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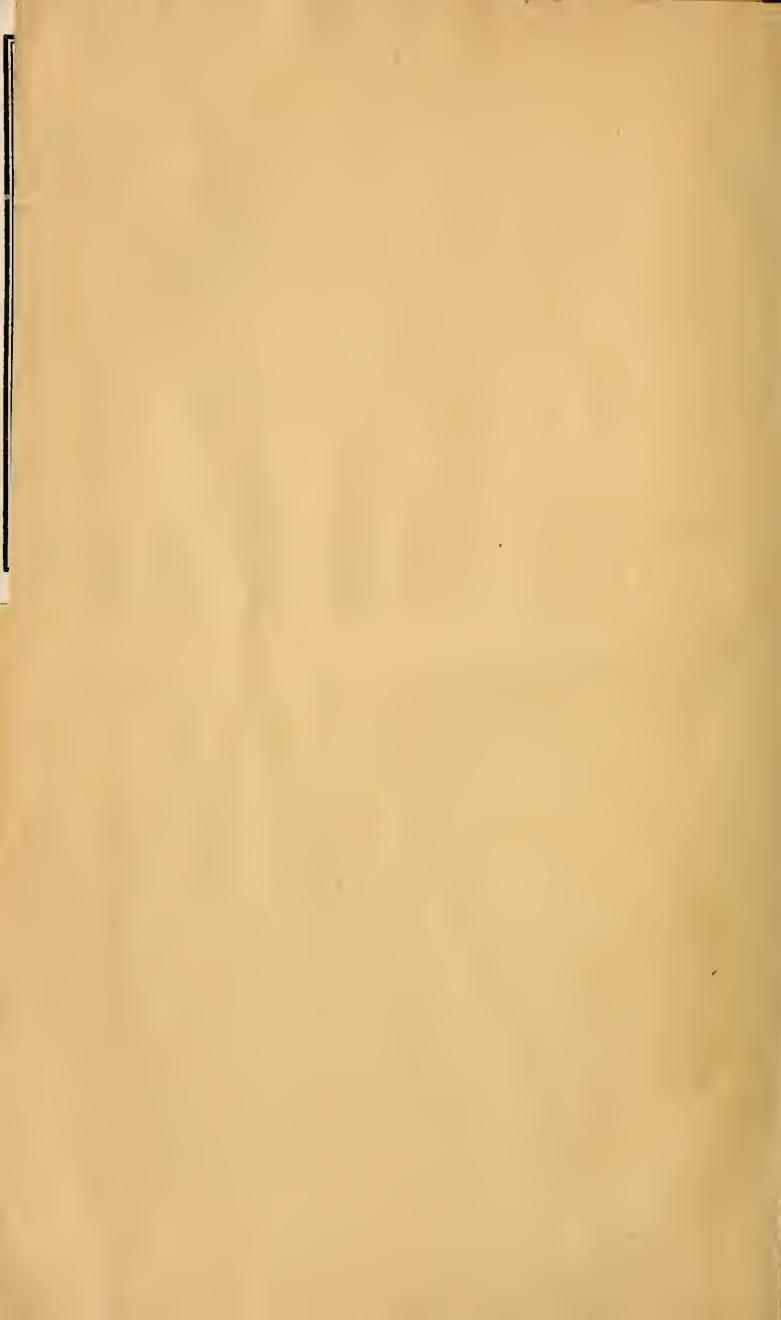
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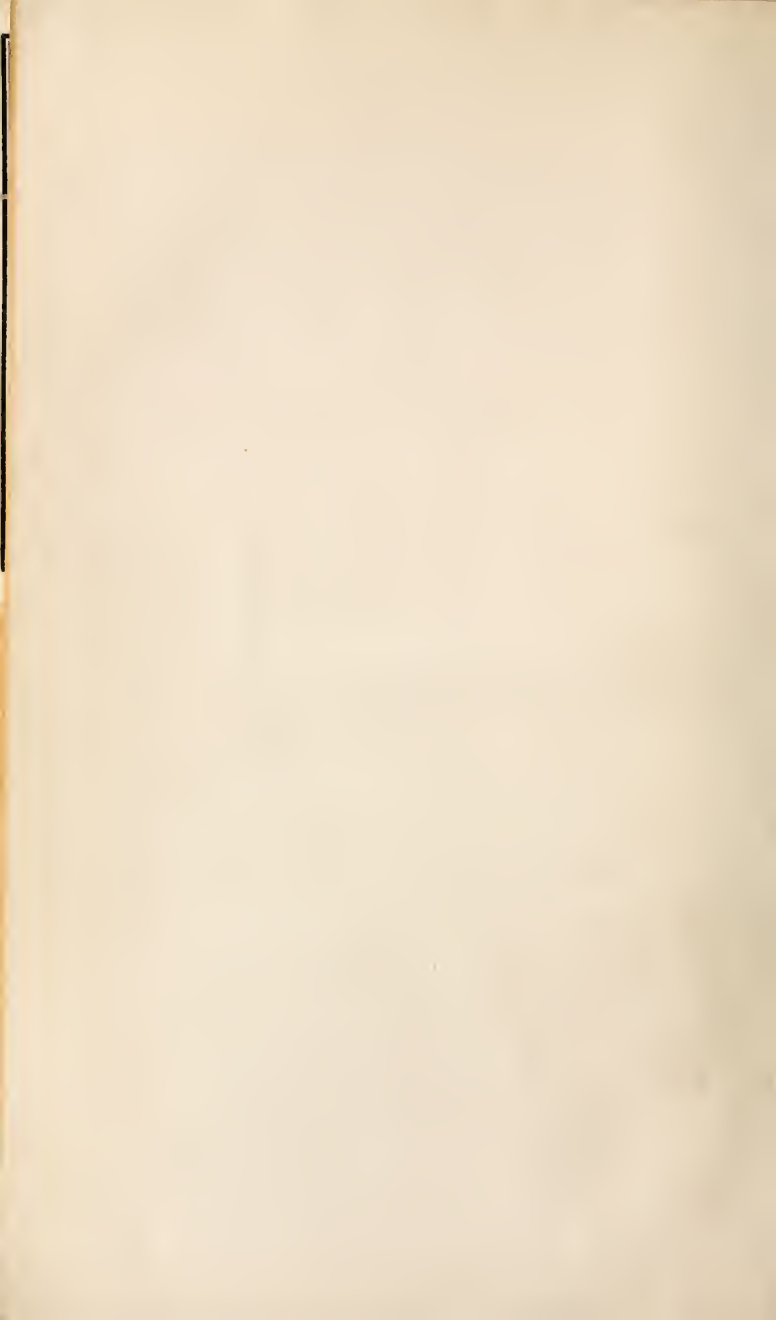
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REVISED CODE

OF

NORTH CAROLINA,

ENACTED BY THE

GENERAL ASSEMBLY AT THE SESSION OF 1854;

TOGETHER WITH

OTHER ACTS OF A PUBLIC AND GENERAL NATURE, PASSED AT  
THE SAME SESSION;

THE CONSTITUTION OF THE STATE—THE CONSTITUTION OF THE UNITED STATES, ETC., ETC.

---

PREPARED UNDER ACTS OF THE GENERAL ASSEMBLY PASSED AT THE SESSIONS OF  
1850 AND 1854,

BY

BARTHOLOMEW F. MOORE AND ASA BIGGS.

---

PRINTED AND PUBLISHED UNDER THE SUPERVISION AND DIRECTION OF  
BARTHOLOMEW F. MOORE AND WILLIAM B. RODMAN

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I N O N E V O L U M E .

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BOSTON:  
LITTLE, BROWN AND COMPANY.  
1855.

27376

Entered according to Act of Congress, in the year 1855, by

WILLIAM B. RODMAN AND B. F. MOORE,

On behalf of the State of North Carolina the proprietor, in the Clerk's Office of the District Court  
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## P R E F A C E

OF THE COMMISSIONERS OF 1833.

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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 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 Albemarle 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 twenty-fourth 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 thirty-first and thirty-sixth 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 thirty-six degrees thirty minutes and twenty-nine 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

\* 2d Vol. p. 1 and 437, published in 1837.

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 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

\* See 2d Vol. p. 13.

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 1693. By one of its provisions, the eldest Lord Proprietor was called Palatine; and the style of the enactments by the Grand, afterwards called 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 north-east 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 revisal 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 here-

\* 2d Vol. p. 449.

after 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 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 twenty-fifth 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 twenty-seventh 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 twenty-ninth of 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 "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 forty-six 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 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 annually read, 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 Waightstil 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 eighteenth day of December, in the year 1776, for the purpose of establishing a constitution or form of government for the 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, Waightstil 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 lawsuits, 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 were 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 it 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. 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, 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 Britain, 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."

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## P R E F A C E

CONTINUED BY THE COMMISSIONERS OF 1854.

AT the session of the General Assembly, in 1833, it was enacted, that three commissioners should be appointed by the Governor, "to collate, digest, and revise, all the public statute laws of the State," with instructions to reduce into one act, all acts and parts of acts upon the same subject, and distribute the acts thus consolidated, under proper titles, divisions, and sections. For this purpose the late Gavin Hogg, Esq., and Gov. Iredell, with the Hon. William H. Battle, now a judge of the Supreme Court, were appointed. Mr. Hogg, by reason of ill health, soon abandoned the commission; and the vacancy was filled with the Hon. Frederic Nash, now chief justice of the Supreme Court. The plan of revision adopted, was "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 to incorporate with them, such British statutes as were in force.

The work was finally reported to the General Assembly of 1836; and at that session, the acts thus digested, were amended and passed into laws, entitled, "The Revised Statutes," which were comprised wholly in the first volume printed under that title, — the second volume being little else than a collection of charters, and boundaries of counties.

This was a work much demanded, and was favorably received by the public. From the construction, however, put on their powers by the commissioners, very little change was made in the language of the stat-

utes, as they were originally enacted, or last revised. To some extent, and in cases very palpably requiring it, this was done by the legislature of 1836.

In 1850, the General Assembly deeming another revisal of the statutes necessary, empowered the Governor to appoint three commissioners for that purpose, with instructions similar to those prescribed in the act of 1833. The undersigned B. F. Moore, with the Hon. R. M. Saunders, and the Hon. Asa Biggs were appointed; and after some progress in the work, Mr. Saunders resigned. At the ensuing session of the Legislature, Messrs. Biggs and Moore were directed to continue and complete the unfinished work. In its execution, (to use the language of their report to the General Assembly of 1854,) they "departed in one respect, very essentially from the course pursued by former commissioners; they not only compiled, and brought together the different acts, and parts of acts on the same subjects; but they consolidated them, by fusing them together, and giving them the character of a single enactment; and as to a great many, and indeed most of the acts, they expunged the verbiage, where it was merely cumbersome and imparted no aid in ascertaining the meaning of the law."

The laws as revised and reported, with such alterations and amendments as were deemed proper, were passed; and have now become the law of the land, under the title of "The Revised Code of North Carolina."

By virtue of the "act concerning the Revised Code," the undersigned were appointed superintendents of publication. In that act are prescribed their duties. The marginal digests of the sections of the acts as first published, have not been revised for many years past, imperfect and scant as they were. Although a great part of them was the hasty work of the public printer, they had undergone no change, and furnished almost the entire material of the index to the matter contained in the statutes. These digests have been greatly enlarged in number, and most of them were corrected in phrase, by the commissioners of revision; and all have received, at the hands of the undersigned, much additional alteration. The Constitutions of the State, and the United States, they have caused to be printed with a marginal digest, and an index following each instrument.

In regard to the references to the decisions of the Supreme Court, they have felt much embarrassed. These decisions have greatly increased in number since the publication of the Revised Statutes in 1837. To have referred to those only, which directly construed the words of the statutes, would have answered, very imperfectly, the end designed; to have referred to all indirectly connected with the statute, would have been cumbrous. Moreover, in not a few instances, the known purpose of laws having been defeated by judicial decision, (a calamity which sometimes befalls the best considered acts,) an attempt has been made to regain the purpose, by a change, in the Revised Code, of the language which defeated it. In such cases the decision is of little consequence, except, perhaps, to aid the inquiring lawyer to discover, that the case is of no authority against a change of the construction, while it may mislead those who skim the surface of investigation. In such cases, they have not prescribed for themselves any inflexible rule, but have endeavored to refer to all the leading cases connected with each subject, which they thought the practising lawyer would likely be desirous to use. Notwithstanding all the care which the commissioners have been able to use, imperfections will doubtless exist in their work; but having discharged their duty, with faithful purpose and industry, they submit it to the public.

B. F. MOORE,  
WILL. B. RODMAN.

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# MECKLENBURG

## DECLARATION OF INDEPENDENCE,

ADOPTED ON THE TWENTIETH OF MAY, 1775.

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In the spring of 1775, the leading characters of Meeklenburg 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, etc., etc., 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 vapor, 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 two 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, namely, 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, namely,

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 Mecklenberg 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 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 coöperation, our lives, our fortunes, and our most sacred honor.

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, namely, 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.

## NAMES OF DELEGATES.

## CURRITUCK COUNTY.

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

## DOBBS COUNTY.

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

## 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,  
MENUMCAN HUNT,  
JOHN OLIVER.

## GUILFORD COUNTY.

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

## HALIFAX COUNTY.

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

## HERTFORD 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.

## ONSGLOW 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,  
DENSEY 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.†

NAMES OF DELEGATES.

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

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

WASHINGTON	}	CHAS. ROBESON,
DISTRICT,		JOHN CARTER,
<i>Watauga,</i>		JOHN HAILE,
<i>settlement,</i>		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.

## DECLARATION OF RIGHTS.

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

Power derived  
from the peo-  
ple.

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

Right of Gov-  
ernment in the  
people.

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

None entitled  
to exclusive  
privileges, etc.

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.

Legislative and  
other powers to  
be kept sep-  
arate.

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

Suspension of  
laws forbidden.

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.

Elections to be  
free.

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

Rights of ac-  
cused in crimi-  
nal prosecu-  
tions.

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.

Mode of prose-  
cution pre-  
scribed.

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

Jury trial in  
criminal prose-  
cutions.

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.

Bail, fines, and punishments, to be reasonable.

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 offense is not particularly described and supported by evidence, are dangerous to liberty, and ought not to be granted.

General warrants forbidden.

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.

None to be deprived of 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.

Habeas corpus.

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.

Jury trial in civil causes.

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

Freedom of the press not 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.

Taxes not to be imposed but by General Assembly.

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.

Right to bear arms. Standing armies not to be kept up. Military power subordinate to civil.

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.

Instruction, right of.

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

Religious worship, right of.

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

Elections to be frequent.

Fundamental principles to be often recurred to.

Hereditary privileges, etc., forbidden.

Perpetuities, etc., forbidden.

*Ex post facto* laws forbidden.

Limits of the State.

Territory held in sovereignty.

Saving the rights of Indians.

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 thirty-three degrees fifty-six minutes, to thirty-five 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 thirty-six 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 anywise 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.

Other govern-  
ments may be  
established  
west.

Present titles  
confirmed.

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

JAMES GREEN, JUN., *Secretary.*

---

NOTE.

SECT. 7. 11 Ire. 513; 7 Ib. 225.

SECT. 12. § 76, c. 107, of the Revised Code, is not prohibited by the Declaration of Rights or the Constitution, *State v. Manuel*, 4 D. & B. 20. The legislature cannot take away a vested right, *Hoke v. Henderson*, 4 Dev. 1; see also 13 Ire. 75; *University v. Foy*, 1 Mur. 58; *Same v. Maulsby*, 8 Ire. Eq. 257; 1 Ire. 414; nor suspend the collection of debts, 1 Car. L. R. 385; but it may consolidate offices, 10 Ire. 377, or alter remedies, 1 Mur. 500; 10 Ire. 543. It may pass laws regulating the exercise of rights for the benefit of society, 4 D. & B. 319; 2 Ib. 555; 2 Ire. 66.

SECT. 14. 2 Jones, 66; 2 D. & B. 451; 3 Dev. 478; 2 Hawks, 204; 3 Ib. 590; N. C. T. R. 158.

SECT. 23. 2 Jones, 66; 2 D. & B. 451; 2 Hawks, 10; 1 Ib. 96; 2 Mur. 266.

SECT. 24. 1 Hawks, 384; 3 Mur. 327.

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 seventy-six.*

Allegiance and protection being reciprocal,

and Great Britain having withdrawn her protection and waged war on the colonies,

they are absolved from allegiance.

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:

Wherefore to prevent anarchy, the freemen of North Carolina ordain a constitution.

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.

Legislative authority vested in two branches.

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

Senate.

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.*]

House of commons.

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

When convened, 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.

Qualification of members of Senate.

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.

Of members of house of commons.

SECT. 7. That all [*freemen*] of the age of twenty-one 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.

Of voters for senators.

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

Of members of House of Commons.

SECT. 8. That all [*freemen*] of the age of twenty-one 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.

Of voters for members from Towns.

[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 freeholder in such county, who resides without or beyond the limits of such town, to vote for a member for said town.*]

Each House to choose its officers; judge of the qualifications of its members; adjourn; prepare bills; issue writs of election; jointly to adjourn, when.

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.

Bills to be read three times in each House and signed by the speaker.

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.

Members and officers to take oath of office and to the State.

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.

Judges appointed by General Assembly, and commissioned by Governor during good behavior.

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.

General Assembly to appoint officers of militia.

[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.*]

Two Houses jointly to elect Governor.

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.

His qualifications.

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.

Shall elect seven persons, counsellors of State.

Their duty.

To keep a journal of their proceedings.

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.

Great seal to be kept by governor and affixed to grants and commissions, etc.

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.

Governor to be commander-in-chief of militia.

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,

His powers and duties.

In case of vacancy, who to fill the office.

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.*]

Vacancies, during recess of General Assembly, in offices filled by that body, to be filled by governor and council.

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.

Governor, judges, and attorney-general, to have salaries.

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.

Treasurer appointed by General Assembly.

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

Governor and other officers impeachable or indictable for corruption, etc.

SECT. 23. That the governor and other officers offending against the State, by violating any part of this constitution, maladministration, 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.

Secretary of State appointed by General Assembly.

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

Defaulting receivers of public money ineligible to General Assembly.

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.

Public treasurer in office, or in default ineligible to General Assembly.

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.

Officers of army or navy of United States,

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.

and agents to supply the army or navy, ineligible. Member-, etc., accepting such places to vacate their seats, etc.

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

Counsellor of State ineligible.

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.

Judges ineligible, nor to be of the council.

SECT. 30. That no seeretary 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.

Sec. of State, att'y-gen., and clerks of courts ineligible, nor to be of the council.

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.

Clergymen, exercising pastoral functions ineligible, nor to be of the council.

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.

Atheists, infidels, and persons with religious principles dangerous to the freedom of the State, etc., excluded from office, etc.

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.

Justices of the peace — mode of appointment. To hold office during good behavior.

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

No religious establishment.

All may use their own mode of worship.

herein contained shall be construed to exempt preachers of treasonable or seditious discourses from legal trial and punishment.

Lucrative offices, two not to be held at a time by one person.

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.

Commissions, grants, and writs, to run in the name of the State of North Carolina; how signed.

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.

Delegates to Continental Congress.

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.

Sheriff, coroner, and constables for each county.

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

Debtor not to be imprisoned unless, etc. Prisoners bailable, unless, etc.

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.

Foreigners settling and taking the oath of allegiance may hold land.

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.

Cheap schools to be established, and one or more universities.

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.

Purchase of lands from Indians, prohibited.

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.

Entails in perpetuity, forbidden.

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.

Declaration of Rights a part of the constitution.

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.

Members of General Assembly may protest of record.

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.

Neither house to transact business with less than a majority of all the members. Yeas and nays may be demanded, on a second. Journals to be printed.

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 seventy-six, read the third time and ratified in open congress.

R. CASWELL, *Pres.*

JAMES GREEN, JUN., *Secretary.*

*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 thirty-five, 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 thirty-five, did direct that polls

Preamble reciting the authority by which the convention was called to amend the constitution.

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 thirty-five, 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 thirty-five, and having continued in session from day to day, until the eleventh of July, one thousand eight hundred and thirty-five, 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:—

Assembled  
first Thursday  
of June, 1835:  
Adjourned  
eleventh July,  
1835.

## ARTICLE I.

### SECTION I.

Senate to consist of fifty members; biennially elected by districts, to be laid off every twenty years on the basis of public taxation.

CLAUSE 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 forty-one; and afterwards, at its first session after the year one thousand eight hundred and fifty-one; 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.

No county to be divided, etc.

CL. 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, three fifths 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.

House of commons to consist of one hundred and twenty members; biennially elected by counties, on the basis of federal population.

CL. 3. This appointment shall be made by the General Assembly, at the respective times and periods when the districts for the senate are hereinbefore 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.

Apportionment of members, when made.

CL. 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.

Ratio of representation. How ascertained.

## SECTION II.

How senate to  
be composed  
until first ses-  
sion after 1841.

CL. 1. Until the first session of the General Assembly which shall be had after the year eighteen hundred and forty-one, the senate shall be composed of members to be elected from the several districts hereinafter 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, Edgcombe; 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.

How house of  
commons to be  
composed till  
then.

CL. 2. Until the first session of the General Assembly after the year eighteen hundred and forty-one, 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, Edcombe, 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.

CL. 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. Qualification of senators.

CL. 2. All free men of the age of twenty-one 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. Of voters for senators.

CL. 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. Free persons of color not to vote for members of either house.

## SECTION IV.

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

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

CL. 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. May pass laws to regulate, but shall not grant, divorces, etc.

Shall not alter names, nor legitimate bastards, etc., but may pass laws for the purpose.

CL. 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.

Nor pass private laws, but on notice of thirty days.

CL. 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.

Vacancies in membership, before meeting of Assembly, how filled.

CL. 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.

Sessions biennial, election of secretary of State, treasurer, and council.

CL. 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.

Governor, how chosen.

CLAUSE 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.

Term of office; when ineligible.

CL. 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.

Returns of his election, how made, opened, and published.

CL. 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.

How elected in case of equal vote between two.

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

Elections contested, how determined.



CL. 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 authorized to administer the same.

To enter on duty on first day of January, having first taken the oaths of office.

## ARTICLE III.

## SECTION I.

CLAUSE 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, maladministration, or corruption.

Governor and other officers may be impeached.

CL. 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.

How punished on conviction.

CL. 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 two-thirds 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.

House of commons shall impeach; and the senate shall try.  
Mode of trial.

## SECTION II.

CL. 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 two thirds 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.

Judges may be removed by General Assembly for mental or physical inability.

Their salaries not to be diminished, while in office.

CL. 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.

Office of justice of peace vacated on conviction of infamous crime, or corruption in office, etc.

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

## SECTION IV.

Attorney-General to be elected for four years, and commissioned by governor.

The General Assembly at its first session after the year one thousand eight hundred and thirty-nine, 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.

Convention of the people, how called.

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

Constitution, how altered.

CL. 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 three fifths 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.

Proceedings by 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.

How ratified  
by the people.

## SECTION II.

The thirty-second 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.

Religious test  
for office.

## SECTION III.

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

Capitation tax  
to be equal.

CL. 2. All free males over the age of twenty-one years, and under the age of forty-five 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.

Free males  
over 21, and  
slaves between  
12 and 50 years  
of age, subject  
to such tax.

## 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.

Who disquali-  
fied to hold of-  
fice under this  
State, and in-  
eligible to Gen-  
eral Assembly.

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

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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Amendments to constitution submitted to the people.

*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."*

Polls to be kept open three days, and results certified by sheriffs.

The vote, how given.

Duplicate statements of polls.

One sent to governor.

To be opened by the governor.

If ratified, proclamation to be made by governor.

*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 gov-*

error shall cause to be indorsed on the amendment, 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 thirty-six: 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 thirty-five. } NATH'L MACON, *Pres.*

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

JOSEPH D. WARD, *Assistant Secretary.*

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NOTE.

SECT. 8. Roberts v. Cannon, 4 D. & B. 256. Opinion of judges, App. to 8 Ire. Eq. Rep.

SECT. 40. 3 Ire. 141; 5 Ire. Eq. 207; 4 Dev. 247; 8 Dev. 188.

# I N D E X

TO THE

## CONSTITUTION OF NORTH-CAROLINA.

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CONSTITUTION  
OF  
THE UNITED STATES.

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NORTH CAROLINA.

IN GENERAL ASSEMBLY, NOV. 20, 1788.

Convention recommended to consider the federal constitution.

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.

Counties and towns recommended to elect in August, 1789, delegates to determine on the proposed constitution of 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.

Citizens freeholders, eligible to the convention.

Sheriffs to notify the people of the election.

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.

Delegates to assemble in November, 1789. If constitution be approved, to confirm and ratify it.

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.

Also to consider if Fayetteville ought to be represented in the General Assembly.

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

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, namely:—

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.

Objects of the people of the United States in establishing the federal constitution.

## ARTICLE I.

### SECTION I.

All legislative powers hercin 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,

House of representatives—its members; by

whom chosen; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

A representative to be twenty-five; seven years a citizen of the United States; and an inhabitant of his State when elected.

2. No person shall be a representative who shall not have attained to the age of twenty-five 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.

Representatives and taxes to be apportioned according to numbers.

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, three fifths of all other persons.

Actual enumeration every ten years.

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.

Limitation of the ratio of representation, etc.

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.

First apportionment of representatives.

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

Writs of election for filling vacancies.

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

House of representatives to choose speaker etc., and have power of impeachment.

#### SECTION III.

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

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.

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

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.

Executives of States to fill vacancies in the recess of legislatures, etc.

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 equal division 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*, etc.

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 two thirds of the members present.

The senate have the sole power to try impeachments, etc.

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, etc., 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 first Monday in December, unless, etc.

## SECTION V.

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

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 to form its own rules and punish its members.

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

Journals of each house. Yeas and nays how taken.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in 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, etc., privileged from arrest; not to be questioned for debate, etc.

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, etc.

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.

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.

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

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 repassed by two thirds 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,  
1. To lay taxes, etc.

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

2. Borrow money.  
3. Regulate commerce.

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

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, etc., and fix weights and measures.

6. Provide for punishing counterfeiters.
7. Establish post offices, etc.
8. Patent rights.
9. To constitute inferior tribunals, etc.
10. To declare war, etc.
11. Raise armies, etc.
12. Provide a navy.
13. Make rules for army and navy.
14. Provide for calling forth the militia.
15. Provide for organizing the militia, etc.
16. Exercise exclusive jurisdiction over a district and places for forts, etc.
17. Make all laws necessary to the execution of their powers.
6. To provide for the punishment of counterfeiting the securities and current coin of the United States;
7. To establish post-offices and post-roads;
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;
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;
10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;
11. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;
12. To provide and maintain a navy;
13. To make rules for the government and regulation of the land and naval forces;
14. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;
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. 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. 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 pro-
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.

hibited until after 1808. [See article 5.]

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.

Habeas corpus.

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

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

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

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.

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

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.

Public moneys, how drawn, etc.

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.

No titles of nobility. No presents, etc.

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

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

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.

## ARTICLE II.

### SECTION I.

Executive power vested in a president, etc.

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:—

Electors of president and vice-president.

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.

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

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, 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 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.

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.

Congress may fix the time of choosing the electors, etc.

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 thirty-five years, and been fourteen years a resident within the United States.

Qualifications of president.

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.

In case of vacancy in the office of president, the vice-president to act, etc.

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.

Compensation to the president.

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

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

“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, etc.

2. He shall have power, by and with the advice and consent of the senate, to make treaties, provided two thirds of the sen-

He may, by advice of the senate, make trea-

ties, appoint ambassadors and other officers; but congress may vest certain appointments otherwise.

ators 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.

President may fill vacancies in recess.

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.

#### SECTION III.

President to recommend measures to congress, etc., — convene and adjourn congress on certain occasions, — receive ambassadors, see the laws executed, and commission officers.

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.

#### SECTION IV.

President and other officers removable by impeachment.

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.

### ARTICLE III.

#### SECTION I.

Judicial power vested in a supreme court, etc., 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.

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.\*

Extent of the judicial power.

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.

Original and appellate jurisdiction of the supreme court.

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.

Trial of crimes to be by jury.

The venue.

SECTION III.

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.

Definition of treason, etc.

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, etc.

[\* Amended, see art. 11.]

## ARTICLE IV.

## SECTION I.

Credit to be given in one State to the public acts, etc., of another.

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.

## SECTION II.

Reciprocity of citizenship throughout the States. Criminals flying from one State to another to be delivered up.

1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

Runaway slaves, etc., to be delivered up.

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.

## SECTION III.

New States may be admitted into the Union, etc.

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.

Congress to have power of territory, etc.

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.

## SECTION IV.

Republican form of government guaranteed to each State, etc.

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legisla-

ture, or of the executive, (when the legislature cannot be convened,) against domestic violence.

ARTICLE V.

The congress whenever two thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two thirds 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 three fourths of the several States, or by conventions in three fourths 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.

Mode of amending the constitution.

ARTICLE VI.

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.

Assumption of debts incurred under the confederation.

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.

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

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.

Members of congress and of the State legislatures, etc. bound by oath to support this constitution.

## ARTICLE VII.

Ratification of  
nine States,  
sufficient, etc.

The ratification of the conventions of nine States, shall be sufficient 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 eighty-seven, 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,  
JARED INGERSOLL,  
JAMES WILSON,  
GOVERNEUR MORRIS.

Attest,

## 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.

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 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.

Constitution to be laid before, congress, etc.

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.

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

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,

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.

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

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 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.

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

## ARTICLE II.

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.

Right of the people to keep and bear arms, etc.

## ARTICLE III.

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.

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

## ARTICLE IV.

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.

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

## ARTICLE V.

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.

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

## ARTICLE VI.

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

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.

## ARTICLE VII.

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

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.

## ARTICLE VIII.

Excessive bail, and unusual and cruel punishments, prohibited.

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

## ARTICLE IX.

Rights enumerated not to disparage those retained.

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

## ARTICLE X.

Powers not delegated, etc., are reserved to the States or people.

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.

## ARTICLE XI.

Restriction of judicial powers.

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.

## ARTICLE XII.

Mode of electing the president and vice-

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 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 two thirds 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 two thirds 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.

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<i>Jury trial shall be held in the State where the crime shall have been committed, . . . . .</i>	3	2
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O.

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<i>shall commission all officers of the United States,</i> . . . . .	2	1
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R.

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	Art.	Sec.
<i>Representatives, House of—</i>		
shall choose their speaker and other officers, . . . . .	1	2
shall have the power of impeachment, . . . . .	1	2
shall be the judge of the returns, elections, and qualifications of its members, . . . . .	1	5
what shall be a quorum of, . . . . .	1	5
any number may adjourn, and compel the attendance of absentees, . . . . .	1	5
may determine the rules of proceeding, . . . . .	1	5
may punish or expel a member, . . . . .	1	5
shall keep a journal, and publish the same, except the parts requiring secrecy, . . . . .	1	5
shall not adjourn for more than three days, nor to any other place, without the consent of the Senate, . . . . .	1	5
one fifth of, present, may require the yeas and nays, . . . .	1	6
shall originate bills for raising revenue, . . . . .	1	7
shall receive a compensation to be ascertained by law, . . . .	1	6
privileged from arrest, during attendance, and in going and returning, except in certain cases, . . . . .	1	6
shall not be questioned elsewhere for any speech or debate in the House, . . . . .	1	6
shall not be appointed to the offices created, or whose compensations shall have been increased during the time for which they are elected, . . . . .	1	6
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shall not serve as primary electors of president, . . . . .	2	1
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<i>Representation of a State, vacancies in, supplied until a new election by the Executive authority thereof, . . . . .</i>	1	2
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to keep and bear arms, . . . . .	2	
to be exempt from quartering of soldiers, in any house, in time of peace, without the consent of the owner; and in time of war, unless prescribed by law, . . . . .	3	
to be secure from any unreasonable searches and seizures, . . .	4	
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not be deprived of life, liberty, or property, without due course of law, . . . . .	5	
private property shall not be taken for public use without just compensation, . . . . .	5	
that the accused, in criminal prosecutions, shall enjoy the right of a speedy public trial by an impartial jury of the vicinage; and the means necessary for his defence, . . . . .	6	
that, in civil cases, facts tried by a jury shall only be re-examined according to the rules of the common law, . . . . .	7	
that, in suits at common law, where the value shall exceed twenty dollars, the right of trial by jury shall be preserved, . . . . .	7	
that excessive bail shall not be required, excessive fines imposed, nor cruel or unusual punishments inflicted, . . . . .	8	

	Art.	Sec.
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S.

<i>Senate of the United States</i> , composed of two senators from each State, . . . . .	1	3
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shall choose their officers, except the president, . . . . .	1	3
shall be the judge of the elections, returns, and qualifications of its members, . . . . .	1	5
what number shall be a quorum, . . . . .	1	5
any number may adjourn, and compel the attendance of absentees, . . . . .	1	5
may determine its rules, . . . . .	1	5
may punish or expel a member, . . . . .	1	5
shall keep a journal, and publish the same, except parts re- quiring secrecy, . . . . .	1	5
shall not adjourn for more than three days, nor to any other place without the consent of the other house, . . . . .	1	5
one fifth of, present, may require the yeas and nays, . . . . .	1	5
may propose amendments to bills for raising revenue, . . . . .	1	7
shall try impeachments, . . . . .	1	3
their judgments only to extend to removal from office, and to disqualify from any other, . . . . .	1	3
members of, shall receive a compensation, to be ascertained by law, . . . . .	1	6
privileged from arrest, . . . . .	1	6
shall not be questioned elsewhere for any speech or debate in the house, . . . . .	1	6
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emitting bills of credit, . . . . .	1	10
making any thing a tender but gold and silver coin, . . . . .	1	10
passing bills of attainder, ex post facto laws, or laws impair- ing contracts, . . . . .	1	10
granting titles of nobility, . . . . .	1	10
laying impost or duties on imports and exports for their own use, . . . . .	1	10
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## INDEX TO THE CONSTITUTION OF THE UNITED STATES.

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<i>States, Judges of, bound to consider treaties, the constitution, and the laws under it, as supreme,</i>	6	1
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REVISED CODE.



STATE OF NORTH CAROLINA.

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IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND  
FIFTY-FOUR.

---

AN ACT

FOR REVISING AND CONSOLIDATING THE PUBLIC  
AND GENERAL STATUTES OF THE STATE.

---

WHEREAS, it is expedient that the Public and General Statutes of the State should be consolidated and arranged in proper titles, chapters, and sections; and that the whole body of the laws should be rendered as concise and intelligible as possible:—

THEREFORE,

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 manner and form following, that is to say:—

CHAPTER 1.

ABATEMENT OF SUITS.

SECTION

1. Suits not to abate by death or marriage of parties, but may be revived within two terms thereafter. In certain cases longer time allowed for revivor.
2. Husband made party, to give security for costs.
3. On marriage of *feme* defendant, husband made party.
4. Not to abate by death of executor or administrator, plaintiff or defendant.
5. Action of ejectment, on death of de-

SECTION

- defendant, may be revived against his heirs or devisees.
6. Court may appoint guardians for infant defendants in ejectment.
7. How service to be made on heirs or devisees out of State.
8. Suits allowed for injuries where death ensues.
9. Same subject.
10. How brought — Rule for assessing damages — Time for bringing suit.
11. Who entitled to damages.

Suits not to abate by death or marriage of parties, but may be revived within two terms thereafter.

1. No action, suit, petition, bill in equity, or information in nature of a bill in equity, or other proceeding, of whatever nature, brought to recover or obtain money, property, or damages, or to have relief of any kind whatever, whether the same be at law or in equity, except suits for penalties, and for damages merely vindictive, shall abate by reason of the death of either party, or by the marriage of the plaintiff *feme*, but the same may be carried on by the heirs, executors, and administrators of the deceased party, and by the husband of the *feme* plaintiff: *Provided*, however, that application be made to the court wherein the process is pending, within two regular terms of the court after such death or marriage; except that, in case of a contest about the grant of administration, or the probate of the will of such deceased person, such action, suit, petition, bill in equity, information, or other process may be carried on, on application at the term next after the final determination of such contest.

In certain cases, longer time allowed for revivor. — R. S. c. 2, s. 1, 2, 3, 10, 11.

2. The husband of the *feme* plaintiff shall, on becoming a party, execute his bond, with security, for the payment of costs, as in other cases of failure to prosecute with effect, and thereupon the security originally given for that purpose shall be vacated: And, on the bond so given, like remedy shall be had, and in like manner, as on bonds executed on the issuing of writs.

Husband made party, to give security for costs. — R. S. c. 2, s. 5.

3. 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.

On marriage of *feme* deft., husband made party. — R. S. c. 2, s. 5.

4. No action, suit, or other proceeding, brought as aforesaid,

Not to abate by death of execu-



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, under the rules and regulations above prescribed.

tor or administrator, plf. or deflt. — R. S. c. 2, s. 6.

5. No action of ejectment shall abate by the death of the defendant; but the same may be revived by serving on his heirs at law, or devisees, 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.

Action of ejectment, on death of deflt., may be revived against his heirs or devisees. — R. S. c. 2, s. 7.

6. Whenever any of the heirs at law or devisees of such defendant, to whom the land in dispute shall descend or be devised, shall be minors without guardian, the court wherein the said suit is pending shall, upon application, appoint a guardian to defend the suit on their behalf.

Court may appoint guardians for infant defts. in ejectment. — R. S. c. 2, s. 8.

7. Whenever any of the heirs or devisees shall reside out of the State, the sheriff, or other officer, to whom the declaration and notice shall have been issued, shall state the fact in his return; whereupon, an advertisement of such notice shall be made for six weeks in some newspaper, and thereupon they shall be deemed to have been duly served with a declaration and notice, and the suit shall proceed accordingly.

How service to be made on heirs or devisees out of the State. — R. S. c. 2, s. 9.

8. Whenever the death of a person shall be caused by the negligence or default of any railroad or steamboat company, or of any steamboat or stage-coach proprietor, in this State, and the neglect or default is such as would have entitled the party injured to maintain an action and recover damages in respect thereof, if death had not ensued, then and in every such case, the corporation which would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured.

Suits allowed for injuries where death ensues, 1854, c. 39, s. 1, 2, 3, 4.

9. Whenever the death of a person shall be caused by the wrongful act of another person, and the wrongful act is such as would have entitled the party injured to maintain an action and recover damages in respect thereof, if death had not ensued, then and in every such case, the person who would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony.

Same subject.

10. Every such action shall be brought by and in the name of the personal representative of the deceased, and the amount recovered shall be disposed of according to the statute for the distribution of personal property in case of intestacy; and in every such action the jury may give such damages as they shall deem fair and just, with reference to the pecuniary in-

How service to Rule for assessing damages.

Time for bringing suit.

jury resulting from such death: *Provided*, that every such action shall be commenced within one year from the death of such deceased person.

Who entitled to damages.

11. The amount recovered in every such action shall be for the exclusive and sole benefit of the widow and issue of the deceased, in all cases where they are surviving.

SECT. 1. *What suits may be revived: overflowing lands*, 4 Hawks, 73; *on official bond, on death of relator*, 3 Ire. 294. *What may not: scire facias v. sheriff*, 13 Ire. 483; *waste*, 3 Mur. 511; *harboring slaves*, Conf. R. 72, Ib. 95; *seduction*, 4 Hawks, 133. *How revived: death after appeal*, 1 Hawks, 16. *By whom: trespass on lands*, 3 Dev. 153. *In what time*: 4 Ire. 9, 1 Mur. 411, 4 Ire. 79, 2 C. L. R. 249. *How abated if not revived*, 1 Mur. 161, 8 Ire. 322.

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## CHAPTER 2.

### AGRICULTURE AND GEOLOGY.

#### SECTION

1. North Carolina State Agricultural Society incorporated—Amount of property which may be held.
2. Shall elect president and other officers.
3. Shall provide a place for holding annual fairs.
4. Fifteen hundred dollars per annum appropriated on condition.
5. Money how applied.
6. County societies how formed—What amount of property they may hold.
7. How organized—to continue during the will of the legislature.
8. When organized, it shall be certified, and certificate filed in clerk's office—Entitled to fifty dollars from the public treasurer on certain condi-

#### SECTION

- tions—Only one society in a county entitled.
9. Funds of society to be appropriated in premiums, etc.
10. Shall transmit to the public treasurer annual statement of money received from State, and from members, and of expenses.
11. Shall annually publish statement of their experiments, reports, etc.
12. Secretary to keep a record of proceedings.
13. Governor to appoint a geological surveyor.
14. Duty of the surveyor.
15. Five thousand dollars per annum appropriated for survey.
16. Surveyor to deliver lectures.

North Carolina State Agricultural Society incorporated.

Amount of property which may be held.—1852, c. 1, s. 1, 3.

1. THE North Carolina Agricultural Society, as organized by a voluntary association, on the eighth day of October, A. D. one thousand eight hundred and fifty-two, at the city of Raleigh, shall be and the same is hereby incorporated under the name and style of "The North Carolina Agricultural Society," and may take and hold real and personal estate of the value of fifty thousand dollars and no more, for the purposes hereinafter specified.

2. The said society shall annually elect a president, four vice-presidents, treasurer, recording secretary, corresponding secretary, and such other officers as may be deemed necessary, all of whom shall hold their offices until successors are appointed.

Shall elect president and other officers.—1852, c. 1, s. 2.

3. It shall be the duty of the North Carolina Agricultural Society to provide a place for the holding of annual fairs, in order that the citizens may be encouraged by exhibitions, premiums, and other means to develop and improve the productions of agriculture, and every species of native industry: and to this end, and for these great and valuable purposes, and to no other, shall the said society apply all the funds which by any means they may acquire.

Shall provide a place for holding annual fairs.

4. It shall be the duty of the public treasurer to pay to the treasurer of the North Carolina Agricultural Society, on the first Monday of October, during each and every year, out of any moneys not otherwise appropriated, the sum of fifteen hundred dollars, to be disposed of in the payment of premiums, as hereinafter directed: *Provided*, however, that the treasurer of the said society shall first produce a certificate from the president thereof, showing that during the past twelve months the like sum has been raised by the said society for the same purposes.

Fifteen hundred dollars per annum appropriated on condition.—1854, c. 1, s. 1.

5. The money hereby appropriated shall be applied, under the direction of said society, to the payment of premiums upon agricultural productions, implements of husbandry, and domestic animals, and to such other purposes as may, in the judgment of said society, be calculated to advance the interest of agriculture and manufactures.

Money how applied.—1854, c. 1, s. 2.

6. Any number of resident persons, not less than ten, may associate together in any county, under written articles of association, subscribed by the members thereof, and specifying the object of the association, to encourage and promote agriculture, domestic manufactures, and the mechanic arts, under such name and style as they may choose, and thereby become a body corporate with all the powers incident to such a body, and may take and hold such property, both real and personal, not exceeding ten thousand dollars in value as may be needful to promote the objects of their association.

County societies how formed.

7. Such society shall be organized by the appointment of a president, two vice-presidents, a secretary and treasurer, and such other officers as they may deem proper, who shall thereafter be chosen annually, and hold their places until others shall be appointed. And the society may from time to time, on such conditions as may be prescribed, receive other members of the corporation, which shall continue as long as there are ten members, during the will and pleasure of the legislature.

What amount of property they may hold.—1852, c. 2, s. 1, 2.

How organized — to continue during the will of the legislature.—1852, c. 2, s. 3.

8. When such society shall be fully organized, the organization thereof shall be certified by the president and signed by the secretary to the county court, and thereupon the court

When organized, it shall be certified, and certificate.

filed in clerk's office.

shall order the same to be filed in the office of the clerk and there kept; and the clerk, under the seal of the court, shall certify a copy of the same, together with the order of the court, to the treasurer of the State, who, if by the said certificate, it shall appear to him that such society has been duly organized, according to this chapter, and it shall likewise be made appear to him by the certificate of the treasurer of said society, signed by the president, and certified by the clerk of the court under the seal thereof, that the sum of fifty dollars has been actually paid to said society by the members thereof, within one year preceding, for the sole benefit of such society, shall pay to the treasurer of said society, fifty dollars, out of the public treasury, for the like sole use and benefit; and such payment shall be annually made by the treasurer of the State on the terms and conditions above and hereinafter specified: *Provided*, however, that only one society for each county shall be entitled to the benefits of this chapter: and the county court in case of a conflict between two claimants, shall determine which shall be the corporate body for the county.

Entitled to \$50 from pub. treasury, on certain conditions.

Only one soc'y entitled in a county.—1852, c. 2, s. 3, 6.

Funds of soc'y to be appropriated in premiums, etc.—1852, c. 2, s. 7.

9. All moneys so subscribed, as well as that received from the State treasury as herein provided, shall, after paying the necessary incidental expenses of such society, respectively, be annually paid out for premiums awarded by such societies, in such sums, and in such way and manner as they severally, under their by-laws, rules, and regulations, shall direct, on such live animals, articles of production, and agricultural implements and tools, domestic manufactures, mechanical implements, tools, and productions, as are of the growth and manufacture of the county, and also on such experiments, discoveries, or attainments in scientific or practical agriculture, as are made within the county wherein such societies are respectively organized.

Shall transmit to pub. treas'r annual statem't of money rec'd from State, members, and of experiments.—1852, c. 2, s. 8.

10. Each agricultural society, entitled to receive money from the State treasury, shall, through its treasurer, transmit to the treasurer of the State, in the month of December or before, a statement of the money received from the State, together with the amount received from the members of the society for the preceding year, a statement of the expenditures of all such sums, and the number of the members of said society.

Shall annually publish statements of their experiments, reports, etc.—1852, c. 2, s. 9.

11. Each agricultural society, receiving money from the State as aforesaid, shall, in each year, publish, at their own expense, a full statement of their experiments, and improvements, and reports of their committees, in at least one newspaper of the State; and evidence that the requirements of this chapter have been complied with, shall be furnished to the State treasurer, before he shall pay to such society the said sum of fifty dollars for the benefit of such society for the next year.

Sec'y to keep a record of proceedings.—1852, c. 2, s. 5.

12. The secretary of such society shall keep a fair record of its proceedings in a book provided for that purpose, which may be read in evidence in suits wherein the corporation may be a party.

13. The governor shall appoint a suitable person to conduct, under the supervision of himself and the board of literature, a geological, mineralogical, botanical, and agricultural survey of the State.

Gov. to appoint geological, etc., 1850, c. 92, s. 1.

14. The person appointed shall examine and survey each and every county of the State and ascertain the different geological formations of each county and section of the State; the nature, character, and value of its minerals; the nature and character of its soils, and the best mode of improving the same; the nature and kind of its productions, and their position and relative value; its facilities for manufactories; the extent and value of its water power; the character and value of its botanical productions; the character and value of its timber; and all other facts connected with the subjects of geology, mineralogy, botany, and agriculture which may tend to a full development of the resources of the State; and such person is authorized to employ as many proper agents and assistants, to be approved by the governor, as may be necessary to enable him speedily and successfully to accomplish the objects committed to his charge; and he shall, from time to time, communicate to the governor, to be by him communicated to the legislature, a report or reports, in writing, setting forth fully the results of his survey; which reports shall be published under the supervision of the governor and board of literature.

Duty of the surveyor.— 1850, c. 92, s. 2.

15. The expenditures incurred by said survey shall not exceed five thousand dollars per annum, to be paid by the public treasurer, upon the warrant of the governor, out of any moneys in the treasury not otherwise appropriated.

\$5,000 per ann. appropriated for survey.— 1850, c. 92, s. 3.

16. The person making such survey shall deliver lectures upon the subjects committed to his charge, in the villages through which he shall pass: *Provided*, that he shall not thereby delay his other duties.

Surveyor to deliver lectures. 1850, c. 92, s. 4.

## CHAPTER 3.

### AMENDMENT OF PROCESS, ETC.

SECTION

1. All proceedings may be amended before judgment.
2. Adverse party may answer amendments in substance.
3. Formal defects may be amended after judgment.
4. Returns of officers, etc., may be amended in matters of form.
5. Certain defects cured after verdict.
6. Such and like defects to be amend-

SECTION

- ed, etc., in whatever court the record may be.
7. No amendment to be made without order of court.
8. On demurrer, formal defects disregarded, unless specially expressed.
9. And may be amended.
10. The provisions of this chapter shall extend to all actions and proceedings in any court of law.

1. THE court in which any action shall be pending, shall have power to amend any process, pleading, or proceeding in

All proceedings may be amend-

ed before judgment.—R. S. c. 3, s. 1.

Adverse party may answer amendments in substance.—R. S. c. 3, s. 1.

Formal defects may be amended after judgment.—R. S. c. 3, s. 3.

Returns of officers, etc., may be amended in matters of form.—R. S. c. 3, s. 4.  
Certain defects cured after verdict.—R. S. c. 3, s. 5.

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.

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.

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.

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 its discretion, as well before as after judgment.

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, or 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 twenty-one 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 and like defects to be amended, etc., wherever the record may be.—R. S. c. 3, s. 6.

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.

No amendment to be made without order of court.—R. S. c. 3, s. 7.

8. When any demurrer shall be entered in any suit, 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.

On demurrer, formal defects disregarded, unless specially expressed.—R. S. c. 3, s. 8.

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.

And may be amended.—R. S. c. 3, s. 9.

10. The provisions of this chapter shall extend to all the courts of the 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 the State, or for any debt, duty, or revenue, belonging to the 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.

The provisions of this chapter shall extend to all actions and proceedings in any court of law.—R. S. c. 3, s. 10.

SECT. 1. *What amendment may be made: add seal*, 1 Ire. 421; *new plaintiff*, 2 Ire. 344; *warrant for penalty*, 4 D. & B. 319, 1 Jones, 436; *suggest death*, 4 Hawks, 73; *scire facias*, 1 Jones, 557, 13 Ire. 112; *verdict*, Bus. 287; *irregular judgment*, 10 Ire. 381, 7 Ib. 346; *schedule of insolvent*, 11 Ire. 509, 12 Ib. 90, 8 Ib. 70.

*What not: to affect existing rights*, 1 Dev. 304, 2 Ire. 147, 13 Ib. 425, 2 Jones, 63, Bus. 380, 11. 189, 10 Ire. 390. *Effect of*, 10 Ire. 55, 5 Ib. 649.

*Which court may amend*, 5 Ire. 9, 2 Ib. 457, 1 D. & B. 377, 2 Dev. 550. *Leave to amend not executed*, 1 Jones, 111, 2 Hawks, 214, 12 Ire. 275. *In Supreme Court*, 3 Dev. 43, 1b. 198, 2 D. & B. 535, 2 Dev. 156, 7 Ire. 92, 2 Jones, 51.

SECT. 5. 4 Dev. 31; 2 Ib. 363.

## CHAPTER 4.

## APPEALS, AND PROCEEDINGS IN THE NATURE OF APPEALS.

## SECTION

1. Appeals allowed to parties from county to superior court on giving security.
2. Also granted: 1. From order appointing or removing guardian. 2. On probate of wills and granting letters of administration. 3. From orders establishing, etc. roads and ferries.
3. Clerk of county court to file a transcript in superior court. Appeal to stand for trial at first term, when.
4. Appellant may procure and file transcript.
5. How to proceed when vacancy in superior court clerk's office.
6. If appellant fail to file transcript, appellee may have judgment affirmed with double costs.
7. After appeal clerks of county courts may issue subpoenas for witnesses.
8. Defendant in actions of debt, covenant, or assumpsit, appealing for delay, to pay additional four per cent. interest.
9. Plaintiff appealing and not recovering more to have no costs, but may be ordered to pay costs.
10. Bonds for appeal and prosecuting suit to be sent up as part of the record, and judgment entered upon them.
11. Appeal not dismissed for want of form.
12. Clerk of superior court to give a receipt for the transcript, and indorse day of delivery.
13. Shall issue subpoenas, if required.
14. Penalty of one hundred dollars on

## SECTION

- clerks failing in their duty in regard to appeals.
15. Clerks of superior court to take security of persons suing writs of *recordari*.
  16. Clerk of county or superior court to take security of persons suing out *certiorari*.
  17. Superior courts may grant writs of error. Proceedings on them. Shall render final judgment and issue execution.
  18. Time for bringing writs of error.
  19. Proviso for persons under disabilities.
  20. Security to be given.
  21. Appeals allowed from superior to supreme court, on giving security. Summary judgment. Proviso for insolvent convicts.
  22. Supreme court on appeal, to render judgment upon inspection of the whole record.
  23. Appeals allowed at discretion of the court from interlocutory judgments at law and in equity.
  24. In such case the whole cause not to be removed; may proceed with the residue.
  25. On appeals to supreme court clerk and clerk and master to file transcripts.
  26. On failure of clerk appellant may:— on his failure, appellee may file it or appellee may obtain certificate of such failure and recover double costs.
  27. Any defendant, when there is more than one, may appeal.

Appeals allowed to parties from county to sup'r court on giving security.  
— R. S., c. 4, s. 1.

1. EVERY free person, whether plaintiff or defendant, who shall be dissatisfied with the sentence, judgment, or decree of the county court, shall be entitled to have, unless the same be expressly forbidden by law, an appeal therefrom to the superior court of law of the county wherein was held the said county court; but before obtaining the same, the appellant shall enter into bond, with sufficient security for prosecuting the same with effect, and for performing the judgment, sentence, or decree which the superior court may pass or make therein against him.

Also from order appointing or

2. Appeals shall likewise be granted, upon the terms aforesaid, in the following cases:— (1.) To any person who may



consider himself aggrieved by an order appointing, or refusing to appoint, or vacating, or refusing to vacate, the guardianship of an orphan, or person *non compos mentis*. (2.) To any person propounding for probate or contesting any will, or to any person claiming the right to administer the estate of any intestate. (3.) From judgments on petitions for establishing ferries, laying out, altering, or discontinuing public roads.

3. Whenever an appeal shall be granted from the judgment of the court of pleas and quarter-sessions to the superior court of law, it shall be the duty of the clerk of the county court, to file a transcript of the record of the suit, on or before the first day of the next regular term of the superior court, if there shall be ten days between the last day of the next regular term of the said county court and the next term of the superior court, and the appeal shall stand for trial at the said next term of the superior court; but if it shall so happen that there shall be less than ten days, then the clerk shall 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.

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 indorse on said 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 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 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, on his making it appear to the satisfaction of the court to which the appeal is 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 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.

6. When the appellant receives the transcript in appeal, and neglects to file the same 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 file the same, and thereupon, on motion in the superior court, the judgment of the court below shall be affirmed, with double costs to be paid by the appellant.

7. The clerks of the county courts may issue subpoenas to summon witnesses in all cases of appeal, returnable to the

removing guardian.  
On probate of wills and granting letters of administration. From orders establishing, etc., roads and ferries.—R. S., c. 4, s. 2.

Clerk of county court to file a transcript in superior court.

Appeal to stand for trial at first term when.—R. S. c. 4, s. 3.

Appellant may procure and file transcript.—R. S. c. 4, s. 4.

How to proceed when vacancy in sup'r court clerk's office.—R. S. c. 4, s. 5.

If appellant fail to file transcript, appellee may, and have judgment affirmed with double costs.—R. S. c. 4, s. 16.

After appeal clerks of county courts may

issue subpoenas for witnesses.—R. S. c. 4, s. 7.  
Def't in actions of debt, covenant, or assumpsit, appealing for delay, to pay additional 4 p. et. interest.—R. S. c. 4, s. 8.

same term of the superior court of law at which such appeal shall be for trial.

8. When the defendant in an action of debt, covenant, or assumpsit, shall appeal from the judgment of the court of pleas and quarter-sessions, to a superior court, and shall not, upon the trial thereof, diminish the sum recovered in the court of pleas and quarter-sessions, the said superior court, if it appear that the appeal was taken for the purpose of delay, shall give judgment for the plaintiff, not only for the amount recovered in said court, but also for the sum in addition thereto of four per centum per annum on the principal sum recovered, from the time of judgment in the inferior court to the time of entering the same in the superior court, which additional sum shall draw no interest.

Plaintiff appealing and not recovering more to have no costs, but may be ordered to pay costs.—R. S. c. 4, s. 9.

9. When the plaintiff shall appeal from the court of pleas and quarter-sessions to the superior court, and shall not recover a greater sum than was recovered in the court of pleas and quarter-sessions, besides 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.

Bonds for appeal and prosecuting suit to be sent up as part of the record and judg't entered upon them.—R. S. c. 4, s. 10, 15.

10. Bonds taken for the prosecution of appeals shall make a part of the record sent up to the superior court, on which judgment may be entered against the appellant and his sureties, in all cases where judgment shall be rendered against the appellant; also in cases of appeal and *certiorari* from the county to the superior court, the bond given for the prosecution of the suit shall make a part of the record, and be transmitted therewith.

Appeal not dismissed for want of form.—R. S. c. 4, s. 11.

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

Clerk of sup'r co. to give receipt for trans. and indorse day of delivery.—R. S. c. 4, s. 12.  
Shall issue subpoenas if required.—R. S. c. 4, s. 13.

12. The clerk of the superior court, upon receiving a transcript of the record and proceedings in any suit, brought up by appeal, shall, if required, give a receipt for the same, and immediately indorse thereon the day when it is delivered.

13. The clerk of the superior court, upon the filing of the transcript in appeal, shall, if required, issue subpoenas for witnesses, to attend at the term when the cause shall stand for trial.

Penalty of \$100 on clerks failing in duty in regard to appeals.—R. S. c. 4, s. 14.—1842, c. 1, s. 2.

14. If the clerk, either of the superior or county court, shall fail to perform any of the duties prescribed to him, in this chapter, he shall pay one hundred 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.

Clerk of sup'r co. to take security of persons suing writs of *recordari*.—R. S. c. 4, s. 15.

15. Every person obtaining a writ of *recordari facias loquelam*, or writ of false judgment, to remove proceedings had before a justice or justices of the peace to a superior court, shall execute, before the clerk of the superior court, at the time of obtaining the same, a bond payable to the adverse party, with

sufficient security, for the payment of the judgment and costs which may be recovered against such person: On which bond, as likewise on the bonds taken on obtaining a *certiorari* or writ of error, judgment may, on motion, be entered against the principal and sureties therein, in the same manner, and under like circumstances as judgment is rendered on appeal bonds.

16. Where writs of *certiorari* are directed to the county court, the clerk of said court, or of the superior court, shall take security in the same manner, and under the same regulations that security is taken on appeals from the county to the superior court.

Clerk of co. or sup'r court to take security of persons suing out *certiorari*.—R. S. c. 4, s. 16.

17. The superior courts shall have power 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 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 or entered in such inferior court, and 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.

Sup'r courts may grant writs of error. Proceedings on them. Shall render final judgment and issue execution.—R. S. c. 4, s. 17.

18. No writ of error shall be allowed, or prosecuted for any matter-of-fact or error in law, upon any judgment rendered in any of the courts, but within five years next after the entering such judgment, and not after.

Time for bringing writs of error.—R. S. c. 4, s. 18, 20.

19. If any person, entitled to prosecute a writ of error, be, at the time of his right to bring such writ, within the age of twenty-one years, *non compos mentis*, imprisoned, or out of the State, then such person may bring a writ of error provided he bring the same within two years after being of sound memory, at large, returned into the State, or of age, as other persons having no such impediment might have done.

Proviso for persons under disabilities.—R. S. c. 4, s. 19.

20. Every person who may bring a writ of error shall execute bond, with good security, payable to the adverse party, to abide by, perform, and fulfil the judgment which shall be given therein.

Security to be given.—R. S. c. 4, s. 17.

21. No cause shall be transmitted to the supreme court from the superior court of law, but on an appeal of one of the parties from the sentence, judgment, or decree of said superior court, unless the same be expressly authorized by law: And such appeal may be had in any cause, either civil or criminal, on giving bond and adequate security to abide the sentence, judgment, or decree of the supreme court; which bond may be proceeded on to judgment by the supreme court, in the same manner as bonds in the case of appeals from the county to the superior court: *Provided*, however, that free persons convicted of capital felonies and sentenced to die, who

Appeals allowed from sup'r to supreme court, on giving security.—R. S. c. 4, s. 21. Summary judgment.

Proviso for insolvent convicts.

are unable to give such security, may appeal without it, if the court, before whom the cause is tried, shall allow it.

Supreme court, on appeal, to render judgment upon inspection of the whole record.—R. S. c. 4, s. 22.

22. Appeals shall be allowed from any final judgment, sentence, or decree of the superior court of law, court of equity, or court of oyer and terminer; and in every case of such appeal, the supreme court shall render such sentence, judgment, or decree as, on 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 by any proper process.

Appeals allowed at discretion of the court from interlocutory judgments at law and in equity.—R. S. c. 4, s. 23.

23. The superior court may, whenever it shall be deemed proper, allow an appeal to the supreme court from any interlocutory judgment, sentence, or decree at law or in equity, at the instance of the party dissatisfied therewith, upon such terms as shall appear to the court just and equitable; and the judge allowing the same, shall direct so much only of the record and proceedings in the cause to be certified to the supreme court, as may be judged necessary to present the question or matter arising upon such appeal fully to be considered by the said court.

In such case the whole cause not to be removed; may proceed with the residue.—R. S. c. 4, s. 24.

24. The allowance and prosecution of such appeal shall not be deemed in law to remove the record of the cause; and the court whence the appeal is taken, notwithstanding the appeal, may make all necessary orders for preparing the cause for trial as fully as if the said appeal had not been taken.

On appeal to supreme court clerk and clerk and master to file transcript.—1842, c. 1, s. 1.

25. In every case of appeal to the supreme court, it shall be the duty of the clerk of the superior court of law, and clerk and master in equity, to file with the clerk of the supreme court, on or before the seventh day of the term next ensuing the appeal, a transcript of the record and proceedings of the causes in their respective courts in which appeals have been taken; for which service an additional fee of two dollars shall be allowed to the clerk, and clerk and master.

On failure of clerk, appellant may;—on his failure appellee may file it:—or appellee may obtain certificate of such failure and recover double costs.—R. S. c. 4, s. 25, 26.

26. The appellant himself may likewise file the transcript and bond of his appeal with the clerk of the supreme court; but if this be not filed at all within the time herein directed, the appellee may file them during that or the next term of the court, or may, at any time, by permission of the court, obtain a certificate from the clerk of the supreme court, under the seal of the court, of such failure, which certificate he shall file in the clerk's office of the court from which the appeal was taken, and thereupon the said last-mentioned clerk shall record the said certificate and issue execution, or any other process on the judgment rendered in the superior court, as though no appeal had been prayed, taxing double costs against the appellant.

Any defendant, where there is more than one, may appeal.—1850, c. 3.

27. Appeals shall also be allowed at law, under the regulations in this chapter prescribed, to any number of the defendants, where there shall be more than one; and such appeal shall not vacate the judgment against those not joining in the appeal, but execution may issue thereon, and any discharge, release, payment, or satisfaction of or towards said judgment,

shall be available to the defendants who may appeal, and the same may be pleaded at any time before final judgment, on paying into court the costs accrued to the time of plea pleaded. And the provisions of this section shall extend to appeals from justices of the peace, as well as to those from every court of record.

SECT. 1. *When allowed: judgment in party's favor*, 10 Ire. 237, 12 Ib. 327; *mandamus*, 2 Ib. 430; *cart-way*, 1 Dev. 368; *appointment of guardian*, 4 Ib. 294; *taxation of costs*, 1 Ire. 124; *fine on juror*, 1 D. & B. 372; *when judgment void*, 1 Ib. 498; *interplea in attachment*, Bus. 203. *When not: draining lands*, 11 Ire. 124; *judgment of nul tiel record*, 13 Ib. 212; 2 Dev. 214, 3 Hawks, 185; *when no judgment*, 3 D. & B. 93; *or not final*, 4 Ib. 271; *mistaken verdict*, 1 Ire. 172; *for costs on petitions*, 2 Ib. 72; *to state, in criminal cases in Co. Co.*, 1 Mur. 257; *order to deliver up deed produced under subpoena*, 1 Dev. 74; *com. to adm'r*, 3 Ib. 441; *granting new trial*, 1 D. & B. 114; *turning road on party's own land*, 1 Ire. 63; *when judgment discretionary*, 8 Ib. 480, 4 D. & B. 429, 1 Ire. 106; *grant of administration, or alimony pend. lite*, 4 Dev. 168, 1 Jones, Eq. 118; *refusal to grant writ of error*, 4 D. & B. 487; *orders of amendment*, 2 Jones, 63, 6 Ire. 425, 10 Ib. 390, 7 Ib. 346, 10 Ib. 1, 4 D. & B. 199, 1b. 235, 1 Dev. 313. *The bond: form of*, 7 Ire. 215, 2 Car. L. R. 472; *may be given in oppellate court, when*, 8 Ire. 92, 1 Mur. 178; *what it covers*, 5 Ire. 89, 2 Dev. 491, 1 Ire. Eq. 214, 11 Ire. 65; *not prison charges*, 1 Hawks, 365. *The sureties*, 3 Ire. 13, 11 Ib. 139, 1 Mur. 498; *on appeal from issue on ca. sa.* 5 Ire. 649, 3 Ib. 86. *Objections to appeal waived*, 12 Ib. 183, 4 Ib. 59. *Effect of from Co. to Super. Co.* Bus. 280, 13 Ire. 103, 7 Ib. 375, 1 D. & B. 10, 3 Mur. 230. *Certiorari*, Bus. 41, 11 Ire. 47, 13 Ib. 373, 8 Ib. 451, 10 Ib. 365. *Recordari*, 6 Ire. 221, 7 Ib. 130, Bus. 298.

SECT. 8. 2 Mur. 25.

SECT. 9. 1 Jones, 91.

SECT. 17. 12 Ire. 118, 8 Ib. 247; 4 D. & B. 487, 2 Dev. 314, 1 Ib. 315.

SECT. 21 and 22. See note to § 1. *Bond*, 2 Hawks, 400. *Effect of appeal*, 4 D. & B. 20; 2 Dev. 356. *Judge's case*, Bus. 436, 4 D. & B. 164, 3 Dev. 6, 1 Ire. 276.

SECT. 23. 12 Ire. 367; 7 Ib. 375; 4 D. & B. 474.

SECT. 25. 1 D. & B. 349.

SECT. 26. 4 Ire. 215; 1 Hawks, 231; Id. 37.

## CHAPTER 5.

### APPRENTICES.

SECTION

1. Orphans and certain other children of small estate, to be bound out by county court. Certain children of free negroes to be bound out.
2. To whom, and for what time, children to be bound.
3. Duties of masters. Who to be educated.
4. Binding to be by indenture. Remedy for apprentice thereon.
5. Master of children of color to give bond not to remove them out of the county: and to produce them when required. On failure to produce

SECTION

- them to be sued and the whole penalty recovered. When colored mariner apprentice may be carried from the county. What shall excuse non-production of apprentice. Mastership may be surrendered on terms. In certain cases may be taken to adjoining county and bound.
6. Remedy for master where apprentice absents himself after the age of eighteen years.
7. Penalty for harboring orphans and not having them bound out.

1. It shall be the duty of the several courts of pleas and quarter-sessions to bind out, as apprentices, all orphans whose estates are of so small value that no person will educate and

Orphans and certain other children of small estate to

be bound out  
by county  
courts.

maintain them for the profits thereof; 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 the children of free negroes, where the parents with whom such children may live, do not habitually employ their time in some honest, industrious occupation; and all free base born children of color.

Certain children of free negroes to be bound out. — R. S. c. 5, s. 1, 5, 6.

To whom and for what time children to be bound. — R. S. c. 5, s. 2, 6.

Duties of masters.

2. Every male apprentice shall be bound to some tradesman, merchant, mariner, or other person approved by the court, until the age of twenty-one years, and every female to some suitable employment till her age of eighteen years, if white, but if colored, till twenty-one.

Who to be educated — R. S. c. 5, s. 3, 6.

3. The master or mistress shall provide for the apprentice, diet, clothes, lodging, and accommodations fit and necessary; and such as are white, shall teach, or cause to be taught to read and write, and the elementary rules of arithmetic; and at the expiration of every apprenticeship, shall pay to each 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 apprentice is ill used or not taught the trade, profession, and employment to which he was bound, or that any white apprentice is not taught reading, writing, and arithmetic, as aforesaid, the court may remove and bind him to some other suitable person.

Binding to be by indenture.

4. The binding of apprentices 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 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 injured may at his cost prosecute a suit thereon in the name of the chairman, and his successors, and recover all damages which he may have sustained by reason of the breach of the covenants therein contained.

Remedy for apprentice thereon. — R. S. c. 5, s. 4.

Master of child of color to give bond not to remove him out of the county: And to produce him when required. On failure to produce, to be sued, and whole penalty recovered. When colored mariner apren-

5. When the court of pleas and quarter-sessions shall bind any child of color, they shall take bond with sufficient security in the sum of one thousand dollars, payable to the State of North Carolina, from the master or mistress, not to remove such colored child out of the county where he is bound, and to produce him before such court, at any time when the court may require it; and also to produce him at the expiration of the term of his service; and on failure in either case to produce him, after two several warnings, the county solicitor is hereby directed to bring suit against such person on his bond,

for the use of the apprentice, in which the whole sum shall be recovered, as liquidated damages: *Provided*, nevertheless, that any person bound to a seafaring employment, may be carried out of the county in the ordinary pursuit of his business; and *provided* further, that no master or mistress shall be subject to a recovery on said bond, who shall make it appear on the trial, that he or she was unable to produce the apprentice, by the act of God, or by the act of the apprentice, without any default on the part of the said master or mistress: *Provided* always, however, that the court may, in its discretion, accept the surrender of the mastership of an apprentice at any time, and on such terms as it shall deem just; all which shall be recorded; and provided, moreover, that if the master or mistress shall remove to an adjoining county, the court may, in its discretion, permit the apprentice to be carried to that county, to the intent that he may there be bound to the person so removing, but to none other; and when, but not before, the said master or mistress shall exhibit to the court which first bound the apprentice, a duly certified copy of the second binding, together with the indenture and bond, and the court shall be satisfied therewith, then the said master or mistress shall be deemed and held to be discharged thereafter from the condition of the bond first executed; all which matters shall be recorded, and the certified copy aforesaid, shall be filed with the indenture in that court.

apprentice, may be carried from the county. What shall excuse non-production of apprentice. Mastership may be surrendered on terms. In certain cases may be taken to adjoining county and bound.—R. S. c. 5, s. 7.—1850, c. 108.

6. If any apprentice, whether colored or otherwise, who shall be well used by his master, and who, if a white person, shall have received from his said master not less than twelve months' schooling, shall absent himself after arriving at the age of eighteen years from his master's service, before the term of his apprenticeship shall have expired, every such apprentice shall be compelled to make satisfaction to the master for the loss of his service: and in case any apprentice shall refuse to make such satisfaction, his master may recover by warrant before any justice of the peace, such satisfaction not exceeding sixty dollars, as the justice may determine ought to be made by such apprentice; or the master may have his action on the case against the apprentice for his default: *Provided*, that no apprentice shall be compelled to make any satisfaction but within seven years next after the end of the term for which he shall be bound to serve.

Remedy for master when apprentice absents himself after the age of eighteen years.—R. S. c. 5, s. 8.

7. No housekeeper shall harbor and conceal, or hire any orphan child, without first obtaining leave of some justice of the peace, under the penalty of ten dollars, one half to the informer, and the other half to the poor of the county; and such justice, on granting permission, shall bind the person by recognizance to bring the said orphan child to the next county court, which shall bind such orphan agreeable to law.

Penalty for harboring orphans and not having them bound out.—R. S. c. 5, s. 9.

SECT. 1. Bus. 414; 6 Ire. 450.  
 SECT. 4. *Mistake in age*, Bus. 21. *Death of master*, 2 D. & B. 476. *Covenant to teach*, 2 D. & B. 108. *Irregular indenture*, 4 Dev. 61. *Damages for seducing*, 5 Ire. 216.

## CHAPTER 6.

## ASYLUMS.

## I. — FOR DEAF MUTES AND BLIND PERSONS.

## SECTION

1. Incorporated. How styled.
2. To be governed by board of seven directors, and have a president.
3. Who shall compose board. Governor to fill vacancies.
4. Corporate powers vested in a president and directors. Their powers and duties.
5. Time of meeting. May resign. Removal from Wake.
6. Board to report to General Assembly.
7. To report to literary board what counties bound to provide for pupils. Public treasurer to report to literary board what counties have levied tax, etc.

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8. What persons received as pupils.
9. County tax levied when parents cannot pay.
10. Other persons admitted as pupils, when.
11. Pupils from other States.
12. Penalty for failure to levy tax, or to collect and pay. No county to provide for more than five.
13. On failure to levy, amount deducted from school fund.
14. Eight thousand dollars yearly appropriated to institution, out of literary fund.
15. Faculty may confer degrees.
16. Funds deposited with public treasurer.

## II. — FOR THE INSANE.

1. An asylum for the insane established. Its corporate name, etc.
2. To be under the control of nine directors chosen by the General Assembly. Their powers.
3. For what period chosen.
4. How apportioned through the State.
5. Three shall reside in Wake county.
6. The whole to meet annually in November.
7. Board to appoint a superintendent, etc. His qualification and residence.
8. Term of office eight years. How removed.
9. Board to appoint other officers.
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11. Superintendent to control subordinates.
12. Board shall make by-laws, reports, etc.
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14. Board to advertise when asylum is completed, and sheriffs to report number of insane in jail, etc. Rule for selecting patients; curableness and not poverty.
15. What insane removed from jail to asylum.
16. Confined on criminal charge to be removed.
17. What indigent insane admitted, and

- proceedings therefor. Affidavit of insanity. Precept to bring up patient for examination. Proceedings of justices on return. Patient removed unless bond is given, etc. Examination sent with him. Form of warrant.
18. Interrogatories, and answers thereto transmitted to superintendent.
19. Board convened and proceedings when indigent insane sent to asylum.
20. When paying patients from other States admitted. What necessary to entitle such patient to admission. Form and conditions of the bond required.
21. Money not spent, refunded.
22. Bonds given to keep insane from asylum transmitted to office of county court, etc. Damages.
23. Form and condition of bond.
24. On breach of bond, patient sent to asylum by order of county court.
25. Two guardsmen only to be employed unless, etc.
26. What insane deemed indigent. County to pay their expenses into public treasury.
27. How county may be reimbursed.
28. County tax levied for support, etc., of insane.



SECTION

- 29. Failure to levy, or to collect and pay tax, a misdemeanor. Proviso.
- 30. Amount in certain cases deducted from school fund.
- 31. Guardian or friend giving bond under twenty-third section, or advancing money, may be repaid.
- 32. Money to support asylum paid out of public treasury.
- 33. Money belonging to asylum paid into

SECTION

- public treasury. Donations, how applied.
- 34. On what warrant treasurer of asylum to pay. To give bond.
- 35. Board and executive committee to record their proceedings, etc.
- 36. Tax laid for support of asylum, to be paid into the public treasury.
- 37. Who shall be official visitors.

I. — FOR DEAF MUTES AND BLIND PERSONS.

Whereas, in virtue of an act of the General Assembly of the year 1846, entitled "*An Act to provide suitable buildings for the comfortable accommodation of Deaf Mutes and Blind Persons in this State,*" and of several supplemental acts passed since that time, many suitable buildings have been erected in the city of Raleigh, on the public grounds called Caswell Square, for the accommodation, education, and maintenance of deaf mutes and blind persons of the State, and the institution hath been incorporated under the name and style of "*The North Carolina Institution for the education of the Deaf and Dumb and of the Blind:*" —

Preamble.  
1844, c. 37.  
1846, c. 48.  
1848, c. 4, 5.  
1850, c. 4, 5.  
1852, c. 48.

1. *Be it therefore enacted,* That the said institution shall be, continue, and remain a corporation, under the name and title of "*The North Carolina Institution for the Deaf, Dumb, and Blind,*" and shall, at all times, be subject to the control of the General Assembly.

Incorporated.  
How styled.

2. The said institution shall be governed by a board of seven directors, a majority of whom shall constitute a quorum for business, and one of whom shall be appointed president, to preside at their meetings; and the principal of the institution shall be, *ex officio,* secretary of the board, who shall record, attest, and preserve their proceedings.

To be governed by board of seven directors, and have a president.

3. Such persons of the board of directors appointed by the act of the General Assembly of the year 1848, chapter 5, entitled "*An Act to establish a Board of Directors for the Deaf and Dumb Institute in this State,*" as are now in office, and such other persons as, having been appointed to vacancies therein, are now in office, shall be the board of directors of the said institution: and, in case of a vacancy therein, (whereof, whenever it may occur, the secretary shall give notice,) the governor shall forthwith fill the same, and submit it for approval by the General Assembly at the earliest opportunity.

Who shall compose board.

4. The corporate powers of said institution shall be vested in the president and directors, under the name and style in the first section named, who shall have capacity to take and receive, in trust for the institution, donations of real and personal estate. They shall be charged with the erection of all necessary buildings and fixtures, and with furnishing, preserving, and repairing the same; with the care of the grounds and

Governor to fill vacancies.  
Corporate powers vested in a president and directors; their powers and duties.

appurtenances, and of the interest of the institution generally. They shall have power to employ all necessary agents; appoint and remove professors; to fix their compensation; prescribe their duties; establish rules for the government and discipline of the pupils; regulate tuition fees; prescribe and control the duties and proceedings of officers, servants, and others, with respect to their employment: and, in general, to do all matters and things, (the same being consistent with the laws of the State,) which shall seem to them most expedient for promoting the purposes and objects of the institution; and to this end, to make all necessary by-laws, rules, and orders which they may deem useful and proper.

Time of meeting. May resign. Removal from Wake.

5. The board shall meet at stated times, and also at such other times as business may require. The members may resign; and a removal from the county of Wake, or an omission to act for a period of six months, shall create a vacancy.

Board to report to General Assembly.

6. The board shall make a report to the General Assembly at each of its sessions, which shall exhibit a full account of the receipts and disbursements, from what source received, and for what purpose expended, the funds on hand, and a general statement of the condition of the institution.

To report to literary board what counties bound to provide for pupils.

7. The board shall also report to "The President and Directors of the Literary Fund of North Carolina," on the day when that body shall assemble to distribute the common school fund, what counties are bound to provide for pupils admitted at the institution, and how much ought to be provided by each county; to which of the county courts, and when, information was given by the board of their duty to make provision for pupils: and at the same time, the public treasurer shall report to said board of the literary fund what counties shall have levied a tax, and how much, for the support of their respective pupils; and which of the sheriffs have paid the same into the public treasury.

Public treasurer to report to literary board what counties have levied tax, etc.

What persons received as pupils.

8. The president and directors shall, on application, receive into the institution as pupils, all white deaf mutes and blind persons, residents of the State, not physically or mentally imbecile, who may be over the age of eight, and under twenty years.

County tax levied when parents cannot pay.

9. And as to so many of such pupils, who, or whose parents, have not the means to pay seventy-five dollars a year towards their board and education in the institution, the justices of the court of pleas and quarter-sessions of the county wherein any such pupil shall be a resident, shall annually levy, and cause to be collected, for and during the term of seven years, a tax of seventy-five dollars for each pupil received into the institution; which shall be collected by the sheriff or other tax collector, and paid into the public treasury along with the State taxes, for the use of the institution.

Other persons admitted as pupils, when.

10. As to the residue of such pupils, they shall be admitted upon such terms of pay, as to board and education, (not how-

ever exceeding thirteen dollars per month,) as the board of directors may think fit.

11. The board of directors may also admit into the institution, at their discretion, and upon such terms as to board and education, and other accommodations, as they may deem proper, pupils of like age and infirmities, who reside out of the State: *Provided, however,* That no such pupil shall acquire the condition of a resident by remaining here in such pupilage.

Pupils from  
other States.

12. If the justices shall fail to levy said tax for the space of one year, after being informed by the board that such deaf mute or blind person is received into the institution; or if the sheriff, when such tax shall be laid, shall fail to collect and pay it to the public treasurer, at the time of accounting for State taxes, the said justices and sheriff, each, for his several neglect, shall be deemed guilty of a misdemeanor, and shall be prosecuted in the superior court of the county: *Provided, however,* That no county shall be required to provide, at one and the same time, for more than five pupils.

Penalty for  
failure to levy  
tax, or to col-  
lect and pay.

No county to  
provide for  
more than five.

13. If any county shall fail, for the space of one year after admission of a poor pupil, for whose board and education such county ought to contribute as aforesaid, to pay to the public treasurer its proper tax, the amount thereof shall be paid to the said treasurer by "The President and Directors of the Literary Fund of North Carolina," for the use of the institution; and shall be deducted by said board of literature out of the share, next to be distributed, of such county, in the common school fund.

On failure to  
levy, amount  
deducted from  
school fund.

14. The president and directors of the literary fund of North Carolina, for the use of the said institution, and to enable it to fulfil its duties, shall annually pay to the public treasurer eight thousand dollars, which sum, with all other moneys appropriated to the institution, shall be paid by the holder of the funds in such sums, and at such times, as may be ordered by the board.

\$8,000 yearly  
appropriated  
to institution  
out of literary  
fund.

15. The faculty of the institution, with the consent of the board of directors, may confer such degrees and marks of literary distinction as may be judged proper to encourage merit.

Faculty may  
confer degrees.

16. All the cash funds which may belong to the corporation shall be deposited with the public treasurer, who shall keep an account with the corporation, and report the same in his annual statement of the finances of the State.

Funds deposi-  
ted with public  
treasurer.

## II. — FOR THE INSANE.

Whereas, in virtue of an act of the General Assembly of the year eighteen hundred and forty-eight, entitled "*An Act to provide for the establishment of a State Hospital for the Insane of North Carolina,*" and of other acts supplemental thereto passed since that time, a tract of land has been purchased, and many suitable buildings have been erected, and

Preamble.  
1848, c. 1, 2.  
1852, c. 73, 74.

are now erecting thereon for the accommodation, maintenance, support, and cure of the insane of this State, and the institution hath been incorporated under the name of "The Lunatic Asylum for the State of North Carolina:"—

An asylum for the insane established.—Its corporate name, etc.

1. *Be it therefore enacted*, That the said institution shall continue and remain a corporation, under the name and title of "The Insane Asylum of North Carolina," and the same is hereby invested with all the property which now belongs to it under any other corporate name; and by this name may acquire and hold, for the purposes of its establishment, all such estate as may be devised, bequeathed, or conveyed to it.

To be under control of nine directors chosen by General Assembly. Their powers.

2. For the government of said asylum, there shall be appointed by the General Assembly nine persons as directors, who, and their successors in office, shall direct and manage the affairs of the institution, and, for its better government, make all necessary by-laws, not inconsistent with the laws of the State; shall have power to receive, hold, manage, and convey, or otherwise dispose of, in the name of the institution, all such property as may be hereafter given or otherwise conveyed to the asylum: and they shall serve without reward, save their travelling expenses incurred in the discharge of their official duties.

For what period chosen.

3. Of the board of directors, when first appointed, three shall be chosen for two years, three for four years, and three for six years; and afterwards they shall be appointed, at the end of their respective terms, for six years: and, in case of any vacancy in a term, the unexpired portion thereof shall be filled by the governor.

How appointed through the State.

4. Of the directors, five shall be appointed from the central portion, two from the eastern, and two from the western portions of the State; and the vacancies which may occur in each portion shall be filled therefrom.

Three shall reside in Wake county.

5. Of the five directors from the central part of the State, three shall be resident, at the time of their appointment, and continue to reside in Wake county, in or near the city of Raleigh; and the other two, at the time of their appointment, shall be resident out of that county.

The whole to meet annually in Nov.

6. The board of directors shall convene at the asylum on the first Monday of November, in each year, and investigate the administration of its affairs, and report the same to the ensuing General Assembly, with such remarks and recommendations as to them shall seem expedient.

Board to appoint a superintendent, etc., his qualification and residence.

7. The board shall appoint a superintendent of the institution, and prescribe his duties; he shall be a skilful physician, educated to his profession; of good moral character, of prompt business habits, and of kindly disposition; he shall be a married man, and shall reside constantly near the institution.

Term of office 8 years, how removed.

8. He shall hold his place for eight years, unless sooner removed by the board, who may, for infidelity to his trust, gross immorality, or incompetency to discharge the duties of his office, fully proved and declared, and the proof thereof recorded in the book of their proceedings, remove him, and put another in his stead.

9. The board, at their annual meeting, shall appoint a treasurer, steward, matron, and other officers whose appointment is not elsewhere vested, who shall hold their places for one year, unless sooner removed by the board for good cause; which cause shall be specified and recorded in their proceedings, and other officers shall be appointed for the unexpired term of those removed.

Board to appoint other officers.

10. The board, at their annual meeting, shall fix the salaries and compensation of the superintendent and the officers and assistants, whose services may be necessary for the management of the asylum.

And fix salaries.

11. The superintendent shall exercise exclusive direction and control over all the subordinate officers, assistants, and servants engaged in the service and labors of the asylum; and, in every case of misconduct, may discharge such servants as are employed by himself, and shall report to the executive committee the misconduct of all other subordinates.

Superintendent to control subordinates.

12. The board shall make such by-laws and regulations for the government of the institution as shall be necessary, and cause them to be published with their biennial report, the report of the superintendent, and that of the treasurer; all which shall be distributed, three at least to each county in the State, and sent to the clerk of the county court.

Board shall make by-laws, reports, etc.

13. The three directors resident in Wake county shall constitute an executive committee, with power to transact all ordinary business, and all business which may not concern the appointment or removal of a salaried officer of the institution, or the appropriation of its funds, or disposal of its property; they shall hold monthly meetings at the asylum, and diligently examine into its government and condition, once every month, or oftener if necessary.

Wake directors to be executive committee. Their powers.

14. As soon as the asylum shall be completed and ready for the reception of patients, the board of directors shall make known the fact by publication in two newspapers of the State; whereupon it shall be the duty of the sheriff of each county in the State to report to the board of directors the number of insane persons in his jail, confined for insanity, together with a statement of the peculiarities of each case, its duration, and other interesting facts connected therewith, attested by at least one respectable physician; and thereupon the board shall determine upon the admission of as many such patients as, in their opinion, the asylum may be capable of accommodating, and shall forthwith notify the several sheriffs thereof: *Provided, however,* That in the admission of such patients, (if all cannot be accommodated,) the board shall, as far as practicable, apportion the same according to the white population of each county; *And further,* That, in the selection of all patients, due regard shall be had to the recent character of each case, and the chance of curing the patient, without reference to his ability to pay.

Board to advertise when asylum is completed, and sheriffs to report number of insane in jail, etc.

Rule for selecting patients; curableness, and not poverty.

What insane removed from jail to asylum. Confined on criminal charge to be removed.

15. Every insane person confined in jail for other cause than crime, shall be removed to the asylum.

16. The courts of record shall allow to be committed to the asylum as a patient, any person who may be confined in jail on a criminal charge, of any kind or degree, or upon a peace warrant, whenever the court shall be satisfied that the act was done while such person was insane; and the court may impanel a jury, if deemed necessary, to inquire into the fact.

What indigent insane admitted, and proceedings therefor.

17. For admission into the asylum as a State patient, (or one whose expenses are borne by the public,) the following proceeding shall be had:—

Some respectable citizen, resident in the county of the patient, shall make before, and file with, a justice of the peace of the county, an affidavit in writing, which shall be substantially as follows:—

State of North Carolina, }  
County, }

Affidavit of insanity.

The undersigned, residing in said county, maketh oath that he has carefully examined \_\_\_\_\_, and believes him to be an insane person; that he is in needy circumstances, has a legal settlement in said county, and, in his opinion, is a fit subject for admission into the insane asylum. Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_ A. B. (*Affiant.*)

Subscribed and sworn before me.

C. D. (*J. P.*)

Whereupon, the said justice of the peace shall issue a precept, directed to the sheriff or constable as follows:—

The State of North Carolina.

To the sheriff or constable of \_\_\_\_\_ county, greeting;

Precept to bring up patient for examination.

Whereas, information on oath has been laid before me, that \_\_\_\_\_ is an insane person: you are hereby commanded to bring him before me, or some other justice of the peace of said county, within the next ten days, or as soon thereafter as is convenient, in order that necessary proceedings may be had respecting his insane condition. Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_, (*J. P.*)

Proceedings of justices on return.

Upon the return of the precept, with the body of the insane person, the justice shall cause to be associated with him two or more justices of the county, who, together, shall proceed to examine into the condition of mind of the supposed insane person, and shall take the testimony of at least one respectable physician, and such other persons as they may think proper. If the justices, or any two of them, shall decide that such person is insane, and some friend will not become bound, with good security, to restrain him from committing injuries, and to keep, support, and take care of him until the cause for confinement shall cease, the said justices, or two of them shall direct the insane person to be removed

Patient removed unless bond is given, etc.

to the asylum as a patient; and to that end, they shall direct a warrant to the sheriff or constable; and, at the same time, shall transmit to the board of directors the examination of the witnesses, and a statement of such facts as the said justices shall deem pertinent to the subject-matter: which warrant shall be substantially as follows:—

Examination sent with him.

The State of North Carolina.

To the sheriff or constable of \_\_\_\_\_ county, greeting:

Whereas, it has been made to satisfactorily appear to us, J. S. and O. M., justices of the peace of the said county, that A. B., a citizen of the State, is an insane person; that he has a legal settlement in said county, and is a fit subject for the insane asylum, and that his being at large is injurious to himself, and disadvantageous, if not dangerous to the community, you are hereby commanded to take the said A. B. and convey him to "The Insane Asylum of North Carolina," and there deliver him to the superintendent thereof, for safe-keeping. Given under our hands, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_

Form of warrant.

J. S. (J. P.)  
O. M. (J. P.)

18. The following interrogatories, with their respective answers by competent witnesses, shall likewise be transmitted, with the other papers, to the board of directors:—

Interrogatories and answers thereto, transmitted to superintendent.

- Question 1. What is the name of the patient?  
 " 2. What is his age?  
 " 3. Is he married or single?  
 " 4. What is the supposed cause of his insanity?  
 " 5. In what way is the disease exhibited?  
 " 6. Has any medical treatment been pursued?—  
 if so, of what kind?  
 " 7. Has the patient manifested any propensity to injure himself or others?  
 " 8. How long has he been insane?  
 " 9. Has he been subject to epilepsy?  
 " 10. Have any of his ancestors been insane?  
 " 11. Has he any property?—how much, and of what kind?  
 " 12. Has he any family?—and what persons compose it?

19. Whenever any insane person, in indigent circumstances, shall be conveyed to the asylum, the superintendent, being duly informed thereof, shall convene a board of directors, (any three of whom shall constitute a board,) for the purpose of examining and deciding if such person is a proper subject for admission; and if a majority of the board decide that he is such, he shall be received into the asylum; but such board may, at any time thereafter, deliver said insane person to any friend who will become bound, with good security, to restrain him from committing injuries, and to keep, maintain,

Board convened, and proceedings when indigent insane sent to asylum.

and take care of him, in the same manner as the justices might have done.

When paying patients from other States admitted.

20. Paying patients from other States may be received into the asylum, whenever there may be vacancies unclaimed by persons having a legal settlement within the State. But before any patient whatever shall be received into the asylum as a patient, there shall be produced to the superintendent —

What necessary to entitle such patient to admission.

1. The treasurer's receipt for three months' charges in advance.
2. A sufficient bond, conditioned as hereinafter required.
3. A certificate from a respectable physician, setting forth —
  - (1) That the patient is free from any infectious or contagious disease.
  - (2) The age of the patient, and a concise history of the disease.
  - (3) Its duration, dating from the first symptoms.
  - (4) Its supposed exciting cause.
  - (5) Whether it is hereditary.
  - (6) Whether the patient has ever been subject to epilepsy.
  - (7) Whether he has ever attempted to commit violence upon himself or others.
  - (8) The medical treatment pursued in the case, and any circumstances known to the physician tending to illustrate the same.

No other proceedings shall be necessary for the admission of paying patients.

The bond required in this section shall be substantially as follows: —

Form and conditions of the bond required.

Know all men by these presents, that we, \_\_\_\_\_, of the county of \_\_\_\_\_, in the State of North Carolina, are held and firmly bound unto the State of North Carolina, in the penal sum of \_\_\_\_\_ dollars; for the payment whereof we hereby bind ourselves, jointly and severally. Witness our hands and seals, this the \_\_\_\_\_ day of \_\_\_\_\_, A. D.

The condition of the above obligation is this. Whereas \_\_\_\_\_, of the county aforesaid, is about to be admitted as a paying patient into "The Insane Asylum of North Carolina." Now if, while he shall remain therein, the undersigned shall constantly supply him with suitable clothing, and quarterly pay in advance all the charges of said insane asylum against him; and whenever his removal shall be required, immediately remove him; and, if he shall escape from the asylum, pay all reasonable charges incurred in restoring him thereto; and, if he shall die therein, pay all reasonable expenses incurred for his funeral; then this obligation shall be void: otherwise it shall remain in full force.

A. B. (Seal.)  
C. D. (Seal.)



21. If there shall be a balance in the treasury of the asylum, to the credit of a patient discharged therefrom, the treasurer shall pay it to the person authorized to receive the same.

Money not spent refunded.

22. All bonds executed under the provisions of this chapter, for restraining insane persons from committing injuries, and for their safe-keeping, support, and care, shall be payable to the State of North Carolina, in the sum of five hundred dollars at least, and shall be transmitted to the clerk of the county court of the county wherein the insane person is settled, for safe-keeping, and may be put in suit by any person injured by the insane person, by reason of his insane condition, for the damages sustained thereby; and shall be put in suit by the solicitor of the State for the county, for any other breach thereof, wherein the damages recovered shall be for the use of the insane person, and shall be at least fifty dollars.

Bonds given to keep insane from asylum, transmitted to office of county court, &c.

Damages.

23. The form of the bond mentioned in the preceding section shall be as follows:—

State of North Carolina, }  
County of \_\_\_\_\_ }

Know all men by these presents, that we, A. B. principal, and C. D. and E. F. sureties, are held and firmly bound unto the State of North Carolina, in the sum of \_\_\_\_\_ dollars, for the payment whereof we bind ourselves and each of us. Witness our hands and seals, this the \_\_\_\_\_ day of \_\_\_\_\_, A. D. \_\_\_\_\_

Form and condition of bond.

The condition of the above obligation is this: Whereas the said A. B., with the view of hindering G. H., an insane person resident in the county aforesaid, from being sent to "The Insane Asylum of North Carolina," hath undertaken to restrain him from committing injuries, and to keep, maintain, support and take care of him. Now, if the said A. B. shall faithfully comply with the conditions of this obligation, then the same shall be void: otherwise it shall be in full force.

24. Whenever it shall be made to appear to the county court that the conditions of the bond are not faithfully kept, the insane person shall be sent to the asylum by order of the county court, unless some other responsible and discreet friend will undertake to fulfil said duties, and shall execute bond therefor, as aforesaid. And whenever said patient shall be sent back to the asylum, he shall not be redelivered on any new bond of the defaulting obligor.

On breach of bond, patient sent to asylum by order of county court.

25. Not more than two persons (unless a greater number be certified to be necessary by the examining justices) shall be employed as a guard for removing any indigent insane person to the asylum, who shall receive, each one, besides his travelling expenses, one dollar per day, to be paid by the county whence he is removed.

Two guardsmen only to be employed, unless, &c.

26. Every insane person, whose property shall be insufficient amply to support himself and his family, shall be deemed,

What insane deemed indigent.

within the provisions of this chapter, to be indigent; and the removal to, and support in, the asylum, of every indigent insane person, shall be paid by the county wherein he may be legally settled; and the expense of his maintenance, and all other needful expenses, shall be annually paid by such county to the treasurer of the State, on or before the first day of October of each year, the said treasurer and the county trustee being duly notified by the superintendent of the amount due.

County to pay their expenses into public treasury.

How county may be reimbursed.

County tax levied for support, &c., of the insane.

27. Any county, liable to pay the expenses of an insane person having any estate, may cause the same to be sold for its indemnity or reimbursement, in the manner provided in the chapter entitled "*Idiots and Lunatics.*"

28. The justices of the court of pleas and quarter-sessions of the county, wherein any indigent insane person may be resident, shall annually levy, and cause to be collected, for and during the time such person may remain in the asylum, an amount necessary for the removal to, and support in the asylum, of such indigent insane person, as notified by the superintendent as aforesaid; and the same shall be collected and paid into the public treasury, along with the State taxes, for the use of the institution.

Failure to levy or to collect and pay tax, a misdemeanor.

29. If the justices shall fail to levy said tax, for the space of one year, after being notified by the superintendent, or if the sheriff, when such tax shall be laid, shall fail to collect and pay it to the public treasurer, at the time of accounting for State taxes, the said justices and sheriff, each for their several neglect, shall be deemed guilty of a misdemeanor, and shall be prosecuted in the superior court of the county: *Provided, however,* That no county shall be required to provide, at one and the same time, for more than five indigent insane persons.

Proviso.

Amount in certain cases deducted from school fund.

30. If any county shall fail, for the space of one year, to contribute its proper tax as aforesaid, after the same is due, "The president and directors of the Literary Fund of North Carolina," shall deduct out of the share of such county in the common school fund, next to be distributed, the amount thereof, and pay the same to the treasurer.

Guardian or friend giving bond under 23d section, or advancing money may be repaid.

31. Any guardian of the estate of an insane person, or any other person, who, as his friend, shall execute the bond mentioned in the twenty-third section of this chapter, and any guardian or friend who shall advance money for such person's expenses and charges at the asylum, may be indemnified and reimbursed out of the estate, from the profits or sale thereof, if the same shall appear just, by applying by petition to the county or superior court of such insane person's settlement.

Money to support asylum paid out of public treasury.

32. All money applied for the use and support of the institution, and the indigent insane, shall be paid to the treasurer of the asylum out of the public treasury, on warrants drawn by the superintendent and countersigned by two at least of the members of the executive committee.

Money belonging to asylum paid into pub-

33. All money and the proceeds of property, given to the asylum, and all money arising from any estate which may be

owned by the asylum, shall be paid into the public treasury; and all donations shall be kept as a separate and distinct fund, and shall be faithfully applied as the donor may have directed.

31. The treasurer of the asylum shall pay out no money except on the warrant of the superintendent, or the executive committee; and he shall execute a bond payable to the State of North Carolina, with two able sureties, in the sum of ten thousand dollars, conditioned for the faithful discharge of his duties.

35. The board and executive committee shall cause all their proceedings to be faithfully and carefully written and recorded in books, and to this end may employ a clerk. And the books shall at all times be open to the inspection of the official visitors of the institution, and of the General Assembly.

36. A tax of one and three fourths cents on every one hundred dollars' worth of land, and five and one fourth cents on every taxable poll, shall be annually levied for the support of the asylum, and collected and paid into the public treasury as other taxes; and the same, with all other moneys belonging to the asylum, shall be kept in a separate account.

37. The governor, judges of the courts, attorney-general, and members of the General Assembly, shall be *ex officio* visitors of the insane asylum.

lic treasury, &c. Donations how applied.

On what warrant treasurer of asylum to pay. To give bond.

Board and executive committee to record their proceedings, &c.

Tax laid for support of asylum, &c., to be paid into public treasury.

Who shall be official visitors.

## CHAPTER 7.

### ATTACHMENT.

SECTION

1. Attachment may issue for debt or damages, where process cannot be served by reason of absence.
2. Also on behalf of a citizen of the State against a non-resident.
3. Not to issue without bond, which, with affidavit, must be returned to court.
4. Form of attachment. Form of bond. Attachment not abated for want of form.
5. Defendant may replevy on giving bail-bond. Power of bail.
6. Perishable property sold, and proceeds deposited, &c.
7. Garnishee summoned; to answer on oath. Judgment against garnishee for effects in his hands.
8. Proceedings against garnishee failing to appear. Judicial attachment to issue, when.
9. Garnishee denying he has any property, &c., issue may be made up.

SECTION

10. Proceedings where attachment levied on property claimed by another.
11. Specific articles confessed by garnishee valued by a jury, and judgment for their value. In what cases garnishee exonerated by delivery of articles.
12. Judgment conditional where money or articles are due or deliverable at a future day.
13. Publication made for defendant six weeks.
14. When judicial process may issue.
15. Attachment may issue against absentees exempt from arrest, who may plead without replevying.
16. Also for injuries to person and property in certain cases. Within what time.
17. Such attachment dismissed if improperly issued.
18. Attachment before justices of the peace.

## SECTION

- (1.) Returnable within thirty days.
  - (2.) Replevy bond, how conditioned.
  - (3.) Garnishee to appear and answer.
  - (4.) Perishable estate to be sold.
  - (5.) Specific articles confessed by garnishee, how valued. How and when garnishee may be exonerated by delivery of said articles. May stay execution.
  - (6.) Claimant of property attached before a justice, may remove proceedings to county or superior court. Must give bond for costs. If garnishee deny possession of any property, &c., proceedings removed to county or superior court.
  - (7.) Publication for defendant.
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19. When real estate is attached and condemned by a justice, proceedings returned to court.

## SECTION

20. Property in hands of executor, administrator, or trustee, attachable by bill in equity.
21. Creditors may file bill before end of two years. On decree, must give refunding bond to executor or administrator.
22. Lien from time of filing bill.
23. Court may require creditor to indemnify executor, &c., against loss.
24. Upon what proofs and terms plaintiff may have decree.
25. Debtor may replevy before final decree, by giving bond.
26. Plaintiff shall state his debt specially, and make affidavit of the matters in his bill.
27. Lien on vessels for work, provisions, &c.
28. May be attached and held, although the owner be present.

Attachment may issue for debt or damages, when process cannot be served by reason of absence.—R. S. c. 6, s. 1.—1859, c. 6.

1. Upon complaint being made on oath to any judge of the supreme or superior courts, or to any justice of the county court, or clerk of the county or superior court, by any person, his attorney or agent, that any person indebted to him, or who hath endamaged him as hereinafter mentioned, hath removed, or is privately removing himself out of the county, or absents himself from the county or State, or conceals himself, so that the ordinary process of law cannot be served on him; and if the plaintiff, his attorney or agent, further swears to the amount of his debt or demand, to the best of his knowledge and belief, such judge, justice, or clerk, shall grant an attachment against the estate of such debtor, wherever the same may be found, or in the hands of any person 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 any court where the suit is cognizable, and shall be deemed the leading process, and the same proceedings shall be had thereon, as on judicial attachments.

Also on behalf of a citizen of the State against a non-resident.—R. S. c. 6, s. 2.

2. When a person, who shall be an inhabitant of another government, and cannot be personally served with process, shall be indebted to any one, a resident of this State, and hath any estate within the same, the said judges, clerks, or justices, may issue an attachment against the estate of such debtor under the rules and regulations before mentioned, and the same proceedings shall be had thereon.

Not to issue without bond, which, with the affidavit, must be returned to court.—R. S. c. 6, s. 3.

3. Every judge, justice, or clerk, before granting an attachment, shall take bond and security of the party for whom the same shall be issued, his attorney or agent, 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 against the plaintiff in any suit 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 judge, justice, or clerk 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.

4. The attachment shall be in the following form, namely:—

The State of North Carolina,  
To the sheriff, constable, or other officer (as the case may be)  
of the county of \_\_\_\_\_ greeting:

Whereas A. B. hath complained on oath before the sub-  
scriber, that E. F. is justly indebted to him in the amount of \_\_\_\_\_  
, and oath having also been made that the said E. F.  
hath removed, or is about to remove, himself out of your county,  
or conceals himself, or absents himself from the county or  
State, so that the ordinary process of law cannot be served on  
him, (or is an inhabitant of another government, as the case  
may be); and the said A. B. having given bond with security,  
according to law: We therefore command you that you attach  
the estate of the said E. F. which may be found in your county,  
or so much thereof, repleviabie on security, as shall be of  
sufficient value to satisfy the said debt and costs, and such  
estate 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 the county of \_\_\_\_\_ at \_\_\_\_\_ on the  
Monday of \_\_\_\_\_ next, (or before a justice of the  
peace of the county of \_\_\_\_\_ within thirty days from the  
date hereof) so as to compel the said E. F. to appear and  
answer the complaint of the said A. B. when and where you  
shall make known to the said court (or to the said justice of  
the peace) how you shall have executed this writ.

Witness, \_\_\_\_\_ judge, or justice, or clerk of said court, the  
day of \_\_\_\_\_ and in the year \_\_\_\_\_ of American In-  
dependence. And the said attachment shall be signed by such  
judge, or justice, or by the clerk of the court, who may grant  
the same.

The bond to be given upon obtaining such attachment shall  
be as follows:—

Know all men by these presents, that we \_\_\_\_\_ of the  
county of \_\_\_\_\_ are held and firmly bound unto E. F. in the  
sum of \_\_\_\_\_ to be paid to the said E. F., and for the pay-  
ment thereof bind ourselves and our heirs firmly by these pres-  
ents, sealed with our seals, and dated the \_\_\_\_\_ day of \_\_\_\_\_  
A. D.

The condition of the above obligation is such, that whereas  
A. B. hath prayed and obtained an attachment against the  
estate of the said E. F., for the sum of \_\_\_\_\_ returnable to

the court to be held at \_\_\_\_\_ on \_\_\_\_\_ (or before a justice of the peace, within thirty days from the date hereof):—

Now if the said A. B. shall prosecute his said suit with effect, or in case he fail therein, shall well and truly pay to the said E. F. all such costs and damages as shall be awarded and recovered against the said A. B. in any suit or suits which may be hereafter brought for wrongfully suing out said attachment, then the above obligation to be void, otherwise to remain in full force and effect. *Provided, however,* That no attachment shall be abated for the want of form, if the essential matters expressed in the foregoing precedent be set forth therein.

Attachment not abated for want of form.—R. S. c. 6, s. 4.  
Defendant may replevy on giving bail-bond.

5. When any estate shall be attached under any attachment, judicial or original, the defendant, his attorney, or agent, may at any time before final judgment or writ of inquiry executed, replevy the same by giving a bail-bond, with sufficient security, to the sheriff or other officer serving such attachment, which bond the sheriff or other officer is required to take; provided, that in case of replevy after return term, the plaintiff shall not be delayed thereby of his trial: and the surety in said bond shall have all the powers, and be subject to all the liabilities, except as hereinafter provided, of special bail in other civil cases.

Power of bail.—R. S. c. 6, s. 5.

Perishable property sold, and proceeds deposited, &c.—R. S. c. 6, s. 5.

6. When the estate attached shall, by three freeholders of the county to be summoned and sworn by the sheriff or other proper officer for that purpose, be certified on oath to be perishable, and the person to whom it belongs, or his agent, shall not within thirty 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, the same being 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 the sale, shall be liable to the judgment obtained upon such attachment, and shall be deposited in the hands of the clerk of the court to which the process shall be returnable, there to await the judgment.

Garnishee summoned; to answer on oath.

7. When the sheriff or other officer shall serve an attachment on any person supposed to be indebted to, or to have any effects of, the defendant in the attachment, he shall at the time summon such person as a garnishee in writing, to appear at the court to which the attachment shall be returnable, within the first three days of the first term thereof, to answer upon oath what he owes to the defendant, and what effects of the defendant he hath in his 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 knowledge and belief; and when an attachment shall be served on any garnishee in manner aforesaid, it shall be lawful upon his appearance and examination to enter up judgment and award execution for the plaintiff against such garnishee, for all sums of money due to the defendant from him, and for all effects and estate of any kind belonging to the defendant, in his possession or custody for the use of the plaintiff, or so much there-

Judgment against garnishee for effects in his hands.—R. S. c. 6, s. 5.

of as shall be sufficient to satisfy the debt and costs and all charges incident to levying the same; and all goods and effects whatsoever in the hands of any garnishee belonging to the defendant, shall be liable to satisfy the plaintiff's judgment, and shall be delivered to the sheriff or other officer serving the attachment.

8. When any garnishee shall be summoned as aforesaid, and shall fail to appear and discover on oath as directed, the court, after solemnly calling the garnishee, shall enter a conditional judgment against him, and thereupon a *scire facias* shall issue against him returnable to the next term, to show cause why final judgment shall not be entered against him; and if upon the due execution thereof, such garnishee shall fail to appear at the next term and discover on oath in manner aforesaid, the court shall confirm said judgment and award execution for the plaintiff's whole judgment and costs; and if upon examination of the garnishee it shall appear to the court, that there is any of the defendant's estate in the hands of any person who has not been summoned, the court shall upon motion of the plaintiff grant a judicial attachment, to be levied in the hands of every such person having any of the estate of the defendant in his custody or possession, who shall appear and answer, and shall be liable as other garnishees.

Proceedings against garnishee failing to appear.

Judicial attachment to issue, when — R. S. c. 6, s. 5.— 1838, c. 2.

9. When any garnishee shall deny that he owes to, or has in his possession any property of the defendant, and the plaintiff shall on oath suggest to the court, the contrary; or when any garnishee shall make such a statement of facts that the court cannot proceed to give judgment thereon, then the court shall order an issue to be made up, which shall be tried by a jury, and on their verdict judgment shall be rendered.

Garnishee denying he has any property, &c., issue may be made up.— R. S. c. 6, s. 6.

10. When the property attached shall be claimed by any other person, the claimant may 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 plaintiff at least ten days before the next court, when the court shall order a jury to be impanelled to inquire in whom is the right of the property levied upon; and the finding of the jury shall be conclusive as to the parties then in court, and the court shall adjudge accordingly.

Proceedings where attachment levied on property claimed by another. — R. S. c. 5, s. 7.

11. When a garnishee shall on oath confess that he has in his 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 herein-after excepted,) then the court shall immediately order a jury to be impanelled and sworn to inquire of the value of such specific property, and the verdict of the jury shall subject such garnishee to the payment of the valuation, or so much thereof as shall be sufficient to satisfy the debt or damages, and costs of the plaintiff: *Provided*, that if such garnishee shall also

Specific articles confessed by garnishee to be valued by jury and judgment for their value.

In what cases garnishee ex-

onerated by  
delivery of  
articles.— R. S.  
c. 6, s. 8.

state in his answer, that said specific property was left, or deposited, in his possession by the defendant as a bailment, or, that he hath tendered said specific articles agreeable to contract and 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 specified in such covenant or agreement ready to be delivered, and is still ready to deliver the same; and such statement shall be admitted by the plaintiff or found by a jury, then in any such case, the garnishee shall be exonerated by the delivery of such specific articles to the sheriff, who shall proceed as if the attachment had been originally levied on the property.

Judgment con-  
ditional, where  
money or ar-  
ticles are due  
or deliverable  
at a future day.  
— R. S. c. 6,  
s. 9.

12. When any garnishee shall declare in his answer, that the money or specific article due by him will become payable or deliverable at a future day, and the same shall be admitted by the plaintiff or found by a jury, in such case conditional judgment shall be entered against the garnishee, and the plaintiff may obtain judgment against the defendant for his demand, but shall not take final judgment against the garnishee without notice by *scire facias*.

Publication  
made for de-  
fendant six  
weeks.— R. S.  
c. 6, s. 11.

13. Upon the return of an original of judicial attachment to the court, if the defendant do not replevy, the court shall cause the proceedings to be made known by publication in some newspaper of the State for six weeks, and after such publication shall have been made, the defendant shall be proceeded against in the same manner as if he had been served with process and failed to appear and plead.

When judicial  
process may is-  
sue.— R. S. c.  
6, s. 12.

14. No judicial process shall be issued against the estate of any person residing without the limits of the State, unless the same be 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.

Attachment  
may issue  
against absen-  
tees exempt  
from arrest,  
who may plead  
without re-  
plevying.

15. Attachments shall extend to persons, executors and administrators excepted, who for any reason are not subject to be arrested nor bound to give bail, provided they be absent from the State, on whatsoever account, so that the ordinary process of law cannot be served on them. *Provided, nevertheless,* That they shall be allowed to defend the suit without replevying the property; but such permission to defend shall not restore to their custody the property attached, but the same shall remain in custody till it be replevied, and be subject to satisfy the plaintiff's recovery as in other cases.

Also to injuries  
to person and  
property in  
certain cases.

16. If any one shall do an injury to the proper person, or property of another, and shall within three months thereafter abscond beyond the limits of the State, or shall, within that time, conceal himself within the State, so that the ordinary process of law cannot be served on him, his estate may be attached to answer the damages for such injury, under the same rules as are prescribed for original or judicial attachments returnable to court, provided the attachment be issued within three months after the injury done.

Within what  
time.



17. If any attachment shall issue under the preceding section, in any other manner or time than is herein allowed, the same shall be void, and the court shall not proceed therein. Such attachment dismissed if improperly issued.

18. Attachments for debts and demands, within the jurisdiction of a justice of the peace, may be issued by and against all such persons, and under the same circumstances, rules, and regulations as are mentioned in the preceding sections of this chapter, with the following modifications of those provisions: Attachment before a justice of the peace.

(1.) The attachment shall be issued by, and returnable before, a justice of the peace, within thirty days from the date thereof: And all the process issuing thereon shall be returnable before a justice of the peace. Returnable within thirty days.

(2.) The replevy bond shall be conditioned to appear before the justice before whom the attachment is returnable, and to abide by and perform the order and judgment which may be made in the attachment. Replevy bond, how conditioned.

(3.) Garnishees shall appear before the justice, and be subject to the like judgment and recovery as hereinbefore provided: *Provided, however,* that, when a conditional judgment shall be rendered against him, the *scire facias* prescribed in the twelfth section shall be for his appearance at such time and place as the justice shall appoint. Garnishee to appear and answer.

(4.) When the estate attached shall, by three freeholders, to be summoned and sworn for that purpose by the officer, be certified on oath to be perishable, and the same shall not be replevied in thirty days after attaching it, then such estate shall be sold at public vendue by the officer, in the manner prescribed, and the proceeds be retained by the officer to await final judgment in the case. Perishable estate to be sold.

(5.) When the garnishee shall, on oath, confess that he has in his 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 any specific articles, then the justice shall immediately order three freeholders to be sworn to inquire of the value of such specific property, and their verdict shall subject the garnishee to the payment of such valuation, or so much thereof as shall be sufficient to satisfy the debt and costs of the plaintiff: *Provided, nevertheless,* that every garnishee who may on oath confess that he has in his hands any specific property of the defendant, left or deposited in his possession, by such defendant, may always exonerate himself by delivering it to the constable or other officer who levied such attachment, or may levy the execution issued thereon: *Provided, further,* that when judgment shall be entered against any garnishee, he shall, on giving security, have the same stay of execution as if he had been original defendant in the suit. Specific articles confessed by garnishee, how valued.

(6.) When the property attached shall be claimed by any other person, and to determine the right thereof a jury may be necessary, the claimant may remove the proceedings to the next county or superior court, as he may choose, where an issue shall be made up and tried by a jury: *Provided, how-* How and when garnishee may be exonerated by delivery of said articles. May stay execution.

Claimant of property attached before a justice may remove proceedings to county or superior court.

Must give bond for costs.

If garnishee deny possession of any property, proceedings to be removed.

Publication for defendant. — R. S. c. 6, s. 13, 14, 15, 16.

Justice to file attachment bond.

When real estate is attached and condemned by a justice, proceedings returned to court. — R. S. c. 6, s. 20.

Property in hands of executor, administrator, or trustee, attachable by bill in equity. — 1852, c. 50.

Creditors may file bill before end of two years. On decree must give refunding bond to executor, &c. — 1852, c. 50.

Lien from time of filing bill. — 1850, c. 50.

Court may require creditor to indemnify executor, &c., against loss, 1852, c. 50.

ever, that the claimant, on removing the same, shall execute bond with sufficient security to pay the costs on his failure to prosecute the same with effect. And when the garnishee shall deny that he owes to, or has in his possession any property of the defendant, and the plaintiff shall, on oath, suggest to the justice the contrary; or when any garnishee shall make such a statement of facts that the justice cannot give judgment thereon, then the justice shall return the proceedings to the next county or superior court, as the plaintiff may choose, in order that proper issues may be made up and tried by a jury; and judgment may be rendered by the court upon the whole cause.

(7.) Upon the return of an attachment before a justice of the peace, if the defendant do not appear and replevy, the justice shall cause the proceedings to be made known by advertisement at two or more public places within the county, for thirty days; and after such publication the defendant shall be proceeded against, as if he had been personally served with process.

(8.) The bond and affidavit taken on issuing the attachment shall be filed by the justice with his official papers.

19. When a constable, or other officer, shall attach any real estate, in any case returnable before a justice of the peace, and the justice shall condemn the same for the satisfaction of the plaintiff's debt, the 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 case of a levy on land under a magistrate's execution.

20. When any debtor, who resides beyond the limits of the State, shall be entitled to any personal estate or effects, or to the use of such estate and effects, in the hands of an executor, administrator, or trustee, or any estate in the hands of any one which cannot be attached at law, or levied on under execution, the creditor may, without obtaining judgment at law, bring his bill in equity against the debtor (making all proper parties according to the course of the court) and have the same decreed to the satisfaction of his debt.

21. The plaintiff may file his bill when the fund is in the hands of an executor or administrator, before the end of two years from his qualification, but shall not have a final decree for payment within that time; and shall execute, on obtaining a decree, if required by the executor or administrator, such a refunding bond as might have been demanded of the debtor himself seeking to get possession of the fund.

22. From the time of filing the bill, the debtor shall not be at liberty to assign his interest in the fund to the injury of the plaintiff.

23. The court, in its discretion, may require of the plaintiff, at any time before or at the decree for satisfaction out of the fund, a full and ample indemnity by bond with security, or otherwise, for the protection of the defendant in whose hands

may be the fund, against all loss which may arise to him from his being required to account by suit out of the State, for the estate or any part thereof which may be decreed to satisfy the plaintiff's debt.

24. No decree shall pass for the plaintiff, unless he prove his debt, notwithstanding any decree *pro confesso*; nor unless he also prove to the satisfaction of the court, that the debtor had not in the State at the filing of the bill, enough estate, on which an attachment at law might have been levied, to satisfy his debt or demand.

Upon what proofs & terms plaintiff may have decree.— 1852, c. 50.

25. The debtor may, at any time before final decree for satisfaction, replevy the property by executing bond with security payable to the plaintiff, to abide by and perform such decree as may be made against him, and thereupon he shall be permitted to plead, answer, or demur to the bill, upon such terms as the court may deem proper, having in view a speedy and just trial of the cause: on which bond the court may, at the passing of the decree, render judgment for the amount decreed against the defendant.

Debtor may replevy before final decree, by giving bond.— 1852, c. 50.

26. The plaintiff shall state specially his debt or demand, as near as he can, and shall make affidavit of the truth of the matters contained in his bill, according to his information and belief.

Plaintiff shall state his debt specially, and make affidavit of the matters in his bill.— 1852, c. 50.

27. Whenever any debt shall be contracted by the master, owner, agent, or consignee of any ship, steamboat, or other vessel, for or on account of any work done, or materials furnished, for the building, repairing, furnishing, or equipping of the same, or for provisions or stores for the same, within this State, or on account of the wharfage and expenses of keeping such ships, steamboats, or other vessels in port, including the expense incurred in employing persons to take charge of the same, such debt shall have a lien on the ship, steamboat, or other vessel, her tackle, apparel, and furniture, and shall be preferred to all other liens thereon, except mariners' wages.

Lien on vessels for work, provisions, &c.— 1854, c. 23, s. 1.

28. Any creditor to whom a debt may be due in manner aforesaid, may proceed against such ship, steamboat, or other vessel by attachment, and cause the same to be seized and held for the satisfaction of his debt, as in other cases of original attachment; and the proceedings in such case shall be thenceforth conducted as in other attachment causes: *Provided*, That the presence of the owner or master of any such vessel shall not prevent the proceeding by attachment, as in case of his absence: but the creditor, his agent, or attorney, before suing out his attachment, shall, in all cases, first verify his debt, and the manner in which it was contracted, by affidavit, and shall enter into bond conditioned for the indemnity of the defendant, in the manner provided by law.

May be attached and held although the owner be present.— 1854, c. 23, s. 1.

- 1 Hay. 365. *When void*, 2 Dev. 343, 2 D. & B. 138, 5 Ire. 374. *Remedy for wrongfully suing*, 3 Hawks, 345. *Irregularities waived*, 2 D. & B. 502, 2 Dev. 343. *What may be attached*, 2 Car. L. R. 254. *Carpenter's tools: when*, 1 Jones, 62. *What not: trusts*, 10 Ire. 295, 3 Ib. 459, 4 Dev. 172; *money in hands of clerk*, 3 Ire. 365; *unliquidated damages owing from garnishee*, 5 Ire. 374; *property of firm for separate debt*, 11 Ire. 407, 4 Dev. 367; *negotiable note*, 11 Ire. 564; *mere rights*, 2 Jones Eq., 9 Ire. 42. *Lien waived by fi. fa.* 3 Mur. 63.
- SECT. 3. 1 Dev. 397.  
 SECT. 5. 9 Ire. 197, 3 Ib. 459.  
 SECT. 7. *Notice creates lien*, Bns. 3. *Garnishee: when liable*, 7 Ire. 438, 9 Ib. 116; *may move to dismiss*, 10 Ire. 174; *what may plead*, 1 Mur. 468; *priority of creditors*, 1 D. & B. 217.  
 SECT. 9. *Practice*, 3 Dev. 96.  
 SECT. 10. *Interpleading*, 6 Ire. 233, 1 D. & B. 202.  
 SECT. 18. (1) 13 Ire. 72, 5 Ib. 175, (7) 7 Ib. 400.

## CHAPTER 8.

### ATTORNEY-GENERAL AND SOLICITORS.

SECTION	SECTION
1. Attorney-general to attend the supreme court and prosecute in third circuit.	5. Shall examine clerk's and register's offices, to see they are properly kept; unless excused by a majority of the justices.
2. Six solicitors appointed; to hold office four years, and prosecute in the circuits.	6. Solicitor to report the condition of the offices.
3. Vacancy in the office of solicitor, how filled.	7. Clerk and register indictable for omission of duty.
4. County solicitor appointed by county court. Term of office and duty.	8. County court to pay solicitors for examination.

Att'y-general to attend supreme court and prosecute in third circuit.—R. S. c. 7, s. 1.

1. THE attorney-general shall attend to all the business which may be carried to the supreme court of the State for adjudication, wherein the State may be concerned or in any manner have an interest. He shall also attend and prosecute in behalf of the State in the superior courts comprising the third circuit.

Six solicitors appointed. To hold office four years, and prosecute in the circuits.—R. S. c. 7, s. 2.

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 shall attend and prosecute in behalf of the State in the respective circuits for which they shall be appointed.

Vacancy in the office of solicitor, how filled.—R. S. c. 7, s. 2.

3. Whenever any vacancy shall happen by the death, removal, or resignation of any of the solicitors in the recess of the legislature, the judge then riding, or who is next to ride, the circuit, wherein such vacancy has happened, shall appoint a solicitor, who shall hold the office until the end of the session of the General Assembly, which shall first happen subsequent to his appointment.

County solicitor appointed by co. court.

4. The court of pleas and quarter-sessions, a majority of the justices being present, shall appoint an attorney properly qualified to act for and in behalf of the State in the county,

who shall hold his office during the term of four years, and shall prosecute all matters cognizable in the court of pleas and quarter-sessions, wherein he shall be appointed, in behalf of the State.

Term of office and duty.

5. The county solicitor, at or shortly before the session of every court in the county, for which he is appointed, shall examine the offices of the register and clerks of the county and superior court, in the presence of the respective officers, to ascertain whether inventories, accounts of sale, accounts current, wills, deeds, bills of sale, reports, official bonds, and all other papers required to be recorded and registered, have been duly recorded and registered; and also whether the several dockets of the courts have been written out and kept in a proper manner: *Provided, however,* that the county court, a majority of the justices being present, may dispense with such examination, and the county attorney shall not make such examination before thirty days after the rise of each court.

Shall examine clerk's and register's offices, to see they are properly kept.

Unless excused by a majority of the justices.—1844, c. 5, s. 1, 2.

6. The county solicitor shall make a faithful report in writing of the several matters hereby directed to be examined, specially stating in what respect, if any, there has been an omission of duty by the officers aforesaid; and his report in relation to the register and clerk of the county court shall be made to the county court, and in relation to the clerk of the superior court to the attorney-general or solicitor of the superior court, every term of the said court.

Solicitor to report the condition of the offices.—1844, c. 5, s. 3.

7. When it shall appear, by such report, that there has been an omission of duty in any of the said officers, the county court or the prosecuting officer in the superior court, if in their or his opinion the public interest requires it, may cause an indictment to be preferred for such reported breach of duty; and on conviction, the defendant shall be fined, or fined and removed from his office, at the discretion of the court; *Provided, however,* that this indictment shall not exempt any of said officers from being indicted for other breaches of duty as prescribed by law.

Cl'k and reg'r indicted for omission of duty.—1844, c. 5, s. 4, 7.

8. The county court shall allow the county solicitor adequate compensation for the duties required of him by the fifth and sixth sections of this chapter, to be determined by the court, a majority of the justices being present, or by any number of justices, which, by special law may be authorized to allow claims against the county.

Co. court to pay solicitors for examination.—1844, c. 5, s. 5.

CHAPTER 9.

ATTORNEYS AT LAW.

SECTION

1. Attorneys at law licensed by judges of supreme court.
2. Persons from other States, licensed, when.

SECTION

3. Attorney to take oaths.
4. To pay a tax for license.
5. To pay costs of suit dismissed for his failure to file a declaration.

## SECTION

6. Guilty of fraud, to pay double damages.
7. Not to take greater tax fees than allowed by law.

## SECTION

8. Justice of the peace not to practise in the county court of his county.
9. Attorney appointed a justice to resign his claim to practise in the county court.

Att'ys licensed by judges of supreme court.—R. S. c. 8, s. 1.

1. 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.

Persons from other States licensed, when.—R. S. c. 8, s. 2.

2. No person coming into this State from any other State, or from any foreign country, with an intention to practise the law, shall be admitted to practise as an attorney, unless he shall have previously resided one year in this State, or 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 unexceptionable moral character.

Attorney to take oaths.—R. S. c. 8, s. 3.

3. Attorneys before they shall be admitted to practise law shall, in open court before the judges thereof, take the oath prescribed for attorneys, and also the oaths of allegiance to the 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.

To pay a tax for license.—R. S. c. 8, s. 4.

4. No attorney shall be permitted to practise until he shall produce the receipt of the proper clerk, showing that he has paid the tax for his license.

To pay costs of suit dismissed for his failure to file a declaration.—R. S. c. 8, s. 5.

5. When a plaintiff shall be compelled to pay the costs of his 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 may be given in evidence in support of such claim.

Guilty of fraud, to pay double damages.—R. S. c. 8, s. 6.

6. If any attorney shall commit any fraudulent practice, he shall be liable in an action on the case to the party injured, and on the verdict passing against him, judgment shall be given for the plaintiff to recover double damages.

Not to take greater tax fees than allowed by law.—R. S. c. 8, s. 7.

7. If an attorney shall knowingly take or receive, directly or indirectly, any other or greater tax fees in civil cases than he is by law entitled to, it shall be deemed a misdemeanor in his profession; and such malpractice being made known to any court, such court shall direct the attorney-general, or solicitors on behalf of the State, to prosecute by indictment for such malpractice; and if such attorney shall be thereupon convicted by the verdict of a jury, he shall be thenceforth dismissed from his practice as an attorney, for one year.

Justice of the peace not to practise in the county court of his county.—R. S. c. 8, s. 8.

8. No court of pleas and quarter-sessions shall admit to the bar of the court, as a practising attorney, any justice of the peace of that county, until he shall first tender to the court a resignation of his office, to be by the court transmitted to the competent authority.

9. Whenever any practising attorney in a court of pleas and quarter-sessions shall accept 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 that court.

Attorney appointed a justice to resign his claim to practise in the county court. — R. S. c. 8, s. 9.

CHAPTER 10.

AUCTIONS AND AUCTIONEERS.

SECTION

1. Auctioneers appointed by county court to give bond for faithful discharge of duty.
2. Duties of auctioneers. To render semiyearly to clerk, sworn accounts of auction sales, and amount of tax.
3. Towns may appoint auctioneers, who shall also give bond and be under like duties.

SECTION

4. Vacancy may be filled.
5. Penalty of two hundred dollars for acting without appointment.
6. What sales exempt from auction tax.
7. Fees not to exceed two and a half per cent. One per cent. to be paid by town auctioneers to the town.

1. THE several courts of pleas and quarter-sessions, a majority of the justices being present, may annually, at the first term, after the first day of April, appoint in their respective counties for the term of one year, not more than three persons to exercise the trade and business of auctioneer therein, each of whom shall execute bond in the sum of five thousand dollars, payable to the State of North Carolina with ample security to be judged of by the court, conditioned that he will faithfully perform all the duties required of auctioneers.

Auctioneers appointed by county court to give bond for faithful discharge of duty. R. S. c. 9, s. 4.

2. It shall be the duty of such auctioneers, while they shall continue in their employment, on the first days respectively of October and April, to render to the clerks of the county courts of their respective counties, a true and particular account in writing of all the moneys made liable to duty by law, for which any goods, wares, or merchandise may have been sold at auction, and also at private sale, where the price of the goods, wares, and merchandise 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; which account shall contain a statement of the gross amount of sales by them made for each particular person or company at one time, the date of each sale, the names of the owners of the goods, wares, and merchandise sold, and the amount of the tax due thereon, which tax they shall pay as directed by law: And which statement shall be subscribed by them and

Duties of auctioneers. To render semiyearly to clerk sworn account of auction sales, and amount of tax. R. S. c. 9, s. 4.

sworn to before the clerk of the said court, who is hereby authorized to administer the oath. And it shall be their further duty to account with and pay to the person entitled thereto, the moneys received on the sales by them made.

Towns may appoint auctioneers, who shall also give bond, and be under like duties.—R. S. c. 9, s. 5.

3. The commissioners of the several incorporated towns of the State may, in their discretion, appoint during the first week in April in every year, as many as three auctioneers for their respective towns, each of whom shall execute bond, to be approved by the commissioners, payable to the State of North Carolina, in like manner, penalty, and condition as is prescribed in the first section; which bond shall be returned by the commissioners to the clerk of the county court, to be by him safely kept.

Vacancy may be filled.—R. S. c. 9, s. 6.

4. In case of vacancies, other auctioneers may be appointed to fill the same, by the authority first appointing, under the rules and regulations above prescribed.

Penalty of \$200 for acting without appointment.—R. S. c. 9, s. 6.

5. No person shall exercise the trade or business of an auctioneer, by selling any goods, wares, or merchandise by auction, or by 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 chapter, on pain of forfeiting to the State, for every such sale, the sum of two hundred dollars, which shall be prosecuted to recovery by the county solicitor.

What sales exempt from auction tax.—R. S. c. 9, s. 1, 2.

6. Nothing in this chapter contained shall extend to any sale by auction of goods, wares, and merchandise made pursuant to, and in execution of, any order, decree, or judgment of the courts of the United States or of this State; or made in consequence of any assignment of property and estate for the benefit of creditors; or made by executors, administrators, or guardians; or made pursuant to any law touching the collection of any tax or duty, or sale of any wrecked goods; or to any article the product of the agriculture of this State, in its natural or unmanufactured state; or to any species of stock or domestic animals; or to any articles of household furniture, or farming utensils which have been in use; but shall extend only to such articles of goods, wares, and merchandise as are the ordinary subject of traffic and sale by merchants and traders.

Fees not over 2½ per cent.—One per cent. to be paid by town auctioneers to the town.—R. S. c. 9, s. 7, 11.

7. The auctioneers shall be entitled to such compensation as may be agreed upon, not exceeding two and a half per cent. on the amount of sales; and the auctioneers of incorporated towns shall retain and pay one per cent. of the gross amount of sales to the commissioners of their respective towns.



CHAPTER 11.

BAIL.

SECTION

1. When and how bail-bond taken and returned. When sheriff shall be special bail.
2. Bail-bonds deemed assigned to plaintiff.
3. Bail shall be special, and proceeded against by *sci. fa.*
4. Shall not plead *non est factum* but on affidavit.
5. May surrender principal before final judgment. Discharged thereby in civil cases; but not in criminal, after default.
6. Persons surrendered may give other bail. Exception thereto may be taken. Consequence in civil cases; — in criminal cases. If defendant be released, sheriff indictable. Duty

SECTION

- of prosecuting officer to collect forfeiture, and prosecute.
7. On return that principal is confined, how bail may discharge themselves. Debtor may be detained, where confined by order of court, on serving notice of order. Debtor surrendered after final judgment not committed, but on affidavit, as on a *ca. sa.*
8. Debtor confined for want of bail may give bail. Bond returned to next court.
9. Matters of defence good for principal, good for bail.
10. Costs paid by bail in certain cases.
11. Bail not discharged by amendment of process, unless, &c.

1. WHEN a 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 courts of pleas and quarter-sessions, whereby the sheriff or other officer shall be commanded to take the body of the defendant to answer to an action, bill, or petition in any of the said courts, such sheriff (or other officer) shall take bond with sufficient security in double the sum for which such person shall be held in arrest, (executors and administrators excepted,) and shall return the bond with the writ; and in case the sheriff or other officer shall fail 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, shall be deemed and stand as special bail, and the plaintiff may proceed to judgment according to the rules hereinafter prescribed.

When and how bail-bond taken and returned.

2. Upon the return of bail-bonds into court, they shall be deemed, without any indorsement to that effect, to be assigned to the plaintiff therein named.

When sheriff shall be special bail. — R. S. c. 10, s. 1.

3. Bail in civil cases taken according to the directions of this chapter, shall be deemed special bail, and as such liable to satisfy the recovery of the plaintiff: but he shall not sue out execution against the bail, until a *scire facias* shall have been made known to the bail: and then after judgment for the plaintiff in such *scire facias*, execution may issue against the principal and sureties, or any of them.

Bail-bonds deemed assigned to plaintiff. — R. S. c. 10, s. 2. Bail shall be special, and proceeded against by *sci. fa.* — R. S. c. 10, s. 3. — 1844, c. 31, s. 3.

4. When any *scire facias* against bail shall be returned executed, they may appear and plead as in other cases; but the plea of *non est factum* shall not be received, unless the truth thereof be verified by affidavit filed with the plea.

Shall not plead *non est factum* but on affidavit. — R. S. c. 10, s. 6.

May arrest and surrender principal before final judgment.

5. The bail shall have liberty, at any time before execution awarded against him, to surrender to the court from which the process issued, or to the sheriff having such process to return, during the session, or in the recess of such court, the principal, in discharge of himself; and such bail shall, at any time before such execution awarded, 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 or court as aforesaid; and the sheriff is hereby required to receive such surrender, and hold the body of the defendant in custody, as if bail had never been given: *Provided, however*, that, in criminal proceedings, the surrender by the bail, after the recognizance forfeited, shall not have the effect to discharge the bail, but the forfeiture may be remitted in the manner provided for.

Discharged thereby in civil cases: but not in criminal.— R. S. c. 10, s. 4.— 1848, c. 7.

Persons surrendered may give other bail.

Exception thereto may be taken. Consequence in civil cases. In criminal cases.

If defendant be released, sheriff indictable.

Duty of prosecuting officer to collect forfeiture, and prosecute.— R. S. c. 10, s. 5.

6. Any person surrendered in the manner specified in the foregoing section, shall have liberty, at any time, before final judgment against him, to give bail; and in case of such surrender, the sheriff shall take the bail-bond or recognizance to the succeeding court; and in case the sheriff shall release such person without bail, or the bail returned be held insufficient, on exception taken the same term to which such bail-bond shall be returned, and allowed by the court, the sheriff, having due notice thereof, shall be deemed and taken, in civil cases, as special bail; and, in criminal cases, the sheriff shall forfeit to the State the sum of one hundred dollars, to be recovered on motion in like manner as forfeitures for not returning process, and be subject to be indicted for misdemeanor in office; and it shall be the duty of the prosecuting officer to collect the forfeiture; and, in case of a release, the sheriff shall be liable for an escape, and prosecuted as provided for in sections thirty-five and thirty-six of chapter thirty-four, entitled "Crimes and Punishments."

On return that principal is confined, how bail may discharge themselves. Debtor may be detained, where confined by order of court, on serving notice of order. Debtor surrendered after final judgment not committed but upon affidavit as in *ca. sa.*

7. When the sheriff shall return upon a *scire facias*, in a civil case, that the principal is imprisoned by virtue of any process, civil or criminal, and he shall be then actually confined in prison, this shall, if then pleaded by the bail, be deemed a surrender of the principal and discharge of the bail. And the court, on motion of the plaintiff, shall order that the debtor be detained in custody where he shall be a prisoner, until the plaintiff's judgment and costs of *scire facias* shall be paid, or he be otherwise discharged according to law; a copy of which order being served on the keeper of the prison where the debtor may be confined, before his releasement, shall be sufficient authority for him to detain the prisoner till such order be complied with: *Provided, always*, that no debtor, after final judgment against him, if surrendered in the manner allowed by this chapter, shall be committed to the custody of the sheriff, at the instance of the plaintiff, unless the plaintiff shall make such affidavit as would entitle him to issue a *capias ad satisfaciendum*.

8. If any person for want of bail, shall be lawfully committed to jail, at any time before final judgment, the sheriff, or other officer having him in custody, may take bail and discharge him; and the bail-bond shall be regarded, in every respect, as other bail-bonds, and shall be returned and sued on in like manner; and the officer taking it shall make special return thereof, with the bond at the first court which is held after it is taken.

Debtor confined for want of bail may give bail. Bond returned to next court.

9. Every matter which would entitle the principal to be discharged from arrest, may be pleaded by the bail in exoneration of his liability.

Matters of defence good for principal, good for bail.

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

Costs paid by bail in certain cases. — R. S. c. 10, s. 8.

11. No amendment of process shall discharge the bail of the party arrested thereon, unless the amendment be to enlarge the sum demanded beyond the sum expressed in the bail-bond.

Bail not discharged by amendment of process, unless, &c.

SECT. 1. *Bond: form of*, 8 Ire. 495, 3 Ib. 181, 2 Hawks, 167; *only one surety*, 4 Hawks, 98. *When sheriff liable as bail*, 1 Ire. 463, 5 Ib. 67, 4 Dev. 412, Ib. 475, 3 Hawks, 244, Bus. 237.

SECT. 3. *When sci. fa. to issue*, Bus. 131; *to what county*, 3 Dev. 247. *Rights of bail*, Bus. 143, 4 D. & B. 423, 3 Ire. 177; *discharge of*, 3 Dev. 155.

SECT. 4. *Form of sci. fa.* 8 Ire. 233. *Pleas to*, 8 Ire. 172; *discharge of principal as insolvent*, 10 Ire. 71; *irregularity*, 5 Ire. 584.

SECT. 5. *Surrender*, 3 Dev. 431, Ib. 392, 1 Ib. 91, 2 Ib. 254.

## CHAPTER 12.

### BASTARD CHILDREN.

#### SECTION

1. A single woman big with child, &c., refusing to declare the father, to pay a fine, and give security, &c. If she declare the father, he shall give security to perform the orders of court.
2. Persons charged bound over, though child not born.
3. Process to issue against the person charged and failing to appear.
4. Issue made to try paternity. If found against him, or there be no issue,

#### SECTION

- he shall maintain the child and pay costs.
5. Appeal by State.
6. Examination to be within three years after birth of child.
7. Execution may issue for maintenance of bastard.
8. Illegitimate children may be legitimated by county or superior court. Decree recorded.
9. Effects of such legitimation. Legitimate in all respects, as to the father.

1. ANY justice of the peace, upon his own knowledge, or information made to him, that any single woman within his

A single woman big with child, &c., re-

fusing to declare the father, to pay a fine and give security, &c.

If she declare the father, he shall give security to perform the orders of court.—R. S. c. 12, s. 1.—1850, c. 14.

Persons charged bound over, though child not born.—R. S. c. 12, s. 2.—1850, c. 14.

Process to issue against the person charged and failing to appear.—R. S. c. 12, s. 3.

Issue made to try paternity.

If found against him, or there be no issue, he shall maintain the child and pay costs.—R. S. c. 1, s. 4.—1850, c. 15.

county is big with child, or delivered of a child or children, may cause her to be brought before him, (or any other justice of the county,) to be examined upon oath respecting 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, otherwise she shall be committed to prison until she shall declare the same, or pay the fine aforesaid and give such bond; but if such woman shall, upon oath, accuse any man of being the father of such child or children, he shall enter into recognizance, with sufficient security, before the said justice, for his appearance at the next term of the county court, to stand to, abide by, and perform whatever order the court may make for the maintenance of said bastard child or children, and for the indemnification of the county against any charges for such maintenance, otherwise he shall be committed to prison until he enters into such recognizance.

2. The justice aforesaid, at his discretion, may bind to the next county court him that is charged as aforesaid to have begotten a bastard child, which shall not then be born, and the county court may continue said person upon security until the woman shall be delivered, that he may be forthcoming when the child is born.

3. Whenever a justice, as aforesaid, shall bind any person, charged with being the father of a bastard child, to the next county court, as above prescribed, and he shall not appear agreeable to his recognizance, or whenever a woman shall swear a child to a man in manner aforesaid, and he shall abscond, or so conceal himself that the process of the justice cannot be served on him, the county court, on the return of the recognizance or other proceedings from the justice, may order their clerk to issue a *caipias* or an attachment, (at the discretion of the court,) to any county within the State, against the person so charged; and the same proceedings shall be had thereon as in other cases of *caipias* or attachment.

4. Whenever any man, in the manner aforesaid, shall be accused by a single woman of being the father of her bastard child or children, upon the return to court of the recognizance, *caipias*, or attachment, as the case may be, he shall be entitled to have an issue made up to try whether he be the father of such child or children; upon the trial of which, the examination of the woman, as aforesaid, taken and returned to court, shall be presumptive evidence against the person accused, subject to be rebutted by other testimony which may be introduced by the defendant; and if the jury shall find that the person 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, with sufficient security, payable to the State of North Carolina, to perform said order, and to in-

demnify the county where such child or children shall be born, from charges for his or their maintenance, and may be committed to prison until he find sureties for the same, and shall be liable for the costs of the issue: and the like order may be made by the court, and such security required of any man who stands charged as above, and does not apply for such issue to be made up; and in default of security, he may be committed to prison as above prescribed.

5. In the trial of all such issues, the county solicitor may appeal to the superior court whenever he shall think that justice has not been obtained.

Appeal by State.—R. S. c. 12, s. 5.

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

Exam'n'n to be within three years after birth of child.

7. When the court shall charge the reputed father of a bastard child with its maintenance, and the father shall neglect to pay the same, then the county court, notice being served on the defendant at least ten days before the sitting of court, or such notice being returned by the sheriff that the defendant is not to be found, may order an execution against the goods, chattels, lands, and tenements of the father, for such sum as the court shall adjudge sufficient for the maintenance of the bastard child or children: *Provided*, that the party aggrieved by such non-payment shall apply for the same.

—R. S. c. 12, s. 6. Execution may issue for the maintenance of bastards.—R. S. c. 12, s. 7.

8. The putative father of any illegitimate child, who was unmarried at the time of its birth, may apply by petition in writing, to the county or superior court of the county in which the father may reside, praying that such child may be declared legitimate; and if it shall appear that the petitioner is reputed the father of the child, the court may thereupon declare and pronounce the child legitimated; and the clerk shall record the decree.

Illegitimate children may be legitimated by co. or sup'r court.

Decree recorded.—R. S. c. 12, s. 8.—1838, c. 4.

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 to inherit from the father only, his real estate, and also to entitle such child to the personal estate of his father, in the same manner as if he had been born in lawful wedlock; and in case of death and intestacy, the real and personal estate of such child shall be transmitted and distributed according to the statute of descents and distribution, among those who would be his heirs and next of kin, in case he had been born in lawful wedlock.

Effects of such legitimation.

Legitimate in all respects as to the father.—R. S. c. 12, s. 9.

SECT. 1. *Venue*, 10 Ire. 350, 12 Ib. 121. *Who liable*, 11 Ire. 32. *Who may swear: married woman*, 13 Ire. 502, Bus. Eq. 213, 3 Hawks, 263; *woman of color*, 9 Ire. 488. *Form of proceeding*, 4 Ire. 242, 2 Ib. 46. *Examination not signed*, 4 Ire. 484. *Refusal to declare father*, 1 Jones, 129.

SECT. 4. *Tender of issue waives irregularity*, 2 D. & B. 368, 7 Ire. 265. *Evidence*, 13 Ire. 382. *Payment to mother*, 4 D. & B. 371. *Release by*, 12 Ire. 264.

SECT. 7. *Summary remedy cumulative*, 1 D. & B. 412.

SECT. 8. 1 Ire. Eq. 28, 4 Dev. 110.

## CHAPTER 13.

## BILLS, BONDS, AND PROMISSORY NOTES.

## SECTION

1. Bills, bonds, and notes, for money, negotiable as inland bills of exchange. Indorsee may sue in case: or in debt where obligee may thus sue.
2. Orders in writing; drawer or acceptor liable thereon. Protest for non-acceptance, and notice necessary, before suit against drawer.
3. Days of grace on bills, &c., except those payable on demand.
4. Interest on bills, &c.; when to accrue.
5. Bills, &c., payable on demand, to bear interest.

## SECTION

6. Also contracts for delivery of specific articles.
7. Also bills of exchange from time when payable.
8. Damages on protested bills of exchange.
9. Protest of notary, &c., evidence of demand, &c.
10. Indorsers of negotiable securities liable as sureties.
11. Bonds payable to clerk, &c., for benefit of suitors, suable in name of State.

Bills, bonds, and notes for money, negotiable as inland bills of exchange.

1. ALL notes signed by any person, body 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, body corporate, or the servant or agent of any corporation, banker, merchant, or trader, shall promise to pay any person, body corporate, or the servant or agent of any corporation, banker, merchant, or trader, the money mentioned in such note, shall be construed to be, by virtue thereof, due and payable to such person, body corporate, or the servant or agent of any corporation, banker, merchant, or trader, to whom the same is made payable; and the person, body corporate, or the servant or agent of any corporation, banker, merchant, or trader, to whom such money is payable, may maintain an action for the same, as they might upon inland bills of exchange; and the same, as likewise all bonds, bills, and notes for money, with or without seal, and expressed, or not, to be payable to order and for value received, may be assignable over in like manner as inland bills of exchange are by custom of merchants in England: and the person, body corporate, or the servant or agent of any corporation, banker, merchant, or trader, to whom such promissory note, bill, bond, or sealed note is assigned or indorsed, may maintain an action on the case against the person, body corporate, or the servant or agent of any corporation, banker, merchant, or trader, who shall have signed such promissory note, bond, bill, or sealed note, or any who shall have indorsed the same, as in cases of inland bills of exchange: *Provided, always,* that the indorsee or assignee of any bill, bond, or note, under seal, may maintain an action of debt on the same in his own name, as indorsee or assignee, provided the original obligee could have maintained an action of debt on the same bill, bond, or note with seal.

Indorsee may sue in case.

Or in debt where the obligee may thus sue.—R. S. c. 13, s. 1-3.

2. When any person by order in writing signed by him, shall direct the payment of any sum of money in the hands or possession of any other person, to the bearer, or any person whatsoever, the money therein specified shall, by virtue thereof, be due and payable to such person to whom the same is drawn payable, and may be put in suit against him who shall draw the same, or against the person on whom the same shall be drawn, after the acceptance thereof by him by whom the same shall be made payable, and damages may be recovered: *Provided, nevertheless*, that none shall commence any suit against him 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; and if suit shall be brought on such order before notice and refusal to pay as aforesaid, the plaintiff shall be nonsuited.
3. All bills of exchange payable within the State, at sight, or at a future day certain, in which there is no express stipulation to the contrary, shall be entitled to days of grace as the same are allowed by the custom of merchants on foreign bills of exchange payable at the expiration of a certain period after date or sight: *Provided*, that no days of grace shall be allowed on any bill of exchange, promissory note, or draft payable on demand.
4. All bonds, bills, notes, bills of exchange, liquidated and settled accounts, shall bear interest from the time they become due, provided such liquidated and settled accounts be signed by the debtor, unless it be specially expressed that interest is not to accrue until a time mentioned in the said writings or securities.
5. All bills, bonds, or notes payable on demand, shall be held and deemed to be due when demandable by the creditor, and shall bear interest from the time they are demandable, unless otherwise expressed.
6. All securities for the payment or delivery of specific articles, shall bear interest as moneyed contracts; and the articles shall be rated by the jury at the time they become due.
7. Bills of exchange which shall be drawn or indorsed in the State, and shall be protested, shall carry interest, not from the date thereof, but from the time of payment therein mentioned.
8. The damages on such protested bills shall be as follows: that is to say, where the bill shall be drawn or indorsed in this State upon any person or corporation in any other of the United States, or in any of the territories thereof, three per centum upon the principal sum; where such bill shall be drawn or indorsed upon any person or corporation in any other place in North America, (excepting the north-west coast of America,) or in any of the West India or Bahama Islands, ten per cent. upon the principal sum; where such bill shall be drawn or indorsed upon any person or corporation in the island of Madeira, the Canaries, the Azores, the Cape de Verd

Orders in writing,—drawer or acceptor liable thereon.

Protest for non-acceptance, and notice thereof before suit against drawer.—R. S. c. 13, s. 2.

Days of grace on bills, &c., except those payable on demand.—1848, c. 9.

Int'rest on bills, &c., when to accrue.—R. S. c. 13, s. 4.

Bills, &c., payable on demand, to bear interest.—R. S. c. 13, s. 5.

Also contracts for delivery of articles.—R. S. c. 13, s. 6.

Also bills of exchange from time when payable.—R. S. c. 13, s. 6.

Damages on protested bills of exchange at various places, R. S. c. 13, s. 8.—1840, c. 1.

Islands, or in any other State or place in Europe or South America, fifteen per cent. on the principal sum; and where such bill shall be drawn or indorsed on any person or corporation in any other part of the world, twenty per cent. on the principal sum.

Protest of notary, &c., evidence of demand, &c. — R. S. c. 13, s. 10.

Justices and clerks may protest, when.

9. In all actions wherein it may be necessary to prove a demand upon, or notice to, the drawer, or indorser 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 against the drawer or indorser thereof, the protest of a notary-public, or, for want of a notary-public, of a justice of the peace, clerk of a court of record, or clerk and master, setting forth that he made such demand, or gave such notice, and the manner in which he did the same, shall be *prima facie* evidence that such demand was made, or notice given in manner set forth in the protest.

Indorsers of negotiable securities liable as sureties. — R. S. c. 13, s. 11.

10. Whenever any bill, or negotiable bond, or promissory note, shall be indorsed, such indorsement, unless it be otherwise plainly expressed therein, shall render the indorser liable as surety 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 indorser: *Provided*, that nothing herein contained shall in any respect apply to bills of exchange, inland or foreign.

Bonds payable to clerk, &c., for benefit of suitors, suable in name of State.

11. Bonds and other obligations taken in the course of any proceeding in law or equity, under the direction of the court, and payable to any clerk, commissioner, or officer of the court, for the benefit of the suitors in the cause, or others having an interest in such obligation, may be put in suit in the name of the State.

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SECT. 1. *What negotiable*, 2 D. & B. 338, 4 Dev. 123. *What not: where no promise to pay*, 2 D. & B. 239; *for money and other things*, 1 Jones, 357; *for bank-stock*, 2 D. & B. 513; *payment contingent*, 3 Hawks, 458. *Payee: bond to A. or bearer*, 11 Ire. 409; 7 Ib. 262; Bus. 138; *blank for name of*, 2 Dev. 473. *When due*, 11 Ire. 564, Bus. 422, Ib. 405. *Indorsement*, Bus. 423; *out of the State*, 6 Ire. 167; *in blank*, 1 Ire. 219, 4 Ib. 266. *Executor may indorse*, 1 Mur. 133. *Rights of indorsers inter se*, 5 Ire. 397, 4 D. & B. 396, 2 Hawks, 290, 3 Dev. 228. *Rights of indorsee*, 2 D. & B. 283. *Note payable at particular place*, 2 Jones, 23, 13 Ire. 75. *Failure of consideration*, 2 D. & B. 338. *Sale without indorsement*, 12 Ire. 324. *Suit by assignee*, 11 Ire. 227.

SECT. 2. *Liability of acceptor*, 4 Dev. 357. *Notice of protest to drawer*, 1 Ire. 262; *on inland bill*, 2 Ire. 134; *waived*, 3 Ire. 347; *where to be sent*, Bus. 371, 5 Ire. 61C, 3 Hawks, 453; *to fraudulent indorser*, 2 Dev. Eq. 154; *form of*, 2 Hawks, 560; *how proved*, 2 Dev. 67.

SECT. 3. *Bonds: days of grace on*, 3 Hawks, 10, Ib. 465.

SECT. 5. 11 Ire. 564.

SECT. 8. 5 Ire. 551.

SECT. 10. 11 Ire. 62; 2 Jones, 29.



CHAPTER 14.

BOATS AND CANOES.

SECTION

1. Trespass on boats, &c. Penalty and damages.

SECTION

2. Slaves guilty, to be whipped.  
3. Penalty not to extend to certain cases.

1. ANY person who shall take away from any landing or other place where the same shall be, or shall loose, unmoor, or turn adrift from the same, any boat, canoe, or pettiagua, belonging to or in the lawful custody of any person; or any person who shall direct the same to be done without the consent of the owner, or the person having the custody or possession of such boat, canoe, or pettiagua, shall forfeit and pay to such owner, or person having the custody and possession as aforesaid, the sum of two dollars; and the owner may also have his action for such injury.

Trespass on boats, &c. Penalty and damages.—R. S. c. 14, s. 1, 2.

2. If any slave shall offend against the provisions of the above section, and be thereof convicted, he shall be whipped, not exceeding thirty-nine lashes.

Slaves guilty, to be whipped.—R. S. c. 14, s. 2.

3. The penalties aforesaid shall not extend to any person who shall press any boat, canoe, or pettiagua by public authority; nor to any slave taking the same by order of his master or overseer.

Penalty not to extend to certain cases.—R. S. c. 14, s. 3.

CHAPTER 15.

BOOK DEBTS.

SECTION

1. In what actions, for what sums, and within what times, book accounts may be proved by plaintiff or defendant.

2. Or by executors and administrators. How proved by them. Time enlarged for such proof, if two years

SECTION

have not elapsed before death of creditor.  
3. Copies of accounts evidence, unless notice to produce original.  
4. Books admissible in all courts, and contestable as other evidence.

1. WHEN any person shall bring his suit in debt, or in case, upon a contract, or any person shall plead, or give notice of, a set-off, for goods, wares, and merchandise by him sold and delivered, or for work done and performed, he shall file his account with his declaration, or with his plea or notice of set-off, and if upon the trial of the issue, or executing a writ of inquiry of damages in such action, he shall declare upon his corporal oath, that the matter in dispute is a book account,

In what actions, for what sums, and within what times, book accounts may be proved by plaintiff or defendant.—R. S. c. 15, s. 1, 5, 6.

and that he hath no means to prove the delivery of any of the articles which he then shall propose to prove by himself, but by this book; in that case, such book may be given in evidence, if he shall make out by his own oath, that it 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 opposing party all just credits; and such book and oath shall be received as evidence for the several articles so proved to be delivered within two years next before the commencement of the suit, but not for any article of a longer standing, nor for any greater amount than sixty dollars.

Or by executors and administrators.

How proved by them.

Time enlarged for such proof, if 2 years have not elapsed before death of creditor.—R. S. c. 15, s. 2.

Copies of accounts evidence, unless notice to produce original.—R. S. c. 15, s. 3.

Books admissible in all courts, and contestable as other evidence.—R. S. c. 15, s. 4.

2. In suits where executors and administrators are parties, such book account for all articles delivered within two years previous to the death of the deceased, may be proved under the like circumstances, rules, and conditions; and in that case, the executor or administrator may prove by himself, 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 articles which he shall propose to prove by 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 therein mentioned: *Provided, however,* That if two years shall not have elapsed previous to the death of the deceased, the executor or administrator may prove the said book account, if the suit shall be commenced within three years from the delivery of the articles: *And provided, further,* That whenever by the aforesaid proviso the time of proving a book account in manner aforesaid is enlarged as to one party, to the same extent shall be enlarged the time as to the other party.

3. A copy from the book of accounts proved in manner above directed, may be given in evidence in any such action or set-off as aforesaid, and shall be as available as if such book had been produced, unless the party opposing such proof shall give notice to the adverse party or his attorney, at the joining of the issue, or twenty days before the trial, that he will require the book to be produced at the trial; and in that case no such copy shall be admitted as evidence.

4. The evidence made admissible by this chapter in suits at law, is hereby declared to be admissible to prove the same matters in any court or cause; *Provided, always,* That the same may be confronted and contested as other evidence.

SECT. 1. *P/f. must prove delivery,* 11 Ire. 416. *Price,* 3 Ire. 77. *All just credits,* 13 Ire. 461. *Amount over \$60 reduced by credits,* 4 Ire. 110.

SECT. 2. Dev. 317.

SECT. 3. 3 Ire. 243.

SECT. 4. Mur. 414.

CHAPTER 16.

BURNING WOODS AND HUNTING.

SECTION

1. No person to fire woods, except his own. Notice thereof to be given.
2. Penalty. Misdemeanor.
3. Penalty for killing wild deer between

SECTION

- twentieth of February and fifteenth of August.
4. Penalty for hunting on land of another after advertisement forbidding.

1. No person shall set fire to any woods, except it be his own property; nor in that case, without first giving notice in writing to all persons owning lands adjoining to the wood lands intended to be fired, at least two days before the time of firing such woods, and also taking effectual care to extinguish such fire before it shall reach any vacant or patented lands near to or adjoining the lands so fired.

No person to fire woods, except his own. Notice thereof to be given.—R. S. c. 16, s. 1.

2. Every person wilfully offending against the provisions of the preceding section shall, for every such offence, forfeit and pay to any person who will sue for the same, fifty dollars, and be liable to any one injured in an action on the case, and shall moreover be deemed guilty of a misdemeanor.

Penalty. Misdemeanor.—R. S. c. 16, s. 1.

3. If any person shall kill or destroy any deer running wild in the woods or unfenced grounds, unless on his own lands, by gun or otherwise, between the twentieth day of February and the fifteenth day of August next succeeding, he shall forfeit and pay for every offence, four dollars, to any person who will sue for the same; and in case the offender be a slave, his owner shall pay a like penalty.

Penalty for killing wild deer between 20th Feb. and 15th Aug.—R. S. c. 56, s. 1.

4. If any person shall hunt, with gun or dogs, on the lands of another, without leave obtained from the owner, he shall for every offence forfeit and pay ten dollars to the party aggrieved: *Provided*, That no such recovery shall be had, unless the owner of the land, by advertisement posted up in two or more public places, have forbidden the person so hunting, by name, or all persons generally, to hunt on his land.

Penalty for hunting on land of another after advertisement forbidding it.—R. S. c. 56, s. 2.

SECT. 1. N. C. T. R. 263; 1 Hawks, 60.

CHAPTER 17.

CATTLE, AND OTHER STOCK.

SECTION

1. Owner of stock to have a mark or brand: to be recorded.
2. Penalty for killing in the woods and

SECTION

- not showing head, ears, and hide, in two days.
3. Cattle not to be driven into this, from

## SECTION

any other State, between first of April and last day of November. Penalty five dollars. Non-residents within five miles of, or owning land in, the State, exempt from penalty, when.

4. Cattle not to be driven from certain places into the highlands, when, &c.
5. When driven from one part of the State through another, must be certified to be healthy, and whence

## SECTION

driven, &c. Misdemeanor for justice to grant certificate, without affidavit.

6. Stone-horses and stone-mules two years old not to go at large; penalty twenty dollars.
7. Remedy, before justice, for stock killed on railroads by engines, &c.
8. For sheep injured by dogs.
9. Ignorance, of dogs' vicious habits, no defence.

Owner of stock to have a mark or brand: to be recorded.—R. S. c. 17, s. 1.

1. EVERY person who hath any horses, cattle, hogs, or sheep, shall have an ear-mark or brand different from the ear-mark and brand of all other persons, which he shall record with the clerk of the county court of the county where his horses, cattle, hogs, or sheep are; and he shall brand all horses eighteen months old and upwards with the said brand, and ear-mark all his hogs and sheep six months old and upwards with the said ear-mark; and ear-mark or brand all his cattle twelve months old and upwards. And if any dispute shall arise about any ear-mark or brand, the same shall be decided by the record thereof.

Penalty for killing in the woods and not showing head, ears, and hide in two days.—R. S. c. 17, s. 2.

2. If any person shall kill any neat cattle, sheep, or hogs in the woods, he shall, within two days, show the head and ears of such hog or sheep, 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 any person who will sue for the same.

Cattle not to be driven into this from any other State, between 1st April and last day of November.

Penalty, § 5.

3. If any person who shall be a resident citizen of another State or one of the territories, shall drive or cause to be driven into any county in this State, any horses, mules, hogs, cattle, or sheep, between the first day of April and the last day of November, and suffer them to run at large in any marsh or forest range in this State, he shall forfeit five dollars, for each head so permitted to run at large, to any one who may sue for the same, or proceed by attachment, in case the offender is not to be found. *Provided, however,* that this section shall not apply to persons actually residing within five miles of the State line, nor to any non-resident, who, for the time being may own in said county any estate in land for one year, or other higher estate, unless such non-resident shall bring into the range more than at the rate of twenty head of any of said beasts, for every two hundred acres of land owned by him in manner aforesaid, in said county.

Non-residents within 5 miles of, or owning land in the State, exempt from penalty, when.—R. S. c. 17, s. 3.—1838, c. 52, s. 1, 2.—1846, c. 58.

Cattle not to be driven from certain places into the highlands, when.—R. S. c. 17, s. 4.

4. No person shall drive any cattle from those parts of this, or any other 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, under the penalty

of four dollars for each head of cattle so driven, to be recovered as last aforesaid.

5. No person shall drive any cattle from any part of the State through any other part thereof, without first obtaining and carrying with him a certificate under the hands and seals of two justices of the peace of the county where such cattle were severally purchased or collected from range, accompanied with an affidavit of the owner setting forth the place 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; 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 such affidavit of the owner, it shall be deemed a misdemeanor in office.

When driven from one part of the State through another, must be certified to be healthy, &c.

Misdemeanor for justice to grant certificate, without affidavit. — R. S. c. 17, s. 5.

6. No person shall let go at large any stone-horse or stone-mule of two years old or upwards, upon penalty of forfeiting twenty dollars to the taker up of any such stone-animal, provided the same be found running at large not within the confines of any fence, water, marsh, or swamp.

Stone-horses and mules 2 years old not to go at large. Penalty \$20. — R. S. c. 17, s. 6.

7. When any cattle or other live-stock shall be killed, or otherwise injured, by the engines or cars running upon any railroad, the owner may 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 railroad company; and upon return thereof, such justice shall cause two freeholders to be summoned, who after being duly sworn by him shall hear evidence, and upon proof of such injury, shall assess the amount of damages which the owner shall have sustained; and the justice shall enter judgment, and issue execution therefor against the said company.

Remedy for justice for stock killed on railroads, &c. R. S. c. 17, s. 7.

8. Upon complaint made to a justice of the peace by any person that his sheep have been killed or damaged by a dog, the justice shall issue his warrant directed to any lawful officer, commanding him to bring before said justice, within thirty days from the date of said warrant, the owner of such dog, or the master of any slave, or parent of any minor child, reputed to be the owner; and the justice shall summon to appear, at the same time and place, three freeholders, who, together with himself, shall hear the testimony of both complainant and defendant; and if upon the trial, the justice and a majority of the freeholders are satisfied that such damage has been done by the dog of the defendant, or by the dog of the slave or minor child of the defendant, the justice shall render judgment against the defendant, in favor of the complainant, for a sum not exceeding twice the amount of the real damage sustained, and issue execution therefor.

For sheep injured by dogs. — 1854, c. 47.

9. Ignorance of the vicious habits or character of the dog shall be no defence, in actions arising under the preceding section.

Ignorance of dog's vicious habits no defence.

## CHAPTER 18.

## CHARITIES.

## SECTION

1. Trustees of charities to return account of their trusts to county court.
2. If they fail, or mismanage their trusts, attorney-general or solicitor shall call them to account in equity.

## SECTION

3. May be sued at the suggestion of two citizens.
4. Attorney-general and solicitor allowed fees in such cases.

Trustees of charities to return account of their trusts to county court. — R. S. c. 18, s. 1. — 43 Eliz. c. 4.

1. WHEN real or personal property may have been 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 court of pleas and quarter-sessions of the county, where the charity is to take effect, at the first term which shall be held after the first day of January in each year, to be filed among the records of the court.

If they fail, or mismanage their trusts, attorney-gen. or solicitor shall call them to account in equity. — R. S. c. 18, s. 2.

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 of the court to give notice thereof to the attorney-general or solicitor, who represents the State in the superior court of law for that 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 administration of the fund and the execution of the trust.

May be sued at the suggestion of two citizens. — R. S. c. 18, s. 3.

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.

Att'y-general and solicitor allowed fees in such cases. — R. S. c. 18, s. 4.

4. The court may allow fees to the attorney-general or solicitor for his services, to be paid by the trustees, the estate, or the county, as shall be ordered by the court.

SECT. 1. *What is a charity: emancipation, &c.*, 1 Ire. Eq. 436, 6 Ib. 130; *free school*, 2 Ire. Eq. 9, 1 Hawks, 96; *the poor*, 2 Ire. Eq. 210. *Construction cy pres*, 2 Ire. Eq. 255; *Uncertainty*, 4 Ire. Eq. 19, 1b. 26, Bus. Eq. 65, 2 Ire. Eq. 255.

CHAPTER 19.

CLERKS OF THE COUNTY AND SUPERIOR COURTS.

SECTION

SECTION

1. Clerks of county and superior courts, when and how elected. Returns of election, how made.
2. Who qualified to vote.
3. Sheriff to declare the persons elected. Clerks to hold office four years. Who to decide in case of a tie, and contested elections.
4. Clerks to give bonds and take oaths. On failure, court to appoint another.
5. Vacancies in clerkship of superior and county court, how filled. How in clerkship of county court between terms.
6. In certain cases twelve justices may accept clerk's bond, unless, &c.
7. Judge appointing in vacation may empower two justices to qualify and take bond, who shall return bond, &c., to next court.
8. Clerks to give bond in fifteen thousand dollars, for faithful discharge of every duty.
9. How bonds of the several clerks shall be proved, and where deposited.
10. Registered.

11. Kept as records are.
12. Renewed annually. Clerks to produce receipts for all public moneys paid before renewing.
13. Penalty for acting without qualifying.
14. Going out of office, to transfer records, &c., to successors,—or when the office is vacant, to whom the court may appoint. Judge may give order for delivery of records, &c. Penalty for not delivering records, &c., one thousand dollars.
15. Clerk's office to be kept at court-house. Deputies how qualified; to act in case of death of clerk.
16. To whom clerks shall resign.
17. County courts, in certain cases, may remove their clerks and appoint others.
18. When clerk of county court removes, how proceeded against.
19. Clerks going out of office, having failed to perform their duties, court may cause duties to be done and recover the amount paid for such service.

1. ON the first Thursday of August, in the year one thousand eight hundred and fifty-seven, 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 and regulations as polls are opened and held for members of the General Assembly; and the returns of the polls shall be made in like manner and time, and under the same penalties for omission, recoverable in like manner and by the same persons, as in elections of members of the General Assembly.

Clerks of county and superior courts, when and how elected.

Returns of election, how made.—R. S. c. 19, s. 1.

2. All persons qualified to vote for members of the house of commons in the General Assembly, shall be entitled to vote for clerks of the county and superior courts in their respective counties.

Who qualified to vote.—R. S. c. 19, s. 2.

3. The sheriff or other person qualified to hold said elections shall, at the court house, declare the person 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 if two or more persons have an equal and the highest number of votes for either of the said offices, the court of pleas and quarter-

Sheriff to declare the persons elected.

Clerks to hold office four years.

Who to decide in case of a tie, and contested election. — R. S. c. 19, s. 3.

Clerks to give bonds and take oaths.

On failure, court to appoint another. — R. S. c. 19, s. 4.

Vacancies in clerkship of superior and county court, how filled.

How in clerkship of county court, between terms. — R. S. c. 19, s. 5. — 1844, c. 4.

In certain cases twelve justices may accept clerk's bond, unless, &c. — 1846, c. 6.  
Judge appointing in vacation, may empower two justices to qualify & take bond, who shall return the bond &c., to the next court. — 1838, c. 7, s. 1, 2.

Clerks to give bond in \$15,000 for faithful discharge of every duty. — R. S. c. 19, s. 7; c. 28, s. 11.

sessions, a majority of the justices being present, shall proceed to make the election as prescribed for the election of sheriff under the like circumstances; and said court shall be a competent tribunal to decide all contested elections under this chapter.

4. The clerks elected under the provisions of this chapter, at the first term of their respective courts, which shall happen after their election, or at the term or time when elected, by the court or justices, shall execute and tender the bonds, and take the oaths prescribed by law; and where a vacancy shall be occasioned by failure to give the necessary bonds, or neglect to qualify, death, or otherwise, the court in which such failure may happen shall fill the vacancy, in the manner prescribed in the following section for vacancies occurring after qualification, and the person appointed shall continue in office until the next regular election and qualification of clerks under this chapter.

5. Whenever the office of the clerk of the superior or county court shall become vacant after qualification of the person elected, by resignation or otherwise, the same shall be filled for the unexpired portion of the term; that of the superior court, by the judge in whose riding may be the vacancy; and that of the county court, by the county court at its next term, a majority of the justices being present; and if the office of clerk of the county court shall become vacant, by the death of the incumbent, between terms, and there shall be no lawful deputy, the sheriff shall summon the magistrates of the county to meet at the court house, within fifteen days after the demise of the deceased clerk, and a majority of them shall elect a clerk, who shall hold his office until the next regular election by the people, as provided in this chapter.

6. In the absence of a majority of the justices, twelve may take the bond of the clerk and qualify him; but they shall not accept any bond previously rejected by a majority.

7. Where any appointment of a clerk shall be made by a judge in vacation, and it shall be inconvenient for him to qualify the person appointed, and take of him the bond required, he may issue a commission to two magistrates of the county for which the appointment is made, authorizing them to administer the oaths of office, and take the bond; which oaths shall be subscribed by the clerk, and with the bond, be returned by the commissioners to the judge at the next term of the superior court of the county. And in case the evidence, of the appointed clerk having taken the oaths and executed the bond of office, be not exhibited to the judge at the succeeding court; or if the bond shall be unsatisfactory, and is not then made satisfactory, the office shall be deemed vacant and shall be filled by the judge.

8. The clerks of the county and superior courts shall each execute a bond with two or more able sureties, in the sum of fifteen thousand dollars, payable to the State of North Carolina and conditioned for the safe-keeping of the records of their



respective courts, for the due collection, accounting for, and paying all moneys which may come into their hands by virtue of their office, and for the faithful discharge of the duties of their office in all respects whatsoever.

9. The judges of the superior courts of law shall cause the bonds taken by them from the clerks of the superior courts to be acknowledged or proved before them, and indorse thereon a certificate of such acknowledgment or probate; and the courts of pleas and quarter-sessions shall cause all bonds taken before them of the clerks of their respective courts, to be acknowledged or proved in open court, and indorse 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, namely, the bond of the clerk of the superior court shall be deposited in the office of the clerk of the court of pleas and quarter-sessions; and the bond of the clerk of the court of pleas and quarter-sessions shall be deposited in the office of the superior court of the respective counties.

How bonds of the several clerks shall be proved, and where deposited. — R. S. c. 19, s. 8.

10. 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.

Registered. — R. S. c. 19, s. 9.

11. The clerks of the respective courts aforesaid shall safely keep the bonds deposited in their offices, under the same rules and regulations, as are provided for the safe-keeping of the records of their courts.

Kept as records are. — R. S. c. 19, s. 10.

12. The clerks of the superior and county courts shall renew their several bonds for the faithful discharge of their duties in office, with good and sufficient security, annually, at the several and respective terms of the courts at which they were qualified; and such as are qualified in vacation shall renew their bonds annually, at the term next succeeding the qualification; and such of the clerks, as shall neglect to renew their respective bonds at the time before mentioned, and give other and better sureties 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 bond, unless he shall produce from the public treasurer, county trustee, and wardens of the poor, receipts in full of all moneys by him received for the use of the State and county for which he shall have been accountable.

Renewed annually, — clerk to produce receipts for all public moneys paid before renewing. — R. S. c. 19, s. 11.

13. Clerks of the superior and county courts, before entering on the duties of their respective offices, shall take an oath of office and also the oaths prescribed for public officers; and if any clerk shall offend herein, or shall enter on the duties of his office, before he executes and delivers to the authority entitled to receive the same, the bond required by law, he shall forfeit and pay two thousand dollars, one half to his use who will sue for the same, and the other half to the wardens of the poor of the county where the offence is committed.

Penalty for acting without qualifying. — R. S. c. 19, s. 12, 13.

Going out of office to transfer records, &c. to successors; or, when the office is vacant, to whom the court may appoint. Judge may give order for delivery of records, &c.

Penalty for not delivering records, &c.—R. S. c. 19, s. 30.

Clk's office to be kept at court house.—Deputies how qualified; to act in case of death of clerk.—R. S. c. 19, s. 15.

To whom clerks shall resign.—R. S. c. 19, s. 16.

Co. courts, in certain cases, may remove their clerks and appoint others.—R. S. c. 19, s. 17.

When clk of co. court removed, how proceeded against.—R. S. c. 19, s. 19.

14. Upon the going out of office for whatever reason, of any clerk of the superior or county court, he shall transfer and deliver to his successor, (or to such person, before his successor in office may be appointed, as the court may designate,) all records, documents, papers, and money belonging to the office. And the judge appointing any clerk to a vacancy in the clerkship of the superior court, may give to such person an order for the delivery to him, by the person having the custody thereof, of the records, documents, papers, and moneys belonging to the office, and he shall deliver the same in obedience to such order. And in case any clerk going out of office as aforesaid, or other person having the custody of such records, documents, papers, and money as aforesaid, shall fail to transfer and deliver them as herein directed, he shall forfeit and pay to the State one thousand dollars, which shall be sued for by the prosecuting officer of that court.

15. The clerks of the 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 the 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 another shall be appointed agreeable to law, and shall be entitled to the fees and perquisites thereof until such appointment.

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 is situate the county in which he is clerk.

17. The court of pleas and quarter-sessions shall have full power, on their clerk being convicted or found guilty on indictment for neglect of duty or misdemeanor in office, to remove such clerk and proceed to the election of another, under the rules prescribed for filling vacancies in the office of clerk of the county court.

18. When any clerk of the court of pleas and quarter-sessions shall remove from his county, the court may make a rule on such clerk, returnable to the next court of pleas and quarter-sessions of such county, to show cause why he shall not be removed from his office, for so removing himself out of his county; which rule shall be served on the clerk if he resides in the State, and on the return thereof, if it shall appear to the satisfaction of the court, that such clerk has so removed, the court shall declare his office vacated and shall elect another, as in other cases of vacancy. But in case such clerk resides out of the State, it shall be sufficient service of the rule to have it published for six weeks, in any newspaper of the

State; which publication being made appear at the next court, and proof being made of such removing, the court shall remove the clerk from his office, as in case of actual service of the rule.

19. Whenever, upon death or resignation, removal from office, or at the expiration of his term of office, any clerk aforesaid shall have failed to discharge any of the duties of his office, the court, if practicable, shall cause the same to be performed by another person, who shall receive for such services, and as a compensation therefor, the fees allowed by law to the clerk; and such portion thereof as may be paid by the county may be recovered back by the county, by suit on the official bond of the defaulting clerk to be brought on the relation of the county.

*Clerks going out of office and having failed to perform their duties, the court may cause them to be done, and recover amount paid for such service.—1844, c. 5, s. 6.*

SECT. 3. *Remedy for clerk wrongfully excluded*, 6 Ire. 155.

SECT. 8. *What bond covers*, 1 Jones, 364, 1 Dev. 426.

SECT. 12. *Bonds cumulative*, 3 Dev. 451.

SECT. 15. *Acts of deputy not qualified*, 13 Ire. 452, 2 Dev. 148, 4 Ire. 355.

## CHAPTER 20.

### CLERKS AND MASTERS IN EQUITY.

SECTION

1. Clerk and master appointed by judge. To hold office four years. *Proviso.*
2. To give bond and take oaths. Same remedies against him, as clerk of the superior court.
3. Judge appointing to vacancy, out of term, may commission two justices

SECTION

- to qualify, &c., as in case of superior court clerks.
4. Clerk and master shall keep his office within one mile of court house, under penalty of one hundred dollars.
5. Shall keep fair records.
6. May administer oaths.

1. THE judge of the court of equity of every county shall appoint, as clerk and master in equity of such county, some person of skill and probity, and shall fill all vacancies that may happen in the same: the said appointments to be made by the judge in whose riding the county may be when made; and the person appointed shall hold the office for the term of four years from the time of his qualification: *Provided, however*, that when an appointment shall be made in vacation to commence before the next ensuing court, it shall continue for the space of four years next after that court, and the bond shall be given accordingly.

*Clerk and master appointed by judge. To hold office four years.*

*Proviso.—R. S. c. 20, s. 1.*

2. The clerk and master shall give the like bond, with good and sufficient security, and take the same oaths before the judges, as prescribed for 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 renewal, probate,

*To give bond and take oaths.*

Same remedies against him, as cl'k of the sup'r court.—R. S. c. 20, s. 2.

Judge appointing to vacancy, out of term, may empower two justices to qualify, &c., as in case of sup'r co. clerks.

C. and M. shall keep his office within one mile of court house under penalty of \$100.—1848, c. 68. Shall keep fair records.

May administer oaths.—R. S. c. 20, s. 3.

and deposit of the bond, (except that the bond of the clerk and master shall be deposited in the office of the superior court clerk,) and he shall be liable to the same remedies upon his bond and otherwise, for breaches of duty; shall incur the same penalties for acting without qualification, and for misdemeanors in office, as clerks of the superior courts.

3. Whenever the presiding judge, in the recess of the court, shall fill a vacancy, and it shall not be convenient for him to administer the oaths of office and take the official bond, he may cause the same to be done in like manner, and under the same rules and regulations, as are provided and prescribed for the qualification and taking bond of clerks of the superior courts of law, under like circumstances.

4. The clerk and master in equity shall keep his office at the court house, or within one mile thereof; and any clerk and master failing so to keep his office, shall forfeit and pay to the State one hundred dollars, to be sued for and recovered by the prosecuting officer of the superior court of the county.

5. He shall keep a fair and distinct record of the proceedings of the court; and the bills, answers, and decrees shall be regularly enrolled in a well-bound book, kept for that purpose.

6. The clerk and master may administer the proper oaths at all times and to all persons, either witnesses or others, having business in the court of equity.

SECT. 2. *What bond covers*, 8 Ire. 7, lb. 168, 2 Jones, 5, lb. 8.

## CHAPTER 21.

### COMMISSIONERS OF AFFIDAVITS AND PROBATE OF DEEDS.

SECTION

1. Clerks, and clerks and masters, to be commissioners to take and certify affidavits.
2. Governor may appoint commissioners to take and certify probate of deeds, &c., in other States.
3. Such commissioner to take an oath,

SECTION

- to be filed in secretary's office. His power and authority.
4. Commission recorded by secretary of State, and certified to clerks of county courts, and there recorded. Certified copies of appointment or removal, evidence.

Clerks and clerks and masters commissioners to take and certify affidavits.—R. S. c. 21, s. 1.

1. 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 to take and certify affidavits, to be used before any justice of the peace, judge, or court of the State; and the affidavits so taken shall 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.

2. The governor is hereby authorized to appoint and commission one or more commissioners in such of the States of the United States, or in the District of Columbia, or any of the territories, as he may deem expedient, who 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 lands, tenements, or hereditaments lying in this State, and to take the private examination of married women, parties thereto, or any other writings 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, shall have the same force and effect, for all purposes, as if the same had been made or taken before any competent authority in this State.

Gov. may appoint comm'rs to take and certify probate of deeds, &c., in other States.—R. S. c. 21, s. 2.

3. Every commissioner appointed by the governor aforesaid, before he shall proceed to perform any duty by virtue of this chapter, shall take and subscribe an oath, 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, according to the laws of North Carolina; which oath shall be filed in the office of the secretary of State: And thereupon he 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 emanating from the courts of this State, relating to any cause depending, or to be brought in said courts, and every deposition, affidavit, or affirmation made before him, shall be as valid as if taken before any proper officer in this State.

Such comm'r to take an oath, to be filed in sec'y's office.

His power and authority.—R. S. c. 21, s. 3, 5.

4. It shall be the duty of the governor to cause to be recorded by the secretary of State the names of the persons who are appointed and qualified as commissioners, and for what State, territory, county, city, or town; and the secretary of State, when the oath of the commissioner shall be filed in his office, shall forthwith certify the appointment to the clerks of the several county courts of the State, who shall record the certificate of the secretary at length; and all removals of commissioners by the governor shall be recorded and certified in like manner: And a certified copy thereof from the clerk, or a certificate of the appointment or removal aforesaid from the secretary of State, shall be sufficient evidence of the appointment or removal of such commissioner.

Comm'n recorded by sec'y of State, and certified to clerks of co. courts, and there recorded.

Certified copy of appointment or removal, evidence.—R. S. c. 21, s. 4.

## CHAPTER 22.

## COMMON LAW.

## SECTION 1. Common law declared to be in force.

Common law declared to be in force.—R. S. c. 22.

1. ALL such parts of the common law as were heretofore in force and use within this State, or so much of the 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.

## CHAPTER 23.

## COMPTROLLER.

## SECTION

1. Comptroller biennially elected by Assembly.
2. Bond to be given,—where deposited.
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 suit paid to treasurer, and receipts filed with comptroller.

## SECTION

8. Balances of accounts stated annually and reported.
9. Comptroller to report annually a printed statement of accounts of treasury. Published in two newspapers in non-legislative year.
10. In certain cases may administer oaths.
11. No warrants, &c., to be paid, unless first entered and certified by comptroller.
12. Instrument for cancelling vouchers procured.

Comptroller biennially elected by Assembly.—R. S. c. 23, s. 1.

1. A COMPTROLLER shall be biennially elected by the General Assembly, in the same manner as the public treasurer is elected, who shall enter upon the duties of his office on the first day of January, and continue therein for two years, and until his successor is appointed.

Bond to be given,—where deposited.—R. S. c. 23, s. 2.

2. The person thus elected comptroller, before entering upon the duties of office, 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; which bond shall be taken by the governor and deposited in the treasurer's office for safe-keeping.

Oath to be taken.—R. S. c. 23, s. 3.

3. The comptroller shall also, before entering upon the duties of his office, take, before some justice of the peace, the

oaths prescribed by law for the qualification of public officers, and also an oath of office.

4. The comptroller shall settle and report on all public accounts of the State, and keep regular books and statements of the same, which he shall do in the manner following, to wit: he shall report the net amount which shall become annually due and payable from the respective revenue officers to the treasurer of the State, (to the end that 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, whom he shall credit by the amount of such receipts as any of them shall, from time to time, produce from the treasurer.

Comptroller to settle all public accounts and keep books.—R. S. c. 23, s. 4.

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 give, according to the fourteenth section of the chapter 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.

To keep an account with the treasurer.—R. S. c. 23, s. 5.

6. The comptroller shall also raise accounts, and report in like manner, against individuals who may become chargeable on any of the warrants or vouchers paid to them, as though they were revenue officers, taking care not to blend such reports and accounts with any others, which may be raised and made on vouchers in the comptroller's office.

And with individuals.—R. S. c. 23, s. 6.

7. All moneys payable to the public, which shall not be paid in due time, but shall be sued for and recovered, shall, when received, be paid into the public treasury by the clerk of the court in which the recovery may be had; and the receipts for such payments shall be rendered to the comptroller, and charged and filed by him.

Public moneys recovered by suit paid to treasurer and receipts filed with compt'r.—R. S. c. 23, s. 7.

8. The comptroller, on the first day of November, annually, shall strike a balance against the treasurer and all other public accountants in arrears, and shall biennially 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.

Balances of accounts stated annually and reported.—R. S. c. 23, s. 8.

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 with the State, as the same shall appear on the books of the comptroller's office for the year preceding that day, stating the balance of the money in the treasury at the last settlement, the receipts into the treasury within the year, particularizing the money 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 the said account a statement of the revenue from each sub-

Compt'r to report annually a printed statement of accounts of treasury.

ject of taxation in every county of the State; of which account and statement the comptroller shall cause to be yearly printed, in pamphlet form, two hundred and fifty copies before the third Monday of the said month of November; ten copies whereof shall be placed in the State library, five in each of the offices of governor, secretary of State, treasurer, and comptroller, and five in the University: the residue shall be delivered by the comptroller to the General Assembly at its next meeting. In addition to such publication, the comptroller shall, in the year when the General Assembly shall not have its regular session, cause the same to be published in two newspapers printed at the seat of government; and for such printing and publication, the treasurer shall pay a reasonable price on the certificate of the comptroller.

Published in two newspapers in non-legislative year.—R. S. c. 23, s. 9.—1844, c. 17, s. 1, 2.

In certain cases may administer oaths.—R. S. c. 23, s. 10.

No warrants &c., to be paid, unless first entered and certified by comptroller.—R. S. c. 23, s. 11.

Instrument for cancelling vouchers procured.

10. The comptroller is authorized to administer an oath to accountants and witnesses, in support of the justice of such accounts as may be exhibited to him for liquidation, and to certify the same accordingly.

11. No claim, draft, or warrant from the governor or any one else, except the certificates for the services of the members, clerks, and waiters of the General Assembly, 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, until such claim, draft, or warrant shall have been entered in the comptroller's office, and charged to the person drawing the same, with the comptroller's order indorsed to the treasurer to pay the same; and no claim, warrant, or draft, (except as before excepted,) shall be allowed in the settlement of the account of the treasurer, but under the foregoing rules and regulations.

12. The comptroller shall procure and keep an instrument of not less than one and a half inches in diameter, for cancelling papers so as not to render them illegible, and the vouchers in the comptroller's office shall be thus cancelled.

## CHAPTER 24.

### CONSTABLES.

SECTION	SECTION
1. Number of constables in each county. Town districts, how many.	4. On failure to elect, county court to appoint, and in case of tie or contested election, to decide.
2. Constables elected annually, in each captain's district. At what time. To qualify before county court, and give bond.	5. Penalty for unlawful voting.
3. Judges of election, how appointed. Notice given. Qualification of electors. Return made to county court.	6. Vacancies filled by county court.
	7. Bond, how conditioned.
	8. Oaths to be taken.
	9. Power and duty of constables.
	10. Constables to execute notices con-



SECTION

cerning matters within justice's jurisdiction—by delivering copy. Return evidence.

SECTION

11. Special constables, in certain cases, appointed by justices.

1. THERE shall not be a greater number of constables in the several counties in the State, than one in each captain's district, except the districts including the several county towns, which districts shall be entitled to two constables each, to be elected as other constables; and except further, that, when a town shall be parted in the division of counties into captains' districts, each district including a part of such town shall be entitled to two constables, one for the town part thereof, and one for the county part of the district.

Number of constables in each county.

Town districts, how many.—  
R. S. c. 24, s. 1.  
—1848, c. 11.

2. Within thirty days before the court of pleas and quarter-sessions of any county which shall first commence its sessions after the third Monday in December, the inhabitants of each captain's district within the several counties, at the usual place of holding the company muster within the district, shall elect some fit and suitable person, residing within the bounds of said company, to act as a constable for the succeeding year, who shall be returned 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 the election, the court shall proceed to qualify the person 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 constable of a town, except he shall live within the corporate bounds thereof; and no person living within the corporate bounds shall be entitled to vote for constable for the county part of the district in which the town is situated.

Constables elected annually, in each captain's district. At what time.

To qualify before county court, and give bond.—R. S. c. 24, s. 2.—  
1838, c. 9.

3. The captains of companies within the several counties, and in their absence any justice of the peace within the district, within the time prescribed by the last section, shall annually appoint two discreet and suitable persons to hold said election, who are required to give at least ten days notice thereof, in two or more public places in the district; and every person having resided for six months next preceding the election within the bounds of the district, who is entitled to vote for members of the house of commons, shall be entitled to vote in such election; 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 of said county after the election.

Judges of election, how appointed. Notice given.

Qualification of electors.

Return made to county court.—  
R. S. c. 24, s. 3.

4. Should any person elected constable die, or from other cause fail to qualify and give the necessary bond; or should any company fail to hold an election, then the court which shall next happen, seven justices being present, shall supply any vacancy occasioned as aforesaid, by appointing some one residing in the district; and in case there should be a tie in any election, then the court, so constituted, shall determine; and also determine in all cases of contested elections.

On failure to elect, county court to appoint, and in case of tie or contested election, to decide.—  
R. S. c. 24, s. 3.

Penalty for unlawful voting.—R. S. c. 24, s. 5.

Vacancies filled by county court.—R. S. c. 24, s. 6.

Bond, how conditioned.—R. S. c. 24, s. 7.

Oaths to be taken.

Power & duty of constables.—R. S. c. 24, s. 9.

Constables to execute notices concerning matters within justice's jurisdiction. By delivering copy. Return evidence.—R. S. c. 62, s. 32, 33.

Special constables, in certain cases, appointed by justices.—R. S. c. 25, s. 10.

5. Persons voting at such elections not qualified to vote, shall be liable to the same penalty, as persons illegally voting at elections for members of the General Assembly.

6. Upon the death or removal of any constable out of the county in which he was elected or appointed constable, the court of pleas and quarter-sessions, seven justices being present, may appoint another person to fill the vacancy, who shall be qualified and act until the next election of constables.

7. The bond required from a constable shall be 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 may be due.

8. All constables, before they shall be qualified to act, shall take, before the county courts, the oaths prescribed for public officers, and also an oath of office.

9. Constables are hereby invested with, and may execute the same power and authority as they have been by law heretofore invested with, and have executed: and, in discharge of their duties, they shall execute all precepts and process of whatever nature, to them directed by any justice of the peace or other competent authority, within their county or upon any bay, river, or creek adjoining thereto; and the said precepts and process shall be returned to the magistrates, or other proper authority.

10. Constables shall likewise execute, within the places aforesaid, all notices tendered to them, which are required by law to be given for the commencement, or in the prosecution of any cause before a justice of the peace; and the service thereof shall be made by delivering a copy to the person to be notified, or by leaving a copy at his usual place of abode, if in the jurisdiction of said constable; which service, with the time thereof, he shall return on the notice; and such return shall be evidence of its service; and, on demand of the same, the constable shall deliver the notice to the party at whose instance it was issued.

11. For the better executing any precept or mandate in extraordinary cases, any justice of the peace may direct the same in the absence of, or for want of a constable, to any person not being a party, who shall be obliged to execute the same, under like penalty that any constable would be liable to.

SECT. 1. 3. Mur. 146.

SECT. 2. 4. Ire. 19.

SECT. 4. *Appointment expires when*, 11 Ire. 436, 10 Ib. 329.

SECT. 6. 13 Ire. 253.

SECT. 7. *Bonds: not cumulative*, 7 Ire. 198; *which liable*, 12 Ire. 44, 3 Ib. 25, 2 Dev. 489, 9 Ire. 20. *What a breach of: demand necessary*, 3 Ire. 96; *must be plaintiff's agent*, 6 Ire. 281, 11 Ib. 134; *non-return of claim*, 11 Ire. 371, 7 Ib. 77; *claim over jurisdiction of justice*, 3 Ire. 92; *degree of diligence*, Bus. 25, 2 Ire. 211, 3 Dev. 436, 1b. 361. *Who to sue on*, 10 Ire. 58, 1b. 45; *surety cannot sue as relator*, Bus. 318.

CHAPTER 25.

CORONERS.

SECTION

1. Coroner, one or more appointed by a majority of justices.
2. Bond given and renewed annually: oaths taken.
3. In cases of vacancy, three justices may appoint till end of next term. To give bond. Bond of coroner

SECTION

- proved and registered. Special coroner, appointed by three justices.
4. To hold inquests. His duty on the occasion. Physicians may be summoned. To be paid for their services.
5. When there is no sheriff, coroner shall act.

1. THE courts of pleas and quarter-sessions of each county, a majority of the justices being present, shall appoint for the county, one coroner, or if deemed necessary, more than one; and a majority of the votes cast shall be necessary to an election.

Coroner, one or more appointed by a majority of justices. — R. S. c. 25, s. 1, 2.

2. Every coroner shall execute bond for the faithful discharge of the duties of his office with good security, in the sum of two thousand dollars, (or in a larger sum if required by the court,) payable to the State of North Carolina and approved by the court, which he shall annually renew, or no longer shall hold said office. He shall also take the oaths of public officers and an oath of office.

Bond given and renewed annually; oaths taken. — R. S. c. 25, s. 3, 5.

3. Whenever in any county there shall be no coroner, it shall be the duty of any three justices of the peace of such county to appoint one; who shall execute a bond as required in the preceding section, and shall hold his office until the end of the next term of the county court of his county, unless a coroner be sooner appointed by the court. And the bond taken of him, with a certificate under their hands of the appointment appended thereto, shall be delivered to the clerk of the county court, who shall file and keep the said bond so certified in the records of his office; and this and all other bonds of coroners shall, on the acknowledgment or proof of the execution thereof before the authorities competent to receive said bonds, be certified as proved or acknowledged, and be registered by the register of the county in the same manner as the bonds of clerks: *Provided, nevertheless*, that any three justices of the peace, for the special purpose of holding an inquest over any deceased person, when there shall be no coroner in the county to perform that duty, shall appoint such special coroner; and such appointment shall certify under their hands, to the clerk of the county court, who shall file the same with his records.

In cases of vacancy, three justices may appoint till end of next term.

To give bond.

Bond of coroner proved and registered.

Special coroner appointed by three justices. — R. S. c. 25, s. 4. — 1842, c. 21. — 1844, c. 19.

4. It shall be the duty of the several coroners, whenever they are informed that any person is slain or suddenly dead, either by drowning or otherwise, to go to the place where such person is and forthwith summon a jury of good and lawful men; whereupon the coroner, upon oath of said jury at the

To hold inquests. His duty on the occasion.

said place, 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. And as many persons as are found culpable, by inquisition in manner aforesaid, shall be taken and delivered to the sheriff and committed to jail; and such persons as are found 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 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. It shall be the duty of every coroner, when he or any of the jurors may deem it useful to the better investigation of the cause or manner of death, to summon a physician or surgeon, who shall be paid for his attendance and service such sum as the court may deem reasonable.

Physicians may be summoned. To be paid for their services. — R. S. c. 25, s. 6.

When there is no sheriff, coroner shall act. — R. S. c. 25, s. 7.

5. If at any time there shall be no person properly qualified to act as sheriff in any county, the coroner of such county is hereby required to execute all process, civil or criminal, lawfully issuing on judgments, orders, or sentences of any court, and in all other things to act as sheriff, until some person shall be appointed sheriff in said county; and such coroner shall be under the same rules and regulations, and subject to the same fines, forfeitures, and penalties as sheriffs are by law, for neglect or disobedience of the same duties.

SECT. 2. *Coroner de facto*, 8 Ire. 201.

## CHAPTER 26.

### CORPORATIONS.

#### SECTION

1. General powers of corporations.
2. Same subject.
3. First meeting, how notified, when not provided for specially.
4. Lands may be held and conveyed.
5. Corporations to continue three years after charter expires, to close their concerns.
6. When corporations expire, &c., receivers or trustees appointed to settle their affairs. Their powers.

#### SECTION

7. Equity jurisdiction over receivers or trustees.
8. Receivers to pay debts, and distribute surplus.
9. What executions to issue, and what may be sold.
10. Who shall be deemed the highest bidder.
11. Officer making sale to convey the right of fare and toll, and deliver possession of property connected with franchise.

SECTION

SECTION

12. Purchaser of a franchise to have same remedies as corporation, for damages, &c.
13. Liabilities of corporation to continue after sale.
14. Charitable, literary, mining, and manufacturing corporations may be created. Corporators may enter into certain articles of agreement. Articles acknowledged before clerk of county court. Shares of capital not less than fifty dollars.
15. Such corporations created by letters patent issued by governor. Notice of incorporation, and substance of articles to be published.
16. Fees of clerk and private secretary.
17. What real estate, mining, and manufacturing companies may hold.
18. No dividends declared, if debts exceed two thirds of assets.
19. Letters patent recorded by secretary of State, and copies admissible in evidence.
20. *Prima facie* evidence of incorporation.

21. Such corporations forbidden to bank.
22. How corporations may convey by deed.
23. Suits against; at law, commenced by summons:—In equity, by subpoena.
24. Process, how served on corporations: On what officer or member.
25. Information may be filed against a corporation. What set forth.
26. Bond for costs may be required of relators.
27. How supreme court may ascertain the facts.
28. Attorney-general may file a bill to restrain corporations from exercising powers not granted, and to bring certain officers to account, &c. Managers of corporations personally liable for fraud.
29. Corporations, how long to exist. Dissolution not to extinguish debts.
30. Two years of non-user a forfeiture of charter.
31. Shares in corporations personal estate.

1. ALL corporations shall, where no other provision is specially made, be capable in their corporate name, to sue and be sued, appear, prosecute, and defend to final judgment and execution, in any courts or elsewhere; to have a common seal, which they may alter at pleasure; to elect, in such manner as they shall determine to be proper, all necessary officers, and to fix their compensation and define their duties and obligations; and to make by-laws and regulations, consistent with the laws of the State, for their own government, and for the due and orderly conducting of their affairs, and the management of their property.

General powers of corporations.—1850, c. 50.

2. All corporations may, by their by-laws, where no other provision is specially made, determine the manner of calling and conducting all meetings; the number of members that shall constitute a quorum; the number of shares that shall entitle the members to one or more votes; the mode of voting by proxy; the mode of selling shares for the non-payment of assessments; and the tenure of office of the several officers; and the manner in which vacancies in any of the offices shall be filled till a regular election; and they may annex suitable penalties to such by-laws, not exceeding in any case, the sum of twenty dollars, for any one offence: *Provided*, That no such by-law shall be made by any corporation, repugnant to any provision of its charter.

Same subject.

3. The first meeting of all corporations, unless otherwise provided for in their acts of incorporation, shall be called by a notice signed by any one or more of the persons named in the act of incorporation, and setting forth the time, place, and

First meeting, how notified, when not provided for specially.

purposes of the meeting; and such notice, ten days at least before the meeting, shall be delivered to each member, or published in some newspaper printed nearest to the proposed place of meeting.

Lands may be held and conveyed. Corporations to continue three years after charter expires, to close their concerns.

4. Every such corporation may hold lands to an amount authorized by law, and may convey the same.

5. All corporations, whose charters shall expire by their own limitation, or shall be annulled by forfeiture or otherwise, shall nevertheless be continued bodies corporate, for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock; but not for the purpose of continuing the business, for which such corporations may have been established.

When corporations expire, &c., receivers or trustees appointed to settle their affairs.

6. When the charter of any corporation shall expire or be annulled, as provided in the preceding section, the court of equity for the county wherein shall have been the usual meetings of the expired corporation, or the court which shall adjudge the forfeiture of charter, on application of any creditor of such corporation, or of any stockholder or member thereof, at any time within the said three years, may appoint one or more persons to be receivers or trustees of and for such corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation; with power to prosecute and defend, in the name of the corporation, or in the name of such receivers or trustees, all such suits as may be necessary or proper for the purposes aforesaid; and to appoint agents under them, and to do all other acts, which might be done by such corporation, if in being, that may be necessary for the final settlement of the unfinished business of the corporation; and the powers of such receivers may be continued beyond the said three years, and as long as the court shall think necessary, for the purposes aforesaid.

Their powers.

Equity jurisdiction over receivers or trustees.

7. The said court shall have jurisdiction in equity of such application, and of all questions arising in the proceedings thereon; and make such orders, injunctions, and decrees therein, as justice and equity shall require.

Receivers to pay debts, and distribute surplus.

8. The said receivers shall pay all debts due from the corporation, if the funds in their hands shall be sufficient therefor; and if not, they shall distribute the same ratably among all the creditors, who shall prove their debts in the manner that shall be directed by any order or decree of the court for that purpose; and if there shall be any balance remaining after the payment of said debts, the receivers shall distribute and pay the same to and among those, who shall be justly entitled thereto, as having been stockholders or members of the corporation, or their legal representatives.

What executions to issue,

9. If any judgment or decree, at law or in equity, shall be rendered against a corporation, the plaintiff may sue out a *dis-*

*tingas* or *feri facias*, as he may think proper, which may be levied, as well on the current money, as on the goods, chattels, lands, and tenements of such corporation; and if the judgment or decree be against any railroad or other corporation, authorized to receive fare or tolls, the franchise of such corporation, with all the rights and privileges thereof, so far as relates to the receiving of fare or tolls, and also all other corporate property, real and personal, may be taken on execution and sold under the rules regulating the sale of real estate.

and what may be sold.—R. S. c. 26, s. 5.

10. In the sale of the franchise of any corporation, the person, who shall satisfy the execution, with all costs thereon, or who shall agree to take such franchise, for the shortest period of time, and to receive during that time all such fare and toll, as the said corporation would by law be entitled to demand, shall be considered as the highest bidder.

Who shall be deemed the highest bidder.

11. The officer making sale shall by deed convey to the purchaser all the immunities and privileges which by law belong to the corporation, so far as relates to the right of demanding fare and toll; and the officer shall, immediately after such sale, deliver to the purchaser possession of all the corporate property connected with the franchise, belonging to such corporation, in whatever county the same may be situated; and the purchaser may thereupon demand and receive, to his own use, all the fare and toll, which may accrue, within the time limited by the term of his purchase, in the same manner and under the same regulations, as such corporation was before authorized to demand and receive the same.

Officer making sale to convey the right of fare and toll, and deliver possession of property connected with franchise.

12. Any person who may have purchased, or shall, under the provisions of this chapter, hereafter purchase the franchise of any railroad or other corporation, and the assignee of such person, may recover in such action as the corporation might have brought, any penalties imposed by law for an injury to the franchise or for any other cause, and which such corporation would have been entitled to recover, during the time limited in the said purchase of the franchise; and during that time, the corporation shall not be entitled to prosecute for such penalties.

Purchaser of a franchise to have same remedies as corporation, for damages, &c.

13. The corporation, whose franchise shall have been sold as aforesaid, shall, in all other respects, retain the same powers and be bound to the discharge of the same duties, and liable to the same penalties and forfeitures, as before such sale.

Liabilities of corporation, to continue after sale.

14. Any number of persons not less than five, who may be desirous of engaging in any scheme of charity or benevolence, or for the encouragement and promotion of education, or in the business of mining or manufacturing, at any place within the State, may, if it please them, become incorporated in the manner following, that is; such persons shall, by articles of agreement, under their hands and seals, set forth before the clerk of the county court, where such mining is to be conducted or manufactory established, and in case of any other association, before the clerk of the county court of the county

Charitable, literary, mining, and manufacturing corporations may be created.

Corporators to enter into articles of agreement.

## Articles.

where the meetings may be held:—1. The corporate name. 2. The business proposed. 3. The place where it is proposed to be carried on. 4. The length of time desired, not exceeding thirty years except as to mining corporations the term for which shall not exceed sixty years. 5. The names of persons who have subscribed. And, in the case of mining and manufacturing, shall also state:—6. The amount of capital; and 7. The number of shares, and the amount of each (the same not less than fifty dollars each); and the amount paid in on each share; which shall not be less than one dollar for each share, nor, upon all the shares, less than one hundred dollars, and shall be paid to the clerk of the county court of the proper county; the payment whereof shall be certified by the clerk and indorsed on the said articles of agreement.

Shares of capital not less than fifty dollars.—1852, c. 67, s. 1.—1852, c. 81, s. 1.

Such corporations created by letters patent issued by gov. Notice of incorporation, & substance of articles to be published.—1852, c. 67, s. 1, 2.—1852, c. 81, s. 1, 2, 3.

15. The said articles of agreement, after having been proved by a subscribing witness, or acknowledged before and recorded by the clerk, and such as relate to mining and manufacturing being moreover indorsed with the clerk's receipt of the money as aforesaid, shall be transmitted to the secretary of State and filed in the department of State; whereupon the governor, on application, shall issue letters patent, under the seal of the State, declaring said persons and their successors to be, and from thenceforth they shall be, a corporation for the purpose and according to the terms prescribed, in said articles; and shall cause notice thereof to be published in some newspaper printed in the county or nearest to the place, where said articles may be recorded, in which shall be set forth the substance of the articles, and, (in case of companies having a capital,) the amount of capital and value of shares.

Fees of clk & private sec'y.—1852, c. 67, s. 3. 1852, c. 81, s. 4, 10.

16. Every company incorporated by letters patent shall pay the clerk of the county court, a fee of two dollars for taking the probate and recording the articles of agreement, also the expense of publication, and one dollar for the charter, for the use of the governor's private secretary.

What real estate, mining & manufact. comp's may hold.—1852, c. 67, s. 1, 2.—1852, c. 81, s. 1, 2, 3, 6.

17. The said mining and manufacturing companies may take and hold, and sell such real estate as may be necessary for the transaction of their business, or for the security and collection of their debts; and as soon as the same may be actually organized, the clerk of the county court shall return to the proper officer of the corporation the money paid to him.

No dividend, if debts exceed two thirds of assets.—1852, c. 81, s. 5.

18. No such company shall declare any dividend, when its debts, whether due or not, shall exceed two thirds of its assets.

Letters patent recorded by sec'y, and copies evidence.—1852, c. 81, s. 8.

19. The secretary of State shall record in a book, kept for that purpose, all such letters patent issued under the authority of this chapter; and copies thereof, certified by the secretary shall in all cases be admissible in evidence.

Prima facie evidence of incorporation.—1852, c. 81, s. 7.

20. The letters patent aforesaid shall, in all judicial proceedings, be deemed *prima facie* evidence of the complete organization and incorporation of the company purporting thereby to have been established.



21. No corporation created by letters patent for the purposes herein allowed, shall, under any pretence, engage in the business of banking: *Provided, however,* that in the transaction of their business, they may make, and take and indorse, when necessary, all such bonds, notes, and bills of exchange, as the particular business may require.

Such corporations forbidden to bank.—1852, c. 81, s. 9.

22. Any corporation may convey lands, and all other property which is transferable by deed, by deed of bargain and sale, or other proper deed, sealed with the common seal, and signed by the president, or presiding member or trustee, and two other members of the corporation, and attested by a witness.

How corporations may convey by deed.—R. S. c. 26, s. 1.

23. Suits against a corporation, when at law, shall be by process of summons, reciting the cause of action, and summoning said corporation to appear and answer the same on the proper return day, and shall be prosecuted as other suits at law commenced by *capias*; and when in equity, shall be by *subpœna*, after the manner of other suits in equity, and be served on the same persons as at law, and shall be prosecuted as suits in equity.

Suits against, at law, commenced by summons. In equity by subpœna.—R. S. c. 26, s. 2, 4.

24. The service of summons, if against any insurance company, railroad, banking, or other joint-stock incorporated company, shall be made by leaving a copy thereof with the president or other head, cashier, treasurer, or director of such company. If against the corporation of any city or town, by leaving a copy with the chief magistrate, treasurer, or commissioner of such city or town; and if against any incorporated college, academy, or other literary institution, by leaving a copy with the president, treasurer, or any trustee thereof; and if against any other corporation, by leaving a copy with the chief officer, treasurer, clerk, or any member. And the officer serving such summons shall return distinctly on whom the service hath been made, otherwise service shall not be deemed to have been made.

Process how served on corporations; on what officer or member.—R. S. c. 26, s. 3.

25. Whenever it may be deemed proper by the General Assembly, or by the governor, or attorney-general, 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 by any other mode, the attorney-general, in behalf of the State, shall file an information in the supreme court, or in the superior court of law for the county wherein the general meetings of the corporation have usually been, or by law ought to be held, setting forth briefly, and without technical forms, the grounds on which such forfeiture or dissolution is alleged; and thereupon the court shall take such order for enabling those interested to have due notice of, and make defence against such information, and shall make all reasonable rules for procuring and taking evidence, and having a fair trial of the controverted facts.

Information may be filed against a corporation. What set forth.—R. S. c. 26, s. 6.

26. When the information shall be filed by the attorney-general, in consequence of the relation of any person, the court

Bond for costs may be required of relators.—R. S. c. 26, s. 7.

in its discretion may require bond with approved security from the relator, to indemnify the corporation against the costs of the information.

How supreme court may ascertain the facts.—R. S. c. 26, s. 8.

27. When this or any other information may be filed in the supreme court, the court, in regard to any facts upon which the finding of a jury may be necessary, may cause a jury to be impanelled in that court, or send the issue to be tried in any superior court of the State.

Att'y-general may file a bill to restrain corporations from exercising powers not granted, and to bring certain officers to account, &c.

28. It shall be the duty of the attorney-general, as hereinbefore directed, to file a bill in the nature of a bill in equity, either in the supreme court of the State, or in the court of equity of the county, as hereinbefore 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 person from exercising corporate franchises not granted; to bring 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, and prevent all malversation, speculation, and waste. And in case of fraud by the president, directors, managers, or stockholders in any corporation, the court shall render personally liable to creditors and others injured thereby, such of the directors, managers, and stockholders as may have been concerned in the fraud.

Managers of corporations personally liable for fraud.—R. S. c. 26, s. 10.

Corp'ns how long to exist—dissolution not to extinguish debts.—R. S. c. 26, s. 9, 11.

29. No body corporate, hereafter to be established in the State, shall exist for a longer term than thirty years, unless otherwise provided in the act creating the same: but in the case of a dissolution of a corporation by any judgment or decree, the debts, due to or from it, shall not be extinguished.

Two years of non-user a forfeiture of charter.—R. S. c. 26, s. 12.

30. When any act shall have passed creating a body corporate, and the corporators, for two years, shall 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, then such disuse of their corporate privileges and powers shall be deemed and taken as a forfeiture of the charter.

Shares in corporations, personal estate.—R. S. c. 26, s. 13.

31. The shares of stock, in all incorporated joint-stock companies in the State, shall be deemed personal estate; and as such may be held by aliens.

SECT. 1. *Can sue in its corporate name only*, 4 Ire. Eq. 195.

SECT. 6. *Effect of dissolution*, 1 Ire. Eq. 358.

SECT. 9. *Execution against railroad companies*, 5 Ire. 297.

SECT. 24. *Where and on whom process is to be served*, 3 Ire. Eq. 471.

SECT. 25. *Form of information; what a forfeiture*, 6 Ire. 456.

CHAPTER 27.

COUNTY BOUNDARIES.

SECTION

1. Disputed lines between counties, how settled.
2. Commissioners sworn. Persons employed, to be paid.

SECTION

3. The military, to be the boundary, until settled.

1. WHENEVER there shall be any dispute concerning the dividing line between counties, the county courts of each county, interested in the adjustment of said line, a majority of the justices consenting thereto, may 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.

Disputed lines between counties, how settled.—R. S. c. 27, s. 1.

2. The commissioners, before entering on the duties assigned them, shall be sworn before a justice of the peace; and they, with all others employed, shall be allowed reasonable pay for their labors.

Comm'rs to be sworn. Persons employed to be paid.—R. S. c. 27, s. 2.

3. In all controversies in and out of court, where, before such disputed boundary is settled and fixed, it shall be material to ascertain the boundary, that shall be regarded as the true boundary which is recognized in mustering the militia.

The military to be the boundary until settled.

CHAPTER 28.

COUNTY REVENUE AND CHARGES.

SECTION

1. Tax for county purposes laid by majority of justices.
2. Collected by sheriff as State taxes.
3. Fines, &c. to be paid to county trustee.
4. Tax on indictments and suits.
5. Sheriff to collect and pay over fines, amercements, &c.
6. Clerk to render annual statement of fines, &c.
7. Penalty on clerk, sheriff, &c. for failing to pay over county money.
8. Costs of prosecutions paid by county in certain cases.

SECTION

9. Witnesses for State paid by the county, when.
10. County wherein the offence is done, to pay costs, and receive the fines, &c.
11. County courts may pay certain officers for extra services.
12. Claims, &c., against the county numbered by clerk, and copy furnished to chairman, annually.
13. Penalty for failing to number claims, &c. His fee for service.
14. A statement of moneys received and paid out for county purposes, to be set up in the court house.

## SECTION

15. Courts to lay tax to pay jurors.  
 16. Power of county court in disposing of county funds.  
 17. County court may appoint a committee of finance. Their duty and powers.

## SECTION

18. Committee to investigate the county finances, and report to court. Pay of committee.  
 19. Any officer failing to settle after ten days' notice, to forfeit one hundred dollars.

Tax for county purposes laid by majority of justices.—R. S. c. 26, s. 1.

1. THE justices of the several county courts, a majority being present, at their first court which shall happen after the first day of January in every year, shall, for county purposes, lay a tax on the lands with their improvements situate in the county, and a tax on the free and black poll.

Collected by sheriff as State taxes.—R. S. c. 28, s. 2.

2. The county and poor 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 and regulations, in respect to their settlement of the said taxes, with the county trustees and wardens of the poor, 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 counties, for the taxes on the unlisted property in their counties, under the same rules and regulations as they account with the comptroller of the State.

Fines, &c. to be paid to county trustee.

3. All fines, forfeitures, amercements, and taxes on suits in any court, other than the supreme court, shall be accounted for and paid to the county trustees, by the officer receiving them, for the purpose of defraying the costs of State prosecutions and the contingent expenses of the county.

Tax on indictments and suits.—R. S. c. 28, s. 6, 7.

4. On every indictment, or civil suit, tried or otherwise disposed of in the superior and county courts, the parties convicted or cast, shall pay a tax of one dollar, and in every suit in equity, a tax of two dollars.

Sheriff to collect and pay over fines, amercements, &c.—R. S. c. 28, s. 8.

5. The sheriffs of the respective counties shall collect and receive all fines, amercements, forfeited recognizances, and penalties imposed, adjudged, or decreed by any court of the State, and shall pay them over to the respective county trustees or wardens entitled to receive the same, within three months after they shall be 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 received.

Clerk to render annual statement of fines, &c.—R. S. c. 28, s. 9.

6. The clerks of the several courts shall, annually, on or before the first day of January in every year, make a full and complete return to the respective county trustees of all such taxes, fines, forfeitures, and amercements, which shall have been imposed, adjudged, or decreed in the preceding year, the names of the persons who shall have paid such taxes, and of those who have been fined, amerced, or adjudged to have forfeited their recognizance.

Penalty on cl'k, sheriff, &c. for failing to pay

7. If any clerk of the superior or county court, or any clerk and master in equity, or any sheriff, shall fail or neglect to

account for, and pay to the county trustees or wardens of the poor of their respective counties, any taxes on suits, or any fines, forfeitures, and amercements, as required by this chapter, or shall fail to make the returns herein specified, he shall forfeit and pay five hundred dollars, to be recovered, in the name of the State, by the county trustee for the use of the county.

over county money.—R. S. c. 28, s. 10.

8. In all criminal prosecutions in the county or superior court, when the defendant shall be acquitted, and the court shall not order the prosecutor to pay the costs; or where the defendant, if convicted, shall be insolvent and unable to pay costs, the officer entitled to fees in said prosecutions, shall render to the county court an accurate fee bill, enumerating the costs due to him; and the county court shall order the county trustee to pay them. *Provided*, that clerks and sheriffs shall be paid half their fees only, except in prosecution for capital felonies, or for forgery, perjury, and conspiracy.

Costs of prosecutions paid by county in certain cases.—R. S. c. 28, s. 12.

9. Witnesses, summoned or recognized, on behalf of the State, to attend on any prosecution in the superior or county court, where the defendant is insolvent, or 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 the prosecution was commenced. And in all cases, wherein witnesses may be summoned or recognized to attend any superior or county court, to give evidence in behalf of the State, and the defendant shall be discharged, and in cases where the defendant shall break jail and shall not afterwards be retaken, the court shall order the witnesses to be paid.

Witnesses for the State paid by county, when.—R. S. c. 28, s. 13.

10. In all cases where the county is liable to pay costs, that county, wherein the offence shall have been charged to be committed, shall pay them. And all fines, forfeitures, and amercements accruing in the case, shall be accounted for and paid to the trustee of that county.

County wherein the offence is done, to pay costs,—and receive the fines, &c.—R. S. c. 28, s. 14.

11. The county court shall make such allowance to the sheriff, clerk, or solicitor of the county for extra services, as they may think proper and just, which shall be paid by the county trustee: *Provided*, that in making such allowances, or in allowing any other claim against the county, a majority of the justices shall be present, unless otherwise provided.

Co. courts may pay certain officers for extra services.—R. S. c. 28, s. 16.

12. The clerks of the county courts, if so ordered by the court, shall number all claims, orders, and certificates that may be allowed by the court in a book kept for that purpose, and they shall annually, the day before the court proceeds 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, agreeable to the number, in the tax list with which the clerks supply the sheriffs or collectors, in order that the same may be paid according to their number and priority.

Claims, &c. against the county numbered by clerk, and copy furnished to chairman annually.—R. S. c. 28, s. 17.

13. Any clerk of the county court, neglecting 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,

Penalty for failing to number claims, &c.

His fee for service.—R. S. c. 28, s. 18.

one half to the use of any person who may sue for the same, the other half for the county. And such county court may allow the clerk, for all such services, annually, any sum not exceeding four dollars.

A statement of moneys rec'd and paid out for county purposes, to be set up in co. house.—R. S. c. 28, s. 19.

14. The court of each county, at the first session after the first day of June in every year, shall 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 has been made of the same, to whom paid, and what claims against the county remain undischarged.

Courts to lay tax to pay jurors.—R. S. c. 28, s. 21.

15. The several county courts, a majority of the justices being present, shall have power to provide for paying the jurors of the county a sum adequate to their services, which shall not be less than fifty cents, nor more than two dollars per day, and a sum equal to the daily allowance, for every thirty miles travelling to and from the court; and for a less distance, a proportionate sum.

Power of co. court in disposing of county funds.—R. S. c. 28, s. 22.

16. The county court is invested with full power to direct the application of all moneys arising by virtue of this chapter, for the purposes herein mentioned; and to any other good and necessary purpose for the use of the county.

Co. court may appoint a committee of finance.

17. The court of pleas and quarter-sessions in every county, at any court after the first day of August in every year, a majority of the justices being present, if deemed expedient, may 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 the county and the sheriff, county trustee, or any other officer or commissioner, who may hold any moneys belonging to the county; and the committee are authorized to require each of said clerks, at his office, to lay before them for inspection, such records, documents, and papers as aforesaid, and to require the sheriff, county trustee, and other officer or commissioner of the county, to meet them at the court house to audit and settle their respective accounts, at such time as the committee may designate.

Their duty and powers.—R. S. c. 28, s. 23.

18. It shall be the duty of said committee to make a full investigation of all the financial concerns of their county, and to return a fair and true report to the county court at the end of each financial year, setting forth a full statement of their investigation, designating therein all moneys due from the county to individuals, as well as the sums due by individuals to the county; and each member of the committee shall receive not exceeding two dollars per day, for each day he shall be necessarily employed, to be paid by the county trustee.

Pay of committee.—R. S. c. 28, s. 24.

Any officer failing to settle, after ten days notice, to forfeit

19. If any clerk, sheriff, county trustee, or other officer or commissioner, who may hold any county money, shall fail 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 a settlement; and every officer receiving notice, and failing to make settlement, as required by this chapter, shall forfeit and pay one hundred dollars, to be sued for in the name of the State, and prosecuted for the use and at the expense of the county, unless the court shall release the officers from the forfeiture.

§ 100. — R. S. c. 28, s. 25.

SECT. 1. *Power of taxation constitutional*, 1 Hawks, 408.

CHAPTER 29.

COUNTY TRUSTEE.

SECTION

1. County trustees appointed.
2. Vacancies to be filled.
3. To give bond and take oaths.
4. To collect all moneys due the county.
5. To call on sheriffs, clerks, and others having county moneys, for payment. On failure, summary judgment rendered against them and sureties. Also for penalty of one hundred dollars. Trustee failing in his duty liable for the money as if he had col-

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- lected it, and a penalty of one hundred dollars.
6. To settle with sheriff for claims as numbered.
7. Pay allowed county trustee.
8. To settle with courts annually.
9. Further penalty of ten dollars on trustees for neglect of duty.
10. Office of county trustee may be abolished. Duties then devolved on sheriff. May be revived, *toties quoties*.

1. THE justices of the several county courts, a majority being present, shall, during the sitting of their respective courts to be held next after the first day of January, in every year, appoint, by vote of a majority, some person to act as trustee for the county for one year, for the purposes herein mentioned: and the appointment shall be entered on the records of the court.

County trustees appointed.—R. S. c. 29, s. 1.

2. In case of the death, disqualification, neglect, or refusal to act, of any trustee appointed in any mode prescribed by this chapter, the justices may appoint another to fill the vacancy until the next annual appointment, under the rules and regulations before prescribed.

Vacancies to be filled.—R. S. c. 29, s. 2.

3. The person appointed trustee shall give bond with good security for the faithful discharge of his duty, in such sum as the court may think sufficient to cover all moneys which may be paid to him for the use of the county; and he shall take the oaths of public officers, and also an oath of office.

To give bond and take oaths.—R. S. c. 29, s. 3.

4. The county trustee shall demand, sue for, and receive from the sheriff of the county, and from all other persons, all money which may be in their hands due and payable to and

To collect all moneys due the county.—R. S. c. 29, s. 4.

for the use of the county, and shall apply them as the county court may direct.

To call on sh'ffs, clerks, and others having county moneys, for payment. On failure, summary judgment rendered against them and sureties. Also for penalty of \$100.

5. The county trustee shall annually call on the sheriff, clerk and master, and clerks of the courts of his county, and all other persons bound to account with him, for payment of all moneys which may be in their hands; and if any of said officers shall fail to account for and pay the same, the trustee, at the first court held for his county after the first day of January in every year, shall move for judgment against such delinquent officer and his sureties, ten days notice having been previously given to them; and the court shall thereupon enter judgment and award execution against such officer and his sureties, for the full amount of the public money due from such delinquent officer; and every sheriff, clerk and master, and clerk aforesaid, against whom judgment is so rendered, over and above all arrearages, shall forfeit and pay the sum of one hundred dollars, to be recovered at the same time, for the use of the county. And if any trustee shall fail to comply with his duties as prescribed in this section, he shall be held liable, not only for all the moneys which such delinquent officer ought to have accounted for and paid on demand, and which by due diligence might have been collected, but shall moreover forfeit and pay a penalty of one hundred dollars, to be recovered at the same time, for the use of the county.

Trustee failing in his duty, liable for the money as if he had collected it, and a penalty of \$100.—R. S. c. 29, s. 5.

To settle with sheriff for claims as numbered.—R. S. c. 29, s. 7.

6. The trustee shall settle with the sheriff or collector of public taxes, only according as claims are numbered, beginning with the lowest number; and where there is no trustee, the court shall settle with their sheriff, or collector of public taxes, in like manner.

Pay allowed eo. trustee.—R. S. c. 29, s. 8.

7. The court of pleas and quarter-sessions shall allow the trustee of the county reasonable pay for all such services, as have not specific fees annexed to them.

To settle with courts annually.—R. S. c. 29, s. 9.

8. At the first court in each county which shall be held after the first of June, in every year, the trustee shall make settlement with the court, in which he shall render an account of his receipts and expenditures, under the penalty of four hundred dollars, to be recovered in the name of the State, for the use of the county.

Further penalty of \$10 on trustees for neglect of duty.—R. S. c. 29, s. 10.

9. If any trustee shall neglect to do and perform any one of the several duties herein enjoined, for breach of which no penalty is specially given, he shall forfeit and pay for every such breach of duty ten dollars, to be recovered in the name of the State, for the use of the county.

Office of eo. trustee may be abolished.

10. Whenever a majority of the justices of the peace of any county shall deem it advisable, they may abolish the office of county trustee; provided notice thereof may have been given by advertisement in pursuance of an order of the county court, made at the preceding term. It shall then be the duty of the sheriff to act as county trustee, and he shall perform all the duties of the office, in the same manner and under the same penalties as are provided in regard to county trustees, and

Duties then devolved on sheriff.



shall receive a like compensation: *Provided, however,* that the office of county trustee may be revived by the vote of a majority of all the justices of the county, whenever and as often as the same may have been abolished; and such revival of the office, as well as the abolishment thereof, shall be recorded.

Duties then devolved on sh'ff. May be revived, *toties quoties*.—R. S. c. 29, s. 11.—1852, c. 6.

SECT. 3. 4 Ire. 140.  
SECT. 4. 9 Ire. 496.

CHAPTER 30.

COURT HOUSES, PRISONS, ETC.

SECTION

1. Court house, jail, pillory and stocks to be built and kept in repair by county court, who shall lay a tax therefor.
2. Jails to have four separate apartments.
3. Visited at each court by grand-jury.
4. Treasurer of public buildings appointed by county court. His duty and bond. Compensation.

SECTION

5. Vacancies filled.
6. Treasurer to settle his accounts annually. On failure to settle or pay, judgment on motion against him and sureties, and for a penalty of one hundred dollars.
7. Treasurer recommending repairs, what to be done.

1. THERE shall be kept and maintained in good and sufficient repair, in every county in the State, a court house, common jail, pillory and stocks, at the expense of the county, wherein the same are situated; and the courts of the several counties respectively, a majority of the justices being present, shall 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, pillories and stocks, in such manner as they shall think proper; and from time to time shall 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.

Court houses, jails, pillory and stocks to be built and kept in repair by co. court, who shall lay a tax therefor.—R. S. c. 30, s. 1.

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 white female criminals, one for debtors, and one other for negroes.

Jails to have four separate apartments.—R. S. c. 30, s. 2.

3. The grand-jury, at every court held for their county, shall visit the jail, examine the same, and especially the apartments in which prisoners shall be confined; and they shall report to the court the condition of the jail and of the prisoners confined therein, and also the manner in which the jailor has discharged his duties.

Visited at each court by grand-jury.—R. S. c. 30, s. 3.

Treas'r of pub.  
buildings ap-  
pointed by co.  
court.  
His duty and  
bond.

4. The several county courts, a majority of the justices being present, may in their discretion, annually, at the first court which shall be held after the first day of January in every year, appoint a suitable person to act as treasurer of public buildings, who, after having given bond with 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, shall superintend the public buildings, and from time to time report their state and condition; shall recommend alterations, repairs, or improvements, together with the sums requisite for making them; shall call to account, by suit if necessary, and settle with, all former commissioners who may have received county moneys for such purposes; shall hear the complaints of persons confined, respecting their diet and treatment; shall examine into the conduct and character of the jailor, and make information thereof to the court or grand-jury of the county, as circumstances may require; shall 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; shall see that the same be collected, accounted for, and applied, according to the intent of this chapter. He shall hold his office during one year; and, as a compensation for his services, shall be entitled to such sum as the court may allow him.

Compensation.  
R. S. c. 30, s. 4.

Vacancies fill-  
ed.—R. S. c.  
30, s. 5.

5. Whenever the office of treasurer of public buildings shall become vacant, in any way whatever, the county court, a majority of the justices being present, may fill the same, until the annual term of appointment.

Treas'r to set-  
tle his accounts  
annually.  
On failure to  
settle or pay,  
judg't on motion  
against  
him and sure-  
ties, and for a  
penalty of \$100.  
R. S. c. 30, s. 6.

6. Treasurers of public buildings are hereby expressly required, at the term of their election, and before the election, to settle their accounts with the court, 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 of public buildings shall fail to settle, as above directed, or to pay the balance which may appear to be due from him on such settlement, his successor, on giving him and his sureties ten days previous notice, shall, on motion in any court of his county, be entitled to have judgment entered against him and his sureties for all moneys received by him, with interest from the day of receiving the same, and the further sum, as a penalty, of one hundred dollars, for the use of the county.

Treas'r recom-  
mending re-  
pairs, what to  
be done.—R. S.  
c. 30, s. 7.

7. When the treasurer, in his report, shall recommend alterations, repairs, and improvements, the court, being satisfied of their utility, may appoint one or more commissioners, in conjunction with the 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 there-

on shall be advanced by the treasurer, who shall be solely responsible and accountable to the court for the sufficiency of the work, and the disbursement of the money.

SECT. 1. 4 Hawks, 194.

CHAPTER 31.

COURTS, COUNTY AND SUPERIOR.

SECTION

*County Courts.*

1. Justices of the peace, judges of courts of pleas and quarter-sessions. At what time courts to be held in the several counties.
2. Court may sit six days; unfinished business continued.
3. One justice may adjourn court from day to day, for three days, &c.
4. Court nor process discontinued by failure to sit, or by change of time of term.
5. Three justices to hold court. Jurisdiction of.
6. May appoint a chairman; also a special court, &c. Their pay.
7. Court may purchase law-books. Penalty on clerk for abusing them.

*Superior Courts.*

8. A superior court established in each county.
9. The State divided into seven judicial circuits. Counties composing, and times of holding courts in, first circuit.
10. In second circuit.
11. In third circuit.
12. In fourth circuit.
13. In fifth circuit. Anson may continue two weeks in the fall. New Hanover may continue two weeks.
14. In sixth circuit.
15. In seventh circuit.
16. Superior court may continue longer than a week in capital cases.
17. Held by judges. Their powers and jurisdiction.
18. Judges appointed from State at large, but to reside in a particular circuit. Shall take oaths.
19. Oaths subscribed and returned to sec-

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- retary of State. Penalty for acting without taking oaths.
20. Judges to ride according to present arrangement of circuits. Ridings to be published. May exchange courts.
  21. Judge not attending first day of term, sheriff to adjourn daily till third day. Recognizances, &c., to stand continued till next term.
  22. Special term of superior court appointed by presiding judge. Governor to be notified, and appoint a judge. Clerk to publish the same. Court may continue till a trial begun is finished. Pay of judge, holding term two weeks.
  23. Judges of special terms to have the powers of other judges. No process, except subpoenas, returnable thereto.
  24. All persons bound to attend, as at regular terms.

*Jury.*

25. Jury list to be made from taxable freeholders, only of persons well qualified. To continue for, and be examined at the end of every two years.
26. Jury list kept in boxes; number to be drawn for superior courts; how drawn. For county courts, and how drawn. Persons having suits in court not to be drawn; nor justices for the county courts. Jurors for special terms, how provided.
27. County court failing to draw jurors, sheriff, clerk, and three justices may draw them.
28. Jury, at two terms of county court, may be dispensed with.
29. Jurors to be summoned, and to attend

## SECTION

- till discharged by court. Tales jurors may be summoned.
30. Jurors not attending fined twenty dollars. To have till next term to make excuse. Tales jurors not attending, fined two dollars.
  31. Exempt from service of civil process.
  32. Ministers of the gospel and others exempt from serving as jurors.
  33. Grand-jury, how drawn.
  34. Petit-jurors sworn in civil cases. In State cases not capital, how. Right of challenge not affected thereby.
  35. Their names to be called over in the hearing of parties before impanelled. Four may be challenged in civil cases.
  36. Constable attending juries to be sworn, for what purpose.

*Practice, Pleas, and Process.*

37. Venue of actions. When plaintiff resides out of State. When plaintiff and defendant reside in different counties. Defendant not to be sued in superior court out of his county for less than one hundred dollars. Actions otherwise brought may be abated.
38. Not to be sued in any court for less than one hundred dollars due by bond, &c. Or for any penalty, justice's judgment under one hundred dollars, or balance of bond, &c., of less amount. Nor for unliquidated demands of sixty dollars, and under. Suits otherwise brought to be abated: Or if the matter appear, dismissed on motion. Penal bonds excepted.
39. The day of issuing process to be noted thereon; sheriff to indorse day of receiving and executing it.
40. Security to be given before the issue of process, or suit may be dismissed. Exception as to persons suing *in forma pauperis*.
41. Names of parties, their sureties and the bail to be docketed by clerk in a book.
42. Clerks issuing process without security to forfeit two hundred dollars.
43. Poor persons may sue *in forma pauperis*. Counsel to be assigned.
44. Writs in the same suit may issue to several counties at the same time.
45. Real plaintiff in ejectment to give a prosecution bond.
46. Defendant in ejectment to give bail-bond.

## SECTION

47. Plaintiff failing to give security, suit dismissed. Defendant to give bail, &c., or shall not plead.
48. If plaintiff in ejectment make affidavit that defendant entered as his tenant, &c., he shall not plead till he makes counter affidavit, and gives bond for damages and costs. On the trial, jury shall find the facts; if for plaintiff, shall assess damages for waste and occupation.
49. Plea *puis darrein* that the plaintiff has entered into possession, not to be received without affidavit and payment of costs. And if bond be given, as in above section, jury to assess damages for occupation and waste.
50. Writs and civil process, when returned. How long before court to be executed.
51. Sheriff returning defendant in jail, plaintiff may enter his appearance, &c.
52. Or that the defendant is not to be found, plaintiff may issue *alias* or attachment. On failure of defendant to appear, judgment by default may be entered. Estate taken on judicial attachment, and not replevied, sold on final judgment.
53. When sheriff returns defendant an inhabitant of another county, *alias* to issue thereto.
54. Process not to be executed on Sunday, days of election, or muster; nor on jurors, or witnesses.
55. When there is no officer, or he will not execute process, on affidavit the clerk shall direct process to the sheriff of adjoining county.
56. Sheriff executing process out of his county to have extra pay.

*Rules of Court.*

57. (1.) Declaration to be filed within three first days of term, or suit dismissed.
- (2.) Defendant to appear, and plead or demur at the same term. When special pleading is required, time may be enlarged. Writ of inquiry, in certain cases, executed at the rendition of judgment.
- (3.) Plaintiff to reply or demur at the same term, and pleadings to be completed, unless, &c.
- (4.) Time may be allowed to argue demurrer, &c.

SECTION

- (5.) Parties may appear in their own suits, &c.
- (6.) Proceedings of court to be entered by clerk in a well-bound book.
- (7.) Jury causes to be first tried.
- (8.) Motions in arrest of judgment to be argued, when.
- (9.) Argument causes, — when to be heard.
- (10.) Plea in abatement to be received, only on affidavit or proof.
- (11.) When overruled, plaintiff shall recover costs. As many pleas as necessary may be pleaded.
- (12.) Plea since the last continuance, no waiver of former pleas.
- (13.) Issues tried at the term next after made up. No cause continued but by consent, or on affidavit.
- (14.) Court may order the party continuing to pay costs.
- (15.) One attorney only to speak, unless allowed by court. May argue to the jury both law and fact.
- (16.) Power of attorney to be produced and filed by attorney, if required. If necessary to retain the power, what to be done.
- 58. In actions on penal bonds, &c., plaintiff may assign several breaches. If judgment be given for plaintiff on demurrer, &c., he may suggest breaches. Defendant may pay damages and costs into court, and then no execution shall issue. Judgment shall be a security for further breaches.
- 59. Rules for summoning witnesses. Subpœna for witnesses, how to issue. Subpœna returnable immediately, to issue in term time only. Subpœna issuing in vacation, how served.
- 60. Witnesses to attend from term to term till discharged. Penalty for not attending. In civil cases. In criminal cases.
- 61. Entitled to pay, if they attend after the suit is settled in vacation, unless notified.
- 62. No execution to issue against defaulting witness until after *scire facias*.

*Depositions.*

- 63. Depositions may be taken before issue. If there be no general nor special rule, then under the rules prescribed. Rules. To be taken under sealed commission, if taken

SECTION

- out of the county. Commissioner not to be kin to either party. Clerk to pass on depositions. Deposition of governor, &c., to be read. May also be taken under special order. Adverse party shall be allowed to cross-examine.
- 64. All commissioners, arbitrators, referees, &c., empowered to summon witnesses to take their depositions. Also clerks of courts.  
Witness, refusing to give his depositions committed to jail. Commitment to recite the authority, &c.

*Witnesses.*

- 65. Sheriff to execute subpœna for witnesses summoned before commissioner, &c., under penalties. Defaults of witnesses to be noted by commissioner. If made before a commissioner appointed out of the State, witness to pay penalty of fifty dollars. What to be evidence of default.
- 66. Default before commissioner acting under authority from this State, certified, to court. Proceedings thereon.
- 67. Witnesses attending jury of view, or commissioner, &c. paid as for attending court.
- 68. Subpœnas to attend commissioners and others, in certain cases issued by clerk.
- 69. Witnesses refusing to depose in court, to be imprisoned.
- 70. During attendance exempt from service of civil process.
- 71. Fees of witness for attendance at court.
- 72. After removal of a cause, subpœnas and commission may issue from either court.
- 73. Witness to prove his attendance at each court. May recover pay for his attendance.
- 74. On final judgment, tickets to be filed with clerk and taxed with costs. Party cast to pay but for two witnesses to the same fact.

*Miscellaneous.*

- 75. Party recovering judgment shall recover costs, unless otherwise provided.
- 76. Costs of petitions paid as court may decree.
- 77. Defendant may, in certain cases, plead

## SECTION

- set-off, or give it in evidence under general issue upon notice, &c.
78. In suits for slander and assault, if damages be under four dollars, costs to be the same.
79. In trespass *q. c. f.*, defendant may disclaim and plead tender, &c. in bar.
80. In trespass, &c. against several, all acquitted shall recover full costs, unless the judge certifies, &c.
81. When a subpoena *duces tecum* may issue.
82. Court may order parties to produce books or papers. Plaintiff failing, to be nonsuited. Defendant failing, judgment against him.
83. Indorsee may sue maker and indorser, jointly or severally. And their executors and administrators.
84. On joint obligations, &c. one or more may be sued.
85. Joint obligations shall survive against executors, &c.
86. Judgment, how entered against executors, &c. and surviving obligors.
87. Several actions on same joint contract to be consolidated. One attorney's fee only taxed.
88. Judgment bonds void as to power to enter judgment.
89. Executions from county courts may issue to any county.
90. Interest on contracts, except penal bonds, and on all judgments. Jury to distinguish principal from interest.
91. Ascertained in judgments final by default, by clerk.
92. Petitions filed in vacation. Capias to issue upon affidavit of amount of demand.
93. Publication to be made for non-resident defendants in cases of petition. Decree *pro confesso* against non-resident to bind as in equity.
94. Court may order the clerk to audit and settle accounts.
95. Depositions in cases of petition.
96. Fees of clerk same as in equity.
97. Infants may sue by next friend.
98. Bill of exceptions tendered by either party. Judge to sign and seal it.
99. Actions of account allowed against executors and administrators of guardians, &c.
100. If defendant in a penal suit plead former judgment, plaintiff may reply fraud. Release of the action void. Defendant pleading falsely, indictable.

## SECTION

101. Payment or satisfaction may be pleaded in suits on bond and judgment. Also payment or satisfaction after the day of paying, in suits on bonds conditioned to be discharged by a less sum.
102. In suits on penal bonds the sum due, interest, and costs being brought into court, shall discharge penalty.
103. Judgments of court to stand till reversed.
104. Upon appeal or *recordari* of defendant from justice's judgment, court may compel plaintiff to secure costs.
105. Appeals from a justice to be tried first term of court. Judgment against party cast and his sureties. How to obtain judgment in case of default.
106. If plaintiff appeal and shall not recover a greater sum, he shall not recover costs.
107. Appeals from county to superior court, how tried.
108. Leap-year day, how counted.
109. Execution not to issue on judgment after a year and a day, unless revived.
110. Nonsuit not allowed after verdict.
111. Party in execution not to be discharged on habeas corpus.
112. Death of a party between verdict and judgment, not to be error, if, &c.
113. Administrator *de bonis non* may have execution on judgment got by former administrator.
114. Accounts may be taken in certain actions against executors, administrators, guardians, sheriffs, and other officers. To be stated as in equity. Pay to commissioners.
115. Causes in superior courts may be removed on affidavit, to adjoining county: Who, in case of slaves, to make affidavit. Reasons for removal to be set forth.
116. Removed twice only. On second removal reasons to be stated in detail.
117. Parties by consent may remove suits to convenient county.
118. On removal, transcript, depositions, &c. to be sent.
119. Surveys may be ordered in cases of disputed boundary. How and by whom made. Charges for surveys to be taxed as costs.
120. Seal of court not put to process, when.
121. Notices in legal proceedings to be served by sheriff. How served. Return evidence of service. When ex-

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- cuted to be returned to party. When sheriff interested, coroner to serve and return them.
- 122. Penalty on officer for failing to serve notices or making false return.
- 123. Return of sheriff on *scire facias* evidence of service.
- 124. Defendants may show they are sureties, and jury or justice to find the fact.
- 125. Property of principal to be first levied on and sold.

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- 126. Judgment for costs against the plaintiff and sureties, on failing in suit.
- 127. After judgment, defendant may pay the money to the clerk.
- 128. Clerk to pay it to the party entitled.
- 129. Speedy collection of proceeds of judicial sales by motion.
- 130. Judge, how to deliver his charge to the jury.
- 131. Quakers may wear hats in court.

1. THE justices of the peace 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:—

Justices of the peace to be judges of courts of pleas and quarter-sessions.

Alamance, on the first Monday after fourth Monday in February, May, August, and November.

At what time courts to be held in the several counties.—R. S. c. 31, s. 1.

Alexander, first Monday in March, June, September, and December.

Anson, second Monday in January, April, July, and October.

Ashe, fourth Monday in February, May, August, and November.

Beaufort, third Monday in March and September, and on the first Monday in June 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 after fourth Monday in March, June, September, and December.

Burke, eighth Monday after fourth Monday in March, June, September, and December.

Cabarrus, third Monday in January, April, July, and October.

Caldwell, sixth Monday after fourth Monday in March, June, September, and December.

Camden, second Monday in March, June, September, and December.

Carteret, third Monday in February, May, August, and November.

Caswell, first Monday after fourth Monday in March, June, September, and December.

Catawba, third Monday in January and July, and second Monday after fourth Monday in March and September.

Chatham, second Monday in February, May, August, and November.

Cherokee, first Monday in March and September, and first Monday in December and June.

- Chowan, first Monday in February, May, August, and November.
- Cleveland, eleventh Monday after the fourth Monday in March, June, September, and December.
- Columbus, second Monday in February, May, August, and November.
- Craven, second Monday in March, June, September, and December.
- Cumberland, first Monday in March, June, September, and December.
- Carrituck, the last Monday in February, May, August, and November.
- Davidson, second Monday in February, May, August, and November.
- Davie, fourth Monday in February, May, August, and November.
- Duplin, third Monday in January, April, July, and October.
- Edcombe, fourth Monday in February, May, August, and November.
- Forsyth, third Monday in March, June, September, and December.
- Franklin, second Monday in March, June, September, and December.
- Gaston, third Monday in February and August, and fourth Monday after the fourth Monday in March and September.
- Gates, third Monday in February, May, August, and November.
- Granville, first Monday in February, May, August, and November.
- Greene, second Monday in February, May, August, and November.
- Guilford, third Monday in February, May, August, and November.
- Halifax, third Monday in February, May, August, and November.
- Harnett, second Monday in March, June, September, and December.
- Haywood, fourth Monday in March, June, September, and December.
- Henderson, first Monday after the fourth Monday in March, June, September, and December.
- Hertford, fourth Monday in February, May, August, and November.
- Hyde, second Monday in February, May, August, and November.
- Iredell, third Monday in February, May, August, and November.
- Jacksen, third Monday in March, June, September, and December.
- Johnston, fourth Monday in February, May, August, and November.
- Jones, fifth Monday after fourth Monday in March and September, and on last Monday in January and July.



- Lenoir, first Monday in January and July, and third Monday in March and September.
- Lincoln, third Monday after fourth Monday in March and September, and second Monday in January and July.
- Macon, second Monday in March, June, September, and December.
- Madison, third Monday after fourth Monday in March, June, September, and December.
- Martin, second Monday in January, April, July, and October.
- McDowell, fifth Monday after fourth Monday in March, June, September, and December.
- Mecklenburg, fourth Monday in January, April, July, and October.
- Montgomery, first Monday in January, April, July, and October.
- Moore, fourth Monday in January, April, July, and October.
- 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 March, June, September, and December.
- Orange, fourth Monday in February, May, August, and November.
- Pasquotank, first Monday in March, June, September, and December.
- Perquimons, second Monday in February, May, August, and November.
- Person, third Monday in March, June, September, and December.
- Pitt, first Monday in February, May, August, and November.
- Polk, tenth Monday after fourth Monday in March, June, September, and December.
- Randolph, first Monday in February, May, August, and November.
- Richmond, third Monday in January, April, July, and October.
- Rowan, first Monday in February, May, August, and November.
- Robeson, fourth Monday in February, May, August, and November.
- Rockingham, fourth Monday in February, May, August, and November.
- Rutherford, ninth Monday after fourth Monday in March, June, September, and December.
- Sampson, third Monday in February, May, August, and November.
- Stanly, second Monday in February, May, August, and November.
- Stokes, second Monday in March, June, September, and December.

Surry, second Monday in February, May, August, and November.

Tyrrell, fourth Monday in January, April, July, and October.

Union, first " " " " " " " "

Wake, third Monday in February, May, August, and November.

Warren, fourth Monday in February, May, August, and November.

Washington, third Monday in February, May, August, and November.

Watauga, third Monday in February, May, August, and November.

Wayne, third Monday in February, May, August, and November.

Wilkes, first Monday after fourth Monday in January, April, July, and October.

Wilson, fourth Monday in January, April, July, and October.

Yadkin, first " " " " " " " "

Yancey, fourth Monday after fourth Monday in March, June, September, and December.

Court may sit six days; unfinished business continued.—R. S. c. 31, s. 2.

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.

One justice may adjourn court daily for three days, &c.—R. S. c. 31, s. 3.

3. If, by reason of bad weather, or other cause, a sufficient number of justices shall not meet for holding their court on the day appointed, any one justice may adjourn the court from day to day, not exceeding three days, until a sufficient number of justices can attend to hold the court.

Court nor process discontinued by failure to sit, or by change of time of term.—R. S. c. 31, s. 4.

4. None of the county courts, nor any process in any of them depending, shall be discontinued by reason of the justices failing to hold court upon the day appointed, or of any alteration of the days appointed for holding it; but in every such case all 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 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 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 court. Their jurisdiction.—R. S. c. 31, s. 5.

5. The justices of the county courts, or any three of them, shall be competent to hold the terms thereof, and shall take cognizance of, and have full power and authority and original 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 statute confined to one or more magistrates out of court, or to the supreme or superior courts; of all penalties to the amount of one hundred dollars and upwards incurred by violation of the penal statutes of the 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 intestate's estates, and all other matters relating thereto; to try, hear, and determine all matters relating to orphans, idiots, and lunatics, and the management of their estates, in like manner as courts of equity exercise jurisdiction in such cases; to inquire of, try, hear, and determine all petit larcenies, assaults and batteries, all trespasses and breaches of the peace, and all other crimes and misdemeanors, the judgment upon conviction whereof shall not extend to life, limb, or member; excepting those only whereof the original jurisdiction is given exclusively to a single justice, or to two justices of the peace, to the superior or to the supreme court.

6. The court may appoint a chairman or presiding magistrate, who shall hold his office until a successor is appointed. And the justices, a majority being present, may, in their discretion, at the first term which may happen after the first day of January in every year, 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, for each day they shall hold court, a sum not exceeding three dollars, nor less than one dollar per day, to be fixed by the court, (a majority of the justices, being present,) and paid out of the funds of the county, upon the certificate of the clerk, showing the number of days each justice has attended.

Court may appoint a chairman.

Also a special court, &c.

Their pay.—R. S. c. 31, s. 6.

7. The justices of the court shall have authority to purchase such law-books as they deem necessary, to be kept by the clerk in his office for the use of the court; and if any clerk shall abuse or destroy, or suffer to be abused or destroyed, any of the books committed to his care, he shall forfeit and pay to the county trustee, for the use of the county, five dollars for each offence.

Court may purchase law-books.

Penalty on clerk for abusing them.—R. S. c. 31, s. 6, 7.

8. A superior court shall be held by a judge thereof, at the court house in each county in the State, twice in every year.

Superior courts established.—R. S. c. 31, s. 9.

9. The State shall be divided into seven judicial circuits, as hereinafter specified, and the superior courts of law and courts of equity, in the several counties, shall be opened and held at the times hereinafter expressed, and each court shall continue in session one week, unless the business thereof shall be sooner determined, namely:—

The State divided into seven judicial circuits.

The first judicial circuit shall be composed of the following counties, and the courts thereof shall be held at the following times, to wit:—

Tyrrell County,	first	Monday of March and September.
Washington,	second	“ “ “
Bertie,	third	“ “ “

Counties composing, and times of holding courts in First circuit.—R. S. c. 31, s. 10, 11.

Hertford, fourth Monday of March and September.

Gates, first Monday after fourth Monday of March and September.

Chowan, second Monday after fourth Monday of March and September.

Perquimons, third Monday after fourth Monday of March and September.

Pasquotank, fourth Monday after fourth Monday of March and September.

Camden, fifth Monday after fourth Monday of March and September.

Currituck, sixth Monday after fourth Monday of March and September.

Second circuit.  
—R. S. c. 31, s.  
10, 12.—1846,  
c. 32.

10. The second judicial court shall be composed of the following counties, and the courts thereof shall be held at the following times, to wit:—

Duplin County, fourth Monday of March and September.

Wayne, first Monday after the fourth Monday of March and September.

Greene, second Monday after the fourth Monday of March and September.

Lenoir, third Monday after the fourth Monday of March and September.

Craven, fourth Monday after the fourth Monday of March and September.

Jones, on the Wednesday next after the fifth Monday after the fourth Monday of March and September.

Onslow, sixth Monday after the fourth Monday of March and September.

Carteret, seventh Monday after the fourth Monday of March and September.

Beaufort, eighth Monday after the fourth Monday of March and September.

Hyde, ninth Monday after the fourth Monday of March and September.

Wilson, tenth Monday after the fourth Monday in March and September.

Third circuit.  
—R. S. c. 31, s.  
10, 13.

11. The third judicial circuit shall be composed of the following counties, and the courts thereof shall be held at the following times, to wit:—

Martin, on the Monday before the first Monday of March and September.

Pitt, first Monday of March and September.

Edgcombe, second " " "

Nash, third " " "

Johnston, fourth " " "

Wake, first Monday after the fourth Monday of March and September.

Franklin, second Monday after the fourth Monday of March and September.

Warren, third Monday after the fourth Monday of March and September.

Halifax, fourth Monday after the fourth Monday of March and September.

Northampton, fifth Monday after the fourth Monday of March and September.

12. The fourth judicial circuit shall be composed of the following counties, and the courts thereof shall be held at the following times, to wit:—

Fourth circuit.  
—R. S. c. 31, s.  
10, 14.

Granville, first Monday of March and September.

Orange, second “ “ “

Chatham, third “ “ “

Randolph, fourth, “ “ “

Davidson, first Monday after the fourth Monday of March and September.

Forsyth, second Monday after the fourth Monday of March and September.

Stokes, third Monday after the fourth Monday of March and September.

Guilford, fourth Monday after the fourth Monday of March and September.

Rockingham, fifth Monday after the fourth Monday of March and September.

Caswell, sixth Monday after the fourth Monday of March and September.

Person, seventh Monday after the fourth Monday of March and September.

Alamance, eighth Monday after the fourth Monday of March and September.

13. The fifth judicial circuit shall be composed of the following counties, and the courts thereof shall be held at the following times, to wit:—

Fifth circuit.

Moore, on the Monday before the last Monday of February and August.

Montgomery, last Monday of February and August.

Stanly, first Monday of March and September.

Anson, second Monday of March and September; and the fall term of Anson superior court shall continue two weeks successively, whenever the business of the court shall require it.

Anson may  
continue two  
weeks in fall.

Richmond, third Monday of March and third Monday of September.

Robeson, fourth Monday of March and fourth Monday of September.

Bladen, first Monday after fourth Monday of March, and first Monday after fourth Monday of September.

Columbus, second Monday after fourth Monday of March, and second Monday after fourth Monday of September.

Brunswick, third Monday after fourth Monday of March, and third Monday after fourth Monday of September.

New Hanover, fourth Monday after fourth Monday of March, and fourth Monday after fourth Monday of September;

New Hanover  
may continue

two weeks.—R.  
S. c. 31, s. 10,  
15.—1852, c.  
38.

and shall continue two weeks successively, should the business require it.

Sampson, sixth Monday after fourth Monday of March, and sixth Monday after fourth Monday of September.

Cumberland, seventh Monday after fourth Monday of March, and seventh Monday after fourth Monday of September.

Sixth circuit.—  
R. S. c. 31, s.  
10, 17.

14. The sixth judicial circuit shall be composed of the following counties, and the courts thereof shall be held at the following times, to wit:—

Surry, fourth Monday of February and August.

Yadkin, first Monday after fourth Monday of February and August.

Ashe, second Monday after fourth Monday of February and August.

Wilkes, third Monday after fourth Monday of February and August.

Alexander, fourth Monday after fourth Monday of February and August.

Davie, fifth Monday after fourth Monday of February and August.

Iredell, sixth Monday after fourth Monday of February and August.

Catawba, seventh Monday after fourth Monday of February and August.

Lincoln, eighth Monday after fourth Monday of February and August.

Gaston, ninth Monday after fourth Monday of February and August.

Union, tenth Monday after fourth Monday of February and August.

Mecklenburg, eleventh Monday after fourth Monday of February and August.

Cabarrus, twelfth Monday after fourth Monday of February and August.

Rowan, thirteenth Monday after fourth Monday of February and August.

Seventh circuit.—R. S. c.  
31, s. 10, 18.—  
1852, c. 44.

15. The seventh judicial circuit shall be composed of the following counties, and the courts thereof shall be held at the following times, to wit:—

Cherokee, on the first Monday of March and September.

Macon, second " " "

Jackson, third " " "

Haywood, fourth " " "

Henderson, first Monday after fourth Monday of March and September.

Buncombe, second Monday after fourth Monday of March and September.

Madison, third Monday after fourth Monday of March and September.

Yancey, fourth Monday after fourth Monday of March and September.

- McDowell, fifth Monday after fourth Monday of March and September.
- Caldwell, sixth Monday after fourth Monday of March and September.
- Watauga, seventh Monday after fourth Monday of March and September.
- Burke, eighth Monday after fourth Monday of March and September.
- Rutherford, ninth Monday after fourth Monday of March and September.
- Polk, tenth Monday after fourth Monday of March and September.
- Cleavland, eleventh Monday after fourth Monday of March and September.

16. When the trial of a capital case shall have been commenced, and the time of term herein before fixed for the court, shall expire before the jury shall have rendered their verdict therein, the court may be continued, by adjournment, from day to day afterwards, for the purpose of finishing the trial and receiving the verdict, and rendering thereon the judgment of the law.

Superior court may continue longer than a week in a capital case.—R. S. c. 31, s. 19.

17. The said courts shall be held by judges, being men of ability, integrity, and learned in the law, who shall have cognizance and legal jurisdiction, unless otherwise provided, of all pleas, real, personal, and mixed, and also all suits and demands relative to dower, partition, legacies, filial portions, and estates of intestates; and, unless it be otherwise provided, of 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 and privileges, 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.

Held by judges. Their power and jurisdiction.—R. S. c. 31, s. 20.

18. The judges shall be selected from the State at large, but shall be appointed for some one judicial circuit, in which there is at that time no judge resident: and the judge thus appointed shall reside in some one of the counties of the circuit for which he shall have been chosen, so long as he may hold the office; and every judge before he shall act as such, shall, in open court, or before the governor, or before one of the judges of the supreme or superior courts, or before some justice of the peace, take the oath appointed for public officers, and also an oath of office.

Judges appointed from State at large, but to reside in a particular circuit. Shall take oaths.—R. S. c. 31, s. 21.—1848, c. 45.

19. The officer or court, before whom said judge shall qualify, shall cause the judge to subscribe the oaths by him taken, and having certified the same, shall return said oaths to the

Oaths subscribed and returned to sec'y of State.

Penalty for acting without taking oaths.—R. S. c. 31, s. 22.

Judges to ride according to present arrangement of circuits. Ridings to be published.

May exchange courts.—R. S. c. 31, s. 23, 24.

Judge not attending first day of term, sheriff to adjourn daily till third day.

Recognizances, &c., to stand continued till next term.—R. S. c. 31, s. 25.

Special term of superior court appointed by judge, when.

Governor notified to appoint judge.

Clerk to publish it.—1844, c. 10, s. 1, 2, 5. 1848, c. 23.  
Court may continue till a trial begun, is finished.

Pay of judge.

Judges of special terms to have the powers of other judges.

secretary of State, who shall carefully preserve them; and if any judge shall act in his office, before he shall have taken the oaths directed, he shall forfeit and pay two thousand dollars, one half to the use of the State, and the other half to the person who shall sue for the same.

20. The judges of the superior courts, shall ride the circuits successively, commencing at the first circuit according to the arrangement now existing between the judges, and shall cause a notification of the ridings to be published in some newspaper by the first of February, and the first of August, preceeding each circuit: *Provided*, that no judge shall ride the same circuit twice in succession, but the judges may exchange with each other for any courts in their circuits; and whenever a judge shall die or resign, his successor shall ride the circuits thus allotted to his predecessor.

21. If the judge shall not attend and hold the courts on the day prescribed, the sheriff of the county or his deputy shall open and adjourn the court from day to day, until the judge shall attend and hold the same, or until the third day appointed for the holding thereof, on which day the sheriff or his 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 court had been duly held. And all recognizances, bonds, and obligations for appearance, and all returns shall be of the same force and validity, for the appearance of any person at such succeeding term, and all summonses for witnesses as effectual, as if such succeeding term had been expressly mentioned.

22. Whenever the civil business of the superior court of any county shall become too great to be done at the regular term thereof, the judge presiding may, and he is required to appoint a special term of said court, to be held for one or two weeks at his discretion, at some specified time before the term next ensuing. He shall notify the governor thereof, who shall appoint one of the judges of the superior courts, other than the presiding judge aforesaid, to hold said special court, and the clerk of the court shall duly publish the same: and the court shall be held for the time appointed, unless the business be sooner finished. *Provided*, that whenever, at such special term, the trial of a cause shall have been commenced, and the term appointed shall expire before the trial shall be finished and the jury shall have rendered their verdict therein, the court may be continued by adjournment from day to day afterwards, for the purpose of finishing the trial and receiving the verdict, and rendering thereon the judgment of the law. And a judge holding a special term of two weeks, shall also receive ninety dollars for the second week, to be paid as provided in the chapter entitled "Salaries and Fees."

23. The judge holding a special term is empowered to hear, try, and determine all civil causes, both at law and in equity, and to do all things appertaining thereto, and to have, use, and



enjoy all the rights and privileges of a judge holding a regular term, in the same manner and to as full extent, as if the same were a regular term of the court: But no process shall be made returnable thereto except subpœnas, or other process for the attendance of witnesses.

No process except subpœnas returnable thereto.—1844, c. 10, s. 2.—1848, c. 29.

24. All persons, as well witnesses summoned in the civil causes of said court to the regular or special term, as officers or others who may be bound to attend the next regular term of the court, except in criminal cases, shall attend the special term, under the same rules, forfeitures, and penalties, and with the same privileges as if the term were a regular term.

All persons bound to attend, as at regular terms.—1844, c. 10, s. 2.

25. The courts of pleas and quarter-sessions, at the first term which shall be held 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 made out by their clerk, and constitute the jury list; and if said returns shall not contain the names of all the inhabitants of their county who are freeholders, and in their opinion are well qualified to act as jurors, they shall cause the names of all such to be inserted in the jury list; and such jury list, so made up, shall continue for two years in its operation; at the end of which time, the court shall examine carefully the jury lists already made out, and diligently inquire if any persons qualified to be jurors, as above mentioned, are omitted; and whether any persons not qualified to be jurors, as above mentioned, have been inserted; and if any have been omitted, they shall add them to the jury list to be made as above directed; and if any have been inserted not possessing the requisite qualifications, they shall strike their names from the jury list; and to obtain full information on this subject, the courts may examine on oath any person they think proper.

Jury list to be made from taxable freeholders, only of persons well qualified.

To continue for, and be examined at the end of every two years.—R. S. c. 31, s. 26.

26. The said courts shall cause the names on their jury list to be written on small scrolls of paper of equal size, and put into a box 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 the court; and at each session of their court, next preceding the sitting of the superior court of the county, shall cause to be drawn from the jury box, out of the partition marked No 1, by a child not more than ten years of age, not more than forty-two nor less than thirty scrolls; and the persons, whose names shall be inscribed on said scrolls, shall serve as jurors at the succeeding superior court to be held for the county. *Provided*, that whenever the county court of such county shall be held within fifteen days of the sitting of the superior court, then the court preceding such county court shall draw the jury. And the court of pleas and quarter-sessions, at

Jury list kept in boxes. Number to be drawn for superior courts: how drawn.

For co. courts, and how drawn. Persons having suits in court, not to be drawn. Nor justices for the county courts.

each term thereof, shall in like manner draw the like number of persons to serve as jurors at the next term of said court; and should any of the jurors 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 partition No. 1 of the jury box; or if any of said persons so drawn be dead or removed out of the county, the scrolls with their names shall be destroyed; and in all such cases other jurors shall be drawn in their stead, and the scrolls drawn to make the jury 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 all the names shall be returned 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 the court shall deem fit persons to be jurors. And whenever there shall be a special court for the county, eighteen jurors shall be drawn to attend said court, by the county court next preceding the special term, in the manner and under the rules prescribed in this and the preceding sections for providing jurors for the regular terms.\*

Jurors for special terms, how provided. — R. S. c. 31, s. 27, 1844, c. 10, s. 3.

Co. court failing to draw jurors, sheriff, clk, and three justices may draw them. — R. S. c. 31, s. 28.

27. If any county court shall fail to draw jurors for the superior court, regular or special, or for the succeeding term of the county court, the sheriff and the clerk of the county court, in the presence of, and assisted by three of the justices of the peace of the county, shall draw the jurors in the manner above prescribed.

Jury at two terms of county court, may be dispensed with. — R. S. c. 31, s. 29.

28. Whenever it shall appear to any court of pleas and quarter-sessions that the business thereof does not require a jury at every term, it shall be in their power, a majority of the justices being present, to pass an order dispensing with the attendance of a jury at two terms, which order shall be rescinded only by a majority of the justices.

Jurors to be summoned, and to attend till discharged by court.

29. The clerk of said court shall deliver the list of the jurors drawn for the county and superior courts, to the sheriff of the county, who shall summon the persons therein named to attend as jurors at such courts respectively, which summons shall be served, personally, or by leaving a copy thereof at the house of the juror, at least five days before the sitting of the court to which he may be summoned; and jurors shall appear and give their attendance until duly discharged; and, that there may not be a defect of jurors, the sheriff shall by order of court summon, from day to day, of the bystanders, other jurors,

\* For New Hanover county fifty-one jurors are to be drawn, of whom the clerk shall designate thirty-six for the first week, and fifteen for the second week, who shall be summoned to attend accordingly. — 1854, c. 16, s. 1, 2.

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.—R. S. c. 31, s. 30.

30. Every person on the original *venire* summoned to appear as a juror, who shall fail to give his attendance until duly discharged, shall forfeit and pay for the use of the county the sum of twenty dollars, to be imposed by the court: *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 the court, shall be discharged without costs. And every person 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 the court; and the clerk shall forthwith issue an execution against the estate of the delinquent tales juror for such amercement and costs.

Jurors not attending fined twenty dollars.

To have till next term to make excuse.

Tales jurors not attending, fined two dollars.—R. S. c. 31, s. 31.

31. No sheriff or other officer shall 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; all such service shall be void, and the defendant on motion shall be discharged.

Exempt from service of civil process.—R. S. c. 31, s. 32.

32. Regular ministers of the gospel of every denomination, regular physicians or practitioners of physic and surgery, keepers of public mills, registers, and postmasters, shall be exempt from serving as jurors.

Ministers and others exempt from serving as jurors.—R. S. c. 31, s. 33.

33. The judges of the superior courts and the justices of the county courts at the terms of their respective courts, shall direct the names of all the persons returned as jurors, to be written on scrolls of paper and put into a box or hat and drawn out by a child under ten years of age; whereof the first eighteen drawn shall be a grand-jury for the court; and the residue shall serve as petit jurors for the court.

Grand-jury how drawn.—R. S. c. 31, s. 34.

34. The clerk shall, at the beginning of the court, swear such of the petit jury as are of the original panel, to try all civil cases; and if there should not be enough of the original panel, the talesmen shall be sworn; and in the trial of all offences, not capital, unless where the court shall otherwise direct, petit jurors of the original panel as well as talesmen shall be sworn as prescribed in the chapter entitled "Oaths."

Petit jurors sworn in civil cases.

In State cases not capital, how.

*Provided*, that nothing herein contained shall be construed to disallow 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 the jury shall be supplied by any of the original *venire*, or of the bystanders qualified to serve as jurors.

Right of challenge not affected thereby.—R. S. c. 31, s. 36.

35. The clerk, before a jury shall be impanelled to try the 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 the parties, or their counsel for them, may challenge peremptorily four jurors upon the said panel, without showing any cause therefor, which shall be allowed by the court.

Their names to be called in the hearing of parties before impanelled. Four may be challenged in civil cases.—R. S. c. 31, s. 37.

Constable attending juries to be sworn, for what purpose. — R. S. c. 31, s. 38.

36. When any constable (except such as are appointed to attend the grand-jury) shall be appointed or summoned to attend any superior or county court, the clerk, at the time of the first going out of a jury on the trial of any civil cause, shall administer an oath to the constable faithfully to attend the several juries that may be put under his care during that term, that shall be charged in the trial of any civil cause; and after the constable shall be once so sworn, he shall be considered, to all intents and purposes as acting upon the same oath, while attending every jury that he may be called to attend during that term.

PRACTICE, PLEAS, AND PROCESS.

Venue of actions.

37. 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 rendered, assault and battery, and for the unlawful taking of goods, all actions upon the case, and suits for legacies, and for distributive shares of intestates' estates, shall be brought to the court of the county where both parties reside. And when the plaintiff resides beyond the limits of the State, shall be brought in the county wherein the defendant resides; and when the plaintiff and defendant reside in different counties, and the action is sued in the court of pleas and quarter-sessions, it shall be commenced in the court of the county, where the defendants, or one of them, reside. And if the action shall be sued in the superior court, it shall be commenced in the county where the plaintiff, or one of the defendants resides, at the option of the plaintiff; *Provided, however*, that no action for any debt or demand of less value than one hundred dollars, due by contract or agreement upon any cause or account whatever, shall be brought in any superior court other than that of the county where the defendants, or one of them, reside. And when any action shall be brought otherwise than is herein directed, the same may be abated on plea of the defendant.

When plaintiff resides out of State.

When plaintiff and deft. reside in different counties. Deft. not to be sued in sup'r co. out of his county for less than \$100.

Actions otherwise brought may be abated. — R. S. c. 31, s. 39, 40, 41, 42. — 1838, c. 14.

Not to be sued in any court for less than \$100 due by bond, &c.

Or for any penalty or justice's judgment under § 100, or balance on bond, &c. of less amount.

38. No action shall be originally commenced in any of the said courts for any sum of less value than one hundred dollars, where the sum sued for is due by bond, promissory note, or liquidated account signed by the party to be charged thereby; nor for any forfeiture or penalty of less amount than one hundred dollars, incurred by virtue of any act of Congress or act of the General Assembly; nor upon any judgment rendered by a justice of the peace, when the principal money due thereon at the time of suit exclusive of costs is less than one hundred dollars; nor for any balance of less value than one hundred dollars, due on any bond, promissory note, or liquidated account signed as aforesaid; nor for any unliquidated debt or

demand of no greater value than sixty dollars, due by contract or agreement, or for goods, wares, and merchandise sold and delivered, or for work and labor done, or for specific articles. And if any action shall be commenced in any of the said courts contrary to the provisions of this section; or if the sum sued for which may be truly due and owing, is of less value than that for which the action is hereby allowed to be commenced in said courts, the same may be abated on plea of the defendant, or, if the matter appear on the writ or declaration, may be dismissed on motion: *Provided, however*, that nothing herein contained shall extend to penal bonds or notes, if the penalty therein stated be of the value of one hundred dollars.

Nor for unliquidated demands of \$ 60, and under. Suits otherwise brought to be abated.

Or if the matter appear, dismissed on motion. Penal bonds excepted.

39. The clerk shall note on process the day on which the same shall be issued, and the sheriff or other officer receiving it for execution, shall in like manner note thereon, the day on which he shall have received it, and the day of the execution; and every clerk, sheriff, or other officer, neglecting so to do, shall forfeit and pay one hundred dollars.

Day of issuing process to be noted thereon; sheriff to indorse day of receiving and executing it.—R. S. c. 31, s. 43.

40. No writ or other leading process, returnable to any court of record, shall be granted or issued by the clerk or his deputy, but under the following rules, to wit: the clerk, by himself or his deputy, before issuing the same, shall take bond with sufficient security of the person suing, conditioned that he will prosecute such suit, and in case of failure therein, will pay to the defendant all such costs and damages, as may be awarded against him by the court: *Provided, nevertheless*, that persons may sue *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 allowing said applicant to sue *in forma pauperis*, the clerk shall issue the same without requiring bond and security; and if any writ or other leading process shall be issued without security, unless upon such order, the same shall be dismissed by the court, on motion of the defendant.

Security to be given before process issued, or suit may be dismissed.

Exception as to persons suing *in forma pauperis*.—R. S. c. 31, s. 44.

41. Where the clerk shall issue any writ or other process, or any declaration in 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 for that purpose in his office, together with the names of the plaintiff and defendant and places of residence, the names of the sureties to such writ, with the place where they live; and when the process is returned he shall enter therein the names of the bail; which book he shall have before the court, at all times during its session, to the end that it may be seen by the parties and the court, whether sufficient security is taken as required.

Names of parties, their sureties and the bail to be docketed by clerk in a book.—R. S. c. 31, s. 45.

42. If any clerk, by himself or deputy, 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.

Clerks issuing process without security to forfeit \$ 200.—R. S. c. 31, s. 46.

43. Every poor person, who shall have cause of action

Poor persons

may sue in *forma pauperis*.

Counsel to be assigned.—R. S. c. 31, s. 47.

Writs in the same suit may issue to several counties at the same time.—R. S. c. 31, s. 48.

Real plaintiff in ejectment to give a prosecution bond.—R. S. c. 31, s. 49.

Def't. in ejectment to give bail-bond.—R. S. c. 34, s. 50.

Pl'tiff failing to give security, suit dismissed. Def't to give bail, &c., or shall not plead.—R. S. c. 31, s. 52.

If plaintiff in ejectment make affidavit that def't entered as his tenant, &c., he shall not plead till he makes counter affidavit and give bond for damages and costs.

against any other person in law or equity, shall have, at the discretion of the judge of any court, a writ of law or in equity, according to the nature of his cause, paying no costs on the same nor giving any security therefor; and the court, to which the writ may be returnable, shall assign to such poor person learned counsel to attend to his case, and they shall attend without fee or reward; and no costs shall be charged to such person by any officer of the court in which the suit shall be brought.

44. When there may be two or more defendants, the plaintiff, in any suit in the superior court, and also in any suit in the county court, (in case one of the defendants resides in the county), may issue writs directed to the sheriff 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 writs are returned they shall be docketed as if only one had issued; and if any defendant shall not be served with such process, the same proceeding shall be had as in other cases of similar process not executed.

45. Upon the return of any declaration in ejectment, the real plaintiff, his agent or attorney, at the return term, shall enter into bond payable to the clerk of the court, for the use of the defendant, 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.

46. Every person, who by leave of court, may become defendant in an action of ejectment, shall, on doing so, by himself or agent, execute a bond with good and sufficient security, payable to the fictitious lessee, for the use of the plaintiff, to answer the action and abide by the judgment which may be rendered therein, in the same manner and on the same conditions as bail are bound; and the obligors shall be under the same rules and regulations, and liable to the same judicial proceedings as to all costs and damages which may be awarded against the defendant, as are principal and bail in other civil actions.

47. Whenever the plaintiff in ejectment shall fail to give bond for prosecuting his suit, the court shall on motion dismiss the same; and whenever any person may be desirous of becoming defendant in a suit in ejectment, he shall give bond as before directed, or surrender himself in custody of the sheriff, before he shall be permitted to plead.

48. If the lessors of the plaintiff, or any one of them, in an action of ejectment, his agent or attorney shall, at the return term of the declaration in ejectment, file his 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 tenant, or as tenant of the person, for whom such agent or attorney deposes, that the said tenant's term therein was expired, at the commencement of the suit, and that he refuses to surrender the possession of the

premises to said lessors or any one of them; then the person in possession or any other person applying to become defendant, shall not be entitled to plead to the suit, and the lessors of the plaintiff shall be entitled to judgment final against the casual ejector at the said term, unless the person in possession, or other person applying to be made defendant, shall make affidavit before the court, in writing, that his term therein had not expired, and also enter into bond with ample security in such sum as the court shall direct, conditioned that the defendant shall pay the lessor or lessors all such costs and damages as shall be recovered in the suit; and the jury in such cases, when issue may be joined, shall 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 the finding be in favor of the lessors of the plaintiff, the jury shall assess the damages to which they shall be entitled, including the value of the occupation of the premises sued for from the expiration of the 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 sureties upon their said bond, to be discharged by the payment of the damages assessed and all costs; and judgment upon the verdict shall bar the action for mesne profits or for the trespass by any of the lessors in said action.

On the trial jury shall find the facts; if for plaintiff, shall assess damages for waste and occupation.—  
—R. S. c. 31, s. 51.

49. If after issue joined in any action of ejectment the defendant shall voluntarily abandon the possession of the premises sued for, and the lessor of the plaintiff shall enter therein, a plea by the defendant of such entry and possession shall not be received, unless the same be verified by affidavit and accompanied with payment into court of all the plaintiff's costs; and such plea shall be a waiver of the plea already pleaded. And in all cases where the defendant shall have given bond in pursuance of the provisions of the preceding section, and he shall plead such entry and possession since the last continuance, in manner aforesaid, and the same shall be admitted by the plaintiff, or on issue joined be found for the plaintiff, the jury shall assess damages in the manner provided for in said section, and the court shall render judgment for the same against the defendant and his sureties on their bond aforesaid.

*Plea puis darrein* that the pl't'f has entered into possession, not to be received without affidavit and payment of costs.

And if bond be given, as in above section, jury to assess damages for occupation and waste.

50. All writs and other civil process and precepts, except subpœnas returnable immediately, shall, unless otherwise directed, 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 superior court; and at least five days, when returnable to the county court; and if any original or mesne process shall be taken out, within the time above specified, it shall be made returnable to the second term next after process issued; and all process,

Writs and civil process, when returned.

How long before court to be executed.—R. S. c. 31, s. 53.

made returnable or executed otherwise than is herein directed, shall be adjudged void upon the plea of the defendant.

Shff. returning deft. in jail, plfff. may enter his appearance, &c.—R. S. c. 31, s. 54.

51. When a 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 in this chapter directed; nevertheless the defendant shall not be discharged out of custody but by putting in bail, or by rule of court.

Or that the deft. is not to be found, plaintiff may issue *alias* or attachment.

52. When the sheriff shall return in a 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 estate 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 to the like judgment, final or interlocutory, against the defendant as if he had appeared and had failed to plead; and the estate so attached, if not replevied or sold, according to the rules prescribed for estate 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 estate taken in execution on a writ of *feri facias*, and if the judgment shall not be satisfied by the estate attached, the plaintiff may have execution for the residue.

On failure of deft. to appear judgment by default may be entered. Estate taken on judicial attachment, and not replevied, sold on final judgment.—R. S. c. 31, s. 56.

When shff. returns deft. to be an inhabitant of another county, *alias* to issue thereto.—R. S. c. 31, s. 57.

53. And when any defendant, in a writ or other process, shall be a known inhabitant of any other county than that of the sheriff, to whom such writ or 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.

Process not to be executed on Sunday, days of election, or muster; nor on jurors, or witnesses.—R. S. c. 31, s. 58.

54. It shall not be lawful for any sheriff, constable, or other officer, to execute any writ or other process on 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 members of Congress, or of electors of President and Vice-President, or of any officer of this State, or upon any person attending under summons as witness or juror; and all such service of process is hereby declared illegal and may be abated by plea, unless the same be issued against such person for treason, felony, or misdemeanor.

When there is no officer, or he will not execute process, on affidavit the clerk shall direct process to the sheriff of adjoining coun-

55. If at any time there should not be in the county a proper officer, to whom precepts or process, original, mesne, or final, of a court of record shall or ought to be directed, who can lawfully execute the same; or, if there be such officer, who shall refuse or neglect to execute such precept or process, then the clerk of the court from which the same hath issued or shall



issue, upon the facts being verified before him by written affidavit subscribed by the plaintiff or his agent, shall issue such precept or process to the sheriff of any adjoining county, who shall have power to execute, and shall execute the same, in like manner as if he were sheriff of the county.

56. Whenever any precept or process shall be directed to the sheriff of an adjoining county, to be served out of his county as aforesaid, such sheriff shall have for such service, not only the fees allowed by law, but a further compensation of five cents for every mile of travel in going to and returning from service of such precept or process: *Provided, however,* that whenever any writ of *feri facias* of five hundred dollars or upwards, shall be directed to the sheriff of an adjoining county, under the provisions of this chapter, such sheriff shall not be allowed mileage, but only the commissions to which he shall be entitled.

ty.—R. S. c. 31, s. 59.—1846, c. 61.

Sheriff executing process out of his county, to have extra pay.—R. S. c. 31, s. 60.

RULES OF COURT.

57. The following rules and methods shall be observed in said courts, namely:—

Rules of court. Decl'n to be filed within three first days of term, or suit dismissed.

(1.) The plaintiff 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 on motion shall be dismissed by the court at the costs of the plaintiff.

(2.) 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 action requires special pleading, the time for pleading may be enlarged. *And provided further,* that where a plaintiff, on any of the demands mentioned in section ninety-one of this chapter, shall obtain judgment final, at the first term to which the process shall be returned, in an action of debt, he may execute his inquiry the same term, as to interest, and the value of any foreign currency or money for which the suit may be brought.

Def't. to appear and plead or demur at the same term.

When special pleading is required, time may be enlarged. Writ of inquiry, in certain cases, executed at the rendition of judgment.

(3.) Where the 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 defendant; 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.

Plaintiff to reply or demur at the same term, & pleadings to be completed, unless, &c.

(4.) When a special verdict shall be found, a case agreed or a demurrer filed, time may be allowed, upon motion of either party, to the next term to argue the same.

Time may be allowed to argue demurrer, &c.

Parties may appear in their own suits, &c.

(5.) In any matter or suit depending in said courts, either plaintiff or defendant may declare, plead, and defend his own cause; and no instrument of writing, which contains the substance, shall be lost or destroyed for want of form.

Proceedings of court to be entered by clerk in a well-bound book.

(6.) For the better preservation of the records of court, when any cause is finally determined, the clerk shall enter all the proceedings therein in a book well bound, and an entire and perfect record make thereof.

Jury causes to be first tried. Motions in arrest of judgment to be argued, when.

(7.) Jury causes shall be first tried.

(8.) 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.

Argument causes — when to be heard.

(9.) Arguments on writs of error, special verdicts, cases agreed, demurrers, and petitions shall be heard upon the four last days of the term.

Plea in abatement to be received, only on affidavit or proof.

(10.) No plea in abatement shall be received in any court, unless the party offering the same shall, by affidavit or otherwise, prove the truth of such plea.

When over-ruled, plaintiff shall recover costs.

(11.) Where a plea in abatement shall be pleaded, and upon argument it shall be adjudged insufficient, the plaintiff shall recover against the defendant full costs to the time of overruling such plea; and the plaintiff in replevin, or defendant in any 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.

As many pleas as necessary may be pleaded.

Plea since the last continuance, no waiver of former pleas.

(12.) The entering a plea since the last continuance of a suit at law shall in no case be construed a waiver 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: *Provided*, such plea be of matter that may be well pleaded with the matter of the other pleas.

Issues tried at the term next after made up. No cause continued but by consent, or on affidavit.

(13.) All issues, whether general or special, shall be heard and tried the next succeeding term after they shall be made up, unless by consent of parties, or on sufficient cause shown to the court by affidavit filed, the case shall be continued; nor shall any case be continued at any term but by consent, or on affidavit showing sufficient cause.

Court may order the party continuing to pay costs.

(14.) Whenever it shall be the opinion of the court, that the party praying a continuance should not obtain it without payment of costs, the whole of the 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 be finally in his favor.

One att'y only to speak, unless allowed by court.

(15.) The plaintiff or defendant may employ several attorneys in his case, but more than one shall not speak thereto, unless allowed by the court; and in jury trials they may argue to the jury the whole case, as well of law as of fact.

May argue to the jury both law and fact.

(16.) Every attorney who shall claim to enter an appearance for any person shall, upon being required so to do, produce and file in the clerk's office of the court, in which he shall claim to enter an appearance, a power or authority to that effect signed by the persons or some one of them for whom he is about to enter an appearance, or by some person duly authorized in that behalf: otherwise he shall not be allowed so to do: *Provided*, that when any attorney 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 him to retain the letter in his own possession, he shall, on the production of said letter setting forth such employment, be allowed to enter his appearance, and the clerk shall note to that effect upon the docket.

Power of attorney to be produced and filed by attorney, if required.

If necessary to retain the power, what to be done.—R. S. c. 31, s. 62.—1844, c. 13.

58. In actions brought on any bond, or on any penal sum for the non-performance of any covenants or agreements in any indenture, deed, or writing contained, the plaintiff may assign as many breaches as he shall think fit, and the jury, on the trial of such action, shall 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 assigned, as the plaintiff upon the trial of the issues shall prove, 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 by default, 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 impanelled to inquire into the truth of any of the breaches, and to assess the damages that the plaintiff shall have sustained thereby, which inquiry shall be made as in other cases of judgment by default; and in case the defendant, after such judgment and before execution executed, shall pay into court, to the use of the plaintiff or his executors or administrators, such damages so assessed, together with the costs of suit, a stay of execution of the judgment shall be entered on record; or if by reason of any execution executed, the plaintiff, or his executors or administrators, shall be fully paid or satisfied all damages so assessed, with his costs of suit, and all reasonable charges and expenses for executing the execution, the body, lands, and goods of the defendant shall be thereupon forthwith discharged from the execution, which shall likewise be entered upon the record; but notwithstanding, in each case such judgment shall remain, continue, and be as a further security to answer to the plaintiff, and his executors and administrators, such damages as shall be sustained for further breach of any covenants in the same indenture, deed, or writing contained, for which the plaintiff may have a *scire facias* upon the said judgment, against the defendant, his executors or administrators, suggesting other breaches of the said covenants or agreements, and to summon them respectively to show cause why execution shall not be awarded

In actions on penal bonds, &c., plaintiff may assign many breaches.

If judgment be given for plaintiff on demurrer, &c., he may suggest breaches.

Def. may pay damages and costs into court, and then no execution shall issue.

Judgment shall be a security for further breaches.—R. S. c. 31, s. 63.—8 & 9 W. 3, c. 11, s. 8.

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 damages in manner as aforesaid; and upon payment or satisfaction in manner as aforesaid of such future damages, costs, and charges, all further proceeding on the said judgment are again to be stayed, and so *toties quoties*.

Rules for summoning witnesses.

59. In obtaining the testimony of witnesses in causes depending in the superior and county courts, the following rules shall be observed in practice, to wit:—

Subpœna for witnesses, how to issue.

In suits where witnesses are to appear at any court, the clerk at the instance of the party shall issue a subpœna, directed to the sheriff or other officer of the county where such witnesses reside, mentioning the time and place for their appearance, the names of the parties to the suit wherein the testimony is to be given, and the party at whose instance they are summoned.

Subpœna returnable immediately, to issue in term time only. Subpœna issuing in vacation, how served.—R. S. c. 31, s. 64.

Every subpœna made returnable immediately, shall be issued only in term time, and shall be personally served on the witness therein named.

A copy of every subpœna issued by the clerk in vacation, in case any witness therein named is not to be found, may be left at his usual place of residence; and such copy, certified by the sheriff or other officer, and left as aforesaid, shall be deemed a legal summons, and the person therein named shall be bound to appear in the same manner as if personally summoned.

Witnesses to attend from term to term till discharged.

60. Every witness, being summoned to appear in any of the said courts, in manner 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 term to term 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, in civil cases, to the party at whose instance the subpœna issued, the sum of forty dollars, to be recovered by *scire facias*, and shall be further liable to his action for the full damages which may be sustained for the want of such witness's testimony; or if summoned in a criminal prosecution or plea of the State, shall forfeit and pay eighty dollars for the use of the State, or the party summoning him.

Penalty for not attending. In civil cases.

In criminal cases.—R. S. c. 31, s. 65.

Entitled to pay, if they attend after the suit is settled in vacation, unless notified.—R. S. c. 31, s. 66.

61. *Provided always*, that, if the civil suit shall, in the vacation, be accommodated and settled between the parties, and the party at whose instance such witness was summoned should omit to discharge him from further attendance, and for want of such discharge, he shall attend at the next term, 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 allowance which is given to witnesses for their attendance, with costs.

62. *And provided further*, that no execution shall issue against any defaulting witness for the forfeiture aforesaid, but after *scire facias* made known to him to show cause against the issuing thereof; and if sufficient cause be shown of his incapacity to attend, execution shall not issue, and the witness shall be discharged of the forfeiture without costs; but otherwise the court shall, on motion, award execution for the forfeiture against the defaulting witness.

No execution to issue against defaulting witness until after *sci. fa.*—R. S. c. 31, s. 67.

63. Any plaintiff or defendant in a civil suit may, after action brought, and as well before as after issue joined, take the deposition of such persons whose evidence he may desire to use in the case, under such rules as to notice as may have been or may be established by the court, in which the suit is pending, for the taking of depositions, without any special order therefor: And if there be no general rule as to the time of notice, nor any special order made in the cause to that effect, the time of notice shall be as follows: Three entire days, when the party notified resides within ten miles of the place where the deposition is to be taken; in all other cases, one day more for every additional ten miles. The depositions shall be taken on commission issuing from the court, and under the seal thereof, when the commissioner resides out of the county, by one or more commissioners, who shall be of kin to neither party, and shall be appointed by the clerk when depositions are taken before the cause is put to issue. The depositions shall be subscribed and sealed up by the commissioner and returned to the court, the clerk whereof shall pass upon them under the same rules as are observed by clerks and masters, in respect of depositions to be read in courts of equity: and all such depositions, when passed upon and allowed to be read by the clerk without appeal, or by the court on appeal from his order, shall be deemed legal evidence, if the witness be competent, and may be read on the trial of the suit, provided they be depositions of the governor, secretary of State, treasurer, comptroller, attorney-general, solicitor for the State, or of any judge, or of any deceased person, or of any person so afflicted as to be unable to travel to court, or of any person become insane since the taking of his deposition, or of any person absent from the State, or then removing from the State: *Provided, however*, that nothing herein contained shall prevent any person from obtaining from the court a special order for the taking of depositions in any cause; but depositions, when so taken and allowed to be read under the rules aforesaid, shall be as effectual to all intents as evidence, as if they were taken in the manner aforesaid: *And provided always*, that the adverse party shall have the power to cross-examine the witness.

Depositions may be taken before issue.

If there be no general nor special rule, then under the rules prescribed.

To be taken under sealed commission if taken out of the county. Comm'r not to be of kin to either party.

Clerk to pass on depositions.

Deposition of governor, &c., to be read.

May also be taken under special order.

Adverse party allowed to cross-examine.—R. S. c. 31, s. 68, 69, 70.—1850, c. 189.

All comm'rs, arbitrators, referees, &c., em-

powered to summon witnesses to take their depositions. Also clerks of courts.

Witness refusing to give his deposition, committed to jail. Committitur to recite the authority, &c.—R. S. c. 31, s. 71, 78.—1848, c. 66.—1850, c. 188.

Sheriff to execute subp. for witnesses summoned before comm'r, &c., under penalties.

Defaults of witnesses to be noted by comm'r. If made before a comm'r appointed out of the State, witness to pay penalty of \$50. What to be evidence of default.—1848, c. 66, s. 2.—1850, c. 188, s. 1, 2.

Default before comm'r acting under authority from this State, certified to court.

Proceedings thereon.—1850, c. 188, s. 2.

Witnesses attending jury of view, or commissioner, &c., paid as for at-

ries of the United States, arbitrators, referees, and all persons acting under a commission issuing from any court of record in this State, are hereby empowered, they or the clerks of the courts respectively in this State, to which such commission shall be returnable, to issue subpoenas, specifying the time and place for the attendance of witnesses before them, and to administer oaths to said witnesses, to the end that they may give their testimony. And any witness, appearing before any of the said persons and refusing to give his testimony on oath touching such matters as he may be lawfully examined unto, shall be committed, by warrant of the person before whom he shall so refuse, to the common jail of the county, there to remain until he may be willing to give his evidence; which warrant of commitment shall recite what authority the person hath to take the testimony of such witness, and the refusal of the witness to give it.

65. The sheriff of the county where the witness may be, shall execute all such subpoenas, and make due return thereof before the commissioner, or other person, before whom the witness is to appear, in the same manner, and under the same penalties, as in case of process of a like kind returnable to court; and when the witness shall be summoned five days before the time of his required attendance, and shall fail to appear according to the precept, and give evidence, the default shall be noted by the commissioner, arbitrator, or other person aforesaid; and in case the default be made before a commissioner acting under authority from courts without the State, the defaulting witness shall forfeit and pay to the party at whose instance he may be summoned fifty dollars, and on the trial for such penalty, the summons issued by the commissioner, or other person as aforesaid, with the indorsement thereon of due service by the officer serving the same, together with the default noted as aforesaid and indorsed on the summons, shall be *prima facie* evidence of the forfeiture, and sufficient to entitle the plaintiff to judgment for the same, unless the witness may show his incapacity to have attended.

66. But in case the default be made before a commissioner, arbitrator, referee, or other person, acting under a commission or authority from any of the courts of this State, then the same shall be certified under his hand, and returned with the subpoena to the court by which he was commissioned or empowered to take the evidence of such witness; and thereupon the court shall adjudge the defaulting witness to pay to the party at whose instance he was summoned, the sum of forty dollars; but execution shall not issue therefor until the same be ordered by the court, after such proceedings had as are provided in section sixty-two of this chapter.

67. Witnesses summoned to appear at any survey, or before any jury of view, or before any commissioner, arbitrator, or other person authorized to require their attendance, shall be entitled to the same fees as for similar attendance at the court

of the county, and may prove, by their own oath, their attendance, mileage, and ferriage before such person, who is hereby authorized to administer the oath: and when they shall attend on any commission issuing from without the State, they may recover the fees for attendance against the party summoning them, or his agent or attorney directing them to be summoned; and when they shall attend under a commission or authority from any court in this State, the fees for attendance shall be proved as aforesaid, and be certified to the proper court and taxed as if the witness had attended the court, among the costs of the cause; but nevertheless, such fees may be immediately recovered against the party summoning, as is provided for in section seventy-three of this chapter.

68. In all cases not already provided for, when 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, expressing the day and place when and where they are to appear, the names of the parties to the suit, and in whose behalf summoned.

69. If any person, who shall be summoned as a witness in a court, shall refuse to give testimony on oath, he shall, by the court before whom he shall be summoned, be committed to the common prison, and there remain, until he shall be willing to give testimony in such manner as the law doth direct.

70. During the attendance of any person summoned as a witness to any court, or before a commissioner, arbitrator, referee, or other person authorized to command the attendance of such witness, and during the time such person is going to and returning from the place of such attendance, allowing one day for every thirty miles such witness has to travel to and from his place of residence, no sheriff or other officer shall execute on such person, so attending, going to, or returning from said court or place of attendance, any writ or other civil process of a leading kind, warrant, order, judgment, or decree in any cause; and if any such shall be so executed, they shall be adjudged void, on plea of the defendant, or on exception duly taken.

71. Every witness attending court shall be allowed, for each day's attendance, and for every thirty miles he may travel going to and returning from court, sixty cents, provided the witness lives within the county, or the sum of one dollar, if he lives without the county; also his ferriage.

72. When any cause shall be removed from the superior court of one county to that of another, after the order of removal, depositions may be taken in the case, and subpoenas for the attendance of witnesses and commissions to take depositions may issue from either of the said courts, under the same rules as if the case had been originally commenced in the court from which the subpoenas or commissions issued.

73. Every person summoned, who shall attend as a witness

tending court.  
R. S. c. 31, s. 78.—1848, c. 66, s. 1.—1850, c. 188, s. 3.

Subp'as to attend comm'rs and others in certain cases, issued by cl'k.—R. S. c. 31, s. 78.

Witnesses refusing to depose in court, to be imprisoned.—R. S. c. 31, s. 71.

During attendance exempt from service of civil process.—R. S. 31, s. 72.

Fees of witness for attendance at court.—R. S. c. 31, s. 73.

After removal of cause, subpoenas and commissions may issue from either court.—R. S. c. 31, s. 74.

Witness to

prove his attendance at each court.

May recover pay for his attendance.—R. S. c. 31, s. 75.

On final judgment tickets to be filed and taxed with costs. Two witnesses allowed to prove same fact.—R. S. c. 31, s. 76.

Party recovering judgment shall recover costs, unless otherwise provided.—R. S. c. 31, s. 77, 79.

Costs of petitions paid as court may decree.—R. S. c. 31, s. 87.

Defendant may in certain cases, plead set-off, or give it in evidence under general issue upon notice, &c.—R. S. c. 31, s. 80.

in any suit, shall, at each court, before the clerk thereof or his deputy, ascertain by his own oath or affirmation the sum due for travelling to and from court, attendance and ferrriage, which shall be certified by the clerk or his deputy; and on failure of the party, at whose instance such witness was summoned, (witnesses for the State excepted,) to pay the same previous to the departure of the witness from court, such witness may at any time sue for and recover the same from the party summoning him; and the certificate of the clerk or his deputy shall be sufficient evidence of the debt. *Provided, always,* that where recovery may be had before a justice of the peace on a witness ticket, the justice shall deface it by writing the word judgment, and deliver the same to the person of whom it is recovered.

74. At the court, where the cause shall be finally determined, the party recovering judgment shall file in the clerk's office the witness tickets; 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 a single fact.

75. In all actions whatsoever, the party in whose favor judgment shall be given, or, in case of nonsuit, dismissal, discontinuance, or stay of judgment, the defendant shall be entitled to full costs, unless where it is or may be otherwise directed by statute; which costs shall be taxed by the clerk against the party bound for the same; and among such costs shall be reckoned the expense of publications in newspapers ordered in the course of the cause, postage on process, documentary evidence and depositions, the fees of commissioners for taking depositions, the fees of clerks and others for transcripts and copies necessary to be used in the cause, and the fees of witnesses out of the State, paid by the party for their attendance before the commissioner in order to give their depositions.

76. In all petitions filed in said courts for legacies, filial portions, distributive shares, dower, partition, or any other matter, unless when it may be otherwise directed by statute, the court before whom the same shall be tried, may, at its discretion, decree, by whom and in what manner, the costs accrued therein shall be paid.

77. In cases where there shall be mutual debts subsisting between the plaintiff and defendant; or where either party may sue or be sued as executor or administrator and 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 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.



78. In actions upon the case for slanderous words, and in actions of assault and battery, if the jury upon the trial of the issue or inquiry of damages, do assess the same under four dollars, the plaintiff shall recover only as much costs as damages.

In suits for slander and assault and bat'y, if dan'gs under \$4, costs the same.—R. S. c. 31, s. 82.

79. In actions of trespass *quare clausum fregit*, wherein the defendant in his plea shall disclaim 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 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; whereupon, or upon some of them, the plaintiff shall join issue, and if the issue be found for the defendant, or the plaintiff shall be nonsuited, the plaintiff shall be barred from the said action and all other suits concerning the same.

In trespass q. c. f. defendant may disclaim and plead tender, &c. in bar.—R. S. c. 31, s. 83.

80. When several persons are made defendants to an action of trespass, assault and battery, false imprisonment or ejection, and any one or more of them shall upon the trial be acquitted by verdict, every person so acquitted shall have and recover his costs of suit, in like manner as if a verdict had been given against the plaintiff and acquitted all the defendants, unless the judge before whom the case is tried shall, immediately after the trial, in open court, certify upon the record, under his hand, that there was a reasonable cause for making such person a defendant.

In trespass, &c., against several, all acquitted shall recover full costs unless judge certifies, &c.—R. S. c. 31, s. 84.

81. In all causes depending in any court, 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 court may issue the process of *subpœna duces tecum*, requiring such persons as hold said offices to attend the court with such original paper, in like manner and under the same penalties as witnesses are required in cases of *subpœna* to testify.

When a *subpœna duces tecum* may issue.—R. S. c. 31, s. 85.

82. The said courts shall have full power in the trial of actions, on motion and due notice thereof given, to require the parties to produce books or writings in their possession or control 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 equity; and if a plaintiff shall fail to comply with such order, and shall not satisfactorily account for his failure, the court on motion may give the like judgment for the defendant as in cases of nonsuit; and if a defendant shall fail to comply with such order, and shall not satisfactorily account for his failure, the court on motion as aforesaid may give judgment against him by default.

Court may order parties to produce books or papers.

Plff failing, to be nonsuit. Def't failing judg't against.—R. S. c. 31, s. 86.

83. The indorsee of any promissory note, or other negotiable security for the payment of money, may prosecute a suit for the recovery of the money due thereon, damages, and charge of protest, jointly against the makers and indorsers

Indorsee may sue maker and indorser jointly or severally. And their executors and ad

ministrators.—  
R. S. c. 13, s. 9.  
l. S. c. 31, s.  
88.

thereof, or against any one or more of them; and if any one or more of such persons should die, the action may be prosecuted against his executors or administrators, severally or jointly with the survivors.

On joint obligations, &c., one or more may be sued.—  
R. S. c. 31, s. 89.

84. In all cases of joint obligations, or assumptions of co-partners in trade or others, suits may be brought and prosecuted on the same against all or any number of the persons making such obligations, assumptions, or agreements.

Joint obligat'n shall survive against executors, &c.—R. S. c. 31, s. 90.

85. In case of the death of one or more joint obligor or obligors, the joint debt or contract shall survive against the 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 executors and administrators of all the joint obligors.

Judgm't how entered against executors, &c., and surviving obligors.—R. S. c. 31, s. 91.

86. In cases where an executor or administrator of any one of several persons, against all of whom living a joint action may be sued, shall be sued with the survivors of said persons, and it may be necessary that judgment should be rendered against such executor or administrator, such process and judgment may be awarded against him, as if he had been sued severally, and judgment may be awarded and entered up against the survivors as is usual in other cases.

Several actions on same joint contract to be consolidated.—One att'y fee only taxed.—  
R. S. c. 31, s. 92.

87. Where there are more persons that one bound on any bond, promissory note, or other contract, whether they be bound as original obligors, contractors, or indorsers, and the plaintiff shall institute more suits than one upon such bond, note, or contract, the writs, on their return to the court whence they issued, shall be consolidated, and one attorney's fee only shall be taxed.

Judgm't bonds void as to pow'r to enter judgment.—R. S. c. 31, s. 93.

88. All judgment bonds, notes, and other writings, with power to any person whatever to confess judgment thereon, shall be utterly void as to such power; but the same proceedings shall be had thereon as on common bonds and penal notes.

Execu'ns from county courts may issue to any county.—  
R. S. c. 31, s. 94.

89. Executions from the courts of pleas and quarter-sessions may issue to any county in the State, in the same manner and under the same rules as executions from a superior court.

Interest on contracts except penal bonds, and on all judgments.

Jury to distinguish principal from interest.—  
R. S. c. 31, s. 95.

90. All sums of money due by contract of any kind whatsoever, excepting only money due on penal bonds, shall bear interest, and when a jury shall render a verdict therefor, they shall distinguish the principal from the sum allowed as interest; and the principal sum due on all such contracts shall bear interest from the time of rendering judgment thereon until it be paid and satisfied. In like manner, the amount of any judgment or decree, except the costs, rendered or adjudged in any kind of action, though not on contract, shall bear interest till paid, and the judgment and decree of the court shall be rendered according to the provisions of this section.

In judgments final by default, ascertained by clerk.—  
R. S. c. 31, s. 96.

91. Whenever a snit shall be instituted on a single bond, a covenant for the payment of money, bill of exchange, promissory note, or a signed account, and the defendant shall not plead to issue thereon, upon judgment, the clerk of the court

shall ascertain the interest due by law, without a writ of inquiry, and the amount shall be included in the final judgment of the court as damages, which judgment shall be rendered therein in the manner prescribed by the preceding section.

92. Petitions to the county or superior court may be filed during the term or in vacation; and the clerk of the court, in whose office any petition may be filed, shall indorse thereon the time of filing, and issue copies and subpoenas; but in case the petitioner shall specify the amount of his debt or demand, (as nearly as may be,) and shall make oath to the same in open court, or before the clerk, said clerk shall issue copies of the petition to, and a *capias ad respondendum*, against the defendant whom the petitioner, by his affidavit, shall charge to be his debtor, for the amount so charged.

Petitions filed in vacation.

Capias to issue upon affidavit of amount of demand.—R. S. c. 31, s. 97.

93. In suits by petition, service whereof hath been made on one of the defendants, if it shall be shown to the court by affidavit or otherwise, that another defendant is not an inhabitant of this State, or on diligent inquiry cannot be found; as likewise when a petition shall be filed in court in vacation against any who reside beyond the limits of the State, and such non-residence is verified by affidavit before the clerk of the court, then, in either case, publication shall be made for six weeks successively in some newspaper printed in the State, for such non-resident defendant to appear and make defence to the suit at the next term of the court, and that, in default thereof, the petition will be taken *pro confesso* and heard accordingly; and if at the next term, (unless further publication be directed by the court,) it shall be shown that publication has been duly made, the court may proceed in the cause to the final decree therein, in the same manner as if there had been personal service on the defendant; and any decree in the cause shall conclude the defendant to such extent, in like manner and under like rules, as if made in a court of equity.

Publica'n to be made for non-resident defnts in cases of petition.

Decree *pro confesso* against non-residents to bind as in equity.—R. S. c. 31, s. 98.—1840, c. 45.—1850, c. 117.

94. When any matters of account shall be involved in a suit by petition, the court may order their clerk or other person to audit and settle them, and to report the balance due thereon, in the same manner and under the same rules, as in references by courts of equity to the masters thereof.

Court may order clerk to audit and settle accounts.—R. S. c. 31, s. 99.

95. Depositions to be read as evidence in the trial of suits by petition, may be taken in the manner hereinbefore prescribed.

Depo'tns in case of petit'ns.—R. S. c. 31, s. 100.

96. The clerk shall receive the same fees for reports in cases referred to them in suits by petition, as clerks and masters for like services,

Fees of clerk same as in equity.—R. S. c. 31, s. 101.

97. All persons within age may sue by their next friend.

Suit by infants.—R. S. c. 31, s. 102.

98. Whenever the plaintiff or defendant in any superior court shall except to the opinion of the court, and the same shall not be allowed, the party making the exception shall commit the same to writing and require it to be signed and sealed by the court, and the judge shall sign and seal the same; which bill of exception shall constitute a part of the

Bill of exceptions tendered by either party, judge to sign and seal it.—R. S. c. 31, s. 103.

record; and upon an appeal, the court shall proceed to judgment according to the exception as the same ought to be allowed.

Actions of acct. allowed against ex'rs & adm'rs of guard'ns, &c. — R. S. c. 31, s. 104.

99. Actions of account 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 tenant in common; and the auditor appointed by the court, where such action shall be pending, may administer an oath and examine the parties touching the matter in question; and for his service in taking such accounts have such allowance as the court shall adjudge reasonable, to be paid by the party against whom the balance of the account shall appear to be.

If def'nt in penal suit plead former judgment, plaintiff may reply fraud. — 4 H. 7, c. 20.

100. If an action be brought in good faith by any person to recover a penalty under a law of this State or of the United States, and the defendant shall plead in bar thereto a former judgment recovered by or against him, in a former action brought by any other person for the same cause, then the plaintiff in such action brought in good faith, may aver that the said former judgment was obtained by covin; and, if the collusion or covin so averred be found, the plaintiff in the action, sued with good faith, shall have recovery; and no release made by such party suing in covin, whether before action brought or after, shall be in anywise available or effectual; and every person pleading such false plea shall be deemed guilty of a misdemeanor.

Release of the action void. Def'nt pleading falsely, indictable. — R. S. c. 31, s. 105.

Payment or satisfaction may be pleaded in suits on bond and judgment.

101. When an action shall be brought on any single bill, or when an action or *scire facias* shall be brought on any judgment, if the defendant hath paid the money due upon such bill or judgment, before action brought; or where the defendant hath made satisfaction to the plaintiff of the money due on such bill or judgment, in other manner than by payment thereof, such payment or satisfaction may be pleaded in bar of such action or suit; and where only part of the money due on such single bill or judgment hath been paid by the defendant, or satisfied in other manner than by payment of money, such part payment or part satisfaction may be pleaded in bar of so much of the money due on such single bill or judgment as the same may amount unto; and where an action of debt is brought on any bond, which hath a condition or defeasance to make void the same upon the 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 executor or administrator, the principal and interest due by the condition or defeasance of such bond, though such payment were not made strictly according to the condition or defeasance; or, if such obligor, his heirs, executors, or administrators have, before action brought, made satis-

Also payment or satisfaction after the day of paying, in suits on bonds conditioned to be discharged by a less sum. — R. S. c. 31, s. 105.

faction to the plaintiff of the principal and interest due by the condition or defeasance of such bond in other manner than by payment thereof, yet the said payment or satisfaction may be pleaded in bar of such action, and shall be effectual as a bar thereof, in like manner as if the money had been paid at the day and place, according to the condition or defeasance, and so pleaded.

102. 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, and also all such costs as have been expended in any suit in law or equity upon such bond, the said money shall be deemed and taken to be in full satisfaction and discharge of said bond, and the court shall give judgment accordingly.

In suits on penal bonds the sum due, interest, and costs being brought into court, shall discharge penalty.—R. S. c. 31, s. 107.

103. Every judgment given in a court of record, or before a magistrate having jurisdiction of the subject, shall be and continue in force until reversed according to law.

Judgments to stand till reversed.—R. S. c. 31, s. 108.

104. When any defendant shall appeal from the judgment of a justice of the peace to the county or superior court; or when the judgment of such justice shall be removed by the defendant, by *recordari* or otherwise to a superior court, the court having cognizance of such appeal or *recordari* may, upon sufficient cause shown by affidavit, compel the plaintiff to give bond, with sufficient security, for payment of the costs of the suit, in the event of his failing to prosecute the same with effect.

On appeal or *recordari* of def't from justice's judgment, court may compel plaintiff to secure costs.—R. S. c. 31, s. 109.

105. When an appeal shall be taken from the judgment of a justice of the peace to a county or superior court, the same shall be reheard by the court; whereupon an issue shall be made up and tried by a jury at the first term to which it is returned, unless continued; and judgment shall be given therein against the party cast and his sureties. And when the defendant shall make default, the plaintiff on such demands as are mentioned in section ninety-one of this chapter, shall have judgment in the manner therein provided, and in other cases, may have his inquiry of damages executed forthwith by a jury.

Appeals from a justice to be tried first term of court. Judgment against party cast and his sureties.—R. S. c. 31, s. 110. How to obtain judgment in case of default.

106. *Provided*, that if judgment be entered for the plaintiff, and he shall not recover on his appeal a greater sum than was recovered before the justice, besides interest accrued since the rendition of the judgment, he shall not recover the costs of the appeal, but shall be liable at the discretion of the court to pay the same.

If plaintiff appeal and recover no greater sum, shall not have costs, but liable to pay.—R. S. c. 31, s. 111.

107. In 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 the hearing of a petition, there shall be a rehearing.

Appeals to superior court, how tried.—R. S. c. 31, s. 112.

108. In every leap-year, the increasing day and the day before, in all legal proceedings, shall be counted as one day.

Leap-year day how counted.—R. S. c. 31, s. 113.

109. No execution shall issue upon any judgment obtained in said courts, after a year and a day from the rendition

Execution not to issue on

judgment after a year and a day, unless revived.—R. S. c. 31, s. 114.—12 E. 1, c. 45.

thereof. *Provided*, that, whenever execution hath been issued upon such judgment within the year and day, the clerk may issue an execution to enforce the 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, he shall not be entitled to an execution, until he have caused a *scire facias* to be issued to the defendant, wherein the sheriff shall be commanded to give notice to the defendant that he appear before that 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 appear and show cause why execution ought not to be done, the sheriff shall be commanded to cause the judgment to be executed.

Nonsuit not allowed after verdict.—R. S. c. 31, s. 115.

Party in execution not to be discharged on habeas corpus.—R. S. c. 31, s. 116.—2 H. 5, c. 2.

Death between verdict and judgment not error, if, &c.—R. S. c. 31, s. 117.

Adm'r d. b. n. may have ex'n on judgment got by former adm'r.—R. S. c. 31, s. 118.

Accounts may be taken in certain actions against ex'rs, adm'rs, guardians, sh'rls, and other officers.

To be stated as in equity.

Pay to commissioners.—R. S. c. 31, s. 119.—1850, c. 52.

Causes in sup'r courts, may be

110. In all cases where a verdict shall pass against the plaintiff, he shall not be nonsuited.

111. When a *certiorari*, or writ of *habeas corpus cum causa* shall issue, and the sheriff, or other officer to whom it is directed, shall return upon the same that the prisoner is condemned by judgment given against him, and held in custody by virtue of an execution issued against him, the prisoner shall not be let to bail, but shall be presently remanded, where he shall remain until discharged in due course of law.

112. In no action shall the death of either party between the verdict and the judgment be alleged for error, if such judgment be entered within two terms after the verdict.

113. When any judgment shall be had by or in the name of an executor or administrator, in such case an administrator *de bonis non* may sue forth a *scire facias*, and take execution on said judgment.

114. Whenever suit shall be brought against an executor, administrator, or guardian, or upon the bond of any such person, or upon the official bond of any sheriff or other public officer, executed for the faithful discharge of the duties of such executor, administrator, guardian, sheriff, or officer, and the matters pleaded in such suit may make it necessary that an account shall be taken in order to a due determination of the cause, the court, at the appearance term, or at any time in the progress of the cause, may, in its discretion, refer the taking of such account to such commissioner or commissioners as the parties may select; if they cannot agree in the selection, then the court may refer it to the clerk or any other person as commissioner, and such commissioner shall state an account, under the same rules and regulations as are provided for stating accounts in courts of equity; whose report, when confirmed by the court, shall be conclusive evidence of the amount of the plaintiff's demand only as against the parties; and the court shall allow the commissioner for his services, in like manner as masters are allowed, to be paid by the parties in such proportions as the court shall adjudge.

115. In all causes in the superior courts, civil or criminal,

in which it shall be suggested on oath, on behalf of the State, of the traverser of the indictment, or of the plaintiff or defendant, that there are probable grounds to believe that justice cannot be obtained in the county in which the causes shall be pending, the judge is hereby authorized to order a copy of the record of the cause to be removed to some adjacent county for trial. The provisions of this section shall extend to indictments against slaves; and the affidavit for removal on the part of the defendant may be made by the master, or by the slave, under the advice of his counsel as stated in the affidavit. *Provided, however,* that no cause shall be removed, unless the facts are set forth, whereon the party founds his belief that justice cannot be obtained in the county, so that the judge may decide upon such facts, whether the belief is well grounded.

removed on affidavit, to adjoining county. Who to make affidavit in case of slaves.

Reasons for removal to be set forth. — R. S. c. 31, s. 120.

116. When an application shall be made to remove any cause, civil or criminal, to an adjacent county, which shall have been before removed, the person applying shall set forth on affidavit, particularly and in detail, the grounds of his 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.

Removed twice only. On second removal reasons stated in detail. — R. S. c. 31, s. 123.

117. The parties to any cause, civil or criminal, in the superior court, may by consent remove the same for trial to any convenient county, which shall be entered of record.

Removed by consent. — R. S. c. 31, s. 121.

118. When a cause shall be directed to be removed, the clerk shall transmit to the court to which the same is removed, a transcript of the record of the case, with the bail-bond, prosecution bond, and the depositions and other written evidences filed therein.

On removal what to be sent with transcript. — R. S. c. 31, s. 122.

119. Whenever, in any suit pending in the county or superior court, the bounds of lands shall be drawn in question, the court may, if deemed necessary, order a survey of the lands in dispute, agreeable to the bounds and lines expressed in each party's titles, and such other surveys as shall be deemed useful; which surveys shall be made by two surveyors appointed by the court, one to be named by each of the parties, or by one surveyor if the parties agree: and the surveyors shall attend according to the order of the court and make the surveys, and shall make as many accurate plans thereof as shall be ordered by the court; and for such surveys the court shall make a proper allowance, to be taxed as and among the costs of the cause.

Surveys ordered in cases of disputed boundary. How and by whom made. Charges for surveys to be taxed as costs. — R. S. c. 31, s. 124.

120. Where the clerk of the superior or county court issues precepts or process to the county of which he is clerk, he shall not annex the seal of the court thereto.

Seal of court not put to process, when. — R. S. c. 31, s. 125.

121. The sheriff of every county shall serve all notices that may be tendered or delivered to him, or that are required to be given in any cause, motion, or proceeding, either at law or in equity, as well for commencing, as for proceeding therein

Notices in legal proceedings to be served by sheriff.

How served.  
Return, evidence of service.

When executed to be returned to party.  
When sheriff interested coroner to serve and return them.—R. S. c. 31, s. 126, 127.

Penalty on officer for failing to serve notices, or making a false return.—R. S. c. 31, s. 128.

Return on *sci. fa.* evidence.—R. S. c. 31, s. 130.

Defts. may show they are sureties, and jury or justice to find the fact.—R. S. c. 31, s. 131.

Property of principal to be first levied on and sold.—R. S. c. 31, s. 132.

Judgment for costs against plaintiff and sureties on failing in suit.—R. S. c. 31, s. 133.

After judgment defendant may pay the money

until the same shall be ended; and he shall serve them by delivering a true copy thereof to the person to whom the same shall be directed, if to be found in his county, or by leaving a copy thereof at the usual place of abode of such person in his county, and shall certify on the notice the time when said notice was served, or copy was left at the place of abode. Such return shall be evidence of the service of the notice as may be therein stated; and the sheriff shall deliver the notice with his return to the party, his attorney or agent, at whose instance it was issued, upon demand of the same; and in case the sheriff of the county in which such notice is to be served, shall be a party, or interested in the proceedings, the coroner shall serve the same and make return thereof in the manner aforesaid.

122. 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 for falsely returning process, directed to him from the superior court of law, to be prosecuted, recovered, and applied, as actions and penalties are directed to be prosecuted, recovered, and applied, for neglecting to serve, or for falsely returning process issued from the superior court.

123. When a *scire facias* shall issue to the sheriff, his return thereon that the same has been executed, shall be deemed sufficient evidence of the service thereof.

124. In the trial of actions at law upon contracts, either of the defendants may show in evidence that he is surety, and if it be satisfactorily shown, the jury in their verdict, or the justice of the peace in his judgment, shall distinguish the principal and surety, which shall be indorsed on the execution by the clerk, or justice of the peace issuing it.

125. When an execution, indorsed as aforesaid, shall come to the hands of any officer for collection, he shall levy the same on the property of the principal, or so much thereof as shall be necessary to satisfy the execution, and for want of sufficient property of the principal, also on the property of the surety, and make sale thereof. *Provided, nevertheless*, that, in all such levies, a sale shall first be had of all the property of the principal levied on, before that of the surety.

126. Whenever a suit shall be brought in said courts, in which security shall be given for the prosecution thereof; or when any case shall be brought up to said courts by an appeal or otherwise, from a justice of the peace, or from the county court, in which a bond for the prosecution of the suit shall have been given, and judgment shall be rendered against the plaintiff for the costs of the defendant, the court, upon motion of the defendant, shall also give judgment against the surety for said costs, and execution may issue jointly against the plaintiff and his surety.

127. The defendant, against whom any final judgment or decree for the payment of money may be rendered or made by



any court of record, may pay the whole or any part thereof to the clerk of the court, in which the same may have been rendered or made, at any time thereafter, although no execution may have issued on such judgment or decree; and such payment of money shall be good and available to the party making the same.

to the clerk.—  
R. S. c. 31, s.  
134.

128. The clerk, to whom money shall be paid as aforesaid, shall pay the same to the party entitled to receive it, under the same rules and penalties, as if the money had been paid into his office by virtue of an execution.

Clerk to pay it  
to the party en-  
titled.—R. S. c.  
31, s. 135.

129. The supreme and other courts ordering a judicial sale, or having possession of the bonds which may have been taken on such sale, may, on motion, after ten days notice thereof in writing, enter judgment, as soon as the money may become due, against the debtors or any of them, unless, for good cause shown, the court shall direct some other mode of collection.

Speedy collec-  
tion of pro-  
ceeds of judi-  
cial sales, by  
motion.

130. No judge, in delivering a charge to the petit jury, shall give an opinion whether a fact is fully, or sufficiently proved, such matter being the true office and province of the jury; but he shall state, in a full and correct manner, the evidence given in the case, and declare and explain the law arising thereon.

Judge, how to  
deliver his  
charge to the  
jury.—R. S. c.  
31, s. 136.

131. The people, called Quakers, may wear their hats, in courts of judicature as elsewhere, according to the custom of their sect.

Quakers may  
wear hats in  
court.—R. S. c.  
31, s. 137.

SECT. 25. 2 Hawks, 211.

SECT. 37. *Venue: suit for penalty*, 3 Ire. 9; *parties both foreigners*, Bus. 250; *on official bond*, 2 Ire. 209. *Plea to jurisdiction*, 3 Ire. 543.

SECT. 38. *State may sue in any co.*, 7 Ire. 48. *Principal less than \$100, with interest over*, 8 Ire. 468, 4 Dev. 358. *Two notes together*, 4 Ire. 43. *Liquidated account what*, 7 Ire. 143, 5 Ire. 231. *Objection how taken*, 5 Ire. 231, 4 Ib. 161, 3 Mur. 39, 3 Ire. 9.

SECT. 39. 1 Dev. 171; 2 D. & B. 491; 3 Ib. 21. *Suit vs. several defendants*, 2 Ire. 149.

SECT. 40. *What bond covers*, 3 Dev. 57. *Suit when dismissed*, 2 D. & B. 107. *Further security*, 1 Jones, 373.

SECT. 42. 8 Ire. 184.

SECT. 43. *In forma paup.* 7 Ire. 191, 11 Ib. 22, 2 Dev. 411, Bus. Eq. 139, 1 Jones, 534.

SECT. 45. 13 Ire. 43.

SECT. 46. 4 Dev. 584.

SECT. 47. 2 D. & B. 107.

SECT. 54. 1 Jones, 122.

SECT. 57. (1.) *declaration*, 5 Ire. 378, 1 Jones, 495; (10.) 2 Hay. 15; (12.) 1 D. & B. 234.

SECT. 60. *Witness: non-resident*, 6 Ire. 76; *unable to attend*, 3 Ire. 11; *summoned to two courts at same time*, Bus. 478.

SECT. 63. *Deposition: when received, temporary absence*, 13 Ire. 13; *sickness*, 4 Dev. 240. *Notice: time of*, 10 Ire. 284; *form of*, 11 Ire. 576, 1 Hay. 423, 2 Car. L. R. 471,

4 Ire. Eq. 427; *taken on Sunday*, 3 Ire. 307. *Irregularity*, 1 Hay. 358, Ib. 359, Ib. 381, Tay. 10, 2 Hay. 290, Conf. R. 483, 3 Hawks, 205, 1 Dev. 483, 4 Ib. 166; *when waived*,

1 Hay. 105; *how taken*, 1 Dev. 372, 3 Hawks, 205; *when returnable*, 2 D. & B. 291.

SECT. 71. 1 Mur. 188.

SECT. 73. 3 Hawks, 318; 11 Ire. 22.

SECT. 74. 11 Ire. 55.

SECT. 75. *Costs: judgment on one count*, 1 Jones, 523, 7 Ire. 111; *one of several defts's acquitted*, 1 Jones, 225, Ib. 487, 1 Car. L. R. 515. *Party's own costs*, 1 Dev. 146, 4 Ire. 131.

*Judgment quando*, 1 Dev. 228, 1 Mur. 502. *Infant*, 1 Dev. 431. *Mandamus*, 1 D. & B. 406. *Of absent witness*, N. C. T. R. 265; *executors*, 4 Dev. 581. *Persons not regular parties*, 1 D. & B. 173. *On abatement by death*, 1 Dev. 99. *Arrest of judgment*, 2 Dev. 386. *When defts's sever in pleas*, 2 Ire. 66. *Peace warrant*, 1 Jones, 550.

SECT. 76. 2 Ire. 72.

SECT. 77. *Set-off: what*, 6 Ire. 22, 1 Ib. 401, Ib. 399, 7 Ib. 255, 4 Dev. 92; *between whom*, 6 Ire. 338; *assignees*, 11 Ire. 505, Ib. 331, 13 Ire. 75, Bus. 40, 2 D. & B. 283, 4 Dev. 519; *admin'r p. admin'r*, 3 Ire. 268.

- SECT. 82. 13 Ire. 163; Ib. 165; Bns. 206; 3 Ire. 381.  
 SECT. 90. *Form of judgment on penal bond*, 13 Ire. 212.  
 SECT. 94. 1 Ire. 332.  
 SECT. 99. 11 Ire. 391.  
 SECT. 102. 4 D. & B. 484.  
 SECT. 103. 1 Ire. 404; 3 D. & B. 9; 4 Ire. 529; 2 D. & B. 138. *Void judgment*, 3 Dev. 360, 1 Ib. 187, 1 D. & B. Eq. 568, 4 Hawks, 283. *When judgment intended*, 4 Dev. 295.  
 SECT. 105. 8 Ire. 480; 13 Ib. 112.  
 SECT. 109. 7 Ire. 387; 2 Jones, 63.  
 SECT. 114. 11 Ire. 224.  
 SECT. 115. 3 Dev. 387; 4 Ib. 305; 6 Ire. 98. *Form of order*, 8 Ire. 195.  
 SECT. 118. 1 D. & B. 377. *Form of transcript*, 8 Ire. 344; 6 Ib. 236.  
 SECT. 121. *Process directed to a sheriff who is a party, void*, 13 Ire. 25.  
 SECT. 124. 8 Ire. Eq. 298.  
 SECT. 125. 13 Ire. 463; 1 D. & B. 44; 1 Ire. 216; Ib. 389.  
 SECT. 130. 7 Ire. 27; 13 Ib. 404. *If no testimony*, 2 Dev. 415, Ib. 452, 2 D. & B. 390.

## CHAPTER 32.

## COURTS OF EQUITY.

## SECTION

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9. Proceedings, when further answer is required of representative.
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- 13. Proceedings enrolled when, and what part of them.
- 14. Injunction not to issue for a greater sum than sworn to, nor without security.
- 15. Nor but within four months after judgment, except, &c.
- 16. Money deposited on obtaining injunction, paid over on security.
- 17. Injunction dissolved, judgment rendered on bond. Damages uncertain, how ascertained.
- 18. Injunction against judgment of the State, when to issue.
- 19. Infant and *non compos* defendants, being non-residents, to have a guardian. Allowed three years after decree, to appear.

- 20. Causes removed to supreme court, when. Parol evidence not to be received in supreme court, except, &c.
- 21. Further provision for removal of equity causes.
- 22. Bills of review and petitions to rehear brought in five years after decree. Saving for infants and others.
- 23. Clerk and master may convey title, in all cases of sale decreed.
- 24. Decree in certain cases, to be a conveyance of title.
- 25. Decree regarded as a deed.
- 26. Copy from register's office evidence.
- 27. How decree registered.

1. EACH superior court of law 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, agreeable to the laws and usages now in force and practice.

Courts of equity established. Powers of.—R. S. c. 32, s. 1.

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.—R. S. c. 32, s. 2.

3. The rules and methods of proceeding in said court shall be as follows, to wit:—

Rules of court-

*Rule 1.*—The plaintiff may file his bill in the clerk's office at any time, and thereupon the clerk shall issue to any county in the State where the defendants or any of them reside, the usual writ of subpœna in chancery for the defendant to appear, &c., upon pain of an attachment issuing against his person, and such other process of contempt, as the court shall award. And when the plaintiff shall specially state his debt or damages and make oath thereto, before any judge in the State, or before the clerk and master, the clerk shall issue, with the subpœna, a writ directed to the sheriff of the county, where the defendant is supposed to reside, as follows, to wit:—

Plaintiff may file his bill at any time.

Penalty of subpœna.

Capias when to issue.

The State of North Carolina, to the sheriff of \_\_\_\_\_ county, greeting.

Form of writ.

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 judge of the court of equity for the county of \_\_\_\_\_ on \_\_\_\_\_ 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 nowise omit at your peril. Witness \_\_\_\_\_ clerk and master of the said

court, at office, the            day of            and in the            year of  
the independence of the State.

Proviso as to  
executors and  
others.—R. S.  
c. 32, s. 4.

Subpœna and  
copy of bill to  
be served ten  
days before  
court.—R. S.  
c. 32, s. 4.

If defendant  
fail to appear  
and answer,  
&c., bill taken  
as *confessed*.

Further time  
allowed for  
cause.

In all cases  
time may be  
enlarged for  
pleading.—R.  
S. c. 32, s. 4.  
Publication six  
weeks for non-  
residents, and  
defendants not  
to be found.

If deft. fail to  
appear, bill  
taken as *con-  
fessed*.  
And court may  
decree.

Provisos.

1. Security to  
be given for re-  
turn of proper-  
ty, in case deft.  
appears and re-  
verses decree.

2. In case of  
satisfaction de-

*Provided*, That such writ shall not issue, except by special order of one of the judges of the State, against any executor, administrator, or heir at law, who is sued as such.

*Rule 2.*—At the time of serving the subpœna, a copy of the bill shall be delivered to the defendant, and such service and delivery shall be ten days before the appearance term, otherwise the defendant shall not be bound to appear until the succeeding term.

*Rule 3.*— If, on due service as aforesaid, or in the manner provided by publication, the defendant shall not appear and answer, plead or demur, agreeable to the practice in chancery, by order of court the bill shall be taken as *confessed*, and appointed to be heard, *ex parte*, at the ensuing term. *Provided*, however, that if the defendant, at the next term, shall offer sufficient excuse to the court for such default, the order shall be discharged, and he may be admitted then to plead, answer, or demur; and in all cases such time shall be allowed, for the pleadings on both sides, and such day appointed for the hearing, as the court shall direct.

*Rule 4.*— If at the time of filing the bill, any defendant shall be, or afterwards and before service shall become, a resident of another State or country, or shall for any cause be so absent from his usual place of abode, that process cannot be personally served on him, and the same shall appear to the court, or be proved by affidavit before the clerk and master, then notice of the filing of the bill, published in some Gazette printed in the State and in other Gazettes where the court may so direct, for six weeks, (or for any longer time when the court may so order,) shall be deemed good service on the defendant; and, on proof of such publication, the court may proceed as if process had been personally served on him, and he had made default in his appearance, and may order the bill to be taken as *confessed*, and make decree thereupon as shall be deemed just; and may thereupon issue process to compel the performance of the decree, either by execution, as hereinafter provided, to satisfy the demand of the plaintiff; or by causing the possession of the estate and effects demanded by the bill to be delivered to the plaintiff, or otherwise as the nature of the case may require. *Provided, nevertheless*:—

First, that when the defendant shall reside out of the State at the time of filing the bill, and shall not actually appear and defend, the plaintiff, before executing the decree, shall give sufficient security in such sum as the court shall think proper, to abide such order, touching the restitution of the estate or effects, as the court shall think proper to make concerning the same, upon the defendant's appearing and petitioning to have the cause reheard, and paying to the plaintiff such costs as the court shall order.

Secondly, upon the like security being given, the court,

when a sequestration shall have issued, may order the decree to be satisfied out of the estate and effects sequestered; but if such security shall not be given, the property sequestered shall remain under the direction of the court, to abide its further order.

Thirdly, if any such non-resident defendant as last aforesaid, against whom such decree shall have been made, or his representative, shall afterwards appear and petition to be heard, he shall be permitted to answer the plaintiff's bill, upon paying, or securing to be paid, such costs as the court shall adjudge; and the suit shall proceed in like manner, as if such defendant had appeared in due season, and no decree had been made.

*Provided*, that the defendant or his representatives shall so appear, within one year after a written notice of the decree shall have been given to him or them; and within five years after the making of the decree, when such notice shall not be given.

Fourthly, if such defendant or his representatives shall not appear within the times respectively above mentioned, the court shall then, by order, confirm the decree against the defendant, and against all persons claiming under him, by virtue of any act done subsequent to the commencement of the suit, and may make such further order in the premises as shall be just and reasonable.

Fifthly, if the suit in which such non-resident person may be a defendant shall be removed to the supreme court, and the decree be made in that court, then, upon his petition to be heard, the record, or a transcript thereof, shall be removed back to the original court, that the case may be prepared for hearing, as is provided when the record has never been removed; and when the case may be set for hearing, it shall be removed to the supreme court, which shall make such decree therein, as if no decree had before been made.

Sixthly, *provided further*, that this chapter shall not be construed to make good any proceedings against a defendant, residing, at the commencement thereof, without the State; unless the ground or cause of action, or the transaction on which the bill is brought took place, or the property in controversy may be, within the State.

*Rule 5.*— Upon issue joined by replication, the parties shall prepare the cause to be set for hearing at the second term thereafter, unless the court, for good cause, shall enlarge the time.

*Rule 6.*— The testimony of all witnesses shall be reduced to writing; and depositions in equity shall be taken under the same rules as depositions at law: and every clerk and master shall be, *ex officio*, a commissioner, to take depositions to be read in any suit in his court.

*Rule 7.*— Commissions to take the plea, answer, or demurrer of a defendant may issue to any justice of the peace, who,

ereed out of sequestered property.

3. If deft. appear may answer bill on terms.

Within what time to appear.

4. Or decree to be confirmed.

5. What to be done if suit has been removed to supreme court.

6. No decree against non-resident, unless, &c.—R. S. c. 32, s. 4.

Cause set for hearing within two terms after replication.

All evidence to be in writing. C. and m. com'r to take depositions.—R. S. c. 32, s. 4.—1842, c. 50.

Answers, &c. taken by judge, or by magis-

trate on commission.—R. S. c. 32, s. 4.

Injunction, sequestration, and *ne exeat* may issue.—R. S. c. 32, s. 4.

Issues of fact, when tried by jury.—R. S. c. 32, s. 4.

Costs at discretion of court.

Except, &c.—R. S. c. 32, s. 4.—1848, c. 12.

Further security may be required of def't.—R. S. c. 32, s. 4.  
Decrees, &c., executed by attachment, or otherwise.—R. S. c. 32, s. 4.  
Matter arising after issue pleaded *puis darrein*.

Venue of suits in equity.

Executions to issue and bind, as at law.—R. S. c. 32, s. 6.

Decree for costs against plaintiff and surety.—R. S. c. 32, s. 7.

Pl'ff dying, his representative may become party.—R. S. c. 32, s. 9.

Def't dying, his representative

for that purpose, shall have the power of a commissioner in chancery; and any judge of the superior or supreme court may grant such commission, or may himself take the plea, answer, or demurrer of the defendant.

*Rule 8.*—The judges of the courts of equity, and likewise any of the judges of the supreme court, may grant writs of injunction, of sequestration, and of *ne exeat*, subject still to the control of the court; but a *ne exeat* shall not issue where sufficient bail has been taken for the party's appearance.

*Rule 9.*—The court may direct that issues of fact shall be tried by a jury, whenever it shall appear necessary, according to the rules and practice heretofore observed in the State.

*Rule 10.*—Costs incurred in the court shall be paid by either party, as the court may direct, as well in bills of discovery as in all other cases, any present usage to the contrary notwithstanding. But where the plaintiff shall dismiss his bill, or it shall be dismissed by the court for want of prosecution, he shall pay to the defendant full costs to be taxed by the master.

*Rule 11.*—The court may, at any time pending a suit, require further security from the defendant.

*Rule 12.*—The court may execute its orders, sentences, and decrees by attachment, and all such other process and means as have been usually exercised by the courts of equity in the State.

*Rule 13.*—Whenever any matter shall arise after the cause shall have been put to issue, which would have been proper to be pleaded if the matter had arisen before issue, the same may be thereafter pleaded as in actions at law, and under the same rules.

*Rule 14.*—Suits may be instituted in any county where any of the parties may reside; or in the county wherein the property is situate, if it be land, or of a fixed and local nature; if instituted elsewhere, they may be abated on plea.

4. Where decrees shall be made for any sum of money, or for costs of suit, execution may issue thereon against the party's body, or against his goods and chattels, lands and tenements to satisfy such decree and costs, in the same manner as execution at law; and lands and tenements, goods and chattels shall be bound by such decree and execution, in the same manner as they are by judgments and executions at law.

5. Whenever a decree shall pass against the plaintiff for costs of suit, the same, on motion of the defendant, may be entered against the plaintiff's surety for the prosecution of his suit.

6. When a complainant shall die after the filing of his bill, his legal representative may carry on the suit, *provided* application be made to the court by such representative, at or before the second term after the decease of such party.

7. When any defendant shall die after service of the subpoena and copy of the bill, the plaintiff may suggest his death,

and issue a *scire facias* against his legal representatives, in the same manner and under the same rules as are used in suits at law; and on service of the writ on such representatives, the suit shall stand revived.

may become party.—R. S. c. 32, s. 8.

8. If they shall not appear and answer or disclaim, after being duly served with the *scire facias*, the answer of the deceased party shall be deemed the answer of his representative.

Answer of deceased def't answer of representative, when.

9. If the deceased party shall have answered, and the complainant shall desire to obtain a further answer to the bill from his representative, the matters whereof further answer is required shall be filed with the master, and a copy thereof shall be issued with the *scire facias* and served on the representative.

Proceedings, when further answer required of rep's.

10. In such case, if the representative shall not appear and put in such further answer, or disclaim at the next term, after being duly served with a copy of such matters, the said matters shall be taken *as confessed*, or an answer may be compelled by attachment or otherwise.

If he will not answer or disclaim, bill taken as confessed, &c.

11. If a defendant shall die, and the cause of action does not survive, and the complainant shall neglect for two terms to revive the suit, the court may order it to stand revived upon the petition of a surviving defendant, against the representatives of the deceased party.

Suit, in certain cases, revived by def't against codef'ts rep's.

12. In such case, the surviving defendant may proceed against such representatives in the same manner as a complainant, to compel them to appear, abide the answer of the deceased party, or answer if answer be required, or to have the bill or his petition taken *as confessed* against them; and the court may, in its discretion, stay the suit as against him, until such proceeding shall have been had.

Proceedings in such case.

13. No bill, answer, or other paper or proceedings in any suit in equity, (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 adjudge what papers shall be enrolled.

Proceedings enrolled, when and what part of them.—R. S. c. 32, s. 10.

14. No injunction commanding the stay of an execution, except on judgments in actions of detinue, shall be granted, for any other or greater sum than what the complainant shall on oath declare to be just; and not until he shall enter into bond with sufficient security, before the master of the court whence the injunction issues, for the payment into office, upon the dissolution of the injunction, of the sum complained of, and all costs.

Injunction to issue for no greater sum than sworn to, nor without security.—R. S. c. 32, s. 11.

15. And whereas, injunctions are often applied for, for mere delay, and the facility of obtaining them sometimes enables debtors to defeat creditors of their just claims; *it is enacted*, that no injunction to stay an execution shall issue but within four months after the judgment at law is obtained, unless the party applying therefor shall, besides the bond required in the preceding section, deposit, as a further security, in the office of

Nor but within four months after judgment, unless, &c.—R. S. c. 32, s. 12.

the master, the amount of such judgment and costs; or unless it shall appear from the oath of the complainant, 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 that the complainant was out of the State at the time of entering up judgment, so that application could not be made within the time aforesaid.

Money deposited on obtaining injunction, paid over on security.

16. If, upon obtaining any injunction, the complainant shall deposit in office any money whose collection is enjoined, the same may be paid on order of the court to the plaintiff at law, upon his executing a bond to the State in a penalty double the amount, with able sureties, conditioned that he will pay to the master said money, or any part thereof, according to the decree that may be made in relation thereto.

Injunction dissolved, judgment rendered on bond. Damages uncertain, how ascertained.—R. S. c. 32, s. 13.

17. When an injunction shall be dissolved, judgment shall be rendered on the bond given on obtaining the same, in the same manner as on appeal bonds; except, that in cases where the damages secured by the bond shall be of an uncertain nature, it shall be referred to the master, (if they consist in account,) to report their amount; or shall be inquired of by a jury, on an issue submitted by the court, and tried upon the testimony filed in the cause, and such other evidence as the parties may offer; and on the confirmation of the report, or verdict of the jury, the court shall render judgment on the bond for the amount and costs.

Injunction against judgment of the State, when to issue.—R. S. c. 32, s. 14.

18. No injunction, bill, or other process in equity, praying the stay of an execution issued on the part of the State against a citizen, shall be granted, until the complainant shall first produce a receipt from the treasurer, or other public officer authorized to give the same, showing the payment of all such part of the judgment as, by his bill of complaint, he shall not on oath declare to be unjust.

Infants and non compos delicti being non-residents, to have a guardian. Allowed three years after decree to appear.—R. S. c. 32, s. 15.

19. Where any defendant is an infant, or person *non compos*, and resides out of the State, having no guardian residing within the same, the court shall appoint a guardian to such person to defend his interest in the suit. *Provided, nevertheless*, that such infant or person *non compos* may, at any time within three years after decree made, appear and petition to be heard with respect to the matter of the decree; and then the suit shall proceed in like manner, as if such person had appeared in due season, and no decree had been made. And if the suit have been removed to the supreme court, the same proceedings shall be had as provided in the fifth proviso of the fourth rule.

Cases removed to supreme court, when. Parol evidence not received in supreme court, except, &c.—R. S. c. 32, s. 16.—1848, c. 30.

20. Any case pending in a court of equity, and set for hearing, or set for hearing on a plea or demurrer, may, by order of the judge, be removed to the supreme court for hearing, upon sufficient cause appearing by affidavit or otherwise, showing that such removal is required for purposes of justice. *Provided*, that no parol evidence be received in the supreme court, before the court, or any jury that may be impanelled for the



trial of an issue of fact, except witnesses to prove exhibits or other documents.

21. In like manner, whenever any of the defendants shall put in a plea or demurrer to the whole or part of the bill, and the same shall be set for hearing, so much only of the case may be removed to the supreme court for hearing, under the regulations prescribed in the preceding section; in which case a transcript of only so much of the record shall be sent up, as may be necessary to present the question or matter upon such plea or demurrer; and the court, notwithstanding such part removal, may proceed to make all necessary orders for preparing the cause for trial, as if no part of the same had been removed. And the opinion of the supreme court, on the matters removed, shall be certified to the court of equity, and be proceeded on in the same manner as in cases of appeals from interlocutory decrees.

Further provision for removal of equity causes.

22. No bill of review or petition for a rehearing shall lie or be allowed, upon a final decree in any court of equity, but within five years next after such decree shall have been made; saying, nevertheless, the rights of infants, *femes covert*, and persons *non compos mentis*, if they shall bring such petition or bill within three years after their disabilities shall have been removed.

Bills of review and petitions to rehear brought in five years. Saving for infants and others.—R. S. c. 32, s. 17.

23. In all cases where a clerk and master, or commissioner appointed by a court of equity, shall sell any real or personal estate, under the authority of a decree of the court, and the clerk and master shall be authorized, by a decree in the cause, to convey the title of such estate to the purchaser, his deed therefor shall be effectual to convey to the purchaser such title, interest, and estate in the said property, as the party of record, owning the same, had therein.

Clerk and master may convey title, in all cases of sale decreed.—R. S. c. 32, s. 18.

24. In any suit wherein the court shall declare that a party is entitled to the possession of property, real or personal, the legal title whereof may be in another or others, parties to the suit, and the court shall decree a conveyance of such legal title to him so declared to be entitled: or where, for any cause, the court shall decree that one of the parties holding property in trust, shall convey the legal title therein to be held in trust, to another person, although not a party: the court, after declaring the right and decreeing the conveyance, shall have power also, to be used in its discretion, to declare in the decree then made, or in any made in the progress of the cause, that the effect thereof shall be to transfer to the party to whom the conveyance is directed to be made, the legal title of the said property, to be held in the same plight, condition, and estate, as though the conveyance decreed was in fact executed; and shall bind and entitle the parties decreed to execute or to take benefit of the conveyance, in and to all such provisions, conditions, and covenants as may be decreed to attend the conveyance, in the same manner and to the same extent as the conveyance would, if the same were executed according to the

Decree in certain cases, to be a conveyance of title.—1850, c. 107, s. 1.

decree. And any party taking benefit under the decree, may have the same redress at law on account of the matter decreed, as he might on the conveyance, if the same had been executed.

Decree to be regarded as a deed.—1850, c. 107, s. 2.

25. Every decree, in which the transfer of title shall be so declared, shall be regarded as a deed of conveyance, executed in due form and by capable persons, notwithstanding the want of capacity in any person decreed to convey, and shall be registered in the proper county, under the same rules and regulations as may be prescribed for conveyances of similar property executed by the party; and all laws which may be passed for extending the time for registration of deeds, shall be deemed to include such decrees, provided the conveyance, if actually executed, would be so included.

Copy from register's office evidence.—1850, c. 107, s. 3.

26. In all legal proceedings, touching the right of parties derived under such decree, a certified copy thereof from the register's books shall be evidence of its existence and of the matters therein contained, as fully as if the same were proved by a perfect transcript of the whole case.

Decree how registered.—1850, c. 107, s. 4.

27. The party desiring registration of such decree shall produce to the register a copy thereof, certified by the clerk of the court in which it is enrolled, under the seal of the court; and the register shall record both the decree and certificate.

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- SECT. 2. (1.) *Venue*, 6 Ire. Eq. 232. *Suit when begun*, 2 D. & B. Eq. 82. (3.) *Effect of decree pro. conf.* 12 Ire. 231. *Time to answer*, 5 Ire. Eq. 187. (10.) 5 Ire. Eq. 291.
- SECT. 15. 3 Ire. Eq. 576.
- SECT. 17. 1 Ire. Eq. 418; 2 Ib. 195.
- SECT. 19. *May appoint C. and M.* 1 Mur. 440.
- SECT. 20. *Not petitions for divorce*, 2 D. & B. Eq. 270. *May be removed from special term*, 6 Ire. Eq. 290. *Original papers to be sent*, 1 Dev. Eq. 372. *When remanded*, 6 Ire. Eq. 349, 5 Ib. 340.
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## CHAPTER 33.

### COURT, SUPREME.

#### SECTION

1. Three judges of the supreme court appointed.
2. To hold annually two terms in Raleigh, in June and December. And one in Morganton, on first Monday of August. To sit till business is done. Name and style of court. To stand adjourned if no judge attends during first week.
3. Judges to take and subscribe oaths, to be filed in office of secretary.
4. Two, in case of sickness, &c., to hold court.

#### SECTION

5. Shall appoint a chief justice. Their powers and authorities.
6. Jurisdiction and power of the court. To render judgment on inspection of the whole record. How execution to issue and be returnable. If to the superior court, final judgment to be certified to that court. In criminal cases, decision of supreme court to be certified to court below. How that court shall proceed.
7. To have original jurisdiction to repeal grants or letters patent.

SECTION

8. What decree the court may make in such case.
9. Shall appoint a clerk for four years at each place of session. His bond and oaths. Where office to be kept.
10. Causes from what counties carried to Morganton. Provisionary exception in criminal cases. Exception also as to civil cases in some of those counties. Court may adjourn causes from Morganton to Raleigh and *vice versa*.
11. Bills, &c., and other parts of proceedings as the court shall direct, to be recorded.
12. Clerk's pay for such services.
13. Judges to prescribe rules of practice for superior courts.
14. On appeal from interlocutory judgments or decrees, no judgment to be entered. Opinion with instructions to be certified to court below.
15. Exhibits in equity cases proved there by witnesses. Rules as to such witnesses.
16. Judges to deliver their opinion in writing. Certificate of decision nor execution to be issued, till the opinion is delivered to clerk.

SECTION

17. Court may amend any proceeding. What amendment may allow after cause is set for hearing. May remand a cause for amendment below. May amend by making parties. May allow further testimony to be taken.
18. When petition to rehear final decree may be filed.
19. Bills of review and writs of error brought within two years after decree, &c.
20. Suits may be dismissed for failure to prosecute after notice.
21. Certificates of decisions transmitted to courts below on the rise of court. Execution for costs in superior and supreme courts to issue from those courts respectively. Clerk failing, twenty days, to transmit certificates of decisions, to forfeit one hundred dollars.
22. In attorney-general's absence, court to appoint counsel for the State.
23. Reporter of decisions annually appointed. Reports, how distributed.
24. Marshal of court at Raleigh, appointed. Sheriff of Burke to attend court at Morganton. Compensation.

1. 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.

Three judges of the supreme court appointed.—R. S. c. 33, s. 1.

2. The court shall be held by the judges thereof thrice every year, — twice in the city of Raleigh, and once in the town of Morganton, in the county of Burke. The terms held in the city of Raleigh shall commence on the second Monday in June, and on the thirtieth day of December, or on the day after, in case the thirtieth day be Sunday. And the term in Morganton shall commence on the first Monday in August. The court shall sit at each term until all the business on the docket shall be determined, or continued on good cause shown. The 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, or in the town of Morganton. *Provided*, however, that in case no one of the judges shall attend the term during the first week thereof, at the end of that time, the court shall stand adjourned till the next term, and the causes on the docket be continued.

To hold annually two terms in Raleigh, in June and December. And one in Morganton, on first Monday of August. To sit till business is done. Name and style of court. To stand adjourned if no judge attends during first week.—R. S. c. 33, s. 2.—1842, c. 15; 1846, c. 28, 29.

3. The judges, before they act as such, shall, before the Judges to take

- and subscribe oaths to be filed, &c.—R. S. c. 33, s. 3. governor or some judicial officer, take and subscribe the oaths appointed for the qualification of public officers, and also an oath of office, which shall be certified by the officer taking the same, and delivered to the secretary of State, to be safely kept.
- Two, in case of sickness, &c. to hold court.—R. S. c. 33, s. 4. 4. When any one of the judges is disabled from attending from sickness or other inevitable cause, two of the judges shall hold the 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 court were present.
- Shall appoint a chief justice. 5. The judges shall appoint one of their number to preside, who shall thenceforth be styled Chief Justice of the Supreme Court of North Carolina; and they and each of them shall have, use, exercise, and enjoy the same powers and authorities, rights, privileges, and preëminences, in every respect, as are now had, used, exercised, and enjoyed by the judges respectively of the superior courts of law and equity, 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 judges of the supreme court may make any fiat, order, or issue any process, and perform any act which a judge of the superior court may do.
- Their powers and authorities.—R. S. c. 33, s. 5.
- Jurisdiction and power of court. 6. The court shall have power to hear and determine all questions at law, brought before it by appeal or otherwise from a superior court of law, and to hear and determine all cases in equity brought before it by appeal or removal from a court of equity; and in every case, the court may render such sentence, judgment, and decree, as, on 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 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 cause may have been removed. *Provided, however*, 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 execution, and in the event of its not being executed, may issue 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, which superior court shall proceed to judgment and sentence, agreeable to the decision of the supreme court and the laws of the State.
- To render judg't on view of the record.
- Execution whence issued, and where returnable.
- If to sup'r co., final judg't to be certified to that court.
- In crim'l cases decision certified to court below.
- How that court shall proceed.—R. S. c. 33, s. 6.

7. The supreme court shall have original cognizance, 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; and such proceedings shall be by bill in equity, or information in the nature of a bill in equity, exhibited in the name of the attorney-general on behalf of the State; and the proceedings thereupon shall be according to the course and practice in equity.

To have original jurisdiction to repeal grants or letters patent.—R. S. c. 42, s. 33.

8. 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 court shall declare the same repealed, rescinded, and annulled; and also 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.

What decree the court may make in such case.—R. S. c. 42, s. 34.

9. The judges shall appoint a clerk for the court held in the city of Raleigh, and one also for the court held in the town of Morganton, who shall hold, each one, his office for four years; but, before undertaking its duties, such clerk shall enter into bond, with sufficient security, payable to the State of North Carolina, in the sum of fifteen 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 he shall also, before said judges, or one of them, take the oaths which are prescribed for clerks of the superior court. And the clerk of the court, directed to be held in the city of Raleigh, shall keep his office in said city in one of the rooms of the capitol assigned to the supreme court; and the clerk of the court held at Morganton shall keep his office at Morganton.

Shall appoint a clerk for four years at each place of session. His bond and oaths.

10. All causes whatsoever, carried into the supreme court by appeal, removal, or otherwise, from a superior court of law or a court of equity of the counties of Surry, Yadkin, Davie, Rowan, Cabarrus, Mecklenburg, and of the counties lying westward of the same, shall be brought into the supreme court at Morganton for determination. *Provided, however,* that all criminal cases carried from the superior courts of any of said counties, after the second Thursday of August and before the thirtieth day of December, when the defendants or any one of them shall be confined in jail, pending the appeal, shall be brought to the supreme court at Raleigh for determination. *And provided also,* that if either party to any cause which may be removed or carried by appeal or otherwise to the supreme court, from any of the said counties of Surry, Yadkin, Davie, Rowan, Cabarrus, or Mecklenburg, or if both parties in any cause west of the same shall prefer it, the said cause shall be brought into the supreme court at Raleigh, to be there determined, and the presiding judge shall so order it. Causes of every kind carried to the supreme court by appeal, removal, or otherwise from any other county, shall be brought to the

Where office to be kept.—R. S. c. 33, s. 7.—1846, c. 28, s. 3.

Causes from what counties carried to Morganton.

Provisionary exception in criminal cases.

Exception also as to civil cases in some of those counties.

Court may adjourn causes from Morganton to Raleigh

and *vice versa*. court at Raleigh, for determination; but the court may, in  
 —1846, c. 28, its discretion, adjourn causes in law and equity from Morg-  
 s. 2. anton to Raleigh, and from Raleigh to Morganton, for de-  
 termination.

Bills, &c. and other parts of proceedings as the court shall direct to be recorded.—R. S. c. 33, s. 8.

11. In cases in equity in said court, the clerks shall record all bills, answers, pleas, replications, and demurrers, with all decrees, made therein, whether interlocutory or final, together with the opinions of the judges of said court; and they shall only record other parts of the proceedings in equity cases, when, for sufficient reasons, it may be specially ordered by the 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 requiring it to be done.

Clerk's pay for such services.—R. S. c. 33, s. 9.

12. 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.

Judges to prescribe rules of practice for superior courts.—R. S. c. 33, s. 10.

13. The judges of the supreme court shall prescribe and establish, from time to time, rules of practice for the superior courts, which the clerk shall certify to the judges of the superior courts, who shall cause the same to be entered on the records of said courts.

On appeal from interlocutory judgments &c., no judgment to be entered. Opinion with instructions to be certified to court below.—R. S. c. 33, s. 11.

14. 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 the court below shall enter upon its records the opinion at length, and proceed in the cause according to the instructions.

Exhibits in equity cases proved there by witnesses. Rules as to such witnesses.—R. S. c. 33, s. 12.

15. Exhibits or other documents relative to cases in equity pending in the supreme court, may be proved by the parol testimony of 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 court; and suitors in said court may have subpoenas 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 pay for traveling, ferriage, and attendance, as witnesses in the superior court. *Provided*, that 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.

Judges to deliver their opinions in writing. Certificate of decision nor execution to be issued till opinion of court is delivered to clerk.—R. S. c. 33, s. 13.

16. The judges shall deliver their opinions or judgments in writing, with the reasons at full length upon which they are founded; and the clerk shall make no entry upon the records of the court, that any cause depending therein is decided, nor give to any person a certificate of such decision, nor issue execution for the costs in such suit, until after the opinion of the court shall have been delivered publicly in open court, stating

at length the ground and argument for such opinion, and until a written copy of the same opinion shall have been delivered to the clerk; which shall afterwards be filed among the records of the court and published in the reports of the decisions made by the court.

17. The supreme court shall have power to amend any process, pleading, or proceeding at law, either in form or substance, for the purpose of furthering justice, on such terms as shall be deemed just, at any time before final judgment. And on like purpose and terms, said court shall have power, and it shall be its duty, any practice heretofore to the contrary notwithstanding, to allow all such amendments as, according to the practice of the court of chancery, may be made without setting aside the order for hearing the cause. And, on like purpose and terms, it shall be the duty of the court when amendment may be needed, which, according to the course of the court, is only allowable before the cause is set for hearing, to remand the same, on motion made in due time, to the intent that application to amend may be made in the court below.

Court may amend any proceeding. What amendment may allow after cause set for hearing.

May remand a cause for amendment below.

Also, to amend by making proper parties to any case in equity where the court may deem it necessary and proper for the purposes of justice, and on such terms as the court may prescribe.

May amend by making parties.

And also, whenever it shall appear necessary for the purposes of justice, to allow and direct the taking of further testimony in any case in equity which may be pending in said court, under such rules as may be prescribed.

May allow further testimony to be taken.—R. S. c. 33, s. 14, c. 4, s. 1, 10.

18. Petitions to rehear any final decree made in the supreme court, may be filed at the term when the same is passed, or within twenty days after the commencement of the next succeeding term; *provided*, that nothing herein contained shall prevent the usual proceedings for enforcing the decree.

When petition to rehear final decree may be filed.

19. Bills of review and writs of error in civil cases, for any error apparent in the final decree or judgment of the supreme court, may be brought in that court within two years after such decree or judgment shall be recorded or enrolled.

Bills of review and writs of error brought within two years.

20. Suits and appeals pending in the supreme court, may be dismissed on failure to prosecute the same, after a rule obtained for that purpose and served on the plaintiff or appellant, his agent or attorney, at least thirty days before the term next ensuing that of entering the rule; when, if the party shall fail to prosecute his suit or appeal, the court shall, at the election of the adverse party, dismiss the suit or appeal at the costs of the plaintiff or appellant, or proceed to hear and determine it.

Suits may be dismissed for failure to prosecute, after notice.—1848, c. 28, s. 2.

21. The clerks of the said court shall, immediately after the rise of each term thereof, transmit by some safe hand or by mail, 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 the courts from which the cases were sent; and the clerk of the supreme court shall issue execution for the costs incurred in

Certificates of decisions transmitted to courts below on the rise of court.

Ex'n for costs in supreme and sup'r courts to issue from those courts respectively.

Clerk failing twenty days to transmit certificates to forfeit \$100.—R. S. c. 33, s. 15.—1842, c. 1, s. 3.

that 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. And if either of the clerks of the court, whose duty it shall be, shall fail for the space of twenty days to perform the duty herein enjoined of transmitting the said certificates of decisions, he shall forfeit and pay to the party or parties, in whose favor the supreme court shall have decided, one hundred dollars.

In att'y-gen'l's absence, court to appoint counsel for State.—1846, c. 29, s. 4. Reporter of decisions annually appointed.

22. If the attorney-general should fail, at any term of the supreme court, to attend to the business which by law is assigned him, the court may appoint some counsellor learned in the law to discharge his duties during the term.

Reports, how distributed.—R. S. c. 33, s. 16.—1852, c. 161.—Res. 1840-'46-'52.

23. The judges of the supreme court shall annually appoint a reporter of the decisions thereof, who, within five months after the close of each term, shall prepare for the press such decisions as the court may direct to be published, and shall contract with some printer, to print at the expense of the State as many copies as may be needed, to be distributed by the reporter, as follows:— One copy for the reporter; one for each of the judges of the State; one for the judge of the court of the United States for the district of North Carolina; two to be deposited in the executive department; six copies in the public library; one copy in the office of the clerk of the court of pleas and quarter-sessions in each county in the State; one in the office of the clerk of the circuit court of the United States; one in each of the supreme court libraries; three copies in the library of the university; one copy for the library of the supreme court of the United States at Washington; as many in the executive office, as will supply with one copy each State and territory of the United States, to be transmitted to the executive departments thereof.

Marshal of court at Raleigh, appointed.

Sheriff of Burke to attend court at Morganton. Compensation.—R. S. c. 33, s. 18.—1840, c. 15.—1846, c. 28, s. 4.

24. The judges of the court may annually appoint an officer to be styled marshal of the supreme court, removable at will, who shall attend upon the court during its session in the city of Raleigh; and, during its session in Morganton, the sheriff of Burke shall attend upon the court: said marshal and sheriff shall be entitled to receive each two dollars, per day, for every day of actual attendance on the court, to be paid by the treasurer upon the certificate of the clerk of the respective courts where the service is performed, which certificate shall state the number of days of attendance, according to the direction of the court.

SECT. 6. *Jurisdiction: bill of review*, 1 Jones Eq. 10; *by consent*, 1 Ire. 523. *Pleadings to be filed*, 3 Ire. 586.  
SECT. 21. *Costs*, 1 D. & B. 489.



CHAPTER 34.

CRIMES AND PUNISHMENTS.

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4. Castration with malice aforethought.
5. Rape.
6. Crime against nature.
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11. Aiding slaves to escape from State.
12. Conveying free negroes from State with intent to sell. Selling free negroes in State.
13. Conveying free negroes within State with intent to sell them.
14. Malicious maiming.
15. Bigamy.
16. Circulating seditious publications among slaves and free negroes.
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31. Stealing or obliterating proceedings and records of court. Not necessary to allege ownership or value.
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75. Betting or playing at cards in ordinary, or retail-house, prohibited.
76. Keeper of ordinary and retail-house, suffering cards to be played on the premises, guilty of misdemeanor.
77. Money or property staked may be seized.
78. Penalty on persons opposing such seizure.
79. Billiard and backgammon tables excepted.
80. Marriage of free negro with white person, forbidden.
81. Enticing away and harboring runaway slaves.
82. Teaching slaves to read or write, use of figures excepted.
83. Fire-arms and other weapons not to be sold or given to slaves. Proviso.
84. Trading with slaves on Sundays, or at night, forbidden.
85. Buying or receiving from slaves, without written permission, forbidden.
86. Unlawful sales to slaves.
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88. Presumptive evidence of unlawful trading with slaves.
89. Offence and punishment for unlawful trading with slaves.

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90. Presumptive assent of principal to unlawful trading by his agent.
91. Forged licenses to slaves to trade.
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93. Entertaining slaves and free negroes, on vessels at certain times forbidden. Punishment on slaves, &c. On whites.
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104. Wilfully killing or injuring live-stock, running at large.
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107. Altering mark, or taking marked timber with intent to steal, larceny.
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109. Sales of liquor, traffic, and exhibitions near places of worship, forbidden, when.
110. Sending letters containing menacing demands for money; or threatening to accuse one of infamous crime to extort money.
111. Malicious injuries to real estate.
112. White women not to be branded or whipped.
113. Negligent omission of returning officers in election of governor and electors.
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- 115. Offences, jurisdiction of. Not pardoned.
- 116. White persons playing at cards with slave or free negro.
- 117. Contempt of court, what shall be.
- 118. Constables failing to execute process,

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- or making false return: acting as such without authority.
- 119. Officers failing to discharge their duties.
- 120. Misdemeanors by statute punished as at common law, unless otherwise directed.

1. EVERY person shall suffer death who may be an accessory before the fact to any offence which now is, or hereafter may be created, the punishment whereof is or shall be death.

Accessories before the fact, punishable as principals.—R. S. c. 34, s. 2, 3, 4, 8.  
Murder, burglary, arson, and robbery on the highway.—R. S. c. 34, s. 1.

2. Every 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, or warehouse, 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 suffer death.

3. If any person fight 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; and all their aiders or abettors shall be considered accessories before the fact.

Fighting a duel when one party is killed.—R. S. c. 34, s. 3.

4. If any person, of malice aforethought, shall 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 shall suffer death.

Castration with malice aforethought.—R. S. c. 34, s. 4.

5. If any person shall ravish and carnally know any female, of the age of ten years or more, by force and against her will, or shall unlawfully and carnally know and abuse any female child under the age of ten years, he shall suffer death.

Rape.—R. S. c. 34, s. 5.

6. If any person shall commit the abominable and detestable crime against nature, with mankind or beast, he shall suffer death.

Crime against nature.—R. S. c. 34, s. 6.

7. If any person shall wilfully or maliciously burn the State house, or any of the public offices of the State, or any court house, jail, arsenal, clerk's office, register's office, or any house belonging to any incorporated town in the State, or to any incorporated company whatever, in which are kept the archives, documents, or public papers of such town or corporation, he shall suffer death.

Burning public buildings.—R. S. c. 34, s. 7.

8. If any person shall enter the dwelling-house of another, with intent to commit felony or other offence, the punishment, or any part of the punishment, of which said other offence shall be infamous, or, being in such dwelling-house, shall commit any felony, or such other offence, and shall, in either case, break out of the said dwelling-house in the night time, such person shall be deemed guilty of burglary.

Breaking out of dwelling-house in the night, burglary.

9. The offence of killing a slave shall be homicide, and

Killing a slave

homicide. — R. S. c. 34, s. 9. shall partake of the same degree of guilt, when accompanied with the like circumstances, that homicide does at common law.

Stealing slaves. 10. Every person who shall steal any slave with the intent that the owner, or any one having any interest in such slave, present or future, vested or contingent, legal or equitable, shall be deprived of the use and benefit of such slave, shall suffer death. And every person who, by violence, seduction, or other means, shall take and carry away any slave with the like intent, shall be deemed and held, for every purpose whatever, to have stolen such slave; and may be so charged in the bill of indictment preferred for the offence. And every person who, knowing any slave to have been stolen as aforesaid, shall, with like intent, convey away, or aid in conveying away said slave, shall suffer death. And in any indictment under this and the following section of this chapter, the property in the slave shall be well laid, if charged to be the property of the owner, or any one or more of the persons having such interest as aforesaid.

Conveying away stolen slaves.

Property in slaves how laid. — R. S. c. 34, s. 10. — 1848, c. 35; 1852, c. 87.

Aiding slaves to escape from State. — R. S. c. 34, s. 11.

11. If any person shall wilfully carry or convey any slave, the property of another, without the consent of the owner, or the guardian of the owner, with the intent and for the purpose of enabling such slave to escape out of this State, from the service of his owner, or any one having an interest in such slave, present or future, vested or contingent, legal or equitable, or if any person shall wilfully conceal any slave, the property of another, with such intent and purpose, the person so offending shall suffer death.

Conveying free negroes from State with intent to sell.

Selling free negroes in State. R. S. c. 34, s. 12.

12. If any person shall unlawfully and wilfully entice, or carry or convey any free negro or free person of color out of the State, with the intent, such free negro or free person of color to sell or dispose of to another, or appropriate to his own use, as a slave, for life or for less time; or shall, within the limits of the State, unlawfully and wilfully sell or dispose of, or appropriate to his own use, as a slave, for life or for less time, any such free negro or free person of color, the person so offending, notwithstanding such free person of color may consent so to be carried out of the State with such intent, or to be sold within the State as aforesaid, shall suffer death. And it is hereby enacted, that all free persons of color in a state of apprenticeship, or hired or sold for a term of time, by virtue of the judgment of any court, they and their masters, purchasers, and hirers, shall be deemed to be within the provisions of this section.

Conveying free negroes within State with intent to sell. — R. S. c. 34, s. 71.

13. If any person shall unlawfully and wilfully entice, or carry, or convey away, from one part of the State to another part of the State, any free negro or free person of color, with the intent such free negro or free person of color, either within or without the State, to sell or dispose of, or to appropriate to his own use, as a slave, for life or for any less time, the person so offending, notwithstanding such free negro or free

person of color may consent so to be carried or conveyed with such intent, shall be deemed guilty of a misdemeanor, and on conviction in the superior court of law, shall be fined not less than one hundred dollars, nor more than one thousand dollars, and shall be imprisoned not less than three nor more than eighteen months. And it is hereby enacted, that all free persons of color in a state of apprenticeship, or hired or sold for a term of time by virtue of the judgment of any court, they and their masters, purchasers and hirers, shall be deemed to be within the provisions of this section.

14. If any person 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 so offending, his counsellors, abettors, and aiders, knowing of and privy to the offence, shall, for the first offence, stand in the pillory for two hours, and receive thirty-nine lashes on his bare back; and, for the second offence, shall suffer death.

Malicious maiming. — R. S. c. 34, s. 13.

15. If any married person doth take to him or herself another husband or wife, while his or her former wife or husband is still alive, the person so offending shall be fined and imprisoned, and receive one or more public whippings, and be branded on the cheek with the letter B. *Provided, always,* that this section shall not extend to any person whose husband or wife shall continually remain beyond sea for the space of seven years together, nor to any person whose husband or wife shall absent him or herself in any other manner for the space of seven years together, such person 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 who shall be, at the time of such after marriage, divorced from the bonds of matrimony according to the mode established by law, nor to any person whose former marriage is declared by law to be void, nor to any person whose former marriage was had or made within the age of consent.

Bigamy. — R. S. c. 34, s. 14.

16. If any person shall wilfully bring into the State, with an intent to circulate, or shall wilfully circulate or publish within the State, or shall aid or abet the bringing into, or the circulation or publication of, within the State, any written or printed pamphlet or paper, whether written or printed in or out of the State, the evident tendency whereof is to cause slaves to become discontented with the bondage in which they are held by their masters and the laws regulating the same, and free negroes to be dissatisfied with their social condition and the denial to them of political privileges, and thereby to excite among the said slaves and free negroes a disposition to make conspiracies, insurrections, or resistance against the peace and quiet of the public, such person so offending shall be deemed guilty of felony, and on conviction 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.

Circulating seditious publications among slaves and free negroes. — R. S. c. 34, s. 17.

Endeavoring by words to excite insurrection among slaves or free negroes.—R. S. c. 34, s. 18.

Servants embezzling their master's goods, &c.—R. S. c. 34, s. 19.

17. If any person, by words, shall endeavor to excite in any slave or free negro or person of color, a spirit of insurrection, conspiracy, or rebellion, he shall receive thirty-nine lashes on his bare back, and be imprisoned for one year; and for the second offence shall suffer death.

18. If any servant, to whom any money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in section twenty of this chapter, of the value of five dollars, by his master shall be delivered safely to be kept to the use of his master, shall withdraw himself from his master, and go away with the said money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned as aforesaid, or any part thereof, with intent to steal the same and defraud his master thereof, contrary to the trust and confidence in him reposed by his said master; or if any servant, being in the service of his master, without the assent of his master, embezzle such money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned as aforesaid, or any part thereof, or otherwise convert the same to his own use, with like purpose to steal them, or defraud his master thereof; the servant so offending shall be publicly whipped not exceeding thirty-nine lashes, and be fined or imprisoned at the discretion of the court. *Provided, however,* that nothing in this section contained shall extend to apprentices, or servants, within the age of eighteen years.

Breaking prison.—R. S. c. 34, s. 20.

Stealing or robbery of bank-notes and other securities.—R. S. c. 34, s. 23.

19. Any person who shall break prison, being lawfully confined therein, shall be deemed guilty of a misdemeanor.

20. If any person 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 certificate of stock in any corporation, 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 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 degree, in the same manner as it would have been if the offender had feloniously stolen, or taken by robbery, money, goods, or property of the value of five dollars; and such offender, for every such offence, shall suffer such punishment and be subject to the same pains, penalties, and disabilities as he should or might have suffered, if he had feloniously stolen or taken by robbery money, goods, or other property of the value of five dollars.

Stealing growing produce.—R. S. c. 34, s. 24.

21. If any person shall steal, or feloniously take and carry away, any indian corn, wheat, rice, or other grain, or any cotton, tobacco, potatoes, or pulse growing, standing, or re-

maining ungathered in any field or ground, he shall be deemed guilty of larceny, and punished accordingly.

22. The benefit of clergy, with respect to persons convicted of felony, shall be abolished: but such abolishment shall not prevent the joinder in indictments of any counts which might have been joined heretofore; and no person convicted of felony shall suffer death, unless it be for some offence which was excluded from the benefit of clergy before, or on the day when this enactment takes effect.

Benefit of clergy abolished.

23. No person hereafter convicted of such clergiable felony and sentenced to punishment, or punished therefor, shall thereby be pardoned of any felony committed before such conviction; but he may be indicted and punished for the same in like manner, as though he had never been convicted of any felony before that time.

None to be pardoned of other offences, by conviction and punishment.—R. S. c. 34, s. 28.

24. Every person who shall commit the crime of manslaughter, shall be punished by being burnt with the mark of an M upon the brawn of his left thumb, openly in court before the presiding judge, or, instead thereof, by a fine; and in addition to either punishment, may, in the discretion of the court, be also imprisoned not exceeding one year.

Manslaughter, first offence.—R. S. c. 34, s. 26.

25. Every person who, having been convicted of the crime of manslaughter and sentenced thereon, shall be convicted of a second crime of the like nature, shall suffer death; and in every such case of conviction for such second offence, the prior conviction of the same person and sentence thereon, may be shown to the court, in the manner now used in such cases for barring the benefit of clergy a second time.

Second offence.

Prior conviction, how shown.

26. All distinctions between petit larceny and grand larceny, where the same hath now the benefit of clergy, is abolished: and the offence of felonious stealing, where no other punishment shall be specifically prescribed therefor by statute, shall be punished as petit larceny is. *Provided, however,* that, in cases of much aggravation or of hardened offenders, the court may, in its discretion, sentence the convict to be whipped two several times, and may imprison him not exceeding one year.

Distinction between petit larceny and grand larceny abolished.

Punished as petit larceny.

27. Every person, who shall hereafter be convicted of any felony for which no specific punishment is prescribed by statute, and which is now allowed the benefit of clergy, shall be imprisoned at the discretion of the court not exceeding two years; or if the offence be infamous, the court may also sentence the convict to receive one or more public whippings, to stand in the pillory, or pay a fine, regard being had to the circumstances of each case.

Felonies not punished by particular statutes, how punishable.

28. If any woman who shall be delivered of a child shall, by secretly burying or otherwise disposing of the dead body of the said child, endeavor to conceal the birth thereof, she shall be guilty of a misdemeanor, and on conviction thereof in the superior court shall be punished by a fine not exceeding five hundred dollars, and imprisonment not exceeding one year.

Concealing birth of a child.—R. S. c. 34, s. 30.

*Provided*, that nothing in this section contained shall be construed to prevent the mother, who may be guilty of the homicide of her child, from being prosecuted and punished for the same, according to the principles of the common law.

Forfeiture for suicide.  
Burn'g bridges and houses, not depositories of archives, &c.

29. No forfeiture shall be incurred by suicide.

Attempting to burn bridges and certain houses, &c.—R. S. c. 34, s. 16, 22.

30. If any person, with intent to destroy the same, shall wilfully and maliciously set fire to and burn any public bridge, or private toll-bridge, or the bridge of any incorporated company, or any fire-engine house, or any house belonging to an incorporated town, used for public purposes other than the keeping of archives, documents, and public papers, or any house belonging to an incorporated company and used in the business of such company, and not included in sections two and seven of this chapter; or if any person shall wilfully and maliciously attempt to burn any of the said houses or bridges, or any of the houses or buildings mentioned in the said sections two and seven, the person so offending shall be deemed guilty of a misdemeanor, and being convicted thereof shall receive thirty-nine lashes on his bare back, stand in the pillory one hour, and be fined and imprisoned at the discretion of the court.

Stealing or obliterating proceedings and records of court.

31. If any person shall steal, or, for any fraudulent purpose, shall 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 deemed guilty of a misdemeanor; and in any indictment for such offence, it shall not be necessary to allege that the article, in respect to which the offence is committed, is the property of any person, or that the same is of any value.

Not necessary to allege ownership or value.—R. S. c. 34, s. 33.

Stealing, destroying, or concealing wills of living or deceased persons.

32. If any person, either during the life of the testator, or after his death, shall steal, or for any fraudulent purpose, destroy or conceal, any will, codicil, or other testamentary instrument, he shall be deemed guilty of a misdemeanor.

Buying and selling offices.—R. S. c. 34, s. 34.

33. If any person shall bargain or sell an office or deputation of an office, or any part or parcel thereof, or take money, reward, or other profit, directly or indirectly, or any promise, covenant, bond, or assurance for money, reward, or profit, for an office or the deputation of an office, or any part thereof, which office, or any part thereof, shall touch or concern the administration or execution of justice, or the receipt, collection, control, or disbursement of the public revenue, or shall concern or touch any clerkship in any court of record



wherein justice is administered: or if any person shall give or pay money, reward, or profit, or shall make any promise, agreement, bond, or assurance for any of the said offices, or for the deputation of any of them, or for any part of them; the person so offending in any of the cases aforesaid, shall be deemed guilty of a misdemeanor, and on conviction thereof shall forfeit all his right, interest, and estate in such office, and every part and parcel thereof, and shall be imprisoned and fined at the discretion of a court.

34. If any juror, by himself or others, do take any thing from the 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, and the person, who shall give such juror any fee or reward to influence his verdict, or induce or procure him to make any gain or profit by his verdict, shall be deemed guilty of a misdemeanor.

Bribery of jurors.—R. S. c. 34, s. 35.

35. When any person charged with crime or misdemeanor, or sentenced by the court upon conviction of any offence, shall be legally committed to any sheriff, constable, or jailer, or shall be arrested by any sheriff, deputy sheriff, or coroner acting as sheriff, by virtue of any *capias* issuing on a bill of indictment, information, or other criminal proceeding, and such sheriff, deputy sheriff, coroner, constable, or jailer, wilfully or negligently, shall suffer such person, so charged, or sentenced and committed, to escape out of his custody, the sheriff, deputy sheriff, coroner, constable, or jailer, so offending, being thereof 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 or other officer, to prove that such person so charged or sentenced 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. *Provided*, that such removal of 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.

Sheriff or other officers suffering a criminal to escape.

What necessary for State to prove.—R. S. c. 34, s. 36.

36. It is hereby declared to be a duty of the attorney-general, and of the solicitors, when they shall be informed, or have knowledge of any felon, or person otherwise charged with any crime or offence against the State, having, within their respective circuits, escaped out of the custody of any sheriff, deputy sheriff, coroner, constable, or jailer, to take the necessary measures to prosecute such sheriff, or other officer, so offending; and in such cases the governor may be indorsed as prosecutor.

Duty of attorney-general and solicitors in such escapes.—R. S. c. 34, s. 37.

37. If any person, by force and violence, shall break up or stay any election, by assaulting the officers thereof, or depriving them of the ballot-boxes, or by any other means, such person, his aiders and abettors, shall be judged guilty of a misdemeanor; and upon conviction shall be imprisoned three

Breaking up or staying elections.—R. S. c. 34, s. 38.

months, and pay such fine as the court shall adjudge, not exceeding one hundred dollars.

Public commissioners forbidden to become contractors.—R. S. c. 34, s. 39.

38. No person, 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 any person so offending shall be deemed guilty of a misdemeanor.

Overseers of roads neglecting duty.—R. S. c. 34, s. 40.

39. Every overseer of a road, who shall be guilty of neglecting any of the duties imposed on him by law, shall be deemed guilty of a misdemeanor.

Bridges kept up by mill owners in certain cases.—R. S. c. 34, s. 41.

40. Every owner of a water-mill, situated on any public road, and also every person whose duty it is to keep up and repair bridges built across any ditch, drain, or canal, in the manner prescribed in section twenty-four of chapter 101, entitled "Roads, Ferries, and Bridges," 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 he may be required to keep up and repair, shall be deemed guilty of a misdemeanor.

Unlawful fences.—R. S. c. 34, s. 42.

41. All persons neglecting to keep and repair their fences during crop time, in the manner required by law, shall be deemed guilty of a misdemeanor. *Provided*, that the concurring testimony of two indifferent witnesses shall be necessary to conviction.

Trespassing on public land.—R. S. c. 34, s. 43.—1842, c. 36, s. 4.

42. If any person shall erect a building on any public lands, before the same shall have been sold or granted by the State, or any lands belonging to the president and directors of the literary fund of North Carolina, before the same shall have been sold and conveyed by them, or cultivate, or remove timber from, any of said lands, such person shall be deemed guilty of a misdemeanor; and when any person shall be in possession of any part of said land, it shall be the duty of the sheriff of the county in which the land is situated, and he is hereby required, to give notice in writing to such person, commanding him to depart therefrom forthwith; and if the person in possession, upon being so notified, shall not, within two weeks after the time of notice, remove therefrom, the sheriff is required to remove him immediately, and, if necessary, shall summon the power of the county to assist him in so doing.

Trespasser removed by sheriff.—R. S. c. 34, s. 43.—1842, c. 36, s. 4.

Vagrants.—R. S. c. 34, s. 44.—1840, c. 61.

43. If any person who has no apparent means of subsistence, or neglects applying himself to some honest calling for the support of himself and family, shall be found sauntering about, and endeavoring to maintain himself by gaming or other undue means, any justice of the county wherein such person may be found, on due proof made, may issue his warrant for such offending person, and cause him to be brought before him, or some other justice, who is hereby empowered and re-

Arrested, recognized, and indicted.

quired, if such person after examination by him be found to be a vagrant as aforesaid, to recognize him with security for his appearance at the next superior court of the county, to answer the charge of being a vagrant, and in the mean time to be of good behavior; and in case of his neglect to give bail, he shall be committed to jail. And if he be found guilty on an indictment to be preferred against him, he shall be fined, and be also imprisoned for the space of twenty days, and be required to give security for his good behavior for such time as the court shall adjudge.

44. If any person shall unlawfully hawk or peddle any goods, wares, or merchandise, or shall fail, upon the application of the sheriff or his deputy, or any justice of the peace, to show his license as required by law, he shall be deemed guilty of a misdemeanor. Peddling without, or failing to show license, a misd'r.—R. S. c. 34, s. 45.

45. If any man and woman, not being married to each other, shall lewdly and lasciviously associate, bed and cohabit together, they shall be deemed guilty of a misdemeanor. *Provided, however,* that the admissions or confessions of one shall not be received in evidence against the other. Fornication and adultery a misdemeanor. R. S. c. 34, s. 46.

46. If any person shall marry a female under the age of fifteen years, he shall be deemed guilty of a misdemeanor. *Provided,* that this section shall not extend to cases in which the father of the female may be living, and previous and up to the marrying, shall have consented thereto in writing; and the superior courts of law shall have exclusive original jurisdiction of the offence. Marrying a female under fifteen, without written consent of her father a misdemeanor.—R. S. c. 34, s. 47.

47. 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, or 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 kill, maim, disfigure, disable, or render impotent such person; in any such case the person so offending shall, on conviction thereof, be imprisoned at least six months, and fined at the discretion of the court. Maiming without malice, how punishable.—R. S. c. 34, s. 48.

48. If any person send, accept, or bear a challenge to fight a duel, though no death ensue, he, and all such as counsel, aid, and abet him shall be deemed guilty of a misdemeanor; and on conviction thereof, shall be punished accordingly, and, moreover, be ineligible to any office of trust, honor, or profit in the State, any pardon or reprieve notwithstanding. Sending, accepting, or bearing challenge to fight a duel, &c., a misd'm'or.—R. S. c. 34, s. 49.

49. If any person shall wilfully and corruptly commit perjury on his oath or affirmation, in any suit, controversy, matter, or cause depending in any of the courts of the State, or in any deposition or affidavit taken pursuant to law; or in any oath or affirmation duly administered of or concerning any matter or thing, whereof such person is lawfully required to be sworn or affirmed; every person so offending shall be deemed guilty of a misdemeanor, and being convicted thereof, shall stand in the pillory one hour, receive one or more public whip-

Perjury.—R. S. c. 34, s. 50.

pings, not less than thirty-nine lashes on his bare back, and be fined not exceeding one thousand dollars.

Subornation of perjury.—R. S. c. 34, s. 51.

50. If any person shall, by any means, procure another person to commit such wilful and corrupt perjury as is mentioned in the preceding section, the person so offending shall be punished in like manner as the person committing the perjury.

Perjury and subornation in capital cases.—R. S. c. 34, s. 52.

51. *Provided, however,* That, if such perjury or subornation of perjury be committed or procured on the trial of any offence the punishment whereof is death, in that case, the offender shall, instead of the public whipping, have his right ear cut off and severed entirely from the head, and nailed to the pillory by the sheriff, there to remain till sundown.

Perjured persons made infamous.—R. S. c. 34, s. 50, 51.

52. All persons convicted of perjury or subornation of perjury, shall be rendered thereby incapable of giving testimony before any court whatsoever.

Accessories to felonies before the fact.

53. And for the more effectual prosecution of accessories before the fact to felony, it is enacted, that if any person shall counsel, procure, or command any other person to commit any felony, whether the same be a felony at common law, or by virtue of any statute or statutes made, or to be made, the person so counselling, procuring, or commanding, shall be deemed guilty of felony, and may be indicted and convicted, either as an accessory before the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon; or may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may be punished in the same manner as any accessory before the fact to the same felony, if convicted as an accessory, may be punished; and the offence of the person so counselling, procuring, or commanding, howsoever indicted, may be inquired of, tried, determined, and punished by any court which shall have jurisdiction to try the principal felon, in the same manner as if such offence had been committed at the same place as the principal felony or where the principal felony is triable, although such offence may have been committed at any place within or without the limits of the State; and that, in case the principal felony shall have been committed within the body of any county, and the offence of counselling, procuring, or commanding shall have been committed within the body of any other county, the last-mentioned offence may be inquired of, tried, determined, and punished in either of such counties. *Provided always,* that no person who shall be once duly tried for any such offence, whether as an accessory before the fact, or as for a substantive felony, shall be liable to be again indicted or tried for the same offence.

When, where, and how tried.—R. S. c. 34, s. 53.—1852, c. 58.

Accessories to felonies after the fact.

54. And for the more effectual prosecution of accessories after the fact to felony, it is enacted, that if any person shall become an accessory after the fact to any felony, whether the same be a felony at common law, or by virtue of any statute or statutes made, or to be made, such person shall be deemed

guilty of a misdemeanor, and may be indicted and convicted together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted for such misdemeanor, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may be punished by fine, imprisonment, and pillory, or with part only of such punishments, at the discretion of the court; and in case the person so offending shall be a free negro, the court may likewise punish the offence with a public whipping. And the offence of such person may be inquired of, tried, determined, and punished by any court which shall have jurisdiction of the principal felon, in the same manner as if the act, by reason whereof such person shall have become an accessory, had been committed at the same place as the principal felony, although such act may have been committed without the limits of the State; and, that in case the principal felony shall have been committed within the body of any county, and the act by reason whereof any person shall have become accessory shall have been committed within the body of any other county, the offence of such person guilty of a misdemeanor as aforesaid, may be inquired of, tried, determined, and punished in either of said counties. *Provided always*, that no person, who shall be once duly tried for such misdemeanor, shall be again indicted or tried for the same offence.

When, where, and how tried.—R. S. c. 34, s. 53.—1852, c. 58.

55. And in order that accessories may be convicted and punished in cases where the principal felon is not attainted; it is enacted, that, if any principal offender shall be in anywise convicted, it shall be lawful to proceed against an accessory, either before or after the fact, in the same manner as if the principal felon had been attainted thereof, notwithstanding such principal felon shall die or be admitted to the benefit of clergy, pardoned, or otherwise delivered before attainder; and every such accessory shall suffer the same punishment, if he be in anywise convicted, as he should have suffered if the principal had been attainted.

Accessories where principal is not attainted.

May be punished.

56. And with regard to receivers of stolen property, it is enacted, that if any person shall receive any chattel, property, money, valuable security, or other thing whatsoever, the stealing or taking whereof shall amount to a larceny or felony, either at common law, or by virtue of any statute made or hereafter to be made, such person knowing the same to have been feloniously stolen or taken, every such receiver shall be deemed to be guilty of a misdemeanor, and may be indicted and convicted, whether the felon stealing and taking such chattels, property, money, valuable security, or other thing, shall or shall not have been previously convicted, or shall or shall not be amenable to justice; and any such receiver may be dealt with, indicted, tried, and punished in any county in which he shall have, or shall have had any such property in his possession, or in any county in which the thief may be

Receivers of stolen goods, &c., of any value.—R. S. c. 34, s. 54.

tried, in the same manner as such receiver may be dealt with, indicted, tried, and punished in the county where he actually received such chattel, money, security, or other thing; and on conviction, such receiver shall be punished as one convicted of larceny.

Altering marks and mismarking beasts.—R. S. c. 34, s. 54.

57. If any person shall knowingly alter or deface the mark or brand of any other person's horse, mule, or ass, neat cattle, sheep, goat, or hog, or shall knowingly mismark or brand any such beast that may be unbranded or unmarked, not properly his own, with intent to defraud any other person, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished as if convicted of petit larceny.

Holding out false lights on sea-coast.—R. S. c. 34, s. 56.

58. 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, for the purpose of deceiving and misleading masters of vessels, and thereby to put them in danger of shipwreck, shall be deemed guilty of a misdemeanor.

Forgery.—R. S. c. 34, s. 21.

59. If any person, of his own head and imagination, 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 show forth in evidence, knowing the same to be forged, any deed, lease, or will, or any bond, writing obligatory, bill of exchange, promissory note, indorsement, 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 any of the said instances, to defraud any person or corporation, and thereof shall be convicted in any of the superior courts of law, such person so offending shall be adjudged to stand in the pillory one hour, and receive thirty-nine lashes on his bare back, and be imprisoned not less than six months nor longer than three years, and fined at the discretion of the court; and all or any of such punishment, at the discretion of the court, may be inflicted.

How punished.

Counterfeiting bank-notes, checks, public, or corporation securities.—R. S. c. 34, s. 59.

60. If any person shall falsely make, forge, or counterfeit, or cause or procure the same to be done, or willingly aid or assist therein, any bill or note in imitation of, or purporting to be, a bill or note of any incorporated bank in this State, or in any of the United States, or in any of the territories of the United States; or any order or check on any such bank or corporation, or on the cashier thereof; or any of the securities purporting to be issued by or on behalf of the State, or by or on behalf of any corporation, with intent to injure or defraud any person, bank, or corporation, or the State; the person so offending shall be deemed guilty of felony, and on conviction thereof in the superior court, he shall be punished in like manner, as if he had been convicted under the preceding section.

Passing, or attempting to pass, counterfeit notes.—R. S. c. 34, s. 60.

61. And if any person directly or indirectly, whether for the sake of gain, or with intent to defraud or injure any other person, shall utter or publish any such false, forged, or counter-

feited bill, note, order, check, or security, as is mentioned in the preceding section of this chapter; or shall pass, or deliver, or attempt to pass, or deliver any of them to another person, (knowing the same to be falsely forged or counterfeited,) the person so offending shall, on conviction thereof in the superior court, be punished in like manner as is prescribed in section fifty-nine of this chapter.

62. If any officer or agent of a corporation shall, falsely and with a fraudulent purpose, make with the intent that the same shall be issued and delivered to any other person by name or as holder or bearer thereof, any certificate or other writing, whereby it is certified or declared that such person, or holder, or bearer, is entitled to or has any interest in the stock of such corporation, when in fact such person, or holder, or bearer, is not so entitled, or is not entitled to the amount of stock in such certificate or writing specified; or if any officer or agent of such corporation, or other person, knowing such certificate or other writing to be false and untrue, shall transfer, assign, or deliver the same to another person, for the sake of gain, or with the intent to defraud the corporation or any member thereof, or such person to whom the same shall be transferred, assigned, or delivered, the person so offending shall, on conviction in the superior court, suffer the same punishment as if he had been convicted under section fifty-nine of this chapter.

Forging, issuing, or passing certificates of stock.

63. And if any person shall sell, by delivery, indorsement, or otherwise, to any other person, any judgment for the recovery of money purporting to have been rendered by a justice of the peace, or any bond, promissory note, bill of exchange, order, draft, or liquidated account purporting to be signed by the debtor, (knowing the same to be forged,) the person so offending shall, on conviction thereof in the superior court, be punished in like manner as one who offends against section fifty-nine of this chapter.

Selling forged judgments, bonds, &c.

64. 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 the resemblance or 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 the State; or shall pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell, or bring into the State from any other place, with intent to pass, utter, publish, or sell as true, any such false, forged, or counterfeited coin, knowing the same to be false, forged, or counterfeited, with intent to defraud any corporation, or any person whatsoever; every person so offending shall be deemed guilty of a misdemeanor, and on conviction thereof, in a superior court of law, shall be punished in like manner as if he had been convicted under section fifty-nine of this chapter.

Counterfeiting foreign gold or silver coins.

Passing, or attempting to pass them.—R. S. c. 34, s. 57.

65. If any person shall have in his possession any instrument for the purpose of making any counterfeit similitude or

Having in possession instruments for coun-

terfeiting such  
coin.—R. S. c.  
34, s. 58.

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 the State, and shall be duly convicted thereof in any superior court of law, the person so offending shall receive thirty-nine lashes on his bare back, and be further liable to be fined at the discretion of the court not more than five hundred dollars, and be imprisoned not more than twelve months.

Fraudulently  
connecting  
parts of several  
bank-notes, &c.

66. If any person shall fraudulently connect together different parts of two or more bank-notes, or other genuine instruments, in such a manner as to produce another note or instrument, with intent to pass all of them as genuine, the same shall be deemed a forgery, and the instrument so produced, a forged note, or forged instrument, in like manner as if each of them had been falsely made or forged.

Cheating by  
false tokens.—  
R. S. c. 34, s. 61.

67. If any person 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 whatsoever, obtain from any person or corporation within the State any money, goods, property, or other thing of value, 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 on any of the United States, or any treasury warrant, debenture, certificate of stock, or 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 corporation of the same, such person shall be deemed guilty of a misdemeanor for fraud and deceit, and being thereof convicted, in the superior court, shall be punished by fine, and imprisonment not exceeding twelve months, standing in the pillory, public whipping not exceeding thirty-nine lashes on his 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. *Provided always*, that if, on the trial of any one indicted for such misdemeanor, it shall be proved that he obtained the property in such manner as to amount to larceny, he shall not, by reason thereof, be entitled to be acquitted of the misdemeanor.

How punished.  
—R. S. c. 34,  
s. 61.

Fraudulent en-  
tries and state-  
ments by pub-  
lic treasurer.—  
R. S. c. 115,  
s. 26.

68. If the treasurer of the State shall willingly or falsely make, or cause to be made, any false entry or charge in any book kept by him as treasurer, 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 any of said instances, to defraud the State or any person, such treasurer shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any of the superior courts of the State, shall be fined at the discretion of the court, not exceeding three thousand dollars, and imprisoned not exceeding three years.



69. 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 be deemed guilty of a misdemeanor, and be fined, not exceeding two thousand dollars, or be imprisoned, not exceeding six months, or both, at the discretion of the court.

Lotteries forbidden.

How punished.—R. S. c. 34, s. 62.

70. If any person shall sell, barter, or dispose of any lottery ticket or order for any number or shares in any lottery, or shall in anywise be concerned in such lottery, by acting as agent in the State for or on behalf of any such lottery, to be drawn or paid either out of or within the State, such person shall be deemed guilty of a misdemeanor, and punished as in the preceding section.

Sale of lottery tickets forbidden.—R. S. c. 34, s. 63.

71. If any person shall open, establish, use, or keep a faro-bank or a faro table, with the intent that games of chance may be played thereat, he shall be deemed guilty of a misdemeanor, and on conviction, shall be fined at least two hundred dollars, and imprisoned not less than three months.

Faro tables prohibited.—1848, c. 34.

72. If any person shall establish, use, or keep any gaming table, (other than a faro-bank,) by whatever name such table may be called, at which games of chance shall be played, he shall, on conviction thereof, be fined not less than two hundred dollars, and be imprisoned not less than one month. And every person who shall play thereat, or thereat bet any money, property, or thing of value, whether the same be in stake or not, shall be deemed guilty of a misdemeanor, and any fine imposed on the offender shall not be less than ten dollars.

Gaming tables of every kind prohibited.—R. S. c. 34, s. 64.

73. If any person shall knowingly suffer to be opened, kept, or used in his house or any part of the premises occupied therewith, any of the gaming tables by this chapter prohibited, he shall forfeit and pay to any one who will sue therefor, two hundred dollars, and be deemed guilty of a misdemeanor, and on conviction shall be fined and imprisoned.

Persons suffering gaming tables to be opened or kept on their premises, how punished.—R. S. c. 34, s. 67.

74. All justices of the peace, sheriffs, constables, and commissioners of police in the several towns of the State, are hereby authorized and directed, on information made to them on oath, that any gaming table, prohibited to be used by this chapter, is in the possession or use of any person within the limits of their jurisdiction, to destroy the same by every means in their power; and they shall call to their aid all the good citizens of the county, if necessary to effect their destruction.

Gaming tables to be destroyed. Sheriffs and others to do so with the power of the county.—R. S. c. 34, s. 64.

75. If any person shall bet money, property, or other thing of value, whether the same be in stake or not, at any game of cards which shall be played in any ordinary, tavern, or house of entertainment, or in any house wherein spirituous liquors are retailed, or on any part of the premises occupied with such

Betting or playing at cards in ordinary, or retail house prohibited.—R. S. c. 34, s. 69.

ordinary, tavern, house of entertainment, or house wherein spirituous liquors are sold as aforesaid; or shall play at such game of cards; the person so offending shall be deemed guilty of a misdemeanor, and any fine imposed on the offence shall not be less than ten dollars.

Keeper of ordinary and retail house, suffering cards to be played on premises guilty of misd'r.—R. S. c. 34, s. 70.

76. If any keeper of an ordinary, or house of entertainment, or of a house wherein liquors are retailed, shall knowingly suffer any game of cards, at which money or property or any thing of value is bet, whether the same be in stake or not, to be played in any such house, or on any part of the premises occupied therewith; or shall furnish persons so playing or betting with drink or other thing for their comfort or subsistence during the time of play, he shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than ten dollars, and be imprisoned not more than thirty days.

Money or property staked may be seized.—R. S. c. 34, s. 65.

77. All moneys, or other property or thing of value exhibited for the purpose of alluring persons to bet at any prohibited game, or actually staked or betted on such game, shall be liable to be seized by any justice of the peace, or by any person acting under his warrant. And the moneys or other property or thing, which shall be so seized, shall belong one half to the person seizing them, and the other half to the wardens of the poor.

Persons opposing such seizure, penalty on.—R. S. c. 34, s. 66.

78. If any person shall oppose the destruction of any prohibited gaming table, or the seizure of any moneys, property, or other thing staked on forbidden games, or shall take and carry away the same or any part thereof after seizure, he shall forfeit and pay to the person so opposed one thousand dollars, for the use of the State and the person so opposed; and shall, moreover, be deemed guilty of a misdemeanor.

Billiard and backgammon tables excepted.—R. S. c. 34, s. 64.

Marriage of free negroes, with white persons forbidden.—R. S. c. 34, s. 72.

79. Billiard and backgammon tables are excepted from the provisions of this chapter, and may be used.

80. If any clerk of the court of pleas and quarter-sessions shall knowingly issue any license for marriage between any free person of color and a white person; or if any clergyman, minister of the gospel, or justice of the peace shall knowingly marry any such free person of color to a white person, the person so offending shall be guilty of a misdemeanor.

Enticing away and harboring runaway slaves.—R. S. c. 34, s. 73.

81. Any person who shall entice, persuade, or tempt any slave to absent himself from his owner's service, or who shall harbor or maintain, under any pretence whatever, any runaway slave, shall forfeit and pay to the owner of such slave one hundred dollars, and be further liable to the owner in an action for damages; and such person shall also pay a penalty of one hundred dollars to any person suing for the same, one half for his use, and the other for the use of the wardens of the poor of the county where suit is brought. And the offender shall moreover be deemed guilty of a misdemeanor, and fined at the discretion of the court, not exceeding one hundred dollars, and imprisoned not exceeding six months.

Teaching slaves to read

82. Any free person who shall teach, or attempt to teach

any slave to read or write, the use of figures excepted, or shall give or sell to such slave any book or pamphlet, shall be deemed guilty of a misdemeanor, and upon conviction thereof, if a white man or woman, shall be fined not less than one hundred, nor more than two hundred dollars or imprisoned; and if a free person of color, shall be fined, imprisoned, or whipped not exceeding thirty-nine, nor less than twenty lashes.

or write, use of figures excepted.—R. S. c. 34, s. 74.

83. No person shall sell, deliver, or give to any slave, for his own use, or for the use of any other person, any sword, dirk, bowie-knife, gun, musket, or fire-arms of any description whatsoever, or any other deadly weapons of offence, or any lead, leaden balls, shot, powder, gun cotton, gun flints, gun caps, or other material used for shooting. *Provided, however,* that any person may sell and deliver to a slave for the use of the person then having his management, any of the articles above mentioned, he being thereunto authorized by a written permission from such manager, specifying the articles and the amount and quantity so allowed to be purchased for him by such slave. *And provided further,* that nothing in this section contained shall be construed to prohibit the delivery to slaves, by their managers, of any of the aforesaid articles to be carried from one place to another, or to be carried in the presence of such manager.

Fire-arms, and other weapons not to be sold or given to slaves.

Proviso.—R. S. c. 34, 75.—1846, c. 42.

84. No person shall trade with a slave on Sundays, or in the night between the hours of sunset and sunrise, either in the buying of, or selling to the slave any article of property whatsoever.

Trading with slaves on Sundays, or at night.—R. S. c. 34, s. 75.

85. Nor shall any person, at any other time, buy of or receive from any slave, without a written permission for that purpose from the person then having the management of such slave, specifying the articles to be sold, and the probable amount or quantity thereof, any of the following articles of property, to wit: tallow, lard, mutton suet, oil, grease, soap, cotton, cotton-seed, corn, wheat, rice, barley, oats, or grain of any kind, pork, bacon, beef, flesh of goats, leather, raw-hides, iron, iron castings, steel, farming utensils, nails, meal, flour, wine, spirituous liquor, peas, salt-fish, flax-seed, hogs, cattle, sheep, sheep-skins, flesh of sheep, wool, lumber, staves, tar, pitch, turpentine, fodder, hay, shingles, hoops, oak-heading, potatoes, silk, linen, cotton or woollen cloth, or cloth of any kind, yarn, wearing apparel, gold bullion, silver bullion, tobacco, guano, lime, mechanic's tools of every kind, crockery, stone, or wood ware.

Buying or receiving from slaves without written permission, forbidden.—R. S. c. 34, s. 75.

86. Nor shall any person sell to a slave any article which slaves may lawfully buy, unless by written permission of the person then having the management of such slave; or unless the article be sold to such slave in exchange and payment for articles, which may then have been lawfully bought of said slave.

Unlawful sales to slaves.—R. S. c. 34, s. 75.

87. No person shall sell or deliver to any slave, for cash, or in exchange for articles delivered, or upon any consideration

Certain sales to slaves of

spirituous liquors forbidden.—R. S. c. 34, s. 75.

Presumptive evidence of unlawful trading with slaves.—R. S. c. 34, s. 78.

Offence and punishment for unlawful trading with slaves.—R. S. c. 34, s. 77.

Presumptive assent of principal to unlawful trading by his agent.

Forged licenses to slaves to trade.—R. S. c. 34, s. 79.

whatever, or as a gift, any spirituous liquor, or liquor of which spirituous liquor may be a chief ingredient, without permission in writing from the person having the management of such slave, specifying the quantity of liquor allowed to be bought.

88. If any slave shall be found in any shop, storehouse, warehouse, tippling-shop, or other place fitted up for trading, in the night after dark and before daybreak, or on Sunday; or if any slave shall be found, at any other time, in any of the aforementioned places, and therein shall have been permitted to remain for the space of ten minutes with the door of the said place closed; or if any slave shall convey into the aforementioned places any article of traffic, and not bring the same out; or if any slave shall bring out of any of the said places any article of traffic not carried in by him, the person using such shop, storehouse, warehouse, tippling-shop, or other place fitted up for trading, shall, in each case, be deemed to have unlawfully traded with such slave, and be deemed guilty of a misdemeanor, and may be convicted thereof, unless he be acquitted of the same by proof to the contrary; and in the prosecution for such offence, or for the penalty imposed by the following section, it shall not be necessary to name the article of trade, or whether the offence was in buying or selling.

89. Any person offending against any of the provisions of section eighty-three, eighty-four, eighty-five, eighty-six, eighty-seven, and eighty-eight of this chapter, shall be deemed to be guilty of a misdemeanor, and on conviction thereof, shall be punished accordingly. *Provided, however,* that, if the defendant shall have been, at the time of committing the offence, a retailer of spirituous liquors by the small measure, he shall on conviction, moreover, forfeit his license to retail, or any license which he may have taken since the commission of the offence, and shall be incapable of taking license again for that purpose, for the space of two years from the date of his conviction. *And provided also,* that the defendant shall not be imprisoned for a longer period than three months, nor fined more than one hundred dollars. *Provided further,* that, if the offender be a free person of color, the court may, in the place of imprisonment, sentence him to be whipped not exceeding thirty-nine lashes.

90. Every species of unlawful trading with a slave, which is forbidden by this chapter, shall, when done by the agent or manager of another, in the course of the business in which he is employed, be deemed to have been done by the consent and command of his principal or employer, unless the contrary be proved; and such agent or manager shall be compelled to testify as a witness concerning the said offence, but his evidence shall in no case be used against himself in any suit or prosecution under this chapter.

91. If any person shall fraudulently give, or cause to be given, to any slave, a permission in writing to sell, trade, or traffic in any article of personal property, without the authority

of the owner or manager of such slave, the person so offending shall be deemed guilty of a misdemeanor.

92. If any person shall offend against any of the provisions of any of the sections eighty-three, eighty-four, eighty-five, eighty-six, eighty-seven, eighty-eight, and ninety-one of this chapter, he shall forfeit and pay to any one who shall sue for the same the sum of one hundred dollars.

Pen'ty of \$100 for unlawfully trading with slaves.—R. S. c. 34, s. 75.

93. It shall not be lawful for the master or commander of any vessel to entertain, or permit to be entertained, any slave or free negro, on board such vessel, at any time between sunset and sunrise, nor on Sunday, unless such slave or free negro shall belong to the vessel, or such slave shall have a pass from his master, and the free negro a pass from some justice of the peace, expressing the time when, and the business for which they go on board; and if any slave or free negro who has not such pass, or is not employed on board the vessel as one of the hands, shall be found on board of any vessel in any bay, harbor, creek, or river within the State on Sunday, or in the night between sunset and sunrise, he shall be deemed guilty of a misdemeanor, and shall receive a whipping not exceeding forty lashes; and the master or commander of such vessel so entertaining, or permitting entertainment as aforesaid, shall be deemed guilty of a misdemeanor; and it shall be the duty of every justice of the peace of the county where the offence is committed, to whom knowledge thereof shall come, to issue his warrant to arrest such captain or commander, and recognize him in sufficient bail for his appearance at the next term of the county or superior court, to answer the charge aforesaid.

Entertaining slaves and free negroes on vessels at certain times, forbidden.—R. S. c. 34, s. 76.

Punishment of slaves, &c. Of white persons.

94. If any person shall retail spirituous liquors by the small measure, in any other manner than is permitted by law, he shall be deemed guilty of a misdemeanor, and be fined not less than ten dollars.

Retailing spirituous liquors without licence, forbidden.—R. S. c. 34, s. 81.

95. If any person shall hunt in the woods in the night time, by fire-light, or, being the master or owner of a slave, shall permit his slave to hunt as aforesaid, or connive thereat, the person so offending shall be deemed guilty of a misdemeanor, and on conviction, shall pay a fine of forty dollars, or be imprisoned, or both.

Hunting by fire-light.—R. S. c. 34, s. 83, 84.

96. When more persons than one are engaged in committing the offence of fire-hunting, any one may be compelled to give evidence against all others concerned: and the witness, upon giving such information, shall be acquitted and held discharged from all penalties and pains to which he was subject by his participation in the offence.

Accomplice in fire-hunting, giving evidence against his fellow, discharged.—R. S. c. 34, s. 85.

97. If any person shall wilfully put into the well, spring, or cistern of water of any other person, any substance or thing, whereby such well, spring, or cistern may be endamaged, or the water thereof be made less wholesome or fit for use, he shall be deemed guilty of a misdemeanor.

Wilful injury to wells, &c., of water.—1850, c. 104.

98. If any person shall knowingly and fraudulently vote at an election, who, by law, shall not be entitled to vote thereat,

Voting fraudulently at elections.—1844, c. 43.

he shall be deemed guilty of a misdemeanor, and shall be fined or imprisoned, or both fined and imprisoned, at the discretion of the court. *Provided, however,* that the fine shall not be more than one hundred dollars, and the imprisonment not more than thirty days.

Maliciously ob-  
structing rail-  
roads.  
When death  
doth not ensue.

99. If any person shall wilfully and maliciously put or place any matter or thing upon, over, or near any railroad track; or shall wilfully and maliciously destroy, injure, or remove the road-bed, or any part thereof, or any rail, sill, or other part of the fixture appurtenant to, or constituting or supporting any portion of the track of such railroad; or shall wilfully and maliciously do any other thing with intent to obstruct, stop, hinder, delay, or displace the cars travelling on such road, or to stop, hinder, or delay the passengers or others passing over the same; or shall wilfully and maliciously injure the road-bed or the fixtures aforesaid, or any part thereof, with any other intent whatsoever, such person so offending, shall be deemed guilty of a misdemeanor, and on conviction thereof in the superior court, shall be fined not exceeding one thousand dollars, nor less than two hundred dollars, and be imprisoned not more than three years, nor less than six months; and shall be committed to jail till he find surety for his good behavior, for a space of time not less than three, nor more than seven years.

When death  
ensues.—1838,  
c. 38.

And if it shall happen that, by reason of the commission of the offences aforesaid, or any of them, any engine or car shall be displaced from the track, or shall be stopped, hindered, or delayed, so that any one thereby be instantly killed, or so wounded or hurt as to die therefrom in six calendar months thereafter, or shall thereby be maimed or be disabled in the use of any limb or member, then, and in every such case, the party so offending, his counsellors, aiders, and abettors, on conviction shall suffer death.

Malicious inju-  
ries to plank-  
roads, turn-  
pikes, and ca-  
nals, misde-  
meanor.

100. If any person shall maliciously destroy or injure any plank-road, turnpike, or canal, or any appurtenance or fixture belonging thereto, or used therewith; or shall maliciously destroy or injure any lock, dam, or sluice, the same being a part of any work erected or made for the purposes of navigation, or improving the navigation of any water, the person so offending, shall be deemed guilty of a misdemeanor, and on conviction thereof in the superior court, shall suffer the like punishment as is provided in the preceding section for maliciously injuring a railroad.

How punished.

Wilful injuries  
to railroads and  
other improve-  
ments, misde-  
meanor.

101. If any person unlawfully and on purpose, but without malice, shall commit any of the offences mentioned in the two preceding sections, he shall be deemed guilty of a misdemeanor. And if it shall happen that by reason of the commission of any such offence, any person shall be instantly killed, or so wounded or hurt as to die therefrom in six calendar months thereafter, or shall thereby be maimed or disabled in the use of any limb or member, then, and in every such case, the party so offending, his counsellors, aiders, and abet-

How punished.

tors, shall be imprisoned not less than twelve months, and fined at the discretion of the court.

102. If any person shall, unlawfully and on purpose, remove from its place, any monument of marble, stone, brass, wood, or other material, erected for the purpose of designating the spot where any dead body is interred; or for the purpose of preserving and perpetuating the memory, name, fame, birth, age, or death of any person, whether situated in or out of the common burying-ground; or shall unlawfully, or on purpose, break or deface such monument, or alter the letters, marks, or inscription thereof, he shall be deemed guilty of a misdemeanor.

Removing or defacing tombstones and monuments over the dead.—1840, c. 6.

103. If any person shall, by any other means than burning or attempting to burn, unlawfully and wilfully demolish, destroy, deface, injure, or damage any of the houses or buildings mentioned in sections two, seven, and thirty of this chapter; or shall unlawfully and wilfully burn, demolish, pull down, destroy, deface, damage, or injure any church, uninhabited house, outhouse, or other house or building not mentioned in the above-recited sections of this chapter; or shall unlawfully and wilfully burn, destroy, pull down, injure, or remove any fence, wall, or other inclosure, or any part thereof surrounding or about any yard, garden, cultivated field, or pasture, or about any church, graveyard, factory, or other house in which machinery is used, every person so offending, shall be deemed guilty of a misdemeanor.

Destroying, defacing, or injuring certain houses.

Burning, injuring, or defacing churches, uninhabited and outhouses. Burning, pulling down or removing fences.—1846, c. 70.

104. If any person shall unlawfully and on purpose, kill, maim, or injure any live-stock running at large in the range, or in the field or pasture of the owner, whether done with the actual intent to injure the owner, or to drive the stock from the range, or any other unlawful intent, every such person, his counsellors, aiders, and abettors shall be deemed guilty of a misdemeanor. *Provided, however,* that nothing herein contained shall prohibit any person from driving out of the range any stock, unlawfully brought from other States or places.

Wilfully killing or injuring live-stock running at large.—1850, c. 94, s. 1, 2.

105. If any person shall, within the counties of Macon, Jackson, Haywood, Madison, and Cherokee, maliciously, or wilfully and wantonly kill any horse, mule, cow, bullock, or any other cattle, the property of another person, either through malice against the owner, or through wilful and wanton cruelty towards such live-stock, and shall be thereof legally convicted in any of the superior courts of law in the counties aforesaid, he shall be subject to the same punishment, and liable to the same penalties, that are now imposed by law on persons convicted of feloniously stealing, taking, and carrying away like property. *Provided, however,* that nothing in this section contained shall be so construed as to extend the provisions thereof to injuries inflicted on live-stock, while committing depredations on the crops or inclosures of the offender.

Maliciously or wantonly killing stock in certain counties, punished as larceny.—1854, c. 28.

106. Those who get ton timber on the Roanoke river, and

Ton timber floated down

Ronnoke river, to be marked, &c.

Marks, &c., recorded, where.—1854, c. 45, s. 51.

Altering mark or taking marked timber with intent to steal, larceny.—1854, c. 45, s. 2.

Mark first recorded to hold.—1854, c. 45, s. 3.

Sales of liquor, traffic, and exhibitions near places of worship, forbidden, when.—1848, c. 102, s. 1, 2; 1850, c. 106, s. 1, 2.

Sending letters containing menacing demands for money; or threatening to accuse one of infamous crime to extort money.

Malicious injuries to real estate.

float the same down said river, shall select some brand or mark which shall be cut, impressed, or made on each log of timber floated down said river, a particular description of which brand or mark shall be recorded in the clerk's office of the counties of Halifax, Northampton, Bertie, Martin, and Washington, and a certificate thereof under the seal of the court, setting forth the date when recorded, shall be taken by each person recording his brand or mark, which shall differ from any other mark or brand previously recorded.

107. Any person may take to his own use any log of ton timber floating singly down said river, which is neither marked or branded; and if any person shall wilfully and fraudulently, with intent to steal the same, alter, deface, or remove any such mark or brand, or shall feloniously take or secrete any log of ton timber, thus marked or branded, he shall be deemed to be guilty of larceny, and may be indicted therefor in the county or superior court of the county where the offence may be committed, or where the timber may be carried, and, upon conviction, shall suffer as in other cases of larceny.

108. In all cases of controversy as to the ownership of timber, claimed by two or more persons having the same brand or mark, he shall be considered the owner whose brand or mark was first recorded in all the said counties.

109. If any person shall exhibit any stud-horse, or jackass, or any curiosities within half a mile of a place where the people are assembled for divine worship; or shall sell any spirituous liquor, or any liquid of which spirituous liquor shall be a chief ingredient; or be engaged in any kind of traffic or attempt to traffic, within one mile where divine worship is celebrating, contrary to any of the provisions of sections six and seven of chapter ninety-seven, entitled "Religious Societies;" every person, so offending against any of the provisions of said sections, shall be deemed guilty of a misdemeanor.

110. If any person shall knowingly send or deliver any letter or writing demanding of any person, with menaces, and without any reasonable or probable cause, any chattel, money, or valuable security; or if any person shall accuse, or threaten to accuse, or shall knowingly send or deliver any letter or writing accusing or threatening to accuse any person of any crime punishable by law with death, branding, whipping, or pillory, with a view or intent to extort or gain from such person any chattel, money, or valuable security, every such offender shall be deemed guilty of a misdemeanor.

111. If any person shall maliciously commit any damage, injury, or spoil upon any real property whatsoever, either of a public or private nature, for which no punishment is provided by any existing law, every person so offending shall be deemed guilty of a misdemeanor. *Provided, always,* that nothing herein contained shall extend to any case where the party trespassing or doing the injury, acted under a fair and reasonable belief that he had a right to do the act complained of, nor to



any trespass, not being wilful and malicious, committed in hunting, fishing, or the pursuit of game.

112. If any white female shall be convicted of any offence, the punishment or any part whereof shall be branding or whipping, the same shall not be inflicted, but the court, instead thereof, may sentence such female to imprisonment for any length of time in its discretion.

White women not to be branded or whipped.

113. If any sheriff, coroner, or other returning officer shall negligently omit to do and perform any act, matter, or thing required of him in relation to the returns to be made by him, in regard to the election of governor, or of electors for president and vice-president of the United States, and the transmission to the seat of government and delivery to the proper officer, of the polls in the manner and form, and within the time prescribed for the same, as is required respectively in the chapter entitled "governor and council" and "electors of president and vice-president," he shall for such offence forfeit and pay the sum of five hundred dollars, to be recovered in the name and to the use of the State, on motion by the attorney-general in the superior court of law of the county of Wake, ten days previous notice in writing, of such intended motion being given to such officer by the secretary of State: the proceedings thereon shall be summary. And if any matter-of-fact shall be in issue, the same shall be tried at the first term; and on such trial, or for any other purpose in the prosecution of such motion to judgment, the certificate of the secretary of State, or of the governor, as the case may be, of the particular default on which the motion shall be founded, shall be received as competent *prima facie* evidence to prove the same; and such officer shall further be deemed guilty of a misdemeanor.

Negligent omission of returning officers in election of gov. and electors.—1842, c. 29; c. 33, s. 4.

114. If any sheriff, coroner, or returning officer whatever, shall wilfully, or of malice, refuse or neglect to perform any duty, act, matter, or thing, required or directed, in the time, manner, and form, in which such duty, act, matter, or thing is required to be performed in relation to the election and returns thereof, of the governor, or of electors for president and vice-president of the United States, the person so offending shall be deemed guilty of felony; and upon conviction shall be fined not less than one thousand, nor more than five thousand dollars, and be imprisoned not less than one, nor more than three years; shall be disabled from holding any office of profit or trust under the authority of the State, and shall moreover forfeit the sum of one thousand dollars, to be recovered in the court, and in the manner in the last section directed.

Wilful neglect of officers to perform their duty in election of governor and electors.—1842, c. 30, s. 5,

115. The superior court of law of the county of Wake shall have jurisdiction of all offences under the two preceding sections of this chapter; and no such offence shall be pardoned nor any of the penalties therefor be remitted by the governor.

Offences, jurisdiction of.

Not pardoned.—1842, c. 30, s. 6.

116. If any white person shall play with any slave or free

White persons playing at

cards with slave or free negro.—1850, c. 186.

person of color, at any game of cards, or at any game of hazard, chance, or skill whatsoever, either with or without betting on the said game, he shall be deemed guilty of a misdemeanor.

Contempt of court, what shall be.—1846, c. 66, s. 1, 2.

117. Attachments and summary punishments for contempt of court shall be lawful only in such cases of misbehavior as are done or committed in the presence of the court, or so near thereto as to obstruct the administration of justice; in cases of misbehavior of the officers of court in their official transactions; in cases of disobedience or resistance by any such officer, or by any party, witness, juror, or other person to any lawful writ, process, order, decree, or command of the court; and in every instance where the court shall issue an attachment, or shall adjudge or award any summary punishment for contempt of court, the court shall cause the particulars of the offence to be specified on the record, and in every committal, attachment, writ, or process in nature of an execution founded upon such judgment or award, or in a written schedule thereto annexed and therein referred to, such particulars of the offence shall be set out; otherwise the same shall be deemed unlawful and void.

Constables failing to execute process, or making false return; acting as such without authority.—R. S. c. 24, s. 11; c. 62, s. 34.

118. Any constable refusing or neglecting to return any precept, notice, or process to him tendered or delivered, which it is his duty to execute, or making a false return thereon; or any person who shall presume to act as constable, not being by law authorized so to do, shall forfeit and pay to any one who will sue for the same one hundred dollars, and shall moreover be deemed guilty of a misdemeanor.

Officers failing to discharge their duties indictable.—R. S. c. 19, s. 14.

119. If any clerk of the county or superior court, clerk and master in equity, sheriff, or any other officer in the State, who is required, in entering upon his office, to take an oath of office, shall wilfully omit, neglect, or refuse to discharge any of the duties of his office, for default whereof it is not elsewhere provided that he shall be indicted, the clerk or other officer so offending shall be deemed guilty of a misdemeanor.

Misdemeanors by statute punished as at common law, unless otherwise directed by statute.

120. Offences made misdemeanors by statute, where a specific punishment is not prescribed, shall be punished as misdemeanors at common law; but the punishment of the pillory shall be used only for crimes that are infamous or done in secrecy and malice, or done with deceit and intent to defraud.

SECT. 2. *Burglary*, 9 Ire. 463; 13 Ib. 244. *Arson*, 3 Ire. 570.

SECT. 5. 6 Ire. 305; 4 Ib. 224.

SECT. 7. 5 Ire. 350.

SECT. 10. 3 Mur. 12; 12 Ire. 157; 9 Ib. 140; 2 D. & B. 390; 2 Car. L. R. 291. *Tenue*, Bus. 191.

SECT. 12. Bus. 9.

SECT. 14. 7 Ire. 39; 1 Ib. 121.

SECT. 15. 2 Dev. 222; 2 Ire. 846.

SECT. 20. 3 Hawks, 618.

SECT. 28. 4 Hawks, 350; 3 Mur. 460.

SECT. 39. 2 Car. L. R. 633.

- SECT. 40. 12 Ire. 130.
- SECT. 41. 8 Ire. 229; 2 Dev. 213.
- SECT. 45. 3 Dev. 331; 3 D. & B. 110; 4 Ire. 231.
- SECT. 47. 1 D. & B. 119.
- SECT. 48. 1 Hawks, 487.
- SECT. 49. 6 Ire. 5; Bus. 402.
- SECT. 56. 13 Ire. 338.
- SECT. 57. 7 Ire. 251; 2 Ib. 153.
- SECT. 59. 13 Ire. 491; 3 Ib. 474; 2 D. & B. 348; 3 Dev. 122; 2 Ib. 443. *What not forgery*, 6 Ire. 79; 7 Ib. 206.
- SECT. 60. 2 Hawks, 248; Ib. 443.
- SECT. 61. 5 Ire. 287. *Slaves not included*, Bus. 214.
- SECT. 65. 3 Hawks, 191.
- SECT. 67. 11 Ire. 477; 4 Hawks, 348; 2 Dev. 199; 1 D. & B. 408; 3 Hawks, 620.
- SECT. 72. *Shuffle board*, 3 Ire. 266. *Ten pins*, 8 Ire. 271.
- SECT. 75. 4 D. & B. 185; 1 Ire. 14; 9 Ib. 378.
- SECT. 81. 3 D. & B. 125.
- SECT. 85. 4 Ire. 246; 6 Ib. 82.
- SECT. 87. 9 Ire. 356; 7 Ib. 275; 1 D. & B. 199; 2 Dev. 299.
- SECT. 89. 1 Ire. 115.
- SECT. 94. 1 Ire. 384; 4 D. & B. 107.
- SECT. 98. 10 Ire. 336; 12 Ib. 178.
- SECT. 103. Bus. 197; 13 Ire. 36; Ib. 341.
- SECT. 116. 2 D. & B. 29.

## CHAPTER 35.

### CRIMINAL PROCEEDINGS.

SECTION

SECTION

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| <ol style="list-style-type: none"> <li>1. Duty of magistrates in committing criminals. Examination of criminals and witnesses when evidence.</li> <li>2. Duty of sheriffs and others, officers in arresting criminals. All persons to aid officer.</li> <li>3. Persons to be imprisoned in common jail of county. Proviso as to sheriff.</li> <li>4. Governor may employ agent, or offer reward, for apprehension of fugitives, charged with capital offences.</li> <li>5. Fugitives, from other States, charged with high crimes, committed.</li> <li>6. No person to be arrested on a presentment, &amp;c.</li> <li>7. Names of witnesses, &amp;c., indorsed on presentment.</li> <li>8. Indictments for misdemeanors, except perjury, &amp;c., to be commenced in two years, if the offender is known. Proviso, where indictment is defective.</li> <li>9. Criminal process to issue and be returnable at any time. Proceedings to be, as heretofore.</li> <li>10. Sheriff to indorse on process and subpoenas, day of receiving and executing them.</li> <li>11. To take bail, when offence is bailable. Shall not become bail himself.</li> </ol> | <ol style="list-style-type: none"> <li>12. Persons convicted of misdemeanors, allowed bail pending their appeal.</li> <li>13. Accused, entitled to counsel.</li> <li>14. Indictments, &amp;c. not quashed or judgment stayed, for formal objections.</li> <li>15. Proceedings of court, how, and what part set forth in indictments.</li> <li>16. What set forth, in indictment for perjury.</li> <li>17. What, for subornation of perjury.</li> <li>18. In indictment for second offence, how first conviction stated.</li> <li>19. How ownership of property stated.</li> <li>20. Certain defects not to vitiate indictments.</li> <li>21. Intent to defraud; what statement and proof thereof sufficient.</li> <li>22. Party whose name is forged, competent witness.</li> <li>23. Counts joined for trading with slaves, receiving stolen goods, &amp;c.</li> <li>24. Crimes committed on waters dividing counties, where tried.</li> <li>25. How improper venue taken advantage of. By plea in abatement. On issue joined, what judgment rendered in misdemeanors. What in felonies.</li> <li>26. In indictment for libel, defendant may give the truth in evidence.</li> </ol> |
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SECTION

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SECTION

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Duty of magistrates in committing criminals.—R. S. c. 35, s. 1.

1. No person shall be committed to prison for any criminal matter, until examination thereof be first had before some magistrate, who 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 law of the State directs, 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 shall be subscribed by the magistrate, and returned to the office of the court wherein the matter is to be tried; and the examination so taken and subscribed by the magistrate may be used as evidence before the grand-jury, and on the trial of the accused, provided he was present at the taking thereof, and had opportunity to hear the same, and to cross-examine the deposing witness, if such witness be dead, or by procurement or connivance hath removed from the State, or is *non compos mentis*.

Examination of criminals and witnesses, when evidence.

Duty of sheriff's and other officers in arresting criminals.

2. Whenever a felony, or any crime, the punishment whereof for the first or second offence is death, or any part of the punishment thereof is whipping or standing in the pillory, shall be committed, the sheriff, constables, and other peace-officers, upon information thereof received by them, shall forthwith pursue and arrest the person committing such felony, or other crime as aforesaid; and any of the said officers shall call to

his aid and assistance as many of the citizens of the county as may be necessary for that purpose; and if any such officer shall refuse or wilfully neglect to pursue and use all the means in his power to arrest such criminal, or if any person summoned to aid and assist such officer in the pursuit and arrest of such criminal, shall refuse or wilfully neglect to render aid and assistance, every such officer or citizen so offending shall be deemed guilty of a misdemeanor.

All persons to aid officer on request.—R. S. c. 35, s. 2.

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; *provided*, that whenever the sheriff of any county shall be liable to be imprisoned, he may be imprisoned in the jail of any adjoining county.

Persons to be imprisoned in common jail of county. Proviso as to sheriff.—R. S. c. 35, s. 4.

4. The governor, on information made to him of any person having committed an offence of a capital nature within the State, and of having fled out of the jurisdiction thereof, may either employ a special agent, with a sufficient escort, to pursue and apprehend such fugitive, or issue his proclamation, and therein offer a reward, not exceeding four hundred dollars, according to the nature of the case, as in his opinion may be sufficient for the purpose, to be paid to him who shall apprehend and deliver the fugitive to such person and at such place, as in the proclamation shall be directed; and he may, from time to time, issue his warrants on the public treasurer, for sufficient sums of money for such purposes.

Gov. may employ agent, or reward, for apprehension of fugitives charged with capital offences.—R. S. c. 35, s. 4.

5. Any judge of the supreme court, or of the superior courts of law, or justice of the peace, on satisfactory information laid before him, that any fugitive in the State has committed, out of the State and within the United States, any murder, larceny, or other felonious offence, or any other offence, although but a misdemeanor by the law of this State, the punishment of which said felonious offences and misdemeanors shall, by the law of this State, be whipping, branding, pillory, death, or any of them, shall have full power and authority, and are hereby required, to commit said fugitive to any jail within the State for the space of six months, unless sooner demanded by the public authorities of that State wherein the offence may have been committed, agreeable to the directions of the Act of Congress in that case made and provided; and if no demand be made within that time, the said fugitive shall be liberated, unless sufficient cause be shown to the contrary.

Fugitives from other States charged with high crimes, committed.—R. S. c. 35, s. 5.

6. No person shall be arrested on a presentment of the grand-jury; or put on trial before any court, but on indictment found by the grand-jury.

No person to be arrested on a presentment, &c.—R. S. c. 35, s. 6.

7. When a presentment shall be made of any offence by a grand-jury, upon the knowledge of any of their body, or upon the testimony of witnesses, the names of such grand-jurors and witnesses shall be indorsed thereon.

Names of witnesses, &c. indorsed on presentment.—R. S. c. 35, s. 7.

8. All misdemeanors, except the offences of perjury, forgery, malicious mischief, and other malicious misdemeanors, deceit, and the offence of being accessory after the fact, now made a

Indictments for misd'rs, except perjury, &c. to be commenced in two

years, if offender is known. misdemeanor, shall be presented or found by the grand-jury within two years after the commission of the same, and not afterwards. *Provided, however,* that in case any of the said misdemeanors hereby required to be prosecuted within two years, shall have been committed in a secret manner, the same may be prosecuted within two years after the discovery of the offender. *And provided further,* that if any indictment found within that time shall be defective, so that no judgment can be given thereon, another prosecution may be instituted for the same offence, within one year after the first shall have been abandoned by the State.

Proviso, where indictment is defective.—R. S. c. 35, s. 8.

Criminal process to issue and be returnable at any time.

Proceedings to be, as heretofore.—R. S. c. 35, s. 9. Sheriff to indorse on process and subpoenas day of receiving and executing them.—1850, c. 57.

To take bail when offence is bailable.

Shall not become bail himself.—R. S. c. 35, s. 10.

Bail allowed pending appeal.—1850, c. 2.

Accused, entitled to counsel.—R. S. c. 35, s. 11.

Indictments, &c. not quashed or judgment stayed, for formal objections.—R. S. c. 35, s. 12.

Proceedings of court, how, and what part

9. All process, warrants, and precepts, issued by any judge or justice of the peace, or clerk of any court, on any criminal prosecution, 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 prosecutions shall be agreeable to the practice heretofore in use, except where the same may be otherwise directed.

10. Every sheriff shall indorse on all process and subpoenas issuing in criminal cases, whether for the State or defendant, the day when such process and subpoenas came to hand, and also the day of their execution; and on failure of any sheriff to perform either of said duties, he shall forfeit and pay the sum of ten dollars for every case of neglect, to be recovered for the use of the State, in the same manner as forfeitures are recovered against sheriffs by parties in civil suits, for failure to make due return of process delivered to them.

11. When any sheriff or his deputy shall arrest the body of any person, in consequence of the writ of *capias* issued to him by the clerk of a court of record on an indictment found, the said sheriff or deputy, if the crime is bailable, shall recognize the offender, and take sufficient bail in nature of a recognizance, for his appearing at the next succeeding court of the county, where he ought to answer; which recognizance shall be returned with the *capias*; and the sheriff shall, in no case, become bail himself.

12. When any person convicted of a misdemeanor, and sentenced by the court, shall appeal, the court shall allow such person to give bail, pending his appeal.

13. Every person, accused of any crime whatsoever, shall be entitled to counsel in all matters which may be necessary for his defence.

14. Every criminal proceeding by indictment, information, or impeachment, shall be sufficient in form for all intents and purposes, if it express the charge against the defendant in a plain, intelligible, and explicit manner; and the same shall not be quashed, nor the judgment thereon stayed, by reason of any informality or refinement, if in the bill or proceeding sufficient matter appears, to enable the court to proceed to judgment.

15. In every indictment, information, or impeachment in which, by the common law, it may be necessary to set forth at

length the judicial proceedings had in any case then or formerly pending in any court civil or military, of law or equity, or before any justice of the peace, it shall be sufficient to set forth the substance only of said proceedings, or the substance of such part thereof as make, or help to make, the offence prosecuted.

16. In every indictment for wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what court, or before whom, the oath was taken, (averring such court, or person to have competent authority to administer the same,) together with the proper averments to falsify the matter wherein the perjury is assigned, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceedings, either in law or equity other than aforesaid, and without setting forth the commission or authority of the court, or person, before whom the perjury was committed.

17. In every indictment for subornation of perjury, or for corrupt bargaining, or contracting with others to commit wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceedings, either in law or equity, and without setting forth the commission or authority of the court or person, or persons, before whom the perjury was committed, or was agreed or promised to be committed.

18. In any indictment for an offence, which, on the second conviction thereof, is punished with other or greater punishment than on the first conviction, it shall be sufficient to state, that the offender was, at a certain time and place, convicted thereof, without otherwise describing the previous offence; and a transcript of the record of the first conviction, duly certified, shall, upon proof of the identity of the person of the offender, be sufficient evidence of the first conviction.

19. In any indictment wherein it shall be necessary to state the ownership of any property whatsoever, whether real or personal, which shall belong to, or be in the possession of more than one person, whether such persons be partners in trade, joint-tenants, or tenants in common, it shall be sufficient to name one of such persons, and to state such property to belong to the person so named, and another, or others, as the case may be: and whenever, in any such indictment it shall be necessary to mention, for any purpose whatsoever, any partners, joint-tenants, or tenants in common, it shall be sufficient to describe them in the manner aforesaid; and this provision shall extend to all joint-stock companies and trustees.

20. No judgment upon any indictment for felony or misdemeanor, whether after verdict, or by confession, or otherwise, shall be stayed or reversed for the want of the averment of any matter unnecessary to be proved, nor for omission of

set forth in indictments.

What set forth in indictment for perjury.—1842, c. 49, s. 1.

What, for subornation of perjury.—1842, c. 49, s. 2.

In indictment for second offence, how first conviction stated.

How own'rship stated of property held in common, &c.

Certain defects in indictments not to vitiate.

the words "as appears by the record," or of the words "with force and arms," nor for the insertion of the words "against the form of the Statutes" instead of the words "against the form of the Statute," or vice versa; nor for omitting to state the time at which the offence was committed, in any case where time is not of the essence of the offence, nor for stating the time imperfectly, nor for stating the offence to have been committed on a day subsequent to the finding of the indictment, or on an impossible day, or on a day that never happened; nor for want of a proper and perfect venue, when the court shall appear by the indictment to have had jurisdiction of the offence.

Intent to defraud: what statement and proof thereof sufficient. — 1852, c. 87, s. 2.

21. In any case, where an intent to defraud is required to constitute the offence of stealing and carrying away slaves beyond the limits of the State, or to constitute the offence of forgery, or any other offence whatever, it shall be sufficient to allege, in the indictment, an intent to defraud, without naming therein the particular person or body corporate intended to be defrauded; and on the trial of such indictment, it shall be sufficient, and shall not be deemed a variance, if there appear to be an intent to defraud the United States, or any State, county, city, town, or parish, or body corporate, or any public officer, in his official capacity, or any copartnership or member thereof, or any particular person.

Party whose name is forged, competent witness.

22. No person shall be deemed to be an incompetent witness by reason of any interest which such person may have, or be supposed to have in respect to any deed, writing, instrument, or other matter whatsoever, in support of any prosecution, wherein shall be questioned the fact of forging such deed, writing, instrument, or other matter whatsoever, or the fact of uttering, showing forth in evidence, or disposing thereof, knowing the same to be forged.

Counts joined for trading with slaves, receiving stolen goods, &c. — 1844, c. 87.

Crimes committed on waters dividing counties, where tried.

23. The defendant may be charged in the same indictment, in several counts, with the separate offences of unlawfully trading with slaves, receiving stolen goods knowing them to be stolen, and larceny.

24. When any offence shall be committed on any water, or watercourse, whether at high or low-water, which said water, or watercourse, or the sides or shores thereof, shall divide counties, such offence may be dealt with, inquired of, tried and determined, and punished at the discretion of the court, in either county of those two which may be nearest to the place where the offence was committed.

How improper venue taken advantage of.

25. And because the boundaries of many counties are either undetermined, or unknown, by reason whereof high offences go unpunished; therefore, for the more effectual prosecution of offences committed on land, near the boundaries of counties, *be it enacted*, that in the prosecution of all offences, it shall be deemed and taken as true, that the offence was committed in the county, in which by the indictment it is alleged to have taken place, unless the defendant shall deny the same by plea

By plea in abatement.



in abatement, the truth whereof shall be duly verified on oath, or otherwise, both as to substance and fact, wherein shall be set forth the proper county, in which the supposed offence, if any, was committed: whereupon the court may on motion of the State commit the defendant, who may enter into recognizance, as in other cases, to answer the offence in the county averred by his plea to be the proper county; and on his prosecution in that county, it shall be deemed, conclusively, to be the proper county. But if the State upon the plea aforesaid, will join issue, and the matter be found for the defendant, he shall be altogether discharged; and if it be found for the State, the court in all offences of misdemeanor, shall proceed to pronounce judgment against the defendant, as upon conviction; and in all cases of felony, the defendant shall be at liberty to plead to the indictment, and be tried on his plea of not guilty.

On issue joined, what judgment rendered in misdemeanors — what in felonies.

26. Every defendant who shall be charged by indictment with the publication of a libel, may prove on the trial for the same, the truth of the facts alleged in the indictment; and, if it shall appear, to the satisfaction of the jury, that the facts are true, the defendant shall be acquitted of the charge.

In indictment for libel, deft may give the truth in evidence.—R. S. c. 35, s. 13.

27. In all cases of felonious homicide, when the assault shall have been made in one county within the State, and the person assaulted shall die in any other county thereof, the offender shall be indicted and punished for the crime in the county wherein the assault was made.

Assault and death in different counties, trial where assault.—R. S. c. 35, s. 13.

28. In all cases of felonious homicide, when the assault shall have been made within this State, and the person assaulted shall die without the limits thereof, the offender shall 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 this State.

Assault in this State and death out of it, trial in this State.—R. S. c. 35, s. 15.

29. If any person, being arraigned upon or charged in any indictment for any crime, shall stand mute of malice, or will not answer directly to the indictment, the court shall order the plea of "not guilty" to be entered on behalf of such person; and the plea so entered shall have the same force and effect as if such person had pleaded the same.

Plea entered for deft who stands mute.—R. S. c. 35, s. 16.

30. Whenever a judge of the superior court shall deem it necessary to a fair and impartial trial of any person charged with a capital offence, he may issue to the sheriff of the county in which the trial may be, a special writ of *venire facias*, commanding him to summon such number of the freeholders of said county as the judge may deem sufficient, (such number being designated in the writ,) to appear on some specified day of the term as jurors of said court; and the sheriff shall forthwith execute the writ, and return it to the clerk of the court on the day when the same shall be returnable, with the names of the jurors summoned.

In capital cases, judge may issue a special *venire*.—R. S. c. 35, s. 17.

31. If any sheriff shall fail duly to execute and return such

Penalty on sheriff not

executing it, and jurors not attending.—R. S. c. 35, s. 18.

In capital cases def<sup>t</sup> may challenge twenty-three jurors, in others four: allowed aid of counsel.—R. S. c. 35, s. 19, 21.

State may challenge four jurors in capital cases, in others two.—R. S. c. 35, s. 20.

On conviction for robbing or stealing, goods restored.—R. S. c. 35, s. 22.

New trial to def<sup>t</sup>s.—R. S. c. 35, s. 24.

A day for trial of crimes fixed by county and sup<sup>r</sup> courts: witnesses not to attend till such day.—R. S. c. 35, s. 25.

Pay of witness-

writ of *venire facias*, he shall be fined by the court not exceeding one hundred dollars; and all jurors so summoned shall attend until discharged by the court, under the same rules and penalties as are prescribed for other jurors.

32. Every person, whether bond or free, on trial for his life, may make a peremptory challenge of twenty-three jurors and no more; and in all trials for crimes and misdemeanors, other than capital, the defendants shall have the right of challenging peremptorily, and without showing cause, four jurors and no more. And to enable defendants to exercise this right, the clerk in all such trials shall read over the names of the jurors on the panel, in the presence and hearing of the defendants and their counsel, before the jury shall be impanelled to try the issue; and in all trials, whether for capital or inferior offences, the defendants may have the aid and assistance of counsel in making challenges to the jury.

33. In all capital cases, 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 for his challenge a cause certain; and in all other cases of a criminal nature, a challenge of two jurors shall be allowed in behalf of the State, and challenges also 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.

34. Upon the conviction of any felon for robbing or stealing any money, goods, chattels, or other estate of any description whatever, the person from whom such goods, money, chattels, or other estate were robbed or stolen, shall be entitled to restitution thereof; and the court may award restitution of the articles so robbed or stolen, and make all such orders and issue such writs of restitution or otherwise, as may be necessary for that purpose.

35. The courts of law may grant new trials in criminal cases, when the defendant is found guilty, under the same rules and regulations as in civil cases.

36. The county and superior courts shall appoint a special day in their respective terms, on which the business of the State shall be disposed of; and the court may proceed therewith till the whole is finished. And no witness recognized or summoned to attend on indictment found, shall be entitled to compensation for attending previous to the day so appointed. *Provided nevertheless*, that in capital cases, witnesses and other persons may be required to attend on the day preceding the day appointed as aforesaid; and the clerk of the court in which a day is thus appointed, shall give notice thereof at the court house door, and three or more public places in the county, and shall issue subpoenas and take recognizances for attendance on such day.

37. All witnesses summoned or recognized in behalf of the

State, shall be allowed the same pay for their daily attendance, ferriage, and mileage as is allowed to witnesses attending in civil suits; and such fees for attendance shall be paid by the defendant, only upon conviction, confession, or submission; and if the defendant be acquitted on any charge of an inferior nature, or a *nolle prosequi* be entered thereto, the court may, at 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 neither frivolous nor malicious, and a greater number of witnesses have been summoned than were, in the opinion of the court, necessary to support the charge, they may, nevertheless, order the prosecutor to pay the attendance of such unnecessary witnesses, if it appear that they were summoned at his special request.

es in State cases.

Court in certain cases may direct prosecutor to pay costs.—R. S. c. 35, s. 27.

38. The judges of the superior courts may hear and determine the petition of all persons, who shall conceive they merit relief on their recognizances forfeited; and may lessen, or absolutely remit the same, and do all and any thing therein, as they shall deem just and right and consistent with the welfare of the State and the persons praying such relief, as well before, as after final judgment entered and execution awarded.

Judges may lessen or remit recognizances, at any time.—R. S. c. 35, s. 28.

39. The clerk of the superior court, on the remission of any forfeited recognizance which has been paid into his office, shall refund the same, or so much thereof, as shall be remitted.

Clerk to refund remitted forfeitures paid into office.—R. S. c. 35, s. 29.

40. If the money has been paid to the county trustee, he shall refund it to the person entitled, on his producing an attested copy of the record from the clerk of the court, certifying that such recognizance hath been remitted or lessened, signed with his own proper name, with the seal of the court affixed thereto.

County trustee to refund, when paid to him.—R. S. c. 35, s. 30.

41. The court of pleas and quarter-sessions may remit or lessen, during the term, any fine imposed. *Provided*, there be seven justices on the bench at the time of such remission or lessening, three of whom shall have been on the bench at the laying of the fine.

Fines remitted or lessened by co. court, when.—R. S. c. 35, s. 31.

42. The court of pleas and quarter-sessions may remit or lessen, previous to entering final judgment, all forfeitures on recognizances. And from every judgment, which the said court may render on a *scire facias* to have execution on any forfeited recognizance, the defendant, or the State may appeal to the superior court; and the county solicitor is expressly instructed to appeal, when, in his opinion, the State by such judgment is injured. On such appeal the judge may remit or lessen the forfeiture, as though it had been incurred in the superior court.

Forfeited recognizances remitted or lessened before judgment, by co. court.—R. S. c. 35, s. 31.

43. No execution shall issue upon a forfeited recognizance, or to collect a fine imposed *nisi*, until a *scire facias* has issued against the person who has forfeited his recognizance, or upon whom the fine has been imposed.

Execution not to issue till after *sci. fa.*—R. S. c. 35, s. 32.

44. When any recognizance, acknowledged by a principal

Joint *sci. fa.* to

issue on forfeited recognizances.—R. S. c. 35, s. 33.

and sureties, shall be forfeited by two or more of the recognitors, the *scire facias* issued thereon shall be jointly against them all, designating which of them are principals and which sureties, and when they are bound in different sums, stating the amount forfeited by each one: and the clerk shall have no greater fee on such *scire facias*, than is due when it is issued against one defendant.

How *sci. fa.* executed.—R. S. c. 35, s. 34.

45. All process of *scire facias* issuing upon forfeited recognizances, shall be executed by leaving a copy with each of the defendants, or at his present place of abode. And in case he cannot be found, and has no known place of abode, and the matter be returned, then an *alias scire facias* shall issue, and on the like return, the same shall be deemed duly served.

Costs paid by convicted, &c.

46. Every person convicted of an offence, or confessing himself guilty, or submitting to the court, shall pay the costs of prosecution.

Penalties not given specially, recovered by any.

47. Where a penalty may be imposed by any law passed, or hereafter to be passed, and it shall not be provided by the law to what person the penalty is given, it may be recovered by any one who will sue for the same, and for his own use.

Recovered in name of State, when.

48. Whenever any penalty shall be given by statute, and it is not prescribed in whose name suit therefor may be commenced, the same shall be brought in the name of the State.

Prosecuting officers to direct *post mortem* examinations.

49. In all cases of homicide, any officer prosecuting for the State may, at any time, direct a *post mortem* examination of the deceased to be made by one or more physicians to be summoned for the purpose; and the physicians shall be paid a reasonable compensation for such examination, the amount to be determined by the court and taxed in the costs, and if not collected out of the defendant, the same shall be paid by the county.

Persons participating in unlawful gaming, compelled to testify of the gaming. Not to be prosecuted therefor.

50. No person shall be excused, on any prosecution, from testifying touching any unlawful gaming, done by himself or others; but no discovery, made by the witness upon such examination, shall be used against him, in any penal or criminal prosecution, and he shall be altogether pardoned of the offence so done, or participated in by him.

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- SECT. 1. Bus. 239. *Recognizance not forfeited*, Bus. 426.  
 SECT. 8. *Conspiracy to cheat*, Bus. 46; *committed in secret*, 10 Ire. 369; *former proceedings*, 3 Ire. 32; *commencement of prosecution*, 6 Ire. 440.  
 SECT. 14. 1 Ire. 373; 2 Dev. 452; 1 Dev. 137; 3 Mur. 7.  
 SECT. 28. 3 Ire. 116.  
 SECT. 30. Bus. 330.  
 SECT. 32. *Practice*, 10 Ire. 469, 2 D. & B. 196. *State may admit challenge*, 10 Ire. 395. *When several defendants*, 2 Ire. 402. *In forgery*, 2 D. & B. 348.

CHAPTER 36.

CURRENCY.

SECTION

1. Currency of United States, currency of the State: public accounts kept in it.
2. Banks not to draw checks, &c., payable otherwise than in specie.
3. Not to issue bills, or certificates of deposit, &c., for less than three dollars. Penalty.
4. Corporations not to issue such certificates, nor any kind, for circulation. Penalty.
5. Issue of due bills, notes, and all kinds of circulation forbidden, unless expressly allowed. Misdemeanor.

SECTION

6. Such due bills, notes, &c., forbidden to be circulated under pain of misdemeanor.
7. Public treasurer not to receive for tax, bills of banks issuing for less than three dollars.
8. Specie required by charter to be *bona fide* paid in, previous to banking. Certified by president and cashier. Certificate deposited with governor. Penalty for failure to deposit certificate.
9. Penalty for issuing false certificate.

1. THE currency of the United States shall be the lawful currency of this State, and all records, fec bills of officers, official accounts, accounts for moneys collected by officers, accounts required to be returned to court, and all other proceedings and papers of a public nature shall be kept in dollars and cents.

Currency of U. States, currency of State. Public acc'ts kept in it.—R. S. c. 36; R. S. c. 105, s. 40.

2. If any bank shall issue any bill, note, check, or draft, redeemable or payable in any other manner than by payment in specie, the same shall be deemed to be due and demandable in specie at the place where it was issued; and on demand and refusal to pay the same, the money therein expressed shall draw interest, till paid, at the rate of twelve per cent. per annum.

Banks not to draw checks, &c., payable otherwise than in specie.

3. No bank, unless plainly and expressly allowed by its charter, shall make or issue any note, bill, check, draft, order, acknowledgment of indebtedness, or certificate of deposit, for a less sum than three dollars, on pain of being deemed to have violated its charter; and, moreover, of forfeiting and paying for each offence the sum of fifty dollars.

Not to issue bills or certificates of deposit, &c., for less than three dollars. Penalty.

4. No corporation whatever, which is allowed to receive money on deposit, shall make, issue, or deliver any certificate, or acknowledgment of deposit for a less sum than three dollars; nor shall make, issue, or deliver any such certificate or acknowledgment of indebtedness for any sum whatever, with the intent that the same shall be circulated as money, on pain of being deemed in either case to have violated its charter; and, moreover, of forfeiting and paying for each offence the sum of fifty dollars.

Corporations not to issue such certificates, nor any kind for circulation.

5. No person or corporation, unless the same be expressly allowed by law, shall issue any bill, due bill, order, ticket, certificate of deposit, promissory note, or obligation, or any other kind of security whatever may be its form or name, with the intent that the same shall circulate or pass as the representa-

Penalty. Issue of due bills, notes, and all kinds of circulation forbidden, unless expressly allowed.

tive of, or as a substitute for, money, on pain of forfeiting and paying for each offence the sum of fifty dollars; and if the party offending be a corporation, of also being deemed to have violated its charter. And every person offending against this section, or aiding or assisting therein, shall likewise be deemed guilty of a misdemeanor.

Misdemeanor.

Such due bills, notes, &c., not to be circulated under pain of misdeme'r.

6. No person or corporation shall pass or receive, as the representative of, or as the substitute for, money, any such bill, check, certificate, promissory note, or other security of the kind mentioned in this chapter, whether the same were issued within or without the State. And any person or corporation, and the officers and agents of such corporation aiding therein, who shall offend against this section, shall for every such offence forfeit and pay five dollars, and shall, moreover, be deemed guilty of a misdemeanor.

Tr'r not to take for tax, bills of banks issuing for less than \$3.—1854, Res. Specie required by charter to be *bona fide* paid in, previous to banking. Certified by president and cashier.

7. The public treasurer is hereby directed not to receive in payment of public taxes, the notes of any bank in the State that issues bills of a denomination less than three dollars.

Certificate deposited with governor.

8. Whenever any bank charter, passed at the present session of the General Assembly, (1854,) or the capital of which has been increased at this session, or any such charter which may hereafter be passed in this State, shall require a certain amount of specie to be paid in before such bank shall go into operation, in order the more effectually to secure a compliance with the terms of the charter, the president and cashier of every such bank shall certify in writing, under the seal of the corporation, that the amount of specie required to be paid in by the charter, has been actually and *bona fide* paid in, to be there used as a basis for banking operations; and shall deposit the said certificate with the governor, to be kept in the archives of the executive office; and in case the president and cashier shall neglect or refuse, as herein provided, to sign and deposit such certificate, then they and each one of the directors of the bank, shall be liable to indictment for a misdemeanor, in the superior court of the county where such bank is located; and on conviction, shall be fined in a sum not less than one thousand, nor more than three thousand dollars, at the discretion of the court.

Penalty for failure to deposit certificate.—1854, c. 4, s. 1.

Penalty for issuing false certificate.—1854, c. 4, s. 2.

9. After signing and depositing such certificate, if it shall appear that the same does not speak the truth in the premises, and that the amount of specie required to be paid in, has not actually and *bona fide* been paid in, for the purpose aforesaid, then, and in that case, the president, cashier, and each of the directors of the bank, shall be indictable for a misdemeanor, in the superior court of the county wherein the bank is located; and each one on conviction, shall be fined in a sum not less than one thousand, nor more than three thousand dollars, and imprisoned for a term of not more than three months, at the discretion of the court.

CHAPTER 37.

DEEDS AND CONVEYANCES.

SECTION

1. Deeds proved and registered in county where land lies within two years, good without livery, &c.
2. Before whom deeds, bills of sale, powers of attorney, proved.
3. When grantor or subscribing witness out of State, proved before commissioner appointed by court.
4. Commission to issue under seal. Probate and privity examination of *feme covert* taken and certified. Deeds registered on return of certificate.
5. Probate of deeds, &c., within United States, including deeds of *feme covert*, before a judge. How certified.
6. Deeds made in foreign countries, how proved and registered.
7. Further provisions for probate of such deeds, before ambassadors, &c.
8. Deeds of husband and wife, how proved. Wife privately examined.
9. Provision when wife is sick, or resident of another country or county.
10. Form of commission to take private examination of *feme covert*.
11. Conveyance under power of attorney from husband and wife to pass lands.
12. Another mode when husband and wife reside in foreign parts.
13. Powers of attorney by *feme covert* proved and registered as deeds.
14. Powers of attorney, how proved in State. How proved out of State.
15. Deeds, &c., how proved when attesting witness dead.

SECTION

16. Copies of registered deeds evidence, unless by rule original is required.
17. Gifts of slaves proved and registered.
18. Deeds of gift also.
19. Sales of slaves in writing also.
20. Registered where purchaser resides, unless vendor retains possession, &c.
21. Estates in slaves limitable by deed, &c., as by will.
22. Mortgage and trust deeds good against creditors, &c., only from registration. Where registered.
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1. No conveyance for land shall be good and available in law, unless the same shall be acknowledged by the grantor, or proved on oath by one or more witnesses in the manner hereinafter directed, and registered in the county where the land shall lie, within two years after the date of the said deed; and all deeds so executed and registered shall be valid, and pass estates in land, without livery of seizin, attornment, or other ceremony whatever.

Deeds proved and registered in co. where land lies, within two years, good without livery, &c.—  
R. S. c. 37, s. 1.

2. All deeds, bills of sale, powers of attorney, and other instruments of writing required or allowed to be registered, may be admitted to registration in the proper county, upon being acknowledged by the grantor, or proved on oath before

Before whom, deeds, bills of sale, powers of att'y proved.—  
R. S. c. 37, s. 1, 15, 25.—1846,

c. 68, s. 3; 1852, one of the judges of the supreme or superior court, or in the county court of the county where the land or estate is situate, unless otherwise directed, or before the clerk of such court, or his deputy. *Provided*, that nothing herein contained shall be construed to allow the privy examination of *femes covert* to be taken otherwise, than by law is specially directed.

When grantor or subscribing witness out of State, proved before com'r appointed by court.—R. S. c. 37, s. 4, 8.

3. All deeds for land or other estate situate within the State, and powers of attorney to convey the same; all bills of sale, and all other instruments of writing required or allowed to be registered, wherever such deeds, powers of attorney, bills of sale, or other instruments of writing may have been executed, whether within or without the State, if the grantor or subscribing witness shall reside, or be, beyond the limits of the State, when it may be desired to have the same registered, may be acknowledged by the grantor, or proved by the witnesses, before a commissioner or commissioners to be appointed by the court of pleas and quarter-sessions of the county wherein the same are to be registered.

Commission to issue under seal.

4. When any person shall desire to have registered any such deed or other writing as is mentioned in the preceding section, the court of pleas and quarter-sessions aforesaid may issue a commission under the seal of such court, (returnable to some subsequent term thereof.) to a commissioner or commissioners, authorizing any one or more of them to take the acknowledgment of the parties, or the examination of any one of the subscribing witnesses thereto, or other due proof thereof; and also the examination of any *feme covert* party to the same; and the proceedings of the commissioners, so authorized, being returned to the court, the court may proceed to adjudge that such deed or other instrument of writing is duly acknowledged or proved, and that the said examination is in due form: and thereupon the same, with the said proceedings, shall be registered; and such registration shall have the same effect as if the proceedings had been in open court.

Probate and privy examin'n of *feme covert* taken and certified.

Deeds registered on return of certificate.—R. S. c. 37, s. 4, 8.

Probate of deeds, &c., within U. S., including deeds of *feme covert*, before a judge.

5. When any deed conveying lands in this State, or power of attorney for the conveyance of the same, or any bill of sale for slaves, or other instrument whatever required or allowed to be registered, shall have been executed by any person, and it may be desired to take the probate or acknowledgment thereof out of this State, but within the United States, and the same shall be personally acknowledged by the person executing the same, or be proved by a subscribing witness thereto, or duly proved in any other manner, before some one of the judges of supreme jurisdiction, or a judge of the courts of law of superior jurisdiction within the State, territory, or district where the parties may be,—and if any of the parties shall be a *feme covert* and she shall be privily examined by such judge, whether she doth voluntarily assent thereto,—and an attestation of such acknowledgment or probate and examination shall be indorsed or affixed to such deed or other instrument by the judge, and a certificate of the governor of

How certified.—R. S. c. 37, s. 5, 13.



the State or territory, or (where the probate or acknowledgment and examination shall be in the district of Columbia) of the secretary of State of the United States, shall be annexed to such deed or other instrument, that the judge, before whom the acknowledgment or probate and examination was taken, was, at the time of taking the same, one of the judges of the courts of superior jurisdiction within said State, territory, or district: Or when such deed, power of attorney, bill of sale of slaves, or other instrument as aforesaid shall be so acknowledged or proved, and the privy examination taken as aforesaid, before any commissioners appointed by the governor of this State, according to law, and duly certified by him, such deed, power of attorney, bill of sale, or other instrument, being exhibited in the court of pleas and quarter-sessions of the county where the property is situate, or to one of the judges of the supreme court or of the superior courts of this State, shall be ordered to be registered with the certificates thereto annexed; and the same being registered in the county wherein the property may be situate, pursuant to such order; or, in the case of slaves, in the county as by this chapter is directed, shall be valid in law for the purpose intended thereby, and shall be received in evidence in any court without further proof.

6. All deeds, bills of sale, and other instruments of writing made in parts beyond the limits of the United States, required or allowed to be registered in this State, which shall be remitted hither, and duly proved in the State, or which shall be personally acknowledged or proved before the chief magistrate of any city in the country, in which such deed, bill of sale, or other instrument was executed, and an attestation thereof under the corporate seal affixed thereto, shall, upon being exhibited to the court of pleas and quarter-sessions of the proper county, or to one of the judges of the supreme or superior courts of the State, be ordered to be, and shall be registered; and when registered, shall be good and valid in law to all intents and purposes, and shall be received in evidence without further proof.

Deeds made in foreign countries, how proved and registered. — R. S. c. 37, s. 6.

7. Whenever a deed, bill of sale, or other instrument of writing which is 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 his certificate shall be thereunto annexed, under his official seal, declaring such probate or acknowledgment; or when any *feme covert*, party to such deed or other instrument of writing, 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 the court to be registered, together with the said deed, bill of sale,

Further provisions for probate of such deeds before ambassadors, &c. — R. S. c. 37, s. 7.

or other instrument; and the deed or instrument so registered shall have the same validity, as if the probate, acknowledgment, and examination had been had in open court.

Deeds of husband and wife, how proved. Wife privately examined.—R. S. c. 37, s. 9.

8. All conveyances in writing and sealed by husband and wife for any lands, and duly proved, or 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 said judge, or some member of the county court, appointed by the court for that purpose, whether she doth voluntarily assent thereto, and duly registered, shall be valid in law to convey all the estate, right and title which such wife may have in the said lands, tenements, and hereditaments.

Provision when wife is sick or resident of another county or country.—R. S. c. 37, s. 10.

9. *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, that the wife is a resident of any other country or county, or so aged or infirm that she cannot travel to the said judge or county court to make such acknowledgment as aforesaid, the judge or county court may 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 the 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 to the county court, to which the commission shall be returnable, shall, by order of the 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*.

Form of commission to take private examination of *feme covert*.—R. S. c. 37, s. 11.

10. The clerk of the court of pleas and quarter-sessions shall issue said commission in the following form, namely, —  
The State of North Carolina.

To A. and B.—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. L., one of the judges of our supreme court, (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 the county, (or of our State, or is so aged and infirm 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 whether she executed the said conveyance freely and of her own accord, without fear or compulsion of her husband; the examination being distinctly and plainly written on the said deed, or on some paper annexed thereto. And when you shall have so taken the 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 M., clerk of our said court, at office, the day of A. D.

11. All conveyances, which may be made by any person, under a power of attorney from any *feme covert* by her freely executed jointly with her husband, shall be valid to all intents and purposes, to pass the estate, right and title which such *feme covert* may have in such lands, tenements, and hereditaments within this State, as are mentioned or included in such power of attorney.

Conveyance under power of att'y from husband and wife to pass lands. —R. S. c. 37, s. 12.

12. Any deed for the conveyance of, or power of attorney to convey, lands in this State, made by husband and wife, who may be without the limits of the United States, which shall be personally acknowledged before the mayor or other chief magistrate of any city, the wife being first privily examined by such mayor or chief magistrate, whether she doth voluntarily assent thereto, and an attestation thereof indorsed thereon or affixed thereto, under his official seal, 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, right and title of the wife to all such lands, tenements, or hereditaments so conveyed or to be conveyed, and when registered shall be received in evidence without further proof.

Another mode when husband and wife reside in foreign parts. —R. S. c. 37, s. 14.

13. All powers of attorney made by any *feme covert* residing in this State jointly with her husband for the conveyance of any estate, right, or interest in lands situate in this State, shall be acknowledged or proved, and she shall be privily examined thereto in the same manner as is prescribed for deeds of conveyance of her lands, and such powers of attorney with the certificates shall be registered in like manner and place.

Powers of att'y by *feme covert* for conveying, proved and registered as deeds.

14. Every power of attorney, wherever made, or concerning whatsoever matter, may be registered on acknowledgment or probate of the same in the county wherein the property or estate may be situate, if it concern the conveyance thereof; and if the same do not concern the conveyance of any estate or

Powers of attorney, how proved in State.

property, then in the county where the attorney may reside, or the business is to be transacted. And such powers of attorney as do not concern the conveyance of land by a *feme covert*, whereof it may be necessary to take the acknowledgment or probate out of the State, may, besides the other modes provided in this chapter, be acknowledged or proved before any mayor, or presiding magistrate of any city, or a clerk of a court of record; and such acknowledgment or probate being duly taken and certified under the seal of office of such officer, shall, on the same being produced to the court of pleas and quarter-sessions of the proper county, be ordered by the court to be registered, and shall be registered.

How proved out of State.—R. S. c. 37, s. 16.—1846, c. 68, s. 2, 3.

Deeds, &c., how proved when subscribing witness dead.—R. S. c. 37, s. 4.

Copies of registered deeds evidence, unless by rule of court original required.—1846, c. 68, s. 1.

15. In all cases of the probate of any deed or other instrument, required or allowed to be registered, having a subscribing witness who may be dead, satisfactory proof of his handwriting, or of the handwriting of the grantor or maker, when there is no subscribing witness, shall be deemed sufficient proof for the purpose of allowing the registration thereof.

16. The registry or duly certified copy of the record of any deed, power of attorney, or other instrument required or allowed to be registered or recorded, may be given in evidence in any court, and shall be held to be full and sufficient evidence of such deed, power of attorney, or other instrument, although the party offering the same shall be entitled to the possession of the original, and shall not account for the non-production thereof; unless by a rule or order of the court, made upon affidavit suggesting some material variance from the original in such registry, or other sufficient grounds, such party shall have been previously required to produce the original; in which case the same shall be produced, or its absence duly accounted for according to the course and practice of the court.

Gifts of slaves to be proved and registered.—R. S. c. 37, s. 17.

17. No gift of any slave shall be valid, unless the writing by which the title to such slave is transferred, shall be proved or acknowledged, as conveyances of land, and registered in the county where the donee resides, within two years after the execution thereof, if the donee be in actual possession of the slave; but if, under any special agreement made at the time of the gift, the donor shall remain in possession of the slave, then the writing shall be proved or acknowledged as aforesaid, and registered within the same time, in the county where the donor resides.

Deeds of gift also.—R. S. c. 37, s. 18.

18. All deeds of gift of any estate of whatever nature shall, within two years after the making thereof, be proved in due form and registered, or otherwise shall be void.

Sales of slaves in writing to be proved and registered.—R. S. c. 37, s. 19.

19. All written sales and conveyances of slaves shall, within two years after the making thereof, be proved in due form and registered, or otherwise shall be void.

Registered where purchaser resides, un-

20. When the transfer or conveyance of any slave shall be in writing, such writing, after being duly acknowledged, or proved, shall be registered in the county where the purchaser

(he being in actual possession of the slave) shall reside ; but if, under any special agreement at the time of the sale, the vendor shall remain in possession of the slave, then the writing shall be registered in the county where the vendor may reside.

less vendor retains possession, &c.—R. S. c. 37, s. 20.

21. Every kind of estate in slaves, be the same vested or contingent, or for life, or for years, which is allowed to be created and limited by any last will or testament, may be created and limited by way of reservation, remainder, reversion, or otherwise, by any written conveyance of slaves.

Estates in slaves limitable by deed, &c., as by will.—R. S. c. 37, s. 22.

22. 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 in the county where the land lieth ; or, in case of personal estate, 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 personal estate, or some part of the same is situate, or in case of choses in action, where the donee, bargainee, or mortgagee resides.

Mortgage and trust deeds good against creditors, &c., only from registration.

Where registered.—R. S. c. 37, s. 24.

23. The register shall indorse on each deed of trust or mortgage the day on which it is presented and delivered to him for registration, and such indorsement 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 fined at the discretion of the court.

Register to indorse on mortgages, &c., day of delivery, and register in order of delivery.

Penalty for failure.—R. S. c. 37, s. 26.

24. All marriage settlements and other marriage contracts, whereby any money or other estate shall be secured to the wife or husband, shall be proved, or acknowledged and registered in the same manner as deeds for lands, within six months after the making thereof, otherwise they shall be void against creditors.

Marriage settlements registered, otherwise void as to creditors.—R. S. c. 37, s. 29.

25. No marriage settlement, or 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 a suit upon any such marriage contract, where a creditor shall be a party, the burden of the proof shall lie upon the person claiming under such marriage contract. *Provided always*, that if any legacy shall be given to the wife in general words, and not in trust, or a distributive share of any intestate's estate shall fall to her during her coverture, and he shall become entitled thereto, such legacy and distributive share (in case the estate of the husband and wife shall not at the time of the marriage be of sufficient

What marriage settlements good against creditors.

How deficiency in property settled, made up.—R. S. c. 37, s. 30.

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.]

Contracts to sell lands, and leases, required to be in writing, must be registered.

26. All contracts to sell or convey any lands, tenements, or hereditaments, or any interest in or concerning them, and all leases required to be put in writing, upon due proof or acknowledgment thereof in the manner in this chapter provided for the conveyance of lands, shall be registered in the proper county, within two years from the date of such contracts or leases.

Infant trustees, how to convey.—R. S. c. 37, s. 31.

27. Whenever any infant shall be seized or possessed of any estate whatever in trust, whether by way of mortgage or otherwise, for another person who may be entitled in a court of equity to have a conveyance of such estate, or may be declared to be so seized or possessed, in the course of any proceeding in such court, the court may decree that the infant shall convey and assure such estate, in such manner as it may direct, to such other person: and every conveyance and assurance, made in pursuance of such decree, shall be effectual in law as if made by a person of full age.

Errors in registration of deeds, &c., corrected on petition.

28. 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, may prefer a petition to the county court, in the same manner as is directed for petitioners to correct errors in grants or patents, and if, on hearing the same before a majority of the justices, it appears that errors have been committed, the court shall order the register of the county to correct such errors, and make the record conformable to the original. *Provided*, that such petitioner shall have notified his grantor, and every person claiming title to, or having lands adjoining, those mentioned in the petition, thirty days previous to preferring the same. *And provided, also*, that such petition shall not be set for hearing at the first term, and any person dissatisfied with the judgment may appeal to the superior court, as in other cases.

Appeal allowed.—R. S. c. 37, s. 32.

Deeds registered in wrong county before 1830, or certified copies thereof may be registered in proper county, in certain cases.—R. S. c. 44, s. 24, 29.

29. And because in times past deeds for land have been registered in the wrong county, by reason of the uncertainty of the boundaries of counties, whereby the title of *bonâ fide* claimants may be questioned: For remedy whereof, *be it enacted*, that all original deeds, made prior to the year one thousand eight hundred and thirty, and registered before that time in a county where any part of the lands thereby conveyed are situate, or in any county adjoining thereto; or the copies of such deeds, duly certified by the register of the county wherein they shall have been registered, may, upon the certificate of the register, be registered in the proper county; and the registry or copy thereof, duly certified as in other cases, shall be received in evidence.

Deeds, how made when sheriff, &c.,

30. Whenever any sheriff or coroner, in virtue of his office, shall have sold any real or personal estate, and shall go out of

office before executing a proper conveyance therefor, he may execute the same after his term of office shall have expired: and whenever such officer shall die or remove from the State before executing the same, his successor in office shall execute such conveyance: and all conveyances thus executed shall be as valid as if made by the sheriff or coroner, who may have made the sale; *Provided*, that nothing herein contained shall be construed to allow the execution of conveyances of lands sold for taxes, otherwise than is prescribed and provided in the chapter entitled "Revenue."

who sells, goes out of office, dies, or removes away.—1838, c. 37.

31. The grantee in any deed, bill of sale, mortgage, or other instrument, requiring or allowing of registration, may, at his own expense, on motion to the court of pleas and quarter-sessions of the county where the same is required to be registered, obtain a summons for any one of the subscribing witnesses to such conveyance, 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 the conveyance or other writing, under the penalty of forty dollars; and the sheriff shall execute the same, at least five days before the term, to which it is returnable, and make due return thereof; and if any witness so summoned shall fail to appear, the court shall give judgment and award execution against him for the penalty aforesaid, for the use of the party summoning him, in like manner and under the same rules as are prescribed in the case of other witnesses defaulting.

Witnesses to deeds may be summoned to prove them.—R. S. c. 37, s. 3.

32. All grants of land in the State, all deeds of conveyance, all conveyances of slaves, all powers of attorney, and every other instrument in writing, which is required or allowed to be registered within a given time, and have not been proved and registered within such time, may be proved and registered within two years after the passage of this chapter, under the same rules, regulations, and restrictions as heretofore appointed by law; and when so proved and registered, shall be as good and valid as if they had been duly proved and registered. *Provided*, that nothing herein contained shall be construed to extend to mortgages, and conveyances in trust, and to marriage settlements.

Further time allowed for registering deeds, &c.—1854.

SECT. 1. *What deeds to be registered*, 1 Jones, Eq. 137, 6 Ire. 309. *Unregistered deed, in equity*, 2 Dev. Eq. 412, 6 Ire. Eq. 79.

SECT. 2. *How proved*, 13 Ire. 379, 11 Ib. 307, 8 Ib. 302. *Deputy clerk*, 13 Ire. 452.

SECT. 8. *Validity, if irregularly proved*, 13 Ire. 193, 5 Ire. Eq. 321. *Form of probate*, 9 Ire. 353, 1b. 312, 10 Ib. 446, 13 Ib. 400, 8 Ib. 70. *Deed for separate estate of wife*, 4 Ire. Eq. 312.

SECT. 9. 2 Ire. Eq. 386; 2 Ire. 240; 1 Ib. 313; 4 D. & B. 51.

SECT. 13. 11 Ire. 307.

SECT. 17. 4 Ire. 165; 3 Ire. Eq. 253; 10 Ire. 245; 2 Dev. Eq. 535; 2 D. & B. 115; 2 Dev. 240; 3 Mur. 133. *Advancement when*, 5 Ire. 78.

SECT. 19. *Estoppel*, 9 Ire. 163. *Attestation*, 12 Ire. 211. Bus. 360. *Sale and delivery*, 11 Ire. 502, 4 Dev. 73.

SECT. 20. *Where registered*, 7 Ire. 14.

SECT. 22. 1 Ire. 97; 2 Ire. Eq. 495; 1 Ire. 340; 4 D. & B. 173; 1 Dev. Eq. 318. *What is a mortgage, &c.*, 4 Dev. 59, Bus. Eq. 181. *When deemed registered*, 2 D. & B. 79, 4 Dev. 384, 4 D. & B. 173. *Between the parties valid without registration*, Bus. 253.

SECT. 32. 3 Dev. 373; 3 Hawks, 18.

## CHAPTER 38.

## DESCENTS.

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Rules of descent.

1. WHEN any person shall die seized of any inheritance, or of any right thereto, or entitled to any interest therein, not having devised the same, it shall descend under the following rules:—

Lineal descent.—R. S. c. 38, s. 1.

*Rule 1.* Every inheritance shall lineally descend forever to the issue of the person, who died last seized, entitled or having any interest therein, but shall not lineally ascend, except as hereinafter provided.

Females to inherit with males, and younger with older children.

*Rule 2.* Females shall inherit equally with males, and younger with older children. *Provided*, that whenever a parent shall die intestate, having in his or her lifetime, settled upon or advanced to any of his or her children, any real or personal estate, such child so advanced in real estate shall be utterly excluded from any share in the real estate descended from such parent, except so much thereof as will, when added to the real estate advanced, make the share of him who is advanced equal to the share of those who may not have been advanced, or not equally advanced. And any child so advanced in personal estate shall be utterly excluded from any share in the personal estate of which the parent died possessed, except so much thereof as will, when added to the personal estate advanced, make the share of him who is advanced equal to the share of those who may not have been advanced, or not equally advanced. And in case any one of the children shall have been advanced in real estate of greater value than an equal share thereof which may come to the other children, he or his legal representatives shall be charged in the distribution of the personal estate of such deceased parent, with the excess in value of such real estate so advanced as

Children advanced in real or personal estate, to account for advancements.—R. S. c. 38, Rule 2.—1844, c. 51, s. 1, 2.



aforesaid, over and above an equal share as aforesaid. And in case any of the children shall have been advanced in personal estate of greater value than an equal share thereof which shall come to the other children, he or his legal representatives, shall be charged in the division of the real estate, if there be any, with the excess in value, which he may have received as aforesaid, over and above an equal distributive share of the personal estate.

*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. Lin. descendts to represent ancestor.—R. S. c. 38, R. 3.

*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, capable of inheriting, of the person last seized, who were of the blood of such ancestor, subject to the two preceding rules. Collateral descent of inheritance, when derived from an ancestor.—R. S. c. 38, R. 4.

*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 relation, capable of inheriting, of the person last seized, whether of the paternal or maternal line, subject to the second and third rules. When not derived from ancestor, or his blood extinct.—R. S. c. 38, R. 5.

*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 capable of inheriting, nor brother, nor sister, nor the issue of such, the inheritance shall vest in the father if living, and if not, then in the mother if living. Half to inherit with whole blood. Parent when to inherit from child.—R. S. c. 38, R. 6.

*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 lunar months after the death of the person last seized. None to inherit, unless alive, or born in ten months, &c.—R. S. c. 38, R. 7.

*Rule 8.* When any person shall die, leaving none who can claim as heir to him, his widow shall be deemed his heir, and as such shall inherit his estate. When widow takes as heir.—R. S. c. 38, R. 8.

*Rule 9.* Where any person shall die, leaving relations, citizens of the United States, capable of inheriting his estate if there might be no other or nearer kindred, but who, by a rule of the common law, cannot inherit, because there are others of nearer kindred, (as aliens or others,) who cannot hold land in the State, the estate of such deceased person shall descend to such of the first-mentioned relations as would be entitled if there were no other relations whatever. Alien heirs not to prevent other relations, being citizens, from inheriting.—R. S. c. 38, R. 9.

*Rule 10.* When there shall be no legitimate issue, every illegitimate child of the mother, and the descendant of any Illegitimate children to inherit from their

mother.—R. S. c. 38, R. 10. such child deceased, shall be considered an heir, and as such shall inherit her estate; but such child or descendant shall not be allowed to claim, as representing such mother, any part of the estate of her kindred, either lineal or collateral.

And from each other. *Rule 11.* Illegitimate children shall be considered legitimate as between themselves and their representatives, and their estates shall descend accordingly in the same manner as if they had been born in wedlock. And in case of the death of any such child or his issue, without leaving issue, his estate shall descend to such person, as would inherit if all such children had been born in wedlock. *Provided always*, that when any illegitimate child shall die without issue, his inheritance shall vest in the mother in the same manner as is provided in rule six of this chapter.

Legitimate may inherit from them.

Dying without issue, mother to be heir.

Estates for life, not devised, to be inheritances.

Seizin defined.

*Rule 12.* Every estate for the life of another, not devised, shall be deemed an inheritance of the deceased owner, within the meaning and operation of this chapter.

*Rule 13.* Every person, in whom a seizin is required by any of the provisions of this chapter, shall be deemed to have been seized, if he may have had any right, title, or interest in the inheritance.

SECT. 1. *Rule (1.) Devise to heir*, 3 Mur. 209.

*Rule (2.) Advancement: when valued*, 6 Ire. 4; *what is*, 11 Ire. 148; *to husband by father-in-law*, 11 Ire. 68; *to grandchild*, 7 Ire. Eq. 159. *As to widow*, Bus. 325, 7 Ire. Eq. 159. *Partial intestacy*, 4 Ire. Eq. 9, 5 Ib. 7.

" (4.) 2 Ire. 315; 2 Jones, Eq. 82; 2 D. & B. 308; 1 Dev. 333.

" (5.) 1 Ire. 387; 5 Ire. Eq. 280.

" (6.) 1 Jones, 344.

" (11.) 6 Ire. 407; 8 Ire. 39.

## CHAPTER 39.

### DIVORCE AND ALIMONY.

#### SECTION

1. Courts of law and equity to have jurisdiction of divorce and alimony.
2. Divorce or alimony, when granted.
3. Divorce from bed and board and alimony, when granted.
4. Alimony to spendthrift's wife.
5. Proceedings to obtain divorce or alimony. Affidavit of the facts. Security for costs.
6. Petition, how served. Material facts submitted to a jury.
7. Cause of complaint must have existed six months, and residence three years.
8. Unless the husband is removing his property, when it may be filed forthwith and his property sequestered.

#### SECTION

9. Rule as to depositions and costs.
10. Bars to divorce on account of adultery.
11. Decree, when and of what, made. Innocent party may marry again. Children not made illegitimate.
12. Alimony, how secured and enforced.
13. Wife divorced from bed and board, to have property thereafter acquired; may sue and be sued alone.
14. In petition for alimony, court may decree that petitioner may have and dispose of all after acquired property, and may sue, &c.
15. Alimony allowed pending suit. Appeal allowed.

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| <p>16. Appeal allowed to supreme court. Suits for divorce removed to supreme court.</p> | <p>17. Offending party divorced, not allowed to marry again, during life of other party.</p> |
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1. THE superior courts of law and the courts of equity shall have sole original jurisdiction in all applications for divorce, for divorce and alimony, and for alimony alone.

Jurisdiction in cases of divorce and alimony.—R. S. c. 39, s. 1.  
Divorce or alimony, when granted.—R. S. c. 39, s. 2.

2. Whenever it shall be adjudged, in the manner herein-after mentioned, that either party, at the time of marriage, 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, the injured person may 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 be demanded, to continue as long as the justice of the case may require.

3. If any person shall abandon his family, or maliciously turn his wife out of doors; or by cruel and barbarous treatment endanger her life, or offer such indignities to her person as to render her condition intolerable or life burdensome, the court may grant a divorce from bed and board, and also 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 assign to her separate use such part of the real and personal estate of the husband, not exceeding one third thereof, as the justice of the case may require; which shall continue until reconciliation.

Divorce from bed and board and alimony, when granted.—R. S. c. 39, s. 3.

4. When a man shall become an habitual drunkard or spendthrift, wasting his substance to the impoverishment of his family, his wife may claim, and the court may decree alimony as aforesaid. *Provided always*, that nothing in this or the preceding section shall be construed in anywise to prejudice the rights of the husband's creditors.

Alimony to spendthrift's wife.—R. S. c. 39, s. 4.

5. The husband or wife seeking to be divorced, or the wife claiming alimony, may exhibit a petition or libel in court during term time, or in vacation at least twenty days before the next term, setting forth particularly and specially the causes of complaint, and shall, together with such petition or libel, exhibit an affidavit taken before the clerk and master, clerk of the superior court, or the presiding judge, or some justice living in the county where such petitioner resides, that the facts contained in such petition or libel are true to the best of the affiant's 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, not for the mere purpose of being freed and separated from each other, but in sincerity and truth for the causes mentioned in the petition or libel; bond with security for the prosecution of the same being first given, as in other cases at law or equity; unless the petitioner make affidavit that he or she is not worth two hundred dollars.

Proceedings to obtain divorce or alimony.

Affidavit of facts.

Security for costs.—R. S. c. 39, s. 5.

Petition, how served.

6. Thereupon a subpœna shall issue, directed to and commanding the person complained against to appear at the next court to be held for the said county, then and there to plead or answer to the petition or libel; and upon due proof, at the return of the process, that a copy thereof was served, either personally on the 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 the county, ten days before the day of the return; then if he or she shall neglect to appear, an *alias* subpœna shall issue, returnable to the first day of the next term, and be served in manner aforesaid; but if the defendant cannot be found, then proclamation shall be publicly made at the court house for the party to appear and answer as commanded by the subpœna, and notice of the suit shall be given in such newspapers as the court may order, for six weeks; and in the mean time such preparatory rules and orders in the cause may be made, as shall be necessary to prepare it for trial: when the court may determine *ex parte*, if necessary. *Provided always*, that the material facts charged in the petition or libel shall be submitted to a jury, upon whose verdict and not otherwise, the court shall decree.

Material facts submitted to a jury.—R. S. c. 39, s. 5.

Cause of complaint must have existed six months, and residence three years.—R. S. c. 39, s. 6.

7. No petition, except in the cases mentioned in the following section, shall be sustained under this chapter, 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, unless he or she shall have resided within this State three years immediately preceding the exhibition of the petition. *Provided*, that the said three years' residence shall not be required in cases sued under the fourth section of this chapter.

Unless husband is removing his property, when it may be filed forthwith and his property sequestrated.

8. In all cases where there shall be a sufficient cause for a divorce (absolute, or from bed and board) with alimony, the wife may exhibit her petition or libel at any time, in case her husband is then removing, or about to remove his effects from the State, if she shall likewise state and swear, that she doth verily believe that she is entitled to alimony, and that by delaying her suit, she will be disappointed of the same, by the removal of her husband's property and effects out of the State. And in such cases any judge may, thereupon, make an order of sequestration or otherwise, as the purposes of justice may seem to require.

Rule as to depositions and costs.—R. S. c. 39, s. 7.

9. The parties may read depositions on the trial, as in causes in equity, and the court may decree by what party, the costs, or any part of them, shall be paid.

Bars to divorce on account of adultery.—R. S. c. 39, s. 8.

10. If, in any suit for divorce for the cause of adultery, it shall be proved that the plaintiff has been guilty of the like crime, or has willingly admitted the defendant into conjugal society or embraces after he or she knew of the criminal fact; or that the husband, if the plaintiff, allowed of his wife's prostitution, or exposed her to lewd company whereby she became

ensnared to the crime aforesaid, the same shall be a good defence, and a perpetual bar against the said suit. }

11. The court after hearing any cause, may determine the same as to law and justice shall appertain, by either dismissing the petition or libel, or 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 agreeable to her prayer; and the court shall have power also to decree alimony to the wife in the case of absolute 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 virtue of said marriage, shall cease and determine; and the plaintiff, or innocent person, shall be at liberty to marry again. *Provided always*, that nothing herein contained shall be construed to render illegitimate any child *in esse*, or born of the body of the wife during coverture.

Decree, when and of what made.

Innocent party may marry again. Children not made illegitimate.—R. S. c. 39, s. 9.

12. 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 decree; 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 for the money decreed, and a writ of *venire* to a jury to lay off and allot the real or personal estate decreed to the wife.

Alimony, how secured and enforced.—R. S. c. 39, s. 10.

13. When the court, on petition of the wife, shall decree a divorce from bed and board, the wife so divorced shall have capacity to acquire, retain, and dispose of, by deed or will, or in any other manner, 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 such property, during such time as the parties shall remain unreconciled, 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 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*.

Wife divorced from bed and board, to have property thereafter acquired; may sue and be sued alone.—R. S. c. 39, s. 11.

14. When any married woman shall file her petition for alimony, and pray that such property as she may thereafter acquire may be also secured to her, the court may, if deemed proper, decree that she may sue and be sued in her own name, without joining the name of her husband, 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 dominion, control, or debts of her husband; but on her death, without a disposition by her by will, deed, or otherwise, shall be transmissible in the same manner as if she were a *feme sole*.

In suit for alimony, court may decree that petitioner may have and dispose of after acquired property, and may sue, &c.—R. S. c. 39, s. 12.

Alimony, pending suit.—1852, c. 53.

15. In petitions for divorce and alimony, or for alimony, where the matter set forth in such petition shall be sufficient to entitle the petitioner to a decree for alimony, the court may in its discretion, at any time pending the suit, decree such reasonable alimony for the support and sustenance of the petitioner and her family, as shall seem just, under all the circumstances of the case. And from such interlocutory decree there may be an appeal to the supreme court, but that court shall re-examine only the sufficiency of the petition to entitle the petitioner to relief.

Appeal from allowance to supreme court.

Appeal from final decree to supreme court.

16. In every case of application for a divorce, or for alimony, and a final judgment thereon, the party against whom judgment is rendered may appeal to the supreme court, whose duty it shall be, according to the facts ascertained in the court below, to make such decree as shall be just; and such appeal may be granted without security, if the situation of the appellant shall render it necessary for the purposes of justice. And any suit may be removed to the supreme court, before a hearing, in the same manner, and in the like state of pleadings, as suits in equity.

Suits removed to supreme court.—R. S. c. 39, s. 13.—1842, c. 43.

Offending party divorced, not allowed to marry again during life of the other party.—R. S. c. 39, s. 14.

17. No defendant, or party offending, from whom a divorce shall be obtained from the bonds of matrimony, shall be allowed to marry again, during the life of the plaintiff or innocent person; and if such offending party shall so marry, he or she shall be deemed guilty of felony, and on conviction shall be punished as persons convicted of bigamy.

SECT. 1. *Absent parties*, 1 D. & B. Eq. 568.

SECT. 2. *Adultery: discretionary for*, 1 Dev. Eq. 352; *single act of*, 2 Hawks, 189; *after separation*, 2 Ire. 55, 5 Ib. 674, 13 Ib. 90, *Fraud*, 3 Dev. 535, Ib. 548, *Abdicy*, 3 Ire. Eq. 91, 2 Ib. 470.

SECT. 5. *Form of petition*, 2 D. & B. 377, Ib. 64. *Amended petition*, 13 Ire. 90. *Sequestration*, 1 Hay. 482, Ib. 347.

SECT. 6. *Form of issues*, 7 Ire. 484. *Confession*, 10 Ire. 506.

SECT. 10. *Alimony*, 6 Ire. 293; *pend. lite*, 1 Jencs, Eq. 118.

## CHAPTER 40.

### DRAINING AND DAMMING LOW LANDS.

#### SECTION

1. Mode of proceeding by petition for draining or damming low lands. Court to appoint seven commissioners.
2. Their duty.
3. Shall report to court. On payment of damages and costs, easement to vest in fee. No canal or dam made through yard, &c.; or to injure mill, or create nuisance by stagnant water, &c.

#### SECTION

4. Fences or paths across canal or im-bankment made by proprietor, when.
5. Earth for dam, how taken; owner of land may adjoin his own dam, when.
6. Commissioners to designate width of land, for use of canal, &c. Width for dam not to exceed five times its base.
7. Earth excavated for canal, removed or levelled.

SECTION

- 8. Owner of land not to open drain within thirty feet of canal.
- 9. Mode of proceeding to drain into a canal. Not to be cut into if its value be endangered. Unless the danger can be avoided by imposing duties or labor. And no final decree made for cutting, till the work is done and the effect seen.
- 10. Commissioners to assess and apportion labor for repairing canals. Report when confirmed, to stand

SECTION

- as a judgment against parties and privies.
- 11. Mode of proceeding for joint repairs of canals.
- 12. Persons failing to work, how recovered against.
- 13. Assignees, &c., bound to repair as original owners.
- 14. All persons interested, to contribute to repair dams, &c. Mode of proceeding.
- 15. Compensation of commissioners. Costs of appeal paid as court directs.

1. ANY person, owning pocosin, swamp, or flat lands, or owning low lands subject to inundation, which cannot be conveniently drained or embanked so as to drain off or dam out the water from such lands, except by cutting a canal or erecting a dam through or upon the lands of other persons, may by petition apply to the county or superior court of law of the county, in which the lands sought to be drained or embanked, or some part of such lands lie, setting forth the particular circumstances of the case, the situation of the land to be drained or embanked, to what outlet and through whose land he desires to drain, or on what lands he would erect his dam, and who are the proprietors of said lands; whereupon a copy of the petition shall be served on each of the proprietors, and, on the hearing of the petition, the court shall appoint seven disinterested freeholders for commissioners to be summoned and sworn by the sheriff on the premises.

Mode of proceeding by petition for draining or damming low lands.

2. The commissioners, or a majority of them, on a day to be appointed by the sheriff, of which each proprietor of land aforesaid is to be notified at least five days beforehand, shall meet on the premises and view the lands to be drained or embanked, and the lands through or on which the drain is to pass or the embankment to be erected, who shall determine and report whether the lands of the petitioner can be conveniently drained or embanked except through or on the lands of the defendants or some of them; and if they are of opinion that the same cannot be conveniently done except through or on such lands, they shall decide and determine the route of the canal or embankment, the width thereof and the depth or height, as the case may be, and the manner in which the same shall be cut or thrown up, considering all the circumstances of the case, and providing as far as possible for the effectual drainage or embankment of the water from the petitioner's land, and also securing the defendant's lands from inundation, and every other injury to which the same may be probably subjected by such canal or embankment; and they shall assess, for each of the defendants, such damage as in their judgment will fully indemnify him for the use of his land in the mode proposed.

Court to appoint seven comm'rs. — R. S. c. 40, s. 1. — 1852, c. 57, s. 1, 2.

Duty of commissioners. — R. S. c. 40, s. 1. — 1852, c. 57, s. 1, 2.

3. The commissioners shall report, in writing under their

Shall report to court.

On payment of damages and costs, easement to vest in fee.

No canal or dam made through yard, &c.; or to injure mill, or create nuisance by stagnant water, &c. — R. S. c. 40, s. 2. — 1852, c. 57, s. 1, 2.

Fences or paths across canal or embankment, made by proprietor, when. — R. S. c. 40, s. 2. — 1852, c. 57, s. 1, 2.

Earth for dam how taken; owner of land may adjoin his own dam, when.

Comm'rs to designate width of land for use of canal, &c. Width for dam not to exceed five times its base.

Earth excavated for canal, removed or levelled.

Proprietor of land not to open drain within thirty feet of canal.

Mode of proceeding to drain into a canal.

hands, the whole matter to the court, who shall confirm the same, unless good cause be shown to the contrary; and on payment of the damages and costs of the proceedings, the court shall order and decree that the petitioner may cut the canal or raise the embankment in the manner reported and determined by the commissioners; and thereupon the petitioner shall be seized in fee-simple of the easement aforesaid. *Provided, however*, that, without the consent of the proprietor, such canal or embankment shall not be cut or raised through or on his yard or curtilage, nor be allowed when the same shall injure any mill, by cutting off or stopping the water flowing thereto; nor shall said dam be allowed so as to create a nuisance by stagnant water, or cut off the flow of useful springs or necessary streams of water, or stop any ditches of such proprietor when there is no freshet.

4. Any proprietor, through or on whose land such canal may be cut or embankment raised, may put a fence or make paths across the same, provided the usefulness thereof be not impaired; and the owner of the canal or dam, his heirs and assigns, shall at all times have free access to the same, for the purpose of making and repairing them; doing thereby no unnecessary damage to the lands of the proprietors.

5. The earth necessary for the erection of the dam may be taken from each side of it, or wherever else the commissioners may designate and allow. And such dam may be removed by the proprietor of the land, his heirs or assigns, to any other part of his lands, and he may adjoin any dam of his own thereto, if allowed by the court on a petition and such proceedings therein as are provided in this chapter, as far as the same may apply to his ease. *Provided always*, that the usefulness of the dam will not be thereby impaired or endangered.

6. The commissioners shall designate the width of the land to be left on each side of the canal or dam, to be used for the protection and reparation thereof, which land shall be altogether under the control and dominion of the owner of the canal or dam, except as aforesaid. *Provided, however*, that, in no case, shall a greater width of land on both sides, inclusive, of a dam, be taken than five times the base of such dam.

7. The earth excavated from the canal shall be removed away or levelled as nearly as may be with the surface of the adjacent land, unless the commissioners shall otherwise specially allow.

8. The proprietor of any swamp or flat lands, through which a canal passes, shall not have a right to open or cut any drain within thirty feet thereof, but by the consent of the owner. Such proprietor, however, and other persons may cut into such canal in the manner hereinafter provided.

9. Any person, desirous of draining into the canal of another person as an outlet, may do so in the manner hereinbefore provided, and, in addition to the persons directed to



be made parties, all others shall be parties, through whose lands or canals the water to be drained may pass till it shall have reached the furthest artificial outlet. And the privilege of cutting into such canal may be granted under the same rules, and upon the same conditions and restrictions, as are provided in respect to cutting the first canal. *Provided, however,* that no canal shall be allowed to be cut into another, if thereby the safety or utility of the latter shall be impaired or endangered. *And provided further,* that, if such impairing and danger can be avoided by imposing on the petitioner duties or labor in the enlarging or deepening such canal, or otherwise, the same may be done; but no absolute decree for cutting such second canal shall pass, till the said duties or work so imposed shall be performed and the effect thereof is seen, so as to enable the commissioners to determine the matter whether such second canal ought to be allowed or not.

Not to be cut into if its value be endangered, unless the danger can be avoided by imposing duties or labor. And no final decree for cutting, made, till work done and effects seen.

10. Besides the damages which the commissioners may assess against the petitioner for the privilege of cutting into such canal, they shall assess and apportion the labor which the petitioner and defendants shall, severally, contribute towards repairing the canal or canals into or through which the petitioner drains the water from his lands, and report the same to court; which when confirmed shall stand as a judgment of the court against each of the parties, his executors and administrators, heirs and assigns.

Comm'rs to assess and apportion labor for repairing canals. Report when confirmed, to stand as a judgment against the parties, &c.

11. Whenever the canals or any of them, for the reparation of which more than one person shall be bound under the provisions of the preceding section, shall need to be repaired, any of the persons so bound may notify the others thereof, and of the time he proposes to repair the same; and thereupon each of the persons shall jointly work on the same and contribute his proportion of labor, till the same be repaired or the work cease by consent.

Mode of proceeding for joint repairs of canals.

12. And in case the person so notified shall make default, any of the others may perform his share of labor and recover against him the value thereof, on a *scire facias* to be issued for such default; in which shall be stated on oath made before the clerk, the value of such labor; and unless good cause to the contrary be shown on the return of the writ, the court shall render judgment for the same with interest and costs.

Persons failing to work, how recovered against.

13. All persons, to whom may descend, or who may otherwise own or occupy lands drained by any canal, for the privilege of cutting which any labor for repairing is assessed, shall contribute the same, and shall be bound therefor to all intents and purposes, and in the same manner and by the same judgment, as the original party himself would be, if he occupied the land.

Assignees, &c., bound to repair as original owners.

14. Whenever there shall be a dam, canal, or ditch, in the repairing and keeping up of which, two or more persons shall be interested and receive actual benefit therefrom, and the duties and proportion of labor, which each one ought to do and

All persons interested, to contribute to repair dams, &c.

Mode of proceeding.

perform therefor, shall not be fixed by agreement, or by the mode already in this chapter provided for assessing and apportioning such labor, any of the parties may have the same assessed and apportioned by petition to the county court of the county in which such duties and labor, or some part thereof, are to be performed, and the proceedings therein shall be by commissioners, in the manner in this chapter already provided.

Compensation of comm'rs. Costs of appeal paid as court directs.

15. The commissioners shall be paid each two dollars per day for their service, to be taxed among the costs; and where either party shall appeal to the superior or supreme court, the costs of the appeal shall be paid as the court may direct.

## CHAPTER 41.

### ELECTORS OF PRESIDENT AND VICE-PRESIDENT.

#### SECTION

1. State divided into ten electoral districts.
2. Persons qualified to vote for electors. Time and place of election. Certificate of poll and return. By whom made. Penalty of five hundred dollars in case of failure.
3. Governor to proclaim electors and warn them to attend at Raleigh; to deliver them a list of votes, and lay one before Assembly.

#### SECTION

4. When and where electors shall meet to vote.
5. In case of vacancy in offices of president and vice-president, governor to issue proclamation for election.
6. Penalty on electors failing to attend. On sheriff refusing to hold the poll, making false return, &c.
7. Compensation, &c., of electors.
8. May supply vacancies in their body.
9. Pay of sheriff for holding elections.

State divided into ten electoral districts. —R. S. c. 41, s. 1.—1852, c. 56.

1. THE State shall be divided into ten districts for the purpose of choosing electors for President and Vice-President of the United States, in the following manner, to wit: The counties of Currituck, Camden, Pasquotank, Perquimans, Gates, Chowan, Hertford, Northampton, Halifax, Martin, Bertie, Washington, and Tyrrell, shall compose the first district. The counties of Hyde, Beaufort, Pitt, Craven, Jones, Lenoir, Wayne, Greene, Edgecombe, Onslow, and Carteret, the second district. The counties of New-Hanover, Brunswick, Columbus, Bladen, Sampson, Cumberland, Robeson, Duplin, and Richmond, the third district. The counties of Wake, Franklin, Warren, Granville, Orange, Nash, and Johnston, the fourth district. The counties of Person, Caswell, Alamance, Chatham, Randolph, Guilford, Moore, and Montgomery, the fifth district. The counties of Stokes, Forsyth, Rockingham, Davidson, Davie, Yadkin, Surry, Iredell, Alexander, and Ashe, the sixth district. The counties of Catawba, Gaston, Lincoln, Mecklenburg, Rowan, Cabarrus, Union, Anson, Stanly, and Cleaveland, the seventh district. The counties of Wilkes, Watauga, Caldwell, Burke, Rutherford,

McDowell, Henderson, Buncombe, Yancy, Haywood, Macon, Cherokee, Jackson, and Madison, the eighth district: and the State at large, the ninth and tenth districts; all which districts shall be denominated electoral districts.

2. The persons qualified to vote for members of the house of commons of the General Assembly in said counties respectively, shall meet on the Tuesday next after the first Monday of November, one thousand eight hundred and fifty-six, and successively every four years thereafter, at the 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 ten discreet persons, being freeholders, one of whom shall actually reside within each of the said electoral districts; 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 the sheriffs of the several counties, or other officers duly authorized, who shall have held the polls, within two days after the day of holding the same, (except in the counties of Currituck, Carteret, and Hyde, in which counties it shall be within five days,) shall ascertain by faithful addition and comparison, 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 and at the places fixed by law within the said county, for electors of President and Vice-President of the United States, and that the number of votes, herein specified, opposite the names of the several persons following, was given 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 votes given for D. C.): For E. F. (here state the number of votes given for E. F., and so on until the list of persons voted for and the number of votes shall be complete). Given under my hand, 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 hand, one of which shall be delivered to some one person among the ten, who shall have therein the greatest number of votes given at the election poll so held by the sheriff or other officer so certifying, and the other shall be returned to the governor within twelve days after the day of holding the said polls. And in case of failing to make such returns within the time herein prescribed, the sheriff or other officer, whose duty it shall be so to do, shall forfeit and pay to the State the sum of five hundred dollars, to be recovered by the attorney-general in the superior court for the county of Wake.

Persons qualified to vote for electors; time and place of elections.

Certificate of poll and return.

By whom made.

Penalty of \$500 in case of failure.—R. S. c. 41, s. 1, 2.—1840, c. 26; 1852, c. 55; 1852, c. 159.

Gov. to proclaim electors, and warn them to attend at Raleigh; to deliver them a list of votes, and lay one before Assembly.—R. S. c. 41, s. 1.—1840, c. 26, s. 2.

3. The governor, within three days after the expiration of the time for the receipt of such certificates and returns, shall proceed to ascertain therefrom the ten persons for whom the greatest number of the whole number of votes throughout the State shall have been given; and at the expiration of that time he shall issue his proclamation, and cause the same to be published in three newspapers of the city of Raleigh, wherein he shall set forth the names of the persons duly elected as electors, and warn each of them to attend at the city of Raleigh on the first Wednesday in December then next ensuing, to vote for President and Vice-President of the United States; and he shall, on or before the said first Wednesday in December, make out three lists of the names of the said ten persons, and cause the same to be delivered to them, as directed by the act of congress; and he shall lay before the General Assembly, for their inspection, the certificates by him received from the sheriffs as aforesaid.

When and where electors shall meet to vote.—R. S. c. 41, s. 3.

4. The ten persons for whom the greatest number of votes throughout the State shall appear to have been given, shall be electors, for and on behalf of the 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 fifty-six, and on the first Wednesday of December next after their appointment in every year in which they shall be appointed, and then and there give their votes for President and Vice-President of the United States.

In case of vacancy in offices of president and vice-president, governor to issue proclamation for election.—R. S. c. 41, s. 4.

5. Whenever the offices of President and Vice-President of the United States shall both become vacant, the governor, upon receiving a notification of such vacancy from the secretary of State of the United States, shall forthwith issue his proclamation, directing the sheriffs of the several counties, or other proper officers, to hold elections, within their respective counties, for the appointment of electors of President and Vice-President of the United States, on the day prescribed for holding the stated elections of the year in which such vacancy may happen. *Provided*, that 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 such space, 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 day aforesaid; and 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.

Penalty on electors failing to attend.

6. Each elector, chosen 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, (except in case of sickness or other unavoidable accident,) shall forfeit and pay four hundred dollars, to be

recovered by the attorney-general, in the superior court of Wake county. And any sheriff or other officer duly authorized for that purpose, refusing to take the poll when thereunto required by a person qualified to vote, or making or signifying, or delivering or transmitting a false certificate or return of an election, or making any erasure or alteration in the poll books, or refusing to suffer any candidate or person qualified to vote, at his own expense to have a copy of the poll books, shall forfeit and pay two hundred dollars, one half to the use of the person who will sue for the same, and the other half to the use of the State.

On sheriff's refusing to hold poll, or making false return, &c.—R. S. c. 41, s. 5.

7. The electors shall be allowed for their travelling to and from the city of Raleigh and their attendance, the same compensation as may be allowed members of the General Assembly, and shall be entitled to the same privileges.

Compensation and privileges of electors.—R. S. c. 41, s. 6.

8. In case any elector should, by reason of sickness or other cause, not attend and give his vote as herein prescribed, the other electors, then present, shall appoint some other person to supply his place; and the person appointed, shall be taken and held to all intents and purposes as an elector to vote for President and Vice-President of the United States.

May supply vacancies in their body.—R. S. c. 41, s. 7.

9. The sheriff and other officers, for holding said elections and conveying duplicate certificates to the governor, shall be allowed the same fees, and the same *per diem* pay for travelling, as are allowed to them in elections for members of congress.

Pay of sheriff for holding elections.—R. S. c. 41, s. 6.

## CHAPTER 42.

### ENTRIES AND GRANTS.

SECTION

1. What lands subject to entry. In what cases land covered by navigable waters may be entered. Regulation of line on water. Price of such land. Owners of wharves on such land may enter it. Lands covered by lake water not to be entered. Nor swamp land of two thousand acres in one body. Marsh or swamp land of fifty acres entered in certain cases.
2. Entries and grants of land not authorized, void.
3. Entry-takers and surveyors appointed.
4. When a vacancy, clerk of county court to act as entry-taker.
5. Bonds of surveyors and entry-takers, &c. Entry-taker to keep office at court house.

SECTION

6. Surveyors may appoint deputies.
7. Price at which lands may be entered.
8. When entry money to be paid. Time of payment on certain entries extended. Proviso.
9. On failure to pay the price, subsequent enterer entitled.
10. In case of lapse same person not to reënter within one year.
11. Entries, how made, and warrants issued.
12. Surveys, how made and returned. Chain carriers appointed and sworn. Special surveyor, when appointed.
13. Surveys to be according to priority of entry.
14. Warrant of survey, when lost duplicate may be issued.

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15. On death, &c. of entry-taker, successor to issue warrants.
16. Entry-takers, how to make entries for themselves.
17. Surveyors, how to have surveys made for themselves.
18. Entry-takers to make annual returns to secretary of State.
19. Penalty for failure, how recovered.
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25. Certain grants heretofore issued to surveyors, &c., confirmed.
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27. Grants on entries extending into two or more counties, confirmed.
28. Mistakes of surveyor and secretary, how corrected. Application to be made in three years after date of grant.
29. Persons aggrieved by issuing of patents, how to proceed.
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31. Chapter not to apply to Cherokee lands.

What lands subject to entry.—R. S. c. 42, s. 1, 2, 3, 8. —1846, c. 36. In what cases, land covered by nav. waters may be entered.—1854, c. 21, s. 1, 2, 3, 4.

Regulation of line on water.

Price of such land.

Owners of wharves on such land may enter it.

Lands covered by lake water, not to be entered.

Nor swamp land of two thousand acres in one body.

Marsh or swamp land of fifty acres, en-

1. ALL vacant and unappropriated lands belonging to the State, shall be subject to entry by any citizen thereof, in the manner hereinafter provided, except:—

(1.) Lands covered by navigable waters. *Provided, however,* that persons owning land on any navigable sound, river, creek, or arm of the sea, for the purpose of erecting wharves on the side of the deep water thereof, next to their lands, may make entries of the lands covered by water, adjacent to their own, as far as the deep water of such sound, river, creek, or arm of the sea, and obtain title as in other cases. But persons making such entries shall be confined to straight lines, including only the fronts of their own tracts, and shall in no respect obstruct or impair navigation.

And when any such entry shall be made in front of the lands in any incorporated town, the town corporation shall regulate the line on deep water, to which entries may be made.

And for all lands thus entered, there shall be paid into the treasury the sum of one dollar per acre.

Also, when any person shall have erected a wharf on public lands of the description aforesaid, before the passage of this section, such person shall have liberty to enter said land, including his wharf, under the restrictions, and upon the terms above set forth.

(2.) Lands covered by the waters of any lake, or which, though now covered, may hereafter be gained therefrom by the recession, draining, or diminution of such waters, or have been so gained heretofore, and not lawfully entered.

(3.) Marsh or swamp land, where the quantity of land in any one marsh or swamp exceeds two thousand acres, or where, if of less quantity, the same has been surveyed by the State, or by the president and directors of the literary fund of North Carolina, with a view to draining and reclaiming the same.

(4.) *Provided,* that marsh or swamp lands, unsurveyed as aforesaid, not exceeding fifty acres in one body, though lying

within a marsh or swamp of a greater number of acres than two thousand, may be entered, when the same shall be situated altogether between the lines of tracts heretofore granted.

tered in certain cases.

2. Every entry made, and every grant issued, for any lands not herein authorized to be entered or granted, shall be void.

Entries and grants not authorized, void.—R. S. c. 42, s. 1, 3.

3. The court of pleas and quarter-sessions may, when they deem it necessary, elect one person to receive entries of claims for lands within the county; and shall also elect not more than two persons, properly qualified, to be surveyors of lands within the same; and any person elected shall hold his office for four years.

Entry-takers and surveyors appointed.—R. S. c. 42, s. 4.

4. Where a vacancy exists in the office of entry-taker, the clerk of the court of pleas and quarter-sessions shall act as entry-taker, until such vacancy be filled by a regular appointment; shall take charge of the books belonging to the office; discharge all the duties and receive the emoluments; and shall be subject to the rules, regulations, and penalties prescribed by law for entry-takers.

Where a vacancy, clerk of county court to act as entry-taker.—R. S. c. 42, s. 5.

5. Every surveyor shall enter into bond in the sum of four thousand dollars, and every entry-taker into bond in the sum of two thousand dollars, payable to the State of North Carolina, with sufficient security, for the faithful discharge of the duties of his office. And the entry-taker shall keep his office at the court house of his county, or within one mile thereof, on pain of forfeiting one hundred dollars to the use of the county, to be sued for by the county solicitor.

Bonds of surveyors and entry-takers, &c. Entry-taker to keep office at court house.—R. S. c. 42, s. 6; 1848, e. 68.

6. Every surveyor may appoint deputies, who shall, previous to entering on the duties of their office, be qualified in a similar manner with the surveyor; and the surveyor making such appointment shall be liable for the conduct of such deputies, as for his own conduct in office.

Surveyors may appoint deputies.—R. S. c. 42, s. 7.

7. Twelve and a half cents shall be paid to the treasurer for every acre of land that may be entered. *Provided*, that no person shall enter more than one hundred acres, within any one year, at that price; and if any person shall enter more than one hundred acres, in the same survey, or in any one year, he shall pay fifteen cents for every acre he may enter.

Price at which lands may be entered.—R. S. c. 42, s. 9.

8. All entries of land, made in the course of any one year, shall, in every event, be paid for on or before the thirty-first day of December, which shall happen in the second year thereafter; and all entries of land, not paid for agreeable to this section, shall become null and void, and may be entered by any other person. *Provided, however*, that all persons who have entered vacant lands and paid for the same, since the first day of January, one thousand eight hundred and forty, shall have until the first day of January, one thousand eight hundred and fifty-seven to perfect their titles to the same by grant; and all persons who have entered lands according to law, since the first day of January, one thousand eight hundred and forty-five, and have not paid for the same, shall have until the first day of January, one thousand eight hundred and fifty-seven to

When to be paid.

Time of payment on certain entries extended.—1854, c. 49, s. 1, 2.

Proviso.

make payment and perfect their titles thereto. *Provided further,* that nothing in this section contained shall be so construed as to affect the titles of persons who have heretofore obtained grants to said lands, or the rights of junior entries, or to extend to the swamp lands of the State; or to extend to, or embrace any entry of more than six hundred and forty acres.

On failure to pay the price, subsequent enterer entitled.—  
R. S. c. 42, s. 11.

9. Whenever an entry of land shall be made in any entry-taker's office, and the enterer shall fail to pay the price for the same, within the time limited by law, any person who may have made a subsequent entry for the same land, may pay the price and have a grant.

In case of lapse, same person not to reënter within one year.—  
R. S. c. 42, s. 12.

10. No lands entered on the books of the entry-takers, the entry of which shall be suffered to lapse by non-payment of the price thereof, shall be reëntered within one year after the time at which such entry shall lapse, by the person in whose name such entry was made, but such reëntry shall be void.

Entries, how made, and warrants issued.—  
R. S. c. 42, s. 13.

11. The claimant of land shall produce to the entry-taker a writing, signed by such claimant, setting forth where the land is situated, the nearest watercourse, mountains, and remarkable places, and such watercourses and remarkable places as may be therein, the natural boundaries, and the lines of any other person, if any, which divide it from other lands; and every such writing shall be on one quarter sheet of paper at least, and be indorsed by the entry-taker with the name of the claimant, the 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; each 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.

Surveys, how made and returned.

12. 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, agreeable to this chapter; 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 watercourses, and other remarkable places crossed or touched by or near to the lines of such lands, and also the quantity of acres; and land lying on any navigable water shall be surveyed in such manner, that the water shall form one side of the survey, and the land be laid off back from the water; and he shall transmit the plats to the office of the secretary of State, or deliver them to the claimant, within one year, 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 survey shall be made without chain carriers, who shall actually

Chain carriers appointed and sworn.



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 the surveyor is empowered and required to administer. *Provided, however,* that when the office of county surveyor is vacant, the county court may appoint a special surveyor to survey any lands that may be entered; and the plats and certificates of such special surveyor, accompanied by a copy of the order of the county court appointing him, shall be deemed and held valid, as if done by a county surveyor duly elected.

Special surveyor, when appointed.—R. S. c. 42, s. 14. —1844, c. 27; 1846, c. 36.

13. 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 obtained by any subsequent entry, otherwise than is by this chapter directed, shall be void. *Provided, nevertheless,* that nothing herein contained shall be construed to prevent any person who shall make a subsequent entry from surveying and obtaining a grant, as the law directs, for all such surplus land as shall remain, after the enterer of such land hath surveyed his entry as aforesaid.

Surveys to be according to priority of entry.—R. S. c. 42, s. 15.

14. When any person shall duly make an entry of lands which shall not have become void by lapse of time, and upon which the entry-taker shall issue his warrant of survey, and the same be lost by accident, the entry-taker, on due proof being made to his satisfaction, by affidavit of the claimant or the surveyor or deputy-surveyor, may issue a duplicate warrant of survey, of the same tenor and date, taking care to set forth, on the face of said warrant, that the same is a duplicate; in which case such warrant shall be as valid as the original.

Warrant of survey lost, duplicate may be issued.—R. S. c. 42, s. 16.

15. In all cases where an entry shall be made, and the entry-taker shall die or resign before a warrant shall be issued thereupon, his successor shall issue a warrant.

On death, &c., of entry-taker, suc'r to issue warrants.—R. S. c. 42, s. 17. Entry-takers, how to make entries for themselves.—R. S. c. 42, s. 18.

16. If any entry-taker shall desire to make an entry in his own name, the same 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 next county court, who shall insert it; and every entry made by or for such entry-taker, in any other manner, shall be void.

17. 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, the county court of said county shall appoint some person to make the survey, and the entry-taker shall direct his warrant of survey to such person; and all certificates, surveys, and plats of the same shall be made under the same regulations as prescribe the duty of the county surveyor in similar cases.

Surveyors, how to have surveys made for themselves.—R. S. c. 42, s. 19.

18. Every entry-taker shall make return to the secretary of State, 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 sec'y.—R. S. c. 42, s. 20.

19. The secretary of State shall furnish the attorney-general, at every spring term of the superior court of Wake county,

Penalty for failure, how re-

covered.—R. S. c. 42, s. 21.

Public treas'r to receive entry money.—R. S. c. 42, s. 22.

with a certificate of failure in every case where any entry-taker shall fail to make return agreeable to law; and the attorney-general shall move for judgment against such entry-taker and his sureties, and the court shall give judgment accordingly.

20. The public treasurer shall receive the 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 by the returns made to him from the surveyor or entry-taker, or from the entry-taker's warrant, or the plats of survey.

Grants to issue, on what certificates.—R. S. c. 42, s. 23.

21. No grant shall issue on the treasurer's receipt for the money; but the comptroller shall make out and deliver to the secretary of State a certificate, conformable to each receipt by him countersigned, on which the secretary shall issue the grant.

Grants, how authenticated.]

22. The secretary, on application of claimants, shall 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 two years after such grant shall be perfected as aforesaid, cause the same to be registered in the county where the land shall lie; and any person may cause to be there registered any certified copy of a grant from the office of the secretary of State, which shall have the same effect as if the original had been registered.

All grants to be registered.

Copies may be registered.—R. S. c. 42, s. 24.

How to issue on death of enterer.—R. S. c. 42, s. 25.

23. In case of the death of any person having made 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, as heirs at law, devisees, tenants in dower, by the courtesy, or otherwise, shall have the same estate as if the land had been granted during the life of the decedent.

Seal of grant lost, may be renewed.—R. S. c. 42, s. 26.

24. In all cases where the seal annexed to a grant is lost or destroyed, the governor may, on the certificate of the secretary of State that the grant was fairly obtained, cause the seal of the State to be affixed thereto.

Certain grants heretofore issued, to surveyors, &c., confirmed.—R. S. c. 42, s. 27.

25. Grants of land made by the State to surveyors and deputy-surveyors, prior to the first day of January, one thousand eight hundred and twenty-nine, upon surveys, plats, and certificates of the same, made by them for themselves respectively, without other illegality, and without fraud or partiality, the certificates in all cases being signed by the principal surveyor, are confirmed and declared to be good and valid.

Certain other grants declared valid.—R. S. c. 42, s. 28.

26. 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-surveyor only, shall be 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 in due form. *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 twenty-nine.

27. Whereas, many citizens of the State, on making entries of lands near the lines of the county 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 into other counties than those where the entries were made; for remedy whereof, *Be it enacted*, That all grants issued on entries made for lands situated as aforesaid, when the money has been paid into the public treasury, shall be good and valid against any entries hereafter made or grants issued thereon.

Grants on entries extending into two or more counties, confirmed.—R. S. c. 42, s. 29.

28. Whenever there 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 agreeable to said returns, or misname the claimant, or make other mistake, so as such claimant shall be injured thereby, the claimant 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 might sustain in consequence of such error or mistake, with all the matters and things relative thereto; and the said court, (seven justices being present, if the petition be in the court of pleas and quarter-sessions,) may hear testimony respecting the truth of the allegations set forth in the petition; and if it shall appear by said testimony, from the return of the surveyor or the error of the secretary, that the patentee is liable to be injured thereby, the court shall direct the clerk to certify the facts to the secretary of State, who shall file the same in his office, and correct the error in the patent, and likewise in the records of his office. The costs of such suit 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 costs shall be paid as the court may decree. The benefits granted by this section 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 shall direct a copy of the order to be recorded in the register's books of the county. *Provided*, that no such petition shall be brought, but within three years after the date of the patent; and if brought after that time, the court shall dismiss the same, and

Mistakes of surveyor and secretary, how corrected.

Application to be made within three years after date of

grant.—R. S. c. 42, s. 30.

all proceedings had thereon shall be deemed null and of no effect. *And provided also*, that nothing herein 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 the 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.

Persons aggrieved by issuing of patents, how to proceed.—R. S. c. 42, s. 31.

29. When any person claiming title to lands 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 aggrieved by any grant or patent issued or made, since the fourth day of July, one thousand seven hundred and seventy-six, to any other person, against law or obtained by false suggestions, surprise, or fraud, the person aggrieved may file his petition in the superior court of law for the county in which such land may be, 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 grantee, patentee, or owner, to show cause why the same shall not be repealed and vacated.

Proceedings and judgment of court in such cases.

30. 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, when 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 recorded at large, shall be filed by the petitioner in the secretary's office, where it shall be recorded in a book 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 of proceedings vacating grant, to be filed in sec'y's office.—R. S. c. 42, s. 32.

Chapter not to apply to Cherokee lands.—R. S. c. 42, s. 36.

31. Nothing contained in this chapter shall apply to the lands commonly known as, and called Cherokee lands, but the said lands are to be disposed of and regulated according to the laws in relation thereto.

SECT. 1. (1.) *Grants for lands not subject to entry*, 13 Ire. 312, 4 D. & B. 328, 1 Mur. 162; *covered by water*, 7 Ire. 139, 1 Hay. 489, 2 Hawks. 226. (2.) 1 Jones, 234.

SECT. 3. *Entry-taker cannot appoint deputy*, 3 Ire. Eq. 593. *Effect of entry in equity*, 2 Ire. Eq. 312.

SECT. 11. *Irregular entry*, 2 Mur. 375; *description of land*, 1 D. & B. Eq. 369.

SECT. 21. *Grant not collaterally impeached*, Bus. 407, 13 Ire. 312. *Priority*, 3 Mur. 539, 1 Hay. 176.

SECT. 22. *Effect of time of registration*, 9 Ire. 333, 3 Mur. 21.

SECT. 27. 1 Dev. Eq. 483.  
 SECT. 29. 4 Dev. 495, 1 Ib. 481, Ib. 300, 2 D. & B. 246, 4 Ib. 533; *purchaser from grantee*, 1 Dev. 427, 2 Mur. 375, 3 Ib. 319; *no limitation of time*, 3 Mur. 322; *effect of judgment on scire facias*, 3 D. & B. 14.

CHAPTER 43.

ESTATES.

SECTION

1. Estates in tail converted into fee-simple.
2. In joint tenancy, the share of deceased cotenant not to vest in survivor. Proviso as to partners in trade.
3. Certain contingent limitations in deeds or wills, how construed. If made since 15th January, 1828.
4. Infant unborn, may take by deed, &c.
5. Limitation to the heirs of a living person, to be, to his children.
6. In conveyances to uses, possession transferred to use without livery.

SECTION

7. Grantees of reversions to have such rights against tenants for life or years, as grantors had.
8. And such tenants to have same rights against grantees of reversions, as against the grantors.
9. Buying and selling pretended rights or titles, prohibited.
10. Collateral and certain other warranties made void. To stand as covenants only.

1. EVERY person seized of an estate in tail, shall be deemed to be seized of the same 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 seventy-seven, 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 in tail and in remainder, of and from all claim, action, 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.

*Estates in tail converted into fee-simple.—R. S. c. 43, s. 1.*

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, 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 in tenancy in common. *Provided always*, that estates held in joint tenancy for the purpose of carrying on and promoting trade and commerce, or any useful work or manufacture, established and pursued with a view of profit to the parties therein concerned, shall be vested in the surviving partner, in order to enable him to settle and 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 shall account with, and pay, and

*In joint tenancy, the share of deceased cotenant not to vest in survivor.*

*Proviso as to partners in trade.—R. S. c. 43, s. 2.*

deliver to the heirs, executors, administrators, and assigns respectively of such deceased partner, all such part, share, and sums of money as he may be entitled to by virtue of the original agreement, if any, or according to his 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.

Certain contingent limitations in deeds or wills, how construed;

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 issue 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 lunar 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 twenty-eight.

If made since 15th Jan., 1828, —R. S. c. 43, s. 3.

Infant, unborn, may take by deed, &c.

4. An infant unborn, but in *esse*, shall be deemed a person capable of taking by deed or other writing, any estate whatever, in the same manner as if he were born.

Limitation to the heirs of a living person, to be to his children.

5. Any limitation by deed, will, or other writing, to the heirs of a living person, shall be construed to be to the children of such person, unless a contrary intention appear by the deed or will.

In conveyances to uses, possession transferred to use without livery.—R. S. c. 43, s. 4.—27 H. 8, c. 10.

6. 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 to be transferred to the bargainee, releasee, or person entitled to the use, for the estate or interest which such person shall have in the use, as perfectly as if the bargainee, releasee, or person entitled to the use had been enfeoffed at common law with livery of seizin of the land, intended to be conveyed by such deed or covenant.

Grantees of reversions to have such rights against tenants for life or years, as grantors had.—R. S. c. 43, s. 5, —32 H. 8, c. 34, s. 1.

7. Whenever a conveyance shall be made by any person, of any reversion in lands, rents, tenements, or hereditaments, which, at the time of such conveyance, shall be held by any other person for a term of life or years, such grantee, his heirs, executors, administrators, and assigns, shall have the like advantages against the tenant for life, and against the tenant for years, his executors, administrators, 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 such tenant for life or years hold the same lands, tenements, rents, or hereditaments, against said tenant for life or for years, his executors, administrators, and assigns, as the grantor or lessor himself or his heirs might have.

8. Lessees and grantees of lands, rents, tenements, and hereditaments for term of years or life, their executors, administrators, and assigns, shall have like action, advantage, and remedy against every person, his heirs and assigns, who shall have any conveyance from any person of the reversion of the same lands, rents, tenements, and hereditaments, so let or any parcel thereof, for any condition, covenant, or agreement contained or expressed in the indenture of their leases, as the same lessees or any of them might and should have had against the said lessor and grantor, and his heirs.

And such tenants to have same rights against grantees of reversions, as against the grantors.—R. S. c. 43, s. 6.—32 H. 8, c. 34, s. 2.

9. No person shall buy, sell, or obtain any pretended right or title, or take a 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 both he that shall make any such sale, promise, or covenant, and the buyer, knowing the same, shall forfeit 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*, that any person being in the lawful possession, by taking the rents and profits of any tenements, may buy the pretended right of any other person to such tenements.

Buying and selling pretended rights or titles, prohibited.—R. S. c. 43, s. 7.—32 H. 8, c. 9, s. 2, 4.

10. All collateral warranties are abolished; and all warranties, made by any tenant for life, of lands, tenements, or hereditaments, the same descending or coming to any person in reversion or remainder, shall be void. And all such warranties, as aforesaid, shall be deemed covenants only, and bind the covenantor in like manner as other obligations.

Collateral and certain other warranties made void. To stand as covenants only.—R. S. c. 43, s. 8.—1852, c. 16.—4 Anne, c. 16, s. 21.

SECT. 2. *Conveyance to husband and wife*, 2 D. & B. 537, Bus. Eq. 286. *Purchase with partnership funds*, 1 D. & B. Eq. 524.

SECT. 3. *Hills before this section*, 8 Ire. 133, 1b. 25, 7 Ib. 261, 5 Ib. 225, 4 Ib. 53, 1b. 57, 1b. 287, 3 Ib. 134, 1b. 200.

SECT. 10. Bus. 169; 12 Ire. 123.

## CHAPTER 44.

### EVIDENCE.

SECTION

1. Evidence necessary to support title under H. E. McCulloch.
2. Grant or copy from proprietors, sufficient evidence of title under him.
3. Law of other States, what evidence of.

SECTION

4. Printed statute book evidence of private acts.
5. Other evidence of private acts.
6. Copies from secretary's office of plats of survey, good evidence.

SECTION	SECTION
7. Administrations, &c., and returns of administrators and executors, in other States, how certified.	11. Evidence in suits, concerning lands, in Haywood and Henderson.
8. Records and papers lodged in State offices, proved by copy.	12. Copies of wills, in the office of secretary of State, to be evidence.
9. Wills or deeds in other States, proved by certified copies.	13. Variance between execution and judgment, not to affect title of property sold.
10. In suits on official bonds, and bonds of executors, &c., evidence against principal, admissible against sureties.	14. Deeds registered and lost, and the registry also destroyed, presumed to have been in due form.

Evidence necessary to support title under H. E. McCulloch.—R. S. c. 44, s. 1.

1. In all suits, 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 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 McCulloch, or 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 or copy, from proprietors, sufficient evidence of title under him.—R. S. c. 44, s. 2.

2. In all trials where the titles 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 or their lawful attorney, or a certified copy thereof, shall be deemed and held sufficient proof of the title of such proprietors, in the same manner as though the original grants were produced in evidence.

Law of other States, evidence of.—R. S. c. 44, s. 3.

3. In all suits, wherein it may be necessary to produce in evidence the law of any of our sister States, or of a territory of the United States, either party may exhibit a copy of the law of such State or territory, drawn off by the secretary of State of this State from the copy of the laws of such State or territory deposited in his or the executive office or State library, certified under his hand with the seal of this State attached, and he shall furnish said copy when required.

Printed statutes evidence of private acts.—R. S. c. 44, s. 4.

4. All private acts passed by the General Assembly, and printed by the printer of the State, may be read in evidence in all courts, from the printed statute book.

Other evidence of private acts.—R. S. c. 44, s. 5.

5. Any private act published by Francis X. Martin, in his collection of private acts, or a copy of any private act certified by the secretary of State, shall be received in evidence in every court.

Copy of survey from secreta-

6. Copies of the plats and certificates of survey, or their ac-



companying warrants, which may be filed in the secretary's office, certified by him as true copies, shall be as good evidence, in any court, as the original.

7. When an administration or letters testamentary on the goods and chattels of any person deceased, being an inhabitant in another State or territory, has been granted, or a return or inventory of the estate has been made, a copy of the record of administration, or of the letters testamentary, and a copy of any inventory or return of the effects of the deceased, after the same has been granted or made, agreeable 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 officer of the said State or territory, and the further testimonial of the governor that the person certifying is the proper officer, shall be allowed as evidence in the courts of the State.

8. Copies of all official bonds or writings recorded or filed as records in any court, or lodged in the office of the governor, treasurer, comptroller, or secretary of State, shall be competent evidence as the originals, when certified by the keeper of such records or writings under the seal of office, when there is such seal, or under his hand when there is no such seal, unless the court shall order the production of the original.

9. In cases where inhabitants of other States or territories, by will or deed, devise or convey property situated in this State, and the original will or deed cannot be obtained for registration in the county where the land lies, or where the property shall be in dispute, a copy of said will or deed, (after the same has been proved and registered or deposited, agreeable to the laws of the State where the persons died or made the same,) being properly certified, either according to the act of Congress aforesaid, or by the proper officer of the said State or territory, with the further testimonial of the governor that the person certifying is the proper officer, shall be read as evidence in the courts of this State.

10. In actions brought upon the official bonds of clerks of the county or superior courts, clerks and masters in equity, sheriffs, coroners, constables, or other public officers, and also upon the bonds of executors, administrators, or guardians, when it may be necessary for the plaintiff to prove any default of the principal obligors, any receipt or acknowledgment of such obligors, or any other matter or thing which, by law, would be admissible and competent for or toward proving the same as against him, shall, in like manner, be admissible and competent against all or any of his sureties, who may be defendants with or without him in said actions.

11. In all legal controversies touching lands in the counties of Haywood and Henderson, in which either party shall claim title under any sale for taxes alleged to have been due and laid, in or for the year one thousand seven hundred and ninety-six, or any preceding year, the recital contained in the deed or as-

ry's office, good evidence.—R. S. c. 44, s. 6.

Administrations, &c., and returns of administrators and executors, in other States, how certified.—R. S. c. 44, s. 7.

Records and papers lodged in State offices, proved by copy.—R. S. c. 23, s. 13.

Wills or deeds in other States proved by certified copies.—R. S. c. 44, s. 8.

In suits on official bonds, and bonds of executors, &c., evidence against principal admissible against sureties.—1844, c. 38, s. 1.

Evidence in suits, concerning lands in Haywood and Henderson.—1842, c. 66.

insurance, made by the sheriff or other officer conveying or assuring the same, of the taxes having been laid and assessed, and of the same having remained due and unpaid, shall be held and taken to be *prima facie* evidence of the truth of each and every of the matters so recited.

Copies of wills, in the office of secretary, to be evidence.—1852, c. 172.

12. Copies of wills filed or recorded in the office of the secretary of State, attested by the secretary, may be given in evidence in any court, and shall be taken as sufficient proof of the devise of real estate, and are declared good and effectual to pass the estate therein devised, in the same manner as if such wills had been duly proved and recorded in the county court.

Variance between execution and judgment, not to affect title of property sold.—1848, c. 53.

13. Whenever property may have been sold by an officer, by virtue of any execution or other process commanding the sale thereof, no variance between the execution and the judgment whereon the same was issued, in the sum due, in the manner in which it is due, or in the time when it is due, shall invalidate or affect the title of the purchaser of such property.

Deeds registered and lost, and the registry also destroyed, presumed to have been in due form.—1854, c. 17.

14. Whenever it shall be shown, in any judicial proceeding, that a deed, or conveyance of real estate, has been lost or destroyed, and that the same had been registered, and that the register's book containing the copy has been destroyed by fire or other accident, so that a copy thereof cannot be had, it shall be presumed and held, unless the contents be shown to have been otherwise, that such deed or conveyance transferred an estate in fee-simple, if the grantor was entitled to such an estate at the time of conveyance; and that it was made upon sufficient consideration.

SECT. 3. 13 Ire. 114; 11 Ib. 576; 2 Ib. 346; 2 Dev. 563; 1 Dev. Eq. 123. *Title no part of a statute*, 3 Hawks, 404.

SECT. 8. *Negative certificate*, 2 Dev. 15. *Records*, 6 Ire. 159.

SECT. 13. 13 Ire. 425. *When plaintiff is purchaser*, 11 Ire. 288.

## CHAPTER 45.

### EXECUTIONS.

#### SECTION

1. Real estate may be taken in execution.
2. Executions to issue against real and personal estate; latter to be first taken and sold.
3. Levies on leaseholds of three years, under justice's execution, returned to court.
4. Trust estates liable to execution. Purchaser to hold property discharged of trust.

#### SECTION

5. The equity, and legal right of redemption in real estate, liable to execution.
6. Sheriff's deed to recite the estate was mortgaged.
7. Articles exempt from execution.
8. Other articles for housekeepers.
9. How to be assigned.
10. Sale of exempt property void.
11. Levy not to be made on growing crops till matured.

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- 12. Justice's execution levied on land, and returned to court, — proceedings.
- 13. If not satisfied, execution to issue for the balance.
- 14. Lands and slaves, how and where sold under execution. Proviso, as to sales decreed by court of equity.
- 15. County court may appoint other places of sale.
- 16. Notice to be given of sales under execution. Advertisement made, how and for what time.
- 17. At what hour sales to begin.
- 18. Penalty for selling contrary to law.
- 19. What to be stated by officer returning no sale for want of bidders. Penalty for omission.
- 20. Justice's execution to bind personally from levy only.
- 21. Sheriff, &c., may take bond for forthcoming of property levied on.
- 22. The surety to be bailee of the officer, by taking list of property, &c. Sales,

- when made under other levied executions.
- 23. Officer how to proceed on the bond, when broken.
- 24. Officer levying justice's execution on land, to notify defendant five days before court. Otherwise court to direct notice.
- 25. County court to make allowance to officers for keeping horses, &c., taken in execution.
- 26. Officer to state and return his account. To furnish debtor a copy.
- 27. Purchaser may recover of defendant in execution, if the title to the thing sold be defective.
- 28. Debtor dying in execution, debt not discharged.
- 29. Clerks to issue execution in six weeks, &c. Penalty of \$100 for failure.
- 30. Officers to prepare deeds for property sold by them.
- 31. Costs on executions to be paid to clerks.

1. THE houses, lands, and other hereditaments and real estate, 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, selling, or disposing of the same towards the satisfaction of such debts, duties, and demands, in like manner as personal estates are seized, sold, or disposed of in satisfaction of debts.

Real estate may be taken in execution.—  
R. S. c. 45, s. 1.

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 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.

Executions to issue against real and personal estate; the latter to be first taken and sold.—R. S. c. 45, s. 2.

3. The levy, by any constable or other officer, under an execution issued by a justice of the peace, on any leasehold estate, of three years' duration or more, at the time of such levy, shall be returned to court as levies on lands, and condemned to sale, and sold in the manner provided for lands.

Levies on leaseholds of three years, returned to court, when.

4. Where any person shall be seized or possessed of any lands, tenements, rents, and hereditaments, or any goods and chattels, in trust for any person against whom any execution

Trust estates liable to execution.

Purchaser to hold discharged of trust.—R. S. c. 45, s. 4.

or process shall be issued, such estate may be levied on and sold under such execution or process; and the purchaser thereof shall hold and enjoy the same freed and discharged from all incumbrances of the person so seized, or possessed in trust, as aforesaid.

Right of redeeming real estate liable to execution.—R. S. c. 45, s. 5.

5. The equity of redemption, and the legal right of redemption, in lands, tenements, rents, or other hereditaments, which shall be pledged or mortgaged, shall in like manner be liable to any execution or process sued out on any judgment against the mortgagor or bargainor.

Sheriff's deed to refer to mortgage.—R. S. c. 45, s. 6.

6. The sheriff selling such lands, tenements, rents, or other hereditaments under execution, shall set forth in the deed to the purchaser thereof, that the said estates were under mortgage at the time of the levy and sale.

Articles exempt from execution.—R. S. c. 45, s. 7.—1848, c. 38, s. 1.

7. The wearing apparel, working tools, arms for muster, one wheel and two pairs of cards, one loom, one bible and testament, one hymn book, one prayerbook, and all necessary school-books, the property of the defendant, shall be exempt from seizure under execution.

Additional articles for housekeeper, exempt.—1844, c. 32; 1846, c. 53; 1848, c. 38, s. 2.

8. In addition to the foregoing articles there shall be, in favor of every housekeeper complying with the provisions of this chapter, exempt from execution on debts contracted since the first day of July, one thousand eight hundred and forty-five, the following property, provided the same shall have been set apart before seizure, to wit: one cow and calf, ten bushels of corn or wheat, fifty pounds of bacon, beef, or pork, or one barrel of fish, all necessary farming tools for one laborer, one bed, bedstead, and covering for every two members of the family, and such other property as the freeholders appointed for that purpose may deem necessary for the comfort and support of such debtor's family; such other property not to exceed in value the sum of fifty dollars at cash valuation. *Provided, however,* that the provisions of this section shall not be extended to any person, against whom judgment is obtained and execution awarded for liability incurred for failure or neglect to work on the public roads, or to muster, or pay his poll tax.

How to be assigned.—1848, c. 38, s. 3.

9. Whenever any such person, or his wife, in his absence, may desire to have the benefit of the preceding section, he shall apply to some justice of the county in which he resides, who shall appoint three respectable freeholders, disinterested and unconnected with the party, to lay off and assign to such person the property to which he may be entitled under said section; and they shall immediately make out a full and fair list thereof, and return the same to the clerk of the court of pleas and quarter-sessions for that county, who shall file the same among the records of his office.

Sale of exempt prop'ty void.—1848, c. 38, s. 5.

10. Every conveyance by sale, deed in trust, or otherwise, for the payment of debts or demands, of any property set apart as aforesaid, shall be void.

No levy on growing crops till matured.—1844, c. 35.

11. No execution shall be levied on growing crops, until the same are matured.

12. When an execution issued by a justice shall be levied on lands and tenements and returned to court according to law, upon application of the plaintiff, the court shall enter up judgment for the amount of the recovery before the justice, and for costs.

Justice's execution levied on land and return'd to court, —proceedings. —R. S. c. 45, s. 8.

13. If, by the sale of the lands so levied on and returned to court, a sufficient sum shall not be raised to satisfy the judgment and costs, the plaintiff may sue execution from the court for the residue thereof.

If not satisfied, execution to issue for the balance.—R. S. c. 45, s. 9.

14. All sales of land or slaves, by the sheriff, coroner, constable, or by the clerk and master in equity, under any execution or decree, shall be made at the court house of the county on the first day of the term of the superior court, or on the same Monday in every month on which the courts of pleas and quarter-sessions are generally held for their respective counties; always making the Monday of each county court and the first day of the term of the superior court, the only sale days in that month; and if, on any sale day, the whole of the property taken in execution cannot be sold, or if property, levied on under other executions, cannot be offered for want of time, or cannot be sold, on the same day, the sheriff or other officer may postpone or continue the sale 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. *Provided*, that nothing herein contained, shall be construed to alter the rules and restrictions under which sales are directed to be conducted, and executions required to be returned; or to alter the days of sale in particular counties, as now established by law. *And provided further*, that the courts of equity may, in any decree of sale made by said courts, appoint the time and place of sale.

Lands and slaves, how and where sold under execution.—R. S. c. 45, s. 10. —1844, c. 9.

15. The court of pleas and quarter-sessions shall have authority, (a majority of the justices being present,) to establish additional places of public sale in their county.

Proviso, as to sales decreed by court of equity.

16. No sheriff, 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 forty days previous thereto, in three public places in his county; nor sell any slave, until he shall have made like advertisement for twenty days previous thereto; nor sell other personal property, until like advertisement for 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, at the court house of his county.

Co. court may appoint other places of sale. —R. S. c. 45, s. 11. Notice to be given of sales. Advertisement made, how and for what time. —R. S. c. 45, s. 12.

17. No sale under an execution or decree shall commence before ten o'clock in the morning, or after four o'clock in the evening, of the day on which the sale is to be made.

At what hour sales to begin. —R. S. c. 45, s. 13.

18. Any sheriff or other officer, who shall make any sale contrary to the true intent and meaning of this chapter, shall forfeit and pay two hundred dollars, to any person suing for

Penalty for selling contrary to law.—R. S. c. 45, s. 14.

the same, one half for his own use, and the other half to the use of the county where the offence is committed.

Sheriff or other officer returning no sale for want of bidders, what he shall state.

19. Whenever a sheriff or other officer shall return upon any writ of *feri facias*, or *venditioni exponas*, 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 the property levied on, and the places at which he hath offered the same for sale; and any officer failing to make such specification, shall 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; for which, on motion of the plaintiff, judgment shall be granted by the court to which the execution shall be returned; or, in the case of a justice's execution, by any justice to whom the execution shall be returned. *Provided*, that nothing in this section contained, or any recovery under the same, shall be a bar to any action for a false return against the sheriff, or other officer.

Penalty for omission.—R. S. c. 45, s. 15.

Justice's ex'n to bind personally from levy only.—R. S. c. 45, s. 16. Sheriff, &c., may take bond for forthcoming of property levied on.—R. S. c. 45, s. 17.

20. Where any execution shall be issued by a justice of the peace, and levied on personal property, the same shall be bound by, and only from, the levy of the execution.

21. If any sheriff or other officer, who may have levied an execution or other process upon personal property, shall permit the same to remain with the possessor, such officer may take a bond for the forthcoming thereof to answer the said execution or process, which bond shall be attested by a credible witness; but the officer shall nevertheless, in all respects, remain liable as heretofore, to the plaintiff's claim.

The surety to be bailee of the officer, by taking list of property, &c.

22. When such a bond shall be taken, the officer shall specify therein the property levied upon, and shall furnish to the surety a list of the property in writing under his hand, attested by at least one credible witness, and stating therein the day of sale; and the property so levied upon shall be deemed in the custody of the surety, as the bailee of the officer; and all other executions thereafter levied on said property, shall create a lien on the same from and after the respective levies, and shall be satisfied accordingly out of the proceeds of the sale of said property; but the officer thereafter levying shall not take the property out of the custody of the surety. *Provided*, that in all such cases, sales of slaves shall take place within sixty days, and of other chattels within thirty days, after the first levy; and if sale shall not be made within the time aforesaid, any other officer who may have levied upon the property, may seize and sell the same.

Sales, when made under other levied executions.—1844, c. 34; 1846, c. 50.

Officer how to proceed on the bond, when broken.—R. S. c. 45, s. 18.

23. If the condition of such bond be broken, the sheriff or other officer, on giving ten days' previous notice in writing, to any obligor therein, may on motion have judgment against him in a summary manner, before the court of pleas and quarter-sessions, or the superior court of the county in which such officer may reside, for all such damages as said officer may have sustained or be judged liable to sustain, not exceed-

ing the penalty of the bond, to be ascertained by a jury, under the direction of the court.

24. When an officer shall levy an execution, issued by a justice of the peace, on land, he shall serve the defendant with notice in writing, five days before the term to which the execution is returned, of the levy, and the term to which it will be returned; and if it do not appear to the court, when an order of sale is prayed, that such notice has been given, the court shall direct a notice to issue, and shall not make any order of sale until the notice be served on the defendant five days previous to the term of the court granting the same; *Provided always*, that, upon affidavit made that the 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 reasonable notice to be given by a publication in some newspaper; and, upon proof of publication, may make the order of sale.

Officer levying justice's execution on land, to notify def't five days before court.

Otherwise court to direct notice.—R. S. c. 45, s. 19.

25. The court of pleas and quarter-sessions shall make a reasonable allowance to officers for keeping and maintaining horses, cattle, hogs, or sheep, and all other property the keeping of which may be chargeable to them, taken into their custody under legal process; and such allowance may be retained by the officers out of the sales of the property, in preference to the satisfaction of the process under which the property was seized or sold.

County court may allow pay for keeping horses, &c., taken in execution.—R. S. c. 45, s. 20.

26. Every such officer shall make out his account, and if required give the debtor or his agent a copy thereof, signed by his own hand, and shall return the account with the execution or other process, under which the property has been seized or sold, to the justice or the court to whom the execution or process is returnable, and shall swear to the correctness of the several items therein set forth; otherwise he shall not be permitted to retain the same.

Officer to state and return his account. To furnish debtor a copy.—R. S. c. 45, s. 22.

27. Where property, real or personal, shall be sold on any execution or decree, by any officer authorized to make the sale, and the sale be legally and *bona fide* made, and such property be not the property of the person against whose estate such execution or decree may have issued, by reason of which the purchaser may have been deprived of the same property, or may have been compelled to pay damages in lieu thereof to the owner; in every such case, the purchaser, his executors, or administrators, may sue the person against whom such execution or decree may have issued, or the person legally representing him, in an action on the case, and recover such sum as he may have paid for the property, with interest from the time of payment. *Provided always*, that such property, if the same be personal property, be present at the sale, and actually delivered to the purchaser.

Purchaser may recover of def't in execution, if the title to the thing sold be defective.—R. S. c. 45, s. 22.

28. Parties, at whose suit the body of any person shall be taken in execution for any judgment recovered, their executors or administrators, may, after the death of the person so

Defendant dying in execution, debt not discharged.—

R. S. c. 45, s. 23.—21 J. 1, c. 24, s. 2, 3.

Clerks to issue executions within six weeks, &c. Penalty of \$100 for failure.—1850, c. 17, s. 1, 2, 3.

Officers to prepare deeds for property sold by them.—1848, c. 39.

Costs on executions to be paid to clerks.—R. S. c. 76, s. 5.

taken and dying in execution, have new execution against the property of the person deceased, as they might have had if such person had never been in execution.

29. The clerks of the county and superior courts shall issue executions on all judgments rendered in their respective courts, unless otherwise directed by the plaintiff therein, within six weeks of the rendition of the judgment, and shall indorse upon the record the date of such issue; and if the executions issued are not returned satisfied to the courts to which they are made returnable, the clerks shall issue *alias* executions, within six weeks thereafter, unless otherwise instructed as aforesaid. And every clerk, who shall fail to comply with the requirements of this section, shall be liable to be amerced in the sum of one hundred dollars, for the benefit of the party aggrieved, under the same rules that are provided, by law, for amercing sheriffs, and shall be further liable to the party injured by suit upon his bond.

30. Sheriffs and other officers, selling lands or slaves, by authority of any execution or process, shall, upon payment of the price, prepare, execute, and deliver to the purchaser a deed for the property purchased. *Provided*, that the purchaser of land shall furnish the officer with a description of the land.

31. The sheriff or other officer shall pay the costs on all executions, which shall be satisfied in whole or in part, to the clerk of the court from which the execution issued, and to no other person, on the second day of the term of the court; and any such officer making default herein, shall forfeit and pay forty dollars.

SECT. 1. *Lien of executor: older and junior*, 4 D. & B. 454, 4 Dev. 128, 2 Ib. 854, 2 Hawks, 341, 1 Ib. 325; *relates back to teste*, 2 Ire. 225; *continued by alias*, 4 Hawks, 309, 4 Ire. Eq. 288; *fi. fa. to one county alias to another*, 3 Dev. 158; *waived; by alias fi. fa. after levy*, 2 Dev. 23, Bus. 28; *by indulgence*, 2 Dev. 359, 8 Ire. 44. *State has priority*, 3 Dev. 12. *When execution may issue*, 1 Hay. 367. *Death of defendant*, 1 D. & B. 356. *Lien on equitable interests*, 10 Ire. 162. *Estate of defendant after levy*, 4 D. & B. 156.

SECT. 2. *Debtor must show personally*, 11 Ire. 627, 1 Hawks, 329, 8 Ib. 328, 2 Ib. 377. SECT. 4. *What liable to levy, or not*, 2 Jones, Eq. 33, 7 Ire. Eq. 70, 5 Ire. 576, 1b. 255, 1b. 192, 6 Ire. Eq. 20, 3 Ire. 459, 1 Ib. 160, 1b. 553, 1 D. & B. Eq. 393, 3 Dev. 425, 1 Dev. Eq. 537, 4 Dev. 172, 4 Hawks, 342. *Fraudulent trust*, 8 Ire. Eq. 16. *Estate of executor vendee*, Bus. Eq. 275, 11 Ire. 456, 4 Ire. Eq. 494.

SECT. 5. *Constructive mortgage*, 5 Ire. 625. *Equity of redemption, by mortgagee plaintiff*, 1 D. & B. 52.

SECT. 6. *Sheriff's deed*, 1 D. & B. Eq. 613, 7 Ire. 14.

SECT. 7. 10 Ire. 43; Bus. 260.

SECT. 8. 11 Ire. 496.

SECT. 9. 13 Ire. 20.

SECT. 11. 12 Ire. 206; 1 D. & B. 241. *How levy made*, 4 D. & B. 385.

SECT. 14. *How sheriff to sell: land*, 3 Ire. 137, 7 Ib. 387, 3 Hawks, 51; *goods*, 7 Ire. Eq. 47, 8 Ire. 70, 1b. 492, 4 Ib. 175, 3 Ib. 256, 2 Hawks, 110, 4 D. & B. 241. *Day of sale*, 11 Ire. 321, 6 Ib. 433, 1b. 437, 3 Dev. 428. *Advertisement waived*, 1 Dev. 1. *Private sale*, 2 Hawks, 199. *Postponement*, 3 Hawks, 16. *Sale not within statute of frauds*, 2 Dev. 149. *Purchaser may assign his bid*, 12 Ire. 369, 7 Ib. 14. *Sale under irregular judgment on execution*, 7 Ire. 14, 1b. 387, 6 Ib. 191, 3 Mur. 250, 2 Jones, 63; *under void execution*, 10 Ire. 466. *Relation of sheriff's deed*, 1 D. & B. 586. *Fraud in sale*, 2 Mur. 364, 8 Ire. 292, 10 Ib. 203, Bus. 352, 4 D. & B. 201, 1 Hawks, 329.

SECT. 20. 1 D. & B. 661; 1 Mur. 266.

SECT. 21. *Obligation of bond*, 13 Ire. 228, 7 Ib. 337, 1 D. & B. 437. *Damages*, 4 Dev. 424.

SECT. 24. *Livy: when returned*, 1 Hawks, 829; *after death of defendant*, 5 Ire. 279; *how made*, Bus. 28; *description of land in*, 6 Ire. 382, 4 Ib. 38. *Form of return*, 3 Ire. 298; *evidence of notice*, 6 Ire. 352; 3 Ib. 137, 5 Ib. 22. *Form of vend. exp.*, 12 Ire. 11.

SECT. 29. 2 Jones, 98.



CHAPTER 46.

EXECUTORS AND ADMINISTRATORS.

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- 61. Sales by heirs, &c., within two years, &c., void as to creditors.
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- 65. Female executor, &c., may swear to inventory, &c., before a justice.

Letters testamentary and of adm'n granted by county courts.—R. S. c. 46, s. 1.

1. 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 such letters shall be signed and issued by the clerk of the court.

Administration, to whom granted.—R. S. c. 46, s. 2.

2. When any person shall die intestate, or having made a will, the executor shall refuse to prove the same or qualify, administration shall be granted to the widow, and after her to the next of kin, or to both, at the discretion of the court; and if the widow and next of kin fail to apply for, 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.

When several in equal degree.—R. S. c. 46, s. 2.

3. When divers persons claiming the administration are in equal degree, the court may grant it to any one or more of them; and if the persons aforesaid fail to apply for the same, or if the person applying shall be deemed incompetent, the court may grant administration to any discreet person.

Executors and administrators to take oath, and administrator to give bond.

4. No clerk shall issue letters testamentary, until the executor has been duly qualified in open court by taking the oath of an executor; nor letters of administration, until the administrator has in like manner been duly qualified by taking the oath of an administrator, and has also given sufficient bond, with two or more able sureties, in the penalty of double the supposed amount of the real and personal estate of the intestate, and with the condition in form following:—

Form of the condition.—R. S. c. 46, s. 3.

The condition of this obligation is such, that if the above-bounden A. B., administrator of C. D., deceased, do make a true and perfect inventory, and account of sales, of all the real estate, and all the goods and chattels, rights and credits of the deceased, which have or shall come to his possession or knowledge, or to the possession of any other person for him, and the same do exhibit into the office of the court where order for administration passed, within ninety days after the date of

these presents, and do well and truly administer according to law, all the goods, chattels, rights and credits of the deceased, and the proceeds of all his real estate, that may be sold for the payment of his debts, which shall at any time come to the possession of the said A. B., or to the possession of any other person for him; and further do make a true and just account of his administration within two years after the date of these presents, and all the rest and residue of the said proceeds of real estate, goods, chattels, and credits which shall be found remaining upon his account, (the same being first examined and allowed by the court,) shall deliver and pay to such person, as the same shall be due unto, pursuant to law; 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, and 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.

5. The bond of every administrator, *pendente lite*, shall be conditioned that he will make and return to court, within three months, a true inventory of all the goods, chattels, rights and credits of the deceased, which have or may come to his possession or knowledge; and that he will render a true account on oath to the court, of all the goods, chattels, debts, and effects of the deceased, that shall be by him received, as such administrator, whenever his trust shall cease, and will deliver the same to the person who shall be appointed executor or administrator of the deceased, or to such other person as shall be lawfully authorized to receive the same.

Bond of adm'r  
*pend. lite*, how  
conditioned.

6. Such administrator shall collect all the goods, chattels, and debts of the deceased, and preserve them for the executor, or administrator thereafter to be appointed; and for that purpose may commence and maintain suits as administrator; and may also sell all such goods as the court may allow.

His duties and  
powers: may  
collect debts  
and sell by or-  
der of court.

7. Upon the granting of letters testamentary or of administration, the power of such administrator shall cease; and he shall forthwith deliver all the goods and effects of the deceased, in his hands, to the executor or administrator, who may prosecute any suit commenced by such special administrator, in like manner as an administrator *de bonis non* may prosecute a suit commenced by a former executor or administrator.

Powers to cease  
on grant of pro-  
bate or adm'n.

His suits, how  
prosecuted.

8. Such administrator shall not be liable to an action by a creditor of the deceased; and the time of limitation for suits against the estate, shall begin to run only from the granting as aforesaid of letters testamentary or of administration.

Not to be sued.  
Lim. of time to  
run from grant  
of common  
adm'n.

9. When any person shall die intestate, and his estate is in such situation as to require the immediate care of some person, any three justices of the peace of the county in which the

Special adm'r  
in certain cases  
appointed by  
three justices.

His power and duties.—R. S. c. 46, s. 4.

deceased had his last usual place of residence, may meet together at the office of the county court of said county, and grant to some discreet person special letters of administration on the estate of the deceased, authorizing him to collect and take into his possession the estate, 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 justices may deem advisable; a schedule whereof shall be made out by the justices, and a copy thereof, signed by them, shall be filed with the clerk.

Bond to be given.—R. S. c. 46, s. 4.

10. Before granting said administration, the justices shall take from such person, bond with approved security in such sum as they shall direct, conditioned for his faithful administration of the estate until the next ensuing court of pleas and quarter-sessions, and for his faithfully accounting for and delivering the estate to such person, as the said court may appoint administrator; and the bond shall be filed with the clerk for safe keeping.

Appointed by court of equity in certain cases.—R. S. c. 46, s. 5.

11. When any person shall die intestate, leaving mortgaged personal property, and there shall be no administration granted upon his estate, the court of equity for the county where the mortgagee resides may appoint a special administrator of such intestate, to the end that the mortgage may be foreclosed, or a decree obtained for the sale of the property.

Executors residing out of the State, to give bond with security within one year.—R. S. c. 46, s. 6.

12. When a testator shall appoint any person residing out of the State, executor of his last will and testament, the court of pleas and quarter-sessions, before which the same shall be offered for probate, shall cause the executor named therein to enter into bond with good and sufficient security for his faithful administration of the estate of the testator, and for the distribution thereof in the manner prescribed by law; the penalty of which shall be double the supposed amount of the real and personal estate of the testator; and until the executor shall enter into such bond, he shall have no authority to intermeddle with the estate; and the court of the county, in which the testator had his last usual place of residence, shall grant letters of administration with the will annexed, which shall continue in force until the said executor shall enter into bond, as aforesaid. *Provided, nevertheless,* that the said executor shall enter into bond, as by this section directed, within the space of one year after the death of the testator, and not afterwards.

A man marrying executrix, shall give bond, &c.—R. S. c. 46, s. 7.

13. In all cases where a man shall marry a woman who is an executrix, he shall give bond with security for the faithful administration of the estate, as is required in cases of administration; and there shall be the same remedy thereon; and if he shall fail to give such bond, the court upon application may order and decree that the power of said executor in right of his wife, and of such executrix, be null; and may then grant letters of administration with the will annexed or otherwise, as the case may require, to such person as they may deem meet.

14. No person shall enter upon the administration of any deceased person's estate, until he has obtained letters of administration, under the penalty of one hundred dollars, one half to the use of the informer and the other half to the State. *Provided*, that nothing contained in this or any preceding section, 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 end of the next succeeding court of pleas and quarter-sessions of the county, wherein letters of administration are issuable.

Administering before letters granted, prohibited. Penalty.—R. S. c. 46, s. 8.

15. The bonds given by any executor or administrator, general or special, shall be made payable to the State of North Carolina, and any person injured by breach thereof may put the same in suit, and recover such damages as he may have sustained.

Bonds how payable, remedy on them.—R. S. c. 46, s. 9.

16. Every executor and administrator, at the term of the court of pleas and quarter-sessions next succeeding his qualification, shall return to the court on oath a just, true, and perfect inventory of all the real estate, goods and chattels of the deceased which have come to his hands, or the hands of any other person for him, which shall be signed by him, and be recorded by the clerk of the court.

Inventory to be returned, when.—R. S. c. 46, s. 10.

17. Executors and administrators, as soon after their qualification as practicable, shall sell, without any order for that purpose, all the perishable estate liable to waste and destruction, except such as may be specially bequeathed: and when the estate shall be so indebted that the debts cannot be discharged by the moneys on hand at the death of the testator, and the sales of such perishable estate; or when there cannot conveniently be a proper distribution of the estate, the executor or administrator shall sell the personal estate for the purposes of paying debts or distribution, or both, as the case may require; but, before making such sale, the executor or administrator shall apply to the county court, and, on showing the necessity of the sale, the court shall allow the same.

Perishable estate to be sold. Other personal estate sold by order of court: when.—R. S. c. 46, s. 11.

18. All sales by an executor or administrator, of the perishable or personal estate, shall be publicly made on a credit of six months, and after twenty days' notification by advertisement posted at the court house and four other public places in the county; and the proceeds of the sale shall be secured by bond with good security, and collected as soon as practicable, otherwise the executor or administrator shall be answerable for the same; and such moneys when received shall be liable for the satisfaction of judgments previously obtained and entered as judgments, when assets should come to the hands of the executor or administrator.

Terms of sale.—R. S. c. 46, s. 11.

19. Nothing in the preceding section shall be construed to affect the powers, trusts, or authorities of an executor, derived from the will of his testator, if thereby creditors be not delayed, nor the order changed in which by law they are entitled to be paid.

Powers under wills not prejudicing creditors to be followed.—R. S. c. 46, s. 12.

Sales, &c., at public auction, between 10 and 4 o'clock.

Penalty for selling otherwise.

Cases excepted.—R. S. c. 46, s. 14.

Dignity of debts prescribed.—R. S. c. 46, s. 15.

Executor and administrator to advertise within two months.—R. S. c. 46, s. 16.

How the advertisements may be proved.—R. S. c. 46, s. 17.

To pay over at the end of two years.

Refunding bond to be given. Remedy of creditors on bond.—R. S. c. 46, s. 18.

20. All sales, renting, and hiring of the property of deceased persons, shall be made and done by public vendue or auction; and no such sale, renting, or hiring shall commence before ten o'clock in the morning, or after four o'clock in the evening, of the day on which the sale, renting, or hiring is to be made: and any executor or administrator, who shall otherwise make any sale, renting, or hiring, shall forfeit and pay two hundred dollars, to any person suing for the same. *Provided*, that nothing herein contained shall be construed to restrict discretionary powers vested in executors by the wills of their testators.

21. In the payment of debts of deceased persons, bills, bonds, and promissory notes, with or without seal, and all settled and liquidated accounts, signed by the debtor, shall be regarded as of equal dignity, and be paid accordingly.

22. Every executor and administrator within two months after being qualified, shall advertise at the court house and two other public places of the county, in which the deceased usually dwelt at the time of his death, for all persons to present their accounts and demands of every kind for payment, within the time prescribed by law.

23. Every executor and administrator shall take a copy of the advertisements he shall put up, in pursuance of the preceding section, which, with an affidavit subscribed thereon by a witness before some justice of the peace of the county in which the advertisements are directed to be made, stating therein the times and places when and where such advertisements were seen, shall, at the term of the court next following that in which the executor or administrator shall qualify, be filed in the office of the clerk of said court; and the copy so attested, shall be considered as a record of the court; and a copy thereof duly certified by the clerk, with a certificate that it was filed at the time herein required, shall be received as evidence in any court. *Provided always*, that nothing herein contained shall preclude any executor or administrator from proving his compliance with the preceding section in any other manner which may be deemed competent.

24. No executor or administrator, after two years from his qualification, shall 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; but all such estate so remaining shall, immediately after the expiration of two years, be divided, and be delivered and paid to such person to whom the same may be due by law, or the will of the deceased, such person or some other for him, giving bond with two or more able sureties, conditioned that if any debt, truly owed by the deceased, shall be afterwards sued for and recovered, or otherwise duly made appear, he will refund and pay his ratable part of such debt, out of the part or share allotted to him: such bond shall be made payable to the State of North Carolina, and shall enure to the sole use of the cred-

itors, who may have a *scire facias*, in manner hereinafter directed, against the obligors therein.

25. The executor or administrator shall bring the bond into court, at the term next after it is taken, together with a descriptive list of the property delivered, and a record shall be made of the bond and list, which shall be filed in the office of the court.

Bond and descriptive lists of property to be filed in co. court. — R. S. c. 46, s. 19.

26. And in all suits, where the executor or administrator 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 of *scire facias* shall issue, summoning the obligors in such bond to show cause why execution shall not issue against them for the amount of the judgment; and if judgment be rendered against the defendants or any of them, execution may issue thereon.

Creditors may have *sci. fa.* on bond. — R. S. c. 46, s. 19.

27. All sums of money or other estate of whatever kind, which shall remain in the hands of any executor or administrator for seven years after his qualification, unrecovered or unclaimed by suit, by creditors, next of kin or others entitled thereto, shall be paid by the executor or administrator, to the trustees of the University of North Carolina; and the said trustees are authorized to demand, sue for, recover, and collect such moneys or other estate of whatever kind, and hold the same without liability for profit or interest, until a just claim therefor shall be preferred by creditors, next of kin, or others entitled thereto; and if no such claim shall be preferred, within ten years after such money or other estate be received by the said trustees, then the same shall be held by them absolutely.

Property remaining seven years unclaimed in their hands paid to university.

If not claimed in ten years, held absolutely. — R. S. c. 46, s. 20.

28. Whenever any executor or administrator shall have in his hands any effects belonging to the estate of his testator or intestate, or such estate shall be insolvent, he may, at any time after two years from his qualification, file his petition against the parties interested in the due administration of the same, in any court of the county wherein he qualified, setting forth the facts, and praying for an account and settlement of the estate committed to his charge; which petition shall be proceeded on according to the rules of court, and on the hearing thereof, such order and decree shall be made in the premises as may seem to the court to be just and right.

In certain cases, may file petition for settlement. — 1848, c. 40, s. 1.

29. When any balance of money or other estate shall be found in the hands of the petitioner, due or belonging to any absent defendant, or infant without guardian, the court in its discretion may direct the same to be paid and delivered to the clerk, or clerk and master, to be by him invested or otherwise managed, under the direction of the court, for the use of such absent person, or infant.

What is due to absentee or infant without guardian, to be paid to clerk of court. — 1848, c. 40, s. 2.

30. The officer intrusted with the property shall receive such compensation for his services as the court may allow, and shall be liable on his official bond for the discharge of

Clerk liable on his bond, and allowed compensation. — 1848, c. 40, s. 3.

the duties enjoined upon him by the court in relation to said property.

Debtor named ex'r, not discharged.—R. S. c. 46, s. 21.  
Trust estates in personalty to be assets.—R. S. c. 46, s. 22.

31. The appointing any person executor shall not be a discharge of any debt or demand, due from him to the testator.

Ex'rs & adm'rs allowed nine months to plead in court.—R. S. c. 46, s. 23.  
And before justices.—R. S. c. 46, s. 24.

32. If any *cestui que trust* shall die leaving any equitable interest in personal estate which shall come to his executors or administrators, the same estate shall be deemed personal assets.

33. No executor or administrator shall be compelled to plead to any original suit, brought against him in any court, until the expiration of nine months from and after his taking upon himself the office.

34. When an executor or administrator shall be warranted for any demand, before the expiration of nine months as aforesaid, the magistrate, before whom the warrant shall be returned, shall postpone, by an indorsement on the warrant, the trial thereof to some day immediately after the expiration of said time, on which day it may be tried.

Warrant returned to court on plea of no assets.

35. When an executor or administrator shall be warranted, he may on the trial suggest a want of assets, and the magistrate shall indorse the same on the warrant; and, if he find the plaintiff's claim to be just, he shall give a judgment therefor, and return the warrant, with such indorsement and judgment, to the next 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.—R. S. c. 46, s. 25.

No lien created by commencing suit.—R. S. c. 46, s. 26.

36. 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 representative; but the executor or administrator may sell the goods, as if such writ had not been served, or suit commenced.

Deeds for lands contracted to be sold by deceased, may be made by ex'rs, &c.—R. S. c. 46, s. 28.

37. When any deceased person shall have *bona fide* sold any lands, and shall have given a bond to the purchaser to convey the same, and the bond hath been duly proved before the court and registered in the county where the lands are situated, if in the State; or if not in the State, shall be proved before the court and registered in the county where the obligee lives, or obligor died; his executor or administrator may execute a deed to the purchaser conveying such estate as shall be specified in the bond; and such deed shall convey the title as fully as if it had been executed by the deceased obligor. *Provided*, that no deed shall be made but upon payment of the price, if that be the condition of the bond.

Commissions not above 5 per cent. allowed for sales, &c.—R. S. c. 46, s. 29.

38. The courts of pleas and quarter-sessions are authorized and directed to allow commissions to executors and administrators, not exceeding five *per centum*, upon the amount of receipts and expenditures, which shall appear to be fairly



made in the course of administration; and such allowance may be retained out of the assets against creditors and all other persons claiming an interest in the estate. And the court, in making such allowance, shall consider the trouble and time expended in the management of the business. *Provided, however*, that in sales of land, by license of court, for payment of debts, commissions shall not be allowed on any larger amount of the proceeds, than the sum actually applied in payment of debts. *And provided also*, that nothing in this section contained shall prevent any executor or administrator from retaining for necessary charges and disbursements in the management of the estate.

Proviso as to sale of lands.—1846, c. 1, s. 19; 1852, c. 158.

39. Any surety on the bond of an executor or administrator, who shall be in danger of sustaining loss by his suretyship, may exhibit on oath his petition to the county, or superior court, or to the court of equity, of the county wherein the said bond was given, setting forth particularly the circumstances of his case, and praying that such executor or administrator may be removed from his office; or give security to indemnify the petitioner against such apprehended loss, or such other relief as may be suitable to his case; and thereupon the defendant shall be required to answer the premises according to the course of the court. And if upon the hearing of the case, the court shall deem the petitioner entitled to relief, the same may be granted in such manner, and to such extent, by sequestration of the property or otherwise, as to the court shall appear to be just. *Provided, however*, that the administration shall not be vacated, unless by appointment of some other to the office. *And provided also*, that the court may, from time to time, pending the petition, make such interlocutory order and decree as, without injury to the rights and remedies of creditors, may tend to the better securing of the petitioner.

Sureties of ex'rs and adm'rs in danger of loss may have relief. Proceedings therefor.—R. S. c. 46, s. 30, 31, 32.

40. When part of the executors of any person making a will of lands, to be sold by his executors, die or refuse to take upon them the administration; or when all the executors die, or refuse to take upon them the administration; or when there is no executor named in a will devising lands to be sold, or to be sold by executors; in every such case, such executors as qualify, or having qualified do survive, or the administrator with the will annexed, may sell such lands; and all conveyances, made by such executors or administrator, shall be effectual to convey the title to the purchaser of the estate so devised to be sold.

Lands devised to be sold by ex'rs, by whom to be sold.—R. S. c. 46, s. 34.

41. Every person who shall receive goods or debts of any person dying intestate, or any release of a 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, of the value of the same goods or debts to him owing by the intestate at the time of his decease,) shall be chargeable as executor of his own wrong, so far as such debts and goods, coming to his hands, or

Who chargeable as executor *de son tort*.—R. S. c. 46, s. 35.—43 Eliz. c. 8, s. 2.

whereof he is released, will satisfy, deducting all just debts owing to him by the intestate, and all other payments made by him.

Executors or administrators of executors or administrators, liable for a *devastavit*.—R. S. c. 46, s. 36.

Right of action to survive to executors, &c.—R. S. c. 46, s. 37.

When personally insufficient to pay debts, &c., executor, &c., may sell real estate.—1846, c. 1, s. 1.

License, how obtained.—1846, c. 1, s. 2, 7.

Sale of part or whole may be licensed.—1846, c. 1, s. 3.

Heirs, &c., to be parties.—1846, c. 1, s. 4.

When petition may be heard.—1846, c. 1, s. 5.

Terms of sale to be directed by court.—1846, c. 1, s. 6.

42. 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.

43. Executors and administrators, and executors of executors, shall have actions in like manner as the first testator or intestate might have had, against any person, his executors and administrators, in all cases except where such actions being commenced, are not allowed by statute to be revived on the death of a party.

44. When the goods and chattels of any deceased person, in the hands of his executor or administrator, shall be insufficient to pay all his debts with the charge of administering the estate, his executor or administrator shall sell his real estate, upon obtaining a license therefor, and proceeding therein in the manner hereinafter provided.

45. In order to obtain such license, the executor or administrator shall present to the county or superior court of the county in which he qualified, a petition setting forth the amount of the debts due from the deceased as nearly as they can be ascertained, and the amount of the estimated charges of administration, and the value of the personal estate; and if it shall be necessary to sell a part only of the real estate, he shall also set forth the value, descriptions, and conditions of the estate, or such part thereof as he shall propose to sell; and the court may, in all cases where it is not necessary to sell the whole, decide and direct what specified part of the estate shall be sold; and he shall make affidavit of the facts stated in his petition.

46. If it shall be represented in such petition, and shall appear to the court that it is necessary to sell some part of the real estate, and by such partial sale, the residue of the estate, or some specified part or, piece thereof, would be greatly injured, the court may license a sale of the whole estate, or such part thereof as the court shall think necessary, and most beneficial for the interest of all concerned therein.

47. No such license shall be granted until the heirs and devisees, or other persons interested in said estate, shall be made parties to the petition, and served with notice, either actually, or by advertisement as in other petitions.

48. As soon as all the parties are before the court, the court may proceed to hear the petition and decree the sale if necessary, unless such cause to the contrary be shown as may induce the court to refuse it, or postpone the final hearing to another term.

49. Whenever the court may decree a sale, it shall be made upon such terms and credit as the court may direct, and the

title shall be made to the purchaser by such person and at such time as the court shall prescribe.

50. All the proceeds of the sales of real estate which may not be necessary to pay debts and charges of administration, shall be considered real estate, and as such shall be paid by the executor or administrator to such persons as would be entitled to the land, had it not been sold; or in the case of *feme covert*s, invested as proceeds of sale made for partition.

Proceeds of sale not disbursed, to be real estate.— 1846, c. 1, s. 8.

51. The proceeds of sale shall be assets in the hands of the executor or administrator, for the purpose of paying debts and charges of administration, and applied as though the same were the proceeds of personal estate; and bonds and other obligations, in which the ancestor hath bound his heirs, shall not be put in suit against the heirs or devisees of the deceased, and shall be considered, in the payment of debts, of equal dignity with other specialties, bills, promissory notes, and liquidated accounts.

To be assets to pay debts and charges of administration.— 1846, c. 1, s. 9.

52. All bonds executed by administrators or executors, on and after the first day of February, one thousand eight hundred and forty-seven, shall be deemed and taken to have been executed, as well to secure the performance of the duties imposed on them respecting the sale of real estate and the administration of assets received therefrom, as those required of them respecting personal assets; and the court to whom an application is made for license to sell real estate, may, if they deem it proper, require an additional bond to be given with good security in a sufficient sum, conditioned for a faithful and proper administration of the assets received from a sale of real estate; on which bond the same remedies may be had as upon the original bond given by the executor or administrator.

Bonds of adm's &c., held as security for both real and personal assets.

53. The real estate subject to sale as hereinbefore provided, shall include all the deceased may have conveyed with intent to defraud his creditors, and all rights of entry and rights of action, and all other rights and interests in lands, tenements, and hereditaments which he may devise, or by law would descend to his heirs; and all such other interests in real estate as would be liable in a court of equity to be applied in discharge of his debts. *Provided*, that lands so fraudulently conveyed, shall not be taken from any one who purchased them for a valuable consideration, and without a knowledge of the fraud.

Additional bond may be required.— 1846, c. 1, s. 10.

What real estate subject to be sold.

54. Whenever an executor or administrator shall file his petition to sell land, which may have been fraudulently conveyed as aforesaid, and of which there may have been a subsequent *bona fide* sale, whereby he cannot have a decree of sale of the land, the court may give judgment in favor of such executor or administrator for the value of the land, against all persons who may have fraudulently purchased the same; and if the whole recovery shall not be necessary to pay the debts and charges aforesaid, the residue shall be restored to the person of whom the recovery was made.

Proviso for *bona fide* purchasers without notice.— 1846, c. 1, s. 11.

What judgment given in case of fraudulent conveyance.— 1846, c. 1, s. 12.

Issue to try title, ordered when.—1846, c. 1, s. 13.

55. Whenever the land which is sought to be sold shall be claimed by another, under any pretence whatsoever, the court may order an issue to try the title; and if it shall be found for the executor or administrator, he shall have his writ of possession, and a decree of sale accordingly.

Ex'r to give bond when licensed to sell real estate.—1846, c. 1, s. 14.

56. When an executor, other than such as may have given bond with security, is licensed to sell any portion of the real estate for the payment of debts, he shall execute a bond with good and sufficient security, payable to the State of North Carolina, conditioned for the faithful application of the proceeds of sale to the debts of the testator; and for accounting and paying over all the proceeds of sale that shall remain after payment of the debts and charges for which such estate may be sold, and for disposing of the same according to law; which bond may be put in suit by any person injured by breach thereof.

Proceeds of all real estate to be legal assets.—1846, c. 1, s. 15.

57. Whenever an executor, or administrator with the will annexed, or other person, shall sell real estate for payment of debts, by virtue of any devise, power, or trust, contained in the will, the proceeds of sale shall be deemed legal, and not equitable assets, and shall be applied as hereinbefore directed in the discharge of debts, any distinction in said will to the contrary notwithstanding.

Specific devisees, whose lands are sold, entitled to contribution.—1846, c. 1, s. 16.

58. If, upon the hearing of any petition for the sale of real estate, the court shall decree a sale of any part that may have been specifically devised, the devisee shall be entitled to a contribution from other devisees, according to the principles which govern courts of equity in respect to contribution among legatees; and children or issue provided for by sections twenty-eight and twenty-nine of the chapter entitled "Wills and Testaments," shall be regarded as specific devisees in such contribution.

Undevised real estate first chargeable with debts.—1846, c. 1, s. 17.

59. When any part of the real estate of a testator shall descend to his heirs by reason of its not being devised or disposed of by the will, the undevised real estate shall be first chargeable with payment of debts, in exoneration as far as it will go of the real estate that is devised, unless from the will it shall appear otherwise to be the wish of the testator.

To what period past this mode of selling realty applies.—1846, c. 1, s. 10, 18.

60. The mode of proceeding against the real estate of deceased persons prescribed by this chapter, shall be in use in all cases where the will may have been proved, or letters of administration granted, on or after the first day of February, one thousand eight hundred and forty-seven; and the mode of proceeding against such real estate in use on the fourteenth day of January, one thousand eight hundred and forty-seven, shall be in use in all cases where the will may have been proved, or letters of administration granted, prior to the first day of February, one thousand eight hundred and forty-seven.

Sales by heirs, &c., within two years, &c., void

61. All sales, conveyances, or alienations of any lands of a deceased debtor, made by any devisee or heir at law, within two years after the probate of his will and qualification of the

executor, or letters of administration on his estate, shall be void as to the creditors, executors, and administrators of such deceased debtor. as to creditors. —R. S. c. 68, s. 15.

62. Nothing contained in this chapter shall affect the right of dower. Right of dower saved.—1846, c. 1, s. 20. Crops ungathered at decease, shall go to ex'r, &c., and not to devisee or widow.

63. The crops of every deceased person, remaining ungathered at his death, shall in all cases belong to the executor or administrator as part of the personal assets, and shall not pass to the widow with the land assigned for dower, nor to the devisee of the land by a devise of the land to him, but only when such intent shall be manifest and expressed in the will.

64. Whenever process may issue against an executor who may not have given bond, and the same cannot be served upon him by reason of his absence or concealment, a copy thereof shall be left at his last place of residence; and on return of the matter, publication for six weeks in some newspaper shall be made for him to appear, and the same having been made shall be deemed due service upon him. Service on absent ex'rs not having given bond, how made.—1842, c. 37.

65. A female who may be an executrix or administratrix shall be allowed to make affidavit to her inventory, account of sale, and account current, before a justice of the peace, who shall certify the same to the court. Female ex'r, &c., may swear to inventory, &c., before a justice.

SECT. 1. *Where granted*, 1 Ire. 345, 2 Dev. 73. *Executor may renounce*, 1 Ire. 298, 8 Ire. Eq. 253, 1 D. & B. Eq. 199. *Foreign administrator*, 5 Ire. Eq. 365, Ib. 190, 8 Ire. Eq. 246, 2 Jones, Eq. 51.

SECT. 2. *To whom*, Bus. 242; *appointee of next of kin*, 1 Hay. 220, 1 Ire. 345. *When void*, 3 Ire. 557; *wrong county*, 4 Ire. Eq. 216. *Form of grant*, 2 Dev. 360, 1 D. & B. 27. *May be revoked*, 3 D. & B. 65.

SECT. 15. *Bond; who may sue on: creditor*, 1 Dev. 475, 2 Dev. 298; *next of kin*, 6 Ire. 397. *Their assignee*, 2 Hawks, 329.

SECT. 16. *Return of joint executors: notes*, 2 D. & B. Eq. 155, 8 Ire. Eq. 137. *Final return: effect of*, 1 Dev. Eq. 55.

SECT. 18. 1 D. & B. Eq. 199; 2 Ib. 58; 7 Ire. Eq. 235. *Sale of notes*, 6 Ire. Eq. 74, Bus. Eq. 127.

SECT. 21. *Dignity of debts: justice's judgment*, 7 Ire 231; *rent*, 4 Dev. 502; *covenant and breach of trust*, 2 D. & B. Eq. 235. *Devastavit*, 1 Ire. Eq. 9, 7 Ire. Eq. 62. *Rule in equity*, 1 D. & B. Eq. 46, 2 Ib. 235.

SECT. 22. *Advertisement in newspaper*, 2 D. & B. Eq. 82; *must be strictly complied with*, 9 Ire. 135, 1 Jones, Eq. 128, 2 D. & B. Eq. 82.

SECT. 24. 1 Ire. 66; Ib. 382; 7 Ire. Eq. 127. *Account how taken*, 1 D. & B. Eq. 502, 2 Ib. 155, Ib. 287, Ib. 442, 2 Dev. Eq. 137, Ib. 167, 6 Ire. Eq. 341, 1 Jones, Eq. 130. *Who entitled after death of administrator*, 4 D. & B. 139. *Refunding bond*, 5 Ire. 632; *with one surety*, N. C. T. R. 238; *tender of, not condition precedent*, 2 Hawks, 329. *Executor becomes guardian*, 3 Dev. 529.

SECT. 31. 6 Ire. 448; 1 Ib. 36.

SECT. 33. 10 Ire. 129; 11 Ib. 65; 3 Ib. 166. *Does not apply to suits in equity*, 2 Ire. Eq. 269.

SECT. 35. Bus. 408; 8 Ire. 88.

SECT. 37. 2 Ire. Eq. 602; 2 D. & B. Eq. 72; 7 Ire. Eq. 55.

SECT. 38. 11 Ire. 224; 2 D. & B. Eq. 325; Ib. 442; Ib. 405; 1 Jones, Eq. 326.

SECT. 39. 3 Ire. 342.

SECT. 41. 11 Ire. 215; 9 Ib. 365; 5 Ib. 444; 4 D. & B. 189; 3 Dev. 221; Bus. Eq. 170.

SECT. 44. *What administrator may proceed under this section*, 11 Ire. 469; *what he may sell*, 13 Ire. 57.

## CHAPTER 47.

## FAIRS.

## SECTION

1. Fairs appointed by county courts.
2. Commissioners appointed, who may regulate fairs.

## SECTION

3. Inhabitants to have free liberty of fairs.

Fairs appointed by county courts.

1. THE county courts, a majority of the justices of the county being present, may appoint fairs in their respective counties, at such places as they may judge most proper for the convenience of the inhabitants, so as to give encouragement to industry, by collecting the inhabitants for the purpose of bartering and selling all such articles as they may wish to dispose of.

Commissioners appointed, who may regulate fairs.

2. When any court may resolve to establish a fair, they shall appoint commissioners, a majority of whom may regulate and conduct the same by a system of by-laws for the government thereof, to be approved by the court and entered of record; and such rules being consistent with the law of the land shall be as valid and effectual, as if they had been expressed by act of Assembly.

Inhabitants to have free liberty of fairs.—R. S. c. 47, s. 1, 2, 3.

3. The inhabitants of any county wherein a fair may be established shall have free liberty to attend the same, dispose of, and buy or barter the articles brought thereto; subject, nevertheless, to such rules as the commissioners may form for the regulation thereof.

## CHAPTER 48.

## FENCES.

## SECTION

1. Planters to keep sufficient fences around cultivated ground.
2. Damages by stock, when fence is sufficient, how recovered.
3. Injuries to stock by persons not having a legal fence, how recovered for.
4. Penalty on slave for injuring stock, without order of his manager.

## SECTION

5. On appeal from justice's judgment, trial *de novo*, &c.
6. Dan river sufficient fence. North-west branch of Cape Fear not sufficient. Penalty for using north-west branch as a fence.

Planters to keep sufficient fences.—R. S. c. 48, s. 1.

1. 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 shall be sufficient, instead of such fence.

Damages by stock, when

2. Upon complaint made by any person to a justice of the

peace, of any trespass or damage done by horses, or other stock, upon his inclosed grounds, the justice shall issue a summons, directed to any lawful officer of his county, commanding him to make known to the owner of such horses or other stock, such complaint, and the time of trial; and shall also summon two freeholders unconnected with either party, to appear before him; who, after being sworn by the justice, shall, together with him, view and examine whether the complainant's fence be good and sufficient, as prescribed in the preceding section; and if it shall appear that his fence is good and sufficient, they shall ascertain and assess what damages he has sustained by means of such trespass, and certify the same under their hands; and the justice shall enter judgment against such owner for the damages assessed, and issue execution therefor.

fence is sufficient, how recovered.—R. S. c. 48, s. 2.

3. If any person, or the slave or servant of any person, shall, with gun, dog, or otherwise, unreasonably chase, worry, maim, or kill any horse, or other stock, or cause the same to be done, when trespassing upon his inclosed grounds, where his fence shall be adjudged insufficient, the occupant of the premises, on complaint being made to any justice of the peace as aforesaid, shall make full satisfaction for all such damages to the party injured, to be ascertained and recovered as provided in the preceding section.

Injuries to stock by persons not having a legal fence, how recovered for.—R. S. c. 48, s. 3.

4. If any slave, without the order of his manager, shall chase, worry, maim, or kill, any horse or other stock, trespassing upon the inclosed grounds cultivated by or under the direction of such manager, he may be apprehended on a warrant from any justice of the peace, and whipped for his offence, not exceeding thirty-nine lashes.

Penalty on slave for injuring stock, without order, &c.—R. S. c. 48, s. 6.

5. On appeals from the judgment of a justice of the peace rendered under any section of this chapter, the trial in court shall in all respects be *de novo*; and the parties shall be permitted to plead, and the issues shall be made up as in actions of trespass.

On appeal from justice, trial *de novo*, &c.—R. S. c. 48, s. 4.

6. The Dan river, from the town of Madison to the Stokes county line, is declared a watercourse sufficient instead of a fence; and the north-west branch of the Cape Fear river, bordering on the county of Brunswick, is declared to be insufficient for a fence; and all persons cultivating lands on the north-east side of the said north-west branch, who shall neglect to inclose the same with a sufficient and lawful fence, shall, for every crop attempted to be made, forfeit and pay one hundred dollars; one half to the persons suing for the same, and the other to the poor of the county.

Dan river sufficient fence. North-west branch of Cape Fear not sufficient.

Penalty for using north-west branch as a fence.—R. S. c. 48, s. 1.—1850, c. 64.

## CHAPTER 49.

## FORCIBLE ENTRY AND DETAINER.

## SECTION

1. Foreible entry indictable.
2. Summary remedy before justice for forcible entry and detainer. Restitution made.
3. Jurors to be summoned. Penalty on officer and jurors for neglect.
4. Penalty on sheriff and others failing to assist justice.

## SECTION

5. Restitution not awarded, if party has been in possession three years.
6. Proceedings returned to superior court.
7. Justices and others not indictable unless acting maliciously. Court may amend all defects.

Forcible entry indictable.—R. S. c. 49, s. 1, 6; 5 R. c. 8.

1. NONE shall make entry into any lands and tenements, or term for years, 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, he shall be deemed guilty of a misdemeanor.

Summary remedy before justice for forcible entry and detainer.

2. Where any person shall make forcible entry, as aforesaid, or having entered peaceably shall hold forcibly, upon complaint being made to any justice of the peace, the justice shall 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 his discretion, (whether the person making such forcible entry, or holding forcibly, be present, or else departed before the coming of the justice,) he shall inquire of the forcible entry or forcible detainer complained of, by a jury of good and lawful men to be by him then and there sworn and impanelled; and if the jury shall find the force as charged, the justice shall recognize the person convicted of such force to the ensuing superior court, to answer any indictment that may be preferred against him; and the justice shall cause the land and tenements or term for years, so entered or held as aforesaid, to be re seized, and shall put the party turned out in full possession of the same.

Restitution made.—R. S. c. 49, s. 2; 15 R. 2, c. 2; 8 H. 6, c. 9.

3. When complaint shall be made as aforesaid, the justice shall issue a precept, directed to the sheriff or other proper officer of the county, commanding him to cause to come before such justice, at such time and place as shall be therein mentioned, sufficient indifferent freeholders, 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 justice may in his discretion impose; and each juror shall be subject to a fine of twenty dollars for failing to attend according to his summons.

Jurors to be summoned by order of justice.

Penalty on officer and jurors for neglect.—R. S. c. 49, s. 3; 3 H. 5, c. 9.

Penalty on sheriff and others, failing to

4. The sheriff, and such others as he or the said justice shall order and command for that purpose, shall, upon pain of im-



prisonment, go and assist the justice in arresting the offenders, and also in causing restitution to be made of the lands and tenements or term for years entered or held by force as aforesaid.

assist justice.—  
R. S. c. 49, s. 4.

5. No restitution, upon any indictment or finding of forcible entry or holding with force, shall be made, if the person 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 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 indicted, he shall pay such costs and damages to the other party as shall be assessed by the judge or justices before whom the same shall be tried, to be recovered and levied as in other actions.

Restitution not awarded if party has been in possession three years.—  
R. S. c. 49, s. 5.

6. Of all the proceedings before the justice he shall make a record, and return the same to the superior court of law of his county, to be kept among the records of the court.

Proceedings returned to superior court.—  
R. S. c. 49, s. 7.

7. No justice of the peace, juror, witness, officer, or party, acting in any proceedings had under this chapter, shall be liable to indictment for any error, defect, or informality in form or substance in any such proceedings, unless it appears in evidence that the justice, juror, witness, officer, or party, acted wrong, wilfully, and of malice; and the superior court, to which the proceedings are returned, may at any time amend all defects in form or substance therein.

Justices and others not indictable, unless, &c.

Court may amend all defects.—1848, c. 71, s. 1, 2.

SECT. 1. 1 Jones, 119; 8 Ire. 315; 1b. 84; 2 Ib. 127; 4 D. & B. 192.  
SECT. 2. 8 Ire. 15; 3 Ib. 123; 1 Ib. 325; 1 D. & B. 324; 1 Mur. 392.

## CHAPTER 50.

### FRAUDS AND FRAUDULENT CONVEYANCES.

SECTION

1. Conveyances of lands or goods made to defraud creditors, void.
2. Conveyances of lands, &c., to defraud purchasers, void.
3. Voluntary conveyances not deemed fraudulent as to creditors, merely because of indebtedness of donors. Indebtedness evidence only of fraud, to be left to the jury.
4. Conveyances *bona fide*, upon good consideration, valid.
5. *Bona fide* purchases without notice,

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- under deeds made on illegal consideration, valid.
6. Purchasers of estates fraudulently conveyed, to have relief in equity.
7. Proceeding by *sci. fa.* when property of debtor is fraudulently conveyed.
8. How to proceed under the *sci. fa.* What decree if defendants do not appear; or appear and confess.
9. Proceedings, when defendant denies the facts charged.

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- 10. Proceedings where original judgment is given by a justice.
- 11. Contracts for sale of land and slaves, and leases for mining, void, unless in writing.
- 12. Gift of slave void, unless in writing and attested. Proviso as to advancements to children.
- 13. Sale of slave not in writing and attested, void, unless accompanied with actual delivery.

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- 14. Persons removing debtors to hinder, delay, or defraud creditors, liable for their debts.
- 15. Contracts charging executors, &c., personally, or any person with the debt, &c., of another, to be in writing.
- 16. Contracts with Cherokee Indians to be in writing, subscribed by two witnesses.

Conveyances of lands or goods made to defraud creditors, void. — R. S. c. 50, s. 1, — 50 E. 3, c. 6; 13 Eliz. c. 6, s. 2.

1. FOR avoiding and abolishing feigned, covinous, and fraudulent gifts, grants, alienations, conveyances, bonds, suits, judgments, and executions, as well of lands and tenements, as of goods and chattels, which may be contrived and devised of fraud, to the purpose and intent to delay, hinder, and defraud creditors and others of their just and lawful actions and debts. *Be it enacted*, That every gift, grant, alienation, bargain, and conveyance of lands, tenements and hereditaments, goods and chattels, by writing or otherwise, and every bond, suit, judgment, and execution, at any time had or made, to or for any intent or purpose last before declared and expressed, shall be deemed and taken (only as against that person, his heirs, executors, administrators, and assigns, whose actions, debts, accounts, damages, penalties, and forfeitures, by such covinous or fraudulent devices and practices aforesaid, are, shall, or might be in anywise disturbed, hindered, delayed, or defrauded,) to be utterly void, and of no effect; any pretence, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.

Conveyances of lands, &c., to defraud purchasers, void. R. S. c. 50, s. 2. — 1840, c. 28, s. 1, 2.

2. Every conveyance, charge, lease, or incumbrance of any lands or hereditaments, if the same be made with the actual intent in fact to defraud such person, as hath 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 utterly void against such person, and others claiming under him, who shall purchase for the full value thereof, the same lands or hereditaments, or rents or profits out of the same, without notice before and at the time of his purchase, of the conveyance, charge, lease, or incumbrance, by him alleged to have been made with intent to defraud; and possession taken or held by or for the person claiming under such alleged fraudulent conveyance, charge, lease, or incumbrance, shall be always deemed and taken as notice in law of the same.

Voluntary conveyances not deemed fraudulent as to creditors, merely because of indebtedness of donors.

3. No voluntary gift or settlement of property by one indebted, shall be deemed or taken to be void in law, as to creditors of the donor or settler prior to such gift or settlement, by reason merely of such indebtedness, if property, at the time of making such gift or settlement, fully sufficient and available for the satisfaction of all his then creditors, be retained by

such donor or settler; but the indebtedness of the donor or settler at such time shall be held and taken, as well with respect to creditors prior as creditors subsequent to such gift or settlement, to be evidence only from which an intent to delay, hinder, or defraud creditors may be inferred; and in any trial at law, shall, as such, be submitted by the court to the jury, with such observations as may be right and proper.

Indebtedness evidence only of fraud, to be left to the jury. — 1840, c. 28, s. 3, 4.

4. Nothing contained in the foregoing sections shall be construed to impeach or make void any conveyance, interest, limitation of use or uses, of or in any lands or tenements, goods or chattels, *bona fide* made, upon and for good consideration, to any person not having notice of such fraud.

Conveyances *bona fide*, upon good consideration, valid. — R. S. c. 50, s. 4. — 13 E. c. 5, s. 6.

5. No conveyance or mortgage made to secure the payment of any debt or the performance of any contract or agreement shall be deemed void, as against any purchaser for valuable or other good consideration of the estate or property conveyed, sold, mortgaged, or assigned, by reason that the consideration of such debt, contract, or agreement, shall be forbidden by law, if such purchaser, at the time of his purchase, shall not have had notice of the unlawful consideration of such debt, contract, or agreement.

*Bona fide* purchases without notice, under deeds made on illegal consideration, valid. — 1842, c. 70.

6. Purchasers of estates previously conveyed in fraud of creditors or purchasers, shall have like remedy and relief in equity, as creditors might have had before the sale and purchase.

Purchasers of estates fraudulently conveyed, to have relief in equity.

7. Upon any judgment being rendered in a court of record, if the plaintiff or his agent will make affidavit that the defendant hath no visible property to satisfy the same, or on which an execution can be levied, and that he hath good reason to believe that the defendant has fraudulently conveyed his property to avoid or delay the payment of his just debts; or that some other person is in possession of property belonging to the defendant and conceals the same, the clerk (at any time while the judgment is in force) shall issue a *scire facias* against the person claiming any estate, real or personal under any such conveyance, or any person charged in the affidavit with concealing any money, goods, or other estate for the use of the defendant, or for the purpose of enabling him to avoid or delay the payment of his just debts; in which he shall be commanded to appear at the next succeeding term, and answer upon oath in writing, whether he 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, or others for him, upon any secret trust; and whether he holds or is in possession of, or was, at the time of rendering said judgment, or at any time since, 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 to avoid the payment of his just debts.

Proceeding by *sci. fa.* when property of debtor is fraudulently conveyed. — R. S. c. 50, s. 5.

8. The *scire facias* shall be served on the defendant after the manner of process in equity, and the defendant shall

How to proceed under *sci. fa.*

What decree if defendants do not appear; or appear and confess. — R. S. c. 50, s. 7.

answer the premises on oath. If he shall not appear, judgment *pro confesso* shall be entered against him; and if he appear and admit that he holds, claims, or has title to any estate, in manner, or upon any of the uses, purposes, or trusts aforesaid, in either case, the court shall subject the same by proper decree to the satisfaction of the plaintiff's debt, and moreover, may decree against the defendant, personally, for any money held or used by him, and for any damages for use, waste, and destruction of property enjoyed, committed or done by him, to be ascertained by a jury on proper issues.

Proceedings, when def't denies the facts charged. — R. S. c. 50, s. 7.

9. If the defendant shall deny the matters charged in the *scire facias*, or any of them, or shall so answer the same that the court cannot make a decree against him, the court, if the plaintiff may require it, shall direct proper issues to be made up and tried, and shall decree on the matters found by the jury, as to right and justice may appertain.

Proceedings where original judgment is given by a justice. — R. S. c. 50, s. 7.

10. Where any judgment shall be given by a justice of the peace, and the plaintiff shall desire to proceed against the defendant or others, in the manner specified in the two last sections, he may make an affidavit as hereinbefore directed before any justice, and thereupon the judgment and all other proceedings shall be removed into the county or superior court, as the plaintiff may desire, to be there proceeded upon as if the judgment had been rendered in that court.

Contracts for sale of land and slaves, and leases for mining, void, unless in writing. — R. S. c. 50, s. 8. — 1844, c. 44.

11. All contracts to sell or convey any lands, tenements, or hereditaments, or any interest in or concerning them, or any slave; and all leases and contracts for leasing of land, for the purpose of digging for gold or other minerals, or for the purpose of mining generally, shall be void and of no effect, unless such contract or lease, 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, leases and contracts for leases (other than those above named) not exceeding in duration the term of three years.

Gift of slave void, unless in writing and attested. Proviso as to advancements to children. — R. S. c. 37, s. 17.

12. No gift of any slave shall be good or available in law, unless the same shall be made in writing, signed by the donor and attested by a credible witness subscribing thereto. *Provided, however*, that when any person dying intestate shall have put into the actual possession of his child any slave, who shall remain in the possession of the child at the time of the death of such person, such slave shall be considered as an advancement to the child, and be regulated by the law relating to advancements made to children by a parent in his lifetime.

Sale of slave not in writing and attested, void, unless accompanied with actual delivery. — R. S. c. 37, s. 19.

13. All sales and conveyances of slaves shall be in writing, attested by a credible witness subscribing thereto, or otherwise shall be void. *Provided, however*, that all sales of slaves, *bona fide* made and accompanied with the actual delivery of the slave to the purchaser, and which would be held good but for the provisions contained in this section, shall be good and valid without any bill of sale.

14. If any person shall remove, or shall aid and assist in removing, any debtor out of any county in which he shall have resided for the space of six months or more, with the intent, by such removing, aiding, or assisting, to delay, hinder, or defraud the creditors, or any of them, of such debtor, the person so removing, aiding, or assisting therein, and his executors or administrators, shall be liable to pay all debts which the debtor removed may justly owe in the county from which he was so removed; and the same may be recovered by the creditors, their executors or administrators, by an action on the case.

Persons removing debtors to hinder, delay, or defraud creditors, liable for their debts. — R. S. c. 50, s. 9.

15. No action shall be brought whereby to charge an executor or administrator upon a special promise to answer damages out of his own estate, or to charge any defendant upon a 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 charging executors, &c., personally, or any person with the debt, &c., of another, to be in writing. — R. S. c. 50, s. 10.

16. All contracts and agreements of every description made after the eighteenth day of May, one thousand eight hundred and thirty-eight, 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 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 witnesses, who shall also subscribe the same.

Contracts with Cherokee Indians to be in writing, subscribed by two witnesses. — R. S. c. 50, s. 11.

SECT. 1. *Fraud a question of law*, 13 Ire. 132, 11 Ire. 339. *Deed good against all but creditors*, 4 Ire. 102, 7 Ib. Eq. 21. *Creditor must establish his debt by judgment*, 4 Ire. 529, Bus. Eq. 170, 1 Jones, Eq. 328. *Fraud what: purchase by A., deed to B.* 1 Ire. 553, *deed to children before enactment of section three*, 7 Ire. 341; *indulgence to debtor*, 7 Ire. 470, 9 Ire. 191, Ib. 365, 11 Ib. 347, Ib. 339, Bus. 105, 3 Dev. 12, Ib. 144, 4 Dev. 197, 1 Jones, 559. *What not fraud*, 1 Ire. 179, 5 Ib. 169, 1 Jones, 413. *Bona fide purchaser*, 6 Ire. Eq. 394.

SECT. 2. 2 Mur. 171; 4 D. & B. 278; 2 Hay. 57. *Purchasers of chattels*, 3 Mur. 429.

SECT. 3. *Prospective only*, 10 Ire. 496. *Construction*, Bus. Eq. 145, 1 Jones, 67.

SECT. 4. 11 Ire. 89; 10 Ib. 302; 8 Ib. 340; 13 Ib. 265; 4 D. & B. 201; 1 Ib. 29. *Mortgagee a purchaser*, 5 Ire. 91, 3 Dev. 105, 1 Ire. 149, 1 Jones, Eq.

SECT. 7. *Abates with original action*, 3 Dev. 27.

SECT. 11. 12 Ire. 252; Ib. 285; 2 Dev. 289. *Sale under parol authority*, 11 Ire. 359; *under trust deed*, 8 Ire. 455. *Specific performance in equity*, 1 Jones, Eq. 277, Ib. 339, 4 Ire. Eq. 125. *Parol trust*, 1 Jones, Eq. 184, Ib. 193, 6 Ire. Eq. 511, Ib. 169.

SECT. 12. *Who a creditor*, 1 Jones, 182, 1 D. & B. 221. *Removal part of the way*, 8 Ire. 260. *Defence: ignorance of plaintiff's debt*, Bus. 143. *Damages*, 8 Ire. 26.

SECT. 13. *To pay the debt of another*, 13 Ire. 86, 11 Ib. 195, Ib. 298, 4 Dev. 261. *Consideration need not be expressed*, 1 D. & B. 103.

## CHAPTER 51.

## GAMING CONTRACTS.

## SECTION

1. Gaming or betting contracts void.
2. Securities for money or property lent for betting, void.

## SECTION

3. Players and betters competent witnesses.

All gaming or betting contracts void.—  
R. S. c. 51.

1. All wagers, bets, or stakes made to depend upon any race, or upon any gaming by lot or chance, or upon any lot, chance, casualty, or unknown or contingent event whatever, shall be unlawful; and all contracts, judgments, conveyances, and assurances for and on account of any money or property or thing in action so wagered, bet, or staked, shall be void.

Securities for money or property, lent for betting, void.—  
R. S. c. 51.

2. All contracts, judgments, conveyances, and assurances to repay or secure any money, or property, or thing in action, lent or advanced for the purpose of such wagering, betting, or staking as aforesaid, shall be void.

Players and betters competent witnesses.

3. No person shall be excused or incapacitated from confessing or testifying touching any money or property, or thing in action, so wagered, bet, or staked, or lent for such purpose, by reason of his having won, played, betted, or staked upon any game, lot, or chance, casualty, or unknown or contingent event aforesaid; but the confession or testimony of such person shall not be used against him, in any criminal prosecution, on account of such betting, wagering, or staking.

SECT. 1. *Elections*, 12 Ire. 344.

## CHAPTER 52.

## GENERAL ASSEMBLY.

## SECTION

1. Elections for members of General Assembly, when and where held.
2. Senatorial districts, of what counties composed.
3. House of commons how composed; members how elected.
4. Separate places of election established, and discontinued by county court.
5. Time and places of, advertised by sheriff.

## SECTION

6. Inspectors for precincts appointed by county court. Neglect to act a misdemeanor.
7. Clerk to furnish a list to sheriff, who shall notify them. If not appointed by court, or they refuse to act, how supplied.
8. Boxes for receiving tickets, furnished by sheriff. Tickets, how received and put into boxes.

SECTION

9. Voters, how to give in their tickets. List of voters kept. Boxes, how opened and tickets counted.
10. Voters may be required to swear to their qualification. Inspectors to be judges thereof.
11. Polls, how made up, returned, compared, and elections declared. Proviso as to certain counties.
12. Polls in senatorial districts, how made up, where compared. Penalty on officer for default— forfeiture, and misdemeanor. Polls examined, &c., in presence of three justices. Tie election, how decided.
13. Pay of sheriff for comparing polls in senatorial districts.
14. Vacancies before session of Assembly to be notified to governor by sheriff, under pain of misdemeanor.
15. Members resigning, &c., to notify governor.
16. Governor, in such cases, to order a new election.
17. Elections under writ from governor or speaker, held as other elections.
18. What time of day opened and closed.
19. List of votes, on request, furnished by sheriff to members and candidates. Penalty for neglect of duty in regard to elections.
20. When no sheriff or coroner, who to hold elections and make returns.
21. Musters not to be on days, nor armed men assembled at places, of election. Penalty.

SECTION

22. Bribery at elections, penalty for.
23. Treating at elections, penalty for.
24. Members giving money, &c., to secure election, expelled.
25. General Assembly to meet third Monday of November.
26. May be convened by governor and council, when. When by the council.
27. Members to convene.
28. Penalty on, for failing in duty. May be remitted.
29. To have freedom of speech, and be protected from arrest, &c.
30. Members elected returned to Assembly by sheriff.
31. Persons contesting seats, how to proceed.
32. Witnesses failing to give evidence in contested elections, penalty on. Voter shall testify how he voted.
33. Pay of witnesses for attending.
34. Private laws, proceedings to procure the passage of.
35. Acts of Assembly, when to take effect.
36. Journals of, deposited in office of secretary of State, who shall certify copies, &c.
37. Principal clerks to hold office till others are appointed.
38. Two door-keepers appointed by keeper of capitol, or secretary, till regular appointment. Their pay.
39. Grave-stones provided for members, interred in Raleigh.

1. 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 where they are now held, or may be directed hereafter to be held, in manner as hereinafter prescribed, on the first Thursday in August, in the year one thousand eight hundred and fifty-six, and every two years thereafter.

Elections for members of General Assembly, when and where held.—R. S. c. 52, s. 1.

2. Until the first session of the General Assembly, which shall be held after the year eighteen hundred and seventy-one, the senate shall be composed of members to be elected from the several districts hereinafter named, that is to say: The first district shall consist of the counties of Pasquotank and Perquimans; the second, of Camden and Currituck; the third, of Gates and Chowan; the fourth, of Tyrrell and Hyde; the fifth, of Northampton; the sixth, of Hertford; the seventh, of Bertie; the eighth, of Martin and Washington; the ninth, of Halifax; the tenth, of Edgecombe; the eleventh, of Pitt; the twelfth, of Beaufort; the thirteenth, of Craven; the fourteenth, of Carteret and Jones; the fifteenth, of Greene and Lenoir;

Senatorial districts, of what counties composed.—1842, c. 27; 1852, c. 158.

the sixteenth, of New Hanover; the seventeenth, of Duplin; the eighteenth, of Onslow; the nineteenth, of Brunswick, Bladen, and Columbus; the twentieth, of Cumberland; the twenty-first, of Sampson; the twenty-second, of Wayne; the twenty-third, of Johnston; the twenty-fourth, of Wake; the twenty-fifth, of Nash; the twenty-sixth, of Franklin; the twenty-seventh, of Warren; the twenty-eighth, of Granville; the twenty-ninth, of Person; the thirtieth, of Orange; the thirty-first, of Alamance and Randolph; the thirty-second, of Chatham; the thirty-third, of Moore and Montgomery; the thirty-fourth, of Richmond and Robeson; the thirty-fifth, of Anson and Union; the thirty-sixth, of Guilford; the thirty-seventh, of Caswell; the thirty-eighth, of Rockingham; the thirty-ninth, of Mecklenburg; the fortieth, of Stanly and Cabarrus; the forty-first, of Rowan and Davie; the forty-second, of Davidson; the forty-third, of Stokes and Forsyth; the forty-fourth, of Ashe, Surry, Watauga, and Yadkin; the forty-fifth, of Wilkes, Iredell, and Alexander; the forty-sixth, of Burke, McDowell, and Caldwell; the forty-seventh, of Lincoln, Gaston, and Catawba; the forty-eighth, of Rutherford and Cleaveland; the forty-ninth, of Buncombe, Henderson, Yancy, and Madison; the fiftieth, of Haywood, Macon, Cherokee, and Jackson.

House of Commons how composed; members how elected.—1842, c. 28; 1852, c. 3.

3. Until the first session of the General Assembly which shall be held after the year one thousand eight hundred and seventy-one, the House of Commons shall be composed of members elected from the counties in the following manner, namely: The counties of Cumberland, Granville, Guilford, Chatham, and Wake shall elect three members each; the counties of Davidson, Edgecombe, Halifax, Iredell, New-Hanover, Orange, Randolph, Alamance, Anson, Beaufort, Bertie, Caswell, Cleaveland, Craven, Duplin, Forsyth, Johnston, Mecklenburg, Northampton, Pitt, Robeson, Rockingham, Rowan, Rutherford, Sampson, Warren, Wayne, and Wilkes shall elect two members each; the counties of Buncombe, Madison, Surry, Yadkin, Ashe, Bladen, Burke, Cabarrus, Catawba, Cherokee, Davie, Gaston, Gates, Henderson, Hertford, Hyde, Lincoln, Martin, Moore, Nash, Onslow, Pasquotank, Person, Richmond, Stanly, Stokes, Union, Yancy, Alexander, Brunswick, Caldwell, Camden, Currituck, Columbus, Carteret, Greene, Jones, Lenoir, McDowell, Montgomery, Perquimans, Tyrrell, Washington, Watauga, Macon, Haywood, Jackson, Chowan, and Franklin shall elect one member each.

Separate places of election established, or discontinued by county court.—R. S. c. 52, s. 2.

4. The several courts of pleas and quarter-sessions shall have power (a majority of the justices of the county being present) to establish, alter, discontinue, or create such separate places of election in their respective counties, as, from time to time, they may deem expedient, thirty days' notice having been given in three public places, and at the court house, of the intended application for the same.



5. The sheriffs, 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, twenty days before the election.

Time and places of, advertised by sheriff.—R. S. c. 52, s. 3.

6. The court of pleas and quarter-sessions at the court preceding each 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; who shall attend at the places for which they are severally appointed, on the day of election, and shall be sworn by the sheriff, or in his absence by some justice of the peace, to conduct the election fairly and impartially, according to the constitution and laws of the State; and in default of acting shall be deemed to be guilty of a misdemeanor.

Inspectors for each precinct appointed by county court.—R. S. c. 52, s. 4.

Failing to act a misdemean'r.

7. The clerk of the court of pleas and quarter-sessions, immediately after the court preceding the election, shall furnish the sheriff of his county with a list of the persons appointed inspectors of the polls; and the sheriff shall notify such persons of their appointment, at least twenty days before the day of election. If the court fail to make such appointment, or may not have appointed a sufficient number of inspectors; or if those appointed shall die or refuse to act, then the sheriff, with the advice of three justices of the peace, or, if none be present, of three respectable freeholders, may appoint inspectors to hold the election, who shall be sworn as aforesaid.

Clerk to furnish a list to sheriff, who shall notify them.

If not appointed by court, or they refuse to act, how supplied.—R. S. c. 52, s. 5.

8. The sheriff or returning officer, on the day and at the place for holding each election, shall 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, the tickets shall be received by one of the inspectors in the presence of the others, and put into their proper boxes.

Boxes for receiving tickets, furnished by sheriff.

Tickets how received and put into boxes.—R. S. c. 52, s. 6.

9. Every person qualified to vote shall give to the returning officer in presence of the inspectors, or, in the absence of such officer, to one of the inspectors, a ticket rolled up, in which shall be written the name or names of the person or persons for whom he intends to vote; and the names of all the persons for whom he votes in the commons' box shall be on the same ticket; which ticket shall be put into the proper box, 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 members of the house of commons in a second; and when the election shall be finished, the returning officer and inspectors, in presence of such of the electors as may choose to attend, shall open

Voters, how to give in their tickets.

List of voters kept.

Boxes, how opened and

tickets counted.—R. S. c. 52, s. 7.—1838, c. 18.

Voters may be required to swear to their qualification.

Inspectors to be judges thereof.—R. S. c. 52, s. 11.

Polls, how made up, returned, compared, and elections declared.—R. S. c. 52, s. 8.—1840, c. 27, s. 1.

Proviso as to certain counties.

Polls in senatorial districts, how made up.

Where compared.

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 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 void.

10. Every person, before he shall be admitted to give his vote, shall, if required by the inspectors, or any one of them, swear that he is qualified according to the constitution, and hath not before voted at such election; and the inspectors shall have the sole and exclusive right to judge of the qualification of voters, except when there is an equal division of opinion between them, in which case the returning officer shall decide.

11. Immediately after the close of the polls at any 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 be sealed and directed to the sheriff; and the same shall be handed by some one of the inspectors appointed for the purpose, to the sheriff of the county at the court house, on the next day, between ten o'clock, A. M. and four o'clock, P. M.; 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 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. *Provided, however,* that in the counties of Carteret, Currituck, and Hyde, the statement aforesaid shall be handed to the sheriffs of said counties on the first Tuesday after the election.

12. The provisions contained in the preceding 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 is composed of more than one county, the sheriff, or other returning officer of each of the counties composing such district, shall, after receiving the returns from the inspectors, as prescribed in the last section, meet on the second Thursday in August, after the election, at the following places in their respective districts, for the purpose of comparing the polls, namely: In the first district, at Woodville, on Little river; in the second district, at Indian Town, Dr. Marchant's store; in the third district, at the house of Thomas J. Miller, in the county of Gates; in the fourth district, at the house of Charles McCleese, in the county of Tyrrell; in the eighth district, at Jamesville, in the county of Martin; in the fourteenth district, at J. J. Pelleteer's Mills, on Hadnot's creek, in the county of Carteret; in the fifteenth district, at Kinston, in the county of Lenoir; in the nineteenth

district, at Wayman Academy, in the county of Brunswick; in the thirty-first district, at Liberty, in the county of Randolph; in the thirty-third district, at the house of Daniel Chisholm, in the county of Moore; in the thirty-fourth district, at John Mallory's, in the county of Richmond; in the thirty-fifth district, at Laneshorough, in the county of Anson; in the fortieth district, at Mount Pleasant, in the county of Cabarrus; in the forty-first district, at Hall's Mills, in the county of Davie; in the forty-third district, at Germanton, in the county of Stokes; in the forty-fourth district, at the house of John Thompson, in the county of Surry; in the forty-fifth district, at Taylorsville, in the county of Alexander; in the forty-sixth district, at Morganton, in the county of Burke; in the forty-seventh district, at Lincolnton, in the county of Lincoln; in the forty-eighth district, at Rutherfordton, in the county of Rutherford; in the forty-ninth district, at Asheville, in the county of Buncombe; in the fiftieth district, at Franklin, in the county of Macon.

*Provided always*, that if any accident shall happen which may prevent any returning officer from meeting on the day aforesaid, the returns shall be received on the day following. And the returning officer, failing to attend at the time and place above mentioned, shall forfeit and pay five hundred dollars, to be recovered in the superior court of his county, by any person who may sue for the same, and moreover shall be deemed to be guilty of a misdemeanor. And when the returning officers shall be convened as aforesaid, the polls for the different counties shall by them, in the presence of three justices of the peace, (or if they cannot be conveniently procured, then in the presence of three freeholders to be summoned by the returning officer of the county where they shall meet,) be examined and compared; and a certificate under the hands and seals of the returning officers shall be given to the candidate in each district, for whom the greatest number of votes shall have been given. But if two or more candidates shall have an equal number of votes, the said officers shall determine which shall be senator; and if no decision is made by them, then they shall determine the same by drawing, in like manner as the grand-jury is drawn.

13. Every returning officer shall be allowed two dollars and a half, for every thirty miles travelling to and from the place of comparing the polls, and the same sum for every day he shall necessarily attend for that purpose, and also his ferriages, which shall be paid by the treasurer of the State on affidavit made before any justice of the peace.

14. If any person elected to represent any county or district in the General Assembly shall die before the meeting thereof, or from any cause shall fail, refuse, neglect, or delay, to accept his appointment, the sheriff of the county, in which the person elected resides, or did reside, shall notify the governor of the same forthwith; and for neglect of duty herein, he shall be deemed to be guilty of a misdemeanor.

Penalty on officer for default, —forfeiture and misdemeanor.

Polls examined, &c., in presence of three justices.

Tie election, how decided.—  
R. S. c. 52, s. 9.  
—1840, c. 27, s. 2; 1842, c. 27, s. 2; 1852, c. 158, s. 2.

Pay of sheriff for comparing polls in senatorial districts.—  
R. S. c. 52, s. 10.

Vacancies before session of Assembly to be notified to governor by sheriff, under pain of misdemeanor.—  
—R. S. c. 52, s. 12.

Members resigning, &c., to notify governor.—R. S. c. 52, s. 13.

Governor in such cases to order a new election.—R. S. c. 52, s. 14.

Elections under writ from governor or speaker, held as other elections.—R. S. c. 52, s. 15.

What time of day opened and closed.—R. S. c. 52, s. 16.  
List of votes on request furnished by sheriff, to members and candidates.

Penalty for neglect of duty in regard to elections.—R. S. c. 52, s. 17, 18.

When no sheriff, or coroner, who to hold elections and make returns.—R. S. c. 52, s. 19.—1842, c. 31.

Musters not to be on day, nor armed men assembled at place of election. Penalty.—R. S. c. 52, s. 21.

15. If any person elected to represent any county or district in the General Assembly shall, before the meeting thereof, resign, refuse, or decline to accept his appointment, he shall immediately notify the governor in writing of his determination.

16. In case of vacancies that shall occur by death, resignation, or otherwise, before the meeting of the General Assembly, the governor, on being notified as aforesaid, shall 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.

17. 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.

18. Every election shall begin at ten o'clock, A. M. on the day appointed therefor, and shall close at sunset the same day.

19. Every returning officer, within ten days after the election, shall, at the request of any person elected to serve in the General Assembly, or any one who was a candidate, cause fair copies of the list of votes and the number of ticket ballots for each candidate to be made out and signed by the officer, and delivered to the person requesting the same, or to his order, on payment of two dollars; and if any officer shall refuse so to do, or shall make elections in other manner than by this chapter is directed, or shall neglect or refuse to make returns of the elections by him made or taken, the officer so offending shall forfeit and pay five hundred dollars, one half for the use of the State, and the other half to the person suing for the same.

20. If at any time it may happen that there shall be no sheriff in the county, the coroner or coroners shall hold the elections for the county; and when there shall be neither sheriff nor coroner, the elections may be held by some respectable freholder appointed by any three justices of the peace of the county; who, in conducting the same, shall have like powers, be under the same directions and restrictions, and subject to the same penalties as are conferred or imposed upon sheriffs; and in all cases where any sheriff holding an election shall die before proper returns thereof shall be made, his successor shall make the same, if they may not have been made by the coroner.

21. It shall not be lawful to call or direct any regimental, battalion, or company muster on election days, or to assemble armed men on the day of election, at any place appointed by law to hold elections for electors, governor, members of Congress, or members of the General Assembly, under the penalty

of one thousand dollars, to be recovered of any person who shall call such muster, or assemble such armed men, and applied one half to the use of the informer, and the other half to the use of the State.

22. If any person shall at any time before or after any election, either directly or indirectly, give any money, property, or reward to any elector, or to any county or district, in order to be elected; or to procure any other person to be elected a member of the General Assembly; every person so offending shall forfeit and pay four hundred dollars, to any person who will sue for the same.

Bribery at elections.  
Penalty for.—  
R. S. c. 52, s. 22.

23. If any person shall treat with either meat or drink, on any day of election, or any day previous thereto, with an intent to influence the election, he shall forfeit and pay two hundred dollars, the one half for the use of the county, and the other to the use of the person who shall sue for the same.

Treating at elections;  
penalty for.—  
R. S. c. 52, s. 23.

24. 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 money, property, reward, or present whatsoever; or give, or cause to be given by himself or another, any treat or entertainment of meat or drink, at any public meeting or collection of the people, to any person for his vote, or to influence him in his election, such person shall, on due proof, be expelled from his seat in the General Assembly.

Members giving money, &c., to secure election, expelled.—  
R. S. c. 52, s. 27.

25. The meeting of the General Assembly shall be, biennially, on the third Monday in November; and, when adjourned without time fixed for its next meeting, shall be deemed to be adjourned *sine die*, or until it may be sooner convened in the manner prescribed in the following section.

General Assembly to meet third Monday of November.—  
R. S. c. 52, s. 26.

26. The governor, with the advice of the council of State, may convene the General Assembly before the time appointed as aforesaid for its meeting, or after its adjournment, whenever it shall be deemed absolutely necessary. And if, at any such time, there should be no one duly authorized to exercise the powers of governor, then the council of State may so convene the General Assembly.

May be convened by governor and council, in certain cases.  
When by the council.—R. S. c. 52, s. 26.

27. Every person, elected to represent any county or district in the General Assembly, shall convene at such time and place as may be appointed for the meeting thereof, on the first day, and attend to the public business as occasion shall require.

Members of, to convene.—  
R. S. c. 52, s. 28.

28. If any member shall fail to convene, or shall neglect to attend to the duties of his appointment, he shall forfeit and pay for not appearing ten dollars, and two dollars for every day he may be absent from his duty during the session, to be deducted from his pay as a member. *Provided*, that a majority of the members of either house of the General Assembly may remit the fines and forfeitures aforesaid, or any part thereof, where it shall appear that the person hath been prevented from attending his duty by sickness, or other sufficient cause.

Penalty on for failing in their duties.

May be remitted.—  
R. S. c. 52, s. 29.

29. The members shall have freedom of speech and debate in the General Assembly, and shall not be liable to impeach-

To have freedom of speech, and be protect-

ed from arrest, &c.—R. S. c. 52, s. 30.

Members elected, returned to Assembly by sheriff.—R. S. c. 52, s. 31.

Persons contesting the seat of a member, how to proceed.—R. S. c. 52, s. 31.

Witnesses failing to give evidence in contested elections, penalty on.

Voter compelled to testify how he voted.—R. S. c. 52, s. 33.

Pay of witnesses for attending.—R. S. c. 52, s. 34.

Private laws. Proceedings to procure the passage of.—R. S. c. 52, s. 35.

ment or question, in any court or place out of the General Assembly, for words therein spoken; and shall be protected, except in cases of crime, from all arrest and imprisonment, or attachment of property, during the time of their going to, coming from, or attending the General Assembly.

30. The sheriff of every county and district shall make return to the General Assembly, at their first meeting, of the persons elected in his county or district, to represent the inhabitants in either house of the General Assembly.

31. No person shall be allowed to contest the seat of any member of the General Assembly, unless he shall have given to the member thirty days' notice thereof in writing, which must state the particular grounds of such contest. If the seat is contested on account of the reception of illegal votes, the notice must set forth the number of such votes, by whom given, and the supposed disqualifications; and if the same is contested on account of the rejection of legal votes, the notice must give the names of the persons whose votes were rejected. No evidence shall be admitted to show that the contestant received illegal votes, unless he shall also have been notified the same number of days, and in the same manner. The same notice of time and place required in taking depositions at law, shall be required and proved on the investigation.

32. Any justice of the peace, or any person duly authorized to take depositions to be read before courts of law, may take depositions to be used on the investigation, and may issue subpoenas for witnesses, which shall be executed by any officer authorized to execute process. And if any witness shall fail to appear, and give his deposition according to the subpoena, he shall forfeit and pay to the party causing him to be summoned, forty dollars. And on such investigation no witness in this, or in the case of any other contested election, shall be excused from discovering whether he voted at such election, or his qualification to vote, except as to his conviction for any offence which would disqualify him. And if he was not a qualified voter, he shall be compelled to discover for whom he voted: but any witness making such discovery, shall not be subject to criminal or penal prosecution, for having voted at such election.

33. Any witness appearing and giving testimony, shall be entitled to receive from the person at whose instance he was summoned, ten cents for every mile travelling to and from the place and his ferriages, to be recovered before any justice of the peace upon the certificate of the commissioner.

34. Any person who may desire the passage of a private law, shall give notice of his intention to make application, by advertisement in some newspaper of the State which circulates in the county where the applicant 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 the application; and when

any private bill shall be introduced, a copy of such advertisement, with due proof of its having been so published, shall be produced, before the second reading thereof.

35. Acts of the General Assembly shall be in force only from and after thirty days after the rise of the session in which they shall have passed, unless the commencement of the operation thereof be expressly otherwise directed. Acts of Assembly, when to take effect.—R. S. c. 52, s. 36.

36. The clerks of the senate and house of commons, as soon as may be practicable after the close of each session, shall deposit in the office of the secretary of State the journals of the General Assembly; and the secretary of State shall make and certify copies of any part or entry of said journals; and may take for the copy of each entry made and certified, the same fee as for the copy of a grant. Journals of, deposited in office of sec'y, who shall certify copies, &c.—R. S. c. 52, s. 37.

37. The principal clerk of each house of the General Assembly shall hold his office for the term of two years, or until another is appointed; shall be present at such time and place as may be fixed for the meeting of the General Assembly, and on the first day thereof, and perform the duties of his office. Principal cl'ks to hold office till others appointed.—1846, c. 63, s. 1.

38. The keeper of the capitol (and if there be none, then the secretary of State) shall employ two suitable persons to place the two halls of the General Assembly in order and wait upon the members, until door-keepers can be regularly appointed. And the persons so employed, shall be allowed, as a compensation, in full, the sum of three dollars each for their daily attendance and services. Two door-keepers appointed by keeper of capitol or sec'y, until, &c. Their pay.—1846, c. 63, s. 2.

39. The governor shall have placed, at the grave of any member of the General Assembly, who may be interred in the city of Raleigh, (whose remains are not intended to be removed by his friends,) suitable grave-stones, containing the name of the deceased, his age and the county he represented; and the cost thereof shall be paid by the treasurer, on the warrant of the governor. Grave-stones provided for members, interred in Raleigh.—1844, Res.

## CHAPTER 53.

### GOVERNOR AND COUNCIL.

SECTION

1. Governor's election when held, and how conducted.
2. Returns of election, when and how made by sheriff. Returns examined by secretary of State. If not regular to send a messenger for them.
3. Poll books to be filed by sheriff with clerk of county court. Clerk to give receipt for them, which sheriff shall send to secretary.

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4. If proper returns are not made secretary to inform Assembly. Proceedings thereupon.
5. Forms of returns and directions furnished by secretary.
6. Returns, by whom and when opened. Election how determined.
7. Clerk omitting any duty about the election to forfeit \$ 100.
8. Forfeitures against returning officers

SECTION	SECTION
recovered from their sureties ; also expenses of messenger.	16. Letter hook kept in executive office.
9. Pay of sheriff for making returns.	17. Council to meet in Raleigh.
10. How ascertained and paid.	18. Seals for State and courts of record procured by governor.
11. Persons contesting election of governor, to give notice, &c. Proceedings thereon.	19. New seals, when needed.
12. Depositions in contested elections, how taken.	20. Seals, how prepared.
13. Governor to reside at Raleigh.	21. Paid for, &c.
14. A house provided for him,	22. Lost State seals to papers, how replaced.
15. Private secretary appointed.	23. Thanksgiving day set apart, by proclamation.

Governor's election, when held and how conducted.—R. S. c. 53, s. 1.—1840, c. 26, s. 1.

1. The sheriff of every county shall open polls at the several election precincts of his county, for the election of a governor of the State of North Carolina, on the first Thursday in August, one thousand eight hundred and fifty-six, and biennially thereafter on the same day ; which shall be conducted under the same rules, regulations, and restrictions, as are elections for members of the General Assembly.

Returns of election, when and how made by sheriff.

2. The proper returning officer of every county shall, on or before the first day of October succeeding any election for governor, transmit to the seat of government and deliver to the secretary of State, a statement of the votes taken in his county for governor ; which statement shall be made from the poll books, in the following form, namely :—

State of North Carolina,  
County.

I, \_\_\_\_\_ sheriff of the county of \_\_\_\_\_ do hereby certify, that at the elections held in said county to elect a governor of the State, for two years from the first day of January next, at the places appointed by law for holding elections in said county, on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, votes were given for \_\_\_\_\_, and \_\_\_\_\_ votes for \_\_\_\_\_.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

Sheriff.

And shall be sealed up and directed, by indorsement upon the sealed packet or envelope containing the said statement, to the speaker of the senate : and the returning officer shall also indorse upon the packet a memorandum of the contents thereof, in this form :—“ A statement of votes taken in the county of \_\_\_\_\_, at the election for governor, held on the \_\_\_\_\_ day of \_\_\_\_\_ ;” and shall sign the memorandum with his name ; which returns shall be delivered by the secretary of State to the speaker of the senate, on or before the second week of the session of the General Assembly to be held next thereafter. And such returning officer shall, on or before the said first day of October succeeding such election, 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 the secretary of State shall immediately after receiving such original

Returns examined by secretary of State.



and duplicate statements, proceed to examine the packets containing the original statements and ascertain whether the same are properly indorsed and directed: and he shall also examine the duplicates, to ascertain if the statements are duly made out in the form required by this section. And if any such packet, containing an original return, shall not be properly addressed or directed, or shall not be properly sealed up; or if any such duplicate return shall be defective or informal, the secretary shall forthwith employ some suitable and discreet person, as a messenger, to proceed to the county from which such return shall have been received, and require from the returning officer a proper and formal return, duly sealed up, directed, and indorsed, and a proper duplicate: which return and duplicate, such officer, upon the demand of the messenger, shall forthwith make out and deliver to him to be transmitted to the seat of government: and the secretary of State shall proceed in like manner, when no return or duplicate shall be transmitted and delivered to him from any county: and he shall furnish every such messenger with a written authority or commission to make the said demand, and shall sign the same, and certify it under the great seal of the State, which the governor shall affix upon application of the secretary.

If not regular, to send a messenger for them.—1840, c. 25, s. 2; 1842, c. 30, s. 1.

3. The sheriff shall forthwith file with the clerk of the county court, the statements and poll books, returned to him by the returning officers, of the votes taken for governor; and the clerk shall receive the same and deposit and safely keep them in his office, and give the sheriff a receipt therefor, stating for what precincts the returns and poll books are made. And the sheriff shall transmit to the secretary of State, the said receipt at the time he transmits his duplicate of the votes.

Poll books to be filed by sheriff with clerk of county court.  
Clerk to give rec'pt therefor, which sheriff shall transmit to sec'y.—1840, c. 25, s. 1.

4. Should it happen, that, at the meeting of the General Assembly next after any election for governor, there shall not be proper returns made as aforesaid from any county, the secretary of State shall immediately communicate the fact to the speakers of the two houses, for the information of the General Assembly, who shall forthwith cause the returning officer to be summoned to appear and make, complete, or correct his return, as the case may require; and should it seem to the General Assembly advisable, they may likewise cause the clerk of the county court to be summoned to produce the returns and poll books, and to take such other steps as may be deemed necessary for supplying, counting, and completing the returns.

If proper returns are not made, sec'y to inform Assembly.

5. The secretary of State, in every year in which an election for governor may be held, shall cause proper forms of returns to be prepared and printed, and send copies thereof with plain directions as to the manner of indorsing, directing, and transmitting the same to the seat of government, to all the returning officers in the State, at least thirty days before the time of holding such elections.

Proceedings thereupon.—1842, c. 30, s. 2.

Forms of returns and directions furnished by sec'y.—1842, c. 30, s. 3.

6. The speaker of the senate, in the presence of a majority of Returns by

whom and when opened.

Election, how determined.—R. S. c. 53, s. 18.

Clerk omitting any duty about the election to pay \$100 penalty.—1840, c. 25, s. 1; 1842, c. 30, s. 4.

Forfeitures against returning officers recovered from their sureties; also expenses of messenger.—1842, c. 30, s. 7.

Pay of sheriff for making returns.—R. S. c. 53, s. 13.

How ascertained and paid.—R. S. c. 53, s. 14.

Persons contesting election of governor to give notice, &c.

Proceedings thereon.—R. S. c. 53, s. 15.

Depositions in

the two houses of the General Assembly shall open the returns for governor, during the first week in December in which the General Assembly 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 person returned as having the largest number of votes, is duly elected. Each house shall separately determine all such cases; and unless a majority of each house shall declare, that 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.

7. If any clerk of the county court shall negligently omit to do and perform any act, matter, or thing, by this chapter required, he shall, for such offence, forfeit and pay one hundred dollars, to be recovered by the attorney-general for the use of the State, on motion in the superior court of law of the county of Wake, ten days' previous notice in writing of such intended motion being given to the officer.

8. The forfeitures for neglect, or refusal of a sheriff, coroner, or other returning officer, to discharge his duties according to the provisions of this chapter, shall be recovered against his sureties in the same manner as against the officer; and when any messenger shall have been employed in manner hereinbefore directed, the expenses of his employment, certified by the secretary of State, shall be taxed and allowed as costs in the recovery.

9. The sheriff, or returning officer shall be entitled to two dollars and a half for every day he may be necessarily engaged in making the returns, and in travelling to and from the city of Raleigh, by the most usual road from and to his residence.

10. The 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.

11. When any person shall contest the election for governor, of any one who may have received the largest number of votes according to the returns of the sheriffs, such person shall give him notice in writing of the intention, and the specific grounds upon which he will contest the election, setting forth the county or counties in which he alleges that illegal votes were given, or any other violation of the law or constitution having relation to the case which 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 of such notice shall be required, before the General Assembly will proceed to inquire into the truth of the 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 any newspaper published in Raleigh, shall be deemed sufficient.

12. In any contest under the preceding section, depositions

may be taken with the same notice of time and place, as is required in taking depositions at law, and before such persons as commissioners; and under the same rules, as to the summoning and attendance of witnesses, as are prescribed in cases of contested elections of members of the General Assembly. And if the party cannot be personally served with notice, publication thereof for the space of fifteen days, in any newspaper published at Raleigh, shall be deemed sufficient notice.

contested elections, how taken.—R. S. c. 53, s. 19.

13. The governor shall reside permanently at the city of Raleigh, during his continuance in office.

Gov. to reside at Raleigh.—R. S. c. 53, s. 2.

14. A convenient and commodious dwelling-house, together with such out-houses as shall be necessary, shall be provided for his accommodation.

A house provided for him.—R. S. c. 53, s. 3.

15. He shall appoint a private secretary, who shall enter in books kept 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.

Private sec'y appointed.—R. S. c. 53, s. 4.

16. The letter book shall be deposited in the office of the executive by the private secretary, and there carefully preserved; and the governor shall produce the letter books before the General Assembly, whenever requested.

Letter book kept in executive office.—R. S. c. 53, s. 5.

17. Whenever the governor shall conceive it necessary to convene the council of State, the meeting shall be in the city of Raleigh, unless invasion, insurrection, or contagious disease shall render it advisable to call them elsewhere.

Council to meet in Raleigh.—R. S. c. 53, s. 6.

18. The governor shall 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 every court of record of the State, for the purpose of authenticating the papers and records of such court.

Seals for State and courts of record procured by govern'r.—R. S. c. 53, s. 8.

19. Whenever the great seal of the State, or any seal of a court of record, shall be lost, or so worn or defaced as to render it unfit for use, the governor shall provide a new one.

New seals when needed.—R. S. c. 53, s. 9.

20. The seals thus provided shall be prepared with one side only, and calculated to make the impression on the face of the grant, commission, record, or other public act; and when new seals are provided, the former ones shall not be used.

Seals, how prepared.—R. S. c. 53, s. 10.

21. The governor is authorized to issue his warrant on the treasurer for the expense of procuring said seals; and the same shall be delivered to the proper officers, who shall give a receipt therefor and be accountable for their safe keeping.

Paid for, &c.—R. S. c. 53, s. 11.

22. In all cases where any person may find it necessary to have the seal of the State put again to any public paper, other than a grant for lands, he may prefer his petition to the governor and council, who shall, if they shall deem the same proper, direct the secretary to put the seal thereto.

Lost State seals to papers, how replaced.—R. S. c. 53, s. 12.

23. The governor is directed to set apart a day in every year, and by proclamation give notice thereof, as a day of

Thanksgiving day set apart

by proclamation.—1848,  
Res.

solemn and public thanksgiving to Almighty God, for past blessings, and of supplication for his continued kindness and care over us, as a State and as a nation.

## CHAPTER 54.

### GUARDIAN AND WARD.

#### SECTION

1. Fathers, by deed or will, may appoint guardians.
2. Superior and county courts to have cognizance of matters concerning orphans; to appoint guardians and take bonds. Justices, &c., liable for taking insufficient security. Proviso.
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4. In cases of divorce, who to be guardian of the children and their estate.
5. Bonds, how payable; remedy on them.
6. Clerk to record the names of justices on the bench accepting bonds. Proviso for justices dissenting.
7. Guardians appointed of estates of children whose fathers are alive.
8. One bond to be taken if wards have property in common.
9. Clerk of superior court, &c., to certify appointment of guardians to county courts.
10. Bonds renewed triennially. Clerk to summon guardians failing to renew.
11. Guardian to render account of ward's estate, on oath.
12. Orphan's court to be held. Accounts rendered annually. Clerk, *ex officio*, to summon defaulting guardians.
13. Power and duty of courts over guardians abusing their trusts; and when they or sureties likely to become insolvent.
14. Guardian removed, or liable to be, to be reported in certain cases, by clerk, to attorney-general or solicitor. How proceeded with.
15. Receiver appointed to manage ward's estate under directions, &c.
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19. Estates of orphans without guardians, to be secured, &c.
20. Clerk's fee for issuing summons, how paid.
21. Guardians to take possession of wards' estates.
22. To sell, by order of court, his perishable estate.
23. To lend out money, and account for interest annually. Bonds to bear compound interest; may be assigned to wards on settlement.
24. Slaves and stock, when to be kept on ward's land. Proviso, if stock becomes too large.
25. Land and slaves, when and how to be rented and hired. Houses, fences, &c., to be kept in repair.
26. Sales, &c., how made.
27. Guardian liable for suffering ward's land to lapse, or be forfeited for taxes, &c. When may sell timber, &c.
28. Allowed disbursements and expenses, and commissions.
29. Ward residing abroad and having property in the State, may remove it through guardian.
30. By petition in equity.
31. Power of courts of equity over orphans, &c., not abridged.
32. Estates of infants sold to promote their interest, when, &c.
33. Manner of making sale, and applying and securing proceeds.
34. When ward is indebted, how guardian to sell his property. Proceeds to be applied as assets of deceased debtors.
35. Sureties of guardians in danger of loss, how relieved.
36. Female guardians may swear to their returns before justices.

1. WHERE any father, whether of full age or a minor, shall have a child under the age of twenty-one and not married, whether born at the time of his death, or in *ventre sa mere*, he may 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 may think fit, dispose of the custody and tuition of his child, for and during such time as he shall remain under the age of twenty-one years or for any less time, to any person or persons; and every such disposition shall be good and effectual against every person claiming the custody and tuition of such child; and the person 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.

Fathers, by deed or will, may appoint guardians.—R. S. c. 54, s. 1.

2. The superior courts of law, and the courts of pleas and quarter-sessions, within their respective counties, shall have full power, 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, and where to them it shall appear necessary; and shall take good security of all the guardians by them appointed for the estate of the orphans. And if any court shall commit an orphan's estate to the charge or guardianship of any person, without taking good and sufficient security for the same, the justices or judge 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 suit of the party grieved. *Provided always*, that where the sureties were good at the time of their being accepted, the justices or judge shall not be liable.

Superior and county courts to have cognizance of matters concerning orphans—to appoint guardians and take bonds.

Justices, &c., liable for taking insufficient security. Proviso.—R. S. c. 54, s. 2.

3. The court may commit the tuition and custody of the orphan to one, and the charge of his estate to another person, either when the guardianship is first granted, or at any time thereafter, whenever it shall appear best for the orphan, and most conducive to the proper care of his estate and his suitable nurture and education so to do, instead of granting the general guardianship to one person: and in such cases the court shall order and appoint what yearly sums of money, or other provisions shall be made for the support, nurture, and education of the orphan. And the said court, or the court of equity of the same county, may, from time to time upon application made, reduce or enlarge the allowance so appointed, and prescribe the time and manner of paying the same; and take all such further order, as, due regard being had to the situation of the orphan, his condition in life, and the kind and value of his estate, may seem just and proper. And all payments made by the guardian of the estate to the tutor of the person, according to any such order or appointment, shall be deemed just disbursements, and be allowed in the settlement of his accounts; but for the payment thereof by the one, and the receipt thereof by the other, merely, no commissions shall

Court may commit the person to one, and estate to another.

May appoint yearly sums for support and education.

Commissions to tutor on dis-

bursements only.—1840, c. 31, s. 1, 2.

In cases of divorce, who to be guardian of the children and their estates.—1838, c. 16, s. 1, 2.

Bonds how payable,—remedy on them.—R. S. c. 54, s. 3.

Clerks to record the names of justices on the bench accepting guardian bonds.

Proviso for justices not assenting.—R. S. c. 54, s. 4.

Guardians appointed of estates of children whose fathers are alive.—R. S. c. 45, s. 5.

One bond given when wards have property

be allowed to either; but may be to him disbursing, and only on his disbursements.

4. Whenever parents, divorced from the bonds of matrimony, or from bed and board, shall have any child under the age of twenty-one years, the court granting the divorce may commit his custody and tuition to the father or mother, as may be thought best; and if such child shall be entitled to any estate, the court may appoint a fit and proper person to take the care and management thereof, who shall enter into bond with security as guardians of orphan's estates, and shall be regulated in like manner in all respects; but shall not have any care of, or authority over, the person of such child, unless the guardian so appointed be the father or mother. And the court may commit the custody of the infant child, in the first place, to one of the parties for a time to be limited by the court; and after the expiration of that time, to the other party, and so *toties quoties*.

5. All bonds taken from guardians shall be made payable to the State of North Carolina, and shall be acknowledged in court and recorded; and any person injured, may, at his own proper costs and charges, prosecute a suit thereon, and recover all damages and costs which he may have sustained by reason of the breach of the condition thereof: and if judgment shall be rendered against the relator, he shall pay costs.

6. The clerk of the county court shall record and enter at large on his docket, the names of the justices of the court who shall be present at the granting of any guardianship, and approving of the sureties to the guardian bond; and the clerk shall certify upon the bond the names of said justices; and no justice of the peace, to whom any guardianship shall be committed, shall be permitted to sit on the bench at the time of his appointment. *Provided always*, that any justice of the peace, present and not concurring in the grant of such guardianship, or in the acceptance of the sureties, may require it, and the clerk shall record on the minutes and certify on the bond, that such justice does not concur in the appointment, or in the acceptance of the sureties taken; and such certificate and entry shall exempt the justice from liability on account of the bond.

7. The superior and county courts shall appoint a fit person to take the care and management of the estates, real and personal, rights and credits of any person under the age of twenty-one years, although the father of such minor may be living. And the person appointed shall enter into bond with security, as required of guardians of orphans, and shall be governed in all respects by the laws relative to guardians and orphans as to the property and rights of orphans, but shall not have any care or authority over the person of such minor.

8. When the same person is appointed guardian to two or more minors, possessed of their estate in common, the court

may take one bond only for the execution of his trust, upon which each of the minors may have his several action. in common.—R. S. c. 54, s. 6.

9. Whenever the court, other than the court of pleas and quarter-sessions, shall appoint a guardian of any minor, or of his estate, the clerk or clerk and master, as the case may be, of such court, shall certify the appointment to the county court of the county, and transmit the guardian bond to that court, there to be recorded, together with the certificate of appointment. Clerk of sup'r court, &c., to certify appointment of guardians to county courts.—R. S. c. 54, s. 8.

10. All guardians shall renew their bonds in the several county courts every three years, during the continuance of their guardianship; and the clerks of the several county courts shall, in virtue of their office, issue summons against every guardian, in whatsoever county he may reside, who shall fail to comply with the requisitions of this section; and upon a return that the guardian is not to be found, an *alias* shall issue, and if upon the return thereof the guardian is still not to be found, the court shall remove such guardian from office, and appoint a successor, unless the former guardian shall at that court renew his bond. *Provided*, that no prosecuting officer shall be entitled to charge a fee in any such case. Bonds renewed triennially. Clerk to summon guardians failing to renew.—R. S. c. 54, s. 7.

11. Every guardian, at the next county court after his appointment, shall exhibit an account upon oath of all the estate of his ward, which he shall have received; and every guardian shall annually exhibit his account and state of the profits and disbursements of the estate of his ward upon oath; and such accounts shall be entered by the clerks in particular books, provided and kept for that purpose only. Guardian to render account of ward's estate, on oath.—R. S. c. 54, s. 10.

12. The justices of every court of pleas and quarter-sessions, shall, on the first day of the court which 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 court shall examine into all accounts of guardians, so exhibited; and the clerk of the court, under the penalty of one hundred dollars to be applied to the use of the ward, shall, *ex officio*, issue summons, returnable to the next court, against all guardians wherever resident, who shall fail to exhibit their accounts as aforesaid; and if any guardian, being summoned, shall wilfully neglect to appear, or obstinately refuse to exhibit such account, the court may issue an attachment for such contempt, and commit him until he shall exhibit the same, and may likewise remove him. Orphan's court to be held. Accounts rendered annually. Clerk, *ex officio*, to summon defaulting guardians.—R. S. c. 54, s. 11.

13. When a superior or county court shall be informed that any guardian appointed by them, or by will or deed, doth waste or convert the money or estate of any ward to his own use, or in any manner doth mismanage the same; is about or intends to marry him or her in disparagement, or neglects to educate or maintain any ward according to his or her degree or circumstances; or where any such guardian or his sureties are likely to become insolvent, the court shall have power from time to Power and duty of courts over guardians abusing their trusts; and when they or sureties likely to become insolvent.—R. S. c. 54, s. 12.

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 ward, or to appoint another guardian, as they shall think fit and convenient.

Guardian removed, or liable to be, to be reported in certain cases, by clerk, to att'y-gen. or solicitor. How proceeded with.—1844, c. 41, s. 1.

14. Where any guardian shall be removed, and another person shall not be appointed, or where any guardian shall by reason of not complying with his duties become liable to be removed, although such order of removal may not be made, the clerk of the court shall certify to the attorney-general, or to the solicitor of the circuit, the name of such guardian and his sureties, and the proceeding had against him; and the attorney-general or solicitor shall forthwith institute a suit in the court of equity in the same county, by bill, petition, or other proper proceeding against the sureties and guardian, for an account of the guardianship, and for securing the estate of the ward; and upon such bill or proceeding, all proper accounts may be taken, all necessary orders made, and a decree had according to the course of the court, as well against the sureties as the guardian.

Receiver appointed to manage ward's estate under directions, &c.—1844, c. 41, s. 2.

15. The court shall have power upon such proceeding, to appoint the clerk and master, or other discreet person, a receiver to take possession of the ward's estate, to collect and receive all moneys due to him, and to pay the same into court, or to secure, loan, invest, or apply the same, and to superintend and direct his estate for the benefit and advantage of the ward, and out of the same to defray the charges of his support, nurture, and education, under the direction and subject to such rules, orders, and directions in every respect, as the court from time to time may make in regard thereto: and the accounts of such receiver shall be returned, audited and settled, from time to time, as the court may direct, making such allowances to the receiver for his time, trouble, and responsibility, as shall seem reasonable and proper.

Compensation to att'y-gen'l and solicitors.—1846, c. 41, s. 3.

16. The attorney-general or solicitor shall prosecute the suit, and take all necessary orders therein, and for his services the court shall allow him reasonable compensation according to the circumstances of the case.

Property, how obtained from receiver.—1846, c. 44, s. 4.

17. Whenever another guardian shall be appointed, he may apply by petition to the court for an order upon the receiver to pay and possess him of the money, estate, and effects of his ward; and in case no such guardian shall be appointed, then the ward on his coming of age, or in case of his death his executor or administrator shall have the like remedy by petition.

Grand-jury to present orphans without guardians, and all abuses of guardians.—R. S. c. 54, s. 19.

18. The grand-jury of every county shall annually at the orphan's court, be charged with, and shall present to the court in writing, the names of all orphan children within their county, that have not guardians, if not bound out to some trade or employment; and also all abuses, mismanagement, and neglect of such guardians as are appointed by the court of their county.



19. Whenever an orphan having any estate shall be presented by a grand-jury, for whom no suitable person will become guardian, the clerk of the court shall give notice thereof to the attorney-general or solicitor, who shall apply in behalf of the orphan, to the court of equity of the county where such presentment is made, and the court shall proceed to secure and manage the estate of such orphan, according to the provisions of the foregoing sections of this chapter.

E-states of orphans without guardians to be secured, &c.—1846, c. 48.

20. The clerk's fee for issuing any summons against guardians for their supposed defaults, as in this chapter directed, shall be paid by the party in default. Unless the guardian, before the issue of such summons, shall have finally settled with his ward, or was prevented by sickness or other unavoidable cause from exhibiting his account, when he shall not pay costs.

Clerk's fee for summons, how paid.—R. S. c. 54, s. 12.

21. Every guardian shall take into possession, for the use of his ward, all his estate, and may bring all necessary actions therefor.

Guardians to take charge of wards' estates.—R. S. c. 54, s. 9.

22. Every guardian shall obtain an order of the court to sell and dispose of all such goods and chattels of his ward as 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 and in reasonable lots, having first advertised the same twenty days, at the court house and three other public places in the county; and shall, for enhancing the price, give six months' credit upon good security. And such guardian shall diligently endeavor to collect the money, upon pain of being answerable therefor; and if the same cannot be collected before the ward shall have a right to demand it, or such guardian shall be removed, he may assign the security to the ward in discharge, for so much due from him.

To sell by order of court, his perishable estate.—R. S. c. 54, s. 13.

23. Where the profits of any ward's estate shall be more than sufficient to maintain and educate him, the guardian shall lend the surplus and all other sums of money in his hands, belonging to such ward, upon bond with sufficient security to be repaid, with interest annually; and all the bonds, notes, and other obligations which he shall take as guardian, shall bear compound interest, for which he shall account; and when the debtor or his sureties are likely to become insolvent, the guardian shall use all lawful means to enforce the payment thereof, on pain of being liable for the same; and he may pay the same to the ward on settlement with him.

To lend their money, and account for interest annually.

Bonds to bear compound interest,—may be assigned to wards on settlement.—R. S. c. 54, s. 13.

24. Where any ward shall have lands, and a sufficient number of slaves to cultivate and improve the same, the slaves, (unless otherwise ordered by the court,) shall be employed on the lands and farm of such ward; and all necessary horses, cattle, sheep, and hogs shall be kept upon such lands and farm until the ward shall come of age. *Provided, nevertheless*, that if the stock grow too numerous, or it shall be to the advantage of the ward, his guardian, by order of the court,

Slaves and stock, when to be kept on ward's land.—Provide if stock becomes too large.—R. S. c. 54, s. 14.

shall sell such part of the stock as the court shall think fit; and all plate shall be preserved and delivered to the ward at age, in kind, according to weight and quantity.

Land and slaves, when and how to be rented and hired.

25. Every guardian, where it is not deemed to be the interest of the ward to employ his slaves upon his lands and farm, shall hire out the slaves and rent out the lands. *Provided always*, that no guardian shall let any land belonging to his ward, for a longer term than the ward be of age, or in other manner than by lease in writing; and that special care be had that the tenant shall improve the farm, and keep the houses, orchards, and fences thereon, or that shall be put on the same, in good and sufficient repair, and leave the same so at the expiration of the lease; and that provision be made in such lease for preventing all kind of waste, and the using of any timber other than for the repairing and keeping up the farm.

Houses, fences, &c., to be kept in repair.—R. S. c. 54, s. 15.

Sales, &c., how made.—R. S. c. 54, s. 16.

26. All sales, hirings, or rentings, by guardians, shall be made and conducted in the same manner and under the same rules and regulations, and the same penalties for disobedience, as prescribed for sales made by administrators.

Guardian liable for suffering ward's land to lapse, or be forfeited for taxes, &c.

27. If any guardian shall suffer his ward's lands to lapse or become forfeited, or be sold for the non-payment of taxes or other dues, he shall be liable to answer the full value thereof to his ward. And if any ward shall not have slaves to cultivate his lands, or it may not be deemed best that they should do so, and the guardian cannot rent the same for enough to pay the taxes and other dues thereof, and there shall not be money or perishable estate sufficient for that purpose, the guardian, with the consent of the court, may annually dispose of, or use so much of the light wood, box, or rent so many pine trees, or sell so much of the timber on the same, as shall raise enough to pay the taxes and other dues thereon, and no more.

When may sell timber, &c.—R. S. c. 54, s. 17.

Allowed disbursements and expenses, and commissions.—R. S. c. 54, s. 22.

28. Every guardian may charge in his account all reasonable disbursements and expenses; and if it shall appear to the court that he hath really and *bona fide* disbursed more in one year than the profits of the ward's estate, for his education and maintenance, the guardian shall be allowed and paid for the same out of the profits of the estate in any other year. *Provided*, that such disbursements be, in the opinion of the court, suitable to the degree and circumstances of the estate of the ward. The court shall likewise allow commissions to the guardian for his time and trouble in the management of the ward's estate, in the same manner and under the same rules and restrictions, as allowances are made to executors and administrators.

Wards residing abroad and having property in the State, how may remove it through guar-

29. Where any ward, whether infant or person of nonsane memory, residing in another State shall be entitled to any personal estate in this State; or to any money arising from the sale of real estate sold for partition or otherwise; or to any personal property substituted for realty by decree of court,

whether the same be in the hands of any executor, administrator, or other person holding for the ward; or in the hands of any guardian, residing in this State, in whatsoever mode appointed; or if the same (not being adversely held and claimed) shall not be in the lawful possession or control of any person, the guardian of such ward duly appointed at the place where such ward may reside, may remove such estate to the residence of the ward in the following manner, and in no other.

30. He shall apply by bill or petition to the court of equity of the county in which the property or some portion thereof is situated, or in which the defendants or some of them may be resident, and shall show to the court a copy of his appointment and bond duly authenticated, and shall prove to the court that the bond is sufficient, as well in the ability of the sureties as in the sum mentioned therein, to secure all the estate of the ward wherever situated. Whereupon the court, all proper parties being before it, shall direct proper accounts to be taken and make every necessary decree, to the end that the guardian may obtain possession of all the estate of his ward.

31. Nothing contained in this chapter shall be construed to restrain or abridge the power of the court of equity in any matter or thing relating to orphans, or wards, or their estates; but that court may hold, use, exercise, and enjoy the same jurisdiction, power, and authority therein, to all intents and purposes, as heretofore.

32. On application of the guardian of an infant by bill or petition to a court of equity, showing that the interest of the infant would be materially and essentially promoted by the sale of any part of his estate, real or personal, the court may cause the truth of the matter to be ascertained, and thereupon decree that a sale be made by such person, in such way and on such terms, as the court shall adjudge.

33. No sale made under such decree shall be valid until the same be confirmed by the court: no conveyance of title shall be made, until the court shall order it and designate the person to make the title; and the proceeds of the sale shall be exclusively applied and secured to such purposes and on such trusts, as the court shall specify and direct. *Provided always*, that whenever in consequence of such sale the personal or real estate of the infant is saved from demands, to which in the first instance it might be liable, the court shall declare and set apart a portion of the personal or real estate thus saved, of value equal to the real and personal estate sold, as property exchanged for that sold; and in all such cases of sale, 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 it shall be reconverted from the character thus impressed upon it by some act of the owner, and restored to its character proper.

d'an.—R. S. c. 54, s. 23.—1842, c. 38, s. 1, 2.

By petition in equity.—R. S. c. 54, s. 24.—1842, c. 38, s. 2.

Power of courts of equity over orphans, &c., not abridged.—R. S. c. 54, s. 25.

Estates of infants sold to promote their interest, when, &c.—R. S. c. 54, s. 26.

Manner of making sale, and how proceeds applied and secured.—R. S. c. 54, s. 27.

When ward is indebted, how guardian to sell his property.

34. When any guardian shall have notice of a debt or demand against the estate of his ward, he may apply to the court wherein the guardianship was granted for an order to sell so much of the personal or real estate of his ward as may be sufficient to discharge such debt or demand; and the order of the court shall particularly specify what property may be sold, and the terms of sale; and the proceeds 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; and the same proceedings may be had against the guardian with respect to such assets, as might be taken against an executor or administrator in similar cases.

Proceeds to be applied as assets of deceased debtors.—R. S. c. 63, s. 11.

Sureties of guardians in danger of loss, how relieved.—R. S. c. 54, s. 20.

35. Any surety of a guardian, who shall be in danger of sustaining loss by his suretyship, may file his petition in the court where the guardianship was granted, setting forth the circumstances of his case and praying relief; and thereupon the defendant shall be required to answer the premises according to the course of the court. And if upon the hearing, the court shall deem the petitioner entitled to relief, the same may be granted in such manner and to such extent, by compelling the defendant to give security to indemnify the petitioner against such apprehended loss, by sequestration of the property or by the removal of the defendant from the guardianship, or in any manner as to the court shall appear to be just; and the court may from time to time pending the petition, make such interlocutory order and decree as may tend to the better securing of the petitioner.

Female guardians may swear to their returns before justices.

36. Female guardians shall be allowed to make affidavit to their accounts before any justice of the peace, who shall certify the same to the court.

SECT. 1. 2 D. & B. Eq. 325. *Not for grandchildren*, Bus. Eq. 46.

SECT. 2. *Where guardian has left the State*, 11 Ire. 37. *Who appointed*, 1 Hay. 303, 1 Mur. 231, 2 Ib. 122. *One acting as guardian*, 2 Car. L. R. 411.

SECT. 5. *Duty of guardian; obligation of bond*, 4 D. & B. 194, 1 Ire. Eq. 232. *Negligence*, 4 Ire. Eq. 54, 1 Jones, Eq. 167, Ib. 331.

SECT. 10. *Successive bonds cumulative*, 3 Ire. Eq. 502, Ib. 569, 6 Ire. Eq. 115. *Liability of clerk*, 1 Jones, 364.

SECT. 23. 3 Ire. Eq. 64. *How interest compounded*, 11 Ire. 227. *When compound interest ceases*, 3 Dev. 430. *May take real security*, 3 Ire. Eq. 549. *Sale of bonds by guardian*, 1 Ire. Eq. 342, Ib. 337, Ib. 340, 3 Ib. 99, 4 Ire. Eq. 281; *bona fide sale*, 5 Ire. Eq. 122.

SECT. 25. *Hired out to what time*, 13 Ire. 475.

SECT. 28. *Allowance of commissions*, 1 Ire. Eq. 136. *When commissions will exceed income*, 2 Ire. Eq. 354. *Accounts of guardian: father, guardian*, 2 Ire. Eq. 478; *ward to take bonds*, 6 Ire. Eq. 238; *board of wards before appointment*, Bus. 110; *interest*, 1 Dev. Eq. 382; *executor, guardian*, 1 D. & B. Eq. 564; *settlement*, 2 D. & B. Eq. 155, 8 Ire. 179, Bus. 480, 5 Ire. Eq. 136, 1 Jones, Eq. 166.

SECT. 32. 5 Ire. Eq. 136, Bus. Eq. 85.

SECT. 34. *What a valid sale*, 11 Ire. 431, 1 Ib. 259. *Priority of debts*, 3 Ire. 501.

SECT. 35. 2 Ire. Eq. 597, 1 D. & B. 475.

CHAPTER 55.

HABEAS CORPUS.

SECTION

1. Writs of *habeas corpus*; how obtained in vacation.
2. Duty of officer or other person to whom the writ is directed.
3. Duty of judge on return of writ.
4. Writs to be applied for within two terms after imprisonment.
5. Returned in open court, when court is in session.

SECTION

6. Penalty on judge for refusing the writ.
7. On officer for not obeying it.
8. For again imprisoning a person released on the writ.
9. Persons committed for capital offences entitled to trial or discharge, when.
10. Writ granted in civil cases.
11. Subpœnas to issue for parties. Costs, how and by whom, paid.

1. If any person shall stand committed, or be detained for any crime, in the vacation time, (other than persons convicted, or in execution by legal process,) he, or any one on his behalf, may complain to any judge of the supreme or superior court; and the judge, on view of the copy of the warrant of commitment, or otherwise on oath that it was denied, on request in writing by such person, or any in his behalf, attested and subscribed by a witness, who was present at the delivery of the same, shall grant a *habeas corpus*, directed to the officer or other persons in whose custody the party shall be, returnable immediately before the said judge.

Writs of *habeas corpus*, how obtained in vacation.—R. S. c. 55, s. 1; 31 Car. 2, c. 2, s. 1, 2, 3, 4, 5, 6, 7, 8, 10.

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, or deputies of the said officer, such officer, or his under officers or deputies, or the person having the custody as aforesaid, without delay, shall bring or cause to be brought the body of the party so committed or restrained, before the judge by whom the said writ was issued, or such other person before whom the writ is made returnable, according to the command thereof; and in ease of the absence of such, before any judge of either of the said courts, together with the true cause of his commitment and detainer or imprisonment.

Duty of officer or other person to whom the writ is directed.—R. S. c. 55, s. 2.

3. Upon such return being made, within two days after the party being brought before him the judge shall discharge the said prisoner from his imprisonment, as the ease 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 thereof, and the recognizance into such court, unless it be made to appear to the judge that the party is detained upon a legal process, order, or war-

Duty of judge, on return of writ.—R. S. c. 55, s. 3.

rant out of some court that has jurisdiction of criminal matters, or by some warrant, signed with the hand of any judge of the supreme or superior court, or some justice of the peace, for such matters or offences for which by law the prisoner is not bailable.

Writ to be applied for within two terms after imprisonment.—R. S. c. 55, s. 4.

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 in vacation time in pursuance of this chapter.

Returned in open court when court is in session.—R. S. c. 55, s. 5.

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 chapter, 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 chapter.

Penalty on judge for refusing the writ.—R. S. c. 55, s. 6.

6. If any judge of the supreme or superior court, 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 chapter required to be granted, being moved for as aforesaid, he shall forfeit to the party grieved two thousand five hundred dollars.

On officer for neglecting to obey it.—R. S. c. 55, s. 7.

7. If any officer or other person to whom a writ of habeas corpus shall be directed, shall neglect or refuse to make the returns as aforesaid, or to bring the body of the prisoner according to the command of the 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.

For again imprisoning a person released on the writ.—R. S. c. 55, s. 8.

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 the 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 the party aggrieved.

Persons committed for capital offences entitled to trial or discharge, when.—R. S. c. 55, s. 9.

9. If any person who shall be committed for treason or felony, plainly and specially expressed in the warrant of commitment, 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 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, upon its appearing by affidavit that there is a reasonable ground for the complaint, to the same remedy by writ of habeas corpus, and subject to the same rules, regulations, and restrictions in every respect, as are prescribed in this chapter; and the judge to whom application is 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 hereinbefore prescribed.

To be granted in civil cases.—R. S. c. 55, s. 10; 56 Geo. 3, c. 100.

11. Any party to a writ of habeas corpus may procure the attendance of witnesses at the hearing by subpoena, issued by the clerk of any court of record under the same rules, regulations, and penalties as are prescribed by law in case of witnesses attending the courts; and the judge, who shall determine such writ, may adjudge and decide how and by whom the costs arising thereon shall be paid, and direct by what officer the costs shall be taxed; and such officer may issue execution therefor, returnable to the next term of his court.

Subpoenas to issue for parties; costs, how and by whom paid.—1852, c. 90.

## CHAPTER 56.

### HUSBAND AND WIFE.

SECTION

1. Real estate of wife not to be sold or leased without her consent. Husband's interest exempt from execution.

SECTION

2. *Feme* may insure her husband's life, and will the interest. If she survives, to be assets to pay his debts, in certain cases.

1. No real estate belonging at the time of marriage to females, married since the third Monday of November, A. D. one thousand eight hundred and forty-eight, nor any real estate by them subsequently acquired, nor any real estate acquired on and since the first day of March, A. D. one thousand eight hundred and forty nine by *feme covert*s, who were such on the said third Monday of November, A. D. one thousand eight hundred and forty-eight, shall be subject to be sold or leased by the husband for the term of his own life, or any

Real estate of wife not to be sold or leased without her consent.

Husband's interest exempt from execution.—1848, c. 41.

*Feme* may insure husband's life, and will the interest. If she survives, to be assets to pay his debts, in certain cases.—185C, c. 90.

less term of years, except by and with the consent of his wife, first had and obtained, to be ascertained and effectuated by deed and privy examination, according to the rules required by law for the sale of lands belonging to *feme covert*s. And no interest of the husband whatever in such real estate, shall be subject to sale to satisfy any execution obtained against him; and every such sale is hereby declared null and void, in law and equity.

2. Any *feme covert*, in her own name, or in the name of a trustee with his assent, may cause to be insured for any definite time the life of her husband, for her sole and separate use; and she may dispose of the interest in the same by will, notwithstanding her coverture. *Provided, however*, that when the annual premium for insurance shall exceed three hundred dollars, and shall not be paid altogether out of her own separate estate, or by some friend for her, the sum due on the insurance on the death of her husband, she surviving, shall in case of the insolvency of the estate, be applied to the discharge of his obligations, contracts, and liabilities.

## CHAPTER 57.

### IDIOTS AND LUNATICS.

#### SECTION

1. Idiocy and lunacy ascertained by inquisition.
2. Guardians appointed by county court.
3. Person and estate may be committed to different persons.
4. Sale of their estate ordered by county court, when.
5. How and for what purpose courts of equity may order sale of their estates. Heirs and next of kin to be parties. Proceeds, how applied and secured; how descend, &c.
6. Estates without guardian, managed by court of equity, &c.
7. Proceedings, when imprisoned for crime.
8. May be tried on becoming sane.
9. Surplus income of insane person may

#### SECTION

- be advanced, in certain cases, to next of kin.
10. Purposes for which such advancements may be made. To whom paid.
11. All persons interested made parties.
12. Rule to be observed by the court.
13. Court may select the persons to be advanced.
14. Advancements secured against waste.
15. Appeal and removal to supreme court allowed.
16. Of what kind of insane persons, advancements to be made of their estates.
17. Decrees for advancements suspended on restoration to sanity.

Idiocy and lunacy ascertained by inquisition.—R. S. c. 57, s. 1.

1. THE idiocy or lunacy of every person, for whom a guardian may be appointed by the county court, shall be ascertained by the inquisition of a jury, to be summoned by the sheriff by virtue of a writ issued by the court for that purpose, on a petition filed at the instance of the court by the county solicitor, or at the instance of some person in behalf of such



idiot or lunatic, leave of the court being first obtained therefor.

2. The county court shall appoint, to be removed at its pleasure, a guardian for every lunatic or idiot, that may be found to be such in manner aforesaid, and may be possessed of any estate, who shall enter into bond, with good security, in the same manner as guardians of orphans, which shall be conditioned as well for the taking care of such nonsane person, as for the prudent management of, and faithfully accounting for, his estate; and such guardian shall make like returns, receive like compensation, have like powers, and be subject to like remedies on his bond, as guardians of orphans.

Guardian appointed by co. court.—R. S. c. 57, s. 1.

3. The guardianship of such nonsane person and his estate may be committed to different persons, whenever the court shall deem it advisable, as in cases of orphans; and, when thus separated, provision may be made for his support in like manner.

Person and estate may be committed to different persons.

4. Whenever it shall appear to any county court, (seven justices being present,) by report of the wardens of the county, or the guardian of any idiot or lunatic, that his personal estate has been exhausted, or is insufficient for his support, and that he is likely to become chargeable on the parish, the court may make an order for the sale or renting of his personal or real estate, or any part thereof, in such manner and upon such terms as they may deem advisable. Such order shall specify particularly the property thus to be disposed of, with the terms of renting or sale, and shall be entered at length on the records of the court; and all sales and rentings made under the provisions of this section, shall be valid to convey the interest and estate directed to be sold, and the title thereof shall be conveyed by such person as the court may appoint on confirming the sale; or the court may direct the guardian to file his petition in a court of equity for such purpose.

Sale of their estates ordered by county court, when.—R. S. c. 57, s. 2.

5. Whenever it shall appear to a court of equity, upon the petition of the guardian of any idiot or lunatic, that a sale of any part of his real or personal estate is necessary for his maintenance, or for the discharge of debts unavoidably incurred for his 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 such estate; or whenever any part of his real estate is required for public purposes, the court may decree a sale thereof to be made by such person, in such way and on such terms, as it shall adjudge. *Provided, however,* that the court, if it be deemed proper, may direct to be made parties to such petition the next of kin or presumptive heirs of such nonsane person.

How and for what purpose, courts of equity may order a sale of their estates.

Heirs and next of kin to be parties.

And if on the hearing, the court shall decree such sale, the same shall be made, and the proceeds applied and secured, shall descend and be distributed, in like manner as is provided for the sale of infant's estates decreed in like cases to be sold

Proceeds, how applied and secured; how descend, &c.—R. S. c. 57, s. 3, 4.

on application of their guardians, as directed in the chapter, entitled "Guardian and Ward."

Estates without guardian, managed by court of equity. — 1846, c. 43, s. 1.

6. Whenever any person is declared to be of nonsane mind, and for whom no suitable person will act as guardian, the court of equity shall secure the estate of such person according to the provisions of the law relating to orphans, whose guardians have been removed by the county court.

Proceedings when imprisoned for crime. — 1848, c. 57, s. 1.

7. Whenever any person shall be confined in any jail charged with a criminal offence, and it shall be suggested to the court, wherein such indictment is pending, that he is insane and incapable of being brought to trial, the court shall empanel a jury to inquire into the truth of the suggestion; and if the jury shall by their verdict find the prisoner to be insane, the judge, if the same be in the superior court, shall order the said finding to be certified to the county court of the county; and the county court on receiving said certificate, or upon the finding of the jury in the county court, if the charge shall be pending there, may cause such prisoner to be removed to the asylum for the insane, or to be otherwise provided for, according to law, to the end that proper means be used for his cure.

Tried on becoming sane. — 1848, c. 57, s. 3. Surplus income of insane persons may be advanced in certain cases to next of kin.

8. No such proceedings shall prevent the trial of such person upon his becoming sane.

9. Whenever any nonsane person, of full age, and not having made a valid will, shall have children or grandchildren, (such grandchildren being the issue of a deceased child,) and shall be possessed of an estate, real or personal, whose annual income shall be more than sufficient abundantly and amply to support himself, and to support, maintain, and educate the members of his family, with all the necessaries and suitable comforts of life, it may be lawful for the court of equity for the county in which such person shall have his residence to decree, from time to time, and as often as may be judged expedient, that fit and proper advancements be made, out of the surplus of such income, to any such child, or grandchild, not being a member of his family and entitled to be supported, educated, and maintained out of the estate of such person.

Purposes for which such advancements may be made.

10. Such advancements shall be decreed only for the better promotion in life of such as are of age, or married, and for the maintenance, support, and education of such as are under the age of twenty-one years and unmarried; and in all cases, the sums decreed shall be paid to such persons, as in the opinion of the court, will most effectually execute the purpose of the advancement. *Provided, however,* that, in case the child, or grandchild, be a *feme covert*, the sum advanced shall be paid or secured to her, for her sole and separate use.

To whom paid.

All persons interested made parties.

11. In every application for such advancements, the guardian or committee of the nonsane person, and all such other persons shall be parties, as would at that time be entitled to a distributive share of his estate, if he were then dead.

Rule to be ob-

12. The court, in decreeing such advancements, shall as far

as practicable so order the same, as that, on the death of the nonsane person, his estate shall be distributed among his distributees in the same equal manner, as if the advancements had been made by the person himself; and on his death, every sum advanced to a child, or grandchild, shall be deemed an advancement, and shall bear interest from the time it may be received.

erved by the court.

13. When the surplus aforesaid shall not be sufficient to make distribution among all the parties, the court may select and decree advancements to such of them as may most need the same, and may apportion the sum decreed in such amounts as shall be deemed expedient and proper.

Court may select the persons to be advanced.

14. It shall be the duty of the court to withhold advancements from such persons as will probably waste them, or so to secure the same when they may have families, that it may be applied to their support and comfort, but any sum so advanced shall be regarded as an advancement to such persons.

Advancements secured against waste.

15. Any person made a party may appeal from any decree of the court; or may, when the pleadings are finished, require that all further proceedings shall be had in the supreme court.

Appeal and removal to supreme court allowed.

16. No such application shall be made under the provisions of this chapter, but in cases of such permanent and continued insanity, as that the nonsane person shall be judged by the court to be incapable, notwithstanding any lucid intervals, to make advancements with prudence and discretion.

Of what kind of insane persons, advancements to be made of their estates.

17. Upon such insane person being restored to sanity, every decree made for advancements shall cease to be further executed, and his estate shall be discharged of the same.

Decrees for advancements suspended on restoration to sanity.

SECT. 1. *Form of proceeding*, 1 Ire. 523, 3 Ire. Eq. 535, 1 Hawks, 11. *Effect of as evidence*, 4 Ire. Eq. 443.

SECT. 2. *Suit how brought*, 2 Ire. Eq. 294, 3 Ire. 389. *Accounts of guardian: how settled*, 2 D. & B. Eq. 385. *Liable for compound interest*, 1 Ire. Eq. 426.

SECT. 5. *Effect of decree of sole*, 2 Ire. Eq. 294. *How proceeds applied*, 4 Ire. Eq. 231, 6 Ib. 406. *Jurisdiction territorial*, 1 D. & B. Eq. 152.

CHAPTER 58.

INFAMOUS PERSONS.

SECTION

- 1. Persons convicted of infamous crimes, how restored to rights of citizenship.
- 2. Depositions not to be read on the application.

SECTION

- 3. Petition filed in county of conviction. No person restored more than once.
- 4. Petition not to be filed within four years after conviction.

1. ANY person who may have been convicted of an infamous crime, whereby the rights of citizenship are forfeited, may be restored to the same, under the following rules and regula-

Persons convicted of infamous crimes, how restored to

rights of citizenship.—  
1840, c. 36.

tions. *First*, he shall file his petition in the superior court of law, setting forth his conviction and the punishment inflicted, and shall state therein his place or places of residence, and his occupation since his conviction, and shall also state the meritorious causes, which, in his opinion, entitle him to be restored to his forfeited rights. *Second*, upon filing the petition, the clerk of the court shall advertise the substance thereof, at the court house door of his county, for the space of three months next before the court when the petitioner proposes that the same shall be heard. *Third*, at the hearing, the court, on being satisfied of the truth of the facts set forth in the petition, and on its being proved by five respectable witnesses who have been acquainted with the petitioner's character for three years next preceding the filing of his petition, that his character for truth and honesty during that time has been good, shall decree his restoration to the lost rights of citizenship, and the petitioner shall accordingly be restored thereto.

Depositions not to be read.—  
1840, c. 36.

2. At the hearing, no deposition relating to the character of the petitioner shall be read; and the court shall examine all proper testimony which may be offered either by the petitioner, or any, who may oppose the grant of his prayer.

Petition filed in county of conviction. No person restored more than once.—  
1840, c. 36.

3. The petition shall be filed in the county where the indictment was found, upon which the conviction took place; and in case the petitioner may have been convicted of an infamous crime more than once, and indictments for the same may have been found in different counties, the petition shall be filed in that county where the last indictment was found; and no person shall be entitled to be restored to the lost rights of citizenship more than once.

Petition not to be filed within four years after conviction.—  
1840, c. 36.

4. No petition for the purposes aforesaid, shall be filed within less time than four years after conviction.

## CHAPTER 59.

### INSOLVENT DEBTORS.

#### SECTION

1. Insolvents imprisoned twenty days may be discharged, how. Ten days' notice to be given. Oath taken. In certain cases notice given to clerk. Court may dispense with notice, when.
2. Proceedings out of court to be put in writing, returned to court, and recorded.
3. Debtors remaining in close prison twenty days, may file a schedule. Proceedings thereon. Oath of debtor filing a schedule.

#### SECTION

4. Debtors filing schedule and taking oath, discharged.
5. Jailer to furnish debtor with food; if debtor is unable to pay, may collect fees from creditor. After twenty days, may notify creditor, and demand security for fees.
6. Debtor in custody on *ca. sa.*, or after judgment, may give bond to appear at next court. On failure to appear, judgment on bond. Upon tendering bond, to be released.
7. Bonds taken by constables returnable

SECTION

SECTION

- to next county court. On what days of court; penalty for failure.
- 8. When returned to second court after arrest.
- 9. Schedule to be filed ten days before court.
- 10. Case may be continued. In case of death, bond discharged.
- 11. Debtor, having given notice, may take oath, &c. Discharged as to all creditors notified. Notices to be filed.
- 12. Debtor appearing who has not given notice, may be imprisoned. Unless court allow time.
- 13. On suggestion of fraud, issues made up. Debtor examined on oath. Issues may be continued.
- 14. On fraud found or refusal to answer, debtor imprisoned.
- 15. Debtor on making disclosure and giving notice, discharged.
- 16. Any creditor notified may become party. Appeal by one or more.
- 17. After issue, debtor not discharged but by trial or consent.

- 18. Particulars of fraud suggested in writing, on oath.
- 19. *Ca. sa.* not to issue without affidavit. May issue against one of several defendants.
- 20. When the creditor is non-resident, who notified, &c.
- 21. Property in schedule to vest in sheriff of the county where filed. Sheriff's duty about the same.
- 22. Commissioners appointed to divide debtor's effects.
- 23. Surety may surrender principal.
- 24. Execution against after acquired estate.
- 25. Debtor swearing falsely, deprived of all relief.
- 26. Female debtors not to be imprisoned.
- 27. Debtor in prison bounds may take the oath.
- 28. Free negroes, committed for fine and costs, and on orders in bastardy, not discharged as insolvents.

1. If any person shall be taken or charged on *mesne process* for any debt; or shall be taken or charged on execution for any debt or damages rendered in any action whatever; or shall be committed for failing to give bond for the maintenance of any bastard child charged upon him, or for failing to pay any sum of money ordered to be paid by him for its maintenance; or shall be committed for the fine and costs of any criminal prosecution, and shall have remained in prison for twenty days, the court of pleas and quarter-sessions, or any two justices of the peace of the county wherein he may be confined, or any judge of the superior or supreme court, in or out of court, upon petition of such prisoner under his hand, (whereof ten days' notice shall be given to the person, his executors, administrators, attorney, or agent, at whose suit such prisoner shall be imprisoned,) shall, by warrant, require the sheriff or keeper of the prisoner to bring him before such county court, justices, or judge, together with a list of the several writs, mesne processes, and executions with which he is charged; which warrant every such sheriff or keeper shall obey. And if such prisoner have no visible estate, and shall make oath before the said county court, justices, or judge, 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 the articles exempted by law from sale under execution; 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

Insolvents confined in jail twenty days may be discharged, how.

Ten days' notice to be given.

Oath taken.

In certain cases notice given to clerk.

Court may dispense with notice, when.—R. S. c. 58, s. 1.—1838, c. 23; 1840, c. 33, 34; 1852, c. 49.

Proceedings out of court to be put in writing, returned to court, and recorded.—R. S. c. 58, s. 2.

Debtors remaining in close prison twenty days, may file a schedule.

Proceedings thereupon.

Oath of debtor filing a schedule.—R. S. c. 58, s. 4.

to himself, or to defraud any of his creditors to whom he is indebted; then if there be none present that can prove the contrary, such person shall be immediately set at liberty, and shall stand forever discharged of all executions against his body for the debt so sued for and all costs of suit. *Provided*, that in cases where the prisoner is committed for fine and costs, or in cases of bastardy as aforesaid, notice shall be served on the clerk of the court by which he was committed, unless the court, in its discretion, may allow him to take the oath of insolvency and be discharged, without notice to the clerk.

2. The justices and judge aforesaid, when the proceedings are before them out of court, shall put the same in writing under their hands, and return them into court from whence the *mesne process* or execution issued, or where the commitment was made; and the proceedings, when such process or execution shall be issued by a justice of the peace, shall be returned to the next county court, there to be kept as a record.

3. If any person shall be taken or charged on *mesne process* for debt, or be in execution for any sum, or otherwise in custody in any of the cases specified in the first section of this chapter, and shall have remained in prison for twenty days, and shall have any estate and be minded to deliver up the same to his creditors, he may prefer a petition to the court from whence the process issued, setting forth therein the cause of imprisonment, and in a schedule an exact account of his estate and all circumstances relating thereto; which petition and schedule, subscribed by him, shall be lodged with the clerk of the court from which such process issued. And thereupon the clerk shall issue a copy of the said petition and schedule to the creditors at whose suit such prisoner is confined, summoning them to the next succeeding court to show cause why the prayer of the petitioner should not be granted; and the same being duly served upon such persons, their executors, administrators, attorney, or agent, ten days before the term, the court shall cause the prisoner to be brought before them, and if the said creditors shall appear, or being duly summoned shall fail to appear, the court shall proceed to hear the petition in a summary way, and shall tender to such person an oath to the following effect:—

“I, A. B., in the presence of Almighty God, solemnly swear 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 in anywise 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 to any other person in trust for me; and that I, or any other person in trust for me, have not land, money, or stock or any other estate in possession, reversion, or remainder, except what is contained in my schedule aforesaid.

and what is exempt by law from sale under execution ; and that I have not, directly or indirectly, sold, lessened, or otherwise disposed of in trust, or concealed 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 to whom I am indebted, in anywise howsoever: so, help me God."

4. If the prisoner take such oath under the rules aforesaid, the court, being convinced of the truth thereof, by warrant shall command the sheriff or keeper forthwith to set him at liberty ; which warrant shall be a sufficient discharge to the sheriff or keeper, and shall indemnify him against any escape, or action which may be brought against him by reason thereof; and in any such action he may plead the general issue, and give the matter aforesaid in evidence.

Debtors, filing schedule and taking oath, discharged.—R. S. c. 58, s. 5.

5. When any debtor shall be actually confined within the walls of a prison, by *mesne process* for debt, *capias ad satisfaciendum*, or surrender by bail after judgment, the jailer shall furnish him with necessary food during his confinement if the prisoner require it, for which the jailer shall have the same fees as for keeping other prisoners; and if the prisoner be unable to discharge them, may recover the same from the party at whose instance such debtor was confined; and when the debtor shall have remained in jail for twenty days, the sheriff or jailer may give notice thereof to the plaintiff, his agent or attorney, and demand security of him for the prison fees, that may accrue after the expiration of that time; and if he shall fail to give such security, then the sheriff or jailer may discharge such debtor out of custody.

Jailer to furnish debtor with food; if debtor unable to pay, may collect fees from creditor.

After twenty days may notify creditor and demand security for fees.—R. S. c. 58, s. 6.

6. When any debtor shall be taken upon any *capias ad satisfaciendum*, or after judgment be in the custody of the sheriff or other officer by commitment of the court, or by surrender of bail out of court, for any debt or contract whatever, and shall desire to take the benefit of the oath for the relief of insolvent debtors, he may tender to the sheriff or other officer by whom he may be arrested, or in whose custody he may be, a bond payable to the plaintiff with good and sufficient security in twice the amount of the debt, conditioned for his appearance at the next court to which the execution shall be returnable, or wherein the judgment may have been rendered, 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 the oath aforesaid; and in case of his failure to appear, judgment shall be rendered *instanter* upon said bond against the principal and his sureties, 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 provisions of this section. And every debtor tendering such bond, shall be entitled to his release from confinement or custody.

Debtors, in custody on *ca. sa.*, or after judgment, may give bond to appear at next court.

On failure to appear, judgment on bond.

Upon tendering bond, released.—R. S. c. 58, s. 7, 8.

7. When the constable or other officer shall take such bond, Bonds taken by

constables returnable to next county court.

On what days of court; penalty for failure.—R. S. c. 58, s. 7.

When returned to second court after arrest.—R. S. c. 58, s. 7.

Schedule to be filed ten days before court.—R. S. c. 58, s. 12.

Case may be continued. In case of death, bond discharged.—R. S. c. 58, s. 7.

Debtor having given notice, may take oath, &c.

Discharged as to creditors notified. Notices to be filed.—R. S. c. 58, s. 10.

Debtor appearing who has not given notice, may be imprisoned.

Unless court allow time.—R. S. c. 58, s. 10.

On suggestion

upon an arrest, by virtue of an execution issued by a justice of the peace, or upon a surrender to him in the manner hereinbefore provided, after any judgment rendered by a justice of the peace, it shall be conditioned for the defendant's appearance at the next county court of the county, wherein such constable or other officer resides; which bond, with all other papers appertaining to the case, shall be returned to the court, on or before the second day of the term, under the penalty of fifty dollars to each of the parties, to be recovered against the constable or other officer.

8. Whenever there shall not be twenty days between the arrest under any *capias ad satisfaciendum* or surrender to the custody of any officer, as provided in the two preceding sections, and the court to which the bond is returnable, the bond shall be conditioned for his appearance at the term of court next after.

9. Every debtor who shall have given bond as aforesaid, and shall have any property, money, or effects, shall file with the clerk of the court a full, true, and accurate schedule of the same, specifying therein what portion of his estate he claims to be exempt from execution, ten days before the term, at which he will avail himself of the benefit of the provisions of this chapter.

10. Whenever it shall appear to the court, that any debtor who may have given bond is prevented from attending court by sickness or other sufficient cause, the case shall be continued to the next term, when the same proceedings shall be had as if he had appeared according to the condition of his bond; and if he shall die in the mean time his bond shall be discharged.

11. Upon the appearance of the debtor at the court aforesaid, he may pray the court to be allowed to swear to his schedule, if any has been filed, and take the oath prescribed for insolvent debtors; and if it shall appear that ten days' notice has been given in writing to his creditors of his intention to take such oath, he shall be allowed to take the same, and the court shall record the proceedings; and thereafter the body of the debtor shall be free from imprisonment for debt, as to every creditor, and as to him only, to whom such notice may have been given; and the notices shall be filed with the clerk of the court.

12. If, in any case where the creditor, at whose instance the debtor is arrested, shall not have suggested fraud or concealment, the debtor will appear, and shall fail to prove that he has duly notified such creditor, he shall, on motion of the creditor, be adjudged to be imprisoned until he shall give such notice or prove the same to have been given. *Provided, however,* that upon good cause shown, the court may allow further time to give such notice, or to prove the same to have been given.

13. *Provided, always,* that if any creditor notified shall sug-



gest any fraud or concealment of any property, money, or other estate, the court shall direct proper issues to be made up and tried by a jury at the first term, and before the debtor is sworn, who may be examined on oath on the trial of such issues, if the creditor shall require it; but he shall not be allowed to deny the execution of the bond except on oath in writing. *Provided, also*, that if either of the parties shall be unprepared for trial, the court, as in other cases, may continue the cause.

of fraud, issues made up.

Debtor examined on oath. Issues may be continued.—R. S. c. 58, s. 10.

14. If, on the trial, the jury shall find that there is any fraud or concealment, or if the debtor shall fail or refuse to answer upon oath, then the debtor shall be deemed in the custody of the sheriff, and shall be adjudged to be imprisoned, until a full and fair disclosure of all the money, property, or effects be made by the debtor.

On fraud found or refusal to answer, debtor imprisoned.—R. S. c. 58, s. 10.

15. 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 by taking the oath prescribed in section three of this chapter.

Debtor on making disclosure and giving notice discharged.—R. S. c. 58, s. 11.

16. The court may permit as many of the creditors 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 of the creditors, where there are more than one, shall be dissatisfied with the judgment of the court, he, or as many as choose, may appeal, notwithstanding some of the creditors, parties to the issue, may decline to appeal; and the suit shall be prosecuted afterwards by the appealing creditors.

Any creditor notified may become party. Appeal by one or more.—R. S. c. 58, s. 20.

17. 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.

After issue, discharged only by trial.—R. S. c. 58, s. 21.

18. The court shall not permit an issue of fraud to be made up and tried under the provisions of this chapter, unless the creditor, his agent, or attorney, shall file a suggestion in writing, specifying therein the particulars of such fraud or concealment, and shall annex to the said suggestion his affidavit that he verily believes the truth of the matters therein stated.

Particulars of fraud suggested in writing, on oath.—1844, c. 31, s. 2.

19. No *capias ad satisfaciendum* shall issue, unless the plaintiff, his agent, or attorney, shall make affidavit in writing before the clerk of the court in which such judgment may be, or before the justice of the peace to whom application is made for such process, that he believes the defendant has not property sufficient to satisfy such judgment, which can be reached by a *fiery facias*, and has property, money, or effects, which cannot be reached by *fiery facias*; or has fraudulently concealed his property, money or effects; or is about to remove from the State. And where the judgment shall be against two

*Ca. sa.* not to issue without affidavit.—1844, c. 31, s. 1.

May issue

against one of several defendants.

When a creditor resides abroad, who, and how notified.—R. S. c. 58, s. 13.

Property in schedule vested in sheriff of county where filed.

Sheriff's duty as to the same.—R. S. c. 58, s. 14.

Commissioners appointed to divide debtor's effects.—R. S. c. 58, s. 15.

Surety may surrender his principal.—R. S. c. 58, s. 9.

Execution against, after acquired estate.—R. S. c. 58, s. 16.

Debtor swearing falsely, deprived of all relief.—R. S. c. 58, s. 17.

or more, although some of them may be solvent, the plaintiff may issue such *causas* against any of the defendants, of whom and whose property he may make said affidavit.

20. When the person to be notified shall reside out of the State, the notice may be served on his attorney or agent, or the constable who has charge of the claim; and if there be no known agent or attorney who resides in the county, notification made in any newspaper in the State, by two publications, shall be sufficient.

21. All the estate, right, and interest of any person who may file a schedule, and all the right, interest, and estate, which he may lawfully depart with, contained in such schedule, shall be vested in the sheriff of the county where the schedule may be filed, except such of the estate in the said schedule contained, as may be exempt from sale under execution; and such sheriff shall sell at public auction, and convey the said estate, right, and interest to him who will give the best price for the same; and the proceeds thereof, and all debts and demands contained in said schedule, (which the sheriff may collect in his own name,) shall be paid by the sheriff, upon oath, into the office of the court of pleas and quarter-sessions of his county, to be distributed as hereinafter provided.

22. The court where any schedule may be filed, shall appoint two commissioners, who shall examine into the claims of all the creditors of the person rendering such schedule, as well of those at whose suit he was arrested as of all others; and the commissioners, by advertisement at the court house, and in some newspaper if they deem it necessary, shall make known the time at which they propose to examine such claims, which shall be within sixty days after their appointment; and upon such creditors, their executors or administrators, agents or attorneys, appearing and satisfying them of the justice of their claims, they shall proceed to make distribution amongst the creditors so appearing, in proportion to their respective demands; and the clerk of the court shall pay the moneys received from such insolvent's estate, to the commissioners for the purposes aforesaid.

23. The surety in a bond, conditioned for the appearance of any person at court and for his taking the oath of insolvency, may surrender the principal in discharge of himself in open court of the county where he is bound to appear, or to the sheriff or other officer of such county, and such surety shall have all the power which special bail have over their principal.

24. In all cases of the discharge of an insolvent debtor, under any of the provisions of this chapter, execution may issue against any estate afterwards acquired by him.

25. If any person shall falsely and corruptly take any of the oaths prescribed in this chapter for the relief of insolvent debtors, and upon indictment of perjury shall be convicted thereof, he shall suffer all the pains of wilful perjury, and never after have any of the benefits of this chapter, but may be sued

and imprisoned, as though he had never taken the oath of insolvency.

26. No female shall be arrested or imprisoned for debt.

27. 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 chapter. *Provided, however,* that no 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 be entitled to the benefit of the prison bounds, but he shall remain in close prison, until discharged by being permitted to take the oath of insolvency.

28. Nothing in this chapter contained shall extend to free negroes, who may be committed for fine and costs in criminal prosecutions, or upon any judgment in a case of bastardy.

Female debtor not to be imprisoned.—R. S. c. 58, s. 18. Debtor in bounds may take the oath.—R. S. c. 58, s. 19.

Free negroes, in bastardy cases, &c., not discharged as insolvents.—1838, c. 23; 1840, c. 29.

SECT. 5. *When creditor liable for jail fees*, 13 Ire. 235, 10 Ib. 417. *Prison bounds*, 13 Ire. 10.

SECT. 6. *Bond: form and effect of*, 11 Ire. 613, 3 Ire. 42, 3 D. & B. 9, 2 Dev. 12, Ib. 254, 3 Dev. 95, 1 D. & B. 113. *Who may give*, 2 D. & B. 356; *for debt only*, 2 D. & B. 490; *defence*, 12 Ire. 136; *by surety*, 1 Ire. 106.

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SECT. 9. *Schedule*, 11 Ire. 509, 1 Ib. 501. *May assign property after arrest*, 3 Ire. Eq. 568.

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SECT. 12. *Exceptions too late after issue*, 8 Ire. 211, 9 Ib. 28, 3 Ib. 42; *joinder of issues*, 5 Ire. 649.

SECT. 13. *Effect of verdict of fraud*, 6 Ire. 285, 1 Dev. 233. *Committitur in execution*, 6 Ire. 119.

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## CHAPTER 60.

### INSPECTIONS.

SECTION

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6. Not to be more than six inspectors in any town, except Wilmington.
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SECTION

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9. Vacancies, how filled when between terms of court. Assistants in certain cases.
10. Principal liable for acts of.
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## SECTION

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65. Steam mill lumber, how inspected.
66. Saw-mill lumber and ton timber, how measured.
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70. Fines, &c., under this chapter, how applied.
71. Disputes about extra cooperage, &c., in Wilmington, how determined.
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76. Shall give bond. Fees.
77. Penalty for selling forage or provisions without inspection.
78. Inspector of forage, &c., may appoint deputy.
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Former places  
of landing and  
inspection con-

1. All such places, as have been established by law, or by the order of any county court within its county as public land-

ings, or as places of inspection, shall be and remain public landings and places of inspection; and the county courts may appoint such public landings and places of inspection, within their respective counties, as they may think necessary and convenient: and on any petition for a public landing, the court may order the costs to be paid by the petitioner or by the county.

tinued; county courts may appoint others.—R. S. c. 59, s. 1.

2. The several county courts, except when herein otherwise directed, may appoint one or more inspectors for the place or places of inspection, who shall inspect such articles, as by law are required to be inspected, which may be brought to his place of inspection for that purpose; which inspectors shall reside in the county where appointed, and take the oaths required by law. *Provided, however,* that inspectors of turpentine and naval stores in the county of Craven, for the places of inspection provided by the court of pleas and quarter-sessions, shall be elected by the citizens of the county qualified to vote for members of the house of commons, at the time of the election of members of Congress, in the year one thousand eight hundred and fifty-five, and at the same time every two years thereafter; and the polls shall be opened and held under the same rules and regulations as polls for members of the General Assembly; and the sheriff, or other officer, qualified to hold such elections, shall, at the court house, declare the persons, having the highest number of votes, duly elected inspectors as aforesaid, who shall continue in office for two years next after their qualification, and until their successors shall be elected and qualified; and if two persons shall have an equal number of votes, the sheriff shall make the election as provided for members of the General Assembly. If a vacancy shall occur by death or otherwise, the court of pleas and quarter-sessions (seven justices being present) may appoint some suitable person to fill the unexpired term.

Inspectors appointed by county courts.—R. S. c. 59, s. 2.

Proviso as to inspectors in Craven county.—1850, c. 69, s. 1, 2, 3, 4, 5.

3. Every inspector shall, in the county court of his county, give bond with two sufficient sureties, in the penalty of one thousand dollars, for the faithful discharge of the duties of his office, payable to the State of North Carolina, and renewed annually as in the case of clerks of courts.

To give bonds.

Renewable yearly.—R. S. c. 59, s. 3.

4. The several inspectors shall 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, fish, flour, butter, flaxseed, sawed lumber, ton timber, and shingles, as shall be exposed to sale for exportation within their respective counties.

To attend at times and places appointed.—R. S. c. 59, s. 4.

5. No merchant, who shall be concerned in the trade and purchase of produce for exportation required to be inspected, shall be appointed inspector. And if any person, receiving such appointment, shall be concerned as a merchant in the exportation of such produce, he shall forfeit the sum of sixty dollars, and be removed from office by the county court, on

Exporting merchant not to be inspector.—R. S. c. 59, s. 5. Penalty.

motion made by the solicitor of the county, on producing the record of the recovery of the said penalty.

Not to be more than six inspectors in any town.—R. S. c. 59, s. 6. Except Wilmington.—1852, c. 134, s. 2.

Not to have deputies.

Proviso for flour inspectors.—R. S. c. 59, s. 7.

6. The county court shall not appoint in any of the towns more than six inspectors, except for the purpose of inspecting timber; in which case the court may appoint such number as they may consider necessary. *Provided, however,* that the county court of New-Hanover may appoint eight or more inspectors of naval stores for the town of Wilmington.

7. No inspector shall appoint a deputy, (except when herein otherwise directed,) under the penalty of two hundred dollars. *Provided,* that if the quantity of flour, brought to any place of inspection, 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, he may appoint one or more persons, of good repute and skilled in the quality of flour, to assist him in the execution of his office; who after having taken the oaths prescribed by law for the inspectors of flour, shall be authorized to inspect and brand flour in the same manner as the inspector. *Provided,* that the inspector shall be liable for all misconduct in office, of his deputies.

To hold office during good conduct.

How removed.

Two general inspectors for Wilmington appointed by commissioners.—1854, c.

8. All inspectors shall hold their offices during good behavior, unless otherwise directed. \* Inspectors of naval stores 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 March; and where any inspector shall be guilty of neglect, malpractice, or misbehavior in office, on complaint made to the county court, they shall summon him to appear before them at the ensuing term; and, if he is found guilty by the verdict of a jury, they shall remove him from office, and appoint another in his stead. Two inspectors, whose duties shall be to inspect flour, provisions, and forage for the town of Wilmington, shall be appointed by the commissioners of the town of Wilmington, said commissioners having the right to specify the articles to be inspected, the mode of inspection, and the fees to be paid for the same, and the length of time that said inspectors shall hold their office; and if any such inspector shall be guilty of neglect, malpractice, or misbehavior in office, said commissioners shall have power to remove him from office, and appoint another in his stead.

Vacancies, how filled between terms of court. Assistants in certain cases.—R. S. c. 59, s. 9.

9. Whenever there shall be a vacancy in the office of inspector, while the county court is not in session, any three justices may appoint some other fit person, until the next succeeding court; or if any inspector shall be rendered incapable of performing his duty by sickness, or other accident, he may, with the consent of three justices, appoint some other person as assistant during his sickness, or other disability; which consent shall be certified under their hands, and lodged with the clerk of the court.

Principal liable

10. Such assistant shall take the same oaths as inspectors;

and the inspector shall be liable to the same fines and penalties for the assistant's misbehavior, as for his own.

for acts of.—  
R. S. c. 59, s. 2.

11. Inspectors of tobacco shall 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 and hooped, and the number, net weight, and tare, with the name of the warehouse, stamped or marked thereon; and for all tobacco, passed by them in crop hogsheads, they shall give to the owner a receipt, or note, containing the warehouse, number, gross, tare, and net weight, and the kind of tobacco, and therein oblige themselves to deliver such tobacco to the 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 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 notes, thirty pounds of tobacco for the cask; and where tobacco is offered for inspection, and it appears that part thereof only is fit to pass, the owner may separate the 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 is the property of one of the inspectors, then another sworn inspector from the nearest warehouse, or a justice of the peace, shall be called and decide, and receive or reject the same.

Inspectors of tobacco; duty of.—R. S. c. 59, s. 11.

12. Where any tobacco shall be delivered out of a warehouse, the inspectors shall give a separate manifest of each hogshead delivered, in which shall be inserted the marks, number, and weight.

To give a manifest of each hogshead.—R. S. c. 59, s. 12.

13. The proprietor of condemned tobacco shall have the privilege of letting it remain in the warehouse six months after inspection, and shall be entitled to have the same reinspected, if he think proper.

Condemned tobacco reinspected, when.—R. S. c. 59, s. 13.

14. No tobacco shall be exported out of the State, until the same has been carried to some place of inspection, and there viewed, passed, and stamped according to the directions of this chapter.

None exported uninspected.—R. S. c. 59, s. 14.

15. If any person shall brand, or cause to be branded, any hogshead of tobacco, which the inspectors have not examined and branded, with a view to induce a belief that such hogshead had been lawfully inspected, he shall forfeit and pay one hundred dollars.

Penalty for falsely branding hogshead.—R. S. c. 59, s. 15.

16. If any person shall forge or counterfeit the stamp, note, or receipt of any inspector of tobacco, or shall offer for sale or payment, or demand of any inspector, tobacco on any such

Forgery of stamp, note, &c., of inspector of tobacco.—R. S. c. 59, s. 16.

forged note or receipt, knowing it to be forged, or shall produce to an inspector as aforesaid any forged certificate, knowing the same to be forged, or shall cause to be exported any hogshead or cask of tobacco stamped with a forged or counterfeit stamp, knowing the same, or shall take any staves, plank, or heading out of any hogshead of tobacco stamped by an inspector as by law directed, after such hogshead shall have been delivered, from any of the public warehouses, with a fraudulent intent; the person so offending shall be deemed guilty of a felony, and shall be publicly whipped not exceeding thirty-nine lashes, and be imprisoned not less than six months.

Manner of proceeding when a note is lost.—R. S. c. 59, s. 16.

17. If any inspector's note shall be lost or destroyed, the owner 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 is the lawful owner thereof, and entitled to receive the tobacco therein mentioned, may obtain a certificate from the justice and shall thereby be entitled to receive the tobacco for which the lost note was given. *Provided*, that in all such cases the owner before obtaining another note for the same, shall give bond with approved security to the inspector, who gave the lost or destroyed note, or his successor, 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 taken shall be assignable by the inspector taking the same, to the person producing the original note, who may maintain an action of debt thereupon, and such assignment shall exonerate the inspector from any claim or demand against him by virtue of the original note.

Proceedings by one demanding his tobacco, injured since inspection.—R. S. c. 59, s. 17.

18. When any person demands tobacco of any inspector on his note, 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 empowered to administer such oath,) well and carefully view and examine the tobacco in dispute, and give their opinion, 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 note, for the same; and in that case the party, calling a review, shall pay the justices attending eighty cents each; but if they reject the tobacco, the inspector shall pay the said justices, and shall be liable to the owner of the note, 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.

Turners up and coopers ap-

19. 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, who shall hold their appointments during good behavior.

pointed.—R. S. c. 59, s. 18.

20. The inspectors shall be judges of the behavior of the turners up; and if, in their opinion, the turners up are deficient in their duty, the inspectors shall report them to the court; and if they shall be found guilty of the charge alleged, the court shall remove them, and appoint others. *Provided*, that any person bringing tobacco to any of the said inspectors, may turn up, pick, prize, and cooper his own tobacco, and have free access to any of the prizes erected by the county for the purpose of prizing the same. And if any dispute should arise between the persons bringing tobacco to any warehouse, the right of preference to the prizes shall be determined by the inspectors.

Inspectors to report to court the misbehavior of turners up.

Owners may turn up, &c., their tobacco.—R. S. c. 59, s. 19.

21. The county court, where a public inspection of tobacco is established, shall appoint two persons skilled in tobacco to be pickers: and the court 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 of inspectors; and the pickers may be called on to give a casting vote, should the inspectors disagree in the inspection of any tobacco; and when attending in lieu of inspectors, may receive the allowance of inspectors. *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, he shall have the power of inspector, in case of inability of any inspector, until the next county court, or until the inspector can be present. *Provided, nevertheless*, that upon complaint made against any picker, the court where such complaint is lodged shall inquire into the nature thereof; and if it shall appear that such picker hath been guilty of any misbehavior in the execution of his duty, the court shall remove him, and appoint another in his stead.

Pickers of tobacco appointed.—R. S. c. 59, s. 20.

22. No inspector shall, directly, or indirectly, buy, or receive by way of barter, loan, or exchange, any tobacco whatsoever, (payments for his own rents excepted,) under the penalty of forfeiting his office.

No inspector to buy tobacco.—R. S. c. 59, s. 21.

23. 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 county charges; and also shall order and limit the time for the attendance of the inspectors at their respective warehouses.

Warehouses may be built or rented.—R. S. c. 59, s. 22.

24. If any warehouse, at any of the tobacco inspections, shall happen to be burned and tobacco therein destroyed, no inspector shall be sued by reason of any notes or receipts by him given for tobacco so burned.

When warehouse burnt, inspector not liable, &c.—R. S. c. 59, s. 23.

Warehouse rent regulated, &c.—R. s. c. 69, s. 24.

25. The justices in each county shall, from time to time, regulate what shall be paid as warehouse rent for each hogshead of tobacco; and shall appoint some fit person to receive the moneys, who shall be accountable to them at all times for the appropriation of the same, by action of debt; and the inspector's books shall be proof as to the number of hogsheads received.

Warehouses, &c., repaired.—R. S. c. 59, s. 25.

26. The justices shall, as occasion may require, appropriate any of the remaining part of the aforesaid moneys in repairing or rebuilding their warehouses.

Rules of private warehouses.—R. S. c. 59, s. 26.

27. The rules and regulations aforesaid shall obtain with respect to warehouses built by persons on their own lands, and at which a public inspection has been established, as to the warehouse rent for each hogshead of tobacco.

Inspectors of tobacco for Fayetteville.—1842, c. 41, s. 1.

28. The county court of Cumberland, at the first court after the first day of February one thousand eight hundred and fifty-five and every two years thereafter, shall appoint one or more inspectors of tobacco; and no person shall inspect tobacco in the town of Fayetteville unless so appointed.

To designate qualities, &c.—1842, c. 41, s. 2.

29. Such inspectors shall designate four qualities of tobacco, to be known as follows:—first, second, and third qualities, and refused or unmerchantable; and they shall mark it according to the quality, and give notes, designating the same.

To take for inspection lugs from each break.—1842, c. 41, s. 3.

30. The inspectors in Fayetteville shall take from each break not less than four nor more than six hands, or lugs of tobacco, and deliver one half to the owner or consignee, and retain the other half, marked according to the quality, and keep the same for the inspection of any person who may wish to examine it, until the tobacco is shipped or sold.

Inspector of flour not to trade in flour.—R. S. c. 59, s. 27.

31. No inspector of flour or his deputies shall, directly or indirectly, trade in flour, bread, or other articles made of flour, under the penalty of two hundred dollars; and every inspector so offending and thereof convicted, shall be disabled from acting in his office; and no inspector of flour shall, directly or indirectly, purchase any flour by him condemned; nor any other flour, than for his own use, under the penalty of seven dollars for every barrel by him purchased.

Degrees of flour.—R. S. c. 59, s. 28; 1852, c. 135, s. 1.

32. The several degrees of flour shall be distinguished as follows, namely, family, superfine, fine, and cross middling; and inspectors of flour shall conform their inspection, as near as may be, to the inspection observed and in use in the adjacent States.

Barrel of flour to weigh 196 pounds, net.

33. Each barrel of flour, exposed to sale in or exported from the State, by land or water, shall contain one hundred and ninety-six pounds; and each half barrel, ninety-eight 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 chine-hoop,

and three nails in each upper bilge hoop; and the dimensions shall be as follows, namely, the stave shall be twenty-seven inches in length, and the head seventeen and one half inches in diameter; and the half barrel shall be of the following dimensions, namely, the staves twenty-three 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 to pass inspection.—R. S. c. 59, s. 29.

34. Every miller or manufacturer of flour, not complying with the provisions of the preceding section, shall pay two dollars for every cask of flour not hooped, marked, branded, and nailed as aforesaid, to be recovered from the miller, 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, he may recover the same from the miller or bolter from whom he purchased or received the same. *Provided*, that he gave notice to the 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 the 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.

Penalty on miller, manufacturer or seller, violating foregoing provisions.—R. S. c. 59, s. 30.

35. The inspector, upon his suspicion, or at the request of the purchaser, shall 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, besides the penalties aforesaid; but otherwise, they shall be paid by the inspector, or by the purchaser, if the trial be made at his request.

Inspectors may, in certain cases unpack flour.—R. S. c. 59, s. 31.

36. When any person shall sell a barrel of flour, not containing the full quantity, 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.

Seller of barrels deficient in quantity, liable, &c.—R. S. c. 59, s. 32.

37. Every inspector 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, 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; and shall also brand and mark the degree of fine-

Casks of flour how inspected.—R. S. c. 59, s. 33.—1852, c. 135, s. 2.

ness which he shall determine the same to be of; for which trouble the inspector shall receive from the owner five cents for every barrel: and no inspector shall pass any flour which shall be unmerchantable, but shall cause the same to be marked on the bilge, "*condemned*;" or secure it for further examination, if required: and the inspector may receive from the owner the same fees as if it had been passed; and every inspector shall, if required, give the owner of the flour inspected and branded, a certificate of the same, and shall keep a record or book of inspection of all flour inspected and branded as aforesaid, setting forth the owner of the flour and miller's name, with the quality of each cask.

Owner dissatisfied, how to obtain a re-examination. — R. S. c. 59, s. 34.

38. Whenever any person may think himself aggrieved by the decision of any inspector of flour, the owner or his agent may secure it for further examination, which shall be made within sixty days by applying to a justice, who shall issue a warrant directed to three indifferent persons, well skilled in the manufacture of flour, one of whom shall be named by the owner of the flour, one by the inspector, and the third by the magistrate; which persons, having first taken the oath directed for inspectors, shall carefully examine the flour; and if they, or any two of them, shall differ from the inspector as to the quality, the inspector shall brand and mark the same according to their judgment, and he moreover shall pay all costs attending the examination; but if they shall be of opinion that the judgment of the inspector is correct, the owner shall pay costs.

Penalty for exporting flour, not passed by inspector. — R. S. c. 59, s. 35.

39. No person shall export, or lade on board of any ship or vessel for exportation out of the State, any barrel of flour marked "*condemned*" by an inspector, or any barrel of flour not inspected or branded as aforesaid, on pain of forfeiting ten dollars for every barrel of flour exported, or put on board of any ship or vessel for exportation.

On shipper receiving uninspected flour.

40. If any master, owner, or commander of a ship, vessel, boat, or craft shall receive any barrel of flour on board 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 five dollars for every barrel so received. *Provided*, that the provisions of this section shall not extend to the transportation of flour from Fayetteville to Wilmington.

Proviso. — R. S. c. 59, s. 36. — 1844, c. 49, s. 3.

Flour not liable to reinspection in 60 days. — R. S. c. 59, s. 37.

41. Any cask of flour, which has been inspected and branded at any one place of inspection in the State, shall not be subject to re-examination and inspection in another, unless, after such inspection, it shall have remained for sixty days before it is exported; and the certificate of the inspector shall be conclusive evidence of the time when the flour was inspected.

Cask not condemned in certain cases, if it contain 196 pounds. — R. S. c. 59, s. 38.

42. No inspector of flour shall condemn any flour cask for not being precisely of the dimensions required by this chapter: *Provided*, such cask shall come within one half inch of the length of the stave, and one half inch in the diameter of the

head, of the measurement required, and shall contain one hundred and ninety-six pounds of flour.

43. If any person shall pack for sale flour or meal of any kind whatever in a cask, which has been inspected and branded with the name of a miller, he shall forfeit and pay twenty dollars for every barrel, one half to the informer, the other half to the miller, and be further liable to the action of the party aggrieved.

Penalty for packing flour in a branded cask. — R. S. c. 59, s. 39.

44. 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; he shall forfeit and pay seven dollars for every cask, and be deemed to be guilty of a misdemeanor.

For altering inspector's brand, &c. — R. S. c. 59, s. 40.

45. Every inspector of flour, failing to perform the duties herein mentioned, shall forfeit and pay ten dollars for every offence.

On inspectors neglecting duty. — R. S. c. 59, s. 41.

46. Any person may sell flour in the town of Fayetteville, either in casks or otherwise, without submitting the same to inspection.

Uninspected flour sold in Fayetteville. — R. S. c. 59, s. 42.

47. Wherever the term barrel or cask of flour may be used in this chapter, it shall be construed to include a half-barrel, unless the same be repugnant to the enactment.

"Barrel" or "cask of flour" to include half-barrel.

48. Every inspector of beef, pork, rice, flaxseed, fish, tar, pitch, and turpentine, shall constantly attend at the places for which he shall 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 steelyards or scales of the lawful standard; and if any inspector shall neglect his duty, or brand or stamp any of the commodities contrary to this chapter, or brand any empty barrels, or lend his brand to any person, he shall forfeit and pay for every such offence, twenty dollars; and for branding any empty barrel, or lending his brand, two hundred dollars; and every other person that shall brand, or procure to be branded, any cask or barrel, otherwise than by the inspector or by his assistant, shall forfeit and pay for every offence the same fines and penalties as inspectors are by this section liable to pay for similar breaches of duty or misbehavior.

Inspectors of beef, &c., duty of; penalties for misconduct. — R. S. c. 59, s. 43.

49. All beef or pork, packed for sale or exportation, shall be put in good and sufficient new, white oak, turkey or water oak casks, which shall not contain, each barrel, more than twenty-eight gallons, wine measure, and fifteen gallons, each half-barrel; and such cask shall be made of timber, seasoned at least six months after the riving, the staves not less than

Beef and pork inspected, how. — R. S. c. 59, s. 44.

half an inch thick when wrought, the head not less than three quarters of an inch thick, and well dowedled, 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, with no more than two heads, and without any boar's flesh, in any barrel of pork, and without 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.

Hog's lard inspected.—R. S. c. 59, s. 45.

50. All hog's lard, exported in casks, shall be inspected respecting the quality thereof, for which the inspectors shall be entitled to fees, similar to those allowed for pork, respect being had to the size of the cask; and hog's fat or lard shall not be exported unless in cypress, white oak, or juniper casks, and inspected, under the penalties inflicted for exporting uninspected pork.

Rice, how inspected.—R. S. c. 59, s. 46.

51. 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, it shall be 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.

Fish, how inspected.—R. S. c. 59, s. 47.

52. All fish, exported from the 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 at least twenty-nine inches in length, and the head at least seventeen inches in diameter, and shall contain thirty gallons, be made in a workmanlike manner, and be 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 in barrels from the State. And if any person shall sell or offer to sell, within the State, any fish in barrels less than the size aforesaid, he shall forfeit and pay two dollars for each barrel, to the use of the prosecutor.

Barrels of turpentine and tar of what weight, and of pitch, &c., of what size, &c.

53. Every barrel of soft turpentine or tar shall be of the weight of two hundred and eighty pounds gross; every barrel of hard turpentine of the weight of two hundred and forty pounds gross; every barrel of pitch shall contain thirty-two gallons; and every barrel of turpentine, tar, or pitch shall be free of any fraudulent mixture, and put in good and sufficient casks made of good seasoned staves, three quarters of an inch thick, and not exceeding five inches wide, and not less than thirty nor more than thirty-two inches long, and heads not less than one nor more than one inch and a half thick, and secured with twelve good hoops, except hard turpentine, which

shall be secured with ten good hoops, and the joint of the head shall be placed perpendicularly to the bung; and if turpentine, tar, or pitch shall be fraudulently mixed, the same shall be condemned by the inspector, and delivered to the owner on demand. 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 tar; but 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. And forasmuch as it is difficult for the makers of turpentine and tar so to regulate the size of their barrels that every barrel shall weigh the number of pounds required by this section, *it is provided*, that the inspector shall make out two fair bills of the same, the one for the seller and the other for the buyer, in which he shall designate the quantity and quality of the same, making a proportional allowance to the seller, when the barrel shall weigh more than the standard number of pounds established by this section, and the same allowance to the buyer, when the barrel shall weigh less.

Water not a fraudulent mixture in tar.

Allowance where barrels weigh more or less than standard quantity.—R. S. c. 59, s. 48.—1846, c. 57, s. 1; 1848, c. 44; 1850, c. 72.

54. Every barrel of turpentine, after the same shall be inspected, weighed, found clean, and in merchantable order, shall be branded or marked by the inspector; the soft with the letter S., and the hard with the letter H. And if any inspector shall inspect any turpentine or tar, contrary to the directions of this chapter, or shall give any bill contrary to the same, he shall forfeit and pay fifty dollars for each offence.

Turpentine barrels to be branded. Penalty on inspector failing.—R. S. c. 59, s. 49.—1844, c. 63; 1846, c. 57, s. 2.

55. Every maker of tar, pitch, or turpentine shall mark or brand each barrel with the initial letters of his name, and in case of his failure, the inspector is required to mark the same, for which he shall receive one half cent per barrel; which fee shall be paid by the person paying the fees of inspection, and by him may be charged to the maker: 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, turpentine, flour, fish, and butter, and the number of barrels inspected of the same mark, the merchant, or shipper'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.

Makers of tar, pitch, turpentine to brand with initials of their names. Inspector to keep a book, and enter maker's name, &c.—R. S. c. 59, s. 50.—1846, c. 57, s. 2.

56. No beef, pork, rice, fish, flour, or butter shall be shipped on board of 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 certificates granted in the same manner as if such commodities had never been inspected; and every person offending herein shall pay twenty dollars for each barrel or cask; 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., re-inspected if not exported in 60 days. Tar, pitch, or turpentine in 20 days.—R. S. c. 59, s. 51.

57. No cooper, or any person making casks, shall expose

No cooper to

make barrels for sale, but as directed by this chapter.—R. S. c. 59, s. 52.

for sale any barrel or half-barrel for the holding of pork or beef, other than such as are by this chapter directed to be made for this use, under the penalty of two dollars; and every such person, before he exposes the same for sale, shall set his proper brand upon them, which brand shall be recorded in the office of the county court where he shall reside, under the penalty of twenty dollars for every neglect.

Seller or exporter of beef, &c., to produce inspector's certificate, &c.—R. S. c. 59, s. 53.

58. Every seller or exporter of beef or other commodity directed to be inspected, shall produce the certificate of the inspector who inspected the same, and make oath, 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 the justice shall certify on the back of the certificate, which certificate the seller shall deliver to the buyer of such commodities; and the person exporting them shall deliver the certificate to the master of the ship or vessel on board which the same shall be shipped; and if the seller or exporter shall refuse to make oath, he shall for every such offence forfeit and pay the sum of two hundred dollars.

Penalty.

Penalty on masters receiving them uninspected.—R. S. c. 59, s. 54.

59. No master or commander of any vessel shall take on board any such cask or barrel or other inspectable commodity as aforesaid, without being inspected and branded as required, under the penalty of two hundred dollars for each offence.

Proviso as to Newbern.—1842, c. 39.

60. *Provided, however,* that the provisions of sections fifty-five, fifty-six, fifty-seven, fifty-eight, and fifty-nine of this chapter shall not extend to the town of Newbern, so far as relate to tar, pitch, and turpentine.

Shingles of what size.—R. S. c. 59, s. 55.

61. Shingles shall not be less than eighteen inches long, four inches broad, and five eighths of an inch thick; should they be larger, they shall not for that reason be considered unmerchantable.

Lumber how inspected.—R. S. c. 59, s. 56.

62. Boards or plank shall be deemed merchantable, and passed by any inspector, that are free from splits not more 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. *Provided, nevertheless,* that no shingles, boards, plank, or scantling, shall be inspected, unless required by the purchaser.

Inspectors of saw-mill lumber near Wilmington appointed.—1838, c. 30, s. 1, 2.

63. The court of pleas and quarter-sessions for the county of New-Hanover, a majority of the justices being present, shall, at the session at which they appoint inspectors for the town of Wilmington, also appoint one inspector for each of the saw-mills in the vicinity of said town, for the inspection of lumber only; and if any such inspector shall fail, when called upon by the proprietors or their agents, promptly and



faithfully to discharge his duties, he shall, for every failure, forfeit and pay to the party aggrieved fifty dollars.

64. The inspection of saw-mill and other lumber and ton timber on the Cape Fear river, and at the several ports belonging to the same, shall be governed by the following rules, to wit: All sound boards and planks, with square edges and showing heart one half the length, and as near an equal thickness at both ends as may be, and split not more than one third of the length; all sound scantling with square edges, and as near the same dimensions at both ends as may be; and all sound scantling with square edges two thirds of their length, and the bark not more than one inch wide, and as near the same dimensions as may be at both ends; and all sound ton timber squaring eleven inches and upwards, and showing heart one half the length, shall be merchantable; and all saw-mill or other lumber or ton timber, not being of such description, shall be refuse. Any inspector, who shall inspect saw-mill lumber by any rules different from those prescribed by this section, shall forfeit and pay the sum of one hundred dollars for every offence.

Lumber and ton timber, how inspected on Cape Fear river.—R. S. c. 59, s. 57.—1838, c. 30, s. 2, 3; 1840, c. 41; 1850, c. 70, s. 1.

Penalty for inspecting lumber by other rules.—R. S. c. 59, s. 57.

65. All steam mill lumber, not herein otherwise provided for, showing heart one half the length, shall be merchantable; and no inspector, having a stated salary from the proprietor of a steam mill, shall inspect any timber brought to the mill, unless by consent of the seller, under the penalty of fifty dollars.

Steam mill lumber, how inspected.—R. S. c. 59, s. 58.

66. All ton and square timber and saw-mill lumber, at the several markets and mills in the State, shall be measured by superficial or board measure; and any person, who shall sell such timber by any other measure, shall pay ten dollars for every offence.

Saw-mill lumber and ton timber, how measured.

67. All shingles, boards, plank, and scantling inspected, shall be culled, and the refuse separated from the merchantable, except there be an agreement otherwise between the purchaser and seller.

Shingles, boards, &c., to be culled.—R. S. c. 59, s. 60.

68. No inspector shall purchase any cullings, or other articles that do not pass inspection, upon pain of forfeiting one hundred dollars.

No inspector to buy cullings, &c.—R. S. c. 59, s. 62.

69. If any person, who is not a legal or sworn inspector of lumber or other articles, presume to act as such, he shall forfeit and pay one hundred dollars, and be deemed to be guilty of a misdemeanor.

Misdemeanor, &c., for falsely acting as inspector.—R. S. c. 59, s. 63.

70. The several penalties and forfeitures by this chapter inflicted, unless otherwise provided, shall be applied one half to the use of the prosecutor, and the other half to the county wherein such penalty shall be incurred.

Fines, &c., how applied.—R. S. c. 59, s. 64.

71. In case the purchaser and seller cannot agree as to the amount to be allowed for extra cooerage and defective barrels in the town of Wilmington, any inspector of naval stores and provisions in the town, at the instance of either, shall establish the amount to be allowed therefor, and such estimate shall be conclusive; and if such inspector refuse to make the esti-

Disputes about extra cooerage, &c. in Wilmington, how determined.—R. S. c. 59, s. 65; 1842, c. 40.

mate when called on, he shall forfeit and pay twenty-five dollars to any person who will sue for the same.

Sale of fire-wood in towns, to be by cord.—R. S. c. 59, s. 66.

72. All firewood sold in incorporated towns 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 seller under the penalty of two dollars for each offence, to the use of the informer.

Inspectors of wood for Newbern.—1846, c. 198, s. 1, 2, 3.

73. The court of pleas and quarter-sessions for the county of Craven may appoint one or more inspectors of firewood for the town of Newbern, who shall reside therein and inspect all such wood as may be carried to the town for sale; and before entering upon their duties, they shall take the oaths and give the bonds required of other inspectors, and shall receive, for inspecting each cord of wood, four cents, to be paid by the purchaser.

Of provisions and forage, appointed by any county.—1848, c. 43, s. 1.

74. The court of pleas and quarter-sessions, a majority of the justices being present, may appoint for their county an inspector of provisions and forage, who shall hold his office for the term of five years after his appointment.

Duty of such inspectors.—1848, c. 43, s. 2; 1850, c. 74, s. 1, 4.

75. Such inspector, when any article of provision or forage is imported from any place out of the State, such as beef, pork, fish, flour made of wheat, buckwheat, or rye, (said articles being in barrels, half-barrels, or kegs); butter by the firkin; cheese by the box; hay or fodder pressed in bales or bundles; or hogsheads of bacon; shall be compelled, when such articles are offered for sale, to inspect, examine, and brand them according to such rules and regulations as may be established by the court of pleas and quarter-sessions. *Provided, however,* that when any of said articles shall have been before inspected by any inspector of the State, they shall not be subject to re-inspection.

Shall give bond.

76. The said inspector shall enter into bond in the sum of five hundred dollars payable to the State of North Carolina, conditioned for the faithful performance of the duties of his office, which bond the court shall take; and he shall be entitled to such fees as may be prescribed by the court.

Fees.—1848, c. 43, s. 3.  
Penalty for selling forage, &c., uninspected.—1850, c. 74, s. 2.

77. If any person shall sell any article of forage or provisions aforesaid, without the same having been inspected, contrary to the true intent and meaning of this chapter, he shall, for every offence, forfeit and pay one hundred dollars.

May appoint deputies.—1850, c. 74, s. 3.

78. Any such inspector, whenever the business may require it, may appoint a deputy, who shall take an oath of office, and for his official duty and penalties incurred by him, the inspector shall be liable.

Fees, by whom paid.  
Penalty for extortion.—R. S. c. 59, s. 59, 67.

79. The fees of inspectors shall be paid by the purchaser or exporter of the articles inspected, and if any inspector shall receive any greater fees than are by law allowed, he shall forfeit and pay ten dollars for every offence to any person suing for the same.

CHAPTER 61.

INTERNAL IMPROVEMENT.

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38. Board to appoint officers to represent the State.

1. THE president and directors of the board of internal improvements shall consist of the governor of the State, who shall, *ex officio*, be president thereof, and of two commissioners to be appointed biennially by the governor, with the advice of the council of State; any two of whom shall constitute a board for the transaction of business; and in case of vacancies occurring in the board, the same shall be filled by the other members. The governor and said members shall be a corporate body, under the name and style of "The President and Directors of the Board of Internal Improvements," and shall have all the rights, powers, and privileges of a corporation which may be necessary to enable it to discharge the duties imposed on it and no more.

Board of internal improvements incorporated.—R. S. c. 60, s. 8.—R. S. c. 61, s. 2.

Sessions of board, and pay of members and secretary.—R. S. c. 60, s. 4.—R. S. c. 61, s. 3.

2. The board may hold their sessions whenever and wherever the governor may direct; may appoint a secretary to record their proceedings, who shall receive three dollars for each day the board shall be in session; and the members shall receive, each, three dollars per day, and their travelling expenses, for the time they may be employed in the public service.

Board may make rules and by-laws.—R. S. c. 60, s. 5.

3. The board may make such rules for the regulation of their proceedings, and all necessary by-laws, rules, and regulations for the better ordering of the conduct of their officers, agents, and servants, as to them shall seem expedient, not inconsistent with the laws of the State.

To keep record of proceedings, and report to Assembly.—R. S. c. 60, s. 9.

4. The board shall keep a fair and true record of all their proceedings, which shall, at all times, be open to the inspection of the members of the General Assembly and others interested therein. They shall report to the General Assembly, at the commencement of every session, the exact state of the fund, 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 be able to collect concerning the objects committed to their trust.

Its fund deposited in banks.—R. S. c. 61, s. 5.

5. All the moneys which may be appropriated to the fund for internal improvement, unless otherwise ordered, shall be deposited in the banks of the State, to the credit of the treasurer, subject to the orders of the board, certified by the secretary, and countersigned by the president.

Public treasurer to keep accounts of board.

6. The treasurer shall keep an account of all disbursements, and shall render an account thereof to the General Assembly when he makes his biennial report of the ordinary revenue. Once in every year the board shall appoint a committee of their body to examine the accounts of disbursements made during the year, and compare the same with the treasurer's books and the certificates authorizing the payment of money. And the treasurer may employ a clerk at three dollars per day for the time he may be engaged in making such accounts. *Provided, however,* that his compensation shall not exceed five hundred dollars a year.

Board to examine them yearly.

Clerk to aid treasurer. His compensation.—R. S. c. 60, s. 8.—R. S. c. 61, s. 4. Duty of board in making contracts.—R. S. c. 60, s. 6.

7. Whenever the General Assembly shall direct any public improvement, the board shall let the same out by contract, and take from the contractor a bond with sufficient security, payable to the State of North Carolina in double the sum paid or contracted to be paid, with the condition that he will faithfully perform his contract, according to the plans or specifications agreed on.

State to be stockholder in companies to the amount advanced.—R. S. c. 60, s. 19.

8. Whenever an appropriation shall be made by the State to any work of internal improvement, conducted by a corporation, the State shall be considered, unless otherwise directed, a stockholder in such corporation, and shall have as many shares as may correspond with the amount of the money ap-

propriated; and the acceptance of such money shall be deemed to be a consent of the corporation to the terms herein expressed.

9. Every railroad, plank-road, tram-road, turnpike, and canal company, for the purpose of constructing their road or canal, may at any time enter upon the lands through which they may desire to conduct their road or canal, and lay out the same as they may desire; and they may also enter on such contiguous land along the route as may be necessary for depots, warehouses, engine-sheds, workshops, water-stations, toll-houses, and other buildings necessary for the accommodation of their officers, servants, and agents, horses, mules, and other cattle, and for the protection of their property: and shall pay to the proprietors of the land, so entered on, such sum as may be agreed on between them.

Railroad and other companies may enter on lands to build their works, &c.—  
1852, c. 92, s. 1.

10. If such corporation cannot agree with the owner of the land which is entered on, or is desired by the corporation for the purposes aforesaid, in the price to be paid for the same, then either the company or the owner, five days previous notice thereof being given to the other party, may apply by petition to the county or superior court of the county, in which the land or some part thereof may be situate, and the court shall appoint five disinterested and impartial freeholders to assess the damages to the owner, for the occupation and use of the land aforesaid.

Proceedings to assess damages.

11. If any owner of the land shall be an infant or person *non compos*, notice shall be given to the guardian or committee; and if any owner resides beyond the limits of the State, or cannot be found, he may be notified as in the manner and according to the course of the court in other cases of petition.

Infants, &c., how notified.

12. The court shall name a day and place for the meeting of the commissioners, of whom three may act in the absence of the others; and any one of them, when a majority shall not meet on the day appointed, may adjourn from time to time, until the business shall be done.

A day for commissioners to meet, appointed by court. One may adjourn from day to day.

13. The owners of the land proposed to be condemned shall be notified by the sheriff of the time and place appointed for the commissioners to meet, at least five days before such meeting.

Owners to have five days notice of meeting.—  
1852, c. 92, s. 2.

14. The commissioners, before entering on their business, shall be sworn by a justice of the peace of the county in which the petition is filed, that they will impartially and justly, to the best of their ability, ascertain the damages which will be sustained by each owner of land, which may be condemned to the use of the company, and that they will truly certify their proceedings thereupon to the court.

Comm'rs sworn. Their oath.

15. The commissioners shall assemble on the land proposed to be condemned, and after viewing the same and hearing such proper evidence as the parties may offer, they shall assess the damages; and they may administer oaths to any who may give evidence.

To meet and assess damages. May administer oaths.

Damages, how assessed.

16. In assessing the damages, they shall consider the proprietor of the land as being the owner of the whole fee-simple interest therein; and shall take into their consideration the quality and quantity of the land condemned: the additional fencing that will be required thereby, and all other inconveniences which will result to the proprietor from the condemnation thereof; and also all the advantages which will probably accrue to him from the establishment of the proposed work.

Report of their proceedings, made and subscribed.  
Form of report.

17. When the commissioners shall have assessed the damages, they shall forthwith make and subscribe a written report of their proceedings, in substance as follows. We, commissioners, appointed by the court to assess the damages that have been and will be sustained by \_\_\_\_\_, the owner of certain land lying in the county of \_\_\_\_\_, which the

\_\_\_\_\_ company proposes to condemn for its use, do hereby certify that we met on the day of \_\_\_\_\_, (or the day to which we were regularly adjourned,) and having first been duly sworn, we visited the premises of the owner, and after taking into full consideration the quantity and quality of the land aforesaid, the additional fencing likely to be occasioned by the works of the \_\_\_\_\_ company, and all other inconveniences likely to result to the owner; and also all advantages which will probably accrue to him from the use of the land and the establishment of the proposed work, we have estimated and do assess the damages aforesaid at the sum of \_\_\_\_\_.

Given under our hands the \_\_\_\_\_ day of \_\_\_\_\_, A.D.

Returned to court.  
Proceedings thereupon.

18. The report of the commissioners shall be returned to the next court, and unless good cause be shown on exception taken thereto, the same shall be confirmed and recorded, and judgment shall be rendered accordingly; and if the report be set aside other commissioners shall be appointed.

Appeal allowed.—1852, c. 92, s. 4.  
On confirmation of report and payment of damages, company to have fee.  
Dwelling-houses, &c., not to be condemned.—1852, c. 92, s. 1.  
Company may take materials from adjacent land.

19. From the judgment of the court in all such cases an appeal shall be allowed, under like rules as in other cases.

20. On the confirmation of the report, and payment to the owner or into the office of the court, of the damages assessed, the land assessed and condemned shall be vested in the company in fee-simple.

21. No such corporation shall be allowed to have condemned to its use, without the consent of the owner, his dwelling-house, yard, kitchen, garden, or burial-ground.

22. For the purpose of constructing its works and necessary appurtenances thereto; or of repairing them, after they shall have been made; or of enlarging, or otherwise altering them; the company may, at any time, enter on any adjacent lands, and cut, dig, and take therefrom any wood, stone, gravel, or earth, which may be deemed necessary. *Provided*, however, that they shall not, without the consent of the owner, destroy or injure any ornamental or fruit-trees.

Who to value them.

23. If for the value of the damages done to the owner by reason of the acts in the preceding section mentioned, the parties may be unable to agree, the same shall be valued by any three freeholders of the county.

24. Either party, for that purpose, may apply to any justice of the peace of the county, wherein the damage is done, who shall thereupon summon said freeholders, and they being duly sworn to impartially and truly assess the damage, shall, after hearing such proper evidence as may be laid before them, report the value thereof to the justice. Proceedings to have them valued.

25. The justice shall preside at the trial and administer all proper oaths to the freeholders and witnesses, and on the return to him of the report, he shall render judgment for the damages and costs against the company and issue execution therefor. Justice to preside at trial, and render judgment.

26. Either party may appeal from such judgment as in other cases, and under the same rules. Appeal allowed.

27. The width of the land condemned for any railroad, shall not be less than eighty feet, nor more than one hundred, except where the road may run through a town, when it may be of less width: or where there may be deep cuts or high embankments, when it may be of greater width. Width of land condemned for railroads.

28. No greater width of land than sixty feet shall be condemned for the use of any plank-road, tram-road, canal, or turnpike. For plank-roads, canals, and turnpikes. — 1852, c. 92.

29. No greater quantity of land than two acres, contiguous to any railroad, plank-road, tram-road, turnpike, or canal shall be condemned at one place for a depot or station. Quantity condemned for depots, &c.

30. Whenever, in their construction, the works of any of said corporations shall cross established roads or ways, the corporation shall so construct its works as not to impede the passage or transportation of persons or property along the same. Railroad, &c., crossing other roads, not to obstruct them.

31. In order to prevent the frequent crossing of such roads or ways; or in cases in which it may be necessary to occupy the same, the corporation may change the roads and ways so as to avoid such crossing and occupation, and to such points as may be deemed expedient. Company may turn roads, &c.

32. For any injury done to the lands of persons by taking them under the preceding section, the value thereof shall be assessed in like manner as is provided for assessing damages done by entering on adjacent lands for the purpose of repairs. Damages allowed owners on whose land roads are turned.

33. Before any part of an established road or way shall be impeded by any of said corporations, the new road or way shall be prepared and made equally good with the portion proposed to be discontinued; and then the same shall be deemed a part of the original road or way, and shall be kept up and repaired as before the change. New road made good as former one.

34. Every company, incorporated for the purpose of improving the internal condition of the State, by railroad, plank-road, tram-road, turnpike, canal, or other means, shall furnish to the bureau of engineers, a correct map or profile of the contemplated improvements, drawn to a uniform horizontal scale of four hundred feet to one inch. And all such charts and documents of a like character, as may be furnished to the Incorporated companies to furnish engineering bureau with maps, &c., of improvements. — 1850, Res. — 1852, c. 92, s. 6.

State, shall be deposited for safe-keeping in said bureau, under the charge of the State Librarian, or State Engineer, in case there should be such an officer.

Railroad and other companies to keep account of produce carried.

35. The president and directors of canal, railroad, plank-road, and turnpike companies, whether wholly or partly in this State, are requested to keep an account of all the products of this State intended for sale abroad, by them transported out of the State, or to any shipping port therein; and report the same to the governor at each session of the General Assembly.

To report to governor.—1854, Res.

Commissioners and freeholders paid. Costs paid by company, except in certain cases.—1852, c. 92, s. 3, 5.

36. Each commissioner and freeholder attending for the purpose of assessing damages to the owner of land, shall be entitled to one dollar a day while engaged in the business; and the same, with all other costs of the case, shall be paid by the corporation, unless when the petition of the owner shall be dismissed, when he shall pay the costs; or unless in the case of exception taken to the report, or of appeal, when the court may adjudge by whom, and in what proportion, the costs shall be paid.

No railroad, plank-road, &c., to be established but by law.

37. If any person or corporation, not being expressly authorized thereto, shall make or establish any canal, turnpike, tram-road, railroad, or plank-road, with the intent that the same shall be used to transport passengers other than such person, or the members of such corporation; or to transport any productions, fabrics, or manufactures other than their own, the person or corporation so offending, and using the same for any such purpose, shall forfeit and pay fifty dollars for every person and article of produce so transported; and shall, moreover, be deemed guilty of a misdemeanor, they and all persons aiding therein, and shall be indicted therefor in the superior court.

Penalty and misdemeanor therefor.

Board to appoint officers to represent the State.

38. The president and directors of the board of internal improvements shall appoint, on behalf of the State, all such officers or agents, as, by any act incorporating a company for the purpose of internal improvement, are allowed to represent the stock or other interests which the State may have in such company.

## CHAPTER 62.

### JUSTICES OF THE PEACE.

#### SECTION

1. Justice within what time to qualify. Penalty for acting, without qualifying.
2. When a candidate, not to vote, &c., in the election.
3. Removed out of county twelve months, to lose his office.

#### SECTION

4. Power of, in his county.
5. Not to act as attorney in his county court, nor as clerk, sheriff, &c., else to vacate his office.
6. Jurisdiction of, in civil matters.
7. Warrants from, when returnable. Bail taken by officer, if required. Bail-



SECTION

- bond deemed assigned, to be returned. Officer not taking bond, to be special bail.
- 8. Defendant refusing to give bail, committed. Warrants when tried, and duty of officer respecting them.
- 9. Bail deemed special—proceedings removed to county court, and bail subjected there, &c.
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- 11. Execution from justice, how issued and returned. May be stayed with security. Security, how given.
- 12. Stay not allowed in suit on former judgment.
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- 15. When judgment is rendered in absence of party, in what time and how, new trial obtained.
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- 17. Levied on land, returned to county court.
- 18. Justice to direct officer to summon witnesses. Penalty on witnesses not attending.
- 19. Execution against one removing from the county, how proceeded on.
- 20. Judgment of justice may be removed to another county.

SECTION

- 21. Justice may accept office under United States.
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- 31. Justices may restrain rioters and disturbers of the peace.
- 32. Duty of two justices, &c., in suppressing unlawful assemblies, riots, &c.
- 33. Special duty of nearest justices.
- 34. But all magistrates to aid.
- 35. On malicious warrants for petty offences, &c., justice may order prosecutor to pay costs.
- 36. Resignation of justices delivered to clerk of county court.

1. EVERY person appointed a justice of the peace, shall, within twelve months thereafter, and not after that time unless reappointed, publicly in court take the prescribed oaths. And if any person shall otherwise presume to execute the office of a justice of the peace, he shall for every offence forfeit and pay two hundred dollars, and be deemed to be guilty of a misdemeanor.

Justice within what time to qualify. Penalty for acting, without qualifying.—R. S. c. 62, s. 1.

2. No justice of the peace, being a candidate for an office which may be filled by the court, shall vote or sit on the bench at the election; and if he do so, his vote shall not be counted, and he shall moreover forfeit and pay one hundred dollars.

When a candidate, not to vote in election.—R. S. c. 62, s. 2.

3. When any justice of the peace shall remove out of the county, and shall not return within twelve months to reside therein, his appointment shall be void; and such person shall not act as a justice of the peace, unless reappointed, under a penalty of one hundred dollars for every such illegal act.

Removed out of county twelve months, to lose office.—R. S. c. 62, s. 3.

4. Justices of the peace, within their respective counties, shall have full power to maintain, keep, and preserve the peace, solemnize the rites of matrimony, and issue all necessary process in aid of their jurisdiction.

Power of, in his county.—R. S. c. 62, s. 4.

Not to act as attorney, in his county court; nor as clerk, sheriff, &c., else to vacate his office.—R. S. c. 62, s. 5.

5. No justice of the peace shall practise as an attorney in the court of pleas and quarter-sessions of the county for which he is a 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 so act or accept any such appointment, he shall thereby vacate his office; and if he shall thereafter act as a justice, without reappointment, he shall, for every such act, forfeit and pay one hundred dollars.

Jurisdiction of justices in civil matters.—R. S. c. 62, s. 6.—1844, c. 42, s. 1.

6. All debts and demands due on bonds, notes, or liquidated accounts stated in writing and signed by the party owing the same, and all balances due on such debts and demands, where the principal of such debt or demand, or balance due thereon, does not exceed one hundred dollars, though the principal and interest thereof may exceed that sum; and all judgments rendered on such debts and demands where the principal of the judgment may not exceed one hundred dollars, though the principal, interest, and costs may exceed that sum. And all debts and demands of sixty dollars and under due on any parol agreement, or for goods, wares, and merchandise sold and delivered, or for work or labor done, or for specific articles, and all balances of sixty dollars and under due on such last-mentioned debts or demands, and all judgments rendered thereon, where the principal of the judgment may not exceed sixty dollars, though the principal, interest, and costs may exceed that sum; and all forfeitures or penalties, not exceeding one hundred dollars, shall be cognizable and determinable by any one justice of the peace out of court.

Warrants from, 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, 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 before some justice of his county; and the officer when required by the plaintiff, shall take bond with sufficient security of the party arrested, in double the sum for which he 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 the warrant issued; which bond, without any indorsement to that effect, shall be regarded as assigned by such officer to the plaintiff therein named, and shall be returned with the warrant and filed by the justice who shall try the warrant with the other papers in the suit; and in case the officer shall fail to take such bond, he shall be held and deemed special bail, and the plaintiff may proceed to judgment against him according to the rules hereinafter prescribed.

Bail taken by officer, if required.

Bail-bond deemed assigned—to be returned—officer not taking bond, to be special bail.—R. S. c. 62, s. 7.

Defendant, re-

8. When an officer shall serve a warrant on any person who

shall refuse to give bond and security for his appearance as aforesaid, the officer shall commit such person to the jail of his county, in order that he may have him forthcoming at the day appointed for trial, and shall produce his prisoner at the trial; and all warrants shall be heard or determined on the day appointed by the officer serving the same, which shall be on or before the return day set forth in the warrant, unless the justice, for good reasons, shall put off the trial to some other day; the officer shall notify the plaintiff of the time and place; and in case the plaintiff shall fail to attend or prosecute his suit on the day appointed, the defendant appearing shall be discharged. *Provided*, that when the officer shall have committed any defendant to jail, he shall give immediate notice thereof to some justice in the county, who shall appoint a day for the trial, and notice of the same shall be given to the plaintiff by the officer.

fusing to give bail, committed.

Warrants, when tried, and duty of officer respecting them.—R. S. c. 62, s. 8.

9. The bail in civil cases taken under the directions of this chapter, shall be deemed special bail, and as such shall be liable to the recovery of the plaintiff; and whenever the plaintiff shall desire to subject the bail, he shall make affidavit to that effect before some justice of the peace, who shall thereupon, by written order, command that the proceedings be returned by the person having them in charge, to the ensuing county court, where on motion the judgment may be confirmed, and all the proceedings shall become a record of that court; and thereupon the same course of proceeding shall be had in that court to subject the bail, as if the case had been commenced, tried, and determined in that court.

Bail deemed special—proceedings removed to county court and bail subjected there, &c.—R. S. c. 62, s. 9.—1844, c. 31, s. 3.

10. Such bail, at any time before final judgment against him, may arrest the body of his principal, and secure him until he shall have an opportunity of surrendering him in discharge of himself; which surrender, if made before the judgment be confirmed by the court, as provided in the preceding section, shall be made to the officer who arrested the defendant, and he shall receive and hold the body in his custody as if bail had never been given; and if made after the confirmation of such judgment, the same shall be made in open court.

May arrest and surrender his principal.—R. S. c. 62, s. 10.

11. When any judgment is given by a justice, he or any other justice may 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 officer to whom the same may be directed, according to the command of the writ. *Provided always*, that where a judgment shall be given by a justice of the peace in any matter whereof he may have jurisdiction, (unless otherwise ordered,) execution thereon shall be stayed in the following manner, namely, for sums not exceeding four dollars, twenty days; for sums above four dollars and not exceeding ten dollars, sixty days; for sums above ten dollars and not exceeding twenty dollars, one hundred and twenty days; and for sums above twenty dollars,

Execution fr'm justice, how to issue and be returned.

May be stayed by giving security.

Security, how given.—R. S. c. 62, s. 11.

six months. And for the payment thereof with interest and costs, the party praying such stay shall give sufficient security, and the acknowledgment of the surety, entered by the justice and signed by the surety, shall be sufficient to bind him. If the judgment shall not be discharged at the time to which the execution has been stayed, then any justice may issue execution against the principal and surety, or either of them.

Stay not allowed in suit on former judgment.—R. S. c. 62, s. 12.

12. On the trial of a warrant issued on a former judgment, the judgment shall be evidence of the debt, subject to such payments as may have been made; and if judgment pass against the defendant, he shall not be entitled to any stay of execution.

Justice may, on cause, continue a trial.—R. S. c. 62, s. 13.

13. Any justice, before whom a warrant is brought for trial, on sufficient excuse shown on oath by the plaintiff or defendant, or his agent, may from time to time continue the same for trial. But such continuance shall not exceed thirty days, and any justice may try the case.

Deposition of witness, when allowed to be read.—R. S. c. 62, s. 14.

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, his deposition taken by a justice 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 justice may issue a summons to compel the attendance of the witness.

When judgment is rendered in absence of party, in what time, and how new trial may be obtained.—R. S. c. 62, s. 15.

15. Whenever a judgment shall be given by a justice in the absence of the plaintiff or defendant, whether execution hath been issued or not, on application of such absent party, his agent, or attorney, within ten days after the date of said judgment, to the justice who awarded the same, and sufficient cause shown on oath why he could not attend on the day of trial, such justice shall 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; and shall 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 shall receive for executing the same, like fees as for summoning witnesses, to be taxed against the party at whose instance it issued.

Execution of justice, when returnable, to whom issued, against what property.—R. S. c. 62, s. 16.

16. All executions, issued by a justice of the peace against the estate of any person, 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 the sums of money therein mentioned, and for want of such goods and chattels to satisfy said execution, that he levy on the lands and tenements of such person, and make return

thereof to the justice who issued the same; and the officer in his return shall set 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 watercourse, and whose land it adjoins.

17. Any justice, to whom a levy on land is returned, shall return the execution, with all other papers on which the judgment was given, to the next county court to be held for his county; and the land shall by order of the court be sold by the sheriff of said county, or so much thereof as shall be sufficient to satisfy the judgment, in the same manner as real property is sold under writs of *feri facias*, or *venditioni exponas*, issuing upon judgments of that court; and the clerk of the court shall, in a well-bound book kept for that purpose, record all the papers and proceedings had before the justice.

Levied on land, to be returned to co. court.—R. S. c. 62, s. 16.

18. Any justice, on application of the plaintiff or defendant, shall direct the sheriff, constable, or other officer, by an order in writing on the process, to summon witnesses to appear and give testimony at the time and place appointed for trial; and each witness failing to appear and give evidence shall forfeit and pay four dollars to the party at whose instance he was summoned, and further be liable to him for all damage sustained by non-attendance; and the fine shall be recovered before any justice, unless the witness on affidavit or otherwise, shall show sufficient cause to the contrary.

Justice to direct officer to summon witness.

Penalty on witnesses not attending.—R. S. c. 62, s. 17.

19. When any execution shall issue to a sheriff, constable, or other officer, in virtue of a judgment obtained before any justice, and the defendant shall remove to any other county, and such officer cannot find property to satisfy the execution, he shall return it with the judgment to the next county court; and the plaintiff shall be entitled to an execution for the whole or any part of the judgment which remains unpaid; and the clerk, by order of the court, shall record the same and issue execution to any other county, in the same manner as if the judgment had been rendered in that court.

Execution against one removing from the county, how proceeded on.—R. S. c. 62, s. 18.

20. Any person having a judgment rendered by a justice of the peace, may procure the clerk of the county court of the county in which judgment was obtained, to certify under the seal of court, that the justice who gave the judgment was, at the rendition thereof, a justice of said county; on which judgment thus certified, any justice in any other county may award execution for the sums therein expressed.

Judgment of justice may be removed to another county.—R. S. c. 62, s. 19.

21. Any justice of the peace, may accept any civil office or appointment of profit or trust, under the authority of the United States, the duties of which shall be confined to the State, if the same be not incompatible with his said office.

Justice may accept office under U. S.—R. S. c. 62, s. 20.

22. 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.

Process of, not to abate, &c.—R. S. c. 62, s. 21.

23. If any party to a trial before a justice of the peace, or any one or more persons of such party, shall be dissatisfied

Appeal from his judgment allowed to sup.

or co. court,  
by one or more.  
—R. S. c. 62, s.  
22.—1850, c. 1,  
3.

with the judgment given therein, he may appeal to the next term of the superior or county court, at his option, on giving good security for prosecuting the appeal with effect; and the judgment against such as do not appeal, and the appeal shall be proceeded on in like manner and under the same rules and regulations, as appeals in like cases from the county to the superior court.

Security for  
appeal, how  
given, and pro-  
ceeded against.  
—R. S. c. 62, s.  
23.

24. Where appeals shall be granted from the judgment of a justice, the acknowledgment of the surety, subscribed by him and attested by the justice, shall be sufficient to bind him 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 surety; and execution shall issue against the principal, and surety, or either of them as the appellee may choose.

Appeal return-  
ed by justice  
before third  
day of term.  
Witnesses sum-  
moned by him.  
R. S. c. 62, s. 24.

25. When any justice shall grant an appeal, he shall return the same on or before the second day of the term, to which it may be returnable; and on application of either party, he shall issue subpœnas directed to the sheriff or other officer in any county, for witnesses to appear and give testimony at court.

Persons unpro-  
vided at trial  
with security  
for stay or ap-  
peal, allowed  
ten days to  
procure it.—R.  
S. c. 62, s. 25.

26. When any person, against whom judgment is rendered by a justice of the peace, shall desire to appeal therefrom or stay the execution thereof, and shall be unprovided at the trial with his sureties, the justice, on affidavit made of the same, shall note on the judgment that the party is allowed to appeal or stay the execution within ten days thereafter; and the party may within that time, before such justice or some other, have the same allowed in the manner already provided.

Or absent be-  
cause of sick-  
ness, &c., al-  
lowed ten  
days for stay  
or appeal.—R.  
S. c. 62, s. 25.

27. And when judgment shall be rendered by any justice in the absence of a party, who shall desire to appeal or stay the execution, on affidavit made before said justice, (or if he be dead or out of the county, before any other justice,) within ten days of the rendition of the judgment, that he was prevented from attending the trial by sickness, mistaking the day of trial, or other sufficient cause, and that he is likely to be injured by such judgment, then such justice may grant an appeal, or stay of execution, on the same terms and in like manner, as if such appeal or stay had been prayed at the time of rendering judgment.

Proceedings of  
justice under  
two preceding  
sections.—R.  
S. c. 62, s. 25.

28. When any party shall be entitled under either of the two preceding sections to have a stay or appeal, then the justice, if the judgment or papers be not in his own hands, shall by his written command to the officer or any other who may have them, cause them to be returned to him, to the end that such stay may be entered, or such appeal be allowed: and in the case of an appeal, the judgment with such other papers and documents as may relate thereto, shall be returned by the justice to the next term of the court to which the appeal may have been taken; and the justice, in the same or some other written order, shall command the officer forthwith to notify the adverse party of the appeal, and to what court it is taken.

29. Nothing in the three preceding sections contained shall prevent the party recovering judgment, from suing out execution at any time before the same is stayed, or the appeal is granted.

Execution may issue forthwith.—R. S. c. 62, s. 26.

30. If execution shall issue upon any judgment, where the defendant prayed an appeal or stay of execution in manner aforesaid, before the ten days be expired, upon security being given as heretofore directed, the same shall be returned to the justice who issued it, and shall not be acted on by any officer; and the officer, or other person having the execution, due notice being given him in writing from the justice, shall deliver up the same or be liable to the action of the party aggrieved.

Upon security given for stay or appeal, officer to return execution to justice.—R. S. c. 62, s. 27.

31. Every justice of the peace within his county, 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 security for their good behavior.

Justices to restrain rioters and disturbers of the peace.—R. S. c. 62, s. 28.

32. 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 of such riot, rout, or unlawful assembly and shall record the same; and shall return the record to the next succeeding term of the court of pleas and quarter-sessions, or of the superior court of their county.

Duty of two justices, with the sheriff, in suppressing unlawful assemblages, riots, &c.—R. S. c. 62, s. 29.

33. The justices of the peace, dwelling nighest where such riot, rout, or unlawful assembly shall be made, are charged specially to execute the provisions of the preceding section.

Special duty of nearest justices.—R. S. c. 62, s. 30.

34. But all magistrates shall suppress 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.

But all magistrates to aid, &c.—R. S. c. 62, s. 31.

35. Whenever any defendant shall be brought before a justice of the peace by the State's warrant, charged with any offence of an inferior nature; or upon a warrant craving bond for keeping the peace, and it shall appear that the prosecution is without cause and malicious, the justice may in his discretion order the prosecutor to pay the costs, and may issue execution therefor.

On malicious warrants for petty offences, &c., justice may order pros'r to pay costs.—1848, c. 47.

36. Justices of the peace, resigning, shall deliver their resignations to the clerk of the county court, to be by him transmitted to the proper authority, to enable the clerk to keep a correct list of the justices in his county.

Resignation of justices delivered to clerk of co. court.

*Former judgments*, 5 Ire. 156, 4 Dev. 479. *Incidental questions*, 3 Ire. 395. *No jurisdiction of claim for damages*, 4 Hawks, 182, 2 Dev. 229; *nor where election*, 2 Dev. 411; *nor of guaranty*, 6 Ire. 300, 2 D. & B. 225, 4 Dev. 261; *nor conditional promise*, 8 Ire. 9. *Fraud on jurisdiction*, Bus. 221. *Trover for judgment*, 6 Ire. 358. *Justice to retain judgment*, 11 Ire. 871.

SECT. 7. *Seal, when necessary*, 11 Ire. 242, 5 Ib. 72; *when not*, 7 Ire. 400. *Form of warrant*, 13 Ire. 7, 11 Ib. 240, 5 Ib. 455, 2 D. & B. 227; *on penal statute*, 1 D. & B. 306, 1 Jones, 436; *how signed*, 1 Car. L. R. 548. *Trial*, 3 Mur. 121. *Judgment presumed right*, 13 Ire. 72, 2 D. & B. 539, 3 Dev. 91; *not collaterally impeached*, 6 Ire. 243, 7 Ib. 398, 4 D. & B. 454, 5 Ire. 557; *how proved*, 3 Ire. 13, 1 Dev. 415; *when void*, 3 Dev. 360, 1 Ire. 473.

SECT. 11. *Justice not to sign as surety*, 10 Ire. 126. *Form of execution*, 5 Ire. 22, 4 D. & B. 414, 1b. 187, 4 Dev. 95, 3 Hawks, 463. *Remedy against stayor*, 1 Dev. 378. *Liability of justice for insufficient surety*, 4 D. & B. 351.

SECT. 13. *May postpone for thirty days excluding Sundays*, 4 Dev. 484.

SECT. 16. *When returnable*, 4 D. & B. 160; *stay after levy*, 5 Ire. 218. *Lery after return day*, 1 Dev. 444. *Priority of execution inter se.*, 3 Ire. 488.

SECT. 23. *Appeal vacates judgment*, 2 Mur. 227. *Justice not to sign as surety*, 1 Hawks, 319. *May waive appeal*, 2 Ire. 44. *Effect of waiver*, Bus. 392. *Liability of surety*, 2 Dev. 109, 3 Ire. 13.

SECT. 24. *Justice must attest*, 2 Hawks, 532.

SECT. 25. *May return at subsequent term*, 1 Dev. 176.

SECT. 31. 5 Ire. 72.

## CHAPTER 63.

### LANDLORD AND TENANT.

#### SECTION

1. Rents payable in crops exempt from execution, except for taxes.
2. Landlord may recover for use and occupation where demise is not by deed. One let into possession under contract of purchase liable for use,

#### SECTION

- &c. Void parol leases not affected.
3. Rents becoming due after death of tenant for life, belong to his executor, &c.—apportioned according to time of enjoyment.

Rents payable in crops exempt from execution, except for taxes.—1850, c. 95, s. 1.

1. **WHENEVER** the lessee of land shall, for the rent thereof, agree to deliver to his landlord a certain share of the crop, or a certain part of a specified kind thereof, to be grown on the land, then so much of the crop, or of that particular kind thereof, grown on the premises by the lessee or any under-tenant, as will be sufficient to satisfy the rent for the year, shall be exempt from execution; and no part of the kind of crop of which the rent is reserved shall be levied on and removed from the premises by virtue of any execution, except for taxes, under any pretence whatever, unless the party at whose suit the execution may issue shall, before removal, set apart for the landlord, he having due notice thereof, the rent reserved, or shall satisfy him therefor.

Landlord may recover for use and occupation where demise is not by deed. One let into possession under contract of purchase,

2. **WHEREAS** difficulties many times occur in the recovery of rents, where the demise is not by deed: For remedy whereof, *Be it enacted*, that the landlord, when the agreement is not by deed, may recover a reasonable satisfaction for the lands, tenements, or hereditaments held or occupied by the defendant, in action of debt or on the case for the use and occupation of what was so held or enjoyed; and if, in evidence on the trial



of the action, any parol demise or any agreement, (not being by deed,) wherein a certain rent was reserved, shall appear, the plaintiff shall not on that account be nonsuited, but may use the same as an evidence of the quantum of damages to be recovered. And it is hereby declared, that one let into possession under a contract of purchase which fails, is within the meaning and purview of this section, and shall be liable for his use and occupation. *Provided, however,* that nothing herein contained shall be construed to make valid any parol lease by law elsewhere made void.

3. Rents reserved by tenant for life upon any demise which determined on his death, for the year in which he may die, or for any previous year, which rents may not become payable during his life, shall, with the securities taken for their payment, belong to his executors and administrators, who may sue for the same in an action on the case, or in any action which the tenant for life might have had if the rent had become due in his lifetime: and the recovery of such rent shall be in proportion according to the time the tenant lived of the last year, or other time in which the rent was growing due as aforesaid, making all just allowances.

liable for use, &c.  
Void parol leases not affected.—1850, c. 120, s. 1.—11 Geo. II. c. 19, s. 14.

Rents becoming due after death of tenant for life, belong to his ex'r. &c., apportioned according to time of enjoyment.—1850, c. 120, s. 2.—11 Geo. II. c. 19, s. 15.

## CHAPTER 64.

### LEGACIES, DISTRIBUTIVE SHARES, &c.

SECTION

1. Intestates' estates, how distributed.
  - (1.) Between widow and one or two children.
  - (2.) A widow and more than two children.
  - (3.) When there is a widow and no children.
  - (4.) When there are children and no widow.
  - (5.) When no widow nor children.
  - (6.) But a mother, brothers, &c.
2. Advancements to children to be ac-

SECTION

- counted for. Representation among collateral kindred, when admitted.
3. Children to render on oath, a schedule of property advanced.
4. Child refusing to account, not entitled.
5. Illegitimate, when no legitimate children, to be next of kin to their mother.
6. May be next of kin to each other.
7. Legacies, &c., recoverable by petition in superior or county court.

1. EVERY administrator shall distribute the surplus of the estate of his intestate in the manner following, namely:—

(1.) If there are not more than two children, one third part to the widow of the intestate, and all the residue by equal portions, to and among the children of the intestate, and such persons as legally represent such children as may then be dead.

(2.) If there are more than two children, then the widow shall share equally with all the children, and be entitled to a child's part.

Intestates' estates, how distributed. Between widow and one or two children.

A widow and more than two children.

When there is a widow and no children.

(3.) If there be no child nor legal representative of a deceased child, then one half of the estate shall be allotted to the widow, and the residue 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.

When there are children and no widow.

(4.) If there be no widow, the estate shall be distributed, by equal portions, among all the children, and such persons as legally represent such children as may be dead.

When no widow nor children.

(5.) If there be neither widow nor children, nor any legal representative of children, the estate shall 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.

But a mother, brothers, &c.—R. S. c. 64, s. 1.—1844, c. 51, s. 1, 2; 1852, c. 7.

(6.) But if after the death of the father, and in the lifetime of the mother, any of his children shall die intestate, without wife or children, every brother and sister, and the representatives of them, shall have an equal share with the mother of the deceased child.

Advancements to children, accounted for.

2. *Provided, nevertheless*, that children, who shall have any estate by the settlement of the intestate, or shall be advanced by him or her in his or her lifetime, shall account with each other for the same in the distribution of the estate, in the manner as provided by the second rule in the chapter entitled "Descents;" and shall also account for the same with the widow of the intestate in ascertaining her child's part of the estate. *And provided further*, that in the distribution of the estate, there shall be admitted, among collateral kindred no representative after brothers' and sisters' children.

Representation among collateral kindred, when admitted.—R. S. c. 64, s. 1.

3. Where any parent shall die intestate, who had in his or her lifetime 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 shall cause to be given to the administrator of the estate, an inventory on oath, setting forth therein the particulars by him or her received of the intestate in his or her lifetime.

Children to render on oath, a schedule of property advanced.—R. S. c. 64, s. 2.

4. In case any child, who had in the lifetime of the intestate, received a part of said estate, shall refuse to give such inventory, he shall be considered to have had and received his full share of the deceased's estate, and shall not be entitled to receive any further part or share.

Child refusing to account, not entitled.—R. S. c. 64, s. 3.

5. When there shall be no legitimate issue, every illegitimate child of the mother dying intestate, or the issue of any such illegitimate child deceased, shall be considered her next of kin, and as such shall be entitled to her personal estate; but such child or issue shall not be allowed to claim, as representing such mother, any part of the estate of her kindred.

Illegitimate, when no legitimate children, to be next of kin to their mother.—R. S. c. 64, s. 4.

6. Illegitimate children born of the same mother shall be considered legitimate as between themselves and their representatives; and their personal estate shall be distributed in the same manner as if they had been born in lawful wedlock. And in case of the death of any such child or his issue, without leaving issue, his estate shall be distributed among his mother and all such persons as would be his next of kin, if all such children had been born in lawful wedlock.

May be next of kin to each other.—R. S. c. 64, s. 4.

7. Legacies, filial portions, distributive shares of intestates' estates, sums of money, or other estate, due or owing from any person appointed guardian to any ward, or from any executor or administrator, or other person whatsoever, may be recovered by petition to the superior court, or court of pleas and quarter-sessions of the county, which shall be served ten days before the court; and the proceedings therein shall be conducted in the manner provided by law for suing by petition, and according to the rules of practice prescribed for, and used in, courts of equity.

Legacies, &c., recoverable by petition in sup'r or county court.—R. S. c. 64, s. 5.

SECT. 1. *Law of domicile governs*, Conf. R. 146, 2 Jones, Eq. 51. *Who take as next of kin*, 2 Jones, Eq. 41, 5 Ire. Eq. 289; *child en ventre*, 1 D. & B. Eq. 77, Bus. Eq. 213. *Advancement, what is*, 7 Ire. Eq. 142, 5 Ib. 67, Bus. Eq. 5; *by mothers*, 1 Jones, Eq. 253; *grandchildren not chargeable with*, 2 Jones, Eq. 41; *if slaves are sold*, 6 Ire. Eq. 528; *if they die*, 7 Ire. Eq. 138; *when valued*, 6 Ire. Eq. 437, Bus. Eq. 5. *Widow*, 7 Ire. Eq. 159.

SECT. 4. 1 Dev. Eq. 71; 1 Jones, Eq. 243.

## CHAPTER 65.

### LIMITATIONS.

SECTION

1. Persons to claim their lands within seven years, or be barred. Infants, &c., to have three years after disability removed. Persons beyond seas, eight years after title accrued. Proviso, in case of judgment stayed or reversed.
2. Possession, twenty-one years under color of title, and known boundaries to bar State.
3. Time within which personal actions must be brought.
4. Sureties of guardians discharged three years after ward comes of age.
5. Suits on bonds of sheriffs and other officers, barred after six years.
6. On justices judgments, in seven years.
7. *Scire facias* against bail, in four years. Time not counted, when.
8. Proviso, in case of writ of error, reversal of judgment, or where process cannot be served.
9. Saving for infants, *femes covert*, &c.
10. Proviso, when defendant is beyond sea, or non-resident.
11. Creditors of deceased persons barred after seven years.
12. To present their claims in two years or be barred, if executor or administrator has advertised.

SECTION

13. Proviso as to disabilities of creditors; and where executor or administrator is non-resident.
14. Time indulged on request of executor, &c., not counted.
15. Time during contested probate or grant of administration not counted.
16. Mortgage of personalty to be redeemed within two years after forfeiture. Proviso; mortgagee may foreclose. Saving for certain disabilities.
17. Fees due to clerks, sheriffs, &c., by residents to be collected in three years.
18. Judgments, contracts, &c., presumed to be paid after ten years.
19. Rights of mortgagor and mortgagee, presumed settled, after ten years, &c.
20. Adverse possession of personal property, three years to give title.
21. If one joint owner of personalty be barred by time, rights of others not affected.
22. Bar of statute of limitations repelled but as to himself, by admissions of a partner or joint contractor.
23. Titles of railroad and other companies, to estate condemned for right of way, &c., not barred by time or occupation.

Persons to claim their lands within seven years, or be barred. Infants, &c., to have three years after disability removed.

Persons beyond seas, 8 years after title accrued.

Proviso, in case of judgment stayed or reversed. — R. S. c. 65, s. 1.

Possession 21 years, under color of title, and known boundaries, to bar State. — R. S. c. 65, s. 2.

Time within which personal actions must be brought. — R. S. c. 65, s. 3, 5, 6.

1. No person, or his heirs, who shall have any right or title to any lands, tenements, or hereditaments, shall thereunto enter or make claim, but within seven years next after his right or title descended or accrued, and in default thereof, shall be utterly excluded and disabled from any entry or claim thereafter to be made. *Provided, nevertheless,* that if any person 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 twenty-one years, *feme covert, non compos mentis*, imprisoned, or beyond seas, then such person may, notwithstanding the said seven years be expired, commence his suit or make his entry within three years next after full age, discovery, coming of sound mind, or enlargement out of prison; or persons beyond seas, within eight years after the title or claim becomes due, 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 manner of persons whatsoever. *Provided, also,* that if in any such action, judgment be given for the plaintiff and the same be reversed for error, or a verdict pass for the plaintiff and judgment thereon be arrested, then, in any such case, the plaintiff may commence a new action from time to time, within one year after judgment reversed, or stayed, as aforesaid, notwithstanding the time limited herein for bringing such action may have expired, if the action first brought was commenced within the time above prescribed for bringing such action.

2. Where any person, or any claiming under him, shall continue to be in possession of any lands, tenements, or hereditaments under titles derived from sales made by creditors, executors, or administrators, or by husbands and their wives, or by indorsement of patents, or other colorable title, for twenty-one years, all such possession under such title, shall be, and is hereby ratified and confirmed, and declared to be a good and legal bar, against the entry of any person, under the right or claim of the State. *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, trover, replevin, account, upon the case; all actions of debt for rent, and actions of debt upon any contract without speciality; all actions for penalties imposed by statute, (unless the time for bringing such penal actions be otherwise directed); all actions brought by an indorsee upon any bond or other security made negotiable by law, shall be commenced within the time and limitation by this chapter directed, and not after, that is, actions of trespass for goods and chattels, *quare clausum fregit*, of detinue, trover, replevin, upon the case, debt for rent, or upon simple contract, for penalties as aforesaid, by indorsees as aforesaid, and actions of account render, (except such accounts as concern the trade of merchandise between merchant

and merchant and their factors and servants,) shall be commenced within three years next after the cause of action accrued, and not after; and actions of trespass for assault and battery, and imprisonment, within one year after the cause of action accrued; and actions upon the case for words within six months after the words spoken.

4. Any orphan or ward, coming to full age, and not calling on his guardian within three years thereafter for a full settlement of his guardianship, shall be forever barred, as to the sureties on the bond of the guardian, from all recovery thereon.

Sureties of guardian discharged 3 years after age of ward.—R. S. c. 65, s. 7.

5. All suits on the bonds of sheriffs, coroners, constables, clerks of the county and superior courts, clerks and masters in equity, surveyor, entry-taker, county trustee, and inspectors, shall be commenced within six years after the right of action shall have accrued, and not after.

Suits on bonds of sheriffs and other officers, barred after six years.—R. S. c. 65, s. 8.

6. All actions of debt upon the judgment of a justice of the peace, shall be commenced within seven years next after the rendition of the judgment, or the teste of the last execution lawfully issuing on the same, and not after.

On justice's judgments, in seven years.—R. S. c. 65, s. 10.

7. No *scire facias* shall be sued against the bail of any defendant in a civil suit or action, but within four years next after the rendition of a final judgment, or the entering a final decree in the suit or action, and not after. *Provided, however,* that if the plaintiff shall marry or die after judgment or decree as aforesaid, and it become necessary for the husband or representative to be made a party before *scire facias* can be sued, the lapse of time during the pendency of such proceedings shall not be reckoned.

*Sci. fa.* against bail, in four years.

Time not counted, when.—R. S. c. 65, s. 15, 16.

8. *Provided, nevertheless,* that if in any of the said actions, except actions for penalties, judgment be given for the plaintiff, and the same be reversed by error, or a verdict pass for the plaintiff and the judgment thereon be arrested, and the plaintiff take nothing by his writ; or if any of the said actions shall be brought by original writ, and the defendant cannot be served with process, in every such case, the plaintiff, his heirs, executors, or administrators, as the case shall require, may commence a new action from time to time, within a year after judgment reversed or judgment arrested, or till the defendant can be served with process.

Proviso, in case of writ of error, reversal of judgment, or where process cannot be served.—R. S. c. 65, s. 4, 17.

9. *Provided further,* that if any person entitled to have any of such actions, except persons suing for penalties, shall be at the time the cause of action accrued, within the age of twenty-one years, *feme covert, non compos mentis*, imprisoned, or beyond seas, then such person may bring the same actions, if he will bring them within the times as before limited, after his coming to or being of full age, discover, of sound memory, at large, or returned from beyond seas, as other persons having no such impediments might have done.

Saving for infants, *feme covert*, &c.—R. S. c. 65, s. 4, 7, 8, 10, 16.

10. *Provided further,* that when any person, against whom there is cause of action, shall be beyond sea, or a non-resident of the State, at the time such cause of action accrued, the

Proviso, when debt is beyond sea, or non-resident.—R.

S. c. 65, s. 4.—plaintiff may bring his action against such person, after his return, within the times as are hereinbefore limited for bringing such actions.

Creditors of dec'd persons, barred after 7 years.—R. S. c. 65, s. 11. To present their claims in two years or be barred; If ex'r or adm'r has advertised.—R. S. c. 65, s. 12.

11. Creditors of any deceased person shall make their claim within seven years after the death of such debtor, otherwise such creditors shall be forever barred.

12. Every creditor of any deceased person, residing within the State, shall within two years, and if he reside without the State, shall within three years from the qualification of the executor or administrator, exhibit to and demand of such executor or administrator his debts and claims of every kind; and if the creditor shall fail so to do, and to bring suit for such debts and claims within the time aforesaid, he shall be forever barred of the recovery of the same. *Provided*, that the executor or administrator shall have advertised within the time, and in the manner prescribed.

Proviso as to disabilities of creditor; and where ex'r or adm'r is non-resident.—R. S. c. 65, s. 12. —1848, c. 59.

13. *Provided further*, that if such creditor be under any of the disabilities, or the executor or administrator be a non-resident of this State, as declared and provided in the ninth and tenth sections of this chapter, the creditor may bring his action within one year after such disabilities are removed or the return of the executor or administrator, notwithstanding the time limited for bringing such actions may have expired, before the return of such person, or the said disabilities be removed.

Time indulged on request of ex'r, &c., not counted.—R. S. c. 65, s. 12.

14. *Provided, also*, that if any creditor, after demanding his debt or claim, shall delay to bring suit at the special request of the executor or administrator, the time of such indulgence shall not be reckoned in the time limited for bringing the action.

During contested probate, or grant of adm'n not counted.

15. In reckoning time, when pleaded as a bar to suits, that period shall not be counted which elapses during any controversy on the probate of a will, or granting letters of administration.

Mortgage of personalty to be redeemed within two years after forfeiture.

16. Whenever any mortgagor of personal property, or his legal representative, shall have failed to perform the conditions of the mortgage for two years after the time of performance specified therein, and shall have omitted to file a bill in equity claiming his equitable right to redeem such property, for two years after the forfeiture of the conditions of the mortgage, he shall be forever barred of all claim in equity thereto. *Provided, nevertheless*, that nothing herein contained shall be construed to prevent any mortgagee from filing his bill in equity to foreclose the mortgage, at any time after the forfeiture of the conditions specified. *And provided further*, that if any such mortgagor shall become lunatic, or *non compos mentis*, or be removed beyond seas or beyond the limits of the State, he shall be allowed the further time of one year from the removal of such disability, within which he, or his legal representative, may claim in equity his right to redeem.

Proviso; mortgage may foreclose.

17. All fees due to the clerk of any court of record, or to any sheriff, or other officer, by the sentence, judgment, or decree of a court, from persons other than non-residents of the

Saving for certain disabilities.—R. S. c. 65, s. 19.

Fees due to clerks, sheriffs, &c., by residents, to be col-

State, shall be collected, or suit commenced therefor, within three years from the time of the judgment rendered, when no execution has issued thereon, or within three years from the issuing of the last execution, and not after.

lected in three years.—R. S. c. 65, s. 9.

18. The presumption of payment or satisfaction on all judgments, decrees, contracts, and agreements had or made, shall arise within ten years after the right of action on the same shall have accrued, under the same rules which now prevail.

Judgments, contracts, &c., presumed paid, after ten years. R. S. c. 65, s. 13.

19. The presumption of payment, or abandonment of the right of redemption of 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 on any equitable interest or claim, under the like rules as aforesaid.

Rights of mortgagor and mortgagee presumed settled after ten years, &c.—R. S. c. 65, s. 14.

20. Whenever any person shall remain in possession of a slave or other personal property, until such possession is protected by the statute of limitations, he and those claiming under him, shall be deemed and held to have a good and absolute title to such slave or other personal property, against all persons whose claim is barred by the said statute. *Provided*, that nothing herein contained shall in any way affect the law that requires gifts of slaves to be in writing.

Adverse possession of personal property three years, to give title.—R. S. c. 65, s. 18.

21. Whenever several tenants in common, or joint owners of personal property shall bring their action to recover the same, or for damages done to such property, and any of them shall be barred of their recovery by limitation of time, the rights of the others shall not be affected thereby; but they may maintain their suit, notwithstanding such bar, and have a verdict and judgment according to their right and interest in said property.

If one joint owner of personalty be barred, rights of others not affected.—1852, c. 91.

22. In suits to recover any debt or demand due from any firm after the dissolution thereof, or from the makers of any promissory note, no act, admission, or acknowledgment done or made by any partner after the dissolution of the copartnership, or by any of the makers of the promissory note after the statute of limitations shall have barred the same, shall be received as evidence to repel the statute, but as against the partner or the maker of the promissory note, doing the act or making the admission or acknowledgment.

Bar of stat. lim. repelled but as to himself, by admissions of a partner or joint contractor.—1852, c. 51, s. 1.

23. No railroad, plank-road, turnpike, or canal company shall be barred of, or be presumed to have conveyed, any real estate, right of way, easement, leasehold, or other interest in the soil, which may have been condemned or otherwise obtained for its use, as a right of way, depot, station-house, or place of landing, by any statute of limitation, or by occupation of the same by any person whatever. But all such property shall be and remain, and be deemed and held to be, the property, estate, and right of such company, according to the terms of its charter, until it may be shown, that the same has been departed with, by some writing duly executed by such company to convey the title thereof, from and out of said company.

Titles of railroad and other companies to estate condemned for right of way, &c., not barred by time or occupation.

SECT. 1. *The statute includes powers*, 3 Dev. 6; *but not right to dower*, 1 D. & B. 213; *reversioner, when*, 1 D. & B. 313. *Entry within seven years*, 6 Ire. 361, 13 Ib. 84, 10 Ib. 237, 12 Ib. 11. *Possession, what is*, 4 Ire. 310, 1 Ib. 535, Ib. 293, Ib. 56; *covers what*, 13 Ire. 269, 12 Ire. 373, 3 Ib. 578, 4 D. & B. 164; *when adverse*, 11 Ire. 469, 1 Dev. Eq. 55, 5 Ire. 711, 4 D. & B. 527, Ib. 291. *Lapping deeds*, 7 Ire. 186, Ib. 175, 1 Ib. 535. *Color of title*, Bus. 303, 5 Ire. 711, 3 Ib. 578, 4 D. & B. 54. *For decisions on the proviso, see references under Sect. 8.*

SECT. 2. 4 Ire. 32.

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SECT. 19. 5 Ire. Eq. 348, 8 Ib. 287, Ib. 201, Ib. 123, 2 D. & B. 218, 1 Dev. Eq. 58, Ib. 338; *mortgage by construction*, 7 Ire. Eq. 282. *How repelled*, 6 Ire. Eq. 97. *Estate reverts on payment*, Bus. 154.

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## CHAPTER 66.

### LITERARY FUND, AND COMMON SCHOOLS.

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I. LITERARY FUND.

Board of literature established and incorporated. Its style.—R. S. c. 67, s. 1. Of whom composed.

1. THERE shall be a board of literature in this State, 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.

Secretary appointed. Pay of members and secretary.—R. S. c. 61, 67-69.

2. The governor, in virtue of his office, shall be president of the board; and there shall be three other members thereof biennially appointed by the governor, with the advice of the council of State; but in case of a vacancy, it shall be filled by the other members. The board may appoint a secretary to record their proceedings. The members shall receive three dollars each per day and their travelling expenses, for the time they may be employed in the service, and the secretary shall receive three dollars for each day during their actual session; to be paid out of the literary fund.

Property, stocks, and funds vested in corporation.—R. S. c. 66, s. 1; c. 67, s. 3, 4.—1842, c. 36, s. 2; 1850, c. 90.

3. The following property and funds shall be vested in the said corporation and their successors, in trust, as a public fund for education, and the establishment and support of common schools, namely: All shares of stock owned by the State in the bank of the State of North Carolina, and in the bank of Cape Fear; all the shares of stock owned by the State in the Wilmington and Raleigh Railroad Company, and in the Wilmington and Manchester Railroad Company, and all the profits and dividends arising therefrom; all the swamp lands of the State, not heretofore duly entered and granted to individuals, and all the swamp lands that now belong, or may hereafter come to the State; all the dividends arising from stock owned by the State in the Cape Fear Navigation Company, the Roanoke Navigation Company, and the Clubfoot and Harlow's Creek Canal Company; the taxes imposed on licenses to retailers of wines, cordials, or spirituous liquors, and auctioneers; all moneys paid to the State for entries of vacant land; all the bonds due and owing to the president and directors of the literary fund by the Wilmington and Raleigh Railroad Company, and by the Raleigh and Gaston Railroad Company; all the bonds due and owing to said president and directors by individuals, by corporations, or by the State. And all the said moneys, stocks, bonds, and funds shall be deposited in the treasury of the State, and kept distinct and apart from all other public money, subject to the orders of the said president and directors, and 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.

Deposited in treasury.

How paid out.

Treasurer to keep account of receipts, &c.,

4. The treasurer of the State shall keep a fair and regular account of all the receipts and disbursements of the literary

fund, and shall report the same to the General Assembly, at the same time when he makes his biennial account of the ordinary revenue: and the board shall report to the General Assembly the manner in which the fund has been applied or vested, with such recommendations for the improvement of the same, as to them shall seem expedient.

and report to Assembly.—R. S. c. 66.

5. The board shall be invested with full power to adopt all necessary ways and means for causing so much of the swamp lands to be surveyed, as they may think capable of being reclaimed; and after said lands, or any part of them, shall be surveyed, to contract for the construction of canals, ditches, and other works, necessary for the purpose of reclaiming the same, upon such terms and conditions as may be prescribed by the corporation; the contractor giving bond with security for the faithful performance of the agreement.

Duty of board in having swamp lands surveyed, drained, &c.—R. S. c. 67, s. 5.

6. Whenever it shall be necessary to construct any of said works on the lands of any individual proprietor, his written consent, without any formal deed of conveyance of the lands necessary to the work and its future enjoyment, shall vest the title thereof in the corporation forever; and when any infant, or person *non compos mentis*, or *feme covert*, shall be owner thereof, his guardian shall be authorized to give such consent; and the *feme covert* and her husband may do so, without any private examination; and the consent so given shall be valid to all intents and purposes.

Written consent of owners to vest title in corporation.—R. S. c. 67, s. 6.

7. Whenever the consent of the proprietor shall be withheld, the corporation or their agents may enter on the lands, and lay off so much as may be necessary to be used in said work, the value of which shall be assessed to the proprietor according to law; and, upon the payment thereof, the title shall be vested in the corporation forever. *Provided*, that, in the assessment of valuation, the benefit that will accrue to the proprietor by reason of the improvement, may be likewise reckoned and set off against the damages.

When owners refuse, how corporation to proceed.—R. S. c. 67, s. 7.

8. When there are lands owned by individuals, which can be reclaimed by reason of the canals, ditches, or other works of the corporation, the same shall be assessed to contribute an equitable proportion of the costs of said works; which assessment shall be made by the board, or a board of commissioners appointed by them; and the same shall be charged on the lands. *Provided, however*, that the corporation, by contract with individual proprietors, may agree upon the assessment, and accept payment thereof in labor or money.

Lands of persons improved by canals, &c., to pay a proportion of expense.—R. S. c. 67, s. 8.

9. The said board may appoint an engineer and surveyor, and other servants, to plan the works; they may enact all necessary rules and regulations for surveying and reclaiming the swamp lands; for assessing the lands of individuals which may be improved by the works, and for collecting assessments; and the assessments 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 of the county

Board may appoint an engineer, surveyor, &c.—R. S. c. 67, s. 9.

wherein the lands assessed are situate. If no objections are filed at the court next after such advertisement, the assessments shall be confirmed by the court, and the lands adjudged liable for the amount, and execution may be issued for the sale thereof to satisfy the same, on motion to the court for that purpose; and if any reasons be shown against the assessments, they shall be heard and determined by the court, and the assessments shall be increased or diminished as the court shall adjudge.

May enter upon any lands for surveying, &c.

Titles to swamp lands not registered, vested in corporation. Proviso.—R. S. c. 67, s. 10.—1850, c. 102, s. 1.

May sell reclaimed lands. Proceeds of and entry-money to become principal.—R. S. c. 67, s. 11.—1844, c. 26, s. 1.

Shall expend no money to reclaim lands, unless, &c.

May employ counsel, and compromise suits.

May buy, or exchange lands.

Turnpike from Plymouth to Pungo river, &c.—1848, c. 58, s. 1; 1848, Res.; 1850, c. 158, s. 1, 2, 3; 1852, Res.

10. The corporation, and their officers or agents, shall have a right to enter upon the lands of all 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 the 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. *Provided, however,* that the provisions of this section, relating to the registration of grants and deeds, shall be applicable to the swamp lands only which have been surveyed or taken possession of by, or are vested in the president and directors of the literary fund of North Carolina, or their agents.

11. The corporation may sell and convey any part of the lands, which may be reclaimed, for the best price that can be obtained, and the proceeds, as also money received on entries of vacant land, shall become a part of the principal of the literary fund: but they shall not sell any canal by them constructed under this chapter.

12. The corporation shall not expend any part of the moneys, stocks, or property herein vested in them, for the purpose of reclaiming the said lands, but by direction of the General Assembly; and the money received on entries of vacant land shall also be added to the principal of the fund.

13. The board may employ counsel learned in the law, to aid and assist them in the investigation and prosecution of their title to any of their swamp lands; and they may compromise upon such terms as to them shall seem reasonable and just, for the title, so as to secure to the corporation an indefeasible right in said lands.

14. Whenever, in the process of draining, it may be necessary, in order to prevent a sacrifice of the interests of the State, to purchase small tracts owned by individuals, the board may buy them, or exchange for them some other portions of the swamp lands; and the lands thus acquired shall be held by them as other swamp lands.

15. The board shall contract, upon such terms and conditions as they may think proper, for the construction of a turnpike-road from Plymouth, in Washington county, to some point on or near Pungo river, in Beaufort county, the more effectually to bring into market the public lands in the counties of Hyde and Washington. *Provided, however,* that the

board may appoint three commissioners, who, after being duly sworn to perform the duties assigned them with their best skill and ability and without partiality, shall have full power to carry into execution the provisions of this section, as effectually as the board may do it. And the commissioners thus appointed shall signify to the board their intention of serving, within ten days after being informed of their appointment.

16. For the purpose of making said road, the board may dispose of five thousand dollars' worth of the swamp lands, if not already done, and appropriate therefor the proceeds, together with the sum of six thousand dollars directed heretofore to be advanced out of the money belonging to the board of literature. And the board or the commissioners shall take bond from the contractor, with good security, in double the amount of the contract, conditioned for its due and faithful performance. And if the board or commissioners cannot agree with the owners of land over which the road will pass, or for land whereon to erect houses for the use of the hands employed, or for earth for the use of the road; or if the owner be a *feme covert*, under age, *non compos*, or out of the State, then, on application to two justices of the peace of the county wherein the lands lie, they shall issue their writ to the sheriff of the county, commanding him to summon, within twenty days, a jury of eighteen disinterested and reputable freeholders, twelve of whom, after meeting on the premises, being duly drawn and sworn by the sheriff to act impartially, shall lay off and value the land required for the construction of said road, and the damages the owners will sustain by reason of the same; and the inquisition shall be returned, under their hands, into the next court of pleas and quarter-sessions of the county, and, upon paying the amounts assessed to the owner of the land or his guardian, or into the office of the clerk of the court, they, or the contractor under them, may enter upon the land laid off and use it, and construct the road thereon; and the road shall be held, deemed, and used as a public highway.

Amount appropriated.

Contractor to give bond.

How land may be condemned for road.—1848, c. 8, s. 2, 3, &c.

17. Whenever a canal shall be opened from Waccamaw river to Little river, near where the latter empties into the ocean, and it shall have been clearly ascertained that any valuable portion of the said swamp lands have been drained by the said canal, and have been made more valuable thereby, the board may allow to the individuals opening the canal, such of the public lands thus drained, and convey the same by deed, as the board may consider just and reasonable.

Board may contribute lands for a canal from Waccamaw to Little river.—1848, c. 56.

18. The board shall inquire into the practicability and expediency of draining certain lands in Carteret county, known as the Open Ground Prairie; and, should they deem it advantageous to do so, may commence the draining thereof; and for that purpose, five thousand dollars are appropriated from the literary fund.

Appropriation of \$5,000 for Open Ground Prairie.—1850, Res.

19. Any person who may at any time have obtained a grant from the State for any swamp lands which have been

Forfeitures of land, by per-

sons failing to pay tax.—1842, c. 36.

surveyed or taken possession of by the president and directors of the literary fund of North Carolina, or their agents, and who, or his heirs or assigns, shall not have regularly listed the same for taxation, and paid the taxes due thereon to the persons entitled to receive the same, such grantee, and his heirs or assigns, shall forfeit and lose all right, title, and interest in the said swamp lands, and the same shall *ipso facto* revert to the State, and be vested in the said corporation upon the same trusts as they hold other swamp lands; unless such person, his heirs or assigns shall have paid to the sheriff of the county in which said lands lie, prior to the twenty-first day of January, one thousand eight hundred and forty-four, all the arrearages of taxes due on said lands, with interest thereon, from the time the taxes ought to have been paid.

Agent of swamp lands appointed.—1854, c. 48.

His duties.

20. The president and directors of the literary fund of North Carolina may annually appoint an agent to superintend and supervise all the swamp lands belonging to the literary fund.

21. The agent shall devote his entire attention to the business; abandon all prior engagements that may conflict with the interest of the board; aid and assist counsel in the preparation and trial of all suits that may be directed by the board; collect information as to the location and value of all said lands; survey or have surveyed such tracts of said lands, or such other lands necessary to ascertain the location of lands belonging to the board, as he may deem necessary, under the direction of the board. He shall make reports from time to time to the board, of all the information he obtains, with such suggestions as he may deem proper; and shall prepare a statement of each tract of land owned by the board, and its location, quantity, as well as ascertained and probable value, distinguishing between those tracts the title to which is doubtful, or good; and this statement shall be recorded by him in a book to be kept by the board, and in a manner, by index or otherwise, easy for reference.

May be removed.

22. The agent may be removed by the board at any time, and another appointed to supply the vacancy, the agent removed being paid a *pro rata* compensation. The agency may be continued in the discretion of the board. The compensation of the agent shall not exceed one thousand dollars; and, besides his salary, he shall receive no other compensation for what he is required to do or have done as aforesaid, except that the necessary incidental expenses of surveys required as aforesaid, (not including surveyor's fees,) shall be paid by the board.

Compensation \$1,000.

Board may procure others to prosecute suits, and share the recovery.—1854, c. 48.

23. The president and directors of the literary fund shall have full power and authority to agree with any person to prosecute their claim to any swamp lands in any county or counties, or to survey and identify their lands in such counties, and allow to such person a share of any such land, as a compensation for his services.

24. In all controversies and suits for any of the swamp lands, to which the said corporation or their assigns shall be a party, the title to the said lands shall be taken and deemed to be in the corporation or their assigns, until the other party shall show that he hath a good and valid title to the said lands in himself.

Presumption of title in favor of lit'ry board, or their assigns.—1842, c. 36, s. 3.

25. No statute of limitation shall affect the title or bar the action of the said corporation, or their assigns, unless the same would protect the person holding and claiming adversely against the State.

Board barred by time, only when State is.—1842, c. 36, s. 6.

II. COMMON SCHOOLS.

26. The net annual income of the literary fund shall be annually distributed among the several counties of the State, in the ratio of their federal population, to be ascertained by the census next preceeding such distribution.

Income of literary fund, how distributed.—1840, c. 7, s. 1; 1844, c. 44, s. 1.

27. There shall be appointed a superintendent of common schools for the State, to be chosen by the General Assembly, and to hold his office two years from the time of his election, and until his successor is duly appointed. The courts of pleas and quarter-sessions of the several counties, (a majority of the justices being present,) at the term held next after the last day of December in each year, shall appoint not more than ten, nor less than five superintendents of common schools for their county, whose term of office shall begin on the third Monday of April succeeding their appointment, and continue for one year, and until others have been appointed and entered upon their office.

Superintendent for State, of common schools elected by Assembly.

For counties, appointed by co. courts.—1844, c. 36; 1848, c. 95.

28. The superintendents shall meet on the third Monday in April as aforesaid, and elect one of their number chairman.

Chairman for county superintendents. Chairman to give bond.

29. The chairman of the board of superintendents, before he enters upon the duties of his office, shall give bond with good security, payable to the State of North Carolina, in such sum as the board may deem adequate, conditioned for the faithful application of the funds that may come to his hands, and the discharge of all his duties; which bond shall be filed with the clerk of the county court; and the chairman shall be allowed to retain not exceeding two and one half per centum of the moneys which shall pass through his hands, as a compensation for his services.

His compensation.—1844, c. 36.

30. The clerk of the county court shall be, *ex officio*, clerk of the board of superintendents, and shall record in a book to be kept for that purpose, all its proceedings, and such other papers touching the subject of common schools as the board may direct; and shall safely keep all papers which may be committed to his custody by the board. He shall issue to the sheriff notices of the appointments of superintendents and school committees, which the sheriff shall deliver.

Clerk of co. court to be cl'k of board of superintendents, &c. His duty. Notices issued by him, served by sheriff.—1844, c. 36.

31. The share of the literary fund to which each county may be entitled, shall be due and payable on or before the first Monday of October in every year; and shall be paid to

Fund paid to counties, when and how.

the chairman of the board of superintendents, or his lawful attorney, upon the warrant of the comptroller.

Tax to be laid by county for school purposes.

32. The court of pleas and quarter-sessions of every county, a majority of the justices being present, shall levy a tax in the same manner that other county taxes are now levied, which shall not be less than one half of the estimated amount to be received by said county for that year from the literary fund; and the sheriff shall collect and pay over the same to the chairman of the board, on the day of their first meeting; and his bond, given to secure the payment of county taxes, shall contain a condition for the faithful collection and payment of the school taxes; and for a breach of the condition, the chairman shall have the same remedies against him and his sureties, as are given to the county trustee for enforcing the payment of ordinary county taxes; except that his right of action shall arise on the first Thursday of January in every year, and the penalty on the sheriff shall go to the use of common schools in his county.

Collected by sheriff.

Payment by him, how enforced.—1844, c. 36, s. 6.

Free negroes not taxed, for schools, &c.—1844.

33. No county court shall tax any free person of color for the support and maintenance of common schools; and no person descended from negro ancestors to the fourth generation inclusive, shall be taught in said schools.

School districts laid off and recorded.—1844.

34. The board of superintendents may lay off in their counties school districts, (and number the same,) of such form and size for one school, as they may think most convenient for the inhabitants of the county, and may alter the boundaries of the same, causing said boundaries and such alterations to be recorded by their clerk.

School committees, elected by voters of members of house of com.

35. The free white men of the several school districts, entitled to vote for members of the house of commons, on the first Saturday in April in every year, shall vote by ballot for three men, to be styled "the school committee," whose term shall commence on the first Monday in May following, and continue for one year, and until others are chosen; said election shall be held at such convenient place in the school district as the board may designate; and the three persons having the highest number of votes shall be declared elected "the school committee;" and the board may fill any vacancy which may occur in the committee by death, removal, or other cause.

Election, when and how held, &c.

Appeal from school com. to board superintendents.—1844, c. 37, s. 8; 1850, c. 28.

The chairman of the board shall give notice in writing, at three or more public places in each district of the election, at least ten days before the same; and the board shall appoint two freeholders of the district to conduct the election. The said freeholders shall give to the board, whose term of service commences on the third Monday of April thereafter, on the day of their first meeting, a certificate under their hands, of the number of votes received by each person; and the board shall declare the three persons receiving the highest number of votes, the school committee. *Provided, nevertheless,* that whenever the districts fail to make an election, the board shall appoint the school committee, who shall continue in office



until others are chosen; and whenever any of the citizens may consider themselves aggrieved by the committee, or any one of the committee-men of their district, an appeal may be made to the board of superintendents, who shall hear and decide on the merits of the complaint, and remove any committee man who, in their opinion, has violated his duty.

36. Each committee of the several school districts shall be a body corporate, by the name and style of "The School Committee of district, number , of the county of ," as the case may be; and in that name shall be capable of purchasing and holding real and personal estate, and of selling and transferring the same, for school purposes; and prosecuting and defending all suits for and against the corporation.

School committee, a body corporate. Its rights and powers.—1844.

37. The school committee shall designate, and purchase or lease, or receive by donation, a suitable site for a school-house as near the central part of the district as may be convenient; shall hire, purchase, build, or receive by donation, a school-house of such form and dimensions as they may deem suitable; and whenever they are unable thus to obtain such site, they shall report to the succeeding county court, with the reasons, why they have not procured the same; and the county court thereupon shall appoint three disinterested freeholders, who shall lay off not more than two acres, and not less than one acre, as a site for a school-house in such district, and condemn the same for the use aforesaid, and assess the value thereof, which assessed value shall be paid by the school committee to the owner of the land so condemned, or into the office of the county court clerk, for the benefit of such owner; and the land condemned and paid for, shall be vested in the school committee and their successors. *Provided, however,* that the freeholders aforesaid shall not condemn any land improved by buildings, culture, or otherwise. *And provided, further,* that if, after the purchase or condemnation of land for school purposes, the school committee see fit to remove the school, then the original owner of the land, or his vendee, shall have the right to take the land at the original price, with the privilege to the committee of removing the building or other improvements.

Sites for school-houses procured by committee.

How land condemned for sites.—1844, c. 36, s. 11; 1852, c. 19.

38. The school committees shall, in one month after their term of office commences, report in writing to the chairman of the board of superintendents, the number and names of the white children in their districts, of six and under twenty-one years of age; and on failure so to do shall each forfeit and pay five dollars, to be recovered by warrant before any justice of the peace, in the name of the chairman of the county superintendents, to be appropriated to the use of the school district in which such failure shall occur.

Committee to report within one month.—1844.

39. The moneys received from the literary fund and from county taxes, shall be distributed equally among the school districts.

Fund distributed equally among districts.

- Notice given of am't due each. 40. The chairman shall give notice, by written publication at the court house door of his county, of the amount due each school district, soon after the money is received.
- What taught in schools, &c. 41. Any branch of English education may be taught in said schools; and all white persons over the age of six years shall be permitted to attend the school of their district, as scholars, and receive instructions. *Provided*, that the children in any one district, may by the consent of two superintendents or committee, attend the schools in any adjoining district.
- When children may attend schools out of their district.—1844, c. 36. 42. The board of superintendents shall annually appoint a committee of examination, of not more than three persons, (of whom the chairman of the board shall be one,) who shall examine into the qualifications, both mental and moral, of all such as may apply for employment as teachers; and shall be convened by the chairman at least three times during the year, at some central point in the county; of the times and places of meeting, the committee or chairman shall post a notice at the door of the court house. The committee shall continue in office until their successors are appointed.
- Com. of examination appointed by superintendent. 43. No person shall be employed as a teacher, unless he obtain from a majority of the committee of examination of the county in which he seeks employment, a certificate of his good moral character, and sufficient mental qualifications: and no certificate shall be good for a longer term than one year from the date thereof.
- When convened. 44. The school committee shall contract with a suitable teacher for their district, for such time as the funds of the district will allow; and at the end of the term of his employment, he shall render to the committee the number and names of the children who have gone to his school, specifying the number of days each one went, and the studies taught; and, on his rendering such statement, the committee shall pay him by giving him an order on the chairman: and no committee-man shall be a teacher.
- Term of office.—1846, c. 106; 1852, c. 18. 45. The chairman of the board shall in no case pay any draft drawn on him in favor of a teacher, unless the same shall be accompanied with a report from the school committee, stating the name of the teacher in the district, the length of time for which the school may have been kept during the current year, and the several branches taught; and the chairman shall not pay such draft, unless the teacher exhibit a regular certificate of mental and moral qualifications from a majority of the committee of examination, dated within one year of that time.
- Teacher to obtain certificate of qualification. 46. No committee shall receive into their hands any of the funds set apart for common schools; but, whenever it shall become necessary for them to incur any expense in the purchase of land for the erection of a school-house, or other necessary purpose, the committee may state an account of the expense, and draw on the chairman for the same; which
- Certificate good for one year.—1846; 1852.
- School committee to employ teacher. His duty, and how paid.
- Committee-man not to be employed.
- Chairman not to pay draft, unless accompanied with report of school com., &c.—1846, c. 106; 1852, c. 18.
- Com. not to have school funds; may reckon expense and draw on chairman for purchase of site, &c.—1844, c. 36.

account shall accompany the draft, and shall be paid by the chairman, provided the school district shall have in his hands a sum sufficient to pay the same.

47. The school committee shall visit the schools from time to time, and, generally, perform all such duties as they may deem necessary to their successful operation; and they may unite with individuals, or other districts, for the purpose of raising a sum sufficient to carry on their schools for the longest time.

To visit schools; may join others to continue schools. — 1844, c. 36.

48. The board of superintendents may make such other regulations relating to their schools, not inconsistent with the provisions of this chapter and the laws of the land, as they may deem necessary to their usefulness.

Board may make other needful rules. — 1844.

49. The chairman of the board of superintendents shall keep a true and just account of all moneys received and expended by him during the time of his service, showing when and of whom received, and for what, and to whom paid, and the balance remaining on hand; and shall lay the same before the committee of finance of his county; and if there is no committee of finance, then before the clerk of the county court, together with the vouchers in support of the charges therein made, on or before the first Monday in September in each year; which account, the committee of finance, or the clerk of the county court, (as the case may be,) shall carefully examine, and if found correct, shall certify the same to be correct; if done by the clerk, he shall certify under his hand and the seal of his office; and he shall annually, on or before the third Monday of October, report in writing to the superintendent of common schools for the State, at Raleigh, a copy of the above account, together with the number of children in his county; the number who may have been taught in the schools of his county the preceding year; for what time the schools have been kept up in the several districts; the names of the committee of examination; the number of certificates issued by the committee of examination during the year preceding, designating in separate columns the number of female teachers, and the number of male teachers; with such other facts and suggestions as he may deem useful. And he shall make two copies of said report, one of which he shall file with the clerk of the board, to be recorded in the book in which are kept all the proceedings of the board; and the other he shall put up for public inspection in some conspicuous place in the court house of his county.

Chairman to keep account of moneys received and paid out.

Examined by com. of finance, or clerk of co. court.

Shall annually report to State superintendent, &c.

Copies of report to be filed, and posted up at court house. — 1844, c. 36; 1852, c. 18.

50. If in settling such accounts, any balance shall be found remaining in the hands of the chairman, the same shall immediately be paid by him to his successor in office; and if any moneys in his hands, whether reported or not, be improperly detained, his successor may, at any time and in any court of his county, recover the same with interest in a summary manner, against the defaulting chairman and his sureties, or any of them, in the same manner and with the same penalty

Shall pay over money to successor; in case of default, how recovered. — 1844, c. 36.

as prescribed in case of judgment against the sheriff at the instance of the county trustee, by giving five days notice to the persons against whom judgment is moved.

Liable to 12 per cent. damages on drafts unpaid, &c.

51. If the chairman shall fail to pay on demand any draft which he ought to pay, the same may be recovered against him, in the name of the payee or his assignee, with twelve per centum damages, besides interest, for its detention.

Misapplication of school fund, a misdemeanor.

52. If the board of superintendents, or any member thereof, shall misapply any of the school funds, the person offending, or assenting thereto, shall be deemed guilty of a misdemeanor.

Penalty for neglect, on superintendent, comm. and clerks.

53. If any person, having accepted the appointment of superintendent or committee-man, or any clerk of the county court, shall refuse or neglect to perform the duties required of him by this chapter, he shall forfeit and pay fifty dollars, to be applied as other school moneys; and the county solicitor shall prosecute suit for the recovery thereof.

County solicitor to prosecute.

State superintendent, duties of:—

54. The superintendent of common schools for the State shall superintend the operations of the system of common schools, and see that the laws in relation thereto are enforced; shall call on the chairmen of the several boards of county superintendents, who fail to make returns to him according to the provisions of this chapter; shall see that moneys distributed for the purposes of education are not misapplied; and that the proper actions provided by law are brought against all the officers and agents of the system who are liable to the same. And the superintendent, at such places as he may deem proper, and as often as possible, shall deliver public lectures on the subject of education, and endeavor to enlist the feelings of the people in the cause.

To see that school laws are executed, money duly applied. Defaulters sued: and deliver lectures.—1852, c. 18.

To attend literary board, when directed. His pay.

55. The superintendent, when notified, shall attend the meetings of the board of literature as long as it shall direct; and for such attendance shall have the same compensation as is allowed to members of the board.

Treasurer to furnish him yearly statement of money paid to counties.

56. The treasurer of the State shall furnish an annual statement to the superintendent, of the sums disbursed from the literary fund to the several counties, and of the names of the persons receiving the same.

Superintendent to issue yearly instructions and forms for returns.—1852, c. 18.

57. The superintendent shall annually issue to the examining committee of each county, a circular letter of instructions and suggestions as to the qualifications of teachers, and a recommendation of the school books proper to be used; and he shall also have prepared and send to the chairmen of the boards of county superintendents, printed forms with proper blanks, upon which to make their returns to him; all which returns, when received, he shall send to the office of the secretary of State, to be filed by him.

To make annual report to governor.

58. The superintendent, on or before the first Monday in January in every year, shall make a written report to the governor, giving a detailed and condensed account of the manner in which he has performed his duties; of the operations of the system of common schools, together with such suggestions

and recommendations as he may deem proper; with tables showing the number of white persons, six years old and under twenty-one, in each county in the State; the number who have attended school during the year; the length of time the schools have been kept open, and the number of school districts in each county; the number of male and female teachers licensed in each county to teach common schools during the year, and the average salaries of teachers; of which report the governor shall cause one hundred and fifty copies to be printed in cheap pamphlet form; fifty whereof the governor shall receive and distribute among the libraries of the State, University, Davidson, Wake-Forest, Catawba, and Normal colleges, the public offices of the State, and such literary institutions, in or out of the State, as he shall deem proper: and one hundred shall be received and distributed by the superintendent, in such manner as will best promote the cause of common education in the State.

Report to be printed.

59. If the superintendent shall wilfully and habitually neglect his duties, or shall use his official position for the purpose of propagating sectarian or political party doctrines, he shall be liable to be removed by the unanimous vote of the board of literature. *Provided*, that a written specification of charges, with the names and address of those preferring them, shall be delivered to him thirty days before his trial, and he shall be allowed to adduce evidence and be heard in his defence. In all such cases, a record of the proceedings, and of the charges and answer, shall be made by the board of literature, and be subject to the inspection of the General Assembly. And in case of his removal, death, or resignation, the board of literature shall appoint another for the residue of the unexpired term.

Penalty on State superintendent for neglect of duty.

May be removed.

Vacancy filled by literary board.—1852, c. 18.

60. The clerk shall receive a reasonable compensation for his services, to be allowed by the board of superintendents, and both he and the sheriff shall be paid out of the school fund.

Allowance to clerk and sheriff paid out of school fund.

61. If the chairman of the board of superintendents shall fail to make a report to the superintendent for the State, as provided in section forty-nine, he shall pay five hundred dollars, to be recovered by the superintendent on motion in the superior court of Wake county, in like manner as in case of clerks failing to make returns to the comptroller; and the certificate of the superintendent shall be *prima facie* evidence of the default.

Penalty of \$500 on chairman for failing to report to superintendent.

## CHAPTER 67.

## MAD DOGS.

Penalty, and liability for damages, for not killing a dog bitten by a mad dog.

Penalty, and liability for damages, for not killing a dog bitten by a mad dog.—  
R. S. c. 70.

1. WHENEVER the owner of any dog shall know, or have good reason to believe, that his dog, or any dog belonging to his slave or other person under his control, has been bitten by a mad dog, and shall neglect or refuse immediately to kill the same, he shall forfeit and pay the sum of fifty dollars to him who will sue therefor; and the offender shall be further liable to pay all damages which may be sustained by any one in his property or person, by the bite of any dog, belonging as aforesaid.

SECT. 1. 10 Ire. 79.

## CHAPTER 68.

## MARRIAGE.

## SECTION

1. Rites of matrimony celebrated by ministers of the gospel and justices. Fee.
2. Marriage, license for, issued by clerk of county court, upon bond, &c.
3. Banns of, published by ministers and readers.
4. Certificate of, to be returned to clerk, and recorded.
5. Penalty on minister, justice, or clerk for neglect of duty. To be sued for by county solicitor.
6. On ministers and clerks, for marrying, or issuing license, contrary to law.
7. Marriages between whites and colored persons, void.
8. Penalty for marrying whites to Indian or colored persons.

## SECTION

9. Marriage void, between nearer kindred than first cousins.
10. Estates of females under fifteen, marrying without consent, secured for her and issue.
11. Duty of attorney-general, &c., to file a bill, and have trustee appointed of her estate. Trustee to give bond. Compensation of. Persons having her estate, to hold it for trustee. Fees of attorney-general and solicitor.
12. How to obtain license when parents or guardian reside out of the State.
13. Penalty on clerks, ministers, and justices for issuing license and marrying females under fifteen years.
14. Females under fourteen and males under sixteen, incapable of marrying.

Rites of matrimony celebrated by ministers and justices.  
Fee.—R. S. c. 71, s. 1.

1. ORDAINED ministers of the gospel of every denomination, and justices of the peace, may solemnize the rites of matrimony, according to the rites and ceremonies of their respective churches, and the rules in this chapter prescribed; and the ministers may take two dollars for every couple by them married.

2. The clerk of the county court of the county in which the *feme* resides, shall issue a license for the marriage of any persons not in this chapter prohibited, to any person applying for the same, directed to any ordained minister or justice of the peace; the clerk first taking bond with sufficient security in the sum of one thousand dollars, payable to the State of North Carolina, conditioned that there is no lawful cause to obstruct the marriage; which bond shall be filed in office, and may be put in suit and recovered by the person aggrieved by the issuing of the license, or by the marriage.

Marriage license issued by clerk of county court, upon bond.—R. S. c. 71, s. 2.

3. Every ordained minister of the gospel, or person appointed by any church as a reader, may publish the banns of matrimony between any two persons requesting the same, on 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 ordained minister or justice of the peace, and may take for such service forty cents. *Provided*, that the people called Quakers, may retain their peculiar rules and privileges in solemnizing the rites of matrimony in their own church.

Banns of, published by ministers and readers.—R. S. c. 71, s. 3.

4. Every justice of the peace or minister of the gospel, who may solemnize the rites of matrimony, shall, within three months thereafter, transmit to the clerk of the county court of the county wherein such marriage may have been celebrated, a certificate in writing of the same, indorsed on the license or otherwise; which certificate properly indorsed, the clerk shall record in a book kept for the purpose, within one month after its reception; and such record shall be deemed *prima facie* evidence of the marriage.

Certificate of, to be returned to clerk, and recorded.—1850, c. 84, s. 1.

5. Any minister, justice of the peace, or clerk of the county court, neglecting to discharge the duties imposed by the preceding section, shall pay a penalty of twenty-five dollars in each case, to be recovered on motion to the county court after five days' notice, by the county solicitor, whose duty it shall be to enforce the penalty; one half whereof shall be applied to the use of the school fund, and the other half to the use of the poor of the county.

Penalty on minister, justice, or clerk for neglect of duty; to be sued for by county solicitor.—1850, c. 84, s. 2.

6. 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 chapter directed; or if any clerk shall knowingly issue any marriage license in any way or manner other than by this chapter directed, the person so offending shall forfeit and pay for every such offence two hundred dollars; one half to the use of him who will sue for the same, and the other half to the use of the county wherein the offence is committed; and such person shall be likewise liable to be sued by the person grieved.

On ministers and clerks, for marrying, or issuing license, contrary to law.—R. S. c. 71, s. 4.

7. All marriages, since the eighth day of January, eighteen hundred and thirty-nine, and all marriages in future, between a white person and a free negro, or free person of color, to the third generation, shall be void.

Marriages between whites and free negroes, void.—1838, c. 24.

Penalty for marrying whites to Indians, or free negroes.—R. S. c. 71, s. 6.

Marriages void, by reason of kindred.—1852, c. 75.

Estates of females under fifteen, marrying without consent, secured for her and issue.—R. S. c. 71, s. 7.

Duty of attorney-general and solicitors to file a bill, and have trustee appointed of her estate.

Trustee to give bond; allowed compensation.

8. No minister of the gospel or justice of the peace shall marry a white person with an Indian, negro, or free person of color, to the third generation, knowing them to be so, upon pain of forfeiting and paying for every such offence one hundred dollars.

9. All marriages contracted after the twenty-seventh day of December, eighteen hundred and fifty-two, and all marriages in future, between persons nearer of kin than first cousins, shall be void.

10. When any person shall marry an infant female under the age of fifteen years, except in the case where her father may be living and shall have assented to the marriage in writing, the person so offending shall acquire no interest in any of the property or estate of such female then owned and possessed by her, or in which she may then have any interest, vested or contingent: but the same shall be vested in and held by such trustee or trustees as the court of equity may appoint, who shall have full power to take all such estate into their possession, and to sue for and recover the same in their own names as trustees; and they shall hold such estate and property to, upon, and for the following uses and trusts, namely: to the sole and separate use of the female during the marriage, free from all control and dominion of her husband. And, upon the termination of the marriage, if she shall be the survivor, the trustees shall convey the said estate and all the profits thereof unexpended to the said female, absolutely and free of all trust. But if she shall not be the survivor, they shall convey the said estate and profits to such children as she may leave surviving her, and to the issue of such children as may have died in her lifetime, leaving issue, the issue to stand in the place of their parent, and take such share as the parent would, if living. And in default of such children or issue, they shall convey the said estate and profits to such persons as, according to the nature of the estate, would have been her distributees or heirs at law, if she had died unmarried. And the said husband shall not be permitted to hold or use, sell or dispose of, any part of such estate; and every sale or disposition made by him of such estate, shall be void; nor shall he, in case he survive his wife, be entitled to administration on her estate, or to any distributive share thereof, or to any right of curtesy therein.

11. It shall be the duty of the attorney-general and solicitors, within whose circuit such female may have resided previous to her marriage, to file a bill in equity in the name of the State against such husband and wife, and every person who may have in hand any of her estate, in which by the marriage the husband would or might, during the coverture, acquire any property, right, or interest, in order that a trustee may be appointed to take charge of the property and estate; who shall give bond with two or more good sureties in such sum as the court shall deem proper, payable to the State of North Carolina, for the faithful performance of the trusts reposed in him,



and for accounting for all the profits of the estate intrusted to him, and shall be allowed a reasonable compensation for his services, and may be removed for sufficient cause, and another or others appointed in his stead. And any person having estate in his hands belonging to such *feme* shall hold the same, against the claim of all persons whatever, for the use of such trustee as may be appointed. The attorney-general and solicitors, for such services, shall be allowed reasonable fees, to be paid out of the estate of the *feme*, or otherwise, as the court may direct.

Persons having her estate, to hold it for trustee.  
Fees of attorney-general and solicitor.  
—R. S. c. 71, s. 8.

12. In all cases when a license is applied for to marry a female whose parents or guardian reside without the State, the person applying shall 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 if under that age that she has leave to marry; which certificate shall be filed in the clerk's office in the county where the license was obtained.

How to obtain license when parents or guardian reside out of the State.—R. S. c. 71, s. 9.

13. If any clerk, or other person, authorized to issue license to marry, shall issue any license for the marriage of any female under the age of fifteen years, the said female not being permitted in writing to marry, as in this chapter directed, and the said clerk or other person knowing thereof; or if any minister or justice of the peace shall marry such female, with knowledge that she is not in writing permitted to marry; or if any such clerk or other person aforesaid shall issue any license, contrary to the true intent and meaning of the preceding section; every such minister, justice of the peace, clerk, or other person, so offending, shall forfeit and pay one thousand dollars.

Penalty on clerks, ministers, and justices, for issuing license and marrying females under fifteen years.—R. S. c. 71, s. 10.

14. Females under the age of fourteen years, and males under the age of sixteen, shall be incapable of contracting marriage.

Females under fourteen, and males under sixteen, incapable of marrying.

SECT. 1. *Who authorized to marry*, 13 Ire. 289. *What form necessary*, 2 Ire. 346, 6 Ib. 23. *Who may be married: not white and colored*, 5 Ire. 201, 3 Ib. 455; *nor idiots*, 5 Ire. 487, 2 Ire. Eq. 470; *persons divorced*, 5 Ire. 535; *slaves*, 2 D. & B. 177, 1 Jones, Eq. 35. *How marriage proved*, 1 Dev. 337. *Declaration against minister*, 5 Ire. 639.  
SECT. 10. 1 Ire. Eq. 232.

CHAPTER 69.

MEMBERS OF CONGRESS.

SECTION

1. Senators in congress chosen by General Assembly.
2. How commissioned.
3. Congressional districts allotted.

SECTION

4. Time and manner of conducting elections.
5. Vacancies in representation, how filled.

## SECTION

6. Returns of election, how made.
7. Sheriff to ascertain number of votes and make two statements.
8. Places for comparing polls by returning officers. Certificate of election

## SECTION

- given by officers to person elected. Provision in case of a tie vote.
9. Representatives commissioned by governor.
10. Pay of officer for comparing polls.
11. Voting more than once, penalty for.

Senators in congress chosen by General Assembly.—R. S. c. 72, s. 1.—Const. U. S. art. 1, s. 3.

How commissioned.—R. S. c. 72, s. 2.

Congressional districts allotted.—R. S. c. 72, s. 3.—1852, c. 21, s. 1.—Const. U. S. art. 1, s. 2.

Time and manner of conducting elections.—R. S. c. 72, s. 4.

Vacancies in representation, how filled.—R. S. c. 72, s. 5, 11.

1. **WHENEVER** a senator in the congress of the United States is to be chosen, the General Assembly, at such time during their session as they shall appoint, shall elect such senator *viva voce*, by a majority of the joint votes of both houses, under the inspection of two members from each house.

2. The senator elect shall obtain a certificate of his election, signed by the speakers of the two houses, and shall be commissioned by the governor, under the seal of the State.

3. For the purpose of electing representatives in the Congress of the United States, the State shall be divided into eight districts, as follows, namely:—The first district shall be composed of the counties of Currituck, Camden, Pasquotank, Perquimans, Gates, Chowan, Hertford, Northampton, Halifax, Martin, Bertie, Washington, and Tyrrell; the second district, of the counties of Hyde, Beaufort, Pitt, Craven, Jones, Lenoir, Wayne, Greene, Edgecombe, Onslow, and Carteret; the third district, of the counties of New-Hanover, Brunswick, Columbus, Bladen, Sampson, Cumberland, Robeson, Duplin, and Richmond; the fourth district, of the counties of Wake, Franklin, Warren, Granville, Orange, Nash, and Johnston; the fifth district, of the counties of Person, Caswell, Alamance, Chatham, Randolph, Guilford, Moore, and Montgomery; the sixth district, of the counties of Stokes, Forsyth, Rockingham, Davidson, Davie, Yadkin, Surry, Iredell, Alexander, and Ashe; the seventh district, of the counties of Catawba, Gaston, Lincoln, Mecklenburg, Rowan, Cabarrus, Union, Anson, Stanly, and Cleveland; the eighth district, of the counties of Wilkes, Watauga, Caldwell, Burke, Rutherford, McDowell, Henderson, Buncombe, Yancy, Haywood, Macon, Cherokee, Jackson, and Madison; each of which districts shall be entitled to elect one representative in the congress of the United States.

4. The election shall be held at the same places as are prescribed for holding elections for members of the General Assembly, on the first Thursday in August immediately succeeding the termination of each congress; and shall be conducted by the sheriffs, or by other persons appointed therefor, in like manner as elections for members of the General Assembly; except that the inspectors of the election shall be sworn to act with justice and impartiality; and each voter shall give his suffrage only in the county wherein he resides.

5. If at any time, after the expiration of any Congress and before another election; or if at any time after any election, there shall be a vacancy in the representation in congress, the governor shall issue a writ of election, and by proclamation

shall require the voters to meet in their respective counties, at such time as may be appointed therein, and at the places established by law, then and there to vote for a representative in congress to fill the vacancy, and the election shall be conducted in like manner as regular elections.

6. The polls of election shall be ascertained by the inspectors, or other persons holding the election, and the returns thereof shall be made to the sheriff, or other returning officer, in like manner, time, and place, and under the same penalties for omission, recoverable in like manner and for like uses, as in elections for members of the General Assembly.

Returns of election, how made.—R. S. c. 72, s. 6.

7. The returning officer, upon receiving the returns, shall, at the court house, in the presence of a majority of such inspectors as may have carried the polls, cast up the votes and make two correct statements of the number of suffrages given at such election for each candidate; one of which being duly certified by him, shall, with the poll books, be filed by the inspectors in the office of the court of pleas and quarter-sessions of the county, and the other shall be retained by the sheriff or other returning officer, with which he shall attend on the day and at the places mentioned in the next section.

Sheriff to ascertain number of votes, and make two statements.—R. S. c. 72, s. 7.

8. The sheriffs, or other returning officers of the counties of each district, shall meet on the Thursday next after each election, at the following places in the several districts, for the purpose of comparing the polls, namely: In the first district, at the court house in the county of Bertie; in the second district, at the town of Newbern, in the county of Craven; in the third district, at the court house in the county of Bladen; in the fourth district, at Louisburg, in the county of Franklin; in the fifth district, at the town of Graham, in the county of Alamance; in the sixth district, at the court house in the county of Yadkin; in the seventh district, at the town of Charlotte, in the county of Mecklenburg; and in the eighth district, at the town of Asheville, in the county of Buncombe. *Provided always*, that if any accident may prevent any returning officer from meeting on the day aforesaid, the returns shall be received on the day following; and the returning officer, failing to attend as required at the time and place above mentioned, shall forfeit and pay one thousand dollars, to be recovered for the use of the State, in any court of law. And when the returning officers shall be convened, the poll for the several counties shall be examined and compared by them, in the presence of three justices of the peace, summoned by the returning officer of the county where they shall meet; and a certificate under the hands of said returning officers shall be given to the candidate, 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 returning officers shall determine which of them shall be the representative; and if no decision is by them made, they shall determine the same by drawing, in like manner as the grand-jury is drawn.

Places for comparing polls by returning officers. Certificate of election given by officers to person elected.

Provision in case of a tie vote.—R. S. c. 72, s. 8.—1852, c. 21, s. 2.

Representatives commissioned by gov.—R. S. c. 72, s. 9.

Pay of returning officer for comparing polls.—R. S. c. 72, s. 10.

Voting more than once, penalty for.—K. S. c. 72, s. 6.

9. Every person duly elected a representative, upon obtaining a certificate of his election, shall procure from the governor a commission, certifying his appointment as a representative of the State, which the governor shall issue on such certificate being produced.

10. Every sheriff or other returning officer holding such elections, shall be allowed 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 the polls, and also the amount of his ferriages; which shall be paid by the treasurer on affidavit of the returning officer.

11. If any person shall vote more than once in any such election, he shall forfeit and pay one hundred dollars, one half to him who will sue for the same, and the other half to the use of the county wherein the offence was committed.

## CHAPTER 70.

### MILITIA.

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Who to be enrolled, and how provided.—R. S. c. 73, s. 1.

1. 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 forty-five years, shall, as soon as 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 at all times every captain, or commanding officer of any company, shall enroll every such citizen, except as hereinafter exempted, 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. *Provided, however,* that no person so enrolled shall be required to perform military service in times of peace by way of drill, mustering, training, or disciplinary exercise after he shall have attained to the age of thirty-five years, if he shall appear before the court-martial of the regiment to which he belongs, and make oath that he has attained the said age, and shall obtain from the colonel commandant or presiding officer of said court-martial a certificate in writing which shall exempt him from the performance of military duty, except in times of war, insurrection, or invasion.

Proviso as to persons over thirty-five years of age.—1848, c. 58, s. 1, 2.

Who exempted from duty.—R. S. c. 73, s. 2.—1838, c. 50; 1844, c. 36, s. 31; 1848, c. 58, s. 9.

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, counsellors 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, ordained ministers of the gospel of every denomination, 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, 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 extend, as to each mill, to one person only 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 the State, the lock keepers on the dismal

swamp canal, wardens of the poor, superintendents of common schools, members of the committee of examination of teachers of common schools, teachers and pupils of common schools while engaged as such, and patrollers, shall be 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 the State.

3. The members of the several fire companies, so long as they shall continue such, that may be established in the State, shall be exempted from all militia duty, except in time of war, invasion, or insurrection. The captain of every fire company, once a year, shall make a regular return to the colonel commandant of the regiment, by the fifteenth day of October, (under the penalties imposed on captains of militia companies for 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 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.—R. S. c. 73, s. 3.

4. The captains or commandants of companies shall enroll, and keep enrolled, 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 enroll and make return of exempts.—R. S. c. 73, s. 4.

5. No captain or other militia officer shall enroll any free persons of color, except for musicians.

Free negroes not enrolled.

6. Every citizen enrolled and notified, as is directed in the first section of this chapter, 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 espontoon; 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

Persons enrolled to equip themselves.

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 for want of a good, serviceable musket, gun, or rifle, 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.—R. S. c. 73, s. 6.

How infantry shall be divided.—R. S. c. 73, s. 7.—1848, c. 58, s. 12.

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 forty-five privates.

Regiments, brigades, and divisions, how distinguished.

8. The following are declared to be the regiments, brigades, and divisions of the infantry, to be known and distinguished as here designated, namely:—

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,	{ 32, 33, 34, 85, 41, 44. 42, 43, 51, 53, 54, 93, 98.
3	6th, 16th.	6, 16,	{ 45, 47, 48, 49, 55, 56. 37, 38, 50, 59.
4	7th, 11th.	7, 11,	{ 63, 64, 87, 88. 60, 61, 62, 68, 69.
5	10th, 15th.	10, 15,	{ 70, 71, 76, 77, 78, 99, 100, 101. 52, 79, 80, 81, 84, 89, 92, 102, 108, 109.
6	3d, 12th.	3, 12,	{ 24, 30, 31, 39. 25, 26, 28, 40.
7	5th, 17th.	5, 17,	{ 13, 14, 15, 16, 20, 21. 22, 23, 29, 35, 36.
8	2d, 13th.	2, 13,	{ 17, 18, 19, 27. 7, 8, 11, 12.
9	8th, 9th.	8, 9,	{ 57, 58, 65, 66, 67, 91. 46, 72, 73, 74, 75, 95, 96, 106, 107.
10	19th, 20th.	19, 20,	{ 86, 90, 103, 110, 111. 82, 83, 97, 104, 105.



Counties.	No. of Reg't.	How distinguished in Counties where there are more than one Reg't.	Counties.	No. of Reg't.	How distinguished in Counties where there are more than one Reg't.
Currituck,	1		Anson,	53	Lower,
Camden,	2		"	54	Upper,
Pasquotank,	3		Randolph,	55	West,
Perquimans,	4		"	56	East,
Chowan,	5		Guilford,	57	West,
Gates,	6		"	58	East,
Tyrrell,	7		Caswell,	59	
Washington,	8		Montgomery,	60	
Bertie,	9		Stanly,	61	
Hertford,	10		Cabarrus,	62	
Hyde,	11		Rowan,	63	
Beaufort,	12		Davie,	64	
Martin,	13		Stokes,	65	
Halifax,	14	Upper,	Forsyth,	66	
"	15	Lower,	Rockingham,	67	Lower,
Northampton,	16		"	91	Upper,
Carteret,	17		Mecklenburg,	68	North,
Craven,	18		"	69	South,
Pitt,	19		Lincoln,	70	
Edgecombe,	20	Upper,	Gaston,	71	
"	21	Lower,	Surry,	72	North,
Nash,	22		"	73	South,
Warren,	23		Wilkes,	74	Lower,
Onslow,	24		"	75	Upper,
Jones,	25		Rutherford,	76	South,
Lenoir,	26		"	77	North,
Greene,	27		"	78	
Johnston,	28		Burke,	79	Morganton,
Franklin,	29		"	80	Lower Creek,
New-Hanover,	30		"	81	Pleasant Gardens,
Duplin,	31		"	92	Toe River,
Sampson,	32		Buncombe,	82	Caney River,
Cumberland,	33	Lower,	"	83	Asheville,
"	34	Upper,	"	84	South, [River,
Wake,	35	East of Raleigh,	"	97	W. of French Broad
"	36	West of Raleigh,	Columbus,	85	
Granville,	37	North,	Haywood,	86	
"	38	South,	Davidson,	87	Lower,
Brunswick,	39		"	88	Upper,
Wayne,	40		Macon,	90	
Bladen,	41		Union,	98	
Robeson,	42	Lower,	Catawba,	99	
"	43	Upper,	Cleveland,	100	Upper,
Moore,	44		"	101	Lower,
Chatham,	45	Lower,	Alexander,	102	
"	94	Upper,	Cherokee,	103	
Ashe,	46	Jefferson,	Henderson,	104	
"	95	Council's Store,	Yancey,	105	
"	96	Gap Civil,	Yadkin,	106	
Orange,	47	Hillsboro',	Watanga,	107	
"	48	Hawfield,	Caldwell,	108	
Alamance,	49		McDowell,	109	
Person,	50		Jackson,	110	
Richmond,	51	First,	Madison,	111	East,
"	93	Second,	"	112	West,
Iredell,	52	South,	Cabarrus,	1	Volunteer Reg't.
"	89	N. of South Yadkin,	Stokes,	2	"

9. The officers of the infantry shall be as follows. To each division there shall be one major-general, and two aids-de-camp with the rank and pay of major, one division inspector, and one division quartermaster, with the rank and pay of lieutenant-colonel, to be appointed by the major-general and

Officers of infantry—their grade and how appointed.

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 quartermaster-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 quartermaster, who shall be commissioned officers with the rank of lieutenant, one paymaster, 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; 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 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 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, to division inspectors, division quartermasters, brigade inspectors, hospital surgeons and mates, and assistant deputy quartermaster-generals, shall be held during the pleasure of the governor, or the generals to whom such aids-de-camp and the other aforesaid officers may be attached.

Adjutant-general appointed.

Governor may appoint four aids-de-camp.—R. S. c. 73, s. 9.—1842, c. 57, s. 1.

10. The uniform, prescribed for the officers of the regular army of the United States, shall be the uniform to be worn by the commissioned officers of the same rank in the militia of this State.

Uniform of officers.—R. S. c. 73, s. 10.—1846, c. 38, s. 9.

11. All officers who may accept of military commissions shall hold and continue to discharge the duties of their respective offices for three years from the date of their commission, unless a resignation should be rendered necessary by promotion, removal, or disease; and they shall equip themselves according to law, within twelve months, and any officer who shall fail to comply with the above requirements shall forfeit and pay, if as high as the grade of a field officer, fifty dollars, of a captain twenty-five dollars, and of a lieutenant or ensign twenty dollars; to be sued for and recovered by the adjutant, in the name of the State of North Carolina, and to be accounted for to the paymaster and applied as other militia fines. 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 also to the general staff and cavalry officers who may reside within the respective brigades, at such place as may be designated by the brigadier-general to meet; and at such time as the brigadier-general shall direct, they shall proceed by ballot to elect a major-general of that division; and it shall be the duty of each colonel and the cavalry officer highest in command presiding at the election, 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 said officers in his brigade, and shall transmit to the adjutant-general a fair statement thereof; and the adjutant-general shall 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, the brigadier-general in whose brigade the major-general lived, shall 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, the major-general of that division shall issue orders as aforesaid for the election of a brigadier-general of that brigade, and the several officers as aforesaid shall transmit, within ten days, a fair statement of the votes given to the major-general, who shall compare the several returns, 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, the colonel, senior in commission, of the county wherein said brigadier-general lived, shall inform the major-general thereof, by mail or otherwise, forthwith, and all resignations of brigadier-generals shall be made to the major-general, and

Officers to hold commissions three years, and equip within 12 months.

Penalty.

Major-generals and all field officers, how elected, and commissioned.

How to resign, and who notified of vacan-

cies, and by whom.—R. S. c. 73, s. 11.

by him made known to the governor. If, on comparing the votes given 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 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 rank and file and the officers of his regiment, 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 the brigadier-general shall inform the governor thereof, from whom 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. The commissioned and non-commissioned officers of each company shall be elected by a vote of the majority of the members of the company; the election to be conducted by the officer highest in rank, or if there be no officer, by a person belonging to the company designated and authorized by the colonel of the regiment: the person superintending the election shall report the result to the colonel; the colonel shall report the same to the adjutant-general, who shall inform the governor, and the governor shall issue commissions to the officers so elected. *Provided, however,* that on failure of any company to elect officers, for three months after vacancies occur, or to fill a vacancy within three months after the company are called together by a person authorized by the colonel for that purpose, then the colonel may appoint proper officers to command said company, to whom the governor shall issue proper commissions upon a notification from the colonel; and if the colonel can get no person to accept such appointment, he may attach said company to any other adjacent company in his regiment. The polls for all such elections shall be held and kept open from eleven o'clock, A. M. until three o'clock, P. M. 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.

How officers of companies elected.—R. S. c. 73, s. 11.—1840, c. 42, s. 1, 2; 1846, c. 38, s. 1, 3, 13; 1848, c. 58, s. 6. 1850, c. 89, s. 5.

Officers to give notice of their absence.—R. S. c. 73, s. 12.

12. When any officer commanding a division, brigade, or regiment, shall have occasion to be absent from his usual residence two months or more, he shall notify the officer next entitled to the command, of his intended absence, and also his next superior officer in command.

To deliver to their successors

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.

money or papers.—R. S. c. 73, s. 13.

14. The rules of discipline and system of tactics, which may be approved and prescribed by Congress, shall be established as the rules for the discipline of militia of this State, except such alterations as shall be rendered necessary by unavoidable circumstances. The adjutant-general shall procure McComb's Tactics, and shall furnish to each major-general and brigadier-general five copies; and to each colonel of a regiment a number of copies equal to the number of companies and field officers in each regiment, for distribution among the officers of the militia as the general and colonel may think proper. Upon the resignation or removal of any field officer or company officer, he shall deliver to his successor in office the copies of military tactics with which he has been furnished; and in case of his death while in office, his executor or administrator shall deliver the same as aforesaid; and upon a failure so to do, the said officer, or his executor or administrator, as the case may be, shall forfeit and pay the sum of three dollars, to be collected by his successor in office, and applied as other militia fines.

Rules of discipline.

Adjutant-gen'l to distribute McComb's tactics, and how.—R. S. c. 79, s. 14.—1848, c. 38, s. 10, 14.

15. The regimental or battalion courts-martial 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, enlarge, or consolidate their respective districts as to create new ones, or unite portions of districts together, so as to form other and separate districts; 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 watercourses 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 thirty-six men, liable to perform military duty, the regimental or battalion court-martial shall lay that section off into a separate captain's district, and appoint officers in the same manner as in other districts; and where there shall be two or more regiments in any county, 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, the county court, a majority of the justices being present, shall establish the said lines; and when so fixed, the judge advocate of each regiment shall spread the same on their journals.

Captains' districts, how laid off.

Boundary lines in regiments of same county, how altered.—R. S. c. 73, s. 15.

16. Every captain or commanding officer of a company shall, at least twice a year, at such place as may be designated

Regulations as to company

musters.—R.  
S. c. 73, s. 16.

by a majority of his company, and agreeable 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 hereinbefore required. The captains shall not 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 section 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 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 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 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 section for not appearing at reviews and musters, or, if appearing, not being properly armed and accoutred, shall be doubled.

Company  
courts-martial.  
How to proceed.

17. The commissioned officers of the company, or any two of them, after 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 judgment, and issue writs of execution against the goods and chattels and body of the delinquent, as on judgments in civil cases. 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 justices

Appeal allowed.

of the peace to the county courts, and shall be proceeded on in like manner by the battalion or regimental courts-martial. Every execution issuing upon a judgment entered up before any court-martial, shall be directed to a constable, or the sheriff of the county; and the officer to whom such execution may be directed and delivered, shall proceed to collect the same in the manner and under the rules established in civil cases, and shall be allowed the same fees for his services; he shall make his return to the next sitting of the court-martial from which the execution issued, under a penalty of twenty dollars for every neglect of duty, to be recovered by suit on the official bond of such constable or sheriff, in the name of the State, to the use of the presiding officer of the court-martial from which such execution issued. Any penalty so recovered shall be appropriated as other militia fines; and in case the presiding officer of any court-martial shall fail in any such suit, he is authorized to use so much of the fines of his company, battalion, or regiment, as the case may be, as shall be necessary to defray the expense of such suit.

Executions from courts-martial how and to whom issued.

Penalty on sheriff or constable for neglect.—R. S. c. 73, s. 17.—  
1842, c. 57, s. 3;  
1846, c. 38, s. 7;  
1848, c. 53, s. 10.

18. For the encouragement of military music, the captain of each military company of infantry may select from among the persons enrolled in his company, 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, the field officers shall grant a certificate to such musicians of their appointment, and the county court of the county shall exempt and discharge such musicians, so selected, during their continuance in appointment, from serving on all juries, from working on the 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 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 every neglect, to be collected and applied in the same manner that other fines are.

Company musicians, how appointed,—their privileges.—R. S. c. 73, s. 18.

19. No overseer of a road 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.

Road hands not to be ordered out on muster day.—R. S. c. 73, s. 19.

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.

Captains to make returns, when.—R. S. c. 73, s. 20.

21. There shall be in every year at least one regimental or battalion muster, to be ordered by the commandant of such regiment or battalion, at such place as may have been designated, or may hereafter be designated by a majority of the

Regimental or battalion musters.

Where held.

Duty of colonel.

Penalty for neglect of duty. — R. S. c. 73, s. 21. — 1846, c. 38, s. 11.

Penalty on officers failing to attend reviews or musters. — R. S. c. 73, s. 22.

Commandants of regiments, &c., to give notice of reviews, &c. — R. S. c. 73, s. 23.

Commissioned officers of regiments, &c., to exercise, day before review. Penalty for failure. — R. S. c. 73, s. 24. — 1846, c. 38, s. 11.

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. The battalion muster shall be held as near the centre of each battalion district as is possible to find a suitable place for said muster. The colonel shall attend at such battalion muster on the days of drill, and the days of review, and drill and instruct the officers and men in their duties: and if he fails to discharge said duty, he shall be fined not less than ten, nor more than twenty dollars, unless he renders to a court-martial a sufficient excuse for such failure: said court-martial to be called by the brigadier-general, upon information to him by the adjutant, and to consist of at least five commissioned officers, one of whom shall be of as high rank as colonel, and the others of at least as high rank as captain.

22. If any officer shall fail to attend at any review, regimental or battalion muster, or, attending, be not armed as required by this chapter, 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 more than one dollar and fifty cents, nor less than fifty cents, to be adjudged and accounted for as aforesaid.

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.

24. Every commissioned and non-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, where the said 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 may be established by law. And any commissioned or non-commissioned officer, who shall fail or neglect to appear at the time and place so appointed by the commandant of his regiment or battalion, or, if appearing, be not armed and equipped as by this chapter directed when at any review or parade, such commissioned officer, so failing and



neglecting, shall forfeit and pay the same sum which such officer would be compelled to pay in cases of failure and neglect at any regimental or battalion reviews or parades, and such non-commissioned officer shall be fined for such failure two dollars, unless he furnishes a sufficient excuse to the regimental court-martial; and the same shall be recovered in the same manner and the money applied, as in other like cases directed by this chapter, and such officer shall, in every instance whatever, be subject to the same punishment for neglect of duty or disobedience of his superior officers, as such officer would be subject to when in actual military service.

25. If any commissioned officer shall suffer himself to be intoxicated on parade or drill, or behave in a riotous or disorderly manner when on duty, or disobey the orders of his commanding officer, he may be ordered in arrest by said commanding officer until the parade or drill is over, and shall be subject to trial by a court-martial, and by them fined not to exceed twenty-five dollars, or, at their discretion shall be reprimanded publicly, or cashiered. If any non-commissioned officer or private shall, during the time of muster, or whilst on duty, behave in a disorderly manner, or resist or refuse to obey his commanding officer, he may be ordered in arrest by such commanding officer during the time of muster or duty, and fined at the discretion of the court-martial, not to exceed five dollars. *Provided*, the said court-martial be regularly detailed as prescribed in this chapter.

Penalties on officers and privates for misbehaving.—  
R. S. c. 73, s. 25.—1842, c. 57, s. 4.

26. If any person, liable to perform duty, shall appear at or near the parade ground, during the time 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, the commanding officer of the regiment or corps shall 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.

Persons on muster ground failing to do duty, arrested.—  
R. S. c. 73, s. 26.

27. No officer or soldier directed by this chapter 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 shall be void. Every person required 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 a toll-bridge shall demand pay, or refuse to put over such person, he shall forfeit and pay for every such offence four dollars to the sole use of the informer.

Persons attending musters, exempt from arrest in civil cases.

Not to pay tolls or ferriages.—  
R. S. c. 73, s. 27.

28. All parents, masters, and guardians shall be liable for the payment of any fines incurred by those under their care,

Parents, &c., liable for fines.—  
R. S. c. 73, s. 28.

as well for non-attendance at company, battalion, or regimental musters and general reviews, as for not being armed and equipped as hereinbefore provided.

Regimental and battalion courts-martial. Their power and duties.—R. S. c. 73, s. 29.

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 of their duty by the adjutant of the regiment or battalion, by a roster to be kept by him; and the said court, when 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:—"You, A. B., do swear that you will hear and determine all causes which may come before this court, and that you will faithfully report all delinquents that come within your knowledge; that you will account for all fines and forfeitures by you collected or received, and in all cases enforce a due execution of the militia laws of the State, to the best of your knowledge and ability; so, help you God." They shall inquire into the age and ability of all persons that come before them by appeal, and exempt such as may be excused on account of age, or 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 or 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 authorized and required to enter up judgment and issue execution.

Duty of paymasters.—R. S. c. 73, s. 30.

30. The paymaster shall demand and receive of the adjutants, sergeants, constables, and others, who may have collected them, all fines and forfeitures, and distribute the same agreeable to the directions of the court-martial, and settle his accounts annually with the judge advocate; and the paymaster shall, before he enters on the duties of his 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, agreeable to law, for all

sums of money which may come into his hands by virtue of his appointment; and the commanding officer aforesaid, under the penalty of two hundred dollars, shall sue for and recover the same, and when received by him, apply it as is already by law directed; and the several paymasters shall be allowed a reasonable compensation for their services by the court-martial. In case there shall be no paymaster appointed by the commandant of any regiment, then each commandant shall perform and execute the duties of paymaster, as above required.

31. Every officer shall take 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:—"You, A. B., do solemnly swear, that you will execute the office of \_\_\_\_\_ according to the rules of military discipline and the laws of the State to the best of your knowledge and ability, and that you will support the constitution of the United States and of this State; that you will, at the court-martial of the company to which you belong, duly administer justice, and apply fines and penalties according to law and to the best of your ability, without favor, affection, or partiality: so, help you God." No officer shall be allowed to sit in a regimental, battalion, or company court-martial, unless he shall have taken the oath aforesaid.

Oath of officers.—  
R. S. c. 73, s. 31.

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.

Proceedings at courts-martial against delinquents.—  
R. S. c. 73, s. 32.

33. The several courts-martial shall have power to adjourn from day to day, or to any future day, when the officers entitled to compose the same shall 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 be a sufficient number at the place of adjournment to form a quorum, the officer ordering the same shall have power to continue its adjournments.

Courts-martial may adjourn.—  
R. S. c. 73, s. 33.

34. Every commanding officer of a regiment, shall exact and enforce regular settlements of all fines, collected under the

Duties of commanding officers as to fines.

Penalty on captains.—  
R. S. c. 73, s. 24.—1842, c. 38, s. 8.

Returns to be made by commandants of regiments.—  
R. S. c. 73, s. 35.

Duties of generals, as to reviews.—  
R. S. c. 73, s. 36.

Returns to be made by brigadier and major-generals.—  
R. S. c. 73, s. 37.

Penalty on general officer, &c. for failing to review or muster, or to make returns, or be equipped.

militia laws, from the several persons, charged with the collection thereof within his regiment, which fines shall be appropriated as directed by law; and each captain or commanding officer of a company shall 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; and if he shall neglect to make such report and account for such fines, he shall forfeit for every such neglect the sum of ten dollars, unless he renders to the regimental court-martial a sufficient excuse therefor.

35. Every commandant of a regiment shall, at least once in every year, on or before the 25th 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.

36. Every major-general shall review his division once in every three years, and a brigadier-general shall 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. The major and brigadier-generals shall 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, 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.

37. The brigadier-general shall make a return of his brigade to the major-general of his division, on or before the tenth day of November in every year, and shall transmit a duplicate of the same to the adjutant-general, on 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, annually on or before the fifteenth day of November.

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; or if any major or brigadier-general shall fail to equip himself, the governor shall cause the adjutant-general to give such delinquent officer thirty days' notice of his neglect of duty; and if such delinquent officer does not, within forty days thereafter, render a satisfactory excuse for such neglect, by showing to the governor that such delinquency happened in consequence of indisposition, absence from the State, or other sufficient cause, the governor shall strike his name from

the list of officers, and communicate the same to the adjutant-general, who shall have it published in some newspaper within the State, and issue proper notices to supply the vacancy. *Provided, however,* that no commissioned officer shall be deprived of his rank or rights as such, without a regular trial before some court-martial, detailed for that purpose in manner prescribed in this chapter.

No officer to be deprived of his commission without trial.—  
R. S. c. 73, s. 38. — 1844, c. 38, s. 12.

39. The adjutant-general shall distribute all orders from the commander-in-chief of the State to the several corps; attend public reviews, if required, when the commander-in-chief of the State shall review the militia, or any part thereof; obey all orders from him relative to carrying into execution and perfecting the system of military discipline, established by law; furnish blank forms of different returns that may be required, and explain the principles upon which they shall be made; and also furnish blanks of such returns; shall 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 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 extracts, 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 the 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, fifty dollars; for not furnishing blank forms, as required by this chapter, ten dollars for each neglect, 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 chapter, upon conviction of either before a general court-martial, to be ordered by the governor, he shall be cashiered; he shall be compensated for the expense of all the blank forms of returns, necessarily required in his department; and the postage of all letters to and from him in his capacity as adjutant-general, shall be paid to him by the treasurer of the State, on the adjutant-general producing a stated account of the same by him certified: he shall keep a roster of the names and dates of the commissions of each major and brigadier-general in the State, likewise the counties under each of

Duty of adjutant-general.—  
R. S. c. 73, s. 39.

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 the State, and to the General Assembly; and he shall from time to time make a report to the General Assembly 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.

In certain cases returns and orders sent through post-office.—R. S. c. 73, s. 40.

40. If no immediate opportunity offers for forwarding orders or returns, the certainty of which insures a speedy delivery thereof, which can be easily ascertained and proved, then the officer issuing the order or making the return (as the case may be) shall 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.

Governor may remit fines and penalties.—R. S. c. 73, s. 41.

41. The governor may 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 the State.

Regiments of cavalry, how formed, officered, equip'd, &c.—R. S. c. 73, s. 42.—1842, c. 33; c. 57, s. 9; 1846, c. 38, s. 5.

42. There shall be, in each brigade of the militia in the State, one regiment of cavalry; there shall be to each regiment of cavalry one colonel, one lieutenant-colonel, and one major, to be elected and commissioned in like manner as such officers are elected and commissioned in the infantry; and out of the militia enrolled in the 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 twenty-four 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 quartermaster, one paymaster, one surgeon with the rank and pay of a first lieutenant, and one surgeon's mate with the rank and pay of a second 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. *Provided, however,* that whenever a troop of cavalry shall be formed in any brigade where there is not a sufficient number of troops to form a regiment, the officers of such troop shall be recommended by the brigadier-general and commissioned by the governor. 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.

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 the captain shall 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 every year, under the penalty of thirty dollars for each neglect. *Provided, however,* such return shall be made to the brigadier-general where there is no regiment of cavalry in the brigade. 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.

44. The field officers of cavalry, once in every two years, shall 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 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.

45. A majority of the commissioned officers of each troop, and a majority of the commissioned officers of each regiment,

Troops of cavalry, when to muster, & how returns made. Who to command when mustering with infantry.—R. S. c. 73, s. 43. —1844, c. 38, s. 6.

Field officers of cavalry to review and make returns.—R. S. c. 73, s. 44.

Cavalry courts-martial to be

held.—R. S. c. 73, s. 45. 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 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.

Fines of cavalry officers and privates, same as in infantry.—R. S. c. 73, s. 46.

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.

How cavalry fines appropriated.—R. S. c. 73, s. 47.

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.

Duties of adjutants of regiments.—R. S. c. 73, s. 48.

48. The adjutant of the regiment shall 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 chapter, and shall receive and account for the same annually with the paymaster 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 herein required, he shall forfeit and pay the sum of one hundred dollars.

Certain sections of this chapter to apply to cavalry.—R. S. c. 73, s. 49.

49. The following sections of this chapter in relation to the infantry, are declared to apply to the cavalry, namely: so much of the eleventh, twelfth, and thirty-eighth sections as relates to officers under the grade of brigadier-general; also the thirteenth, fourteenth, twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth, thirtieth, thirty-first, thirty-fourth, thirty-ninth, fortieth, and forty-first sections.



50. No person shall be commissioned in any troop of cavalry, unless the number is such as shall be prescribed by this chapter.

Commission in cavalry.—R. S. c. 73, s. 50.—1842, c. 57, s. 8.

51. Out of the militia 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 thirty-two privates, four sergeants, four corporals, one captain, and three lieutenants (the third lieutenant to be the ensign); and persons subject by law to be enrolled in the militia may join any volunteer company in a regiment adjoining that in which they reside.

Volunteer companies of artillery, light-infantry, grenadiers, or riflemen may be formed.—R. S. c. 73, s. 51.—1842, c. 57, s. 5.

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 are subjected to by law.

May choose their uniform. To be under the commander of the regiment, and do duty as other companies.—R. S. c. 73, s. 52.

53. Whenever there may be a sufficient number of volunteer companies, in any one brigade, 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, who shall lay said result before the governor, and he shall forthwith issue commissions to said officers.

Regiments of volunteer companies may be formed. Field officers of, how chosen.—R. S. c. 73, s. 53.

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.

Captains, and other officers, how appointed.—R. S. c. 73, s. 54.

55. The captain or commanding officer of each company of artillery, light-infantry, grenadiers, or riflemen, shall, at least once in three months, muster his men at such time as he may direct, and at such place as may be agreed on by a majority of the company; and each company may adopt rules and regulations for their own government, not inconsistent with the laws and constitution of the State and of the United States.

Company to muster once in three months. May adopt rules for their government.—R. S. c. 73, s. 55.

56. Whenever a regiment of volunteers shall be formed and officered, as herein before required, annual returns shall be made to the brigadier-general and adjutant-general, as required to be made by the field officers of infantry.

Officers of volunteer regiments to make returns.—R. S. c. 73, s. 56.

57. No person who shall procure himself to be enrolled in any company of artillery, light-infantry, grenadiers, or riflemen, in any troop of cavalry 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

Volunteers, &c. not to return to infantry but by permission, &c.

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 or troop of cavalry, without the intervention of any other officer.

Shall serve in infantry, till they equip.—R. S. c. 73, s. 57. 1842, c. 57, s. 7; 1846, c. 38, s. 6.

*Provided, nevertheless,* that any person enrolling himself with any captain of a volunteer company or troop of cavalry, 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 or troop, 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.

Officers of volunteer regiments to review.—R. S. c. 73, s. 58.

58. Whenever there may be formed a regiment of volunteers, as herein before provided, the commanding officer shall review his regiment, as often as the colonel or commanding officers of infantry may be required to do by law.

Vacancies in field officers of volunteer regiments, how filled.—R. S. c. 73, s. 59.

59. Whenever a vacancy shall occur by death, resignation, or otherwise, among the field officers of said regiment, the officer highest in command shall notify the brigadier-general thereof, who shall 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 the said general shall transmit the result of said election to the governor, who shall forthwith commission the officer so elected.

Certain sections concerning infantry, to apply to artillery, &c.—R. S. c. 73, s. 60.

60. Every section of this chapter 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, shall be in force for the government and disciplining of the artillery, light-infantry, grenadiers, and riflemen respectively.

General courts-martial, how appointed and held.—R. S. c. 73, s. 61.

61. The governor 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 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, how selected.—R. S. c. 73, s. 62.

62. When a court-martial is ordered, the officer ordering it shall appoint the president, judge advocate, and provost-mar-

shal, and, if it be a general court-martial, orders shall be issued to such divisions as in the opinion of the governor 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; and if it be a regimental court-martial, the officer ordering it shall appoint the members.

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.

64. Whenever the commanding officer of a division, brigade, regiment, or battalion shall be ordered to furnish any officer as a member or supernumerary of a court-martial, such officer 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.

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 divisions, 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.

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 chapter; and the officer ordering a court-martial 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, the judge advocate shall fill such vacancy from the supernumeraries, beginning with the highest in grade and proceeding in regular rotation.

Of what rank the officers shall be.—R. S. c. 73, s. 63.

Officers for courts-martial regularly detailed.—R. S. c. 73, s. 64.

How detailed.—R. S. c. 73, s. 65.

Courts-martial how constituted.—R. S. c. 73, s. 66.

Officers of  
court-martial,  
how to rank.—  
To be sworn.—  
R. S. c. 73, s.  
67.

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 you are 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 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."

Witnesses how  
summoned.—  
R. S. c. 73, s.  
68.

68. The judge advocate of any court-martial, constituted according to the provisions of this chapter, 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, unless the witness can prove his inability to attend.

How sworn.—  
R. S. c. 73, s. 69.

69. All witnesses shall be sworn by the judge advocate, before they give their evidence, as in criminal cases, according to the following form:—"You, A. B., do swear, 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."

Rules for gov-  
ernment 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 the 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, all persons who shall, in the presence of the court-martial, behave in a disorderly and contemptuous manner. None but a commissioned officer shall sit in any court-martial, and if any officer shall fail to attend any court-martial, when notified so to do, he shall be fined, if above the rank of colonel, not less than twenty dollars; if of the rank of colonel and above that of captain, not less than fifteen dollars; if of the rank of captain and under, not less than ten dollars, unless he renders a sufficient excuse, to be judged of by the court-martial from which he may be absent; and if any officer shall take his seat in court-martial without being in uniform, he shall be fined, at the discretion of the court, not to exceed five dollars, unless he furnishes said court a sufficient excuse for such delinquency.

Penalty on officers failing to attend.—R. S. c. 73, s. 70.—1846, c. 38, s. 4.

71. The judge advocate, upon all trials, shall state impartially to the court the evidence, both for and against the accused, shall take in writing the evidence, both for and against the accused, and 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 judgments or sentences of all courts-martial, appointed according to the provisions of this chapter, 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.

Duty of judge advocate.—R. S. c. 73, s. 71.

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.

Proceedings against officers arrested, refusing to attend.—R. S. c. 73, s. 72.

73. If any person shall wilfully and corruptly swear falsely before any court-martial, touching and concerning any matter or thing cognizable before such court-martial, he shall, on conviction thereof, be liable to the pains and penalties of perjury; and in all cases, to delinquents and witnesses, oaths shall be

Perjury before courts-martial.—R. S. c. 73, s. 73.

administered by the judge advocate or presiding officer of said court-martial.

For what, officer cashiered. — R. S. c. 73, s. 74.

74. Dishonest or ungentlemanly conduct in an officer shall be punished by cashiering, and disabling him from ever holding a military commission.

Detachments of militia for United States service. — R. S. c. 73, s. 75.

75. Upon any requisition by the United States for a detachment of the militia from this State, every captain of infantry shall enter upon his roll all able-bodied free white men, between the ages of eighteen and forty-five years, except such as are exempted by the second section of the act of congress of one thousand seven hundred and ninety-two, 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 shall be subject to draft. *Provided*, that nothing in this chapter shall be understood to subject persons, heretofore exempted, to perform ordinary militia duty: and nothing herein contained shall be construed to conflict with the provisions of the third section of this chapter.

Substitutes received. — R. S. c. 73, s. 76.

76. Each captain or commanding officer of a company of militia, detached as part of the requisition under the authority of the United States, shall receive and enroll 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.

Vacancies in detachments, under rank of field officers, how supplied. — R. S. c. 73, s. 77.

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, the colonel commandant of the regiment, to which such officer belonged, shall recommend a proper person, resident within the bounds of such regiment, to be commissioned by the governor to fill such vacancy.

A militia-man, after one tour, exempt, &c. unless, &c. — R. S. c. 73, s. 78.

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.

Penalty for refusing to do duty when ordered out by civil authority. — R. S. c. 73, s. 79.

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, agreeable 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.

Seven justices may call out militia in invasions or insurrections. — R. S. c. 73, s. 80.

80. In all cases of insurrection among slaves or free persons of 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 of their county to call out the militia under his command, and any volunteer company or companies in said county, in the ab-

sence 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.

81. The commanding officer forthwith shall 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 may 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 shall be a board for that purpose.

Duty of commanding officer on such requisition.—R. S. c. 73, s. 81.

82. The commanding officer of any regiment, as soon as he has called out the militia under the provisions of the eighty-first section of this chapter 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.

Commanding officer called out, to notify his superior.

Superior to notify the governor.—R. S. c. 73, s. 82.

83. When there may be outlawed or runaway negroes, committing depredations, or in any way alarming the citizen 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, such officer shall effect the object set forth in said request of the justices, and the expenses of the militia so called out, shall be paid by the court of the county, who may lay a sufficient tax to pay said militia, at the same rates as the regular troops of the United States are by law entitled to, when in actual service.

Three justices may order out militia to suppress outlawed, or runaway slaves.—R. S. c. 73, s. 83.

84. The militia of the 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.

Pay of militia, in service.—R. S. c. 73, s. 84.

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 hold-

Punishment for refusing to appear on call, or alarm given.—R. S. c. 73, s. 85.

ing a military appointment, 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 shall 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, the commanding officer of the regiment or corps shall 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 they 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 desertion.—R. S. c. 73, s. 86.

86. If any non-commissioned officer or private militia-man, while in the pay and service of the 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, 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 the State.

Field officers of volunteer regiments, in service of U. S., by whom and when elected.—1846, c. 37, s. 1.

87. Whenever any regiment of volunteers out of the militia of the State, shall be called into the service of the United States, the field officers of such regiment shall be chosen and elected by the persons, private soldiers as well as officers of the companies who compose the regiment; which election shall take place at their rendezvous, a majority of those composing the regiment and voting being requisite to a choice of such field officers.

Election, when and how conducted.—1846, c. 37, s. 2.

88. As soon after the arrival at the rendezvous of the companies composing said regiment, as the captains of the companies, or a majority of them, shall deem proper, they shall call together the officers and privates of the regiment, and proceed to the election of field officers of the same, the captains superintending said election, and the voting to be by ballot.

Certificate of election furnished field officers by captains.

89. Upon such an election taking place, the captains of the companies composing the regiment, or a majority of them, shall furnish every field officer so elected a certificate stating the fact of his election, and the office to which he is elected;



and upon such certificate being presented to the governor, he shall issue to such person the commission to which his rank entitles him. *Provided, however,* that if any regiment shall be required by the general government to rendezvous at different places, each division thereof may vote at their respective places of rendezvous, under the superintendence of the captains present, and they shall transmit to the governor the result of such election; and the persons having the greatest number of votes given, shall be commissioned by the governor, according to the rank to which they are respectively entitled; and if any two or more of the persons voted for should have the highest and equal number of votes, the governor shall select one of the persons to fill the office so voted for.

Returns, how made, when regiment rendezvous at different places.—1846, c. 37, s. 3.

90. When any regiment having rendezvoused at the same place, and having proceeded to vote as herein before provided; and there should be a tie, the captains shall transmit to the governor the result of such election, and he shall select from those having the highest and equal number of votes, the person to fill such office.

When there is a tie in election, governor to select.—1846, c. 37, s. 4.

91. Whenever any volunteer company may be formed, consisting of the number required by law for the formation of volunteer companies, the captain of such company shall make known in writing such fact to the colonel commandant of the regiment in which such company may be formed; and if the colonel shall be satisfied that the statement made by said captain is true, and that said company is uniformed and equipped in all respects as required by law, except as to arms, he shall give such captain a certificate in writing, setting forth the fact; and every such company shall be entitled to make all such by-laws, rules, and regulations for their government as may be deemed necessary, not inconsistent with the constitution of the State or of the United States; and shall be invested with all the rights, powers, and privileges usually incident to and belonging to volunteer companies which are incorporated. *Provided,* such company shall, as such, perform military duty at least four times every year.

How volunteer companies may be incorporated.—1848, c. 58, s. 3.

92. Any person, between the ages of eighteen and thirty-five, who shall join any regularly constituted company of volunteers, whether of infantry, cavalry, grenadiers, artillery, or riflemen, and shall serve as a volunteer in such company, for a period of ten years, shall thereafter be exempt from military duty, except in cases of insurrection or invasion.

Privates, by ten years' service in such company, exempt from further duty.—1848, c. 58, s. 4.

93. Every commissioned officer (major and brigadier-general excepted) who shall equip himself as the law directs, and shall perform military duty as a commissioned officer, for the period of eight years, shall thereafter be exempt from military duty, except in cases of insurrection or invasion.

Commissioned officers exempt by eight years' service.—1848, c. 58, s. 5.

94. In the absence or death of the brigadier-general of any brigade, the certificate of the highest officer in command of the militia of any county where there may be formed a volunteer company, shall be lawful for the purpose of enabling the

Arms, how procured when brig'r-general dead or absent.—1854, c. 29.

governor to supply such company with arms and accoutrements, under the same rules and regulations as are now in force.

Private acts in relation to militia, not repealed.—R. S. c. 73, s. 87.

95. 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.

SECT. 17. 11 Ire. 605.

## CHAPTER 71.

### MILLS AND MILLERS.

#### SECTION

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4. Mill, within what time to be begun and finished.
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7. Measures to be kept in mills. False measures indictable.
8. Persons injured by mills, how to proceed for damages.
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10. Not disclosing owner, deemed owner. Owner may appear and defend.

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11. When tenant and owner become defendants, what judgment rendered. If against both, they shall have contribution.
12. Upon the hearing, what proceedings for assessing damages. Verdict of jury, how made and returned. To bind for five years, unless, &c. Notice on tenant in possession, sufficient. Jurors may be challenged.
13. Provision when damages assessed as high as twenty dollars.
14. Costs, where no damage, or under five dollars, how paid. Execution to issue yearly for damages.
15. Pay of jurors.
16. Upon appeals, trial to be at bar. Plaintiff appealing to pay costs, if he recovers no more.

What shall be public mills.—R. S. c. 74, s. 1. Owner on one side of a stream, how to get license to build a mill.—R. S. c. 74, s. 2, 4.

1. EVERY water grist mill, steam mill, or windmill, that shall grind for toll, shall be deemed to be a public mill.

2. Any person willing to build a water-mill, who hath land only on one side of a stream, shall exhibit his petition in the county court, and therein set forth who is the proprietor on the opposite side of said stream; whereupon a summons shall issue, with a copy of the petition, to the proprietor, to appear at the next court and show cause, by answer thereto, why the prayer of the petition should not be granted; and if, upon the hearing of the matter, the court shall allow such mill to be built, they shall order four freeholders to view, lay off and value, on oath, to be administered by 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 assessment and proceedings to the next court; and if it take not away houses, orchards, gardens, or other immediate conveniences, the court may, in their discretion, allow either the petitioner or the proprietor to erect such mill at the place proposed, and shall order the costs to be paid by the person to whom leave shall be granted. *Provided, however,* that leave to erect a mill shall in no case be granted, so as to overflow another mill or create a nuisance to the neighborhood. And *provided further,* that when the stream shall be the boundary line between two counties, the petition shall be filed in the superior court of the county in which the petitioner resides.

Not to create nuisance. Proceedings when stream lies between two counties.

3. When such leave shall be granted, the court shall order the report to be recorded; and the person obtaining leave shall pay into the office of the court, for the use of the owner, the assessed value of the land, and thereupon he shall be vested with a fee-simple title in such land.

Report to be recorded, and assessed value paid into office.—R. S. c. 74, s. 3.

4. The person to whom leave shall be granted shall, within one year begin to build such water-mill, and shall finish the same within three years; and thereafter keep it up for the use and ease of 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 mill, for reasons approved by the court, be enlarged.

Mill, within what time to be begun and finished.—R. S. c. 74, s. 5.

5. If any water-mill, belonging to any person not being of age, *feme covert*, *non compos mentis*, or imprisoned, be let fall, burnt, or otherwise destroyed, such person and his heirs shall have three years to rebuild and repair the same, after the disability removed.

Time for infants, &c., to rebuild mills.—R. S. c. 74, s. 6.

6. All millers of public mills 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 shall, for each offence, forfeit and pay five dollars to the party injured. *Provided, nevertheless,* that the owner may grind his own grain at any time.

Millers to grind according to turn. What toll may take.—R. S. c. 74, s. 7.

7. All millers shall keep in their mills the following measures, namely, a half bushel and peck of 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 chapter, shall be deemed to be guilty of a misdemeanor.

Measures to be kept in mills. False measures indictable.—R. S. c. 74, s. 8.

8. Any person conceiving himself injured by the erection of any grist mill, or mill for other useful purposes, may apply by petition to the court of pleas and quarter-sessions of the county in which the land endamaged is situate, setting forth in what respect he is injured by the erection of the mill; a copy of which petition shall be served on the owner or tenant in possession of the mill, ten days previous to the court.

Persons injured by mills how to proceed for damages.—R. S. c. 74, s. 9.

Tenant may make known owner, and petition to be served on him.—R. S. c. 74, s. 10.

9. When a copy of the petition shall have been served upon the tenant in possession, and he shall make affidavit, setting forth the name of the owner to whom he is tenant, a copy shall issue and be served on such owner, if he reside in the State; but if he shall be a non-resident, or cannot be found, publication for six weeks shall be made in some newspaper printed in the State, for him to appear and become defendant.

Not disclosing owner, deemed owner. Owner may appear and defend.—R. S. c. 74, s. 11, 12.

10. If the tenant shall fail to file such affidavit, he shall be deemed the owner of the mill, unless the owner shall appear and apply to become a party, when he shall be allowed to do so upon entering into a bail-bond, in such sum as the court may direct, payable to the petitioner; and the suit shall stand against the tenant and the owner.

When tenant and owner become defendants, what judgment rendered. If against both, they shall have contribution.—R. S. c. 74, s. 11.

11. Whenever the tenant, or the tenant and owner, shall be made defendant in manner aforesaid, the court shall proceed in the cause and determine the same as to right and justice shall appertain; and if judgment be given for the petitioner, he shall recover his costs, and have execution to sell the mill and appurtenances, and the property of the defendant, or a sufficiency to satisfy his judgment and costs. *Provided*, that after the satisfaction of the judgment, either of the defendants may have such contribution in equity, as may be just and proper against the other and his representatives, according to the respective interest of each one, and the proportion of the recovery which each one ought to bear.

Upon the hearing, what proceedings for assessing damages.

12. If upon the hearing of any petition, the court shall adjudge the petitioner entitled to relief, they shall order a writ to be issued to the sheriff of the county, commanding him to summon a jury of twenty-four 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 grist mill, or mills for other useful purposes, to meet on the premises, on a certain day, of which he shall give each party five days' notice in writing; and the jury, who shall be formed by drawing twelve out of the twenty-four, shall take an oath, (which the sheriff or deputy may administer,) that they will well and truly inquire whether any damage hath been sustained by the petitioner, by reason of the matters complained of; and if any hath been sustained, that they will impartially, according to the best of their judgment and ability, assess the amount, which the petitioner ought annually to receive from the owner or tenant of the mill on account thereof. Thereupon they shall view and examine the premises, and hear the evidence 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 his damage by reason of the erection of the mill complained of, reduce the same to writing, sign, and deliver it sealed up to the sheriff, to be delivered to the court at the next ensuing term: which verdict shall be binding between the parties for the term of five years from the filing of the petition, if the mill is kept up dur-

Verdict of jury, how made and returned.

To bind for five years, unless, &c.

ing that time, unless the damages should be increased by raising the water or otherwise. *Provided*, that service of notice, on the tenant in possession, of the meeting of the jury shall be sufficient notice to the owner; and that either party shall be allowed to challenge jurors peremptorily or for cause, as in the trial of other civil cases.

Notice on tenant in possession, sufficient. Jurors may be challenged.—R. S. c. 74, s. 12, 13.

13. In all cases where the jury shall assess the yearly damage as high as twenty dollars, nothing in this chapter contained shall be construed to prevent the petitioner, his heirs or assigns, from suing as heretofore; and in such cases, the verdict of the jury and judgment thereon, shall be binding only for the year's damage preceding the filing of the petition.

Provision where damages assessed as high as twenty dollars.—R. S. c. 74, s. 14.

14. If the verdict shall be that the petitioner hath sustained no damage, he shall pay the costs of his petition; but if in favor of the petitioner, he may have execution 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 recover no more costs than damages. And if the defendant do not annually pay the petitioner, his heirs or assigns, before it falls due, the sum assessed as the damages for that year, the petitioner, his heirs or assigns, may annually during the five years, at the same term that the petition was filed, sue out an execution against him, for the amount of the last year's damage, or any part thereof, which may remain unpaid.

Costs, when no damage, or under five dollars, how paid.

Execution to issue yearly for damages.—R. S. c. 74, s. 15.

15. Each juror shall be entitled to eighty cents per day, for attending on the premises, and four cents for every mile he shall travel to and from the place of trial, an account of which he shall render on oath to the sheriff to be returned to court.

Pay of jurors.—R. S. c. 74, s. 16.

16. Where either party shall appeal to the superior court, the trial in that court shall be had at bar: And if the plaintiff shall appeal, and fail to recover higher damages than were awarded by the jury on the premises, he shall pay the costs of the appeal.

Upon appeals, trial to be at bar. Plaintiff appealing to pay costs, if he recovers no more.—R. S. c. 74, s. 17.

SECT. 2. *House not to be valued*, 13 Ire. 109.

SECT. 8. *This the only remedy*, 11 Ire. 106. 2 Car. L. R. 245. *Who may sue*, 7 Ire. 20, 5 Ib. 333; *one in possession*, 10 Ire. 103. *Who may be sued*, 7 Ire. 24. *Death of defendant*, 2 Mur. 254, 4 Hawks, 73.

SECT. 12. *Plaintiff a creditor within stat. frauds*, 1 D. & B. 221. *Rule of damages*, 1 Ire. 232, 1 D. & B. 339, 1b. 492, 2 Ib. 50. *Effect of judgment*, 12 Ire. 341. *How to proceed after five years*, 11 Ire. 104.

## CHAPTER 72.

## MINES.

Lessors of gold mines not partners with their lessees, unless they so contract.

Lessors of gold mines not partners with their lessees, unless they so contract.—R. S. c. 75, s. 6.

No lessor of property, real or personal, for gold mining purposes, although the lessor 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 of the lessee; nor shall any of the legal or equitable relations or liabilities of copartners exist between them, unless it be so stipulated in the contract between the lessor and lessee.

## CHAPTER 73.

## MONEY REMAINING IN THE HANDS OF CLERKS AND OTHERS.

## SECTION

1. Clerks, &c., of all courts to make statement of moneys remaining in hand three years. Unless detained by order of court. And publish the same at court house door. To whom statement sent.
2. Moneys to be paid to certain public officers.
3. Clerks failing to render account, &c.,

## SECTION

- to be sued. Penalty \$100. Where suit brought.
4. Clerks, &c., admitting money in hand, and failing to pay, how proceeded against.
  5. Sheriff to account for such moneys, in like manner as clerks.
  6. Moneys may be used by the public, till called for by owners.

Clerks, &c., of all courts to make statement of moneys remaining in hand three years; unless detained by order of court.

And publish the same at court house door.

To whom statement sent.—R. S. c. 76, s. 1.

1. EVERY clerk of the county court, superior court of law, clerk and master in equity, and clerk of the supreme court, at the first session of the court of which he is clerk, which shall be after the first day of August in every year, shall produce to said court a statement, on oath, of all moneys remaining in his hands, which may have been paid into his office three years or more previous thereto, and shall have come into his hands either directly from parties, or from his predecessor in office, and is not detained in his custody by special order of the court; specifying therein the amount of each claim, and the name of the person to whom the same is payable; a copy of which statement he shall forthwith post up in his office, and at the court house door; and if there be no such moneys in his hands, he shall make affidavit of the same; which statement or affidavit, if made by a clerk of the supreme court, the court shall cause to be transmitted to the public treasurer and comp-

troller; if made by a clerk of the county or superior court, or a clerk and master in equity, the judge or chairman of the court, before whom it is made, shall cause the same to be transmitted to the officer appointed to receive and disburse the county funds, on or before the first day of January in the next year.

2. The said officers shall, on or before the first day of January in every year after the foregoing statements are made, account with and pay to the persons entitled to receive the same, all such balances reported as aforesaid to be in their hands; that is, the clerk of the supreme court shall pay to the public treasurer, and the other clerks shall pay to the receivers of the county funds of their respective counties.

Moneys to be paid to certain public officers.—R. S. c. 76, s. 2.

3. If any clerk, or clerk and master, shall fail to comply with the duties herein enjoined, he shall be liable to be sued for the moneys in his hands; and, moreover, shall forfeit and pay for every offence one hundred dollars, to be recovered in the name of the State and for the use of the county, by the receiver of the county funds; except that in the case of the default of the clerk of the supreme court, suit shall be brought by the public treasurer in the superior court of Wake county, and the recovery shall go to the public treasury.

Clerks failing to render account, &c., to be sued. Penalty \$100.

4. If any of the said officers shall fail to pay any such money, by him admitted to be due, on or before the first day of January in every year as aforesaid, such officer shall be proceeded against by the public treasurer, in any court of record in the State; or by the proper county officer, in the courts of his own county, in the like manner as against defaulting revenue officers.

Where suit brought.—R. S. c. 76, s. 3.

Clerks, &c., admitting money in hand, and failing to pay, how proceeded against.—R. S. c. 76, s. 4.

5. Every sheriff, at the same time and in like manner as is required of clerks of county courts, shall render and publish an account of moneys which may have been in his hands for the period of three years, and account for and pay the same to the receiver of county funds, under the same penalties for default, and recoverable in like manner, as are provided in respect of said clerks.

Sheriff to account for such moneys, in like manner as clerks.—R. S. c. 76, s. 6.

6. The money aforesaid, while held by the clerks and sheriffs, shall be paid on application, to the persons entitled thereto; and after it shall cease to be so held, it may be used as other revenue, subject, however, to the claim of the rightful owner.

Moneys may be used by the public, until called for by owners.—R. S. c. 76, s. 2, 7.

## CHAPTER 74.

## NAMES.

Names changed by superior courts.

Names changed  
by sup<sup>r</sup> courts.  
R. S. c. 77, s. 1.

ANY person desirous of changing his name, may have it done by petition in any superior court: and the court, at the term of filing the petition, or afterwards, may decree the same.

## CHAPTER 75.

## NOTARIES.

## SECTION

1. Notaries appointed by governor. Qualified in county court.
2. Duplicate commission issued. One part filed in office of county court.

## SECTION

3. Clerks and c. and master may act as notaries, and certify under seal of office.

Notaries appointed by gov.  
Qualified in  
co. court.—R.  
S. c. 78, s. 1.

1. THE governor may, from time to time, at his discretion, appoint one or more fit persons in every county, to act as notaries; who, on exhibiting their commission to the county court of the county in which they are to act, shall be duly qualified, by taking before said court an oath of office, and the oaths prescribed for officers.

Duplicate commission issued  
—one part filed  
in office of co.  
court.

2. The governor shall issue to each a duplicate commission, one part whereof shall be deposited with the clerk of the court, and filed among the records, and he shall note on his minutes the qualification of the notary.

Clerks and c.  
and m. may  
act as notaries,  
and certify  
under seal of  
office.—R. S. c.  
78, s. 2.

3. The clerks of the county and superior courts, and clerks and masters in equity, may act as notaries-public, in their several counties, by virtue of their office as clerks, and may certify their notarial acts under the seals of their respective courts, whenever it may be desired.

## CHAPTER 76.

## OATHS.

## SECTION

1. Oaths, how administered.
2. Persons scrupulous of laying hands on the Scriptures, sworn with uplifted hand.

## SECTION

3. Quakers, Moravians, Dunkers, and Mennonists to be affirmed.
4. Oaths or affirmations to support the constitutions of the United States



SECTION

- and of this State, taken by all officers.
- 5. Oath to support the constitution of the United States.
- 6. Oaths of sundry persons:—
  - (1.) Administrator.
  - (2.) Attorney at law.
  - (3.) Attorney-general and solicitors for State and county.
  - (4.) Book debt.
  - (5.) Book debt oath for an executor or administrator.
  - (6.) Clerk and master in equity.
  - (7.) Clerk of supreme court.
  - (8.) Clerk of superior court.
  - (9.) Clerk of county court.
  - (10.) Commissioners allotting a year's provision.
  - (11.) Dividing and allotting real estate.
  - (12.) Commissioner of wrecks.
  - (13.) Comptroller.
  - (14.) Constable.
  - (15.) Coroner.
  - (16.) Entry-taker.
  - (17.) Executor.
  - (18.) Finance committee.
  - (19.) Governor.
  - (20.) Inspector of flour.
  - (21.) Inspector of tobacco.
  - (22.) Inspector of other articles than tobacco or flour.
  - (23.) Judge of supreme court.

SECTION

- (24.) Judge of superior court.
- (25.) Foreman of grand-jury.
- (26.) Grand-jurors.
- (27.) Officer attending grand-jury.
- (28.) Officer charged with a jury.
- (29.) Petit-jury in a capital case.
- (30.) In criminal cases not capital.
- (31.) Jury in civil cases.
- (32.) Jury laying off dower.
- (33.) Jury to assess damages for overflowing lands.
- (34.) Jury to lay off and assess damages for road.
- (35.) Justices of the peace.
- (36.) Processioner.
- (37.) Public treasurer.
- (38.) Ranger.
- (39.) Register.
- (40.) Secretary of State.
- (41.) Sheriff.
- (42.) Standard-keeper.
- (43.) Strays, valuers of.
- (44.) Surveyor for the county.
- (45.) Tobacco picker.
- (46.) County trustee.
- (47.) Witness, to go before grand-jury.
- (48.) Witness, in a capital case.
- (49.) Witness, on a traverse.
- (50.) Witness, in civil cases.
- (51.) Witness, to prove a will.
- 7. Deputies to administer oaths wherever their principals may.

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 truth, and the just and omnipotent avenger of falsehood, such oaths, therefore, ought to be taken and administered with the utmost solemnity. Wherefore it is enacted,

1. That judges and justices of the peace, and other persons who may be empowered to administer oaths, shall (except in the cases in this chapter excepted,) require the party 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.

2. When the person to be sworn, shall be conscientiously scrupulous of taking a book oath in manner aforesaid, he

Oaths, how administered.—  
R. S. c. 79, s. 1.

Persons scrupulous of lay-

ing hands on the Scriptures, sworn with uplifted hand.—R. S. c. 79, s. 2.

shall be excused from laying hands upon, or touching the holy gospels; and the oath required shall be administered in the following manner, namely: he shall stand with his right hand lifted up towards heaven, in token of his solemn appeal to the supreme God, 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, namely: "I, A. B., do appeal to God, as a witness of the truth and the 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.

Quakers, Moravians, Dunkers, and Mennonists to be affirmed.—R. S. c. 79, s. 3.

3. The solemn affirmation of Quakers, Moravians, Dunkers, and Mennonists, made in the manner heretofore used and accustomed, shall be admitted as evidence in all civil and criminal cases; and in all cases where they are required to take an oath to support the constitution of the State, or of the United States, or an oath of office, they shall make their solemn affirmation, in the words of the oath 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 constitution of the United States and of this State, taken by all officers.—R. S. c. 79, s. 4.

4. Every member of the General Assembly, and every person who shall be chosen or appointed to hold any office of trust or profit in the State, shall, before taking his seat or entering upon the execution of the office, 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, Mennonists, or Dunkers, he shall take and subscribe 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 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 the State, by any means, in any conspiracy whatever, against the State; that I will disclose and make known to the legislative, executive, or judicial powers of the State, all treasonable conspiracies which I shall know to be made or intended against the State."

Oath to support the constitution of the U. States.—R. S. c. 79, s. 5.

5. All members of the General Assembly, and all officers who shall be elected or appointed to any office of trust or profit within the State, shall, agreeable 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: so help me, God:" which oath shall be taken before they enter upon the execution of the office.

6. The oaths of office to be taken by the several officers and persons hereafter named, shall be in the words following the names of said officers and persons respectively.

Oaths of sundry persons.

#### ADMINISTRATOR.

(1.) You swear (or affirm) 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 to 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.

Administrator.

#### ATTORNEY AT LAW.

(2.) 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.

Attorney at law.

#### ATTORNEY-GENERAL, AND STATE AND COUNTY SOLICITORS.

(3.) 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; (solicitor for the State — or solicitor for the State in the county of \_\_\_\_\_,) 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.

Attorney-general and solicitors for State and county.

#### BOOK DEBT OATH.

(4.) You swear (or affirm) 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 yourself; 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.

#### BOOK DEBT OATH FOR AN EXECUTOR OR ADMINISTRATOR.

(5.) You, as executor or administrator of A. B., swear (or affirm) 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.

#### CLERK AND MASTER IN EQUITY.

(6.) The same as the oath prescribed for a clerk of the superior court of law, *mutatis mutandis*.

C. and master in equity.

## CLERK OF THE SUPREME COURT.

Clerk of supreme court.

(7.) I, A. B., do swear (or affirm) that, by myself or any other person, I neither have given, nor will give, to any person 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, or offered to sell, nor will I sell or 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.

## CLERK OF THE SUPERIOR COURT OF LAW.

Clerk of superior court.

(8.) 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 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 or offered to sell, nor will I sell or 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.

## CLERK OF THE COURT OF PLEAS AND QUARTER-SESSIONS.

Clerk of county court.

(9.) The same, *mutatis mutandis*, as that prescribed for clerk of the superior court of law.

## COMMISSIONERS ALLOTING A YEAR'S PROVISION.

Commissioners allotting a year's provision.

(10.) You and each of you swear (or affirm) 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.

## COMMISSIONERS DIVIDING AND ALLOTING REAL ESTATE.

Commissioners dividing and allotting real estate.

(11.) You and each of you swear (or affirm) 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 agreeable to law: so help you, God.

## COMMISSIONER OF WRECKS.

Commissioner of wrecks.

(12.) I, A. B., do solemnly swear (or affirm) that I will truly and faithfully discharge the duties of a commissioner of wrecks, for the district of \_\_\_\_\_, in the county of \_\_\_\_\_, according to law: so help me, God.

## COMPTROLLER.

(13.) I, A. B., do solemnly swear (or affirm) that I will well Comptroller. and truly execute the trust reposed in me as comptroller, without favor or partiality, according to law, to the best of my knowledge and ability: so help me, God.

## CONSTABLE.

(14.) I, A. B., do solemnly swear (or affirm) that I will well Constable. 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.

## CORONER.

(15.) I, A. B., do solemnly swear (or affirm) that, in all Coroner. things, I will diligently, faithfully, and impartially execute the office of coroner, for the county of \_\_\_\_\_, according to law, and to the best of my skill and ability: so help me, God.

## ENTRY-TAKER.

(16.) I, A. B., do solemnly swear (or affirm) that I will well Entry-taker. and impartially discharge the several duties of the office of entry-taker for the county of \_\_\_\_\_, according to law: so help me, God.

## EXECUTOR.

(17.) You swear (or affirm) that you believe this writing to Executor. 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, agreeable to the trust and confidence reposed in you, and according to law: so help you, God.

## FINANCE COMMITTEE.

(18.) I, A. B., do solemnly swear (or affirm) that I will faithfully perform the duties imposed on me by law, as a member Finance committee.

of the committee of finance for the county of \_\_\_\_\_, in all business that shall come before me, without doing injustice to the county or individuals, to the best of my knowledge and ability: so help me, God.

## GOVERNOR.

Governor.

(19.) I, A. B., do swear (or affirm) that, as governor of the State of North Carolina, I will execute the duties of that important office, without favor or affection, agreeable to the constitution and laws of the State, and according to the best of my skill and ability: so help me, God.

## INSPECTOR OF FLOUR.

Inspector of flour.

(20.) 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, and 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 of flour that shall not appear to me, to the best of my skill and judgment, 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.

## INSPECTOR OF TOBACCO.

Inspector of tobacco.

(21.) 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, hogshead 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, or affection, malice or partiality: so help me, God.

## INSPECTOR OF OTHER ARTICLES THAN TOBACCO AND FLOUR.

Inspector of other articles than tobacco or flour.

(22.) 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 timber, 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.

JUDGE OF THE SUPREME COURT.

(23.) I, A. B., do solemnly swear (or affirm) that, in my <sup>Judge of</sup> office of judge of the supreme court of North Carolina, I will <sup>supreme court.</sup> administer justice without respect to persons, and do equal right to the poor 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 agreeable to the constitution and laws of the State: so help me, God.

JUDGE OF THE SUPERIOR COURT OF LAW AND EQUITY.

(24.) I, A. B., do solemnly swear (or affirm) that I will well <sup>Judge of</sup> and truly serve the State of North Carolina, in the office of <sup>superior court.</sup> judge of the superior courts of law and equity of the said State: I will do equal law 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 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 appoint 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.

GRAND-JURY — FOREMAN OF.

(25.) You, as foreman of this grand inquest for the body of <sup>Foreman of</sup> this county, shall diligently inquire and true presentment make <sup>grand-jury.</sup> 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.

## GRAND-JURORS.

Grand-jurors. (26.) 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.

## GRAND-JURY — OFFICER OF.

Officer attending grand-jury. (27.) You swear (or affirm) 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, and without disclosing the contents thereof: so help you, God.

## JURY — OFFICER OF.

Officer charged with a jury. (28.) You swear (or affirm) 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.

## JURY, IN A CAPITAL CASE.

Petit-jury in a capital case. (29.) You swear (or affirm) that you will 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.

## JURY, IN CRIMINAL CASES NOT CAPITAL.

Petit-jury in criminal cases, not capital. (30.) You and each of you swear (or affirm) that you will well and truly try all issues of traverse which shall come before you during this term, and true verdicts give according to the evidence thereon: so help you, God.

The same oath to talesmen, by using the word "day" instead of "term."

## JURY, IN CIVIL CASES.

Jury in civil cases. (31.) The original panel thus:— You and each of you swear (or affirm) that you will well and truly try all civil cases, which shall come before you during this term, and true verdicts give thereon, according to the evidence: so help you, God.

The same oath to talesmen, by using the word "day" instead of "term."

## JURY, LAYING OFF DOWER.

Jury laying off dower. (32.) You and each of you swear (or affirm) 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.

## JURY, TO ASSESS DAMAGES FOR OVERFLOWING LANDS.

Jury to assess damages for (33.) You and each of you swear (or affirm) 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.

overflowing  
lands.

JURY, TO LAY OFF ROADS AND ASSESS DAMAGES.

(34.) I, A. B., do solemnly swear (or affirm) that I will lay out the road, 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 the owners of land, over which the same shall be laid out, as may be; and will truly and impartially assess the damages, which may be awarded by me, for injuries done to lands by the laying out of said road, without favor, affection, malice, or hatred, and to the best of my skill and knowledge: so help me, God.

Jury to lay off  
and assess dam-  
ages for road.

JUSTICE OF THE PEACE.

(35.) I, A. B., do solemnly swear (or affirm) that as a justice of the peace, and as a justice of the 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 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 of my county, as the statutes in that case shall direct; and 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 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 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, to the parties, any warrant by me made, 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.

Justice of the  
peace.

## PROCESSIONER.

Processioner.

(36.) 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 the State, according to the best of my skill and ability, without favor or partiality, to any person or persons whatsoever: so help me, God.

## PUBLIC TREASURER.

Public treasurer.

(37.) I, A. B., do swear (or affirm) that, according to the best of my abilities and judgment, I will execute impartially the office of public treasurer, in all things according to 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.

## RANGER.

Ranger.

(38.) I, A. B., do swear (or affirm) that I will well and truly execute the office of ranger, for the county of \_\_\_\_\_, according to the best of my skill and ability: so help me, God.

## REGISTER.

Register.

(39.) 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.

## SECRETARY OF STATE.

Secretary of State.

(40.) I, A. B., do swear (or affirm) that I will, in all respects, faithfully and honestly execute the office of secretary of State, of the State of North Carolina, during my continuance in office, according to law: so help me, God.

## SHERIFF.

Sheriff.

(41.) 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, agreeable 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, reward, or other thing whatsoever, to any person, for his vote or interest to procure me to be nominated to the said office; nor will I hereafter give to any person, such fee, gratuity, or reward, for having procured or contributed to procure me to be nominated thereto: so help me, God.

## STANDARD KEEPER.

Standard keeper.

(42.) 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.

## STRAY VALUERS.

(43.) You swear (or affirm) that you will well and truly view and appraise the stray, now to be valued by you, without favor or partiality, according to your skill and ability: so help you, God. Strays, valuers of.

## SURVEYOR FOR THE COUNTY.

(44.) The same, *mutatis mutandis*, with that of entry-taker. Surveyor for county.

## TOBACCO PICKER.

(45.) 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. Tobacco picker.

## TRUSTEE FOR A COUNTY.

(46.) 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 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. County trustee.

## WITNESS, TO DEPOSE BEFORE THE GRAND-JURY.

(47.) You swear (or affirm) that 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. Witness sent to grand-jury.

## WITNESS, IN A CAPITAL TRIAL.

(48.) You swear (or affirm) that the evidence you shall give to the court and jury in this trial, 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. Witness, on a capital trial.

## WITNESS, ON A TRAVERSE.

(49.) You swear (or affirm) that 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. Witness, on a traverse.

## WITNESS, IN CIVIL CASES.

(50.) You swear (or affirm) that the evidence you shall give to the court and jury in this cause, now on trial, wherein A. B. is plaintiff, and C. B. defendant, shall be the truth, the whole truth, and nothing but the truth: so help you, God. Witness, in civil cases.

## WITNESS, TO PROVE A WILL.

Witness, to  
prove a will.

(51.) You swear (or affirm) that you saw C. D. execute (or heard him acknowledge the execution of) this writing as his last will and testament; that you attested it in his presence and at his request; and that at the time of its execution, (or at the time its execution was acknowledged,) he was, in your opinion, of sound mind and disposing memory: so help you, God.

Deputies to ad-  
minister oaths  
wherever their  
principals may.  
—R. S. c. 79.

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.

## CHAPTER 77.

## OFFICES.

## SECTION

1. No person to hold office contrary to the constitution; penalty \$200.
2. Contracts for office void.
3. Sheriffs, &c. sworn into office, considered rightfully in, until, &c. Sheriffs,

## SECTION

- clerks, clerks and masters, and registers, to hold till successor appointed.
4. All officers to take the oaths before acting. Penalty \$500, and ejection from office.

No person to  
hold office con-  
trary to consti-  
tution, penalty  
\$200.—R. S. c.  
80, s. 1.

1. If any person shall presume to hold any office, or place of trust or profit, or be elected to a seat in either house of the General Assembly, contrary to the fourth section of the fourth article of the constitution of the State, he shall forfeit and pay two hundred dollars, to any person who will sue for the same.

Contracts for  
office void.—R.  
S. c. 80, s. 2.

2. All bargains, bonds, and assurances, made or given for the purchase or sale of any office whatsoever, the sale of which is contrary to law, shall be void.

Sheriffs, &c.,  
sworn into of-  
fice considered  
rightfully in  
until, &c.—  
1844, c. 38, s. 2.

3. Any person who shall, by the county court, be admitted and sworn into the office of sheriff, coroner, or constable, shall be held, deemed, and taken, by force of such admission, to be rightfully in such office, until, by judicial sentence, upon a *quo warranto* or other proper proceeding, he shall be ousted therefrom, or his admission thereto be, in due course of law declared void; and sheriffs, clerks of the county and superior courts, registers, clerks and masters in equity, shall be deemed to be and continue in their respective offices, until their successors shall have been elected or appointed, and shall have been duly qualified.

Sheriffs, clerks,  
c. and m. and  
registers, to  
hold till suc-  
cessor appoint-  
ed.—1848, c.  
64, s. 1.

All officers to  
take the oaths

4. Every officer and other person who may be required to take an oath of office, or an oath for the faithful discharge of

any duty imposed on him, and also the oath appointed for such as hold any office of trust or profit in the State, shall take all said oaths, before entering on the duties of the office, or the duties imposed on such person, on pain of forfeiting five hundred dollars to the wardens of the poor of the county, in or for which the office is to be used, and of being ejected from his office or place by writ of *quo warranto*.

before acting.  
Penalty \$500,  
and ejection  
from office.

CHAPTER 78.

OFFICIAL BONDS.

SECTION

1. Suits on bonds of clerks, &c. may be brought by parties injured.
2. Declaration to show relator. Or party may sue in case.
3. Sheriff and constable liable for whole debt put into his hands.
4. Remedy before justice against officers neglecting to pay over moneys.
5. Summary remedy in court. Notice given.

SECTION

6. Damages of twelve *per cent.* on money detained.
7. Names of justices present at qualification of sheriffs and others, recorded. Such justices failing to take bond, bound as surties. Copy of record, evidence.
8. Penalty on officers not giving bond before acting.
9. Irregularity in taking, or in the form of bonds not to invalidate.

1. EVERY person, injured by the neglect, misconduct, or misbehavior in office of any clerk of the superior or county court, clerk and master in equity, register, entry-taker, surveyor, sheriff, constable, or other officer, may institute a suit or suits against said officers or any of them, and their sureties, 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 thereof; 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.

Suits on bonds of clerks, &c. may be brought by party injured. — R. S. c. 81, s. 1.

2. Any person who may bring suit in manner aforesaid, shall state in his declaration at whose instance and in whose behalf the suit is brought; and he shall be entitled to receive to his own use the money recovered. *Provided, nevertheless,* that nothing herein contained shall prevent such person from bringing, at his election, an action on the case against the officer to recover damages for his injury.

Declaration to show relator.

Or party may sue in case. — R. S. c. 81, s. 2.

3. When a claim shall be placed in the hands of any sheriff or constable for collection, and he shall not use due diligence in collecting the same, he shall be liable for the full amount of the claim, notwithstanding the debtor may have been at all times, and is then, able to pay the amount thereof.

Sheriff and constable liable for whole debt put in his hands. — 1844, c. 64.

Remedy before justice, against officers neglecting to pay over moneys.—R. S. c. 81, s. 3.

4. When any sheriff, clerk, coroner, constable, or clerk and master, shall have received any money, by virtue of his office, and shall fail to pay the same to the person entitled to receive it, a justice of the peace may issue a warrant against him and his sureties, whether he be in office or not, and give judgment for any sum not exceeding the jurisdiction of a justice of the peace, with costs.

Summary remedy in court.

5. Whenever a sheriff, coroner, constable, clerk, or clerk and master, 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, the person thereby aggrieved may move for judgment, in any court having competent jurisdiction, against such officer and his sureties; and the court shall try the same and render judgment, at the term when the motion shall be made. *Provided*, ten days' notice in writing, of the motion shall have been previously given.

Notice given.—R. S. c. 81, s. 4.

Damages of 12 per cent. on money detained.—R. S. c. 81, s. 5.

6. Whenever money received as aforesaid, shall be unlawfully detained by any of said officers, and the same shall be sued for, in any mode whatever, the plaintiff shall be entitled to recover, besides the sum detained, damages at the rate of twelve *per centum per annum*, from the time of detention until payment. *Provided*, that the officer shall not be liable for such damages, if he shall, on the demand, have tendered the money received, in any notes of the banks of this State of par value, unless the creditor shall have notified the officer to collect specie.

Names of justices present at qualification of sheriff and others recorded.

7. It shall be the indispensable duty of the clerk of the county court to record and enter on his docket the names of those justices of the peace, who shall be on the bench at the time of the qualification of the sheriff, coroner, clerk, entry-taker, register, and constables; and if the clerk shall neglect to make such record, and be thereof convicted in the superior court, he shall forfeit his office. And should any of the officers above named 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, as required by law, the justices of the peace, who were on the bench at the time of the appointment of the officer so officiating and acting under color of his appointment, shall be considered bound, to all intents and purposes, as the sureties of the officer, in the same manner as though they had been formally bound by executing bond with and as the sureties of such officer, and may be sued accordingly, by any person having cause of action against such officer for any default; and in all suits and proceedings under this section, a copy of the record of the court, attested by the clerk, shall be sufficient evidence that they were on the bench.

Such justices failing to take bond, bound as sureties.

Copy of record evidence.—R. S. c. 81, s. 6.

Penalty on officers not giving bond before acting.

8. Every officer or other person of whom a bond is required for the faithful discharge of the duties of his office, shall execute the same before entering on the duties thereof, on

pain of forfeiting five hundred dollars to the wardens of the poor of the county in which the duties are to be discharged, and of being ejected from his office by writ of *quo warranto*.

9. Whenever any instrument shall be taken by, or received under the sanction of a court of record, or by any persons acting under or in virtue of any public authority, purporting to be a bond executed to the State, for the performance of any duty belonging to any office or appointment, such instrument, notwithstanding any irregularity or invalidity in the conferring of the office or in making of the appointment, or any variance in the penalty or condition of the instrument from the provisions prescribed by law, shall be valid and may be put in suit in the name of the State, for the benefit of the person injured, by a breach of the condition thereof, in the same manner as if the office had been duly conferred or the appointment duly made, and as if the penalty and condition of the instrument had conformed to the provisions of law. *Provided*, that the instrument be in all other respects executed with the solemnities which are required by law. *And provided further*, that no action shall be sustained thereon because of a breach of any condition thereof, or of any part of the condition thereof, which is contrary to law.

Irregularity in taking, or in the form of bonds, not to invalidate.— 1842, c. 61.

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- SECT. 1. *Who may be sued*, 6 Ire. 279. *New duty*, 10 Ire. 229. *Bonds cumulative*, when, 9 Ire. 69, 7 Ib. 198; *several actions*, 6 Ib. 347.  
 SECT. 3. *Officer must be agent to collect*, 6 Ire. 281, 11 Ib. 184, 9 Ib. 20.  
 SECT. 5. *Act done by color of office*, 8 Ire. 415, Ib. 513, 11 Ib. 141.  
 SECT. 8. *Officer de facto*, 8 Ire. 201, 4 Ib. 355, Ib. 365, 3 Ib. 171.  
 SECT. 9. 7 Ire. 344; Ib. 359; 5 Ib. 105.

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## CHAPTER 79.

### ORDINARIES AND INNS.

SECTION

1. License to keep inn, tavern, or ordinary, how obtained. Bond given. Its condition.
2. Names of justices taking bond, recorded.
3. Rates of charges established by justices. Duty of ordinary keepers.

SECTION

4. Ordinary keeper, or retailer, not to credit for liquors over ten dollars.
5. Penalty on ordinary keepers, entertaining slaves or sailors, &c.
6. License to retail spirituous liquors, how obtained.
7. Houses of private entertainment excepted from first section.

1. EVERY person wishing to keep a common inn, tavern, or ordinary, for the entertainment of travellers and others, shall apply to the court of pleas and quarter-sessions for license to do so; and, unless good cause be shown to the contrary, the court shall grant the license for one year, provided

License to keep inn, tavern, or ordinary, how obtained.— R. S. c. 82, s. 2.

Bond given.  
Its condition.

the applicant shall execute a bond of one thousand dollars payable to the State of North Carolina, and conditioned for constantly finding and providing good and wholesome diet and lodging for his guests, and stable and provender for their horses; and also, to safely keep for his guests all such articles and property as may come to his care and charge as inn-keeper. And on a breach of any condition thereof, any person injured may put the same in suit.

Names of jus-  
tices taking  
bond, recorded.

2. The clerk of the court shall record the names of the justices on the bench at the time of the taking said bond, and issue a license.

Rates of  
charges estab-  
lished by jus-  
tices.

Duty of ordina-  
ry keepers.—R.  
S. c. 82, s. 4.

3. The justices shall, once a year, or oftener if necessary, at the first court to be held after the first day of January, rate the prices of liquor, diet, lodging, and provender, to be taken in their counties by keepers of inns, taverns, and ordinaries; and every such keeper shall, within thirty days after such rates are settled, set the same up in the common entertaining room of the inn, tavern, or ordinary, there to be kept until the rates are altered, on pain of forfeiting forty dollars.

Ordinary keep-  
er, or retailer,  
not to credit for  
liquors over ten  
dollars.—R. S.  
c. 82, s. 5.

4. No keeper of an inn, tavern, or ordinary, or retailer of liquors by the small measure, shall sell to any person on credit, liquors to a greater amount than ten dollars, unless the person credited, sign a book or note in the presence of a witness, in acknowledgment of the 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 the matter of defence allowed by this section given in evidence.

Penalty on or-  
dinary keepers,  
entertaining  
slaves or sail-  
ors, &c.—R.  
S. c. 82, s. 6.

5. If any keeper of an inn, tavern, or ordinary, or vendor or retailer of spirituous or other liquors, shall entertain slaves against the will of their owners, or common sailors against the direction of the masters of vessels to which they belong, he shall forfeit and pay one hundred dollars to the use of the owner of the slave, or master of the vessel.

License to re-  
tail spirituous  
liquors, how  
obtained.—R.  
S. c. 82, s. 7.

6. Any person wishing to retail spirituous liquors by a measure less than a quart, at any particular place in the county, shall apply to the court of pleas and quarter-sessions of the county and obtain an order therefor, for one year and no longer; and the same shall be granted by the court, seven justices being on the bench, only to such free white person as shall show his 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 the clerk, upon the grant of such order, shall give to the applicant a certificate thereof; upon which he may obtain a license in the manner provided in the chapter entitled "Revenue."

Houses of pri-  
vate entertain-  
ment excepted  
from first sec-  
tion.

7. Nothing in the first section of this chapter contained, shall be so construed as to extend to keepers of houses, commonly called houses of private entertainment.



CHAPTER 80.

OVERSEERS.

Overseer, leaving his employer, to forfeit wages.

1. If any person shall contract to serve as an overseer, upon wages, or a share of the produce, 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 forfeit all right to wages or share of the produce.

Overseer, leaving his employer, to forfeit wages.—R. S. c. 83, s. 1.

CHAPTER 81.

OYSTERS, AND OTHER FISH.

SECTION

1. Oysters not to be transported without the State. Penalty. Exceptions.
2. Duty of magistrates in apprehending offenders.
3. Penalty for using dragnets in Pamlico Sound to catch terrapins; or instruments, except tongs, to take oysters, unless, &c.
4. Net, &c. not to be used in half mile of marshes between Croatan and Pamlico Sounds.
5. Non-residents forbid to fish, for sale, in waters of the State. Proviso.
6. Penalty therefor, \$100.

SECTION

7. In what direction nets to be set in Pamlico Sound.
8. Fishing stakes in Pamlico and Albemarle Sounds, &c., to be removed by June.
9. Masters of vessels wantonly injuring seines or nets, penalty on.
10. Fish offal not to be cast into navigable waters, &c.
11. Penalty for setting nets across navigable waters, or obstructing fish.
12. For erecting stand, &c., in waters required to be left open for passage of fish, or not keeping slopes open.
13. Offences herein created, indictable.

1. If any master or skipper of a vessel shall transport oysters, taken from any place within the State, to any place beyond the limits thereof, he shall forfeit and pay two hundred dollars for every offence. *Provided*, that nothing herein contained shall prevent the carrying of oysters into the north and north-east rivers having their source in the State of Virginia, nor the exportation to the West Indies of pickled oysters, not exceeding in quantity sixty gallons at one time. *And provided further*, that it shall be lawful for any person, who shall have planted, cultivated, and grown oysters in any private oyster ground in the State, to export the same beyond the limits thereof.

Oysters not to be transported without the State; penalty. Exceptions.—R. S. c. 84, s. 1, 2.—1854, c. 33.

2. Whenever a person shall make affidavit that he has good cause to believe, that any master or skipper of a vessel has received oysters on board his vessel, for the purpose of trans-

Duty of magistrates in apprehending offenders.—R. S. c. 84, s. 3.

porting them out of the State, any justice within whose jurisdiction such vessel may be, may issue his warrant for the immediate apprehension and bringing of such master or skipper before some magistrate of the same county; and the justice, before whom such person may be brought, if there is good cause to believe that a violation of the preceding section is intended, may commit the master or skipper to the jail of his county, unless he shall enter into recognizance with sufficient security, not exceeding two hundred dollars, upon condition to appear at the next court to be held for the county, and answer such charge as may be preferred against him.

Penalty for using dragnets in Pamlico Sound to catch terrapins; or instruments, except tongs, to take oysters, unless, &c.—R. S. c. 84, s. 4.—1842, c. 53; 1854, c. 33.

3. If any person, who is not a citizen of the State, shall use dragnets in the waters of Pamlico Sound, for the purpose of catching terrapins; or if any person whatever shall use any drag, or other instrument, except such tongs as are generally used for catching of oysters, within any of the waters of the State; the person so offending, if a free man, shall forfeit and pay one hundred dollars, or if a slave, shall receive thirty-nine lashes. *Provided, nevertheless,* that the owner or tenant of any private oyster ground may use any scoop, drag, or other instrument, to take oysters therein.

Net, &c., not to be used in half mile of marshes between Croatan and Pamlico Sounds.—1844, c. 40, s. 3.

4. No person, for the purpose of taking fish between the first day of February and the first day of May of the same year, shall use or cause to be used, at or within half a mile of the marshes separating the waters of Croatan and Pamlico Sounds, any weir, hedge, net, or seine.

Non-residents forbid to fish for sale in waters of the State.

5. No person shall use, or cause to be used, in any of the navigable waters of the State, any weir, hedge, net, or seine, for the purpose of taking fish for sale or exportation, unless he shall have resided continuously in the State, at least twelve months next preceding the day on which he shall begin to take fish; nor shall any person assist in using, or be interested in using or causing to be used, in any of such waters, for the purpose aforesaid, any weir, hedge, net, or seine, in the use of which any such non-resident person may have an interest.

Proviso.—1844, c. 40, s. 1.

*Provided,* that nothing herein contained shall prevent any person from fishing with seines hauled to the shore at any fishery, the title to which fishery or any interest therein may have been acquired by such person, by purchase or inheritance. *And provided further,* that this section shall not extend to servants employed to fish, by any person allowed to fish in the navigable waters of the State.

Penalty therefor, one hundred dollars.—1844, c. 40, s. 2.

6. Any person, who shall violate any of the provisions of the preceding section, shall, for every offence, forfeit 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 the county where the offence is committed.

In what direction nets to be set in Pamlico Sound.—1844, c. 40, s. 6.

7. Every net, (unless the same be a dragnet and hauled to the shore,) which may be used for catching shad in that portion of the waters of Pamlico Sound, lying between a line drawn eastwardly from Stumpy Point, and the southern side

of Long Shoal in said Sound, shall be set and fixed in said waters, in a direction from north to south, and shall not be used in any other manner; and any person, offending against this section, shall, for every offence, forfeit five dollars.

8. Every person, who may set or use, in any of the navigable waters of Pamlico, Croatan, Currituck, and Albemarle Sounds, or their tributaries, any fishing stake or pole, shall remove the same by the first day of June; and every person, offending against this section, shall, for every stake not so removed, forfeit and pay five dollars.

Fishing stakes in Pam. and Alb. Sounds, &c., to be removed by June.—1844, c. 40, s. 7; 1852, c. 13.

9. Any master or other person, having the management or control of a vessel or boat of any kind, in the navigable waters of the State, who shall wilfully, wantonly, and unnecessarily do injury to any seine or net, which may be lawfully hauled, set, or fixed in said waters for the purpose of taking fish, shall forfeit and pay to the owner of such seine or net, or other person injured by such act, one hundred dollars.

Masters of vessels wantonly injuring seines or nets. Penalty on.—1848, c. 61, s. 1, 2.

10. No person shall throw, or cause to be thrown, into the channel of any of the navigable waters of the State, any fish offal, in any quantity that shall be deemed likely to hinder or prevent the passage of fish along such channel.

Fish offal not to be cast into navigable waters, &c.—1844, c. 40, s. 4.

11. No person shall set a net of any description across the main channel of any navigable river or creek, or shall erect, so as to extend more than three fourths of the distance across such channel, any stand, dam, weir, hedge, or other obstruction to the passage of fish; and every person so offending shall, if a free man, forfeit and pay forty dollars, or, if a free negro or slave, shall receive thirty-nine lashes.

Penalty for setting nets across nav. streams, or obstructing fish.—R. S. c. 103, s. 10, 11.

12. Every person who shall erect any stand, dam, weir, or hedge, in such part of any river or creek that may be left open for the passage of fish; or who, having erected any dam where the same was allowed, and shall not make and keep open such slope, as the commissioners appointed as prescribed in the chapter entitled "Rivers and Creeks" may judge necessary, shall forfeit and pay ten dollars for every twenty-four hours he shall not keep open, or shall obstruct, such passage or slope.

For erecting stand, &c., in waters left open for passage of fish, or not keeping slopes open.—R. S. c. 103, s. 9.—1844, c. 66.

13. Every person who shall commit any of the offences in this chapter created, shall be deemed to be guilty of a misdemeanor.

Offences herein created indictable.—R. S. c. 84, s. 1, 4; c. 103, s. 10.—1844, c. 40; 1848, c. 61; 1852, c. 13.

CHAPTER 82.

PARTITION.

SECTION

1. Tenants in common may have partition, by courts. How to proceed.
2. Of land in different counties, made in superior court.
3. To be equal, if practicable. Sums charged on minors, not payable till of age.
4. But to bear interest, and guardian to pay when he has assets.
5. Commissioners and costs paid us may be decreed.
6. Sale to prevent injury by actual partition, may be decreed.
7. Also when land required for public purposes. Proceeds secured for infants, *feme covert*s, persons *non compos*, &c.
8. Sales, where made.
9. When there is dower, court may decree sale and apportion dower.

SECTION

10. Proceedings where lands lie partly in this State, and partly in another.
11. Court may decree partition thereof.
12. Commissioners appointed. Their duty in making partition. What final decree, court may make.
13. Decree for partition in another State, when enforced in this.
14. Court to judge whether another State has passed a law in conformity to this.
15. Time allowed to *feme covert*s, infants, &c.
16. Pay of commissioners.
17. Personal property, partition of, how made.
18. When sold for partition.
19. Infant to have guardian.
20. Pay of commissioners acting in the State.

Tenants in common may have partition by courts. How to proceed.—R. S. c. 85, s. 1.

1. THE superior and county courts, and courts of equity, on petition of one or more persons claiming any real estate as tenants in common, shall 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. Said commissioners shall be summoned by the sheriff to meet on the premises, and shall be sworn by the sheriff, or some justice of the peace, to do justice among the claimants according to their best skill and ability; and thereupon they, or a majority of them, shall divide the said land; and in so doing are empowered to charge the more valuable dividends with such sums, to be paid to the dividends of inferior value, as they shall judge necessary, in order to make an equitable division. And the commissioners as soon as they can, shall make a return of their proceedings, under their hands, ascertaining with precision the different tracts or parcels of land, lots, or houses, with actual surveys of the same when necessary; which return when confirmed shall be enrolled and certified to the register and registered in the office of the county, where such lands, lots, or houses may lie or be situated; and the return shall be binding among, and between the claimants, their heirs and assigns.

Of land in different counties, made in sup'r court.—R. S. c. 85, s. 2.

2. In cases where the real estate lies in several counties, the petition shall be exhibited in the superior court of any one of the counties in which a part thereof may lie; and the proceed-

ings in all such petitions shall be the same as in other petitions.

3. The commissioners shall divide said lands into equal shares in point of value, as nearly as possible, by a subdivision of the more valuable tract or tracts; and in case the situation of the estate is such, that an equal division cannot be made without injury to the tenants in common, and some of them are obliged to be charged with money to be paid to the dividends of inferior value, then the money shall not be payable until the person charged, if a minor, shall arrive at the age of twenty-one years.

To be equal, if practicable. Sums charged on minors, not payable till of age.—R. S. c. 85, s. 3.

4. The sums due from the more valuable dividends shall bear interest until paid. *Provided always*, that the guardian of the minor, to whom a more valuable dividend shall fall, shall pay such sums, whenever assets shall come into his hands; and if it shall appear that the guardian shall have had assets which he did not apply, he shall pay out of his own proper estate, any interest which shall have accrued in consequence of such failure.

But to bear interest, and guardian to pay when assets.—R. S. c. 85, s. 4.

5. The commissioners, for their services, shall be allowed whatever the court shall adjudge to be adequate; and the same, and the expenses incurred for surveyors or otherwise, and all other costs of the petition, shall be paid as the court may decree.

Commissioners and costs paid as may be decreed.—R. S. c. 85, s. 6.

6. Whenever application for partition of real estate shall be made to a court of equity, and it shall be suggested and made appear, that an actual partition cannot be made without injury to some or all of the parties interested, the court may order a sale of the property on such terms as may be deemed just and reasonable.

Sale, to prevent injury by actual partition, may be decreed.—R. S. c. 85, s. 7.

7. And whenever any joint-tenants, or tenants in common, or the guardian of such, on oath and by a petition or bill in equity to which all persons interested shall be made parties, shall state that their lands are required for public purposes, and that the interest of the proprietors requires that there shall be a sale thereof, and the facts shall be ascertained to be true, the court may order a sale of said lands, or of such parts as it may judge necessary, in the manner and on the terms it shall deem expedient. *Provided*, that whenever a sale shall be made under this or the preceding section, and any party shall be an infant, a *feme covert*, *non compos*, imprisoned, or beyond the limits of the State, the court shall decree the share of such person in the proceeds of sale, to be invested or settled so that the same be secured unto such person, or his real representatives.

Also when land required for public purposes.

Proceeds secured for infants, *feme coverts*, persons *non compos*, &c.—R. S. c. 85, s. 7, 8.

8. The court, in its discretion, may direct the sale of real estate decreed to be sold, to be made on the premises, or at any place within the county, in which the estate or some part thereof is situated; and when there shall be no such direction, it shall be made at the place prescribed for public sales.

Sales, where made.—R. S. c. 85, s. 9.

9. Whenever there shall be dower or a right of dower on

When there is dower, court

may decree sale and appor-  
tion dower.—  
R. S. c. 85, s.  
11.

any lands, petitioned to be sold for the causes aforesaid, the person entitled to the dower or right of dower, may join in the petition; and on a decree of sale, the interest of one third of the proceeds shall be secured to the person entitled to the dower or right of dower; or the value thereof shall be ascertained, and paid out of the proceeds to such person absolutely.

Proceedings  
where lands lie  
partly in this  
State, and partly  
in another.  
—R. S. c. 85,  
s. 12.

10. Whenever on the death of any person, his lands in this State, and in another State, shall descend or be devised to several persons, who, by the laws of this and the other State, shall hold in the lands undivided estates as tenants in common, 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 any of the cotenants, then, if such deceased person shall have been at the time of his death, a resident of this State, or not then a resident of any of the States, in which his lands lie, and in the last case the most valuable part of such lands shall lie in this State, such heir or devisee, or any person claiming under him, may file a bill in the court of equity for the county where the deceased resided at his death, or where any part of the land lies in this State, setting forth all the lands in which the plaintiff has an undivided estate, without and within the State, described by their names and boundaries or by the adjoining tracts, and also the estate the deceased 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 cotenants is entitled, under the laws of the several States, and praying for partition to be made of all the tracts, according to their respective interests, and the material facts set forth in the bill shall be verified by the affidavit of the plaintiff or his guardian, or other person, at the discretion of the court; and all persons concerned in interest in the lands, shall be made parties, according to the practice of the courts of equity in this State.

Court may decree partition  
thereof.—R. S.  
c. 85, s. 13.

11. On the hearing of the bill, the court may decree a partition; and shall allot in severalty to each tenant his just share of the lands, according to the value of his interest in the same, by the laws of the several States in which they are situate.

Commissioners  
appointed.  
Their duty in  
making parti-  
tion.

12. The court making such decree, shall issue a commission to five respectable freeholders in this or any State, where any part of the land may lie, unconnected by blood or interest with the parties, directing them or any three of them, to make partition between the cotenants, 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; and before making the allotment the commissioners shall make a valuation of all the lands held by the cotenants, in all the said States; and where they cannot, without injury to the value of some shares, make an exact division of the lands, they shall charge the more valuable dividends with money, to be paid to

the tenant of a less valuable dividend, to make equality of partition; and they shall report their proceedings as they may be directed, and the report shall contain a valuation of all the estate in the lands in this and the other State, and the division among the cotenants, according to such valuation; and the court may confirm such report, or, on sufficient cause shown, may correct and alter it, or set it aside and order a new commission; and where any sum is charged upon a more valuable dividend, the court may direct, if the tenant taking such a dividend 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 that the same shall bear interest at a rate not greater than 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 parties to execute and deliver deeds and assurances, sufficient, by the laws of this State and the other States, to give the partition full force and validity in all the States; and in case any of the parties are under such disabilities that they cannot execute such assurances, or are without the jurisdiction of the court, then the court, upon receiving evidence from the plaintiff, that, by a law of the other State in which lie the parts of the lands described in the bill to be without this State, the decree can have effect thereon, shall direct the decree to be enrolled, 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, duly certified, to the end that, as to the lands without this State, it may be carried into effect in the State in which the said lands may be, in such manner as said State may direct: And on satisfactory evidence being made to the court in this State, that the decree may have full effect by the 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 decree shall be firm and irreversible, as hereinafter provided; and shall on registration as aforesaid pass to the tenants the title 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.

What final decree court may make.—R. S. c. 85, s. 14.

13. Where real estate may be partly in this State and partly in another State, 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

Decree for partition in another State, when enforced in this.—R. S. c. 85, s. 15.

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 other State, the courts of record of the 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 the provision herein made on this subject, to decree partition of the lands in this State together with those within such other State, 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, as to the lands of deceased persons resident here at their death, or having lands of greater value here than in any other 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 courts in said State, produce the record and proceedings of such courts of record duly certified, to a court of equity of any county in this State, where any of the lands in this State lie, the court, on petition *ex parte* in such case, shall order such proceedings to be entered of record in the court of this State, and order that the said decree shall be of the same force and validity, as if it had 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 the decree of the court of such other State, and the proceedings on it by petition in the court of equity in this State confirming 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 the lands in this State according to the 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 chapter.

Court to judge whether another State has passed a law in conformity to this.—R. S. c. 85, s. 16.

14. Where a copy of a decree and proceedings of a suit in any other State shall be produced, as in the preceding section; 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, can have effect therein, it shall be competent for the court of equity, before which the existence of a law in such other State is to be proved, to judge whether any act of the Legislature of such State has been passed.

Time allowed to *feme covert*s, infants, &c.—R. S. c. 85, s. 17.

15. On an original bill or petition under this chapter, as against *feme covert*s, infants, persons *non compos mentis*, and against all parties, against whom judgment shall be taken *pro confesso* on publication, the final decree shall be binding, in



like manner, on the same terms and to the same extent, and with the like saving for persons under disabilities, as are provided under the rules regulating decrees in equity in the chapter entitled "Courts of Equity."

16. The commissioners, appointed to divide lands lying in this and another State, shall be entitled to three dollars per day for their services.

Pay of commissioners.—  
R. S. c. 85, s. 14.

17. When any persons entitled as tenants in common to any slaves or other chattel property, shall be desirous to have a division of the same, they may file a petition in the county or superior court, or court of equity, for that purpose; and if a division can be had without a sale of said slaves or other chattel property, the court may appoint three freeholders, unconnected with the parties by blood or affinity, who, first being duly sworn, shall divide such property as nearly equal as possible, and allot to each tenant in common his share in severalty, and make report to court as directed; and if such report be confirmed, a decree shall be entered accordingly and vest in each tenant in common his share in severalty.

Personal property, partition of how made.—  
R. S. c. 85, s. 18.

18. If a division of slaves, or other chattel property, cannot be had without injury to some of the parties interested, and a sale thereof may be deemed necessary, the court shall order sale of the same to be made by the clerk or some other fit person, who shall sell the said slaves or chattel property, after twenty days' notice, in three or more public places in the county, by advertisement; and the deed of the clerk or person appointed, when directed to be made, shall convey to the purchaser such title, interest, and estate therein, as the tenants in common had; and the clerk, or person appointed as aforesaid, shall report to the court all his proceedings in the case; and the court shall secure to each tenant in common his ratable share in severalty of the proceeds of sale.

When sold for partition.—  
R. S. c. 85, s. 19.

19. Whenever a petition is filed under the two last sections, and either party may be an infant, or person *non compos mentis*, without guardian, the court shall appoint a guardian for such party.

Infants &c., to have guardian.—  
R. S. c. 85, s. 20.

20. The freeholders appointed to make division, or the person appointed to make a sale, of property held in common, shall be paid for their services a sum to be judged by the court and taxed in the bill of costs, all of which shall be paid by the parties in such manner as the court may decree.

Pay of commissioners acting in the State.—  
R. S. c. 85, s. 21.

SECT. 1. *Partition a right*, 8 Ire. 462, 7 Ire. Eq. 94, 2 Ib. 607. *Land left to be divided in a particular way*, 8 Ire. Eq. 84. *When title disputed*, 4 Dev. 223, 5 Ire. Eq. 111, 10 Ire. 361. *Partnership property*, 2 Jones, 120.

SECT. 3. *Assessment a lien*, 5 Ire. Eq. 425, 1 Dev. Eq. 23. *Pleading and practice*, 1 D. & B. 257, 2 Dev. 529, 1 Dev. Eq. 47, 3 Hawks, 41. *Judgment conclusive*, 8 Ire. Eq. 242, 2 D. & B. 433.

SECT. 6. *Sale*, 2 Jones, Eq. 66, 6 Ire. Eq. 183, see note to section 1. 3 Mur. 207. *Share of feme covert*, 1 Dev. Eq. 118; *of infant*, Bus. Eq. 91, 4 Hawks, 215. *Dower*, 6 Ire. Eq. 392.

SECT. 17. *Pleading and practice*, 6 Ire. 219, 7 Ire. Eq. 4, 8 Ib. 25; *when cotenancy denied*, 10 Ire. 361, 5 Ire. Eq. 111.

## CHAPTER 83.

## PATROL.

## SECTION

1. County courts may appoint patrol committee, who shall employ a patrol. May also appoint a patrol.
2. Committee refusing to act, penalty.
3. Duties and powers of patrol.
4. Rules for, prescribed by court.

## SECTION

5. Committee may discharge patrollers and appoint others.
6. Patrol appointed by committee refusing to act ; penalty.
7. By court, refusing to act ; penalty.
8. Pay of patrol. Tax therefor.

Co. courts may appoint patrol committee, who shall employ a patrol.

1. THE county court of each county, if the court deem it necessary, shall, at the first court that may be held after the first of January, in every year, or any subsequent court, appoint a patrol committee of three persons, in each captain's district in said county, who shall 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.

May also appoint a patrol.—R. S. c. 86, s. 1.

Committee refusing to act, penalty.—R. S. c. 86, s. 2.

2. Any person, appointed one of the patrol committee, who shall neglect to discharge his duties, shall pay a penalty of twenty-five dollars, to be recovered on motion to the court by the county solicitor and paid to the county trustee, in aid of the tax in support of the patrol.

Duties and powers of patrol.—R. S. c. 86, s. 3.—1848, c. 73.

3. The patrol shall visit the negro houses in their respective districts, as often as may be necessary, and may 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 slaves have leave to go. The patrol shall also visit all suspected places, and suppress all unlawful collections of slaves ; shall be diligent in apprehending all runaway negroes in their respective districts ; shall be vigilant and endeavor to detect all thefts, and bring the perpetrators to justice, and also all persons guilty of trading with slaves. The patrol thus employed, or appointed by the county court, or any two of them, shall have such powers as may be necessary to a proper discharge of the duties herein enjoined ; and if, upon taking up a slave and chastising him, as herein directed, he shall behave insolently, they may inflict further punishment for his misconduct, not exceeding thirty-nine lashes.

Rules for, prescribed by court.—R. S. c. 86, s. 4.

4. The county courts shall prescribe all necessary rules for the government of the patrol of the respective counties, and the patrol shall be subject thereto, under such fines and penalties as the court shall fix and direct.

Com. may discharge, &c.—R. S. c. 86, s. 5.

5. The patrol committee shall have full power to discharge any one or more of the patrol, and employ others, at any time when they may think it expedient.

6. Any person, appointed by the committee one of the patrol, who shall neglect to serve, shall be subject to a penalty of twenty dollars, to be sued for by the patrol committee of his particular district, and paid by them to the county trustee, in aid of the tax for the support of the patrol.

Patrol of com. refusing to act, penalty.—R. S. c. 86, s. 6.

7. Any person appointed one of the patrol by the court, who shall neglect to serve, shall forfeit and pay twenty dollars.

Appointed by court, and refusing, penalty.—R. S. c. 86, s. 6.

8. The patrol shall receive such compensation for their services as may be allowed them by the county court; and the court, a majority of the justices being present, may lay a tax not exceeding twenty-five cents on each taxable slave, to defray the expenses of the patrol.

Pay of patrol. Tax therefor.—R. S. c. 86, s. 7; R. S. c. 28, s. 20.

SECT. 3. *Liable for malice*, 1 Hawks, 418.  
SECT. 6. *Ministers not exempt*, Bus. 89.

## CHAPTER 84.

### PENSIONS.

Pensions allowed persons disabled in militia service, and their widows and orphans.  
Mode of procuring the same.

EVERY person who may have been disabled by wounds in the militia service of the State, or rendered incapable thereby of procuring subsistence for himself and family, and the widows and orphans of such persons who may have died, may apply to the court of the county in which such person, widow, or orphan shall reside, and the court shall certify to the General Assembly their distresses; and thereupon, such person shall have an allowance by the General Assembly sufficient for one year's relief: and the allowance shall be continued from year to year, so long as the court shall certify that such person, widow, or orphan continues under the description aforesaid: which certificate of court, countersigned by the speakers of the General Assembly, during the year of its meeting, and in every other year, by the governor, shall be a sufficient voucher in settling his public accounts, to any sheriff, collector, or treasurer, who may pay the same.

Pensions allowed persons disabled in militia service, and their widows and orphans.

Mode of procuring.—R. S. c. 87, s. 1, 2.—1838, c. 25.

## CHAPTER 85.

## PILOTS.

## SECTION

1. Commissioners of Navigation for Cape Fear river yearly elected by citizens of Wilmington.
2. How styled. To fill vacancies, and appoint a clerk. To establish, &c. fees of pilots. To have authority concerning navigation of the river, &c.
3. Harbor master appointed.
4. Pilot stations and pilotage, &c. regulated by commissioners.
5. Pilots appointed by board.
6. Bond given by pilots.
7. Disputes between masters and pilots, decided by board. Warrant for pilotage, forfeiture, &c., may be issued by one of the commissioners. Jurisdiction not to exceed sixty dollars. May summon witnesses, and administer oaths.
8. Stay of execution not allowed. Appeals allowed.
9. Notice given when rates of pilotage altered.
10. Number of boats to be prescribed for pilots.
11. Rights of pilots as to Main and New Inlet bars of Cape Fear.
12. Apprentices to be kept by pilots.
13. Penalty on pilots not attending when requested. Proviso.
14. Pilots refused, entitled to full pay.
15. One third fees only, due to pilots in certain cases.
16. Pilotage, when vessel deepened or lightened.
17. Vessels, of what burden, and where, exempt from pilotage.
18. Of sixty tons, coming into Cape Fear river for coal exempt, if they hoist a prescribed flag. Outward bound coal vessels also. Penalty on captains, &c. falsely hoisting flag of coal vessels.
19. Penalty on coal vessels not raising flag.
20. Pilotage of, not to be altered, &c.
21. Commissioners of navigation for Newbern, Washington, and Edenton, yearly appointed. Mode of appointing. Vacancies, how filled.

## SECTION

22. Power of commissioners.
23. Commissioners of Washington, a body corporate. Their style and powers. May provide for receiving persons in quarantine. Employ physician, &c.
24. Board of commissioners for Ocracock to be continued; to meet three times a year at Ocracock. To appoint pilots for the bar, swashes, &c. To keep office at Ocracock. Fees paid for branches, how disposed of. Vacancies, how filled. Commissioners to keep a journal, and take oath. Branches to expire in three years.
25. Commissioners of navigation for Carteret, Onslow, and Hyde. Those of Carteret, a board for Old Topsail inlet, &c. Of Onslow, a board for Bogue inlet, &c. Of Hyde, a board for Hatteras Inlet, &c. Vacancies, how filled. Powers of boards.
26. Bonds given by pilots.
27. To have a telescope or spy-glass.
28. May be removed for misconduct, &c. Penalty for acting after removal. Notice of removal published.
29. Penalty for acting without license.
30. Pay to pilots for detention. Pay when driven off coast, after boarding.
31. Penalty for neglecting to go to a vessel with a signal, &c.
32. Pilots, when refused, to have pay.
33. No pilotage on ships under 60 tons. Exception.
34. Rates of pilotage for Edenton, Washington, Newbern, Ocracock, and Hatteras pilots.
35. Harbor masters and clerks appointed by boards.
36. Rates of pilotage at Old Topsail.
37. Bogue inlet.
38. Fees of pilots annexed to branches.
39. Penalty, when a slave acts as pilot.
40. Boards to designate where ballast, trash, &c., may be cast. Penalty for throwing ballast, stone, &c., into navigable water, or pulling down beacons, &c.
41. On pilots not informing thereof.
42. Penalties and fines, how disposed of. Annual report made thereof.

1. THERE shall be elected annually on the first Monday of May, five commissioners of navigation and pilotage for Cape Fear river, who shall be citizens of the town of Wilmington. The election shall be held at the court house of the county, shall be conducted by the sheriff of New Hanover in the same manner as political elections, and shall be made by the citizens of the town who are resident therein and are qualified to vote for members of the house of commons.

Comm'rs of navigation for Cape Fear river yearly elected by citizens of Wilmington.— R. S. c. 88, s. 1.— 1840, c. 47, s. 2; 1850, c. 27, s. 1.

2. The commissioners shall be styled the board of commissioners of navigation and pilotage for the Cape Fear river, and a majority of them may act in all cases. Said board shall have power to fill vacancies as they occur in the board, during their term; to appoint a clerk to record in a book the rules, orders, and proceedings of the board; to establish, from time to time, all such rules, regulations, and orders for the port as they may deem necessary and efficient for the detection, apprehension, or return of slaves, escaping or attempting to escape from the port in vessels; and to establish, and as often as need may be, to alter and regulate the fees and charges of the pilots or harbor masters of the port for services required of them by virtue of such rules, regulations, and orders. Moreover, they shall have authority in all matters that may concern the navigation of the waters from seven miles above Negrohead point downwards and out of the bar and 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; and the commissioners of pilotage, and the commissioners of the town, shall consult together, upon the best methods of preventing any injury to the channel, by wharves or otherwise in the town, and when there is no harbor master, the commissioners of navigation and pilotage shall decide all disputes about the moving of vessels and other matters, which properly fall within the department of harbor master.

How styled.  
To fill vacancies, and appoint a clerk.  
To establish, &c., fees of pilots.

To have authority concerning navigation of the river, &c.— R. S. c. 88, s. 2.— 1848, c. 47, s. 3.

3. The said commissioners immediately on their election, shall appoint a harbor master for the port of Wilmington, who shall hold his office for one year next ensuing; and they shall prescribe the duties of his office. He shall be entitled to receive from the master of each vessel, that shall enter said port, one dollar, and such fees for other services as the commissioners may prescribe.

Harbor master appointed.— R. S. c. 88, s. 4.

4. The commissioners shall, from time to time, make and establish such rules and regulations, respecting the arrangement and station of pilots, and the rates of pilotage, as to them shall seem most advisable, and shall impose reasonable fines, forfeitures, and penalties, for the purpose of enforcing the execution of such rules and regulations.

Pilot stations and pilotage, &c., regulated by comm'rs.— R. S. c. 88, s. 3.

5. The board, or a majority of them, shall, from time to time, examine, or cause to be examined, such persons as may offer themselves to be pilots for Cape Fear river and bars, and shall give to such as are approved, commissions, under their

Pilots appointed by board.— R. S. c. 88, s. 5.

hands and seals, to act as pilots both for the bars and rivers, according as they shall be found qualified.

Bond given by pilots.—R. S. c. 88, s. 6.

6. Every person, before he obtains a commission or a branch to be a pilot, shall give bond with two sufficient sureties payable to the State of North Carolina, in the sum of five hundred dollars, with condition for the due and faithful discharge of his duties, and the duties of his apprentices; and the board may, from time to time, and as often as they may deem it necessary, enlarge the penalty of the bond, or require new and additional bonds to be given; and every bond taken of a pilot shall be filed with, and preserved by, the said board of commissioners in trust for every person that shall be injured by the neglect or misconduct of such pilot, or his apprentices; who may severally bring suit thereon for the damage by each one sustained.

Disputes between masters and pilots, decided by board. Warrant for pilotage, forfeiture, &c., issued by a comm'r.

7. The board shall have power and authority to hear and determine 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 them 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 which 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 and bars, or incurred by any by-law or rule passed in virtue thereof; which warrant the sheriff or any constable of New Hanover county shall execute, together with all other process authorized by this chapter. And on any warrant, issued as aforesaid, any one of said commissioners may give judgment for any sum, not exceeding sixty dollars, and may issue execution thereon, in the manner of issuing execution on judgments given by justices of the peace; which may be executed agreeable to the rules and regulations prescribed for the levy and sale under executions issuing on judgments rendered by justices of the peace; and such commissioner shall issue summons for witnesses, and administer oaths as is done in cases of trials before justices of the peace.

Jurisdiction not to exceed \$60. May summon witnesses, and administer oaths.—R. S. c. 88, s. 9.

Stay of execution on judgment not allowed.

8. There shall be no stay of execution on any judgment obtained by pilots against masters of vessels, or by masters of vessels against pilots, or by pilots against pilots, on account of any compensation or detention, or for any forfeiture or penalty payable to any pilot or master of a vessel, by a pilot or master of a vessel, in virtue of any act of the General Assembly, or by-law made in pursuance thereof: but appeals shall be allowed in such cases under the rules which regulate appeals from the judgments of justices of the peace. *Provided, however,* that, if on the appeal of any defendant, the recovery shall not be lessened, and it shall be the opinion of the court that the appeal was obtained for the purpose of delay, the court shall adjudge the defendant to pay twenty per cent. on the amount of the original judgment, which shall be added thereto, and execution shall issue for the whole amount.

Appeals allowed.—R. S. c. 88, s. 10.

9. When the commissioners aforesaid shall alter the rates of pilotage, they shall cause the new rates to be set up in the office of the collector of the port; and shall also cause them to be annexed to the several pilots' branches, certified under their hands.

Notice given when rates of pilotage altered. — R. S. c. 88, s. 11.

10. The commissioners aforesaid shall determine and make known, as far as occasion may require, to the pilots, how many decked boats are necessary for the attendance on the bars respectively; in which decked boats any number of said pilots, not exceeding five, may act and be concerned as partners and joint owners.

Number of boats prescribed for pilots. — R. S. c. 88, s. 12.

11. The pilots having branches to pilot over the main bar, or New Inlet bar, 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 does not attend to navigate the same, the captain or master may employ any other pilot for that purpose, such other pilot being a branch or commissioned pilot for the bar over which the 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 forty dollars to the pilot or pilots, who, by this chapter, would have been entitled to navigate said vessel out of port.

Rights of pilots as to main and New Inlet bars of Cape Fear. — R. S. c. 88, s. 13.

12. Every pilot, commissioned as aforesaid, shall keep at least one, but not more than two apprentices, and instruct them in the art and mystery of a pilot; which said apprentices, upon being authorized by the board, may pilot any vessel, which their several masters are entitled to pilot, for the behoof and emolument of their masters, without let or molestation, subject however to the same regulations as the pilots are.

Apprentices to be kept by pilots. — R. S. c. 88, s. 14.

13. When any pilot shall have notice from the master of any vessel to attend in piloting such vessel, and shall not, without delay, go on board for that purpose, he shall forfeit and pay to the master ten dollars, (unless he shall, at the time of such notice, have the actual and personal charge of some other vessel,) for each day's delay, caused by his neglect, of the vessel which he had notice to attend, and the further sum of one day's expense of such vessel, 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 may administer). *Provided*, that no 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 be previously paid him, or satisfactory security for the payment thereof be given him.

Penalty on pilots not attending when requested.

Proviso. — R. S. c. 88, s. 15.

14. When any master of a vessel, not having a pilot on board, coming over the bar into the Cape Fear river; or being

Pilots, refused, entitled to full pilotage. — R. S. c. 88, s. 18.

in the river and going out of either of the inlets, shall refuse a pilot across the bar, then each pilot so refused, shall be entitled to the same pilotage, as if he had been actually employed to pilot, and had piloted such vessel.

One third fees only, due to pilots in certain cases.—R. S. c. 88, s. 19.

15. 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.

Pilotage, when vessel deepened or lightened.—R. S. c. 88, s. 20.

16. If any vessel deepens or lightens between Wilmington and the flats, between the flats and Brunswick, or between Brunswick and Fort Johnson, the pilot shall be paid for the greatest draught of water, and shall besides be entitled to demand, at the rate of two dollars per day, for every day or part of a day, he may be delayed in loading or unloading such vessel.

Vessels, of what burden, and where, exempt from pilotage.—R. S. c. 88, c. 22 — 1840, c. 48.

17. No master of a vessel shall be required to take or keep a pilot on board, or pay for pilotage in the river, inside of the bar, in going either up or down the river; nor shall any vessel under sixty tons burden be compelled to take a pilot while crossing the bar, or pay pilotage, 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.

Of sixty tons, coming into C. F. river for coal, exempt, if they hoist a prescribed flag.

18. All vessels of sixty tons burden or upwards, bound from sea to Cape Fear river, with the intention of taking a return cargo of coal, which has been mined in the State, and actually taking such cargo, shall be exempt from pilotage.

*Provided*, that such vessel, when coming in sight of New Inlet or Main bar, shall hoist at her topmast head, or such other place as shall be designated by the board of commissioners aforesaid, and keep the same flying till said vessel shall have crossed the bar or inlet, a flag one yard square, of a white ground, with a black ball in the centre of not less than a foot in diameter. And all vessels in the river of like burden, outward bound and laden with coal, shall also be exempt from pilotage. *Provided*, they hoist said flag as soon as they come in sight of, and keep it flying till they pass New Inlet or Main bar. *Provided, however*, that no vessel of sixty tons burden or upwards, having on board any merchandise or freight, except coal, shall be entitled to exemption from pilotage. *And provided further*, that if any vessel of the burden last mentioned, coming into the Cape Fear river through New Inlet or Main bar, or going out of the river to sea, shall hoist said flag under false pretences, to avoid paying pilotage, the master, captain, and owner thereof shall pay double pilotage to some one of the pilots, for the equal benefit of them all.

Outward bound coal vessels, also.

Penalty on captains, &c., for hoisting flag of coal vessels.—1850, c. 116, s. 1, 3.

Penalty on coal vessels for not raising flag.—1850, c. 116, s. 5.

19. All vessels of such burden engaged in the transportation of coal, on the coast of North Carolina, whenever they appear within sight of any pilot station, shall raise said flag,



to the end that pilots may know that their services are not required, under the penalty of ten dollars, to be paid by the master or owner to any one of the pilots who may first sue for the same.

20. The board of commissioners shall not alter the rules and regulations concerning pilotage, prescribed in the two preceding sections.

21. Five persons who shall be residents of the towns, respectively, and possessed of a freehold therein, shall be annually appointed commissioners of navigation, for each of the ports of Newbern, Washington, and Edenton. Those for the ports of Edenton and Newbern, shall be chosen by the freemen of said towns respectively, who are entitled to vote for commissioners of the towns, at the same time and in the like manner as are elected the commissioners of the respective towns: and those for the port of Washington shall be appointed by the county court of Beaufort, (seven justices at least being present,) at the first court of each year: and all vacancies in said boards, whether by a refusal to act, resignation, or otherwise, shall be filled by the remaining commissioners, until the same shall be filled (which is hereby directed to be done) at the regular period of election.

22. 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 commissioners shall think most convenient for the safety of vessels.

23. The commissioners of the port of Washington shall be a body corporate, under the name of "the commissioners of navigation for the port of Washington," and have all the powers of a corporation, concerning the subjects placed under their control; and they shall have authority in all matters that concern the navigation of Pamlico river from Willow point downwards, and may purchase and sell and buy again, at their discretion, at or near the port of Washington a piece of land and erect thereon suitable houses for the reception of persons on board any vessel which, by the laws of the State, might be compelled to perform quarantine, and to have over such persons when landed, the same control as if performing quarantine in the accustomed mode. Also, to employ a physician to attend the persons landed; to furnish them with such articles of provision, clothing, or other necessaries, as their situation may demand during their continuance there. And it is hereby enacted, that both the vessel and the persons so landed shall, in all things and to every intent whatever, be considered, while remaining on said piece of land, to be in a state of quarantine, and subject, both they and all persons, to the same penalties for leaving or visiting said place, for breaking or violating such

Pilotage of, not altered, &c.—1850, c. 116, s. 4.

Comm'rs of navigation for Newbern, Washington, and Edenton, yearly appointed. Mode of appointing.

Vacancies, how filled.—R. S. c. 88, s. 27.—1842, c. 65, s. 1.

Power of commissioners.—R. S. c. 88, s. 28.

Com'rs of Washington, a body corporate. Their style and powers. May purchase lands and erect houses, for receiving persons in quarantine. May employ physician, &c.—1842, c. 65, s. 2, 3.

quarantine in any respect whatever, as if the said persons so landed had remained on the vessel.

Board of com'rs for Ocracock, to be continued; to meet three times a year at Ocracock.

To appoint pilots for the bar, swashes, &c.

To keep an office at Ocracock.

Fees paid for branches, how disposed of. Vacancies, how filled.

Com'rs to keep a journal, and take oath.

Branches to expire in three years.—R. S. c. 88, s. 29.

Com'rs of navigation for Carteret, Onslow, and Hyde.

Those of Carteret, a board for old Topsail inlet, &c.

Of Onslow, a board for Bogue inlet, &c.

Of Hyde, a board for Hatteras inlet, &c. Vacancies, how filled.

Powers of boards.—R. S. c. 88, s. 32.—

24. The board of commissioners for the port of Ocracock, established by the twenty-ninth section of an act of the General Assembly, passed in the year 1836, entitled "*An Act to reduce into one the several acts concerning pilots and commissioners of navigation*," and now existing by virtue of the provisions thereof, shall continue to exist; and it shall be their duty 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 when found competent to take charge of any ship or vessel as a pilot, the board shall issue to him a branch, and take the bond 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 have an office at Ocracock, in which shall be filed the bonds of the pilots; and every pilot receiving a branch from said board, shall pay to the 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 residue shall be divided between all the members of said board; when a vacancy shall occur in the board by death, resignation, or refusal to act, a majority thereof shall appoint some suitable person thereto, whose residence shall be at the same place where the vacancy occurred. Said commissioners shall keep a regular journal of their proceedings; and before entering on the duties of their office, they shall take and subscribe before any justice of the peace of the counties of Carteret or 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.

25. Each of the county courts (a majority of the justices being present) of the counties of Carteret, Onslow, and Hyde shall, if not already done, appoint five commissioners of navigation; those appointed by the court of Carteret, to be a board for Old Topsail inlet and the waters thereof; those appointed by the court of Onslow to be a board for Bogue inlet and its waters; those appointed by the court of Hyde, to be a board for Hatteras inlet and its waters. And when vacancies occur in any of the boards, by refusal to act, by resignation, or otherwise, the remaining members of such board shall fill the same, until the same be supplied by the appointing court, which is directed to be done at the first court after the vacancy occurs. And the said boards, respectively, shall have the same powers and authorities as to pilots and pilotage, as to staking out

the respective channels, and as to placing buoys and beacons, of their several and respective inlets and waters, as are given to the commissioners of navigation for the ports of Newbern, Washington, and Edenton.

1846, c. 60;  
1846, c. 193.

26. All pilots appointed by the commissioners of navigation for Newbern, Washington, Edenton, Ocracock, Old Topsail, and Bogue inlets, shall give bond, with sufficient security, for the amount, and in the manner prescribed for the bonds of the Cape Fear pilots, in section six of this chapter, and be subject to the same rules, regulations, and right of recovery as are there specified.

Bonds given by pilots.—R. S. c. 88, s. 24.

27. Every pilot, within such convenient time as the commissioners may direct, who have control over the waters within which he acts, shall furnish himself with a good telescope or spy-glass, under the penalty of fifty dollars, to be paid to the commissioners.

To have a telescope or spy-glass.—R. S. c. 88, s. 21.

28. Whenever any pilot appointed by any board by this chapter authorized to appoint, shall on trial be found to be incompetent, or shall be guilty of improper conduct by intoxication or otherwise, or of any misbehavior in his office, the pilot so offending, may be removed from his office by the board of commissioners under whose authority he is acting, by a notice to him in writing; and if after such removal, he shall attempt to take charge of any vessel, he shall forfeit and pay two hundred dollars for the use of said board. And it shall be the duty of the board to put up a written notice of the removal, in the public places within the port, or publish it in some convenient newspaper.

May be removed for misbehavior, &c.

Penalty for acting after removal. Notice of removal published.—R. S. c. 88, s. 7, 21, 35.

29. If any person shall presume to act as pilot, who is not qualified and licensed in the manner herein prescribed, he shall forfeit and pay, for the use of the commissioners, forty dollars for every attempt at piloting. *Provided, nevertheless,* that should there be no pilot in attendance, any person may conduct into port, any vessel in danger from stress of weather, or in a leaky condition.

Penalty for acting as pilot, without license.—R. S. c. 88, s. 8, 33.

30. If the master of any vessel shall send for or take on board, any pilot to conduct his vessel from her station to any other place, and shall afterwards neglect or delay to remove such vessel, (wind and weather permitting,) he shall pay to the pilot two dollars for attending each day he shall be so detained; and if any vessel, which shall be boarded by a pilot, without or within any of the inlets, shall, by violence of the weather or otherwise, be driven to sea, the master or owner of such vessel shall allow and pay the pilot two dollars per day, for every day he shall be on board, besides the fees of pilotage.

Pay to pilots for detention.

Pay when driven off coast, after boarding.—R. S. c. 88, s. 16, 33.

31. When any pilot shall see any vessel on the coast, having a signal for a pilot, or shall hear a gun of distress fired off the coast, and shall neglect or refuse to go to the assistance of such vessel, such pilot shall forfeit and pay one hundred dollars, to be recovered in the name of the State, one half to

Penalty for neglecting to go to a vessel, having a signal, &c.—R. S. c. 88, s. 17, 36.

the use of the informer, and the other half to the master of the vessel; unless such pilot is then actually in charge of another vessel.

Pilots, when refused, to have pay.—R. S. c. 88, s. 38.

32. 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 to such pilot, if not previously furnished with one, the same sum as is allowed by law for conducting such vessel in, to be recovered before a justice of the peace, if the sum be within his jurisdiction.

No pilotage on ships under 60 tons.

33. 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 burden, unless such vessel shall have given a signal for a pilot, or otherwise shall have required the assistance of a pilot.

Exception.—R. S. c. 88, s. 30, 39.

Rates of pilotage for Edenton, Washington, Newbern, Ocracock, Hatteras.—R. S. c. 88, s. 40.—1846, c. 49, s. 1, 2, 3.

34. Branch pilots of Edenton, Washington, Newbern, Ocracock, or Hatteras, shall be entitled to receive of the commander of such vessel as they may have in charge, the following pilotage, namely: for every vessel of sixty and not over one hundred and forty tons burden, from the other side of the bar, at any place within the limits of the pilot ground, to Beacon Island road, or Wallace's channel, ten cents for each ton; and the further sum of two and a half cents for each ton over one hundred and forty; and two dollars for each vessel over either of the swashes; (that is, over said swashes, either to or from Beacon Island road, or Wallace's channel, or over any shoal lying intermediate, between either of said swashes and Beacon Island road, or Wallace's channel); for every ship or vessel from the mouth of the swash to either of the ports of Newbern or Washington, one dollar per foot; and for every ship or vessel from the same place to the port of Edenton, twelve dollars; and to the port of Elizabeth City, ten dollars; and the same allowances down, as up, and outwards, as inwards.

Harbor masters and clerks appointed by boards.—1846, c. 69.

35. The several boards of commissioners may appoint a harbor master for their respective ports; and the commissioners of Old Topsail inlet shall appoint a harbor master for the port of Beaufort. They shall appoint a clerk to keep books, in which shall be recorded all their proceedings.

Rates of pilotage at Old Topsail inlet.—R. S. c. 88, s. 41.

36. The branch pilots for Old Topsail inlet shall be entitled to receive of the commander of such vessel, as they may have charge of, the following pilotage, namely: for every vessel of sixty tons burden, from the outside of the inlet, at any place within the limits of pilot ground, into Bogue road or Shackleford road, at the option of the commander, six dollars; for vessels drawing eight feet water and less than twelve, one dollar per foot; for all vessels drawing twelve feet and upwards, one dollar and twenty-five cents per foot; and the same fees for piloting outwards as inwards.

Bogue inlet.—R. S. c. 88, s. 42.

37. The branch pilots for Bogue inlet shall be entitled to receive of the commander of such vessel, as they may have

charge of, the following pilotage, namely: 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.

38. The commissioners of navigation for the several ports of this State, shall annex to the branch or commission, by them given to each pilot, a copy of the fees to which such pilot is entitled.

Fees of pilots annexed to branches.—R. S. c. 88, s. 43.

39. If any slave shall, with the consent of his 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 the State, or shall pilot any such ship or vessel out of and over any bar or inlet, the owner shall forfeit the value of such slave, to be recovered in the name of the State; one half to the use of the person suing for the same, the other half to the use of the county where the owner resides.

Penalty, when a slave acts as pilot.—R. S. c. 88, s. 44.

40. The several boards of commissioners, established by this chapter, may designate the places whereat, within the waters under their several and respective control, may be cast and thrown ballast, trash, stone, and such like matter: and if any person shall cast or throw from any vessel, into the navigable waters of Carteret or Onslow counties, of Tar or Pamlico river, or into the navigable waters of the Cape Fear, or any other river in the State, or into any channel of navigable water elsewhere than in a river, any ballast, stone, shells, earth, trash, or other substance likely to be injurious to the navigation of such waters, rivers, or channels; or if any person shall wilfully pull down any beacon, stake, or other mark, erected or placed in virtue of this chapter, or any by-law, order, or regulation, passed or ordained in pursuance thereof; the person so offending shall be deemed guilty of a misdemeanor, and may be indicted therefor: and, moreover, shall forfeit and pay two hundred dollars, to be recovered for the use of the commissioners in whose waters the offence was committed.

Boards to designate where ballast, trash, &c., may be cast. Penalty for throwing ballast, stone, &c., into navigable water, or pulling down beacons, &c.—R. S. c. 88, s. 23, 24, 45.—1842, c. 65, s. 4; 1846, c. 60, s. 3.

41. If any pilot shall knowingly suffer any such unlawful act to be done, and shall not within ten days thereafter give to the said commissioners, or one of them, information thereof, such pilot shall likewise be deemed to be guilty of a misdemeanor; and, besides the usual punishment of such offence, on conviction, shall be forever incapable of acting as a pilot in the State. *Provided always*, that it shall be the especial duty of the commissioners to enforce the penalties imposed in every section of this chapter, which, or part of which, are given to the commissioners.

Penalty on pilots for not informing thereof.—R. S. c. 88, s. 25, 26.

42. One half of all the penalties, fines, and forfeitures, imposed in this chapter, which, or any part of which, are to be recovered by the commissioners, shall belong to the board, within whose jurisdiction the same may have been incurred, and shall be applied to the defraying of the expenses of the

Penalties and fines, how disposed of.—R. S. c. 88, s. 46.

Annual report  
made thereof.

board; and the other half shall be applied to the improvement of the navigation of the waters, within the same jurisdiction. And an annual report of the last-mentioned half of such receipts, and the objects on which the same may have been expended, shall be made to the board of internal improvement.

## CHAPTER 86.

### POOR.

#### SECTION

1. Wardens of poor elected by the justices. To be notified, &c.
2. To serve three years, and take oath.
3. Warden's court held at court house. To appoint clerk, &c. Treasurer to give bond.
4. Penalty on clerks, and sheriffs, &c. On wardens, refusing to qualify. Vacancies, how filled.
5. Three wardens may call a court. Penalty for not attending.
6. Wardens to keep a journal of proceedings. To keep and publish annually, accounts of receipts, &c.
7. Tax laid by majority of justices, for poor.
8. Wardens, &c., to settle with successors. On failure, to pay \$100. Summary recovery of money detained.
9. Poor-houses may be established.
10. Houses and poor managed by wardens.
11. Property of wardens free from tax.
12. Legal settlements, how acquired.
  - (1.) By one year's residence.
  - (2.) Married women to have the settlement of husbands, if, &c.

#### SECTION

- (3.) Legitimate children, that of their father or mother, &c.
- (4.) Illegitimate, that of the mother, &c.
- (5.) Settlements to continue, till others acquired, &c.
13. Paupers to be removed to their settlements. Unless sick and disabled. All charges to be paid by the county of his settlement. Housekeepers entertaining paupers, to give notice.
14. Families of poor militia-men on service, to be supported.
15. Disabled slaves provided for by wardens. Owner to repay charges.
16. If dead, his estate charged.
17. May be removed to owner's county.
18. Two wardens may act in such cases.
19. Proceedings when owner about to remove, and leave infirm slave.
20. Stock of slaves to be taken by wardens.
21. Penalties imposed in this chapter to go to the poor.
22. County court may pay wardens.

Wardens of  
poor elected  
by a majority  
of justices.—  
1846, c. 64.

1. THE justices of the several courts of pleas and quarter-sessions, a majority being present, at the first term held on or after the first day of January in the year in which wardens of the poor are now chosen, and every three years thereafter, shall elect not more than twelve, nor less than seven freeholders, to serve as wardens of the poor in their respective counties, for the term of three years next after the election: and the justices shall, at the term of electing the wardens, appoint a time for their meeting, of which the clerks shall forthwith issue notices to be served on the wardens by the sheriff, within ten days after receiving them.

To be notified,  
&c.

To serve three  
years, and

2. The wardens shall serve for three years, and at the first meeting next after the election, shall take before some magis-

trate the oath appointed for public officers, and shall take and subscribe in a book to be by them kept for that purpose, the oath of office prescribed for them.

take oath.—R. S. c. 89, s. 3.

3. The court of wardens shall be held at the court house; and a majority of them at their first meeting shall appoint a treasurer of the court, and take from him a bond with ample security for the faithful discharge of his duties; and shall also appoint for their clerk some fit person who shall not be of their own body.

Court of, held at court house. To appoint clerk, &c. Treasurer to give bond.—R. S. c. 89, s. 6.—1848, c. 100.

4. Every clerk or sheriff failing to discharge the duties prescribed in this chapter, and every person elected a warden, who shall refuse or neglect to qualify as aforesaid, after notice as aforesaid, shall forfeit and pay twenty dollars; and when a person elected shall refuse or neglect to qualify, or when a vacancy may occur by death, removal, or otherwise, a majority of the other wardens shall elect of freeholders others in their stead, and the persons so chosen shall be subject to the same penalty for refusing or neglecting to qualify.

Penalty on clerks and sheriffs, &c. On wardens, refusing to qualify.—R. S. c. 99, s. 4.—1848, c. 98. Vacancies, how filled.

5. Any three wardens may call a court of wardens when necessary, by written summons directed to any sheriff or constable of the county, who shall execute the same under the penalty of ten dollars for every wilful neglect; and every warden summoned, who may wilfully neglect to attend, shall forfeit and pay the like sum.

Three wardens may call a court. Penalty for not attending.—R. S. c. 89, s. 7.

6. The wardens shall keep in well-bound books a journal and minutes of their proceedings, in which shall be fairly stated accounts of all moneys, which from time to time they shall receive, and the purposes for which the same may have been disbursed; and every year, at the next court of their respective counties after the first day of June, they shall publish and set up, at the court house, an account of the moneys received from taxes or otherwise, for the purposes aforesaid, with the use and application of the same, particularly specifying the expense of the paupers, with an account of the claims or debts unpaid, if any, and to whom due; under the penalty of two hundred dollars for the use of the county, to be prosecuted by the solicitor thereof.

Wardens to keep a journal of proceedings.

And publish annually accounts of receipts and expenditures.—R. S. c. 89, s. 8.

7. On application of the wardens, the justices, when providing for other county revenue, may lay a tax sufficient for the maintenance of the poor, which shall be collected and paid to the wardens, at the same time as other county taxes are paid to the county trustee.

Tax for poor laid by majority of justices.—R. S. c. 89, s. 9.

8. When the wardens go out of office, they and their clerk and treasurer shall deliver to the succeeding wardens all their books, journals, and minutes of the proceedings, and shall settle with, and pay to their successors, all the money remaining in their hands; and on failure to do so, each of the persons offending shall forfeit and pay to the successors one hundred dollars; which sum, with any money that may be in the hands of the offending person, may be recovered by suit against him; and in case of any default by the treasurer of such out-

Wardens going out of office to settle with successors.

On failure, to pay \$100. Summary recovery of money detained.—R. S. c. 89, s. 11.

going wardens, his bond may be sued by their successors, both for the penalty aforesaid and the money detained; or the money in his hands may be recovered with the forfeiture aforesaid, against him and his sureties, on motion in any court of record, after giving them ten days' notice of the motion.

Poor-houses may be established.—R. S. c. 89, s. 12.

9. The court of pleas and quarter-sessions, a majority of the justices being present, may, when they deem it necessary, purchase lands, and cause to be erected houses for the maintenance and support of the poor of their county.

Houses and poor under direction of wardens.—R. S. c. 89, s. 13.

10. The wardens, twenty days' notice being given, shall annually let out to the lowest bidder, or employ some person as overseer of, the said poor-houses and poor of their respective counties, as to them may seem best; and such overseer shall give bond payable to the State of North Carolina, with security for the faithful discharge of the duties assigned to him. And the wardens may ordain by-laws, rules, and regulations, and do all such matters and things as they shall deem expedient for the comfort of the poor.

Property not taxed.—R. S. c. 89, s. 14.  
Legal settlements, how acquired.

11. The property held by the wardens of the poor shall be exempt from tax.

12. Legal settlements may be acquired in any county, so as to entitle the party to be supported as a pauper therein, in the manner following and not otherwise.

By one year's residence.—R. S. c. 5, s. 12.

(1.) Every person, who shall have resided continuously in any county for one year, shall be deemed to be legally settled in that county.

Married women to have the settlement of their husbands, if, &c.

(2.) A married woman shall always follow and have the settlement of her husband, if he have any in the State; otherwise, her own at the time of marriage, if she then had any, shall not be lost or suspended by the marriage, but shall be that of her husband, till another is acquired by him, which shall then be the settlement of both.

Legitimate children, that of their father or mother, &c.

(3.) Legitimate children shall follow and have the settlement of their father, if he have any in the State, until they gain a settlement of their own; but if he have none, they shall, in like manner, follow and have the settlement of their mother, if she have any.

Illegitimate children, that of their mother, &c.

(4.) Illegitimate children shall follow and have the settlement of their mother, at the time of their birth, if she then have any in the State. But neither legitimate nor illegitimate children shall gain a settlement by birth, in the county in which they may be born, if neither of their parents had any settlement therein.

Settlements to continue, till others acquired, &c.

(5.) Every legal settlement shall continue, till it shall be lost or defeated by acquiring a new one, within or without the State: and upon acquiring such new settlement, all former settlements shall be defeated and lost.

Paupers to be removed to their settlements.

13. Upon complaint made by the wardens before a justice of the peace, that any person has come into their county, who is likely to become chargeable thereto, the justice by his war-



rant shall cause such poor person to be removed to the county where he was last legally settled; but if such poor person be sick or disabled, and cannot be removed without danger of life, the wardens shall provide for his maintenance and cure at the charge of the county; and after his recovery shall cause him to be removed, and pay the charges of his removal: and the county, wherein he was last legally settled, shall repay all charges occasioned by his sickness, maintenance, cure, and removal, and all charges and expenses whatever, 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 him when removed as aforesaid, every warden, so refusing, shall forfeit and pay forty dollars, for the use of the county whence the removal was made; moreover, if the wardens of the county, where such person was legally settled, shall refuse to pay the charges and expenses aforesaid, they shall be liable for the same, by suit in the superior 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, the person so offending shall forfeit and pay ten dollars.

Unless sick and disabled.

All charges to be paid by the county of his settlement.

Housekeepers entertaining paupers, to give notice.—R. S. c. 89, s. 17.

14. 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 his county, on application, shall make towards their maintenance such allowances as they think reasonable.

Families of poor militia-men on service, supported.—R. S. c. 89, s. 18.

15. The owner of any slave, incapable of service from age or other disability, shall provide him with proper food, raiment, and lodging; and if any such slave shall be unprovided as aforesaid, the wardens of the county, where the slave may be, shall furnish him with food, raiment, and lodging, and charge the owner therewith, and may recover against him the price, before any tribunal having jurisdiction of the amount of the demand. *Provided, however,* that the wardens shall inform the owner of their proceedings, as soon as practicable, by notice directed to the sheriff or constable of his county, who shall execute the same forthwith, and make return thereof to the wardens by whom it was issued.

Disabled slaves provided for by wardens.

Owner to repay charges.—R. S. c. 89, s. 19.

16. If the owner of such slave be dead, his executors or administrators shall provide for him out of the estate of the deceased; and upon failure so to do, the wardens shall provide for him, and proceed against such executors or administrators in every respect, as against the owner; or, if such slave shall be under the control of a guardian, he shall provide for the slave out of the estate of his ward; and upon failure, the wardens shall provide for the slave, and proceed against the guardian in manner aforesaid; and such executors, administrators, and guardians shall be allowed the expense of making such provision, in their settlements.

If dead, his estate charged, in hands of executor, administrator, and guardian.—R. S. c. 89, s. 20.

17. When such slave shall be in a county other than the county where the owner, or the executors or administrators of

Such slave may be removed to owner's

county.—R. S. c. 89, s. 21. a deceased owner or guardian reside, the wardens may remove him to the owner, or to the executors or administrators of the deceased owner, or to the guardian, at the expense of such owner, executors, administrators, or guardian.

Two wardens may act, &c.—R. S. c. 89, s. 22. 18. Any two of the wardens shall have authority to execute the foregoing provisions, relative to disabled slaves.

Proceedings when owner about to remove, and leave infirm slave.—R. S. c. 89, s. 23. 19. The wardens, or any one of them, on information, that any person is about to remove out of the county, and has a slave likely to become a county charge, may issue a warrant to bring such person before him or them, and shall take such security by bond, payable to the State of North Carolina, as may be sufficient to indemnify the county: And in case such person shall refuse to give bond, he or they shall have power to commit him, until he shall enter into such bond, or remove the slave without the limits of the county.

Stock of slaves to be taken by wardens.—R. S. c. 89, s. 24. 20. All horses, cattle, hogs, sheep, or other stock, that shall belong to any slave, or be of any slave's mark, shall be seized and sold by the wardens, and the proceeds by them applied, the one half to the support of the poor, and the other half to the informer.

Penalties imposed in this chapter, to be for the poor.—R. S. c. 89, s. 25. 21. The several forfeitures and penalties by this chapter imposed, unless otherwise directed, shall be recovered for the use of the wardens of the poor of the county, wherein the forfeiture or penalty was incurred.

County court may pay wardens.—1854, c. 53. 22. The court of pleas and quarter-sessions may order that the wardens of the poor of their county shall be paid for the services rendered in the capacity of wardens; each warden first making appear to the satisfaction of the court, by his oath, the character and extent of the services rendered, for which he claims compensation; and such payment shall be made by the clerk of the wardens, out of any funds in his hands not otherwise appropriated.

SECT. 16. *Executors de son tort, not liable*, 6 Ire. 356.

SECT. 20. 2 Ire. 66.

## CHAPTER 87.

### PRISONERS.

#### SECTION

1. Keepers of jails to keep prisoners of United States. To have same fees, as for State prisoners.
2. When jail destroyed, prisoners sent to jail of adjoining county.
3. If no jail, or jail unsafe, court may commit in like manner.

#### SECTION

4. The sheriff, &c., may, likewise. Jailer of such county liable for escape.
5. Sheriff apprehensive of escape, how to obtain guard. Guard to be paid.
6. Prisoners for crime to pay jail fees.
7. Expense of guarding and removing prisoners, &c., by what county paid.

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- 8. Prisoners may buy necessaries. Penalty on jailers, for injuring prisoners.
- 9. Jailer to cleanse jail, furnish diet, &c.
- 10. Blankets and bedclothing provided for prisoners. Blankets, &c., used by slaves.
- 11. Prison-bounds for health of prisoners, laid out by court. Bond to keep bounds.
- 12. Bond, in criminal cases, returned to court and deemed a recognizance.

- 13. In civil cases on *mesne process*, to stand as security for final judgment.
- 14. In cases of imprisonment on final process, deemed a judgment. On breach of bond, debtor excluded from bounds.
- 15. Prisoners, how transferred to sheriff's successor.
- 16. To be confined in proper apartments. Penalty 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 safely keep therein, all prisoners committed under the authority of the United States, until they shall be discharged by the due course of law, 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 committed 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, *be it enacted*, that, when a prisoner shall be delivered to the keeper of any jail in the State, by the authority of the United States, such keeper shall receive the prisoner, and commit him accordingly: and every keeper of a jail, refusing or neglecting to take possession of a prisoner delivered to him by the authority aforesaid, shall be subject to the same pains and penalties, as for neglect or refusal to commit any prisoner delivered to him under the authority of the State. And the allowance for the maintenance of any prisoner committed as aforesaid, shall be equal to that made for prisoners committed under the authority of the State.

Keepers of jails to receive and keep prisoners of U. States.

To have same fees as for State prisoners.—R. S. c. 90, s. 1.

2. Whenever the jail of any county shall be destroyed by fire or other accident, any justice of the peace of such county may cause all prisoners who may then be confined therein, to be brought before him; and upon the production of the process, under which any prisoner was confined, shall order his commitment to the jail of any adjacent county; and the sheriff, constable, or other officer of the county, deputed for that purpose, shall obey the order; and the sheriff or keeper of the common jail of such adjacent county shall receive such prisoners upon the order aforesaid, and in case of neglect shall be deemed guilty of a misdemeanor, and held as for an escape.

When jail destroyed, prisoners sent to jail of adjoining county.—R. S. c. 90, s. 2.

3. Whenever it shall happen that there shall be no public jail, or an unfit or insecure jail, in any county, the superior courts of law and courts of equity, the courts of pleas and quarter-sessions, judges, justices of the peace, and all judicial

Or if no jail, or jail unsafe, courts may commit, &c.—R. S. c. 90, s. 3.

officers of such county, may 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 usual jail; and the sheriffs, constables, and other officers of such county, in which there may be no jail, or an unfit one, and the sheriffs or keepers of the jails of the adjoining counties, shall obey any order of commitment, so made, under pain of being guilty of a misdemeanor.

Also sheriffs,  
&c.

Jailer of such  
county liable  
for escape.—  
R. S. c. 90, s. 4.

4. The sheriffs, constables, and other ministerial officers of any county, in which there may be no jail, shall have authority to confine any prisoner arrested on process, civil or criminal, and held in custody for want of bail, in the jail of any adjoining county, until bail be given or tendered. And any sheriff or jailer having a prisoner in his custody, by virtue of any mode of commitment provided in this chapter, shall be liable, civilly and criminally, for his escape, in the same manner as if such prisoner had been confined in the prison of his proper county.

Sheriff, apprehensive of  
escape, how to  
obtain guard.

5. Whenever the sheriff of the county, or keeper of the jail, shall apprehend that there is danger of a prisoner's escaping, 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 a solicitor, if any of those officers be in the county, and if not, then to three justices of the peace; and they are authorized, if they deem it advisable, to furnish the 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 to him may appear to be suitable for the occasion. For which service, the persons ordered on guard shall receive such compensation, as militia-men in actual service for defence of the State; and on application for pay, the letter to the commanding officer, on which the guard was ordered, and the certificate of such officer, countersigned by the sheriff or jailer, together with the deposition of the officer of the guard, stating the time of service, and that it was faithfully performed, shall be sufficient to authorize the payment of the same.

Guard to be  
paid.—R. S.  
c. 90, s. 5.

Prisoners for  
crime, to pay  
jail charges.—  
R. S. c. 90, s. 6.

6. Every person committed to a public jail, by lawful authority, for any criminal offence or misdemeanor against the State, shall bear all reasonable charges for carrying and guarding him to jail, and also for his support therein until released; and all the estate, which such person possessed at the time of committing the offence, shall be subject to the payment of such charges and other prison fees, in preference to all other debts and demands; and if there be no visible estate whereon to levy such fees and charges, the amount shall be paid by the county.

Expense of  
guarding and  
removing pris-  
oners, &c.,  
by what

7. The expense for guarding prisons shall be paid by the county wherein the prison is situated; and for conveying prisoners, as also the expense attending such prisoners while in

jail, when the same may be chargeable on the county, shall be paid by the county from which the prisoner is removed. county paid.—R. S. c. 90, s. 7.

8. Prisoners shall be allowed to purchase and procure such necessities, in addition to the diet furnished by the jailer, as they may think proper; and to provide their own bedding, linen, and clothing, without paying 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 chapter, he shall not only pay treble damages to the person injured, but shall be deemed guilty of a misdemeanor. Prisoners may buy necessities. Penalty on jailers for injuring prisoners.—R. S. c. 90, s. 8.

9. The sheriff or keeper of any public prison shall, every day, cleanse the room of the prison in which any prisoner shall be confined, and cause all filth to be removed therefrom; and shall also furnish the prisoner a plenty of good and wholesome water, three times in every day; and shall find each prisoner fuel, one pound of wholesome bread, one pound of good roasted or boiled flesh, and every necessary attendance. Jailer to cleanse jail, furnish diet, &c.—R. S. c. 90, s. 9.

10. The court of pleas and quarter-sessions, from time to time as may be necessary, shall order the sheriff of their county to purchase, for the use of their jail, a certain number of good warm blankets, or other suitable bedclothing; which shall be securely preserved by the jailer, and furnished to the prisoners for their use and comfort, as the season or other circumstances may require; and the sheriff, at least once in every year, shall report to the court, the condition and number of such blankets and bedclothing. *Provided*, that whenever negro prisoners are allowed to use said blankets or clothing, their owner shall pay to the jailers, besides the other fees, two and a half cents per day, for every blanket used by such prisoners; which sum shall be accounted for to the court. Blankets and bedclothing provided for prisoners. Blankets, &c., used by slaves.—R. S. c. 90, s. 10.

11. For the preservation of the health of such persons as shall be committed to the county prisons, the court shall 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 bond with good security to the sheriff of the county to keep within the rules, shall have liberty to walk therein, out of the prison, for the preservation of his health; and on keeping continually within the said rules, shall be deemed to be in law a true prisoner; and, that every person may know the true bounds of said rules, they shall be recorded in the county records, and the marks thereof shall be renewed as occasion may require. Prison bounds for health of prisoners, laid out by court. Bond to keep bounds.—R. S. c. 90, s. 11.

12. Every such bond taken of any person confined for an offence, or otherwise than on process issuing in a civil case, shall be returned to the court by whose order or process such person is confined, or which may be entitled to cognizance of the matter, and shall be deemed of the force and effect of a recognizance; and on breach thereof shall be forfeited, and shall be collected as a forfeiture, in the name and for the use of the State, and applied as other forfeited recognizances. Bond in criminal cases, returned to court and deemed a recognizance.

In civil cases on *mesne process*, to stand as security for final judgment.

13. And every such bond taken of any person committed on civil process before final judgment, shall be returned to the court whence the process issued, and shall be assigned to the plaintiff therein; and on breach thereof the bond shall stand as a security for any judgment which the plaintiff may recover against the defendant, and may be proceeded on and enforced in the same manner and under the same rules and restrictions, as are provided in the next section, for obtaining judgment against persons confined on final process.

In cases of imprisonment on final process, deemed a judgment.

14. Every such bond given by any person committed on a *capias ad satisfaciendum*, or in custody after final judgment, shall be assigned by the sheriff to the party at whose instance such person was committed to jail, and shall be returned to the office of the clerk of the court where the judgment was rendered, and shall have the force of a judgment; and if any person, who shall obtain the rules of any prison, as aforesaid, shall escape out of the same, before he shall have paid the debt or damages and costs according to the condition of his bond, the court where the bond is lodged, upon motion of the assignee thereof, shall award execution against such person and his sureties for the debt or damages and costs, with interest from the time of escape till payment; and no person committed to jail on such execution shall be allowed the rules of prison. *Provided, however*, that the obligors have ten days' previous notice of such motion, in writing; but they shall not be admitted to plead *non est factum* in their defence, unless by affidavit, they prove the truth of the plea.

On breach of bond, debtor excluded from bounds.—R. S. c. 90, s. 12.

Prisoners, how transferred to sheriff's successor.—R. S. c. 90, s. 13.

15. The delivery of prisoners, by indenture between the late and present sheriff, or the entering on record in court the names of the several prisoners, and the causes of their commitment, delivered over to the present sheriff, shall be sufficient to discharge the late sheriff from all liability for any escape that shall happen.

Prisoners to be confined in proper apartments. Penalty for confining them otherwise.—R. S. c. 90, s. 14.

16. The sheriff or jailer shall confine those committed to his custody in the apartment, provided and designated by law, for persons of the description of the prisoner; and if a sheriff or jailer, wantonly, or unnecessarily otherwise confine prisoners in his custody, it shall be a misdemeanor in office.

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SECT. 11. *Prison rules: when prisoner for misdemeanor entitled to*, 4 Ire. 543. *When bond may be taken*, 8 Ire. 175. *Tender of bond by prisoner*, 1 Hawks, 427. *Remedy on bond*, 1 Mur. 421. *How discharged*, 3 Mur. 270, 2 Ib. 369.

CHAPTER 88.

PROCESSIONING.

SECTION

1. ProceSSIONERS of land appointed by county court.
2. Oath and term of office.
3. Owners to give written notice, and proceSSIONER to have a copy.
4. Land partly in two counties, how proceSSIONED.
5. ProceSSIONER to make certificate and

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- return it to clerk, &c. To be re-  
corded.
6. When line disputed, and proceSSIONER forbidden to proceed, he shall report to court. Five freeholders then appointed with proceSSIONER.
7. Person having land twice proceSSIONED, deemed owner. Who not bound by proceSSIONING.

1. THE county courts shall appoint one or more persons capable of surveying, to act as proceSSIONERS in their respective counties, for the purpose of having proceSSIONED the lands of such persons as desire it. And any proceSSIONER, when there are several, may act alone.

ProceSSIONERS appointed by co. court.—R. S. c. 91, s. 1.

2. Every proceSSIONER shall take an oath of office, and shall continue in office until he resign or remove from the county, or be displaced by the court.

Oath and term of office.—R. S. c. 91, s. 2.

3. The proprietor of any land who may desire to have it proceSSIONED, shall give ten days' notice in writing to all persons whose lands may be adjoining to his; a copy of which notice, signed by the person serving it, shall be delivered to the proceSSIONER.

Owners to give notice and proceSSIONER to have a copy.—R. S. c. 91, s. 3.

4. When a tract of land shall lie partly in two or more counties, the proceSSIONER of either county shall proceSSION the same in like manner as if the whole tract lay in the same county.

Land partly in two counties, how proceSSIONED.

5. The proceSSIONER shall make a plat of each tract of land proceSSIONED, and also a certificate of the same, which certificate shall contain the claimant's name, the quantity of acres, the corners, length, and course of each line, and shall be signed and returned with a copy of the several notices, to the court of pleas and quarter-sessions of the county for which the proceSSIONER is appointed; and the same, with the plat, shall be recorded by the clerk in a bound book kept for that purpose, and filed together in his office; and the fees of the proceSSIONER and clerk shall be paid by the proprietor of the land.

ProceSSIONER to make certificate and return it to clerk, &c. To be recorded by clerk.—R. S. c. 91, s. 5, 6.

6. In all cases where a line is disputed, and the proceSSIONER is forbidden by any of the persons interested in the event of the proceSSIONING, to proceed further in running and marking the same, he shall report the matter, stating truly all the circumstances of the case, with the names of the persons who forbade further proceedings, to the next succeeding court of the county for which the proceSSIONER is appointed; and the court shall thereupon appoint five respectable freeholders, who

When line disputed, and proceSSIONER forbidden to proceed, he shall report to court.

Five freeholders then ap-

pointed with  
processioner.—  
R. S. c. 91, s. 7.

shall 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 shall be recorded as above directed. *Provided, nevertheless,* that either of the 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.

Person having  
land twice pro-  
cessioned,  
deemed owner.

7. Every person whose lands shall be processioned to him, according to the directions of this chapter, at two several times, shall be deemed and adjudged to be the sole owner thereof; and, upon any suit commenced for such lands, the party in possession may plead the general issue, and give the proceedings under this chapter in evidence. *Provided always,* that the processioning of the lands of a tenant for life shall not bar or preclude the heir, or other person in reversion or remainder; neither shall any processioning bar or preclude *feme covert*s, persons under age, *non compos mentis*, imprisoned, or out of the State; but all such persons may sue for, and dispute the title and bounds of any such lands, if they will commence and prosecute their suit within the time limited by law, after the removal of such disability.

Who not bound  
by procession-  
ing.—R. S. c.  
91, s. 8.

SECT. 5. *Report of processioner, 7 Ire. 466; when forbidden to proceed, 3 Ire. 204, 4 Ib. 23, Ib. 155, 3 Mur. 504.*

## CHAPTER 89.

### PUBLIC ARMS.

SECTION

1. Public arms to be deposited in arsenals, &c.
2. Keeper of arms at arsenals appointed by adjutant-general. Superintendent at Newbern, by governor.
3. Volunteer companies, how to obtain arms.
4. A town or senior colonel may, on giving bond.
5. Arms distributed on invasion, &c.

SECTION

6. Duty of officers receiving arms.
7. Not keeping arms in order, penalty.
8. Selling, buying, or embezzling public arms, misdemeanor.
9. On death, &c., of the private, his arms delivered to successor.
10. Officers to demand public arms of persons not entitled.
11. Detachments in service may have arms, when.

Public arms to  
be deposited in  
public arsenals,  
&c.—R. S. c.  
92, s. 1.—1846,  
c. 3.

1. ALL the public arms of every description, belonging to the State, which may not be distributed among the militia according to law, shall, under the direction of the adjutant-general, be deposited and kept in the public arsenals established at



Raleigh and Fayetteville, and the depot of arms in the town of Newbern or its vicinity, in such proportions as the governor may prescribe.

2. The adjutant-general shall, at each place where an arsenal or depot of arms is established, appoint some suitable person keeper of the same, who shall be allowed not exceeding sixty dollars per annum; and the superintendent of the depot of arms in the town of Newbern or its vicinity, for his services and the rent of a building, shall receive one hundred and fifty dollars yearly; the one half thereof to be paid semiannually. The adjutant-general may make regulations respecting the duty of the superintendent; may require bond and security for the faithful discharge of his duty; and at the pleasure of the adjutant-general he may be removed, and another appointed in his place. The governor may make such provisions as he may think necessary for guarding and protecting the arsenals and depots of arms; and for the purpose of defraying the expenses incurred under this and the preceding section, he may upon the certificate of the adjutant-general, from time to time draw on the public treasurer, for such sums as may be necessary.

Keeper of arms at arsenals, appointed by adjutant-general. Superintendent at Newbern, by governor.—R. S. c. 92, s. 2.—1846, c. 3; 1848, c. 6; 1852, c. 52.

3. Whenever any volunteer company of infantry, light-infantry, or riflemen, artillery, or cavalry may be formed out of the militia, and it shall appear to the governor, by a certificate from the brigadier-general of the brigade in which such company is formed; or, in case of his death or absence, by the certificate of the highest officer in command of the militia of any county where such company may be formed, that the said corps has enrolled, as members, the number of officers and men required for such a company, and is otherwise equipped except as to arms and accoutrements, then the governor may direct such portion of the arms as may be necessary for the company, to be delivered to the commanding officer, taking his receipt for the same; but no such officer shall be allowed to draw the arms before he shall have given bond, with two good sureties, if required, in double the appraised value of the arms, conditioned for the safe-keeping, cleaning, and returning thereof, whenever the company shall be dissolved, or the governor shall direct.

Volunteer companies, how to obtain public arms.—R. S. c. 92, s. 3.—1846, c. 2; 1854.

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 sixty-five stand, of the public arms, he is authorized to furnish them. *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 sixty-five, unless in case of insurrection or invasion.

A town, or senior colonel may, on giving bond.—R. S. c. 92, s. 4.

5. In case of insurrection or invasion, or a probability thereof, the governor is authorized to distribute the public arms and send them to such places as he may deem necessary and ex-

Arms distributed on invasion, &c.—R. S. c. 92, s. 5.

pedient, and to draw warrants on the treasurer of the State, for the sums necessary for that purpose.

Duty of militia officers receiving arms.—R. S. c. 92, s. 6.

6. When public arms shall be delivered to any colonel commandant, for distribution in his county, he shall take receipts of the captains in whose hands they may be placed, and give the necessary orders for keeping the arms safe and in good order; and the captains, when they distribute the arms to their respective companies, shall take from each man a receipt at full length under seal, in the muster book of their companies, in double the value of the arms, conditioned for the safe-keeping and returning thereof, when called for by the colonel commandant; which muster or receipt book, shall be carefully kept, 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 book shall be handed over to the officer who may be appointed to command the company.

Not keeping arms in order, penalty for.—R. S. c. 92, s. 7.

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 soldierlike manner; and for every 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 the arms: and if a company so equipped shall generally keep their arms in a negligent and unsoldierlike manner, the colonel to whose regiment the company belongs, shall deprive said company of the public arms and accoutrements, and bestow them on some other company of his regiment, under the regulations aforesaid.

Selling, buying, or embezzling public arms, misdemeanor.—R. S. c. 92, s. 8.

8. If any person to whom shall be confided public arms or accoutrements, shall sell, or in any manner embezzle the same, or any part thereof, or if any person shall purchase any of them, knowing them to be such, the person so offending shall be deemed to be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars, and imprisoned not less than one month.

On death, &c., of a private, his arms delivered to successor.—R. S. c. 92, s. 9.

9. When any non-commissioned officer or private of such company shall die, remove from the county, or be excused from performing military duty, the captain thereof shall immediately take his arms and accoutrements into possession, and deliver them to his successor in the company: and the captain shall keep them safely and in good order, while they remain in his possession.

Officers to demand public arms of persons not entitled.—R. S. c. 92, s. 10.

10. Every commissioned officer of the militia, 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 chapter, shall make immediate demand for the same, personally or in writing; and should such person refuse to deliver them to the officer, he shall be deemed guilty in like manner, and punished in like manner, as for selling or embezzling public arms.

11. The governor may order the colonel commandant of the county where any of the public arms may be distributed, to place the same in the hands of any detachment of the militia ordered into the service of the State, or of the United States, if he shall judge it necessary.

Detachments in service may have arms, when.— R. S. c. 92, s. 11.

## CHAPTER 90.

### PUBLIC DEBT.

SECTION

1. All bonds and certificates of debt issued by the State to be registered.
2. Bonds and certificates transferable. Mode of transfer.
3. In what manner State bonds shall be executed, &c. Coupons of interest attached. Money where payable. No bond less than \$1,000 to issue; or be sold under par.

SECTION

4. A memorandum of State bonds, with numbers, &c., to be kept.
5. What State bonds exempt from tax.
6. Guardians, executors, and trustees, may invest in State bonds.
7. Title of the act, or date and chapter, to be recited in the bond.

1. THE bonds of the State for five hundred thousand dollars issued under the authority of the act of the General Assembly of the year eighteen hundred and forty-six, entitled "An Act to provide for the transfer of the bonds of the Raleigh and Gaston Railroad Company, indorsed by the State," and payable on the first day of January, eighteen hundred and sixty: the "certificates of debt" issued on behalf of the State for the sum of two hundred thousand dollars, under the authority of the act of the General Assembly of the year eighteen hundred and forty-eight, entitled "An Act to provide for the payment of the debt of the State to the Bank of Cape Fear, to the Bank of the State, and other debts due on account of indorsement by the State for the Raleigh and Gaston Railroad," and payable at the end of ten years from the date of the issue of said certificates, respectively: the "certificates of debt" of one hundred and twenty thousand dollars, issued under the authority of the act of the General Assembly of the year eighteen hundred and forty-eight, entitled "An Act to incorporate the Fayetteville and Western Plank-Road Company," and payable at the end of twenty years from the date of the issue: the "certificates of debt" already issued, and which may be issued, for two millions of dollars, under the authority of the act of the General Assembly of the year eighteen hundred and forty-eight, entitled "An Act to incorporate the North Carolina Railroad Company," and payable at the end of thirty years from the date of their issue: the "certificates of debt" for two hundred thousand dollars, issued under the authority of the act of the General Assembly of the

All bonds and certificates of debt issued by State to be registered.— 1846, c. 9, s. 2; 1848, c. 39, s. 4.

year eighteen hundred and fifty, entitled "An Act to provide for the payment of the debt of the State," and payable in like time: and all other bonds and "certificates of debt," issued by and in the name of the State, or which may hereafter be issued by the authority of any statute now or hereafter to be enacted, shall be duly registered by the public treasurer, in a book to be kept by him for that purpose.

Bonds and certificates transferable. Mode of transfer.—1848, c. 37, s. 5; 1850, c. 58, s. 4; 1852, c. 11.

2. All bonds or certificates of debt of the State, which now are or hereafter may be issued on behalf of the State, shall be transferable: such as are payable to bearer, by delivery; and such as are payable to the holder by name alone, may be transferred by the holder, or by his agent, in a book to be kept for that purpose by the public treasurer, on surrendering for cancellation the outstanding bond or certificate; and in this latter case of transfer, a new bond or certificate for the same amount shall be issued.

In what manner State bonds shall be executed, &c.

3. All bonds or certificates of debt of the State, hereafter to be issued as originals, or as substitutes for such as may be surrendered for transfer, by virtue of any act now or to be hereafter passed, shall be signed by the governor, and countersigned by the public treasurer, and sealed with the great seal of the State, and shall be made payable to such person by name as may be the purchaser, or to bearer; and the principal shall be made payable by the State, at a day named in the bond or certificate. And coupons of interest, in such form as may be prescribed by the public treasurer, shall be attached to the certificate, and the certificates and coupons attached thereto, shall be made payable at such bank or place in the city of New York, as the public treasurer may designate, or at the office of the public treasurer at Raleigh, if preferred by the purchaser. *Provided, however,* that if the purchaser or holder so may desire, the bond or certificate shall be payable to him alone, and not to bearer. *And provided further,* that no certificate shall issue for a less sum than one thousand dollars, unless the same be issued for a surrendered bond of less amount: nor shall any original bond or certificate of debt of the State be sold for a sum less than par value: nor shall any such bond or certificate, issuing in lieu of a transferred bond or certificate, be payable elsewhere than may be the original, except, by the consent of the holder, it may be made payable at the public treasury.

Coupons of interest attached. Money, where payable. No bond less than \$1,000 to issue; or be sold under par.—1848, c. 89, s. 22; 1852, c. 9, 10, s. 1.

A memorandum of State bonds with numbers, &c., to be kept.—1852, c. 10, s. 2.

4. The public treasurer shall enter in a book to be kept for that purpose, a memorandum of every bond, or certificate of debt of the State, issued or to be issued by the State, under any act whatever, together with the numbers, dates of issue, when and where payable, at what premium, and to whom the same may have been sold or issued.

What State bonds exempt from taxation.—1852, c. 10, s. 4.

5. The original bonds, or certificates of debt of the State, which have been issued since the first day of January, eighteen hundred and fifty-three, or which may hereafter be issued under the authority of any act whatever; as likewise the bonds

and certificates substituted for such original bonds and certificates, shall be, they and the interest accruing thereon, exempt from taxation.

6. Guardians, executors, and other persons, holding funds in trust to be invested and kept on interest, may, unless prohibited, invest the same in bonds or certificates of debt of the State, or in any securities for the payment whereof the State is responsible, now or hereafter to be issued; and in all settlements they shall be deemed cash, and may be paid as such by transfer thereof to the persons entitled.

Guardians, executors, and trustees may invest in State bonds.—1850, c. 90, s. 2.

7. In every bond or certificate of debt issued by the State, and in the body thereof, shall be set forth the title of the act, with the year of its enactment, under the authority of which the same may be issued; or reference thereto shall be made by the number of the chapter, and the year of the legislative session.

Title of the act, or date and chapter to be recited in the bond.

## CHAPTER 91.

### PUBLIC DOCUMENTS.

SECTION

1. Public documents of federal government, how distributed.

SECTION

2. Secretary to furnish documents to New York Historical Society.  
3. Library of documents established.

1. THE laws of congress, and all the other public printed documents, transmitted to this State by the general government, shall be distributed by the secretary of State in the following manner, to wit: two copies to each of the counties, which shall be deposited in the offices of the superior and county courts in each county, for the use of the courts; one copy to every judge of the supreme court, and the superior courts of law and equity; one to the attorney-general; one to each solicitor; one in each of the offices of governor, secretary of State, treasurer, and comptroller; three copies in the library of the university; and three copies retained in the public library, for the use of the members of the assembly, and other public functionaries.

Public documents of federal government, how distributed.—R. S. c. 94, s. 1.

2. The secretary of State shall furnish to the agent or order of the New York Historical Society, in the city of Raleigh, one bound set of all official documents, including the decisions of the supreme court and the laws and journals of the General Assembly of the State, which may be published under the laws, or by order of the General Assembly.

Secretary to furnish documents to New York Historical Society.—1842, Res.

3. The principal clerks of each house of the General Assembly shall collect such printed documents as have been, or shall hereafter be ordered to be printed by the General Assembly, to the number of three copies of each document for each

Library of documents established.—1854, c. 24.

house, and cause the same to be bound in convenient form, and keep them on shelves which they shall cause to be erected in their offices, for the use of the members of their several houses.

## CHAPTER 92.

## PUBLIC LIBRARY.

## SECTION

1. Five hundred dollars yearly appropriated to library.
2. Governor, and judges of supreme court to be trustees and appoint librarian. His salary.
3. His duty.
4. Governor to designate documents to

## SECTION

- be preserved and bound. What books to be bound and labelled.
5. Penalty for injuring books.
6. Tax on attorney's licenses at Morganton, expended for books.
7. Judges may transfer law-books from Raleigh to Morganton.

\$500 yearly appropriated to library.—1840, c. 46. Governor and judges of supreme court to be trustees and appoint librarian.

His salary.—1840, c. 46, s. 2, 7; 1842, c. 68, s. 2.

His duty.—1840, c. 46, s. 5; 1844, c. 62.

Governor to designate documents to be preserved and bound.

1. THE sum of five hundred dollars is annually appropriated for the increase of the public library of the State.

2. The governor, and judges of the supreme court, and their respective successors in office, are appointed trustees of the State library; and all moneys appropriated for its increase shall be laid out under their direction and supervision: the judges of the supreme court, in the absence of the governor, or the governor and any of the judges, in the absence of the others, shall be a quorum, with all the authority vested in said trustees. The trustees may make such rules and regulations in regard to the library and the use of the books, as they may deem best; they shall appoint a suitable person as librarian, at a salary not exceeding three hundred dollars a year, who shall give bond with security, in such sum as they may determine, payable to the State of North Carolina, conditioned for the safe-keeping of the books, and the faithful discharge of his duties.

3. The librarian shall keep the library open for the accommodation of the public, on every day in the year, between the hours of nine and twelve o'clock, M., and between two and five o'clock, P. M., (Sundays and the fourth day of July excepted); he shall prepare and have printed a catalogue of all the books in the library, and shall report to each succeeding General Assembly any increase or diminution of the catalogue; he shall procure and preserve in the library two of the principal newspapers in the State, and five copies of the journals and of the acts of the General Assembly.

4. The governor shall designate such portions of the documents, journals, and acts of the congress of the United States, as he may deem proper to be preserved in the library; may designate which of them are to be bound, of such pamphlets,

acts, and journals of the General Assembly, works of periodical literature, laws of other States, and documents of the General Assembly, that may be added to the library; and the librarian shall have them bound. And all the books belonging to the library, or which may be added thereto, shall be labelled in gilt letters with the words "State Library;" and the governor may draw upon the treasurer for such sums as may be necessary to defray the expenses thereof.

What books to be bound and labelled.—1840, c. 46, s. 6; 1842, c. 68, s. 3.

5. Any person who shall damage, deface, or mutilate any book which he may be allowed to withdraw from the library, or who shall return any book so damaged, defaced, or mutilated while in his possession, shall forfeit and pay the full amount of the damage; which amount shall be determined by the librarian, but in no case to exceed double the value of the book; and the fines and forfeitures accruing under this section, shall be sued for and recovered by the librarian in the name of the State, before any justice of the peace; and the librarian shall be a competent witness to prove any fact material to the issue; and the fines and forfeitures recovered shall be added to the fund for the increase of the library.

Penalty for injuring books.—1842, c. 68, s. 1.

6. The clerk of the supreme court at Morganton, under the direction of the judges shall apply the taxes on attorneys' licenses, that may be paid to him, to the purchase of law-books for the supreme court library at Morganton.

Tax on attorney licenses at Morganton, expended for books.—1850, c. 93.

7. The judges of the supreme court may direct the clerk at Raleigh to transmit to the court library at Morganton, all such law-books as can be spared from the library at Raleigh.

Judges may transfer law-books from Raleigh to Morganton.—1850, c. 93, s. 2.

CHAPTER 93.

PUBLIC PRINTING.

SECTION

1. State printer elected biennially. What printing to be done. Pay.
2. To give bond in five thousand dollars.
3. Bills, &c., in what manner printed.
4. A practical printer to assist in estimate of work done. His compensation.
5. Paper furnished, and binding, contracted for, by secretary of State. Paid for, on governor's warrant.
6. Copy, when to be furnished, and work completed. Laws distributed by secretary.
7. Journals, number of copies printed, and for whom.

SECTION

8. Acts, how arranged. What printed on the margin. Index to all the acts.
9. Number of copies to be printed for members, &c., and bound in leather. Additional number stitched. Number of public documents. Justices' names to be recorded by secretary of State. Clerks of county courts to furnish list of justices.
10. Blanks to be printed for offices of governor, treasurer, &c.
11. Vacancy in office of printer, filled by governor.
12. Repealing clause.

1. A STATE printer shall be biennially elected by the joint vote of the two houses of the General Assembly on the second

State printer elected biennially.

day of the session, who shall execute the printing of the acts of the General Assembly, the journals, the bills, and all other documents, and all other printing of whatsoever kind, which may be ordered to be done by the General Assembly, except the Revised Code, at the following rates, to wit: for every one thousand ems of plain work, he shall be allowed sixty-two and a half cents, and for every one thousand ems of rule and figure work, one dollar and twenty-five cents, and for every token, sixty-two and a half cents.

2. The State printer shall give bond, with approved security, payable to the State, in the sum of five thousand dollars, conditioned to perform faithfully his duties under this chapter. The bond must be approved and accepted by the governor, and shall be filed in the office of the secretary of State.

3. The bills and all other documents ordered to be printed by either branch of the General Assembly, shall be printed in octavo form, without a title-page. But the first page shall be printed as follows: at the head of the page, there shall be four rules, one double, two single, and one parallel, extending across the page. Between said rules shall be printed, first, the name of the house where the bill originated, with the year and date of the session, the name of the introducer, and the name of the printer; after leaving a space the width of two line pica, a synopsis, or caption of the bill, or report of the committee, or whatever it may be, shall be set up with pica capitals. After such heading, the said document to follow immediately, commencing with a paragraph, allowing a space the width of small pica between the heading and commencement of the same.

4. In estimating the amount of work done, the State printer shall be allowed to count the first page as solid matter; and the secretary of State shall, before having a final settlement with the State printer, call in to his aid a practical printer, for the purpose of estimating the amount of work done; and any printer so called in, shall be allowed a compensation not exceeding three dollars per day.

5. All the paper for the printing aforesaid, shall be furnished by the secretary of the State, of such quality as may be deemed suitable for the work. The secretary of State shall also contract for the folding, stitching, and binding of all work authorized by this act; and the same, together with the cost of the paper aforesaid, shall be paid by the treasurer, on a warrant from the governor upon certificate of the secretary.

6. The secretary shall, within thirty days from the adjournment of the General Assembly, furnish the State printer with complete copies of all the laws; and the clerks of each house shall, within twenty days thereafter, deliver to the printer aforesaid, complete copies of the journals. The printer after completing the laws and journals, shall have them addressed to those entitled to them, and packed up in parcels for each county, and delivered within ninety days from the close of the session, to the secretary of State, who shall distribute

What printing to be done.

Pay of.

To give bond in \$5,000.

Bills, &c., in what manner printed.

A practical printer to assist in estimate of work done.

His compensation.

Paper furnished, and binding contracted for, by sec'y State.

Paid for on governor's warrant.

When copy to be furnished, and work completed.

Laws distributed by sec'y.



said journals, acts, and documents by mail, express, or some discreet person, as he may deem most expedient.

7. A sufficient number of the journals of the General Assembly shall be printed to supply each member with a copy, five copies to the State library, one copy to each of the offices of governor, secretary of State, treasurer, and comptroller, two copies to each of the libraries of the senate and house of commons, one to the university library, and one to the office of each county court clerk in the State. Each of the aforesaid copies to be bound in leather.

Journals, number of copies printed, and for whom.

8. The acts of the General Assembly shall be divided into two parts or volumes, and numbered by chapters continuously through each volume. The number of the chapter and year of the session, to be printed on the margin of every page, in Arabic figures of suitable size; the first part or volume to contain an index of all the acts and resolutions of the General Assembly, the public laws, and the comptroller's statement of the public revenue and expenditure: the second volume shall contain all the acts and resolutions of a private and local nature, embracing all acts granting corporate privileges.

Acts, how arranged. What printed on the margin. Index to all the acts.

9. A sufficient number of each of the volumes (embracing both public and private acts) shall be printed to supply a copy to each member of the General Assembly, a copy to the offices of governor, secretary of State, and comptroller, and to each of the clerks of the county courts, superior courts, and clerks and masters in equity of the several counties of the State, and the clerks of the supreme court, one copy to each of the judges of the supreme and superior courts, and to the attorney-general and solicitors, five copies to the State library, ten copies to each of the libraries of the senate and house of commons, one copy to the library of congress, one copy to the governor of each of the States and Territories of the United States — each of said copies to be bound in leather. There shall also be printed an additional number of the first volume of public acts, to be stitched, to furnish one copy to every sheriff, register, county solicitor, and to each justice of the peace of the several counties of the State. The printer shall also deliver to the secretary of State, a sufficient number of public documents, (including the governor's message and inaugural, and excluding bills,) as either branch of the General Assembly may order to be printed, to furnish two copies for the State library, two for the executive office, ten to each of the libraries of the senate and house of commons, one to the university library, and one to each member of the General Assembly; all of which volumes shall be bound and distributed along with the journals and acts, as directed in the provisions of this chapter.

Number of copies to be printed, for members, &c.

Bound in leather. Additional number stitched.

Number of public documents.

The secretary of State shall record in a book kept for that purpose, the names of all the justices of the peace for the several counties of the State; and whenever a vacancy occurs, it shall be entered therein, and the clerks of the several county courts shall, on the third Monday of November, one thousand

Justices' names to be recorded by sec'y of State. Clerks of co. court to furnish list of justices.

eight hundred and fifty-six, and every two years thereafter, furnish the secretary of State with a correct list of the justices of the peace of their several counties, and by this list shall the public laws and journals be distributed.

Blank forms to be printed for offices of gov'r, treasurer, &c.

10. The governor, secretary of State, treasurer, comptroller, and adjutant-general, may have printed for their several offices, such blank forms and other necessary printing, as may be suitable and proper to enable them to discharge their duties; and the treasurer shall cause to be printed one hundred copies of his report, for the use of his office. The charges for which printing shall be reasonable and just, to be adjudged of and allowed by the board composed of the governor, secretary of State, treasurer, and comptroller.

Vacancy in office of printer, filled by gov'r.

11. Any vacancy occurring in the office of public printer, during the interval between the meetings of the General Assembly, shall be filled by appointment of the governor.

Repealing clause.  
—1854, c. 36.

12. All laws and clauses of laws, coming within the meaning and purview of this chapter, are hereby repealed.

## CHAPTER 94.

### QUARANTINE AND HEALTH.

#### SECTION

1. Quarantine, when and by whom directed. Masters and pilots to report the health of vessels. Duty of those ordered to perform quarantine. Penalties on masters and pilots.
2. Vessel coming from infected place, to anchor at quarantine ground. Coming into port without permission, master or pilot indictable.
3. Such vessel to be removed.
4. Port physicians appointed.
5. Penalty on passengers or crew breaking quarantine.
6. On person going on board without leave—and on master allowing it. Such person to remain on board.
7. Person breaking quarantine arrested and sent back.
8. Penalty for landing articles.
9. Affidavit of health required of master. Penalty for false statement.

#### SECTION

10. Provisions furnished vessels, &c.
11. Penalties, how recovered and applied.
12. Penalty on pilots, bringing in vessels without certificate, &c.
13. Commissioners of navigation may appoint harbor master and health-officer, and enact by-laws, &c.
14. Of seaport towns, where no commissioners of navigation, to have like authority.
15. Nuisances in seaports, what deemed such.
16. Lots in, kept drained at certain seasons. Penalty for neglect. Commissioners may abate nuisance at owner's expense.
17. Officers of police, to provide against contagious diseases.
18. Hospitals established by county court, and commissioners of towns.
19. Proviso to the foregoing sections.

Quarantine, when and by whom directed.

1. THE commissioners of navigation in the respective ports and inlets of the State, and where there are no such 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 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, when to be had; upon whose report in writing, (which said physician is required to make,) and on other information they may receive, any three of such commissioners, and where there are 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, may 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 the State; and every person on board such vessel directed to perform quarantine, shall from time to time, during such quarantine, obey all orders 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 the State, the receiving any persons on board, or the putting them on shore; and if the pilot or master neglect to give such information as above required, the pilot, for such neglect, shall forfeit and pay one hundred dollars, and the master, for the like neglect, shall forfeit and pay 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, for performing quarantine with his vessel as aforesaid, he shall forfeit and pay two hundred dollars for each day he shall fail to perform the quarantine; for which forfeiture the property of the captain, with the vessel and cargo, shall be liable, if it shall appear that the breach of the order 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.

Masters and pilots to report health of vessel.

Duty of those ordered to perform quarantine.

Penalties on masters and pilots, failing in duty.—R. S. c. 96, s. 1.

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, smallpox, or other infectious disorder; or if any vessel, arriving in the State, shall have the smallpox or yellow fever or other infectious disorder on board, or shall have had such disorder on board during her passage to the State, such vessel shall be anchored at the place appointed for quarantine, and there remain, until permitted to remove by the commis-

Vessel coming from infected place, to anchor at quarantine ground.

Coming into port without permission, master or pilot indietable.—R. S. c. 96, s. 2.

Such vessel to be removed.—R. S. c. 96, s. 3.

Port physicians appointed.—R. S. c. 96, s. 4.

Penalty on passengers or crew breaking quarantine.—R. S. c. 96, s. 5.

On person going on board without leave, and on master permitting it.

Such person to remain on board.—R. S. c. 96, s. 6.

Person breaking quarantine, arrested and

sioners of navigation, or by the commissioners of the town to which the 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 the vessel, or ordering or permitting her to be conducted to such town or harbor, shall be subject to indictment; and upon conviction shall be fined not less than one thousand dollars, and imprisoned not exceeding one year.

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 chapter, or the justices as aforesaid, may 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 the vessel, and may be recovered of either of them before any jurisdiction having cognizance of the sum due.

4. The commissioners of navigation in the several ports of the State, and, where there are no such commissioners, the commissioners of the several seaport towns, may appoint port physicians, and 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 chapter, and giving certificates of their situation and condition, in regard to the health of their respective crews and passengers.

5. When a vessel shall be directed to perform quarantine, and any seaman or passenger shall, contrary to the order and direction of the commissioners or justices as aforesaid, leave the vessel and land on any other place than they shall allow of, every person so offending shall forfeit and pay two hundred dollars for each offence; and when he shall have left the vessel with the master's consent, the master shall pay a like penalty of two hundred dollars for every such offence of any of his passengers or seamen.

6. When any vessel shall be directed to perform quarantine, and any person knowing of such order, by the information of the master or otherwise, shall go on board of such vessel without permission of the commissioners or justices aforesaid, every such person shall forfeit and pay one hundred dollars. And if any person shall be permitted by the master to come on board, without informing him of the order and directions of the commissioners, or justices of the peace, the master shall forfeit and pay two hundred dollars for every person so offending, and 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 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 pay one hundred dollars.

7. The commissioners or justices aforesaid, or a majority of them, respectively, may issue their warrant to any sheriff or

other officer, commanding him to take the body of any person that may have left any vessel ordered to ride quarantine, and carry him on board of said vessel; and the said officer may summon such persons to assist him in the execution of the warrant, as he may think fit.

8. If any master of a vessel, ordered to ride quarantine, shall convey, or cause, or permit to be conveyed, any article of goods, wares, and merchandise from his vessel on any other land, or into any other boat or vessel, than the said commissioners or justices shall authorize, he shall forfeit and pay two hundred dollars for every such offence. And any other person so conveying, or causing to be conveyed, any article as above mentioned, shall be liable to the like penalty.

9. The said commissioners or justices may, whenever they think proper, require the master of a vessel, on his arrival in the 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 such vessel, he shall forfeit and pay two thousand dollars.

10. The commissioners or justices are empowered and directed to furnish any vessel, ordered to ride quarantine, with a sufficient quantity of good wholesome provisions, for the expense of which the master, vessel, and cargo shall be liable.

11. All penalties and forfeitures imposed or allowed to be imposed by this chapter, may be recovered and applied, one half to the use of the informer, the other half by the commissioners of navigation, for the use and benefit of the navigation of the port, within whose jurisdiction the penalty or forfeiture may have been incurred.

12. If any pilot shall bring any vessel beyond the place 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 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 the State.

13. The commissioners of navigation of the several seaport towns in the 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 such compensation is to be paid. And they shall have power to pass such by-laws, (not inconsistent with the laws of the land,) for the better regulation of the quarantine to be performed by vessels, arriving from ports infected, or suspected to be infected, with any infectious disease, and for preventing all intercourse between such vessels and persons on shore, as to them may seem meet and proper, and to enforce obedience to

sent back.—R. S. c. 96, s. 7.

Penalty for landing any articles.—R. S. c. 96, s. 8.

Affidavit of health required of-master.

Penalty for false statement.—R. S. c. 96, s. 9.

Provisions furnished vessels, &c.—R. S. c. 96, s. 10.

Penalties, how recovered and applied.—R. S. c. 96, s. 11.

Penalty on pilots, bringing in vessels without certificate.—R. S. c. 96, s. 12.

Commissioners of navigation may appoint harbor master and health-officer, and enact by-laws, &c.—R. S. c. 96, s. 13.

such by-laws, by imposing such penalties as they may think proper.

Of seaport towns where no com'r of nav., to have like authority.—R. S. c. 96, s. 14.

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 authority 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 the commissioners of such towns, shall be subject to the same fines, penalties, and forfeitures, as though the said regulations had been made by commissioners of navigation.

Nuisances in seaport towns, what deemed such.—R. S. c. 96, s. 15.

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 the 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.

Lots kept in seaports to be drained at certain seasons.

16. Every person, possessed of a lot in any seaport town, which, from its low or sunken situation, is liable to retain tide, or rain water, or on which cellars or foundations for buildings may be dug, (whether a tenement be erected over the same or not,) shall, during the months of June, July, August, September, and October, preserve and keep the said lot, cellars, and foundations dry and free from stagnant or putrid waters and other filth; and any person offending herein shall forfeit and pay five dollars for the use of the town, for every week he shall suffer such stagnant or putrid water, or other filth, to remain therein. And if the said owner shall, notwithstanding the above provisions, neglect to remove such stagnant or putrid water or other filth, the commissioners of the town may employ any person, upon such terms as to them may seem reasonable and just, to remove such filth or stagnant or putrid waters; and the expense shall be considered as a further fine for not complying with the provisions of this section, and shall be collected accordingly, and shall also be a lien upon the lot upon which the same has been expended.

Penalty for neglect.

Com'rs may abate nuisance at owner's expense.—R. S. c. 96, s. 16.

Officers of police, to provide against introduction of contagious diseases.—R. S. c. 96, s. 17.

17. When an infectious disease shall be raging in any part of the State, or in any part of the United States, the officers of police of any incorporated town, who may have well-founded apprehensions, that their town is in danger of being visited by such disease, may 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

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 the same, 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 the town.

18. The county court, a majority of the justices being present, may establish public hospitals for the county; and the commissioners of every incorporated town may do the same for the town: and the said county court, and the commissioners of such town, may make all such rules, regulations, and by-laws as they may deem needful, for preventing the spread of contagious and infectious diseases, and taking care of the afflicted, the same not being inconsistent with the laws of the State.

Hospitals established by county court, and commissioners of towns.

19. Nothing contained in the preceding sections, 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 sections.—R. S. c. 96, s. 18.

## CHAPTER 95.

### QUO WARRANTO AND MANDAMUS.

SECTION

1. Informations, in what cases, and by whom, filed. Nature of proceedings. In certain cases, several rights may be tried in one information. Pleas filed first term, unless, &c.
2. Upon conviction, what judgment. Costs adjudged to party succeeding.

SECTION

3. Return to be made to first mandamus.
4. Time given by court to make return, plead, &c.
5. Returns may be contested: proceedings thereon. On verdict for plaintiff or defendant, what consequences shall follow.

1. WHERE any person shall usurp, intrude into, or unlawfully hold or execute, any office or franchise, the attorney-general or solicitor 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, may exhibit an information in the nature of a *quo warranto*, at the relation of any persons desiring to prosecute the same, (who shall be mentioned in the information to be relators,) against such persons so usurping, intruding into, or unlawfully holding or executing said office or franchise; 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 office

Informations, in what cases, and by whom filed.

Nature of proceedings.

In certain cases, several

rights may be tried in one information.

Pleas filed first term, unless, &c.

Upon conviction, what judgment. Costs adjudged to party succeeding.

Return made to first mandamus. Time given by court to make return, plead, &c.

Returns may be contested: proceedings thereon.

On verdict for plaintiff or defendant, what consequences shall follow.—R. S. c. 97.—9 Anne, c. 20, s. 1, 2, 4, 5, 6.

or franchise may properly be determined on one information, the court may 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 persons, who prosecute such information, shall proceed thereupon with the most convenient speed.

2. When any person shall be found guilty of an usurpation, intrusion into, or unlawful holding or executing any office or franchise, the court may both give judgment of ouster, and fine such person, and also give judgment that the relators shall recover their costs; and if judgment be given for the defendant, he shall recover his costs against the relators.

3. When any writ of mandamus shall issue, the return thereto shall be made to the first writ.

4. The court, to whom such return is to be made, may allow the person, 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 the persons who shall prosecute the same, such convenient time to make a return, plead, reply, rejoin, or demur, as shall seem just.

5. Where any mandamus shall issue, and a return shall be made, the person suing the mandamus may plead to 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 if the person suing the writ had brought his action on the case for a false return; and if issue shall be joined, the person suing the 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 suing the writ, or judgment given for him, he shall recover damages and costs as he might have done in such action on the case, 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 chapter, against any person making such return to the writ as aforesaid, he shall not be liable in any other action, for making such return.

SECT. 1. 1 Ire. 42; 2 Jones, 124.

SECT. 3. *When mandamus may issue, and practice*, Bus. 257, 1 Ire. 129, 2 lb. 430, 2 Mur. 195, 1 Hawks, 274; *costs*. 1 Ire. 22; *appeal from order in*, Bus. 302.

SECT. 4. *Return to peremptory mandamus*, 1 Ire. 414.



CHAPTER 96.

REGISTERS.

SECTION

1. Registers appointed by county court for four years: — to take oaths, and hold office four years.
2. Vacancies between terms filled by three justices. Appointee to hold till appointment by court. Clerk to record appointment.
3. Registers to give bond in \$10,000.
4. Clerks on request, to deliver deeds and register's fees, after ten days from rise of court.
5. Register to call on clerks for deeds, &c., in twenty days after rise of court.
6. Mortgages and deeds in trust to be registered on delivery. Other deeds,

SECTION

- &c. within a month. Penalty for neglect.
7. To keep alphabetical files of deeds, and deliver, &c.
8. Office kept where justices shall direct. Days of attendance may be fixed.
9. Penalty for violation of duties, \$100, and misdemeanor.
10. County courts may have register's books transcribed. Deemed originals. Errors may be corrected.
11. County court to have performed omitted duties, &c.
12. Shall have made a general index to register's books.

1. THE court of pleas and quarter-sessions, a majority of the justices being present, shall, by a vote of a majority of the justices present, appoint a register for their county for the term of four years, who shall take the oath of office, and the oaths of officers: and such appointment shall be made as often as the office becomes vacant.

Registers appointed by county court for 4 years.

To take oath.—R. S. c. 98, s. 1.

2. When any vacancy shall exist in the office of register, by death or otherwise, in the interval between county courts, any three justices of the peace of the county may meet at the office of the court of pleas and quarter-sessions, and appoint a register, who shall give bond and take the oaths required of registers; he shall take into his custody the books and records, perform all the duties, be invested with all the powers, authorities, and emoluments pertaining to the office, and shall hold it until an appointment shall be made by the court of pleas and quarter-sessions, as prescribed in the first section of this chapter; and the clerk shall record the appointment so made, on the records of the court.

Vacancies between terms, filled by three justices.

Appointee to hold till appointment by court.

Clerk to record appointment.—R. S. c. 98, s. 3.

3. The register shall give bond with sufficient security, to be renewed every year, 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 the office.

Registers to give bond in \$10,000.—R. S. c. 98, s. 4.

4. The clerk of the court of pleas and quarter-sessions, upon application of the register of his county, at any time after ten days from the rise of each court, shall deliver to the register all deeds and other instruments of writing admitted to probate and then remaining in the office of the clerk for registration, and at the same time shall pay over to him the several fees for

Clerks, on request, to hand over deeds and register's fees after ten days from rise of court.—R. S. c. 98, s. 5.

registering them; which fees the clerk shall receive for the register; and in case the clerk shall fail to deliver such deeds and instruments of writing, upon application as aforesaid, and to pay the fees as aforesaid, he shall, for every such failure, forfeit and pay to the register one hundred dollars; for which sum judgment shall be entered by the succeeding court, upon motion on behalf of the register, and due notice thereof to the clerk.

Register to call on clerks for deeds, &c., in 20 days after rise of court.—R. S. c. 98, s. 6.

5. The register, within twenty days after the rise of each county court, shall apply at the clerk's office for all deeds and other instruments of writing admitted to probate for registration; and in case of neglect by either clerk or register in performing the duties aforesaid, he shall forfeit and pay forty dollars for every such offence, to any person suing for the same, and be further liable for all damages which the person injured by such neglect may sustain.

Mortgages and deeds in trust to be registered on delivery; other deeds, &c., within a month. Penalty for neglect.—R. S. c. 87, s. 23.—R. S. c. 98, s. 7.

6. The register shall register, forthwith after delivery to him, all mortgages and deeds in trust made to secure the payment of money; and he shall register all other deeds and instruments delivered to him for registration, within one month after delivery of the same: and in case of his failure so to do, he shall, for every such offence, forfeit and pay to any person, who will sue for the same, one hundred dollars, and moreover pay to any person injured by the delay, all such damages as he may sustain thereby.

To keep alphabetical files of deeds, and deliver, &c.

7. The register shall keep in his office, in files alphabetically labelled, all original instruments delivered to him for registration, and on application for such originals by any person entitled to their custody, he shall deliver them.

Office kept where justices shall direct.

8. The register shall keep his office, with all the books and papers thereof, at such place as a majority of the justices may prescribe, which shall be at the court house of his county, or within one mile thereof. And the said justices may, in their discretion, from time to time, prescribe by order, to be entered on the records of their court and notified to the register, on what days of each week, and at what hours of each day he shall attend in his office by deputy or in person: and the register shall give his attendance accordingly.

Days of attendance may be fixed.—1840, c. 35; 1844, c. 68.

Penalty for violation of duties \$100, and misd'r.—R. S. c. 98, s. 9.—1840, c. 35; 1844, c. 68.

9. If any register shall wilfully violate any of the duties prescribed in this chapter, he shall forfeit and pay to the chairman of the court, for the use of the county, one hundred dollars, to be recovered against him and the sureties of his official bond by action on his bond, and shall moreover be deemed guilty of a misdemeanor in office, and on conviction, shall be removed from office.

County courts may have register's books transcribed or indexed.

10. The courts of pleas and quarter-sessions may 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 books, when so transcribed and approved by the courts respectively, shall be deemed and taken as public records; and shall

be deemed and taken, to all intents, and for every purpose, the original books; and copies therefrom shall be certified accordingly. *Provided, however,* that the court may at any time correct any error in the transcription of the same.

Deemed originals. Errors corrected.—R. S. c. 98, s. 10.

11. Whenever upon the determination, for whatever cause, of the term of office of any register, it shall appear that he has failed to perform any of the duties of his office, the court shall cause the same to be performed by another person, who shall receive for his compensation the fees allowed for such services; and such portion as shall be paid by the county, may be recovered back by the county, by suit on his official bond.

County court to have performed omitted duties, &c.—1844, c. 5, s. 6.

12. Every county court, without delay, and at the expense of the county, shall cause to be made and consolidated in one book, a general index of all the deeds and other documents registered in the office of register; and after the same shall be done, the register shall keep up such index without any additional compensation.

County court shall have made general index of register's books.

## CHAPTER 97.

### RELIGIOUS SOCIETIES.

SECTION

1. Donations to religious societies, to vest in them or their trustees.
2. Houses of worship on vacant land, to belong to the society, &c.
3. Societies may appoint trustees to hold their property. Yearly value of lands, a church or society may hold.
4. Trustees may be removed, &c. To be accountable.
5. Penalty for stopping way to places of worship, springs, &c.

SECTION

6. Stud horses, curiosities, &c., not to be exhibited in half a mile of congregation. Exception as to towns, &c.
7. Sale of liquor and goods, within a mile, forbidden. Exception. Penalty.
8. Penalty for intoxication or disorder during worship.
9. Penalties under this chapter to be for the poor.

1. ALL glebes, lands, and tenements, heretofore purchased, given, or devised for the support of any particular ministry, or mode of worship; and all churches, and other houses built for the purpose of public worship; and all lands and donations of any kind of property or estate that have been or may be given, granted, or devised to any church or religious denomination, religious society or congregation within the State, for their respective use, shall be and remain forever to the use and occupancy of that church or denomination, society, or congregation, for which the said glebes, lands, tenements, property, and estate were so purchased, given, granted, or devised, or for which the said churches, chapels, or other houses of public worship were built; and the estate therein shall be deemed and held to be absolutely vested, as between the parties thereto, in the trus-

Donations to religious societies, to vest in them or their trustees.—R. S. c. 99, s. 1, 6.

tees respectively of the said churches, denominations, societies, and congregations, for their several use, according to the intent expressed in the conveyance, gift, grant, or will: and in case there shall be no trustees, then in the said churches, denominations, societies, and congregations, respectively, according to such intent.

Houses of worship on vacant land, to belong to society erecting them.—R. S. c. 99, s. 2.

2. All houses and edifices, erected for public religious worship on vacant lands, or on lands of the State not for other purposes intended or appropriated, 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.

Religious societies may appoint trustees to hold their property.

3. The conference, synod, convention, or other ecclesiastical body, representing any church or religious denomination within the State, as also the religious societies and congregations within the State, may from time to time and at any time, appoint in such manner as such body, society, or congregation may deem proper, a suitable number of persons as trustees for such church, denomination, religious society, or congregation, who and their successors shall have power to receive donations, and to purchase, take, and hold property, real and personal, in trust for such church or denomination, religious society, or congregation. *Provided, however,* that, besides such lands and lots as may be specially set apart and appropriated to divine worship, no church or denomination by virtue of this chapter, shall have to their own use lands of a greater yearly value than six thousand dollars; and no single congregation or society, lands of a greater yearly value than four hundred dollars; and said lands shall be subject to taxation.

Yearly value of lands, a church or society may hold. R. S. c. 99, s. 3.—1844, c. 47; 1848, c. 76.

Trustees may be removed, &c.

4. The body appointing may remove such trustees or any of them, and fill all vacancies caused by death or otherwise; and the said trustees and their successors may sue and be sued in all proper actions, for or on account of the donations and property so held or claimed by them, and for and on account of any matter relating thereto. And they shall be accountable to the said churches, denominations, societies, and congregations for the use and management of said property, and shall surrender it to any person authorized to demand it.

To be accountable.—R. S. c. 99, s. 4, 5.—1844, c. 47.

Penalty for stopping way to places of worship, springs, &c.—R. S. c. 99, s. 7.

5. If any person shall maliciously stop up or obstruct the way leading to any place of public worship, or to any spring or well commonly used by the congregation, he shall, for every such offence, forfeit and pay twenty dollars.

Stud-horses, jackasses, curiosities not to be exhibited in half a mile of congregation. Exception as to towns, &c.—R. S. c. 99, s. 8.

6. If any person shall bring within half a mile of any place where the people are assembled for Divine worship, and stop for exhibition, any stud-horse or jackass; or shall bring, within that distance, any natural or artificial curiosities, and there exhibit them, he shall forfeit and pay to any one who will warrant therefor, the sum of twenty dollars. *Provided,* that nothing herein contained shall be construed to prohibit such exhibitions at any time, if made within the limits of any

incorporated town; or without such limits, if made before the hour of ten o'clock in the forenoon, or after three o'clock in the afternoon.

7. No person, licensed keepers of taverns and retailers excepted, (and they only when they shall sell at their taverns or shops,) during the progress of religious exercises, at any place where Divine service may be then celebrated, shall sell within one mile of such place, any spirituous liquor, or any liquor of which spirituous liquor shall be a chief ingredient. Nor shall any person, the keepers of licensed stores only excepted, during such time and within that distance of such place, be engaged in the occupation of selling or offering to sell any article of traffic, prepared food and provender only excepted. And if any person shall offend against this or the preceding section, he shall forfeit and pay, to any one who will warrant therefor, twenty dollars.

Sale of liquor and goods within a mile, forbidden. Exception. Penalty.—R. S. c. 99, s. 9, 10.

8. If any person shall be intoxicated, or shall quarrel, fight, or be guilty of any other disorderly behavior, at a church or other place appointed for Divine worship, during the time the people shall be there assembled for such worship, he shall, for each offence, forfeit and pay twenty dollars.

Penalty for intoxication or disorder during worship.—R. S. c. 99, s. 11.

9. The penalties incurred for offences created by this chapter shall be for the use of the poor of the county, if not otherwise provided: and, on information thereof before any justice of the peace of the county wherein they may be committed, he shall issue a warrant against the offender for the penalty incurred; and if there shall be an appeal from the judgment thereon, the case shall be prosecuted by the proper officer of the State.

Penalties under this chapter for the poor.—R. S. c. 99, s. 12, 13.

SECT. 3. 7 Ire. 44. *Deed on unlawful trust*, 1 Dev. 189. *Bequests, good when*, 6 Ire. Eq. 380, 4 Ib. 19.

## CHAPTER 98.

### REPLEVIN.

SECTION

1. Action of replevin for slaves and other chattels, under certain rules.
  - (1.) Plaintiff to make affidavit.
  - (2.) Clerk shall describe property and its value in the writ, and take bond of plaintiff.
2. Duty of sheriff executing writ. Shall deliver property to plaintiff, unless defendant give bond.

SECTION

3. What judgment if plaintiff recovers, the property having remained with him. What judgment if defendant recovers.
4. What judgment where plaintiff recovers, the property having remained with defendant. What judgment, if plaintiff fails.

1. WRITS of replevin for slaves and other personal chattels may be maintained against persons in possession thereof, in

Action of replevin for slaves and oth-

er chattels, under certain rules.

Plaintiff to make affidavit, &c.

Clerk to describe property and its value in the writ, and take bond of plaintiff. — R. S. c. 101, s. 1, 2, 3.

Duty of sheriff executing writ. Shall deliver property to plaintiff, unless defendant give bond. — R. S. c. 101, s. 4.

What judgment if plaintiff recovers, the property having remained with him. What judgment, if defendant recovers. — R. S. c. 101, s. 5. — 1828, c. 35.

What judgment, where plaintiff recovers, property having remained with defendant.

What judgment, if plaintiff fails. — R. S. c. 101, s. 4.

all cases in which actions of detinue or trover will lie, except against persons holding the same in custody of the law, under the following rules and regulations:—

(1.) The plaintiff, or his agent shall make oath before the clerk at the issuing of the writ, that within three years next preceding that time, he hath been in the lawful possession of the property detained, that he has been deprived of the possession thereof without his permission or consent, or unjustly and by fraud, and shall state the value and description of each slave and article of other property, as nearly as he can.

(2.) The clerk shall describe in the writ each slave and article of property demanded, and shall annex to each slave and article so described double the sworn value thereof, and shall take of the plaintiff a bond with good security, in double the alleged value of the property demanded, payable to the defendant and conditioned to perform the final judgment on the writ.

2. The sheriff or other officer, to whom the writ may be delivered, shall forthwith take into his custody the property demanded, and deliver it to the plaintiff or his agent. *Provided always*, that if the defendant will execute and deliver to the sheriff a bond with good security, in double the amount of the sworn value of the property demanded in the writ, payable to the plaintiff, and conditioned to perform the final judgment which shall be rendered in the case, the said property shall be allowed to remain with the defendant, and the sheriff or other officer shall return the matter and bond, along with the writ, to the court whence the process was issued.

3. If the property shall have been delivered to the plaintiff, and on the trial of the action he shall recover, he shall have judgment for his costs and the damages assessed for the taking and detention; but if he shall fail to recover, or be nonsuited, or verdict be rendered for the defendant, the court shall forthwith direct an inquiry of the value of the property, and the damages sustained by the defendant by the detention of his property; and judgment shall be rendered against the plaintiff and his sureties for the penalty of his bond, which may be discharged on surrender of the property and payment of the damages and costs.

4. But if the property shall have remained with the defendant, by reason of his having given bond with security, and the plaintiff on the trial shall recover, the jury shall assess the value of the property, as likewise the damage for its detention, or for its caption and detention; and the plaintiff shall recover against the defendant and his sureties the penalty of his bond and costs of suit, which may be discharged by surrender of the property and payment of the damages and costs. And if, in this case the plaintiff shall fail, the defendant shall recover his costs against the plaintiff and the sureties of his bond.

## CHAPTER 99.

## REVENUE.

## SECTION

1. Property and persons taxed. Property exempt.
2. Tax on real estate.
3. Tax on real estate, a lien.
4. Tax on poll. On slaves, paid by owner. In what case hirer shall pay. Whom court may exempt from poll-tax.
5. On turnpike toll-gates. On gates across highways.
6. On stud-horses and jackasses. To be paid in advance by non-residents.
7. On real estate of \$300 value, and personal of \$200, descending, devised, bequeathed, or distributable, to, or among collateral kindred.
  - (1.) First class, one per cent.
  - (2.) Second class, two per cent.
  - (3.) Third class, three per cent. Certain persons exempt from the tax.
8. Tax on personalty, and surplus of land sales retained by executor, &c., and paid to clerk.
9. Remedy against, for failing to pay it over.
10. Value of personal estate, how ascertained.
11. Executor, &c., to report to clerk an account of the real estate. Its value, how ascertained.
12. Heir or devisee failing to pay tax in six months after report, to be sued.
13. Clerk to keep a record of such taxes; to return a list to comptroller, and pay them to sheriff.
14. Commissioners appointed by governor to enforce collection of such tax.
15. Estates subject to tax not to be settled without administration, under penalty of \$500.
16. When no administration in three months, clerk to administer.
17. Duty of commissioners. Commissioners to sue defaulting clerks for penalties, &c.
18. Conveyances in fraud of such tax, void.
19. Tax on all interest exceeding six dollars.

## SECTION

20. On dividends or profits exceeding six dollars.
21. Taxable sum of interest and dividends, how ascertained.
22. On money employed in trading in slaves, and other kinds of trade.
23. Sulkies, buggies, and other pleasure vehicles of \$50 value, and upwards.
  - (2.) Plate, jewelry, and watches.
  - (3.) Musical instruments.
  - (4.) Certain arms, if at any time used during the year.
  - (5.) Retailers.
  - (6.) Tavern-keepers.
  - (7.) Billiard tables.
  - (8.) Bowling-alleys.
  - (9.) Livery-stables.
- (10.) Playing cards. Seller to state the number.
- (11.) Peddlers of patent medicines, razor-straps, &c.
- (12.) Mortgages, trust-deeds, and marriage contracts. Register to receive and account for tax. To list the number of deeds, &c., under penalty of \$100.
- (13.) Tax on marriage licenses. Clerk to receive and list.
- (14.) Tax on retailers, billiards, and bowling-alleys to be paid to sheriff, in advance.
24. Merchants, merchant-tailors, and jewelers. Dealers in liquors, wines, or cordials. Drugs, medicines, &c., nostrums of non-residents; commission merchants; auctioneers. Capital and commissions of merchants, how estimated for tax. Distillers of turpentine.
25. Bonds, &c., of merchants, &c., not deemed stock.
26. Merchants, &c., to apply for license on first of April.
27. Such as open stores afterwards, how to obtain license.
28. Merchant selling without, to pay additional tax of \$100 to sheriff.
29. On peddlers of carriages, &c., not made in the State, \$30 in each

## SECTION

- county. On horses brought into the State for sale.
30. On persons keeping a fixed establishment for sale of such articles; unless sold where made.
  31. Selling, or offering to sell by sample.
  32. License under three preceding sections obtained on paying the tax. Two not to peddle under one license.
  33. Double tax for violating the four preceding sections.
  34. On peddlers of other articles not obtaining license, \$100 a year, for each county.
  35. On peddlers obtaining license, \$30 for each county.
  36. Proviso (1.) As to south side of Albe-  
marle sound, &c.  
(2.) As to peddling live-stock, vege-  
tables, &c.  
(3.) As to books, &c.  
(4.) Two not to peddle under one li-  
cense.  
(5.) Shall pay duties on auction sales.  
(6.) Deemed peddlers though they pro-  
cure houses temporarily.
  37. On brokers, \$100 a year.
  38. And \$200, if not paid down.
  39. On all receivers of salaries and fees,  
of \$500 yearly value.
  40. On license to attorneys. How dis-  
posed of.
  41. On insurance companies. Agencies of  
banks incorporated out of the State.  
Double tax on failure to pay.
  42. On circus riders, menageries, &c., ex-  
hibited for reward, \$50 for each  
county.
  43. On stage-players, jugglers, rope danc-  
ers, exhibitors for reward of curiosi-  
ties.
  44. On singers, serenaders, and players  
on musical instruments for reward.
  45. Tax imposed in sections 42, 43, 44, to  
be paid in advance, or doubled.  
Sheriff to specify county, &c., for  
which tax is paid.
  46. Peddlers, and persons allowed to ex-  
hibit, to show tax receipt to justices  
and constables.
  47. Penalty for refusing, and proceedings  
to enforce it.
  48. Members of family, and free negro  
tenants, by whom listed.
  49. What subjects listed for tax.
  50. Tax lists to refer to first of April.  
Persons, coming of age after that  
day, may pay tax and vote.

## SECTION

51. Lists of deceased and disabled persons,  
and others, by whom given in.
52. Lands divided after valuation, how  
valued and listed.
53. List-takers for each district appointed  
by court held after first of April.  
Their names and districts advertised  
during term.
54. On failure to appoint, three justices  
may before July.
55. List-takers to be notified in ten days;  
and advertise for ten days, the places  
and times of taking lists.
56. Sections 59 and 66 to be copied into  
notice to list-taker. His duty.
57. If list-taker die, justices to appoint  
another.
58. Inhabitants to attend and give their  
lists. List-takers to read over the  
subjects of taxation, and administer  
an oath.
59. Penalty for failing to administer oath.  
Proviso for females, infirm and ab-  
sent persons.
60. County in which taxables shall be  
listed.
61. Persons failing to list, to pay double  
tax.
62. Sheriff discovering land not assessed,  
to report it to court. Proceedings  
thereon.
63. Persons listing taxables refusing to  
take oath, guilty of a misdemeanor.  
To be committed and indicted.
64. Sheriff to inform prosecuting officer  
of frauds on the revenue. Duty of  
officer.
65. Forms of tax lists prepared by treasur-  
er, and sent to clerks.
66. Mode of entering taxables on lists.
67. List-takers or assessors refusing to  
act, guilty of misdemeanor.
68. Lists returned to be recorded by clerk  
and set up in court house.
69. Abstracts of lists of all taxes sent to  
comptroller before first of April.  
What set forth in abstracts. Print-  
ed forms furnished by comptroller.
70. Penalty on clerk for failing to send  
abstracts.
71. County court up to March, may re-  
ceive tax lists.
72. Board of valuation appointed every  
five years, to value real estate. For  
Wilmington every two years.
73. Mode of assessing value, fisheries,  
mines, &c., considered in valuation.  
Lands in several districts, where  
valued. Affidavit of board.



SECTION

- 74. Owner to furnish a list of his real estate for valuation.
- 75. When number of acres is unknown, board shall order survey at owner's cost.
- 76. Valuation too high, how reduced. How advanced, when increased by mines, &c.
- 77. Overcharge of poll, &c., how corrected.
- 78. Pay of board.
- 79. Allowance to clerk.
- 80. Double tax may be released by county court. In what cases.
- 81. Tax lists delivered by clerk to sheriff by April. Form and contents of lists. Penalty for omission.
- 82. Tax collectors to be sworn.
- 83. If sheriff die, his sureties may collect taxes.
- 84. Sheriff allowed one year after first of October to collect.
- 85. Shall collect double tax on unlisted property. If not assessed, what to be deemed its value.
- 86. Sheriff on receiving tax lists to advertise them, &c.
- 87. May distrain for tax.
- 88. Tax of persons about to remove, to be collected forthwith.
- 89. Of solvent persons, having no property in the county, collected by execution.
- 90. Sales of personalty for taxes, how made.
- 91. Sales of land, how conducted.
  - (1.) Sheriff to return to court a list of lands, &c. To be read aloud, recorded, and put up in court house.
  - (2.) Land-owners notified, how. Description of land to be given.
  - (3.) To be sold in two terms after returned—where.
  - (4.) Whole tract to be put up. Who deemed the buyer.
  - (5.) Sale returned at the second term, &c. Proceedings on return.
- 92. Lands of infants, &c., not to be sold. When held jointly with such persons, how to be sold. Proceedings to get title in such case.
- 93. Lands may be redeemed in one year. Mode of proceeding.
- 94. Purchaser to select and lay off quantity bought in a compact body, &c.
- 95. Land to be surveyed in a year after time of redeeming. By whom surveyed.
- 96. Deed to be made by sheriff.
- 97. Proceedings, when another conveys than the sheriff who sold.

SECTION

- 98. Purchaser to pay certain back tax.
- 99. Penalty on sheriff's and clerks omitting duties prescribed in sections 90 and 91.
- 100. Penalty on county surveyor failing to survey.
- 101. State deemed buyer, if none bid less than the whole tract. Sheriff to report to county court. Proceedings thereon.
- 102. Copies of report to be certified by clerk for comptroller and secretary. Proceedings thereupon.
- 103. Sheriff failing to report sale, or deposit copy with secretary, to be charged with \$2,000.
- 104. Lands bid off by State may be redeemed; on what terms.
- 105. Deemed vacant, and subject to entry.
- 106. On sheriff's death, &c., his sureties may report sales, &c.
- 107. Sheriff and all tax-receivers to settle yearly with comptroller, between June and October. Comptroller to report to treasurer amount due from each.
- 108. Sheriff to render to comptroller the amount of each kind of tax. A copy certified by comptroller, to be deposited with the clerk. What sheriff's to be charged with.
- 109. With what credited. Tax on land bought by State, &c. Insolvents allowed by court.
- 110. List of money received by sheriff from clerk, and on unlisted taxables, to be returned to the county court next before October.
- 111. What the list to set forth. To be read, recorded, set up, and laid before grand-jury.
- 112. In certain cases list filed with clerk in vacation.
- 113. Sheriff to deliver a copy to comptroller, or be charged with \$1,000.
- 114. Penalty on clerk for violating sections 107, 108, 109.
- 115. Register, or clerk failing to settle taxes with sheriff, to be sued.
- 116. Insolvent taxables, in what case allowed by court.
- 117. Penalty on sheriff returning false lists of insolvents. On clerk failing to record and set up lists.
- 118. Oath of sheriff, on settling with comptroller.
- 119. Comptroller suspecting frauds, &c., about the revenue, to inform, &c.

## SECTION

120. Commissions allowed sheriff on settlement.
121. Further compensation.
122. Sheriff failing to settle, comptroller to report his account. How to be stated. Treasurer to take judgment against him and sureties.
123. Clerk to furnish comptroller with certified copies of sheriffs' bonds, under penalty of \$1,000.
124. Register to furnish comptroller with a certified copy of clerk's bond, under penalty of \$1,000.
125. In suits against sheriffs or clerks, such copies to be evidence.
126. If register fail to transmit a copy, how comptroller to proceed.

## SECTION

127. Penalties on clerks and sheriffs for defaults not specially provided for. Penalties recovered by treasurer on motion.
128. Certificate of treasurer or comptroller, and copies of papers in office, to be evidence.
129. Debts due the State recovered on motion.
130. Sheriffs' receipts to state separately the sums of State and county tax.
131. Tax on profits of Deep River Navigation Company, to be a sinking fund.
132. Tax on coal shipped, to be a part of such fund.

Property and  
persons taxed.

1. THE following taxes shall be annually collected and paid by the citizens and other persons, and by owners of property situate in the State, besides the taxes which by any other law may be imposed on them; unless the property in this chapter described shall be expressly exempt from taxation by this or some other law. The property and estate hereby exempted from taxation, are all such and their profits as may belong to the State, or may belong to, or be set apart for the university and colleges, institutes, academies, and schools for the education of youth, or the support of the poor or afflicted, or specially set apart for and appropriated to divine worship.

Property ex-  
empt from tax-  
ation.—R. S. c.  
102, s. 2.

Tax on real es-  
tate.—R. S. c.  
102, s. 1.

2. There shall be annually levied upon all real property, with the improvement thereon, including entries of land, twelve cents on every hundred dollars value thereof.

Tax on real es-  
tate, a lien.—R.  
S. c. 102, s. 4.

3. If any person shall sell his real property, and shall have no estate within reach of the sheriff to satisfy the taxes imposed thereon, at the time when they become demandable, the land shall be bound for the same, as well as the property of the then owner.

Tax on poll.  
On slaves paid  
by owner.

4. Upon every free male, between the ages of twenty-one and forty-five years, a tax of forty cents; and for every slave of either sex, between the ages of twelve and fifty years, the like sum shall be paid by the owner, and not the hirer; unless when the owner may be a non-resident and his slave be hired, and then the hirer shall list the slave and pay the tax. *Provided, however,* that the county court may exempt from a poll-tax such poor and infirm persons, and disabled and insane slaves, as they may declare and record to be fit objects for exemption.\*

When hirer  
shall pay.

Whom co. may  
exempt from  
poll tax.—R.  
S. c. 102, s. 6.—  
State Cens't'n,  
Art. 4, s. 3, cl. 2.

On turnpike  
toll-gates.  
On gates across  
highways.—R.  
S. c. 102.—  
1848, c. 80;  
1860, c. 121.

5. Upon each toll-gate of a turnpike-road, a tax of ten dollars shall be paid by every owner; and a tax of three dollars per gate by every person who may be permitted to erect gates

\* The taxes laid in sections two and four include the taxes imposed in section 36, ch. 6, for the support of the Insane Asylum—vide p. 91, and Act of 1854, c. 38.

across a highway; and a tax, equal to five times the largest toll by the owner demanded, upon every public ferry; and a tax of ten dollars on every toll-bridge.

6. Upon every stud-horse or jackass, let to mares for a price, a tax of five dollars, unless the value of the highest season for one mare shall exceed that sum, in which case a tax of that value shall be paid, and they shall be listed by resident owners; owners residing out of the State, of such as are kept within the same to be let to mares, shall pay the tax forthwith to the sheriff of the first county into which the horse or ass may be put to stand; and if he shall fail, such sheriff, or any other sheriff of the county in which the animal may stand, shall forthwith distrain and sell it for the tax.

On stud-horses and jackasses.

To be paid in advance by non-residents.—R. S. c. 102, s. 7, 8.

7. Upon the value of all real and personal estate which shall descend upon, be devised or bequeathed to, or shall become distributable among, other persons than lineal descendants, or to or for the benefit of the father or mother, or any lineal ancestor of the deceased, where the real estate descended or devised, or both descended and devised, on or to any heir or devisee, shall be of the value of three hundred dollars; or the personal estate bequeathed to any legatee, or distributive share, or both legacy and distributive share, shall be of the value of two hundred dollars, the following taxes shall be paid:—

On real estate of \$300 value, and personal of \$200, descending, devised, bequeathed, or distributable, to, or among collateral kindred.

(1.) When such collateral relation shall be a brother or sister of the deceased, or any descendant of a brother or sister, a tax of one per cent.

First class, one per cent.

(2.) When such collateral relation shall be a brother or sister of the father or mother of the deceased, or any descendant of a brother or sister of the father or mother of the deceased, a tax of two per cent.

Second class, two per cent.

(3.) When such collateral relation shall be in any other degree of consanguinity to the deceased than is above described, or the legatee or devisee shall be a stranger in blood to the deceased, a tax of three per cent. *Provided, however,* that no devise, or bequest, or distributive share to the widow of the deceased; nor any devise or bequest to the wife or widow of a son of the deceased; nor to the husband of a daughter of the deceased, whether she be living or dead, shall be taxed: nor shall the husband of any deceased wife, receiving her estate after her death, be subject to any tax therefor, unless the same would have been taxable had she been living.

Third class, three per cent.

Certain persons exempt from the tax.—1846, c. 72, s. 1, 2.

8. The executor or administrator of every such deceased person, on his settlement of the estate, shall retain out of the legacy or distributive share of every such legatee or next of kin, the tax properly chargeable thereon; and, in case he may have sold any real estate and there shall be a surplus in his hands not needed to pay debts and charges, he shall retain the proper tax of each person entitled to such surplus; which taxes he shall pay to the clerk of the court of pleas and quarter-sessions of the county wherein the will was proved, or administration granted.

Tax on personalty, and surplus of land sales retained by executor or administrator, and paid to clerk.—1846, c. 72, s. 4.

Remedy against, for failing to pay it over.—1846, c. 72, s. 4.

9. If the executor or administrator shall fail to retain and pay the tax to the clerk, it shall be deemed a breach of his bond, if one shall have been executed, and the same shall be put in suit, on behalf of the State, by the county solicitor; or such executor or administrator, with his sureties, may be sued in equity, at the cost of the State in case of failure.

Value of personal estate, how ascertained.—1848, c. 81.

10. Whenever the personal property in the hands of such executor or administrator, (the same not being needed to be converted into money in the course of administration,) shall be of an uncertain value, he shall apply to the county court to appoint three impartial persons of probity to assess the value thereof; and such assessment, being returned to the court and confirmed, shall be conclusive of the value.

Executor, &c., to report to clerk an account of the real estate.

11. The executor or administrator, as soon as he may ascertain that the land of the deceased will not be needed to pay his debts, shall report to the clerk of the court who receives the tax on personalty, an account of such real estate; and the tax thereon shall be paid by the heirs and devisees thereof, respectively, to the said clerk;—the value of the real estate to be ascertained as provided in the preceding section in relation to personalty, and the heir and devisee being duly notified of the motion to appoint commissioners.

Its value, how ascertained.

Heir or devisee failing to pay tax in six months after report, to be sued.

12. If they, or any of them, fail to pay said tax within twelve months after the report of the executor or administrator, the clerk shall report such default to the commissioner for the judicial circuit; who, thereupon, shall cause a *scire facias* to issue to the defaulting person, to show cause why judgment shall not be rendered against him for the tax, and the real estate be sold to pay the same; and the court shall render judgment, and cause the tax to be collected and paid to the clerk.

Clerk to keep a record of such taxes; to return a list to comptroller, and pay them to sheriff.—1846, c. 72, s. 5, 6.

13. The clerk shall keep a record of the taxes on the real and personal estate received by him in virtue of the six preceding sections, and shall return to the comptroller a correct account of the same with his annual statement of other taxable property; and he shall annually return upon oath to the court of pleas and quarter-sessions of his county, at the term next preceding the time at which the sheriff may settle with the comptroller, a correct account of the same, and immediately pay the money to the sheriff of the county, retaining three per cent. thereof for his services.

Commissioners appointed by governor in each circuit, to enforce the collection of such tax.—1854, c. 87.

14. The governor shall appoint in each judicial circuit, one or more commissioners, whose duty it shall be to institute and attend to all suits brought to enforce the collection of the tax laid in section seven of this chapter; and to bring suits and take such other steps as may be necessary to enforce the collection of all taxes due and unpaid, which have heretofore been laid on property real and personal, descended or devised to collateral relations, and the commissioners shall receive such compensation for their services as the governor may allow.

Estates subject to tax, not to

15. In all cases where estates descend, or are devised to

collateral relations, or strangers in blood, and the same shall be divided or settled, or an attempt be made to divide or settle them, without any lawful administration being had upon such estates, any person intermeddling in said estates, shall forfeit and pay the sum of five hundred dollars; to be sued for in the name of the State, in the superior court of the county wherein the testator or intestate had his domicile at the time of his death, and accounted for when collected as public tax.

be settled without administration, under penalty of \$500.—1854, c. 37.

16. Whenever any person shall die, leaving no lineal descendants, and leaving property liable to the tax imposed by the seventh section of this chapter, and no administration shall be had on the estate within three months thereafter, it shall be the duty of the county court upon being informed of the fact, to grant administration thereof to the clerk of the county court, who shall retain and account for the tax according to the preceding sections of this chapter.

When no administration in three months, clerk to administer.—1854, c. 37.

17. It shall be the duty of the commissioners to institute suit for all penalties incurred by clerks for failing to collect and account for the tax on collateral descents; which penalties shall be accounted for as public tax.

Commissioners to sue defaulting clerks for penalties, &c.—1854, c. 37.

18. Every conveyance made by such deceased person, with intent fraudulently to evade the collection of said taxes, or any of them, shall, as against the State, be void; and the same shall be chargeable at the suit of the State, on the property conveyed, in the hands of such vendee or donee, and his assignee.

Conveyances in fraud of such tax, void. 1846, c. 72, s. 3.

19. Upon every dollar more than six dollars of net interest not listed theretofore, either received during the year next preceding the first day of April, or during that time accrued—or converted into principal, so as to become an interest bearing subject,—(whether demandable or not,) on money owed by solvent debtors, wherever they may reside, a tax of three cents.

Tax on all interest exceeding six dollars.—1850, c. 121; 1854.

20. Upon every dollar more than six dollars of net dividend or profit, not theretofore listed, actually due or received during the year ending on the said first day of April, upon money vested in steam vessels of twenty tons burden and upwards, or in stocks of any kind, or in shares of any incorporated or trading company, whether in or out of the State—and herein shall be included all bank dividends, bonds, and certificates of debt of any other State or country, or of any public corporation created by this or any other State—a tax of three cents.

On dividends or profits exceeding six dollars.—1850, c. 121, s. 2; 1854.

21. Such net interest, dividend, or profit, shall be ascertained by deducting from the whole amount thereof, such interest as during that time had accrued against the payer of the tax.

Taxable sum of interest, &c., how ascertained.—1850, c. 121, s. 2.

22. Upon every hundred dollars employed in buying and selling slaves, whether the said capital shall be borrowed or shall be the individual property of the person or company investing the same, during the year ending on the said first day of April, twenty-five cents; and upon every hundred dollars 2.

On money employed in trading in slaves, and other kinds of trade.—1850, c. 121, s. 2.

- employed within the same time in any other species of trade, not in this chapter specially taxed, ten cents.
- Sulkies, buggies, and other pleasure vehicles of \$50 value, and upwards.—1850, c. 121, s. 5. ✓ 23. Upon each sulky, gig, buggy, barouche, carriage, and other pleasure vehicles, in use by the owner, or by his consent, of the value of fifty dollars and under a hundred dollars, fifty cents; of the value of one hundred dollars and under two hundred dollars, one dollar; of the value of two hundred dollars and under three hundred dollars, two dollars; of the value of three hundred dollars and under four hundred dollars, three dollars; of the value of four hundred dollars and upwards, four dollars.
- Plate, jewelry, and watches. ✓ (2.) Upon all gold and silver plate and ornamental jewelry in use, except ornamental jewelry worn by females, of as great value as fifty dollars, one per centum on the value. On each gold watch in use, one dollar; on each silver watch in use, twenty-five cents.
- Musical instruments. ✓ (3.) Upon each harp in use, two dollars; on each piano-forte in use, one dollar.
- Certain arms, if at any time used during the year. ✓ (4.) Upon every pistol, except such as are used exclusively for mustering, and on every bowie knife, one dollar. On dirks and sword canes, fifty cents each. *Provided, however,* that of said arms only such shall be taxable as at some time within the year have been used, worn, or carried about the person of the owner, or of some other by his consent.
- Retailers. (5.) On all retailers of wines, cordials, or spirituous liquors, twenty dollars.
- Tavern-keepers. (6.) On every keeper of a common inn, ordinary, or tavern, ten dollars.
- Billiard tables. (7.) On each billiard table one hundred dollars, except when there are more than one kept by the same individual in the same room; in that case, a tax of one hundred dollars shall be paid on the first, and fifty dollars on each additional table.
- Bowling-alleys. (8.) On each bowling-alley, commonly called nine pin or ten pin, or by whatever other name called, twenty-five dollars.
- Livery-stables. (9.) On each livery-stable, a tax of ten dollars.
- Playing cards. Seller to state the number. (10.) On each pack of playing cards, twenty-five cents, to be paid by the seller; and every merchant, shopkeeper, retailer, inn or tavern-keeper, or public dealer in goods, wares, or merchandise, or other thing, shall list the number of packs he may have sold during the year.
- Peddlers of patent medicines, razor straps, &c. (11.) On all peddlers of patent soap, medicines for the killing of crows, chinchies, and other vermin, for the curing of headache, toothache, or corns, and of all patent medicines, razors, and razor straps, a tax of five dollars in every county in which they may so peddle.
- Mortgages, trust deeds, and marriage contracts. Register to receive and account for tax. (12.) On each mortgage deed, marriage contract, and deed in trust made to secure debts or liabilities, which shall be registered, one dollar, which the register shall pay. The register shall not be obliged to record any such deed, unless the tax thereon is paid to him; and he shall indorse thereon the

payment of the tax, and shall render to the justice who takes the tax list, the number of such deeds by him registered in the preceding year, under the penalty of one hundred dollars for the use of the State, to be collected by the county solicitor.

To list the number of deeds, &c., under penalty of \$100.—1850, c. 121, s. 5.  
Tax on marriage licenses. Clerk to receive and list.—1854.

(13.) On each marriage license, the sum of one dollar, which shall be paid by the clerk; and no clerk shall issue such license unless the tax thereon shall be paid to him; and he shall render to the justice who takes the tax list the number of such licences by him granted in the preceding year, under the penalty of two hundred dollars for the use of the State, to be collected by the county solicitor.

(14.) The taxes herein imposed on retailers, tavern-keepers, peddlers, billiard tables, and bowling-alleys, shall be annually paid in advance to the sheriff of the county, who shall grant a license for the same; the applicant for license to retail spirituous liquors, having first obtained an order therefor, as provided in the chapter entitled "Ordinaries and Inns." And any person offending against this provision, shall pay a double tax, to be collected by distress.

Tax on retailers, billiards, and bowling-alleys to be paid to sheriff in advance.—1854.

24. On every merchant, merchant-tailor, or jeweller, who shall sell goods, wares, and merchandise, a tax of one fourth of one per cent. upon his capital: on every merchant, apothecary, druggist, or other dealer, consignee, or agent, selling at wholesale or retail, spirituous liquors, wines, or cordials, five per cent. upon the capital so employed, to be paid by the seller: on every merchant or apothecary selling drugs, medicines, or nostrums, as agent of the owner, if a non-resident, twenty-five per cent. of the value, to be paid by the seller: on every commission merchant, one per cent. on the commission received by him: on every auctioneer, one-fourth of one per cent. upon the value of all goods sold by him. *Provided*, that no tax shall be levied upon sales made under an execution, or order issuing from any court, or from a justice of the peace, nor by any executor, administrator, or trustee. The capital aforesaid shall be the aggregate sum of the purchases of goods, wares, and merchandise, made within the year preceding the first day of April. The commissions received by each commission merchant, shall be computed by the same time, and also the amount of such articles, not of the manufacture of the State, as are sent here to be sold by the consignees or agents of the owner. All distillers of spirits of turpentine shall pay an annual tax of two dollars and fifty cents, on every distillery of a capacity of ten barrels and under; on every distillery of a capacity between ten and fifteen barrels, an annual tax of three dollars and fifty cents; on every distillery of a capacity between fifteen and twenty barrels, an annual tax of five dollars; and on every one of a larger capacity than twenty barrels, an annual tax of ten dollars.

Merchants, merchant-tailors, and jewelers.

Dealers in liquors, wines, or cordials.

Drugs, medicines, and nostrums of non-residents.

Commission merchants; auctioneers.

Capital and commissions of merchants, how estimated for tax.

Distillers of turpentine.—1854.

25. The bonds and notes payable to any merchant, merchant-tailor, or jeweller, shall not be deemed part of his capital stock, but the interest on the same shall be taxed as other money at interest.

Bonds, &c., of merchants, &c., not deemed stock.—1850, c. 121, s. 3.

26. Every such merchant, merchant-tailor, or jeweller, engaged in business in any county on the first day of April, shall apply to the sheriff of such county, and on paying the tax on his capital estimated as aforesaid, (the account of which he shall swear to in an affidavit subscribed and made before the sheriff,) shall take a receipt therefor, and be allowed to carry on his business.

Such as open stores afterwards, how to obtain license.—R. S. c. 102, s. 14.—1844, c. 18, s. 2.

27. Every person opening such store, after the first day of April, shall pay the tax, or shall execute and deposit with the sheriff a bond with good security payable to the State of North Carolina, to pay the tax on the amount of all his purchases, including his present stock, to the first day of April next succeeding; and thereupon shall take from the sheriff a receipt for such tax or bond, and be allowed to carry on his business.

Merchant selling without, to pay additional tax of \$100 to sheriff.—R. S. c. 102, s. 14.

28. Every wholesale, commission, or retail merchant, merchant-tailor, or jeweller, who shall sell any goods, wares, or merchandise, without first taking the receipt of the sheriff, as in any of the foregoing sections of this chapter is provided, shall pay an additional tax of one hundred dollars, which the sheriff shall collect forthwith by distress, with the other tax imposed on such merchant.

On peddlers of carriages, &c., not of manufacture of the State, \$30 in each county.—1846, c. 74.

On horses brought into State for sale.—1854.

29. There shall be paid in advance to the sheriff of each county a tax of thirty dollars, by every person who shall offer for sale, or peddle in that county, any riding vehicle, not of the manufacture of this State: and on all horses and mules brought into the State for sale, whether by citizens of the State or others, there shall be paid to the sheriff a tax of ten dollars for each county in which any sale of such horses or mules may be made. *Provided*, that, when a person shall offer for sale any vehicle purchased for his own use, he shall not be subject to the above tax.

On persons keeping a fixed establishment for sale of such articles.—1846, c. 74.

Unless sold where made.—1854.

30. A tax of one hundred dollars shall be paid to the sheriff of the county by every person who shall keep therein an establishment for the sale of such vehicles, any part of the woodwork of which is not of the manufacture of this State; and a tax of fifty dollars, when the vehicles are of the manufacture of this State. *Provided*, nevertheless, that no person who is a manufacturer of such vehicles in this State, shall be subject to the tax for the sale of vehicles manufactured by him, when said sales are made in his county.

Selling, or offering to sell by sample.

31. There shall be paid in advance to the sheriff of each county a tax of fifty dollars, by every person exhibiting, selling, or offering to sell by sample, any goods, wares, or merchandise not of the manufacture of this State.

License under three preceding sections obtained on paying the tax.

Two not to peddle under

32. On payment of the tax mentioned in the three preceding sections, the person paying the same shall take the sheriff's receipt specifying the county and purpose for which it is paid, and thereupon he may exercise such employment for one year, and sell at any places in the county for which the tax is paid. *Provided*, always, That such receipt shall not be construed to



pernit two or more persons to peddle under the same license, under the pretence of being partners in trade. one license.— R. S. c. 102.

33. If any person shall offend against any of the four preceding sections, he shall pay to the sheriff double the tax due from him, which the sheriff shall forthwith collect by distress. Double tax for violating four preceding sections.

34. Every peddler, except as hereinafter provided, of any other article, part of machinery, or thing whatsoever, than aforesaid, the whole or principal part whereof, in value, shall be not of the growth or manufacture of this State, who shall exercise such employment, without first having obtained an order allowing him to peddle, from the court of pleas and quarter-sessions of the county in which he proposes to peddle, and paid the tax in the following section imposed, shall pay a tax of one hundred dollars a year for each county in which he may so peddle, which the sheriff shall forthwith collect by distress. On peddlers of other articles not obtaining license, \$100 a year, for each county.—R. S. c. 102, s. 10, 13.

35. Every person who shall prove to the court that he is of good moral character, and that he is a native or naturalized citizen of the United States, shall be entitled to such order from the county court; and on paying to the sheriff of the county for which the order was granted, a tax of thirty dollars, and taking a receipt therefor, specifying the purpose and county, may peddle in that county for one year, either on land or water, articles, parts of machinery, or other thing of the kind mentioned in the preceding section. On peddlers obtaining license, \$30 for each county.— R. S. c. 102, s. 10,—1846, c. 73 ; 1848, c. 79.

36. *Provided*, (1.) That when such licensed peddler shall peddle altogether on the waters on the south side of Albemarle sound and the tributaries entering that side of the sound, (Roanoke and Cashie excepted,) he shall pay a tax of five dollars only. Provido as to south side of Albemarle sound, &c.

(2.) That any person may freely peddle live-stock, (except horses and mules,) vegetables, fruits, oysters, or fresh fish, the growth or produce of the United States. As to peddling live-stock, vegetables, &c.

(3.) That any person, a citizen, and for twelve months a resident of the State, may freely peddle books, charts, maps, philosophical apparatus, and music prints. As to books, &c.

(4.) That two persons shall not peddle under one license, under any pretence of being partners. Two not to peddle under one license.

(5.) That no licensed peddler shall sell any goods or other thing at auction, without incurring the duties on auction sales. Shall pay duties on auction sales.

(6.) That any person who shall procure houses for carrying on a temporary sale of goods, at one or more public places in the State, shall be deemed a peddler. Deemed peddlers though they procure houses, &c.

37. Upon all persons, commonly known as brokers, who for the purpose of gain, shall be engaged in buying or selling bills of exchange, or the bills of any bank incorporated in this State, shall be levied a tax of one hundred dollars. On brokers, \$100 a year.— R. S. c. 102.— 1848, c. 78.

38. The tax shall be paid in advance, to the sheriff of the county in which the calling is used, whose receipt therefor shall allow the person to act as broker aforesaid for one year; and if any without such authority shall act as such, he shall And \$20, if not paid down.— R. S. c. 102, s. 15.—1848, c. 78.

pay a tax of two hundred dollars, which the sheriff shall forthwith collect by distress.

On all receivers of salaries and fees, of \$500 yearly value.—1850, c. 121, s. 4.

39. On surgeon dentists, practising physicians, practising lawyers, and all other persons, (ministers of the gospel excepted,) whose practice, salaries, or fees, or all of them together, shall yield an annual gross income of five hundred dollars, there shall be levied a tax of three dollars for the first five hundred, and two dollars for every additional five hundred dollars, until such income shall exceed fifteen hundred dollars, and five dollars for every additional five hundred above that amount.

On license to attorneys.

40. Upon each license to attorneys to practise law in the county or superior courts, ten dollars, to be paid at the time of obtaining license, to the clerk of the supreme court; so much thereof as may be paid to the clerk of the court at Raleigh, shall be paid by him into the public treasury; and so much as shall be received by the clerk at Morganton, shall be expended by him under the direction of the court, in the purchase of books for the library at that place. And the clerk shall be entitled to six per cent. for receiving and accounting for said money.

How disposed of.—R. S. c. 28, s. 5.—1846, c. 72, s. 7; 1850, c. 93.

On insurance companies.

41. Upon all insurance companies incorporated in this State, an annual tax of one hundred dollars; and upon all insurance companies incorporated out of the State, an annual tax of one hundred dollars for the first county, and fifty dollars for every other county in which an agency shall be established. On all agencies of banks incorporated out of the State, a tax of five hundred dollars. The tax shall be paid in advance, to the sheriff of the county where the company may transact its business, and where the agency may be established: and, if the tax be not paid in advance, the same shall be two hundred dollars, which the sheriff shall forthwith collect. On each express company, a tax of two hundred dollars.

Agencies of banks incorporated out of State.

Double tax on failure to pay.—1850, c. 121, s. 7; 1854.

On circuses, menageries, &c., exhibited for reward, \$50 for each county.

42. Upon every company of circus riders or equestrian performers, and upon every company or person, who for reward, shall exhibit any collection of animals commonly known as a menagerie, an annual tax, for each county wherein they may exhibit, of fifty dollars.

On stage-players, jugglers, rope dancers, exhibitors for reward of curiosities.—1850, c. 121, s. 8.

43. Upon every company of stage or theatrical players, slight of hand performers, rope-dancers, tumblers, wire-dancers, or company exhibiting for reward artificial curiosities of any kind, (models of useful inventions excepted,) and on each one of such persons, when they perform or exhibit alone, an annual tax for each county wherein they may exhibit, of thirty dollars; and upon every person or company exhibiting any other natural curiosity, not already mentioned, an annual tax for each county wherein it may be exhibited, of fifteen dollars.

On singers, serenaders, and players on musical instruments, for reward.—1850, c. 121, s. 8.

44. Upon every person, or company of singers, dancers, Ethiopian serenaders, or performers on musical instruments, who, for the public amusement, shall sing, dance, serenade, or play on musical instruments for reward; and upon every other

public exhibition for amusement, exhibited for reward; and upon every person who lectures for reward, an annual tax of five dollars, unless the reward be wholly devoted to some literary or charitable use in the State.

45. The tax imposed in the three next preceding sections, shall be paid in advance, to the sheriff of the county in which the exhibition is to be made, who shall thereupon give a receipt for the same, specifying the county for which the tax is paid, and a list of the performances, animals, or articles to be exhibited; and if such tax is not paid in advance, the sheriff shall forthwith collect a double tax.

Tax imposed in sections 42, 43, 44, to be paid in advance, or doubled. Sheriff to specify county, &c., for which tax is paid. — 1850, c. 121, s. 8. Peddlers, and persons allowed to exhibit, to show tax receipt to justices and constables.

46. Every peddler, stage-player, slight of hand performer, rope-dancer, tumbler, wire-dancer, company of circus riders, or equestrian performers, exhibiter of natural or artificial curiosities, company of singers, serenaders, or musical performers, dancers, and every other public exhibiter for reward, shall show his receipt for the tax, to any justice of the peace or constable who may demand a view thereof; and it shall be the especial duty of constables to demand such view.

47. If the justice or constable shall be denied a view of the receipt, the offender shall forfeit and pay one hundred dollars, one half for the State, and the other half for the constable or any other who will sue for the same; and the justice, if the denial be to him, shall forthwith issue his warrant for the recovery thereof; and if to a constable, he shall arrest the party and carry him before some justice of the peace, who shall issue his warrant for the penalty, and determine the cause.

Penalty for refusing, and proceedings to enforce it. — R. S. c. 102, s. 18, 19.

48. All free persons, living with, and constituting a part of the family, and all colored persons living by consent on the lands of another, shall be listed by the head of the family, or owner of the land, as the case may be.

Members of family, and free negro tenants, by whom listed. R. S. c. 102.

49. Every kind of property, person, employment, profession, privilege, or subject, on which a tax is imposed by this chapter, other than such whereon the tax imposed is demandable at the time it is laid, shall be listed for taxation within the last twenty working days in July, in every year.

What subjects listed for tax. — R. S. c. 102, s. 22.

50. The real and personal estate, and other taxable subjects, unless otherwise provided, required to be listed for taxation, shall be such as were the property or in the possession of the owner, or were subjects of taxation, on the first day of April preceding, and the polls shall be such as were of the required age on that day. And any freeman arriving at age after that day, and before an election, may list himself before the sheriff or his deputy, and pay down to the sheriff the poll-tax of the year.

Tax lists shall refer to 1st April. Persons, coming of age after that day, may pay tax and vote. — R. S. c. 102, s. 25.

51. Lists of the taxables of testators, intestates, minors, lunatics, insane persons, absentees, and estates held in trust, shall be rendered by the executor, administrator, guardian, agent, trustee, or *cestui que trust*, as the case may be.

Lists of deceased and disabled persons and others, by whom given in. — R. S. c. 102, s. 26.

52. When tracts of land or town lots have been divided after valuation by the board, the taker of tax lists shall affix

Lands, divided after valuation,

how valued and listed.—1838, c. 36; 1846, c. 75.

List-takers appointed by first court after 1st April. Their names, &c., advertised during term.—R. S. c. 102.

If not appointed, three justices may appoint before July.—1846, c. 75.

List-takers to be notified in ten days; and to advertise for ten days, places and times of taking lists.—R. S. c. 102, s. 23.

Sects. 59 and 66, to be copied into notice to list-taker. His duty.—1846, c. 75, s. 8, 9.

If list taker die, &c., justices to appoint another.—R. S. c. 102, s. 23.

Inhabitants to attend and give their lists.

List takers to read over subjects of taxation, and administer an oath.—R. S. c. 102, s. 24.—1850, c. 121, s. 10, 11.

and return the separate value of each part, making the sum of all the values equal to the valuation returned by the board; and the justice may swear and examine witnesses to aid him in the inquiry.

53. At the first court of pleas and quarter-sessions of each county, held after the first day of April, the court shall annually appoint for each captain's district, a justice of the peace to take the list of taxable property; whose names, with their respective districts, shall, during the term, be advertised at the court house by the clerk.

54. If the court should fail to make such appointment, any three justices of the peace of the county may meet at the office of the county court, on or before the first day of July, and appoint the takers of tax lists for the county, and the clerk shall record the same.

55. Notices of all appointments of the takers of tax lists, as soon as they are made, shall be issued and delivered by the clerk to the sheriff, who shall serve them within ten days on each justice, and he shall advertise, at three several places within the district, at least ten days before the time of listing, the places and times, where and when, he will attend for receiving the list of taxables.

56. The notice to be issued as aforesaid to the justice, shall contain a copy of sections fifty-nine and sixty-six of this chapter; and, at the same time, the clerk shall deliver to the sheriff, to be handed to each justice, a fair copy of the returns, made by the last preceding board of valuation, of the assessment of real estate in his district; which copy the justice shall return, with his return of taxables, to the clerk.

57. If any such justice should die, remove, or become incapable, before his duties are performed, another shall be appointed by any three justices of the county, to be notified by the sheriff, for that purpose; and such justice shall take the list.

58. At the times and places appointed by the justice, the inhabitants of the district shall attend, and the justice shall read over to each one giving in his list, all the articles and subjects of taxation; and thereupon he shall render to the justice his list of taxables, and at the same time shall take the following oath:—

You, A. B., do solemnly swear, that you, either in your own right, or the right of any other person or persons whomsoever, either as guardian, attorney, agent, or trustee, or in any other manner whatsoever, are not liable for more taxes, under the laws of the State, than the amount which you have now listed; and that the list by you now delivered, contains at least as large an amount of interest, dividends, profits, practice, salaries, and fees, as you are bound to list for taxation; and in all other respects 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.

59. No justice shall take the tax list of any one, but on administering the foregoing oath, on pain of paying one hundred dollars to any one who will sue for it. *Provided, however*, that females, aged, and infirm persons, and persons absent from the county during the days of listing taxables, may, on oath, before any other justice, render a list of his taxables; and the same being certified by such justice, shall be entered on the tax lists.

Penalty for failing to administer oath. Proviso for females, infirm, and absent persons.—1846, c. 75.

60. Real estate shall always be listed in the county wherein it is situate. Personal property, and other subjects of taxation, shall be listed in the county where the owner or lister resides; but if the owner reside out of the State, they shall be listed in the county where his agent, or the person liable for the tax may reside. *Provided, however*, that when real estate shall lie in one or more counties, a list of such estate, lying out of the county of the owner's residence, sworn before a justice of the county wherein the owner may reside, may be transmitted to the proper taker of the lists. *Provided further*, that such slaves, or other taxable personal estate as are employed on the land of the owner, shall be listed where the land is listed.

County in which taxables shall be listed.—R. S. c. 102, s. 31.

61. If any person, bound to list taxables in his own right, or in right of another, shall fail to list the same, or any part thereof, the sheriff shall collect from him, and of his own proper estate, double the tax imposed on the property or subject not listed.

Persons failing to list, to pay double tax.—R. S. c. 102, s. 33.

62. If the sheriff, or other person shall discover that any land has not been assessed, he shall make it known to the county court; whereupon a board shall be appointed to assess the same, who shall proceed in the manner herein provided: and the court shall ascertain the amount of tax which, within the ten preceding years, the land has been liable for but not paid; and the sheriff shall be ordered forthwith to collect treble the amount, with interest, of all such tax, by distress or otherwise.

Sheriff discovering land not assessed, to report it to court. Proceedings thereon.

63. If any person shall refuse to take the oath prescribed in the fifty-eighth section of this chapter, he shall be deemed guilty of a misdemeanor; and the justice shall forthwith commit him to the common jail, unless he will be recognized with sureties to appear at the next term of the superior court of the county to answer the charge; and, on conviction or submission, he shall be fined one hundred dollars at least, more than the amount of his taxes.

Persons listing taxables and refusing to take oath, guilty of a misdemeanor. To be committed and indicted.—1850, c. 121, s. 12.

64. It shall be the duty of the sheriffs to inform the attorney-general and solicitors of the State for the circuits and counties, concerning all omissions by tax-payers, done in their respective counties to defraud the State of its revenue; and the attorney-general and solicitors of the State for circuits and counties, upon information, or good cause for suspicion, that any person has omitted to render his tax list, or has failed to render an accurate and fair list of all the property, estate, and subjects upon and for which he is liable to be taxed, shall file a bill in equity against the person so defaulting; and the answer of

Sheriff to inform prosecuting officer of frauds on revenue. Duty of officer.—1850, c. 121, s. 13.

the defendant shall not be competent evidence against him in any criminal or penal prosecution whatever.

Forms of tax list prepared by treasurer and sent to clerks.—1850, c. 121, s. 14.

65. The public treasurer, at the public cost, shall have prepared and printed, as they may be needed, forms of tax lists, with all the articles and subjects of taxation to be listed under this chapter, or any future law, mentioned separately over the heads of parallel columns, in which the amount or quantity or description of each article or subject to be listed, is to be set down; and he shall annually furnish to each county court clerk, two copies thereof for each collection district.

Mode of entering taxables on lists.—1850, c. 121, s. 15.

66. The justice appointed to take the list of taxables shall set down each article or subject in its proper column, against the names of the persons listing, arranged in alphabetical order, and return the same to the clerk of the county court, at the term next after the time prescribed for taking the list; and as a part of his return, which he shall always subscribe, he shall state that the list of each person listing was rendered on oath, in the manner prescribed and enjoined by law.

List-taker or assessor refusing to act, guilty of misdemeanor.

67. If any justice appointed to take the list of taxables, or any freeholder appointed to assess the value of land, shall wilfully refuse to discharge the duties of his appointment, he shall be deemed guilty of a misdemeanor.

Lists returned to be recorded by clerk, and set up in court house.—R. S. c. 102, s. 39.

68. The clerk, on receiving the returns, shall record them at length in alphabetical order, keeping the returns of each district separate from the other; and at the next county court, after they are directed to be made, shall set up in some conspicuous part of the court house, a copy of the whole, adding to the taxables of each person the amount of tax for which he is liable: and any clerk offending against any of the duties prescribed in this section shall forfeit and pay one hundred dollars.

Abstracts of lists of all taxes sent to comptroller before 1st April.

69. The clerk, on or before the first day of April next after the lists are returned, shall return to the comptroller an abstract of the same, showing the number of acres of land, and their value, the valuation of town lots, and the number of white and black polls, and shall specify every other subject of taxation, and the aggregate tax on the whole. At the same time the clerk shall return to the comptroller an abstract of the lists of the county and poor taxes paid in his county, setting forth, separately, the number of taxable white and black polls, the amount paid on each hundred dollars value of land, and also the gross amount of taxes of every kind levied for county purposes: and the comptroller, at the public cost, shall furnish the clerks with blank forms for the aforesaid abstracts of both kinds, and include the abstracts in his reports.

What set forth in abstracts.

Printed forms furnished by compt.—R. S. c. 102, s. 34.—1852, c. 162.

Penalty on clerk failing to send abstracts.—R. S. c. 102, s. 34, 37.—1852, c. 162.

70. And if any clerk shall offend against any of the duties prescribed in the preceding section, he shall forfeit and pay to the State one thousand dollars, to be recovered against him and the sureties of his bond in the superior court of Wake county, at the term next after the default, on motion of the attorney-general; and it shall be the duty of the comptroller to inform the attorney-general of such default.

71. The county court, on the prescribed oath, may take the tax list of any person applying to list his taxables, at any term of such court before the first day of March, upon his paying to the clerk one dollar for recording the same.

County court up to March, may receive tax lists.—1838, c. 36.

72. The several county courts, at the term when they shall appoint justices to take the tax lists for the year eighteen hundred and fifty-five, and at the same term every five years thereafter, shall appoint two respectable freeholders, men of skill and probity, to be associated with each justice, and these three shall be styled a board of valuation. They shall be notified of their appointment by the clerk, and as such board shall ascertain, either by viewing the premises or otherwise, as accurately as may be practicable, the cash value of the lands or other real estate with the improvements thereon, situate within the districts for which they are appointed, and return the same to their respective county courts, in the manner herein prescribed. And for the town of Wilmington such a board shall be appointed every two years after the time of their appointment, in the said year eighteen hundred and fifty-five.

Board of valuation appointed every five years to value real estate.

73. In estimating the value, the board may call and swear witnesses to testify thereto, and they shall take into the estimate any fishery appurtenant to, or used with, the land; also, all mines of metal, stone, or coal, or other matter discovered, or supposed to exist, whereby the price of the land is enhanced: and when the same tract, or body of land, shall lie in one or more districts, the board, where the owner resides, shall ascertain the value of the whole tract; and, if the owner resides in neither of the districts, the board where the greater part may lie, shall value the whole. And the board shall annex to their return of valuation the following affidavit, subscribed by them, and sworn before, and certified by, some justice of the peace:—

For Wilmington every two years.—1846, c. 75, s. 1; 1852, c. 69.

Mode of assessing value. Fisheries, mines, &c., considered in valuation. Lands in several districts, where valued.

“We solemnly swear, that the foregoing valuation of land, with the improvements thereon, and privileges thereto attached, made by us, is, 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.”

Affidavit of board.—1846, c. 75, s. 1.

74. The owner of land, or his agent, (if he be a non-resident,) shall on oath furnish the board with a list, including land entries, setting forth the separate tracts, and also the several contiguous bodies or tracts of land owned by him in the district, together with the names of the watercourses or other remarkable places on or nearest to which they may be situate, and the number of acres in each separate tract or contiguous bodies of land: town lots shall be listed separately, and each lot be numbered according to the plan of the town: and each separate body of land and town lot, shall be separately and distinctly valued and returned.

Owner to furnish a list of his real estate for valuation.—1846, c. 75, s. 3.

75. If the owner, or his agent, will not on oath state the number of acres, or if the statement is so vague that the board

When number of acres unknown, board

shall order surveys at owner's cost.

cannot, with reasonable certainty, determine the number of acres, they shall procure the county or other surveyor to survey the land, at the cost of the owner, who may be warranted for his fees and other expenses, by the surveyor.

Valuation too high, how reduced.  
How advanced, when increased by mines, &c.—1846, c. 75; 1848, c. 51.

76. If any one deem that too high a valuation has been put on his land, the county court, at the ensuing term, may reduce the same, on motion, and satisfactory proof; or they may inquire into the complaint, by commissioners appointed for that purpose. And in all cases where land, after valuation, shall increase in value, by reason of mines of metal, coal, stone, or other valuable thing being discovered or worked, or if the same shall decrease in value by reason of fire or extraordinary causes, the justice taking the list, shall appoint and swear two respectable and disinterested freeholders, who, with himself, shall reassess said land; and the justice shall affix their valuation to the land.

Overcharge of poll, &c., how corrected.—R. S. e. 102, s. 38.

77. In like manner, if any one shall be charged with more poll or other subject of taxation than he is liable for, the court shall direct the clerk to give a certificate, stating the amount and subject of tax; which certificate shall be received by the comptroller of the State, and deducted by him from the proper tax to be accounted for by the sheriff.

Pay of board.—1846, c. 75.

78. The members of every board, engaged in assessing the value of land, shall receive, each, one dollar a day for the time engaged, to be paid by the county court.

Allowance to clerk.

79. For all services of the clerks in relation to the taxes, not in this chapter specially provided for, they shall be paid by the county such sum as the court may allow.

Double tax, in what cases may be released by co. courts.—1846, c. 75, s. 10.

80. The county courts may release any person from the payment of a double tax, for failing to list his taxables, in cases where it shall appear to the court, by satisfactory proof, that such failure occurred by reason of the sickness of the party, at the very time when the tax list was taken; or where it may appear that he rendered a list, and his name was omitted to be entered, or has been omitted in the duplicate prepared by the justice to be returned to the clerk, or other sufficient cause, to be judged of by the court: and the court shall have no power to remit a double tax in any other case, and they are expressly forbidden to do so.

Tax lists delivered by clerk to sheriff by April.  
Form and contents of lists.  
Penalty for omission.—R. S. e. 102, s. 41.

81. The clerk of the county court shall, on or before the first day of April, in the year ensuing the taking the lists, deliver to the sheriff of the county a fair and accurate copy, in alphabetical order, of the tax list, which shall contain the public tax, or tax payable to the public treasurer, and the taxes imposed by the justices of the county court. It shall likewise designate the separate amount due from each subject of taxation, and extend the aggregate amounts due from each person in columns. And if any clerk shall fail to furnish the sheriff, at the time provided, with a copy of this description, he shall be deemed guilty of a misdemeanor, and the sheriff shall inform the grand-jury thereof.



82. The sheriff shall forthwith proceed to collect said taxes; and when he shall collect, by his deputies, who are not sworn, or others, such persons shall in open court, or before a justice of the peace of the county, take an oath, faithfully and honestly to account for the same, with the sheriff, or other person authorized to receive them.

Tax collectors sworn.—R. S. c. 102, s. 41, 42.

83. If any sheriff shall die during the time appointed for collecting the taxes, his sureties may collect them; and for that purpose shall have all the powers and means for collecting the same of the collectors and tax payers, as the sheriff would have had; and shall be subject to all the remedies for collection and settlement of the taxes on their bond or otherwise, as might have been had against the sheriff, if he had lived.

If sheriff die, his sureties may collect taxes.—R. S. c. 102, s. 43.

84. The sheriff, and (in case of his death) his sureties shall have one year, and no longer, from the day prescribed for his settlement and payment of the State taxes, to finish the collection of all taxes; but this extension of time for collection shall not extend the time of his settlement of the taxes.

Sheriff allowed one year after 1st Oct. to collect.—R. S. c. 102, s. 44.

85. The sheriff shall collect the taxes as they are set down in the list, and, moreover, shall collect of all persons, whose taxables are not listed, double the taxes imposed on the same subjects; and as to any land not listed, which may not have been assessed at the last assessment, the same, in estimating the double tax, shall be deemed to be of the value, by acre, of the highest valued tract adjoining thereto.

Shall collect double tax on unlisted property. If not assessed, what deemed its value.—R. S. c. 102, s. 45.

86. Immediately on receiving the tax lists, the sheriff shall advertise the fact, and that he holds them ready for inspection. He shall also request, therein, all persons to inform him of any taxables which may not be listed.

On receiving tax lists, sheriff to advertise them, &c.—R. S. c. 102, s. 46.

87. For the more efficient collection of the taxes, the sheriff at any time from the delivery to him of the lists, till the first day of October in the next year, may, and if there be need, shall distrain and sell the property of the tax payer, to satisfy the same; selling first his personal, and then his real estate.

Sheriff may distrain for tax.—R. S. c. 102, s. 47, 48.

88. If any person liable for taxes on other subjects than land, shall be about to remove from the county, after listing time and before the period for collection, the sheriff shall make affidavit thereof before the clerk, and obtain from him a certificate of the amount of such person's tax, and forthwith collect the same.

Tax of persons about to remove to be collected forthwith.—R. S. c. 102, s. 49.

89. If any person be liable for taxes in any county wherein he shall have no property, but shall be supposed to have property in some other county, and will not pay his tax, the sheriff shall report the fact to the county court, held next after the first day of October; and thereupon the court shall direct the clerk to issue a *feri facias* to the sheriff of that county, returnable to the court whence it issued, for such tax and the costs of process and executing the same, which the sheriff shall execute in the manner of writs of execution in other cases; and the tax collected thereon shall be paid to

Tax of solvent persons, having no property in the county, collected by execution.

the clerk of the court, and by him paid to the sheriff, to be accounted for as other taxes.

Sales of personalty for taxes, how made.—R. S. c. 102, s. 50.

90. The sale under distress of personal estate for taxes, shall be advertised ten days previous thereto, at three public places in the district wherein the delinquent tax payer shall reside; and if he reside not in the county, then in the district where the taxables were, or ought to have been, listed; and the amount of tax due shall be stated in the advertisements.

Sales of land, how conducted.

Sheriff to return a list of lands, &c.

91. The sale of land for taxes due thereon, shall be made under the following rules:—

To be read aloud, recorded, and put up in co. house.—R. S. c. 102, s. 52, 53.  
Land-owners notified, how.

(1.) The sheriff shall return to the court of pleas and quarter-sessions of his county, held next after the first day of January, a list of the tracts of land which he proposes to sell for taxes, therein mentioning the owner or supposed owner of each tract, and if such owner be unknown, the name of the last known or reputed owner, the situation of the tracts, and the amount of taxes for which they are respectively to be sold; which 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 in some public part of the court house.

Description of land to be given.—R. S. c. 102, s. 51.—1850, c. 118.

(2.) The county court shall order the clerk of the court to issue notice to every person whose land is returned as aforesaid; and a copy of the notice shall be served by the sheriff on the owner, or his agent, and returned to the next county court; and if the owner be a non-resident, the clerk shall publish the same in some newspaper printed in the State; in which advertisement shall be mentioned the situation of the land, the streams on or near which it lies, the estimated quantity, the names of the owners when they are known, and the names of the tenants or occupiers of the same.

To be sold in two terms after returned, where.—R. S. c. 102, s. 51.

(3.) The sale shall be made within the two terms next succeeding the term when the returns are made of lands to be sold, and at such place in the county as is directed for sale of land under execution; and the whole expense attendant on the advertising and sale, shall be chargeable on the lands, and raised at the sale.

Whole tract put up. Who deemed the buyer.—R. S. c. 102, s. 55.

(4.) The whole tract or contiguous body of land, belonging to one delinquent person or company, shall be set up for sale at the same time, and the bid shall be struck off to him who will pay the amount of taxes, with all the expenses aforesaid, for the smallest part of the land.

Sale returned at second term, &c.

(5.) At the second term next succeeding the term when the returns are made of lands to be sold, the sheriff shall return a list of the tracts actually sold for taxes, the quantity of the tract bought and to be laid off, the name of the purchaser, and the sum paid to the sheriff for taxes 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 term, in some public part of the court house.

Proceedings on return.—R. S. c. 102, s. 53.

92. The land of an infant, lunatic, or person *non compos mentis*, shall not be sold for taxes. *Provided, however*, that where land may be owned by such persons, in common with another or others free of such disability, the share or interest of the persons so free, shall be subject to be sold for the taxes due on the whole tract; but before setting apart the quantity bid off, the purchaser by petition shall cause the tract to be divided among the tenants in common, and the share or interest of the defaulting tax payer being set apart, the purchaser may proceed to lay off on such share, the quantity by him bid off, and secure the title as is before provided: and the time necessarily employed in procuring such division, shall not be reckoned against the purchaser.

Lands of infants, &c., not to be sold. Land held jointly with such persons, how sold. Proceedings to get title in such case.—R. S. c. 102, s. 53.

93. The owner of land sold for taxes under section ninety-one of this chapter, his heirs, executors, or administrators, or any other person for them, may redeem the same from the purchaser at any time within one year after the sale by paying or tendering in payment to the purchaser, or to the county court clerk of the county where the land lies, the full amount of the price paid to the sheriff, and twenty-five per cent thereon.

Lands may be redeemed in one year. Mode of proceeding.—R. S. c. 102, s. 57.

94. If the land so sold shall not be redeemed within the period aforesaid, the purchaser may at the end of that time, select the quantity of land struck off to him, out of any part of the tract or body of which the same was bid off; the said quantity to be laid off in one compact body, as nearly in a square as may be, and adjoining to some of the outlines of the whole tract or body of land.

Purchaser to select and lay off quantity bought in a compact body, &c.—R. S. c. 102, s. 58.

95. Within one year after the time of redemption shall have passed, the purchaser at his own cost, his heirs, executors, or administrators, or any other for them, may procure the quantity bid off to be surveyed by the county surveyor, who shall make out and certify, under his hand, a fair plat of the survey with the courses and distances fairly and truly set forth; and if the county surveyor on request, shall fail to make such survey and plat, then any other surveyor may make and certify the same.

Land to be surveyed in a year after time of redeeming. By whom surveyed.—R. S. c. 102, s. 58, 59.

96. The sheriff on being presented with such certified plat, within the year after the time of redemption is passed, shall convey to the purchaser the land therein contained.

Deed to be made by sh'ff.—R. S. c. 102, s. 59.

97. Where by any provision of the law, any sheriff or officer, other than the person who sold for the taxes, shall be authorized to execute a conveyance for the land, the purchaser shall apply to the county court, and on showing to the court that such purchase had been made, and the price paid to the sheriff who sold, and that he has paid the other taxes since accruing thereon, the court shall direct the present sheriff to execute a deed, on the purchaser producing to him a certified plat and survey, as is provided for in sections ninety-five and ninety-six of this chapter.

Proceedings when another conveys than the sheriff who sold.—R. S. c. 102, s. 65.

98. The purchaser of land sold for taxes, under section ninety-one of this chapter, shall be considered as taking and

Purchaser to pay certain back tax.—R. S. c. 102, s. 64.

holding the same subject to all the taxes accrued from the first day of April in the year preceding the purchase.

Penalty on sheriffs and clerks omitting duties prescribed in sections ninety and ninety-one.—R. S. c. 102, s. 54.

99. If any sheriff or clerk shall fail to perform any of the duties prescribed in sections ninety and ninety-one of this chapter, he shall forfeit and pay to the person aggrieved one hundred dollars, and shall moreover be liable, he and his sureties, on his bond, for all such damages as any one may sustain by reason of such default.

Penalty on co. surveyor failing to survey.—R. S. c. 102, s. 59.

100. If any county surveyor, being required within two months after the survey may be lawfully made to survey the land bid off at a sale for taxes, shall wilfully fail to do so within four months after such request, he shall forfeit and pay to the purchaser, or his executor, or administrator, one hundred dollars.

State deemed buyer, if none bid less than the whole tract. Sheriff to report to county court. Proceedings thereon.—R. S. c. 102, s. 60.

101. If no person will bid a less quantity than the whole land, for the taxes, the bid shall be deemed the bid of the State, and the land shall be struck off to the State as the purchaser; and the sheriff shall report in writing to the county court, at the time he returns the list of lands sold for taxes, what and whose lands are thus struck off to the State, describing them particularly; which report shall be recorded on the minutes of the court, and thereupon the title of said lands shall be deemed to have been vested in the State from the time of purchase.

Copies of reports of land sales to be certified by clerk for comptroller and secretary. Proceedings thereupon.—R. S. c. 102, s. 61, 62.

102. The clerk shall within twenty days after the return of the sheriff's report of the land sold to the State, make and certify two copies thereof; one of which he shall transmit to the comptroller, and the other deliver to the sheriff, (or to his sureties, when they act,) who shall deposit the same with the secretary of State, to be by him recorded; and the secretary shall grant to the sheriff a certificate setting forth what and whose lands, and the quantity and value thereof, have been sold for taxes, and struck off to the State.

Sheriff failing to report sale, or deposit copy with secretary, to be charged with \$2,000.—R. S. c. 102, s. 62.

103. If any sheriff or other person authorized thereto, shall sell for taxes and strike off any land to the State, and shall fail duly to report the same to the county court, or to duly obtain and deposit a copy thereof with the secretary of State, the comptroller shall in his report to the treasurer charge such sheriff (or other person acting in his stead,) with the sum of two thousand dollars, and the treasurer shall recover the same as unpaid tax.

Lands bid off by State redeemable;—on what terms.—R. S. c. 102, s. 62.

104. Lands bid off for the State may be redeemed in like time, and under the same rules and regulations as those purchased by individuals, except that the payment (which shall be double in amount of all the taxes for which they were sold,) shall be made to the treasurer, and on his certificate thereof the secretary of State shall, on being paid his fees, issue a grant to the original proprietor, his heirs, or assigns, and at the same time shall certify the payment to the comptroller.

Deemed vacant, and sub-

105. Lands bid off for the State shall, as to the person for whose tax the same is sold, his heirs, or assigns, be liable to be

entered as vacant land; subject nevertheless, to the right of redemption within the time prescribed.

106. When land shall be sold for its tax, and the sheriff shall die, or otherwise become unable to report his sales, his sureties may report the same within the time prescribed; and shall proceed as to land bid off by the State, in the same manner as the sheriff might.

107. The sheriff, and all receivers of public moneys, shall yearly settle their accounts with the comptroller, between the last day of June and the first day of October, (unless where the settlement of such persons may be specially directed to be made in another manner, or at another time,) so that it may be known what sum each one ought to pay into the treasury: and the comptroller shall forthwith report to the public treasurer the amount due from each accountant, setting forth therein (if a sheriff's account,) the net amount of each species of public tax: and thereupon the treasurer shall raise an account against such person and debit him accordingly.

108. The sheriff in making his settlement as aforesaid, shall designate in a list by him rendered at the time, the different sources from which were raised the taxes accounted for by him, and the particular amount of tax received from each source: and the comptroller shall give to each sheriff a certified copy of such list, which the sheriff shall deposit with the clerk of the county court of his county, for public inspection. In such settlement the sheriff shall be charged with the amount of public tax as the same appears by the tax lists transmitted by the clerk to the comptroller: also, with all double taxes, and taxes on unlisted property, by him received, and with all other tax which he may have collected, or for which he is chargeable.

109. And he shall be credited, (1.) With the amount of State tax on land bid off by the State with the costs attendant on the sale and procuring the title, and with commissions on the whole including the county revenue, on producing the certificate of the Secretary of State, as is provided in section one hundred and two of this chapter. (2.) With all insolvent taxables allowed by the court, as hereinafter provided: and where the sheriff shall be required to settle before such taxables are allowed, he shall be credited with them in the next year's settlement: or the sheriff may, at any time thereafter, on producing a certificate of such taxables allowed, procure an order from the comptroller on the treasurer, for the amount thereof.

110. The 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 may settle with the comptroller, a list of all moneys which he may have received from the clerks of court, or as double taxes, from taxes imposed on unlisted property, or on merchants, merchant-tailors, jewellers, retailers by the small measure, tavern-keepers, billiard tables, bowling-alleys, stage-players, slight of hand performers, rope-dancers, tumblers, wire-dancers, circus riders, equestrian performers, ex-

ject to entry.—  
R. S. c. 102, s. 62.

On sheriff's death, &c., his sureties may report sales, &c.

Sheriff and all tax receivers to settle with comptroller between June and Oct.

Comptroller to report to treasurer amount due from each. R. S. c. 102, s. 66.

Sheriff to render to comptroller the amount of each kind of tax.

A copy certified by comptroller deposited with the clerk.

What sheriffs to be charged with.—R. S. c. 102, s. 67.

With what credited.

Tax on land bought by State, &c.

Insolvents allowed by court.—R. S. c. 102, s. 62, 63, 75.—1844, c. 18.

List of money received by sheriff from clerk, and on unlisted taxables, to be returned to court next before October.—R. S. c. 102, s. 68.—1840, c. 49; 1854.

hibitors of natural or artificial curiosities, apothecaries, druggists, non-resident owners of stud-horses or jackasses, horses, and mules brought into the State for sale, sellers of carriages, buggies, and other riding vehicles, persons keeping establishments for the sale of such vehicles, peddlers, sellers, or persons offering to sell by sample, brokers, insurance companies, agencies of banks incorporated out of the State, exhibitors of menageries, singers, dancers, Ethiopian serenaders, performers for reward on musical instruments, and other exhibitions for public amusement for reward, and on any and all other subjects for which he ought to account.

What the list to set forth. To be read, recorded, set up, and laid before grand-jury. — R. S. c. 102, s. 68.

111. The list shall set forth the name of each person who may have paid any such tax, its amount, and for what it was paid; which shall be read aloud in open court, and shall be recorded on the minutes of the court by the clerk, who, during the space of six months after its return, shall keep a copy thereof set up in some public place in the court house, and shall lay before each grand-jury, during that time, a copy of the same.

List, in certain cases, filed with clerk in vacation. — R. S. c. 102, s. 69.

112. If the term aforesaid of the county court shall be held before the sheriff can complete and return the collection of the taxes last aforesaid; or if, from any other cause, the sheriff have failed to make his return at that court, then the list of said taxes may be returned and filed with the clerk of the court during vacation, and sworn and subscribed in the presence of the clerk before two justices of the county; and the same shall be recorded on the minutes of the court, and a copy set up and laid before the grand-jury as aforesaid.

Sheriff to deliver a copy to comptroller, or be charged with \$1,000. — R. S. c. 102, s. 70, 71.

113. The clerk, on application of the sheriff, shall deliver to him a certified copy of such return, which the sheriff shall deliver to the comptroller when he settles his accounts. And if any sheriff shall fail to deliver such copy to the comptroller, the comptroller shall add to the taxes, for which such sheriff is liable, one thousand dollars, and so report his account to the treasurer.

Penalty on clerk for violating sections 111, 112, 113. — R. S. c. 102, s. 73.

114. If any clerk shall fail to perform any of the duties required in sections one hundred and eleven, one hundred and twelve, and one hundred and thirteen of this chapter, or shall falsely certify any such return of the sheriff, he shall be deemed guilty of a misdemeanor, and on conviction shall be removed from office.

Register or clerk, failing to settle tax with sheriff, to be sued. — 1846, c. 75.

115. If any register or clerk shall fail to pay to the sheriff any tax which he ought to pay, the county solicitor, at the instance of the sheriff, shall bring suit on his bond, and shall recover, in addition to the taxes withheld or not accounted for, one hundred dollars; and the whole recovery shall be paid into the treasury by the sheriff.

Insolvent taxables, in what case allowed by court. — R. S. c. 102, s. 75, 76.

116. No insolvent taxables shall be credited to the sheriff in his settlement with the comptroller, but such as shall be allowed by the county court; a list whereof, containing the names and amounts and subscribed by the sheriff, he shall return to the court at some term preceding said settlement; and the

same shall be allowed only on his making oath that he has been at the dwelling-house or usual place of abode, of each of the tax payers, and could not, there or elsewhere in the county, find property wherewith to discharge his taxes, or such part thereof as is returned unpaid; and that the persons contained in the list were insolvent, at and during the time when, by law, he ought to have endeavored to collect their taxes. Such list shall be recorded on the minutes of the court, and a copy thereof, within ten days after its return, shall be set up by the clerk, in some public part of the court house.

117. If any sheriff shall return to court, as insolvent, the name of a person who is not listed, or has paid his taxes for that year, or shall by himself or his deputy, collect from any person his tax for the year, for which he has been returned an insolvent, without accounting for the same; or if any clerk shall fail to record or set up the return as required in the preceding section, the person so offending, shall forfeit and pay to the State one hundred dollars, and the county solicitor shall prosecute a suit for the same.

Penalty on sheriff returning false lists of insolvents. On clerk failing to record, and set up lists. — R. S. c. 102, s. 76, 77.

118. Every sheriff, (or other person allowed by law to collect and account in his stead,) on settling his accounts with the comptroller, shall take and subscribe the following oath: I, A. B., sheriff of the county of \_\_\_\_\_ do on this the \_\_\_\_\_ day of \_\_\_\_\_ one thousand eight hundred and \_\_\_\_\_ make oath that the list now given in by me, is, to the best of my knowledge and belief, complete, perfect, and entire, and doth contain 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 \_\_\_\_\_, on listed and unlisted property; and all double taxes, and all taxes received from clerks of courts, and from insolvents not heretofore accounted for; and all taxes received, or which ought to have been received, from any other and all other sources whatsoever. And I do further make oath, that if I, or any person for me, shall hereafter collect any unpaid tax now due and not rendered in said list, I will render a true account thereof, within one year after collecting the same.

Oath of sheriff, on settling with comptroller. — R. S. c. 102, s. 74, 78, 79.

119. If the comptroller at any time shall have just cause to suspect that any sheriff, or other person accounting in his stead, may have made a false return or sworn falsely in any matter relative to the collecting or accounting for any tax, he shall thereof inform the officer prosecuting in the superior court of the county wherein the offence was committed, who shall take such steps as public justice may demand.

Comptroller suspecting frauds, &c., about the revenue, to inform, &c. — R. S. c. 102, s. 72.

120. The sheriff for his services in collecting and paying the public taxes into the treasury shall receive a commission of three per cent. on the net amount received by him from the clerk for taxes imposed by the seventh section; and five per cent. on the net amount of taxes collected from every other source, to be deducted in the settlement of his account with the comptroller.

Commissions allowed sheriff on settlement. — R. S. c. 102, s. 80.

Further compensation. — R. S. c. 102, s. 81.

121. And for his settlement with the treasurer, he shall be paid by the treasurer three dollars for each day he may be necessarily engaged therein; and two dollars for every thirty miles of twice the estimated distance from his home to the seat of government, by the most usual common highway.

Sheriff failing to settle, comptroller to report his account. How to be stated.

Treasurer to take judgment against him and sureties. — R. S. c. 102, s. 85, 86.

122. In every case of failure by a sheriff or other accounting officer, to settle his accounts within due time, or to take the oath required on his settlement, the comptroller shall forthwith report to the treasurer the account of such sheriff or officer, deducting therefrom nothing for commissions or insolvents, but adding thereto, one thousand dollars, for the amount of taxes supposed not to appear in the lists transmitted by the clerk: and if the whole amount be not paid, the treasurer, on motion of the attorney-general in the superior court of Wake county, at the first court after the default shall have occurred, shall recover judgment against such defaulting officer and his sureties, for the amount reported against him, without other notice than is given by the delinquency of the officer.

Clerk to furnish compt'r with certified copies of sheriff's bonds, under penalty of \$1,000. — R. S. c. 102, s. 84.

123. And to the end that their obligation and names may be known, the clerk of the county court, at the same time when he transmits to the comptroller the tax lists, shall transmit to him also a copy certified under the seal of the court, of the bond of the sheriff, upon pain, for his default, of forfeiting to the State one thousand dollars; which the treasurer shall and is hereby specially charged to collect in like manner and at such time as is provided in the preceding section.

Register to furnish compt'r with certified copy of clerk's bond, under penalty of \$1,000. — 1850, c. 121.

124. The register of every county, yearly, on or before the first day of September, shall transmit to the comptroller a certified copy of the bond of the clerk of the county court, as the same is registered, upon pain of forfeiting for his default to the State one thousand dollars; which the treasurer is hereby specially charged to collect, in like manner and time, as is provided in section one hundred and twenty-two of this chapter.

In suits against sheriffs or clerks, copies to be evidence. — R. S. c. 102, s. 85.

125. In all suits directed by any law to be instituted on motion of the attorney-general, at the instance of the treasurer or comptroller, against any sheriff or clerk and his sureties, a copy of the bond of such officer, certified as aforesaid and sent to the comptroller, and by the comptroller certified together with the default under his hand, shall be deemed sufficient evidence of the execution of such bond and the default of the officer, to allow the judgment to be entered.

If register fail to transmit copy, how comptroller to proceed.

126. And in case of the default by the register to duly certify and transmit the bond of the clerk in proper time, the comptroller shall forthwith proceed to procure such certified copy, and also a copy of the bond of the register, certified by the keeper thereof, and shall proceed in the manner hereinbefore provided against them and their sureties, at the first superior court in Wake after said copies shall be procured.

Penalties on clerks and sheriffs for defaults not specially

127. In every case of default by any clerk, sheriff, or justice of the peace, in the discharge of any of the duties by this chapter imposed on any of them, where no penalty is provided,



the defaulting officer shall forfeit and pay to the State, for each default, one hundred dollars. And all the penalties by this chapter imposed on such officers for the sole use of the State, may, when there is no special mode provided for recovering the same, be recovered in the name of the State, at the instance of the treasurer on motion of the attorney-general, or any of the solicitors of the State.

provided for. Penalties recovered by treasurer on motion.—R. S. c. 102, s. 87.

128. The certificate of the treasurer or comptroller of any matter of default in any of said officers occurring at the office of the comptroller or treasurer, and copies of any papers in said offices duly certified by the proper keeper thereof, shall be admitted as evidence in any suit or prosecution whatsoever, against them or others, and about any other matter whatsoever.

Certificate of treasurer or compt'r, and copies of office papers to be evidence.—R. S. c. 102, s. 72.

129. The treasurer may on motion obtain judgment in any court of record against any person indebted to the State, in the same manner and under the same rules and regulations which are prescribed in cases of delinquent sheriffs, and the court shall award execution, though the amount of the claim be within the jurisdiction of a justice of the peace.

Debts due the State, recovered on motion.—R. S. c. 102, s. 88.

130. The sheriff shall specify in his receipts to tax payers, the amount of State tax and the amount of county tax, separately.

Sheriff's receipts to state separately county and State tax. Tax on profits of Deep River Nav. Co. to be a sinking fund.—1854, c. 5, s. 11.

131. The president and directors of the Cape Fear and Deep River Navigation Company shall pay to the public treasury, on the first Monday of January, eighteen hundred and fifty-six, and annually thereafter, until the bonds issued under the authority of the act of eighteen hundred and fifty-four, chapter five, entitled "*An Act to authorize the Cape Fear and Deep River Navigation Company to issue bonds, and for other purposes,*" shall have been paid, one *per centum* of the net profits of said company, to be by him invested in State securities; which, with the interest annually accruing thereon reinvested, shall constitute a sinking fund, which shall be applied to the payment of the principal of said bonds, as they severally fall due.

132. A tax of two cents per ton, on all coal that shall be shipped and conveyed from the mines on Deep river, shall be annually levied, and paid as other taxes of the State are paid, and shall be collected by the sheriff of the county of Chatham for the time being, and paid to the public treasurer; and when received, shall be invested and reinvested, as prescribed in the preceding section, and shall constitute a sinking fund for the payment of the principal of said bonds, and shall be applied by the treasurer, as prescribed in said section; and when the debts and liabilities of the company shall have been discharged, the said tax shall constitute a part of the revenue of the State.

Tax on coal shipped, part of said fund.—1854, c. 5, s. 12.

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## CHAPTER 100.

## RIVERS AND CREEKS.

SECTION	SECTION
1. County courts may appoint commissioners to examine streams, and make improvements.	4. Power of county courts of Johnston, Wayne, &c., as to Neuse river.
2. Overseers to be yearly appointed by county court: their duty.	5. Streams to be laid off into districts. One fourth to be left open for passage of fish.
3. Justices may direct flats, &c., to be procured.	6. Obstructing boats by felling trees, &c., misdemeanor.

Co. courts may appoint com-m'r's to examine streams, and make improvements.—R. S. c. 103, s. 1.

1. WHERE any inland river or stream shall run through the county, or be a line of their county, a majority of the justices of the court of pleas and quarter-sessions of the several counties may appoint commissioners to view such river or stream, and make out a scale of the expense of labor, with which the opening and clearing thereof will be attended; and if the same shall be deemed within the ability of the county, and be expedient, they may appoint and authorize the commissioners to proceed in the most expeditious manner, in opening and clearing the same, by taking such hands from the public roads, as the court shall permit, and direct to be allotted to such work; which hands shall be placed under overseers in companies, every overseer and company to have a distinct portion of such river or stream laid off by the court.

Overseers appointed; yearly by co. court: their duty.—R. S. c. 103, s. 2.—1844, c. 66.

2. Every overseer shall be appointed by the county court; and the clerk shall issue a notice, expressing therein the name of the stream, the distance he is to work thereon, and the hands appointed under him, and the sheriff shall serve the same upon him, under the same rules as notices are served upon overseers of roads; and the overseer and hands, 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 public roads; and no overseer or hands, appointed to open and clear out navigable rivers and streams, shall be compelled to work on public roads. And the county courts thereafter shall annually

appoint overseers, and assign such hands, as they may judge proper, to work on the rivers and creeks, and keep in repair any slopes erected or to be erected; and such overseers, and the hands assigned, for a failure of duty, shall be subject to all the penalties imposed by law upon overseers of roads and the hands liable to work thereon.

Subject to same rules as overseers of roads.

3. The justices appointing the commissioners may direct them 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 to be paid for out of the county funds.

Justices may direct flats, &c., to be procured.—R. S. c. 103, s. 3.

4. The justices of the courts of pleas and quarter-sessions of the counties of Johnston, Wayne, Lenoir, and Craven, seven being on the bench, at the first court which shall be held for their respective counties after the first day of July, may yearly appoint and lay off, in convenient districts, all the inhabitants of their counties, respectively, resident above Spring Garden on both sides of Neuse river, within such distances of the river, as the said county courts shall appoint; and for each district appoint some person as overseer, who shall cause all persons, within the district allotted to him, liable to work on public roads, to work at least six days in every year on the river, unless the county courts shall otherwise direct; during which time he shall cause that they be employed in removing all logs, brush, and other obstructions to the navigation; and for neglect he shall be deemed to be guilty of a misdemeanor: and every person liable to work as aforesaid, or send hands, who shall fail when warned, (as hands are for working on roads) to appear and work, with such tools as the overseer shall direct, shall pay for each day, one dollar, to be recovered and applied in the same manner as fines for failing to work on public roads. *Provided, however,* that nothing contained in this section shall abridge, or interfere with, the rights and privileges of the Neuse River Navigation Company.

Power of co. courts of Johnston, Wayne, &c., as to Neuse river.—R. S. c. 103, s. 5.

5. The county courts may appoint commissioners to examine and lay off the rivers and creeks in their county; and where the stream is a boundary between two counties, may lay off the same on their side; in doing so, they shall allow three fourths for the owner of the stream for erecting stops, dams, and stands; and one fourth part, including the deepest part, they shall leave open for the passage of fish, marking and designating the same in the best manner they can; and if mills are built across such stream, and slopes may be necessary, the commissioners shall lay off such slopes, and determine the length of time they shall be kept open; and such commissioners shall return to their respective county courts, a plan of such slopes, dams, and other parts of streams viewed and surveyed.

Streams to be laid off into districts. One fourth to be left open for passage of fish.—R. S. c. 103, s. 8.

6. If any person shall obstruct the free passage of boats, by felling trees, or by any other means whatever, he shall be deemed to be guilty of a misdemeanor.

Obstructing boats by felling trees, &c., misdemeanor.—R. S. c. 103, s. 4.

## CHAPTER 101.

## ROADS, FERRIES, AND BRIDGES.

## SECTION

1. What shall be public roads and ferries. County courts to establish and discontinue ferries, roads, and bridges.
2. Ferries and roads, how established, altered, or discontinued.
3. Court may decree how costs shall be paid. Appeal.
4. Roads, how laid out.
5. When changed, how received.
6. How persons may turn roads on their own land.
7. Overseers of highways annually appointed and hands assigned. Their duty. Notice of appointment. Not bound to serve more than one year in three.
8. Clerks, in ten days, to furnish sheriffs with orders appointing overseers. Sheriffs to apply at clerk's office for orders, and serve them in twenty days. Penalty on clerks and sheriffs for neglect.
9. Overseers to summon hands, three days before work day. Who are hands. Penalty for failure to work.
10. Notice, how served.
11. Overseers competent to prove notice to hands.
12. No person excused from working, but by county court.
13. Overseers may apportion road among hands. But still liable for any default.
14. What to be width of roads and causeways.
15. Timber and earth taken from adjoining lands.
16. Owners may petition county court for pay.
17. Footways and hollow bridges, made where court may order. Order of court presumed after ten years' use.
18. Sign-posts at fork of roads, to be set up by overseers. Penalty for neglect.
19. On persons, removing or defacing posts or mile-marks.

## SECTION

20. Overseers to measure and mile-mark roads.
21. Penalty on overseers for general neglect of duty.
22. Bridges to be erected at county expense.
23. Contracts to build bridges, binding on county.
24. Owners of mills and ditches, to keep up bridges, when.
25. Penalty for neglect.
26. Toll-bridges allowed by court, when. Builders to keep them in repair, or forfeit toll, and be indicted.
27. Tolls of ferry regulated by county court. Penalty for neglect to keep it up.
28. Owner may build toll-bridge at his ferry. Draw in bridge, when made.
29. Bonds of keepers of ferries and owners of toll-bridges, taken by county court. Persons injured may recover damages.
30. Penalty for keeping ferry, &c., without authority. Proviso for mail-carriers.
31. Fastening vessel to float-bridge, penalty.
32. Railroad companies, &c., to keep draw in bridges.
33. Owners of steamboats, &c., to notify owners of bridges, to construct draws. Penalty for neglect.
34. Counties to construct draws, when.
35. Railroad companies, &c., to keep bridges over county road. Penalty for failure.
36. Duty of attorney-general and solicitors to prosecute for injuries to bridges.
37. Cart-ways, in what cases, and how obtained. Proceedings therefor.
38. May be changed or discontinued, and gates or bars erected, &c. Penalty for injuring them.
29. License to erect gates across public roads, how obtained.
40. Who exempt from working on roads.

What shall be public roads and ferries.

1. ALL roads and ferries that have been or shall be laid out or appointed by virtue of any act of assembly, or any order

of court, are hereby declared to be public roads and ferries; and from time to time, and at all times, the courts of pleas and quarter-sessions shall have full power and authority within their respective counties to appoint and settle ferries; to order the laying out of public roads where necessary; to appoint where bridges shall be made; to discontinue such roads and ferries as shall be found useless; and to alter roads so as to make them more useful.

Co. courts to establish and discontinue ferries, roads, and bridges.—R. S. c. 104, s. 1.

2. The said courts shall not establish any ferry, or order the laying out of any public road, or discontinue or alter such road or ferry, unless upon petition in writing. And unless it appear to the court, that every person, over whose lands the said road may pass, or whose ferry shall be within two miles of the place at which the other ferry is prayed to be established, shall have had twenty days' notice of the intention to file such petition, the same shall be filed in the clerk's office until the succeeding court, and notice thereof be posted during the same period at the court house door; at which court the justices shall hear the allegations set forth in the petition; and if sufficient reason be shown, the court shall appoint and settle, or discontinue the said ferry, or order the laying out, or discontinue or alter the said road, as the case may be.

Ferries and roads how established, altered, or discontinued.—R. S. c. 104, s. 2.

3. In all such applications, the court may decree how and by whom the costs shall be paid; and if any person shall appeal from the judgment of the county court on such petition, he shall give bond to the opposing party as in other cases of appeal; and the superior court shall hear the whole matter anew.

Court may decree how costs shall be paid. Appeal.—R. S. c. 104, s. 3.

4. All roads shall be laid out by a jury of freeholders, to the greatest advantage of the inhabitants, and with as little prejudice as may be, to lands and inclosures; which laying out, and such damage as private persons may sustain, shall be done and ascertained, by the same jury on oath; and all damages by them assessed, shall be deemed a county charge.

Roads, how laid out.—R. S. c. 104, s. 5.

5. Whenever, upon petition of any person, a road shall be changed, and, as a condition thereof, it shall be required by the court of such petitioner, that he put the proposed road in good condition, he may at any time thereafter, tender the same to the overseer, who shall receive it, if it be in such condition as is required for highways; and, if not, shall reject it; and, in either case, he shall report and certify the fact to court, where the same may be considered: and the court shall hear all persons interested in the matter of receiving or rejecting the road; and the decision of the court shall be conclusive as to the condition of the road: but the old road shall not be closed, until it be discontinued by order of the court.

When changed, how received.—R. S. c. 104, s. 5.

6. In addition to the mode prescribed in the second section of this chapter, for turning roads, the following method may be observed by any one who desires to change a road from one part of his laud to another part, namely: Such person shall lay out the same, and, after putting it in such

How persons may turn roads on their own land.—R. S. c. 104, s. 6, 7.

good condition as highways are directed to be, shall apply to a justice of the peace, who thereupon shall notify the overseer of the road, and summon two freeholders to meet on the premises at a given day; and the said freeholders, being duly sworn to that effect, shall, with the justice, view and examine carefully the road which is proposed in place of the other, and all matters and facts tending to show whether the change should be allowed; and they shall report in writing subscribed by them, the result of their consideration to the next county court, which may confirm or reject their report. *Provided always*, that such justice and freeholders shall be disinterested in the land, and not of kin or affinity to the applicant.

Overseers of highways annually appointed, and hands assigned.

7. There shall be overseers of all the common highways or public roads in the State, who shall be appointed annually, or as often as may be necessary, within every county, by the county courts thereof, who shall divide the roads into portions of convenient length; and each overseer shall have assigned to him some one of such portions, which he shall keep in good repair, and for that purpose shall have allotted to him certain hands to work the same. Such overseer shall serve, and be liable as such for neglect of duty, until he shall be relieved by the court, which shall be done only upon his showing that his road is in good condition as prescribed by law. *Provided, however*, that he shall not be responsible for any insufficiency of the road, until ten days after the notice of his appointment is served upon him, as is hereinafter directed. *And provided, also*, that he shall not be compelled to serve longer than one year in every three, if he shall faithfully discharge his duties as overseer for such year.

Their duty.

Notice of appointment.

Not bound to serve more than one year in three.—R. S. c. 104, s. 8.

Clerks in 10 days, &c., to furnish sheriffs with orders appointing overseers. Sh'ffs to apply at clerk's office for orders, and serve them in 20 days.

8. The clerk of the court of pleas and quarter-sessions, within ten days after the rise of court, shall furnish the sheriff with two copies of each order appointing overseers of roads, rivers, or creeks, that may have been made during the sitting of the court. And the sheriff shall apply at the office of the clerk, within ten days after the rise of every court, for such orders, and, on receiving them, shall, within twenty days, serve each overseer of roads, rivers, or creeks, with a copy of the order, or leave the same at his usual habitation; and the other copy, shall return to the next county court, with the date of its reception by him, and the date of the service, indorsed thereon, or the date when it was left at the residence of the said overseer. And if either the clerk or sheriff shall fail to perform any duty enjoined on him by this section, he shall forfeit ten dollars to the county, to be recovered at any time, by *scire facias* at the instance of the county solicitor, who shall prosecute the same in the name of the State.

Penalty on clerks and sheriffs for neglect.—R. S. c. 104, s. 9.

Overseers to summon hands, three days before work day. Who are hands.

9. It shall be the duty of the overseer of public roads, three days before the day of working, to summon all white males, between the ages of eighteen and forty-five, and free males of color and male slaves, between the ages of sixteen and fifty years, within the district, to meet at such times and places, as

to the overseer shall seem convenient, for the repairing or making such roads as may be necessary; and the overseer shall, at the same time, give notice to each free person, or the master or mistress, or overseer of slaves, what kind of tools they shall bring and work with on the road. And whosoever shall, upon such summons, neglect the duty, or any part thereof, required of him, shall forfeit and pay one dollar, per day, for each person or hand so neglecting or failing therein; which may be recovered of the father, or guardian having funds if the person failing be a minor; or, if a slave, of the master.

Penalty for failure to work.—R. S. c. 104, s. 10.

10. When an overseer shall not be able to personally notify the persons aforesaid, three days before the day appointed for working the road, he shall leave at the house of such free person, or the master, mistress, or overseer of slaves, and in case there be resident no free white person superintending the slaves residing on any plantation who are bound to work the road, then at the house of any slave, a written summons, specifying the day on which they are required to attend, the place of the road to be worked, and the kind of tools to be brought or used: and the said written summons, left as aforesaid, shall be deemed sufficient notice to the persons required to be notified, to every intent and purpose: and all penalties recovered by an overseer, for default of working on the road, shall be applied by him to the repair of the road of which he is, or may have been, overseer.

Notice, how served.—1842, c. 65.

11. Overseers, whenever compelled to warrant their hands, or the owners of hands for neglect of their duty, shall be competent witnesses to prove notice to them; and if any defendant shall be unable to discharge the judgment and costs that may be recovered against him, the costs shall be paid by the county.

Overseers competent to prove notice to hands.—R. S. c. 104, s. 11.

12. No persons, between the ages prescribed for free white men, and slaves and free persons of color, respectively, shall be exempted from working upon the public roads, except such as shall be exempted by the General Assembly, or by the county court on account of personal infirmity; of which the said court, seven justices being present, shall be the sole judge, and except also such as shall send three slaves, or other three sufficient hands to work on the roads: and nothing herein shall be construed to excuse overseers of slaves from working on roads.

No person excused from working, but by county court.—R. S. c. 104, s. 12.

13. The overseer, if requested by a majority of the workmen on the road assigned him, may, in his discretion, lay off the road in equal portions for the convenience 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 shall cause such part to be finished by the labor of other persons; and by warrant may recover the value thereof to his own use. *Provided*, that the time agreed on shall not exceed ten days; and that nothing in this section contained shall be a defence to the overseer, when prosecuted for default concerning the condition of the road.

Overseers may apportion road among hands.

But still liable for any default.—R. S. c. 104, s. 13.

What to be width of roads and causeways.—R. S. c. 104, s. 14.

14. All roads shall be laid off at least twenty feet wide; and where, by the overseers, it may be deemed expedient to make or repair causeways on the same, they shall be at least fourteen feet wide; and earth, necessary to raise or cover them, shall be taken from either hand, so as to form a drain on each side of the causeway. And the overseers shall cause to be cut and completely cleared all stumps and runners, for the width of sixteen feet, in the centre of the highways under their care: and they shall make, of the same width, necessary bridges through swamps, and over small streams of water.

Timber and earth taken from adjoining lands.—R. S. c. 104, s. 15.

15. Overseers may lawfully cut poles and other necessary timber, for repairing and making bridges and causeways. And whenever earth shall be needed on a public road, and it cannot be conveniently procured on either side of the causeway, the overseer may lawfully take the earth from any adjoining land.

Owners may petition county court for pay.—R. S. c. 104, s. 16.

16. The owner of the land or timber thus used, may file his petition in the court of pleas and quarter-sessions of the county wherein the injury is done; and, for damages sustained thereby, the court shall make the petitioner adequate compensation. *Provided*, that this and the preceding section shall not apply to the lands adjoining or contiguous to the causeway, or great road, leading across Eagle's island to Wilmington.

Footways and hollow bridges made where court may order.

17. Every overseer of the road, when the county courts may so direct, shall cause to be made and kept in repair, for the convenience of travellers on foot, good and sufficient footways over all swamps and streams of water that may cross that part of the road allotted to him; and, when the court shall so direct, shall also erect and keep hand-rails on each side of all hollow bridges situate on such part of the road. *Provided*, that, at all places where footways and hand-rails, at hollow bridges or over swamps and streams of water, shall have been commonly used, for the space of ten years next preceding any period within three years before presentment made or indictment found for want of such footways or hand-rails, the same shall be conclusive evidence of an order theretofore made by the county court, that they shall be erected and kept up, and subject to be rebutted only by producing an order dispensing with them made within three years next before such presentment.

Order of court presumed, after ten years' use.—R. S. c. 104, s. 17.

Sign-posts at forks of roads, to be set up by overseers.

18. Overseers shall cause to be set up, at the forks of their respective roads, a post or posts, with arms pointing the way of each road, with plain and durable directions to the most public places to which they lead, and with the number of miles from that place as near as can be computed; and every overseer, who shall, for ten days after notice of his appointment, neglect to do so and to keep the same in repair, shall forfeit and pay for every such neglect ten dollars.

Penalty for neglect.—R. S. c. 104, s. 18.

On persons removing or defacing posts or mile-marks.—R. S. c. 104, s. 18. Overseers to measure and

19. Any person, who shall wantonly remove, knock down, or deface the said posts, arms, or any mile-mark, shall, for every such offence, forfeit and pay to the State ten dollars; and, moreover, be deemed guilty of a misdemeanor.

20. Every overseer of a road shall cause the same to be



exactly measured, where it has not already been done, and at the end of each mile, shall mark in a plain, legible, and durable manner, the number of the miles, — beginning, continuing, and marking the numbers, in such manner and form as the court shall direct; and every overseer shall keep up and repair such marks and numbers of his road. If an overseer shall neglect any of the duties prescribed in this section, for the space of thirty days after his appointment to office, he shall forfeit and pay four dollars, and the like sum for every thirty days thereafter the said marking may be neglected.

mile-mark roads.—R. S. c. 104, s. 19.

21. Every overseer who shall neglect to do any other duty, by this chapter directed to be done, or who shall not keep the roads and bridges clear and in repair, or shall let them remain uncleared or out of repair, during the space of ten days, unless hindered by extreme bad weather, shall forfeit for every such offence four dollars, and be liable for such damages as may be sustained. *Provided always*, that nothing in this section contained shall excuse any neglect of duty by an overseer, as the same is prescribed in any other part of this chapter.

Penalty on overseers for general neglect of duty.—R. S. c. 104, s. 20.

22. When a bridge shall be necessary, and the overseer with his assistants cannot conveniently make it, the county court shall contract for the building, keeping, and repairing thereof, and levy the charge on their county; and when bridges shall be necessary over any stream 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 taxable polls in each.

Courts to have bridges erected at county expense.—R. S. c. 104, s. 22.

23. Every contract and order, by the court 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 valid against the justices and their successors.

Contracts to build bridges, binding on county.—R. S. c. 104, s. 23.

24. It shall be the duty of every owner of a water-mill, which is situate on any public road, and also of every person, who, for the purpose of draining his lands, or for any other purpose, shall construct any ditch, drain, or canal across a public road, respectively, to keep at his own expense in good and sufficient repair, all bridges that are or may be erected or attached to his mill-dam, immediately over which a public road may run; and also to erect and keep in repair all necessary bridges over such ditch, drain, or canal on the highway, of the width required for other bridges across the highway, so long as they may be needed by reason of the continuance of said mill, or mill-dam, ditch, drain, or canal. *Provided*, that nothing herein contained shall be construed to extend to any mill which was erected before the laying off such road, unless the road was laid off by the request of the owner of the mill. *And provided further*, that the duty hereby imposed on the owner of the mill, and on the person cutting the drain or canal, shall continue on all subsequent owners and occupiers of the mill,

Owners of mills and ditches, on and across roads, to keep up bridges.—R. S. c. 104, s. 24.—1846, c. 95, s. 1.

and on all subsequent owners and occupiers of the property, for the benefit of which the said ditch, drain, or canal was cut.

Penalty for neglect.—R. S. c. 104, s. 25.

25. Every person, who shall neglect to do his duty as directed by the preceding section, or shall let remain out of repair any such bridge, for the space of ten days, unless prevented by unavoidable circumstances, shall forfeit, for every such offence, twenty dollars, and be liable for such damage as may be sustained.

Toll-bridges allowed by court, when.

26. Whenever, from the rapidness or width of any stream, it may be too burdensome to build and keep up a bridge across the same, at the expense of those who are taxable for that purpose, the justices of the county, or counties chargeable therewith, a majority being present, may jointly and severally (as the case may be) contract for the building thereof, by allowing the builder to take tolls, at such rate and for such time, on all persons, horses, carriages, and other things passing over the bridge, as may be agreed on between the justices and the builder; which tolls shall be common to all persons. And such bridges shall be built in the manner the court or courts may direct, and shall be kept in good repair by the builder, his heirs and assigns, during the time the tolls are to be enjoyed: and in default of complying with the contract, the builder, or others who may succeed to his rights and enjoy the tolls, shall be deemed guilty of a misdemeanor.

Builders to keep them in repair, or forfeit toll, and be indicted.—R. S. c. 104, s. 26.

Tolls of ferry regulated by county court.

27. The justices of each county shall, once a year, or oftener if necessary, at the court to be held next after the first day of January, 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, shall forfeit and pay five dollars for every offence, to the party aggrieved. And every person who owns a public ferry, and refuses to keep it up at the rates allowed by the court, shall for every such offence, forfeit five dollars.

Penalty for refusing to keep it up.—R. S. c. 104, s. 27.

Owner may build toll-bridge at his ferry.

28. In all cases, where the proprietor of a ferry shall prefer building a good and substantial bridge over any watercourse instead of keeping a ferry, he may do so; and may claim and hold such bridge under the same rights, and in the same manner, by which the ferry is claimed and held, and under the same rules, regulations, restrictions, and penalties as other toll-bridges, allowed by the twenty-sixth section of this chapter. *Provided, nevertheless,* that no more toll shall be demanded for passing any such bridge, than is granted by law for the ferriage, unless by agreement with the county court. *And provided further,* that, in all such bridges, the proprietor shall erect a draw, where the free navigation of the stream may require it.

Draw in bridge, when made.—R. S. c. 104, s. 28.

Bonds of owners of ferries, and toll-bridges to

29. The court of each county shall compel every person that may own a toll-bridge, or keep a public ferry, within the county, to give bond with good security, in the sum of one

thousand dollars, payable to the State of North Carolina, conditioned that he will constantly keep such bridge in good repair, or, as the case may be, provide and keep good and sufficient boats, or other proper craft, always to be well attended, for the passing of travellers or other persons, their horses, carriages, and effects; and will indemnify and save harmless every person who may be endamaged, by reason of any default in his undertaking. And if any person shall receive damage, because such ferryman, or keeper of a toll-bridge shall not have complied with the condition of his bond, he may bring suit thereon in the name of the State, and recover his damages. And if any person shall be detained at any public ferry, by reason of the ferryman not having sufficient boats or other proper crafts and hands, or by his neglecting to do his duty in any other respect, he may recover before a justice of the peace, against such ferryman, the sum of ten dollars, as a penalty for every such default or neglect.

be taken by county court.

Persons injured may recover damages.—R. S. c. 104, s. 29.

30. If any unauthorized person shall pretend to keep a ferry, or to transport for pay any person or his effects, within ten miles of any ferry on the same river or water, which theretofore may have been appointed, he shall forfeit and pay two dollars for every such offence, to the nearest ferryman. *Provided*, that any person who may contract for carrying the mail, may keep a boat for the sole purpose of transporting the same, and such passengers as may travel in the coach therewith, across any ferry; but such contractor shall not transport across such ferry any other passengers than such as travel by the coach.

Penalty for keeping ferry, &c., without authority.

Proviso for mail-carriers.—R. S. c. 104, s. 30.

31. No person shall fasten any decked vessel to a float-bridge, on pain of forfeiting fifty dollars; which, in the case of a bridge that crosses a county line, may be recovered in either county.

Fastening vessel to float-bridge. Penalty.—R. S. c. 104.

32. Railroad, plank-road, and turnpike companies, erecting bridges across watercourses, shall attach and keep up good and sufficient draws, by which vessels may be allowed conveniently to pass.

Railroad co's, &c., to keep draw in bridges.—1846, c. 51, s. 1, 2.

33. Owners of steamboats or other craft, who may intend to navigate any river or creek over which any person may have a bridge, may give three months' notice thereof in one of the public journals of the State, published nearest the river or creek intended to be navigated, and to the owner of said bridge, to construct a draw of sufficient width to allow the passage of the boat which is to be used; and if the owner of the said bridge shall not, within three months from the date of the notice, construct the required draw, he shall forfeit and pay to the person so notifying, if he be thereby prevented from navigating the watercourse, fifty dollars; and shall be further subject to the like penalty, under like circumstances, for every three months default thereafter.

Owners of steamboats, &c., to notify owners of bridges, to construct draws.

Penalty for neglect.—1846, c. 51, s. 1, 2.

34. The county or counties which may erect bridges shall,

Counties to erect draws,

where necessary.

by their courts, provide and keep up draws in all such bridges, where the same may be necessary to allow the convenient passage of vessels.

Railroad co's, &c., to keep bridges over county roads.

35. Railroad, plank-road, and turnpike companies, each, shall keep up, at their own expense, all bridges on or over county, or incorporated roads, which they have severally made it necessary to be built, in establishing their respective roads; and on failure to do so, shall be deemed guilty of a misdemeanor, and, on conviction thereof be fined, and execution may issue for fine and costs; and moreover shall forfeit and pay twenty-five dollars.

Penalty for failure.—1838, c. 5, s. 1, 2, 3, 4.

Duty of att'y-gen'l and solicitors to prosecute for injuries to bridges.—1846, c. 11, s. 1, 2.

36. The attorney-general, and the solicitors of the superior and county courts are authorized and directed to institute suits, in the name of the State, in the counties wherein the injuries may be done, for the recovery of damages, against all persons, who shall wilfully or negligently injure any public bridge belonging to or situate in any county or counties, by forcibly running any decked vessel, boat, or raft against the same; by cutting trees or timber in the rivers or creeks above such bridges, or by any other manner or means whatsoever. In case the injury is done to two counties, the action may be brought in either for the entire damage; and the damages which may be recovered, shall be for the use of the county or counties injured: and if the plaintiff fail, the costs shall be paid by the county or counties, for whose use the suit is brought, and in the same proportion in which the recovery would be divided.

Cart-way, in what cases, and how obtained.

37. If any person be settled upon or cultivating any land, to which there is leading no public road, and it shall appear necessary, reasonable, and just, that such person should have a private way to a public road over the lands of other persons, he may file his petition in the county court, praying for a cart-way to be kept open across such other person's lands, leading to some public road, ferry, bridge, or public landing; and upon his making it appear to the court, that the adverse party has had twenty days' notice of his intention, the court, seven justices being present, shall hear the allegations of the petitioner; and, if sufficient reason be shown, shall order the sheriff to summon a jury of twelve freeholders, to view the premises, and lay off a cart-way not less than fourteen feet wide, and assess the damages the owner of such land may sustain thereby; which, with the expense of making the way shall be paid by the petitioner: and the way shall be kept open for the free passage of all persons, on foot or horseback, carts, and wagons. *Provided*, that, if the notice aforesaid shall not have been given, the court 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 therefor.—R. S. c. 104, s. 33.

May be changed or discontinued, and gates or bars erected, &c.

38. Cart-ways, laid off according to the preceding section, may be changed or discontinued upon application by any person concerned, under the same rules of proceeding as they

may be first laid off, and upon such terms as to the court shall seem equitable and just. And any person, through whose land a cart-way may pass, may erect gates or bars across the same: and if any person shall leave open, break down, or otherwise injure such gates or bars, he shall forfeit and pay, for every such offence ten dollars, to the person erecting the same or his assigns of the land; and, if the offence shall be maliciously done, he shall be deemed guilty of a misdemeanor.

Penalty for injuring them.—R. S. c. 104, s. 34, 35, 37.

39. 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 the road lies; whereupon, publication shall be made at the court house until the next succeeding term, of such application, specifying the road, the place for the gate, and name of the petitioner: and all persons interested in the convenient travelling or transportation on said road, shall have leave to appear and defend, demur, or plead to said petition; and if, at that court, it shall appear that such publication has been made, the court, a majority of the justices being present, may, at their discretion, authorize the petitioner, at his cost, to erect a gate as prayed for.

License to erect gates across highways, how obtained.—R. S. c. 104, s. 38.

40. The following persons shall be exempted from working on roads, namely: justices of the peace, constables, keepers of public grist-mills, wardens of the poor, patrollers, teachers and pupils of schools, and lock keepers on the Dis-mal Swamp Canal.

Who exempt from working on roads.—1848, c. 46.—R. S. c. 24, s. 12; R. S. c. 74, s. 18; R. S. c. 80; 1844, c. 36, s. 31; 1838, c. 50.

SECT. 1. *May be established: by user*, 1 Ire. 432, 5 Ib. 369, Bus. 245; *dedication*, 4 Ire. 318, 11 Ib. 647; *not by mere appointment of overseer*, 3 Ire. 168, 11 Ib. 647.

SECT. 2. *Practice*, 7 Ire. 365, 1 Car. L. R. 249; *what petition must show*, 3 Ire. 108; *notice*, 3 Hawks, 599; *non-assessment of damages*, 1 Ire. 432; *what may be condemned*, 2 D. & B. 451; *irregular order*, 2 D. & B. 547, 6 Ire. 162; *appeal*, 2 Ire. 168; *costs on*, 3 Hawks, 312, 11 Ire. 9.

SECT. 6. *Form of petition*, 2 D. & B. 547; *should be granted, when*, Bus. 387.

SECT. 7. *Who liable as hands*, 8 Ire. 436, 1 Jones, 133; *how allotted*, 2 Jones, 48; *penalty for not working*, 11 Ire. 278.

SECT. 10. *Notice necessary*, 2 Car. L. R. 633. *Liability of overseer*, 1 Jones, 231.

SECT. 14. *Overseer has no right to widen road*, 11 Ire. 94.

SECT. 17. *What bridges, &c., overseer to make*, 6 Ire. Eq. 613.

SECT. 21. *Case of inability to repair*, 11 Ire. 371.

SECT. 24. *State v. Yurreli*, 2 Jones, 2 Hawks, 349.

SECT. 26. 3 Ire. Eq. 613.

SECT. 28. 3 Ire. Eq. 613.

SECT. 38. 9 Ire. 15.

## CHAPTER 102.

## SALARIES AND FEES.

## SECTION

1. Salaries of governor, judges of supreme court, secretary of State, treasurer, comptroller, private secretary, superintendent of common schools, clerks of treasury, when and how paid.
2. Of adjutant-general.
3. Of judges of superior courts. Additional pay when circuit has more than twelve courts.
4. Certificates of attendance to be produced, or deductions made. Clerks of certain courts forbidden to give certificates until 4 o'clock, P. M. of Thursday in term.
5. Salary of attorney-general, and solicitors.
6. Of reporter of decisions of supreme court. He may print copies of his reports on his own account. May contract with clerk to furnish copies for distribution.
7. Pay of counsellors of State.
8. Of clerk, and door-keeper of council.
9. Of members of General Assembly.
10. Of clerks and officers of General Assembly.
11. Pay of members and officers, when ascertained, certified, and paid.
12. Fees of governor's private secretary.
13. Of secretary of State.
14. Of attorney-general and solicitors for State. Fees in supreme court.
15. Of county solicitors.
16. Of attorneys at law. Attorneys for State in civil cases.
17. Clerks of county courts, on mesne process. On final process. For proving, recording, filing, searching, certifying, and entering on minutes.

## SECTION

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  19. No fee on *capias*, in certain cases.
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  24. May issue execution for fees in certain cases. Bill of costs to be annexed.
  25. Salary and fees of clerk of supreme court.
  26. Of clerk and master in equity.
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  28. Fees of coroners.
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  37. Of standard-keepers.
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  40. Of tobacco-pickers.
  41. Of notaries.
  42. Dates and figures, how reckoned in copy sheet.

Salaries of governor, judges of supreme court, treasurer, secretary of State, comptroller, private secretary, superintendent of com'n schools, clerks of treasury.

1. THE officers hereinafter named shall annually receive the following salaries, that is: the governor of the State, three thousand dollars, and no other compensation whatsoever; each of the judges of the supreme court, two thousand five hundred dollars; the secretary of State, besides his fees, eight hundred dollars; the public treasurer, two thousand dollars; the comptroller, one thousand dollars, and a fee of ten cents from the claimant, for each certificate made and delivered to

the secretary of State of money paid on entered land; the superintendent of common schools for the State, fifteen hundred dollars, to be paid out of the literary fund; the private secretary to the governor, three hundred dollars, besides his fees; and the clerk or clerks of the treasury department, seven hundred and fifty dollars: all which salaries shall be paid quarterly, that is, on the first days of April, July, October, and January in every year, by the public treasurer, on warrants drawn by the governor.

2. The adjutant-general of the State shall receive an annual salary of two hundred dollars, to be paid semiannually by the public treasurer, upon warrant from the governor.

3. The judges of the superior courts of law and courts of equity, shall each have an annual salary, payable semiannually, 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; and for the holding of a special term of the superior court, the judge presiding shall receive ninety dollars, to be paid by the county in which the special term is held, on the production of the certificate of the clerk of the court aforesaid. *Provided, however,* that in all cases where a circuit of the superior courts shall exceed twelve weeks, the judges holding said courts at any regular term, shall be entitled to a compensation of ninety dollars for the court of each county, exceeding twelve, held by them, to be paid by the public treasurer on the first days of January and July, in addition to the salary aforesaid; and each week in which a court shall be held shall be considered a term.

4. Every judge shall produce a certificate from the clerk of each county of his having held the court of the county according to law; and for every such certificate omitted to be produced, there shall be a deduction from his salary of one hundred dollars. *Provided, however,* that no certificate of attendance shall be given by the clerks of the superior courts of Northampton, Hyde, Davie, Currituck, Person, and Cleveland, until four o'clock on Thursday evening of each week when the court shall be held; and the certificate shall be void if it do not certify that the presiding judge was present and held the court until that time, and until the business was disposed of; unless some unavoidable circumstance shall prevent the courts of said counties from being held at the prescribed time, and then the same shall also be certified in the certificate.

5. The attorney-general, or the solicitor who may attend in his place, shall receive one hundred dollars for each term of the supreme court which he shall attend; and these officers shall receive, besides their prescribed fees, twenty dollars for each term of the superior court they shall attend, to be paid by the public treasurer, on a certificate of such attendance from the clerk of the court; and if they attend any court more

When and how paid.

Of adjutant-general.

Of judges of superior courts.

Additional pay when circuit has more than twelve courts.

Certificates of attendance to be produced, or deductions made.

Clerks of certain courts forbidden to give certificates until 4 o'clock, P. M. of Thursday in term.

Salary of attorney-general and solicitors.

than one week, they shall receive twenty dollars more for the second week, to be paid in the same manner.

Of reporter of decisions of supreme court.

He may print copies of his reports on his own account.

May contract with clerk to furnish copies for distribution.

Pay of counsellors of State.

Of clerk and door-keeper of council.

Of members of General Assembly.

Of clerks and officers of General Assembly.

6. The reporter of decisions of the supreme court shall receive, as a compensation for the services and reports required of him by law, a salary of six hundred dollars; which shall be paid 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. Besides the copies aforesaid, the reporter, then or at any other time, may, on his own account, and at his own expense, print, publish, and vend as many additional copies as he may choose; and shall also have the exclusive right to obtain, under the act of congress, the copy-right of the reports: and if the reporter should prefer to do the work himself of printing and distributing for the State the copies directed to be distributed, he may do so upon such terms as the clerk of the supreme court at Raleigh shall deem reasonable, and may contract with the clerk on behalf of the State for that purpose.

7. A counsellor of State shall receive 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.

8. The clerk of the council shall receive two dollars, and the door-keeper eighty cents, for each day such persons may be employed in attending on the council of State.

9. The speakers of the senate and of the house of commons of the General Assembly, shall each be entitled to receive four dollars, for every day they shall attend the senate or house of commons; and each senator and member of the house of commons, 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 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, as if he had attended regularly in his place.

10. There shall be allowed, as a compensation for their daily attendance and services, to the clerks and officers of the senate and house of commons of the General Assembly, at every session, the following sums: to each principal and assistant clerk, six dollars; to each engrossing clerk, four dollars; to each door-keeper, three dollars; and there shall be allowed to each of the principal clerks of both houses, 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 door-keepers of both houses, and also the engrossing clerks, shall each be allowed 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.

11. The compensation of the members and officers of the senate shall be ascertained by the principal clerk, and certified by the speaker thereof; and that of the members and officers of the house of commons and the engrossing clerks, shall be ascertained by the principal clerk of the house of commons, and certified by the speaker thereof; and the sums so certified shall be passed as public accounts, and paid by the treasurer.

Pay of members and officers, how ascertained, certified, and paid.

12. The private secretary of the governor shall be allowed the following fees, and no other, to be paid by the persons for whom the services are rendered, namely: for the commission of a judge, four dollars; of the attorney-general, two dollars; of a solicitor, two dollars; of a senator in congress, two dollars; of a representative in congress, two dollars; of a notary-public, two dollars; for any commission for a place of profit, two dollars; for a testimonial, one dollar; for suspension of a grant, seventy-five cents; for affixing the seal to a grant, twenty-five cents.

Fees of governor's private secretary.

13. The secretary of State shall be allowed, besides his salary, the following compensation and fees, namely: 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; copying and certifying a will not exceeding two copy sheets, fifty cents, and for every additional copy sheet, ten cents; correcting an error, not made by himself, in a patent, fifty cents; copying and certifying the record of a grant or patent, containing not more than six hundred and forty acres, fifty cents; 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; receiving surveyor's return, making out, recording, and indorsing grant, sixty cents; each search, ten cents; each certificate, ten cents; recording deeds or other evidences of title, for land purchased for the use of the State, the same fees that registers are entitled to for deeds or like services; filing and recording a copy of the judgment vacating a grant, and all other services thereon, fifty cents; copying an entry from the journals of the Assembly, forty cents; 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; receiving articles of agreement, and filing and recording letters patent, one dollar: 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 registers.

Of secretary of State.

Of attorney-general and solicitors for State, in superior court.

14. The attorney-general and solicitors for the State shall, in addition to the general compensation allowed them by the State, receive the following fees, and no other, namely: for every indictment which they may prosecute for a felony, perjury, forgery, counterfeiting, passing, or attempting to pass or sell, any forged or counterfeited paper or evidence of debt; maliciously injuring or attempting to injure any railroad, or railroad car, or any person travelling on such railroad; stealing or obliterating records; stealing, concealing, destroying, or obliterating any will; maliciously burning or attempting to burn houses or bridges; misdemeanors of accessories after the fact to felonies; and for circulating seditious writings among slaves and free negroes, and for persuading them to conspiracy and rebellion, each of them shall receive ten dollars upon conviction of the defendant, to be paid by him: for every indictment for frauds, deceits, maim, and escapes, five dollars; and for all other offences, four dollars, to be paid as aforesaid, and in no other manner whatever, except in cases where the court shall be of opinion that the prosecution is frivolous and malicious, and may order the prosecutor to pay the costs, including a tax fee. *Provided, nevertheless,* that no larger fee than ten dollars shall be taxed for the 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: and in all appeals to the supreme court, of persons convicted of criminal offences, a fee of ten dollars against each person who shall not reverse the judgment, shall be allowed the attorney-general, to be taxed among the costs of that court.

In supreme court.

Of county solicitors.

15. The county solicitor shall not be entitled to receive fees in any case, but on conviction of the defendant; and then he shall receive four dollars for each defendant convicted, to be paid by the defendant, and in no other way whatever, except in cases adjudged to be frivolous and malicious, when the court may tax a fee, to be paid as provided in the preceding section.

Of attorneys at law.

16. Fees to be taxed for attorneys or parties in suits in the supreme and other courts, shall be as follows, namely: in a suit in equity, twenty dollars; in a suit at law in the supreme court, ten dollars; in a suit in any of the superior or county courts, where the title of land may come in question, ten dollars; in all other suits, originally commenced in the superior or county courts, four dollars; in appeals from any other court to the superior, the same fee as in the court below; in every appeal from a judgment of a justice of the peace to the superior court, four dollars, and to the county court, two dollars; in a petition for dower, where the suit may be brought at law, four dollars; and no fee shall be taxed on any order for sale of lands levied on under an execution issued by a justice of the peace, unless where the same may be opposed: nor in cases where a bond shall be taken and returned under the law for

the relief of insolvent debtors, unless where an issue shall be made up; nor shall any fee be taxed in the case of a petition to rehear any decree made either at law or in equity, which may be filed before the actual enrolment of the final decree in the cause; and such fees shall be taxed for counsel, appearing for the State in civil cases, to be paid by the defendant on the rendition of judgment against him, as are taxed in like cases, when the suit is between citizens.

Attorneys for State in civil cases.

17. The clerks of the courts of pleas and quarter-sessions shall receive the following fees, and no other, namely: 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; every indictment, sixty cents; each recognizance, twenty cents; every reference or continuance of a cause, thirty cents; every judgment entered after the return court, seventy-five cents; every subpoena, provided the party inserts no more than four witnesses in the same, fifteen cents; every commission to take testimony, twenty-five cents; every special verdict, or demurrer or motion in arrest of judgment, thirty cents; every writ of error or appeal, with the transcript of record, two dollars; taking and recording prosecution bond, forty cents; every subpoena, issuing on a petition, fifty cents; every writ, other than leading process, or subpoena for witnesses, seventy-five cents; docketing appeals, and entry of plea or default in the same, one dollar; trial of issue on insolvent's schedule or bond, seventy cents; every *scire facias*, sixty cents; docketing constable's levies, including all services in court, one dollar; and it is provided that the creditors, at whose instance any issue with insolvents shall be made up, shall pay costs whenever they shall fail, as in other cases.

Clerks of county courts, on mesne process.

For every execution or order of sale, thirty-five cents.

Final process.

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 receive twenty cents; if above two hundred and under one thousand dollars, forty cents; if above one thousand, seventy-five cents and no more: for entering on the minutes the probate of any will, qualifying executors, making certificate, and recording the will in a bound book kept for that purpose, one dollar. *Provided, however,* that when any such inventory, account, or will shall exceed five copy sheets, the clerk shall receive ten cents for each additional sheet. For every search of record out of court, ten cents; proving or entering the acknowledgment of a conveyance of land, or other estate, and certifying the same with order of registration, and examination of a *feme covert* without commission, twenty cents; for every commission to examine a *feme covert*, twenty-five cents; proving or taking acknowledgment of a deed or power of at-

For proving, recording, filing, searching, certifying, and entering on minutes.

torney, and certifying the same, including order of registration, twenty cents; every certificate for witnesses' or jurors' attendance, ten cents; affixing the seal of office, and writing the necessary certificate, on any instrument requiring the same, twenty-five cents; every certificate, without the seal of office, when the same is not otherwise directed to be paid, twenty cents; recording a mark or brand, and giving a certificate thereof, ten cents; issuing a warrant, on entry of land, by order of the court, forty cents; enrolling divisions of estates, for each lot, twenty cents; every certificate of inn, ordinary, or tavern license and bond, with a copy of rates, one dollar; recording processioner's certificate, twenty cents; every search of entry-taker's books, ten cents; filing insolvent's schedule, bond, and all other services in court thereupon without trial by jury, one dollar; recording the decree of the court upon a petition for the legitimation of a bastard child, one dollar; for each description of a slave or free negro and certificate thereof, fifty cents.

For copying.

For every copy of a record, not exceeding five copy sheets, ten cents for each copy sheet of ninety words, and five cents for each copy sheet after five. *Provided*, that the total amount of fees, charged for any one record, or will, shall not exceed five dollars; every order or rule, foreign to the cause, with a copy of the same, if required, twenty cents; every copy of a petition, by the copy sheet, ten cents; every copy of location from entry-taker's books, ten cents; for declaration of a foreigner, wishing naturalization, copy and seal, one dollar and fifty cents; final entry of order of naturalization, copy of the same and seal, one dollar and fifty cents.

For bonds, licenses, notices, &c.

For every marriage license and bond, seventy-five cents; every guardian and other bond taken in court, for which no other special fee is allowed, sixty cents; granting administration, taking bond, and other services thereon, eighty cents; every indenture for binding apprentices, sixty cents; taking an account, such sum as the court may allow not exceeding fifty dollars; every order of court authorizing license to retailers, eighty cents; issuing license to hawk or peddle, eighty cents; correcting or certifying an error in a patent, forty cents; every guardian's notice for renewal of bonds, return, or settlement of accounts, sixty cents.

Of clerks of superior courts.

18. The clerks of the superior courts of law shall receive for filing a transcript of appeal to the supreme court, two dollars; and for all other services, shall receive the same fees as are allowed the clerks of the county courts, and no other.

No fee on *capias* in certain cases.

19. No clerk of the county or superior court shall charge a fee for any *capias ad respondendum*, issued during term time, and returnable *instanter*, unless the same 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 be unable to pay the costs, and the court shall not order the prosecutor to pay the same, the county shall pay the clerks

and sheriffs half their fees only; except in felonies, or prosecutions for forgery, perjury, larceny, conspiracy, and such offences mentioned in section fourteen, for the prosecution whereof, the attorney-general is allowed a fee of ten dollars in the superior court, when they shall receive full fees.

21. The sheriff shall receive the following fees, and no other, namely: for every arrest, seventy-five cents; every bail or replevin bond, twenty-five cents; service of a copy of declaration in ejectment, sixty cents; service of subpoena, with a copy of petition, sixty cents; service of a copy of declaration, ten cents; service of every *scire facias*, sixty cents; every attachment levied, seventy-five cents; and, if further trouble by moving of goods, a sum to be taxed by the court; every replevy bond upon attachment, twenty-five cents; every subpoena served, for each person named therein, thirty cents; summoning commissioners to divide real estate, and qualifying them, thirty cents each, to be paid in just proportions by the claimants; every notice to take depositions, thirty cents; every notice required to be given in any cause, motion, or proceeding, at law or in equity, as well for commencing as in prosecuting the same until the final termination, the same fee as for serving a subpoena; summoning, impanelling, and attending on every jury in each cause in court, and calling the same, ten cents; where a special *venire* for any purpose, in or out of court, shall issue by order of a court, for summoning each juror, twenty cents; for serving and attending any person on a *habeas corpus*, one dollar and fifty cents per day; apprehending any criminal, one dollar; summoning guardian to renew his bond, make return, or settle his accounts, sixty cents, to be paid by the guardian; service of notice to arbitrators, referees, and commissioners to take an account, thirty cents; for notifying wardens of the poor of their day of meeting, thirty cents.

Sheriffs' fees  
on mesne pro-  
cess, subpoe-  
nas, orders, &c.

For executing a *capias ad satisfaciendum*, issued from, and returnable to, a court of record beyond the sheriff's own county, and carrying the defendant and confining him in the jail of such county, three dollars for every thirty miles travelling from his own house to, and from, the jail; and the sheriff shall set forth in his return upon the writ, the distance from his residence to the jail wherein he may have confined the defendant; the truth of which return shall be verified on oath before the clerk, and his fee taxed and collected as his other fees; for putting a person in the stocks or pillory, fifty cents; every commitment or release, thirty cents; every writ of possession, one dollar; every levy by virtue of an execution, seventy-five cents; execution and decent burial of any criminal, ten dollars.

On final pro-  
cess.

For keeping a criminal in jail per day, the sum allowed and fixed by each county court, as now directed by law; maintaining any slave or other property, or any criminal seized by virtue of any legal precept, such sum as may be fixed by the

For keeping  
and conveying  
criminals,  
maintaining  
slaves, &c.

county court; conveying any eriminal or other person under arrest, to that jail where he 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 such prisoner, he shall receive fifty cents, the expense to be paid by the proper county, if the prisoner shall not be liable or able to pay the same.

Sheriff's commissions.

For all moneys, collected by him by virtue of any levy, or executing a writ of distress, or an execution against the body, two and a half per centum; and the like commission for all moneys that may be paid to the plaintiff by the defendant, while such precept is in the hands of the sheriff and after levy or executing the distress or execution against the body.

Service of equity process.

For service of equity process, and sales and orders incidental thereto, the same fees as for the like service at law.

No commissions on justice's execution.

22. No sheriff shall take a commission on any moneys collected on an execution issued by a justice of the peace; nor any other fees, unless they be allowed by law.

Clerks to keep a copy of their fees posted up in their offices.

23. The clerks of superior and county courts shall keep a copy of this chapter, 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.

May issue execution for fees in certain cases.

24. The clerks of the supreme, superior, and county courts, where suits are determined and the fees are not paid by the party from whom they are due, shall sue out executions, directed to the sheriff of any county in the State, who shall levy them as in other cases; and to the said execution shall be annexed a bill of costs, written in words, so as plainly to show each item of costs, and on what account it is taxed; and all executions for costs, issuing without such a bill annexed, shall be deemed irregular, and may be set aside as to the costs, at the return term, at the instance of him against whom it is issued.

Bill of costs to be annexed.

Salary and fees of clerk of supreme court.

25. The clerk of the supreme court shall receive an annual salary of three hundred dollars, to be paid semiannually, on a certificate of the judges; and, in addition thereto, the following fees, namely: 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 court at each term, 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 a cause, one dollar; and the same fees as are allowed to clerks and masters in equity for similar services, in all matters relating to causes in equity; for entering an appeal in a case at law, one dollar; a continuance, thirty cents; a *scire facias*, eighty cents; a *certiorari*, eighty cents; for a determination, two dollars; a certificate, sixty cents; a *feri facias*, or

other execution, fifty cents; a seal, twenty-five cents; and for a transcript, or copy of a record, twenty cents for each copy sheet.

26. The clerk and master in equity shall receive the following fees, and no other, namely: for a report on an answer, thirty cents; report on a plea and answer, forty cents; report on a demurrer and answer, forty cents; an affidavit to an answer, fifteen cents; an affidavit to a bill, fifteen cents; a separate affidavit, twenty cents; copying a report by the office copy sheet, twenty cents; a report stating an account to be allowed by the court, a sum not to exceed fifty dollars; copies of proceedings and exemplification, by the copy sheet, twenty cents; taking a bond, fifteen cents; a rule given for service, twenty-five cents; a rule not for service, fifteen cents; a subpoena, writ, or other process, one dollar; a commission, fifty cents; an injunction, one dollar; drawing a decree, by the copy sheet, forty cents; enrolling a bill or answer, by the copy sheet, twenty cents; entering a plea or demurrer, twenty cents; recording depositions to perpetuate testimony, by the copy sheet, twenty cents; a dismissal, twenty cents; a search, ten cents; taking security on a leading process, twenty cents; recording each bond, twenty cents; for affixing the seal to any writing requiring it, twenty-five cents; for transcript to the supreme court, two dollars; for taking depositions in equity, to such fees as may be allowed by the court to which the commission is returnable, to be taxed as other costs.

Of clerk and master in equity.

27. The county trustee shall receive, as a compensation in full for all services required of him by law, such a per centum, not exceeding six, upon the amount of his receipts and disbursements, as the county court, a majority of the justices being present, shall deem adequate and proper.

Compensation of county trustees.

28. The coroner shall receive the following fees, and no other, namely: for attending on an inquest, five dollars, and twenty cents for every juror summoned to attend the inquest, to be paid by the county; for decently interring the body of any white man, or free person of color, over whom he has held an inquest, such sum, not exceeding ten dollars, as the county court, seven justices being present, may order, to be paid by the county, if the friends of the deceased shall refuse or neglect to inter the body; which sum shall be charged against the estate of the deceased, and the county trustee may recover it by a warrant; for decently interring the body of any slave, over whom he has held an inquest, the same sum, to be allowed and paid in like manner, if the master or owner shall refuse or neglect to inter the body; which sum the master or owner shall pay back to the county trustee, who may warrant for 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 coroners.

29. A constable shall receive the following and no other fees, namely: for every day's attendance on court, when sum-

Of constables.

moned, one dollar and fifty cents; whipping a slave, by order of any justice of the peace, thirty cents; serving a warrant, for each person named therein, forty cents; summoning a witness, twenty cents; an execution levied, forty cents; an attachment levied, fifty cents; a bail-bond, twenty-five cents; serving notice on bail, forty cents; serving a notice, that may be required by law to be given for commencing or prosecuting any cause before a justice of the peace out of court, thirty cents.

Of registers.

30. A register shall receive the following fees, and no other, namely: for registering each deed or grant, containing one tract of land, including the certificate, not less than forty, nor more than one hundred cents; if the deed contain two or more tracts, not less than forty, nor more than one hundred cents for the first tract, and not less than ten, nor more than twenty cents for 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 twenty-five 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, nor more than one hundred cents; registering decrees of court, operating as deeds, one dollar; registering all other instruments of writing, for each instrument, not less than forty, nor more than one hundred cents; for a search, ten cents.

County court may fix register's fees within certain limits.

31. Any county court, (a majority of the justices being present,) may establish and regulate the fees of the register of the county, within the limits prescribed in the preceding section; and when the fees are so established, they shall not be altered by the court within one year. And if the county court shall not establish the fees, as aforesaid, then the fees of the register shall be at the minimum rates prescribed.

Of entry-taker.

32. Entry-takers shall receive the following fees, and no other, namely: for an entry, including all services, forty cents; issuing each duplicate warrant, when thereto required, twenty-five cents.

Of county surveyors and chain carriers.

33. Surveyors appointed by courts to survey any lands, the boundaries of which may come in question in any suit or proceeding 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, namely: 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, two dollars per day, or such greater sum as the court may allow; for assisting in the surveying and dividing the lands of intestates, or others, held in common, when called upon by the commissioners ap-



pointed to make partition, or in laying off dower, travelling to and from the place, and performing the duty, two dollars per day. In all surveys made by order of the court, the chain carriers shall be allowed such compensation as the court may determine, not exceeding one dollar each per day; and in matters of disputed boundary, which may come in question in any suit, the court may make to the surveyor such allowance for plots as it may deem reasonable, which, with the allowance to chain-carriers, shall be taxed as costs.

34. Rangers shall receive the following fees, and no other, Of rangers. namely: for entering each horse, mare, gelding, colt, mule, ass, or jenny, including the certificate, fifty cents; for entering each head of neat cattle, twenty-five cents; for entering each head of hogs or sheep, ten cents; for a bond, twenty cents; for advertising such strays as are required to be advertised, one dollar and fifty cents; for a search, ten cents.

35. Commissioners of affidavits, and those who are authorized by law to act as such, shall receive the following fees, and no other, Of commissioners of affidavits. namely: for an affidavit taken and certified, forty cents; affixing the seal of court, when necessary, twenty-five cents.

36. Processioners shall receive the same fees which are allowed by law to county surveyors. Of processioners.

37. Standard-keepers shall be entitled to receive the following fees, and no other, Of standard-keepers. namely: for examining and adjusting a pair of steelyards, twenty-five cents; every weight of half a pound and upwards, five cents; every set of weights below half a pound, including one piece of each denomination, five cents; for a yard-stick, or other measure of cloth, five cents; every bushel, half bushel, peck, or other measure used in measuring grain, meal, or salt, ten cents; each measure for liquors or wines, three cents.

38. Jailers shall receive, for finding prisoner fuel, one pound Of jailers. 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 court of pleas and quarter-sessions, a majority of the justices being present, shall deem it expedient to increase his fees, which they may do, provided such increase does not exceed fifty per cent. on the above sum, which shall be recorded, and shall not be altered within one year thereafter.

39. Inspectors shall receive the following fees, for the duties Of inspectors. required of them, and no other, namely: for inspecting ton timber, twenty cents per thousand feet; inspecting, turning up, coopering, finding nails, hoops, and issuing a note for every hogshead of tobacco, seventy cents; inspecting transfer tobacco, at the rate of five cents per hundred pounds; inspecting a barrel of flour, five cents; a barrel of pork or beef, ten cents; a barrel of rice or butter, six and a fourth cents; a barrel of fish, three cents; each barrel of tar, pitch, or turpentine, two and a half cents, to be paid by the purchaser; every thousand

shingles, two and a half cents; every thousand feet of boards, plank, or scantling, thirty cents; every barrel of flax-seed containing seven and a half bushels, ten cents.

Of tobacco pickers.

Fees of notaries.—R. S. c. 78, s. 3.—1846, c. 69.

40. Tobacco-pickers, for every one hundred pounds picked and prized, shall receive the fifteenth part.

41. Notaries proper, and other persons acting as such, shall be allowed one dollar for all services on a protest for non-acceptance, or for non-payment, or for both when done at the same time, of any order, draft, note, bond, or bill, or any other thing necessary to be protested. For other necessary services, where no fee is fixed, they shall be allowed twenty cents for every ninety words. *Provided, however,* that cases of protest concerning vessels or their cargoes shall not be affected by this chapter.

Dates and figures, how reckoned in copy sheet.

42. In reckoning the number of words in a copy sheet, every date, or amount of money, expressed in figures, as 1855, \$250.90, shall be estimated and charged as one word.

SECT. 21. *Sheriff's commissions*, 3 D. & B. 73, 4 Hawks, 1; *who entitled to*, 3 Dev. 38.

SECT. 26. *Subpœnas for witnesses*, 7 Ire. Eq. 33. *County attorney, on scire facias, vs. guardian*, 3 Hawks, 238.

## CHAPTER 103.

### SEAT OF GOVERNMENT.

#### SECTION

1. City of Raleigh to be seat of government.
2. Governor and others, a board to take charge of public buildings and lots. May sue for injuries thereto.
3. Shall furnish offices, and appoint a keeper of capitol. Duty and pay of keeper. Board to secure capitol from fire.

#### SECTION

4. Rooms not to be used as sleeping apartments. Keeper to keep keys.
5. Appropriation of rooms.
6. Keeper to give bond.
7. Disorderly conduct in capitol prohibited. Penalty.
8. Penalties against infants, paid by parent or guardian.

City of Raleigh to be seat of government.—R. S. c. 107, s. 1.

1. THE city of Raleigh shall be deemed and considered the permanent and unalterable seat of government of the State; the place for holding the meetings of the General Assembly, and the place of residence of the chief officers of the State.

Governor and others, a board to take charge of public buildings and lots. May sue for injuries thereto.—R. S. c. 107, s. 2.—1840, c. 3.

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, and shall have charge of the public lots belonging to the State; and in the name of the State may institute an action on the case, or trespass, for damages done to the said buildings or lots; and may also, in the name of the State, as

lessor, institute actions of ejectment to remove persons from the possession of any of the lots.

3. The board shall take charge of and keep in repair the public buildings of the State in the city of Raleigh; shall, from time to time, as the same may be needed, procure, furnish, and keep in repair, for the public offices of the capitol, all necessary office furniture, and shall appoint some suitable and discreet person, removable at the will of a majority of them, who shall take charge of the capitol square; take care of the furniture, sweep and cleanse off cobwebs and dust from all the unoccupied parts of the buildings: keep the keys of the several doors not occupied as offices, and conduct visitors through the capitol, whenever requested to do so: shall, under the direction of the board, trim or remove trees standing in the public square, and remove the leaves and other rubbish as often as may be necessary; and shall perform any other duty required by this chapter, of which he is capable, whenever especially ordered by the board so to do. For which services the keeper shall receive a reasonable and just price; which, as well as all other expenditures allowed by this chapter, shall be paid by the treasurer, on a certificate by the board, of the work done and the price allowed for it. The board at all times are required to use such means as may secure the capitol from fire.

Shall furnish offices, and appoint a keeper of capitol.

Duty and pay of keeper.

Board to secure capitol from fire.— 1840, c. 3, s. 1; 1842, c. 47, s. 1.

4. The rooms in the capitol shall not be used as sleeping apartments, and no bed shall be kept in any room save only that used by the keeper; and he shall remove all beds and sleeping couches, which may be introduced by any person into any of the rooms; and shall take charge of and keep all the keys of the rooms, except only such as are used by the heads of the departments; and of them for such time as they are not so used.

Rooms not to be used as sleeping apartments. Keeper to keep keys.— 1842, c. 47, s. 1.

5. The rooms of the capitol, other than the senate chamber and house of commons, shall be appropriated as follows:— The two west rooms of the southern division of the capitol shall be appropriated to the executive; the south-east room in the southern division shall be appropriated to the comptroller, and the room adjoining it to the public treasurer; the two east rooms in the northern division shall be appropriated to the supreme court, and the two rooms opposite, to the secretary of State; the upper room in the east wing to the State library; and the room number three, in the west wing, shall be appropriated and set apart as a permanent bureau of engineering.

Appropriation of rooms in capitol.— 1842, c. 54.

6. Before entering upon the duties of his office, the keeper of the capitol shall execute bond with good security, in the sum of two hundred and fifty dollars, payable to the State of North Carolina, and conditioned for the faithful discharge of his duties: the bond shall be deposited in the office of secretary of State, and be renewed every two years under the care of the board; and shall be put in suit, whenever in their judg-

Keeper to give bond.— 1840, c. 3, s. 2.

ment, the conditions thereof, or any of them, may have been broken; and the same shall not be discharged, until the whole penalty is exhausted in damages.

Disorderly conduct in capitol prohibited.

7. All rude and riotous noises and disorderly conduct in the capitol are forbidden, under a penalty of five dollars; and any person who shall write or scribble on the walls of the capitol, or mark, deface, or besmear them, or shall do or commit any nuisance in the capitol building or any part thereof or near thereto, shall pay a like penalty, to be recovered for the use of the State, before the intendant of police, or any justice of the peace for Wake county: and the said keeper shall arrest such as are guilty of violating the provisions of this section, and carry them immediately before said intendant, or justice, and prosecute the offender for the penalty.

Penalty.—R. S. c. 107, s. 4. —1842, c. 47, s. 1.

Penalties against infants paid by parent or guardian.—R. S. c. 107, s. 5.

8. If such offence be committed by an infant under the age of twenty-one years, his guardian or parent, (as the case may be,) shall also be liable to the penalty prescribed by this chapter, to be recovered as above directed.

CHAPTER 104.

SECRETARY OF STATE.

SECTION

1. Secretary to give bond.
2. Form of, deposited in treasurer's office. To take oaths.
3. To take receipts for grants. May send grants by mail.
4. Office hours.

SECTION

5. Allowance for services in public printing, and postages.
6. To purchase stationery, fuel, &c., for public offices.
7. His accounts for expenses, how allowed and paid.

Secretary of State to give bond. Form of.—R. S. c. 108, s. 1; Const., Art. 1, s. 7.

1. THE governor shall take from every person appointed secretary of State, before he enters upon the discharge of the duties of his office, a bond with sufficient security, payable to the State of North Carolina, in the following form, namely: 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 the payment of which we bind ourselves 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 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, agreeable to law, then the above obligation to be void; otherwise, to remain in full force and effect.

Deposited in treasurer's office. To take oaths.—R. S. c. 108.

2. The bond of the secretary shall be deposited in the treasurer's office for safe-keeping; and he shall take the oaths prescribed for public officers, and also the oath of office.

3. The secretary shall keep a receipt book, in which he shall take from every person, to whom a grant shall be delivered, a receipt for the same; and he may inclose grants by mail to any person requesting him to do so, first entering the same on the receipt book.

To take receipts for grants. May send them by mail.—R. S. c. 108.

4. The secretary shall 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).

Office hours.—R. S. c. 108, s. 7.

5. For the duties required of him concerning the public printing, he shall be allowed, every two years, one hundred dollars, as an addition to his salary, to be paid by the public treasurer; and he shall likewise be allowed the postage by him paid on all official matter.

Allowance for services in public printing, and postages.—R. S. c. 108.—1842, c. 48.

6. He shall purchase suitable stationery and candles for the executive office, departments of State, General Assembly, the supreme court, and public library, upon the best terms the same can be procured. And he shall contract with the lowest bidder, under sealed proposals, for the necessary fuel for the General Assembly, and the public offices in the capitol.

To purchase stationery, fuel, &c., for public offices.—1842, c. 48; 1842, c. 68.

7. The accounts of the secretary for the expenditures aforesaid, and all other expenses which he may incur, in pursuance of any law, the payment whereof is not otherwise provided, shall be passed on, and, if allowed by the governor, treasurer, and comptroller, shall be paid by the treasurer, on a proper certificate of allowance.

His accounts for expenses, how allowed and paid.—1842, c. 48, s. 1; 1842, c. 68, s. 3.

## CHAPTER 105.

### SHERIFFS.

SECTION

1. Sheriffs elected.
2. Election, when held; returns, how made.
3. Person having highest vote elected. If a tie, county court to choose.
4. Returns, when made. Inspectors and clerks neglecting duty concerning, to forfeit five hundred dollars.
5. Who ineligible to office of sheriff.
6. Sheriff ineligible, who fails to settle public dues.
7. Who may not serve as sheriff.
8. His bonds, when to be given. Not deemed sheriff, until given.
9. Shall renew bonds, annually. Failure, to create a vacancy.

SECTION

10. Justices to meet on second and third days of term, to take bonds.
11. Sheriff, how removed from office. Duty then of coroner, and county court.
12. Coroner to give bonds and take oaths when he acts as sheriff.
13. What bonds sheriff to give; conditions of. Form of bond for execution of process, &c.
14. Sureties of, liable for fines, &c.
15. May resign to county court.
16. Sheriffs, &c., of Hyde and Carteret may serve process on shipboard, &c.
17. Sheriffs to execute all process, &c. Penalty for neglect, \$100. For false return, \$500.

SECTION

- 18. To give receipt for process, which shall be evidence, &c.
- 19. To take no obligation of any in custody, but as payable to himself as sheriff, &c. Nor unlawful fees.
- 20. Permitting escape of one in execution, liable in action of debt.
- 21. Not to farm his office.

SECTION

- 22. To have custody of public jail.
- 23. To diligently collect claims.
- 24. To furnish grand-jury with a list of retailers, &c. Penalty for omission.
- 25. Outgoing sheriffs subject to a penalty of \$100 for not executing precepts in certain cases.

Sheriffs elected.—R. S. c. 109, s. 1.

1. THE sheriffs of the several counties shall be elected by the freemen of their respective counties, who are entitled to vote for members of the house of commons.

Election, when held, returns how made.—R. S. c. 109, s. 2.

2. The election of sheriff shall be held every two years in each county, at the time and places specified for the election of members of the General Assembly, by the same persons, and under the same rules and regulations as are prescribed for conducting that election, except that the returns shall be made to the clerk of the county court.

Person having highest vote, elected. If a tie, county court to choose.—R. S. c. 109, s. 3.

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, having the greatest number of votes, shall have an equal number, the county court, a majority of the justices being present, shall choose from them the person to act as sheriff; and such court shall decide all contested elections.

Returns when made.

4. The return of votes given for sheriff shall be made by the returning officers, within the time and at the place fixed by law for making the returns of elections for members of assembly; and the clerks shall attend on such day and place, to receive the returns. And if any inspector shall wilfully fail to make return of the polls, or any clerk shall wilfully neglect to receive the returns, as herein required, the court shall take efficient means to procure the returns; and the person so offending shall forfeit and pay five hundred dollars.

Inspectors and clerks neglecting duty concerning, to forfeit \$500.—R. S. c. 109, s. 4.—1840, c. 27, s. 3.

Who ineligible to office of sheriff.—R. S. c. 109, s. 6.

5. No person shall be eligible to the office of sheriff, who is not of the age of twenty-one years, and 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 one hundred acres of land, in fee-simple, for six months next before and immediately preceding the day of his election; which freehold he shall continue to hold during his term of office.

Sheriff ineligible, who fails to settle public dues.—R. S. c. 109, s. 7.

6. No person shall be eligible to the office of sheriff in any county, who theretofore has been 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 such former sheriff to give bond for, or reënter upon the duties of the office, until he has produced before the court, the receipt in full of every officer, for such taxes.

Who may not serve as sheriff.—R. S. c. 109, s. 17.

7. No member of the General Assembly, or Council of State, nor any practising attorney, shall hold the appointment of sheriff.

8. The sheriff elect shall prepare and tender to the court the bonds required of him, on or before four o'clock of the afternoon of the second day of the term, at which he is declared to be elected, and take the oaths of office: but in case a majority, or twelve, of the justices shall not be present, then the sheriff elect may execute the bonds, at or before two o'clock, P. M. of the third day of the term aforesaid. *Provided, however,* that when the first Thursday in August shall happen during any county court, the sheriff elect (except in the county of Bladen) shall enter into bond, and take the proper oaths, on the first or second day after the election. And until the bonds shall be received by the court, no sheriff elect shall be deemed sheriff, nor shall he, on any pretence, discharge any of the duties of the office: and in case the sheriff elect shall refuse or neglect to comply with the provisions of this section, the court, a majority of the justices being present, shall forthwith elect the sheriff; who, on giving the bonds and taking the oaths required of sheriffs, shall be sheriff until the next regular election.

His bonds,  
when to be  
given.

Not deemed  
sheriff until  
given.—R. S. c.  
109, s. 8.

9. The sheriff shall renew his bonds annually, and produce the receipts from the public treasurer, county trustee, wardens of the poor, and other persons, 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, or twelve at least, of the justices being present at the renewal thereof; and a failure of the sheriff elect to renew his bonds, or to exhibit the aforesaid receipts, shall create a vacancy.

Shall renew  
bonds annually.  
Failure to cre-  
ate vacancy.—  
R. S. c. 109, s. 9.

10. A majority, or twelve of the 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, and on other days when necessary, for the purpose of receiving from the sheriff elect the bonds prescribed by law.

Justices to  
meet on second  
and third days  
of term to take  
bonds.—R. S.  
c. 109, s. 10.

11. If any sheriff 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 in the office, created by this or any other means, the coroner of the county shall execute all process directed to the sheriff, until the first session of the county court next succeeding such vacancy; when the court, a majority of the justices being present, shall elect a sheriff to supply the vacancy for the residue of the term, who shall possess the same qualifications, enter into the same bonds, and be subject to removal, as the sheriff regularly elected; and should the court fail to fill such vacancy, the coroner shall continue to discharge the duties of sheriff until it shall be filled.

Sheriff, how re-  
moved from  
office.

Duty of cor-  
oner, and co.  
court, in such  
case.—R. S. c.  
109, s. 11.

12. Any coroner called to discharge the duties of sheriff, shall, before he enters thereon, in the court, or at the county court clerk's office, five or more justices being present, take the same oaths, and enter into the same bonds, that may be

Coroner to give  
bonds and take  
oaths, when  
called to act as  
sheriff.—  
R. S. c. 109, s.  
12.

required of sheriffs: and the first appointed coroner in each county shall be considered the coroner to discharge the duties of the sheriff, and the proceeding shall be entered on record by the clerk.

What bonds  
sh'ff shall give,  
and their condi-  
tions.

13. The sheriff shall execute three several bonds, each in the sum of ten thousand dollars, payable to the State of North Carolina, and conditioned as follows: one, conditioned for the collection, payment, and settlement of the county and poor taxes, as required by law; one, for the collection, payment, and settlement of the public taxes, as required by law; and a third, conditioned as follows:—

Form of bond  
for execution  
of process, &c.—  
—R. S. c. 109,  
s. 13.

The condition of the above obligation is such, that whereas the above bounden \_\_\_\_\_ is elected and appointed sheriff of \_\_\_\_\_ county, \_\_\_\_\_; if, therefore, he 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 bonds, every county court, a majority, or twelve of the justices being present, shall demand and take, and cause to be acknowledged before them in open court, and recorded.

Sureties liable  
for fines, &c.—  
R. S. c. 109, s.  
15.

14. The sureties to a sheriff's bond shall be liable for all fines and amercements, imposed on him, in the same manner as they are liable for other defaults in his official duty.

May resign to  
co. court.—R.  
S. c. 109, s. 16.

15. Every sheriff may vacate his office by resigning the same to the court of pleas and quarter-sessions of his county, a majority of the justices being present and accepting such resignation; and thereupon the court may proceed to elect another sheriff.

Sheriffs, &c., of  
Hyde and  
Carteret may  
serve process  
on shipboard  
between Ocrac-  
cock and Ports-  
mouth.—1846,  
c. 67.

16. The sheriffs, constables, and other officers of Hyde and Carteret counties, shall have power to execute process upon any person, on board any vessel lying in the waters between Ocracock island in Hyde county, and the island of Portsmouth in Carteret county; and for every process so executed, the sheriff shall receive a fee of three dollars, and the constable, for like service, two dollars.

Sheriff to exe-  
cute all process  
from courts.

17. Every sheriff, by himself or his lawful deputies, shall execute all writs and other process to him legally issued and directed, within his county, or upon any river, bay, or creek adjoining thereto, or in any other place where he may lawfully execute the same, 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 aggrieved by order of the court, upon motion and

Penalty for ne-  
glect, \$100.



proof of such delivery, unless such sheriff can show sufficient cause to the court, at the next succeeding term after the 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 to him that will sue for the same; and moreover be further liable to the action of the party grieved, for damages.

For false return, \$500.—R. S. c. 109, s. 18.

18. Every sheriff shall, when requested, pass his receipt for all original and mesne process placed in his hands for execution, to the party suing out the same, his agent, or attorney; and such receipt shall be admissible as evidence of the facts therein stated, against the sheriff and his sureties, in any suit, between the party taking the receipt, and the sheriff and his sureties.

To give receipt for process, which shall be evidence, &c.—1848, c. 97.

19. The sheriff, or his deputy, shall take no obligation, of or from any person 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 sureties discharging themselves therefrom as special bail of such prisoner, or such person 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 void, except, in any special case, any other obligation 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 by law.

To take no obligation of any in custody, but as payable to himself as sheriff, &c.

Nor unlawful fees.—R. S. c. 109, s. 19.

20. When any sheriff shall take, or receive and have in keeping, the body of any debtor in execution, or upon attachment for not performing a decree in equity 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 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.

Permitting escape of one in execution, liable in action of debt.—R. S. c. 109, s. 20.

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.

Not to farm his office.—R. S. c. 109, s. 21.

22. The sheriff shall have the care and custody of the public jail in his county; and shall be, or appoint the keeper thereof.

To have custody of jail.

23. When a claim, within the jurisdiction of a justice of the peace, shall be placed in the hands of any sheriff, or his dep-

To diligently collect claims.—R. S. c. 109, s. 23.

uty, for collection, he shall diligently endeavor to collect the same.

To furnish grand-jury with a list of retailers of spirituous liquors. Penalty for omission.—R. S. c. 34, s. 82. —1850, c. 185.

24. The sheriff shall lay before the grand-jury of his county, at each court, as soon as the grand-jury shall be assembled, a list of all persons who may have obtained license to retail spirituous liquors by the small measure, within two years previous to said court; which list, the foreman of the grand-jury, at the close of its session, shall deliver to the clerk for safe-keeping; and any sheriff failing to perform the duty aforesaid, shall forfeit and pay to the State ten dollars, to be recovered by the prosecuting officer, in the same manner as the penalties against sheriffs for not returning process.

Outgoing sheriff subject to a penalty of \$100, for not executing precepts in certain cases.

25. Any sheriff, who shall have received a precept, and shall go out of office before the return day thereof, without having executed the same, shall forfeit and pay to the party at whose instance it was issued, the sum of one hundred dollars, if such precept shall have remained in his hands for such length of time wherein it might have been well executed by him; unless the same shall have been thereafter executed by the successor of such sheriff, and returned at the day and place commanded therein; or unless it shall have been delivered over to the succeeding sheriff time enough to have allowed of its being executed by him: And the penalty aforesaid shall be recoverable by *scire facias*, against such outgoing sheriff and his sureties.

SECT. 6. *Reappointment of defaulter*, 9 Ire. 307.

SECT. 14. *What tax bond covers*, 8 Ire. 104; *school tax*, Bus. 275; *must be legally laid*, 5 Ire. 227, 7 Ib. 68; *if sheriff collects without list*, 8 Ire. 104; *who to sue*, 9 Ire. 496; *on which bond*, 3 Hawks, 42. *Form of bond*, 3 Hawks, 285, 1 Dev. 52, Ib. 65. *Which sheriff to collect taxes*, 3 Dev. 365. *What third bond covers*, 8 Ire. 415, Ib. 613, 11 Ib. 141, 3 D. & B. 58, Ib. 73, 1 Ire. 155, Ib. 453, 2 Ib. 144, 2 Hawks, 5, Ib. 366, 1 Dev. 214. *Pleading, in suit on bond*, 6 Ire. 347, 4 D. & B. 461, 1 Dev. 157, 7 Ire. 296.

SECT. 17. *Who to execute process: old or new sheriff*, 4 D. & B. 439; *when*, 3 Hawks, 548; *sheriff a party*, 13 Ire. 25. *Who amerced*, 1 Mur. 255, 7 Ire. 296, 3 Ire. 407. *When*, 8 Ire. 240. *Negligence*, 10 Ire. 200, Ib. 242, 1 D. & B. 243, Ib. 252, 13 Ire. 444. *Form of return*, 2 Car. L. R. 440, N. C. T. R. 79, 1 Car. L. R. 500, Bus. 877, 11 Ire. 627, 12 Ib. 108. *False return*, 7 Ire. 317, Ib. 333, Ib. 412, 8 Ib. 312. *Sureties bound by return*, 1 Dev. 153. *What execution protects sheriff*, 4 D. & B. 169. *Power of sheriff*, 2 Hawks, 246; *of ex-sheriff*, 2 D. & B. 87. *Deputy-sheriff*, 13 Ire. 13, 5 Ib. 36, 1 Dev. 218, 3 Ib. 23; *what acts of, sheriff liable for*, 7 Ire. 333, 11 Ib. 383, 3 Ib. 649, 2 D. & B. 204; *demand on deputy sufficient*, 4 Ire. 226, 2 Dev. 538.

SECT. 19. *Indemnity to sheriff*, 2 Dev. 136, 3 Ire. 181.

SECT. 20. *Escape*, 10 Ire. 579, 9 Ib. 261, 5 Ib. 702, 2 Jones, 104, 3 Hawks, 211, 1 Mur. 445, 1 Hawks, 425, 6 Ire. 119, 8 Ib. 147, Ib. 201. *Reception*, 10 Ire. 485.

SECT. 22. *Liability of jailer to sheriff*, 11 Ire. 652.

SECT. 23. *Sheriff bound like constable*, 7 Ire. 379.

CHAPTER 106.

SLANDER OF WOMEN.

What words spoken of women shall be actionable.

WHEREAS, doubts have arisen whether actions of slander can be maintained 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 depends upon the unsullied purity of their character:—

*It is therefore enacted*, that any words written or spoken of a woman, which may amount to a charge of incontinency, shall be deemed and held to be actionable.

What words spoken of women shall be actionable.  
—R. S. c. 110.

SECT 1. 12 Ire. 348; 1 Dev. 210.

CHAPTER 107.

SLAVES AND FREE NEGROES.

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1. Slaves, unlawfully imported, sold, &c.
2. Sheriff's duty in selling, &c.
3. His duty, when they abscond.
4. Persons informing, &c., to be rewarded. Sheriff to give bills of sale.
5. His commissions, &c., for sales.
6. Issue of such negroes, included, &c.
7. Penalty for bringing slaves from liberating States.
8. Reward for apprehending runaways. When taken in certain swamps. Reward and jail fees retained by jailer.
9. Runaways delivered to owner, or brought before a justice. Proceedings. If committed, sheriff to advertise him.
10. Description of slaves worked in Great Dismal and other swamps, to be taken and recorded by clerk. Certified copy to be kept by slave while at work. Penalty on owner for neglect.
11. Free negroes to procure like certificates. Penalty for neglect.
12. Slaves without them may be punished. Reward of \$25 for taking them up. May be treated as runaways.

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13. Certificated slaves, &c., not to work with uncertificated. Misdemeanor.
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18. Expenses of carrying runaways, how paid.
19. Runaways sold by sheriff in certain cases, by order of court.
20. His commissions for sale.
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22. Owner may reclaim proceeds.
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24. County may recover back.
25. Runaways may be outlawed, when.
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28. Not allowed to hire their time. Penalty on master. Slave indictable. Punishment.
29. Not to go at large as freemen.
30. Permitting slaves of others to meet for dancing, unless, &c., a misdemeanor.
31. Inferior offences of slaves, what.
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33. Appeals from justice allowed.
34. Felonies, &c., of, tried in superior court. Slaves tried as freemen.
35. Conspiracies of, how punishable.
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37. Free persons conspiring with slaves, how punishable.
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39. Slaves convicted of, to suffer death, or be transported.
40. Returning voluntarily, to be executed. If brought back, forfeited.
41. In case of insurrection, &c., a commission of oyer and terminer may issue.
42. Prosecuting officer paid.
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44. Attempting rape on white female.
45. Emancipation of slaves. Owner to give bond for freed slaves to leave the State, &c.
46. How freed, when directed by will.
47. When court may direct to what place they may be carried.
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49. Slaves over fifty, may be freed for meritorious services. Master to give bond, &c.
50. Emancipated for other cause, to leave the State in ninety days. Or be sold into slavery.
51. And the bond put in suit.
52. Freed slaves violating this chapter, to be presented.
53. None to be freed contrary to law.
54. Free negro not to migrate into the State. Misdemeanor;—fine \$500.
55. Penalty for introducing free negroes.
56. Free negroes immigrating, or their

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- issue, not to become inhabitants. Misdemeanor. To be removed.
57. Migrating, and absent ninety days not to return, unless sickness, &c.
58. Grand-jury to be charged to present those coming into the State.
59. Free negroes forbid to preach, &c.
60. When vagrants, how dealt with. Hires of, paid to county trustee.
61. Free negroes not to marry with slaves.
62. Nor gamble or play with them at certain games.
63. Nor suffer slaves to gamble in their houses, &c.
64. Nor entertain them Sunday, or at night.
65. Nor hawk and peddle without license.
66. Nor wear or keep guns, bowie-knives, &c., without license.
67. Nor sell spirituous liquors.
68. Slaves convicted of felonies not capital, how punished.
69. Owners to have ten days notice of trial. Liable for costs.
70. When owner cannot be notified, counsel appointed. Who shall have fees, &c.
71. Evidence of slaves and persons of color, against whom allowed.
72. Slaves, &c., when witnesses, to be warned, &c.
73. Guilty of perjury, punished as freemen.
74. Free negroes, in certain cases, whipt instead of imprisoned.
75. May be hired out for fines. Hirer's authority.
76. Charged with bastard, may be hired out to support the child.
77. If hired as long as five years, fine, &c., discharged. Absconding, to serve double time. Hirer to enter into recognizance to feed, clothe, &c. Not to be removed out of the county. On breach of recognizance, discharge from service, &c.
78. Slaves not to be carried on ships, railroads, coaches, &c. Unless permitted by, or travelling with their masters, &c.
79. Who shall be deemed free negroes.

Slaves, imported contrary to act of congress, sold for use of State.—R. S. c.111, s. 1.

1. EVERY negro, or person of color, being a slave, 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, 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 juris-

diction 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 for the use of the State.

2. The sheriff of each county in this State is hereby authorized and required to seize and take into his possession, every such negro or person of color, who has been or shall be imported as aforesaid, and shall be found in the county of which he is sheriff; and such negro or person of color, so taken, to sell and dispose of at public sale, at the court house door, (giving previous notice of twenty days, of the time of sale, by advertisement in the nearest newspaper published in the State,) to the highest bidder, at a credit of six months, the purchaser entering into bond with security, to be approved by the sheriff, for the payment of the price; which, when received by the sheriff, he shall account for and pay to the public treasurer after deducting from the gross amount the several sums hereinafter authorized to be retained, at the same time, and under the same regulations and penalties, as are prescribed for paying the public taxes.

Sheriff's duty in seizing and selling.—R. S. c. 111, s. 2.

3. Where any such negro shall abscond, or so conceal himself that he cannot be taken, the sheriff may offer a reward, not exceeding one fifth part of his value, to any person who will apprehend and deliver him to the sheriff; or the sheriff may, in his discretion, advertise and sell him as directed in the preceding section, without offering a reward, although he may not be in his possession at the time of sale.

His duty, when they abscond.—R. S. c. 111, s. 3.

4. Any person who shall discover any such negro, and give such notice to the sheriff that he shall, in consequence thereof, obtain the negro, shall be entitled to one fifth part of the sum for which the negro shall be sold, to be retained, that and the reward, out of the proceeds of sale, and paid by the sheriff; and the sheriff, or his successor, shall execute and deliver to the purchaser, his executors, administrators, or assigns, a bill of sale for such negro; and the title so acquired shall not be affected by the want of advertisement, or other irregularity, in the sale, or proceedings on the part of the sheriff.

Persons giving notice of such slaves to be rewarded.

Sheriff to give bills of sale.—R. S. c. 111, s. 4, 5.

5. The sheriff may retain out of the price, besides the reasonable charges for keeping such negro till the day of sale, and advertising, the further sum of six per centum on the gross proceeds of sale, in full for his services.

His commissions, &c., for sales.—R. S. c. 111, s. 6.

6. The foregoing provisions of this chapter shall extend and apply to every negro and person of color, and to the issue of every negro and person of color, imported as aforesaid.

Issue of such negroes, included.—R. S. c. 111, s. 8.

7. Every person who shall introduce into the 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 security, in the sum of one thousand dollars for each slave, for the removing of such slave to

Penalty for bringing slaves from liberating States.—R. S. c. 111, s. 9.

the State whence he was brought, within three months thereafter, under the penalty of five hundred dollars for every month's delay; one half to the use of the State, and the other half to the use of the prosecutor.

Reward for apprehending runaways.

8. 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 a reward of five dollars, when the owner resides in the county in which the slave may be apprehended, and ten dollars, if he reside beyond the limits of such county; and if the runaway shall have been apprehended in any part of the swamps mentioned in section ten of this chapter, not lying in Beaufort or Hyde counties, the apprehender shall, besides any reward offered, be entitled to twenty-five dollars from the owner; and when the runaway slave thus apprehended shall be lodged in jail, the jailer shall tax the reward herein allowed on each slave, against the owner, and collect the same with his prison fees, and all other charges allowed by this chapter.

When taken in certain swamps.

Reward and prison fees retained by jailer.—R. S. c. 111, s. 10.—1846, c. 46, s. 7.

Runaways delivered to owner, or brought before a justice.

9. Any slave, taken up as a runaway, may be delivered immediately to the owner, and if not so delivered, shall be brought before a justice of the peace of the county wherein he is apprehended; and if the owner be known, and a resident of that county, the justice, by warrant, shall commit the runaway to some constable of the county, to be by him conveyed to his home, and the constable shall give a receipt for the runaway; but if the owner be unknown, or reside out of the county, the justice shall, by warrant, commit the runaway to the jail of his county; and the sheriff shall forthwith cause notice of such commitment to be set up at the court house door of the county, and there continued during two months, in which notice, a full description of the runaway, and his clothing, shall be particularly set forth; and whenever the owner is supposed to be a resident of another State, or to reside as many as fifty miles from the jail where the runaway is confined, the sheriff or jailer shall also cause said notice to be immediately published in some newspaper published at the seat of government, for six months, unless the runaway is sooner delivered to the owner.

Proceedings.

If committed, sheriff to advertise him.—R. S. c. 111, s. 11, 12, 15.

Description of slaves employed in Great Dismal and other swamps, to be taken and recorded by the clerk.

10. Every person being the owner, or having the use, care, or management of slaves, and employing them in the Great Dismal Swamp, or in the swamp which lies between Lees' mill in the county of Washington, and Pamlico river in the county of Beaufort, or in the swamp which lies between Juniper creek, and the lands of Charles Pettigrew, in the county of Tyrrell, shall, before said slaves are put to work in any of the places aforesaid, bring each one before the clerk of the court of pleas and quarter-sessions of the county in which he is to be employed, who shall, upon his personal examination take an exact description of the slave, specifying the name and residence of the person intending so to employ the slave,

the height, complexion, and every peculiar mark of description, by which the slave may be most effectually known and identified; and such written description shall be entered by the clerk on a book kept for that purpose, and he shall forthwith make out and deliver to the owner, or to the person having the use, care, or management of the slave, a fair and true copy thereof, without any interlineation or erasure, certified under his hand and the seal of the court: and the owner or person aforesaid, shall, before putting the slave to work in any of said swamps, deliver such copy to him, to be kept about his person. And if any owner, or person having the use, care, or management of any slave, shall employ him in any of said swamps, without procuring and delivering to the slave such copy as aforesaid, or shall otherwise offend against the provisions of this section, the person so offending, shall be deemed guilty of a misdemeanor.

Certified copy delivered to owner, and kept by slave while at work. Penalty on owner for neglect.—1846, c. 46; 1848, c. 93; 1850, c. 193.

11. Free negroes working in any of said swamps, shall procure from the clerks of the proper counties, a similar description of themselves, certified as above directed, and keep it ready at all times when so engaged to be exhibited. And if any free person of color shall wilfully work in any of said swamps without such copy, he shall be deemed guilty of a misdemeanor; and, on conviction, may be punished at the discretion of the court, by fine, whipping, and imprisonment, or any of them.

Free negroes to procure like certificates. Penalty for neglect.—1846, c. 46; 1848, c. 93; 1850, c. 187.

12. If any slave shall wilfully work in any of said swamps, without such copy as is prescribed in section ten of this chapter, he may be arrested by any person; and, on being tried and convicted before a justice of the peace, shall receive thirty-nine lashes on his bare back; and the person arresting such slave, shall be entitled to demand and have from the owner or person having the use, care, or management of the slave, twenty-five dollars; or may proceed against the slave, as a runaway, according to the law directing the disposition of runaway slaves, and cause him to be kept in custody, until the said sum of twenty-five dollars, and all other charges shall have been paid.

Slaves without them may be punished. Reward of \$25 for taking up.

May be treated as runaways.—1846, c. 46.

13. If any slave or free person of color, having obtained such certified copy, shall, in any of said swamps, consort with, or work, or be employed in company with any runaway slave, or any slave or free negro not having such copy, the slave or free person so offending, shall be deemed guilty of a misdemeanor.

Certificated slaves, &c., not to work with uncertificated. Misdemeanor.—1846, c. 46.

14. If any white person shall, in any of said swamps, consort or work with, or employ, or engage to work therein, any runaway slave, or any slave who shall not have such certified copy as aforesaid, he shall forfeit the sum of one hundred dollars, to any person who will sue for the same, and shall be deemed guilty of a misdemeanor; and on conviction, may be imprisoned not more than six months; or fined at the discretion of the court.

White persons working with uncertificated slaves, &c., guilty of misdemeanor.—1846, c. 46.

Forgery of certificate punishable with pillory, &c.—  
1846, c. 46.

15. If any person shall falsely make, forge, or counterfeit, or cause the same to be done, or willingly aid or assist therein, any writing, purporting to be the original, or a copy of a description of any slave or free person of color, employed or about to be employed in any of said swamps, with intent to evade any of the provisions of this chapter, which relate to such persons, the person so offending shall be guilty of a misdemeanor, and on conviction, shall be punished by standing in the pillory for one hour, by whipping, imprisonment for six months, and fine; by all or any of them, at the discretion of the court.

Certificate not required as to certain swamps; or reclaimed swamp land; or temporary cutting of timber.—  
1846, c. 46;  
1850, c. 187.

16. None of the provisions of this chapter respecting working in swamps, shall be construed to extend to any swamp in the county of Currituck, lying below Indian Town creek bridge; nor to any part of the swamps herein referred to, which lie in Beaufort or Hyde counties; nor to any swamp lands which shall have been reclaimed, and may be used for agricultural purposes; nor to any slave employed in cultivating the same; nor to any slave, his owner, employer, or manager that may be temporarily engaged in said swamp, in cutting timber for ordinary plantation purposes.

Penalty on sheriff, &c., employing, wrongly detaining, or suffering runaway to escape.—  
R. S. c. 111, s. 18.

17. If any sheriff, jailer, or constable, shall set to work, employ, or let out to hire, any runaway slave committed to his custody, or shall detain such runaway longer than by this chapter is directed, he shall forfeit the jail fees; and if any sheriff, jailer, or constable, to whom any runaway is committed by virtue of this chapter, shall negligently or wilfully suffer such runaway to escape, he shall be liable on his official bond, to the action of the party grieved, for the recovery of his damages.

Expense of carrying runaways, how paid.—  
R. S. c. 111, s. 14.

18. The expense of carrying a runaway to jail, incurred by any officer, shall be paid by the county, and repaid to the county by the owner; and the same shall be a lien on the runaway in behalf of the county.

Runaways sold in certain cases, by order of court.—  
R. S. c. 111, s. 16.

19. Whenever any slave shall be taken up as a runaway, and confined in jail for twelve months, and his apprehension and confinement have been advertised in a newspaper as aforesaid, for six months, and the owner does not apply to prove property in that time, then the court of pleas and quarter-sessions of the county in which the runaway is confined, shall command the sheriff of the county to expose the slave to public sale, for cash, giving two months' notice in some newspaper published in this State, at the court house door, and at two other public places in the county, of the time and place of sale, and of the circumstances under which the slave is to be sold.

Commissions for sale.—  
R. S. c. 111.

20. The sheriff shall be allowed two and a half per centum on the amount of sales made under the preceding section.

Sheriff to convey. Proceeds, how applied.—  
R. S. c. 111, s. 18.

21. The bill of sale of the sheriff shall vest in the purchaser an absolute right to the slave; and the sheriff shall pay over the residue of the amount of sales, after deducting his com-



missions and prison charges, to the county trustee for the use of the county.

22. Upon the petition of the owner of such slave, to the court of the county where the proceeds of sale are deposited, and upon satisfactory proof of the right of property of the petitioner, the court shall direct payment to him of the sum paid into the county treasury, taking bond and security from the petitioner, when they think proper, payable to the State of North Carolina, to refund the money with interest to the true owner of the slave, should it thereafter appear that the petitioner was not such.

Owner may reclaim proceeds on petition.—R. S. c. 111, s. 19.

23. If any runaway slave confined in jail, (his owner being unknown,) should die, or, by the regular process of law be removed from jail before a sale is made, according to the provisions of this chapter, the court of pleas and quarter-sessions of the county where the slave was confined, shall direct the expenses of his imprisonment to be paid out of the county funds. *Provided*, that the sheriff or jailer shows to the court, that he has complied with the directions requiring the advertisement of runaways.

Expenses of runaways in certain cases paid by county.—R. S. c. 111, s. 20.

24. Whenever such expenses shall have been paid by the county, the county trustee by warrant shall recover back the same of the owner, or his representatives, when he shall become known, for the use of the county.

County may recover back.—R. S. c. 111, s. 20.

25. Whereas, many times slaves do run away 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 the State; in all such cases, upon intelligence that any slave is lying out as aforesaid, any two justices of the peace for the county wherein he is supposed to lurk or do mischief, are hereby empowered and required to issue proclamation against him, (reciting his name and the name of the owner if known,) thereby requiring him forthwith to surrender himself; and also to empower and require the sheriff of the 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 outlying slave; which proclamation shall be published at the door of the court house, and at such other places as the justices shall direct. And if any slave against whom proclamation hath been thus issued, stay out, and do not immediately return home, any person may capture him; and in case of flight or resistance, may slay him without accusation or impeachment of any crime.

Runaways may be outlawed, in certain cases.—R. S. c. 111, s. 22.

26. No slave shall go armed with gun, sword, 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 a slave shall be found offending herein, any person may seize and take to his own use such gun or other weapon, and may apprehend and bring such slave before a justice for trial and punishment, and send him home; and the master or owner

Slaves not to go armed, or hunt with guns.—R. S. c. 111, s. 23.

shall pay the taker up of such armed slave, the same reward as is allowed for taking up runaways.

Not properly fed, owners liable for their stealing.—R. S. c. 111, s. 26.

27. In case any slave who shall appear not 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 may maintain an action on the case, against the possessor of such slave, for his damages.

Not allowed to hire their time. Penalty on master. Slave indictable. Punishment.—R. S. c. 111, s. 31.

28. No person under any pretence whatever, shall hire to his slave, or to a slave under his control, his time, on pain of forfeiting forty dollars for every offence. And it shall be the duty of all grand-juries to make presentment of any slave, who shall be permitted by his master to go at large, having hired his time; and, on indictment being found for the offence, a *capias* shall issue to take such slave and secure him in custody, or on sufficient recognizance of his master or others, so that he be before the next court to answer to the indictment. The master shall have notice of the trial, as in other cases is provided, and the court, at the return of the *capias*, shall impanel a jury to inquire and try the truth of the charge against the slave; and if he be found guilty, he shall be publicly hired out by the sheriff for one year, who shall take bond with security from the hirer for the price, and for furnishing all necessaries, and taking proper care of the slave; and the bond shall be for the use of the poor of the county. *Provided, always*, that if such slave be the property of a ward, he shall be hired out for the remainder only of the time for which he may belong to the person from whom he hired his time.

Not to go at large as freemen.—R. S. c. 111, s. 32.

29. No slave shall go at large as a free man, exercising his own discretion in the employment of his time; nor shall any slave 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 slave consent to the same, or connive thereat, he shall be deemed guilty of a misdemeanor, and on conviction be fined not exceeding one hundred dollars. *Provided, however*, that any person may permit his slave to live or keep house upon his land, for the purpose of attending to the business of his master.

Permitting slaves of others to meet for dancing, unless, &c., a misdemeanor.—R. S. c. 111, s. 33.

30. No person shall grant permission for any meeting of the slaves of others, at his house, or on his plantation, for the purpose of dancing, under the penalty of forfeiting twenty dollars, to any who will sue therefor, unless such slaves shall have a special permit in writing from their owners for that purpose; and the person so offending shall be deemed guilty of a misdemeanor.

Inferior offences of slaves, what.—R. S. c. 111, s. 21, 24, 25, 27, 28, 29, 30, 34, 62.

31. It shall not be lawful for any slave to be insolent to a free white person; nor to utter mischievous and slanderous reports about any free white person; nor to wilfully trespass on his property or person; nor to intermarry or cohabit with any free person of color; nor for any male slave to have sexual intercourse, or indulge in any grossly indecent familiarities

with a white female; nor to produce any forged free pass or certificate of freedom; nor to go from off the plantation or seat of land, where such slave may be appointed to live, without a certificate of leave in writing from his master, or manager; nor to raise any horses, cattle, hogs, or sheep; nor to teach, or attempt to teach, any other slave or free negro to read or write, the use of figures excepted; nor to sell any spirituous liquor or wine; nor to play at any game of cards, dice, or nine pins; nor to play at any game of chance, hazard, or skill, for any money, liquor, or any kind of property, whether the same be staked or not; nor to set fire to any woods, except in such manner as is allowed by statute; nor to preach or exhort in public, or in any manner officiate as a preacher or teacher, at any prayer-meeting or other association for worship, where slaves of different families are collected together; nor to traffic with another slave, by buying of, or selling to him, any articles of property, forbidden absolutely, or forbidden, except by written permission, to be the subject of traffic between white persons and slaves; nor to traffic with any other person, by buying of, or selling to him, any article of property, unless such other person may lawfully buy of, or sell the same to, said slave.

32. All the offences mentioned in the foregoing section, and all other misdemeanors done by slaves, mentioned in this chapter, the prescribed punishment whereof is whipping; and all crimes by them committed, whereunto, if done by a free person, extends the jurisdiction of the county court; and all petty offences forbidden by them to be done, shall be cognizable before a single justice of the peace of the county wherein the offence is committed, who shall have full power to issue summons for witnesses, and compel their attendance; and on conviction, the offending slave shall receive not exceeding thirty-nine lashes on his bare back: and in all such trials, as many justices as think proper may sit in judgment.

33. Whenever any slave shall be convicted before a justice of the peace, of any offence, the master, on behalf of the slave, may appeal to the next county or superior court, on entering into sufficient recognizance for the slave, and giving good security, as in other cases of appeals.

34. The superior court shall have exclusive original jurisdiction of all felonies and other offences committed by slaves, which, by section thirty-two, are not assigned for trial before a justice of the peace; and the trial shall be conducted in like manner as the trials of freemen for the same offence; and moreover, the jurors shall be slave-owners.

35. If any number of slaves shall, at any time, consult, advise, or conspire to rebel or make insurrection, or shall plot, or conspire to murder any person, every such consulting, plotting, or conspiring, shall be adjudged and deemed felony; and any slave convicted thereof, in the manner prescribed by law, shall suffer death, or be transported as hereinafter provided.

36. If any slave be found in a state of rebellion or insurrec-

Inferior offences cognizable by one justice.—R. S. c. 111, s. 41.

Appeals from justice allowed.—1842, s. 3.

Felonies, &c., of, tried in superior court. Slaves tried as freemen.—R. S. c. 111, s. 42, 43, 45.

Conspiracy of slaves, how punishable.—R. S. c. 111, s. 35.

Insurrection of slaves, how

punishable.—  
R. S. c. 111, s.  
36.

tion, 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, assist, or encourage any slave in a state of rebellion, or engaged in a conspiracy to make insurrection, every slave, so offending and being thereof convicted, shall suffer death, or be transported as hereinafter provided.

Free persons  
conspiring with  
slaves, how  
punishable.—  
R. S. c. 111, s.  
37.

37. If a free person shall join, or agree to join, in any conspiracy, rebellion, or insurrection of slaves, or shall procure or persuade others to join or enlist for that purpose, or shall knowingly and wilfully aid, assist, or encourage any slave in a state of rebellion, or engage in a conspiracy to make insurrection, every free person so offending, and thereof convicted, shall suffer death.

What evidence  
received in tri-  
als for insur-  
rection, &c.—  
R. S. c. 111, s.  
38.

38. In all cases, wherein a slave shall be prosecuted for the offences described in sections thirty-five and thirty-six of this chapter, the court may take for evidence the oath of one or more witnesses, the confession of the offender freely given without any undue influence 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 only, shall be admitted, the same shall not be deemed sufficient to convict the person charged; unless it shall be supported by such pregnant circumstances in the trial, as to the jury shall appear convincing proof, when taken with such testimony.

Slaves convict-  
ed to suffer  
death, or be  
transported.—  
R. S. c. 111, s.  
39.

39. When any slave shall be convicted of either of the felonies created by the thirty-fifth and thirty-sixth sections of this chapter, he shall suffer death; or at the discretion of the court, shall be sentenced to be transported 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.

Returning vol-  
untarily, to  
suffer death.  
If brought  
back, forfeited.  
—R. S. c. 111,  
s. 40.

40. Whenever a slave shall be transported, in pursuance of the provisions of this chapter, by the owner, or by the State, and such slave shall ever thereafter voluntarily return to, and be found in the State, he shall suffer death, upon due conviction thereof. And if any slave so transported, shall be brought into any county in this State by his master, or, against his will, by any other person, such slave shall be forfeited (on proof thereof) to the county into which he may be brought; and the slave shall be again transported by order of the county court, and sold for the use of the county.

In case of in-  
surrection, &c.,  
a commission  
of oyer and  
terminer may  
issue.—R. S. c.  
111, s. 53.

41. In all cases of insurrection or rebellion, or of conspiracy to make insurrection, or to murder, or to 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 offences shall happen or may be contemplated, the governor may issue a commission of oyer and terminer, to any one of the judges of the superior courts of law; who shall hold said court forthwith,

and be clothed with all the powers necessary for the trial of such slaves.

42. The officer prosecuting in behalf of the State, attending such court, shall be entitled to receive the same compensation, as for attending a term of a superior court.

Prosecuting officer paid.—R. S. c. 111, s. 54.

43. When any person, indicted before a court of oyer and terminer, shall, upon affidavit of himself or any other, show such circumstances and facts to the court, as would induce the judge, in the regular courts, to remove the trial out of the county, the judge may, in his discretion, continue the indictment, and commit or bind over the prisoner, as the case may require, for trial at the next superior court for the county; when the same shall be disposed of, according to the course of the court.

Court may continue such cases to regular term.—R. S. c. 111, s. 56.

44. Any slave, or free negro, or free 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.

Attempting rape on white female.—R. S. c. 111, s. 78.

45. Any inhabitant of this State, desirous to emancipate any slave, may file a petition in writing, in any of the superior courts, setting forth, as near as may be, the name, sex, and age of the slave, and praying permission to emancipate the same, and the court shall grant the prayer, on the following conditions, and not otherwise, namely: (1.) The petitioner shall show that he has given public notice of his intention to file the petition, at the court house of the county, and in the nearest gazette, for at least six weeks before the hearing of the petition; and (2) shall enter into bond, with two able sureties, payable to the State of North Carolina, in the sum of one thousand dollars for each slave named in the petition, conditioned that he shall honestly and correctly demean himself, while he shall remain within the State; and that he will, within ninety days after granting the prayer for emancipation, leave the State, and never afterwards come within the same. *Provided, nevertheless*, that no such emancipation shall in any manner invalidate or affect the rights of the creditors of such petitioner.

Emancipation of slaves.

Owner to give bond for freed slaves to leave the State, &c.—R. S. c. 111, s. 57.

46. Any person may, by last will and testament, direct and authorize his executors to cause to be emancipated any of his slaves, which shall justify the executor in doing the same; who, to that end, is hereby directed to file a petition according to the preceding section, in the same manner as if he were absolute owner of the slaves; and such slaves shall be emancipated on the same terms and conditions, and under the same liabilities, as are prescribed in the said section. *Provided always*, that no such emancipation shall, in any manner, exempt the slaves from the claims of creditors. *And provided further*, that permission to emancipate any slave, under the directions of any last will and testament, shall not be granted within two years after probate of the same, unless the executor will enter into bond with good security, payable to the State of North Carolina, in double the value of each slave emancipated, con-

How emancipated, when directed by will.—R. S. c. 111, s. 59.

ditioned to be responsible to the creditors of his testator for the value of said slaves.

When court may direct to what place they may be carried.

47. Whenever it may be directed by a testator, that any of his slaves shall be emancipated and carried to any State, territory, or country, and it may not be convenient to carry them to the place specially appointed, the court shall designate and prescribe to what other place the slaves shall be carried after, or for emancipation.

When issue of slaves to be emancipated with the mother.

48. Whenever a female slave shall by will be directed to be emancipated, all her issue, born after the date of the will, shall be deemed to have been likewise intended by the testator to be emancipated; and the court shall so declare, unless a contrary intent appear by the will, or by some disposition of the slave so born, inconsistent with such presumed intent.

Slaves over fifty may be emancipated for meritorious services. Master to give bond, &c.—R. S. c. 111, s. 60.

49. It may be lawful to emancipate, upon petition, and under the order of any superior court of law, any slave over the age of fifty years, if his owner shall prove, by his own oath, or otherwise, that said slave has performed meritorious services, (which shall be more than mere general duties); and the petitioner will swear that he 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 emancipation in consideration of any price paid, or to be paid therefor. *Provided*, 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 himself, so long as he shall remain in the State, and shall not become a county 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, as often as it may be broken.

Emancipated for other cause, to leave the State in ninety days.

50. Every emancipation granted to any slave, in pursuance of, and according to, the directions prescribed in this chapter, other than emancipation for meritorious services, shall be upon the express condition that such slave, within ninety days from the time of granting the same, shall leave the State, and never thereafter return into it. And, if any such slave shall refuse or neglect to leave the State, within that time, or shall ever come within the State, after having left it, any justice of the peace of the county wherein such emancipated slave may be found, shall issue a warrant to arrest him; and, upon proper proof made of his having violated the provisions of this chapter, the justice shall commit him to the jail of the county, there to remain until the next ensuing term of the county court, where, on indictment found against him for the causes aforesaid, or any of them, the trial shall be by jury; and if found guilty, the offender shall be sentenced to be publicly sold, and the purchaser shall hold him forever thereafter as a slave, and the proceeds of sale be divided equally between the informer, and the poor of the county. *Provided, however*, that the accused may appeal from the judgment of the court to the superior court of the county.

Or be sold into slavery.—R. S. c. 111, s. 58, 61.

51. If any emancipated slave refuse or neglect to leave the State, as is required of him, or shall ever come within the same after having left it, any person may bring suit in the name of the State, for the joint use of himself and the wardens of the poor, of the county, upon the bond given pursuant to the provisions of this chapter.

And the bond put in suit.— R. S. c. 111, s. 62.

52. All grand-juries shall present every emancipated slave, who may violate the provisions of this chapter; and the prosecuting officer shall prosecute such slave as hereinbefore provided.

Freed slaves violating, &c., to be presented.— R. S. c. 111, s. 63.

53. No slave shall be set free, but according to the provisions of this chapter.

None freed against law.— R. S. c. 111.

54. It shall not be lawful for any free negro to migrate into this State; and if one shall do so, he shall be deemed guilty of a misdemeanor during all the time of his stay, and may be indicted from time to time, until he removes out of the State; and on every conviction shall be fined five hundred dollars, for the payment of which he may be hired out as hereinafter directed. *Provided, however,* that such free negro shall not be indicted within thirty days after payment of the fine, or the expiration of the time of service, adjudged and suffered on a previous conviction.

Free negro not to migrate into the State. Misdemeanor. Fine \$500.— R. S. c. 111, s. 65, 66, 67.

55. Any person who shall bring into this State, by water or land, any free negro, shall forfeit and pay, for every person so brought in, five hundred dollars, to be recovered in the name of the State, for the use of the county wherein the offence shall be committed. *Provided,* that this section shall not extend to masters of vessels, bringing into this State any free negro, employed on board and belonging to such vessels, and who shall therewith depart; nor to any person, travelling in or through this State, having any free negro as a servant, who shall, with such person, depart out of the State.

Penalty for bringing free negroes into the State.— R. S. c. 111, s. 68.

56. Free negroes, not now lawful residents and inhabitants of the State, shall never hereafter become so by any length of time, neither they nor their issue; and in all cases where such free negroes are under the age of sixteen, it shall be the duty of the county court of the county in which they reside, to remove them at the expense of the county; and all such as remain to that age, shall be deemed guilty of a misdemeanor, and on conviction, shall be fined five hundred dollars.

Free negroes immigrating or their issue, not to become inhabitants. Misdemeanor. To be removed.— R. S. c. 111, s. 65.

57. If any free negro, who may be a resident of this State, shall migrate and go into any other State, and shall be absent for the space of ninety days or more, he shall cease to be a resident and an inhabitant of this State, and it shall not be lawful for him to return to the State; and if any free negro shall return, he shall be deemed and held to have migrated to the State. *Provided,* that no persons shall incur the penalties or disabilities prescribed in this section, if he shall have been prevented from returning to this State by sickness, or other unavoidable occurrence.

Migrating and absent ninety days not to return, unless sickness, &c.— R. S. c. 111, s. 76.

58. It shall be the duty of the county solicitors to give in

Grand-jury to be charged to

present those coming into the State. — R. S. c. 111, s. 75.

charge to the grand-jury, the law relating to the migration of free negroes into the State: and it is hereby made the duty of the grand-jury to present all cases of that kind in their county, arising under this chapter, within the knowledge of any of them; and the said solicitors shall, in all such cases, prosecute for, and in behalf of the State.

Free negroes forbid to preach in public. — R. S. c. 111, s. 34.

59. If any free person of color shall preach or exhort in public, or in any manner officiate as a preacher or teacher in any prayer-meeting, or other association for worship, where slaves of different families are collected together, he shall be deemed guilty of a misdemeanor; and on conviction, shall, for each offence, receive not exceeding thirty-nine lashes on his bare back.

Vagabond free negroes, how dealt with.

60. If a free negro who is able to labor, shall be found in any county spending his time in idleness and dissipation, or having no regular or honest employment or occupation, which he is accustomed to follow, any citizen may apply to a justice of the peace of said county, and upon affidavit, obtain a warrant to arrest such person and bring him before some justice of the county; and if, upon examination of the case, it shall appear that the free negro comes within the provisions of this section, the justice shall bind him with reasonable security, to appear at the next county court of the county; and in case he shall fail to give security, he shall be committed to the jail of the county, until the next county court thereafter: and it shall be the duty of the court, if, upon examination of the case, it shall come within the meaning of this section, to require such free negro to enter into bond, with sufficient security in a reasonable sum, payable to the State of North Carolina, conditioned for his good behavior, and industrious, peaceable deportment, for one year. And in case he shall fail to give such security, or shall not pay the costs and charges of the prosecution, the court shall hire out such free negro to service and labor, for a term of time which to them may seem reasonable and just, and calculated to reform him to habits of industry and morality, not exceeding three years for any one offence. And all sums of money which may arise under the provisions of this section, shall be paid to the county trustee.

Hires of vagabond free negroes paid to county trustee. — R. S. c. 111, s. 69, 70.

Free negroes not to marry with slaves. — R. S. c. 111, s. 77.

61. It shall not be lawful for a free negro to intermarry, or cohabit and live together as man and wife, with any slave; and any free negro offending herein, 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 thirty-nine lashes. *Provided*, that this section shall not extend to any case where an intermarriage, or cohabiting, or living together took place, by and with the consent of the master or mistress, before the first day of November, A. D. one thousand eight hundred and forty-four.

Nor gamble with slaves; nor play with them at certain

62. No free negro shall play at all with any slave at any game of cards, dice, or nine pins; nor shall he play with any slave at any game of chance, hazard, or skill, for money, liquor,



or any thing of value; and any free negro offending herein shall be deemed guilty of a misdemeanor, and, on conviction, shall receive a whipping, not exceeding thirty-nine lashes, on his bare back. games. — R. S. c. 111, s. 79.

63. If any free negro, or person of mixed blood, shall knowingly suffer any slave to play at any game of cards, dice, nine pins, or any game of chance, hazard, or skill, whether for money, liquor, or any kind of property, or not, in his house, or in the yard, field, or garden attached or belonging to his house, he shall be deemed guilty of a misdemeanor; and, on conviction, shall receive not exceeding thirty-nine lashes on his bare back. Nor suffer slaves to gamble in their houses, &c. — R. S. c. 111, s. 80.

64. If a free negro shall entertain any slave in his house, during Sunday, or in the night between sunset and sunrise, he shall forfeit and pay two dollars for every offence, for the use of the county in which the offence shall be committed. Nor entertain them Sunday, or at night. — R. S. c. 111, s. 81.

65. No free negro shall hawk or peddle in any county, without first obtaining a license from the court of pleas and quarter-sessions of that county; which license shall be granted for but one year, and only when seven or more justices are present, and upon satisfactory evidence of the good character of the applicant. And if any free negro shall offend against this section, he shall be deemed guilty of a misdemeanor. Nor hawk and peddle without license. — R. S. c. 111, s. 85.

66. If any free negro shall wear or carry about his person, or keep in his house, any shot-gun, musket, rifle, pistol, sword, dagger, or bowie-knife, unless he shall have obtained a license therefor from the court of pleas and quarter-sessions of his county, within one year next preceding the time of the wearing, keeping, or carrying thereof, he shall be guilty of a misdemeanor. Nor wear or keep guns, bowie-knives, &c., without license. — 1840, c. 30.

67. If any free negro shall, directly or indirectly, sell or give to any person, bond or free, any spirituous liquor, he shall be deemed guilty of a misdemeanor. Nor sell spirituous liquors. — 1844, c. 86.

68. Every slave or free person of color, who shall hereafter be convicted of any felony, for which no specific punishment is prescribed by statute, and which is now allowed the benefit of clergy, shall be imprisoned at the discretion of the court, not exceeding two years; and, in addition to such imprisonment, the court may sentence the convict to receive one or more public whippings, or to stand in the pillory, or (if a free negro) to pay a fine, regard being had to the circumstances of each case. Slaves convicted of felonies not capital, how punished. — R. S. c. 111, s. 47.

69. When a slave shall be apprehended or indicted for any offence, whereof the superior court has original jurisdiction, his owner, if known, shall have ten days' notice of the trial, in order that he may have an opportunity of defending his slave; the cost of which notice, and all other costs, attending the trial of the slave, shall be paid by the owner, if such slave, being a free man, would be liable to the payment thereof. And if the owner refuse to pay the same, execution in the name of the State may issue against such owner. Owners to have ten days' notice of trial. Liable for costs. — R. S. c. 111, s. 48.

When owner cannot be notified, counsel appointed.

70. When the owner of any slave who may be tried in virtue of this chapter, shall not be known, or cannot be ascertained, or shall reside out of the State, the court shall appoint counsel to appear for the prisoner, who shall be allowed the same fees as the attorney for the State is allowed for such criminal prosecutions; after which, the trial may proceed in the same manner, as if the owner had been notified agreeable to the directions of this chapter; and the fees for the counsel, clerk, and sheriff, shall be paid by the county having cognizance of the offence, as other county charges.

Who shall have fees, &c.—R. S. c. 111, s. 49.

Evidence of slaves and persons of color, against whom allowed.—R. S. c. 111, s. 50.

71. Negroes, Indians, and 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 in law to be incapable to be witnesses in any case whatever, except against each other. In all pleas of the State, where the defendant may be a negro, Indian, 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, Indian, 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 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.

Slaves, &c., when witnesses, to be warned, &c.—R. S. c. 111, s. 51.

Guilty of perjury, punished as freemen.—R. S. c. 111, s. 52.

72. On the trial of any slave, free person of color, or Indian, the judge or presiding magistrate, before the examination of any slave, free negro, or Indian, shall charge such to declare the truth.

73. If any slave, free negro, or Indian, upon any trial where he may be examined as a witness, shall commit wilful and corrupt perjury, he shall, upon conviction, be punished as a freeman convicted of a like offence.

Free negroes in certain cases, whipped, instead of imprisoned.

74. In every case where the whole, or part of the punishment prescribed by statute for any offence, shall be imprisonment for a time so long as thirty days at least, and there shall be provided by the statute no difference in the punishment between a white person and a free negro, the court may sentence the free negro to be both whipped and imprisoned; but in such case the time of imprisonment, within the limit prescribed, shall be in the discretion of the court.

May be hired out for fines.

75. When a free negro 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 he is unable to pay the fine imposed, (which shall in all cases be equal to the costs,) the court shall direct the sheriff to hire out such free negro publicly at the court house door, during the term of court, to any person who will pay the fine, or the

greatest part thereof, for the services of the free negro for the shortest space of time, not exceeding five years; and the hirer shall have all such power and authority over, and the same rights to control the services of, such free negro, as masters have over free negro apprentices.

Hirer's authority.—R. S. c. 111, s. 86, 87, 88.

76. Whenever a free negro shall be charged with the maintenance of any bastard child, and he shall be unable to give the bond required in such case, the court may order him to be hired out, in the same manner and under the same rules as are prescribed in the preceding section, for such sum as the court shall adjudge to be proper for the maintenance of the child.

Charged with bastard may be hired out to support the child.

77. When any free negro, for any fine imposed on him for an offence, or for a sum of money adjudged against him in case of bastardy, shall be hired out for the space of five years, the whole fine or sum of money shall be discharged; and the sheriff, after deducting five per centum on the sums collected for any hiring, shall account for the residue, as for other fines; and in these cases, the officers shall have full fees. *Provided always*, that if any free negro, who may be hired out for his fine, or in pursuance of section seventy-five of this chapter, shall abscond or leave the service of his hirer, before the expiration of his time of hiring, such free negro shall be bound to serve double the deficient time. *And provided, further*, that the person hiring such free negro shall, in open court, enter into recognizance to the State, with two able sureties, in such sum as the court shall direct, that the free negro, during the time of service, shall be furnished with good and sufficient lodging, clothing, medicine, and food; shall be treated with humanity, and be employed in some useful and industrious occupation; shall not be removed from the county, during the term of service, and shall be produced to the county court at the expiration thereof, or whenever, and as often as, the court may order. On breach of the recognizance, the prosecuting officer of the court, which may have directed the hiring, shall enforce and collect the recognizance for the benefit of the free negro, who, on such breach thereof being established, shall be discharged of all further service. And if any hirer shall fail to comply with any of the duties hereby imposed on him, he shall be deemed guilty of a misdemeanor, and may be prosecuted therefor in the county where the hiring took place.

If the term of hire be long as five years, fine, &c., to be discharged.

Absconding to serve double time.

Hirer to enter into recognizance to feed, clothe, &c.

Not to be removed out of the county.

On breach of recognizance, discharged from service, &c.—R. S. c. 111, s. 89.

78. It shall not be lawful for any slave to be transported on any railroad, steamboat, or other vessel navigating the waters of the State, or on any stage-coach, without a permission in writing from the owner, under the penalty of five hundred dollars; one half to the informer and one half to the State, to be recovered in the name of the State against such railroad company, the owner or captain of the boat or vessel, or the owner of such coach, as the case may be. And if any slave shall escape from his owner, by means of such transportation, the owner may recover his value from the said company, owner, or captain of the boat, or owner of the coach, so transporting the

Slaves not to be carried on ships, railroads, coaches, &c.

Unless permitted by, or travelling with masters, &c.—R. S. 1840, c. 58, s. 1, 2, 3.

Who shall be deemed free negroes.—R. S. c. 111, s. 74.

slave, (as the case may be,) by action on the case. *Provided, however,* that this section shall not extend to the case of any slave travelling with his master, or with the agent of his master, or as the servant or attendant of any white person, *bonâ fide* employed for that purpose.

79. All free persons descended from negro ancestors, to the fourth generation inclusive, though one ancestor of each generation may have been a white person, shall be deemed free negroes and persons of mixed blood.

SECT. 28. 13 Ire. 154; 5 Ib. 221.

SECT. 30. 19 Ire. 536.

SECT. 32. 13 Ire. 373.

SECT. 33. 13 Ire. 373; 8 Ib. 48.

SECT. 44. 2 D. & B. 297; 3 Dev. 329.

SECT. 45. Before 1830, Bus. 60; 12 Ire. 41; 11 Ib. 449; 9 Ib. 168; 3 D. & B. 88; 1 Ib. 384.

SECT. 46. 4 Ire. Eq. 15; 6 Ib. 15; 8 Ib. 32; 7 Ib. 201; 8 Ib. 253; Ib. 70; 8 Ire. 66; 1 Jones, Eq. 1; Ib. 35; 1 Ire. Eq. 436. *Will made in Virginia*, 1 Ire. 109, 3 Ib. 224.

SECT. 49. 3 D. & B. 38.

SECT. 54. 2 Jones, 52.

SECT. 66. 8 Ire. 256.

SECT. 69. Bus. 6.

SECT. 76. *Status of free negroes*, 4 D. & B. 25, 5 Ire. 250.

SECT. 77. 8 Ire. 522.

## CHAPTER 108.

### STATUTES, REPEAL, AND CONSTRUCTION OF.

SECTION	SECTION
1. Repeal of statutes not to affect suits.	(4.) "Oath" and "sworn."
2. Rules for construing statutes.	(5.) "Person."
(1.) Singular and plural number, masculine gender, &c.	(6.) "Preceding" and "following."
(2.) Authority of public officers, &c., exercised by majorities, unless, &c.	(7.) "Seal."
(3.) "Month" and "year."	(8.) "Will."
	(9.) "Written" and "in writing."
	(10.) "State" and "United States."

Repeal of statutes not to affect suits.—R. S. c. 100, s. 1.

Rules for construing statutes.

Singular and plural number, masculine gender, &c.

1. THE repeal of a statute shall not affect any suit brought before the repeal, for any forfeitures incurred, or for the recovery of any rights accruing under such statute.

2. In the construction of all statutes, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the General Assembly, or repugnant to the context of the same statute, that is to say:—

(1.) Every word, importing the singular number only, may extend and be applied to several persons or things, as well as to one person or thing; and every word importing the plural number only, may extend and be applied to one person or thing, as well as to several persons or things; and every word

importing the masculine gender only, may extend and be applied to females as well as to males.

(2.) All words purporting to give a joint authority to three or more public officers or other persons, shall be construed as giving such authority to a majority of such officers or other persons, unless it shall be otherwise expressly declared in the law giving the authority.

Authority of public officers, &c., exercised by majorities, unless, &c.

(3.) The word "month" shall be construed to mean a calendar month, unless otherwise expressed; and the word "year" a calendar year, unless otherwise expressed; and the word "year" alone shall be equivalent to the expression "year of our Lord."

"Month" and "year."

(4.) The word "oath" shall be construed to include "affirmation," in all cases, where by law an affirmation may be substituted for an oath, and in the like cases, the word "sworn" shall be construed to include the word "affirm."

"Oath" and "sworn."

(5.) The word "person" may extend and be applied to bodies politic and corporate, as well as to individuals.

"Person."

(6.) The words "preceding" and "following," when used by way of reference to any section of these revised statutes, shall be construed to mean the section next preceding or next following that in which such reference is made; unless when some other section is expressly designated in such reference.

"Preceding" and "following."

(7.) In all cases in which the seal of any court or public office shall be required by law to be affixed to any paper issuing from such court or office, the word "seal" shall be construed to include an impression of such official seal, made upon the paper alone, as well as an impression made by means of a wafer or of wax affixed thereto.

"Seal."

(8.) The term "will" shall be construed to include codicils as well as wills.

"Will."

(9.) The words "written" and "in writing," may be construed to include printing, engraving, lithographing, and any other mode of representing words and letters; *provided, however,* that in all cases where a written signature is required by law, the same shall be in a proper handwriting, or in a proper mark.

"Written" and "in writing."

(10.) The word "State," when applied to the different parts of the United States, shall be construed to extend to and include the District of Columbia and the several territories so called; and the words "United States" shall be construed to include the said district and territories.

"State" and "United States."

## CHAPTER 109.

## STRAYS.

## SECTION

1. Rangers appointed by county courts.
2. Information of strays made to ranger. Stray valued. Ranger to keep a book. To advertise strays.
3. Reward to taker-up.
4. Property not proved, to belong to taker-up, after one year. May be reclaimed. Expense of keeping stray, how ascertained.
5. Not claimed within one year, two thirds of its value paid to county trustee. Owner may reclaim of county.
6. Taker-up to give bond, if value exceeds four dollars.

## SECTION

7. Not answerable for its death.
8. Freeholders only shall take up and enter; but any may take up and return stray.
9. Ranger to administer oaths.
10. To make returns to county court.
11. Books of, may be inspected.
12. County trustee to collect moneys accruing under this chapter.
13. Penalty on rangers not paying.
14. Duty of taker-up, when stray dies, or is reclaimed.
15. Penalties, &c., to belong to county.

Rangers appointed by county courts.—R. S. c. 112, s. 1.

Information of strays made to ranger.

Stray valued.

Ranger to keep a book. To advertise strays.—R. S. c. 112, s. 2.

1. THE court of pleas and quarter-sessions, in each county, seven justices being present, shall appoint one or more rangers for their county, who shall hold their offices during good behavior; and no person shall be deemed duly elected without receiving a majority of the votes.

2. Every freeholder, who shall take up any stray horse, mare, gelding, colt, mule, ass, or jenny, neat cattle, hog, or sheep, shall, under the penalty of twenty dollars for failing so to do, within ten days after taking up such stray, (the owner of such stray being to him unknown,) make information on oath before the ranger of the county, of the marks, brands, and color of the stray, and that the same was taken up at his 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 shall issue his summons to any two freeholders of the neighborhood, who, after taking before the ranger the oath prescribed for the faithful and impartial discharge of their duty, shall view and appraise such stray, and make return thereof to the ranger, under their hands; which appraisal, with a particular and exact description of the marks, brands, age, and color, as near as can be ascertained, of such stray, together with the time of taking up, and place of abode of the person taking it up, shall, by such ranger, be entered in a book kept for that purpose; and he shall immediately thereafter, and also during the sitting of the next succeeding court of the county, put up an advertisement at the court house, in the most public place, describing therein the kind, marks, brand, and color of the stray; and if the stray shall be a horse, mare, gelding, colt, mule, ass, or jenny, the ranger shall likewise without delay, under a penalty of four dollars, cause an advertisement to be published, at least

two weeks, in a paper printed in or nearest the county, containing an accurate description of the stray as entered upon his book, the value as 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 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.

3. The person taking any stray, for his trouble and expenses, may demand and receive of the owner one dollar for each horse, mare, gelding, colt, or mule, ass, or jenny, — fifty cents for each head of cattle, — and fifteen cents for each hog and sheep.

Reward to taker-up.—R. S. c. 112, s. 3.

4. The property of every such stray, twelve months after such appraisement, (the property not being proved by the owner thereof,) shall be vested in the person taking up the same. *Provided, nevertheless,* that the former owner of any such stray, at any time within twelve months after such appraisement, on proving his property before the ranger, by his own oath or otherwise, may demand and recover such stray, or the valuation thereof, first paying the ranger's fees, and the reward for taking up the stray. *Provided also,* that where the taker-up shall have been at any expense for keeping and maintaining such stray, he may retain the same, until the owner or claimer shall pay all such expense, to be ascertained in the following manner, namely: the taker-up shall obtain from the ranger, or some justice of the peace, a warrant empowering three freeholders by the ranger or justice to be named, to declare on oath upon view of the stray, and examination of witnesses if necessary, how much the taker-up ought to have for keeping the stray; and such sum as shall by the said freeholders or any two of them, be declared, the taker-up may demand and receive, before the owner shall take the stray out of his possession.

Property not proved, to belong to taker-up, after one year.

May be reclaimed.

Expense of keeping strays, how ascertained.—R. S. c. 112, s. 4.

5. After the expiration of twelve months, every person taking up any stray, (no property being proved by the owner,) shall account for and pay to the county trustee two thirds of the appraised value, after deducting the ranger's fees, the costs for advertising, and the reward for taking up the same; and in case any person taking up a stray shall neglect to account with the trustee, the trustee shall commence suit for the same; and the person failing shall also forfeit and pay double the appraised value of the stray. *Provided, nevertheless,* that if, at any time, the owner shall prove his property before the county court by the oath of one or more indifferent witnesses, the court shall direct the county trustee to pay to the owner the net sum of money which the ranger may have paid to the trustee, after deducting the trustee's commissions.

Stray not claimed within a year, two thirds of its value paid to co. trustee.

Owner may reclaim of county.—R. S. c. 112, s. 5.

6. Any person taking up a stray shall first give bond, in double the sum, which may be deemed to be the value of the stray, with approved sureties, to one of the rangers of the

Taker-up to give bond, if value of stray exceeds four,

dollars.—R. S. c. 112, s. 6.

county, for his faithful compliance with the duties enjoined by this chapter, by delivering up the stray 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 shall not exceed four dollars, no bond shall be required.

Not answerable for its death.—R. S. c. 112, s. 7.

7. If within twelve months after the appraisement of any stray and entry thereof made with the ranger, it should die, the taker-up shall not be answerable, unless it may appear to have died by ill usage and abuse.

Freeholders only shall take up and enter; but any may take up and return stray.—R. S. c. 112, s. 8.

8. If any person, not being a freeholder, shall take up any stray, or if any freeholder shall take up any stray at any other place than on his own land, or shall make use of any stray before the same shall be appraised, he shall, for every such offence, forfeit and pay ten dollars, and be further liable to the action of the party grieved. *Provided*, nevertheless, that nothing herein contained shall prevent any person from taking up any stray of any kind, and carrying the same immediately to the owner thereof.

Rangers to administer oaths.—R. S. c. 112, s. 9.

9. The ranger may administer the oath, in all cases, where it is required to be taken before him, under the provisions of this chapter.

To make returns to county court.—R. S. c. 112, s. 10.

10. Every ranger shall make return of the strays entered, to his county court, which shall happen after the first day of February in every year, under the penalty of twenty dollars; of which return the clerk of the court shall make and deliver a copy to the county trustee, to the end that he may proceed to the collection of the money due.

Books of, may be inspected.—R. S. c. 112, s. 11.

11. For the more speedy recovery of strays, any person may search the entry books, for any information he may want, first paying to the ranger the prescribed fee therefor.

Co. trustee to collect moneys accruing under this chapter.—R. S. c. 112, s. 12.

12. The trustee in each county shall collect all sums that may be due for any stray entered, under the same rules as he collects any other moneys due him; and on all such collections he shall be entitled to receive six per centum. And if any person, entering strays, shall fail to account for such moneys, the trustee shall sue for the same.

Penalty on rangers for not paying over.—R. S. c. 112, s. 13.

13. Whenever any ranger or his deputy has received any money, which ought to have been paid by the taker-up to the trustee, the trustee shall call on the ranger, or his deputy, for payment; and, on failure to settle and pay as herein directed, he shall forfeit two hundred dollars, and be further liable to the suit of the trustee for such sums, as have been paid by the taker-up of strays, over and above the ranger's fee.

Duty of taker-up, when stray dies, or is reclaimed.—R. S. c. 112, s. 14.

14. Every person taking up a stray, afterwards reclaimed by the owner, or dying as aforesaid, shall produce to the ranger of the county a certificate of such stray being reclaimed or dying, from some justice of his county, within twelve months after entering the stray; 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 strays. And in case any taker-up shall fail to produce a certificate, when demanded, he shall be subject to the payment of all costs, which may accrue in consequence of any suit brought against him, as fully as if no claim had been made, or death happened.

15. Every penalty incurred by the violation of any of the provisions of this chapter, shall be recovered by the county trustee, in the name of the State, for the use of the county.

Penalties under this chapter, to belong to county.—R. S. c. 112, s. 15.

## CHAPTER 110.

### SURETY AND PRINCIPAL.

SECTION

1. Summary remedy for surety against principal.
2. Surety may sue cosurety for ratable part of debt paid for principal.
3. May dissent from stay of execution

SECTION

- then not liable to surety for the stay. Officer, how to collect in such case.
4. Surety, paying debt of deceased principal, to have priority as the creditor had, against the estate.

1. ANY person, who may have paid money for and on account of those for whom he became surety, upon producing to the county court, or any justice of the peace having jurisdiction of the sum, a receipt, and showing that an execution has issued and he has satisfied the same, and making it appear by indifferent testimony, that he has laid out and expended any sum of money, as the surety of such person, may move the court or justice of the peace, as the case may be, for judgment against his principal, for the amount which he has actually paid; a citation having previously issued against the principal to show cause why execution should not be awarded: and should not the principal show sufficient cause, the court or justice shall award execution against the estate of the principal.

Summary remedy for surety against principal.—R. S. c. 113, s. 1.

2. Where there are two or more sureties for the performance of a contract, and one or more of them may have been compelled to perform and satisfy the same, or any part thereof, and the principal shall be insolvent, or out of the State, such surety may have and maintain an action on the case against every other surety, for a just and ratable proportion of the sum, which may have been paid as aforesaid, whether of principal, interest, or cost.

Surety may sue cosurety for ratable part of debt paid for principal.—R. S. c. 113, s. 2.

3. Whenever any judgment shall be obtained before a justice, against a principal and his surety, and the principal debtor shall desire to stay the execution thereon, but the surety is unwilling that such stay shall be had, the surety may cause his dissent thereto to be entered by the justice, which shall absolve him from all liability to the surety, who may

May dissent from stay of execution, then not be liable to surety for the stay.

Officer, how to collect in such case.—R. S. c. 113, s. 3.

Surety, paying debt of dec'd principal, to have priority as the creditor had, against the estate.—R. S. c. 113, s. 4.

stay the same. And the constable or other officer, who may have the collection of the debt, shall make the money out of the property of the principal debtor, and that of the surety for the stay of execution, if he can, before he shall sell the property of the surety before judgment.

4. Whenever a surety, or his representative, shall pay the debt of his deceased principal, the claim thus accruing shall have such priority in the administration of the assets of the principal, as had the debt before its payment.

SECT. 1. *Sureties: who are*, 4 D. & B. 458, Ib. 404, Ib. 537. *Relation, to creditor*, 1 Ire. 216, Ib. 389, 1 D. & B. 44; *to principal: cannot sue principal in tort*, 11 Ire. 294; *must pay before suing*, 12 Ire. 243, 7 Ire. 353, 1 Ib. 286, 3 Dev. 253, 4 D. & B. 458, 2 Ib. 460, 1 Ib. 437; *demand necessary*, 4 Dev. 360. *Payment by surety: effect of*, 3 Dev. 380, Ib. 237, 1 D. & B. 437. *How sureties discharged*, 4 Dev. 529, 1 Ire. 216, 5 Ire. Eq. 91, Ib. 369.

SECT. 2. *Cosureties*, 8 Ire. 56, Ib. 286, 9 Ib. 10, 4 Ib. 377, Ib. 83, 1 Jones, Eq. 313, 6 Ire. Eq. 115.

SECT. 4. Bns. 300.

## CHAPTER 111.

### TOWNS.

#### SECTION

1. Incorporated towns may elect commissioners, who shall be a body corporate. How styled.
2. Qualification of commissioners.
3. Of voters.
4. First election, when held, and number of commissioners; when afterwards, and how conducted.
5. Inspectors of elections; their duty.
6. Election tied, decided by lot.
7. Number of commissioners, and time of election may be changed.
8. On change of time, or failure to elect, officers in to hold, &c.
9. Vacancy, how filled.
10. Mayor may be elected. Tie vote, how determined. Term of office. Vacancy, how filled. Shall preside at meetings.
11. Mayor shall take oaths. Shall have judicial powers. Their extent. Appeal lies from his judgment.
12. Commissioners to take oath. Their powers to make by-laws, &c.
13. May lay tax—on what. Appoint constables and other officers; fix their compensation and take bonds.
14. Markets, may establish and regulate.
15. Nuisances, abate.

#### SECTION

16. Streets and bridges, keep in repair. Improvements make by assessment of labor, &c. Citizens exempt from working on roads. May appoint overseer of streets. Citizens liable for neglect, as road hands. Town patrol.
17. By-laws, may enforce by penalties.
18. Baker's bread, its quality and weight regulate.
19. List of taxables, to be taken by mayor. Slaves of non-residents, who to list. Double tax, when paid. Assessors of real estate appointed—their oath and duty.
20. Town constables—their oath, power, and duties.
21. Shall give bond, collect tax, and have the powers of sheriff for collection.
22. Officers refusing to qualify, to pay \$25.
23. Provisions of this chapter to apply to all incorporated towns, unless, &c.
24. Tax on dogs. If not paid, how enforced.
25. Annual statement of taxes and expenditures, to be published. Penalty, \$100.

1. EVERY incorporated town, for the better government thereof, may annually elect by ballot, not more than seven, nor less than three commissioners, who shall, they and their successors, be deemed a body corporate with succession during the corporate existence of the town, and shall be styled, "the commissioners of the town of \_\_\_\_\_," (the same being the name of the town of which they are commissioners).

Incorporated towns may elect commissioners, who shall be a body corporate. How styled.

2. The commissioners shall be of the age of twenty-one years, shall have resided within the limits of the town twelve months next preceding the day of election, and shall on the day of election possess a freehold or a leasehold estate for at least one year, in real estate situate within the town.

Qualification of commissioners.

3. Every free white man of the age of twenty-one years, being a native or naturalized citizen of the United States, who shall have resided within the limits of the town six months next preceding the day of election, and shall have paid all the taxes imposed upon him by the commissioners, which are due and payable, shall be entitled to vote for commissioners.

Of voters.

4. The first election shall be held on such day, and for as many commissioners, as the county court of the county in which the town is situate may think proper to name, and annually afterwards on the same day: and every election for commissioners shall be held under the inspection of such persons, not exceeding three, as the county court may appoint; who shall advertise the elections at three public places in the town, ten days before the same is held. And in case the county court neglect at any time to appoint inspectors, the sheriff of the county shall summon two freeholders of the town, who with him shall make such appointment.

First election when held, and number of commissioners. When afterwards, and how conducted.

5. The inspectors shall be sworn by some justice of the peace, as in elections for members of the General Assembly, and they shall conduct the election in the like manner and during the same hours of the day, as elections for members of the General Assembly. And, at the close of the poll, shall declare elected such persons as have the highest number of votes; and they shall, within ten days, notify the persons elected.

Inspectors of elections; their duty.

6. If among the number voted for, there should be any two or more who may have an equal number of votes, and either would be duly elected but for the equal vote, the inspectors shall determine by lot the election between them.

Election tied, decided by lot.

7. After the first election the voters of the town may, whenever and as often as they choose, by a vote at the time of electing commissioners, and due notice given thereof by the commissioners then in authority, alter, by a concurring majority of all the votes cast, the day of election and the number of commissioners, and fix any other day or number, so that the number be not more than seven, nor less than three; and the elections thereafter shall be held on the designated day, and thenceforth the number of commissioners agreed on shall be chosen.

Number of commissioners and time of election may be changed.

On change of time, or failure to elect, officers in to hold, &c.

8. Whenever the day of election shall be altered, the officers of the corporation elected or appointed before that day, shall hold their places till the day of election, and until other officers shall be appointed and qualified. And they shall hold their offices in like manner, when there is any failure to make the annual election.

Vacancy, how filled.

9. In case of a vacancy after election, in the office of commissioner, the others may fill it until the next election.

Mayor may be elected.

10. In like manner, and at the same time when commissioners are elected, the voters may by ballot, under the inspection of the same persons and under the same rules and regulations, elect a mayor of the town; and the person having the highest number of votes, shall be declared elected. If, among the number voted for, there should be any two or more who may have an equal number of votes, and either would be elected but for the equal vote, the election shall be determined as in the case of commissioners; and he shall be notified and hold his office for the same term as the commissioners; and in case of a vacancy in the office, the commissioners may fill the same. The mayor shall preside at the meetings of the commissioners, but shall have no vote except in case of a tie; and in the event of his absence or sickness, the board of commissioners may appoint one of their number, *pro tempore*, to exercise his duties.

Tie vote, how determined.

Term of office. Vacancy, how filled. Shall preside at meetings.

Mayor shall take oaths.

11. The mayor, before some justice of the peace, shall take the oaths prescribed for public officers, and an oath that he will faithfully and impartially discharge the duties imposed upon him by law. As a peace-officer, he shall have within the limits of the town, all the powers of a justice of the peace; and as a judicial officer, shall have within the same, all the power, jurisdiction, and authority of a justice of the peace, to issue process; to hear and determine all cases that may arise upon the ordinances of the commissioners; to enforce penalties by issuing execution upon any adjudged violation thereof, and to execute the laws and rules that may be made and provided by the commissioners for the government and regulation of the town. *Provided*, that, in all cases, any person dissatisfied with his judgment may appeal to court, as in case of a judgment rendered by a justice of the peace.

Shall have judicial powers. Their extent.

Appeal allowed from his judgment.

12. The commissioners shall take an oath before some justice of the peace, that they will faithfully and impartially discharge the duties of their office. They shall have power to make such by-laws, rules, and regulations for the better government of the town, as they may deem necessary. *Provided* the same be not inconsistent with the provisions of this chapter, or the laws of the land.

Commissioners to take oath.

Their powers to make by-laws, &c.

May lay tax, on what.

13. Among the powers hereby conferred on them, they may, not oftener than annually, lay a tax on real estate situate within the corporation; on such polls as are taxed by the General Assembly for public purposes; on all persons, (apothecaries and druggists excepted,) retailing or selling liquor or wines,

of the measure of a quart or less, a tax not exceeding twenty-five dollars; on all such shows and exhibitions for reward as are taxed by the General Assembly; on all dogs; and on swine, horses, and cattle, running at large within the town. They may appoint a town constable, and such other officers and agents, as may be necessary to enforce their by-laws and regulations, keep their records, and conduct their affairs; may determine the amount of their salaries or compensation; and also the compensation or salary of the mayor: may impose oaths of office upon them, and require bonds from them payable to the State, in proper penalties for the faithful discharge of their duties.

Appoint constables and other officers; fix their compensation, and take bonds.

14. They may establish and regulate their markets, and prescribe at what place, within the corporation, shall be sold marketable things; in what manner, whether by weight or measure, may be sold, grain, meal, or flour, (if the flour be not packed in barrels,) fodder, hay, or oats in straw; may erect scales for the purpose of weighing the same, appoint a weigher, fix his fees, and direct by whom they shall be paid.

Markets, may establish and regulate.

15. They may pass laws for abating or preventing nuisances of any kind, and for preserving the health of the citizens.

Nuisances, abate.

16. They shall provide for keeping in proper repair the streets and bridges in the town, in the manner and to the extent they may deem best; may cause such improvements in the town to be made as may be necessary, and may apportion the same equally among the inhabitants, by assessments of labor or otherwise, and the citizens shall not be liable to work on the public roads without the limits of the town. When they determine to repair or improve by labor, they may appoint an overseer and compel such persons as are liable to perform duty on the public roads, to work on the streets, in the same manner and under the same penalties, as are provided by law for the reparation of the public roads. They may appoint a town watch or patrol, to be regulated by such rules as the commissioners may provide.

Streets and bridges, keep in repair. Improvements, make by assessment of labor, &c. Citizens, exempt from working on roads. May appoint overseer of streets. Citizens liable for neglect, as road hands. Town patrol.

17. They may enforce their by-laws and regulations, by imposing penalties on such as violate them; and compel the performance of the duties they impose upon others, by suitable penalties.

By-laws, may enforce by penalties.

18. They shall have power to make all such laws and regulations as they may deem necessary to protect the citizens of the town from imposition and fraud in the manufacture, weight, and sale therein of baker's bread, and to prevent fraudulent mixtures of other substances therewith; so as to insure that the bread shall be good and wholesome, and of full weight.

Baker's bread, its quality and weight regulated.

19. The mayor shall, by order of the commissioners, take the list of taxables in the town, in such manner and at such time as the commissioners shall prescribe. If the owners of slaves employed in town shall not reside therein, the hirers shall list them for taxation; and if any person fail to list his

List of taxables to be taken by mayor. Slaves of non-residents, who to list.

Double tax, when paid. Assessors of real estate appointed; their oath and duty.

taxables within the time prescribed by the commissioners, he shall be liable to a double tax. The commissioners may appoint assessors of the real estate within the town, who, before acting, shall take an oath before some justice of the peace to discharge their duties faithfully and impartially; and the mayor and assessors shall make report to the commissioners within the time prescribed by them.

Town constables, their oath, power, and duties.

20. The town constable shall, before some justice of the peace, take the oaths prescribed for public officers, and an oath that he will faithfully and impartially discharge the duties of his office according to law. As a peace-officer, he shall have within the town all the powers of a constable in the county; and as a ministerial officer, he shall have the same power as a constable in the county, to execute all process that may be issued by the mayor, and to enforce the ordinances and regulations of the commissioners as they may direct.

Shall give bond, collect tax, and have the powers of sheriff for collection.

21. He shall have the same power to collect the taxes imposed by the commissioners, as sheriffs have to collect the taxes imposed by the county courts; and he may be required by the commissioners to give bond, with sufficient security, payable to the State of North Carolina, in such sum as the commissioners may prescribe, to account for the same; upon which, suit may be brought by the commissioners, as suits are brought upon the bonds of other officers.

Town officers refusing to qualify, to pay \$25.

22. Every person elected or appointed commissioner, mayor, town constable, or assessor of real estate, who, after being duly notified, shall neglect or refuse to qualify and perform the duties of his office or appointment, shall pay twenty-five dollars, one half to the use of the town, and the other half to the use of any person who will sue for the same.

Provisions of this chapter to apply to all incorporated towns, unless, &c.

23. The provisions of this chapter shall apply to all incorporated towns, where the same shall not be inconsistent with the provisions of special acts of incorporation, or special laws in reference thereto.

Tax on dogs. If not paid, how enforced.

24. If any person residing in town, shall have therein any dog, and shall not return it for taxation, and shall fail to pay the tax according to law, the commissioners, at their option, may fine the person so failing double the tax, or may treat such dog as a nuisance, and order his destruction.

Annual statement of taxes and expenditures to be published. Penalty \$100.

25. The commissioners shall annually publish an accurate statement of the taxes levied and collected in the town, together with a statement of the amount expended by them, and for what purpose. And any board of commissioners failing to comply with the directions of this section, shall forfeit and pay one hundred dollars to any person who will sue for the same.

CHAPTER 112.

TREASURER.

SECTION	SECTION
1. Treasurer biennially elected. Oaths taken and bond given. Form of bond.	14. Duty of treasurer and governor, on suspecting a bank of insolvency.
2. Duplicates to be given; how indorsed, and where deposited.	15. Treasurer to give duplicate receipts. No receipt good without comptroller's indorsement.
3. On failure to give bond, another elected.	16. Accounts of literary, and other funds, to pass through comptroller's office.
4. If failure occur in recess, governor and council to appoint, &c.	17. Certificates of the State's stocks, to be registered, &c., by secretary.
5. Judgment how entered on bond.	18. Comptroller to indorse them, when allowed as credits to treasurer.
6. Treasurer to keep account of receipts and expenditures.	19. Copy of, good on loss of original.
7. To report to Assembly.	20. Treasurer may appoint agents to collect, &c.
8. Committee of finance, to report the state of the treasury.	21. May have summary judgment against, &c.
9. Warrants, &c., not to be paid, unless they express the consideration.	22. Office hours of treasurer.
10. Names of defaulting revenue officers to be published.	23. Penalty on, for not proceeding against delinquents.
11. Monthly settlements between treasurer and comptroller. Balance deposited in banks.	24. Proceedings against treasurer, &c., for defalcation.
12. Duplicate certificates of deposits to issue.	25. Debt of State to have priority.
13. Treasurer may check for deposits.	26. Int. improvement fund transferred to treasury.
	27. Treasurer to procure seal of office.

1. THE treasurer of the State shall be elected, as early in each biennial session of the General Assembly as can be conveniently done. Before entering into office, and within twenty-one days after his election, he shall take and subscribe the oaths prescribed, before some justice of the peace; and give bond with sureties, to be approved by the governor and the speakers of the two houses of the General Assembly, payable to the State of North Carolina, and the following shall be the form thereof; namely:—

Treasurer biennially elected. Oaths taken, and bond given. —R. S. c. 115, s. 1.—1842, c. 60.

STATE OF NORTH CAROLINA. Form of bond. —1842, c. 60.

Know all men by these presents, that we, A. B. principal, and the other obligors whose names are hereunto subscribed, as his sureties, are held and firmly bound unto the State of North Carolina, in the sum of two hundred and fifty thousand dollars; for the payment of which we bind ourselves, our heirs, executors, and administrators. Witness our hands and seals this the \_\_\_\_\_ day of \_\_\_\_\_ A. D.

The condition of the above obligation is such, that whereas the above bounden A. B. hath been appointed treasurer of the State; now if he shall faithfully account for all moneys and other things which shall come to his hands in virtue of his

office, and perform all other duties required, and to be required of him by law, then the above obligation to be void; otherwise to remain in full force and virtue.

Duplicates to be given; how indorsed, and where deposited.—R. S. c. 115, s. 1.

2. The treasurer shall execute duplicate parts of said bond, which shall be indorsed "approved," and signed by the governor and speakers of the two houses; one part shall be delivered by the governor to the comptroller, and the other to the secretary of State, for safe-keeping; and the justice performing the duty, shall certify the oath as taken and subscribed by the treasurer, and the same shall be delivered to the comptroller and filed with the bond. *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.

On failure to give bond, another elected.—R. S. c. 115, s. 2.

3. If the person elected treasurer shall fail to give bond and security, within the time above mentioned, the governor shall communicate the same to the General Assembly, who shall proceed to elect some other person.

If failure occur in recess, governor and council to appoint, &c.—R. S. c. 115, s. 3.

4. If at any time there should not be twenty-one days between the election of treasurer and the rise of the General Assembly, then the bonds shall be given to the governor, within twenty-one days after such election, and by him indorsed "approved:" and if any person elected treasurer shall fail to give such bonds, within the time prescribed, and the General Assembly should not then be in session, the governor shall call the council of State and appoint some other person treasurer, who shall give the bonds within twenty-one days, to be approved by the governor.

Judgment how entered on bond.—R. S. c. 115, s. 4.

5. 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 are prescribed for entering judgments against delinquent sheriffs.

Treasurer to keep account of receipts and expenditures.—R. S. c. 115, s. 5.

6. The treasurer, in books provided for that purpose at the public expense, shall state and keep an account of all money received by him on account of public taxes and impositions, and otherwise, and of all moneys paid by him for public dues, and in pursuance of acts and resolutions 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.

To report to Assembly at each session.—R. S. c. 115, s. 6.

7. The treasurer shall make an accurate statement of the condition of the treasury, which shall be laid before the General Assembly, and be published and bound up with the laws of each session; 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.



8. The books and accounts of the treasurer and comptroller, during the session of the General Assembly, shall be subject to the inspection and examination of the committee of finance, who shall carefully 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 General Assembly, and also ascertain the full amount of money in the treasury, by counting the same; and they shall report thereon at each session.

Committee of finance, to examine and report state of treasury.—R. S. c. 115, s. 7.

9. The treasurer shall not discharge any grant by the General Assembly, or warrant of the governor, unless the grant or warrant shall particularly express the cause and service for which the same was allowed or issued.

Warrants, &c., not to be paid, unless they express the consideration.—R. S. c. 115, s. 8.

10. On the first day of November, in every year, the treasurer and comptroller shall certify and publish for one month, in some newspaper in Raleigh, 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 for that year.

Names of defaulting revenue officers to be published.—R. S. c. 115, s. 9.

11. The treasurer and comptroller at all times, except during the sitting of the General Assembly, shall have monthly settlements of all accounts of public moneys, which by law they are required to keep; and once in each month shall balance said accounts, and ascertain the amount of money in the possession of the treasurer, which shall, immediately thereafter, be deposited by the treasurer in the banks of the State.

Monthly settlements between treasurer and comptroller. Balance to be deposited in banks.—R. S. c. 115, s. 10.

12. For all deposits of public money made in a bank, the cashier shall at the time give duplicate certificates of deposit; one to the comptroller, which he shall file and keep in his office, and the other to the treasurer.

Two certificates of deposits issued.—R. S. c. 115, s. 11.

13. The treasurer shall from time to time, as the public interest may require, check for the public moneys deposited in the banks; and for the amounts drawn out 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 General Assembly, money sufficient to pay the officers and members of the two houses.

Treasurer may check for deposits.—R. S. c. 115, s. 12.

14. If at any time the treasurer shall suspect the solvency of any bank, in which public moneys are deposited, he shall communicate the same to the governor; and if, upon an examination, the governor shall consider that the public interest requires the money to be withdrawn from the bank, the treasurer shall remove it.

Duty of treasurer and governor on suspecting a bank's solvency.—R. S. c. 115, s. 13.

15. The treasurer shall, in all payments made to him, grant two receipts of the same tenor and date; one of which shall be filed in the comptroller's office, and the other shall be indorsed by the comptroller and continued with the person, who has made the payment: And without such indorsement of the comptroller, no receipt given by the treasurer shall be valid.

Treasurer to give duplicate receipts. No receipt good without comptroller's indorsement.—R. S. c. 115, s. 14.

Accounts of literary and other funds, to pass through comptroller's office.—R. S. c. 115, s. 15.

Certificates of the State's stocks, to be registered and indorsed by secretary.—R. S. c. 115, s. 16.

Comptroller to indorse them, when allowed, as credits to treasurer.—R. S. c. 115, s. 17.

Copy of, good on loss of original.—R. S. c. 115, s. 18.

Treasurer and governor may appoint agents to collect, &c.—R. S. c. 115, s. 19.

May have summary judgment against, &c.—R. S. c. 115, s. 20.

Office hours of treasurer.—R. S. c. 115, s. 22.

Penalty for not proceeding against delinquents.—R. S. c. 115, s. 23.

Proceedings against treasurer and sureties for default.—R. S. c. 115, s. 26.

16. The receipts and expenditures of the literary fund; of the fund for internal improvements; of the funds appropriated for the support of the asylums for the deaf, dumb, and blind; and for the insane, shall in all cases be passed through the comptroller's office, be examined by him and entered on his books, in like manner as other receipts and expenditures.

17. The treasurer shall deliver to the secretary of State all the certificates, or other evidences of shares of stock in any of the incorporated companies, in which the State is interested; and the secretary of State shall register the same in a well-bound book kept for that purpose, and indorse the registration on the back of each certificate, or other evidence of the claim of the State, and return the same to the treasurer.

18. The comptroller, as soon as his accounts shall be passed on by the General Assembly, shall indorse upon each certificate, or other evidence of public stock, that the same has been allowed by the General Assembly, as a credit to the treasurer, and also the date of such allowance; and then shall return such certificate or other evidence to the treasurer for safe-keeping.

19. Whenever any certificate of shares or stock in any incorporated company, or other evidence of the claim of the State to the same shall be lost or destroyed, a certified copy thereof from the secretary's office shall be as good and valid as if the original were produced.

20. 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 for that purpose, and execute to him letters of attorney, specifying the powers conferred; and the agent shall receive such compensation from the treasurer, as the governor and treasurer may allow, or as the General Assembly may direct.

21. The treasurer shall have full power to move in any court of record for judgment against any agent for the State who is indebted by reason of such agency, in the manner and under the rules prescribed in cases of delinquent sheriffs.

22. He shall attend at his office 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, the fourth of July, thanksgiving day, and Christmas excepted).

23. If in any instance the treasurer shall neglect to call to account, as directed by law, any delinquents herein before described, whereby the public revenue may suffer loss, he shall be held and deemed accountable for the sums due by such delinquents, to all intents and purposes, as if the same had actually been paid into his office.

24. If at any time it shall appear, from the accounts kept between the comptroller and treasurer, or in any other way, that the treasurer has not accounted for and paid over the

public moneys of the State as directed by law, the State may move for and obtain judgment against the treasurer and his sureties in any court of record, first giving to the persons against whom such motion shall be made, five days' notice of the time and place, when and where such motion will be made.

25. If any treasurer, or other person indebted to the State, shall become insolvent, the debt of the State shall be paid first of all debts, notwithstanding any attachment against his effects, or any voluntary assignment thereof to pay debts, or for other purposes. And in case of the death of the debtor, no other debt but funeral expenses, shall be preferred to the debt of the State.

Debt of State to have priority.—R. S. c. 115, s. 2.

26. The fund now known as the internal improvement fund, and heretofore directed to be transferred to the public treasury, and not otherwise heretofore appropriated, shall in future be deemed and considered to be a part of the public funds, and be consolidated therewith; and there shall be no separation or distinct account of the same.

Internal improvement fund transferred to treasury.

27. The treasurer shall procure a seal of office with such devices thereon, as the treasurer and governor deem most suitable.

Treasurer to procure seal of office.—1848, Res.

## CHAPTER 113.

### UNIVERSITY.

SECTION

1. License to retail in two miles of Chapel Hill void.
2. Places in two miles of Chapel Hill for sale of liquors, forbidden.
3. No person without written permit, to sell liquor to be used in two miles of Chapel Hill.
4. Electioneering treats in two miles forbidden.
5. Also billiard and gaming-tables in five miles.

SECTION

6. Also exhibitions in five miles, without license.
7. Violation of preceding sections, a misdemeanor.
8. Contracts with minor students without permission, void.
9. May be avoided under plea of general issue.
10. Incapable of confirmation.
11. University endowed with escheats.
12. To take effect from ratification.

1. ANY license granted to retail spirituous liquor, wine, or cordials at Chapel Hill, or within two miles thereof, shall be void.

License to retail at Chapel Hill, &c., void.

2. No person shall erect, keep, maintain, or have at Chapel Hill, or within two miles thereof, any tippling-house, establishment, or place, for the sale of wine, cordials, spirituous, or malt liquor.

Places in two miles of, for sale of liquors, forbidden.

3. No person in the State, without permission in writing from the president of the university, or some member of its

No person without written permit, to

sell liquor to be used in two miles of Chapel Hill.—R. S. c. 116, s. 1.

Electioneering treats forbidden.

Also billiard and gaming-tables in five miles.—R. S. c. 116, s. 4.

Also exhibitions in five miles without license.—R. S. c. 116, s. 3.

Violating preceding sections, misdemeanor.

Contracts with minor students without permission, void.

May be avoided under plea of general issue.

Incapable of confirmation.

Endowed with escheats.—2 R. S. p. 428.—1789, s. 2.

To take effect from ratification.

faculty, shall sell, or offer to sell, or deliver to any student of the university, or to any other person, any wine, cordial, spirituous or malt liquor, for the purpose of being used, or with knowledge that the same will be used at Chapel Hill, or within two miles thereof, by any such student.

4. No person, at or within two miles of Chapel Hill, shall give or furnish any electioneering treat or entertainment.

5. No person shall set up, keep, or maintain at Chapel Hill, or within five miles thereof, any public billiard-table or other public table of any kind at which games of chance or skill, by whatever name called, may be played.

6. No person, without permission in writing obtained therefor from the president of the university or some member of its faculty seven days beforehand, shall exhibit at Chapel Hill, or within five miles thereof, any theatricals, slight of hand, or equestrian performances, or any dramatic recitations or representations, or any rope or wire-dancing, natural or artificial curiosities, or any concert, serenade, or performance in music, singing, or dancing.

7. Any person who shall offend against any of the provisions of this chapter hereinbefore recited, shall be deemed guilty of a misdemeanor.

8. Every contract or agreement by any student of the university, being then a minor, with any shopkeeper, merchant, trader, or other person, upon the sale of any wine, cordial, spirituous or malt liquor, or of any goods, wares, or merchandise, or any article of trade, or with the keeper of any livery-stable, shall be void, unless the same, if made at or within two miles of Chapel Hill, be made under the written permission of the president of the university or some member of its faculty; or, if made at a greater distance from Chapel Hill, under the written consent of the person who may have the control and authority over such student.

9. Every contract made with a student of the university contrary to the provisions of the preceding section, shall be void, and may be avoided on account of any of the matters therein contained, on the plea of the general issue. On the trial whereof, if it appear that the defendant was at the time of the alleged contract a student of the university, it shall be presumed that he was at the making thereof a minor.

10. Every such contract shall be incapable of being confirmed; and any promise or obligation given by such student after his arrival at full age shall be void.

11. All the real estate which has escheated or may escheat to the State, which has not been reduced into possession by the State or the president and directors of the literary fund, shall be and hereby is vested in the trustees of the university for the use of the university.

12. This chapter shall take effect from and after its ratification.

CHAPTER 114.

USURY.

No more than six per cent. to be taken for interest. Persons taking more, to forfeit double the value forborne.

No person, upon any contract, shall, directly or indirectly, take for loan of any moneys, wares, merchandise, 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 less sum, or for a longer or shorter time: and 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 on the hundred, as aforesaid, shall be void. And every person who, upon any contract, shall take, accept, and receive, by way of any corrupt bargain, loan, or other means whatsoever, for the forbearing or giving day of payment, a rate of interest greater than hereinbefore specified, shall forfeit and lose, for every such offence, the double value of the moneys, wares, merchandise, and other things, so lent, bargained, or exchanged; the one moiety to the State, and the other to him, who will sue for the same.

No more than six per cent. to be taken for interest.

Persons taking more, to forfeit double the value forborne.—R. S. c. 117, s. 1.

SECT. 1. *Usury what: mistake*, 6 Ire. 225, 3 Dev. 30; *compensation for trouble*, 4 D. & B. 120. *Conditional contract*, 1 Dev. Eq. 420; *interest in advance*, 1 Dev. 100; *exchange of notes*, 12 Ire. 334; *corrupt intent*, 13 Ire. 454, 4 D. & B. 313, 3 Ire. 415; *loan in notes below par*, 5 Ire. 692, 3 Ib. 522; *indorser and indorsee*, 4 D. & B. 209, Ib. 313; *innocent holder*, 3. Dev. 30; *deed in trust*, 10 Ire. 428, 4 D. & B. 91; *sale*, 4 D. & B. 512, 1 D. & B. Eq. 613, 10 Ire. 156; *contract out of State*, 7 Ire. 424, 1 Hawks, 471. *Relief in equity*, 2 Dev. Eq. 75, 1 Mur. 225. *Penalty*, 6 Ire. 390, 10 Ib. 315, 4 Ib. 296, 3 Hawks, 28, 3 Dev. 43, 2 Mur. 200, 2 D. & B. 474. *Pleading*, 6 Ire. 117, 7 Ib. 79, Ib. 118, 3 Mur. 237, 2 Hawks, 57, 4 Dev. 86.

CHAPTER 115.

VICE AND IMMORALITY.

SECTION

1. No person to work on Sunday, under penalty of one dollar.

SECTION

2. Penalty for swearing before a justice holding his court.

1. ON the Lord's day, commonly called Sunday, no tradesman, artificer, planter, laborer, or other person, shall, upon land or water, do or exercise any labor, business, or work, of his ordinary calling, (works of necessity and charity only ex-

No person to work on Sunday, under penalty of one dollar.—R. S. c. 118, s. 1.

cepted,) nor employ himself in hunting, fishing, or fowling, nor use any game, sport, or play, upon pain that every person, so offending, being of the age of fourteen years and upwards, shall forfeit and pay one dollar.

Penalty for swearing before a justice, &c.—R. S. c. 118, s. 2.

2. If any person shall profanely swear or curse in the hearing of a justice of the peace, holding his court, the justice may commit him for a contempt, or fine him fifty cents.

## CHAPTER 116.

### WASTE.

SECTION

1. For and against whom action lies.
2. Tenant for life aliening, still liable.
3. Judgment for treble damages and place wasted.

SECTION

4. Action by one tenant, &c., against cotenant.
5. Heirs shall have the action.

For and against whom action lies.

1. 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 guardians.

Tenant for life aliening, still liable.

2. Where tenant for life or years grants 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 years.

Judgment for treble damages and place wasted.

3. In all such cases of waste, when judgment shall be against the defendant, the court shall give judgment for thrice the amount of the damages assessed by the jury, and also that the plaintiff recover the place wasted.

Action by tenant against cotenant.

4. Where a joint-tenant or a tenant in common commits waste, an action shall lie against him at the instance of his cotenant or joint-tenant.

Heirs shall have the action.—R. S. c. 119.—52 Hen. 3, c. 23; 6 Ed. 1, c. 5; 11 Hen. 6, c. 5; 20 Ed. 1, st. 2.

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.

SECT. 1. *What*, Bus. 91, 1 D. & B. Eq. 631, 2 Hay, 339, Ib. 283, Ib. 110; *by husband*, 5 Ire. Eq. 308; *by dowress*, 7 Ire. Eq. 197, 4 D. & B. 179; *husband of dowress*, 1 Jones, 100. *Who to sue for*, 3 Mur. 511; *husband and wife*, Bus. 30. *When restrained in equity*, 1 Jones, Eq. 176, Ib. 180.

CHAPTER 117.

WEIGHTS AND MEASURES.

SECTION

1. Weights and measures to be used.
2. Justices to procure weights and stamps.
3. Governor to procure measures.
4. Standard keeper appointed. His oath and bond.
5. Weights and measures to be tried by

SECTION

- standard keeper once in two years, and certificate given. Penalty for not having them examined.
6. For selling or buying by, when not branded or stamped.
7. Acre of land, of what measure to be.

1. No trader or other person shall buy or sell, or otherwise use in trading, any other weights or measures, than are made and used according to the standard prescribed by the congress of the United States.

Weights and measures to be used.—R. S. c. 120.

2. The justices of every county shall, at the charge of their county, provide sealed weights of hundred, half hundred, quarters of hundred, half quarters of hundred, seven pounds, four pounds, two pounds, one pound, and half pound: And they shall also provide a stamp for brass, tin, iron, lead, or pewter weights and measures, and a brand for wooden measures, with the letters N. C.

Justices to procure weights and stamps.—R. S. c. 120, s. 2.

3. The governor shall procure for each of the counties now or hereafter to be established, the following of the measures adopted as standards by resolution of congress, approved the fourteenth of June, one thousand eight hundred and thirty-six, which shall correspond with the standards furnished for this State by the secretary of the treasury of the United States, in pursuance of the said resolution, namely: a yard measure made of substantial wood, duly sealed, and marked and stamped with the letters N. C.; to be of suitable size, and placed in a secure wooden box, with such fixtures to the same, as the governor may deem necessary for its proper use and preservation; also the half-bushel, peck, gallon, half-gallon, quart, pint, half-pint, and gill measures, to be duly stamped with the letters N. C.

Governor to procure measures.—1838, c. 40, s. 1; 1842, c. 55, s. 1, 2, 3.

4. The weights and measures, stamps and brands, thus provided, shall be kept at the court house 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 a majority may 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, conditioned for the safe-keeping of the weights and measures, stamps and brands aforesaid, and for the faithful performance of the duties of his office.

Standard keeper appointed. His oath and bond.—R. S. c. 120, s. 3.

5. Every person using weights or measures, shall bring all

Weights and measures to be

tried by standard keeper, once in two years; and certificate given.

Penalty for not having them examined.—R. S. c. 120, s. 4.

For selling or buying by, when not branded or stamped.—R. S. c. 120, s. 5.

Acre of land, of what measure to be.—R. S. c. 120, s. 6.

his weights and measures and steelyards to the standard keeper 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, at least once in every two years thereafter, shall cause their weights, measures, and steelyards to be reëxamined and adjusted by the standard keeper of the county, in which such weights and measures are used; and the standard keeper, when practicable, shall 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, who shall neglect to comply with the requisites of this section, shall forfeit fifty dollars, to be recovered, at the instance of the standard keeper; one half to his use, and the other half to the use of the county wherein the offence is committed.

6. 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 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, he shall forfeit and pay for each offence forty dollars, to the person suing therefor.

7. The measure of an acre of land shall be equal to a rectangle of sixteen poles or perches in length and ten in breadth, and shall contain one hundred and sixty square perches or poles, or four thousand eight hundred and forty square yards; six hundred and forty such acres being contained in a square mile.

## CHAPTER 118.

### WIDOWS.

#### SECTION

1. Widows of intestates, and widows dissenting from husband's will, may take dower. Fraudulent conveyance not to defeat dower. To include dwelling-house, unless, &c.
2. Proceedings to obtain dower. When lands lie in several counties.
3. Jury not bound to assign on each tract.
4. Proceedings to be summary.
5. How to allot in case of dissent.
6. Allowed of rights of redemption, trusts, &c.

#### SECTION

7. How obtained of lands in this and other States.
8. Dower, and land in lien, not subject to husband's debts.
9. Widow entitled to emblements.
10. Sale of dower land, to convey her right only.
11. Wife eloping, &c., barred of dower.
12. Widow dissenting, to take as on intestacy. How personally allotted.
13. Not dissenting, to share intestate estate.



SECTION

- 14. Claiming under will, as to creditors considered a legatee.
- 15. Widows of intestates, leaving no kindred to have all the personalty. Proceedings to obtain it.
- 16. To give bond to refund, if kin appear, &c. Proviso for infants and others.
- 17. Widow of intestate may take charge, &c., of personalty till administration. Provided she applies for letters at first court.
- 18. Entitled to year's provision, and certain articles if on hand. May retain the articles.
- 19. Proceedings for year's provision.

SECTION

- 20. What decree on confirmation of report.
- 21. When petition is filed before administration, what to be allotted and how.
- 22. Property allotted, vested in widow for self and family.
- 23. Widow dissenting, entitled to year's provision. Within what time to petition. Specific articles delivered forthwith.
- 24. If estate be levied on, entitled to articles exempt from execution.
- 25. Widows detained of dower, entitled to damages.

1. 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 in person, or by attorney if an adult, and if an infant or insane by guardian, may signify her dissent thereto, before the county court of the county wherein she resides, in open court when the will is propounded, or within six months after the probate thereof; and in such case she shall be entitled to dower in the following manner, namely: one third part of all the lands, tenements, and hereditaments of which her husband died seized or possessed, or which he had fraudulently conveyed to his children, or otherwise, with intent to defeat her of her dower; in which third part shall be comprehended the dwelling-house in which her husband shall have been accustomed to dwell most generally next before his death, and commonly called the mansion-house, together with the offices, outhouses, buildings, and other improvements thereunto belonging or appertaining. *Provided always*, that, in case it should appear to the court that the whole of said houses cannot be applied to the use of the wife, without manifest injustice to the children or others, the widow shall be entitled to such part or portion of the houses as they shall conceive will be sufficient to afford her a decent residence, due regard being had to her rank and her past manner of life.

Widows of intestates, and widows dissenting from husband's will, may take dower.

Fraudulent conveyance not to defeat dower.

Dower to include dwelling-house, unless, &c.—R. S. c. 121, s. 1.—1848, c. 101, s. 1, 2.

2. Any widow having claim to dower may file her petition in the county or superior 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 she claims dower, and praying that her dower may be allotted to her; whereupon the court shall issue a writ to the sheriff of the county, where the lands, tenements, and hereditaments of the deceased husband lie, commanding him to summon twelve freeholders, unconnected with the parties by consanguinity or affinity, and entirely disinter-

Proceedings to obtain dower.

ested, who, upon oath, (which the sheriff may administer,) shall allot and set off to the widow one third part of all the lands, tenements, and hereditaments in said county, of which her husband was, as aforesaid seized or possessed, or which had been by him fraudulently conveyed as aforesaid, and shall put her in possession of the same; and when the proceedings of the jury shall be confirmed by the court, the title in the lands allotted for dower shall be deemed to have been vested in her, during her natural life, from the time she was put in possession; and in case such lands, tenements, and hereditaments lie in several counties, the court shall issue a writ to the sheriff of the county wherein the petition is filed; and the sheriff may summon a jury from any or all the counties in which the lands may be situate, who shall allot her dower of all the lands.

When lands lie in several counties.—R. S. c. 121, s. 2.

Jury not bound to assign dower on each tract.—R. S. c. 121, s. 3.

Proceedings to be summary.—R. S. c. 121, s. 4.

Jury how to allot in case of dissent.—R. S. c. 121, s. 5.

Allowed in rights of redemption, trusts, &c.—R. S. c. 121, s. 6.

How obtained of lands in this and other States.—R. S. c. 121, s. 7.

Dower, and land in lieu, not subject to debts.—R. S. c. 121, s. 8.

3. The jury shall not be restricted to assign or lay off dower in every separate tract of land, but may allot the same in one body or several, on one or more tracts, having due regard to the interest of the heirs and the right of the widow.

4. The proceedings for dower shall be in a summary manner; and the court shall, at the first term when the petition is filed, hear and determine as shall seem just and right. *Provided always*, that the heirs or devisees shall have ten days' previous notice, and be served with a copy of the petition.

5. When the widow shall have dissented from her husband's will, it shall be the duty of the jury, and they shall be so directed, to assign and set off her dower in such manner as will derange, in as small a degree as practicable, the devises of the will.

6. When a man shall die seized of a legal right of redemption, or 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 in legal estates of inheritance.

7. Whenever a widow shall be entitled to dower in lands in this State and also in another State, and she cannot without suit obtain assignment of her dower, for want of the consent of the terre-tenants, or other cause, if her 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 lands lie, and in this last case, the most valuable part of his lands shall lie in this State; then such widow may proceed in obtaining her dower in all the lands of her deceased husband, lying in this 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 tenants in common, when such lands lie in this and other States as before described.

8. The dower of a widow, 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.

9. The crop at her death on the land held by a widow in dower, shall belong to her.

To have em-  
blements.—R.  
S. c. 121.  
Sale of dower  
land to convey  
her right only.  
—R. S. c. 121,  
s. 10.

10. No alienation by a widow, with or without covenants of warranty, of the lands held 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.

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 his lands, unless he shall have willingly become reconciled to her and suffered her to dwell with him: in which case she shall be restored to her claim.

Wife eloping  
with adulterer,  
barred of  
dower.—R. S.  
c. 121, s. 11.

12. When a widow shall dissent from her husband's will, she shall take as fully, and such part of his personal estate, as she would take in case of his intestacy, except that she shall not be entitled to more than one third; and the share of a widow, dissenting as aforesaid, shall be allotted to her in such manner, as to create as little derangement of the provisions of the will as practicable.

Widow dis-  
senting, to take  
as on intestacy.  
How allotted.  
—R. S. c. 121,  
s. 12, 13.

13. Whenever there shall be any personal estate, undisposed of by the testator, the widow, if she may not have dissented from the will, shall be entitled to such part of the same, as if her husband had died altogether intestate.

Not dissenting,  
to share intes-  
tate estate.—R.  
S. c. 121, s. 12.

14. The widow, claiming under her husband's will, shall in relation to creditors be considered as a legatee, and be chargeable for the whole amount of her husband's estate that may come to her, either as legatee, or in the manner by this chapter prescribed; and shall be bound to refund to the executors or administrators her ratable part of such debts or demands, as may be afterwards sued for and recovered, or otherwise duly made appear against the estate of her husband, in the same manner as other legatees, and by the same process.

Claiming under  
will, as to cred-  
itors, consid-  
ered a legatee.  
—R. S. c. 121,  
s. 14.

15. If any person 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 or the will proved, file her petition in the court of equity of the county, in which administration was granted, or the will proved, against the administrator or executor, stating the facts of the case, and that there are no persons of kindred, to her knowledge, and praying that the surplus of the estate may be adjudged to her; which petition shall be sworn to by the widow, and the same proceedings thereupon had, as in other cases of petition. The court shall order notice of the filing of the petition, and the substance thereof, to be published in some newspaper printed at Raleigh, for at least four months; and if, at the next term of the court, no claimant shall appear, a jury shall inquire whether there be any known kindred of the intestate; and if they shall find that there was not any kindred of the intestate, living at his decease, the court shall

Widows of in-  
testates, leav-  
ing no kindred,  
to have all the  
personalty.

Proceedings to  
obtain it.—R.  
S. c. 121, s. 15.

adjudge and decree that the administrator or executor account with the widow for the whole surplus personal estate. *Provided always*, that, at any time pending said petition, any person claiming to be of kin to the intestate, may apply to the court by petition, to be made defendant to the widow's petition, and to contest the facts stated therein.

To give bond to refund, if kin appear in seven years.

16. If the court shall adjudge the surplus to be paid, the widow, in addition to the refunding bond required of distributees, shall enter into bond in double the sum recovered, with two good sureties, conditioned that she will refund to the next of kin of her husband, the said surplus, if they make claim thereof, within seven years after such decree. *Provided, nevertheless*, that such next of kin as may be infants, or *non compos mentis*, at the date of the decree, may prosecute their claim, notwithstanding the said seven years may have expired, if they shall do so within three years after their disability shall be removed; and that such as be resident at the date of the decree out of the State, not being at that time infants or *non compos mentis*, may, in the same manner, prosecute their claim within ten years after the date of the decree.

Proviso for infants and others.—R. S. c. 121, s. 16.

Widow of intestate may take charge, &c., of personalty till administration.

17. Where a man shall die intestate, leaving a widow, she may take into her charge and possession the whole of the personal estate of such intestate, and 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 may be granted on the estate of her deceased husband, when her right to the possession, by virtue of this section, shall cease. *Provided always*, that she shall 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.

Provided she applies for letters at first court.—R. S. c. 121, s. 17.

Entitled to year's prov'n, and certain articles if on hand. May retain articles.—R. S. c. 121, s. 18, 21.

18. Such widow, besides her distributive share, shall be entitled to a support for one year, for herself and her family, out of her husband's personal estate, to be allotted to her out of the crop, stock, and provisions, if there be as much on hand; and if there be not enough for that purpose, then the value of the deficiency shall be assessed in money, and paid to her by the proper representative of the estate. She shall also be entitled (if such articles be on hand) to one bed and its necessary furniture, one loom, one wheel, and one pair of cards, which she shall be allowed to retain, immediately after the death of her husband.

Proceedings to obtain year's provision.—R. S. c. 121, s. 18.

19. For such support the widow shall file her petition in the county court of the county where letters of administration or letters testamentary are issuable, at or before the first term when the same are granted; and thereupon the court shall appoint a justice of the peace and three freeholders, unconnected with her, (who shall be duly sworn by some justice of the peace) for the purpose of allotting the year's support, and assessing the deficiency, if there be any. And the said justice and a majority of the freeholders shall meet on the premises,

and on view shall make the assessment, and make due return thereof in writing to the court.

20. Upon return of the report, if the same be not excepted by the administrator, or next of kin, or any legatee, or if excepted to, and the exception be disposed of, the court shall make such decree therein as may seem to be right and proper; and the value assessed for the deficiency and the costs of the petition shall be paid by his personal representative in preference of the debts of the intestate, if there be assets; and if there be none, then the cost shall be paid by the petitioner.

What decree on confirmation of report.—R. S. c. 121, s. 18, 19, 23.

21. If the petition be filed before the term when such letters are granted, and there be no crop, stock, or provisions on hand, or not sufficient, the commissioners, besides the aforesaid specific articles, may allot to the widow any article of personal property of the intestate, (slaves excepted;) and also any debt or debts known to be due such intestate: and such allotment shall vest in the widow the right to collect by warrant or otherwise, in an action of debt in her own name, the debts allotted to her.

When petition is filed before adm'n, what to be allotted and how.—R. S. c. 121, s. 19.

22. The allotment of any articles in kind, or of the crop, stock, and provisions, or of any articles of personal property in lieu thereof, as above provided, shall vest in the widow an absolute right therein to her own use, and the use of her children, but shall nevertheless be returned in the inventory of the estate, by the representative, therein noticing that the same has been allowed the widow for her support.

Property allotted, vested in widow for self and family.—R. S. c. 121, s. 20.

23. Any widow, dissenting from the will of her husband within the time prescribed, may, within six months after the probate, obtain a year's provision for herself and family, and such other articles as are allowed widows of intestates, in the same manner as if her husband had died intestate; and it shall be the duty of the executor, or the administrator with the will annexed, to deliver to her the articles of furniture allowed to widows of intestates, (if such articles be on hand) immediately after she has declared her dissent.

Widow dissenting, entitled to year's provision. In what time to petition. Specific articles delivered forthwith.—R. S. c. 121, s. 22.

24. If by reason of any levy upon the estate of the deceased, or other cause, the widow cannot obtain a year's provision otherwise, she shall be entitled to the articles exempted from sale under execution, by sections eight and nine of the chapter entitled "Executions," upon complying with the requirements of said sections.

If estate be levied on, entitled to articles exempt from execution.—1848, c. 38, s. 4.

25. Every widow having a right to dower, shall be entitled to damages during the time the dower is detained from her, in the like manner as such damages have heretofore been allowed to her in the State.

Widows detained of dower, entitled to damages.

SECT. 1. *Dower: from what estates*, 4 Ire. Eq. 264, 6 Ib. 329, 10 Ire. 123, 4 D. & B. 442, 3 Dev. 3, 3 Hawks, 125, 1 Dev. Eq. 195. *Estate of doweress*, 4 D. & B. 179, 7 Ire. Eq. 197, 1 Dev. Eq. 77, 3 Ire. 61. *Dower on dissent from will*, Bus. 177, 2 Dev. Eq. 373. *Damages for detention of*, 1 D. & B. 213, 2 D. & B. Eq. 325, 2 Mur. 79, 1 Ib. 128. *Conveyances in fraud of*, 1 D. & B. Eq. 22, 1 D. & B. 327, 4 Ire. 105, Bus. 475.

SECT. 2. *Pleading*, 8 Ire. 247, 4 D. & B. 501, 4 Ire. 105.

SECT. 11. 13 Ire. 361.

SECT. 12. Bus. Eq. 77.

SECT. 13. 5 Ire. 136.

SECT. 19. *Recoverable at law only*, 8 Ire. Eq. 201. *Not barred by adultery*, 12 Ire. 170. *Death of widow before allotment*, 5 Ire. 184, lb. 418. *Stock*, 2 Hay. 149. *Money on hand*, 11 Ire. 165. *Petition to be filed, when*, 4 Dev. 119.

## CHAPTER 119.

### WILLS AND TESTAMENTS.

#### SECTION

1. Wills of real and personal estate, how executed.
2. Ages of testators and executors.
3. Wills of married women, how and where proved.
4. Appointments by will, executed as wills. Valid, though other required forms be not observed.
5. All property, rights, and interests may be disposed of by will.
6. Wills to speak at the death of testator.
7. Lapsed and void devises to pass under residuary clause.
8. A general gift to include estates which testator has power to appoint.
9. Executor competent witness.
10. Devises, &c., to witnesses, void.
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12. How proved. Next of kin to be cited.
13. County courts shall have jurisdiction of probate of wills.
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17. Wills of citizens of another country or State, allowed and recorded in this, —how. Not to pass lands in this State, unless executed, &c.
18. Wills of citizens of this State proved

#### SECTION

- elsewhere, how certified, proved, and recorded here.
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  22. Written wills, how revoked.
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  26. Devises construed to be in fee, unless the contrary appear.
  27. What slaves pass under "increase."
  28. Gifts to issue dying and leaving issue living at testator's death, to vest in living issue.
  29. Child, born after parent's will executed, entitled as on intestacy.
  30. How to proceed in such case.
  31. His share of real estate to be allotted of undevisee lands, if any. Otherwise of lands devisee.
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  33. Intestate estate, applied in exoneration of all devisee or bequeathed.
  34. Such child to be seized in fee. Devises and legatees entitled to contribution from each other.
  35. After decree, petitioner deemed legatee and devisee.
  36. If such children do not proceed in two years, executor to proceed: — how.
  37. Rights of after-born children, lien on whole estate.

Wills of real and personal estate, how executed.—R. S. c. 122, s. 1.—1840, c. 62; 1846, c. 54.

1. No last will or testament shall be good or sufficient, in law or equity, to convey or give any estate, real or personal, unless such last will shall have been written in the testator's lifetime, and signed by him, or by some other person in his presence and by his direction, and subscribed in his pres-

ence by two witnesses at least, no one of whom shall be interested in the devise or bequest of the said estate. Or, unless such last will and testament be found among the valuable papers and 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, with his name subscribed thereto, or inserted in some part of such will; and if such handwriting shall be proved, by three credible witnesses, who verily believe such will and every part thereof is in the handwriting of the person whose will it appears to be, then such will shall be sufficient to give and convey real and personal estate.

2. No person shall be capable of disposing of real or personal estate by will, nor be allowed to qualify as executor of a will, until he shall have attained the age of twenty-one years. —

Ages of testators and executors.—R. S. c. 122, s. 14.

3. When a married woman, under any will, deed, settlement, or articles, shall have power, by an instrument in nature of a will, to appoint or dispose of any property, real or personal, and she shall execute such instrument, the same may be admitted to probate in the court of pleas and quarter-sessions, or may be proved originally in a court of equity, upon a proper bill for that purpose; and either mode of probate shall be conclusive as to the due execution thereof.

Wills of married women, how and where proved.—1844, c. 88, s. 8.

4. No appointment, made by will in exercise of any power, shall be valid, unless the same be executed in the manner by law required, for the execution of wills; and every will, executed in such manner, shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required, that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.

Appointments by will, executed like wills. Valid, though other required forms be not observed.—1844, c. 88, s. 9.

5. Any testator, by his will duly executed, may devise, bequeath, or dispose of all real and personal estate, which he shall be entitled to, either at law or in equity, at the time of his death, and which, if not so devised, bequeathed, or disposed of, would descend or devolve upon his heirs at law, or upon his executor or administrator; and the power hereby given, shall extend to all contingent, executory, or other future interest in any real or personal estate, whether the testator may or may not be the person or one of the persons, in whom the same may become vested, or whether he may be entitled thereto under the instrument by which the same was created, or under any disposition thereof by deed or will; and also to all rights of entry for conditions broken, and other rights of entry; and also to such of the same estates, interests, and rights respectively, and other real and personal estate, as the testator may be entitled to, at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will.

All property, rights, and interests may be disposed of by will.—1844, c. 88, s. 1.

Wills to speak as at the death of testator.—1844, c. 88, s. 3.

6. Every will shall be construed, with reference to the real and personal estate comprised therein, to speak and take effect, as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

Lapsed and void devises to pass under residuary clause.—1844, c. 88, s. 4.

7. Unless a contrary intention shall appear by the will, such real estate or interest therein, as shall be comprised, or intended to be comprised, in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will.

A general gift to include estates which testator has power to appoint.—1844, c. 88, s. 5.

8. A general devise of the real estate of the testator, or of his real estate in any place or in the occupation of any person mentioned in the will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend, (as the case may be,) which he may have power to appoint in any manner he may think proper; and shall operate as an execution of such power, unless a contrary intention shall appear by the will: and in like manner a bequest of the personal estate of the testator, or any bequest of personal property, described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend, (as the case may be,) which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

Executor, competent witness.

9. No person, on account of his being an executor of a will, shall be incompetent to be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

Devises and bequests to witnesses, void.

10. If any person shall attest the execution of any will, to whom or to whose wife or husband any beneficial devise, estate, interest, legacy, or appointment of or affecting any real or personal estate shall be thereby given or made, such devise, estate, interest, legacy, or appointment, shall, so far only as concerns such person attesting the execution of such will or the wife or husband of such person, or any person claiming under such person, or wife or husband, be void; and such person so attesting, shall be admitted as a witness to prove the execution of such will, or the validity or invalidity thereof.

What nuncupative will good, where the estate exceeds two hundred dollars.—R. S. c. 122, s. 2.

11. No nuncupative will in anywise 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.



12. 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.

How proved.  
Next of kin to be cited.—R. S. c. 122, s. 3.

13. The courts of pleas and quarter-sessions shall, within their respective counties, take the probate of wills, and order the same to be recorded in proper books, kept for that purpose; and shall make orders for issuing letters testamentary, and letters of administration to the persons entitled to the same, which shall be signed and issued by the clerks of the said courts.

Co. courts to have jurisdiction of probate of wills.—R. S. c. 122, s. 4.

14. The court of pleas and quarter-sessions, upon application, shall by summons, compel any person in the State, having in his possession the will or testament of any deceased person, to exhibit the same to the court for probate; and who-ever, being duly summoned, shall, in contempt of the court, refuse to produce such will in his possession, or, (the same having been in his possession,) shall refuse to inform the court on oath, where such will then is, or in what manner he hath disposed of the same, shall, by order of court, be committed to the common prison of the county, there to remain without bail, until such will shall be produced, and due submission made to the court for the contempt.

Production of wills compelled by court.

Persons refusing committed to jail.—R. S. c. 122, s. 4.

15. 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 had fixed places of residence in more than one county, in any of said counties; and in case of a written will, with witnesses thereto, the same shall be proved by at least two 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 the same. And where the validity of any last will or testament, whether written or nuncupative, shall be contested, the same shall be always tried by a jury, on an issue made up, under the direction of the court, for that purpose.

Wills proved in county where testator resided.

Manner of proving. Contested wills tried by jury.—R. S. c. 122, s. 6.

16. Whenever it shall be suggested to the court of pleas and quarter-sessions, that a will has been made without the State, disposing of or charging lands or other property situate within the same, the court may order a commission to issue to such person as it may select, to be returned at any subsequent term thereof, authorizing the commissioner to take the examination of such witnesses, as may be produced, touching the execution thereof; and upon return of such testimony, the court may 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 witnesses in open court; and if duly proved, the same shall be recorded.

Made in another State disposing of property in this, how proved.—R. S. c. 122, s. 7.

17. When any will, made by a citizen of any other State or country, shall be duly proved and allowed in such State or

Wills of citizens of another coun-

try or State, allowed and recorded in this, how.—1844, c. 88, s. 6.

Not to pass lands in this State, unless executed according to its laws.

Wills of citizens of this State proved elsewhere, how certified, proved, and recorded here.—1844, c. 88, s. 7.

Wills filed in clerk's office.—R. S. c. 122, s. 8.

No will effectual, without probate. Probate conclusive, when.—R. S. c. 122, s. 9.

Copies of, evidence.—R. S. c. 122, s. 9.

Written wills, how revoked.—R. S. c. 122, s. 12, 13.—1840, c. 62.

country, according to the laws thereof, a copy or exemplification of such will duly certified and authenticated, when produced and exhibited before the court of pleas and quarter-sessions of any county, wherein may be any property of the deceased, shall be, by such court, allowed, filed, and recorded; and letters testamentary or of administration, as the case may require, shall be issued, and other proceedings thereupon had, and the like effect given to the said will, as if the original, instead of the copy, had been produced and allowed in the said court. *Provided*, that when such will shall contain any devise of, charge upon, or power concerning, any real estate situate in this State, such devise, charge, or power shall not have any validity or operation, unless the will shall have been executed according to the law of this State: and the court, in which the same may be exhibited, shall have power to issue commissions for taking proofs touching the execution thereof, to make up an issue touching such devise, charge, or power, to examine witnesses, and to take all other proceedings thereupon, according to the law and course of the court in like cases.

18. When a will, made by any citizen of this State, shall be proved and allowed in some other State or country, and the original will cannot be removed from its place of legal deposit in such other State or country, into this State for probate, the court of pleas and quarter-sessions of the county of this State, having cognizance thereof, upon a duly certified copy or exemplification of such will being propounded for probate, may take all and every order and proceeding for the proving, allowing, and recording the said copy, as by law might be had or taken upon the production of the original; and the copy, being in such court duly proved, allowed, and recorded, according to the course of the court, shall have the same legal effect and operation, to all intents and purposes, as if the original had been produced, proved, allowed, and recorded.

19. All original wills shall remain in the clerk's office, among the records of the court, where the same shall be proved, and to the said wills any person may have access, as to the other records.

20. No will shall be effectual to pass real or personal estate, unless it shall have been duly proved and allowed in the probate court; and the probate of a will devising real estate shall be conclusive as to the execution thereof, against the heirs and devisees of the testator, whenever the probate thereof, under the like circumstances, would be conclusive against the next of kin and legatees of the testator.

21. Copies of wills, duly certified by the proper officer, may be given in evidence in any proceeding wherein the contents of the will may be competent evidence.

22. No will or testament in writing, 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 testator himself, or in his presence and by his direction and consent:

but all wills or testaments shall remain and continue in force, until the same be burnt, cancelled, torn, or obliterated by the testator, 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 testator, 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 testator, all of which shall be in the handwriting of the testator, 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 testator, by three witnesses at least.

23. Every will made by a man or woman, shall be revoked by his or her marriage, except a will made in exercise of a power of appointment, when the real or personal estate, thereby appointed, would not in default of such appointment, pass to his or her heirs, executor or administrator, or the person entitled as his or her next of kin, under the statute of distributions.

Revoked by marriage.—1844, c. 88, s. 10.

24. No will shall be revoked by any presumption of an intention, on the ground of an alteration in circumstances.

Not by altered circumstances.—1844, c. 88.

25. No conveyance or other act made or done subsequently to the execution of a will of, or relating to any real or personal estate therein comprised, except an act by which such will shall be duly revoked, shall prevent the operation of the will with respect to any estate or interest in such real or personal estate as the testator shall have power to dispose of, by will, at the time of his death.

Nor by conveyances after will executed.—1844, c. 88, s. 2.

26. When real estate shall be devised to any person, the same shall be held and construed to be a devise in fee-simple, unless such devise shall, in plain and express words, show, or it shall be plainly intended by the will, or some part thereof, that the testator intended to convey an estate of less dignity.

Devises construed in fee, unless contrary appear.—R. S. c. 122, s. 10.

27. A bequest of a slave with her increase shall be construed to include all her children born before the testator's death, unless a contrary intention appear by the will.

What slaves pass under "increase."

28. When any person, being a child or other issue of the testator, to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator, leaving issue, and any such issue of such person shall be living at the death of the testator, such devise or bequest shall not lapse, but shall take effect and vest a title to such estate in the issue surviving, if there be any, in the same manner, proportions, and estates, as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

Gifts to issue, dying and leaving issue living at testator's death, to vest in such issue.—R. S. c. 122, s. 16.

Child, born after parent's will executed, &c.—R. S. c. 122, s. 16.

29. Children, born after the making of their parent's will, and whose parent shall die without making any provision for them, shall be entitled to such share and portion of said parent's estate, as if he or she had died intestate.

How to proceed in such case.—R. S. c. 122, s. 16, 17.

30. Within two years after probate of the will, such child may prefer his bill in the court of equity, or his petition in the county or superior court, against the personal representatives and devisees of the testator, and his heirs also, if any part of the real estate shall be undevised, setting forth the facts which entitle him to relief; and the court shall order all proper accounts to be taken, and when necessary, shall appoint commissioners as in proceedings for partition of lands, to allot and set off the share of such child in the real estate of the testator.

His share of real estate to be allotted of undeviseed lands, if any. Otherwise, of lands devised.—R. S. c. 122, s. 18.

31. The share of the child in such real estate, shall be allotted to him out of any lands not devised, if there be enough for that purpose; and if there be none undeviseed, or not enough, then the whole share, or the deficiency, as the case may be, shall be made up of the lands devised; and so much thereof shall be taken from the several devisees according to their respective values, as near as may be convenient, as will make the proper share of such child.

Of personalty, allotted of intestate property, if any. Otherwise, of property bequeathed.—R. S. c. 122, s. 17.

32. And the share of such child in the personal estate, shall be paid and delivered to him out of any such estate not bequeathed, if there be enough for that purpose; and if there be none undisposed of, or not enough, then the whole share, or the deficiency, as the case may be, shall be made up from the estate bequeathed; and so much shall be taken from the several legacies, according to their respective values, as will make the proper share of such child.

Intestate estate, applied in exoneration of all devised or bequeathed.—R. S. c. 122, s. 17, 18.

33. *Provided*, that, if after satisfaction of the child's share of real estate out of undeviseed lands, there shall be a surplus of such lands, and there be no personal estate undisposed of, or not enough to make up his share of such estate, then such surplus of land, or as much thereof as the court shall decree, shall be sold and the proceeds applied to the making up his share of such personal estate: *And provided further*, that, if after satisfaction of the child's share of personal estate, out of property undisposed of by the will, there shall be a surplus of such property, then such surplus shall be applied, as far as it will go, in exoneration of the lands both devised and descended, and the same shall be set apart and secured as real estate to such child, if an infant, *non compos*, or *feme covert*.

Such child to be seized in fee.

34. Upon the allotment to such child, of any real estate in the manner aforesaid, he shall thenceforth be seized thereof in fee-simple; and the court shall give judgment severally, in favor of such of the devisees and legatees, of whose lands and legacies more has been taken away than in proportion to the respective values of said lands and legacies, against such of said devisees and legatees, of whose lands and legacies 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

Devisees and legatees entitled to contribution from each other.—R. S. c. 122, s. 19, 20.

equitable, and in the ratio of the values of the several devises and legacies; and the costs attending the petition and proceedings therein, shall be within the discretion of the court.

35. The petitioner, after such decree, shall be considered and deemed in law a legatee and devisee as to his portion, shall 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, *bonâ 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 chapter had never been passed, and the petitioner shall take his portion as aforesaid, completely subject thereto. *And provided also*, that any suit instituted in law or equity against the devisees or legatees, previously to such petition, 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, during the pendency of such suit, the petitioner, by his next friend or guardian, may become a defendant in the suit.

After decree, petitioner deemed legatee and devisee.—R. S. c. 122, s. 21.

36. In case no petition shall be filed within two years as herein prescribed, the executor or administrator with the will annexed, before he shall pay or deliver the legacies in the will given, or before paying to the next of kin of the testator any residue undisposed of by the will, shall call upon the legatees, devisees, heirs, and next of kin, and the said after-born child, by bill in equity or petition in the superior or county court, to litigate their respective claims, and shall pray the court to ascertain the share to which said child shall be entitled, and to apportion the shares and sums, which the legatees, devisees, heirs, or next of kin, shall severally contribute toward the share to be allotted to said child; and the court shall adjudge and decree accordingly.

If such child do not proceed in two years, executor to proceed; how.—R. S. c. 122, s. 22.

37. The rights of such after-born child, shall be a lien on every part of the parent's estate, until his several share thereof shall be set apart.

Rights of, lien on whole estate.—R. S. c. 122, s. 24.

SECT. 1. *Must be proved in court of probate*, 2 D. & B. Eq. 463, 6 Ire. Eq. 248. *Execution: witness must sign in presence of testator*, 1 Jones, 321, 10 Ire. 219, 11 lb. 632, 1 lb. 561, 1 Mur. 176; *witnesses who*, Bus. 454, 3 D. & B. 40, 2 Hawks, 368; *attestation: mark*, 13 Ire. 259. *Publication*, 1 Mur. 258; *republication*, 9 Ire. 288, 12 lb. 355; *by codicil*, 6 Ire. Eq. 55. *Holograph*, 1 Jones, 150, 4 Ire. 335, 1 Dev. 296, 1 Hawks, 384. *Effect of probate*, 6 Ire. Eq. 248.

SECT. 3. 9 Ire. 170, 1 lb. 514, 3 Ire. Eq. 242.

SECT. 6. *Prospective only*, 12 Ire. 21; *construction*, Bus. Eq. 246.

SECT. 11. 9 Ire. 156, 2 Mur. 350.

SECT. 15. *Domicil*, 9 Ire. 99, 5 Ire. Eq. 190, 1 Ire. 345. *Trial of issue, &c.*, 11 Ire. 49, Bus. 454, 5 Ire. 97, 4 lb. 335; *after appeal*, 2 Dev. 393. *Evidence: declarations*, 6 Ire. 212, lb. 289; *handwriting of witnesses*, 2 D. & B. 311. *Reprobated when*, 9 Ire. 256, lb. 109, 3 D. & B. 47, 3 Ire. 82, 2 Hawks, 24, 1 D. & B. 482, 4 Dev. 430. *Practice*, 12 Ire. 355, 1 D. & B. 186, 1 Dev. 459, 1 Hawks, 58, 2 Car. L. R. 634.

SECT. 17. Bus. 277, lb. 184, 5 Ire. 267, lb. 421, 2 D. & B. 125, 2 Hawks, 237.

- SECT. 20. *Certificate of probate*, 10 Ire. 186, 2 Dev. 527, 1 Jones, 111.  
 SECT. 22. *Revocation: burning*, 1 Jones, 197, 10 Ire. 139; *mutilation*, 3 Ire. 303; *conditional cancellation*, 2 D. & B. 311.  
 SECT. 23. *Bus.* 17.  
 SECT. 26. 5 Ire. 430.  
 SECT. 27. 3 Ire. Eq. 362, 4 Ire. 287, Ib. 255, 3 Ib. 155, 2 D. & B. Eq. 353, 4 D. & B. 527; *went into effect, when*, 5 Ire. Eq. 111.  
 SECT. 28. *Uncle and niece*, 2 Ire. Eq. 330. *Child dead at making of will*, 4 Ire. Eq. 320.  
 SECT. 29, 1 Jones, Eq. 130.

## CHAPTER 120.

## WRECKS.

## SECTION

1. Wreck districts in certain counties, how laid off. County of Hyde may lay off districts for itself.
2. Commissioners of wrecks appointed by county court. Their bond and oath.
3. To reside in the district — not to be pilot; or officer under United States.
4. Their duty when ships in danger. Salvors to be paid. Amount ascertained by referees. if parties disagree. Superior court may examine award.
5. Commissioners to take charge of, sell, &c., wrecked property. To render account of sales. Compensation.
6. Sale advertised; how long and where. How to proceed when property is damaging.
7. Commissioner not to take salvage.

## SECTION

- No person to interfere with his rights.
8. Proceedings when there is a wreck and no person claiming. Goods sold and proceeds sent to county court. If not claimed in one year, to belong to public treasury.
9. Finders of wrecked property to notify commissioner. Penalty for concealing it.
10. Finders, concealing stranded goods, deemed guilty of larceny.
11. Embezzlers, or receivers of such goods, punished as for larceny, &c.
12. Penalty on commissioners for abuse of trust.
13. On persons refusing to aid in saving vessels, &c. Summons proved by him.
14. Finders of wrecked property at sea, to deliver it to commissioner.

Wreck districts in certain counties, how laid off. — R. S. c. 123, s. 1.— 1844, c. 58, s. 1, 7.

1. THE counties of Currituck, Carteret, Onslow, New Hanover, and Brunswick, are hereby divided into the following wreck districts, namely: 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 five districts; the first from the Hyde county line to Ocracoke inlet; the second from Ocracoke inlet to a due south-east line drawn from Harbor island to the sea; the third from said line to a due south-east line drawn from Shell point, on Harker's island, to the sea; the fourth from the last-mentioned line to Old Topsail inlet; the fifth from Old Topsail inlet to the Onslow county line: the county of Onslow into two districts; the first from Bogue inlet to New River inlet; the second from New River inlet to the New Hanover line:

the county of New Hanover into two districts; the first from the Onslow county line to Deep inlet; the second from Deep inlet to the Brunswick county line: the county of Brunswick 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 court of Hyde county (a majority of the justices being present) shall have power, at the first term of said court held after the first day of January in every year, to lay off their county into such wreck districts as to them may seem right and proper.

2. The county courts, in which said wreck districts are located, shall 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 the faithful performance of his duties as commissioner of wrecks; which 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 oaths prescribed for the qualification of public officers, and the oath of office.

3. Each commissioner shall 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; and no person, who shall hold any office or deputation under the United States, or who is a pilot, shall act as a commissioner of wrecks.

4. The commissioners, on the earliest intelligence given, that any ship or other vessel is stranded, or in danger of being stranded, shall command any sheriff or constable nearest the coast where such ship or other vessel shall be, to summon as many men as shall be thought necessary to the assistance of such ship or vessel, who shall be under the direction of the master or owner: and all persons, except commissioners, 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 to the persons employed, the commander of the vessel saved, or the owner of the goods, or merchant interested, or his agent, shall choose one indifferent person, and also the salvors shall nominate one other, who shall adjust and ascertain the same; and if the persons thus chosen cannot agree, they shall choose

County of Hyde may lay off districts for itself.—R. S. c. 123, s. 1.—1844, c. 58, s. 1, 17.

Commissioners of wrecks appointed by county court. Their bond and oath.—R. S. c. 123, s. 2.

To reside in district—not to be pilot, or officer under U. S.—R. S. c. 123, s. 2, 3.—1844, c. 58, s. 2.

Their duty when vessels in danger.

Salvors to be paid.

Sum ascertained, by referees, if parties disagree.

Superior court may examine award.—R. S. c. 123, s. 4.—1844, c. 58, s. 3.

Commissioners to take charge of, sell, &c., wrecked property.

To render account of sales.

Compensation.—R. S. c. 123, s. 5.—1844, c. 58, s. 4.

Sale advertised; how long and where.—R. S. c. 123, s. 6.—1844, c. 58, s. 6.

How to proceed when property is damaging.—1854, c.

Commissioner not to take salvage. No person to interfere with

one other indifferent person as umpire to decide between them; 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 the court may cause the same to be reëxamined, and pronounce such judgment thereon as they may deem just: and in the mean time, the commissioner of wrecks shall retain in his hands, in order to satisfy said judgment, the amount awarded by the referees or umpire.

5. The commissioner shall be the only proper person to take charge of, advertise, or sell, any vessel, cargo, or other wrecked property that may be stranded or cast on shore in his district. *Provided*, that the captain, owner, merchant, or consignee, or their agent may, during the absence of the commissioner, or if he refuse to act, take charge of, or sell or remove such vessel, cargo, or other wrecked property; and each commissioner shall provide himself with books, 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 all sales which shall be made; and every commissioner shall receive for selling any wrecked property, five per cent. on the amount of sales: and in case of the removal of any wrecked property by the owner, merchant, consignee, or his agent, from the custody of any commissioner, without a sale, then such commissioner shall receive two and a half per cent. on the amount of the value of such property so removed; which amount shall be ascertained in the same manner as the amount of the reward to be paid to the salvors, as provided in the preceding section.

6. When any commissioner shall undertake to sell any wrecked or stranded property, he shall advertise the sale thereof, not less than twenty nor exceeding thirty days, at the court house door, and at other public places in three captain's districts 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 at one other public place of the town in the federal district of which his county forms a part. *Provided, however*, that the commissioners of the first and second wreck districts in the county of Currituck, may advertise in some newspaper published in Norfolk, Virginia, in cases where they are required to advertise in a newspaper. *Provided further*, that in case the property is in a damaged state, the commissioner may appoint two disinterested merchants, to survey the same, and upon their recommendation, may sell by advertising for ten days; and the commissioner shall pay the merchants so appointed a reasonable compensation, to be retained by him out of the proceeds of sale.

7. No commissioner shall, in any case, be entitled to salvage on property saved; and for the discharge of all the duties which may be imposed on him, he shall be entitled to receive



only the commissions allowed him by this chapter. And any person who shall interfere with the rights and privileges of any commissioner, shall be liable to him for such damages as he shall sustain, by reason of such interference. *Provided*, that the commissioner, when such person may have been employed in his absence, or in case of his refusal to act, shall tender to the person thus engaged, a reasonable compensation for the trouble and expense the person thus employed may have incurred.

8. If any vessel or other property be cast ashore, within the limits of any district, no person being 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 as hereinbefore directed; and after commissions and all reasonable charges are deducted, the residue of the money, with an account of the whole, he shall transmit to the office of the county court of the county in which such vessel may be stranded or goods saved, and the 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 associated with two justices, shall, by their warrant or order, receive the same, paying to the clerk of said court one per cent. for his trouble; and should no person claim the same within a year and a day from the date of the advertisement, then the clerk, holding such money, shall transmit the same, after deducting one per cent. for his trouble, to the treasurer of the State, for the use of the State.

9. When any person shall find any stranded property on or near the seashore, and no owner appears to claim the same, he shall, as soon as possible after saving it, give information to the nearest commissioner of wrecks, and to him 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 them, or convert the same to his own use, or fail, for ten days thereafter, to give information thereof to the nearest commissioner of wrecks for his county, he shall pay to the commissioner, discovering the same, five times the value of such property, to be recovered before any jurisdiction having cognizance thereof.

10. If any person shall find any stranded goods or property, on or near the seashore, and shall, secretly, or without notice of such finding given to the commissioner, take the same into his possession with the intent to defraud the owner or other person of the said property, or any interest therein; or if, having taken possession of such goods or property, without such intent, he shall afterwards, with such fraudulent intent conceal

his rights. — 1844, c. 58, s. 5.

When there is a wreck and no person claiming, what to be done.

Goods sold and proceeds sent to county court.

If not claimed in one year, to belong to public treasury. — R. S. c. 123, s. 7.

Finders of wrecked property, to notify commissioner.

Penalty for concealing it. — R. S. c. 123, s. 8.

Finders concealing stranded goods deemed guilty of larceny. — R. S. c. 123, s. 9.

the same, or fail to give notice to the commissioner, he shall be deemed to have stolen the same goods or other property; and the said goods and property shall be deemed and held, as to all persons and for all purposes, to have been stolen.

Embezzlers, or receivers of such goods, punished as for larceny, &c. — R. S. c. 123, s. 9.

11. If any person shall embezzle, steal, or receive, knowing the same to have been embezzled or stolen, any such goods or property, he shall forfeit five times the value of the same to the commissioner; and on conviction thereof shall suffer as if convicted of larceny.

Penalty on comm'rs for abuse of trust. — R. S. c. 123, s. 10.

12. If any commissioner, by fraud or wilful neglect, abuse the trust reposed in him, he shall forfeit and pay treble damages to the party aggrieved thereby, to be recovered by action on the case; and shall thereafter be incapable of acting as a commissioner.

On persons refusing to aid in saving vessels, &c. Summons proved by comm'r. — R. S. c. 123, s. 10.

13. If any sheriff, constable, or other person, summoned as hereinbefore provided, shall refuse or neglect to give the assistance required for the saving any vessel or her cargo, he shall forfeit and pay the sum of ten dollars, to the commissioner ordering such duty. And such commissioner, on trial for the recovery of the same, may, by his own oath, prove the summons of such person.

Finders of wrecked property at sea, to deliver it to comm'r. — R. S. c. 123, s. 11.

14. Whenever any property shall be found on board any vessel at sea, which has been wrecked, or has been abandoned by the crew, and the property is afterwards brought into the State, the person in whose possession the same may be, shall deliver it to the commissioner of wrecks of the district, into which said property may be brought, to be disposed of as stranded property.

SECT. 5. *Owner has right to take possession, 8 Ire. 100. Right of way to purchaser at wreck sale, 13 Ire. 394.*

## CHAPTER 121.

### CONCERNING THE REVISED CODE.

SECTION

1. Revised code, when to take effect.
2. Former acts on subjects embraced in revised code, repealed after January 1, 1856.
3. Repeal not to affect rights accrued, or suits commenced.
4. Effect on offences committed, and penalties incurred.
5. On suits and prosecutions commenced for offences.
6. Repealed acts not revived thereby.
7. Effect of repeal on persons holding offices.
8. What acts not repealed.

SECTION

9. Revised code, how published. Under superintendence of commissioners. Chapters alphabetically arranged. To contain acts passed at this session. Also federal constitution, State constitution, declaration of rights, Meeklenburg declaration of independence, laws of Congress for certifying records, and naturalizing foreigners.
10. Ten thousand copies to be published.
11. Superintendents to be paid.
12. Revised code to be evidence of the law.
13. Copies, how distributed.

1. ALL the provisions contained in the chapters revised and reported by the commissioners, and enacted by the present session of this General Assembly, and known as the "Revised Code," shall take effect and go into operation on the first day of January, in the year one thousand eight hundred and fifty-six, except only such parts thereof, as to which a different provision is expressly made therein, and the following named chapters, which shall take effect from and after thirty days after the rise of this session of the General Assembly, namely: the chapters entitled "Asylums," "Entries and Grants," "Literary Fund and Common Schools," "Public Debt," "Public Printing," "Revenue," "Salaries and Fees;" and the ninety-fourth section of the chapter entitled "Militia."

Revised code, when to take effect.

2. All acts and parts of acts passed before the present session of this General Assembly, the subjects whereof are revised and reënacted in the revised code, or which are repugnant to the provisions therein contained, are hereby declared to be repealed, and of no force and effect from and after the first day of January, in the year one thousand eight hundred and fifty-six, with the exceptions and limitations hereinafter mentioned.

Former acts on subjects embraced in revised code, repealed after Jan. 1, 1856.

3. The repeal of the acts mentioned in the preceding section shall not affect any act done, or any right accruing, or accrued, or established, or any suit or proceeding 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 code.

Repeal not to affect 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 code, such provisions may be extended and applied to any judgment to be pronounced after the repeal.

Effect on offences committed, and penalties incurred.

5. No suit or prosecution pending at the time of the 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 code.

On suits and prosecutions commenced for offences.

6. No act or law which has heretofore been repealed, shall be revived by the repeal contained in this chapter, of any of the acts hereinbefore mentioned.

Repealed acts not revived thereby.

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 code.

Effect of 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 incon-

What acts not repealed.

sistent 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 State, no act providing for the support of the poor in any county, no act relating to the boundary of the State and its several counties, no act ceding the lands of this State to the general government, and no act relative to the corporate powers of the trustees of the University, shall be construed to be repealed by the second section of this chapter.

Revised code, how published.

Under superintendence of commissioners.

Chapters alphabetically arranged.

9. The revised code shall not be published in the usual pamphlet form, (except those chapters hereinbefore directed to take effect thirty days after the rise of this session,) with the other acts of the present session, but shall be published in a volume, under the superintendence and direction of two commissioners to be appointed by the governor, who in case of a vacancy shall fill the same; the superintendents 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 the State, and shall take bond with good security for the faithful performance of the work of those who may undertake the same. The chapters shall be arranged in the publication in alphabetical order, (omitting the enacting title and clause to each act,) according to their titles, with marginal references to the decisions of the supreme court upon their subject-matter, and with a full index. They shall be preceded by the following title, preamble, and enacting clause: "An act for revising and consolidating the public and general statutes of the State."

"Whereas, it is expedient that the public and general statutes of the State should be consolidated and arranged in proper titles, chapters, and sections; and that the whole body of the laws should be rendered as concise and intelligible as possible; therefore, *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 manner and form following, that is to say:"

To contain acts of this session.

In the volume shall also be published the acts of a public and general nature passed at this session and not included in the revised code, incorporating the same as far as practicable into the chapters under the appropriate titles, and excluding from such publication all which grant or modify corporate privileges, or relate to Cherokee lands. And there shall likewise be published in the volume, the constitution of the United States, the constitution and declaration of rights of this State, the Mecklenburg declaration of independence, with the short narrative preceding the same; the act of Congress approved May twenty-sixth, one thousand seven hundred and ninety, and an act supplementary thereto, approved March twenty-seventh, one thousand eight hundred and four, prescribing the mode in which records and judicial proceedings in each State shall be authenticated, so as to take effect in every other State; and the several acts of Congress now in force for the naturalization of foreigners.

Also, federal constitution, State constitution, declaration of rights, Mecklenburg independence, laws of Congress, certifying records, naturalization.

10. There shall be published, of the said revised code, ten thousand copies, the copy-right whereof shall be secured to the State by the 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 superintendents.

Ten thousand copies to be published.

11. The volume 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.

Superintendents to be paid.

12. The copies of the revised code 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.

Revised code to be evidence of the law.

13. The said copies when completed shall be distributed under the direction of the governor as follows, namely:— 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 two literary societies of the University, two copies each; 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, ten copies each, for the use of their respective houses; to the clerks of the supreme court, the clerks of the several superior and county courts, and the clerks and masters in equity, 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 fifty-six, one copy each; and to the justices of the peace of the several counties, one copy each. 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.

Copies, how distributed.

13. This act shall be in force from and after its ratification.



## APPENDIX.

### AN ACT

TO PRESCRIBE THE MODE IN WHICH THE PUBLIC ACTS, RECORDS, AND JUDICIAL PROCEEDINGS IN EACH STATE, SHALL BE AUTHENTICATED SO AS TO TAKE EFFECT IN EVERY OTHER STATE.

THE acts of the legislatures of the several States shall be authenticated by having the seal of their respective States affixed thereto. The records and judicial proceedings of the courts of any State, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, as the case may be, that the said attestation is in due form. And the said records and judicial proceedings authenticated as aforesaid, shall have such faith and credit given to them in every court within the United States, as they have by law or usage, in the courts of the State, from whence the said records are or shall be taken.

Laws, records, and judicial proceedings of the several States, how to be authenticated; and the effect thereof. May 26, 1790.

#### AN ACT SUPPLEMENTARY TO THE FOREGOING ACT.

SECT. 1. All records and exemplifications of office books, which are or may be kept in any public office, of any State, not appertaining to a court, shall be proved or admitted in any other court or office in any other State, by the attestation of the keeper of the said records or books, and the seal of his office thereto annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county or district, as the case may be, in which such office is or may be kept; or of the governor, the secretary of State, the chancellor, or the keeper of the great seal of the State, that the said attestation is in due form, and by the proper officer; and the said certificate, if given by the presiding justice of a court, shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or if the said certificate be given by the gover-

Records, &c., of office books, how authenticated. March 27, 1804.

nor, the secretary of State, the chancellor or keeper of the great seal, it shall be under the great seal of the State in which the said certificate is made. And the said records and exemplifications, authenticated as aforesaid, shall have such faith and credit given to them in every court and office within the United States, as they have by law or usage in the courts or offices of the State from whence the same are, or shall be taken.

Mode of authenticating laws, &c., in territories the same. March 27, 1804.

2. All the provisions of this act, and the act to which this is a supplement, shall apply as well to the public acts, records, office books, judicial proceedings, courts, and offices of the respective territories of the United States, and countries subject to the jurisdiction of the United States, as to the public acts, records, office books, judicial proceedings, courts, and offices of the several States.

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NOTE.—Although a judgment in a State court, is not to be regarded in the court of a sister State as a foreign judgment, it is distinguishable from the latter, only in this, that by the first section of the act of 26th May, 1790, the judgment is conclusive on the merits, and to it full faith and credit shall be given, when duly authenticated. By the act, the judgment is made a debt of record, not examinable on its merits. To give it the force of a judgment in another State, it must be made a judgment there; and it can be executed in the latter only as its laws permit. The plea of the statute of limitations, to an action on a judgment obtained in another State, is a plea to the remedy; and consequently, the *lex fori* must prevail. There is nothing in the federal constitution which prohibits a State to legislate upon the remedy, by suit, on judgments of other States, if the merits be left unquestioned; and therefore the suit must be brought within the period prescribed by the local law, or it will be barred.

In the appropriation of the assets of a deceased person, the judgment of another State, on whatever subject rendered, ranks as a simple contract debt. *McElmoyle v. Cohen*, 13 Pet. R. 312.

An exemplification of an act of the legislature of a State under the great seal of the State, is evidence, though not attested by the governor, or any other principal officer of the State. *U. S. v. Johns*, 4 Dall. 412, *Craig v. Brown*, 1 Pet. 352, *U. S. v. Amedy*, 11 Wheat. 392.

A certificate of an affidavit taken before a magistrate, must state the place where the affidavit was taken, so as to show that the magistrate had jurisdiction to administer the oath. If the place be omitted, it cannot be received as evidence on a hearing before a court of the United States, on a motion to commit on a criminal charge. Nor is such omission helped by the certificate being dated at a place where the magistrate had jurisdiction. *U. S. v. Burr*, 96, 98. A record certified as prescribed by article 4, s. 1, Fed. Const. is proof of the judgment of as high a nature, as the inspection of the record. *Mills v. Duryee*, 7 Cr. 484.

The judgment of a State court has the same credit, validity, and effect, in any State, which it has in the State where it was pronounced; and whatever pleas would be good in a suit thereon in such State, and no others can be pleaded in any court in the United States. *Hampton v. McConnell*, 3 Wheat. 234; *Armstrong v. Carson's ex'r*, 2 Dall. 302; *Green v. Sarmiento*, 2 Pet. C. C. Rep. 74, 155, 494; *Mayhew v. Thatcher*, 6 Wheat. 129, *Sergt. on Con. Law*, 383, for authorities in State courts. As to the effect of a judgment of another State, see *Davidson v. Sharpe*, 6 Iro. 14; *Pigot v. Davis*, 3 Hawks, 23; *Irby v. Wilson*, 1 D. & B. Eq. 568; *Picket v. Johns*, 1 Dev. Eq. 123.

For the mode of authenticating the statute of another State, see *State v. Cheek*, 13 Ire. 114; *McDougald v. Smith*, 11 Ire. 576; *State v. Jackson*, 2 Dev. 563; *State v. Welsh*, 3 Hawks, 404.

It is the province of the Court to decide upon the existence and proper construction of the statute of another State, *Moore v. Gwynn*, 5 Ire. 187. What the law of another State is, when not contained in a statute, is matter for the jury. *Id.*



## LAWS OF NATURALIZATION,

PASSED BY THE CONGRESS OF THE UNITED STATES, AS DIGESTED BY THOMAS F. GORDON, ESQ., AND CORRECTED BY ALL THE LAWS PASSED UP TO THE FOURTH OF MARCH, 1855.

## ARTICLE

1. Declaration by alien previous to naturalization. (Gordon, Art. 1488.)
2. Exception as to aliens residing within the United States before 29th of January, 1795. (1489.)
3. Exception as to aliens residing within the United States between 18th of June, 1798, and 14th April, 1802. (1490.)
4. Further provisions respecting such aliens. (1491.)
5. Exception as to aliens residing within the United States between 14th April, 1802, and 18th June, 1812. (1492.)

## ARTICLE

6. Exception as to alien minors. (1493.)
7. Oath required from alien. (1494.)
8. Court to be satisfied of certain qualifications. (1495.)
9. Renunciation of titles and orders. (1496.)
10. Provision relative to widow and children of alien. (1497.)
11. Minor children of naturalized citizens become citizens, when. (1498.)
12. What courts may administer the naturalization laws. (1499.)
13. Five years residence necessary, when. (1500.)

ART. 1. Any alien being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise: That he shall have declared on oath or affirmation before the supreme, superior, district, or circuit court of some one of the United States, or of the territorial districts of the United States, or a circuit or district court of the United States, or before the clerk of either of such courts, (1) two (2) years at least before his admission, that it was *bonâ fide* his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, State, or sovereignty whatever, and particularly by name, the prince, potentate, State, or sovereignty whereof such alien may at the time be a citizen or subject. (3)

Declaration by alien previous to naturaliza'n.

(1) Act May 26, 1824, s. 3.  
(2) Ib. s. 4.

(3) Act 14th April, 1802.  
Exception as to aliens residing within the U. States before 29th Jan. 1795.

2. Any alien who was residing within the limits, and under the jurisdiction of the United States before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts aforesaid, that he has resided two years at least within and under the jurisdiction of the United States, and one year at least immediately preceding his application, within the State or territory where such court is at the time held; and on his declaring on oath or affirmation, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, State, or sovereignty whatever, and particularly, by name, the prince, potentate, State, or sovereignty whereof he was before a citi-

zen or subject; and, moreover, on its appearing to the satisfaction of the courts that during the said term of two years, he has behaved as a man of good moral character, attached to the constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien, applying for admission to citizenship shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or State from which he came, on his moreover making in the court an express renunciation of his title or order of nobility, before he shall be entitled to such admission: all of which proceedings required in this proviso to be performed in the court, shall be recorded by the clerk thereof. (1)

(1) Act April 14, 1802, s. 1.

Exception as to aliens residing in U. States between 18th June, 1798, and 14th April, 1802.

(2) Act March 26, 1804, s. 1.

Further provisions respecting such aliens.

3. From this condition (Art. 1), is exempted any alien being a free white person, who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, 1798, and the fourteenth day of April, 1802, and who has continued to reside within the same. (2)

4. Nothing in the first section, act 22d March, 1816,\* shall be construed to exclude from admission to citizenship, any free white person who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one thousand eight hundred and two, and who, having continued to reside therein without having made any declaration of intention before a court of record as aforesaid, may be entitled to become a citizen of the United States according to act 26th of March, 1804. Whenever any person without a certificate of such declaration of intention as aforesaid, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdiction of the United States, before the fourteenth of April, one thousand eight hundred and two, and has continued to reside within the same, or he shall not be so admitted. And the residence of the applicant, within the limits and under the jurisdiction of the United States for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States; which citizens shall be named in the record as witnesses. And such continued residence within the limits and under the jurisdiction of the United States when satisfactorily proved, and the place or places where the applicant has resided for at least five years as aforesaid, shall be stated and set forth, together with the names of such citizens in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States. (3)

(3) Act March 22, 1816, s. 2.

Exception as to aliens resid-

5. That any alien, being a free white person, who was

\* The first section of act 22d March, 1816, was repealed by act 24th May, 1828.

residing within the limits and under the jurisdiction of the United States, between the fourteenth day of April, one thousand eight hundred and two, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States, without having made any previous declaration of his intention to become a citizen. *Provided*, that whenever any person, without a certificate of such declaration of intention, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdiction of the United States, before the eighteenth day of June, one thousand eight hundred and twelve, and has continued to reside within the same, or he shall not be so admitted: and the residence of the applicant within the limits, and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States; which citizens shall be named in the record as witnesses: and such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years, as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States. (1)

ing within the U. States, between 14th April, 1802, and 18th June, 1812.

(1) Act May 24, 1828, s. 2.

6. Any alien, being a free white person and a minor, under the age of twenty-one years, who shall have resided in the United States three years next preceding his arrival at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he shall have resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of the first section of the act to which this is in addition (Art. 1), three years previous to his admission. *Provided*, such alien shall make the declaration required therein at the time of his or her admission; and shall further declare, on oath, and prove to the satisfaction of the court, that, for three years next preceding, it has been the *bonâ fide* intention of such alien to become a citizen of the United States; and shall, in all other respects, comply with the laws in regard to naturalization. (2)

Exception as to alien minors.

(2) Act May 26, 1824, s. 1.

7. An alien shall, at the time of his application to be admitted, declare, on oath or affirmation, before some one of the courts aforesaid, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, State, or sovereignty, whatever, and particu-

Oath required from alien.

(3) Act April 14, 1802, s. 1, Con. 2.

Court to be satisfied of certain qualifications.

larly, by name, the prince, potentate, State, or sovereignty, whereof he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court. (3)

(4) Act April 14th, 1802, s. 1, Con. 3.

Renunciation of titles and orders.

8. The court admitting such alien shall be satisfied that he has resided within the United States five years, at least, and within the State or territory, where such court is at the time held, one year at least; and it shall further appear to their satisfaction, that, during that time, he has behaved as a man of a good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same. The oath of the applicant shall, in no case, be allowed to prove his residence. (4)

9. In case the alien, applying to be admitted to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility, in the kingdom or State from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility, in the court to which his application shall be made, which renunciation shall be recorded in the said court. *Provided*, That no alien, who shall be a native citizen, denizen, or subject of any country, State, or sovereign, with whom the United States shall be at war, at the time of his application, shall be then admitted to be a citizen of the United States. (1)

(1) Act April 14, 1802, s. 1, Con. 4.

Provision relative to widow and children of aliens.

10. When any alien, who shall have complied with the conditions specified in article No. 1, and who shall have pursued the directions prescribed in section 2, Act 14th April, 1802,\* may die, before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States; and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law. (2)

(2) Act March 26th, 1804, s. 2.

Minor children of naturalized citizens become citizens, when.

11. The children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject by the government of the United States, may have become citizens of any one of the said States, under the laws thereof, being under the age of twenty-one years, at the time of their parents being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered citizens of the United States; and the children of persons, who now are, or have been, citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States. The right of citizenship shall not descend to persons whose fathers have never resided within the United States. And no person heretofore proscribed by any State, or who has been legally convicted of having joined the army of Great Britain during the war of the Revolution, shall be admitted a citizen, without the consent of the legislature of the State in which such person was proscribed. Children of persons naturalized before the 14th of April, 1802,

\* This second section was repealed by act 24th May, 1828. It provided for the registry of the alien.

under age at the time of their parents' naturalization, were, if dwelling in the United States on the 14th of April, 1802, to be considered as citizens of the United States. (3)

12. Every court of record, in any individual State, having common law jurisdiction, and a seal, and clerk or prothonotary, shall be considered as a district court within the meaning of the naturalization act; and every alien, who may have been naturalized in any such court, shall enjoy the same rights and privileges, as if he had been naturalized in a district or circuit court of the United States. (4)

13. No person who shall arrive in the United States after February the 17th, 1815, shall be admitted to become a citizen of the United States, who shall not, for the continued term of five years, next preceding his admission, have resided within the United States.\*

(3) Act April 14, 1802, s. 4, Campbell v. Gordan et al. 6 Cr. 177.

What court may administer the naturalization laws.

(4) Act April 14, 1802, s. 3.

Five years' residence necessary, when.

(5) Act March 3, 1813, s. 12. 26th June, 1848, c. 72.

\* The oath of naturalization, when taken, confers the rights of a citizen. It is not necessary that there should be an order of court admitting the alien to become a citizen. *Campbell v. Gordan et al.*, 6 Cr. 176. Nor that it should appear by the record of naturalization that all the requisites presented by law for the admission of aliens have been complied with. *Stark v. Chesapeake Ins. Com.* 7, Cr. 520. The courts in naturalization cases receive testimony, compare it with the law, and judge on both law and fact. Hence their judgment, entered on record in legal form, is complete evidence of its own validity, and conclusive in all courts. *Spratt v. Spratt*, 4 Pet. 393.

The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States. Cou. art. 4, s. 2.

Citizens of the United States have a right to expatriate themselves in time of war as well as of peace, until restrained by Congress. Such right is subject to the control of the legislature, and to render the exercise of it valid, there must be an entire departure from the United States for a purpose which is not illegal, nor in fraud of the duties at home of the emigrant. *Talbot v. Jansen*, 3 Dall. 133; *Santissima Trinidad*, 7 Wheat. 548; see *U. S. v. Williams*, 4 Hall's Law Journal, 461; *U. S. v. Gillies*, 1 Pet. 161.

A citizen of the United States, by becoming a citizen of another country, does not thereby cease to be a citizen of the United States, nor is he absolved from his original allegiance. *Ibid.* He may acquire in a foreign country the commercial privileges attached to his domicile, and be exempted from the operation of commercial acts embracing only persons resident in the United States or under its protection. *Murray v. Charming Betsy*, 2 Cranch, 120.

### 1870

The first of the year was a very cold one, and the snow lay on the ground for several weeks. The crops were all killed, and the people were obliged to live on their stocks. The winter was a very hard one, and the people suffered much. The spring was a very wet one, and the crops were all spoiled. The summer was a very hot one, and the people suffered much. The autumn was a very dry one, and the crops were all spoiled. The year was a very hard one, and the people suffered much.

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