shall be convened as aforesaid, the poll for the different counties shall, by the said sheriffs or other returning officers, as the case may be, in presence of three justices of the peace, who are to be summoned by the sheriff or other returning officer of the county where they shall meet, for that purpose, be examined and compared, and a certificate under the hands and seals of said returning officers shall be given to the candidate in each district, for whom the greatest number of votes shall have been given in said district. But if two or more candidates shall have an equal number of votes, the said returning officers shall determine which of them shall be the representative, and if no decision is by them made, then they shall decide the same by drawing, in like manner as the grand jury is drawn for in the superior court.

Returning officers of the different counties of the district to meet and compare the polls, and to give a certificate of election to the successful candidate.

Provision where there is an equal number of votes for two or more candidates.

8. 1831, c. 831, s. 6.

9. 1812, c. 831, s. 7.

9. Each and every person, who shall be duly elected a repre-



Governor to commission the persons elected representatives.

representative, shall, upon obtaining a certificate of his election according to the direction above mentioned, obtain from his excellency the governor a commission, certifying his appointment as a representative of this State, which commission the governor is hereby empowered and required, on such certificate being produced to him, to issue.

Returning officer's allowance for comparing polls.

10. Every sheriff or other returning officer, holding elections in pursuance of the above provisions, shall be allowed the sum of two dollars and a half for every thirty miles travelling to, and returning from, the place of comparing the polls in the district, and the same sum for every day he shall necessarily attend for the purpose of comparing said polls, and also the amount of his ferriages, which shall be paid by the treasurer on affidavit of the sheriff or returning officer aforesaid.

How and when elections to be held in cases of vacancy.

11. In the event of the death, or resignation of any member of the house of representatives in the congress of the United States, the election to supply such vacancy, held in pursuance of the writ of election issued by the governor, shall be held at the time directed in such writ, under the same rules, regulations and restrictions as herein prescribed for holding, conducting and determining the regular elections.

10. 1812, c. 831, s. 8.

11. 1812, c. 831, s. 9.

*Compilation of militia laws published.*

## CHAPTER 73.

# MILITIA.

### AN ACT CONCERNING THE MILITIA OF THIS STATE.

#### SECTION

1. Who are to be enrolled and how provided.
2. Who are exempted from militia duty.
3. Members of fire companies exempted—Also persons of conscientious scruples.
4. Officers to enrol and make return of exempts.
5. Free persons of color not to be enrolled, except as musicians.
6. Persons enrolled for duty to equip themselves—Forfeitures for neglecting to equip.
7. How the infantry shall be divided.
8. Regiments, brigades and divisions, how distinguished.

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9. Officers of the infantry—Their grade and how to be appointed—Adjutant general to be appointed—Governor may appoint four aids de camp.
10. Uniform of officers.
11. Penalty on officers for resigning or failing to equip themselves within twelve months—How major and brigadier generals, colonels and other field officers shall be elected and commissioned—How they shall resign, and to whom notification of vacancies shall be made, and by whom.

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12. Officers to give notice of their absence.
13. Officers to deliver to their successors money or papers.
14. Rules of discipline.
15. Captains' districts, how laid off—Boundary lines of regiments in the same county, how may be altered.
16. Regulations as to company musters.
17. Company courts martial—How to proceed—Appeal allowed.
18. Company musicians, how appointed, and their privileges.
19. Overseers of roads not to order out hands on days of company muster.
20. Captains of companies to make returns.
21. Regimental or battalion musters.
22. Penalty on officers failing to attend reviews or musters.
23. Commandants of regiments, &c. to give notice of reviews or musters.
24. Commissioned officers of regiment, &c. to meet for exercise, the day before review or muster.
25. Penalties on officers and privates for misbehaving.
26. Persons on muster ground failing to do duty, to be arrested.
27. Officers and privates attending musters, exempt from arrest in civil cases—Not to pay tolls or ferriages.
28. Parents, &c. liable for fines.
29. Regimental and battalion courts martial—Their power and duties.
30. Duty of paymasters.
31. Officers holding a court martial must take an oath.
32. Proceedings at courts martial against delinquents.
33. Courts martial may adjourn.
34. Duties of commanding officers of regiments and companies as to fires.
35. Returns to be made by the commandants of regiments.
36. Duties of major and brigadier generals as to reviews.
37. Returns to be made by brigadier and major generals.
38. Penalty on a general officer or commandant of a regiment for failing to make review or muster, to make returns, or to be properly equipped.
39. Duty of the adjutant general.
40. In certain cases, returns may be made and orders issued through the post office.

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41. Governor may remit fines and penalties.
42. Regiments of cavalry, how to be formed, officered, equipped, &c.
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44. Field officers of cavalry to review and make returns.
45. Cavalry courts martial to be held.
46. Fines of cavalry officers and privates same as in the infantry.
47. How cavalry fines to be appropriated.
48. Duty of adjutant of the regiment.
49. Certain sections of this act to apply to the cavalry.
50. Provision when the number of the cavalry troop shall be less than required by law.
51. Volunteer companies of artillery, light infantry, grenadiers or riflemen may be formed.
52. May choose their own uniform—To be under the command of the commanding officer of the regiment, and to do duty as other companies.
53. A regiment of volunteer companies may be formed—Field officers, how chosen.
54. How captains, lieutenants and non-commissioned officers shall be elected or appointed.
55. Company to muster once in three months—May adopt rules and regulations for their own government.
56. Officers of volunteer companies to make returns.
57. Persons enrolled in volunteer companies not to return to the infantry except by permission, &c.—Volunteers bound to serve in the infantry until they equip themselves.
58. Officers of volunteer regiments to review.
59. How vacancies among the field officers of volunteer regiments shall be filled.
60. Certain sections of this act, relative to the infantry, to apply to the artillery, &c.
61. General courts martial, how to be appointed and held.
62. Officers of general courts martial, how to be selected.
63. Of what rank the officers shall be.
64. Officers for courts martial to be regularly detailed.
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66. Courts martial, how constituted.
67. Officers of a court martial, how to take rank—To take an oath.
68. How witnesses to be summoned.
69. How to be sworn.
70. Rules for the government of courts martial.
71. Duty of judge advocate.
72. Proceedings against officers arrested and refusing to attend.
73. Perjury before courts martial.
74. For what conduct an officer may be cashiered.
75. Detachments of militia for the United States' service.
76. Substitutes may be received.
77. Vacancies under the rank of field officers in detachments, how to be supplied.
78. A militiaman, after one tour, to be exempt from a second draft.
79. Penalty for refusing to perform duty

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- when ordered out by the civil authority.
80. Seven justices may call out the militia in case of invasion or insurrection.
81. Duty of the commanding officer on such requisition.
82. Commanding officer called out, to notify his superior officer—Superior officer to notify the governor.
83. Three justices may order out the militia to suppress outlawed or runaway slaves.
84. Pay of the militia when in service.
85. Punishment for refusing to appear on call or alarm given.
86. Punishment for desertion.
87. Repealing clause.
88. Adjutant general to have copies of this act printed and distributed.
89. When this act to be in force.

1848. Ch 58. - 99.

Who are to be enrolled and how provided.

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 all free white men and white apprentices, citizens of this State, or of the United States residing in this State, who are or shall be of the age of eighteen and under the age of fortyfive years, shall, as soon as is practicable, be severally and respectively enrolled in the militia of this State by the captain or commanding officer of the infantry company, within the bounds of whose district, (to be allotted him as hereinafter directed,) such citizen shall reside ; and it shall at all times be the duty of every captain, or commanding officer of any company, to enrol every such citizen, except as hereinafter excepted, and also those between the ages aforesaid and not exempt by law, who may from time to time come to reside within the bounds of his district and remain therein thirty days, and he shall without delay notify such citizen of the enrolment, by a proper non-commissioned officer of the company, by whom the notice may be proved.

Who are exempted from militia duty.

2. The vice president of the United States, the officers, judicial and executive, of the United States, the members of both houses of congress and their respective officers ; the judges of the supreme and superior courts of law, and justices of the peace, councillors of state, the secretary, comptroller, treasurer, the governor's private secretary, attorney general, solicitors, the clerks of the several courts of record, the state printer, high sheriffs of the several counties, physicians and surgeons, ministers of the gospel of every denomination, that are properly and regularly ordained and have the cure of souls, all custom house officers, postmasters, and stage drivers or mail carriers, employed in the care and conveyance of the mail to the post offices of the United States,

1. 1806, c. 708, s. 1.

2. 1806, c. 708, s. 2.—1823, c. 1218.—1812, c. 828, s. 7.

all ferrymen, employed on any ferry of a public road, provided the same shall not exceed one superintendent and one other to each ferry, all millers of public mills, provided that this exemption shall only extend as to each mill to one person subject to do military duty, whose occupation and daily employment it is to attend and perform the duty of a public miller, all inspectors of produce, all branch and licensed pilots, all mariners actually employed in the sea service of the United States, or of any merchant, all officers and students of the university and all other seminaries of learning within this State, shall be and they are hereby exempted from military duty : *Provided always*, that nothing herein contained shall be so construed as to exempt any person from performing duty in case of invasion or insurrection in this State.

3. The members of the several fire companies, so long as they shall continue members of said companies, that now are or hereafter may be established in this State, shall be and they are hereby declared exempted from all militia duty, except in time of war, invasion or insurrection. It shall be the duty of the captains of all fire companies, once a year, to make a regular return to the colonel commandant of the regiment, by the fifteenth day of October, under the penalties now imposed on captains of militia companies on failure of making return, in the limits of which the company exists, of all persons belonging to said company liable to muster, and the colonel of the regiment shall include them in his regular annual returns to the general of the brigade and adjutant general. Persons having scruples of conscience against bearing arms, who shall produce, to the captains of their respective districts, certificates, signed by the clerks of their respective churches, that they are regular members thereof, and shall make oath or affirmation before a justice of the peace that they are, from religious scruples, averse to bearing arms, and shall also produce a certificate from such justice that such oath or affirmation has been duly made, shall not be compelled to muster or perform military duty, except in cases of insurrection or invasion, or pay any tax for said exemption ; but they shall be subject to taxation in time of insurrection, invasion or war, and also to furnish their quota of men or pay an equivalent.

Members of fire companies exempted.

Also persons of conscientious scruples.

4. The captains or commandants of companies shall enrol, and keep enrolled on their muster rolls, all within the limits of their respective districts, who are exempt from performing militia duty by law except in time of invasion or insurrection, and shall return the number of exempts in their annual returns to the commandants of regiments, who shall make a like return of all exempts in their respective regiments in their annual returns to the brigadier and adjutant generals, regulations for which annual reports are hereinafter prescribed.

Officers to enrol and make return of exempts.

5. It shall not be lawful for any captain or other militia officer in this State to enrol any free persons of color, except for musicians.

Free persons of color not to be enrolled, except as musicians.

3. 1829, c. 25.—1806, c. 708, s. 2.—1833, c. 16.

4. 1832, c. 7.

5. 1823, c. 1219.



Persons enrolled for duty to equip themselves.

6. Every citizen enrolled and notified, as is directed in the first section of this act, shall, within six months thereafter, provide himself with a good musket, smooth bored gun or good rifle, shot pouch, and powder horn, and shall appear so armed and accoutred, when called out to exercise or in actual service ; the commissioned officers shall severally be armed with a sword or hanger or an es-ponton ; and every citizen, so enrolled and providing himself with arms and accoutrements as herein directed, shall hold the same exempt from all suits, executions, or sales for debts or for the payment of taxes ; and if he shall fail to provide himself with arms and accoutrements, as herein directed, and if the commissioned officers of his company shall deem him in sufficient circumstances to equip himself, he shall forfeit and pay, as follows : for the want of a good, serviceable musket or rifle, the sum of fifty cents. And all parents, guardians and masters shall furnish those of the militia, who shall be under their care or command, with the arms and equipments above mentioned, under the like penalty for each neglect : *Provided* such guardian shall have sufficient in his hands belonging to his ward to purchase said arms. If the company court martial, after examination on oath, shall adjudge any person enrolled to be incapable of providing himself with arms and accoutrements, as here required, they shall make report thereof to the next regimental or battalion court martial, as the case may be, who may, if it shall appear necessary, exempt such person from the fines here imposed, until such arms and accoutrements shall be provided and delivered to him by the court martial, who shall take security for the safe keeping of such arms and accoutrements to be returned when required.

Forfeitures for neglecting to equip.

How the infantry shall be divided.

7. The infantry shall be divided into divisions, brigades, regiments, battalions and companies ; each division shall consist of at least two brigades ; each brigade of at least four regiments, each county forming at least one regiment ; each regiment, when convenient, shall consist of at least two battalions ; each battalion of five companies ; and each company of sixtyfour privates.

Regiments, brigades and divisions, how distinguished.

8. The following are hereby declared to be the regiments, brigades and divisions of the infantry, to be known and distinguished as here designated, viz :—

No. divisions.	Of what brigades composed.	No. of brigades.	Of what regiments composed.
1.	1st, 18th.	1, 18,	{ 1, 2, 3, 4. 5, 6, 10, 9.
2.	4th, 14th.	4, 14,	{ 41, 44, 33, 34, 35, 32. 53, 54, 42, 43, 51, 93.
3.	6th, 16th.	6, 16,	{ 45, 47, 48, 49, 55, 56, 94. 59, 37, 38, 50.
4.	7th, 10th, 11th,	7, 10, 11,	{ 63, 64, 87, 88. 76, 77, 78, 70, 71. 68, 69, 60, 61, 62, 95.

6. 1806, c. 703, s. 1, 3 and 9.

7. 1806, c. 703, s. 3.

8. Adjutant general's report.

5.	15th, 19th.	15,	{ 79, 80, 81, 92, 52, 89.
		19,	{ 90, 86, 82, 83, 84.
6	3d, 12th.	3,	{ 30, 39, 24, 31.
		12,	{ 25, 26, 40, 28.
7.	5th, 17th.	5,	{ 20, 21, 13, 14, 15, 16.
		17,	{ 29, 35, 36, 22, 23.
8.	2d, 13th.	2,	{ 17, 18, 19, 27.
		13,	{ 12, 11, 8, 17.
9.	8th, 9th.	8,	{ 67, 91, 65, 66, 57, 58, 96.
		9,	{ 46, 72, 73, 74, 75.

Counties.	No. of Regt.	How distinguished in Counties where there are more than one Regt.	Counties.	No. of Regt.	How distinguished in Counties where there are more than one Regt.
Currituck,	1		Orange,	48	Hawfields,
Camden,	2		"	49	Haw River,
Pasquotank,	3		Person,	50	
Perquimons,	4		Richmond,	51	First,
Chowan,	5		"	93	Second,
Gates,	6		Iredell,	52	South,
Tyrrel,	7		"	89	North,
Washington,	8		Anson,	53	Lower,
Bertie,	9		"	54	Upper,
Hertford,	10		Randolph,	55	West,
Hyde,	11		"	56	East,
Beaufort,	12		Guilford,	57	West,
Martin,	13		"	58	East,
Halifax,	14	Upper,	Caswell,	59	
"	15	Lower,	Montgomery,	60	East,
Northampton,	16		"	61	West,
Carteret,	17		Cabarrus,	62	
Craven,	18		Rowan,	63	Fork,
Pitt,	19		"	64	Lower,
Edgecomb,	20	Upper,	Stokes,	65	North,
"	21	Lower,	"	66	South,
Nash,	22		Rockingham,	67	Lower,
Warren,	23		"	91	Upper,
Onslow,	24		Mecklenburg,	68	North,
Jones,	25		"	69	South,
Lenoir,	26		Lincoln,	70	Upper,
Greene,	27		"	71	Lower,
Johuston,	28		Surry,	72	North,
Franklin,	29		"	73	South,
New Hanover,	30		Wilkes,	74	Lower,
Duplin,	31		"	75	Upper,
Sampson,	32		Rutherford,	76	West,
Cumberland,	33	Lower,	"	77	South,
"	34	Upper,	"	78	East,
Wake,	35	East of Raleigh,	Burke,	79	Morganton,
"	36	West of Raleigh,	"	80	Lower Creek,
Granville,	37	North,	"	81	Pleasant Gardens,
"	38	South,	"	92	Toe River,
Brunswick,	39		Buncombe,	82	Caney River,
Wayne,	40		"	83	Asheville,
Bladen,	41		"	84	South,
Robeson,	42	Lower,	Columbus,	85	
"	43	Upper,	Haywood,	86	
Moore,	44		Davidson,	87	Lower,
Chatham,	45	Lower,	"	88	Upper,
"	94	Upper,	Macon,	90	
Ashe,	46		Cabarrus,	1	Volunteer Regt.
Orange,	47	Hillsborough,	Stokes,	2	Do do.

9. The officers of the infantry shall be as follows : to each di- vision there shall be one major general, and two aids de camp with the rank and pay of major, one division inspector, and one division quarter master, with the rank and pay of lieutenant colonel, to be

Officers of the infantry — their grade and how to be appointed.



appointed by the major general and commissioned by the governor ; to each brigade one brigadier general, and one aid de camp with the rank and pay of major, one brigade inspector with the rank and pay of major, one hospital surgeon and two mates, and one assistant deputy quarter master general with the rank and pay of a captain, to be appointed by the brigadier general and commissioned by the governor ; to each regiment one colonel and lieutenant colonel and one major ; there shall also be to each regiment one adjutant and one quarter master, who shall be commissioned officers with the rank of lieutenant, one pay master, one surgeon and one surgeon's mate, one sergeant major, one drum major, and one fife major, all to be appointed by the commanding officer of the regiment, and the adjutant shall, when necessary, discharge the duties heretofore assigned to the brigade inspectors within his regiment, for which service he shall be allowed by the court martial a reasonable compensation, if they think proper, to be paid out of the fines collected ; to each company there shall be one captain, three lieutenants, one ensign, four sergeants, four corporals, one drummer, and one fifer ; the commissioned officers of each company shall be recommended by the field officers of the regiment to the governor, who is requested to issue commissions to fill such appointments, according to the said recommendations ; the non-commissioned officers, to wit, sergeants, corporals, drummers and fifers, shall be appointed by the captain of each company ; all commissioned officers of the same rank shall take precedency on command according to the date of their commissions, and where two or more of the same grade bear an equal date, then their rank shall be determined by lot, to be drawn by them before the commanding officers of the division, brigade, regiment, battalion, company or detachment. The general and field officers, and all other commissioned officers, shall reside within the division, brigade, regiment, battalion or company district, which they respectively command : an adjutant general of the militia shall be appointed and commissioned by the governor of the State, who shall rank as a brigadier general, and who shall receive a salary of two hundred dollars per annum for his services, besides a reimbursement of his expenses, as hereinafter provided, to be paid quarterly by the treasurer by a warrant from the governor : *Provided however*, that no major general, brigadier general or colonel shall be appointed or act as adjutant general. The governor for the time being shall be entitled to four aids de camp, whom he may appoint and commission with the rank of colonel. The commissions hereby authorized and directed to be granted to the several aids de camp of the governor, major generals and brigadier generals, shall be held during the pleasure of the officers to whom such aids de camp may be attached.

Adjutant general to be appointed.

Governor may appoint four aids de camp.

Uniform of officers.

Penalty on officers for resigning or fail-

10. The uniform prescribed for the officers of the United States shall be the uniform to be worn in future by the commissioned officers of this State.

11. If any officer, below the rank of general, shall resign, or fail to equip himself according to law within twelve months from the

10. 1813, c. 850, s. 13.

11. Amendment.

date of his commission ; if a colonel, he shall forfeit and pay the sum of fifty dollars ; if a lieutenant colonel, he shall forfeit and pay the sum of forty dollars ; if a major, the sum of thirty dollars ; if a captain, the sum of twenty dollars ; if a first lieutenant, the sum of fifteen, if a second or third lieutenant or ensign, the sum of ten dollars ; to be sued for and recovered by the adjutant, in the name of the governor, and to be accounted for to the pay master. When there shall occur a vacancy in the office of major general, the adjutant general shall issue orders to the brigadier generals in that division, who shall forthwith issue orders to the colonels of their respective regiments to call together the commissioned officers of their regiments, at the usual place of regimental musters, and at such time as the brigadier general shall direct, and they shall proceed by ballot to elect a major general of that division, and it shall be the duty of each colonel to transmit to the brigadier general of his brigade a fair statement of the votes so polled, within ten days after said election, and the brigadier general shall compare the votes transmitted to him by the colonels in his brigade, and shall transmit to the adjutant general a fair statement thereof, and it shall be the duty of the adjutant general to compare the statements made to him by the brigadier generals, and make known to the governor the person for whom the highest number of votes may have been given, and a commission shall be issued by the governor ; and if the office of major general shall be vacated by death or removal, it shall be the duty of the brigadier general, in whose brigade the major general lived, to inform the adjutant general thereof, and all resignations of major generals shall be made to the adjutant general, and by him made known to the governor. When a vacancy shall occur in the office of brigadier general, it shall be the duty of the major general of that division, to issue orders to the several colonels in that brigade to call together the commissioned officers of their respective regiments, at the usual place of review and at such time as the major general shall direct, who shall proceed by ballot to elect a brigadier general of that brigade, and the several colonels shall transmit, within ten days, a fair statement of the votes given to the major general, whose duty it shall be to compare the several returns, so made to him, and inform the governor who shall have received the highest number of votes, and the governor shall issue a commission ; and if the office of brigadier general shall become vacant by death or removal, it shall be the duty of the colonel, senior in commission, of the county wherein said brigadier general lived, to inform the major general thereof, by mail or otherwise forthwith, and all resignations of brigadier generals shall be made to the major general, and by him made known to the governor. If, on comparing the votes given in for a major general there be a tie, the governor shall make the appointment from the two highest candidates ; and if there be a tie in the votes given in for brigadier general, the major general shall make the appointment from the two highest candidates. When a vacancy shall occur in the office of colonel, lieutenant colonel or major, the senior officer in command attached to that regiment shall call together the commissioned

ing to equip  
themselves  
within 12  
months.

How major and  
brigadier gen-  
erals, colonels  
and other field  
officers shall be  
elected, and  
commissioned.

How they  
shall resign,  
and to whom  
notification of  
vacancies to be  
made, and by  
whom.



officers, at the usual place of regimental review, and at such time as he may think proper, and they shall proceed to elect by ballot officers to supply said vacancies, and a fair statement shall be transmitted by the officer, highest in command, to the brigadier general of his brigade, of the officers that have been elected, and it shall be the duty of the brigadier general to inform the governor thereof, from whom a commission or commissions shall issue ; all resignations of colonels, lieutenant colonels or majors shall be made to the brigadier general of that brigade ; and in case of vacancy in any of those offices by resignation, the brigadier general shall order an election as before directed, and shall inform the governor of such resignation ; when any commission for a major general or brigadier general is issued by the governor, under the provisions of this section, it shall be the duty of the adjutant general to have the same published in one of the papers in the city of Raleigh.

Officers to give notice of their absence.

12. When any officer, commanding a division, brigade or regiment, shall have occasion to be absent from his usual residence two months or more, it shall be his duty to notify the officer, next entitled to the command, of such his intended absence, and also his next superior officer in command.

Officers to deliver to their successors money or papers.

13. All officers, who shall have in their hands either money or papers received by virtue of their appointments, shall, when they leave their office, pay and deliver the same to their successors in office, under the penalty of one hundred dollars, to be recovered in the name of the governor, and applied as hereinafter directed.

Rules of discipline.

14. The rules of discipline and system of tactics, which are now or hereafter may be approved and prescribed by congress, shall be and the same are hereby established, as the rules for the discipline of the militia of this State, except such alterations as shall be rendered necessary by unavoidable circumstances.

Captains' districts, how laid off.

15. The regimental or battalion courts martial, of the several regiments or battalions in this State, shall have power so to lay off the several captains' districts, as to render them as convenient to the inhabitants as a due regard to the requisite number of persons liable to perform military duty will permit ; and they may at any subsequent court martial so alter or consolidate their respective districts, as to create new ones, or unite portions of districts together, so as to form other and separate districts, as a majority of the court martial may think proper ; and all allotments or alterations shall be duly recorded by the judge advocate in the books of the regiment or battalion : where a small number of inhabitants are so detached, by water courses or mountains, as to render their attendance inconvenient at any place where they have been accustomed to muster, and where such detached sections contain a population of thirtysix men, liable to perform military duty, it shall be the duty of the regimental or battalion court martial to lay that section off into a separate captain's district, and to appoint officers in the same manner as in other districts ; and where there shall be

12. 1806, c. 708, s. 18.

13. 1806, c. 708, s. 19.

14. 1806, c. 703, s. 5.

15. 1831, c. 8, amended.

two or more regiments in any county within this State, a majority of the officers, composing such regiments, shall have full power to alter and regulate the boundary lines of their regiments, and in the event the officers should not agree with respect to said lines, it shall be the duty of the county court, a majority of the justices being present, to establish the said lines; and when so fixed, the judge advocate of each regiment shall spread the same on their journals.

Boundary lines in regiments of the same county, how may be altered.

16. Every captain or commanding officer of a company shall, at least twice a year, at such place as may be designated by a majority of his company, and agreeably to the order of the commanding officer, muster, train, and exercise such company, and shall cause them to remain under arms at least two hours on every day, by himself, or one of his lieutenants, or his ensign, and then and there teach them the manual exercise, and the proper company manœuvres, at which muster the officers and privates shall appear armed and equipped as herein before required. It shall not be lawful for the captains to call their men together, without their consent, for the purpose of company musters, more than twice in each year, except in cases of insurrection or invasion: *Provided*, that this enactment shall not apply to volunteer companies: *And provided further*, that when any person enters into the rank in the extra musters, he shall be subject to the same discipline, and governed by the same rules and penalties, as govern them in their regular musters. If any captain or commanding officer of a company shall fail or neglect to muster his company, as herein directed, he shall forfeit and pay the sum of six dollars, to be adjudged by the next regimental court martial; and if he, or any commissioned officer of the company, shall fail to appear equipped, as directed, at the said muster, the officer so failing shall pay the sum of four dollars; and if a non-commissioned officer or private shall fail to attend at a company muster, he shall forfeit and pay a sum not exceeding two dollars nor less than one dollar, and if he attend without being armed and accoutred, he shall pay a sum not exceeding one dollar nor less than fifty cents, which sum shall be adjudged by the company court martial, according to the circumstances of the delinquent: *Provided*, that every absentee shall be allowed until the next succeeding company muster to make his excuse, which shall always be on oath, the officer highest in rank present being hereby authorized to administer the same. When companies consist principally of persons residing within any town, and the muster ground is at, or within one mile of, said town, all fines imposed by this act for not appearing at reviews and musters, or, if appearing, not being properly armed and accoutred, shall be doubled.

Regulations as to company musters.

17. The commissioned officers of the company, or any two of them, after each and every muster of the company, shall, on the same day, meet in court martial, and proceed to try and determine on all cases which may come before them, and on conviction of any delinquent, the officer highest in rank present shall enter up

Company courts martial. How to proceed.

16. 1806, c. 703, s. 8 and 24.—1827, c. 11.—1829, c. 31, s. 2.—1832, c. 5, s. 3.

17. 1806, c. 703, s. 12.—1813, c. 830, s. 4.



judgment, and issue writs of execution against the goods and chattels and body of the delinquent, as in judgments in civil cases, directed to the constable of that district, which constable shall proceed to execute the same in the same manner and under the same rules, as are established by law for the government of constables in their duty in civil cases, and shall be allowed the same fees for his services, and shall make his return to the next company court martial. The right of appeal shall be allowed from a company to a battalion or regimental court martial, but no appeal shall be granted, unless the person, praying the same, shall give security, to be approved by the captain or presiding officer of the company court martial, to abide by the decision of the battalion or regimental court martial, which appeal shall be taken in like manner as appeals from the justices of the peace to the county courts, and shall be proceeded on in like manner by the battalion or regimental courts martial.

Appeal allowed.

Company musicians, how appointed, and their privileges.

18. For the encouragement of military music, it shall and may be lawful for the captain of each and every military company of infantry in this State, to select from among the persons enrolled in their respective companies, one fifer and one drummer, each being properly qualified for their appointment, which selection shall be made under the direction and with the approbation of the field officers belonging to the regiment, to which such company is attached; and when such selection of musicians is made, it shall be the duty of the field officers to grant a certificate to such musicians of their appointment, and the county court of the county, in which such companies respectively are, shall exempt and discharge such musicians, so selected, during their continuance in appointment, from serving on all juries, from working on the public roads, and from the payment of poll taxes; such musicians shall be removable at the pleasure of the field officers of the regiment, to which they severally belong, and shall attend each and every muster of their respective companies, and also the muster of the officers, and perform the duties of their appointment, under the penalty of four dollars for each and every neglect, to be collected and applied in the same manner that other fines are.

Overseers of roads not to order out hands on days of company muster.  
Captains of companies to make returns.

19. No overseer of any road in this State shall order the hands under him to work, on the days previously appointed for musters by the captain of the company, to which such hands belong.

20. The captains shall, at the several musters or within thirty days after being required so to do, or immediately if required at a regimental or battalion muster, make a return of their respective companies to the commanding officer of the regiment or battalion, under penalty of ten dollars in the first case, or disobedience of orders in the second case.

Regimental or battalion musters.

21. There shall be in every year at least one regimental or battalion muster, to be ordered by the commandant of such regiment

18. 1812, c. 828, s. 14.

19. 1812, c. 828, s. 12.

20. 1806, c. 708, s. 10.

21. 1806, c. 708, s. 6.

or battalion, at such place as may have been designated, or may hereafter be designated by a majority of the commissioned officers of such regiment or battalion, at which, such commanding officer shall cause the militia to be exercised at least two hours on each day.

22. If any officer shall fail to attend at any review, regimental or battalion muster, or, attending, be not armed as required by this act, he shall, on conviction before a court martial, forfeit and pay, if a field officer, the sum of twenty dollars; if a commissioned officer under that grade, the sum of ten dollars; and every non-commissioned officer or private, who shall fail to attend such review or muster, shall, on conviction, pay such sum as shall be adjudged against him by the commissioned officers of the company, to which he belongs, not exceeding four dollars nor less than one dollar, to be ascertained at the next company muster, and, when collected, to be accounted for with the court martial, or, if appearing, be not armed as by law directed, shall for such default forfeit and pay a sum not exceeding one dollar and fifty cents nor less than fifty cents, to be adjudged and accounted for as aforesaid.

Penalty on officers failing to attend reviews or musters.

23. The commanding officer of each regiment or battalion shall give to the commanding officers of the companies, under his command, not less than ten days notice of the battalion or regimental musters or reviews, which may at any time be ordered.

Commandants of regiments, &c. to give notice of reviews or musters.

24. Every commissioned officer of the infantry, by appointment of the commanding officer of each regiment, shall meet the day before that, on which the commanding officer of such regiment or battalion has appointed for holding of reviews or regimental musters, in their respective counties, where the said commissioned officers of infantry shall be exercised by the adjutant, or by the commanding officer of such regiment or battalion, at least three hours, when and where they shall be instructed in all matters of field exercise and discipline, according to the system which now is or may hereafter be established by law. And any commissioned officer, who shall fail or neglect to appear at the time and place, so appointed by the commandant of his regiment or battalion, as required by this section, or, if appearing, be not armed and equipped as by this act directed, when at any review or parade, such commissioned officer, so failing and neglecting, shall forfeit and pay the same sum, which such commissioned officer would be compelled to pay, in cases of failure and neglect at any regimental or battalion reviews or parades, and the same shall be recovered in the same manner and the money applied, as in other like cases directed by this act, and such commissioned officer shall in every instance whatever be subject to the same punishment for neglect of duty or disobedience of his superior officers, as such commissioned officer would be subject to when in actual military service.

Commissioned officers of regiments, &c. to meet for exercise the day before review or muster.

25. If any officer shall suffer himself to be intoxicated, or be-

Penalties on officers and pri-

22. 1806, c. 703, s. 8.  
 23. 1813, c. 550, s. 7.  
 24. 1806, c. 703, s. 16.  
 25. 1806, c. 703, s. 8 and 9.



vates for misbehaving.

have in a riotous or disorderly manner, when required to be on duty, or disobey the orders of his commanding officer, he shall either be fined and reprimanded by the court martial, or, at their discretion, shall be cashiered: *Provided*, he shall not be cashiered but by a court martial regularly detailed for his trial as hereinafter directed. If any non-commissioned officer or private shall, during the time of muster, resist his commanding officer or refuse to obey his lawful commands, if a non-commissioned officer, he shall be kept under guard during such muster, and fined at the discretion of the court martial not exceeding two dollars.

Persons on muster ground failing to do duty, to be arrested.

26. If any person, liable to perform duty, shall appear at or near the parade ground, during the term of any review or muster, and shall not take his proper station and perform the duties required of him by law, or behave himself in a disorderly manner, while on parade, it shall be the duty of the commanding officer of the regiment or corps to order the said person under guard, there to be detained during the time of exercise or the service then performing, and until the militia are discharged, and such person shall further be fined at the discretion of the court martial.

Officers and privates attending musters exempt from arrest in civil cases.

27. No officer or soldier, directed by this act to appear and muster as aforesaid, shall be liable to be taken or arrested, in any civil action or process whatever, on the day such person is directed to appear, or in a reasonable time either in going to, continuing at, or returning from the place appointed to muster or appear, but every such arrest is hereby declared to be void. Every person required by this act to attend musters and reviews, going to or returning from the same, shall be suffered to pass over any toll bridge or toll causeway, and shall be put over any ferry, without delay, free from any charge whatever. If any ferryman or proprietor of any toll bridge shall demand pay or refuse to put over such person, he shall forfeit and pay for every such offence four dollars, to be recovered by warrant before any justice of the peace to the sole use of the informer.

Not to pay tolls or ferriages.

Parents, &c. liable for fines.

28. All parents, masters and guardians within this State shall, and they are hereby declared to be liable for the payment of any fines, incurred by those under their care, as well for non-attendance at company, battalion or regimental musters and general reviews, as not being armed and equipped as herein before provided.

Regimental and battalion courts martial. Their power and duties.

29. The commanding officer of each regiment or battalion shall order a court martial to be held, at the place appointed for the muster of the same, on the day after the regimental or battalion muster, or on the same day if convenient, which court shall consist of a majority of the officers of the regiment or battalion, one of whom shall be a field officer, and two of the grade of captain, and the highest officer in rank present shall be president. The court shall be notified to their duty by the adjutant of the regiment or battalion, by a roster to be kept by him, and the said court when

26. 1806, c. 708, s. 25.

27. 1806, c. 708, s. 21.

23. 1808, c. 749, s. 5.

29. 1806, c. 708, s. 11.—1817, c. 955.

convened shall appoint a judge advocate, who shall himself in the presence of the court take the following oath. "I, A. B. do swear, that I will well and truly perform the duties of judge advocate of this court, according to the best of my skill and ability : so help me God." And the judge advocate shall administer the following oath to the members of the court martial. "I, A. B. do swear, that I will hear and determine all the causes which may come before this court, and that I will faithfully report all delinquents that come within my knowledge, that I will account for all fines and forfeitures by me collected or received, and in all cases enforce a due execution of the militia laws of this State, to the best of my knowledge and ability : so help me God." They shall inquire into the age and ability of all persons, that come before them by appeal, and exempt such as may be judged incapable of service, also try and decide on all persons charged with omission or commission, as well by officers as by privates. The said regimental or battalion court martial shall hear and determine all appeals from the company court martial, and order and dispose of all fines for buying drums, fifes and other implements of war, for the use of the company, where the same shall arise, and for supplying the militia with arms and accoutrements, and for other purposes, that will promote the good thereof. The judge advocate shall be allowed a reasonable salary, to be paid out of the fines, for his services. His duty shall be to write at length the proceedings of the said court. For all fines, which may be imposed by the court martial, he is hereby authorized and required to enter up judgment and issue execution, which if against commissioned officers shall be directed to the adjutant or constable ; if against non-commissioned officers, or privates, shall be directed to a constable of the county, to which the delinquent belongs ; the constable or adjutant shall proceed to distrain and sell, in the same manner, and under the same rules as are established by law for the government of constables in their duty in civil cases, and shall be allowed the same fees for their services. The adjutant or constable shall in all cases make due returns to the next succeeding court martial, and in case of failure of such adjutant, sergeant or constable to do the several duties, as required of them by this act, in collecting and accounting for all fines, such adjutant, sergeant or constable, as the case may be, shall incur a penalty or fine of double the amount that such adjutant or constable was bound to collect and account for.

30. It shall be the duty of the pay master to demand and receive of the adjutants, sergeants, constables and others, who may have collected fines and forfeitures, and distribute the same agreeably to the directions of the court martial, and settle his accounts annually with the judge advocate ; and the pay masters respectively shall, before they enter on the duties of their office, give bond and sufficient security, in the sum of two hundred dollars, payable to the commanding officer of the regiment and his successors in office, for the faithful accounting for, agreeably to law, of all sums of money which may come into his hands by virtue of his appoint-  
Duty of pay  
masters.



ment ; and it shall be the duty of the commanding officer aforesaid, under the penalty of two hundred dollars, to sue for and recover the same, and when the same is so received by him, apply it as is already by law directed, and the several pay masters shall be allowed a reasonable compensation for their services by the court martial. In case there shall be no pay master appointed by the commandant of any regiment, then and in that case each commandant shall perform and execute the duties of pay masters as above required.

Officers holding a court martial must take an oath.

31. Every officer, at the first meeting of the court martial after being commissioned, shall take and subscribe the following oath, to be administered in open court martial by the judge advocate, or if a company officer, it may be taken before the commanding officer of the regiment. "I A. B. do solemnly swear, that I will execute the office of \_\_\_\_\_ according to the rules of military discipline and the laws of this State, to the best of my knowledge and ability, and that I will support the constitution of the United States and of this State : so help me God." And also the following oath : "I A. B. do swear, that I will, at the court martial of the company to which I belong, duly administer justice, and apply fines and penalties according to law and to the best of my ability without favor, affection or partiality : so help me God." No officer shall be allowed to sit in a regimental, battalion or company court martial, unless he shall have taken and subscribed the oaths aforesaid.

Proceedings at courts martial against delinquents.

32. If at any regimental, battalion or company court martial, or company of the officers, there shall be any delinquents, either for non-attendance or not being properly armed and accoutred, or for disorderly conduct, proclamation shall be made by the captain or commanding officer, calling the names of all delinquents enrolled, that they attend the trial at the following company court martial, which shall be deemed a legal notice : if field officers, or officers of the regimental staff, such notice shall be given by the commanding officer or adjutant of the regiment or battalion, or to the officers assembled, and if any officer or private has an excuse to offer to the court martial, he may send his affidavit taken before a civil magistrate, or produce a witness, or he may personally appear and make oath to the cause of his delinquency, and in all cases, whether from neglect or failure of the officers and privates at regimental or battalion musters, or of appeals from the company courts martial, and of all other cases of which the regimental courts martial have jurisdiction, their determination shall be final.

Courts martial may adjourn.

33. The several courts martial have power and legal authority to adjourn from day to day, or to any future day, when it shall be the duty of the officers, entitled to compose the same, to attend, under the penalties by law established in other like cases for non-attendance, and at which time the unfinished business of the court may be acted upon : If there should not meet a sufficient number at the place of adjournment to form a quorum, the officer ordering the same shall have power to continue its adjournments.

31. 1806, c. 708, s. 13.—1808, c. 749, s. 3.

32. 1806, c. 708, s. 14.

33. 1806, c. 708, s. 15.

34. It shall be the duty of each commanding officer of a regiment, to exact and enforce regular settlements of all fines, collected under the militia laws, from the several persons, charged with the collection thereof within his regiment, which fines shall be appropriated as directed by law, and it shall be the duty of each captain or commanding officer of a company to report in writing, once in every six months, to the commanding officer of the regiment, to which he belongs, the amount of fines assessed in his company within that period.

Duties of commanding officers of regiments and companies as to fines.

35. Every commandant of a regiment shall, at least once in every year, on or before the 25th day of October, make a return to the brigadier general of the brigade to which such regiment belongs, and shall transmit a duplicate of the same to the adjutant general, on or before the 15th day of November in every year, at the bottom of which he shall report, whether or not his regiment was reviewed by the major or brigadier general, and at what time.

Returns to be made by the commandants of regiments.

36. It shall be the duty of a major general to review his division once in every three years, and a brigadier general to review his brigade once in every two years, the several corps composing a division or brigade to meet by order of the reviewing general, by regiments, at such time as he may appoint, and at the usual places of regimental musters, in their respective counties. It shall be the duty of the major and brigadier generals to give fifty days' notice, by order to the commandants of their regiments or brigades, of the time of the review, previous to such review taking place. Any major or brigadier general, failing to give notice as above directed, shall forfeit and pay, for every offence, the sum of forty dollars, to be recovered before any jurisdiction having cognizance thereof, one half to the use of the county, in which recovery is had, and the other half to the use of the person suing for the same.

Duties of major and brigadier generals as to reviews.

37. The brigadier general of each brigade shall make a return of his brigade to the major general of his division, on or before the tenth day of November in each and every year, and shall transmit a duplicate of the same to the adjutant general, or or before the fifteenth day of November, in which he shall state when his brigade was last reviewed by the major general of his division. The major general shall make a return of his division to the adjutant general, on or before the annual meeting of the General Assembly.

Returns to be made by brigadier and major generals.

38. If any general officer, or commandant of a regiment, shall fail to review his division or brigade, or muster his regiment, or to make an annual return of his division, brigade or regiment, as is now required by law, or if any major or brigadier general shall fail to equip himself, it shall be the duty of the governor to cause the adjutant general to give such delinquent officer thirty days' notice of his neglect of duty, and if such delinquent does not, within forty days thereafter, render a satisfactory excuse for such neglect, by showing to the governor that such delinquency happened in conse-

Penalty on a general officer, or commandant of a regiment for failing to review or muster, to make returns, or to be properly equipped.

34. 1812, c. 828, s. 4.

35. 1806, c. 708, s. 10.—1808, c. 749, s. 2.

36. 1832, c. 5, s. 1.—1817, c. 943, s. 1 and 2.

37. 1806, c. 708, s. 10 and 22.

38. 1832, c. 5, s. 1 and 2.



quence of indisposition, absence from the State, or other sufficient cause, it shall be the duty of the governor to strike his name from the list of officers, and when the governor shall thus strike the name of any officer from the list officers, he shall communicate it to the adjutant general, who shall have it published in some newspaper within this State, and issue proper notices to supply the vacancy.

Duty of the  
adjutant gen-  
eral.

39. It shall be the duty of the adjutant general to distribute all orders from the commander in chief of the State to the several corps ; to attend public reviews, if required, when the commander in chief of the State shall review the militia, or any part thereof ; to obey all orders from him relative to carrying into execution and perfecting the system of military discipline, established by law ; to furnish blank forms of different returns that may be required, and to explain the principles upon which they shall be made ; and also to furnish blanks of such returns ; to demand and receive, from the several officers of the different corps throughout the State, returns of the militia under their command, reporting the actual situation of the arms and accoutrements, and their delinquencies, and every other thing which relates to the advancement of good order and discipline, all which the several officers of the divisions, brigades, regiments and battalions are hereby required to make, in the manner herein directed, that the adjutant general may be duly furnished therewith, previous to the biennial meeting of the General Assembly, from all which returns he shall make proper abstracts, and lay the same, with a report of the general state of the militia, magazines and military stores, and such improvements as he may think necessary for the advancement of discipline and benefit of the militia, biennially before the General Assembly, or the commander in chief of the State, who is required to lay the same without delay before the said assembly. And the adjutant general shall also annually make a return of all the militia of this State to the president of the United States. In failure of which recited duties, he shall suffer the following fines and penalties : for not attending all public reviews, when required by the governor or commander in chief of the State, fifty dollars ; for not furnishing blank forms, as required by this act, the sum of ten dollars for each neglect, to be recovered before any jurisdiction having cognizance thereof, one half to the use of the informer and the other half to the use of the State ; for not distributing all orders from the commander in chief of the State, or for not making returns as required by this act, upon conviction of either before a general court martial, to be ordered by the governor, he shall be cashiered ; the said adjutant general shall be compensated for the expense of all the blank forms of returns, necessarily prescribed in his department, and the postage of all letters to and from him in his capacity as adjutant general, to be paid to him by the treasurer of the State, on the adjutant general producing a stated account of the same by him certified ; the adjutant general shall keep a roster of the names and dates of the commissions of each major and brigadier general in this State,

likewise the counties under each of their commands respectively, designating therein the numbers of each division, brigade and regiment, ready at all times for immediate inspection; shall at least once in every three years transmit a copy of this roster, certified by him, to the president of the United States, to the governor of this State, and to the General Assembly; and he shall from time to time make report to the legislature of what shall be done by him in virtue of his appointment, and accompany such report with such remarks, as may by him be deemed necessary, for the better regulation and improvement of the militia discipline throughout the State.

40. If no immediate opportunity offers for forwarding orders or returns, the certainty of which ensures a speedy delivery thereof, which can be easily ascertained and proved, then it shall be the duty of the officer issuing the order or making the return (as the case may be) to lodge the same, properly directed, in the post office, marked on the back "public service," under which he shall write his name and grade, and a return thus made shall be deemed sufficient and good in law.

In certain cases returns may be made and orders issued through the post office.

41. The governor for the time being is hereby authorized to mitigate or remit all fines and penalties, which may be recovered in any of the courts of justice against any general or field officer, arising under the militia laws of this State.

Governor may remit fines and penalties.

42. There shall be, in each brigade of militia in this State, one regiment of cavalry; there shall be to each regiment of cavalry one colonel, one lieutenant colonel, and one major, to be appointed, in case of vacancy, by joint vote of both houses of the General Assembly, and commissioned by the governor for the time being; and out of the militia, enrolled in this State, there may be formed, out of each battalion that has a separate muster, at least one troop of cavalry, to be formed of volunteers, which shall be uniformly clothed in regimentals at their own expense, the color and fashion to be determined by the field officers of cavalry of the regiment or battalion to which they belong; to each troop one captain, two lieutenants, one cornet, four sergeants, four corporals, one saddler, one farrier, one trumpeter, and no less than twentyfour dragoons. The commissioned officers to furnish themselves with good horses, at least fourteen and a half hands high, to be armed with a sword and pair of pistols, the holsters of which shall be covered with bear skin; and each dragoon shall furnish himself with a serviceable horse, at least fourteen and a half hands high, a good saddle, bridle, breastplate, cruppers and valise, a pair of boots and spurs, one pair of pistols and holsters, the holsters to be covered with bear skin, a sword and cartouch box to hold twelve cartridges for pistols; and the field officers and commissioned officers shall reside within the brigade, regimental or troop district in which they respectively command; there shall also be to each regiment of cavalry one adjutant, one quarter master, one pay master, one surgeon, and

Regiments of cavalry, how to be formed, officered, &c.

40. 1813, c. 850, s. 3.

41. 1813, c. 850, s. 6.

42. 1806, c. 709, s. 1, 7 and 12.—1824, (bound up with the acts of 1826, p. 24.)



one surgeon's mate, each of the rank of lieutenant, to be appointed by the commanding officer of each regiment; the commissioned officers of troops of cavalry shall be recommended by the field officers of the regiment to which they belong, and commissioned by the governor for the time being; all non-commissioned officers of each troop shall be appointed by the captain of such troop; all commissioned officers shall take rank according to the date of their commissions, and when two or more of equal grade bear the same date, then their rank shall be determined by lot, to be drawn by them before the commanding officer of the regiment to which they belong.

Troops of cavalry, when to muster, how returns to be made — and who to command when mustering with infantry.

43. Each troop of cavalry shall muster at least once in every three months, at such time and place as the captain or commanding officer of such troop shall direct, and it shall be the duty of the captain to make a true return of his troop to the commanding officer of the regiment to which he may belong, on or before the first day of September in each and every year, under the penalty of thirty dollars for each neglect. The troops of cavalry, when attending the general muster of the regiment or battalion of infantry, shall be under the command of any field officer of the cavalry, if present on parade, except on review days, when ordered by the major general, adjutant general or brigadier general; and at the reviewing of the regiment of cavalry, when ordered by the colonel thereof, the cavalry shall then be under the command of the officers of the cavalry only, except a general officer shall be present on parade.

Field officers of cavalry to review and make returns.

44. It shall be the duty of the field officers of cavalry, once in every two years, to review the troops of cavalry, composing their regiments, at some place most convenient in the brigade, to be designated by a majority of the commissioned officers of the regiment, at such time as the commanding officer of the regiment shall appoint, of which at least thirty days' notice shall be given to the commanding officers of the several troops. The commanding officer of each regiment of cavalry shall, once in every year, on or before the first day of October, make a just and full return, after the form prescribed by the adjutant general, of all officers and dragoons under his command, and their equipments, to the brigadier general to whose brigade the said regiment belongs, and shall also transmit to the adjutant general, on or before the fifteenth day of November in each and every year, a duplicate of such returns, and at the bottom of the same shall state when his regiment or the several troops composing it, were last reviewed by the brigadier and major generals.

Cavalry courts martial to be held.

45. A majority of the commissioned officers of each troop, and a majority of the commissioned officers of each regiment, immediately after their respective troop or regimental musters, shall hold troop or regimental courts martial, in the same manner, and the courts shall have the same power, duties and authorities, and shall be governed by the same rules and regulations, as the company or

43. 1806, c. 703, s. 4.

44. 1832, c. 5, s. 9.

45. 1806, c. 703, s. 6.

regimental courts martial of the infantry herein before prescribed : *Provided however*, that the delinquents of each troop of cavalry, at any regimental parade, shall be heard, and either fined or excused, at the troop court martial next succeeding such regimental muster or review, and the troop courts martial shall make returns to the next succeeding regimental court martial of their proceedings, and of all moneys by them caused to be made, to be disposed of as herein directed.

46. The fines of the officers, non-commissioned officers and privates of the troops and regiments of cavalry, for not holding musters, not attending musters, parades and reviews, or not being armed and equipped as required by law, shall be the same as herein before prescribed for officers, non-commissioned officers and privates of the infantry in similar cases. Fines of cavalry officers and privates same as in the infantry.

47. All fines and forfeitures, incurred by the cavalry officers or privates, and not herein particularly appropriated, shall be applied to the purposes of first buying trumpets, and then at the disposal of the regimental courts martial, to the use and benefit of the troop whence the same arose. Those fines, paid by the field and staff officers and not particularly appropriated, shall be equally divided among the troops composing the regiment, to which they respectively belong ; all other fines and forfeitures shall be appropriated and divided, at the discretion of the regimental courts martial, for the promotion and advancement of military discipline. How cavalry fines to be appropriated.

48. It shall be the duty of the adjutant of the regiment to attend the regimental parade, and receive and execute such orders as the commanding officer may deem expedient, and the said adjutant shall take an oath of office, in open court martial, and from time to time call upon and bring suit against all delinquent captains, and other commissioned officers, below the grade of captain, for fines and penalties by them incurred, and which are not otherwise especially provided for in this act, and to receive and account for the same annually with the pay master of the regiment, for which services the adjutant shall be allowed a reasonable compensation, to be paid out of the fines so collected, by order of the court martial ; and in case any adjutant shall fail to attend and perform his duty as required by this act, he shall forfeit and pay the sum of one hundred dollars. Duty of adjutant of the regiment.

49. The following sections of this act in relation to the infantry, are hereby declared to apply to the cavalry, to wit : so much of the eleventh, twelfth and thirteenth sections as relates to officers under the grade of brigadier general ; also the thirteenth, fourteenth, twentyfifth, twentysixth, twentyseventh, twentyeighth, thirtieth, thirtyfirst, thirtyfourth, thirtyninth, fortieth and fortyfirst sections. Certain sections of this act to apply to the cavalry.

50. No person shall be commissioned in any troop of cavalry, unless the number is such as shall be prescribed by this act, and when from default of numbers or otherwise, a troop shall no longer Provision when the number of the cavalry troop shall be less than required by law.

46. 1806, c. 709, s. 13, amended.

47. 1806, c. 709, s. 17.

48. 1806, c. 709, s. 9.

49. 1806, c. 709, s. 11.

50. 1823, c. 1216, s. 4.



be entitled to muster as cavalry, it shall be the duty of the captain of infantry, in whose company district the members of such troop shall reside, to cause them to be enrolled in their respective companies.

Volunteer companies of artillery, light infantry, grenadiers or riflemen may be formed.

51. Out of the militia of this State there may be enrolled as many volunteer companies of artillery, light infantry, grenadiers or riflemen, as may see fit to form themselves into such, each company to consist of fortyfour privates, four sergeants, four corporals, one captain and three lieutenants.

May choose their own uniform.

To be under the command of the commanding officer of the regiment, and to do duty as other companies.

52. The said companies shall be clothed in regimentals, to be furnished by themselves, of their own choice and fashion, and shall attend battalion and regimental reviews, parades and drills, whenever ordered by the colonel of the county or commanding officer of the regiment, to which they respectively belong ; shall be subject to his orders, and liable to the same fines and penalties for the non-performance of military duty, misdemeanors in office, or dereliction of duty, as the militia of this State now are or may hereafter be subjected to by law.

A regiment of volunteer companies may be formed.

53. Whenever there may be a sufficient number of volunteer companies, in any one brigade in this State, to form a regiment, containing as many companies as five, the commissioned officers of such companies may meet together, at such time and place as a majority of them may designate, and proceed to elect (a majority of said commissioned officers being present) a colonel, lieutenant colonel and major, the result of said election to be certified by the senior officer present at said meeting, (who shall also preside thereat,) to the brigadier general of said brigade, whose duty it shall be to lay said result before the governor, who shall forthwith issue commissions to the said officers.

Field officers, how chosen.

How captains, lieutenants and non-commissioned officers shall be elected or appointed.

54. The captains and lieutenants of said companies shall be elected by a majority of the members of their respective companies, and the non-commissioned officers of said companies shall be appointed by the commissioned officers thereof.

Company to muster once in three months. May adopt rules and regulations for their own government.

55. The captain or commanding officer of each company of artillery, light infantry, grenadiers or riflemen, shall, at least once in three months, muster their men at such time as such captain may direct, and at such place as may be agreed on by a majority of the company, and each of said companies may adopt rules and regulations for their own government, not inconsistent with the laws and constitution of this State and of the United States.

Officers of volunteer regiments to make returns.

56. Whenever a regiment of volunteers shall be formed and officered, as herein before required, it shall be their duty to make annual returns to the brigadier general and adjutant general, as is or may be required to be made by the field officers of infantry or militia.

Persons enrolled in volun-

57. No person, who now is, or shall hereafter procure himself

51. 1806, c. 710, amended.

52. 1806, c. 710, amended.

53. 1806, c. 710, and 1829, c. 3, amended.

54. 1806, c. 710, amended.

55. 1806, c. 710, amended.

56. 1806, c. 710, and 1829, c. 3, amended.

57. 1806, c. 710, amended.

to be, enrolled in any company of artillery, light infantry, grenadiers or riflemen, or in any volunteer company, shall be permitted to return to the infantry, except by the consent of the field officers of the regiment, or by removal out of the county, regiment or battalion, wherein such person was enrolled, and it shall be sufficient for any person to be enrolled and approved by the captain of said volunteer company, without the intervention of any other officer: *Provided, nevertheless*, that any person, enrolling himself with any captain of a volunteer company, shall be subject to perform all the duties and exercises in the infantry, and under the officers thereof, until such person so enrolling himself shall fully and completely equip himself with clothing and arms, required and settled on for such company, and a certificate to that effect procured from the captain, with whom he has enrolled, and produced to the captain, under whom such person so served before such enrolment, or his successor in office.

teer companies not to return to the infantry except by permission, &c.

Volunteers bound to serve in the infantry until they equip themselves.

58. Whenever there may be formed a regiment of volunteers, as herein before provided, it shall be the duty of the commanding officer of such regiment to review his regiment, as often as the colonel or commanding officers of infantry may be required to do by law.

Officers of volunteer regiments to review.

59. Whenever a vacancy shall occur by death, resignation, or otherwise, among the field officers of said regiment, it shall be the duty of the officer highest in command to notify the brigadier general thereof, whose duty it shall be to call the commissioned officers of said regiment together, at some convenient place, for the purpose of electing some one to fill said vacancy; and may either detail some officer to superintend said election, or may make it the duty of the officer highest in rank, that may be present, to attend thereto, and transmit to him the returns of said election; and it shall be the duty of said general to transmit the result of said election to the governor, who shall forthwith commission the officer or officers so elected.

How vacancies among the field officers of volunteer regiments shall be filled.

60. Each and every section of this act relative to the infantry, which can be applied to the government and disciplining of the artillery, light infantry, grenadiers or riflemen, or which can by construction be applied to them or either of them, is hereby declared to be in force for the government and disciplining of the artillery, light infantry, grenadiers and riflemen respectively.

Certain sections of this act, relative to the infantry, to apply to the artillery, &c.

61. The governor or commander in chief shall appoint general courts martial for the trial of major generals; major generals, each within his own division, shall appoint division courts martial for the trial of brigadier generals; brigadier generals, each within his own brigade, shall appoint brigade courts martial for the trial of all officers above the grade of captain; and in like manner the colonel or commandant of each regiment or battalion, shall appoint regimental or battalion courts martial, for the trial of all commissioned

General courts martial, how to be appointed and held.

58. 1806, c. 710, and 1829, c. 3, amended.

59. 1806, c. 710, amended.

60. 1813, c. 850, s. 11.

61. 1817, c. 955, s. 1.



officers, under the grade of a field officer ; in every case the officer ordering the court martial shall cause the officer accused to be arrested, to be furnished with a copy of the charges against him, and to be notified of the time and place appointed for his trial.

Officers of general courts martial, how to be selected.

62. When a court martial is ordered, the officer ordering it shall appoint the president, judge advocate, and provost marshal, and, if it be a general court martial, orders shall be issued to such divisions, as in the opinion of the governor or commander in chief may most conveniently furnish the members thereof ; if it be a division court martial, orders shall be issued to such brigades, as in the opinion of the officer ordering it, may most conveniently furnish the members thereof ; if it be a brigade court martial, orders shall be issued to such regiments in the brigade, as, in the opinion of the officer ordering it, may most conveniently furnish the members of it ; if it be a regimental court martial, the officer ordering it may and shall appoint the members.

Of what rank the officers shall be.

63. The president of a general court martial shall not be under the rank of a major general, and the court shall be composed of two brigadier generals and ten field officers, as members, six of whom shall be of different divisions ; the president of a division court martial shall not be under the grade of a brigadier general, and the court shall be composed of twelve field officers, as members, six of whom shall be of a different brigade ; the president of a brigade court martial shall not be under the rank of a colonel, and the court shall be composed of twelve officers, as members, to be taken from the brigade, none of whom shall be under the rank of captain ; the president of a regimental court martial shall not be under the grade of a field officer, and the court martial shall be composed of a majority of the officers of the regiment, as members.

Officers for courts martial to be regularly detailed.

64. Whenever the commanding officer of a division, brigade, regiment or battalion, shall be ordered to furnish any officer or officers, as a members or members, supernumerary or supernumeraries, of a court martial, such officer or officers shall be regularly detailed from the roster of the division, brigade, regiment or battalion, by the commanding officer thereof forthwith, after receiving orders therefor : *Provided*, that in case of sickness, inability, or absence of any officer, whose turn it may be to serve on a court martial, the detailing officer shall certify such circumstance to the officer who ordered the court martial, and detail the officer next in succession.

How to be detailed.

65. Officers, ordered to be detailed to serve on courts martial, shall be detailed in the following manner :—Brigadier generals by the major generals of division from the division rosters ; colonels, lieutenant colonels and majors by the commanding officers of brigades from the brigade rosters ; captains and subalterns by the commanding officers of regiments and battalions from the regimental or battalion rosters.

62. 1817, c. 955, s. 2.

63. 1817, c. 955, s. 3.

64. 1817, c. 955, s. 4.

65. 1817, c. 955, s. 5.

66. All courts martial for the trial of officers shall be constituted of a president, judge advocate and provost marshal, together with the number of members prescribed by the provisions of this act, and the officer ordering a court martial shall and may, at his discretion, order a number of officers to be detailed, as supernumeraries, in addition to those intended to serve as members, to attend the organization thereof, and, in case there should be any vacancy or vacancies, the judge advocate shall fill such vacancy or vacancies from the supernumeraries, beginning with the highest in grade and proceeding in regular rotation.

Courts martial,  
how con-  
stituted.

67. All officers on a court martial shall take rank by seniority of commission without regard to corps ; and before any court martial shall proceed to the trial of any officer, the judge advocate shall administer to the president and each of the members the following oath : " You, A. B., do swear that you will well and truly try and determine, according to the evidence, the matter now before you between the State of North Carolina and the prisoners to be tried, and that you will duly administer justice according to the militia laws of North Carolina, without partiality, favor or affection ; and you do further swear that you will not divulge the sentence of the court, until it shall be published by the proper authority, neither will you disclose the vote or opinion of any particular member of the court, unless required to give evidence thereof as a witness by a court of justice in due course of law : so help you God." And the president shall administer to the judge advocate the following oath : " You, A. B., do swear that you will faithfully and impartially discharge the duty of judge advocate on this occasion, as well to the State as to the accused, and that you will not disclose the vote or opinion of any particular member of the court, unless required to give evidence thereof as a witness by a court of justice in a due course of law, nor divulge the sentence of the court to any but to the proper authority, until it shall be duly published by the same : so help you God."

Officers of a  
court martial,  
how to take  
rank -- to take  
an oath.

68. The judge advocate of any court martial, constituted according to the provisions of this act, shall and may issue a summons, in the nature of a subpoena in criminal cases, directed to the provost marshal, to summon witnesses for the State, and the accused, and the persons summoned by him shall be bound to attend and give evidence before the court martial, under the penalty of forty dollars, to be recovered by the party aggrieved in an action of debt before a justice of the peace, unless the witness can prove his inability to attend.

How witnesses  
to be summon-  
ed.

69. All witnesses shall be sworn or affirmed by the judge advocate, before they give their evidence, as in criminal cases, according to the following form. " You A. B. do swear (or affirm, as the case may be) that the evidence you will give the court in the case between the State and C. D. shall be the truth, the whole truth and nothing but the truth : so help you God."

How to be  
sworn.

66. 1817, c. 955, s. 6.

67. 1817, c. 955, s. 7.

68. 1817, c. 955, s. 8.

69. 1817, c. 955, s. 9.



Rules for the government of courts martial.

70. All trials by court martial shall be carried on in the day time, between the hours of ten o'clock in the morning and five o'clock in the evening; and when the votes shall be called for on any question, the judge advocate shall begin with the youngest in commission and proceed regularly to the oldest. And at all courts martial, unless two thirds of the members agree that the accused is guilty, the judge advocate shall record his acquittal. And all courts martial, authorized and appointed in pursuance of the military laws of this State, shall have full power and authority to preserve order during their session, and may imprison in the county jail, for the space of eight hours, any and all persons, who shall in the presence of the court martial behave in a disorderly and contemptuous manner.

Duty of judge advocate.

71. It shall be the duty of the judge advocate, upon all trials, to state impartially to the court the evidence, both for and against the accused, to take in writing the evidence both for and against the accused, and to minute down the proceedings of the court, all of which, with the judgment or sentence of the court thereupon, authenticated by his signature, and that of the president of the court, with the papers read at the trial or copies thereof, certified by him, he shall transmit under seal to the officer who ordered the court, and all motions and objections to evidence, whether on the part of the State, or the accused, and the opinion of the judge advocate on questions of law, made at the trial, shall be stated in writing, and the statement of the complaint and the defence shall be made in writing, so that a full view of the trial may be had by the officer, whose duty it is to approve or disapprove of the proceedings; and all the original proceedings and judgment or sentence of all courts martial, appointed according to the provisions of this act, after having been approved or disapproved by the officer ordering them, shall by him, as soon thereafter as convenient, be transmitted to the adjutant general of the State, to be deposited and preserved in his office; and the party tried by any court martial, as aforesaid, upon request by himself, or by any person properly authorized, at the adjutant general's office, shall be entitled to a copy of the original record, certified as aforesaid, of the proceedings and sentence of the court, he paying reasonably for the same.

Proceedings against officers arrested and refusing to attend.

72. When any officer shall be arrested and notified to attend any court martial, which may be ordered for his trial, and shall refuse or neglect to attend the same, the said court shall take up the charges and specifications alleged against him, provided he has been served with a copy thereof, and proceed to trial in the same manner as if he were present.

Perjury before courts martial.

73. If any person shall wickedly, wilfully and corruptly swear falsely before any court martial, touching and concerning any matter or thing cognizable before such court martial, he shall, on con-

70. 1817, c. 955, s. 10.

71. 1817, c. 955, s. 11.

72. 1817, c. 955, s. 12.

73. 1812, c. 823, s. 3.

viction thereof, be liable to the pains and penalties of perjury, and in all cases, to delinquents and witnesses, oaths and affirmations shall be administered by the judge advocate or presiding officer of said court martial.

74. Dishonest or ungentlemanly conduct in an officer shall be punished by cashiering, and disabling him from ever holding a military commission in this State. For what conduct an officer may be cashiered.

75. Upon any requisition by the United States for a detachment of the militia from this State, it shall be the duty of every captain of infantry to enter upon his roll all able bodied free white men, between the ages of eighteen and fortyfive years, except such as are exempted by the second section of the act of congress of one thousand seven hundred and ninetytwo, and except the judges of the superior courts of law and equity, and ministers of the gospel, regularly ordained, within his company district, and they are hereby declared to be subject to draft: *Provided*, that nothing in this act shall be understood to subject persons, heretofore exempted, to perform ordinary militia duty: *And provided further*, nothing herein contained shall be construed to conflict with the provisions of the third section of this act. Detachments of militia for the United States service.

76. It shall be the duty of each captain or commanding officer of a company of militia, detached as part of the requisition under the authority of the United States, to receive and enrol in the place and stead of any person, drafted to serve in such company, any able bodied free white citizen to serve as a substitute for such person so drafted. Substitutes may be received.

77. If any commissioned officer, under the grade of a field officer, appointed to command in any detachment from this State, under the authority of the United States, shall die, resign or remove out of the regiment to which he belongs or may belong, it shall be the duty of the colonel commandant of the regiment, to which such officer belonged, to recommend a proper person, resident within the bounds of such regiment, to be commissioned by the governor to fill such vacancy. Vacancies under the rank of field officers in detachments, how to be supplied.

78. In all cases where a militia man shall have performed a term of service, either as a volunteer or drafted militia man, whether upon the requisition of the United States or of this State, he shall not be liable to stand a second draft, until the whole of the militia within his company district shall have performed a like term of duty. A militia man, after one tour, to be exempt from a second draft.

79. When militia men are ordered out on duty in aid of the civil authority, either to guard a jail or for any other purpose, and shall neglect or refuse to attend, agreeably to orders, each man shall be fined, at the discretion of his company court martial, not exceeding five dollars for each day he shall fail to do duty. Penalty for refusing to perform duty when ordered out by the civil authority.

80. In all cases of insurrection among slaves or free persons of Seven justices may call out

74. 1803, c. 749, s. 1.  
 75. 1814, c. 867, s. 3.  
 76. 1812, c. 828, s. 8.  
 77. 1812, c. 828, s. 9.  
 78. 1814, c. 867, s. 1.  
 79. 1822, c. 1167, s. 2.  
 80. 1831, c. 32, s. 1.



the militia in case of invasion or insurrection.

color, either in any county of this State, or in an adjoining State, or in case of invasion, seven justices of the peace, deeming the emergency to require it, may, at their discretion, require in writing of the commanding officer or officers of their county to call out the militia under his command, and any volunteer company or companies in said county, in the absence of the officer who is entitled to the command, to suppress or repel such insurrection or invasion, or to protect the inhabitants of their county from the danger to be apprehended, and may again require of the said officer to dismiss his men when they think the danger is over, and the commanding officer may dismiss in like manner.

Duty of the commanding officer on such requisition.

81. It shall be the duty of the commanding officer forthwith to order out the militia, in the way he shall judge best to effect the purpose desired; he may make such contracts, as he may think most to the interest of the State, for the requisite ammunition, and appoint some one a commissary to provide the necessary rations for the subsistence of the men while in service, and immediately on the discharge of the men the commanding officer is hereby empowered to dispose of any surplus ammunition or provisions, for the benefit of the State; and all expenses hereby incurred shall be properly certified by said officer and forwarded to the governor, and shall be paid by the State after undergoing an examination, and approval by the governor, treasurer and comptroller, who are hereby created a board for that purpose.

Commanding officer called out, to notify his superior officer.

82. The commanding officer of any regiment, as soon as he has called out the militia under the provisions of the eightyfirst section of this act, shall immediately send an express to the brigadier or major general of his brigade or division, informing him of that fact, and of any other official facts he may be in possession of, and continue to do so from time to time, and the brigadier or major general shall immediately apprise the governor, either by express or mail, as he may judge the emergency requires, of all the circumstances; in the mean time such general officer shall pursue the most effectual measures for repelling such invasion, or suppressing such insurrection, and the militia thus called out shall be armed according to law.

Superior officer to notify the governor.

Three justices may order out the militia to suppress outlawed or runaway slaves.

83. When there may be outlawed or runaway negroes, committing depredations, or in any way alarming the citizens of any county, or where the guarding of a jail is necessary, three justices of the peace, certifying the same in writing and requesting the officer in command of their county, he is hereby required to effect the object set forth in said request of the justices, and the expenses of said militia so called out, shall be paid by the court of the county, who are hereby authorized to lay a sufficient tax to pay said militia, at the same rates as the regular troops of the United States are by law now entitled to, when in actual service.

Pay of the militia when in service.

84. The militia of this State, both officers and soldiers, when called into the service of the State, shall receive the same pay and rations as when called into the service of the United States.

81. 1831, c. 32, s. 2.

82. 1831, c. 32, s. 3.

83. 1831, c. 32, s. 4.

84. 1813, c. 850, s. 5.

85. Every officer who shall refuse or neglect, on call or alarm given, to appear at such times and places as shall be appointed by his commanding officer, shall, on conviction before a court martial, be cashiered and rendered incapable of ever after holding a military appointment under the authority of this State, and be further liable to pay the sum of forty dollars, to be collected, as herein directed ; and if a non-commissioned officer or private, he shall forfeit and pay the sum of ten dollars. If any person do not march against the enemy, when commanded, by himself or substitute, or refuse or neglect to do his duty or perform the services he is requested to perform by his officer, or quit his post, desert or mutiny, it shall and may be lawful for the commanding officer of the regiment or corps to order a court martial for the trial of such offender ; the members when met shall individually, before they proceed, take the following oath : “ I swear well and truly to try and determine, according to the evidence of the matter before me, between the State and the person now to be tried : so help me God.” And shall, on trial and conviction, order punishment on the offender, according to the articles of war established for the regulation of the army : *Provided*, such punishment shall not extend to sentence of death, except in case of desertion to an enemy, or mutiny.

Punishment  
for refusing to  
appear on call  
or alarm given.

86. If any non-commissioned officer or private militia man, while in the pay and service of this State, shall wilfully desert the service or abandon the post assigned to him, without being regularly discharged, or permitted by an officer duly authorized for that purpose, such non-commissioned officer or private, so deserting or abandoning his post, and being thereof convicted by a court martial having jurisdiction of the offence, shall be adjudged to have forfeited the pay and emoluments, due to him at the time of his desertion, and be subject to a fine not less than twenty and not exceeding fifty dollars, and imprisonment not exceeding six nor less than one month, at the discretion of the court martial ; and, furthermore, turned over to serve as a private soldier in the regular army of the United States, at the discretion of the court martial, not exceeding double the term of time, which he had been called out to serve in the militia of this State.

Punishment for  
desertion.

87. All acts, heretofore passed on the subject of the militia, are hereby repealed : *Provided*, that this act shall not extend to military appointments made by recommendation to the present legislature : *And provided*, that nothing herein contained shall be construed to repeal any private act of the General Assembly, incorporating, granting privileges to, or regulating particular corps, whether of the volunteers or of the ordinary militia.

Repealing  
clause.

88. It shall be the duty of the adjutant general to have copies of this act printed and distributed, one copy to each general officer, one copy to each field officer, and two copies to each company—to be distributed, as is provided for the distribution of the acts of the General Assembly.

Adjutant gen-  
eral to have  
copies of this  
act printed and  
distributed.

89. This act shall be in force from and after its passage.

When this act  
to be in force.

85. 1806, c. 708, s. 20.

86. 1813, c. 850, s. 12.

87. Amendment.

88. Amendment.

89. Amendment.



## CHAPTER 74.

## MILLS AND MILLERS.

## AN ACT CONCERNING MILLS AND MILLERS.

## SECTION

1. What shall be public mills.
2. Persons wishing to build public mills, how to proceed when they own land only on one side of the stream.
3. Persons obtaining an order to build a mill, how to obtain a title to the land on which it is built.
4. When an order for one mill is granted, another shall not be granted within two miles on the same tract of land—Not to overflow another, or create a nuisance.
5. Within what time the mill is to be commenced and finished.
6. What time infants, &c. may have for rebuilding mills burnt or destroyed.
7. Millers shall grind according to turn—What toll they may take.
8. What measures millers shall keep in their mills—Keeping false measures indictable.
9. Persons injured by the erection of mills, how to proceed to recover damages.
10. When notice is served upon the tenant in possession, instead of the owner, how such tenant is to proceed.

## SECTION

11. If the tenant fail to file an affidavit, he is to be taken as owner.
12. When the owner appears, he is, upon giving bond, to be admitted co-defendant with the tenant.
13. Upon the hearing of the petition, what proceedings are to be had for the purpose of having the damages assessed, the verdict of the jury returned, and how long such verdict shall be in force.
14. Provision in cases where the damages are assessed as high as twenty dollars.
15. Provision as to costs where the verdict is that there is no damage, or where the damages are under five dollars—How execution shall issue against the defendant for damages.
16. What pay the sheriff and jurors shall be entitled to.
17. Upon appeals, the trial to be had at bar in the superior court—Plaintiff to pay costs if he appeals and fails to recover higher damages.
18. Keepers of public mills exempt from serving on juries or working on roads.

What shall be public mills.

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 every water grist mill or windmill, already built or which shall hereafter be built, that hath or shall at any time grind for toll, shall be held and deemed, and is hereby declared to be, a public mill.

Persons wishing to build public mills, how to proceed, when they own land only on one side of the stream.

2. Any person, willing to build such mill, who hath land only on one side of a run, shall exhibit his petition to the county court, and therein shew who is the proprietor on the opposite side of the run, whereupon a summons shall issue to such proprietor to appear at the next court and answer the allegations of such petition, and the court also at the same time shall order four freeholders to lay off,

1. 1777, c. 122, s. 1.

2. 1777, c. 122, s. 2.—1836, amended.

view and value on oath, to be administered by the sheriff, or any justice of the peace, an acre of the land of such proprietor, and also an acre of the land of the petitioner opposite thereto, and to report their opinion and proceedings thereon to the next court; and thereupon the court shall order the said report to be recorded, and, if it take not away houses, orchards, gardens or other immediate conveniences, shall and may, and are hereby empowered and authorized to grant leave to the petitioner, or such proprietor, to erect such mill at the place proposed, as in their discretion shall seem reasonable, and to order the costs of such petition to be paid by the person to whom such leave shall be granted.

3. The person, to whom such leave is granted, shall pay down in court for the acre of land he shall obtain thereby, the valuation money, and procure a record to be made thereof, which shall be a good and effectual seizin in law to create to such person, his heirs and assigns, a fee simple in such acre of land.

Persons obtaining an order to build a mill, how to obtain a title to the land on which it is built.

4. Where any grist mill shall have been erected by order of court, it shall not be lawful for any court, on the petition of any person whatever, to grant any part of the tract, whereon such mill stands, for the purpose of building another mill, within two miles above or below the mill already erected. And it shall not be lawful for any court to grant leave to any person to erect a mill, so as to overflow any other mill, or create a nuisance to the neighborhood.

When an order for one mill is granted, another shall not be granted within two miles, &c. Not to overflow another, or create a nuisance.

5. The person so being seized shall, within one year, begin to build a water mill, and finish the same within three years, and shall thereafter keep up the same, for the use and ease of all such as shall be customers to it, otherwise the said land shall return to the person from whom it was taken, or to such other person as shall have his right, unless the time for finishing the same, for reasons shown to and approved of by the court, be enlarged.

Within what time the mill is to be commenced and finished.

6. If any water mill, belonging to any person within the age of twentyone years, *feme covert*, *non compos mentis*, or imprisoned, be let fall, burnt, or otherwise destroyed, then such person or persons, and their heirs, shall have three years to rebuild and repair such mill, after his or their full age, discoverture, coming of sound mind, or enlargement out of prison.

What time infants, &c. may have for rebuilding mills burnt or destroyed.

7. All millers shall grind according to turn, and shall well and sufficiently grind the grain brought to their mills, if the water will permit, and shall take no more toll for grinding than one eighth part of the indian corn and wheat, and one fourteenth part for chopping grain of any kind; and every miller and keeper of a mill, making default therein, viz: not grinding according to turn, nor well and sufficiently grinding the grain, if the water will permit as aforesaid, or exacting and taking more toll than herein is set down and allowed, shall, for every such offence, forfeit and pay five dollars to the party injured, to be recovered before any justice of the

Millers shall grind according to turn. What toll they may take.

3. 1777, c. 122, s. 3.

4. 1777, c. 122, s. 4 and 5.

5. 1777, c. 122, s. 6.

6. 1777, c. 122, s. 7.

7. 1777, c. 122, s. 10. — 1793, c. 402.



county, wherein such offence is committed, with costs : *Provided nevertheless*, that it shall be in the power of any such owner to grind or cause to be ground his own grain, at any time he thinks fit.

What measures millers shall keep in their mills.

Keeping false measures indictable.

Persons injured by the erection of mills, how to proceed to recover damages.

8. All millers shall keep in their mills the following measures, viz : a half bushel and peck, at full measure, and also proper toll dishes for each measure, and every owner by himself, servant or slave, keeping any mill, who shall keep any false toll dishes, contrary to the true intent and meaning of this act, shall be indicted, and, on conviction, shall be fined or imprisoned, or both fined and imprisoned, at the discretion of the court.

9. Any person, who may conceive himself injured by the erection of any public grist mill, or mills for domestic manufactures or other useful purposes, and be desirous of recovering damages from the owner or proprietor of any such mill, shall apply by petition to the court of pleas and quarter sessions of the county, in which the land, to which the damage is done, is situate, setting forth in such petition in what respect he is injured by the erection of said mill, having first given to the owner or owners, or to the tenant or tenants in possession of said mill, ten days previous notice in writing, of his intention to file said petition, and a copy of such notice, returned by the sheriff executed, shall be evidence of such service.

When notice is served upon the tenant in possession, instead of the owner, how such tenant is to proceed.

10. When such notice shall have been served upon any tenant or tenants in possession of any mill, instead of the owners thereof, such tenant or tenants shall file in court an affidavit, setting forth the name of the real owner or owners of the mill or mills, whereof he or they are tenants, and upon filing such affidavit, the court shall order a copy of such petition to be served on such owner or owners, if he, she or they reside in this State, and if not in this State, the court shall order publication to be made for six weeks in some newspaper in this State, notifying such owner or owners to appear, and plead, answer, or demur, or judgment will be entered against him, her or them at the next court.

If the tenant fail to file an affidavit, he is to be taken as owner.

11. If such tenant or tenants, as aforesaid, shall fail to file such affidavit, he or they shall be taken and deemed the owner or owners of such mill, and the court shall hear the petition, and order a writ to be issued, in the same manner as if such tenant or tenants was or were the real owner or owners as hereinafter directed, and in case of judgment for the petitioner or petitioners, he, she or they shall recover all costs, and it shall be lawful for the petitioner to take out execution, and sell said mill and appurtenances, and the property of the tenant or tenants, and the property of the owner or owners thereof, or a sufficiency to pay all costs and the judgment.

When the owner appears, he is, upon giving bond, to be admitted co-defendant with the tenant.

12. If the person or persons, set forth as owner or owners of such mill, in the affidavit of such tenant or tenants as aforesaid, shall appear at the next court and apply to be made parties to the petition, it shall and may be lawful for the court to cause him, her

8. 1777, c. 122, s. 11, amended.

9. 1809, c. 773, s. 1.—1813, c. 863, s. 1.—1833, c. 6, s. 1.

10. 1833, c. 6, s. 2.

11. 1833, c. 6, s. 3 and 5.

12. 1833, c. 6, s. 4.

or them to be made defendants, upon his, her or their entering into bond, in such sum as the court may require, payable to the petitioner or petitioners, conditioned as other bonds given by defendants in civil actions ; and then the petition shall stand against the tenant or tenants, so notified as aforesaid, and the owner or owners, so made parties defendant as aforesaid, and in that case the sheriff shall give written notices, five days previous to his going with the jury on the premises as hereinafter directed, to the tenant or tenants in possession of said mill, and no notice to the owner or owners shall be necessary.

13. Upon the hearing of any petition, filed as above directed, it shall be the duty of the court to order a writ to be issued to the sheriff of their county, commanding him to summon a jury of twentyfour freeholders, unconnected with the parties by consanguinity or affinity, and entirely disinterested, no one of whom shall be the owner or part owner of any public mill, or mills for domestic manufactures or other useful purposes, to meet on the premises, on a certain day, of which he shall give each party five days previous notice in writing, and it shall be the duty of the jury, formed by drawing twelve out of twentyfour summoned as aforesaid, (in the doing which each party may challenge either peremptorily, or for cause, as in other civil cases,) after appearing at the place and on the day appointed, and having taken an oath, (which the sheriff or deputy is hereby authorized to administer,) that they will well and truly inquire whether any damage hath been sustained by the petitioner, by reason of the erection of the mill complained of, and if in their opinion any hath been sustained, that they will impartially, according to the best of their judgment and ability, assess the amount, which said petitioner ought annually to receive from the owner, proprietor or tenant of said mill on account thereof; they shall proceed to view and examine the premises, and to hear all the evidence which may be produced on both sides ; they shall then retire to themselves and make up their verdict, as to the sum which the petitioner is entitled to receive, as an annual compensation for the damage he sustains, by reason of the erection of the mill complained of, reduce the same to writing, sign their names thereto and deliver it to the sheriff, sealed up, to be delivered to the court from whence the writ issued, at the next ensuing term ; which verdict shall be binding between the parties for the term of five years, unless the damages should be increased by raising the water or otherwise, if said mills are kept up, from the filing of the petition, unless appealed from by either of them.

14. In all cases where the jury shall assess the yearly damage as high as the sum of twenty dollars, nothing contained in this act shall be so construed as to prevent the person so injured, his heirs or assigns, from suing as heretofore usual in such cases ; and in such cases, the verdict of the jury on the premises, and the judgment thereon, shall only be binding for the year's damage preceding the filing of the petition.

Upon the hearing of the petition, what proceedings are to be had for the purpose of having the damages assessed, the verdict of the jury returned, and how long such verdict shall be in force.

Provision in cases where the damages are assessed as high as twenty dollars.

13. 1809, c. 773, s. 1.—1813, c. 863, s. 3.

14. 1809, c. 773, s. 5.



Provision as to costs where the verdict is that there is no damage, or where the damages are under five dollars.

How execution shall issue against the defendant for the damages.

What pay the sheriff and jurors shall be entitled to.

Upon appeals, the trial to be had at bar in the superior court.

Plaintiff to pay costs if he appeals and fails to recover, &c.

Keepers of public mills exempt from serving on juries or working on roads.

15. If the verdict of the jury shall be that the petitioner hath sustained no damage, then he shall pay all the costs of his petition, and execution shall be issued therefor by the clerk of the court, but if in favor of the petitioner, shall be issued by the clerk against the defendant for the amount of one year's damage preceding the filing of the petition and for all costs: *Provided*, that if the damage assessed do not amount to five dollars, the petitioner shall not recover more costs than damages; and if the defendant do not annually pay up the petitioner, his heirs or assigns, before it falls due, the sum assessed by said verdict, as the damages to be paid annually, such petitioner, his heirs or assigns, shall be at liberty, annually during the five years, to apply to the clerk for an execution against him, at the same term that the petition was filed, in each and every year, for the amount of the last year's damage, or any part thereof, which may remain unpaid.

16. The sheriff, for summoning each juror or witness, shall be entitled to twenty cents, and each juror to eighty cents per day, for attending on the premises, and four cents per mile for every mile they shall travel to and from the place of trial, an account of which they shall render on oath to the sheriff after the verdict is made up, to be returned therewith to the court, and the clerk shall receive the same fees as in other cases of petitions, where no copy is issued.

17. In all cases arising under this act, where either party shall appeal from the county to the superior court, the trial in the superior court shall be had at bar: And if the plaintiff shall appeal, and fail to recover higher damages in the superior court than were awarded by the jury on the premises, he shall pay all the costs of his appeal.

18. All keepers of public mills shall be exempt from working on roads or serving on juries.

15. 1809, c. 773, s. 2.—1833, c. 6, s. 6.—1834, c. 20.

16. 1809, c. 773, s. 3.

17. 1813, c. 863, s. 2.—1809, c. 773, s. 4.

18. 1836, amendment.

*Note.*—REFERENCES TO ADJUDGED CASES.

- SECT. 1. Eason *vs.* Perkins, 2 Dev. Eq. 38.  
 SECT. 9. Mumford *vs.* Terry, 2 Car. Rep. 425. Purcell *vs.* McCallum, 1 Dev. and Bat. 221. Gillet *vs.* Jones, *ib.* 339.  
 SECT. 14. Gillet *vs.* Jones, 1 Dev. and Bat. 339. Pugh *vs.* Wheeler, 2 Dev. and Bat.

CHAPTER 75.

MINES.

AN ACT CONCERNING IRON AND GOLD MINES.

SECTION

1. Three thousand acres of land granted for the use of iron works as a bounty—Entry taker to make out a copy of the bounty land, and transmit it to the county court.
2. Court to appoint a jury to view the bounty lands—Jury to make their return, and the same to be recorded.
3. Conditions to entitle the proprietors to the land granted.

SECTION

4. Manner in which the grants are to be obtained—Proviso, the land to revert upon failure to erect the works.
5. Bounty lands to be exempt from taxes for ten years.
6. Lessors of gold mines not to be taken as partners with their lessees, unless they so contract.

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 three thousand acres of vacant land, not fit for cultivation, most convenient to the different seats, is hereby granted for every set of iron works, as a bounty from this State, to any person or persons, who will build and carry on the same, to be under the following rules and regulations, viz: where any person or persons intend to build iron works, such person or persons may proceed to the entry taker of the county where he intends to erect such works, and enter, in one or more tracts, the quantity of bounty land allowed by this act for one set of works, and the entry taker is hereby required to make out a copy of the land entered as aforesaid, and transmit the same to the next court that shall be held in the county in which he is entry taker.

Three thousand acres of land granted for the use of iron works, as a bounty. Entry taker to make out a copy of the bounty land, and transmit it to the county court.

2. The court of any county in this State, upon receiving the return of the entry taker for the land as aforesaid, shall appoint a jury consisting of twelve persons, who shall proceed to view the land in their county entered as aforesaid, and if they shall adjudge the land so entered not fit for cultivation, they shall certify the same in writing, and return the certificate to the next court held in their county, and the court upon receiving such return shall cause the certificate to be recorded by the clerk.

Court to appoint a jury to view the bounty lands. Jury to make their return and the same to be recorded.

3. If any person or persons, who may enter land agreeably to this act, shall erect iron works within the term of three years from the time of the jury's return, such person or persons, on making it appear to the court of the county that he or they have made at said works five thousand weight of iron, shall receive an order to the entry taker, requiring him to issue the warrants for the bounty lands.

Conditions to entitle the proprietors to the land granted.

1. 1783, c. 293, s. 1.  
 2. 1783, c. 293, s. 2.  
 3. 1783, c. 293, s. 3.



Manner in which the grants are to be obtained.

Proviso, the land to revert upon failure to erect the works.

Bounty lands to be exempt from taxes for ten years.

Lessors of gold mines not to be taken as partners with their lessees, unless they so contract.

4. Such entry taker, upon receiving such order, shall proceed to issue warrants for the lands granted by this act, without receiving any money for the State, and the surveyor, upon receiving such warrants, shall proceed to survey the same as soon as convenient, and make return to the secretary's office, that grants may issue for the same, and such grant or grants shall be as good and valid to the proprietors of such works, their heirs or assigns, as if the purchase money had been paid: *Provided nevertheless*, that if any person or persons shall enter land, in pursuance of this act, and fail to erect iron works according to the true meaning and intent thereof, the land so entered shall revert to the State, unless the person who has entered the same pays the purchase money for the use of the State.

5. The bounty lands granted by this act, shall be exempted from taxation for the term of ten years.

6. No lessor or lessors of property, real or personal, for gold mining purposes, although such lessor or lessors may receive a sum uncertain of the proceeds or net profits, or any other consideration, which, though uncertain at first, may afterwards become certain, shall be held as a partner or partners of the lessee; nor shall any of the legal or equitable relations or liabilities of co-partners exist between them, unless it be so stipulated in the contract between such lessors and lessees.

4. 1788, c. 293, s. 4.

5. 1788, c. 293, s. 5.

6. 1830, c. 46.

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## CHAPTER 76.

# MONEY REMAINING IN THE HANDS OF CLERKS, &c.

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AN ACT PRESCRIBING THE DISPOSITION OF MONEY REMAINING IN THE HANDS OF CLERKS AND SHERIFFS A CERTAIN TIME.

### SECTION

1. Clerks of the supreme, superior and county courts, and clerks and masters in equity, to make statements and returns of all moneys remaining in their hands for three years.
2. To whom such moneys shall be paid over, subject to be reclaimed by the rightful owner.
3. Clerks, and clerks and masters, failing to pay over such moneys, to forfeit one thousand dollars.
4. Clerks, and clerks and masters, failing to pay over moneys remaining in

### SECTION

- their hands, how to be proceeded against.
5. Sheriffs and coroners to pay costs on executions to the clerks.
  6. Sheriffs to account and pay over moneys in their hands in the same manner as clerks, &c.
  7. Clerks, &c. to set up a statement of their returns in the court house for six months before making such returns.
  8. Penalty on clerks, &c. for failing to set up statements.

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 the duty of each and every clerk of any county court, superior court of law, clerk and master in equity, and clerk of the supreme court within this State, at the first session of the court, of which he is clerk, which shall be after the first day of August in each and every year, to produce to said court a statement, to be made on oath, of all moneys remaining in his hands, which were received by him officially three years or more previous thereto, specifying therein the amount of each separate claim, and the name of the person, to whom the same is payable : and if there be no such moneys in his hands, he shall make affidavit of the same, which return or affidavit, if made by the clerk of the supreme court, the judges of the said court shall cause to be transmitted to the public treasurer of this State ; or if made by a clerk of the county court, or a clerk of the superior court of law, or a clerk and master in equity, the judge or chairman of the court, before whom it is made, shall cause to be transmitted to the officer appointed to receive and disburse the county funds, on or before the first day of December in the same year.

Clerks of the supreme, superior and county courts, and clerks and masters in equity, to make statements and returns of all moneys remaining in their hands for three years.

2. The clerk of the supreme court shall, on or before the first day of December, in each and every year, after the foregoing statements are made, account with and pay over to the public treasurer, all the balances aforesaid, which shall be held by him in trust for the legal claimants, but, whilst unapplied for, shall constitute a part of the general fund ; and the clerks of the county and superior courts of law, and the clerks and masters in equity, shall, within the same time, account with and pay over all the balances aforesaid, to the officer appointed to receive and disburse the county funds, whose duty it shall be to receive the same, and to hold it subject to the claims of the rightful owners, and, until called for by such owners, to be used by them as other county funds.

To whom such moneys shall be paid over, subject to be reclaimed by the rightful owner.

3. Any clerk of the supreme court, failing to comply with the duties required by this act, shall forfeit and pay to the State one thousand dollars, to be sued for and recovered by the public treasurer in the superior court of law of Wake county ; and be, moreover, liable to pay all such moneys, as he may be chargeable with under the provisions of this act ; and any clerk of the county or superior courts of law, or clerk and master in equity, failing as aforesaid, shall forfeit and pay, to the use of the county wherein he is clerk, or clerk and master, one thousand dollars, to be sued for and recovered by the proper county officer, in the superior court of law of his county, and be, moreover, liable to pay such moneys as he may be chargeable with, under the provisions of this act.

Clerks, and clerks and masters, failing to pay over such moneys, to forfeit one thousand dollars.

4. If any clerk, or clerk and master as aforesaid, shall fail to

Clerks, and clerks and

1. 1823, c. 1186, s. 1.—1831, c. 3, s. 1 and 3.  
 2. 1823, c. 1186, s. 2.—1831, c. 3, s. 1 and 3.  
 3. 1823, c. 1186, s. 3.—1831, c. 3, s. 2.  
 4. 1823, c. 1186, s. 4.—1831, c. 3, s. 2.



masters, failing to pay over moneys remaining in their hands, how to be proceeded against. pay any money, by him admitted to be due as aforesaid, on or before the first day of December, in each and every year, such clerk or clerk and master, may be proceeded against by the public treasurer, in any court of record in this State, or by the proper county officer in the courts of his own county, in the like manner as against defaulting revenue officers.

Sheriffs and coroners to pay costs on executions to the clerks. 5. It shall be the duty of the sheriff and coroner of each county to pay the costs on all executions, which shall be satisfied in the whole or in part, to the clerk of the court from which such execution issued, and to no other person, on the second day of the term of such court; and any sheriff, making default therein, shall be fined the sum of forty dollars, which fine shall be recovered in the name of the State, by *scire facias*, in the same manner as other fines, and, when collected, shall be paid into the office of said clerk for the purposes above directed.

Sheriffs to account and pay over moneys in their hands in the same manner as clerks, &c. 6. All sheriffs now in office shall, at the same time prescribed in the first section of this act for clerks, render a like statement to the court of the county of which he is sheriff, and account with the officer, appointed to receive and disburse the county funds, for all balances in his hands, arising under the provisions of this act, in the same manner and under the same penalties as by this act is provided for clerks.

Clerks, &c. to set up a statement of their returns in the court house for six months before making such returns. 7. Each clerk and clerk and master of the several courts of law and equity, who is bound by the provisions of this act to make a return to the public treasurer, or to the officer appointed to receive and disburse the county funds, on oath, of all moneys remaining in his hands, and which were received by him officially, three years or more previous thereto, shall post up in the court house of his county, at least six months before he is, by the provisions of this act, bound to make his return, a list of all such moneys with the amount of each claim, and the name of the person to whom it is payable, that the person entitled may have an opportunity of applying for the same, before it is paid into the public or the county treasury.

Penalty on clerks, &c. for failing to set up statements. 8. Any clerk or clerk and master, who shall fail to comply with the provisions of the last section, shall forfeit and pay the sum of twenty dollars, to be sued for and recovered before any justice of the peace of his county, one half to the use of the person suing for the same, and the other half to the use of the said county.

5. 1822, c. 1149, s. 1.

6. 1823, c. 1186, s. 6.—1831, c. 3, s. 1 and 2.

7. 1828, c. 41, s. 1.

8. 1828, c. 41, s. 2.

CHAPTER 77.

NAMES.

AN ACT EMPOWERING COURTS OF RECORD TO CHANGE NAMES.

SECTION

1. Superior courts may, upon petition, change the name of any person desiring it.

SECTION

2. Repealing clause.

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 whenever any person shall be desirous to change his or her name, it shall be lawful for him or her to file a petition in any superior court, praying that the same may be done; and thereupon the court, at the same term of filing the petition, may decree for the petitioner according to his prayer; and the person, whose name is thus changed, may sue and be sued in his or her new name.

Superior courts may, upon petition, change the name of any person desiring it.

2. All laws and clauses of laws, coming within the meaning and purview of this act, shall be and the same are hereby repealed.

Repealing clause.

CHAPTER 78.

NOTARIES.

AN ACT PROVIDING FOR THE APPOINTMENT OF NOTARIES.

SECTION

1. Governor to appoint one or more notaries in each county—Notaries to take oaths.

SECTION

2. Clerks, and clerks and masters, may act as notaries.  
3. Fees of clerks, &c. when acting as notaries.

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 the governor for the time being may, from time to time at his discretion, appoint one or more persons properly qualified, to act as notary or notaries in each and every county in this State, and the said notaries and every of them, shall take the oath ap-

Governor to appoint one or more notaries in each county. Notaries to take oaths.

1. 1777, c. 113, s. 15.



pointed to be taken for the qualification of public officers, and also an oath of office, which oaths may be taken in, and administered by, the court of the county in which such notary shall reside.

Clerks, and  
clerks and  
masters, may  
act as notaries.

2. It shall be lawful for each of the clerks of the courts of record in this State, and for the clerks and masters in equity, to act as notaries public, in their several counties, by virtue of their said offices of clerk and clerk and master, and they shall certify their acts as notaries public, whenever the same are to be used out of the county, under the seal of the court of which they may be clerks or clerks and masters.

Fees of clerks,  
&c. when act-  
ing as notaries.

3. The fees of clerks and clerks and masters, as notaries, shall be the same as now fixed by law for the service of a notary public, and for services where the law fixes no fee, they shall not demand a larger fee than twenty cents for every ninety words.

2. 1833, c. 7, s. 1 and 2.

3. 1833, c. 7, s. 3.

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## CHAPTER 79.

# OATHS.

### AN ACT CONCERNING OATHS.

#### SECTION

1. Oaths, how to be administered.
2. A person conscientiously scrupulous of laying his hands on the Scriptures, to be sworn with an uplifted hand.
3. Quakers, Moravians, Dunkards and Menonists to be affirmed—Their affirmation to be received in all cases, civil and criminal.
4. Oaths or affirmations to support the Constitution of the United States and of this State, to be taken by all officers.
5. Also an oath to support the constitution of the United States.
6. Oath of the governor—Of the secretary of state—Of the public treasurer—Of the comptroller—Of a judge of the supreme court—Of a judge of the superior courts—Of the attorney general and solicitors—Of a justice of the peace—Of the clerk of the supreme court—Of a clerk of the superior courts—Of clerk and master—Of a clerk of the county courts—Of a sheriff—Of a

#### SECTION

coroner—Of a county attorney—Of a constable—Of a county trustee—Of a register—Of a standard keeper—Of a ranger—Of an entry taker—Of a county surveyor—Of a pro-cessioner—Of inspectors of tobacco—Of a picker of tobacco—Of an inspector of flour—Of inspectors of other articles than tobacco and flour—Of an attorney at law—Of a witness on a state trial—Of a witness on a traverse—Of a witness in civil cases—Of a witness to prove a will—Of a witness to be sent to the grand jury—Of a petit jury in a capital case—Of a petit jury in criminal cases not capital—Of a jury in civil cases—Of a jury laying off dower—Of a jury to assess damages for overflowing land—Of the foreman of a grand jury—Of the other grand jurors—Of a constable charged with a jury—Of a constable to attend the grand jury—Of an executor—Of an administrator—Of commissioners di-

SECTION

viding and allotting real estate—  
Of commissioners allotting a year's  
provision—Of valuers of strays—  
Book debt oath—Book debt oath

SECTION

for an executor or administrator.  
7. Deputies to administer oaths wher-  
ever their principals are authorized  
to do so.

WHEREAS, lawful oaths, for the discovery of truth and establishing right, are necessary and highly conducive to the important end of good government, and being most solemn appeals to Almighty God, as the omniscient witness of the truth, just and omnipotent avenger of falsehoods such oaths, ought, therefore, to be taken and administered with the utmost solemnity :

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 judges and justices of the peace, and other persons, who are and shall be empowered to administer oaths, shall (except in the cases in this act excepted) require the party to be sworn, to lay his hand upon the holy evangelists of Almighty God, in token of his engagement to speak the truth, as he hopes to be saved in the way and method of salvation, pointed out in that blessed volume, and in further token, that, if he should swerve from the truth, he may justly be deprived of all the blessings of the gospel, and made liable to that vengeance, which he has imprecated on his own head ; and, after repeating the words “ So help me God,” shall kiss the holy gospels, as a seal of confirmation to the said engagements.

Oaths, how to be administered.

2. In all cases when any judges, justices of the peace, or other persons are or shall be empowered to administer any manner of oath in this State, and the person to be sworn, shall be conscientiously scrupulous of taking a book oath in manner aforesaid, and pray the benefit of this act, it shall be lawful for all such judges and justices and other persons, and they and each of them are hereby required, to excuse such person from laying hands upon, or touching the holy gospels ; and the said judges, justices and others, are hereby directed in such case to administer the oath required, in the following manner, to wit : the party, so conscientiously scrupulous and praying the benefit of this act, shall stand with his right hand lifted up towards heaven, in token of his solemn appeal to the supreme God, whose dwelling is in the highest heavens, and also in token, that if he should swerve from the truth, he would draw down the vengeance of heaven upon his head, and shall introduce the intended oath with these words, viz : “ I, A. B., do appeal to God, as a witness of the truth and avenger of falsehood, as I shall answer the same at the great day of judgment, when the secrets of all hearts shall be known, that, &c.” as the words of the oath may be. And it is hereby declared, that an oath thus administered and taken, with the right hand lifted up, is and shall be a lawful oath in this State, and such oath shall be admitted and used in all courts in this State, where the same shall be required

A person conscientiously scrupulous of laying his hands on the Scriptures, to be sworn with an uplifted hand.

1. 1777, c. 108, s. 2.  
2. 1777, c. 108, s. 3.



as aforesaid, and shall be equally good and valid in law to all intents and purposes, as if the same oath had been taken by the party having laid his hand upon, and kissed the holy gospels.

Quakers, Moravians, Dunkards and Menonists to be affirmed. Their affirmation to be received in all cases, civil and criminal.

3. The solemn affirmation of Quakers, Moravians, Dunkards and Menonists, made in the manner heretofore used and accustomed, shall be admitted as evidence in all criminal cases, as well as in civil controversies in this State; and in all cases where other persons are required to take an oath to support the constitution of this State, or of the United States, or an oath of office, the said Quakers, Moravians, Menonists and Dunkards, shall make their solemn affirmation, in the words of the said oath or oaths beginning after the word "swear," which affirmation shall be as good and effectual to all intents and purposes, as if they had taken the oaths aforesaid.

Oaths or affirmations to support the constitutions of the United States and of this State, to be taken by all officers.

4. Every person, who shall be chosen or appointed to hold any office of trust or profit in this State, shall, before his entering upon the execution of the office, to which he shall have been chosen or appointed, take and subscribe the following oath or affirmation: "I, A. B., do solemnly and sincerely swear or affirm, that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities, which are or may be established for the government thereof, and that I will endeavor to support, maintain and defend the constitution of said State, not inconsistent with the constitution of the United States, to the best of my knowledge and ability: so help me God." Where such person shall be of the people called Quakers, Moravians, Menonists or Dunkards, he shall take and subscribe to the following affirmation: "I, A. B., do solemnly and sincerely declare and affirm, that I will truly and faithfully demean myself as a peaceable citizen of North Carolina; that I will be subject to the powers and authorities, that are or may be established for the good government thereof, not inconsistent with the constitution of the said State and the constitution of the United States, either by yielding an active or passive obedience thereto, and that I will not abet or join the enemies of this State, by any means, in any conspiracy whatever, against the said State; that I will disclose and make known to the legislative, executive or judicial powers of the said State, all treasonable conspiracies, which I shall know to be made, or intended against the said State."

Also an oath to support the constitution of the United States.

5. All members of the General Assembly, and all officers who shall be elected, chosen or appointed to any office of trust or profit within this State, shall, agreeably to act of congress, take the following oath or affirmation: "I, A. B., do solemnly swear (or affirm, as the case may be,) that I will support the constitution of the United States:" which oath shall be taken by all members of the General Assembly, and by all other persons, who shall be chosen or appointed to any office of trust or profit within this State, before they enter upon the execution of the office, to which they shall have been chosen or appointed.

3. 1777, c. 103, s. 4.—1777, c. 115, s. 42.—1819, c. 1019.—1821, c. 1112.

4. 1791, c. 342, s. 1.

5. 1791, c. 342, s. 2.

6. The oaths of office to be taken by each and every officer, elected or appointed under the constitution and laws of this State, shall be in the following words respectively.

## THE OATH OF THE GOVERNOR.

I, A. B., do swear or affirm (as the case may be,) that as gov-<sup>Oath of the</sup>ernor of the State of North Carolina, I will execute the duties of <sup>governor.</sup> that important office without favor or affection, agreeably to the constitution and laws of the State, and according to the best of my skill and ability : so help me God.

## THE OATH OF THE SECRETARY OF STATE.

I, A. B., do swear (or affirm) that I will in all cases faithfully <sup>Of the secre-</sup>and honestly execute the office of secretary of state of the State <sup>tary of state.</sup> of North Carolina, during my continuance in office, according to law.

## THE OATH OF THE PUBLIC TREASURER.

I, A. B., do swear (or affirm) that, according to the best of my <sup>Of the public</sup>abilities and judgment, I will execute impartially the office of pub- <sup>treasurer.</sup>lic treasurer in all things according to the law, and account for the public taxes, and I will not directly or indirectly apply the public money to any other use than by law directed : so help me God.

## THE OATH OF THE COMPTROLLER.

I, A. B., do solemnly swear (or affirm) that I will well and truly <sup>Of the comp-</sup>execute the trust reposed in me as comptroller, without favor or <sup>troller.</sup>partiality, according to law, to the best of my knowledge and ability : so help me God.

## THE OATH OF A JUDGE OF THE SUPREME COURT.

I, A. B., do solemnly swear (or affirm) that, in my office of <sup>Of a judge of</sup>judge of the supreme court of North Carolina, I will administer <sup>the supreme</sup>justice without respect to persons, and do equal right to the poor <sup>court.</sup>and the rich, to the State and to individuals, and that I will honestly, faithfully and impartially perform all the duties of the said office, according to the best of my abilities and agreeably to the constitution and laws of the State : so help me God.

## THE OATH OF A JUDGE OF THE SUPERIOR COURT OF LAW AND EQUITY.

I, A. B., do solemnly swear (or affirm) that I will well and truly <sup>Of a judge of</sup>serve the State of North Carolina in the office of judge of the supe- <sup>the superior</sup>rior courts of law and equity of the said State ; I will do equal law <sup>courts.</sup>and right to all persons, rich and poor, without having regard to any person. I will not wittingly or willingly take, by myself or by any other person, any fee, gift, gratuity or reward whatsoever, for any

6. 1798, c. 503, s. 3.—1827, c. 1, s. 10—1782, c. 173, s. 2.—1818, c. 963, s. 1.—1777, c. 115, s. 5.—1777, c. 115, s. 52.—1818, c. 963, s. 5.—1777, c. 115, s. 4.—1832, c. 2, s. 4.—1787, c. 278, s. 3.—1777, c. 115, s. 61.—1777, c. 118, s. 1.—1741, c. 24, s. 2.—1833, c. 5, s. 2.—1777, c. 118, s. 13.—1741, c. 32, s. 6.—1777, c. 114, s. 13.—1792, c. 365, s. 3.—1777, c. 120, s. 4.—1787, c. 265, s. 5.—1810, c. 790, s. 10.—1784, c. 206, s. 2.—1777, c. 115, s. 8.—Amended.



matter or thing by me to be done by virtue of my office, except the fees and salary by law appointed ; I will not maintain, by myself or by any other person, privately or openly, any plea or quarrel depending in any of the said courts ; I will not delay any person of common right, by reason of any letter or command from any person or persons in authority to me directed, or for any other cause whatsoever, and in case any letter or orders come to me contrary to law, I will proceed to enforce the law, such letters or orders notwithstanding ; I will not give my voice for the appointment of any person to be clerk of any of the said courts, but such of the candidates as appear to me sufficiently qualified for that office, and in all such appointments I will nominate without reward, hope of reward, prejudice, favor or partiality, or any other sinister motive whatsoever ; and finally, in all things belonging to my office, during my continuance therein, I will faithfully, truly and justly, according to the best of my skill and judgment, do equal and impartial justice to the public and to individuals : so help me God.

THE OATH OF THE ATTORNEY GENERAL AND SOLICITORS.

Of the attorney  
general and  
solicitors.

I, A. B., do solemnly swear (or affirm) that I will well and truly serve the State of North Carolina in the office of attorney general (or solicitor) ; I will, in the execution of my office, endeavor to have the criminal laws fairly and impartially administered, so far as in me lies, according to the best of my knowledge and ability : so help me God.

THE OATH OF A JUSTICE OF THE PEACE.

Of a justice of  
the peace.

I, A. B., do solemnly swear (or affirm) that as a justice of the peace, and as a justice of the county court of pleas and quarter sessions in the county of \_\_\_\_\_, in all articles in the commission to me directed, I will do equal right to the poor and to the rich, to the best of my judgment and according to the laws of the State ; I will not, privately or openly, by myself or any other person, be of counsel in any quarrel or suit depending before me, and I will hold the quarter sessions and county courts of my county, as the statutes in that case shall and may direct ; the fines and ameracements that shall happen to be made, and the forfeitures that shall be incurred, I will cause to be duly entered without concealment ; I will not wittingly or willingly take, by myself or by any other person for me, any fee, gift, gratuity or reward whatsoever for any matter or thing, by me to be done by virtue of my office, except such fees as are or may be directed and limited by statute, but well and truly I will do my office of justice of the peace, as well within the county court of pleas and quarter sessions as without ; I will not delay any person of common right, by reason of any letter or order from any person or persons in authority to me directed, or for any other cause whatever, and if any letter or order come to me contrary to law, I will proceed to enforce the law, such letter or order notwithstanding. I will not direct, or cause to be directed, any warrant by me to be made to the parties, but will direct all such warrants to the sheriffs or constables of the county, or the other

officers or ministers of the State, or other indifferent persons to do execution thereof ; and finally, in all things belonging to my office, during my continuance therein, I will faithfully, truly and justly, and according to the best of my skill and judgment, do equal and impartial justice to the public and to individuals : so help me God.

## THE OATH OF THE CLERK OF THE SUPREME COURT.

I, A. B., do swear (or affirm) that, by myself or any other person, I neither have given or will give to any person or persons whatsoever, any gratuity, gift, fee, or reward, in consideration of my appointment to the office of clerk of the supreme court of North Carolina, nor have I sold nor offered to sell, nor will I sell nor offer to sell, my interest in the said office ; I also solemnly swear that I do not, directly or indirectly, hold any other lucrative office in this State ; I do further swear that I will execute the office of clerk of the supreme court without prejudice, favor, affection or partiality, to the best of my skill and ability : so help me God.

Of the clerk of the supreme court.

## THE OATH OF A CLERK OF THE SUPERIOR COURTS OF LAW.

I, A. B., do swear (or affirm) that, by myself or any other person, I neither have given nor will I give to any person or persons whatsoever, any gratuity, gift, fee or reward, in consideration of my election or appointment to the office of clerk of the superior court of law for the county of \_\_\_\_\_, nor have I sold nor offered to sell, nor will I sell nor offer to sell, my interest in the said office ; I also solemnly swear that I do not, directly or indirectly, hold any other lucrative office in the State ; and I do further swear, that I will execute the office of clerk of the superior court of law for the county of \_\_\_\_\_, without prejudice, favor, affection or partiality, to the best of my skill and ability : so help me God.

Of a clerk of the superior courts.

## THE OATH OF A CLERK AND MASTER IN EQUITY.

The same as the oath prescribed for a clerk of the superior courts of law, *mutatis mutandis*.

Of a clerk and master.

## THE OATH OF A CLERK OF THE COURTS OF PLEAS AND QUARTER SESSIONS.

The same, *mutatis mutandis*, as that prescribed for the clerks of the superior courts of law.

Of a clerk of the county courts.

## THE OATH OF A SHERIFF.

I, A. B., do solemnly swear (or affirm) that I will execute the office of sheriff of \_\_\_\_\_ county to the best of my knowledge and ability, agreeably to law, and that I will not take, accept or receive, directly or indirectly, any fee, gift, bribe, gratuity or reward whatsoever, for returning any man to serve as a juror, or for making any false return on any process to me directed ; and I also swear that I have not given any fee, gift, gratuity or reward or other thing whatsoever, to any person or persons, for his or their vote or interest to procure me to be nominated to the said office, nor will I hereafter give to any person or persons such fee, gift, gratuity or

Of a sheriff.



reward, for having procured or contributed to procure me to be nominated thereto : so help me God.

## THE OATH OF A CORONER.

Of a coroner. I, A. B., do solemnly swear (or affirm) that, in all things, I will diligently, faithfully and impartially execute the office of coroner for the county of \_\_\_\_\_, according to law and according to the best of my skill and ability : so help me God.

## THE OATH OF A COUNTY ATTORNEY.

Of a county attorney. I, A. B., do solemnly swear (or affirm) that I will well and truly serve the State as attorney for the county of \_\_\_\_\_, and that I will faithfully and impartially perform all the duties of my office according to law, and according to the best of my knowledge and ability : so help me God.

## THE OATH OF A CONSTABLE.

Of a constable. I, A. B., do solemnly swear (or affirm) that I will well and truly serve the State of North Carolina in the office of a constable ; I will see and cause the peace of the State to be well and truly preserved and kept according to my power ; I will arrest all such persons as, in my sight, shall ride or go armed offensively or shall commit or make any riot, affray or other breach of the peace ; I will do my best endeavor, upon complaint to me made, to apprehend all felons and rioters or persons riotously assembled, and if any such offenders shall make resistance with force, I will make hue and cry and will pursue them according to law, and will faithfully and without delay execute and return all lawful precepts to me directed ; I will, well and truly, according to my knowledge, power and ability, do and execute all other things belonging to the office of a constable, so long as I shall continue in office : so help me God.

## THE OATH OF A COUNTY TRUSTEE.

Of a county trustee. I, A. B., do solemnly swear (or affirm) that, according to the best of my skill and ability, I will execute impartially the office of county trustee for the county of \_\_\_\_\_, in all things according to the law, that I will duly and faithfully account for all public moneys that may come into my hands, and will not, directly or indirectly, apply the same or any part thereof to any other use than by law directed : so help me God.

## THE OATH OF A REGISTER.

Of a register. I, A. B., do solemnly swear (or affirm) that I will faithfully and truly, according to the best of my skill and ability, execute the office of register for the county of \_\_\_\_\_, in all things according to law : so help me God.

## THE OATH OF A STANDARD KEEPER.

Of a standard keeper. I, A. B., swear (or affirm) that I will not stamp, seal or give any certificate for any steelyards, weights or measures, but such as shall, as near as possible, agree with the standard in my keeping ;

and that I will, in all respects, truly and faithfully discharge and execute the power and trust, by law reposed in me, to the best of my ability and capacity : so help me God.

## THE OATH OF A RANGER.

I, A. B., do swear (or affirm) that I will well and truly execute the office of a ranger for the county of \_\_\_\_\_, according to the best of my skill and ability : so help me God.

## THE OATH OF AN ENTRY TAKER.

I, A. B., do solemnly swear (or affirm) that I will well and impartially discharge the several duties of the office of entry taker for the county of \_\_\_\_\_, according to law : so help me God.

## THE OATH OF A COUNTY SURVEYOR.

The same, *mutatis mutandis*, with that of entry taker.

Of a county  
surveyor.

## THE OATH OF A PROCESSIONER.

I, A. B., do solemnly swear (or affirm) that I will well and truly execute the duty and trust, enjoined by the act for processioning lands in this State, according to the best of my skill and ability, without favor or partiality to any person or persons whatsoever : so help me God.

## THE OATH OF INSPECTORS OF TOBACCO.

I, A. B., swear (or affirm) that I will carefully and diligently view and examine all tobacco, brought to any public warehouse, whereof I am appointed to be inspector, and all other tobacco, which I may be called upon to view and inspect, and that, not separate and apart from my fellow, but in his presence ; and that I will not receive any tobacco, that is not, in my judgment, sound, well conditioned, merchantable, and clear of trash, nor receive, pass or stamp any tobacco, hogsheads or cask of tobacco, prohibited by law ; and that I will not change, alter, or give out any tobacco, other than such hogshead or cask, for which the receipt to be taken in was given, but that I will, in all things, well and faithfully discharge my duty in the office of inspector, according to law, without fear, favor, affection, malice or partiality : so help me God.

## THE OATH OF A PICKER OF TOBACCO.

I, A. B., do swear (or affirm) that I will faithfully pick all tobacco, which may be put into my possession for that purpose, without fraud or damage to the owner : so help me God.

## THE OATH OF AN INSPECTOR OF FLOUR.

I, A. B., do swear (or affirm) that I will, without favor or affection, malice or partiality, inspect all flour brought to me, and which I shall be required to examine, that no flour shall be passed or branded by me without my inspecting the same ; that I will not brand, or cause to be branded, as passed, any cask or casks of flour that do not appear to me, to the best of my skill and judg-



ment, to be sufficiently clean, well ground, sweet and merchantable ; that I will mark on all casks of flour the degree thereof, according to the directions of law ; that I will carefully examine the casks, in which flour brought for inspection shall be contained, and that I will not pass or brand any such casks, unless they be of such size, goodness and thickness as by law required : so help me God.

THE OATH OF INSPECTORS OF OTHER ARTICLES THAN TOBACCO AND FLOUR.

Of inspectors of other articles than tobacco and flour.

I, A. B., do swear (or affirm) that I will faithfully, impartially and diligently execute the office of inspector, and that I will not, for favor, affection, prejudice or partiality, brand for any person whatsoever any barrel of beef, pork, rice, tar, pitch or turpentine, fish, butter or flaxseed, or pass any staves or heading, lumber or shingles, other than such as are declared to be lawful, according to the best of my skill and judgment : so help me God.

THE OATH OF AN ATTORNEY AT LAW.

Of an attorney at law.

I, A. B., do swear (or affirm) that I will truly and honestly demean myself in the practice of an attorney, according to the best of my knowledge and ability : so help me God.

OATH OF A WITNESS ON A CAPITAL TRIAL.

Of a witness on a capital trial.

The evidence you shall give to the court and jury, between the State and the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth : so help you God.

OATH OF A WITNESS ON A TRAVERSE.

Of a witness on a traverse.

The evidence you shall give to the court and jury, touching this issue of traverse, between the State and A. B., shall be the truth, the whole truth, and nothing but the truth : so help you God.

OATH OF A WITNESS IN CIVIL CASES.

Of a witness in civil cases.

The evidence you shall give to the court and jury, in this cause now on trial, wherein A. B. is plaintiff and C. D. defendant, shall be the truth, the whole truth, and nothing but the truth : so help you God.

OATH OF A WITNESS TO PROVE A WILL.

Of a witness to prove a will.

You swear that you saw C. D. sign, seal, publish and declare this writing to be and contain his last will and testament ; that at the time thereof he was of sound and disposing mind and memory, and that he did it freely, without compulsion, to the best of your knowledge : so help you God.

OATH OF A WITNESS TO BE SENT TO THE GRAND JURY.

Of a witness to be sent to the grand jury.

The evidence you shall give to the grand jury, upon this bill of indictment against A. B., shall be the truth, the whole truth, and nothing but the truth : so help you God.

## OATH OF A PETIT JURY IN A CAPITAL CASE.

You shall well and truly try and true deliverance make, between the State and the prisoner at the bar whom you shall have in charge, and a true verdict give according to your evidence : so help you God.

Of a petit jury in a capital case.

## OATH OF A PETIT JURY IN CRIMINAL CASES NOT CAPITAL.

You and each of you swear that you will well and truly try all issues of traverse, which shall come before you during this day, and true verdicts give according to the evidence thereon : so help you God.

Of a petit jury in criminal cases not capital.

## OATH OF A JURY IN CIVIL CASES.

The original panel thus :—You and each of you swear that you will well and truly try all civil cases, which shall come before you during this term, and true verdicts give according to the evidence thereon : so help you God.

Of a jury in civil cases.

The same oath to talesmen by using the word “ day ” instead of “ term.”

## OATH OF PETIT JURY LAYING OFF DOWER.

You and each of you swear that you will, without partiality and according to your best judgment, lay off and allot to A. B., widow of C. D., such dower in the lands of said C. D. as by law she is entitled to : so help you God.

Of a jury laying off dower.

## OATH OF A JURY TO ASSESS DAMAGES FOR OVERFLOWING LAND.

You and each of you swear that you will well and truly inquire, whether any damage hath been sustained by the petitioner A. B., by reason of the erection of the mill complained of by him, and, if any damage hath been sustained, that you and each of you will impartially, according to the best of your judgment and ability, assess the amount which the said A. B. ought annually to receive from the owner, proprietor or tenants of said mill, on account thereof : so help you God.

Of a jury to assess damages for overflowing lands.

## OATH OF THE FOREMAN OF A GRAND JURY.

You, as foreman of this grand inquest for the body of this county, shall diligently inquire and true presentment make of all such matters and things as shall be given you in charge ; the State’s counsel, your fellows’ and your own you shall keep secret ; you shall present no one for envy, hatred or malice ; neither shall you leave any one unrepresented, for fear, favor or affection, reward or the hope of reward, but you shall present all things truly, as they come to your knowledge, according to the best of your understanding : so help you God.

Of the foreman of a grand jury.

## OATH OF THE OTHER GRAND JURORS.

The same oath which your foreman hath taken on his part, you and each of you shall well and truly observe and keep on your part : so help you God.

Of the other grand jurors.



## OATH OF A CONSTABLE CHARGED WITH A JURY.

Of a constable charged with a jury.

You swear that you will keep every person, sworn of this jury, together in some private and convenient place, without meat or drink (water excepted). You shall not suffer any person to speak to them, neither shall you speak to them yourself, unless it be to ask them whether they are agreed in their verdict, but with leave of the court : so help you God.

## OATH OF A CONSTABLE TO ATTEND THE GRAND JURY.

Of a constable to attend the grand jury.

You swear that you will faithfully carry all papers sent from the court to the grand jury, or from the grand jury to the court, without alteration or erasement : so help you God.

## OATH OF AN EXECUTOR.

Of an executor.

You swear that you believe this writing to be and contain the last will and testament of A. B., deceased, and that you will well and truly execute the same, by first paying his debts and then his legacies, as far as the said estate shall extend, or the law shall charge you ; and that you will well and faithfully execute the office of an executor, agreeably to the trust and confidence reposed in you, and agreeably to law : so help you God.

## THE OATH OF AN ADMINISTRATOR.

Of an administrator.

You swear that you believe A. B. died without leaving any last will and testament ; that you will well and truly administer all and singular the goods and chattels, rights and credits of the said A. B., and a true and perfect inventory thereof return into this court at its next term, and that all other duties, appertaining to the charge reposed in you, you will well and truly perform, according to law, and with your best skill and ability : so help you God.

## OATH OF COMMISSIONERS DIVIDING AND ALLOTING REAL ESTATE.

Of commissioners dividing and allotting real estate.

You and each of you swear, that, in the partition of the real estate now about to be made by you, you will do equal and impartial justice among the several claimants, according to their several rights, and agreeably to law : so help you God.

## OATH OF COMMISSIONERS ALLOTING A YEAR'S PROVISION.

Of commissioners allotting a year's provision.

You and each of you swear that you will lay off and allot to the petitioner, a year's provision for herself and family, according to law, and with your best skill and ability : so help you God.

## OATH OF VALUERS OF STRAYS.

Of valuers of strays.

You swear that you will well and truly view and appraise the stray, in the summons to you directed, without favor or partiality, according to your skill and ability : so help you God.

## BOOK DEBT OATH.

Book debt oath.

You swear that the matter in dispute is a book account, and that you have no means to prove the delivery of such articles, as you propose to prove by your own oath, or any of them, but by your-

self, and you further swear that the account rendered by you is just and true ; and that you have given all just credits : so help you God.

BOOK DEBT OATH FOR AN EXECUTOR OR ADMINISTRATOR.

You, as executor or administrator of A. B., swear that you verily believe this account to be just and true, and that there are no witnesses to your knowledge, capable of proving the delivery of the articles therein charged, and that you found the book or account so stated, and do not know of any other or further credit to be given than what is therein given : so help you God.

Book debt oath for an executor or administrator.

7. In all cases where any civil officer, in the discharge of his duties, is permitted by the law to administer an oath, the deputy of such officer, when discharging such duties, shall have authority to administer it, provided he is a sworn officer ; and the oath thus administered by the deputy, shall be as obligatory as if administered by the principal officer, and shall be attended with the same penalties in case of false swearing.

Deputies to administer oaths wherever their principals are authorized to do so.

7. 1836, c. 27, s. 2.

Note.—REFERENCES TO ADJUDGED CASES.

SECT. 2. State vs. Whisenhurst, 2 Hawks, 453.

CHAPTER 80.  
OFFICES.

AN ACT CONCERNING OFFICES.

SECTION

1. Penalty for holding an office both under this State and the United States—Proviso as to justices of

SECTION

the peace and officers of the militia.  
2. Contracts for the sale of offices void.

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 if any person, holding any office or place of profit or trust under the United States or any department thereof, or under this State or any other state or government, or acting as senator or representative in the congress of the United States, shall presume to hold or exercise any other office or place of trust or profit, under the authority of this State, or to take a seat in either house of the General Assembly of this State, or if any person, holding

Penalty for holding an office both under this State and the United States.

1. 1790, c. 319.—1792, c. 366.—1793, c. 393.—1796, c. 450.—1811, c. 811.



any office or place of profit or trust, under the authority of this State, or accepting a seat in the General Assembly of this State, shall presume to hold or exercise any office of profit or trust under the United States or any department thereof, or any other state or government, or shall act as senator or representative in the congress of the United States, without resigning his previous office or place of profit or trust, he shall, for every such offence, forfeit and pay the sum of two hundred dollars, to be sued for and recovered in the name of the State, one half to the use of the State, and the other half to the use of the person suing for the same: *Provided*, that nothing herein contained shall extend to officers in the militia or justices of the peace.

Proviso as to justices of the peace and militia officers.

Contracts for the sale of offices void.

2. All bargains, sales, promises, bonds, agreements, covenants and assurances, made or given for the purchase or sale of any office whatsoever, the sale of which is or shall be prohibited by law, shall be void to and against him and them, by whom any such bargain, sale, bond, promise, covenant or assurance shall be had or made.

2. 5 and 6 Edw. 6, c. 16, s. 3.

*Note.*—REFERENCES TO ADJUDGED CASES.

SECT. 2. Haralson vs. Dickens, 2 Car. Rep. 66.

## CHAPTER 81.

# OFFICIAL BONDS.

AN ACT PRESCRIBING A MODE OF RECOVERY AGAINST CERTAIN OFFICERS THEREIN MENTIONED AND THEIR SECURITIES.

### SECTION

1. Suits on the official bonds of clerks, &c. may be brought by the party injured.
2. Declaration must shew in whose behalf the suit is brought—Person injured may at his election sue the officer in an action on the case.
3. Remedy before a justice of the peace against officers who neglect to pay over moneys received within the jurisdiction of a justice.
4. Summary remedy in court against

### SECTION

- officers failing to pay moneys received.
5. Twelve per cent. damages allowed on money unlawfully detained by an officer.
6. Clerks of the county court to record the names of the Justices present when appointments are made—Such justices, failing to take bond, are to be held securities themselves—Copy of the record to be evidence against them.

1842. 3. ch 60. - 61. . 62.

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 and may be lawful for any person or persons, injured by the neglect, misconduct or misbehavior in office of any of the clerks of the superior or county courts, clerks and masters in equity, registers, entry takers, surveyors, sheriffs, constables, or other officers, to institute a suit or suits against the said officers or any of them, and their securities, upon their respective bonds for the due performance of their duties in office in the name of the State, to whom the said bonds are made payable, without any assignment thereon.

Suits on the official bonds of clerks, &c. may be brought by the party injured.

2. The person or persons, so injured and bringing suit as aforesaid, shall be and are hereby declared to be entitled to receive to his, her or their own use, all moneys so recovered : *Provided*, the person or persons, so injured and bringing suit as aforesaid, shall state in the declaration, as he, she, or they are hereby authorized to do, matter of inducement sufficient to shew the court, (in which suit or suits may be brought,) at whose instance, and in whose behalf the same is or are brought. *And provided further*, that nothing herein contained shall prevent any person or persons, injured, as aforesaid, by any of the officers aforesaid, from bringing, at his, her or their election, an action on the case against such officer or officers, and recovering damages for his, her, or their injury as aforesaid.

Declaration must shew in whose behalf the suit is brought.

Person injured may at his election sue the officer in an action on the case.

3. When any sheriff, clerk, coroner or constable, within the several counties in this State, shall or may have received any money, by virtue of his office or appointment, and shall fail to pay the same to the person or persons entitled to receive it, then and in that case, it shall and may be lawful for a justice of the peace to issue a warrant against him and his securities and give judgment for any sum, not exceeding the jurisdiction of a justice of the peace, together with costs, and to award execution thereon, subject nevertheless to the right of appeal, and when it shall so happen that any person's appointment, as sheriff, clerk, coroner or constable, shall expire, or he be removed from office, before such warrant issues, the same remedy and proceedings may be had against him, as if he actually were in office.

Remedy before a justice of the peace against officers who neglect to pay over moneys received within the jurisdiction of a justice.

4. Whenever a sheriff, coroner, constable, clerk of a court of law, or clerk and master in equity, has collected or received, or shall have collected or received, any money, by virtue or under color of his office, and on demand shall fail to pay the same to the person entitled to require the payment thereof, it shall be lawful for the person thereby aggrieved to move for judgment, in any court having competent jurisdiction, against such sheriff, coroner, constable, clerk, or clerk and master, as the case may be, and against any or all of his securities, and it shall be the duty of such court to try the same and to render judgment accordingly, at the term when

Summary remedy in court against officers failing to pay moneys received.

1. 1793, c. 384, s. 1.—1833, c. 17.—1825, c. 1276.  
 2. 1793, c. 384, s. 2 and 3.  
 3. 1793, c. 384, s. 5.—1800, c. 559.—1802, c. 619.  
 4. 1819, c. 1002, s. 1.



the motion shall be made : *Provided*, ten days' notice in writing, of such intended motion shall have been previously given, to the person or persons against whom judgment is prayed.

Twelve per cent. damages allowed on money unlawfully detained by an officer.

5. Whenever money, received as aforesaid, shall be unlawfully detained by a sheriff, coroner, constable, clerk of a court of law, or clerk and master in equity, from any person entitled to require the payment thereof, it shall be lawful for the person, thereby aggrieved, pursuing his remedy against such delinquent or his representatives, or his securities, whether suing in the mode by this act prescribed or in any other way known to the law, to recover, over and above the sum detained, damages at the rate of twelve per centum per annum, from the time of such detention until payment, and such damages shall form a part of the judgment, to be rendered in his behalf by the court or the magistrate, before whom his action may be brought : *Provided*, that such officer shall not be liable to the damages hereby given, if he shall offer payment in any of the notes of the banks of this State, unless the creditor shall have given notice to such officer not to receive any moneys but gold or silver.

Clerks of the county court to record the names of the justices present when appointments are made.

6. It shall be the indispensable duty of the clerks of the county court, and they and every of them are hereby strictly required, to make a record of, and enter at large on their dockets, the names of those justices of the peace, who shall be in court or on the bench, at the time of the qualification of their sheriffs, clerks, entry takers and registers, and if the said clerk shall fail or neglect to make such entry and record as aforesaid, and be thereof convicted in any superior court, he shall forfeit his office as a punishment for such failure and neglect as aforesaid ; and should it at any time hereafter so happen, that any of the officers above named shall be permitted to officiate as such, and to discharge any of the duties of their respective appointments, without having first qualified and given bond with security, for the due and faithful performance of them, as is required by law, the justices of the peace, who sat on the bench or were in court at the time of the appointment of the officer or officers so officiating and acting as aforesaid, in virtue and under color of his appointment, but without qualifying or giving bond, shall be considered bound, to all intents and purposes, and they and every of them are hereby declared to be bound, as the securities of the sheriff or other officer or officers thus acting and availing himself of such his appointment, without having first given bond for the faithful performance of his duty in office, in the same degree and in the same manner as though they had been formally bound by entering into and executing bonds with and as the securities of such officers ; and they may and shall be proceeded against accordingly, by the proper officers of the State, and all other persons concerned ; and in all suits and proceedings under this section, a copy of the record of the court, attested by the clerk, is hereby declared to be legal and sufficient evidence, and shall be admitted as such, and judgment shall be had thereon accordingly.

Such justices, failing to take bond, are to be held securities themselves

Copy of the record to be evidence against them.

5. 1819, c. 1002, s. 2.

6. 1790, c. 327.—1809, c. 777.

Note.—REFERENCES TO ADJUDGED CASES.

SECT. 4. State bank vs. Davenport, 2 Dev. and Bat.

SECT. 6. Rawles vs. Deans, 4 Hawks, 299. Governor vs. M'Affee, 2 Dev. 15. State bank vs. Davenport, 2 Dev. and Bat.

CHAPTER 82.

ORDINARIES.

AN ACT FOR REGULATING ORDINARIES.

SECTION

1. Retailers of liquors to sell by sealed measures.
2. How a license to keep an ordinary may be obtained—Bond to be given.
3. How license to be issued, and how long to continue in force.
4. Justices to establish rates of charges—Duty of ordinary keepers.

SECTION

5. No ordinary keeper to give credit for liquors beyond ten dollars—Proviso.
6. Penalty on ordinary keepers for entertaining slaves or sailors.
7. Persons wishing to obtain license to sell spirituous liquors, how to proceed.

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 all persons, hereafter retailing liquors, shall sell the same by sealed measures, or such other measures as shall at least contain the full quantity pretended to be sold.

Retailers of liquors to sell by sealed measures.

2. Any person, by applying to the court of the county in which such person dwells, and praying a license to keep an ordinary, may, at the discretion of such court, be ordered to have a license for the purpose aforesaid, unless it shall appear to the said court that the person so applying is a person of gross immorality, or of such poor circumstances and slender credit, that they think him or her not able to comply with the intention of this act. And on granting such license, the person who applies for the same, shall produce one or more securities to the said court, to be by them approved, who shall, before the license be made out, join with him or her in a bond of the following tenor, to wit :

How a license to keep an ordinary may be obtained.

“ Know all men by these presents, that we, A. B. and C. D., are held and firmly bound to the State of North Carolina, in the sum of two hundred dollars, to be paid to the State, to which payment well and truly to be made, we bind ourselves and every of us, our and every of our heirs, executors and administrators, jointly and severally firmly by these presents, sealed with our seals and dated the        day of        .

Bond to be given.

1. 1798, c. 501, s. 1.—1741, c. 32.  
 2. 1798, c. 501, s. 2.



“The condition of the above obligation is such that whereas the above bounden A. B. hath obtained a license to keep an ordinary at \_\_\_\_\_; if therefore the said A. B. doth constantly find and provide, in his or her said ordinary, good and wholesome diet and lodging for travellers, and stable, fodder, corn and pasturage for their horses, for and during the term of one year from the \_\_\_\_\_ day of \_\_\_\_\_, then this obligation to be void, otherwise to remain in full force.”

And in case of breach of, or not complying with the condition of the said bond, it shall and may be lawful for any person, in the name of the State, to sue for and recover the penalty of the said bond, one half thereof to his use, and the other half to the use of the State.

How license to be issued, and how long to continue in force.

3. When such bond shall have been given, the clerk of the court shall prepare a license and sign the same, which license shall continue in force one year and no longer; and the said clerk shall receive eighty cents in full for his fees and furnishing a copy of the tavern rates; and every person obtaining such license shall pay to the sheriff of his or her county, at the time of paying public taxes, four dollars as a tax to the State.

Justices to establish rates of charges.

4. The justices of each county shall, once a year or oftener if necessary, at the first court to be held after the first day of January in each year, rate the prices of liquor, diet, lodging, fodder, corn, provender and pasturage, to be taken by ordinary keepers in their respective counties; and every ordinary keeper shall, within thirty days after such rates are settled, cause the same to be set up in the common entertaining room of such ordinary, and there kept until the rates are again altered; and on failing so to do, shall forfeit and pay the sum of forty dollars, to the use of the county wherein such offence may happen, to be recovered before any justice of the peace of said county, subject nevertheless to an appeal as in other warrants.

Duty of ordinary keepers.

No ordinary keeper to give credit for liquors beyond ten dollars.

5. No ordinary keeper shall sell on credit, liquors to any person to a greater amount than ten dollars, unless the person so credited, sign a book or note in the presence of one or more witnesses, in acknowledgment of the said debt, under the penalty of losing the money so credited; and in any action brought for recovery of such debt, the general issue may be pleaded and this act given in evidence: *Provided nevertheless*, that nothing in this section contained shall be construed, deemed or taken, to prohibit or restrain any person to sell, by retail, brandy or other distilled spirits, the production of his own farm, by the quart or a greater quantity.

Proviso.

Penalty on ordinary keepers for entertaining slaves or sailors.

6. If any ordinary keeper shall entertain slaves against the will of their owners, or common sailors against the direction of the masters of vessels, to which they belong, every ordinary keeper, so offending, shall and may, by order of the justice before whom such offence shall be proved, be from thenceforth suspended and

3. 1798, c. 501, s. 3.
4. 1798, c. 501, s. 5.
5. 1798, c. 501, s. 6.
6. 1798, c. 501, s. 4.

disabled from keeping an ordinary, as if he or she had never obtained a license for that purpose ; and shall be further subject to a fine of ten dollars, to the use of the party suing for the same, to be recovered before any justice of the peace, subject, nevertheless, to an appeal to court, as in cases of other warrants, by either party who may think himself aggrieved by the determination of such justice.

7. Every person, wishing to retail spirituous liquors by the small measure, viz : by a measure less than a quart, shall apply to the county court of pleas and quarter sessions, in which he resides, and obtain an order therefor, which order shall be granted by the said court, seven justices being on the bench, only to such free white persons as shall satisfactorily shew to the court their good moral character, by at least two witnesses of known respectability, to whom the character of the applicant has been known for at least one year : and, upon the same being granted as aforesaid, the clerk shall give to the party, so applying for a license, a certificate thereof, upon which he may obtain a license, in the manner provided in the act concerning the public revenue : *Provided*, that no person, obtaining a license, shall be authorized to retail spirituous liquors at more than one place in said county, for which said license may be granted : *And provided further*, that such license shall continue in force only for one year.

Persons wishing to obtain licenses to retail spirituous liquors, how to proceed.

7. 1825, c. 1272, s. 2 and 3.—1828, c. 10.

*Note.*—REFERENCES TO ADJUDGED CASES.

SECT. 4. *State vs. Wynne*, 1 Hawks, 451.

SECT. 5. *Thomegeux vs. Bell, Martin*, 44.

## CHAPTER 83.

# OVERSEERS.

AN ACT CONCERNING OVERSEERS.

*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 if any person shall hire or contract himself to serve as an overseer, either upon wages or share of the produce, with any person or planter whatsoever, and shall absent himself or depart from the service of his employer, before the time mentioned in his agreement or contract shall be expired, he shall, for such offence, forfeit his right and title to his wages or share of the produce.

Overseer leaving his employer, to forfeit his wages.

1741, c. 35, s. 22.

*Note.*—REFERENCES TO ADJUDGED CASES.

*Steed vs. McRae*, 1 Dev. and Bat. 435.



## CHAPTER 84.

## OYSTERS.

## AN ACT TO PREVENT THE DESTRUCTION OF OYSTERS.

## SECTION

1. Penalty for transporting oysters out of the State.
2. Offenders to give bail.

Penalty for transporting oysters out of the State.

Offenders to give bail.

Duty of magistrates in apprehending offenders.

## SECTION

3. Duty of magistrates in apprehending offenders.
4. Penalty for using any instrument except tongs, in taking oysters.

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 not be lawful for any person or persons to carry oysters out of this State, and if any master or skipper of a vessel shall hereafter transport any quantity of oysters, taken from any place within this State, to any place beyond the limits thereof, every such master or skipper shall forfeit and pay two hundred dollars for every such offence, to be recovered in any court of record, by any person who will sue for the same, one half to the use of the informer, and the other half to the poor of the county.

2. In all actions which shall be brought against any master or skipper of any vessel, in pursuance of this act, such master or skipper shall be required to give appearance bail: *Provided*, the plaintiff shall make affidavit, before a magistrate, of the cause of such action, to be transmitted to the clerk of the court, wherein the suit shall be prosecuted.

3. Whenever any person shall make affidavit that he has good cause to believe, that any master or skipper of a vessel has received on board such vessel oysters, for the purpose of transporting them out of this State, contrary to the provisions of this act, it shall be lawful for the magistrate, before whom such affidavit shall be made, and within whose jurisdiction such vessel may be, to issue his warrant for the immediate apprehension of such master or skipper, and for bringing him before such magistrate, or before any other magistrate of the same county, and the justice, before whom such person shall be brought, upon hearing such evidence as may be adduced before him, if there be no good cause to believe that a violation of the provisions of this act is intended, shall discharge from further custody such master or skipper, but if it shall appear to such magistrate that there is good cause to believe, that a violation of the provisions of this act is intended by such master or skipper, then it shall be the duty of such magistrate to commit

1. 1822, c. 1134, s. 1.
2. 1822, c. 1134, s. 2.
3. 1822, c. 1134, s. 3.

such master or skipper to the jail of his county, unless he shall enter into a recognizance with sufficient security, in a sum not exceeding two hundred dollars, upon condition to appear at the next court to be held for such county, and to abide and perform such order or orders as shall be made by such court.

4. If any person shall use any drag, scoop, or rake, or other instrument except tongs, such as have been generally used for the purpose of catching oysters, within the waters of this State, every person so offending, and being thereof convicted before a magistrate of either of the counties adjoining the water course, in which the offence has been committed, shall forthwith pay, if a free man, the sum of twenty dollars, and if a slave, he, she or they shall receive, on his or her bare back, so many stripes as such magistrate shall direct, not exceeding twenty, or be committed by such magistrate to the public jail of the county, there to remain without bail, for thirty days, unless such fine of twenty dollars be sooner discharged, one half of which fine shall go the county, and the other half to the use of the informer: *Provided*, that nothing in this act shall be so construed, as to prevent the carrying of oysters into the North and Northwest rivers, having their source in the State of Virginia, as now practised, nor the exportation of pickled oysters in vessels to the West Indies: *Provided*, that no one vessel shall carry more than sixty gallons at one time.

Penalty for using any instrument except tongs in taking oysters.

4. 1822, c. 1134, s. 4.

CHAPTER 85.

PARTITION.

AN ACT PRESCRIBING A MODE BY WHICH PARTITION OF REAL AND PERSONAL ESTATES MAY BE MADE AMONG TENANTS IN COMMON, AND IN WHAT CASES SUCH ESTATES MAY BE SOLD FOR A DIVISION.

SECTION

1. One or more tenants in common may file a petition in the superior or county court for a division of real estate—Proceedings on such petition.
2. The petition to be filed in the superior court when the land lies in different counties—If one co-tenant is absent from the State, advertisement must be made.
3. Commissioners to divide the land as equally as possible—Sums charged

SECTION

- on dividends of minors not to be paid until they come of age.
4. Sums charged to bear interest—Guardian of minor shall pay when he has assets.
5. Sheriff shall summon commissioners and swear them.
6. Pay of commissioners—Court to order by whom the costs of the petition shall be paid.
7. Court of equity may order a sale of



## SECTION

- real estate for division, when it cannot be divided otherwise without prejudice to the parties.
8. Court of equity may order a sale of real estate required for public purposes, upon the petition of the tenants in common.
  9. Where the sale shall be made.
  10. The deed of the clerk and master shall convey the title.
  11. Where there is dower on the land the court may decree a sale, and apportion the dower interest.
  12. Proceedings when lands descended or devised lie partly in this State and partly in another state.
  13. The court may decree a partition of such lands.
  14. Court shall appoint commissioners—  
Duty of such commissioners in

## SECTION

- making a partition of such lands—  
What final decree the court may make.
15. When a decree for partition in another State may be enforced in this State.
  16. Court to judge whether another state has passed a law in conformity to this.
  17. Time allowed for *femes covert*, infants, &c.
  18. How a partition of personal property among tenants in common may be made.
  19. When personal property may be sold for a division.
  20. Court may appoint a guardian to infants, &c.
  21. Compensation of the freeholders, clerk or other commissioners.

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 the judges of the superior courts of law and equity and the justices of the county courts of pleas and quarter sessions be, and they are hereby required and empowered, on petition of one or more persons, claiming the real estate of any intestate, or on petition of one or more persons otherwise claiming any real estate as tenants in common, to appoint five commissioners to divide and appropriate the same, or so much thereof as shall be prayed for, and the court shall judge proper and requisite according to law. And said commissioners or a majority of them, being first sworn to do justice among the claimants, according to the best of their skill and abilities, are hereby empowered to charge the more valuable dividend or dividends with such sum or sums as they shall judge necessary, to be paid to the dividend or dividends of inferior value, in order to make an equitable division. And further, the said commissioners or a majority of them are required, as soon as they can, to make a return of their proceedings and appropriations, under their hands and seals, ascertaining with precision the different tracts or parcels of lands, lots or houses, with actual surveys of the same when necessary, to the court by which they were appointed, which return and appropriation shall be certified by the clerk and enrolled in his office, and registered in the office of the county where such lands, lots or houses respectively lie; and such return and appropriation shall be binding and valid in, among and between the claimants, their heirs and assigns forever.

One or more tenants in common may file a petition in the superior or county court for a division of real estate. Proceedings on such petition.

The petition to be filed in the superior court when the land lies in different counties.

2. In all cases where the real estate lies in different counties within this State, the petition for partition shall be exhibited in the superior court of any one of the counties in which part of the real estate lies, and, where the estate lies in one county only, the peti-

1. 1787, c. 274, s. 1.—1789, c. 309.

2. 1784, c. 274, s. 1.—1803, c. 636.

tion shall be to the superior court, or county court of pleas and quarter sessions of such county and no otherwise, and the proceedings in such petitions shall be analogous to those in other cases of petitions. And if one of the tenants in common shall be absent out of the State, it shall be lawful for his co-tenant, desirous of having said real estate divided, to give notice of such intention, under an order of the court in which the petition shall be filed, for six weeks successively, by advertisement at the court house or three different places in the county, and in the State Gazette, and on proof thereof, the court shall proceed as if a copy of the petition and summons had been personally served.

If one co-tenant is absent from the State, advertisement must be made.

3. It shall be the duty of the commissioners, appointed as aforesaid, to divide the lands of said tenants in common into equal shares in point of value, as nearly as possible, by a subdivision of the more valuable tract or tracts of land: and in case the situation of the real estate is such, that an equal division cannot be made without injury to the heirs or other tenants in common, and some of the heirs or other tenants in common are obliged to be charged with a sum or sums of money, to be paid to the dividend or dividends of inferior value, then and in that case the sum or sums, so charged on the dividend or dividends, shall not be paid until the heir or tenant in common, if a minor, shall arrive at the age of twentyone years.

Commissioners to divide the land as equally as possible.

Sums charged on dividends of minors not to be paid till they come of age.

4. The sum or sums, so due from the more valuable dividend or dividends, shall bear an interest of six per centum per annum until paid: *Provided always*, that the guardian or guardians of such minor or minors, to whom the more valuable dividend or dividends shall fall, shall at all times be at liberty and is required to pay such sum or sums, whenever assets shall come into his hands sufficient to discharge the same: *Provided nevertheless*, that if it shall appear that the guardian shall have had assets in his hands, which he did not apply to the discharge of the sums for which his ward is liable, he the said guardian shall be held and deemed answerable and bound to pay, out of his own proper estate, any interest which shall have accrued thereon in consequence thereof, and which might have been stopped had the same been so applied.

Sums charged to bear interest.

Guardian of minor shall pay when he has assets.

5. Whenever any court shall, on any petition being filed and commissioners appointed, order the sheriff of the county where the commissioners live, to summon them to appear on the premises for the purpose which may be set forth in said order, it shall be his duty to summon the same, and when they or a majority of them shall have met, the sheriff or some justice of the peace shall administer the necessary oaths, before they proceed to execute the purposes for which they shall have been appointed.

Sheriff shall summon commissioners and swear them.

6. The commissioners, for their trouble and services, may take and demand whatever the court, by which they may be appointed, shall judge adequate to the trouble they may have been at, and for the expense thus incurred and the expenses incurred for surveyors

Pay of commissioners. Court to order by whom the costs of the petition shall be paid.

3. 1801, c. 588, s. 1.

4. 1801, c. 588, s. 2.

5. 1795, c. 447.

6. 1787, c. 274, s. 2.—1828, c. 25, s. 1.



and otherwise, and all the other costs of the petition, the court before whom the same may be tried, may, at their discretion, decree by whom and in what manner the same shall be paid ; and execution may issue therefor as in other cases.

Court of equity may order a sale of real estate for division, when it cannot be divided otherwise without prejudice to the parties. 7. It shall and may be lawful for any court of equity, in cases of application for a division of real estate, when it shall be suggested and made appear to the satisfaction of the court, that an actual partition cannot be made without injury to some or all of the parties interested, to order a sale of the property, on such terms as such court shall deem just and reasonable: *Provided always*, that whenever any of the parties shall be an infant, a *feme covert*, *non compos*, imprisoned or beyond the limits of this State, it shall be the duty of the court to direct the part of the proceeds of the sale, to which such person is entitled, to be so invested or settled, that the same shall be effectually secured unto the person so entitled, or his or her real representatives.

Court of equity may order a sale of real estate required for public purposes, upon the petition of the tenants in common. 8. Whenever any joint tenants, or tenants in common, or the guardian of such, shall, on oath or affirmation, and by a petition or bill, to which all the joint tenants or tenants in common shall be made parties, state to a court of equity that the lands of such joint tenants or tenants in common are required for public purposes, and that the interest of the proprietors requires that a sale shall be made thereof, if the said alleged facts shall be ascertained by the court to be true, it shall then be lawful for the said court to order a sale of the said lands, or of such parts thereof as it may judge necessary, in such manner and on such terms as it shall deem expedient ; and it shall be the duty of the said court to direct that the part of the proceeds of such sales, to which any infant, *feme covert* or person *non compos* may be entitled, be so invested as that the same shall be effectually secured to the person so entitled, or to his or her real representatives.

Where the sale shall be made. 9. Whenever the court of equity shall order the sale of real estate, belonging to joint tenants or tenants in common ; the court at their discretion, may direct such sale to be made on the premises, or at any place within the county, where such estate is situated. *Provided always*, that when the order of sale shall contain no such direction, sales shall be made at the places prescribed by law for public sales.

The deed of the clerk and master shall convey the title. 10. In all cases arising under the seventh and eighth sections of this act, the deed of the clerk and master of the court ordering the sale, shall be held, deemed and taken as good and sufficient to convey to the purchaser such title, interest and estate in the lands, tenements and hereditaments, ordered to be sold, as the respective tenants in common or joint tenants had therein, which deed shall recite in substance the petition of the said tenants and the decree of the court ordering the sale.

Where there is dower on the 11. When an application shall be made to a court of equity, by

7. 1812, c. 847.

8. 1818; c. 982, s. 1.

9. 1827, c. 41.

10. 1818, c. 982, s. 2.

11. 1819, c. 1026.

joint tenants or tenants in common, for a sale of real estate which is incumbered with dower, it shall and may be lawful, if the person holding or entitled to dower therein, shall join in said application, for the court to decree an immediate sale of the said real estate, and to cause a third part of the proceeds thereof, to be secured to the use of the person, so holding or entitled to dower therein for life, or to ascertain the value of such life estate in such land, and to decree the value so ascertained, to be paid over to the person thus claiming absolutely.

land, the court may decree a sale, and apportion the dower interest.

12. Whenever, on the death of any person, his lands in this State, and also in another state or states, shall descend or be devised to several persons, who, by the laws of this and the other state or states shall hold in the lands, so descended or devised, undivided estates or interests, whether as parceners, tenants in common or joint tenants, or by any other undivided tenancy, and such heirs or devisees cannot without suit have partition for want of consent, or because of inability in one or more of the co-tenants, if such deceased person shall have been at the time of his death, a resident of this State, or not a resident at that time of any of the states, in which his said lands lie, and in the last case the most valuable part of his lands shall lie in this State, it shall be lawful for any such heir or devisee or any person claiming by, through or under them, to file a bill in the superior court of equity, either for the county, where the deceased person resided at his death, or wherein any one tract or part of a tract of the land lies in this State, setting forth all the lands in which the plaintiff has an undivided estate, as well those without as those within the State, described by their names and boundaries or by the adjoining tracts, and also the estate the testator or intestate had in them, and the supposed value of the lands in each state, and the share in severalty, to which the plaintiff and each of his co-tenants is entitled, under the laws of the several states, in which the several tracts or parts of tracts may lie, and praying for partition to be made of all the tracts, as if the lands were situated within the jurisdiction of one sovereign state, respect being had to the value of interest, to which the several co-tenants in joint tenancy, in common or co-parcenary, or other undivided tenancy, may have in the several tracts, by the laws of the several states in which they may be situated, and the material facts set forth in the said bill shall be verified by the affidavit of the plaintiff or his guardian, or other person, at the discretion of the court, and on the exhibition of such bill all persons, concerned in interest in the lands, of which partition is to be made, shall be made parties by process or publication, as in other cases in equity, according to the practice of the courts of equity in this State.

Proceedings where lands descended or devised lie partly in this State and partly in another state.

13. On the hearing of any such bill, the court may and shall, by interlocutory order, decree a partition of all the lands in the seizin of any tenants of an undivided estate or estates, derived by descent from a common ancestor, or by devise from any testator, and shall allot in severalty to each tenant, his just share of the lands,

The court may decree a partition of such lands.

12. 1831, c. 25, s. 1.

13. 1831, c. 25, s. 2.



according to the value of the interest he has in all the lands descended or devised to him, by the laws of the several states respectively in which they are situate.

Court shall appoint commissioners. Duty of such commissioners in making a partition of such lands.

14. The court, making such interlocutory decree, shall issue a commission to five respectable freeholders in this or in any state, where land may lie, unconnected by blood or interest with the parties, directing the said commissioners, or any three of them, to make partition between the co-tenants, plaintiffs and defendants in said bill, and to assign each his respective share in value, in severalty, in any tract or tracts in any or all the states, having respect to the value of the interest he has under the laws of the several states, and before making such allotment the said commissioners shall make a valuation of all the lands held by the co-tenants, by descent or devise, in all the said states ; and where they cannot, without injury to the value of some shares, make an exact division of the lands, the said commissioners shall have power to charge the more valuable dividend or dividends with the sum of money, to be paid to the tenant in severalty of a less valuable dividend, to make an equality of partition ; and the said commissioners, or any three of them, shall report their proceedings on said commission, as they may be directed, and said report shall contain a valuation of all the estate in the lands in this and the other state or states, with respect to the laws of each state, and the division among the co-tenants, according to such valuation, and the court may confirm such report, or, on sufficient cause shown, may correct and alter, or may set it aside and order a new commission, and the court may on motion allow each commissioner a sum not exceeding three dollars per day for his services, and, where any sum is charged upon a more valuable dividend, the court may direct, if the tenant taking such a dividend in severalty be an infant, or, if otherwise, it seem to the court equitable, that the sum charged shall not be paid until a future day, and may direct that the same shall bear interest at any rate not greater than the interest by law allowed in this State : *Provided always*, that the tenant of the larger dividend may discharge himself from accruing interest by paying the whole amount due, at any time ; and the sum due from the greater dividend shall be a charge on the land, into whose hand soever it may come, although it may be taken without notice, and the court shall, upon the confirmation of any report of the commissioners, make a final decree ; and where all the parties are within the jurisdiction of this court, the court shall, by the usual proceedings in equity, direct and compel the said parties to execute and deliver deeds and assurances, sufficient, by the laws of this State and the other states, to give the partition made full force and validity in all the states ; and in case any of the said parties are under such disabilities that they cannot execute such assurances, or are without the jurisdiction of the courts of this State, and so cannot be affected by their process, then the court, upon receiving evidence from the plaintiffs, that by a law or laws of the other state or states, in which the parts of the lands, described in the bill, without this State

What final decree the court may make.

lie, the decree can have effect on the said lands, shall direct the decree to be enrolled in the records of the court, and a copy of it shall be registered in the register's office of all the counties within this State, where any of the lands lie, and a copy shall be also furnished to the plaintiff or other party interested, certified according to the acts of congress, prescribing the manner in which the records and judicial proceedings of one state shall be proved, so as to have full faith and credit in another state, to the end that it may be carried into effect, as to the lands without this State, in the state or states in which the said lands may be, by such court and in such manner as said state or states by a law, made substantially in accordance with this act of assembly, may direct; and on satisfactory evidence being made to the court in this State, as aforesaid, that the decree may have full effect by such law of such other state, the court in this State shall, by its decree, declare the partition in the land in this State to be final and conclusive, and the said decree shall be firm and irreversible, as hereinafter provided, and shall on registration, as aforesaid, pass the title to the tenants in severalty to the lands in this State, in the same manner as if all the lands mentioned in the decree were situate within this State.

15. In any case, where real estate may be partly in this State and partly in another state or states, and the deceased person, from whom it was derived by descent or devise, was at the time of his death a resident in some other state, or was a resident of none of the states, in which he held lands, and in this last case, the lands, of which he was seized in this State, were of less value than the lands of which he was seized in any one other state, the courts of record in such state, in which such deceased person had his residence at his death, or in which he held lands of greater value than those he held in this State, shall have full power and authority, under any law passed by the legislature of such state, substantially in accordance with this act of assembly, to decree partition of the lands in this State, together with those within the territory of such other state or states, in the same manner as if the whole real estate were within the jurisdiction of such court, and in the same manner as the courts in this State are directed and authorized to do by the preceding section of this act, as to the lands of deceased persons resident here at their death, or having lands of greater value here than in any other state or states, in respect of the lands in such state, and in case any person, having an interest in the final decree made as aforesaid in another state, as to lands in this State, shall within twelve months after the same may be entered up in the said courts in said state, produce the record and proceedings of such courts of record, certified according to the acts of congress before referred to, to a superior court of equity in this State, where any of the lands in this State lie, it shall be the duty of the court, on petition in writing *ex parte*, in such case, to order such proceedings to be entered of record in said court of this State by the proper officer, and to order that the said decree shall be of the same force and validity, as if it had

When a decree for partition in another state may be enforced in this State.



been a decree of the court in this State, in which the petition is filed, upon an original bill and regular proceedings had thereon ; and such decree of the court of such other state, and the proceedings on it by petition in the superior court in this State, confirming it and giving it validity, being enrolled in the said court of this State, and registered in all the counties where the lands lie in this State, shall pass said lands in this State according to said decree, and shall vest estates in severalty therein declared, as to said lands, in the same manner and with the same effect in law, as if the lands in this State had been so allotted on a petition for partition, according to the provisions of the former sections of this act.

Court to judge whether another state has passed a law in conformity to this.

16. Where a copy of a decree and proceedings of a suit in any other state shall be produced, as in the preceding section of this act is authorized, and also when it is necessary for a court of equity to be certified, that its decree of partition of lands, without this State, and within the territory of another state or states, can have effect in said state, it shall be competent for the court of equity, before which the existence of a law in such other state, in conformity with this act, is to be proved, to judge whether any act of the legislature of such state has been passed, and whether it be in conformity with this law, and to that end to receive either the acts of the legislature of such state, printed by authority, or a copy duly certified under the acts of congress in such cases made.

Time allowed to *femes covert*, infants, &c.

17. On an original bill under the twelfth and fifteenth sections of this act, as against *feme coverts*, infants, persons *non compos mentis*, and against all parties, against whom judgment shall be taken *pro confesso* on publication, the final decree shall be entered up with a reservation in favor of such party, against whom judgment was taken *pro confesso* to file his answer, within three years after the final decree, to have said decree corrected or reversed, and with like reservations to have the same so reversed or corrected as to *feme coverts*, infants and persons *non compos*, within three years after their several disabilities removed, and, after the time saved by said reservation shall have expired, said final decree as against all such persons and those claiming under them, and all other persons, parties and previes to the decree, after three years from and after the enrolment of the same, shall be irreversible by petition for rehearing, or bill of review, or other proceedings in equity ; and any suit by bill, under the twelfth and fifteenth sections of this act, may be removed into the supreme court for hearing, upon affidavit as in other cases in equity, and the final decree in any such suit, shall be subject to an appeal to said supreme court.

How a partition of personal property among tenants in common may be made.

18. When any two or more persons shall be entitled, as tenants in common, to any negro or negroes, or other chattel property, and any one or all shall be desirous to have a division of the same, it shall and may be lawful for such person or persons to file a petition in the county or superior court, for that purpose, under the same

16. 1831, c. 25, s. 5.

17. 1831, c. 25, s. 6.

18. 1829, c. 17, s. 1.

rules and regulations as are prescribed in the other cases of petition, and if a division can be had without a sale of said negroes or other chattel property, then the court may appoint three freeholders, unconnected with the parties by consanguinity or affinity, who, first being duly sworn, shall divide such property as nearly coequally as possible, and allot to each tenant in common his or her share in severalty, and make report to court as directed, and, if such report be confirmed by the court, a decree or judgment shall be entered accordingly and vest in each tenant in common his or her share in severalty.

19. Whenever a division of such negroes, or other chattel property, cannot be had without injury to some of the parties interested, and a sale thereof may be deemed necessary by the court, it shall be the duty of the court to order a sale of the same, and the clerk of the court in which said petition may be filed and order of sale made, or some other fit person to be appointed by said court, shall sell the said negroes, or chattel property held in common, after giving thirty days' notice in three or more public places in the county by public advertisement, and the deed of said clerk or person so appointed shall be deemed and taken as good and sufficient to convey, to the purchaser of said property at such sale, such title, interest and estate in the said negroes or other chattel property sold, as the respective tenants in common or joint tenants had; and the clerk, or person appointed as aforesaid, shall report to the court, from which the decree of sale issued, all his proceedings in such case, and the court shall secure to such tenant in common or joint tenant, his or her ratable share in severalty of the proceeds of such sale.

When personal property may be sold for a division.

20. Whenever a petition is filed under the provisions of the two last sections, and either party concerned may be an infant, or person *non compos mentis*, it shall be lawful for the court, in which the petition may be filed, to appoint a guardian for such party, should there be no regular guardian.

Court may appoint a guardian to an infant, &c.

21. The freeholders appointed to make division, or the clerk of the court or other person appointed to make a sale of negroes, or other chattel property, held in common, shall be entitled to compensation for their services, to be judged of by the court and taxed in the bill of costs, all of which shall be paid by the parties to said petition in such manner as the court may deem just.

Compensation of the freeholders, clerk or other commissioner.

19. 1829, c. 17, s. 1.—1830, c. 39.

20. 1830, c. 39.

21. 1829, c. 17, s. 2, amended.

*Note.*—REFERENCES TO ADJUDGED CASES.

SECT. 1. *Anders vs. Anders*, 2 Dev. 529. *Wynn vs. Tunstall*, 1 Dev. Eq. 23. *Nicelar vs. Barbrick*, 1 Dev. and Bat. 257.

SECT. 7. *Strudwick vs. Ashe*, 3 Murph. 207. *Hickstall vs. Powell*, 4 Hawks, 216.

SECT. 8. *Ex parte Dozier's heirs*, 1 Dev. Eq. 118. *Bryan vs. Bryan*, ib. 47.



CHAPTER 86.

PATROL.

AN ACT CONCERNING THE APPOINTMENT AND DUTIES OF A PATROL IN EACH COUNTY.

SECTION

1. County courts to appoint a patrol committee, who shall employ a patrol—Proviso that the county courts may also employ a patrol.
2. Penalty on the patrol committee for refusing to act.
3. Duties and powers of the patrol.

SECTION

4. County courts to adopt rules for the regulation of the patrol.
5. Patrol committee may discharge patrollers, and appoint others.
6. Penalty on patrol for refusing to act.
7. Compensation to patrol.

1848. Ch 73

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,

County courts to appoint a patrol committee, who shall employ a patrol.

That it shall be the duty of the county court of each county, should the court deem it necessary, at the first court that shall happen after the first day of January, in each and every year, or any subsequent court, to appoint a patrol committee of three persons, in each captain's district in said county, whose duty it shall be to employ a patrol of such number of persons, as they may think necessary to patrol their district : *Provided*, that nothing herein contained shall be construed to prevent the county courts from appointing such patrol as they may deem proper.

Proviso that the county courts may also appoint a patrol. Penalty on the patrol committee for refusing to act.

2. Any person, appointed one of the patrol committee, and who shall refuse or neglect to discharge the duties imposed by the preceding section, shall be subject to a penalty of twentyfive dollars, to be recovered on motion to the court by the prosecuting officer of said county, and, when recovered, to be paid over to the county trustee, to form a fund in aid of the tax in support of the patrol.

Duties and powers of the patrol.

3. It shall be the duty of the patrol to visit the negro houses in their respective districts, as often as may be necessary, and to inflict a punishment, not exceeding fifteen lashes, on all slaves they may find off their owner's plantations, without a proper permit or pass, designating the place or places, to which the slave or slaves have leave to go. It shall also be the duty of the patrol to visit all suspected places, and suppress all collections of slaves ; it shall also be their duty to be diligent in apprehending all runaway negroes in their respective districts, to be vigilant and endeavor to detect all thefts, and bring the perpetrators to justice, and also all per-

1. 1830, c 16, s. 1 and 4.  
 2. 1835, c. 22, s. 2.  
 3. 1830, c. 16, s. 3.—1802, c. 616, s. 2.—1794, c. 406, s. 5.

sons guilty of trading with slaves. The patrol thus employed, shall have such powers as may be necessary to a proper discharge of the duties herein enjoined, and if, upon taking up a negro and chastising him, as herein directed, he shall behave insolently, they may inflict further punishment for his misconduct, not exceeding thirtynine lashes.

4. It shall be the duty of the several county courts, to adopt all necessary rules, regulations and restrictions, for the government of the patrol of the respective counties, and the patrol, when appointed, shall be subject to the same, and under such fines and penalties as the said court shall fix and direct.

County courts to adopt rules for the regulation of the patrol.

5. The patrol committee shall have full power and authority to discharge any one or more of the patrollers, and employ others, at any time when they may think it expedient.

Patrol committee may discharge patrollers and appoint others.

6. Any person, who shall be appointed a patrol under this act, and who shall refuse or neglect to serve, shall be subject to a penalty of twenty dollars, to be sued for in the name of the State, by the patrol committee of his particular district, and when recovered, shall be paid over by them to the county trustee, to form a fund in aid of the tax for the support of the patrol.

Penalty on patrol for refusing to act.

7. The patrol, appointed under this act, shall receive such compensation for their services as may be allowed them by the county court, and shall also be exempted from working on the road, and from the militia service, except in times of invasion or insurrection.

Compensation to patrol.

- 4. 1830, c. 16, s. 5.—1802, c. 616, s. 1.
- 5. 1830, c. 16, s. 3.
- 6. 1830, c. 16, s. 6.
- 7. 1794, c. 406, s. 3.

*Note.*—REFERENCES TO ADJUDGED CASES.

SECT. 3. *Tate vs. Oneal*, 1 Hawks, 418.

**CHAPTER 87.**

**PENSIONS.**

AN ACT FOR THE RELIEF OF SUCH PERSONS AS HAVE BEEN DISABLED BY WOUNDS, OR RENDERED INCAPABLE OF PROCURING FOR THEMSELVES AND FAMILIES SUBSISTENCE, IN THE MILITIA SERVICE OF THIS STATE, AND PROVIDING FOR THE WIDOWS AND ORPHANS OF SUCH AS HAVE DIED

SECTION

1. Pensions allowed to persons disabled in the militia service.

SECTION

2. And to their widows and orphans.

*1898.9. Ch 257*



Pensions allowed to persons disabled in the militia service.

And to their widows and orphans.

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 every person, who shall come within the above description, shall apply to the court of the county in which he shall reside, which court, on such application, shall certify to the General Assembly the distresses of such person, who shall have an allowance adequate to his relief for one year, which allowance shall be continued for the next succeeding year, and so long as such court shall certify such person to continue under the description aforesaid; which order or certificate of court, being countersigned by the speakers of the General Assembly, shall be a sufficient voucher to any sheriff, collector or treasurer, paying the same, in the settlement of their public accounts.

2. The widows and orphans of such persons, as come within the above description, shall be entitled to obtain relief on application to the county court, in the same manner as those disabled persons before mentioned.

1. 1784, c. 199, s. 1.

2. 1784, c. 199, s. 2.

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## CHAPTER 88.

# PILOTS AND COMMISSIONERS OF NAVIGATION.

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AN ACT TO REDUCE INTO ONE THE SEVERAL ACTS CONCERNING PILOTS AND COMMISSIONERS OF NAVIGATION.

### SECTION

1. Commissioners of navigation for Cape Fear, how appointed—To appoint a clerk.
2. Powers of commissioners.
3. Power of the said commissioners as to pilotage.
4. Harbor masters to be appointed.
5. Commissioners to appoint pilots.
6. Bond to be given by pilots.
7. Pilots may be removed for misbehavior.
8. Penalty on persons not authorized as pilots for acting as such.
9. Commissioners to decide disputes between masters and pilots.
10. No stay of execution allowed—But appeal may be taken.

### SECTION

11. Notice to be given when the rates of pilotage are altered.
12. Commissioners to prescribe the number of boats for pilots.
13. Rights of the pilots as to the Main and New Inlet bars of Cape Fear.
14. Pilots to keep apprentices.
15. Penalty on pilots for not attending when requested—Proviso as to bar pilots.
16. Masters to pay pilots for detention.
17. Penalty on pilots for refusing or neglecting to go to a vessel shewing a signal.
18. Pilots entitled to full pilotage though the master refuse to take them.

1846.7. 39 49. 60  
 1842.3. ch 65.  
 1840.1. ch 47. 48

- SECTION
19. When pilots entitled to only one third fees.
  20. Rate of charge when vessel deepens or lightens.
  21. Bar pilots to have a telescope or spy glass.
  22. What vessels exempt from pilotage.
  23. Throwing ballast, &c. into the river prohibited.
  24. Penalty on captain of a vessel from which ballast is so thrown.
  25. Duties and powers of the commissioners in this respect.
  26. Penalty on branch pilots for not informing when ballast is thrown out.
  27. Commissioners of navigation for Newbern, Washington and Edenton to be appointed.
  28. Power of such commissioners.
  29. Board of commissioners appointed for Ocracock—Their duty in regard to pilots—Their compensation—Oath to be taken by them.
  30. What vessels shall be compelled to take a pilot.
  31. Pilot becoming incompetent, his branch may be revoked.
  32. Commissioners of navigation for old

- SECTION
- Topsail inlet—For Bogue inlet—Their duty and powers.
  33. Penalty for piloting without a branch.
  34. Bonds to be given by pilots.
  35. Commissioners of navigation may remove pilots—Penalty for acting after removal.
  36. Penalty on pilots refusing to go to a vessel having a signal.
  37. Pilots' pay if driven off the coast after boarding.
  38. Pilots entitled to pay if they go off to a vessel though the master will not take them.
  39. No pilotage on vessels under sixty tons burthen.
  40. Rates of pilotage for the Ocracock pilots.
  41. Rates at Old Topsail inlet.
  42. Rates for Bogue inlet.
  43. Rates of pilotage to be annexed to the branches.
  44. No slave to act as pilot over any bar.
  45. Penalty for throwing ballast into any channel.
  46. How penalties and fines to be disposed of.

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 at the first court of pleas and quarter sessions, to be held for the county of New Hanover, after the first day of May annually, the justices of the said court, a majority being present, shall appoint five discreet persons to act as commissioners of navigation and pilotage for Cape Fear river, and said commissioners are authorized and empowered to appoint a clerk, whose duty it shall be to keep a book, and record therein all the orders, rules and proceedings of the said board of commissioners.

Commissioners of navigation for Cape Fear, how appointed.

To appoint a clerk.

2. The said commissioners shall have authority, in all matters that may concern the navigation of the said river, from Negrohead point downwards and out of each of the inlets ; and with respect to throwing trash in the river at the town of Wilmington, and the construction of wharves, shall have a concurrent jurisdiction with the commissioners of the town of Wilmington, and the commissioners of pilotage, and the commissioners of the said town, shall consult together, upon the best methods of preventing any injury being done to the channel, by wharves or otherwise, opposite to the said town, and when there is no harbor master, the commissioners of pilotage, or such of them as shall reside in the town of Wilmington, shall decide all disputes about the moving of vessels and other matters, which properly fall within the department of a harbor master.

Powers of the commissioners.

1. 1831, c. 91.—1802, c. 626, s. 1.  
 2. 1784, c. 207, s. 15.



Power of the said commissioners as to pilotage.

3. The said commissioners shall be and they are hereby authorized and empowered, from time to time, to make and establish such rules and regulations, respecting the arrangement and station of the pilots, and respecting the rates of pilotage, as to them shall seem most advisable and advantageous, for the navigation of said river; and shall and may lay and impose reasonable fines and penalties, for the purpose of enforcing the execution of such rules and regulations; and all fines annexed to said rules and regulations shall and may be recoverable, before any justice of the peace of New Hanover county, or any commissioner of navigation, in the name of the board of commissioners, who are hereby authorized to warrant therefor, and, when recovered, shall be applied to the repair of the public wharves and docks, and improvement of the channel of said river: *Provided*, that any person, considering himself aggrieved by such judgment, may appeal to the next court of pleas and quarter sessions of New Hanover county, first giving security for prosecuting the appeal, in like manner as is directed by law upon other appeals from justices of the peace.

Harbor master to be appointed.

4. The said commissioners shall and may appoint a harbor master for the port of Wilmington, and prescribe the duties of his office, who shall be entitled to receive from the master of each vessel, that shall enter said port, the sum of one dollar.

Commissioners to appoint pilots.

5. The commissioners of pilotage for the bars and rivers of Cape Fear, or a majority of them, are hereby authorized and empowered from time to time, to examine as many persons as shall offer themselves to be pilots for Cape Fear river aforesaid, and, on approving any such person to be a pilot, shall give to such person a commission, under their hands and seals, to act as a pilot for the bars and rivers, according as they shall find him qualified.

Bond to be given by pilots.

6. Every such person, before he obtains a commission or a branch to be a pilot, shall give bond with two sufficient securities, payable to the State of North Carolina, in the sum of five hundred dollars, with condition for the due and faithful discharge of his office, which bond shall be filed with, and preserved by, the said board of commissioners, in trust for such person or persons as shall appear to be injured by such pilot, and the person, so injured, may bring suit on such bond, in the name of the State, and recover the damage by him sustained, and the bond shall not be void upon the first recovery, or if judgment be rendered for the defendant, but may be put in suit from time to time by any person, who shall be injured by a breach of its conditions, until the whole penalty shall be recovered.

Pilots may be removed for misbehavior.

7. Upon the misbehavior of any pilot in his office, the said commissioners, or a majority of them, shall be, and they are hereby authorized to remove such pilot from his office, by a note in writing, directed to him and subscribed by them, and to appoint another in his stead, in manner aforesaid, and the commissioners

3. 1786, c. 262, s. 2.—1802, c. 626, s. 4.

4. 1802, c. 626, s. 5.

5. 1784, c. 207, s. 2.

6. 1784, c. 207, s. 3.

7. 1784, c. 207, s. 4.

shall put up notice in writing, in all public places within the said port, or publish in some convenient newspaper, that such pilot is removed.

8. If any person, not authorized as a pilot for Cape Fear, in manner as by this act directed, shall assume and take upon himself the office of pilot, and shall bring, or attempt to bring, into the said river any vessel whatever, such person shall forfeit and pay the sum of forty dollars, to be recovered by action of debt, one half to the person who shall sue for the same, and the other half to the commissioners of navigation for said river : *Provided always*, that it shall be lawful for any person to conduct into the port of Brunswick any vessel, in danger from distress of weather, or in a leaky condition, any thing herein to the contrary notwithstanding.

9. The said commissioners of navigation, a majority of whom may form a board, shall have power and authority to hear and decide in all matters of dispute between any pilot and master of a vessel, or between the pilots themselves, respecting the pilotage of vessels, and any one of said commissioners may issue a warrant against any master of a vessel, for the recovery of any pilotage, and against any pilot for the recovery of any demand, one pilot may have against another relative to pilotage, and for the recovery of any forfeiture or penalty, incurred by any act of the General Assembly for regulating the pilotage of Cape Fear river, which warrant shall be directed to the sheriff or any constable of New Hanover county, who are hereby respectively directed and enjoined to obey and execute the same, and all other process authorized by this act, and on any warrant, issued as aforesaid, any one of the said commissioners may give judgment for any sum, not exceeding sixty dollars, and may issue execution thereon, in the usual manner of issuing execution on judgments given by justices of the peace ; and any execution, so issued, shall and may be levied and satisfied, agreeably to the rules and regulations prescribed for the levy of and sale under other executions, issuing under judgments had before justices of the peace as aforesaid ; and any commissioner, before whom any warrant is tried, shall have power and authority to summon witnesses, and administer an oath, under the rules and regulations prescribed by law in cases of trials before justices as aforesaid.

10. If any Cape Fear pilot shall obtain a judgment before any justice of the peace, or before any commissioner, against any master of a vessel for pilotage, compensation or detention, or against any other pilot for any forfeiture or penalty, payable to him by any act of the General Assembly, or if any master of a vessel shall obtain any judgment, as aforesaid, against any such pilot for any forfeiture or penalty, made payable to him by any law of this State, there shall be no stay of execution : *Provided always*, that if any party shall consider himself aggrieved by any judgment as aforesaid, he may appeal to the ensuing court of pleas and quarter ses-

8. 1784, c. 207, s. 7.

9. 1802, c. 626, s. 2.

10. 1802, c. 626, s. 3.



sions of New Hanover county, but if any judgment given against any defendant shall be affirmed in the county court, and it shall be the opinion of the said court that the said appeal was prayed for and obtained for the purpose of delay, the said court shall order and adjudge the said defendant to pay, at the rate of twenty per cent. on the amount of the original judgment, which shall be added thereto, and execution shall and may issue for the whole amount, as in other cases of judgments in said court.

Notice to be given when the rates of pilotage are altered.

11. When the commissioners of navigation for Cape Fear shall make any alteration in the rates of pilotage, they shall cause such rates to be set up in the office of the collector of the port, and shall also cause the same to be certified under their hands, and annexed to the several pilots' branches.

Commissioners to prescribe the number of boats for pilots.

12. The commissioners aforesaid shall have power, and they are hereby authorized and required, to make known and determine, as far as occasion may require, to the pilots of the Main and New Inlet bars, how many decked boats are necessary for the attendance on them respectively, in which decked boats any number of said pilots, not exceeding three, may act and be concerned as partners and joint owners.

Rights of pilots as to the Main and New Inlet bars of Cape Fear.

13. The pilots, now having branches or commissions, or who may hereafter have branches or commissions, to pilot over the Main bar, or New Inlet bars of Cape Fear river, shall be entitled to pilot and navigate vessels into port over either bar, and the pilot, who shall bring a vessel into port over either bar, shall be entitled exclusively to navigate the same vessel out of port over either bar: *Provided always*, when any vessel shall be ready to go out of port, and such pilot, so exclusively entitled, does not attend to navigate the said vessel out of port, the captain or master of such vessel may employ any other pilot to navigate such vessel out of port: *Provided*, such other pilot, so by the captain or master to be employed, shall be a branch or commissioned pilot for the bar over which such vessel is to be navigated out; and every pilot, who shall navigate a vessel out of port contrary to the meaning of this section, shall for every such offence forfeit and pay the sum of forty dollars, to be recovered before any jurisdiction having cognizance thereof, to the use of the pilot or pilots, who by this act would have been entitled to navigate said vessel out of port.

Pilots to keep apprentices.

14. Each and every pilot of the said river, shall keep at least one apprentice, and instruct him in the art and mystery of a pilot, and each of the said pilots may keep two apprentices and no more, which said apprentices, upon being authorized by a majority of said commissioners, may pilot any vessel, which their several masters are entitled to pilot, for the behoof and emolument of their said masters, without let or molestation, subject however to the same regulations as the said pilots are.

Penalty on pilots for not attending when requested.

15. When any pilot of said river shall have notice from the

11. 1796, c. 470, s. 5.
12. 1796, c. 470, s. 3.
13. 1797, c. 486, s. 1.
14. 1786, c. 262, s. 4.
15. 1784, c. 207, s. 5.—1796, c. 470, s. 4.

master of any vessel, or other person in his behalf, to attend in piloting such vessel, and shall not go on board for that purpose without delay, the pilot having such notice shall forfeit and pay the sum of ten dollars, (unless he shall, at the time of such notice, have the actual and personal charge of some other vessel,) for each and every day's delay of the vessel which he had notice to attend, by reason of such pilot's neglect, to be recovered by a warrant under the hand of any one of the commissioners, on oath being made of the fact, (which oath any of the commissioners is hereby authorized to administer,) and to be paid to the master or owner of the vessel so detained or delayed: *Provided*, that no bar pilot shall be considered as obliged to take charge of any vessel outward bound, in order to pilot her over either of the bars, until the pilotage, to which such pilot might or would be entitled for such service, be previously paid him, or satisfactory security for the payment thereof be given him.

Proviso as to bar pilots.

16. If the master of any vessel shall send for, or take on board, any pilot to conduct such vessel from her station to any other place in the said river, and shall afterwards neglect or delay to remove such vessel, (wind and weather permitting,) such master shall pay unto the pilot one dollar for attending each and every day he shall be so detained; and if any vessel, which shall be boarded by a pilot without the harbor, should happen to be blown off to sea by the violence of the weather, the pilot on board such vessel shall also be entitled to receive, from the master thereof, one dollar for every day he shall be at sea, until the said vessel shall be brought into port, which sum such master is hereby required to pay.

Masters to pay pilots for detention.

17. When any Cape Fear branch pilot shall see a vessel on the coast, having a signal for a pilot, or shall hear a gun or guns fired off the coast, and shall refuse or neglect to go to the assistance of such vessel, such pilot shall, on conviction, forfeit and pay the sum of forty dollars, to be recovered by action of debt in any court of record in this State, the one half to the informer, the other half to the master of such vessel; and such pilot so refusing or neglecting may, upon due proof being made before the commissioners of navigation, be removed by them from being a branch pilot.

Penalty on pilots for refusing or neglecting to go to a vessel shewing a signal.

18. When any master of a vessel shall refuse a pilot to come into, or up the Cape Fear river, or in any part of the said river to go out of either of the inlets, then each pilot, so refused, shall be entitled to the full pilotage, in the same manner as he would have been, had he been actually employed for the purpose of piloting such vessel.

Pilots entitled to full pilotage, though the master refuse to take them.

19. When any vessel shall come over the bar before a pilot boards her, she shall pay only one third fees for coming in, unless when it may happen the weather is so bad, that no person can board a vessel; in which case, if he shall hail her without the bar, he shall be entitled to full fees.

When pilots entitled to only one third fees.

16. 1784, c. 207, s. 6.

17. 1784, c. 207, s. 10.—1790, c. 320, s. 2.

18. 1784, c. 207, s. 8.

19. 1786, c. 262, s. 6.



Rate of charge when vessel deepens or lightens.

20. If any vessel deepens or lightens between Wilmington and the flats, between the flats and Brunswick, or between Brunswick and fort Johnston, the pilot shall be paid for the greatest draught of water, and shall besides be entitled to demand at the rate of one dollar and twentyfive cents per day, for every day he may be delayed in loading or unloading such vessel, in which no fraction or part of a day shall be allowed or deducted.

Bar pilots to have a telescope or spy glass.

21. Each Cape Fear bar pilot shall, within such convenient time as the said commissioners shall direct, furnish himself with a good telescope or spy glass, under such penalty as the commissioners shall think proper, and such spy glass shall always be taken in the boat when the pilot goes out to sea.

What vessels exempt from pilotage.

22. No vessel or boat, entering Cape Fear river, either by the old bar or the new inlet, under forty tons burden, shall be compelled to take a pilot, or pay pilotage to any person whatever, except where signals are made for a pilot; and no vessel coming in at either of the said inlets, with a view to the more convenient prosecution of her voyage, or to make a harbor, shall be subject to the payment of pilotage.

Throwing ballast, &c. into the river prohibited.

23. It shall not be lawful for any master of a vessel or other person to throw any stone, earth or ballast or other thing, which can be injurious to the navigation of said river, into the same, within seven miles of the town of Wilmington, except it be at such place as may be designated by the commissioners of navigation and pilotage of Cape Fear river; and any person, guilty of a violation of this section, shall be liable to an indictment in the county or superior court of law of New Hanover county, and, on conviction thereof, shall be punished by fine and imprisonment or either at the discretion of the court.

Penalty on captain of a vessel from which ballast is so thrown.

24. The captain, master or commander of any vessel, from which any stone, earth or other ballast or any other thing, which can be injurious to the navigation of said river, may be thrown, contrary to the provisions of the preceding section, shall forfeit and pay the sum of two hundred dollars, to be recovered, in the name of the commissioners of navigation and pilotage of Cape Fear river for the time being, by action of debt in the superior court of law of New Hanover county, one half to the use of the informer, and the other half to the use of the said commissioners, for the improvement of the navigation.

Duty and power of the commissioners in this respect.

25. It shall be the duty of the commissioners for the time being to enforce these penalties; and all the powers and authority, now vested in the commissioners of pilotage and navigation of Cape Fear river below Negrohead point, shall be and remain in said commissioners, and shall extend up both branches of said river seven miles above said point.

Penalty on branch pilots

26. If any branch pilot of Cape Fear river shall knowingly suf-

20. 1790, c. 320, s. 1.

21. 1790, c. 320, s. 3.

22. 1813, c. 866.—1831, c. 65.—1823, c. 1222, s. 1 and 2.

23. 1833, c. 146, s. 1 and 2.

24. 1833, c. 146, s. 3.

25. 1833, c. 146, s. 4 and 5.

26. 1784, c. 207, s. 11.

fer any kind of ballast or trash, to be thrown out of any vessel into any part of the channel of the said river, and shall not, within ten days after the commission of such offence, make information thereof to one or more of the commissioners of pilotage, such pilot shall, upon conviction, be forever rendered incapable of acting as a pilot for the said river or any part thereof.

27. Five commissioners of navigation, for each of the ports of Newbern, Washington and Edenton, shall annually be chosen by the freemen of the said towns respectively, entitled to vote for commissioners of their towns, at the same time and in the same manner that commissioners of the said towns are respectively elected: *Provided*, that no person shall be eligible as a commissioner of navigation, in either of the said towns, unless he be a resident of such town and possessed of a freehold within the same.

28. The said commissioners shall have power to contract with proper persons to examine, from time to time, the situation of the Swash, and keep the same and all other channels, leading from Ocracock bar to Newbern, Washington, Edenton, Plymouth and Elizabeth city, well and sufficiently staked out, and to cause buoys and beacons to be placed, where the said commissioners shall think most convenient for the safety of vessels.

29. Levin Burress and William B. Quidley, of cape Hatteras; Joseph Williams, Benjamin Gaskins and George Hobbs, of Ocracock; Alpheus Whitehurst and Valentine Robertson, of Portsmouth, shall be a board of commissioners for the port of Ocracock, whose duty it shall be to meet at Ocracock, at least three times in each year, or a majority of them, after giving at least twenty days' notice of each meeting, and when any person is desirous of becoming a pilot at Ocracock bar, and the Swashes, and through Pamlico and Albemarle sounds, he shall be examined by said board; and such person, being so examined and found competent to take charge of any ship or vessel, as a pilot, the board aforesaid shall issue to him a branch, and receive the bond with security, under the rules and regulations prescribed by law; and no person shall be authorized to act as a bar or swash pilot, unless he shall have a branch from said board; the said board shall keep an office at Ocracock, in which shall be filed the bonds of the pilots; and every pilot, receiving from said board a branch, shall pay to the said board two dollars and fifty cents, of which sum, those living on Portsmouth and cape Hatteras, shall receive ten cents per mile travelling to and from the meeting of said board, and the balance shall be divided between all the members of said board: when a vacancy shall occur in said board, by death, resignation or refusal to act, a majority thereof shall appoint some suitable person to fill said vacancy, whose residence shall be at the same place where the vacancy occurred; and said commissioners shall keep a regular journal of their proceedings; and before the said commissioners enter on the duties of their office, they shall take and sub-

for not informing when ballast is thrown into the river.

Commissioners of navigation for Newbern, Washington and Edenton to be appointed.

Power of such commissioners.

Board of commissioners appointed for Ocracock. Their duty in regard to pilots.

Their compensation.

27. 1783, c. 194 — 1801, c. 600.

28. 1783, c. 194, s. 1 and 2.

29. Amendment.



Oath to be taken by them.

scribe, before any justice of the peace of the counties of Carteret and Hyde, or before the collector of the port of Ocracock, the following oath: "I do solemnly swear, that I will truly, faithfully and impartially examine every person who shall apply to me for a branch, to the best of my ability: so help me God." The branches shall expire in three years from the date thereof.

What vessels shall be compelled to take a pilot.

30. All vessels, not owned by citizens of this State, nor hailing from a port of this State, and over forty tons burden, shall be compelled to take a pilot, from the first of October to the first of April.

Pilot becoming incompetent, his branch may be revoked.

31. When any pilot, who stands an examination under the aforesaid board, and receives a branch, is afterwards found incompetent, by intoxication or otherwise, to perform the duties of a pilot, the commissioners aforesaid shall have power to revoke said branch, and from that time such pilot shall be disqualified from any further exercising the business of a pilot.

Commissioners of navigation for Old Topsail inlet.

32. The court of pleas and quarter sessions of Carteret county, a majority of the justices being present, shall, annually at the first term after the first day of May, appoint five commissioners of navigation for Old Topsail inlet and the waters thereof, and the court of pleas and quarter sessions of Onslow county, a majority of the justices being present, shall appoint, at the first term after the first day of May annually, five commissioners of navigation for Bogue inlet and its waters; and the said commissioners shall have the same powers and authorities, with regard to the pilots and pilotage of Old Topsail inlet and its navigation, and Bogue inlet and its navigation, respectively, and as to staking out their respective channels, and the placing of buoys and beacons, as are given to the commissioners of navigation for the ports of Newbern, Washington and Edenton.

For Bogue inlet.

Their duty and powers.

33. If any person shall pretend to pilot, or take charge of any ship or vessel, without having passed an examination as aforesaid, and obtained a certificate for so doing, and also giving bond as hereafter directed, he shall forfeit and pay for each and every offence the sum of two hundred dollars, to the use of any person suing for the same.

Penalty for piloting without a branch.

Bonds to be given by pilots.

34. All pilots appointed by the commissioners of navigation for Newbern, Washington, Edenton, Ocracock, Old Topsail and Bogue inlets shall give bond, with sufficient securities, for the amount and in the manner prescribed for the bonds of the Cape Fear pilots, in section sixth of this act, and subject to the same rules, regulations and right of recovery as are there prescribed.

Commissioners of navigation may remove pilots. Penalty for acting after removal.

35. The commissioners of navigation, or a majority of them, in the respective ports of this State, upon complaint being made to their satisfaction of the improper conduct of any pilot, acting under their authority, shall have full power to disqualify such pilot from piloting thereafter, and should such pilot, after such disqual-

30. Amendment.

31. 1819, c. 1025, s. 4.

32. 1783, c. 194.—1784, c. 208, s. 2.

33. 1783, c. 194, s. 3.—1784, c. 208, s. 4.

34. 1783, c. 194, s. 4.

35. 1800, c. 565.

ification, attempt to take charge of any vessel, he shall be subject to the penalty of two hundred dollars, to be recovered in the same manner as if he had never obtained license for so doing.

36. When any branch pilot shall see any vessel on the coast, having a signal for a pilot, and shall neglect or refuse to go to the assistance of such vessel, on proper proof being made of such neglect or refusal, he shall forfeit the sum of forty dollars, to be recovered by action of debt before any competent jurisdiction, the one half to the informer, and the other half to the master or owner of said ship or vessel.

Penalty on pilots for refusing to go to a vessel having a signal.

37. If any ship or vessel, coming into any of the inlets and taking a pilot on board, shall be, by contrary winds or otherwise, driven off the coast, the master or owner of such vessel shall allow and pay the said pilot one dollar per day, for each and every day he shall be on board the said vessel, over and above the pilotage.

Pilot's pay if driven off the coast after boarding.

38. If a branch pilot shall go off to any vessel bound in, and offer to pilot her over the bar, the master or commander of such vessel, if he refuses to take such pilot, shall pay and satisfy to such pilot, if not previously furnished with one, the same sum as is allowed by law for conducting such vessel in.

Pilots entitled to be paid if they go off to a vessel, though the master will not take them.

39. No pilot, acting under the authority of the commissioners of navigation for Newbern, Edenton, Washington or Old Topsail inlet, shall be entitled to pilotage for any vessel under sixty tons burthen, unless such vessel shall have given a signal for a pilot, or otherwise shall have required the assistance of a pilot.

No pilotage on vessels under 60 tons burthen.

40. All branch pilots, legally authorized by the commissioners of navigation for Edenton, Washington, Newbern, or Ocracock, shall be entitled to demand and receive of the commander of such vessel, as they may have charge of, the following pilotage, viz : For every vessel of sixty tons burthen, from the other side of the bar, at any distance within the limits of the pilot ground, to Beacon island road or Wallace's channel, six dollars ; and for all vessels drawing eight feet water and less than twelve, one dollar per foot ; and for all vessels drawing twelve feet or upwards, one dollar and twentyfive cents per foot ; and two dollars for each vessel over either of the Swashes ; and for every slip or vessel, from the mouth of the Swash to either of the ports of Newbern or Washington, drawing any draft of water, one dollar per foot, and for every ship or vessel from the mouth of the Swash to the port of Edenton, twelve dollars, and to the port of Elizabeth City, ten dollars ; and the same allowance down as up, and outwards as inwards.

Rates of pilotage for the Ocracock pilots.

41. The branch pilots for Old Topsail inlet shall be entitled to demand and receive of the commanders of such vessel, as they may have charge of, the following pilotage, to wit : for every ves-

Rates at Old Topsail inlet.

36. 1783, c. 194, s. 6.

37. 1783, c. 194, s. 6.—1784, c. 207, s. 7.

38. 1794, c. 426, s. 2.

39. 1801, c. 600, s. 3.—1806, c. 711, s. 1.

40. 1806, c. 711.—1794, c. 426.

41. 1793, c. 515.—1794, c. 426.—1806, c. 711.



sel of sixty tons burthen from the outside of the inlet, at any distance within the limits of pilot ground, into Bogue road or Shacklesford road, at the option of the commander, six dollars ; and for all vessels drawing eight feet water and less than twelve, one dollar per foot ; and for all vessels drawing twelve feet and upwards, one dollar and twentyfive cents per foot ; and the same fees for piloting outwards as inwards.

Rates for  
Bogue inlet.

42. The branch pilots for Bogue inlet shall be entitled to demand and receive of the commander of such vessel, as they may have charge of, the following pilotage, to wit : for bringing any vessel into the said inlet, drawing less than seven feet, from the outside of the bar to the anchorage before the town, or the customary place in Hill's channel, fifty cents per foot ; for a vessel, drawing more than seven feet, seventy cents per foot ; and the same fees for pilotage outwards as inwards.

Rates of  
pilotage to be  
annexed to the  
branches.

43. It shall be the duty of the commissioners of navigation for the several ports of this State, to annex to the branch or certificate, by them given to each pilot, a copy of the fees to which by law such pilot is entitled.

No slave to act  
as pilot over  
any bar.

44. If any slave or slaves shall, with the consent of his or their owner, and not accompanied by a pilot, go off to any ship or vessel for the purpose of bringing such ship or vessel over any bar or inlet of this State, or shall pilot any such ship or vessel out and over any bar or inlet, the owner of such slave or slaves shall forfeit the value of such slave or slaves, to be recovered in any court having cognizance thereof, one half to the person suing for the same, the other half to the use of the county where the owner resides.

Penalty for  
throwing bal-  
last into any  
channel.

45. No master or other person, belonging to any vessel trading to this State, shall cast or throw overboard, into any channel or river within this State, any stones or other ballast whatsoever, any oysters or oyster shells, under the penalty of two hundred dollars for every such offence ; and if any person or persons shall wilfully pull down any beacon, stake or other mark, erected or placed in virtue of this act, he or they shall, for every such offence, forfeit and pay one hundred dollars ; and such penalties shall be recovered by the commissioners of navigation for the respective ports, by action of debt, in any court having competent jurisdiction.

How penalties  
and fines to be  
disposed of.

46. All penalties and fines, recovered by the commissioners of navigation under this act, except when otherwise herein particularly directed, shall be by them applied to the placing of stakes, buoys and beacons, and otherwise improving the navigation leading to their respective ports.

42. 1792, c. 372, s. 2.

43. 1784, c. 208, s. 4.

44. 1812, c. 839.

45. 1783, c. 194, s. 8.

46. 1783, c. 194, s. 10.

Wardens

CHAPTER 89.

1846.7. Ch 64

POOR.

AN ACT PROVIDING FOR THE SUPPORT OF THE POOR.

SECTION

SECTION

1. Wardens of the poor to be elected every three years—Sheriff's duty and penalty for failure.
2. How the elections shall be conducted.
3. Oaths to be taken by wardens.
4. Penalty on wardens refusing to qualify—Vacancies to be filled by the remaining wardens.
5. On failure of election, sheriff to appoint another day of election.
6. Place of meeting of wardens—Appointment of clerk.
7. Three wardens may call a meeting—Penalty on sheriff and wardens for neglect of duty.
8. Wardens to keep minutes and accounts—To publish an account of their receipts and expenditures annually.
9. Tax to be laid by the county courts on application of the wardens.
10. Sheriff to collect and account to the wardens.
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15. County courts to lay taxes for the erection of poor houses.
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17. How paupers coming into a county may be removed—County where last legally settled to pay all charges—Housekeepers to give notice of such paupers to the wardens.
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20. Executors, administrators and guardians liable to the wardens if they neglect to provide for slaves under their care.
21. Duty of the wardens when the owner lives in another county.
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24. Stock, &c. belonging to slaves, to be seized by the wardens.
25. How forfeitures and penalties may be recovered.

1848. Ch 65.

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 the freemen, in each and every county in this State, shall meet on Easter Monday, three years from the last election, at the court house, and on the same day and at the same place in every three years thereafter, then and there to elect seven freeholders to serve as wardens of the poor, and the sheriff, or his deputy, is hereby directed to set up an advertisement at the place of election in each county, appointing a day for the meeting of the wardens so elected, which day shall not be less than ten, nor more than thirty days after the election, and the said sheriff, or his deputy,

Wardens of the poor to be elected every three years.

Sheriff's duty and penalty for failure.

1. 1777, c. 117, s. 1.—1783, c. 191, s. 3.



shall also summon each and every warden to meet on the day so appointed, at the court house, to be qualified according to the directions of this act ; and if the sheriff shall fail to appoint and advertise a day of meeting as aforesaid, and shall fail to summon each and every warden in his county to attend on such day, such sheriff shall forfeit and pay the sum of twenty dollars, for the default first mentioned, and the sum of ten dollars for every warden not summoned as aforesaid, to be levied and applied as hereinafter directed, and the sheriff shall be paid by the county the sum of thirty cents for every warden he shall summon.

How the elections shall be conducted.

2. The sheriff, in each respective county, shall advertise at the court house and other public places, the day of holding the election of wardens of the poor, at least ten days before such election, under the penalty of twenty dollars for neglect, and the elections of such wardens shall be held and conducted in the same manner, and under the same regulations, as elections of the members of the house of commons.

Oaths to be taken by wardens.

3. The wardens of the poor so elected, shall, at the first meeting next after such election, take before some magistrate the oath by law appointed to be taken by public officers, and shall repeat and subscribe the following oath, in a book to be by them kept for that purpose, viz : " I, A. B., do swear that I will honestly and faithfully discharge my office as warden of the poor, to the best of my skill and ability, according to law." And every warden, so elected and qualified, shall be deemed and taken to be a warden of the poor, in the county for which he was elected, for three years.

Penalty on wardens refusing to qualify.

4. Every person, elected a warden of the poor according to this act, who shall refuse or neglect to qualify, as aforesaid, on notice from the sheriff, shall forfeit and pay the sum of twenty dollars, to be sued for and recovered in any court of record, by the chairman of the county court, in an action of debt, and the money so recovered to be applied to the use of the county ; and where a person elected shall so refuse or neglect, or when a warden of the poor shall die, or remove out of the county for which he was elected, the remaining wardens, or a majority of them, shall elect one or more freeholders, instead of him or them so neglecting or refusing, dying or removing out of the county, and persons so chosen shall be subject to the same penalty for refusing or neglecting to qualify, and, when qualified, shall in all respects have the same powers and discharge the same duties, as if they had been chosen at the regular election.

Vacancies to be supplied by the remaining wardens.

On failure of election, sheriff to appoint another day of election.

5. If it shall happen, from any cause, that an election of wardens of the poor in any county, shall not be held on the day appointed for that purpose, in such case the sheriff shall appoint a time, not less than ten nor exceeding twenty days thereafter, for electing wardens of the poor in such county, and shall summon the inhabitants having a right to vote for members of the house of commons, to attend, and elect in manner herein before directed, and

2. 1777, c. 117, s. 2.

3. 1777, c. 117, s. 3.

4. 1777, c. 117, s. 4.—1783, c. 191, s. 2.—1821, c. 1119.

5. 1777, c. 117, s. 15.

every such election shall be as good and valid, as if the same had been made on the day by this act directed.

6. The meeting or court of wardens, in every county in this State, shall hereafter be held at the court house, or usual place of holding the court of the county, and the said wardens, or a majority of them, in each county, at their first meeting respectively, shall appoint some person of skill and probity to officiate as clerk, but such person shall not be one of their own body.

Place of meeting of wardens.

Appointment of clerk.

7. Any three of the wardens of the poor in each county shall have power to call a meeting or court of wardens, when necessary, by summons under their hands, directed to the sheriff or constables of the county, who are hereby directed to execute the same, under the penalty of four dollars for every warden in such summons named, whom he or they shall fail to summon, and every warden, so summoned and refusing or neglecting to attend, shall forfeit and pay the sum of four dollars, unless such sheriff, constables or wardens shall shew sufficient cause for the omission to the next meeting or court of wardens, which penalties shall be recovered and applied as hereinafter directed.

Three wardens may call a meeting.

Penalty on sheriff and wardens for neglect of duty.

8. The wardens of the poor in every county shall purchase, at the expense of the same, well bound books for keeping a journal and minute of their proceedings, in which shall be fairly stated accounts of all such moneys, as they from time to time shall receive in virtue of their office, and the manner in which the same shall have been disbursed; and they shall every year, at the next court of their respective counties after the first day of June, publish and set up, at the court house, an account of the moneys by them received by taxes or otherwise for the purposes aforesaid, with the use and application they have made of the same, particularly specifying the expense of each pauper, with an account of the claims or debts unpaid, if any, and to whom due; under the penalty of two hundred dollars, to be sued for and recovered by action of debt, in the name of the chairman of the court of the county where such neglect shall happen, and applied to the use of the county. And it shall be the duty of the attorney or solicitor, acting in behalf of the State in such county, to institute and prosecute a suit, in the name of the chairman of the court, for the recovery of such penalty.

Wardens to keep minutes and accounts.

To publish an account of their receipts and expenditures annually.

9. The several courts of pleas and quarter sessions are hereby authorized, on the application of the wardens, to lay a tax, which may be sufficient for the maintenance of the poor, which said tax may be collected and accounted for to the wardens, and applied by them in the manner now prescribed by law: *Provided*, that a majority of the justices be present when said tax is laid.

Tax to be laid by the county courts on application of the wardens.

10. The sheriff in each and every county shall collect the tax aforesaid, and shall be subject to the same rules, regulations and penalties, in their settlement with the wardens of their respective

Sheriff to collect and account to the wardens.

6. 1777, c. 117, s. 10.

7. 1777, c. 117, s. 7.

8. 1777, c. 117, s. 6.—1786, c. 255, s. 3.—1792, c. 361, s. 2.

9. 1817, c. 245, s. 1.

10. 1808, c. 754, s. 2.



counties for the poor tax, as are prescribed for their settlements with county trustees.

Wardens to settle with their successors.

11. It shall be the duty of the persons, who have been wardens of the poor, to call upon, settle with and pay over to their successors in office all moneys remaining in their hands unappropriated, which they may have received by virtue of their appointment as wardens of the poor, and, on failure thereof, each warden shall forfeit and pay the penalty of one hundred dollars, to be recovered by the present wardens, on motion to the court of their county, first giving said delinquent wardens ten days' notice of their intention to make such motion.

County courts may erect poor houses.

12. The courts of pleas and quarter sessions of the several counties shall be and they are hereby authorized, when they deem it necessary, a majority of the justices of the said courts being present, to cause to be erected poor houses, and other out buildings for the maintenance and support of the poor of said counties, with full power and authority to purchase lands when the same may be necessary.

Poor houses to be under the direction of the wardens.

13. The wardens of the poor of said counties shall, twenty days' notice at least being given, annually let out to the lowest bidder the said poor houses and the poor of their respective counties, or shall employ some person as overseer to superintend the business, as to them may seem best, such contractor or overseer giving bond and approved security for the faithful discharge of the duties assigned to him; and the wardens shall have full power and authority to ordain bylaws, rules and regulations, and do all such matters and things as they may deem expedient, for the promotion of the said poor house, and the comfort of the poor.

Property of wardens exempt from taxation.

14. The property held by the wardens of the poor of the several counties in this State, for the use of the poor of the said counties, shall be exempt from the payment of any tax whatever.

County courts to lay taxes for the erection of poor houses.

15. The said courts shall have full power and authority to lay the taxes necessary to carry into effect the purposes of this act, in relation to the purchase of land, and the erection thereon of suitable buildings for the maintenance of the poor.

What shall be a legal settlement.

16. No person shall be accounted an inhabitant, so as to have gained a legal settlement in any county, until such person shall have been actually resident in such county one whole year.

How paupers coming into a county may be removed.

17. Upon complaint made by the county wardens of any county, before a justice of the peace, that any poor person has come into their county, and is likely to become chargeable thereto, it shall be lawful for such justice, by warrant under his hand, to cause such poor person to be removed to the county where he or she was last legally settled; but if such poor person be sick or disabled, and cannot be removed without danger of life, the county wardens shall provide for his or her maintenance and cure at the charge of the

11. 1798, c. 497, s. 3.

12. 1831, c. 17, s. 1.

13. 1831, c. 17, s. 2.

14. 1831, c. 17, s. 3.

15. 1831, c. 17, s. 4.

16. 1777, c. 117, s. 16.

17. 1777, c. 117, s. 17.—1834, c. 21.

county, and after recovery shall cause him or her to be removed ; and in cases of removal, it shall and may be lawful for the wardens to pay the charges of such removal, and such fees to the persons conveying the said pauper, as are fair and equitable, and the county, wherein he or she was last legally settled, shall repay all charges occasioned by the sickness, maintenance and cure of such poor person, and all the charges and expenses incurred by such removal, and also all charges and expenses, if such person shall die before removal ; and if the wardens of the county, to which such poor person belongs, shall refuse to receive and provide for the person removed by warrant as aforesaid, every warden, so refusing, shall forfeit and pay forty dollars, one half to the use of the county from whence the removal was, and the other half to the informer, to be recovered by action of debt, with costs of suit ; and if the wardens of the county, where such person was legally settled, shall refuse to pay and satisfy all the charges and expenses aforesaid, in such case they shall be liable for the same, to be recovered with costs in the county court ; and if any housekeeper shall entertain such poor person, and shall not give notice thereof to the wardens of his county, or one of them, within one month, he or she, so offending, shall forfeit and pay the sum of ten dollars, to be recovered with costs by the county wardens, for the use of the county, by warrant before a justice of the peace.

County where last legally settled to pay all charges.

Housekeepers to give notice of such paupers to the wardens.

18. When any citizen of the State is absent on service as a militia man, and his family are unable to support themselves during his absence, the court of wardens of the county to which he belongs, on application, shall make him or them such allowances as they think reasonable out of their tax, towards the maintenance of such man's family, and an account of such expenditures shall be allowed in their settlement with the county.

Wardens to support the families of poor militia men absent on service.

19. The owner of every slave, who shall be rendered incapable of service from advancement in years or other disability, shall provide and furnish such slave with the usual allowance of food, raiment and lodging, furnished to slaves in the neighborhood where such slave may be, and if any such slave shall be unprovided for by his or her owner as aforesaid, it shall and may be lawful for the wardens of the poor of the county, where such slave may be, (if the owner of such slave lives in such county) and they are hereby required to furnish such slave with food, raiment and lodging aforesaid, and make a charge of the same to the owner of such slave, which sum so expended the said wardens shall and may recover by warrant against such owner before any justice of the peace, if the sum so expended exceeds not the sum cognizable before a justice by law ; if so, then before any jurisdiction having cognizance of the same. *Provided always*, that the said wardens shall not, at the expense of the owner, provide such slave aforesaid, until they or one of them shall first have given the owner of such slave notice to provide for and furnish such slave, as is herein required, which notice shall be served upon such owner ten days previous to the wardens providing for such slave, and shall and

Wardens to provide for infirm slaves neglected by their owners, and may recover from the owners.

Owners to have previous notice.

18. 1779, c. 152.

19. 1798, c. 493, s. 1.



may be issued by any one of said wardens, upon information being given to him, and by him directed to the sheriff or a constable of the county, who is hereby required forthwith to execute the same, and make return of the same to the warden who issued such notice, or to any one of them.

Executors, administrators and guardians liable to the wardens if they neglect to provide for slaves under their care.

20. If the owner of any such slave shall be dead, the executors or administrators of such deceased owner shall provide for such slave, in the manner aforesaid, out of the estate of such deceased owner, and upon failure so to do, the wardens aforesaid shall provide for such slave aforesaid, and proceed against such executors or administrators in every respect, as herein directed against the owner, or if any such slave shall be liable to the direction of any guardian, such guardian shall make the provision aforesaid for such slave out of the estate of his ward, and upon failure, the wardens aforesaid shall provide for such slave as aforesaid, and proceed against such guardian in manner aforesaid, and such executors, administrators and guardians shall be allowed the expense of making such provision for such slave, in their settlements.

Duty of the wardens when the owner lives in another county.

21. When any such slave shall be in a county other than the county where the owner of such slave, or the executors or administrators of a deceased owner, or guardian reside, the wardens aforesaid may remove such slave to the owner, or to the executors or administrators of the deceased owner, or to the guardian, at the expense of such owners, and at the expense of the executors, administrators and guardian in such cases.

Two wardens may act in the case of such slaves.

22. Any two of the wardens of the poor shall have power and authority to carry the foregoing provisions, relative to disabled slaves, into effect.

Power of the wardens when a person having infirm slaves is about to remove out of the county.

23. The wardens of the poor in the several counties, or any one of them, shall have power and authority, on information to him or them made, that any person is about to remove out of the county, and has any slave or slaves that are likely to become a county charge, to issue their or his warrant to bring such person before him or them, and take such security by bond, as may be deemed sufficient to indemnify the county, which bond shall be made payable to the State of North Carolina. And in case such person shall refuse to give bond, as is herein directed, he or they shall have power and authority to commit the said person, and keep him committed until he shall enter into such bonds, or remove the slave or slaves, so about to be left, without the limits of the county.

Stock, &c. belonging to slaves, to be seized by the wardens.

24. All horses, cattle, hogs, or sheep, that shall belong to any slave, or be of any slave's mark in this State, shall be seized and sold by the county wardens, and by them applied, the one half to the support of the poor of the county, and the other half to the informer.

How forfeitures and penalties may be recovered.

25. The several forfeitures and penalties by this act inflicted,

- 20. 1793, c. 493, s. 2.
- 21. 1793, c. 493, s. 3.
- 22. 1793, c. 493, s. 4.
- 23. 1801, c. 584, s. 2.
- 24. 1779, c. 152, s. 1.
- 25. 1777, c. 117, s. 13.

for which no method of recovery or application is herein before directed, shall and may be recovered with costs, before any jurisdiction, having cognizance thereof, one half to the use of the informer, the other half to the county wardens, for the use of the poor of the county, wherein such penalties shall be incurred.

## CHAPTER 90.

# PRISONERS.

### AN ACT CONCERNING PRISONERS.

*1838.9 - Ch 23.*

#### SECTION

1. Keepers of jails in this State, to receive and keep prisoners of the United States—Jailers to have the same fees as for keeping prisoners of this State.
2. When the jail of any county shall be destroyed, the prisoners shall be sent to the jail of an adjoining county.
3. When there shall be no jail in any county, the courts and magistrates may send prisoners to the jail of an adjoining county.
4. In such cases, the sheriff, &c. may confine any person arrested under process, civil or eriminal, in the jail of an adjoining county.
5. Sheriff, apprehensive of prisoners escaping, how to proceed to obtain a guard—Persons ordered on guard, to receive compensation.
6. Prisoners, committed for criminal offences, to bear the charges of imprisonment.

#### SECTION

7. Claims for guarding, &c. prisoners, to be paid by the county from which they are sent.
8. Prisoners may purchase necessaries in addition to the diet furnished by the jailer—Penalty on jailers for injuring prisoners.
9. Jailer to cleanse the jail and furnish diet.
10. Blankets and bed clothing to be provided for the use of the prisoners.
11. Prison bounds, for the benefit of prisoners, to be laid out by the county court.
12. Bonds, taken from debtors for keeping the prison bounds, how to be proceeded on.
13. Manner of transferring prisoners from a sheriff to his successor.
14. Prisoners to be confined in the proper apartments of the jail—Penalty on sheriff or jailer for confining them otherwise.

1. WHEREAS it is recommended by the resolve of the first session of the congress of the United States, to the legislatures of the several States, to pass laws making it expressly the duty of the keepers of their jails, to receive, and safe keep therein, all prisoners committed under the authority of the United States, until they shall be discharged by the due course of the laws thereof, under the like penalties as in the case of prisoners, committed under the authority of such States respectively, the United States promising, on their part, to pay for the use and keeping of such jails, at the rate of fifty cents per month, for each prisoner who shall be com-



mitted under their authority, during the time such prisoner shall be confined therein, and also to support such prisoners as shall be committed for offences : To carry the said resolve into effect,

Keepers of jails in this State to receive and keep prisoners of the United States.

*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 when any prisoner or prisoners shall be delivered to the keeper of any jail in this State, by the authority of the United States, such keeper is hereby commanded to receive such prisoner, or prisoners, and commit him or them accordingly : And all and every keeper or keepers of any jail in this State, refusing or neglecting to take possession of any prisoner or prisoners, delivered to him or them by the authority aforesaid, shall be subject to the same pains and penalties, as for neglect or refusal to commit any prisoner or prisoners, delivered them under the authority of this State : *Provided always,* the allowance for the maintenance of any prisoner or prisoners committed to any of the prisons of this State, under the authority of the United States, shall be equivalent to the allowances made for prisoners committed under the authority of this State.

Jailers to have the same fees as for keeping prisoners of this State.

When the jail of any county shall be destroyed, the prisoners shall be sent to the jail of some adjoining county.

2. Whenever the public jail of any county shall be destroyed by fire or other accident, it shall and may be lawful for any justice of the peace of such county to cause all prisoners confined therein, at the time of such destruction, to be brought before him, and upon the production of the process, under which any prisoner or prisoners were confined in the jail so destroyed, it shall be the duty of such justice to order the commitment of all such persons, to the jail or jails of any of the adjacent counties, and the sheriff, constable, or any officer, deputed for that purpose, in the county where said justice resides, shall be bound to obey the order so made, and the sheriff or keeper of the common jail of any such adjacent county shall be bound to receive such prisoner or prisoners, upon the order of such justice, under the penalties now provided by law for any failure to perform the like duties.

When there shall be no jail in any county, the courts and magistrates may send prisoners to the jail of an adjoining county.

3. Whenever, from any cause, it shall happen that there shall be no public jail in any county, it shall and may be lawful for the superior courts of law and equity, the courts of pleas and quarter sessions, justices of the peace, and all other judicial officers of such county, to commit all persons who may be brought before them, whether in a criminal or civil proceeding, to the jail of any adjoining county, for the same causes, and under the like regulations that they might have ordered commitments to the jail of their own counties, if any existed ; and the sheriffs, constables and other officers of such county, in which there may be no jail, and the sheriffs or keepers of the jails of the adjoining counties, shall be bound to obey any order of commitment, so made, under the like penalties as aforesaid.

In such cases, the sheriff, &c. may confine

4. The sheriffs, constables, and other ministerial officers of any county, in which there may be no jail, shall have power, authori-

1. 1790, c. 322, s. 1 and 2.
2. 1835, c. 2, s. 1.
3. 1835, c. 2, s. 2.
4. 1835, c. 2, s. 3.

ty and privilege to confine any prisoner, who has been arrested on process, either civil or criminal, and who may be held in custody for want of bail, in the jail of any adjoining county, until sufficient bail shall be given or tendered ; and the sheriffs or keepers of the jails, shall receive such prisoners in the like manner as aforesaid, and all sheriffs or keepers of jails, who shall suffer any prisoner or prisoners committed to their custody, in any of the modes aforesaid, to escape therefrom, shall be liable to indictment and punishment, as in other cases of escape.

5. Whenever the sheriff of the county, wherein any jail is situated, or the person keeping such jail, shall be apprehensive that there is danger of the prisoners' escaping, either through the insufficiency of the jail or other cause, it shall be his duty, without delay, to make information thereof to a judge of the superior court, the attorney general, or either of the solicitors, if either of those officers be in the county, and if not in the county, to three justices of the peace, who are hereby authorized, upon consideration of the circumstances, and information received, if they deem it advisable, to furnish the said sheriff or keeper of the jail with an order in writing, addressed to the commanding officer of the county, setting forth the danger, and requiring him forthwith to furnish such guard as may appear to be suitable for the occasion : For which service, the persons ordered out shall receive such compensation, as is or may hereafter be provided by law for militia, when called into actual service for the defence of the State : and on application for the same, the letter to the commanding officer, on which the guard was ordered out, the certificate of such commanding officer, countersigned by the sheriff or jailer, together with the deposition of the officer of the guard, setting forth the time of service, and that it was faithfully performed, shall be sufficient to authorize the payment of the same.

6. All and every person or persons, who shall be hereafter committed to a public jail, by lawful authority, for any criminal offence or misdemeanor against this State, shall bear all reasonable charges for carrying and guarding them to the said jail, and also for their support therein, until lawfully released ; and all the estate, which such persons possessed at the time of committing the offence, shall be subject to the payment of the aforesaid charges and other prison fees, in preference to all other debts or demands ; and in case there be no visible estate whereon to levy such fees and charges, the amount shall be paid by the county, according to the provisions of the law in such cases.

7. All claims for guarding prisons, and conveying prisoners, shall be allowed by the court of the county, in which such prison is situated, or from which any prisoner is removed, and paid off by the county trustee, out of the moneys levied for such purpose.

8. All prisoners, committed to any jail in this State, shall be permitted to purchase and send for such necessaries, in addition to

any person arrested under process civil or criminal, in the jail of an adjoining county.

Sheriff, apprehensive of prisoners escaping, how to proceed to obtain a guard.

Persons ordered on guard to receive compensation.

Prisoners committed for criminal offences, to bear the charges of imprisonment.

Claims for guarding, &c. prisoners, to be paid by the county from which they are sent.

Prisoners may purchase necessaries in ad-

5. 1795, c. 433, s. 8.

6. 1795, c. 433, s. 7.

7. 1808, c. 757, s. 2.

8. 1795, c. 433, s. 6.



dition to the diet furnished by the jailer.

Penalty on jailers for injuring prisoners.

Jailer to cleanse the jail and furnish diet, &c.

Blankets and bed clothing to be provided for the use of prisoners.

Prison bounds, for the benefit of prisoners, to be laid out by the county court.

Bonds taken from debtors for keeping the

the diet furnished by the jailer, as they may think proper, and to provide their own bedding, linen and clothing, without their being obliged to pay any perquisite to the jailer for such indulgence; and if the keeper of a public jail shall do or cause to be done any wrong or injury to the prisoners, committed to his custody, contrary to the intention of this act, he shall not only pay treble damages to the person injured, but such fine not exceeding forty dollars, for each offence, in addition thereto, as the court of the county, where the prisoner is confined, shall think fit to impose.

9. It shall be the duty of the jailer, or keeper of any public prison, to cleanse, each and every day, the room of the prison in which any person shall be confined, and cause all filth to be removed therefrom, and also to furnish the prisoner or prisoners, confined in said jail, good and wholesome water, three times in each and every day, and shall find each prisoner fuel, one pound of wholesome bread, one pound of good roasted or boiled flesh, and a sufficient quantity of water, and every necessary attendance.

10. It shall be the duty of the courts of pleas and quarter sessions, from time to time, as may be necessary, to order the sheriff of their respective counties to purchase, for the use of their jails, a certain number of good warm blankets, or other suitable bed clothing; which blankets or bed clothing, so purchased, shall be securely preserved by the jailers, and furnished to the prisoners for their use and comfort, as the season or other circumstances may require; and it shall be the duty of the sheriffs, at least once in every year, to report to the court, the condition and number of such blankets and bed clothing: *Provided*, that whenever any negro prisoners are allowed the use of said blankets or clothing, their owner shall pay to the jailers, in addition to the other fees, the sum of two and a half cents per day for each and every blanket had in use by such prisoner; which sum shall be accounted for to the court by the jailer receiving the same.

11. For the preservation of the health of such persons, as shall at any time hereafter be committed to the county prisons, the court shall have power to mark out such a parcel of the land as they shall think fit, not exceeding six acres, adjoining to the prison, for the rules thereof; and every prisoner, not committed for treason or felony, giving good security to the sheriff of the county to keep within the said rules, shall have liberty to walk therein, out of the prison, for the preservation of his or their health; and every prisoner, giving such security as aforesaid, and keeping continually within the said rules, shall be and is hereby adjudged and declared to be in law a true prisoner; and that every person, therewith concerned, may know the true bounds of said rules, the same shall be recorded in the county records, and the marks thereof shall, from time to time, be renewed as occasion may require.

12. All and every bond or bonds, which shall hereafter be given in pursuance of the above section of this act, by any person or

9. 1816, c. 911, s. 2.—1815, c. 899.

10. 1822, c. 1136.

11. 1741, c. 33, s. 3.

12. 1759, c. 65, s. 2 and 3.

persons committed on a *capias ad satisfaciendum*, shall, by the sheriff taking the same, be assigned to the party at whose instance such person or persons was or were committed to jail, and shall be returned to the office of the clerk of the court from whence such execution issued, there to be safely kept, and shall have the force of a judgment; and if any person, who shall obtain the rules of any prison, upon giving bond and security, as aforesaid, shall escape out of the same, before he shall have paid the debt or damages and costs, according to the condition of such bond, it shall be lawful, and full power and authority is hereby given to the court, where such bond is lodged, upon motion of the party for whom such execution issued, to award execution, against such person and his securities, for the debt or damages and costs, with interest to be computed from the time of such escape till payment; and no person or persons whatsoever, who shall be committed to jail on any such execution, shall have or be allowed the rules of any prison, but shall be kept in safe custody in the prison to which he or they shall be committed, until the whole debt or damages, with interest and costs, shall be fully paid and satisfied: *Provided always*, that such obligors have ten days' previous notice of such motion, in writing; and the obligors, in such case, shall not be admitted to plead *non est factum* in their defence, unless they shall, by affidavit, prove the truth of such plea.

prison bounds,  
how to be pro-  
ceeded on.

13. The delivery of prisoners, by indenture between the old sheriff and the new, or the entering on record in court the names of the several prisoners and the causes of their commitment, delivered over to the new sheriff, shall be sufficient to discharge the late sheriff, from all suits and actions for any escape that shall happen.

Manner of  
transferring  
prisoners from  
a sheriff to his  
successor.

14. It shall be the duty of the sheriff or jailer to confine those, committed to his custody, in the apartment provided and designated by law for persons of the description of which the prisoner may be; and in case a sheriff or jailer shall wantonly or unnecessarily confine prisoners, committed to his keeping, otherwise than is by this section directed, it shall be a misdemeanor in office, and, upon conviction, he shall be fined at the discretion of the court.

Prisoners to be  
confined, in  
the proper  
apartments of  
the jail.  
Penalty on  
sheriff or jailer  
for confining  
them other-  
wise.

13. 1777, c. 118, s. 12.

14. 1795, c. 433, s. 4.

*Note.*—REFERENCES TO ADJUDGED CASES.

SECT. 12. *Wynn vs. Buchett*, Tayl. 140. *Brown vs. Pulliam*, 1 Murph. 421. *Mann vs. Vick*, 1 Hawks, 427. *Gidney vs. Halsey*, 2 Hawks, 550.



## CHAPTER 91.

## PROCESSIONING.

## AN ACT CONCERNING THE PROCESSIONING OF LANDS.

## SECTION

1. County courts to divide their counties into districts, and appoint a proceSSIONER in each district.
2. ProceSSIONERS to take oaths.
3. Owners of lands, how to proceed to have them proceSSIONED.
4. When land lies partly in two counties, it may be proceSSIONED by proceSSIONERS in either.
5. ProceSSIONER to make out a certificate in words at full length and return it to the clerk, &c.

## SECTION

6. Certificate to be recorded by the clerk.
7. What to be done when a line is disputed, and the proceSSIONER is forbidden to proceed.
8. Person whose lands have been twice proceSSIONED, to be deemed the owner—Proviso as to what persons shall not be bound by such proceSSIONING.

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 the duty of the several county courts of this State, to divide their respective counties into as many districts as to them shall appear most convenient, for the purpose of having proceSSIONED the lands of all such persons as desire it, and it shall be the further duty of the said counties, whenever application is made for the same, to appoint some person capable of surveying, to act as proceSSIONER in the respective districts, and where any person appointed proceSSIONER shall die, remove, refuse to act, or resign, the court shall appoint another to fill such vacancy, as soon as possible after the same happens.

County courts to divide their counties into districts, and appoint a proceSSIONER in each district.

ProceSSIONER to take oaths.

2. The proceSSIONERS, appointed in pursuance of this act, previous to entering upon the execution of their office, shall take, in open court or before some justice of the peace, the oaths appointed for the qualification of public officers and also an oath of office.

Owners of lands, how to proceed to have them proceSSIONED.

3. The proprietor of any land in this State, desirous to have the same proceSSIONED, shall cause to be given ten days notice to all persons, whose lands may be adjoining to any tract which he is about to proceSSION, which notice shall be in writing, and a copy of the same delivered to the proceSSIONER, signed by the person who served such notice.

When land lies partly in two counties, it

4. Whenever any tract of land shall lie partly in one county and partly in another, it shall be lawful for the proceSSIONERS of the

1. 1792, c. 365, s. 1, 2 and 4.—1804, c. 670, s. 2.

2. 1792, c. 365, s. 3.

3. 1792, c. 365, s. 5.

4. 1804, c. 670, s. 1.

district in either county, on application of any person who may have lands so divided, lying partly in his said district, to procession the same in like manner as if the whole tract lay in the same county.

may be processioned by processioners in either.

5. The processioner shall make out a certificate, in words at full length, for each tract of land by him processioned, which certificate shall contain the claimant's name, the quantity of acres, the corners and number of poles contained in each line, signed by such processioner, and the certificate made out as aforesaid, shall be returned to the clerk of the county, where said lands lie, together with a copy of the several notices.

Processioner to make out a certificate in words at full length, and return it to the clerk, &c.

6. The clerk, upon receiving such certificate, shall record the same in a bound book, specially kept for that purpose, and file the same with the notices in his office; and, for every certificate by him recorded, he shall be entitled to receive twenty cents, which, together with the fees of the processioner, shall be paid by the proprietor of the land processioned.

Certificate to be recorded by the clerk.

7. In all cases where a line is disputed, and the processioner is forbidden by either of the parties, interested in the event of the processioning, to proceed further in running and marking the same, it shall be the duty of such processioner, he being legally appointed, to report the same, stating truly all the circumstances of the case, with the name of the person or persons who forbade the further proceedings, to the next succeeding court of the county, in which the land lies; and it shall be the duty of the court, receiving such report, to appoint five respectable freeholders, whose duty it shall be to appear with the processioner on the line or lines so disputed, and proceed, after being sworn by the processioner or some justice of the peace, to do equal right and justice between the contending parties, to establish such disputed line or lines, as shall appear to them right, and procession the same, and make report of their proceedings to the next succeeding court, which proceedings shall be recorded by the clerk of said court, as directed by the above section: *Provided nevertheless*, that either of the contending parties may call in any other surveyor, to act with the processioner, and complete such survey, and the party against whom the decision is made shall pay all costs.

What to be done when a line is disputed, and the processioner is forbidden to proceed.

8. Every person whose lands shall be processioned to him, according to the directions of this act, at two several times, shall be deemed and adjudged to be the sole owner of the said lands, and upon any suit, commenced for any such lands, the party in possession may plead the general issue, and give this act in evidence: *Provided always*, that the processioning of the lands of a tenant for life shall not bar or preclude the heir in reversion or remainder, neither shall any processioning bar or preclude persons under age, *femes covert*, *non compos mentis*, imprisoned, or out of the State, but that all such person or persons shall have free liberty to sue for and dispute the title and bounds of any lands within this

Person whose lands have been twice processioned, to be deemed the owner.

Proviso as to what persons shall not be bound by such processioning.

5 1792, c. 365, s. 6.

6 1792, c. 365, s. 7 and 8.

7 1799, c. 541.—1816, c. 923, s. 2.

8 1723, c. 14, s. 1 and 2.



State : *Provided*, that the same person or persons commence suit and prosecute the same within the time limited by the laws of the State, after the removal of such disability.

*Note.*—REFERENCES TO ADJUDGED CASES.

SECT. 5. Cansler *vs.* Hoke, 3 Dev. 268.

SECT. 7. Wilson *vs.* Shufford, 3 Murph. 504.

## CHAPTER 92.

# PUBLIC ARMS.

### AN ACT CONCERNING THE PUBLIC ARMS.

#### SECTION

1. The public arms, with certain exceptions, to be deposited in the public arsenals.
2. Keeper of the public arms to be appointed—Governor to have the arsenals protected.
3. Governor may distribute the public arms to volunteer companies, upon the commanding officer giving bond.
4. The police authorities of a town, or the senior colonel of a county, may petition for and receive arms, upon giving bond.
5. How the public arms may be distributed in cases of invasion or insurrection.
6. Duty of the militia officers on receiving the public arms.

#### SECTION

7. Penalty for not keeping the public arms in order.
8. Penalty for selling or embezzling the public arms.
9. On the death, &c. of a private, his arms to be taken and delivered to the person succeeding him.
10. Militia officers to demand the public arms, when in the possession of those to whom they were not distributed.
11. Detachments ordered into service may be furnished with arms.
12. The same regulations prescribed for the arms hereafter to be distributed, to be applied to those heretofore distributed.

1846.7. Ch 2.3

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 all the public arms of every description, belonging to the State, which have not been, or may not hereafter be distributed among the militia, according to the provisions of this or some other act of the General Assembly, shall, under the direction of the adjutant general, be deposited and kept in the public arsenals established at Raleigh and Fayetteville, in such proportions as the governor may prescribe.

The public arms, with certain exceptions, to be deposited in the public arsenals.

1. 1820, c. 1058.—1822, c. 1168.—1823, c. 31.

1848. ch 6

2. The adjutant general shall, at each place where an arsenal is established, appoint some suitable person as keeper of the public arms, who shall be allowed a reasonable compensation for his services, not exceeding sixty dollars per annum ; and the governor is hereby authorized and required, whenever he shall deem it expedient, to make such provisions as he may think necessary, for guarding and protecting the said arsenals ; and for the purpose of defraying the expenses incurred under these two sections, the governor shall be and he is hereby authorized to draw, from time to time, on the public treasurer, for such sums as he may deem necessary.

Keeper of the public arms to be appointed.

Governor to have the arsenals protected.

3. The governor may, from time to time, direct such portions of the said arms as may be necessary for arming any volunteer company, organized and equipped according to law, to be delivered to the commanding officer of such company, taking his receipt for the same, but no commanding officer of a volunteer company shall be allowed to draw arms from the arsenals, before he shall have given bond, with two good securities, if required, in double the appraised value of the arms, conditioned for the safe keeping, cleaning and returning of the arms.

Governor may distribute the public arms to volunteer companies, upon the commanding officer giving bond.

4. In case the public authority of any town, or the senior colonel of any county, shall petition the governor for any number, not exceeding sixtyfive stand, of the public arms, he is hereby authorized to furnish them with that number : *Provided*, bond be given, with approved security, if required, for the safe keeping, preservation and return of the same : *And provided*, that no one county shall receive a greater number than sixtyfive, unless in case of insurrection or invasion.

The police authorities of a town, or the senior colonel of a county, may petition for, and receive arms, upon giving bond.

5. In case of insurrection or invasion, or a probability thereof, the governor is authorized to distribute the public arms of the State, and to send them to such places as he may deem necessary and expedient, and to draw warrants, on the treasurer of the State, for such sums as may be necessary for that purpose.

How the public arms may be distributed in cases of invasion or insurrection.

6. When any of the public arms shall be delivered to any colonel commandant, for distribution in his county, it shall be the duty of the said colonel commandant to take receipts of the captains in whose hands they may be, or are placed, and to give the necessary orders for keeping said arms safe and in good order ; and the captains, when they distribute the arms to their respective companies, shall take a receipt at full length, in the muster book of their companies, from each man, in double the value thereof, under seal, conditioned for the safe keeping, and returning of the arms when called for by the colonel commandant ; which said muster book, containing the receipts for the arms, shall be taken good care of, and be subject to the inspection of the colonel whenever he may desire it, and on the death, resignation or removal of the captain, the receipt book shall be handed over to the officer who may be appointed to the command of said company.

Duty of the militia officers on receiving the public arms.

2. 1822, c. 1168.—1828, c. 31.—1830, c. 21, s. 5.  
 3. 1819, c. 1027.—1822, c. 1168.  
 4. 1830, c. 21, s. 2.  
 5. 1830, c. 21, s. 3.  
 6. 1831, c. 45, s. 3.



Penalty for not keeping the public arms in order.

7. Every non-commissioned officer and private, belonging to any company equipped with public arms, shall keep and preserve his arms and accoutrements in good order, and in a soldier-like manner; and for every refusal or neglect to do so, shall be fined by the court martial of his company, a sum not less than two nor more than ten dollars; which fines shall be laid out by the captains for the repairs of said arms; and if a company, so equipped, shall generally keep their arms in a negligent and unsoldier-like manner, the colonel, to whose regiment the said company belongs, shall and may deprive said company of the public arms and accoutrements, and bestow them on some other company belonging to his regiment; which last mentioned company shall receive, keep, and deliver said arms and accoutrements, on the same terms, and under the same regulations prescribed by this act.

Penalty for selling or embezzling the public arms.

8. If any person or persons, to whom the public arms and accoutrements, or any of them, shall be confided, shall sell, or in any manner embezzle the same, or any part thereof, and be thereof convicted in any court of record, he or they shall forfeit and pay, by sentence of said court, for the use of the State, a sum not less than twenty dollars, nor more than fifty dollars, for every stand of arms and accoutrements so embezzled or sold; and shall moreover be imprisoned for a period not less than one month, nor more than six months, and any person or persons purchasing any of said public arms and accoutrements, knowing them so to be, shall be prosecuted in the same manner; and shall, on conviction, be liable to like penalties and imprisonments as the seller or embezzler thereof.

On the death, &c. of a private, his arms to be taken and delivered to the person succeeding him.

9. When any non-commissioned officer or private, belonging to any of the said companies, shall die, remove from any county, or be excused from performing military duty, it shall be the duty of the captain of the company, to which he belonged, immediately to take the arms and accoutrements of the person so dying, removing or excused, into his possession, and deliver them to whoever shall succeed thereto in said company; and the said captain shall keep the said arms and accoutrements safely and in good order, while they remain in his possession.

Militia officers to demand the public arms when in the possession of those to whom they were not distributed.

10. It may be lawful, and shall be the duty of every commissioned officer of the militia of this State, whenever and wherever he shall see or learn that any of the arms belonging to the State, are in the possession of any person other than in whose hands they may be placed for safe keeping, under the provisions of this act, to make immediate demand of such arms, either personally or in writing; and should such person refuse to deliver up such arms to the officer demanding the same, he shall be subject to the same fines and penalties, as are prescribed in this act, for selling or embezzling said public arms.

Detachments ordered into

11. The governor shall have power to order the colonel com-

- 7. 1831, c. 45, s. 4.
- 8. 1831, c. 45, s. 5.
- 9. 1831, c. 45, s. 6.
- 10. 1831, c. 45, s. 7.
- 11. 1831, c. 45, s. 8.

mandant of the county, where any of the public arms may be distributed, to place the same in the hands of any detachment of militia, ordered into the service of this State, or of the United States, if the same shall by him be deemed necessary.

service, may be furnished with arms.

12. The same rules, regulations and penalties, as are prescribed in the sixth, seventh, eighth, ninth and tenth sections of this act, in relation to the public arms hereafter to be distributed, shall be applied and enforced as to the arms heretofore distributed, unless, in the act authorizing such distribution, there be other and different provisions, inconsistent with those herein contained.

The same regulations prescribed for the arms hereafter to be distributed, to be applied to those heretofore distributed.

12. Amendment.

### CHAPTER 93.

AN ACT CONCERNING THE PUBLIC ARMS NOW IN THE ARSENALS AT RALEIGH AND FAYETTEVILLE.

1838.9. ch 1.

SECTION

1. Adjutant general to have the public arms repaired, &c.
2. The public arms to be deposited at certain places, for distribution.
3. Adjutant general to inform the senior colonel of each county, who shall

SECTION

- send for the arms and distribute them.
4. Upon the dissolution of a volunteer company, the arms to be delivered to the colonel.
5. Expenses of repairing, &c. arms, how to be paid.

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 the duty of the adjutant general, and he is hereby authorized, to employ some well qualified artist, at as low a price as possible, to repair the public arms now in the arsenals at Raleigh and Fayetteville, and to have each musket and rifle deeply stamped with the letters N. C.

Adjutant general to have the public arms repaired, &c.

2. When the said arms are so stamped, and in proper order for service, they shall be deposited by the adjutant general at the following places of depot, viz : At Morganton, six hundred and thirty-five rifles, to be distributed, one hundred and five to each of the counties of Rutherford, Burke, Buncombe, Yancey, Haywood and Macon. At Salisbury, one thousand one hundred and fifteen rifles, and three hundred and six muskets, to be distributed, one hundred and five rifles to each of the counties of Rowan, Wilkes, Davie, Davidson, Lincoln, Iredell, Stokes, Surry, Ashe, Cabarrus and Mecklenburg ; and one hundred and two muskets to each

Public arms to be deposited at certain places for distribution.

1. 1836, c. 34, s. 1.  
2. 1836, c. 34, s. 2.



of the counties of Guilford, Randolph and Montgomery. At Fayetteville, eight hundred and sixteen muskets, to be distributed, one hundred and two to each of the counties of Cumberland, Moore, Anson, Richmond, Robeson, Columbus, Bladen and Sampson. At Wilmington, three hundred and six muskets, one hundred and two to each of the counties of New Hanover, Brunswick and Duplin. At Raleigh, eight hundred and sixteen muskets, to be distributed, one hundred and two to each of the counties of Wake, Johnston, Franklin, Orange, Person, Chatham, Rockingham and Caswell. At Newbern, six hundred and twelve muskets, to be distributed, one hundred and two to each of the counties of Craven, Carteret, Jones, Lenoir, Wayne and Onslow. At Washington, five hundred and ten muskets, to be distributed, one hundred and two to each of the counties of Beaufort, Hyde, Pitt, Greene and Edgcomb. At Elizabeth City, five hundred and ten muskets, to be distributed, one hundred and two to each of the counties of Camden, Currituck, Tyrrel, Pasquotank and Perquimons. At Plymouth, six hundred and twelve muskets, to be distributed, one hundred and two to each of the counties of Washington, Bertie, Hertford, Martin, Gates and Chowan. At Halifax, five hundred and ten muskets, to be distributed, one hundred and two to each of the counties of Halifax, Nash, Northampton, Warren and Granville. And the adjutant general is hereby authorized to employ, at each of the above depots, an agent to receive and distribute the said arms.

Adjutant general to inform the senior colonel of each county, who shall send for the arms and distribute them.

3. The adjutant general shall forthwith inform the senior colonel of the several counties, at what depot the quota belonging to his county may be, who shall send for the said arms, and receipt to the adjutant general therefor. The colonel shall deposit the arms with one or more companies of his regiment, and take the captains' receipt therefor; and each soldier shall sign the receipt for his musket or rifle in the muster book; and the expenses of conveying the arms from the depots shall be paid out of the fines, collected in the company or companies receiving the said arms. When any soldier, from age or any other cause, leaves the company, he shall hand over the musket or rifle to the captain; and any person, selling a musket or rifle stamped as aforesaid, shall be subject to indictment in any court, and be fined and imprisoned at the discretion of the court.

Upon the dissolution of a volunteer company, the arms to be delivered to the colonel. Expenses of repairing, &c. arms, how to be paid.

4. When any volunteer company, which has been or may be incorporated, shall be dissolved, the muskets or rifles shall be delivered over to the colonel, and by him disposed of as heretofore directed.

7. The expenses of repairing and stamping the public arms, in pursuance of this act, and also of removing them to the several depots, shall be paid by the treasurer, on the warrant of the governor.

3. 1836, c. 34, s. 3.

4. 1836, c. 34, s. 4.

5. 1836, c. 34, s. 5.

Public Buildings, 1840.1. ch 3  
1842.3. 46. 47. 4

CHAPTER 94.

PUBLIC DOCUMENTS.

AN ACT DIRECTING THE MANNER IN WHICH THE LAWS OF CONGRESS, AND OTHER PUBLIC PRINTED DOCUMENTS, TRANSMITTED TO THIS STATE BY THE GENERAL GOVERNMENT, SHALL BE DISTRIBUTED.

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 laws of congress, and all the other public printed documents, transmitted to this State by the general government, which now are, or hereafter may be, in the possession of the State, shall be distributed by the secretary of state in the following manner, to wit: two copies to each of the counties in the State, which shall be deposited in the offices of the superior and county courts in each county, for the use of the said courts respectively; one copy to each and every judge of the supreme court, and the superior courts of law and equity; one copy to the attorney general; one copy to each and every solicitor; one copy in the offices of governor, secretary of state, treasurer and comptroller; three copies in the library of the university of this State; and three copies retained in the public library, for the use of members of assembly, and other public functionaries.

How the public documents transmitted by the general government shall be distributed.

1823, c. 1, s. 1.

CHAPTER 95.

PUBLIC PRINTING.

AN ACT CONCERNING THE PUBLIC PRINTING OF THE STATE.

SECTION

- 1. The secretary of state to let out the printing of the acts, &c. of the legislature—To let out the journals separate from the acts.

SECTION

- 2. Also, the printing to be done for either or both houses of the General Assembly.
- 3. Persons contracting, to give bonds, &c.

1838.9. ch 26.  
1842.3. ch 42



## SECTION

4. The secretary of state to file the proposals with the governor.
5. What number of the acts and journals shall be printed, and how they shall be distributed.
6. The public acts to be printed separate from those of a private nature—What to be published with them.
7. Within what time copies of the acts and journals shall be furnished to the printer, and by whom—Within what time to be printed.

## SECTION

8. Secretary to have them delivered.
9. Governor, treasurer, &c. to have blanks, &c. printed for their offices.
10. In what form the acts, &c. shall be printed.
11. The secretary of state to keep a book for the names of the justices of the peace in the State.
12. Advertisements, where to be made in certain cases.

1848. ch 757

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,

The secretary of state to let out the printing of the acts, &c. of the legislature. To let out the journals separate from the acts.

That hereafter it shall be the duty of the secretary of state to let out, to the lowest bidder, the printing of the acts and resolutions of the General Assembly, passed at each and every session thereof; to let out also, separate and apart from the acts, the printing of the journals of the senate and house of commons; and the manner of letting out the said printing shall be as follows: the secretary of state shall give reasonable notice, and receive sealed proposals in writing for the printing aforesaid, under such rules and regulations as he may prescribe.

Also, the printing to be done for either or both houses of the General Assembly.

2. The secretary of state shall also let out to the lowest bidder, by the printed page, the public printing, which shall be required to be done by either or both houses of the General Assembly, jointly or separately, during the session, in the manner prescribed in the foregoing section, and communicate to the General Assembly, on the second day of their session, the name of the person or persons with whom the said agreement shall be made.

Persons contracting, to give bonds, &c.

3. The person or persons, with whom the contract aforesaid shall be made, shall give bond, payable to the State, in the sum of one thousand dollars on each contract, (with approved security,) conditioned to perform faithfully the contract so made with him or them, within the time and in such manner as shall be prescribed by law. The bonds, and the security to said bonds, must be accepted and approved by the governor, and the same shall be endorsed on the bonds, after which they shall be filed in the office of the secretary of state.

The secretary of state to file the proposals with the governor. What number of the journals and acts shall be printed, and how they shall be distributed.

4. The secretary of state shall file with the governor, all the proposals, which shall be made to him for doing the printing aforesaid.

5. There shall be a sufficient number of the journals of each session of the General Assembly, to supply each member thereof with one copy, and the offices of the governor, treasurer, secretary and comptroller, and the clerks of the county courts of this State, with each a copy, and one other copy for each of the clerks

1. 1836, c. 33, s. 1.
2. 1836, c. 33, s. 2.
3. 1836, c. 33, s. 3.
4. 1836, c. 33, s. 4.
5. 1836, c. 33, s. 5.

of the General Assembly ; a sufficient number of the acts passed at each session, to serve each member of the General Assembly with one copy ; also one copy for each of the public officers and clerks as aforesaid, one copy for each judge and clerk of the supreme and superior courts, one for the attorney general and each of the solicitors, one for every clerk and master of equity, and for every justice of the peace and sheriff throughout the State, and one copy of the public laws for the executive of each state and territory in the Union.

6. The public laws shall be printed separate from the laws of a private nature, leaving a blank page between the public and private laws, and there shall likewise be printed, in the margin of each page, the year in which the laws were passed. The printer shall also attach to the acts of the General Assembly, the statement of the revenue of North Carolina, agreeably to the comptroller's statement, and an index of the laws.

The public acts to be printed separate from those of a private nature. What to be published with them.

7. The secretary of state shall, within thirty days from the rise of each General Assembly, furnish the printer with complete copies of all the laws ; and the clerks of each house shall, within twenty days after the same time, deliver to the printer complete copies of the journals of each house ; and it shall be the duty of the printer to have such laws and journals of each session printed, and when thus finished and addressed to those entitled to receive them, he shall cause them to be packed up in parcels for each county, and delivered, within ninety days from the close of each session, to the secretary of state.

Within what time copies of the acts and journals shall be furnished to the printer, and by whom.

Within what time to be printed.

8. The secretary of state shall employ a trusty person or persons, to carry to the clerks of the several county courts, or to some person in their behalf, the copies of the journals and acts of assembly, hereby directed to be distributed, on the cheapest and best terms he can.

Secretary to have them delivered.

9. The governor, treasurer, comptroller and adjutant general of this State are authorized to have printed for their several offices, such blanks and other necessary printing, as may be suitable and proper to enable them to discharge the duties required of them by law ; and the amount for which printing shall be reasonable and just, to be judged of and allowed by the board, to be composed of the governor, secretary of state, treasurer and comptroller.

Governor, treasurer, &c. to have blanks, &c. printed for their offices.

10. The journals, acts of assembly, reports of committees, and other documents printed for the assembly, shall be printed in octavo form.

In what form the acts, &c. shall be printed.

11. A book shall be kept by the secretary of state, in which the names of each justice of the peace shall be recorded ; and by the list so kept, the acts aforesaid shall be distributed ; and when a justice of the peace in any county shall resign or die, or his office otherwise become vacant, it shall be entered therein.

The secretary of state to keep a book for the names of the justices of the peace in the State.

- 6. 1836, c. 38, s. 6.
- 7. 1836, c. 33, s. 7.
- 8. 1836, c. 33, s. 8.
- 9. 1836, c. 33, s. 9.
- 10. 1836, c. 33, s. 10.
- 11. 1836, c. 33, s. 11.



Advertisements where to be made in certain cases.

12. In all cases where advertisement is now required by law to be made in the State Gazette, the same may be hereafter made in any newspaper printed at the seat of government.

12. 1836, c. 39, s. 1.

## CHAPTER 96.

# QUARANTINE AND HEALTH.

### AN ACT CONCERNING QUARANTINE, AND TO PREVENT THE INTRODUCTION AND COMMUNICATION OF CONTAGIOUS DISEASES.

#### SECTION

1. Who may direct quarantine, and when—Masters and pilots of vessels to report—Duty of those ordered to perform quarantine—Penalties.
2. Vessel coming from an infected place, to anchor at quarantine ground—Coming into port without permission, the master or pilot indictable.
3. Force may be used to remove such vessel.
4. Port physicians may be appointed.
5. Penalty for passengers or crew breaking quarantine.
6. Penalty on persons going on board without permission—Penalty on master for permitting it—Such persons may be ordered to remain on board.
7. Persons breaking quarantine may be arrested and sent back.
8. Penalty for landing any articles.
9. Oath may be required of the master—Penalty for giving a false certificate.

#### SECTION

10. Provisions to be furnished vessels under quarantine.
11. How penalties recovered and applied.
12. Penalty on pilots in certain cases.
13. Commissioners of navigation may appoint harbor masters and health officers, and enact bylaws and regulations.
14. Commissioners of seaport towns to have, in certain cases, the authority of commissioners of navigation.
15. What shall be considered nuisances in the seaport towns.
16. Owners of lots in seaport towns to keep them drained at certain seasons—Penalty for neglect—Commissioners may remove the nuisance at the expense of the owner.
17. Officers of police in incorporated towns, to adopt measures for preventing contagious diseases.
18. Proviso to the foregoing section.

Who may direct quarantine, and when.

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 the commissioners of navigation in the respective ports and inlets of this State, and, where there are no commissioners, any three justices of the peace convenient to said ports or inlets, or the commissioners of any seaport town, shall meet together and appoint such place or places, as they may think proper, for vessels to perform quarantine, and when a vessel shall arrive at any

1. 1783, c. 194, s. 12.—1793, c. 379, s. 1.—1802, c. 624.

of the said ports or inlets, having an infectious distemper on board, or which came from any place that was, at the time of her sailing, or shortly before, infected with any malignant disorder, the master and pilot of the vessel shall anchor her at the place so appointed, and give immediate information thereof to the commissioners of navigation, or to the commissioners of the seaport town, or, where there are no commissioners, to the nearest justice of the peace, who, with two others to be summoned by him, or any three of the commissioners aforesaid, or any one commissioner and two justices, or any one justice and two commissioners, shall thereupon cause such vessel and her crew to be examined by at least one experienced physician, where to be had, upon whose report in writing, (which said physician is required to make,) and on other information they may receive, it shall and may be lawful for any three of such commissioners, and where no commissioners, any three neighboring justices, or any one commissioner and two justices, or any one justice and two commissioners, or the commissioners of the town to which such vessel is bound, to order and command the master of the vessel, crew and passengers to perform quarantine, as by them shall be deemed most proper and requisite, to check or prevent any infectious distemper from spreading in this State; and every person on board such vessel, directed to perform quarantine, shall from time to time, during such quarantine, obey all and every order given by the authority of the said commissioners or justices, respecting the victualling, purifying and cleansing of such vessel, and all persons and articles on board, and the intercourse of the said persons with the inhabitants of this State, the receiving any person on board, or the putting them on shore; and the said pilot or master, neglecting or refusing to give such information as above required, the pilot for such neglect or refusal shall forfeit and pay the sum of one hundred dollars, and the master for the like neglect or refusal shall forfeit and pay the sum of two hundred dollars. And in case the master of any vessel, so ordered to perform quarantine, shall refuse to comply with, or fail to fulfil the orders of the commissioners or justices of the peace, for performing quarantine with his vessel as aforesaid, he shall forfeit and pay the sum of two hundred dollars for each day he shall fail to proceed and perform the quarantine, ordered by the commissioners or justices of the peace as in this act directed; for which forfeiture or forfeitures the property of said captain, with the vessel and cargo, shall be liable: *Provided*, it shall appear that the breach of the order of the commissioners or justices as aforesaid, was by the consent of the owner or consignee, but if the owner or consignee did not consent, then the master of such vessel only shall be liable; to be recovered and applied in such manner as hereinafter directed.

Masters and pilots of vessels to report.

Duty of those ordered to perform quarantine.

Penalties.

2. If any vessel shall be brought into the State from a place, which, at the time of her departure, was infected with the yellow fever, small pox or other infectious disorder, or if any vessel, arriving in this State, shall have the small pox or yellow fever or other infectious disorder on board, or shall have had such disorder

Vessel coming from an infected place, to anchor at quarantine ground.



Coming into port without permission, the master or pilot indictable.

on board during her passage to this State, such vessel shall be anchored at the place appointed for quarantine, and there remain, until permitted to remove by the commissioners of navigation, or by the commissioners of the town to which said vessel is bound, or by the justices aforesaid; and if any such vessel shall come to such town or into its harbor, without permission obtained as aforesaid, the pilot or master, conducting said vessel or ordering or permitting her to be so conducted to such town or harbor, shall be subject to indictment in the court of pleas and quarter sessions, or superior court, of the county in which said offence is committed, and upon conviction shall be fined not less than one thousand dollars, and be subject to imprisonment until such fine and costs are paid: *Provided*, such imprisonment shall not exceed one year.

Force may be used to remove such vessels.

3. The commissioners of navigation, or the commissioners of the town, in the harbor of which any vessel shall have arrived in violation of this act, or the justices as aforesaid, shall have power and are authorized to use such force as shall be necessary to remove said vessel to the place of quarantine; their reasonable charge for which service shall be paid by the master or owner of said vessel, and may be recovered of either of them before any jurisdiction having cognizance thereof.

Port physicians may be appointed.

4. The commissioners of navigation in the several ports of this State, and, where no such commissioners, the commissioners of the several seaport towns, shall be and they are hereby authorized and empowered to appoint port physicians, and to regulate and prescribe the fees to which they shall be respectively entitled, according to the different quarantine stations, which they shall be bound to attend for the purpose of inspecting vessels, as required by this act, and giving certificates of their situation and condition, in regard to the health of their respective crew and passengers.

Penalty for passengers or crew breaking quarantine.

5. When any vessel shall be directed to perform quarantine as aforesaid, and any seaman or passenger shall, contrary to the order and direction of the commissioners or justices of the peace as aforesaid, leave the said vessel and land on any other place than the said commissioners or justices shall allow of, each and every person so offending shall forfeit and pay the sum of two hundred dollars for each and every offence, and when the person or persons offending shall not be able to pay the said forfeiture, and it can be made appear that they left the vessel with the master's consent, either express or implied, the said master shall be liable to pay the said penalty of two hundred dollars, for each and every such offence of any of his passengers or seamen.

Penalty on persons going on board without permission.

6. When any vessel shall be, as aforementioned, directed to perform quarantine, and any person, knowing of such order, either by the information of the master or otherwise, shall go on board of such vessel without permission of the commissioners or justices aforesaid, each and every person so going on board, shall forfeit and pay the sum of one hundred dollars. And if any person shall be

3. 1817, c. 946, s. 2.

4. 1802, c. 624, s. 2.

5. 1793, c. 379, s. 2.

6. 1793, c. 379, s. 3.

permitted by the master of such vessel to come on board, without informing him or them of the order and directions of the commissioners, or justices of the peace, the said master shall be liable to pay the sum of two hundred dollars for each and every person so offending, and the sum of four hundred dollars for suffering any person so on board to depart his vessel, without leave of the commissioners or justices aforesaid, and the said commissioners or justices are hereby empowered to order every person who shall go on board any such vessel, to remain there for such length of time as they may think proper, and if he disobey such order, he shall be liable to pay the sum of one hundred dollars.

Penalty on master for permitting it.

Such persons may be ordered to remain on board.

7. The commissioners or justices aforesaid shall be, and they or a majority of them respectively are hereby empowered to issue their warrant to any sheriff or other lawful officer, commanding him to take the body of any person that may have left any vessel, ordered as aforesaid to ride quarantine, and carry or cause to be carried him or her on board of said vessel, and the said officer is hereby empowered to summon such persons to assist him in the execution of said warrant, as he may think fit.

Persons breaking quarantine, may be arrested and sent back.

8. If any master of a vessel, ordered to ride quarantine, shall convey, cause or permit to be conveyed, any article or articles of goods, wares and merchandise from on board his vessel on any other land, or into any other boat or vessel, than the said commissioners or justices shall authorize, he shall be liable to pay the sum of two hundred dollars for each and every offence. And any other person, so conveying or causing to be conveyed any article or articles as above mentioned, shall be liable to the like penalty in like manner.

Penalty for landing any articles.

9. The said commissioners or justices may, whenever they think proper, require from any master of a vessel, on his arrival in this State, to declare on oath the state of the health of himself, crew and passengers, and of the place from whence he came. And if any master shall give a false declaration, or any physician shall wilfully give a false certificate of the health of the persons on board any vessel so arriving, he shall forfeit and pay the sum of two thousand dollars.

Oath may be required of the master.

Penalty for giving a false certificate.

10. The commissioners or justices are hereby empowered and directed to furnish any vessel, ordered to ride quarantine as aforesaid, with a sufficient quantity of good wholesome provisions, for the expense of which, the master, vessel and cargo shall be liable.

Provisions to be furnished vessels under quarantine.

11. All fines, penalties and forfeitures imposed by this act, may be recovered by action of debt, or on the case, in any court having cognizance thereof, one half to the informer, the other half to be applied by the commissioners of navigation, for the use and benefit of the navigation of the port, within whose jurisdiction the fine, penalty or forfeiture may have been incurred.

How penalties recovered and applied.

7. 1793, c. 379, s. 4.  
 8. 1793, c. 379, s. 5.  
 9. 1793, c. 379, s. 6.  
 10. 1793, c. 379, s. 7.  
 11. 1793, c. 379, s. 8.



Penalty on pilots in certain cases.

12. If any pilot shall bring any vessel beyond the place fixed and limited, or to be fixed and limited, by the commissioners of navigation, without a certificate of the health officer, declaring that there is no danger to be apprehended from any contagious or infectious disease on board said vessel, such pilot shall forfeit his branch or commission, and from thence be deemed incapable to act as a pilot in any port of this State.

Commissioners of navigation may appoint harbor master and health officer, and enact bylaws and regulations.

13. The commissioners of navigation of the several seaport towns in this State, shall have power to appoint a harbor master and health officer, to prescribe their duties and authority, to make rules and regulations for their government, allow them a reasonable compensation for their services, and determine how and by whom such compensation is to be paid. And said commissioners shall have power to pass such bylaws (not inconsistent with the laws and constitution of this State and the United States,) for the better regulation of the quarantine to be performed by vessels, arriving from ports which may be infected, or suspected to be infected with any contagious disease, and for the purpose of preventing all intercourse between such vessels and persons on shore, as to them may seem meet and proper, and to enforce obedience to such bylaws, by imposing such penalties as they may think proper, which penalties so imposed by them may be recovered as other penalties incurred under this act, and shall be disposed of in the same manner and for the same purposes.

Commissioners of seaport towns to have, in certain cases, the authority of commissioners of navigation.

14. The commissioners of the several seaport towns and towns having a port of entry, where there are no commissioners of navigation, shall have the same power and authorities, and be subject to the same duties, as are herein directed and prescribed for the commissioners of navigation, in relation to the quarantine of vessels, in the ports of their respective towns, and all persons offending against the regulations of such commissioners of towns, where there are ports of entry, shall be subject to the same fines, penalties and forfeitures, as though the said regulations had been made by commissioners of navigation.

What shall be considered nuisances in the seaport towns.

15. All ponds of stagnant water, all cellars and foundations of houses, whose bottoms contain stagnant and putrid water, all dead and putrefied animals lying about the docks, streets, lanes, alleys, vacant lots or yards, all privies that have no wells sunk under them, all slaughter houses, all docks whose bottoms are alternately wet and dry by the ebbing and flowing of the tide, all accumulation of filth in the streets, lanes, alleys, and gutters thereof, all accumulations of vegetable and animal substances undergoing putrefactive fermentation, in any of the seaport towns of this State, are hereby declared common nuisances, productive of offensive vapors and noxious exhalations, the causes of disease, and ought to be restrained, regulated and removed.

Owners of lots in seaport

16. Every person, possessed of a lot or lots in any seaport

12 1797, c. 486, s. 2.

13. Amendment.

14. Amendment.

15. 1815, c. 893, s. 1.

16. 1815, c. 893, s. 2.

town, which, from their low or sunken situation, are liable to retain towns to keep tide, or rain water, or on which cellars or foundations for buildings them drained may be dug, and whether a tenement be erected over the same or at certain seasons. not, shall during the months of June, July, August, September and October, preserve and keep the said lots, cellars and foundations dry and free from stagnant or putrid waters and other filth ; Penalty for neglect. and any person offending herein shall forfeit and pay five dollars for the use of the town, to be recovered in the name of the commissioners thereof, for every week he, she or they shall suffer such stagnant or putrid water or other filth to remain therein. And if Commissioners may remove the said owner or owners shall, notwithstanding the above provision, neglect to remove such stagnant or putrid water or other filth, the expense of the owner. the commissioners of the town may employ such person or persons as they may think proper, and upon such terms as to them may seem reasonable and just, to remove from the said lot or lots, cellar or foundation, the said filth or stagnant or putrid waters, which said expense shall be considered as a further fine for not complying with the provisions of this section, and shall be collected accordingly, and the said expense shall also be a lien upon the lot or lots, upon which the same has been expended.

17. When a contagious disease shall be raging in any part of this State, or in any part of the United States, it shall be the duty of the officers of police of any incorporated town within this State, who may have what they consider well founded apprehensions, that their town is in danger of being visited by such disease, to take such precautionary measures, and provide such penalties for the breach of them, as may seem necessary and proper, the expense of which they are hereby authorized to defray out of any money at the time in their town treasury, or, if that should not be in a situation to sustain the expense, to borrow such sum as may be necessary to defray such expense, and afterwards to raise the amount by tax on the inhabitants of such town, over and above the ordinary taxes levied for the current expenses of such town. Officers of police, in incorporated towns, to adopt measures for preventing the introduction of contagious diseases.

18. Nothing contained in the foregoing section, shall be construed to lessen or impair the power and authority of the commissioners of the seaport towns, or the commissioners of navigation, or other officers, under the quarantine laws of the State, to prevent the introduction of diseases by vessels arriving at or near said seaport towns. Proviso to the foregoing section.

17. 1824, c. 1232, s. 1.

18. 1824, c. 1232, s. 2.



CHAPTER 97.

QUO WARRANTO AND MANDAMUS.

AN ACT CONCERNING WRITS OF QUO WARRANTO AND MANDAMUS.

SECTION

1. In what cases an information may be filed, and by whom—Nature of the proceedings—In certain cases, several rights may be tried in one information — Pleas, when to be filed.
2. Upon conviction, what judgment the court may pronounce—Costs to be recovered by the party succeeding.

SECTION

3. A return shall be made to the first *mandamus*.
4. Court may give time to make return, plead, &c.
5. Returns may be contested, and proceedings thereon—If the plaintiff have a verdict in his favor on such contested return, what consequences shall follow.

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,

In what cases, an information may be filed, and by whom.

That where any person or persons shall usurp, intrude into, or unlawfully hold or execute, any office or franchise, it shall be lawful for the attorney general or solicitors for the State, in the superior court of the county within which the office is situate or the franchise is held and exercised, with the leave of the court, to exhibit an information or informations, in the nature of a *quo warranto*, at the relation of any person or persons desiring to prosecute the same, and who shall be mentioned in said information or informations, to be the relator or relators, against such person or persons, so usurping, intruding into, or unlawfully holding or executing said offices or franchises, and the court shall proceed therein, in such manner as is usual in cases of information in the nature of a *quo warranto* ; and if it shall appear to the court that the several rights of divers persons, to the said offices or franchises, may properly be determined on one information, it shall be lawful for the said courts to give leave to exhibit one such information against several persons, in order to try their respective rights ; and such persons shall appear and plead, as of the same term in which the information is filed, unless the court shall give further time ; and the person or persons, who prosecute such information or informations, shall proceed thereupon with the most convenient speed.

Nature of the proceedings.  
In certain cases several rights may be tried in one information.  
Pleas when to be filed.

Upon conviction, what judgment the court may pronounce.

2. When any person or persons, against whom any information or informations, in the nature of a *quo warranto*, shall in any of the said cases be exhibited, shall be found guilty of an usurpation, in-

1. 9 Annc, c. 20, s. 4.  
2. 9 Annc, c. 20, s. 5.

trusion into, or unlawful holding or executing any of the said offices or franchises, it shall be lawful for the said courts, as well to give judgment of ouster, as to fine such persons, and also to give judgment that the relators shall recover their costs ; and if judgment be given for the defendants, they shall recover their costs against the relators.

Costs to be recovered by the party succeeding.

3. When any writ of *mandamus* shall issue, such persons, as by law are required to make returns, shall make their returns to the first writ of *mandamus*.

A return shall be made to the first *mandamus*.

4. It shall be lawful for the court, to whom such return is required to be made, to allow the persons, to whom any writ of *mandamus* shall be directed, or against whom any information in the nature of a *quo warranto* in the cases aforesaid, shall be prosecuted, or to the persons who shall prosecute the same, such convenient time to make a return, plead, reply, rejoin or demur, as to the said courts shall seem just.

Court may give time to make return, plead, &c.

5. Where any *mandamus* shall issue, and a return shall be made, it shall be lawful for the person or persons, suing such *mandamus*, to plead or traverse all or any material facts contained in the return, to which the persons making the return shall reply, take issue or demur, and such proceedings shall be had therein as might have been had, if the person suing such writ had brought his action on the case for a false return ; and if issue shall be joined on such proceedings, the person or persons, suing such writ, may try the same in such place, as issue joined in such action on the case might have been tried ; and in case a verdict be found for the person or persons suing such writ, or judgment given for him or them, they shall recover their damages and costs, as they might have done in such action on the case, to be levied as in other cases ; and a peremptory writ of *mandamus* shall be granted without delay, as if such return had been adjudged insufficient ; and in case judgment shall be given for the persons making such returns, they shall recover their costs : *Provided*, if any damages shall be recovered, by virtue of this act, against any person or persons making such return to such writ as aforesaid, he or they shall not be liable to be sued in any other action or suit for making such return.

Returns may be contested, and proceedings thereon.

If the plaintiff have a verdict in his favor on such contested return, what consequences shall follow.

- 3. 9 Anne, c. 20, s. 1.
- 4. 9 Anne, c. 20, s. 6.
- 5. 9 Anne, c. 20, s. 2.

## Rail. Roads.

1838. 9 - Ch 29.

1840. 1. Ch

1840. 1 - - 57.

1838. 9 31.

1842. 3 . 67.

1844. 5 - 78-74

1846. 7. 85-86

for Wil & Nat Rail Road

R & B. RR -



*Registration of Deeds. v - 1848. ch 62*

**CHAPTER 98.**

*338.9 - ch. 33.34.* **R E G I S T E R S .**  
*340.1. ch. 43-35*  
*342.3.4.5.6.7. extends time of Registration*

**AN ACT CONCERNING REGISTERS.**

**SECTION**

1. County courts to appoint registers, who are to take oaths, and hold their offices for four years.
2. County courts to fill vacancies, and the persons appointed to hold office for four years.
3. Three justices to fill vacancies occurring between the terms of the courts, and the persons appointed to remain in office until an appointment by court—The clerk shall record such appointment.
4. Registers to give bond.
5. Clerks to deliver deeds, and pay over register's fees after ten days from the rise of the court.

**SECTION**

6. Registers, to call upon the clerks for the deeds, &c. within twenty days from the rise of the court.
7. Penalty on registers for delay in registering deeds, &c.
8. Registers, to leave deeds, &c. which they have registered, at the county court.
9. Registers convicted of breach of duty, may be removed from office.
10. County courts may have register's books transcribed.
11. Registers, to be exempt from serving on juries.

County courts to appoint registers, who are to take oaths, and hold their offices for four years.

County courts to fill vacancies, and the persons appointed to hold office for four years.

Three justices to fill vacancies occurring between the terms of the

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 the several courts of pleas and quarter sessions, a majority of the acting justices being present, shall, by a vote of a majority of the justices present, nominate and appoint a register for their respective counties, who shall take the oaths appointed for the qualification of public officers, and an oath of office, and shall hold his office for the term of four years.

2. When any vacancy shall arise in the office of register of any county, by death, resignation or otherwise, it shall be the duty of the county court, wherein such vacancy may happen, a majority of the justices being present, to elect some suitable person of such county to be register for the term of four years, next succeeding his appointment, who shall be qualified as above directed, and, after the expiration of the term of four years, for which any person may be appointed register, under the provisions of this section, the several county courts shall proceed to elect registers in the manner prescribed in the first section of this act.

3. When any vacancy shall exist in the office of register of any county, by death or otherwise, in the interval between the county courts, it shall be lawful for any three justices of the peace of such

1. 1777, c. 118, s. 13.—1816, c. 901, s. 1.—1822, c. 1147, s. 1.  
 2. 1835, c. 24.  
 3. 1835, c. 18, s. 1 and 2.

county, to meet at the office of the clerk of the court of pleas and quarter sessions of such county, and nominate and appoint a register, who shall give bond and take the oaths, required by law from registers regularly appointed, and shall take into his custody the book and records, be bound to perform all the duties, and invested with all the powers, authorities and emoluments pertaining to said office, and shall hold his office until an appointment shall be made by the court of pleas and quarter sessions, as prescribed in the first section of this act; and it shall be the duty of the clerk of the court of pleas and quarter sessions to record the appointment, so made in vacation, on the records of said court, for which he shall be entitled to the same compensation, that he receives for recording an appointment made in open court.

courts, and the persons appointed to remain in office until an appointment by court.

The clerk shall record such appointment.

4. Every register, before he enters upon the duties of his office, shall give bond with sufficient security, in the penalty of ten thousand dollars, payable to the State of North Carolina, and conditioned for the safe keeping of the books and records, and for the true and faithful discharge of the duties of his office, which bond shall be renewed every year, and, upon a breach thereof, shall be sued upon as in other cases of official bonds.

Registers to give bond.

5. Each of the clerks of the courts of pleas and quarter sessions, upon application of the register for his county, at any time after ten days from the rise of each court, shall deliver to the said register all deeds and other instruments of writing, admitted to probate, and then remaining in the office of the said clerk for registration, and shall at the same time pay over to the register the several fees for registering the same, which fees it shall be the duty of the clerk to receive for the register; and in case any one of the said clerks shall fail to deliver over such deeds and instruments of writing, upon the application of the register aforesaid, and to pay to the said register his fees as aforesaid, he shall for every such failure, forfeit and pay to the register the sum of one hundred dollars, for which sum judgment shall be entered by the succeeding court, upon motion on behalf of the register.

Clerks to deliver deeds, and pay over register's fees after ten days from the rise of the court.

6. It shall be the duty of the registers within the several counties, within twenty days after the rise of each and every county court as aforesaid, to apply at the clerk's office of their respective counties, for all deeds and other instruments of writing as aforesaid, admitted to probate for registration, and in case of neglect by either clerk or register in performing the duties aforesaid, the person, so neglecting, shall forfeit and pay the sum of ten dollars for every such offence, to be recovered by warrant before a justice of the peace, one half to the use of the poor of the county in which such recovery may be had, the other half to the use of any person suing for the same, and be further liable for all damages the party injured by such neglect may sustain.

Registers to call upon the clerks for deeds, &c. within twenty days from the rise of court.

7. Every register, who shall neglect or delay to register any deed or conveyance, within two months after the same shall be

Penalty on registers for delay in registering deeds, &c.

4. 1777, c. 118, s. 13.—1833, c. 17.—1819, c. 990.—1793, c. 384, s. 1, 2 and 3.

5. 1814, c. 881, s. 2.—1807, c. 725, s. 1.

6. 1807, c. 725, s. 2.

7. 1756, c. 58, s. 5.—1741, c. 34, s. 4.



delivered to him, such register, for each and every two months he shall so neglect or delay, shall forfeit and pay the sum of forty dollars, one half to the use of the poor of the county, and the other half to him or them, who will sue for the same, to be recovered by action of debt with costs.

Registers to leave deeds, &c. which they have registered, at the county court.

8. It shall be the duty of each and every public register, to leave at each and every county court of pleas and quarter sessions, within their respective counties, all grants or State patents, which have been delivered to them for registration, one week previous to the setting of such court, and on which their fees have been paid, ready to be delivered to the owner thereof.

Registers convicted of a breach of duty, may be removed from office.

9. If the register of any county shall be guilty of any breach of the duties enjoined him by this act, either by his own confession or verdict of a jury, it shall, on a second conviction, be adjudged and deemed a misbehavior in office, for which such register shall be removed from office: *Provided nevertheless*, that in case such register shall be dissatisfied with the determination of the county court, he may appeal to the superior court of the same county, in which there shall be a trial by jury, and if the suspension of the county court shall be confirmed, the said register shall ever afterwards be rendered incapable of acting in the same office in any county in this State.

County courts may have register's books transcribed.

10. The courts of pleas and quarter sessions shall have power to employ suitable persons to transcribe and index such of the register's books, in their respective counties, as from decay or other cause may require to be transcribed or indexed, and the said books, when so transcribed and approved of by the said courts respectively, shall be deemed and taken as public records; and copies from said books, of deeds and other conveyances, reports of commissioners appointed to make partition of real estate, and all other papers required by law to be registered, certified by the registers for the time being, shall be received in evidence in the same way and under the same rules, regulations and restrictions, as copies from the register's books have heretofore been received in evidence.

Registers to be exempt from serving on juries.

11. Registers shall be exempted from serving on juries.

8. 1807, c. 725, s. 4.

9. 1724, c. 223, s. 9.

10. 1814, c. 831, s. 1.

11. Amendment.

CHAPTER 99.

RELIGIOUS SOCIETIES.

AN ACT CONCERNING RELIGIOUS SOCIETIES AND CONGREGATIONS.

SECTION

1. All lands, &c. heretofore appropriated to any religious society, to belong to them.
2. Houses of worship, on vacant land, secured to the religious society erecting them.
3. Religious societies may choose trustees—Their power.
4. Trustees may sue and be sued.
5. Trustees to account to their respective societies.
6. Donations, &c. to religious societies confirmed.
7. Penalty for obstructing ways to places of public worship.

SECTION

8. No stud horse or jackass to be brought within three hundred yards of a place of a religious congregation.
9. Spirituous liquors not to be brought for sale within half a mile of persons assembled for religious worship.
10. Proviso to the two last sections.
11. Penalty for intoxication or disorderly behavior during divine service.
12. How penalties shall be recovered.
13. When appeal is taken, duty of clerk and prosecuting attorney.

*1844. 5. Ch 47. - 1848. Ch. 7*

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 all glebes, lands and tenements, heretofore purchased, given or devised for the support of any particular ministry, or mode of worship, and all churches, chapels and other houses, built for the purpose of public worship, shall be and remain forever to the use and occupancy of that religious society, church, sect or denomination, to or for which, the said glebes, lands or tenements were so purchased, given or devised, or for which the said churches, chapels, or other houses of public worship were built.

All lands, &c. heretofore appropriated to any religious society, to belong to them.

2. All houses and edifices, erected for public religious worship, where the same may have been on vacant or unappropriated lands, together with two acres adjoining the same, shall hereafter be held and kept sacred for divine worship, to and for the use of the society, by which the same was originally established.

Houses of worship, on vacant land, secured to the religious society erecting them.

3. It may be lawful for any religious society or congregation in this State, if they should deem it necessary, at any time, to elect any number of persons they may think proper, as trustees for their respective societies or congregations, from whose body they may have been selected, and all such persons, so appointed, or their successors in office, are hereby vested with full and ample power to purchase and hold, in trust for such society or congregation to

Religious societies may choose trustees.

Their power.

1. 1776, c. 107.  
 2. 1773, c. 132, s. 6.  
 3. 1796, c. 457, s. 1.



which they may belong, any lands, houses or tenements, and to receive gifts and donations of any nature or kind whatever, for the use and benefit of such society or congregation: *Provided nevertheless*, that by virtue of this act no single congregation or society shall hold more lands, than in value shall amount to the sum of four hundred dollars yearly, and in quantity to two thousand acres, all which shall be subject to taxes like other lands.

Trustees may sue and be sued.

4. It may be lawful for trustees, acting under the authority of this act, to sue for the recovery of any gift or donation, that has been heretofore or may hereafter be given, whether of real or personal property, and to sue and be sued in all cases of tort or contract, of or concerning the property, real or personal, of which they are trustees; also in all matters of contract, which may be cognizable before a justice of the peace, for the purposes aforesaid, and if any recovery shall be made by the said congregation or society, or their trustees, such recovery shall enure to the sole use of the respective societies or congregations, to which they may belong.

Trustees to account to their respective societies.

5. It shall be lawful for such religious societies or congregations, at any time they may think proper, to cause the said trustees to account for all such property, of any nature or kind whatsoever, that may have been committed to their trust; and in case of refusal or neglect, when required so to do, it shall be lawful for the society or congregation to elect any number of persons as agents, in behalf of said society or congregation, to bring suit for the recovery thereof.

Donations, &c. to religious societies confirmed.

6. All lands, houses, tenements, gifts or donations, of any kind or nature whatsoever, that have been heretofore or may be hereafter given, granted or otherwise confirmed or conveyed to any religious society or congregation, or to any of the members thereof, for the use of the said society or congregation, shall be deemed and held valid in law to convey to the said society or congregation, or respective societies or congregations, the absolute estate of all such property, as may have been intended to be made or expressed in such deed of sale, will or gift: *Provided nevertheless*, that nothing contained in this act, shall tend to affect the claim or claims of any other person or persons, except the donor, his heirs or those claiming under him or them, from whom the respective societies or congregations may have derived their titles.

Penalty for obstructing ways to places of public worship.

7. Any person, who shall, under pretence of owning the land or lands adjoining or surrounding any church, meeting house or other house or houses of religious public worship, stop or obstruct, or cause the same to be done, the usual way or ways leading to or from any of the aforesaid places of public worship, or springs or wells therewith used, shall forfeit and pay the sum of ten dollars for every such offence: *Provided always*, that nothing herein shall subject any person to the penalty aforesaid, who shall surround any spring or well with a fence, if such fence shall not

4. 1796, c. 457, s. 2.

5. 1796, c. 457, s. 3.

6. 1796, c. 457, s. 4.

7. 1785, c. 211.

absolutely render a passage to such spring or well impracticable : *And provided also*, that surrounding any piece of land, through which any of the aforesaid ways shall lead, shall not subject any person to the said penalty, if a passage shall be left to the church, meeting house or place of religious public worship, of the same width at least that such way was usually of.

8. No person shall bring to any place, where a congregation is assembled for divine worship, or within three hundred yards thereof, any stud horse or jackass, under the penalty of six dollars, to be recovered by warrant, in the name of the State, before any justice of the peace of the county in which such offence may be committed, to be applied to the use of the poor of said county : *Provided*, nothing herein contained shall be so construed as to prevent any person from removing his stud horse or stud horses, from one stand to another, so that he does not stop his stud horse within three hundred yards of the aforesaid place of worship.

No stud horse or jackass to be brought within three hundred yards of a place of a religious congregation.

9. It shall not be lawful for any person, who is settled within a mile of any church or meeting house or other place, where persons are assembled for divine worship, the keepers of licensed taverns and stores excepted, to sell spirituous liquors or other articles to persons assembled for divine service ; and if any person shall bring to any church or meeting house yard, on days fixed upon for divine worship, or to any place, where persons are assembled for divine worship, or within half a mile of either of said places, and shall there attempt to sell or give away, on such days as aforesaid, any spirituous liquors or other articles, or shall erect any booth, harbor, or make a stand within half a mile thereof, for the purpose of selling or giving away spirituous liquors and other articles, on such days as aforesaid, each and every person so offending shall forfeit and pay the sum of ten dollars.

Spirituous liquors not to be brought for sale within half a mile of persons assembled for religious worship.

10. The eighth and ninth sections of this act are not intended to operate and take effect before the hour of ten in the forenoon, and after the hour of four in the afternoon, where a church or meeting house is situated within the limits of any town, nor shall any recovery be had in pursuance of this act, unless information shall be made of the offence within ten days after it is committed.

Proviso as to the two last sections.

11. If any person shall be intoxicated at a church, meeting house or any other place appointed for divine worship, in the time people shall be there assembled for the purpose of divine worship, or shall at such time and place quarrel, fight or be guilty of any other disorderly behavior, he shall forfeit and pay the sum of five dollars.

Penalty for intoxication or disorderly behavior during divine service.

12. The penalties, incurred under this act, shall and may be recovered before any justice, within whose county the same may happen, by warrant in the name of the State, to the use of the poor of the county, or by indictment ; and upon information of any such offences being made to a justice of the peace in his county,

How penalties shall be recovered.

8. 1809, c. 779, s. 1.

9. 1800, c. 564, s. 1.—1808, c. 761, s. 1.—1809, c. 779, s. 2.

10. 1800, c. 564, s. 2.

11. 1807, c. 729, s. 2.

12. 1800, c. 564, s. 1.—1807, c. 729, s. 2.—1816, c. 922.



he shall issue his warrant against such offender, and have him or her apprehended and brought to justice. *Provided* the application be made for said warrant, within ten days after the offence was committed.

When appeal is taken, duty of clerk and prosecuting attorney. 13. The clerk shall enter on the State docket all appeals from judgments, rendered for penalties given under this act; and it shall be the duty of the prosecuting officer to prosecute the same, who shall be entitled to the same fees, as are allowed for State prosecutions.

13. 1807, c. 779, s. 4.

*Note.*—REFERENCES TO ADJUDGED CASES.

SECT. 6. *Trustees vs. Dickinson*, 1 Dev. 190.

## CHAPTER 100.

# REPEAL OF STATUTES.

### AN ACT CONCERNING THE REPEAL OF STATUTES.

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 repeal of a statute shall not effect any suit or suits, brought before the repeal, for any forfeitures incurred, or for the recovery of any rights accruing, under said statute.

The repeal of a statute not to affect suits pending.

1830, c. 44.

## CHAPTER 101.

# REPLEVIN.

### AN ACT CONCERNING THE ACTION OF REPLEVIN.

#### SECTION

1. Action of replevin for slaves maintainable, in what cases.
2. Duty of clerk before issuing writ.
3. Description and value of slaves to be stated.
4. Duty of sheriff in executing the writ.

#### SECTION

5. What judgment shall be rendered if plaintiff recovers.
6. What judgment the plaintiff shall have in case of his recovery, when the slave shall have been delivered to him agreeably to the fourth section.

1838. 9. ch. 35.

recovery of P/H.  
entire judgment on Def

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 writs of replevin for slaves shall be held and deemed to be sustainable, against persons in possession of such slaves, in all cases where actions of detinue or trover are now proper : *Provided*, that the plaintiff, his or her agent or attorney, in such action of replevin, shall make oath before the clerk issuing such writ, that he or she has been in the lawful possession of such slave, within two years next preceding the issuing of said writ, and that he or she has been deprived of such possession, without his or her permission or consent.

Action of replevin for slaves maintainable, in what cases.

2. Whenever any person shall apply to the clerk of any court in this State to obtain a writ of replevin for any slave, it shall be the duty of such clerk, before he issues the same, to take an affidavit from the plaintiff in such writ, or from his or her agent or attorney, of the value of such slave ; and also to take a bond, with approved security, in double the alleged value of such slave, payable to the defendant, and conditioned to perform the final judgment on such writ.

Duty of clerk before issuing writ.

3. In issuing writs of replevin, the clerk shall, as nearly as may be convenient, describe every slave therein demanded, and shall annex to such description a value, which shall be equal to double the sworn value of such slave.

Description and value of slaves to be stated.

4. The sheriff, to whose hands any writ of replevin for any slave or slaves shall hereafter come, shall forthwith take into his custody all such slaves, and deliver them to the plaintiff in such writ, or his or her agent or attorney : *Provided always*, that if the defendant in such writ shall execute and deliver to the sheriff a bond, with approved security, in double the amount of the sworn value of the slave or slaves, described in the said writ, payable to the plaintiffs therein, with a condition to perform the final judgment which shall be rendered thereon, it shall not be lawful for said sheriff to take such slaves from his or her possession ; but he shall return the bond so given, with the writ, to the court from which it issued.

Duty of sheriff in executing the writ.

5. If, upon the trial of such action, the plaintiff or plaintiffs shall recover, final judgment shall be rendered against the defendant and his security, in case he shall have given a bond as required by the fourth section of this act, for such value as shall be assessed by the jury upon such slave or slaves, with a condition to be discharged by the surrender of such slave or slaves demanded by the writ, and the judgment of such damages, as may be adjudged by the court, for the taking and detention of such slaves, which damages for the taking and detention aforesaid, the court shall assess double the amount assessed by the jury.

What judgment shall be rendered if plaintiff recovers.

6. In case the slave, demanded in any writ of replevin, shall have been taken by the sheriff and delivered to the plaintiff in such writ, agreeably to the fourth section of this act, then if the plaintiff

What judgment the plaintiff shall have in case of his re-

1. 1823, c. 23, s. 1.
2. 1823, c. 23, s. 2.
3. 1823, c. 23, s. 3.
4. 1823, c. 23, s. 4.
5. 1823, c. 23, s. 5.
6. 1823, c. 23, s. 6.



covery when the slave shall have been delivered to him agreeably to the fourth section.

recovers in such action, he shall recover judgment for his costs, and double the real damage assessed by the jury for the taking and detention of such slave or slaves ; but if the plaintiff in such action shall fail to recover, and a verdict be rendered for the defendant, it shall be the duty of the court, rendering judgment thereon, forthwith to direct an issue to be tried, in which the damages, the defendant has sustained from being deprived of his property, shall be ascertained, and judgment shall be rendered against the plaintiff and his securities for the amount of the bond given by them, agreeably to the second section of this act, with a condition to be discharged upon payment of the amount of damages thus assessed, and all costs, for which the defendant is entitled to judgment.

CHAPTER 102.

REVENUE.

AN ACT TO PROVIDE FOR THE COLLECTION AND MANAGEMENT OF A REVENUE FOR THIS STATE.

SECTION

- 1. Tax on real estate.
- 2. What real estate shall be subject to taxation.
- 3. Entries of land subject to taxation.
- 4. Tax on real estate shall be a lien thereon.
- 5. Tax on turnpike roads and gates.
- 6. Poll tax—Proviso as to who may be exempted from poll tax.
- 7. Tax on stud horses and jackasses.
- 8. Stud horses and jackasses to be listed.
- 9. Tax on billiard tables—How to be given in and license obtained for keeping them.
- 10. Tax on pedlers by land—Tax on pedlers by water—Persons selling books only, not to be taxed.
- 11. Tax on pedlers by water on the south side of Albemarle sound, except on Roanoke and Cashie.
- 12. Tax to be collected, though the pedler may rent a temporary store.
- 13. The comptroller to issue to the sheriffs, blank licenses for pedlers—No license to be issued to a pedler but on a certificate from the county court.

SECTION

- 14. Tax on retail merchants and jewelers—On wholesale and commission merchants.
- 15. Tax on brokers.
- 16. Tax on slaves brought from another state to this State for sale.
- 17. Tax on stage players, sleight of hand performers, exhibitors of curiosities, &c.—Models of useful inventions excepted.
- 18. Pedlers, stage players, &c. to exhibit their licenses to any justice or constable when demanded—Penalties for refusal.
- 19. Duty of constables to demand a view of such licenses.
- 20. Tax on retailers of spirituous liquor.
- 21. Tax on tavern keepers.
- 22. Time when the list of taxables shall be taken.
- 23. County courts to appoint justices to take lists—Justices to be notified of their appointment—To appoint places of taking the lists—Three justices may appoint one to take lists in case of vacancy.
- 24. How tax lists shall be given in.
- 25. Tax lists to refer to the first day of

83.8.9 ch 36  
40.1 ch 49.  
44.5 ch 18.

848. ch. 79 x

1846.7. ch 72-73-74-67. — 1848. ch 77. 78. 80. 8.

## SECTION

- April preceding—A person coming of age after that day may list himself and pay immediately.
26. By whom the lists of absentees, testators, minors, &c. shall be given in.
27. If owner fails to give in his lands, the justice may appoint a freeholder to value it.
28. In case of failure by the owner and justice, the sheriff to have the land valued by a freeholder—Duty of such freeholder.
29. Penalty on freeholders refusing to act.
30. Valuation of lands to be in dollars and cents—How town property to be given in and assessed.
31. A tract of land lying partly in two counties, where to be given in.
32. County court to associate with the justices appointed to take the tax lists, two freeholders to form a board of valuation—Duty of the board in assessing the value of lands—Their compensation.
33. Persons failing to give in their lists, to pay a double tax—Lands of a minor, &c. not to be sold for taxes.
34. Justices appointed to take the lists, to return a copy of such lists in alphabetical order to the next county court—Clerks to return abstracts of the lists to the comptroller—Penalty on the clerks for failing to do so; and duty of the comptroller and attorney general in regard to such failure.
35. Form of the lists to be returned by the justices.
36. Each justice to return his own lists.
37. Penalty on justices appointed to take lists, for failure of duty.
38. County courts may grant a certificate to be received by the comptroller, when the tax is overcharged.
39. Clerks to record the tax lists, and set up copies of them in the court house.
40. Penalty on a justice for receiving a list without an oath.
41. The clerks of the county courts to deliver to the sheriffs copies of the lists returned—Sheriff to proceed to collect after first of April—Penalty on the clerks for failure to deliver lists.
42. All persons employed to collect taxes must take an oath.

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43. Sheriffs by themselves or their deputies, or in case of their deaths, their sureties to collect the taxes.
44. Sheriffs and their sureties to have one year to collect arrears.
45. Sheriffs to collect a double tax from those who neglect to give in their lists—Such tax, how to be ascertained.
46. Sheriffs to give notice by advertisement when they have received their lists—Penalty on sheriffs for failing to collect taxes on property not given in.
47. Sheriffs and their sureties may distrain and sell during the additional year.
48. Lands may be distrained and sold when there is no personal property.
49. When a person is about to remove, the sheriff may proceed forthwith to levy the taxes due from him.
50. Sheriff to give ten days' notice by advertisement, before he sells personal property for taxes.
51. Sheriff to advertise in some newspaper in Raleigh, and also at the court house of his county, before he sells land for taxes.
52. Sheriff to return to the county court a list of the tracts of land to be sold, which list shall be recorded, &c.
53. To return a list of the lands sold, the name of the purchaser, &c., which shall be recorded, and a copy set up in the court house.
54. Penalty on sheriffs and clerks for failing to perform the duties enjoined in the two preceding sections.
55. Sheriff to sell the land at public sale to him who will pay the taxes and costs for the smallest part.
56. The purchaser to choose his part in a compact body.
57. Persons whose lands are sold, may redeem within twelve months.
58. Purchaser to have his lands surveyed and the sheriff to execute a deed.
59. Penalty on the county surveyor for refusing—If he refuses, another may make the survey.
60. When the land shall be struck off to the governor for the use of the State.
61. How the deeds of the sheriff to the governor shall be perfected—Penalty on the clerks for failure of duty in this particular.
62. Sheriff to deposit the deeds in the



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- secretary's office—Lands so bid off, to be deemed vacant—Sheriff's oath with respect to such lands.
63. Sheriffs to be allowed for the taxes on land bid off for the governor.
  64. Persons purchasing lands sold for taxes, liable for accruing taxes—Lands to revert to the State upon the purchaser's failing to comply.
  65. Where a sheriff dies or goes out of office, his successor may make a deed for lands sold for taxes—What to be done by purchaser before obtaining such deed.
  66. Sheriffs to settle with comptroller, when.
  67. Sheriffs, in their settlements, to designate the different sources of the taxes—Comptroller to give the sheriffs certified copies of the returns, to be deposited with the clerks.
  68. Sheriffs to return upon oath to the county court a list of all taxes received from merchants, &c.—Such returns to be recorded and published by the clerks.
  69. If such return cannot be made to court, it may be returned and filed with the clerk in vacation.
  70. The clerk shall give to the sheriff a copy of the return, to be by him delivered to the comptroller—Provisos.
  71. Penalty on sheriffs for failing to make returns to court or to the clerk.
  72. Duty of the comptroller when he suspects any sheriff of making any false return or swearing falsely.
  73. Clerks, for refusing to record or to certify returns, shall be liable to in-

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- dictment for a misdemeanor in office.
74. Sheriffs to render a list of persons who paid a double tax.
  75. Sheriffs to be allowed for insolvent taxables—How to obtain such allowance.
  76. List of insolvents to be advertised by the clerk.
  77. Penalties on sheriffs for certain violations of duty in relation to insolvents.
  78. Sheriffs' oath on settling his accounts with the comptroller.
  79. Oath as to the collection of delinquent taxes—Penalty for collecting and not accounting for delinquent taxes.
  80. Sheriff's commission for collecting taxes.
  81. His pay for time and expenses in making his settlement.
  82. Bond to be given by sheriffs for the collection of the public taxes.
  83. Clerks to furnish the comptroller with the names of the sheriffs and their sureties.
  84. Penalties on clerks for failing to furnish comptroller with names of sheriffs, &c., and for failing to make certain returns.
  85. Comptroller's duty when the sheriff or other accounting officer fails to settle—Duty of the treasurer in taking judgment against a defaulting officer.
  86. Summary judgment may be taken against all accounting officers.
  87. How penalties on clerks, justices and sheriffs shall be recovered.
  88. A summary judgment may be taken by the treasurer against any person indebted to the State.

Tax on real estate.

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 there shall be annually levied and collected, from all the real property, with the improvements thereon, within this State, subject to taxation, the sum of six cents on every hundred dollars value thereof.

What real estate shall be subject to taxation.

2. All real estate held by deed, grant or lease, or by title of dower, or courtesy, or otherwise, shall be subject to the payment of public taxes, except the real estate belonging to the university of this State, and such houses, lots and other real estate as are set apart and appropriated to divine worship, or for the education of

1. 1822, c. 1129, s. 1.

2. 1782, c. 176, s. 3.—1786, c. 254.—1789, c. 306, s. 3.—1806, c. 695.

youth, or the support of the poor, and except also such real property as is or shall be exempted, in any act creating a society or company with corporate powers and privileges.

3. All entries of land shall be subject to taxation like other real estate. Entries of land subject to taxation.

4. If any person shall return, as his taxable property, any land, and shall dispose thereof, before the taxes due thereon shall have been paid, and shall have no estate to satisfy said taxes, within reach of the sheriff, the purchaser of said land shall pay the taxes due thereon, and may be proceeded against as if he had originally given in the same. Tax on real estate shall be a lien thereon.

5. A tax of five dollars shall be laid on all turnpike roads where toll is received, and on all gates, which have been or hereafter may be erected across any public road in this State, which roads and gates shall be given in at the same time that real estate is given in for taxation. Tax on turnpike roads and gates.

6. An annual tax of twenty cents on each and every free male poll, between the ages of twentyone and fortyfive years, and a tax of twenty cents on each and every slave poll of both sexes, between the ages of twelve and fifty years, shall be levied, collected and accounted for as hereinafter provided: *Provided always*, that the several county courts shall be authorized to exempt from the payment of poll tax, such infirm free persons as they may think proper objects; and also the slaves disabled by bodily infirmities or void of reason, such incapacity to be judged of and certified by the county court, shall not be deemed taxable property, nor given in as such by their respective owners. Poll tax. Proviso as to who may be exempted from poll tax.

7. A tax on all stud horses and jackasses within this State, of the highest sum which the owner or keeper of such stud horse or jackass, shall ask or receive for the season of one mare, shall be levied, collected and accounted for; and all stud horses and jackasses, which are not stationed in any one county, and all those that may be brought from another state to stand for a less term than the season in this State, shall pay the sheriff of some county the amount of the season, as soon as the season of such stud horse or jackass shall commence, or produce a certificate from a justice of the peace from the county, from whence such horse or jackass came, (if in the State,) that such stud horse or jackass has been enlisted for taxation, and it shall be the duty of the sheriff to collect the said tax; and on failure of the owner or keeper of such stud horse or jackass to pay the same when demanded, it may be lawful for the sheriff to distrain for the same, by seizing such stud horse or jackass, and make sale thereof for the tax. Tax on stud horses and jackasses.

8. All owners or keepers of stud horses and jackasses shall enlist the same for taxation, as other taxable property is enlisted, and on failure of such owner or keeper to enlist such stud horse and Stud horses and jackasses to be listed.

3. 1795, c. 430, s. 2.

4. 1792, c. 360, s. 6.

5. 1822, c. 1129, s. 7.

6. 1822, c. 1129, s. 9 and 10.—1782, c. 7, s. 5 and 8 of Iredell's revisal.

7. 1821, c. 1122, s. 1.

8. 1821, c. 1122, s. 2.



jackass as aforesaid, they or either of them shall be liable to pay a double tax for such horse or jackass.

Tax on billiard tables.

How to be given in and license obtained for keeping them.

9. The owner or possessor of every billiard table shall give in such billiard table, in the same manner as other taxable property, and shall pay for each billiard table, a tax of five hundred dollars ; and no billiard table shall be kept until such tax shall be paid to the sheriff of the county, in which such billiard table is or may be erected or kept up, and a license to erect or keep the same shall be first granted by said sheriff ; and if any billiard table is erected or kept up without such license first had and obtained, the sheriff of the county, where such table is or may be erected or kept up, shall seize and destroy the same by burning.

Tax on peddlers by land.

10. Each and every person, who shall peddle in any county in this State, and not on a navigable stream, goods, wares or merchandise, not of the growth or manufacture of this State, or any wooden clock, or the machinery or materials thereof, or jewelry, which machinery or clock shall be manufactured of materials, not of the growth, produce or manufacture of this State, shall pay to the sheriff of each and every county, in which he shall so peddle goods, wares or merchandise, or jewelry, or any wooden clock, or the machinery or materials thereof, the sum of twenty dollars on every cart, wagon or other vehicle, employed in the transportation of said goods, wares or merchandise : *Provided*, that should two or more persons employ one cart, wagon or other vehicle to transport their goods, wares or merchandise, each and every of them shall pay the aforesaid tax on said cart, wagon or other vehicle by them employed, nor shall any thing in this section be construed to authorize two or more persons, under the pretence of being partners in trade, to peddle goods, wares or merchandise under the same license ; which tax shall be accounted for by the sheriff in like manner as other public state taxes ; and upon paying such tax and obtaining a receipt therefor, such person shall be authorized and permitted to hawk and peddle goods, wares and merchandise, wooden clocks, or the machinery or materials which shall not be of the manufacture of this State, or jewelry as aforesaid, in such county and no other, for the term of one year thereafter ; and every person who shall peddle goods, wares or merchandise, not of the growth or manufacture of this State, except vegetables or other provisions of the produce of the United States, on any navigable waters in this State, except as excepted in the next section, shall pay to the sheriff of each and every county in which he shall so peddle, twentyfive dollars as a tax to the State, to be levied and accounted for as above, and, on payment thereof, shall be authorized and permitted to peddle goods as aforesaid, in such county and no other, for the term of one year thereafter ; and each and every person, who shall peddle in any county without having previously paid the tax thereon, and having obtained a license as hereinafter directed, or who shall refuse or neglect, upon the request of the sheriff or his lawful deputy, or any justice of the peace,

Tax on peddlers by water.

9. 1822, c 1129, s. 5.—1835, c. 3, s. 1.

10. 1822, c 1129, s 2.—1823, c. 1158.

to show a license therefor, shall pay a tax of one hundred dollars, to be collected by the sheriff of the county where such failure takes place, by distress and sale of the property of such delinquent, and to be applied one half to the use of the State, and the other half to the use of the sheriff: *Provided nevertheless*, that nothing in this act contained shall extend to tax persons who shall sell books only: Persons selling books only, not to be taxed.

*And provided*, nothing herein contained shall exempt the persons thus licensed, from being liable to the duties imposed on those who sell goods, wares and merchandise, or wooden clocks, or the machinery or materials thereof, which shall not be of the manufacture of this State, at auction.

11. Any person, who shall peddle goods, wares or merchandise, not of the growth or manufacture of this State, except vegetables or other provisions of the produce of the United States, on the south side of Albemarle sound, and the waters emptying therein (Roanoke and Cashie excepted,) shall pay to the sheriff of each and every county, in which he may so peddle, the sum of five dollars annually as a tax to the State, to be levied, collected and accounted for as other taxes upon pedlers: *Provided however*, that nothing in this section contained shall be construed to extend to persons peddling on the land, but only those peddling on the waters aforesaid. Tax on pedlers by water on the south side of Albemarle sound, except on Roanoke and Cashie.

12. The several sheriffs of the State shall collect and enforce the payment of the taxes, by this act imposed upon pedlers, notwithstanding the pedler may rent or procure houses for the purpose of carrying on a temporary sale of goods. Tax to be collected though the pedler may rent a temporary store.

13. The comptroller shall issue to the several sheriffs blank licenses to peddle goods within this State, who shall upon application of any person desirous to traffic and peddle goods, countersign and issue the same to the person so applying, upon his paying the taxes imposed by this act, and all licenses, so issued by the comptroller and delivered to any sheriff, shall stand as a charge against said sheriff for the amount of said licenses, and the sheriff shall be entitled, in the settlement of his public accounts, to a credit for all licenses, by him not issued and countersigned, which he shall return to the comptroller, and the comptroller shall annually issue and deliver to the members of the General Assembly, to be delivered to the respective sheriffs, not less than eight licenses for each county, before the rise of the General Assembly, and should any sheriff, who shall have received any license as aforesaid, resign, or the term of his service expire, without having issued the license so delivered to him, he shall deliver the same to his successor, and the receipt of such successor shall be allowed said sheriff in the settlement with the comptroller: *Provided*, that it shall not be lawful for the sheriff of any county to issue such license, unless the applicant shall first deliver to such sheriff, a certified copy of an order from the court of pleas and quarter sessions of the county, for which the license is wanted, permitting the same to issue, which The comptroller to issue to the sheriffs blank licenses for pedlers. No license to be issued to a pedler but on a certificate from the county court.

11. 1826, c. 5.—1827, c. 38.

12. 1822, c. 1129, s. 16.

13. 1822, c. 1129, s. 3.—1835, c. 17, s. 1.



order the said county court is hereby authorized and required to make, seven or more justices being present, upon satisfactory evidence of the good moral character of such applicant.

Tax on retail  
merchants and  
jewellers.

14. Every merchant or jeweller, who shall sell goods, wares and merchandise, not of the growth or manufacture of this State, in any retail store, shall pay the following tax, to wit : if the amount of his capital stock in trade (which capital shall comprehend all purchases of goods, wares and merchandise made within the year immediately preceding the first day of April,) shall be between four hundred and two thousand dollars, a tax of six dollars ; if between two thousand and five thousand dollars, a tax of eight dollars ; if between five thousand and ten thousand dollars, a tax of twelve dollars ; if between ten thousand and fifteen thousand dollars, a tax of sixteen dollars ; and if the amount of his capital stock in trade as aforesaid shall be above fifteen thousand dollars, a tax of twenty dollars ; and every wholesale merchant shall pay a tax of twentyfive dollars, and every commission merchant a tax of fifteen dollars, and every such merchant or jeweller of this State, having a store on the first day of April in each and every year, shall apply to the sheriff of the county, in which he shall have such store, and tender an affidavit, stating the amount of the capital stock, which he has employed in trade in such store, and shall pay the tax thereon, and shall receive from the sheriff a license to keep the same, but any merchant, unwilling to make such affidavit, may obtain such license by paying the tax of twenty dollars ; and every such merchant, keeping a store of goods, not of the growth and manufacture of this State, without such license, shall forfeit and pay the sum of fifty dollars, to be levied, collected and accounted for as other public state taxes ; and every person, whether resident or transient, who shall open such store at any time after the first day of April, shall apply to the sheriff for a license, which shall be granted upon such applicant giving bond and security to the sheriff to pay the tax, required by this section, on the amount of such goods, wares and merchandise, as such applicant shall sell between the time of such application, and the first day of April succeeding, under the same penalties, to be collected in the same manner as the other penalties hereby imposed ; and all wholesale and commission merchants shall take out license, in the same manner and under the same regulations, restrictions and penalties as retail merchants and jewellers, except that they need not tender the affidavit stating the amount of capital stock ; and it shall be the duty of the comptroller to issue to the sheriff of each county blank licenses for merchants, to be used and accounted for in the same manner as prescribed in the case of pedlers.

Tax on  
brokers.

15. Every person, using the profession of a broker, either as agent, factor or principal, dealing in the sale of bills of exchange, or the purchase of the bills of any bank incorporated by this State, shall be subject to an annual tax of twentyfive dollars : such person, using such profession or any branch of it, shall apply to the sheriff

14. 1822, c. 1129, s. 4.

15. 1822, c. 1129, s. 11, amended.

of the county, in which he shall intend or desire to pursue, or use such profession, and shall pay said tax, and obtain from the said sheriff a receipt therefor ; and if any person shall pursue or exercise such profession, not having paid such tax, he shall pay a tax of fifty dollars, to be levied, collected and accounted for as other taxes.

16. All persons, who shall bring negro slaves from another state into this State for sale, shall pay to the sheriff of some one county the sum of ten dollars upon each negro slave so brought, and it shall be the duty of the respective sheriffs in this State to collect the tax hereby imposed : but if the said person or persons shall produce to the sheriff of any one county, the certificate of the sheriff of any other county, duly authenticated under the seal of the clerk of the county, in which such sheriff resides, that he has paid the tax hereby imposed, he or they shall be permitted to proceed without the payment of any further tax : and it shall be the duty of the sheriff of each county, into which any negro slaves shall be taken by any person or persons whatsoever, to seize such negro slave, until the tax hereby imposed be paid, or until he or they shall produce to the sheriff an affidavit, subscribed by him or them, before some justice of the peace within this State, duly authenticated by the certificate of the clerk and seal of the court of the county, setting forth that the slave or slaves so seized were not, by him or them or any other person with his or their privity and consent, brought in evasion or elusion of the revenue laws of this State : and any person, guilty of making any false affidavit for such person, shall on conviction be deemed guilty of wilful and corrupt perjury, and the owners or possessors of all such slaves, so seized, shall pay to the sheriff all expense, that may accrue in consequence of seizing, keeping and feeding such slaves ; and the slaves, so seized, may be detained by the sheriff until such payment ; and in default thereof, the said sheriff may sell the same at public auction, at the court house of the county, upon twenty days previous notice, which sale shall convey an absolute title to the purchaser.

17. Each and every person or company of stage players, sleight of hand performers, rope dancers, tumblers and wire dancers, or company of circus riders or equestrian performers, and each and every person or company, who shall exhibit artificial curiosities of any kind or sort, except models of useful inventions, for a reward, shall, previously to exhibiting or performing in any county of this State, pay to the sheriff thereof thirty dollars ; and every person or company, who shall exhibit natural curiosities of any kind or sort, the sum of fifteen dollars, as a tax to the State, to be accounted for by the sheriff as other state taxes ; and on paying such tax, the sheriff who receives the same shall give a license to exhibit in his county, which license shall contain a list of such animals or personal performances or other articles to be exhibited, and in that case such company or person shall be authorized and permitted to perform and exhibit, as aforesaid, in such county and no other, for

Tax on slaves brought from another state to this State for sale.

Tax on stage players, sleight of hand performers, exhibitors of curiosities, &c. Models of useful inventions excepted.

16. 1822, c. 1129, s. 8.

17. 1822, c. 1129, s. 6.—1830, c. 11.



the space of one year thereafter ; and each and every itinerant stage player, sleight of hand performer, rope dancer, tumbler, or wire dancer, or company of circus riders or equestrian performers, or exhibitors of artificial or natural curiosities, except the exhibitors of models of useful inventions, who shall perform or exhibit in any county in this State, without previously having paid the tax herein directed, shall be liable to a forfeiture of sixty dollars, to be collected by the sheriff by distress and sale of the property of such delinquent, and to be applied one half to the use of the State and the other half to the use of the sheriff.

Pedlers, stage players, &c. to exhibit their licenses to any justice or constable, when demanded.

Penalties for refusal.

18. It shall be the duty of all pedlers, stage players, sleight of hand performers, rope dancers, tumblers, wire dancers, company of circus riders or equestrian performers, and all exhibitors of natural and artificial curiosities, to exhibit their licenses to any justice of the peace or constable, who may demand a view thereof, and if he or they shall neglect or refuse to show his or their license, when so demanded, he or they shall forfeit and pay the sum of twenty dollars for every such neglect or refusal : if any such neglect or refusal shall occur before a justice of the peace, it shall be the duty of such justice forthwith to issue his warrant, in the name of the wardens of the poor in said county, against such offender, and upon the return thereof to enter up judgment and issue execution for the said sum of twenty dollars and costs, which said sum shall be for the use of the wardens of the poor ; and if such neglect or refusal shall happen before a constable, it shall be his duty to arrest the person or persons, so neglecting or refusing, and carry him or them before some justice of the peace, who may upon warrants, issued for that purpose, give judgment and issue execution forthwith for the said sum of twenty dollars and costs, which said sum shall be one half to the use of the constable, and the other half to the use of the wardens of the poor. *Provided*, that in either case the defendant shall have the right to stay the execution, or appeal from such judgment, on giving security as in other cases of appeals.

Duty of constables to demand a view of such licenses.

19. It shall be the duty of all constables to demand a view of the license of any pedler, who may be peddling in his county, and a view of the license of any actors, performers or exhibitors, as aforesaid, who may act, perform or exhibit in his county, and on his or their refusing to exhibit such license, to prosecute for the penalty imposed by the last section.

Tax on retailers of spirituous liquor.

20. Every person, who has obtained from the county court a license to retail spirituous liquors by the small measure, according to the provisions of law in such cases, shall, immediately on obtaining a certificate thereof from the clerk, deliver the same to the sheriff, and pay into his hands the sum of four dollars, and receive therefor a license, signed by the comptroller and countersigned by the sheriff, which said licenses the comptroller is directed to issue blank to the several sheriffs in this State, at the same time and under the same rules and regulations and to be accounted for by

18. 1831, c. 1, s. 7 and 8.

19. 1831, c. 1, s. 9.

20. 1825, c. 1272, s. 1 and 3.

the sheriffs in the same manner, that the pedlers' licenses are directed to be issued and accounted for.

21. Every person, obtaining a license to keep an ordinary or house of entertainment, according to the provisions of the law in such cases, shall pay to the sheriff, at the time of paying other public taxes, a tax of four dollars to be accounted for as other public state taxes. Tax on tavern keepers.

22. The last twenty working days in July, in every year, are hereby established, as the time when the lists of property required to be listed for taxation, shall be taken in every county in the State. Time when the lists of taxables shall be taken.

23. At the respective courts of pleas and quarter sessions in each county, which shall first happen after the first day of April in every year, the justices for taking the lists of taxable property shall be appointed, and the clerks of the several courts aforesaid shall give notice thereof, with a list of the names of said justices, and of the districts for which they were appointed, in the course of the term, in which said appointments are made, by advertising the same at the court house. The clerks shall issue notices of such appointments to the sheriff of the county, who shall serve the same within ten days on the justices so appointed, and it shall be the duty of each of the justices so appointed to advertise, at three different places in the district, for which he is appointed, at least ten days before the days established for giving in the list of taxables, the place whereat he will attend to receive the same, and if any justice of the peace so appointed shall become incapable, die or remove out of the county, before the duties of his appointment shall be performed, then any three other justices of the county, on notice of such death, incapability or removal being given them in writing by the sheriff, may and they are hereby authorized and required to appoint some other justice of the peace to perform the duties of the person so becoming incapable. County courts to appoint justices to take lists. Justice s to be notified of their appointment — to appoint places of taking the lists. Three justices may appoint one to take list in case of vacancy.

24. The inhabitants of the respective districts in each county shall attend, at the time and places appointed by the justices for taking the lists of taxables, and shall return, on oath in writing to the justice appointed to receive the same, each and every tract of land, for which they are liable to pay tax in the county, stating the number of acres of each separate tract, its local situation and the improvements thereon, the number of town lots with their improvements, the number of free males between the ages of twentyone and fortyfive years, living in their families, also all free negroes and mulattoes between those ages living on their lands with their consent, the number of slaves male and female between the ages of twelve and fifty years, which to them belong, or who live in their family, said slaves to be listed in the county where they reside, all stud horses and jackasses of which they may be the owners or keepers, all the turnpike roads where toll is received, and gates How tax lists shall be given in.

21. 1795, c. 501, s. 3.

22. 1801, c. 570, s. 1.

23. 1801, c. 570, s. 2.

24. 1784, c. 195, s. 1.—1819, c. 999, s. 1.—1828, c. 34.—1822, c. 1129, s. 5, 7, 9 and 10.—1821, c. 1122, s. 2.



across any public road in this State, and all billiard tables, and the oath to be administered by the justice, receiving such list, shall be as follows, (viz :) “ You do swear (or affirm as the case may be) that this list by you delivered, contains a just and true account of all the property, which by law you are bound to list for taxation, to the best of your knowledge and belief. So help you God.”

Tax lists to refer to the first day of April preceding.

A person coming of age after that day may list himself and pay immediately.

By whom the lists of absentees, testators, minors, &c. shall be given in.

If owner fails to give in his lands, the justice may appoint a freeholder to value it.

In case of failure by the owner and justice, the sheriff to have the land valued by a freeholder.

Duty of such freeholder.

25. The lands, town lots and slaves and other taxable property, unless otherwise provided, required to be listed according to the preceding section, shall be such as were the property, or in the possession of their respective owners, on the first day of April in each and every year, and the free polls shall be such as were taxable on that day, and in all cases, where any person shall come of age after the said first day of April, and before any election held during the year next ensuing the first day of April aforesaid, it shall be lawful for such person, then coming of age, to list himself before the sheriff or his deputy as of the said first day of April, and immediately pay the poll tax of that year, and the sheriff is hereby required to receive the same and account therefor as for other public taxes.

26. Lists of the real and other taxable estate of testators, intestates, minors, lunatics and persons *non compos mentis* and absentees, shall be returned and given in by the executors, administrators, guardians, agents and attorneys, in the same manner as the estates of other persons.

27. If any person, owning lands in any county within this State, or any non-resident, shall fail to return, either by himself or agent, to the justice appointed to take the list of taxable property in the district in which the land of such owner or non-resident may be situated, a list of his land with the number of acres, in manner herein before prescribed, it shall be the duty of the said justice of the peace to appoint a freeholder, acquainted with the lands, to value the same on oath within five days, and return the valuation to the said justice. And the said freeholder shall receive a compensation of one dollar for each tract by him valued, to be levied and collected by the sheriff, at the time he collects the taxes on the said lands, if not previously paid by the owner, and under the same rules, regulations and restrictions.

28. When any person shall have failed, either by himself, agent or guardian, to list his lands, and the justice appointed to take the list of taxable property shall have failed to have the same assessed, according to the provisions of the last section, it shall be the duty of the sheriff, within the time prescribed for collecting the taxes, to summon one freeholder, near to or acquainted with the land, whose duty it shall be, within five days after such notification, to value said lands on oath, which the sheriff or his lawful deputy is hereby authorized to administer. And it shall be the duty of such freeholder, summoned as aforesaid, to transmit under his hand a

25. 1784, c. 195, s. 1, amended.

26. 1782, c. 176, s. 2.—1819, c. 999, s. 1.

27. 1819, c. 999, s. 9.

28. 1819, c. 999, s. 9.

fair transcript of such valuation to the clerk of the county court, at or before the succeeding county court, and also to deliver to the sheriff another transcript of the same, within ten days after the valuation aforesaid; and the said freeholder shall receive a compensation for his services, as assessor, of one dollar for every tract of land by him assessed, to be levied and collected by the sheriff at the time he collects the taxes on said land, if not previously paid by the owner; and the clerk of the county court shall incorporate the returns made by the freeholders aforesaid with those made by the justices.

29. Any person, appointed or summoned, by the justices or sheriff as aforesaid, to value lands, who shall refuse or fail to perform the duties required by the two last sections, shall forfeit and pay the sum of fifty dollars, to be recovered in the name of the State to the use of the county.

Penalty on freeholders refusing to act.

30. The valuation of land and their improvements shall be made in dollars and cents, and town property shall be given in and assessed in the same manner as prescribed for other real estate.

Valuation of lands to be in dollars and cents—How town property to be given in and assessed.

31. When a tract of land shall be in two or more counties, the owner shall be bound to list the same in the county where he resides, if he resides in either of the counties, and if not, then he may list the same in either of the said counties; and in case of transmitting a list of taxable property, from the county in which the person bound to list it resides, to that in which the property is situate, the oath required to the list may be taken before any magistrate of the county, in which the person bound to return the same resides.

A tract of land lying partly in two counties, where to be given in.

32. It shall be the duty of the several county courts in this State, at the respective terms when they appoint justices of the peace to take in the list of taxable property, for the year one thousand eight hundred and thirtyseven, to appoint two respectable freeholders to be associated with each justice, who together with such justice shall be styled "the board of valuation." It shall be the duty of the board of valuation to ascertain, as accurately as may be practicable, the cash valuation of the land in the district to which they belong, and to return the same to their respective county courts, in the manner herein prescribed: *Provided*, said justice and freeholders may, if they deem it necessary, call upon any person to testify as to the value of any tract which may be listed, and they are authorized in such case to administer an oath to any person so called upon. No person giving in his land for taxation shall hereafter be required to state the value thereof upon oath, and if any individual shall deem himself injured, by too high a valuation being placed upon his land by the board aforesaid, it shall be competent for the ensuing county court to reduce the same, upon motion and satisfactory proof of such allegation. The individuals comprising the said board of valuation shall annex to their respective returns the following affidavit, signed by them and certified by some justice

County court to associate with the justices appointed to take the tax lists, two freeholders to form a board of valuation.

Duty of the board in assessing the value of lands.

29. 1819, c. 999, s. 10.

30. 1819, c. 999, s. 12.

31. 1819, c. 999, s. 11.

32. Amendment.

x Re-assessed, 1848. ch 57. 52



of the peace : “ We solemnly swear, that the foregoing valuations of land, made by us, are, in our judgment and belief, the actual value thereof in cash, and that in making the same, we have endeavored to do equal justice to the public, and to the individuals concerned : so help us God.” And the said justice of the peace and freeholders shall each be entitled to receive the sum of one dollar per day, for each day they may be necessarily engaged in making said valuation and returns, to be paid out of the taxes levied for county purposes.

Their compensation.

Persons failing to give in their lists, to pay a double tax.

Lands of a minor, &c. not to be sold for taxes.

Justices appointed to take the lists, to return a copy of such lists in alphabetical order to the next county court.

Clerks to return abstracts of the lists to the comptroller.

Penalty on the clerks for failing to do so ; and duty of the comptroller and attorney general in regard to such failure.

Form of the lists to be returned by the justices.

33. If any person, bound to list lands or other property, either in his own right or as executor, administrator, guardian or agent, shall fail or neglect so to do, he shall pay a double tax, to be collected by the sheriff out of his individual property, notwithstanding his failure or neglect may be as representative of another ; and it is expressly declared that the lands of a minor, lunatic or person *non compos mentis*, shall in no case be liable to be sold for taxes.

34. The justices, appointed to take the list of taxables in each county, shall make out a fair copy of the lists of lands by them taken, in alphabetical order, with the number of acres and valuation annexed, and return the same, together with the list of other taxable property by them taken, to the clerk of the county court, at the next succeeding court, which may happen after the time prescribed for taking the list of taxable property, and the clerks of the several county courts are hereby required to return to the comptroller, on or before the first day of September, in each and every succeeding year thereafter, an abstract of such lists, showing the number of acres of land so listed, the valuation thereof, and the valuation of town property, which shall be contained in said lists. Any clerk, failing to make return of the abstract herein required, shall forfeit and pay the sum of one hundred dollars, to be recovered in the superior court of Wake county, on motion by the attorney general. And it shall be the duty of the comptroller to inform the attorney general of all such delinquent clerks, and, on the trial of the motion, the certificate of the comptroller, certifying such failure, shall be sufficient evidence thereof ; the forfeiture thus recovered shall be paid into the public treasury of the State by the clerk of the superior court of Wake county, and on failure to do so, he and his sureties shall be liable on his bond, in a suit at the instance of the State.

35. The justices, in the lists which they shall return to the clerks of their respective county courts, shall distinguish the persons' names, the several tracts of land, the quantity and situation of each tract with its reasonable value, the town lots, the number of polls white and black, and the several other subjects of taxation, which are required to be listed, in the following manner :

33. 1819, c. 999, s. 5.

34. 1819, c. 999, s. 7.—1806, c. 699, s. 3.—Amended.

35. 1784, c. 195, s. 3.

Persons Names.	Quantity of each tract of land with its situation.	Value of each Tract.	Town Lots.	White Poll.	Black Poll.	Stud Horses and Jackasses.	Gates and Turnpike Roads.
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36. The several justices, appointed to receive lists of taxables, shall make their return of their own lists to the county courts. Each justice to return his own lists.

37. If any justice, appointed to receive lists of taxable property, shall fail or neglect to discharge the duty of his appointment, he shall forfeit and pay two hundred dollars, to be recovered in the name and to the use of the State ; and if any clerk of the court of pleas and quarter sessions shall fail or neglect to make return of an abstract of the list of taxables to the comptroller, as prescribed in the thirtyfourth section, he shall forfeit and pay one thousand dollars, to be sued for by the attorney general, in the name and for the use of the State. Penalty on justices appointed to take lists, for failure of duty.

38. Where it shall appear to the satisfaction of any of the county courts of this State, that any person is charged with more land or polls, on his list of taxable property, than he ought to pay for, the said court may order their clerk to give a certificate for the quantity of acres and their value, or polls so overcharged, which certificate shall be received by the comptroller of the State, and be deducted by him from the amount of valuation of land or number of polls, to be accounted for by such sheriff. County courts may grant a certificate to be received by the comptroller, when the tax is overcharged.

39. The clerk of each county court shall record at length, in alphabetical order, the annual returns made by the justices in his county, and the court shall make a reasonable allowance for such service, to be paid out of the county tax ; and the said clerks shall also, at the next court after the returns of the taxable property are directed to be made, set up, in some conspicuous part of the court house, an alphabetical list of the taxables and taxable property, delivered or reported by the persons appointed to take the list of taxable property, adding to each person's taxable property, the amount of the tax for which he may be liable, and any clerk, neglecting or refusing to perform the duties here required, shall, for every such neglect or refusal, forfeit and pay one hundred dollars, to any person who will sue for the same within six months. Clerks to record the tax lists, and set up copies of them in the court house.

40. If any justice of the peace shall receive any person's list of taxable property, without taking such person's oath or affirmation, as the case may be, the justice so acting shall forfeit and pay one hundred dollars for the use of the State. Penalty on a justice for receiving a list without an oath.

41. The clerks of the several county courts shall, within thirty days The clerks of the county

36. 1784, c. 195, s. 5.  
 37. 1784, c. 195, s. 4.—1806, c. 699, s. 3.  
 38. 1803, c. 639.  
 39. 1784, c. 195, s. 4.—1786, c. 255, s. 2.—1798, c. 506.  
 40. 1788, c. 282.  
 41. 1819, c. 999, s. 8.—1822, c. 1129, s. 14.



courts to deliver to the sheriffs copies of the lists returned.

Sheriffs to proceed to collect after the first of April. Penalty on the clerks for failure to deliver lists.

All persons employed to collect taxes must take an oath.

Sheriffs by themselves or their deputies, or in case of their deaths, their sureties to collect the taxes.

Sheriffs and their sureties to have one year to collect arrears.

Sheriffs to collect a double tax from those who neglected to give in their lists.

after the court to which the lists are returned, has finished its session, deliver to the sheriffs of their respective counties a fair and accurate copy of the returns made, in alphabetical order, designating in such copy the separate amount of taxes, due and accruing from each species of property, and in addition thereto shall extend the aggregate amount due from each individual; and the respective sheriffs shall proceed, after the first day of April in each and every year, to collect the said taxes, to be accounted for at the time and in the manner hereinafter provided for, and if any clerk shall fail or neglect to furnish said lists as herein directed, he shall forfeit and pay two hundred dollars to the use of the State, to be sued for by the sheriff in the name of the State.

42. Deputy sheriffs, and all other persons that shall be employed by the sheriffs of any county to collect the public, county and parish taxes, shall, before they enter on the collection of either of the aforesaid taxes, take an oath, in open court, or before any two justices of the peace, where such deputy sheriff, or collector may reside, faithfully and honestly to account for all moneys, that may be received by them in the capacity of collectors.

43. It shall be the duty of each and every sheriff, by himself, his deputy or other person appointed for the purpose, to collect the taxes in their respective counties, and if any sheriff shall die, shortly before or during the time appointed for the collection of public taxes, so that a successor in office cannot be appointed before the time for collecting the taxes, in such case it shall be lawful for their securities to proceed in the collection of said taxes; in which business they are hereby declared to have all the power, authorities, privileges and emoluments, in and for the receipt and collection of public taxes, which the sheriff deceased possessed and enjoyed.

44. The several sheriffs, and in case of their death, their sureties, shall have one year, from the day prescribed for the settlement of the public accounts, to finish the collection of the taxes they are bound by law to account for, after the expiration of which year they shall be barred from the collection of any taxes: *Provided always*, that nothing in this section contained shall be construed to alter the law, directing the manner and time of the sheriffs' accounting with the comptroller and treasurer.

45. It shall be the duty of the sheriffs to collect the public taxes, from each and every individual in their counties respectively, who are liable to pay taxes, whether their names be contained in the list of taxables, delivered by the clerks or not; and in all cases where the public taxes shall be demanded of any person, whose name and taxable property are not contained in the list furnished by the clerk, the sheriff shall demand and receive, from each and every such person, a sum equal to double the amount, which he would have been liable to pay in case a list of his taxa-

42. 1811, c. 813.

43. 1791, c. 334, s. 1.—1784, c. 219, s. 3.

44. 1800, c. 547, s. 1 and 2.

45. 1791, c. 334, s. 2.

ble property had been given in due time and according to law, and in instances where disputes shall arise, as to the amount of the tax, for which any person may be liable under this section, the papers and records in the clerk's office shall be held and deemed sufficient authority, on the part of the sheriff, to entitle them to enforce their demands by distraining or otherwise, in case the party hath, at any time within two years then last past, given a list of his or her taxable property, but in cases where no such lists have been given in, an estimation in writing, under the hands and seals of one justice of the peace and three freeholders, convened for that purpose by the sheriff, shall authorize and warrant his demand to the amount of such estimation, saving nevertheless a right of appeal from the determination of such justice of the peace and freeholders to the next county court, where the matter shall be tried and fully determined on in a summary way during the same term.

Such tax, how to be ascertained.

46. It shall be the duty of each and every sheriff, immediately on receiving the list of taxable property from the clerk of his county, to set up at the court house an advertisement, informing the inhabitants of his county that he has received such list, and holds it ready for inspection, and requesting them to give him any information of any land, polls, or other taxable property in said county, not given in, and any sheriff, receiving information of any lands, polls or other taxable property not given in, and neglecting or refusing to collect and account for the same, shall forfeit and pay twelve hundred dollars, to be recovered, one half to the use of the State and the other half to the use of the person suing for the same : *Provided*, that one thousand dollars of this fine shall not be inflicted, in any case where the sheriff shall account with the treasurer, within six months from the expiration of the time allowed by law for his settling with the treasurer.

Sheriffs to give notice by advertisement, when they have received their lists.

Penalty on sheriffs for failing to collect taxes on property not given in.

47. Each and every sheriff, or, in case of his death, his sureties, shall have the same power to enforce the collection of taxes by distress and sale or otherwise, during the additional year, which is allowed him to finish the collection of the public taxes, as he could or might have had and used, when the said taxes became due.

Sheriffs and their sureties may distrain and sell during the additional year.

48. Any person failing to pay, by himself or through others, the public taxes to which he may be liable, in due time and according to law, and having no visible personal property on which the sheriff can distrain, but being possessed of lands within the county where such taxes become due and payable, it shall and may be lawful for the sheriff of such county and he is hereby required to distrain on such lands, and to sell the same, or so much thereof as shall be sufficient for the payment of the taxes due and the costs of such sale.

Lands may be distrained and sold when there is no personal property.

49. Whenever the sheriff of any county shall have reason to suspect that any person, whose name is or should be on the list of taxable property returned by the justices, is about to remove him-

When a person is about to remove, sheriff may proceed

46. 1796, c. 449, s. 4.  
 47. 1792, c. 376.  
 48. 1792, c. 360, s. 5.  
 49. 1801, c. 570, s. 3.



forthwith to levy the taxes due from him.

self or property out of the county, the sheriff shall have power to proceed to levy and collect the tax due from such person, immediately, before the time appointed for commencing the collection of the taxes: *Provided*, such sheriff shall first make oath, before some justice of his county, that he has just reason to believe, that such person is about to remove himself or property out of the county, before the time of the payment of his taxes shall arrive; and obtain a certificate from such justice to that effect.

Sheriff to give ten days' notice by advertisement before he sells personal property for taxes.

50. Whenever any sheriff shall distrain any article of personal property for the payment of taxes, he shall not sell the same, until ten days' previous notice of such sale, and of the amount of taxes due, shall have been given, by advertisement at three or more of the most public places in the district where said taxes are due.

Sheriff to advertise in some newspaper in Raleigh, and also at the court house of his county, before he sells land for taxes.

51. It shall not be lawful for any of the sheriffs in this State, either by themselves or their deputies, to sell lands for their taxes, until the same have been first advertised for sale in the State Gazette, or some other newspaper published in the city of Raleigh, for the space of one month, and also at the court house of the county where they are situated; the whole of the expense attendant on which shall be chargeable on such lands, and shall be made accordingly; in which advertisements shall be mentioned the situation of the lands, the streams near which or on which they lie, the estimated quantity, the names of the tenant or tenants in possession if cultivated, and the names of the reputed owners where the same can be ascertained: *Provided*, that no sale of lands for taxes shall take place previous to the first day of August in each year.

Sheriff to return to the county court a list of the tracts of land to be sold, which list shall be recorded, &c.

52. The sheriff of every county shall, at the term of the court of pleas and quarter sessions of his county, next preceding the day he shall fix for the sale of any lands for taxes, in open court return a list of the tracts of land upon which the taxes are unpaid, and which he proposes to sell for the taxes, therein mentioning the owners of each tract, and, if the owner be unknown, the name of the last known or reputed owner shall be mentioned, the situation of said lands, and the amount of tax thereon due, which said list shall be read aloud in open court, recorded by the clerk upon the minutes of the court, and a copy thereof shall be put up by the said clerk during the said term in the court room.

To return a list of the lands sold, the name of the purchaser, &c. which list shall be recorded, and a copy set up in the court house.

53. It shall be the duty of the sheriff, at the term of the court of pleas and quarter sessions of his county, next after any sale of lands by him made for taxes, to return to said court a list of the tracts of land by him sold for taxes, the quantity thereof so laid off for the tax, the name of the purchaser, and the sum due or paid to said sheriff by said purchaser for tax and charges, which list shall be read aloud by the clerk in open court, shall be recorded in the minutes of the court, and a copy thereof shall be put up by the clerk during the said term in the court room.

50. 1784, c. 219, s. 3.

51. 1796, c. 449, s. 1.

52. 1819, c. 1006, s. 1.

53. 1819, c. 1006, s. 2.

54. Every sheriff or clerk, who shall omit to perform the several duties enjoined in the two preceding sections, shall forfeit and pay the sum of one hundred dollars, to be recovered by any person suing for the same in an action of debt, and shall be liable in an action on the case for such further damages, as may be sustained by the owner of the lands, in consequence of such irregular sale.

Penalty on sheriffs and clerks for failing to perform the duties enjoined in the two preceding sections.

55. When any lands shall, by the above provisions, become liable to be sold for the taxes of the same, it shall be the duty of the sheriff to set up the whole of the lands, belonging to any one person or company, for which the taxes thereon shall be due, to be sold to the person, who will pay the amount of the public, county and poor taxes, with all the charges for advertising the same agreeably to law, for the smallest part thereof, and he shall strike off the quantity, so bid or offered to be taken for the amount of the taxes and charges aforesaid, to the person offering to take the smallest number of acres of the land for the taxes and charges as before mentioned.

Sheriff to sell the land at public sale to him who will pay the taxes and costs for the smallest part.

56. The person purchasing land at any sheriff's sale for the taxes, as above provided, shall be at liberty to make choice of the quantity of land, so struck off to him, out of any part of the land offered for sale, to be laid off in one compact body, as nearly in a square as can be, and adjoining to some of the outlines of such tracts or parcels of land.

The purchaser to choose his part in a compact body.

57. Where land may be sold by any sheriff in this State for non-payment of taxes, due thereon, by virtue of law, the person or persons, their heirs, executors and administrators, owning such lands, shall be permitted to redeem the same from the purchaser, at any time within twelve months after such sale is made, by paying or tendering in payment to the purchaser or to the clerk of the court, where the list of the sales shall be recorded according to the fiftythird section of this act, the full amount, which such purchaser gave to such sheriff, and twentyfive per cent. on the purchase money and all costs of sale accruing thereon.

Persons whose lands are sold, may redeem within twelve months.

58. When any person shall purchase land sold for taxes, he shall, if it is not redeemed within the time mentioned in the last section, procure the same to be surveyed by the county surveyor, within six months after the time for redemption has expired, and present to the sheriff a fair plat of such survey, with the courses and distances fairly set forth, and certified under the hand of said county surveyor, which survey shall be made at the expense of such purchaser, and the sheriff shall execute and deliver to him a deed for the same.

Purchaser to have his land surveyed, and the sheriff to execute a deed.

59. It shall be the duty of the county surveyor to survey lands sold for taxes, as prescribed in the last section, upon pain of forfeiting fifty dollars; and, if he shall fail so to do within the six months, the purchaser of said lands shall be allowed a further time of six months to have said lands surveyed by some other surveyor, a

Penalty on the county surveyor for refusing. If he refuses, another may make the survey.

54. 1828, c. 42.

55. 1798, c. 492, s. 1.

56. 1798, c. 492, s. 2.

57. 1805, c. 676—1819, c. 1006, s. 3.

58. 1798, c. 492, s. 3.—1808, c. 760.

59. 1808, c. 760.



plat of whose survey being returned to the sheriff for the time being, he shall proceed to execute title, as if the said survey had been made by the county surveyor, and his deed shall be good and valid to all intents and purposes, as if it had been made under the provisions of the last section. *Provided nevertheless*, that the county surveyor shall not be liable to the penalty aforesaid, unless the purchaser apply to him to survey such lands, within two months after he is at liberty to have the survey made.

When the land shall be struck off to the governor for the use of the State.

60. If no person shall bid a smaller quantity than the whole of the lands, then the whole of the said lands so set up shall be considered as a bid for the governor, and the sheriff shall strike off the same to him accordingly, and execute a good and sufficient deed of conveyance to him and his successors in office, in manner hereinafter directed, for the use of the State.

How the deeds of the sheriff to the governor shall be perfected.

61. It shall be the duty of the several sheriffs respectively, to perfect the said deed or deeds to the governor, by signing, acknowledging and delivery thereof, in the presence of the next ensuing county court for the county, where the said land shall be, and the clerk shall accordingly register the same, in a book to be kept by him for that purpose, which registration shall be deemed valid; and it shall be the further duty of the clerk, after having recorded the deed as aforesaid, to certify the same thereon, and deliver the same to the sheriff (who shall call on him for the same,) within twenty days after the rising of the court, at which such deed shall have been acknowledged, and the said clerk, neglecting to perform and deliver the same to the sheriff as aforesaid, shall be liable to a penalty of one thousand dollars, to be recovered against him by the attorney general or one of the solicitors for the State, for the use of the State, in any court having cognizance thereof, by motion, first giving to the said clerk ten days' previous notice of such motion.

Penalty on the clerks for failure of duty in this particular.

Sheriff to deposit the deed in the secretary's office.

62. It shall be the duty of every such sheriff, before he settles his account with the comptroller, to deposit such deed or deeds in the office of the secretary of state, who shall record and keep the same in his office for the benefit of the State; and the said lands so conveyed shall be deemed vacant lands and liable to entry accordingly; and the secretary of state shall grant a certificate to such sheriff, setting forth the quantity of land so conveyed to the governor, which certificate shall be returned by such sheriff to the comptroller; and such sheriff, in addition to the oaths taken on his settlement with the comptroller as hereinafter provided for, shall also swear that he has conveyed to the governor, in conformity to the requisition of this act, all lands by him sold for the taxes thereof, and purchased as aforesaid for the use of the State; and if any sheriff shall fail or refuse so to do, the comptroller shall, in his report to the treasurer, charge such sheriff, so failing or refusing, with the sum of two thousand dollars, and the treasurer shall recover the same for the use of the State.

Lands so bid off, to be deemed vacant.

Sheriff's oath with respect to such lands.

60. 1798, c. 492, s. 4.

61. 1798, c. 492, s. 5.

62. 1798, c. 492, s. 6.

63. Each respective sheriff shall be allowed in his settlement with the comptroller, (the requisites of the three last sections being complied with,) the amount of the tax on all lands, so purchased for the use of the State, together with the costs of advertising and recording, and also shall be allowed commissions on the same, as if the money had actually been collected, and such sheriff shall also be credited, in his settlement with the county treasurer or trustee, and with the wardens of the poor, for such of the county and poor tax, as the said lands may be sold to satisfy.

Sheriffs to be allowed for the taxes on land bid off for the governor.

64. Any person, purchasing lands sold for the taxes due thereon, shall be considered as taking and holding the same, subject to the taxes accruing and growing due thereon, from the first day of April next preceding the time of his purchase : but if such person shall fail to complete and perfect his title to said lands, according to the above provisions, such lands shall be deemed lapsed or vacant lands and to have reverted to the State, and liable to be entered in the entry taker's office, as if the same had never been appropriated.

Persons purchasing lands sold for taxes, liable for accruing taxes. Lands to revert to the State upon the purchaser's failing to comply.

65. Where any sheriff shall sell any lands for the taxes due thereon, and die, or remove, or be out of office, before a deed or deeds have been executed for the same, it shall be lawful for his successors in office, to make and execute a deed or deeds to the person or persons purchasing the same, if it shall appear that the sale was *bona fide* made ; *Provided always*, that before any deed or deeds shall be executed by the sheriff to the person or persons, so claiming as purchasers of the land aforesaid, such purchaser or purchasers shall produce to the court of the county, in which such lands lie, the receipt of the deceased sheriff for the purchase money, and shall also produce such other testimony, to shew that they had well and truly purchased and paid for the said lands, as may by the said court be deemed satisfactory, and shall also make it appear that they have surveyed the same, and registered a plat thereof agreeably to law, and also that they have paid the lawful taxes on said lands ; on which proof the said court may issue an order, directing the sheriff to make and execute titles for the same, and all deeds, made and executed contrary to the provisions of this section, shall be void.

Where a sheriff dies or goes out of office, his successor may make a deed for lands sold for taxes.

What to be done by purchaser before obtaining such deed.

66. All sheriffs and receivers of public moneys shall settle their public accounts, or cause them to be settled, with the comptroller of this State ; the whole of which settlements, except those which now are or hereafter may be excepted by law, shall be made in the months of July, August and September in each and every year, and it shall be the duty of the comptroller, on making any such settlement, forthwith to report the sums or amount, due from such accountant, to the treasurer of the State, setting forth in such report (if a sheriff's account,) the net amount of each species of public tax, and the treasurer shall raise an account against each and every of such persons, and debit them accordingly.

Sheriffs to settle with comptroller, when.

63. 1798, c. 492, s. 7.

64. 1798, c. 492, s. 8.—1800, c. 549.

65. 1801, c. 577.

66. 1827, c. 1, s. 7.



Sheriffs, in their settlements, to designate the different sources of the taxes.

Comptroller to give the sheriffs certified copies of the returns, to be deposited with the clerks.

Sheriffs to return upon oath to the county court a list of all taxes received from merchants, &c.

Such returns to be recorded and published by the clerks.

If such return cannot be made to court, it may be returned and filed with the clerk in vacation.

The clerk shall give to the sheriff a copy of such return, to be by him delivered to the comptroller.

Provisos.

Penalty on sheriffs for failing to make returns to court or to the clerk.

67. It shall be the especial duty of the several sheriffs of this State, in making settlements of their accounts annually with the comptroller, to designate, in a list by them to be rendered, the different sources from which the taxes, by them accounted for, were received, and the particular amount of tax from each. And the comptroller shall give the sheriffs a certified copy of the lists returned by them respectively, which said copy, it shall be the duty of the said sheriffs to deposit with the clerks of their respective counties for public inspection.

68. Every sheriff shall return upon oath to the court of pleas and quarter sessions of his county, at the term next preceding the time at which he shall settle with the comptroller for public taxes, a list of all the moneys which he may have received from taxes imposed on merchants, retailers of spirituous liquors, stage players, sleight of hand performers, rope dancers, tumblers, wire dancers, company of circus riders, equestrian performers, and all exhibitors of natural or artificial curiosities, setting forth in such list the name of each person who may have paid any such tax, the amount paid by each, and for what tax; which list the court shall cause to be publicly read in open court; and it shall be the duty of the clerk of the court to enter upon the minutes of said court and preserve such return, and to cause to be set up, in some conspicuous place in the court house, a fair copy thereof, at each and every court which may be held in his county within six months thereafter, and to furnish each grand jury with a copy of the same.

69. If the term of the county court in any county shall happen, before the sheriff can complete the collection of the taxes mentioned in the above section, or from any other cause the sheriff shall have failed to make his return to the court aforementioned, then the said list of taxes may be returned and filed with the clerk of said court during vacation, which list shall be sworn to, in the presence of the clerk, before two justices of the peace, by the sheriff returning the same.

70. The clerk shall deliver to the sheriff a certified copy of such return, which copy the sheriff shall deliver to the comptroller at the time of settling for public taxes, and the comptroller shall charge the sheriff according to such return: *Provided*, that nothing herein contained shall be so construed as to exempt any sheriff from liability for any moneys which he may have received on account of such taxes, whether contained in such return or not: *And provided further*, that nothing herein contained, shall be so construed as to affect in any manner the provisions regulating the issuing of licenses, and accounting for them.

71. If any sheriff fail to make the returns to the court, or to the clerk in vacation, or shall fail to deliver a copy thereof to the comptroller, as above required, he shall forfeit and pay the sum of

67. 1822, c. 1129, s. 15.

68. 1831, c. 1, s. 1.

69. 1832, c. 11.

70. 1831, c. 1, s. 2.

71. 1831, c. 1, s. 3.

two hundred dollars, and the comptroller shall charge him with the same in stating his account with the State, and the sheriff shall be moreover liable to pay the taxes, which he has, or ought to have collected.

72. It shall be the duty of the comptroller, when he shall have just cause to suspect that any sheriff may have made a false return, or sworn falsely in any matter relative to the collecting or accounting for any tax, to communicate the same to the officer prosecuting in the superior court of the county, wherein the offence may have been committed, and it shall be the duty of such officer to prosecute such sheriff, if in his opinion the circumstances of the case shall justify a suspicion of such sheriff's guilt; and in all such prosecutions, a copy of any list returned on oath, filed in the comptroller's office, duly certified by the comptroller, shall be admitted as evidence in the same manner, and have the same effect as the original, unless the court, for special reasons, shall previously order the original to be produced on trial.

Duty of the comptroller when he suspects any sheriff of making any false return or swearing falsely.

73. If any clerk shall fail to perform the duties required of him by the sixtyeighth section of this act, or shall neglect or refuse to certify any return made to him, as required by the seventieth section, or shall falsely certify any return duly made to him, he shall be deemed and taken to be guilty of a misdemeanor in office, and shall, on conviction in any court having cognizance thereof, for any or either of the aforesaid offences, be punished by fine or imprisonment or removal from office, at the discretion of the court.

Clerks, for refusing to record or to certify returns, &c. shall be liable to indictment for a misdemeanor in office.

74. All sheriffs shall, at the time of their annual settlements, render unto the comptroller, on oath, a list of the names of those persons from whom they have recovered a twofold tax, together with the amount, specifying from what source each species of tax arose.

Sheriffs to render a list of persons who paid a double tax.

75. Each and every sheriff shall, in his annual settlement with the comptroller, be allowed for insolvent taxables; but in order to obtain such allowance, he must return to the court of pleas and quarter sessions of his county, at some term preceding his settlement with the comptroller, a list containing the names of those for whom he claims as insolvent, and he must make oath that he hath been at the dwelling house or usual place of residence of the person or persons therein named, and that he could not find property of such person or persons, sufficient to discharge the respective taxes or any part thereof, and that the persons contained in such list were insolvents, at the time when he ought by law to have accounted for such collection, and the said court shall not be at liberty to allow such sheriff for more insolvent taxables than he shall have thus expressly named and sworn to.

Sheriffs to be allowed for insolvent taxables. How to obtain such allowance.

76. Such list of insolvent taxables shall be advertised by the clerk in the court house, within ten days after its return, and any

List of insolvents to be advertised by the clerk.

72. 1831, c. 1, s. 5.

73. 1831, c. 1, s. 4.

74. 1791, c. 334, s. 4.

75. 1774, c. 105, s. 2.—1786, c. 255, s. 2.—1793, c. 385.

76. 1774, c. 105, s. 2.—1786, c. 255, s. 2.



clerk, neglecting or refusing to perform the duty hereby required, shall for every such neglect or refusal forfeit and pay one hundred dollars, one half to the wardens of the poor, the other half to the person suing for the same.

Penalties on sheriffs for certain violations of duty in relation to insolvents.

77. If any sheriff shall return to court, as insolvent, the name of any person, who is not enlisted or has actually paid his tax for that year, or shall presume to collect or receive, by himself or deputy, from any person his tax for the year for which he has been returned an insolvent, without accounting for the same, such sheriff shall forfeit and pay for every offence the sum of forty dollars, to be recovered as directed in the last section, and applied one half to the use of the county where the offence shall be committed, the other half to the party injured who may sue for the same.

Sheriff's oath on settling his accounts with the comptroller.

78. Each and every sheriff, previous to settling his accounts, shall take and subscribe the following oath in the comptroller's office: "I, A. B., sheriff of the county of \_\_\_\_\_, do on this \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_, make oath that the list, now by me given in, is to the best of my knowledge and belief complete, perfect and entire, and contains the full amount of all moneys by me or for me received, or which ought to have been received, on account of the public taxes for the year one thousand eight hundred and \_\_\_\_\_, and that I have truly and faithfully endeavored to execute and govern myself by the revenue laws of this State, without favor, affection or partiality, to the best of my knowledge and ability: so help me God."

Oath as to the collection of delinquent taxes.

79. In addition to the foregoing oath, said sheriff shall swear, that if he collects any delinquent tax beyond those accounted for in said settlement, he will render a true account thereof to the comptroller within one year after such collection. And if it shall be discovered that any sheriff, or any person by virtue of having been a sheriff, shall collect delinquent taxes and not account for the same as herein required, such sheriff or other person shall be liable to pay fourfold the amount of the sum collected and not accounted for, to be recovered in the name of the State before any jurisdiction having cognizance thereof.

Penalty for collecting and not accounting for delinquent taxes.

Sheriff's commission for collecting taxes.

80. Each and every sheriff, as a compensation for his services in collecting and paying into the treasury, in due time and according to law, the public taxes, shall be entitled to a commission of six per centum on the net amount of the taxes of his county, to be allowed him, by way of deduction, in the settlement of his accounts with the comptroller.

His pay for time and expenses in making his settlement.

81. Each and every sheriff shall also be allowed the sum of three dollars for every day he may be necessarily engaged in making his settlement with the treasurer, and shall also be allowed the sum of one dollar and fifty cents for every thirty miles of the estimated distance of going and returning home, by the most usual road, from his place of residence to the seat of government, to be

77. 1774, c. 105, s. 3.

78. 1791, c. 334, s. 6.

79. 1822, c. 1129, s. 13.

80. 1791, c. 334, s. 1.

81. 1827, c. 1, s. 24.

paid by the treasurer ; and if any sheriff shall fail to pay the whole amount of the taxes, due from him to the State at the time he makes such settlement, he shall not be entitled to any mileage nor to the three dollars a day allowed for his attendance in making the settlement.

82. Over and above the other bonds, directed by law to be given by the sheriff of each county before his entering into office, he shall enter into a distinct bond with two or more sufficient sureties to be approved of by the county court, payable to the State of North Carolina, in the sum of four thousand dollars, conditioned for the due collection, payment and settlement of the public taxes as required by law.

Bond to be given by sheriffs for the collection of the public taxes.

83. It shall be the duty of the clerks of the county courts, at the same time when they make a return of the lists of the taxable property to the comptroller, to furnish the comptroller with a certificate of the name of the sheriff of his county, and the sureties to his bond for the collection of public taxes, which certificates, when certified by the comptroller, shall, on motion of the treasurer for judgment against any such sheriff and his sureties, be deemed equally valid in law with the bond of such sheriff, and the court shall give judgment and award execution thereon accordingly.

Clerks to furnish the comptroller with the names of the sheriffs and their sureties.

84. If any clerk of the county court shall fail to furnish the comptroller with such certificate, as directed in the last section, he shall forfeit and pay one thousand dollars, to be recovered by the treasurer for the use of the State, and such clerk, so failing and forfeiting, or failing to return a list of taxable property, as prescribed in this act, shall be considered guilty of a misdemeanor in office, and on conviction shall be dismissed accordingly, and shall thereafter be held ineligible to the appointment of the clerkship of his county.

Penalties on clerks for failing to furnish comptroller with names of sheriffs, &c. and for failing to make certain returns.

85. In all cases of failure of a sheriff or other accounting officer to settle his account within the time by law required, and to take the oaths prescribed by law, it shall be the duty of the comptroller, and he is hereby directed, to report immediately on the same, allowing to the failing sheriff neither commissions nor insolvents, but adding to his account the sum of four hundred dollars, as the supposed amount of such delinquents, receipts from the tavern keepers and persons failing to give in their lists of taxable property. And upon such report, and such sheriff or other accounting officer failing to appear and fully pay up and finally settle for the sums, so reported against him, as directed by law, it shall be the indispensable duty of the treasurer, and he is hereby required to take judgment, without delay, for the several sums or balances, due the State agreeably to such report, against the sheriff and his sureties, or against such other accounting officer and his sureties, and it is hereby declared that in all cases of delinquency of sheriffs or other accounting officers, the comptroller's certificate shall be held and

Comptroller's duty when the sheriff or other accounting officer fails to settle.

Duty of the treasurer in taking judgment against a defaulting officer.

82. 1784, c. 219, s. 6.

83. 1787, c. 269, s. 3.

84. 1806, c. 699, s. 3.

85. 1827, c. 1, s. 7 and 8.



deemed sufficient testimony for the court and jury to found their verdict on.

Summary judgments may be taken against all accounting officers.

86. No citation or other warning shall be required or held necessary, preparatory to the taking judgment against any delinquent sheriff or other collecting revenue officer, but the delinquency of all such officers shall be and the same is hereby declared to be held and deemed good and sufficient notice, and shall be so considered by the courts in this State as well for the officers themselves as for their sureties; and on all motions at the instance of the treasurer by the attorney general, in behalf of the State, for arrears of taxes or other money due the State, judgment shall be granted as well against the principals as their sureties, without further notice accordingly.

How penalties on clerks, justices and sheriffs shall be recovered.

87. All penalties imposed by this act upon clerks, sheriffs and justices for delinquencies in the performance of any of the duties here enjoined, where the penalties are declared to be solely for the use of the State, shall be recovered in any court of record by the treasurer, on motion of the attorney general, or any of the solicitors of the State, on the certificate of the comptroller stating such delinquency, which certificate the comptroller is hereby required to furnish to the treasurer immediately after the first day of October in each year.

A summary judgment may be taken by the treasurer against any person indebted to the State.

88. The public treasurer shall have power and authority to move for judgment against any person, indebted to the State, in any court of record in this State, in the same manner and under the same rules and regulations, which are prescribed in cases of delinquent sheriffs, and the said court shall render judgment and award execution, though the amount thereof may be within the jurisdiction of a justice of the peace.

86. 1793, c. 383, s. 9.

87. Amendment.

88. 1822, c. 1150.

*Note.*—REFERENCES TO ADJUDGED CASES.

- SECT. 10. *Cowley vs. Brittain*, 2 Hawks, 204. *Wynn vs. Wright*, 1 Dev. and Bat. 19.  
 SECT. 24. *Jones vs. Justices*, 2 Murph. 157.  
 SECT. 39. *Rhodes vs. Buie*, 2 Dev. 524.  
 SECT. 43. *Fitts vs. Hawkins*, 2 Hawks, 394. *Lenoir vs. Wellborn*, 1 Dev. 451. *Dickey vs. Alley*, ib. 453. *Slade vs. Governor*, 3 Dev. 365.  
 SECT. 48. *Douglass vs. Short*, 3 Dev. 432.  
 SECT. 51. *Stanly vs. Smith*, 1 Car. Rep. 511.  
 SECT. 55. *Jones vs. Gibson*, N. C. Term. R. 41.  
 SECT. 60. *Register vs. Bryan*, 2 Hawks, 17.  
 SECT. 61. *Avery vs. Rose*, 4 Dev. 549.  
 SECT. 86. *State vs. ———*, 1 Hay. 23. *Oats vs. Darden*, 1 Murph. 500.

Revised Statutes

1838. 9. Ch 37.

CHAPTER 103.

RIVERS AND CREEKS.

AN ACT CONCERNING THE IMPROVEMENT OF RIVERS AND CREEKS AND TO PREVENT OBSTRUCTIONS TO THEIR NAVIGATION.

SECTION

1. County courts may appoint commissioners to examine rivers and creeks and make improvements.
2. Overseers to be appointed, and their duty.
3. Justices may direct flats, &c. to be purchased or hired.
4. Penalty for felling trees in the rivers, &c.
5. Powers of the county courts of Johnston, Wayne, &c., as to the river Neuse.
6. Duty of the county solicitors in regard to the improvement of rivers and creeks—Powers of the superior court in regard to it.

SECTION

7. Fees of solicitors for their services under this act.
8. County courts may lay off their rivers, &c. into districts—One fourth of the river to be left open for the passage of fish.
9. Penalty for erecting a stand, &c. in the part of the river required to be left open for the passage of fish.
10. Penalty for setting nets across the main channel of any navigable stream—To erect stand, &c. to prevent the passage of fish indictable—Proviso as to seines.
11. Slaves violating the last section to be whipped.

1844.5. Ch. 37.

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 a majority of the justices of the court of pleas and quarter sessions of the several counties of this State shall have full power and authority, in open court, where any inland river or stream shall run through the county, or be a line of the county, of which they are justices, by order of court to appoint commissioners to view and inspect such river or stream, and make out a scale of the expense of labor, with which the opening and clearing the same will be attended; and if the same shall be deemed within the compass of the abilities of the county, and that the burden will be compensated by the utility, to appoint and authorize the commissioners to proceed in the most expeditious manner, in opening and clearing the same, by taking such hands off the making or repairing the public roads, as the court shall permit, and direct to be appropriated to such work, which hands shall be placed under overseers in companies, every overseer and company to have a distinct portion of such rivers or streams laid off by the court.

County courts may appoint commissioners to examine rivers and creeks and make improvements.

2. The overseers shall be appointed by the county court, and it shall be the duty of the clerk to issue a notice, expressing therein the name of the stream, the distance the overseer is to work there-

Overseers to be appointed, and their duty.

1. 1784, c. 227, s. 16.—1785, c. 242, s. 1.—1796, c. 460, s. 1.—1790, c. 331, s. 2.  
 2. 1809, c. 782, s. 3.—1812, c. 845, s. 1, 2 and 3.—1813, c. 859, s. 1 and 2.—1796, c. 460, s. 2.—1784, c. 227, s. 16.



on, and the hands appointed to work under him, and of the sheriff to serve the same upon them, under the same rules as notices are issued and served upon overseers of the roads ; and the overseers and hands aforesaid, upon receiving three days' previous notice from the commissioners, shall proceed to work upon and clear out such river or stream, subject to the same rules and double the penalties, imposed by law upon overseers and hands working upon the public roads ; and no overseers or hands, appointed to open and cleanse navigable rivers and streams, shall be compelled to work on public roads.

Justices may direct flats, &c. to be purchased or hired.

3. The justices, appointing the commissioners aforesaid, shall have full power and authority, where the same shall appear to them to be necessary and expedient, to direct the commissioners to purchase or hire a flat with a windlass and the appurtenances, necessary to remove loose rocks and other things, which may by such means be more easily removed, and allow the same flat, windlass and appurtenances to be paid for out of the county tax : *Provided*, nothing herein contained shall affect private property.

Penalty for felling trees in the rivers, &c.

4. If any person or persons shall obstruct the free passage of boats, by felling trees or by any other means whatever, he or they so offending shall be liable to be indicted, and upon conviction shall be fined at the discretion of the court.

Powers of the county courts of Johnston, Wayne, &c. as to the river Neuse.

5. It shall and may be lawful for the justices of the courts of pleas and quarter sessions of the counties of Johnston, Wayne, Lenoir and Craven, seven justices being on the bench, at the first court which shall be held for their respective counties after the first day of July, yearly, to appoint and lay off, in convenient districts, all the inhabitants of their counties, respectively resident within such distances from the river Neuse, as the respective county courts shall appoint, and above Spring garden on both sides of the said river, and to appoint for each district some person properly qualified as overseer, who shall cause all the persons, within the district so allotted him, who are liable to work on public roads, to work at least six days in each and every year on the said river Neuse, unless the county courts shall otherwise direct ; when he shall cause that they be employed in cutting into proper lengths and removing all logs, and in removing all brush and other obstructions to the navigation, under the penalty of twentyfive dollars for failure or neglect, to be recovered and applied as fines and forfeitures incurred by overseers of roads ; and all and every person, liable to work as aforesaid, who shall fail, when summoned or warned (agreeably to the custom in working on roads,) to appear with such tools, as the overseer shall direct, and work accordingly, shall forfeit and pay the sum of one dollar for each day he shall fail or neglect, to be recovered and applied as fines for failing to appear and work on public roads : *Provided however*, that nothing contained in this section shall be so construed, as in any wise to abridge or interfere with the rights and privileges of the Neuse River Navigation Company.

3. 1785, c. 242, s. 2.

4. 1796, c. 460, s. 2.

5. 1823, c. 1197.

6. It shall be the duty of the county solicitor for each and every county, through any part or on the borders of which any stream may pass, to inform himself of the laws, whether private or public, made for the improving the navigation of such stream or streams, and where the power of carrying such laws into effect is vested in the county courts, to apply to the court, of which he is solicitor, at the first term thereof which shall be held after the annual election of sheriff, to make the necessary orders and appointments for effecting the object of such law or laws, and if such court shall fail or refuse to make such orders and appointments, it shall be the duty of such solicitor to make a record on the State docket of his application, and appeal thereon to the next superior court of law to be held for such county, when it shall be the duty of the solicitor of the superior court, or person acting as such, to apply to the judge of the superior court to make such orders and appointments, as may be necessary for carrying such laws into effect ; and to enable the judge to obtain such information as he may need to govern him in making such orders and appointments, he is hereby empowered to call upon the clerk, sheriff, grand jurors, petit jurors, or any other person who may be attending the court, for any information which it may be in his power to give touching the subject, and to make all such orders and appointments as by the laws county courts may be empowered to make, which orders, when made, shall be in all respects as obligatory as though they had been made by the county court.

Duty of the county solicitors in regard to the improvement of rivers and creeks.

Powers of the superior court in regard to it.

7. The county and superior court solicitors shall respectively be entitled to the same fees, for any application either of them may make under this law, as they are now allowed for prosecuting any indictment in said courts, to be paid out of the moneys collected for county uses, in the county where such application is made.

Fees of solicitors for their services under this act.

8. The county courts of pleas and quarter sessions shall be and they are hereby empowered to appoint commissioners to examine and lay off the rivers in their county, and where the river is a boundary between two counties, to lay off the river on the side of the county appointing such commissioners ; and further, such commissioners, in laying off the rivers, shall allow three fourths of such river for the owner or owners of the same, for the purpose of erecting stops, dams and stands, and one fourth part, including the deepest part of the river and creeks, they shall leave open for the passage of fish, marking and designating the same in the best manner they can ; and where any mill or mills are built across any such river, and slopes are or may be necessary, commissioners shall be appointed as above, who shall lay off such slope or slopes, and determine the length of time such shall be kept open ; and such commissioners shall and they are hereby required to return, to their respective county courts, a plan of such falls, dams and other parts of rivers, as may have been thought necessary to survey as above.

County courts may lay off their rivers, &c. into districts.

One fourth of the river to be left open for the passage of fish.

9. All and every person, who shall hereafter erect any stand,

Penalty for erecting a

6. 1809, c. 782, s. 1.  
 7. 1809, c. 782, s. 2.  
 8. 1787, c. 272, s. 1.  
 9. 1787, c. 272, s. 2.



stand, &c. in the part of the river required to be left open for the passage of fish.

dam, weir or hedge, in such part of the river as by this law is required to be left open for the passage of fish, or who shall not make and keep open any such slope as the commissioners may judge necessary, shall forfeit and pay ten dollars for every twenty-four hours he shall keep up, erect or make any such dam, stand, weir or hedge, or dan up or stop any such slope, to be recovered by any person suing for the same, one half to his own use, the other half to be applied to the use of the county, either by warrant before a justice of the peace or in a court of law, as the case may require.

Penalty for setting nets across the main channel of any navigable stream.

10. It shall not be lawful for any person in this State to set, or cause to be set, any net of any description across the main channel of any navigable river or creek in this State, under the penalty of forty dollars, to be recovered by any person suing for the same, to his or her own use, before any jurisdiction having cognizance thereof; and if any person shall erect, so as to extend more than three fourths of the distance across the channel of such river or creek, any stand, dam, weir or hedge, or other obstructions to the passage of fish, such person so offending shall be liable to indictment, and, upon conviction, shall be fined at the discretion of the court: *Provided*, that nothing herein contained shall prevent, or be construed to prevent, any person or persons from working and hauling their seines across any of the rivers or creeks, in the same manner as heretofore in use.

To erect stand, &c. to prevent the passage of fish indictable.

Proviso as to seines.

Slaves violating the last section to be whipped.

11. If any slave shall be guilty of the offence mentioned in the last section, without the knowledge or consent of his or her master or mistress, he or she so offending shall have and receive thirty-nine lashes on his or her bare back.

10. 1796, c. 454, s. 1 and 3, amended.  
11. 1796, c. 454, s. 2.

CHAPTER 104.

ROADS, FERRIES AND BRIDGES.

AN ACT CONCERNING THE PUBLIC ROADS, FERRIES AND BRIDGES IN THIS STATE.

SECTION

- 1. What shall be public roads and ferries—County courts to settle ferries, and order the laying out public roads.
- 2. Manner in which ferries are to be settled, and public roads to be laid out, altered or discontinued.

SECTION

- 3. Appeals allowed, and proceedings thereon.
- 4. Directions as to how roads shall be laid out.
- 5. Penalty on persons for turning roads contrary to law.
- 6. Where an overseer refuses to receive

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- a road altered or turned according to law, what proceedings may be had.
- 7. How persons may turn or alter roads on their own lands in certain cases.
- 8. County courts to appoint overseers of roads—Penalty for not serving—Not to be compelled to serve more than one year in three.
- 9. Clerks to furnish sheriffs with orders appointing overseers—Sheriffs to apply at the clerk's office for the same, and to serve the overseers with copies—Penalty on clerks and sheriffs for failing.
- 10. Overseers to summon the hands liable to work on public roads—What persons are liable.
- 11. Overseers competent to prove notice to hands.
- 12. No person, liable to work on public roads, to be exempt, unless exempted by the county court.
- 13. Overseers may lay off their roads into equal parts among their hands.
- 14. Of what width public roads and causeways shall be.
- 15. Overseers may cut poles and timber and dig earth on any adjoining lands.
- 16. Owners of such lands may petition the county court for indemnification.
- 17. Overseers to make footways over swamps and runs of water, where the county court may direct.
- 18. Overseers to set up sign posts at the forks of roads—Penalty on overseers for not setting up, and upon persons for removing, &c. sign boards.
- 19. Overseers to measure the roads within their districts, and set up mile posts.
- 20. Penalty on overseers for neglect of duty, or not keeping roads in repair.
- 21. Penalty on persons for erecting bars across any public road.
- 22. County courts may cause bridges to be erected across streams, where

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- necessary, at the expense of the county.
- 23. Contracts, made by the justices, for building bridges, to be binding on them and their successors.
- 24. Owners of water mills, situate on public roads, to keep up bridges connected with their mill dams.
- 25. Penalty on owners of water mills for failing to keep up bridges.
- 26. County courts may authorize the building of toll bridges.
- 27. County courts to regulate the rates of ferriage.
- 28. Owners of ferries may build toll bridges at their ferries.
- 29. County courts may compel keepers of ferries and owners of toll bridges to give bond, &c.—How persons injured may proceed to recover on such bonds.
- 30. Penalty on persons not empowered, for keeping a ferry, or transporting persons within ten miles of any ferry for pay—Proviso for persons contracting to carry the mail.
- 31. Keepers of public ferries to keep up a house of entertainment at their ferries.
- 32. Penalty for fastening a vessel to a float bridge.
- 33. In what cases the county courts may order the laying out of cart ways—Proceedings for such purpose.
- 34. Persons, across whose lands cart ways are laid out, may erect bars or gates across the same.
- 35. Cart ways to be free for all persons to pass.
- 36. Appeals allowed from orders to lay out cart ways.
- 37. County courts may authorize the erection of gates across public roads.
- 38. How a person, desirous of erecting a gate across a public road, shall proceed to obtain an order for that purpose—Appeal allowed—Gates to be subject to tax.
- 39. Forfeitures, how to be recovered and applied.

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 all roads and ferries in the several counties in this State, that have been laid out or appointed by virtue of any act of assembly What shall be public roads and ferries.

1. 1784, c. 227, s. 1.



County courts to settle ferries and order the laying out public roads.

Manner in which ferries are to be settled and public roads to be laid out, altered or discontinued.

Appeals allowed and proceedings thereon.

Directions as to how roads shall be laid out.

heretofore made, or by virtue of any order of court, are hereby declared to be public roads and ferries, and that from time to time and at all times hereafter, the courts of pleas and quarter sessions of the several counties in this State, shall have full power and authority to appoint and settle ferries, and order the laying out public roads, where necessary, and to appoint where bridges shall be made, and to discontinue such roads, as are now or shall be hereafter made, as shall be found useless, and to alter roads so as to make them more useful, as often as occasion shall require.

2. The said county courts of pleas and quarter sessions shall not appoint or settle any ferry, or order the laying out of any public road, or discontinue or alter such roads, as now are or shall hereafter be made, unless upon the petition, in writing, of one or more persons in the said court filed; and unless such petitioner or petitioners shall make it appear to the satisfaction of the court, that all and every such person, over whose lands the said road may pass, or whose ferry heretofore established shall be within two miles of the place, at which the said petitioner may pray the court to establish a ferry, shall have had twenty days notice of the intention of filing said petition, the court shall cause the said petition to be filed in the clerk's office until the succeeding court, and notice thereof to be posted during the same period at the court house door, at which court the justices present shall hear the allegations set forth in the said petition, and if sufficient reason be shown, the court shall have full power and authority to appoint and settle the said ferry, or to order the laying out, or to discontinue or alter the said roads, as the case may be.

3. If any persons or persons shall be dissatisfied with the judgment, sentence or decree, which the court may pass or pronounce on said petition, such person, so dissatisfied, may pray an appeal to the superior court of law of the said county, but, before obtaining the same, shall enter into bond with two or more sufficient securities, to be judged of by the said court, for the faithful prosecution of said appeal, and for the faithful performance of the judgment, sentence or decree of the said superior court, which bond shall be made payable to the person or persons, who shall have filed said petition, or to such person or persons who shall have opposed the same, as the case may be, and the appeal so granted shall be subject to the same rules and regulations as appeals in other cases from the county courts to the superior courts; and the said superior courts shall proceed to hear and determine the said petition, as shall appear right and expedient: *Provided nevertheless*, that nothing in this act contained shall authorize the superior court to interfere in fixing or regulating the rates of ferriage, tolls of bridges, or the distribution or allotment of hands to work under overseers of the public roads.

4. All roads, to be hereafter laid out, shall be laid out by a jury of freeholders, to the greatest advantage of the inhabitants, and as

2. 1813, c. 862, s. 1.
3. 1813, c. 862, s. 1.
4. 1784, c. 227, s. 2.

little as may be to the prejudice of enclosures, which laying out, and such damage as private persons may sustain, shall be done and ascertained by the same jury on oath, which oath shall run in these words, to wit: "I, A. B., do solemnly swear, that I will lay out the road, now directed to be laid out by the court of pleas and quarter sessions, to the greatest ease and advantage of the inhabitants, and with as little prejudice to enclosures as may be, without favor, affection, malice or hatred, and to the best of my skill and knowledge: so help me God." And all damages to be hereafter thus assessed, shall be deemed a county charge, and be defrayed from the tax on each county, laid for contingent charges.

5. No person shall turn, alter or change any public road, unless in the manner above prescribed for the laying out of new roads, (except as hereinafter provided,) under the penalty of ten dollars for each month such road is turned out of the old course, without the permission obtained as aforesaid of the court, and the old road shall in no case be shut up, until the overseer shall certify to the court, that the new opened road is in good and sufficient order.

Penalty on persons for turning roads contrary to law.

6. Whenever any person, by permission of the court of his county, and agreeably to law, shall have turned, altered or changed any road, and shall tender the same to the overseer, and the overseer shall refuse to receive said road, upon the ground that the said road is not in good or sufficient order, the person, making such alteration in the road, if dissatisfied with the decision of said overseer, may petition the court of his county, who shall appoint three persons to examine said road, and their report as to the condition of the road shall be conclusive; and in like manner any person liable to work on any road, or any person sending three hands to work on any road, and dissatisfied with the certificate or decision of any overseer, that a road altered or turned, or a new road opened is in good and sufficient order, may make his objection to said certificate to the court of his county, at the term such certificate is returned, and said court shall appoint three persons to examine said road, and their report as to the condition of said road, shall be conclusive.

Where an overseer refuses to receive a road altered or turned according to law, what proceedings may be had.

7. Any person, through whose farm or land a public road passes, or may hereafter pass, may turn or alter the same, by laying off the road as he proposes, so, however, as not to interfere with the land of any other person, and put it in a good and proper condition as a public highway; but before he shall close up, or in any way obstruct the former road, he shall apply to a justice of the peace, whose duty it shall be to summon two disinterested freeholders to attend on the premises, on a given day, who, after having taken an oath to that effect, shall together within himself, view and examine the road, as proposed to be altered or turned, and report its condition, and such other facts connected with the case, as may be necessary to determine, whether such alterations should be made, to the next court of pleas and quarter sessions to be held for the

How persons may turn or alter roads on their own lands in certain cases.

5. 1784, c. 227, s. 13.—1813, c. 862, s. 1.

6. 1817, c. 939, s. 1.

7. 1834, c. 22.



county, and upon consideration the court may sanction the proposed alteration, or refuse it: *Provided always*, that the overseer of the road shall have five days' notice of the time and place of meeting of the justice and freeholders.

County courts to appoint overseers of roads. Penalty for not serving.

8. The county courts of the several counties shall, annually and as often as may be necessary, appoint overseers of the highways or roads within their respective counties, each of whom shall serve as such, under the penalty of forty dollars for refusing, and shall be deemed and held liable for any neglect in working on the roads, until he shall have made return to the court of his county, and shall make it appear to their satisfaction, that he has done the duties of an overseer, as by law directed: *Provided*, that no overseer shall be responsible for the insufficiency of the road, of which he is appointed overseer, until ten days after he shall be served with the notice of his appointment, as hereinafter directed: *And provided always*, that no person, complying with the requisites of this act, shall be compelled to serve as overseer of a road in any county more than one year in three.

Not to be compelled to serve more than one year in three.

Clerks to furnish sheriffs with orders appointing overseers.

9. It shall be the duty of the clerks of each and every county court of pleas and quarter sessions, within ten days after the rise of each court, to furnish their respective sheriffs with two copies of each order, appointing overseers of the roads, that may have been made during the sitting of the said court. And it shall be the duty of the sheriff to apply at the office of the clerk, either by himself or some other proper person, within ten days after the rise of each court, for the said orders, and he shall, on receiving them, within twenty days, serve each person, so appointed overseer of roads, rivers or creeks, with one copy of the said orders, or leave the same at his usual habitation; and the other copy it shall be his duty to return to the next county court happening thereafter, with the date of the service endorsed thereon, or the date when it was left at the residence of the said overseer. And if either of the aforesaid clerks or sheriffs fail or neglect to perform his duty, as herein specified, they or either of them shall, on conviction before any competent authority, pay for such neglect the sum of ten dollars.

Sheriffs to apply at the clerk's office for the same, and to serve the overseer with copies.

Penalty on clerks and sheriffs for failing.

Overseers to summon the hands liable to work on public roads. What persons are liable.

10. It shall be the duty of the overseers of the public roads to summon all white males, between the ages of eighteen and fortyfive, and free males of color and slaves, between the ages of sixteen and fifty years, within their district, to meet, at such times and places as to them shall seem convenient, for the repairing or making such roads as shall be necessary; and whosoever shall, upon such summons, refuse or neglect the duty therein required, shall forfeit and pay one dollar per day for each person so neglecting or refusing, to be recovered of the guardian or father, if the person failing be a minor, or of the master if he be a slave: *Provided*, that the overseers shall give notice to each free person, or the master, mistress or overseers of slaves, what kind of tools they and each of them

8. 1784, c. 227, s. 8 and 9.—1786, c. 256, s. 5.—1812, c. 845, s. 3.

9. 1812, c. 845, s. 1 and 2.—1813, c. 859, s. 1 and 2.

10. 1784, c. 227, s. 8 and 9.—1786, c. 256, s. 2.—1817, c. 935, s. 1 and 3.—1825, c. 1295, s. 2 and 3.

shall bring and work with on the roads, at the time of summoning, and that the several persons, summoned by the overseers to work on the roads as aforesaid, shall not be liable to any fine for not appearing and doing their duty, unless they shall be so summoned three days before the day appointed for working.

11. In all cases, where overseers of roads shall be compelled to warrant their hands for neglect or refusal to perform their duty, such overseers shall be deemed competent witnesses to prove notice to them, and if any defendants shall be unable to discharge the judgment and costs that may be recovered against them, the costs of the said warrants shall be paid by the county courts : *Provided*, that the defendant shall first have taken the benefit of the act for the relief of insolvent debtors.

Overseers competent to prove notice to hands.

12. No person, between the ages prescribed above for free white men and slaves and free persons of color respectively, shall be exempted from working upon the public roads, except such persons as are or shall be exempted by the General Assembly, or by the county courts, on account of personal infirmity, of which the said courts, seven justices being present, shall be the sole judges, and also such as shall send three slaves or other three sufficient hands to work on the roads : *Provided*, that nothing herein contained shall be construed to exempt overseers of slaves from working on roads.

No person, liable to work on public roads, to be exempt, unless exempted by the county court.

13. It shall and may be lawful for an overseer, if required by a majority of the workmen on the road assigned him, to lay off the road in equal apartments for the ease of the laborers, who shall finish his or their part in a time agreed on between him and each free person, master, mistress or overseer, and on default of any agreeing party, the overseer is hereby authorized to cause such part to be finished by the hire of other persons to do the same thereon, to tender his account, and demand payment, and, on refusal, to warrant for the same, and to recover the money to his own use : *Provided*, the time agreed upon shall not exceed ten days.

Overseers may lay off their roads into equal parts among their hands.

14. All roads laid off, under the provisions of this act, shall be deemed public roads, and shall be at the least twenty feet wide, and where by the overseers of roads it may be deemed expedient to make or repair causeways on the same roads, they shall be at least fourteen feet wide ; and earth, necessary to raise or cover the said causeways, shall be taken from each side of the causeway equally, and so as to form a drain on each side of the said causeway. And the overseers of public roads are hereby directed to have cut and completely cleared all stumps and runners, for the width of sixteen feet in the centre of the highways under their care, of which width necessary bridges through swamps, and over small runs, creeks or streams are directed to be made.

Of what width public roads and causeways shall be.

15. The overseers of the several roads are hereby authorized to cut poles and other necessary timber, to enable them to comply

Overseers may cut poles and timber and dig

11. 1825, c. 1287.—1817, c. 935, s. 2.

12. 1784, c. 227, s. 8 and 9.—1826, c. 26, s. 1 and 2.

13. 1784, c. 227, s. 10.

14. 1784, c. 227, s. 4.

15. 1786, c. 256, s. 1.—1813, c. 976, s. 1.



earth on any adjoining lands.

Owners of such lands may petition the county court for indemnification.

Overseers to make footways over swamps and runs of water, where the county court may direct.

Overseers to set up sign posts at the forks of roads.

Penalty on overseers for not setting up, and upon persons for removing, &c. sign boards.

Overseers to measure the roads within their districts and set up mile posts.

with the duties enjoined them in repairing and making bridges and causeways, without incurring any penalty thereby. And whenever earth shall be needed for raising or covering a causeway on a public road, and the same cannot be conveniently procured on either side of the causeway, it shall and may be lawful for the overseer of the road to take the earth required from any adjoining land, and he shall not be liable for any action or penalty therefor.

16. The owner of the land, thus used, may if he deem himself injured, file his petition in the court of pleas and quarter sessions of the county, wherein the causeway thus raised or covered is situate, and pray indemnification; and it shall be the duty of the court, after a proper examination of the facts, to make the petitioner such compensation, out of the county funds, as shall be adequate to the injury sustained: *Provided*, that this and the preceding section shall in no wise be construed to apply to the lands, adjoining or contiguous to the causeway, or great road, leading across Eagle's island to Wilmington.

17. It shall be the duty of the overseers of the road, in the several counties, where the county courts may so direct, to make or cause to be made and kept in repair, good and sufficient footways across all swamps and runs of water, that may cross that part of the road, allotted to them by an order of the court of said county, for the convenience of travellers on foot; and also to erect and keep hand rails on each side of all hollow bridges, where the county courts may direct, which may be situate on that part of said road, so allotted them by the county court.

18. All overseers of roads shall cause to be set up, at the forks of all roads within their several districts, a post or posts, with arms pointing the way of each and every road, with directions to the most public places to which they lead, with the number of miles from that place as near as can be computed; and every overseer, who shall neglect or refuse to do and keep the same in repair, shall forfeit and pay for every such neglect the sum of ten dollars: *Provided*, that no overseer shall be considered guilty of a neglect of the duty herein enjoined, unless he shall fail to set up the same for the space of fifteen days. And every person, who shall wantonly remove, knock down, or deface the said arms, shall for every such offence forfeit and pay the sum of ten dollars, and be moreover liable to indictment.

19. The several overseers of the roads shall cause the public roads, within their districts respectively, to be exactly measured, where the same has not already been done, and shall, at the end of each mile, mark in a legible and durable manner the number of such miles, beginning, continuing and marking the numbers, in such manner and form as the court of the counties shall severally and respectively direct; and every overseer shall keep up and repair such marks and numbers within his district, and every overseer,

16. 1818, c. 976, s. 2.

17. 1817, c. 940, s. 1 and 2.

18. 1784, c. 227, s. 11.—1812, c. 846.

19. 1784, c. 227, s. 12.

neglecting to mile mark, or to repair the mile marks within his district, according to the intent and meaning of this act, for the space of thirty days after his appointment to office, shall forfeit and pay the sum of four dollars.

20. Every overseer of roads, who shall refuse or neglect to do his duty, as is by this act directed, or who shall not keep the roads and bridges clear and in repair, or let them remain uncleared or out of repair for and during the space of fifteen days, unless hindered by extreme bad weather, shall forfeit, for each and every such offence, the sum of four dollars over and above such damages as may be sustained.

Penalty on overseers for neglect of duty or not keeping roads in repair.

21. If any person or persons whatsoever shall erect, or cause to be erected, across any public road, any bars, he or they so offending shall be subject to pay the sum of ten dollars, and be moreover liable to be indicted: *Provided*, that no gate nor toll bridge shall be considered as liable to the fine hereby imposed.

Penalty on persons for erecting bars across any public road.

22. Where a bridge shall be necessary over any place, where the overseer, with his assistants, cannot conveniently make it, the court of the county, wherein such place shall be, is hereby empowered and required to contract and agree for the building, keeping and repairing thereof, and to levy the charge in their county; and when bridges shall be necessary over any such creek or river, which divides one county from another, the court of each shall join in agreement for building, keeping and repairing the same, and the charge thereof shall be defrayed by both counties, in proportion to the number of taxables in each.

County courts may cause bridges to be erected across streams where necessary, at the expense of the county.

23. All and every contract, agreement and order, by the justices of the court of any of the counties aforesaid entered into or made, for or concerning the building, keeping or repairing bridges, in such manner as to them shall seem most proper, shall be good against them and their successors.

Contracts made by the justices for building bridges, to be binding on them and their successors.

24. It shall be the duty of every owner of a water mill within any county, whose mill is situate on any public road, to keep at his or her expense, in such order as the county thereof may deem sufficient, all bridges that are or may be erected, or attached to his or her mill dam, immediately over which a public road may run: *Provided*, that nothing herein contained shall be construed to extend to any mill, which was erected before the laying off of any such road, unless such road was laid off by the request of the owner of said mill.

Owners of water mills, situate on public roads, to keep up bridges connected with their mill dams.

25. Every owner or owners of any such water mill, who shall refuse or neglect to do his or their duty, as is by this act directed, or shall let remain out of repair any such bridge or bridges for the space of ten days, unless prevented by unavoidable circumstances, shall forfeit, for each and every such offence, the sum of twenty dollars over and above such damage as may be sustained.

Penalty on owners of water mills for failing to keep up bridges.

- 20. 1784, c. 227, s. 14.
- 21. 1784, c. 227, s. 13.
- 22. 1784, c. 227, s. 5.
- 23. 1784, c. 227, s. 6.
- 24. 1817, c. 941, s. 1.
- 25. 1817, c. 941, s. 2.



County courts may authorize the building of toll bridges.

26. It shall and may be lawful for the majority of the justices of the courts, through whose counties run large water courses or creeks, across which, from the rapidity of the water and width of the stream, it may be too burthensome to build bridges and keep them in repair by a tax on the inhabitants, if they deem it necessary, to contract with builders to build toll bridges or expensive causeways, for each of which, each court is hereby authorized and required to lay the toll to be paid on all persons, horses, carriages and cattle passing over the same: *Provided*, that such toll shall be general to all persons, and no person shall be exempt therefrom. And the revenue arising therefrom for such a number of years, as the said courts may agree upon, shall be granted unto the builders of said bridges, their heirs and successors, for the building thereof, which bridges, being built under the direction of the said courts, and the revenue arising from the toll thereof so granted, the said builder or builders, his or their heirs or successors, shall keep in constant repair at his or their sole expense, and shall keep good and sufficient hand rails across the same; in default of which, on conviction, they are hereby declared to forfeit all right and title to the toll allowed by the court.

County courts to regulate the rates of ferriage.

27. The justices of each county shall, once a year, or oftener if necessary, at the first court to be held after the first day of January, in each year, rate the prices of such ferries, as shall be kept within their respective counties: And any ferry keeper, who shall ask, demand or receive a greater price for ferriage, than shall be rated by the justices according to the directions of this act, shall forfeit five dollars for every offence. And every person, who lives at, or owns a public ferry in this State, and refuses to keep up such ferry, at the rates allowed by the county court, shall forfeit for every such offence the sum of five dollars.

Owners of ferries may build toll bridges at their ferries.

28. In all cases, where the proprietor of any ferry shall prefer building a good and substantial bridge over any water course, instead of keeping a ferry, he shall be at liberty to do so, under the same rights and in the same manner, by which the ferry is claimed and held, and under the same rules, regulations and restrictions as other toll bridges heretofore established by law: *Provided nevertheless*, that no more toll shall be demanded for passing any bridge, erected in consequence of this act, than is granted by law for the ferriage, unless by agreement with the county court, who are hereby authorized to grant an advance, as far as twentyfive per cent., and not more. *And provided further*, that in all such bridges, the proprietors shall erect a draw, where any water course is frequently and commonly used by sea vessels, or masted boats of considerable burthen.

County courts may compel keepers of ferries and owners of toll bridges to give bond, &c.

29. The courts of each and every county shall have full power and authority, and they are hereby directed and required, to compel all persons, that now do or shall hereafter be appointed to keep

26. 1784, c. 227, s. 7.—1817, c. 939, s. 2.—1817, c. 940, s. 3.

27. 1779, c. 10, s. 8 and 9 of Iredell's Rev.—C. 160, s. 2 of the New Rev.

28. 1806, c. 706.

29. 1784, c. 227, s. 15.

a public ferry, or who shall own a bridge receiving tolls, within the said counties, to give bond with good and sufficient security, in the sum of one thousand dollars, payable to the State of North Carolina, with condition that he or they shall and will constantly find, provide and keep good and sufficient boats or other proper crafts, or keep such bridges in good repair, as the case may be, and always to be well attended, for travellers or other persons, their horses, carriages and effects, over any river or creek; and if any person shall receive damage by any ferryman or keeper of a toll bridge not having complied with the condition of his bond, the person, receiving such damage, shall and may bring an action of debt against such ferryman or bridge keeper on such bond, in the name of the State, and recover for the non-performance of the said condition so much damages, as he, she or they shall appear to have sustained, and thereupon take out execution for whatsoever shall be so recovered, and apply the same to his, her or their own use; and it shall and may be lawful for any person, detained at any public ferry by reason of the ferryman's not having sufficient boats or other proper crafts and hands, or by neglecting to do his duty, by a warrant from a justice of the peace, to recover of such ferryman the sum of ten dollars for every such default or neglect: *Provided*, that any such recovery shall not be deemed to bar any action for personal damages, suffered by any person or persons, by reason of the insufficiency of said ferries and boats thereon, and bridges and causeways.

How persons injured may proceed to recover on such bonds.

30. If any person or persons, not empowered to keep ferry, shall pretend to keep any ferry, or to transport any person or persons or their effects for pay, within ten miles of any ferry, (being on the same river or water,) which is already, or hereafter shall be appointed, such person or persons, so pretending to keep ferry, or transporting any person or persons or their effects, shall forfeit and pay the sum of two dollars, for every such offence, to the nearest ferryman, to be recovered by a warrant from any justice of the peace: *Provided*, that such person or persons, as may contract for riding post, or for carrying the mail in stages, shall be authorized to keep a boat and to employ hands for the sole purpose of transporting the public mail, and such passengers as may travel in the stage with the same, across any ferry or ferries without let or hindrance. But such contractors for riding post or for carrying the mail by stage, shall not be authorized to transport any other passengers across, at public ferries, than such as travel by the stage, and no person or persons shall pretend to transport any other passenger for pay, at a public ferry, unless he or they are duly authorized so to do, by the court of the county in which the ferry may be, or of the county from which the passenger may be carried, under the penalty of ten dollars, to be recovered by the owner of the ferry, to his own use, as above provided.

Penalty on persons not empowered, for keeping a ferry, or transporting persons within ten miles of any ferry for pay.

Proviso for persons contracting to carry the mail.

31. All keepers of public ferries or bridges in this State, where the ferriage or bridge toll is above five cents for a man and horse,

Keepers of public ferries to keep up a

30. 1764, c. 72, s. 1.—1787, c. 273.

31. 1767, c. 83, s. 1.



house of entertainment at their ferries.

shall be obliged to furnish all travellers with entertainment, at tavern rates, and shall take out license for that purpose ; and if any keeper of any such public ferry or bridge shall refuse or neglect to furnish such entertainment, or to take out such license, such ferry or bridge keeper shall forfeit and pay, for each offence, the sum of twenty dollars, to any person who shall sue for the same.

Penalty for fastening a vessel to a float bridge.

32. It shall not be lawful for any person to tie or make fast any decked vessel to any of the float bridges of this State ; and any person, violating this section of this act, shall forfeit and pay fifty dollars, recoverable before any jurisdiction having cognizance thereof, the one half to the use of the person suing for the same, and the other half to the wardens of the poor in the county, where such bridge is situate : and where such bridge crosses a county line, the justices of either county shall have jurisdiction under this act, and the one half shall be paid to the wardens of the poor of the county, where judgment is given by the justice.

In what cases the county courts may order the laying out of cart ways.

33. If any person shall be settled upon or cultivating any land, to which there is no public road leading, and no way to get to and from the same, other than by crossing other persons' lands, and it shall not be necessary to establish a public road, it shall be lawful for such person to file his petition in the county court, praying for a cart or wagon way, to be kept open across another person's land, leading to some public road, ferry, bridge or public landing ; and upon his making it appear, to the satisfaction of the court, that the adverse party has had twenty days notice of such his intention, the said court, seven justices being present, shall hear the allegations set forth by the petitioner, and if sufficient reason be shewn, it shall be the duty of such court to pass an order, directing the sheriff to summon a jury of twelve freeholders to go on the premises, and view the same, and lay off a cart way, not less than fourteen feet wide, and assess the damages the owner of such land may sustain thereby ; and such damages, with the expense of making the road, shall be paid by the petitioner, and the way shall be kept open for the free passage of persons on horseback, carts or wagons. *Provided*, that if the notice aforesaid shall not have been given, the justices shall cause such petition to be filed in the clerk's office until the next court, when they shall proceed to hear and determine the same.

Proceedings for such purpose.

Persons across whose lands cart ways are laid out, may erect bars or gates across the same.

34. Any person, across whose land such cart way may pass, shall be at liberty to erect gates or bars across the same ; and if any person shall leave open, break down or otherwise destroy such gate or bars, erected as aforesaid, he shall on conviction thereof forfeit and pay two dollars for such offence, for the use of the person suing for the same, to be recovered before any justice of the peace for the county, where the offence may be committed.

Cart ways to be free for all persons to pass.

35. Any cart way, laid off as aforesaid, for and at the request of a petitioner or petitioners for the use aforesaid, shall be free for the

32. 1819, c. 1017.

33. 1793, c. 508, s. 1.—1822, c. 1139, s. 1.

34. 1798, c. 508, s. 1 and 2.

35. 1793, c. 503, s. 3.

passage of any person or persons to pass. *Provided*, that this act shall not be construed, so as to exempt any such petitioner or petitioners from working on the public roads, to which the court may have directed them.

36. Either party, dissatisfied with the judgment of the county court in any case arising under the thirtythird section of this act, shall have a right to appeal to the superior court of said county, under the same rules and restrictions as in other cases of appeals. Appeals allowed from orders to lay off cart ways.

37. The several courts of pleas and quarter sessions in this State, a majority of the justices of the county being present, shall have full power to authorize, in the manner herein prescribed, the erection of gates across public roads in their respective counties. County courts may authorize the erection of gates across public roads.

38. Any person, desirous to erect a gate across a public road, may file his petition in the court of pleas and quarter sessions of the county, where such road lies, whereupon the court shall order that publication be made until the next succeeding court, at the court house or in some public place, that application has been made to the court to erect a gate across a public road, describing the place and name of the petitioner, and that all persons interested in the convenient travelling or transportation on said road have leave to appear and defend, demur or plead to said petition, and if at the next succeeding court, it shall satisfactorily appear that such publication has been made as aforesaid, and not otherwise, the said court may, at their discretion, a majority of the justices being present, authorize the petitioner, at his or her cost, to erect a gate as prayed for : *Provided always*, that the petitioner, or party defendant shall have the right of appeal as in other cases : *And provided further*, that all gates, erected under the authority of this section, shall be subject to the same taxes as are imposed by law on gates across public roads. How a person desirous of erecting a gate across a public road, shall proceed to obtain an order for that purpose.

*And provided further*, that all gates, erected under the authority of this section, shall be subject to the same taxes as are imposed by law on gates across public roads. Appeal allowed. Gates to be subject to tax.

39. All forfeitures, incurred by a violation of any of the provisions of this act, shall be recovered by action of debt before any jurisdiction having cognizance of the same, one half to the use of the prosecutor, the other half to the use of the county in which the offence is committed, unless the same shall have been otherwise provided for by this act. Forfeitures, how to be recovered and applied.

- 36. 1822, c. 1139, s. 3.
- 37. 1834, c. 16, s. 1.
- 33. 1834, c. 16, s. 2, 3 and 4.
- 32. 1786, c. 256, s. 4.

*Note.*—REFERENCES TO ADJUDGED CASES.

- SECT. 1. Carr vs. Hairston, 1 Car. Rep. 249. Beard vs. Long, 2 Car. Rep. 69. Pipkin vs. Wynn, 2 Dev. 402.
- SECT. 2. Little vs. May, 3 Hawks, 599.
- SECT. 3. Harris vs. Coltraine, 3 Hawks, 312.
- SECT. 25. Mulholland vs. Brownrigg, 2 Hawks, 349.



CHAPTER 105.

SALARIES AND FEES.

40.1. Ch 39. allows Coroners \$5. for inquest  
46.7. Ch 41

AN ACT PRESCRIBING THE SALARIES AND FEES OF THE SEVERAL OFFICERS OF THIS STATE.

SECTION

- 1. Salaries of the governor, judges of the supreme court, secretary of state, treasurer, comptroller, private secretary to the governor, and clerk in the treasury department—When paid.
- 2. Salary of the adjutant general.
- 3. Salary of the judges of the superior courts.
- 4. Salaries of the attorney general and solicitors.
- 5. Of the reporter of the decisions of the supreme court.
- 6. Of the clerk of the supreme court.
- 7. Pay of the councillors of state.
- 8. Of the clerk and doorkeeper of the council.
- 9. Of the members of the General Assembly.
- 10. Of the clerks and officers of the General Assembly.
- 11. Pay of the members and officers of the General Assembly, how ascertained, certified and paid.
- 12. Fees of the governor's private secretary.
- 13. Of the secretary of state.
- 14. Of the attorney general and solicitors for the State.
- 15. Of the county solicitors.
- 16. Of attorneys at law.
- 17. Of clerks of the county courts.
- 18. Of the clerks of the superior court.

SECTION

- 19. Clerks to have no fee on a *capias* in certain cases.
- 20. In certain state cases, clerks and sheriffs to have only half fees.
- 21. Fees of sheriffs.
- 22. Sheriffs not allowed commissions upon a justice's execution.
- 23. Clerks of the superior and county courts to keep a copy of the clerks' and sheriffs' fees posted up in their offices.
- 24. Clerks of courts may issue execution for fees in certain cases—Bill of costs to be annexed.
- 25. Fees of the clerk of the supreme court.
- 26. Of clerk and masters in equity.
- 27. Compensation of county trustees.
- 28. Fees of coroners.
- 29. Fees of constables.
- 30. Of registers.
- 31. Of entry takers.
- 32. Of county surveyors.
- 33. Of rangers.
- 34. Of commissioners of affidavits.
- 35. Of processioners.
- 36. Of standard keepers.
- 37. Of jailers.
- 38. Of inspectors.
- 39. Of tobacco pickers.
- 40. Fee bills to be made out in dollars and cents—Receipts to be given in the same.

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 the governor of this State shall receive an annual salary of two thousand dollars ; the judges of the supreme court shall receive, each, an annual salary of two thousand five hundred dollars ; the secretary of state, besides his fees, shall receive an annual salary of eight hundred dollars ; the public treasurer, an annual salary of

Salaries of the governor, judges of the supreme court, secretary of state, treasurer, comptroller, private sec-

1. 1786, c. 251, s. 1.—1793, c. 403.—1817, c. 956.—1818, c. 962, s. 1.—1821, c. 1121.—1784, c. 219, s. 14.—Journals of 1790.—1806, c. 702, s. 1.—1827, c. 1, s. 19.—1787, c. 269, s. 7.—1823, c. 5.

one thousand five hundred dollars ; the comptroller of public accounts, an annual salary of one thousand dollars ; the private secretary to the governor, besides his fees, shall receive an annual salary of three hundred dollars ; and the clerk or clerks of the treasury department, an annual salary of five hundred dollars. All which salaries shall be paid quarterly ; that is, on the first day of April, first day of July, first day of October, and the first day of January, in each and every year ; and the public treasurer is hereby authorized to pay said officers, on warrants from the governor, at the different times as before stated.

2. The adjutant general of the State shall receive an annual salary of two hundred dollars, to be paid semiannually ; which salary the public treasurer is authorized to pay, upon warrant from the governor.

3. The judges of the superior courts of law and equity, shall each have an annual salary of one thousand nine hundred and fifty dollars, in full compensation for all judicial duties, which are now or may hereafter be assigned to them by the General Assembly, payable semiannually : *Provided nevertheless*, that if any of the judges aforesaid shall fail to produce to the treasurer, the certificate or certificates of any of the clerks of the several superior courts of the districts assigned them, it shall be the duty of the treasurer, for any certificate they shall so fail to produce, to deduct one hundred dollars.

4. The attorney general of the State, or the solicitor who may attend in his place, shall receive the sum of one hundred dollars for each term of the supreme court, which he shall attend ; and the attorney general and solicitors shall receive, besides their prescribed fees, the sum of twenty dollars for each term of the superior courts they shall attend, to be paid by the public treasurer, on his or their presenting a certificate of such attendance from the clerks of the respective courts, and if they attend any of said superior courts more than one week, then the said attorney general and solicitors, so attending, shall receive twenty dollars more for the second week of said term, to be paid in the same manner.

5. The reporter of the decisions of the supreme court shall receive, as a compensation for the services required of him by law, a salary of three hundred dollars, which shall be paid to him, upon satisfactory evidence to the treasurer, that he has had printed and distributed, within the prescribed time, the number of copies of the reports reserved for the use of the State ; and he shall also be authorized, on his own account, and at his own expense, to print, publish and vend, and to obtain under this grant and in conformity with the act of congress, the copy right of said reports of cases determined by said court.

6. The clerk of the supreme court shall, besides his fees, receive an annual compensation for his services, not exceeding three hundred dollars, to be estimated by the judges of the supreme court.

2. 1812, c. 823, s. 10.

3. Amendment.

4. 1818, c. 973, s. 1 and 2.—1820, c. 1033, s. 1 and 2.

5. 1822, c. 1148, s. 2.—1831, c. 39, s. 2.

6. 1803, c. 742, s. 3.—1812, c. 829.—1818, c. 963, s. 5.



court, and to be paid by the public treasurer upon their certificate.

Pay of the  
councillors of  
state.

7. Every councillor of state shall receive the sum of three dollars per day, for every day he may attend on public business, and three dollars for every thirty miles travelling to and from the city of Raleigh, on public business as aforesaid.

Of the clerk  
and doorkeep-  
er of the coun-  
cil.

8. The clerk of the council shall receive two dollars for each day he is employed, and the doorkeeper of the council shall receive eighty cents for each day he is employed, in attending on the council of state.

Of the mem-  
bers of the  
General As-  
sembly.

9. The speaker of the senate, and the speaker of the house of commons, of the General Assembly, shall each be entitled to receive the sum of four dollars, for every day he shall attend the senate or house of commons ; and each senator and member of the house of commons shall be entitled to receive three dollars, for every day he shall attend the senate or house of commons ; and the speaker and every member of the senate and house of commons shall also be allowed his necessary ferriage, and the sum of three dollars for every thirty miles of the estimated distance of going and returning, by the most usual road, from his place of residence to the seat of government. And in case the speaker or any member of the senate or house of commons shall be detained by sickness, on his journey to or from any session, or, after his arrival, shall be unable to attend the senate or house of commons, he shall be entitled to the same daily allowance, as if he had attended regularly in his place.

Of the clerks  
and officers of  
the General  
Assembly.

10. There shall be allowed, as a compensation to the clerks and officers of the senate and house of commons of the General Assembly, at every session of the same, the following sums : to each principal clerk, the sum of six dollars, for his daily attendance and services ; to each assistant clerk, the sum of six dollars, for his daily attendance and services ; to each engrossing clerk, the sum of four dollars, for his daily attendance and services ; and to each doorkeeper, the sum of three dollars, for his daily attendance and services ; and there shall be allowed, annually, to each of the principal clerks of both houses, the sum of sixty dollars, as a full compensation for transcribing the journals of each house for the public printer, and for taking care of the books, papers and effects of each house, and all other incidental services attached to their offices ; and the principal clerks, assistant clerks and doorkeepers of both houses, and also the engrossing clerks, shall each be allowed the sum of three dollars for every thirty miles of the estimated distance, in going and returning by the most usual road from the seat of government to his place of residence, and also their ferriages.

Pay of the  
members and  
officers of the

11. The compensation, which shall be due to the members and officers of the senate, shall be ascertained by the principal clerk,

7. 1803, c. 751.—1793, c. 403.

8. 1793, c. 403.

9. 1820, c. 1050, s. 1 and 2.

10. 1820, c. 1050, s. 3 and 4.

11. 1820, c. 1050, s. 5.

and certified by the speaker thereof, and the same shall be passed as public accounts ; and that, which shall be due to members and officers of the house of commons and to the engrossing clerks, shall be ascertained by the principal clerk of the house of commons, and certified by the speaker thereof, and the same shall be passed as public accounts, and paid by the treasurer.

12. The private secretary of the governor shall be allowed the following fees, and no other whatever, to be paid by the persons for whom the services are rendered, to wit : for a judge's commission, four dollars ; for an attorney general's commission, two dollars ; for a solicitor's commission, two dollars ; for commission for senator in congress, two dollars ; for commission for representative in congress, two dollars ; for notary public's commission, two dollars ; for any commission for a place of profit, two dollars ; for a testimonial, one dollar ; for suspension of a grant, seventyfive cents ; for affixing the seal to a grant, twentyfive cents.

13. The secretary of state shall be allowed, in addition to his salary, the following compensation and fees, to wit : for furnishing the public printer with copies of the laws, two dollars for each law, and fifty cents for each resolution, to be paid by the public treasurer, upon the warrant of the governor ; for copying and certifying a will, forty cents ; for correcting an error in a patent, forty cents ; for copying and certifying the record of a grant or patent, containing not more than six hundred and forty acres, forty cents ; for copying and certifying a grant or patent, or plot and survey, containing more than six hundred and forty acres, fifty cents for each warrant contained in such grant, patent, or plot, not to exceed five dollars for one copy ; for receiving surveyor's return, making out, recording and endorsing grant, fifty cents ; for each search, ten cents ; for each certificate, ten cents ; for recording deeds for land purchased for the use of the State, the same fees that registers are entitled to for like services ; for docketing a *caveat*, filing order of suspension to the court, and entering and filing the judgment of the court thereon, fifty cents ; for copying any entry from the journals of the assembly, forty cents ; for copying and certifying the laws of other states, twenty cents for each copy sheet, to be paid by the treasurer for all copies furnished for the use of the State, and by individuals for copies furnished for their own use. And in all cases not provided for above, the secretary of state shall receive the same fees, for copies of records from his office, that are allowed by law to the registers of the several counties of this State.

14. The attorney general and solicitors of this State shall, in addition to the compensation allowed them by the State, receive the following fees, and no other, to wit : for each and every indictment for murder, perjury, forgery and burglary, which they or either of them may have occasion to prosecute on behalf of the State, they and each of them shall receive the sum of ten dollars

12. 1799, c. 535, s. 3.—1806, c. 702, s. 1.

13. 1821, c. 1121, s. 2.—1782, c. 179, s. 2.—1793, c. 403.—1799, c. 535, s. 1.—1832, c. 15.—1834, c. 23.—1819, c. 1020.—1823, c. 1193, s. 2.—1812, c. 833, s. 3.

14. 1820, c. 1033, s. 3.—1818, c. 973, s. 2, amended.



upon the conviction of the defendant, to be paid by the party convicted ; for each and every indictment for grand or petit larceny, arson, frauds, deceits, and maim, the sum of five dollars, to be paid as aforesaid ; and for all other offences whatsoever, the sum of three dollars to be paid as aforesaid, and in no other manner whatsoever, except in cases of inferior offences, where the court shall be of opinion that the prosecution is frivolous or malicious, and may think proper to order that the prosecutor shall pay the costs : *Provided nevertheless*, that no larger fee than ten dollars shall be taxed for any attorney general or solicitor, in any indictment against the justices of the peace of any county, as justices, when there are more than three justices who are found guilty.

Of the county  
solicitors.

15. The county solicitor of each county shall not be entitled to receive any fees in any case whatever, unless on conviction of the defendants of the crimes set forth in the bills of indictment respectively ; and in all cases of conviction, the said solicitors shall receive the sum of four dollars, for each defendant convicted, from said defendant, and in no other way whatever.

Of attorneys  
at law.

16. All fees to be taken by attorneys, in any suits in any of the several courts of law and equity established in this State, shall be as follows, to wit : in any suit in equity, the sum of twenty dollars ; in any suit in any of the superior or county courts, where the title of lands shall come in question, the sum of ten dollars ; in all other suits originally commenced in any of the said courts on the law side, the sum of four dollars ; in all appeals from any other court to the said superior courts, the sum of four dollars ; in every appeal from the judgment of a justice of the peace to the said county courts, the sum of two dollars : *Provided always*, that on any petition for dower, a larger fee than four dollars shall not be taxed : *And provided further*, that whenever a court shall make an order of sale of lands, levied on by a constable or other officer, in pursuance of an execution issued by a justice of the peace, and in all cases where any bond shall be taken and returned, under the act for the relief of insolvent debtors, to the court of pleas and quarter sessions, except in cases where an issue shall be made up, no attorney's fee shall be taxed by the clerk on any such order or *scire facias* ; or against any such insolvent and his sureties.

Of clerks of  
the county  
courts.

17. The clerks of the several courts of pleas and quarter sessions in each and every county of this State shall receive the following fees, and no other, viz : for every leading process returned to the first court, including all services, together with dismissal or final judgment, where either happens at the return court, one dollar ; for every indictment, sixty cents ; for each recognizance, twenty cents ; for every reference, or continuance of any cause, thirty cents ; for every judgment entered after the return court, seventyfive cents ; for every subpœna, provided the party inserts no more than four witnesses in the same, fifteen cents ; for every execution, or order of sale, thirtyfive cents ; for every *scire facias*,

15. 1818, c. 965.

16. 1786, c. 253, s. 4.—1806, c. 693, s. 16.—1823, c. 25, s. 2.—1830, c. 1, s. 5.—1834, c. 8, s. 1.

17. 1830, c. 1, s. 1.—1823, c. 8, s. 7.—1829, c. 19, s. 2.

sixty cents : *Provided*, that when, at any term of a court, there shall be several judgments obtained against an administrator or an executor, with an admission or finding, that said executor or administrator has not assets liable to the judgments, and the plaintiffs shall pray for writs of *scire facias* against the heirs or devisees of the testator or intestate, the clerk, for issuing such *scire facias*, shall be entitled to charge but thirty cents. For every copy of a record, five cents for each copy sheet of ninety words, not exceeding five copy sheets, and three cents for each copy sheet after five : *Provided*, that the total amount of fees charged for any one record shall not exceed five dollars. For every order or rule foreign to the cause, with a copy of the same, if required, twenty cents. For a copy of a will, five cents for each copy sheet of ninety words not exceeding five copy sheets, and three cents for each copy sheet after five : *Provided*, that the total amount of fees, charged for the copy of any will, shall in no case exceed five dollars. For proving and recording at length, in bound books kept for that purpose, and filing, an inventory, account of sales or account current, exhibited by an executor, administrator or guardian, or for search and certificate of the amount thereof, if the estate be under two hundred dollars, the clerk shall be entitled to receive for his fee twenty cents ; if above two hundred and under one thousand dollars, forty cents ; if above one thousand, seventyfive cents, and no more. For entering on the minutes the probate of any will, qualifying executors, making certificates, and recording the will, in a bound book kept for that purpose, eighty cents ; for granting administration, taking bond, and other services thereon, eighty cents ; for every marriage license and bond, seventyfive cents ; for every search of record out of court, ten cents ; for proving or entering the acknowledgment of the conveyance of lands or other estate, and certifying the same with order of registration, and examination of a *feme covert* without commission, twenty cents ; for proving or taking acknowledgment of a deed, or power of attorney, and certifying the same, including order of registration, twenty cents ; for every commission to examine a *feme covert*, twentyfive cents ; for every commission to take testimony, twentyfive cents ; for every guardian and other bond taken in court, sixty cents ; for every indenture for binding apprentices, sixty cents ; for every special verdict, or demurrer, or motion in arrest of judgment, thirty cents ; for every writ of error, or appeal, with a transcript of record, one dollar ; for every certificate of witnesses' or jurors' attendance, ten cents ; for affixing the seal of office and writing the necessary certificate on any instrument of writing, requiring the same, twentyfive cents ; for every certificate without the seal of office, and when the same is not otherwise directed to be paid, twenty cents ; for recording a mark or brand, and giving a certificate thereof, ten cents ; for issuing a warrant, on entry of land, by order of court, forty cents ; for enrolling divisions of estates, for each lot, twenty cents ; for taking and recording every prosecution bond, forty cents ; for every certificate of tavern license and bond, with a copy of rates, one dollar ; for taking an account, such sum as the court may allow,



not exceeding fifty dollars ; for every subpœna, founded on a petition, fifty cents ; for every copy of a petition, by the copy sheet, ten cents ; for every writ, other than leading process or subpœna for witnesses, seventyfive cents ; for every order of court, authorizing the sheriff to issue a license to retailers, eighty cents ; for correcting an error in a patent, forty cents ; for recording processions' certificate, twenty cents ; for every search of entry taker's books, ten cents ; for every copy of location from entry taker's books, ten cents ; for docketing constables' levies, including all services in court, one dollar ; for filing insolvent's schedule bond, and all other services in court, without trial by jury, one dollar ; for trial of issue on such schedule bond, seventyfive cents ; and the creditors, at whose instance the issue is made up, shall be bound to pay the taxed costs of the issue, if the defendant be discharged by the court ; for declaration of a foreigner wishing naturalization, copy and seal, one dollar and fifty cents ; for final entry of naturalization, copy of the same and seal, one dollar and fifty cents ; for docketing appeals, and entry of plea or default, eighty cents ; for every guardian notice, for renewal of bonds or settlement of accounts, sixty cents ; for recording the decree of the court, upon a petition filed for the legitimation of a bastard child, one dollar.

Of the clerks of the superior courts.

18. The clerks of the superior courts of law of this State, shall for like services, receive the same fees as are by this act allowed the clerks of the county courts, and no other.

Clerks to have no fee on a *capias* in certain cases.

19. No clerk of any county or superior court shall be entitled to charge any fee for any *capias ad respondendum*, issued during term time, returnable *instanter*, unless such *capias* be executed.

In certain state cases, clerks and sheriffs to have only half fees.

20. In all state cases, where there shall be a *nolle prosequi* entered, or the defendant shall be acquitted, or convicted and unable to pay the costs, and the court shall not order the prosecutor to pay costs, the counties shall pay the clerks and sheriffs half their lawful fees only, except in capital or clergiable felonies, or prosecutions for forgery, perjury and conspiracy.

Fees of sheriffs.

21. The several sheriffs in this State shall receive the following fees, and no other, viz : for every arrest, seventyfive cents ; for every bail or replevin bond, twentyfive cents ; for service of a copy of declaration in ejectment, sixty cents ; for service of subpœna, with a copy of petition, sixty cents ; for serving a copy of declaration, ten cents ; for services of every *scire facias*, sixty cents—*Provided*, that when at any term of a court there shall be several judgments obtained against an administrator or an executor, with an admission or finding that said administrator or executor has not assets, liable to the judgments, and the plaintiffs shall pray for writs of *scire facias* against the heirs or devisees of the testator or intestate, the officer for serving each *scire facias*, shall be entitled to charge but thirty cents ; for service of notice to arbitrators, referees and commissioners, to take an account, thirty cents ; for every attachment levied, seventyfive cents, and if further trouble by moving of goods, to be taxed by the court ; for

18. 1830, c. 1, s. 2.

19. 1830, c. 1, s. 6.

20. 1830, c. 1, s. 7.

21. 1830, c. 1, s. 9 and 14.—1828, c. 8, s. 7.—1827, c. 20, s. 5.—1834, c. 9, s. 1 and 2.

every replevy bond upon such attachment, twentyfive cents ; for every subpoena served, for each person named therein, thirty cents ; for putting a person in the stocks or pillory, fifty cents ; for every commitment, thirty cents ; for every release, thirty cents ; for summoning commissioners to divide real estate, and for qualifying them, to be paid in equal proportions by the claimants, thirty cents each ; the fees for keeping each criminal in jail, per day, to be allowed and fixed by each county court, as now directed by law ; for every notice to take depositions, thirty cents ; for every notice, that may be required to be given in any cause, motion or proceeding, either at law or equity, as well for commencing as for proceeding in the same, until the same be ended, the same fee as for serving a subpoena ; for summoning, empanelling, and attending on every jury, in every cause in court, and calling the same, ten cents ; where a special *venire* shall issue, by order of court, for summoning each juror, twenty cents ; for serving and attending on any person on a *habeas corpus* per day, one dollar and fifty cents ; for selling the estate of an intestate, to be allowed by the court not exceeding two and a half per cent. ; for executing a warrant of distress, or an execution against the body, two and a half per cent. ; for all moneys collected by him by virtue of any levy, two and a half per centum, and the like commissions for all moneys that may be paid the plaintiff by the defendant, while such precept is in the hands of such sheriff ; for every writ of possession, one dollar ; for every levy, by virtue of an execution, seventyfive cents ; for the execution and decent burial of any criminal, ten dollars ; for services of equity process and incidental thereto, the same fees as for the like services at law ; for maintaining any slave or other property, or any criminal seized by virtue of any legal precept, such sum as may be fixed by the county court in each county in this State ; for apprehending any criminal, one dollar ; for conveying any criminal to that jail, where such criminal ought to be conveyed, ten cents per mile, and five cents for each person composing the guard, provided the number shall not exceed four persons, and if more than four shall be absolutely necessary, two cents per mile for each of said guard ; for each day the sheriff shall maintain said prisoner, he shall receive fifty cents—the expense shall be paid by the respective counties, if such prisoner shall not be liable or able to pay the same ; for summoning each guardian to renew his bond, or settle his accounts, sixty cents, to be paid by said guardian ; for executing a *capias ad satisfaciendum*, issued from and returnable to a court of record beyond the sheriff's own county, and carrying the body of the defendant and confining him in the jail of such county, three dollars for every thirty miles travelling to and returning from said jail to his own home ; and it shall be the duty of the sheriff to set forth in his return, upon the writ of *capias ad satisfaciendum*, the distance from his residence to the jail, wherein he may have confined the defendant, the truth of which return shall be verified, by oath or affirmation, before the clerk, and his said fee shall be taxed and collected as his other fees.



Sheriffs not allowed commissions upon a justice's execution.

22. No sheriff of any county in this State shall charge a commission, on any moneys collected on an execution issued by a justice of the peace, nor any other fees than those allowed by law for similar services.

Clerks of the superior and county courts to keep a copy of the clerks, and sheriffs' fees posted up in their offices, &c.

23. It shall be the duty of the clerks of superior and county courts to keep a copy of this act, in relation to the fees of clerks and sheriffs, posted up in their respective offices, and in the court house, in some conspicuous place, during the sitting of each court, under a penalty of fifty dollars, to be recovered before any justice of the peace, by any person suing for the same.

Clerks of courts may issue execution for fees in certain cases.

Bill of costs to be annexed.

24. It shall be lawful for the clerks of the superior and county courts, where suits are determined, and fees not paid by the party from whom they are due, to make out executions, directed to the sheriff of any county in this State, and the said sheriff shall levy the same as in other cases, and to the said execution shall be annexed a copy of the bill of costs of the fees, on which such execution shall issue, written in words at length, without any abbreviation whatsoever; and all executions, issuing without the copy of such bill of costs annexed, shall be deemed illegal, and no sheriff shall serve or execute the same.

Fees of the clerk of the supreme court.

25. The clerk of the supreme court shall, in addition to his salary, receive the following compensation and fees, to wit: for recording the papers and proceedings, in the causes decided in the supreme court, which are required by law to be recorded, such compensation as may be estimated by the judges of the said court at each term thereof, not to exceed thirty cents for each page recorded, to be paid by the treasurer, on the certificate of the judges; for entering an appeal, or removal of any equity cause, one dollar; and the same fees as are allowed clerks and masters in equity for similar services in all other matters relating to causes in equity; for entering an appeal in a cause at law, one dollar; for every continuance, thirty cents; for every *scire facias*, eighty cents; for every *certiorari*, eighty cents; for every determination, one dollar and eighty cents; for every certificate, sixty cents; for every *feri facias* or other execution, fifty cents; for every seal, twentyfive cents; for every transcript, or any copy of a record, twenty cents for each copy sheet.

Of clerk and masters in equity.

26. The clerks and masters of the several courts of equity in this State shall receive the following fees, and no others, to wit: For a report on an answer, thirty cents; for a report on a plea and answer, forty cents; for a report on a demurrer and answer, forty cents; for an affidavit to an answer, fifteen cents; for an affidavit to a bill, fifteen cents; for a separate affidavit, twenty cents; for copying a report by the office copy sheet, twenty cents; for a report, stating an account, to be allowed by the court, not exceeding fifty dollars; for copies of proceedings and exemplification, by the copy sheet, twenty cents; for taking a bond, fifteen

22. 1830, c. 1, s. 10.

23. 1830, c. 1, s. 15.

24. 1784, c. 223, s. 8.

25. 1812, c. 829, s. 1.—1831, c. 20, s. 1, amended.

26. 1787, c. 278, s. 3.—1793, c. 389, s. 7.—1793, c. 403.—Resolutions of 1792.

cents ; for every rule given for service, twentyfive cents ; for every rule not for service, twelve and a half cents ; for every subpoena, writ, or other process, one dollar ; for every *dedimus* or commission, fiftythree cents ; for every injunction, one dollar ; for drawing a decree, by the copy sheet, forty cents ; for enrolling a bill or answer, by the copy sheet, twenty cents ; for entering a plea or demurrer, twenty cents ; for recording depositions to perpetuate testimony, by the copy sheet, twenty cents ; for every dismissal, twenty cents ; for every search, ten cents ; for taking security on a leading process, twenty cents ; for recording such bond, twenty cents ; for affixing the seal to any writing requiring it, twentyfive cents.

27. The county trustees of the several counties in this State shall receive, as a compensation in full for all services required of them by law, such a per centum upon the amount of their receipts and disbursements, as the county courts, a majority of the justices being present, shall deem adequate and proper : *Provided*, that such allowance shall not exceed six per centum on such amounts.

Compensation  
of county trus-  
tees.

28. The several coroners of each county in this State shall receive the following fees, and no others, to wit : for attending on every inquest, two dollars and forty cents, to be paid by the county trustee out of the county funds ; for decently interring the body of any white man or free person of color, over whom he has holden an inquest, such sum as the county court, seven justices being present, may order, not to exceed ten dollars, to be paid by the county trustee—*Provided*, the friends of the deceased shall refuse or neglect, to inter the said body—which said sum, so allowed and paid said coroner, shall be charged against the estate of the said deceased, which the county trustee shall use all lawful ways and means to recover ; for decently interring the body of any slave, over whom he has holden an inquest, the same sum, to be allowed and paid as prescribed in the preceding clause—*Provided*, the master or owner of such slave shall refuse or neglect to inter the body of such slave—which sum such master or owner shall pay back to said trustee, who is authorized to warrant for and recover the same ; for discharging the duties of sheriff, in the cases prescribed by law, the same fees as the sheriff would be entitled to for performing the like services.

Fees of cor-  
oners.

coroners inquest.  
1840. ch 39.

29. The constables in each and every county of this State shall receive the following and no other or greater fees, to wit : for every day's attendance on court, when summoned, eighty cents ; for whipping a negro, by order of court or of any justice of the peace, thirty cents ; for serving every warrant, for each person named therein, forty cents ; for summoning every witness, twenty cents ; for every execution, forty cents ; for every attachment levied, fifty cents ; for every bail bond, ten cents ; for serving notice on bail, forty cents ; for serving every notice, that may be required by law to be given for commencing and prosecuting any cause, before any justice of the peace, out of court, thirty cents.

Fees of con-  
stables.

27. 1777, c. 129, s. 4.

28. 1784, c. 223, s. 7.—1803, c. 644.—1826, c. 19, s. 1.

29. 1784, c. 223, s. 5.—1794, c. 414, s. 4 and 22.—1793, c. 403.—1827, c. 20, s. 5.



Of registers.

30. The register in each and every county shall receive the following fees and no other, to wit: for registering each deed or grant, containing one tract of land, including the certificate, not less than forty cents, nor more than one hundred cents; if the deed contain two or more tracts, not less than forty cents, nor more than one hundred cents for the first tract, and not less than ten nor more than twenty cents, for each and every other, and the like fees for copies; for registering the acknowledgment and certificate of a *feme covert*, in the conveyance of lands or other estate, an additional fee of twentyfive cents, and the like fees for copies; for registering divisions of lands, for each lot or dividend therein described, not less than ten cents, nor more than twenty cents, and the same fees for copies; for registering copies of rectified errors in patents or grants, not less than forty cents, nor more than one hundred cents; for registering all other instruments of writing, for each instrument, not less than forty cents, nor more than one hundred cents; for every search, ten cents; and it shall be in the power of any county court, (a majority of the justices being present, and unanimously assenting to it) to establish and regulate the fees of the register in such county, within the limits above prescribed, and when the said fees are once so established they shall not be altered by the court in one year. And when the county court does not establish the said fees, as aforesaid, then the fees of said register shall be at the minimum rates herein prescribed.

Of entry takers.

31. The entry takers in each and every county shall receive the following fees, and no other, to wit: for every entry, including all services, forty cents; for issuing each duplicate warrant, when thereto required, twentyfive cents.

Of county surveyors.

32. The surveyors, appointed by the several county courts to survey any lands, the boundaries of which may come in question in any suit depending therein, or called upon by the commissioners to assist in surveying and dividing the lands of intestates or others, held in common, shall receive the following fees and no other, to wit: for every survey on an entry containing three hundred acres, or less, one dollar and sixty cents; and for every hundred more than that quantity, forty cents; for surveying lands in dispute, by order of court, travelling to and from the place, and performing the duty, per day, two dollars; for assisting in the surveying and dividing the lands of intestates, or others, held in common, when called upon by the commissioners appointed by the court to make partition, travelling to and from the place, and performing the duty, per day, two dollars.

Of rangers.

33. The rangers of each and every county shall receive the following fees, and no other, to wit: for entering each horse, mare, gelding, colt or mule, including the certificate, fifty cents; for entering each head of neat cattle, twentyfive cents; for entering

30. 1793, c. 403.—1797, c. 482.—1831, c. 11.—1807, c. 725, s. 4.—1800, c. 555, s. 3.—Amended.

31. 1783, c. 185, s. 15.—1793, c. 403.—1814, c. 878, s. 2.

32. 1783, c. 185, s. 15.—1786, c. 252, s. 1.—1793, c. 403.

33. 1784, c. 223, s. 6.—1799, c. 542, s. 2.—1815, c. 892.—1816, c. 909.—1777, c. 119, s. 10.—1793, c. 403.

each head of hogs or sheep, ten cents ; for every bond, twenty cents ; for advertising such strays as are required to be advertised, one dollar and fifty cents ; for every search, ten cents.

34. The commissioners of affidavits, or those who are authorized by law to act as such in each and every county, shall receive the following fees, and no other, to wit ; for every affidavit taken and certified, forty cents ; for affixing the seal of the court, when necessary, twentyfive cents.

Of commissioners of affidavits.

35. The processioners, appointed in each and every county, shall receive the same fees and emoluments, which are allowed by law to county surveyors.

Of processioners.

36. The several standard keepers in this State shall be entitled to receive the following fees, and no other, to wit : for examining and adjusting each pair of steelyards, twentyfive cents ; for every weight of half a pound and upwards, five cents ; for every set of weights below half a pound, including one piece of each denomination, five cents ; for every yard stick, or other measure of cloth, five cents ; for every bushel, half bushel, peck or other measure, used in measuring grain, meal or salt, ten cents ; for each measure for liquors, three cents.

Of standard keepers.

37. The jailers of every county shall be entitled to receive, for finding each prisoner fuel, one pound of wholesome bread, one pound of good roasted or boiled flesh, and a sufficient quantity of water, with every necessary attendance, thirty cents per day, and no more, unless the courts of pleas and quarter sessions of the several counties, a majority of the acting justices being present, shall deem it expedient to increase said fees, which they are authorized to do : *Provided*, that such increase does not exceed fifty per cent. on the above sum, which increase shall be recorded, and shall not be altered within one year thereafter.

Of jailers.

38. The several inspectors in this State shall receive the following fees for the duties required of them, and no other, to wit ; for inspecting ton timbers, ten cents per ton ; for inspecting, turning up, coopering, finding nails, hoops, and issuing a note for every waggoned hogshead of tobacco, the sum of seventy cents ; and for each rolling hogshead, eighty cents ; for inspecting transfer tobacco, at the rate of five cents per hundred pounds ; for inspecting each barrel of flour, five cents ; for inspecting each barrel of pork or beef, ten cents ; for inspecting each barrel of rice or butter, six and a fourth cents ; for inspecting each barrel of fish, three cents ; for inspecting each barrel of pitch or turpentine, two and a half cents ; for inspecting each barrel of tar, two cents ; for inspecting every hundred staves or heading, two and a half cents ; for every thousand shingles, two and a half cents ; for every thousand feet of boards, plank or scantling, ten cents ; for every barrel of flaxseed, containing seven and a half bushels, ten cents.

Of inspectors.

34. 1818, c. 965, s. 2.

35. 1792, c. 365, s. 8.—1816, c. 923, s. 1.

36. 1793, c. 395.—1793, c. 403.—1818, c. 965, s. 2.

37. 1793, c. 403.—1815, c. 899.—1817, 944, s. 1 and 2.

38. 1811, c. 812, s. 1.—1803, c. 642.—1813, c. 852, s. 4.—1791, c. 345, s. 6.—1784, c. 221, s. 4.—1793, c. 403.—1787, c. 265, s. 1.



Of tobacco  
pickers.

Fee bills to be  
made out in  
dollars and  
cents.  
Receipts to be  
given in the  
same.

39. The tobacco pickers, for every hundred pounds picked and prized, shall receive the fifteenth part.

40. All officers of the State, who are entitled to fees, shall make out their fee bills and other charges, of whatever nature they may be, relating to their offices, in dollars and cents, and shall give receipts for their fees, and all other moneys by them collected, by virtue of their offices, in the same.

39. 1787, c. 265, s. 5.

40. 1825, c. 1284, s. 1 and 2.

*Note.*—REFERENCES TO ADJUDGED CASES.

SECT. 21. *Matlock vs. Gray*, 4 Hawks, 1.

SECT. 24. *Wingate vs. Galloway*, 3 Hawks, 6. *Superior Court Office vs. Lockman*, 1 Dev. 146.

SECT. 26. *Collins vs. Dickinson*, 2 Hay. 2.

## CHAPTER 106.

### SEAMEN.

#### AN ACT FOR THE RELIEF OF SICK AND DISABLED AMERICAN SEAMEN.

##### SECTION

1. An account of the number of officers, &c. to be rendered by masters of vessels, and thirty cents per month paid on each.
2. Coasting vessels subject to like regulations, &c.—Penalty on masters for failing to render account, &c.
3. Collector to pay the money to the

##### SECTION

- president and directors of the Wilmington Marine Hospital Association.
4. Money, how to be appropriated.
5. When to be in force.
6. Confirmed by an act of congress, and declared to be now in force.

WHEREAS, by an act, passed by the General Assembly of 1835, chapter sixteen, it was enacted as follows, (*viz.*) “An act for the relief of sick and disabled American seamen.”

Whereas the hospital money, collected at the port of Wilmington, in this State, under the acts of congress, is insufficient for the purposes designed, and to assist the Marine Hospital Association, recently organized in the town of Wilmington, more effectually to accomplish so benevolent an object,

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 before any ship or vessel of the United States shall be ad-

An account of  
the number of

1. 1835, c. 16, s. 1.

mitted to enter at the custom house at the port of Wilmington, the master of said ship or vessel shall render, to the collector of said port, a true account of the number of officers and seamen that have been employed on board such ship or vessel, since she last entered or cleared at any port of the United States, and shall pay to the said collector at the rate of thirty cents per month, for each and every officer and seaman so employed, which sum the master is hereby authorized to retain out of the wages of such officer and seamen.

officers, &c. to be rendered by masters of vessels, and thirty cents per month paid on each.

2. On the arrival of any coasting vessel, or vessel sailing under coasting license, (except vessels trading within the limits of this State,) at the port of Wilmington, the master of said vessel shall forthwith render, to the collector of said port, a true account of the number of passengers, officers and seamen, who came in and were employed on board said vessel, and shall pay to the said collector, for each cabin passenger and himself, fifty cents, and for each officer, passenger and seaman, twentyfive cents, which payment for the crew of said vessel the master is hereby authorized to retain out of the wages of said seamen ; and if the master of any ship or vessel shall fail to render an account, or render a false account of the number of passengers, officers and seamen, and length of time they have been employed, as herein required by the first and second section, he shall forfeit and pay one hundred dollars, to be recovered in any court of record in this State, at the instance of the collector aforesaid, to the use of the Wilmington Marine Hospital Association.

Coasting vessels subject to like regulations, &c.

Penalty on masters for failing to render account, &c.

3. The money collected by virtue of the above recited act, by the collector aforesaid, after deducting for his compensation, two and a half per cent., shall be paid over to the president and managers of the Wilmington Marine Hospital Association aforesaid, or to such person as they shall appoint for that purpose ; and should the collector of that said port fail or refuse to pay over the money as herein directed, he shall forfeit and pay five hundred dollars, for each and every offence, to be recovered in any court of record in this State, to the use of the Wilmington Marine Hospital Association aforesaid.

Collector to pay the money to the president and directors of the Wilmington Marine Hospital Association.

4. The president and managers of the Wilmington Marine Hospital Association aforesaid shall faithfully devote all the money, coming into their hands in virtue of this act, to the relief of sick and disabled American seamen, and shall annually make a true return of their proceedings and situation to the public treasurer of the State, and to the secretary of the treasury of the United States.

Money how to be appropriated.

5. This act shall not be in force until the same is ratified and confirmed by an act of congress of the United States.

When to be in force.

6. And whereas the said recited act has been ratified and confirmed by an act of congress of the United States : Therefore,

Confirmed by an act of congress, and declared to be now in force.

*Be it enacted, &c.,* That the said act and every part thereof shall be and is hereby confirmed.

2. 1835, c. 16, s. 2.  
 3. 1835, c. 16, s. 3.  
 4. 1835, c. 16, s. 4.  
 5. 1835, c. 16, s. 5.  
 6. Amendment.



CHAPTER 107.

SEAT OF GOVERNMENT.

AN ACT CONCERNING THE SEAT OF GOVERNMENT AND PUBLIC BUILDINGS.

SECTION

- 1. City of Raleigh to be the seat of government.
- 2. Who shall be a board to take charge of the public buildings.
- 3. Board to direct repairs, which shall be paid by the public treasurer.

SECTION

- 4. Unlawful to deface the walls of the state house.
- 5. If an infant offends, parent or guardian to pay.

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 the city of Raleigh shall be deemed and considered the permanent and unalterable seat of the government of this State, and the place of holding the meetings of the General Assembly, and the place of residence of the chief officers of the State.

City of Raleigh to be the seat of government.

2. The governor, secretary of state, treasurer and comptroller are hereby constituted a board to take charge of and keep in repair the buildings, belonging to the State, in the city of Raleigh.

Who shall be a board to take charge of the public buildings.

3. The said board is hereby authorized and directed, at any time, when in their opinion the public interest shall require it, to employ persons to do and make such repairs to the said public buildings and property, as may be necessary to prevent their decay or injury for the want of repair, for which services a reasonable and just price shall be given, to be judged of and allowed by the said board, and which shall be paid by the treasurer, upon their certificate containing a statement of the work and the prices for it which may be allowed.

Board to direct repairs which shall be paid by the public treasurer.

4. It shall not be lawful for any person to write or scribble on the walls of the state house, or mark the same with pictures or otherwise, under the penalty of five dollars, recoverable before any justice of the peace for the county of Wake, to be recovered by any informer to his own use.

Unlawful to deface the walls of the state house.

5. Should such offence be committed by an infant under the age of twentyone years, his guardian or parent, as the case may be, shall be liable to the penalty prescribed by this act, to be recovered as above directed.

If an infant offends, parent or guardian to pay.

1. 1792, c. 367, s. 4.—1791, c. 337.  
 2. 1827, c. 29, s. 2.  
 3. 1827, c. 29, s. 5.  
 4. 1829, c. 29, s. 1.  
 5. 1829, c. 29, s. 2.

CHAPTER 108.

SECRETARY OF STATE.

AN ACT CONCERNING THE SECRETARY OF STATE.

SECTION

- 1. Bond to be given.
- 2. Bond to be deposited with the treasurer.
- 3. Oaths to be taken.
- 4. Remedy on the bond.
- 5. Secretary to take receipts for grants.

SECTION

- 6. May send grants by mail.
- 7. Office hours.
- 8. Compensation to the secretary as librarian, and for certain other services.

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 the governor for the time being is required to demand and receive, from each and every person appointed secretary of state, before he enters upon the discharge of the duties of his office, a bond and sufficient security, in the sum of twenty thousand dollars, which bond shall be taken in the name of and payable to the State of North Carolina, and shall be in the following form, to wit :—  
 Know all men by these presents, that we, A. B. and C., are held and firmly bound unto the State of North Carolina, in the sum of twenty thousand dollars, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the        day of        . The condition of the above obligation is such, that whereas the above bounden A. is constituted and appointed secretary of state for the State of North Carolina, if therefore the said A. shall well and truly execute and discharge the duty of secretary of state in all cases, agreeably to law, then the above obligation to be void, otherwise to remain in full force and effect.

Bond to be given.

2. The said bond, when executed as above prescribed, shall be deposited in the treasurer's office for the safe keeping thereof.

Bond to be deposited with the treasurer.

3. It shall be the duty of each and every secretary of state, before he enters on the duties of his office, besides entering into bond as aforesaid, to take the oaths required by law for the qualification of public officers, and also an oath of office.

Oaths to be taken.

4. Any person injured or aggrieved by the secretary of state, by virtue of his office, may bring suit on the said bond, in the name of the State, and in any court of record within this State.

Remedy on the bond.

5. The secretary of state shall keep a receipt book, in which

Secretary to take receipts for grants.

- 1. 1798, c. 503, s. 1.
- 2. 1798, c. 503, s. 2.
- 3. 1793, c. 503, s. 3.
- 4. 1798, c. 503, s. 4.
- 5. 1799, c. 535, s. 2.



he shall take from each and every person, to whom a grant shall be delivered, a receipt for the same.

May send grants by mail.

6. It shall be lawful for the secretary of state to enclose grants by mail to any person, requesting him to do so, first entering the same on the receipt book kept in his office.

Office hours.

7. For the convenience of the secretary of state and persons having business with him, he shall be required to attend to every application made to him for official duties, at his office, which shall be in the city of Raleigh, between the hours of nine and twelve o'clock, and between two and five o'clock, on every day in the year, (Sundays and the fourth of July excepted,) and the secretary of state shall not be required to attend to any call made at any other time of the day.

Compensation of the secretary, as librarian, and for certain other services.

8. Whereas, by a resolution of the General Assembly of one thousand eight hundred and thirty one, the secretary of state was required to collect the books of the state library, and discharge the duty of librarian; and by an act of the present General Assembly, respecting the public printing, important additional duties are required of him:—

*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 secretary of state be allowed the sum of fifty dollars per annum, for his services as state librarian, during the term he has, and may continue to discharge the duties of state librarian; and the sum of one hundred dollars, every two years, for the services required of him by the act aforesaid concerning the public printing, to be paid by the public treasurer as an addition to the salary of the said secretary of state.*

6. 1821, c. 1121, s. 3.

7. 1824, c. 1238, s. 6.

8. 1836, c. 32.

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## CHAPTER 109.

# SHERIFFS.

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### AN ACT CONCERNING SHERIFFS.

#### SECTION

1. Sheriffs, how elected.
2. When election to be held, and how returns to be made.
3. Persons having the greatest number of votes, to be declared elected—If two or more have an equal number, county court to choose between them.
4. When the returns shall be made.

#### SECTION

5. Election to be held every two years —County court to decide contested elections.
6. Who shall be ineligible to the office of sheriff.
7. No sheriff shall be capable of being re-elected, who has failed to settle for public dues.
8. Sheriff elect to give bonds and take

1838.9. ch 39.

1842.3. ch 62

1844.5. ch 64.

SECTION

SECTION

- oaths before entering upon the duties of his office.
- 9. Sheriff to renew his bonds annually.
- 10. Justices to meet on the second and third day of the court after an election, to take the sheriff's bonds.
- 11. How sheriff may be removed from office—Duty of the coroner, and of the county court, in such case.
- 12. Coroner to give bonds and take oaths when required to act as sheriff.
- 13. Form of the bond to be given by the sheriff for the faithful discharge of his duty in office.
- 14. Sheriff to take oaths.
- 15. Sheriff's sureties liable for fines and amercements.
- 16. Sheriff not compelled to serve more

- than two years—May resign his office to the county court.
- 17. Penalty on person elected sheriff for refusing to accept—Proviso where he is unable to give security—Who not compellable to serve as sheriff.
- 18. Sheriff to execute all process from courts—Penalty for neglect.
- 19. Sheriff to take no obligation, from any person in his custody, but such as is payable to himself, &c.
- 20. Sheriff permitting an escape in civil cases, to be liable to an action of debt.
- 21. Sheriff not to farm his office.
- 22. Sheriff to have the custody of the public jail.
- 23. Sheriff and his sureties to be liable for claims put into his hands for collection.

*1848 Ch 64.*

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 the sheriffs of each county in this State shall be elected by the free white men of the county, entitled to vote for members of the house of commons, except that no person, who shall have been convicted of felony, or the *crimen falsi*, shall be capable of voting for a slieriff.

Sheriffs, how elected.

2. The election of sheriff shall take place at the usual time and places in each county for the election of members of the General Assembly, under the same rules and regulations as prescribed by law for conducting said elections, except that the returns shall be made to the clerk of the county court, and the election of sheriff shall be under the inspection of such persons, as the county court shall appoint at its session next before the election, and in case of the failure of the persons appointed to hold said election or either of them, it shall be competent for a justice of the peace and two freeholders to supply the vacancy.

When election to be held, and how returns to be made.

3. The person, having the greatest number of votes, shall be declared elected by the county court, at its term next after the election, and if two or more persons shall have the greatest number of votes and an equal number, the county court, a majority of the acting justices being present, shall proceed to choose from the persons, so having the greatest and equal number of votes, the person to act as sheriff.

Person having the greatest number of votes, to be declared elected. If two or more have an equal number, county court to choose between them.

4. The return of votes given for sheriff, shall be made by the returning officers to the clerk of the county court, within the time fixed by law for making the returns of elections for members of assembly, and it shall be the duty of the clerks to attend on such day and place, to receive said returns of the votes for sheriff.

When the returns shall be made.

1. 1829, c. 5, s. 1.—1830, c. 25, s. 6.  
 2. 1829, c. 5, s. 2.  
 3. 1829, c. 5, s. 2.  
 4. 1830, c. 25, s. 4 and 5.



Election to be held every two years. County court to decide contested elections.

Who shall be ineligible to the office of sheriff.

No sheriff shall be capable of being re-elected, who has failed to settle for public dues.

Sheriff elect to give bonds and take oaths before entering upon the duties of his office.

Sheriff to renew his bonds annually.

5. The election of sheriff shall take place in each county every two years, subject to the same rules and regulations, as prescribed in a preceding section of this act, and the county courts, a majority of the acting justices being present, shall be a competent tribunal to decide all contested elections under this act.

6. No person shall be eligible to the office of sheriff, who is not of the age of twentyone years, and who has not resided in the county, in which he is chosen, for one year immediately preceding his election, and shall not have possessed a freehold, of at least one hundred acres of land, in fee simple, for the space of six months next before and immediately preceding the day of his election, which freehold he shall continue to hold during his term of office.

7. No person shall be eligible to the office of sheriff in any county, who has been or hereafter shall be sheriff of such county, and hath failed to settle with and fully pay up, to every officer, the taxes which were by law due from him, nor shall any court permit any such former sheriff to give bond for or re-enter upon the duties of said office, until he has produced before said court, the receipt in full of every officer aforesaid for such taxes.

8. The person, declared to be elected in manner above prescribed, shall, in open court, at the same session at which he is so declared, enter into the bonds and take the oaths, which now are or hereafter may be required by law for the qualification of sheriffs; and until such bond shall be received by the court, no person, declared to be chosen under this act, shall be deemed to be sheriff, or shall on any pretence enter on the duties of sheriff; and it shall be the duty of the sheriff elect to prepare and tender to the court, the bonds required of him on or before the second day of the term aforesaid, at or before four o'clock in the afternoon of the said day, but in case a majority or twelve of the justices of the peace of such county shall not be present, then and in that case the sheriff elect shall give bond, at or before two o'clock of the third day of the court aforesaid; and in case any sheriff elect shall refuse or neglect to comply with the provisions of this section, the county court, a majority of the acting justices of the county being present, shall forthwith proceed to elect a sheriff, who shall enter into the several bonds and take the oaths required by law, and shall continue in office until the next regular election.

9. It shall be the duty of the county court to require the sheriff to renew his bonds annually, and to produce the receipts from the public treasurer, county trustee and wardens of the poor, for the time being, in full of all moneys by him collected, or which ought to have been by him collected, for the use of the State and county, and for which he shall have become accountable; a majority of the acting justices being present at the renewal thereof, and a failure

5. 1829, c. 5, s. 4.

6. 1829, c. 5, s. 6.—1830, c. 25, s. 3.

7. 1830, c. 25, s. 2.—1806, c. 699, s. 2.

8. 1829, c. 5, s. 5.—1830, c. 25, s. 1.

9. 1829, c. 5, s. 5.

of the sheriff elect to renew his bonds or to exhibit the aforesaid receipts shall create a vacancy.

10. A majority or twelve of the acting justices in the several counties are required to meet at the county court, which shall first be held after the election of sheriff, on the second and third days of the term, for the purpose of receiving from the sheriff elect the several bonds prescribed by law.

Justices to meet on the second and third days of the court after an election, to take the sheriff's bond.

11. If any sheriff, elected under this act, shall be convicted in the superior or county courts of a misdemeanor in office, the court may at their discretion, as a part of his punishment, remove him from office, and on any vacancy created by this or any other means in the office of sheriff, it shall be the duty of the coroner of the county to execute all process directed to the sheriff, until the first session of the county court next succeeding such vacancy, and it shall be the duty of the county court at said session, a majority of the justices being present, to elect a sheriff to supply the vacancy for the residue of the term of two years, who shall possess the same qualifications, and enter into the same bonds, and be subject to the same removal, as the sheriff regularly elected under this act, and should the court fail to fill such vacancy, the coroner shall continue to discharge the duties of sheriff until such vacancy shall be filled.

How sheriff may be removed from office. Duty of the coroner, and of the county court, in such case.

12. Any coroner, required by this act to discharge the duties of sheriff, shall, before he enters on his duties as sheriff, at the county court clerk's office, five or more justices being present, take the same oath and enter into the same bonds, that now are or hereafter may be required of sheriffs regularly elected, and the oldest or first appointed coroner in each county shall be considered the coroner to discharge the duties of sheriff, and the proceedings shall be entered on record by the clerk.

Coroner to give bonds and take oaths when required to act as sheriff.

13. Every sheriff, elected or appointed under any of the provisions of this act, shall, besides the bonds for collecting the public, county and poor taxes, enter into bond with two or more good and sufficient securities, in the penalty of ten thousand dollars, payable to the State of North Carolina, with condition in the following form, that is to say: "The condition of the above obligation is such, that whereas the above bounden is elected and appointed sheriff of county, , if therefore the said shall well and truly execute and due return make of all process and precepts, to him directed, and pay and satisfy all fees and sums of money, by him received or levied by virtue of any process, into the proper office, into which the same by the tenor thereof ought to be paid, or to the person or persons, to whom the same shall be due, his, her or their executors, administrators, attorneys or agents, and in all other things well, truly and faithfully execute the said office of sheriff, during his continuance therein, then the above obligation to be void, otherwise to remain in full force and effect;" which said bond every county court, a majority or twelve of the

Form of the bond to be given by the sheriff for the faithful discharge of his duty in office.

10. 1829, c. 5, s. 10.—1830, c. 25, s. 1.

11. 1829, c. 5, s. 8.

12. 1829, c. 5, s. 9.

13. 1777, c. 118, s. 1.—1823, c. 1223.



justices being present, is, as above prescribed, required and empowered to demand and take, and cause to be acknowledged before them in open court and recorded; and upon a breach of the condition of such bond, the party or parties injured may maintain an action on the same, in the name of the State, and no such bond shall become void upon the first recovery, or if judgment shall be given for the defendant, but may be put in suit and prosecuted from time to time until the whole penalty shall be recovered.

Sheriff to take oaths.

14. Every sheriff elect, before entering upon the discharge of the duties of his office, shall take the oaths prescribed by law for the qualification of public officers, and also an oath of office.

Sheriff's securities liable for fines and amercements.

15. The securities to sheriff's bonds shall be liable for all fines and amercements, imposed on him, in the same manner as they are liable for all other deficiencies in the official duty of sheriff.

Sheriff not compelled to serve more than two years. May resign his office to the county court.

16. No sheriff shall be compellable to serve more than two years, and every sheriff shall be at liberty to vacate his office by resigning the same to the court of pleas and quarter sessions of his county, a majority of acting justices being present and accepting of such resignation; and thereupon the said court may proceed to elect a proper person to act as sheriff as in other cases of vacancy.

Penalty on person elected sheriff for refusing to accept.

17. If any person, who shall be elected or appointed sheriff under any of the provisions of this act, shall refuse to accept and execute the said office, he shall forfeit and pay the sum of one hundred dollars, to the use of the State, to be recovered in the name of the State by action of debt in any court having cognizance thereof: *Provided always*, that if any person, who shall be elected and appointed as aforesaid shall be willing to execute the same, but cannot give security as above required, and shall make oath in the county court, that he hath used his best endeavors, without fraud or collusion, to get such securities, then such person shall not incur the penalty aforesaid: *And provided further*, that no member of the General Assembly or council of state shall be elected or appointed, nor shall any practising attorney be obliged to act, as sheriff of any county.

Proviso where he is unable to give security.

Who not compellable to serve as sheriff.

Sheriff to execute all process from courts.

18. Every sheriff, by himself or his lawful officers or deputies, shall from time to time execute all writs and other process to him legally issued and directed, within his county, or upon any bay, river or creek adjoining thereto, and make due return thereof, under the penalty of forfeiting one hundred dollars for each neglect, where such process shall be delivered to him twenty days before the sitting of the court, to which the same is returnable, to be paid to the party grieved by order of such court, upon motion and proof of such delivery, unless such sheriff can show sufficient cause to the court, at the next succeeding term after such order; and for every false return, the sheriff shall forfeit and pay five hundred dollars, one moiety thereof to the party grieved, and the other moiety to him or those that will sue for the same, to be recovered

Penalty for neglect.

14. 1777, c. 118, s. 1.

15. 1829, c. 33.

16. 1777, c. 118, s. 1.—1808, c. 752.

17. 1777, c. 118, s. 2 and 4.

18. 1777, c. 118, s. 5.—1821, c. 1110.

with costs by action of debt in any court of record, and moreover be further liable to the action of the party grieved for damages.

19. It shall not be lawful for any sheriff, or his officer or deputy, to take any obligation of or from any person or persons in his custody, for or concerning any matter or thing relating to his office, otherwise payable than to himself as sheriff, and dischargeable upon the prisoner's appearance and rendering himself at the day and place required in the writ, whereupon he was or shall be taken or arrested, and his securities discharging themselves therefrom as special bail of such prisoner, or such person or persons keeping within the limits and rules of any prison, and every other obligation, taken by any sheriff in any other manner or form, by color of his office, shall be null and void, except in any special case any other obligation is or shall be by law particularly and expressly directed; and no sheriff shall demand, exact, take or receive any greater fee or reward whatsoever, nor shall have any allowance, reward or satisfaction from the public, for any service by him done, other than such sum as the county court shall allow for *ex officio* services, and the allowance given and provided, or which shall be from time to time given and provided by law.

Sheriff to take no obligation, from any person in his custody, but such as is payable to himself as sheriff, &c.

20. When any sheriff shall take the body of any debtor in execution, or upon attachment for not performing a decree in chancery for the payment of any sum of money, and shall wilfully or negligently suffer such debtor to escape, the person suing out such execution or attachment, his executors or administrators shall and may have and maintain an action of debt against such sheriff, and in case of his death, against his executors or administrators, for the recovery of all such sums of money, as are mentioned in the said execution or attachment and damages for detaining the same.

Sheriff permitting an escape in civil cases, to be liable to an action of debt.

21. No sheriff shall let to farm, in any manner, his county, or any part of it, under pain of forfeiting five hundred dollars, one half to the use of the county, and the other half to the person suing for the same.

Sheriff not to farm his office.

22. The several sheriffs of this State shall have the care and custody of the public jail in their respective counties, and they shall appoint the keeper thereof.

Sheriff to have the custody of the public jail.

23. Whenever a sheriff, by himself or deputy, shall receive into his hands claims for collection, it shall be his duty as an officer, diligently to endeavor to collect and pay them over, in like manner as constables are now bound; and in default of such duty, he shall be liable to the owner of such claims for damages, which may be recovered in any court of law, by suit on his official bond, given for the faithful discharge of his duty in office; and for moneys collected on such claims, the sheriff and his sureties shall be liable, in like manner and for like damages as are now provided for in the case of money collected by sheriffs under process of law.

Sheriff and his sureties to be liable for claims put into his hands for collection.

19. 1777, c. 118, s. 8.

20. 13 Edw. 1, c. 11.—1777, c. 118, s. 10 and 11.

21. 23 Hen. 6, c. 9.

22. 24 Edw. 3, c. 10.

23. 1836, c. 28.



*Note.*—REFERENCES TO ADJUDGED CASES.

SECT. 13. *Hostler vs. Patterson*, 1 Hay. 216. *Governor vs. Matlock*, 2 Hawks, 366. *Crumpler vs. Governor*, 1 Dev. 52. *Governor vs. Twitty*, ib. 153. *Governor vs. Matlock*, ib. 214. *Branch vs. Elliot*, 3 Dev. 86. *Governor vs. Munroe*, 4 Dev. 412.

SECT. 18. *Hogg vs. Bloodworth*, Conf. 477. *Davis vs. Lancaster*, 1 Murph. 255. *Douglas vs. Auld*, 1 Car. Rep. 500.

SECT. 19. *Denson vs. Sledge*, 2 Dev. 136.

## CHAPTER 110.

## SLANDER OF WOMEN.

## AN ACT TO ENABLE WOMEN, IN CERTAIN CASES, TO MAINTAIN ACTIONS OF SLANDER.

WHEREAS it is of the first importance in every free and well regulated government, that the laws, which secure to individuals the enjoyment of private character, should be plainly defined and clearly understood ; and as doubts have arisen whether actions of slander can be maintained in this State against persons, who may attempt, in a wanton and malicious manner, to destroy the reputation of innocent and unprotected women, whose very existence in society may depend on the unsullied purity of their character :

*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 from and after the passing of this act, any words spoken of women, which may amount to a charge of incontinency, shall be deemed and held to be actionable, and shall subject the person using them to an action on the case, to be prosecuted by the party aggrieved, in any court of record having cognizance thereof, under the same rules and regulations as have been heretofore observed in the trials of actions of slander.

What words  
spoken of  
women shall be  
actionable.

1808, c. 748.

*Note.*—REFERENCES TO ADJUDGED CASES.

*Watts vs. Greenlee*, 2 Dev. 115.

## CHAPTER 111.

**SLAVES AND FREE PERSONS OF COLOR.**

## AN ACT CONCERNING SLAVES AND FREE PERSONS OF COLOR.

## SECTION

1. Negroes, mulattoes, or persons of color, imported contrary to act of congress, to be sold for the use of the State.
2. Sheriff's duty in seizing and selling.
3. Sheriff's duty when such negroes, &c. abscond.
4. Persons giving notice of such negroes, &c. to have one fifth of their value.
5. Sales to be made at the court house, and sheriff to give bills of sale.
6. Sheriff's commissions, &c. for making such sales.
7. Certain former purchases confirmed.
8. The issue of negroes, &c. imported, included in the foregoing provisions.
9. Penalty for bringing slaves from certain states.
10. Reward for taking up runaways.
11. Runaways to be committed to jail in certain cases, and notice to be given.
12. Duty of a justice when a runaway is brought before him—And also of the constable to whom such runaway may be committed.
13. Penalty on any sheriff, &c. for employing the runaway, or keeping him longer than this act directs, or for suffering him to escape.
14. Keepers of ferries to give passage to constables, &c. conveying runaways.
15. Notice to be given by the jailer, in certain cases, in the State Gazette.
16. Runaway slaves may be sold, in certain cases, by order of the county court.
17. Sheriff's commissions on such sale.
18. Sheriff to give a bill of sale—Proceeds of such sale, how appropriated.
19. Owner may recover the money on petition.
20. The county to pay the expenses of runaways in certain cases—Such

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- expenses to be recovered of the owner when he becomes known.
21. Slaves offering forged free passes, to be whipped.
22. Runaway slaves may be outlawed in certain cases.
23. Slaves not to go armed, nor to hunt with a gun.
24. Slaves not to go off their master's plantation without a written permit.
25. Slaves not to raise stock.
26. Owners of slaves, not properly feeding them, &c. to be liable for their stealing corn, &c.
27. Slaves not to teach each other to read, &c.
28. Slaves not to sell spirituous liquors.
29. Slaves not to play at any game for money, &c.
30. Penalty on slaves for burning the woods.
31. Slaves not to be allowed to hire their own time—Proceedings in such cases.
32. Slaves not to go at large as freemen.
33. Negroes, &c. not to meet for the purpose of dancing, &c. without a written permit.
34. Slaves, &c. not to preach in public.
35. Conspiracy of slaves, how punishable.
36. Insurrection of slaves, how punishable.
37. Free persons joining conspiracy, &c. of slaves, how punishable.
38. What evidence shall be received in cases of insurrection, &c.
39. Slaves convicted of conspiracy, &c. to suffer death, or be transported.
40. Slaves returning voluntarily from transportation, to suffer death—If brought by their owner, &c., to be forfeited.
41. Slaves, for trivial offences, to be tried before a justice of the peace.



## SECTION

42. What jurisdiction the county court shall have over offences committed by slaves.
43. Jurisdiction of the superior court over offences committed by slaves.
44. Trials of slaves may be removed as in cases of free persons.
45. Slaves shall be entitled to a trial by jury when tried in court.
46. Slaves, for capital offences, to be tried on presentment or indictment, and be allowed challenges of jurors.
47. Slaves allowed the benefit of clergy.
48. Owner of slave to have notice of the trial in certain cases.
49. Where the owner cannot be found, the court shall appoint counsel for slaves.
50. Against and for whom slaves and other persons of color may be witnesses.
51. Court to give a charge to a negro, &c. examined as a witness.
52. Negro, &c. committing perjury, to be punished as a free man.
53. In cases of insurrection, &c. a commission of oyer and terminer may issue.
54. Compensation to the prosecuting officer in such case.
55. Appeal allowed from such court of oyer and terminer to the supreme court.
56. Judge may in certain cases continue the cause to the regular term of the superior court.
57. How slaves may be emancipated—Owner to give bond conditioned for slaves leaving the State, &c.
58. Emancipated slaves to leave the State in ninety days.
59. How slaves may be emancipated when directed so to be done by will.
60. Slaves over fifty years of age may be emancipated for meritorious services.
61. Emancipated slaves, not leaving the State, or returning, to be arrested and sold.
62. In such case, suit may also be brought upon the bond given by the owner.
63. Grand jury to present all slaves violating this act.
64. No slave to be set free but according to this act.
65. Free negroes, &c. not to migrate into this State—Penalty for coming into the State and not leaving after twenty days' notice.

## SECTION

66. How to proceed against free negroes, &c. coming into this State.
67. After term of service, to remove under like penalties.
68. Penalty on persons bringing free negroes, &c. into this State.
69. Vagabond free negroes, &c., how to be dealt with.
70. Money arising from the hire of free negroes, &c. to be paid to the county trustee.
71. County court may bind out the children of free negroes, &c. in certain cases.
72. Persons to whom free negroes, &c. are hired, to feed them, &c., and not to remove them from the county.
73. Free negroes, &c. charged with migrating into this State, &c., to be tried by a jury.
74. Who shall be deemed free negroes.
75. Grand juries to be charged and to make presentment of the offences of free negroes, &c. coming into this State.
76. Free negroes, &c. migrating from this State, and being absent ninety days, not to be permitted to return.
77. Free negroes not to intermarry with slaves.
78. Any person of color, attempting to commit a rape on a white woman, to suffer death.
79. Free negroes, &c. not to gamble with slaves.
80. Free negroes, &c. not to suffer slaves to gamble in their houses.
81. Free negroes, &c. not to entertain slaves in their houses at certain times.
82. Slaves not to trade with each other for certain articles.
83. Free negroes, &c. not to trade with slaves for certain articles.
84. Appeals allowed in cases under the two preceding sections.
85. Free negroes, &c. not to hawk or peddle without a license.
86. Fines on free persons of color, how to be enforced.
87. How such free persons of color shall be hired out.
88. Persons hiring them, to have the same authorities, and be under the same liabilities, as masters of apprentices.
89. Further provisions in cases of hiring out free persons of color for fines, &c.

1844.5. ch 86-87.  
1848. ch 93.

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 each and every negro, mulatto or person of color, imported into this State from any foreign port or place, for a slave, or to be held to service or labor, since the first day of January in the year one thousand eight hundred and eight, contrary to the provisions of an act of congress, entitled "An act to prohibit the importation of slaves into any port or place within the jurisdiction of the United States, from and after the first day of January, in the year of our Lord one thousand eight hundred and eight," approved the second day of March, one thousand eight hundred and seven, (except as hereinafter provided,) shall be sold and disposed of for the use of the State.

Negroes, mulattoes, or persons of color, imported contrary to act of congress, to be sold for the use of the State.

2. The sheriff of each county of this State shall, and he is hereby authorized and required to seize and take into his possession every negro, mulatto, and person of color, of the description aforesaid, as well those which have been, as those which shall be imported as aforesaid, found, or which shall be found in the county of which he is sheriff; and such negro, mulatto or person of color, so taken in his possession, to sell and dispose of at public sale, (giving previous notice of fifteen days of the time of such sale, by advertisement in one of the newspapers published in this State,) to the highest and best bidder, at a credit of six months, the purchaser entering into bond with security, to be approved by said sheriff, for the payment of the purchase money, which money, when received, the sheriff so receiving shall account for and pay to the treasurer of this State, after deducting from the gross amount thereof the several sums hereinafter authorized by him to be retained: the moneys collected by virtue of this act shall be paid and accounted for at the treasury, by the several sheriffs, at the same time and under the same regulations and penalties, as prescribed in accounting for and paying the public taxes.

Sheriff's duty in seizing and selling.

3. Where any such negro, mulatto or person of color, as is above mentioned, shall abscond, or so conceal him or herself that he or she cannot be taken by the sheriff, said sheriff may offer a reward, not exceeding one fifth part of the value of such negro, mulatto or person of color, to any person or persons, who shall apprehend and deliver him or her to the sheriff or his deputy, and shall then sell said negro, mulatto or person of color as above directed; or such sheriff may in his discretion proceed to advertise and sell such negro, mulatto or person of color, as directed in the foregoing section, without offering a reward, although such negro, mulatto or person of color may not be in the custody or possession of said sheriff at the time of said sale.

Sheriff's duty when such negroes, &c. abscond.

4. Whenever any person shall discover any negro of the description aforesaid in any county of this State, and give such notice thereof to the sheriff of the county, that he shall, in consequence of such information, obtain the said negro, mulatto or person of

Persons giving notice of such negroes, &c. to have one fifth of their value.

1. 1816, c. 910, s. 1.  
 2. 1816, c. 910, s. 2.  
 3. 1816, c. 910 s. 3.  
 4. 1816, c. 910, s. 4.



color, the person or persons, giving such information, shall be entitled to receive from the said sheriff one fifth part of the sum, for which said negro, mulatto or person of color shall afterwards sell, to be retained, as well as the reward offered, as directed in the preceding section, out of the proceeds of the sale, and paid to the person entitled to the same by the sheriff.

Sales to be made at the court house, and sheriff to give bills of sale.

5. All sales by virtue of this act shall be made at the court house of each respective county ; and the sheriff selling, or his successor, in case of his death, resignation or removal from office, shall execute and deliver to the purchaser, his executors, administrators or assigns, a bill of sale for such negro, mulatto or person of color so sold, which shall vest in the purchaser the absolute property in the same, and the title so acquired shall not be affected by the want of advertisement or by any other irregularity in such sale or proceedings on the part of the sheriff.

Sheriff's commissions, &c. for making such sales.

6. Every sheriff, selling as aforesaid, may retain out of the purchase money of such negro, mulatto or person of color, so sold, beside the rewards above directed to be paid, and beside the reasonable charges, at which the said sheriff shall be, in keeping such negro, mulatto or person of color till the day of sale, and in advertising as aforesaid, the further sum of six per centum on the gross proceeds of such sale, which shall be in full compensation for his services.

Certain former purchases confirmed.

7. Where any person or persons shall have purchased, before the eighteenth of November, one thousand eight hundred and sixteen, for a fair and valuable consideration, any such negro, mulatto or person of color, so imported into this State, contrary to the provisions of the said act of congress, of or from any person or persons originally importing such negro, mulatto or person of color, or the master, agent or attorney of such importer or importers, and such sale or purchase shall not be merely colorable to defeat or evade the provisions of this act, in that case the sheriff, in whose county, such negro, mulatto, or person of color is found, and the sheriff of the county where such purchaser resides, shall not proceed to sell such negro, mulatto or person of color : but upon due proof being made of such sale and purchase before the chief justice, or other justice of the supreme or superior courts, such chief or other justice shall give to such purchaser a certificate under his hand, directed to the sheriff of the county where such negro, mulatto or person of color is, or the purchaser resides, specifying the negro, mulatto or person of color, with respect to which such proof shall have been exhibited ; and on receipt of such certificate, such sheriff shall execute and deliver to such purchaser or his representative, a bill of sale for such negro, mulatto or person of color ; and the benefit of this section shall extend to the assignee or assignees of such purchaser, as well as to such purchaser and his representatives.

5. 1816, c. 910, s. 5.

6. 1816, c. 910, s. 6.

7. 1816, c. 910, s. 7.

8. The foregoing provisions of this act shall extend and apply to every negro, mulatto and person of color, the issue of any negro, mulatto or person of color, so imported as aforesaid.

The issue of negroes, &c. imported, included in the foregoing provisions.

9. Every person who shall introduce into this State any slave, from any of the United States, which have passed laws for the liberation of slaves, shall, on complaint thereof before any justice of the peace, be compelled by such justice to enter into bond with sufficient surety, in the sum of one hundred dollars current money for each slave, for the removing of such slave to the State from whence such slave was brought, within three months thereafter, the penalty to be recovered, one half for the use of the State, the other half for the use of the prosecutor, on failure of a compliance therewith; and the person introducing such slaves, shall also, in case of such failure, forfeit and pay the sum of two hundred dollars, to be recovered by any person suing for the same, and applied to his own use.

Penalty for bringing slaves from certain states.

10. All persons who may apprehend and confine in jail or deliver to the owner, any runaway slave, for whom a greater reward shall not have been offered, shall be entitled to recover and receive from the owner of such slave the sum of three dollars, where the owner resides in the county in which such slave may be apprehended, and five dollars, if he reside beyond the limits of such county; and where the runaway slave thus apprehended shall be lodged in jail, it shall be the duty of the jailer to tax the said reward on each slave against such owner, and collect the same with his prison fees.

Reward for taking up runaways.

11. If any negro, who shall be taken up as a runaway, and brought before any justice of the peace, will not declare the name of his or her owner, such justice shall in such case, and he is hereby required, by a warrant under his hand, to commit the said negro slave to the jail of the county wherein he or she shall be taken up; and the sheriff or under sheriff of the county, into whose custody the said runaway shall be committed, shall forthwith cause notice in writing of such commitment to be set up on the court house door of the said county, and there continued during the space of two months; in which notice a full description of the said runaway and his clothing shall be particularly set down. And every sheriff, failing to give such notice as herein is directed, shall forfeit and pay ten dollars; which said forfeiture shall and may be recovered with costs before any justice of the peace in the county, in which such slave is committed; the one moiety whereof shall be to the county, and the other moiety to the person who shall sue for the same.

Runaways to be committed to jail in certain cases, and notice to be given.

12. Where any runaway slave shall be brought before a justice of the peace, said justice shall commit the said runaway to the constable of his district, by his warrant, and therein order such constable to convey the said runaway to his home or the public jail, and may

Duty of a justice when a runaway is brought before him. And also of the

8. 1816, c. 910, s1 8.

9. 1786, c. 249.

10. 1819, c. 1014.—1823, c. 1227.

11. 1741, c. 35, s. 25.

12. 1741, c. 35, s. 30 and 31.



constable to whom such runaway may be committed.

also, if he think proper, order the said constable to give such runaway as many lashes, not exceeding thirtynine, as the said justice may in his discretion direct. Every constable, on the receipt of such runaway shall give a receipt for him or her, and, upon failure to execute such warrant or give such receipt, shall forfeit and pay two dollars for the use of the county; to be recovered before any justice of the county where such constable shall reside.

Penalty on any sheriff, &c. for employing the runaway, or keeping him longer than this act directs, or for suffering him to escape.

13. If any sheriff, under sheriff or constable, shall set to work, employ or let out to hire any runaway slave, committed to the custody of any of them, or shall detain such runaway longer in his or their custody than by this act is directed, he or they so offending shall forfeit and pay ten dollars, to be recovered before any justice of the peace having jurisdiction thereof: one moiety whereof to be paid to the county, where the offence shall be committed, and the other to him or them, who shall sue for the same; and if any sheriff or his under sheriff, or any constable, into whose hands any runaway shall be committed, by virtue of this act, shall negligently or wilfully suffer such runaway to escape, the said sheriff, under sheriff or constable shall be liable to the action of the party grieved, for recovery of his damages at the common law with costs.

Keepers of ferries to give passage to constables, &c. conveying runaways.

14. The keepers of ferries within this State shall give immediate passage to all constables and their assistants, charged with conducting any runaway or runaways, either to the public jail or to such runaway or runaways' master or owner, without charging such constable or their assistants for their ferriage, either going or returning; but all such ferriages of constables and their assistants shall be paid by the county, where such ferry keepers respectively live, and levied, as aforesaid, upon the respective masters or owners of such runaways.

Notice to be given by the jailer, in certain cases, in the State Gazette.

15. When any runaway, whose owner is supposed to be resident in any other state, shall be committed to any public jail in this State, the keeper of the said jail shall, by the first opportunity after such commitment, send a description of such negro or runaway, together with the account of the time of commitment, and the county where such runaway is committed, to the press, to be advertised in the State Gazette, for which he shall be reimbursed by the owner of the said slave or runaway.

Runaway slaves may be sold, in certain cases, by order of the county court.

16. Whenever any negro slave shall be taken up in this State as a runaway, and confined in any jail for the space of twelve months, and the apprehension and confinement of said slave have been advertised in the State Gazette at least six months, and the owner does not apply to prove property in said time, then it shall be lawful for the court of pleas and quarter sessions of the county, in which said runaway is confined, to command their sheriff to expose said negro slave to public sale for ready money, giving three months notice in some public newspaper in this State, at the court house door, and at two other public places in the said county, of the time and place of sale, and of the circumstances under which the said slave is to be sold.

13. 1741, c. 35, s. 32.

14. 1741, c. 35, s. 33.

15. 1741, c. 35, s. 34.

16. 1818, c. 981, s. 1.

17. The said sheriff shall be allowed two and a half per centum on the amount of sales made under the preceding section.

Sheriff's commissions on such sale.

18. The bill of sale of the sheriff shall vest in the purchaser an absolute right to the said slave ; and said sheriff is hereby directed to pay over the residue of the amount of sales, after deducting his commissions and prison charges, to the county trustee, to be applied as county taxes for the use of said county.

Sheriff to give a bill of sale. Proceeds of such sale, how appropriated.

19. Upon petition of the owner of said slave or slaves to the court of the county, where the proceeds of said sale are deposited, and upon satisfactory evidence of the right of property of said petitioner or petitioners to said slave, the said court shall direct the payment to the said petitioner or petitioners of the sum paid into the county treasury, taking bond and security from such petitioner or petitioners, when they think proper, payable to the State of North Carolina, to refund said money with interest to the real owner of said slave, should it thereafter appear that such petitioner or petitioners were not the real owners of such slave.

Owner may recover the money on petition.

20. If any runaway slave, confined in any jail in this State, his or her owner being unknown, should die, or by the regular process of law be removed from said jail, before a sale of such runaway is effected according to the provisions of this act, then and in either of these cases, it shall be the duty of the court of pleas and quarter sessions of the county where the said slave was confined, to direct the county trustee to pay all the expenses of his or her imprisonment out of the county funds : *Provided*, that the jailer shews to the court that he has complied with the directions of this act requiring the advertisement of runaways. And when such expenses have been so paid by the county trustee, if the owner should thereafter become known, it shall be the duty of the said trustee to recover, for the use of the county, from the owner or his representative, the amount he may have paid on account of the said runaway.

The county to pay the expenses of runaways in certain cases, such expenses to be recovered of the owner when he becomes known.

21. If any slave shall be guilty of producing any forged free pass, or certificate, he or she so offending, shall, on conviction before any justice of the peace, be sentenced to receive as many lashes on his bare back, not exceeding thirtynine, as the said justice may in his discretion direct.

Slaves offering forged free papers, to be whipped.

22. Whereas many times slaves runaway and lie out, hid and lurking in swamps, woods, and other obscure places, killing cattle and hogs, and committing other injuries to the inhabitants of this State ; in all such cases, upon intelligence of any slave or slaves lying out as aforesaid, any two justices of the peace for the county wherein such slave or slaves is or are supposed to lurk or do mischief, shall, and they are hereby empowered and required to issue proclamation against such slave or slaves (reciting his or their names, and the name or names of the owner or owners, if known,)

Runaway slaves may be outlawed in certain cases.

17. 1818, c. 981, s. 2.  
 18. 1818, c. 981, s. 3.  
 19. 1818, c. 981, s. 4.  
 20. 1830, c. 17, s. 1 and 2.  
 21. 1791, c. 335, s. 2.  
 22. 1741, c. 35, s. 40.



thereby requiring him or them, and every of them, forthwith to surrender him or themselves; and also to empower and require the sheriff of the said county to take such power with him, as he shall think fit and necessary, for going in search and pursuit of, and effectually apprehending such out lying slave or slaves, which proclamation shall be published at the door of the court house, and at such other places as said justices shall direct, and if any slave or slaves, against whom proclamation hath been thus issued, stay out and do not immediately return home, it shall be lawful for any person or persons whatsoever to kill and destroy such slave or slaves, by such ways and means as he shall think fit, without accusation or impeachment of any crime for the same.

Slaves not to go armed, nor to hunt with a gun.

23. No slave shall go armed with gun, sword, club, or other weapon, or shall keep any such weapon, or shall hunt or range with a gun in the woods, upon any pretence whatsoever; and if any slave shall be found offending herein, it shall and may be lawful for any person or persons to seize, and take to his own use such gun, sword or other weapon, and to apprehend and deliver such slave to the next constable, who is enjoined and required, without further order or warrant, to give such slave twenty lashes on his or her bare back, and to send him or her home; and the master or owner of such slave, shall pay the taker up of such armed slave the same reward, as by this act is allowed for taking up run-aways.

Slaves not to go off their master's plantation without a written permit.

24. No slave shall go from off the plantation or seat of land, where such slave shall be appointed to live, without a certificate of leave in writing for so doing, from his or her master or overseer.

Slaves not to raise stock.

25. No slave shall be permitted, on any pretence whatever, to raise any horses, cattle, hogs or sheep, but all such belonging to any slave or in any slave's mark, shall be seized and sold by the county wardens, as directed in the act, entitled "An act concerning the poor."

Owners of slaves not properly feeding them, &c. to be liable for their stealing corn, &c.

26. In case any slave, who shall not appear to have been properly clothed and fed, shall be convicted of stealing any corn, cattle, hogs or other goods whatsoever from any person, not the owner of such slave, such injured person shall and may maintain an action of trespass against the master, owner, or possessor of such slave in the superior or county court, and shall recover his or her damages with costs of suit.

Slaves not to teach each other to read, &c.

27. If any slave shall teach, or attempt to teach any other slave to read or write, the use of figures excepted, he or she may be carried before any justice of the peace, and, on conviction thereof, shall be sentenced to receive thirtynine lashes on his or her bare back.

Slaves not to sell spirituous liquors.

28. If any negro slave shall presume to sell any spirituous liquors,

23. 1741, c. 35, s. 35, 36 and 37.—1831, c. 44.

24. 1741, c. 35, s. 33.

25. 1741, c. 35, s. 39.—1779, c. 152, s. 1.

26. 1753, c. 53, s. 6.

27. 1830, c. 6, s. 2.

28. 1818, c. 974.

by the retail or otherwise, such slave so offending, shall be taken before a magistrate of the county, where he may have committed such offence, and if found guilty, shall receive not exceeding thirtynine lashes on his or her bare back.

29. It shall not be lawful for any slave or slaves to play at any game of cards, dice, nine-pins, or any game of hazard or chance, for any money, liquor, or any kind of property, whether the same be staked or not ; and any slave, so offending, shall, upon conviction before a justice of the peace, receive a whipping on his or her bare back, not exceeding thirtynine lashes.

Slaves not to play at any game for money, &c.

30. Any slave, convicted of setting fire to any woods, under circumstances, which, if the offence were committed by a free person, would subject such free person to a penalty, shall be ordered to receive on his bare back thirtynine lashes.

Penalty on slaves for burning the woods.

31. It shall not be lawful, under any pretence whatever, for any person or persons to allow his, her or their slave, or any slave under his, her or their command or direction, to hire his, her or their time, under the penalty of forfeiting the sum of forty dollars for each and every offence, to be recovered before any justice of the peace, to the sole benefit of the party prosecuting. And it shall be part of the duty and charge of the grand jury, both in the county and superior courts, to make presentment of any slave, who shall be permitted by his or her master or mistress to go at large, having hired his or her time, and on such presentment being made, the court shall issue an order to the sheriff of the county, where such negro may be, to take up such negro, and him or her safely secure so that he can have such negro before the next county court, and it shall be the duty of the sheriff to give the owner notice thereof, (if residing within the county) at least ten days before the sitting of the court ; and the said court shall empanel a jury to inquire and try the truth of such presentment, on which trial or inquiry the owner may produce evidence as in other cases ; and if the jury shall find that the said presentment is true, such negro shall then be hired out by the sheriff of the county, at public vendue, for the space of one year, taking bond with security for the same, payable to the State of North Carolina, for the use of the poor of said county, subject to the payment of any charges respecting said negro : *Provided always*, that when the owner resides out of the county, the sheriff shall give notice by advertisement in the nearest gazette, for at least two weeks, where a gazette shall be published in the county in which the sheriff shall live, but in other cases the sheriff shall advertise the same at the court house of the county, in which the said slave shall be presented or shall be taken up. *Provided always*, that when any person who shall hire the negro of an orphan, shall hire to such slave his or her time, the slave shall only be hired out under this section for such time, or the remainder of the time, as said slave may have been hired to such person.

Slaves not to be allowed to hire their own time.

Proceedings in such cases.

29. 1830, c. 10, s. 1.

30. 1777, c. 123, s. 3.

31. 1794, c. 406, s. 1.



Slaves not to go at large as freemen.

32. It shall not be lawful for any slave to go at large as a free man, exercising his or her own discretion in the employment of his or her time ; nor shall it be lawful for any slave to keep house to him or herself as a free person, exercising the like discretion in the employment of his or her time ; and in case the owner of any slave consent or connive at the commission of such offence, he or she so offending shall be subject to indictment, and on conviction be fined in the discretion of the court, not exceeding one hundred dollars : *Provided*, that nothing herein shall be construed to prevent any person permitting his or her slave or slaves to live or keep house upon his or her land, for the purpose of attending to the business of his or her master or mistress.

Negroes, &c. not to meet for the purpose of dancing, &c. without a written permit.

33. No person shall grant permission for any meeting or meetings of the negroes of others, or people of color at his, her or their houses, or on his, her or their plantation for the purpose of drinking or dancing, under the penalty of forfeiting twenty dollars, on conviction of such offence, in any court having jurisdiction thereof, unless such slave shall have a special permit in writing or otherwise from his or her owner for that purpose ; the same to be recovered by any person suing for the same in the name of the State.

Slaves, &c. not to preach in public.

34. It shall not be lawful under any pretence, for any slave or free person of color to preach or exhort in public, or in any manner to officiate as a preacher or teacher in any prayer meeting, or other association for worship, where slaves of different families are collected together ; and if any free person of color shall be thereof duly convicted on indictment, before any court having jurisdiction thereof, he shall for each offence receive not exceeding thirtynine lashes on his bare back ; and where any slave shall be guilty of a violation of this section, he shall, on conviction, before a single magistrate, receive not exceeding thirtynine lashes on his bare back.

Conspiracy of slaves, how punishable.

35. If any number of slaves shall, at any time hereafter, consult, advise or conspire to rebel or make insurrection, or shall plot or conspire the murder of any person or persons whatsoever, every such consulting, plotting or conspiring, shall be adjudged and deemed felony, and the slave or slaves, convicted thereof in the manner prescribed by law, shall suffer death, or be transported as hereinafter provided.

Insurrection of slaves, how punishable.

36. If any slave be found in a state of rebellion or insurrection, or shall agree to join any conspiracy or insurrection, or shall procure or persuade others to join or enlist for that purpose, or shall knowingly and wilfully aid or assist any slave or slaves in a state of rebellion, or engaged in a conspiracy to make insurrection, as by furnishing or agreeing or promising to furnish such persons with arms, ammunition or any other article for their aid and support, every slave, so offending and being thereof legally convicted, shall

32. 1831, c. 4, s. 2.

33. 1794, c. 406, s. 2.

34. 1831, c. 4, s. 1.

35. 1802, c. 618, s. 1.

36. 1802, c. 618, s. 2.

be adjudged guilty of felony, and shall suffer death or be transported as hereinafter provided.

37. If any free person shall join in any conspiracy, rebellion or insurrection of the slaves, or shall agree to join any such conspiracy, rebellion or insurrection, or shall procure or persuade others to join or enlist for that purpose, or shall knowingly and wilfully aid or assist any slave or slaves in a state of rebellion, or engage in a conspiracy to make insurrection, as by furnishing, or agreeing or promising to furnish such slave with arms, ammunition or any other article for their aid and support, every free person, so offending and being thereof legally convicted, shall be adjudged guilty of felony, and shall suffer death without benefit of clergy.

Free persons joining conspiracy, &c. of slaves, how punishable.

38. In all cases, wherein a slave shall be prosecuted for the offences described in the thirtyfifth and thirtysixth sections of this act, the court may take for evidence the oath of one or more credible witnesses, the confession of the offender, freely given, without any undue influence either by terror or persuasion, or the testimony of a negro or other person of color, bond or free; but in all cases, where the testimony of one negro or person of color shall be admitted, the same shall not be deemed conclusive and sufficient to convict the person charged, unless the same shall be supported by such pregnant circumstances, as to the jury on such trial shall appear convincing proof, when taken together with the testimony of such negro or person of color.

What evidence shall be received in cases of insurrection, &c.

39. When any slave shall be convicted of either of the felonies, created by the thirtyfifth and thirtysixth sections of this act, he or she shall suffer death, without benefit of clergy, or at the discretion of the court, shall be sentenced to be transported out of this State, and beyond the limits of the United States, under such restrictions and upon such conditions, as good policy and the public safety at the time shall require.

Slaves convicted of conspiracy, &c. to suffer death or be transported.

40. Whenever a slave shall be transported, in consequence of the provisions of this act, either by the owner or the State, and such slave shall ever thereafter voluntarily return to and be found in the State, such slave shall suffer death without benefit of clergy, upon due conviction thereof; and if any slave, so transported, shall be brought into any county in this State by his or her master or mistress, or by any other person, such slave shall be forfeited (on proof thereof) to the county into which the same may be brought, and the said slave shall be again transported by order of the county court, and sold for the use of the county.

Slaves returning voluntarily from transportation, to suffer death.

If brought by their owner, &c., to be forfeited.

41. When any slave shall commit any misdemeanor or offence, which is not by law declared capital, and which, in the opinion of the justice or justices, before whom such offending slave may be carried for examination, shall appear to be of so trivial a nature, as not to deserve a greater punishment than a single justice of the peace is empowered by this act to inflict, such justice shall, and

Slaves, for trivial offences, to be tried before a justice of the peace.

37. 1802, c. 618, s. 3.

38. 1802, c. 618, s. 4.

39. 1802, c. 618, s. 5.—1819, c. 1009.

40. 1802, c. 618, s. 6.

41. 1783, c. 190, s. 2 and 3.



he is hereby authorized and empowered forthwith to issue subpoenas, if necessary, to compel the attendance of witnesses, and proceed immediately upon the trial of such slave in a summary way, and to pass sentence and award execution: *Provided*, the punishment extends no further than by ordering the offender to be publicly whipped, not exceeding forty lashes; and where the offence, for which any slave shall be apprehended, shall appear to the justice or justices to be of such a nature, as to deserve any other or greater punishment, such offending slave shall be committed to jail, and stand his or her trial by the proper court having jurisdiction of such offence: *Provided*, that upon all trials of slaves, before any justice of the peace, for any misdemeanor under this act, any other of the justices of the county, where such slave may be upon trial, may, if they think proper, sit upon and assist in the examination and trial.

What jurisdiction the county court shall have over offences committed by slaves.

42. In all cases of offences committed by slaves, of a higher degree than such as are cognizable by a justice of the peace, the courts of pleas and quarter sessions, in their respective counties, shall have original exclusive jurisdiction, except in cases in which the punishment may extend to life, and except also in cases of felonies within the benefit of clergy; and trials of slaves, in the county courts, shall be conducted under the same rules, regulations and restrictions as the trials of freemen.

Jurisdiction of the superior court over offences committed by slaves.

43. In all cases, unless otherwise expressly provided, in which a slave shall be charged with the commission of an offence, the punishment whereof may extend to life, or with the commission of a felony within the benefit of clergy, the superior courts of law shall have exclusive jurisdiction within their respective counties; and the trial shall be conducted under the same rules, regulations and restrictions, as trials of freemen for a like offence are now conducted, except as may be herein otherwise provided.

Trials of slaves may be removed as in cases of free persons.

44. Such cases may be removed for trial to an adjoining county, upon affidavit of the owner, or in his absence, of the counsel of such slave or slaves, in the same manner as causes may now be removed by freemen; and if it shall appear to the presiding judge, by affidavit of the master, the counsel of the slave, or otherwise, that such slave or slaves cannot have a fair trial in the county wherein the offence is charged to have been committed, it shall and may be lawful for such judge to order the removal of such cause to an adjacent court for trial, notwithstanding the master or owner of such slave or slaves may neglect or refuse to make an application to the court for that purpose.

Slaves shall be entitled to a trial by jury when tried in court.

45. In all cases, where the county or superior courts shall have jurisdiction of offences committed by slaves, the slave charged shall be entitled to a trial by a jury of good and lawful men, owners of slaves.

Slaves, for capital offences, to

46. A slave shall not be tried for a capital offence, but on pre-

42. 1793, c. 331, s. 1.—1816, c. 912, s. 1.—1825, c. 1291.—1794, c. 412.

43. 1816, c. 912, s. 1.—1825, c. 1291.

44. 1816, c. 912, s. 2.—1822, c. 1130, s. 2.

45. 1793, c. 381, s. 1.—1831, c. 30, s. 5.

46. 1816, c. 912, s. 3.—1818, c. 972.

sentment or indictment of the grand jury ; and on his trial for such capital offence, shall, by himself, his master or counsel, have the same right to challenge jurors, that a freeman is now entitled to by law.

47. A slave, convicted of a clerigiable offence, shall be entitled to the benefit of clergy, in like manner with a free man, and, when he shall pray for the same, the court shall have power to direct and adjudge such corporal punishment, short of death or dismemberment, as to the court shall seem right under all the circumstances of the case ; and the entry of such judgment shall have the same legal effects and consequences, as if the slave or slaves were burned in the hand, as in the case of a freeman convicted of a similar offence.

48. When a slave shall be apprehended for any offence, the punishment whereof may affect life, member or limb, it shall be the duty of the sheriff, and he is hereby required to serve the owner of such slave, if known, with notice of trial ten days previous thereto, (which notice shall be proved to the court,) in order that the owner may have an opportunity of defending the said slave ; and the costs of said notice, and all other costs attending the trial of any slave, so apprehended, where the owner or owners shall be known, shall be paid by the owner or owners : *Provided*, the said slave, if a freeman, would be liable to the payment thereof. And in case of refusal to pay the same, process may issue from the clerk of the court to compel payment in the same manner as for other costs.

49. When the owner of any slave, to be tried by virtue of this act, shall not be known, or cannot be discovered or ascertained, or shall reside out of this State, it shall and may be lawful for the court, and they are hereby authorized and required, to appoint counsel to appear for and in behalf of the prisoner, who shall be allowed the same fees as the attorney for the State is allowed for criminal prosecutions. After which, they may proceed to trial in the same manner as if the owner had been notified agreeable to the directions of this act ; in which case the fees for the counsel, clerk and sheriff shall be paid by the county, in which the court is held, in the same manner as other county charges.

50. All negroes, Indians, mulattoes, and all persons of mixed blood, descended from negro and Indian ancestors, to the fourth generation inclusive, (though one ancestor of each generation may have been a white person) whether bond or free, shall be deemed and taken to be incapable in law to be witnesses in any case whatsoever, except against each other. In all pleas of the State, where the defendant may be a negro, Indian or mulatto, or person of mixed blood, descended from negro or Indian ancestors, to the fourth generation inclusive, (though one ancestor of each generation may have been a white person,) whether such defendant be bond or free, the evidence of a negro or negroes, Indian or In-

47. 1816, c. 912, s. 4.—1825, c. 1291.

48. 1793, c. 381, s. 2.

49. 1793, c. 381, s. 3.

50. 1777, c. 115, s. 42.—1821, c. 1123.



dians, mulatto or mulattoes, and of all persons of mixed blood, descended from negro or Indian ancestors to the fourth generation inclusive, (though one ancestor of each generation may have been a white person,) whether the persons or persons, whose evidence is offered, be bond or free, shall be admissible and the witnesses competent, subject nevertheless to be excluded upon any other grounds of incompetency which may exist.

Court to give a charge to a negro, &c. examined as a witness.

51. On the trial of any slave charged with committing capital or other offences, the judge or presiding magistrate sitting on such trial shall, before the examination of any negro, mulatto or Indian, charge such to declare the truth.

Negro, &c. committing perjury, to be punished as a free man.

52. If any negro, mulattó or Indian, bond or free, shall, upon any trial where he may be examined as a witness, commit wilful and corrupt perjury, he or she shall, upon conviction thereof, be sentenced to receive the same punishment, as is imposed upon a free man for the commission of the same offence.

In cases of insurrection, &c. a commission of oyer and terminer may issue.

53. In all cases of insurrection or rebellion, or of conspiracy to make insurrection, or to murder or rebel, or any such contemplated conspiracy, insurrection or rebellion, of any slave or slaves, upon the information and at the request of any five justices of the peace of the county in which such conspiracy, insurrection or rebellion shall happen or may be contemplated, the governor for the time being shall be authorized and have power to issue a commission of oyer and terminer, to any one of the judges of the superior courts of law; and in case the said judges are necessarily engaged on their circuits, the governor shall be authorized and have power to issue a commission to one of the judges of the supreme court, whose duty it shall be to hold said court forthwith, and who shall be clothed with all the powers necessary for the trial of all such slave or slaves, as may be charged with any of the before mentioned offences.

Compensation to the prosecuting officer in such case.

54. The prosecuting officer in behalf of the State, attending the said court, shall be entitled to receive the same compensation, as may be allowed by law generally for attending a term of a superior court.

Appeal allowed from such court of oyer and terminer to the supreme court.

55. The prisoner or prisoners, who shall be tried before any court of oyer and terminer, shall have the right of appeal to the supreme court, under the rules and regulations now prescribed by law for appeals.

Judge may, in certain cases, continue the cause to the regular term of the superior court.

56. When the person, who shall be indicted before a court of oyer and terminer, shall upon affidavit of himself or any other person, shew such circumstances and facts to the court, as would induce the judge, in the regular courts of this State, to remove the trial of said indictment out of the county, the judge holding such court of oyer and terminer may, in his discretion, continue the said indictment, and commit or bind over the prisoner, as the case may

51. 1741, c. 35, s. 42.

52. 1741, c. 35, s. 41.—1831, c. 12.

53. 1831, c. 30, s. 1.

54. 1831, c. 30, s. 2.

55. 1831, c. 30, s. 3.

56. 1831, c. 30, s. 4.

require, for trial at the next superior court for said county, when the same shall be disposed of, according to the rules and regulations in force for the trial of such offences.

57. Any inhabitant of this State, desirous to emancipate any slave or slaves, shall file a petition in writing in some one of the superior courts of this State, setting forth, as near as may be, the name, sex and age of such slave intended to be emancipated, and praying permission to emancipate the same ; and the court, before whom such petition shall be filed, shall grant the prayer thereof on the following conditions and not otherwise, viz : That the petitioner shall shew that he has given public notice of his intention to file such petition, at the court house of the county, and in the State Gazette, for at least six weeks before the hearing of such petition, and that the petitioner shall enter into bond with two securities, each to be good and sufficient, payable to the State of North Carolina, in the sum of one thousand dollars for each slave named in the petition, conditioned that the said slave or slaves shall honestly and correctly demean him, her or themselves, while he, she or they shall remain within the State of North Carolina, and that he, she or they will, within ninety days after granting the prayer of the petitioner to emancipate him, her or them, leave the State of North Carolina, and never afterwards come within the same : *Provided nevertheless*, that no such emancipation shall, in any manner whatever, invalidate or affect the rights or claims of any creditor of such petitioner.

How slaves may be emancipated.

Owner to give bond conditioned for slaves leaving the State, &c.

58. Any emancipation granted to any slave or slaves, as herein directed, shall be upon the express condition, that he, she or they will leave the State, within ninety days from the granting thereof, and never will return within the State afterwards.

Emancipated slaves to leave the State in ninety days.

59. It shall be lawful for any person, by his or her last will and testament, to direct and authorize his or her executor or executors, to cause to be emancipated any slave or slaves pursuant to this act ; and such bequest or authority shall be good and available in law and equity, and shall justify said executor or executors in emancipating such slave or slaves at any time thereafter : *Provided*, he, she or they file his, her or their petition, and pursue the directions of this act, in the same manner as if he, she or they were the absolute owners of such slave or slaves : *And provided further*, that nothing herein contained shall be taken or held to interfere with the claims of creditors, or exempt any slave, directed to be emancipated, from liability to the claims of creditors : *And provided further*, that any slave emancipated by an executor, pursuant to the directions of the testator, shall be emancipated on the same conditions and under the same liabilities as herein before set forth : *Provided further*, that no permission shall be granted to any executor or executors to emancipate any slave or slaves, under the directions of the last will and testament of his or their testator, before the expiration of two years from and after the probate of

How slaves may be emancipated when directed so to be done by will.

57. 1830, c. 9, s. 1.

58. 1830, c. 9, s. 2.

59. 1830, c. 9, s. 3.



said last will and testament, unless the said executor or executors shall enter into bond, with approved security, to the State of North Carolina, in double the value of the slave or slaves, proposed to be emancipated, conditioned to be answerable to the creditors of his, her or their testator for the value of the said slave or slaves.

Slaves over fifty years of age may be emancipated for meritorious services.

60. It may be lawful to emancipate, upon the petition filed and under the order of any superior court of law in this State, any slave over the age of fifty years. *Provided*, his or her owner shall prove, by his own oath or otherwise, to the satisfaction of the court and jury, that said slave has performed meritorious services (which meritorious services must consist in more than mere general performance of duty :) *Provided nevertheless*, that the petitioner shall swear that he or she has not received, in money or otherwise, the price or value, or any part thereof, of said slave, or been induced to petition for his or her emancipation in consideration of any price paid therefor or to be paid : *And provided further*, that before such slave shall be emancipated, the petitioner shall give bond and good security, in the sum of five hundred dollars, payable to the State of North Carolina, that said slave shall honestly and correctly demean him or herself, so long as he or she shall remain in the State, and shall not become a parish charge ; which bond may be sued upon, in the name of the State, to the use of the poor, or of any person injured by the malconduct of such slave.

Emancipated slaves not leaving the State, or returning, to be arrested and sold.

61. If any slave, other than such as may be emancipated under the sixtieth section of this act, shall refuse or neglect to leave the State, within ninety days after permission to emancipate him or her has been granted, as aforesaid, by any superior court, or shall ever come within the State after having left it, it shall be the duty of any justice of the peace of any county, wherein said slave may be found, to issue a warrant to arrest said slave ; and he shall, upon proper proof being made of his or her having violated the provisions of this act, commit him or her to the jail of the county, there to remain until the next ensuing term of the court of pleas and quarter sessions, where an issue shall be made up and immediately tried, whether the accused has violated the provisions of this act ; and upon the finding of the jury that the accused has so done, he, she or they shall, by the said court of pleas and quarter sessions, be ordered to be sold, which sale shall vest an absolute right of property in the purchaser in and to the accused, and the proceeds thereof be equally divided between the informer and the wardens of the poor of the county.

In such case suit may also be brought upon the bond given by the owner.

62. If any slave shall refuse or neglect to leave the State as aforesaid, or shall ever come within the same after having left it, it shall and may be lawful for any person to bring suit, in the name of the State, for the joint use of himself and the wardens of the poor of the county, and to be applied by them to the support of the poor of the county, upon the bond which may have been given, in pursuance of the provisions of this act.

60. 1830, e. 9, s. 4.

61. 1830, c. 9, s. 5.

62. 1830, c. 9, s. 6.

63. It shall be the duty of all grand juries within this State to make presentment of all slaves, who may hereafter be emancipated, who may violate the provisions of this act; and upon such presentment, it shall be the duty of the prosecuting officer of the county, wherein the presentment may be made, to prosecute such slave as herein before provided.

Grand jury to present all slaves violating this act.

64. No slave shall be set free but according to the provisions of this act.

No slave to be set free but according to this act.

65. It shall not be lawful for any free negro, or mulatto to migrate into this State: and if he or she shall do so, contrary to the provisions of this act, and, being thereof informed, shall not, within twenty days thereafter, remove out of the State, he or she, being thereof convicted in manner hereinafter directed, shall be liable to a penalty of five hundred dollars; and, upon failure to pay the same, within the time prescribed in the judgment awarded against such person or persons, he or she shall be liable to be held in servitude and at labor, for a term of time not exceeding ten years, in such manner and upon such terms as may be prescribed by the court awarding such sentence, and the proceeds arising therefrom shall be paid over to the county trustee for county purposes: *Provided*, that in case any free negro or mulatto shall pay the penalty of five hundred dollars, according to the provisions of this act, it shall be the duty of such free negro or mulatto to remove him or herself out of this State, within twenty days thereafter, and, for every such failure, he or she shall be subject to the like penalty, as is prescribed for a failure to remove in the first instance.

Free negroes, &c. not to migrate into this State.

Penalty for coming into the State and not leaving after 20 days notice.

66. If any free negro or mulatto shall come into this State as aforesaid, he or she may be arrested upon a warrant from any justice of the peace, and carried before any justice of the peace of the county, in which he or she may be arrested, who is hereby authorized and required to examine into the case; and if, upon such examination, it shall appear to him that the said free negro or mulatto has come into this State, contrary to the provisions of this act, he shall bind him or her over to the next county court of said county, which shall happen thereafter, taking such security for his or her appearance as may be reasonable; and upon neglecting or refusing to give such security, the said justice shall commit such free negro or mulatto to the jail of the county, there to be confined until the next county court, unless, in the mean time, he or she shall give security as aforesaid; and at the said court it shall be the duty of the said court, to inquire into the case, and if it shall appear to them that the said free negro or mulatto has migrated into this State, contrary to the provisions of this act, they shall enter judgment against him or her for the aforesaid penalty, and may award execution thereon; and, if he or she shall have no property or not sufficient to satisfy the said debt, the said court shall adjudge

How to proceed against free negroes, &c. coming into this State.

63. 1830, c. 9, s. 7.

64. 1830, c. 9, s. 8.

65. 1826, c. 21, s. 1.

66. 1826, c. 21, s. 2.



that the said free negro or mulatto shall be hired out for a term of time, not exceeding that prescribed in the sixtyfifth section of this act, in such manner and upon such terms as may seem expedient to said court.

After term of service to remove under like penalties.

67. If after the expiration of the term of service, for which such free negro or mulatto shall have been held in servitude, he or she shall remain in this State for thirty days, such free negro or mulatto, shall be liable to the same penalties and punishments, as are prescribed in the sixtyfifth and sixtysixth sections of this act.

Penalty on persons bringing free negroes, &c. into this State.

68. Any person, who shall bring into this State, by water or land, any free negro or mulatto, shall forfeit and pay for every such person so brought into this State, the sum of five hundred dollars, to be recovered by action of debt, in the name of the State, for the use of the county, where the offence shall be committed: *Provided*, that this section shall not extend to masters of vessels, bringing into this State any free negro or mulatto, employed on board and belonging to said vessel, and who shall therewith depart, nor to any person, travelling in or through this State, having any free negro or mulatto as a servant, and who shall with such person depart out of the State.

Vagabond free negroes, &c., how to be dealt with.

69. If any free negro or mulatto in any county of this State, who is able to labor, shall be found spending his or her time in idleness and dissipation, or having no regular or honest employment or occupation, which he or she is accustomed to follow, it shall and may be lawful for any citizen to apply to a justice of the peace of said county, and upon affidavit to obtain a warrant to arrest such person and bring him or her before some justice of said county; and if, upon examination of the cause, it shall appear to said justice that the said free negro or mulatto comes within the provisions of this section, the said justice shall bind him or her, with reasonable security, to appear at the next county court of said county; and in case he or she shall fail to give security, such free negro or mulatto shall be committed to the jail of the county, until the next county court thereafter, and it shall be the duty of the said court, if, upon examination of the case, he or she shall come within the meaning of this section to require such free negro or mulatto to enter into bond, with sufficient security in such sum as may be considered by the court reasonable, payable to the State of North Carolina, conditioned for his or her good behavior and industrious, peaceable deportment for one year; and in case he or she shall fail to give such security, or shall not pay the costs and charges of the prosecution, it shall be lawful for the said court and they are hereby required to hire out such free negro or mulatto, for a term of time, to service and and labor, which to them may seem reasonable and just and calculated to reform him or her to habits of industry and morality, not exceeding three years for any one offence.

Money arising from the hire of free negroes,

70. All sums of money which may arise under the provisions

67. 1826, c. 21, s. 3.

68. 1826, c. 21, s. 4.

69. 1826, c. 21, s. 5.

70. 1826, c. 21, s. 6.

of the last section from the hire of free negroes or mulattoes, shall be paid to the county trustee for county uses.

&c. to be paid to the county trustee.

71. The justices of the courts of pleas and quarter sessions, in each of the counties of this State, shall have power, in cases where it may appear expedient, to bind out the children of free negroes or mulattoes, where the parent, with whom such children may live, does or shall not habitually employ his or her time in some honest, industrious occupation.

County court may bind out the children of free negroes, &c. in certain cases.

72. All persons, with whom any free negro or mulatto may be held to service under this act, shall, and they are hereby required to provide him or her with good and sufficient clothing and food, treat him or her with humanity, and teach him or her some mechanical trade, or some useful and industrious employment, during the term for which such free negro or mulatto may be compelled to serve ; he or she shall not be removed from the county by such master or any other person, and shall be produced to the county court at the expiration of the term of service as aforesaid, or whenever thereto required by them ; and if any such master or mistress shall violate this section, he or she may be indicted for such offence, in any court of the county, where such offence may be committed, and, on conviction thereof, may be fined or imprisoned at the discretion of the court ; and in case such free negro or mulatto shall run away, before the expiration of his or her term of service, he or she shall be compelled to serve, after the said expiration, such a length of time as he or she shall have absented him or herself.

Persons to whom free negroes, &c. are hired, to feed them, &c. and not to remove them from the county.

73. In all cases, arising under the sixtyfifth, sixtysixth, sixtyseventh and sixtyninth sections of this act, the free negro or mulatto, who is charged with an offence, upon application to the court for that purpose, shall have a right to have the facts of his or her case tried by a jury upon an issue or issues, made up under the direction of the court for that purpose.

Free negroes, &c. charged with migrating into this State, &c. to be tried by a jury.

74. All free mulattoes, descended from negro ancestors to the fourth generation inclusive, though one ancestor of each generation may have been a white person, shall come within the provisions of this act.

Who shall be deemed free negroes.

75. It shall be the duty of the several county attorneys in this State, to give in charge the sixtyfifth, sixtysixth, sixtyseventh and sixtyninth sections of this act to the grand jurors, and it is hereby made their duty to present all cases in their county, arising under the said sections, within the knowledge of either of them ; and the said attorneys are hereby required, in all cases arising under the provisions of the said sections, to prosecute for, and on behalf of the State ; and it shall be the duty of the several courts of this State, before whom any proceedings may be had under the said sections, so to construe the same as to prohibit the evils intended to be remedied ; and they are hereby authorized and required to

Grand juries to be charged and to make presentment of the offences of free negroes, &c. coming into this State.

71. 1826, c. 21, s. 7.

72. 1826, c. 21, s. 8.

73. 1826, c. 21, s. 9.

74. 1826, c. 21, s. 10.

75. 1826, c. 21, s. 11.



make all necessary rules and regulations, according to the usual course of justice, which may be required for the purposes and objects of the said sections of this act.

Free negroes, &c. migrating from this State and being absent ninety days, not to be permitted to return.

76. If any free negro or person of color, who may be a resident of this State, shall migrate from this State, and go into any other state, and shall be absent for the space of ninety days or more, it shall not be lawful for such free negro or person of color to return to this State ; and if any free negro or person of color shall violate this section, he shall be liable to the same penalties as are prescribed for the punishment of free negroes and persons of color, who migrate to this State : *Provided*, that no persons shall incur the penalties or disabilities prescribed in this section, if he or she shall have been prevented from so returning to this State by sickness, or other unavoidable occurrence.

Free negroes not to intermarry with slaves.

77. It shall not be lawful for any free negro or free person of color to intermarry, or cohabit and live together as man and wife, with any slave ; and any free negro or person of color, so intermarrying, or cohabiting and living as man and wife with a slave, shall be liable to indictment, and, upon conviction, shall be fined and imprisoned, or whipped at the discretion of the court ; the whipping not to exceed thirtynine lashes : *Provided*, that this section shall not extend to any case, where an intermarriage, or cohabiting, or living together took place, before the first day of March, A. D. one thousand eight hundred and thirtyone.

Any person of color attempting to commit a rape on a white woman, to suffer death.

78. Any person of color, convicted by due course of law of an assault with intent to commit a rape upon the body of a white female, shall suffer death without benefit of clergy.

Free negroes, &c. not to gamble with slaves.

79. It shall not be lawful for any free negro, mulatto or person of mixed blood, descended from negro ancestors to the fourth generation inclusive, (though one ancestor of each generation may have been a white person,) to play at any game of cards, dice, nine-pins, or any game of chance or hazard, whether for money, liquor or any kind of property, or not, with any slave or slaves ; and any free negro, mulatto or person of mixed blood as aforesaid, so offending, shall, upon conviction before any court having jurisdiction, receive a whipping, not exceeding thirtynine lashes, on his or her bare back.

Free negroes, &c. not to suffer slaves to gamble in their houses.

80. If any free negro, mulatto, or person of mixed blood as aforesaid, shall knowingly suffer any slave or slaves to play at any game of cards, dice, nine-pins or any game of chance or hazard, whether for money, liquor or any kind of property, or not, in his or her house, or in the yard, field or garden attached or belonging to his or her house, he or she shall be liable to indictment in any court having jurisdiction ; and, upon conviction, the free negro, mulatto or person of mixed blood as aforesaid, shall receive a whipping on his or her bare back, not exceeding thirtynine lashes.

76. 1830, c. 14.

77. 1830, c. 4, s. 3.

78. 1823, c. 1229.

79. 1830, c. 10, s. 2.

80. 1830, c. 10, s. 3.

81. If any free negro or mulatto shall entertain any slave in his or her house, during the sabbath, or in the night, between sunset and sunrise, he or she shall, for entertaining such slave, be subject to a fine of two dollars for the first offence, and four dollars for every subsequent offence, to be recovered on conviction before any one justice of the peace, and applied to the use of the poor of the county, in which the offence shall be committed, saving to the party the right of appealing.

Free negroes, &c. not to entertain slaves in their houses at certain times.

82. If any slave shall buy or receive from any slave or slaves, or shall sell or deliver to any slave or slaves, any of the property prohibited to be bought by or received from, or to be sold or delivered to any slave by any free white person, by the laws of this State, he or she, on conviction thereof before any justice of the peace, shall receive on his or her back, not exceeding thirty-nine lashes, well laid on by any constable of said county, or other person appointed for that purpose.

Slaves not to trade with each other for certain articles.

83. If any free negro or mulatto shall trade with any slave, either by buying from or selling to him or her, any article of property, prohibited to be sold or bought from a slave by any white free person by the laws of this State, he or she may be presented by indictment in the county or superior courts; and, on conviction, shall receive not less than thirty-nine lashes on his or her bare back.

Free negroes, &c. not to trade with slaves for certain articles.

84. Either of the parties or master of the slave, convicted under either of the two preceding sections, shall be entitled to an appeal from the judgment of the justice or of the county court; and no indictment shall be prosecuted for so trading with a slave, unless the indictment be commenced within twelve months from the time of the offence committed.

Appeals allowed in cases under the two preceding sections.

85. It shall not be lawful for any free negro, mulatto or free person of color, to hawk or peddle, within the limits of any county in this State, without first obtaining a license from the court of pleas and quarter sessions of the county, in which they propose to hawk or peddle, which license shall be granted for one year only, and only when seven or more justices are present, and upon satisfactory evidence of the good character of the applicant, to be approved by said court; and for issuing such license, the clerk shall be entitled to demand and receive from such applicant the sum of eighty cents: *Provided nevertheless*, that nothing in this act shall be construed, so as to allow such person, coming from another state, to peddle in this State; and if any free negro, or free person of color, shall offend against this section of this act, he or she shall be subject to indictment.

Free negroes, &c. not to hawk or peddle without a license.

86. When any free person of color shall be convicted of any offence against the criminal laws of the State, and sentenced to pay a fine, and it shall appear to the satisfaction of the court, that the

Fines on free persons of color, how to be enforced.

81. 1787, c. 267, s. 2.

82. 1826, c. 13, s. 4.

83. 1826, c. 13, s. 5.—1828, c. 32, s. 2.

84. 1826, c. 13, s. 7.—1828, c. 32, s. 3.

85. 1831, c. 28.—1830, c. 7.

86. 1831, c. 13, s. 1.



free person of color, so convicted, is unable to pay the fine imposed, the court shall direct the sheriff of the county, where such fine is imposed, to hire out the free person of color, so convicted, to any person, who will pay the fine for his services for the shortest space of time.

How such free persons of color shall be hired out.

87. It shall be the duty of the sheriff, during the week of court, or as soon thereafter as convenient, publicly at the door of the court house, to hire out such free person of color to any person, who will pay the fine, so imposed, for his services for the shortest space of time, and to take from the person so hiring, bond and security, in double the amount of the fine so paid, payable in the same manner and with the same conditions for the proper treatment of the free person of color, during the time for which he is so hired, as are now contained in apprentice bonds.

Persons hiring them, to have the same authorities, and be under the liabilities as masters of apprentices.

88. The person, to whom the sheriff shall so hire any free person of color, shall, during the time for which the hiring is so made, have the same authority over, and the same right to control and require the services of such free person of color, and shall be liable in all respects to the same obligations and duties as masters now have, and are liable to in cases of apprentices.

Further provisions in cases of hiring out free persons of color for fines, &c.

89. If no person can be found who will pay the fine so imposed, for the services of the free person of color so fined, for a space of time not exceeding five years, then it shall be the duty of the sheriff to hire the free person of color to any person, who will pay the highest sum for his services, for five years, which sum shall discharge the fine; and it shall be the duty of the sheriff, after deducting five per cent. commissions, to account for and pay over the money collected by virtue of this act, as other fines: *Provided always*, that if any free person of color, hired out under the provisions of this act, shall abscond or leave the service of his master before the expiration of his or her time, he or she shall be liable and bound to make up such time, so elapsed, by serving double the time thereof: *And provided further*, that the fine imposed, shall in all cases be at least equal to the amount of the costs of such prosecution.

87. 1831, c. 13, s. 2.

88. 1831, c. 13, s. 3.

89. 1831, c. 13, s. 4.

*Note.*—REFERENCES TO ADJUDGED CASES.

SECT. 33. *State vs. Woodman*, 3 Hawks, 334. *State vs. Clements*, 3 Dev. 472.

SECT. 37. *State vs. Tom*, 2 Dev. 569.

SECT. 45. *State vs. Allen*, 3 Hawks, 614. *State vs. Daniel*, ib. 617.

SECT. 46. *State vs. Poll and Lavinia*, 1 Hawks, 442.

SECT. 50. *State vs. Isaac*, 2 Dev. 47. *State vs. Jones*, ib. 43.

SECT. 80. *State vs. Jim*, 1 Dev. 142. *State vs. Martin*, 3 Dev. 329.

CHAPTER 112.

STRAYS.

AN ACT CONCERNING STRAYS.

SECTION

1. County courts to appoint one or more rangers for each county.
2. Information of strays to be made to rangers—Stray to be valued—Rangers to keep a book—To advertise strays.
3. Reward to the taker up.
4. Property not proved, to belong to the taker up after twelve months—May be reclaimed—How expense of keeping strays shall be ascertained.
5. When the stray is not claimed within twelve months, two thirds of the appraised value is to be paid to the county trustee—How owner may reclaim the two thirds.
6. Taker up to give bond, when the value of the stray exceeds four dollars.

SECTION

7. Taker up not answerable for the death of the stray.
8. None but freeholders shall take up strays.
9. Rangers authorized to administer oaths.
10. Rangers to make returns to the county court.
11. Ranger's books to be open for public inspection.
12. County trustee to collect moneys accruing under this act.
13. Penalty on rangers for not paying over moneys.
14. Duty of the taker up, when the stray dies or is reclaimed.
15. How the penalties under this act shall be recovered.

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 the respective courts of pleas and quarter sessions, in each county within this State, shall appoint one or more rangers for their respective counties, who shall hold their offices during good behavior ; and, in the making of every such appointment, there shall be present at least seven justices of the county, and no person shall be deemed duly elected without receiving a majority of the votes of the justices present.

County courts to appoint one or more rangers for each county.

2. Every freeholder, who shall take up any stray horse, mare, gelding, colt or mule, neat cattle, hog or sheep, shall, under the penalty of twenty dollars for failing so to do, within ten days after the taking up of such stray, (the owner of such stray or strays being to him unknown,) make information on oath before the ranger of the county, wherein such stray or strays shall be so taken up, of the marks, brands and color of each and every stray or strays, and that the same was taken up at his or her plantation or place of abode, and that the marks or brands have not been altered or defaced by the means or knowledge of such taker up ; whereupon such ranger is hereby required to issue his summons to any two freeholders of the neighborhood, who, after tak-

Information of strays to be made to the ranger.

1. 1777, c. 119, s. 2.—1803, c. 640.—1816, c. 901, s. 2.  
 2. 1777, c. 119, s. 2.—1815, c. 892.—1819, c. 1012, s. 2.



Stray to be valued.

ing the oath prescribed for the faithful and impartial discharge of their duty before the ranger, where such stray or strays shall be so taken up, shall view and appraise such stray or strays, and make return thereof to the said ranger, under their hands, which appraisement, with a particular and exact description of the marks, brands, age and color, as near as can be ascertained, of each and every such stray or strays, together with the time of taking up, and place of abode of the person taking up the same, shall by such

Ranger to keep a book.

ranger be entered in a book, to be by him kept for that purpose, and he shall immediately thereafter, and also during the sitting of the next succeeding court of the county, where such entry shall be made, put up an advertisement, at the court house, in the most public place, describing therein the kind, marks, brand and color, of all strays entered as aforesaid, and in case the stray so taken up and entered shall be a horse, mare, gelding, colt or mule, the ranger shall likewise, without delay, under a penalty of four dollars for refusing or neglecting so to do, cause an advertisement to be published, for at least two weeks, in the paper printed by the printer for the State, containing an accurate description of the stray as entered upon his book, the value at which the same shall have been appraised, and the name and place of the abode of the taker up; and for the purpose of making such advertisement, the taker up shall pay to the ranger one dollar, which sum the owner shall pay to the taker up, at the time of receiving his stray, or it shall be allowed him in his settlement with the county trustee, as hereinafter directed.

To advertise strays.

Reward to the taker up.

3. The person, taking any stray or strays aforesaid, for his trouble and expenses in taking up the same and paying to the ranger his fees, may demand and receive of the person, claiming the property of the said stray or strays, the sum of one dollar for each horse, mare, gelding, colt or mule, fifty cents for each head of cattle, and fifteen cents per head for each hog and sheep.

Property not proved, to belong to the taker up after 12 months.

4. The property of every stray horse, mare, gelding, colt or mule, neat cattle, hog or sheep, twelve months after such appraisement, and property not proved by the owner thereof, shall be deemed to be vested in the person taking up the same: *Provided nevertheless*, it shall and may be lawful for the former owner of any such stray or strays, at any time within twelve months after such appraisement, as aforesaid, on proving his property in the same before the ranger, by his own oath or otherwise, to demand and recover such stray or strays, or the valuation thereof, the claimant first paying the ranger's fees, and the reward for taking up the same: *Provided also*, that where the taker up of any stray shall have been at any expense for keeping and maintaining such stray, it shall be lawful for him to retain the same, until the owner or claimer thereof shall pay all such expense, which expense shall be ascertained in the following manner, to wit: the taker up shall obtain from the ranger or some justice of the peace a warrant, empowering three freeholders, by said ranger or justice to be named,

May be reclaimed.

How expense of keeping strays shall be ascertained.

3. 1777, c. 119, s. 2.

4. 1777, c. 119, s. 3, 4 and 5.

to declare on oath upon view of said stray, and examination of witnesses, if necessary, how much the said taker up ought to demand for the keeping and maintainance of the stray, and such sum, as shall by the said freeholders, or any two of them, be so declared, shall be the sum which the taker is and shall be entitled to demand and receive, before the owner can take the stray out of his possession.

5. After the expiration of twelve months, each and every person so taking up any stray or strays, and no property proved by the owner thereof, shall account for and pay into the hands of the county trustee two thirds of the appraised value of all such stray or strays, after deducting the ranger's fees, the costs for advertising and the reward for taking up the same, and in case any person, so taking up any stray or strays according to the intent and meaning of this act, shall neglect or refuse to account with the said trustee, as herein before directed, it shall be the duty of the trustee to commence suit for the same, and he or she so failing shall also forfeit and pay double the appraised value of all such stray or strays by him or her so taken up: *Provided nevertheless*, that it shall and may be lawful for the former owner thereof, at any time, on proving his property before the ranger and to his satisfaction, by the oath of one or more indifferent witnesses, to demand and receive from the county trustee two thirds of the appraised value of such stray or strays, so accounted for as aforesaid, deducting therefrom the ranger's fees, the cost of advertising, the reward for taking up, and the trustee's commission of six per cent. for receiving and accounting for the same.

When the stray is not claimed within 12 months, two thirds of the appraised value is to be paid to the county trustee.

How owner may reclaim the two thirds.

6. Any person, taking up a stray or strays as aforesaid, shall first give bond, in a sum of at least double the sum, which may be deemed to be the value of such stray or strays, with approved sureties, to some one of the rangers of the county, wherein said stray shall be taken up, for his or her faithful compliance with the duties enjoined by this act, by delivering up the stray or strays to the owner, if claimed in due time, or otherwise accounting with the county trustee, as above directed: *Provided*, that if the sum, which may be deemed to be the value of such stray so taken, shall not exceed four dollars, then no bond shall be required.

Taker up to give bond when the value of the stray exceeds four dollars.

7. If after the appraisement of any stray horse, mare, gelding, colt or mule, and entry thereof made with the ranger, such stray should happen to die, within the space of twelve months after such appraisement, the person taking up such stray or strays shall not be answerable for the same, unless such death appears to have been occasioned by ill usage and abuse.

Taker up not answerable for the death of the stray.

8. If any person, not being a freeholder, shall presume to take up any stray horse, mare, gelding, colt or mule, neat cattle, hog or sheep, or if any freeholder shall take up any such stray or strays at any other place than on his own land, or shall make use of any such stray or strays, before the same shall be appraised as aforesaid,

None but freeholders shall take up strays.

5. 1777, c. 119, s. 6 and 7.—1795, c. 441.

6. 1799, c. 542, s. 1 and 2.

7. 1817, c. 951.—1777, c. 119, s. 8.

8. 1777, c. 119, s. 9.



he or she so offending shall, for every such offence, forfeit and pay the sum of ten dollars, and be further liable to the action of the party grieved : *Provided nevertheless*, that nothing herein contained shall extend to prevent any person from taking up any stray or strays of any kind, and carrying the same immediately to the owner thereof.

Rangers authorized to administer oaths.

9. It shall be the duty of the rangers in the several counties to administer the oath, in all cases where it is required to be taken before them according to the provisions of this act, and any person swearing falsely and corruptly before any ranger, in any case in which he is authorized by this act to administer oaths, shall, upon conviction, suffer the penalties prescribed by law in cases of perjury.

Rangers to make returns to the county court.

10. It shall be the duty of the several rangers to make return of the strays, by them entered, to their respective county courts, which shall happen after the first day of February in each and every year, under the penalty of twenty dollars, which return the clerk of the court shall copy and deliver to the county trustee, to the end that he may proceed to the collection of the money due.

Ranger's books to be open for public inspection.

11. For the more speedy recovery of strays, it shall and may be lawful for any person, at all times hereafter, to look over and search the entry books, by this act directed to be kept by the ranger or rangers in each county, for any information he may want as to any horse, mare, gelding, colt or mule, neat cattle, hog or sheep which has strayed or may stray away from the owner thereof, the person requesting such search first paying the prescribed fee therefor to the ranger keeping such book.

County trustee to collect moneys accruing under this act.

12. It shall be the duty of the trustees in each county and they are hereby required to collect from those, who have entered or may enter strays in their counties respectively, all sums that are or may be due for any stray or strays entered, under the same rules as they are to collect any other moneys to them to be paid, and on all such collections they shall be entitled to receive six per centum. And if any person, who has entered or may enter strays, shall fail to account for the moneys aforesaid, it shall be the duty of the county trustee to commence suit for the same.

Penalty on rangers for not paying over moneys.

13. Wherever it can be made appear that any ranger, or any person acting as deputy ranger, has received, or shall hereafter receive any sums of money, which by virtue of the fifth section of this act ought to have been paid by the taker up to the county trustee, it shall be the duty of the county trustee and he is hereby authorized to call on such ranger, or person acting as deputy ranger, for the payment of such money ; and on failure of any such person to settle and pay as herein directed, he shall forfeit and pay the sum of two hundred dollars, and be further liable to the suit of the county trustee for such sums, as can be proved to have been paid by the taker up of strays, over and above the ranger's fee.

9. 1819, c. 1012, s. 1.
10. 1793, c. 497, s. 2.
11. 1777, c. 119, s. 10.
12. 1795, c. 441.
13. 1793, c. 497, s. 1.

14. Each and every person, taking up a stray or strays, and such stray or strays being reclaimed by the owner or owners thereof, or dying as aforesaid, shall produce to the ranger of the county a certificate of such stray or strays being reclaimed or dying, from some justice of the peace of his county, within twelve months after entering such stray or strays, which certificate the ranger shall note in his book and file in his office, and shall give a receipt for the same, specifying the day and date of the entry of such stray or strays. And in case any taker up of any stray or strays shall fail or neglect to produce a certificate, when demanded by the county trustee, he or she, so failing or neglecting, shall be subject to the payment of all costs, which may accrue in consequence of any suit or suits, which shall or may be brought against him or her, as fully as if no claim of such stray had been made or death happened.

Duty of the taker up when the stray dies or is reclaimed.

15. Each and every penalty, that may be incurred by the violation of any of the provisions of this act, shall and may be recovered by the county trustee, in the name of the State, for the use of the court, before any single justice or court or county having jurisdiction of the same.

How the penalties under this act shall be recovered.

14. 1801, c. 596.  
15. Amendment.

Stock of Cattle - 1846.7. Ch 58

Swamp Lands - 1840.1. Ch 59.

CHAPTER 113.

**SURETY AND PRINCIPAL.**

AN ACT CONCERNING SURETY AND PRINCIPAL.

SECTION

1. Summary remedy for sureties against their principals.
2. One surety may sue his co-surety for a rateable proportion of the debt paid for the principal.
3. In judgments before a justice, the surety may dissent from the stay of

SECTION

- execution—and then shall not be liable to the surety for the stay—  
Officer, how to collect in such cases.
4. Surety paying a debt, shall have the same priority as his creditor against executors and administrators.

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 and may be lawful for any person or persons whatsoever, who have paid any sum or sums of money for and on account of those for whom they became security, upon producing to the county court or any justice of the peace, who may have jurisdiction

Summary remedy for sureties against their principals.

1. 1797, c. 487, s. 1.



of the same, a receipt, and showing that an execution has issued, and that he has satisfied the same, and making it satisfactorily appear by indifferent testimony, that he has laid out and expended any sum or sums of money, as the security of any person, to move such court or justice of the peace, as the case may be, for judgment against his principal, for the amount of the sum, which he has actually paid out and expended, a citation previously issuing against the principal to shew cause why execution should not be awarded; and should not the principal show sufficient cause to the court or justice of the peace, it shall be lawful for such court or justice of the peace to award execution thereon against the goods and chattels, lands and tenements of the principal.

One surety may sue his co-surety for a rateable proportion of the debt paid for the principal.

2. Where there are two or more securities for the performance of any contract whatsoever, and it shall so happen that one or more of them may have been or shall be compelled to perform and satisfy the same or any part thereof, and the principal be insolvent, or out of the State, he, she or they may have and maintain his, her or their action on the case against the other security or securities, for a just and rateable proportion of the sum, which he, she or they may be compelled to pay as aforesaid, whether of principal, interest or costs, to be recovered before any court of record or justice of the peace having jurisdiction thereof.

In judgments before a justice, the surety may dissent from the stay of execution — and then shall not be liable to the surety for the stay.

3. Whenever any judgment shall be obtained before a justice of the peace, upon any debt contracted by bill, bond, note or contract, for the payment of which any person shall have become liable as surety, and the principal debtor shall desire to obtain a stay of execution thereof, but the surety is unwilling that such stay shall be had, it shall be lawful for such original surety to cause his dissent thereto to be entered by the justice granting the judgment, which shall absolve him from all liability to the surety, who may stay the same.

Officer, how to collect in such cases.

And it shall be the duty of the constable or other officer, who may have the collection of the said debt, to make the same out of the property of the principal debtor, and that of the surety for the stay of execution, before he resorts to the property of the said original surety.

Surety paying a debt shall have the same priority as his creditor against executors and administrators.

4. When a surety, or the representatives of a surety, shall discharge in whole or in part the debt of his principal, the claim of surety or the representatives of such surety, against the executor or administrator of his principal, shall have the same priority against the assets, as belonged to the demand of the creditor thus in whole or part discharged.

2. 1807, c. 722.

3. 1829, c. 6, s. 1 and 2.

4. 1829, c. 23.

*Note.*—REFERENCES TO ADJUDGED CASES.

SECT. 4. *Chaffin vs. Haines*, 4 Dev. 103.

State Lots. 1846.7. ch 66

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CHAPTER 114.

TOWNS.

AN ACT CONCERNING INCORPORATED TOWNS.

SECTION

SECTION

- 1. Owners of lots to have further time to complete buildings.
- 2. Commissioners of towns may lay a tax on dogs.

- 3. Penalty for failing to give them in.
- 4. Commissioners of towns to publish a list of taxes—Penalty for failure.

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 all persons, who hold lots in any of the towns of this State, shall have until the year eighteen hundred and eightyfive, to complete their buildings, agreeably to the respective acts of assembly in those cases made and provided.

Owners of lots to have further time to complete buildings.

2. The commissioners of every incorporated town in this State shall have power to impose such annual tax on dogs, kept within said town, as they shall think proper ; and to require the persons, owning or possessing said dogs, to return the same in their list of taxable property, in the same manner as other taxable property is by law required to be given in for taxation.

Commissioners of towns may lay a tax on dogs.

3. If any person, residing in either of said towns, shall have in his possession, within the same, any dog, and shall not return the same for taxation, and shall fail to pay the tax after thirty days public notice of the imposition thereof, and of the notice to return the same for taxation, the commissioners of such town may, and are hereby authorized, at their option, to sue for and recover the tax from the person so failing, before any jurisdiction having cognizance thereof, or may treat said dogs, not returned for taxation, and not paid for, as nuisances, and may order their destruction as they may think fit.

Penalty for failing to give them in.

4. Said commissioners shall annually publish an accurate list of the taxes, levied and collected in their respective towns, together with a list of each sum expended by them, and to whom paid, and for what purpose ; and any board of commissioners, failing to comply with the directions and intentions of this section, shall forfeit and pay the sum of one hundred dollars, to be recovered by any person, who shall sue for the same, which sum shall be levied of the goods and chattels, lands and tenements of said commissioners or either of them.

Commissioners of towns to publish a list of taxes.

Penalty for failure.

- 1. 1785, c. 244.
- 2. 1817, c. 957, s. 1.
- 3. 1817, c. 957, s. 2.
- 4. 1786, c. 255, s. 5.



## CHAPTER 115.

## TREASURER.

## AN ACT CONCERNING THE TREASURER OF THE STATE.

## SECTION

1. Treasurer to be biennially elected— Oaths to be taken and bond given.
2. On failure to give bond, another to be elected.
3. If the failure occur during the recess, governor and council to appoint.
4. How judgment may be entered on the bond.
5. Treasurer to keep an account of receipts and expenditures.
6. To report to the General Assembly at each session.
7. Committee of finance, at each session, to examine into and report the state of the treasury.
8. No grant or warrant to be paid, unless it express the cause for which it issued.
9. Names of defaulting revenue officers to be published.
10. Monthly settlements to be made by the treasurer and comptroller— Balance in the treasury to be deposited in the banks.
11. Duplicate certificates of deposits to be taken.
12. Treasurer may check for the money deposited.
13. Duty of the treasurer and governor,

## SECTION

- when a bank is suspected of insolvency.
14. Treasurer, in all cases, to give a duplicate receipt— No receipt good without the comptroller's endorsement.
15. Accounts of the literary and internal improvement funds to pass through comptroller's office.
16. Certificates of stock belonging to the State, to be registered and endorsed by the secretary of state.
17. Comptroller to endorse them, when allowed as a credit to the treasurer.
18. Copy of certificate from the secretary's office to be good, when the original is lost.
19. Treasurer, in certain cases, may appoint agents.
20. Treasurer may move for judgment against such agents, as against sheriffs.
21. Treasurer may employ a clerk.
22. Office hours.
23. Penalty for failing to proceed against delinquents.
24. Proceedings against the treasurer for defalcation.
25. Priority of the State in case of the death or insolvency of the treasurer.
26. Fraud in the treasurer, how punished.

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 the treasurer of the State shall be elected, as early in each biennial session as can be conveniently done. Before entering into office and within twentyone days after his election, he shall take and subscribe the oaths prescribed by law, before some justice of the peace; he shall give bond to the governor, with securities to be approved by the governor and the speakers of the two houses of the General Assembly, in the penalty of two hundred and fifty thousand dollars, payable to the State of North Carolina, conditioned that he will faithfully account for all moneys and other

Treasurer to be biennially elected  
Oaths to be taken and bond given.

things, which shall come to his hands in virtue of his office, and perform all other duties required by law, or which may hereafter be required by law, of the treasurer of this State; and the said treasurer shall execute duplicates of the said bond, which shall be endorsed "approved," and signed by the governor and speakers of the two houses, and one duplicate shall be delivered by the governor to the comptroller, and the other to the secretary of state, for safe keeping, and the certificate of the treasurer's qualification shall be delivered to the comptroller and filed with the bonds: *Provided*, that the election of treasurer shall not take place, until after the committee of finance shall have made their report on the state of the treasury.

2. If the person elected treasurer shall fail to give bond and security, within the time mentioned by this act, it shall be the duty of the governor to communicate the same to the General Assembly, who shall proceed to elect some other person.

On failure to give bond, another to be elected.

3. If at any time there should not be twentyone days, between the election of treasurer and the rise of the General Assembly, then the bonds required by this act shall be given to the governor, within twentyone days after such election, and by him endorsed "approved," and if any person elected treasurer shall fail to give such bonds, within the time prescribed, and the legislature should not then be in session, it shall then be the duty of the governor to call the council of state and proceed to appoint some other person treasurer, and the person so appointed shall give bonds and security, within twentyone days, to be approved by the governor: *Provided*, that in no case shall any person appointed treasurer, either by the General Assembly or the governor and council, enter into office, before giving bonds and taking and subscribing the oath of office as above required.

If the failure occur during the recess, governor and council to appoint.

4. Suit may be brought on either of the bonds given by the treasurer, and judgment may be entered, in the same manner and under the same rules and regulations, as have been or shall be prescribed for entering judgments against the several sheriffs of this State.

How judgment may be entered on the bond.

5. It shall be the duty of the treasurer, in books provided for that purpose at the public expense, to state and keep an account of all money, received by him for public taxes and impositions and otherwise, and all moneys paid by him for public dues and in pursuance of acts and votes of the General Assembly, in such a manner that the net produce of the whole revenue, as well as of every branch thereof, and the amount of disbursements in discharge of the several demands, may distinctly appear, which accounts shall at all times be liable to the inspection and examination of the General Assembly.

Treasurer to keep an account of receipts and expenditures.

6. The treasurer shall form an accurate statement of the treasury, which shall be laid before the General Assembly and

To report to the General Assembly at each session.

- 2. 1827, c. 1, s. 4.
- 3. 1827, c. 1, s. 5.
- 4. 1827, c. 1, s. 2.
- 5. 1827, c. 1, s. 3.
- 6. 1827, c. 1, s. 11.



which shall be published and bound up with the laws of each session thereof ; in which statement shall be specified the net produce of the several branches of revenue, the several allowances for insolvencies, and the arrears of any sheriff, or any other person bound to account with the public treasurer ; all allowances and drafts made by the General Assembly, and warrants issued by the governor, shall be severally enumerated, briefly setting forth in whose favor they were made or drawn and on what account.

Committee of finance at each session to examine into and report the state of the treasury.

7. The books and accounts of the treasurer and comptroller shall be subject to the inspection and examination of the committee of finance of the legislature, during each session of the legislature, and it shall be the duty of the said committee carefully to examine the exact condition and statement of the deposits, made in the banks by the treasurer, and ascertain the amount of funds of the State, at the time of the report of the treasurer to the legislature, and also ascertain the full amount of money in the treasury, by counting the same ; and they shall report thereon at each session.

No grant or warrant to be paid unless it express the cause for which it issued.

8. The public treasurer shall not discharge any grant by the assembly, or warrant of the governor, unless the said grant or warrant shall particularly express the cause and service for which the same was issued.

Names of defaulting revenue officers to be published.

9. On the first day of November, in each and every year, it shall be the duty of the public treasurer and comptroller for the time being, to certify and deliver to the public printer, to be by him published for one month, a list containing the names of all the revenue officers of the State, who shall on that day have failed to account for the public taxes and other moneys, due by them for the last year, and which by law are made payable into the treasury on the first of October preceding, stating in such list the sum due from each officer respectively for that year.

Monthly settlements to be made by the treasurer and comptroller.

10. It shall be the duty of the treasurer and comptroller of this State, at all times, except during the sitting of the legislature, to have monthly settlements of all accounts of public moneys, which by law they are required to keep, and once in each month to balance said accounts, and ascertain the amount of public money in the possession of the treasurer, which said amount shall, immediately thereafter, be deposited by the treasurer in the banks of this State.

Balance in the treasury to be deposited in the banks.

Duplicate certificates of deposits to be taken.

11. For all deposits of public money, made by the treasurer in the banks of this State, the cashier thereof shall give duplicate certificates of deposit, one to the comptroller, which he shall file and safely keep in his office, and the other to the treasurer, which certificates shall be given by the cashier at the time the deposit shall be made by the treasurer.

Treasurer may check for the money deposited.

12. The treasurer shall from time to time, as the public interest may require it, check for the public moneys deposited in the banks as

7. 1827, c. 1, s. 16.

8. 1827, c. 1, s. 9.

9. 1827, c. 1, s. 23.

10. 1827, c. 1, s. 12.

11. 1827, c. 1, s. 13.

12. 1827, c. 1, s. 14.

aforesaid, and for the amounts for which he shall so draw, he shall account to the comptroller in their monthly settlements, but the treasurer may check for and keep in his office, during the session of the legislature, an amount of money sufficient to pay the officers and members of the two houses.

13. If at any time the treasurer shall suspect the solvency of any of the banks, in which public moneys are deposited, it shall be his duty to communicate the same to the governor, and if, upon an examination of the subject, the governor shall consider that the public interest requires the public money to be withdrawn from the bank, it shall be the duty of the treasurer to remove, or cause to be removed, the deposit in the said bank.

Duty of the treasurer and governor when a bank is suspected of insolvency.

14. The treasurer shall, in all payments made to him, grant two receipts of the same tenor and date, one of which receipts shall be filed in the comptroller's office, and the other shall be endorsed by the comptroller and continued with the person, who has made the payment, without which endorsement of the comptroller no receipt, said to be given by the treasurer, shall be operative.

Treasurer in all cases to give duplicate receipts: No receipt good without the comptroller's endorsement.

15. The receipts and expenditures of the literary fund and the fund for internal improvements shall be in all cases passed through the comptroller's office, be examined by him and entered on his books, in like manner as all other receipts and expenditures.

Accounts of the literary and internal improvement funds to pass through comptroller's office.

16. It shall be the duty of the treasurer of this State and he is hereby directed to deliver to the secretary of state all the certificates or other evidences of shares or stock in any of the incorporated companies, in which the State is interested, and it shall be the duty of the secretary of state to register the same in a well bound book, to be kept for that purpose, and to endorse such registration on the back of each certificate or other evidence of the claim of the State, which shall be returned to the treasurer.

Certificates of stock belonging to the State to be registered and endorsed by the secretary of state.

17. It shall be the duty of the comptroller and he is hereby directed, as soon as his accounts shall be passed on by the General Assembly, to endorse upon each certificate or other evidence of public stock, that the same has been allowed by the General Assembly, as a credit to the public treasurer, and the date of such allowance; and to return such certificate or other evidence to the treasurer for safe keeping.

Comptroller to endorse them when allowed as a credit to the treasurer.

18. Whenever any certificate, or other evidence of the claim of the State to shares or stock in any of the incorporated companies, shall be lost or destroyed, a certified copy thereof from the secretary's office shall be as good and valid to all intents and purposes, as if the original were produced.

Copy of certificate from the secretary's office to be good when the original is lost.

19. Whenever it shall be necessary to collect any moneys, or to enforce any demands of the State, in any other state or country, the treasurer, with the approbation of the governor, shall appoint an agent or agents for that purpose, and execute to him or them

Treasurer in certain cases may appoint agents.

- 13. 1827, c. 1, s. 15.
- 14. 1827, c. 1, s. 20.
- 15. 1827, c. 1, s. 21.
- 16. 1826, c. 27, s. 1.
- 17. 1826, c. 27, s. 2.
- 18. 1826, c. 27, s. 3.
- 19. 1803, c. 750.



letters of attorney, specifying the powers conferred ; and said agent or agents shall receive such compensation from the public treasurer, as the governor and treasurer may allow, or as the General Assembly may direct.

Treasurer may move for judgment against such agents as against sheriffs.

20. The public treasurer of this State shall have full power and authority to move for judgment against any person or persons acting as agents for the State, who are indebted to the State by or on account of such agency, in any court of record of this State, in the same manner and under the same rules and regulations, which are prescribed in cases of delinquent sheriffs, and the said courts shall respectively render judgment and award execution, though the amount thereof may be within the jurisdiction of a justice of the peace.

Treasurer may employ a clerk.

21. The treasurer shall be allowed the sum of five hundred dollars, as a salary to such clerk or clerks, as he may think proper to employ in the office, to be paid out of the public treasury, in quarterly payments, to wit : on the first day of April, July, October and January in each and every year, on warrants to be drawn by the governor.

Office hours.

22. For the convenience of the treasurer and persons having business with him, he shall be required to attend to every application made by them for official duties at his office, which shall be in the city of Raleigh, between the hours of nine and twelve and between two and five o'clock on every day in the year, (Sundays and the fourth of July only excepted,) and said officer shall not be required to attend to any call made at any other time of the day.

Penalty for failing to proceed against delinquents.

23. If, at any time, it shall appear that the public treasurer hath neglected, in any instance, to call to account, as directed by law, any delinquents herein before described, by which the public revenue of the State may suffer loss, then and in such case the said treasurer shall be held and deemed accountable for sums, due by such delinquents, to all intents and purposes, as if the same had actually been paid into his office.

Proceedings against the treasurer for defalcation.

24. If, at any time, it shall appear from the accounts kept between the comptroller and treasurer, or it shall appear in any other way, that the treasurer has not accounted for and paid over the public moneys of this State, as directed by law, it shall and may be lawful for the State to move for and obtain judgment against the said treasurer and his securities or any of them, in any court of record in this State, first giving to the persons, against whom such motion shall be made, at least five days notice of the time and place, when and where such motion will be made, and upon such judgment execution shall issue as in other cases.

Priority of the State in case of the death or insolvency of the treasurer.

25. If any person appointed treasurer shall die indebted to the State, or being so indebted, shall become insolvent, any debt, which he may owe to the State, shall be first satisfied ; and the

20. 1827, c. 1, s. 25.

21. 1827, c. 1, s. 19.

22. 1824, c. 1233, s. 6.

23. 1784, c. 219, s. 12.

24. 1827, c. 1, s. 17.

25. 1827, c. 1, s. 18.

priority hereby established, shall be deemed to extend to cases, in which such debtor, not having sufficient property to pay his debts, shall make a voluntary assignment thereof, or in which his estate or effects shall be attached, as of absconding, concealed or absent debtors.

26. If any person appointed treasurer, of his own head and imagination, or by false conspiracy or fraud with others, shall wilfully or falsely make, or cause to be made, any false entry or charge in any book or books, which he is required by law to keep, or shall wittingly and falsely form, or procure to be formed, any statement of the treasury, to be by him laid before the governor, the General Assembly or any committee thereof, or to be by him used in any settlement, which he is required to make with the comptroller, with intent in either or any of said instances to defraud the State or any person or persons, such treasurer shall be deemed and held guilty of a misdemeanor, and, upon due conviction thereof in any of the superior courts of this State, shall be fined at the discretion of the court, not exceeding one thousand dollars, and imprisoned, not exceeding three years.

Fraud in the treasurer, how punished.

26. Amendment.

**CHAPTER 116.**

**UNIVERSITY.**

AN ACT CONCERNING THE UNIVERSITY OF NORTH CAROLINA.

SECTION

- 1. Merchants, &c. not to sell goods, &c. to students of the university, without consent of the faculty.
- 2. No license to retail spirituous liquors at Chapel Hill shall be granted— Electioneering treats, also prohibited.

SECTION

- 3. Theatrical performances, &c. at Chapel Hill, or within five miles thereof, prohibited.
- 4. Billiard tables, &c. also prohibited.
- 5. Persons offending against these provisions, to be indicted.

1842.3 - Ch. 69.

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 unlawful for any merchant, shop keeper or other person at Chapel Hill, or within two miles thereof, to sell to any student of the university, goods, wares, merchandise, spirituous liquors or wine, without the consent of the faculty, or some one of the professors thereof, given in writing ; and if any contract for

Merchants, &c. not to sell goods, &c. to students of the university without consent of the faculty.

1. 1827, c. 4, s. 1.



the sale of such articles shall be made, it is hereby declared to be null and void, and no recovery shall be had thereon.

No license to retail spirituous liquors at Chapel Hill shall be granted. Electioneering treats also prohibited. Theatrical performances, &c. at Chapel Hill or within five miles thereof prohibited. Billiard tables, &c., also prohibited.

2. No license shall be granted to retail spirituous liquors at Chapel Hill, or within two miles thereof: any license obtained for that purpose shall be null and void, nor shall it be lawful for any person to give an electioneering treat or entertainment, within two miles of the university of the State.

3. It shall not be lawful for any person or persons to exhibit any theatrical, sleight of hand, or equestrian performances, dramatic recitations, rope or wire dancing, or natural or artificial curiosities, at Chapel Hill, or within five miles thereof, without the special permission in writing of the faculty.

4. No person shall set up or keep up any billiard table or other public table, constructed or erected for playing games of chance, by whatever name called.

Persons offending against these provisions, to be indicted.

5. If any person or persons shall offend against the provisions of this act, or any of them, he, she or they, thus offending, shall be liable to be indicted under this act, and fined or imprisoned at the discretion of the court, or under any general act or acts of the General Assembly, prohibiting said offences.

2. Amendment.
3. 1824, c. 1252.
4. 1794, c. 429, amended.
5. 1827, c. 4, s. 2, amended.

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## CHAPTER 117.

### USURY. 1842.3. ch 70

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#### AN ACT FOR RESTRAINING THE TAKING OF EXCESSIVE USURY.

Not more than six per cent. to be taken for interest.

*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 no person or persons whatsoever, upon any contract, shall, directly or indirectly, take for loan of any moneys, wares, merchandises or commodities whatsoever, above the value of six dollars, by way of discount or interest for the forbearance of one hundred dollars for one year, and so after that rate for a greater or lesser sum, or for a longer or shorter time; and that all bonds, contracts and assurances whatsoever, for the payment of any principal or money to be lent, or covenanted to be performed, upon or for any usury, whereupon or whereby there shall be reserved or taken above the rate of six dollars in the hundred, as aforesaid, shall be utterly void; and that all and every person or

persons whatsoever, which, upon any contract, shall take, accept and receive, by way or means of any corrupt bargain, loan, exchange, shift or interest of any moneys, wares, merchandises or other thing or things whatsoever, or by any deceitful ways or means, or by any discount, covin, device or deceitful conveyance, for the forbearing or giving day of payment, for one whole year, of or for their money or other thing, above the sum of six dollars for the forbearing of one hundred dollars for a year, and so after that rate for a greater or lesser sum, or for a longer or shorter time, shall forfeit and lose, for every such offence, the double value of moneys, wares, merchandises and other things, so lent, bargained, exchanged or shifted; the one moiety of all which forfeitures to be to the State, and the other moiety to him or them, that will sue for the same by action of debt in any court of record within this State.

Persons taking more to forfeit double the value.

*Note.*—REFERENCES TO ADJUDGED CASES.

Glisson vs. Newton, 1 Hay. 336. Carter vs. Brand, Conf. 28. Seawell vs. Shomberger, 2 Murph. 200. Graham vs. Lowrie, N. C. Term Rep. 189. McQueen vs. Burns, 1 Hawks, 476. Ruffin vs. Armstrong, 2 Hawks, 411. Wilkes vs. Coffield, 3 Hawks, 25. State Bank vs. Hunter, 1 Dev. 100. Collier vs. Neville, 3 Dev. 30. Dowell vs. Vannoy, *ibid.* 43. McBrayer vs. Roberts, 2 Dev. Eq. 75. Jones vs. Cannady, 4 Dev. 86.

CHAPTER 118.

VICE AND IMMORALITY.

AN ACT FOR THE MORE EFFECTUAL SUPPRESSION OF VICE AND IMMORALITY.

SECTION

1. No person to do any work on the Sabbath, under penalty of one dollar.
2. Penalty on persons for profanely swearing in the hearing of a justice —A public officer to pay double.
3. Penalty for profanely swearing in a court of record.

SECTION

4. Penalty for getting drunk.
5. Power of justices as to offences under this act—Proviso, as to time within which offences must be prosecuted.
6. Fines, how appropriated.
7. Penalty for committing fornication.

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 all and every person and persons whatsoever shall, on the Lord's day, commonly called Sunday, carefully apply themselves to the duties of religion and piety; and that no tradesman, artificer,

No person to do any work on the Sabbath, under penalty of one dollar.



planter, laborer, or other person whatsoever, shall, upon the land or water, do or exercise any labor, business, or work, of their ordinary callings, (works of necessity and charity only excepted,) nor employ themselves either in hunting, fishing, or fowling, nor use any game, sport, or play, on the Lord's day aforesaid, or any part thereof, upon pain that every person, so offending, being of the age of fourteen years and upwards, shall forfeit and pay the sum of one dollar.

Penalty on persons for profanely swearing in the hearing of a justice.

2. If any person or persons shall profanely swear or curse, in the hearing of any justice of the peace, or shall be convicted of profanely swearing and cursing, by the oath of one or more witness or witnesses, or confession of the party before any justice or justices of the peace, every such offender shall forfeit and pay the sum of twentyfive cents, for every oath or curse ; and if any person executing any public office, shall profanely swear or curse, being first convicted, as aforesaid, such person shall forfeit and pay the sum of fifty cents, for each and every oath or curse.

A public officer to pay double.

Penalty for profanely swearing in a court of record.

3. If any person or persons shall profanely swear and curse, in the presence of any court of record in this State, such offender or offenders shall immediately pay the sum of one dollar, for each and every oath or curse ; to be deposited in the hands of the chairman of the said court, and by him accounted for and paid, as hereinafter directed : or to sit in the stocks, not exceeding three hours, by order of such court.

Penalty for getting drunk.

4. Every person, convicted of drunkenness, by view of any justice of the peace, confession of the party, or oath of one or more witness or witnesses, such person so convicted shall, if such offence was committed on the Lord's day, forfeit and pay the sum of fifty cents ; but if on any other day, the sum of twentyfive cents, for each and every offence.

Power of justices as to offences under this act.

5. All and every justice and justices of the peace, within his or their respective county, shall have full power and authority to convene before him or them any person or persons, who shall offend in any of the particulars before mentioned, in his or their hearing, or on other legal conviction of any such offence, and to impose the said fine or penalty for the same, and to restrain or commit the offender until it be satisfied, or to cause the same to be levied by distress and sale of the offender's goods, returning the overplus, if any, to the owner ; and in case any such offender be unable to satisfy such fine, to cause him to be put in the stocks, not exceeding three hours : *Provided always*, that all informations against the aforesaid offenders, shall be made within ten days after such offence or offences committed, and not after.

Proviso, as to time within which offences must be prosecuted.

Fines, how appropriated.

6. All fines, accruing and becoming due by virtue of this act, shall be levied as soon as may be after conviction, one half to the informer, the other half to the use of the county, where such offence shall be committed ; and the chairman and justices of the

2. 1741, c. 30, s. 3.

3. 1741, c. 30, s. 4.

4. 1741, c. 30, s. 5.

5. 1741, c. 30, s. 6 and 7.

6. 1741, c. 30, s. 8.

several courts of the several counties of this State are hereby directed to account for, upon oath, and pay such fine or fines, as shall or may by them or any of them be received by virtue of this act, to the wardens of the poor of the respective counties, at least once a year, and when demanded by the said wardens, under the penalty of paying the sum of forty dollars for every refusal, to be levied and applied as aforesaid.

7. If any persons commit fornication, upon due conviction, each of them shall forfeit and pay two dollars and fifty cents, for each and every such offence, to be recovered and applied to the same use as the other fines in this act. Penalty for committing fornication.

7. 1741, c. 30, s. 9.

**CHAPTER 119.**

**WASTE.**

AN ACT CONCERNING WASTE.

SECTION

1. Who entitled to the action for waste, and against whom.
2. If tenant for life aliens, he is still liable.
3. Plaintiff shall recover treble damages, and the place wasted.

SECTION

4. Action will lie by one joint tenant, &c. against his co-tenant.
5. Heirs shall have the action.

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 in all cases of waste, an action shall lie at the instance of him in whom the right is, against all persons committing the same, as well tenant for term of life, as tenant for term of years and guar- Who entitled to the action for waste, and against whom. dians.

2. Where tenant for life or years granteth his estate to another, and still continues in the possession of the lands, tenements or hereditaments, an action shall lie against the said tenant for life or If tenant for life aliens, he is still liable. years.

3. In all such cases of waste, when judgment shall be against the defendant, the court, before whom the cause is tried or the writ of inquiry executed, shall give judgment against the defendant for thrice the amount of the damages assessed by the jury, and also that the plaintiff recover of the defendant the place wasted. Plaintiff shall recover treble damages and the place wasted.

1. 52 Hen. 3 c. 23.—6 Edw. 1, c. 5.  
 2. 11 Hen. 6, c. 5.  
 3. 6 Edw. 1, c. 5.—20 Edw. 1, stat. 2.



Action will lie by one joint tenant, &c. against his co-tenant. Heirs shall have the action.

4. Where a joint tenant or a tenant in common committeth waste, an action shall lie against him at the instance of his co-tenant or joint tenant.
5. Every heir shall have his action for waste committed on lands, tenements or hereditaments of his own inheritance, as well in the time of his ancestor as in his own.

4. 13 Edw. 1, c. 22.  
5. 20 Edw. 1, stat. 2.

CHAPTER 120.

WEIGHTS AND MEASURES.

1848. ch. 67  
1838.9. Ch 40

AN ACT CONCERNING WEIGHTS AND MEASURES.

SECTION

1. What weights and measures to be used.
2. Justices to procure weights and measures—Also brands and stamps.
3. Standard keeper to be appointed—His oath and bond.
4. Weights and measures to be carried to the standard keeper, by the persons using them, once in two years,

SECTION

1842.3. ch. 55.

- to be tried—Standard keeper to give certificates—Penalty for not having weights and measures examined.
5. Penalty for selling or buying by weights or measures not branded or stamped.
6. What shall be the measure of an acre of land.

What weights and measures to be used.

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 no trader or other person shall buy or sell, or otherwise make use of in trading, any other weights or measures, than are made and used according to the standard in the exchequer of England, and which have been heretofore used in this State.

Justices to procure weights and measures.

2. The justices of each and every county within this State shall, at the charge of each county respectively, provide sealed weights of hundred, half hundred, quarters of hundred, half quarters of hundred, seven pounds, four pounds, two pounds, one pound, and a half pound, and measures of ell and yard of brass or copper, and measures of half bushel, peck and gallon of dry measure, and a gallon, pottle, quart and pint of wine measure, and the said justices shall also find and provide a stamp for brass, tin, iron, lead or pewter weights or measures, and also a brand for wooden measures, of the letters N. C.

Also brands and stamps.

Standard keeper to be appointed.

3. The weights and measures, stamps and brands, thus pro-

1. 1741, c. 32, s. 2.  
2. 1741, c. 32, s. 3.—1827, c. 22, s. 1.  
3. 1741, c. 32, s. 3.—1827, c. 22, s. 3.—1816, c. 901, s. 2.

vided, shall be kept at the court houses of the respective counties by a standard keeper, to be elected by the justices of the county courts, at least seven being present, of whom it shall require a majority to elect, and the person thus elected shall in open court take the oaths required for public officers, and also an oath of office, and shall give bond, with good and sufficient security, payable to the State of North Carolina, in the sum of two hundred dollars, and conditioned for the safe keeping of the weights and measures, stamps and brands aforesaid, and for the faithful performance of the duties of his appointment.

His oath and bond.

4. Every person whatsoever using weights or measures, shall bring all his weights and measures and steelyards to the keeper of the standard of the county, where such person shall reside or trade, to be there tried by the standard; and every trader or dealer by profession, and every miller shall, at least once in every two years thereafter, cause their weights, measures and steelyards to be re-examined and adjusted by the standard keeper of the county, in which such weights and measures are used; and the standard keeper shall, when practicable, mark by stamp or brand the weights, measures and steelyards, found or made to agree with the standard, and shall give a certificate of such examination and adjustment, stating the weights, measures and steelyards by him examined and adjusted; and every person using, buying or selling by weights and measures, neglecting to comply with the requisites of this section, shall forfeit the sum of fifty dollars, to be recovered, in the name of the State, at the instance of the standard keeper, one half to the use of the county, where the offence is committed, the other half to the use of the standard keeper prosecuting therefor.

Weights and measures to be carried to the standard keeper, by persons using them, once in two years, to be tried.

Standard keeper to give certificates.

Penalty for not having weights and measures examined.

5. If any person shall buy, sell or barter by any weight or measure, which shall not be tried by the standard, and sealed or stamped as aforesaid, he shall for every such offence forfeit and pay the sum of forty dollars; and if any person shall sell and deliver any kind of grain, salt or other articles in a less measure, than the standard established by law, he shall forfeit and pay for each offence the sum of forty dollars, to be recovered before any jurisdiction having cognizance of the same, and applied to the use of the person suing for the same.

Penalty for selling or buying by weights or measures not branded or stamped.

6. The measure of an acre of land in this State, shall be equal to a rectangle of sixteen perches in length and ten in breadth, and shall contain one hundred and sixty square perches, or four thousand eight hundred and forty square yards; six hundred and forty such acres being contained in a square mile.

What shall be the measure of an acre of land.

4. 1741, c. 32, s. 4 and 5.—1818, c. 965, s. 1.—1823, c. 1226.

5. 1741, c. 32, s. 4.—1779, c. 160, s. 1.—34 Edw. 3, c. 5.

6. 33 Edw. 1, stat. 6.



## CHAPTER 121.

## W I D O W S .

## AN ACT CONCERNING WIDOWS.

## SECTION

1. Widows may dissent from the will of their husbands, and upon doing so, or in cases of intestacy, shall have one third of the lands of which their husbands died seized and possessed assigned to them for life as dower—Proviso, that fraudulent conveyances shall not defeat dower—Dower to include the dwelling house, &c.
2. Widows to petition for dower, and the proceedings thereon.
3. Jury not restricted to assign dower in each separate tract.
4. Proceedings on petition for dower to be in a summary way.
5. Duty of the jury in laying off dower when the widow has dissented from her husband's will.
6. Widows to be endowed of equities of redemption or other equitable or trust estates.
7. How widows shall proceed who may be entitled to dower in this State, and also in other states.
8. Dower not to be subject to the deceased husband's debts.
9. Widows may bequeath the crops growing on their dower lands.
10. Alienation by widows of their dower lands, with or without warranty, to pass nothing but the dower interest.
11. If a wife leave her husband, and go off with an adulterer, she shall lose her dower.
12. To what share of the personal estate a widow shall be entitled in case of her husband's intestacy.

## SECTION

13. How the widow's share of the personal estate shall be allotted to her when she dissents from her husband's will.
14. Widow, in relation to creditors, shall be considered a legatee.
15. Provision for widows of intestates dying and leaving no kindred that are known.
16. Widow to give bond to refund in case any of the next of kin should appear.
17. Widows of intestates may take possession of the whole personal estate till administration be granted.
18. Widow may petition the county court for year's provisions—How the same shall be allotted to her.
19. Where there is no crop, &c. on hand, the value of the year's provisions must be assessed in money, or specific articles of personal property be assigned to her.
20. The crop, stock, &c. allotted to the widow, shall be vested in her for the use of herself and family—The administrator shall not be accountable for the same as assets.
21. Widow to have certain articles in addition to her year's provisions.
22. Widows, dissenting from their husband's will, to be entitled to a year's provisions.
23. The costs of the petition for a year's provision to be paid by the administrator out of the assets of the estate—Proviso.

Widows may dissent from the will of their husbands, and upon doing so, or in cases of intestacy,

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 if any person shall die intestate, or shall make his last will and testament, and not therein make an express provision for his wife, by giving and devising unto her such part or parcel of his

real or personal estate, or to some other for her use, as shall be fully satisfactory to her, such widow may signify her dissent thereto, before the judge of the superior court, or in the county court of the county, wherein she resides, in open court, within six months after the probate of the said will ; and then and in that case, she shall be entitled to dower in the following manner, to wit : one third part of all the lands and tenements and hereditaments, of which her husband died seized and possessed : *Provided always*, that any conveyance, made fraudulently to children or otherwise, with an intention to defeat the widow of her dower hereby allotted, shall be held and deemed to be void ; and such widow shall be entitled to dower in such land, so fraudulently conveyed, as if no conveyance had been made ; which said third part shall be and enure to her own proper use, benefit and behoof, for and during the term of her natural life ; in which said third part shall be comprehended the dwelling house, in which the said husband shall have been accustomed to dwell most generally next before his death, and commonly called the mansion house, together with the offices, out houses, buildings and other improvements thereunto belonging or appertaining : *Provided always*, that in case it should appear to the said judge or justices that the whole of the dwelling house, out houses, offices and appurtenances cannot be applied to the use of the wife, without manifest injustice to the children or other relations, then and in that case such widow shall be entitled to such part or portion of said dwelling house, out houses, offices and improvements thereunto belonging, as they shall conceive will be sufficient to afford her a decent residence, due regard being had to her rank, condition and past manner of life ; which dwelling house, out houses, offices and improvements, or such part thereof so allotted the said widow, shall be and enure to her during the term of her natural life.

shall have one third of the lands of which their husbands died seized and possessed assigned to them for life as dower.

Proviso, that fraudulent conveyances shall not defeat dower.

Dower to include the dwelling house, &c.

2. It shall and may be lawful for any widow, having claim to dower, to file her petition in the superior court, or county court, of the county, where her husband shall have usually dwelt, setting forth the nature of her claim, and particularly specifying the lands, tenements and hereditaments, of which her husband died seized or possessed, and praying that her dower may be allotted to her ; whereupon the said court shall issue their writ to the sheriff of the county, where the lands, tenements and hereditaments of the deceased husband lie, commanding him to summon twelve freeholders, connected with the parties neither by consanguinity or affinity, and entirely disinterested, who upon oath (which oath the sheriff is hereby empowered to administer) shall allot and set off to the said widow one third part of all the lands, tenements and hereditaments in said county, of which the said husband was so as aforesaid seized or possessed, and shall put her in possession of the same, which possession shall vest in her an estate for her natural life, in the third part of the lands, tenements and hereditaments, of which her husband was so as aforesaid seized or possessed ; and the said sheriff or freeholders shall also put her in

Widows to petition for dower, and the proceedings thereupon.



possession of the house or mansion, or part or portion thereof, in which her said husband dwelt most generally next before his decease, and of all offices, out houses, buildings and improvements thereunto belonging or in any way appertaining ; and in case of the lands, tenements and hereditaments, that were of the estate of the deceased, lying in different counties, the courts shall issue their writs to the sheriffs of the several counties respectively, commanding them as aforesaid, which writs shall be executed in manner as aforesaid directed, where the lands, tenements and hereditaments lie in the same county.

Jury not restricted to assign dower in each separate tract.

3. The jury, summoned as aforesaid for the purpose of assigning dower to a widow, shall not be restricted to assign the same in every separate and distinct tract of land, of which her husband may die seized and possessed ; but may allot to her her portion of the whole in one or more tracts, having a due regard to the interest of the heirs as well as to the right of the widow.

Proceedings on petition for dower to be in a summary way.

4. The proceedings upon such petitions for dower shall be in a summary manner, and the judges or justices shall, at the first court where such petitions are filed, proceed to hear and determine as to them shall seem just and right : *Provided always*, that the party petitioning for dower shall give ten days previous notice to the heirs, and shall serve them with a copy of the said petition.

Duty of the jury in laying off dower when the widow has dis-sented from her husband's will.

5. When a widow has, by virtue of the power given to her in the first section of this act, signified her dissent from her husband's will, and the sheriff, in consequence thereof, and by order of the court for that purpose made, has summoned a jury agreeably to this act, to allot and set off to such widow her dower of her said husband's lands, it is hereby declared to be the duty of the jury so summoned, to allot to the petitioner her dower according to the provisions of this act, deranging in as small a degree as practicable the devises of her husband's will.

Widows to be endowed of equities of redemption or other equitable or trust estates.

6. When a man shall die, seized of an equity of redemption or other equitable or trust estate in fee, his wife shall be entitled to dower therein, subject to valid incumbrances thereon, in the same manner as she is entitled to be endowed of a legal estate of inheritance.

How widows shall proceed who may be entitled to dower in this State, and also in other states.

7. Whenever any widow, on the death of her husband, shall become entitled to dower in his lands in this State, and also in any other state or states, and such widow cannot without suit obtain assignment of her dower, for want of the consent of the terretenants, or because of legal inability in one or more of the terretenants, if such husband shall have been at the time of his death, a resident of this State, or not a resident at that time of any of the states, in which his said lands lie, and in this last case, the most valuable part of his lands shall lie in this State ; it shall be lawful for such widow to proceed in obtaining the assignment of her dower in all the lands of her deceased husband, lying in this

3. 1827, c. 46.

4. 1784, c. 204, s. 10.

5. 1791, c. 351, s. 1, amended.

6. 1823, c. 14.

7. 1831, c. 25.

and other states, as aforesaid, in the same manner and under the same rules, regulations and restrictions, as are prescribed for obtaining partition of lands devised or descended to any persons as parceners, tenants in common or joint tenants when such lands lie in this and other states as before described.

8. The dower of a widow in the lands of her deceased husband, and also such lands as may be devised to her by his will, if such lands do not exceed the quantity she would be entitled to by right of dower, shall not be subject to the payment of debts, due from the estate of her husband, during the term of her life.

Dower not to be subject to the deceased husband's debts.

9. A widow may bequeath the crop in the ground of the land holden by her in dower.

Widows may bequeath the crops, &c.

10. No alienation made by a widow, either with or without covenants of warranty, of the lands holden by her in dower or of the gift or devise of her husband, shall have any other or further effect, than to pass her own interest in the same.

Alienation by widows of their dower lands, with or without warranty, &c.

11. If a wife willingly leave her husband and go away and continue with her adulterer, she shall be barred forever of any claim to dower in the lands of such husband, unless her said husband shall have willingly become reconciled to her and suffered her to dwell with him; in which case she shall be restored to her claim.

If a wife leave her husband, and go off with an adulterer, she shall lose her dower.

12. If any husband shall die intestate, or having left a will, there be a surplus undisposed of in said will, the widow of such husband shall be entitled to one third part of his personal estate, or of the residue undisposed of in his will, remaining after the payment of his debts and the charges of settling his estate: *Provided* there be no children, or not more than two children of such husband; but if there be more than two children, then the widow may be entitled to a child's part of her said husband's personal estate, or of the surplus undisposed of as aforesaid.

To what share of the personal estate a widow shall be entitled in case of her husband's intestacy.

13. When a widow, who may have dissented from her husband's will, shall claim the share of the personal estate, to which she may be entitled, it shall be the duty of the court to allot the same with as little derangement of the provisions of her husband's will as is practicable: *Provided however*, that she shall be entitled to what may be allotted her in as full estate, as though the same had been allotted to her in case of intestacy.

How the widow's share of the personal estate shall be allotted to her when she dissents from her husband's will.

14. The widow, claiming under her husband's will, shall in relation to all creditors be considered as a legatee, and be chargeable for the whole amount of her husband's estate, that may come to her hands, either as legatee or in the manner by this act prescribed, and shall be bound to refund to the executors or administrators her ratable parts of such debts or demands, as may be afterwards sued for and recovered, or otherwise duly made appear against the estate of her deceased husband, in the same manner as other legatees, and by the same process.

Widow, in relation to creditors, shall be considered a legatee.

8. 1791, c. 351, s. 4.

9. 20 Hen. 3, c. 2.

10. 11 Hen. 7, c. 20.

11. 13 Edw. 1, c. 34.

12. 1754, c. 204, s. 8.—1835, c. 10, s. 1.—1784, c. 225, s. 4.—1787, c. 271.

13. 1791, c. 351, s. 2, amended.

14. 1791, c. 351, s. 4.



Provision for widows of intestates dying and leaving no kindred that are known.

15. If any citizen of this State shall die intestate, or having left a will, in which there is a residue undisposed of, and leaving a widow and no kindred that are known to exist, the widow may, at the expiration of three years from the grant of administration on the estate of her husband, or the will proved, file her petition in the superior court of law of the county, in which administration was granted, or the will proved, against the administrator or executor of her husband, stating the facts of the case, and that there are no persons of kindred to her knowledge, and praying that the surplus of said estate, after debts and charges paid, may be adjudged to her, which petition shall be sworn or affirmed to by said widow ; and copies thereof shall be served upon the administrator or executor as in other cases of petition, and the same proceedings shall be thereupon had as in other cases of petition. The court shall order notice of the filing of said petition, of the facts therein stated and of the prayer thereof, to be published in some newspaper, printed at the seat of government of this State, for at least four months, and if, at the next term of said court, no claimant shall appear, a jury shall be empanelled to inquire whether there be any known kindred of the said intestate ; and if said jury, after hearing the petition and answer, and such testimony as may be offered, shall find that there was not any known kindred of said intestate, living at his decease, the court shall adjudge and decree that the administrator or executor account with the widow for the whole surplus personal property, in the hands of said administrator or executor, after paying debts, legacies and charges of administration ; and such accounts shall be taken, as accounts are taken in other cases of petition in said court for distributive shares of intestates' estates, and judgment shall be rendered against such administrator or executor for the said surplus : *Provided always*, that it shall be lawful, at any time pending said petition, for any person, claiming to be kin to the intestate, to apply to the said court by petition to authorize him to be made defendant to said petition, and to contest the facts stated in the petition.

Widow to give bond to refund in case any of the next of kin should appear.

16. When the said court shall adjudge the said surplus to be paid, the said widow or some person for her, in addition to the refunding bond required of distributees, shall enter into bond in double the sum so recovered, with two good securities, with condition that the said widow shall refund to the next of kin to her deceased husband, the said surplus of said estate, provided they make claim thereof, within seven years after such judgment, or within the period hereinafter allowed for the claim of such said kindred, as may be within the disabilities hereafter provided for : *Provided*, that nothing herein contained shall affect the right of such next of kin, as at the date of said bond may be infants, *non compos mentis*, or beyond seas, who may sue on said bond within three years next after such disability removed.

Widow of intestate may

17. Where a man shall die intestate, leaving a widow, it shall

15. 1823, c. 1182, s. 1.—1831, c. 23.

16. 1823, c. 1182, s. 2.

17. 1796, c. 469, s. 1.

be lawful for her to take into her charge and possession the whole of the personal estate of such intestate ; and it shall be lawful for the said widow to use so much of the crop, stock and provisions, then on hand, as may be absolutely necessary for the support of herself and family, until such time as letters of administration are or may be granted on the estate of her deceased husband, when her right to the possession of the said personal estate by virtue of this section shall cease : *Provided always*, that it shall be the duty of the widow, claiming under this section, to apply for administration upon such estate at the first court, which shall be held after her husband's decease, in the county in which he usually resided.

take possession of the whole personal estate till administration be granted.

18. It shall and may be lawful for such widow, at or before the same court, when letters of administration are granted, to petition the court to appoint one justice of the peace and three freeholders, unconnected with the said widow, whose duty it shall be to view the estate of such intestate, and to allot and appoint out such part of the crop, stock and provisions, as they may conceive necessary and adequate for the support of the widow and family for the space of one year, and under their hands and seals make return, to the next succeeding court, of the quantity and articles by them laid off and allotted to the widow and family ; having first taken an oath that they will faithfully and impartially, to the best of their knowledge and ability, give and apportion to said widow and family so much or such part of the crop, stock and provisions, as they may deem necessary for the support of the widow and family for one year and no more.

Widow may petition the county court for year's provisions.

How the same shall be allotted to her.

19. If there shall be no crop, stock or provisions on hand, or not sufficient to afford such allowance, the commissioners shall proceed to estimate the value of a year's provisions for the said widow and family, and may, if such petition is filed before the court, at which administration is granted, allot and set over to her any article or articles of the personal property, (negroes excepted,) of such intestate, and also any debt or debts known to be due such intestate ; and such allotment shall vest in such widow the right to collect, by warrant or otherwise, by action of debt in her own name the debt or debts so allotted to her ; but if the petition be filed at the court, when administration is granted, the said commissioners shall make return, under their hands and seals, of the said estimate to the next court of pleas and quarter sessions ; whereupon it shall be the duty of the court to decree that the same be paid by the administrator, who shall be allowed the same in the settlement of his accounts, and may plead the same, or give it in evidence under the plea of fully administered, to any claim which may be brought against him ; and such sum shall not be taken into account so as to bar the widow of any part of her distributive share.

Where there is no crop, &c. on hand, the value of the year's provisions must be assessed in money, or specific articles of personal property be assigned to her.

20. The appointment or allotment of the crop, stock and provisions, or of any articles of personal property in lieu thereof as

The crop, stock, &c. allotted to the widow

18. 1796, c. 469, s. 2.—1832, c. 20, s. 1.

19. 1813, c. 853.—1832, c. 20, s. 2.

20. 1796, c. 469, s. 3.



shall be vested in her for the use of herself and family.

The administrator shall not be accountable for the same as assets.

Widow to have certain articles in addition to her year's provisions.

Widows dissenting from their husband's will to be entitled to a year's provisions.

The costs of the petition for a year's provision to be paid by the administrator out of the assets of the estate. Proviso.

above provided, shall vest in the said widow an absolute right therein to her own use, and the use of her children, but shall nevertheless be returned, in the inventory of said estate, by the administrator, therein notifying that the same has been given and allowed the widow for her support: which notification and return of the persons so appointed by the said court, shall exonerate such administrator from being accountable for the same, either to the claimants upon the estate of the deceased or creditors, and shall not be considered as assets in his hands, for which he shall be liable or accountable; and the said part or portion of the estate, so given to the widow, shall not debar her from the distributive share now allowed by law.

21. In addition to the provisions for the year's support of the widow and family of persons dying intestate, the widow of every such person, so dying intestate, shall be entitled to one bed and its necessary furniture, and one wheel and one pair of cards, if such articles be among the goods of her deceased husband, which shall be her absolute property, and shall be exempted from all claims either of the administrators or of the creditors of said estate, under the same rules and regulations as the articles for her year's support are.

22. Where any widow may enter her dissent from her husband's will, within six months after the probate of such will, she may, within six months after probate of such will, file her petition in the court, where the probate of such will was made, and shall recover out of the estate of her husband one year's provisions, in the same manner that she would have done, if her husband had died intestate: which year's provision shall be paid by the executor or administrator in preference to all other claims out of the assets.

23. In all cases where a widow shall file her petition for one year's provisions out of her deceased husband's estate, the costs of such petition shall be paid by the executor or administrator, out of the assets of the testator or intestate: *Provided always*, that if there should be a deficiency of assets to pay the year's provision and costs of petition, then the petitioner shall pay the costs.

21. 1824, c. 1244.

22. 1827, c. 13.—1835, c. 10, s. 2.

23. 1835, c. 10, s. 3.

*Note.*—REFERENCES TO ADJUDGED CASES.

SECT. 1. *Winstead vs. Winstead*, 1 Hay. 243. *Jones vs. Jones*, 1 Murph. 96. *Whitehead vs. Clinch*, ib. 123. *Sutton vs. Burrows*, 2 Murph. 79. *Frost vs. Etheridge*, 1 Dev. 30. *Davidson vs. Frew*, 3 Dev. 3. *Craven vs. Craven*, 2 Dev. Eq. 338. *Tate vs. Tate*, 1 Dev. and Bat. Eq. 22. *Spencer vs. Weston*, 1 Dev. and Bat. 213. *Littleton vs. Littleton*, ib. 327.

SECT. 2. *Whitehead vs. Clinch*, 2 Hay. 3. *Eagles vs. Eagles*, ib. 181.

SECT. 4. *Rayner vs. Capehart*, 2 Hawks, 375.

SECT. 19. *Gillespie vs. Hymans*, 4 Dev. 119.

CHAPTER 122.

WILLS AND TESTAMENTS.

1840.1 - Ch 62.  
1844.5. Ch 83

AN ACT CONCERNING LAST WILLS AND TESTAMENTS.

SECTION

1. What shall be a good will of lands.
2. What a good nuncupative will, where the estate exceeds two hundred dollars.
3. How a nuncupative will shall be proved.
4. The county court shall have jurisdiction of the probate of wills.
5. Appeal allowed.
6. Where and how wills shall be proved.
7. How a will, made in another state, disposing of property in this State, may be proved.
8. Wills to be filed in the clerk's office.
9. Probates of wills evidence of the devise of real estate, and copies may be received as originals.
10. Devises construed to be in fee simple, unless the contrary plainly appears.
11. Construction of a limitation upon dying without issue.
12. How a written will of lands may be revoked.
13. How a will of personal property, of greater value than two hundred dollars, may be revoked—Of the value of two hundred dollars or less, how.
14. No person, under eighteen years, can make a will of chattels.

SECTION

1846.7. Ch 54

15. A devise to a child shall vest in his children, if he die before the testator.
16. Children, born after the making of their parent's will, may petition for a provision.
17. Court to decree a share of the personal estate, and appoint commissioners to allot a share of the real.
18. Commissioners' duty in making the allotment.
19. Legatees to contribute proportionally.
20. What decree the court may make on the return of the commissioners.
21. After a decree, the petitioners to be deemed legatees and devisees.
22. If no petition be filed by an after-born child within two years, executors to file a bill or petition of interpleader.
23. Guardian to be appointed by the court, if the infant have none.
24. Petition to be a lien on the lands devised.
25. Devise may be made of an estate held for the life of another—Such estate, when not devised, shall be assets in the hands of the heir of the tenant for life, if he take it by special occupancy.

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 no last will or testament shall be good or sufficient, <sup>What shall be a good will of lands.</sup> either in law or equity, to convey or give any estate in lands, tenements or hereditaments, unless such last will shall have been written in the testator's life time, and signed by him or some other person, in his presence and by his direction, and subscribed in his presence by two witnesses at least, no one of which shall be interested in the devise of the said lands ; or unless such last will shall

1. 1784, c. 204, s. 11.—1784, c. 225, s. 5.



be found among the valuable papers or effects of any deceased person, or shall have been lodged in the hands of any person for safe keeping, and the same shall be in the handwriting of such deceased person, and his name subscribed thereto, or inserted in some part of such will, and if such handwriting is generally known by the acquaintances of such deceased person, and it shall be proved, by at least three credible witnesses, that they verily believe such will and every part thereof is in the handwriting of the person, whose will it appears to be, then and in that case such will shall be sufficient in law to give and convey a sufficient estate in lands, tenements and hereditaments.

What a good nuncupative will, where the estate exceeds two hundred dollars.

2. No nuncupative will in any wise shall be good, where the estate exceeds two hundred dollars, unless proved by two credible witnesses present at the making thereof, and unless they or some of them were specially required to bear witness thereto by the testator himself, and unless it was made in his last sickness, in his own habitation or dwelling house, or where he had been previously resident, ten days at least, except he be surprised with sickness on a journey or from home, and die without returning to his dwelling.

How a nuncupative will shall be proved.

3. No nuncupative will shall be proved by the witnesses, after six months from the making, unless it were put in writing within ten days, nor shall it be proved till fourteen days after the death of the testator, nor till process has first issued to call in the widow or next of kin, or both, if conveniently to be found, to contest it if they think proper.

The county courts shall have jurisdiction of the probate of wills.

4. The courts of pleas and quarter sessions shall and may, within their respective counties, take the probate of wills, and order the same to be recorded in proper books, to be kept for that purpose, and shall and may make order for issuing letters testamentary and letters of administration to the persons entitled to the same by law, which letters shall be signed and issued by the clerks of the said courts; and may, by summons, upon application to them made, compel any person or persons whatsoever, within their respective counties, having in their possession any will or testament of any deceased person, to exhibit the same to the court for legal probate thereof; and whoever, being legally summoned, shall in contempt of the court refuse to produce any such will in his or her possession, or having been in his or her possession, shall refuse to inform the court on oath where such will then is, or in what manner he or she hath disposed of the same, such person shall by order of court be committed to the common prison of the county, there to remain, without bail or mainprise, until such will shall be produced and due submission made to the court for the contempt; and the court shall be and is hereby empowered, in case of such person's removal, to issue such summons and process for commitment into any county within this State.

2. 1784, c. 204, s. 15.

3. 1784, c. 204, s. 16.

4. 1777, c. 115, s. 57.

5. If any person who shall claim a right to execute any will, shall think himself injured by order of court for letters testamentary, he shall be entitled to an appeal to the superior court of the county, where such order shall be made, subject to the same regulations as in other cases of appeal. Appeal allowed.

6. All wills shall be proved in the county, where the testator had his usual residence at the time of his death, or in case he or she had fixed places of residence in more than one county, in either or any of the said counties; and in case of a written will, with witnesses thereto, the same shall be proved by at least one of the subscribing witnesses, if living, but, if contested, shall be proved by all the living witnesses, if to be found, and by such other persons as may be produced to support such will; and where the validity of any last will or testament, whether written or nuncupative, shall be contested, the same shall be invariably tried by a jury, on an issue made up, under the direction of the court, for that purpose. Where and how wills shall be proved.

7. Whenever it shall be suggested to the court of pleas and quarter sessions in any county, that a will has been made without the State, disposing of or charging lands or other property situate within the same, it shall be competent for said court to order a commission or commissions to issue to such person or persons, as it may select, and to be returned at any subsequent term thereof, authorizing the commissioner or commissioners, or such number of them as it may designate, to take the examination of such witnesses, as may be produced, touching the execution thereof, and upon return of such testimony, the court may proceed to adjudge the said will to be or not to be duly proved, in the same manner as it now can on the oral examination of a witness or witnesses in open court. How a will made in another state, disposing of property in this State, may be proved.

8. All original wills shall remain in the clerk's office, among the records of the respective counties, where the same shall be proved, and to the said wills any person may have access, as to the other records, except for the time they shall or may be removed before any other court for the determination of any controversy. Wills to be filed in the clerk's office.

9. All probates of wills in the county courts shall be sufficient testimony for the devise of real estates, and attested copies of such wills or the records thereof by the proper officer shall and may be given in evidence in the same manner as the originals: *Provided always*, that when any fraud may be suggested to have been committed, in the drawing or obtaining any last will, or any irregularity in the execution or attestation thereof, the party making such suggestion, shall and may insist upon the original will being produced to the court, if the same is to be found, and the court wherein any suit is depending and in which such will may be introduced as tes- Probates of wills evidence of the devise of real estates, and copies may be received as originals.

5. 1777, c. 115, s. 58.

6. 1789, c. 303, s. 1.

7. 1835, c. 13.

8. 1777, c. 115, s. 59.

9. 1784, c. 225, s. 6.



timony, may compel all and every person or persons, whether in office or otherwise, to produce the same.

Devises construed to be in fee simple, unless the contrary plainly appears.

10. When any lands, tenements or hereditaments, or other real estate, shall be devised to any person or persons, the same shall be held and deemed and construed to be a devise in fee simple, unless such devise shall, in plain and express words, shew, or it shall be plainly intended by such will or some part thereof, that the testator intended to convey an estate of less dignity.

Construction of a limitation upon dying without issue, &c.

11. Every contingent limitation in any will, made to depend upon the dying without heir, or heirs of the body, or without issue, or issue of the body, or without children, or offspring, or descendant, or other relation, shall be held and interpreted a limitation to take effect, when such person shall die, not having such heirs or issue or other relation (as the case may be) living at the time of his death, or born to him within ten months thereafter; unless the intention of such limitation be otherwise expressly declared in the face of the will creating it: *Provided*, that the rule of construction, herein contained, shall not extend to any will made and executed before the fifteenth of January, eighteen hundred and twentyeight.

How a written will of lands may be revoked.

12. No devise in writing of lands, tenements and hereditaments, or any clause thereof, shall be revocable, otherwise than by some other will or codicil in writing, or other writing declaring the same, or by burning, cancelling, tearing or obliterating the same by the divisor himself, or in his presence and by his direction and consent; but all devises of lands and tenements shall remain and continue in force, until the same be burnt, cancelled, torn or obliterated by the divisor, or in his presence and by his consent and direction, or unless the same be altered or revoked by some other will or codicil in writing, or other writing of the divisor, signed by him or some other person in his presence and by his direction, and subscribed in his presence by two witnesses at least, or unless the same be altered or revoked by some other will or codicil in writing, or other writing of the divisor, all of which shall be in the handwriting of the divisor and his name subscribed thereto or inserted therein, and lodged by him with some person for safe keeping, or left by him in some secure place or among his valuable papers and effects, every part of which will or codicil or other writing shall be proved to be in the handwriting of the divisor by three witnesses at least.

How a will of personal property of greater value than two hundred dollars may be revoked.

13. No will in writing, passing or bequeathing a personal estate of greater value than two hundred dollars, or any clause thereof, shall be revocable, otherwise than by some other will or codicil, or other writing declaring the same, or by cancelling, burning, tearing, or obliterating the same by the testator himself, or in his presence, by his direction and consent; but such will in writing, passing and bequeathing a personal estate of greater value than two hundred dollars, shall continue and remain in force, until the same

10. 1784, c. 204, s. 12.

11. 1827, c. 7.

12. 1819, c. 1004, s. 1.

13. 1819, c. 1004, s. 2.—1784, c. 204, s. 14.

shall be burnt, torn, cancelled or obliterated by the testator himself, or in his presence, by his direction and consent, or unless the same be altered or revoked by some other will or codicil, or other writing executed in the same manner and with the same formalities as a will good and sufficient in law to pass a personal estate of greater value than two hundred dollars ; and no written will, passing or bequeathing a personal estate of the value of two hundred dollars or less, shall be revoked or altered by a subsequent nuncupative will, except the same be, in the life time of the testator, reduced to writing and read over to him and approved, and unless the same be proved to have been so done by the oath of two witnesses at least, who shall be such as are admissible in trials at common law.

Of the value of two hundred dollars or less, how.

14. No person shall be capable of disposing of chattels by will, until he or she shall have attained the age of eighteen years.

No person under 18 years can make a will of chattels.

15. When any person shall bequeath or devise any share of his or her estate to his or her child or children, without more saying, or to such child or children, his, her or their heirs, executors, administrators or assigns, and such child or children shall have died in the life time of such testator or testatrix, in every such case the said legacy, devise or bequest shall take effect and vest a title to the property or share of estate, described and mentioned in the same, in the issue of such child or children, if any, in the same manner and to the same extent, as it would have vested it in such child or children had he, she or they been in full life at the death of the testator, and taking effect of such will.

A devise to a child shall vest in his children if he die before the testator.

16. When any child or children shall be born after the making of his, her or their parent's will, and such parent shall die without having made provision for said child or children, such child or children may, at any time within two years after the probate of said will, by his, her or their next friend or guardian, prefer a petition to the superior court or court of pleas and quarter sessions of the county in which he, she or they reside, setting forth these facts and praying a provision under this act, to which petition the executor of the testator or the administrator with the will annexed, as the case may be, and the devisees of said testator and also his heirs, if a part of the testator's land be undeviseed, shall be parties, and copies of the petition and subpœnas shall be served in the manner by law directed in other cases of petition.

Children born after the making of their parent's will may petition for a provision.

17. On such petition preferred as aforesaid, it shall and may be lawful for the court to adjudge and decree, that the executor or administrator as aforesaid shall pay and deliver over to the petitioner or petitioners such portion of the personal estate of his, her or their parent, as the petitioner or petitioners would have been entitled to, had the said parent died intestate, and also to appoint five disinterested commissioners, who, or a majority of whom, with a surveyor, being first sworn to do equal and impartial justice, shall lay off to the petitioner or petitioners a share of his or their

Court to decree a share of the personal estate, and appoint commissioners to allot a share of the real.

14. 1811, c. 820.  
 15. 1816, e. 915, s. 1.  
 16. 1808, c. 740, s. 1.  
 17. 1808, c. 740, s. 2.



parent's lands, in whatever county situate, equal in value to the share, which would have descended to the petitioner or petitioners, had no will been made, and shall also return a correct valuation of the lands severally devised, and a statement, setting forth what part in value of the lands of each devisee is taken away by the portion so allotted to the petitioner or petitioners.

Commissioners' duty in making the allotment.

18. If there be any lands of the testator not devised, these lands, or so much thereof as may be sufficient, shall always be set apart for the petitioner or petitioners, and the commissioners are enjoined not to interfere with the lands devised or any of them, except so far as may be necessary to make up the deficiency in the petitioner or petitioners' share.

Legatees to contribute proportionally.

19. The several legatees under the will of the testator, in order to make up the personal portion decreed by the court to the petitioner or petitioners aforesaid, shall contribute proportionally to the values of their several legacies.

What decree the court may make on the return of the commissioners.

20. Upon the return to the court of the proceedings of the commissioners, the said court shall and may adjudge and decree that the petitioners and each of them be seized, and thenceforth said petitioner shall be seized, in fee simple of the share of the lands, to him or her by them allotted, and the said court shall and may give judgment severally, in favor of such of the devisees, of whose lands more has been taken away than in proportion to the respective values of said lands, against such of said devisees, of whose lands a just proportion has not been taken away, for such sums as will make the contribution on the part of each and every of them equitable, and in the ratio of the values of the several devisees; and the costs attending the petition and proceedings thereon shall be within the discretion of the court.

After a decree, the petitioners to be deemed legatees and devisees.

21. The petitioner as aforesaid, after such decree as aforesaid, shall be considered and deemed in law a legatee and devisee as to his or her portion, shall and may be styled as such in all legal proceedings, and shall be liable to all the obligations and duties by law imposed on such: *Provided always*, that all judgments or decrees, *bona fide* obtained against the devisees and legatees, previously to the preferring of any petition as aforesaid, and which in law and equity were binding upon, or ought to operate upon, the lands and chattels devised or bequeathed, shall be carried into execution and effect, as if this act had never been passed, and the petitioner shall take his or her portion as aforesaid, completely subject thereunto: *And provided also*, that any suit instituted, either in law or equity, against the devisees or legatees, previously to such petition as aforesaid, shall not be abated or abatable thereby, nor by the decree thereon, but shall go on as instituted, and the judgment and decree, unless obtained by collusion, be carried into complete execution, but on the filing of the petition as aforesaid, during the pendency of such suit, the petitioners or

18. 1803, c. 740, s. 3.

19. 1803, c. 740, s. 4.

20. 1803, c. 740, s. 5.

21. 1803, c. 740, s. 5.

any of them, by his or her next friend or guardian, may come into court, suggest the filing of the petition and become a defendant to the said suit.

22. In case it shall happen that no petition shall be filed, within two years as prescribed by this act, it shall be the duty of the executor or executrix, or administrator with the will annexed of the parent, before he shall pay or deliver the legacies in said will given, or before paying to the next of kin of the testator any residue undisposed of by said will, to call upon the said legatees, devisees, and next of kin, and the said after-born child, either by bill in equity or petition in the superior or county court, where the executors, and devisees, and legatees, and next of kin, or any of them may reside, to litigate their respective claims and shall pray the court to ascertain, agreeably to the mode of proceeding prescribed by the preceding sections, the share to which said child shall be entitled under this act, and to apportion the shares and sums, which said legatees, devisees, or next of kin, shall severally contribute toward the share to be allotted to said child, and the said court shall adjudge and decree as by this act is legal and equitable.

If no petition be filed by an after-born child within two years, executors to file a bill or petition of interpleader.

23. In case said child shall have no guardian, the said court shall appoint a special guardian to defend the interests and rights of the said child.

Guardian to be appointed by the court if the infant have none.

24. The said petition, from the filing thereof in the clerk's office, shall be a lien on the real estate devised, in the hands of the devisees, for the share of such after-born child, which may be decreed by the court on the final hearing of the case.

Petition to be a lien on the lands devised.

25. Every person seized of an estate in lands, tenements or hereditaments for the life of another person, may devise the said estate by last will and testament, executed with the formalities required for the devise of real property; and should no such devise be made, and the said estate for the life of another shall come to the heir or heirs of the tenant for life by special occupancy, the same shall be chargeable in the hands of such heir or heirs as assets by descent.

Devise may be made of an estate held for the life of another. Such estate when not devised shall be assets in the hands of the heir of the tenant for life, if he take it by special occupancy.

- 22. 1823, c. 1183, s. 1.
- 23. 1823, c. 1183, s. 2.
- 24. 1823, c. 1183, s. 3.
- 25. 1818, c. 983, s. 1.

Note. — REFERENCES TO ADJUDGED CASES.

SECT. 1. *Rogers vs. Briley*, 1 Hay. 256. *Eelbeck vs. Granberry*, 2 Hay. 232. *Rhea vs. Norman*, ib. 342. *Winants vs. Winants*, 1 Murph. 148. *Bateman vs. Mariner*, ib. 176. *Jiggetts vs. Manney*, ib. 258. *Harrison vs. Burgess*, 1 Hawks, 384. *Allison vs. Allison*, 4 Hawks, 141. *Galloway vs. Yates*, 1 Dev. 296.

SECT. 2. *Brown vs. Brown*, 2 Murph. 350.

SECT. 4. *Anon.* 2 Hay. 2. *Hodges vs. Jasper*, 1 Dev. 459. *Sumner vs. Roberts*, 2 Dev. 527. *Redmond vs. Collins*, 4 Dev. 430.

SECT. 5. *Odom vs. Thompson*, 2 Hawks, 24. *McNiel vs. McNiel*, 2 Dev. 393. *Harvey vs. Smith*, 1 Dev. and Bat. 186.

SECT. 6. *Hampton vs. Garland*, 2 Hay. 147.

SECT. 9. *Stanly vs. Kean*, Tayl. 93.

SECT. 12. *Howell vs. Barden*, 3 Dev. 442. *Hester vs. Hester*, 4 Dev. 223.



## CHAPTER 123.

## WRECKS.

1844, 5, ch 58

## AN ACT CONCERNING WRECKS AND WRECKED PROPERTY.

## SECTION

1. Wreck districts laid off.
2. Commissioners of wrecks to be appointed—Their bond and oath.
3. No officer of the United States to be a commissioner.
4. Duty of the commissioners of wrecks.
5. Commissioners to advertise and make sales—To render an account of sales—Their compensation.
6. How sales to be advertised.
7. What to be done when there is a

## SECTION

- wreck without any person to claim.
8. Persons finding wrecked property, what to do
9. Punishment for stealing or embezzling wrecked property.
10. Penalty on commissioners for abuse of trust.
11. Persons finding wrecked property at sea, what to do.
12. Compensation to commissioners, when no owner appears.

Wreck districts laid off.

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 the counties of Currituck, Carteret, Onslow, New Hanover and Brunswick be, and they are hereby divided into the following wreck districts, to wit: the county of Currituck into four districts, the first from the Virginia line to Judy's cove, the second from Judy's cove to Caffey's inlet, the third from Caffey's inlet to the place usually called the Sheep Pen, the fourth from the Sheep Pen to New inlet; the county of Carteret into four districts, the first from the Hyde county line to Ocracock island, including the same, the second from Ocracock island to Cedar inlet, the third from Cedar inlet to Old Topsail inlet, the fourth from Old Topsail inlet to the Onslow county line; Onslow county into two districts, the first from Bogue inlet to New River inlet, the second from New River inlet to the New Hanover line; New Hanover county into two districts, the first from New Topsail inlet to Masonsborough inlet, the second from Masonsborough inlet to the Brunswick line; Brunswick county into two districts, the first from New inlet to Lockwood's Folly, the second from Lockwood's Folly to the South Carolina line; and the county of Hyde shall constitute one wreck district.

Commissioners of wrecks to be appointed. Their bond and oath.

2. It shall be the duty of the county courts, in which said wreck districts shall be located, to appoint, whenever it may be necessary, a commissioner of wrecks for each district, who shall hold his office for two years, and shall, at the time of his appointment, enter into bond, with good security, in the sum of fifteen thousand dollars, payable to the State of North Carolina, and conditioned for

1. 1817, c. 953.—1831, c. 47.—1818, c. 975.—1834, c. 28.

2. 1817, c. 953.—1833, c. 17.—1828, c. 18.—1801, c. 599.—1834, c. 28.—Amended.

the faithful performance of his duties as commissioner of wrecks, which said bond shall be deposited in the office of the clerk of the county court for safe keeping, and may be sued upon by any person aggrieved by the neglect or misconduct of such commissioner. Before entering on the duties of his office, the commissioner shall, before the court that appointed him, take the following oath: "I, A. B., do solemnly swear, that I will truly and faithfully discharge the duties of a commissioner of wrecks for the district of \_\_\_\_\_ in the county of \_\_\_\_\_, agreeably to law." And it shall be the duty of each commissioner to reside in the district for which he is appointed, unless separated by navigable waters, and then at a distance not exceeding three miles from such district. *Provided always*, that the court of pleas and quarter sessions for the county of Hyde shall appoint one or more commissioners for the district of Hyde, as they may deem proper, under the rules and regulations herein prescribed.

3. No person, who shall hold any office or deputation under the United States, shall act as a commissioner of wrecks.

No officer of the United States to be a commissioner.

4. It shall be the duty of the commissioners appointed as aforesaid, on the earliest intelligence given, or on application to them, made by or on behalf of any owner, supercargo or commander of any ship or other vessel, being in danger of being stranded, or being stranded, to command any sheriff or constable nearest the coast where such ship or other vessel shall be in danger, to summon as many men, as shall be thought necessary, to the assistance of such ship or vessel, who are to be under the direction of the masters or owners; and the commissioners and all others, who shall assist in preserving any ship or other vessel in distress, or their cargoes, shall, within forty days, be paid a reasonable reward by the commander or owner of the ship or vessel in distress, or by the merchant, whose vessel or goods shall be saved, and in default thereof, the vessel or goods shall remain in the custody of the commissioners or salvors until all reasonable charges be paid, or security given for that purpose to the satisfaction of the parties; and in case the parties shall disagree, touching the amount of the reward to be paid the persons employed, it shall be the duty of the commander of such vessel saved, or the owner of the goods, or merchant interested, or their agent, to choose one indifferent person, and also of the commissioners or salvors to nominate one other indifferent person, who shall adjust and ascertain the same, and if such adjustment shall be unsatisfactory to either party, he shall declare his dissent, and thereupon the said award shall be returned to the next superior court of the county, where the same was made, and it shall be competent for said court to cause the same to be re-examined, and to pronounce such judgment thereon, as they may deem just; and in the meantime, it shall be the duty of the commissioner of wrecks to retain in his hands, in order to satisfy said judgment, the amount awarded by the referees or umpire.

Duty of the commissioners of wrecks.

3. 1805, c. 639, s. 2.

4. 1801, c. 599, s. 1.—1827, c. 21.



Commissioners to advertise and make sales. To render an account of sales. Their compensation.

5. In future, the commissioners of wrecks shall be deemed the proper officers to advertise and expose to sale, at public auction, any cargo or cargoes, which may be stranded or cast on shore in their respective districts, unless the captain, owner, merchant or consignee shall choose to superintend such sale himself, or to remove the property without selling it, and each commissioner shall provide himself with books sufficient, and shall record in them all such sales by him made, and shall deliver to the captain, owner or merchant, or other person concerned a true account of any such sale or sales which shall have been made; and the said commissioner shall receive for such service two and a half per cent. on the amount of all such sales.

How sales to be advertised.

6. When any commissioner of wrecks shall undertake to sell any wrecked or stranded property, it shall be his duty to advertise the sale thereof, not less than ten nor exceeding twenty days, at two or more public places in his county, and should said property be adjudged above the value of one thousand dollars, he shall advertise the same in some newspaper (if any) and one other public place of the towns in the federal district of which his county forms a part.

What to be done when there is a wreck without any person to claim.

7. If any vessel or other property be cast ashore, within the limits of any of the aforesaid districts, without any person present to claim the same as owner, the commissioner of such district shall take possession thereof, and cause a true description of the marks, numbers and kinds of such goods to be advertised in one or more public gazettes, for the space of eight weeks, and if no person shall claim the same within twelve months, public sale shall be made thereof, but if perishable, the goods shall be sold after being advertised in two or more public places, not less than ten nor more than twenty days, as circumstances may require; and after all reasonable charges deducted, the residue of the money, with an account of the whole, shall be transmitted to the clerk's office of the court of the county, where such vessel may be stranded or goods saved, and the said clerk shall make a record and keep an account of the same, for the benefit of the owner, who upon proof of his property to the satisfaction of the commissioner together with two justices, shall by their warrant or order receive the same, paying to the clerk of such court one per cent. for his trouble; and should no person claim the same within a year and one day from the date of the advertisement, it shall then and in that case be the duty of the clerk, holding such money, to transmit the same, after deducting one per cent. for his trouble, to the public treasurer of the State for the use of the State.

Persons finding wrecked property, what to do.

8. When any person or persons shall find any stranded property on or near the sea shore, and no owner appearing to claim the same, he or they shall, as soon as possible after saving the same, give information to the nearest commissioner thereof, and to him

- 5. 1805, c. 689, s. 1.
- 6. 1817, c. 953, s. 2.
- 7. 1801, c. 599, s. 4.
- 8. 1801, c. 599, s. 5.

deliver the same, for which he shall be entitled to his reasonable salvage to be ascertained in manner before directed ; and should any person, finding stranded goods or other property as aforesaid, conceal the same, or convert the same to his own use, or fail within ten days to give information thereof to the nearest commissioner of wrecks in his or their county, on proof thereof had, he or they shall pay to the commissioner, discovering the same, double the value of such property, to be recovered before any competent jurisdiction having cognizance thereof.

9. If any person shall embezzle or steal any stranded property, or conceal the same, knowing it to have been stolen, such person or persons, upon due proof thereof, shall forfeit and pay to the owner or commissioner double the value of the stolen goods so proved against him or them, or found in his or her possession, to be recovered before any justice of the peace or other competent jurisdiction ; and the person or persons, so feloniously taking or concealing the same, shall moreover be deemed guilty of larceny, and shall be indicted under this act and suffer as in cases of larceny at common law.

Punishment for stealing or embezzling wrecked property.

10. Should any commissioner, appointed as aforesaid, either by fraud or wilful neglect, abuse the trust so reposed in him, he shall, upon conviction thereof, forfeit and pay treble damages to the party aggrieved, to be recovered, with costs, by action on the case in any court of record, and shall thereafter be incapable of acting as a commissioner ; and any sheriff or constable or other persons, summoned as aforesaid, refusing or neglecting to give the assistance required for the saving any vessel or her cargo, shall forfeit and pay the sum of four dollars to be recovered by the commissioner, ordering such duty, before any justice of the peace in the county, where such duty was required.

Penalty on commissioners for abuse of trust.

11. Whenever hereafter any property shall be found on board any vessel at sea, which has been wrecked or abandoned by the crew, which property is afterwards brought into this State, it shall be the duty of the person, in whose possession the same may be, to deliver it to the wreck master of the district, into which said property may be brought, to be disposed of as stranded property is now directed to be ; and any person, who shall hereafter embezzle or conceal any such property, shall be liable to indictment, and upon conviction shall be whipped at the discretion of the court, not exceeding thirtynine lashes.

Persons finding wrecked property at sea, what to do.

12. The commissioner of wrecks, when there shall be any stranded or wrecked property cast ashore, or any such property shall come into his hands, and there shall appear no owner to claim the same, shall be allowed, in full for performing the duties and services enjoined by this act in such cases, the sum of five per cent. on the value or sales of such goods.

Compensation to commissioners when no owner appears.

9. 1801, c. 599, s. 6.  
 10. 1801, c. 599, s. 7.  
 11. 1828, c. 13, s. 3.  
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