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BATTLE'S REVISAL

OF THE

PUBLIC STATUTES OF NORTH CAROLINA.

BATTLE'S REVISAL
OF THE
PUBLIC STATUTES
OF
NORTH CAROLINA,

ADOPTED BY THE

GENERAL ASSEMBLY AT THE SESSION OF 1872-'3:

INCLUDING

THE ACTS OF A PUBLIC AND GENERAL NATURE PASSED AT
THE SAME SESSION.

TOGETHER WITH

THE CONSTITUTION OF THE UNITED STATES, THE CONSTITUTION OF
THE STATE, &C., &C.

PREPARED UNDER ACTS OF THE GENERAL ASSEMBLY AT THE SESSIONS
OF 1871-'2 AND 1872-'3,

BY

WILLIAM H. BATTLE,

AND

PRINTED AND PUBLISHED UNDER HIS SUPERVISION.

IN ONE VOLUME.

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1873.

Entered according to Act of Congress, in the year 1873, by

WILLIAM H. BATTLE,

On behalf of the State of North Carolina, the proprietor, in the office of the District
Court of the United States of America for the Pamlico District, Eastern District of
North Carolina.

PREFACE.

THIS Revisal owes its existence to the act of 1871-'2, ch. 210, entitled "An Act to provide for the compilation of the Public Statutes," by which the undersigned was appointed a commissioner "to collate, digest and compile all the public statute laws of the State."

In carrying out the wishes of the Legislature, thus indicated, the commissioner selected as the plan of his work that which was first adopted in the preparation of the Revised Statutes of 1836, and afterwards followed in the Revised Code of 1854; a plan which was recommended as well by its intrinsic merits, as by the fact that it had been long known to, and approved by, the legal profession and the public. All the public and general statutes relating to the same subject are brought together and included in one chapter, which is subdivided into sections. Then the various chapters are arranged in alphabetical order according to their subject matter. Among these chapters is placed, in its proper order, the Code of Civil Procedure, with all the amendments to it made by legislation subsequent to its adoption. But while these amendments have been embraced in and made a part of it, the Code retains its original divisions into titles, chapters and sections. This was rendered necessary to prevent confusion in references to the decisions of the Supreme Court upon

such sections as have been subjects of judicial construction. Where the amendments have made additional sections necessary, they are distinguished by a repetition of the number of the section which they follow, annexing the letters of the alphabet, e. g., 11*a*, 11*b*, &c.

In preparing the compilation, the commissioner met with many and serious difficulties caused mainly by the adoption of an entirely new constitution for the State, and by the consequent changes in its laws, and particularly in those relating to the practice and pleadings in the Courts. The 24th section of the 4th Article of the constitution of 1868 declares that "the laws of North Carolina, not repugnant to this constitution, or to the constitution and laws of the United States, shall be in force until lawfully altered." By this provision the whole of the Revised Code, and the subsequent acts of the Legislature up to the time of the adoption of the constitution, have been recognized as being in force, except such parts as were abrogated by their repugnancy to the new constitution, to the constitution and laws of the United States, and such as have been repealed, altered or modified by subsequent legislation. Such being the case, the Revised Code has been taken as the basis of the revisal, and that, with other public and general statutes passed prior to the ratification of the new constitution, has been retained, unless expressly or impliedly repealed, altered or modified in whole or in part by statutes which have been since enacted.

The chapters thus prepared and arranged, were reported to his Excellency, Governor Caldwell, and were by him transmitted to the General Assembly at its last session. In that body they were referred to a joint select committee of both Houses, by whom a report was made, approving the work

and recommending its publication. A bill was accordingly introduced and passed into a law, entitled "An Act to provide for the printing and publication of Battle's Revisal of the Public Statute Laws of North Carolina and for other purposes."

By the 9th section of the act, the undersigned was appointed to superintend the publication. His duties as superintendent will be seen by a reference to the act; and the volume which is now presented to the public will show with what fidelity those duties have been performed. Bearing in mind that all former laws are to be repealed, and that the volume is to contain all the public and general statute laws, now in force and use in the State, and that it is to be received as evidence of what the law is in all the courts of the State, he has faithfully endeavored to make the work as perfect as such a work can be. While he fears that he has not reached the highest mark of excellence, he hopes that he has succeeded in accomplishing the main purpose for which a revisal of the statutes was desired, that is, to make those statutes more accessible, and withal, in the language of the act authorizing the work, "more plain and easy to be understood."

WILL: H. BATTLE.

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CONSTITUTION

OF THE

UNITED STATES OF AMERICA.

NORTH CAROLINA.

IN GENERAL ASSEMBLY, Nov. 20, 1788.

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

Convention recommended to consider the federal constitution.

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, sheriff and returning officers excepted.

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

Citizens freeholders, eligible to the convention.

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.

Sheriffs to notify the people of the election.

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

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.

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

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

ALEX. MARTIN, S. S.

JOHN SITGREAVES, S. C.

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:—

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

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

ARTICLE I.

SECTION I.

Legislative powers vested in Congress.

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION II.

House of Representatives—its members; by whom

1. The House of Representatives shall be composed of members chosen every second year by the people of the several

States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

chosen; qualifications of electors.

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.

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

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. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative ; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

Representatives and taxes to be apportioned according to numbers.

Actual enumeration every ten years.

Limitation of the ratio of representation, etc.

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.

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.

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

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

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

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

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.

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

Vice-President to be President of the Senate; to vote on an equal division only.

The Senate to choose their President *pro tempore*, etc.

The Senate have the sole power to try impeachments, 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.

4. The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

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.

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.

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

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.

SECTION IV.

Times, etc., of holding elections for Senators and Representatives regulated by the States or by Congress.

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.

Congress to assemble annually the first Monday in December, unless, etc.

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.

SECTION V.

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

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

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

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

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

Journals of each house.

Yeas and nays how taken.

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.

Adjournment of both houses.

SECTION VI.

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.

Senators and Representatives to be paid, etc.; privileged from arrest: not to be questioned for debate, etc.

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.

Concerning the holding of offices by Senators and Representatives.

SECTION VII.

1. All bills for raising revenue shall originate in the House

Revenue bill to originate in

the House of Representatives, etc.

Powers of the President and of Congress in the enacting of laws and the forms of proceeding on bills in that respect.

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 becomes 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.

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

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

SECTION VIII.

Congress shall have power,
1. To lay taxes,
etc.

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 ;

2. Borrow money.
3. Regulate commerce.

2. To borrow money on the credit of the United States ;
3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes ;

4. Establish the rule of naturalization and bankrupt laws.

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

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

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.

SECTION IX.

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

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

Habeas corpus.

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

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

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

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

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

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

Public moneys how drawn, etc.

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

No titles of nobility, No presents, 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.

SECTION X.

Restrictions on the power of the States individually.

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.

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

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of

the United States; and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION I.

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

Executive power vested in a president, etc.

2. Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

Electors of president and vice president.

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

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

quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.

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

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

Qualifications of President.

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

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

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

Compensation to the President.

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

The president to take an oath

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

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.

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

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 officers

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.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provide two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

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

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

President may fill vacancies in recess.

SECTION III.

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

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

SECTION IV.

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

President and other officers removable by impeachment.

ARTICLE III.

SECTION I.

The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress

Judicial power vested in a supreme court,

etc., judges to hold their offices during good behavior.

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

SECTION II.

Extent of the judicial power.

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

Original and appellate jurisdiction of the supreme court.

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

Trial of crimes to be by jury.

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.

The venue.

SECTION III.

Definition of treason, etc.

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.

Congress to declare the punishment 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.

ARTICLE IV.

SECTION I.

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

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

SECTION II.

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

Reciprocity of citizenship throughout the States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

Criminals flying from one State to another to be delivered up.

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.

Runaway slaves, etc., to be delivered up.

SECTION III.

1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned as well as of the Congress.

New States may be admitted into the Union, 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.

Congress to have power of territory, etc.

SECTION IV.

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-

Republican form of government guaranteed to each State, etc.

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

ARTICLE V.

Mode of amending the constitution.

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.

ARTICLE VI.

Assumption of debts incurred under the confederation.

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

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

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

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

3. The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the Conventions of nine States, shall be ^{Ratification of} sufficient for the establishment of this Constitution between ^{nine States,} the States so ratifying the same. ^{sufficient, etc.}

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 JOHNSON, *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.

Constitution to be laid before congress, etc.

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.

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

Mode recommended for carrying the constitution into effect.

By the unanimous order of the Convention,

GEORGE WASHINGTON, *President.*

WILLIAM JACKSON, *Secretary.*

IN CONVENTION, SEPTEMBER 17th, 1787.

SIR,

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

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

2. The friends of our country have long seen and desired, that the power of making war, peace, and treaties; that of levying money, and regulating commerce, and the correspondent executive and judicial authorities, should be fully and

effectually vested in the general government of the union : but the impropriety of delegating such extensive trust to one body of men, is evident ; hence results the necessity of a different organization.

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

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

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

By unanimous order of the Convention.

GEORGE WASHINGTON, *President.*

His Excellency the President of Congress.

AMENDMENTS TO THE CONSTITUTION.

ARTICLE I.

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

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

ARTICLE II.

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

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

ARTICLE III.

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

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

ARTICLE IV.

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

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

ARTICLE V.

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

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 witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

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

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

ARTICLE VII.

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

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

ARTICLE VIII.

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

Excessive bail, and unusual and cruel punishments, prohibited.

ARTICLE IX.

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

Rights enumerated not to disparage those retained.

ARTICLE X.

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

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

ARTICLE XI.

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

Restriction of judicial power.

ARTICLE XII.

1. The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom,

Mode of electing the President and Vice-

President of
the United
States.

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 list 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.

ARTICLE XIII.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been

Slavery abolished.

duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

This Article may be enforced by legislation.

ARTICLE XIV.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Who are citizens of the United States and of the States; their privileges and immunities.

SEC. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Apportionment of Representatives.

SEC. 3. No person shall be a Senator, or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Certain persons disqualified from holding office.

How disability may be removed.

SEC. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of

The validity of the public debt not to be questioned.

Certain debts and obligations not to be assumed or paid.

pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

This article may be enforced by legislation.

SEC. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.

Right to vote not to be denied or abridged.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

This article may be enforced by legislation.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

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<i>House of Representatives</i> —See <i>Representatives</i> .		
<i>House</i> —See <i>Senate</i> .		

I

<i>Impeachment</i> , all civil officers liable to, - - - - -	2	4
persons found guilty by, liable to indictment and punishment for the offence, - - - - -	1	3
<i>Importation of Slaves</i> , until prohibited, a duty authorized on, after 1808, - - - - -	1	9

J

<i>Judges</i> , shall hold their offices during good behavior, - - - - -	3	1
the compensations of, shall not be diminished during continuance in office, - - - - -	3	1
<i>Judicial Power</i> , vested in a Supreme Court, and Courts inferior, - - - - -	3	1
the cases to which it extends, - - - - -	3	2

	Art.	Sec.
<i>Judicial Proceedings</i> , records, and acts of each State, are entitled to faith and credit in every other State, - - -	4	1
<i>Jury Trial</i> shall be held in the State where the crime shall have been committed, - - - - -	3	2
if the crime have not been committed within a State, the trial shall be held at the place Congress shall have directed, -	3	2
<i>Jury</i> , trial by, <i>secured</i> in prosecution for all <i>crimes</i> , except in cases of impeachment, - - - - -	3	2
and in suits at common law, where the value in controversy shall exceed twenty dollars, 7th amendment.		

L

<i>Law</i> , Supreme, the Constitution, the laws under it, and treaties declared to be, - - - - -	6	2
<i>Legislative Power</i> , vested in Congress—See <i>Congress</i> , - - -	1	1

M

<i>Money</i> shall be drawn from the Treasury, only by laws appropriating, - - - - -	1	9
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N

<i>Nobility</i> , titles of, shall not be granted by the United States, -	1	9
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O

<i>Officers</i> of the Senate, except their President, shall be chosen by the Senate, - - - - -	1	3
civil, may be removed by impeachment, - - - - -	2	4
<i>Order</i> , of one House, requiring the concurrence of the other—See <i>Resolution</i> , - - - - -	1	7

P

<i>Persons</i> held to labor or service, their importation or migration into the United States, may be prohibited after 1808, -	1	9
escaping from one State to another, shall be delivered up to those entitled to their service, - - - - -	4	2
<i>Powers</i> , not delegated, are reserved to the people, or, when not prohibited, to the States, 10th amendment.		
Legislative—See <i>Congress</i> , - - - - -	1	1
Executive—See <i>President</i> , - - - - -	2	1
Judicial—See <i>Judicial</i> , - - - - -	3	1
<i>Presents</i> , emoluments, office or title, from a foreign king, prince, or State, to persons holding offices of profit or trust, prohibited, - - - - -	1	9
<i>President of the U. S.</i> vested with the executive power, - - -	2	1
shall be chosen for four years, - - - - -	2	1
how elected, - - - - -	2	1
qualifications for, - - - - -	2	1
compensation of, - - - - -	2	1
shall take an oath of office, - - - - -	2	1
may be removed by impeachment, - - - - -	2	4

	Art.	Sec.
<i>President of the U. S., powers of—</i>		
shall be commander-in-chief of the army and navy, - - -	2	2
may require the written opinions of the heads of departments, - - -	2	2
may reprieve and pardon, - - - - -	2	2
may make treaties, with consent of the Senate, - - -	2	2
may appoint to office, with consent of the Senate, - - -	2	2
shall fill up vacancies happening during the recess of the Senate, - - - - -	2	2
<i>President of the U. S., duties of—</i>		
shall give information to Congress, and recommend measures, - - -	2	3
may convene both houses, or either House, - - -	2	3
may adjourn them in case of disagreement, - - - - -	2	3
shall receive ambassadors and public ministers, - - -	2	3
shall take care that the laws be faithfully executed, - - -	2	3
shall commission all officers of the United States, - - -	2	1
in case of death, etc., shall devolve on the Vice-President, and on such others as may be provided by law, - - - - -	2	1
<i>Privileges and immunities of citizens of the States—See Citizens.</i>		
<i>Property</i> shall not be taken for public use, without just compensation—5th amendment.		

Q

<i>Quorum</i> , what shall be, for business, - - - - -	1	5
of States, in choosing a President by the House of Representatives, - - - - -	2	1

R

<i>Receipts and expenditures, accounts of, to be published, - - -</i>	1	9
<i>Records—See Judicial Proceedings, - - - - -</i>	4	1
<i>Representatives, House of, composed of members chosen every second year, - - - - -</i>	1	2
qualifications of the electors of its members, - - - - -	1	2
qualifications of members, - - - - -	1	2
shall not exceed one for every 30,000, - - - - -	1	2
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

		Art.	Sec.
<i>Representatives, House of—</i>			
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
can, whilst serving, hold no office under the United States, -		1	6
shall not serve as primary electors of President, - -		2	1
and direct taxes, apportioned according to numbers, - -		1	2
<i>Representation, of a State, vacancies in, supplied until a new election by the Executive authority thereof, - - -</i>		1	2
<i>Resolution, order, or vote, requiring the concurrence of both Houses, (except for an adjournment,) shall be presented to the President, and undergo the formalities of bills, - -</i>		1	7
<i>Revenue—See Vessels.</i>			
<i>Rights of the Citizen declared to be—</i>		Amend.	
liberty of conscience in matters of religion, - - -		1	
freedom of speech and of the press, - - -		1	
to assemble and petition, - - - - -		1	
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	
to be free, except in the army, navy, and militia, from answering for a capital, or otherwise infamous crime, unless on presentment or indictment of a grand jury, - - -		5	
to vote, secured—Amend. - - - - -		15	1
<i>Rights, not to be twice jeopardized for the same offence, - -</i>		5	
not to be compelled, in criminal cases to be a witness against himself, - - - - -		5	
not to 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.
<i>Rights, that the enumeration of certain, shall not operate, constructively, against the retained rights, - - - -</i>		9	
<i>Rules, each House shall determine its own, - - - -</i>		1	5

S

	Art.	Sec.
<i>Senate of the United States</i> , composed of two Senators from each State,	1	3
how chosen, classed, and terms of service, - - -	1	3
qualifications of members, thirty years of age, nine years a citizen, and an inhabitant of the State, - - -	1	3
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 requiring 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
shall not be appointed to offices of the United States, created or whose emoluments shall have been increased during the terms for which they were elected, - - - - -	1	6
<i>Senators</i> and Representatives, elections of, how prescribed, -	1	4
<i>Senator</i> shall not be an elector of President, - - - -	2	1
<i>Slaves</i> —See <i>Persons</i> held to service,—Amend. - - - -	13	1
<i>Speaker</i> , how chosen, - - - - -	1	2
<i>States</i> , prohibited from,		
entering into any treaty, alliance, or confederation, -	1	10
granting letters of marque, - - - - -	1	10
coining money, - - - - -	1	10
emitting bills of credit, - - - - -	1	10
making any thing a tender but gold and silver coin, -	1	10
passing bills of attainder, <i>ex post facto</i> laws, or laws impairing contracts, - - - - -	1	10
granting titles of nobility, - - - - -	1	10
laying impost or duties on imports and exports for their own use, - - - - -	1	10
laying duties on tonnage, without the consent of Congress, -	1	10
keeping troops or ships of war, in time of peace, - -	1	10
entering into any agreement or contract with another State, or a foreign power, - - - - -	1	10
engaging in war, unless invaded, or in imminent danger, -	1	10
new, may be admitted into the Union, - - - - -	4	3

<i>States,—</i>	Art.	Sec.
may be formed within the jurisdiction of others, or by the junction of two or more, with the consent of Congress and the Legislatures concerned, - - - -	4	3
<i>States</i> , Judges of, bound to consider treaties, the Constitution, and the laws under it, as supreme, - - - -	6	1
majority of <i>all</i> necessary to the choice of President, -	2	1
each to be guaranteed a republican form of government; protected against invasion; and secured, upon application, against domestic violence, - - - -	4	4
<i>Supreme Court</i> —See <i>Court</i> .		

T

<i>Tax</i> , capitation or direct, shall be laid only in proportion to census, -	1	9
<i>Tax</i> on exports from a State prohibited, - - - -	1	9
<i>Taxes</i> , direct, shall be apportioned according to representation, -	1	2
<i>Territory</i> , or property belonging to the United States, Congress may make rules concerning, - - - -	4	3
<i>Test</i> , religious, shall not be required, - - - -	6	3
<i>Titles</i> —See <i>Nobility</i> , - - - -	1	9
<i>Title</i> , from foreign State—See <i>Present</i> , - - - -	1	9
<i>Treason</i> , defined, - - - -	3	3
two witnesses, or confession, necessary for conviction, -	3	3
punishment of, may be prescribed by Congress, with one limitation, - - - -	3	3
or other crime, persons charged with in one State, and fleeing into another, shall, on demand, be delivered up, - -	4	2
<i>Treasury</i> , money drawn from, only by appropriations, - -	1	9
<i>Treaties</i> , the supreme law, - - - -	6	2

V

<i>Vacancies</i> , happening during the recess of the Senate, may be filled temporarily by the President, - - - -	2	2
in representations in Congress, how filled, - - - -	1	2
<i>Vessels</i> to enter, clear, and pay duties in <i>the States</i> in which they arrive, or from which they depart, - - - -	1	9
<i>Vice-President</i> of the United States to be President of the Senate, except when exercising the office of President of the United States, - - - -	1	3
how elected, - - - -	2	1
and 12th amendment.		
qualifications for, 12th amendment.		
shall, in certain cases, discharge the duties of President, -	2	1
may be removed by impeachment, - - - -	2	4
<i>Vote of one House</i> , requiring concurrence of the other, - -	1	7

See *Resolution*.

W

<i>Warrants</i> for searches and seizures, when and how they shall issue, 4th amendment.		
<i>Witness</i> , in criminal cases, no one compelled to be against himself, 5th amendment.		

CONSTITUTION

OF THE

STATE OF NORTH CAROLINA,

Ratified by the People April 21st, 22d and 23d, 1868.

PREAMBLE.

We, the people of the State of North Carolina, grateful to Almighty God, the Sovereign Ruler of nations, for the preservation of the American Union, and the existence of our civil, political and religious liberties, and acknowledging our dependence upon Him, for the continuance of those blessings to us and our posterity, do, for the more certain security thereof, and for the better government of this State, ordain and establish this Constitution—

Preamble.

ARTICLE I.

DECLARATION OF RIGHTS.

That the great, general and essential principles of liberty and free government may be recognized and established, and that the relations of this State to the Union and government of the United States, and those of the people of this State to the rest of the American people, may be defined and affirmed, we do declare :

SECTION 1. That we hold it to be self-evident that all men are created equal ; that they are endowed by their Creator with certain unalienable rights ; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

The equality and rights of men.

SEC. 2. That all political power is vested in, and derived from, the people ; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

Political power and government.

SEC. 3. That the people of this State have the inherent, sole, and exclusive right of regulating the internal government and police thereof, and of altering and abolishing their Constitution and form of government, whenever it may be necessary to their

Internal government of the State.

safety and happiness ; but every such right should be exercised in pursuance of law, and consistently with the Constitution of the United States.

That there is no right to secede.

SEC. 4. That this State shall ever remain a member of the American Union; that the people thereof are part of the American nation; that there is no right on the part of the State to secede, and that all attempts from whatever source or upon whatever pretext, to dissolve said Union, or to sever said nation, ought to be resisted with the whole power of the State.

Of allegiance to the U. S. government.

SEC. 5. That every citizen of this State owes paramount allegiance to the Constitution and Government of the United States, and that no law or ordinance of the State in contravention or subversion thereof, can have any binding force.

Public debt.

SEC. 6. To maintain the honor and good faith of the State untarnished, the public debt, regularly contracted before and since the rebellion, shall be regarded as inviolable and never be questioned : but the State shall never assume or pay, or authorize the collection of, any debt or obligation, express or implied, incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave.

Exclusive emoluments, &c.

SEC. 7. No man or set of men are entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services.

The Legislative, Executive and Judicial powers distinct.

SEC. 8. The Legislative, Executive, and Supreme judicial powers of the government ought to be forever separate and distinct from each other.

Of the power of suspending laws.

SEC. 9. All power of suspending laws, or the execution of laws, by any authority, without the consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.

Elections free.

SEC. 10. All elections ought to be free.

In criminal prosecutions.

SEC. 11. In all criminal prosecutions, every man has the right to be informed of the accusation against him and to confront the accusers and witnesses with other testimony, and to have counsel for his defence, and not be compelled to give evidence against himself or to pay costs, jail fees, or necessary witness fees of the defence, unless found guilty.

Answers to criminal charges.

SEC. 12. No person shall be put to answer any criminal charge, except as hereinafter allowed, but by indictment, presentment or impeachment.

SEC. 13. No person shall be convicted of any crime but by the unanimous verdict of a jury of good and lawful men in open court. The Legislature may, however, provide other means of trial for petty misdemeanors, with the right of appeal. Right of jury.

SEC. 14. Excessive bail should not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted. Excessive bail.

SEC. 15. General warrants, whereby any officer or messenger may be commanded to search suspected places, without evidence of the act committed, or to seize any person or persons not named, whose offence is not particularly described and supported by evidence, are dangerous to liberty and ought not to be granted. General warrants.

SEC. 16. There shall be no imprisonment for debt in this State, except in cases of fraud. Imprisonment for debt.

SEC. 17. No person ought to be taken, imprisoned or disseized of his freehold, liberties or privileges, or outlawed or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person to be taken, &c., but by law of the land.

SEC. 18. Every person restrained of his liberty is entitled to a remedy to enquire into the lawfulness thereof, and to remove the same, if unlawful; and such remedy ought not to be denied or delayed. Persons restrained of liberty.

SEC. 19. 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. Controversies at law respecting property.

SEC. 20. The freedom of the press is one of the great bulwarks of liberty, and therefore ought never to be restrained, but every individual shall be held responsible for the abuse of the same. Freedom of the press.

SEC. 21. The privileges of the writ of *habeas corpus* shall not be suspended. Habeas corpus

SEC. 22. As political rights and privileges are not dependent upon, or modified by property, therefore no property qualification ought to affect the right to vote or hold office. Property qualification.

SEC. 23. 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. Representation and taxation.

SEC. 24. 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; and, as standing armies, in time Militia and the right to bear arms.

of peace, are dangerous to liberty, they ought not to be kept up, and the military should be kept under strict subordination to, and governed by, the civil power.

Right of the people to assemble together.

SEC. 25. 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.

Religious liberty.

SEC. 26. All men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority should, in any case whatever, control or interfere with the rights of conscience.

Education.

SEC. 27. The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.

Elections should be frequent.

SEC. 28. For redress of grievances, and for amending and strengthening the laws, elections should be often held.

Recurrence to fundamental principles.

SEC. 29. A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.

Hereditary emoluments, &c.

SEC. 30. No hereditary emoluments, privileges or honors, ought to be granted or conferred in this State.

Perpetuities, &c.

SEC. 31. Perpetuities and monopolies are contrary to the genius of a free State, and ought not to be allowed.

Ex post facto laws.

SEC. 32. Retrospective laws, punishing acts 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. No law taxing retrospectively sales, purchases, or other acts previously done, ought to be passed.

Slavery prohibited.

SEC. 33. Slavery and involuntary servitude, otherwise than for crime whereof the parties shall have been duly convicted, shall be, and are hereby, forever prohibited within this State.

State boundaries.

SEC. 34. The limits and boundaries of the State shall be and remain as they now are.

Courts shall be open.

SEC. 35. All Courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay.

Soldiers in time of peace.

SEC. 36. 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 prescribed by law.

Other rights of the people.

SEC. 37. This enumeration of rights shall not be construed to impair or deny others, retained by the people; and all powers, not herein delegated, remain with the people.

ARTICLE II.

LEGISLATIVE DEPARTMENT.

SECTION 1. The Legislative authority shall be vested in two Two branches.
distinct branches, both dependent on the people, to-wit: a
Senate and House of Representatives.

SEC. 2. The Senate and House of Representatives shall meet Time of as-
annually on the third Monday in November, and when assem-
bled, shall be denominated the General Assembly. Neither sembling.
House shall proceed upon public business, unless a majority of
all the members are actually present.

SEC. 3. The Senate shall be composed of fifty Senators Number of
nially chosen by ballot. Senators.

SEC. 4. Until the first session of the General Assembly, which Senatorial dis-
shall be had after the year eighteen hundred and seventy-one, tricts.
the Senate shall be composed of members elected from districts
constituted as follows:

1st District—Perquimans, Chowan, Pasquotank, Currituck,
Gates and Camden shall elect two Senators.

2d District—Martin, Washington and Tyrrell shall elect one
Senator.

3d District—Beaufort and Hyde shall elect one Senator..

4th District—Northampton shall elect one Senator.

5th District—Bertie and Hertford shall elect one Senator.

6th District—Halifax shall elect one Senator.

7th District—Edgecombe shall elect one Senator.

8th District—Pitt shall elect one Senator.

9th District—Nash and Wilson shall elect one Senator.

10th District—Craven and Carteret shall elect two Senators.

11th District—Jones and Lenoir shall elect one Senator.

12th District—Duplin and Onslow shall elect one Senator.

13th District—Brunswick and New Hanover shall elect two
Senators.

14th District—Bladen and Columbus shall elect one Senator.

15th District—Robeson shall elect one Senator.

16th District—Cumberland, Harnett and Sampson shall
elect two Senators.

17th District—Johnston shall elect one Senator.

18th District—Greene and Wayne shall elect one Senator.

19th District—Franklin and Wake shall elect two Senators.

Senatorial districts.

20th District—Warren shall elect one Senator.
 21st District—Granville and Person shall elect two Senators.
 22d District—Orange shall elect one Senator.
 23d District—Chatham shall elect one Senator.
 24th District—Caswell shall elect one Senator.
 25th District—Rockingham shall elect one Senator.
 26th District—Alamance and Guilford shall elect two Senators.

27th District—Randolph and Montgomery shall elect one Senator.

28th District—Moore and Richmond shall elect one Senator.
 29th District—Anson and Union shall elect one Senator.
 30th District—Mecklenburg shall elect one Senator.
 31st District—Cabarrus and Stanly shall elect one Senator.
 32d District—Davie and Rowan shall elect one Senator.
 33d District—Davidson shall elect one Senator.
 34th District—Forsythe and Stokes shall elect one Senator.
 35th District—Surry and Yadkin shall elect one Senator.
 36th District—Alexander and Iredell shall elect one Senator.

37th District—Catawba, Gaston and Lincoln shall elect one Senator.

38th District—Cleveland, Polk and Rutherford shall elect one Senator.

39th District—Alleghany, Ashe and Wilkes shall elect one Senator.

40th District—Buncombe, Henderson and Transylvania shall elect one Senator.

41st District—Burke, Caldwell and Watauga shall elect one Senator.

42d District—Madison, Mitchell, McDowell and Yancey shall elect one Senator.

43d District—Clay, Cherokee, Haywood, Jackson and Macon shall elect one Senator.

Regulations in relation to districting the State for Senators.

SEC. 5. An enumeration of the inhabitants of the State shall be taken under the direction of the General Assembly in the year one thousand eight hundred and seventy-five, and at the end of every ten years thereafter; and the Senate Districts shall be so altered by the General Assembly, at the first session after the return of every enumeration taken as aforesaid, or by order of Congress, that each Senate District shall contain, as nearly

as may be, an equal number of inhabitants, excluding aliens and Indians not taxed, and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory; and no County shall be divided in the formation of a Senate District, unless such County shall be equitably entitled to two or more Senators.

SEC. 6. The House of Representatives shall be composed of one hundred and twenty Representatives, biennially chosen by ballot, to be elected by the Counties respectively, according to their population, and each County shall have at least one Representative in the House of Representatives, although it may not contain the requisite ratio of representation; this apportionment 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.

Regulations in relation to apportionment of Representatives.

SEC. 7. In making the apportionment in the House of Representatives, the ratio of representation shall be ascertained by dividing the amount of the population of the State, exclusive of that comprehended within those Counties which do not severally contain the one hundred and twentieth part of the population of the State, by the number of Representatives, less the number assigned to such Counties; and in ascertaining the number of the population of the State, aliens and Indians not taxed shall not be included. 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.

SEC. 8. Until the General Assembly shall have made the apportionment as hereinbefore provided, the House of Representatives shall be composed of members elected from the Counties in the following manner, to-wit:

Apportionment of Representatives.

The County of Wake shall elect four members; the Counties of Craven, Granville, Halifax and New Hanover shall elect three members each; the Counties of Caswell, Chatham, Cumberland, Davidson, Duplin, Engecombe, Franklin, Guilford, Iredell, Johnston, Mecklenburg, Northampton, Orange, Pitt, Randolph, Robeson, Rockingham, Rowan, Warren and Wayne shall elect two members each; the Counties of Alamance,

Alexander, Alleghany, Anson, Ashe, Beaufort, Bertie, Bladen, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Camden, Carteret, Catawba, Cherokee, Chowan, Clay, Cleveland, Columbus, Currituck, Davie, Forsythe, Gaston, Gates, Greene, Harnett, Henderson, Haywood, Hertford, Hyde, Jackson, Jones, Lenoir, Lincoln, Macon, Madison, Martin, McDowell, Mitchell, Montgomery, Moore, Nash, Onslow, Pasquotank, Perquimans, Person, Polk, Richmond, Rutherford, Sampson, Stanley, Stokes, Surry, Transylvania, Tyrrel, Union, Washington, Watauga, Wilkes, Wilson, Yadkin and Yancey shall elect one member each.

Qualifications
of Senators.

SEC. 9. Each member of the Senate shall be not less than twenty-five years of age, shall have resided in the State as a citizen two years, and shall have usually resided in the District for which he is chosen, one year immediately preceding his election.

Qualifications
for Representatives.

SEC. 10. Each member of the House of Representatives shall be a qualified elector of the State, and shall have resided in the County for which he is chosen, for one year immediately preceding his election.

Election of officers.

SEC. 11. In the election of all officers, whose appointment shall be conferred upon the General Assembly by the Constitution, the vote shall be *viva voce*.

Powers in relation to divorce and alimony.

SEC. 12. 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.

Private laws in relation to names of persons, &c.

SEC. 13. The General Assembly shall not have power to pass any private law to alter the name of any person or to legitimate any person 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.

Thirty days' notice shall be given anterior to passage of private laws.

SEC. 14. 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 direction, and in such manner as shall be provided by law.

Vacancies.

SEC. 15. If vacancies shall occur in the General Assembly by death, resignation or otherwise, writs of election shall be issued by the Governor under such regulations as may be prescribed by law.

SEC. 16. No law shall be passed to raise money on the credit Revenue. of the State, or to pledge the faith of the State directly or indirectly for the payment of any debt, or to impose any tax upon the people of the State, or to allow the Counties, Cities or Towns to do so, unless the bill for the purpose shall have been read three several times in each House of the General Assembly, and passed three several readings, which readings shall have been on three different days, and agreed to by each House respectively, and unless the yeas and nays on the second and third reading, of the bill shall have been entered on the Journal.

SEC. 17. The General Assembly shall regulate entails in such Entails. manner as to prevent perpetuities.

SEC. 18. Each House shall keep a Journal of its proceedings, Journals. which shall be printed and made public immediately after the adjournment of the General Assembly.

SEC. 19. Any member of either House may dissent from, and Protest. 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 Journal.

SEC. 20. The House of Representatives shall choose their Officers of the House. own Speaker and other officers.

SEC. 21. The Lieutenant Governor shall preside in the Senate President of the Senate. but shall have no vote, unless it may be equally divided.

SEC. 22. The Senate shall choose its other officers and also a Other Senatorial officers. Speaker (*pro tempore*) in the absence of the Lieutenant Governor, or when he shall exercise the office of Governor.

SEC. 23. The style of the acts shall be, "The General As- Style of the acts. sembly of North Carolina do enact."

SEC. 24. Each House shall be judge of the qualifications and elections of its own members, shall sit upon its own adjournment from day to day, prepare bills to be passed into laws, and the two Houses may also jointly adjourn to any future day, or other place. Powers of the General Assembly.

SEC. 25. All bills and resolutions of a legislative nature shall be read three times in each House, before they pass into laws; and shall be signed by the presiding officers of both Houses. Bills and resolutions to be read three times, &c.

SEC. 26. Each member of the General Assembly, before taking his seat, shall take an oath or affirmation that he will support the Constitution and laws of the United States, and the Constitution of the State of North Carolina, and will faith- Oath for members.

fully discharge his duty as a member of the Senate or House of Representatives.

Terms of office

SEC. 27. The terms of office for Senators and members of the House of Representatives shall commence at the time of their election; and the term of office of those elected at the first election held under this Constitution shall terminate at the same time as if they had been elected at the first ensuing regular election.

Yeas and nays.

SEC. 28. Upon motion made and seconded in either House, by one-fifth of the members present, the yeas and nays upon any question shall be taken and entered upon the Journals.

Election for members of the General Assembly.

SEC. 29. The election for members 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 such manner as may be prescribed by law, on the first Thursday in August, in the year one thousand eight hundred and seventy, and every two years thereafter. But the General Assembly may change the time of holding the elections. The first election shall be held when the vote shall be taken on the ratification of this Constitution by the voters of the State, and the General Assembly then elected shall meet on the fifteenth day after the approval thereof by the Congress of the United States, if it fall not on Sunday, but if it shall so fall, then on the next day thereafter; and the members then elected shall hold their seats until their successors are elected at a regular election.

ARTICLE III.

EXECUTIVE DEPARTMENT.

Officers of the Executive Department.

SECTION 1. The Executive Department shall consist of a Governor, (in whom shall be vested the supreme executive power of the State) a Lieutenant Governor, a Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Works, a Superintendent of Public Instruction, and an Attorney General, who shall be elected for a term of four years by the qualified electors of the State, at the same time and places and in the same manner as members of the General Assembly are elected. Their term of office shall commence on the first day

Term of office.

of January next after their election, and continue until their successors are elected and qualified: *Provided*, That the officers first elected shall assume the duties of their office ten days after the approval of this Constitution by the Congress of the United States, and shall hold their offices four years from and after the first day of January, 1869.

SEC. 2. No person shall be eligible as Governor or Lieutenant Governor, unless he shall have attained the age of thirty years, shall have been a citizen of the United States five years, and shall have been a resident of this State for two years next before the election; nor shall the person elected to either of these two offices be eligible to the same office more than four years in any term of eight years, unless the office shall have been cast upon him as Lieutenant Governor or President of the Senate.

Qualifications
of Governor
and Lieuten-
ant Governor.

SEC. 3. The return of every election for officers of the Executive Department shall be sealed up and transmitted to the seat of government by the returning officers, directed to the Speaker of the House of Representatives, who shall open and publish the same in the presence of a majority of the members of both Houses of the General Assembly. The persons having the highest number of votes respectively shall be declared duly elected; but if two or more be equal and highest in votes for the same office, then one of them shall be chosen by joint-ballot of both Houses of the General Assembly. Contested elections shall be determined by a joint vote of both Houses of the General Assembly, in such manner as shall be prescribed by law.

Returns of
elections.

SEC. 4. The Governor, before entering upon the duties of his office, shall, in the presence of the members of both branches of the General Assembly, or before any Justice of the Supreme Court, take an oath or affirmation, that he will support the Constitution and laws of the United States, and of the State of North Carolina, and that he will faithfully perform the duties appertaining to the office of Governor to which he has been elected.

Oath of office
for Governor.

SEC. 5. The Governor shall reside at the seat of government of this State, and he shall, from time to time, give the General Assembly information of the affairs of the State, and recommend to their consideration such measures as he shall deem expedient.

Duties of the
Governor.

SEC. 6. The Governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offences,

Reprieves,
commutations
and pardons.

immiably
(except in cases of impeachment,) upon such conditions as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. He shall annually communicate to the General Assembly each case of reprieve, commutation, or pardon granted, stating the name of each convict, the crime for which he was convicted, the sentence and its date, the date of commutation, pardon or reprieve, and the reasons therefor.

Annual reports from officers of Executive Department and of Public Institutions.

SEC. 7. The officers of the Executive Department and of the public institutions of the State shall, at least five days previous to each regular session of the General Assembly, severally report to the Governor, who shall transmit such reports, with his message, to the General Assembly; and the Governor may, at any time, require information in writing from the officers in the Executive Department upon any subject relating to the duties of their respective offices, and shall take care that the laws be faithfully executed.

Commander-in-Chief.

SEC. 8. The Governor shall be Commander-in-Chief of the militia of the State, except when they shall be called into the service of the United States.

Extra sessions of General Assembly.

SEC. 9. The Governor shall have power, on extraordinary occasions, by and with the advice of the Council of State, to convene the General Assembly in extra session by his proclamation, stating therein the purpose or purposes for which they are thus convened.

Officers whose appointments are not otherwise provided for.

SEC. 10. The Governor shall nominate, and by and with the advice and consent of a majority of the Senators elect, appoint all officers whose offices are established by this Constitution, or which shall be created by law, and whose appointments are not otherwise provided for, and no such officer shall be appointed or elected by the General Assembly.

Duties of the Lieutenant Governor.

SEC. 11. The Lieutenant Governor shall be President of the Senate, but shall have no vote unless the Senate be equally divided. He shall, whilst acting as President of the Senate, receive for his services the same pay which shall, for the same period, be allowed to the Speaker of the House of Representatives; and he shall receive no other compensation except when he is acting as Governor.

In case of impeachment of Governor, or vacancy caused by death or resignation.

SEC. 12. In case of the impeachment of the Governor, his failure to qualify, his absence from the State, his inability to discharge the duties of his office, or in case the office of Governor

shall in anywise become vacant, the powers, duties and emoluments of the office shall devolve upon the Lieutenant Governor until the disabilities shall cease, or a new Governor shall be elected and qualified. In every case in which the Lieutenant Governor shall be unable to preside over the Senate, the Senators shall elect one of their own number President of their body; and the powers, duties and emoluments of the office of Governor shall devolve upon him whenever the Lieutenant Governor shall, for any reason, be prevented from discharging the duties of such office as above provided, and he shall continue as acting Governor until the disabilities be removed, or a new Governor or Lieutenant Governor shall be elected and qualified. Whenever, during the recess of the General Assembly, it shall become necessary for a President of the Senate to administer the Government, the Secretary of State shall convene the Senate, that they may elect such President.

SEC. 13. The respective duties of the Secretary of State, Auditor, Treasurer, Superintendent of Public Works, Superintendent of Public Instruction and Attorney General shall be prescribed by law. If the office of any of said officers shall be vacated by death, resignation or otherwise, it shall be the duty of the Governor to appoint another until the disability be removed or his successor be elected and qualified. Every such vacancy shall be filled by election at the first general election that occurs more than thirty days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired term fixed in the first section of this Article.

SEC. 14. The Secretary of State, Auditor, Treasurer, Superintendent of Public Works, and Superintendent of Public Instruction, shall constitute, *ex officio*, the Council of State, who shall advise the Governor in the execution of his office, and three of whom shall constitute a quorum; their advice and proceedings in this capacity shall be entered in a Journal, to be kept for this purpose exclusively, and signed by the members present, from any part of which any member may enter his dissent; and such Journal shall be placed before the General Assembly when called for by either House. The Attorney General shall be, *ex officio*, the legal adviser of the Executive Department.

SEC. 15. The officers mentioned in this Article shall, at Compensation

of Executive
officers.

stated periods, receive for their services a compensation to be established by law, which shall neither be increased nor diminished during the time for which they shall have been elected, and the said officers shall receive no other emolument or allowance whatever.

Seal of State.

SEC. 16. There shall be a seal of the 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." All grants and commissions shall be issued in the name and by the authority of the State of North Carolina, sealed with "the Great seal of the State," signed by the Governor and countersigned by the Secretary of State.

Bureau of sta-
tistics, Agri-
culture and
Immigration.

SEC. 17. There shall be established in the office of Secretary of State, a Bureau of Statistics, Agriculture and Immigration, under such regulations as the General Assembly may provide.

ARTICLE IV.

JUDICIAL DEPARTMENT.

Abolishes the
distinction be-
tween actions
at law and suits
in equity.

SECTION 1. The distinctions between actions at law and suits in equity, and the forms of all such actions and suits shall be abolished, and there shall be in this State but one form of action, for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action; and every action prosecuted by the people of the State as a party, against a person charged with a public offence, for the punishment of the same, shall be termed a criminal action. Feigned issues shall also be abolished, and the fact at issue tried by order of Court before a jury.

Feigned issues
abolished.

Apportion-
ment and du-
ties of three
Commission-
ers.

SEC. 2. Three Commissioners shall be appointed by this Convention to report to the General Assembly at its first session after this Constitution shall be adopted by the people, rules of practice and procedure in accordance with the provisions of the foregoing section, and the Convention shall provide for the Commissioners a reasonable compensation.

Code of law.

SEC. 3. The same Commissioners shall also report to the General Assembly as soon as practicable, a code of the law of North Carolina. The Governor shall have power to fill all vacancies occurring in this Commission.

SEC. 4. The Judicial power of the State shall be vested in a Court for the trial of Impeachments, a Supreme Court, Superior Courts, Courts of Justices of the Peace, and Special Courts.

Division of Judicial powers.

SEC. 5. The Court for the trial of Impeachments shall be the Senate. A majority of the members shall be necessary to a quorum, and the judgment shall not extend beyond removal from, and disqualification to, hold office in this State; but the party shall be liable to indictment and punishment according to law.

Trial Court of impeachment.

SEC. 6. The House of Representatives solely shall have the power of impeaching. No person shall be convicted without the concurrence of two-thirds of the Senators present. When the Governor is impeached, the Chief Justice shall preside.

Impeachment.

SEC. 7. Treason against the State shall consist only in levying war against it or adhering to its 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. No conviction of treason or attainder shall work corruption of blood or forfeiture.

Treason against the State.

SEC. 8. The Supreme Court shall consist of a Chief Justice and four Associate Justices.

Five Supreme Court Justices.

SEC. 9. There shall be two terms of the Supreme Court held at the seat of government of the State in each year, commencing on the first Monday in January, and first Monday in June, and continuing as long as the public interests may require.

Terms of the Supreme Court.

SEC. 10. The Supreme Court shall have jurisdiction to review, upon appeal, any decision of the Courts below, upon any matter of law or legal inference; but no issue of fact shall be tried before this Court; and the Court shall have power to issue any remedial writs necessary to give it a general supervision and control of the inferior Courts.

Jurisdiction of Supreme Court.

SEC. 11. The Supreme Court shall have original jurisdiction to hear claims against the State, but its decisions shall be merely recommendatory: no process in the nature of execution shall issue thereon; they shall be reported to the next session of the General Assembly for its action.

Claims against the State.

SEC. 12. The State shall be divided into twelve Judicial Districts, for each of which a Judge shall be chosen, who shall hold a Superior Court in each County in said District at least twice in each year, to continue for two weeks, unless the business shall be sooner disposed of.

Twelve Judicial Districts for Superior Courts.

Apportionment of said districts.

SEC. 13. Until altered by law, the following shall be the Judicial Districts:

First District—Currituck, Camden, Pasquotank, Perquimans, Chowan, Gates, Hertford, Bertie.

Second District—Tyrrell, Hyde, Washington, Beaufort, Martin, Pitt, Edgecombe.

Third District—Craven, Carteret, Jones, Greene, Onslow, Lenoir, Wayne, Wilson.

Fourth District—Brunswick, New Hanover, Duplin, Columbus, Bladen, Sampson, Robeson.

Fifth District—Cumberland, Harnett, Moore, Richmond, Anson, Montgomery, Stanley, Union.

Sixth District—Northampton, Warren, Halifax, Wake, Nash, Franklin, Johnston, Granville.

Seventh District—Person, Orange, Chatham, Randolph, Guilford, Alamance, Caswell, Rockingham.

Eighth District—Stokes, Forsythe, Davidson, Rowan, Davie, Yadkin, Surry.

Ninth District—Catawba, Cabarrus, Mecklenburg, Lincoln, Gaston, Cleveland, Rutherford, Polk.

Tenth District—Iredell, Wilkes, Burke, Alexander, Caldwell, McDowell.

Eleventh District—Alleghany, Ashe, Watauga, Mitchell, Yancey, Madison, Buncombe.

Twelfth District—Henderson, Transylvania, Haywood, Macon, Jackson, Clay, Cherokee.

Residences of Judges, and special terms of courts.

SEC. 14. Every Judge of a Superior Court shall reside in his District while holding his office. The Judges may exchange Districts with each other with the consent of the Governor, and the Governor, for good reasons, which he shall report to the Legislature at its current or next session, may require any Judge to hold one or more specified terms of said Courts in lieu of the Judge in whose District they are.

Original jurisdiction of the Superior Courts.

SEC. 15. The Superior Courts shall have exclusive original jurisdiction of all civil actions, whereof exclusive original jurisdiction is not given to some other Courts; and of all criminal actions in which the punishment may exceed a fine of fifty dollars or imprisonment for one month.

Appellate jurisdiction.

SEC. 16. The Superior Courts shall have appellate jurisdiction of all issues of law or fact, determined by a Probate Judge or a Justice of the Peace, where the matter in controversy exceeds twenty-five dollars, and of matters of law in all cases.

SEC. 17. The Clerks of the Superior Courts shall have jurisdiction of the probate of deeds, the granting of letters testamentary and of administration, the appointment of guardians, the apprenticing of orphans, to audit the accounts of executors, administrators and guardians, and of such other matters as shall be prescribed by law. All issues of fact joined before them shall be transferred to the Superior Courts for trial, and appeals shall lie to the Superior Courts from their judgments in all matters of law.

Jurisdiction of Superior Court Clerks.

Right of appeal.

SEC. 18. In all issues of fact, joined in any court, the parties may waive the right to have the same determined by jury, in which case the finding of the Judge upon the facts shall have the force and effect of a verdict of a jury.

In case of waiver of trial by jury.

SEC. 19. The General Assembly shall provide for the establishment of Special Courts, for the trial of misdemeanors, in cities and towns, where the same may be necessary.

Special courts in cities.

SEC. 20. The Clerk of the Supreme Court shall be appointed by the Court, and shall hold his office for eight years.

Clerk of Supreme Court.

SEC. 21. A Clerk of the Superior Court for each County shall be elected by the qualified voters thereof, at the time and in the manner prescribed by law for the election of members of the General Assembly.

Election of Superior Court Clerk.

SEC. 22. Clerks of the Superior Courts shall hold their offices for four years.

Term of office.

SEC. 23. The General Assembly shall prescribe and regulate the fees, salaries and emoluments of all officers provided for in this Article; but the salaries of the Judges shall not be diminished during their continuance in office.

Fees, salaries and emoluments.

SEC. 24. The laws of North Carolina, not repugnant to this Constitution, or to the Constitution and laws of the United States, shall be in force until lawfully altered.

What laws are and shall be in force.

SEC. 25. Actions at law, and suits in equity, pending when this Constitution shall go into effect, shall be transferred to the Courts having jurisdiction thereof, without prejudice by reason of the change, and all such actions and suits commenced before, and pending at, the adoption by the General Assembly of the rules of practice and procedure herein provided for, shall be heard and determined according to the practice now in use, unless otherwise provided for by said rules.

Disposition of actions at law and suits in equity pending which this Constitution shall go into effect, &c.

SEC. 26. The Justices of the Supreme Court shall be elected by the qualified voters of the State, as is provided for the elec-

Election, terms of office, &c., of Supreme

and Superior
Court Judges.

tion of members of the General Assembly. They shall hold their offices for eight years. The Judges of the Superior Courts shall be elected in like manner, and shall hold their offices for eight years; but the Judges of the Superior Courts elected at the first election under this Constitution shall, after their election, under the superintendence of the Justices of the Supreme Court, be divided by lot into two equal classes, one of which shall hold office for four years, the other for eight years.

Provision in
relation to
election of Su-
perior Court
Judges.

SEC. 27. The General Assembly may provide by law that the Judges of the Superior Courts, instead of being elected by the voters of the whole State, as is herein provided for, shall be elected by the voters of their respective Districts.

Transaction of
business in the
Superior
Courts.

SEC. 28. The Superior Courts shall be, at all times, open for the transaction of all business within their jurisdiction, except the trial of issues of fact requiring a jury.

Solicitors for
each Judicial
District.

SEC. 29. A Solicitor shall be elected for each Judicial District by the qualified voters thereof, as is prescribed for members of the General Assembly, who shall hold office for the term of four years, and prosecute on behalf of the State, in all criminal actions in the Superior Courts, and advise the officers of justice in his District.

Sheriffs and
Coroners.

SEC. 30. In each County a Sheriff and Coroner shall be elected by the qualified voters thereof, as is prescribed for members of the General Assembly, and shall hold their offices for two years. In each Township there shall be a Constable elected in like manner by the voters thereof, who shall hold his office for two years. When there is no Coroner in the County, the Clerk of the Superior Court for the County may appoint one for special cases. In case of a vacancy existing for any cause, in any of the offices created by this section, the Commissioners for the County may appoint to such office for the unexpired term.

Vacancies.

SEC. 31. All vacancies occurring in the offices provided for by this Article of this Constitution, shall be filled by the appointment of the Governor, unless otherwise provided for, and the appointees shall hold their places until the next regular election.

Terms of office
of first officers
under this Ar-
ticle.

SEC. 32. The officers elected at the first election held under this Constitution shall hold their offices for the terms prescribed for them respectively, next ensuing after the next regular election for members of the General Assembly. But their terms

shall begin upon the approval of this Constitution by the Congress of the United States.

SEC. 33. The several Justices of the Peace shall have exclusive original jurisdiction under such regulations as the General Assembly shall prescribe, of all civil actions, founded on contract, wherein the sum demanded shall not exceed two hundred dollars, and wherein the title to real estate shall not be in controversy; and of all criminal matters arising within their Counties, where the punishment cannot exceed a fine of fifty dollars, or imprisonment for one month. When an issue of fact shall be joined before a Justice, on demand of either party thereto, he shall cause a jury of six men to be summoned, who shall try the same. The party against whom judgment shall be rendered in any civil action may appeal to the Superior Court from the same, and if the judgment shall exceed twenty-five dollars, there may be a new trial of the whole matter in the appellate Court; but if the judgment shall be for twenty-five dollars or less, then the case shall be heard in the appellate Court only upon matters of law. In all cases of a criminal nature, the party against whom judgment is given may appeal to the Superior Court, where the matter shall be heard anew. In all cases brought before a Justice, he shall make a record of the proceedings, and file the same with the Clerk of the Superior Court for his County.

Jurisdiction of
Justices of the
Peace.

SEC. 34. When the office of Justice of the Peace shall become vacant otherwise than by expiration of the term, and in case of a failure by the voters of any District to elect, the Clerk of the Superior Court for the County shall appoint to fill the vacancy for the unexpired term.

Vacancies in
office of Justices.

SEC. 35. In case the office of Clerk of a Superior Court for a County shall become vacant otherwise than by the expiration of the term, and in case of a failure by the people to elect, the Judge of the Superior Court for the County shall appoint to fill the vacancy until an election can be regularly held.

Vacancies in
office of Superior
Court Clerk.

ARTICLE V.

REVENUE AND TAXATION.

SECTION 1. The General Assembly shall levy a capitation tax on every male inhabitant of the State over twenty-one and

Capitation tax.

Exemptions.

under fifty years of age, which shall be equal on each, to the tax on property valued at three hundred dollars in cash. The Commissioners of the several Counties may exempt from capitation tax in special cases, on account of poverty and infirmity, and the State and County capitation tax combined shall never exceed two dollars on the head.

Application of proceeds of State and County capitation tax.

SEC. 2. The proceeds of the State and County capitation tax shall be applied to the purposes of education and the support of the poor, but in no one year shall more than twenty-five per cent. thereof be appropriated to the latter purpose.

Taxation shall be by uniform rule and ad-valorem.

SEC. 3. Laws shall be passed taxing, by a uniform rule, all moneys, credits, investments in bonds, stocks, joint-stock companies or otherwise; and, also, all real and personal property, according to its true value in money. The General Assembly may also tax trades, professions, franchises, and incomes, provided that no income shall be taxed when the property, from which the income is derived, is taxed.

Payment of interest on public debt.

SEC. 4. The General Assembly shall, by appropriate legislation and by adequate taxation, provide for the prompt and regular payment of the interest on the public debt, and after the year 1880, it shall lay a specific annual tax upon the real and personal property of the State, and the sum thus realized shall be set apart as a sinking fund, to be devoted to the payment of the public debt.

Restriction upon the increase of the public debt, except in certain contingencies.

SEC. 5. Until the bonds of the State shall be at par, the General Assembly shall have no power to contract any new debt or pecuniary obligation in behalf of the State, except to supply a casual deficit, or for suppressing invasion or insurrection, unless it shall in the same bill levy a special tax to pay the interest annually. And the General Assembly shall have no power to give or lend the credit of the State in aid of any person, association, or corporation, except to aid in the completion of such Rail Roads as may be unfinished at the time of the adoption of this Constitution, or in which the State has a direct pecuniary interest, unless the subject be submitted to a direct vote of the people of the State, and be approved by a majority of those who shall vote thereon.

Property exemptions from taxation.

SEC. 6. Property belonging to the State or to municipal corporations, shall be exempt from taxation. The General Assembly may exempt cemeteries, and property held for educational, scientific, literary, charitable, or religious purposes; also, wear-

ing apparel, arms for muster, household and kitchen furniture, the mechanical and agricultural implements of mechanics and farmers, libraries and scientific instruments, to a value not exceeding three hundred dollars.

SEC. 7. The taxes levied by the Commissioners of the several Counties for County purposes, shall be levied in like manner with the State taxes, and shall never exceed the double of the State tax, except for a special purpose, and with the special approval of the General Assembly.

Taxes levied
by County
Commission-
ers.

SEC. 8. Every act of the General Assembly levying a tax shall state the special object to which it is to be applied, and it shall be applied to no other purpose.

Acts levying
taxes shall
state object,
&c.

ARTICLE VI.

SUFFRAGE AND ELIGIBILITY TO OFFICE.

SECTION 1. Every male person born in the United States, and every male person who has been naturalized, twenty-one years old, or upward, who shall have resided in this State twelve months next preceding the election, and thirty days in the County in which he offers to vote, shall be deemed an elector.

Qualifications
of an elector.

SEC. 2. It shall be the duty of the General Assembly to provide, from time to time, for the registration of all electors, and no person shall be allowed to vote without registration, or to register, without first taking an oath or affirmation to support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith.

Registration of
electors.

SEC. 3. All elections by the people shall be by ballot, and all elections by the General Assembly shall be *viva voce*.

Elections by
people and
General As-
sembly:

SEC. 4. Every voter, except as hereinafter provided, shall be eligible to office; but before entering upon the discharge of the duties of his office, he shall take and subscribe the following oath: "I, —, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office. So help me God."

Oath of office.

Disqualifica-
tions for office.

SEC. 5. The following classes of persons shall be disqualified for office: First, All persons who shall deny the being of Almighty God. Second, All persons who shall have been convicted of treason, perjury, or of any other infamous crime, since becoming citizens of the United States, or of corruption, or mal-practice in office, unless such person shall have been legally restored to the rights of citizenship.

ARTICLE VII.

MUNICIPAL CORPORATIONS.

County offi-
cers.

SECTION 1. In each County, there shall be elected biennially by the qualified voters thereof, as provided for the election of members of the General Assembly, the following officers: A Treasurer, Register of Deeds, Surveyor and Five Commissioners.

Duty of Coun-
ty Commis-
sioners.

SEC. 2. It shall be the duty of the Commissioners to exercise a general supervision and control of the penal and charitable institutions, schools, roads, bridges, levying of taxes and finances of the County, as may be prescribed by law. The Register of Deeds shall be, *ex officio*, Clerk of the Board of Commissioners.

Counties to be
divided into
districts.

SEC. 3. It shall be the duty of the Commissioners first elected in each County, to divide the same into convenient Districts, to determine the boundaries and prescribe the name of the said Districts, and to report the same to the General Assembly before the first day of January, 1869.

Said districts
shall have cor-
porate powers
as Townships.

SEC. 4. Upon the approval of the reports provided for in the foregoing section, by the General Assembly, the said Districts shall have corporate powers for the necessary purposes of local government, and shall be known as Townships.

Officers of
Townships.

SEC. 5. In each Township there shall be biennially elected, by the qualified voters thereof, a Clerk and two Justices of the Peace, who shall constitute a Board of Trustees, and shall, under the supervision of the County Commissioners, have control of the taxes and finances, roads and bridges of the Township as may be prescribed by law. The General Assembly may provide for the election of a larger number of Justices of the Peace in cities and towns, and in those Townships in which cities and towns are situated. In every Township there shall also be

biennially elected a School Committee, consisting of three persons, whose duty shall be prescribed by law.

SEC. 6. The Township Board of Trustees shall assess the taxable property of their Townships and make return to the County Commissioners, for revision, as may be prescribed by law. The Clerk shall also be, *ex officio*, Treasurer of the Township. Trustees shall assess property.

SEC. 7. No County, city, town, or other municipal corporation shall contract any debt, pledge its faith, or loan its credit, nor shall any tax be levied, or collected by any officers of the same, except for the necessary expenses thereof, unless by a vote of a majority of the qualified voters therein. No debt or loan except by a majority of voters.

SEC. 8. No money shall be drawn from any County or Township Treasury, except by authority of law. Drawing of money.

SEC. 9. All taxes levied by any County, city, town, or Township, shall be uniform and *ad valorem*, upon all property in the same, except property exempted by this Constitution. Taxes to be ad-valorem.

SEC. 10. The County officers first elected under the provisions of this Article, shall enter upon their duties ten days after the approval of this Constitution by the Congress of the United States. When officers enter on duty.

SEC. 11. The Governor shall appoint a sufficient number of Justices of the Peace in each County, who shall hold their places until sections four, five and six of this Article shall have been carried into effect. Governor to appoint Justices.

SEC. 12. All charters, ordinances and provisions relating to municipal corporations shall remain in force until legally changed, unless inconsistent with the provisions of this Constitution. Charters to remain in force until legally changed.

SEC. 13. No County, city, town or other municipal corporation shall assume or pay, nor shall any tax be levied or collected for the payment of any debt, or the interest upon any debt, contracted directly or indirectly in aid or support of the rebellion. Debts in aid of the rebellion not to be paid.

ARTICLE VIII.

CORPORATIONS OTHER THAN MUNICIPAL.

SECTION 1. Corporations may be formed under general laws, but shall not be created by special act, except for municipal Corporations under general laws.

purposes, and in cases where, in the judgment of the Legislature, the object of the corporations cannot be attained under general laws. All general laws and special acts passed, pursuant to this section, may be altered from time to time or repealed.

Debts of corporations, how secured.

SEC. 2. Dues from corporations shall be secured by such individual liabilities of the corporations and other means, as may be prescribed by law.

What corporations shall include.

SEC. 3. The term corporation, as used in this Article, shall be construed to include all associations and joint stock companies, having any of the powers and privileges of corporations, not possessed by individuals or partnerships. And all corporations shall have the right to sue, and shall be subject to be sued in all Courts, in like cases as natural persons.

Legislation to provide for organizing Cities, Towns, &c.

SEC. 4. It shall be the duty of the Legislature to provide for the organization of cities, towns and incorporated villages, and to restrict their power of taxation, assessments, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debts by such municipal corporations.

ARTICLE IX.

EDUCATION.

Education shall be encouraged.

SECTION 1. Religion, morality and knowledge, being necessary to good government and happiness of mankind, schools and the means of education shall forever be encouraged.

General Assembly shall provide for schools.

SEC. 2. The General Assembly, at its first session under this Constitution, shall provide by taxation and otherwise for a general and uniform system of public schools, wherein tuition shall be free of charge to all the children of the State between the ages of six and twenty-one years.

Counties to be divided into districts.

SEC. 3. Each County of the State shall be divided into a convenient number of districts, in which one or more public schools shall be maintained at least four months in every year; and if the Commissioners of any County shall fail to comply with the aforesaid requirements of this section, they shall be liable to indictment.

What proper-

SEC. 4. The proceeds of all lands that have been, or hereafter

may be granted by the United States to this State and not otherwise specially appropriated by the United States or heretofore by this State ; also, all moneys, stocks, bonds, and other property now belonging to any fund for purposes of education ; also, the net proceeds that may accrue to the State from sales of estrays, or from fines, penalties and forfeitures ; also, the proceeds of all sales of the swamp lands belonging to the State ; also, all money that shall be paid as an equivalent for exemption from military duty ; also, all grants, gifts or devises that may hereafter be made to this State, and not otherwise appropriated by the grant, gift or devise, shall be securely invested and sacredly preserved as an irreducible educational fund, the annual income of which, together with so much of the ordinary revenue of the State as may be necessary, shall be faithfully appropriated for establishing and perfecting in this State a system of free public schools, and for no other purposes or uses whatsoever.

SEC. 5. The University of North Carolina, with its lands, emoluments and franchises, is under the control of the State, and shall be held to an inseparable connection with the free public school system of the State.

University and public schools not to be separated.

SEC. 6. The General Assembly shall provide that the benefits of the University, as far as practicable, be extended to the youth of the State free of expense for tuition ; also, that all the property which has heretofore accrued to the State, or shall hereafter accrue from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons, shall be appropriated to the use of the University.

Benefits of the University.

SEC. 7. The Governor, Lieutenant Governor, Secretary of State, Treasurer, Auditor, Superintendent of Public Works, Superintendent of Public Instruction and Attorney General, shall constitute a State Board of Education.

Board of Education.

SEC. 8. The Governor shall be President, and the Superintendent of Public Instruction shall be Secretary of the Board of Education.

President and Secretary.

SEC. 9. The Board of Education shall succeed to all the powers and trusts of the President and Directors of the Literary Fund of North Carolina, and shall have full power to legislate and make all needful rules and regulations in relation to free public schools and the educational fund of the State ; but all acts, rules and regulations of said Board may be altered, amend-

Power of Board.

ed or repealed by the General Assembly, and when so altered, amended or repealed, they shall not be re-enacted by the Board.

First session
of Board.

SEC. 10. The first session of the Board of Education shall be held at the capitol of the State, within fifteen days after the organization of the State government under this Constitution; the time of future meetings may be determined by the Board.

Quorum.

SEC. 11. A majority of the Board shall constitute a quorum for the transaction of business.

Expenses.

SEC. 12. The contingent expenses of the Board shall be provided for by the General Assembly.

Trustees for
the University.

SEC. 13. The Board of Education shall elect Trustees for the University as follows: One Trustee for each County in the State, whose term of office shall be eight years. The first meeting of the Board shall be held within ten days after their election, and at this and every subsequent meeting, ten Trustees shall constitute a quorum. The Trustees at their first meeting, shall be divided, as equally as may be, into four classes. The seats of the first class shall be vacated at the expiration of two years; of the second class, at the expiration of four years; of the third class, at the expiration of six years; of the fourth class, at the expiration of eight years; so that one-fourth may be chosen every second year.

Board of Trustees.

SEC. 14. The Board of Education and the President of the University, shall be, *ex officio*, members of the Board of Trustees of the University; and shall, with three other Trustees, to be appointed by the Board of Trustees, constitute the Executive Committee of the Trustees of the University of North Carolina, and shall be clothed with the powers delegated to the Executive Committee under the existing organization of the Institution. The Governor shall be, *ex officio*, President of the Board of Trustees and Chairman of the Executive Committee of the University. The Board of Education shall provide for the more perfect organization of the Board of Trustees.

Privileges and
rights vested
in new Board.

SEC. 15. All the privileges, rights, franchises and endowments heretofore granted to, or conferred upon, the Board of Trustees of the University of North Carolina by the charter of 1789, or by any subsequent legislation, are hereby vested in the Board of Trustees, authorized by this Constitution, for the perpetual benefit of the University.

Agricultural
Department.

SEC. 16. As soon as practicable after the adoption of this Constitution, the General Assembly shall establish and maintain in

connection with the University, a Department of Agriculture, of Mechanics, of Mining, and of Normal Instruction.

SEC. 17. The General Assembly is hereby empowered to enact that every child, of sufficient mental and physical ability, shall attend the public schools during the period between the ages of six and eighteen years, for a term of not less than sixteen months, unless educated by other means. Children must attend school.

ARTICLE X.

HOMESTEADS AND EXEMPTIONS.

SECTION 1. The personal property of any resident of this State, to the value of five hundred dollars, to be selected by such resident, shall be, and is hereby exempted from sale under execution, or other final process of any Court, issued for the collection of any debt. Exemption.

SEC. 2. Every homestead, and the dwelling and buildings used therewith, not exceeding in value one thousand dollars to be selected by the owner thereof, or in lieu thereof, at the option of the owner, any lot in a city, town or village, with the dwelling and buildings used thereon, owned and occupied by any resident of this State, and not exceeding the value of one thousand dollars, shall be exempt from sale under execution, or other final process, obtained on any debt. But no property shall be exempt from sale for taxes, or for payment of obligations contracted for the purchase of said premises. Homestead.

SEC. 3. The homestead, after the death of the owner thereof, shall be exempt from the payment of any debt, during the minority of his children, or any one of them. Homestead exempted from debt.

SEC. 4. The provisions of sections one and two of this Article shall not be so construed as to prevent a laborer's lien for work done and performed for the person claiming such exemption, or a mechanic's lien for work done on the premises. Laborer's lien.

SEC. 5. If the owner of a homestead die, leaving a widow, but no children, the same shall be exempt from the debts of her husband, and the rents and profits thereof shall inure to her benefit during her widowhood, unless she be the owner of a homestead in her own right. Benefit of widow.

Property of a married female secured to her.

SEC. 6. The real and personal property of any female in this State, acquired before marriage, and all property, real and personal, to which she may, after marriage, become in any manner entitled, shall be and remain the sole and separate estate and property of such female, and shall not be liable for any debts, obligations or engagements of her husband, and may be devised or bequeathed, and, with the written assent of her husband, conveyed by her as if she were unmarried.

Husband may insure his life for the benefit of wife and children.

SEC. 7. The husband may insure his own life for the sole use and benefit of his wife and children, and in case of the death of the husband the amount thus insured shall be paid over to the wife and children, or the guardian, if under age, for her, or their own use, free from all the claims of the representatives of the husband, or any of his creditors.

How deed for homestead may be made.

SEC. 8. Nothing contained in the foregoing sections of this Article shall operate to prevent the owner of a homestead from disposing of the same by deed ; but no deed made by the owner of a homestead shall be valid without the voluntary signature and assent of his wife, signified on her private examination according to law.

ARTICLE XI.

PUNISHMENTS, PENAL INSTITUTIONS AND PUBLIC CHARITIES.

Punishments.

SECTION 1. The following punishments only shall be known to the laws of this State, viz: death, imprisonment, with or without hard labor, fines, removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under this State.

Death punishment.

SEC. 2. The object of punishments being not only to satisfy justice, but also to reform the offender, and thus prevent crime, murder, arson, burglary, and rape, and these only, may be punishable with death, if the General Assembly shall so enact.

Penitentiary.

SEC. 3. The General Assembly shall, at its first meeting, make provision for the erection and conduct of a State's Prison or Penitentiary at some central and accessible point within the State.

Houses of correction.

SEC. 4. The General Assembly may provide for the erection

of Houses of Correction, where vagrants and persons guilty of misdemeanors shall be restrained and usefully employed.

SEC. 5. A House or Houses of Refuge may be established whenever the public interest may require it, for the correction and instruction of other classes of offenders. Houses of refuge.

SEC. 6. It shall be required, by competent legislation, that the structure and superintendence of penal institutions of the State, the County jails, and city police prisons, secure the health and comfort of the prisoners, and that male and female prisoners be never confined in the same room or cell. The sexes to be separated.

SEC. 7. Beneficent provision for the poor, the unfortunate and orphan, being one of the first duties of a civilized and a Christian State, the General Assembly shall, at its first session, appoint and define the duties of a Board of Public Charities, to whom shall be entrusted the supervision of all charitable and penal State institutions, and who shall annually report to the Governor upon their condition, with suggestions for their improvement. Provision for the poor and orphans.

SEC. 8. There shall also, as soon as practicable, be measures devised by the State for the establishment of one or more Orphan Houses, where destitute orphans may be cared for, educated and taught some business or trade. Orphan houses

SEC. 9. It shall be the duty of the Legislature, as soon as practicable, to devise means for the education of idiots and inebriates. Inebriates and idiots.

SEC. 10. The General Assembly shall provide that all the deaf mutes, the blind, and the insane of the State, shall be cared for at the charge of the State. Deaf mutes and insane.

SEC. 11. It shall be steadily kept in view by the Legislature, and the Board of Public Charities, that all penal and charitable institutions should be made as nearly self-supporting as is consistent with the purposes of their creation. Self-supporting.

ARTICLE XII.

MILITIA.

SECTION 1. All able bodied male citizens of the State of North Carolina, between the ages of twenty-one and forty years, who are citizens of the United States, shall be liable to duty in Who are liable to militia duty.

the Militia: *Provided*, That all persons who may be adverse to bearing arms, from religious scruples, shall be exempt therefrom.

Organizing,
&c.

SEC. 2. The General Assembly shall provide for the organizing, arming, equipping and discipline of the Militia, and for paying the same when called into active service.

Governor
Commander-
in-Chief.

SEC. 3. The Governor shall be Commander-in-Chief, and have power to call out the Militia to execute the law, suppress riots or insurrection, and to repel invasion.

Exemptions.

SEC. 4. The General Assembly shall have power to make such exemptions as may be deemed necessary, and to enact laws that may be expedient for the government of the Militia.

ARTICLE XIII.

AMENDMENTS.

Convention,
how called.

SECTION 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.

How the Con-
stitution may
be altered.

SEC. 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. 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 Representatives throughout the State; and if, upon comparing the votes given in the whole State, it shall appear that a majority of the voters voting thereon have approved thereof, then, and not otherwise, the same shall become a part of the Constitution.

ARTICLE XIV.

MISCELLANEOUS.

SECTION 1. All indictments which shall have been found, or may hereafter be found, for any crime or offence committed before this Constitution takes effect, may be proceeded upon in the proper Courts, but no punishment shall be inflicted which is forbidden by this Constitution.

Indictments.

SEC. 2. No person who shall hereafter fight a duel, or assist in the same as a second, or send, accept, or knowingly carry a challenge therefor, or agree to go out of this State to fight a duel, shall hold any office in this State.

Penalty for fighting duel.

SEC. 3. No money shall be drawn from the Treasury but in consequence of appropriations made by law, and an accurate account of the receipts and expenditures of the public money shall be annually published.

Drawing money.

SEC. 4. The General Assembly shall provide, by proper legislation, for giving to mechanics and laborers an adequate lien on the subject matter of their labor.

Mechanic's lien.

SEC. 5. In the absence of any contrary provision, all officers in this State, whether heretofore elected or appointed by the Governor, shall hold their positions only until other appointments are made by the Governor, or, if the officers are elective, until their successors shall have been chosen and duly qualified according to the provisions of this Constitution.

Governor to make appointments.

SEC. 6. The seat of government in this State shall remain at the City of Raleigh.

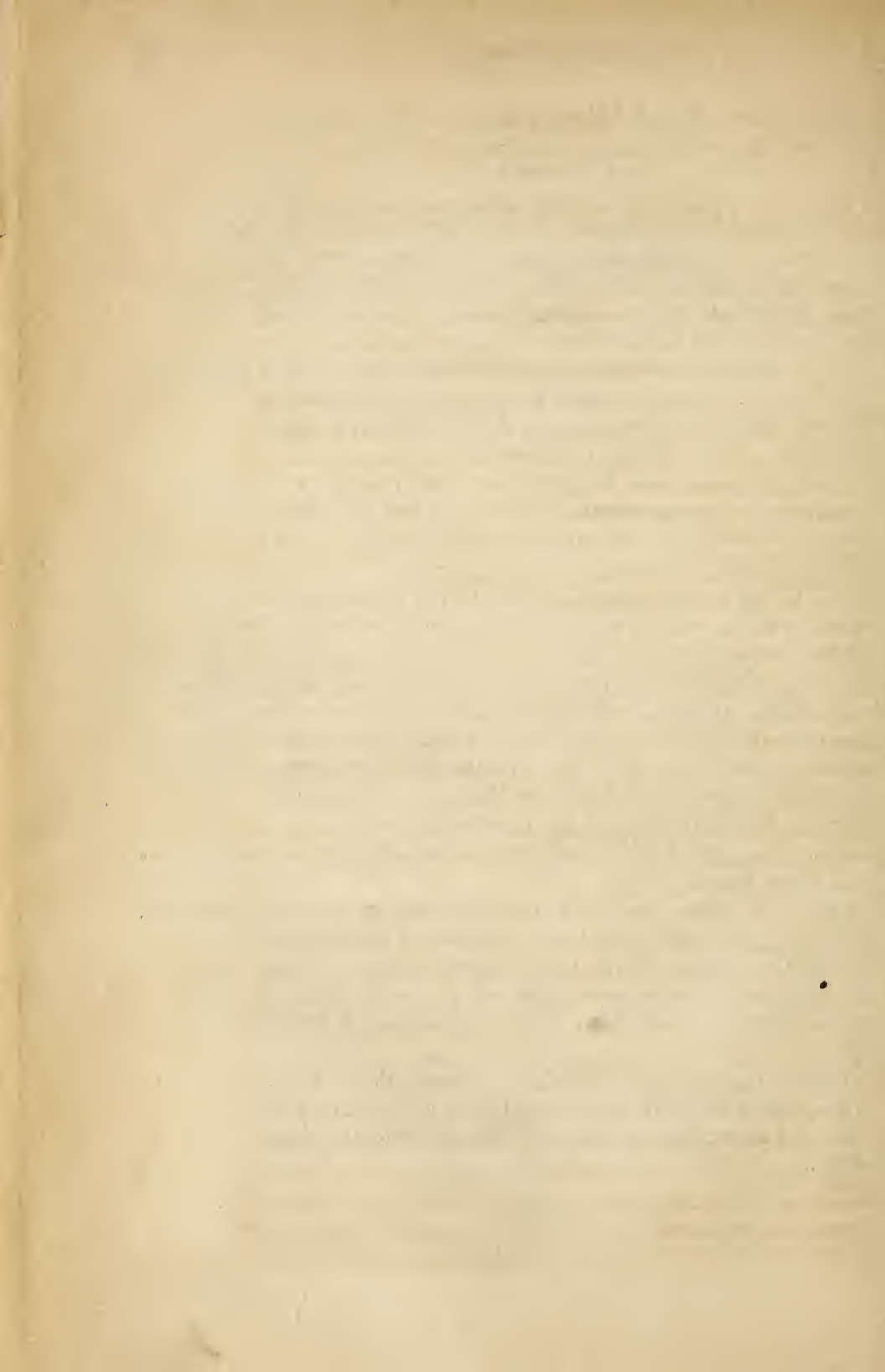
Seat of government.

SEC. 7. No person shall hold more than one lucrative office under the State at the same time: *Provided*, That officers in the militia, Justices of the Peace, Commissioners of Public Charities and Commissioners appointed for special purposes, shall not be considered officers within the meaning of this section.

Holding office.

Done in Convention at Raleigh, the sixteenth day of March, in the year of our Lord one thousand eight hundred and sixty-eight, and of the Independence of the United States the ninety-second.

*See Amendment
page 897.*



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TO THE

CONSTITUTION OF NORTH CAROLINA.

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BATTLE'S REVISAL.

STATE OF NORTH CAROLINA.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED
AND SEVENTY-THREE.

AN ACT

FOR COLLECTING, DIGESTING AND COMPILING ALL THE
PUBLIC STATUTE LAWS OF THE STATE, NOW
IN FORCE OR IN USE.

WHEREAS, it is expedient that all the public statute laws of the State in force or in use, shall be collected, digested and compiled in proper titles, divisions and sections, so that the said public statute laws shall be rendered more plain and easy to be understood; therefore,

The General Assembly of North Carolina do enact, in manner and form following, that is to say:—

CHAPTER 1.

ADOPTION OF MINOR CHILDREN.

SECTION

1. Persons desirous of adopting minor may file petition in the Superior Court.
2. Court may grant letters of adoption.
3. Effect of order.

SECTION

4. Bond to be given if the minor be an orphan having property.
5. Order to be recorded.
6. Parent or guardian must be parties of record.

Persons desirous of adopting minor children may file petition in Superior Court.—1872-'3, c. 155, s. 1.

1. ANY person or persons intending and desiring to adopt any minor child or children may file a petition in the Superior Court of the County wherein such child or children may reside, setting forth the name and age of such child or children and the name of its parents, whether the parents or either of them be living, and if there be no living parent the name of the guardian, if any, and if there be no guardian the name of the person having charge of the child or with whom such child resides, the amount and nature of the child's estate, if any, and especially if the adoption is for the minority or for the life of the child.

Court may grant letters of adoption.—1872-'3, c. 155 s. 2.

2. Upon the filing of such petition, and with the consent of the parent or parents, if living, or of the guardian, if any, or of the person with whom such child resides, or who may have charge of such child, the Court may, if the petitioner be a proper and suitable person, sanction and allow such adoption, by an order granting letters of adoption.

Effect of order.—1872-'3, c. 155, s. 3.

3. Such order, when made, shall have the effect forthwith to establish the relations of parent and child between the petitioner and the child or children during the minority or for the life of such child, according to the prayer of the petition, with all the duties, powers and rights belonging to the actual relationship of parent and child, and in case the adoption be for the life of the child, and the petitioner die intestate, such order shall have the further effect to enable such child to inherit the real estate and entitle it to the personal estate of the petitioner in the same manner and to the same extent such child would have been entitled to do, if such child had been the actual child of the person adopting it: *Provided*, such child shall not so inherit, and be so entitled to personal estate if the petitioner specially set forth in his petition such to be his desire and intentions.

Bond to be given if the minor be orphan having property.—1872-'3, c. 155 s. 4.

4. If such child be an orphan and without guardian, and shall be possessed of any estate, the Court shall require from the petitioner such bond as is required by law to be given by guardians.

Order to be re-

5. The order granting letters of adoption shall be recorded

in the office of the Clerk of the Superior Court of the County in which it is made, and may be revoked at any time by the Court for good cause shown.

6. The parent or guardian, or the person having charge of such child, or with whom it may reside, must be parties of record in this proceeding.

recorded.—1872-'8, c. 155, s. 5.

Parent or guardian must be parties of record.—1872-'73, c. 155, s. 6.

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. Society may alter or modify its by-laws.
4. Shall provide a place for holding annual fairs.
5. Fifteen hundred dollars per annum appropriated on condition.
6. Money how applied.
7. County societies how formed—What amount of property they may hold.
8. How organized—to continue during the will of the legislature.
9. When organized, it shall be certified, and certificate filed in clerk's office—Entitled to fifty dollars from the public treasurer on certain conditions—Only one society in a county entitled.
10. Funds of society to be appropriated in premiums, etc.
11. Shall transmit to the public treas-

SECTION

- urer annual statement of money received from State, and from members, and of expenses.
12. Shall annually publish statement of their experiments, reports, etc.
13. Secretary to keep a record of proceedings.
14. Governor to appoint a geological surveyor.
15. Duty of the surveyor.
16. Five thousand dollars per annum appropriated for survey.
17. Surveyor to deliver lectures.
18. State accepts benefit of act of Congress,
19. Governor directed to notify.
20. Treasurer authorized to demand and receive certain donated lands and scrip.
21. Treasurer authorized to sell scrip.
22. Treasurer authorized to employ agent.
23. To report his proceedings to the legislature.

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.

North Carolina State Agricultural Society incorporated.

Amount of property which may be held.—R. C. c. 2, s. 1.

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.—R. C. c. 2, s. 2.

Society may alter or modify its by-laws.—R. C. 1860, c. 1.

Shall provide a place for holding annual fairs.—R. C. c. 2, s. 8.

Fifteen hundred dollars per annum appropriated on condition.—R. C., c. 2, s. 4.

Money how applied.—R. C., c. 2, s. 5.

County societies how formed.

What amount of property they may hold.—R. C., c. 2, s. 6.

How organized—to continue during the will of the legislature.—R. C., c. 2, s. 7.

When organized, it shall be certified, and certificate

3. The said society is hereby authorized to rescind, alter or modify any of the rules, articles of association, by-laws or ordinances which existed before said society was incorporated by the Legislature, to the end that it may improve its organization and be empowered to adapt its operations to the great and useful purposes of its institution.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. When such society shall be fully organized, the organization thereof shall be certified by the President and signed by the Secretary to the County Commissioners, and thereupon the Board

shall order the same to be filed in the office of their Clerk and there kept; and the Clerk, under the seal of the Board, shall certify a copy of the same, together with the order of the Board 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 Board 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 Commissioners in case of a conflict between two claimants, shall determine which shall be the corporate body for the county.

filed in clerk's office.—R. C., c. 2, s. 8.

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

Only one society entitled in a county.

10. 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.

Funds of society to be appropriated in premiums, &c.—R. C., c. 2, s. 9.

11. 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 transmit to public treasurer annual statement of money received from State, members, and of experiments.—R. C., c. 2, s. 10.

12. 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.

Shall annually publish statements of their experiments, reports, &c.—R. C., c. 2, s. 11.

13. 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.

Secretary to keep a record of proceedings.—R. C., c. 2, s. 12.

14. The Governor shall appoint a suitable person to conduct, Governor to

appoint geological, etc.—
R. C., c. 2, s. 13.

Duty of the surveyor.—R. C., c. 2, s. 14.

under the supervision of himself and the board of literature, a geological, mineralogical, botanical, and agricultural survey of the State.

15. 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.

\$5,000 per annum appropriated for survey.—R. C., c. 2, s. 15.

16. 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.

Surveyor to deliver lectures.—R. C., c. 2, s. 16.

17. 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.

Resolution.—
1866.

WHEREAS, By an act of the Congress of the United States, approved July the second, one thousand eight hundred and sixty-two, entitled "an act donating public lands to the several States and Territories, which may provide colleges for the benefit of agriculture and mechanic arts," there was granted to the several States an amount of public land, to be apportioned to each State a quantity equal to thirty thousand acres for each Senator and Representative in Congress to which the States are respectively entitled by the apportionment under the census of eighteen hundred and sixty; and land scrip is directed to be issued accordingly, which shall be sold by the several States and the proceeds invested in stocks to constitute a perpetual fund for the endowment, support and maintenance of, at least, one college, where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the legislatures of the States may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life. And

WHEREAS, By another act of Congress, approved April fourteenth, one thousand eight hundred and sixty-four, a further time of two years from that date is allowed to the several States within which to express their acceptance of the benefits of the act aforesaid, according to the condition thereof; And, whereas, by virtue of the said acts of Congress, the State of North Carolina is entitled to land scrip to the amount of two hundred and seventy thousand acres upon expressing her acceptance as aforesaid:

18. *Resolved, therefore, by the General Assembly of the State of North Carolina*, That this State doth hereby accept the benefits of the said act of Congress, approved July second, eighteen hundred and sixty-two, in all respects according to the terms and conditions thereof.

State accepts benefit of act of Congress.

19. *Resolved, further*, That his Excellency, the Governor, be and he is hereby authorized and requested, immediately to signify to the President of the United States and the Secretary of the Department of the Interior, the acceptance of the said donation of land by this State for the purposes and on the conditions mentioned in said act, and to transmit copies of this preamble and resolutions to the President of the Senate and Speaker of the House of Representatives of the United States.

Governor directed to notify.

20. The Public Treasurer is designated and he is hereby authorized to demand and receive the lands and land scrip to which the State of North Carolina is entitled, under an act entitled "An act donating public lands to the several States and Territories, which may provide colleges for the benefit of agriculture and the mechanic arts," approved July second, eighteen hundred and sixty-two, and amended by an act extending the time within which the States and Territories may accept the grant of lands and scrip under said act, approved April fourteenth, eighteen hundred and sixty-four; which donation was accepted by the Legislature of the State of North Carolina at this session.

Treasurer authorized to demand and receive certain donated lands and scrip.—1866, c. 11, s. 1.

21. The Public Treasurer is authorized by and with the advice and consent of the Governor to sell said scrip from time to time for the highest price which can be obtained in such market as he may deem best, and shall invest the proceeds in stocks of the United States or of the States, or some other safe stocks yielding not less than five per centum upon the par value of said stocks, and the said funds shall be held separate and apart from other public funds.

Treasurer authorized to sell scrip.—1866, c. 11, s. 2.

22. The Public Treasurer, to effect the objects of this act, shall have power to employ such agents as may be necessary, and the expenses incurred, not to exceed fifteen hundred dollars, shall be paid out of any moneys not otherwise appropriated on the warrant of the Governor.

Treasurer authorized to employ agent.—1866, c. 11, s. 3.

23. The Treasurer shall report his proceedings to the General Assembly.

To report his proceedings to the Legislature.—1866, c. 11, s. 4.

CHAPTER 3.

ALIENS.

SECTION

1. Aliens may take and hold lands.

SECTION

2. Prior contracts made valid.

Aliens may take and hold property.—1870-'1, c. 255 s. 1.

1. FROM and after the ratification of this act, it shall be lawful for aliens of whatever foreign state or country, to take both by purchase and descent or other operation of law, any lands, tenements or hereditaments within this State, and to hold and convey the same as fully as citizens of this State can or may do, any law or usage to the contrary notwithstanding.

Prior contracts made valid.—1870-'1 c. 255, s. 2.

2. That all contracts to purchase or sell real estate by or with aliens, heretofore made, shall be deemed and taken as valid to all intents and purposes.

CHAPTER 4.

AMNESTY.

SECTION

1. What persons entitled to amnesty.
2. Act presumed to be done by order until contrary appears.
3. Provisions extended to organizations exempt from service.
4. Not liable to civil action.
5. Amnesty extended to females.

SECTION

6. Persons not to be held to answer for crimes.
7. Amnesty extended to officers and members of certain associations.
8. Accessories not to be responsible.
9. Legal proceedings dismissed. Proviso. Further proviso.

What persons entitled to amnesty, 1866-'7, c. 331.

1. No person who may have been in the civil or military service of the State as officers or soldiers of the militia, officers or soldiers of the home guard, officers and soldiers of the local police, officers and soldiers of the late Confederate States, or as officers and soldiers of the United States, shall be held to answer on any indictment for any act done in the discharge of any duties imposed on him, purporting to be by a law of the State, or late Confederate States government, or by virtue of any order emanating from any officer, commissioned or non-commissioned, of the militia or home guard, or local police of North Carolina, or any officer, commissioned or non-commissioned, of the late Confederate States government, or any officer, commissioned or non-commissioned, of the United States government, no one of the above named officers or privates, who now are or may hereafter be indicted for any homicides, felonies or misdemeanors, committed prior to the first day of January, A. D. 1866, shall be held to answer for the same, but shall be enti-

tled to a full and complete amnesty, pardon and discharge from the same upon the payment of costs; *Provided*, they shall not be taxed with the payment of the costs, upon any indictment preferred against them, from and after the twenty-second day of December, A. D. 1866; or in other words, that no officers or privates in any of the above named organizations, against whom no indictment was then pending, shall be liable to prosecution for any offence committed against the criminal laws of North Carolina prior to the first day of January, A. D. 1866, as aforesaid.

2. In all cases where indictments were pending on the twenty-second day of December, A. D. 1866, in the Superior Courts or the County Courts, if the defendant can show that he was an officer or private in either of the above named organizations at the time, it shall be presumed that he acted under orders until the contrary shall be made to appear.

Act presumed to have been done by order until contrary appears, 1866-'7, c. 3, s. 2.

3. All private citizens who, on account of age or from any other cause were exempt from service, in any or all of the above named organizations, who, for the preservation of their lives or property, or for the protection of their families, associated themselves together for the preservation of law and order, in their respective counties or districts, shall be entitled to all the benefits and provisions of this act.

Provisions extended to organizations exempt from service, 1866-'7, c. 3, s. 3.

4. No person who may have been in the civil or military service of the State, or late Confederate States government, or in the service of the United States government, in either of the above named organizations, shall be held liable in any civil action for any act done in the discharge of any duties imposed upon him by any law or authority purporting to be a law of the State or late Confederate States government.

Not liable to civil action, 1866-'7, c. 3, s. 3.

5. The provisions of this act shall be, and the same are hereby extended, as far as the same are applicable, to all females who may at any time, from the 20th day of May, 1861, to the 20th day of May, 1865, have violated any of the criminal laws of the State, by making raids upon any county, State or Confederate States commissaries or quartermasters, or other person or persons who had in his possession supplies or quartermaster stores belonging to the public, or who may have broken into or entered, or taken from any commissary or quartermaster depot, or other place where provisions or commissary or quartermaster stores were kept, or any other place where unusual quantities of provisions, supplies, or commissary or quartermaster stores, either by the aforesaid quartermaster or commissary or other persons, speculators or producers, were kept for the purpose of hoarding, speculation or regrating the same; and if any bill of indictment has been found and is now pending in any court of record in this State against any female, for the commission of the aforesaid offences, it shall be the duty of the solicitor for the said court to enter a *nolle prosequi*, and if any bill of indictment shall come on to be heard and determined before any Judge of the Superior Court, it shall be the

Amnesty extended to females, 1866-'67, c. 4.

duty of the Judge of the said court, before which the same may come, to order the discharge of the defendant upon the payment of the cost, and if it appear that the defendant is unable to pay the costs, to order her unconditional discharge.

Preamble,
1872-'3, c.
181, s. 1.

WHEREAS, It is believed that a strict enforcement of the criminal law in reference to many offences committed within the limits of the State since the close of the late civil war would result in greater detriment to the State of North Carolina than a policy based upon mercy and forgiveness; therefore,

Persons not to
be held to an-
swer for
crimes.

6. *The General Assembly of North Carolina do enact*, That no person who may have committed any crime against or in violation of the laws of the State of North Carolina, with the exception of rape, deliberate and wilful murder, arson and burglary, while a member of or officer or pretended officer of the Heroes of America, Loyal Union League, Red Strings, Constitutional Union Guard, White Brotherhood, Invisible Empire, Ku-Klux Klan, North Carolina State Troops, North Carolina Militia, Jay Hawkens, or any other organization, association, or assembly, secret or otherwise, political or otherwise, by whatever name known or called, in obedience to the commands, decrees or determinations, by whatever name called, of such organizations, associations or assemblies, or in obedience to the commands, orders or requests of any one exercising or pretending to exercise any authority or pretended authority by reason of his connection or attachment to any such organization, association or assembly, shall be held to answer criminally for any such crime against or in violation of the laws of the said State of North Carolina in fact committed or charged to have been committed previous to the first day of September, A. D. 1871, but every such person shall have free and complete amnesty and pardon therefor: *Provided*, that all persons who were not personally present at and actually participating in the crimes of wilful murder, arson and burglary, or who were not present at, and did not assent to the decree or order for the same, shall have the benefit of this act.

Proviso.

Amnesty ex-
tended to offi-
cers and mem-
bers of certain
associations,
1872-'3, c.
181, s. 2.

7. No person who may have been a member, officer or pretended officer, of any one of the organizations, associations or assemblies referred to in section one of this act shall be held to answer therefor, but every such person shall have full and complete amnesty and pardon therefor.

Accessories
not to be re-
sponsible,
1872-'3, c.
181, s. 3.

8. No person shall be held to answer criminally as accessory either before or after the fact for any crime against or in violation of the laws of this State for which amnesty and pardon are provided in the preceding sections of this chapter, but every such person shall have full and complete amnesty and pardon therefor.

Legal pro-
ceedings dis-
missed, 1872-
'3, c. 181, s. 4.

9. All presentments, indictments or criminal proceedings, of whatsoever nature or kind, now pending for any of the crimes against or violation of the laws of this State for which

amnesty and pardon are provided in the preceding sections of this chapter, shall be forthwith dismissed, and no further criminal proceedings shall be had against such persons, or any of them, for any of said crimes against or violations of the laws of this State: *Provided*, that this chapter shall not apply to larceny and robbery: *Provided*, that the provisions of this chapter shall not be construed to extend amnesty and pardon to any person or persons who have in any way embezzled or wrongfully in any way used or misappropriated any moneys, bonds, evidences of indebtedness, choses in action, or any other property of any kind whatsoever belonging or appropriated by law to any railroad company or other corporation in which the State has or had any interest, either direct or indirect, nor to Stephen Lowery, a condemned felon in the county of Robeson.

Proviso.
Proviso.

SECT. 1. Phillips' Law, 242, 536, 63 N. C. 140, 66 N. C. 145, 67 N. C. 467.
SECT. 4. 64 N. C. 141.

CHAPTER 5.

APPRENTICES.

SECTION

1. Binding to be by indenture.
2. Remedy thereon.
3. Who may be apprenticed.
4. For what time bound.

SECTION

5. Duties of masters.
6. Duty of Probate Judge.
7. Apprentices how compelled to serve.
8. Misconduct of masters.

1. THE binding of apprentices shall be by indenture, made in the name of the Judge of Probate of the county of the one part, and of the master or mistress of the other part; which indenture shall be recorded and filed in the office of the probate court.

Binding to be
by indenture.
—C. C. P., s.
482.

2. The apprentice may bring an action on such indenture in the name of the Judge of Probate and his successors, and recover any damages sustained by reason of the breach of the covenants contained in said indenture.

Remedy there-
on.—C. C. P.,
s. 483.

3. The Judges of Probate in their respective counties shall bind out as apprentices:

Who may be
apprenticed.—
C. C. P., s. 484.

(1.) All orphans whose estates are of so small value, that no person will educate and maintain them for the profits thereof;

(2.) All infants whose fathers have deserted their families and been absent for one year, leaving them without sufficient support;

(3.) All infants (not living with the father) whose mother has secured to her such property as the infants may thereafter acquire, provided the Probate Judge deems it improper to permit such infants to remain with the mother;

(4.) All infants who make application to the Board of Commissioners of the county for relief out of the funds for the poor, and such fact is certified by the Board to the Judge of Probate ;

(5.) All infants whose parents do not habitually employ their time in some honest, industrious occupation.

For what time bound.—1869-'70, c. 7, C. C. P., s. 485.

4. Every male apprentice shall be bound to some discreet person approved by the Judge of Probate, till the age of twenty-one, and every female apprentice until the age of eighteen years.

Duties of masters.—C. C. P. s. 486.

5. The master shall provide for the apprentice:

(1.) Diet, clothes, lodgings and accommodation fit and necessary ;

(2.) Education in reading, writing and arithmetic ;

(3.) Six dollars in cash, a new suit of clothes and a new Bible, at the end of the apprenticeship ;

(4.) Such other education, sum of money, or articles of furniture or implements of trade, as may be agreed on between the court and the master, and inserted in the indenture.

Duty of Probate Judge.—C. C. P., s. 487.

6. On application of any person to have an apprentice bound to him, it is the duty of the Judge of Probate to inform himself of the circumstances of the case ; and, for this purpose, he may cite before him the relatives of the orphan or infant, for examination on oath ; and he may also examine such other persons as he deems proper. In the selection of a master, he shall prefer, so far as may be consistent in other respects with the comfort and interest of the apprentice, some tradesman of a useful art or mystery.

Apprentices how compelled to serve.—C. C. P., s. 488.

7. If an apprentice refuses to serve as required by the indenture or by law, the Judge of Probate may, on application of the master, compel him, by citation or otherwise, to appear for inquiry into the facts ; and if the complaint is well-founded, and the apprentice persists in such refusal, the Judge of Probate may commit him by warrant to the House of Correction or the common jail of the county, until he consents.

Misconduct of masters.—C. C. P., s. 489.

8. Upon complaint of any apprentice that the master is guilty of cruelty, ill-usage, refusal of necessary provisions or clothing, or any other violation of the indenture, or of the law towards such apprentice, the Judge of Probate may, by order, compel the appearance of the master before him, when he shall examine and determine the complaint ; and if the same is well-founded, he shall cancel the indenture and discharge such apprentice from his obligation of service, and may proceed to appoint another master.

CHAPTER 6.

ASYLUMS.

I. FOR DEAF MUTES AND BLIND PERSONS.

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7. What persons received as pupils.
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I.—FOR DEAF MUTES AND BLIND PERSONS.

Preamble.—R.
C., c. 6.

WHEREAS, In virtue of an act of the General Assembly of the year eighteen hundred and forty-six, 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:"—

Incorporated.

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.

How styled.—
R. C., c. 6, s. 1.

Board of directors abolished.
1870'-1, c. 35, s. 1.

2. Chapter six of the Revised Code is hereby so altered and amended as to abolish the Board of Directors of said institution, and the powers, rights and duties heretofore prescribed by law to said board shall hereafter be granted to and imposed upon a Board of Trustees consisting of seven persons, who shall have the management and control of said institution as fully as has been heretofore given by law to the Board of Directors.

Board of trustees created.

Trustees.—
1870'-1, c. 35, s. 2.

3. W. H. McKee, J. R. Williams, W. W. Vass, John C. Palmer, R. S. Tucker, L. E. Heartt, and Chas. M. Busbee, are hereby constituted and appointed said Board of Trustees. They shall organize by choosing one of their number as President of the Board. The Principal of the Institution shall be

President.

Secretary.

ex officio secretary of the board, with the same duties heretofore pertaining to him as Secretary of the Board of Directors.

Vacancies.

Vacancies in the board may be filled by appointment of the Governor, subject to the approval of the General Assembly who shall themselves fill the vacancy if they disapprove the appointment made by the Governor; *Provided*, that said Board of Trustees shall hold their appointments until the first day of January, eighteen hundred and seventy-three, and until their successors are chosen.

Proviso.

4. The corporate powers of said institution shall be vested in the president and trustees, 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 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.

Corporate powers vested in a president and trustees; their powers and duties.—R. C., c. 6, s. 4.

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.

Time of meeting, may resign; removal from Wake.—R. C., c. 6, s. 5.

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.

Board to report to the General Assembly.—R. C., c. 6, s. 6.

7. The President and Trustees 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.

What persons received as pupils.—R. C. c. 6, s. 8.

8. The Board of Trustees 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.—R. C., c. 6, s. 11.

9. The Board of Education 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.—R. C., c. 6, s. 14.

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

Faculty may confer degrees.—R. C., c. 6, s. 15.

11. 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 deposited with public treasurer.—R. C., c. 6, s. 16.

Lot of land donated for colored pupils.—1872-'3, c. 134, s. 1.

12. A lot of land belonging to the State of North Carolina, situated in the city of Raleigh in the south-eastern part of said city, bounded on the west by Bloodworth street, on the north by Lenoir street, on the east by East street, and on the south by the lands of John W. B. Watson, containing about one acre, be and the same is donated and appropriated to the Institution for the Deaf and Dumb and the Blind for the purpose of establishing thereon buildings for the accommodation of the colored pupils of said institution.

Five thousand dollars appropriated.—1872-'3, c. 134, s. 2.

13. For the purpose of constructing suitable buildings thereon for that purpose, the sum of five thousand dollars is hereby appropriated, which said sum shall be paid by the Treasurer of the State to the treasurer of said institution upon the order of the board of trustees.

Treasurer to give bond.—1872-'3, c. 134, s. 2.

14. The treasurer of the said institution shall give bond in the sum of ten thousand dollars, conditioned that he will faithfully account for said money, which bond shall be filed with the Public Treasurer.

How money to be applied.—1872-'3, c. 134, s. 4.

15. The sum of money herein appropriated shall be applied by the trustees of the said institution to the construction of said buildings and to no other purposes whatever.

II.—FOR THE INSANE.

Preamble.—1868-'9, c. 87.

WHEREAS, By virtue of an act of the General Assembly passed in the year eighteen hundred and forty-eight, entitled "An act to provide for the establishment of a State Asylum 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 may be erected thereon, for the accommodation, maintenance, support and care of the insane of this State, and the Institution has been incorporated under the name of the Lunatic Asylum for the State of North Carolina;

Corporate name.—1868-'9, c. 67, s. 1.

1. *The General Assembly of North Carolina do enact,* That the said Institution shall be and remain a corporation, under the name of "The Insane Asylum of North Carolina," and the same is hereby invested with all the property which now belongs to it under the present or any other corporate name; and by this name it may acquire and hold, for the purposes of its establishment, all such property and estate as may be devised, bequeathed, or in any way given or conveyed to it.

How managed.—1858-'9, c. 2, s. 9. 1870-'1, c. 228, s. 1.

2. The affairs of the Insane Asylum of North Carolina shall hereafter be managed by fifteen directors, any five of whom shall constitute a quorum for the transaction of business.

Executive committee.—1858-'9, c. 2, s. 9. 1870-'1, c. 228, s. 1.

3. The board of directors shall out of their number appoint three members as an executive committee, who shall hold their office as such for one year and shall have the powers and be subject to the duties which the present executive committee has or is subject to.

Directors.—1870-'1, c. 228, s. 2.

4. The following named persons, to-wit: Dr. Chas. E. John-

son, Dr. E. Burke Haywood, Charles Dewey, P. F. Pescud, John D. Primrose, Thomas Bragg, A. S. Merrimon, and Kemp P. Battle, of Wake, Dr. C. T. Murphy, of Sampson, Dr. John McCormick, of Harnett, Rev. B. Craven, of Randolph, Dr. J. J. Summerell, of Rowan, C. Dowd, of Mecklenburg, Dr. Pride Jones, of Orange, and Joseph J. Davis, of Franklin, are hereby appointed directors of said asylum, their term of office to begin thirty days after the ratification of this act and continue until the first Monday in November, one thousand eight hundred and seventy-one, at which time they shall be divided into three classes, the seats 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 from the time of their appointment, and afterwards they shall be appointed at the expiration of their respective terms for six years. In case of a vacancy in a term, the unexpired portion thereof shall be filled by the board of directors.

Terms of office.

Vacancies.

5. All the duties and powers now required of and vested in the Governor and Board of Supervisors, are hereby required of and vested in the directors appointed under the provisions of this act.

Powers and duties of directors.—1870-'1, c. 228, s. 3.

6. The Board of Directors 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, convey, or otherwise dispose of in the name of the Institution all such property or estate as may hereafter be given, or otherwise conveyed to the Asylum; and the members of the board shall serve without reward, save their travelling expenses incurred in the discharge of their official duties.

Directors to direct affairs.—1868-'9, c. 67, s. 4.

7. The Board of Directors shall convene at the Asylum on the first of November in each year, and investigate the administration of its affairs, and report on the same to the Board of Public Charities, with such remarks and recommendations as to them shall seem expedient.

Board to serve without reward.

Annual meeting, &c.—1868-'9, c. 67, s. 5, 1871-'2, c. 159.

8. The Board of Directors shall appoint a Superintendent of the Institution and prescribe his duties. He shall be a skillful 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 at or near the Institution: *Provided, however*, that the present Superintendent shall be deemed the first appointee under the provisions of this section. He shall hold his place for eight years from the first day of January ensuing his appointment, unless sooner removed by the Board, who may, for infidelity to his trust, gross immorality, 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 appoint another in his place.

Appointment of Superintendent.—1868-'9 c. 60, s. 6.

Term of office.

9. The Board of Directors shall appoint an assistant physician.—1868-'9, c. 67, s. 7.

Assistant physician.—1868-'9, c. 67, s. 7.

sician, and, with the advice and consent of the Superintendent, prescribe his duties. He shall hold his place for four years from the first day of January ensuing his appointment, unless sooner removed by the Board for good cause, which shall be specified and recorded in their proceedings.

Treasurer,
Steward and
Matron.—1868-
'9, c. 67, s. 8.

10. The Board of Directors, 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 from the first of January ensuing their appointment, 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 fix
salaries.—1868-
'9, c. 67, s. 9.

11. The Board of Directors, at their annual meeting, shall fix the salaries and compensation of the Superintendent, and the officers and employees whose services may be necessary for the management of the Asylum: *Provided*, that the salaries shall not be diminished during the term of the incumbents.

Proviso.

Duties of Super-
intendent.—
1868-'9, c.
67, s. 10.

12. The Superintendent shall exercise exclusive direction and control over all the subordinate officers and employees engaged in the service and labors of the Asylum, and in every case of misconduct may discharge such employees as have been employed by himself or his predecessor, and shall report to the Board of Directors the misconduct of all other subordinates.

Board to make
by-laws and
regulations.—
1868-9, c. 67,
s. 11.

13. The Board of Directors shall make all such by-laws and regulations for the government of the Institution as shall be necessary, among which regulations shall be such as shall, in the language of the Constitution, make the Institution as nearly self-supporting as is consistent with the purpose of its creation. The Board shall cause the by-laws and regulations, the report of the Superintendent and that of the Treasurer, to be published with their report to the Board of Public Charities, copies of which shall be sent to the Clerk of the Superior Court of each and every county in the State.

Meetings of
the Board.—
1868-'9, c. 67,
s. 12.

14. The Board of Directors shall hold meetings at the Asylum or Executive office, from time to time, and diligently examine into its government and condition as often as they may deem necessary.

Transfers
from jail to
Asylum, &c.
—1868-'9, c.
67, s. 13.

15. Every insane person confined in jail for any other cause than crime, may be removed to the Asylum, upon the order of the Clerk of the Superior Court of the county in which the jail is situated.

Criminal in-
sane to Asy-
lum.—1868-'9,
c. 67, s. 14.

16. The Judges of the Superior Courts in the respective Districts 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 Judge shall be satisfied by a verdict of a jury of inquisition that the alleged criminal act was committed while such person was insane.

Manner of ad-
mission.—

17. For admission into the Asylum, in other cases, the following proceedings shall be had: Some respectable citizen,

residing in the county of the alleged insane person, shall make before, and file with a Justice of the Peace of the county, an affidavit in writing, which shall be substantially as follows : 1868-'9, c. 67,
s. 15.

STATE OF NORTH CAROLINA, }
..... County. }

The undersigned, residing in said county, maketh oath that he has carefully examined, the alleged lunatic, and believes him or her to be an insane person, and is, in the opinion of the undersigned, a fit subject for admission into the Insane Asylum. Form of affida-
vit.

A. B. (*affiant*.)

Dated day of, 18..

Subscribed and sworn to.

C. D., *J. P.*

Whereupon, unless the person or persons in whose care and custody the alleged insane is, will agree to bring him or her before the said Justice without a warrant, the Justice shall issue a precept, directed to the Sheriff, or a Constable, as follows :

THE STATE OF NORTH CAROLINA,
To the Sheriff or Constable of County—Greeting :

WHEREAS, information on oath has been laid before me that is an insane person. You are hereby commanded to bring him or her before me, or some other Justice of the Peace of said county, within the next ten days, in order that necessary proceedings may be had respecting his or her insane condition. Form of war-
rant.

Given under my hand this day of 18..

C. P., *J. P.*

Upon the bringing of the alleged insane person before the Justice by his or her friend or friends, or upon the return of the precept with the body 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 person as they may think proper. If the Justices, or any two of them, shall decide that such person is insane, and some friend, as he may do, will not become bound with good security to restrain him or her from committing injuries, and to keep, support and take care of him or her until the cause for confinement shall cease, the said Justices, or any two of them, shall direct the insane person to be removed 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 : Justice to ex-
amine and
take testimony
of Physician.

When Justices
may direct in-
sane to be re-
moved.

Form of warrant to be directed to Sheriff.

THE STATE OF NORTH CAROLINA,
To the Sheriff or Constable of County—Greeting :

WHEREAS, it has been made to satisfactorily appear to us, C. D. and E. F., Justices of the Peace of 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..

C. D., J. P.
E. F., J. P.

Justices to make full report to Clerk of Superior Court.—1868-'9, c. 67, s. 16.

18. Whenever the Justices of the Peace, under the provisions of the preceding section, shall direct any insane person to be removed to the Asylum as a patient or for safe-keeping, it shall be their duty to make a full report of their proceedings to the Clerk of the Superior Court of their county.

Interrogatories with answers to be transmitted.—1868-'9, c. 67, s. 17.

19. The following interrogatories, with their respective answers by competent witnesses, shall likewise be transmitted, with the other papers, to the Board of Directors:

Question 1. What is the name of the patient ?

“ 2. What is his or her age ?

“ 3. Is he or she married or single ?

“ 4. What is the supposed cause of his or her insanity ?

“ 5. In what way is the disease exhibited ?

“ 6. Has any medical treatment been pursued ? if so, of what kind ?

“ 7. How long has he or she been insane ?

“ 8. Has the patient manifested any propensity to injure himself or others ?

“ 9. Has he or she been subject to epilepsy ?

“ 10. Has any of his or her ancestors been insane ?

“ 11. Has he or she any family ; and, if so, what persons compose it ?

“ 12. What is the occupation of the patient ?

“ 13. How many attacks of mental disease has the patient had ?

Superintendent may convene Board.—1868-'9, c. 67, s. 18.

20. Whenever an insane person shall be conveyed to the Asylum, and the Superintendent is in doubt as to the propriety of his or her admission, he may convene the 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 such Board decide that he or she is such, 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 or her from committing injuries, and to keep, maintain, and take care of him or her in the same manner as he or she might have become bound under the authority of the Justices of the Peace.

To whom patient may be delivered.

21. Whenever the Superintendent shall deem an insane person to be incurable, and that his or her being at large would not be injurious to himself or herself, or dangerous to the community, he shall certify the fact to the Clerk of the Superior Court of the county from which the patient was sent, and also to the Board of Directors (any three of whom shall constitute a Board,) who may, if deemed expedient, remove such patient from the Asylum.

Insane person may be discharged, when—1868-'9, c. 67, s. 19.

22. When an affidavit in writing shall be made before a Justice of the Peace, by any citizen of the State, that any person who has been found by the inquisition of a jury to be an idiot, lunatic, or *non compos mentis*, and whose estate in the hands of his or her guardian shall be sufficient to support him or her and family, if he or she has any, is mischievously inclined, and that his or her going at large is dangerous to the community, it shall be lawful for said Justice to issue his warrant requiring the Sheriff to bring him or her before two Justices of the Peace within ten days, in order that the complaint may be duly examined, and the Sheriff, when he executes the warrant, is to notify the guardian.

On affidavit of a citizen Justice shall issue warrant.—1868-'9, c. 67, s. 20.

23. If the said Justices, on the return of the warrant, are satisfied that the facts stated in the complaint are true, it shall be their duty to issue process to the Sheriff, commanding him to take such insane person and convey him or her to the Insane Asylum of North Carolina, and there to deliver him or her to the Superintendent thereof for safe keeping: *Provided, however*, that the mischievous disposition of such insane person shall have been proved by at least two competent witnesses, who have been acquainted with him or her for more than twelve months.

Examination and commitment.—1868-'9, c. 67, s. 21.

24. If the insane person mentioned in the preceding section be sent to the Asylum, a copy of the proceedings shall be returned by the Justices to the Clerk of the Superior Court of his county, who shall have power from time to time to make such orders or decrees concerning the payments of the expenses of sending him or her to said Asylum, or sending him or her back, should he or she be discharged therefrom, as to said Clerk shall seem just and reasonable under all the circumstances of the case.

Copy of proceedings shall be returned to Clerk of the Superior Court.—1868-'9, c. 67, s. 22.

25. Any Judge of the Superior or Supreme Courts may make an order for the discharge from the Asylum of any person confined there under this act, if the Superintendent thereof shall certify to him in writing that he is well satisfied that such person is not mischievous, and would not be dangerous to the community if discharged: *Provided*, that the signature to

Any Judge of the Superior or Supreme Court may make order for discharge.—1868-'9, c. 67, s. 23. *Proviso*,

Bond payable
to the State.

Damages for
use of insane
person shall
be at least fifty
dollars.

the certificate be duly acknowledged or proved before the Clerk of the Superior Court for Wake county, and shall be certified by him under his official seal. All bonds executed 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 Superior 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 or her insane condition, and shall be put in suit by the Solicitor for the judicial district in which the county of the insane person's residence is situated, for any other breach thereof wherein the damages received shall be for the use of the insane person, and shall be at least fifty dollars.

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

STATE OF NORTH CAROLINA, }
County of }

Form of bond.
1868-'9, c. 67,
s. 24.

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 18..

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, (or effect his release from the said Asylum, as the case may be) hath undertaken to restrain him or her from committing injuries, and to keep, maintain, support and take care of him or her: 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.

A. B., [SEAL.]
C. D., [SEAL.]
E. F., [SEAL.]

When insane
to be returned
to Asylum.—
1868-'9, c. 67,
s. 25.

27. Whenever it shall be made to appear to the Clerk of the Superior Court of the county in which such insane person was resident, that the conditions of the bond are not faithfully complied with, the insane person shall be sent to the Asylum by such Clerk of the Superior Court, unless some other responsible and discreet friend will undertake to fulfill the duties of said obligation, and whenever said insane person shall be sent back to the Asylum, he or she shall not be delivered on any new bond of the defaulting obligor.

Number and
per diem of
guard.—1868-
'9, c. 67, s. 26.

28. 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 insane person to the

Asylum, and each one of the said guard shall be paid one dollar per day in addition to the payment of his traveling expenses.

29. The expenses of carrying any insane person to the Asylum, and of removing him or her therefrom, shall be paid out of the Public Treasury upon a warrant of the Superintendent, approved by the Governor, unless such person shall have property sufficient for the payment thereof, and in that case they shall be paid out of the proceeds of such property upon order made for that purpose by the Clerk of the Superior Court of the proper county: *Provided*, that the Superintendent shall not sign any warrant for the carrying to or removal from the Insane Asylum of any insane persons, until there shall be exhibited to said superintendent and filed in his keeping a certificate under the official seal of the clerk of the Superior Court of the county whence such insane person was brought or to which he is to be removed, that he has not property sufficient to pay such expense.

30. All dues to the Asylum from any and all sources shall be paid into the Public Treasury, and the said Asylum shall hereafter be supported by appropriations from the Public Treasury. And as the constitution declares that "the General Assembly shall provide that all the deaf mutes, the blind and the insane of the State shall be cared for at the charge of the State," the indebtedness of the counties for, and in account of the Asylum, shall be forgiven and discharged, and hereafter no county shall levy any tax for the support of the Insane Asylum.

31. Section twenty-nine of said act entitled an act in relation to the lunatic asylum is hereby repealed, and the Board of Directors shall have power to regulate admissions into the asylum, having regard to the probabilities of curing the parties of their mental diseases.

32. All money applied for the use and support of the Institution, and the insane therein, shall be paid to the Treasurer of the Asylum out of the Public Treasury, on warrants drawn by a majority of the Board of Directors, or by the Superintendent, and countersigned by at least two of the Board of Directors, and approved by the Governor.

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 in which there shall be special directions for its application, shall be kept as a distinct fund, and shall be faithfully applied as the donor may have directed.

34. The Treasurer of the Asylum shall pay out no money except on the warrant of the Superintendent; and before entering upon the discharge of the duties of his office he shall enter into bond, payable to the State of North Carolina, with two sufficient sureties, in the sum of twenty-five thousand dollars, conditioned for the faithful discharge of his duties; which bonds shall be recorded in the office of Secretary of State and filed with the Auditor.

Expenses of conveyance to be paid by the public treasurer.—1868-'9, c. 67, s. 27. 1870-'71, c. 228 s. 4.

All dues to be paid into the Public Treasury.—1868-'9, c. 67, s. 28.

No County to levy tax for support of Insane Asylum.

Board of directors to regulate admissions.—1870-'71, c. 228, s. 5.

Moneys to be paid to Treasurer of the Asylum.—1868-'9, c. 67, s. 30.

All money, &c., shall be paid into the Public Treasury.—1868-'9, c. 67, s. 31.

Duty of Treasurer of Asylum.—1868-'9, c. 67, s. 32. Bond.

Employees
exempt from
duty as jurors,
&c.—1868-'9,
c. 67, s. 33.

Board may
employ a
Clerk.—1868-
'9, c. 67, s. 34.

Visitors.—
1868-'9, c. 67,
s. 35.

Fiscal year.—
1868-'9, c. 67,
s. 36.

Board shall
have power to
settle claims.
—1868-'9, c.
67, s. 37.

Preamble.—
1869-'70, c.
167.
Expenses of
maintaining
the insane,
how paid.—
1872-'3, c. 145.

Claims of Lu-
natics, how au-
dited.—1871-
'2, c. 135, s. 1.

Affidavit of
physicians re-
quired

Claim ap-
proved by
Board of
Trustees.

What claims
to be allowed.
—1871-'2, c.
135, s. 2.

35. In order to secure their constant supervision and attendance, the officers and employees of the Asylum shall be exempt from serving on juries, in the militia, and from the duty of working on the public roads.

36. The Board of Directors shall cause all their proceedings to be faithfully and carefully written and recorded in books, and to this end may employ a clerk and pay him a reasonable compensation for his services. The books shall at all times be open to the inspection of the Board of Public Charities and of the General Assembly.

37. The Board of Public Charities and the members of the General Assembly shall be *ex officio* visitors of the Insane Asylum. It shall be the duty of the Board of Public Charities to visit the Asylum, from time to time, as they may deem expedient, to examine its condition, and make report thereon to the General Assembly, with such suggestions and remarks as they think proper.

38. The close of the fiscal year shall hereafter be the thirty-first of December in each and every year, and all accounts and estimates shall be made with reference thereto.

39. The Board of Directors shall have power to compromise or settle, on such terms as may seem to them equitable, all claims due the Asylum for board of paying patients, whether in suit or otherwise.

WHEREAS, The constitution of the State makes the care of lunatics a state charge, to be borne by general taxation;

40. Wherever any county has sustained any expense in maintaining any lunatic person, who would be entitled to a place in the lunatic asylum, and have been refused admission, the commissioners of the county in which such person is resident shall make out a semi-annual account of the charges for maintaining any such person, which shall be presented to the treasurer of the state, who, upon the same being duly audited by the auditor, is authorized to pay such account in like manner as if the charges were incurred at the asylum for the insane: *Provided*, said amount shall not exceed one hundred dollars in any one year.

41. The auditor shall not audit any claim or account presented at the instance of any county under and in pursuance of the preceding section unless in addition to the present requirements of law, it shall first appear upon the affidavit of two respectable practicing physicians that the person or persons on account of whom such claim or claims shall be presented are in their opinion such persons as are under existing laws entitled in all respects to be admitted into the Lunatic Asylum as a lunatic, that such claim has been approved by the board of trustees of the township in which such lunatics or idiots may reside, and the chairman of the board of county commissioners.

42. The provisions of this chapter shall extend to all cases of lunatics on account of which claims are now pending and not yet allowed and paid as well as such as may hereafter occur.

43. It shall be the duty of the county commissioners, by proper order to that effect, to discharge any ascertained lunatic in their county not admitted to the Lunatic Asylum when it shall appear upon the certificate of two respectable physicians and the chairman of the board of county commissioners that such lunatic or idiot ought to be discharged, if in the Lunatic Asylum.

Discharge of Lunatics.—1871-'2, c. 135, s. 8.

44. Whenever any person shall be found to be insane in the mode prescribed by this chapter, and such person shall be possessed of an income amply sufficient to support those who may be legally dependent for support on the estate of such insane person, and moreover to support and maintain such insane person in any named asylum situate out of the State; and such insane person, if of capable mind to signify such preference, shall in writing declare his or her wish to be placed in such asylum without the State, instead of being in the asylum established by the State; and two respectable physicians who shall have examined such insane person with the Justices appointed by said act to make the examination shall deem it proper, then it may be lawful for said Justices of the Peace, together with said physicians, to recommend in writing that such insane person shall be placed in the Asylum so chosen as a patient thereof.

Insane person having income sufficient may go out of the State for treatment.—1871-'2, c. 44, s. 1.

45. It shall be the duty of any person having the legal custody of the estate of such insane person to supply the funds for his or her support in the Asylum in which he or she may be placed, during his or her stay therein, and so long as they may be sufficient for that purpose over and beyond maintaining and supporting those persons who may be legally dependent on the estate as aforesaid.

Legal custodian may supply funds.—1871-'2, c. 44, s. 2.

46. It shall be the duty of said Justices to report the proceedings in all such cases to the Clerk of the Superior Court of the county in which such insane person may reside or be domiciled, as provided in this chapter.

Justices report to Clerk Superior Court.—1871-'2, c. 44, s. 3.

47. The Clerk of the Court shall lay the said proceedings before the Judge of the Superior Court of the district in which the insane person may reside or be domiciled, and, if he approve them, he shall so declare in writing, and such proceedings, with the approval thereof, shall be recorded by said clerk.

Clerk shall submit to Judge Superior Court, and record approval.—1871-'2, c. 44, s. 4.

48. A certified copy of such proceedings, with the approval of the said Judge, shall be sufficient warrant to authorize any friend or friends of the insane person appointed by the said Judge to remove him or her to the asylum designated.

Certified copy the warrant to remove.—1871-'2, c. 44, s. 5.

NOTE.—In the cases of the *People ex rel. of Nichols et al. vs. McKee et al.*, 68 N. C. 426, and *People ex rel. of Badger et al. vs. Johnson et al.*, *ibid* 471, it was decided that the Board of Trustees of the North Carolina Institution for the Deaf and Dumb and the Blind, and the Directors of the Lunatic Asylum, were not properly appointed by the General Assembly, but must be appointed by the Governor, by and with the advice and consent of the Senate, when that body is in session, and the Governor alone in the recess.—Constitution, Art. 3, sec. 10.

CHAPTER 7.

ATTORNEYS AT LAW.

SECTION

1. Attorneys licensed by Judges of Supreme Court.
2. Persons from other States, licensed, when.
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 complaint.
6. Guilty of fraud, to pay double damages.

SECTION

7. Not to take greater tax fees than allowed by law.
8. Justices of the Peace not to practice as Attorneys.
9. Clerks of Courts forbidden to practice law.
10. Penalty.
11. Persons heretofore practicing in County Courts may practice in all courts.

Att'ys licens-
ed by Judges
of Supreme
Court.—R. C.
c. 9, s. 1.

1. PERSONS who may apply for admission to practice 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. C. c. 9, s.
2.

2. No person coming into this State from any other State, or from any foreign country, with an intention to practice the law, shall be admitted to practice 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. C. c. 9, s. 3.

3. Attorneys before they shall be admitted to practice 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. C. c. 9, s. 4.

4. No attorney shall be permitted to practice 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 com-
plaint.—R. C.
c. 9, 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 complaint 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.
C. c. 9, s. 6.

6. If any attorney shall commit any fraudulent practice, he shall be liable in an action 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 al-

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.

8. It shall not be lawful for a Justice of the Peace to practice law as an attorney in any of the judicial courts held for the county wherein he holds the office of Justice of the Peace. And any person offending against the provisions of this chapter shall, upon conviction, be fined at the discretion of the court not less than two hundred dollars, and be removed by judgment of the court from the office of Justice of the Peace.

9. It shall not be lawful for any deputy or assistant clerk of the Superior Court Clerk of any county to practice law as an attorney in any of the judicial courts held for the county in which he performs the duties of a deputy or assistant clerk as aforesaid : *Provided*, this section shall not apply to the counties of Rowan and Stanly.

10. Any person offending against the provisions of the above section, shall, upon conviction, be fined at the discretion of the court not less than two hundred dollars.

11. All applicants for license to practice law, who have had license from the Supreme Court of the State to practice in the County Courts as they heretofore existed, shall now be allowed to practice in all the courts of the State.

lowed by law.
—R. C., c. 9, s. 7.

Justices of the Peace not to practice as attorneys.—1870-’1, c. 90, s. 1.

Clerks of courts forbidden to practice law.—1871-’2, c. 120, s. 1.

Proviso.

Penalty.—1871-’2, c. 120, s. 2.

Persons heretofore practicing in County Courts may practice in all courts.—1868-’9, c. 1.

NOTE.—The following rule was adopted by the Supreme Court at June Term, 1872 : “ Applicants for license are expected to have read : For first course, Blackstone’s Commentaries (2d book diligently) ; Coke or Cruise ; Fearne ; Saunders on Uses, and some work on Executors and Administrators. Second course : 3d Blackstone’s Commentaries ; Chitty and Stephen on Pleading ; Adams’ Equity, and the Code of Civil Procedure.”

CHAPTER 8.

AUCTIONS AND AUCTIONEERS.

SECTION

1. How appointed. Bond given.
2. Duties of auctioneers. To render semi-yearly to clerk sworn account of auction sales and amount of tax.
3. Penalty \$200 for acting without appointment.

SECTION

4. What sales exempt from auction tax.
5. Fees not over 2½ per cent. One per cent. to be paid by town auctioneers to the town.

1. ANY citizen of this State, desiring to exercise the business of an Auctioneer, shall apply to the County Commissioners, or the Commissioners of incorporated towns in the county in

How appointed.—R. C., c. 10, s. 1.

Auctioneers appointed annually. Bond with security given.—1871-'2, c. 201.

Duties of auctioneers. To render semi-yearly to clerk sworn account of auction sales, and amount of tax.—R. C. c. 10, s. 2.

Penalty of \$200 for acting without appointment.—R. C. c. 10, s. 5.

What sales exempt from auction tax.—R. C. c. 10, s. 6.

which he proposes to carry on such business, and, upon his giving bond in the sum of five thousand dollars, payable to the State of North Carolina, to be approved by the Commissioners, conditioned that he will perform faithfully all the duties required of Auctioneers, the Sheriff shall issue to him a license to act as an Auctioneer in said county for twelve months from the date of the license: *Provided*, that the Commissioners of the county of Washington may annually, after the first day of March, appoint 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 hundred dollars, payable to the State of North Carolina, with good and sufficient security, to be judged by the Commissioners, conditioned that he will faithfully perform all the duties required of Auctioneers.

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 Superior 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 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.

3. 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 solicitor of the district.

4. 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.

5. 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.

Fees not over
2½ per cent.
One per cent.
to be paid by
town auction-
eers to the
town.—R. C.
c. 10, s. 7.

CHAPTER 9.

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, he shall maintain the child and pay costs.

SECTION

5. Examination to be within three years after birth of child.
6. Execution may issue for maintenance of bastard.
7. Illegitimate children may be legitimated by Superior Court.
8. Decree recorded. Effect of such legitimation. Legitimate in all respects, as to the father.
9. In certain cases putative father may be committed to the house of correction.

1. ANY Justice of the Peace, upon his own knowledge, or information made to him, that any single woman within his 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 Superior Court, to stand to, abide by, and perform whatever order the court may make for the maintenance of

A single woman big with child, &c., refusing to declare the father, to pay a fine and give security, &c.
—R. C. c. 12.

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

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.

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

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

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

3. Whenever a justice, as aforesaid, shall bind any person, charged with being the father of a bastard child, to the next Superior 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 Superior Court, on the return of the recognizance or other proceedings from the justice, may order their clerk to issue a capias 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 capias or attachment.

Issue made to try paternity.

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, capias, 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 indemnify 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.

If found against him, or there be no issue, he shall maintain the child and pay costs.—R. C., c. 12, s. 4.

Exam'n to be within three years after birth of child.—R. C. c. 12, s. 6. Executi'n may issue for the maintenance

5. 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.

6. 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 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.

7. The putative father of any illegitimate child, who was unmarried at the time of its birth, may apply by petition in writing, to the 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.

of bastards.—
R. C. c. 12, s.
7.

Illegitimate
children may
be legitimated
by Superior
Court.

Decree record-
ed.—R. C. c.
12, s. 8.

8. 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. C. c. 12, s.
9.

9. In all cases arising under this chapter, when the putative father shall be charged with costs or the payment of money for the support of a bastard child, and such putative father shall, by law, be subject to be committed to prison in default of paying the same, it shall be competent for the court to sentence such putative father to the house of correction for such time, not exceeding twelve months, as the court may deem proper: *Provided, however*, that such person or putative father, at his discretion, instead of being committed to prison or to the house of correction, may bind himself as an apprentice to any person whom he may select, for such time and at such price as the court may direct. The binding shall be by indenture in open court. On the indenture being signed by the presiding Judge of the court and by the master receiving such apprentice, and the price obtained shall be paid to the county treasurer; the person thus bound shall be treated and regarded as an apprentice in all matters, except education.

In certain cases putative
father may be
committed to
house of cor-
rection.—1866
—7, c. 10.

SEC. 1. 10 Ire. 350, 12 Ib. 121; 11 Ire. 32; 13 Ire. 502, Bus. Eq. 213, 3 Hawks, 263; 9 Ire. 483; 4 Ire. 242, 2 Ib. 46; 4 Ire. 434; 1 Jones, 129; 3 Jones 365; 7 Jones 100; 63 N. C. 471; Ib. 550; 65 N. C. 244; 66 N. C. 648.

SEC. 4. 2 D. & B. 368; 7 Ire. 265; 13 Ire. 382; 4 D. & B. 371; 12 Ire. 264; 7 Jones 579.

SEC. 6. 1 D. & B. 412.

SEC. 7. 1 Ire. Eq. 28; 4 Dev. 110.

CHAPTER 10.

BILLS, BONDS AND PROMISSORY NOTES.

SECTION

1. Bills, bonds, and notes, for money, negotiable as inland bills of exchange. Indorsee may sue where obligee may 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 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 on the same in his own name, as indorsee or assignee, provided the original obligee could have maintained an action on the same bill, bond, or note with seal.

Indorsee may sue where the obligee may sue.—R. C. c. 13, s. 1.

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.

Orders in writing,—drawer or acceptor liable thereon.

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

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.

Days of grace on bills, &c., except those payable on demand.—R. C. c. 13, s. 3,

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.

Interest on bills, &c., when to accrue.—R. C. c. 13, s. 4.

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.

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

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.

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

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.

Also bills of exchange from time when payable.—R. C. c. 13, s. 7.

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 Islands, or in any other State or place in Europe or South

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

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. C. c. 13, s. 9.

Justices and clerks may protest, when.

Indorsers of negotiable securities liable as sureties.—R. C. c. 13, s. 10.

Bonds payable to clerk, &c., for benefit of suitors, suable in name of State.—R. C. c. 13, s. 11.

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 or clerk of a court of record, 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.

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.

11. Bonds and other obligations taken in the course of any proceeding in law, 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.

SECT. 1. 2 D. & B. 338; 4 Dev. 122; 2 D. & B. 239; 1 Jones, 357; 2 D. & B. 513; 3 Hawks, 458; 11 Ire. 403; 7 Ib. 262; Bus. 138; 2 Dev. 473; 11 Ire. 564; Bus. 422; Ib. 405; Bus. 423; 6 Ire. 107; 1 Ire. 219; 4 Ib. 266; 1 Mur. 133; 5 Ire. 397; 4 D. & B. 396; 2 Hawks, 290; 3 Dev. 228; 2 D. & B. 283; 2 Jones, 23; 13 Ire. 75; 2 D. & B. 338; 12 Ire. 324; 11 Ire. 227; 6 Jones, 4; Ib. 94; 8 Jones, 383; 1 Winston, 215.

SECT. 2. 4 Dev. 357; 1 Ire. 262; 2 Ire. 134; 3 Ire. 347; Bus. 371; 5 Ire. 610; 3 Hawks, 453; 2 Dev. Eq. 154; 2 Hawks, 560; 2 Dev. 67.

SECT. 3. 3 Hawks, 10; Ib. 465.

SECT. 5. 11 Ire. 564.

SECT. 8. 5 Ire. 551.

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

CHAPTER 11.

BOATS AND CANOES.

SECTION

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

SECTION

2. Penalty not to extend to certain cases.

Trespass on boats, &c.

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.

Penalty and damages.—R. C. c. 14, s. 1.

2. The penalties aforesaid shall not extend to any person who shall press any boat, canoe, or pettiagua by public authority.

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

CHAPTER 12.

BUILDING ASSOCIATIONS.

SECTION

- 1. Building and Home Associations authorized. Proviso.
- 2. Alterations to be certified and recorded.
- 3. Number of shares, &c.
- 4. Power to force payment of dues.
- 5. New members to pay sum sufficient

SECTION

- to put them on same footing as original members.
- 6. May be lawful to make advances, &c.
- 7. Loans secured by mortgage. Proviso.
- 8. May be altered at pleasure.

WHEREAS, Divers persons, chiefly of the industrial classes, are desirous of forming associations for the purpose of accumulating by small periodical deposits, a savings fund with which they may secure a homestead, and for their mutual benefit; and whereas, it is the dictate of a sound policy that the protection and encouragement of the legislature should be given to associations having in view ends and objects so commendable in their character; therefore:

Preamble.

1. From and after the passage of this act it shall and may be lawful, and authority is hereby given to any individuals or persons in any city or county in this State, under any name by them to be assumed, to associate for the purpose of organizing and establishing homestead and building associations, and being so associated shall, on complying with the provisions of this chapter, be a body politic and corporate, and as such shall be capable in law to hold and dispose of property, both real and personal, may have and use a common seal, may choose a presiding and other officers, may enact by-laws for the regulation of the affairs of such corporation, and compel the due observance of the same by fines and penalties, may sue and be sued, plead and be impleaded, answer and be answered in any court in this State, and do all acts necessary for the well ordering and good government of the affairs of such corporation, and shall

Building and homestead associations authorized.—1869-70, c. 129, s. 1.

Proviso.

exercise all and singular the powers incident to bodies politic or corporate: *Provided, however*, that before any such corporation shall be entitled to the privileges of this chapter, they shall lodge with the Clerk of the Superior Court of the county where such corporation is designed to act, a copy of the articles of association of such corporation, signed by at least seven members and certified by the secretary thereof, to be recorded in the office of such clerk.

Alterations to be certified and recorded.—1869-'70, c. 129, s. 2.

2. Any addition or additions to, alteration or alterations in, or amendments of, the articles of association of any such corporation shall be signed, certified and recorded as is provided in the preceding section of this chapter.

No. of shares, &c.—1869-'70, c. 129, s. 3.

3. Any corporation created under and by virtue of the provisions of this chapter, shall have power to declare in their articles of association the number of shares of which the capital stock of such corporation shall consist; the par value of the same; to limit the number which each stockholder may be allowed to hold, to prescribe the entrance fee to be paid by each stockholder at the time of subscribing, to regulate the installments to be paid on each share, and the times at which the same shall be paid and payable.

Power to force payment of dues.—1869-'70, c. 129, s. 4.

4. Any such corporation shall have power to issue to each member of such corporation a certificate of the shares of stock held by him, and to enforce the payment of all instalments and other dues due to said corporation from the members or stockholders by such fines and forfeitures as the corporation may, from time to time, provide in the by-laws or articles of association of such corporation.

New members to pay sum sufficient to place them on same footing with original members.—1869-'70, c. 129 s. 5.

5. Any person or persons applying for membership or stock in any such corporation after the end of a month from the date of its incorporation, may be required to pay, on subscribing such sums or assessments as may from time to time be fixed, and assessed in manner as may be provided by said corporation, in order to place such new member or stockholder on like footing with the original members and others holding stock at the time of such application.

May be lawful to make advances, &c.—1869-'70, c. 129, s. 6.

6. It shall and may be lawful for any such corporation at any time in advance of the time at which such corporation shall cease to exist, according to the plan contained in the article of association thereof, to advance to any member thereof for such premium as may be agreed upon, the same which he would be entitled to receive upon the dissolution thereof, for any number of shares therein held by him, or to purchase from any member the share or shares of stock held by him at such price or sum as, according to the articles of association, such member may agree to receive, and on payment of said sum of money, to receive from such member security as is hereinafter mentioned for the payment by such members to said corporation of the unpaid instalments, to be paid on the share or shares of stock so sold or redeemed, together with interest at the rate of six per centum per annum, on the sum of money so paid or ad-

vanced to such member at such times, and under and subject to such fines and penalties for non-payment thereof as may be prescribed by the articles of association of such corporation.

7. The payment of the unpaid installments to be paid on the share or shares so purchased or redeemed with interest upon the sum of money paid therefor as aforesaid, at the rate heretofore mentioned, and all fines and penalties incurred in respect thereof by any such member shall be secured to such corporation by way of mortgage on real or leasehold property, or by hypothecation of stock of such corporation held by such member as may be provided in the articles of association of any such corporation : *Provided, however*, that in case of hypothecation of stock, no greater sum of money shall at any time be drawn out by any member than shall have already been paid in by him on all his shares at the time of such hypothecation, and such mortgage or mortgages, and the mortgage debt, or debts intended to be secured thereby as aforesaid, is and are hereby declared exempt from taxation, the property so mortgaged as aforesaid to the corporation being taxed in the hands of the mortgager.

8. The power is hereby reserved to alter, amend or repeal this chapter at pleasure.

Loans secured by mortgage.—1871-'72, c. 156. 1869-'70, c. 129, s. 7.

Proviso.

May be altered at pleasure.—1869-'70, c. 192 s. 8.

CHAPTER 13.
BURNING WOODS.

SECTION

1. No person to fire woods except his own. Notice thereof to be given.

SECTION

2. Penalty. Misdemeanor.
3. Wagoners, &c.

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 woodlands 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.

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, and shall moreover be deemed guilty of a misdemeanor.

3. If any wagoner or other person encamping in the open air shall leave his camp without totally extinguishing his campfire, he shall be liable to a penalty of ten dollars, to be recovered by any person suing for the same, and he shall be further liable for the full amount of damages that any individual may

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

Penalty.

Misdemeanor.—R. C. c. 16, s. 2.

Wagoners, &c.—1865-'6, c. 38.

sustain by reason of any fire getting out from said camp. to be recovered by action in the Superior Court for the county in which said camp may be situated, or in which said damage may be done: *Provided*, that this section shall apply only to the counties of Cumberland, Harnett, Bladen, Moore, Hertford and Chowan.

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

CHAPTER 14.

BURNT AND LOST RECORDS AND OTHER PAPERS.

SECTION	SECTION
1. Copies of records received in evidence.	12. Records of any court admissible to prove deeds.
2. Copies of destroyed records may be recorded.	13. Copies of deed may be recorded on application to court.
3. How original papers may be recorded. Proviso.	14. Rules to be observed.
4. Copies of lost wills may be admitted to probate.	15. To have effect as originals.
5. Judge to issue letters, &c.	16. Where records lost or destroyed, duty of clerk. Proviso.
6. Contents of destroyed wills, how established.	17. On return of notice clerk to issue execution.
7. Destroyed judgments, &c., how perpetuated.	18. Judges to have jurisdiction.
8. Color of title, how determined. Proviso. Further proviso.	19. Written evidence prior to 1st May, 1865, to be deemed sufficient title.
9. Suits on destroyed official bonds, how prosecuted.	20. Deeds of conveyance to be received as evidence.
10. Lost witness tickets.	21. Provisions of this chapter to include all records lost both since and during the war.
11. Lost conveyances, how replaced.	

Copies of record received in evidence.—1866, c. 41, s. 1.

1. WHENEVER the office of any registry shall have been, or may be destroyed by fire or other accident, and the records and other papers thereof be burnt or destroyed, the copies of all such proceedings, instruments and papers as are of record or registry, certified by the proper officer, though without the seal of office, shall be received in evidence whenever the original or duly certified exemplifications would be.

Copies of destroyed records may be recorded.—1866, c. 41, s. 2.
How original papers may be recorded.
1866, c. 41, s. 3.

2. All such copies, when the court shall be satisfied of their genuineness, may be ordered to be recorded or registered.

3. All original papers, once admitted to record or registry, whereof the record or registry is destroyed, may, on motion, be again recorded or registered, on such proof as the court shall require. Whenever any conveyance of real estate, or any right or interest therein shall have been lost, the registry

thereof being also destroyed, any person claiming under the same, may cause the boundaries thereof to be established in the manner provided for processioning land, or he may proceed in the following manner to establish both the boundaries and nature of his estate: He shall file his petition setting forth the location and boundaries of his land, whose land it adjoins, and the estate claimed therein, and praying to have his own boundaries established, and the nature of his estate declared. All persons claiming any estate in the premises, and those whose lands adjoin, shall be notified of the proceedings, and thereupon, unless they or some of them shall, by answer on oath, deny the truth of the matters alleged, or some of them, the court shall order a surveyor to run and designate the boundaries of the petitioner's land, return his survey, with the plot thereof to court, which, when confirmed, shall, with the declaration of the court, as to the nature of the estate of the petitioner, be registered and have, as to the persons notified, the effect of a deed for the same, executed by the person possessed of the same, next before the petitioner: *Provided, however,* that in all cases wherein the process of surveying shall be disputed, and the surveyor shall be forbidden to proceed by any person interested, the same proceedings shall be had as in like cases of processioning land. The petitioner shall set forth the whole substance of the conveyance as truly and specifically as he can, and if any of the persons notified shall, by answer, deny the truth thereof, the court may cause proper issues to be submitted to a jury concerning the execution and contents of the same, and the true boundaries of the land claimed, and on their verdict and the pleadings, the court shall adjudge the rights of the parties, and declare the contents of the deed, if any deed be found by the jury, and allow the registration of such judgment and declaration, which shall have the force and effect of a deed.

4. In all counties where, by the casualties of war or otherwise, the original wills on file in the office of Clerks of the Courts of Pleas and Quarter Sessions, and will-books, containing copies, have been lost or destroyed, if the executor or any other person has preserved a copy of a will, (the original being so lost or destroyed,) with a certificate appended, signed by a former clerk of said Court, and stating that said copy is a correct one, such copy may be admitted to probate, under the same rules and in the same manner as now prescribed by law for proving wills, and the proceedings in such cases shall be the same as though such copy was the original offered for the first time for probate, except that the clerk who signed such certificate, shall on oath, acknowledge his signature, or in case it shall appear that said clerk has died or left the State, then his signature shall be proven by a competent witness, and the witness or witnesses to the original, who may be examined, shall be required to swear that he or they signed in the presence of the testator and by his direction a paper writing purporting to be his last will and testament.

Copies of lost will may be admitted to probate.—1868-¹⁹, c. 160, s. 1.

Judge to issue letters, &c.—
1868-'9, c. 160,
s. 2.

5. In any suit or proceeding at law, wherein it may become necessary to introduce such will to establish title, or for any other purpose, a copy of the will and of the record of the probate, with a certificate, signed by the Judge of Probate for the County where the will may be recorded, stating that said record and copy are full and correct, shall be admitted as competent evidence; and when a copy of a will shall have been admitted to probate, as provided in the first section above, the Judge of Probate shall thereupon issue letters testamentary.

Contents of destroyed wills, how established.—
1866, c. 41, s. 4.

6. Any person desirous of establishing the contents of a will destroyed as aforesaid, there being no copy thereof, may file his petition, setting forth the entire contents thereof, according to the best of his knowledge, information and belief, and all persons having an interest under the same, shall be made parties, and if the truth of such petition be denied, the court may direct proper issues to be made up, and the matter in controversy tried by a jury, whether the will was recorded, and if so recorded, the contents thereof, and the declarations of the court shall be recorded as the will of the testator; any devisee or legatee shall be a competent witness as to the contents of every part of said will, except such as may concern his own interest in the same.

Destroyed judgments, &c., how perpetuated.—1866
c. 41, s. 5.

7. Every person desirous of perpetuating the contents of any destroyed judgments, order or proceedings of court, or any paper admitted to record or registration, or directed to be filed for safe keeping, other than wills or conveyances of real estate, or some right or interest therein, or any deed or other instrument of writing, required to be recorded or registered but not having been recorded or registered, it being competent to register or record said deed or other instrument at the time of its loss or destruction, may file his petition setting forth the substance of the whole record, deed, proceeding, or paper, which he desires to perpetuate, and if, on the hearing, the court shall declare the existence of such record, deed, or proceeding, or paper, at the time of the burning of the office wherein the same was lodged or kept, or other destruction thereof, and that the same was there destroyed, and shall declare the contents thereof, such declaration shall be recorded or registered, or filed, according to the nature of the paper destroyed.

Color of title how determined.—1866, c. 41, s. 6.

8. Every person who shall have been in the continual, peaceable and quiet possession of land, tenements, or hereditaments, situated in the county, claiming, using and occupying them as his own, for the space of seven years, under known boundaries, the title thereto being out of the State, shall be deemed to have been lawfully possessed, under color of title, of such estate therein as has been claimed by him during his possession, although he may exhibit no conveyance therefor: *Provided*, that such possession shall have commenced before the destruction of the registry office, or other destruction as aforesaid, and also that any such person, or any person claiming by, through

Proviso.

or under him, will make affidavit and produce such proof as shall be satisfactory to the court that the possession was rightfully taken; and if taken under a written conveyance, that the registry thereof was destroyed by fire or other means, or was destroyed before registry as aforesaid, and that neither the original, or any copy thereof, is in existence: *And, provided further*, that such presumption shall not arise against *femes covert*, infants, persons of non-sane memory, and persons residing out of the State, who were such at the time of possession taken, and were not therefore barred, nor were so barred at the time of the burning of the office or other destruction.

9. Suits on official or other bonds lodged in any office, which are destroyed with the registry thereof, may be prosecuted by petition against the principal and sureties thereto, and the proceedings shall be as in the former Courts of Equity.

Suits on destroyed official bonds, how prosecuted.—1866, c. 41, s. 7

10. The court may allow other witness tickets to be filed in place of such as may be destroyed, upon the oath of the witness, or other satisfactory proof.

Witness tickets.—1866, c. 41 s. 8.

11. Where any conveyance, executed by any person, or sheriff, clerk and master, or commissioner of court, has been lost, and the registry thereof destroyed as aforesaid, and there is no copy thereof, such persons, whether in or out of office, may execute another of like tenor and date, reciting therein that the same is a duplicate, and such deed shall be evidence of the facts therein recited, in all cases wherein the parties thereto are dead, or are incompetent witnesses to prove the same, to the extent as if it was the original conveyance.

Lost conveyances how replaced.—1866, c. 41, s. 9.

12. The records of any court, in or out of the State, and all transcripts of such records, and the exhibits filed therewith in any case, shall be admissible to prove the existence and contents of all deeds, wills, conveyances, depositions and other papers, copies whereof are therein set forth or exhibited, in all cases where the records and registry of such as were, or ought to have been recorded and registered, or the originals of such as were not proper to be recorded or registered, have been destroyed as aforesaid, although such transcript or exhibits may have been informally certified; and when offered in evidence shall have the like effect as though the transcript or record was the record or transcript of the record of the court whose records are destroyed, and the deeds, wills and conveyances, depositions and other papers therein copied or therewith exhibited, were original.

Records of any court admissible to prove deeds.—1866, c. 41, s. 10.

13. The copies aforesaid of all such deeds, wills, conveyances and other instruments proper to be recorded or registered, as are mentioned in the preceding section, may be recorded or registered on application to the court, and due proof that the original thereof was genuine.

Copies of deed may be recorded on application to court.—1866, c. 41, s. 11.

14. The following rules shall be observed in petitions and motions under this chapter: The facts stated in every petition or motion shall be verified by affidavit of the petitioner that they are true according to the best of his knowledge, informa-

Rules to be observed.—1866, c. 41, s. 12.

tion and belief; the instrument or paper sought to be established by any petition shall be fully set forth in its substance, and its precise language shall be stated when the same is remembered. All persons interested in the prayers of the petition or decree, shall be made parties. No petition to declare the contents of a deed or will, or any matter of record, shall be filed but within five years next after the ratification of this act:

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Provided, however, that infants, *femes covert*, persons of non-sane memory and non-residents, may file such petition within one year after the disability is removed. Petitions to establish a registered paper may be filed in the Superior Court, and petitions to establish a record of the County Court, Superior Court, and Court of Equity, shall be filed in the Superior Court of the County where the record is sought to be established. Other petitions may be filed in the Superior Courts. The costs of every suit under this chapter shall be paid as the court may decree. Appeals shall be allowed as in all other cases, and where the error alleged shall be an erroneous finding by the Superior Court, of a matter of fact, the same may be removed on appeal to the Supreme Court, and the proper judgments directed to be entered below.

To have same effect as originals.—1866, c. 41, s. 14.

Where records lost or destroyed, duty of clerk.—1868-'9, c. 160, s. 8.

15. The records and registries allowed by the court in pursuance of this chapter shall have the same force and effect as original records and registries.

16. Where in such counties other records have been so lost or destroyed, and such records would have furnished the only legal evidence of costs due to former Clerks of the Superior Courts, Clerks and Masters in Equity, Clerks of the Courts of Pleas and Quarter Sessions, or of former sheriffs, or of tax fees due to attorneys, and where, in such cases, by means of *feri facias* returned without sale, or by any transcript or paper, now in the office of the Clerk of the Superior Court, a memorandum of costs, due either former clerks, or sheriffs, or fees due attorneys, can be obtained, it shall be the duty of the Clerk of the Superior Court, upon application of one of the parties to whom costs or fees are supposed to be due, to issue notice to the party or parties from whom they are supposed to be due, twenty days before any term of the Superior Court, setting forth the amount of costs due each of said former officers, and the amount of the tax fee, the time at which said costs or fees became due, with the name and style of the suit or proceeding in which they accrued and citing such party or parties to appear at the next term of the Court and plead or answer: *Provided*, that notice shall not issue until the applicant shall have made oath before the Clerk of the Superior Court that such costs or fees have not been paid.

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On return of notice clerk to issue execution.—1868-'9, c. 160, s. 4.

17. If, upon the return of such notice, the defendant shall enter pleas within the first three days of the term, then such case shall be entered upon the trial docket, and a jury may be empaneled to try any question at issue between the parties, whether it be the former existence and destruction of the

record, or payment, and if said issue or issues shall be decided in favor of the plaintiff, or if the defendant shall fail to plead as aforesaid, then, in either event, judgment shall be entered for the plaintiff, and the clerk shall issue execution.

18. The Judges of the Superior Courts shall have the same jurisdiction, in the re-establishment of lost or destroyed records of the Courts of Pleas and Quarter Sessions, by petition or otherwise, as was given to the Courts of Pleas and Quarter Sessions, by any law or laws before said Courts were abolished. And, in any other cases where deeds or any other matter should be of record, shall be lost or destroyed, the Probate Judge in any such county where the same occurs, shall have the same jurisdiction in the re-establishment of such lost deeds or other matter.

Judges to have jurisdiction.—1868-'9, c. 160, s. 5. 1870-'1, c. 14. 1870-'1, c. 86, s. 1.

19. The recitals, reference to, or mention of any decree, order, judgment or other record of any court of record of any county in which the court-house, or records of said courts, or both, have been destroyed by fire or otherwise, contained, recited or set forth in any deed of conveyance, paper writing, or other *bona fide* written evidence of title, executed prior to the first day of May, one thousand eight hundred and sixty-five, by any executor or administrator with a will annexed, or by any Clerk and Master, Superior Court Clerk, County Court Clerk, Sheriff or other officer, or commissioners appointed by either of said courts, and authorized by law to execute said deed or other paper writing, shall be deemed, taken and recognized as true in fact, and shall be *prima facie* evidence of the existence, validity and binding force of said decree, order, judgment or other record so referred to or recited in said deed, or paper writing, and shall be to all intents and purposes binding and valid against all persons mentioned or described in said instrument of writing, deed, &c., as purporting to be parties thereto, and against all persons who were parties to said decree, judgment, order or other record so referred to or recited, and against all persons claiming by, through or under them or either of them.

Written evidence executed prior to May 1st, 1865, to be deemed sufficient title.—1871-'2, c. 64, s. 1.

20. Said deed of conveyance, or other paper writing, executed as aforesaid, and registered according to law, shall be allowed to be read in any suit now pending or which may hereafter be instituted in any court of this State, as *prima facie* evidence of the existence and validity of the decree, judgment, order, or other record upon which the same purports to be founded, without any other or further restoration or reinstatement of said decree, order, judgment, or record, than is contained in the provisions of this chapter.

Deeds of conveyance to be received as evidence.—1870-'1, c. 86, s. 2.

21. The provisions of this chapter shall extend to records of court which have been destroyed by fire or otherwise since as well as during the war, and to any deed of conveyance, paper writing, or other *bona fide* evidence of title executed before the destruction of said records and prior to the ratification of this chapter.

Provisions of this chapter include all records lost both since and during the war.—1871-'2, c. 64, s. 2.

CHAPTER 15.

CAPITOL AND PUBLIC BUILDINGS AND GROUNDS.

SECTION

1. Powers and duties of the Keeper.
2. Superintendent of Capitol Square.
3. Charge of arsenal, &c.
4. Shall furnish offices. Duty and pay of Keeper. Board to secure capitol from fire.
5. Rooms not to be used as sleeping apartments. Keeper to keep keys.
6. Appropriation of rooms in capitol.
7. Keeper to give bond.
8. Disorderly conduct in capitol prohibited. Penalty.
9. Penalties against infants paid by parent or guardian.
10. Amount appropriated to capitol square, &c.
11. All accounts for labor to be sworn

SECTION

- to. Secretary of State to certify accounts only of persons employed by Keeper of capitol.
12. All accounts for fuel to be sworn to.
13. Governor may lease executive mansion. Repairs, &c.
14. Governor to collect rents, &c.
15. Keeper of capitol supervisor of public lots. May lease them.
16. Penalties for trespass on public lots.
17. Committee to take inventory of firearms, weights and measures, &c.
18. Moore and Nash squares to be ornamented. Vacant State lots to be improved.
19. Free access to them to be allowed.

Powers and duties of keeper.—1870-'1, c. 175, s. 1. %

1. THE keeper of the capitol shall perform all the duties and have all the rights as hereinafter prescribed; as to the manner of performing his duties he shall be under the general directions of a board, consisting of the Governor, Secretary of State, Treasurer and Attorney General; but he shall have the absolute right to appoint and control all lawful subordinates, such as watchman of the capitol, workmen on the grounds, and servants about the capitol and its appurtenances.

Sup't of capitol square.—1870-'1, c. 175, s. 2.

2. There shall be no Superintendent of capitol square as contra-distinguished from the keeper of the capitol.

Charge of arsenal, &c.—1870-'1, c. 175, s. 3.

3. The keeper of the capitol shall also have charge of the arsenal located in the capitol square, under the superintendence of the Adjutant General, and shall receive fifty dollars per year for the performance of his duties in that particular; and the separate office of keeper of the arsenal is hereby abolished.

Shall furnish offices.—R. C. c. 103, s. 3.

4. 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 the keeper shall 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 es-

Duty and pay of keeper.

pecially 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.

Board to secure capitol from fire.

5. The rooms in the capitol shall not be used as sleeping apartments, and no beds 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.—R. C. c. 103, s. 4.

6. The rooms of the capitol, other than the Senate Chamber and House of Representatives, shall be appropriated as follows: The two west rooms of the southern division of the capitol shall be appropriated to the executive; the two east rooms in the southern division shall be appropriated 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 and the Auditor; 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 room for the Superintendent of Public Instruction.

Appropriation of rooms in capitol.—R. C. c. 103, s. 5.

7. 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 judgment 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.

Keeper to give bond.—R. C. c. 103, s. 6.

8. 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.

Disorderly conduct in capitol prohibited.—R. C. c. 103, s. 7.

9. 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.

Penalty.

Penalties against infants paid by parent or guardian.—R. C. c. 103, s. 8.

10. A sum not exceeding six hundred dollars be and the

Amount ap

appropriated for capitol square.—1870-'1, c. 80, s. 1.

All accounts for labor to be sworn to.—1870-'1, c. 80, s. 2.

Secretary of State to certify account only of persons employed by the keeper of the capitol.

All accounts for fuel to be sworn to.—1870-'1, c. 80, s. 3.

Governor may lease executive mansion.—1870-'1, c. 282, s. 1.

Repairs, &c.

Governor to collect rents, &c.—1870-'1, c. 282, s. 2.

Keeper of capitol supervisor of public lots.—1870-'1, c. 282, s. 3.

May lease them.

Penalties for trespass on

same is hereby set apart annually, out of any money in the treasury not otherwise appropriated, which may be used in caring for the capitol square and public grounds in the city of Raleigh.

11. No account for work or labor done on the capitol square or public grounds in the city of Raleigh, or in the Senate Chamber, or House of Representatives, or in any room or office in the capitol, or in any building connected with the square or grounds aforesaid, shall be audited or paid, until the same is sworn to before the Secretary of State, to be just and true, and so certified by that officer. Nor shall the Secretary of State certify the account of any laborer for work done or services rendered in any of said buildings or on any of said grounds, unless it be made to appear that said laborer or employee has been employed by the keeper of the capitol.

12. No account for wood, or fuel or for coal shall be audited or paid until the claimant make oath as above, that the account is just and true, and that the number of cords of wood, or tons of coal, charged for, have been delivered within the enclosure of the capitol square.

13. The Governor is authorized and directed to lease the executive mansion and the ground attached to the same, provided he does not choose to occupy the same as a family residence, to some suitable and discreet person or persons for the period of twelve months, and at such price as he may deem reasonable and just; and he is authorized to have such repairs made upon the said building and outhouses and fences enclosing the same as he may deem necessary to preserve the property and keep it from ruin and decay, and for such purposes he may use the proceeds of the lease of this property, and the proceeds of the lease of other public lots, and such sums of money as may be collected for rents now due.

14. The Governor is further authorized and directed to collect by suit or otherwise, all such sums of money as may now be due for rents accrued, and he is further empowered to adjust and settle with the Raleigh and Gaston Railroad Company any claim which the State may have against said company for the use of its property or for right of way over any of the public lots belonging to the State in the city of Raleigh.

15. The keeper of the capitol is appointed supervisor of all the other public lots belonging to the State in the city of Raleigh, except such as may be occupied by the Institution for the Deaf and Dumb, and the public schools, and he is authorized to lease such lots or such part thereof as it may be proper to lease, and upon such terms as may be reasonable and proper, for the period of twelve months; and he is required to turn over the proceeds of such renting to the Governor whenever the same may be demanded, after retaining for his services ten per cent. thereof.

16. If any person or persons shall wilfully trespass upon any of the public lots aforesaid, or shall cut any timber or commit

any waste, or shall refuse to surrender possession after the expiration of their leases, or if any person or persons now in possession of any of said lots above mentioned shall refuse to leave the same and shall further refuse to surrender possession within ten days after demand made by the keeper of the capitol, said person or persons shall be guilty of a misdemeanor, and may be indicted in the Superior Court of Wake county; and it shall be the duty of said keeper of the capitol to report all such violations of law to the Governor or to the Attorney General, and if any of the said persons shall be convicted, they shall be fined or imprisoned, at the discretion of the court.

17. For the better protection of the arms and other state property, a committee be appointed to take an inventory of the firearms and other property in the arsenal, and also an inventory of weights and measures, &c., now on hand, and take the receipt of the keeper of the capitol for the same in duplicate, one copy of which shall be deposited in the executive office and the other shall be retained by the keeper of the capitol.

18. The board of commissioners of the city of Raleigh shall have power to grade, lay out in walks, plant with trees, shrubbery and flowers, and otherwise adorn Moore Square and Nash Square in said city, so as to make the same an ornament to the city, and to that end they shall have the general charge and management of said squares. They may improve in like manner any of the vacant lots belonging to the State within the city limits not otherwise specially appropriated.

19. Nothing herein contained shall be construed to authorize said commissioners to prevent the free access of well behaved persons to said square and lots except at unreasonable hours or for some temporary purpose specially to be designated by the board.

public lots.—
1870-'1, c. 282,
s. 4.

Committee to
take inventory
of fire-arms,
weights and
measures, &c.
—1870-'1, c.
282, s. 5.

Moore and
Nash squares
to be orna-
mented.—1871
-'2, c. 205, s. 1.

Vacant State
lots to be im-
proved.

Free access al-
lowed.—
1871-'2, c. 205,
s. 2.

CHAPTER 16.

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 not showing head, ears and hide in two days.
3. Cattle not to be driven into this from any other State, between 1st of April and last day of November. Penalty. Proviso. Non-residents within 5 miles of, or owning land in the State, exempt from penalty.
4. Cattle not to be driven from certain places into the highlands, when.
5. When driven from one part of the State through another must be

SECTION

- certified to be healthy, &c. Misdemeanor for Justice to grant certificate without affidavit.
6. Persons allowing distempered cattle to go at large to be deemed guilty of a misdemeanor, &c.
7. Where subject to damage only.
8. When not subject to penalty.
9. Stone horses and mules two years old not to go at large. Penalty \$20.
10. Remedy before Justice for stock killed on Railroads, &c.
11. What shall be evidence of negligence.

Owner of stock to have a mark or brand; to be recorded.—
R. C. 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 Commissioners 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. C. 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 State from any other State, between first 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. C. c. 17, s. 3.

Cattle not to be driven from certain places into the highlands, when.—
R. C. 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.

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

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.

Misdemeanor for justice to grant certifi-

And if any Justice shall grant such certificate without such affidavit of the owner, it shall be deemed a misdemeanor in office.

ate without
affidavit—R.
C. c. 17, s. 5.

6. If any person shall drive or cause to be driven any cattle from any county in this State, or from any county or district in any other State into any county in this State, at any time between the first of April and the first day of November, knowing such cattle to be distempered or otherwise infected, or permit any distempered cattle to roam at large and enter any uninfected district, shall be guilty of a misdemeanor, and, upon conviction, he shall be subject to fine and imprisonment at the discretion of the court, and be further liable to an action for all damages which may arise from a violation of this section.

Persons allow-
ing distem-
pered cattle to
go at large to
be deemed
guilty of a
misdemeanor,
&c.—1868-9,
c. 50, s. 1.

7. If any person shall drive or cause to be driven any cattle as aforesaid, not knowing them to be infected, and losses should be sustained by the spreading of distempers or infection from said cattle, such person shall be subject to damages only.

Where subject
to damage
only.—1868-9
c. 50, s. 2.

8. If any person complies with the requirements of section five, without regard to growth or locality, said person shall not be subject to the above penalties.

When not sub-
ject to penalty.
—1868-9, c.
50, s. 3.

9. 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 two
years old not
to go at large.
Penalty \$20.—
R. C. c. 17, s.
6.

10. 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 before
justice for
stock killed on
railroads, &c.
R. C. c. 17, s.
7.

11. When any cattle or any other live stock shall be killed or injured by the engines or cars running upon any railroad, it shall be *prima facie* evidence of negligence on the part of the company in any suit for damages against such company: *Provided, however*, that no person shall be allowed the benefit of this act unless he shall bring suit within six months after his cause of action shall have accrued.

What shall be
evidence of
negligence.—
1856-7, c. 7.

CHAPTER 17.

CODE OF CIVIL PROCEDURE.

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III.	GENERAL PROVISIONS AS TO CIVIL ACTIONS.
IV.	LIMITATION OF ACTIONS.
V.	PARTIES TO CIVIL ACTIONS.
VI.	OF THE PLACE OF TRIAL OF CIVIL ACTIONS.
VII.	MANNER OF COMMENCING CIVIL ACTIONS AND THE SERVICE OF THE SUMMONS.
VIII.	OF THE PLEADINGS IN CIVIL ACTIONS.
IX.	OF THE PROVISIONAL REMEDIES IN CIVIL ACTIONS.
X.	OF THE TRIAL AND JUDGMENT IN CIVIL ACTIONS.
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SECTION

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11c. Powers, &c.	11p. Witnesses to be summoned, &c.
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11e. Certificate of attendance.	11r. Commission to be copied and recorded, when.
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220. Issue of law.	227. Trial may be postponed by Clerk when.
221. Issue of fact.	228. Trial postponed by Judge in term, when.
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- 229*g*. Jurors who have suits pending.
 229*h*. In case of death or removal from county.
 229*i*. How drawing of jury to continue.
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 229*k*. When commissioners fail to draw a jury.
 229*l*. Clerk of board to furnish sheriff with list.
 229*m*. Commissioners may revise jury list at any time. Proviso.
 229*n*. Revision to be valid. Proviso.
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 230. Separate trials.
 231. Judge to be furnished with copy of pleadings.

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232. General and special verdicts defined.
 233. When jury may render either general or special verdict, and when, Judge may direct special finding.
 234. On special finding with general verdict, the former to control.
 235. Jury to assess defendant's damages in certain cases.
 236. Entry of the verdict. Motion for new trial on Judge's minutes.
 237. Judge to explain law, but to express no opinion on facts.
 238. Judge to put his instructions in writing.
 239. Counsel to put their prayer for instructions in writing.

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240. Trial by jury, how waived.
 241. On trial by the Court, judgment how to be given.
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 245. When reference may be compulsively ordered.
 246. Mode of trial; Effect of report; Review.
 247. Referees, how chosen. Who may be Referee. Report.

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248. Judgment may be for, or against, any of the parties; may grant defendant affirmative relief. Complaint may be dismissed for neglect to prosecute action. Judgment against married women.
 249. The relief to be awarded to the plaintiff.
 250. Rates of damages, where damages are recoverable.
 251. Judgment in action for recovery of personal property.
 252. Clerk to enter judgments on Judgment Book, also judgments rendered in other Courts, and index them.
 253. Judgment roll.
 254. Existing suits, Judgments when and how to be docketed. Secured on appeal.

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- 256. After three years, to be issued only by leave of Court. Leave, how obtained.
- 257. Judgments, how enforced.
- 258. The different kinds of execution.
- 259. To what counties execution may be issued. Execution against a married woman.
- 259a. Judgments docketed. Executions and ven. ex. writs shall issue under seal of court rendering judgment, to any county in which judgment is docketed. Two or more counties at same time.
- 259b. Clerk of the court to which return is made to send copy to Clerk of Superior Court of each county where the judgment is docketed.
- 259c. Executions heretofore issued from court rendering judgment or from court in which docketed or both shall be valid and binding on all officers. Proviso.
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- 260. Execution against the person, in what cases.
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- 262a. Defendant to be allowed for improvements. Execution of judgment suspended. Jury may assess damages.
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- 262c. Time of liability.
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- 262e. Defendant not liable beyond rents and improvements.
- 262f. Jury shall find verdict for balance.
- 262g. Which shall constitute lien.
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- 262i. Does not apply to mortgagor.
- 262j. Defendant claiming allowance, &c.
- 262k. How value of improvements estimated.
- 262l. Plaintiff may enter election to relinquish.
- 262m. Payments, how made.
- 262n. When plaintiff is feme covert, minor or insane.
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273. Existing suits. Costs of proceeding.
274. Existing suits. Disobedience of order, how punished.

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277. When allowed to defendant.
278. When allowed to either party in the discretion of the court.
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283. Costs, how to be inserted in judgment. Adjustment of interlocutory costs.
284. Fees of clerks, sheriffs, &c.
285. Referees' fees.
286. Costs against infant plaintiff.
287. Costs in action by or against an executor or administrator, trustees of an express trust, or a person expressly authorized by statute to sue.
288. Costs in civil actions by the State.
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290. Costs against assignee after action brought, of cause of action.
291. Costs on a settlement.
292. Costs on appeals.
293. Costs in existing actions.
294. Costs in special proceedings.
295. Costs on appeals from Justices of the Peace.
- 295a. When appeals taken to Supreme Court of the United States, Treasurer to pay costs when so adjudged.
- 295b. Applies to causes in which appeals have already been taken.

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296. Existing suits; writs of error abolished, and appeals substituted.
297. Orders made out of court, how vacated or modified.
298. Existing suits; who may appeal.
299. Appeal; in what cases it may be taken.
300. When taken; execution not suspended when.
301. Appeal to be entered by clerk on judgment docket, case how stated and settled.
302. Clerk to make copy of judgment roll, and to send to clerk of Supreme Court.
303. On appeal, security must be given, or deposit made, unless waived.
304. Existing suits—on judgment for money—security to stay execution—new undertaking on sureties in first becoming insolvent.
305. Existing suits—if judgment be to deliver document or personal property, it must be deposited or security given.
306. Existing suits—if to execute conveyance, it must be executed and deposited.
307. Existing suits—security where judgment is to deliver real property, or for a sale of mortgaged premises.

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308. Existing suits—stay of proceedings upon security being given.	312. Existing suits—undertaking must be filed.
309. Existing suits—undertakings may be in one instrument or several.	313. Existing suits—intermediate orders affecting the judgment may be reviewed on the appeal.
310. Existing suits—security to be approved and to justify.	314. Existing suits—judgment on appeal—restitution.
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315. Controversy how submitted without action.	317. Judgment how enforced or appealed from.
316. Judgment.	

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318. Parties, not summoned in action on joint contract, may be summoned after judgment.	322. Party summoned may answer and defend.
319. If judgment debtor die, his representatives may be summoned.	323. Subsequent pleadings and proceedings same as in action.
320. Form of summons.	324. Answer and reply to be verified.
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328. Offer of compromise.	330. Effect of acceptance or refusal of offer.
329. Defendant may offer to liquidate damages conditionally.	

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333. Existing suits; a party may examine his adversary as a witness.	
334. Existing suits; such examination also allowed before trial.	339. Existing suits; persons for whom action is brought or defended may be examined.
335. Existing suits; party how compelled to attend.	340. Existing suits; examination of co-plaintiff or co-defendant.
336. Existing suits; testimony of party may be rebutted.	341. Husband and wife, witnesses.
337. Existing suits; effect of refusal to testify.	

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342. Existing suits; interest not to exclude a witness.	for not attending. In civil cases. In criminal cases.
343. Existing suits; parties to actions and special proceedings may be examined as witnesses on their own behalf, except in certain cases.	343g. Entitled to pay, if they attend after the suit is settled in vacation unless notified.
343a. In what actions, for what sums, and within what time book accounts may be proved by plaintiff or defendant.	343h. No execution to issue against defaulting witness until after <i>scire facias</i> .
343b. Or by executors and administrators. How proved by them.—Time enlarged for such proof if two years have not elapsed before death of creditor.	<i>Depositions.</i>
343c. Copies of account evidence, unless notice to produce original.	343i. 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 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.
343d. Books admissible in all courts, and contestible as other evidence.	
343e. 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.	343j. All commissioners, arbitrators, referees, &c., empowered to summon witnesses to take their depositions. Also, clerks of courts.
343f. Witnesses to attend from term to term till discharged. Penalty	

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Witnesses.

343*k*. Sheriff to execute subpoena 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.

343*l*. Default before commissioner acting under authority from this State, certified, to court. Proceedings thereon.

343*m*. Witnesses attending jury of view, or commissioner, &c., paid as for attending court.

343*n*. Subpoenas to attend commissioners and others, in certain cases issued by clerk.

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343*o*. Witnesses refusing to depose in court, to be imprisoned.

343*p*. During attendance exempt from service of civil process.

343*q*. Fees of witness for attendance at court.

343*r*. After removal of a cause, subpoenas and commission may issue from either court.

343*s*. Witness to prove his attendance at each court. May recover pay for his attendance.

343*t*. 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.

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343*u*. Party recovering judgment shall recover costs, unless otherwise provided.

343*v*. Costs of petitions paid as court may decree.

343*w*. When a subpoena *duces tecum* may issue.

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MOTIONS AND ORDERS.

344. Definition of an order.

345. Definition of a motion. Motions how and where made, Stay of

proceedings, compelling parties to testify. Decision on motion.

346. Notice of motion.

CHAPTER IX.

ENTITLING AFFIDAVITS.

347. Existing suits; affidavits defectively entitled, valid.

CHAPTER X.

COMPUTATION OF TIME.

348. Time, how computed.

CHAPTER XI.

NOTICES AND FILING AND SERVICE OF PAPERS.

349. Existing suits. Notice, &c., how served; subpoena for witnesses.

350. Existing suits; service by mail.

351. Existing suits; service by mail.

352. Existing suits; double time when served by mail.

353. When this chapter does not apply.

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DUTY OF SHERIFFS AND CORONERS.

SECTION	SECTION
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CHAPTER XIII.

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355. Guardian not to receive property until security given.

CHAPTER XIV.

POWERS OF REFEREES.

356. Powers of referees.

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MISCELLANEOUS PROVISIONS.

357. Papers lost or withheld, how supplied.	360. Laws of other States and governments, how proved.
358. Where undertaking to be filed.	
359. Time for publication of notices, how computed.	

TITLE XV.

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ACTIONS AGAINST FOREIGN CORPORATION.

361. Where and by whom brought.

CHAPTER II.

ACTIONS IN PLACE OF SCIRE FACIAS, QUO WARRANTO, AND OF INFORMATIONS IN THE NATURE OF QUO WARRANTO.

362. Scire facias and quo warranto abolished and this chapter substituted.	364. Action to annul a corporation, when and how brought by Attorney-General, by leave of the Supreme Court.
363. Action may be brought by Attorney-General to vacate a charter, by direction of the Legislature.	365. Leave. how obtained.

SECTION	SECTION
366. Action upon information or complaint of course.	378. Restraining corporation, and appointment of receiver.
367. Action, when and how brought to vacate letters patent.	379. Copy of judgment-roll against corporation, where to be filed.
368. Relator, when to be joined as plaintiff.	380. Entry of judgment relating to letters patent.
369. Complaint, and arrest of defendant, in action for usurping an office.	381. Actions for forfeiture of property to the State.
370. Judgment in such actions.	381a. Application for writs of mandamus.
371. Assumption of office, &c., by relator, when judgment is in his favor.	381b. Manner in which summons for mandamus shall issue and be returnable when the enforcement of a money demand is sought.
372. Proceedings against defendant, on refusal to deliver books or papers.	381c. Manner in which summons for mandamus shall issue and be returnable when other relief is sought. Proviso.
373. Damages, how recovered.	381d. Complaints to be verified.
374. One action against several persons claiming office or franchise.	382. Defendant to file bond in action for real property.
375. Penalty for usurping office or franchise; how awarded.	382a. Bond to be given in cases not determined.
376. Judgment of forfeiture against a corporation.	382b. Sureties may be required to justify.
377. Costs against a corporation, or persons claiming to be such, how collected.	382c. Relief on failure to justify. Proviso.

CHAPTER IV.

ACTIONS FOR WASTE AND NUISANCE.

383. Action of waste abolished. Waste how remediable.	385. When judgment of forfeiture and eviction to be given.
384. Provisions of Revised Code applicable to action for waste under this chapter.	386. Writ of nuisance abolished.
	387. Remedy for injuries heretofore remediable by writ of nuisance.

TITLE XVI.

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388. Definition of "real property."	395. Judges of Superior Courts to suggest rules.
389. Definition of "personal property."	396. If Judge of a Superior Court not present, court to be adjourned, when.
390. Definition of "property."	398. Pleadings, &c., how written.
391. Rule of construction.	399. Judges of Superior Courts to issue writs of habeas corpus.
392. Statutory provisions inconsistent with this chapter repealed.	
393. Rules and practice inconsistent with this chapter abrogated.	
394. Judges of Supreme Court shall make rules of practice.	

TITLE XVII.

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400. Clerk of Superior Court to transfer existing suits in which no final judgment.	408. Executions not levied at all, or levied on real property.
401. Suits not transferred to abate.	409. Executions to be docketed.
402. If transferred how proceeded with.	410. Penalty on Sheriff for failing to return.
403. Existing judgments not dormant, may be transferred.	411. Judgments not dormant, when.
404. Dormant judgments, how revived.	412. Ordinance of 11th March, 1868, not effected.
406. Executions levied on personal property.	412a. Certain suits and petitions in Equity transferred to Superior Court.
407. Executions satisfied.	412b. Duty of clerk in such cases.

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413. Jurisdiction of Supreme Court.	416. Manner of prosecuting claims against the State.
414. Cases, how taken to Supreme Court.	417. Justices of Supreme Court may take probate of deeds, &c.
415. Claims against the State.	

OF THE PROCEDURE IN SPECIAL PROCEEDINGS.

418. When all parties ask same relief.	424. No report set aside for trivial defects.
419. In what cases Clerk may hear summarily.	425. Certain irregular proceedings in Superior Courts made legal.
420. If any of petitioners are infants, Judge must revise order.	426. Cases begun in such courts to be carried on to final judgment.
421. How special proceedings to be commenced.	427. Guardians, trustees, &c., may file petition and issue summons for relief in certain cases. Judge to state account, &c.
422. Orders, &c., to be signed by Judge.	428. Practice and appeal in such cases.
422a. Judgments in civil actions.	
423. What parts of C. C. P. applicable.	

THE CODE OF CIVIL PROCEDURE.

WHEREAS, it is ordained by Section 1, Article IV of the Constitution of North Carolina, that:

“The distinction between actions at law and suits in equity and the forms of all such actions and suits shall be abolished, and there shall be in this State but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action; and every action prosecuted by the people of the State as a party against a person charged with a public offence, shall be termed a criminal action: Feigned issues shall also be abolished, and the fact at issue tried by order of court before a jury.”

The General Assembly of the State of North Carolina, for the purpose of carrying into effect the said section, and regulating the practice and procedure in civil actions, in the several courts of this State, do enact as follows:

GENERAL DEFINITIONS AND DIVISIONS.

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|---|----------------------|
| 1. Remedies in the courts of justice are divided into— | Remedies. |
| (1.) Actions. | |
| (2.) Special proceedings. | |
| 2. An action is an ordinary proceeding in a court of justice, by which a party prosecutes another party, for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment or prevention of a public offence. | Actions. |
| 3. Every other remedy is a special proceeding. | Special proceedings. |
| 4. Actions are of two kinds: | Division of actions. |
| (1.) Civil. | |
| (2.) Criminal. | |
| 5. A criminal action is, | Criminal action. |
| (1.) An action prosecuted by the State as a party against a person charged with a public offence, for the punishment thereof. | |
| (2.) An action prosecuted by the State, at the instance of an individual, to prevent an apprehended crime against his person or property. | |
| 6. Every other is a civil action. | Civil action. |
| 7. Where the violation of a right admits both of a civil and criminal remedy, the right to prosecute the one is not merged in the other. | Remedies not merged. |

TITLE I.

GENERAL PROVISIONS IN REGARD TO ACTIONS.

To what actions these enactments applicable.

8. The following enactments are applicable to :

(1.) Civil actions, which at the approval, by the government of the United States, of the Constitution adopted by a Convention of this State, on the sixteenth day of March, 1868, were pending in any County Court, Superior Court of Law, or Court of Equity, of this State, and which were not founded on contract, as far as they may be, according to the stage of progress of the action, and having regard to its subject and not to its form.

(2.) All civil actions which shall be commenced after the ratification of this Act, not founded on a contract made prior to its ratification.

(3.) All actions commenced prior to the ratification of this Act, or which shall be hereafter commenced, founded on a contract made prior to the ratification of this Act, shall be governed in respect to the practice and procedure therein, up to, and including the judgment, by the laws existing prior to the ratification of this Act, as near as may be, and the practice in such actions subsequent to judgment, shall be governed by the enactments of this Act.

Definition of Court; to mean clerk, when.

9. In those of the following enactments, which confer jurisdiction or power, or impose duties, when the words Superior Court, or "Court," in reference to a Superior Court are used, they mean the Clerk of the Superior Court, unless otherwise specially stated, or unless reference is made to a regular term of the Court, in which cases the Judge of the Court alone is meant.

TITLE II.

SUPERIOR COURTS.

How Judges shall be elected.—1871-'2, c. 6.

9a. In all elections hereafter to be held in this State for any judge or judges of the Superior Courts, the same shall be determined by the legally qualified voters of the several judicial districts respectively.

Original civil jurisdiction of the Superior Court.

10. The Superior Courts shall have exclusive original jurisdiction of all civil actions, whereof exclusive original jurisdiction is not given to some other Court. (Const. Art. IV, Sect. 15.)

Terms of the several Superior Courts.

11. The terms of the several Superior Courts of this State shall begin in each year, at the times herein stated, and shall continue to be held for two weeks (Sundays and legal holidays excepted) unless the business be sooner disposed of.

FIRST JUDICIAL DISTRICT.

Northampton county, on the third Monday in February and September. 1872-'8, c. 188.

Bertie county, on the first Monday in March and October.

Hertford county, on the third Monday in March and October.

Gates county, on the fourth Monday after the first Monday in March and October.

Chowan county, on the sixth Monday after the first Monday in March and October.

Perquimans county, on the eighth Monday after the first Monday in March and October.

Pasquotank county, on the tenth Monday after the first Monday in March and October.

Camden county, on the twelfth Monday after the first Monday in March and October.

Currituck county, on the fourteenth Monday after the first Monday in March and October.

Dare county, on the sixteenth Monday after the first Monday in March and October.

SECOND JUDICIAL DISTRICT.

Tyrrell county, on the first Monday in September and February.

Washington county, on the third Monday in September and February.

Hyde county, on the second Monday after the third Monday in September and February.

Martin county, on the fourth Monday after the third Monday in September and February.

Beaufort county, on the sixth Monday after the third Monday in September and February.

Pitt county, on the eighth Monday after the third Monday in September and February.

Edgecombe county, on the tenth Monday after the third Monday in September and February.

THIRD JUDICIAL DISTRICT.

Wilson county, on the fourth Monday in August and February. 1871-'2, c. 32.

Wayne county, on the second Monday after the fourth Monday in August and February.

Craven county, on the fourth Monday after the fourth Monday in August and February; and on the seventeenth Monday after the fourth Monday in August and February. 1872-'3, c. 106.

Onslow county, on the sixth Monday after the fourth Monday in August and February.

Lenoir county, on the eighth Monday after the fourth Monday in August and February.

Jones county, on the tenth Monday after the fourth Monday in August and February.

Greene county, on the twelfth Monday after the fourth Monday in August and February.

Carteret county, on the fourteenth Monday after the fourth Monday in August and February.

FOURTH JUDICIAL DISTRICT.

1872-'3, c. 143. Robeson county, on the fourth Monday in February and on the sixth Monday after the fourth Monday in August.

Bladen county, on the second Monday after the fourth Monday in August and February.

Columbus county, on the fourth Monday after the fourth Monday in August and February.

Brunswick county, on the sixth Monday after the fourth Monday in February, and on the fourth Monday in August.

There shall be four terms of the Superior Court for the county of New Hanover, in each year, to be held for two weeks, unless the business be sooner disposed of; and the time for holding the said courts shall be as follows, viz :

On the fourth Monday in January, the eighth Monday after the fourth Monday in February, the fourth Monday in June, and the eighth Monday after the fourth Monday in August.

January term
of each year to
hold four
weeks if ne-
cessary.

2. The term of the court which may be held on the fourth Monday in January in each year may be continued in session for a period of four weeks unless the business shall be sooner disposed of.

Duplin county, on the twelfth Monday after the fourth Monday in August and February.

FIFTH JUDICIAL DISTRICT.

Harnett county, on the second Monday in August and February.

Moore county, on the second Monday after the second Monday in August and February.

Montgomery county, on the fourth Monday after the second Monday in August and February.

Stanly county, on the sixth Monday after the second Monday in August and February.

Union county, on the eighth Monday after the second Monday in August and February.

Anson county, on the tenth Monday after the second Monday in August and February.

Richmond county, on the twelfth Monday after the second Monday in August and February.

1872-'3, c. 149.

Cumberland county, on the last Monday in January and July.

1871-'2, c. 79.

Sampson county, on the fourteenth Monday after the fourth Monday of August and February.

SIXTH JUDICIAL DISTRICT.

Nash county, on the second Monday in August and February 1871-'2, c. 33.

Warren county, on the second Monday after the second Monday in August and February.

Franklin county, on the fourth Monday after the second Monday in February.

Johnston county, on the sixth Monday after the second Monday in August and February.

Wake county, on the eighth Monday after the second Monday in August and February, and on the first Monday in January, and fourth Monday in June. 1872-'3, c. 1.

Granville county, on the tenth Monday after the second Monday in August and February, and on the third Monday of January, and on the ——— Monday in July. 1871-'2, c. 33. 1872-'3, c. 185.

Halifax county, on the twelfth Monday after the second Monday in August and February.

SEVENTH JUDICIAL DISTRICT.

Alamance county, on the second Monday before the first Monday in March and September. 1871-'2, c. 6.

Guilford county, on the first Monday in March and September.

Rockingham county, on the second Monday after the first Monday in March and September.

Caswell county, on the fourth Monday after the first Monday in March and September.

Person county, on the sixth Monday after the first Monday in March and September.

Orange county, on the eighth Monday after the first Monday in March and September.

Chatham county, on the tenth Monday after the first Monday in March and September.

Randolph county, on the twelfth Monday after the first Monday in March and September.

EIGHTH JUDICIAL DISTRICT.

Surry county, on the first Monday in March and September. 1869-'70, c. 29.

Yadkin county, on the third Monday in March and September.

Davie county, on the second Monday after the third Monday in March and September.

Rowan county, on the fourth Monday after the third Monday in March and September.

Davidson county, on the sixth Monday after the third Monday in March and September.

Forsythe county, on the eighth Monday after the third Monday in March and September.

Stokes county, on the tenth Monday after the third Monday in March and September.

NINTH JUDICIAL DISTRICT.

1868-'9, c. 47. Polk county, on the second Monday in March and September.

Rutherford county, on the fourth Monday in March and September.

Cleveland county, on the second Monday after the fourth Monday in March and September.

Lincoln county, on the fourth Monday after the fourth Monday in March and September.

Gaston county, on the sixth Monday after the fourth Monday in March and September.

Mecklenburg county, on the eighth Monday after the fourth Monday in March and September.

Cabarrus county, on the first Monday in July and the tenth Monday after the fourth Monday in September.

TENTH JUDICIAL DISTRICT.

1872-'3, c. 195. Catawba county, on the first Monday in March and September.

Alexander county, on the third Monday in March and September.

Caldwell county, on the second Monday after the third Monday in March and September.

Alleghany county, on the fourth Monday after the third Monday in March and September.

Ashe county, on the sixth Monday after the third Monday in March and September.

Wilkes county, on the eighth Monday after the third Monday in March and September.

Iredell county, on the tenth Monday after the third Monday in March and September.

ELEVENTH JUDICIAL DISTRICT.

1871-'2, c. 110. Watauga county, on the second Monday of March and August.

McDowell county, on the fourth Monday of March and August.

Henderson county, on the second Monday after the fourth Monday in March and August.

Buncombe county, on the fourth Monday after the fourth Monday in March and August.

Madison county, on the sixth Monday after the fourth Monday in March and August.

Yancey county, on the eighth Monday after the fourth Monday in March and August.

Mitchell county, on the tenth Monday after the fourth Monday in March and August.

Burke county, on the twelfth Monday after the fourth Monday in March and August.

TWELFTH JUDICIAL DISTRICT.

Graham county, on the first Monday in March and August. 1871-'2, c. 110.

Cherokee county, on the third Monday of March and August.

Clay county, on the second Monday after the third Monday in March and August.

Macon county, on the fourth Monday after the third Monday in March and August.

Swain county, on the sixth Monday after the third Monday in March and August.

Jackson county, on the eighth Monday after the third Monday in March and August.

Haywood county, on the tenth Monday after the third Monday in March and August.

Transylvania county, on the twelfth Monday after the third Monday in March and August.

11a. Whenever it shall appear to the Governor by the certificate of any Judge, or a majority of the County Commissioners, that there is such an accumulation of civil or criminal actions, in the Superior Court of any county, as to require the holding of a special term for its dispatch, he shall issue an order to some one of the Judges of the Superior Court other than the Judge in the judicial district in which such county is, requiring him to hold a special term of the Superior Court of such county, to begin on a certain Monday, not to interfere with any of the regular terms of the courts of his district. The Judge shall attend and hold such court.

Special courts provided for.—1871-'2, c. 15, s. 1. 1868-'9, c. 273, s. 1.

11b. Whenever the Governor shall call a special term of the Superior Court for any county, he shall notify the chairman of the County Commissioners of the county of such call, and such chairman shall take immediate steps to cause twenty-four, or if a grand jury be needed, thirty-eight, qualified persons, to be drawn and summoned as jurors for said term; and also to advertise said term at the Court House and at one public place in every township of his county, or by publication of at least two weeks in some newspaper published in his county, in lieu of such township advertisement.

Notice to chairman of County Commissioners.—1868-'9, c. 273, s. 2.

11c. The special terms of the Superior Courts held in pursuance of this chapter shall have all the jurisdiction and powers that regular terms of the Superior Courts have.

Powers, &c.—1868-'9, c. 273, s. 3.

11d. The said terms shall last until all the business of the court shall be disposed of.

Terms shall last how long.—1868-'9, c. 273, s. 4.

11e. The clerk shall give the Judge a certificate of attendance for the number of days occupied by the court, and the Judge shall thereupon be entitled to receive from the Commissioners of the county in which the court is held, his expenses at the rate of one hundred dollars per week, as his compensation for holding said term.

Certificate of attendance.—1868-'9, c. 273, s. 5.

11f. The Judge after each term shall report to the Secretary of State, according to the forms prescribed by law, or which may be prescribed by the Secretary:

Judge to report, &c.—1868-'9, c. 273, s. 6.

(1.) The number and kinds of criminal actions which were for trial.

(2.) The number actually tried.

(3.) The number of civil actions which were for trial.

(4.) The number actually tried, and whether the cases were continued at the instance of one or both of the parties, or from what other cause.

Clerk to report.—1868-'9, c. 273, s. 7.

11g. The Clerk of the Superior Court shall report the proceedings of special terms to the Secretary of State as he is or may be required to report the proceedings of regular terms.

Subpœnas, &c.—1868-'9, c. 273, s. 8.

11h. Subpœnas may issue returnable on any day of any special term.

Grand Juries.—1868-'9, c. 273, s. 9.

11i. There shall be no grand jury at any special term, unless the same shall be ordered by the Governor.

Parties may apply to Superior Court for relief in vacation.—1871-'2, c. 3, s. 1.

11j. In all cases where the Superior Court in vacation has jurisdiction under the existing laws of the State, and all of the parties unite in the proceedings, they may apply for relief to the Superior Court in vacation or in term time, at their election.

Cases acted on in Superior Court during vacation do not conflict with court in term time.—1871-'2, c. 3, s. 2.

11k. In all cases heretofore acted upon, in which the Superior Court in vacation had jurisdiction, it shall be no objection to the order or decree that it was made by the court in term time.

Court of Oyer and Terminer.—1863, c. 7, s. 1.

11l. On application for a court of oyer and terminer by any county commissioners in behalf of its county, or of the Attorney General, or of the Solicitor on behalf of any county within their respective districts, the Governor shall issue a commission therefor to a Judge of the Superior Courts, who shall hold the same; and such courts shall have like jurisdiction by a grand jury to inquire of and by a petit jury to hear and determine all felonies and larcenies whatever, and also all other crimes whereof the Superior Court of that county hath jurisdiction; and the court thus appointed shall have like power as a regular superior court to continue or remove cases; and all such cases whereof jurisdiction is hereby conferred, pending for trial in the Superior Court of any county, shall be deemed in the court of oyer and terminer held for that county during its session, and on the adjournment thereof shall be deemed in the Superior Courts for the county. And in all cases of appeals from any judgment in a court of oyer and terminer, the certificate from the Supreme Court shall be sent to the Clerk of the Superior Court and the same proceedings shall be had therein as if the appeal had been taken from the Superior Court.

Powers.

Appeals.

Where held, &c.—1863, c. 7, s. 2.

11m. The said courts shall be held where the Superior Courts are held, and shall be attended by the same officers, who shall have like fees for their services. And the jurors for said courts shall be the same in number and qualification and be drawn in like manner as for the Superior Courts, by three Justices of the Peace, with the assistance of the Clerk of the Superior Court.

Judge to fix time of session, &c.—1863, c. 7, s. 3.

11n. The Judge commissioned to hold the court shall fix the time of its session and he shall forthwith notify the Clerk of

the Superior Court thereof, and also the prosecuting officer of the district in which said court is to be held; and the Clerk of the Superior Court shall forthwith summon the justices to draw the jurors and deliver the *venire* to the sheriff, who shall summon the jury.

11o. The Judge shall have like discretion as at a regular term to order a special *venire*. Special venire.—1863, c. 7, s. 4.

11p. The Clerks of the Superior Courts shall issue subpoenas for witnesses to attend the sessions of the courts of oyer and terminer, and the witnesses, when summoned, shall attend under the same rules, forfeitures and penalties, and with the same privileges as if the term were a regular term. Witnesses to be summoned, &c.—1862, c. 5.

11q. It shall be competent for any Judge holding a court of oyer and terminer, when any case or cases in such court, depending, and for any cause removed for trial to another county, to proceed at such time as such Judge may designate, to such county to which such case or cases may be removed, and there hold a court of oyer and terminer for the purpose of the trial of such case or cases so removed; and all persons charged with such crimes and misdemeanors as a court of oyer and terminer may take jurisdiction of, under the same rules and regulations as are herein prescribed: *Provided*, that the commission issued by the Governor to such Judge, authorizing him to hold such court of oyer and terminer, shall be sufficient authority for holding such other courts of oyer and terminer as may be rendered necessary by such removal of any such case or cases, if the transcript of the record therein shall set out and contain a copy of such commission. Courts of oyer and terminer may remove trials to another county.—1864, c. 10, s. 1.

11r. It shall be the duty of the Judge holding the court of oyer and terminer, except in cases where such courts are rendered necessary by the removal of cases for trial, as hereinbefore provided, to cause the commission, issued to such Judge by the Governor authorizing him to hold such court, to be copied into the record of such court, and such copy shall constitute a part of the record thereof, and such record shall be sufficient authority for holding any court of oyer and terminer rendered necessary by the removal of any case or cases as hereinbefore provided for. Commission to be copied and recorded, when.—1864, c. 10, s. 2.

11s. When a judge shall fix the time for holding a court of oyer and terminer, rendered necessary by the removal of any case or cases as hereinbefore provided for he shall forthwith notify the Clerk of the Superior Court of the county in which such court is to be held, and also the prosecuting officer of the district in which such court is to be held; and the Clerk of the Superior Court being so notified, shall forthwith summon Justices of the Peace to draw jurors and deliver the *venire* to the sheriff, who shall summon the jury, under the same rules and regulations as are now prescribed by law, and such court of oyer and terminer shall have all the powers, and shall be governed by the same rules and regulations now incident to courts of oyer and terminer, and the expenses of the Notification shall be given in case of removal of any cause for trial.—1864, c. 10, s. 3.

Powers, &c.

Judge holding such court shall be paid as if he were holding a regular term of the Superior Court, and the Solicitor for the State shall be entitled, for attending such court, to be paid as if attending a regular term of the Superior Court.

As many courts shall be held as necessary.—1861, c. 10, s. 4.

11 $\frac{1}{2}$. The Judge, holding a court of oyer and terminer, may hold as many courts of oyer and terminer under the provisions of this chapter as may be rendered necessary by the removal of any case or cases therein, and if any case shall be removed more than once, the Judge holding such court may continue to hold courts of oyer and terminer as herein provided, until such case or cases are tried according to law.

TITLE III.

GENERAL PROVISIONS AS TO CIVIL ACTIONS.

Forms of civil actions.—Distinction between actions at law and suits in equity abolished.

12. The distinction between actions at law and suits in equity, and the forms of all such actions and suits, heretofore existing, are abolished; and there shall be, in this State, hereafter, but one form of action, for the enforcement or protection of private rights and the redress of private wrongs, which shall be denominated a civil action. (Const. Art. IV. Sec. 1.)

Parties designated, plaintiff and defendant. Actions on judgments, when they may be brought.

13. In such action, the party complaining shall be known as the plaintiff, and the adverse party as the defendant.

14. No action shall be brought upon a judgment rendered in any court of this State, which shall be rendered after the ratification of this act, except a court of a Justice of the Peace, between the same parties, without the leave of the Judge of the court, either in or out of term, for good cause shown, on notice to the adverse party.

Feigned issues abolished.

15. Feigned issues are abolished; and instead thereof, in the cases where the power now exists to order a feigned issue, or when a question of fact not put in issue by the pleadings is to be tried by a jury, an order for the trial may be made by the Judge, stating distinctly and plainly the question of fact to be tried; and such order shall be the only authority necessary for a trial.

TITLE IV.

LIMITATION OF ACTIONS.

CHAPTER I.

ACTIONS IN GENERAL.

Time of commencing actions in general.

16. The provisions contained in chapter sixty-five of the Revised Code, entitled "Limitations," are repealed, and the provisions of this title are substituted. This title shall not extend

to actions already commenced, or to cases where the right of action has already accrued, but the statutes in force previous to the ratification of this act shall be applicable to such cases ; and in cases where the right of action has already accrued, but the action has not been commenced, the said statutes shall be applied according to the subject-matter of the action, and without regard to the form.

Civil actions can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued, except where, in special cases, a different limitation is prescribed by statute. But the objection that the action was not commenced within the time limited, can only be taken by answer.

Period of limitation ; objection must be taken by answer.

CHAPTER II.

ACTIONS FOR THE RECOVERY OF REAL PROPERTY—TIME OF COMMENCING.

18. The State will not sue any person for, or in respect of, any real property, or the issues or profits thereof, by reason of the right or title of the State to the same ;

When the State will not sue.

(1.) When the person in possession thereof, or those under whom he claims, shall have been in the adverse possession thereof for thirty years, such possession having been ascertained and identified under known and visible lines or boundaries ; and such possession, so held, shall give a title in fee to the possessor.

Thirty years possession.

(2.) When the person in possession thereof, or those under whom he claims, shall have been in possession under colorable title for twenty-one years, such possession having been ascertained and identified under known and visible lines or boundaries.

Twenty-one years possession under colorable title.

19. All such possession as is described in the preceding section, under such title as is therein described, is hereby ratified and confirmed, and declared to be a good and legal bar against the entry or suit of any person under the right or claim of the State.

Such possession valid against claimants under the State.

20. When the person in possession of any real property, or those under whom he claims, shall have been possessed of the same, under known and visible lines and boundaries, and under colorable title for seven years, no entry shall be made or action sustained against such possessor, by any person having any right or title to the same, except during the seven years next after his right or title shall have descended or accrued, who in default of suing within the time aforesaid, shall be excluded from any claim thereafter to be made ; and such possession, so held, shall be a perpetual bar against all persons ; subject to the qualifications in sections twenty-eight and twenty-nine of this title.

When persons having title must sue.

21. If in any action for real property, the plaintiff be non-
Proviso in case

of judgment
for plaintiff re-
versed, &c.

sued or judgment be given for him, 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 nonsuit, judgment reversed or stayed as aforesaid, notwithstanding the time limited in the foregoing section (twenty) for bringing such action as may have expired, if the action first brought, was commenced within the time above prescribed for bringing such actions.

Seizin within
twenty years
when necessa-
ry.

22. No action for the recovery of real property, or the possession thereof, shall be maintained, unless it appear that the plaintiff, or those under whom he claims, was seized or possessed of the premises in question within twenty years before the commencement of such action; subject to the qualifications in sections twenty-nine and thirty.

When adverse
possession for
twenty years.

23. No action for the recovery of real property, or the possession thereof, or the issues and profits thereof, shall be maintained when the person in possession thereof, or the defendant in such action, or those under whom he claims, shall have possessed such real property under known and visible lines and boundaries adversely to all other persons for twenty years; and such possession, so held, shall give a title in fee to the possessor, in such property, against all persons not under disability.

Action after
entry.

24. No entry upon real estate shall be deemed sufficient or valid, as a claim, unless an action be commenced thereupon, within one year after the making of such entry, and within the time prescribed in this title.

Possession
presumed.
Occupation
when deemed
under legal
title.

25. In every action for the recovery of real property, or the possession thereof, or damages for a trespass on such possession, the person establishing a legal title to the premises, shall be presumed to have been possessed thereof within the time required by law; and the occupation of such premises by any other person shall be deemed to have been under and in subordination to the legal title, unless it appears that such premises have been held and possessed adversely to such legal title, for the time prescribed by law before the commencement of such action.

Relation of
landlord and
tenant.

26. Whenever the relation of landlord and tenant shall have existed between any persons, the possession of the tenant shall be deemed the possession of the landlord, until the expiration of twenty years from the termination of the tenancy; or where there has been no written lease, until the expiration of twenty years from the time of the last payment of rent, notwithstanding that such tenant may have acquired another title, or may have claimed to hold adversely to his landlord. But such presumptions shall not be made after the periods herein limited.

Persons under
disabilities.

27. If a person entitled to commence any action for the recovery of real property, or to make an entry or defence founded on the title to real property, or to rents and services out of the same, be, at the time such title shall descend or accrue, either,

- (1.) Within the age of twenty-one years, or
- (2.) Insane, or

(3.) Imprisoned on a criminal charge, or in execution upon conviction of a criminal offence, or

(4.) A married woman ;

Then such person may, notwithstanding the time of limitation prescribed in this title be expired, commence his action, or make his entry, within three years next after full age, coming of sound mind, enlargement out of prison, or discovery, and at no time thereafter.

28. When two or more disabilities shall co-exist, or when one disability shall supervene an existing one, the period prescribed within which an action may be brought shall not begin to run until the termination of the latest disability. Cumulative disabilities.

29. No Railroad, Plank Road, Turnpike or Canal Company shall be barred of, or 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. Railroads, &c., not barred.

CHAPTER III.

ACTIONS OTHER THAN FOR THE RECOVERY OF REAL PROPERTY— TIME OF COMMENCING.

30. The periods prescribed for the commencement of actions, other than for the recovery of real property, shall be as follows: Periods of limitation prescribed.

31. Within ten years. Ten years.

(1.) An action upon a judgment or decree of any Court of the United States, or of any State or territory thereof;

(2.) An action upon a sealed instrument against the principals thereto;

(3.) An action for the foreclosure of a mortgage, or deed in trust for creditors with a power of sale, of real property, where the mortgagor or grantor has been in possession of the property, within ten years after the forfeiture of the mortgage, or after the power of sale became absolute, or within ten years after the last payment on the same;

(4.) An action for the redemption of a mortgage, where the mortgagee has been in possession, or for a residuary interest under a deed in trust for creditors, where the trustee or those holding under him, shall have been in possession; within ten years after the right of action accrued.

32. Within seven years. Seven years.

(1.) On a judgment rendered by a Justice of the Peace.

(2.) By any creditor of a deceased person against his personal or real representative; within seven years next after the qualification of the executor or administrator and his making the advertisement required by law, for creditors of the deceased to present their claims, where no personal service of such notice

in writing is made upon the creditor ; and a creditor thus barred of a recovery against the representative of any principal debtor shall also be barred of a recovery against any surety to such debt.

Six years.

33. Within six years.

(1.) An action upon the official bond of any public officer.

(2.) An action against any executor, administrator, or guardian on his official bond, within six years after the auditing of his final accounts by the proper officer, and the filing of such audited account as required by law.

(3.) An action for injury to any incorporeal hereditament.

Three years.

34. Within three years.

(1.) An action upon a contract, obligation or liability arising out of a contract, express or implied, except those mentioned in the preceding sections ;

(2.) An action upon a liability created by statute, other than a penalty or forfeiture, unless some other time be mentioned in the statute creating it ;

(3.) An action for trespass upon real property ;

(4.) An action for taking, detaining, converting, or injuring any goods or chattels, including actions for their specific recovery ;

(5.) An action for criminal conversation, or for any other injury to the person or rights of another, not arising on contract and not hereinafter enunciated ;

(6.) An action against the sureties of any executor, administrator or guardian, on the official bond of their principal ; within three years after the breach thereof complained of ;

(7.) An action against bail ; within three years after judgment against their principal, but bail may discharge themselves by a surrender of their principal, at any time before final judgment against them ;

(8.) Fees due to any clerk, sheriff or other officer, by the judgment of a Court ; within three years from the time of the judgment rendered, or of the issuing of the last execution therefor ;

(9.) An action for relief on the ground of fraud, in cases which heretofore were solely cognizable by courts of equity, the cause of action in such cases not to be deemed to have accrued until the discovery by the aggrieved party, of the facts constituting fraud.

One year.

35. Within one year.

(1.) An action against a sheriff, coroner, or constable, or other public officer for a trespass under color of his office ;

(2.) An action upon a statute, for a penalty or forfeiture, where the action is given to the State alone, or in whole or in part, to the party grieved, or to a common informer except where the statute imposing it prescribes a different limitation ;

(3.) An action for libel, assault, battery, or false imprisonment ;

(4.) An action against a sheriff or other officer, for the escape of a prisoner arrested or imprisoned on civil process ;

(5.) An action by a creditor of any deceased person, on whom personal notice in writing to present his claim to the personal representative of the deceased has been served, and who has failed so to do, within one year after the service of such notice, and any such creditor, barred of a recovery against the personal representative of a principal debtor, by reason of such default, shall also be barred of a recovery against the sureties for such debt.

(36.) Within six months.

Six months.

(1.) An action for slander.

(37.) An action for relief not herein provided for, must be commenced within ten years after the cause of action shall have accrued.

Action for other relief.

38. The limitations prescribed in this chapter shall apply to civil actions brought in the name of the State, or for its benefit, in the same manner as to actions by or for the benefit of private parties.

Limitations to apply to actions by the State.

39. In an action brought to recover a balance due upon a mutual, open and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the latest item proved in the account on either side.

Action upon an account current, when cause accrues.

CHAPTER IV.

GENERAL PROVISIONS AS TO THE TIME OF COMMENCING ACTIONS.

40. An action is commenced as to each defendant when the summons is issued against him.

When action deemed commenced.

41. If when the cause of action accrue against any person, he shall be out of the State, such action may be commenced within the terms herein respectively limited, after the return of such person into this State; and if after such cause of action shall have accrued, such person shall depart from and reside out of this State, or remain continuously absent therefrom for the space of one year or more, the time of his absence shall not be deemed or taken as any part of the time limited for the commencement of such action.

Exception, defendant out of the State.

42. If a person entitled to bring an action mentioned in the last chapter, except for a penalty or forfeiture, or against a sheriff or other officer for an escape, be at the time the cause of action accrued, either.

Exceptions, persons under disabilities.

(1.) Within the age of twenty-one years; or

(2.) Insane; or

(3.) Imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than his natural life; or

(4.) A married woman;

Then such persons may bring their actions within the times before limited, after their disabilities shall be removed.

43. If a person entitled to bring an action die before the

Death of a per-

son entitled
before limita-
tion expires.

expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives after the expiration of that time, and within one year from his death. If a person against whom an action may be brought die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced against his executors or administrators after the expiration of that time, and within one year after the issuing of letters testamentary or of administration.

Actions by
aliens; time
of war not
counted.

44. When a person shall be an alien, subject or citizen of a country at war with the United States, the time of the continuance of the war shall not be part of the period limited for the commencement of the action.

When judg-
ment reversed,
&c., plaintiff
may com-
mence new ac-
tion.

45. If an action shall be commenced within the time prescribed therefor, and the plaintiff be nonsuited, or a judgment therein be reversed on appeal, or be arrested, the plaintiff, or if he die and the cause of action survive, his heirs or representatives, may commence a new action within one year after such nonsuit, reversal, or arrest of judgment.

Time of stay
by injunction,
&c., not count-
ed.

46. When the commencement of an action shall be stayed by injunction or statutory prohibition, the time of the continuance of the injunction or prohibition shall not be part of the time limited for the commencement of the action.

Time during
controversy
about probate
of will, &c.,
not counted.

47. 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, unless there be an administrator appointed during the pendency of the suit, and it be provided by law that suit may be brought against him.

Disability
must exist
when the right
of action ac-
crued.

48. No person shall avail himself of a disability, unless it existed when his right of action accrued.

Where several
disabilities;
all must be
removed.
Acknowledg-
ment by part-
ner, &c., after
dissolution.

49. Where two or more disabilities shall co-exist at the time the right of action accrues, the limitation shall not attach until they all be removed.

50. No act, admission or acknowledgment by any partner after the dissolution of the co-partnership, or by any of the makers of a promissory note or bond after the statute of limitations shall have barred the same, shall be received as evidence to repel the statute, except against the partner or maker of the promissory note or bond, doing the act or making the admission or acknowledgment.

Acknowledg-
ment or new
promise must
be in writing.

51. No acknowledgment or promise shall be received as evidence of a new or continuing contract, whereby to take the case out of the operation of this title, unless the same be contained in some writing signed by the party to be charged thereby; but this section shall not alter the effect of any payment of principal or interest.

Co-tenants;
when some
barred, others
not.

52. In actions by tenants in common or joint tenants of personal property to recover the same, or damages for the detention of or injury thereto, and any of them shall be barred of their recovery by limitation of time, the rights of the other

shall not be affected thereby ; but they may recover according to their right and interest notwithstanding such bar.

53. This title shall not affect actions to enforce the payment of bills, notes or other evidences of debt, issued by moneyed corporations, or issued or put in circulation as money.

This title not applicable to bills, &c., of corporations, or to bank notes.

54. This title shall not affect actions against directors or stockholders of any moneyed corporation, or banking association which shall hereafter be incorporated by or under the laws of this State, to recover a penalty or forfeiture imposed, or to enforce a liability created by law ; but such actions must be brought within three years after the discovery by the aggrieved party, of the facts upon which the penalty or forfeiture attached, or the liability was created.

Nor to actions against directors, &c., of moneyed corporations or banking associations ; limitation in such cases prescribed.

54a. WHEREAS, Many citizens of the State of North Carolina were stockholders in banking institutions chartered in other States before the year one thousand eight hundred and sixty-one, which contain individual liability clauses in the nature of penalties in the event of failure on the part of said banking corporations to meet their liabilities ; and,

Certain suits against banks barred. 1872-'3, c. 120.

WHEREAS, said banking corporations have become insolvent by the results of the late war, thereby entailing upon the stockholders the loss of the investment of their capital therein, and they are threatened with further loss by reason of said individual liability clauses ; therefore,

All such causes of action as have not hitherto been commenced in this State against citizens thereof are hereby declared to be barred by lapse of time.

TITLE IV.

PARTIES TO CIVIL ACTIONS.

55. Every action must be prosecuted in the name of the real party in interest, except as otherwise provided in section fifty-seven ; but this section shall not be deemed to authorize the assignment of a thing in action not arising out of contract. But an action may be maintained by a grantee of land in the name of a grantor, or his or her heirs or legal representatives, when the grant or grants are void by reason of the actual possession of a person claiming under a title adverse to that of the grantor at the time of the delivery of the grant, and the plaintiff shall be allowed to prove the facts to bring the case within this provision.

Action to be by party in interest.

Action by grantee of land held adversely.

In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set off or other defence existing at the time of, or before notice of, the assignment ; but this section shall not apply to a negotiable promissory note or bill of exchange, transferred in good faith, and upon good consideration, before due.

Assignment of things in action.

Action by and
against a mar-
ried woman.

56. When a married woman is party, her husband must be joined with her except that,

(1.) When the action concerns her separate property she may sue alone;

(2.) When the action is between herself and her husband, she may sue or be sued alone;

And in no case need she prosecute or defend by a guardian or next friend.

Action by ex-
ecutor, trustee
&c.

57. An executor or administrator, a trustee of an express trust, or a person expressly authorized by statute, may sue, without joining with him the person for whose benefit the action is prosecuted. A trustee of an express trust, within the meaning of this section, shall be construed to include a person with whom or in whose name a contract is made for the benefit of another.

Infant plaint-
iffs may ap-
pear through
guardian or
next friend.—
1870-'1, c. 233,
s. 1.
1871-'2, c. 95,
s. 1.

58. In actions and special proceedings of any of the courts of this State whenever any of the parties plaintiffs are infants, idiots, lunatics and persons *non compos mentis*, whether said infants, idiots, lunatics and persons *non compos mentis* be residents or non-residents of this State, said infants, idiots, lunatics and persons *non compos mentis* shall appear by their general or testamentary guardian, if they have any within the State; and if there shall be no such guardian, then said infants, idiots, lunatics and persons *non compos mentis* may appear by their next friend.

Infant defen-
dant, &c.—
1871-'2, c. 95,
s. 2.

59. In all actions and special proceedings in any of the courts of this State, whenever any or all of the defendants are infants, idiots, lunatics, or persons *non compos mentis*, said infants, idiots, lunatics, or persons *non compos mentis* shall defend by their general or testamentary guardian, if they have any within this State, whether said infants, idiots, lunatics, or persons *non compos mentis* are residents or non-residents of this State; and if said infants, idiots, lunatics, or persons *non compos mentis*, have no general or testamentary guardian within this State, and any of the defendants in said action or special proceeding shall have been summoned, and a copy of the complaint has been served on them, or any of them, or filed according to law, then it shall be lawful for the court, wherein said action or special proceeding is pending, upon motion of any of the parties to the said action or special proceeding, to appoint some discreet person to act as guardian *ad litem*, to defend in behalf of such infant, or infants, idiots, lunatics, or persons *non compos mentis*, and such guardian so appointed shall, if the cause in which he is appointed be a civil action, file his answer to the complaint within the time required for other defendants, unless such time be extended by the court for good cause, and if the cause in which he is so appointed be a special proceeding, a copy of the complaint, with the summons, shall be served on said guardian *ad litem*, and after twenty days' notice of said summons and complaint in such special proceeding, and after answer filed as above prescribed in such civil action, the court may proceed in the cause to final judgment and decree therein

Summons.

Court may ap-
point guardian
ad litem for
defendant.

Guardian *ad*
litem to file
answer.

Final judg-
ment.

in the same manner as if there had been personal service upon the said infant, idiot, lunatic, or person *non compos mentis*, defendants, and any decree or judgment in the case shall conclude the infant, idiot, lunatic, or person *non compos mentis*, defendants as effectually as if he or they had been personally summoned.

59a. Whenever any guardian *ad litem* shall be appointed under this chapter the guardian shall file an answer in said action or special proceeding admitting or denying the allegations thereof, the costs and expenses of which said answer in all applications to sell or divide the real estate of said infants shall be paid out of the proceeds of the property, or in case of a division, shall be charged upon the land, if the sale or division shall be ordered by the court, and if not ordered in any other manner the court shall direct.

Guardian *ad litem* to file answer.—1870
—'1, c. 233, s.
4.

Costs.

60. All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except as otherwise provided in this title.

Who is to be plaintiff.

61. Any person may be made a defendant who has, or claims, an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the questions involved therein; and in an action to recover the possession of real estate, the landlord and tenant thereof may be joined as defendants; and any person claiming title or right of possession to real estate, may be made parties plaintiff or defendant, as the case may require, to any such action.

Who to be defendant.

62. Of the parties to the action, those who are united in interest must be joined as plaintiffs or defendants; but if the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest of many persons, or where the parties may be very numerous, and it may be impracticable to bring them all before the Court, one or more may sue or defend for the benefit of the whole.

Parties to be joined, &c.

63. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may all or any of them be included in the same action at the option of the plaintiff.

Parties to bills and notes, &c.

63a. In all cases of joint contracts of co-partners in trade or others, suit may be brought and prosecuted on the same against all or any number of the persons making such contracts.

Suit brought against joint-contractors.—
1871-'2, c. 24,
s. 1.
Existing suits.
Action when not to abate.

64. (1.) No action shall abate by the death, marriage or other disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of death, except in suits for penalties, and for damages merely vindictive, marriage or other disability of a party. the Court, on motion at any time within one year thereafter, or afterwards on a supplemental complaint, may allow the action to be continued by, or against, his representative or successor in interest. In case of any other transfer of interest, the action shall be con-

tinued in the name of the original party, or the Court may allow the person to whom the transfer is made, to be substituted in the action.

(2.) After a verdict shall be rendered in any action for a wrong, such action shall not abate by the death of any party, but the cases shall proceed thereafter in the same manner as in cases where the cause of action now survives by law.

(3.) At any time after the death, marriage, or other disability of the party plaintiff, the Court in which an action is pending, upon notice to such persons as it may direct, and upon application of any person aggrieved, may in its discretion, order that the action be deemed abated, unless the same be continued by the proper parties, within a time to be fixed by the Court, not less than six months, nor exceeding one year from the granting of the order.

(4.) The provisions of this section shall apply as well to actions existing at the ratification of this act, as to those commenced subsequently thereto.

Court may determine controversy and interpleader.

65. The court either between the terms, or at a regular term, according to the nature of the controversy, under the regulations contained in this chapter, may determine any controversy before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the court must cause them to be brought in.

And when in an action for the recovery of real or personal property, a person not a party to the action, but having an interest in the subject thereof, makes application to the court to be made a party, it may order him to be brought in by the proper amendment.

A defendant against whom an action is pending upon a contract, or for specific real or personal property, may at any time before answer, upon affidavit, that a person not a party to the action, and without collusion with him, makes against him a demand for the same debt or property, upon due notice to such person and the adverse party, apply to the court for an order to substitute such person in his place, and discharge him from liability to either party, on his depositing in court the amount of the debt, or delivering the property or its value, to such person as the court may direct; and the court may, in its discretion, make the order.

TITLE VI.

OF THE PLACE OF TRIAL OF CIVIL ACTIONS.

Actions to be tried where

66. Actions for the following causes must be tried in the county in which the subject of the action, or some part thereof,

is situated, subject to the power of the court to change the place of trial, in the cases provided in this Code. subject matter situated.

(1.) For the recovery of real property, or of an estate or interest therein, or for the determination in any form, of such right or interest, and for injuries to real property;

(2.) For the partition of real property;

(3.) For the foreclosure of a mortgage of real property;

(4.) For the recovery of personal property distrained for any cause.

67. Actions for the following causes must be tried in the county where the cause, or some part thereof, arose, subject to the like power of the court to change the place of trial, in the cases provided in this Code; Actions to be tried where cause of action arose.

(1.) For the recovery of a penalty or forfeiture, imposed by statute; except that, when it is imposed for an offence committed on a sound, bay, river or other body of water situated in two or more counties, the action may be brought in any county bordering on such sound, bay, river or other body of water, and opposite to the place where the offence was committed.

(2.) Against a public officer or person especially appointed to execute his duties, for an act done by him by virtue of his office; or against a person who by his command or in his aid, shall do anything touching the duties of such officer.

68. In all other cases the action shall be tried in the county in which the plaintiffs or the defendants, or any of them, shall reside at the commencement of the action; or if none of the defendants shall reside in the State, then in the county in which the plaintiffs, or any of them, shall reside; and if none of the parties shall reside within the State, then the same may be tried in any county which the plaintiff shall designate in his summons and complaint, subject, however, to the power of the court to change the place of trial, in the cases provided by statute. Action to be tried where defendant resides. 1868-'9, c. 59. 1868-'9, c. 277, s. 6.

68a. All suits upon official bonds or against executors and administrators in their fiduciary capacity, shall be instituted in the county where the bonds were or shall be given, if the principal or any of the sureties on the bond is in the county; if not, then in the plaintiff's county. Suits upon official bonds to be tried in county where given.—1868-'9, c. 258, s. 1.

69. If the county designated for that purpose in the summons and complaint be not the proper county, the action may, notwithstanding, be tried therein, unless the defendant, before the time of answering expires, demand in writing that the trial be had in the proper county, and the place of trial be thereupon changed by consent of parties, or by order of the Court, as is provided in this section. Change of place of trial.

The Court may change the place of trial in the following cases:

(1.) When the county designated for that purpose is not the proper county.

(2.) When the convenience of witnesses and the ends of justice would be promoted by the change.

When the place of trial is changed, all other proceedings shall be had in the county to which the place of trial is changed, unless otherwise provided by the consent of the parties in writing duly filed, or order of Court; and the papers shall be filed or transferred accordingly.

Suit may be moved to adjoining judicial district when judge interested.—1870-'1, c. 20, s. 1.

Proviso.

Further proviso.

69a. Upon the application of any party plaintiff or defendant, it shall be the duty of the Judges of the Superior Courts of this State, in their respective judicial districts, to order the transfer and removal of any suit, action or cause pending in the courts of their said districts, in which such Judge shall have been at any time interested as party, or employed or otherwise engaged as counsel, to some county in an adjoining judicial district, to be agreed upon by the parties to such suit, action or cause for trial: *Provided*, that if the parties cannot agree upon a county to which such suit, action or cause may be transferred or removed, the Judge of the court shall order the transfer and removal of such suit, action or cause, to some county adjoining and nearest to his judicial district: *Provided, further*, that if the Judge be interested as a party in any such suit, action or case, he shall, upon the application of any other party to the suit, order the transfer and removal of such suit, action or cause to some county in an adjoining district, where the term of the court will not interfere with the judicial duties of the Judge making such order.

TITLE VII.

OF THE MANNER OF COMMENCING CIVIL ACTIONS, AND THE SERVICE OF THE SUMMONS.

Manner of commencing civil actions. By whom issued, &c.

1868-'9, c. 277, s. 13.

70. Civil actions in the Superior Courts of this State shall be commenced by the issuing of a summons.

71. The summons shall be issued by a Clerk of any Superior Court at the request of the plaintiff; but before issuing it, the clerk shall require of the plaintiff, either to give a bond with sufficient security in the sum of two hundred dollars, with the condition that the same shall be void if the plaintiff shall pay the defendant all such costs as the defendant shall recover of him in the action; or to deposit a like sum with him as a security to the defendant for such costs, and in case of such deposit he shall give to the plaintiff and to the defendant a certificate to that effect; or to file with him a written authority from some Judge of a Superior Court authorizing the plaintiff to sue as a pauper.

How to sue as a pauper. How obtained.—1868-'9, c. 96, s. 1.

72. Any Judge, Justice of the Peace, or Clerk of the Superior Court may authorize any person to sue as a pauper in their respective courts when he shall prove, by one or more witnesses, that he has a good cause of action, and shall make affidavit

that he is unable to comply with the provisions of the last section.

72a. The court to which such writ is made returnable may, at its discretion, assign to the person, suing as a pauper, learned counsel, who shall prosecute his suit.

Court may assign counsel.
1868-'9, c. 96,
s. 2.

72b. Whenever any person shall sue as a pauper, no officer shall require of him any fee, and he shall recover no costs.

No costs or fees recoverable.—
1868-'9, c. 96,
s. 3.
Form of the summons.

73. The summons shall run in the name of the State, be signed by the Clerk of a Superior Court, under the seal of his court, and be directed to the sheriff of the county in which the defendant resides or may be found, or in case such sheriff be a party to, or interested in, the action, it may be directed to the coroner of that county, or to the sheriff of any adjoining county. It shall command the officer to summon the defendant to appear at the office of the Clerk of the Superior Court for some certain county, within a certain number of days after the service, exclusive of the day of service, to answer the complaint of the plaintiff. It shall be dated on the day of its issue.

74. There shall also be inserted in the summons, a notice in substance as follows :

(1.) In an action arising on contract for the recovery of money only, that the plaintiff will take judgment for a sum specified therein, if the defendant shall fail to answer the complaint within the time specified.

What summons to contain.

(2.) In other actions, that if the defendant shall fail to answer the complaint within the time specified, the plaintiff will apply to the court for the relief demanded in the complaint. The clerk before whom the defendant shall be summoned to appear, shall be the Clerk of the Superior Court of the county in which it is provided in Title VI, that the action shall be tried.

(3.) The number of days within which the defendant is summoned to appear, shall, in no case, be less than twenty, exclusive of the day of service, to which one day shall be added for every twenty-five miles of distance between the court-house of the county in which the service is made and the court-house of the county at which the defendant is required to appear, by the usual route of travel.

75. The officer to whom the summons is addressed shall note on it the day of its delivery to him, and execute it within ten days after its receipt by him. Before proceeding to execute it, he shall be entitled to require of the plaintiff his fee for the service. If required by the plaintiff he shall execute the writ immediately. When executed he shall immediately return the writ, with the date and manner of its execution, by mail or otherwise, to the Clerk of the proper court.

Return of summons.

76. A copy of the complaint may or may not be served with the summons. In either case the plaintiff must file a copy thereof with the clerk of the court before which the defendant is summoned to appear, within ten days from the issuing of the sum-

Service of the complaint.

mons; and in case no copy shall have been issued with the summons, he shall also within the said time file with the clerk another copy thereof, addressed to, and for the use of, the defendant, or if there be several defendants, a copy for each of them, provided, however, if several defendants appear by one attorney, one copy only need be filed for all who so appear.

Plaintiff failing to file complaint within ten days.

77. If the plaintiff shall fail to file his complaint within ten days after the issuing of his summons, then the defendant may at any time before the filing of such complaint, and within the time limited for his appearance, enter an appearance specifying where within the State, a copy of the complaint may be served on him, and the plaintiff at his own expense, shall cause such copy to be served within sixty days; and the defendant shall not be required to answer until the twentieth day after such service.

Plaintiff failing to file complaint within the time for defendant's appearance, may be nonsuited. Time of filing pleadings may be enlarged.

78. If the plaintiff shall fail to file his complaint within the time limited by the summons, for the appearance and answer of the defendant, or by the next preceding section, the defendant shall be entitled to demand judgment of nonsuit against the plaintiff.

79. The time for filing the complaint or of any pleading whatever, may be enlarged by the court for good cause shown by affidavit, but it shall not be enlarged by more than twenty additional days nor more than once, unless the default shall have been occasioned by accident over which the party applying had no control, or by the fraud of the opposing party; and in all cases in which the time shall be enlarged unless upon the ground of such accident or fraud, the party making the application shall pay into court for the use of the opposing party five dollars, which shall not in any event be recovered back. Three days' notice must be given of the motion to enlarge.

Plaintiff shall name an attorney in the county town, &c.

80. At the time of filing his complaint the plaintiff, and at the time of filing his answer, the defendant, shall name some place and person in the county town in which the court to which the action is brought is held, where and upon whom service of pleadings and notices in the action may be served; and if either shall fail to do so, the filing of all such pleadings and notices in the office of the clerk of the court shall be deemed sufficient service on the day of such filing, unless the party shall in writing on the copy of his complaint, or answer, or by other written notice, served on the adverse party, require personal service thereof, at a place named by him within the county, and shall deposit with the clerk a sum sufficient to pay the expense of such personal service; in which case, the personal service shall be made at his expense.

Notice of no personal claim

81. In case of a defendant against whom no personal claim is made, the plaintiff may deliver to such defendant with the summons, a notice subscribed by the plaintiff or his attorney, setting forth the general object of the action, a brief description of the property affected by it, if it affects real or personal property, and that no personal claim is made against such de-

(2.) If the action be against defendants severally liable, he may proceed against the defendants served, in the same manner as if they were the only defendants.

(3.) If all the defendants have been served, judgment may be taken against any or either of them severally, when the plaintiff would be entitled to judgment against such defendant or defendants if the action had been against them or any of them alone.

(4.) If the name of one or more partners, shall for any cause have been omitted in any action in which judgment shall have passed against the defendants named in the summons, and such omission shall not have been pleaded in such action, the plaintiff, in case the judgment therein shall remain unsatisfied, may by action recover of such partner separately, upon proving his joint liability, notwithstanding he may not have been named in the original action; but the plaintiff shall have satisfaction of only one judgment rendered for the same cause of action.

88. In the cases in which service by publication is allowed, the summons shall be deemed served at the expiration of the time prescribed by the order of publication.

When service complete.

89. Proof of the service of the summons and of the complaint or notice, if any accompanying the same, must be:

Proof of service.

(1.) By the certificate of the sheriff or other proper officer.

(2.) In case of publication, the affidavit of the printer, or his foreman, or principal clerk, showing the same, and an affidavit of a deposit of a copy of the summons in the post office as required by law, if the same shall have been deposited; or,

(3.) The written admission of the defendant.

In case of service otherwise than by publication, the certificate or admission must state the time and place of service.

90. From the time of the service of the summons in a civil action, or the allowance of a provisional remedy, the court is deemed to have acquired jurisdiction, and to have control of all the subsequent proceedings. A voluntary appearance of a defendant is equivalent to personal service of the summons upon him.

Jurisdiction.
Appearance.
Notice of *lis pendens*.

In an action affecting the title to real property, the plaintiff, at the time of filing the complaint, or at any time afterwards, or whenever a warrant of attachment, under chapter four, of title ten, of this Code, shall be issued, or at any time afterwards, the plaintiff, or a defendant when he sets up an affirmative cause of action in his answer and demands substantive relief, at the time of filing his answer, or at any time afterwards, if the same be intended to affect real estate, may file with the clerk of each county in which the property is situated, a notice of the pendency of the action, containing the names of the parties, the object of the action, and the description of the property in that county affected thereby; and if the action be for the foreclosure of a mortgage, such notice must be filed twenty days before judgment, and must contain the date of the mortgage, the parties thereto, and the time and place of record-

ing the same. From the time of filing only shall the pendency of the action be constructive notice to a purchaser or incumbrancer of the property affected thereby; and every person whose conveyance or incumbrance is subsequently executed or subsequently recorded, shall be deemed a subsequent purchaser or incumbrancer, and shall be bound by all proceedings taken after the filing of such notice, to the same extent as if he were made a party to the action. For the purposes of this section, an action shall be deemed to be pending from the time of filing such notice; provided, however, that such notice shall be of no avail unless it shall be followed by the first publication of the summons on an order therefor, or by the personal service thereof on a defendant within sixty days after such filing. And the court in which the said action was commenced may, in its discretion, at any time after the action shall be settled, discontinued, or abated, as is provided in section sixty-four, on application of any person aggrieved, and on good cause shown, and on such notice as shall be directed or approved by the court, order the notice authorized by this section to be cancelled of record by the clerk of any county in whose office the same may have been filed or recorded; and such cancellation shall be made by an indorsement to that effect on the margin of the record, which shall refer to the order, and for which the clerk shall be entitled to a fee of twenty-five cents.

TITLE VIII.

OF THE PLEADINGS IN CIVIL ACTIONS.

CHAPTER I.

THE COMPLAINT.

Forms of
pleading.

91. All the forms of pleading heretofore existing are abolished; and hereafter, the forms of pleading in civil actions in courts of record, and the rules by which the sufficiency of the pleadings is to be determined, are those prescribed by this Code.

Complaint.

92. The first pleading on the part of the plaintiff is the complaint.

Complaint
what to con-
tain.

93. The complaint shall contain;

(1.) The title of the cause, specifying the name of the court in which the action is brought, the name of the county in which the trial is required to be had, and the names of the parties to the action, plaintiff and defendant.

(2.) A plain and concise statement of the facts constituting a cause of action, without unnecessary repetition; and each material allegation shall be distinctly numbered.

fendant, in which case no copy of the complaint need be served on such defendant, unless within the time for answering he shall in writing demand the same. If a defendant on whom such notice is served, unreasonably defend the action, he shall pay costs to the plaintiff.

82. The summons shall be served by delivering a copy thereof as follows:

Manner of service of summons.

(1.) If a suit be against a corporation, to the president, or other head of the corporation, secretary, cashier, treasurer, a director or managing agent thereof; but such service can be made in respect to a foreign corporation only when it has property within the State, or the cause of action arose therein, or where the plaintiff resides in the State, or where such service can be made within this State personally upon the President, Treasurer or Secretary thereof;

(2.) If against a minor under the age of fourteen years, to such minor personally, and also his father, mother or guardian, or if there be none within the State, then to any person having the care and control of such minor, or with whom he shall reside, or in whose service he shall be employed;

(3.) If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs in consequence of habitual drunkenness and for whom a committee or guardian has been appointed, to such committee and to the defendant personally;

(4.) In all other cases, to the defendant personally.

83. Where the person on whom the service of the summons is to be made cannot, after due diligence, be found within the State, and that fact appears by affidavit to the satisfaction of the Court, or a Judge thereof, and it in like manner appears that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a proper party to an action relating to real property in this State, such Court or Judge may grant an order that the service be made by the publication of a summons in either of the following cases:

Service by publication; form of summons.

(1.) Where the defendant is a foreign corporation, and has property within the State, or the cause of action arose therein;

(2.) Where the defendant, being a resident of this State, has departed therefrom, with intent to defraud his creditors, or to avoid the service of a summons, or keeps himself concealed therein with a like intent;

(3.) Where he is not a resident of this State, but has property therein, and the Court has jurisdiction of the subject of the action;

(4.) Where the subject of the action is real or personal property in this State, and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partly in excluding the defendant from any lien or interest therein;

(5.) Where the action is for divorce, in the cases prescribed by law.

Manner and effect of publication.

84. The order must direct the publication in any one or two newspapers to be designated as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, not less than once a week for six weeks. In case of publication the Court or Judge must also direct a copy of the summons and complaint to be forthwith deposited in the post office, directed to the person to be served, at his place of residence, unless it appears that such residence is neither known to the party making the application, nor can with reasonable diligence be ascertained by him. When publication is ordered, personal service of a copy of the summons and complaint, out of the State, is equivalent to publication and deposit in the post office.

Defendant allowed to defend before and after judgment.

85. The defendant against whom publication is ordered, or his representatives, on application and sufficient cause shown at any time before judgment, must be allowed to defend the action; and, except in an action for divorce, the defendant against whom publication is ordered, or his representatives, may in like manner, upon good cause shown, be allowed to defend after judgment, or at any time within one year after notice thereof, and within five years after its rendition, on such terms as may be just; and if the defence be successful and the judgment, or any part thereof, have been collected, or otherwise enforced, such restitution may thereupon be compelled as the court may direct; but the title to property sold under such judgment to a purchaser in good faith shall not be thereby affected. And in all cases where publication is made, the complaint must be first filed, and the summons as published must state the time and place of such filing.

Actions for foreclosure of mortgages.

86. In actions for the foreclosure of mortgages on real estate, already instituted, or hereafter to be instituted, if any party having any interest in or lien upon such mortgaged premises, is unknown to the plaintiff, and the residence of such party cannot, with reasonable diligence, be ascertained by him, and such fact shall be made to appear by affidavit to the court, such court may grant an order that the summons be served on such unknown party by publishing the same for six weeks once in each week successively, in one newspaper printed in Raleigh, and in a newspaper printed in the county where the premises lie, if there be any, which publication shall be equivalent to a personal service on such unknown party.

Joint and several debtors; partners.

87. Where the action is against two or more defendants, and the summons is served on one or more of them, but not on all of them, the plaintiff may proceed as follows:

(1.) If the action be against defendants jointly indebted upon contract, he may proceed against the defendants served, unless the court otherwise direct; and if he recover judgment, it may be entered against all the defendants thus jointly indebted, so far only as that it may be enforced against the joint property of all, and the separate property of the defendants served, and if they are subject to arrest, against the persons of the defendants served; or

notes or bonds are given to any president, cashier or other person, for the benefit or interest of such banks, and also in all cases where any note or bond has been given in lieu of any note or notes, bond or bonds, to any banking association, or for the benefit of the same.

1868-'9, c. 77, s. 3.

101*d*. The remedy under this chapter may be by plea of set off, or by injunction, as the case may require.

Remedy may be by injunction.—1868-'9, c. 77, s. 4. Several defences.

102. The defendant may set forth by answer as many defences and counter-claims as he may have, whether they be such as have been heretofore denominated legal, or equitable or both. They must each be separately stated and numbered, and refer to the cause of action which they are intended to answer, in such manner that they may be intelligibly distinguished.

103. The defendant may demur to one or more of several causes of action stated in the complaint, and answer to the residue.

Demurrer and answer.

104. Sham and irrelevant answers and defences may be stricken out on motion, and upon such terms as the Court may in its discretion impose.

Sham and irrelevant defences.

CHAPTER IV.

THE REPLY.

105. When the answer contains new matter constituting a counter-claim, the plaintiff may, within twenty days, reply to such new matter, denying generally or specifically each allegation controverted by him, or any knowledge or information thereof sufficient to form a belief; and he may allege, in ordinary and concise language, without repetition, any new matter not inconsistent with the complaint, constituting a defence to such new matter in the answer; and the plaintiff may in all cases demur to an answer containing new matter, where upon its face it does not constitute a counter claim or defence; and the plaintiff may demur to one or more of such defences or counter-claims and reply to the residue of the counter-claims. And in other cases, when an answer contains new matter constituting a defence by way of avoidance, the Court may, in its discretion, on the defendant's motion, require a reply to such new matter; and in that case, the reply shall be subject to the same rules as a reply to a counter-claim.

Reply,—demurrer to answer.

106. If the answer contain a statement of new matter constituting a counter-claim, and the plaintiff fail to reply or demur thereto within twenty days after the filing or service of such answer, the defendant may move for such judgment as he is entitled to upon such statement; and if the case require it, an order for an inquiry of damages by a jury may be made.

Motion for judgment on answer.

107. If a reply of the plaintiff to any defence set up by the answer of the defendant be insufficient, the defendant may demur thereto, and shall state the grounds thereof.

Demurrer to reply.

CHAPTER V.

DUTIES AND POWERS OF THE CLERK OF THE SUPERIOR COURT IN
RELATION TO THE PLEADINGS, AND IN COLLATERAL MATTERS.

Jurisdiction of
clerk on
pleading, &c.

108. The Clerk of the Superior Court shall have jurisdiction to hear and decide on all questions of practice and procedure, arising in actions brought to this court, and on all other matters whereof jurisdiction is hereby given to the Superior Court, unless the Judge of said court, or the court at a regular term thereof, be expressly referred to.

Either party
may appeal.

109. Any party may appeal from any decision of the clerk to the Judge of the court, without bond.

Duty of the
clerk on ap-
peal prayed.

110. On such appeal being prayed, the clerk, within three days thereafter, shall prepare a statement of the facts of the case, of his decision, and of the appeal, and shall sign the same; he shall, within the time aforesaid, exhibit such statement to the parties or their attorneys on request; if such statement is satisfactory, the parties or their attorneys shall sign the same; if either party object to the statement as partial or erroneous, he may put his objections in writing, and the clerk shall attach such writing to his statement, and within two days thereafter he shall send such statement, together with the objections, and copies of all necessary papers, by mail or otherwise if necessary, to the Judge for his decision.

Issues of law,
sent to Judge.

111. When any issue of law shall be joined on the pleadings before the clerk, he shall within ten days thereafter send by mail or otherwise, if necessary, to the Judge of the Court, a copy of the record, for hearing and decision by him.

Party to be
heard before
Judge.

112. The attorney of either party may endorse on the statement of any appeal, or on the copy of the record of any issue sent to the Judge, a request to be heard before him on such matter.

Duty of Judge
on appeal.

113. It shall be the duty of the Judge on receiving a statement of appeal from the clerk, or the copy of the record of an issue of law, to decide the questions presented as early as may be. But if he shall have been informed in writing, by the attorney of either party, that he desires to be heard on the questions, the Judge shall fix a time and place for such hearing, and give the attorneys of both parties reasonable notice thereof. He shall transmit his decision in writing, endorsed on or attached to the record, to the Clerk of the Court, who shall immediately acknowledge the receipt thereof, and within three days after such receipt, notify the attorneys of the parties of the decision, and on request and the payment of his legal fees, give them a copy thereof; and the parties receiving such notice may proceed thereafter according to law. But no Judge shall be required to return any transcript, decision, or appeal, order made on motion or petition, or other matter to the clerk, or another party, unless there shall have been forwarded to him sufficient money or stamps to defray the postage on said returns.

(3.) A demand of the relief to which the plaintiff supposes himself entitled. If the recovery of money be demanded, the amount thereof must be stated.

CHAPTER II.

THE DEMURRER.

94. The only pleading on the part of the defendant is either a demurrer or an answer. It must be filed in the office of the clerk of the court before which the defendant is summoned to appear, together with a copy thereof for the plaintiff, within ten days after the time limited for the appearance of the defendant: a copy thereof must be served on the attorney of the plaintiff if he shall have named one in the county town, in lieu of filing one for him in the clerk's office, or on the plaintiff personally if he shall have complied with the provisions of section eighty. If the plaintiff shall have failed to file his complaint within the time limited for that purpose, the defendant may move for judgment of nonsuit.

Defendant to demur or answer.

95. The defendant may demur to the complaint when it shall appear upon the face thereof, either;

When defendant may demur.

(1.) That the court has no jurisdiction of the person of the defendant, or the subject of the action; or

(2.) That the plaintiff has not legal capacity to sue; or

(3.) That there is another action pending between the same parties for the same cause; or

(4.) That there is a defect of parties plaintiff or defendant; or

(6.) That the complaint does not state facts sufficient to constitute a cause of action.

96. The demurrer shall distinctly specify the grounds of objection to the complaint. Unless it does so, it may be disregarded. It may be taken to the whole complaint, or to any of the alleged causes of action stated therein.

Demurrer must specify grounds of objection.

97. If the complaint be amended a copy thereof must be served on the defendant in the manner provided in section eighty, for the service of pleadings and notices after appearance, within twenty days after the leave to amend.

How to proceed if complaint be amended.

98. When any of the matters enumerated in section ninety-five, do not appear upon the face of the complaint, the objection may be taken by answer.

Objection not appearing on complaint.

99. If no such objection be taken either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the court, and the objection that the complaint does not state facts sufficient to constitute a cause of action.

Objection when deemed waived.

CHAPTER III.

THE ANSWER.

Answer what
to contain.

100. The answer of the defendant must contain :

(1.) A general or specific denial of each material allegation of the complaint controverted by the defendant, or of any knowledge or information thereof sufficient to form a belief;

(2.) A statement of any new matter constituting a defence or counter-claim, in ordinary and concise language, without repetition.

Counter-claim
Several defen-
ces.]

101. The counter-claim mentioned in the last section must be one existing in favor of a defendant, and against a plaintiff, between whom a several judgment might be had in the action, and arising out of one of the following causes of action :

(1.) A cause of action arising out of the contract or transaction set forth in the complaint as the foundation of the plaintiff's claim, or connected with the subject of the action ;

(2.) In an action arising on contract, any other cause of action arising also on contract, and existing at the commencement of the action.

Bank note or
certificate of
deposit a set-
off—1870-'1, c.
113, s. 1.

101a. In all actions brought by any bank or other corporation having exercised banking privileges, or by any assignee or endorsee or receiver or officer of said bank or corporation, it shall and may be lawful for the defendant to set off by plea or on trial any note or certificate of deposit issued by said bank or its branches or other corporation, whether the same has been presented for payment or not, and whether or not the same was in the possession of the defendant at the time of suit brought, any law or usage to the contrary notwithstanding ; but said plea of set off or set off on trial shall not avail to carry costs against the plaintiff unless there has been a tender of such payment before suit brought.

When and
where bank
bills shall be a
legal set off.—
1868, c. 47, s.
1.

101b. Where any note or bond has been, or may hereafter be given as a renewal of any debt or demand due or payable to any bank in this State, whose charter bears date prior to the twentieth day of May, eighteen hundred and sixty-one, the bills of said bank shall be a legal set off to such note or bond, without regard to whether such note or bond be made payable to said bank or to some other party ; and the bills of such bank may be offered, and shall be received to sustain the plea of set off to any suit brought upon such note or bond in any court of this State, whether said note or bond be made payable to such bank or to any other party, and this section shall apply to judgments and executions which may have been obtained on any debt due any of the banks mentioned herein.

Who entitled
to benefit of
this act.—1868
-'9, c. 77, s. 1.
1868-'9, c. 77,
s. 2.

101c. When any person shall have given his or her note or bond, since the first of May, eighteen hundred and sixty-five, to any of said banks, the consideration of which was specie, they shall not be entitled to the benefit of this section. The provisions of this section shall apply to all cases where such

the plaintiff shall be bound to establish, on trial, that it was so published or spoken.

125. In the actions mentioned in the last section, the defendant may in his answer, allege both the truth of the matter charged as defamatory, and any mitigating circumstances to reduce the amount of damages; and whether he prove the justification or not, he may give in evidence the mitigating circumstances.

Answer in such cases.

126. The plaintiff may unite in the same complaint several causes of action, whether they be such as have been heretofore denominated legal, or equitable, or both, where they all arise out of,

What causes of action may be joined in the same complaint.

(1.) The same transaction; or transactions connected with the same subject of action;

(2.) Contract express or implied; or

(3.) Injuries with or without force, to person and property or either; or

(4.) Injuries to character; or

(5.) Claims to recover real property, with or without damages for the withholding thereof; and the rents and profits of the same; or

(6.) Claims to recover personal property, with or without damages for the withholding thereof; or

(7.) Claims against a trustee, by virtue of a contract, or by operation of law.

But the causes of action so united must all belong to one of these classes, and except in actions for the foreclosure of mortgages, must affect all the parties to the action, and not require different places of trial, and must be separately stated. In actions to foreclose mortgages, the court shall have power to adjudge and direct the payment by the mortgagor of any residue of the mortgage debt that may remain unsatisfied after a sale of the mortgaged premises, in cases in which the mortgagor shall be personally liable for the debt secured by such mortgage; and if the mortgage debt be secured by the covenant or obligation of any person other than the mortgagor, the plaintiff may make such person a party to the action, and the court may adjudge payment of the residue of such debt remaining unsatisfied after a sale of the mortgaged premises, against such other person, and may enforce such judgment as in other cases.

127. Every material allegation of the complaint not controverted by the answer, as prescribed in section one hundred and every material allegation of new matter in the answer, constituting a counter-claim, not controverted by the reply, as prescribed in section one hundred and five, shall, for the purposes of action, be taken as true. But the allegation of new matter in the answer, not relating to a counter-claim, or of new matter in reply, is to be deemed controverted by the adverse party as upon a direct denial or avoidance, as the case may require.

Allegation not denied, when to be deemed true.

CHAPTER VII.

MISTAKES IN PLEADINGS AND AMENDMENTS.

Material variance.

128. No variance between the allegation in a pleading and the proof shall be deemed material, unless it have actually misled the adverse party, to his prejudice, in maintaining his action upon the merits. Whenever it shall be alleged that a party has been so misled, that fact shall be proved to the satisfaction of the court, and in what respect he has been misled; and thereupon the Judge may order the pleading to be amended upon such terms as shall be just.

Immaterial variance.

129. Where the variance is not material as provided in the last section, the Judge may direct the fact to be found according to the evidence, or may order an immediate amendment without costs.

A failure of proof, when.

130. Where, however, the allegation of the cause of action or defence to which the proof is directed is unproved, not in some particular or particulars only, but in its entire scope and meaning, it shall not be deemed a case of variance within the last sections, but a failure of proof.

Amendments of course after allowance of demurrer.

131. Any pleading may be once amended by the party of course, without costs and without prejudice to the proceedings already had, at any time before the period for answering it expires: or it can be so amended at any time within twenty days after the service of the answer or demurrer to such pleading, unless it be made to appear to the court that it was done for the purpose of delay, and the plaintiff or defendant will thereby lose the benefit of a term for which the cause is or may be docketed for trial; and if it appear to the court or Judge that such amendment was made for such purpose, the same may be stricken out, and such terms imposed as to the court or Judge may seem just. In such case a copy of the amended pleading must be served on the adverse party. After the decision of a demurrer, the Judge shall, if it appear that the demurrer was interposed in good faith, allow the party to plead over upon such terms as may be just. If the demurrer be allowed for the reason that several causes of action have been improperly united, the Judge may, in his discretion, and upon such terms as may be just, order the action to be divided into as many actions as may be necessary to the proper determination of the causes of action therein mentioned.

1871-'2, c. 172, s. 1.

Amendments by order.

132. The court may, before, and the Judge may, after judgment, in furtherance of justice, and on such terms as may be proper, amend any pleading, process or proceeding, by adding or striking out the name of any party; or by correcting a mistake in the name of a party, or a mistake in any other respect; or by inserting other allegations material to the case; or when the amendment does not change substantially the claim or defence, by conforming the pleading or proceeding to the facts proved.

114. The Judge shall keep a docket, in which shall be entered the title of every case brought in any manner before him out of term, every motion made therein before him, and a copy of every order and judgment rendered by him; and in case the original of any order or judgment of such Judge, shall be lost or destroyed, a copy from such docket, certified by the Judge, shall be evidence of such order or judgment in place of the original, and have the same effect for all purposes.

Judge to keep
a Docket.

115. The said judgment on issues of fact shall be final; any party within ten days after notice of such judgment may pray an appeal to the Supreme Court of the State from such judgment, upon any matter of law or legal inference therein, under the regulations provided for appeals in other cases. But execution shall not be suspended until the undertakings required by the provisions of TITLE XIII of this Code, entitled "OF APPEALS IN CIVIL ACTIONS," shall have been given as required.

Judgment on
matter of fact
final; on mat-
ter of law may
be appealed
from.

CHAPTER VI.

GENERAL RULES OF PLEADING.

116. Every pleading in a court of record must be subscribed by the party or his attorney; and when any pleading is verified, every subsequent pleading, except a demurrer, must be verified also.

Pleadings to
be subscribed
and verified.

117. The verification must be to the effect that the same is true to the knowledge of the person making it, except as to those matters stated on information and belief, and as to those matters he believes it to be true; and must be by affidavit of the party, or if there be several parties united in interest, and pleading together, by one at least of such parties acquainted with the facts, if such party be within the county where the attorney resides, and capable of making the affidavit. The affidavit may also be made by the agent or attorney, if the action or defence be founded upon a written instrument for the payment of money only, and such instrument be in the possession of the agent or attorney, or if all the material allegations of the pleading be within the personal knowledge of the agent or attorney. When the pleading is verified by any other person than the party, he shall set forth in the affidavit his knowledge, or the grounds of his belief on the subject, and the reasons why it is not made by the party. When a corporation is a party, the verification may be made by any officer thereof; and when the State, or any officer thereof in its behalf, is a party, the verification may be made by any person acquainted with the facts. The verification may be omitted when an admission of the truth of the allegation might subject the party to prosecution for felony. And no pleading can be used in a criminal prosecution against the party, as proof of a fact admitted or alleged in such pleading. Any Judge or Clerk of the Superior Court, Notary Public, or Justice of the

Pleadings,
how verified.

Peace, shall be competent to take affidavits for the verification of pleadings, in any court or county in the State, and for general purposes.

Items of account; particulars to be furnished when.

118. It shall not be necessary for a party to set forth in a pleading the items of an account therein alleged; but he shall deliver to the adverse party, within ten days after a demand thereof in writing, a copy of the account, which, if the pleading is verified, must be verified by his own oath, or that of his agent or attorney, if within the personal knowledge of such agent or attorney, to the effect that he believes it to be true, or be precluded from giving evidence thereof. The court or the Judge thereof, may order a further account when the one delivered is defective; and the court may, in all cases, order a bill of particulars of the claim of either party to be furnished.

Pleadings, how construed.

119. In the construction of a pleading for the purpose of determining its effect, its allegations shall be liberally construed, with a view of substantial justice between the parties.

Irrelevant or redundant; indefinite or uncertain.

120. If irrelevant or redundant matter be inserted in a pleading, it may be stricken out, on motion of any person aggrieved thereby. And when the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge or defence is not apparent, the court may require the pleading to be made definite and certain by amendment.

Judgments, how to be pleaded.

121. In pleading a judgment or other determination of a court or officer of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish, on the trial, the facts conferring jurisdiction.

Conditions precedent, how to be pleaded; instrument for payment of money only.

122. In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such performance; but it may be stated generally that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading shall be bound to establish, on the trial, the facts showing such performance. In an action or defence founded upon an instrument for the payment of money only, it shall be sufficient for the party to give a copy of the instrument, and to state that there is due to him thereon, from the adverse party, a specified sum which he claims.

Private statutes, how to be pleaded.

123. In pleading a private statute or right derived therefrom, it shall be sufficient to refer to such statute, by its title and the day of its ratification, and the court shall thereupon take judicial notice thereof.

Libel and slander, how stated in complaint.

124. In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts, for the purpose of showing the application to the plaintiff, of the defamatory matter out of which the cause of action arose: but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff; and if such allegation be controverted,

complete and faithful record of all his official acts, and give copies thereof to all persons desiring them, on payment of the legal fees. He shall be answerable for all records belonging to his office, and all papers filed in the court, and they shall not be taken from his custody, unless by special order of the court, or on the written consent of the attorneys of record of all the parties; but parties may at all times have copies upon paying the clerk therefor.

1868-'9, c. 159,
s. 4.

144. Each clerk shall keep the following books:

Books to be
kept by clerks.

(1.) A docket of all writs, summons or other original processes issued by him, or returned to his office; this docket shall contain a brief note of every proceeding whatever in each action, up to the final judgment inclusive.

(2.) A judgment docket in which the substance of the judgment shall be recorded, and every proceeding subsequent thereto, noted.

(3.) A docket of all issues of fact joined upon the pleadings, and of all other matters for hearing before the Judge at a regular term of the court, a copy of which shall be furnished to the Judge at the commencement of each term.

(4.) An alphabetical index according to the names of the plaintiffs, of all final judgments in civil actions rendered in the court, with the dates and numbers thereof, and also of all final judgments rendered in other courts and authorized by law to be entered on his judgment docket.

(5.) A docket of all criminal actions, containing a note of every proceeding in each.

(6.) A minute docket, in which shall be entered a record of all proceedings had in the court during term, in the order in which they occur, and such other entries as the Judge of the district may direct to be made therein.

1868-'9, c. 159,
s. 1.

145. The books specified in the above section shall be supplied to the clerks of the several counties by the Secretary of State, at the expense of the State, and the Secretary shall, as soon as possible, transmit an account thereof to the presiding officer of the County Commissioners, in order that the price may be levied in the county taxes; and also to the Auditor of Public Accounts, who shall add the same to the taxes of the respective counties and receive and account for it, as for other taxes. The commissioners of any county failing to cause such sum to be levied, with the other county taxes, shall be guilty of a misdemeanor.

Books to be
furnished by
Secretary of
State.

146. They shall keep the papers in each action in a separate roll or bundle, and at its termination attach them together, properly labeled, and file them in the order of the date of the final judgment.

Papers in each
action to be
kept separate,
and filed to-
gether.

147. At every regular term of the Superior Court, the Solicitor for the judicial district shall inspect the office of the clerk, and report to the court in writing. If any clerk, after being furnished with the necessary books, shall fail to keep them up, as required by law, he shall be guilty of a misde-

Solicitor to ex-
amine records.

meanor, and the solicitor shall cause him to be prosecuted for the same. If any solicitor shall fail or neglect to perform the duty hereby imposed on him, he shall be liable to a penalty of five hundred dollars to any person who shall sue for the same.

TITLE IX.

OF THE PROVISIONAL REMEDIES IN CIVIL ACTIONS.

CHAPTER I.

ARREST AND BAIL.

No person to be arrested except as prescribed.

In what cases.

When defendant may be arrested.—1869-'70, c. 69, s. 1.

148. No person shall be arrested in a civil action, except as prescribed by this chapter; but this provision shall not apply to proceedings for contempt.

149. The defendant may be arrested, as hereinafter prescribed, in the following cases:

(1.) In an action arising on contract where the defendant is a non-resident of this State, or is about to remove therefrom, and in an action for the recovery of damages on a cause of action not arising out of contract, where the action is for injury to person or character, or for wrongfully taking, detaining or converting property.

(2.) In an action for a fine or penalty, or on a promise to marry, or for money received, or for property embezzled or fraudulently misapplied, by a public officer, or by an attorney, solicitor or counsellor, or by an officer or agent of a corporation or banking association, in the course of his employment as such, or by any factor, agent, broker or other person in a fiduciary capacity, or for any misconduct or neglect in office, or in a professional employment.

(3.) In an action to recover the possession of personal property, unjustly detained, where the property, or any part thereof, has been concealed, removed or disposed of, so that it cannot be found or taken by the sheriff, and with the intent that it should not be so found or taken, or with the intent to deprive the plaintiff of the benefit thereof.

(4.) When the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation for which the action is brought, or in concealing or disposing of the property for the taking, detention or conversion of which, the action is brought, or when the action is brought to recover damages for fraud or deceit.

(5.) When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

But no female shall be arrested in any action, except for a wilful injury to person, character or property.

133. The Judge may likewise in his discretion, and upon such terms as may be just, allow an answer or reply to be made, or other act to be done, after the time limited by this act, or by an order enlarge such time; and may also in his discretion, and upon such terms as may be just, at any time within one year after notice thereof, relieve a party from a judgment, order or other proceeding taken against him through his mistake, inadvertence, surprise or excusable neglect, and may supply an omission in any proceeding; and whenever any proceeding taken by a party fails to conform in any respect to the provisions of this Code, the Judge may, in like manner and upon like terms, permit an amendment of such proceeding, so as to make it conformable thereto.

Relief in case of a mistake.

134. When the plaintiff shall be ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding by name; and when his true name shall be discovered, the pleading or proceeding may be amended accordingly.

When plaintiff ignorant of name of defendant.

135. The Court and the Judge thereof shall, in every stage of action, disregard any error or defect in the pleadings or proceedings, which shall not affect the substantial rights of the adverse party; and no judgment shall be reversed or affected by reason of such error or defect.

Errors or defects not substantial to be disregarded.

136. The plaintiff and defendant respectively may be allowed on motion to make a supplemental complaint, answer or reply, alleging facts material to the case, occurring after the former complaint, answer or reply, or of which the party was ignorant when his former pleading was made, and either party may, by leave of the Court in any pending or future action, set up by a supplemental pleading, the judgment or decree of any Court of competent jurisdiction, rendered since the commencement of such action, determining the matter in controversy in said action or any part thereof, and if said judgment be set up by the plaintiff, the same shall be without prejudice to any provisional remedy theretofore issued or other proceedings had, in said action, on his behalf.

Supplemental pleadings.

CHAPTER VIII.

OF THE QUALIFICATION AND GENERAL DUTIES OF CLERKS OF THE SUPERIOR COURTS.

137. At the first meeting of the County Commissioners of each county, after the election or appointment of any clerk of a Superior Court, it shall be the duty of the Clerk to deliver to such Commissioners a bond with sufficient sureties, to be approved by them, in a penalty of ten thousand dollars, payable to the State of North Carolina, and with a condition to be void, if he shall account for, and pay over, according to law, all moneys and effects which have come or may come into his hands, by virtue or color of his office, and shall diligently pre-

Bond of clerk.

serve and take care of all books, records, papers and property which have come or may come into his possession, by virtue or color of his office, and shall in all things faithfully perform the duties of his office as they are, or thereafter shall be prescribed by law. Each surety shall take and subscribe an oath, before the Register of Deeds, that he is worth a certain sum (which shall not be less than one thousand dollars) over and above all his debts and liabilities and his homestead exemption, and the sums thus sworn to shall not be less in the aggregate than the penalty of the bond.

Bond how approved, &c.

138. The approval of said bond, by the Commissioners or a majority of them, shall be recorded by their clerk. Any Commissioner approving a bond which he knows or believes to be insufficient, shall be personally liable as if he were a surety thereto. The said bond shall be acknowledged by the parties thereto, or proved by a subscribing witness, before the Clerk of said Commissioners, or their presiding officer, registered in the Register's office in a separate book to be kept by him for the registration of official bonds; and the original, with the approval thereof endorsed, deposited with the Register for safe-keeping. The like remedies shall be had upon said bond as are or may be given by law on official bonds.

Qualification of clerks.

139. The clerks of the Superior Court before entering on the duties of their office, shall take and subscribe before some officer authorized by law to administer an oath, the oaths prescribed by law, and file such oaths with the Register of Deeds for the county.

Failure to give bond, &c.

140. In case any clerk shall fail to give bond and qualify as above directed, the presiding officer of the County Commissioners of his county shall immediately inform the Judge of the Judicial District thereof, who shall thereupon declare the office vacant and fill the same, and the appointee shall give bond and qualify as above directed.

Office, where to be kept—when to be open.

141. He shall have an office in the Court-house or other place provided by the County Commissioners, in the county town of his county. He shall give due attendance, in person or by deputy, at his office daily (Sundays and holidays excepted), from nine o'clock, A. M., to three o'clock, P. M., and longer when necessary for the despatch of business.

To receive official papers, &c.

142. Immediately after he shall have given bond and qualified as aforesaid, he shall receive from the late Clerks of the County and Superior Courts and Clerk and Master of the Court of Equity, all the records, books, papers, moneys and property of their respective offices, and give receipts for the same, and if any clerk, or clerk and master shall refuse, or fail within a reasonable time after demand to deliver such records, books, papers and property, they shall be respectively liable on their official bonds for the value thereof, and be held guilty of a misdemeanor.

To keep record, &c.

143. He shall be furnished with the requisite stationery and furniture, for official use, by the county commissioners, except as hereinafter provided. He shall keep in bound volumes a

150. An order for the arrest of the defendant must be obtained from the court in which the action is brought, or from a Judge thereof. Order for arrest, by whom made.

151. The order may be made where it shall appear to the court or Judge thereof, by the affidavit of the plaintiff, or of any other person, that a sufficient cause of action exists, and that the case is one of those mentioned in section one hundred and forty-nine. Affidavit to obtain order.

The provisions of this chapter shall apply to all actions included within the provisions of section one hundred and forty-nine, which shall be commenced after the ratification of this act. To what actions this chapter applies.

152. Before making the order, the court or Judge shall require a written undertaking on the part of the plaintiff, with sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least one hundred dollars. Security by plaintiff before order of arrest.

153. The order may be made to accompany the summons, or issue at any time afterwards, before judgment. It shall require the sheriff of the county where the defendant may be found, forthwith to arrest him and hold him to bail in a specified sum, and to return the order, at a place and time therein mentioned, to the clerk of the court in which the action is brought, and notice of such return shall be served on the plaintiff or his attorney as prescribed in section eighty. Order, when made, and its form—Time to answer or to move to vacate.

But said order of arrest shall be of no avail, and shall be vacated or set aside on motion, unless the same is served upon the defendant, as provided by law, before the docketing of any judgment in the action; and the defendant shall have twenty days, after the service of the order of arrest, in which to answer the complaint in the action, and to move to vacate the order of arrest, or to reduce the amount of bail.

154. The affidavit and order of arrest shall be delivered to the sheriff, who, upon arresting the defendant, shall deliver to him a copy thereof. Affidavit and order to be delivered to sheriff, and copy to defendant.

155. The sheriff shall execute the order by arresting the defendant, and keeping him in custody until discharged by law; and may call the power of the county to his aid in the execution of the arrest, as in case of process. Arrest how made.

156. The defendant, at any time before execution, shall be discharged from the arrest, either upon giving bail, or upon depositing the amount mentioned in the order of arrest, as provided in this chapter. Defendant to be discharged on bail or deposit.

157. The defendant may give bail, by causing a written undertaking to be executed by two or more sufficient bail, stating their places of residence and occupations, to the effect that the defendant shall at all times render himself amenable to the process of the court, during the pendency of the action, and to such as may be issued to enforce the judgment therein, or if he be arrested for the cause mentioned in the third sub-division of Bail, how given.

Surrender of
defendant.

section one hundred and forty-nine, an undertaking to the same effect as that provided by section one hundred and eighty-one.

158. At any time before final judgment against them, the bail may surrender the defendant in their exoneration, or he may surrender himself to the sheriff of the county where he was arrested in the following manner :

(1.) A certified copy of the undertaking of the bail shall be delivered to the sheriff, who shall detain the defendant in his custody thereon, as upon an order of arrest, and shall, by a certificate in writing, acknowledge the surrender ;

(2.) Upon the production of a copy of the undertaking and sheriff's certificate, the Court, or a Judge thereof, may, upon a notice to the plaintiff of eight days, with a copy of the certificate, order that the bail be exonerated ; and on filing the order and papers used on said application, they shall be exonerated accordingly. But this section shall not apply to an arrest for cause mentioned in sub-division three of section one hundred and forty-nine, so as to discharge the bail from an undertaking given to the effect provided by section one hundred and eighty-one.

Surrender of
defendant.

159. For the purpose of surrendering the defendant, the bail, at any time or place, before they are finally charged, may themselves arrest him, or by a written authority, indorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.

Bail, how pro-
ceeded against

160. In case of failure to comply with the undertaking, the bail may be proceeded against, by action only.

Bail, how ex-
onerated.

161. The bail may be exonerated, either by the death of the defendant, or his imprisonment in a State prison, or by his legal discharge from the obligation to render himself amenable to the process, or by his surrender to the sheriff of the county where he was arrested, in execution thereof, at any time before final judgment against the bail.

Delivery of
undertaking
to plaintiff,
and its accep-
tance or rejec-
tion by him.

162. Within the time limited for that purpose, the sheriff shall deliver the order of arrest to the clerk of the court in which the suit is brought, with his return indorsed, and a certified copy of the undertaking of the bail, and notify the plaintiff or his attorney thereof. The plaintiff, within ten days thereafter, may serve upon the sheriff a notice that he does not accept the bail, or he shall be deemed to have accepted it, and the sheriff shall be exonerated from liability.

Notice of jus-
tification--new
bail.

163. On the receipt of such notice, the sheriff or defendant may, within ten days thereafter, give to the plaintiff, or his attorney, notice of the justification of the same or other bail (specifying the places of residence and occupation of the latter) before the court, or the Judge thereof, at a specified time and place ; the time to be not less than five, nor more than ten days thereafter. In case other bail be given, there shall be a new undertaking, in the form prescribed in section one hundred and fifty-seven.

Qualification
of bail.

164. The qualifications of bail must be as follows :

(1.) Each of them must be a resident and householder or freeholder within the State.

(2.) They must each be worth the amount specified in the order of arrest, exclusive of property exempt from execution; but the Judge, on justification, may allow more than two bail to justify severally in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

165. For the purpose of justification, each of the bail shall attend before the court or the Judge, or a Justice of the Peace, at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency, in such a manner as the court, or Judge in his discretion, may think proper. The examination shall be reduced to writing, and subscribed by the bail, if required by the plaintiff. Justification of bail.

166. If the court or Judge find the bail sufficient, he shall annex the examination to the undertaking, indorse his allowance thereon, and cause them to be filed with the clerk; and the sheriff shall thereupon be exonerated from liability. Allowance of bail.

167. The defendant may, at the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. The sheriff shall thereupon give the defendant a certificate of the deposit, and the defendant shall be discharged out of custody. Deposit with the sheriff.

168. The sheriff shall, within four days after the deposit, pay the same into court, and shall take from the officer receiving the same, two certificates of such payment, the one of which he shall deliver to the plaintiff, and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the sheriff, to collect the sum deposited, as in other cases of delinquency. Payment of deposit into court.

169. If money be deposited, as provided in the last two sections, bail may be given and justified upon notice, as prescribed in section one hundred and sixty-five, any time before judgment; and thereupon the Judge shall direct, in the order of allowance, that the money deposited be refunded, by the sheriff, to the defendant, and it shall be refunded accordingly. Substituting bail for deposit.

170. When money shall have been so deposited, if it remain on deposit at the time of an order or judgment for the payment of money to the plaintiff, the clerk shall, under the direction of the Court, apply the same in satisfaction thereof, and after satisfying the judgment, shall refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk shall refund to him the whole sum deposited and remaining unapplied. Deposit, how disposed of.

171. If, after being arrested, the defendant escape or be rescued, or bail be not given or justified, or a deposit be not made instead thereof, the sheriff shall himself be liable as bail. But he may discharge himself from such liability, by the giving and justification of bail, as provided in sections one hundred and Sheriff, when liable as bail.

sixty-three, one hundred and sixty-four, one hundred and sixty-five, and one hundred and sixty-six, at any time before process against the person of the defendant, to enforce an order or judgment in the action.

Proceedings
on judgment
against sheriff.

172. If a judgment be recovered against the sheriff, upon his liability as bail, and an execution thereon be returned unsatisfied, in whole or in part, the same proceedings may be had on the official bond of the sheriff, to collect the deficiency, as in other cases of delinquency.

Bail liable to
sheriff.

173. The bail taken upon the arrest, shall, unless they justify, or other bail be given or justified, be liable to the sheriff by action, for damages which he may sustain by reason of such omission.

Vacating or-
der of arrest,
or reducing,
bail.

174. A defendant arrested may at any time before judgment apply, on motion, to vacate the order of arrest, or to reduce the amount of bail.

Affidavits on
motion.

175. If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits, or other proofs, in addition to those on which the order of arrest was made.

Debtor confin-
ed for want of
bail may give
bail.

175a. 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.

Bond returned
to next court.
—R. C. c. 11,
s. 8.

Costs paid by
bail in certain
cases.—R. C.
c. 11, s. 10.

175b. Whenever a summons 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 summons, notwithstanding the bail may be afterwards discharged, by the death or surrender of the principal, or otherwise.

Bail not dis-
charged by
amendment of
process, un-
less.—R. C. c.
11, s. 11.

175c. 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.

CHAPTER II.

CLAIM AND DELIVERY OF PERSONAL PROPERTY.

Delivery of
personal prop-
erty.

176. The plaintiff, in an action to recover the possession of personal property, may, at the time of issuing the summons, or at any time before answer, claim the immediate delivery of such property, as provided in this chapter.

Affidavit and
its requisites.

177. Where a delivery is claimed an affidavit must be made before the clerk of the court in which the action is required to

be tried, by sections sixty-six, sixty-seven and sixty-eight, by the plaintiff, or some one in his behalf, showing;

(1.) That the plaintiff is the owner of the property claimed (particularly describing it,) or is lawfully entitled to the possession thereof, by virtue of a special property therein, the facts in respect to which shall be set forth;

(2.) That the property is wrongfully detained by the defendant;

(3.) The alleged cause of the detention thereof, according to his best knowledge, information, and belief;

(4.) That the same has not been taken for a tax, assessment, or fine, pursuant to a statute; or seized under an execution or attachment against the property of the plaintiff; or, if so seized, that it is, by statute, exempt from such seizure; and

(5.) The actual value of the property.

178. The clerk of the court shall, thereupon, by an indorsement in writing upon the affidavit, require the sheriff of the county where the property claimed may be, to take the same from the defendant and deliver it to the plaintiff; provided the plaintiff shall give the undertaking prescribed in the next section.

Requisition to sheriff to take and deliver the property.

179. Upon the receipt of the order from the clerk with a written undertaking executed by one or more sufficient sureties, approved by the sheriff, to the effect that they are bound in double the value of the property, as stated in the affidavit for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the plaintiff, the sheriff shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, notice, and undertaking, by delivering the same to him personally, if he can be found, or to his agent, from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion.

Security by plaintiff.

180. The defendant may, within three days after the service of a copy of the affidavit and undertaking, give notice to the sheriff personally, or by leaving a copy at his office in the county town of the county, or if he have no such office, at the office of the clerk of the court, that he excepts to the sufficiency of the sureties. If he fail to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify on notice, in like manner as upon bail on arrest. And the sheriff shall be responsible for the sufficiency of the sureties, until the objection to them is either waived as above provided, or until they shall justify, or new sureties shall be substituted and justify. If the defendant except to the sureties, he cannot reclaim the property, as provided in the next section.

Exception to sureties.

Defendant
when entitled
to re-delivery.

181. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required, within three days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in section one hundred and eighty-six.

Justification of
defendant's
sureties.

182. The defendant's sureties, upon a notice to the plaintiff of not less than two nor more than six days, shall justify before a Judge or Justice of the Peace, in the same manner as upon bail on arrest; upon such justification, the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties, until they justify, or until justification is completed or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

Qualifications
and justifica-
tion of sure-
ties.

183. The qualifications of sureties, and their justification, shall be as prescribed by sections one hundred and sixty-four and one hundred and sixty-five, in respect to bail upon an order of arrest.

Property, how
taken when
concealed in
building or in-
closure.

184. If the property, or any part thereof, be concealed in a building or inclosure, the sheriff shall publicly demand its delivery. If it be not delivered, he shall cause the building or inclosure to be broken open, and take the property into his possession; and, if necessary, he may call to his aid the power of his county.

Property, how
kept.

185. When the sheriff shall have taken property, as in this chapter provided, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping the same.

Claim of prop-
erty by third
person.

186. If the property taken be claimed by any other person than the defendant or his agent, and such person shall make affidavit of his title thereto, and right to the possession thereof, stating the grounds of such right and title, and serve the same upon the sheriff, the sheriff shall not be bound to keep the property, or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, shall indemnify the sheriff against such claim, by an undertaking executed by two sufficient sureties, accompanied by their affidavits, that they are each worth double the value of the property, as specified in the affidavit of the plaintiff, and freeholders and householders of the county. And no claim to such property, by any other person than the defendant or his agent, shall be valid against the sheriff, unless made as aforesaid; and notwithstanding such claim, when so

made, he may retain the property a reasonable time to demand such indemnity.

187. The sheriff shall file the notice and affidavit, with his proceedings thereon, with the clerk of the court in which the action is pending, within twenty days after taking the property mentioned therein.

Notice and affidavit, when and where to be filed.

CHAPTER III.

INJUNCTION.

188. The writ of injunction as a provisional remedy, is abolished, and an injunction by order, is substituted therefor. The order may be made by any Judge of a Superior Court, in the cases provided in the next section, and may be enforced as the order of the court. Upon such order it shall be issued by the clerk of the court in which the action is required to be tried.

Injunction by order.

189. (1) When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission, or continuance, of some act, the commission or continuance of which, during the litigation, would produce injury to the plaintiff; or (2.) When, during the litigation, it shall appear that the defendant is doing, or threatens, or is about to do, or procuring or suffering some act to be done in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act.

Injunctions, in what cases.

(3.) And where, during the pendency of an action, it shall appear by affidavit that the defendant threatens, or is about to remove or dispose of his property, with intent to defraud his creditors, a temporary injunction may be granted to restrain such removal or disposition.

190. The injunction may be granted at the time of commencing the action, or at any time afterwards, before judgment, upon its appearing satisfactorily to the Judge, by the affidavit of the plaintiff, or of any other person, that sufficient grounds exist therefor. A copy of the affidavit must be served with the injunction.

At what time it may be granted.

Copy of affidavit to be served.

191. An injunction shall not be allowed after the defendant shall have answered, unless upon notice, or upon an order to show cause; but in such case the defendant may be restrained until the decision of the Judge granting or refusing the injunction.

Injunction after answer.

192. Upon granting an order for an injunction, the Judge shall require as a condition precedent to the issuing thereof, that the clerk shall take from the plaintiff a written undertaking, with sufficient sureties to be justified before, and approved by the said clerk or by the Judge, in an amount to be fixed by the Judge, to the effect that the plaintiff will pay to the party enjoined, such damages, not exceeding an amount to

Security upon injunction.

- be specified, as he may sustain by reason of the injunction, if the court shall finally decide that the plaintiff was not entitled thereto. The damages may be ascertained by a reference, or otherwise, as the Judge shall direct.
- Damages.** 193. If the Judge deem it proper that the defendant, or any of several defendants, should be heard before granting the injunction, an order may be made requiring cause to be shown, at a specified time and place, why the injunction should not be granted; and the defendant may, in the meantime, be restrained.
- Order to show cause.**
- Restraint in meantime.** 194. An injunction to suspend the general and ordinary business of a corporation shall not be granted without due notice of the application therefor, to the proper officers of the corporation, except where the State is a party to the proceeding, unless the plaintiff shall give a written undertaking, executed by two sufficient sureties, to be approved by the Judge, to the effect that the plaintiff will pay all damages, not exceeding the sum to be mentioned in the undertaking, which such corporation may sustain by reason of the injunction, if the Court shall finally decide that the plaintiff was not entitled thereto. The damages may be ascertained by a reference, or otherwise, as the court shall direct.
- Security upon injunction to suspend business of corporation.** 195. If the injunction be granted by a Judge of the Court, without notice, the defendant, at any time before the trial, may apply, upon notice to a Judge of the Court in which the action is brought, to vacate or modify the same. The application may be made upon the complaint and the affidavits on which the injunction was granted, or upon the affidavits on the part of the defendant, with or without the answer.
- Motion to vacate or modify injunction.** 196. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proofs, in addition to those on which the injunction was granted.
- Affidavits on motion.**

CHAPTER IV.

ATTACHMENT.

- Property of foreign corporations, and of non-residents, or absconding or concealed defendants, may be attached.** In an action arising on contract, for the recovery of money only, or in an action for the wrongful conversion of personal property, against a corporation created by, or under, the laws of any other State, government or country, or against a defendant who is not a resident of this State, or against a defendant who has absconded or concealed himself, or whenever any person or corporation is about to remove any of his, or its property, from this State, or has assigned, disposed of, or secreted, or is about to assign, dispose of, or secrete, any of his, or its, property, with intent to defraud creditors, as hereinafter mentioned, the plaintiff at the time of issuing the summons, or at any time afterwards, may have the property of such defendant or corporation attached, in the manner hereinafter prescribed,

as a security for the satisfaction of such judgment as the plaintiff may recover; and for the purposes of this section, an action shall be deemed commenced, when the summons is issued; *Provided, however*, that personal service of such summons shall be made, or publication thereof commenced within thirty days after obtaining a warrant of attachment.

198. The plaintiff, within thirty days from obtaining a warrant of attachment from a Justice of the Peace, shall cause publication thereof to be made for four successive weeks at the court-house door, and two other public places in the county where the warrant is returnable.

Publication to be made.
1868-'9, c. 95, s. 3.

199. If the action be not founded on a contract, or if the sum demanded exceed two hundred dollars, a warrant of attachment may be obtained from the Judge of the district embracing the county in which the action has been instituted, or from the clerk of the Superior Court from which the summons in the action issued; and it may be issued to any county in the State where the defendant has property, money, effects, choses in action or debts due him, and shall be made returnable in term time to the court from which the summons issued.

Warrant by whom granted.—1870-'1, c. 166, s. 1.

199a. The warrant of attachment may be issued upon affidavit, for any of the causes mentioned in section two hundred and one.

Warrant of attachment upon affidavit.—1870-'1, c. 166, s. 2.

199b. When the warrant of attachment is taken out at the time of issuing the summons, and the summons is to be served by publication, the order shall direct that notice be given in said publication to the defendant of the issuing of the attachment, and when the warrant of attachment is obtained after the issuing of the summons, the defendant shall be notified by publication of the fact for four successive weeks in some newspaper published in the county to which it is returnable, or if there be none such, then in one published in the judicial district including said county, and if there be no newspaper published in the district, then in any newspaper published in the State. Said publication shall state the names of the parties, the amount of the claims, and in a brief way the nature of the demand and the time and the place to which the warrant is returnable; *Provided, however*, that no irregularity in the publication of the warrant of attachment, summons, leading or other process, or otherwise, or in the issuance of the summons, leading or other process or otherwise, shall render invalid any proceedings by attachment, since the adoption of the code of civil procedure and prior to the ratification of this act, and all proceedings in case of attachment commenced since the ratification of the code of civil procedure, are hereby declared valid to all intents and purposes, any irregularity in the particulars aforesaid to the contrary notwithstanding: *Provided*, that in proceedings by attachment begun and had before Justices of the Peace, such advertisement in a newspaper shall not be necessary, but in all such cases, advertisement at the court house door and at four other public places in the county shall be sufficient.

How served, &c.,—1870-'1, c. 166, s. 3.

Proviso.

Certain proceedings declared valid.

Proviso.

When warrant granted by justice of the peace.

200. If the action be founded on contract, and the sum demanded does not exceed two hundred dollars, the warrant of attachment must be obtained from, and made returnable before some Justice of the Peace of a county, to the Superior Court of which it might have been returnable under a preceeding section, had the sum demanded exceeded two hundred dollars, or had the action not have been founded on contract.

Justices attachment levied on real estate what to be done.—1868-'9, c. 95, s. 4.

200a. If the attachment be levied on real property, the Justice shall proceed to try the action, but shall issue no execution to sell the real property, and shall return the papers in the case to the office of the Clerk of the Superior Court of his county, where the judgment shall be docketed. The levy of the attachment, however, shall be a lien on the real estate.

In what cases warrants may be issued.

201. The warrant may be issued whenever it shall appear by affidavit, that a cause of action exists against such defendant, specifying the amount of the claim and the grounds thereof, and that the defendant is either a foreign corporation, or not a resident of this State, or has departed therefrom with intent to defraud his creditors or to avoid the service of a summons, or keeps himself concealed therein with like intent, or that such corporation or person has removed, or is about to remove, any of his or its property from this State, with intent to defraud his or its creditors, or has assigned, disposed of, or secreted, or is about to assign, dispose of, or secrete, any of his or its property with the like intent, whether such defendant be a resident of this State or not. It shall be the duty of the plaintiff procuring such warrant, within ten days from the issuing thereof, to file the affidavits on which the same was granted in the office of the Clerk of the Superior Court to which, or with the Justice of the Peace before whom, the process is made returnable.

Affidavits to be filed.

Security on obtaining warrant.

202. Before issuing the warrant, the officer issuing the same shall require a written undertaking on the part of the plaintiff, with sufficient surety, to the effect, that if the defendant recover judgment, or the attachment be set aside by the order of the court, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking, which shall be at least two hundred and fifty dollars.

Warrant, to whom directed, and what to require.

203. The warrant shall be directed to the sheriff of any county in which the property of such defendant may be, or in case it be issued by a Justice of the Peace to such sheriff, or to any constable of such county, provided such county be that of the Justice issuing the warrant, and shall require such sheriff or constable to attach and safely keep all the property of such defendant within his county, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint, together with costs and expenses; it must also state when and where it shall be returned. Several warrants may be issued at the same time to the sheriffs of different counties.

204. The officer to whom such warrant of attachment is directed and delivered, shall seize and take into his possession the tangible personal property of the defendant, or so much thereof as may be necessary, and he shall be liable for the care and custody of such property, as if the same had been seized under execution; he shall levy on the real estate of the defendant as prescribed for executions; he shall make and return with the warrant, an inventory of the property seized or levied on; subject to the direction of the court, he shall collect and receive into his possession all debts owing to the defendant, and take such legal proceedings, either in his own name, or in that of the defendant, as may be necessary for that purpose.

Mode of proceeding in executing warrant.

205. If any property, so seized, shall be perishable, or of such character that the expense of keeping it until the determination of the suit would be likely to exceed one-fifth of its value, or if any part of it consists of a vessel, or of any share or interest therein, the sheriff or other officer having possession thereof, shall immediately apply to the court for authority to sell the same, stating the circumstances, and the same shall be sold, under the order and direction of the court.

Proceedings in case of perishable property or vessel.

206. The rights or shares which such defendant may have in the stock of any association or corporation, together with the interests and profits thereon, and all other property in this State of such defendant, shall be liable to be attached and levied on, and sold to satisfy the judgment and execution.

Interest in corporations or associations liable to attachment.

207. The execution of the attachment upon any such rights, shares, or any debts or other property incapable of manual delivery to the sheriff, shall be made, by leaving a certified copy of the warrant of the attachment with the President or other head of the association or corporation, or the secretary, cashier or managing agent thereof, or with the debtor or individual holding such property, with a notice showing the property levied on.

Attachment, how executed on property incapable of manual delivery.

208. Whenever the sheriff or other lawful officer with a warrant of attachment or execution, shall apply to any officer mentioned in the next preceding section, or to any debtor or individual, for the purpose of attaching or levying on the property of the defendant in such warrant, such officer, debtor or individual shall furnish him with a certificate under his hand, designating the number of rights or shares of the defendant in such association or corporation, with any dividend or any incumbrance thereon, or the amount and description of the property held by such association, corporation, or individual, for the benefit of, or debt owing to the defendant. If such officer, debtor or individual refuse to do so, he may be required by the court or Judge to attend before him, and be examined on oath concerning the same, and obedience to such order may be enforced by attachment.

Certificate of defendant's interest to be furnished.

209. In case judgment be entered for the plaintiff in such action, the sheriff shall satisfy the same out of the property attached by him if it shall be sufficient for that purpose.

Judgment, how satisfied.

(1.) By paying over to such plaintiff the proceeds of all property sold by him, and of all debts or credits collected by him, or so much as shall be necessary to satisfy such judgment.

(2.) If any balance remain due, and an execution shall have been issued on such judgment, he shall proceed to sell under such execution, so much of the attached property, real or personal, except as provided in sub-division four of this section, as may be necessary to satisfy the balance, if enough for that purpose shall remain in his hands; and in case of the sale of any rights or shares in the stock of a corporation or association, the sheriff shall execute to the purchaser a certificate of sale thereof, and the purchaser shall thereupon have all the rights and privileges in respect thereto which were had by such defendant.

(3.) If any of the attached property belonging to the defendant, shall have passed out of the hands of the sheriff without having been sold or converted into money, such sheriff shall repossess himself of the same, and for that purpose shall have all the authority which he had to seize the same under the attachment: and any person who shall wilfully conceal or withhold such property from the sheriff shall be liable to double damages at the suit of the party injured.

(4.) Until the judgment against the defendant shall be paid, the sheriff may proceed to collect the notes and other evidences of debt, and the debts that may have been seized or attached, under the warrant of attachment, and to prosecute any bond he may have taken in the course of such proceedings, and apply the proceeds thereof to the payment of the judgment.

At the expiration of six months from the docketing of the judgment, the court shall have power upon the petition of the plaintiff, accompanied by an affidavit setting forth fully all the proceedings which have been had by the sheriff, since the service of the attachment, the property attached, and the disposition thereof, and also the affidavit of the sheriff that he has used due diligence, and endeavored to collect the evidences of debt in his hands so attached, and that there remains uncollected of the same any part or portion thereof, to order the sheriff to sell the same, upon such terms and in such manner as shall be deemed proper. Notice of such application shall be given to the defendant or his attorney, if the defendant shall have appeared in the action. In case the summons has not been personally served on the defendant, the court shall make such rule or order, as to the service of notice and the time of service, as shall be deemed just.

When the judgment and all costs of the proceedings shall have been paid, the sheriff, upon reasonable demand, shall deliver over to the defendant the residue of the attached property, or the proceeds thereof.

When action
to recover
notes, &c., of
defendant,
may be prosecuted by

210. The actions herein authorized to be brought by the sheriff may be prosecuted by the plaintiff, or under his direction, upon the delivery by him to the sheriff of an undertaking executed by two sufficient sureties, to the effect, that the plain-

tiff will indemnify the sheriff from all damages, costs and expenses on account thereof, not exceeding two hundred and fifty dollars in any one action. Such sureties shall in all cases when required by the sheriff, justify by making an affidavit that each is a householder, or freeholder and worth double the amount of the penalty of the bond over and above all demands and liabilities, and exemptions.

211. If the foreign corporation, or absent, or absconding, or concealed defendant, recover judgment against the plaintiff in such action, any bond taken upon the issuing of the warrant of attachment, and any bond taken by the sheriff, except such as are mentioned in the last section, all the proceeds of sales and moneys collected by him, and all the property attached remaining in his hands, shall be delivered by him to the defendant or his agent, on request, and the warrant shall be discharged and the property released.

212. Whenever the defendant shall have appeared in such action, he may apply to the court in which the action is pending, or to the Judge thereof, for an order to discharge the same; and if the same be granted, all the proceeds of sale, and moneys collected in such action, and all the property attached remaining in the hands of any officer of the court, under any process or order in such action, shall be delivered or paid to the defendant or his agent, and released from the attachment.

And where there is more than one defendant, and several property of either of the defendants has been seized by virtue of the order of attachment, the defendant whose several property has been seized may apply in like manner for relief.

213. Upon such application the defendant shall deliver to the Court an undertaking, executed by at least two sureties, who are resident and freeholders or householders in this State, approved by such court, to the effect that such sureties will, on demand, pay to the plaintiff the amount of judgment that may be recovered against the defendant in the action, not exceeding the sum specified in the undertaking, which shall be at least double the amount claimed by the plaintiff in his complaint. If it shall appear by affidavit, that the property attached be less than the amount claimed by the plaintiff, the court or Judge may order the same to be appraised and the amount of the undertaking shall then be double the amount so appraised. And in all cases, the defendant may move to discharge the attachment, as in the case of other provisional remedies.

And where there is more than one defendant, and several property of either of the defendants, has been seized by virtue of the order of attachment, the defendant whose several property has been seized may deliver to the court an undertaking, in accordance with the provision of this section, to the effect that he will, on demand, pay to the plaintiff the amount of judgment that may be recovered against such defendant. And all the provisions of this section applicable to such an undertaking shall be applied thereto.

plaintiff in the action in which the attachment issued.

Bond to sheriff on attachment, how disposed of, on judgment for defendant.

Discharge of attachment, and return of property or its proceeds, to the defendant on his appearance in action.

Undertaking on the part of the defendant.

Discharge of attachment.

When the sheriff to return warrant with his proceedings thereon.

214. The sheriff shall return the warrant of attachment with a statement of his proceedings thereon, at the time and place at which it is on its face returnable, and upon, or at any time after such return, he may obtain from the court to which the same was returnable, a certified copy thereof, which shall be held and deemed for the purpose of giving him authority, the same as the original, and when the warrant shall have been fully executed or discharged, the sheriff shall return the same, with his proceedings, to the said court.

CHAPTER V.

PROVISIONAL REMEDIES.

Powers of court as to receivers, deposit of money, &c., in court, and other provisional remedies.

215. A receiver may be appointed,—

(1.) Before judgment, on the application of either party, when he establishes an apparent right to property which is the subject of the action, and which is in the possession of an adverse party, and the property, or its rents and profits, are in danger of being lost, or materially injured or impaired; except in cases where judgment upon failure to answer may be had on application to the court;

(2.) After judgment, to carry the judgment into effect;

(3.) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied, and the judgment-debtor refuses to apply his property in satisfaction of the judgment;

(4.) In the cases provided in this Code and by special statutes, when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights; and in like cases, of the property within this State of foreign corporations. Receivers of the property within this State of foreign or other corporations shall be allowed such commissions as may be fixed by the Judge appointing them, not exceeding five per cent. on the amount received and disbursed by them.

(5.) In such other cases as are now provided by law, or may be in accordance with the existing practice, except as otherwise provided in this act.

When it is admitted, by the pleading or examination of a party that he has in his possession, or under his control, any money or other thing capable of delivery, which, being the subject of the litigation, is held by him as trustee for another party, or which belongs or is due to another party, the Judge may order the same to be deposited in court, or delivered to such party, with or without security, subject to the further direction of the Judge.

Whenever, in the exercise of his authority, a Judge shall have ordered the deposit, delivery or conveyance of money or other property, and the order is disobeyed, the Judge, besides

punishing the disobedience as for contempt, may make an order requiring the sheriff to take the money or property, and deposit, deliver, or convey it, in conformity with the direction of the Judge.

When the answer of the defendant expressly, or by not denying, admits part of the plaintiff's claim to be just, the Judge, on motion, may order such defendant to satisfy that part of the claim, and may enforce the order as it enforces a judgment or provisional remedy.

Judgment for sum admitted due.

TITLE X.

OF THE TRIAL AND JUDGMENT IN CIVIL ACTIONS.

CHAPTER I.

JUDGMENT UPON FAILURE TO ANSWER, &C.

216. A judgment is the final determination of the rights of the parties in the action.

Judgment defined.

217. Judgment may be had, if the defendant fail to answer the complaint, as follows:

Judgment on failure of defendant to answer, or for excess over counter-claim.

(1.) In any action arising on contract for the recovery of money only, the plaintiff may file with the clerk proof of personal service of the summons and complaint on one or more of the defendants, or of the summons according to the provisions of section seventy-six, and that no answer has been filed. The clerk shall thereupon enter judgment for the amount mentioned in the summons, against the defendant or defendants, or against one or more of several defendants, in the cases provided for in section eighty-seven. But if the complaint be not sworn to, and such action is on an instrument for the payment of money only, the clerk, on its production to him, shall assess the amount due to the plaintiff thereon; and in other cases shall ascertain the amount which the plaintiff is entitled to recover in such action, from his examination, under oath, or other proof, and enter the judgment for the amount so assessed or ascertained. In case the defendant give notice of appearance in the action, he shall be entitled to five days' notice of the time and place of such assessment.

Where the defendant, by his answer in such action, shall not deny the plaintiff's claim, but shall set up a counter-claim, amounting to less than the plaintiff's claim, judgment may be had by the plaintiff for the excess of said claim over the said counter-claim, in like manner in any such action, upon the plaintiff's filing with the clerk of the court a statement admitting such counter-claim, which statement shall be annexed to and be a part of the judgment-roll.

(2.) In other actions the plaintiff may, upon the like proof,

apply to the court, after the expiration of the time for answering, for the relief demanded in the complaint. If the taking of an account or the proof of any fact be necessary to enable the court to give judgment, or to carry the judgment into effect, the court may take the account or hear the proof, or may, in its discretion, order a reference for that purpose. And where the action is for the recovery of money only, or of specific real or personal property, with damages for the withholding thereof, the court may order the damages to be assessed by a jury, or, if the examination of a long account be involved, by a reference as above provided. If the defendant give notice of appearance in the action before the expiration of the time for answering, he shall be entitled to eight days' notice of the time and place of application to the court for the relief demanded by the complaint.

(3.) In actions where the service of the summons was by publication, the plaintiff may, in like manner, apply for judgment, and the court must thereupon require proof to be made of the demand mentioned in the complaint, and if the defendant be not a resident of the State, must require the plaintiff or his agent to be examined on oath respecting any payments that have been made to the plaintiff, or to any one for his use on account of such demand, and may render judgment for the amount which he is entitled to recover. Before rendering judgment the court may in its discretion require the plaintiff to cause to be filed satisfactory security, to abide the order of the court, touching the restitution of any estate or effects which may be directed by such judgment to be transferred or delivered, or the restitution of any money that may be collected under and by virtue of such judgment, in case the defendant or his representatives shall apply and be admitted to defend the action, and shall succeed in such defence.

218. If a demurrer, answer or reply be frivolous, the party prejudiced thereby, upon a previous notice of five days may apply to the court or to the Judge thereof, either in or out of the court, for judgment thereon, and judgment may be given accordingly.

CHAPTER II.

ISSUES, AND THE MODE OF TRIAL.

The different
kinds of issues

219. Issues arise upon the pleadings when a fact or conclusion of law is maintained by the one party and controverted by the other. They are of two kinds;

(1.) Of law; and

(2.) Of fact.

Issue of law.

220. An issue of law arises,

(1.) Upon a demurrer to the complaint, answer or reply, or to some part thereof.

221. An issue of fact arises,

Issue of fact.

(1.) Upon a material allegation in the complaint controverted by the answer; or,

(2.) Upon new matter in the answer controverted by the reply; or,

(3.) Upon new matter in the reply, except an issue of law is joined thereon.

222. Issues both of law and of fact may arise upon different parts of the pleadings in the same action. In such cases the issues of law must be first tried, unless the court otherwise direct.

On issues of both law and fact, the issue of law to be tried first.

223. A trial is the judicial examination of the issues between the parties, whether they be issues of law or of fact.

Trial defined.

224. An issue of law must be tried by the Judge of the court, unless it be referred, as provided in sections two hundred and forty-four and two hundred and forty-five. An issue of fact, in an action for the recovery of money only, or of specific real or personal property, must be tried by a jury, unless a jury trial be waived, as provided in section two hundred and forty, or a reference be ordered, as provided in sections two hundred and forty-four and two hundred and forty-five.

Issues how tried.

225. Every other issue is triable by the court, or the Judge thereof, who, however, may order the whole issue, or any specific question of fact involved therein, to be tried by a jury, or may refer it, as provided in sections two hundred and forty-four and two hundred and forty-five.

Other issues to be tried by the court or judge.

226. Every issue of fact joined on the pleadings, and inquiry of damages required to be tried by a jury, shall be tried at the term of the court next ensuing such joinder of issue or order for inquiry; provided such issue shall have been joined or order for inquiry made, more than thirty days before such term, but if not, they shall be tried at the second term after such joinder or order.

Issues of fact, when to be tried.

227. Any party to any action may apply to the court in which it is pending, or to the Judge thereof, after three days notice in writing to the adverse party, to have the trial deferred to a term subsequent to that in which it is regularly triable; such application must be made thirty days before the trial term, and must be on affidavit. The court or Judge may defer the trial as asked for, on such terms as shall be just, if satisfied:

Trial may be postponed, by clerk when.

(1.) That the applicant has used due diligence to have his case ready for trial; and,

(2.) That by reason of circumstances beyond his control, which he shall set forth, he cannot have a fair trial at the regular trial term; if the application is made by reason of the expected absence of a witness, it shall state the name and residence of the witness, the facts expected to be proved by him, and the grounds for the expectation of his non-attendance, and that the applicant expects to procure his evidence at or before some named subsequent term.

The applicant shall in all cases pay the costs of the application.

Trial postponed by judge in term, when.

228. The Judge at any time during the term at which an action is triable, may postpone the trial on the application of either party and on such terms as shall be just, if satisfied :

(1.) That the applicant has used due diligence to be ready for trial.

(2.) That he cannot have a fair trial at that term, by reason of circumstances stated, and if the ground of application be the non-attendance of a witness, the affidavit shall contain the particulars required by subdivision two of section two hundred and twenty-seven. Unless the applicant shall also set forth in his affidavit that the facts upon which his application is grounded occurred, or came to his knowledge too late to allow him to apply as prescribed in the last section, and that his application is made as soon as it reasonably could be after the knowledge of such facts, the postponement shall not be granted, except on the terms of the payment of the costs in the action for the term.

Criminal calendar first disposed of. Order of disposing of issues in civil actions

229. The criminal calendar shall be first disposed of, unless by consent of counsel, or for reasons satisfactory to the Judge, particular criminal actions may be deferred. The issues on the civil calendar shall be disposed of in the following order, unless, for the convenience of parties or the dispatch of business, the court shall otherwise direct :

(1.) Issues of fact to be tried by a jury ;

(2.) Issues of fact to be tried by the court ;

(3.) Issues of law.

CHAPTER III.

TRIAL BY JURY.

Jurors who shall be selected.—1868 c. 9, s. 1,

229*a*. The commissioners for the several counties at their regular meeting on the first Monday of September in each year, shall cause their clerks to lay before them the tax returns of the preceding year for their county, from which they shall proceed to select the names of such persons only as have paid tax for the preceding year and are of good moral character and of sufficient intelligence.

List of names to be made out.—1868, c. 9, s. 2.

229*b*. A list of the names thus selected shall be made out by the Clerk of the Board of Commissioners and shall constitute the jury list ; *Provided*, that no practicing physician, regular minister of the gospel, keepers of public grist mills, or regularly licensed pilots shall be required to serve as jurors.

Commissioners may augment list.—1868, c. 9, s. 3.

229*c*. If the list so made out does not contain the names of all the inhabitants who are qualified as provided in section one of this chapter to serve as jurors, the commissioners shall insert the names of such inhabitants in the jury list.

Commissioners to examine jury list.—1868. c. 9, s. 4.

229*d*. At each regular meeting on the first Monday in September, in each year, the commissioners shall carefully examine the jury lists as already made out, compare the same with the tax returns, and diligently enquire whether any persons

qualified to be jurors as provided in section one, are omitted, and whether any person not qualified to be jurors as therein provided have been inserted, and if any have been inserted not possessing the requisite qualifications, they shall strike such names from the jury lists, and in order to obtain full information on the subject the commissioners may examine on oath any person they think proper.

May examine on oath.

229e. The commissioners 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 must have two divisions marked No. 1 and 2, and two locks, the key of one to be kept by the sheriff of the county, the other by the chairman of the commissioners, and the box by the clerk of the board.

Names to be put in box.—1868, c. 9, s. 5.

229f. At least twenty days before the regular fall and spring term of the Superior Court in each year, the commissioners 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, thirty-six scrolls, and the persons whose names are inscribed on said scrolls shall serve as jurors at the fall and spring terms of the Superior Court to be held for the county respectively ensuing such drawing, and the scrolls so drawn to make the jury shall be put into the partition marked No. 2. The said commissioners shall at the same time and in the same manner draw eighteen names who shall be summoned to appear and serve during the second week of the term of said courts, unless the Judge thereof shall sooner discharge all jurors from further service; and the trial jury which has served during the first week, shall be discharged by the Judge at the close of said week.

How jury shall be drawn.—1868, c. 9, s. 6.

229g. If any of the jurors drawn have a suit pending and at issue in the Superior Court, the scrolls with their names must be returned into partition No. 1 of the jury box.

Jurors who have suits pending.—1868, c. 9, s. 7.

229h. If any of the persons drawn to serve as jurors be dead or removed out of the county, the scrolls with the names of such persons must be destroyed, and in such cases other persons shall be drawn in their stead.

Case of death or removal from county.—1868, c. 9, s. 8.

229i. The drawing out of partition marked No. 1 and putting the scrolls drawn into partition No. 2, shall continue until all the scrolls in partition No. 1 are drawn out, when all the scrolls shall be returned into partition No. 1 and drawn out again as herein directed.

How drawing of jury to continue.—1868, c. 9, s. 9.

229j. Whenever a special term of the Superior Court is ordered for the county, the commissioners, fifteen days before the holding of such special term, shall draw eighteen jurors to attend said court as herein provided for drawing jurors of the regular terms thereof.

In case of special term.—1868, c. 9, s. 10.

229k. If the commissioners for any cause fail to draw a jury for any term of the Superior Court, regular or special, the Sheriff of the county and the clerk of the commissioners in the presence of, and assisted by two Justices of the Peace of

When commissioners fail to draw a jury.—1868, c. 9, s. 11.

the county, shall draw such jury in the manner above prescribed.

Clerk of board to furnish sheriff with list.—1868, c. 9, s. 12.

229*l*. The clerk of the board of commissioners shall deliver to the Sheriff a list of the jurors drawn, within five days after such drawing, with an order to summon the same as directed by law.

Commissioners may revise jury lists at any time.—1871-'2, c. 50, s. 1.

229*m*. In all cases where the county commissioners of any county have failed to revise, prepare and correct the jury lists for any county at the time prescribed by law, it shall be lawful for said commissioners at any time to perform the duties required of them according to the provisions of law.

Revision to be valid.—1871-'2, c. 50, s. 2.

229*n*. In all cases where the county commissioners of any county may have revised the jury list or corrected the same, or drawn a jury at a time or in a manner different from that prescribed by law, the same shall be valid as if drawn at the proper time and in the proper manner; *Provided*, said action has been in all other respects conformable to law.

Proviso.

Time nor manner to be changed except by law.—1871-'2, c. 50, s. 3.

229*o*. This chapter shall in no wise change the time or manner of drawing jurors, or revising, preparing or correcting the jury lists except as above prescribed, or relieve any persons from any penalties for failure to attend to their duties as county commissioners at the time now prescribed by law.

Separate trial.

230. A separate trial between a plaintiff and any of the several defendants may be allowed by the court, whenever, in its opinion, justice will thereby be promoted.

Judge to be furnished with copy of pleadings, &c.

231. The clerk shall furnish the Judge with a copy of the summons and pleadings, and with the offer of the defendant if any shall have been made.

General and special verdicts defined.

232. A general verdict is that by which the jury pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury find the facts only, leaving the judgment to the court.

When jury may render either general or special verdict, and when judge may direct special finding.

233. In an action for the recovery of specific personal property, if the property have not been delivered to the plaintiff, or the defendant by his answer claim a return thereof, the jury shall assess the value of the property, if their verdict be in favor of the plaintiff; or if they find in favor of the defendant, and that he is entitled to a return thereof; and may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the detention or taking and withholding such property.

In every action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases, the court may direct the jury to find a special verdict in writing, upon all or any of the issues; and in all cases may instruct them if they render a general verdict, to find upon particular questions of facts, to be stated in writing, and may direct a written finding thereon. The special verdict or finding shall be filed with the clerk, and entered upon the minutes.

234. Where a special finding of facts shall be inconsistent with the general verdict, the former shall control the latter, and the court shall give judgment accordingly.

On special finding with general verdict, former to control. Jury to assess defendant's damages in certain cases.

235. When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant when a set off for the recovery of money is established beyond the amount of the plaintiff's claim as established, the jury must also assess the amount of the recovery; they may also, under the direction of the court, assess the amount of the recovery when the court gives judgment for the plaintiff on the answer. If a set-off, established at the trial, exceed the plaintiff's demand so established, judgment for the defendant must be given for the excess; or if it appear that the defendant is entitled to any other affirmative relief, judgment must be given accordingly,

236. (1.) Upon receiving a verdict, the clerk shall make an entry in his minutes, specifying the time and place of the trial, the names of the jurors and witnesses, the verdict, and either the judgment rendered thereon, or an order that the cause be reserved for argument or further consideration. If a different direction be not given by the court, the clerk must enter judgment in conformity with the verdict.

Entry of the verdict.

(2.) If an exception be taken, it may be reduced to writing at the time, or entered in the Judge's minutes, and afterwards settled as provided by the rules of the court, and then stated in writing in a case, or separately, with so much of the evidence as may be material to the question to be raised, but a bill of exceptions need not be made.

(3.) If the exceptions be in the first instance stated in a case, and it be necessary to separate them, the separation may be made under the direction of the Judge.

(4.) The Judge who tries the cause may, in his discretion, entertain a motion, to be made on his minutes, to set aside a verdict and grant a new trial upon exceptions, or for insufficient evidence, or for excessive damages; but such motion can only be heard at the same term at which the trial is had. When such motion is heard and decided upon the minutes of the Judge, and an appeal is taken from the decision, a case or exceptions must be settled in the usual form, upon which the argument of the appeal must be had.

Motion for new trial on judge's minutes.

237. No Judge, in giving a charge to the petty jury, shall give an opinion whether a fact is fully or sufficiently proven, such matter being the true office and province of the jury; but he shall state in a plain and correct manner, the evidence given in the case, and declare and explain the law arising thereon.

Judge to explain law, but to express no opinion on facts.

238. Every Judge, at the request of any party to an action on trial, made at or before the close of the evidence, before instructing the jury on the law, shall put his instructions in writing, and read them to the jury; he shall then sign and file them with the clerk as a part of the record of the action.

Judge to put his instructions in writing.

239. Counsel praying of the Judge instructions to the jury,

Counsel to put

their prayers
for instruction
in writing.

shall put their request in writing entitled of the cause, and sign them; otherwise the Judge may disregard them; they shall be filed with the clerk as a part of the record.

CHAPTER IV.

TRIAL BY THE COURT.

Trial by jury
how waived.

240. Trial by jury may be waived by the several parties to an issue of fact, in actions on contract, and with the assent of the court, in other actions, in the manner following:

(1.) By failing to appear at the trial.

(2.) By written consent, in person or by attorney, filed with the clerk.

(3.) By oral consent entered in the minutes.

On trial by the
court, judg-
ment, how be
given.

241. Upon the trial of a question of fact by the court, its decision shall be given in writing, and shall contain a statement of the facts found, and the conclusions of law, separately; and upon a trial of an issue at law, the decision shall be made in the same manner, stating the conclusions of law. Such decision shall be filed with the clerk during the court at which the trial takes place. Judgment upon the decision shall be entered accordingly.

Exceptions,
how and when
taken.

242. (1.) For the purpose of an appeal, either party may except to a decision on a matter of law arising upon such trial within ten days after the judgment, in the same manner and with the same effect as upon a trial by jury: *Provided, however,* that where the decision does not authorize a final judgment, but directs further proceedings before a referee or otherwise, either party may except thereto, and make a case or exception as above provided in case of an appeal.

(2.) And either party desiring a review, upon the evidence appearing on the trial, of the questions of law may, at any time within ten days after the judgment, or within such time as may be prescribed by the rules of the court, make a case of exceptions in like manner as upon a trial by jury, except that the Judge, in settling the case, must briefly specify the facts found by him, and his conclusions of law.

Proceedings
upon judg-
ment on issue
of law.

243. On a judgment for the plaintiff upon an issue of law, the plaintiff may proceed in the manner prescribed by the first two subdivisions of section two hundred and seventeen, upon the failure of the defendant to answer, where the summons was personally served. If judgment be for the defendant, upon an issue of law, and if taking an account or the proof of any fact be necessary to enable the court to complete the judgment, a reference or assessment by jury may be ordered, as in that section provided.

CHAPTER V.

TRIAL BY REFEREES.

244. All, or any, of the issues in the action, whether of fact or of law, or both, may be referred, upon the written consent of the parties.

All issues referable by consent.

245. Where the parties do not consent, the court may, upon the application of either, of its own motion, except where the investigation will require the decision of difficult questions of law, direct a reference in the following cases:

When reference may be compulsory ordered.

(1.) Where the trial of an issue of fact shall require the examination of a long account on either side; in which case the referee may be directed to hear and decide the whole issue, or to report upon any specific question of fact involved therein; or,

(2.) Where the taking of an account shall be necessary for the information of the court, before judgment, or for carrying a judgment order into effect; or,

(3.) When the case involves a complicated question of boundary, or one which requires a personal view of the premises.

(4.) Where a question of fact, other than upon the pleadings, shall arise, upon motion or otherwise, in any stage of the action.

246. The trial by referees shall be conducted in the same manner, as a trial by the court. They shall have the same power to grant adjournments and to allow amendments to any pleadings and to the summons, as the court upon such trial, upon the same terms and with like effect. They shall have the same power to preserve order and punish all violations thereof upon such trial, and to compel the attendance of witnesses before them by attachment, and to punish them as for a contempt for non-attendance or refusal to be sworn or testify, as is possessed by the court. They must state the facts found and the conclusions of law separately; and their decision must be given, and may be excepted to and reviewed in like manner, and with like effect in all respects as in cases of appeal under section two hundred and forty-two; and they may in like manner settle a case or exceptions. The report of the referees upon the whole issue shall stand as the decision of the court, and judgment may be entered thereon upon application to the Judge, and his order. When the reference is to report the facts, the report shall have the effect of a special verdict.

Mode of trial. Effect of review. Review.

247. In all cases of reference the parties as to whom issues are formed in the action (except when the defendant is an infant or an absentee) may agree in writing upon a person or persons, not exceeding three, and a reference shall be ordered to him or them, and to no other person or persons. And if such parties do not agree, the court shall appoint one or more referees, not more than three, who shall be free from exception. And no person shall be appointed referee to whom all parties in the action shall object, except in actions for divorce. And no

Referees, how chosen. Who may be referee. Report.

Judge or Justice of any court shall sit as referee in any action pending in the court of which he is Judge or Justice, and not already referred, unless the parties otherwise stipulate. The referee or referees shall make and deliver a report within sixty days from the time the action shall be finally submitted; and in default thereof, and before the report is delivered, either party may serve notice upon the opposite party that he elects to end the reference, and thereupon the action shall proceed as though no reference had been ordered, and the referees shall not in such case be entitled to any fees.

The report of the referee shall be made to the clerk of the court in which the action is pending: either party after ten days notice to the adverse party, may move the Judge to review such report, and set aside, modify, or confirm the same in whole or in part, and no judgment shall be entered on any reference except by order of the Judge.

CHAPTER VI.

MANNER OF ENTERING JUDGMENT.

Judgment may be for or against any of the parties; may grant defendant affirmative relief. Complaint may be dismissed for neglect to prosecute action.

248. (1.) Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may determine the ultimate rights of the parties on each side, as between themselves.

(2.) And it may grant to the defendant any affirmative relief to which he may be entitled.

(3.) In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment may be proper.

(4.) The court may also dismiss the complaint, with costs in favor of one or more defendants, in case of unreasonable neglect on the part of the plaintiff to serve the summons on other defendants, or to proceed in the cause against the defendant or defendants served.

Judgment against married women.

In an action brought by or against a married woman, judgment may be given against her as well for costs as for damages, or both for such costs and for such damages, in the same manner as against other persons, to be levied and collected of her separate estate and not otherwise.

The relief to be awarded to the plaintiff.

249. The relief granted to the plaintiff, if there be no answer, cannot exceed that which he shall have demanded in his complaint; but in any other case the court may grant him any relief consistent with the case made by the complaint and embraced within the issue.

Rates of damages, where damages are recoverable.

250. Whenever damages are recoverable, the plaintiff may claim and recover, if he show himself entitled thereto, any rate of damages which he might have heretofore recovered for the same cause of action.

Judgment in

251. In an action to recover the possession of personal prop-

erty, judgment for the plaintiff may be for the possession, or for the recovery of possession, or for the value thereof, in case a delivery cannot be had, and the damages for the detention. If the property have been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof, in case a return cannot be had, and damages for taking and withholding the same.

action for recovery of personal property.

252. The Clerk of the Superior Court shall enter every judgment of the court, on his judgment book; it shall specify clearly the relief granted, or other determination of the action; he shall also enter on said book all judgments rendered in any other court, and authorized by law to be so entered, and shall keep an alphabetical index of the whole, with the dates and numbers thereof.

Clerk to enter judgments on judgment book, also judgments rendered in other Courts, and index them.

253. Unless the party or his attorney shall furnish a judgment roll, the clerk, immediately after entering the judgment, shall attach together, and file the following papers, which shall constitute the judgment-roll:

Judgment roll.

(1.) In case the complaint be not answered by any defendant, the summons and complaint, or copies thereof, proof of service, and that no answer has been received, the report if any, and a copy of the judgment.

(2.) In all other cases, the summons, pleadings, or copies thereof, and a copy of the judgment, with any verdict or report, the offer of the defendant, exceptions, case, and all orders and papers in any way involving the merits and necessarily affecting the judgment.

254. Upon filing a judgment-roll upon a judgment directing in whole or in part the payment of money, it may be docketed with the clerk of the county where the judgment-roll was filed, and in any other county upon the filing with the clerk thereof a transcript of the original "docket," and shall be a lien on the real property in the county, where the same is docketed, of every person against whom any such judgment shall be rendered, and which he may have at the time of the docketing thereof in the county in which such real property is situated, or which he shall acquire at any time thereafter, for ten years from the time of docketing the same in the county where the judgment-roll was filed. But the time during which the party recovering or owning such judgment shall be, or shall have been, restrained from proceeding thereon by an order of injunction, or other order, or by the operation of any appeal, shall not constitute any part of the ten years aforesaid, as against the defendant in such judgment, or the party obtaining such orders or making such appeal, or any other person who is not a purchaser, creditor or mortgagee in good faith. But whenever an appeal from any judgment shall be pending, and the undertaking requisite to stay execution on such judgment shall have been given, and the appeal perfected as provided in the Code, the court in which such judgment was recovered may,

Existing suits, judgments when and how to be docketed. Secured on appeal.

on special motion, after notice to the person owning the judgment, on such terms as they shall see fit, direct an entry to be made by the clerk on the docket of such judgment, that the same is "secured on appeal," and thereupon it shall cease, during the pendency of said appeal, to be a lien on the real property of the judgment-debtor, as against purchasers and mortgagees in good faith.

All executions issuing upon judgments docketed in a county other than that in which the original judgment was rendered, shall be returned to the court from which they issued; the return noted on the execution docket; and the executions transmitted to the clerk of the court in which the original judgment was taken. The provisions of this section shall apply to existing judgments as well as to all hereafter rendered.

TITLE XI.

OF THE EXECUTION OF THE JUDGMENT IN CIVIL ACTIONS.

CHAPTER I.

THE EXECUTION.

Execution within three years of course.

255. Writs of execution for the enforcement of judgments as now used are modified in conformity to this title, and the party in whose favor judgment has been heretofore or shall hereafter be given, and in case of his death his personal representatives duly appointed, may at any time within three years after the entry of judgment, proceed to enforce the same, as prescribed by this title.

The provisions of this title shall apply to existing judgments except in the cases provided for, by the ordinance of the Convention of this State entitled "An ordinance respecting the jurisdiction of the courts of this State," ratified 14th of March, 1868, which shall be governed by the existing law.

After three years, to be issued only by leave of court. Leave, how obtained.

256. After the lapse of three years from the entry of judgment, an execution can be issued only by leave of the court, upon motion, with personal notice to the adverse party, unless he be absent or non-resident, or cannot be found to make such service, in which case such service may be made by publication, or in such other manner as the court shall direct. Such leave shall not be given unless it be established by the oath of the party, or other satisfactory proof, that the judgment or some part thereof, remains unsatisfied and due. But the leave shall not be necessary when execution has been issued on the judgment within the three years next preceding the suing for execution, and returned unsatisfied in whole or in part.

Judgments,

257. Where a judgment requires the payment of money, or

the delivery of real or personal property, the same may be enforced in those respects by execution, as provided in this Title. Where it requires the performance of any other act, a certified copy of the judgment may be served upon the party against whom it is given, or the person or officer who is required thereby or by law to obey the same, and his obedience thereto enforced. If he refuse, he may be punished by the court as for contempt.

how enforced.

258. There shall be three kinds of execution; one against the property of the judgment debtor; another against his person; and the third for the delivery of the possession of real or personal property, or such delivery with damages for withholding the same. They shall be deemed the process of the court, and shall be subscribed by the clerk, and where to run out of his county, sealed with the seal of his court.

The different kinds of execution.

259. When the execution is against the property of the judgment debtor, it may be issued to the sheriff of any county where the judgment is docketed. When it requires the delivery of real or personal property, it must be issued to the sheriff of the county where the property, or some part thereof, is situated. Executions may be issued at the same time to different counties.

To what counties execution may be issued.

Real property adjudged to be sold must be sold in the county where it lies, by the sheriff of the county, or by a referee appointed by the court for that purpose; and thereupon the sheriff or referee must execute a conveyance to the purchaser, which conveyance shall be effectual to pass the rights and interests of the parties adjudged to be sold.

An execution may issue against a married woman, and it shall direct the levy and collection of the amount of the judgment against her from her separate property, and not otherwise.

Execution against a married woman.

259a. The judgments of the several courts in this State shall be docketed as now provided by law; but the executions provided in this chapter and all writs of *venditioni exponas*, and other process for the enforcement of such judgments shall issue under seal of the court only from the court in which the judgment for the enforcement of such execution, other final process, or any of them may issue, was rendered; and such executions or other final process against the property of the defendant or defendants, or any one or more of them, may be issued to any county in which such last mentioned judgment may be docketed; and such executions or other final process may issue to two or more counties at the same time as now provided by law, and executions against the person or persons of the defendant or defendants, or any of them, may issue to any one or more counties in the State; and the returns of all such executions or other final process shall be made to the court of the county from which the same is issued.

Judgments docketed.—1871-'2, c. 74, s. 1. Executions and ven. ex. writs shall issue under seal of court rendering judgment.

To any county in which judgment is docketed.

To two or more counties at same time.

259b. When any such execution shall be returned, as herein provided, the return of the sheriff or other officer shall be

Clerk of the court to which

return is made to Clerk Superior Court of each county where the judgment is docketed.

noted by the clerk on the execution docket; and when the same shall be returned satisfied, or partially satisfied, it shall be the duty of the clerk of the court to which the same is returned to send a copy of such last mentioned return, under his hand, to the Clerk of the Superior Court of each county in which such judgment is docketed, whose duty it shall be to note such copy in his execution docket, opposite said judgment, and file said copy with the transcript of the docket of said judgment in his office.

Executions heretofore issued from court rendering judgment or from court in which docketed or both, shall be valid and binding on all officers.

259c. In all cases where such executions have been, or are now issued, either from the court of the county in which such judgments were rendered, or from the court of the county in which such judgment was docketed, other than that in which such judgment was rendered, or from both of such last mentioned courts, whether at the same time or otherwise, all sales of property and all other things made and done and all liabilities and penalties incurred by sheriffs, or other officers or persons, under and in pursuance of such last mentioned executions, shall be valid and binding upon all such sheriffs, other officers or persons, to all intents and purposes, and to the same extent as if such executions or other processes for the enforcement of said judgments had issued in all respects regularly: *Provided, nevertheless*, that such executions or other process, were and are in other respects than those herein specified, regular and valid.

Proviso.

Notice to amerce sheriffs under hand and seal of clerk of court where judgment is entered sufficient.

259d. In all cases where any sheriff, or other officer, shall be amerced for failure to make due return of any execution, or other writ or process, placed in his hands, or for any default whatsoever in office, and judgment *nisi* or otherwise, for the penalty or forfeiture in such case made and provided, shall be entered, it shall be sufficient to give such sheriff notice, according to law, under the hand of the clerk and seal of the court, where such judgment may be entered of a motion for a judgment absolute, or for execution as the case may be, and no other notice, summons or suit shall be necessary to enforce the same; and such proceedings shall be deemed and held in aid of a suit or other proceedings already instituted in court.

Execution against the person, in what cases.

260. If the action be one in which the defendant might have been arrested, as provided in section one hundred and forty-nine and section one hundred and fifty-one, an execution against the person of the judgment debtor may be issued to any county within the State, after the return of an execution against his property unsatisfied in whole or in part. But no execution shall issue against the person of a judgment debtor, unless an order of arrest has been served, as in this act provided, or unless the complaint contains a statement of facts showing one or more of the causes of arrest required by section one hundred and forty-nine.

Form of the execution.

261. The execution must be directed to the sheriff, or coroner when the sheriff is a party or interested, subscribed by the clerk of the court, and must intelligibly refer to the judgment,

stating the county where the judgment roll or transcript is filed, the names of the parties, the amount of the judgment, if it be for money, and the amount actually due thereon, and the time of docketing in the county to which the execution is issued, and shall require the officer substantially as follows :

(1.) If it be against the property of the judgment debtor, it shall require the officer to satisfy the judgment out of the personal property of such debtor ; and if sufficient personal property cannot be found, out of the real property belonging to him on the day when the judgment was docketed in the county, or at any time thereafter, but no execution against the property of a judgment debtor shall be a lien on the personal property of such debtor, ~~as~~ against any *bona fide* purchaser from him for value, or as against any other execution, except from the levy thereof. 1863-'79, c. 148, s. 1.

(2.) If it be against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants of real property or trustees, it shall require the officer to satisfy the judgment out of such property.

(3.) If it be against the person of the judgment debtor, it shall require the officer to arrest such debtor, and commit him to the jail of the county until he shall pay the judgment or be discharged according to law.

(4.) If it be for the delivery of the possession of real or personal property, it shall require the officer to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may at the same time require the officer to satisfy any costs, damages, or rents or profits recovered by the same judgment, out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered, to be specified therein ; if a delivery thereof cannot be had, and if sufficient personal property cannot be found, then out of the real property belonging to him on the day when the judgment was docketed, or at any time thereafter, and shall in that respect be deemed an execution against property.

262. The execution shall be returnable within sixty days after its receipt by the officer, to the clerk with whom the record of judgment is filed. To be returnable in sixty days.

262a. Any defendant against whom a judgment shall be rendered for land, may at any time before the execution of such judgment, present a petition to the court rendering the same, stating that he or those under whom he claims while holding the premises under a title believed by him or them to be good, have made permanent improvements thereon, and praying that he may be allowed for the same over and above the value of the use and occupation of such land ; and thereupon the court may, if satisfied of the probable truth of the allegation, suspend the execution of such judgment and impanel a jury to assess the damages of the plaintiff and the allowance to the defendant for such improvements. Defendant to be allowed for improvements —1871-'2, c. 147, s. 1. Execution of judgment suspended. Jury may assess damages.

Annual value of land for the time occupied.—1871-'2, c. 147, s. 2.

262*b*. The jury in assessing such damages shall estimate against the defendant the clear annual value of the premises during the time he was in possession thereof (exclusive of the use by the tenant of the improvements thereon made by himself or those under whom he claims,) and also the damages for waste or other injury to the premises committed by the defendant.

Time of liability.—1871-'2, c. 147, s. 3.

262*c*. The defendant shall not be liable for such annual value for any longer time than three years before the suit, or for damages for any such waste or other injury done before said three years, unless when he claims for improvements as aforesaid.

Valuation of improvements to be in favor of defendant.—1871-'2, c. 147, s. 4.

262*d*. If the jury shall be satisfied that the defendant or those under whom he claims, made on the premises, at a time when there was reason to believe the title good under which he or they were holding the said premises, permanent and valuable improvements, they shall estimate in his favor the value of such improvements as were so made before notice in writing of the title under which the plaintiff claims, not exceeding the amount actually expended in making them and not exceeding the amount to which the value of the premises is actually increased thereby at the time of the assessment.

Defendant not liable beyond rents and improvements.—1871-'2, c. 147, s. 5.

262*e*. If the sum estimated for the improvements exceed the damages estimated by the jury against the defendant as aforesaid, they shall then estimate against him for any time before the said three years, the rents and profits accrued against or damages for waste or other injury done by him or those under whom he claims, so far as may be necessary to balance his claim for improvements, but in such case he shall not be liable for the excess, if any, of such rents, profits or damages beyond the value of the improvements.

Jury shall find verdict for balance.—1871-'2, c. 147, s. 6.

262*f*. After offsetting the damages assessed for the plaintiff, and the allowances to the defendant for the improvements, if any, the jury shall find a verdict for the balance for the plaintiff or defendant, as the case may be, and judgment shall be entered therefor according to the verdict.

Which shall constitute lien.—1871-'2, c. 147, s. 7.

262*g*. Any such balance due to the defendant shall constitute a lien upon the land recovered by the plaintiff until the same shall be paid.

Defendant may recover for improvement, when.—1871-'2, c. 147, s. 8.

262*h*. If the plaintiff claim only an estate for life in the land recovered and pay any sum allowed to the defendant for improvements, he or his personal representative, may recover at the determination of his estate from the remainder man or reversioner, the value of the said improvements as they then exist, not exceeding the amount as paid by him, and shall have a lien therefor on the premises in like manner as if they had been mortgaged for the payment thereof, and may keep possession of said premises until it be paid.

Does not apply to mortgagor.—1871-'2, c. 147, s. 9.

262*i*. Nothing herein shall extend or apply to any suit brought by a mortgagee or his heirs or assigns against a mortgagor or his heirs or assigns for the recovery of the mortgaged premises.

262j. When the defendant shall claim allowance for improvements the plaintiff may by entry on the record require that the value of his estate in the premises without the improvements shall also be ascertained.

Defendant claiming allowance, &c.—1871-'2, c. 147, s. 10.

262k. The value of the premises in such cases shall be estimated as it would have been at the time of the enquiry, if no such improvements had been made on the premises by the tenant or any person under whom he claims, and shall be ascertained in the manner hereinbefore provided for estimating the value of improvements.

How value of improvements estimated.—1871-'2, c. 147, s. 11.

262l. The plaintiff in such case, if judgment is rendered for him may, at any time during the same term, or before judgment is rendered on the assessment of the value of the improvements, in person or by his attorney in the cause, enter on the record his election to relinquish his estate in the premises to the defendant at the value as ascertained, and the defendant shall thenceforth hold all the estate that the plaintiff had therein at the commencement of the suit: *Provided*, he pay therefor the said value with interest in the manner in which the court may order it to be paid.

Plaintiff may enter election to relinquish.—1871-'2, c. 147, s. 12.

262m. The payments shall be made to the plaintiff, or into court for his use, and the land shall be bound therefor, and if the defendant fail to make the said payments within or at the times limited therefor respectively, the court may order the land to be sold and the proceeds applied to the payment of said value and interest, and the surplus, if any, to be paid to the defendant, but if the said net proceeds be insufficient to satisfy the said value and interest, the defendant shall not be bound for the deficiency.

Payments, how made.—1871-'2, c. 147, s. 13.

262n. If the party by or for whom the land is claimed in the suit be a *feme covert*, minor, or insane, such value shall be deemed to be real estate, and be disposed of as the court may consider proper for the benefit of the persons interested therein.

When plaintiff is *feme covert*, minor or insane.—1871-'2, c. 147, s. 14.

262o. If the defendant or his heirs or assigns shall, after the premises are so relinquished to him, be evicted thereof by force of any better title than that of the original plaintiff, the person so evicted may recover from such plaintiff or his representatives, the amount so paid for the premises, as so much money had and received by such plaintiff in his lifetime for the use of such person, with lawful interest thereon from the time of such payment.

When defendant evicted by force or better title.—1871-'2, c. 147, s. 14.

263. Until otherwise provided by the Legislature, the existing provisions of law, not in conflict with this chapter, relating to executions and their incidents, the property liable to sale on execution, the sale and redemption thereof, the powers and rights of officers, their duties thereon, and the proceedings to enforce those duties, and the liability of their sureties, shall apply to the executions prescribed by this chapter.

Existing laws relating to executions continued until otherwise provided.

CHAPTER II.

PROCEEDINGS SUPPLEMENTARY TO THE EXECUTION.

Existing suits.
Order for discovery of
property.
Examination
of judgment
debtor, &c.
1868-'9, c. 95,
s. 2.

264. (1.) When an execution against property of the judgment debtor, or any one of several debtors in the same judgment issued to the sheriff of the county where he resides or has a place of business, or if he do not reside in the State, to the sheriff of the county where a judgment roll or a transcript of a justice's judgment is filed, is returned unsatisfied, in whole or in part, the judgment creditor, at any time after such return made, is entitled to an order from the court to which the execution is returned, or from the Judge thereof, requiring such debtor to appear and answer concerning his property, before such court or Judge, at a time and place specified in the order, within the county to which the execution was issued.

(2.) After the issuing of an execution against property, and upon proof by affidavit, of a party or otherwise, to the satisfaction of the court, or a Judge thereof, that any judgment debtor, residing in the judicial district where such Judge or officer resides, has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court or Judge may, by an order, require the judgment debtor to appear at a specified time and place, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor towards the satisfaction of the judgment as are provided upon the return of an execution.

(3.) On an examination under this section, either party may examine witnesses in his behalf, and the judgment debtor may be examined in the same manner as a witness.

1868-'9, c. 148,
s. 4.

(4.) Instead of the order requiring the attendance of the judgment debtor, the court or Judge may, upon proof by affidavit or otherwise, to his satisfaction, that there is danger of the debtor's leaving the State, or concealing himself, and that there is reason to believe he has property which he unjustly refuses to apply to such judgment, issue a warrant requiring the sheriff of any county where such debtor may be, to arrest him and bring him before such court or Judge. Upon being brought before the court or Judge, he may be examined on oath, and, if it then appears that there is danger of the debtor leaving the State, and that he has property which he has unjustly refused to apply to such judgment, ordered to enter into an undertaking, with one or more sureties, that he will, from time to time, attend before the court or judge as he shall direct, and that he will not, during the pendency of the proceedings, dispose of any property not exempt from execution. In default of entering into such undertaking, he may be committed to prison by warrant of the Judge, as for a contempt.

(5.) No person shall, on examination pursuant to this chapter, be excused from answering any question on the ground that

his examination will tend to convict him of the commission of a fraud ; but his answer shall not be used as evidence against him in any criminal proceeding or prosecution. Nor shall he be excused from answering any question, on the ground that he has, before the examination, executed any conveyance, assignment or transfer of his property for any purpose, but his answer shall not be used as evidence against him in any criminal proceeding or prosecution.

265. After the issuing of execution against property, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as shall be necessary to satisfy the execution ; and the sheriff's receipt shall be a sufficient discharge for the amount so paid.

Existing suits.
Any debtor
may pay exe-
cution against
his creditor.

266. After the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon affidavit that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding ten dollars, the court or Judge may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place, and answer concerning the same. The court or Judge may also, in his or its discretion, require notice of such proceeding to be given to any party to the action, in such manner as may seem to him or it proper.

Existing suits.
Examination
of debtors of
judgment
debtor, or of
those having
property be-
longing to
him.

The proceedings mentioned in this section and in section two hundred and sixty-four may be taken upon the return of an execution unsatisfied, issued upon a judgment recovered in an action against joint debtors, in which some of the defendants have not been served with the summons by which said action was commenced, so far as relates to the joint property of such debtors ; and all actions by creditors to obtain satisfaction of judgments out of the property of joint debtors are maintainable in the like manner and to the like effect. These provisions shall apply to all proceedings and actions now pending and those terminated by final decree or judgment.

Joint debtors.

267. Witnesses may be required to appear and testify on any proceedings under this chapter, in the same manner as upon the trial of an issue.

1869-'70, c. 79,
s. 2.

Existing suits.
Witness re-
quired to tes-
tify.

268. The party or witness may be required to attend before the court or Judge, or before a referee appointed by the court or Judge ; if before a referee, the examination shall be taken by the referee, and certified to the Judge. All examinations and answers before a court or Judge or referee, under this chapter, shall be on oath, except that when a corporation answers, the answer shall be on the oath of an officer thereof.

Existing suits.
Compelling
party or wit-
nesses to at-
tend.
1870-'1, c. 245,
s. 1.

269. The court or Judge may order any property of the judgment debtor, not exempt from execution, in the hands either of himself or any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment ; except that the earnings of the debtor for his personal services, at any time within sixty days next preceeding the order, can-

Existing suits.
What prop-
erty may be or-
dered to be
applied to the
execution.
1870-'1, c. 245,
s. 1.

not be so applied when it is made to appear, by the debtor's affidavit or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor.

Existing suits.
Judge may
appoint re-
ceiver, and
forbid trans-
fer, &c., of
property.
Order, &c,
1870-'1, c. 245,
s. 1.

270. The Court or Judge may also, by order, appoint a receiver of the property of the judgment debtor, in the same manner, and with the like authority, as if the appointment was made by the court, according to section two hundred and fifteen. But before the appointment of such receiver, the Judge shall ascertain, if practicable, by the oath of the party or otherwise, whether any other supplementary proceedings are pending against the judgment debtor, and if such proceedings are so pending, the plaintiff therein shall have notice to appear before him, and shall likewise have notice of all subsequent proceedings in relation to said receivership. No more than one receiver of the property of a judgment debtor shall be appointed. The Judge may also, by order, forbid a transfer or other disposition of the property of the judgment debtor not exempt from execution, and any interference therewith.

1870-'1, c. 245,
s. 1.

Whenever the court or Judge shall grant an order for the appointment of a receiver of the property of the judgment debtor, the same shall be filed in the office of the Clerk of the Superior court of the county where the judgment-roll in the action or transcript from justice's judgment, upon which the proceedings are taken, is filed; and the clerk shall record the order in a book to be kept for that purpose in his office, to be called "Book of orders appointing receivers of judgment debtors," and shall note the time of the filing of said order therein. A certified copy of said order shall be delivered to the receiver named therein, and he shall be vested with the property and effects of the judgment debtor from the time of the filing and recording of the order as aforesaid. The receiver of the judgment debtor shall be subject to the direction and control of the court in which the judgment was obtained upon which the proceedings are founded.

But before he shall be vested with any real property of such judgment debtor, a certified copy of said order shall also be filed and recorded on the execution docket, in the office of the Clerk of the Superior Court of the county in which any real estate of such judgment debtor sought to be affected by such order is situated, and also in the office of the Clerk of the Superior Court of the county in which such judgment debtor resides.

Existing suits.
Proceedings
upon claim of
another party
to property, or
on denial of
indebtedness
to judgment
debtor.
1870-'1, c. 245,
s. 1.

271. If it appear that a person or corporation alleged to have property of the judgment debtor, or indebted to him, claims an interest in the property adverse to him, or denies the debt, such interest or debt shall be recoverable only in an action against such person or corporation by the receiver; but the court or Judge may, by order, forbid a transfer or other disposition of such property or interest, till a sufficient opportunity be given to the receiver to commence the action, and prosecute the same to judgment and execution; but such order may be

modified or dissolved by the Judge granting the same, at any time, on such security as he shall direct.

272. The Judge may, in his discretion, order a reference to a referee agreed upon by the parties, or appointed by him, to report the evidence or the facts, and may, in his discretion, appoint such referee in the first order, or at any time.

Existing suits.
Reference by
Judge.

273. The Judge may allow to the judgment creditor, or to any party so examined, whether a party to the action or not, witnesses' fees and disbursements, and a fixed sum in addition, not exceeding thirty dollars, as costs.

Existing suits.
Cost of pro-
ceeding.

274. If any person, party, or witness, disobey an order of the Judge or referee, duly served, such person, party, or witness, may be punished by the Judge as for a contempt. And in all cases of commitment under this chapter, the person committed may, in case of inability to perform the act required, or to endure the imprisonment, be discharged from imprisonment by the court or Judge committing him, or the court in which the judgment was rendered, on such terms as may be just.

Existing suits.
Disobedience
of order, how
punished.

The sections of this chapter, from section two hundred and sixty-four, to section two hundred and seventy-four, both inclusive, shall be applicable to all judgments or decrees which have been recovered before or shall be recovered after the ratification of this chapter.

1869-'70, c. 79,
s. 3.

TITLE XII.

OF THE COSTS IN CIVIL ACTIONS.

275. (This section is repealed by 1870-'1, chapter 139.)

276. Costs shall be allowed of course to the plaintiff, upon a recovery, in the following cases:

When allowed
of course to
the plaintiff.
Several actions
on one instru-
ment.

(1.) In an action for the recovery of real property, or when a claim of title to real property arises on the pleadings, or is certified by the court to have come in question at the trial;

(2.) In an action to recover the possession of personal property;

(3.) In the actions of which a court of Justice of the Peace has no jurisdiction;

(4.) In an action for the recovery of money, where the plaintiff shall recover fifty dollars; but in an action for assault, battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction, if the plaintiff recover less than fifty dollars damages, he shall recover no more cost than damages. And in an action to recover the possession of personal property, if the plaintiff recover less than fifty dollars damages, he shall recover no more costs than damages, unless he recovers also property, the value of which, with the damages, amounts to fifty dollars, or the possession of property be adjudged to him, the value of which, with the damages, amounts to fifty dollars;

such value must be determined by the jury, court, or referee by whom the action is tried. When several actions shall be brought on one bond, recognizance, promissory note, bill of exchange, or other instrument in writing, or in any other case, for the same cause of action, against several parties who might have been joined as defendants in the same action, no costs other than disbursements shall be allowed to the plaintiff in more than one of such actions, which shall be at his election, provided that the party or parties proceeded against in such other action or actions shall at the time of the commencement of the previous action or actions have been within the State, and not secreted.

When allowed to defendant.

277. Costs shall be allowed of course to the defendant, in the actions mentioned in the last section, unless the plaintiff be entitled to costs therein.

When allowed to either party in the discretion of the court.

278. In other actions, costs may be allowed or not, in the discretion of the court.

In all actions where there are several defendants not united in interest, and making separate defences by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such of the defendants as have judgment in their favor or any of them.

In the following cases the costs of an appeal to any court shall be in the discretion of the court:

- (1.) When a new trial shall be ordered;
- (2.) When a judgment shall be affirmed in part, and reversed in part.

Report, when allowed.

282. When the judgment is for the recovery of money, interest, from the time of the verdict or report until judgment be finally entered, shall be computed by the clerk, and added to the costs of the party entitled thereto.

Costs how to be inserted in judgment. Interlocutory costs adjusted. 1869-'70, c. 192.

283. The clerk shall insert in the entry of judgment the sum of the allowances for cost, as provided by this code, the necessary disbursements, including the fees of officers allowed by law, the fees of witnesses, the reasonable compensation of commissioners in taking deposition, the fees of referees, and the expense of printing papers for any hearing where required by a rule of the court. The disbursements shall be stated in detail. Whenever it shall be necessary to adjust costs in any introductory proceedings, or in any special proceedings, the same shall be adjusted by the clerk of the court to which the proceedings were returned, except in those matters in which the allowance is required and to be made by the judge.

Fees of Clerks, heriffs, &c.

284. The fees of the clerk, sheriff and other officers of the court, shall be as prescribed by law.

Referees' fee.

285. The fees of referees shall be three dollars to each, for every day spent in the business of the reference; but the parties may agree in writing upon any other rate of compensation.

Costs against infant plaintiff

286. When costs are adjudged against an infant plaintiff, the guardian by whom he appeared in the action shall be responsible therefor, and payment thereof may be forced by attachment.

287. (1.) In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by statute, costs shall be recovered, as in an action by and against a person prosecuting or defending in his own right; but such costs shall be chargeable only upon or collected of the estate, fund, or party represented, unless the court shall direct the same to be paid by the plaintiff or defendant personally, for mismanagement or bad faith in such action or defence. But this section shall not be construed to allow costs against executors or administrators where they are now exempted therefrom by law.

Costs in action by or against an executor or administrator, trustee of an express trust, or a person expressly authorized by statute to sue.

(2.) Whenever any claim against a deceased person shall be referred, the prevailing party shall be entitled to recover the fees of referees and witnesses, and other necessary disbursements, to be taxed according to law.

288. In all civil actions prosecuted in the name of the State, by an officer duly authorized for that purpose, the State shall be liable for costs in the same cases and to the same extent as private parties. If a private person be joined with the State as plaintiff, he shall be liable in the first instance for the defendant's costs, which shall not be recovered of the State till after execution issued therefor against such private party and returned unsatisfied.

Costs in civil actions by the State.

289. In an action prosecuted in the name of the State for the recovery of money or property, or to establish a right or claim for the benefit of any county, city, town, village, corporation or person, costs awarded against the plaintiff shall be a charge against the party for whose benefit the action was prosecuted, and not against the State.

Costs in action by the State for a private person.

290. In actions in which the cause of action shall, by assignment after the commencement of the action, or in any other manner, become the property of a person not a party to the action, such person shall be liable for the costs, in the same manner as if he were a party, and payment thereof may be enforced by attachment.

Costs against assignee after action brought of cause of action.

291. Upon the settlement, before judgment of any action mentioned in section two hundred and seventy-six, no greater sum shall be demanded from the defendant as costs than at the rates prescribed by that section.

Costs on settlement.

292. On an appeal from a Justice of the Peace to a Superior Court, or from a Superior Court or a Judge thereof, to the Supreme Court, if the appellant shall recover judgment in the appellate court, he shall recover the costs of the appellate court, and those he ought to have recovered below, had the judgment of that court been correct, and also restitution of any costs of the court appealed from, which he shall have paid under the erroneous judgment of such court.

Costs on appeals.

If in any court of appeal there shall be judgment for a new trial, or for a new jury, or if the judgment appealed from be not wholly reversed, but partly affirmed and partly disaffirmed, the costs shall be in the discretion of the appellate court.

Costs in existing actions.

293. Costs in actions brought before the ratification of this Act shall be according to existing laws.

Costs in special proceedings.

294. The costs in special proceedings shall be as herein allowed in civil actions, unless where otherwise specially provided.

On appeals from justices of the peace.

295. After an appeal from the judgment of a Justice of the Peace shall be filed with a Clerk of a Superior Court, the costs in all subsequent stages shall be as herein provided for actions originally brought to the Superior Court.

When appeals are taken to Supreme court U.S., treasurer to pay costs when so adjudged.—1871-'2, c. 26. s. 1.

295a. In all cases, to which the State of North Carolina is a party, and which may be carried from the courts of this state or from the Circuit Court of the United States, by appeal or writ of error to the Supreme Court of the United States, and the state shall be adjudged to pay the costs in said last mentioned court in any of said cases, it shall be the duty of the Attorney General to certify to the Governor the amount of any such bill of costs, who shall thereupon issue a warrant for the same, directed to the Public Treasurer, who shall pay the same out of any moneys in the treasury not otherwise appropriated.

Applies to causes in which appeals have already been taken.—1871-'2, c. 26, s. 2.

295b. This provision shall be construed to apply to cases in which appeals have already been taken, or writs of error already sued out, and to civil as well as criminal cases.

TITLE XIII.

OF APPEAL IN CIVIL ACTIONS.

CHAPTER I.

Writs of error abolished, and appeals substituted.

296. Writs of error in civil actions, as they have heretofore existed, are abolished; and the only mode of reviewing a judgment, or order, in a civil action, shall be that prescribed by this title.

The provisions of this title shall apply to all actions tried after the Fall Terms of the Superior Courts, held next after the ratification of this Act. The existing laws shall govern trials and appeals in said Courts at said Fall Terms.

Orders made out of court, how vacated or modified.

297. An order, made out of court, without notice to the adverse party, may be vacated or modified, without notice, by the Judge who made it, or may be vacated or modified on notice, in the manner in which other motions are made.

Existing suits. Who may appeal.—in what cases it may be taken.

298. Any party aggrieved may appeal in the cases prescribed in this title; this section shall apply to existing suits.

299. An appeal may be taken from every judicial order or determination of a Judge of a Superior Court, upon or involving a matter of law or legal inference, whether made in or out of term, which affects a substantial right claimed in any action or proceeding; or which in effect determines the action, and prevents a judgment from which an appeal might be taken; or discontinues the action, or grants or refuses a new trial.

300. The appeal must be taken from a judgment rendered out of term, within ten days after notice thereof, and from a judgment rendered in term, within ten days after its rendition, but execution shall not be suspended until the giving by the appellant of the undertakings hereinafter required by sections three hundred and three, to three hundred and twelve, both inclusive, of this code.

When taken—
execution not
suspended,
when.

301. Within the time prescribed in the preceding section, the appellant shall cause his appeal to be entered by the clerk on the judgment docket, and notice thereof to be given to the adverse party. He shall cause to be prepared a concise statement of the case, embodying the instructions of the Judge as signed by him, if there be any exception thereto, and the requests of the counsel of the parties for instructions if there be any exception on account of the granting or withholding thereof, and stating separately in articles numbered, the errors alleged. A copy of this statement shall be served on the respondent as provided in section eighty, within five days from the entry of the appeal taken; within three days after such service, the respondent shall return the copy with his approval or specific amendments endorsed or attached; if the case be approved by the respondent, it shall be filed with the clerk as a part of the record; if not returned with objections within the time prescribed, it shall be deemed approved; if returned with objections as prescribed, the appellant shall immediately request the Judge to fix a time and place for settling the case before him; and the judge shall forthwith notify the attorneys of the parties to appear before him for that purpose at a certain time and place, within the judicial district, which time shall not be more than twenty days from the receipt of such request; and at the time and place stated, the Judge shall settle and sign the case, and deliver a copy to the attorney of each party, or if they be not present, file a copy in the office of the clerk of the court. In settling the case, the written instructions signed by the Judge, and the written requests for instructions signed by the counsel, and filed as prescribed in sections two hundred and thirty-eight and two hundred and thirty-nine, shall be taken as conclusive as to what such instructions and requests were. If a copy of the case settled, was delivered to the appellant, he shall, within five days thereafter, file the same with the clerk, and in case he fail to do so, the respondent may file his copy.

Appeal to be
entered by
clerk on judg-
ment docket.
Case how sta-
ted and set-
tled.

302. The clerk on receiving a copy of the case settled, as required in the preceding section, shall make a copy of the judgment-roll and of the case, and within twenty days transmit the same, duly certified, to the clerk of the Supreme Court.

Clerk to make
copy of judg-
ment-roll and
send to clerk
of Supreme
Court.

303. To render an appeal effectual for any purpose in any civil cause or special proceeding, a written undertaking must be executed on the part of the appellant, with good and sufficient surety, in such sum as may be ordered by the court, not in any case to exceed the sum of two hundred and fifty dollars, to the effect that the appellant will pay all costs which may be

On appeal se-
curity must be
given or de-
posit made un-
less waived.—
1871-'2, c. 31,
s. 1.
Surety not to
exceed \$250.

To be deposited with the clerk.

Existing suits. On judgment for money, security to stay execution. New undertaking on sureties in first becoming insolvent.

awarded against him on the appeal, or such sum as may be ordered by the court, must be deposited with the clerk by whom the judgment or order was entered, to abide the event of the appeal; such undertaking or deposit may be waived by a written consent on the part of the respondent.

304. If the appeal be from a judgment directing the payment of money, it shall not stay the execution of the judgment, unless a written undertaking be executed on the part of the appellant, by at least two sureties, to the effect that, if the judgment appealed from, or any part thereof, be affirmed, or the appeal be dismissed, the appellant will pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if it be affirmed only in part, and all damages which shall be awarded against the appellant upon the appeal. Whenever it shall be made satisfactorily to appear to the court that since the execution of the undertaking the sureties have become insolvent, the court may, by rule or order, require the appellant to execute, file and serve a new undertaking, as above; and in case of neglect to execute such undertaking within twenty days after the service of a copy of the rule or order requiring such new undertaking, the appeal may, on motion to the court, be dismissed with costs. Whenever it shall be necessary for a party to any action or proceeding to give a bond or an undertaking, with surety or sureties, he may, in lieu thereof, deposit with the officer or into court, as the case may require, money to the amount for which such bond or undertaking is to be given. The court in which such action or proceeding is pending may direct what disposition shall be made of such money, pending the action or proceeding. In any case where, by this section, the money is to be deposited with an officer, a judge of the court, at special term, or at chambers, upon the application of either party, may, before such deposit is made, order it to be deposited in court instead of with such officer; and a deposit made, pursuant to such order, shall be of the same effect as if made with such officer.

Existing suits. If judgment be to deliver document or personal property, it must be deposited, or security be given.

305. If the judgment appealed from direct the assignment or delivery of documents or personal property, the execution of the judgment shall not be stayed by appeal, unless the things required to be assigned or delivered be brought into court, or placed in the custody of such officer or receiver as the court shall appoint, or unless an undertaking be entered into on the part of the appellant, by at least two sureties, and in such amount as the court, or a Judge thereof, shall direct, to the effect that the appellant will obey the order of the appellate court upon the appeal.

Existing suits. If to execute conveyance, it must be executed and deposited.

306. If the judgment appealed from direct the execution of a conveyance or other instrument, the execution of the judgment shall not be stayed by the appeal until the instrument shall have been executed and deposited with the clerk by whom the judgment is entered, to abide the judgment of the appellate court.

307. If the judgment appealed from direct the sale or delivery of possession of real property, the execution of the same shall not be stayed, unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that, during the possession of such property by the appellant, he will not commit, or suffer to be committed, any waste thereon, and that if the judgment be affirmed, he will pay the value of the use and occupation of the property, from the time of the appeal until the delivery of possession thereof, pursuant to the judgment, not exceeding a sum to be fixed by a Judge of the court by which judgment was rendered, and which shall be specified in the undertaking. When the judgment is for the sale of mortgaged premises, and the payment of a deficiency arising upon the sale, the undertaking shall also provide for the payment of such deficiency.

Existing suits.
Security where judgment is to deliver real property or for a sale of mortgaged premises.

308. Whenever an appeal is perfected as provided by sections three hundred and four, three hundred and five, three hundred and six, and three hundred and seven, it stays all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced therein; but the court below may proceed upon any other matter included in the action and not affected by the judgment appealed from. And the court below may, in its discretion, dispense with or limit the security required by sections three hundred and four, three hundred and five, and three hundred and seven, when the appellant is an executor, administrator, trustee, or other person acting in another's right; and may also limit such security to an amount not more than fifty thousand dollars, in the cases mentioned in sections three hundred and five, three hundred and six, three hundred and seven, where it would otherwise, according to those sections, exceed that sum.

Existing suits.
Stay of proceedings upon security being given.

309. The undertakings prescribed by sections three hundred and four, three hundred and five, three hundred and six, and three hundred and seven, may be in one instrument or several, at the option of the appellant; and a copy, including the names and residence of the sureties, must be served on the adverse party, with the notice of appeal, unless a deposit is made as provided in section three hundred and four, and notice thereof given.

Existing suits.
Undertakings may be in one instrument or several.

310. An undertaking upon an appeal shall be of no effect unless it be accompanied by the affidavit of the sureties that they are each worth double the amount specified therein. The respondent may, however, except to the sufficiency of the sureties, within ten days after the notice of the appeal; and unless they or other sureties justify before the Judge or court below, or as prescribed by sections one hundred and sixty-five and one hundred and sixty-six, within ten days thereafter, the appeal shall be regarded as if no undertaking had been given. The justification shall be upon a notice of not less than five days.

Existing suits.
Security to be approved and to justify.

311. In the cases not provided for in sections three hundred and five, three hundred and six, three hundred and seven, and

Existing suits.
Perishable

property may be sold notwithstanding appeal.

three hundred and eight, the perfecting of an appeal, by giving the undertaking mentioned in section three hundred and four, shall stay proceedings in the court below upon the judgment appealed from, except that where it directs the sale of perishable property, the court below may order the property to be sold, and the proceeds thereof to be deposited or invested, to abide the judgment of the appellate court.

Existing suits. Undertaking must be filed.

312. The undertaking must be filed with the clerk with whom the judgment or order appealed from was entered. The provisions of this chapter as to the security to be given upon appeals, and as to the stay of proceedings, shall apply to all appeals taken to the Supreme Court.

Existing suits. Intermediate orders affecting the judgment may be reviewed on the appeal.

313. Upon an appeal from a judgment, the court may review any intermediate order involving the merits and necessarily affecting the judgment.

Existing suits. Judgment on appeal—restitution.

314. Upon an appeal from a judgment or order, the appellate court may reverse, affirm or modify the judgment or order appealed from, in the respect mentioned in the notice of appeal, and as to any or all of the parties, and may, if necessary or proper, order a new trial. When the judgment is reversed or modified, the appellate court may make complete restitution of all property and rights lost by the erroneous judgment.

The foregoing sections, from section three hundred and four to section three hundred and fourteen, both inclusive, shall apply to existing suits.

Judgment against appellant, &c., and sureties.—R. C. c. 4, s. 10 & 21.

314a. Undertakings taken for the prosecution of appeals and on writs of *certiorari* shall make a part of the record sent up to the Supreme Court, on which judgment may be entered against the appellant and his sureties in all cases where judgment shall be rendered against the appellant, or the person prosecuting the writ of *certiorari*.

TITLE XIV.

OF THE MISCELLANEOUS PROCEEDINGS IN CIVIL ACTIONS, AND GENERAL PROVISIONS.

CHAPTER I.

SUBMITTING A CONTROVERSY WITHOUT ACTION.

Controversy how submitted without action.

315. Parties to a question in difference, which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought. But it must appear by affidavit that the controversy is real, and the proceeding in good faith, to determine the rights of the parties.

The Judge shall thereupon hear and determine the case, and render judgment thereon, as if an action were depending.

316. Judgment shall be entered in the Judgment Docket, as in other cases, but without costs for any proceeding prior to trial. The case, the submission, and a copy of the judgment shall constitute the judgment-roll. The costs of the trial shall be five dollars. Judgment.

317. The judgment may be enforced in the same manner as if it had been rendered in an action, and shall be subject to appeal in like manner. Judgment how enforced or appealed from.

CHAPTER II.

PROCEEDINGS AGAINST JOINT DEBTORS, HEIRS, DEVISEES, LEGATEES, AND TENANTS HOLDING UNDER A JUDGMENT DEBTOR.

318. When a judgment shall be recovered against one or more of several persons jointly indebted upon a contract, by proceeding as provided in section eighty-seven, those who were not originally summoned to answer the complaint may be summoned to show cause why they should not be bound by the judgment, in the same manner as if they had been originally summoned. Parties, not summoned in action on joint contract, may be summoned after judgment.

319. In case of the death of the judgment debtor after judgment, the heirs, devisees, or legatees of the judgment debtor, or the tenants of real property owned by him and affected by the judgment, may, after the expiration of three years from the time of granting letters testamentary or of administration upon the estate of the testator or intestate, be summoned to show cause why the judgment should not be enforced against the estate of the judgment debtor in their hands respectively; and the personal representatives of a deceased judgment debtor may be so summoned at any time within one year after their appointment. The personal representative of a deceased judgment debtor, if there be any, shall always be parties to any summons against his heirs, devisees, legatees or tenants, to enforce the judgment. If judgment debtor die, his representatives may be summoned.

320. The summons provided in the last section shall be signed by the clerk of any court in which the judgment was docketed before the death of the debtor, and in which he had property affected thereby, but shall be made returnable to the court in which the judgment was recovered; it shall describe the judgment, and require the person summoned to show cause within twenty days after the service of the summons; and shall be served in like manner as the original summons. Form of summons.

321. The summons shall be accompanied by an affidavit of the person causing it to issue, that the judgment has not been satisfied, to his knowledge or information and belief, and shall specify the amount due thereon. To be accompanied by affidavit of amount due.

322. Upon such summons any party summoned may answer within the time specified therein, denying the judgment, or Party summoned may

answer and
defend.

setting up any defence thereto which may have arisen subsequently to such judgment; and in addition thereto, if the party be proceeded against according to section three hundred and eighteen, he may make any defence which he might have made to the action if the summons had been served on him at the time when the same was originally commenced and such defence had been then interposed to such action.

Subsequent
pleadings and
proceedings
same as in ac-
tion.

323. The party issuing the summons may demur or reply to the answer, and the party summoned may demur to the reply; and the issues may be tried and judgment may be given in the same manner as in an action, and enforced by execution, or the application of the property charged to the payment of the judgment may be compelled by attachment, if necessary.

Answer and
reply to be
verified as in
an action.

324. The answer and reply shall be verified in the like cases and manner, and be subject to the same rules, as the answer and reply in an action.

CHAPTER III.

CONFESSION OF JUDGMENT WITHOUT ACTION.

Judgment
may be con-
fessed for debt
due or contin-
gent liability.

325. A judgment by confession may be entered, without action, either in or out of term, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this chapter.

Statement in
writing and
form thereof.

326. A statement in writing must be made, signed by the defendant, and verified by his oath, to the following effect:

(1.) It must state the amount for which judgment may be entered, and authorize the entry of judgment therefor.

(2.) If it be for money due, or to become due, it must state concisely the facts out of which it arose, and must show that the sum confessed therefor is justly due, or to become due.

(3.) If it be for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting the liability, and must show that the sum confessed therefor does not exceed the same.

Judgment and
execution.

327. The statement may be filed with the clerk of the Superior Court of the county in which the defendant resides, or if he does not reside in the State, of some county in which he has property. The clerk shall endorse upon it, and enter on his judgment docket a judgment of the court for the amount confessed, with three dollars costs, together with disbursements. The statement and affidavit, with the judgment endorsed, shall thenceforth become the judgment-roll. Executions may be issued and enforced thereon, in the same manner as upon judgments in other cases in such courts. When the debt for which the judgment is recovered is not all due, or is payable in installments, and the installments are not all due, the execution may issue upon such judgment for the collection of such installments as have become due, and shall be in the usual form, but

shall have endorsed thereon, by the attorney or person issuing the same, a direction to the sheriff to collect the amount due on such judgment, with interest and costs, which amount shall be stated, with interest thereon, and the costs of said judgment. Notwithstanding the issue and collection of such execution, the judgment shall remain as security for the installments thereafter to become due; and whenever any further installments become due, execution may, in like manner, be issued for the enforcement of the same.

CHAPTER IV.

OFFER OF THE DEFENDANT TO COMPROMISE THE WHOLE OR A PART OF THE ACTION.

328. The defendant may, at any time before the trial or verdict, serve upon the plaintiff an offer in writing to allow judgment to be taken against him for the sum or property, or to the effect therein specified, with costs. If the plaintiff accept the offer, and give notice thereof in writing within ten days, he may file the summons, complaint, and offer, with an affidavit of notice of acceptance, and the clerk must thereupon enter judgment accordingly. If the notice of acceptance be not given, the offer is to be deemed withdrawn, and cannot be given in evidence; and if the plaintiff fail to obtain a more favorable judgment he cannot recover costs, but must pay the defendant's costs from the time of the offer; and in case the defendant shall set up a counter-claim in his answer to an amount greater than the plaintiff's claim, or sufficient to reduce the plaintiff's recovery below fifty dollars, then the plaintiff may serve upon the defendant an offer in writing, to allow judgment to be taken against him for the amount specified, or to allow said counter-claim to the amount specified with costs. If the defendant accept the offer, and give notice thereof in writing within ten days, he may enter judgment as above for the amount specified, if the offer entitle him to judgment, or the amount specified in said offer shall be allowed him in the trial of the action. If the notice of acceptance be not given, the offer is to be deemed withdrawn, and cannot be given in evidence; and if the defendant fail to recover a more favorable judgment, or to establish his counter-claim for a greater amount than is specified in said offer, he cannot recover costs, but must pay the plaintiff's costs from the time of the offer.

Offer of compromise.

329. In an action arising on contract, the defendant may, with his answer, serve upon the plaintiff an offer in writing, that if he fail in his defence, the damages be assessed at a specified sum; and if the plaintiff signify his acceptance thereof in writing, twenty days before the trial, and on the trial have a verdict, the damages shall be assessed accordingly.

Defendant may offer to liquidate damages conditionally.

330. If the plaintiff do not accept the offer, he shall prove his damages, as if it had not been made, and shall not be permitted

Effect of acceptance or refusal of offer.

to give it in evidence. And if the damages assessed in his favor shall not exceed the sum mentioned in the offer, the defendant shall recover his expenses incurred in consequence of any necessary preparation or defence in respect to the question of damages. Such expense shall be ascertained at the trial.

CHAPTER V.

ADMISSION OR INSPECTION OF WRITINGS.

Existing suits.
Inspection
and copy of
books, papers,
and docu-
ments, how
obtained.

331. Either party may exhibit to the other, or to his attorney at any time before the trial, any paper material to the action, and request an admission in writing of its genuineness. If the adverse party, or his attorney, fail to give the admission, within four days after the request, and if the party exhibiting the paper be afterwards put to expense in order to prove its genuineness, and the same be finally proved or admitted on the trial, such expense, to be ascertained at the trial, shall be paid by the party refusing the admission, unless it appear to the satisfaction of the court that there were good reasons for the refusal. The court before which an action is pending, or a Judge thereof, may, in their discretion, and upon due notice, order either party to give to the other, within a specified time, an inspection and copy, or permission to take a copy, of any books, papers, and documents, in his possession or under his control, containing evidence relating to the merits of the action or the defence therein. If compliance with the order be refused, the court, on motion, may exclude the paper from being given in evidence, or punish the party refusing, or both. This section shall apply to existing suits.

CHAPTER VI.

EXAMINATION OF PARTIES.

Action for discovery abolished.

332. No action to obtain discovery under oath, in aid of the prosecution or defence of another action, shall be allowed, nor shall any examination of a party be had, on behalf of the adverse party, except in the manner prescribed by this chapter.

Existing suits.
A party may
examine his
adversary as
a witness.

333. A party to an action may be examined as a witness, at the instance of the adverse party, or of any one of several adverse parties, and for that purpose may be compelled, in the same manner, and subject to the same rules of examination, as any other witness, to testify, either at the trial, or conditionally, or upon commission.

Existing suits.
Such examination also allowed before trial.

334. The examination, instead of being had at the trial, as provided in the last section, may be had at any time before the trial, at the option of the party claiming it, before a Judge or clerk of the court, on a previous notice to the party to be examined, and any other adverse party, of at least five days, unless, for good cause shown, the Judge order otherwise. But

the party to be examined shall not be compelled to attend in another county than that of his residence, or where he may be served with a summons for his attendance.

335. The party to be examined, as in the last section provided, may be compelled to attend in the same manner as a witness who is to be examined conditionally; and the examination shall be taken and filed by the Judge or clerk in like manner, and may be read by either party on the trial.

Existing suits. Party how compelled to attend.

336. The examination of the party thus taken, may be rebutted by adverse testimony.

Existing suits. Testimony of party may be rebutted.

337. If a party refuse to attend and testify, as in the last four sections provided, he may be punished as for a contempt, and his complaint, answer, or reply may be stricken out.

Existing suits. Effect of refusal to testify.

338. A party examined by an adverse party, as in this chapter provided, may be examined on his own behalf, subject to the same rules of examination as other witnesses. But if he testify to any new matter, not responsive to the inquiries put to him by the adverse party, or necessary to explain or qualify his answers thereto, or discharge when his answers would charge himself, such adverse party may offer himself as a witness on his own behalf in respect to such new matter, subject to the same rules of examination as other witnesses, and shall be so received.

Existing suits. Testimony of a party not responsive to the inquiries, may be rebutted by the oath of the party calling him.

339. A person for whose immediate benefit the action is prosecuted or defended, though not a party to the action, may be examined as a witness, in the same manner, and subject to the same rules of examination, as if he were named as a party.

Existing suits. Persons for whom action is brought or defended may be examined.

340. A party may be examined on behalf of his co-plaintiff or of a co-defendant as to any matter in which he is not jointly interested or liable with such co-plaintiff or co-defendant, and as to which a separate and not joint verdict or judgment can be rendered. And he may be compelled to attend in the same manner as at the instance of an adverse party; but the examination thus taken shall not be used in the behalf of the party examined. And whenever, in the case mentioned in sections three hundred and eighteen and three hundred and nineteen, one of several plaintiffs or defendants who are joint contractors, or are united in interest, is examined by the adverse party, the other of such plaintiffs or defendants may offer himself as a witness to the same cause of action or defence, and shall be so received.

Existing suits. Examination of co-plaintiff or co-defendant.

341. In any trial or inquiry in any suit, action or proceeding in any court, or before any person having, by law or consent of parties, authority to examine witnesses or hear evidence, the husband or wife of any party thereto, or of any person in whose behalf any such suit, action or proceeding is brought, prosecuted, opposed or defended, shall, except as hereinafter stated, be competent and compellable to give evidence, the same as any other witness, on behalf of any party to such suit, action or proceeding. Nothing herein contained shall render any husband or wife competent or compellable to give evidence for or

Husband and wife, witnesses.

against the other, in any criminal action or proceeding (except to prove the fact of marriage in case of bigamy,) or in any action or proceeding in consequence of adultery, or in any action or proceeding for divorce on account of adultery (except to prove the fact of marriage,) or in any action or proceeding for or on account of criminal conversation. No husband or wife shall be compellable to disclose any confidential communication made by one to the other during their marriage. The several sections of this chapter shall apply to existing suits.

CHAPTER VII.

EXAMINATION OF WITNESSES.

Existing suits.
Interest not to
exclude a wit-
ness.
Existing suits.
Parties to ac-
tions and spe-
cial proceed-
ings may be
examined as
witnesses on
their own be-
half, except in
certain cases.

342. No person offered as a witness shall be excluded by reason of his interest in the event of the action.

343. A party to an action or special proceeding in any and all courts and before any and all officers and persons acting judicially, may be examined as a witness on his own behalf, or in behalf of any other party, conditionally, on commission and upon the trial or hearing in the case, in the same manner and subject to the same rules of examination as any other witness; provided, however, that no party to the action or proceeding, nor any person who has a legal or equitable interest which may be affected by the event of the action or proceeding, nor any person who, previous to such examination, has had such an interest, however the same may have been transferred to or come to the party to the action or proceeding, nor any assignor of anything in controversy in the action, shall be examined in regard to any transaction or communication between such witness and a person at the time of such examination deceased, insane or lunatic, as a witness against a party then prosecuting or defending the action as executor, administrator, heir-at-law, next-of-kin, assignee, legatee, devisee, or survivor of such deceased person, or as assignee or committee of such insane person or lunatic, when such examination or any judgment or determination in such action or proceeding can in any manner affect the interest of such witness or the interest previously owned or represented by him. But when such executor, administrator, heir-at-law, next-of-kin, assignee, legatee, devisee, survivor or committee, shall be examined on his own behalf in regard to such transaction or communication or the testimony of such deceased or insane person or lunatic in regard to such transaction or communication (however the same may have been perpetuated or made competent,) shall be given in evidence on the trial or hearing on behalf of such executor, administrator, heir-at-law, next-of-kin, assignee, legatee, devisee, survivor, or committee, then all other persons not otherwise rendered incompetent shall be made competent witnesses in relation to such transaction or communication on said trial or hearing. The sections of this chapter shall apply to existing suits.

343a. When any person shall bring his suit 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 complaint, 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, 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.

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

343b. 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.

Or by executors and administrators.

How proved by them.

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

343c. 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.

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

343d. 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.

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

343e. In obtaining the testimony of witnesses in causes de-

Rules for summoning witnesses.

Subpoena for witnesses, how to issue.

Subpoena returnable immediately, to issue in term time only. Subpoena issuing in vacation how served.—R. C. c. 31, s. 59.

Witnesses to attend from term to term till discharged

Penalty for not attending. In civil cases.

In criminal cases.—R. C. c. 31, s. 60.

Entitled to pay, if they attend after the suit is settled in vacation unless notified.—R. C. c. 31, s. 61.

No execution to issue against defaulting witness until after *scire facias*.—R. C. c. 31, s. 62.

pendent in the Superior Courts, the following rules shall be observed in practice, to-wit:—

In suits where witnesses are to appear at any court, the clerk at the instance of the party shall issue a subpoena, 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.

Every subpoena made returnable immediately, shall be issued only in term time, and shall be personally served on the witness therein named.

A copy of every subpoena 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.

343f. 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 subpoena 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.

343g. *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.

343h. *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.

343i. 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 were 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, President of the University or the head of any other incorporated college of this State, 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.

343k. Commissioners to take depositions, appointed by the courts of this State, or by the courts of the States or territories 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 ad-

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 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. —1863, c. 22.

Adverse party allowed to cross-examine —R. C. c. 31, s. 63.

All comm'rs, arbitrators, referees, &c., empowered to summon witnesses to take their depositions. Also, clerks of courts.

Witness refusing to give his deposition, committed to jail. Commitment to recite the authority, &c.—R. C. c. 31, s. 64.

Sheriff to execute subpoena for witnesses summoned before comm'r, &c., under penalties.

Defaults of witnesses to be noted by commissioner. If made before a comm'r appointed out of the State, witness to pay penalty of \$50. What to be evidence of default.—R. C. c. 31, s. 65.

Default before comm'r acting under authority from this State, certified to court.

Proceedings thereon.—R. C. c. 31, s. 66.

Witnesses attending jury of view, or commissioner, &c., paid as for attending court.—R. C. c. 31, s. 67.

minister 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.

343l. 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.

343m. 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 three hundred and forty-three *h*.

343n. 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 three hundred and forty-three *l*.

343o. 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.

Subpœnas to attend commissioners and others, in certain cases issued by clerk.—R. C. c. 31, s. 68.

343p. 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.

Witnesses refusing to depose in court, to be imprisoned.—R. C. c. 31, s. 69.

343q. 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.

During attendance exempt from service of civil process.—R. C. c. 31, s. 70.

343r. 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, one dollar, provided the witness lives within the county, or the sum of one dollar and a half, if he lives without the county; also his ferriage.

Fees of witness for attendance at court.—R. C. c. 31, s. 71.

343s. 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 subpœnas 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 subpœnas or commissions issued.

After removal of a cause, subpœnas and commissions may issue from either court.—R. C. c. 31, s. 72.

343t. Every person summoned, who shall attend as a witness 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 ferriage, 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

Witness to prove his attendance at each court.

May recover pay for his at-

tendance.—R. C. c. 81, s. 73.

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.

On final judgment, tickets to be filed and taxed with costs.

Party cast to pay but for two witnesses to the same fact.—R. C. c. 81, s. 74

Party recovering judgment shall recover costs, unless otherwise provided.—R. C. c. 81, s. 75.

343u. 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.

343v. 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.

Costs of petitions paid as court may decree.—R. C. c. 81, s. 76.

343w. 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.

When a subpoena *duces tecum* may issue.—R. C. c. 81, s. 81.

343x. 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 subpoena *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 subpoena to testify.

CHAPTER VIII.

MOTIONS AND ORDERS.

Definition of an order.

344. Every direction of a court or Judge, made or entered in writing, and not included in a judgment, is denominated an order.

Definition of a motion.
Motions how

345. (1.) An application for an order is a motion.
(2.) Motions may be made to the Clerk of a Superior Court, or to a Judge out of court, except for a new trial on the merits.

(3.) Motions must be made within the district in which the action is triable. and where made.

(4.) A motion to vacate or modify a provisional remedy, and an appeal from an order allowing a provisional remedy, shall have preference over all other motions.

(5.) No order to stay proceedings for a longer time than twenty days shall be granted by a Judge out of court, except upon previous notice to the adverse party. Stay of proceedings.

(6.) When any party intends to make or oppose a motion in any court of record, and it shall be necessary for him to have the affidavit of any person who shall have refused to make the same, such court may, by order, appoint a referee to take the affidavit or deposition of such person. Such person may be subpœnaed and compelled to attend and make an affidavit before such referee, the same as before a referee to whom it is referred to try an issue. And the fees of such referee for such service shall be three dollars per day. Compelling parties to testify.

(7.) Whenever a motion shall be made in any cause or proceeding in any of the courts of this State, to obtain an injunction order, order of arrest, or warrant of attachment, granted in any such case or proceeding, it shall be the duty of the Judge before whom such motion is made, to render and make known his decision on such motion within ten days after the day upon which such motion shall or may be submitted to him for decision. Decision on motion.

346. When a notice of a motion is necessary, it must be served eight days before the time appointed for the hearing; but the court or Judge may, by an order to show cause, prescribe a shorter time. Notice of motion.

CHAPTER IX.

ENTITLING AFFIDAVITS.

347. It shall not be necessary, to entitle an affidavit in the action, but an affidavit made without a title, or with a defective title, shall be as valid and effectual, for every purpose, as if it were duly entitled, if it intelligibly refer to the action or proceeding in which it is made. Existing suits. Affidavits defectively entitled, valid.

CHAPTER X.

COMPUTATION OF TIME.

348. The time within which an act is to be done, as herein provided, shall be computed by excluding the first day, and including the last. If the last day be Sunday, it shall be excluded. Time, how computed.

CHAPTER XI.

NOTICES AND FILING AND SERVICE OF PAPERS.

Existing suits.
Notice, &c.,
how served.
subpœna for
witnesses.

349. Notices shall be in writing; notices and other papers may be served on the party or his attorney personally, or in the manner prescribed in section eighty, where not otherwise provided in this chapter.

(1.) If upon an attorney, service may be made during his absence from his office, by leaving the paper with his clerk therein, or with a person having charge thereof; or, when there is no person in the office, by leaving it, between the hours of six in the morning and nine in the evening, in a conspicuous place in the office; or, if it be not open so as to admit of such service, then by leaving it at the attorney's residence, with some person of suitable age and discretion.

(2.) If upon a party, it may be made by leaving the paper at his residence, between the hours of six in the morning and nine in the evening, with some person of suitable age and discretion.

(3.) Service of a subpœna for witnesses may be made by a sheriff, coroner or constable, and proved by the return of such officer; or the service may be made by any person not a party to the action, and proved by his oath.

A subpœna for witnesses need not be signed by the clerk of the court; it shall be sufficient if subscribed by the party or his attorney.

Existing suits.
Service by
mail.

350. Service by mail may be made where the person making the service and the person on whom it is to be made reside in different places, between which there is regular communication by mail. But service by mail shall not be good on any party living more than one mile from the post office to which it is addressed.

Existing suits.
Service by
mail.

351. In case of service by mail, the paper must be deposited in the post office, addressed to the person on whom it is to be served, at his place of residence, and the postage paid.

Existing suits.
Double time
when served
by mail.

352. Where the service is by mail it shall be double the time required for a letter to reach the party to whom it is addressed by the ordinary usage of the mail.

Existing suits.
When this
chapter does
not apply.

353. The provisions of this chapter shall not apply to the service of a summons, or other process, or of any paper to bring a party into contempt. The several sections of this chapter shall apply to existing suits.

CHAPTER XII.

DUTIES OF SHERIFFS AND CORONERS.

Duty of sher-
iff and coroner
in serving or
executing pro-
cess and how

354. Whenever, pursuant to this chapter, the sheriff may be required to serve or execute any summons, order or judgment, or to do any other act, he shall be bound to do so in like manner as upon process issued to him, and shall be equally liable

in all respects for neglect of duty ; and if the sheriff be a party, the coroner shall be bound to perform the service, as he is now bound to execute process where the sheriff is a party ; and all the provisions of this act relating to sheriffs shall apply to coroners when the sheriff is a party. Sheriffs and coroners may return process by mail. Their liabilities in respect to the execution of process shall be as now prescribed by law.

enforced ; may return process by mail.

CHAPTER XIII.

ACCOUNTABILITY OF GUARDIANS.

355. No guardian appointed for an infant shall be permitted to receive property of the infant, until he shall have given sufficient security, approved by a Judge, or the court, to account for and apply the same under the direction of the court.

Guardian not to receive property until security given.

CHAPTER XIV.

POWERS OF REFEREES.

356. Every referee appointed pursuant to this act shall have power to administer oaths in any proceeding before him, and shall have generally the powers now vested in a referee by law.

Powers of referees.

CHAPTER XV.

MISCELLANEOUS PROVISIONS.

357. If an original pleading or paper be lost or withheld by any person, the court may authorize a copy thereof to be filed and used instead of the original.

Papers lost or withheld, how supplied.

358. The various undertakings required to be given by this act must be filed with the clerk of the court, unless the court expressly provides for a different disposition thereof, except that the undertakings provided for by the chapter on the claim and delivery of personal property, shall, after the justification of the sureties, be delivered by the sheriff to the parties respectively, for whose benefit they are taken.

Where undertaking to be filed.

359. The time for publication of legal notices shall be computed so as to exclude the first day of publication and include the day on which the act or event, of which notice is given, is to happen, or which completes the full period required for publication.

Time for publication of notices, how computed.

360. Printed copies in volumes of statutes, code, or other written law, enacted by any other State or territory, or foreign government, purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law in the courts and judicial tribunals of such State, Territory, or government, shall be admitted by

Laws of other States and governments, how proved.

the courts and officers of this State, on all occasions, as presumptive evidence of such laws. The unwritten or common law of any State or Territory, or foreign government, may be proved as facts by parol evidence; and the books of reports of cases adjudged in their courts, may also be admitted as presumptive evidence of such law.

TITLE XV.

ACTIONS IN PARTICULAR CASES.

CHAPTER I.

ACTIONS AGAINST FOREIGN CORPORATIONS.

Where and by whom brought.

361. An action against a corporation created by, or under the laws of any other State, government, or country, may be brought in the Superior Court of any county in which the cause of action arose, or in which it usually did business, or in which it has property, in the following cases:

(1.) By a resident of this State, for any cause of action.

(2.) By a plaintiff, not a resident of this State, when the cause of action shall have arisen, or the subject of the action shall be situated within this State.

CHAPTER II.

ACTIONS IN PLACE OF SCIRE FACIAS, QUO WARRANTO, AND OF INFORMATIONS IN THE NATURE OF QUO WARRANTO.

Scire facias and quo warranto abolished and this chapter substituted.

362. The writ of *scire facias*, the writ of *quo warranto*, and proceedings by information in the nature of *quo warranto*, are abolished; and the remedies heretofore obtainable in those forms may be obtained by civil actions under the provisions of this chapter. But any proceedings heretofore commenced, or judgment rendered, or right acquired, shall not be affected by such abolition.

Action may be brought by Attorney General to vacate a charter, by direction of the Legislature.

363. An action may be brought by the Attorney General, in the name of the State, whenever the Legislature shall so direct, against a corporation, for the purpose of vacating or annulling the act of incorporation, or an act renewing its corporate existence, on the ground that such act or renewal was procured upon some fraudulent suggestion, or concealment of a material fact, by the person incorporated, or by some of them, or with their knowledge and consent.

Action to annul a corporation, when and how brought by Attorney Gen-

364. An action may be brought by the Attorney General, in the name of the State, on leave granted by the Supreme Court or a Judge thereof, for the purpose of vacating the charter or annulling the existence of a corporation, other than municipal, whenever such corporation shall—

(1.) Offend against any of the provisions of the act or acts creating, altering, or renewing such corporation; or,

(2.) Violate the provisions of any law by which such corporation shall have forfeited its charter by abuse of its powers; or,

(3.) Whenever it shall have forfeited its privileges or franchises by failure to exercise its powers; or,

(4.) Whenever it shall have done or omitted any act which amounts to a surrender of its corporate rights, privileges and franchises; or,

(5.) Whenever it shall exercise a franchise or privilege not conferred upon it by law.

And it shall be the duty of the Attorney General whenever he shall have reason to believe that any of these acts or omissions can be established by proof, to apply for leave, and upon leave granted to bring the action, in every case of public interest, and also in every other case in which satisfactory security shall be given to indemnify the State against the costs and expenses to be incurred thereby.

365. Leave to bring the action may be granted upon the application of the Attorney General; and the court or Judge may at discretion, direct notice of such application to be given to the corporation or its officers, previous to granting such leave, and may hear the corporation in opposition thereto.

366. An action may be brought by the Attorney General in the name of the people of this State, upon his own information, or upon the complaint of any private party, against the parties offending in the following cases:

(1.) When any person shall usurp, intrude into, or unlawfully hold or exercise any public office, civil or military, or any franchise within this State, or any office in a corporation created by the authority of this State; or,

(2.) When any public officer, civil or military, shall have done or suffered an act which, by the provisions of law, shall make a forfeiture of his office; or,

(3.) When any association or number of persons shall act within this State as a corporation, without being duly incorporated.

367. An action may be brought by the Attorney General, in the name of the State, for the purpose of vacating or annulling letters patent granted by the State, in the following cases:

(1.) When he shall have reason to believe that such letters patent were obtained by means of some fraudulent suggestion, or concealment of a material fact, made by the person to whom the same were issued or made, or with his consent or knowledge; or,

(2.) When he shall have reason to believe that such letters patent were issued through mistake, or in ignorance of a material fact; or,

(3.) When he shall have reason to believe that the patentee, or those claiming under him, have done or omitted an act, in violation of the terms and conditions on which the letters

eral, by leave of the Supreme Court.

Leave, how obtained.

Action upon information or complaint, of course.

Action when and how brought to vacate letters patent.

patent were granted, or have by any other means forfeited the interest acquired under the same.

Relator, when
to be joined as
plaintiff.

368. When an action shall be brought by the Attorney-General, by virtue of this chapter, on the relation or information of a person having an interest in the question, the name of such person shall be joined with the State as plaintiff, and in every such case the Attorney-General may require as a condition for bringing such action, that satisfactory security shall be given to indemnify the State against the costs and expenses to be incurred thereby; and in every case where such security is given, the measure of the compensation to be paid by such person or persons to the Attorney-General, shall be left to the agreement of the parties express or implied.

Complaint,
and arrest of
defendant, in
action for
usurping an
office.

369. Whenever such action shall be brought against a person for usurping an office, the Attorney-General, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightfully entitled to the office, with a statement of his right thereto; and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office, and by means of his usurpation thereof, an order may be granted by a Judge of the Supreme Court for the arrest of such defendant, and holding him to bail, in the manner, and with the same effect, and subject to the same rights and liabilities, as in other civil actions where the defendant is subject to arrest.

Judgment in
such actions.

370. In every such case, judgment shall be rendered upon the right of the defendant, and also upon the right of the party so alleged to be entitled, or only upon the right of the defendant, as justice shall require.

Assumption of
office, &c., by
relator, when
judgment is in
his favor.

371. If the judgment be rendered upon the right of the person so alleged to be entitled, and the same be in favor of such person, he shall be entitled, after taking the oath of office, and executing such official bond as may be required by law, to take upon himself the execution of the office; and it shall be his duty, immediately thereafter, to demand of the defendant in the action all the books and papers in his custody, or within his power, belonging to the office from which he shall have been excluded.

Proceedings
against de-
fendant, on re-
fusal to deliv-
er books or
papers.

372. If the defendant shall refuse or neglect to deliver over such books or papers, pursuant to the demand, he shall be deemed guilty of a misdemeanor, and the same proceedings shall be had, and with the same effect, to compel delivery of such books and papers, as are prescribed by law.

Damages, how
recovered.

373. If judgment be rendered, upon the right of the person so alleged to be entitled, in favor of such person, he may recover, by action, the damages which he shall have sustained by reason of the usurpation by the defendant of the office from which such defendant has been excluded.

One action
against sever-
al persons
claiming office
or franchise.

374. Where several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise.

375. When the defendant, whether a natural person or a corporation, against whom such action shall have been brought, shall be judged guilty of usurping or intruding into, or unlawfully holding or exercising any office, franchise, or privilege, judgment shall be rendered that such defendant be excluded from such office, franchise, or privilege, and also that the plaintiff recover costs against such defendant. The court may also, in its discretion, fine such defendant a sum not exceeding two thousand dollars, which fine, when collected, shall be paid into the treasury of the State.

Penalty for usurping office or franchise, how awarded.

376. If it shall be adjudged that a corporation against which an action shall have been brought pursuant to this chapter, has, by neglect, abuse, or surrender, forfeited its corporate rights, privileges, and franchises, judgment shall be rendered that the corporation be excluded from such corporate rights, privileges, and franchises, and that the corporation be dissolved.

Judgment of forfeiture against a corporation.

377. If judgment be rendered in such action against a corporation, or against persons claiming to be a corporation, the court may cause the costs therein to be collected by execution against the persons claiming to be a corporation, or by attachment or process against the directors or other officers of such corporation.

Costs against corporation, or persons claiming to be such, how collected.

378. When such judgment shall be rendered against a corporation, the court shall have the power to restrain the corporation, to appoint a receiver of its property, and to take an account, and make a distribution thereof among its creditors; and it shall be the duty of the Attorney-General, immediately after the rendition of such judgment, to institute proceedings for that purpose.

Restraining corporation, and appointment of receiver.

379. Upon the rendition of such judgment against a corporation, or for the vacating or annulling of letters patent, it shall be the duty of the Attorney-General to cause a copy of the judgment-roll to be forthwith filed in the office of the Secretary of State.

Copy of judgment-roll against corporation, where to be filed.

380. Such secretary shall thereupon, if the record relates to letters patent, make an entry in the records of the commissioners of the land office, of the substance and effect of such judgment, and of the time when the record thereof was docketed; and the real property granted by such letters patent may thereafter be disposed of by such commissioners in the same manner as if such letters patent had never been issued.

Entry of judgment relating to letters patent.

381. Whenever, by the provisions of law, any property, real or personal, shall be forfeited to the State, or to any officer for their use, an action for the recovery of such property, alleging the grounds of the forfeiture, may be brought by the proper officer, in any Superior Court of the State.

Actions for forfeiture of property to the State.

381a. All applications for writs of mandamus shall be made by summons and complaint.

Applications for writs of mandamus. 1871-'2, c. 75, s. 1. Manner in

381b. In all applications when the plaintiff seeks to enforce

which summons for mandamus shall issue and be returnable when the enforcement of a money demand is sought.—1871-'2, c. 75, s. 2.

Manner in which summons for mandamus shall issue and be returnable when other relief is sought.—1871-'2, c. 75, s. 3. Proviso. Complaints to be verified.—1871-'2, c. 75, s. 4.

a money demand, the summons shall issue and be made returnable as is prescribed by chapter eighteen of this Revisal.

381c. In all applications when the plaintiff seeks other relief than the enforcement of the payment of a money demand, the summons shall be made returnable before a Judge of the Superior or Supreme Court at chambers, or in term at a day specified in the summons, not less than ten days after the service of the summons and complaint upon the defendant, at which time the court, except for good cause shown, shall proceed to hear and determine the cause, both as to law and fact: *Provided, however*, That in cases arising under this section where issue of fact is raised by the pleadings, it shall be the duty of the court, upon the application of either party, to continue the same till said issue of fact can be decided by a jury of the next regular term of the court.

381d. All complaints in applications for mandamus shall be verified according to law.

CHAPTER III.

Defendant to file bond in action for real property.—1869-'70, c. 193 s. 1.

382. In all suits in the Superior Courts for the recovery of real property or the possession thereof, the defendant before he is permitted to plead, answer or demur, shall execute and file in the office of the Clerk of the Superior Court of the county wherein the suit is pending, a bond with good and sufficient sureties for the sum of two hundred dollars, to be void upon condition that the defendant pay to the plaintiff all such costs and damages as the said plaintiff may recover in the action.

Bond to be given in cases not determined.—1869-'70, c. 193, s. 2.

382a. In all cases in which the said action or suit has been commenced but not determined, and the said bond has not been filed, the same shall be done upon the plaintiff or his attorney giving ten days notice to the defendant to file the same.

Sureties may be required to justify.—1869-'70, c. 193, s. 3.

382b. It shall be lawful for the plaintiff or his attorney to require the sureties in sections one and two of this chapter to justify, or the defendant give better security.

Relief on failure to justify.—1869-'70, c. 193, s. 4. Proviso.

382c. Upon failure of the defendant to file the bond as required by the last three sections, or upon failure of the sureties to justify, the plaintiff shall have judgment and execution for the relief demanded in the complaint: *Provided*, that no defendant shall be required to give said bond if any attorney practicing in the court where the action is pending will certify to the court in writing that he has examined the case of the defendant and that in his opinion the plaintiff is not entitled to recover, and said defendant shall further file an affidavit that he is unable to give said bond.

CHAPTER IV.

ACTIONS FOR WASTE AND NUISANCE.

383. The action of waste is abolished ; but any proceeding heretofore commenced, or judgment rendered, or right acquired, shall not be affected thereby. Wrongs heretofore remediable by action of waste, are subjects of action as other wrongs, in which action there may be judgment for damages, forfeiture of the estate of the party offending, and eviction from the premises.

Action of waste abolished. Waste how remediable.

384. The provisions of the Revised Code relating to the action of waste shall apply to an action for waste brought under this act, without regard to the form of the action, so far as the same can be so applied.

Provisions of Revised Code applicable to action for waste under this chapter. When judgment of forfeiture and eviction to be given.

385. Judgment of forfeiture and eviction shall only be given in favor of the person entitled to the reversion, against the tenant in possession, when the injury to the estate in reversion shall be adjudged in the action to be equal to the value of the tenant's estate or unexpired term, or to have been done in malice.

386. The writ of nuisance is abolished ; but any proceeding heretofore commenced, or any judgment rendered, or right acquired, shall not be affected thereby.

Writ of nuisance abolished

387. Injuries heretofore remediable by writ of nuisance are subjects of action, as other injuries ; and in such action there may be judgment for damages, or for the removal of the nuisance, or both.

Remedy for injuries heretofore remediable by writ of nuisance.

TITLE XVI.

GENERAL PROVISIONS.

388. The words "real property," as used in this Code, are co-extensive with lands, tenements and hereditaments.

Definition of "real property."

389. The words "personal property," as used in this Code, include money, goods, chattels, things in action, and evidences of debt.

Definition of "personal property."

390. The word "property," as used in this Code, includes property real and personal.

Definition of "property."

391. The rule of common law, that statutes in derogation of that law are to be strictly construed, has no application to this Code.

Rule of construction.

392. All statutory provisions inconsistent with this Code are repealed ; but this repeal shall not revive a statute or law which may have been repealed or abolished by the provisions hereby repealed. And all rights of action given or secured by existing laws may be prosecuted in the manner provided by this Code. If a case shall rise in which an action for the enforce-

Statutory provisions inconsistent with this Code repealed.

ment or protection of a right, or the redress or prevention of a wrong, cannot be had under this Code, the practice heretofore in use may be adopted so far as may be necessary to prevent a failure of justice.

Rules and practice inconsistent with this Code abrogated.

393. The present rules and practice of the courts in civil actions, inconsistent with this Code, are abrogated, except where otherwise expressly provided, but where inconsistent with this Code, they shall continue in force, subject to the power of the respective courts to relax, modify, or alter the same.

Judges of Supreme Court shall make rules of practice.

394. The Judges of the Supreme Court of the State shall make, from time to time, rules for the practice of that Court, and also rules for the practice and procedure of the Superior Courts, not inconsistent with the provisions of this Code.

Judges of Superior Courts to suggest rules.

395. Every Judge of a Superior Court, at least once in two years, shall send to the Chief Justice of the Supreme Court, any suggestions which he may think fit, respecting the practice and procedure of the Courts, and respecting any other changes in the law which may seem likely to be useful.

If Judge of a Superior Court not present, court to be adjourned, when.

396. If the Judge of a Superior Court shall not be present to hold any term of a court, at the time fixed therefor, it shall be the duty of the sheriff to adjourn the court from day to day, until the fourth day of the term inclusive, unless he shall be sooner informed that the Judge, from any cause, cannot hold the term; if by sunset on the fourth day the Judge shall not appear to hold the term, or if the sheriff shall be sooner advised that the Judge cannot hold the term, it shall then be the duty of the sheriff to adjourn the court until the next term.

Pleadings, &c. how written.

398. Every process, pleading, report, order, judgment and other proceeding required to be in writing and all copies of records, shall be written on paper of the width of foolscap or of legal cap; a margin of from three-fourths of an inch to an inch wide, shall be left on the left-hand side of each page; if the sheet be written on both sides, it shall be so written, that when several sheets are attached at their tops, they may be read consecutively, without reversing the manuscript.

Judges of Superior Courts to issue writs of habeas corpus.

399. Judges of the Superior Courts shall have all the powers and be subject to all the duties in respect to issuing, hearing, and adjudicating on, writs of *habeas corpus*, as were given or imposed by law on the Judges of the late Superior Courts of law of this State.

TITLE XVII.

REGULATIONS RESPECTING EXISTING SUITS.

Clerk of Superior Court to transfer existing suits in

400. The Clerks of the Superior Courts, at the request of a party thereto within twelve months from the ratification of this Code, and on the payment of a fee of one dollar, shall enter

on a separate docket, all suits which, at the ratification aforesaid, shall have been commenced and in which final judgment has not been rendered in the late County Courts, Superior Courts of Law, and Courts of Equity of their respective counties.

which no final judgment.—
1868-9, c. 277,
s. 12.

401. And every suit not so transferred within the time aforesaid shall be abated, and the Clerk of the Superior Court shall tax the costs against the parties liable, and collect the same by the proper process.

Suits not transferred to abate.

402. The said suits shall be proceeded in and tried, under the existing laws and rules applicable thereto. After final judgment shall be rendered therein, the clerk shall enter such judgment on the execution docket required to be kept by him, and the subsequent proceedings shall be as provided for actions hereafter to be commenced.

If transferred how proceeded with.

403. Existing judgments and decrees not dormant, may in like manner be entered on the execution docket, and the subsequent proceedings shall be as is prescribed for actions hereafter to be commenced, as far as shall be compatible with the previous proceedings; and no lien acquired before the ratification aforesaid shall be lost by any change of process, occasioned by this chapter.

Existing judgments not dormant, may be transferred.

404. Judgments or decrees which are dormant at the ratification aforesaid, may be revived or enforced in the manner herein provided.

Dormant judgments, how revived.

406. The late sheriff of any county having in his hands any *fiери facias* execution, which has been levied on personal property of the defendants, which is unsold, shall proceed to sell the same, as now required by law; he shall pay over the proceeds, after deducting his fees, and shall also make return of the writ to the Clerk of the Superior Court of the county, to any court of which the writ is returnable, the proceeds to be paid by the clerk to the parties entitled thereto.

Executions levied on personal property.

407. The said sheriffs shall in like manner return all executions in their hands which are satisfied, whether by a sale of property or otherwise, and shall pay over any proceeds thereof.

Executions satisfied.

408. As soon as the successors of the said late sheriffs shall have qualified and given bonds as required by law, the said late sheriffs shall deliver to said successors, all writs of execution in their hands, which have not been satisfied, and have not been levied on at all, or which have been levied on property which has been sold and a residue remains unsatisfied, or have been levied on real property which in whole or in part remains unsold, with a return stating any receipt of money by them, and their action under the writ. The new sheriffs shall proceed to act under such writ as if the same had been addressed and issued to them, and shall make return thereof to the next term of the Superior Court of the county to any court of which the writ was returnable. Any new sheriff failing to make due return of such writs delivered to him shall forfeit and pay one hundred dollars to any person grieved thereby, to be recovered

Executions not levied at all, or levied on real property.

on motion to the court before which the writ is required to be returned.

All proceeds of executions in part only satisfied while in the hands of any late sheriff, shall be paid by him to the Clerk of the Superior Court of the county to any court of which the writ was returnable for the use of the parties entitled thereto, under the penalties now provided by law in case of failure.

Executions to
be docketed.

409. The clerk of any Superior Court to which any execution shall be returned as is above prescribed, shall, at the request of any person interested therein, and on the payment of one dollar, enter such execution on his judgment docket, and the like process may be thereafter had thereon as is provided in similar cases on judgments recovered after the ratification of this act.

Penalty on
Sheriff for
failing to re-
turn.

410. Any late sheriff or other officer having executions in his hands and failing to make due return thereof, and to pay the proceeds as herein prescribed, shall in each case forfeit and pay to any person grieved, one hundred dollars, to be recovered on motion to the Court.

Judgments
not dormant,
when.

411. No judgment shall be held to have become dormant by reason of any stay of execution thereon, in obedience to any general or special order, issued by the General lately commanding the Military District of which the State of North Carolina formed a part, and the time during which execution was so stayed shall not be counted in determining any question respecting a judgment being dormant.

Ordinance of
14th March,
1868, not af-
fected.

412. Nothing in this chapter contained shall affect or impair any right given by an ordinance of the Convention of this State entitled "An ordinance respecting the jurisdiction of the Courts of this State," ratified on the fourteenth day of March, one thousand eight hundred and sixty-eight, in the cases to which it is applicable.

Certain suits
and petitions
in Equity
transferred to
Superior
Court.—1871-
'2, c. 30, s. 1.

412a. WHEREAS, There are upon the dockets of the late Courts of Equity in this State, a considerable number of suits and petitions for the sale and partition of real and personal property in which the rights and estates of infants, *feme covert*s and others are concerned; in which orders for collection, orders for distribution, and other final orders and decrees have never been made, and which, through the inadvertence of parties, or from other causes, have not been transferred to the docket of the present Superior Courts, but under existing laws may have abated; therefore,

In order to protect the interest of all parties concerned in such causes, and to save costs therein, it shall be lawful for any party, plaintiff or defendant in any such suit or petition, at any time within twelve months from the ratification of this chapter, to have such suit or petition transferred to the trial dockets of the Superior Court for the county in which the same was pending.

Duty of clerk
in such cases.
—1871-'2, c.
30, s. 2,

It shall be the duty of all Clerks of the Superior Courts, upon the application of such party, plaintiff or defendant, immediately to transfer such suits or petitions to the trial dockets

of their respective counties ; and every such suit or petition so transferred, shall be tried, conducted and disposed of according to the course of the court and the practice and procedure which are applicable to all like writs and petitions, which have been already so transferred under laws allowing such transfer.

TITLE XVIII.

SUPREME COURT.

413. The Supreme Court shall have jurisdiction to review upon appeal, any decision of the courts below upon any matter of law or legal inference ; but no issue of fact shall be tried before this court ; and the court shall have power to issue any remedial writs necessary to give it a general supervision and control of the inferior courts. [Constitution, Article IV, Section 10.]

Jurisdiction of
Supreme
Court.

414. Cases shall be taken to the Supreme Court by appeal as provided in Chapter I, of Title XIV, of this Code of Civil Procedure.

Cases, how ta-
ken to Su-
preme Court.

415. The Supreme Court shall have original jurisdiction to hear claims against the State, but its decision shall be merely recommendatory ; no process in the nature of execution shall issue thereon : they shall be reported to the next session of the General Assembly for its action. [Constitution, Article IV, Section 11.]

Claims
against the
State.

416. Any person having any claim against the State may file his complaint in the office of the clerk of the Supreme Court, setting forth the nature and grounds of his claim ; he shall cause a copy of his complaint to be served on the Governor, and therein request him to appear on behalf of the State and answer his claim ; the copy shall be served at least twenty days before application for relief shall be made to the court. In case of an appearance for the State by the Governor, or any other authorized officer, the pleadings and trial shall be conducted in such manner as the court shall direct. If an issue of fact shall be joined on the pleadings, the court shall transfer it to the Superior Court of some convenient county for trial by a jury, as other issues of fact are directed to be tried ; and the Judge of the court before whom the trial is had shall certify to the Supreme Court, at its next term, the verdict, and the case, if any, made up and settled, as prescribed in section three hundred and one of the Code of Civil Procedure.

Manner of
prosecuting
claims against
the State.

If the State shall not appear in the action by any authorized officer, the court may make up issues and send them for trial as aforesaid. The Supreme Court shall in all cases report the facts found, and their recommendation thereon, with the reasons thereof, to the General Assembly at its next term.

Justices of Supreme Court may take probate of deeds, &c.—1868-'9, c. 277, s. 11.

417. The several Judges of the Supreme Court shall have like powers to take the probate of deeds, and to examine married women respecting their free consent to deeds made by them, to issue and hear writs of *habeas corpus*, to issue, modify or vacate writs of injunction, to issue warrants for the arrest of persons charged with crime, and to discharge such persons on bail, as is or may be given to Judges of the Superior Courts.

PROCEDURE IN SPECIAL PROCEEDINGS GENERALLY.

When all parties ask same relief.—1868-'9, c. 93, s. 1.

418. If all the parties in interest join in the proceeding and ask the same relief, the commencement of the suit shall be by petition setting forth the facts entitling the petitioners to relief, and the nature of the relief demanded.

In what cases Clerk may hear summarily.—1868-'9, c. 93, s. 2.

419. In such cases, if all persons to be affected by the decree, or their Attorney, shall have signed the petition, and they be of full age, the Clerk of the Superior Court shall have power to hear the petitions summarily, and to decide the same; if either or any of the petitioners shall be residing out of the State, an authority from him or them, to the Attorney, in writing, must be filed with the Clerk, before he shall make any order or decree to prejudice their rights.

If any of petitioners are infants, Judge must revise order.—1868-'9, c. 93, s. 3.

420. If any of the petitioners be an infant, or the guardian of an infant acting for him, no order or judgment of the Clerk, affecting the merits of the case, and capable of being prejudicial to the infant, shall be valid, unless submitted to, and approved by, the Judge of the Court in or out of term.

How special proceedings to be commenced.—1868-'9, c. 93, s. 4. Orders, &c., to be signed by Judge.—1868-'9, c. 93, s. 5. Judgments in civil actions.—1872-'3, c. 100.

421. When special proceedings are had against adverse parties, they shall be commenced as is prescribed for civil actions.

422. Every order or judgment, in a special proceeding, which is required to be made by a Judge of the Superior Court, either in or out of term, shall be authenticated by his signature.

422a. All judgments in civil actions, which have been rendered heretofore, and which have not been authenticated by the signature of the Judge, but in all other respects regular, be, and the same are, together with all processes issued to enforce the same, hereby declared regular and complete.

What parts of C. C. P. applicable.—1868-'9, c. 93, s. 6.

423. Both in respect to proceedings on petitions in which all the parties in interest join as petitioners and to special proceedings between adverse parties, the following portions of the Code of Civil Procedure, except as modified by special provisions in particular proceedings, shall be applicable as far as they can be, without prejudice to right and justice, and without inconvenience, to-wit: Titles one, two, three, four, five, six, seven; title eight, except sections one hundred and twenty-four and one hundred and twenty-five; titles nine, ten; title eleven, except so much of section two hundred and fifty-eight as limits the kinds of executions to three. In special proceeding the

judgment may be, that the parties, or any of them, shall do, or omit to do, any act according to the right and justice of the case; and upon such judgment the execution may issue, conformable thereto and be enforced as provided in section two hundred and fifty-seven of the Code of Civil Procedure. Titles twelve, thirteen, fourteen, fifteen, sixteen, seventeen and sections four hundred and thirteen and four hundred and fourteen of title eighteen.

424. No report or return made by any Commissioners shall be set aside, and sent back to them, or others for a new report, by reason of any defect or omission not affecting the substantial rights of the parties, but such defect or omission may be amended by the Court, or by the Commissioners, by permission of the Court.

No report set aside for trivial defects.—1868-'9, c. 93, s. 7.

WHEREAS, In consequence of the great uncertainty as to the proper jurisdiction of Superior Courts before judges, and Superior Courts before the probate judges and clerks of the Superior Courts, many proceedings have been in good faith erroneously instituted in one of said courts, when they should have been instituted in another of said courts, and in virtue of such proceedings in those cases in which judgments and decrees have been made, valuable rights have been acquired by purchasers or others, and in those cases in which judgments and decrees have not been made, much costs have already accrued; now, for the purpose of remedying the evils and wrongs resulting from such mistake of jurisdiction,

425. All proceedings heretofore had in the Superior Courts of this State in any action, petition, special proceeding in dower, for partition of real estate, widow's year's allowance, by administrators to sell real estate to pay debts, which may have been improperly or irregularly instituted and begun in said courts, be and are hereby in all things confirmed and made valid, so far as regards the question of jurisdiction in such cases, to the same extent as if such proceedings had been originally begun in the proper court.

Certain irregular proceedings in Superior Courts made legal.—1870-'1, c. 108, s. 1.

426. All such cases heretofore begun and instituted, and not yet determined, may be prosecuted to final judgment or decree in such courts and before the judges thereof, and jurisdiction is hereby conferred upon said courts or the judges thereof, to hear, try and determine such causes as fully as if they had been originally instituted in said courts according to the act of the General Assembly in such cases made and provided.

Cases begun in such courts to be carried on to final judgment.—1870-'1, c. 108, s. 1.

WHEREAS, Many difficult questions have arisen and are likely to arise respecting the liability of guardians, administrators, executors and trustees, for investments of the money or property of their *cestui que trusts*, between the first day of May, one thousand eight hundred and sixty-one, and the first day of May, one thousand eight hundred and sixty-five; and whereas, it is desirable that such questions may be settled while the evidence can be procured,

427. Any guardian, administrator, executor or other trustee, Guardians,

trustees, &c., may file petition and issue summons for relief in certain cases.—1869-'70, c. 197, s. 1. Probate

who may have made investments of the money or property of his *cestui que trusts*, between the first day of May, one thousand eight hundred and sixty-one, and the first day of May, one thousand eight hundred and sixty-five, may issue a summons and file his petition before the Probate Judge for the county in which the guardianship, letters of administration, or letters testamentary were granted, or in the case of an express trust otherwise arising, of the county in which the trustee resides, in which petition he shall set forth a full and true account of his dealings with the estate of his *cestui que trusts*, and state the nature and amount of his investments, and upon and under what circumstances they were made, and what he then hath in hands, and the names and residences of all persons interested in the trust; all persons so interested shall be made parties as in other cases of special proceeding, and the Probate Judge shall state the account of said guardian, administrator, executor or other trustee, with his *cestui que trusts*, and shall put in writing and preserve the said account and all the evidence upon which the same shall be made up, and the account so stated and adjudged correct, shall have the force and effect of an account stated and settled between parties.

Judge to state account, &c.

Practice and appeal in such cases.—1869-'70, c. 193, s. 2.

428. The practice shall be as is provided in other cases of special proceedings, and any party may appeal as is provided in other cases of special proceedings.

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- SECTION 5. 68 N. C. 378.
 SECTION 8. 63 N. C. 95.
 SECTION 117. 63 N. C. 276; 68 N. C. 348.
 SECTION 12. 65 N. C. 189.
 SECTION 17. 67 N. C. 144.
 SECTION 37. 66 N. C. 427.
 SECTION 45. 65 N. C. 48, 385.
 SECTION 55. 68 N. C. 255; Ibid 385.
 SECTION 57. 64 N. C. 673; 67 N. C. 228.
 SECTION 61. 64 N. C. 90; 66 N. C. 455; Ibid. 9 547.
 SECTION 62. 66 N. C. 455.
 SECTION 63. 66 N. C. 438.
 SECTION 65. 63 N. C. 231; 65 N. C. 189.
 SECTION 66. 68 N. C. 160.
 SECTION 67. 67 N. C. 101.
 SECTION 69. 64 N. C. 631.
 SECTION 70. 63 N. C. 573.
 SECTION 72. 67 N. C. 291; 68 N. C. 215; Ibid 321.
 SECTION 82. 64 N. C. 115; 65 N. C. 144; 67 N. C. 425.
 SECTION 94. 64 N. C. 17; 65 N. C. 478.
 SECTION 95. 65 N. C. 63; 67 N. C. 228.
 SECTION 96. 64 N. C. 17; Ib. 150; Ib. 706.
 SECTION 98. 65 N. C. 63.
 SECTION 101. 64 N. C. 250; Ib. 417; Ib. 568; Ib. 678; 65 N. C. 382; Ib. 619; Ib. 406; 66 N. C. 244; Ib. 233; 68 N. C. 1.
 SEC. 101a. 68 N. C. 1.
 SEC. 111. 65 N. C. 511; Ib. 567, 637.
 SEC. 116. 63 N. C. 521.
 SEC. 128. 66 N. C. 116.
 SEC. 121. 64 N. C. 17; 65 N. C. 430.
 SEC. 132. 65 N. C. 430; Ib. 436; 67 N. C. 241; 68 N. C. 215.
 SEC. 133. 64 N. C. 624; 65 N. C. 76; Ib. 393, 66 N. C. 391; Ib. 423; 67 N. C. 235; Ib. 302; 68 N. C. 215; Ib. 367; Ib. 342.
 SEC. 152. 68 N. C. 91.
 SEC. 155. 67 N. C. 241.
 SEC. 174. 68 N. C. 91.

- SEC. 176. 65 N. C. 516.
SEC. 177. 67 N. C. 32.
SEC. 178. 67 N. C. 32.
SEC. 179. 67 N. C. 32.
SEC. 189. 65 N. C. 119.
SEC. 190. 64 N. C. 233.
SEC. 192. 65 N. C. 162; 66 N. C. 473.
SEC. 195. 63 N. C. 375.
SEC. 203. 64 N. C. 233.
SEC. 213. 65 N. C. 511, Ib. 567; Ib. 637.
SEC. 215. 66 N. C. 45.
SEC. 216. 63 N. C. 76; 68 N. C. 354.
SEC. 217. 65 N. C. 137; 66 N. C. 374; Ib. 442.
SEC. 218. 66 N. C. 321; 68 N. C. 497.
SEC. 224. 66 N. C. 387.
SEC. 225. 67 N. C. 403.
SEC. 232. 67 N. C. 84.
SEC. 237. 63 N. C. 395.
SEC. 241. 67 N. C. 455.
SEC. 242. 67 N. C. 455.
SEC. 244. 68 N. C. 509.
SEC. 245. 67 N. C. 383.
SEC. 247. 67 N. C. 383.
SEC. 248. 65 N. C. 137; 68 N. C. 354.
SEC. 249. 66 N. C. 438; 67 N. C. 241.
SEC. 254. 65 N. C. 221.
SEC. 263. 64 N. C. 72.
SEC. 264. 64 N. C. 115; Ib. 250; 66 N. C. 95; 67 N. C. 156.
SEC. 265. 66 N. C. 214; 67 N. C. 459.
SEC. 266. 66 N. C. 95; 67 N. C. 156.
SEC. 270. 64 N. C. 637.
SEC. 287. 67 N. C. 185; Ib. 285.
SEC. 292. 66 N. C. 231.
SEC. 297. 63 N. C. 375.
SEC. 299. 63 N. C. 483; 67 N. C. 47; Ib. 169; Ib. 257; Ib. 264; 68 N. C. 131;
Ib. 177.
SEC. 301. 63 N. C. 568; 66 N. C. 406.
SEC. 303. 64 N. C. 734; 66 N. C. 412; 67 N. C. 414.
SEC. 304. 65 N. C. 221.
SEC. 309. 64 N. C. 734.
SEC. 315. 65 N. C. 232; 68 N. C. 243; Ib. 451.
SEC. 319. 66 N. C. 444.
SEC. 325. 68 N. C. 243.
SEC. 331. 67 N. C. 152.
SEC. 341. 63 N. C. 319.
SEC. 342. 64 N. C. 607; 65 N. C. 183.
SEC. 343. 64 N. C. 313; Ib. 640; Ib. 607; Ib. 642; 65 N. C. 88; Ib. 183; Ib. 272;
67 N. C. 93; 68 N. C. 370; Ib. 385.
SEC. 343a. 11 Ired. 416; 3 Ired. 77; 12 Ired. 401; 4 Ired. 110.
SEC. 343b. 2 Dev. 31.
SEC. 343c. 3 Ired. 243.
SEC. 343d. 3 Mur. 314.
SEC. 345. 64 N. C. 69; 68 N. C. 307.
SEC. 365. 64 N. C. 225; Ib. 251.
SEC. 366. 65 N. C. 119.
SEC. 368. 65 N. C. 225; Ib. 251.
SEC. 369. 65 N. C. 119.
SEC. 393. 65 N. C. 403.
SEC. 394. 65 N. C. 1.
SEC. 396. 64 N. C. 632.
SEC. 397. 66 N. C. 298, 309.
SEC. 403. 65 N. C. 1; Ib. 573.
SEC. 414. 67 N. C. 449.

CHAPTER 18.

CODE OF CIVIL PROCEDURE SUSPENDED.

SECTION

1. How civil actions commenced.
2. Form of summons.
3. Filing of complaint.
4. Answer of defendant.
5. Reply to answer. Trial.

SECTION

6. Writs now in the hands of the sheriff or clerk.
7. Executions issued, how tested and returned.
8. Proceeding by attachment.
9. How long act to remain in force.

How civil actions commenced.—1870-'1, c. 42, s. 1.
Form of summons.—1870-'1, c. 42, s. 2.

1. ALL civil actions shall be commenced by issuing a summons.

2. The summons shall run in the name of the State, be signed by the Clerk of the Superior Court having jurisdiction to try the action, and under the seal of the court, and shall be directed to the sheriff of the county in which the defendant resides or may be found. It shall be returnable to the regular term of the Superior Court of the county where the plaintiff, or one or more of them, or the defendants reside; and shall command the sheriff or other proper officer, to summon the defendant to appear at the next ensuing term of the Superior Court, and answer the complaint of the plaintiff, and shall be dated on the day of its issue. The officer to whom the summons is addressed shall note on it the day of its delivery to him, and shall execute it at least ten days before the beginning of the term to which it shall be returnable, and shall return it on the first day of the term.

Filing of complaint.—1870-'1, c. 42, s. 3.

3. The plaintiff shall file his complaint in the clerk's office on or before the third day of the term to which the action is brought, otherwise the suit shall, on motion, be dismissed by the court at the cost of the plaintiff.

Answer of defendant.—1870-'1, c. 42, s. 4.

4. The defendant shall appear and demur, plead or answer at the same term to which the summons shall be returnable, otherwise the plaintiff may have judgment by default, as is now allowed by law.

Reply to answer.—1870-'1 c. 42, s. 5.

5. The plaintiff shall join issue on the demurrer or reply to the answer at the same term to which such demurrer or answer may be filed; and the issues, whether of law or fact, shall stand for trial at the next term succeeding the term at which the pleadings are completed.

Trial.

Writs now in hands of sheriff or clerk.—1870-'1, c. 42, s. 6.

6. All writs of summons in civil actions now in the hands of the sheriff or clerk, shall be returned by said officers to the next term of the Superior Court, and such writs, together with all writs of summons in civil actions heretofore returned, in which no final judgment has been rendered, shall be placed by the clerk on the docket of the Superior Court at the next ensuing term, and the pleadings in such actions shall be conducted according to the rules prescribed in this chapter.

7. All executions issued or judgments in civil actions shall be tested as of the term next before the day on which they issued, and shall be returnable to the term of the court next after that from which they bear test; and all executions now in the hands of any sheriff, issued from any Superior Court, shall be returned to the next term of said court.

8. The provisions of this chapter shall not apply to proceedings by attachment.

9. Nothing in this chapter shall operate to repeal the provisions of the Code of Civil Procedure, which allow defendants to be arrested and held to bail in certain cases.

10. This chapter shall be in force until otherwise provided by law.

Executions issued, how tested and returned.—1870-'1, c. 42, s. 7.

Proceedings by attachment—1870-'1, c. 42, s. 8.
Exemptions from repeal.—1870-'1, c. 42, s. 9.
1872-'3, c. 14.

NOTE.—See 68. N. C. 245.

CHAPTER 19.

COMMERCIAL MANURES.

SECTION

1. Trade mark, name, place of business to be affixed to all commercial fertilizers.
2. Persons fraudulently selling manures to be liable for damages—Attachment served—Proviso.

SECTION

3. Deficiency of ingredients.
4. Analysis made by State Geologist.
5. Cost of analysis to be taxed.
6. Several parties may join in one suit
Jury to ascertain damages—Proviso.

1. ALL commercial manures and manipulated guanos sold or kept for sale in this State shall have affixed to every bag, barrel or parcel thereof containing fifty pounds or upwards, an especial name, trade mark or device by which the same may be known or designated, with the name or place of business of the manufacturer or seller, together with a true analysis or specification of the chemical contents, such as soluble bone, phosphate of lime, bone phosphate of lime, alkaline salts and ammonia, and the per centage of each of the above named ingredients contained in such package.

Trade-mark, name, place of business to be affixed to all commercial fertilizers.—1871-2. c. 203, s. 1.

2. Any manufacturer or trader who shall sell or offer for sale any such package without having affixed such stamp, impress or card, as prescribed in the first section of this chapter, or who shall fraudulently affix a stamp, impress or card, inconsistent with the requirements of the first section of this chapter, shall be held personally liable for all damages sustained by any one in the purchase of such manures, and the manure so sold shall be forfeited; and any such commercial manure held by any such trader or manufacturer shall be subject to attachment at the suit of any person damaged in the purchase of any such fertilizer, bearing such name, trade mark or stamp; the amount of such damage to be recovered before any tribunal

Persons fraudulently selling manures to be liable for damages.—1871-'2 c. 203, s. 2.

Proviso.

having competent jurisdiction : *Provided*, That nothing herein contained shall be construed to affect such commercial fertilizers now in the hands of dealers or manufacturers within the State.

Deficiency of ingredients,—1871-'2, c. 203, s- 3.

3. Any deficiency of the above mentioned ingredients in such fertilizers may be plead in bar of the recovery of any debt or debts contracted for fertilizers.

Analysis made by State Geologist.—1871-'2 c. 203, s. 4.

4. Any person or persons instituting suit against any such manufacturer for such damages, may on the payment of fifteen dollars to the State Geologist, cause a full and accurate analysis to be made by him, a certificate of which shall be presumptive evidence of the chemical elements and ingredients contained in the sample of fertilizer so analyzed, and of the package or parcel from which such sample was taken.

Cost of analysis to be taxed.—1871-'2, c. 203, s. 5.

5. In all cases where suits are brought, and an analysis had, and fifteen dollars paid as required in section four of this chapter, the said fifteen dollars shall be taxed and recovered as a part of the bill of cost against the party cast in such suit.

Several parties can join in one suit.—1871-'2, c. 203, s. 6.
Jury to ascertain damages.
Proviso.

6. It shall be lawful for one or more parties in the same county to join in one suit against the manufacturer or trader, and in entering judgment should there be more than one party damaged, the jury shall in their verdict ascertain the damage to each party so joined in the suit as plaintiff, and a judgment shall be rendered thereon accordingly: *Provided, however*, That the State Geologist shall be entitled to fifteen dollars for each separate analysis made for parties to such suit.

CHAPTER 20.

COMMISSIONERS OF AFFIDAVITS AND PROBATE OF DEEDS.

SECTION

1. Clerks 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, to be filed in secretary's office. His power and authority.
4. Commission recorded by Secretary of State, and certified to clerks of

SECTION

- courts, and there recorded. Certified copies of appointment or removal, evidence.
5. Secretary to prepare list of commissioners.
6. List to be printed.
7. To be printed in all subsequent volumes of acts of assembly.
8. List to be conclusive evidence.
9. List of revocations to be published.

Clerks and commissioners to take and certify affidavits.—R. C. c. 21, s. 1.

1. THE Clerks of the Superior Courts 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, if to be

used out of the county where taken, also under the seal of the court of which they are respectively clerks.

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. C. 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 secretary's office.

His power and authority.—R. C. c. 21, s. 3,

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 Superior 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 secretary of State, and certified to clerks of courts, and there recorded

Certified copy of appointment or removal, evidence.—R. C. c. 21, s. 4.

5. The Secretary of State shall as soon as may be, prepare and cause to be printed a list of all persons who, since the first day of May, one thousand eight hundred and sixty-five, have been appointed commissioners of affidavits and to take the probate of deeds in the several States and Territories of the United States and in the District of Columbia, under section

Secretary to prepare list of commissioners.—1869-'70, c. 194, s. 1.

two of this chapter setting forth the States, territory or district for which such persons were appointed, and the dates of their respective appointments, and he shall send a certified copy of said list to every clerk of a court in this State.

List to be printed.—1869-'70, c. 194, s. 2.

6. The Secretary of State shall cause a copy of said list to be printed in the next volume of the acts of the General Assembly.

To be printed in all subsequent volumes of acts of assembly.—1869-'70, c. 194, s. 8.

7. He shall also have printed in every subsequent volume of the acts of the General Assembly a list as aforesaid of all such commissioners appointed since the date of the previous list.

List to be conclusive evidence.—1869-'70, c. 194, s. 4.

8. The list of commissioners so published in any volume of the acts of the General Assembly shall be conclusive evidence in all courts of the appointments therein stated, and of the dates thereof.

List of revocations to be published.—1869-'70, c. 194, s. 5.

9. The Secretary shall also add to each of said lists that may be published after that provided for in section five of this chapter a list of all such commissioners whose appointments have been revoked, or have resigned, removed or died since the date of the list previously published, as far as the same may be known to him, with the dates of such revocation, resignation, removal or death.

CHAPTER 21.

COMMON LAW.

SECTION

1. Common law declared to be in force.

Common law declared to be in force.—R. C. c. 22.

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 22.

CONGRESS.

SECTION

1. Representation in Congress. 1st District. 2d District. 3d District. 4th District. 5th District. 6th District. 7th District, and 8th District.

SECTION

2. Time and manner of conducting elections. 3. Vacancies in representation, how filled.

SECTION

4. Comparison of polls for Members of Congress. When and where returning officers to meet. Proviso. Failure of returning officer to attend. Penalty. Messenger to be

SECTION

- despatched for returns. Poll, how examined and result declared.
5. Commissions of Members of Congress.
6. Compensation of returning officers.

(For Senators and their mode of election, see act of Congress of the 25th of July, 1866, 14th Statutes at Large, 243.)

1. For the purpose of selecting Representatives in the Congress of the United States, the State of North Carolina shall be divided into eight districts, as follows:

Representation in Congress.—1871-
72, c. 171, s. 1.
1st District.

The First District shall be composed of the counties of Currituck, Camden, Pasquotank, Perquimans, Gates, Chowan, Hertford, Hyde, Beaufort, Pitt, Pamlico, Bertie, Martin, Washington, Tyrrell, and Dare.

The Second District shall be composed of the counties of Edgecombe, Wilson, Greene, Wayne, Lenoir, Jones, Craven, Northampton, Warren, and Halifax.

2d District.

The Third District shall be composed of the counties of Onslow, Duplin, Sampson, Harnett, Cumberland, Bladen, Columbus, Brunswick, New Hanover, Carteret, and Moore.

3d District.

The Fourth District shall be composed of the counties of Johnston, Wake, Chatham, Orange, Granville, Franklin, and Nash.

4th District.

The Fifth District shall be composed of the counties of Randolph, Davidson, Guilford, Alamance, Person, Caswell, Rockingham, and Stokes.

5th District.

The Sixth District shall be composed of the counties of Robeson, Montgomery, Richmond, Anson, Stanly, Cabarrus, Union, Mecklenburg, Gaston, Lincoln, and Catawba.

6th District.

The Seventh District shall be composed of the counties of Forsythe, Surry, Yadkin, Davie, Rowan, Iredell, Alexander, Wilkes, Alleghany, Ashe, and Watauga.

7th District.

The Eighth District shall be composed of the counties of Caldwell, Burke, Cleaveland, Mitchell, Yancey, McDowell, Transylvania, Buncombe, Madison, Haywood, Jackson, Swain, Macon, Clay, Graham, Cherokee, Rutherford, Polk, and Henderson.

8th District.

2. 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 preceding 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 township wherein he resides.

Time and manner of conducting elections.—R. C. c. 52, s. 4.

3. 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

Vacancies in representation, how filled.—R. C. c. 52, s. 5.

shall require the voters to meet in the different townships of 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.

Comparison of
polls for mem-
bers of Con-
gress.—1871-
'2, c. 185, s. 21.

Where and
when return-
ing officers to
meet.

Proviso,

Failure of re-
turning officer
to attend.

Penalty.

Messenger to
be dispatched
for returns.

Poll, how ex-
amined and
result declared

Commissions
of members of
Congress.—

4. The sheriff or other returning officers of the counties of each Congressional District shall meet on the third Thursday of August, at the following places in the several districts, for the purpose of comparing the polls for members of Congress, namely: In the First District, at the court-house in the town of Plymouth, in the county of Washington. In the Second District, at the court-house in the town of Goldsboro', in the county of Wayne. In the Third District, at the court-house in the town of Wilmington, in the county of New Hanover. In the Fourth District, at the court-house in the city of Raleigh, in the county of Wake. In the Fifth District, at the court-house in the city of Greensboro', in the county of Guilford. In the Sixth District, at the court-house in the town of Wadesboro', in the county of Anson. In the Seventh District, at the court-house in the town of Wilkesboro', in the county of Wilkes. In the Eighth District, at the court-house in 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 return 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 Superior Court of law, and shall be guilty of a misdemeanor; but if the returns from all the counties of the district be not in by Friday noon, then the returning officers present shall adjourn from day to day till the returns from all the counties are received, and in the meantime shall dispatch a competent person, under oath, to the county of the delinquent returning officer for a certified copy of the vote of that county, which shall be furnished by the register of deeds of said county, and when received shall be counted; 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 a justice of the peace and ten electors, to be 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 representative, and if no decision is made by them, they shall determine it by lot.

5. Every person duly elected a representative to Congress, upon obtaining a certificate of his election as aforesaid, shall procure from the Governor a commission, certifying his ap-

pointment as a representative of the State, which the Governor shall issue on such certificate being produced. 1871-'2, c. 185, s. 26.

6. Every Sheriff or other returning officer shall be allowed three dollars per day for the time actually employed and ten cents per mile for distance travelled for making the returns for Senators and members of Congress, and one dollar for each notice served upon the county officers elect, and one dollar for giving certificates to representatives to the General Assembly, and to the Senators whose district is a single county : all to be paid by the county treasurer upon the affidavit of the returning officer. Compensation of returning officers.—1871-'2, c. 185, s. 27.

CHAPTER 23.

CONSTABLES.

SECTION

1. Oaths to be taken.
2. Power and duty of constables.
3. Constables to execute notices concerning matters in justice's juris-

SECTION

- diction. By delivering copy. Return. evidence.
4. Special constables in certain cases appointed by Justices.

(See Constitution, article IV section 30, Townships, 1868-'9, chapter 185, section 10.)

1. ALL constables, before they shall be qualified to act, shall take, before the township board of trustees, the oaths prescribed for public officers, and also an oath of office. Oaths to be taken.—R. C. c. 24, s. 8.

2. 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 township 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. Power and duty of constables.—R. C. c. 24, s. 9.

3. 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. Constables to execute notices concerning matters within justice's jurisdiction. By delivering copy. Return, evidence.—R. C. c. 24, s. 10.

4. For the better executing any precept or mandate in ex-Special consta-

bles in certain cases, appointed by justices. R. C. c. 24, s. 11.

traordinary 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.

CHAPTER 24.

CONCERNING CONTEMPT.

SECTION

1. What constitutes contempt.
2. Punishment.
3. Court may punish summarily.
4. Who may punish.
5. Commissioners may punish.
6. When offender to appear.
7. Clerk, sheriff, register, &c., may be punished. Parties to suits. Act-

SECTION

- ing without authority. Witnesses refusing or neglecting. Jurors conversing. Inferior officers, &c. Other cases heretofore adopted.
8. Proceedings, how to be prosecuted.
9. To sustain action, what necessary.
10. When attorney may be disbarred.

What constitutes contempt.—1863-'9, c. 177, s. 1.

1. ANY person guilty of any of the following acts may be punished for contempt:

(1.) Disorderly, contemptuous, or insolent behavior committed during the sitting of any court of justice, in immediate view and presence of the court, and directly tending to interrupt its proceedings, or to impair the respect due to its authority.

(2.) Behavior of the like character committed in the presence of any referee or referees, while actually engaged in any trial or hearing pursuant to the order of any court, or in the presence of any jury while actually sitting for the trial of a cause, or upon any inquest or other proceedings authorized by law.

(3.) Any breach of the peace, noise or other disturbance directly tending to interrupt the proceedings of any court.

(4.) Wilful disobedience of any process or order lawfully issued by any court.

(5.) Resistance wilfully offered by any person to the lawful order or process of any court.

(6.) The contumacious and unlawful refusal of any person to be sworn as a witness, or when so sworn, the like refusal to answer any material question.

(7.) The publication of grossly inaccurate reports of the proceedings in any court, about any trial, or other matter pending before said court, made with intent to misrepresent or to bring into contempt the said court; but no person can be punished as for a contempt in publishing a true, full and fair report of any trial, argument, decision or proceeding had in court.

(8.) Misbehavior of any officer of the court in any official transaction.

(9.) The several acts, neglects and omissions of duty, mal-

feasances, misfeasances, and nonfeasances, above specified and described shall be and they are hereby declared to be the only acts, neglects and omissions of duty, malfeasances, misfeasances and nonfeasances which shall be the subject of contempt of court. And if there be any parts of the common law now in force in this State which recognized other acts, neglects, omissions of duty, malfeasances, misfeasances or nonfeasances besides those specified and described above, the same are hereby repealed and annulled.

2. Punishment for contempt shall be by fine or imprisonment or both, in the discretion of the court. The fine not to exceed two hundred and fifty dollars and the imprisonment not to exceed thirty days. Punishment.—1868-'9, c. 177, s. 2.

3. Contempt committed in the immediate view and presence of the court may be punished summarily, but the court shall cause the particulars of the offence to be specified on the record, and a copy of the same to be attached to every committal, attachment or process in the nature of an execution founded on such judgment or order. Court may punish summarily.—1868-'9, c. 177, s. 3.

4. Every Justice of the Peace, Judge of Probate, Referee, Commissioner, Clerk of the Superior Court, or Judge of the Superior, or Justice of the Supreme Court, shall have power to punish for contempt while sitting for the trial of causes or engaged in official duties. Who may punish.—1868-'9, c. 177, s. 4.

5. The Board of Commissioners of each county shall have power to punish for contempt for any disorderly conduct or disturbance, tending to interrupt them in the transaction of their official business. Commissioners may punish.—1868-'9, c. 177, s. 5.

6. Whenever the contempt shall not have been committed in the immediate presence of the court, or so near as to interrupt its business, proceedings thereupon shall be by an order directing the offender to appear, within reasonable time, and show cause why he should not be attached for contempt. At the time specified in the order, the person charged with the contempt may appear and answer, and, if he fail to appear and show good cause why he should not be attached for the contempt charged, he shall be punished as provided in section second of this chapter. When offender to appear and show cause.—1868-'9, c. 177, s. 6.

7. Every court of record shall have power to punish as for contempt: Clerk, sheriff, register, &c., may be punished.—1868-'9 c. 177, s. 7.

(1.) Any Clerk, Sheriff, Register, Solicitor, Attorney, Counsellor, Coroner, Constable, Referee, or any other person in any manner selected or appointed to perform any ministerial or judicial service for any neglect or violation of duty or any misconduct, by which the rights or remedies of any party in a cause or matter depending in such court may be defeated, impaired, delayed or prejudiced for disobedience of any lawful order of any court or Judge, or any deceit or abuse of any process or order of any such court or Judge.

(2.) Parties to suits, attorneys, and all other persons for the non-payment of any sum of money ordered by such court, in Parties to suits &c.

cases where execution cannot be awarded for the collection of the same.

Acting with-
out authority.

(3.) All persons for assuming to be officers, attorneys or counsellors of the Court, and acting as such without authority, for receiving any property or person which may be in custody of any officer by virtue of any order or process of the Court, for unlawfully detaining any witness or party to any suit, while going to, remaining at, or returning from the Court where the same may be set for trial, or for the unlawful interference with the proceedings in any action.

Witnesses re-
fusing or neg-
lecting.

(4.) All persons summoned as witnesses in refusing or neglecting to obey such summons to attend, be sworn, or answer, as such witness.

Jurors con-
versing.

(5.) Parties summoned as jurors for impropriety, conversing with parties or others in relation to an action to be tried at such Court or receiving communication therefrom.

Inferior offi-
cers &c.

(6.) All inferior magistrates, officers and tribunals for disobedience of any lawful order of the Court, or for proceeding in any matter or cause contrary to law, after the same shall have been removed from their jurisdiction.

Other cases
heretofore
adopted.

(7.) All other cases where attachments and proceedings as for contempt have been heretofore adopted and practiced in courts of record in this State, to enforce the civil remedies or protect the rights of any party to an action.

Proceedings
how to be
prosecuted.—
1868-'9, c. 177,
s. 8.

8. Proceedings as for contempt shall be prosecuted and carried on, as provided in other special proceedings.

To sustain ac-
tion, what ne-
cessary.—1868
-'9, c. 177, s. 9.
No attorney to
be disbarred.—
1870-'1, c. 2 &c.

9. To sustain an action as for contempt, the act complained of must have been such as tended to defeat, impair, impede, or prejudice the rights or remedies of a party to an action then pending in Court.

10. No person who shall have been duly licensed to practice law as an attorney shall be debarred or deprived of his license and right so to practice law either permanently or temporarily, unless he shall have been convicted or in open court confessed himself guilty of some criminal offence, showing him to be unfit to be trusted in the discharge of the duties of his profession.

NOTE.—See 63 N. C. 397; '64 N. C. 202; 65 N. C. 353; 65 N. C. 637; 66 N. C. 1.

CHAPTER 25.

CORONER.

SECTION

1. To hold inquests. His duty on the occasion. Physicians may be summoned. To be paid for their services.

SECTION

2. When there is no sheriff, coroner shall act.

(See Constitution, Article IV, sec. 30 ; also "Official Bonds.")

1. 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 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 anything 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 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 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.

To hold inquests. His duty on the occasion.

Physicians may be summoned. To be paid for their services. —R. C. c. 25, s. 4.

2. 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.

When there is no sheriff coroner shall act. —R. C. c. 25, s. 5.

CHAPTER 26.

CORPORATIONS.

SECTION

1. Forming of private corporations. Qualifications.
2. Capital stock not stated for religious corporations.
3. Form of opening books of subscription.
4. Two-thirds of the capital stock requisite for the corporation.

SECTION

5. When two-thirds of the capital stock is subscribed, a meeting of stockholders may be called. Public notice given.
6. Subscribers to vote and elect officers.
7. Proposal of corporation to be abandoned if ten per cent. is not paid.

SECTION

8. Form of corporations. Clerk to endorse order for registration. What may be entitled evidence.
9. Fees of Clerk and Register.
10. Power of corporation. Continuous identity. Proviso. Rights, privileges, &c.
11. Corporation may have a lien on stock. Proviso. Estates may be sold under execution.
12. After registration company may hold meetings, &c.
13. Company to have no right before registration. Certificates to be given.
14. Certificates to be signed by officers of company. What certificate shall show.
15. False statements a misdemeanor.
16. Certificates to be endorsed by owners. Certificates invalid when.
17. Renewal of certificates.
18. Payment endorsed on certificate.
19. Book kept for registering stock corporations.
20. Individual liabilities.
21. Enforcement of liabilities. Judgments rendered. Conclusive evidence. Presumptive evidence. Duty of clerk.
22. Action can be brought against corporation. Insolvency of corporation. Judgment may be demanded. Court to determine the case.
23. Contracts exceeding \$100, to be in writing.
24. Contracts less than \$100, officers responsibility.
25. Contracts more than \$100, officers how responsible. Misdemeanor.

SECTION

26. What power corporations shall not have.
27. Shall not issue bills, &c., intended to circulate as money.
28. What corporations shall not hold over 300 acres of land.
29. Corporations may hold for not over 21 years when. When lands may be forfeited to the State.
30. Duty of grand jury and Solicitor.
31. Lands how sold, &c.
32. Existing corporations affected.
33. How corporations may be dissolved.
34. Abuse of power.
35. Non-user.
36. Insolvency.
37. Criminal conviction.
38. How summons in such cases served. Public notification held sufficient service.
39. Consequences of dissolution.
40. Advertisement of dissolution.
41. How capital stock may be increased.
42. Of insurance companies.
43. Secretary to appoint examiner.
44. Duty of officers of corporation to exhibit books, &c.
45. Tax on bills for incorporation presented to General Assembly.
46. Sales under deed of trust.
47. Corporation created by sale shall succeed to rights, &c.
48. Expiration of corporation, &c. Proviso.
49. Limitation of sections 46, 47 and 48 of this chapter.

The forming
of private cor-
porations.
1870-'1, c. 199,
s. 1.

1. Any three or more persons desiring to form themselves into a private corporation for any purpose not unlawful, may file with the clerk of the Superior Court of the county in which it is proposed that such corporation shall have its only or principal place of business, a written plan of incorporation, in which shall be set forth the following particulars:

(1.) The names and residences of those proposing to be incorporated.

Qualifications.

(2.) The name of the proposed corporation, the place in which it proposes to have its principal or only place of business, the general purpose of the corporation, and the nature of the business which it proposes to do.

(3.) The amount of the capital stock and the number of

shares into which it is to be divided, showing the par value of each share.

(4.) The number of shares which upon incorporation will be owned by each of named corporators.

(5.) The title of the principal officers.

(6.) By whom the corporation shall be governed and how they shall be elected, and by what proportion of corporators the by-laws shall be made, and the number of votes which the various number of shares held by one person shall have at a general meeting.

(7.) How often regular general meetings of the stockholders shall be had, and by whom the times and places of such meeting shall be designated.

(8.) Whether or not the stockholders of the corporation shall be individually liable for its debts.

(9.) Any other matters which it may be desirable to set forth in the organic law.

2. Corporations having no capital stock and no shares, and which are proposed not at all for trading purposes, but exclusively for religious, benevolent, charitable or social purposes, need not state the amount of their capital stock.

Capital stock not stated for religious corporations.—1871-'2, c. 199, s. 2.
Form of opening books of subscription.—1871-'2, c. 199, s. 3.

3. On the filing of such plan of incorporation, signed by the proposed original corporators, whose signatures shall be proved to the satisfaction of the clerk, as deeds are required to be, the clerk shall append to one or more copies thereof, a permit to open books of subscription to the capital stock of the proposed company, at such times and places as may be desired, and all subscriptions to such plans shall bind the subscribing parties according to the terms thereof.

4. If two-thirds or more of the capital stock be not subscribed for within twelve months after the date of such permit, (the day of the date excluded,) the proposition to incorporate shall be deemed abandoned.

Two-thirds of the capital stock requisite for corporation.—1871-'2, c. 199, s. 4.
When two-thirds capital stock are subscribed, a meeting of stockholders may be called.—1871-'2, c. 199, s. 5.

5. If two-thirds or more of the capital stock shall be subscribed for within the twelve months next ensuing the date of the said permit, it shall be the duty of the clerk on request of any subscriber or corporator, at any time within two years next ensuing the date of such permit, to call a meeting of the proposed corporators and subscribers, at the place designated in the plan of incorporation as the principal place of business of the proposed corporation, or at some convenient place near thereto; such call shall be advertised at least once a week for not less than twenty-one days, in some newspaper published in the judicial district in which such principal place of business is situated, or if there be no such newspaper, then in some newspaper published in the city of Raleigh, and at the door of the court-house of the county in which such principal place of business is situated. The clerk shall not be required to make such advertisement until he shall be paid the expense thereof.

Public notification given.

6. At the meeting held under such call the subscribers shall vote as prescribed in the plan of incorporation; they shall elect

Subscribers to vote and to

elect officers.
—1871-'2, c.
199, s. 6.

Proposal of in-
corporation to
be abandoned
if ten per cent.
is not paid.—
1871-'2, c. 199,
s. 7.

Form of incor-
poration.—
1871-'2, c. 199,
s. 8.

Clerk to en-
dorse order for
registration.

What may be
entitled evi-
dence.

Fees of clerk,
&c.—1871-'2,
s. 9.

Power of cor-
poration.
Continuous
identity.—
1871-'2, c. 199,
s. 10.
Proviso.

Rights and
privileges, &c.

such officers as may be provided for in the plan and such others as they may think proper; they may adopt any by-laws, not inconsistent with law, or with the said plan.

7. If ten per cent of the capital stock subscribed for be not paid before or at the said meeting, or within three months thereafter, to some person authorized to receive the same, the proposal of incorporation shall be deemed abandoned, and all sums paid on subscriptions for the stock shall be refunded, subject to a deduction of a ratable proportion of the expenses lawfully incurred by the purposes in procuring the incorporation.

8. It shall be the duty of the chief or some officer of the proposed corporation, within six months after the meeting aforesaid, in case ten per cent. or upwards on the subscriptions to the capital stock of the proposed corporation shall have been paid as above required, to certify such payment to the clerk, together with a list of the subscribers, showing the number of shares subscribed for by each, and the sums paid by each, and the proceeding of the meeting hereinbefore provided for; the same shall be attached to a copy of the plan of incorporation, filed in the clerk's office, and the clerk shall thereupon endorse thereon an order for the registration of such plan and list of subscribers and officers, by the register of deeds of the county, and upon such registration the proposed corporation shall be a corporation by the name and for the purposes in such plan set forth. Copies of such plan and lists from the books of the register and duly certified by him, shall be admitted as evidence in all courts, as copies of deeds are, or may be allowed to be.

9. The clerk and register shall respectively receive for their services the like fees as are or may be allowed on the probate and registration of a deed for land.

10. Every corporation formed under this chapter shall possess the following powers:

(1.) Continuous identity for the term named in the plan of incorporation, or if none be named, perpetually: *Provided*, that every corporation may, for just cause, and without prejudice to private rights, be suspended, dissolved, or nullified, according to any general public law now existing or which may be hereafter enacted by the General Assembly.

(2.) Power to contract and be contracted with in its corporate name, within the scope of the purpose of the corporation, either under its common seal or in cases where a seal is not required by law to the validity of a like contract by an individual through its chief officer, or by some other officer appointed for the purpose by the by-laws or by special resolution at a general meeting.

(3.) Power to sue and be sued, plead and be impleaded.

(4.) Power to make by-laws not unreasonable and not inconsistent with law, for the regulation and government of the corporators as such.

(5.) Powers to purchase, hold and convey personal property, and also real property, to a quantity not exceeding that specified in this chapter, or in any which may hereafter be enacted.

11. The corporation shall have a lien on the stock of each subscriber or stockholder for the unpaid residue of his subscription, and for all unpaid dues to the corporation: *Provided*, that if upon the certificate of ownership of shares, such indebtedness or liability do not appear, a *bona fide* purchaser of such shares without notice shall take free from any lien for the antecedent indebtedness of his assignor. The interest and estate of any subscriber or stockholder in any company may be sold under execution issuing upon any judgment recovered by the company against him as other like personal property may be by law.

Corporation may have a lien on stock.—1871-2, c. 199, s. 11. Proviso.

Estates may be sold under execution.

12. After the registration of the plan of incorporation as provided for in section one of this chapter, the company may hold meetings, enact by-laws, and elect officers, and exercise all the powers belonging to corporations under this chapter.

After registration company may hold meetings, &c.—1871-2, c. 199, s. 12. Company to have no right before registration.—1871-2, c. 199, s. 18.

13. No proposed corporation shall be deemed incorporated or shall do or attempt any corporate act except as the same is herein expressly allowed, or contract in its corporate name before the registration of the plan. The persons receiving subscriptions to the capital stock of the company may give certificates of subscriptions, and the proper persons may give receipts for payments upon such subscriptions; but no certificate of stock shall be issued until after such registration.

Certificates to be given.

14. Every certificate of the ownership of stock in any incorporated company shall be signed by the chief officer of the company, or by such other officer or officers as shall be appointed by the company for that purpose. It shall set forth:

Certificates to be signed by officer of company.—1871-2 c. 199, s. 14.

(1.) The name of the company.

(2.) The amount of its capital stock.

(3.) The par value of each share.

(4.) The name of the holder and the number of his shares.

(5.) The date of its issue.

What certificate shall show.

(6.) Whether or not the stockholders according to the plan of incorporation are individually liable on the contracts of the corporation.

(7.) The date and place of registration of the plan of incorporation.

(8.) The amount which has been paid on the shares.

15. If the chief or other authorized officer of any company shall issue any certificate of stock on which it shall not be stated whether or not the stockholders are individually liable on the contracts of the company, according to its plan of incorporation, or in which the fact of such liability shall be falsely stated, it shall be held that upon all contracts made after the date of such issue, all the officers of said company are individually liable as sureties for the company to such contracts, and they may be sued as such, whether by the plan of incorporation the individual stockholders were or were not liable, and the officer issuing such certificate shall be deemed guilty of a misdemeanor.

False statements a misdemeanor.—1871-2, c. 199, s. 15.

16. Certificates of stock shall be assignable by the endorse-

Certificates to

be endorsed
by owners.—
1871-'2, c. 199,
s. 16.

Certificates in-
valid, when.

Renewal of
certificates.—
1871-'2, c. 199,
s. 17.

Payment en-
dorsed on cer-
tificate.—1871
-'2, c. 199, s.
18.
Book kept for
registering
stock corpora-
tions.—1871-
'2, c. 199, s. 19.

Individual lia-
bilities.—1871
-'2, c. 199, s.
20.

Enforcement
of liabilities.—
1871-'2, c. 199,
s. 21.

ment of the owner, or by some writing attached thereto; but no assignment of the stock of any company by the registered plan of incorporation, of which the individual stockholders are liable for the contracts of the company, shall be valid to exonerate the assignor from such liability upon contracts made after such assignment, until such assignment shall have been entered on the stock book of the company, nor shall any company be bound to notice of such assignment until the same, authenticated as may be required by the by-laws, shall be presented to the proper officer for entry on such book.

17. Certificates of stock may be renewed or re-issued from time to time, according to the by-laws, and upon every renewal, or re-issue, the certificate shall set forth its own date and the date of the original issue.

18. Every payment for stock made by any holder to the company after the issue of any certificate, shall, at the request of the holder making the payment, be endorsed on such certificate.

19. Every corporation having a capital stock divided into shares, and not exclusively for religious, benevolent, charitable or social purposes, shall keep a book, in which shall be entered the names of original holders of certificates of stock, the number of shares, the par value of each, the amounts paid thereon, all assignment and re-issue of shares, with the date thereof; this book shall be open at all proper times and under proper regulations, to the inspection of all stockholders, and in the case of companies whose stockholders by the registered plan of incorporation are individually liable, to the inspection of all creditors and contractors with the company.

20. The stockholders in every corporation, which in its registered plan of incorporation shall set forth that the stockholders will be individually liable for the contracts of the company, shall be liable upon all judgments which may be confessed by, or recorded against the company, upon any contract made or entered into by the company, to the amount of the par value of the shares held by them respectively at the time of the making or entering into such contract, and such liability may be enforced in the manner following:

21. Any creditor obtaining a judgment against such corporation as is mentioned in the next preceding section in which judgments shall be set forth, the date of contract declared on, and having docketed the same in the Superior Court of the County in which the company has its only or principal place of business, and having caused an execution to issue against the property of the company, may, when such execution shall be returned unsatisfied, give notice to any person or persons who was or were a stockholder or stockholders in such company, that on a certain day, which shall not be less than twenty days after the service of such motion, he will move before the Clerk of the Superior Court of the county in which such stockholder or stockholders reside, for several judgments against him or them for sums not exceeding the par value of the shares

held by them respectively in such company at the date of the contract recovered on, and not exceeding in all the amount of such recovery; on motion pursuant to the notice, a certified transcript of the judgment against the company shall be held to be conclusive evidence of the existence of the debt by the company and of the date of the contract, unless the recovery shall be impeached for fraud by the answer of the defendant under oath, and the certificate of the proper officer of the company shall be presumptive evidence of the ownership by the defendant of the shares stated in such certificate at the date therein stated, unless the statement in the same shall be in like manner denied. And it shall be the duty of the clerk, unless the allegations of the plaintiff shall be denied as aforesaid, to give the judgment demanded; either party shall have the right to a trial by jury, and to an appeal under the regulations prescribed in other like cases.

Judgments rendered.

Conclusive evidence.

Presumptive evidence.

Duty of clerk.

22. Any creditor of a corporation, by judgment docketed in the county in which the corporation has its only or principal place of business, upon which an execution has been returned unsatisfied, or any corporator of a corporation who voluntarily or under compulsion, as is provided in the next preceding section, shall pay any such judgment against the corporation, may institute by summons, as is provided in other cases of special proceedings, an action against the corporation in the Superior Court of the county in which it has its only or principal place of business, and by his complaint suggest that such corporation is insolvent, of which the judgment against it shall be *prima facie* evidence, and demand judgment of the court, that the corporation be dissolved or suspended and its effects applied *pro rata* to the payments of its debts; and if the corporation be one for the contracts of which the individual stockholders are liable by the registered plan of organization, he may also demand judgment, that after the effects of the corporation shall have been exhausted the debts of the corporation and all necessary facts relating thereto may be ascertained, and judgment given against the individual stockholders for the rateable share of debt payable by each. The pleadings in such case shall be according to the course of the court, and the court shall determine the case as to equity and justice shall appertain, and may declare such corporation dissolved or suspended; and may from time to time as it may appear that any one or more of the stockholders are unable to pay their rateable share of the debts, make a new distribution of liability, so however that no stockholder shall be compelled to pay from his individual means more than the par value of his share of stock held by him when the contract of the corporation was made.

Action can be brought against corporation.—1871-2, c. 199, s. 22.

Insolvency of corporation.

Judgment may be demanded.

Court to determine the case.

23. Every contract of every corporation by which a liability may be incurred by the company exceeding one hundred dollars, shall be in writing, and either under the common seal of the corporation, or signed by some officer of the company authorized thereto, and shall state on the face thereof whether or

Contracts exceeding \$100 to be in writing.—1871-2, c. 199, s. 23.

not, according to the registered plan of the incorporation, the stockholders are individually liable for the contracts of the company, otherwise the same shall be void.

Contracts less than \$100.—1871-'2, c. 199, s. 24.
Officer's responsibility.

24. Any officer of a corporation making or professing to make any contract not in writing, in the name of, or in behalf of any corporation, of the value of one hundred dollars or less, shall be liable as surety for such corporation upon such contract, and may be sued either with the corporation, or separately, for a breach thereof.

Contracts over \$100.
Officers how responsible.

25. Any officer of a corporation professing or undertaking to make any contract of value greater than one hundred dollars in the name of, or on behalf of the corporation, not in writing, and either sealed with the common seal of the company, or signed by the same officer of the company authorized for such purpose, or in writing, and not setting forth truly on the face thereof, whether or not the stockholders of the company are or are not liable thereon, shall be held and deemed individually liable upon such contract for any breach thereof, as if the same had been made by him personally, and upon conviction shall be punished as for a misdemeanor.

Misdemeanor.

What power corporations shall not have.—1871-'2, c. 199, s. 26.
Shall not issue bills, &c., intended to circulate as money.—1871-'2, c. 199, s. 27.

26. No corporation formed under this chapter shall have any exclusive privileges or power to do any of the acts herein-after prohibited, to-wit :

27. To issue bills or notes, payable on demand, or intended to circulate as money, and any such corporation issuing or attempting to issue any such bills or notes, shall be liable to indictment, and on conviction of such offence, may be fined in the discretion of the court; and every officer of any corporation, signing his name for or on behalf of such corporation, to any such bills or notes, shall be guilty of a misdemeanor, and shall be fined and imprisoned at the discretion of the court.

What corporations shall not hold over three hundred acres of land.—1872-'3, c. 21.

28. No corporation formed under this chapter, except railroad, mining and manufacturing companies, shall have power to hold at the same time more than three hundred acres of land in fee simple, or for a longer term than twenty-one years.

Corporations may hold for not over twenty-one years, when.—1871-'2, c. 199, s. 29.

29. Any corporation may take a mortgage upon any quantity of land to secure a debt owing to the corporation, and may take a conveyance of any quantity of land in partial or total satisfaction of a debt due the corporation; and may purchase any quantity of land at a sale under execution against a debtor of the corporation, or at any individual sale of the property of a debtor of the corporation; but the corporation purchasing such land to a quantity exceeding, with its lands previously owned, three hundred acres, shall not be capable of holding the same for more than twenty-one years from the date of such purchase, and all lands so purchased in excess of the limited quantity and held by any corporation, shall at the end of twenty-one years from the date of such purchase be forfeited to the State, and may be recovered in action brought in the name of the State by its proper officer; the corporation purchasing such land may at any time within twenty-one years next ensuing the

When lands may be forfeited to the state.

date of its purchase, convey by deed under its common seal, such estate in said lands as it would have had under its purchase, but for the limitation herein contained.

30. It shall be the duty of the grand jury in each county to inquire and report to the solicitor, what lands at any time are held by any corporation in violation of the provisions of this chapter; and it shall be the duty of every solicitor, either upon or without such report, to institute proceedings for the forfeiture of all such lands, and to report the same to the Governor from time to time.

Duty of grand jury and solicitor.—1871-'2, c. 199, s. 30.

31. The lands recovered by the State under this chapter shall not be the subject of entry, but shall be sold at public sale for cash, under the direction of the Governor and Attorney General, and the proceeds paid into the State Treasury; and the sale shall be reported to the General Assembly at its next ensuing session.

Lands how sold, &c.—1871-'2, c. 199, s. 31.

32. All corporations (except railroad corporations) which at the ratification of this act shall be seized in fee, or for a longer term than three lives in being, or possessed for a longer time than twenty-one years next ensuing such ratification, of any lands or tenements exceeding three hundred acres in quantity, are required, within twenty-one years next ensuing the date of such ratification, to dispose of such excess; and the foregoing sections of this chapter relating to the power to purchase, hold and convey land, are applicable to such companies.

Existing corporations affected.—1871-'2, c. 199, s. 32.

33. All corporations formed under this chapter may be dissolved by special proceeding, instituted by the company or by any corporator, or by any judgment creditor, whose execution issued to the county in which the corporation has its only or principal place of business shall be returned unsatisfied, or by the authority of the Attorney General in the name of the State, for the causes hereinafter mentioned, to-wit:

How corporations may be dissolved.—1871-'2, c. 199, s. 33.

34. (1.) For any abuse of its powers to the injury of the public or of the corporators, or its creditors or debtors.

Abuse of power.—1871-'2, c. 199, s. 34.

35. (2.) For non-use of its powers for three years, or more, consecutively.

Non-user.—1871-'2, c. 199, s. 35.

36. (3.) For insolvency manifested by the return of an execution unsatisfied upon a judgment against the company, docketed in the Superior Court of the county where it has its only or principal place of business.

Insolvency.—1871-'2, c. 199, s. 36.

37. (4.) Upon any conviction of the company of a criminal offence, if such offence be persistent.

Criminal conviction.—1871-'2, c. 99, s. 37.

38. Upon any special proceedings for the dissolution of a corporation the summons shall be served on the chief or other officer of the corporation authorized for that purpose as writs of summons are required to be in like cases, and shall be served on the corporators, creditors, dealers and others interested in the affairs of the company, by publishing a copy thereof, at least weekly, for not less than three successive weeks, in some newspaper printed in the county in which such corporation has its only or principal place of business, or if there be no such

How summons in such cases served.—1871-'2, c. 199, s. 38.

newspaper published, then by posting a copy of such summons at the door of the court-house of such county, and publishing a copy thereof for the time and in the manner aforesaid in the newspaper published nearest the county-seat of the county in which such corporation has its only or principal place of business, or in some newspaper published in the city of Raleigh; and such publication shall be deemed and held sufficient service on all the corporators, creditors, of, or dealers with such corporation, and all such corporators, creditors or dealers or other parties interested, may intervene in said proceedings and become parties thereto for themselves, or for others in like interest, under such rules as the court for the purpose of justice shall prescribe.

Consequences
of dissolution.
—1871-'2, c.
199, s. 39.

39. Upon a judgment for the dissolution of any corporation, the court may appoint a receiver of its effects and make the proper order for the settlement of its affairs; after such judgment it shall continue to exist, and its corporate name may be used under the order of the court for the following purposes only:

- (1.) The collection of all debts owing to it;
- (2.) The sale of all its property and effects;
- (3.) The payment of all persons having just claims against it;
- (4.) The distribution of its surplus effects among the corporators;
- (5.) The payment of all costs connected with the settlement:

Advertisem't
of dissolution.
1871-'2, c. 199,
s. 40.

40. Every judgment for the dissolution of a corporation shall be published as the summons is required to be in section thirty-eight of this chapter.

How the cap-
ital stock may
be increased.
—1871-'2, c.
199, s. 41.

41. A corporation can increase its capital stock or add to the number of its shares only by a vote of a majority both in number and in value of the stockholders at a general meeting of the stockholders held pursuant to the by-laws; every such increase shall be registered as the plan of incorporation is required to be, and a reference to such registration shall be made in the margin of the registration of said plan. It shall also be advertised as a summons is required to be by section thirty-eight of this chapter.

Of insurance
companies.—
1871-'2, c. 199,
s. 42.

42. Every corporation doing the business of maritime, fire or life insurance, shall make to the Secretary of State, at least once in each year, at such time and in such form as shall be prescribed by him, a report of its condition, which shall be sworn to by the chief officer of the company, or by some other officer appointed for the purpose, and shall be published at the expense of the company in some newspaper selected by said Secretary, published in the city of Raleigh.

Secretary to
appoint exam-
iner.—1871-'2,
c. 199, s. 43.

43. Once in each year the Secretary of State shall appoint some competent person to examine into the affairs of every corporation which insures against loss, either by the perils of the sea or rivers, or by fire, or which insures lives, or which grants annuities or holds property in trust or receives money on deposit, who shall be paid by such companies a reasonable com-

Compensation
 pension, not to exceed ten dollars per day while engaged in such examination. He shall report to the Secretary of State the result of his examination, and whether, in his opinion, the said companies respectively are safe and are doing their business on safe principles, and such report shall be published by the Secretary at the expense of the company.

Duty of officers of corporations to exhibit books.--
 1871-'2, c. 199, s. 44.
 44. It shall be the duty of every officer of every corporation mentioned in the next preceding section, having in his possession or control any books, accounts or paper of any company of which he is an officer, to exhibit the same on demand to any person who shall be appointed under section forty-three of this chapter, and to give to such person all the information necessary to enable him to make a full and correct report; and every such officer failing or refusing so to do, or making to any person appointed under section forty-three of this chapter, knowingly or carelessly, any false statement respecting the affairs of the corporation of which he is an officer, shall be deemed guilty of a misdemeanor, and, on conviction, punished by fine and imprisonment, at the discretion of the court.

Tax on bills for incorporation presented to general assembly.--1871-'2, c. 199, s. 45
 Sales under deeds of trust.--1872-'3, c. 181, s. 1.
 45. No bill to incorporate any company shall be read in either house of the General Assembly unless the same shall be accompanied by a receipt from the Treasurer of the State for twenty-five dollars.

46. If a sale be made under a deed of trust or mortgage, executed by any company on all its works and property, and there be a conveyance pursuant thereto, such sale and conveyance shall pass to the purchaser at the sale not only the works and property of the company as they were at the time of making the deed of trust or mortgage, but any works which the company may, after that time and before the sale, have constructed, and all other property of which it may be possessed at the time of the sale other than debts due to it. Upon such conveyance to the purchaser, the said company shall, *ipso facto*, be dissolved, and the said purchaser shall forthwith be a corporation, by any name which may be set forth in the said conveyance, or in any writing signed by him and recorded in the same manner in which the conveyance shall be recorded.

Corporation created by sale shall succeed to rights, &c.--1872-'3, c. 181, s. 2.
 47. The corporation created by or in consequence of such sale and conveyance shall succeed to all such franchises, rights and privileges, and perform all such duties as would have been had or should have been performed by the first company but for such sale and conveyance, save only that the corporation so created shall not be entitled to the debts due to the first company, and shall not be liable for any debts of, or claims against, the said first company which may not be expressly assumed in the contract of purchase; and that the whole profits of the business done by such corporation shall belong to the said purchaser and his assigns. His interest in the corporation shall be personal estate, and he or his assigns may create so many shares of stock therein as he or they may think proper, not

exceeding together the amount of stock in the first company at the time of the sale, and assign the same in a book to be kept for that purpose. The said shares shall thereupon be on the footing of shares in joint stock companies generally, except only that the first meeting of the stockholders shall be held on such day and at such place as shall be fixed by the said purchaser, of which notice shall be published for two weeks in a newspaper.

Expiration of
corporation,
&c.—1872-'8,
c. 131, s. 3.

48. When such corporation shall expire or be dissolved, or its corporate rights and privileges shall have ceased, all its works and property and debts due to it shall be subject to the payment of debts due by it, and then to distribution among the members according to their respective interests; and such corporation may sue and be sued as before for the purpose of collecting debts due to it, prosecuting rights under previous contracts with it, and enforcing its liabilities and distributing the proceeds of its works, property and debts among those entitled thereto: *Provided*, that all debts and contracts of any corporation prior to or at the time of the execution of any mortgage or deed of trust by such corporation, shall have a first lien upon the property, rights and franchises of said corporation, and shall be paid off or secured before such mortgage or deed of trust shall be registered.

Proviso.

Limitation of
sections 46, 47,
and 48,—1872-
'8, c. 131, s. 4.

49. The provisions of sections forty-six, forty-seven and forty-eight, of this chapter shall not apply to any company in which the State of North Carolina has any interest.

CHAPTER 27.

COUNTIES AND COUNTY COMMISSIONERS.

SECTION

1. Every county a body politic.
2. How its powers can be exercised.
3. Power to sue and be sued, to purchase land, to make contracts, &c., and to dispose of property.
4. Proceedings by or against county.
5. Commissioners to hold meeting.
6. Majority of board a quorum.
7. Chairman.
8. Powers of commissioners: To levy taxes. To exempt from capitation. To provide for the payment of debt. To submit certain propositions to a vote of electors. To order elections, &c. To make orders respecting property. To audit ac-

SECTION

counts, &c. To purchase property, &c. To designate site for any county building, under certain regulations. To erect county buildings, &c. To repair county buildings. To construct and repair bridges in certain cases. To borrow money. To raise highway money. To divide county into districts and report to General Assembly, &c. To erect, divide or alter townships. To order the laying out, alteration or discontinuance of highways. To hear appeals. To exercise authority in certain cases in relation to high-

SECTION

ways, &c. To appoint an inspector of highways and bridges. To provide for the erection of a house of correction. To appoint a superintendent thereof. To provide for the employment of certain prisoners. To appoint proxies to represent interest held by county. To sell or lease real property. To provide for the maintenance of the poor. To employ overseer. To cause removal, &c., of certain poor persons. To establish public hospitals. To procure weights and measures. To appoint commissioners to open and clear rivers and creeks. To license keepers of inns, peddlers, &c. To establish public landings. To appoint inspectors and to try them for misbehavior in office and to remove them. Proviso in relation to the city of Wilmington. To appoint turners up of tobacco. To appoint pickers. To purchase or rent ground, warehouses, &c., for tobacco inspectors. To allow salaries to inspectors and to prescribe rules. To regulate certain prices. To appoint persons to receive moneys. To appoint inspectors of firewood for the city of Newbern. To appoint inspectors of provisions and forage. To license auctioneers. To induct into office certain county officers. To take and approve bonds. To require from any county officer a report under oath. To authorize their chairman to issue subpoenas. How such subpoena shall be served. To adopt a seal.

SECTION

9. Vote of majority of members necessary to exercise powers.
10. Accounts to be made out in items. Affidavit of claimant to be filed with claim. Board may disallow claim.
11. Certain fees and costs to be paid by township or city where offence committed. How bill of fees shall be made out. How assessed. Not applicable to felonies.
12. Accounts to be numbered. To be entered on minutes. Not to be withdrawn except as evidence.
13. Board to make annual publication of accounts audited. To make statement of county revenue and charges. Of permanent debt.
14. When commissioners to qualify and enter upon office. Oaths of office to be filed.
15. Pay of commissioners.
16. Pay of clerk.
17. Neglect of duty a misdemeanor.
18. Duty of clerk.
19. Clerk to publish an annual statement.
20. Neglect to publish statement a misdemeanor.
21. Certified copies of record declared evidence in all courts.
22. Finance Committee.
23. Power of committee. Misdemeanor.
24. Committee to report.
25. Oath administered by clerk of the Superior Court.
26. Remuneration.
27. Purchase of county bonds confirmed.
28. Lawful to purchase liabilities of counties.
29. Commissioners to fill vacancies.

1. EVERY County is a body politic and corporate, and has the powers specified by statute, or necessarily implied in such a body and no others.

2. Its powers can only be exercised by the Board of Commissioners, or in pursuance of a resolution adopted by them.

3. It has power :

(1.) To sue, and be sued, in the name of the Board of Commissioners.

(2.) To purchase and hold land within its limits, and for the use of its inhabitants, subject to the supervision of the General Assembly.

Every county a body politic.—1868, c. 20, s. 1.

How its powers can be exercised.—1868, c. 20, s. 2.

Power to sue and be sued.—1868, c. 20, s. 3.

To purchase land.

To make contracts, &c.

(3.) To make such contracts, and purchase and hold such personal property as may be necessary to the exercise of its powers.

To dispose of property.

(4.) To make such orders for the disposition or use of its property as the interest of its inhabitants require.

Proceedings by or against county.—1868, c. 20, s. 4.

4. All acts or proceedings by or against a County, in its corporate capacity, shall be in the name of the Board of Commissioners of the County.

Commissioners to hold meetings.—1868, c. 20, s. 5.

5. The Board of Commissioners in each County shall hold a regular meeting at the court-house, on the first Monday in September and March in each year. They may hold special meetings on the first Monday in every month, and no special meeting shall be holden for more than two days. Every meeting shall be open to all persons. They may adjourn their regular meetings in March and September, from day to day, until the business before them is disposed of.

1868-'9, c. 259.

Quorum.—1868, c. 20, s. 6.

6. A majority of the Board shall constitute a quorum.

Chairman.—1868, c. 20, s. 7.

7. They shall, at each regular September meeting, choose one of their number as Chairman for the ensuing year. In his absence at any meeting, the members present shall choose a temporary Chairman.

Power of commissioners to levy taxes.—1868, c. 20, s. 8.

8. The Commissioners have power :

(1.) To levy in the several Counties, for County purposes, the necessary taxes in the like manner with the State taxes, but the taxes so levied by them shall never exceed the double of the State tax, except for a special purpose, and with the special approval of the General Assembly. All taxes shall be levied at their regular meeting on the first Monday of February.

To exempt from capitation tax.

(2.) To exempt from capitation tax in special cases on account of poverty and infirmity.

To provide for payment of debt.

(3.) To provide by taxation or otherwise, for the prompt and regular payment, with interest, of any existing debt due by bond or otherwise from any County, except a debt, or the interest on any debt, contracted directly or indirectly in aid or support of the rebellion.

To submit certain propositions to a vote of electors.

(4.) To submit to a vote of the qualified electors in the County, any proposition to contract a debt or loan the credit of the County under Sec. 7, Art. VII, of the Constitution ; to order the time for voting upon such proposition, which shall be upon public notice thereof, at one or more places in each Township in the County, and publication in one or more County newspapers, if there be any, for three months next immediately preceding the time fixed on ; and such election shall take place, and be conducted under the laws as prescribed for the election of members of the General Assembly ; and the Commissioners shall provide for giving effect, in case of the adoption of the proposition, to the expressed will of a majority of the qualified voters in such election.

To order elections, &c.

(5.) To make such orders respecting the corporate property of the County as they deem expedient.

To make orders respecting property.

(6.) To liquidate and audit accounts against the County, and direct the raising of the sums necessary to defray them.

To audit accounts, &c.

(7.) To purchase real property necessary for any public County building, and for the support of the poor; and to determine the site thereof, where it has not been already located.

To purchase property, &c.

(8.) To remove or designate a new site for any County building; but the site of any County building already located shall not be changed, unless by a unanimous vote of all the members of the Board, at the regular September meeting, and unless upon notice of the proposed change, specifying the new site. Such notice shall be published in a newspaper printed in the County, if there be one, and posted in one or more public places in every Township in the County, for three months next immediately preceding the annual meeting at which the final vote on the proposed change is to be taken. Such new site shall not be more than one mile distant from the old, except upon the special approval of the General Assembly.

To designate site for any county building under certain regulations.

(9.) To erect the necessary County buildings, and to raise by tax upon the County the money necessary for their erection.

To erect county buildings, &c.

(10.) To repair the County buildings, and raise the expense thereof by tax.

To repair county buildings.

(11.) To construct and repair bridges in the County, and to raise by tax the money necessary therefor, where, in their judgment, the Township Board of Trustees cannot conveniently, and without unreasonable burden to the inhabitants, construct or repair the same; and when a bridge is necessary in like cases, over a stream which divides one County from another, the Commissioners of each County shall join in constructing or repairing such bridge; and the charge thereof shall be defrayed by the Counties concerned, in proportion to the number of taxable polls in each.

To construct and repair bridges in certain cases.

(12.) To borrow money for the necessary expenses of the County, and to provide for its payment, with interest, in yearly installments or otherwise, by taxation.

To borrow money.

(13.) To raise by tax, the necessary highway moneys in such manner as may be prescribed by law.

To raise highway moneys.

(14.) To divide each County into convenient districts, to determine the boundaries and prescribe the names of said districts, and to report the same to the General Assembly before the first of January, eighteen hundred and sixty-nine. They shall cause a map and survey of said districts, when fully completed, to be filed in the office of the Clerk of the Board of Commissioners of each County, and of the Secretary of State.

To divide county into districts and report to General Assembly, &c.

(15.) To erect, divide or alter Townships in the manner following: In any County, any three freeholders of each Township to be affected, may, after the notice presently to be mentioned, apply by petition to the Board of Commissioners, at the regular March or September meeting, to erect a new Township, or divide an existing Township, or alter the boundaries thereof. Notice of the application shall be posted in one or more public places in each of such Townships, and publish-

To erect, divide or alter townships.

1871-'2, c. 42.

ed in one or more newspapers printed in the County, if there be any, for at least four weeks immediately preceeding the regular March or September meeting at which the application is made to the Board. A map and survey of all the Townships affected, showing the proposed alterations, shall be furnished to the Board, a copy of which, if the application is granted, shall be filed with a certified statement of the action of the Board, in the office of the Clerk of the Board of Commissioners of the County, and of the Secretary of State. Whenever the Board erect a new Township, they shall designate its name, fix the time and place of holding the first election, and appoint two electors and a clerk, who shall open and keep the polls, and exercise all the powers necessary to an organization of the Township, as provided in Art. VII., Sec. 5, of the Constitution.

To order the laying out, alteration or discontinuance of highways.

(16.) To order the laying out, alteration, or discontinuance of any highway, in cases where they deem such highway important, and necessary to the public convenience, and are satisfied that the authority of the Township Board of Trustees will not be exercised to lay out, alter, or discontinue the same. But the Commissioners shall not move in the first instance, in such proceeding, except upon the written petition of not less than six electors, resident in the Townships, or in each of the Townships, where the highway is located, or the proposed route lies. And personal service of not less than ten days, of such petition and the time and place of hearing the same, must be made on the Clerk of each Township to be affected thereby.

To hear appeals.

(17.) To hear and determine, as prescribed by law, all appeals from Township Board of Trustees in matters respecting roads and bridges.

To exercise authority in certain cases in relation to highways, &c.

(18.) To exercise authority in laying out, altering, repairing and discontinuing highways; in establishing and settling ferries; in building and keeping up bridges; in laying off or discontinuing cart-ways; in providing draws in all bridges where the same may be necessary for the convenient passage of vessels; in appointing overseers of highways; in excusing persons from working on the highways; in allowing and contracting for the building of toll-bridges and taking bond from the builders thereof; and in licensing the erection of gates across highways. This authority shall be exercised under the rules, regulations, restrictions and penalties in all respects prescribed and imposed in the chapter of this Revisal entitled Roads, Ferries and Bridges. The Clerk of the Board shall perform the duties heretofore enjoined upon the Clerk of the County Court.

Power of commissioners to appoint an inspector of highways and bridges.

(19.) To appoint an inspector of highways and bridges for the County, if they deem it necessary; to fix and provide for his compensation, and regulate his duties, not inconsistent with the laws of the State. The Commissioners of two or more Counties may unite in employing an Inspector of highways and bridges, and apportioning his compensation between the respective Counties as may be agreed.

(20.) To make provision, if they deem it necessary, for the erection in each County, of a House of Correction, where vagrants and persons guilty of misdemeanors shall be restrained and usefully employed; to regulate the employment of labor therein; to appoint a Superintendent thereof, and such assistants as they may deem necessary, and fix their compensation.

To provide for the erection of a house of correction.

To appoint a superintendent thereof.

(21.) To provide, under such regulations as they deem best, for the employment on the highway or public works in the County, of all persons condemned to imprisonment with hard labor, and not sent to the Penitentiary.

To provide for the employment of certain prisoners.

(22.) To appoint proxies to represent, in any annual or other meeting, the shares or interest held by any County in a Railroad Company or other corporation, in the manner heretofore exercised by the Justices of the County Court, under the charter of such corporation or any special acts of the General Assembly authorizing County subscriptions in such cases.

To appoint proxies to represent interest held by county.

(23.) To sell or lease any real property of the County, and convey the same.

To sell or lease real property.

(24.) To provide by tax for the maintenance, and to do all such matters and things as they may deem expedient, for the comfort and well-ordering of the poor; to employ, biennially, by public letting or otherwise, some competent person as overseer of the poor; to institute proceedings by the warrant of their Chairman against any person coming into the County who is likely to become chargeable thereto and to cause the removal of such poor person to the County where he was last legally settled; and to recover by action in the Superior Court from the said County, all the charges and expenses whatever incurred for the maintenance or removal of such poor person.

To provide for the maintenance of the poor.

To employ overseer.

To cause removal, &c., of certain poor persons.

(25.) To establish public hospitals for the County in cases of necessity, and to make such rules, regulations and by-laws as they deem useful, for preventing the spread of contagious and infectious diseases, and for taking care of those afflicted thereby, the same not being inconsistent with the laws of the State; and they shall raise by taxation the necessary moneys to defray the charges and expenses incurred under this sub-division.

To establish public hospitals.

(26.) To procure for their respective Counties sealed weights and measures, according to the standard prescribed by the Congress of the United States; and to elect a Standard-keeper, who shall qualify before the Board and give bond approved by them, as prescribed by law.

To procure weights and measures.

(27.) To appoint a Commissioner, in case they deem it expedient, to open and clear the rivers and creeks within the County or where such river or creek forms a County line or a part thereof. For this purpose they are authorized to withdraw from the public roads such lands as they deem necessary, and allot them to such work under overseers and the direction of the Commissioner. They may impose the duties of this sub-division on the Inspector of highways and bridges when appointed; and they shall in all respects conduct the opening and clearing of such rivers and creeks as prescribed by law.

To appoint commissioner to open and clear rivers and creeks.

To license keepers of inns peddlers, &c.

To establish public landings.

To appoint inspectors and to try them for misbehavior in office and to remove them.

Provide in relation to City of Wilmington.

To appoint turners up of tobacco.

To appoint pickers.

Pickers to be removed for misbehavior.

To purchase or rent ground, warehouses, &c., for tobacco inspection. Allow salaries to inspectors. Prescribe rules. To regulate certain prices.

(28.) To license keepers of inns, taverns or ordinaries, peddlers and retailers of spirituous and other liquors as prescribed by law. No license shall be good for more than one year, nor granted to two or more persons to peddle as partners in trade.

(29.) To establish such public landings and places of inspection within their respective Counties as they may think necessary and convenient; to appoint not more than six inspectors in any town or city, who shall hold office for two years; and give bond before the Board, payable to the State of North Carolina and renewed annually, with two sufficient sureties, in the sum of one thousand dollars, conditioned for the faithful discharge of their duties; to bring before the Board, by the summons of the Chairman, any Inspector charged, on written complaint, with neglect, malpractice or misbehavior in office, and on proof thereof to remove him from office and appoint another in his stead; and to fill, from time to time, any vacancy arising from any cause. The Commissioners may appoint, for the purpose of inspecting timber, such number of inspectors as they consider necessary; *Provided*, That the provisions of this sub division shall not apply to the City of Wilmington, so far as the same are in conflict with the provisions of an act ratified on the twenty-seventh day of July, A. D. one thousand eight hundred and sixty-eight, entitled "An act concerning inspectors for the City of Wilmington." The County Commissioners shall appoint not exceeding ten persons, where there may be an inspection of tobacco established, to turn up and cooper tobacco. The turners up shall hold their appointments during good behavior, but the inspectors shall be judges of their behavior; and if the inspectors find them deficient in duty, they shall report them to the Commissioners, who shall examine the charge alleged, and if the turners up are found guilty, the Commissioners shall remove them and appoint others.

The Commissioners shall appoint, where any public inspection of tobacco is established, two persons skilled in tobacco, to be pickers, and may authorize one of the pickers to act in the room of an inspector, who is unable to attend to his duties, and in such case, the picker shall take the oath of an inspector and receive his allowance. Upon complaint made against any picker, the Commissioners shall inquire into the nature thereof, and if such picker has been guilty of any misbehavior, in the execution of his duty, they shall remove him and appoint another in his stead.

The Commissioners may, at the expense of the County, purchase or rent ground, build or rent warehouses, provide scales and weights for a tobacco inspection, and allow such salaries to the inspectors as they judge proper, to be paid as a County charge; and also order and limit the times for the attendance of the inspectors at their respective warehouses.

The Commissioners 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 such moneys, who

shall be accountable to them for the same; and they shall, as occasion may require, appropriate any part of said moneys in repairing or rebuilding their warehouses.

The Commissioners of Craven County may appoint one or more inspectors of firewood for the City of Newbern, who, before entering on their duties, shall take the oaths and give the bonds required of other inspectors.

Inspectors of firewood for city of Newbern.

The Commissioners of any County may appoint for their County an inspector of provisions and forage, who shall hold his office for five years and give bond as other inspectors, and be entitled to such fees as the Commissioners may prescribe.

To appoint inspectors of provisions and forage.

(30.) To license, for the term of one year, any number of persons to exercise the trade and business of auctioneers in each county, and to take their bonds as prescribed by law.

To license auctioneers.

(31.) To qualify, and induct into office at the annual meeting on the first Monday in September after a general election, or at any time when a vacancy in any of the county officers shall be filled, the Clerk of the Superior Court, the Sheriff, the Coroner, the County Treasurer, Register of Deeds, and County Surveyor; and to take and approve the official bonds of the said county officers, which they shall cause to be registered and the originals to be deposited with the Clerk of the Superior Court, except the bond of the said Clerk, which shall be deposited with the Register of Deeds for safe keeping.

To induct into office certain county officers.

(32.) To require from any county officer, or other person employed and paid by the county, a report, under oath, at any time, on any matter connected with his duties. A neglect to comply with such requirement shall be a misdemeanor.

To take and approve bonds of same.

To require from any county officer a report under oath.

(33.) To authorize their chairman to issue subpoenas to compel the attendance before the board, of persons, and the production of books and papers relating to the affairs of the county, for the purpose of examination on any matter within their jurisdiction.

To authorize their chairman to issue subpoenas.

The subpoena shall be served by the sheriff or any constable to whom it is delivered; and upon return of personal service thereof, whoever neglects to comply with the subpoena or refuses to answer any proper question, shall be deemed guilty of contempt and punishable therefor by the board. A witness is bound in such case to answer all the questions which he would be bound to answer in like case in a court of justice; but his testimony given before the board shall not be used against the witness on the trial of any criminal prosecution other than for perjury committed on the examination.

How such subpoena shall be served.

(34.) To adopt a seal for the county, a description and impression whereof shall be filed in the office of the Superior Court Clerk and of the Secretary of State.

To adopt a seal.

9. For the exercise of the powers mentioned in any of the sub-divisions of the preceding section, a vote of a majority of all the members is necessary in all cases, unless otherwise specially provided.

Vote of majority of members necessary to exercise powers.—1868 c. 20, s. 9.

10. No account shall be audited by the board for any services

Accounts to be

made out in items.—1868, c. 20, s. 10. To have affidavit of claimant filed with them, &c.

Board may disallow.

Certain fees and costs to be paid by township or city where offence was committed.—1868, c. 20, s. 11.

How bill of fees shall be made out. How assessed. Not applicable to felonies.

Accounts to be numbered.—1868, c. 20, s. 12.

To be entered on minutes. Not to be withdrawn except as evidence.

Board to make annual publication of accounts audited.—1868, c. 20, s. 18.

To make statement of county revenue and charges.

Of permanent debt.

When commissioners to qualify and enter upon office.—1868, c. 20, s. 14. Oaths of office to be filed.

Pay of commissioners.—1868, c. 20, s. 15. 1872-'3, c. 108.

or disbursements, unless it is first made out in items and has attached to, and filed with it the affidavit of the claimant that the services therein charged have been in fact made and rendered, and that no part thereof has been paid or satisfied. Each account shall state the nature of the services, and, where no specific compensation is provided by law, it shall also state the time necessarily devoted to the performance thereof. The board may disallow or require further evidence of the account, notwithstanding the verification.

11. All fees and costs of magistrates or other officers for the arrest or trial of persons charged with misdemeanors, including cases of vagrancy, where the same are not collected out of the defendant, shall be paid by the township or city, where the offence was committed. The clerk and magistrate or other officer making out such bills of fees and costs, shall specify thereon the place of offence, and the board shall assess the same upon the township or city specified. This section does not apply to felonies.

12. All accounts presented in any year, beginning at each regular meeting in September, shall be numbered from one upwards, in the order in which they are presented; and the time of presentation, the names of the persons in whose favor they are made out, and by whom presented, shall be carefully entered on the minutes of the Board; and no such account shall be withdrawn from the custody of the Board or its Clerk, except to be used as evidence in a judicial proceeding and forthwith returned.

13. The Board shall cause to be posted at the court-house, and to be published in one or more County newspapers, if there be any, within five days after each regular September meeting and for, at least, four successive weeks, the name of every individual whose account has been audited by them, the amount claimed and the amount allowed; and also, at the same time, a full statement of County revenue and charges, showing by items the income from every source and the disbursements on every account for the past year, together with the permanent debt of the County, if any, when contracted and the interest paid or remaining unpaid thereon.

14. The Commissioners shall qualify and enter upon their office hereafter, on the first Monday of September next succeeding their election, and they may take the oaths of office before any person authorized by law to administer oaths. The oaths of office severally taken and subscribed by them, shall be deposited with the Clerk of the Superior Court.

15. Except where otherwise provided by law, each Commissioner shall receive for his services and expenses in attending the meetings of the Board not exceeding two dollars per day, as a majority of any board fix upon, and they may be allowed mileage to and from their respective places of meeting, not to exceed five cents per mile. And the accounts due each Commissioner shall be audited by the Board as prescribed in section ten.

16. The Board shall fix the compensation of their Clerk.

Pay of clerk.
—1868, c. 20,
s. 16.

17. Any Commissioner who neglects to perform any duty required of him by law, as a member of the Board, shall be guilty of a misdemeanor, and liable, besides, to a penalty of two hundred dollars for each offence.

Neglect of duty a misdemeanor.—1868 c. 20, s. 17.

18. It is the Clerk's duty:

Duty of clerk.
—1868, c. 20,
s. 18.

(1.) To record, in a book to be provided for the purpose, all the proceedings of the Board.

(2.) To enter every resolution or decision concerning the payment of money.

(3.) To record the vote of each Commissioner on any question submitted to the Board, if required by any member present.

(4.) To preserve and file, in alphabetical or other due order, all accounts presented or acted on by the Board, and to designate upon every account audited, the amount allowed, and the charges for which it was allowed.

(5.) To keep the books and papers of the Board free to the examination of all persons.

19. The clerk shall annually, on or within five days next before the first Monday of September, make out and certify, and cause to be posted at the court-house, and published in a newspaper printed in the county, if there be one, for at least four weeks, a statement for the preceding year, showing:

Clerk to publish an annual statement.—1868, c. 20, s. 19.

(1.) The amount, items and nature of all compensation audited by the Board to the members thereof severally.

(2.) The number of days the board was in session, and the distance traveled by the members, respectively, in attending the same.

(3.) Whether any unverified accounts were audited, and, if any, how much and for what.

20. Any clerk who intentionally neglects to post and publish the statement required by the preceding section, or knowingly posts and publishes a false statement, shall be guilty of a misdemeanor.

Neglect to publish statement a misdemeanor.—1868 c. 20, s. 20.

21. Copies of the records of the board, certified by the clerk under his hand and the seal of the county, are declared evidence in all the courts of the State.

Certified copies of records declared evidence in all courts.—1868, c. 20, s. 21.
Finance Committee.—1871-'72, c. 71, s. 1.

22. The justices of the peace in the several counties of the State may assemble at the court-house in their respective counties on the first Monday in each and every year, and a majority of them being present, they may elect, by ballot, three discreet, intelligent, tax-paying citizens, to be known as the "Finance Committee," whose duty it shall be to inquire into, investigate and report by public advertisement, at the court-house, and one public place in each township of the county, or in a newspaper, at their option, if one be published in the county, a detailed and itemized account of the condition of the county finances, together with any other information appertaining to any funds, misappropriation of county funds or any malfeasance in office by any county officers.

23. For the purpose of rendering the preceding section

Power of com-

mittee.—1871-
'2, c. 71, s. 2.

effectual, the said finance committee shall have power and authority to send for persons and papers, and any person failing to obey their summons, or to produce promptly any paper relating or supposed to relate to any matter appertaining to the duties of the finance committee, shall be deemed guilty of a misdemeanor, and upon conviction in the Superior Court, shall be fined and imprisoned at the discretion of the court.

Misdemeanor.

Committee to
report.—1871-
'2, c. 71, s. 3.

24. It shall be the duty of said finance committee to make and publish, as herein directed, their report on or before the first Monday in July of each and every year.

Oath administered by clerk
of the Superior
Court.—1871-
'2, c. 71, s. 4.

25. The members of said finance committee before entering upon their duties shall, before the clerk of the Superior Court, subscribe to the following oath or affirmation: "I, A. B., do solemnly swear (or affirm) that I will diligently inquire into all matters relating to the receipts and disbursements of county funds and a true report make, without partiality; so help me, God."

Remunerati'n.
—1871-'2, c.
71, s. 5.

26. The said committee shall receive a compensation of five dollars each for the performance of their duties imposed by this chapter.

Purchase of
county bonds
confirmed.—
1868-'9, c. 269,
s. 1.

27. All purchases of county bonds heretofore made by county commissioners, are hereby confirmed.

Lawful to purchase liabilities
of counties.—1868-9,
c. 269, s. 2.
Commissioners to fill vacancies.—1868,
c. 4.

28. It shall be lawful for county commissioners to purchase, at any price not more than their par value and accumulated interest, any of the outstanding liabilities for their counties.

29. Every vacancy occurring in any of the offices provided for in Article VII of the Constitution of North Carolina, shall be filled unless otherwise provided for by law, by a majority of the board of county commissioners of the county in which such vacancy may occur: *Provided*, that any vacancy occurring in the county commissioners of any county shall be filled by the Governor of the State.

CHAPTER 28.

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.

Disputed lines
between counties,
how settled.—R. C. c.
27, s. 1.

1. WHENEVER there shall be any dispute concerning the dividing line between counties, the County Commissioners of each county, interested in the adjustment of said line, a majority of the Board 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 Commissioners in 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.

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. C. 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 bound'ry until settled.—R. C. c. 27, s. 3.

CHAPTER 29.

COUNTY REVENUE AND CHARGES.

SECTION

1. Collected by sheriff as State taxes.
2. Fines, &c., to be paid to county treasurer.
3. Tax on indictments and suits.
4. Sheriff to collect and pay over fines, amercements, &c.
5. Clerk to render annual statement of fines, &c.
6. Penalty on clerk, sheriff, &c., for failing to pay over county money.
7. Witnesses for State paid by the county, when.
8. County wherein the offence is done,

SECTION

- to pay costs, and receive the fines, &c.
9. Claims, &c., against the county numbered by clerk, and copy furnished to chairman, annually.
10. Penalty for failing to number claims, &c. His fee for service.
11. A statement of moneys received and paid out for county purposes, to be set up in the court-house.
12. Power of county in disposing of county funds.
13. Any officer failing to settle after ten days' notice, to forfeit \$100.

1. 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 treasurer, as they are in their settlements of the public tax with the Treasurer of the State; and they shall also settle with the treasurers of their counties, for the taxes on the unlisted property in their counties, under the same rules and regulations as they account with the Auditor of the State.

Collected by sheriff as State taxes.—R. C. c. 28, s. 2.

2. 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 treasurers, by the officers receiving them, for the purpose of defraying the costs of State prosecutions and the contingent expenses of the county.

Fines, &c., to be paid to county treasurer.—R. C. c. 28, s. 3.

Tax on indictments and suits.—R. C. c. 28, s. 4.

Sheriff to collect and pay over fines, amercements, &c.—R. C. c. 28, s. 5.

Clerk to render annual statement of fines, &c.—R. C. c. 28, s. 6.

Penalty on clerk, sheriff, &c., for failing to pay over county money.—R. C. c. 28, s. 7.

Witness for the State paid by county, when.—R. C. c. 28, s. 9.

County wherein the offence is done to pay costs, and receive the fines, &c.—R. C. c. 28, s. 10.

Claims, &c., against the county numbered by clerk and copy furnished to chairman annually.—R. C. c. 28, s. 12.

3. On every indictment, or civil suit, tried or otherwise disposed of in the Superior Courts, the parties convicted or cast, shall pay a tax of one dollar.

4. 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 treasurers 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 treasurers, 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.

5. 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 treasurers 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.

6. If any clerk of the Superior Court, or any sheriff, shall fail or neglect to account for, and pay to the county treasurers 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 treasurer for the use of the county.

7. Witnesses, summoned or recognized, on behalf of the State, to attend on any prosecution in the Superior 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 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.

8. 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 treasurer of that county.

9. The clerk of the County Commissioners, if so ordered by the Board, shall number all claims, orders and certificates that may be allowed by the Board in a book kept for that purpose, and they shall annually, the day before the Board proceeds to lay a county tax for the ensuing year, furnish the Chairman of the Board 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.

10. Any clerk of the County Commissioners, 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, one half to the use of any person who may sue for the same, the other half to the county. And such Board may allow the clerk, for all such services, annually, any sum not exceeding four dollars.

Penalty for failing to number claims, &c. His fee for service.—R. C. c. 28, s. 13.

11. The County Commissioners of each county, at the first session after the first day of September in every year, shall cause the proper officer to publish and set up in some part of the courthouse, 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.

A statement of moneys rec'd and paid out for county purposes to be set up in court house.—R. C. c. 28, s. 14.

12. The County Commissioners are 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.

Power of co. comm'rs in disposing of co. funds.—R. C. c. 28, s. 16.

13. If any clerk, sheriff, county treasurer, 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 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.

Any officer failing to settle, after ten days notice, to forfeit \$100.—R. C. c. 28, s. 19.

CHAPTER 30.

COUNTY TREASURER.

SECTION

1. When to qualify and give bond.
2. Commissioners to fill vacancy.
3. County Treasurer to give bond.
4. Delivering of books, papers and money to successor.
5. Prosecution of bond.
6. Compensation.
7. Speculation in county claims.
8. Treasurer's duties. (1.) To keep true accounts, &c. (2.) To call on sheriff, &c. (3.) To exhibit to Board of Commissioners.

SECTION

9. Failure of Sheriff, &c., to account, &c.
10. Failure of Treasurer a misdemeanor.
11. What orders county Treasurer not to pay.
12. Property to be transferred to county Treasurer, when.
13. Duty of Treasurer.
14. Board to keep record of funds.
15. Treasurer to exhibit books.

When to qualify and give bond.—1868-'9, c. 157, s. 2.
Commissioners to fill vacancy.—1868-'9, c. 157, s. 3.

1. THE County Treasurer shall qualify and give bond before the Board of Commissioners on the first Monday of September next after his election.

2. When a vacancy exists from any cause in the office of County Treasurer, the Board of Commissioners must fill such vacancy by the appointment of a successor, who, within ten days after his appointment, shall qualify and give bond as prescribed in this chapter..

County treasurer to give bond.—1868-'9, c. 157, s. 4.

3. The County Treasurer, before entering office, shall give bond in three or more sufficient securities, to be approved by the Commissioners, payable to the State, conditioned that he will faithfully execute the duties of his office, and pay, according to law, and on the warrant of the Chairman of the Board of Commissioners, all moneys which come into his hands as Treasurer, and render a just and true account thereof to the Board when required by law or by the Board of Commissioners. The penalty of his bond shall be at least double the amount of county revenue for the preceding year, and the Board of Commissioners at any time, by an order, may require him to renew or enlarge his bond. A failure to do so, within ten days after the service of such an order, shall vacate his office, and the Board shall appoint a successor.

Delivering of books, papers and money to successor.—1868-'9, c. 157, s. 5.

4. Whenever the right of any County Treasurer to his office expires, the books and papers belonging to his office, and all moneys in his hands by virtue of his office, shall, upon his oath, or, in case of his death, upon the oath of his personal representative, be delivered to his successor.

Prosecution of bond.—1868-'9, c. 157, s. 6.

5. The Board of Commissioners shall bring action on the Treasurer's bond whenever they have knowledge or a reasonable belief of any breach of the bond.

Compensation.—1868-'9, c. 157, s. 7.

6. The compensation of the Treasurer shall be fixed by the Board of Commissioners, not exceeding one per cent. on moneys received and one per cent. on moneys paid.

Speculating in county claims.—1868-'9, c. 157, s. 8.

7. Any County Treasurer buying up claims against the County Treasurer at less than such claims call for on their face, shall not be entitled to receive or draw therefor more than what he actually paid for the same, and the Board of Commissioners may examine him as well as the person from whom the claim was purchased, on oath, touching what was actually paid.

Treasurer's duty.—1868-'9, c. 157, s. 9.

8. It is the duty of the Treasurer :

(1.) To receive all moneys belonging to the county, and all other moneys by law directed to be paid to him, and to apply them and render account of them as required by law.

To keep true accounts, &c.

(2.) To keep a true account of the receipt and expenditure of all such moneys, taking proper vouchers in every case in books provided for the purpose at the expense of the county.

To call on sheriff, &c.

(3.) To call on the Sheriff, the Clerk of the Superior Court, or other officer having county moneys in his hands, at least twice in each year, or as often as may be necessary, to pay over to him and account for all such moneys.

To exhibit to

(4.) To exhibit to the Board of Commissioners, at least five

days before their regular meeting on the first Monday of September in each year, or oftener if they require it, a statement of all his receipts and disbursements during the preceding year, together with his books, accounts and vouchers, to be audited and allowed by them. They shall post such statement at the court-house, or cause it to be published in the county newspaper.

9. In case of the failure or refusal of a Sheriff, Clerk of the Superior Court or other officer to account and pay over, when called on, as directed under sub-division three of the last section, the treasurer shall report the facts to the Board of Commissioners, who may forthwith bring suit on the official bond of such delinquent officer, and they are allowed to bring suit on the official bond of the Clerk of the Superior Court of any adjoining county.

10. Any treasurer failing to perform the duties herein enjoined shall be guilty of a misdemeanor, and, on conviction thereof, besides other punishment, at the discretion of the Court, shall be removed from office.

11. It shall not be lawful for the county treasurers of this State to pay out of the funds of the counties, any order or other certificate of indebtedness, issued by the late County Courts, unless the same shall have been audited by the Board of County Commissioners.

12. In all cases where the justices of the peace of any of the late County Courts, or the chairman or other officer thereof, held or now hold by deed, will or otherwise, any property or estate in trust for such county, or for any charitable use or purpose to be administered by the trustee of such estate in and for the benefit of such county or any of the citizens thereof, the person or persons so holding such property or estate may and shall transfer and deliver the same to the treasurer for such county, to be held by him and his successors in office, and administered and applied by him or them under the direction of the Board of Commissioners for such county, upon such uses, purposes and trusts, and no other, as are described and declared by the grantor, testator or other person giving or conveying the same.

13. It shall be the duty of the county treasurer to take charge of all such funds and to qualify himself both by oath and bond therefor; but he shall not be qualified to do so without giving a bond payable to the State in a penalty of double the estimated value of said funds, with three or more sureties, each of whom shall be worth at least the amount of the penalty of the bond over and above all his liabilities and property exempt from execution, which bond shall be taken by the Board of Commissioners and shall be recorded and otherwise treated and dealt with as may be the official bond of the treasurer.

14. The Board of Commissioners shall keep a proper record of all such charitable funds, and when necessary shall institute proceedings to recover for the treasurer all such as may be unjustly withheld.

board of commissioners.

Failure of sheriff, &c., to account, &c.—1868-'9, c. 157, s. 10.

Failure of treasurer a misdemeanor.—1868-'9, c. 157, s. 11.

What orders, &c., county treasurer not to pay, &c.—1868, c. 19.

Property to be transferred to county treasurer, when.—1869-70, c. 85, s. 1.

Duty of treasurer.—1869-'70, c. 85, s. 2.

The board to keep record of funds.—1869-'70, c. 85, s. 3.

Treasurer to
exhibit books.
—1869-'70, c.
85, s. 4.

15. The county treasurer, whenever he is required to exhibit to the Board of Commissioners for the county the financial condition of the county, shall exhibit also distinctly and separately the amount and condition of such funds, how invested, secured, used, and other particulars concerning the same.

CHAPTER 31.

COURT-HOUSES, PRISONS AND WORKHOUSES.

SECTION

1. Court-house and jail to be built and kept in repair by the County Commissioners, who shall lay a tax therefor.
2. Jails to have four separate apartments.
3. To be visited at each court by grand jury.
4. Treasurer of public buildings appointed by County Commissioners. His duty, bond and compensation.
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 \$100.00.
7. Treasurer recommending repairs.
8. County Commissioners empowered to establish public workhouses, &c.
9. County Commissioners to appoint Directors. Duties, &c.
10. County Commissioners to appoint a bonded manager. His duties, &c.

SECTION

11. Compensation of manager.
12. County Commissioners empowered to levy a tax.
13. Penalties incurred by absconding offenders.
14. Certain persons released.
15. Duties of sheriffs.
16. Managers, duties.
17. Term of office of directors, &c.
18. County Commissioners authorized to issue bonds in certain cases.
19. Duty of Chairman of Board.
20. Suits to be brought in the name of the State.
21. Two or more counties may jointly establish workhouses.
22. Directors to be appointed.
23. Manager or superintendent to be appointed.
24. Houses of correction established by two or more counties to be governed by the provisions of this chapter.

Court-houses
and jails to be
built and kept
in repair by
county com-
missioners
who shall lay
a tax therefor.
R. C. c. 80, s. 1.

1. THERE shall be kept and maintained in good and sufficient repair in every county in the State, a court-house and common jail, at the expense of the county, wherein the same are situated; and the County Commissioners of the several counties respectively, 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 and jails, 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-house, 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.

Jails to have

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 persons of color.

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.

4. The several Boards of County Commissioners, may in their discretion, annually, at the first meeting 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 Board 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 taxes laid by the Board; 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 County Commissioners may allow him.

5. Whenever the office of treasurer of public buildings shall become vacant, in any way whatever, the County Commissioners may fill the same, until the annual term of appointment.

7. Treasurers of public buildings are hereby expressly required, at the term of their election, and before the election, to settle their accounts with the County Commissioners, 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.

four separate apartments.—R. C. c. 30, s. 2.

Visited at each court by the grand jury.—R. C. c. 30, s. 3.

Treas'r of public buildings appointed by co. comm'rs. His duty and bond.

Compensation R. C. c. 30, s. 4.

Vacancies filled.—R. C. c. 30, s. 5.

Treasurer to settle his accounts annually. On failure to settle or pay, judgt on motion against him and sureties, and for a penalty of \$100.—R. C. c. 30, s. 6.

Treas'r recom-
mending re-
pairs, what to
be done.—R.
C. c. 30, s. 7.

7. When the treasurer, in his report, shall recommend alterations, repairs, and improvements, the County Commissioners, 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 thereon shall be advanced by the treasurer, who shall be solely responsible and accountable to the County Commissioners for the sufficiency of the work, and the disbursement of the money.

County com-
mission'rs em-
powered to es-
tablish public
workhouses.—
1866, c. 35, s.
1.

8. The County Commissioners may, when they deem it necessary, establish within their respective counties, one or more fit and convenient houses of correction, with work shops and other suitable buildings for the safe keeping, correcting, governing, and employing of offenders legally committed thereto. They may also, to that end, procure machinery and material suitable for such employment in said houses, or on the premises; and moreover attach thereto a farm or farms; and all lands purchased for the purposes aforesaid, shall vest in the directors hereinafter provided for, and their successors in office. The said County Commissioners shall also have power to make, from time to time, such rules and regulations as they may deem proper, for the kind and mode of labor, and the general management of the said houses.

County com-
mission'rs to
appoint direc-
tors.
Duties, &c.—
1866, c. 35, s.
2.

9 The county commissioners shall, annually, appoint not less than five nor more than nine directors for each house of correction which may be established, whose duty it shall be to superintend and direct the manager hereinafter named in the discharge of his duties; to visit said houses at least once in every three months, to see that the laws, rules and regulations relating thereto are duly executed and enforced and that the persons committed to his charge are properly cared for, and not abused or oppressed. They shall keep a journal of their proceedings, and publish annually an account of the receipts and expenditures. They shall further make a quarterly report to their respective county commissioners of the general condition of their charge, and of the receipts and expenditures of the institution. They shall also make such by-laws and regulations for the government thereof as shall be necessary, which shall be reported to, and approved by, the said Commissioners. The directors shall be paid for the services rendered, by the county treasurer, each director first making appear to the satisfaction of the Board of County Commissioners, by his oath, the character and extent of the services rendered for which he claims compensation; and such payment shall be made by the county treasurer out of any funds in his hands not otherwise appropriated.

County com-
miss'rs to ap-
point a bonded
manager.

10. The county commissioners shall appoint a manager for each house or establishment, who shall give a bond, with two or more able sureties, in such sum as may be required, payable to the State of North Carolina, conditioned for the faithful dis-

charge of his duties. He shall hold his office during the pleasure of the board, and be at all times under the supervision of the directors; and in case of his misconduct, of which they shall be the sole judges, he may be forthwith removed by them and a successor appointed, who shall discharge the duties of the office until another manager shall be appointed by the County Commissioners. It shall be the duty of the manager to receive all persons sent to the house of correction, to keep them during the time of their sentence, and to employ and control them according to the rules and regulations established therefor. He shall have the direction and control over the subordinate officers, assistants and servants, who may be appointed by the directors. He shall make monthly reports to the directors of his management of the institution and his receipts and expenditures.

11. The said County Commissioners shall direct what compensation the manager and such subordinate officers, assistants and servants, as shall be appointed, shall receive, and shall provide the payment thereof.

Compensation of managers.--
1866, c. 35, s. 4.

12. The County Commissioners, in addition to the tax for the maintenance of the poor, shall also, at the time said tax is laid, lay such tax as may be necessary to carry into effect the necessary provisions of this chapter, which shall be collected and paid to the manager at the same time as other county taxes are directed to be paid; for which, and such other funds as may come into his hands as manager, he shall be accountable, and he shall disburse the same under the authority of the directors.

County Commissioners empowered to levy tax.--
1866, c. 35, s. 5.

13. If any offender shall abscond, escape or depart from any house of correction without license, the manager shall have power to pursue, retake and bring him back, and to require all necessary aid for that purpose; and when brought back, the manager may confine him to his work by fetters or shackles, or in such manner as he may judge necessary, or may put him in close confinement in the county jail or elsewhere, until he shall submit to the regulations of the house of correction; and for every escape, each offender shall be holden to labor in the house of correction for the term of one month in addition to the time for which he was first committed.

Penalties incurred by absconding offenders.--1866, c. 35, s. 6.

14. If any person shall behave well and reform, he may, on the certificate of the manager, be released by the directors, if committed as a vagrant; but if otherwise committed, he may be released by the committing authority, upon the certificate of the manager and directors.

Certain persons released.
1866, c. 35, s. 7.

15. Whenever any person shall be sentenced to a workhouse, he shall forthwith be committed by the court to the custody of the sheriff, to whom the clerk shall immediately furnish a certified copy of the sentence, in which it shall be stated (if the fact be so) that the offender is committed as a vagrant. The sheriff shall convey the offender to the workhouse, and deliver him to the manager with the certified copy aforesaid, and take

Duties of sheriffs.--1866, c. 35, s. 8.

the manager's receipt for the body ; which receipt the sheriff shall return to the clerk of the county commissioners, with his endorsement of the times when the offender was committed to him and delivered to the manager, and the clerk shall record the same in a book kept for that purpose, and file the original with the papers in the case.

Manager's duties.—1866, c. 35, s. 9.

16. The manager shall assign to each person sent to the workhouse the kind of work in which such person is to be employed.

Term of office of directors, &c.—1866, c. 35, s. 10.

17. The directors shall continue in office until others shall be appointed; and if any vacancy happen among them, it shall be filled by the residue of the directors.

County commissioners authorized to issue bonds in certain cases.—1866, c. 35, s. 11.

18. The County Commissioners, a majority being present, may, if deemed advisable by them, issue county bonds to raise money to establish the houses and farms herein provided for.

Duty of chairman of board.—1866, c. 35, s. 12.

19. Whenever any workhouse or house of correction shall be established in pursuance of the provisions of this chapter, it shall be the duty of the Chairman of the Board of County Commissioners of the county wherein the same shall be established, to certify the fact to the Governor, who shall cause it to be noted in a book kept for that purpose.

Suits to be brought in name of the State.—1866, c. 35, s. 13.

20. All suits brought on behalf of the institution shall, unless it be otherwise prescribed, be brought in the name of the State of North Carolina, to the use of the directors of the workhouse, without designating such directors by name.

Preamble.—

WHEREAS, The expenditures incident to the establishment, support and management of fit and convenient houses of correction, as provided in the above sections, are in many cases too great to be borne by one county, by reason whereof such counties will be deprived of the benefits which may result from the establishment of such houses of correction :

Two or more counties may jointly establish work-houses. 1867, c. 130, s. 1.

21. Any two or more counties, acting through their respective County Commissioners, may jointly establish one or more fit and convenient houses of correction, as is provided in the preceding sections of this chapter, for the joint use of the counties so agreeing together, and the same may be established at such place or places, and be in all respects managed under such by-laws, rules and regulations as a majority of the general board of directors, to be appointed as hereinafter directed, shall determine.

Directors to be appointed. 1867, c. 130, s.

22. The County Commissioners of each of the respective counties, agreeing as aforesaid to the establishment of one or more houses of correction for use jointly with any other county or counties, shall annually appoint five directors in behalf of their several counties, and the directors so to be appointed by each of such counties shall together constitute the general board of directors of any such joint establishment; that the provisions of the ninth section of this chapter, so far as the duties of the directors referred to herein are concerned, shall apply to the general board of directors aforesaid: *Provided, however,* that the quarterly report required to be made by said

section of said chapter shall be made by the directors appointed by the several counties, to the courts by which such directors are respectively appointed.

23. Said general board of directors shall appoint a manager or superintendent for every such joint establishment, and such assistants and servants as they may deem necessary. The manager shall give bond with two or more able sureties, to be approved by said board, in such sums as may be required, payable to the State of North Carolina, and conditioned for the faithful performance of his duties. He shall hold his office during the pleasure of the general board of directors, and be, at all times, under their supervision; and of his misconduct they shall be the sole judges, and they may at any time remove him. He shall perform all such duties as may be prescribed by such general board of directors, and all such as may be incident to the office of manager by virtue of this chapter. The compensation of the manager and such subordinate officers, assistants and servants, as may be appointed by the general board, shall be fixed by said general board.

Manager or superintendent to be appointed.—1867 c. 180, s. 3.

24. All the provisions of this chapter in relation to the establishment, management, maintenance and support of any house of correction or workhouse, shall be considered and deemed in all respects applicable to the establishment, management, maintenance and support of any house of correction, agreed to be established by two or more counties under the provisions of this chapter.

Houses of correction of two or more counties to be governed by the provisions of this chapter.—1867, c. 180, s. 4.

Sec. 1. 4 Hawks 194.

CHAPTER 32.

CRIMES AND PUNISHMENTS.

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Punishment for murder.—1868-'9, c. 167, s. 1.
 Punishm't for rape.—1868-'9, c. 167, s. 2.

1. EVERY person who is convicted in due course of law of any wilful murder of malice prepense, shall suffer death.

2. Every person, who is convicted in due course of law of ravishing and carnally knowing any female of the age of ten years or more by force and against her will; or who is convicted, in like manner, of unlawfully and carnally knowing and abusing any female child under the age of ten years, shall suffer death.

What necessary to constitute rape.—1860, a. 30.

3. It shall not be necessary upon the trial of any indictment for the offences of rape, carnally knowing and abusing any female child under ten years of age and buggery, to prove the actual emission of seed in order to constitute the offence, but the offence shall be deemed and taken in law to be complete upon proof of penetration only.

Penalty for arson or burglary.—1871-'2, c. 222.

4. Any person, convicted according to due course of law, of the crime of arson or burglary, shall suffer death.

Punishment for assault with intent to commit a rape.—1868-'9, a. 167, s. 3.

5. Every person convicted by due course of law, of an assault with intent to commit a rape upon the body of any female, shall be imprisoned in the State prison not less than five, nor more than fifteen years.

Arson of gin or tobacco house.—1868-'9, c. 167, s. 5.
 1863, c. 17.

6. Every person convicted of any wilful burning of any gin-house or tobacco-house, or any part thereof, or in the night time, any stable containing a horse or horses, or a mule or mules, shall be imprisoned in the State's prison not less than five, nor more than ten years.

Accessories before the fact punishable as principals.—R. C. c. 34, s. 1.

7. 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.

Fighting a duel when one party is killed.—R. C. c. 34, s. 4.

8. 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.

9. 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 imprisonment in the State's prison for not less than five nor more than sixty years.

Castrat'n with malice aforethought.—R. C. c. 34, s. 4. 1868-'9, c. 167, s. 6.

10. If any person shall commit the abominable and detestable crime against nature, with mankind or beast, he shall suffer imprisonment in the State's prison for not less than five nor more than sixty years.

Crime against nature.—R. C. c. 34, s. 6.

11. If any person shall willfully or maliciously burn the State house, or any of the public offices of the State, or any courthouse, 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 as prescribed in section thirteen.

Burning public buildings.—R. C. c. 34, s. 7.

12. 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 time, burglary.—R. C. c. 34, s. 8.

13. Every person convicted of any crime, whereof the punishment has hitherto been death by the laws of North Carolina existing at the time the present Constitution went into effect, other than the crimes before specified in this chapter, shall suffer imprisonment in the State's prison for not less than five, nor more than sixty years.

Crimes heretofore punishable with death, how punished now.—1868-'9, c. 167, s. 6.

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 counselors, abettors, and aiders, knowing of and privy to the offence, shall, for the first offence, suffer as prescribed in section twenty-nine, and, for the second offence, shall suffer as prescribed in section thirteen.

Malicious maiming.—R. C. c. 34, s. 14.

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 suffer as prescribed in section twenty-nine; *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

Bigamy.—R. C. c. 34, s. 15.

any person whose former marriage was had or made within the age of consent.

Servants em-
bezzling their
master's goods
&c.—R. C. c.
34, s. 18.

16. If any servant, to whom any money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in section nineteen 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 suffer as prescribed in section twenty-nine: *Provided, however*, that nothing in this section contained shall extend to apprentices, or servants, within the age of eighteen years.

Stealing horses,
&c.—1868,
c. 37, s. 1.

17. Every person who shall steal any horse, mare, gelding or mule, and shall thereof be convicted according to the due course of law, shall suffer imprisonment at hard labor for not less than five, nor more than twenty years, at the discretion of the Judge.

Penalty to ac-
cessory.—1868
c. 37, s. 2.

18. Every accessory before the fact to any such felony and stealing as aforesaid, shall also, on due conviction thereof, suffer imprisonment at hard labor for not less than five, nor more than twenty years.

Stealing or
robbery of
bank notes
and other se-
curities.—R.
C. c. 34, s. 20.

19. 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.

20. If any person shall steal, or feloniously take and carry away any Indian corn, wheat, rice, or other grain, or any cotton, tobacco, potatoes, pea-nuts, pulse or any fruit, vegetable or other product cultivated for food or market, growing, standing or remaining ungathered in any field or ground, he shall be deemed guilty of larceny and punished accordingly.

Stealing growing corn, &c.
1868-'9, c. 251.

21. 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.—R. C. c. 24, s. 22.

22. 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. C. c. 24, s. 23.

23. Every person who shall commit the crime of manslaughter shall be punished as prescribed in section twenty-nine, or by a fine.

Manslaughter, first offence.—R. C. c. 24, s. 24.

23. 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 as prescribed in section thirteen; 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.—R. C. c. 24, s. 25.

Prior conviction how shown.

25. 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, punish him as prescribed in section twenty-nine.

Distinction between petit larceny and grand larceny abolished.—R. C. c. 24, s. 26.

26. 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 suffer as prescribed in section twenty-nine, or pay a fine, regard being had to the circumstances of each case.

Felonies not punished by particular statutes, how punishable.—R. C. c. 24, s. 27.

27. 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 imprisoned not exceeding one year;

Concealing birth of a child.—R. C. c. 24, s. 28.

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.

Burn'g bridges and houses, not depositories of archives, &c.

28. 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 any 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; 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 previous sections of this chapter, the person so offending shall be deemed guilty of a misdemeanor, and being convicted thereof, shall suffer as prescribed in the twenty-ninth section of this chapter.

Attempting to burn bridges and certain houses.—R. C. c. 84, s. 30.

What punishment in lieu of corporal punishment.—1868-'9, c. 167, s. 2.

29. Every crime or offence whatever, heretofore punishable by the laws of North Carolina when the present Constitution went into effect with public whipping or other corporeal punishment, shall hereafter, in lieu of such corporeal punishment, be punished by imprisonment in the State's prison, (or county jail) for not less than four months nor more than ten years.

Where convicts confined till erection of a penitentiary.—1868-'9, c. 167, s. 10.

30. Whenever, until the completion of the State's prison, any person is sentenced to confinement therein, such convict may be confined in the county jail or other secure place; or if such convict be a male, he may be kept at hard labor on the construction of the State prison or other public work, as provided by law, during the whole or any part of his imprisonment, but such term of imprisonment shall begin to run upon and shall include the day of his conviction.

No forfeiture for suicide.—R. C. c. 34, s. 30.

31. No forfeiture shall be incurred by suicide.

Breaking prison.—R. C. c. 34, s. 19.

32. Any person who shall break prison, being lawfully confined therein, shall be deemed guilty of a misdemeanor.

33. 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. C. c. 34, s. 31.

34. 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.

35. 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 the court.

36. If any juror, by himself or others, do take anything 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.

37. When any person charged with a crime or misdemeanor, or sentenced by the court upon conviction of any offence, shall be legally committed to any sheriff, constable or jailor, 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.

Stealing, destroying, or concealing wills of living or deceased persons.—R. C. c. 34, s. 32.
Buying and selling offices.—R. C. c. 34, s. 33.

Bribery of jurors.—R. C. c. 34, s. 34.

Sheriff or other officers suffering a criminal to escape.

What necessary for State to prove.—R. C. c. 34, s. 35.

Duty of solicitors in such escapes.—R. C. c. 84, s. 36.

38. It is hereby declared to be a duty 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 districts, 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 endorsed as prosecutor.

Breaking up or staying elections.—R. C. c. 84, s. 37.

39. 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 months, and pay such fine as the court shall adjudge, not exceeding one hundred dollars.

Public commission's forbidden to become contractors.—R. C. c. 84, s. 38.

40. 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 road neglecting duty.—R. C. c. 84, s. 39. Bridges kept up by mill owners in certain cases.—R. C. c. 84, s. 40.

41. 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.

42. 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 the chapter 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. C. c. 84, s. 41.

43. 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. C. c. 84, s. 42.

44. 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 State Board of Education 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,

Trespasser removed by sheriff.

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.

45. 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. C. c. 34, s. 44.*

46. 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 misd'r.—R. C. c. 34, s. 45.*

47. 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 shall have exclusive original jurisdiction of the offence. *Marrying a female under fifteen, without written consent of her father, a misdemeanor.—R. C. c. 34, s. 46.*

48. If any person shall, on purpose and unlawfully, but without malice aforethought, cut or slit the nose, bite or cut off a nose or lip, 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 shall, on conviction thereof, be imprisoned at least six months, and fined at the discretion of the court. *Maiming without malice, how punishable.—R. C. c. 34, s. 47.*

49. 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'r.—R. C. c. 34, s. 48.*

50. 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 suffer as prescribed in section twenty-nine, and be fined not exceeding one thousand dollars. *Perjury.—R. C. c. 34, s. 49.*

51. 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. *Subornation of perjury.—R. C. c. 34, s. 50.*

52. For the more effectual prosecution of accessories be- *Accessories to*

felonies before
the fact.

When, where,
and how tried.
—R. C. c. 34,
s. 53.

fore 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.

Accessories to
felonies after
the fact.

When, where,
and how tried.
—R. C. c. 34,
s. 54.

53. 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, shall or shall not be amenable to justice, and may be punished by fine, imprisonment, and in the manner prescribed in section twenty nine, or with part only of such punishments, at the discretion of the court. 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.

54. 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 shall die or be 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.—R. C. c. 34, s. 55.

May be punished.

55. 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 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 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.

Receivers of stolen goods, &c., of any value.—R. C. c. 34, s. 56.

56. 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 larceny.

Alteri'g marks and mismarking beasts.—R. C. c. 34, s. 57.

57. 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.

Holding out false lights on sea-coast.—R. C. c. 34, s. 58.

58. 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

Forgery.—R. C. c. 34, s. 59.

How punished

be forged, any deed, lease, or will, or any bond, writing obligatory, bill of exchange, promissory note, endorsement, or assignment thereof; or any acquittance or receipt for money or goods; or any receipt or release for any bond, note, bill, or any other security for the payment of money; or any order for the payment of money or delivery of goods, with intent, in any of the said instances, to defraud any person or corporation, and thereof shall be convicted in any of the Superior Courts, such person so offending shall be adjudged to suffer as is prescribed in section twenty-nine, and fined at the discretion of the court; and all or any of such punishment, at the discretion of the court, may be inflicted.

Counterfeiting bank-notes, checks, public or corporation securities.—R. C. c. 84, s. 60.

59. 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. C. c. 84, s. 61.

60. 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 counterfeited 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 prescribed in section twenty-nine of this chapter.

Forging, issuing, or passing certificates of stock.—R. C. c. 84, s. 62.

61. 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 or 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 sixty of this chapter.

62. And if any person shall sell, by delivery, endorsement, 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 sixty of this chapter.

Selling forged judgments, bonds, &c.—
R. C. c. 34, s. 63.

63. 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, shall be punished in like manner as if he had been convicted under section sixty of this chapter.

Counterfeiting foreign gold or silver coin.—
R. C. c. 34, s. 64.

Passing, or attempting to pass them.

64. If any person shall have in his possession any instrument for the purpose of making any counterfeit similitude or likeness of a Spanish milled dollar, or other foreign coin made of gold or silver, which is in common use and received in discharge of contracts by the citizens of the State, and shall be duly convicted thereof in any Superior Court, the person so offending shall suffer as prescribed in section twenty-nine of this chapter, 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.

Having in possession instruments for counterfeiting such coin.—R. C. c. 34, s. 65.

65. 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.

Fraudulently connecting parts of several bank notes, &c.—R. C. c. 34, s. 66.

66. 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 on any treasury warrant, debenture, certificate of stock, or public security, or any order,

Cheating by false tokens.—
R. C. c. 34, s. 67.

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 suffer as prescribed in section twenty-nine of this chapter: *Provided always*, that if, on 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.

67. Every person who, with intent to defraud or cheat another shall, designedly, by color of any false token or writing, or by any other false pretence, obtain the signature of any person or persons to any written instrument, the false making of which would be punishable as forgery, or obtain from any person or persons any money, goods, wares, merchandise or other property or valuable thing whatsoever, shall, on conviction thereof, be punishable by fine not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the penitentiary of the State for a term not less than one year or more than five years, or both, at the discretion of the court.

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 or 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 Auditor, 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 way 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.

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

How punished

Obtaining signature by false pretence.
1871-'2, c. 92.

Fraudulent entries and statements by public treasurer.—R. C. c. 34, s. 68.

Lotteries forbidden.

How punished
R. C. c. 34, s. 69.

Sale of lottery tickets forbidden.—R. C. c. 34, s. 70.

deemed guilty of a misdemeanor, and punished as in the preceding section.

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, or shall play or bet thereat any money, property or thing of value, whether the same be in stake or not, 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.—
R. C. c. 84, s. 71.
1856-'7, a. 25.

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. C. c. 84, s. 72.

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 and kept on their premises, how punished.—
R. C. c. 84, s. 73.

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. C. c. 84, s. 74.

75. All Justices of the Peace, Intendents and Magistrates of Police, Mayors of towns and Judges of the Supreme or Superior Courts, who shall have good reason to believe that any person or persons within their jurisdiction has knowledge of the existence and establishment of any faro-bank or faro-table, or gaming tables prohibited by this chapter, in any town or county in this State, within their several jurisdictions, and such persons not being minded to make voluntary information thereof on oath, then it shall be lawful for such Justice of the Peace, Intendent and Magistrate of Police, Mayor of town, or Judge of Supreme or Superior Court, to issue to the Sheriff of the county, or any Constable of the town or district in which said faro-bank, or faro-table, or gaming table or tables are supposed to be, a subpoena, *capias ad testificandum*, or summons in writing, commanding such person or persons to appear immediately before said Justice of the Peace, Intendents or Magistrates of Police, Mayor or Judge, and give evidence on oath as to what he may know touching the existence, establishment and whereabouts

Justices, &c., may summons witnesses to give evidence against gaming tables.—
1858-'9, c. 34, s. 1.

of said gaming table or tables, faro-bank or faro-tables, and the names and personal description of the keepers thereof; and such evidence when obtained shall be considered and held in law, as an information on oath as contemplated in section seventy four of this chapter; and said Justice, Intendent, Magistrate, Mayor or Judge, may thereupon proceed to seize and arrest said keepers and destroy said tables, or issue process therefor, in like manner as they may now do, when information of such facts is made to them on oath by provision of said seventy-fourth section of this chapter.

Penalty for failing to appear.—1858-'9, c. 34, s. 2.

76. When any person so summoned fails to appear, he shall forfeit, in addition to the penalties now fixed by law for contempt, the additional sum of one hundred dollars, to be recovered by warrant before a Justice of the Peace.

Not to testify against himself.—1858-'9, c. 34, s. 3.

77. The person so summoned shall not be requested to testify before such Justice, Commissioner, Mayor or Judge, against himself or any other person, except the keeper or owners of said faro-bank or faro-tables, or gaming tables, or such persons as are known as "dealers" thereof, and the witness or other person shall in no case be prejudiced thereby in any trial at law: *Provided, nevertheless,* That this and the two preceding sections, except for the special purpose herein set forth, shall not be construed as coming in conflict with any other law on this subject now existing.

Betting or playing at cards in ordinary, or retail house prohibited.—R. C. c. 34, s. 75.

78. 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 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 misdemeanor.—R. C. c. 34, s. 76.

79. 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. C. c. 34, s. 77.

80. 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 use of the poor.

81. 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.

Persons opposing such seizure, penalty on.—R. C. c. 34, s. 78.

82. Billiard and backgammon tables are excepted from the provisions of this chapter, and may be used.

Billiard and backgammon tables excepted.—R. C. c. 34, s. 79.

83. If any register of deeds shall knowingly issue any license for marriage between any person of color and white person; or if any clergyman, minister of the gospel, or Justice of the Peace shall knowingly marry any such person of color to a white person, the person so offending shall be guilty of a misdemeanor.

Marriage of negroes with white persons forbidden.—R. C. c. 34, s. 80.

84. 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 license forbidden.—R. C. c. 34, s. 84.

85. If any person shall hunt for deer with a gun or guns in the woods in the night-time, by fire-light, 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. C. c. 34, s. 95.

86. 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. C. c. 34, s. 96.

87. 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.—R. C. c. 34, s. 97.

88. If any person shall knowingly and fraudulently vote at an election, who, by law, shall not be entitled to vote thereat, 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.

Voting fraudulently at elections.—R. C. c. 34, s. 98.

89. 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

Maliciously obstructing railroads. When death doth not ensue

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. 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 tract, 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, if the persons were killed, and shall suffer as prescribed in section thirteen if the persons were maimed or disabled.

When death
ensues.—R. C.
c. 34, s. 99.

Malicious in-
juries to plank
roads, turn-
pikes, and ca-
nals. misde-
meanor.—R.
C. c. 34, s. 100

How punished

Wilful injuries
to railroads
and other im-
provements,
misdemeanor.
—R. C. c. 34,
s. 101.

How punished

Removing or
defacing tomb-
stones and
monuments
over the dead.
—R. C. c. 34,
s. 102.

Destroying, de-
facing or inju-
ring certain
houses.

90. If any person shall maliciously destroy or injure any plank road, turn pike, 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.

91. 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 abettors, shall be imprisoned not less than twelve months, and fined at the discretion of the court.

92. 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.

93. 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 men-

tioned in section twenty-eight 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 section 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.

Burning, injuring and defacing churches, uninhabited and out-houses.
Burning, pulling down, or removing fences.—R. C. c. 84, s. 103.

94. 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.
—R. C. c. 84, s. 104.

95. If any person shall kill or abuse any horse, mule, cattle, hog, sheep or neat cattle, the property of another, in any inclosure not surrounded by a lawful fence, such person shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined or imprisoned at the discretion of the court.

Killing horses, mules, &c., a misdemeanor.
1868-9, c. 258.

96. 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 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, larceny.—R. C. c. 84, s. 105.

97. Those who get ton timber on the Roanoke river, and 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.

Timber floated down Roanoke river to be marked, &c.
Marks, &c., recorded, where.—R. C. c. 34, s. 108.

98. Any person may take to his own use any log of ton timber floating singly down said river, which is neither marked or

Altering mark or taking

marked timber with intent to steal, larceny.—R. C. c. 34, s. 107.

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 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.

Mark first recorded to hold.—R. C. c. 34, s. 108.

99. 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.

Sales of liquor, traffic and exhibitions near places of worship forbidden when.—R. C. c. 34, s. 109.

100. 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 of where divine worship is celebrating, contrary to any of the provisions of sections six and seven of chapter ninety-nine, entitled "Religious Societies;" every person, so offending against any of the provisions of said sections, shall be deemed guilty of a misdemeanor.

Sending letter containing menacing demand for money, or threatening to accuse one of infamous crime to extort money.—R. C. c. 34, s. 110.

101. 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, or imprisonment in the penitentiary, 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.

Malicious injuries to real property.—R. C. c. 34, s. 111.

102. 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.

Negligent omission of returning officers in elections of Governor and Electors.—R. C. c. 34, s. 113.

103. 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 "General Assembly" 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 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 proceeding 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.

104. 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 the 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.

105. The Superior Court 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 thereof be remitted by the Governor.

106. 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.

107. If any Clerk of the Superior Court, 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.

108. Offences made misdemeanors by statute, where a specific punishment is not prescribed, shall be punished as misdemeanors at common law, but the punishment prescribed in section twenty-nine of this chapter shall be used only for crimes that are infamous or done in secrecy and malice, or done with deceit and intent to defraud.

Wilful neglect of officers to perform their duty in elections of Governor and electors.—R. C. c. 34, s. 114.

Jurisdiction of such offences. Not pardoned.—R. C. c. 34, s. 115.

Constables failing to execute process or making false returns. Acting as such without authority.—R. C. c. 34, s. 118.

Officers failing to discharge their duties indictable.—R. C. c. 34, s. 119.

Misdemeanors by statute punished as at common law unless otherwise directed by statute.—R. C. c. 34, s. 120.

Betting on elections misdemeanor.—1858-'9, c. 49.

Persons destroying dams, &c. Penalty.—1866, c. 48.

Punishment for assault.—1870-'1, c. 48, s. 2.

Penalty for failing to work on public roads.—1870-'1, c. 74, s. 1.

Proviso.

Protection to private marks, labels, &c.—1870-'1, c. 25, s. 1.

Penalty for violation.

Penalty for vending merchandise with forged labels, &c.—1870-'1, c. 253, s. 2.

109. Any person who shall bet or wager any money or other thing of value upon any election held in this State shall be guilty of a misdemeanor, and, on conviction, shall be fined or imprisoned at the discretion of the court.

110. Any person or persons who shall cut away, destroy or otherwise injure any dam or dams, or parts thereof, or shall obstruct or damage any race, canal or water channel erected, opened, or constructed for the purpose of furnishing water for the operations of any mill, factory or machine works, shall be liable to be indicted in the Superior Court of the county in which the offence shall have been committed, and upon conviction shall be fined or imprisoned, or both, at the discretion of the court, and shall also be further liable to an action in said court for damages, by the person or company thus injured.

111. In all cases of an assault with or without intent to kill or injure, the person convicted shall be punished by fine or imprisonment, or both, at the discretion of the court.

112. If any person liable under existing laws to work upon the public roads, shall wilfully refuse to work upon said roads, after being legally summoned for that purpose, or if said person or persons so liable to work as aforesaid shall attend at the place and time designated in the notice or summons from the overseer, and wilfully refuse or neglect to work on said road, the person or persons so offending shall, for every such offence, be deemed guilty of a misdemeanor, and upon conviction before a Justice of the Peace, shall be fined not less than two, nor more than five dollars: *Provided, however,* That this section shall not be construed to affect any person liable to work as aforesaid, who shall furnish a good hand to work in his stead, or who for each day notified to attend, shall pay to the overseer the sum of one dollar, to be expended for labor on the road.

113. Every person who shall knowingly and wilfully forge or counterfeit or cause or procure to be forged or counterfeited the private marks, tokens, stamps or labels of any mechanic, manufacturer or other person being a resident of this State or of the United States with intent to deceive and defraud the purchasers, mechanics or manufacturers of any goods, wares or merchandise whatsoever, upon conviction thereof shall be punished by fine not less than fifty dollars and not exceeding one thousand dollars, or by imprisonment not less than one month, or more than five years, or both fine and imprisonment, at the discretion of the court.

114. Every person who shall vend any goods, wares or merchandise having thereon any forged or counterfeit marks, tokens, stamps, or labels purporting to be the marks, tokens, stamps or labels of any person being a resident of the State or of the United States, knowing the same at the time of the purchase thereof by him to be forged or counterfeited, shall, upon conviction, be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county prison not exceeding six

months or by fine not exceeding one hundred dollars, or by both fine and imprisonment at the discretion of the court.

115. If any person shall pursue, kill or wound any horse, mule, ass, jenny, cattle, hog, sheep or goat, the property of another, with the intent unlawfully and feloniously to convert the same to his own use, he shall be deemed guilty of a misdemeanor, and on conviction, shall be punishable, in all respects, as if convicted of larceny, though such animal may not have come into the actual possession of the person so offending. And all persons commanding, counselling, advising, aiding or abetting any of such unlawful acts, shall be punished in like manner, and may be prosecuted alone, or with the principal actor.

Persons infur-
ing live stock
guilty of mis-
demeanor.—
1866, c. 67.

116. No person, after being forbidden to do so, shall enter on the premises of another without a license therefor; and if any person after being thus forbidden, shall so enter, he shall be deemed guilty of a misdemeanor. And if any person not being the present owner or *bona fide* claimant of such premises shall wilfully and unlawfully enter thereon, and carry off or be engaged in the act of carrying off, any wood or other kind of property whatsoever, growing or being thereon, the same being the property of the owner of the premises, or under his control, keeping or care, such person shall, if the act be done with felonious intent, be deemed guilty of larceny, and punished as for that offence. And if not done with such intent, shall be deemed guilty of a misdemeanor: *Provided, however*, that if any person shall make a written affidavit before a Justice of the Peace of the county, that any of his cattle or other live stock, (which shall be specially described and set forth in such affidavit) has strayed away, and he has good reason to believe that it is on the premises of another or other persons, then such justice may, in his discretion, allow such person to enter on said premises with one or more servants, without firearms, in the day time (Sunday excepted,) between the hours of sunrise and sunset, and make search for his estray for such limited time as to said justice shall appear reasonable; but the only effect of such license shall be to protect the persons entering from indictment therefor, and then only, provided the license shall have been made *bona fide*, and without any damages except such as was necessary to conduct the search.

Persons for-
bidden to
enter land.—
1866, c. 61.
Misdemeanor.

Proviso.

117. If any person or persons whomsoever shall be known to hunt in this State on the Sabbath with a dog or dogs, or shall be found off of their premises on the Sabbath, having with him or them a shot gun, rifle or pistol, he or they shall be subject to indictment; and, upon conviction, shall pay a fine not to exceed fifty dollars at the discretion of the court, two-thirds of such fine to enure to the benefit of the free public schools in the county of which such convict is a resident, the remainder to the informant.

Hunting on
the Sabbath
prohibited.—
1863-'9, c. 18.
s. 1.

118. Upon failure of such convict to pay the required fine, he shall be imprisoned at hard labor for not more than three

Penalty for
failing to pay
fine.—1868-'9,
c. 18, s. 2.

Proviso.

months as the court, in its judgment, shall direct: *Provided*, that the preceding section shall not apply to any person who may violate its provision in defence of his own property.

Husband guilty of misdemeanor for abandoning family.—1868, '9, c. 209, s. 1.

119. If any husband shall wilfully abandon his wife without providing adequate support for such wife, and the child or children which he has begotten upon her, he shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not to exceed the sum of fifty dollars, or imprisoned not to exceed one month, or both, in the discretion of the Judge of the Superior Court, or Justice of the Peace before whom the case shall be tried.

Fined or imprisoned for not providing for his family.—1868-'9, c. 209, s. 2.

120. If any husband, while living with his wife, shall wilfully neglect to provide adequate support for such wife and the child or children which he has begotten upon her, he shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not to exceed the sum of fifty dollars, or imprisoned not to exceed one month, or both, in the discretion of the Judge or Justice of the Peace before whom the case shall be tried.

Presumptive evidence thereof.—1868-'9, c. 209, s. 8.

121. In the cases provided for in the two preceding sections of this chapter, if the fact of abandonment and failure to provide adequate support of wife and child or children shall be proved, or while being with such wife, neglect to provide for the adequate support of such wife and child or children, shall be proved, then the fact that such husband neglects applying himself to some honest calling for the support of himself and family, but is found sauntering about, endeavoring to maintain himself by gaming or other undue means, or is a common frequenter of drinking houses, or is a known common drunkard, shall be presumptive evidence that such abandonment and neglect is wilful.

Wife competent witness.—1868-'9, c. 209, s. 4.

122. In all such cases as is provided for in the three preceding sections of this chapter, the wife shall be a competent witness as to the fact of abandonment, or neglect to provide adequate support by such husband for his wife and child or children.

Unlawful to offer bribe to electors.—1868 c. 62, s. 1.

123. It shall be unlawful for any person to offer any bribe to any of the qualified voters of this State, with intent to influence his vote in any election.

Unlawful to influence voters by threats.—1868 c. 62, s. 2.

124. It shall be unlawful for any person to attempt to influence the vote of any of the qualified voters of this State, in any election, by any threat to discharge such voter from employment, or to withdraw from him patronage, or to discharge from employment, or refuse employment to any member of such voter's family.

Unlawful to give pecuniary consideration for vote.—1868, c. 62, s. 8.

125. It shall be unlawful for any person to give any pecuniary or other consideration whatever, to any of the qualified voters of this State because of the vote which such voter may cast or may have cast in any election.

Unlawful to discharge from employment.—1868, c. 62, s. 4.

126. It shall be unlawful for any person to discharge from employment, withdraw patronage from, or otherwise injure, threaten, oppress or attempt to intimidate any of the qualified voters of this State, because of the vote such voter may cast in any election.

127. Any person violating any of the provisions of the four preceding sections shall be guilty of a misdemeanor, and shall be liable to indictment for the same, and on conviction of having violated the provisions of section one hundred and twenty-three, shall be fined not less than twenty dollars, or imprisoned not less than ten days. And on conviction of having violated the provisions of section one hundred and twenty-four, shall be fined not less than fifty dollars, or imprisoned not less than twenty days. And on conviction of having violated the provisions of section one hundred and twenty-five, shall be fined not less than twenty dollars, and also imprisoned not less than ten days. And on conviction of having violated section one hundred and twenty-six, shall be fined not less than fifty dollars, and also imprisoned not less than twenty days.

Penalty for
bribing voters.
—1868, c. 62,
s. 5.

128. Every magistrate or peace officer of the State, or of municipal corporations in the State, who shall know of his own knowledge, or to whom information shall in any way come, that any person has violated any of the provisions of the five preceding sections, shall immediately arrest, or by warrant cause to be arrested, such person so offending, and upon sufficient evidence, shall cause him to enter into bond and sufficient security in the sum of not less than two hundred dollars, for his appearance before the next term of the Superior Court of the county in which the offence may have been committed, then and there to answer to the law, and in the meantime to keep the peace, and in default of giving bond and sufficient security, such person so offending shall be committed to prison until he shall have complied with the aforesaid provisions.

Every magis-
trate and
peace officer
having infor-
mation of bri-
bing, &c., to
cause the ar-
rest of offend-
er.—1868, c.
62, s. 6.

129. Any Justice of the Peace or other officer charged with the execution of sections one hundred and twenty-three, one hundred and twenty-four, one hundred and twenty-five, one hundred and twenty-six, and one hundred and twenty-seven of this chapter, who shall refuse or neglect to carry out the provisions of said sections, shall be guilty of a misdemeanor in office.

Penalty on
Justice, &c.,
for refusing to
act.—1868, c.
62, s. 7.

130. Any person who shall receive, expect, or offer to receive, or pay, offer or promise to pay, contribute, or promise to contribute, to another to be paid or used, any money or other valuable thing, or who shall make any promise to influence, or as a compensation for the giving or withholding a vote at an election, shall not vote at said election; and upon challenge for such cause, the person so challenged before the judge or other officers authorized for that purpose to receive his vote, shall swear or affirm before said judge or other officers, that he has not received or offered, does not expect to receive, has not paid, offered or promised to pay, contribute, offered or promised to contribute, to another to be paid or used, any money, or other valuable thing, nor made any promise to influence, or as a compensation or reward for the giving or withholding a vote at such election: *Provided*, that any person convicted in any court of law in this State, of having falsely sworn in such case,

Unlawful to
receive bribes.
—1868-'9, c.
176, s. 1.

Proviso.

shall be liable to all the pains and penalties inflicted in cases of perjury.

Officers receiving bribes guilty of felony.—1868-'9, c. 176, s. 2.

131. Any person holding office under the laws of this State who, except in payment of his legal salary, fees or perquisites, shall receive, or consent to receive, directly or indirectly, anything of value or personal advantage, or the promise thereof, for performing or omitting to perform any official act, or with the express or implied understanding that his official action, or omission to act, is to be in any degree influenced thereby, shall be deemed guilty of a felony, and, on conviction, shall be punished by imprisonment in the State prison for a term not exceeding five years, or a fine not exceeding five thousand dollars, or both, in the discretion of the court.

Penalty for offering bribes.—1870-'1, c. 233.

132. Any person offering a bribe, whether it be accepted or not, shall be guilty of a felony, and, on conviction, shall be punished by imprisonment for a term not less than one year nor more than five years.

Accused allowed to testify.—1868-'9, c. 176, s. 3.

133. Any person charged with receiving a bribe, or with offering or promising a bribe that is rejected, shall be permitted to testify in his or her own behalf in any civil or criminal prosecution therefor.

Persons liable to indictment for offering bribes, &c., to members of Legislature. 1868-'9, c. 176, s. 5.

134. Any person or persons who shall directly or indirectly promise, offer or give, or cause, or procure to be promised, offered or given, any money, goods, right in action, bribe, present or reward, or any promise, contract, undertaking, obligation or security for the payment or delivery of any money, goods, rights in action, bribe, present or reward, or any other valuable thing whatever, to any member of the Senate or House of Representatives of this State after his election as such member, and either before or after he shall have qualified and taken his seat, with intent to influence his vote or decision on any question, matter, cause or proceeding which may then be pending before the General Assembly, or which may come before him for action in his capacity as a member of the General Assembly, and shall be thereof convicted, said person or persons so offering, promising or giving, or causing or procuring to be promised, offered or given any such money, goods, right in action, bribe, present or reward, or any bond, contract, undertaking, obligation or security for the payment or delivery of any money, goods, rights in action, bribe, present or reward, or other valuable thing whatever, and the member or members elect who shall, in any wise, accept or receive the same, or any part thereof, shall be liable to an indictment as for a felony in the Superior Courts of this State, and shall, upon conviction thereof, be fined not exceeding double the amount so offered, promised or given, and imprisoned in the penitentiary not exceeding five years, and the person convicted of so accepting or receiving the same, or any part thereof, shall forfeit his seat in the General Assembly, and be forever disqualified to hold any office of honor, trust or profit under this State.

Legislators receiving bribes to forfeit seats, &c.

Solicitor to

135. Any District Solicitor who shall fail faithfully to pros-

ecute the violation in their jurisdiction, of any provision of this chapter in relation to bribery which may come to his knowledge, shall be removed from office by the Governor after due notice and an opportunity to be heard in his defence. The expenses which shall be incurred by any county in investigating and prosecuting any charge of bribery, or attempt to bribe any State officer or member of the General Assembly within said county, and of receiving bribes by any State officer or member of the General Assembly in said county, shall be a charge against the State, and the properly attested claim of the County Commissioners shall be paid by the Treasurer of the State.

prosecute.—
1868-'9, c. 176,
s. 6.

Costs of prosecution to be paid by Public Treasurer.

136. If any officer, agent, clerk or servant of any corporation, or any clerk, agent or servant of any person or copartner-ship, (except apprentices and other persons under the age of sixteen years,) shall embezzle or fraudulently convert to his own use or shall take, make way with or secrete, with intent to embezzle or fraudulently convert to his own use any money, goods or other chattels, bank note, check or order for the payment of money issued by or drawn on any bank or other corporation, or any treasury warrant, treasury note, bond or obligation for the payment of money issued by the United States or by any State, or any other valuable security whatsoever belonging to any other person or corporation which shall have come into his possession or under his care by virtue of such office or employment, he shall be deemed guilty of felony, and upon conviction thereof, shall be punished as in case of larceny.

Embezzlement of funds declared felony, when.—1871-'2, c. 145, s. 1.

137. In indictments under the preceding section, except when the offence shall relate to a chattel, it shall be sufficient to allege the embezzlement to be of money without specifying any particular coin or valuable security; and such allegation, so far as regards the description of the property, shall be sustained if the offender shall be proved to have embezzled any amount although the particular species of coin or valuable security of which such amount was composed shall not be proved.

Embezzlement defined.—1871-'2, c. 145, s. 2.

138. If any Clerk, Sheriff, Register of Deeds, County Treasurer, or other county or State officer shall engage in the purchasing of any county or State claim at a less price than its full and true value, or any rate of discount thereon, or be interested in any speculation in such claims, he shall be guilty of a misdemeanor, and subject to indictment in the Superior Court of the county in which the offence is committed; and, on conviction thereof, shall be liable to removal from office at the discretion of the court.

Misdemeanor to speculate in county claims.—1868-'9, c. 260.

139. If any person who may be able to labor has no apparent means of subsistence, and neglects to apply himself to some honest occupation for the support of himself and his family, if he have one; or, if any person shall be found spending his time in dissipation, or gaming, or sauntering about without employment, or endeavoring to maintain himself or his family by any undue or unlawful means, such person shall be deemed

Vagrancy defined and punished.—1865-'6, c. 42.

Duty of magistrates.

a vagrant, and guilty of a misdemeanor. And it shall be the duty of any Justice of the Peace of the county wherein such person shall be found, upon due proof of such offence, to issue a warrant for the arrest of the offender, to be brought before him or some other Justice of the Peace, whose duty it shall be, if, on examination, such person shall be found a vagrant, to recognize him with good security for his appearance at the first court to be held for said county, to answer such offence. And if he fail to give such recognizance, he shall be imprisoned until the session of said court: *Provided, however*, that if such offender shall, at the said court, enter into a recognizance, in such sum as the court shall prescribe, conditioned for his good behavior, and industrious, peaceable deportment for one year, he may be discharged on payment of the costs and charges which shall have accrued; but if he shall fail to enter in such recognizance, and pay such costs and charges, he shall be prosecuted as a vagrant, and upon conviction, the court may fine or imprison him, or both, or sentence him to the workhouse for such time as the court may think fit.

Proviso.

Mooring vessels to buoys, —1858-'9, c. 58, s. 2.

140. Any person mooring any vessel to any of the buoys, beacons or stakes, placed in the navigable waters of this State by the "United States Light-House Board," or in any manner hanging on with a boat or vessel to any such buoy, stake or beacon in said waters, shall forfeit and pay the sum of fifty dollars for every offence; and any person who shall wilfully remove, break or otherwise damage any such buoy, beacon or stake, shall be deemed guilty of a misdemeanor, and in addition thereto shall forfeit and pay the sum of one hundred dollars.

Penalties, how recoverable. —1858-'9, c. 58, s. 3.

141. The penalties enumerated in the above section shall be recovered by the superintendent of lights of the district in which the offence is committed, for the use and benefit of the commissioners of navigation in whose waters the offence is committed.

Conspiracy to destroy government. —1868, c. 60, s. 1.

142. If two or more persons shall conspire together to overturn or put down, or to destroy by force, the government of this State, or to levy war against the government of this State, or to oppose by force the authority of said government, or by force, or by threats, to intimidate, or to prevent, hinder or delay the execution of any law of the State of North Carolina, or by force or fraud to seize or take possession of any fire arms or property of the State aforesaid, against the will or contrary to the authority of said State, every person so offending in any of the ways aforesaid, shall be deemed guilty of a high crime, and upon conviction thereof in any court having jurisdiction shall be imprisoned for not more than ten years, and be fined not exceeding five thousand dollars.

Penalty.

Rebellion or insurrection a high crime. —

143. If any person shall incite, set on foot, assist or engage in a rebellion or insurrection against the authority of the State of North Carolina or the laws thereof, or shall give aid or comfort thereto, each and every person so offending in any of the

ways aforesaid, shall be deemed guilty of a high crime, and upon conviction thereof in any court having jurisdiction, shall be punished by imprisonment at hard labor for not more than fifteen years, and be fined not more than ten thousand dollars.

144. If any person shall adulterate any spirituous, alcoholic, vinous or malt liquors by mixing the same with any substance of whatever kind, except as hereinafter provided, or if any person shall sell or offer to sell any spirituous, alcoholic, vinous or malt liquors, knowing the same to be thus adulterated, or shall import into this State any spirituous or intoxicating liquors, and sell or offer to sell such liquor, knowing the same to be adulterated, he she or they shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined and imprisoned, one or both, at the discretion of the court before which the trial shall be had.

Penalty for selling adulterated liquors.—1858-'9, c. 57, s. 1.

145. Any person who shall sell or offer to sell any recipe or formula whatever for adulterating any spirituous or alcoholic liquors, by mixing the same with any substance of whatever kind except as is hereinafter provided, he, she or they shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined and imprisoned as is provided in the preceding section of this chapter.

Penalty for selling recipes for adulterating liquors.—1858-'9, c. 57, s. 2.

146. The provisions of the two preceding sections shall not be so construed as to prevent druggists, physicians, and persons engaged in the mechanical arts, from adulterating liquors for medical and mechanical purposes.

Not to extend to druggists.—1858-'9, c. 57, s. 3.

147. If any person, for the purpose of compassing or furthering any political object, or aiding the success of any political party or organization, or for resisting the laws, shall join or in any way connect or unite himself with any oath-bound secret political or military organization, society or association of whatsoever name or character, or shall form or organize, or combine and agree with any other person or persons to form or organize any such organization, or as a member of any secret political or military party or organization shall use or agree to use, any certain signs or grips or passwords, or any disguise of the person or voice, or any disguise whatsoever for the advancement of its object, and shall take or administer any extra judicial oath, or any secret solemn pledge, or any like secret means, or if any two or more persons for the purpose of compassing or furthering any political object, or aiding the success of any political party or organization, or for circumventing the laws, shall secretly assemble, combine or agree together, and the more effectually to accomplish such purposes, or any of them, shall use any certain signs, or grips, or pass words, or any disguise of the person or voice, or other disguise whatsoever; or shall take or administer any extra-judicial oath or other secret solemn pledge, or if any persons shall band together and assemble to muster, drill or practice any military evolutions except by virtue of the authority of an officer recognized by law, or of an instructor in institutions or schools in

Secret political organizations prohibited.—1870-'1, c. 183, s. 1.

Penalty.

which such evolutions form a part of the course of instruction, or if any person shall knowingly permit any of the acts and things herein forbidden to be had, done or performed on his premises, or on any premises under his control, or if any person being a member of any such secret political or military organization, shall not at once abandon the same and separate himself entirely therefrom; every person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than ten nor more than two hundred dollars, or imprisoned, or both, at the discretion of the judge of the Superior Court.

Penalty for altering or removing land-marks.—1858-'9, c. 17.

148. If any person shall wilfully or fraudulently remove, alter or deface any land mark, in anywise whatsoever, such person shall be deemed guilty of a misdemeanor, and shall be punished accordingly, upon conviction in any Superior Court of the State: *Provided, however*, that this act shall not apply to such land marks as creeks and other small streams, which the interest of agriculture may require to be altered or turned from their channels.

Intoxicating liquors not to be given away or sold at elections.—1868, c. 26, s. 1.

149. No person or persons shall give away in any public place, retail or sell except upon prescription of a practicing physician, and for medical purposes, any intoxicating liquors at any time within twelve hours next preceding or succeeding any public election, or during the holding thereof, at any place within five miles of any election precinct.

Penalty.—1868 c. 26, s. 2.

150. Any person or persons violating the provisions of the preceding section shall be guilty of a misdemeanor, and punishable with a fine of not less than one hundred nor more than one thousand dollars.

Penalty for digging ginseng at certain times.—1866-'7, c. 60.

151. Any person digging ginseng between the first day of April and the first day of September, shall forfeit and pay the sum of ten dollars for each day or part of a day's digging, and shall also be guilty of a misdemeanor, and liable to be indicted and fined at the discretion of the court: *Provided*, that no man shall be prevented from destroying ginseng upon his own premises.

Any officer or agent of a railroad company who shall embezzle corporate funds guilty of felony.—1870-'1, c. 102, s. 1.

152. If the president, or treasurer or any director, or any engineer, or any other officer or agent of any railroad company incorporated by any law or laws of this State, and a law or laws of any other State or States, already in existence, or which shall hereafter come into existence by virtue of any such law or laws already passed, or which may hereafter be passed, shall embezzle any money with which such president, treasurer, director, engineer, officer or agent, shall be charged by virtue of his said office or agency, or shall in any way, directly or indirectly apply or in any way dispose of to his own use or benefit, or for the use or benefit of himself or any other person, State or corporation, other than the company of which he is or may be such president, director, engineer or agent, any money, bonds of any kind, or other thing or things, such president, treasurer, director, engineer, or agent so offending shall,

for every such offence, be deemed guilty of a felony, and on conviction in any Superior Court of any county through which the railroad or any part thereof of any such railroad company shall pass, shall be imprisoned at hard labor in the penitentiary, not less than three nor more than ten years, and fined not less than one thousand nor more than ten thousand dollars. Penalty.

153. If any person or persons shall agree, combine, collude, or conspire with the president, treasurer, director, engineer or agent, or any one or more of them of any such railroad company, to commit any offence specified in the preceding section of this chapter, every person so offending shall be deemed guilty of a felony, and on conviction in any Superior Court of a county through which the railroad or any part thereof of any railroad company against which such offence may be perpetrated passes, shall be imprisoned at hard labor in the penitentiary for not less than three nor more than ten years, and fined not less than one thousand nor more than ten thousand dollars. Person conspiring with offending officer or agent guilty of felony.—1870-'1, c. 103, s. 2.
Penalty.

154. If any person shall wilfully fell any tree, or wilfully put any obstruction except for the purposes of utilizing water as a motive power, in any branch, creek, or other natural passage for water, whereby the natural flow of water through such passage is lessened or retarded, or whereby the navigation of such course by any raft or flat may be impeded, delayed or prevented, the person so offending shall be guilty of a misdemeanor, and on conviction shall be fined not to exceed fifty dollars, or imprisoned not to exceed thirty days. Obstructing water courses.—1872-'3, c. 107, s. 1.
Penalty.

155. Nothing contained in the preceding section shall prevent the erection of fish dams or hedges which do not extend across more than two-thirds of the width of any stream where erected, but if extending over more than two-thirds of the width of any stream, the penalties in the preceding section of this chapter shall attach. Dams and hedges excepted, when. 1872-'3, c. 107, s. 2.

156. As the ends of justice, public morals and the preservation of order, demand that the execution of all capital offenders should be made private and invested with the solemnity appropriate to the final act of penal law, any Sheriff on whom shall devolve the execution of a sentence of death on a public offender, shall be required to provide for the execution of such criminal within the jail yard enclosure, and as much removed from public view as the means within his control will allow. Sheriffs required to execute within enclosure.—1868 c. 21, s. 1, 2.

157. The Sheriff, after having provided for the private execution of the criminal, may admit by ticket, in addition to the required guard, two physicians and necessary assistants, not more than thirty-six nor less than eighteen respectable citizens to witness for the State, the due observance of the law. Sheriff may admit by ticket physicians and others.—1868, c. 21, s. 3.

SECTION 2. 6 Ire., 305; 4 Ire., 224, 8 Jones, 170; 1 Winston, 300; Phillips, 49; Ibid, 231; Ibid, 302; 63 N. C., 7; 65 N. C., 466.

SEC. 4. 9 Ire., 463; 13 Ire., 244; 3 Ire., 570; 4 Jones, 349; 5 Jones, 430; 7 Jones, 190; 1 Winston, 249; 2 Winston, 80; Phillips, 186; 7 Jones, 167; 8 Jones, 354; Ib., 455; Ib., 459; 68 N. C., 493.

- SEC. 11. 5 Ire., 350; 9 Ire., 554.
 SEC. 14. 7 Ire., 39; 1 Ire., 121.
 SEC. 15. 2 Dev., 222; 2 Ire., 346.
 SEC. 19. 3 Hawks, 618; 8 Jones, 448; Phillips, 637.
 SEC. 27. 4 Hawks, 350; 3 Mur., 430.
 SEC. 41. 2 Car. L. R., 633; 2 Mur., 135; 11 Ire., 571.
 SEC. 42. 12 Ire., 130.
 SEC. 43. 8 Ire., 229; 2 Dev., 231.
 SEC. 45. 3 Dev., 331; 3 D. & B., 110; 4 Ire., 261; Phillips, 520; 5 Jones, 415.
 SEC. 47. 1 D. & B., 119.
 SEC. 49. 1 Hawks, 487.
 SEC. 50. 6 Ire., 5; Bus., 402; Phillips, 812.
 SEC. 55. 13 Ire., 338.
 SEC. 56. 7 Ire., 251; 2 Ire., 153.
 SEC. 58. 13 Ire., 491; 3 Ib., 474; 2 D. & B., 348; 3 Dev., 122; 2 Ib., 443; 6 Ire., 79; 7 Ib., 206; 65 N. C. 419; 66 N. C., 644.
 SEC. 59. 2 Hawks, 248; Ib., 443.
 SEC. 60. 5 Ire., 287.
 SEC. 64. 3 Hawks, 191.
 SEC. 66. 11 Ire., 477; 4 Hawks, 648; 2 Dev., 199; 1 D. & B., 408; 3 Hawks, 620; 65 N. C., 821.
 SEC. 69. 64 N. C., 604.
 SEC. 71. 6 Jones, 73; 8 Jones, 208.
 SEC. 72. 8 Ire., 266; 8 Ire., 271.
 SEC. 78. 4 D. & B., 185; 1 Ire., 14; 9 Ire., 378.
 SEC. 83. 63 N. C., 451.
 SEC. 84. 1 Ire., 334; 4 D. & B., 107; 8 Jones, 178; 1 Winston, 234.
 SEC. 88. 10 Ire., 336; 12 Ib., 178.
 SEC. 93. Bus., 197; 13 Ire., 86; Ib., 841.
 SEC. 94. 65 N. C., 309.
 SEC. 117. 67 N. C., 24.
 SEC. 119. 65 N. C., 496.
 SEC. 122. 67 N. C., 470.
 SEC. 139. 65 N. C., 389.

CHAPTER 33.

CRIMINAL PROCEEDINGS.

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Persons summoned by any Judge, &c., to assist.—1868-'9, c. 178, sub. c. 1, s. 1.

Person summoned by any Judge, &c., to assist.—1868-'9, c. 178, sub. c. 1, s. 2.

1. Every person present at any riot, rout, affray or other breach of the peace, shall endeavor to suppress and prevent the same, and if necessary for that purpose, shall arrest the offenders.

2. Every person summoned by a Judge, Justice, Sheriff, Coroner or Constable, to aid in suppressing any riot, rout, unlawful assembly, affray or other breach of the peace, or to arrest the persons engaged in the commission of such offences,

or to prevent the commission of any felony or larceny which may be threatened or begun, shall do so.

3. Every Sheriff, Coroner, Constable, officer of police, or other officer entrusted with the care and preservation of the public peace, who shall know or have reasonable ground to believe that any felony or larceny has been committed, or that any dangerous wound has been given, and shall have reasonable ground to believe that any particular person is guilty and shall apprehend that such person may escape if not immediately arrested, shall arrest him without warrant, and may summon all bystanders to aid in such arrest.

4. All persons are authorized to break open and enter a house to prevent a felony about to be committed therein.

5. If a felony or larceny has been committed, or a dangerous wound has been given, and there is reasonable ground to believe that the guilty person is concealed in a house, it shall be lawful for any Sheriff, Coroner, Constable or police officer, admittance having been demanded and denied, to break open the door and enter the house and arrest the person against whom there shall be such ground of belief.

6. Every person in whose presence a felony or larceny has been committed may arrest the person whom he knows or has reasonable ground to believe to be guilty of such offence, and it shall be the duty of every Sheriff, Coroner, Constable or officer of police, upon information, to assist in such arrest.

7. Every person without warrant shall be either immediately taken before some magistrate having jurisdiction to issue a warrant in the case; or else committed to the county prison, and, as soon as may be taken before such magistrate, who, on proper proof, shall issue a warrant and thereon proceed to act as may be required by law.

8. In all cases where any two Justices of the Peace, or any Judge of the Supreme or Superior Courts, shall, on written affidavit, filed and retained by such Justice or Judge, receive information that a felony has been committed by any person, and that such person flees from justice, conceals himself and evades arrest, and service of the usual process of the law, the said Judge, or the said two Justices, being Justices of the county wherein such person is supposed to lurk or conceal himself, are hereby empowered and required to issue proclamation against him reciting his name, if known, and thereby requiring him forthwith to surrender himself; and also, when issued by any Judge, empowering and requiring the Sheriff of any county in the State in which said fugitive shall be, and when issued by two Justices empowering and requiring the Sheriff of the county of said Justices, to take such power with him as he shall think fit and necessary for going in search and pursuit of, and effectually apprehending such fugitive from justice, which proclamation shall be published at the door of the court-house of any county in which such fugitive is supposed to lurk or conceal himself, and at such other places as the Judge or Justices shall direct; and if any person against whom proclamation hath

Peace officers in case of a suspected felony or larceny.—1868-'9, c. 178, sub. c. 1, s. 3.

All persons may break open doors to prevent a felony.—1868-'9, c. 178, sub. c. 1, s. 4.

Who may break open doors to arrest a felon.—1868-'9, c. 178, sub. c. 1, s. 5.

Persons in whose presence a felony, &c., is committed, may arrest a suspected person.—1868-'9, c. 178, sub. c. 1, s. 6.

What to be done with persons arrested without warrant.—1868-'9, c. 178, sub. c. 1, s. 7.

Who may be outlawed and how.—1868-'9, c. 178, sub. c. 1, s. 8.

been thus issued, continue to stay out, lurk and conceal himself, and do not immediately surrender himself, any citizen of the State may capture, arrest and bring him to justice, and in case of flight or resistance by him, after being called on and warned to surrender, may slay him without accusation or impeachment of any crime.

What officers to act under this chapter.—1868-'9, c. 178, sub. c. 3, s. 1.

9. The following persons respectively shall have power to issue process for the apprehension of persons charged with any offence, and to execute the powers and duties conferred in this chapter, namely: the Chief Justice and the Associate Justices of the Supreme Court of the State, the Judges of the Superior Courts, Judges of Special Criminal Courts, Justices of the Peace, Mayors of cities, Superintendents of Police, or other chief officers of incorporated towns.

Duty of magistrate on complaint made.—1868-'9, c. 178, sub. c. 3, s. 2.

10. Whenever complaint shall be made to any such Magistrate that a criminal offence has been committed within this State, or without this State and within the United States, and that a person charged therewith is in this State, it shall be the duty of such Magistrate to examine, on oath, the complainant and any witnesses who may be produced by him.

Duty of magistrate on examination.—1868-'9, c. 178, sub. c. 3, s. 3.

11. If it shall appear from such examination that any criminal offence has been committed, the Magistrate shall issue a proper warrant under his hand, with or without seal, reciting the accusation, and commanding the officer to whom it shall be directed forthwith to take the person accused of having committed such offence and to bring him before a Magistrate, to be dealt with according to law.

Where warrant to run.—1868-'9, c. 178, sub. c. 3, s. 4.

12. Warrants issued by any Justice of the Supreme Court, or by any Judge of the Superior Court, or of a Special Criminal Court, may be executed in any part of this State; warrants issued by a Justice of the Peace, or by the chief officer of any city or incorporated town, in any part of the county of such Justice, or in which such city or town is situated, and on any river, bay or sound forming the boundary between that and some other county, and not elsewhere, unless endorsed as prescribed in the section next following.

How warrants may be endorsed.—1868-'9, c. 178, sub. c. 3, s. 5.

13. If the person against whom any warrant granted by any such justice or chief officer of a city or town shall be issued shall escape, or be in any other county ^{without} jurisdiction of such justice or chief officer, ^{grand jury.} the duty of any Justice of the Peace or any other Magistrate named in the ninth section of this chapter within the county where such offender shall be, or shall be suspected to be, upon proof of the handwriting of the Magistrate issuing the warrant, to endorse his name on the same, and thereupon the person or officer to whom the warrant was directed, or any officer of the county in which it was endorsed, to whom it may be delivered, may arrest the offender in that county.

Magistrate not liable for endorsement.—

14. No Magistrate shall be liable to any indictment, action for trespass or other action for having endorsed any warrant pursuant to the provisions of the last section, although it

should afterward appear that such warrant was illegally or improperly issued. 1868-'9, c. 178, sub. c. 3, s. 6.

15. It shall be the duty of the officer arresting to take the person charged with the offence before some Magistrate of the county in which the offence is charged to have been committed, or before any Judge of the Supreme or Superior Court. Duty of person arresting. 1868-'9, c. 178, sub. c. 3, s. 7.

16. If the offence charged in the warrant be not punishable with death, such Magistrate may take from the person so arrested a recognizance with sufficient sureties for his appearance at the next term of the Superior Court, to be held in the county where the offence shall be alleged to have been committed. Duty, if offence be not capital. &c.—1868-'9, c. 178, sub. c. 3, s. 8.

17. Such Magistrate shall certify on the warrant the fact of his having let the defendant to bail, and shall deliver the same, together with the recognizance taken by him, to the officer or other person having charge of the prisoner, who shall deliver the same without unnecessary delay to the clerk of the court in which such prisoner shall have been recognized to appear. Duty of magistrate on bailing.—1868-'9, c. 178, sub. c. 3, s. 9.

18. If such Magistrate refuse to let to bail the person so arrested, or if such person fail to give bail as above provided, the officer or person having him in charge shall take him before a Magistrate of the county in which the warrant was originally issued as hereinafter provided. If magistrate refuse to bail, duty of officer in charge.—1868-'9, c. 178, sub. c. 3, s. 10.

19. If the offence charged in the warrant be punishable with death, the officer making the arrest shall convey the prisoner to the county where the warrant was originally issued, before some Magistrate thereof, or before a Judge of the Supreme or Superior Court, as in the next section prescribed. The same, if offence capital, &c.—1868-'9, c. 178, sub. c. 3, s. 11.

20. Persons arrested under any warrant issued for any offence shall, where no provision is otherwise made, be brought before the Magistrate who issued the warrant; or, if he be absent, or from any cause unable to try the case, before the nearest Magistrate in the same county; and the warrant, by virtue of which the arrest shall have been made, with a proper return endorsed thereon and signed by the officer or person making the arrest, shall be delivered to such Magistrate. Before what magistrate to be brought.—1868-'9, c. 178, sub. c. 3, s. 12.

21. The Magistrate, before whom any such person shall be brought, shall be empowered, as may be, to examine the complainant, and the evidence produced in support of the prosecution, on oath, in the presence of the prisoner, in regard to the offence charged, and in regard to any other matters connected with such charge, which such Magistrate may deem pertinent. Duty of magistrate.—1868-'9, c. 178, sub. c. 3, s. 13.

22. The Magistrate shall then proceed to examine the prisoner in relation to the offence charged. Such examination shall not be on oath; and before it is commenced, the prisoner shall be informed of the charge made against him, and shall be allowed a reasonable time to send for and advise with counsel. If desired by the person arrested, his counsel shall be present during the examination of the complainant and the witnesses on the part of the prosecution, and during the examination of the prisoner, and the prisoner, or his counsel, shall be allowed The same continued.—1868-'9, c. 178, sub. c. 3, s. 14.

to cross-examine the complainant and the witnesses for the prosecution.

The same continued.—1868-'9, c. 178, sub. c. 3, s. 15.

23. At the commencement of the examination, the prisoner shall be informed by the Magistrate that he is at liberty to refuse to answer any question that may be put to him, and that his refusal to answer shall not be used to his prejudice in any stage of the proceedings.

Answers of prisoners to be reduced to writing.—1868-'9, c. 178, sub. c. 3, s. 16.

24. The answers of the prisoner to the several interrogatories shall be reduced to writing by the Magistrate, or under his direction; they shall be read to the prisoner who may correct or add to them; and when made conformable to what he declares is the truth, shall be certified and signed by the Magistrate.

Witnesses to be examined.—1868-'9, c. 178, sub. c. 3, s. 17.

25. After the examination of the prisoner is complete, his witnesses, if he have any, shall be sworn and examined, and he may have the assistance of counsel in such examination.

Witnesses may be separated.—1868-'9, c. 178, sub. c. 3, s. 18.

26. The witnesses produced on the part either of the prisoner or of the prosecution, shall not be present at the examination of the prisoner; and while any witness is under examination, the Magistrate may exclude from the place in which such examination is had, all witnesses who have not been examined, and may cause the witnesses to be kept separate and prevented from conversing with each other until they shall have been examined.

Testimony to be reduced to writing.—1868-'9, c. 178, sub. c. 3, s. 19.
Duty of magistrate.—1868-'9, c. 178, sub. c. 3, s. 20.

27. The evidence given by the several witnesses examined shall be reduced to writing by the Magistrate, or under his direction, and shall be signed by the witnesses respectively.

28. If upon examination of the whole matter, it shall appear to the Magistrate either that no offence has been committed by any person, or that there is no probable cause for charging the prisoner therewith, he shall discharge such prisoner.

The same continued.—1868-'9, c. 178, sub. c. 3, s. 21.

29. If it shall appear that an offence has been committed, and that there is no probable cause to believe the prisoner to be guilty thereof, the Magistrate shall bind by recognizances the prosecutor, and all the material witnesses against such prisoner to appear and testify at the next term of the Superior Court for the county in which the offence is alleged to have been committed.

Magistrate not compelled to examine prisoner for misdemeanor.—1868-'9, c. 178, sub. c. 3, s. 22.

30. Nothing contained in the preceding section shall be construed to require any Magistrate, before whom a prisoner charged with a misdemeanor shall be brought, to take the examination of such prisoner, except where such Magistrate shall deem it material so to do, or where such examination shall be required by the prisoner.

Magistrate may commit witness.—1868-'9, c. 178, sub. c. 3, s. 23.

31. Whenever such Magistrate shall be satisfied by the proof that there is good reason to believe that any such witness will not fulfill the conditions of such recognizance unless security be required, he may order such witness to enter into a recognizance with such sureties as he shall deem meet for his appearance at such court.

Refusal of wit-

32. If any witness so required to enter into a recognizance,

either with or without sureties, shall refuse to comply with such order, it shall be the duty of such Magistrate to commit him to prison until he shall comply with such order, or be otherwise discharged according to law.

ness to give recognizance.—1868-'9, c. 173, sub. c. 3, s. 24.

33. If the offence with which the prisoner is charged be bailable, and the prisoner offer sufficient bail, such bail shall be taken and the prisoner discharged; if no bail be offered, or the offence be not bailable, the prisoner shall be committed to prison.

Bail to be allowed when.—1868-'9, c. 173, sub. c. 3, s. 25.

34. All examinations and recognizances taken pursuant to the provisions of this chapter shall be certified by the Magistrate taking the same to the court at which the witnesses are bound to appear, on the first day of the sitting thereof; and the examinations taken and subscribed as herein prescribed, 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 an opportunity to hear the same and to cross examine the deposing witness, if such witness be dead or so ill as not to be able to travel, or by procurement or connivance of the defendant hath removed from the State or is of unsound mind.

Examinations to be certified. 1868-'9, c. 173, sub. c. 2, s. 26.

35. If any Magistrate shall refuse or neglect to return to the proper court, any such examination of recognizance by him taken, he may be compelled by rule of court forthwith to return the same, and in case of disobedience of such rule, may be proceeded against by attachment as for contempt of court as provided for by law.

Penalty on magistrate for failure.—1868-'9, c. 173, sub. c. 2, s. 27.

36. It shall be lawful for any Magistrate, to whom any complaint may be made, or before whom any prisoner may be brought, as hereinbefore provided, to associate with himself any other Magistrate of the same county, and the powers and duties herein mentioned may be executed by such two Magistrates so associated.

Magistrate may associate another.—1868-'9, c. 173, sub. c. 2, s. 28.

37. Officers before whom persons charged with crime but who have not been committed to prison by an authorized Magistrate shall be brought, shall have power to let to bail as follows:

Who may let to bail.—1868-'9, c. 173, sub. c. 2, s. 29. 1871-'2, c. 37.

(1.) Any Justice of the Supreme Court, or a Judge of a Superior Court, or of a Special Criminal Court.

(2.) Any Justice of the Peace or Chief Magistrate of any incorporated city or town, in all cases of misdemeanor, and in all cases of felony not capital.

38. Any Justice of the Supreme Court or any Judge of a Superior Court or of a Special Criminal Court, shall have power to let to bail persons committed to prison charged with crime in all cases: any Justice of the Peace or Chief Magistrate of any incorporated city or town, in all cases where the punishment is not capital.

Who may let to bail persons imprisoned on charge of crime.—1868-'9, c. 173, sub. c. 2, s. 30.

39. Whenever any prisoner shall be let to bail by any officer under the preceding section, such officer shall immediately cause the recognizance taken by him to be filed with the Clerk

Officers letting prisoners to file recogni-

zanee.—1868-'9, c. 178, sub. c. 2, s. 31.

What the commitment shall state.—1868-'9 c. 178, sub. c. 2, s. 82.

of the Superior Court of the county in which the party bailed was imprisoned.

40. Every commitment to prison of a person charged with crime shall state :

(1.) The name of the person charged.

(2.) The character of the offence with which he is charged.

(3.) The name and office of the Magistrate committing him.

(4.) The manner in which he may be discharged ; if upon giving recognizance of bail, the amount of said recognizance ; the conditions on the performance of which it shall be discharged, and the persons or Magistrates before whom the bail may justify.

(5.) The court before which the prisoner shall be sent for trial.

To what jail prisoners to be committed.—1868-'9, c. 178, sub. c. 2, s. 82.

41. All persons committed to prison before conviction shall be committed to the jail of the county in which the examination is had, or to that of the county in which the offence is charged to have been committed: *Provided*, if the jails of these counties are unsafe or injurious to the health of prisoners, the committing Magistrate may commit to the jail of any other convenient county. And every Sheriff or jailor to whose jail any person shall be committed by any court or Magistrate of competent jurisdiction, shall receive such prisoner and give a receipt for him, and be bound for his safe keeping as prescribed by law.

Of fugitives from justice in other States.—1868-'9, c. 178, sub. c. 2, s. 84.

42. Any Justice of the Supreme Court or any Judge of the Superior Court, or of any Special Criminal Court, or any Justice of the Peace, or Mayor of any city, or Chief Magistrate of any incorporated town, on satisfactory information laid before him that any fugitive in the State has committed, out of the State and within the United States, any offence which, by the law of the State in which the offence was committed, is punishable either capitally or by imprisonment for one year or upwards in any State prison, shall have full power and authority, and is hereby required to issue a warrant for said fugitive and commit him to any jail within the State for the space of six months, unless sooner demanded by the public authorities of the State wherein the offence may have been committed, agreeable to the act of Congress in that case made and provided: if no demand be made within that time the said fugitive shall be liberated, unless sufficient cause be shown to the contrary.

Duty of magistrate to report to the Governor.—1868-'9, c. 178, sub. c. 2, s. 85.

43. Every Magistrate committing any person under the next preceding section, shall keep a record of the whole proceedings before him, and immediately transmit a copy thereof to the Governor of this State, for such action as he may deem fit therein under the law.

Duty of Governor in such case.—1868-'9, c. 178, sub. c. 2, s. 86.

44. The Governor of this State shall immediately inform the Governor of the State or Territory in which the crime is alleged to have been committed, or the President of the United

States, if it be alleged to have been committed within the District of Columbia, of the proceedings had in such case.

45. Every Sheriff or jailor, in whose custody any person committed under section forty-two of this chapter shall be, upon the order of the Governor of this State, shall surrender him to the person named in such order, for that purpose.

46. 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, or who conceals himself within the State to avoid arrest, or who having been convicted has escaped and cannot otherwise be apprehended, 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.

47. In all cases where the Governor of the State has made a requisition on the Governor of another State for any fugitive from justice and has sent an agent to receive said fugitive, it shall be lawful for the Governor to issue a warrant on the Public Treasurer for the amount of money necessary to pay the expenses of said agent and other costs in the arresting of said fugitives from justice, to be paid by the Public Treasurer of the State.

48. If any credible witness shall prove, upon oath, before any Justice of Peace, or Mayor of any city, or Chief Magistrate of any incorporated town, a reasonable cause to suspect that any person has in his possession, or on his premises, any property stolen or any false or counterfeit coin resembling, or apparently intended to resemble, or pass for, any current coin of the United States, or of any other State, Province or country, or any instrument, tool or engine whatsoever, adapted or intended for the counterfeiting of any such coin; or any false and counterfeit notes, bills or bonds of the United States, or of the State of North Carolina, or of any other State or country; or any instrument, tool or engine whatsoever, adapted or intended for the counterfeiting of such note, bill or bond, it shall be lawful for such Justice, Mayor or Chief Magistrate of any incorporated town, to grant a warrant, to be executed within the limits of his county or of the county in which such city or incorporated town is situated, to any proper officer, authorizing him to search for such property and to seize the same, and to arrest the person having in possession, or on whose premises may be found, such stolen property, counterfeit coin, counterfeit notes, bills or bonds, or the instruments, tools or engines for making

Duty of sheriff or jailor to obey order of Governor.—1868-'9, c. 178, sub. c. 2, s. 37. Gov. may employ agent, or reward for apprehension of fugitives charged with capital offences.—R. C. c. 35, s. 4.

Expenses of receiving or arresting fugitives from justice to be paid. 1870-1, c. 32.

Of search warrants.—1868-'9, c. 178, sub. c. 2, s. 38.

the same, and to bring them before any Magistrate of competent jurisdiction to be dealt with according to law.

Form of warrant and proceedings thereon.—1868-'9, c. 178, sub. c. 2, s. 89.

49. Such search warrant shall describe the article to be searched for, with reasonable certainty, and by whom the complaint is made, and in whose possession the article to be searched for is supposed to be; it shall be made returnable as other criminal process is by law required to be, and the proceedings thereupon shall be as is required in other cases of criminal complaint.

Of costs in proceedings before justice, &c.—1868-'9, c. 178, sub. c. 2, s. 40.

50. In all cases of criminal complaints before Justices of the Supreme Court, Judges of the Superior Courts, Justices of the Peace and other Magistrates having jurisdiction of such complaints, the officers entitled by law to receive fees for issuing or executing process, shall not be entitled to demand them in advance. Such officers shall endorse the amounts of their respective fees on every process issued or executed by them, and return the same to the court to which the same is returnable, and the cost of all such preliminary proceedings shall be in the discretion of the Judge before whom the case shall be tried; and it shall be in his discretion, either not to allow costs or fees to any officer, or to impose them on the prosecutor except in cases of conviction when he may impose costs on the defendant, or on the county or on the State, as to him shall seem just, and in all such cases the costs shall be as prescribed by law.

Persons to be imprisoned in common jail of county. Proviso as to sheriff.—R. C. c. 35, s. 3.

51. 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.

No person to be arrested on a presentment &c.—R. C. c. 35, s. 6.

52. 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.

Names of witnesses, &c., endorsed on presentment.—R. C. c. 35, s. 7.

53. 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 endorsed thereon.

Indictments for misdemeanors to be commenced within two years, if offender is known. Proviso where indictment is defective.—R. C. c. 35, s. 8.

54. 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 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 of 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.

55. 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 prosecution shall be agreeable to the practice heretofore in use, except where the same may be otherwise directed.

Criminal process to issue and be returnable at any time. Proceedings to be as heretofore.—R. C. c. 35, s. 9.

56. Every Sheriff shall endorse 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.

Sheriff to endorse on process and subpoenas day of receiving and executing them.—R. C. c. 35, s. 10.

57. 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 the 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.

To take bail when offence is bailable.

Shall not become bail himself.—R. C. c. 35, s. 11.

58. 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.

Bail allowed pending appeal.—R. C. c. 35, s. 12.

59. Every person, accused of any crime whatsoever, shall be entitled to counsel in all matters which may be necessary for his defence.

Accused entitled to counsel.—R. C. c. 35, s. 13.

60. 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.

Indictments &c., not quashed or judgment stayed, for formal objections.—R. C. c. 35, s. 14.

61. 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.

Proceedings of court, how, and what part set forth in the indictment.—R. C. c. 35, s. 15.

62. 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

What set forth in indictment for perjury.—R. C. c. 35, s. 16.

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.

What, for sub-
ornation of
perjury.—R.
C. c. 85, s. 17.

63. 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.

In indictment
for second of-
fence how first
conviction stat-
ed.—R. C. c.
85, s. 18.

64. 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.

How owner-
ship stated of
property held
in common,
&c.—R. C. c.
85, s. 19.

65. 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.

Certain defects
in indictments
not to vitiate.
—R. C. c. 85,
s. 20.

66. 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 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.

67. In any case, where an intent to defraud is required 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 co-partnership or member thereof, or any particular person.

Intent to defraud: what statement and proof thereof sufficient.—R. C., c. 35, s. 21.

68. 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.

Party whose name is forged competent witness.—R. C., c. 35, s. 22.

69. 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.

Crimes committed on waters dividing counties, where tried.—R. C., c. 35, s. 24.

70. 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 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 or misdemeanors, 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.

How improper venue taken advantage of

By plea in abatement.

On issue joined, what judgment rendered in misdemeanors—what in felonies.—R. C., c. 35, s. 25.

71. 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

In indictment for libel, deft may give the truth in evi-

dence.—R. C., c. 35, s. 26. it shall appear, to the satisfaction of the jury, that the facts are true, the defendant shall be acquitted of the charge.

Assault and death in different counties, trial where assaulted.—R. C., c. 35, s. 27. 72. 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 is this State and death out of it, trial in this State.—R. C., c. 35, s. 28. 73. 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.

Plea entered for def't who stands mute.—R. C., c. 25, s. 29. 74. 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.

In capital cases, judge may issue a special *venire*.—R. C., c. 35, s. 30. 75. 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.

Penalty on Sheriff not executing it, and jurors not attending.—R. C., c. 35, s. 31. 76. If any Sheriff shall fail duly to execute and return such writ of *venire facias*, he shall be fined by the court not exceeding one hundred dollars; and all jurors so summoned shall attend until discharged by the court, under the same rules and penalties as are prescribed for other jurors.

Persons on trial for life or crime may make challenge of jurors.—1871-72, c. 39. 77. Every person on joint or several trial for his life, may make a peremptory challenge of twenty-three jurors and no more; and in all joint or several trials for crimes and misdemeanors, other than capital, every person on trial 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 impannelled 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.

State may challenge four jurors in capital cases, 78. 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.

79. 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.

80. 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.

81. The 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.

82. 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.

83. 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

in others two.
—R. C., 35, s. 33.

On conviction for robbing or stealing goods restored.—R. C., c. 35, s. 34.

New trial to defts.—R. C., c. 35, s. 35.

A day for trial of crimes fixed by Superior Courts: witnesses not to attend till such day.—R. C., c. 35, s. 36.

Pay of witnesses in State cases.

Court in certain cases may direct prosecutor to pay costs.—R. C., c. 35, s. 37.

Judge may lessen or remit recognizances, at any time.—R. C., c. 35, s. 38.

of the State and the persons praying such relief, as well before, as after final judgment entered and execution awarded.

Clerk to refund remitted forfeitures paid into office.—R. C., c. 35, s. 39.
County Treasurer to refund, when paid to him.—R. C., c. 35, s. 40.

84. 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.

85. If the money has been paid to the County Treasurer, 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.

Execution not to issue till after *scire fa.*—R. C., c. 35, s. 43.

86. 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.

Joint *scire fa.* to issue on forfeited recognizances.—R. C., c. 35, s. 44.

87. When any recognizance, acknowledged by a principal and sureties, shall be forfeited by two or more of the recognizers, 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 *scire fa.* executed.—R. C., c. 35, s. 45.

88. 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.—R. C., c. 35, s. 46.

89. 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.—R. C., c. 35, s. 47.

90. 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.—R. C., c. 35, s. 48.

91. 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.—R. C., c. 35, s. 49.

92. 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

93. 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.

94. The following magistrates shall have power to cause to be kept all laws made for the preservation of the public peace; and in execution of that power, to require persons to give security to keep the peace, in the manner provided in this chapter, namely: The Chief Justice and Associate Justices of the Supreme Court, the Judges of the Superior Courts, and of any Special Courts which may be hereafter created, the Justices of the Peace, the Mayors, Superintendents of Police or other chief officers of all cities and towns in this State.

to be prosecuted therefor.—R. C. c. 35, s. 50. Officers who are authorized to keep the peace.—1868-'9, c. 178, sub. c. 2, s. 1.

95. Whenever complaint shall be made in writing, and upon oath to any such magistrate, that any person has threatened to commit any offence against the person or property of another, it shall be the duty of such magistrate to examine such complainant and any witnesses who may be produced on oath, to reduce such examination to writing, and to cause the same to be subscribed by the parties so examined.

Complaint to Magistrates.—1868-'9, c. 178, sub. c. 2, s. 2.

96. If it shall appear from such examination that there is just reason to fear the commission of any such offence by the person complained of, it shall be the duty of the Magistrate to issue a warrant under his hand, with or without a seal, reciting the complaint and commanding the officer to whom it is directed forthwith to apprehend the person so complained of, and bring him before such magistrate or some other magistrate authorized to issue such warrant.

When warrant to issue.—1868-'9, c. 178, sub. c. 2, s. 3.

97. The warrant shall be directed to the Sheriff, Coroner, or any Constable, each of whom shall have power to execute the same within his county; and if no Sheriff, Coroner or Constable can conveniently be found, the warrant may be directed to any person whatever, who shall have power to execute the same within the county in which it is issued. No Justice of the Peace, or Mayor, or Superintendent of Police, or other chief officer of any city or town, shall direct his warrant to any officer outside of the county of said Justice or chief officer.

To whom the warrant shall be directed.—1868-'9, c. 178, sub. c. 2, s. 4.

98. Upon the person complained of being brought before the magistrate, he may be required to enter into a recognizance, payable to the State of North Carolina, in such sum not exceeding one thousand dollars, as such magistrate shall direct, with one or more sufficient sureties, to appear at the next term of the Superior Court of the county in which the offence is charged to have been committed, and not to depart the same without leave, and in the meanwhile to keep the peace and be of good behavior towards all the people of this State, and particularly towards the person requiring such security.

Duty of Magistrate on return of warrant.—1868-'9, c. 178, sub. c. 2, s. 5.

99. If such recognizance shall be given, the party complained of shall be discharged; if such person shall fail to find such security, it shall be the duty of the magistrate to commit him to prison until he shall find the same, specifying in the mitti-

When party complained of, discharged or imprisoned.—1868-'9, c. 178, sub. c. 2, s. 6.

mus the cause of commitment and the sum in which such security was required.

How discharged subse-
quently.—1868-
'9, c. 178, sub.
c. 2, s. 7.

100. Any person committed for not finding sureties of the peace as above provided, may be discharged by any magistrate upon giving such security as was originally required of such person, or by a Justice of the Supreme Court, or Judge of the Superior Court of the district, by giving such other security as may seem sufficient.

Recognizance
returned to
court.—1868-
'9, c. 178, sub.
c. 2, s. 8.

101. Every recognizance taken pursuant to the foregoing provisions shall be transmitted by the magistrate taking the same to the next term of the Superior Court for the county in which the offence is charged to have been committed.

Breach of the
peace, &c., in
presence of
magistrate or
court.—1868-
'9, c. 178, sub.
c. 2, s. 9.

102. Every person who, in the presence of any magistrate above specified, or in the presence of any court of record, shall make any affray, or threaten to kill or beat another, or to commit any offence against his person or property; and all persons who, in the presence of such magistrate or court, shall contend with hot and angry words, may be ordered by such magistrate or court, without any other proof, to give such security as above specified, and in case of failure so to do, may be committed as above provided.

Proceedings
on recogni-
zances.—1868-
'9, c. 178, sub.
c. 2, s. 10.

103. Every person who shall have entered into a recognizance to keep the peace, shall appear according to the obligation thereof; and if he fail to appear, the court shall forfeit his recognizance and order it to be prosecuted, unless reasonable excuse for his default be given.

If complainant
does not ap-
pear.—1868-
'9, c. 178, sub.
c. 2, s. 11.

104. If the complainant does not appear, the party recognized shall be discharged, unless good cause be shown to the contrary. If the respective parties appear, the court shall hear their allegations and proofs, and may either discharge the recognizance taken, or they may require a new recognizance, as the circumstances of the case may require, for such time as may appear necessary, not exceeding one year.

Recognizance,
when deemed
broken.—
1868-'9, c. 178,
sub. c. 2, s. 12.

105. No recognizance taken under this chapter shall be deemed to be broken except in the case provided for by the one hundred and fourth section, unless the principal in such recognizance be convicted of some offence amounting in judgment of law to a breach of such recognizance.

Evidence of
breach.—
1868-'9, c. 178,
sub. c. 2, s. 13.

106. Whenever evidence of such conviction shall be produced in the court in which the recognizance is filed, it shall be the duty of such court to order the recognizance to be prosecuted, and the Solicitor of the District shall cause the proper proceedings to be thereupon taken.

Costs in the
discretion of
the court.—
—1868-'9, c.
178, sub. c. 2,
s. 14.

107. The costs in all cases arising under the last thirteen sections of this chapter, except in those arising under sections one hundred and three and one hundred and six, shall be in the discretion of the court, and, in cases under those sections, shall be paid by the defendants upon a judgment against them.

If trial for fel-
ony progress,
&c.—C. C. P.,
s. 897.

108. In case the term of a court shall expire while a trial for felony, or for any offence punishable by imprisonment in a penitentiary, or by any greater punishment, shall be in prog-

ress, and before judgment shall be given therein, the Judge shall continue the term as long as in his opinion it shall be necessary for the purposes of the case.

109. 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.

110. 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, in criminal cases, 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-seven and thirty-eight of chapter thirty-two entitled "Crimes and Punishments."

111. In all cases of conviction in the Superior Court of this State for any criminal offence, the defendant or defendants so convicted shall have the right to an appeal without giving security for costs, upon filing of an affidavit that he is wholly unable to give security for the costs, and he is advised by counsel that he has reasonable cause for the appeal prayed for, and that the application is in good faith.

112. It shall be the duty of the Judge, on filing of the affidavit required in the preceding section, to grant the appeal without security for costs, and for any offence indictable by the laws of this State shall require the defendant to enter into bond or recognizance in a reasonable sum to make his appearance at the first term of the Superior Court to be held in the county after the adjournment of the Superior Court to which the appeal was prayed and to further answer the charge preferred.

113. In all cases where any two Justices of the Peace, or any Judge of the Supreme or Superior Courts, shall on written affi-

Bail may arrest surrender and prin'p'l before final judgment.—R. C., c. 11, s. 5.

Not discharged thereby in criminal cases.—R. C. c. 11, s. 5.

Persons surrendered may give other bail. Exception thereto may be taken, in criminal cases. If defendant be released Sheriff indictable. Duty of prosecuting officer to collect forfeiture and prosecute.—R. C., c. 11, s. 6.

Convicts may appeal without giving security for costs.—1869-'70, c. 196, s. 1.

Judge to grant appeal, &c.—1869-'70, c. 196, s. 2.

When and how persons

may be outlawed.—1866, c. 62.

davit, filed and retained by such Justice or Judge, receive information that a felony has been committed by any person, and that such person flees from justice, conceals himself and evades arrest and service of the usual process of the law, the said Judge or Justice of the county where such person is supposed to lurk and conceal himself, are hereby empowered and required to issue proclamation against him, reciting his name, 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 fugitive from justice; which proclamation shall be published at the door of the court-house and such other places as the said Justices shall direct; and if any person against whom proclamation hath been thus issued, continue to stay out, lurk and conceal himself, and do not immediately surrender himself, any citizen of the State may capture, arrest and bring him to justice, and in cases of flight or resistance by him, after being called on and warned to surrender, may slay him without accusation or impeachment of any crime.

Jurisdiction given to Justices.—1868-'9, c. 178, sub. c. 4, s. 1.

114. Justices of the Peace shall have power to hear, try and determine, in the manner prescribed in this chapter, criminal actions, for the offences hereinafter enumerated, committed under the circumstances stated.

Assaults and batteries.—1868-'9, c. 178, sub. c. 4, s. 2.

115. Assaults, and assaults and batteries where no deadly weapon was used, and no serious damage was done, and where the punishment imposed by law does not exceed fifty dollars' fine or one month's imprisonment.

Indictable trespasses on real or personal property.—1868-'9, c. 178, sub. c. 4, s. 3.

116. Indictable trespasses on real or personal property, when the punishment imposed by law does not exceed fifty dollars' fine or one month's imprisonment.

Receiving stolen goods.—1868-'9, c. 178, sub. c. 4, s. 4.

117. Receiving stolen goods, knowing them to be stolen, when the value of the property received does not exceed five dollars.

Offences punishable by penalty of \$50 only.—1868-'9, c. 178, sub. c. 4, s. 5.

118. Offences which are punishable only by a penalty of not over fifty dollars.

119. But no justice shall have final jurisdiction to determine any criminal action or proceeding for any offence whatever, unless it shall appear on the complaint, and upon proof before him:

(1.) That the offence was committed within his township.

(2.) That the complaint is not made by collusion with the accused, and that it is made by the party injured by the offence.

(3.) That it is made within six months after the commission of the alleged offence. The complaint shall be in writing, and under oath, but need not be in any particular form.

In what case justice shall not have jurisdiction.—1868-'9, c. 178, sub. c. 4, s. 7.

120. If any one or more of the above requisites to his jurisdiction shall fail to be proved to the satisfaction of the justice upon any hearing before him, or if it shall appear to the justice on the hearing of any complaint for an assault, or an assault and battery, that a deadly weapon was used, or that any serious

damage was done, or that the offence deserves a more severe or other punishment than it is within his jurisdiction to impose; or on the hearing of any complaint for an indictable trespass, that the damage by reason thereof, exceeded twenty-five dollars; or, on hearing of any complaint for larceny, or for receiving stolen goods, that the value of the property stolen or received, exceeded five dollars; in such cases, the justice shall desist from any final determination of the action or complaint, and either commit the accused to prison, or require from him a recognizance with sufficient sureties and in a sufficient amount for his appearance at the next term of the Superior Court of his county to answer the charge; he shall also bind the complainant and the witnesses over to appear in like manner and testify; and he shall return the papers with a statement of his proceedings to the Clerk of the Superior Court of his county, on or before the first day of the next term of said court.

121. When the justice shall be satisfied by proof of all the facts necessary to give him jurisdiction, if no jury shall be asked for, he shall proceed to determine the case, and shall either acquit the accused or find him guilty, and sentence him to such punishment as the case may require, not to exceed in any case a fine of fifty dollars, or imprisonment in the county jail for one month.

If no jury be asked for.—
1868-'9, c. 178,
sub. c. 4, s. 8.

122. If either the complainant or the accused shall ask for it, the justice, having first found the facts necessary to give him jurisdiction, shall allow a trial by jury, as is provided in civil actions before Justices of the Peace.

Jury to be allowed if asked for.—1868-'9,
c. 178, sub. c. 4, s. 9.

123. In case a trial by jury shall be had, the justice shall submit to the jury in each case simply the question of the guilt or innocence of the accused of the offence charged, and shall enter the verdict on his docket, and adjudge accordingly.

What to be submitted to the jury.—
1868-'9, c. 178,
sub. c. 4, s. 10.

124. Either the accused or the complainant may appeal from the sentence of the justice to the Superior Court of the county. On such appeal being prayed, the justice shall recognize both the prosecutor and the accused, and all the material witnesses, to appear at the next term of the court, in such sums as he shall think proper, and he may require the accused to give sureties for his appearance as aforesaid. In all cases of appeal, the trial shall be anew, without prejudice from the former proceedings.

Either party may appeal.
Trial *de novo*.—
1868-'9, c. 178, sub. c. 4, s. 11.

125. In every case, whether an appeal shall be prayed or not, the justice shall forthwith transmit to the Clerk of the Superior Court of the county all the papers in the case, together with a copy of his preliminary finding of the verdict, if any, of his determination of the facts if there shall have been no trial by jury, and of the sentence, in which shall be set forth all the facts found by him, as well as his finding of those which were alleged in the complaint, and which were found by him not to be proved.

Justice to send papers to Clerk. What his return to set forth.—
1868-'9, c. 178,
sub. c. 4, s. 12.

126. He shall give to either party on request, and on payment of his lawful fee, a copy of the complaint and of his finding and sentence.

Copies to be furnished on request and payment of fees.—1868-'9,
c. 178, sub. c. 4, s. 13.

Finding and sentence may be pleaded in bar of indictment.—1868-'9, c. 178, sub. c. 4, s. 14, Justice to imprison if fine and costs not paid.—1868-'9, c. 178, sub. c. 4, s. 15. If imprisoned party to pay costs before discharged.—1868-'9, c. 178, sub. c. 4, s. 16. What commitment to set forth.—1868-'9, c. 178, sub. c. 4, s. 17.

What fees allowed Justices, &c.—1868-'9, c. 178, sub. c. 4, s. 18.

Who to pay the costs.—1868-'9, c. 178, sub. c. 4, s. 19.

Justice to make return of offences.—1869-'70, c. 110, s. 1.

Clerk to hand return to Solicitor and grand jury.—1869-'70, c. 110, s. 2.

127. Such finding and sentence may be pleaded in bar of any indictment subsequently found for the same offence.

128. If the justice shall sentence the party found by him to be guilty to pay a fine and costs, and the same shall not be immediately paid, the justice shall commit the guilty person to the county prison until the same shall be paid, or until he shall be otherwise discharged according to law.

129. If the sentence be that the guilty person be imprisoned for a time certain, and that he pay the costs, there shall be added to it that he shall remain in prison after the expiration of the fixed time for his imprisonment until the costs shall be paid, or he shall otherwise be discharged according to law.

130. The commitment to the county prison shall set forth :

(1.) The name of the guilty person.
(2.) The nature of the offence of which he is convicted and the date of the trial.

(3.) The period of his imprisonment.

(4.) It shall be directed to the Sheriff of the County, or to the keeper of the county jail, and shall direct him to keep the prisoner for the time stated, or until discharged by law.

(5.) The name of the Constable or other officer required to execute it.

(6.) It shall be signed by the justice, and be dated.

131. Justices of the Peace, Sheriffs, constables and other officers shall receive the same fees in criminal actions as are allowed in civil actions before justices, when the amount claimed is less than one hundred dollars.

132. The party convicted shall be always adjudged to pay the costs, and if the party charged be acquitted, the complainant shall be adjudged to pay the costs, and may be imprisoned for the non-payment thereof; in the case of an appeal the whole costs shall be paid in the discretion of the Judge of the Superior Court.

133. It shall be the duty of each Justice of the Peace on or before Monday of every term of the Superior Court of his county, to furnish the clerk of said court with a list of the names and offenses of all parties tried and finally disposed of by such Justice of the Peace, together with the papers in each case, in all criminal actions, since the last term of the Superior Court.

134. The Clerk of the Superior Court shall hand a copy of such list to the Solicitor and to the grand jury, at each terms of the Superior Court; and no indictment shall be found against any party whose case has been so finally disposed of by any Justice of the Peace: *Provided*, that this and the preceding section shall not be deemed to extend or enlarge or otherwise affect the jurisdiction of Justices of the Peace, except as provided by law.

- SECTION 54. Bus., 46; 10 Ire., 369; 3 Ire., 32; 6 Ire., 440.
 SEC. 60. 1 Ire., 378; 2 Dev., 452; 1 Dev., 137; 3 Mur., 7; 65 N. C., 450; 66 N. C., 120; Ibidem, 640.
 SEC. 61. 67 N. C., 467.
 SEC. 65. 64 N. C., 129.
 SEC. 66. 67 N. C., 467; 63 N. C., 234.
 SEC. 73. 3 Ire., 113.
 SEC. 75. Bus., 330.
 SEC. 77. 10 Ire., 469; 2 D. & B., 196; 10 Ire., 395; 2 Ire., 492; 2 D. & B., 348.
 SEC. 119. 65 N. C., 298; Ib., 301; Ib., 496; Ib., 617; 64 N. C., 581; Ib., 589.

CHAPTER 34.

CURRENCY.

SECTION

1. Currency of the United States, currency of the State. Public accounts kept in it.
2. Banks not to draw checks, &c., payable otherwise than in specie.
3. Issues of due bills, notes and all kinds of circulation forbidden unless expressly allowed. Misdemeanor.
4. Such due bills, notes, &c., not to be circulated. Misdemeanor.

SECTION

5. Scale of depreciation of Confederate currency established.
6. At what time the depreciation to apply.
7. Consideration may be shown in contracts for Confederate currency. Proviso.
8. Consideration may be proved before justice.

1. THE currency of the United States shall be the lawful currency of this State, and all records, fee 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. C., c. 36, s. 1.

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.—R. C., c. 36, s. 2.

3. 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 representative 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

Issue of due bills, notes, and all kinds of circulation forbidden, unless expressly allowed.—R. C., c. 36, s. 3.

Misdemeanor.

Such due bills
notes, &c., not
to be circulat-
ed under pain
of misdemeⁿr,—
R. C., c. 36, s.
6.

section, or aiding or assisting therein, shall likewise be deemed guilty of a misdemeanor.

4. 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.

WHEREAS, By an Ordinance of the Convention, entitled "An Ordinance declaring what laws and ordinances are in force, and for other purposes," ratified on the eighteenth day of October, in the year of our Lord, one thousand eight hundred and sixty-five, it is made the duty of the General Assembly to provide a scale of depreciation of the Confederate currency, from the time of its first issue to the end of the war; and it is further therein declared that "all executory contracts, solvable in money, whether under seal or not, made after the depreciation of said currency before the first day of May, one thousand eight hundred and sixty-five, and yet unfilled (except official bonds and penal bonds payable to the State,) shall be deemed to have been made with the understanding that they were solvable in money of the value of said currency," subject, nevertheless, to evidence of a different intent of the parties to the contract. Therefore,

Scale of depreciation of Confederate currency established.—1866, c. 89, s. 1.

5. *Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same,* That the following scale of depreciation be and the same is hereby adopted and established as the measure of value of one gold dollar in Confederate currency, for each month, and the fractional parts of the month of December, one thousand eight hundred and sixty-four, from the first day of November, one thousand eight hundred and sixty-one, to the first day of May, one thousand eight hundred and sixty-five, to-wit:

Scale of depreciation of Confederate Currency, the gold dollar being the unit and measure of value, from November first, one thousand eight hundred and sixty-one, to May first, one thousand eight hundred and sixty-five:

MONTHS.	1861.	1862.	1863.	1864.	1865.
January,	—	\$1.20	\$3.00	\$21.00	\$50.00
February,	—	1.30	3.00	21.00	50.00
March,	—	1.50	4.00	23.00	60.00
April,	—	1.50	5.00	20.00	100.00
May,		1.50	5.50	19.00	—
June,		1.50	6.50	18.00	—
July,		1.50	9.00	21.00	—
August,		1.50	14.00	23.00	—
September,		2.00	14.00	25.00	—
October,		2.00	14.00	26.00	—
November,	\$1.10	2.50	15.00	30.00	—
December,	1.15	2.50	20.00	—	—
Dec. 1st to 10th, incl.				35.00	—
“ 10th to 20th, incl.				42.00	—
“ 20th to 30th, incl.				49.00	—

6. The scale of depreciation of Confederate currency herein established, shall be construed to apply to debts herein mentioned at the date of contracting the same, and not at the time said debts became due.

At what time to apply.—
1866-27, c. 44, s. 1.

7. In all civil actions which have arisen or may arise in courts of justice, for debts contracted during the late war, in which the nature of the obligation is not set forth, nor the value of the property, for which such debts were created, is stated, it shall be admissible for either party to show on trial, by affidavit or otherwise, what was the consideration of the contract, and the jury in making up their verdict, shall take the same into consideration and determine the value of said contract in present currency, in the particular locality in which it is to be performed, and render their verdict accordingly.

Consideration may be shown in contracts for Confederate currency.—
1866, c. 38, s. 2.

8. When any warrant shall be returned before any Justice of the Peace for debt contracted during the war, said Justice of the Peace shall give the parties the privilege of setting forth on oath the nature of the obligation, with the kind of property, currency or other consideration for which it was created, and the true value of the contract in the present currency in the particular locality where it is to be solved shall govern his judgment: *Provided*, that Justices of the Peace shall have jurisdiction of all sums less than one thousand dollars, unless it is specified in the contract that it is payable in other than Confederate currency; *And, provided further*, that no claim shall be issued upon by a Justice of the Peace, which will, according to a scale of depreciation of Confederate currency, after judgment exceed one hundred dollars.

Consideration may be proved before justice.—1866, c. 38, s. 3.

Proviso.

CHAPTER 35.

DEEDS AND CONVEYANCES.

SECTION

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2. Deeds, &c., how proved. 1. When grantor or witness in the State. 2. When grantor or witness lives out of State. 3. Where no witness, and grantor lives out of State. 4. Where witness is dead. 5. Where grantor and witness live out of United States. 6. Private examination to be required if married woman be party.
3. How proved when real estate is in two or more counties.
4. Justices of the Supreme Court may take probate of deeds and private examination.
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- mission in certain cases. Form of commission.
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33. In what cases Judges of Probate to appoint trustee.
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36. Common surveys may be recorded.
37. Donations to persons while in slavery. Title to be legal. Proviso. Term of possession. What deemed as possession. Further proviso.
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39. Time extended for registering grants of land and other instruments.
40. Instruments not heretofore registered made valid.

1. No conveyance of 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 seisin, attornment, or other ceremony whatever.

Deeds proved and registered in county where land lies with two years, good without living &c.—R. C. c. 37, s. 1.

2. All deeds conveying lands in this State, or letters of attorney, or other instruments requiring registration, must be offered for probate, or a certified copy thereof must be exhibited before the Judge of Probate of any county of this State, in the manner following:

Deeds, &c., how proved.—C. C. P. s. 429. 1868-'9, c. 277, s. 15.

(1.) Where the grantor or maker, or the subscribing witness, reside in the State, the deed or other instrument must be acknowledged by such grantor or maker, or proved on the oath of such subscribing witness.

When the grantor or witness in State.—C. C. P. s. 429, sub. s. 1.

(2.) Whenever the subscribing witness to any instrument required or allowed to be registered, shall be a non-resident, or shall be dead, and the maker shall also be a non-resident or dead, the proof of the handwriting of such witness and that of the maker before the Judge of Probate of the county where the instrument is sought to be registered, shall be sufficient evidence of the execution thereof to admit the same to registration, and in case such maker shall have subscribed with a mark only, the proof of the signature of such witness shall be sufficient.

When grantor or witness out of the State.—C. C. P. s. 429, sub. s. 223.

(3.) Whenever any such instrument shall not have a witness and the maker thereof shall be a non-resident or dead, proof of his handwriting shall be sufficient to admit the same to registration.

When witness and grantor out of State.—1870-'1, c. 271, s. 1, 2.

(4.) 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.

Where witness is dead.—R. C. c. 37, s. 15. 1871-'2, c. 28, s. 1.

(5.) Where the grantor or maker and the subscribing witness, reside beyond the limits of the United States, the deed or other instrument may be personally acknowledged by such grantor or maker, or proved on the oath of such subscribing witness, before the chief magistrate of any city in the country where the grantor or witness is resident; or before any ambassador, minister, consul, or commercial agent of the United States, and where such proof, or acknowledgment is certified under the corporate seal of such chief magistrate, or under the official seal of such ambassador, minister, consul, or commercial agent, and where such certificate is affixed to the deed or other instrument, and the same is exhibited before the Probate Judge having jurisdiction, he shall adjudge that such deed, or other instrument, is duly proved or acknowledged.

Where grantor and witness live out of the United States.—C. C. P. s. 429, sub. s. 5.

Private examination to be required if married woman be party. C. C. P., s 429, sub. s. 6.

(6.) When the proof or acknowledgment of a conveyance, power of attorney, or other instrument concerning the interest of a married woman in lands, is taken before a commissioner of affidavits, or in foreign parts, as in this chapter before directed, no Judge of Probate shall adjudge such conveyance or other instrument to be duly proved or acknowledged, unless the private examination of such married women is taken according to the laws of this State, and a certificate thereof is attached to the deed or other instrument.

How proved when land lies in two or more counties.—C. C. P., s. 430.

3. Where real estate is situated in two or more counties, probate of the deed or other instrument conveying or concerning the same made in the Probate Court of any of said counties is sufficient.

Justices of the Supreme Court may take probate of deeds, &c.—1868-'9, c. 277, s. 11. Clerk of the Superior Court of a county other than that in which land lies may take probate and certify &c.—1868-'9, c. 64, s. 2.

4. The several Justices of the Supreme Court shall have power to take the probate of deeds and to examine married women respecting their free consent to deeds made by them.

5. Any Clerk of the Superior Court of any county other than that in which the land or other real estate lies, before whom such deed, power of attorney, or other instrument is acknowledged or proved, or the private examination of married women taken in relation thereto, shall certify the fact upon said deed, power of attorney, or other instrument, and the Clerk of the Superior Court of the county wherein the land lies, upon the exhibition of such certificate to him, or of any certificate made by a Justice of the Supreme Court upon any deed, power of attorney, or other instrument, shall adjudge the said deed, power of attorney, or other instrument to be duly acknowledged, or proved, in the same manner as if made or taken before him.

Powers of attorney, how proved in the State.

6. 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 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 Clerk of the Superior Court of the proper county, be ordered by the clerk to be registered, and shall be registered.

How proved out of the State.—R. C., c. 37, s. 14.

Deed to be proved before Commissioners of Affidavits in other States.—C. C. P., s. 429, sub. s. 4.

7. Where the acknowledgment or proof of any deed or other instrument is taken or made, in the manner directed by the laws of this State, before any Commissioner of Affidavits for the State of North Carolina, appointed by the Governor thereof, in any of the States or Territories of the United

States or in the District of Columbia; and where such acknowledgment or proof is certified by such commissioner, the Judge of Probate, having jurisdiction, upon the same being exhibited to him, shall adjudge such deed or other instrument to be duly acknowledged or proved in the same manner as if made or taken before him.

8. When any deed concerning lands in this State, or power of attorney for the conveyance of the same, or any other instrument whatever, required or allowed to be registered, shall have been executed, and it may be desired to take the acknowledgment or probate thereof out of this State, but within the United States, it shall be lawful for any Judge of a Supreme, Superior or Circuit Court within the State or Territory where the parties may be, to take the probate or acknowledgment of said deed or other instrument; and the private examination of any married woman who may be a party thereto, as to whether she voluntarily executed the same; and the certificate of such judge, as to such acknowledgment, or probate and private examination with the certificate of the Governor of the State or Territory annexed to such deed or other instrument, that the judge before whom the acknowledgment or probate and private examination were taken, was at the time of the taking of the same, a judge as aforesaid, being exhibited before the Judge of the Court of Probate of the county in this State in which the property is situated, shall (if the same be according to the provisions of this chapter) be adjudged by him to be sufficient, and shall be ordered to be registered with the certificate thereunto annexed.

9. 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.

10. 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.

11. WHEREAS, By reason of the uncertainty of the boundary lines of many of the counties of this State, deeds, wills, and other writings have been proved, recorded and registered in the wrong county, whereby titles are becoming insecure, for the remedy whereof,

The General Assembly of North Carolina do enact, That a duly certified copy of any deed or writing required or allowed

Deeds, &c., may be proved before Judge, &c., of another State. 1871-'2, c. 1. s. 1.

Copies of registered deeds evidence unless original required.—R. C. c. 37, s. 16.

Deeds of gift to be proved and registered.—R. C. c. 37, s. 18. Deeds, &c., proved and registered in wrong county, copy may be registered in proper county.—1858-'9, c. 18, s. 2.

to be registered may be registered in any adjoining county ; and the registry or duly certified copy of any deed or writing so registered may be given in evidence in any court of the State.

Mortgages and trust deeds good against creditors only from registration.—R. C. c. 87, s. 22.

12. 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.

Register to indorse on mortgages, &c., day of delivery and register in order of delivery.—R. C. c. 37, s. 23.

13. 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 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 to the party injured, and also to be indicted in the Superior Court, and fined at the discretion of the court.

Deeds by husband and wife how executed, proved and registered.—C. C. P. s. 422, sub. s. 6.

14. Every conveyance, power of attorney or other instrument, affecting the estate, right or title of any married woman, in lands, tenements or hereditaments, must be jointly executed by such married woman with her husband, and due proof or acknowledgment thereof must be made as to the husband before the Judge of Probate of any county in this State, who shall take the acknowledgment of the wife and privily examine her apart from her husband touching her voluntary assent thereto. He shall also endorse thereon a certificate of such assent, and when the land lies in another county than that in which the Judge of Probate lives, he shall affix his seal of office to such certificate.

1868-'9, c. 277, s. 15.

Deeds, &c., executed by *femes covert* in this State, how proved and registred.—C. C. P. s. 422, 1869-'70, c. 233, s. 1.

15. When any person shall desire to have registered any deed for land, or other estate situated within the State, or any powers of attorney to convey the same, or bills of sale or other instruments of writing required or allowed to be registered, whenever such deed, power of attorney, bill of sale, or other instrument may have been executed by any *feme covert* then residing within this State, and her privy examination is required to be taken by law, the same may be acknowledged by the grantor or proved by the witness before the Judge of Probate of any county of the State, and the Judge of Probate may issue a commission under the seal of such court to a Justice of the Peace of the county within which such *feme covert* resides, authorizing him to take examination of such *feme covert* party to the same, and the proceedings of such Justice of the Peace so

authorized as commissioner being returned to the Probate Court, the court may proceed to adjudge that such deed or other instrument is duly acknowledged or proved, and the said examination is in due form, and therefore 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 Probate Court: *Provided*, that nothing herein contained shall be construed to exclude the Judge of Probate from taking the privy examination of any *feme covert* who may appear before him.

16. The Judge of Probate shall issue said commission in the following form, namely :

State of North Carolina to A. B., greeting :

WHEREAS, F. G. hath produced a deed of conveyance made to him from H. J., (or other instrument as the case may be,) 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. J. before me, Judge of Probate of said county, and it being represented to our said court that it is required by law that K., wife of the said H. J., be privily examined as to her free consent in executing the said conveyance : Know ye, that reposing confidence in your prudence, I have appointed you, and by these presents do give unto you full power and authority to take the privy examination of the said K., wife of the said H. J., concerning her free consent in executing the said conveyance; and therefore command 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 and without fear or compulsion of her husband, the examination being plainly and distinctly written on the said deed or some paper annexed thereto, and when you have taken this examination you are to send the same closed up under your seal, together with this commission, to our said court of probate.

Witness, W. N., Judge of Probate of said county, at office this day of, year of our Lord

17. The return of said Justice of the Peace shall be substantially as follows :

Personally appeared before me, Justice of the Peace of county, K., wife of H. J., and acknowledged the due execution of the foregoing (or annexed) deed of conveyance, (or other instrument,) and the said K. being by me privately examined, separate and apart from her said husband, touching her voluntary execution of the same, doth state that she signed the same freely and voluntarily without fear or compulsion of her said husband or any other person, and that she doth still voluntarily assent thereto. Witness my hand and seal this day of A. D.

Judge of Probate may issue a commission in certain cases.

Form of commission.—1869-'70, c. 233, s. 2.

Return of commission.

Form of the same.—1869-'70, c. 233, s. 2.

J. P. [Seal.]

Fees of Judge of Probate and commission'r.—1869-'70, c. 233, s. 4.

Clerk to certify, &c.—1869-'70, c. 233, s. 5.

Probate Judge may issue commissions for taking probate in another State.—1869-'70, c. 185, s. 1.

Certain probates and registrations validated.—1869-'70, c. 185, s. 2.

Applies to all conveyances. 1869-'70, c. 185, s. 3.

Governor or Judge may issue the commission.—1869-'70, c. 185, s. 4.

Contracts to sell land and leases required to be in writ'g, must be registered.—R. C., c. 37, s. 26.

Infant trustees, how to

18. The Judge of Probate shall be entitled to a fee of one dollar for issuing the commission and recording the returns, and the Magistrate to a fee of fifty cents in addition to other fees allowed by law.

19. Any clerk before whom such deed, power or instrument is acknowledged or proved or the private examination of married women taken and all returns in relation thereto shall certify the fact upon said deed, power of attorney or instrument, or some paper annexed thereto, and the Clerk of the Superior Court of the county wherein the land lies, upon the exhibition of such certificate to him, shall adjudge the said deed or other instrument to be duly acknowledged and proved in the same manner as if made, taken or returned before him.

20. Whenever it shall appear to the Judge of Probate of any county that any person non-resident of this State is desirous of acknowledging or conveying to be proved a power of attorney, deed or other conveyance touching any real estate situated in the county of said judge, he shall issue a commission to a commissioner for receiving such acknowledgment, or taking such proof, and said commissioner may likewise take the acknowledgment and privy examination of a married woman separate and apart from her husband, touching her assent to any power of attorney, deeds or other conveyances, touching real estate in said county. The commissioner shall make certificate of the acknowledgments or proof and privy examination made by him, and shall return the same to the Probate Judge, whereupon he shall adjudge that such conveyance, power of attorney or other instrument is duly acknowledged or proved, and that such examination is in due form, and shall order the same to be registered.

21. All probate examination and registration heretofore had in accordance with the foregoing provisions, are declared valid and sufficient.

22. The provisions of the foregoing sections shall apply to all conveyances of whatever kind required or allowed to be registered.

23. The Governor or any Judge of the Supreme or Superior Courts of this State, is authorized to issue the commission hereinbefore authorized, but the certificate of the commissioner and the said commission shall be returned to the Probate Judge of the county wherein the law requires the registration should be made.

24. 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.

25. Whenever any infant shall be seized or possessed of any estate whatever in trust, whether by way of mortgage or other-

wise, for another person who may be entitled in law to have a conveyance of such estate, or may be declared to be so seized or possessed, in the course of any proceeding in the Superior 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 as effectual in law as if made by a person of full age.

26. Every person who discovers that there is an error in the registration of his grant, conveyance, bill of sale or other instrument of writing, may prefer a petition to the Judge of Probate of the county in which said writing is registered, in the same manner as is directed for petitioners to correct errors in grants or patents, and if, on hearing the same before said Judge of Probate, it appears that errors have been committed, the Judge of Probate 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 any person dissatisfied with the judgment may appeal to the Judge of the Superior Court as in other cases.

Errors in registration of deeds, &c., corrected on petition.—R. C., c. 37, s. 28.

Appeal allowed.

27. 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."

Deeds how made when sheriff who sells dies or removes away.—R. C., c. 37, s. 30.

28. 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 Judge of Probate 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 said Judge of Probate, and directed to the Sheriff, commanding him to summon such witness to appear at a certain time therein named, and give 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 time to which it is returnable, and make due return thereof; and if any witness so summoned shall fail to appear, the Judge of Probate shall give judgment and award execution against him for the penalty aforesaid, for the use of the party summoning him, in the 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. C. c. 36, s. 32.

Deeds of trust and mortgages how discharged and released.—1870-'1, c. 217, s. 1.

29. Any deed of trust or mortgage which hath been or which hereafter may be registered in the manner required by this chapter, may be discharged and released in the following manner, to-wit; the trustee or mortgagee, or his or her legal representative, or the duly authorized agent or attorney of such trustee, mortgagee or legal representative, may, in the presence of the Register of Deeds, acknowledge the satisfaction of the provisions of such trust or mortgage, whereupon it shall be the duty of the register forthwith to make upon the margin of the record of such trust or mortgage, an entry of such acknowledgment of satisfaction, which shall be signed by the said trustee, mortgagee, legal representative or attorney, and witnessed by the register, who shall also affix his name thereto, and every such entry thus acknowledged and witnessed shall operate and have the same effect to release and discharge all the interest of such trustee, mortgagee or representative in such deed or mortgage, as if a deed of release or re-conveyance thereof had been duly executed and recorded.

Mortgages to secure purchase money, need not be executed by wife.—1868-'9, c. 204, s. 1.

30. The purchaser of real estate who does not pay the whole of the purchase money at the time when he takes a deed for title, may make a mortgage for securing the payment of such purchase money, or such part thereof as may remain unpaid, which shall be good and effectual against his wife (if he be a married man) as well as himself, without requiring her to join in the execution of such mortgage deed.

31. Any person indebted to another in a sum to be secured, not exceeding at the time of executing the deed herein provided for, the sum of three hundred dollars, may execute a deed of trust, in form substantially that which follows:

Form of chattel mortgage.—1870-'1, c. 277, s. 1.

I,, of the county of, in the State of North Carolina, am indebted to, of county, in said State, in the sum of dollars, for which he holds my note to be due the day of, A. D. 18.., and to secure the payment of the same, I do hereby convey to him these articles of personal property to-wit: but on this special trust, that if I fail to pay said debt and interest, on or before the day of, A. D. 18.., then he may sell said property, or so much thereof as may be necessary, by public auction for cash, first giving twenty days notice at three public places, and apply the proceeds of such sale to the discharge of said debt and interest on the same, and pay any surplus to me. Given under my hand and seal, this day of, A. D. 18..

[Seal.]

Fees of probate judge and register of deeds.—1870-'1, c. 277, s. 2.

32. Such deed of trust shall be good to all intents and purposes, when the same shall be duly registered according to the present provisions of law: *Provided, nevertheless*, the probate fee of the Probate Judge in such cases shall be only ten cents, and the fee of the register shall be twenty cents, and no other fee or tax shall be due on account of the same.

33. WHEREAS, In many cases trustees in deeds of trust have died or removed from the county and State where the trusts were executed, or become incompetent to execute the said trusts, therefore

Preamble.—
1869-'70, c. 188.

The General Assembly of North Carolina do enact, That where any trustee of a deed of trust has died, removed from the county where the deed was executed and the State, or in any way become incompetent to execute the said trust that the Judge of Probate of the county wherein the said deed of trust was executed be authorized and empowered to appoint some discreet and competent person to act as trustee, and execute the said deed of trust according to its true intent and meaning, and as fully as if appointed by the parties to the deed.

In what cases Judges of Probate to appoint trustee.—1869-'70, c. 188, s. 1.

34. Wherever, in any of the counties of this State, the Judges of the Superior Court or the deputy clerks of the Superior Court, mistaking their powers, have essayed to take the probate of deeds and the privy examination of *femes covert*, whose names are signed to such deeds and have ordered said deeds to registration, and the same have been registered, all such probates, privy examinations and registrations so taken and had, shall be as valid and binding to all intents and purposes as if the same had been taken before or ordered by the Probate Judge or other proper officer having jurisdiction thereof.

Certain probates and registrations validated.—1871-'72, c. 200, s. 1.

35. Whenever any person owns several tracts of land which are contiguous or adjoining, but held under different deeds and different surveys, it may be lawful for any such person to have all such bodies of land included in one common survey by running around the lines of the outer tracts, and thereupon the possession of any part of said land covered by such common survey shall be deemed and held in law as a possession of the whole and every part thereof: *Provided*, that nothing in this section shall be construed to affect the right or claims of persons which have already accrued to any part of said land.

Consolidation of surveys.—1869-'70, c. 84, s. 1.

Proviso.

36. That in all cases where such common surveys are made as directed by this chapter, the same may be recorded and registered as in cases of deeds, and shall be evidence in like manner.

Common surveys may be recorded.—1869-'70, c. 84, s. 2.

Preamble.

37. WHEREAS, Land has been given to persons heretofore slaves, and by reason of their incapacity to hold the same they are under existing laws deprived of their rightful possessions; therefore

The General Assembly of North Carolina do enact, That whenever it be made to appear that any gift or conveyance has been made to any person, while a slave, of any lands or tenements, whether the same shall have been conveyed by deed or by parol, and the bargainee or donee has been placed into actual possession of the same, then and in that case such gift or conveyance shall have the force and effect of transferring the legal title to the said lands and tenements to such

Donations to persons while in slavery.—1869-'70, c. 77, s. 1.

Title to be legal.

Proviso.
Term of pos-
session.
What deemed
as possession.

bargainee or donee: *Provided*, such possession shall have continued for the term of ten years prior to the passage of this section: *Provided further*, that any absence from the premises from the first day of May, one thousand eight hundred and sixty-one, to the first day of January, one thousand eight hundred and sixty-six, shall not be held as an abandonment or discontinuance of the possession: "*Provided further*, that this section shall not affect the interest of a *bona fide* purchaser for value from the grantor or bargainee of the lands or tenements in dispute."

Further proviso.

Preamble.

38. WHEREAS, Creditors and purchasers are often hindered and defrauded of their lawful actions, debts and purchases, by reason of the failure of the grantee or bargainee of lands to register their deeds and conveyance, power of attorney, &c.; therefore

Grants and
deeds to be
registered
though not
heretofore
registered.—
1868-'9, c. 265,
s. 1.

The General Assembly of North Carolina do enact, That all grants of land in the State, all deeds of conveyance, 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 may be proved or registered on or before the first day of October, eighteen hundred and sixty-nine, 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.

Proviso.

Time extended
for regis-
tering grants
of land and
other instru-
ments.—1870-
'1, c. 180, s. 1.

39. All grants of land in the State, all deeds of conveyance of the same, all powers of attorney, and every other instrument in writing which is required by law to be registered within or by a given time, and has not been proved and registered within or by such time, may be proved and registered within two years after the passage of this chapter, under the same rules and regulations as heretofore required by law; and when so proved and registered, shall be as good and valid to every intent and purpose as if they had been duly proved and registered: *Provided*, that nothing herein contained shall be so construed as to extend to mortgages, and deeds in trust, and to marriage settlements.

Instruments
not heretofore
registered
made valid.—
1870-'1, c. 180,
s. 2.

40. That all grants for land, deeds for land, powers of attorney, and other instruments required by law to be registered before the first day of October, one thousand eight hundred and sixty-nine, and the same has been duly proved and registered since that time, the said registration shall be as valid and effectual in law, to every intent and purpose, as if the said grants, deeds, powers of attorney, and other instruments in writing had been duly proved and registered before the said first day of October, one thousand eight hundred and sixty-nine.

SECTION 1. 1 Jones Eq., 137; 6 Ire., 309; 2 Dev. Eq., 412; 6 Ire. Eq., 79; 4 Jones, 31; 4 Jones, 479; 7 Jones, 337; 65 N. C., 279; 66 N. C., 224; Ib., 547.

SEC. 6. 3 Jones, 115.

SEC. 12. 1 Ire., 97; 2 Ire. Eq., 495; 1 Ire., 340; 4 D. & B., 173, 1 Dev. Eq., 318; 4 Dev., 59; Bus. Eq., 181; 2 D. & B., 19; 4 Dev., 384; 4 D. & B., 173; Bus., 283; 4 Jones 66; 6 Jones Eq., 120; 64 N. C., 118.

CHAPTER 36.

DESCENTS.

SECTION

1. Rules of descent.

Rule 1. Lineal descent.

Rule 2. Females to inherit with males, and younger with older children. Children advanced in real or personal estate, to account for advancements.

Rule 3. Lineal descendants to represent their ancestors.

Rule 4. Collateral descent of inheritance, when derived from an ancestor.

Rule 5. When not derived from an ancestor—or his blood extinct.

Rule 6. Half blood to inherit with whole blood. Parent, when to inherit from child.

SECTION

Rule 7. None to inherit, unless born before, or in ten lunar months after ancestor's death.

Rule 8. When widow shall take as heir.

Rule 9. Alien heirs not to prevent other relations, being citizens, from inheriting.

Rule 10. Illegitimate children to inherit from their mother.

Rule 11. And from each other. Legitimate may inherit from them. Dying without issue, mother to be heir.

Rule 12. Estates for life not devised, to be inheritances.

Rule 13. Seizin defined.

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:

Rules of descent.—R. C., c. 33, 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.

Lineal descent R. C., c. 33, s. 1, R. 1.

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 ad-

Females to inherit with males, and younger with older children

Children advanced in real or personal estate to account for advancements.—R. C. c. 33, s. 1, R. 2.

vanced, 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 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 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.

Lineal descendants to represent ancestor.

—R. C. c. 38, s. 1, R. 3.
Collateral descent of inheritance, when derived from an ancestor.—
R. C. c. 38, s. 1, R. 4.

When not derived from an ancestor or his blood extinct.—
R. C. c. 38, s. 1, R. 5.

Half blood to inherit with whole.

Parent to inherit from child.—R. C. c. 38, s. 1, R. 6.

None to inherit unless alive or born within ten months.—
R. C. c. 38, s. 1, R. 7.

When widow taken as heir.—
R. C. c. 38, s. 1, R. 8.

Alien heirs not to prevent other relations being citizens

Rule 3. The lineal descendants of any person deceased shall represent their ancestor, and stand in the same place as the person himself would have done had he been living.

Rule 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.

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.

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 issue of such, the inheritance shall vest in the father if living, and if not, then in the mother if living.

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.

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.

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.

Rule 10. When there shall be no legitimate issue, every illegitimate child of the mother, and the descendant of any 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.

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.

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.

from inheriting.—R. C. c. 38, s. 1, R. 9.

Illegitimate children to inherit from their mother.—R. C. c. 35, s. 1, R. 10.

And from each other.

Legitimate may inherit from them. Dying without issue mother to be heir.—R. C. c. 38, s. 1, R. 11.

Estates for life not devised to be inheritance's.—R. C., c. 38, s. 1, R. 12. Seizin defined.—R. C. c. 38, s. 1, R. 13.

SECTION 1. Rule 1. 3 Mur., 209; 8 Jones, 336.

Rule 2. 6 Ire., 4; 11 Ire., 148; 11 Ire., 68; 7 Ire. Eq., 159; Bus., 325; 7 Ire. Eq., 159; 4 Ire. Eq., 9; 5 Ib., 7.

Rule 3. 5 Jones' Eq., 124; 66 N. C., 484.

Rule 4. 2 Ire., 315; 2 Jones Eq., 82; 2 D. & B., 308; 1 Dev., 333; 3 Jones Eq., 238; 66 N. C., 332.

Rule 5. 1 Ire., 387; 5 Ire. Eq., 280.

Rule 6. 1 Jones, 344; Ib., Eq., 471; 5 Jones Eq., 10; 66 N. C., 484.

Rule 9. 5 Jones Eq., 246; 64 N. C., 474.

Rule 11. 6 Ire., 407; 8 Ire., 39.

CHAPTER 37.

DIVORCE AND ALIMONY.

SECTION

1. Superior Court to have jurisdiction.
2. What marriages may be declared void on application of the parties.
3. What to be declared void at all times. Offspring not legitimated.

SECTION

4. For what causes marriages may be dissolved.
5. What cause sufficient for divorce from bed and board.

SECTION

6. Affidavit to be filed with complaint. Proviso. Further proviso.
7. Material facts to be tried by jury.
8. Venire in proceedings for divorce.
9. Alimony on divorce from bed and board.
10. Alimony *pendente lite*. Proviso. Further proviso.
11. When wife not seeking divorce is entitled to alimony.
12. Court given power to issue writs where real estate is assigned.
13. Security for costs on application for divorce or alimony.

SECTION

14. Consequences of a divorce a *vinculo* on the property of the parties.
15. Of a divorce a *vinculo* on the personal relations of the parties.
16. Consequences of an elopement with an adulterer, &c.
17. Consequences of a husband separating from his wife and living in adultery.
18. Consequences of a divorce on the right to the custody of the children.

Superior courts to have jurisdiction.—1868-9, c. 93, s. 45.

What marriages may be declared void on application of the parties.—1871-2, c. 193, s. 83.

What to be declared void at all times.—1871-2, c. 193, s. 84.

For what causes marriage may be dissolved.—1871-2, c. 193, s. 85.

What cause sufficient for divorce from bed and board.—1871-2, c. 193, s. 86.

1. THE Superior Courts shall have jurisdiction on complaints for divorce and alimony, or either, and the procedure on such complaints shall be as provided for special proceedings, except as hereinafter otherwise prescribed.

2. The Superior Courts in term time, on application made as by law provided, by either party to a marriage contracted contrary to the prohibitions in section two of the chapter concerning marriages, or declared void by said section, may declare such marriage void from the beginning, subject, nevertheless, to the proviso contained in section two.

3. All marriages between a white person and a negro, or Indian, or between a white person and a person of negro or Indian descent, to the third generation inclusive, shall be absolutely void to all intents and purposes, and shall be so held and declared by every court at all times, whether during the lives or after the deaths of the parties thereto; and it shall not be lawful for the issue of any such marriage to be legitimated to the supposed father.

4. Marriages may be dissolved and the parties thereto divorced from the bonds of matrimony, on application of the party injured, made as by law provided, in the following cases:

(1.) If either party shall separate from the other and live in adultery.

(2.) If the wife shall commit adultery.

(3.) If either party at the time of the marriage was and still is naturally impotent.

5. The Superior Courts may grant divorces from bed and board on the application of the party injured, made as by law provided, in the following cases:

(1.) If either party shall abandon his or her family; or,

(2.) Shall maliciously turn the other out of doors; or,

(3.) Shall by cruel or barbarous treatment endanger the life of the other; or,

(4.) Shall offer such indignities to the person of the other as to render his or her condition intolerable, and life burdensome; or,

(5.) Shall become an habitual drunkard.

6. The plaintiff in a complaint seeking either divorce or alimony, or both, shall file with his or her complaint an affidavit that the facts, set forth in the complaint, 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 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 complaint; and the plaintiff shall also set forth in such affidavit, either that the facts set forth in the complaint, as grounds for divorce, have existed to his or her knowledge at least six months prior to the filing of the complaint; or, if the wife be the plaintiff, that the husband is removing, or about to remove his property and effects from the State, whereby she may be disappointed in her alimony: *Provided*, if any wife shall file in the office of the Superior Court Clerk of the county where she resides an affidavit, setting forth the fact that she intends to file a petition or bring an action for divorce against her husband, and that she has not had knowledge of the facts upon which his said petition or action will be based for six months, then and in that case it shall be lawful for such wife to reside separate and apart from her said husband, and to secure for her own use the wages of her own labor during the time she shall so remain separate and apart from her said husband: *Provided further*, that if such wife shall fail to file her petition or bring her action for divorce within thirty days after the six months shall have expired since her knowledge of the facts upon which she intends to file her said petition or bring her said action, then she shall not be entitled any longer to the benefit of this section.

Affidavit to be filed with complaint.—1868-'9, c. 93, s. 46.

Provido.—1869-'70, c. 184.

Provided further.

7. The material facts in every complaint asking for a divorce shall be deemed to be denied by the defendant, whether the same shall be actually denied by pleading or not, and no judgment shall be given in favor of the plaintiff in any such complaint until such facts have been found by a jury, and on such trial neither the husband or wife shall be a competent witness to prove the adultery of the other, nor shall the admissions of either party be received as evidence to prove such fact.

Material facts to be tried by a jury.—1868-'9, c. 93, s. 47.

8. In all proceedings for divorce, the summons shall be returnable to the court of the county in which the applicant resides.

Venue in proceedings for divorce.—1871-'2, c. 193, s. 40.

9. When any court shall adjudge any two married persons divorced from bed and board, it may also decree to the party upon whose application such judgement was rendered, such alimony as the circumstances of the several parties may render necessary; which, however, shall not in any case exceed the one third part of the net annual income from the estate, occupation, or labor of the party against whom the judgment shall be rendered.

Alimony on divorce from bed and board.—1871-'2, c. 193, s. 37.

10. If any married woman shall apply to a court for a divorce from the bonds of matrimony, or from bed and board with her husband, and shall set forth in her complaint such facts, as if

Alimony pendente lite.—1871-'2, c. 193, s. 38.

true, will entitle her to the relief demanded, and it shall appear to the Judge of such Court, either in or out of term, by the affidavit of the complainant, or other proof, that she has not sufficient means whereon to subsist during the prosecution of the suit, and to defray the necessary and proper expenses thereof, the Judge may order the husband to pay her such alimony during the pendency of the suit as shall appear to him just and proper, having regard to the circumstances of the parties; and such order may be modified or vacated at any time, on the application of either party or of any one interested: *Provided*, that no order allowing alimony *pendente lite* shall be made unless the husband shall have had five days' notice thereof: *And, provided further*, that if the husband shall have abandoned his wife and left the State, or shall be in parts unknown, or shall be about to remove or dispose of his property for the purpose of defeating the claim of his wife, no notice shall be necessary.

When wife not seeking for divorce is entitled to alimony.—1871-'2, c. 193, s. 39.

11. If any husband shall separate himself from his wife and fail to provide her with the necessary subsistence according to his means and condition in life, or if he shall be a drunkard or spendthrift, the wife may apply for a special proceeding to the Judge of the Superior Court for the county in which he resides, to have a reasonable subsistence secured to her and to the children of the marriage from the estate of her husband, and it shall be lawful for such Judge to cause the husband to secure so much of his estate as may be proper according to his condition and circumstances, for the benefit of his said wife and children, having regard also to the separate estate of the wife.

Court power to issue writ where real estate is assigned.—1868-'9, c. 123, s. 1. Security for costs on application for divorce or alimony.—1871-'2, c. 193, s. 41.

12. In all cases in which the court shall grant alimony by the assignment of real estate, the court shall have power to issue a writ of possession when necessary in the judgment of the court to do so.

13. It shall not be necessary for either party to a proceeding for divorce or alimony to give any undertaking to the other party to secure such costs as such other party may recover. The judge of the court in which any such proceeding is pending, both before and after judgment therein, may at any time in his discretion, make any order respecting the payment of such costs as may be incurred by the wife, either by the husband or by her from her separate estate.

Consequences of a divorce, a vinculo on the property of the parties.—1871-'2, c. 193, s. 42.

14. When a marriage shall be dissolved for any of the causes set forth in section four of this chapter, the party adjudged guilty of such cause shall thereby lose all his or her right to an estate by the courtesy, or dower, and all right to any year's provisions or distributive share in the personal property of the other, and all right to administer on the estate of the other and every right and estate in the real or personal estate of the other party, which by settlement before or after marriage, was settled upon such party in consideration of the marriage only.

15. After a judgment of divorce from the bonds of matrimony, all rights arising out of the marriage shall cease and determine, and either party may marry again: *Provided*, that no judgment of divorce shall render illegitimate any children *in esse*, or born of the body of the wife during coverture.

Consequences of a divorce, a vinculo on the personal relations of the parties.—1871-'2, c. 198, s. 43.

16. If any married woman shall elope with an adulterer she shall thereby lose all right to dower in the lands and tenements of her husband, and also all right to a year's provision, and to a distributive share from the personal property of her husband, and also all right and estate in the property of her husband, settled upon her upon the sole consideration of the marriage, before or after marriage; any such elopement may be pleaded in bar of any action, or proceeding, for the recovery of such rights and estates: *Provided*, the husband shall have commenced an action for divorce during his life time.

Consequences of an elopement with an adulterer.—1871-'2 c. 198, s. 44.

17. If any husband shall separate himself from his wife and live in adultery, he shall lose all his right and estate as tenant by the courtesy in the lands, tenements and hereditaments of his wife, and also all his right and estate of whatever character, in and to her personal property, as administrator, or otherwise; and also any right and estate in the property of his wife, which may have been settled upon him solely in consideration of the marriage, by any settlement before or after marriage; and such separation, and living in adultery, may be pleaded in bar of any action or proceeding for the recovery of such right or estates: *Provided*, the wife has commenced an action for divorce in her lifetime.

Consequences of a husband separating from his wife and living in adultery.—1871-'2, c. 198, s. 45.

18. After the filing of a complaint in any proceeding for divorce, whether from the bonds of matrimony, or from bed and board, both before and after final judgment therein, it shall be lawful for the judge of the court, in which such application is or was pending, to make such orders respecting the care, custody, tuition and maintenance of the children of the marriage as may be proper, and from time to time to modify or vacate such orders: *Provided*, that no order respecting the children shall be made on the application of either party without five day's notice to the other party, unless it shall appear that the party having the possession or control of such children has removed or is about to remove the children, or himself, beyond the jurisdiction of the court.

Consequences of divorce upon the right to the custody of the children.—1871-'2, c. 198, s. 46.

CHAPTER 38.

DOGS.

SECTION

1. Penalty and liabilities to damages for not killing dog bitten by a mad dog.

Penalty and liability for damages, for not killing a dog bitten by a mad dog.--R. C., c. 67.

Penalty for keeping a sheep killing dog.--1862-'3, c. 41, s. 1.

Penalty for permitting bitches to run at large at certain times.--1862-'3, c. 41, s. 2.

SECTION

2. Penalty for keeping a sheep killing dog.
3. Penalty for permitting bitches to run at large at certain times.

1. WHENEVER the owner of any dog shall know, or have good reason to believe, that his dog, or any dog belonging to any 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.

2. Any person owning or having any dog or dogs that kill sheep, upon satisfactory evidence of the same being made before any Justice of the Peace of the county, and the owner duly notified thereof, if the owner of said dog or dogs refuses to kill it or them, or refuses to have the same done after such evidence has been made, and shall permit said dog or dogs to go at liberty, he shall forfeit and pay fifty dollars for each and every time such dog or dogs shall be permitted to go at liberty, to be recovered by warrant before any two Justices of the Peace of said county, one-half to the use of the informer and the other half to the use of the county.

3. Any person or persons owning or having any bitch or bitches, and permitting them, knowingly, to run at large during the erratic stage or copulation, shall forfeit and pay twenty-five dollars for each and every offence, to be recovered by warrant before any Justice of the Peace of the county, one-half to the use of the informer, the other half to the use of the county.

SECTION 1. 10 Ire., 79.

CHAPTER 39.

DRAINING WET LANDS.

SECTION

1. How persons draining wet lands to proceed. Three free-holders to be appointed.

SECTION

2. Register to deliver transcript.
3. Owners to have ten days' notice.

SECTION

- Notice, how proved. Proofs, where filed.
4. Appraisers to meet, where.
 5. Compensation of appraisers.
 6. Register to record, &c.
 7. Persons may survey, &c.
 8. Applicant to pay expenses.
 9. When work completed, &c. Proviso.

SECTION

10. How to proceed in case of damages. Proviso.
11. Parties may appeal.
12. Any person may take benefit of this chapter. Proviso. Liable to damages. Drainage of ditches an obligation.
13. Persons obstructing ditches, &c.
14. Natural streams may be cleaned out, &c.

1. ANY person not a body corporate who may be interested in constructing any levee, drain, breakwater, or who may be interested in opening or clearing out any drain or water course, or doing any other work necessary to protect or reclaim any wet lands, which work cannot be completed without effecting the lands of other persons, may make application in writing to the commissioners of the county in which the lands to be affected thereby or the greater part thereof are situated, specifying the character of the work contemplated, its general course, extent, height, depth, width, the amount of fall per mile, the point of beginning and terminus, with a description of lands to be affected thereby, together with the names of the owners of such lands, if the same be known to such applicants, or the name of the occupant of such lands, if any there be, and thereupon said commissioners shall appoint three disinterested freeholders of the county in which the application is made, and not of kin to any of the parties, appraisers to assess the benefits and damages to any of such lands incident to said contemplated work.

How persons draining wet lands to proceed.—1869—'70, c. 137, s. 1.

Three freeholders to be appointed.

2. The register of such county shall make out and deliver to such applicant a transcript of the application and of the proceedings of the commissioners therein; such applicant shall deliver said transcript to the persons appointed appraisers by the commissioners.

Register to deliver transcript.—1869—'70, c. 137, s. 2.

3. The owners of such lands shall, if in the county in which said lands or some part thereof are situated and known to such applicant, have ten days' notice of the time and place of meeting to make such assessment, and may attend before the appraisers and be heard on the subject of the proposed assessment; such notice shall be given personally by such applicant in writing, by reading or leaving a copy at last place of residence, if the party to be notified reside in the county where said lands or any part thereof are situated, otherwise the notice shall be given by a publication addressed to all whom it may concern, for three weeks successively in a newspaper of general circulation most convenient to the proposed work; said notice, whether personal or made in person or by publication, shall state the time and place of making such assessment, and shall contain a clear description of

Owners to have ten days notice.—1869—'70, c. 137, s. 3.

Notice, how proved.

the proposed work. Notice by publication shall be proved by affidavit of the printer or publisher; personal notice shall be proved by affidavit of the applicant, attached to a copy of the notice, stating the time, place and mode of service, whether by reading or "by true copy left at the last and usual place of residence." The proofs so made shall be filed with other papers in the case in the office of the county register.

Proofs, where
filed.

Appraisers to
meet, where.
—1869-'70, c.
137, s. 4.

4. Such appraisers, or any two of them, at the time mentioned in said notice, shall meet at the point of beginning of said work, and shall examine all lands in any way liable to be affected by said work, and shall make out a list of the same, and shall assess the amount of benefits or injuries to such tract of land, and shall make out a schedule thereof with their assessments aforesaid, and shall append thereto their affidavits that the same is in all respects a true assessment to the best of their judgment and belief, and cause the same to be filed in the register's office of the county in which the land is situated, and from which filing said assessment shall be a lien upon said several tracts respectively.

Compensation of
appraiser.—
1869-'70, c.
137, s. 5.

5. Each appraiser shall receive as a compensation one dollar per day for the time employed in making said assessment.

Register to re-
cord, &c.—
1869-'70, c.
137, s. 6.

6. The register shall, upon receipt of said assessment, record the same, for which he may charge twenty-five cents for each tract of land therein described.

Persons may
survey, &c.—
1869-'70, c.
137, s. 7.

7. Any person desiring under the provisions of this chapter to make application, may employ an engineer and enter upon such lands as may be necessary to make a survey and schedule, and estimate of the cost of construction of such proposed work.

Applicant to
pay expenses.
—1869-'70, c.
137, s. 8.

8. Such applicant shall pay all the expense of giving notice to parties of appraisers and recording assessment.

When work
completed,
&c.—1869-'70,
c. 137, s. 9.

9. When said work is completed according to specifications in the applications, it shall be lawful for said applicant to demand of and receive from the owners of said lands, or any one of them, the amount of benefits so assessed against his said lands, and if the same shall not be paid within ten days after demand, said applicant is hereby authorized to sue and collect the same in any court having jurisdiction to enforce liens on real estate: *Provided*, that if the owner of the land is not a resident of the county, or if he is unknown to the applicant, no demand shall be necessary.

Proviso.

How to pro-
ceed in case of
damages.—
1869-'70, c.
137, s. 10.
Proviso.

10. When damages shall be assessed to any tract of land, said applicant shall not be authorized to enter upon such tract to make such improvements until he shall have paid or tendered to the owner thereof the damages so assessed: *Provided*, the owner be a resident of the county, or have an agent in the county known to the applicant.

Parties may
appeal —
1869-'70, c.
137, s. 11.

11. Any person aggrieved by the proceedings of said appraisers may appeal the same to the Superior Court of the county upon giving bond and within the time, as in cases of appeal from Justices of the Peace, except that said bond be filed with the clerk of said courts.

12. Whenever any person or persons may desire to drain his or their lands by the construction of a new ditch into and communicating with any ditch previously constructed upon the lands of any other person or persons, he or they shall have the benefits of the provisions of this chapter in the appointment of appraisers to estimate the benefit that would accrue to, or the damages likely to be sustained by, the person or persons through whose lands the same may pass in order to communicate with such old ditch or outlet, and proceedings in such cases shall, in all respects, be similar to those in this chapter heretofore mentioned: *Provided, however*, that if the volume of water discharged by such new ditch shall be too large to pass or go through the old ditch without a too frequent overflow of adjoining lands, it shall be the duty of the person or persons constructing such new ditch to widen, deepen and enlarge the capacity of the old ditch, so as to make it of sufficient size for the flow of such increased volume of water at the ordinary stages thereof; and in case of failure or refusal so to do for the space of one month or longer after the construction of such new ditch, he or they shall be liable from time to time to the owners of land along the line of such old ditch for all damages he or they may sustain in consequence thereof, with ten per centum thereon and costs of suit, to be recovered by suit in any court having jurisdiction in the proper county: *Provided, also*, that every person who shall take the benefit of this section, and shall construct a ditch through his lands to communicate with a ditch upon the lands of another, as aforesaid, or shall widen, deepen, or enlarge the capacity of an old ditch, shall also, under the same penalties and forfeitures for failure or refusal, be required to keep such new ditch, or such widened, deepened or enlarged ditch as the case may be, opened and cleaned out from end to end, and to erect such dikes as shall be necessary to prevent injury to the ditch or ditches below by the overflow of sand, water or other earth or debris.

Any person may take benefit of this chapter.—1869-'70, c. 187, s. 12.

Proviso.

Liable for damages.

Proviso.—1871-'2, c. 191.

Drainage of ditches an obligation.

13. Any person who shall obstruct a drain or ditch constructed under the provisions of this chapter shall be liable to the person or persons injured thereby, or the persons opening such ditch, in the sum of one dollar for each day such obstructions shall remain in such drain, to be recovered in an action brought before a Justice of the Peace in the name of the person thus entitled to said damages.

Persons obstructing ditches.—1869-'70, c. 187, s. 13.

14. Natural streams may be cleaned out, enlarged, widened or deepened under the same rules and regulations as herein provided for canalling.

Natural streams may be cleaned, &c.—1866, c. 25.

CHAPTER 40.

ELECTORS FOR PRESIDENT AND VICE-PRESIDENT.

SECTION

1. When election to be held.
2. Names of electors to be on each ballot. How electors to be allotted.
3. Election to be as in case of State officers.
4. Returns from precinct judge of election. Meeting of county canvassers.
5. Register of Deeds to seal abstract. Time of delivering abstract by Register and Sheriff.
6. When and where electors shall meet to vote.
7. Governor to issue certificate of election.

SECTION

8. Organization of the college of electors.
9. College of electors to proceed in conformity with the Constitution of the United States.
10. In case of vacancy in offices of President and Vice President, Governor to issue proclamation for election.
11. Penalty on electors failing to attend.
12. Compensation and privileges of electors.
13. May supply vacancies in their body.
14. Pay of Sheriff for holding elections.

When elections to be held.—1868, c. 45, s. 1.

1. On the Tuesday next after the first Monday in the month of November in the year one thousand eight hundred and sixty-eight, and every four years thereafter, (or on such days as the Congress of the United States shall direct,) a poll shall be opened in each of the precincts of the State for the election of electors of President and Vice-President of the United States, the number of whom is to be equal to the number of Senators and Representatives in Congress to which this State may be entitled.

Names of electors to be on each ballot.—1868, c. 45, s. 2.
How electors allotted.

2. The names of the electors to be chosen shall be written on each ballot, and each ballot shall contain the name of at least one inhabitant of each Congressional District into which the State may be divided, and against the name of each person shall be designated the number of the Congressional District to which he belongs.

Election to be as in case for State officers.—1868, c. 45, s. 3.

3. This election shall be conducted and the returns made as nearly as may be directed in relation to the election of State officers and Representatives in Congress, except as herein otherwise expressed.

Return from precinct judge of election.—1868, c. 45, s. 4.
Meeting of county canvassers.

4. The returns from the township or precinct judge of election to the register of deeds, shall be made within two days after the day of election, and on the third day after the day of election the county canvassers shall meet, examine the returns, make the abstract, and sign and seal it with the county seal.

Register of deeds to seal abstract.—1868, c. 45, s. 5.
Time of delivery of abstract by register and Sheriff.

5. The register of deeds shall envelope and seal up the abstract, and endorse and direct it as provided in other cases, and before ten o'clock, A. M., of the fifth day after the election, shall deliver the same to the Sheriff of his county, whose duty it is to deliver the abstract to the Secretary of State within ten days including the day he receives it.

6. 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 in December, one thousand eight hundred and sixty-eight, 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.

When and where electors shall meet to vote.—R. C., c. 41, s. 4.

7. The Governor, or in his absence, the Secretary of State, shall issue a certificate of election under his hand, and the seal of the State, and cause it to be served on each person elected, notifying him to attend at the seat of government at noon of the Tuesday preceding the first Wednesday of December, next after his election, and report himself to the Governor as in attendance.

Governor to issue certificate of election.—1868, c. 45, s. 6.

8. The electors so attending shall meet at the earliest convenient hour after the noon of the said Tuesday, and the Governor shall provide them a list of all the electors elected, and in case of the absence of any elector chosen, or if the proper number of electors shall from any cause be deficient, those present shall forthwith elect from the citizens of the State so many persons as will supply the deficiency, and such choice being certified to the Governor, he shall cause the person chosen to be notified immediately.

Organization of the college of Electors.—1868, c. 45, s. 7.

In case of vacancy.

9. The college of electors, being full, shall meet at the Capitol at noon of the said first Wednesday of December, and proceed to the election in conformity with the Constitution of the United States.

College of electors to proceed in conformity with Constitution of U. S.—1868, c. 45, s. 9.

10. 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.

In case of vacancy in offices of President and Vice-President, Governor to issue proclamation for election.—R. C., c. 41, s. 5.

11. Each elector, chosen with his own consent previously signified, failing to attend and vote for a President and Vice-

Penalty on electors failing to attend.

On Sheriff refusing to hold poll, or making false return, &c.—R. C., c. 41, s. 6.

President of the United States at the time and place herein directed, (except in cases 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.

Compensation and privileges of electors.—R. C., c. 41, s. 7.

12. 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.

May supply vacancies in their body.—R. C., c. 41, s. 8.

13. 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.

Pay of Sheriff for holding election.—R. C., c. 41, s. 9.

14. 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.

CHAPTER 41.

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 may be made by persons not citizens.

SECTION

3. Entries and grants not authorized, void.
4. An entry-taker to be elected.
5. Who may act when vacancy occurs.
6. Entry-taker's bond.
7. Where office to be kept.
8. Oaths and fees.
9. Certain entries validated.
10. Surveyors to be elected.
11. Surveyors may appoint deputies.
12. Price at which lands may be entered.
13. When entry money to be paid. Time

SECTION

- of payment on certain entries extended. Proviso.
14. On failure to pay the price, subsequent enterer entitled.
 15. In case of lapse same person not to re-enter within one year.
 16. Entries, how made, and warrants issued.
 17. Surveys, how made and returned. Chain carriers appointed and sworn. Special surveyor, when appointed.
 18. Surveys to be according to priority of entry.
 19. Warrant of survey, when lost duplicate may be issued.
 20. On death, &c., of entry-taker, successor to issue warrants.
 21. Entry-takers, how to make entries for themselves.
 22. Surveyors, how to have surveys made for themselves.
 23. Entry-takers to make annual returns to Secretary of State.
 24. Penalty for failure, how recovered.

SECTION

25. Public Treasurer to receive entry money.
26. Grants to issue, on what certificates.
27. Grants, how authenticated. All grants to be registered. Copies may be registered.
28. How to issue on death of enterer.
29. Seal of grant lost, may be renewed.
30. Certain grants heretofore issued to surveyors, &c., confirmed.
31. Certain other grants declared valid.
32. Grants on entries extended into two or more counties, confirmed.
33. Mistakes of surveyor and secretary, how corrected. Application to be made in three years after date of grant.
34. Persons aggrieved by issuing of patents, how to proceed.
35. Proceedings and judgment of court in such cases. Copy of proceedings vacating grants, to be filed in secretary's office.
36. Chapter not to apply to Cherokee lands.

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 lands on any navigable sound, river, creek or arm of the sea, for the purpose of erecting wharves on the side of the deep waters 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.

What lands subject to entry.

In what cases land covered by nav. waters may be entered.—R. C., c. 42, s. 1.

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.—R. C., c. 42, s. 1.

Entries may be made by persons not citizens.—1869-'70, c. 19, s. 1.

Entries and grants not authorized, void.—R. C., c. 42, s. 2.

An entry-taker to be elected.—1868-'9, c. 173, s. 1.

Who may act when vacancy occurs.—1868-'9, c. 193, s. 2.

Entry-taker's bond.—1868-'9, c. 173, s. 3.

Where office to be kept.—1868-'9, c. 173, s. 4.

Oath and fees.—1868-'9, c. 173, s. 5.

Validates certain entries.—1868-'9, c. 173, s. 6.

(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.

2. All entries of land subject to entry by the laws of this State, made or to be made, by or for any person or persons who have or may come into the State with the *bona fide* intent of becoming residents and citizens thereof, shall be deemed and taken to be as good and effectual to all intents and purposes as if such entries had been made by a citizen or citizens of the State: *Provided*, that such enterer or enterers shall comply with the laws of the State in relation to such entries.

3. Every entry made, and every grant issued, for any lands not herein authorized to be entered or granted, shall be void.

4. The board of commissioners of the several counties shall elect one person to receive entries of claims for lands within each county; and such entry taker shall hold his office for four years.

5. When a vacancy exists in the office of entry taker, the register of deeds shall act as entry taker until such vacancy is filled by an election by the commissioners. The register of deeds, in such case, shall take charge of the books belonging to the office, shall discharge all the duties and receive the emoluments, and shall be subject to the rules, regulations and penalties prescribed by law for entry takers.

6. Every entry taker shall enter into bond in the sum of five hundred dollars, payable to the State, with sufficient security to be approved by the county commissioners, for the faithful discharge of the duties of his office.

7. 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 county, to be sued for by the county treasurer.

8. The entry taker shall take the oath of office and receive the fees, and no other, prescribed in the chapters of this revisal respectively entitled "Oaths" and "Salaries and Fees."

9. And whereas, certain entries of claims for lands have been irregularly made before former entry takers or clerks of the Superior Courts, since the abolition of the late County Courts, and under the provisional government of the State, whereby doubts exist respecting the validity of such entries; for remedy whereof, *it is further enacted*, that all and every entry of land made as declared in the preamble of this section, be and the same are hereby rendered valid in all respects, as if made under the existing government of the State and by authority

of this chapter, and that the time for perfecting entries made prior to this date, shall have to the first day of January, one thousand eight hundred and seventy, to perfect entries and obtain grants from the State.

10. A county surveyor shall be biennially elected in each county as provided for in section first of the seventh article of the Constitution ; he shall enter into bond in the sum of four thousand dollars payable to the State of North Carolina, with sufficient security for the faithful discharge of the duties of his office.

Surveyors to be elected.—R. C., c. 42, s. 3.—1868, c. 20, s. 32.

11. 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. C., c. 42, s. 6.

12. 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. C., c. 42, s. 7.

13. 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 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.

When to be paid. Time of payment on certain entries extended.—R. C., c. 42, s. 8.

14. 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.

Proviso.

On failure to pay the price, subsequent entry entitled.—R. C., c. 42, s. 9.

15. 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 re-entered within one year after the time at which such entry shall lapse, by the person in

In case of lapse, same person not to re-enter within one year.—R. C., c. 42, s. 10.

whose name such entry was made, but such re-entry shall be void.

Entries, how made and warrants issued.
—R. C., c. 42, s. 11.

16. 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 water-course, mountains and remarkable places, and such water-courses and remarkable place 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 endorsed 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.
Chain carriers appointed and sworn.
Special surveyor, when appointed.—
R. C., c. 42, s. 12.

17. Every county surveyor, upon receiving the copy of the entry and order of survey for any claim of lands, shall, as soon as may be, lay off and survey the same, agreeably to this 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 water-courses, and other remarkable places crossed or touched by or near to the lines of such lands, and also the quantity of acres; and 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 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 authorized to administer: *Provided, however*, that when the office of county surveyor is vacant, the county commissioners 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 commissioners appointing him, shall be deemed and held valid, as if done by a county surveyor duly elected.

Surveys to be according to priority of en-

18. 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.

19. 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 made as valid as the original.

20. 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.

21. 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 meeting of the County Commissioners, who shall insert it; and every entry made by or for such entry taker, in any other manner, shall be void.

22. 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 Commissioners 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.

23. 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.

24. The Secretary of State shall furnish the Attorney General, at every spring term of the Superior Court of Wake County, with a certificate of failure in every case where an entry taker shall fail to make return according to law; and the Attorney General shall move for judgment against such entry taker and his sureties, and the court shall give judgment accordingly.

25. 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 the 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.

26. No grant shall issue on the Treasurer's receipt for the

try.—R. C., c. 42, s. 13.

Warrant of survey lost, duplicate may be issued.—R. C., c. 42, s. 14.

On death, &c., of entry taker, succ'r to issue warrants.—R. C., c. 42, s. 15.
Entry takers, how to make entries for themselves.—R. C., c. 42, s. 16.

Surveyors, how to have surveys made for themselves.—R. C., c. 42, s. 17.

Entry takers to make annual returns to Sec'y.—R. C., c. 42, s. 18.
Penalty for failure, how recovered.—R. C., c. 42, s. 19.

Public Treasurer to receive entry money.—R. C., c. 42, s. 20.

Grants to is-

sue, on what certificates.—
R. C., c. 42, s. 21.

money; but the Auditor 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.

27. 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. C., c. 42, s. 22.

How to issue on death of enterer.—
R. C., c. 42, s. 23.

28. 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 heir 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. C., c. 42, s. 24.

29. 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. C., c. 42, s. 25.

30. 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. C., c. 42, s. 26.

31. 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.

Grants on entries extending into two or more counties, confirmed.—
R. C., c. 42, s. 27.

32. 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.

33. 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 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 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 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.

Mistakes of surveyor and secretary, how corrected.

Application to be made within three years after date of grant.—R. C., c. 42, s. 28.

34. 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 per-

Persons aggrieved by issuing of patents, how to proceed.—R. C., c. 42, s. 29.

son aggrieved may file his petition in the Superior Court 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.

35. 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 secretary's office.—R. C., c. 42, s. 30.

Chapter not to apply to Cherokee lands.—R. C., c. 42, s. 31.

46. 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.

SECTION 1. 13 Ire., 312; 4 D. & B., 328; 1 Mur., 162; 7 Ire., 139; 1 Hay., 439; 2 Hawks, 226; 1 Jones, 234; Phillips, 184.

Sec. 14. 4 Jones Eq., 383.

Sec. 16. 2 Mur., 375; 1 D. & B. Eq., 369; 1 Jones Eq., 270; 4 Ib. 25; Ib. 121; 5 Ib., 29.

Sec. 26. Bus., 307; 13 Ire., 312; 3 Mur., 539; 1 Hay., 176.

Sec. 27. 9 Ire., 333; 3 Mur., 21.

Sec. 32. 1 Dev. Eq., 483.

Sec. 34. 4 Dev., 495; 1 Ib., 481; Ib. 800; 2 D. & B., 246; 4 Ib., 533; 1 Dev., 427; 2 Mur., 375; 3 Ib., 319; 3 Ib., 322; 3 D. & B., 14.

CHAPTER 42.

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.

SECTION

3. Certain contingent limitations in deeds or wills, how construed. If made since 15th January, 1823.
4. Infant unborn, may take by deed, &c.

SECTION

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.
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.

SECTION

9. Buying and selling pretended rights or titles, prohibited.
10. Collateral and certain other warranties made void. To stand as covenants only.
11. Property held in trust. Property so held not liable for debts. Proviso.

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. C., 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 by 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 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.

In joint tenancy, the share of deceased co-tenant not to vest in survivor.

Proviso as to partners in trade.—R. C., c. 43, s. 2.

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

Certain contingent limitations in deeds or wills, how construed.

If made since
15th Jan.,
1823.—R. C.,
c. 43, s. 3.

Infant un-
born, may
take by deed,
&c.—R. C., c.
43, s. 4.
Limitation to
the heirs of a
living person,
to be to his
children.—R.
C., c. 43, s. 5.
In convey-
ance to uses,
possession
transferred to
use without
livery.—R. C.,
c. 43, s. 6.

Grantees of
reversions to
have such
rights against
tenants for
life or years,
as grantors
had.—R. C.,
c. 43, s. 7.

And such ten-
ants to have
same rights
against grant-
ees or rever-
sions, as
against the
grantors.—R.
C., c. 43, s. 8.

Buying and
selling pre-
tended rights
or titles, pro-

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.

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.

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.

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.

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 non-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.

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.

hibited.—R. C., c. 43, s. 9.

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. C., c. 43, s. 10.

11. It shall and may be lawful for any person by deed or will to convey any property to any other person in trust to receive and pay the profits annually or oftener for the support and maintenance of any child, grand-child or other relation of the grantor, for the life of such child, grand-child or other relation with remainder as the grantor shall provide. And the property so conveyed shall not be liable for or subject to be seized or taken in any manner for the debts of such child, grand-child or other relations, whether the same be contracted or incurred before or after the grant: *Provided*, nevertheless, that this section shall apply only to grants or conveyances where the property conveyed does not yield at the time of the conveyance a clear annual income exceeding five hundred dollars.

Property held in trust.—1871-'72, c. 204, s. 1.

Property so held not liable for debts.

Proviso.

SECTION 2. 2 D. & B., 537; Bus. Eq., 286; 1 D. & B. Eq., 524.

SEC. 3. 8 Ire., 133; Ib., 25; 7 Ib., 261; 5 Ib., 225; 4 Ib., 53; Ib., 57; Ib., 237; 3 Ib., 134; Ib., 200.

SEC. 6. 65 N. C., 279; 66 N. C., 223.

SEC. 10. Bus., 169; 12 Ire., 123.

CHAPTER 43.

EVIDENCE.

SECTION

1. Evidence necessary to support title under H. E. McCulloch.
2. Grant or copy from proprietor,

SECTION

- 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.
7. Administrations, &c., and returns of executors and administrators in other States, how certified.
8. Official writings recorded in court taken as evidence.
9. Wills or deeds in other States proved by certified copy.
10. In suits on official bonds and bonds of executors, &c., evidence against principal admissible against surety.

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11. Evidence in suits concerning lands in Haywood and Henderson.
12. Variance between execution and judgment not to affect title to property sold.
13. Deeds registered and lost, and the registry also destroyed, presumed to have been in due form.
14. Witness not incompetent from interest or crime.
15. Evidence of interested parties admissible.
16. Incompetent evidence, what. Proviso.
17. Inadmissible evidence, what.

Evidence necessary to support title under H. E. McCulloch.—R. C., 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 proprietor, sufficient evidence of title under him.—R. C., 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. C., 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. C., 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.

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.

Other evidence of private acts.—R. C., c. 44, s. 5.

6. Copies of the plats and certificates of survey, or their accompanying 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.

Copy of survey from Secretary's office, good evidence.—R. C., c. 44, s. 6.

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.

Administrations, &c., and returns of administrators, and executors, in other States, how certified.—R. C., c. 44, s. 7.

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, Auditor, Secretary of State or Adjutant General, shall be as competent evidence as the originals, when certified by the keeper of such records or writings under the seal of his 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.

Official writings recorded in court taken as evidence.—1871-'72, c. 91, s. 1.

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 person 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.

Wills or deeds in other States proved by certified copies.—R. C., c. 44, s. 9.

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

In suits on official bonds, and bonds of executors, &c., evidence against principal admissible against sureties.—R. C., c. 44, s. 10.

competent against all or any of his sureties, who may be defendants with or without him in said actions.

Evidence in suits concerning lands in Haywood and Henderson.—R. C., c. 44, s. 11.

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 assurance, 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.

Variance between execution and judgment, not to affect title of property sold.—R. C., c. 44, s. 13.

12. 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.—R. C., c. 44, s. 14.

13. 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.

Preamble.—1866, c. 43, s. 1.

14. WHEREAS, The inquiry after truth in courts of justice is often obstructed by incapacities created by the present law, and it is desirable that full information as to the facts in issue, both in criminal and civil cases, should be laid before the persons appointed to decide upon them, and that such persons should exercise their judgments on the credit of witnesses adduced, and on the truth of their testimony; now therefore,

Witness not incompetent from interest or crime.—1869-'70, c. 177.—1871-'72, c. 4.

The General Assembly of North Carolina do enact, That no person offered as a witness shall hereafter be excluded by reason of incapacity from interest or crime, from giving evidence either in person or by deposition, according to the practice of the court, on the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit or proceeding, civil or criminal, in any court, or before any Judge, Justice, jury or other person having, by law, authority to hear, receive and examine evidence; and every person so offered shall be admitted to give evidence, notwithstanding such person may or shall have an interest in the matter in question, or in the event of the trial of the issue, or of the suit or other proceeding in which he is offered as a witness.

Evidence of interested parties admissible.

15. On the trial of any issue, or of any matter or question, or on any inquiry arising in any suit or other proceeding in

court, or before any Judge, Justice, jury or other person having by law authority to hear and examine evidence, the parties and the person in whose behalf any suit or other proceeding may be brought or defended, shall, except as hereinafter provided, be competent and compellable to give evidence, either *viva voce*, or by deposition, according to the practice of the court, in behalf of either or any of the parties to said suit or other proceeding.

16. Nothing contained in the fifteenth section of this chapter shall render any person who, in any criminal proceeding, is charged with the commission of an indictable offence, competent or compellable to give evidence for or against himself, or shall render any person compellable to answer any question tending to criminate himself, or shall in any criminal proceeding render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband: *Provided nevertheless*, that in all criminal prosecutions of a husband for an assault and battery upon the person of his wife, it shall be lawful to introduce and examine the wife in behalf of the State against the said husband.

17. Nothing contained in the fifteenth section of this chapter shall apply to any suit or other proceeding in any court, instituted in consequence of adultery, or to any action for breach of promise of marriage or for criminal conversation, and nothing contained in the fourteenth section of this chapter shall apply to the attesting witnesses to wills.

SECTION 3. 13 Ire., 114; 11 Ib., 576; 2 Ib., 346; 2 Dev., 563; 1 Dev. Eq., 123; 3 Hawks, 404.
 SEC. 12. 13 Ire., 425; 11 Ire., 288.
 SEC. 15. Phillips, 401; 1b., 406.

CHAPTER 44.

EXECUTIONS.

SECTION

1. Real estate may be taken in execution.
2. Executions to issue against real and personal estate. The latter to be first taken and sold.
3. Leasehold estate taken as real estate.
4. Trust estates liable to executions.
5. Right of redeeming real estate liable to execution.

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6. Sheriff's deed to refer to mortgage.
7. Articles exempt from execution.
8. Homestead and personal exemptions not liable to execution.
9. No levy on growing crops until matured.
10. Shall be sold at the Court House door. Proviso.
11. When sale to be.
12. Sheriff may postpone.

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13. To be advertised before sale.
14. Sheriff to serve copy of notice.
15. All private acts allowing land to be sold repealed.
16. Chapter shall not invalidate proceedings had before this chapter went into effect.
17. At what hour sale to begin.
18. Penalty for selling contrary to law.
19. Sheriff or other officer returning no sale for want of bidders, what he shall state. Penalty for omission.
20. Justices execution to bind personalty from levy only.
21. Sheriff, &c., may take bond for the forthcoming of property levied on.
22. Surety to be bailee by taking list of property, &c. Sales when made under other levied executions.

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23. Officer, how to proceed on bond when broken.
24. Court or Justice may allow pay for keeping horses, &c., taken in execution.
25. Officer to state and return his account. To furnish debtor a copy.
26. Purchaser may recover of defendant in execution if title to the thing sold be defective.
27. Defendant dying in execution, debt not discharged.
28. Clerks to issue executions within six weeks, &c. Penalty of \$10 for failure.
29. Officers to prepare deeds for property sold by them.
30. Costs on executions to be paid to clerks.

Real estate may be taken in execution.—R. C., c. 45, s. 1.

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 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.

Executions to issue against real and personal estate; the latter to be first taken and sold.—R. C., c. 45, s. 2.

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.

Lease-hold to be taken as real estate.—R. C., c. 45, s. 8.
Trust estates liable to execution.

3. All lease-hold estates of three years' duration, or more, shall, as to their liability to execution under this chapter, be taken and held to be real estate.

Purchaser to hold discharged in trust.—R. C., c. 45, s. 4.

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 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.

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.

Right of redeeming real estate liable to execution.—R. C., c. 45, s. 5.

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.

Sheriff's deed to refer to mortgage.—R. C., c. 45, s. 6.

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 prayer-book, and all necessary school-books, the property of the defendant, shall be exempt from seizure under execution.

Articles exempt from execution.—R. C., c. 45, s. 7.

8. The homestead and personal exemption as provided in the Constitution and in the chapter on those subjects shall also be exempt from seizure under execution. And every conveyance by sale, deed in trust, or otherwise, for the payment of debts or demands of any property set apart in this and the next preceding section shall be void.

Homestead and personal exemptions not liable to execution.

9. No execution shall be levied on growing crops, until the same are matured.

No levy on growing crops till matured.—R. C., c. 45, s. 11.

10. All real property sold under execution, or by virtue of an order or judgment of a court in this State, shall be sold at the court house of the county in which the property, or some part thereof, is situate: *Provided*, that this section shall not apply to the sale of lands by executors and administrators for the creation of assets, nor to sales for partition between tenants in common, unless so ordered or directed by the court.

Shall be sold at Court House door.—1868-'9, c. 257, s. 7.

11. The sale shall be during the first three days of the term of the Superior Court of the County, or on the first Saturday in a month, or on the Monday and Tuesday next succeeding such Saturday.

When sale to be.—1868-'9, c. 237, s. 8.—1869-'70, c. 218.

12. The Sheriff, for the absence of bidders or other just cause, may postpone a sale from day to day, but not more than six days; upon such postponement he shall post a notice thereof at the court house door.

Sheriff may postpone.—1868-'9, c. 237, s. 9.

13. No real property shall be sold until the same shall have been advertised for thirty days at the door of the court house of the county in which the sale is to take place, and at three other public places in the county. In lieu of advertisement in three other public places in the county, advertisement once a week for four weeks, in some newspaper published in the county, will suffice.

To be advertised before sale.—1868-'9, c. 237, s. 10.

14. In addition to the advertisements above required, the Sheriff shall in every case, at least ten days before a sale of real property under execution, serve a copy of so much of the advertisement as relates to the real property of any defendant on him personally, if to be found in the county, or on his agent, if he have a known agent within the county, or if he be not to be found within the county, and have no known agent

Sheriff to serve copy of notice.—1868-'9, c. 237, s. 11.

therein, but his address be known, by mail to such address ; and the date of service shall be ascertained by the usual course of the mail from the place where sent to the place of its address.

All private acts allowing land to be sold, repealed.—1868-9, c.

237, s. 12. Acts shall not invalidate proceedings had before this act goes into effect.—1868-9, c. 237, s. 6. At what hour sale to begin.—R. C., c. 45, s. 17.

Penalty for selling contrary to law.—R. C., c. 45, s. 18.

Sheriff or other officer returning no sale for want of bidders, what he shall state.

Penalty for omission.—R. C., c. 45, s. 19.

Justice's ex'n to bind personalty from levy only.—R. C., c. 45, s. 20, Sheriff, &c., may take bond for forthcoming of property levied on.—R. C., c. 45, s. 21.

The surety to be bailee of the officer, by taking list of property, &c.,

15. All private acts by which lands in particular counties are required or allowed to be sold at places or at times, other than those hereinafter prescribed, are hereby repealed.

16. The repeal of the above-mentioned acts and parts of acts shall not invalidate any proceedings had under them before this act goes into effect, and no sale heretofore made under any of said acts shall be invalid merely because of an irregularity or mistake in the day of sale.

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.

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 the same, one half for his own use and the other half to the use of the county where the offence is committed.

19. Whenever a Sheriff or other officer shall return upon any writ of execution, 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 justices' 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.

20. Where an 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.

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 chattels shall take place 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.

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 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 exceeding the penalty of the bond, to be ascertained by a jury, under the direction of the court.

24. The court or justice 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.

25. 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 fourth; otherwise he shall not be permitted to retain the same.

26. 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, 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.

27. 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 taken and dying in execution, have new execution against the

Sales, when made under other levied executions.—R. C., c. 45, s. 22.

Officer, how to proceed on the bond, when broken.—R. C., c. 45, s. 23.

Court or Justice may allow pay for keeping horses, &c., taken in execution.—R. C., c. 45, s. 25.

Officer to state and return his account. To furnish debtor a copy.—R. C., c. 45, s. 26.

Purchaser may recover of deft in execution, if the title to the thing sold be defective.—R. C., c. 45, s. 27.

Defendant dying in execution, debt not discharged.—R. C., c. 45, s. 23.

property of the person deceased, as they might have had if such person had never been in execution.

Clerks to issue executions within six weeks, &c. Penalty of \$100 for failure.—R. C., c. 45, s. 29.

28. The Clerks of the 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.

Officers to prepare deeds for property sold by them.—R. C., c. 45, s. 20.

29. Sheriffs and other officers, selling lands 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.

Costs on executions to be paid to clerks.—R. C., c. 45, s. 31.

30. 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.

SECTION 1. 4 D. & B., 454; 4 Dev., 128; 2 Ib., 354; 2 Hawks, 341; 1 Ib., 325; 3 Ire., 225; 4 Hawks, 309; 4 Ire. Eq., 288; 3 Dev., 158; 2 Dev., 23; Bus., 28; 2 Dev., 359; 8 Ire., 44; 8 Dev., 12; 1 Hay., 367; 1 D. & B., 856; 10 Ire., 162; 4 D. & B., 156; 3 Jones 537; 4 Jones, 206; Ibid., 533.

SEC. 2. 11 Ire., 627; 1 Hawks, 329; 3 Ib., 323; 2 Ib., 377.

SEC. 4. 2 Jones Eq., 33; 7 Ire. Eq., 70; 5 Ire., 576; Ib., 255; Ib., 192; 6 Ire. Eq., 20; 3 Ire., 459; 1 Ib., 160; Ib., 553; 1 D. & B. Eq., 393; 3 Dev., 425; 1 Dev. Eq., 537; 4 Dev., 172; 4 Hawks, 342; 8 Ire. Eq., 16; Bus. Eq., 275; 11 Ire., 453; 4 Ire. Eq., 494; 66 N. C., 55.

SEC. 5. 5 Ire., 525; 1 D. & B., 52.

SEC. 6. 1 D. & B. Eq., 613; 7 Ire., 14.

SEC. 7. 10 Ire., 43; Bus., 260.

SEC. 9. 12 Ire., 206; 1 D. & B., 241; 4 D. & B., 385.

SEC. 20. 1 D. & B., 561; 1 Mur., 266.

SEC. 21. 13 Ire., 228; 7 Ib., 327; 1 D. & B., 437; 4 Dev., 424.

SEC. 29. 2 Jones, 98.

CHAPTER 45.

EXECUTORS AND ADMINISTRATORS.

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1. THE Judge of Probate of each county has jurisdiction, within his county, to take proof of wills and to grant letters testamentary, letters of administration with the will annexed, and in cases of intestacy, in the following cases:

(1.) Where the decedent at, or immediately previous to his death, was domiciled in the county of such Probate Judge, in whatever place such death may have happened ;

(2.) Where the decedent at his death had fixed place of domicile in more than one county, the Judge of Probate of any such county has jurisdiction ;

(3.) Where the decedent, not being domiciled in this State, died out of the State, leaving assets in the county of such Judge of Probate, or assets of such decedent thereafter come into the county of such Probate Judge ;

(4.) Where the decedent, not being domiciled in this State, died in the county of such Judge of Probate, leaving assets in the State or assets of such decedent thereafter come into the State.

2. The Judge of Probate, who first gains and exercises jurisdiction under sub-division two and three of the preceding section, thereby acquires sole and exclusive jurisdiction over the decedents estate.

When Probate Judge has jurisdiction of the estate.—
C. C. P., s. 433.

Probate Judge first acquiring jurisdiction to have exclusive jurisdiction.—
C. C. P., s. 434.

Letters of administration, to whom granted.—C. C. P., s. 456.

3. Letters of administration, in case of intestacy, shall be granted to the persons entitled thereto, and applying for the same, in the following order :

(1.) To the husband or widow ;

(2.) To the next of kin in the order of their degree, where they are of different degrees—if of equal degree, to one or more of them, at the discretion of the Probate Court ;

(3.) To the most competent creditor, who resides within the State, and proves his debt on oath, before the Probate Court ;

(4.) To any other person legally competent.

4. The Probate Judge shall not issue letters of administration to any person, who, at the time of appearing to qualify, is

Disqualifications.—C. C. P., s. 457.

(1.) Under the age of twenty-one years ;

(2.) An alien, who is a non-resident of this State ;

(3.) A person who has been convicted of an infamous crime ;

(4.) Who, on proof, is adjudged by the Probate Court incompetent to execute the duties of such trust, by reason of drunkenness, improvidence or want of understanding ;

(5.) Who fails to take the oath or give the bond required by law.

Joining persons not entitled.—C. C. P., s. 458.

5. With the consent of the person or persons who are entitled, letters of administration may be granted to one or more competent persons who are not entitled, jointly with those who are entitled. Such consent must be in writing, and the Probate Judge shall file the same.

Renunciation of persons having prior right.—C. C. P., s. 459.

6. When any person applies for administration, and any other person has prior right thereto, a written renunciation of the person or persons, having such prior right, must be produced and filed with the Probate Judge.

Persons having prior right disqualified or absent.—C. C. P., s. 460.

7. When any person having such prior right to administration is under the disqualification of age specified in section four, or is temporarily absent from the State, such person is entitled to six months, after the disability of age is removed or his return to the State, in which to renounce his right or apply for letters of administration.

When person entitled to administration deemed to have renounced.—1868-'9, c. 208.—C. C. P., s. 460a.

8. If any person, entitled to letters of administration, fails or refuses to apply for such letters within thirty days after the death of the intestate, the Judge of Probate, on application of any party interested, shall issue a citation to such person to show cause, within twenty days after service of the citation, why he should not be deemed to have renounced. If, within the time named in the citation, he neglects to answer or to show cause, he shall be deemed to have renounced his right to administer, and the Judge of Probate must enter an order accordingly, and proceed to grant letters to some other person.

What must be shown on application.—C. C. P., s. 461.

9. On application for letters of administration, the Judge of Probate must ascertain by affidavit of the applicant or otherwise :

(1.) The death of the decedent and his intestacy ;

(2.) That the applicant is the proper person entitled to ad-

ministration, or that he applies after the renunciation of the person or persons so entitled.

(3.) The value and nature of the intestate's property, the names and residence of all parties entitled as heirs or distributees of the estate, if known, or that the same cannot on diligent enquiry be procured; which of said parties are minors, and whether with or without guardians, and the names and residence of such guardians, if known.

Such affidavit or other proof must be recorded and filed by the Probate Judge.

10. Any person interested in the estate may, on complaint filed and notice to the applicant, contest the right of such applicant for letters of administration, and on any issue of fact joined, or matter of law arising on the pleadings, the cause may be transferred to the Superior Court for trial, or an appeal be taken, as in other cases provided in this chapter.

Contested administration.--
C. C. P., s. 462.

11. Whenever, for any reason, a delay is necessarily produced in the admission of a will to probate, or in granting letters testamentary, letters of administration, or letters of administration with the will annexed, the Judge of Probate may issue to some discreet person or persons at his option, letters of collection, authorizing the collection and preservation of the property of the decedent.

When letters of collection to issue, and to whom.--C. C. P., s. 463.

12. Every collector shall have the qualifications, and give the bond prescribed by law for an administrator.

Qualifications, &c.--C. C. P., s. 464.
Authority, &c.--C. C. P., s. 465.

13. Every collector has authority to collect the personal property, take possession and receive the rents and profits of the real property, preserve and secure the estate, and collect the debts and credits of the decedent. And for these purposes he may commence and maintain or defend suits, and he may sell, under the direction and order of the Probate Judge, any personal property for the preservation and benefit of the estate. He may be sued for debts due by the decedent; and he may pay funeral expenses and other debts.

14. When letters testamentary, letters of administration or letters of administration with the will annexed are granted, the powers of such collector shall cease, but any suit brought by the collector may be continued by his successor, the executor or the administrator, in his own name. Such collector must, on demand, deliver to the executor or administrator all the property, right and credits of the decedent under his control, and render an account, on oath, to the Probate Judge of all his proceedings. Such delivery and account may be enforced by citation, order or attachment.

Authority, when to cease, &c.--C. C. P., s. 466.

15. Before letters testamentary, letters of administration with the will annexed, letters of administration or letters of collection are issued to any person, he must take and subscribe an oath or affirmation, before the Judge of Probate, that he will faithfully and honestly discharge the duties of his trust, which oath must be filed in the office of the Probate Judge.

Oaths, &c., to be taken.--C. C. P., s. 467.

16. Every executor from whom a bond is now required by Administra-

tor, &c., to
give bond, &c.
C. C. P., s.
468.—1870-'1,
c. 93.

Proviso.

Public admin-
istrator, how
appointed.—
1868-'69, c.
113, s. 1.
Bond to be
given.—1868-
'9, c. 113, s. 2.

When bond to
be enlarged.—
1868-'69, c.
113, s. 3.

Bond, when to
be renewed.—
1868-'9, c. 113,
s. 4.
Oath of public
administrator.
—1868-'9, c.
113, s. 5.

When public
administrator
to obtain let-
ters.—1868-'9,
c. 113, s. 6.

law, and every administrator and collector, before letters are issued, must give a bond payable to the State, with two or more sufficient sureties, to be approved by the Probate Judge, conditioned that such executor, administrator or collector shall faithfully execute the trust reposed in him, and obey all lawful orders of the Probate Judge, or other court touching the administration of the estate committed to him. The penalty of such bond must be at least double the value of all the personal property of the deceased, such value to be ascertained by the Probate Judge, by the examination on oath of the applicant, or of some other competent person: *Provided*, that if the personal property of any decedent shall be insufficient to pay his debts, and the charges of administration, and it shall become necessary for his executor or administrator to apply for the sale of real estate for assets, and the bond previously given is not double the value of both the real and personal estate of the deceased, such executor (if bond is required of him by law) or administrator, shall, before or at the time of filing his petition for such sale, give another bond payable and conditioned as the one above prescribed and with like security, in double the value of the real estate for the sale of which application shall be made.

19. There may be in every county a public administrator, to be appointed by the Judge of Probate for the term of eight years.

18. The public administrator shall enter into bond, with three or more securities, approved by the Judge of Probate, in the penal sum of eight thousand dollars, payable to the State of North Carolina, conditioned faithfully to perform the duties of his office, and obey all lawful orders of the Probate or other court, touching the administration of the several estates that may come into his hands.

19. Whenever the aggregate value of the real and personal property, belonging to the several estates in the hands of the public administrator, shall exceed the one-half of his bond, the Judge of Probate shall require him to enlarge his bond in amount so as to cover, at all times, at least, the double of such aggregate.

20. The public administrator shall renew his bond every two years.

21. The public administrator shall take and subscribe an oath (or affirmation) faithfully and honestly to discharge the duties of his trust; and the oath so taken and subscribed must be filed in the office of the Probate Judge.

22. The public administrator shall apply for and obtain letters on the estates of deceased persons in the following cases:

(1.) When the period of six months has elapsed from the death of any decedent, and no letters testamentary, or letters of administration or collection, have been applied for and issued to any person.

(2.) When any stranger, or person without known heirs, shall die intestate in any County.

(3.) When any person entitled to administration shall request, in writing, the Judge of Probate to issue the letters to the public administrator.

23. The public administrator shall have, in respect to the several estates in his hands, all the rights and powers, and be subject to all the duties and liabilities of other administrators. Powers and duties.—1868-'9, c. 113, s. 7.

24. Every executor, administrator and collector, within three months after his qualification, shall return into the Court of Probate, 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 to the hands of any person for him, which inventory shall be signed by him and be recorded by the Judge of Probate. Inventory to be returned, when.—1868-'9, c. 113, s. 8.

25. If the inventory specified in the last section is not returned as therein prescribed, the Judge of Probate must issue an order requiring the executor, administrator or collector to file such inventory within the time specified in the order, which shall not be less than twenty days, or to show cause why an attachment should not be issued against him. If, after due service of the order, the executor, administrator or collector does not, on the return day of the order, file such inventory, or obtain further time to file the same, the Judge of Probate shall have power to vacate the office of administrator, executor or collector, and such executor, administrator or collector shall be subject to prosecution for a misdemeanor, and fined and imprisoned at the discretion of the court. Compelling inventory.—1868-'9, c. 113, s. 9.

26. Whenever further property of any kind, not included in any previous return, shall come to the hands or knowledge of any executor, administrator or collector, he must cause the same to be returned, as prescribed in section twenty-four, within three months after the possession or discovery thereof; and the making of such return of new assets, from time to time, may be enforced in the same manner as in the case of the first inventory. New assets.—1868-'9, c. 113, s. 10.

27. If any trustee, or any person interested in any trust estate, shall die leaving any equitable interest in personal estate which shall come to his executor, administrator or collector, the same estate shall be deemed personal assets. Trust estate in personalty deemed personal assets.—1868-'9, c. 113, s. 11.

28. All proceeds arising from the sale of real property, for the payment of debts, as hereinafter provided, shall be deemed personal assets in the hands of the executor, administrator or collector, and applied as though the same were the proceeds of the personal estate; and bonds and other obligations in which the ancestor has bound his heirs shall not be put in suit against the heirs or devisees of the deceased, but shall be paid as other debts of the same class in the manner provided in this chapter. What proceeds of sale of real property deemed personal assets.—1868-'9, c. 113, s. 12.

29. All proceeds from the sale of real estate, as hereinafter provided, which may not be necessary to pay debts and the What proceeds deemed

real assets.—
1868-'9, c. 113,
s. 13.

The distinction
between legal and equi-
table assets
abolished.—

1868-'9, c. 113,
s. 14.

Crops ungath-
ered at de-
cease deemed
personal as-
sets.—1868-'9,
c. 113, s. 15.

Power of ex-
ecutor or ad-
ministrator to
sell personal
property.—
1868-'9, c. 113,
s. 16.

The same as
to collector.—
1868-'9, c. 113,
s. 17.

Sales, how to
be made.—
1868-'9, c. 113,
s. 18.

To sell for
cash, when.—
1868-'9, c. 113,
s. 19.

Sale of evi-
dences of debt.
—1868-'9, c.
113, s. 20.

Proceeds of
sale, how se-
cured.—1868-
'9, c. 113, s. 21.

Hours of sale.
—1868-'9, c.
113, s. 22.

charges of the administration, shall, notwithstanding, be considered real assets, and as such shall be paid by the executor, administrator or collector, to such persons as would have been entitled to the land had it not been sold.

30. The distinction between legal and equitable assets is abolished, and all assets shall be applied in the discharge of debts in the manner prescribed by this chapter.

31. The crops of every deceased person, remaining ungathered at his death, shall, in all cases, belong to the executor, administrator or collector, as part of the personal assets, and shall not pass to the widow with the land assigned as dower, nor to the devisee by virtue of any devise of the land, unless such intent be manifest and specified in the will.

32. Every executor and administrator shall have power in his discretion and without any order, except as hereinafter provided, to sell, as soon after his qualification as practicable, all the personal estate of his decedent.

33. All sales of personal property by collectors shall be made only upon order obtained, by motion, from the Judge of Probate, who shall specify in his order a descriptive list of the property to be sold.

34. All sales of personal estate by an executor, administrator or collector, shall be publicly made on a credit of six months or for cash, after twenty days' notification posted at the court house and four other public places in the county.

35. To sell for cash, executors, administrators and collectors must obtain an order from the Probate Court, for reasons to be filed in the office of the court. When any person interested either as creditor or legatee on the day of sale, objects to the completion of such cash sale, on account of the insufficiency of the amount bid, before passing title to property so disposed of, the Court of Probate, at its discretion, shall confirm the sale.

36. Every executor, administrator and collector, at any time after twenty-four months from the grant of letters, shall be authorized to sell at public auction, in the manner prescribed in this chapter, all bills, bonds, notes, accounts, or other evidences of debt belonging to the decedent, which he has been unable to collect or which may be deemed insolvent. Before offering such evidences of debt at public sale he shall file with the Judge of Probate a descriptive list thereof, and obtain an order of sale therefor from the Court of Probate, to which he shall make return of the proceeds of such sale as in other cases of assets.

37. The proceeds of all sales of personal estate and rentings of real property by public auction, shall be secured by bond and good personal security; and such proceeds shall be collected as soon as practicable, otherwise the executor, administrator or collector shall be answerable for the same.

38. All sales or rentings provided for in the preceding section, shall be between the hours of ten o'clock, A. M., and four o'clock, P. M., of the day on which the sale or renting is to be

made; and every executor, administrator or collector, who otherwise makes any sale or renting, shall forfeit and pay two hundred dollars to any person suing for the same.

39. Nothing contained in sections thirty-two, thirty-three, thirty-four and thirty-five shall be construed to affect the discretionary powers, trusts and authorities of an executor or other trustee acting under a will: *Provided*, thereby creditors be not delayed, nor the order changed in which by law they are entitled to be paid.

Powers under wills.—1868-'9, c. 113, s. 23.

40. The debts of the decedent must be paid in the following order:

Order of payment.—1868-'9, c. 113, s. 24.

First Class.—Debts which by law have a specific lien on property to an amount not exceeding the value of such property.

Second Class.—Funeral expenses.

Third Class.—Taxes assessed on the estate of the deceased previous to his death.

Fourth Class.—Dues to the United States and to the State of North Carolina.

Fifth Class.—Judgments of any court of competent jurisdiction within this State, docketed and in force, to the extent to which they are a lien on the property of the deceased at his death.

Sixth Class.—Wages due to any domestic servant, or mechanical or agricultural laborer employed by the deceased; which claim for wages shall not extend to a period of more than one year next preceding the death; or if such servant or laborer was employed for the year current at the decease, then from the time of such employment; for medical services within the twelve months preceding the decease.

Seventh Class.—All other debts and demands.

41. Every debt must be paid *pro rata* equally in its class.

42. No executor, administrator or collector shall give to any debt any preference whatever, either by paying it out of its class, or by paying thereon an undue proportion in its class.

Rate of payment.—1868-'9, c. 113, s. 25.

43. Debts not due may be paid on a rebate of interest thereon for the time unexpired.

No preference allowed.—1868-'9, c. 113, s. 26.

44. No property or assets of the decedent shall be retained by the executor, administrator or collector, in satisfaction of his own debt, in preference to others of the same class; but such debt must be established upon the same proof and paid in like manner and order as required by law in case of other debts.

Debts not due.—1868-'9, c. 113, s. 27.

Debts due to executor, &c.—1868-'9, c. 113, s. 28.

45. Every executor, administrator and collector, within twenty days after the granting of letters, shall notify all persons having claims against the decedent, to exhibit the same to such executor, administrator or collector, at or before a day to be named in such notice; which day must be twelve months from the day of the first publication of such notice.

Advertising for claims.—1868-'9, c. 113, s. 29.

46. The notice directed to be given in the preceding section shall be made by posting the same at the court house and at four other public places in the county where letters are granted.

How advertisement to be made.—

1868-'9, c. 113,
s. 30.

In lieu of advertisements at four other public places, an insertion of such notice once a week for six weeks in some newspaper published in said county will suffice.

How advertisements to be proved.—1868-'9, c. 113, s. 31.

47. A copy of the advertisement, directed to be posted or published in pursuance of the preceding section, with an affidavit, taken before some person authorized to administer oaths, of the proprietor, editor or foreman of the newspaper wherein the same appeared, to the effect that such notice was published for six weeks successively in said newspaper, or of a witness stating the times and places when and where he saw such notice posted, may be filed in the office of the Probate Court by the executor, administrator or collector. The copy so verified and filed shall be deemed a record of the court; and a copy thereof, duly certified by the Judge of Probate, with a certificate of the time of filing, shall be received as conclusive evidence of the fact of publication in all the courts of this State.

Notice may be personally served.—1868-'9, c. 113, s. 32.

48. The executor, administrator or collector may cause the notice mentioned in section forty-five to be personally served on any creditor; who shall, thereupon, within six months after personal service thereof, exhibit his claim, or be forever barred from maintaining any action thereon, against the personal representative.

Affidavits may be required.—1868-'9, c. 113, s. 33.

49. Upon any claim being presented against the estate, the executor, administrator or collector may require the affidavit of the claimant or other satisfactory evidence that such claim is justly due, that no payments have been made thereon, and that there are no off-sets against the same, to the knowledge of the claimant; or if any payments have been made, or any off-sets exist, their nature and amount must be stated in such affidavit.

Referring claim.—1868-'9, c. 113, s. 34.

50. If the executor, administrator or collector doubt the justice of any claim so presented, he may enter into an agreement, in writing, with the claimant, to refer the matter in controversy, whether the same be of a legal or equitable nature, to one or more disinterested persons, not exceeding three; whose proceedings shall be the same in all respects as if such reference had been ordered in an action. Such agreement to refer, and the award thereupon, shall be filed in the Probate Court where the letters were granted, and shall be a lawful voucher for the personal representative: the same may be impeached in any proceeding against the personal representative, or on the final settlement of the estate for fraud, error or illegality therein: *Provided*, that the right to refer claims under this section shall extend to claims in favor of the estate as well as those against it.

Limitation of action on disputed claims.—1868-'9, c. 113, s. 35.

51. If a claim is presented to and rejected by the executor, administrator or collector, and not referred as provided in the last section, the claimant must, within six months after notice of such rejection, or after some part of the debt becomes due, commence an action for the recovery thereof, or be forever

barred from maintaining an action thereon against the personal representative.

52. A creditor who neglects to present his claim, as prescribed by section forty-eight, or who neglects to commence an action as prescribed by section fifty-one, may, notwithstanding, recover the same from the heirs, devisees, legatees, or next of kin of the decedent, in the manner prescribed in this chapter.

Remedy against heirs, devisees, &c.—1868-'9, c. 113, s. 36.

53. In an action brought on a claim which was not presented within twelve months from the first publication of the general notice to creditors, as prescribed in section forty-five, the executor, administrator or collector shall not be chargeable for any assets that he may have paid in satisfaction of any debts, legacies or distributive shares, before such action was commenced; nor shall any costs be recovered in such action against the executor, administrator or collector.

Omission to present claim in twelve months.—1868-'9, c. 113, s. 37.

54. No costs shall be recovered in any action against an executor, administrator or collector, unless it appears that payment was unreasonably delayed or neglected, or that the defendant refused to refer the matter in controversy pursuant to section fifty, in which cases the court may award such costs against the defendant personally, or against the estate, as may be just.

Cost against executors, &c., when allowed.—1868-'9, c. 113, s. 38.

55. When any part of the real estate of the testator descends to his heirs by reason of its not being devised or disposed of by the will, such 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 appears otherwise to be the wish of the testator.

Undevised real estate first chargeable with debts.—1868-'9, c. 113, s. 39.

56. The appointing of any person executor shall not be a discharge of any debt or demand due from such person to the testator.

Debtor named executor not discharged.—1868-'9, c. 113, s. 40.

57. No lien shall be created by the commencement of a suit against an executor, administrator or collector.

No lien created by commencement of suit.—1868-'9, c. 113, s. 41. To what estates applicable.—1869-'70, c. 58, s. 1.

58. This chapter shall apply to the estates of such deceased persons only whereof original administration has been granted subsequent to the first day of July, one thousand eight hundred and sixty-nine, and all estates whereon administration was granted prior to the said first day of July, one thousand eight hundred and sixty-nine, shall be dealt with, administered and settled according to the law as it existed just prior to the said date, and it is hereby declared that such is the true intent and meaning of this chapter: *Provided, however*, that nothing herein contained shall be construed to prevent the application of the chapter so far as it relates only to the courts having jurisdiction of any action or proceeding for the settlement of an administration or to the practice and procedure therein.

Proviso.

59. If any person, prior to the ratification of this chapter, shall have *bona fide* administered any estate or any part of the estate of any deceased person whereof original administration was granted prior to said first day of July, under the said act of one thousand eight hundred and sixty-eight and one

In case of bona fide administration prior to July, 1869.—1869-'70, c. 58, s. 2.

thousand eight hundred and sixty-nine, he shall not be deemed guilty of a *devastavit*.

Administrators may sell certain evidences of debt.—1868-’70, c. 58, s. 8.

60. Executors and administrators who qualified and entered upon the administration of their estates before the first day of July, one thousand eight hundred and sixty-nine, may sell such evidences of debts as are mentioned in section thirty-six of this chapter and in the manner therein provided.

Application to sell real property.—1868-’9, c. 113, s. 42.

61. When the personal estate of a decedent is insufficient to pay all his debts, including the charges of administration, the executor, administrator or collector may, at any time after the grant of letters, apply to the Superior Court of the county, where the land or some part thereof is situated, by petition to sell the real property for the payment of the debts of such decedent.

Contents of petition.—1868-’9, c. 113, s. 43.

62. The petition, which must be verified by the oath of the applicant, shall set forth, as far as can be ascertained:

(1.) The amount of debts outstanding against the estate;

(2.) The value of the personal estate, and the application thereof;

(3.) A description of all the legal and equitable real estate of the decedent, with the estimated value of the respective portions or lots;

(4.) The names, ages and residences, if known, of the devisees and heirs at law of the decedent.

Heirs and devisees to be parties.—1868-’9, c. 113, s. 44.

63. No order to sell real estate shall be granted till the heirs or devisees of the decedent have been made parties to the proceeding, by service of summons, either personally or by publication, as prescribed in the Code of Civil Procedure.

Infant defendants.—1868-’9, c. 113, s. 45.

64. Infant defendants must appear by guardian, either general or special, who shall file an answer to the petition, either admitting or denying the allegations thereof, and where such answer is filed by a guardian *ad litem*, the costs and expenses thereof, if any, may be directed to be paid, if the court thinks proper, out of the proceeds of the sale, in case one is ordered.

When issue joined.—1868-’9, c. 113, s. 46.

65. When an issue of law or fact is joined between the parties, the course of the procedure shall be as prescribed in such cases for other special proceedings.

Issue as to title.—1868-’9, c. 113, s. 47.

66. Whenever the land, which is sought to be sold, is claimed by another person under any pretence whatsoever, such claimant shall be admitted to be heard as a party to the proceeding, upon affidavit of his claim, and if the issue be found for the petitioner he shall have his writ of possession and order of sale accordingly.

Power of clerk.—1868-’9, c. 113, s. 48.

67. As soon as all proper parties are made to the proceeding, the Clerk of the Superior Court, before whom it is instituted, if the allegations in the petition are not denied or controverted, shall have power to hear the same summarily, and to decree a sale, as provided in the next section.

Order of sale, what to contain.—1868-’9, c. 113, s. 49.

68. The court may decree a sale of the whole or any specified parcel of the premises, in such a manner as to size of lots, place of sale, terms of credit, and security for payment of pur-

chase money, as may be most advantageous to the estate, and upon the coming in of the report of the sale and the confirmation thereof, title shall be made by such person, and at such time as the court may prescribe.

69. Any person let into possession under any judicial sale confirmed, where the title may be retained as a security for the price, shall be deemed the legal owner of the premises for all purposes of bringing suits for injuries thereto, after the day of sale, by trespass, or wrongful possession taken or continued, in the same manner as if the title had been conveyed to him on the day of sale, unless restrained by some order of the court directing the sale; and the suit so brought shall be under the control of the court ordering the sale.

Person let into possession deemed legal owner.—1858-'9, c. 50.

70. Notice of sale under this proceeding shall be the same as for the sale of real estate by Sheriffs on execution.

Notice of sale.—1868-'9, c. 113, s. 50.

71. The real estate subject to sale under this chapter 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: *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.

What real estate subject to be sold.—1868-'9, c. 113, s. 51.

72. Whenever an executor, administrator or collector shall file his petition to sell land, which may have been fraudulently conveyed, 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, administrator or collector 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, the residue shall be restored to the person of whom the recovery was made.

Judgment in case of fraudulent conveyance.—1868-'9, c. 113, s. 52.

73. Any creditor of a deceased person may, within the times prescribed by law, prosecute a special proceeding in his own name and in behalf of himself and all other creditors of the deceased without naming them, against the personal representatives of the deceased, to compel him to an account of his administration, and to pay the creditors what may be payable to them respectively.

Creditor may bring a special proceeding.—1871-'2, c. 213, s. 1.

74. The action shall be governed by the rules of practice prescribed for special proceedings, except so far as the same are modified by this chapter.

By what rules governed.—1871-'2, c. 213, s. 2.

75. The summons shall be returnable before the clerk of the Superior Court of the county in which letters testamentary or administration were granted, and on a day not less than forty nor more than one hundred days from the issuing thereof, and not less than twenty days after the service thereof.

Summons, when and where returnable.—1871-'2, c. 213, s. 3.

76. On issuing of the summons, the clerk shall advertise for all creditors of the deceased to appear before him on or before the return day and file the evidences of their claims.

On issuing of summons clerk to advertise.—1871-'2, c. 213, s. 4.

Where published and for what time.—
1871-'2, c. 213,
s. 5.

77. The advertisement shall be published at least once a week for not less than five weeks in some newspaper which may be thought by the clerk the most likely to inform all the creditors, and shall also be posted at the court house door for not less than thirty days. If, however, the estate does not exceed three thousand dollars in value, and the creditors are supposed by the clerk all to reside within the county or to be known, publication in a newspaper may be omitted, and in lieu thereof the advertisement shall be posted at four public places in the county, besides the court house door. Proof of personal service on a creditor or that a copy of the advertisement was sent to him by mail at his usual address, shall be as to him equivalent to publication.

Creditors to name an agent to receive notices, &c.—
1871-'2, c. 213,
s. 6.

78. The creditors of the deceased on or before the required day shall file with the clerk the evidences of their demands, and every creditor on filing such claim shall endorse thereon or otherwise name some person or place within the town in which the court is held, upon whom or where notices in the cause may be served or left, otherwise he shall be deemed to have notice of all motions, orders and proceedings in the cause filed or made in the clerk's office.

How demands filed shall be evidenced.—
1871-'2, c. 213,
s. 7.

79. If the evidence of the demand be other than a judgment, or some writing signed by the deceased, it shall be accompanied by the oath of the creditor, or if he be non-resident or infirm or absent, or in any other proper case, of some witness of the transaction, or of some agent of the creditor, that to the best of his knowledge and belief the claim is just, and that all due credits have been given.

Representative to file list of demands made on him.—
1871-'2, c. 213, s. 8.

80. On the day of his appearance the personal representative shall on oath give to the clerk a list of all claims against the deceased of which he has received notice or has any knowledge with the names and residences of the claimants to the best of his knowledge and belief; and if any person so named shall have failed to file evidence of his claim, the clerk shall immediately cause a notice requiring him to do so to be served on him, which may be done by posting the same directed to him at his usual address.

Clerk to exhibit list of demands and evidences to representative.—
1871-'2, c. 213, s. 9.
Representatives to admit or deny demands within five days.—
1871-'2, c. 213,
s. 10.

81. On the day fixed for the appearance of the personal representative, the clerk shall exhibit to him a list of all the claims filed in his office with the evidences thereof.

82. Within five days thereafter the defendant shall state in writing on said list, or on a separate paper, which of said claims he disputes in whole or in part. The clerk shall then notify the creditors, as above provided, that his claim is disputed, and the creditor shall thereupon file in the office of the clerk a complaint founded on his said claim, and the pleadings shall be as in other cases.

What Clerk to do when issues joined.—
1871-'2, c. 213,
s. 11.

83. If the issues joined be of law, the clerk shall send the papers to the Judge of the Superior Court for trial, as is provided for by the Code of Civil Procedure in like cases. If the issues shall be of fact, the clerk shall send so much of the

record as may be necessary to the next term of the Superior Court for trial.

84. If any personal representative shall deny the liability of his deceased upon any claim evidenced as is provided in section seventy-nine of this chapter, and the issue shall finally be decided against him, the costs of the trial shall be paid by him personally, and not allowed out of the estate, unless it shall appear that he had reasonable cause to contest the claim and did so *bona fide*.

Who shall pay costs of issue.—1871-'2, c. 213, s. 12.

85. If the personal representative shall fail to appear on the return day, the Clerk or Judge of the Superior Court may permit him afterward to appear and plead on such terms as may be just.

Failure of representative to appear, what may be done.—1871-'2, c. 213, s. 13. Clerk to proceed to state account.—1871-'2, c. 213, s. 14.

86. Immediately after the return day the clerk shall proceed to hear such evidence as shall be brought before him, and to state an account of the dealings of the personal representative with the estate of his deceased according to the course of his court.

87. After the clerk shall have stated the account and prepared his report, he shall notify all the parties to examine and except to the same. Any party may then except to the same in whole or in part. The clerk shall then pass on the exceptions and prepare and sign his final report and judgment, of which the parties shall have notice.

Clerk to prepare and sign final report.—1871-'2, c. 213, s. 15.

88. If no length of notice, or no time for the doing of an act, is stated in this chapter, the time shall be reasonable, and in any case it may be enlarged by the clerk from time to time, or by the Judge of the Superior Court, on application to him or on appeal to him from the clerk.

Times of notice, &c., may be enlarged by Clerk or Judge.—1871-'2, c. 213, s. 16.

89. Any party may appeal from a final judgment of the clerk to the Judge of the Superior Court in term time, on giving an undertaking with surety, or making a deposit, to pay all costs which shall be recovered against him. If any creditor shall appeal and give such security, his appeal shall be deemed an appeal by all who are damaged by the judgment, and no other creditor shall be required to give any undertaking.

Of appeals to Superior Court, what required.—1871-'2, c. 213, s. 17.

90. On an appeal the clerk shall file his report and judgment and all the papers in his office as Clerk of the Superior Court, and enter the case on his trial docket for the next term.

Clerk to file papers on appeal.—1871-'2, c. 213, s. 18.

91. If the exceptions and questions, from the decision on which the appeal is taken, affect only the creditors in one or more classes, the creditors in the prior classes by the leave of the clerk, or of the Judge of the Superior Court, may docket their judgments and issue execution thereon.

Creditors in prior classes may docket their judgments, &c.—1871-'2, c. 213, s. 19.

92. If upon taking the account it shall be admitted, or be found without appeal, that the defendant has assets sufficient, after the deduction of all proper costs and charges, to pay all the claims which have been presented of any one or more of the classes, the clerk shall give judgment in favor of the creditors whose debts of such classes have been admitted, or adjudged by any competent court; and if any claim in any

If assets sufficient to pay any class of debts.—1871-'2, c. 213, s. 20.

preferred classes in litigation, the amount of such claim, with the probable costs of the litigation, shall be left in the hands of the personal representative, and not carried to the credit of any subsequent class until the litigation is ended.

If assets insufficient to pay all claims in any class of debts.—1871-'2, c. 213, s. 21.

93. If the assets be insufficient to pay in full all the claims of any class, the amounts thereof having been found or admitted as aforesaid, the clerk may adjudge payment of a certain part of such claims, proportionate to the assets applicable to debts of that class.

What judgments to declare.—1871-'2, c. 213, s. 22.

94. All judgments given by a clerk of a Superior Court as Probate Judge against a personal representative for any claim against his deceased shall declare :

(1.) The certain amount of the creditor's demand ;

(2.) The amount of assets which the personal representative has applicable to such demand. Execution may issue only for this last sum with interest and costs.

No judgments to fix assets unless, &c.—1871-'2, c. 213, s. 23.

95. No judgment of any court against a personal representative shall fix him with assets, except a judgment of the clerk as Probate Judge, rendered as aforesaid, or the judgment of some appellate court rendered upon an appeal from such judgment. All other judgments shall be held merely to ascertain the debt, unless the personal representative by pleading expressly admit assets.

Form and effect of execution.—1871-'2, c. 213, s. 24.

96. All executions issued upon the order or judgment of the clerk as Probate Judge, or of any appellate court against any personal representative, shall run against the goods and chattels of the deceased, and if none, then against the goods and chattels, lands and tenements of the representative. And all such judgments docketed in any county shall be a lien on the property for which execution is adjudged as fully as if it were against him personally.

Report evidence of assets on day only to which it relates.—1871-'2, c. 213, s. 25.

97. The account and report and adjudication by the clerk or any appellate court, shall not be evidence as to the assets except on the day to which such adjudication relates.

Affidavit of assets afterwards come to hand, proceedings on.—1871-'2, c. 213, s. 26.

98. Any creditor may afterwards, on filing an affidavit, by himself or his agent, that he believes that assets have come to the hands of the personal representative since that day, and on giving an undertaking, with surety, or making a deposit for the costs of the personal representative, may sue out a summons against him alleging subsequent assets, and the proceedings thereon shall be as hereinbefore prescribed, so far as the same may be necessary.

If personal assets insufficient, may proceed against land.—1871-'2, c. 213, s. 27.

99. If it shall appear at any time during or upon or after the taking of the account of a personal representative that his personal assets are insufficient to pay the debts of the deceased in full, and that he died seized of real property, it shall be the duty of the clerk, at the instance of any party, to issue a summons in the name of the personal representative or of the creditors generally, to the heirs, devisees and others in possession of the lands of the deceased, to appear before him on a

certain day, not less than twenty days after service of the summons, and show cause why said lands should not be sold.

100. Upon the return of the summons the proceedings shall be as is directed in other like cases.

101. This chapter shall apply only to cases where the grant of letters of collection or of probate or of administration shall have issued on or after the first day of July, one thousand eight hundred and sixty-nine, "except in case of administrations *de bonis non* upon estates where the former letters of administration or letters testamentary were granted prior to the first of July, one thousand eight hundred and sixty-nine, in all which cases estates shall be administered, closed up and settled according to the law as it existed just prior to the first of July, one thousand eight hundred and sixty-nine."

102. Proceedings against other personal representatives shall be regulated by the existing law. In all cases where an action has been or shall be brought against a personal representative to recover a claim against his deceased; if in the Superior Court, that court shall proceed according to its course; if before a Justice of the Peace, and the representative has pleaded or shall plead that he has fully administered, the justice shall find the debt and return the papers to the next term of the Superior Court in order that the issue in respect to the assets may be there tried and determined according to the course of the court.

103. The surplus of the estate, in case of intestacy, shall be distributed in the following manner:

(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;

(3.) If there be no child nor legal representative of a deceased child, then one-half 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;

(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;

(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 those who legally represent them;

(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 or sister, and the representatives of them, shall have an equal share with the mother of the deceased child.

Proceedings on return of summons.—1871-'2, c. 213, s. 28.
Chapter not to apply to probates, &c., had before July, 1869.—1871-'2, c. 213, s. 29.—1872-'3, c. 179,

Proceedings on probates, &c., before July 1st, 1869.—1871-'2, c. 213, s. 30.

Intestates' estates, how distributed.—1868-'9, c. 113, s. 53.

Advance-
ments to be
accounted for.
—1868-'9, c.
113, s. 54.

104. 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 to the widow of the intestate in ascertaining her child's part of the estate.

Children ad-
vanced to ren-
der schedule.
—1868-'9, c.
113, s. 55.

105. Where any parent shall die intestate, who had in his or her life time given to, or put into the actual possession of, any of his or her children, any personal property of what nature or kind soever, such child shall cause to be given to the administrator or collector 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 refus-
ing to account
not entitled.—
1868-'9, c. 113,
s. 56.

106. In case any child who had, in the lifetime of the intestate, received a part of said intestate, 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.

Illegitimate
children next
of kin to their
mother,
when.—1868-
'9, c. 113, s. 57.

107. Every illegitimate child of the mother dying intestate, or the issue of any such illegitimate child deceased, shall be considered among her next of kin, and as such shall be entitled to a share of her personal estate as prescribed in section one hundred and three.

Illegitimate
children next
of kin to each
other.—1868-
'9, c. 113, s. 58.

108. 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.

Executors,
&c., to pay
over at the
end of two
years.—1868-
'9, c. 113, s. 59.

109. No executor, administrator or collector, 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.

Sums to be re-
served.—1868-
'9, c. 113, s.
60.

110. But if, on a final accounting in the Court of Probate, it appears that any claim exists against the estate which is not due, or on which a suit is pending, the Probate Judge shall allow a sum sufficient to satisfy such claim, or the proportion to which it may be entitled, to be retained in the hands of the executor, administrator or collector, for the purpose of being applied to the payment when due or when recovered, with the expense of contesting the same. The order allowing such sum to be retained must be entered in the Order Record of the Court of Probate, and must specify the amount and nature of the claim.

111. 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.
—1868-'9, c.
113, s. 61.

112. Children born after the making of the parent's will, and whose parent shall die without making any provision for them, shall be entitled to such share and proportion of said parent's estate as if he or she had died intestate, and the rights of any such after-born child shall be a lien on every part of the parent's estate, until his several share thereof is set apart in the manner prescribed in this chapter.

Child born af-
ter parents'
will executed.
—1868-'9, c.
113, s. 62.

113. Upon the death of any person, all demands whatsoever, and rights to prosecute or defend any action or special proceeding, existing in favor or against such person, except as hereinafter provided, shall survive to and against the executor, administrator or collector of his estate.

Rights of ac-
tion survive
to and against
personal rep-
resentative.—
1868-'9, c. 113,
s. 63.

114. The following rights in action do not survive:

(1.) Causes of action for libel and for slander, except slander of title;

Exceptions.
Rights which
die with the
persons.—
1868-'9, c. 113,
s. 64.

(2.) Causes of action for false imprisonment, assault and battery, or other injuries to the person, where such injury does not cause the death of the injured party;

(3.) Causes of action accruing against a husband by reason of his marriage, for the debts of the wife contracted by her before marriage;

(4.) Cases where the relief sought could not be enjoyed, or granting it would be nugatory, after death.

115. 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 any Probate Court and registered in the county where the lands are situated, if within the State, or, if not in the State, shall be proved before said court and registered in the county where the obligee lives or obligor died, his executor, administrator or collector 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.

Deeds may be
made by ex-
ecutor, &c., in
certain cases.
—1868-'9, c.
113, s. 65.

116. 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

Land devised
to be sold by
executors,
who may sell.
—1868-'9, c.
113, s. 66.

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 administrators, shall be effectual to convey the title to the purchaser of the estate so devised to be sold.

Who chargeable as executor *de son tort*.—1868-'9, c. 113, s. 67.

117. 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 whereof he is released, will satisfy, deducting all just debts owing to him by the intestate, and all other payments made by him.

Devastavit by executors or administrators of executors, &c.—1868-'9, c. 113, s. 68.

118. The executors and administrators of persons, who, as rightful executors in their own wrong, or as administrators, shall waste or convert to their own use any estate or assets of any person deceased, shall be chargeable in the same manner as their testator or intestate might have been.

Payments of executors, &c., deemed valid, when.—1869-'70, c. 150, s. 1.

119. Where any executor or administrator has paid any debt of his testator or intestate before all the debts of higher dignity have been paid and satisfied, and the estate of such testator or intestate was at the time of such payment solvent, but has since been rendered insolvent by the emancipation of the slaves, or the insolvency of the debtors of the estate, or other cause, without any fault or want of diligence on the part of the executor or administrator, or when any creditor has refused to accept payment of his debt in Confederate currency, and such currency was afterwards used by the executor or administrator in payment of debts of the estate, or it became of no value by the termination of the war, in all such cases payments thus made shall be deemed and held valid in law, and shall be allowed to such executor or administrator in all suits by creditors of the estate seeking to charge such executor or administrator with assets of the estate or with *devastavit* thereof without regard to the dignity of the debt thus paid, or on which such suit may be brought.

Right of action to survive to executor of executor, &c.—1868-'9, c. 113, s. 69.

120. 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 any party.

Action for wrongful act or neglect causing death.—1868-'9, c. 113, s. 70.

121. Whenever the death of a person is caused by a wrongful act, neglect or default of another, such as would, if the injured party had lived, have entitled him to an action for damages therefor, the person or corporation that would have been so liable, and his or their executors, administrators, col-

lectors or successors, shall be liable to an action for damages, to be brought within one year after such death, by the executor, administrator or collector of the decedent; and this notwithstanding the death, and although the wrongful act, neglect or default, causing the death, amount in law to a felony.

122. The plaintiff in such action may recover such damages as are a fair and just compensation for the pecuniary injury resulting from such death. Measure of damages.—1868-'9, c. 113, s. 71.

123. The amount recovered in such action is not liable to be applied as assets, in the payment of debts or legacies, but shall be disposed of as provided in this chapter for the distribution of personal property in case of intestacy. How recovery to be applied.—1868-'9, c. 113, s. 72.

124. Executors, administrators or collectors may maintain any appropriate action or proceeding to recover assets, and to recover possession of the real property of which executors are authorized to take possession by will; and to recover for any injury done to such assets or real property at any time subsequent to the death of the decedent. Recovery of assets and possession of real property, &c.—1868-'9, c. 113, s. 73.

125. Every estate vested in executors, administrators or collectors, as such, shall be held by them in joint tenancy. Executors, &c., to hold in joint tenancy.—1868-'9, c. 113, s. 74.

126. Sales of real property made pursuant to authority given by will, unless the will otherwise directs, may be public or private, and on such terms, as, in the opinion of the executor, are most advantageous to those interested therein. Sales of real property under wills.—1868-'9, c. 113, s. 75.

127. All sums of money or other estate of whatever kind, which shall remain in the hands of any executor, administrator or collector for five years after his qualification, unrecovered or unclaimed by suit, by creditors, next of kin, or others entitled thereto, shall be paid by the executor, administrator or collector, 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. When property paid to University.—1868-'9, c. 113, s. 76.

128. At any auction sale of real property belonging to the estate, the executor, administrator or collector may bid in the property and take a conveyance to himself as executor, administrator or collector for the benefit of the estate, when, in his opinion, this is necessary to prevent a loss to the estate. Bidding in real property.—1868-'9, c. 113, s. 77.

129. No action shall be brought whereby to charge an executor, administrator or collector upon a special promise to answer damages, or to pay the decedent's debts out of his own estate, unless the agreement upon which such action is brought, or some memorandum or note thereof shall be in writing and signed by such executor, administrator or collector, or by some other person thereunto by him lawfully authorized. Promises, to charge executor, &c., personally to be in writing.—1868-'9, c. 113, s. 78.

130. All actions and proceeding brought by or against execu- All actions to

be in representative capacity.—1868-'9, c. 113, s. 79.

When action is pending.—1868-'9, c. 113, s. 80.

Appearance by one of several executors, &c.—1868-'9, c. 113, s. 81.

Actions against executors, &c., by a creditor.—1868-'9, c. 113, s. 82.

Legacies and distributive shares, how recoverable.—1868-'9, c. 113, s. 83.

Right of succeeding executor, &c., to issue execution.—1868-'9, c. 113, s. 84.

Actions continued in case of revocation of letters.—1868-69, c. 113, s. 85.

When executor to give bond.—1868-'9, c. 113, s. 86.

tors, administrators or collectors, upon any cause of action or right to which the estate is the real party in interest, must be brought by or against them in their representative capacity.

131. Any executor or administrator against whom any action is pending in any court of this State, and who has heretofore entered pleas in such actions, may hereafter, as matter of right and without motion, amend, strike out or change such pleas at his discretion, and the actions in which such pleas may be so amended, stricken out or changed, shall be tried upon the next pleas as though they were for the first time entered.

132. In actions against several executors, administrators or collectors, they are all to be considered as one person, representing the decedent; and if the summons is served on one or more, but not all, the plaintiff may proceed against those served, and if he recovers, judgment may be entered against all.

133. An action may be brought by a creditor against an executor, administrator or collector, on a demand at any time after it is due; but no execution shall issue against the executor, administrator or collector, on a judgment therein against him, without leave of the court, upon notice of twenty days, and upon proof that the defendant has refused to pay such judgment its rateable part, and such judgment shall be a lien on the property of the defendant only from the time of such leave granted.

134. Legacies and distributive shares may be recovered from an executor, administrator or collector by petition preferred in the Superior Court at any time after the lapse of two years from his qualification, unless the executor, administrator or collector shall sooner file his final account for settlement in the Court of Probate. The suit shall be commenced and the proceedings therein conducted as prescribed by law in other cases of special proceedings.

135. Any executor, administrator or collector may have execution issued on any judgment recovered by any person who preceded him in the administration of the estate, or by the decedent, in the same cases and the same manner as the original plaintiff might have done.

136. In case the letters of an executor, administrator or collector are revoked, pending an action to which he is a party, the adverse party may, notwithstanding, continue the action against him in order to charge him personally. If such party does not elect so to do, within six months after notice of such revocation, the action may be continued against the successor of the executor, administrator or collector in the administration of the estate, in the same manner as in case of death, as provided in section sixty-four of the Code of Civil Procedure.

137. Executors shall give bond as prescribed by law in the following cases:

(1.) Where the executor resides out of the State, and no foreign executor has any authority to intermeddle with the estate,

until he shall have entered into bond, which must be done within the space of one year after the death of the testator, and not afterwards;

(2.) When a man marries a woman who is an executrix, and if the husband in such case fail to give bond, the Court of Probate, on application of any creditor or other party interested in the estate, shall revoke the letters issued to the wife, and grant administration with the will annexed to some other person;

(3.) Where an executor, other than such as may have already given bond, obtains an order to sell any portion of the real estate for the payment of debts, as hereinbefore provided; and the court to whom application is made shall require, before granting any order of sale, such executor to enter into bond.

138. Every person injured by the breach of any bond given by an executor, administrator or collector, may put the same in suit and recover such damages as he may have sustained.

Remedy on bond.—1868-'9, c. 113, s. 57.

139. Whenever the letters of an executor, administrator or collector are revoked his bond may be prosecuted by the person or persons succeeding to the administration of the estate, and a recovery may be had thereon to the full extent of any damage not exceeding the penalty of the bond sustained by the estate of the decedent by the acts or omissions of such executor, administrator or collector, and to the full value of any property received and not duly administered. Moneys so recovered shall be assets in the hands of the person recovering them.

Bond to be prosecuted on revocation of letters.—1868-'9, c. 113, s. 88.

140. If complaint be made on affidavit to the Court of Probate that the surety in any bond of an executor, administrator or collector is insufficient, or that one or more of such sureties is, or is about to become a non-resident of this State, or that the bond is inadequate in amount, the Judge of Probate must issue an order requiring the principal in the bond to show cause why he should not give a new bond, or further surety, as the case may be.

Requiring new bonds or new sureties.—1868-'9, c. 113, s. 89.

On the return of the order duly executed, if the objections in the complaint are found valid, the Judge of Probate shall make an order requiring the party to give further security or a new bond in a larger amount, within a reasonable time.

141. Any surety on the bond of an executor, administrator or collector, who is in danger of sustaining loss by his suretyship, may exhibit his petition on oath to the Court of Probate, wherein the bond was given, setting forth particularly the circumstances of his case, and asking that such executor, administrator or collector be removed from office, or that he give security to indemnify the petitioner against apprehended loss, or that the petitioner be released from responsibility on account of any future breach of the bond. The Judge of Probate shall issue a citation to the principal in the bond, requiring him, within twenty days after service thereof, to answer the petition. If, upon the hearing of the case, the Judge of Probate deem

Surety in danger of loss, &c., entitled to relief.—1868-'9, c. 113, s. 90.

the surety entitled to relief, he may grant the same in such manner and to such extent as may be just. And if the principal in the bond gives new or additional security, to the satisfaction of the court, within such reasonable time as may be required, the Probate Judge may make an order releasing the surety from liability on the bond for any subsequent act, default or misconduct of the principal.

Revocation of letters for failure to comply.—1868-'9, c. 113, s. 91.

142. If any person required to give a new bond, or further security, or security to indemnify, under the next preceding two sections, fails to do so within the time specified in any such order, the Court of Probate must forthwith revoke the letters issued to such person, whose right and authority, respecting the estate, shall thereupon cease.

Appointment of successor, interlocutory order.—1868-'9, c. 113, s. 92.

143. In all cases of the revocation of letters, the Judge of Probate must immediately appoint some other person to succeed in the administration of the estate; and pending any suit or proceeding between parties respecting such revocation, the Judge of Probate is authorized to make such interlocutory order as, without injury to the rights and remedies of creditors, may tend to the better securing of the estate.

Administering before letters granted. Penalty.—1868-'9, c. 113, s. 93.

144. No person shall enter upon the administration of any decedent's estate until he has obtained letters therefor, under the penalty of one hundred dollars, one half to the use of the informer and the other half to the State; but nothing herein contained shall prevent the family of the deceased from using so much of the crop, stock and provisions on hand as may be necessary, until the widow's year's support is assigned therefrom, as prescribed by law.

Service on absent executor, how made.—1868-'9, c. 113, s. 94.

145. Whenever process may issue against an executor who has not given bond, and the same cannot be served upon him by reason of his absence or concealment, service of such process may be made by publication in the manner prescribed in sections eighty-three and eighty-four of the Code of Civil Procedure.

Commissions allowed executor. Proviso.—1868-'9, c. 113, s. 95.

146. The Courts of Probate are authorized and directed to allow commissions to executors, administrators and collectors on filing their final accounts for settlement, not exceeding five per cent. 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 the sales of land, by order of the Superior 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, administrator or collector from retaining for necessary charges and disbursements in the management of the estate. And any Judge of the Superior Court or any commissioner ap-

1869-'70, c. 113, s. 1.

pointed by said court, upon any plea of fully administered, to take and state an account of the assets of any deceased person in the hands of any executor or administrator, shall have power and be authorized and directed to allow such executor, administrator or commissioner not exceeding five per centum upon the amount of receipts and expenditures which shall appear upon the trial of said cause or taking of such account to have been fairly made in the course of administration.

147. An executor, administrator or collector, who has filed his final account for settlement in the Court of Probate, may, at any time thereafter, file his petition against the parties interested in the due administration of the estate, in the Superior Court of the county in which he qualified, setting forth the facts, and praying for an account and settlement of the estate committed to his charge. The petition shall be proceeded on in the manner prescribed by law in other cases of special proceedings; and, at the final hearing thereof, the Judge of the Court, either in term time or vacation, may make such order or decree in the premises as shall seem to be just and right.

Executors, &c., may file petition for settlement.—1868-'9, c. 113, s. 96.

148. When any balance of money or other estate, which is due an absent defendant or infant without guardian, is found in the hands of an executor, administrator or collector who has preferred his petition for settlement, the Judge may direct such money or other estate to be paid and delivered to the Clerk of the Superior Court, to be invested upon interest, or otherwise managed under the direction of the Judge, for the use of such absent person or infant.

Payment of legacy or distributive share due absentee or minor.—1868-'9, c. 113, s. 97.

149. Every Clerk of the Superior Court, who may be intrusted with money or other estate in such case, shall be liable, on his official bond, for the faithful discharge of the duties enjoined upon him by the Judge in relation to said estate, and he may receive such compensation for his services as the Judge may allow.

Liability and compensation of clerk.—1868-'9, c. 113, s. 98.

150. All persons succeeding to the real or personal property of a decedent, by inheritance, devise, bequest or distribution, shall be liable jointly, and not separately, for the debt of such decedent.

Heirs, &c., jointly liable for debts, &c.—1868-'9, c. 113, s. 99.

151. No person shall be liable, under the preceding section, beyond the value of the property so acquired by him, or for any part of a debt that might by action or other due proceeding have been collected from the executor, administrator or collector of the decedent, and it is incumbent on the creditor to show the matters herein required to render such person liable.

Limit of liability.—1868-'9, c. 113, s. 100.

152. In any such action, the recovery must be apportioned in proportion to the assets or property received by each defendant, and judgment against each must be entered accordingly. Costs in such actions must be apportioned among the

Apportionment of recovery. Costs.—1868-'9, c. 113, s. 101.

several defendants, in proportion to the amount of the recovery against each of them.

Priority of debts.—1868-'9, c. 113, s. 102.

153. Every person who is liable for the debts of a decedent under section one hundred and fifty must observe the same preferences, in the payment thereof, as are established in this chapter; nor shall the commencement of an action by a creditor give his debt any preference over others.

Defence. Other debts of equality or priority.—1868-'9, c. 113, s. 103.

154. The defendants in such action may show that there are unsatisfied debts of a prior class, or of the same class with that in suit. If it appears that the value of the property acquired by them does not exceed the debts of a prior class, judgment must be rendered in their favor. If it appears that the value of the property acquired by them exceeds the amount of debts which are entitled to a preference over the debt in suit, the whole amount, which the plaintiff shall recover, is only such a portion of the excess as is a just proportion to the other debts of the same class with that in suit.

Debts paid estimated as if unpaid, when.—1868-'9, c. 113, s. 104.

155. If any debts of a prior class to that in which the suit is brought, or of the same class, has been paid by any defendant, the amount of the debts so paid shall be estimated, in ascertaining the amount to be recovered, in the same manner as if such debts were outstanding and unpaid, as prescribed in the preceding section.

Conveyance by heir or devisee void, when.—1868-'9, c. 113, s. 105.

156. All conveyances of real property of any decedent made by any devisee or heir at law, within two years from the grant of letters, shall be void as to the creditors, executors, administrators and collectors of such decedent; but such conveyances to *bona fide* purchasers for value and without notice, if made after two years from the grant of letters, shall be valid even as against creditors.

How to compel contributions among devisees and legatees.—1868-'9, c. 113, s. 106.

157. The remedy to compel contribution shall be by petition filed in the Superior Court against the personal representatives, devisees, legatees and heirs also of the decedent, if any part of the real estate be undevised, within two years after probate of the will, and setting forth the facts which entitle the party to relief. The suit shall be commenced and proceeded on in the manner prescribed by law in case of other special proceedings; and the costs therein shall be within the discretion of the court.

Specific devise, when entitled to contribution.—1868-'9, c. 113, s. 107.

158. If, upon the hearing of any petition for the sale of real estate to pay debts, under this chapter, the court decree a sale of any part that may have been specifically devised, the devisee shall be entitled to contribution from other devisees, according to the principles of equity in respect to contribution among legatees. And the children and issue provided for in sections one hundred and twelve and one hundred and thirteen of this chapter, shall be regarded as specific devisees in such contribution.

Of what lands an after-born child's share to be allotted.—1868-'9, c. 113, s. 108.

159. The share of an after-born child in 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 undevised, 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.

160. The share of an after-born 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.

Of what personalty such child's share to be allotted.—1868-'9, c. 113, s. 109.

161. If, after satisfaction of the child's share of real estate out of undevise lands, there 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 the surplus of undevise land, or as much as may be necessary, shall be sold and the proceeds applied to making up his share of personal estate. And if, after satisfaction of the child's share of personal estate out of property undisposed of by the will, there be a surplus of such property, then the surplus thereof shall be applied, as far as it will go, in exoneration of land, 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*.

Intestate estate to be applied in exoneration of estate devised or bequeathed.—1868-'9, c. 113, s. 110.

162. 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 equitable, and in the ratio of the values of the several devises and legacies.

Decree of contribution.—1868-'9, c. 113, s. 111.

163. An after-born child after such decrees 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, *bona fide*, obtained against the devisees and legatees previously to the preferring of any petition, and which were binding upon, or ought to operate upon, the lands and chattels devised or bequeathed, shall be carried into execution and effect notwithstanding, and the petitioner shall take his portion completely subject thereto: *And provided also*, that any suit instituted against the devisees and legatees previously to such petition shall not be abated or abateable thereby, nor by the decree thereon, but shall go on as instituted, and the judgment and decree, unless obtained by collusion, be carried into execution; but on the filing of the petition, during the pendency of such suit, the petitioner, by guardian, if an infant, may become a defendant in the suit.

After-born child deemed devisee and legatee, when.—1868-'9, c. 113, s. 112.

How executor
to proceed if
no petition be
filed.—1868-
'9, c. 113, s.
113.

164. 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 petition in the Superior 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 to 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.

Refunding
bonds to be
filed.—1863
c. 54, s. 1.

165. Hereafter all refunding bonds taken by executors and administrators with the descriptive lists of the property delivered, shall be filed in the office of the Clerk of the Superior Court of the County, within ninety days after they shall have been taken, and the clerk shall cause a record to be made thereof.

Power of
Clerks of Su-
perior Courts.
1868, c. 54, s.
2.

166. The clerks of said courts shall have as full and ample power in every respect whatever as to the filing and recording of said bonds and lists as the County Courts formerly had ; including the power to allow them to be filed now as of the proper term, in all cases where they were not filed at the first term of the proper court, after being executed, and the clerk in all such cases is to exercise a sound discretion according to circumstances.

Transfer from
County to Su-
perior Courts.
1868, c. 54, s.
3.

167. All refunding bonds and descriptive lists now on file in the County Courts shall be delivered up to the Clerks of the Superior Courts, to be filed in their offices and made records therein.

Cases of sale
of real estate,
&c., final or-
ders, not made
before the
present Con-
stitution may
be transferred
to Superior
Court.—1871-
'2, c. 161.
Proviso.

168. All cases for the sale of real estate for assets heretofore in the County Courts, in which only final orders for collection and application or distribution of purchase money and making titles were not made before the adoption of the present Constitution, may at the instance of any person interested be transferred as other cases to the Superior Court of the county where such proceeding was pending, and such court shall have full authority to make all necessary orders to complete the same : *Provided*, this shall not apply to cases litigated at time of passage of this chapter.

SEC. 40. 65 N. C., 240 ; 66 Ib., 590.

SEC. 61. 67 N. C., 261.

SEC. 93. 66 N. C., 367.

SEC. 105. 66 N. C., 345.

SEC. 156. 66 N. C., 305.

CHAPTER 46.

EXPRESS COMPANIES.

Articles not called for within a specified time may be sold. Application of proceeds of sale.

1. WHENEVER any express company, exercising the right and privilege of transportation for hire in the State, shall have received at the place designated for their delivery any articles of property, and the same shall not be called for and delivered according to the terms upon which such company may have agreed to carry them, within six months from and after the time of receiving them at said place of delivery, then and in that case it shall be lawful for such company to sell for cash the said articles of property at public auction at such place as may be designated by the company, after having duly advertised the time, place and terms of sale for the space of thirty days in some newspaper published in the county, or as near thereto as may be, wherein such sale is intended to be made; and the proceeds of sale shall be applied in the first place to the payment of all costs and charges of carriage due to such company, together with all expenses incident to the making of such sale, and then the residue, if any, to be deposited in some convenient national bank, located in the State, to be selected by the company, for the use and benefit of such person as may be entitled thereto.

Articles not called for within a specified time may be sold. —1871-72, c. 179.

Application of proceeds of sale.

CHAPTER 47.

FAIRS.

SECTION

1. Fairs appointed by County Commissioners.
2. Commissioners appointed who may regulate fairs.
3. Inhabitants to have free liberty of fairs.
4. Appointment of police.

SECTION

5. Policemen to be sworn. Powers.
6. Duties of police.
7. Violation of rules of society a misdemeanor.
8. Exemptions from seizure under execution, &c.
9. Society may appoint auctioneer.

1. THE County Commissioners, a majority 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.

Fairs appointed by county commissioners. —R. C., c. 47, s. 1.

2. When any Board of County Commissioners may resolve Commission-

ers appointed, who may regulate fairs.—
R. C., c. 47, s. 2.

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 Board 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. C., c. 47, s. 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.

Appointment of police.—
1870-'1, c. 184, s. 1.

4. The agricultural, horticultural or other society for the encouragement of agriculture or mechanical or other industrial art or business, incorporated by any law of this State or acting under a general law, shall, for the preservation of order and the protection of exhibitions, have power by their executive committee or other authorized officers, to appoint policemen with the powers and duties hereafter mentioned.

Policemen to be sworn.—
1870-'1, c. 184, s. 2.

5. Such policemen shall be sworn to the performance of their duty before a judge, mayor or other chief officer of any city or town, or any justice of the peace, whereupon they shall have the same power and duties for the arrest of criminals and disorderly persons as are possessed by the constables or policemen of any city or town, within the fair grounds or within one hundred yards thereof, and such power and authority shall continue for a period extending from Friday before the week of the fair to Tuesday after the same, both inclusive.

Powers.

Duties of police.—1870-'1, c. 184, s. 3.

6. It shall be the duty of such policemen to assist in carrying into effect the rules and regulations adopted by the lawful authorities of such agricultural or other societies as aforesaid, and any drunken or disorderly person, or any person who shall, after being warned, continue to break the rules or regulations of the society, may be excluded or removed from the fair grounds, and if after being so excluded, he shall offer to enter the same without the permission of the society, he shall be guilty of a misdemeanor.

Violation of rules of society a misdemeanor.—1870-'1, c. 184, s. 4.

7. If any person shall, without license of the owner, or any agricultural or other society as aforesaid, unlawfully carry away, remove, destroy, mar, deface or injure anything animate or inanimate, while on exhibition on the grounds of any such society, or going to or returning from the same, he shall be guilty of a misdemeanor. It shall be sufficient in any indictment for any such offence, or for the larceny of any such thing, animate or inanimate as aforesaid, to charge that the thing so carried away, destroyed, marred, injured or feloniously stolen, is the property of the society to which the said thing shall be forwarded for exhibition.

Exemption from seizure under executions, &c.—
1870-'1, c. 184, s. 5.

8. Anything animate or inanimate shall not be liable to seizure under execution, attachment or other process of law, while on exhibition on any fair grounds of any such society as aforesaid, or going to or returning from any such grounds,

such exemption being only for a period of five days before and five days after any fair.

9. Any agricultural society shall have power to appoint an auctioneer to sell at auction things animate or inanimate, which have been exhibited at any fair on the fair grounds, and such sales being made during the week of the fair, shall not be liable to taxation, nor shall such auctioneer, selling only as aforesaid, be liable to pay a license tax.

Society may appoint auctioneer.—1870 '1, c. 184, s. 6.

CHAPTER 48.

FENCES.

SECTION

- 1. Planters to keep sufficient fences.
- 2. What water courses sufficient instead of a fence.
- 3. General rule as to persons having a common fence.
- 4. Rule when one owner has put up fence.
- 5. Value of fence, how ascertained.
- 6. What the report to state.
- 7. Report to be returned to the register of deeds.

SECTION

- 8. Who bound by judgment on report.
- 9. Remedy in case of delinquency.
- 10. How owner may relieve himself of liability.
- 11. Five electors may petition for water courses to be made a lawful fence.
- 12. Notice.
- 13. Power of Commissioners.
- 14. Orders to be made of record.
- 15. Acts partially repealed.

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.

Planters to keep sufficient fences.—R. C., c. 48, s. 1.

2. The Dan river, from the town of Madison to the Stokes County line, and east to the Virginia line, is declared a water-course sufficient instead of a fence; also the following water-courses, to-wit: the Roanoke river for that side of cultivable lands being in Martin County immediately on its banks; also the Cape Fear river bordering on the county of Brunswick; the Tar river from the dam at the falls through the whole extent of Edgecombe County to the Pitt County line; the Neuse river from its upper falls down to the lower line of David Smith's plantation below the county bridge known as Turner's bridge over the Neuse; the Reedy Fork of Haw River from its junction with that river to the public bridge at the mills of L. W. Somers, in the county of Guilford, being the distance of about five miles; the Tar river from the point where the line between the counties of Nash and Edgecombe crosses said river up to Lemon's bridge, a distance of about seven miles: *Provided*, that all parties taking the benefit of this section shall connect their fences with the river by extending freshet proof

What water courses sufficient instead of a fence — 1860, c. 40. Roanoke.—1866-'7, c. 82. Cape Fear.—1866-'7, c. 80. Tar.—1866-'7, c. 83. Neuse.—1868-'9, c. 205.—1869-'70, c. 157.—1872-'3, c. 37. Haw.—1868-'9, c. 230. Tar 1869-'70, c. 99.

Dan.—1869-
'70, c. 201.

Yadkin.—1870
'1, c. 75.

Dan.—1870-'1,
c. 187.

Smith.—1870-
'1, c. 187.
Deep.—1870-
'1, c. 269.

Yadkin.—1871
'2, c. 87.

1871-'2, c. 141.

General rule
as to persons
having a com-
mon fence.—
1868-'9, c. 275,
s. 1.
Rule when
one owner has
put up fence.
—1868-'9, c.
275, s. 2.

Value of fence,
how ascertain-
ed.—1868-'9,
c. 275, s. 3.

hural or fences into the river at low water mark; the Dan river from the mouth of Flat Shoal creek to the mouth of Buck Island creek: *Provided*, that all parties taking the benefit of this clause shall connect their fences with the river; the South Yadkin river in the counties of Rowan and Davie from Peter W. Hairston's mill dam to the mouth of Beaver Dam branch in Rowan County; the Dan river from the State line near Perkin's ferry to the Leaksville bridge near the mouth of Smith river; the Smith river from its mouth to the State line; Deep river from Columbia Factory in Randolph County to the Moore County line: *Provided*, that all persons or parties taking the benefit of this clause shall connect their fences with said river; the Yadkin river from the Wilkes line through the counties of Yadkin, Surry and Forsyth to the Forsyth and Davie lines; Dutchman's creek in the county of Davie from the bridge near James Haine's on the public road leading from Mocksville to Fulton, to Dulin and to Sheek's mill.

3. Where two or more persons shall have lands adjoining, which shall be either cultivated or used as a pasture for stock, the respective owners of each piece of land shall make and maintain the one-half of the fence upon the dividing line.

4. Where the owner of one piece shall have chosen neither to cultivate his land, nor to pasture, nor to permit his stock to run on it, if he shall afterwards do either, without so enclosing such stock that they cannot enter on the lands of such adjoining owner, he shall refund to such owner one-half the value at that time of any fence erected by him on the dividing line.

5. The value of fence shall be ascertained as follows: Either owner may summon the other to appear before any Justice of the Peace of the township in which the dividing line is situated; or if it be situated in more than one township, then before any Justice of the Peace of any township in which any part of it is situated. In his summons he shall name a day certain, not less than five days after the summons, for the appearance of the defendant; it shall also state the purpose of the summons to be the adjustment of all matters in controversy respecting the dividing fence between the parties. The Justice shall hear the complaint and defence. If the facts be found such as to entitle either party to demand contribution of the other, the Justice shall call on the complainant to name an indifferent person, qualified to act as juror of the township, and if the complainant refuse the justice shall name one for him. The justice shall then call on the defendant to name an indifferent person, qualified to act as juror of the township, and if the defendant refuse the justice shall name one for him. The justice shall then name a third indifferent person qualified to act as juror. These three persons, qualified to act as jurors, or any two of them, shall view the premises and decide all matters in controversy between the parties, relating to a fence on the dividing line. They shall make a written report to the justice, who shall give judgment thereon,

and for the costs, which shall be paid by the owners of the several pieces of land equally. The persons qualified to act as jurors shall receive each one dollar per day. The fees of the justice and constable shall be as in other cases. Either party may appeal as is provided for in other cases of justice's judgment.

6. The report of the persons qualified to act as jurors shall also state the sort of fence which ought to be kept up, and assign to each owner, in such manner as that it may be identified, the part which he shall keep up. What the report further to state.—1868-'9, c. 275, s. 4.

7. The justice shall return the report, together with a transcript of the proceedings, to the register of deeds of his county for registration. The justice shall collect from the parties the fees of the register, and pay the same to him. Report to be returned to register of deeds.—1868-'9, c. 275, s. 5.

8. The final judgment upon the report of the persons qualified to act as jurors shall be binding on the owners of the respective lands and their assigns, so long as such ownership shall continue, or until the same shall be set aside, modified or reversed. Who bound by judgment on report.—1868-'9, c. 275, s. 6.

9. If any person who is liable to build or keep up a part of any division fence, shall fail at any time to do so, the owner of the adjoining land, after notice, may build or repair the whole, and recover of the delinquent the one-half of the cost before any court having jurisdiction. Remedy in case of delinquency.—1868-'9, c. 275, s. 7.

10. If any owner of land liable to contribute for the keeping up of a division fence, shall determine neither to cultivate his land nor to permit his stock to run thereon, he may give the adjoining owner six month's notice of his determination; and in that case, at any time after the expiration of such notice, and between the first day of January and the first day of March, but at no other time, he may remove the half of the fence kept up by him; and shall be no longer liable to keep up the same. How owner may relieve himself of liability.—1868-'9, c. 275, s. 8.

11. Any five electors, residents of the same county, may apply to the County Commissioners in their respective counties, at any regular meeting of the same, by written petition praying that any water course, or any part of any water course in their respective counties, may be made a lawful fence. Five electors may petition for water course to be made a lawful fence.—1872-'3, c. 112, s. 1.

12. Notice of such petition shall be posted forty days at the court house door, by the clerk of the board, before such petition shall be acted upon. Notice.—1872-'3, c. 112, s. 2.

13. Upon the hearing of such petition, the County Commissioners, who shall hear the same, are hereby authorized and empowered to declare any water course or any part of any water course to which the petition applies a lawful fence. Powers of commissioners.—1872-'3, c. 112, s. 3.

14. Any order made under section thirteen of this chapter shall be made of record and signed by the chairman, and may be rescinded at any time by the Board of County Commissioners, at any regular meeting. Orders to be made of record.—1872-'3, c. 112, s. 4.

15. The several acts of the General Assembly heretofore passed and ratified, declaring certain water courses in part or Acts partially repealed.—

1872-'3, c. 112,
s. 5.

in whole, lawful fences, are hereby so far repealed as to enable, authorize and empower the County Commiseioners in their respective counties to declare any of such acts null and void, by an order of theirs, which shall be of record, and signed by the chairman.

SECTION 1. 8 Ire., 229; 8 Ire., 506; 64 N. C., 305.

CHAPTER 49.

FORCIBLE ENTRY AND DETAINER.

SECTION

1. Forcible 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. C., c. 49, s.
1.

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 de-
tainer. Res-
titution made.
—R. C., c. 49,
s. 2.

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 impannelled; 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.

Jurors to be
summoned by

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.

order of Justice. Penalty on officer and jurors for neglect.—R. C., c. 49, s. 3.

4. The sheriff, and such others as he or the said justice shall order and command for that purpose, shall, upon pain of imprisonment, 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.

Penalty on Sheriff and others, failing to assist Justice.—R. C., 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. C., 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 his county, to be kept among the records of the court.

Proceedings returned to Superior Court.—R. C., c. 49, s. 6. Justices and others not indictable, unless, &c. Court may amend all defects.—R. C., 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.

SECTION 1. 1 Jones, 119; 8 Ire., 315; Ib., 84; Ib., 127; 4 D. & B., 192.

SEC. 2. 8 Ire., 15; 3 Ib., 123; 1 Ib., 325; 1 D. & B., 324; 1 Mur., 392; Phillips, 164; Ib., 167; Ib., 240.

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, under deeds made on a legal consideration, valid.

SECTION

6. Purchasers of estates fraudulently conveyed to have relief.
7. Persons removing debtors to hinder, delay or defraud creditors liable for their debts.
8. Contracts charging executors, &c., personally, or any person, with the debt, &c., of another, to be in writing.
9. Contracts with Cherokee Indians to be in writing subscribed by two witnesses.
10. Contracts for the sale of land void unless in writing.

Conveyances of lands or goods made to defraud creditors, void.—R. C., c. 50, s. 1.

1. FOR avoiding and abolishing feigned, covinous and fraudulent gifts, grants, alienations, conveyance, 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 creditor and others of their just and lawful actions and debts,

The General Assembly of North Carolina do enact, 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. C., c. 50, s. 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.

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 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.

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 or chattels, *bona fide* made, upon and for good consideration, to any person not having notice of such fraud.

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.

6. Purchasers of estates previously conveyed in fraud of creditors or purchasers, shall have like remedy and relief as creditors might have had before the sale and purchase.

7. 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 a civil action.

8. 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.

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.—R. C., c. 50, s. 3.

Conveyances *bona fide* upon good consideration, valid.—R. C., c. 50, s. 4.

Bona fide purchases without notice, under deeds made on illegal consideration, valid.—R. C., c. 50, s. 5.

Purchasers of estates fraudulently conveyed, to have relief.—R. C., c. 50, s. 6.

Persons removing debtors to hinder, delay or defraud creditors, liable for their debts.—R. C., c. 50, s. 14.

Contracts charging executors, &c., personally, or any person with the debt, &c., of another, to be in writing.—R. C., c. 50, s. 15.

Contracts with Cherokee Indians to be in writing, subscribed by two witnesses.—R. C., c. 50, s. 16.

9. 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 for the sale of land void unless in writing.—R. C., c. 50, s. 11.—1868-'9, c. 156, s. 33.

10. All contracts to sell or convey any lands, tenements or hereditaments, or any interest in or concerning them, shall be void and of no effect unless such contract, or some memorandum or note thereof, shall be put in writing and signed by the party to be charged therewith, or by some other person by him thereto lawfully authorized.

SECTION 1. 13 Ire., 132; 11 Ire., 339; 4 Ire., 102; 7 Ib. Eq., 21; 4 Ire., 529; Bus. Eq., 170; 1 Jones Eq., 328; 1 Ire., 553; 7 Ire., 341; 7 Ire., 470; 9 Ire., 191; Ib., 365; 11 Ire., 347; Ib., 339; Bus., 105; 3 Dev., 12; Ib., 144; 4 Dev., 197; 1 Jones, 559; 1 Ire., 179; 5 Ib., 569; 1 Jones, 413; 6 Ire. Eq., 394; 2 Jones, 444; 3 Jones, 85; Ib., 335; 4 Jones, 66; Ib., 150; Ib., 301; 6 Jones, 128; 7 Jones, 300; Ib., 313; 8 Jones, 377; 1 Winston, 292; Phillips, 515; 3 Jones Eq., 4; 5 Jones Eq., 75; 66 N. C., 547; 67 N. C., 68.

SEC. 2. 2 Mur., 171; 4 D. & B., 278; 2 Hay., 57; 3 Mur., 429; 3 Jones, 85; Ib., 290; 4 Jones, 66; 6 Jones, 14; 3 Jones Eq., 449; 4 Jones Eq., 58; 5 Jones Eq., 26.

SEC. 3. 10 Ire., 496; Bus. Eq., 145; 1 Jones, 67.

SEC. 4. 11 Ire., 89; 10 Ire., 302; 8 Ire., 340; 13 Ire., 265; 4 D. & B., 201; 1 Ib., 29; 5 Ire., 91; 3 Dev., 105; 1 Ire., 149; 1 Jones Eq., 226; 67 N. C., 63.

SEC. 6. 6 Jones, 450; 8 Jones, 45.

SEC. 7. 8 Ire., 260; Bus., 143; 1 Jones, 182; 2 Jones, 349; 3 Jones, 90; 6 Jones, 140; Ib., 297; 8 Jones, 342.

SEC. 8. 13 Ire., 86; 11 Ib., 195; Ib., 298; 4 Dev., 261; 1 D. & B., 103.

CHAPTER 51.

GAMING CONTRACTS.

SECTION

1. Gaming or betting contracts void.
2. Security for money or property lent for betting, void.

SECTION

3. Players and betters competent witnesses.

All gaming or betting contracts void.—R. C., c. 51, s. 1.

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.

Sureties for money or property, lent for betting void.—R. c. 51, s. 2.

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.

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.

Players and
bettors compe-
tent witness-
es.—R. C., c.
51, s. 3.

SECTION 1. 12 Ire., 344; 64 N. C., 39.

CHAPTER 52.

GENERAL ASSEMBLY.

SEE Constitution, Art. II.

SECTION

1. Members of Senate elected by new apportionment of the State.
2. Manner of electing members of the House of Representatives until new apportionment.
3. Date of election. Officers to be elected.
4. Polling places, how established. Advertised. One in each township. In cities.
5. Secretary of State to supply registration books.
6. Books to be provided by commissioners, when.
7. Registration of voters, how and when appointed.
8. Duties of registrars.
9. Where electors may vote.
10. Registration books open to inspection. Right of challenge.
11. Appointment of judges of election. Their duties, &c. Commissioners to furnish list of judges to Sheriff. Judges failing to attend.
12. Qualification of electors. Oath of electors.
13. No registration on election day. Proviso.
14. When judges to challenge.
15. Oath of persons challenged. When vote to be rejected. Challenge to be recorded. Powers of registrars, &c.

SECTION

- 16 When polls to be opened. Manner of voting.
17. Registration books to be deposited, &c.
18. No. of ballots and what to contain. Material, colors, &c., of ballot. To be without device.
19. Ballot boxes, how provided. Description of boxes. Who to keep them.
20. How boxes opened and ballots counted. What tickets to be void.
21. Returns from precincts. When and to whom made. Vote to be added publicly. Who to be deemed elected. Delinquent returning officer. Statement of the result filed with the register and Sheriff. Precinct returns to be filed.
22. Returning officers of senatorial districts, when and where to meet. When returning officers are prevented from meeting on designated day. Penalty for failing to make returns. Messenger to be sent to county of delinquent. How such vote to be obtained. Returns, how examined. Declaration of result.
23. Certificates of election, when and how furnished. Organization of county officers.

SECTION

24. Returns for State officers, when, by whom and how made. Certificate of Sheriff. To whom statement to be sent. Delinquent returning officer. Penalty.
25. Secretary of State to prepare and transmit forms of returns.
26. Returns for State officers, how and by whom opened and published. In case of defective returns. Who to be declared elected. In case of tie vote. Contested election.
27. Compensation of Sheriff or other returning officer.
28. Fees of registrars.
29. Penalty for non-performance of duty under this chapter.
30. Penalty for fraudulent registration or voting.
31. Penalty for falsely taking oath.
32. Secretary of State to furnish copies.
33. How vacancies in General Assembly to be filled.
34. Elections under writ from Governor held as other elections.
35. Musters not to be on days of, nor armed men to be assembled at the place of election. Penalty.
36. Bribery at elections. Penalty.
37. Treating at elections. Penalty.
38. Members giving money, &c., to secure election expelled.

SECTION

39. Members of, to convene.
40. Penalty on for failing in their duties. May be remitted.
41. To have freedom of speech and be protected from arrest.
42. Persons contesting the seat of a member, how to proceed.
43. Witnesses failing to give evidence in contested elections, penalty on. Voter compelled to testify how he voted.
44. Pay of witnesses for attending.
45. Private laws, proceedings to secure the passage of.
46. Journals of deposited in office of Secretary, who shall certify copy.
47. Principal clerks to hold office until others appointed.
48. Two door-keepers appointed by keeper of capitol or Secretary until, &c. Their pay.
49. Grave stones provided for members interred in Raleigh.
50. Per diem of President and Speaker. Mileage.
51. Per diem and mileage of members.
52. Principal and assistant clerks.
53. Enrolling and engrossing clerks.
54. Door-keepers and assistant door-keepers.
55. Employees, how to be paid.

Members of
Senate elected
by new apportionment of
State.—1871-
'2, c. 174, s. 1.

1. AFTER the present session of the General Assembly, and until the first session of the General Assembly which shall be after a new apportionment of the State shall be had in accordance with the terms of the Constitution and laws of North Carolina, the Senate shall be composed of members elected from districts constituted as follows:

First District—Currituck, Camden, Pasquotank, Hertford, Gates, Chowan and Perquimans shall elect two senators;

Second District—Tyrrell, Washington, Martin, Dare, Beaufort and Hyde shall elect two senators:

Third District—Northampton and Bertie shall elect one senator;

Fourth District—Halifax shall elect one senator;

Fifth District—Edgecombe shall elect one senator;

Sixth District—Pitt shall elect one senator;

Seventh District—Wilson, Nash and Franklin shall elect two senators;

Eighth District—Craven shall elect one senator;

Ninth District—Jones, Onslow and Carteret shall elect one senator;

- Tenth District—Duplin and Wayne shall elect two senators ;
- Eleventh District—Greene and Lenoir shall elect one senator ;
- Twelfth District—New Hanover shall elect one senator ;
- Thirteenth District—Brunswick and Bladen shall elect one senator ;
- Fourteenth District—Sampson shall elect one senator ;
- Fifteenth District—Columbus and Robeson shall elect one senator ;
- Sixteenth District—Cumberland and Harnett shall elect one senator ;
- Seventeenth District—Johnston shall elect one senator ;
- Eighteenth District—Wake shall elect one senator ;
- Nineteenth District—Warren shall elect one senator ;
- Twentieth District—Orange, Person and Caswell shall elect two senators ;
- Twenty-first District—Granville shall elect one senator ;
- Twenty-second District—Chatham shall elect one senator ;
- Twenty-third District—Rockingham shall elect one senator ;
- Twenty-fourth District—Alamance and Guilford shall elect two senators ;
- Twenty-fifth District—Randolph and Moore shall elect one senator ;
- Twenty-sixth District—Richmond and Montgomery shall elect one senator ;
- Twenty-seventh District—Anson and Union shall elect one senator ;
- Twenty-eighth District—Cabarrus and Stanley shall elect one senator ;
- Twenty-ninth District—Mecklenburg shall elect one senator ;
- Thirtieth District—Rowan and Davie shall elect one senator ;
- Thirty-first District—Davidson shall elect one senator ;
- Thirty-second District—Stokes and Forsythe shall elect one senator ;
- Thirty-third District—Surry and Yadkin shall elect one senator ;
- Thirty-fourth District—Iredell, Wilkes and Alexander shall elect two senators ;
- Thirty-fifth District—Alleghany, Ashe and Watauga shall elect one senator ;
- Thirty-sixth District—Caldwell, Burke, McDowell, Mitchell and Yancey shall elect two senators ;
- Thirty-seventh District—Catawba and Lincoln shall elect one senator ;
- Thirty-eighth District—Gaston and Cleaveland shall elect one senator ;
- Thirty-ninth District—Rutherford and Polk shall elect one senator ;
- Fortieth District—Buncombe and Madison shall elect one senator ;
- Forty-first District—Haywood, Henderson and Transylvania shall elect one senator ;

Forty-second District—Jackson, Swain, Macon, Cherokee, Clay and Graham shall elect one senator.

Manner of electing members for the House of Representatives until the new apportionment.—1871-'2, c. 67, s. 1.

2. Until the General Assembly shall have made the new apportionment, as provided by the Constitution and laws of North Carolina, the House of Representatives shall be composed of members elected from the counties in the following manner, to-wit: The county of Wake shall elect four members; the county of New Hanover shall elect three members; the counties of Buncombe, Caswell, Chatham, Craven, Cumberland, Davidson, Duplin, Edgecombe, Granville, Guilford, Halifax, Iredell, Johnston, Mecklenburg, Orange, Pitt, Randolph, Robeson, Rockingham, Rowan, Sampson, Warren, Wayne and Wilkes shall elect two members each; and the counties of Alamance, Alexander, Alleghany, Anson, Ashe, Beaufort, Bertie, Bladen, Brunswick, Burke, Cabarrus, Caldwell, Camden, Carteret, Catawba, Cherokee, Chowan, Clay, Cleaveland, Columbus, Currituck, Dare, Davie, Forsythe, Franklin, Gaston, Gates, Greene, Harnett, Haywood, Henderson, Hertford, Hyde, Jackson, Jones, Lenoir, Lincoln, Macon, Madison, Martin, McDowell, Mitchell, Montgomery, Moore, Nash, Northampton, Onslow, Pasquotank, Perquimans, Person, Polk, Richmond, Rutherford, Stanley, Stokes, Surry, Swain, Transylvania, Tyrrell, Union, Washington, Watauga, Wilson, Yadkin and Yancey shall elect one member each.

Date of election.—1871-'2, c. 185, s. 1.

3. There shall be an election held for the following officers, on the first Thursday of August, in the year of our Lord one thousand eight hundred and seventy-two:

Officers to be elected.

First, Governor; second, Lieutenant-Governor; third, Secretary of State; fourth, Auditor; fifth, Treasurer; sixth, Superintendent of Public Instruction; seventh, Superintendent of Public Works; eighth, Attorney-General; ninth, members of Congress in the several districts; tenth, members of the General Assembly for their respective counties and districts, and eleventh, a county treasurer; twelfth, a register of deeds; thirteenth, county surveyor; fourteenth, five county commissioners; fifteenth, a coroner; sixteenth, a sheriff, for their respective counties.

Polling places, how established.—1871-'2, ch. 185, s. 2.

4. The county commissioners shall have power to establish, alter, discontinue or create such separate places of election in their respective counties as they may deem expedient, giving thirty days' notice thereof by advertisement in some public journal, if there be one published in the county, or in lieu thereof in three places in such county and at the court-house thereof, but there shall be at least one polling place in every township, as nearly central as possible, and there shall be a polling place open in each ward of a city numbering over three thousand inhabitants.

Advertised.

One in each township. In cities.

Secretary of State to supply registration books.—1871-'2, c. 185, s. 3.

5. The Secretary of State shall, on or prior to the first Monday of June, year of our Lord one thousand eight hundred and seventy-two, provide for and forward to the commissioners of counties, on their requisition, suitable registration books, when

needed, for each election precinct as established heretofore, and for any new precincts which may be established under the last section.

6. If the commissioners of counties do not receive a sufficient number of registration books, as provided in the last section, they are authorized and directed to provide the same for their respective counties at the expense of the State.

Books to be provided by commissioners, when.—1871-'2, c. 185, s. 4.

7. The commissioners of counties shall select, on or before the first Monday of July, year of our Lord one thousand eight hundred and seventy-two, one justice of the peace for each election precinct, who shall act as registrar of voters for such precinct; and when for any cause there are not enough justices of the peace to have one at each precinct, the commissioners shall appoint some discreet person to act as registrar of voters. Said commissioners shall make publication of the names of the persons so selected, at the court-house door, immediately after such appointment, and shall cause a notice to be served upon said persons by the Sheriff.

Registrar of voters, how and when appointed.—1871-'2, c. 185, s. 5.

8. Registrars shall be furnished with a registration book, and it shall be their duty to revise the existing registration books of their precinct or township in such manner that said books shall show an accurate list of electors previously registered in such precinct or township, and still residing therein, without requiring such electors to be registered anew; and such registrars shall also between the hours of sunrise and sunset on each day (Sundays excepted) from the first Thursday in July, one thousand eight hundred and seventy-two, up to and including the day preceding the first Thursday in August, one thousand eight hundred and seventy-two, keep open said books for the registration of any electors residing in such precinct or township and entitled to registration, whose names have never before been registered in such precinct or township, or do not appear in the revised list.

Duties of registrars.—1871-'2, c. 185, s. 6.

9. No elector shall be entitled to register or vote in any other precinct or township than the one in which he is an actual and *bona fide* resident on the day of election, and no certificates of registration shall be given.

Where electors may vote.—1871-'2, c. 185, s. 7.

10. It shall be the duty of the registrar and judges of election to attend at the polling place of their township or precinct with the registration books on the Saturday preceding the election, from the hour of nine o'clock, A. M., till the hour of five o'clock, P. M., when and where the said books shall be open to the inspection of the electors of the precinct or township, and any of said electors shall be allowed to object to the name of any person appearing on said books. In case of any such objection the registrar shall enter upon his books, opposite to the name of the person so objected to, the word "challenged," and shall appoint a time and place on or before the election day, when he, together with said judges of election, shall hear and decide said objection, giving due notice to the voter so objected

Registration books open to inspection.—1871-'2, c. 185, s. 8.

Right of challenge.

to: *Provided*, that nothing in this section contained shall be construed to prohibit the right of any elector to challenge or object to the name of any persons registered, or offering to register, at any time other than that above specified. If any person challenged or objected to shall be found not duly qualified, as provided in this chapter, or as provided in the Constitution, the registrar shall erase his name from the books.

Appointment
of judges of
election.—
1871-'2, c. 185,
s. 9.

Their duties,
&c.

Commission-
ers to furnish
lists of judges
to Sheriff.

Judges failing
to attend.

Qualification
of electors.—
1871-'2, c. 185,
s. 10.

Oath of elec-
tors.

No registra-

11. The County Commissioners, on or before the first Monday of July next, shall appoint four judges or inspectors of election, two of whom shall be of a different political party, where possible, from the registrar, at each place of holding election in their respective counties. The said judges of election shall attend at the places for which they are severally appointed, on the day of election, and they together with the registrar for such precinct or township, who shall attend with his registration books, after being sworn by some justice of the peace or other person authorized to administer oaths, to conduct the election fairly and impartially according to the Constitution and laws of the State, shall open the polls and superintend the same until the close of the election. They shall keep poll books in which shall be entered the name of every person who shall vote; and at the close of the election the judges of election shall certify the same over their proper signatures, and deposit them with the register of deeds for safe keeping. And said poll books shall in any trial for illegal or fraudulent voting be received as evidence. The County Commissioners shall immediately after the appointment of the judges of election, as herein provided, furnish a list of the names of such judges to the sheriff of their county, who shall within ten days serve notice of such appointment upon the said judges; and if, for any cause, any person appointed judge of election shall fail to attend, the registrar of such township shall appoint some discreet person to act as such, who shall be by him sworn before acting, and shall be of the same political party as the absent judge or judges.

12. Every male person born in the United States, and any male person who has been naturalized, twenty-one years old or upwards, who shall have resided in the State twelve months next preceding the election and thirty days in the county in which he offers to vote, shall be deemed an elector in the township in which he resides, and shall be entitled to registration upon application, upon taking the following oath; "I, —, do solemnly swear (or affirm) that I will support the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith; that I have been a resident in the State of North Carolina for twelve months, and in the county of — for thirty days, and that I have not registered for this election in any other precinct, and that I am an actual and *bona fide* resident of — township. So help me God."

13. No registration shall be allowed on the day of election,

but if any person shall give satisfactory evidence to the judges of the election that he has come of the age of twenty-one years on the day of election, or has for any other reason, become on that day entitled to register, he shall be allowed to register and vote.

14. On the day of election any elector may, and it shall be the duty of the judges of election to challenge the vote of any person, who may be known or suspected not to be a duly qualified voter.

When judges to challenge.—1871-'2, c. 185, s. 12.

15. When any person is so challenged, the judges shall explain to him the qualifications of an elector, and may examine him as to his qualifications, and if the person insists that he is qualified, and the challenge is not withdrawn, one of the judges shall tender to him the following oath: "You do solemnly swear (or affirm) that you are a citizen of the United States, that you are twenty-one years old, and that you have resided in this State for twelve months, and in this county for thirty days next preceding this election, and that you are not disqualified from voting by the Constitution and laws of this State; that your name is (here insert the name given), and that in such name you were duly registered as a voter of this township, and that you are now an actual resident of the same, and that you are the identical person you represent yourself to be, and that you have not voted in this election at this or any polling place. So help you God." And if he refuses to take such oath his vote shall be rejected; if, however, he does take the oath when tendered, his vote shall be received: *Provided*, that after such oath shall have been taken, the judges may, nevertheless, refuse to permit such person to vote if they be satisfied from record evidence or their own knowledge or other legal testimony adduced before them that he is not a legal voter; and they are hereby authorized to administer the necessary oaths or affirmations to all witnesses brought before them to testify to the qualifications of a person offering to vote. Whenever any person's vote shall be received after having taken the oath prescribed in this section, it shall be the duty of the clerks of the election to write on the poll books, at the end of such person's name the word "sworn." The same powers as to the administration of oaths and examination of witnesses as in this section granted to judges of elections, may be exercised by the registrars in all cases where the names of persons registered or offering to register are objected to.

Oath of persons challenged.—1871-'2, c. 185, s. 13.

When vote to be rejected.

Challenge to be recorded.

Powers of registrars, &c.

16. The polls shall be opened on the day of election from seven o'clock in the morning until sunset of the same day; and each voter whose name may appear registered, and who shall not be challenged and rejected, shall hand in his ballots to the judges who shall carefully deposit the ballots in the ballot boxes.

When polls to be opened.—1871-'2, c. 185, s. 14.

Manner of voting.

17. Immediately after any election the judges of election shall deposit the registration books for their respective precincts with the register of deeds of their respective counties.

Registration books to be deposited, &c.—1871-'2, c. 185, s. 15.

Number of ballots and what to contain.—1871-'2, c. 185, s. 16.

Material, colors, &c., of ballot. To be without device. Ballot boxes, how provided.—1871-'2, c. 185, s. 17.

Description of boxes. Who to keep them.

How boxes opened and ballots counted.—1871-'2, c. 185, s. 18.

What tickets to be void.

Returns from precincts. When and to whom made.—1871-'2, c. 185, s. 19. Vote to be added publicly.

Who to be deemed elected.

Delinquent returning officers.

18. The State officers, viz: Governor, Lieutenant Governor, Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Superintendent of Public Works and Attorney General shall be voted for on one ballot. The members of Congress for their respective districts shall be voted for on one ballot. The members of the General Assembly for their respective counties and districts shall be voted for on one ballot. The county officers for the respective counties, viz: treasurer, register of deeds, surveyor, five commissioners, coroner and sheriff, shall be voted for on one ballot. The ballots shall be on white paper, and may be printed or written, or partly written and partly printed, and without device.

19. The County Commissioners, or upon their failure, the inspectors of election, shall provide for each election precinct in their respective counties four ballot-boxes, one for each class of officers to be voted for as prescribed in the preceding section, in which to deposit the ballots for such officers respectively. Each of said boxes shall have an opening through the lid of sufficient size to admit a single folded ballot and no more. The said ballot-boxes shall be kept by the judges of election for the use of their several election precincts respectively. And said judges of election, before the voting begins, shall carefully examine the ballot boxes and see that there is nothing in them.

20. When the election shall be finished the registrar and judges of election, in presence of such of the electors as may choose to attend, shall open the boxes and count the ballots, reading aloud the names of the persons who shall appear on each ticket; and if there shall be two or more tickets rolled up together or any ticket shall contain the names of more persons than such elector has a right to vote for, or shall have a device upon it, in either of these cases such ticket or tickets shall not be numbered in taking the ballots, but shall be void, and the said counting of votes shall be continued without adjournment until completed and the result thereof declared.

21. Returns from all the precincts shall be made by the judges of election by noon on Saturday ensuing the day of election to the County Commissioners, who shall, in the presence of such persons as choose to attend, proceed to add the number of votes returned, and so far as county officers, members of the House of Representatives and senators, where the senatorial district consists of but one county, are concerned, the person having the greatest number of votes shall be deemed duly elected, (should any two persons have an equal number of votes for the same office, the commissioners shall decide which of the two shall be elected.) And if for any cause the return of any precinct be not in by three o'clock p. m. on that day, then and in that case the commissioners shall adjourn without comparing the polls, to meet again on the following Tuesday at twelve o'clock m., when the polls of the various precincts of the county shall be compared, and in the meantime they shall direct the sheriff or one of his deputies to compel the attend-

ance of the delinquent returning officer with the vote of his precinct. When the commissioners have thus completed the comparison of the polls they shall proclaim the result at the court-house door, of the voting in their county for all the persons voted for and the number of votes cast for each, and shall immediately thereafter file with the register of deeds and with the sheriff of their county, or in case there be no sheriff, with the coroner, a certified statement of the same: *Provided*, the counties of Carteret, Hyde and Dare shall be allowed until Tuesday after the election to make their returns. The commissioners shall also file with the register of deeds the returns made by the judges of the election of each precinct.

Statement of result filed with register and Sheriff.

Precinct returns to be filed.

22. The sheriff or other returning officers in the various senatorial districts composed of more than one county shall, after receiving the returns as prescribed in the last section, meet on the second Thursday in August, one week after the election, at the following places in their respective districts for the purpose of comparing the polls: In the first district, at Hertford, in the county of Perquimans. In the second district, at Plymouth, in the county of Washington. In the third district, at Roxabel, in the county of Bertie. In the seventh district, at Nashville, in the county of Nash. In the ninth district, at Pollocksville, in the county of Jones. In the eleventh district, at Kinston, in the county of Lenoir. In the tenth district, at Mt. Olive, in the county of Wayne. In the thirteenth district, at Northwest, in the county of Brunswick. In the fifteenth district, at Leesville, in the county of Robeson. In the sixteenth district, at Fayetteville, in the county of Cumberland. In the twentieth district, at Hillsboro', in the county of Orange. In the twenty-fourth district, at Gibsonville, in the county of Guilford. In the twenty-fifth district, at Brower's Mill, in the county of Randolph. In the twenty-sixth district, at John Webb's, on the plank road, in the county of Richmond. In the twenty-ninth district, at Lanesborough, in the county of Anson. In the twenty-eighth district, at Mount Pleasant, in the county of Cabarrus. In the thirtieth district, at the Foard's Mill, in the county of Rowan. In the thirty-second district, at Germantown, in the county of Stokes. In the thirty-third district, at Rockford, in the county of Surry. In the thirty-fourth district, at Taylorsville, in the county of Alexander. In the thirty-fifth district, at Jefferson, in the county of Ashe. In the thirty-sixth district, at Marion, in the county of McDowell. In the thirty-seventh district, at Early Grove, in the county of Catawba. In the thirty-eighth district, at Cherryville, in the county of Cleveland. In the thirty-ninth district, at Rutherfordton, in the county of Rutherford. In the fortieth district, at Asheville, in the county of Buncombe. In the forty-first district, at Brevard, in the county of Transylvania. In the forty-second district, at Franklin, in the county of Macon. If for any cause any of said sheriffs or returning officers are prevented from meeting at said places respectively, on the

Returning officers of senatorial districts, when and where to meet.—1871-'2, c. 185, s. 20.

When returning officers are

prevented from meeting on designated day. Penalty for failing to make returns.

Messenger to be sent to county of delinquent. How such vote to be obtained.

Returns, how examined.

Declaration of result.

Certificates of election, when and how furnished.—1871-'2, c. 185, s. 22.

Organization of county officers.

Return for State officers, when, by whom and how made.—1871-'2, c. 185, s. 23.

aforesaid second Thursday in August, the returns of such officers shall be waited for and received if they arrive on the following day, and the returning officer failing to attend at the time and place required as aforesaid, shall forfeit and pay one thousand dollars, to be recovered in the Superior Court of his county by any person who may sue for the same, and moreover shall be guilty of a misdemeanor; but if the returns of all the counties of the district be not in by Friday noon, then the returning officers shall adjourn from day to day until the returns from all the counties be received, and in the meantime, shall despatch a competent person, under oath, to the county of the delinquent returning officer for a certified copy of the vote of that county, which shall be furnished by the register of deeds of said county; and when received shall be counted; and when the sheriffs shall be convened as aforesaid, the polls for the different counties shall by them, in the presence of one justice and five electors, to be summoned by the sheriff of the county where they shall meet, be examined and compared; a certificate, under the hands and seals of the returning sheriffs, 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 a senator, and if no decision shall be made by them, they shall determine the same by lot.

23. The Sheriff of each county shall furnish before the first Monday in September the member or members elected to the House of Representatives and to the Senate, where the district is not composed of more than one county, a certificate of election under his hand and seal; he shall also, at least ten days before the first day of September, notify all persons elected in the county to meet at the court-house on the first Monday in September to be qualified. The commissioners elect shall be qualified before the Clerk of the Superior Court by taking the several oaths of office, and shall thereupon organize by electing one of their number as chairman, and proceed to qualify the other officers elected in the county, and take the several bonds as prescribed by law.

24. The Sheriff or other returning officer of every county shall on or before the third Monday in November, one thousand eight hundred and seventy-two, transmit by mail or otherwise to the Speaker of the House of Representatives a separate statement of the votes taken in his county for each of the State officers, to-wit: Governor, Lieutenant Governor, Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Superintendent of Public Works and Attorney General, which statement, in each case, shall be in the following or some similar form, viz:

STATE OF NORTH CAROLINA,
_____ COUNTY,

Certificate of Sheriff.

I, ———, Sheriff of ——— county, do hereby certify

that at the election held in said county to elect a Governor (or other officers, as the case may be), for four years, from the first day of January next, at the places appointed by law for holding elections in said county on the — day of August, *Anno Domini* one thousand eight hundred and seventy-two, — votes were given for — —, and votes for — —.

Given under my hand this — day of —, 1872.
— — —, Sheriff.

If said statements are transmitted by mail they shall be directed in sealed packets to the Speaker of the House of Representatives, in care of the Secretary of State, and if by messenger, it shall be sent direct to the Speaker of the House of Representatives, sealed as aforesaid: *Provided*, that no messenger bringing said statements shall receive compensation therefor. Any Sheriff or other returning officer failing or neglecting to perform the duties required in this section shall forfeit and pay two thousand dollars, to be recovered in the Superior Court of his county by any person who shall sue for the same, and moreover, shall be guilty of a misdemeanor and upon conviction thereof, shall be imprisoned at hard labor in the State prison for twelve months.

To whom statement to be sent.

Delinquent returning officers.

Penalty.

25. The Secretary of State shall cause proper forms of returns to be prepared and printed and send copies thereof with plain directions as to the manner of endorsing, 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 said election.

Secretary of State to prepare and transmit forms of returns—1871-'2, c. 185, s. 24.

26. The Speaker of the House of Representatives, in the presence of a majority of the members of both houses of the General Assembly, shall open and publish the returns for Governor, Lieutenant Governor, Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Superintendent of Public Works and Attorney General, at twelve, m., on the first Tuesday after the organization of both houses of the General Assembly. And if for any cause there be no return from any county of the State, or if any return be defective, a proper return shall be had in such manner as the two houses in joint session may direct; and in either case the publication of the result may be postponed to such time as the joint session of the two houses may deem best. The person having the highest number of votes for each office respectively shall be declared duly elected thereto, but if two or more be equal and highest in votes for the same office, then one of them shall be chosen by joint ballot of both houses of the General Assembly. Contested elections shall be determined by a joint vote of both houses of the General Assembly in the same manner and under the same rules and regulations as are prescribed in cases of contested elections of members of the General Assembly.

Returns for State officers, how and by whom opened and published.—1871-'2, c. 185, s. 25.

In case of defective returns.

Who to be declared elected.

In case of tie vote.

Contested election.

27. Every Sheriff or other returning officer shall be allowed three dollars per day for the time actually employed and ten

Compensation of Sheriff, &c.

—1871-'2, c. 185, s. 27.

cents per mile for distance traveled for making returns for Senators and Members of Congress, and one dollar for each notice served upon the county officers elect, and one dollar for giving certificates to Representatives to the General Assembly, and to Senators whose district is a single county: all to be paid by the county treasurer upon the affidavit of the returning officer.

Fees of registrars.—1871-'2, c. 185, s. 28.

28. The registrar shall receive one cent for each name copied from the original registration book, and three cents for each new name registered.

Penalty for non-performance of duty under this chapter.—1871-'2, s. 185, s. 29.

29. Any registrar or judge or judges of election appointed under the provisions of this chapter, or any county commissioners, register of deeds, or sheriff failing or neglecting to make the returns and perform the duties required of him by this chapter, for the non-performance of which no penalty has been hereinbefore imposed, shall be fined not less than five hundred nor more than one thousand dollars, or imprisoned not more than six nor less than two months, at the discretion of the court.

Penalty for fraudulent registration or voting.—1871-'2, c. 185, c. 30.

30. Any person who shall with intent to commit a fraud, register or vote at more than one box or more than one time, or who shall induce another to do so, shall be guilty of a misdemeanor, and on conviction shall be imprisoned not less than six nor more than twelve months, or fined not less than one hundred nor more than five hundred dollars, at the discretion of the court; and any registrar of voters, or any clerk or copyist who shall make any entry or copy with intent to commit a fraud shall be liable to the same penalty.

For falsely taking oath. Penalty.—1871-'2, c. 185, s. 31.

31. Any person who shall falsely and corruptly take the oath prescribed for voters in section twelve or fifteen of this chapter, shall be deemed to be guilty of perjury, and upon conviction thereof shall be fined not less than five hundred nor more than one thousand dollars, and be imprisoned at hard labor in the penitentiary not less than two nor more than five years.

Secretary of State to furnish copies, &c.—1871-'2, c. 185, s. 32.

32. The Secretary of State shall, on or before the first Monday in June next, furnish the County Commissioners of each county with a sufficient number of copies of this chapter to supply each county commissioner, register of deeds, sheriff, registrar of voters and judges of election with one copy thereof.

How vacancies in General Assembly to be filled. How elections to be held.—1868, c. 23, s. 1.

33. When a vacancy occurs in the General Assembly by death, resignation or otherwise, it shall be the duty of the sheriff of the county in which the late member resided, provided the General Assembly shall not be in session, to notify the Governor of such vacancy, and in the case the General Assembly shall be in session when such vacancy occurs, it shall be the duty of the presiding officer of the House in which the vacancy occurs, to notify the Governor of the same, who shall thereupon issue a writ of election to the sheriff or sheriffs of the district or county represented by the late member, said election to be held at such time as the Governor may designate, and in such manner as may be prescribed by law.

34. Every election, held in pursuance of a writ from the Governor, shall be conducted in like manner as the regular biennial elections, so far as the particular case can be governed by the general rules, and shall, to all intents and purposes, be as legal and valid, and subject the officers and persons elected to the same penalties and liabilities, as if the same had been held at the time, and according to the rules and regulations prescribed for the regular biennial elections.

Elections under writ from Governor held as other elections.—R. C., c. 52, s. 17.

35. 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.

Muster not to be on day, nor armed men assembled at place of election. Penalty.—R. C., c. 52, s. 21.

36. 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. C., c. 52, s. 22.

37. 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. C., c. 52, s. 23.

38. 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. C., c. 52, s. 24.

39. 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. C., c. 52, s. 27.

40. 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. C., c. 52, s. 28.

To have freedom of speech and be protected from arrest, &c.—R. C., c. 52, s. 29.

41. The members shall have freedom of speech and debate in the General Assembly, and shall not be liable to impeachment 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.

Persons contesting the seat of a member, how to proceed.—R. C., c. 52, s. 31.

42. 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.

Witnesses failing to give evidence in contested elections, penalty on.

43. 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.

Voter compelled to testify how he voted.—R. C., c. 52, s. 32.

Pay of witnesses for attending.—R. C., c. 52, s. 33.

44. 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.

Private laws. Proceedings to procure the passage of.—R. C., c. 52, s. 34.

45. 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.

46. The clerks of the Senate and House of Representatives, 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 Secretary, who shall certify copies, &c.—R. C., c. 52, s. 36.

47. 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.—R. C., c. 52, s. 37.

48. 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 and Sec'y, until, &c. Their pay.—R. C., c. 52, s. 38.

49. 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.—R. C., c. 52, s. 39.

50. The President of the Senate and Speaker of the House of Representatives shall receive seven dollars per day during the session of the General Assembly, and twenty cents per mile for every mile traveled to and from their home to the capitol at Raleigh.

Per diem of President and Speaker.—1870-'1, c. 18, s. 1. Mileage.

51. Each and every member of the General Assembly shall receive during the session of the same, five dollars per day and mileage as expressed in the fiftieth section of this chapter.

Per diem and mileage of members.—1870-'1, c. 18, s. 2.

52. The principal and assistant clerks shall receive six dollars per day and mileage as expressed in the fiftieth section of this chapter.

Principal and assistant clerks.—1870-'1, c. 18, s. 3. Enrolling and engrossing clerks.—1870-'1, c. 18, s. 4.

53. The enrolling and engrossing clerks shall receive five dollars per day and mileage as expressed in the fiftieth section of this chapter.

Door-keepers.—1870-'1, c. 18, s. 5.

54. The door-keepers and assistant door-keepers shall receive five dollars per day and mileage as stated in the fiftieth section of this chapter.

55. The Auditor is hereby authorized and directed to audit the account of any employee of the Senate or of the House of Representatives, upon the certificate of the President of the Senate or of the Speaker of the House of Representatives, that such services have been rendered for which the account is presented, and that the amount is due as stated in said account.

Concerning employees of Senate and House.—1870-'1, resolution.

CHAPTER 53.

GUARDIAN AND WARD.

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10. Guardian of the estate where the father is alive.
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13. When wards have property in common, one bond.
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64. Notice of award to be given parties to the reference before confirmation.
65. Courts of probate may make rules.

Father may
appoint guar-

1. ANY father, though he be a minor, may, by deed executed in his lifetime or by his last will and testament in writing, dispose

of the custody and tuition of any of his infant children, being unmarried and whether born at his death or in *ventre sa mere*, for such time as the children may remain under twenty-one years of age, or for any less time.

2. Every such disposition shall be good and effectual against any person claiming the custody and tuition of such child or children.

3. Every guardian by deed or will shall have the same powers and rights, and be subject to the same liabilities and regulations as other guardians.

4. The Courts of Probate, 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 in all cases, except where otherwise prescribed by law.

5. Instead of granting general guardianship to one person, the Court of Probate may commit the tuition and custody of the orphan to one and the charge of his estate to another, whenever, and at any time during minority, it appears most conducive to the proper care of the orphan's estate and his suitable nurture and education to do so.

6. In such cases the court must order what yearly sums of money or other provisions shall be allowed for the support and education of the orphan, and must prescribe the time and manner of paying the same; but such allowance may, upon application and satisfactory proof made, be reduced or enlarged, or otherwise modified, as the orphan's condition in life and the kind and value of his estate may require.

7. All payments made by the guardian of the estate to the tutor of the person, according to any such order, shall be deemed just disbursements and be allowed in the settlement of his accounts; but for the payment thereof by the one, and the receipts thereof by the other merely, no commissions shall be allowed to either, though commissions may be allowed to the tutor of the person on his disbursements only.

8. When parents, divorced from the bonds of matrimony, or from bed and board, have any child under twenty-one years, the court granting the divorce may commit his custody and tuition to the father or mother as may be thought best; or the court may commit the custody and tuition of such infant child, in the first place, to one parent for a limited time, and after the expiration of that time, then to the other parent; and so alternately.

9. In cases provided for by the last section, where such child is entitled to any estate, the court granting the divorce must certify that fact to the Court of Probate, to the end that the judge thereof may appoint a fit and proper person to take the care and management of such estate, whose powers and duties shall be the same in all respects as other guardians, except that a guardian so appointed shall not have any authority over the person of such child, unless the guardian be the father or mother.

Guardian by deed or will.—1868-'9, c. 201, s. 1.

Effect of such disposition.—1868-'9, c. 201, s. 2.

Guardians by deed or will; their powers and liabilities.—1868-'9, c. 201, s. 3.

Powers of Courts of Probate.—1868-'9, c. 201, s. 4.

Tutor of the person and guardian of the estate.—1868-'9, c. 201, s. 5.

Yearly sums for support and education.—1868-'9, c. 201, s. 6.

Disbursements and commissions.—1868-'9, c. 201, s. 7.

In cases of divorce.—1868-'9, c. 201, s. 8.

Guardian of the estate in cases of divorce.—1868-'9, c. 201, s. 9.

Guardian of the estate where the father is alive.—1868-'9, c. 201, s. 10.

10. The Courts of Probate may appoint a guardian of the estate of any minor, although the father of such minor be living. And the guardian so appointed shall be governed in all respects by the laws relative to guardians of the estate in other cases, but shall have no authority over the person of such minor.

Bond to be given.—1868-'9, c. 201, s. 11.

11. Every guardian of the estate, before letters of appointment are issued to him, must give a bond payable to the State, with two or more sufficient sureties, to be acknowledged before and approved by the Probate Judge, and to be jointly and severally bound. The penalty in such bond must be double, at least, the value of all property, real and personal, of the infant; which value is to be ascertained by the Probate Judge by the examination, on oath, of the applicant for guardianship, or of any other person. The bond must be conditioned that such guardian shall faithfully execute the trust reposed in him as such, and obey all lawful orders of the Probate or other court, touching the guardianship of the estate committed to him.

Action on bond.—1868-'9, c. 201, s. 12.

12. The bond so taken shall be recorded in the Court of Probate; and any person injured by a breach of the condition thereof, may prosecute a suit thereon, as in other actions under the Code of Civil Procedure.

When wards have property in common, one bond.—1868-'9, c. 201, s. 13.

13. When the same person is appointed guardian to two or more minors, possessed of one estate in common, the Probate Court may take one bond only in such case, upon which each of the minors may have a separate action.

Return within three months.—1868-'9, c. 201, s. 14.
C. C. P. s., 477.

14. Every guardian, within three months after his appointment, shall exhibit an account, upon oath, of the estate of his ward, to the Judge of Probate, but such time may be extended by the Judge of Probate, on good cause shown, not exceeding six months.

Compelling return.—1868-'9, c. 201, s. 15.

15. In cases of default to exhibit the return required by the last section, the Judge of Probate must issue an order requiring the guardian to file such return forthwith, or to show cause why an attachment should not issue against him. If, after due service of the order, the guardian does not, on the return day of the order, file such return, or obtain further time to file the same, the Judge of Probate shall issue an attachment against him, and commit him to the common jail of the county, till he files such return.

New assets.—1868-'9, c. 201, s. 16.

16. Whenever further property of any kind, not included in any previous return, comes to the hands or knowledge of any guardian, he must cause the same to be returned as directed in section fourteen, within three months after the possession or discovery thereof; and the making of such return of new assets, from time to time, may be enforced in the same manner as prescribed in the last section.

Annual account.—1868-'9, c. 201, s. 17.
Renewal of bond.—1868-'9, c. 201, s. 18.

17. Every guardian shall annually exhibit his account in the Court of Probate as hereinafter prescribed.

18. Every guardian shall renew his bond in the Court of Probate every three years, during the continuance of the guardianship.

19. The Judge of Probate shall issue a citation against every guardian failing to renew his bond, as directed in the last section, requiring such guardian to renew his bond within twenty days after service of the citation ; and on return of the citation duly served, and failure of the guardian to comply therewith the Court of Probate shall remove him and appoint a successor : *Provided*, that the Judge of Probate of Hertford county, in lieu of private citation to guardians who fail to renew their bonds as directed in section eighteen of this chapter may give forty days' public notice at the court-house and three other public places in each township in the county, and if any guardian shall fail to renew his bond in that time, unless prevented by sickness, the Court of Probate shall remove him and appoint a successor.

Guardian failing to renew.—1868-'9, c. 201, s. 19.
1869-'70, c. 144

20. The Courts of Probate shall have power, on information or complaint made, at all times to remove guardians and appoint successors, to make and establish rules for the better ordering, managing and securing infant's estates, and for the better education and maintenance of wards ; and it shall be their duty to do so in the following cases :

Power and duty of Probate Courts over guardians abusing their trusts.—1868-'9, c. 201, s. 20.

(1.) Where the guardian wastes or converts the money or estate of the ward to his own use.

(2.) Where the guardian in any manner mismanages the estate.

(3.) Where the guardian is about or intends to marry any ward in disparagement.

(4.) Where the guardian neglects to educate or maintain the ward in a manner suitable to his or her degree.

(5.) Where the guardian is legally disqualified to act as a person would be to be appointed administrator under the chapter concerning executors and administrators, section four.

C. C. P., s. 457.

(6.) Where the guardian or his sureties are likely to become insolvent or non-residents of the State.

21. Whenever any guardian is removed, and no person is appointed to succeed in the guardianship, the Judge of Probate shall certify the name of such guardian and his sureties to the Solicitor of the judicial district, who shall forthwith institute an action on the bond of the guardian in the Superior Court, for securing the estate of the ward.

Action to be brought by Solicitor, when.—1868-'9, c. 201, s. 21.

22. The Judge of the Superior Court, before whom such action is brought, shall have power to appoint some discreet person as a receiver to take possession of the ward's estate, to collect all moneys due to him, to secure, loan, invest or apply the same for the benefit and advantage of the ward, under the direction and subject to such rules and orders in every respect as the said Judge may from time to time make in regard thereto ; and the accounts of such receiver shall be returned, audited and settled as the judge may direct. The receiver shall be allowed such amounts for his time, trouble and responsibility as seem to the Judge reasonable and proper ; and such receivership may be continued until a suitable person can be procured to take the guardianship.

Receiver to be appointed, when.—1868-'9, c. 201, s. 22.

Compensation for solicitor.—1868-'9, c. 201, s. 23.

23. The Solicitor shall prosecute the action directed to be brought in section twenty-one, and take all necessary orders therein, and for his services shall be allowed such reasonable compensation as may be just.

Property, how obtained from receiver.—1868-'9, c. 201, s. 24.

24. When another guardian is appointed, he may apply by motion, on notice, to the Superior Court for an order upon the receiver to pay over all the money, estate and effects of the ward; and if no such guardian is appointed, then the ward, on coming of age, or in case of his death, his executor, administrator or collector shall have the like remedy against the receiver.

Guardian to take charge of ward's estate.—1868-'9, c. 201, s. 25.
Sale of perishable property.—1868-'9, c. 201, s. 26.

25. Every guardian shall take possession, for the use of the ward, of all his estate and may bring all necessary actions therefor.

26. Every guardian shall sell, by order of the Court of Probate, all such goods and chattels of his ward as may be liable to perish or be the worse for keeping. Every such order shall be entered in the order record of the court of Probate, and must contain a descriptive list of the property to be sold, with the terms of sale.

Sales and rentings, how made.—1868-'9, c. 201, s. 27.

27. All sales and rentings shall be made and conducted by guardians in the same manner, upon like terms and notice, and under the same rules and regulations and the same penalties as prescribed for sales made by executors, administrators and collectors.

Guardian may lease, when.—1868-'9, c. 201, s. 28.

28. The guardian may lease the lands of an infant for a term not exceeding the end of the current year in which the infant shall come of age, or die in non-age. But no guardian, without leave of the Court of Probate, shall lease any land of his ward without impeachment of waste, or for a term of more than three years, unless at a rent not less than three per centum on assessed taxable value of the land.

Compound interest.—1868-'9, c. 201, s. 29.

29. When the profits of any ward's estate is more than sufficient to maintain and educate him the guardian shall lend the surplus upon bond with sufficient security, to be repaid with interest annually, and all the bonds, notes or other obligations which he shall take as guardian, shall bear compound interest, for which he must account, and he may assign the same to the ward on settlement with him.

Liability of guardian for debts.—1868-'9, c. 201, s. 30.

30. Every guardian shall diligently endeavor to collect, by all lawful means, all bonds, notes, obligations or moneys due his ward when any debtor or his sureties are likely to become insolvent, on pain himself of being liable for the same.

How guardian may invest.—1870-'1, c. 197, s. 1.

31. Guardians, trustees and others acting in a fiduciary capacity, having surplus funds of their wards and *cestui que trusts* to loan, may invest in United States bonds, or any securities whereof the United States are responsible, now or hereafter to be issued, and in all settlements by guardians, trustees and others, acting in a fiduciary capacity, such bonds or other security of the United States shall be deemed cash, including the premium, if any paid for such bonds or other securities, and

may be paid as such by the transfer thereof to the persons entitled.

32. If any guardian suffer his ward's lands to lapse or become forfeited or be sold for non-payment of taxes or other dues, he shall be liable to answer for the full value thereof to his ward.

Guardian liable for lands forfeited for taxes.—1868-'9, c. 201, s. 22.

33. In case the land cannot be rented for enough to pay the taxes and other dues thereof, and there is not money sufficient for that purpose, the guardian, with the consent of the Court of Probate, may annually dispose of, or use so much of the light wood, and box or rent so many pine trees, or sell so much of the timber on the same, as may raise enough to pay the taxes and other dues thereon and no more.

When guardian may sell timber.—1868-'9, c. 201, s. 33.

34. All plate shall be preserved and delivered to the ward at age, in kind, according to weight and quantity.

Plate to be kept.—1868-'9, c. 201, s. 34.
Foreign guardian may have ward's estate removed, how.—1868-'9, c. 201, s. 35.

35. Where any ward residing in another State is entitled to any personal estate in this State, or personal property substituted for realty by decree of Court, or to any money arising from the sale of real estate, whether the same be in the hands of any guardian residing in this State, or of any executor, administrator or other person holding for the ward, or if the same (not being adversely held and claimed) be not in the lawful possession or control of any person, the guardian of the ward, duly appointed at the place where such ward resides, may apply to have such estate removed to the residence of the ward by petition filed in the Superior Court of the county in which the property or some portion thereof is situated.

36. The petitioner must show to the court a copy of his appointment as guardian and bond duly authenticated, and must 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.

What petitioner must show.—1868-'9, c. 201, s. 36.

37. Any person may be made a party defendant to the proceeding who is specified in section sixty-one of the Code of Civil Procedure.

Who may be defendants.—1868-'9, c. 201, s. 37.

38. The petition shall be proceeded on as prescribed in other cases of special proceedings, and every necessary decree made, to the end that the guardian may obtain possession of all the estate of the ward in case the judge shall order such removal.

Power of court.—1868-'9, c. 201, s. 38.

39. On application of the guardian by petition, verified upon oath, to the Superior Court, showing that the interest of the ward would be materially promoted by the sale of any part of his estate, real or personal, the proceeding shall be conducted as in other cases of special proceedings; and the truth of the matter alleged in the petition being ascertained by satisfactory proof, a decree may thereupon be made that a sale be had by such person, in such way and on such terms as may be most advantageous to the interest of the ward; but no sale shall be made until ordered by the Judge of the Court, nor shall the same be valid, nor any conveyance of title made, unless confirmed and directed by the Judge, and the proceeds of the sale

Estates of ward sold, when.—1868-'9, c. 201, s. 39.

shall be exclusively applied and secured to such purposes and on such trusts as the Judge shall specify.

Property substituted for that sold, its effect.—1868-'9, c. 201, s. 40.

40. Whenever, in consequence of any sale under the preceding section, the real or personal property of the ward is saved from demands to which in the first instance it may be liable, the final decree 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 or 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 be re-converted from the character thus impressed upon it by some act of the owner, and restored to its character proper.

When ward indebted, how property sold.—1868-'9, c. 201, s. 41.

41. When a guardian has notice of a debt or demand against the estate of his ward, he may apply by petition, setting forth the facts to the Court of Probate wherein the guardianship was granted, for an order to sell so much of the personal or real estate as may be sufficient to discharge such debt or demand; and the order of the court shall particularly specify what property is to be sold and the terms of sale; but no real estate shall be sold under this section, in any case, without the revision and confirmation of the order therefor by the Judge of the Superior Court.

Proceeds to be applied, how.—1868-'9, c. 201, s. 42.

42. The proceeds of sale under the last section 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 a personal representative; and the same proceedings may be had against the guardian with respect to such assets as might be taken against an executor, administrator or collector in similar cases.

Sureties of guardian in danger of loss, how relieved.—1868-'9, c. 201, s. 43.

43. Any surety of a guardian, who is in danger of sustaining loss by his suretyship, may file his complaint in the Court of Probate where the guardianship was granted, setting forth the circumstances of his case and demanding relief; and thereupon the guardian shall be required to answer the complaint within twenty days after service of the summons. If, upon the hearing, the Judge of Probate deem the surety entitled to relief, the same may be granted by compelling the guardian to give a new bond, or to indemnify the surety against apprehended loss, or by the removal of the guardian from his trust; and in case the guardian fail to give a new bond or security to indemnify, when required to do so within reasonable time, the Judge of Probate must enter a peremptory order for his removal, and his authority as guardian shall thereupon cease.

Interlocutory order pending controversy.—1868-'9, c. 201, s. 44.

44. In all cases where the letters of a guardian are revoked, the Judge of Probate may from time to time, pending any controversy in respect to such removal, make such interlocutory orders and decrees as will tend to the better securing the

estate of the ward, or other party seeking relief by such revocation.

45. Any guardian, wishing to resign his trust, may apply in writing to the Court of Probate, setting forth the circumstances of his case. If, at the time of making the application, he also exhibits his final account for settlement, and if the Judge of Probate is satisfied that the guardian has been faithful and has truly accounted, and if a competent person can be procured to succeed in the guardianship, the Judge of Probate may accept the resignation of the guardian and discharge him from the trust. But the guardian so discharged and his sureties are still liable in relation to all matters connected with the trust before the resignation.

Guardian may resign, when.—1868-'9, c. 201, s. 45.

46. The grand jury of every county is charged with, and shall present to the Superior Court the names of all orphan children that have no guardians, or are not bound out to some trade or employment. They shall further enquire of all abuses, mismanagement and neglect of such guardians as are appointed by the Court of Probate. The Judge of Probate shall, at each regular term of the Superior Court, lay before the grand jury a list of all the guardians acting in his county or appointed by him.

Duty of grand jury as to orphans.—1868-'9, c. 201, s. 46.

47. Whenever an orphan, having any estate, is presented by a grand jury, for whom no suitable person will become guardian, the Judge of Probate must give notice thereof forthwith to the solicitor of the State for the judicial district, who shall apply in behalf of the orphan to the Judge of the Superior Court of the county where such presentment was made, to the end that the estate of such orphan may be secured and managed as directed in section twenty-two of this chapter.

Estate of orphans without guardians, how secured.—1868-'9, c. 201, s. 47.

48. All fees and costs of the Court of Probate for issuing orders, citations, summons or other process against guardians for their supposed defaults, shall be paid by the party found in default.

Fees and costs in certain cases, by whom paid.—1868-'9, c. 201, s. 48.

49. Every guardian may charge in his annual account all reasonable disbursements and expenses; and if it appear 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; but such disbursements must, in all cases, be suitable to the degree and circumstances of the estate of the ward.

Guardians allowed disbursements.—1868-'9, c. 201, s. 49.

50. The Court of Probate shall 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, administrators and collectors.

Commissions also allowed.—1868-'9, c. 201, s. 50.

51. If any Judge of Probate shall commit an infant's estate to the charge or guardianship of any person without taking good and sufficient security for the same as directed by law, such Judge of Probate shall be liable, on his official bond as

Liability of judges of probate. Security.—1868-'9, c. 201, s. 51.

Clerk of the Superior Court, at the suit of the party aggrieved, for all loss and damages sustained for the want of such security being taken; but if the sureties were good at the time of their being accepted, the Probate Judge shall not be liable.

Liability for other defaults.—1868-'9, c. 201, s. 52.

52. If any Judge of Probate shall wilfully or negligently, do, or omit to do, any other act prohibited, or other duty imposed on him by law, by which act or omission the estate of any ward suffers damage, he shall be liable therefor as in the preceding section directed.

Punishment on conviction of infamous crime, &c.—1868-'9, c. 201, s. 53.

53. Upon the conviction of any Judge of Probate of an infamous crime, of corruption and malpractice in office, he shall be removed from office, and he shall be disqualified from holding or enjoying any office of honor, trust or profit under this State.

Guardians heretofore appointed.—1868-'9, c. 201, s. 54.

54. All guardians heretofore appointed by the late County or Superior Courts, or Courts of Equity, and now acting shall be deemed and taken as fully within the provisions of this chapter, as if they were or had been appointed by the Courts of Probate.

Annual accounts.—C. C. P., s. 478.

55. Every guardian shall, within twelve months from the date of his qualification or appointment, and annually, so long as any of the estate remains in his control, file, in the office of the Judge of Probate, an inventory and account, under oath, of the amount of property received by him, or invested by him, and the manner and nature of such investment, and his receipts and disbursements for the past year in the form of debit and credit. He must produce vouchers for all payments. The Judge of Probate may examine on oath, such accounting party, or any other person, concerning the receipts, disbursements or any other matter relating to the estate; and having carefully revised and audited such account, if he approve the same, he must endorse his approval thereon, which shall be deemed *prima facie* evidence of correctness.

Failure to account.—C. C. P., s. 479.

56. If any guardian omits to account, as directed in the preceding section, or renders an insufficient and unsatisfactory account, the Probate Judge shall forthwith order such guardian to render a full and satisfactory account, as required by law, within twenty days after service of the order. Upon return of the order, duly served, if such guardian fail to appear or refuse to exhibit such account, the Judge of Probate may issue an attachment against him for a contempt and commit him till he exhibit such account, and may likewise remove him from office.

Vouchers.—C. C. P., s. 480.

57. Vouchers are presumptive evidence of disbursement, without other proof, unless impeached. If lost, the accounting party must, if required, make oath to that fact, setting forth the manner of loss, and state the contents and purport of the voucher.

When guardian to file account at close of guardianship.—C. C. P. s. 481.

58. A guardian may be required to file such account at any time after six months from the ward's coming of full age, or the cessation of the guardianship; but such account may be

filed voluntarily at any time; and, whether the accounting be voluntary or compulsory, it shall be audited and recorded by the Judge of Probate.

59. On application to any Judge of Probate for the custody and guardianship of any infant, it is the duty of such Judge of Probate to inform himself of the circumstances of the case on the oath of the applicant or of any other person; and if none of the relatives of the infant are present at such application, the Probate Judge must assign, or, for any other good cause, he may assign a day for the hearing; and he shall thereupon direct notice thereof to be given to such of the relatives and to such other persons, if any, as he may deem it proper to notify. On the hearing, he shall ascertain, on oath, the amount of the property, real and personal, of the infant, and the value of the rents and profits of the real estate; and he may grant or refuse the application, or commit the guardianship to some other person, as he may think best for the interest of the infant.

60. The Judge of Probate must issue to every guardian appointed by him a letter of appointment, which shall be signed by him and sealed with the seal of his office.

61. All executors, administrators, guardians and other persons acting in a fiduciary capacity, are hereby empowered to make such settlement of claims due by their intestates or wards, or *cestui que trusts*, or of claims which may be due the said executors, and administrators, and others as aforesaid, growing out of the transactions completed before the 15th day of May, Anno Domini, one thousand eight hundred and sixty-five, as may be equitable and just upon the conditions hereinafter provided.

62. The several Courts of Probate of this State shall have power, with the consent of both parties, to be entered on their proceedings, to arbitrate between a claimant and an executor, administrator, guardian, trustee, or other person acting in a fiduciary capacity, or between an executor, administrator, guardian, or other person as aforesaid, and a person against whom they may have a claim or claims, or the subject matter may be referred to two or more disinterested persons at the discretion of the Court.

63. In every case where an award shall have been made, the same shall be recorded and shall have the validity of a judgment of court, and shall be a lawful voucher in all respects whatever, in the settlement of the accounts of guardians, trustees and executors and administrators, or of other persons which said accounts are required by law to be recorded.

64. No award made by or under an order of a Court of Probate and returned to court, shall be confirmed until after notice of the award shall have been given to the parties to the reference or their representatives, and any party may file exceptions or show cause against the award upon any ground on the face of it, or extrinsic thereto, and the court may confirm

Proceedings on application for guardianship.—C. C. P., s. 474.

Letters of appointment.—C. C. P., s. 475.

Who authorized to make settlements.—1868, c. 53, s. 1.

Power of courts of probate to arbitrate.—1868, c. 53, s. 2.

Subject matter may be referred by court.

Award shall be recorded.—1868, c. 53, s. 2.

Notice of award to be given parties to the reference before confirmation.—1868, c. 53, s. 4.

or reject the same and remand the case to the referees for a new award, or appoint a new reference.

Courts of probate may make rules.—1868, c. 53, s. 5.

65. The Courts of Probate may make such rules respecting the notice to be given in case of awards and exceptions, and showing cause and a hearing in the premises as they may deem reasonable.

CHAPTER 54.

HABEAS CORPUS.

SECTION

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In what cases application may be made.—1868-'9, c. 116, s. 1.

1. EVERY person imprisoned or restrained of his liberty within this State, for any criminal or supposed criminal matter, or on any pretence whatsoever, except in cases specified in the next section, may prosecute a writ of *habeas corpus*, according

to the provisions of this chapter, to inquire into the cause of such imprisonment or restraint, and if illegal to be delivered therefrom.

2. Application to prosecute the writ shall be denied in the following cases:

When the application may be denied.—1868-'9, c. 116, s. 2.

(1.) Where the persons are committed or detained by virtue of process issued by a court of the United States, or a Judge thereof, in cases where such courts or judges have exclusive jurisdiction under the laws of the United States, or shall have acquired exclusive jurisdiction by the commencement of suits in such courts;

(2.) Where persons are committed or detained by virtue of the final order, judgment or decree of a competent tribunal of civil or criminal jurisdiction, or by virtue of an execution, issued upon such final order, judgment or decree;

(3.) Where any person has 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 apply for the writ, such person shall not have a *habeas corpus* in vacation time for his enlargement;

(4.) Where no probable ground for relief is shown in the application.

By whom application may be made.—1868-'9, c. 116, s. 3.

3. Application for the writ may be made either by the party for whose relief it is intended or by any person in his behalf.

4. Application for the writ shall be made in writing, signed by the applicant:

Mode of making the application.—1868-'9, c. 116, s. 4.

(1.) To any one of the Judges of the Supreme Court;

(2.) To any one of the Superior Court Judges, either at term time or in vacation.

5. The application must state in substance, as follows:

(1.) That the party, in whose behalf the writ is applied for, is imprisoned or restrained of his liberty, the place where, and the officer or person by whom he is imprisoned or restrained, naming both parties, if their names are known, or describing them if they are not known;

What application must contain.—1868-'9, c. 116, s. 5.

(2.) The cause or pretence of such imprisonment or restraint, according to the knowledge or belief of the applicant;

(3.) If the imprisonment is by virtue of any warrant or other process, a copy thereof shall be annexed, or it shall be made to appear that a copy thereof has been demanded and refused, or that for some sufficient reason a demand of such copy could not be made;

(4.) If the imprisonment or restraint be alleged to be illegal, the application must state in what the alleged illegality consists; and that the legality of the imprisonment or restraint has not been already adjudged, upon a prior writ of *habeas corpus*, to the knowledge or belief of the applicant.

(5.) The facts set forth in the complaint must be verified by the oath of the applicant, or by that of some other credible witness, which oath may be administered by any person authorized by law to take affidavits.

When the writ must be granted.—1868-'9, c. 116, s. 6.

6. Any court or judge empowered to grant the writ, to whom such application may be presented, shall grant the writ without delay, unless it appear from the application itself, or from the documents annexed, that the person applying, or for whose benefit it is intended, is, by the provisions of this chapter, prohibited from prosecuting the writ.

Defect of form.—1868-'9, c. 116, s. 7.

7. No writ of *habeas corpus* shall be disobeyed on account of any defect of form.

When the writ sufficient.—1868-'9, c. 116, s. 8.

8. It shall be sufficient:

(1.) If the person having the custody of the party imprisoned or restrained, be designated either by his name of office, if he have any, or by his own name, or if both such names be unknown or uncertain, he may be described by an assumed appellation, and any one who may be served with the writ, shall be deemed the person to whom it is directed, although it may be directed to him by a wrong name, or description, or to another person;

(2.) If the person who is directed to be produced, be designated by name, or if his name be uncertain or unknown, he may be described by an assumed appellation, or in any other way, so as to designate the person intended;

Penalty for refusal to grant the writ.—1868-'9, c. 116, s. 9.

9. If any Judge authorized by the provisions of this chapter to grant writs of *habeas corpus*, shall refuse to grant such writ when legally applied for, every such Judge shall forfeit to the party aggrieved two thousand five hundred dollars.

Writ may issue without application, when.—1868-'9, c. 116, s. 10.

10. Whenever the Supreme or Superior Court, or any judge of either, shall have evidence from any judicial proceeding before such court or judge, that any person within this State is illegally imprisoned or restrained of his liberty, it shall be the duty of said court or judge to issue a writ of *habeas corpus* for his relief, although no application be made for such writ.

The return, and what to contain.—1868-'9, c. 116, s. 11.

11. The person or officer on whom the writ is served, must make a return thereto in writing, and, except where such person shall be a sworn public officer, and shall make his return in his official capacity, it must be verified by his oath. The return must state plainly and unequivocally:

(1.) Whether he have or have not, the party in his custody or under his power or restraint;

(2.) If he have the party in his custody or power, or under his restraint, the authority and the cause of such imprisonment or restraint, setting forth the same at large;

(3.) If the party be detained by virtue of any writ, warrant, or other written authority, a copy thereof shall be annexed to the return; and the original shall be produced and exhibited on the return of the writ to the court or judge, before whom the same is returnable;

(4.) If the person or officer upon whom such writ is served, shall have had the party in his power or custody, or under his restraint, at any time prior or subsequent to the date of the writ, but has transferred such custody or restraint to another, the return shall state particularly, to whom, at what time, for what cause and by what authority, such transfer took place.

12. When it appears from the return to the writ, that the party named therein is in custody on any process, or by reason of any claim of right, under which any other person has an interest in continuing his imprisonment or restraint, no order shall be made for his discharge, until it shall appear that the person so interested, or his attorney, if he have one, shall have had reasonable notice of the time and place at which such writ is returnable.

Notice to parties interested.—1868-'9, c. 116, s. 12.
1870-'1, c. 221, s. 1.

13. When it appears from the return that such party is detained upon any criminal accusation, the court or judge may, if he thinks proper, make no order for the discharge of such party until sufficient notice of the time and place at which the writ shall have been returned, or shall be made returnable, be given to the District Solicitor of the county in which the person prosecuting the writ is detained.

Notice to District Solicitor.—1868-'9, c. 116, s. 13.

14. If the writ require it, the officer or person, on whom the same has been served, shall also produce the body of the party in his custody or power, according to the command of the writ, except in the case of the sickness of such party, as hereinafter provided.

Production of the body.—1868-'9, c. 116, s. 14.

15. If the person or officer, on whom any writ of *habeas corpus* shall have been duly served, shall refuse or neglect to obey the same, by producing the body of the party, named or described therein, and by making a full and explicit return thereto, within the time required, and no sufficient excuse be shown, for such refusal or neglect, it shall be the duty of the court or judge, before whom the writ shall have been made returnable, upon due proof of the service thereof, forthwith to issue an attachment against such person or officer, directed to the Sheriff of any county within this State, and commanding him forthwith to apprehend such person or officer, and bring him immediately before such court or judge, and on being so brought, such person or officer shall be committed to close custody, in the jail of the county where such court or judge may be, without being allowed the liberties thereof, until such person or officer make return to such writ and comply with any order that may be made by such court or judge in relation to the party, for whose relief the writ shall have been issued.

Attachment on failure to obey the writ.—1868-'9, c. 116, s. 15.

16. If any judge shall wilfully refuse to grant the writ of attachment as provided for in the preceding section, he shall be liable to impeachment, and moreover shall forfeit to the party aggrieved twenty-five hundred dollars.

Penalty for refusing attachment.—1870-'1, c. 221, s. 2.

17. If a Sheriff shall have neglected to return the writ, agreeably to the command thereof, the attachment against him may be directed to the Coroner or to any other person to be designated therein, who shall have power to execute the same, and such Sheriff, upon being brought up, may be committed to the jail of any county other than his own.

Where a sheriff fails to return.—1868-'9, c. 216, s. 16.

18. The court or judge, by whom any such attachment may be issued, may also at the same time, or afterwards, direct a precept to any sheriff, coroner, or other person to be designated therein, commanding him to bring forthwith, before such court

Precept to bring up party detained.—1868-'9, c. 116, s. 17.

or judge, the party, wherever to be found, for whose benefit the writ of *habeas corpus* shall have been granted.

Penalty for refusing to grant the precept.—1870-'71, c. 221, s. 3.

19. If any judge shall refuse to grant the precept provided for in section eighteen of this chapter, he shall be liable to impeachment, and moreover shall forfeit to the party aggrieved twenty-five hundred dollars.

Penalty for conniving, &c., at any insufficient return, &c.—1870-'71, c. 221, s. 4.

20. If any judge shall grant the attachment provided for in section fifteen of this chapter, or the precept provided for in section eighteen of the same, and shall give the officer or other person charged with the execution of the same verbal or written instructions not to execute the same, or to make any evasive or insufficient return, or any return other than that provided by law; or shall connive at the failing to make any return or any evasive or insufficient return, or any return other than that provided by law, he shall be liable to impeachment, and moreover shall forfeit to the party aggrieved, twenty-five hundred dollars.

Power of the county.—1868-'79, c. 116, s. 18.

21. In the execution of any attachment, precept or writ, under sections fifteen, sixteen and seventeen, the sheriff, coroner, or other person, to whom it may be directed, may call to his aid the power of the county, as in other cases.

Proceedings on the return of the writ.—1868-'79, c. 116, s. 19.

22. The court or judge before whom the party is brought on a writ of *habeas corpus*, shall, immediately after the return thereof, examine into the facts contained in such return, and into the cause of the confinement or restraint of such party, whether the same shall have been upon commitment for any criminal or supposed criminal matter or not; and if issue be taken upon the material facts in the return, or other facts are alleged to show that the imprisonment or detention is illegal, or that the party imprisoned is entitled to his discharge, the court or judge shall proceed, in a summary way, to hear the allegations and proofs on both sides, and to do what to justice shall appertain in delivering, bailing or remanding such party.

Party to be discharged, when.—1868-'79, c. 116, s. 20.

23. If no legal cause be shown for such imprisonment or restraint, or for the continuance thereof, the court or judge shall discharge the party from the custody or restraint under which he is held. But if it appear on the return to the writ, that the party is in custody by virtue of civil process from any court legally constituted, or issued by any officer in the course of judicial proceedings before him, authorized by law, such party can be discharged only in one of the following cases:

(1.) Where the jurisdiction of such court or officer has been exceeded, either as to matter, place, sum or person;

(2.) Where, though the original imprisonment was lawful, yet by some act, omission or event, which has taken place afterwards, the party has become entitled to be discharged;

(3.) Where the process is defective in some matter of substance required by law, rendering such process void;

(4.) Where the process, though in proper form, has been issued in a case not allowed by law;

(5.) Where the person, having the custody of the party

under such process, is not the person empowered by law to detain him ;

(6.) Where the process is not authorized by any judgment, order or decree by any court, nor by any provision of law.

24. It shall be the duty of the court or judge forthwith to remand the party, if it appear that he is detained in custody, either,

Party to be remanded, when.—1868-'9, c. 116, s. 21.

(1.) By virtue of process issued by any court or judge of the United States, in a case where such court or judge has exclusive jurisdiction ;

(2.) By virtue of the final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree ;

(3.) For any contempt specially and plainly charged in the commitment by some court, officer, or body, having authority to commit for the contempt so charged ;

(4.) That the time during which such party may be legally detained has not expired.

25. If it appear that the party has been legally committed for any criminal offence, or if it appear by the testimony offered with the return of the writ, or upon the hearing thereof, that the party is guilty of such an offence, although the commitment be irregular, the court or judge shall proceed to let such party to bail, if the case be bailable and good bail offered ; if not, the court or judge shall forthwith remand such party to the custody, or place him under the restraint from which he was taken : *Provided*, the person or officer, under whose custody or restraint he was, be legally entitled thereto ; if not so entitled, the court or judge shall commit such party to the custody of the officer or person legally entitled thereto.

Party to be bailed or remanded, when.—1868-'9, c. 116, s. 22.

26. Whenever, from the sickness or infirmity of the person directed to be produced by a writ of *habeas corpus*, such person cannot, without danger, be brought before the court or judge, where the writ is made returnable, the party in whose custody he is, may state the fact in his return to the writ ; and if the court or judge be satisfied of the truth of the allegation and the return be otherwise sufficient, the court or judge shall proceed to decide on such return, and to dispose of the matter in the same manner as if the body had been produced.

Proceedings in case of sickness of the party.—1868-'9, c. 116, s. 23.

27. Obedience to a judgment, or order, for the discharge of a prisoner or person restrained of his liberty, pursuant to the provisions of this chapter, may be enforced by the court or judge, by attachment, in the same manner and with the same effect as for a neglect to make return to a writ of *habeas corpus* ; and the person found guilty of such disobedience shall forfeit to the party aggrieved two thousand five hundred dollars, besides any special damages, which such party may have sustained.

Penalty for disobedience to order of discharge.—1868-'9, c. 116, s. 24.

28. No officer or other person, shall be liable to any civil action for obeying such judgment or order of discharge.

Officer not liable civilly for obedience.—1868-'9, c. 116, s. 25.

29. No person who has been set at large upon any writ of *habeas corpus* shall be again imprisoned or detained for the same

Penalty for

committing
for same
cause.—1863-
'9, c. 116, s.
26.

Penalty for
neglecting to
obey the writ,
or for refusing
copy of pro-
cess.—1868-'9,
c. 116, s. 27.

False return.
—1868-'9, c.
116, s. 28.
Penalty for
concealing
party.—1868-
'9, c. 116, s. 29.

Aiders and
abettors.—
1868-'9, c. 116,
s. 30.

Writs return-
able, when.—
1868-'9 c. 116,
s. 31.

By whom
served and
manner of
service.—1868-
'9, c. 116, s. 32

Persons com-
mitted for cap-
ital offences,
when to be
tried or dis-

cause by any person whatsoever, other than by the legal order or process of the court wherein he shall be bound by recognizance to appear, or of any other court having jurisdiction in the case under the penalty of two thousand five hundred dollars to the party aggrieved thereby. And every officer, or other person, who shall knowingly offend against the provisions of this section, shall be deemed also guilty of a misdemeanor.

30. If any person, to whom a writ of *habeas corpus* is directed, shall neglect or refuse to make due return thereto, or to bring the body of the party detained, according to the command of the writ without delay; or shall not, within six hours after demand made therefor, deliver a copy of the commitment or cause of detainer, such person shall, upon conviction by indictment, be fined one thousand dollars, or imprisoned not exceeding twelve months, and if such person be an officer, shall moreover, be removed from office.

31. Every person making a false return to a writ of *habeas corpus*, shall be deemed guilty of a misdemeanor.

32. Any one having in his custody, or under his power, any party, who, by the provisions of this chapter, would be entitled to a writ of *habeas corpus*, or for whose relief such writ shall have been issued, who shall, with intent to elude the service of such writ or to avoid the effect thereof, transfer the party to the custody, or put him under the power or control of another, or shall conceal or change the place of his confinement, shall be deemed guilty of a misdemeanor.

33. Every person who shall knowingly aid or abet in the violation of the last section, shall be deemed guilty of a misdemeanor.

34. Writs of *habeas corpus* may be made returnable at a certain time, or forthwith, as the case may require. If the writ be returnable at a certain time, such return shall be made and the party shall be produced at the time and place specified therein.

35. The writ of *habeas corpus* may be served by any qualified elector of this State, thereto authorized by the court or judge allowing the same. It may be served by delivering the writ, or a copy thereof, to the person to whom it is directed; or, if such person cannot be found, by leaving it, or a copy, at the jail, or other place in which the party, for whose relief it is intended, is confined, with some under officer, or other person of proper age; or, if none such can be found, or if the person attempting to serve the writ be refused admittance, by affixing a copy thereof in some conspicuous place on the outside, either of the dwelling house of the party to whom the writ is directed, or of the place where the party is confined for whose relief it is sued out.

36. When any person, who has been committed for treason or felony, plainly and specially expressed in the warrant of commitment, upon his prayer in open Court to be brought to his trial, shall not be indicted some time in the next term of

the Superior Court ensuing such commitment, the judge of the court, upon notice in open court, on the last day of the term, shall set at liberty such prisoner upon bail, unless it appear on oath that the witnesses for the State could not be produced at the same term; and if such prisoner, upon his prayer as aforesaid, shall not be indicted and tried at the second term of the court, he shall be discharged from his imprisonment.

37. Any party to a proceeding on a writ of *habeas corpus* may procure the attendance of witnesses at the hearing, by subpœna, to be issued by the clerk of any Superior Court, under the same rules, regulations and penalties prescribed by law in other cases.

38. The costs on a writ of *habeas corpus* may be awarded at the discretion of the court or judge who shall hear the same; and he may direct what officer shall tax such costs; and execution may issue therefor as in other cases.

39. When a contest shall arise on a writ of *habeas corpus* between any husband and wife, who are living in a state of separation, without being divorced, in respect of the custody of their children, the court or judge, on the return of such writ, may award the charge or custody of the child or children, so brought before it, either to the husband or to the wife, for such time, under such regulations and restrictions and with such provisions and directions as will, in the opinion of such court or judge, best promote the interest and welfare of the children. At any time after the making of such orders the court or judge may, on good cause shown, annul, vary or modify the same.

40. Every Court of record shall have power, upon the application of any party to any suit or proceeding, civil or criminal, pending in such court, to issue a writ of *habeas corpus*, for the purpose of bringing before the said court any prisoner, who may be detained in any jail or prison within the State, for any cause, except such prisoner be under sentence for a felony, to be examined as a witness in such suit or proceeding, in behalf of the party making the application.

41. Such writ of *habeas corpus* may be issued by any Justice of the Peace or Judge of Probate upon application as provided in the last section, to bring any person confined in the jail or prison of the same county where such Justice or Judge of Probate may reside, to be examined as a witness before such Justice or Judge of Probate. And in cases where the testimony of any prisoner is needed in a proceeding before a Justice of the Peace, or a Judge of Probate, and such person be confined in a county in which such Justice or Judge of Probate does not reside, application for a *habeas corpus* to testify may be made to the Judge of the district in which the county is located.

42. The application for the writ shall be made by the party to the suit or proceeding in which the writ is required, or by his agent or attorney. It must be verified by the applicant, and shall state:

charged.—
1868-'9, c. 116,
s. 33.

Subpœnas for
witnesses.—
1868-'9, c. 116,
s. 34.

Costs.—1868-
'9, c. 116, s. 35.

Custody and
disposition of
infants in cer-
tain cases.—
1868-'9, c. 116,
s. 36.
1858-'9, c. 55.

*Habeas corpus
ad testifican-
dum.*—1868-'9,
c. 116, s. 37.

Justices of the
Peace and
Judges of Pro-
bate.—1868-'9,
c. 116, s. 38.

Application
and what to
contain.—1868-
'9, c. 116, s.
39.

(1.) The title and nature of the suit or proceeding in regard to which the testimony of such prisoner is desired ;

(2.) That the testimony of such prisoner is material and necessary to such party on the trial or hearing of such suit or proceeding, as he is advised by counsel and verily believes.

Service of writ
and by whom.
—1868-'9, c.
116, s. 40.

43. The writ of *habeas corpus* to testify shall be served by the same person, and in like manner in all respects, and enforced by the court or officer issuing the same as prescribed in this chapter for the service and enforcement of the writ of *habeas corpus cum causa*.

Fees and bond
on service.—
1868-'9, c. 116,
s. 41.

44. The service of the writ shall not be complete, however, unless the applicant for the same shall tender to the person in whose custody the prisoner may be, if such person be a sheriff, coroner, constable or marshal, the fees and expenses allowed by law for bringing such prisoner, nor unless he shall also give bond, with sufficient security, to such sheriff, coroner, constable or marshal, as the case may be, conditioned that such applicant will pay the charges of carrying back such prisoner.

Duty of of-
ficers.—1868-
'9, c. 116, s. 42.

45. It shall be the duty of the officer to whom the writ is delivered or upon whom it is served, whether such writ be directed to him or not, upon payment or tender of the charges allowed by law, and the delivery or tender of the bond herein prescribed, to obey and return such writ according to the exigency thereof upon pain, on refusal or neglect, to forfeit to the party, on whose application the same shall have been issued, the sum of five hundred dollars.

Prisoner to be
remanded.—
1868-'9, c. 116,
s. 43.

46. After having testified, the prisoner shall be remanded to the prison from which he was taken.

SECTION 40. 68 N. C., 63.

CHAPTER 55.

HOMESTEADS AND PERSONAL PROPERTY EX- EMPTION.

SECTION

1. Homestead, when and how exempted.
2. Sheriff to summon appraisers.
3. Duty of appraisers.
4. Appraisers to make return.
5. Levy to be made on excess.
6. Appraisers to elect.
7. Assessors to be appointed.
8. Assessors to set apart property.
9. Register to endorse, &c.

SECTION

10. When persons die without having set apart homestead.
11. Petition to be filed, &c.
12. Appraisal of personal property.
13. Return of same.
14. Who to be appraisers.
15. Tracts not contiguous included.
16. Costs, how charged.
17. Liability of officer.
18. Liability of appraiser.

SECTION

19. Liability for misdemeanor.
20. Judgment creditor dissatisfied.
21. Who disqualified to act as appraiser
22. When exemption made or reallocated.
23. Costs of reassessment, how paid.
24. How vacated. Proviso.

SECTION

25. Fees of appraisers, &c.
26. Not to sell reversionary interest. Proviso.
27. Misdemeanor and penalty for selling.
28. Forms.

1. WHENEVER the real estate of any resident of this State shall be levied on, by virtue of any execution or other final process obtained on any debt, such portion thereof as may be occupied by the owner as an actual homestead, and which he may then elect to regard as such, including the dwelling and buildings thereon, shall be exempt from such levy, except under an execution or other final process issued for the collection of a debt contracted :

Homestead, when and how exempted.—1868-'9, c. 137, s. 1.

- (1.) For purchase of said homestead ;
- (2.) For such work and labor done for the owner of the homestead as may constitute a laborer's lien ;
- (3.) For such labor done on the premises as may constitute a mechanic's lien ;
- (4.) For taxes accruing on said homestead.

2. Before levying upon any homestead thus owned and occupied, the sheriff or other officer charged with such levy, shall summon three discreet persons qualified to act as jurors, to whom he shall administer the following oath : " I, A. B., do solemnly swear (or affirm) that I have no interest, near or remote, in the homestead exemption of C. D., and that I will faithfully perform the duties of appraiser (or assessor, as the case may be,) in valuing and laying off the same. So help me God."

Sheriff to summon appraisers.—1868-'9, c. 137, s. 2.

3. The said appraisers shall thereupon proceed to value the homestead, with its dwelling and buildings thereon, and lay off to said owner such portion as he may select, or any agent, attorney, or other person in his behalf, not exceeding in value one thousand dollars, and to fix and describe the same by metes and bounds.

Duty of appraisers.—1868-'9, c. 137, s. 3.

4. They shall then make and sign in the presence of the officer a return of their proceedings, setting forth the property exempted, which shall be returned by the officer to the clerk of the court for the county in which the homestead is situated and filed with the judgment roll in the action, and a minute of the same entered on the judgment docket.

Appraisers to make return.—1868-'9, c. 137, s. 4.

5. The levy may be made upon the excess of the homestead, not laid off according to the provisions of this chapter, and the officer shall make substantially the following return upon the execution : " A. B., C. D., and E. F., summoned and qualified as appraisers or assessors, (as the case may be,) who set off to X. Y., the homestead exempt by law. Levy made upon the excess."

The levy to be made on the excess.—1868-'9, c. 137, s. 5.

6. In case no election is made by the owner, his agent, or

Appraisers to elect.—1868-'9, c. 137, s. 6.

attorney, or any one acting in his behalf, of the homestead, to be laid off as exempt, the appraisers shall make such election for him, including always the dwelling and buildings used therewith.

Assessors to be appointed.—1868-'9, c. 137, s. 7.

7. Whenever any resident of this State may desire to take the benefit of the homestead and personal property exemption as guaranteed by article ten of the Constitution of this State, such resident (or his agent or attorney,) shall apply to any justice of the peace of the county in which he resides, and said justice of the peace shall appoint as assessors, three disinterested person, qualified to act as jurors residing in said county, who shall, on notice by order of said justice, meet at the applicant's residence, and, after taking the oath prescribed in section two of this chapter for appraisers before some officer authorized to administer an oath, lay off and allot to the applicant a homestead with metes and bounds, according to the applicant's direction, not to exceed one thousand dollars in value, and make and sign a descriptive account of the same and return it to the office of the register of deeds.

Assessors to set apart property.—1868-'9, c. 137, s. 8.

8. Said assessors shall set apart of the personal property of said applicant, to be by him selected, articles of personalty not exceeding in value the sum of five hundred dollars, and make and sign a descriptive list thereof, and return the same to the register of deeds.

Register to endorse, &c.—1868-'9, c. 137, s. 9.

9. It shall be the duty of the register of deeds to endorse on each of said returns the date when received for registration, and to cause the same to be registered without unnecessary delay. The said register shall receive for registering the said returns the same fees that may be allowed him by law for other similar or equivalent services, which fees shall be paid by said resident applicant (or his agent or attorney) upon the reception of said returns by the register.

When persons die without having set apart homestead.—1868-'9, c. 137, s. 10.

10. If any person entitled to a homestead and personal property exemption, die without having had the same set apart, his widow, if he leave one, then his child and children under the age of twenty-one years, if he leave such, may proceed to have said homestead and personal property exemption laid off to her, him or them, according to the provisions of sections seven and eight of this chapter.

Petition to be filed, &c.—1868-'9, c. 137, s. 11.

11. When any person entitled to a homestead and personal property exemption, shall file his or her petition before a justice of the peace to have the same laid off and set apart under the provisions of sections seven, eight, nine and ten of this chapter, the said justice shall make advertisement at the courthouse door of the county in which the petition is filed, notifying all creditors of said applicant of the time and place when and where the said petition will be heard; and the same shall not be heard nor any decree made in the cause in less than six months nor more than twelve, from the day of making advertisement as above required.

Appraisal of personal prop-

12. Whenever the personal property of any resident of this State shall be levied upon by virtue of any execution or other

final process issued for the collection of any debt, and the owner or any agent, or attorney in his behalf, shall demand that the same, or any part thereof, shall be exempted from sale under such execution, the sheriff or other officer making such levy, shall summon three appraisers, as heretofore provided, who, having been first duly sworn, shall appraise and lay off to the judgment debtor such articles of personal property as he, or another in his behalf, select, to the value of five hundred dollars, which articles shall be exempt from said levy.

erty.—1868-'9,
c. 137, s. 12.

13. Return shall be made of such appraisal and setting off of personal property, in the same manner as is required in section four of this chapter, upon the laying off of a homestead exemption.

Return of the
same.—1868-
'9, c. 137, s. 13.

14. The persons summoned to appraise the personal property exemption shall take the same oath and be entitled to the same fees as the appraisers of the homestead, and when both exemptions are claimed by the judgment debtor, at the same time, one board of appraisers shall lay off both and be entitled to but one fee.

Who to be ap-
praisers.—
1868-'9, c. 137,
s. 14.

15. Different tracts or parcels of land not contiguous may be included in the same homestead, when a homestead of contiguous lands is not of the value of one thousand dollars.

Tracts not
contiguous in-
cluded.—1868-
'9, c. 137, s. 15.

16. The costs and expenses of appraising and laying off the homestead or personal property exemptions, when the same is made under execution, shall be charged and included in the officer's bill of fees upon such execution or other final process; and when made upon the petition of the owner they shall be paid by such owner, and the latter costs shall be a lien on said homestead.

Costs, how
charged.—
1868-'9, c. 137,
s. 16.

17. Any officer making a levy, who shall refuse or neglect to summon and qualify appraisers as heretofore provided for, or who shall fail to make due return of their proceedings, or who shall levy upon the homestead set off by said appraisers or assessors, (as the case may be,) except as herein provided, shall be liable to indictment for a misdemeanor, and he and his sureties shall be liable to the owner of said homestead for all costs and damages in a civil action.

Liability of ap-
praiser.—1868-
'9, c. 137, s. 17.

18. Any officer or appraiser or assessor, (as the case may be,) who shall wilfully or corruptly conspire with any judgment debtor, or other appraiser or assessor, (as the case may be,) to undervalue the homestead or personal property exemption of such debtor, or shall assign false metes and bounds, or make or procure to be made a false and fraudulent return thereof, shall be liable to indictment for a misdemeanor, and shall be answerable to the judgment creditor for all costs and damages in a civil action.

Liability of
appraiser.—1868-
'9, c. 137, s. 18.

19. Any officer or appraiser or assessor who shall wilfully or corruptly conspire with any judgment creditor, or other appraiser or assessor, to overvalue the homestead or personal property exemption of any debtor or applicant, or shall assign false metes and boundaries, or make, or procure to be made, false

Liable for
misdemeanor.
—1868-'9, c.
137, s. 19.

and fraudulent return thereof, shall be liable to indictment for a misdemeanor, and shall be answerable to the party injured, for all costs and damages in a civil action.

Judgment creditor dissatisfied.—1868-'9, c. 137, s. 20.

20. If the judgment creditor for whom the levy is made, or judgment debtor or person entitled to homestead exemption, shall be dissatisfied with the valuation and allotment of the appraisers or assessors, (as the case may be,) he may, within ten days thereafter, or any other judgment creditor within six months, and before sale under execution of the excess, notify the clerk of the township thereof and file with him a transcript of the return of the appraisers or assessors, (as the case may be,) and thereupon the clerk shall notify the other trustees of the township to meet him, at a time specified, within ten days, on the premises, to reassess and allot said homestead. At the time specified, the trustees shall meet on the premises, and, having first taken the oath prescribed for appraisers, they shall view and examine the homestead laid off, and make their report as required in section twenty-two of this chapter.

Who disqualified to act as appraisers.—1868-'9, c. 137, s. 21.

21. If any trustee, or any person summoned as an appraiser, shall be related by blood or marriage to the debtor or judgment creditor, or shall be a party in interest in any action against the former, he shall be disqualified to serve in the valuation of the homestead or personal property exemption, and another person qualified to act as juror shall be summoned and qualified in his place.

When exemption made or reallocated.—1868-'9, c. 137, s. 22.

22. When the homestead or personal property exemption is made or reallocated on the petition of the person entitled thereto, the township trustees shall make their report as required in section twenty of this chapter, to the register of deeds, specifying what changes, if any, they have made in the former valuation and allotment, who shall register the same as required in section nine, and when said homestead and personal property exemption is made or reallocated, under execution by a judgment creditor, the township trustees shall make said return to the Clerk of the Superior Court, who shall file the same and make a minute thereof on the judgment roll and the execution docket.

Cost of reassessment, how paid.—1868-'9, c. 137, s. 23.

23. If the board of trustees shall confirm the former appraisal or shall increase the exemption allowed the judgment debtor, the levy shall stand only upon the excess remaining, and the judgment creditor shall pay all costs of the reallocation. If they shall reduce the amount allowed the judgment debtor, the costs shall follow the execution, and the levy shall cover the excess then remaining.

How vacated.—1868-'9, c. 137, s. 24.

24. Any appraisal or allotment by the trustees of a township may be set aside, on application of any party interested, for fraud, complicity or other irregularity. The proceedings shall be upon petition, as in other special proceedings, and the applicant shall give bond to the opposing party for costs and damages: *Provided*, that where any person has had his homestead laid off in accordance with the provisions of sections two and

Proviso.—1872-'3, c. 105.

three of this chapter, the said homestead shall not thereafter be vacated, set aside or again laid off by any other judgment creditors for whom a levy shall be made, except for fraud, complicity or other irregularity.

25. The following fees and no other shall be charged in this proceeding: Fees of appraisers, &c.—1868-'9, c. 187, s. 25.

Each appraiser, for laying off homestead or personal property exemption, or both, one dollar.

Officer, for summoning and qualifying appraisers and delivering return to clerk, one dollar. Summoning appraiser.

Clerk of Superior Court, for filing return and entering minute on execution docket, twenty-five cents.

For making transcripts for township clerk, when required to do so, fifty cents.

Township clerk, for summoning trustees, fifty cents.

Township clerk, for transmitting return, twenty-five cents.

26. It shall not be lawful to levy or sell under execution for any debt the reversionary interest in any lands included in a homestead until after the termination of the homestead interest itself: *Provided*, that the statute of limitations shall not run against any debt owing by the holder of the homestead affected by this section, during the existence of his interest in the homestead. Not lawful to sell reversionary interest.—1869-'70, c. 121, s. 1.

27. Any officer or person whatsoever selling such reversionary interest to satisfy an execution for any debt, or otherwise violating the prohibitions of the preceding section, shall be guilty of a misdemeanor and on conviction thereof shall be punished by fine not exceeding five hundred dollars, and imprisonment not exceeding six months, either or both, at the discretion of the court. Misdemeanor and penalty for selling.—1869-'70, c. 121 s. 2.

28. The following forms shall be substantially followed in proceedings under this chapter: Forms.—1868-'9, c. 137, s. 27.

[No. 1.]

I. APPRAISERS' RETURN.

I. WHEN THE HOMESTEAD IS VALUED AT LESS THAN ONE THOUSAND DOLLARS, AND PERSONAL PROPERTY ALSO APPRAISED.

The undersigned having been duly summoned, and sworn to act as appraisers of the homestead and personal property exemptions of A. B., of Township, County, by C. D., Sheriff (or constable or deputy,) of said county, do hereby make the following return: We have viewed and appraised the homestead of the said A. B., and the dwellings and buildings thereon, owned and occupied by said A. B. as a homestead, to be one thousand dollars (or any less sum) and that the entire tract, bounded by the lands of and is therefore exempted from sale under execution according to law. At the same time and place we viewed and appraised at the values Form of appraisers' return.

annexed, the following articles of personal property, selected by said A. B. (*Here specify the articles and their value, to be selected by the debtor or his agent*), which we declare to be a fair valuation, and that the said articles are exempt under said execution. We hereby certify that we are not related by blood or marriage to the judgment debtor or the judgment creditor in this execution, and have no interest, near or remote, in the above exemptions.

Given under our hands and seals, this.... day of 18...

O. K. (*L. S.*)

L. M. (*L. S.*)

R. S. (*L. S.*)

The above return was made and subscribed in my presence, day and date above given.

C. D., (Sheriff or Constable.)

[No. 2.]

II. PETITION FOR HOMESTEAD BEFORE A JUSTICE OF THE PEACE.

In the matter of A. B.	}	Before..... <i>J. P.</i> County.
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Form of petition.

A. B. respectfully shows that he, (she or they, *as the case may be*), is (or are) entitled to a homestead exempt from execution in certain real estate in said county, and bounded and described as follows: (*Here describe the property.*) The true value of which he (she or they, *as the case may be*), believes to be one thousand dollars, including the dwelling and buildings thereon. He (she or they) further shows, that he (she or they, *as the case may be*), is (or are) entitled to a personal property exemption from execution, to the value of (*here state the value*) consisting of the following property: (*Here specify.*) He (she or they, *as the case may be*), therefore prays your worship to appoint three disinterested persons qualified to act as jurors, as assessors, to view the premises, allot and set apart to your petitioner his homestead and personal property exemption, and report according to law.

Personal property appraised

The undersigned having been duly summoned and sworn to act as appraisers of the personal property of A. B., of.... Township, County, and to lay off the exemption given by law thereto, by C. D. (Sheriff or other officer,) of said county, do hereby make and subscribe the following return:

We viewed and appraised at the values annexed the following articles of personal property selected by the said A. B., to wit:

..... which we declare to be a fair valuation, and that said articles are exempt under said execution.

We hereby certify, each for himself, that we are not related by blood or marriage, to the judgment debtor or judgment creditor in this execution, and have no interest, near or remote, in the above exemptions.

Given under our hands and seals, this day of, 18..

O. K., (*L. S.*)

L. M., (*L. S.*)

R. S., (*L. S.*)

The above return was made and subscribed in my presence, day and date above given.

C. D., (Sheriff or Constable.)

[No. 4.]

IV. CERTIFICATE OF QUALIFICATION TO BE ENDORSED ON RETURN
BY SHERIFF.

The within named B. F., G. H. and J. R. were summoned and qualified according to law, as appraisers of the exemption of the said A. B., under an execution in favor of X. Y., this day of 18..

Form of certificate by Sheriff.

C. D., (Sheriff.)

[No. 5.]

V. MINUTE ON EXAMINATION DOCKET.

X.... Y....
vs.
A.... B....

Execution issued..... 18....

Homestead appraised and set off and return made 18....

Form of minute on docket.

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- SECTION 1. 64 N. C. 25; 66 N. C. 164; Ib. 206.
SEC. 2. 65 N. C. 20.
SEC. 8. 68 N. C. 482.
SEC. 10. 66 N. C. 197.
SEC. 15. 67 N. C. 295.
SEC. 26. 65 N. C. 447.

CHAPTER 56.

HUNTING.

SECTION

1. Penalty for hunting on land of another after advertisement forbidding it.
2. Penalty for hunting or killing deer.

SECTION

3. School committee can sue for damages.
4. What counties to apply to.

Penalty for hunting on land of another after advertisement forbidding it.—R. C., c. 16, s. 4.

1. If any person shall hunt, with a 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 or killing deer.—1871-'2, c. 68, s. 1.

2. If any person shall hunt for with gun, or chase with a dog, or shall kill or destroy any deer running wild in the woods, between the fifteenth day of January and the first day of September next thereafter ensuing, unless in an enclosure surrounded by a sufficient fence, at least five feet high, and where such person shall have a lawful right so to do, the person so offending shall pay a penalty of fifty dollars for each and every offense to any person or persons suing for the same, one half for his use and the other for the use of the public school or schools of the school district or districts wherein the offense is committed, and the offender shall be deemed guilty of a misdemeanor, and on conviction shall pay a fine of not less than ten dollars, or be imprisoned, or both, at the discretion of the court.

School committees can sue for damages.—1871-'2, c. 68, s. 2.

3. In the event that no one has brought a prior suit, and prosecuted the same in good faith for the penalty prescribed in the preceding section, it shall be the duty of the school committee of any township where the said offense shall be committed, to sue for the same, and the whole of their recovery shall be to themselves for the use of their school district. And it shall further be their duty to cause any person so offending to be prosecuted, by indictment for such offense.

What counties to apply to.—1872-'3, c. 40.

4. Sections two and three of this chapter shall only apply to the counties of Clay, Cherokee, Macon, Jackson, Haywood, Transylvania and Randolph.

CHAPTER 57.

IDIOTS AND LUNATICS.

SECTION

1. Inquisition of lunacy.
2. Proceedings on application for guardianship.
3. How to proceed in case of persons confined in Insane Asylum.
4. Letters of appointment.
5. Person and estate may be committed to different persons.
6. Sale of estate ordered by county commissioners, when.
7. How and for what purpose courts of probate may order sale of their estate. Heirs and next of kin to be parties. Proceeds, how applied and secured. How descend, &c.
8. Estates without guardian managed by court of probate.
9. Proceedings when imprisoned for crime.
10. Tried on becoming sane.
11. Surplus income of insane persons

SECTION

- may be advanced in certain cases to next of kin.
12. Purposes for which such advancement may be made. To whom paid.
13. All persons interested made parties.
14. Rules to be observed by the court.
15. Court may select the persons to be advanced.
16. Advancements secured against waste.
17. Appeal and removal to Superior Court.
18. Of what kind of insane persons advancements to be made of their estates.
19. Decrees for advancement suspended on restoration to sanity.
20. What may be done when lunatic *feme* is abandoned by her husband.
21. Assignments by husband void.

1. ANY person in behalf of one who is deemed an idiot, inebriate or lunatic, or incompetent from want of understanding to manage his own affairs, by reason of the excessive use of intoxicating drinks, or other cause, may file a petition before the Judge of Probate of the county where such supposed idiot, inebriate or lunatic resides, setting forth the facts, duly verified by the oath of the petitioner. Whereupon such Judge of Probate shall issue an order, upon notice to the supposed idiot, inebriate or lunatic, to the Sheriff of the county, commanding him to summon a jury of twelve men to inquire into the state of such supposed idiot, inebriate or lunatic. The jury shall make return of their proceedings under their hands to the Judge of Probate, who shall file and record the same; and he shall proceed to appoint a guardian of any person so found to be an idiot, inebriate or lunatic, by inquisition of a jury, as in cases of orphans.

Inquisition of lunacy.—C. C. P., s. 473.

2. On application to any Judge of Probate for the custody and guardianship of any idiot, inebriate or lunatic, it is the duty of such Judge of Probate to inform himself of the circumstances of the case on the oath of the applicant or of any other person: and if none of the relatives of the idiot, inebriate or lunatic are present at such application the Probate Judge must assign, or for any other good cause he may assign, a day for the hearing; and he shall thereupon direct notice thereof to be given to such of the relatives and to such other

Proceeding on application for guardianship.—C. C. P., s. 474.

persons, if any, as he may deem it proper to notify. On the hearing he shall ascertain, on oath, the amount of property, real and personal, of the idiot, inebriate or lunatic, and the value of the rents and profits of the real estate, and he may grant or refuse the application or commit the guardianship to some other person, as he may think best for the idiot, inebriate or lunatic.

How to proceed in case of persons confined in Lunatic Asylum.—1860-'1, c. 30.

3. If any person be confined in any asylum for lunatics and insane persons, the certificate of the superintendent of such asylum declaring such person to be of insane mind and memory, which certificate shall be sworn to and subscribed before the Probate Judge of the county in which such asylum is situated, and certified under the seal of court, shall be sufficient evidence to authorize the Judge of Probate to appoint a guardian for such idiot, lunatic or person of insane memory.

Letters of appointment.—C. C. P., s. 475.

4. The Judge of Probate must issue to every guardian appointed by him under this chapter, a letter of appointment, which shall be signed by him and sealed with the seal of his office.

Person and estate may be committed to different persons.—R. C., c. 57, s. 3.

5. 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.

Sale of their estates ordered by county commissioners, when.—R. C., c. 57, s. 4.

6. Whenever it shall appear to any Judge of Probate, by report of 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 Judge of Probate 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 he 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 for such purpose.

How and for what purpose courts of probate may order a sale of their estates.

7. Whenever it shall appear to the Court of Probate, 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 order 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

Heirs and next of kin to be parties.

presumptive heirs of such nonsane person. And if on the hearing, the court shall order 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 infants' estate decreed in like cases to be sold on application of their guardians, as directed in the chapter entitled "Guardian and Ward."

Proceeds, how applied and secured; how descend, &c.—R. C., c. 57, s. 5.

8. Whenever any person is declared to be of nonsane mind, and for whom no suitable person will act as guardian, the Court of Probate shall secure the estate of such person according to the provisions of the law relating to orphans whose guardians have been removed by the Probate Court.

Estates without guardian, managed by court of probate.—R. C., c. 57, s. 6.

9. 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 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.

Proceedings when imprisoned for crime.—R. C., c. 57, s. 7.

10. No such proceedings shall prevent the trial of such person upon his becoming sane.

Tried on becoming sane.—R. C., c. 57, s. 8.

11. 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 necessities and suitable comforts of life, it may be lawful for the Probate Court for the county in which such person shall have his residence to order from time to time, and so 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.

Surplus income of insane persons may be advanced in certain cases to next of kin.—R. C., c. 57, s. 9.

12. Such advancements shall be ordered 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 ordered 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.

Purposes for which such advancements may be made.—R. C., c. 57, s. 10.

To whom paid.

13. 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.

All persons interested made parties.—R. C., c. 57, s. 11.

14. The court in ordering such advancements, shall as far

Rule to be ob-

served by the court.—R. C., c. 57, s. 12.

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.

Court may select the persons to be advanced.—R. C., c. 57, s. 13.

15. 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.

Advancements secured against waste.—R. C., c. 57, s. 14.

16. 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.

Appeal and removal to superior court allowed.—R. C., c. 57, s. 15. Of what kind of insane persons advancements to be made of their estates.—R. C., c. 57, s. 16. Decrees for advancements suspended on restoration to sanity.—R. C., c. 57, s. 17.

17. Any person made a party may appeal from any order of the court; or may, when the pleadings are finished, require that all further proceedings shall be had in the Superior Court.

18. 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.

What may be done when lunatic *feme covert* is abandoned by her husband.—1858-9, ch. 52, s. 1.

19. Upon such insane person being restored to sanity, every order made for advancements shall cease to be further executed, and his estate shall be discharged of the same.

20. Whenever any *feme covert* lunatic shall be abandoned by her husband, she may by her committee, or next friend, in case there be no committee, apply to a Probate Court for support and maintenance, which the court may decree as in cases of alimony, out of any property or estate of her husband, or of her own choses in action, legacies or distributive shares.

Assignments by husband void.—1858-9, c. 52, s. 2.

21. All assignments by the husband, after the lunacy of the wife, of her choses in action, legacies or distributive shares, shall be void as against such provision.

CHAPTER 58.

IMPEACHMENT.

SECTION

1. Trial court of impeachment.
2. Quorum.
3. Exhibition of articles.
4. Powers of the court.
5. Powers of the presiding officer.
6. When Chief Justice to preside.
7. Process against the accused to appear and answer.
8. Accused entitled to counsel.
9. What done when issue is joined.

SECTION

10. Oath of members.
11. Two-thirds required to convict.
12. Judgment upon conviction.
13. Officers suspended by impeachment.
14. Impeachment of the President of the Senate.
15. Indictment after conviction.
16. For what offences officers liable to be impeached.

1. THE court for the trial of impeachment shall be the Senate. Trial court of impeachment.—
 2. A majority of the members shall be necessary to a quorum. 1868-'9, c. 168, s. 1.
 3. All impeachments must be delivered by the House of Representatives to the presiding officer of the Senate, who shall thereupon cause proclamation to be made in the following words, viz: "All persons are commanded to keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of North Carolina articles of impeachment against". After which the articles shall be exhibited, and then the presiding officer of the Senate shall inform the House of Representatives that the Senate will take proper order on the subject of impeachment, of which due notice shall be given to the House of Representatives. Quorum.—1868-'9, c. 168, s. 2.
 Exhibition of articles.—1868-'9, c. 168, s. 3.

4. The Senate, as a court, shall have power to compel the attendance of parties and witnesses, to enforce obedience to its orders, mandates, writs, precepts and judgments, to preserve order, to punish, in a summary way, contempts of its authority, orders, mandates, writs, precepts or judgments, to adjourn from time to time, and to make all lawful rules and regulations which it may deem essential or conducive to the ends of justice. Powers of the court.—1868-'9, c. 168, s. 4.

5. The presiding officer of the Senate shall have power:

(1.) To direct all necessary preparations in the Senate chamber; Powers of the presiding officer.—1868-'9, c. 168, s. 5.

(2.) To make and issue by himself or by the clerk of the Senate all orders, mandates, writs and precepts authorized by law or by the Senate;

(3.) To direct all the forms of procedure during the trial not otherwise specially provided for;

(4.) To decide in the first instance, without a division, all questions of evidence and incidental questions, but the same shall, on demand of one-fifth of the members present, be decided by yeas and nays.

6. When the Governor of the State, or Lieutenant-Governor, upon whom the powers and duties of the office of Governor have devolved, is impeached, the Chief-Justice of the Supreme When chief justice to preside.—1868-'9, c. 168, s. 6.

Court shall preside; and in a case requiring the Chief Justice to preside, notice shall be given him, by order of the Senate, of the time and place fixed for the consideration of the articles of impeachment, with a request to attend; and the Chief-Justice shall preside over the Senate during the consideration of said articles, and upon the trial of the person impeached therein. But the Chief-Justice shall not vote on any question during the trial, and shall pronounce decision only as the organ of the Senate with its assent.

Process
against the ac-
cused to ap-
pear and an-
swer.—
1868-'9, c. 168,
s. 7.

7. The Senate, upon the presentation of articles of impeachment and its organization as a court, shall forthwith cause the person impeached to appear and answer the articles exhibited either in person or by attorney; he shall be entitled to a copy of the impeachment and have a reasonable time to answer the same.

Accused en-
titled to coun-
sel.—1868-'9,
c. 168, s. 8.
What done
when issue is
joined.—
1868-'9, c. 168,
s. 9.
Oath of mem-
bers.—
1868-'9, c. 168,
s. 10.

8. The person accused is entitled on the trial of the impeachment, to the aid of counsel.

9. When issue is joined in the trial of an impeachment, the court shall fix a time and place for the trial thereof.

10. At the time and place appointed, and before the commencement of the trial, the presiding officer of the Senate shall administer to each member of the court then present, and to other members as they appear, an oath or affirmation, truly and impartially to try and determine the charge in question, under the Constitution and laws, according to the evidence. No member of the court shall sit or give his vote upon the trial until he shall have taken such oath or affirmation.

Two-thirds
required to
convict.—
1868-'9, c. 168,
s. 11.
Judgment
upon convic-
tion.—1868-'9,
c. 168, s. 12.
Officers sus-
pended by im-
peachment.—
1868-'9, c. 168,
s. 13.
Impeachment
of the presi-
dent of the
senate.—
1868-'9, c. 168,
s. 14.
Indictment
after convic-
tion.—1868-'9,
c. 168, s. 15.
For what of-
fences officers
liable to be
impeached.—
1868-'9, c. 168,
s. 16.

11. No person shall be convicted, on an impeachment, without the concurrence of two-thirds of the Senators present.

12. Upon a conviction of the person impeached, judgment may be given that he be removed from office; or that he be disqualified to hold any office of honor, trust or profit, under this State, or both.

13. Every officer impeached shall be suspended from the exercise of his office until his acquittal.

14. If the President of the Senate be impeached, notice thereof shall immediately be given to the Senate by the House of Representatives, in order that another President may be chosen.

15. Every person convicted on impeachment shall, nevertheless, be liable to indictment and punishment according to law.

16. Every officer in this State shall be liable to impeachment for :

- (1.) Corruption or other misconduct in his official capacity;
- (2.) Habitual drunkenness;
- (3.) Intoxication while engaged in the exercise of his office;
- (4.) Drunkenness in any public place;
- (5.) Mental or physical incompetence to discharge the duties of his office;
- (6.) Any criminal matter, the conviction whereof would tend to bring his office into public contempt.

CHAPTER 59.

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 regulations: *First*, he shall file his petition in the Superior Court, 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 courthouse 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.

Persons convicted of infamous crimes, how restored to rights of citizenship.—R. C., c. 58, s. 1.

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.

Depositions not to be read.—R. C., c. 58, s. 2.

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 filed in county of conviction. No person restored more than once.—R. C., c. 58, s. 3.

4. No petition for the purposes aforesaid, shall be filed within less time than four years after conviction.

Petition not to be filed within four years after conviction.—R. C., c. 58, s. 4.

CHAPTER 60.

INSOLVENT DEBTORS.

SECTION

1. Petition of debtor.
2. Schedule and affidavit.
3. Insolvent's schedule, what to contain.
4. Order to show cause.
5. Notice of order.
6. Summary proceedings before clerk.
7. Creditor may suggest fraud.
8. Proceeding where fraud is suggested.
9. Order of discharge, its terms and effect.
10. Who entitled to the benefit of this chapter.
11. Where application to be made.
12. Nature of application.
13. Form of oath.
14. Notice to be served.
15. Suggestions of fraud.
16. When no fraud is suggested.
17. Debtor may give bond for his appearance.
18. In case of sickness or death.
19. Order of discharge, terms and effect.
20. Judgment on fraud found.
21. Proceedings after issue.
22. Surrender of principal.

SECTION

23. Debtor swearing falsely, penalty.
24. Creditor liable for prison fees in certain cases.
25. Who may take prison bounds.
26. Who entitled to discharge in bastardy, &c.
27. Application to be made, how.
28. Notice to be served.
29. Warrant to bring prisoner.
30. Proceeding before court.
31. Oath to be taken.
32. Who may suggest fraud.
33. When and by whom application to be made in case of debtor confined for crime.
34. To whom application to be made.
35. Trustee to be appointed, when.
36. Duty of trustee.
37. General powers and duties of trustees under this chapter.
38. Where returns made and accounts settled.
39. Oath of trustee.
40. More than one person may be trustee.
41. In case of disability of trustee.

Petition of
debtor.—1868-
'9, c. 162, s. 1.

1. EVERY insolvent debtor may present a petition in the Superior Court, praying that his estate may be assigned for the benefit of all his creditors, and that his person may thereafter be exempted from arrest or imprisonment, on account of any judgment previously rendered, or of any debts previously contracted.

Schedule and
affidavit.—
1868-'9, c. 162,
s. 2.

2. On presenting such petition, every insolvent shall deliver therewith a schedule containing an account of his creditors and an inventory of his estate, as required in the next section; and shall annex to his petition and schedule the following affidavit, which must be taken and subscribed by him before the Clerk of the Superior Court, and must be certified by such officer:

"I,, do swear (*or affirm*) that the account of my creditors, with the places of their residence, and the inventory of my estate, which are herewith delivered, are in all respects just and true; that I have not, at any time or in any manner, disposed of or made over any part of my estate for the future benefit of myself or my family, or in order to defraud any of my creditors; and that I have not paid, secured

to be paid, or in any way compounded with any of my creditors, with a view that they, or any of them, should abstain or desist from opposing my discharge. So help me God."

3. The insolvent's schedule shall contain :

(1.) A full and true account of all his creditors, with the place of residence of each, if known, and the sum owing to each creditor, whether on written security, on account or otherwise ;

Insolvent's schedule, what to contain.—1868-'9, c. 162, s. 8.

(2.) A full and true inventory of all his estate, real and personal, with the incumbrances existing thereon, and all books, vouchers and securities relating thereto ;

(3.) A full and true inventory of all property, real or personal, claimed by him as exempt from sale under execution.

4. On receiving the petition, schedule and affidavit, the Clerk of the Superior Court shall make an order requiring all the creditors of such insolvent to show cause before said officer, within thirty days after publication of the order, why the prayer of the petitioner should not be granted.

Order to show cause.—1868-'9, c. 162, s. 4.

5. Notice of the contents of the order shall be published by the clerk at the court-house and three other public places in the county where the application is made, for four successive weeks ; or, in lieu thereof, for three successive weeks in any newspaper published in said county, or in an adjoining county.

Notice of order.—1868-'9, c. 162, s. 5.

6. If no creditor oppose the discharge of the insolvent, the clerk of the Superior Court, before whom the hearing of the petitioner is had, shall enter an order of discharge and appoint a trustee of all the estate of such insolvent.

Summary proceeding before clerk.—1868-'9, c. 162, s. 6.

7. Every creditor opposing the discharge of the insolvent may suggest fraud and set forth the particulars thereof in writing, verified by his oath ; but the insolvent shall not be compelled to answer the suggestions of fraud in more than one case, though as many creditors as choose may make themselves parties to the issues in such cases.

Creditor may suggest fraud.—1868-'9, c. 162, s. 7.

8. In every case where an issue of fraud is made up, the case shall be entered in the trial docket of the Superior Court, and stand for trial as other causes ; and upon a finding by the jury in favor of the petitioner, the Judge shall enter the order and make the appointment directed in section six.

Proceeding where fraud is suggested.—1868-'9, c. 162, s. 8.

9. The order of discharge shall declare that the person of such insolvent shall forever thereafter be exempted from arrest or imprisonment on account of any judgment, or by reason of any debt due at the time of such order, or contracted for before that time, though payable afterwards. But no debt, demand, judgment or decree against any insolvent, discharged under this chapter, shall be affected or impaired by such discharge ; but the same shall remain valid and effectual against all the property of such insolvent acquired after his discharge and the appointment of a trustee ; and the lien of any judgment or

Order of discharge, its terms and effect.—1868-'9, c. 162, s. 9.

decree upon the property of such insolvent shall not be in any manner affected by such discharge.

Who entitled to benefit of this chapter.—1868-'9, c. 162, s. 10.

10. The following persons are entitled to the benefit of this chapter :

(1.) Every person taken or charged on any order of arrest for default of bail, or on surrender of bail in any action.

(2.) Every person taken or charged in execution of arrest for any debt or damages rendered in any action whatever.

Where application to be made.—1868-'9, c. 162, s. 11.

11. Every person taken or charged as in the preceding section specified, may, at any time after his arrest or imprisonment, petition the court from which the process issued on which he is arrested or imprisoned, for his discharge therefrom, on his compliance with the provisions of this chapter.

Nature of application.—1868-'9, c. 162, s. 12.

12. The petitioner shall set forth the cause of the imprisonment, with the writ or process and complaint on which the same is founded, and shall have annexed to it a just and true account of all his estate, real and personal, and of all charges affecting such estate, as they exist at the the time of filing his petition, together with all deeds, securities, books or writings whatever relating to the estate and the charges thereon ; and also what property, real and personal, the petitioner claims as exempt from sale under execution.

Form of oath.—1868-'9, c. 162, s. 13.

13. The petition shall have annexed to it an oath or affirmation, subscribed by the petitioner and taken before any person authorized by law to administer oaths, to the effect following :

“I,, the within named petitioner, do swear (or affirm) that the within petition and account of my estate, and of the charges thereon, are, in all respects, just and true ; and that I have not at any time or in any manner disposed of or made over any part of my property, with a view to the future benefit of myself or my family, or with an intent to injure or defraud any of my creditors. So help me God.”

Notice to be served.—1868-'9, c. 162, s. 14.

14. Twenty days' notice of the time and place at which the petition will be filed, together with a copy of such petition and the account annexed thereto, shall be personally served by such debtor on the creditor or creditors at whose suit he is arrested or imprisoned, and such other creditors as the debtor may choose, or their personal representatives or attorneys ; and if the person to be notified reside out of the State, and have no agent or attorney therein, the notice may be served on the officer having the claim to collect, or by two weekly publications in any newspaper in the State.

Suggestions of fraud.—1868-'9, c. 162, s. 15.

15. Every creditor upon whom the notice directed in the preceding section is served, may suggest fraud upon the hearing of the petition, as prescribed in section seven of this chapter, and if the case be in a court of a justice of the peace, the issues made up respecting the fraud, shall be returned into the office of the Clerk of the Superior Court and stand for trial, as

in other cases; and the proceeding in the Superior Court shall be as prescribed in section eight of this chapter.

16. If no creditor suggest fraud or oppose the discharge of the debtor, the justice of the peace, or the clerk of the Superior Court, before whom the petition is heard, shall forthwith discharge the debtor, and, if he surrender any estate for the benefit of his creditors, shall appoint a trustee of such estate. The order of discharge and appointment shall be entered in the docket of the court, and if granted by a justice of the peace, a copy thereof shall be certified by him to the clerk of the Superior Court, where the same shall be recorded and filed.

When no fraud is suggested.—1868-'9, c. 162, s. 16.

17. Every debtor entitled to the provisions of this chapter may, at the time of filing his application for a discharge, or at any time afterwards, tender to the sheriff, or other officer having his body in charge, a bond, with sufficient surety, in double the amount of the sum due any creditor, or creditors, at whose suit he was taken or charged, conditioned for the appearance of such debtor before the court, where his petition is filed, at the hearing thereof, and to stand to and abide by the final order or decree of the court in the case. If such bond be satisfactory to the sheriff, he shall forthwith release such debtor from custody.

Debtor may give bond for his appearance.—1868-'9, c. 162, s. 17.

18. Whenever it appears to the court that any debtor, who may have given bond for his appearance under this chapter, is prevented from attending court by sickness or other sufficient cause, the case shall be continued to another day, or to the next term, when the same proceedings shall be had as if the debtor had appeared according to the condition of his bond, and, in the event of his death in the meantime, his bond shall be discharged.

In case of sickness or death.—1868-'9, c. 162, s. 18.

19. The order of discharge under this chapter, whether granted upon a non-suggestion of fraud or upon the finding of a jury in favor of the debtor, or otherwise, shall be in like terms and have like effect as prescribed in section nine of this chapter; except that the body of such debtor shall be free from arrest or imprisonment at the suit of every creditor, and as to him only, to whom the notice required in section fourteen may have been given; and the notices, or copies thereof, shall in all cases be filed in the office of the Superior Court clerk.

Order of discharge—terms and effect.—1868-'9, c. 162, s. 19.

20. If, on the trial, the jury find that there is any fraud or concealment, the judgment shall be that the debtor be imprisoned until a full and fair disclosure on account of all the money, property or effects be made by the debtor.

Judgment on fraud found.—1868-'9, c. 162, s. 20.

21. After an issue of fraud or concealment is made up the debtor shall not discharge himself as to the creditors in that issue, except by trial and verdict in the same, or by a discharge by consent.

Proceeding after issue.—1868-'9, c. 162, s. 21.

22. The surety in any bond, conditioned for the appearance of any person under this chapter, may surrender the principal, or such principal may surrender himself, in discharge of the bond, to the Sheriff or other officer of any court where such

Surrender of principal.—1868-'9, c. 162, s. 22.

principal is bound to appear, in the manner provided in the Code of Civil Procedure, title nine, chapter one, section one hundred and fifty-eight.

Debtor swear-
ing falsely,
penalty.—1868
'9, c. 162, s.
23.

23. If any insolvent or imprisoned debtor take any oath prescribed in this chapter falsely and corruptly, and upon indictment of perjury be convicted thereof, he shall suffer all the pains of wilful perjury, and he shall never after have any of the benefits of this chapter, but may be sued and imprisoned as though he had never been discharged.

Creditor liable
for prison fees
in certain
cases.—1868-
'9, c. 162, s. 24.

24. When any debtor is actually confined within the walls of a prison, on an order of arrest in default of bail or otherwise, the jailor must furnish him with necessary food during his confinement, if the prisoner require it, for which the jailor shall have the same fees as for keeping other prisoners. If the debtor be unable to discharge such fees, the jailor may recover them from the party at whose instance the debtor was confined. And when the debtor has remained in jail for twenty days, the Sheriff or jailor may give notice thereof to the plaintiff, his agent or attorney, and demand security of him for the prison fees that accrue after such notice, and if the plaintiff fail to give such security, then the Sheriff may discharge the debtor out of custody.

Who may take
prison bounds
—1868-'9, c.
162, s. 25.

25. Any imprisoned debtor may take the benefit of the prison bounds by giving security, as required by law, except as follows :

- (1.) A debtor against whom an issue of fraud is found ;
- (2.) Any debtor who, for other cause, is adjudged to be imprisoned until he make a full and fair disclosure or account of his property.

Who entitled
to be dis-
charged in
bastardy, &c.
—1868-'9, c.
162, s. 26.

26. The following persons may be discharged from imprisonment upon complying with the provisions of this chapter :

- (1.) Every putative father of a bastard committed for a failure to give bond, or to pay any sum of money ordered to be paid for its maintenance ;

- (2.) Every person committed for the fine and costs of any criminal prosecution.

Application to
be made, how.
—1868-'9, c.
162, s. 27.

27. Every such person, having remained in prison for sixty days, may apply by petition to the court, where the judgment against him was entered, praying to be brought before such court at a time and place to be named in the petition, and to be discharged upon taking the oath hereinafter prescribed.

Notice to be
served.—1868-
'9, c. 162, s. 28.

28. The applicant shall cause ten days' notice of the time and place of filing the petition to be served on the sheriff or other officer, by whom he was committed, which notice shall, in no case, be waived by such officer nor dispensed with in the discretion of any court.

Warrant to
bring prison-
er.—1868-'9,
c. 162, s. 29.

29. The clerk of the Superior Court, or justice of the peace, before whom such petition is presented, shall forthwith issue a warrant to the sheriff, or keeper of the prison, requiring him to bring the prisoner before the court, at the time and place

named, for the hearing of the case, which warrant every such sheriff or keeper shall obey.

30. At the hearing of the petition, if such prisoner have no visible estate, and take and subscribe the oath or affirmation prescribed in the next section, the clerk of the Superior Court, or justice of the peace, before whom he is brought, shall administer said oath or affirmation to him, and discharge him from imprisonment; of which an entry shall be made in the docket of the court, and, where the proceeding is before a justice of the peace, the justice shall return the petition and orders thereon into the office of the clerk of the Superior Court to be filed.

Proceeding
before court.
—1868-'9, c.
162, s. 30.

31. The oath referred to in the preceding section shall be as follows: "I, do solemnly swear (or affirm) that I have not the worth of one dollar in any worldly substance, above such exemption as may be allotted me by law, and that I have not at any time since my imprisonment or before, directly or indirectly, sold or assigned, or otherwise disposed of, or made over in trust for myself or my family, any part of my real or personal estate, whereby to have or expect any benefit, or to defraud any of my creditors; so help me God."

Oath to be
taken.—1868-
'9, c. 162, s. 31.

32. The Chairman of the board of commissioners, and every officer interested in the fee bill taxed against such prisoner, may oppose his taking the oath prescribed in the preceding section; and file the particulars of his suggestion in writing, when the same shall be returned to and stand for trial in the Superior Court as prescribed in the preceding chapter, in other cases of fraud or concealment.

Who may sug-
gest fraud.—
1868-'9, c. 162,
s. 32.

33. Whenever any debtor is imprisoned in the penitentiary for any term whatever, or in a county jail for any term more than twelve months, application by petition may be made by any creditor, the debtor, or by his wife, or any of his relatives, for the appointment of a trustee to take charge of the estate of such debtor.

When and by
whom applica-
tion to be
made in case
of debtors
confined.—
1868-'9, c. 162,
s. 40.

34. The application must be made to the Superior Court of the county where the debtor was convicted.

To whom ap-
plication to be
made.—1868-
'9, c. 162, s. 41.
Trustee to be
appointed,
when.—1868-
'9, c. 162, s. 42.

35. Upon producing a copy of the sentence of conviction of such debtor, duly certified by the Clerk of the court, together with an affidavit of the applicant that such debtor is actually imprisoned under such sentence, and is indebted in any sum whatever, the Clerk of the court or the Judge thereof may immediately appoint a trustee of the estate of such debtor.

36. Every trustee under this chapter is required to pay the debts of the imprisoned debtor in the manner directed in section thirty-seven of this chapter; and after paying such debts, the trustee shall apply the surplus, from time to time, to the support of the wife and children of such debtor, under the direction of the Superior Court; and whenever any such imprisoned debtor is lawfully discharged from his imprisonment, the trustee so appointed shall deliver up to him all the estate,

Duty of trustee.—1868-'9,
c. 162, s. 43.

real and personal of such debtor, after retaining a sufficient sum to satisfy the expenses incurred in the execution of the trust and lawful commissions therefor.

General power and duty of trustees under this chapter.—1868-'9, c. 162, s. 44.

37. Any trustee appointed under the provisions of this chapter, in the several cases therein contemplated, is hereby declared a trustee of the estate of the debtor, in respect to whose property such trustee is appointed, for the benefit of creditors, and is invested, from the time of appointment, with all the powers and authorities, and subject to the control, obligations and responsibilities prescribed by law in relation to personal representatives over the estates of deceased persons; but all debts shall be paid by the trustee *pro rata* equally.

Where returns made and accounts settled.—1868-'9, c. 162, s. 45.

38. Such trustee shall make his returns and have his accounts audited and settled in the Court of Probate of the county, where the proceeding was had in like manner as provided for personal representatives.

Oath of trustee.—1868-'9, c. 162, s. 46.

39. Before proceeding to the discharge of his duty, such trustee shall take and subscribe an oath, well and truly to execute his trust according to his best skill and understanding; which oath must be filed with the Clerk of the Superior Court.

More than one person may be trustee.—1868-'9, c. 162, s. 47.

40. The court shall have power, when deemed necessary, to appoint more than one person trustee under any of the provisions of this chapter; but in reference to the rights, authorities and duties conferred herein, all such trustees shall be deemed one person in law.

In case of disability of trustee.—1868-'9, c. 162, s. 48.

41. In case of the death, removal, resignation or other disability of a trustee, the court making the appointment may from time to time supply the vacancy; and all proceedings may be continued by the successor in office in like manner as in the first instance.

CHAPTER 61.

INSPECTIONS.

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3. To give bonds renewable yearly.
4. To attend at times and places appointed.
5. Exporting merchant not to be inspector; penalty.
6. Not to be more than six inspectors

SECTION

7. in any town, except Wilmington.
7. Not to have deputies. Proviso for flour inspectors.
8. To hold office during good conduct. How removed. Two general inspectors for Wilmington, appointed by commissioners.
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47. Flour may be sold in Fayetteville without inspection.
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51. Hogs' lard inspected, how.
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55. Turpentine barrels to be branded. Penalty on inspector failing.
56. Makers of tar, pitch and turpentine to brand with initials of their names. Inspector to keep a book and enter maker's name, &c.
57. Inspectors of naval stores to guage spirits of turpentine. Other persons prohibited.
58. Beef, &c., re-inspected, if not exported in sixty days. Tar, pitch, or turpentine in twenty days.
59. No cooper to make barrels for sale but as directed in this chapter.
60. Seller or exporter of beef, &c., to procure inspector's certificate, &c. Penalty.
61. Penalty on masters receiving them uninspected.
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 85. Cotton shipped, &c.

Former places of landing and inspection continued; county commissioners may appoint others.—R. C., c. 60, s. 1. See 1869, c. 20, s. 8, sub-sec., 29.

1. ALL such places, as have been established by law, or by the order of the commissioners of any county within their county as public landings, or as places of inspection, shall be and remain public landings and places of inspection; and the county commissioners 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 board may order the costs to be paid by the petitioner or by the county.

Inspectors appointed by county commissioners.—R. C., c. 60, s. 2.

2. The several boards of county commissioners, 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 inspector 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 county commissioners, shall be elected by the citizens of the county qualified to vote for members of the House of Representatives, at the time of the election of members of Congress, in the year one thousand eight hundred and seventy-four, 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 county commissioners may appoint some suitable person to fill the unexpired term.

Proviso as to inspectors in Craven county

To give bonds.

3. Every inspector shall, before the county commissioners 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.

Renewable yearly.—R. C., c. 60, s. 2.

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. C., c. 60, 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 commissioners, on motion made by the solicitor of the district, on producing the record of the recovery of the said penalty. Exporting merchant not to be inspectors.—R. C., c. 60, s. 5. Penalty.
6. The county commissioners shall not appoint in any of the towns more than six inspectors, except for the purpose of inspecting timber; in which case the board may appoint such number as they may consider necessary: *Provided, however*, that the county commissioners of New Hanover may appoint eight or more inspectors of naval stores for the town of Wilmington. Not to be more than six inspectors in any town.—R. C., c. 60, s. 6. Except 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. Not to have deputies. Proviso for flour inspectors.—R. C., c. 60, s. 7.
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 commissioners of New Hanover, every two years, at the first meeting 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 board, they shall summon him to appear before them at the ensuing meeting, 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 To hold office during good conduct. How removed. Two general inspectors for Wilmington appointed by commissioners.—R. C., c. 60, s. 8.

misbehavior in office, said commissioners shall have power to remove him from office and appoint another in his stead.

Vacancies,
how filled be-
tween meet-
ings of board.
Assistants in
certain cases.
—R. C., c. 60,
s. 9.

9. Whenever there shall be a vacancy in the office of inspector, while the county commissioners are not in session, any three justices may appoint some other fit person, until the next succeeding meeting of the board; 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 board of commissioners.

Principal lia-
ble for acts of.
—R. C., c. 60,
s. 10.

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.

Inspectors of
tobacco; duty
of.—R. C., c.
60, s. 11.

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.

To give a man-
ifest of each
hogshead.—R.
C., c. 60, s. 12.

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.

Condemned
tobacco rein-
spected, when.
—R. C., c. 60,
s. 13.

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 re-inspected, if he think proper.

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 uninspect-
ed.—R. C., c. 60, 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. C., c. 60, 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 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 punished as prescribed in section twenty-nine of the chapter entitled "Crimes and Punishments."

Forgery of stamp, note, &c., of inspector of tobacco.—R. C., c. 60, s. 16.

17. If any inspector's note shall be lost or destroyed, the owner, on making oath before some justice of the peace, 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 thereupon, and such assignment shall exonerate the inspector from any claim or demand against him by virtue of the original note.

Manner of proceeding when a note is lost.—R. C., c. 60, 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

Proceedings by one demanding his tobacco, injured since inspection.—R. C., c. 60, s. 18.

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
appointed.—
R. C., c. 60, s.
19.

19. Any number of persons, not exceeding ten, shall be appointed by the board of county commissioners, where there may be an inspection of tobacco established to turn up and cooper tobacco, who shall hold their appointments during good behavior.

Inspectors to
report to
board the mis-
behavior of
turners up.

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 board ; and if they shall be found guilty of the charge alleged, the board 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.

Owners may
turn up, &c.,
their tobacco.
—R. C., c. 60,
s. 20.

Pickers of to-
bacco appoint-
ed.—R. C. c.
60, s. 21.

21. The county commissioners, where a public inspection of tobacco is established, shall appoint two persons skilled in tobacco to be pickers : and the board 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 board, he shall have the power of inspector, in case of inability of any inspector, until the next meeting of the board or until the inspector can be present: *Provided, nevertheless*, that upon complaint made against any picker, the board of commissioners of the county 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 board shall remove him, and appoint another in his stead.

No inspector
to buy tobacco.—
R. C., c.
60, s. 22.

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.

Warehouses

23. The commissioners of any county 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.

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.

25. The commissioners 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.

26. The commissioners shall, as occasion may require, appropriate any of the remaining part of the aforesaid moneys in repairing or rebuilding their warehouses.

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.

28. The county commissioners of Cumberland, at the first meeting after the first day of February, one thousand eight hundred and sixty-nine, 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.

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.

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.

31. It shall hereafter become the duty of all inspectors of flour in this State to keep a blank book and register therein the number of barrels inspected by him or his deputy each day, the name or names of the person or persons for whom the inspection was made, with the different grades or qualities of each lot inspected by him, and the said book or books shall be kept open by him for review or inspection of the public.

32. 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

may be built or rented.—R. C., c. 60, s. 23.

When warehouse burnt, inspector not liable, &c.—R. C., c. 60, s. 24.

Warehouse rent regulated, &c.—R. C., c. 60, s. 25.

Warehouses, &c., repaired.—R. C., c. 60, s. 26.

Rules of private warehouses.—R. C. c. 60, s. 27.

Inspectors of tobacco for Fayetteville.—R. C., c. 60, s. 28.

To designate qualities, &c.—R. C., c. 60, s. 29.

To take for inspection lugs from each break.—R. C., c. 60, s. 30.

Inspectors of flour to keep blank books, &c.—1855-'9, c. 56.

Inspector of flour not to trade in flour.

—R. C., c. 60, s. 31. 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. C., c. 60, s. 32. 33. 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. 34. 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 staves 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. C., c. 60, s. 33. 35. 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. C., c. 60, s. 34. 36. 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,

Inspectors may, in certain cases, unpack flour.—R. C., c. 60, s. 35.

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.

37. 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 a civil action for money had and received.

Seller of barrels deficient in quantity, liable, &c.—R. C., c. 60, s. 36.

38. 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 fineness 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.

Casks of flour, how inspected.—R. C., c. 60, s. 37.

39. 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.

Owner dissatisfied, how to obtain a re-examination.—R. C., c. 60, s. 38.

40. 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.

Penalty for exporting flour not passed by inspector.—R. C., c. 60, s. 39.

41. If any master, owner, or commander of a ship, vessel, boat or craft shall receive any barrel of flour on board for ex-

On shipper receiving uninspected flour.

Proviso.—R. C., c. 60, s. 40.

Flour not liable to re-inspection in 60 days.—R. C., c. 60, s. 41.

Cask not condemned in certain cases, if it contain 196 pounds.—R. C., c. 60, s. 42.

Penalty for packing flour in a branded cask.—R. C., c. 60, s. 43.

For altering inspector's brand, &c.—R. C., c. 60, s. 44.

On inspectors neglecting duty.—R. C., c. 60, s. 45.

Uninspected flour sold in Fayetteville.—R. C., c. 60, s. 46.

"Barrel" or "cask of flour" to include half barrel.—R. C., c. 60, s. 47.

Inspectors of beef, &c., duty of; penalties for misconduct.—R. C., c. 60, s. 48.

portation 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.

42. 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.

43. 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.

44. 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.

45. 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.

46. Every inspector of flour, failing to perform the duties herein mentioned, shall forfeit and pay ten dollars for every offence.

47. Any person may sell flour in the town of Fayetteville, either in casks or otherwise, without submitting the same to inspection.

48. 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.

49. 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.

50. 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 half an inch thick when wrought, the head not less than three quarters of an inch thick, and well dowelled, twelve good substantial hoops on each cask, and the whole to be tight, fit to hold pickle, and made in a workmanlike manner; and each barrel shall contain at least two hundred pounds of good, sound and clean merchantable meat, well salted and cured, with at least half a bushel of salt to each barrel, and nailed and packed, 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.

Beef and pork inspected, how.—R. C., c. 60, s. 49.

51. 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.

Hog's lard inspected.—R. C., c. 60, s. 50.

52. 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.

Rice, how inspected.—R. C., c. 60, s. 51.

53. 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

Fish, how inspected.—R. C., c. 60, s. 52.

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.
—R. C., c. 60, s. 53.

54. 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 hung; 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. C., c. 60, s. 53.

Turpentine barrels to be branded.
Penalty on inspector failing
—R. C., c. 60, s. 54.

55. 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.

Makers of tar, pitch, turpentine to brand with initials of their names.
Inspector to keep a book, and enter maker's name, &c.—R. C., c. 60, s. 55.

56. 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.

57. Hereafter inspectors of naval stores, appointed for the town of Wilmington, in New Hanover county, are authorized and required to gauge the article of spirits of turpentine in said town of Wilmington; and they may be entitled to the sum of five cents for each and every cask or barrel of spirits of turpentine so gauged, to be paid by the purchaser, and it shall not be lawful for any other person than those legally appointed as inspectors of naval stores to gauge said article of spirits of turpentine in said town of Wilmington, under the penalty of one hundred dollars for each violation.

Inspectors of naval stores to gauge spirits of turpentine. Other persons prohibited.—1856 '7, c. 27, s. 1 & 2.

58. 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. C., c. 60, s. 56.

59. No cooper, or any person making casks, shall expose for sale any barrel or half-barrel for the holding of pork or beef, other than such as are by this 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 register of deeds of the county where he shall reside, under the penalty of twenty dollars for every neglect.

No cooper to make barrels for sale, but as directed by this chapter.—R. C., c. 60, s. 57.

60. 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.

Seller or exporter of beef, &c., to produce inspector's certificate, &c.—R. C., c. 60, s. 58.

Penalty.

61. No master or commander of any vessel shall take on board any such cask or barrel or other inspectable commodity

Penalty on masters re-

ceiving them
uninspected.
—R. C., c. 60,
s. 59.

Proviso as to
Newbern.—
R. C., c. 60, s.
60.

Shingles, of
what size.—R.
C., c. 60, s. 61.

Lumber, how
inspected.—R.
C., 60, s. 62.

Inspectors of
saw-mill lum-
ber near Wil-
mington ap-
pointed.—R.
C., c. 60, s. 63.

Lumber and
ton timber,
how inspected
on Cape Fear
river.—R. C.,
c. 60, s. 64.—
1866, c. 26 of
special ses-
sion.

as aforesaid, without being inspected and branded as required, under the penalty of two hundred dollars for each offence.

62. *Provided, however*, that the provisions of sections fifty-seven, fifty-eight, fifty-nine, sixty and sixty-one of this chapter shall not extend to the town of Newbern, so far as relates to tar, pitch and turpentine.

63. 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.

64. Boards of 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 county for the use of the poor: *Provided, nevertheless*, that no shingles, boards, plank or scantling, shall be inspected, unless required by the purchaser.

65. The board of commissioners of the county of New Hanover shall, at the meeting 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.

66. 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. And all sound timber hereafter inspected and refused by reason of not showing heart and not squaring eleven inches, shall be culled and the refuse separated from the merchantable, except there be an agreement between the purchaser and the seller that the same shall not be done. The purchaser, or purchasers, receiving such timber, sold and inspected on the Cape Fear river, shall pay the seller or owner of such timber one-half the price for the refuse which may be stipulated to be paid for the merchantable. 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.

inspecting
lumber by
other rules.—
R. C., c. 60, s.
64.
Steam mill
lumber, how
inspected.—R.
C., c. 60, s. 65.

67. 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.

68. 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 lum-
ber and ton
timber, how
measured.—R.
C., c. 60, s. 66.

69. 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.
C., c. 60, s. 67.

70. 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 cull-
ings, &c.—R.
C., c. 60, s. 68.

71. 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 in-
spector.—R.
C., c. 60, s. 69.

72. 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. C., c. 60,
s. 70.

73. In case the purchaser and seller cannot agree as to the amount to be allowed for extra cooperage 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 estimate when called on, he shall forfeit and pay twenty-five dollars to any person who will sue for the same.

Disputes
about extra
cooperage, &c.
in Wilming-
ton, how de-
termined.—R.
C., c. 60, s. 71.

74. 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.

Sale of fire-
wood in towns
to be by cord.
—R. C., c. 60,
s. 72.

75. The board of commissioners 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.

Inspectors of
wood for New-
bern.—R. C.,
c. 60, s. 73.

76. The county commissioners 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.

Of provisions
and forage, ap-
pointed by
any county.—
R. C., c. 60, s.
74.

Duty of such inspectors.—R. C., c. 60, s. 75.

77. 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 county commissioners: *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 reinspection.

Shall give bond.—R. C., c. 60, s. 76.

78. 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 board shall take; and he shall be entitled to such fees as may be prescribed by the board.

Fees.

Penalty for selling forage, &c., uninspected.—R. C., c. 60, s. 77.

79. 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.—R. C., c. 60, s. 78.

80. 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. C., c. 60, s. 79.

81. 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.

Cotton sold in Wilmington to be weighed.—1856-'7, c. 41, s. 1.
Who to weigh.—1856-'7, c. 41, s. 2.

82. All cotton sold in the town of Wilmington shall be weighed, under the penalty of one hundred dollars for any bale sold without being weighed by the proper officer.

83. The aforesaid article shall be weighed by the inspectors of flour and provisions, who have been or who may be, from time to time, appointed by the county commissioners of New Hanover.

Board to fix the fee.—1856-'7, c. 41, s. 3.

84. The county commissioners of said county shall, from time to time, fix the fee, not to exceed ten cents per bale, for the weighing of the aforesaid articles, and until said board shall determine said fee, the inspector shall be entitled to receive the following fee, viz: for every bale of cotton weighed, ten cents.

Cotton shipped, &c.—1856-'7, c. 41, s. 4.

85. All cotton shipped from the port of Wilmington, without being first sold in said town, shall be exempted from inspection and all charges therefor: *Provided*, that if cotton shipped is weighed it shall be done by the regular inspectors.

CHAPTER 62.

INTERNAL IMPROVEMENT.

SECTION

1. Board of internal improvements incorporated.
2. Sessions of board, and pay of members and secretary.
3. Board may make rules and by-laws.
4. To keep record of proceedings, and report to Assembly.
5. Its fund deposited in banks.
6. Treasurer to keep accounts of board. Board to examine them yearly. Clerk to aid treasurer. His compensation.
7. Duty of board in making contracts.
8. State to be stockholder in companies, when.
9. Railroad and other companies may enter on lands to build their works, &c.
10. Proceedings to assess damages. Commissioners appointed.
11. Infants, &c., how notified.
12. A day for commissioners to meet, appointed by court. One may adjourn from day to day.
13. Owners to have five days' notice of meeting.
14. Commissioners sworn. Their oath.
15. To meet and assess damages. May administer oaths.
16. Damages, how assessed.
17. Report of their proceedings made and subscribed. Form of report.
18. Returned to court; proceedings thereupon.
19. Appeal allowed.
20. On confirmation of report and pay-

SECTION

- ment of damages, company to have fee.
21. Dwelling-houses, &c., not to be condemned.
22. Company may take materials from adjoining land.
23. Who to value them.
24. Proceedings to have them valued.
25. Justice to preside at trial and render judgment.
26. Appeal allowed.
27. Width of land condemned for railroads.
28. For plank-roads, canals, and turnpikes.
29. Quantity of land allowed to be condemned for depots, &c.
30. Railroad, &c., crossing other roads, not to obstruct them.
31. Company may turn roads, &c.
32. Damages allowed owners on whose land roads are turned.
33. New road made good as former one.
34. Incorporated companies to furnish engineering bureau with maps, &c., of improvements.
35. Railroad and other companies to keep account of produce carried. To report to Governor.
36. Commissioners and freeholders paid. Costs paid by company, except, &c.
37. No railroad, plank-road, &c., to be established, but by law. Penalty and misdemeanor therefor.
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

Board of internal improvements incorporated.—R. C., c. 61, s. 1.

which may be necessary to enable it to discharge the duties imposed on it and no more.

Sessions of board, and pay of members and secretary.—R. C., c. 61, s. 2.

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. C., c. 61, s. 3.

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. C., c. 61, s. 4.

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. C., 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 national banks in 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.

Board to examine them yearly.

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.

Clerk to aid treasurer. His compensation.—R. C., c. 61, s. 6.

Duty of board in making contracts.—R. C., c. 61, s. 7.

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

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 appropriated; 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.

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 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.

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.

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.

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.

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.

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.

advanced.—
R. C., c. 61, s. 8.

Railroad and other companies may enter on lands to build their works, &c.—
R. C., c. 61, s. 9.

Proceedings to assess damages.—R. C., c. 61, s. 10.

Commissioners appointed.

Infants, &c., how notified.—R. C., c. 61, s. 11.

A day for commissioners to meet, appointed by court. One may adjourn from day to day.—R. C., c. 61, s. 12. Owners to have five days notice of meeting.—R. C., c. 61, s. 13. Comm'rs sworn. Their oath.—R. C., c. 61, s. 14.

To meet and assess damages. May administer oaths.—R. C., c. 61, s. 15.

Damages, how assessed.—R. C., c. 61, s. 16.

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.—R. C., c. 61, s. 17.

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 propose 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 quality and quantity 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.—R. C., c. 61, s. 18.

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.—R. C., c. 61, s. 19.

19. From the judgment of the court in all such cases an appeal shall be allowed, under like rules as in other cases.

On confirmation of report and payment of damages, company to have fee.—R. C., c. 61, s. 20.
Dwelling-houses, &c., not to be condemned.—R. C., c. 61, s. 21.
Company may take material from adjacent land.—R. C., c. 61, s. 22.

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.

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.

When to value them.—R. C., c. 61, s. 23.

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.—R. C., c. 61, s. 24.

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.

Justices to preside at trial and render judgment.—R. C., c. 61, s. 25.

26. Either party may appeal from such judgment as in other cases, and under the same rules.

Appeal allowed.—R. C., c. 61, s. 26.

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.—R. C., c. 61, s. 27.

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.—R. C., c. 61, s. 28.

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.—R. C., c. 61, s. 29.

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.—R. C., c. 61, s. 30.

31. In order to prevent the frequent crossing of such roads or ways, or in cases where 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.—R. C., c. 61, s. 31.

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.—R. C., c. 61, s. 32.

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 roads made good as former one.—R. C., c. 61, s. 33.

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 contem-

Incorporated companies to furnish engineering bureau

with maps, &c., of improvements.—R. C., c. 61, s. 34.

Railroad and other companies to keep account of produce carried. To report to governor.—R. C., c. 61, s. 35.

Commissioners and freeholders paid. Costs paid by company, except in certain cases.—R. C., c. 61, s. 36.

No railroad, plank-road, &c., to be established but by law.

Penalty and misdemeanor therefor.—R. C., c. 61, s. 37.

Board to appoint officers to represent the State.—R. C., c. 61, s. 38.

plated 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 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.

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.

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 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.

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 persons, 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.

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 63.

JUSTICES AND THEIR JURISDICTION.

SECTION

1. General provisions respecting justices of the peace. Within what time justices to qualify.

SECTION

2. Removal out of township for six months forfeits office.
3. Resignation.

SECTION	SECTION
4. May issue process and try causes, where.	36. When trial by jury demanded or waived.
5. May accept office under the United States.	37. Jury drawn and trial postponed.
6. Punishment on conviction of infamous crimes, &c.	38. Summoning of jury.
7. Filing dockets with clerks.	39. The jury for the trial of the cause.
8. Delivery of unfiled docket to successor.	40. Challenge.
9. Filing and delivery, how enforced.	41. What names to be returned to the jury box or destroyed.
10. Summons.	42. Tales jurors may be summoned.
11. Civil and criminal dockets to be furnished justice.	43. Jury sworn and empanelled. Verdict, &c.
12. Summons, by whom issued.	44. New trial. Appeal.
13. Service and return of summons.	45. Less than six may be a jury, when.
14. Jurisdiction.	46. Not compelled to serve out of township.
15. Where sum demanded exceeds two hundred dollars.	47. Jurors serving on trial, &c.
16. Answer where title to real estate is brought in issue.	48. Deposit of jury fees.
17. Action to be dismissed, when.	49. Adjournment after return of the jury.
18. Another action may be brought.	50. Process issuing from a justice of the peace in one county on a party in another county rendered valid by endorsement of justice in defendant's county.
19. Docketing justices' judgment.	51. Certificate of the clerk of the superior court. Entry of date.
20. Rules of proceeding in justice's court.	52. No process served under two days' notice. Appeal.
21. Execution on what, and from what time a lien.	53. Appeal. Execution.
22. Stay of execution.	54. Appeal, when to be taken.
23. Security on stay of execution.	55. When appellant not to give written notice.
24. Former judgment.	56. Judge to endorse date, &c.
25. Application for releasing.	57. Return to the appeal.
26. Justice's judgment removed to another county, how.	58. Defective return.
27. Witness, penalties, &c.	59. On return to appeal, what to be done.
28. Provisions of Code of Civil Procedure applicable.	60. Appeal, on what to be heard.
29. Arrest, in what cases.	61. Execution of judgment, how to be stayed.
30. Order of Arrest, by whom made.	62. May give bond, &c.
31. Affidavit to obtain order.	63. Same undertaking to be given.
32. Provisions of Code of Civil Procedure applicable. Jury trials in justice's court.	64. Same delivery and service of order, on whom.
33. Jury list furnished to each Justice.	65. Restitution.
34. Justice to keep a jury box.	66. Costs, how awarded.
35. Names of jurors to be deposited in jury box.	67. Forms to be used in justice's court.

1. EVERY person elected or appointed a justice of the peace, shall, within ten days after such election or appointment, take and subscribe the prescribed oath of office before the Clerk of the Superior Court; which oath shall be filed by the clerk of said court. And any person presuming to execute the office of a justice of the peace without qualifying as herein directed, shall be guilty of a misdemeanor.

Within what time justices to qualify.—
C. C. P., s. 546.

Removal out of township six months to forfeit office.—
C. C. P., s. 547.

2. When any justice of the peace removes out of his township and does not return therein for the space of six months, he shall forfeit and lose his office; and any such justice of the peace presuming to act thereafter, contrary to the provisions of this section, unless re-elected or re-appointed, shall be guilty of a misdemeanor.

Resignation.—
C. C. P., s. 548.

3. Justices of the peace wishing to resign must deliver their letters of resignation to the Clerk of the Superior Court, who shall file the same.

May issue process and try causes, where.—
C. C. P., s. 549.

4. A justice of the peace may issue a summons or other process anywhere in his county, but he shall not be compelled to try a cause out of the township for which he was elected or appointed.

May accept office under the U. S.—C. C. P., s. 550.

5. Any justice of the peace may accept a civil office or appointment of trust or profit, under the authority of the United States, the duties of which confine him to the county where he is resident.

Punishment on conviction of infamous crimes, &c.—
C. C. P., s. 551.

6. Upon the conviction of any justice of the peace, of an infamous crime, of corruption and malpractice in office, he shall be removed from office, and he shall be disqualified from holding or enjoying any office of honor, trust or profit under this State.

Filing dockets with clerks.—
C. C. P., s. 552.

7. Each justice of the peace, as often as he has filled his docket, shall file the same with the Clerk of the Superior Court for his county.

Delivery of unfilled docket to successor.—
C. C. P., s. 553.

8. When a vacancy exists, from any cause, in the office of a justice of the peace, whose docket is not filled, or when such justice goes out of office by expiration of his term, such former justice, if living, and if dead, his personal representative, shall deliver such docket and all official papers to his successor, who is authorized to hear and determine any unfinished cause or causes on said docket, in the same manner as if such cause or causes had been originally brought before such successor.

Filing and delivery—how enforced.—
C. C. P., s. 554.

9. The duty imposed on the justice, or his personal representative by the last two preceding sections may be enforced, on ten days' notice in writing to such justice or his representative, by attachment.

Summons.—
C. C. P., s. 495.
1868-'9, c. 159, s. 9.

10. Civil actions in these courts shall be commenced by the issuing of a summons.

11. A civil and criminal docket shall be furnished each justice, at the expense of the county, as provided in section one hundred and forty-five of the Code of Civil Procedure for furnishing the books of the Clerk of the Superior Court, in which shall be entered a minute of every proceeding had in any action before such justice.

Summons, by whom issued.—
C. C. P., s. 496.

12. The summons shall be issued by the justice and signed by him. It shall run in the name of the State, and be directed to any constable or other lawful officer, commanding him to summon the defendant to appear and answer the complaint of the plaintiff at a place, within the county, to be therein specified, and at a time, to be therein named, not exceeding twenty

days from the date of the summons. It shall also contain the amount of the sum demanded by the plaintiff.

13. The officer to whom the summons is delivered shall execute the same within five days after its receipt by him, or immediately, if required to do so by the plaintiff. Before proceeding to execute it, he is entitled to require of the plaintiff his fee for the service. When executed he shall immediately return the summons, with the date and manner of the service, to the justice who issued the same.

Service and return of summons.—C. C. P., s. 497.

14. Justices of the peace shall have exclusive original jurisdiction of all civil actions founded on contract, except:

Jurisdiction.—C. C. P., s. 498.

(1.) Wherein the sum demanded, exclusive of interest, exceeds two hundred dollars;

1868-'9, c. 159, s. 2.

(2.) Wherein the title to real estate is in controversy.

15. Where it appears, in any action brought before a justice, that the sum demanded exceeds two hundred dollars, the justice shall dismiss the action and render judgment against the plaintiff for the costs, unless the plaintiff shall remit the excess above two hundred dollars, and shall, at the time of filing his complaint, direct the justice to make this entry: "The plaintiff in this action forgives and remits to the defendant all interest and so much of the principal of this claim as is in excess of two hundred dollars."

Where sum demanded exceeds two hundred dollars.—C. C. P., s. 499. 1868-'9, c. 159, s. 3.

16. In every action brought in a court of a justice of the peace, where the title to real estate comes in controversy, the defendant may, either with or without other matter of defence, set forth, in his answer, any matter showing that such title will come in question. Such answer shall be in writing, signed by the defendant or his attorney, and delivered to the justice.

Answer where title to real estate is brought in issue.—C. C. P., s. 500.

17. If it appears on the trial that the title to the real estate is in controversy, the justice shall dismiss the action and render judgment against the plaintiff for the cost.

Action to be dismissed, when.—C. C. P., s. 501.

18. When a suit before a justice is dismissed upon answer, and proof by the defendant that the title to real estate is in controversy in the case, the plaintiff may prosecute an action for the same cause in the Superior Court, and the defendant shall not be admitted in that court to deny the jurisdiction by an answer contradicting this answer in the justice's court.

Another action may be brought.—C. C. P., s. 502.

19. A justice of the peace, on the demand of a party in whose favor he has rendered a judgment, shall give a transcript thereof, which may be filed and docketed in the office of the Superior Court clerk of the county where the judgment was rendered. Or in such case he shall also deliver to the defendant, or his attorney, a transcript of any stay of execution issued, or which may thereafter be issued, by him in such judgment, which may be in like manner filed and docketed in the office of the clerk of said court. The time of the receipt of the transcript by the clerk shall be noted thereon and entered in the docket; and from that time the judgment shall be a judgment of the Superior Court in all respects. The execution

Docketing justice's judgment.—C. C. P., s. 503.

1868-'9, c. 272, s. 3.

1868-'9, c. 272,
s. 3.

thereon shall be issued by the clerk of the Superior Court to the sheriff of the county, and shall have the same effect, and be executed in the same manner, as other executions of the Superior Court: *Provided*, that in case a stay of execution upon such judgment shall be granted, as provided herein, executions upon such judgment shall not be issued by the clerk of the Superior Court until the expiration of such stay. A certified transcript of such judgment may be filed and docketed in the Superior Court clerk's office of any other county, and with the like effect, in every respect, as in the county where the judgment was rendered, except that it shall be a lien only from the time of filing and docketing such transcript.

RULE I.

Rules of proceeding in justices' court.—
C. C. P., s.
504.

20. The pleadings in these courts are :

- (1.) The complaint of the plaintiff;
- (2.) The answer by the defendant.

RULE II.

The pleadings may be either oral or written; if oral, the substance must be entered by the justice on his docket; if written, they must be filed by the justice, and a reference to them be made in his docket.

RULE III.

The complaint must state, in a plain and direct manner, the facts constituting the cause of action.

RULE IV.

The answer may contain a denial of the complaint, or of any part thereof, and also a notice, in a plain and direct manner, of any facts constituting a defence or counter-claim.

RULE V.

Pleadings are not required to be in any particular form, but must be such as to enable a person of common understanding to know what is meant.

RULE VI.

Where a defendant does not appear and answer, the plaintiff must still prove his case before he can recover.

RULE VII.

In an action or defence, founded on an account or an instrument for the payment of money only, it is sufficient for a party

to deliver the account or instrument to the justice and state that there is due to him thereon from the adverse party a specified sum, which he claims to recover or set off.

Rules of proceeding in justice's court.

RULE VIII.

A variance between the evidence on the trial and the allegations in a pleading, shall be disregarded as immaterial, unless the court is satisfied that the adverse party has been misled to his prejudice thereby.

RULE IX.

The pleadings may be amended at any time, before the trial, or during the trial, or upon appeal, when, by such amendment, substantial justice will be promoted. If the amendment be made after the joining of the issue, and it appears to the satisfaction of the court, by oath, that an adjournment is necessary to the adverse party, in consequence of such amendment, an adjournment shall be granted. The court may also, in its discretion, require as a condition of an amendment the payment of costs to the adverse party.

RULE X.

The justice may, at the joining of issue, require either party, at the request of the other, at that or some other specified time to exhibit his account or demand, or state the nature thereof as far forth as may be in his power; and in case of his default, the justice shall preclude him from giving evidence of such parts thereof as have not been so exhibited or stated.

RULE XI.

Either party may demur to a pleading of his adversary, or to any part thereof, when it is not sufficiently explicit to enable him to understand it, or it contains no cause of action or defence, although it be taken as true.

RULE XII.

If the justice deem the objection well-founded, he shall order the pleading to be amended on such terms as he may think just; and if the party refuse to amend, the defective pleading shall be disregarded.

RULE XIII.

The justice shall enter all his proceedings in a cause tried before him in his docket. No part of such proceedings must be entered on the summons, on the pleadings or on any other paper in the cause.

RULE XIV.

Rules of proceeding in justice's court.

Execution may be issued on a judgment, rendered in a justice's court, at any time within one year after the rendition thereof, and shall be returnable sixty days from the date of the same.

RULE XV.

The provisions of the Code of Civil Procedure, respecting forms of actions, parties to actions, the times of commencing actions, and the service of process upon corporations, shall apply to justices' courts.

RULE XVI.

Suitors may take depositions.—1872-'3, c. 33.

(1.) Any plaintiff or defendant in a civil action pending before a justice of the peace 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 action, and to do so may apply to the clerk of the Superior Court for a commission to take the same and proceed in all things in taking such depositions as if such action was pending in the Superior Court.

Notices and commissions.

(2.) In all actions the notices and commissions shall be entitled in the cause and court for which they are to be taken.

Depositions opened by clerk.

(3.) When the depositions are returned to the clerk they shall be opened and passed upon by the clerk and delivered to the party or parties or justice of the peace before whom the trial is to be had, and the reading and using said depositions shall conform to the rules adopted for the Superior Court.

Appeal.

(4.) If an appeal be taken to the Superior Court, or the same be taken up by *recordari* or otherwise, the deposition only shall be read which would be admissible if the suit had been originally instituted in the Superior Court.

RULE XVII.

The defendant may, on the return of process and before answering, make an offer in writing to allow judgment to be taken against him for an amount, to be stated in such offer, with costs. The plaintiff shall thereupon, and before any other proceeding be had in the action, determine whether he will accept or reject such offer. If he accept the offer, and give notice thereof in writing, the justice shall file the offer and the acceptance thereof, and render judgment accordingly. If notice of acceptance be not given, and if the plaintiff fail to obtain judgment for a greater amount, exclusive of costs, than has been specified in the offer, he shall not recover costs, but shall pay to the defendant his costs accruing subsequent to the offer.

RULE XVII.

Any justice before whom an action is brought, may, on sufficient excuse therefor shown on the affidavit of either party or any person for him, continue such action from time to time for trial; but such continuance shall not exceed thirty days.

Rule of proceeding in justice's court.

21. Executions issued by a justice, which must be directed to any constable or other lawful officer of the county, shall be a lien on the goods and chattels of the defendant named therein, from the levy thereof only, but shall not be levied on or enforced in any manner against real estate; but when such shall be made a judgment of the Superior Court as is provided by section nineteen, it shall be capable of being levied and collected out of any property of the defendant, in execution, and it shall be a lien on the real estate of said defendant, from the time when it becomes a judgment of the Superior Court.

Execution, on what and from what time a lien.—C. C. P. s. 505. 1868-'9, c. 159, s. 5.

22. In all actions founded on contract made since the first day of May, Anno Domini one thousand eight hundred and sixty-five, whereon judgments are rendered in justices' courts, stay of execution, if prayed for at the trial by the defendant or his attorney, shall be granted by the justices in the following manner: for any sum not exceeding twenty-five dollars, one month; any sum above twenty-five dollars and not exceeding fifty dollars, three months; for any sum above fifty dollars and not exceeding one hundred dollars, four months; for any sum above one hundred dollars, six months. But no stay of execution shall be allowed in any action wherein judgment is rendered on a former judgment taken before a justice of the peace.

Stay of execution.—C. C. P., s. 505a. Stay granted by justice.—1868-'9, c. 272.

23. The party praying for a stay of execution shall, within ten days after the trial, give sufficient security approved by the justice, for payment of the judgment, with interest thereon till paid, and cost; and the acknowledgment of the surety, entered by the justice in his docket and signed by the surety, shall be sufficient to bind such surety. If the judgment be not discharged at the time to which execution has been stayed, the justice who awarded the judgment shall issue execution against the principal, or surety, or both.

Security on stay of execution.—C. C. P., s. 506.

24. On the trial of an action founded on a former judgment, the judgment itself shall be evidence of the debt, subject to such payments as have been made.

Former judgment.—C. C. P., s. 507.

25. When a judgment has been rendered by a justice, in the absence of either party, and when such absence was caused by the sickness, excusable mistake or neglect of the party, such absent party, his agent or attorney, may, within ten days after the date of such judgment, apply for relief to the justice who awarded the same, by affidavit, setting forth the facts, which affidavit must be filed by the justice; whereupon the justice, if he deem the affidavit sufficient, shall open the case for reconsideration; and to this end, he shall issue a summons, directed to a constable, to cause the adverse party, together with the

Application for rehearing.—C. C. P., s. 508.

witnesses on both sides, to appear before him at a place and at a time, not exceeding twenty days, to be specified in the summons, when the complaint shall be re-heard, and the same proceedings had as if the case had never been acted on. If execution has been issued on the judgment, the justice shall direct an order to the officer having such execution in his hands, commanding him to forbear all further proceedings thereon, and to return the same to the justice forthwith.

Justice's judgment removed to another county, how.
—C. C. P., s. 509.

26. Any person, who may desire to have a justice's judgment in his favor removed to another county to be enforced against the goods and chattels of the defendant, must obtain from the justice who rendered the judgment a transcript thereof, under his hand; and must further procure a certificate from the clerk of the Superior Court of the county where the judgment was rendered, under the seal of his court, that the justice who gave the judgment was, at the rendition thereof, a justice of said county. On such transcript of the judgment, thus certified, any justice in any other county may award execution for the sum therein expressed.

Witnesses, penalties, &c.
—C. C. P., s. 510.

27. The justice, on application of either party, shall, by a subpoena or by an order in writing on the process, direct the constable or other officer to summon witnesses to appear and give testimony at the time and place appointed for the trial. Each witness, failing to appear, shall forfeit and pay eight dollars to the party at whose instance he was summoned, and shall be further liable to such party for all damage sustained by non-attendance. The fine herein imposed may be recovered, on motion, before the justice who tried the action, unless the witness, on a notice of five days, by affidavit or other proof, show sufficient excuse for his failure to attend.

Provisions of Code of Civil Procedure applicable.—C. C. P., s. 511.

28. The provisions of the Code of Civil Procedure, title X, chapter I, are applicable, except as herein otherwise directed, to proceedings in justice's courts concerning "*arrest and bail*," substituting the word "*constable*" for the word "*sheriff*," and the words "*justice of the peace*" for the words "*judge, court or clerk*," whenever they occur in said chapter.

Arrest, in what cases.—C. C. P., s. 512.

29. The defendant may be arrested in the following cases:

(1.) When the defendant has been guilty of a fraud in contracting the debt or obligation for which the action is brought;

(2.) When the defendant is not a resident of the State, or is about to remove therefrom;

(3.) When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

Order for arrest, by whom made.—C. C. P., s. 513.

30. An order for the arrest of the defendant must be obtained from the justice of the peace before whom the action is brought.

Affidavit to obtain order.—C. C. P., s. 514.

31. The order may be made where it appears to the justice of the peace, by affidavit of the plaintiff or of any other person, that a sufficient cause of action exists, and that the case is one of those mentioned in section twenty-nine of this chapter.

32. The provisions of the Code of Civil Procedure are applicable to proceedings by Attachment before justices of the peace, in all cases founded on contract wherein the sum demanded does not exceed two hundred dollars, and where the title to real estate is not in controversy.

Provisions of Code of Civil Procedure applicable.—C. C. P., s. 516.

33. The clerk of the board of commissioners shall furnish, on demand, to each justice of the peace in the county, a list of the jurors for the township for which such justice is elected or appointed.

Jury list furnished to each justice.—C. C. P., s. 517.

34. Each justice shall keep a jury box, having two divisions marked No. 1 and 2, and having two locks, the key of one to be kept by the justice and the other by the clerk of the township board of trustees.

Justice to keep jury box.—C. C. P., s. 518.

35. Each justice shall cause the names on his jury list to be written on small scrolls of paper of equal size, and to be placed in the jury box, in division marked No. 1, until drawn out for the trial of an issue as required by law.

Names of jurors to be deposited in jury box.—C. C. P., s. 519.

36. A trial by jury must be demanded at the time of joining the issue of fact; and if neither party demand at such time a jury, they shall be deemed to have waived a trial by jury.

When trial by jury demanded or waived.—C. C. P., s. 520.

37. When a trial by jury is demanded, the justice shall immediately, in the presence of the parties, proceed to draw the names of twelve jurors from division marked No. 1 of the jury box; and the trial of the cause shall thereupon be postponed to a time and place to be fixed by the justice.

Jury drawn and trial postponed.—C. C. P., s. 521.

38. A list of the jurors so drawn shall be immediately delivered by the justice to any constable, with an order endorsed thereon, directing him to summon the persons named in the list to appear as jurors at the time and place fixed for the trial; and it is the duty of the constable to proceed forthwith to summon such jurors, or so many of them as can be found, according to the order; and he shall make return thereof at the time and place appointed, stating in his return the names of the jurors summoned by him.

Summoning of the jury.—C. C. P., s. 522.

39. At the time and place appointed, and on return of the order, if the trial be not further adjourned, and if adjourned, then at the time and place to which the trial shall be adjourned, the justice shall proceed, in the presence of the parties, to draw from the jurors summoned the names of six persons to constitute the jury for the trial of the issue.

The jury for the trial of the cause.—C. C. P., s. 523.

40. Each party shall be entitled to challenge, peremptorily, two of the persons drawn as jurors.

Challenge.—C. C. P., s. 524.

41. The scrolls containing the names of jurors not summoned, if any, and of those summoned, but not drawn, and of those drawn, but challenged and set aside, must be returned by the justice to his jury box, in division marked No. 1; *Provided*, that the scrolls containing the names of such as are not legally liable, or legally qualified to serve as jurors, shall be destroyed.

What names to be returned to the jury box or destroyed.—C. C. P., s. 525.

42. If a competent and indifferent jury is not obtained from the twelve jurors drawn as specified in section thirty-seven, the

Tales jurors may be sum-

moned.—C.
C. P., s. 526.

Jury sworn
and empan-
nelled—ver-
dict, &c.—C.
C. P., s. 527.
New trial—ap-
peal.—C. C.
P., s. 528.

Less than six
may be a jury,
when.—C. C.
P., s. 529.
Not compelled
to serve out of
township.—C.
C. P., s. 530.
Jurors serving
on trial, &c.—
C. C. P., s.
531.

Deposit of
jury fees.—C.
C. P., s. 532.

Adjournment
after return of
the jury.—C.
C. P., s. 533.

Process issu-
ing from a jus-
tice of the
peace in one
county on a
party in an-
other county
rendered valid
by endorse-
ment of jus-
tice in defend-
ant's county.
—1870-'1, c.
60, s. 1.
Certificate of
the Clerk of
Superior

justice may direct others to be summoned, from the bystanders, sufficient to complete the jury.

43. The jury shall be sworn and empannelled by the justice, who shall record their verdict in his docket and enter a judgment in the case according to such verdict.

44. A new trial is not allowed in a justice's court in any case whatever; but either party dissatisfied with the judgment in such court may appeal therefrom to the Superior Court, as hereinafter prescribed.

45. Six jurors shall constitute a jury in a justice's court, but, by consent of both parties, a less number may constitute it.

46. No person is compelled to serve as a juror, in a justice's court, out of his own township, except as a talesman.

47. The scrolls containing the names of the jurors who serve on the trial of an issue must be placed in the jury-box in division marked No. 2, until all the scrolls in division marked No. 1 have been drawn out. As often as that may happen, the whole number of scrolls shall be returned to division marked No. 1, to be drawn out as in the first instance.

48. Before a party is entitled to a jury he shall deposit with the justice the sum of three dollars for jury fees, and the justice shall pay to all persons who attend, pursuant to the summons, as well to those who do not actually serve as to those who do serve, twenty-five cents each, to be included in the judgment as part of the costs, in case the party demanding the jury recover judgment, but not otherwise. The justice shall refund to the party the fees of all jurors who do not attend.

49. No adjournment shall be granted after the return of the jury, unless the party asking the same shall, in addition to the other conditions imposed on him by law or by the justice, deposit with the justice, to be immediately paid to the jurors attending, the sum of twenty-five cents each, such amount to be in no case included in the judgment as part of the costs. On such adjournment, the jurors shall attend at the time and place appointed, without further summons or notice; and the fees for the jury, deposited with the justice according to the preceding section, shall remain in his hands until the jury are empannelled on the trial, and shall be then immediately paid to the jurors or to the party entitled thereto.

50. In all civil causes in courts of justices of the peace where one or more of the defendants may reside in a county other than that of the plaintiff, it shall be lawful for any justice of the peace within the county where such defendant or defendants may reside, upon proof of the hand-writing of the justice of the peace who issued the process, to endorse his name on the same, or a duplicate thereof, and such process so endorsed shall be executed in like manner as if it had been originally issued by the justice endorsing it.

51. In all cases referred to in the preceding section it shall be lawful for the clerk of the Superior Court of the county in which the action is brought, to certify, under the seal of his

court, on the process or a duplicate thereof, that the justice of the peace who issued the same is an acting justice of the peace in his county. And in all such cases it shall be the duty of any sheriff or constable to whom it may be directed, to make an entry of the date of its reception, and to execute the same as now provided by law for the service of civil process in courts of justices of the peace, and return it by mail to the justice of the peace from whose court it issued.

Court.—1870-'1, c. 60, s. 2.

Entry of date.

52. No justice of the peace shall enter a judgment under the provisions of the two preceding sections against any defendant who may be a non-resident of his county, unless it shall appear that the process was duly served upon him at least two days before the return day of the same.

No process served under two days' notice.—1870-'1, c. 60, s. 3.

53. The party against whom judgment is rendered in any civil action in a justice's court may appeal to the Superior Court from the same; but no appeal shall prevent the issuing of an execution on such judgment or work a stay thereof, except as herein afterwards provided.

Appeal—execution.—C. C. P., s. 534.

54. The appellant shall, within ten days after judgment, serve a notice of appeal, stating the grounds upon which the appeal is founded. If the judgment is rendered upon process not personally served, or the defendant did not appear and answer, he shall have fifteen days, after personal notice of the rendition of the judgment, to serve the notice of appeal herein provided for.

Appeal, when to be taken.—C. C. P., s. 535.

55. Where any party prays an appeal from a judgment rendered in a justice's court, and the adverse party is present in person or by attorney at the time of the prayer, the appellant shall not be compelled to give any written notice of appeal either to the justice or to the adverse party; but if the judgment be for twenty-five dollars or less the appellant shall nevertheless state in writing the grounds upon which the appeal is founded, which statement shall be returned by the justice with the other papers in the case to the clerk of the Superior Court, who shall transmit the same to the judge of the district.

When appellant not to give written notice.—1869-'70, c. 187, s. 1.

56. When an appeal is sent up to the judge of the district on a judgment for twenty-five dollars or less, it shall be the duty of the judge to endorse thereon the day when he received it, and he shall render his decision thereon within twenty days after its receipt, and return the same immediately to the clerk of the appellate court.

Judge to endorse date, &c.—1869-'70, c. 187, s. 3.

57. The justice shall, within ten days after the service of the notice of appeal on him, make a return to the appellate court and file with the clerk thereof the papers, proceedings and judgment in the case, with the notice of appeal served on him. He may be compelled to make such return by attachment. But no justice shall be bound to make such return until the fees, prescribed by law for this service, be paid him. The fee, so paid, shall be included in the costs, in case the judgment appealed from is reversed.

Return to the appeal.—C. C. P., s. 537.

Defective return.—C. C. P., s. 538.

58. If the return be defective, the judge or clerk of the appellate court may direct a further or amended return, as often as may be necessary, and may compel a compliance with the order by attachment.

On return to the appeal, what to be done.—C. C. P., s. 539.

59. When the return is made, the clerk of the appellate court, if the judgment exceed twenty-five dollars, exclusive of cost, shall docket the case on his trial docket, for a new trial of the whole matter at the ensuing term of said court. If the judgment be for twenty-five dollars or less, exclusive of costs, he shall forthwith transmit the papers, proceedings and judgment to the judge of the district, who shall hear and determine only the matters of law therein, and send his decision thereon to the clerk of the appellate court.

Appeal, on what heard.—C. C. P., s. 540.

60. The appeal shall, in all cases, be heard on the original papers, and no copy thereof need be furnished for the use of the appellate court.

Execution of the judgment, how stayed.—C. C. P., s. 541.

61. If the appellant desires a stay of execution of the judgment, he may apply, at any time, to the clerk of the appellate court for leave to give the undertaking, as provided in a subsequent section; who shall, upon the undertaking being given, make an order that all proceedings on the judgment be stayed.

Same, May give bond, &c. 1869-70, c. 187, s. 2.

62. In all cases of appeal from justices' courts the appellant may, if he choose, give his bond or undertaking for the appeal before the justice who tried the cause, and who shall endorse his approval thereon, instead of before the clerk of the appellate court.

Same. Undertaking to be given.—C. C. P., s. 542.

63. The undertaking shall be in writing, executed by one or more sufficient sureties, to be approved by the clerk of the appellate court making the order, to the effect that if judgment be rendered against the appellant, and execution thereon be returned unsatisfied, in whole or in part, the sureties will pay the amount unsatisfied, together with all costs awarded against the appellant.

Same. Delivery and service of order, on whom.—C. C. P., s. 543.

64. A delivery of a certified copy of the order mentioned in section sixty-one to the justice of the peace, shall stay the issuing of the execution on the judgment; if it have been issued, the service of a certified copy of such order on the officer holding the execution, shall stay further proceedings thereon. A certified copy of such order shall also be served on the respondent, or his agent or attorney, within ten days after the making thereof.

Restitution.—C. C. P., s. 544.

65. If the judgment appealed from, or any part thereof, be paid or collected, and the judgment be afterwards reversed, the appellate court shall order the amount paid or collected to be restored, with interest from the time of such payment or collection. The order may be obtained on proof of the facts made at or after the hearing of the appeal, on a previous notice of six days. If the order be obtained before the judgment of reversal is entered, the amount may be included in the judgment.

66. If the judgment be affirmed, costs shall be awarded to the respondent; if reversed, costs shall be awarded to the appellant; if affirmed in part, the costs may be awarded to either party, in the discretion of the court.

Costs, how awarded.—C. C. P., s. 545.

Forms to be used in Justices' Courts.

67. The following forms, or substantially similar, shall be sufficient in all cases of proceedings provided for in this chapter:

Forms deemed sufficient.—1869-'9, c. 191.

[No. 1.]

COMMON FORM.—SECTION TWELVE OF THIS CHAPTER.

A..... B.....	} Justice's Court.
<i>against</i>	
C..... D.....	

State of North Carolina, to any Constable or other lawful officer of County, GREETING:

Form of summons.

We command you to summon C. D. to appear before G. W. H., Esq., one of the justices of the peace for the county of, on the day of, 18..., at his office, (*or elsewhere, as the justice may appoint the place of trial,*) in said county, to answer A. B. in a civil action for the recovery of dollars; and have you then and there this precept, with the date and manner of its service.

Hereof fail not. Witness our said justice, this day of, 18...

G. W. H.....,
Justice of the Peace.

[No. 2.]

FORM ON ALLOWING APPLICATION TO RE-HEAR.—SECTION TWENTY-FIVE OF THIS CHAPTER.

(Title, &c., as in No. 1.)

WHEREAS, A. B., plaintiff above named, (*or C. D., defendant above named*) has applied by affidavit, which is filed, for a re-hearing in the above entitled action; wherein judgment was rendered against the said plaintiff, (*or defendant*) in his absence, at the trial thereof, before the undersigned on the day of, 18....; and such application having been allowed, and the cause opened for reconsideration;

To release.

Now, therefore, we command you to summon the said plaintiff (*or defendant*) to appear before G. W. H., Esq., one of the justices of the peace for the county of, on the day of, 18...., at, in said county; when

and where the complaint will be re-heard, and the same proceedings be had as if the case had not been acted on ; and have you then and there this precept with the date and manner of its service.

Hereof fail not. Witness our said justice, this day of, 18.....

G. W. H.....,
Justice of the Peace.

[No. 3.]

Forms in attachment.

AFFIDAVIT TO OBTAIN ATTACHMENT.—CODE, SECTION TWO HUNDRED AND ONE.

General Form.

A.... B....	}	County of
<i>against</i>		
C.... D....		

Affidavit to obtain attachment.

A. B., plaintiff above named, being duly sworn, deposes and says :

1. That the defendant C. D. is indebted to the plaintiff in the sum of dollars, (*state any cause of action founded on contract, specifying the amount of the claim, and the grounds thereof, §§200, 201.*)

2. That the said defendant (*state any fact or facts, so as to bring the case within one of the classes in which an attachment may issue, § 201. The facts must be stated positively and affirmatively, not merely upon information and belief, except where a fact is alleged with a particular intent. The intent, in such case, may be stated as on information and belief.—See No. 4.*)

A. B.....

Sworn to and subscribed before me, this day of 18

G. W. H.....
Justice of the Peace.

[No. 4.]

ANOTHER FORM OF AFFIDAVIT.

(Title, &c., as in No. 3.)

Another form.

A. B., plaintiff above named, being duly sworn, deposes and says :

1. That the defendant, C. D., is indebted to plaintiff in the sum of dollars, for goods sold and delivered to said defendant by the plaintiff on or about the day of, 18..

2. That the said defendant has departed from this State, or

keeps himself concealed therein, with intent, as defendant is informed and believes, to avoid the service of a summons, (*or with intent, &c., to defraud defendant's creditors.*)

(Sworn to, &c., as in No. 2.) A. B.....

[No. 5.]

AFFIDAVIT AGAINST A FOREIGN CORPORATION.

A.... B.... <i>against</i> The Highland Mining Co.	}	County of.....
--	---	----------------

A. B., the plaintiff above named, being duly sworn, deposes and says: Affidavit against foreign corporation.

1. That the defendant above named is indebted to the plaintiff in the sum of dollars, for the use and occupation of certain premises, by permission of plaintiff, from the day of, 18...., until the day of....., 18..

2. That the defendant is a foreign corporation, created under the laws of the State of

3. That the cause of action above stated, arose in this State.
 (Sworn to, &c., as in No. 3.) A. B.....

[No. 6.]

UNDERTAKING UPON ATTACHMENT.—CODE, SECTION TWO HUNDRED AND TWO.

(Title as in No. 3 or 5.)

WHEREAS, the plaintiff above named is about to apply for a warrant of attachment against the property of the above named defendant: Undertaking upon attachment.

Now, therefore, we, J. W. B., of county, and W. D. M., of county, undertake in the sum of dollars, (*the sum must be at least two hundred and fifty dollars.*) that if the said warrant be granted, and the defendant recover judgment in this action, or the attachment be set aside by order of the court, the plaintiff shall pay all costs that may be awarded to defendant in the same, and all damages which he may sustain by reason of such attachment.

J. W. B.
 W. D. M.....

Signed and delivered in the presence of G. W. H., Esq., this day of, 18..

G. W. H.....
Justice of the Peace.

[No. 7.]

WARRANT OF ATTACHMENT.—CODE, SECTION TWO HUNDRED
AND THREE.

A.... B....	}	Justice's Court.
<i>against</i>		
C.... D....		

Warrant of at-
tachment.State of North Carolina, to any Constable or other lawful officer
of County, GREETING :

It appearing by affidavit to the undersigned that a cause of action exists in favor of the plaintiff against the defendant for the sum of dollars, and that the defendant is not a resident of this State (*or otherwise, as the fact may be*) and the plaintiff having given the undertaking required by law :

Now, therefore, you are commanded forthwith to attach and safely keep all the property of the said defendant C. D. in your county, or so much thereof as may be sufficient to satisfy the said plaintiff's demand, with costs and expenses ; and have you this warrant before G. W. H., one of the justices of the peace for your county, at his office in said county, on the day of, 18.., with your proceedings hereon.

Witness our said justice this day of, 18..

G. W. H.,
Justice of the Peace.

[No. 8.]

OFFICER'S RETURN TO BE ENDORSED ON ATTACHMENT.

Officer's re-
turn to be en-
dorsed on at-
tachment.

I, O. P. M., Constable (*or Sheriff*) of County, do hereby return that, by virtue of the within attachment, I have seized and taken into my possession the tangible personal property (*or, have levied on the real estate, as the case may be,*) of the defendant within named, specified in the inventory hereto annexed.

Dated this day of 18..

O. P. M.....

[No. 9.]

INVENTORY OF PROPERTY ATTACHED TO ABOVE RETURN.—CODE,
SECTION TWO HUNDRED AND FOUR.

A.... B....	}	County of
<i>against</i>		
C.... D....		

Inventory of

I do hereby certify that the following is a true and just inventory of all the property seized or levied on by me under a

warrant of attachment, issued in the above entitled action by G. W. H., Esq., with a statement of the books, vouchers, papers, rights and credits taken into my custody by virtue of said warrant. (*Insert list of property by items.*)

property at-
tached.

I do further testify that the following property mentioned in the above inventory is perishable, and that the expense of keeping the same until the termination of the suit would exceed one-fifth of its value; and I do hereby apply to this court for authority to sell the same. (*Insert a list of perishable property.*)

Dated this day of, 18..

O. P. M.....,
Constable (or Sheriff.)

[No. 10.]

ORDER DIRECTING SALE OF PERISHABLE PROPERTY.—CODE, SECTION TWO HUNDRED AND FIVE.

A... .. B.....	}	Justice's Court.
<i>against</i>		
C..... D.....		

County of.....

It appearing by the inventory returned by O. P. M., constable (or sheriff,) under the warrant of attachment granted in this action, that the following property mentioned in said inventory is perishable, to wit: (*Insert here the list of perishable property.*)

Order direct-
ing sale of
perishable
property.

It is therefore ordered that the said property be sold by the said officer at public auction, at such time and place as he shall deem advisable, and that the said officer give notice of such sale as the sale of personal property on execution.

It is further ordered that the proceeds of such sale be retained by said officer, and disposed of in the same manner as the property itself, if the same had not been sold.

Dated this day of, 18..

G. W. H.....
Justice of the Peace.

[No. 11.]

NOTICE OF LEVY ON PROPERTY NOT CAPABLE OF MANUAL DELIVERY.—CODE, SECTION TWO HUNDRED AND SEVEN.

To H. B.....

Take notice that by warrant of attachment issued in this action, a certified copy of which is herewith served upon you, I have levied upon, and do hereby levy upon, your indebted-

Notice of levy
on property
not capable of

manual delivery.

ness, amounting to dollars or thereabouts, to the defendant above named. (*Describe as particularly as possible the shares, debts or property levied upon.*)

Dated this day of, 18..

O. P. M. ,
Constable, (or Sheriff.)

The officer will endorse on the copy of the attachment served with the above notice, the following certificate:

Certificate.

I do hereby certify that the within is a true copy of the warrant of attachment in my possession, issued in this action and of the whole thereof.

Dated this day of, 18..

O. P. M. ,
Constable, (or Sheriff.)

[No. 12.]

ORDER DIRECTING THIRD PERSON (H. B.) TO APPEAR AND BE EXAMINED.—CODE, SECTION TWO HUNDRED AND EIGHT.

A.	B.	} Justice's Court.
	<i>against</i>	
C.	D.	

County of

Order directing third person to appear.

It appearing to me by the certificate of O. P. M., Constable, (or sheriff,) of said county, that the said officer, with a warrant of attachment against the property of C. D., the defendant in this action, has applied to H. B. for the purpose of levying upon a debt owing to the defendant by said H. B. (*or upon property of said defendant held by said H. B., or otherwise,*) and that the said H. B. refuses to furnish said officer with a certificate designating the amount of the debt owing by said H. B. to the defendant, (*or the amount and description of the property held by said H. B. for the benefit of the defendant.*)

Now, therefore, I do order and require the said H. B. to attend before me at my office, on the day of, 18.., and be examined on oath concerning the same.

Dated this day of, 18..

G. W. H. ,
Justice of the Peace.

[No. 13.]

ATTACHMENT TO ENFORCE OBEDIENCE TO ABOVE ORDER.—CODE,
SECTION TWO HUNDRED AND EIGHT.

A..... B.....	} Justice's Court.
C..... D.....	

against

State of North Carolina to any Constable or other lawful officer
of County, GREETING:

WHEREAS, it appears that H. B. was duly served on the day of, 18.., with an order issued by G. W. H., Esq., one of our justices of the peace for said county, requiring said H. B. to attend before said justice at his office, in said county, on the day of, 18.., and be examined on oath, concerning a certain debt owing to the defendant, named in the above action, by the said H. B., (*or property held by the said H. B. for the benefit of the defendant, or otherwise, as the case may be.*)

Attachment to
enforce obedi-
ence.

And whereas, the said H. B., in contempt of said order, has refused or neglected, and doth still refuse or neglect, to appear and be examined on oath, as in said order he is required to do;

Now, therefore, we command you that you forthwith attach the said H. B., so as to have his body before G. W. H., Esq., one of our justices of the peace for your county, on the day of, 18.., at his office in said county, then and there to answer, touching the contempt which he, as is alleged, hath committed against our authority; and further, to perform and abide by such order, as our said justice shall make in his behalf. And have you then and there this writ, with a return, under your hand, of your proceedings thereon.

Hereof, fail not at your peril.

Witness, our said justice, this day of, 18..

G. W. H.....,
Justice of the Peace.

[No. 14.]

UNDERTAKING ON DISCHARGE OF ATTACHMENT.—CODE, SECTION
TWO HUNDRED AND THIRTEEN.

(Title of the Cause as in No. 3.)

WHEREAS, the property of the above named C. D. has been attached, and the defendant desires a discharge of said attachment on giving security according to law;

Undertaking
on discharge
of attachment.

Now, therefore, we, B. B., of county, and D. D., of county, undertake in the sum of dollars, (*the*

sum named must be at least double the amount claimed by plaintiff,) that if the said attachment be discharged, we will pay to the plaintiff, on demand, the amount of the judgment that may be recovered against the defendant in this action.

Dated this day of, 18..

(Signed,)

B. B.

D. D.

ACKNOWLEDGMENT AND AFFIDAVIT OF SURETIES.

County of

Acknowledg-
ment and affi-
davit of sure-
ties.

On this day of, 18..., before me personally appeared the above named B. B. and D. D., known to me to be the persons described in, and who executed the above undertaking, and severally acknowledged that they executed the same.

And the said B. B. and D. D., being severally sworn, each for himself, says that he is a resident of the State of North Carolina, and a householder, (*or* freeholder,) therein.

B. B.

D. D.

Sworn to and subscribed the day above written before me.

G. W. H.

Justice of the Peace.

[No. 15.]

ORDER VACATING ATTACHMENT ON SECURITY BEING GIVEN.— CODE, SECTION TWO HUNDRED AND TWELVE.

A. B.	} Justice's Court.
<i>against</i>	
C. D.	

County of

Order vacat-
ing attach-
ment on secu-
rity.

The defendant having appeared in this action, and applied to discharge the attachment on giving security; and the said defendant having delivered to the court an undertaking in due form of law, which has been duly approved by the court;

It is ordered that the attachment issued in this action on the day of, 18.., be and the same is hereby vacated and discharged, and the defendant is released therefrom in all respects. It is further ordered, that any and all proceeds of sales, and money collected by O. P. M., Constable (*or* Sheriff,) and all property attached, now in said officer's possession, be paid and delivered to the said defendant or his agent.

Dated this day of 18..

G. W. H.

Justice of the Peace.

[No. 16.]

FORM OF PUBLICATION TO BE MADE BY PLAINTIFF IN ATTACHMENT.—SEE CODE, SECTION ONE HUNDRED AND NINETY-EIGHT.

A.....	B.....	} Attachment.
<i>against</i>		
C.....	D.....	

Seventy-five dollars due by note, (*or otherwise, as the fact may be.*) Warrant of attachment returnable before G. W. H., Esq., a justice of the peace, for county, at his office (*or otherwise, as the place may be,*) on the day of, 18.., when and where the defendant is required to appear and answer the complaint.

Form of publication made by plaintiff in attachment.

Dated ... day of, 18..

A. B.....
Plaintiff.

[No. 17.]

AFFIDAVIT FOR ARREST ON DEBT FRAUDULENTLY CONTRACTED.—
SECTION TWENTY-NINE OF THIS CHAPTER.

A.....	B.....	} County of
<i>against</i>		
C.....	D.....	

A. B., plaintiff above named, being duly sworn, deposes and says:

1st. That the defendant C. D. is indebted to the plaintiff in the sum of dollars, on an inland bill of exchange drawn on the day of, 18.., by defendant on the First National Bank of Charlotte, North Carolina, payable at sight to order of plaintiff:

Affidavit for arrest of fraudulent debt.

2nd. That on the day of, 18.., the defendant applied to the plaintiff to purchase a bill of goods amounting to dollars, which the plaintiff offered to sell to the defendant for cash; that the defendant contriving to defraud the plaintiff, represented that he had money on deposit at the said National Bank for more than the amount of the proposed purchase, and offered to give plaintiff a sight draft on said Bank; that the plaintiff, relying upon the representations of the said defendant and solely induced thereby, sold and delivered a bill of goods amounting to dollars to the defendant, who thereupon drew the sight order on said bank above referred to; that on the day of, 18.., the plaintiff presented said draft at said bank for acceptance, when

the same was not accepted for want of any funds in said bank to the credit of the defendant; that notice of non-acceptance was given to the defendant, who has wholly refused to pay the draft or any part thereof; that the representations made as aforesaid by the defendant were, and each and every of them was, as deponent is informed and believes, untrue; and that the defendant as deponent is informed and believes, did not have, nor expect to have, any funds on deposit at said bank, at the making of the representations above mentioned, but said defendant was then and is now wholly insolvent.

A.... B....

Sworn to and subscribed before me, this day of 18..

G. W. H.....
Justice of the Peace.

[No. 18.]

LIKE AFFIDAVIT WHEN DEFENDANT IS A NON-RESIDENT, OR ABOUT TO REMOVE FROM THE STATE.—SECTION TWENTY-NINE OF THIS CHAPTER.

(Title as in Preceding Form.)

Affidavit
where defen-
dant is non-
resident or
about to move.

A. B., the plaintiff above named, being duly sworn, deposes and says:

1. That the defendant C. D. is indebted to the plaintiff in the sum of dollars, for board and lodging furnished said defendant by the plaintiff from the day of, 18.., to the day of, 18..

2. That the said defendant is a non-resident of this State (*or*, is about to depart from this State.)

A. B.....

Sworn and subscribed before me this day of 18..

G. W. H.....
Justice of the Peace.

[No. 19.]

UNDERTAKING ON ARREST.—CODE, SECTION ONE HUNDRED AND FIFTY-TWO.

A.... B.... <i>against</i> C.... D....	}	County of
--	---	-----------------

Undertaking
on arrest.

Whereas, the plaintiff above named is about to apply (*or*, has applied) for an order to arrest the defendant C. D.:

Now, therefore, we, J. J. of county, and P. P. of

..... county, undertake in the sum of dollars,
(the sum must be at least one hundred dollars,) that if the said
 defendant recover judgment in this action, the plaintiff will
 pay all costs that may be awarded to the said defendant, and
 all damages which he may sustain by reason of his arrest in
 this action.

J. J.
 P. P.

Signed in my presence, this day of , 18..

G. W. H.
Justice of the Peace.

[No. 20.]

ORDER OF ARREST.—CODE, SECTIONS ONE HUNDRED AND FIFTY-
 THREE AND ONE HUNDRED AND THIRTY-ONE OF THIS CHAPTER.

A.... B.... <i>against</i> C.... D....	}	Justice's Court.
--	---	------------------

County of

To any constable or other lawful officer of said county, in the name of the State of North Carolina ;

Order of ar-
rest.

For the causes stated in the annexed affidavit :

You are required forthwith to arrest C. D., the defendant named above, and hold him to bail in the sum of dollars, *(the sum should be the amount of plaintiff's claim,)* and to return this order before the undersigned at his office in said county, on the day of, 18.. ; of which return you will serve a notice on plaintiff or his attorney.

Dated this day of 18..

G. W. H.
Justice of the Peace.

[No. 21.]

UNDERTAKING OF BAIL ON ARREST.—CODE, SECTIONS ONE HUN-
 DRED AND FIFTY-SIX AND ONE HUNDRED AND FIFTY-SEVEN.

A..... B..... <i>against</i> C..... D.....	}	County of
--	---	-----------------

WHEREAS, the above named defendant, C. D., has been arrested in this action :

Now, therefore, we B. B., of county, (tailor,) and D. D., of county, (merchant,) undertake, in the sum

Undertaking
of bail on ar-
rest.

of dollars, (*the sum should be the same as mentioned in the order of arrest,*) that, if the defendant is discharged from arrest, he shall, at all times, render himself amenable to the process of the court during the pendency of this action, and to such as may be issued to enforce judgment therein.

B. B.
D. D.

Signed in my presence, this day of 18..
G. W. H. ,
Justice of the Peace.

[No. 22.]

NOTICE OF EXCEPTION TO BAIL.—CODE, SECTION ONE HUNDRED AND SIXTY-TWO.

A. B. }
 against
C. D. }

Exception to
bail.

To O. P. M., Constable (*or Sheriff*) of the county of

Take notice, that the plaintiff does not accept the bail offered by the defendant in this action, (*and if the undertaking is defective in form or otherwise, add also*) and further, he excepts to the form and sufficiency of the undertaking.

Yours, &c., A. B. , *Plaintiff.*
 (*or M. W. N., Attorney for Plaintiff.*)

Dated this day of , 18...

[No. 23.]

NOTICE OF JUSTIFICATION OF BAIL.—CODE, SECTION ONE HUNDRED AND SIXTY-THREE.

A. B. }
 against
C. D. } County of

Notice of justification of
bail.

To A. B., plaintiff, (*or M. W. N., Attorney for plaintiff:*

Take notice, that the bail in this action will justify before G. W. H., Esq., a justice of the peace for said county, at the office of said justice, in said county, on the day of , 18..

 C. D. ,
 (*or Attorney for C. D., Defendant.*)
Dated this day of 18..

[No. 24.]

NOTICE OF OTHER BAIL.—CODE, SECTION ONE HUNDRED AND SIXTY-THREE.

(Title, &c., as in last Form.)

Take notice, that R. S., of county, (physician,) and Y. Y., of county, (farmer,) are proposed as bail, in addition to, (*or in place of*,) B. B. and D. D., the bail already put in; and that they will justify, (*conclude as in last form.*)
Date, &c.

Notice of
other bail.

[No. 25.]

JUSTIFICATION OF BAIL.—CODE, SECTION ONE HUNDRED AND SIXTY-THREE.

A..... B.....	}	Justice's Court.
<i>against</i>		
C..... D.....		

County of

On this day of, 18.., before G. W. H., Esq., a justice of the peace for said county, personally appeared B. B. and D. D., (*or R. S. and Y. Y., as the case may be*), the bail given by the defendant C. D., in this action, for the purpose of justifying pursuant to notice; and the said B. B., being duly sworn, says:

Justification
of bail.

1. That he is a resident and householder (*or freeholder*) in this State;

2. That he is worth the sum of dollars, (*the amount specified in the order of arrest*) exclusive of property exempt from execution;

And the said D. D., being duly sworn, says:

(*As with the other bail.*)

(*As so on, with each bail offered.*)

(*Signatures of bail.*)

Examination taken and sworn to before me, this day of, 18..

G. W. H.....
Justice of the Peace.

[No. 26.]

ALLOWANCE OF BAIL.—CODE, SECTION ONE HUNDRED AND SIXTY-SIX.

A..... B.....	} Justice's Court :
<i>against</i>	
C..... D.....	

County of

Allowance of
bail.

The bail of the defendant, C. D., within mentioned, having appeared before me and justified, I do find the said bail to be sufficient and allow the same.

Dated this day of, 18..

G. W. H.

Justice of the Peace.

[No. 27.]

(Section twenty-seven of this chapter.)

SUBPOENA TO TESTIFY.

STATE OF NORTH CAROLINA, }
 County. }

Subpoena to
testify.

To S. T.—Greeting : (*The Justice may insert any number of names.*)

You (and each of you) are commanded to appear personally before G. W. H., Esq., a justice of the peace for said county, at his office in said county, on the day of, 18.., to give evidence in a certain civil action, now depending before said Justice, and then and there to be tried, between A. B., plaintiff, and C. D., defendant, on the part of the defendant (*or plaintiff*)* Hereof fail not, under the penalty prescribed by law. Witness, our said justice, this day of, 18..

G. W. H.

Justice of the Peace.

[No. 28.]

N. B.—The justice may, instead of a formal subpoena, endorse on the summons or other process an order for witnesses substantially as follows :

"The officer to whom the within process is directed will summon the following persons as witnesses for the plaintiff,, and the following as witnesses for the defendant,; and will notify all such witnesses to appear and testify at the time and place within named for the return of this process.

Dated day of 18..

G. W. H.

Justice of the Peace."

[No. 29.]

SUBPŒNA DUCES TECUM.

If any witness has a paper or document, which a party desires as evidence at the trial, the justice will pursue the form No. 27 as far down as the asterisk*; and then add the following clause : Subpœna
duces tecum.

“ And you, S. T., are also commanded to bring with you and there produce as evidence a certain bond (*describe particularly*) which is now in your possession, or under your control, together with all papers, documents, writings or instruments in your custody, or under your control.” (*Conclude as in form No. 27.*)

[No. 30.]

FORM OF OATH TO WITNESS.

You swear that the evidence you will give as to the matters in difference between A. B., plaintiff, and C. D., defendant, shall be the truth, the whole truth, and nothing but the truth. So help you, God. Oath of wit-
ness.

[No. 31.]

PROCEEDINGS AGAINST DEFAULTING WITNESS.—SECTION TWENTY-SEVEN OF THIS CHAPTER.

When a witness, under subpœna, fails to attend, the justice will note the fact in his docket by some such entry as the following : Defaulting
witness.

“ R. P., a witness summoned on the behalf of the plaintiff, called and failed.”

If the party, who suffers by the default of the witness, wishes to move for the penalty against him, he will serve substantially the following notice on the witness :

A.... B.... <i>against</i> The Highland Mining Co.	}	County of.....
--	---	----------------

To R. P.

Take notice, that on the sixth March, one thousand eight hundred and sixty-nine, the plaintiff in the above action will move G. W. H., Esq., the justice before whom the trial of said action was had, on the day of, 18.., for judgment against you for the sum of eight dollars, forfeited by rea-

son of your failure to appear and give evidence on said trial as you were summoned to do.

Dated this Feb. 28, 1869.

A. B.
Plaintiff.

The justice will enter the proceedings on the foregoing notice in his docket as follows:

A. B. <i>against</i> C. D.	}	Justice's Court : Motion for penalty against R. P., defaulting witness.
--	---	--

March 6th, 1869: A. B. above named appears, and, according to notice filed and duly served on R. P., moved for the penalty of eight dollars, forfeited by the said R. P. by reason of his failure to attend and give evidence on the trial of a cause, wherein A. B. was plaintiff and C. D. was defendant, tried before me at my office on the day of, 18.., as appears by entry duly made in my docket; when and where the said R. P., a witness summoned on the part of the plaintiff in that action, was called and did fail.

R. P. appears and assigns for excuse, "high water," and offers his own affidavit which is filed. He also offers as a witness in his behalf, S. S., who, being duly sworn, testifies that (*state what S. S. says about the condition of the water at the time.*) R. P. having no other evidence, closed the case on his part. Whereupon, A. B. offered M. Y. as a witness, who being sworn, testifies, (*state what witness says.*)

Neither party having any other evidence, and after hearing all the proofs and allegations submitted for and against the motion:

It is adjudged, on motion of A. B., that A. B. do recover of R. P. the sum of eight dollars, penalty forfeited by reason of the premises, and the further sum of dollars, costs of this motion.

[No. 32.]

FORM OF A VENIRE.—SECTION THIRTY-EIGHT OF THIS CHAPTER.

Form of a venire.

The justice will make a list of the persons drawn by him as jurors, and endorse thereon substantially as follows:

To O. P. M., constable of county:

You are hereby directed to summon the persons named within to appear as jurors before me at my office, in your county, on the day of, for trial of a civil action now pending between A. B., plaintiff, and C. D., defendant, then and there to be tried. And have you then and

there the names of the jurors you shall summon, with this precept.

Dated this day of 18..

G. W. H.....

Justice of the Peace.

[No. 33.]

FORM OF JUROR'S OATH.

You swear well and truly to try the matter in difference Form of juror's oath.
between A. B., plaintiff, and C. D., defendant, and a verdict to
give thereon according to the evidence in the cause. So help
you, God.

[No. 34.]

FORM OF OATH TO CONSTABLE IN CHARGE OF THE JURY.

You swear that you will, to the utmost of your ability, keep Oath of Constable in charge of jury.
the persons sworn as jurors on this trial together, in some private
and convenient place, without any meat or drink, except such
as may be ordered by the court; that you will not suffer any
communication, orally or otherwise, to be made to them; and
that you will not communicate with them yourself, orally or
otherwise, unless by order of the court. So help you, God.

[No. 35.]

SUMMONS AGAINST DEFAULTING JUROR TO SHOW CAUSE.

State of North Carolina to any constable or other lawful officer
of county, greeting:

We command you to summon R. S. to appear before G. W. Summons against defaulting juror.
H., Esq., a justice of the peace for your county, at his office
in said county, on the day of, 18.., to show cause
why he, the said R. S., should not be fined according to law,
for his non-attendance as a juror before our said justice, at his
office in said county, on the day of, 18.., in a
certain cause then and there pending, in which A. B. was plain-
tiff, and C. D. was defendant; and have you then and there this
precept, with the date and manner of your service thereof.
Witness, our said said justice, this day of, 18..

G. W. H.....

Justice of the Peace.

[No. 36.]

DEMURRER TO COMPLAINT.—RULE XI, SECTION TWENTY OF THIS CHAPTER.

A..... B.....	}	Justice's Court.
<i>against</i>		
C..... D.....		

County of.....

Demurrer to
complaint.

The defendant demurs to the complaint in this action, for that the said complaint does not state facts sufficient to constitute a cause of action, (*or*, for that the said complaint is not sufficiently explicit to enable this defendant to understand it.)
(Signature of Defendant or Defendant's Attorney.)

[No. 37.]

DEMURRER TO ANSWER.—RULE TEN.

(Title as above.)

Demurrer to
answer.

The plaintiff demurs to the answer of the defendant, for that, the facts stated in the answer are not legally sufficient to constitute a defence to this action, (*or* for that the said answer is not sufficiently explicit to make this plaintiff to understand it.)
(Signature of Plaintiff or Plaintiff's Attorney.)

[No. 38.]

JUDGMENT UPON DEMURRER.—RULE TWELVE.

Judgment up-
on demurrer.

NOTE.—If the Justice thinks the objection raised by the demurrer to the pleadings, is well founded, he will make this entry in his docket:

“Demurrer to the complaint (*or* to the answer) filed, heard and sustained; and, whereupon, it is ordered that the said pleading be amended without cost, (*or* upon payment of costs,”
as the case may be.)

This order to amend the defective pleading is a matter of course, and is the only judgment which the justice can render upon the demurrer. He cannot give a final judgment in the cause at this stage; for the party may choose to amend in his pleadings and try the case on the facts. If, however, the party refuse to amend the defective pleading, the justice will disregard the same, and proceed to render final judgment, as follows:

“The plaintiff (*or* defendant) having refused to amend his complaint (*or* his answer) demurred to, it is adjudged, that the defendant go without day and recover of the plaintiff the sum

of dollars, costs of this action (*or* that the plaintiff recover of the defendant the sum of dollars, damages, and the further sum of dollars, costs of this action.”)

If the justice deems the objection, raised by the demurrer, not well founded, he will enter in his docket as follows:

“Demurrer to the complaint (*or* to the answer) filed, heard and overruled;” and he will then proceed to the evidence in the cause.

[No. 39.]

(Rule 13.)

NOTE.—The following is offered as a general precedent of the manner in which the justice will make the entries in his docket:

A	B	} Justice's Court.
<i>against</i>		
C	D	

Form of entries in justice's docket.

APRIL 1ST, 1869. Summons issued; returnable on the 10th instant, at my office.

APRIL 10TH, 1869. Summons returned, served on defendant by O. P. M., Constable, on the 4th instant; both parties appear, the plaintiff in person, the defendant by R. H. R., Esq., Attorney.

The plaintiff complains of a promissory note executed by the defendant to him, dated October five, one thousand eight hundred and sixty-eight, payable one day after date, for \$35, and also for goods, sold and delivered to the defendant, and claims damages for \$47.50.

The defendant answers and denies each and every allegation in the complaint; and claims a set off of \$18 for wood sold and delivered to the plaintiff, and also of \$10.60 for work and labor performed for the plaintiff.

On joining issue of fact as above, the action is, by consent of parties, adjourned to the 15th instant, at my office.

A venire is also issued at the plaintiff's (*or* defendant's) demand, returnable at the time and place last mentioned.

APRIL 15TH, 1869. The parties appear and proceed to the trial of the cause. The following jurors are returned as summoned upon the venire by O. P. M., Constable. (*Insert the names of all jurors summoned.*) The following jurors, who are returned as summoned, do not appear. (*Insert their names.*) The following jurors appear according to the summons. (*Insert their names.*) The following jurors are sworn to try the action. (*Insert their names.*)

H. P. and J. M., witnesses for the plaintiff, and W. F., a witness for the defendant, are sworn and testify; J. S., a witness on the part of the defendant, is offered, but objected to

Form of entries in justice's docket.
—Continued.

by the plaintiff on the ground, (*state the ground*) and rejected.

Having heard the evidence, (and the arguments of counsel, *if any*), the cause is submitted to the jury, who retire, under charge of O. P. M., a constable duly sworn for that purpose, and afterwards returned into open court and publicly deliver their verdict, by which they find in favor of the plaintiff for \$41.25 damages; whereupon, I adjudge that the plaintiff do recover of the defendant:

Damages,	\$41 25
Costs,	5 20

APRIL 18TH, 1869. Execution issued for above judgment to O. P. M., constable.

APRIL 20TH, 1869. Notice of appeal served on me by defendant; my fee paid and return to the appeal made by me.

N. B.—If the action is tried by the justice without a jury, all that relates to the venire and the verdict in the above form, must be left out, and the judgment will be entered as follows:

"After hearing the proofs and allegations of the respective parties, I do adjudge that the plaintiff recover," &c., (*as above*.)

We can give only a general idea of how these entries should be made in the justice's docket. Since each case has features peculiar to itself, so, in each case, the entries must conform to the facts as they actually occur.

Form on appeal.

NOTE.—It will be observed from Art. IV, sec. 33, Constitution, and section fifty-nine of this chapter, that, upon an appeal from a justice's court, where the judgment exceeds \$25, there may be a new trial of the whole matter in the appellate court; but if the judgment be for \$25, or less, then the case shall be heard in the appellate court, only upon matters of law. These provisions render it necessary to note well a difference in practice between the cases, where the judgment is for \$25, and where it exceeds that amount, in the forms of the notice of appeal and the return to the appeal.

When the judgment is for \$25, or less, the notice of appeal should state *particularly* the grounds of appeal; and the justice, in making his return thereto, should be careful to set forth all the evidence and other facts, which may be necessary to enable the appellate court to review the matters of law arising thereon.

But where the judgment exceeds \$25, as the appellate court must proceed to a new trial of the whole matter, both of law and of fact, upon testimony offered in that court, and not dependent in any way upon the proceedings had before the justice, it will be sufficient to state the grounds of appeal *generally* in the notice of appeal, and the justice, in his return, will not set out any evidence offered on questions of law raised by the parties at the trial.

For the sake of illustration, we give the forms of both kinds of notices and returns.

[No. 40.]

FORM OF NOTICE OF APPEAL TO THE SUPERIOR COURT, WHERE A NEW TRIAL OF THE WHOLE MATTER IS TO BE HAD.—SECTIONS FIFTY-FOUR, FIFTY-FIVE AND FIFTY-NINE OF THIS CHAPTER.

A. B.
against
C. D. } Justice's Court.

County of.

To G. W. H., Esq., a justice of the peace for said county :

Form of notice
of appeal, &c.

Take notice, that the defendant in the above action appeals to the Superior Court from the judgment rendered therein by you on the day of 18., in favor of the plaintiff for the sum of sixty-five dollars, damages, and the further sum of three dollars and seventy-five cents, costs, and that this appeal is founded upon the ground that the said judgment is contrary to law and evidence.

Dated this day of 18..

W. W.
Attorney for Appellant.

[No. 41.]

RETURN TO NOTICE OF APPEAL LIKE THE FOREGOING.—SECTIONS FIFTY AND FIFTY-NINE OF THIS CHAPTER.

A. B.
against
C. D. } County of

To the Superior Court of. County:

An appeal having been taken in this action by the defendant, I, G. W. H., the justice before whom the same was tried, in pursuance of the notice of appeal hereto annexed, do hereby certify and return that the following proceedings were had by and before me in said action :

Return to no-
tice, &c.

On the first of February, one thousand eight hundred and sixty-nine, at the request of the plaintiff, I issued a summons in his favor and against the defendant, which is herewith sent. Said summons was, on the return day thereof, returned before me at my office ; and at the same time and place, the parties personally appeared.

The plaintiff complained for goods sold and delivered to defendant to the amount of \$75. The defendant denied the right of the plaintiff to recover that amount for the goods, on the ground that he had paid, at or shortly after the purchase of said goods, dollars thereon; and he also claimed to have a set-off against the plaintiff to the amount of \$85 for board and lodging furnished to plaintiff, and work and labor done for him; and he claimed to be entitled to judgment against the plaintiff for \$.

Both parties introduced evidence upon the claims so made by them, and after hearing their proofs and allegations, I rendered judgment in favor of the plaintiff and against the defendant, on the tenth February, eighteen hundred and sixty-nine, for \$65 damages, and for the further sum of \$3.75, costs of the action.

I also certify that on the eleventh February, eighteen hundred and sixty-nine, the defendant served the annexed notice of appeal on me, and at the same time paid me my fee of \$1 for making my return.

All of which I send, together with the process, pleadings, and other papers in the cause.

Dated this 15th day of February, 1869.

G. W. H.

Justice of the Peace.

N. B.—If the cause was tried by a jury, state the fact and set forth the verdict, with the judgment thereon. It is not necessary to set out in the return a copy of any process, pleading, affidavit or other paper. It is sufficient to refer to such a paper as filed and as herewith sent.

[No. 42.]

NOTICE OF APPEAL, WHERE A NEW TRIAL IS NOT HAD IN THE
SUPERIOR COURT.—SECTION FIFTY-NINE OF THIS CHAPTER.

A. . . . B. . . .	}	Justice's Court.
<i>against</i>		
C. . . . D. . . .		

To G. W. H., Esq., a justice of the peace for
County :

Notice of appeal where new trial is not had.

Take notice, that the plaintiff in the above action appeals to the Superior Court from the judgment rendered therein by you, on the . . . day of, 18., in favor of the defendant for the sum of \$23.50, and \$5 costs, and that this appeal is founded upon the following grounds:

1. The Justice erred in excluding I. W. as a witness, when offered by the plaintiff on said trial.

2. The justice erred in receiving L. M. as a witness on the part of the defendant, and against the objection of the plaintiff.

3. The justice erred in charging the jury that (*state the matter of law in which the alleged error consists.*)

Dated this day of, 18..

E. P.

Attorney for Appellant.

[No. 43.]

RETURN TO ABOVE NOTICE OF APPEAL.

A..... B.....	} Justice's Court.
<i>against</i>	
C..... D.....	

To the Superior Court of county.

In pursuance of the notice of appeal hereto annexed, which was served on me on the sixteenth March, one thousand eight hundred and sixty-nine, I, G. W. H., the justice before whom the above entitled action was tried, do hereby certify, and return to the said court, that the following proceedings were had by and before me on said trial.

Return to such notice of appeal.

At the request of the plaintiff, on the first day of March, one thousand eight hundred and sixty-nine, I issued a summons against the defendant, returnable before me at my office on the ninth day of March, one thousand eight hundred and sixty-nine. Said summons, which is herewith sent, was returned, duly served on the defendant before me at the time and place last mentioned, when both parties appeared by attorney.

The plaintiff filed a written complaint, which is herewith sent. The defendant filed a written answer, which is herewith sent.

Issues having been thus joined on the pleadings between the parties, the cause was adjourned, on motion and oath of the defendant, to the fifteenth March, one thousand eight hundred and sixty-nine, at the court-house, in the town of

At the time and place last mentioned, the parties appeared by attorney, and at the demand of the plaintiff, I issued a venire to O. P. M., constable, which venire, by consent of both parties, was returnable forthwith, and the said constable, afterwards and on the same day, returned the said venire, with a panel containing the names of twelve jurors, summoned by him for the jury aforesaid. All the jurors so summoned appeared, and the following were duly drawn and sworn as jurors to try the action, to-wit:

(*Here insert the jurors' names.*)

In the course of the trial, the plaintiff called I. W. as a witness and offered to prove by him, (*state what was offered.*)

The defendant objected to the evidence on the ground (*state the ground*,) and I excluded the evidence, to which decision the plaintiff duly excepted.

Afterwards the defendant called L. M. as a witness, and offered to prove by him (*state what was offered*.) The plaintiff objected to receiving the evidence on the ground (*state the ground*,) and I admitted the evidence, to which decision the plaintiff duly excepted.

After all the evidence was submitted to the jury, and the arguments of counsel heard in the cause, I charged the jury as follows: (*state the charge*.) The plaintiff excepted to this charge, or to certain parts of this charge, (*stating them*.)

Thereupon the jury retired for deliberation, under the charge of a constable, duly sworn for that purpose, and afterwards they returned into court, and being called by me, and severally answering to their names, they delivered their verdict in open court, by which they found in favor of the defendant in the sum of \$23.50, the amount of his set-off against the claims of the plaintiff.

Whereupon, I did immediately, and on the same day, render judgment in favor of the defendant, and against the plaintiff, for the said sum of \$23.50, and \$5 costs of this action.

I also certify that, when the notice of appeal above referred to, was served on me, the plaintiff paid me my fee, (\$1.00) for costs of this return.

All of which I send, together with the process, pleadings, and all other papers in the cause.

Dated this March 20th, 1869.

G. W. H.
Justice of the Peace.

[No. 44.]

WHERE THE SUM DEMANDED EXCEEDS TWO HUNDRED DOLLARS.

—SECTION FIFTEEN OF THIS CHAPTER.

Forms of judgment.
Where sum exceeds \$200.

It appearing that the sum demanded by the plaintiff in this action, exceeds two hundred dollars, it is ordered that the action be dismissed, and judgment is rendered against A. B., plaintiff, for the sum of dollars costs.

[No. 45.]

WHERE THE TITLE TO REAL ESTATE IS IN QUESTION.—SECTION SIXTEEN OF THIS CHAPTER.

Where real estate is in question.

N. B.—The defendant, if he wishes to make answer to title, must file a written answer to the complaint, setting forth the facts.

ANSWER OF TITLE.

A..... B..... <i>against</i> C..... D.....	}	Justice's Court.
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The defendant answers to the complaint:

1. That no allegation thereof is true.

2. That the plaintiff ought not to have or maintain his action against the defendant, because the premises mentioned and described in the complaint, at the time when the rent and render, for which said action is brought, is alleged to be due, was and is now the land and freehold of one J. D., and not that of the plaintiff; nor was the plaintiff then, nor is he now, entitled to the possession thereof; and the defendant further answers that the title to said premises was, at the time aforesaid, and is now, in said J. D., and will come in question on the trial of this action.

Dated this day of, 18..

C. D,
Defendant.

It appearing from the answer and proof of the defendant, that the title to real estate is in controversy in this action, it is ordered that the action be dismissed, and judgment is rendered against the plaintiff for dollars costs.

[No. 46.]

OFFER OF JUDGMENT.—RULE SIXTEEN.

A.... B.... <i>against</i> C.... D....	}	Justice's Court.
--	---	------------------

To A. B.....

Take notice, that the defendant hereby offers to allow judgment to be taken against him by the plaintiff in the above action for the sum of fifty dollars, with costs.

Dated this day of, 18..

C. D,
Defendant.

[No. 47.]

ACCEPTANCE OF OFFER OF JUDGMENT.

(Title as above.)

To C. D.....

Take notice, that the plaintiff hereby accepts the offer to allow

Acceptance of

offer of judgment.

the plaintiff to take judgment in the above action, for the sum of fifty dollars, with costs, and the justice will enter up judgment accordingly.

Dated this day of, 18...

A. B. ,
Plaintiff.

[No. 48.]

FORM OF JUDGMENT OR OFFER.

(Title as above.)

Judgment on offer.

N. B.—The justice will state all the proceedings in the action from the issuing of the summons down to the appearance of the parties and the complaint of the plaintiff, and then proceed as follows:

Whereupon the said defendant, before answering said complaint, made and served an offer, in writing, to allow the plaintiff to take judgment against him for the sum of fifty dollars with costs;* and the said plaintiff thereupon accepted such offer, and gave notice thereof to the defendant in writing; said offer and acceptance thereof being filed:

Now, therefore, judgment is accordingly rendered in favor of the plaintiff and against the defendant, for the sum of fifty dollars damages, and the further sum of one dollar costs.

If notice of acceptance is not given, the entry will be as follows:

(Follow the foregoing form down to the asterisk, () and then add):*

“And the said plaintiff having refused to accept such offer, the defendant answered the complaint by denying,” &c., *(state the defence of the defendant, down to the judgment, which, in case the plaintiff fails to recover more than the sum mentioned in the offer, will be entered thus):*

After hearing the proofs and allegations of the respective parties, I adjudge that the plaintiff do recover the sum of fifty dollars damages, and the further sum of one dollar costs;

I further adjudge that the defendant do recover of the plaintiff the sum of two dollars and seventy-five cents, costs accruing in the action subsequent to the offer of the defendant referred to.

[No. 49.]

GENERAL FORM.

Execution.

State of North Carolina, to any Constable or other lawful officer of County, GREETING:

WHEREAS, judgment has been rendered by G. W. H., Esq., a justice of the peace for said county, against C. D., in favor

of A. B., for the sum of dollars damages, and the further sum of dollars costs on the day of 18. . ;

You are therefore commanded, forthwith to levy of the goods and chattels of the said C. D., (excepting such goods and chattels as are by law exempt from execution) the amount of said judgment, with interest from the date thereof, until the money is recovered.

And make due return, according to law, in sixty days from the date hereof.

Dated this day of ; 18. .

G. W. H.

Justice of the Peace.

[No. 50.]

EXECUTION IN ATTACHMENT.

State of North Carolina, to any Constable or other lawful officer of County, GREETING: Execution in attachment.

WHEREAS, in pursuance of a warrant of attachment, dated the day of 18. ., issued by G. W. H., Esq., a justice of the peace of said county, in an action wherein A. B. was plaintiff and C. D. defendant, the following property of the defendant was, on the day of, 18. ., duly levied on and attached :

(Here insert a list of property.)

And whereas, judgment was rendered in said action, on the day of, 18. ., in favor of said plaintiff, and against the said defendant, in the sum of . . . dollars.

Therefore we command you that you satisfy the said judgment out of the property so attached as aforesaid, by the sale of the same or so much thereof as shall be sufficient to satisfy the said judgment; and if a sufficient sum be not realized therefrom, then you satisfy the said judgment out of any other goods and chattels of the said judgment debtor within your county.

And make due return thereof according to law within sixty days from the date hereof.

Witness, our said justice, this day of, 18. .

G. W. H.,

Justice of the Peace.

[No. 51.]

RECORD OF CONVICTION OF A CONTEMPT.

The justice will make an entry in his docket stating the particular circumstances of the contempt, of which the following is offered as an example : Proceedings for contempt. Record of conviction.

WHEREAS, on the day of, 18. ., while en-

gaged in the trial of an action (*or other judicial, act as the case may be*) in which A. B. was plaintiff and C. D. was defendant, at my office in county, M. B. did wilfully and contemptuously interrupt me, and did then and there conduct himself so disorderly and insolently towards me, and by making a loud noise, did disturb the proceedings on said trial (*or other judicial act*) and impair the respect due to the authority of the law; and on being ordered by me to cease making such noise and disturbance, the said M. B. refused so to do, but, on the contrary, did publicly declare and with loud voice, (*state whatever offensive words were used,*) and whereas, when immediately called upon by me to answer for the said contempt, the said M. B. did not make any defense thereto, nor excuse himself therefrom; the said M. B. is therefore convicted of the contempt aforesaid, and is adjudged to pay a fine of five dollars and be imprisoned in the county jail for the term of two days, and until he pays such fine or is duly discharged from imprisonment according to law.

G. W. H.
Justice of the Peace.

[No. 52.]

WARRANT OF COMMITMENT FOR A CONTEMPT.

Warrant of
commitment
for contempt.

State of North Carolina to the Keeper of the common jail
of county, GREETING:

WHEREAS, &c., (*recite the record of conviction so as to show the entire matter of contempt, together with the judgment therefor; and then proceed as follows:*)

Therefore, you are hereby commanded to receive the said M. B. into your custody in the said jail, and him there safely keep during the said term of two days, and until he pays the said fine, or is duly discharged according to law. Hereof fail not.

Dated this day of 18..

G. W. H.
Justice of the Peace.

[No. 53.]

TRANSCRIPT OF JUDGMENT TO BE DOCKETED IN SUPERIOR COURT CLERK'S OFFICE.—CODE, SECTION FIVE HUNDRED AND THREE.

A..... B.....	} Justice's Court.
<i>against</i>	
C..... D.....	

County of

Transcript

It is adjudged that the plaintiff do recover of the defendant

the sum of seventy-five dollars damages, and the further sum of four dollars costs of the action.

Dated April 10, 1868.

G. W. H.....,
Justice of the Peace.

County of: I, G. W. H., the justice before whom the judgment in the above entitled action was rendered, do hereby certify that the foregoing is a transcript of said judgment, and of the whole thereof, as the same is entered by me in my docket in the proceedings of said action at the date therein stated.

Given under my hand this April 15th, 1868.

G. W. H.....,
Justice of the Peace.

[No. 54.]

TRANSCRIPT OF JUSTICE'S JUDGMENT TO BE REMOVED TO ANOTHER COUNTY.—SECTION TWENTY-SIX OF THIS CHAPTER.

(Make out a certified transcript of the judgment as given in the preceding, and then attach thereto the following certificate of the clerk of the Superior Court):

Transcript of
justice's judg-
ment.

County of: I, S. A. W., Clerk of the Superior Court of said county, do hereby certify that G. W. H., the person who subscribed the foregoing transcript and certificate, was, at the date of the judgment therein mentioned, to wit, on the day of , 18..., a justice of the peace in said county; and that I am acquainted with the handwriting of the said G. W. H., and believe the name subscribed to said transcript and certificate, is his proper and genuine signature.

In witness whereof, I have hereto set my hand and the seal [L. s.] of my office, on this day of , 18...

S. A. W.....,
Clerk Superior Court.

SECTION 14. 64 N. C., 650; 67 N. C., 1.

SEC. 19. 63 N. C., 478; 65 N. C., 81.

SEC. 55. 68 N. C., 288.

SEC. 61. 68 N. C., 72.

SEC. 63. 68 N. C., 72.

CHAPTER 64.

LANDLORD AND TENANT.

SECTION

1. Guardian of infant may lease to end of current year of full age; but not to lease without, &c.
2. When lease shall be in writing.
3. Lessors not partners with lessees unless they so contract.
4. Formal demand of rent not necessary to create a forfeiture when there is a proviso for re-entry.
5. Right to reeover for use and occupation, when.
6. Rents apportioned when the estate of the lessor terminates.
7. When person entitled to rents limited in succession dies, to whom payment is to be made.
8. When lease of farming lands determines during current year, tenant to hold to end of year in lieu of emblements.
9. What length of notice required to terminate tenancy.
10. Tenant not liable for damage for accidental fire.
11. Agreement to repair, how construed.
12. In case of accidental damage lessee may surrender his estate.
13. Possession of crops deemed vested in lessors in certain cases.
14. When money rent reserved, lessor shall have like remedy.
15. Removal of crop by lessee without notice a misdemeanor.
16. Lessors mining and getting timber

SECTION

- entitled to the remedies given by section fourteen.
17. On conveyance of the reversion, &c., no attornment necessary.
18. Right of grantees of reversions and tenants of particular estates.
19. Tenants who hold over may be dispossessed, when.
20. When summons shall issue. Oath of lessor.
21. Officer to serve summons, how.
22. What justice to do, if defendant fail to appear or deny allegation.
23. What to be done if both parties require a trial by jury.
24. Powers of justices same as on other trials.
25. Either party may appeal. Bond to be given.
26. What to be done if defendant tenders rent in arrear and costs.
27. If proceedings quashed, judgment of restitution.
28. Damages may be recovered for occupation till time of trial.
29. Costs to successful party.
30. Defendant may reeover damages for his removal from possession.
31. Remedy given to the lessor when the tenant deserts premises.
32. What forms sufficient.
33. Forms of proceeding before a justice of the peace for the summary ejectment of a tenant holding over.

Guardian of infant may lease to end of current year of full age; but not to lease without, &c.—1868-'9, e. 156, s. 1.

When lease shall be in writing.—1868-'9, e. 156, s. 2.

1. THE guardian of an infant may lease the lands of the infant for a term not exceeding the end of the current year in which the infant shall come of age or die in non-age.

But no guardian, without leave of the court, shall lease any land of his ward, without impeachment of waste, or for a term of more than three years, unless at a rent not less than three per centum on the assessed taxable value of the land.

2. All leases and contracts for leasing land for the purpose of digging for gold or other minerals, or of mining generally, of whatever duration, and all other leases and contracts for leasing lands, exceeding in duration three years from the making thereof, shall be void unless put in writing and signed by

the party to be charged therewith, or by some other person by him thereto lawfully authorized.

3. No lessor of property, merely by reason that he is to receive as rent or compensation for its use a share of the proceeds or net profits of the business in which it is employed, or any other uncertain consideration, shall be held a partner of the lessee.

Lessors not partners with lessees unless they so contract.—1868-'9, c. 156, s. 8.

4. Whenever any half year's rent or more shall be in arrear from any tenant to his landlord, and the landlord has a subsisting right to re-enter for the non-payment of such rent, he may bring an action for the recovery of the demised premises, and the service of the summons therein shall be deemed equivalent to a demand of the rent in arrear and a re-entry on the demised premises, and if, on the trial of the cause, it shall appear that the landlord had a right to re-enter, the plaintiff shall have judgment to recover the demised premises and his costs.

Formal demand of rent not necessary to create a forfeiture when there is a proviso for re-entry.—1868-'9, c. 156, s. 4.

5. Whenever any person shall occupy land of another, by the permission of such other, without any express agreement for rent, or upon a parol lease which is void, the landlord may recover a reasonable compensation for such occupation, and if by such parol lease a certain rent was reserved, such reservation may be received as evidence of the value of the occupation.

Right to recover for use and occupation, when.—1868-'9, c. 156, s. 5.

6. If a lease of land, in which rent is reserved, payable at the end of a year or other certain period of time, be determined by the death of any person during one of the periods in which the rent was growing due, the lessor or his personal representative may recover a part of the rent which becomes due after the death, proportionate to the part of the period elapsed before the death, subject to all just allowances; and if any security shall have been given for such rent it shall be apportioned in like manner.

Rents apportioned when the estate of the lessor terminates.—1868-'9, c. 156, s. 6.

7. In all cases where rents, rent charges, annuities, pensions, dividends, or any other payments of any description, are made payable at fixed periods to successive owners under any instrument executed hereafter, or by any will becoming operative hereafter, and where the right of any owner to receive payment is terminable by a death or other uncertain event, and where such right shall so terminate during a period in which a payment is growing due, the payment becoming due next after such terminating event, shall be apportioned among the successive owners according to the parts of such periods elapsed before and after the terminating event.

When person entitled to rents, &c., limited in succession dies, to whom payment be made.—1868-'9, c. 156, s. 7.

8. Where any lease for years of any land let for farming on which a rent is reserved shall determine during a current year of the tenancy, by the happening of any uncertain event determining the estate of the lessor, the tenant in lieu of emblements shall continue his occupation to the end of such current year, and shall then give up such possession to the succeeding owner of the land, and shall pay to such succeeding owner a part of the rent accrued since the last payment became due, proportionate to the part of the period of payment elapsed

Where lease of farming land determines during a current year tenant to hold to end of year in lieu of emblements.—1868-'9, c. 156, s. 8.

after the termination of the estate of the lessor, to the giving up such possession, and the tenant in such case shall be entitled to a reasonable compensation for the tillage and seed of any crop not gathered at the expiration of such current year from the person succeeding to the possession.

What length of notice required to terminate a tenancy.—1868-'9, c. 156, s. 9.

9. A tenancy from year to year may be terminated by a notice to quit given three months or more before the end of the current year of the tenancy; a tenancy from month to month by a like notice of fourteen days; a tenancy from week to week, of two days.

Tenant not liable for damage for accidental fire.—1868-'9, c. 156, s. 10.

10. A tenant for life, or year, or for a less term, shall not be liable for damage occurring on the demised premises accidentally, and notwithstanding reasonable diligence on his part; unless he so contract.

Agreement to repair, how construed.—1868-'9, c. 156, s. 11.

11. An agreement in a lease to repair a demised house shall not be construed to bind the contracting party to rebuild or repair in case the house shall be destroyed or damaged to more than one-half its value, by accidental fire not occurring from the want of ordinary diligence on his part.

In case of accidental damage lessee may surrender his estate.—1868-'9, c. 156, s. 12.

12. If a demised house, or other building, be destroyed during the term, or so much damaged that it cannot be made reasonably fit for the purpose for which it was hired, except at an expense exceeding one year's rent of the premises, and the damage occur without negligence on the part of the lessee or his agents or servants, and there be in the lease no agreement respecting repairs, or providing for such a case, and the use of the house damaged was the main inducement to the hiring, the lessee may surrender his estate in the demised premises by a writing to that effect delivered or tendered to the landlord within ten days from the damage, and by paying or tendering at the same time all rent in arrear, and a part of the rent growing due at the time of the damage, proportionate to the time between the last period of payment and the occurrence of the damage, and the lessee shall be thenceforth discharged from all rent accruing afterwards; but not from any other agreement in the lease. This section shall not apply if a contrary intention appear from the lease.

Possession of crops deemed vested in lessors in certain cases.—1868-'9, c. 156, s. 13.

13. It shall be competent for any lessee of land to agree in writing to pay the lessor a share of the crop to be grown on the land during the term as rent, or to give him a lien on the whole crop, or any part thereof, as a security for the performance of any stipulation contained in the lease; and when the lessee has so agreed, such charge, or such crop, shall be deemed and held to be vested in possession in the lessor and his assigns at all times until such lien shall have been satisfied or discharged by some writing signed by the lessor or his assigns; and such lessor and his assigns shall be entitled against the lessee or any other person who shall gather or remove any part of such crop without the consent of the lessor or his assigns, to the remedies given in the Code of Civil Procedure, upon a claim for the delivery of personal property.

14. Where a tenant or lessee of land has agreed to pay a rent in money, such rent, unless otherwise agreed between the parties to the lease, shall be a lien on the crop which shall be grown on the land during the term; and the lessor in such case shall have the rights, and be entitled to the remedies, given in the next preceding section.

When money rent reserved, the lessor shall have like remedy.—1868-'9, c. 156, s. 14.

15. Any tenant of land, under a lease giving the lessor a share of the crop as rent, or giving the lessor a lien on the crop as security for the rent, or for the performance of any stipulation in the lease; and any person with knowledge of said lien, under the license or authority of such tenant, who shall remove any part of the crop from such land without the consent of the lessor and without having given the lessor or his agent, if to be found on the demised premises or within five miles thereof, three days' notice, of such intended removal, and before satisfying all liens on said crop, shall be guilty of a misdemeanor.

Removal of crop by lessee without notice, a misdemeanor.—1868-'9, c. 156, s. 15.

16. If, in a lease of land for mining, or of timbered land for the purpose of manufacturing the timber into goods, rent shall be reserved, and if it shall be agreed in the lease that the minerals or timber goods, or any portion thereof shall not be removed until the payment of the rent, in such case the lessor shall have the rights and be entitled to the remedy given by section fourteen of this chapter.

Lessors for mining and for getting timber entitled to the remedies given in section fourteen.—1868-'9, c. 156, s. 16.

17. Every conveyance of any rent, reversion, or remainder in lands, tenements or hereditaments, otherwise sufficient, shall be deemed complete without attornment by the holders of particular estates in said lands: *Provided, however*, no holder of a particular estate shall be prejudiced by any act done by him as holding under his grantor, without notice of such conveyance.

On conveyance of the reversion, &c., no attornment necessary.—1868-'9, c. 156, s. 17.

18. The grantee in every conveyance of a reversion in lands, tenements or hereditaments, shall have the like advantages and remedies by action or entry, against the holders of particular estates in such real property, and their assigns, for non-payment of rent, and for the non-performance of other conditions and agreements contained in the instruments by the tenants of such particular estates held, as the grantor or lessor or his heirs might have; and the holders of such particular estates, and their assigns, shall have the like advantages and remedies against the grantee of the reversion, or any part thereof, for any conditions and agreements contained in such instruments, as they might have had against the grantor or his lessor or his heirs.

Rights of grantees of reversions, and of tenants of particular estates.—1868-'9, c. 156, s. 18.

19. Any tenant or lessee of any house or land, and the assigns, under the tenants or legal representatives of such tenants or lessee, who shall hold over and continue in the possession of the demised premises, or any part thereof, without the permission of the landlord, and after demand made for its surrender, may be removed from such premises in the manner hereinafter prescribed in either of the following cases:

Tenants who hold over may be dispossessed, when.—1868-'9, c. 156, s. 19.

(1.) Whenever a tenant in possession of real estate holds over after his term has expired;

(2.) When the tenant or lessee, or other person under him,

has done or omitted any act by which, according to the stipulation of the lease, his estate has ceased.

When summons shall issue. Oath of lessor.—1868-'9, c. 156, c. 20.
1869-'70, c. 212

20. When the lessor or his assigns, or his or their agent or attorney, shall make oath in writing, before any justice of the peace of the county in which the demised premises are situated, stating such facts as constitute one of the cases above described, and describing the premises, and asking to be put in possession thereof, the justice shall issue a summons reciting the substance of the oath, and requiring the defendant to appear before him or some other justice of the county, at a certain place and time, (not to exceed five days from the issuing of the summons, without the consent of the plaintiff or his agent or attorney) to answer the complaint. The plaintiff or his agent or attorney may in his oath claim rent in arrears, and damage for the occupation of the premises since the cessation of the estate of the lessee: *Provided*, the sum claimed shall not exceed two hundred dollars; but, if he shall omit to make such claim, he shall not be thereby prejudiced in any other action for their recovery.

Officer to serve summons, and how.—1868-'9, c. 156, s. 21.

21. The officer receiving such summons shall immediately serve it by the delivery of a copy to the defendant, or by leaving a copy at his usual or last place of residence, with some adult person, if any such be found there, or if the defendant have no usual place of residence in the county, and cannot be found therein, by fixing a copy on some conspicuous part of the premises claimed.

What justice to do, if defendant fail to appear or admit allegation.—1868-'9, c. 156, s. 22.

22. The summons shall be returned according to its tenor, and if on its return it shall appear to have been duly executed, and if the defendant shall fail to appear, or shall admit the allegations of the complaint, the justice shall give judgment that the defendant be removed from, and the plaintiff be put in possession of the demised premises; and if any rent or damages for the occupation of the premises after the cessation of the estate of the lessee, not exceeding two hundred dollars, be claimed in the oath of the plaintiff, as due and unpaid, the justice shall inquire thereof, and give judgment as he may find the fact to be.

What to be done, if both parties require a trial by jury.—1868-'9, c. 156, s. 23.

23. If the defendant by his answer, shall deny any material allegation in the oath of the plaintiff, and the parties shall waive a trial by jury, the justice shall hear the evidence and give judgment as he shall find the facts to be. If either party shall demand a trial by jury, and shall deposit with the justice a sum of money equal to the costs of such jury, the justice shall immediately cause to be summoned twelve lawful jurors, from whom a jury of six shall be obtained and empanelled as is prescribed in other cases of trial by jury before a justice, who shall decide upon the issues of fact joined between the parties, and if rent or damages be claimed as aforesaid, shall assess the same. The justice shall record the verdict and render judgment accordingly; and if the jury shall find that the allegation in the plaintiff's oath, which entitle him to be put in possession, are true, the justice shall give judgment that the

defendant be removed from, and the plaintiff put in possession of the demised premises; and also for such rent and damages as shall have been assessed by the jury, and for costs; and shall issue his execution to carry the judgment into effect.

24. On trials under this chapter, the justice shall have the powers given him in other cases of trials before him, and be subject to like duties.

25. Either party may appeal from the judgment of the justice, as is prescribed in other cases of appeal from the judgment of a justice; but no execution commanding the removal of a defendant from the possession of the demised premises, shall be suspended until the defendant shall have given bond in an amount not less than one year's rent of the premises, with sufficient security, who shall justify and be approved by the justice, to be void if the defendant shall pay any judgment which in that or any other action the plaintiff may recover for rent, and for damages for the detention of the land.

26. If, in any action brought to recover the possession of demised premises upon a forfeiture for the non payment of rent, the tenant, before judgment given in such action, shall pay or tender the rent due and the costs of the action, all further proceedings in such action shall cease; or if the plaintiff shall further prosecute his action, and the defendant shall pay into Court for the use of the plaintiff, a sum equal to that which shall be found to be due, and the costs, to the time of such payment, or to the time of a tender and refusal, if one has occurred, the defendant shall recover from the plaintiff all subsequent costs; the plaintiff shall be allowed to receive the sum paid into Court for his use, and the proceedings shall be stayed.

27. If the proceedings before the justice shall be brought before a Superior Court and quashed, or judgment be given against the plaintiff, the Superior or other Court in which final judgment shall be given, shall, if necessary, restore the defendant to the possession, and issue such writs as shall be proper for that purpose.

28. On an appeal to the Superior Court, the jury that tries the issue joined, shall also assess the damages of the plaintiff for the detention of his possession to the time of the trial in that Court, and judgment for the rent in arrear and for the damages as assessed may; on motion, be rendered against the sureties to the appeal bond.

29. In cases under this chapter, the successful party shall recover costs.

30. If, by order of the justice, the plaintiff shall be put in possession, and the proceedings shall afterwards be quashed or reversed, the defendant may recover damages of the plaintiff for his removal.

31. If any tenant or lessee of lands or tenements, being in arrear for rent, or having agreed to cultivate the demised premises and to pay a part of the crop to be made thereon as rent, or who shall have given to the lessor a lien on such crop as a

Powers of justices the same as on other trials.—1868-'9, c. 156, s. 24.

Either party may appeal—bond to be given.—1868-'9, c. 156, s. 25.

What done if defendant tenders rent in arrear and costs.—1868-'9, c. 156, s. 26.

If proceedings quashed, judgment of restitution.—1868-'9, c. 156, s. 27.

Damages may be recovered for occupation to time of trial.—1868-'9, c. 156, s. 28.

Costs to successful party.—1868-'9, c. 156, s. 29. Defendant may recover damages for his removal from possession.—1868-'9, c. 156, s. 30. Remedy given to the lessor when the ten-

ant deserts
premises.
1868-'9, c. 156,
s. 32.

security for the rent, shall desert the demised premises, and leave them unoccupied and uncultivated, the lessor shall have the like remedies to be put in possession as are given to lessors against tenants who hold over.

What forms
sufficient.—
1868-'9, c. 156,
s. 33.

32. The following forms, or any substantially similar, shall be sufficient in proceedings for the summary ejectment of tenants holding over, and others, under sections nineteen to thirty-three, both inclusive, of this chapter.

Forms of pro-
ceeding before
a justice of the
peace for the
summary
ejectment of a
tenant holding
over.—1868-'9,
c. 156, s. —.

33.

[No. 1.]

FORM OF THE OATH OF PLAINTIFF.

North Carolina, County.

A. B., Plaintiff,
against
C. D., Defendant.

Summary proceedings in ejectment.

1869-'70, c.
212.

The plaintiff (his agent or attorney) maketh oath that the defendant entered into the possession of a piece of land in said county, (describe the land,) as a lessee of the plaintiff, (or as lessee of E. F., who, after the making of the lease, assigned his estate to the plaintiff, or, otherwise as the fact may be,) that the term of the defendant expired on the day of, 18. . ., (or that his estate has ceased by non-payment of rent, or otherwise, as the fact may be,) that the plaintiff has demanded the possession of the premises of the defendant, who refused to surrender it, but holds over; that the estate of the plaintiff is still subsisting, and the plaintiff asks to be put in possession of the premises.

The plaintiff claims dollars for rent of the premises from the day of, 18. . ., to the day of, 18. . .; and, also, dollars for the occupation of the premises since the day of, 18. . ., to the date hereof.

A. B., *Plaintiff*.

Subscribed and sworn to before me, this day of
....., 18. . .

J. K., *J. P.*

[No. 2.]

FORM OF SUMMONS TO BE ISSUED BY THE JUSTICE.

North Carolina, County.

A. B., Plaintiff,
against
C. D., Defendant,

Summary proceedings in ejectment.

A. B., (his agent or attorney,) having made and subscribed

before me the oath, a copy of which is annexed, you are re-^{1869-'70, c. 212.} quired to appear before me, or some other justice of the peace of said county, on the day of, 18.., at, then and there to answer the complaint; otherwise judgment will be given that you be removed from the possession of the premises.

Witness, my hand and seal, this day of, 18.. J. K., *J. P.*, [SEAL.]

To C. D., Defendant.

The justice attaches the oath of the plaintiff to the summons and delivers them, and a copy of both of them, to the officer, and makes the following entry on his docket, or varied according to the facts.

[No. 3.]

FORM OF ENTRY MADE BY JUSTICE.

<div style="border-bottom: 1px solid black; padding-bottom: 2px;">A. B., Plaintiff,</div> <div style="padding: 2px 0 2px 40px;"><i>against</i></div> <div style="border-bottom: 1px solid black; padding-bottom: 2px;">C. D., Defendant,</div>	}	Summary proceedings in ejectment for <i>(describe the premises.)</i>
--	---	---

Oath of plaintiff (his agent or attorney) filed on the^{1869-'70, c. 212.} day of, 18..

Plaintiff claims dollars for rent, from to and dollars for occupation from to

Summons issued the day of 18.., to constable, *(or sheriff, as the case may be.)*

The officer serves the summons as required by section twenty-two, and returns it to the justice with the oath of the plaintiff, and with his return endorsed.

[No. 4.]

FORM OF RETURN OF OFFICER.

On this day I served the within summons on the defendant, C. D., by delivering him a copy thereof, and of the oath of A. B., annexed, *(or by leaving a copy thereof, and the oath of A. B., at the usual place of residence of the defendant C. D., with an adult found there,) or (the said C. D. not being found in my county, and having no usual or last place of residence therein,) or (no adult person being found at his usual or last place of residence,) by posting a copy of the summons, and of the oath of A. B. annexed, on a conspicuous part of the premises claimed.* N. M., Constable.

The day of, 18..

[No. 5.]

FORM OF RECORD TO BE ENTERED BY JUSTICE ON HIS DOCKET.

A. B., Plaintiff, <i>against</i> C. D., Defendant.	}	Summary proceedings in ejectment.
--	---	-----------------------------------

1869-70, c.
212.

It appearing that the summons, with a copy of the oath of the plaintiff (his agent or attorney,) was duly served on defendant,* and, whereas, the defendant fails to appear, (*or admits the allegations of the plaintiff*.) I adjudge that the defendant be removed from, and the plaintiff put in possession of, the premises described in the oath of the plaintiff. I also adjudge that the plaintiff recover of defendant dollars, for rent, from the day of, 18.., to the day of, 18.., and dollars for damages for occupation of the premises from the day of, 18.., to this day, and dollars for his costs; the day of, 18..

If the defendant admits part of the allegations of plaintiff, but not all, the judgment must be varied accordingly; for example: follow the foregoing to the *, and then proceed:

[No. 6.]

And whereas, the defendant appears and admits the first and second allegations of the plaintiff, and denies the residue; and whereas, both parties waived a trial by jury, I heard evidence upon the matters in issue, and find, (*here state the finding on the matters in issue separately*.)

Supposing the findings are for the plaintiff, the record would proceed:

I therefore adjudge that the defendant (*and so on from**.)

[No. 7.]

If either party shall demand a jury the record will proceed from*, as follows: And whereas, the plaintiff, *or* defendant, *as the case may be*.) demanded a trial of the issues joined by a jury, I caused a jury to be summoned to wit: (*here give the names of the jurors summoned*.) from whom the following jury was duly empanelled, to wit: (*here state the names of the six jurors empanelled*.) who find (*here state the verdict of jury; if they find all the issues for the plaintiff, say so; if any particular issues, say so; also, state the sums assessed by them for rent and for occupation to the trial*.) Therefore, I adjudge, &c., as in form No. 5, from*.

If either party appeals the justice will enter on his docket as follows, altering the entry according to the facts.

[No. 8.]

FORM OF RECORD WHEN AN APPEAL IS PRAYED.

From the foregoing judgment the plaintiff *or* defendant, (*as* Forms.—Con-
the case may be) prayed an appeal to the next Superior Court *tinued.*
 of law for said county, which is allowed.

[No. 9.]

FORM OF BOND TO BE GIVEN BY DEFENDANT TO SUSPEND EXECUTION.

We, C. D., E. F. and G. H. are bound to A. B. in
 dollars. Witness, our hands and seals, this day of
, 18.. Whereas, on the day of, 18.,
 before, justice of the peace, A. B. recovered a judg-
 ment against C. D., in a summary proceeding in ejectment,
 for dollars, with interest from the day of,
 18., till paid, and dollars costs, and C. D. obtained an
 appeal to the Superior Court, of county. Now, if C. D.
 shall prosecute his appeal with effect, or shall perform the
 final judgment upon such appeal, the above shall be void.

Witnessed and approved by { (Seal.)
..... J. P. { (Seal.)
 (Seal.)

JUSTIFICATION OF SURETIES.

We, E. F. and G. H., severally swear that we are respectively
 worth the half of the penalty of the above bond, clear of our
 debts and homestead exemptions.

(Signed)

E. F.
G. H.

Subscribed and sworn to before me, {
 J. P. {

[No. 10.]

FORM OF EXECUTION ON A JUDGMENT FOR THE PLAINTIFF.

A. B., Plaintiff,	} Beaufort County.
<i>against</i>	
C. D., Defendant.	

The State of North Carolina to any lawful officer of said
 county, GREETING :

You are hereby commanded to remove C. D. from, and put
 A. B. in, the possession of a certain piece of land, (*here de-*

Forms.—Continued.

scribe it as in the oath of the plaintiff.) You shall also make out of the goods and chattels, lands and tenements, of said defendant, . . . dollars, with interest from the . . . day of . . . , 18. . . , to the day of payment, which the plaintiff lately recovered of the defendant as rent and damages, and the further sum of . . . dollars as costs, in said action. Return this writ, with a statement of your proceedings therein, before me. (*State when and where according to general law respecting Justices' executions.*)

Witness, my hand and seal, this . . . day . . . , 18. . .

(Seal.)

[No. 11.]

FORM OF SUPERSEDEAS OF EXECUTION.

The State of North Carolina to any officer having an execution in favor of A. B., plaintiff, *vs.* C. D., defendant, in a summary proceeding in ejectment, signed by, a justice of the peace.

The defendant having given bond to me, as required by law, on his appeal to the Superior Court of county, in the above case, you will stay further proceedings upon said execution and immediately return the same to me, with a statement of your action under it.

Witness, my hand and seal, this day of , 18. . .
, *J. P.* (SEAL.)

[No. 12.]

FORM OF CERTIFICATE OF JUSTICE ON RETURN OF THE APPEAL TO THE SUPERIOR COURT.

The annexed are the original oath, summons and other papers, and a copy of the record of the proceedings in the case of a summary proceeding in ejectment, A. B., plaintiff, *vs.* C. D., defendant.

., *J. P.*

COSTS IN THE CAUSE.

(*Here state all the costs, to whom paid or due, and by whom.*)
 All the papers must be attached.

CHAPTER 65.

LIENS OF MECHANICS AND OTHERS.

SECTION

1. Liens on buildings, &c.
2. Liens on crops, &c.
3. Personal property subject to lien.
4. Claims, where filed.
5. To be brought before magistrate in case of disagreement.
6. What rights not affected.
7. Costs allowed to either party.
8. Defendant entitled to set off.
9. When notice of lien filed.
10. Proceedings to enforce lien, in what courts and in what time.
11. Executions.
12. Order in which liens to be paid.

SECTION

13. How liens discharged.
14. Justices' judgment.
15. When remedy by attachment.
16. Laborer's share of crop not liable to execution against employer.
17. Owners of stud-horses, &c., to have a lien on colt, &c.
18. Colt not exempt from execution, &c.
19. Lien on crop in favor of those making advances.
20. Warrant of sheriffs to seize the crop on affidavit that the lien is about to be defeated. Proviso. Further proviso.

1. EVERY building built, rebuilt, repaired or improved, together with the necessary lots on which said building may be situated, and every lot, farm or vessel or any kind of property not herein enumerated, shall be subject to a lien for the payment of all debts contracted for work done on the same, or material furnished.

Liens on building, &c.—1869-'70, c. 206, s. 1.

2. The lien for work on crops or farms or materials given by this chapter shall be preferred to every other lien or incumbrance, which attached upon the property subsequent to the time at which the work was commenced or the materials were furnished.

Lien on crops, &c.—1869-'70, c. 206, s. 2.

3. Any mechanic or artizan who shall make, alter or repair any article of personal property at the request of the owner or legal possessor of such property, shall have a lien on such property so made, altered or repaired for his just and reasonable charge for his work done and material furnished, and may hold and retain possession of the same until such just and reasonable charges shall be paid; and if not paid for within the space of thirty days, provided it does not exceed fifty dollars, if over fifty dollars, ninety days, after the work shall have been done, such mechanic or artizan may proceed to sell the property so made, altered or repaired at public auction, by giving two weeks, public notice of such sale by advertising in some newspaper in the county in which the work may have been done, or if there be no such newspaper, then by posting up notice of such sale in three of the most public places in the county, town or city in which the work may have been done, and the proceeds of the said sale shall be applied first to the discharge of the said lien and the expenses and costs of keeping and selling such property, and the remainder, if any, shall be paid over to the owner thereof.

Personal property subject to lien.—1869-'70, c. 206, s. 3.

4. All claims under two hundred dollars may be filed in the Claims, where

filed.—1869-
'70, c. 206, s. 4.

office of the nearest magistrate; if over two hundred dollars, in the office of the Superior Court Clerk in any county where the labor has been performed or the material furnished; but all claims filed shall be in detail, specifying all materials furnished or labor performed, and at what date it was performed or material furnished, in case of contract or otherwise. If the parties interested make a special contract for such labor performed, or if such material and labor are specified in writing, in such cases it shall be decided agreeably to the terms of the contract, provided the terms of such contract do not affect the lien for such labor performed or materials furnished.

To be brought
before magis-
trate in case of
disagreement.
—1869-'70, c.
206, s. 5.

5. In case of any disagreement between the parties interested in any such contract it may be brought before the nearest magistrate by the plaintiff or defendant for arbitration or otherwise, as the magistrate may decide, provided the amount claimed does not exceed two hundred dollars; if over that amount, all claims must be filed with the clerk of the Superior Court and entered on the calendar so as to be brought before the court at the first term after the filing of any claims. The judges of the Superior Court may appoint referees to ascertain the proper value of any labor performed on any building or farm, or any material furnished or specified in the application at the time of plaintiff or defendant filing his petition.

What rights
not affected.—
1869-'70, c. 206,
s. 6.

6. Nothing contained in this chapter shall be construed to affect the rights of any person to whom any debt may be due for any work done for which priority of claims are filed with the proper officer.

Costs allowed
to either par-
ty.—1869-'70,
c. 206, s. 7.

7. Costs are allowed to either party upon the rules established by law in actions arising on contracts made under the Code of Civil Procedure.

Defendant en-
titled to set
off.—1869-'70,
c. 206, s. 8.

8. The defendant in any suit to enforce the lien shall be entitled to any set off or claim arising between the contractors during the performance of the contract.

When notice
of lien filed.
1869-'70, c.
206, s. 9.

9. The notice of the lien shall be filed as hereinbefore provided, at any time before or within thirty days after the performance and completion of the labor, or the final furnishing of the materials, or the gathering of the crop.

Proceedings
to enforce lien;
in what Courts
and in what
time.—1868-'9,
c. 117, s. 7.

10. Proceedings to enforce the lien created, must be commenced in the courts of justices of the peace, and in the Superior Courts, according to the jurisdiction thereof, within six months from the date of filing the notice of the lien.

Executions.—
1868-'9, c. 117,
s. 9.

11. Upon judgment rendered in favor of the claimant, an execution for the collection and enforcement thereof, shall issue, in the same manner as upon other judgments in actions arising on contract for the recovery of money only, except that the execution shall direct the officer to sell the right, title and interest which the owner had in the premises or the crops thereon, at the time of the filing of the notice of lien, before such execution shall extend to the general property of the defendant.

Order in

12. The liens created and established by this chapter shall

be paid and settled according to the priority of the notice of lien filed with the justice or the clerk.

13. All liens created by this chapter may be discharged as follows :

(1.) By filing with the justice or clerk a receipt or acknowledgment that the lien has been paid or discharged, signed by the claimant ;

(2.) By depositing with the justice or clerk money equal to the amount of the claim, which money shall be held by said officer for the benefit of the claimant ;

(3.) By an entry in the lien docket, that the proceedings on the part of the claimant to enforce the lien have been dismissed, or a judgment rendered against the claimant in such action ;

(4.) By a failure of the claimant to commence an action for the enforcement of the lien within six months from the notice of lien filed.

14. No execution issued by a justice of the peace, under this chapter, shall be enforced against real estate or any interest therein, but justices' judgments may be docketed as provided in section nineteen of the chapter entitled " Justices and their Jurisdiction," for the purpose of selling such estate or any interest therein.

15. In all cases where the owner or employer attempts to remove the crop, houses or appurtenances from the premises, without the permission, or with the intent to defraud the laborer of his lien, the claimant may have a remedy by attachment.

16. Whenever servants and laborers in agriculture shall by their contracts in writing, already or hereafter made, be entitled, for wages, to a part of the crops cultivated by them, such part shall not be subject to sale under executions, against their employers, or the owners of the land cultivated.

17. In all cases where the owner or any agent for or employee of the owner of any mare or jennett shall turn the same to a stud horse or jackass for the purpose of raising colts, the price charged for the season of the stud horse or jackass shall be constituted a lien on the colt until the price so charged for the season is paid by the owner of the colt, his agent or employee.

18. The colt shall not be exempt from execution for the payment of said season price by reason of the operation of the homestead exemption: *Provided, however*, that the person or persons claiming such lien on the colt shall close the same within six months from the foaling of the colt.

19. If any person or persons shall make any advance or advances, either in money or supplies, to any person or persons, who are engaged in or about to engage in the cultivation of the soil, the person or persons so making such advance or advances shall be entitled to a lien on the crops which may be made during the year upon the land in the cultivation of which the advances so made have been expended, in preference to all

which liens to be paid.—1868 '9, c. 117, s. 11.

How liens discharged.—1868-'9, c. 117, s. 12.

Justices' judgment.—1868-'9, c. 117, s. 13.

When remedy by attachment.—1868-'9, c. 117, s. 14.

Laborers' share of crop not liable to execution against employer.—1866, c. 59.

Owners of stud horses, &c., to have a lien on colts, &c.—1872-'3, c. 94, s. 1.

Colt not exempt from execution.—1872-'3, c. 94, s. 2.

Lien on crops in favor of those making advances.—1866-'7, c. 1, s. 1.—1872-'3, c. 133, s. 1.

other liens existing or otherwise, to the extent of such advance or advances: *Provided*, an agreement in writing shall be entered into before any such advance is made to this effect, in which shall be specified the amount to be advanced, or in which a limit shall be fixed beyond which the advance, if made from time to time during the year, shall not go; which agreement shall be recorded in the office of the register of the county in which the person to whom the advances are made resides, within thirty days after its date.

Warrant to
Sheriffs to
seize the crops
on affidavit
that the lien is
about to be
defeated.—
1866-'7, c. 1, s.
2.
1872-'3, c. 133,
s. 2.

20. If the person making such advances shall make an affidavit before the clerk of the Superior Court of the county in which such crops are, that the person to whom such advances have been made, is about to sell or dispose of his crop, or in any other way is about to defeat the lien hereinbefore provided for, accompanied with a statement of the amount then due, it shall be lawful for him to issue his warrant, directed to any of the sheriffs of this State, requiring them to seize the said crop, and, after due notice, sell the same for cash and pay over the net proceeds thereof, or so much thereof as may be necessary, in the extinguishment of the amount then due:

Proviso.

Provided, however, that if the person to whom such advances have been made, shall, within thirty days after such sale has been made, give notice in writing to the sheriff, accompanied with an affidavit to this effect, that the amount claimed is not justly due, that then it shall be the duty of the said sheriff to hold the proceeds of such sale subject to the decision of the court, upon an issue which shall be made up and set down for trial at the next succeeding term of the Superior Court for the county in which the person to whom such advances have been made resides: *Provided, further*, that this shall not affect the rights of landlords to their proper share of rents.

Proviso.—
1872-'3, c. 133,
s. 3.

SECTION 15. 67 N. C., 45.

CHAPTER 66.

LIGHT HOUSES.

SECTION

1. United States may purchase lands to erect light houses, &c. Proviso.
2. Deeds to be recorded.

SECTION

3. Exemption from taxation.
4. Officers of the State may execute process on such lands.
5. Conditions of consent. Proviso.

U. S. may purchase lands to erect light

1. IT shall be lawful for the government of the United States, or any person under authority of the same, to purchase any tract, piece or parcel of land from any individual or individuals,

bodies politic or corporate within the boundaries or limits of this State, and hold the same for the purpose of erecting thereon light-houses, light keepers' dwellings, buoys and coal depots and buildings connected therewith: *Provided*, that no one tract, piece or parcel shall contain more than twenty acres.

2. All deeds, conveyances or other title papers for the same shall be recorded, as in other cases, in the office of the register of deeds in which the lands so conveyed may lie, in the same manner and under the same regulations as other deeds and conveyances are now recorded, and in like manner may be recorded a sufficient description by metes and bounds, courses and distances, of any tract or tracts, or legal division of any public land belonging to the United States, which may be set apart by the general government for the purpose before mentioned, by an order, patent or other official document or papers so describing such land.

3. The lots, parcels or tracts of land so selected, together with the tenements and appurtenances for the purpose before mentioned, shall be exempt from taxation by the State of North Carolina.

4. Nothing herein contained shall be so construed as to debar or hinder any of the officers of this State from executing any process, or levying any execution within the limits of any tract or parcel of land so held and purchased by the government of the United States in the same manner as if this act had never been passed.

5. The consent herein and hereby given is in accordance with the seventeenth clause of the eighth section of the first article of the Constitution of the United States, and with the acts of Congress in such cases made and provided, and in consideration of the United States building light-houses on the tracts or parcels of land so purchased, or that may be purchased: *And provided, also*, that the title to said land so conveyed to the United States shall escheat to the State unless the construction of a light-house be completed thereon with ten years from the date of the conveyance from said grantor.

houses.—1870-'1, c. 44, s. 1.
1872-'3, c. 201.

Proviso.—

Deeds to be recorded.—
1870-'1, c. 44, s. 2.
1872-'3, c. 201.

Exemption from taxation.—
1870-'1, c. 44, s. 8.

Officers of the State may execute process on such land.—
1870-'1, c. 44, s. 4.

Conditions of consent.—
1870-'1, c. 44, s. 5.

Proviso.

CHAPTER 67.

LIMITED PARTNERSHIPS.

SECTION

1. Limited partnerships may be formed.
2. General may unite with special partners.
3. Certificate must be signed. What it must show.

SECTION

4. Certificate must be acknowledged and registered.
5. Where to be registered.
6. Oaths to be made of the sums contributed.
7. Certificate, &c., to be essential.

SECTION

8. Effect of false statement.
9. Terms of partnership must be published.
10. Affidavits of publication to be filed.
11. Renewals and continuances must be certified, &c.
12. Alteration in names, &c., to work a dissolution.
13. Name of firm, what to be.
14. Suits, how to be conducted.

SECTION

15. Special stock not to be withdrawn.
16. When special stock to be returned.
17. Special partner may examine into business.
18. Partners liable to account with each other.
19. Effect of fraud by a partner.
20. Effect of bankruptcy.
21. How partnership to be dissolved.
22. Clerk's and register's fees.

Limited partnerships may be formed.--1860-'1, c. 28, s. 1.

1. LIMITED partnerships for the transaction of any mercantile, manufacturing or mechanical business within the State may be formed by two or more persons, upon the terms and with rights and powers and subject to the conditions and liabilities in this chapter; but its provisions must not be construed to authorize any such partnership for the conducting of a banking or insurance business.

General may unite with special partners.--1860-'1, c. 28, s. 2.

2. Such partnerships may consist of one or more persons, who are general partners, and are jointly and severally responsible as partners are now by law, and of one or more persons, who contribute in actual cash payments a specific sum as capital to the common stock, who are called special partners, and who are not liable for the debts of the partnership beyond the funds so contributed to the capital.

Certificate to be signed. What it must show.--1860-'1, c. 28, s. 3.

3. The persons desirous of forming such partnership must make and severally sign a certificate containing; first, the name or firm under which such partnership is to be conducted; second, the general nature of the business to be transacted; third, the names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence; fourth, the amount of capital which each special partner has contributed to the common stock; fifth, the period at which such partnership is to commence and terminate.

Certificate must be acknowledged and registered.--1860-'1, c. 28, s. 4.

4. The certificate must be acknowledged by the several persons signing the same before a Judge of the Supreme or Superior Court, or before the clerk of the Superior Court of the county in which the principal place of business of such partnership is situated; and the said judge or clerk shall endorse said acknowledgment, and order the certificate to be registered.

Where to be registered.--1860-'1, c. 28, s. 5.

5. The certificate and acknowledgment and order for registration must be registered in the county in which the principal place of business of such partnership is situated. If the partnership has places of business in different counties, a transcript of the certificate and acknowledgment certified by the register must be registered and filed in the register's office of each of such counties.

Oaths to be made of the

6. At the time of the acknowledgment of the certificate, an affidavit of one or more of the general partners shall be made

on oath before the judge or clerk taking such acknowledgment, stating that the sums specified in the certificate to have been contributed by each of the special partners to the common stock have been actually in good faith paid in cash, and the said affidavit so made shall be registered with the original certificate.

7. No such partnership shall be deemed to have been formed until such certificate and affidavit have been made, acknowledged and registered as required in the foregoing section.

8. If any false statement is made in such certificate or affidavit, all the persons interested in such partnership shall be liable as general partners.

9. The terms of the partnership must be published immediately after its formation for six successive weeks, in at least one newspaper in the same county or near the place of said partnership business, and if such publication be not made the partnership shall be deemed general.

10. Affidavits of such publications made by the proprietor of such newspaper in which the same is published, may be filed with the clerk of the Superior Court of the county in which such business is conducted, and shall be evidence of the fact.

11. Every renewal or continuance of such partnership beyond the time originally fixed for its duration must be certified, acknowledged and registered, and an affidavit of a general partner made and filed, and notice given by publication as required for its original formation, and every such partnership which is otherwise continued must be deemed a general partnership: *Provided*, that the affidavit herein required may state that the amount of cash therein specified had been originally paid in good faith, and that it is represented by goods or merchandise then on hand, and has not been impaired in the course of trade.

12. Every alteration which is made in the names of the partners, in the nature of the business, in the capital or shares thereof, or in any other matter specified in the original certificate, must be deemed a dissolution of the partnership, and any such partnership which is in any manner carried on after such alteration has been made must be deemed a general partnership unless renewed as a special partnership, according to the provisions of the preceding sections.

13. The business of the partnership must be conducted under a firm in which the names of the general partners only are inserted without the addition of the word "company," or any other general term; and if the name of any special partner is used in the firm with his privity, he shall be deemed a general partner.

14. Suits in relation to the business of the partnership may be brought and conducted by and against the general partner in the same manner as if there was no special partner.

15. No part of the sum which any special partner has con-

sums contributed.—1860-'1, c. 28, s. 6.

Certificate, &c., essential.—1860-'1, c. 28, s. 7.

Effect of false statement.—1860-'1, c. 28, s. 8.

The terms of partnership must be published.—1860-'1, c. 28, s. 9.

Affidavits of publication to be filed.—1860-'1, c. 28, s. 10.

Renewals and continuances must be certified, &c.—1871-'2, c. 121, s. 1.

Alteration in the names, &c., works a dissolution.—1860-'1, c. 28, s. 12.

Name of firm, what to be.—1860-'1, c. 28, s. 13.

Suits, how to be conducted.—1860-'1, c. 28, s. 14.

Special stock

not to be withdrawn.—1860-'1, c. 28, s. 15.

tributed to the capital stock must be withdrawn or paid by him in the shape of dividends, profits or otherwise, at any time during the continuance of the partnership, but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest does not reduce the original amount of such capital, and if after the payment of such interest any profits remain to be divided, he may receive his portion of such profits.

When special stock to be returned.—1860-'1, c. 28, s. 16.

16. If it appears by the payment of interest or profits to any special partner the original capital has been reduced, the partner receiving the same is bound to restore the amount necessary to make good his share of the capital without interest.

Special partner may examine into business.—1860-'1, c. 28, s. 17.

17. A special partner may, from time to time, examine into the state and progress of the partnership concerns; may advise as to their management and act as attorney at law, but must not transact any other of the partnership business, nor be employed for that purpose as agent or otherwise; and if he interfere contrary to the provisions of this section he is deemed a general partner.

Partners liable to account with each other.—1860-'1, c. 28, s. 18.
Effect of fraud by a partner. 1860-'1, c. 28, s. 19.
Effect of bankruptcy.—1860-'1, c. 28, s. 20.

18. The general partners are liable to account to each other, and to the special partners for their management of the partnership, as other partners.

19. Any partner who is guilty of any fraud in the affairs of the partnership is liable civilly to the party injured to the extent of the damage, and is also guilty of a misdemeanor.

20. In case of the bankruptcy or insolvency of the partnership, no special partner, under any circumstances, is to be allowed to claim as a creditor until the claims of all the other creditors of the partnership are satisfied.

How partnership to be dissolved.—1860-'1, c. 28, s. 21.

21. No dissolution of such partnership by the acts of the parties must take place before the time specified in the certificate of its formation, or in the certificate of its renewal, until a notice of its dissolution has been recorded in the register's office in which the original certificate was recorded, and published once a week for four successive weeks in the nearest newspaper to each of the places where the partnership transacts its business.

Clerk's and register's fees.—1860-'1, c. 28, s. 22.

22. The clerk of the Superior Court and register of deeds shall be entitled to the following fees for services rendered under this chapter: for each acknowledgment and probate the clerk shall be allowed fifty cents; for recording the original certificates and acknowledgments and each transcript of the same the register shall be allowed one dollar; for recording each affidavit, twenty-five cents; making out transcripts and certifying the same, fifty cents, and the same fees on the renewal or continuance of the partnership.

CHAPTER 68.

LITERARY FUND AND COMMON SCHOOLS.

SECTION

1. Treasurer to keep accounts of receipts, &c., and to report to General Assembly.
2. Duty of board in having swamp lands surveyed, drained, &c.
3. Written consent of owners to vest title in corporation.
4. When owners refuse, how corporation to proceed.
5. Lands of persons improved by canal, &c., to pay for portion of expense.
6. Board may appoint an engineer, surveyor, &c.
7. May enter upon any lands for surveying, &c. Titles to swamp lands not registered vested in corporation. Proviso.
8. May sell reclaimed lands. Proceeds of and entry-money to become principal.
9. Shall expend no money to reclaim lands, unless, &c.
10. May employ counsel and compromise suits.
11. May buy or exchange lands.
12. Turnpike from Plymouth to Pungo river.
13. Amount appropriated. Contractor to give bond. How land may be condemned for road.
14. Board may contribute lands for a canal from Waccamaw river to Little river.
15. Appropriation of \$5,000 for opening Open Ground Prairie.
16. Forfeitures of land by persons failing to pay tax.
17. Agent of swamp lands appointed.
18. His duties.
19. May be removed. Compensation.
20. Board may procure others to prosecute suits and share the recovery.
21. Presumption of title in favor of literary board or their assigns.
22. Board barred by time, only when State is.
23. No sale of swamp lands to be made except by authority of the General Assembly.
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26. Certain powers to be reserved to State, &c.
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28. Investment of funds.
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30. Treasurer.
31. Special deposits. County boards.
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45. To lay off townships. Proviso.
46. Boundaries of districts. Separate schools.
47. Committee may receive gifts, grants, &c., for the use of schools. Deeds, &c.
48. Sites of school houses. When unable to obtain sites to report to commissioners. Commissioners to appoint assessors.
49. Public schools.
50. Tax for the support of public schools. Proviso.
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53. School year.
54. Teachers to keep registers. Teachers to make report.
55. Teachers to make statement.
56. Apportionment of school funds.
57. Report of county treasurers.
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60. School laws to be published.
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- 62. Overplus of funds.
- 63. School taxes.
- 64. Report of secretary of county board.
Penalty for failing to report.
- 65. Commissions of treasurers.
- 66. Committees exempt from militia
duty, &c. Oath.

SECTION

- 67. School fund paid to county treasurers.
- 68. Apportionment of funds.
- 69. Compensation of examiners.
- 70. Disturbance of schools, &c., forbidden.
- 71. Duty of township school committees.

(See Constitution, Article 9.)

Treasurer to keep account of receipts, &c., and report to Assembly.—R. C., c. 66, s. 4.

1. THE Public Treasurer 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 invested, with such recommendations for the improvement of the same, as to them shall seem expedient.

Duty of board in having swamp lands surveyed, drained, &c.—R. C., c. 66, s. 5.

2. 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.

Written consent of owners to vest title in corporation.—R. C., c. 66, s. 6.

3. 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.

When owners refuse, how corporation to proceed.—R. C., c. 66, s. 7.

4. 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.

Lands of persons improved by canals, &c., to pay a proportion of ex-

5. 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.

pense.—R. C.,
c. 66, s. 8.

6. 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 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.

Board may ap-
point an engi-
neer, survey-
or, &c.—R.
C., c. 66, s. 9.

7. 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.

May enter up-
on any lands
for surveying,
&c. Titles to
swamp lands
not registered,
vested in cor-
poration.
Proviso.—R.
C., c. 66, s. 10.

8. 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.

May sell re-
claimed lands.
Proceeds of
and entry-
money to be-
come princi-
pal.—R. C.,
c. 66, s. 11.

9. 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.

Shall expend
no money to
reclaim lands,
unless, &c.—
R. C., c. 66, s.
12.

10. 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

May employ
counsel, and
compromise
suits.—R. C.,
c. 66, s. 13.

just, for the title, so as to secure to the corporation an indefeasible right in said lands.

May buy, or exchange lands.—R. C., c. 66, s. 14.

11. 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.

Turnpike from Plymouth to Pungo river.—R. C., c. 66, s. 15.

12. 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.

Amount appropriated. Contractor to give bond. How land may be condemned for road.—R. C., c. 66, s. 16.

13. 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. 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 Superior Court 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.

Board may contribute

14. 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.

15. 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.

lands for a canal from Waccamaw to Little river.—R. C., c. 66, s. 17.

Appropriation of \$5,000 for Open Ground Prairie.—R. C., c. 66, s. 18.

16. Any person who may at any time have obtained a grant from the State for any swamp lands which have been 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.

Forfeitures of land, by persons failing to pay tax.—R. C., c. 66, s. 19.

17. 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.

Agent of swamp lands appointed.—R. C., c. 66, s. 20.

His duties.—R. C., c. 66, s. 21.

18. 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.

19. 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

May be removed. Compensation—

tion.—R. C.,
c. 66, s. 22.

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.

Board may
procure others
to prosecute
suits, and share
recovery.—R.
C., c. 66, s. 23.

20. 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.

Presumption
of title in favor
of literary
board or their
assigns.—R.
C., c. 66, s. 24.

21. 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.

Board barred
by time, only
when State is.
—R. C., c. 66,
s. 25.

22. 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.

No sale of
swamp lands
to be made
except by au-
thority of Gen-
eral Assem-
bly.—1868-'9,
c. 79.

23. No sales of swamp lands, stocks or other property appropriated to the cause of education, shall be made, except by the authority of the General Assembly, on such terms as shall be prescribed by law, and all laws in conflict with this chapter are hereby repealed.

No loan to be
made, except,
&c.—1870-'1,
c. 279.

24. Hereafter it shall not be lawful for the board of education to loan any amount of the public funds under their control, or expend the same for any purpose whatever, except by the direction of the legislature.

Board of edu-
cation author-
ized to sell,
&c., when.—
1869-'70, c. 79.

25. Authority is hereby given to the board of education to perfect a sale of the lands held by the said board in the counties of Hyde, Tyrrell and Washington, for the sum of fifty thousand dollars or more, the said sale to be on five years' time, the interest to be paid annually and to be secured by the board under such regulations as the board may deem best.

Certain pow-
ers to be re-
served to the
State, &c.—
1872-'3, c. 118.

26. *Provided*, That in any sale which shall be made by the board of education, the following powers shall be expressly reserved to the state, to be reserved under such laws as are now or may be enacted by the General Assembly:

(1.) To make any expedient regulations respecting the repair of the canals which have been cut by the State, or enlargement of said canals;

(2.) To impose taxes on the lands benefitted by those canals for their repair, and which shall not be closed;

(3.) That the navigation of the canals shall be free to all persons, subject to a right in the State to impose tolls, which shall be spent exclusively in repairing or enlarging said canals to

Pungo river from the mouth of the Pungo lake canal downwards to Leachville.

(4.) That all land owners on the canals may drain into them, subject only to such general regulations as now are or hereafter may be made by the General Assembly in such cases.

(5.) The roads along the banks of the canals shall be public roads.

And provided, further, That the sale authorized by this section shall in no manner affect the titles of persons who occupy any of said lands under grants from the State, and in all cases where entries have been made grants shall be issued as now provided by law.

27. The State board of education shall meet at such times as a majority of the members may appoint: *Provided*, that the Governor may call a meeting at any time.

Meeting of board of education.—1872-'3, c. 90, s. 1.

28. The State board of education may, from time to time, as the same shall accumulate, invest the public school funds in United States bonds.

Investment of funds.—1872-'3, c. 90, s. 2.

29. The State Auditor shall keep a separate and distinct account of the public school funds and of the interest and income thereof, and also of such moneys as may be raised by State, county and capitation tax, or otherwise, for school purposes. He shall draw his warrants on the State treasurer in favor of any county treasurer, whenever such county treasurer shall present an order from the State board of education.

Auditor to keep separate accounts.—1872-'3, c. 90, s. 3.

30. The State Treasurer shall be the treasurer of the State board of education.

Treasurer.—1872-'3, c. 90, s. 4.

31. The State Treasurer shall receive and hold as a special deposit all school funds paid into the treasury, and pay them out only on the warrant of the State Auditor, issued on the order of the State board of education, in favor of a county treasurer, which warrant, duly indorsed by the county treasurer in whose favor it is drawn, shall be the only valid voucher in the hands of the State treasurer for the disbursement of school funds.

Special deposits.—1872-'3, c. 90, s. 5.

32. The county commissioners of each county shall constitute a board of education for the county. The chairman of the county commissioners shall be the chairman, the register of deeds the secretary, and the county treasurer the treasurer of the county board of education.

Chairman, &c.—1872-'3, c. 90, s. 6.

33. The county board of education shall have supervision of the public schools in their respective counties, shall decide all controversies relating to the boundaries of school districts, or which may arise upon the construction of the school law, and shall see that the school law is enforced. An appeal, however, may be taken from any decision of a county board to the State board of education.

Powers and duty of county board.—1872-'3, c. 90, s. 7.

34. The county treasurer of each county shall receive and disburse all public school funds. But before entering upon the duties of his office he shall execute a bond with sufficient security, in double the amount of money which may come into

Treasurer of county board.—1872-'3, c. 90, s. 8.

his possession during any year of his official term, for the faithful performance of his duties as treasurer of the county board of education. The county commissioners shall from time to time, if necessary, require the county treasurer to give bond and sufficient security, by additional bond or bonds, so as to secure the faithful administration of the school funds, and in default thereof, the commissioners shall be guilty of a misdemeanor.

Order upon
county treas-
urer.—1872-'3,
c. 90, s. 9.

35. All orders upon the county treasurer for school money for the payment of teachers, for the purchase of sites for school-houses, and for half the cost of building, repairing, and furnishing school-houses, shall be signed by the school committee of the township in which the school is taught or in which the site or school-house is situated; which orders, duly indorsed by the persons to whom the same are payable, shall be the only valid vouchers in the hands of county treasurers for disbursements of school money.

Secretary.—
1872-'3, c. 90,
s. 10.

36. The secretary shall record all of the proceedings of the county board of education, issue all notices and orders pertaining to the public schools, school-houses, sites, or districts, which notices or orders it shall be the duty of the sheriff to serve, and record all school statistics which shall be reported to him by school committees and board of county examiners, in a book to be furnished by the county commissioners for the purpose.

Appeal from
county board.
—1872-'3, c.
90, s. 11.

37. In all cases in which an appeal may be taken from the decision of the county to the State board of education, it shall be the duty of the secretary to send up a transcript of the proceedings and evidence in the case, together with the written statements of the parties.

Meetings of
county board.
1872-'3, c. 90,
s. 12.

38. The county board of education of each county shall hold two regular meetings every year on the first Mondays of February and August, for the purpose of looking after the interests of the public schools: *Provided*, that the chairman may call a meeting of the board at any time. At each regular meeting it shall be the duty of the board to examine the books and vouchers of the county treasurer, and audit his accounts, and report to the Superintendent of Public Instruction a full account of all school funds received and disbursed by the county treasurer.

Board of ex-
aminers.—
1872-'3, c. 90,
s. 13.

39. The county board of education of each county shall appoint three residents of their county of good moral character and suitable attainments, who shall be styled "The Board of Examiners," one of whom shall be designated as chairman. They shall hold their office one year and until their successors are appointed. If a vacancy should at any time occur in the board of examiners, the same shall be filled by the county board of education.

Duty of exam-
iners. Certifi-
cates to appli-
cant.—1872-'3,
c. 90, s. 14.

40. The board of examiners of each county shall examine all applicants for teachers' certificates at the court-house of the county on the first Thursdays of January and July of every year, and continue the examination from day to day during the remainder of the week, if necessary, till all applicants are

examined. They shall grant certificates to all applicants of sufficient moral and mental qualification. The board of examiners shall give certificates in three grades, as follows: If applicants are qualified to teach classes in the higher branches of English, they shall receive certificates of the first grade; if qualified to teach only in the ordinary branches of English, they shall be given a certificate of the second grade; and all applicants qualified to teach primary classes only, shall be given certificates of the third grade. If any person shall apply for an examination and certificate at any other time, the applicant shall pay the board of examiners a fee of one dollar. If the board of examiners should become satisfied that any person to whom a teacher's certificate has been granted is guilty of any immoral or disreputable conduct, or is neglectful of or in any way incompetent to the discharge of the duties of a teacher, they shall revoke the certificate and give notice to the secretary of the county board of education.

41. The board of examiners shall deliver to the secretary of the county board of education on or before the first day of October of every year, a catalogue of all the teachers to whom they gave certificates during the year, also an abstract statement of the number, race and sex of the teachers, and report the same to the Superintendent of Public Instruction.

Catalogue of teachers.—1872-'8, c. 90, s. 15.

42. In each township there shall be biennially elected by the qualified voters thereof a school committee of three persons, whose duties shall be as prescribed in this chapter. If there should at any time be a failure to elect school committeemen in any township, or if a vacancy should at any time occur, it shall be the duty of the county board of education to appoint suitable residents of the townships to fill the vacancy, and the persons thus appointed shall exercise all the powers and duties of a school committee until their successors are elected and qualified.

School committee. Vacancy.—1872-'8, c. 90, s. 16.

43. The school committee of each township shall be a body corporate by the name and style of "The School Committee of Township", in 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 of prosecuting and defending suit for and against the corporation. All conveyances to school committees shall be to them and their successors in office.

School committee to be corporate.—1872-'8, c. 90, s. 17.

44. The school committee of each township, within fifteen days after their election or appointment, shall meet at some convenient point within the township, and organize by electing one of their number chairman, and another of their number clerk of the school committee.

Duty of committee.—1872-'8, c. 90, s. 18.

45. The school committee of the several townships shall lay off their respective townships into convenient school districts, consulting, as far as practicable, the convenience of the neighborhood, and the wishes of persons interested, and disregarding the township boundaries where convenience requires it.

To lay off townships.—1872-'8, c. 90, s. 19.

Proviso.

They shall designate the districts by number, as school district No. 1, school district No. 2, of township, in the of, as the case may be: *Provided*, that where a district lies in two or more townships, it shall be designated as school district No. . . . of the township in which the school-house is situated; and the commissioners of adjoining counties shall have power in cases of great inconvenience to arrange for the sending of pupils to schools across the lines of such counties and provide for their payment from the fund of their school district.

Boundaries of districts. Separate schools.—1872-'3, c. 90, s. 20.

46. The school committee shall consult the convenience of the white residents in settling the boundaries of districts for white schools, and of colored residents in settling the boundaries for colored schools. The schools of the two races shall be separate; the districts the same or not, according to the convenience of the parties concerned. In cases where there are two sets of districts in a township they shall be designated as school districts numbers one, two, three, &c., for white schools, or school districts numbers one, two, three, &c., for colored schools, as the case may be, of township, of &c., as before stated.

Committee may receive gifts, grants, &c., for the use of schools. Deeds, &c.—1872-'3, c. 90, s. 21.

47. The school committee may receive any gift, grant, donation or devise made for the use of any school or schools within their jurisdiction, and in their corporate capacity they shall be and are hereby entrusted with the care and custody of all school-houses, school-house sites, grounds, books, apparatus, or other public school property belonging to their respective jurisdiction, with full power to control the same as they may deem best for the interest of the public schools, and the cause of education. When, in the opinion of the committee, any school-house, school-house sites, or other public school property has become unnecessary for public school purposes, they shall return the land to the original owner, his heirs or assigns, if he or they do desire, on the payment of first cost, and remove or sell the building after advertisement for twenty days at three public places in the townships. The deed for the property thus sold shall be executed by the chairman and clerk of the committee, and the proceeds of the sale shall be paid to the township treasurer, for the school expenses in the township.

Sites for school-houses. When unable to obtain site to report to commissioners. Commissioners to appoint assessors. Payment for property assessed. Appeal.—1872-'3, c. 90, s. 22.

48. The school committee may receive suitable sites for school-houses by donation or purchase. In the latter case, they shall report the price to the chairman and secretary of the county board of education. If the latter are satisfied that the price is not excessive, they shall approve the order of the committee on the county treasurer, which said committee are hereby authorized to give for the purchase money in favor of the grantor of the land, and upon payment of the order the title to said site shall vest in the committee and their successors in office. Whenever the committee are unable to obtain a suitable site for a school by gift or purchase, they shall report to the county commissioners, and the latter shall thereupon ap-

point three disinterested citizens, who shall lay off not more than one acre, and assess the cash value thereof, and report their proceedings to the county commissioners. If said report be confirmed by the commissioners, the chairman and secretary of the board of education for the county shall approve the order which the township school committee shall give on the county treasurer in favor of the owner of the land thus laid off, and upon payment or offer of payment of this order, the title to said land shall vest in the school committee and their successors in office: *Provided*, that improved land shall not be condemned under the provisions of this section; *and provided*, *further*, that any person aggrieved by the action of said commissioners, may appeal to the Superior Court of the county in which said land is situate, upon giving bond to secure said commissioners against such costs as they may incur on account of said appeal not being prosecuted with effect.

49. Every school to which aid shall be given under the provisions of this chapter shall be a public school, to which children between the ages of six and twenty-one years shall be admitted free of any charge, subject to the restrictions contained in section forty-six.

Public schools.—1872-'3, c. 90, s. 23.

50. If the tax levied in this chapter for the support of the public schools shall be insufficient to maintain one or more schools in each township for the period of four months, then the county commissioners of each county may levy annually a special tax to supply the deficiency for the support and maintenance of said schools for the said period of four months. The said tax shall be collected by the sheriff in money, and he shall be subject to the same liabilities for the collection and accounting for said tax as he is or may be by law in regard to other county taxes. The said tax shall be levied on all property, credits and polls in the county, and in the assessment of the amount upon each, the commissioners shall observe the constitutional equation of taxation; and the fund thus raised shall be appropriated in the county in which it is collected as provided in section fifty-seven of this chapter: *Provided*, that the question of the levy and collection of said tax shall have first been submitted to the vote of the qualified voters of the county at an election held at the different election precincts of the county, under rules and regulations to be fixed by the commissioners, and conforming as near as may be to the rules and regulations for conducting other elections, except that no new registration need be made, but the registration books of the next preceding general election may be used. The penalties for illegal and fraudulent voting shall be the same as provided in annual elections.

Tax for the public schools. 1872-'3, c. 90, s. 24.

Proviso.

51. The school committee shall have the authority to employ and dismiss teachers of the schools within their townships, and shall determine the pay per month to be paid the same: *Provided*, however, that teachers of the first grade shall not receive out of the school fund more than two dollars per day; of the

Employment of teachers.—1872-'3, c. 90, s. 25.

Proviso.

second grade not more than one dollar and fifty cents per day ; and of the third grade not more than one dollar per day ; but no teacher shall receive any compensation for a less term than one month. No committeeman shall be a teacher. Nor shall any committeeman in any way be interested by contract or otherwise in the erection or repairing of any school-house in his district.

Committee to make report of amount necessary for schools.—1872-'3, c. 90, s. 26.

52. The school committees of each township shall annually make an estimate of the amount of money necessary for maintaining the schools within their jurisdiction for a period not less than four months, and a certified report of said estimate shall be made to the county commissioners on or before the regular meeting in February: *Provided*, that the first estimate and report as herein required shall be made on or before the first Monday in April, one thousand eight hundred and seventy-three.

School year.—1872-'3, c. 90, s. 27.

53. The school year shall begin July first and end June thirtieth.

Teachers to keep registers. Teachers to make report.—1872-'3, c. 90, s. 28.

54. Every teacher or principal of a school to which aid shall be given under the provisions of this chapter, shall keep a daily record of all absences of pupils and of the grade in scholarship and deportment of each. The grade in scholarship shall be indicated by the numbers 1, 2, 3, 4 and 5 ; 1 representing the highest or first grade, and 5 the lowest, and the three intermediate numbers the three intermediate grades. The grades in deportment shall be represented by the same numbers and in the same order. At the end of every term every teacher of a public school shall deliver to the county treasurer a statement of the length of the term of the school, of the race, number, sex and average attendance of pupils, and the name of the district and township in which the school was taught.

Teachers to make statement.—1872-'3, c. 90, s. 29.

55. At the middle and end of every four months' term of a public school, the teacher or principal of the school shall exhibit to the school committee of the township a statement of the number of pupils, their average attendance, the length of a term and the time taught. He shall also exhibit a teacher's certificate, dated within one year of the time. If the committee are satisfied that the provisions of this chapter are complied with, they shall give an order on the county treasurer, payable to the teacher, for the sum due his school for the time taught. But they shall in no case give such an order unless the teacher produce a certificate of mental and moral qualifications from the board of examiners, dated within one year of the time.

Apportionment of school funds.—1872-'3, c. 90, s. 30.

56. The county board of education of every county shall, on the first Monday of February of each year, or as soon thereafter as practicable, apportion among the several townships in the county, according to the number of children in each between the ages of six and twenty-one years, (which number shall be ascertained by a census to be taken by the school committee and reported to the county board of education,) all school funds which may then be in the possession of or due

to the county treasurer, specifying how much thereof is apportioned to the children of each race, and give notice thereof to the school committees of the several townships of the county. And the school committees in the several townships shall apportion the same in like manner among the several school districts, and publish the same by an advertisement posted on the court-house door of each county. The sums thus apportioned to the several townships shall be subject to the orders of the school committees thereof for payment of the school expenses mentioned in section thirty-five: *Provided, however*, that in no case shall the school fund thus apportioned to either race be expended for the education of the other race: *And provided, further*, that so much of said school fund as shall not be expended in any school district for the education of the race for which it was apportioned in any year, shall be added to the final apportionment to said race in said school districts for the succeeding year. If the pupils of any public school reside in different townships, the school committees of each shall give an order to the teacher for such part of the amount due him as is proportionate to the number of pupils attending his school from their township,

57. The county treasurer of each county shall report to the Superintendent of Public Instruction on the first day of July of each year the entire amount of school money received by him during the preceding school year, the several sources from which it was derived and the disbursements thereof made by him, designating the sums paid for schools for the white and the colored children respectively, for school-house sites in the several townships. At the same time he shall report to the Superintendent of Public Instruction the number of public schools taught in the county during the year for each race, the number of pupils of each race, their average attendance, the number of males and the number of females, according to the reports made to him by the provisions of this chapter.

Report of county treasurers.—1872-'3, c. 90, s. 31, 1872-'3, c. 192,

58. It shall be the duty of all teachers of free public schools to maintain good order and discipline in their respective schools, to encourage morality, industry and neatness in all their pupils, and to teach thoroughly all branches which they profess to teach. If any pupil should wilfully and persistently violate the rules of school, such pupil may be dismissed by the teacher for the current term.

Duty of teachers.—1872-'3, c. 90, s. 32.

59. The State board of education may recommend the course of study to be pursued, the text books and other means of instruction to be used in the public schools: *Provided*, that no sectarian or political text books or influences shall be used in any public school.

Course of study.—1872-'3, c. 90, s. 33.

60. The Superintendent of Public Instruction shall have the school laws of the State published in pamphlet form and distributed to all school officers in the State, on or before the 1st day of April of this year, shall have printed all the forms necessary and proper for the purposes of this chapter, and shall

School laws to be published. 1872-'3, c. 90, s. 34.

look after the school interests of the State at large, and report to the Governor of the State on or before the third Monday of November of every year, which report shall give information and statistics of the public schools, and recommend such improvement in the school law as may occur to him; he shall keep his office at the seat of government, and shall sign all requisitions on the auditor for the payment of money out of the State Treasury for school purposes; copies of his acts and decisions, and of all papers kept in his office and authenticated by his signature and official seal, shall be of the same force and validity as the original. He shall be furnished with such room, fuel and stationery as shall be necessary for the efficient discharge of the duties of his office as heretofore.

State and
county capita-
tion taxes.—
1872-'3, c. 90,
s. 35.

61. All State and county capitation taxes which shall be levied and collected for school purposes under the Constitution, and all others levied by and in pursuance of this chapter for school purposes, shall be collected and paid to the county treasurer of the counties respectively in which the same are collected, at the same time and under the same rules, regulations and penalties as are or may be prescribed for the collection and payment of county taxes, and shall constitute a revenue and fund for the support of the public schools in said counties respectively, and shall not be used for any other purpose. The sheriff or other person collecting such taxes shall take the duplicate receipts of the county treasurer for such payments, one copy of which shall be transmitted to the auditor of the State: *Provided*, that in his settlement with the sheriff for the taxes mentioned in this section, the county treasurer shall only receive money.

Proviso.

Overplus of
funds.—1872-
'3, c. 90, s. 36.

62. All the school funds which shall not be required to pay the school orders of one thousand eight hundred and seventy-two, shall be added to the school fund for the counties for one thousand eight hundred and seventy-three. And the school funds for any year which may not be required for the school expenses of that year, shall be added to the school fund for the following year.

School taxes.
—1872-'3, c.
90, s. 37.

63. In addition to the State and county capitation taxes, appropriated by the Constitution, and other revenues heretofore provided by law for the support of public schools, there shall be levied and collected every year for the support and maintenance of public schools eight and one-third cents on every hundred dollars worth of property and credits in the State, and twenty-five cents on every poll in addition to the taxes in the revenue law.

Report of sec-
retary of coun-
ty boards.
Penalty for
failure to re-
port.—1872-'3,
c. 90, s. 38.
1872-'3, c. 192.

64. It shall be the duty of the secretary of the board of education for each county to report to the Superintendent of Public Instruction on or before the first day of July of every year, full and accurate statistics, showing the number of school children in the county, as reported to the county board of education under the provisions of section seventy-one of this chapter. And if any secretary of a county board of education shall fail

to comply with the provisions of this section at the time above stated, he shall be guilty of a misdemeanor, and upon conviction thereof in the Superior Court of his county, he shall be fined not less than fifty dollars and not more than two hundred dollars, or imprisoned not less than one month or more than six months, in the discretion of the court.

65. The county treasurer of each county shall receive as a compensation in full of all services required of him by law, such a *per centum*, not exceeding two and a-half, on account of receipts and disbursements, as the county commissioners, or a majority of them, may deem adequate and proper, on the entire amount of school funds which may pass through his hands each year, but he shall state the amount of his commissions in his annual statement to the secretary of the State board of education, as provided for in the fifty-seventh section of this chapter. The secretary of each county board of education shall receive such compensation for his services as may be allowed by the county commissioners, which shall be paid out of the school fund.

Commissions of treasurers.—1872-'3, c. 90, s. 89. 1870-'1, c. 139, s. 2.

66. The school committee shall be exempt from military duty, from working the public roads, and from serving on juries, and shall receive no other compensation for their services. Before entering upon the duties of their office they shall take an oath before a justice of the peace for the faithful discharge of the duties of that office.

Committee exempt from militia duty, &c. Oath.—1872-'3, c. 90, s. 40.

67. The share of the public school fund arising from the increase thereof by investment or otherwise to which each county may be entitled, shall be paid to the county treasurer, or his lawful attorney, upon the order of the board of education and the warrant of the Auditor, and in like manner shall all payments from the school fund be made.

School fund paid to county treasurers.—1872-'3, c. 90, s. 41.

68. It shall be the duty of the State board of education, on the first day of January of every year, to apportion among the several counties of the State all the school funds which may then be in the treasury of the State board of education, and order a warrant for the full apportionment to each county, upon the requisition of each county treasurer, approved by the chairman and secretary of the county board of education.

Apportionment of funds.—1872-'3, c. 90, s. 42.

69. Each member of the board of examiners who shall comply with the provisions of this chapter shall receive as a compensation for his services two dollars a day for every day he may be actually engaged in the examination of teachers at the times mentioned in the fortieth section of this chapter. It shall be the duty of the chairman and secretary of each county board of education to draw an order on the county treasurer for the amount due each member of the board of examiners by virtue of this section, payable to said examiners. This order shall be paid by the county treasurer out of the school fund.

Compensation of examiners.—1872-'3, c. 90, s. 43.

70. Every person who shall wilfully interrupt or disturb any public or private school, or any meeting lawfully and peaceably held for the purpose of literary or scientific improvement,

Disturbance of schools, &c., forbidden.—1872-'3, c. 90, s. 44.

Duty of township school committees.—1872-'3, c. 90, s. 45.

either within or without the place where such school or meeting is held, or injure any school building, or deface any school furniture, apparatus or other school property, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not exceeding one hundred dollars, at the discretion of the court.

71. It shall be the duty of the school committee of each township to take and return to the county board of education on or before the first day of August in every year a full and accurate census of the children between the ages of six and twenty-one years, giving the number in public schools, and the number who attended no school, designating the race and sex in all cases. They shall also report the number of public school-houses and the number of private school-houses, and the number of academies and colleges in each township.

CHAPTER 69.

MARRIAGE AND MARRIAGE SETTLEMENTS AND THE CONTRACTS OF MARRIED WOMEN.

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1. ALL unmarried male persons of sixteen years, or upwards, of age, and all unmarried females of fourteen years, or upwards, of age, may lawfully marry, except as hereinafter forbidden.

Who may contract a marriage.—1871-'2, c. 193, s. 1.

2. All marriages between a white person and a negro or Indian, or between a white person and a person of negro or Indian descent, to the third generation, inclusive, or between any two persons nearer of kin than first cousins, or between a male person under sixteen years of age and any female, or between a female person under fourteen years of age and any male, or between persons either of whom has a husband or wife living at the time of such marriage, or between persons either of whom is at the time thereof physically impotent, or is incapable of contracting from want of will or understanding, shall be void: *Provided*, that no marriage followed by cohabitation and the birth of issue shall be declared void after the death of either of the parties for any of the causes stated in this section, except for that one of the parties was a white person and the other a negro or Indian, or of negro or Indian descent to the third generation inclusive, and for bigamy.

Who may not.—1871-'2, c. 193, s. 2.

3. The consent of a male and female person who may lawfully marry, presently to take each other as husband and wife, freely, seriously and plainly expressed by each in the presence of the other, and in the presence of an ordained minister of any religious denomination, or of a justice of the peace, and the consequent declaration by such minister or officer that such persons are man and wife, shall be a valid and sufficient marriage: *Provided*, that the right of marriages among the society of Friends according to a form and custom peculiar to themselves, shall not be interfered with by the provisions of this or any other section of this chapter.

What necessary to a valid marriage.—1871-'2, c. 193, s. 3.

4. No minister or officer mentioned in the next preceding section shall perform a ceremony of marriage between any two persons, or shall declare them to be man and wife, until there shall be delivered to him a license for the marriage of the said persons, signed by the register of deeds of the county in which the marriage is intended to take place, or by his lawful deputy.

Ministers, &c, not to celebrate marriage unless a license be delivered.—1871-'2, c. 193, s. 4.

5. Every register of deeds shall, upon application, issue a license for the marriage of any two persons: *Provided*, it shall appear to him probable that there is no legal impediment to such marriage: *Provided*, nevertheless, that where either party to

License, when to be issued by register of deeds.—1871-'2, c. 193, s. 5.

the proposed marriage shall be under eighteen years of age, and shall reside with the father, or mother, or uncle, or aunt, or brother, or elder sister, or shall reside at a school or be an orphan and reside with a guardian, the register shall not issue a license for such marriage until the consent in writing of the relation with whom such infant resides, or if he or she resides at a school, of the person by whom said infant was placed at school, and under whose custody and control he or she is, shall be delivered to him, and such written consent shall be filed and preserved by the register.

Form of license. Particulars of form.
—1871-'72, c.
193, s. 6.

6. License shall be in the following or some equivalent form: "To any ordained minister of any religious denomination, or to any justice of the peace for county." A. B. having applied to me for a license for the marriage of C. D., (the name of the man to be written in full) of (here state his residence,) aged years, (color as the case may be) the son of (here state the father and mother, if known, state whether they are living or dead, and their residence, if known; if any of these facts are not known, so state,) and E. F. (write the name of the woman in full) of (here state her residence) aged (here state the number of) years, color (as the case may be) the daughter of (here state the names and residence of the parents, if known, as is required above with respect to the man.) If either of the parties shall be under eighteen years of age, the license shall here contain the following: "And the written consent of G. H., father (or mother, &c., as the case may be) to the proposed marriage having been filed with me) and there being no legal impediment to such marriage known to me, you are hereby authorized, at any time within one year from the date thereof, to celebrate the proposed marriage at any place within the said county. You are required within two months after you shall have celebrated such marriage, to return this license to me, at my office, with your signature subscribed to the certificate under this license, and with the blanks therein filled according to the facts, under penalty of forfeiting two hundred dollars to the use of any person who shall sue for the same. Issued this day of, 18

L. M.,

Register of Deeds for county.

Certificate to be filled up and signed by the minister or officer celebrating the marriage, and also to be signed by one or more witnesses present at the marriage, who will add to their names their places of residence: "I, N. O., an ordained minister of (here state to what religious denomination, or justice of the peace, as the case may be) united in matrimony (here name the parties,) the parties licensed above, on the day of, 18, at the house of P. R., in (here name the town, if any, the township and county,) according to law.

N. O.

Witnesses present at the marriage:

S. T., of (here give the residence.)

7. Every register of deeds who shall knowingly or without reasonable inquiry issue a license for the marriage of any two persons to which there is any lawful impediment, or where either of the persons is under the age of eighteen years, without the consent required by section five of this chapter, shall forfeit and pay two hundred dollars to any person who shall sue for the same.

Penalty on register for issuing license unlawfully.—1871-'2, c. 193, s. 7.

8. Every minister or officer mentioned in section three of this chapter, who shall marry any couple without a license being first delivered to him, as required by this chapter, or after the expiration of such license, or who shall fail to return such license to the register of deeds within two months after any marriage celebrated by virtue thereof, with the certificate appended thereto duly filled up and signed, shall forfeit and pay two hundred dollars to any person who shall sue therefor, and shall also be deemed guilty of a misdemeanor.

Penalty on minister or officer marrying without a license.—1871-'2, c. 193, s. 8.

9. Every register of deeds shall keep a book (which shall be furnished on demand by the county commissioners of his county) on the first page of which shall be written or printed: "Record of marriage licenses and of returns thereto, for the county of, from the day of, 18. . . , to the day of, 18. . . , both inclusive." In said book shall be entered, alphabetically, according to the names of the proposed husbands, the substance of each marriage license and of the return thereupon, as follows: The book shall be divided by lines with columns which shall be properly headed, and in the first of these, beginning on the left, shall be put the date of issue of the license; in the second, the name in full of the intended husband with his residence; in the third his age; in the fourth, his color; in the fifth, the name in full of the intended wife, with her residence; in the sixth, her age; in the seventh, her color; in the eighth, the name and title of the minister or officer who celebrated the marriage; in the ninth the day of the celebration; in the tenth, the place of the celebration; in the eleventh, the names of all or at least three of the witnesses who signed the return as present at the celebration. The original license and return thereto, shall be filed and preserved.

Register of deeds to keep a book of marriages.—1871-'2, c. 193, s. 9.

10. Any register of deeds who shall fail to record, in the manner above prescribed, the substance of any marriage license issued by him, or who shall fail to record, in the manner above prescribed, the substance of any return made thereon, within ten days after such return made, shall forfeit and pay two hundred dollars to any person who shall sue for the same.

Penalty on register for failure to record license and return.—1871-'2, c. 193, s. 10.

11. Every contract and settlement of property made by any man and woman, in consideration of a marriage between them, for the benefit of such man or woman, or of their issue, whether the same be made before or after the marriage, shall be void as against creditors of the parties making the same respectively, existing at the time of such marriage, if the same is antenuptial, or at the time of making such contract or settlement, if the same is post-nuptial.

Marriage settlements void as to existing creditors.—1871-'2, c. 193, s. 11.

Marriage settlements void except from registration.—1871-'2, c. 193, s. 12.

Husband does not become liable for wife's debt.—1871-'2, c. 193, s. 13.
The liability of wife continues.—1871-'2, c. 193, s. 14.
In actions against wife, copy of summons to be served on husband.—1871-'2, c. 193, s. 15.

Husband may be ordered to pay costs or discharged from defence.—1871-'2, c. 193, s. 16.

Wife not capable of contracting without her husband, unless a free trader.—1871-'2, c. 193, s. 17.

A married woman may become a free trader.—1871-'2, c. 193, s. 18.
How. Written form of free traders.—1871-'2, c. 193, s. 19.

12. Every such contract and settlement of property shall be void as against the creditors of or purchasers from the husband and wife respectively, as to any lands, tenements or hereditaments, and chattels real, conveyed or agreed to be conveyed thereby, except from the registration thereof in the county in which such lands, tenements and hereditaments or chattels real lie, and as to any personal property conveyed or agreed to be conveyed thereby, except from the registration in the county in which such husband and wife at the marriage, or at the making thereof, if after the marriage, shall reside.

13. No man by marriage shall incur any liability for any debts owing, or contracts made, or for wrongs done by his wife before the marriage.

14. The liability of a *feme sole* for any debts owing, or contracts made, or damages incurred by her before her marriage shall not be impaired or altered by such marriage.

15. In all actions brought against a married woman, who is not a free trader, (as hereinafter provided for,) a copy of the summons shall be served upon the husband also, and on the motion to the court in which the action is pending, he may be allowed, with her consent, to defend the same in her name and behalf, but no judgment shall be given against him, upon any liability claimed against her arising before the marriage or upon any contract made by her alone after her marriage.

16. Whenever any husband shall be allowed to defend for his wife, he may be ordered to pay costs for any misconduct, and may be discharged from the conduct of her defence, if it shall appear to the court that his defence is not *bona fide* in her interest.

17. No woman during her coverture shall be capable of making any contract to affect her real or personal estate, except for her necessary personal expenses, or for the support of the family, or such as may be necessary in order to pay her debts existing before marriage, without the written consent of her husband, unless she be a free trader, as hereinafter allowed.

18. Every married woman of the age of twenty-one years or upwards, with the consent of her husband, may become a free trader in the manner following:

19. (1.) By ante-nuptial contract, proved and registered as hereinafter required; or,

(2.) She and her husband shall sign a writing in the following or some equivalent form:

"A. B., of the age of twenty-one years or upwards, wife of C. D., of county, with his consent, testified by his signature hereto, enters herself as a free trader from the date of the registration hereof.

(Signed)

A. B.,
C. D.

Witness: E. F.

Registered this day of, 18...

The said writing may be proved by the subscribing witness, or acknowledged by the parties before any officer authorized to take the probate of deeds, and shall be filed and registered in the office of the register of deeds for the county in which the woman proposes to have her principal or only place of business.

20. From the time of the registration of the writing mentioned in the next preceding section, the married woman therein mentioned, shall be a free trader, and authorized to contract and deal, as if she were a *feme sole*.

21. A copy of such writing, duly proved and registered, and certified by the register of the county in which the same is registered, shall be admissible in evidence as certified copies of registered deeds are, or may be allowed to be.

22. The right of a married woman to act as a free trader may be ended at any time by an entry by her, or by her attorney, in the margin of the registration of the writing above mentioned, to the effect that from the date of such marginal entry, she ceases so to act, and by publication to that effect weekly, for three weeks, in some newspaper published in the county in which she had her principal or only place of business, or if there shall be none so published, then in any other convenient newspaper. But such entry and publication shall not impair any liabilities incurred previously thereto, nor prevent such married woman from becoming liable afterwards to any person whom she may fraudulently induce to deal with her as a free trader.

23. Every woman who shall be living separate from her husband, either under a judgment of divorce *a mense et thoro*, or from the bonds of matrimony, by a competent court, or under a deed of separation, executed by said husband and wife, and registered in the county in which she resides, shall be deemed and held, from the docketing of such judgment, or from the registration of such deed, a free trader.

24. Every woman whose husband has abandoned, or shall abandon her, or shall maliciously turn her out of doors, shall be deemed a free trader, so far as to be competent to contract and be contracted with, and to bind her separate property, but the liability of her husband for her reasonable support shall not thereby be impaired.

25. Every husband living with his wife shall be jointly liable with her for all damages accruing from any tort committed by her and for all costs and fines incurred in any criminal proceeding against her.

26. No lease or agreement for a lease or sub-lease or assignment by any married woman, not a free trader, of her lands or tenements, or chattels real, to run for more than three years, or to begin in possession more than six months after its execution, or any conveyance of any freehold estate in her real property, shall be valid, unless the same be executed by her and her husband, and proved or acknowledged by them, and her

A free trader from date of registration.—1871-'2, c. 193, s. 20.

Copy from register's books evidence.—1871-'2, c. 193, s. 21.

How she may cease to be a free trader. Public notification given.—1871-'2, c. 193, s. 22.

Woman living separate from her husband may be a free trader.—1871-'2, c. 193, s. 23.

Wife abandoned, &c., by her husband.—1871-'2, c. 193, s. 24.

Husband liable jointly with wife for torts and costs and fines in criminal actions.—1871-'2, c. 193, s. 25.

What leases, &c., by wife valid, and what not, without private examination.—1871-'2, c. 193, s. 26.

free consent thereto, appear on her examination separate from her husband, as is now or may hereafter be required by law in the probate of deeds of *femes covert*.

What contract between husband and wife not to be valid unless with sanction of judge, &c.—1871-'2, c. 193, s. 27.

27. No contract between a husband and wife made during coverture shall be valid to affect or change any part of the real estate of the wife or the accruing income thereof, for a longer time than three years next ensuing the making of such contract, or to impair or change the body or capital of the personal estate of the wife, or the accruing income thereof, for a longer time than three years next ensuing the making of such contract, unless such contract shall be in writing, and be duly proved as is required for conveyances of land; and upon the examination of the wife separate and apart from her husband, as is now or may hereafter be required by law in the probate of deeds of *feme coverts*, it shall appear to the satisfaction of such officer that the wife freely executed such contract, and freely consented thereto at the time of her separate examination, and that the same is not unreasonable or injurious to her. The certificate of the officer shall state his conclusions, and shall be conclusive of the facts therein stated: *Provided*, that the same may be impeached for fraud as other judgments may be.

What contracts between husband and wife valid.—1871-'2, c. 193, s. 28.

28. Contracts between husband and wife not forbidden by the next preceding section and not inconsistent with public policy are valid, and any persons of full age about to be married, and subject to the next preceding section, any married persons may release and quit claim dower, tenancy by the courtesy, and all other rights which they might respectively acquire or may have acquired by marriage in the property of each other; and such releases may be pleaded in bar of any action or proceeding for the recovery of the rights and estates so released.

Savings from separate estate of wife.—1871-'2, c. 193, s. 29.

29. The savings from the income of the separate estate of the wife, are her separate property. But no husband who, during the coverture (the wife not being a free trader under this chapter,) has received, without objection from his wife, the income of her separate estate, shall be liable to account for such receipt, for any greater time than the year next preceding the date of a summons issued against him in an action for such income, or next preceding her death.

Husband tenant by courtesy, when.—1871-'2, c. 193, s. 30.

30. Every man who hath married, or shall marry a woman, and by her have issue born alive, shall after her death, he surviving, be entitled to an estate as tenant by the courtesy during his life, in all the lands, tenements, and hereditaments, whereof his said wife was beneficially seized in deed during the coverture, wherein the said issue was capable of inheriting, whether the said seizin was of a legal or of equitable estate.

Power of married women to make a will.—1871-'2, c. 193, s. 31.

31. Every married woman shall have power to devise and bequeath her real and personal estate, as if she were a *feme sole*; and her will shall be proved as is required of other wills; *Provided, nevertheless*, That no will made by any married woman, shall be held to deprive her husband, surviving, of his

estate in her real property, as tenant by the courtesy, as defined in the next preceding section.

32. If any married woman shall die wholly or partially intestate, the surviving husband shall be entitled to administer on her personal estate, and shall hold the same, subject to the claims of her creditors and others having rightful demands against her, to his own use. If the husband shall die after his wife, but before administering, his executor or administrator or assignee shall receive the personal property of the said wife, as a part of the estate of the husband, subject as aforesaid.

How the personal estate of a married woman intestate shall be distributed.—1871-2, c. 193, s. 32.

33. 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 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.

Real estate of wife not to be sold or leased without her consent. Husband's interest exempt from execution.—R. C., c. 56, s. 1.

34. 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.

Feme may insure husband's life, and will the interest. If she survives, to be assets to pay his debts, in certain cases.—R. C., c. 56, s. 2.

CHAPTER 70.

MASTER AND SERVANT.

SECTION

1. Persons enticing servant from employer may be sued.

SECTION

2. Additional penalty.

1. IF any person shall entice, persuade and procure any servant by indenture, or any servant who shall have contracted in

Persons enticing servant

from employer
may be sued.—
1866, c. 58.

Additional
penalty.—
1867, c. 124.

writing to serve his employer, to unlawfully leave the service of his master or employer; or, if any person shall knowingly and unlawfully harbor and detain, in his own service, and from the service of his master or employer, any servant who shall unlawfully leave the service of such master or employer; then, in either case, such person and servant may be sued, singly or jointly, by the master, and, on recovery, he shall have judgment for the actual double value of the damages assessed.

2. In addition to the remedy given in the preceding section against the person and servant violating the provisions of the above section, such person and servant shall also pay a penalty of one hundred dollars to any person suing for the same, singly or jointly, one-half to his use, and the other to the use of the poor of the county where suit is brought, and the offender shall moreover be guilty of a misdemeanor, and fined at the discretion of the court, not exceeding one hundred dollars and imprisoned not exceeding six months.

CHAPTER 71.

MILITIA.

SECTION

1. Of whom composed. Exemptions.
2. How divided.
3. United States army regulations to govern.
4. Adjutant General to be appointed.
5. Officers, how commissioned.
6. Officers to take oath.
7. White and colored militia in distinct companies.
8. Who exempted from duty.
9. Members of fire companies exempted. Also persons of conscientious scruples.
10. Further exemptions from militia duty.
11. Officers to enroll and make return of exemptions.
12. Persons enrolled to equip themselves. Forfeitures for neglecting to equip.
13. How infantry shall be divided.
14. Regiments and brigades and divisions, how distinguished.
15. Officers of infantry, their grade and how appointed.
16. Governor may appoint four aids-de-camp.

SECTION

17. Uniform of officers.
18. Officers to hold commissions three years and equip within one. Penalty.
19. To give notice of their absence.
20. To deliver to their successors money or papers.
21. Rules of discipline. Adjutant general to distribute Upton's tactics, and how.
22. Captains' districts, how laid off. Boundary lines in regiments of same county, how altered.
23. Regulations as to company musters.
24. Company courts martial. How to proceed. Appeal allowed. Execution from courts martial; how and to whom issued. Penalty on sheriff or constable for neglect.
25. Company musicians, how appointed; their privileges.
26. Road hands not to be ordered out on muster day.
27. Captains to make returns, when.
28. Regimental or battalion musters. Where held. Duty of colonel. Penalty for neglect of duty.

SECTION

29. Penalty on officers failing to attend reviews or musters.
30. Commandants of regiments, &c., to give notice of reviews, &c.
31. Commissioned officers of regiments, &c., to exercise day before review. Penalty for failure.
32. Penalty on officers and privates for misbehaving.
33. Persons on muster ground failing to do duty, arrested.
34. Attending muster, exempt from arrest in civil cases. Not to pay tolls or ferriages.
35. Regimental and battalion courts-martial. Their power and duties.
36. Duty of pay masters.
37. Officer's oath on court-martial.
38. Proceedings against delinquents.
39. Courts-martial may adjourn.
40. Duties of officers as to fines. Penalty for default on captains.
41. Returns by commandants of regiments.
42. Duties of generals as to reviews.
43. Returns by brigadier and major generals.
44. Penalty on general officer, &c., failing to review or muster; or to make returns, or be equipped. No officer to be deprived of his commission without trial.
45. Duty of adjutant general.
46. In certain cases returns and orders sent through postoffice.
47. Governor may remit fines and penalties.
48. Regiments of cavalry, how formed, &c.
49. Troops of cavalry, when to muster, and how returns made. Who to command when mustering with infantry.
50. Field officers of cavalry to review and make returns.
51. Cavalry courts-martial to be held.
52. Fines of cavalry officers and privates, same as in infantry.
53. Cavalry fines, how appropriated.
54. Duties of adjutants of regiments.
55. Certain sections of this chapter to apply to cavalry.
56. Commissions in cavalry.
57. Volunteer companies of artillery, &c., may be formed.

SECTION

58. May choose their uniform. To be under the commander of the regiment, and do duty, &c.
59. Regiments of volunteer companies may be formed. Field officers of, how chosen.
60. Captains, lieutenants, non-commissioned officers, how elected or appointed.
61. Company to muster once in three months. May make rules for their government.
62. Officers of volunteer regiments to make returns.
63. Volunteers, not to return to infantry, but by permission, &c. Shall serve in infantry, till they equip.
64. Volunteer regiments to be reviewed.
65. Vacancies in field officers of, how filled.
66. Certain section concerning infantry, to apply to artillery, &c.
67. General courts-martial, how appointed and held.
68. Officers of, how selected.
69. Rank of the officers.
70. Officers of, regularly detailed.
71. How detailed.
72. Courts-martial, how constituted.
73. Officers of, how to rank; to be sworn.
74. Witnesses, how summoned.
75. How sworn.
76. Rules for courts-martial. Penalty on officers, for not attending.
77. Duty of judge advocate.
78. Proceedings against officers arrested, refusing to attend.
79. Perjury before courts-martial.
80. For what conduct officer cashiered.
81. Detachments of militia for United States service.
82. Substitutes received.
83. Vacancies in detachments, under rank of field officers, how supplied.
84. A militia-man after one tour, exempt, &c.
85. Penalty for neglecting duty when ordered out by civil authority.
86. Seven justices may call out militia in invasions or insurrections.
87. Duty of officer on such requisition.
88. Commanding officer called out, to notify his superior. Superior to notify the Governor.

SECTION

89. Three justices may order out militia to suppress outlawed persons.
90. Militia called into service to be paid.
91. By whom paid.
92. Pay of militia in service.
93. Punishment for refusing to appear on call or alarm given.
94. Punishment for desertion.
95. How volunteer companies may be incorporated.

SECTION

96. Privates by ten years' service in such company relieved from further duty.
97. Commissioned officers exempt by eight years' service.
98. Arms, how procured when brigadier general dead or absent.
99. Private acts in relation to militia not repealed. ●

(See Constitution, Article XII.)

Of whom composed. Exemptions.—1868, c. 22, s. 1.

How divided. 1870-'1, c. 34. 1868, c. 22, s. 2.

United States Army Regulations to govern.—1868, c. 22, s. 3. Adjutant general, to be appointed.—1868, c. 22, s. 4.

Officers, how commissioned.—1868, c. 22, s. 5.

Officers to take oath.—1869-'70, c. 164.

White and colored militia in distinct companies.—1868, c. 22, s. 9.

Who exempted from duty.—R. C., c. 70, s. 2.

1. THE militia of North Carolina shall consist of those liable to military duty, and every person so liable shall be required to serve in the same unless he shall pay to the county treasurer a yearly contribution of two dollars, or be exempted under the certificate of some practicing physician on account of bodily infirmity.

2. The militia shall consist of companies, regiments, brigades and divisions as now required by law.

3. The regulations of the United States army shall be adhered to as near as practicable in organizing the militia of this State.

4. The Governor shall appoint one Adjutant-General, who shall receive a salary of one hundred dollars per month, and necessary travelling expenses while organizing and supervising the militia, and after the militia shall have been fully organized, said salary shall be reduced to three hundred dollars per annum.

5. The Governor shall appoint and commission all officers.

6. All officers in the militia shall take and subscribe the oath required of officers by the Constitution of the State of North Carolina.

7. The white and colored militia shall be enrolled in separate and distinct companies and shall never be compelled to serve in the same companies.

8. 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, the Secretary of State, Auditor, 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, 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, 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.

9. 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.

10. Any citizen of the State who has faithfully served as an active fireman in this State in an organized fire company for a period of seven consecutive years may obtain exemption from jury duty and, except in time of insurrection or invasion, from militia duty, by procuring a certificate of the facts aforesaid from the principal officer of the company in which the service was rendered, or if the company has been disbanded then on affidavit of the facts of such service by some officer or member of the late company in which such service was rendered shall be sufficient to entitle the holder thereof to such exemption.

11. 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

Members of fire companies exempted. Also persons of conscientious scruples.—R. C., c. 70, s. 3.

Further exemptions from militia duty.—1869-'70, c. 164, s. 4.

Officers to enroll and make return of exemptions.—R. C., c. 70, s. 4.

number of exempts in their annual returns to the commanders 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.

Persons enrolled to equip themselves. Forfeitures for neglecting to equip.—R. C., c. 70, s. 6.

12. Every citizen enrolled and notified, as is directed in 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 esponton; and every citizen, so enrolled and providing himself with arms and accoutrements as herein directed, shall hold the same exempt from all suits, executions, or sales for debts, or for the payment of taxes; and if he shall fail to provide himself with arms and accoutrements, as herein directed, and if the commissioned officers of his company shall deem him in sufficient circumstances to equip himself, he shall forfeit and pay for want of a good, serviceable musket, gun or rifle, fifty cents. And all parents, 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. 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.

How infantry shall be divided.—R. C., c. 70, s. 7.

13. 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. 1866, c. 23, s. 1.

14. The following are declared to be the regiments, brigades, and divisions of the infantry, to be known and distinguished as here designated, namely:

Brigades.	Counties.	No. Reg't.	How distinguished in counties where more than one reg't.
1st.	Currituck	1	
	Camden	2	
	Perquimans	3	
	Pasquotank	4	

Brigades.	Counties.	No. Reg't.	How distinguished in counties where more than one reg't.	Regiments, brigades, and divisions, how distinguished.
2nd.....	Chowan	5		
	Hertford.....	6		
	Gates	7		
	Bertie	8		
	"	9		
3rd.....	Martin	10		
	Washington	11		
	Tyrrell.....	12		
	Hyde	13		
4th.....	Beaufort	14		
	Craven	15	North.	
	"	16	South.	
	Pitt	17		
5th.....	Carteret.....	18		
	Jones	19		
	Lenoir.....	20		
	Onslow	21		
6th.....	New Hanover.....	22	East N. E. River.	
	" "	23	West N. E. River.	
	Sampson.....	24	East of Big Coharria.	
	"	25	West of " "	
7th.....	Duplin	26		
	Wayne.....	27	Upper.	
	"	28	Lower.	
	Greene	29		
8th.....	Edgecombe	30	Upper.	
	"	31	Lower.	
	Nash	32		
	Wilson.....	33		
9th.....	Halifax	34	Upper.	
	"	35	Lower.	
	Northampton.....	36		
	Warren	37		
10th.....	Wake	38	East of Raleigh.	
	"	39	West of " "	
	Franklin	40		
	Johnston	41		
11th.....	Granville	42	North.	
	"	43	South.	

Regiments, brigades, and divisions, how distinguished.	Brigades.	Counties.	No. Reg't.	How distinguished in counties where more than one reg't.
		Person	44	
		Orange	45	Hillsboro'.
		"	46	Hawfield.
12th		Caswell	47	
		Alamance	48	
		Chatham	49	Upper.
		"	50	Lower.
13th		Moore	51	
		Harnett	52	Upper.
		Cumberland	53	Lower.
		"	54	
14th		Bladen	55	
		Brunswick	56	
		Columbus	57	
		Robeson	58	Lower.
15th		Robeson	59	Upper.
		Richmond	60	Lower.
		"	61	Upper.
		Montgomery	62	
16th		Randolph	63	West.
		"	64	East.
		Davidson	65	Lower.
		"	66	Upper.
17th		Guilford	67	West.
		"	68	East.
		Rockingham	69	Lower.
		"	70	Upper.
		Forsythe	71	
18th		Stokes	72	
		Surry	73	North.
		"	74	South.
		Yadkin	75	
19th		Rowan	76	
		Davie	77	
		Iredell	78	North of S. Yadkin.
		"	79	South of S. Yadkin.
20th		Anson	80	
		Union	81	East.
		"	82	West.
		Stanly	83	

Brigades.	Counties.	No. Reg't.	How distinguished in counties where more than one reg't.	Regiments, brigades, and divisions, how distinguished.
21st.....	Cabarrus.....	84		
	Mecklenburg	85	North.	
	“	86	South.	
	Gaston.....	87		
22nd.	Lincoln.....	88		
	Catawba	89		
	Cleveland	90	Upper.	
	“	91	Lower.	
23rd.....	Wilkes.....	92	Lower.	
	“	93	Upper.	
	Alexander.....	94		
	Caldwell	95		
24th.....	Alleghany.....	96		
	Ashe	97		
	Watauga.....	98		
	Mitchell.....	99		
25th.....	Burke	100	North.	
	“	101	South.	
	McDowell	102		
	Rutherford	103	North.	
26th.	Rutherford	104	South.	
	Polk.....	105		
	Henderson	106		
	Transylvania.....	107		
27th.....	Buncombe.....	108	North.	
	“	109	South.	
	Madison	110		
	Yancey.....	111		
28th.....	Haywood.. ..	112		
	Jackson	113		
	Macon.....	114		
	Cherokee.....	115		
	Clay.....	116		

First division composed of 1st, 2nd, 3rd and 4th brigades.

Second “ “ “ 5th, 6th, 7th and 8th “

Third “ “ “ 9th, 10th, 11th and 12th “

Fourth “ “ “ 13th, 14th, 15th and 16th “

Fifth “ “ “ 17th, 18th, 19th and 20th “

Sixth “ “ “ 21st, 22nd, 23rd and 24th “

Seventh “ “ “ 25th, 26th, 27th and 28th “

Officers of infantry—their grade and how appointed.—R. C., c. 70, s. 9.

15. 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 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 quarter-master, who shall be commissioned officers with the rank of lieutenant, one pay-master, one surgeon and one surgeon's mate, one sergeant-major, one drum-major and one fife-major, all to be appointed by the commanding officer of the regiment; and the adjutant shall, when necessary, discharge the duties heretofore assigned to the brigade inspectors within his regiment, for which services 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 precedence 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.

Governor may appoint four aids-de-camp.—R. C., c. 70, s. 9.

16. 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.

Uniform of officers.—R. C., c. 70, s. 10.

17. 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.

Officers to hold commissions three years, and equip within 12 months. Penalty.—R. C., c. 70, s. 11.

18. 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 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 of the city of Raleigh.

19. 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.

Officers to give notice of their absence.—R. C., c. 70, s. 12.

20. 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.

To deliver to their successors money or papers.—R. C., c. 70, s. 13.

21. 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 Upton'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 general to distribute Upton's tactics, and how.—R. C., c. 70, s. 14.

22. 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

Captain's district, how laid off. Boundary lines in regiments of same county, how altered.—R. C., c. 70, s. 15.

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 commissioners shall establish the said lines; and when so fixed, the judge advocate of each regiment shall spread the same on their journals.

Regulations as
to company
musters.—R.
C., c. 70, s. 16.

23. Every captain or commanding officer of a company shall, at least twice a year, at such place as may be designated by a majority of his company, and 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 to 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

24. 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 judgment 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 of the peace to the Superior 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.

courts-martial. How to proceed. Appeal allowed. Executions from courts-martial, how and to whom issued. Penalty on sheriff or constable for neglect.—R. C., c. 70, s. 17.

25. 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 fife 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 commissioners 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. C., c. 70, s. 18.

Road hands not to be ordered out on muster day.—

R. C., c. 70, s. 19.

Captains to make returns, when.—R. C., c. 70, s. 20.

Regimental or battalion musters. Where held. Duty of colonel. Penalty for neglect of duty.—R. C., c. 70, s. 21.

Penalty on officers failing to attend reviews or musters.—R. C., c. 70, s. 22.

Commandants of regiments, &c., to give notice of reviews, &c.—R. C., c. 70, s. 23.

Commissioned officers of regiments, &c., to exercise, day be-

26. 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.

27. 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.

28. 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 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.

29. 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.

30. 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.

31. 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 the 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 furnish 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.

32. 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.

33. 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 of the service then performing, and until the militia are discharged, and such person shall further be fined at the discretion of the court-martial.

34. 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,

fore review.
Penalty for failure.—R. C., c. 70, s. 24.

Penalties on officers and privates for misbehaving.—R. C., c. 70, s. 25.

Persons on muster ground failing to do duty, arrested.—R. C., c. 70, s. 26.

Persons attending musters, exempt from arrest in civil cases.

Not to pay
tolls or ferri-
ages.—R. C.,
c. 70, s. 27.

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.

Regimental
and battalion
courts-mar-
tial Their
power and du-
ties.—R. C.,
c. 70, s. 29.

35. 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 pay-
masters.—R.
C., c. 70, s. 30.

36. 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

agreeably 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.

37. 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. C., c. 70, s. 31.

38. 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. C., c. 70, s. 32.

39. The several courts-martial shall have power to adjourn from day to day, or to some 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

Courts-martial may adjourn.—R. C., c. 70, s. 33.

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.

Duties of commanding officers as to fines. Penalty on captains.—R. C., c. 70, s. 34.

40. Every commanding officer of a regiment shall exact and enforce regular settlements of all fines, collected under the militia laws, from the several persons, charged with the collection thereof within his regiment, which fines shall be appropriated as directed by law ; and 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.

Returns to be made by commandants of regiments.—R. C., c. 70, s. 35.

41. Every commandant of a regiment shall, at least once in every year, on or before the twenty-fifth 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 fifteenth 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.

Duties of generals, as to reviews.—R. C., c. 70, s. 36.

42. 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.

Returns to be made by brigadier and major generals.—R. C., c. 70, s. 37.

43. 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.

Penalty on general officer, &c., for failing to review or muster, or to make returns, or be

44. 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.

45. 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

equipped.
No officer to be deprived of his commission without trial.—R. c. 70, s. 33.

Duty of adjutant-general.—R. C., c. 70, s. 39.

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 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 postoffice.—R. C., c. 70, s. 40.

46. 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. C., c. 70, s. 41.

47. 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, equipped, &c.—R. C., c. 70, s. 42.

48. 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 appointed and commissioned in like manner as such officers are appointed 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.

49. 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.

50. 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,

Troops of cavalry, when to muster, and how returns made. Who to command when mustering with infantry.—R. C., c. 70, s. 43.

Field officers of cavalry to review and make returns.—R. C., c. 70, s. 44.

a duplicate of such returns, and at the bottom of the same shall state when his regiment or the several troops composing it were last reviewed by the brigadier and major-generals.

Cavalry courts-martial to be held.—R. C., c. 70, s. 45.

51. A majority of the commissioned officers of each troop, and a majority of the commissioned officers of each regiment, immediately after their respective troop or regimental musters, shall hold troop or regimental courts-martial, in the same manner, and the courts shall have the same power, duties and authorities, and shall be governed by the same rules and regulations as the company or regimental courts-martial of the infantry hereinbefore 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. C., c. 70, s. 46.

52. 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 hereinbefore prescribed for officers, non-commissioned officers and privates of the infantry in similar cases.

How cavalry fines appropriated.—R. C., c. 70, s. 47.

53. 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. C., c. 70, s. 48.

54. 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

55. The following sections of this chapter in relation to the infantry, are declared to apply to the cavalry, namely: so much

of the thirty-sixth and forty-fourth sections as relates to officers under the grade of brigadier-general; also the nineteenth, twentyeth, thirty-first, thirty-second, thirty-third, thirty-fourth, thirty-sixth, thirty-seventh, fortieth, forty-fifth, forty-sixth and forty-seventh sections.

56. No person shall be commissioned in any troop of cavalry, unless the number is such as shall be prescribed by this chapter.

57. Out of the militia there may be enrolled as many volunteer companies of artillery, light-infantry, grenadiers, or rifle-men, 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.

58. 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.

59. 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.

60. 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.

61. The captain or commanding officer of each company of artillery, light-infantry, grenadiers or rifle-men, 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.

62. Whenever a regiment of volunteers shall be formed and officered, as hereinbefore required, annual returns shall be made to the brigadier-general and adjutant-general, as required to be made by the field officers of infantry.

chapter to apply to cavalry.—R. C., c. 70, s. 49.

Commission in cavalry.—R. C., c. 70, s. 50.

Volunteer companies of artillery, light infantry, grenadiers, or rifle-men may be formed.—R. C., c. 70, s. 51.

May choose their uniform. To be under the command of the regiment, and do duty as other companies.—R. C., c. 70, s. 52.

Regiments of volunteer companies may be formed. Field officers of, how chosen.—R. C., c. 70, s. 53.

Captains, and other officers, how appointed.—R. C., c. 70, s. 54.

Company to muster once in three months. May adopt rules for their government.—R. C., c. 70, s. 55.

Officers of volunteer regiments to make returns.—R. C., c. 70, s. 56.

Volunteers, &c., not to return to infantry but by permission, &c. Shall serve in infantry, till they equip.—R. C., c. 70, s. 57.

63. 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 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: *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, of his successor in office.

Officers of volunteer regiments to review.—R. C., c. 70, s. 58.

64. Whenever there may be formed a regiment of volunteers, as hereinbefore 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. C., c. 70, s. 59.

65. 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. C., c. 70, s. 60.

66. 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. C., c. 70, s. 61.

77. 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.

68. When a court-martial is ordered, the officer ordering it shall appoint the president, judge advocate, and provost-marshal, and, if it be a general court-martial, orders shall be issued to such divisions as in the opinion of the governor 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.

69. 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.

70. 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.

71. 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.

72. 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

Officers of,
how selected.
—R. C., c. 70,
s. 62.

Of what rank
the officers
shall be.—R.
C., c. 70, s. 63.

Officers for
courts-martial
regularly de-
tailed.—R. C.,
c. 70, s. 64.

How detailed.
—R. C., c. 70,
s. 65.

Courts-mar-
tial, how con-
stituted.—R.
C., c. 70, s. 66.

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.

Officers of
court-martial,
how to rank.
To be sworn.
—R. C., c. 70,
s. 67.

73. 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. C., c.
70, s. 68.

74. 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. C., c. 70, s.
69.

75. 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-mar-
tial. Penalty
on officers fail-
ing to attend.
—R. C., c. 70,
s. 70.

76. All trials by court-martial shall be carried on in the daytime, 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.

77. 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. C., c. 70, s. 71.

78. 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. C., c. 70, s. 72.

79. If any person shall wilfully and corruptly swear falsely before any court-martial, touching and concerning any matter

Perjury before courts-mar-

tial.—R. C., c. 70, s. 73.

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 administered by the judge advocate or presiding officer of said court-martial.

For what, officer cashiered.—R. C., c. 70, s. 74.

80. 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. C., c. 70, s. 75.

81. 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 men, between the ages of twenty-one and forty 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 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 ninth section of this chapter.

Substitutes received.—R. C., c. 70, s. 76.

82. 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 citizen to serve as a substitute for such person so drafted.

Vacancies in detachments, under rank of field officers, how supplied.—R. C., c. 70, s. 77.

83. 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. C., c. 70, s. 78.

84. 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. C., c. 70, s. 79.

85. 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 in-

86. In all cases of insurrection 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 absence of the officer who is entitled to the command, to suppress or repel such insurrection or invasion, or to protect the inhabitants of their county from the danger 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.

87. 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 Auditor, who shall be a board for that purpose.

88. The commanding officer of any regiment, as soon as he has called out the militia under the provisions of the eighty-seventh 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.

89. When there may be outlawed persons, committing depredations, or in any way alarming the citizens of any county, or where the guarding of a jail is necessary, three justices of the peace, certifying the same in writing and requesting the officer in command of their county, 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 county commissioners, 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.

90. The provisions for paying the militia contained in section eighty-nine of this chapter shall be construed to apply to all cases when the militia has been and may hereafter be called into actual service by the Governor or any Superior Court Judge or any local civil officer according to existing laws.

91. When the militia or any portion thereof shall be or may heretofore have been called into actual service according to law

surrections.—
R. C., c. 70, s. 80.

Duty of commanding officer called out, to notify his superior. Superior to notify the governor.—R. C., c. 70, s. 81.

Commanding officer called out, to notify his superior. Superior to notify the governor.—R. C., c. 70, s. 82.

Three justices may order out militia to suppress outlawed persons.—R. C., c. 70, s. 88.

Pay of militia in actual service.—1869-'70, c. 165, s. 1.

By whom paid.—1869-

'70, c. 164, s. 3.

to serve any county of the State, guarding the jail of such county on account of prisoners from some other county being imprisoned in such jail, the county commissioners of the county from which said prisoners may be or may have been taken shall audit the account of said militia and draw a warrant upon the county treasurer for the same, and the county treasurer shall pay the same out of any county funds not otherwise appropriated.

Pay of militia, in service.—R. C., c. 70, s. 84.

92. 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.

Punishment for refusing to appear on call, or alarm given.—R. C., c. 70, s. 85.

93. Every officer who shall refuse or neglect, on call or alarm given, to appear at such times and places as shall be appointed by his commanding officer, shall, on conviction before a court-martial, be cashiered and rendered incapable of ever after holding a military appointment, 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. C., c. 70, s. 86.

94. 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.

How volunteer companies may be

95. 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.

96. 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.

97. 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.

98. 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 governor to supply such company with arms and accoutrements, under the same rules and regulations as are now in force.

99. 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.

incorporated.
—R. C., c. 70,
s. 91.

Privates, by
ten years' ser-
vice in such
company, ex-
empt from fur-
ther duty.—
R. C., c. 70, s.
92.

Commission-
ed officers ex-
empt by eight
years' service.
—R. C., c. 70,
s. 93.

Arms, how
procured
when briga-
dier general
dead or ab-
sent.—R. C.,
c. 70, s. 94.

Private acts in
relation to mi-
litia, not re-
pealed.—R.
C., c. 70, s. 95.

SECTION 24. 11 Ire., 605.

CHAPTER 72.

MILLS.

SECTION

1. What shall be public mills.
2. Millers to grind according to turn.
What tolls to be taken.

SECTION

3. Measures to be kept in mills. False
measures indictable.

SECTION

4. How persons wishing to build a water mill to proceed.
5. Court to appoint three commissioners.
6. The third commissioner to notify meeting and preside.
7. Duty of commissioners.
8. What their report to contain.
9. When mill shall not be allowed.
10. Power of court on return of report.
11. Duty of persons to whom leave is granted.

SECTION

- 12 Time to build or repair water mill.
13. Remedy for persons injured by the erection of a mill.
14. Court to appoint commissioners.
15. Duty of commissioners.
16. Parties to be notified of meeting of commissioners.
17. When yearly damages as high as twenty dollars.
18. If judgment against plaintiff; if for plaintiff.
19. Pay of commissioners.

What shall be public mills.—R. C., c. 71, s. 1.
 Millers to grind according to turn.—R. C., c. 71, s. 6.

1. EVERY water grist mill, steam mill or wind-mill, that shall grind for toll, shall be deemed to be a public mill.

2. 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.

Measures to be kept.—R. C., c. 71, s. 7.

3. 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 or servant, 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.

How persons wishing to build a water mill to proceed.—1868-'9, c. 158, s. 1.

4. Any person wishing to build a water mill, who hath land on only one side of a stream, shall issue a summons returnable to the Superior Court of the county in which the land sought to be condemned, or some part of it, lies, against the persons in possession and the owners of the land on the opposite side of the stream, and against such others as are required to be made defendants by the Code of Civil Procedure; and the procedure shall be as is provided in other special proceedings, except so far as the same may be modified by this chapter. All persons may be made defendants who are permitted to be by section sixty-one of the Code of Civil Procedure.

Court to appoint three commissioners.—1868-'9, c. 158, s. 2.

5. If no just cause should be shown against the building of such mill, the court shall appoint three freeholders, one of whom shall be chosen by the plaintiff, another by the defendants, and the third by the court, or if the plaintiff or defendants shall refuse or fail, or unreasonably delay to name a commissioner, the court shall name one in lieu of such delinquent party; these commissioners may be changed from time to time by permission of the court for just cause shown.

The third commissioner

6. The third commissioner shall cause the others to be notified of the time and place of meeting, and shall preside at their

meetings; they may, if necessary, summon and examine witnesses, who shall be sworn by the presiding commissioner; any commissioner named by or for either of the parties, who, without just cause, shall fail to attend any meeting notified by the president, shall forfeit and pay to the opposite party fifty dollars; and if the president shall, in like manner, unreasonably delay to notify of a meeting, or fail to attend one that is appointed, he shall forfeit and pay to the plaintiff fifty dollars, and to the defendant a like sum.

to notify meeting and preside.—1868-'9, c. 158, s. 3.

7. The commissioners shall be sworn by some officer qualified to administer an oath, to act impartially between the parties, and to perform the duties herein imposed on them honestly and to the best of their ability. They shall view the premises where the mill is proposed to be built, and shall lay off and value a portion of the land of the plaintiff, not to exceed one acre in area, and an equal area of the land of the defendants opposite thereto, and report their proceedings to the court within a reasonable time, not exceeding sixty days.

Duty of commissioners.—1868-'9, c. 158, s. 4.

8. The report of the commissioners shall set forth:

What their report to contain.—1868-'9, c. 158, s. 5.

(1.) The location, quantities and value of the several areas laid off by them.

(2.) Whether either of them includes houses, garden, orchards or other immediate conveniences.

(3.) Whether the proposed mill will overflow another mill or create a nuisance in the neighborhood.

(4.) Any other matter upon which they shall have been directed by the Court to report, or which they may think necessary to the doing of full justice between the parties.

9. If the area laid off on the land of either party take away houses, gardens, orchards, or other immediate conveniences; or if the mill proposed will overflow another mill, or will create a nuisance in the neighborhood, the Court shall not allow the proposed mill to be built.

When mill shall not be allowed.—1868-'9, c. 158, s. 6.

10. If the report be in favor of building the proposed mill, and be confirmed by the Court, the Court may, in its discretion, allow either the plaintiff or defendant to erect such mill at the place proposed, and shall order the costs, and the value of the opposite area, to be paid by the party to whom such leave shall be granted; and upon such payment, the party to whom such leave shall be granted shall be vested with a title in fee simple to the opposite area. Such payment may be made into Court for the use of the parties entitled thereto.

Power of Court on return of report.—1868-'9, c. 158, s. 7.

11. 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.

Duty of persons to whom leave is granted.—1868-'9, c. 158, s. 8.

12. If any water mill belonging to any person, not being of Time to build

or repair water mill.—1868-'9, c. 158, s. 9.

Remedy for persons injured by the erection of a mill.—1868-'9, c. 158, s. 10.

Court to appoint commissioners.—1868-'9, c. 158, s. 11.

Duty of commissioners.—1868-'9, c. 158, s. 12.

Parties to be notified of meeting of commissioners.—1868-'9, c. 158, s. 13.

When yearly damages as high as twenty dollars.—1868-'9, c. 158, s. 14.

age, a married woman, or of unsound mind, or imprisoned, be let fall, burnt, or otherwise destroyed, such person and his heirs shall have three years to rebuild and repair the same, and any person under any disability aforesaid, shall have three years from the removal of the disability.

13. Any person conceiving himself injured by the erection of any grist mill, or mill for other useful purposes, may issue his summons returnable to the Superior Court of the county in which the endamaged land is situated, against the persons required to be made defendants by the Code of Civil Procedure. In his complaint he shall set forth in what respect he is injured by the erection of the mill, together with such other matters as may be necessary to entitle him to the relief demanded. All persons may be made defendants who are permitted by section sixty-one of the Code of Civil Procedure; the proceedings shall be as in other special proceedings, except where modified by the provisions of this chapter.

14. If, upon the hearing of the case, the court shall adjudge the plaintiff entitled to relief, three commissioners shall be appointed, as provided in section five of this chapter; they shall be subject to the provisions contained in section six of this chapter, and shall be sworn as prescribed in section seven of this chapter.

15. The said commissioners shall view the premises alleged to be damaged, and the premises whereon is situated the mill by which the damage is alleged to be caused, and shall inquire whether any damage hath been sustained by the plaintiff by reason of the matters complained of; and of the amount which the plaintiff ought annually to receive from the defendants on account thereof. They shall have power to summon witnesses, and to hear evidence; they shall put their report in writing, and return the same to the court; the report may be excepted to, and the issues made upon the exceptions, whether of fact or law, shall be tried as other like issues are directed to be. A judgment giving to the plaintiff an annual sum by way of damages, shall be binding between the parties for five years from the issuing of the summons, if the mill is kept up during that time, unless the damages shall be increased by raising the water or otherwise. The judgment may be enforced as other judgments are.

16. The parties in all the cases provided for in this chapter shall be notified as is prescribed in other cases of notice, at least ten days before the meeting of the commissioners of the time and place of meeting.

17. In all cases where the final judgment of the court shall assess the yearly damage of the plaintiff as high as twenty dollars, nothing in this chapter contained shall be construed to prevent the plaintiff, his heirs or assigns, from suing as heretofore, and in such case, the final judgment aforesaid shall be binding only for the year's damage preceding the issuing of the summons.

18. If the final judgment of the court shall be that the plaintiff hath sustained no damage, he shall pay the costs of his proceeding; but if the final judgment shall be in favor of the plaintiff, he shall have execution against the defendant for one year's damage, preceding the issuing of the summons, and for all costs: *Provided*, that if the damage adjudged do not amount to five dollars, the plaintiff shall recover no more costs than damages. And if the defendant do not annually pay the plaintiff, his heirs or assigns, before it falls due, the sum adjudged as the damages for that year, the plaintiff may sue out execution for the amount of the last year's damage, or any part thereof which may remain unpaid.

If judgment against plaintiff; if for plaintiff.—1868-'9, c. 158, s. 15.

19. Each commissioner appointed under this chapter shall be entitled to two dollars per day to be paid and taxed as the other costs provided in this chapter.

Pay of commissioners.—1868-'9, c. 158, s. 16.

CHAPTER 73.

MINES.

SECTION

1. Conveyance of water for mining purposes. Application made to justices of the peace.
2. Time of notice. Copy of notice delivered to owner of land.
3. Character of application.
4. Jurors appointed to assess damages.
5. Oaths administered.

SECTION

6. Appeals to Superior Court.
7. Right of applicant. Proviso.
8. Registration of assessment.
9. Compensation to appraiser.
10. Fee of justice.
11. Fee of sheriff.
12. Obstruction of drains a misdemeanor.

1. ANY person or persons or body politic or corporate engaged or about to engage in mining, who may find it necessary for the furtherance of their operations to convey water either to or from their mine or mines over the lands of any other person or persons, may make application in writing to any justice of the peace of the county in which the lands to be affected or the greater part thereof are situated, for the right so to convey the said water.

Conveyance of water for mining purposes. Application made to justices of the peace.—1871-'2, c. 158, s. 1.

2. Before making said application the applicant shall give ten days' notice to the owners of said lands of the time and place of said application and the magistrate before whom the same will be made; said notice shall be in writing, and shall be served by delivering a copy thereof to the owner of said lands, or by leaving said copy at his usual place of residence, if he be a resident of this State, or if he be a non-resident by posting said notice in some conspicuous place upon said land, and also at the court-house door of the county.

Time of notice. Copy of notice delivered to owner of land.—1871-'2, c. 158, s. 2.

3. Said application shall specify the lands to be affected

Character of

application.—
1871-'2, c. 158,
s. 3.

thereby, the name or names of the owner or owners of said lands if they be known to the applicant, the name of the occupant or occupants of such lands, if any there be, and the character of the ditch or drain intended to be made.

Jurors appointed to assess damages.—1871-'2, c. 158, s. 4.

4. Upon due proof being made to the justice of the peace that the notice mentioned in section two of this chapter has been given, he shall appoint three disinterested persons qualified to act as jurors, and not connected either by blood or marriage with such applicant, or the owner or occupant of such lands, appraisers to assess the damage, if any, that will accrue to said lands by the contemplated work, and shall issue a notice to them to meet upon the premises at a day specified, not to exceed ten days from the date of said notice.

Oath administered.—1871-'2, c. 158, s. 5.

5. The appraisers having met, shall take an oath before some officer qualified to administer oaths, to faithfully perform their duty and to do impartial justice in the case, and shall then examine all the lands in any way to be affected by the said work, and assess the damage thereto, and make report thereof under their hands and seals to the justice from whom the notice issued.

Appeal to Superior Court.—1871-'2, c. 158, s. 6.

6. Either party dissatisfied with the assessment of the appraisers may, within ten days thereafter, appeal to the Superior Court, having first given bond with approved security for the payment of the costs of the appeal.

Right of applicant.—1871-'2, c. 158, s. 7. Proviso.

7. After the return of the assessment the applicant shall have full right and power to enter upon such lands and make such ditches, drains or other necessary work: *Provided*, he has first paid or tendered the damages assessed as above to the owner of such lands or his known and recognized agent, if he be a resident of this State, or have such agent in this State. If the owner be a non-resident and have no known agent in this State, the amount so assessed shall be paid by the applicant into the office of the clerk of the Superior Court of the county for the use of such owner.

Registration of assessment.—1871-'2, c. 158, s. 8.

8. The applicant or any other person interested may have the said assessment registered upon the certificate of the magistrate, and shall pay the register a fee of twenty-five cents therefor.

Compensation of appraiser.—1871-'2, c. 158, s. 9.

9. Each appraiser shall be entitled to a fee of one dollar for each day actually employed in making said assessment, to be paid by the applicant.

Fees of magistrate.—1871-'2, c. 158, s. 10.

10. The magistrate shall receive a fee of one dollar and no more for the issuing of notices and other services required of him by this chapter, to be paid by the applicant.

Fee of sheriff.—1871-'2, c. 158, s. 11.

11. The sheriff or other officer serving the notices hereinbefore mentioned, shall receive the same fees as are allowed for such services in cases of partition of land, to be paid by the applicant.

Obstruction of drains a misdemeanor. Penalty.—

12. Any person or persons who shall obstruct any drain or ditch constructed under the provisions of this chapter shall be deemed guilty of a misdemeanor, and on conviction thereof

be punished by fine or imprisonment, or both at the discretion of the court. 1871-'2, c. 153, s. 12.

CHAPTER 74.

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,

SECTION

- &c., 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.

1. EVERY clerk of the Superior Court, 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 auditor; if made by a clerk of the Superior Court, the judge 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.

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. C., c. 73, s. 1.

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. C., c. 73, s. 2.

3. If any clerk shall fail to comply with the duties herein enjoined, he shall be liable to be sued for the moneys in his

Clerks failing to render ac-

count, &c., to be sued.
Penalty \$100.
Where suit brought.—R.
C., c. 73, s. 3.

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, &c., admitting money in hand, and failing to pay, how proceeded against.—R.
C., c. 73, s. 4.

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.

Sheriff to account for such moneys, in like manner as clerks.—R.
C., c. 73, s. 5.

5. Every sheriff, at the same time and in like manner as is required of clerks, 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.

Moneys may be used by the public, until called for by owners.—R.
C., c. 73, 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.

CHAPTER 75.

NAMES.

Names changed by Superior Courts.

Names changed by Superior Courts.—R.
C., c. 74.

1. ANY person desirous of changing his name, may have it done by petition in any Superior Court; and the Court at the time of filing the petition, or afterwards, may decree the same.

CHAPTER 76.

NOTARIES.

SECTION

1. Notaries appointed by Governor, Qualified in the Superior Court.
2. Duplicate commission issued, one

SECTION

part to be filed in the office of the clerk of the Superior Court.

SECTION

3. Clerks to act as notaries and certify under seal of office.

4. Notaries may take probate of deeds,

SECTION

&c., and act as commissioners of affidavits.

5. Fees of notaries.

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 clerk of the Superior Court of the county in which they are to act, shall be duly qualified, by taking before said clerk an oath of office, and the oaths prescribed for officers.

Notaries appointed by Governor. Qualified in Superior Court.—R. C., c. 75, s. 1.

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.

Duplicate commissions issued—one part filed in office of Clerk.—R. C., c. 75, s. 2.

3. The clerks of the Superior Courts, 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.

Clerks may act as notaries, and certify under seal of office.—R. C., c. 75, s. 3.

4. Notaries public shall have power to take and certify the acknowledgment or proof of powers of attorney, mortgages, deeds and other instruments of writing, to take depositions and to administer oaths and affirmations in matters incident or belonging to the duties of their office, and to take affidavits to be used before a court, judge or other officer, within the State: *Provided*, that nothing herein contained shall be construed to allow the privy examination of *femes covert* to be taken otherwise than by law specially directed.

Notaries may take probate of deeds, &c., and act as commissioners of affidavits.—1866, c. 30, s. 1.

5. The fees of notaries-public, for each certificate and seal shall be fifty cents, and in other matters shall be, as regulated by the chapter entitled salaries and fees.

Fees of notaries.—1866, c. 30, s. 2.

CHAPTER 77.

OATHS.

SECTION

1. Oaths, how administered.

2. Persons scrupulous of laying hands on the Scriptures, sworn with uplifted hand.

3. Quakers, Moravians, Dunkers, and Mennonists to be affirmed.

4. Oaths or affirmations to support the Constitution of the United States and of this State, taken by all officers.

5. Oath to support the Constitution of the United States.

SECTION

6. Oaths of sundry persons.

(1) Administrator.

(2) Attorney at law.

(3) Book debt oath.

(4) Book debt oath for an executor and administrator.

(5) Commissioners allotting year's provision.

(6) Commissioner dividing and allotting real estate.

(7) Commissioner of wrecks.

(8) Constable.

SECTION

- (9.) Entry-taker.
- (10.) Executor.
- (11.) Finance committee.
- (12.) Inspector of flour.
- (13.) Inspector of tobacco.
- (14.) Inspector of other articles than tobacco or flour.
- (15.) Foreman of grand jury.
- (16.) Grand jurors.
- (17.) Officers attending grand jury.
- (18.) Officer charged with a jury.
- (19.) Petit jury in a capital case.
- (20.) Petit jury in criminal cases not capital.
- (21.) Jury in civil cases.
- (22.) Jury laying off dower.
- (23.) Jury to assess damages for overflowing lands.
- (24.) Jury to lay off and assess damages for road.

SECTION

- (25.) Processioner.
 - (26.) Ranger.
 - (27.) Register.
 - (28.) Standard keeper.
 - (29.) Stray valuers.
 - (30.) County surveyor.
 - (31.) Tobacco picker.
 - (32.) County treasurer.
 - (33.) Trustees of townships.
 - (34.) Witness, to go before grand jury.
 - (35.) Witness in a capital trial.
 - (36.) Witness on a traverse.
 - (37.) Witness in civil cases.
 - (38.) Witness to prove a will.
 - (39.) Form of oath for other persons.
7. Deputies to administer oath when 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,

Oaths, how administered.
—R. C., c. 76, s. 1.

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 be justly 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.

Persons scrupulous of laying hands on the Scriptures, sworn with uplifted hand.
—R. C., c. 76, s. 2.

2. When the person to be sworn, shall be conscientiously scrupulous of taking a book oath in manner aforesaid, he 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.

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.

Quakers, Moravians, Dunkers, and Mennonists to be affirmed.—R. C., c. 76, s. 3

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 to 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."

Oaths or affirmations to support the Constitutions of the United States and of this State, taken by all officers.—R. C., c. 76, s. 4:

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.

Oath to support the Constitution of the United States.—R. C., c. 76, s. 5.

6. The oaths of office to be taken by the several persons hereafter named, shall be in the words following the names of said persons respectively.

Oaths of sundry persons.—R. C., c. 76, s. 6.

ADMINISTRATOR.

Administra-
tor.

(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 according to law; 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.

ATTORNEY AT LAW.

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.

BOOK DEBT OATH.

Book debt.

(3.) You swear (or affirm) that the matter in dispute is a book account, 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 OATH FOR AN EXECUTOR OR ADMINISTRATOR.

Book debt
oath for an
executor or
administrator.

(4.) 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.

COMMISSIONERS ALLOTTING A YEAR'S PROVISIONS.

Commission-
ers allotting a
year's provis-
ion.

(5.) You and each of you swear (or affirm) that you will lay off and allot to the petitioner, a year's provisions for herself and family, according to law, and with your best skill and ability: so help you, God.

COMMISSIONERS DIVIDING AND ALLOTTING REAL ESTATE.

Commission-
ers dividing
and allotting
real estate.

(6.) 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.

(7.) 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. Commissioner
of wrecks.

CONSTABLE.

(8.) I, A. B., do solemnly swear (or affirm) that I will well and truly serve the State of North Carolina in the office of a constable; I will see and cause the peace of the State to be well and truly preserved and kept, according to my power: I will arrest all such persons as, in my sight, shall ride or go armed offensively, or shall commit or make any riot, affray or other breach of the peace; I will do my best endeavor, upon complaint to me made, to apprehend all felons and rioters, or persons riotously assembled, and if any such offenders shall make resistance with force, I will make hue and cry, and will pursue them according to law, and will, faithfully and without delay, execute and return all lawful precepts to me directed; I will, well and truly, according to my knowledge, power and ability, do and execute all other things belonging to the office of a constable, so long as I shall continue in office: so help me, God. Constable.

ENTRY TAKER.

(9.) I, A. B., do solemnly swear (or affirm) that I will well and impartially discharge the several duties of the office of entry taker for the county of, according to law: so help me, God. Entry-taker.

EXECUTOR.

10.) You swear (or affirm) that you believe this writing to be and contain the last will and testament of A. B., deceased; and that you will well and truly execute the same, by first paying his debts and then his legacies, as far as the said estate shall extend, or the law shall charge you; and that you will well and faithfully execute the office of an executor, agreeably to the trust and confidence reposed in you, and according to law: so help you, God. Executor.

FINANCE COMMITTEE.

(11.) I, A. B., do solemnly swear (or affirm) that I will diligently inquire into all matters relating to the receipts and disbursements of county funds and a true report make, without partiality, so help me God." Finance com-
mittee.—1871-
'2, c. 71, s. 4.

INSPECTOR OF FLOUR.

Inspector of
flour.

(12.) 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 will 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.

(13.) 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.

(14.) 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 flax-seed; 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.

GRAND JURY—FOREMAN OF.

Foreman of
grand jury.

(15.) You, as foreman of this grand inquest for the body of this county, shall diligently enquire and true presentment make of all such matters and things as shall be given you in charge; the State's counsel, your fellows' and your own, you shall keep secret; you shall present no one for envy, hatred, or malice;

neither shall you leave any one unrepresented, for fear, favor, or affection, reward or the hope of reward ; but you shall present all things truly, as they come to your knowledge, according to the best of your understanding : so help you, God.

GRAND JURORS.

(16.) 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 jurors.

GRAND JURY—OFFICER OF.

(17.) 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. Officer attending grand jury.

JURY—OFFICER OF.

(18.) 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. Officer charged with a jury.

JURY, IN A CAPITAL CASE.

(19.) 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. Petit jury in a capital case.

JURY, IN CRIMINAL CASES NOT CAPITAL.

(20.) 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. Petit jury in criminal cases, not capital.

The same oath to talesmen, by using the word "day" instead of "term."

JURY, IN CIVIL CASES.

(21.) 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 according to the evidence : so help you, God. Jury in civil cases.

The same oath to talesmen, by using the word "day" instead of "term."

JURY, LAYING OFF DOWER.

Jury laying off dower. (22.) 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 overflowing lands. (23.) 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.

JURY TO LAY OFF ROADS AND ASSESS DAMAGES.

Jury to lay off and assess damages for road. (24.) I, A. B., do solemnly swear (or affirm) that I will lay out the road, directed to be laid out by the proper authority, 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.

PROCESSIONER.

Processioner. (25.) 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.

RANGER.

Ranger. (26.) 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. (27.) I, A. B., do solemnly swear (or affirm) that I will faith-

fully 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.

STANDARD KEEPER.

(28.) 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.

Standard
keeper.

ESTRAY VALUERS.

(29.) 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, valu-
ers of.

SURVEYOR FOR THE COUNTY.

(30.) The same, *mutatis mutandis*, with that of entry-taker.

Surveyor for
county.

TOBACCO PICKER.

(31.) 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 pick-
er.

TREASURER FOR A COUNTY.

(32.) 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 treasurer 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 treas-
urer.

TRUSTEES OF TOWNSHIP.

(33.) You, and each of you, swear (or affirm) that you will in all respects faithfully and honestly execute the office of trustees of township in the county of during your continuance in office, according to law : so help you, God.

Trustees of
township.

WITNESS TO DEPOSE BEFORE THE GRAND JURY.

Witness sent to grand jury. (34.) 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 IN A CAPITAL TRIAL.

Witness on a capital trial. (35.) 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 TRAVERSE.

Witness on a traverse. (36.) 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 IN CIVIL CASES.

Witness in civil cases. (37.) 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 TO PROVE A WILL.

Witness to prove a will. (38.) 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.

Form of oath for other persons. (39.) Any officer of the State or of any county or township, the form of whose oath is not given above, shall take an oath in the following form: I, A. B., do swear (or affirm) that I will well and truly execute the office of according to the best of my skill and ability according to law: so help me, God.

Deputies to administer oaths wherever their principals may.—R. C., c. 76, s. 7. 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 78.

OFFICERS OF THE STATE—THEIR POWERS AND DUTIES.

SECTION

1. Public officers.
2. Legal powers not defined.
3. Legislative officers:
 - (1.) Senators.
 - (2.) Representatives.
 - (3.) Speaker.
 - (4.) Clerks.
 - (5.) Doorkeepers.
 - (6.) Subordinates.
4. Elections and term of office of Senators.
5. Elections and term of office of Representatives.
6. How other officers chosen.
7. Term of office of clerks and doorkeepers.
8. Duty of Lieutenant Governor.
9. Powers of committee of investigat'n.
10. Penalty for failing to give evidence.
11. May administer oaths.
12. Penalty for false swearing.
13. How persons may make application.
14. Party may appeal.
15. Secretary to have laws printed.
16. Names to be prefixed.
17. Distribution of laws.
18. When selling books a misdemeanor.
19. Executive officers:
 - (1.) Civil.
 - (2.) Military.
20. Civil executive officers:
 - (1.) General.
 - (2.) Special.
 - (3.) Local.
21.
 - (1.) Governor.
 - (2.) Lieutenant-Governor.
 - (3.) Private Secretary.
 - (4.) Secretary of State.
 - (5.) Auditor.
 - (6.) Treasurer.
 - (7.) Attorney General.
 - (8.) Superintendent of Public Instruction.
 - (9.) Governor's Council.
22. Governor and Lieut. Gov'r, when and how elected. Contested elec'tns.
23. Powers and duty of Governor:
 - (1.) Supervise conduct, &c.
 - (2.) See offices filled, &c.

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- (3.) Make appointments.
- (4.) Official organ.
- (5.) Custodian of seal.
- (6.) May direct Attorney General, &c.
24. Gov'r to send copies of statutes, &c.
25. To keep the following records:
 - (1.) Register of pardons.
 - (2.) Register of other applications.
26. Records, &c., to be preserved.
27. Others performing duties of Gov'or.
28. Residence of Governor.
29. Dwelling of Governor. Private Secretary.
30. Letter books deposited, &c.
31. Seal of State.
32. When new seal procured.
33. Treasurer to pay expenses.
34. Putting seal to papers.
35. Day of Thanksgiving.
36. Council.
37. How applications for pardon made. What to contain.
38. Secretary of State charged with custody of statutes, &c.
39. His bond, where deposited.
40. Office hours.
41. His duties:
 - (1.) To attend Legislature, &c.
 - (2.) To attend the Governor.
 - (3.) To receive mortgages, &c.
 - (4.) To receive depositions, &c.
 - (5.) To distribute statutes, &c.
 - (6.) To distribute acts of Congress.
 - (7.) Receipt book for grants.
42. To have statutes bound, &c.
43. To transmit documents, &c., at the expense of the State.
44. To purchase stationery.
45. To purchase books on requisition.
46. Justice's dockets.
47. Books at actual cost.
48. To furnish blank forms for estimates.
49. Secretary to submit estimates.
50. Register of deeds to include Superior Court Clerk.
51. Auditor and Treasurer to review estimates.

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52. Requisitions approved, &c.
53. Sealed proposals to be sent to Secretary.
54. No stationery furnished except as herein provided.
55. Secretary to furnish amount of stationery to Auditor.
56. Auditor, his duties :
 - (1.) To superintend fiscal concerns.
 - (2.) To report to the General Assembly.
 - (3.) Suggest plans.
 - (4.) Keep accounts.
 - (5.) Examine accounts.
 - (6.) Collect moneys.
 - (7.) Examine claims.
 - (8.) To require persons to settle, &c.
 - (9.) To draw warrants.
 - (10.) To keep leases, &c.
 - (11.) To keep certificates, &c.
 - (12.) To procure statements of deposit.
 - (13.) To countersign checks, &c.
 - (14.) To keep accounts between State and Treasurer.
 - (15.) To examine bank book kept by Treasurer, &c.
57. To require statements, &c.
58. Power to require oath.
59. May draw warrant.
60. With consent may release.
61. When property sold under foreclosure.
62. Office hours.
63. Office room.
64. Treasurer, his duties :
 - (1.) To receive money.

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- (2.) To keep bank book.
- (3.) Pay warrants, &c.
65. Banks to transmit statement, &c.
66. Treasurer not to draw, &c.
67. To give bond.
68. Deputy Treasurer.
69. Accounts to be closed, when.
70. Commissioners to examine vouchers.
71. In case of death or resignation.
72. Office hours.
73. Office room.
74. Attorney General, his duties :
 - (1.) To defend actions, &c.
 - (2.) Shall defend and prosecute, when.
 - (3.) Advise solicitors, &c., when.
 - (4.) Give an opinion.
 - (5.) To pay moneys, when.
75. Supreme Court Reporter abolished. Attorney General to fulfil duties.
76. General provisions concerning the Superintendent of Public Instruction. Where to keep office, seals, &c.
77. Office room.
78. Shall direct operations of schools.
79. Report to Governor, &c.
80. Report to contain statement, &c.
81. To correspond, &c.
82. To acquaint himself with wants of education, &c.
83. To apportion school moneys.
84. To prepare forms, &c.
85. To file printed and manuscript reports, &c.
86. To be *ex officio* one of the directors of the asylums.
87. To deliver over papers, &c., when.

Public officers.
—1868-'9, c. 270,
s. 1.

Legal powers
not defined.—
1868-'9, c. 270,
s. 2.

Legislative of-
ficers.—1868-
'9, c. 270, s. 3.

1. THE public officers of the State are :
 - (1.) Legislative ;
 - (2.) Executive ;
 - (3.) Judicial.
2. But this classification shall not be construed as defining the legal powers of either class.
3. The legislative officers are :
 - (1.) Fifty Senators ;
 - (2.) One hundred and twenty-two members of the House of Representatives ;
 - (3.) A Speaker of the House of Representatives ;
 - (4.) A clerk and assistants in each house ;
 - (5.) A door-keeper and assistants in each house ;
 - (6.) As many subordinates in each house as may be deemed necessary.

4. The time and manner of electing Senators, and their term of office, are prescribed by the Constitution, (Art. II, sections 3, 4, 27 and 29,) and in chapter fifty-two of this revisal.

5. The time and manner of election, and the term of office of the members of the House of Representatives, are prescribed by the Constitution, (Art. II, sections 6, 7, 8, 27 and 29,) and in chapter fifty-two of this revisal.

6. The other legislative officers are chosen by their respective houses, voting *viva voce*. (Constitution, Art. II.)

7. The term of office of the clerk and door-keeper of each house shall be two years, and until their successors are appointed.

8. When the Lieutenant-Governor is sick or absent, the Senate must choose one of their own number as his successor. In other cases his duties are simply those of presiding officer of the Senate, without the right of voting except in case of a tie.

9. Any committee of investigation raised either by joint resolution or resolution of either house of the General Assembly, has full power to send for persons and papers and if necessary to compel attendance and production of papers by attachment or otherwise.

10. Any person or persons wilfully failing or refusing to attend or produce papers (in accordance with the provisions of the preceding section) on summons of any committee of investigation, either select or committee of the whole, shall be guilty of a misdemeanor, and on conviction in the Superior Court of the county in which such witness may reside or be found, shall be fined not less than five hundred dollars nor more than one thousand dollars, and shall be subject to imprisonment at the discretion of the court.

11. The chairman of any committee or any person in his presence, shall have competent power and authority to administer oaths.

12. Any person or persons who shall wilfully and corruptly swear falsely to any fact material to the investigation of such committee, shall be subject to all the pains and penalties of wilful and corrupt perjury, and, on indictment and conviction in the Superior Court of Wake county, shall be confined in the penitentiary of the State for the time now prescribed by law for perjury.

13. Every person desiring to appear either in person or by attorney to introduce testimony, or to offer argument for or against the passage of an act or resolution, before any committee of either House of the General Assembly, shall first make application to said committee, stating in writing his object, the number and names of his witnesses, and the nature of their testimony. If the committee consider the information likely to be important, or the interest of the applicant to be great, they shall appoint a time and place for hearing the same, with such limitations as may be deemed necessary.

14. If any committee shall refuse to grant the request of any

Election and term of office of Senators.—1868-'9, c. 270, s. 4.

Elections and term of office of Representatives.—1868-'9, c. 270, s. 5.

How other officers chosen.—1868-'9, c. 270, s. 6.

Term of office of clerks and doorkeepers.—1868-'9, c. 270, s. 7.

Duty of Lieutenant Governor.—1868-'9, c. 270, s. 8.

Powers of committees of investigation.—1869-'70, c. 5, s. 1.

Penalty for failure to give evidence.—1869-'70, c. 5, s. 2.

May administer oaths.—1869-'70, c. 5, s. 3.

Penalty for swearing falsely.—1869-'70, c. 5, s. 4.

How persons may make application.—1868-'9, c. 270, s. 10.

Party may ap-

peal—1868-'9,
c. 270, s. 11.

citizen to be heard before them in a matter touching his interests, he may appeal to the House of which the committee is a part; and if he show good reason for his request the House shall order it to be granted.

Secretary to
have laws
printed.—1868
'9, c. 270, s.
14.

15. The Secretary of State, within thirty days after each session of the General Assembly, shall cause to be published by the State Printer, all the laws and joint resolutions passed at such session; and each volume shall contain his certificate that it was printed under his direction from enrolled copies on file in his office. In the printing he shall omit the certificate required to be endorsed upon the original bills; but he shall insert immediately after the title of each law, the word "passed," adding the day, month and year.

Names to be
prefixed.—
1868-'9, c. 270,
s. 15.

16. There shall be prefixed to the statutes published each year the names and residences of Governor, Lieutenant Governor, Senators and members of the House of Representatives and of the Justices of the Supreme, and Judges of the Superior Courts.

Distribution of
laws.—1869-
'70, c. 235, s.
1-2.

17. The Secretary of State shall publish within forty days after the adjournment of the General Assembly all the general statutes in a cheap form, which he shall distribute at once as follows: one to each county commissioner, one to each register of deeds for his office, and one to each justice of the peace. The copies for each county shall be sent to the register of deeds therein for distribution as above.

When selling
books a mis-
demeanor.—
1869-'70, c.
224, s. 3.

18. Whenever any book is published under the direction of the General Assembly and at the cost of the State for distribution, until the whole number of copies required by law to be distributed have been forwarded to their proper destination, the selling of any such books shall be a misdemeanor, and the person so offending, upon conviction, shall pay a fine of one hundred dollars, and each book sold shall constitute a separate and distinct offence.

Executive of-
ficers, civil
and military.
—1868-'9, c.
270, s. 24.
Civil.—1868-
'9, c. 270, s.
25.

19. Executive officers are either:

- (1.) Civil;
- (2.) Military.

20. Civil executive officers are:

- (1.) General, or for the whole State;
- (2.) Special, or for special duties in different parts of the State;
- (3.) Local, or for a particular part of the State.

General civil
executive of-
ficers.—1868-
'9, c. 270, s. 26.

21. The general civil executive officers of this State are as follows:

- (1.) A Governor;
- (2.) A Lieutenant Governor;
- (3.) A Private Secretary for the Governor;
- (4.) A Secretary of State;
- (5.) An Auditor;
- (6.) A Treasurer;
- (7.) An Attorney General;
- (8.) A Superintendent of Public Instruction;

(9.) The members of the Governor's Council.

[See Constitution, Article III, sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16.]

22. The election of a Governor and Lieutenant Governor for the State of North Carolina shall be held on the first Thursday in August in the year of our Lord one thousand eight hundred and seventy-two and every four years thereafter in the same manner and under the same rules and regulations as are or shall be prescribed for the election of members of the General Assembly; and contested elections shall be determined by a joint vote of both houses of the General Assembly in the same manner and under the same rules and regulations as are or shall be prescribed in cases of contested elections of members of the General Assembly.

23. In addition to those prescribed by the Constitution, the Governor has powers and duties prescribed in this and the following sections:

(1.) He has to supervise the official conduct of all executive and ministerial officers;

(2.) He is to see that all offices are filled, and the duties thereof performed, or in default thereof, apply such remedy as the law allows, and if the remedy is imperfect acquaint the General Assembly therewith;

(3.) He is to make the appointments and supply the vacancies not otherwise provided for by law in all departments;

(4.) He is the sole official organ between the government of this State and other States, or the government of the United States;

(5.) He has the custody of the seal of the State, a description whereof must be deposited with the Secretary of State;

(6.) Whenever any suit or legal proceeding is pending against the State, or which may result in any claim against the State, or affect the title of this State to any property, he may direct the Attorney-General to appear on behalf of the State, and may employ such additional counsel as he may judge expedient;

(7.) He shall have such other powers and duties as may devolve on him by law.

24. The Governor, each year, as soon as published, shall transmit to the executive of every State in the Union, three copies of the statutes of each year, and of the reports of the Supreme Court, and request a similar transmission to be made to him of the statutes and reports of the higher courts of the several States. When the statutes of any State are received he shall deposit one copy in the executive library, but in case only one copy is received it shall be deposited in the State library.

25. The Governor shall cause to be kept the following records:

(1.) A register of all applications for pardon, or for commutation of any sentence, with a list of the official signatures and recommendations in favor of such application;

Governor and Lieutenant Governor, when and how elected. Contested elections.—1871-'2, c. 185, s. 1 and 25.

Powers and duties of Governor.—1868-'9, c. 270, s. 27.

Supervise conduct, &c.

See offices filled, &c.

Make appointments.

Official organ.

Custody of seal.

May direct Attorney-General, &c.—1870-'1, c. 111.

Other powers and duties.

Governor to send copies of statutes.—1868-'9, c. 270, s. 23.

To keep following records.—1868-'9, c. 270, s. 29. Register for pardons.

Register of other applications. Accounts approved by Auditor.—1870-'1, c. 111.

(2.) A separate register of all other applications made to him for any official action ;

(3.) An account of all his official expenses and disbursements, including the incidental expenses of his departments, and the rewards offered by him for the apprehension of criminals, which shall be paid upon his warrant, approved by the Auditor.

Records, &c., to be preserved.—1868-'9, c. 270, s. 30.

26. These records and the originals of all applications, petitions and recommendations, and reports therein mentioned, shall be preserved in the office of the Governor, but when applications for offices are refused, he may, in his discretion, return the papers referring to the application

Others performing duties of Governor.—1868-'9, c. 270, s. 31.

27. Every provision in the Constitution and statutes in relation to the powers and duties of the Governor, and in relation to the acts and duties to be performed by others towards him, extends to others performing for the time being the duties of Governor.

Residence of Governor.—1868-'9, c. 270, s. 32.

28. The Governor shall reside permanently at the city of Raleigh during his continuance in office.

Dwelling of Governor. Private Secretary.—1868-'9, c. 270, s. 33.

29. A convenient and commodious dwelling-house, together with such out-houses as shall be necessary, shall be provided for his accommodation. 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.

Letter book deposited.—1868-'9, c. 270, s. 34.

30. 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 his letter books before the General Assembly, whenever requested.

Seal of State.—1868-'9, c. 270, s. 35.

31. 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.

When new seal procured.—1868-'9, c. 270, s. 36.

32. 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, and when new seals are provided, the former ones shall not be used.

Treasurer to pay expenses.—1868-'9, c. 270, s. 37.

33. The Treasurer shall pay the expense of procuring said seals upon warrant of the Governor countersigned by the Auditor ; and the same shall be delivered to the proper officers, who shall give a receipt therefor and be accountable for their safe keeping.

Putting seal to papers.—1868-'9, c. 270, s. 38.

34. 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 Gov-

ernor and Council, who shall, if they deem the same proper, direct the Secretary to put the seal thereto.

35. The Governor is directed to set apart a day in every year, and by proclamation give notice thereof, as a day of 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 a nation.

Day of thanksgiving.—1868-'9, c. 270, s. 39.

36. The Governor may convene his Council for consultation therewith whenever he may deem it proper.

Council.—1868-'9, c. 270, s. 40.

37. Every application for pardon must be made to the Governor in writing, signed by the party convicted, or by some person in his behalf. And every such application shall contain the grounds and reasons upon which the executive pardon is asked, and shall be in every case accompanied by a certified copy of the indictment, and the verdict and judgment of the court thereon.

Applications for pardon, how made. What to contain.—1868-'70, c. 171, s. 1. 1870-'1, c. 61, s. 1.

38. The Secretary of State is charged with the custody of all statutes and joint resolutions of the Legislature, all documents which pass under the great seal, and of all the books, records, deeds, parchments, maps and papers now deposited in his office, or which may hereafter be there deposited pursuant to law, and he shall from time to time make all necessary provisions for their arrangement and preservation.

Secretary of State charged with custody of statutes, &c.—1868-'9, c. 270, s. 41.

39. The Secretary of State shall give bond with sufficient security, approved by the Governor and Auditor, for the sum of twenty thousand dollars, payable to the State, and conditioned for the faithful performance of his duties. And the bond of the Secretary of State shall be deposited in the Treasurer's office for safe keeping: and he shall take the oath prescribed for public officers.

His bond and where deposited.—1868-'9, c. 270, s. 42 and 43.

40. The Secretary shall attend at his office, in the City of Raleigh, between the hours of nine o'clock, A. M., and two o'clock, P. M., on every day of the year, Sundays and legal holidays excepted. He shall be allowed such office room as may be necessary.

Office hours.—1868-'9, c. 270, s. 44. 1870-'1, c. 111.

41. It is the duty of the Secretary of State:

His duties.—1868-'9, c. 270, s. 45.

(1.) To attend at every session of the Legislature for the purpose of receiving bills which shall have become laws, and to perform such other duties as may then be devolved upon him by resolution of the two houses, or either of them;

To attend Legislature, &c.

(2.) To attend the Governor, whenever required by him, for the purpose of receiving documents which have passed the great seal;

Attend the Governor.

(3.) To receive and keep all conveyances and mortgages belonging to the State;

Receive mortgages, &c.

(4.) To receive and record, in proper books, the depositions made or furnished him, or required by law, by resident aliens desirous to take and hold real property;

Receive depositions, &c.

(5.) To distribute annually the statutes, the legislative journals and documents, and the reports of the Supreme Court;

To distribute the statutes, &c.

Acts of Congress.

Receipt book for grants.

To have statutes bound, &c.—1868-'9, c. 270, s. 46.

To transmit at expense of State.—1868-'9, c. 270, s. 48.

Secretary to purchase stationery.—1869-'70, c. 234, s. 4. 1869-'70, c. 141, s. 1.

Purchase books on requisition.—1869-'70, c. 234, s. 5.

Justice dockets.—1869-'70, c. 234, s. 6.

(6.) To distribute the acts of Congress received at his office in the same manner as the statutes of the State;

(7.) To keep a receipt book, in which he shall take from every person to whom a grant shall be delivered, a receipt for the same; but he may inclose grants by mail to any person requesting him to do so, first entering the same on the receipt book.

42. The original statutes and joint resolutions passed at each session, the Secretary of State shall immediately thereafter cause to be bound in volumes of convenient size. He shall compare with this original, a copy of the printed statutes; and having noted therein at the end of each statute or resolution any error in the printed copy, deposit the same with the original volume in his office. Each such volume shall be lettered on the back with its title and the date of its session. He shall also cause indexes to the statutes to be prepared as soon as practicable after each session of the Legislature and deliver them to the printer of the statutes.

43. The statutes, journals and documents for the use of each county, and for members of the General Assembly and other officers therein, shall be transmitted in boxes to the register of deeds of each county, and the rest in such manner as the Secretary may think best: the statutes to be transmitted within sixty days after the adjournment of the General Assembly, all of which are to be transmitted at the expense of the State. He shall also put up in boxes the laws directed to be sent by the Governor to the several States in the Union, and shall transmit the same at the expense of the State in such manner as the Governor shall direct, and he shall offer for sale, at an advance not exceeding ten per centum, such number of copies as the Senate and Assembly may, by joint resolution, direct.

44. The Secretary of State shall purchase stationery for the use of the Executive, Treasurer, Auditor, Superintendent of Public Instruction, Supreme Court, State librarian, the two houses of the General Assembly and his own office. He shall also be required to furnish all blank books for record purposes in the departments above named, and all blank books needed by the county commissioners in their several offices, and by registers of deeds, clerks of the Superior Courts, county treasurers, and dockets for justices of the peace.

45. The Secretary of State shall, as soon as practicable after requisition is made on him, purchase such books as are mentioned in section forty-four, and as may be required by the several counties of the State, and forward the same to the several registers of deeds, with an invoice enclosed, who shall receipt for the same and distribute according to the provisions of this chapter.

46. The register of deeds shall require each person receiving a justice's docket to pay for the same, and each register shall account with his sheriff for all such sums with his other official taxes.

47. All blank books furnished the counties shall be supplied at actual cost and no others shall be used except those used by the Secretary of State.

Books at actual cost.—1869-'70, c. 234, s. 7.

48. It shall be the duty of the Secretary of State on or before the first day of August in each year, to send the Executive, Treasurer, Auditor, Superintendent of Public Instruction, Clerk of Supreme Court, State Librarian, the clerks of the houses of the General Assembly and to each register of deeds, a blank estimate of the amount or quantity and kind of stationery, as allowed by this chapter, that will be required in their several offices for official use during the next succeeding year, which shall be properly filled and certified and returned to the Secretary of State by the tenth day of September following.

To furnish blank forms for estimates.—1869-'70, c. 234, s. 8.

49. The Secretary of State shall at the time these estimates are examined submit an estimate of stationery for his own official use in his own office.

Secretary to submit estimate.—1869-'70, c. 234, s. 9.

50. Each register of deeds in making out his estimate shall include the requirements of the Superior Court clerk, the county commissioners and county treasurer, and justices of the peace.

Register of deeds to include Superior Court Clerk, &c.—1869-'70, c. 234, s. 10. Auditor and Treasurer to review estimates.—1868-'9, c. 270, s. 59.

51. Immediately upon the receipt of these requisitions, the Secretary of State shall summon the Auditor and Treasurer to attend his office and inspect the amounts of each of said requisitions, and if the requisitions of any officer shall appear to the said board of inspectors excessive and unreasonable, it shall then and there be reduced as in their judgment may be deemed just and proper.

52. When the inspectors have passed upon and approved or amended the various requisitions, the Secretary shall prepare a list of the various kinds of stationery required, and the amount of each and the time at which it is required to be delivered, and shall invite sealed proposals to supply the same by advertising at least twice in two weekly issues of four papers in the State.

Requisitions approved, &c.—1868-'9, c. 270, s. 60.

53. Said sealed proposals must be forwarded to the Secretary of State previous to the first day of November, marked on the back of the envelope, "Sealed proposals for furnishing stationery," which shall be opened on said first day of November, at twelve o'clock, by the Secretary of State, in the presence of the Auditor and Treasurer, and not elsewhere or otherwise; and the lowest bidder for each class, offering sufficient security, to be determined by the officer named in this section, shall be awarded the contract to supply the same; each award thus made shall be signed at the same time by the Secretary of State, and no account for stationery furnished shall be audited or paid except on presentation of such award.

Sealed proposals to be sent to Secretary.—1869-'70, c. 234, s. 11.

54. No stationery shall be furnished at the expense of the State, except as provided in this chapter.

No stationery furnished except as herein provided.—1869-'70, c. 234, s. 12. Secretary to furnish amount of sta-

55. The Secretary of State shall furnish to the Auditor each year, before the first Wednesday in August, the amount of stationery, with the cost thereof, including freight, furnished each county during the previous year, and it shall be the duty

tionery to Auditor.—1868-'9, c. 270, s. 62.

Auditor, his duties—1868-'9, c. 270, s. 63. To report to the General Assembly.

Suggest plans.

Keep accounts.

Examine accounts.

Collect moneys, &c.

Examine claims.

To require persons to settle, &c.

Draw warrants.

Keep leases, &c.

Keep certificates, &c.

Procure statements of deposit.

To countersign checks, &c.

of the Auditor to forward to the board of county commissioners of each county, before the fifteenth day of August in each year, the stationery account of such county, and the same shall be levied with the taxes of the county and paid over with the other taxes by the sheriff.

56. It is the duty of the Auditor:

(1.) To superintend the fiscal concerns of the State;

(2.) To report to the General Assembly, annually, a complete statement of the funds of the State, of its revenues and of the public expenditures during the preceding fiscal year, and, as far as practicable, an account of the same down to the termination of the current calendar year, together with a detailed estimate of the expenditures to be defrayed from the treasury for the ensuing fiscal year, specifying therein each object of expenditure and distinguishing between such as are provided for by permanent or temporary appropriations, and such as must be provided for by a new statute, and suggesting the means from which such expenditures are to be defrayed;

(3.) To suggest plans for the improvement and management of the public revenue;

(4.) To keep and state all accounts in which the State is interested.

(5.) To examine and settle the accounts of all persons indebted to the State, and to certify the amount of balance to the Treasurer.

(6.) To direct and superintend the collection of all moneys due the State.

(7.) To examine and liquidate the claims of all persons against the State, in cases where there is sufficient provision of law for the payment thereof; and where there is no sufficient provision, to examine the claim and report the fact, with his opinion thereon, to the General Assembly;

(8.) To require all persons who have received any moneys belonging to the State, and have not accounted therefor, to settle their accounts;

(9.) To draw warrants on the Treasurer for the payment of all moneys directed by law to be paid out of the treasury; but no warrant shall be drawn unless authorized by law, and every warrant shall refer to the law under which it is drawn;

(10.) To keep in his office all leases, mortgages, bonds and other securities for money given to the people of the State, unless otherwise specially directed;

(11.) To keep and preserve the certificates of stock of any kind, owned by the people of the State;

(12.) To procure from the books of the banks in which the Treasurer makes his deposits, monthly statements of the moneys received and paid on account of the Treasurer;

(13.) To countersign and enter all checks drawn by the Treasurer, and all receipts for money paid to the Treasurer, and no such receipts shall be evidence of payment, unless so countersigned;

(14.) To keep an account between the State and the Treasurer, and therein charge the Treasurer with the balance in the treasury when he came into office, and with all moneys received by him, and credit him with all warrants drawn or paid by him.

Keep account between State and Treasurer.

(15.) To examine carefully on the first Tuesday of every month, or oftener if he deems it necessary, the accounts of the debts and credits in the bank book kept by the Treasurer, and if he discovers any irregularity or deficiency therein, unless the same be rectified or explained to his satisfaction, to report the same forthwith, in writing, to the Governor.

Examine bank book kept by Treasurer, &c.

57. To require, from time to time, all persons who have received moneys or securities, or have had the disposition or management of any property of the State, of which an account is kept in his office, to render statements thereof to him; and all such persons shall render such statement at such time and in such form as he shall require.

Require statements, &c.—1868-'9, c. 270, s. 64.

58. He has power to require any person presenting an account for settlement, to be sworn before him and to answer orally as to any facts relating to its correctness.

Power to require oath.—1868-'9, c. 270, s. 65.

59. Whenever he is satisfied that moneys have been paid into the treasury, through mistake, he may draw his warrant therefor on the Treasurer, in favor of the person who made such payment; but this provision shall not extend to payments on account of taxes, to payments on bonds and mortgages.

May draw warrant.—1868-'9, c. 270, s. 66.

60. He may, with the consent of the Attorney General, if they are satisfied that the interests of the State will not be prejudiced, release any portion of real property, subject to a judgment in favor of the people of this State, from the lien created by such judgment, and may also acknowledge satisfaction of a judgment in favor of the people, when it is satisfied by payment.

With consent, may release, &c.—1868-'9, c. 270, s. 67.

61. Whenever any real property mortgaged to the people of this State, or bought in for the benefit of the State, of which a certificate shall have been given to a former purchaser, is sold by the Attorney General on a foreclosure by notice, or under a judgment, for a greater sum than the amount due to the State, with costs and expense, the surplus money received into the treasury, after a conveyance has been executed to the purchaser, shall be paid to the person legally entitled to such real property at the time of the foreclosure on the forfeiture of the original contract; but the Auditor shall not draw his warrant for surplus money, unless upon satisfactory proof by affidavit or otherwise, of the legal rights of such person.

When property sold on foreclosure, &c.—1868-'9, c. 270, s. 68.

62. The Auditor shall keep his office at the city of Raleigh, and shall attend thereat between the hours of nine o'clock A. M., and two o'clock P. M., Sundays and legal holidays excepted.

Office hours.—1868-'9, c. 270, s. 69.

63. He shall be allowed such office room as may be necessary.

Office room.—1868-'9, c. 270, s. 70.

64. It is the duty of the Treasurer:

(1.) To receive all moneys which shall, from time to time, be paid into the treasury of this State.

Treasurer, his duties.—1868-'9, c. 270, s. 71.

Keep bank book.

(2.) To keep a bank book, in which shall be entered his account of deposits in bank, and moneys drawn therefrom, and to exhibit the same to the Auditor for his inspection on the first Tuesday in every month, and oftener if required.

Pay warrants, &c.

(3.) To pay all warrants legally drawn on the Treasurer by the Auditor, and no moneys shall be paid out of the treasury except on the warrant of the Auditor; to report to the General Assembly at its annual session the exact balance in the treasury to the credit of the State, with a summary of the receipts and payments of the treasury during the preceding fiscal year, and so far as practicable, an account of the same down to the termination of the current calendar year.

Banks to transmit statement, &c.—
1868-'9, c. 270, s. 72.

65. The banks having State deposits shall every month transmit to the Auditor a statement of the moneys which have been received and paid by them on account of the treasury.

Treasurer not to draw, &c.—
1868-'9, c. 270, s. 73.

66. The Treasurer shall not draw, nor shall such bank pay, any moneys on account of the treasury, except by checks subscribed by him as Treasurer and countersigned by the Auditor.

To give bond.—
1868-'9, c. 270, s. 74.
1870-'1, c. 111.

67. The Treasurer shall, within ten days after he receives notice of his election, and before he enters upon the execution of his office, give a bond to the State in the sum of two hundred and fifty thousand dollars, with not less than four sufficient sureties, to be approved by the President of the Senate and Speaker of the House of Representatives, conditioned that he will faithfully execute the duties of his office, which bond shall be deposited in the office of Secretary of State, and shall be deemed to extend to the faithful execution of the office of Treasurer by the person elected thereto, until a new election of Treasurer be made, and a new bond given by the person elected.

Deputy Treasurer.—1868-'9, c. 270, s. 76.

68. The deputy Treasurer may perform any of the duties of the Treasurer except signing of checks. The Treasurer is responsible for the conduct of his deputy.

Accounts to be closed, when.—
1868-'9, c. 270, s. 77.

69. The accounts of the treasury shall be annually closed on the thirtieth of September, and examined during the months of October, November and December by commissioners appointed for that purpose by the General Assembly at each session, to consist of two Senators and three Representatives.

Commissioners to examine vouchers.—
1868-'9, c. 270, s. 78.

70. The commissioners shall examine the accounts and vouchers relating to all moneys received into and paid out of the treasury during the preceding fiscal year, and shall certify and report to the Legislature at its next session the amount of moneys received and the amount of moneys paid out of the treasury during such year, by virtue of warrants drawn on the treasury by the Auditor, the amount of moneys received by the Treasurer when he entered his office, and the balance in the treasury at the close of the fiscal year. They shall also compare the warrants drawn by the Auditor on the treasury during such fiscal year, with the several laws under which the same purport to have been drawn, and shall in like manner

certify and report whether the Auditor had power to draw such warrant; and if any are found which, in the opinion of the commissioners, he had no power to draw, they shall be specified, with the reasons for the opinion. The majority of the committee may perform all its duties.

71. Whenever the Treasurer dies or resigns during his term or is succeeded at the expiration of his term by another, these commissioners shall examine his accounts. They shall be governed in their examination, certificate and report, by the provisions of the preceding section.

72. The Treasurer shall keep his office at the city of Raleigh, and shall attend there between the hours of nine o'clock, A. M., and two o'clock, P. M., Sundays and legal holidays excepted.

73. He shall be allowed such office room as may be necessary.

74. It shall be the duty of the Attorney General:

(1.) To defend all actions in the Supreme Court in which the State shall be interested, or is a party; and shall also, when requested by the Governor or either branch of the General Assembly, appear for the people of this State, in any other court or tribunal, in any cause or matter, civil or criminal, in which the people of this State may be a party or interested.

(2.) At the request of the Governor, the Secretary of State, the Auditor, or Superintendent of Public Instruction, he shall prosecute and defend all suits relating to matters connected with their departments.

(3.) To consult with and advise the Solicitors, when requested by them, in all matters pertaining to the duties of their offices.

(4.) To give, when required, his opinion upon all questions of law submitted to him by the General Assembly, or by either branch thereof, or by the Governor, Auditor, Treasurer, or any other State officer.

(5.) To pay all moneys, received for debts due or penalties to people of this State, immediately after the receipt thereof, into the treasury.

75. The office of reporter of the decisions of the Supreme Court is hereby abolished, and it shall be the duty of the Attorney General of the State to report said decisions and to discharge all other duties which are now required by law to be performed by the Supreme Court reporter, for which he shall receive all the fees, emoluments, &c., now allowed by law to said reporter for the duties now performed by him.

76. The Superintendent of Public Instruction shall keep his office at the seat of Government. He shall provide a seal for his office; and copies of his acts and decisions, and of papers kept in his office, and authenticated by his signature and official seal, shall be of the same force and validity as the original. He shall sign all requisitions on the Auditor for the payment of money out of the State treasury for school purposes.

In case of death or resignation.—1868-'9, c. 270, s. 79.

Office hours.—1868-'9, c. 270, s. 80.

Office room allowed.—1868-'9, c. 270, s. 81. Attorney General, his duties.—1868-'9, c. 270, s. 82. To defend actions, &c.

He shall defend and prosecute, when.

Advise solicitors, &c.

Give an opinion.

To pay moneys, &c.—1870-'1, c. 111.

Supreme Court Reporter abolished. Attorney General to fulfil duties of office.—1871-'2, c. 112, s. 2.

Superintendent of Public Instruction. Where to keep office, seals, &c.—1868-'9, c. 270, s. 85.

Office room,
&c.—1870-'1,
c. 111.

Direct opera-
tions of
schools.—1868
-'9, c. 270, s.

87.
Report to Gov-
ernor, &c.—
1868-'9, c. 270,
s. 88.

Report to con-
tain state-
ment, &c.—
1868-'9, c. 270,
s. 89.

To corres-
pond, &c.—
1868-'9, c. 270,
s. 90.

Acquaint him-
self with
wants of edu-
cation, &c.—
1868-'9, c. 270,
s. 91.

Shall appor-
tion school
moneys.—1868
-'9, c. 270, s.
92.

Prepare forms,
&c.—1868-'9,
c. 270, s. 93.

77. He shall be furnished with such office room as may be necessary.

78. The Superintendent of Public Instruction shall direct the operations of the system of common schools and enforce the regulations and laws in relation thereto.

79. He shall report to the Governor annually on the first of November. The Governor shall transmit such report to the Legislature.

80. Said report shall contain a statement of the condition of the public schools in the State; full statistical tables by counties, showing among other statistics the number of school children in the State; the number attending public schools, and the average attendance; the number attending private schools, and the number not attending any school; the amount of State school fund, the sources from which derived and how apportioned, the amount raised by county and district taxes, and from other sources of revenue for school purposes; the amount expended for salaries of teachers, for building, improving and preserving school houses; a statement of plans for the management and improvement of schools and school buildings; of the condition of the State normal schools, of the State Agricultural College, of all incorporated literary institutions required to report to him; of the educational department of the State penitentiary; of the asylum for the deaf and dumb and the blind, and of all other educational institutions to which State appropriations may be made.

81. It shall be his duty to correspond with educators abroad and to investigate the system of free schools established in other States and countries, and as perfectly as possible render the results of educational efforts and experiences available for the information and aid of the Legislature and board of education.

82. It shall be the duty of the Superintendent of Public Instruction to acquaint himself with the peculiar educational wants of each section of the State, and he shall take all proper means to supply them by visiting schools, advising teachers, counselling with county commissioners and superintendents, by lectures before institutes and addresses to public assemblies on subjects pertaining to public schools.

83. The Superintendent of Public Instruction, after the State Auditor reports to him as required in this chapter, shall apportion to the several counties the school moneys to which each may be entitled, and shall furnish to the State Auditor, to each county treasurer and to the commissioners of each county an abstract of such apportionment, and shall draw his order on the State Auditor in favor of each county treasurer for the amount of State school fund to which such county is entitled, and shall take each treasurer's receipt for the same.

84. The Superintendent of Public Instruction shall prepare, and cause to be printed, suitable forms for making all reports and conducting all necessary proceedings under this chapter, and

shall transmit them to the local school officers and teachers, who shall be governed in accordance therewith.

85. The Superintendent of Public Instruction shall file, arrange and cause to be bound in a substantial form all valuable printed and manuscript reports in his office.

86. The Superintendent of Public Instruction shall be *ex officio* one of the directors of the asylum of the deaf and dumb and the blind, and of the State reform school and State orphan asylum.

87. The Superintendent of Public Instruction shall, at the expiration of his term of office, deliver, on demand, to his successor all property, books, documents, maps, records, reports and other things belonging to his office.

To file printed and manuscript reports, &c.—1868-'9, c. 270, s. 94.
To be *ex officio* one of the directors of the asylums.—1868-'9, c. 270, s. 95.
To deliver over papers, &c., when.—1868-'69, c. 270, s. 96.

CHAPTER 79.

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.

SECTION

- Sheriffs, clerks, and registers, to hold until successors appointed.
4. All officers to take the oaths before acting. Penalty \$500, and ejection from office.

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 seventh section of the fourteenth article of the Constitution of the State, he shall forfeit and pay two hundred dollars to any person who will sue for the same.

No person to hold office contrary to Constitution, penalty \$200.—R. C., c. 77, s. 1.

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.

Contracts for office void.—R. C., c. 77, s. 2.

3. Any person who shall, by the proper authority, 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 proper proceeding, he shall be ousted therefrom, or his admission thereto be, in due course of law, declared void; and sheriffs, clerks of the Superior Courts, and registers, 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, &c., sworn into office considered rightfully in, until, &c.—R. C., c. 77, s. 3.
Sheriffs, clerks, and registers to hold till successors appointed.

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 for the oath appointed for such as hold any office of trust or profit in the State, shall

All officers to take the oaths before acting. Penalty \$500, and ejection

from office.—
R. C., c. 77, s.
4.

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 use 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 proper proceedings for that purpose.

CHAPTER 80.

OFFICIAL BONDS.

SECTION

1. When official bonds to be renewed.
2. Vacancy on failure to renew.
3. Surety on official bonds.
4. Approval, execution and custody of official bonds.
5. Clerk of board to record name of Commissioners present.
6. Commissioners liable as surety, when.
7. Commissioners liable to indictment also.
8. Copy of record evidence.
9. Penalty on officers not giving bond before acting.

SECTION

10. Suit on official bonds brought by injured persons.
11. Complaint must show relator.
12. Sheriff and constable liable for whole debt, when.
13. Remedy before justice of the peace on bond.
14. Summary remedy in Superior Court, when.
15. Damages of twelve per cent. on money detained.
16. Irregularity in taking or in form of bonds not to invalidate such bonds. Proviso.

When official
bonds to be
renewed.—
1869-'70, c.
169, s. 1.

1. EVERY clerk of the Superior Court, county treasurer, sheriff, coroner, register of deeds, and county surveyor, shall regularly renew his official bonds before the board of county commissioners, who shall approve the same, on the first Monday of September of each year; but nothing herein shall be deemed to modify or repeal any provision of law whereby the commissioners are empowered at any time to require the sheriff, county treasurer, or other officer, to renew or justify his bonds.

Vacancy on
failure to re-
new.—1869-
'70, c. 169, s.
2.

2. Upon the failure of any officer named in the preceding section to make such regular annual renewal of his bonds, it is the duty of the commissioners, by an order to be entered in their proceedings, to declare his office vacant, and to proceed forthwith to appoint a successor, if the power of filling the vacancy in the particular case be vested in the commissioners; but if otherwise, they shall immediately inform the proper person having the power of appointment of the fact of such vacancy.

Surety on of-
ficial bonds.—
1869-'70, c.
169, s. 3.

3. Every surety on an official bond required by law to be taken or renewed and approved by the commissioners, shall take and subscribe an oath before the chairman of the commissioners that he is worth a certain sum (which shall be not less than one thousand dollars) over and above all his debts and liabilities and his homestead and personal property exemptions,

and the sum thus sworn to shall in no case be less in the aggregate than the penalty of the bond.

4. The approval of all official bonds taken or renewed by the commissioners or by a majority of them shall be recorded by their clerk. Every such bond shall be acknowledged by the parties thereto or proved by a subscribing witness, before the chairman of the commissioners, registered in the register's office in a separate book to be kept for the registration of official bonds, and the original bond, with the approval of the commissioners endorsed thereon and certified by their chairman, shall be deposited with the clerk of the Superior Court, except the bond of said clerk, which shall be deposited with the register of deeds for safe-keeping.

Approval, execution and custody of official bonds.—1869-'70, c. 169, s. 4.

5. It is the duty of the clerk of the commissioners to record in the proceedings of the board the names of those commissioners who are present at the time of the approval of any official bond and who shall vote for such approval, and every clerk neglecting to make such record is guilty of a misdemeanor and beside other punishment shall forfeit his office.

Clerk of board to record names of commissioners present.—1869-'70, c. 169, s. 5.

6. Every commissioner who approves an official bond, which he knows or believes to be insufficient in the penal sum, or in the security thereof, shall be liable as if he were a surety thereto, and may be sued accordingly by any person having a cause of action on said bond.

Commissioners liable as surety, when.—1869-'70, c. 169, s. 6.

7. Every commissioner liable as in the last section prescribed shall be moreover liable to a criminal action, and, on conviction, shall be removed from office and forever disqualified from holding or enjoying any office of honor, trust or profit under the State.

Commissioners liable to indictment, also.—1869-'70, c. 169, s. 7.

8. In all actions under the last two sections, a copy of the proceedings of the board of commissioners in the particular case, certified by their clerk under his hand and seal of the county, shall be conclusive evidence of the facts in such record alleged and set forth, but any commissioner may cause his written dissent to be entered on the records of the board.

Copy of record evidence.—1869-'70, c. 169, s. 8.

9. Every person or officer of whom an official bond is required, who shall presume to discharge any duty of his office before executing such bond in the manner prescribed by law, is liable to a forfeiture of five hundred dollars to the use of the State for each attempt so to exercise his office, and is moreover liable to a criminal action, upon conviction, in which he shall be ejected from office and be forever disqualified from holding or enjoying any office of honor, trust or profit under this State.

Penalty on officers not giving bond before acting.—1869-'70, c. 169, s. 9.

10. Every person injured by the neglect, misconduct, misbehavior in office of any clerk of the Superior Court, register, entry-taker, surveyor, sheriff, coroner, constable, county or township treasurer, or other officer, may institute a suit or suits against said officer 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

Suits on official bonds brought by injured persons.—1869-'70, c. 169, s. 10.

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.

Complaint must show relator.—1869-'70, c. 169, s. 11.

11. Any person who may bring suit in manner aforesaid shall state in his complaint on whose relation and in whose behalf the suit is brought, and he shall be entitled to receive to his own use the money recovered, but nothing herein contained shall prevent such person from bringing at his election an action against the officer to recover special damages for his injury.

Sheriff and constable liable for whole debt, when.—1869-'70, c. 169, s. 12.

12. When a claim shall be placed in the hands of any sheriff, coroner 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.

Remedy before a justice of the peace on bond.—1869-'70, c. 169, s. 13.

13. When any sheriff, clerk, coroner, constable, register, county or township treasurer or other officer 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 summons against him and his sureties whether he be in office or out, and give judgment for any sum demanded, not exceeding two hundred dollars and costs of the action, notwithstanding the amount nominated in the penalty of the bond sued on.

Summary remedy in Superior court, when.—1869-'70, c. 169, s. 14.

14. Whenever a sheriff, coroner, constable, clerk, county or township treasurer or other officer 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 the Superior Court against such officer and his sureties for any sum demanded that exceeds two hundred dollars and the cost of the motion; and the court shall try the same and render judgment at the term when the motion shall be made, but ten days notice in writing of the motion must have been previously given.

Damages of twelve per cent. on money detained.—1869-'70, c. 169, s. 15.

15. 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.

Irregularity in taking or in form of bonds, not to invalidate such bonds.—1869-'70, c. 169, s. 16.

16. Whenever any instrument shall be taken by or received under the sanction of the board of county commissioners or board of township trustees, or by any person or 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 making of the appointment, or any variance in the penalty or condition of the instrument from the provision 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 any part of the condition thereof which is contrary to law.

Proviso.

CHAPTER 81.

ORDINARIES AND INNS.

SECTION

1. License to keep inn, tavern, or ordinary, how obtained. Bond given. Its condition.
2. The clerk of the board shall record the names of the commissioners present at the time of taking such bond and issuing a license.
3. Rates of charges established by commiss'rs. Duty of ordinary keepers.

SECTION

4. Ordinary keeper, or retailer, not to credit for liquors over ten dollars.
5. Penalty on ordinary keepers, entertaining 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 board of county commissioners for license to do so; and, unless good cause be shown to the contrary, the board shall grant the license for one year, provided 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.

2. The clerk of the board shall record the names of the commissioners present at the time of the taking of the said bond and issuing a license.

3. The commissioners shall, once a year, or oftener if necessary, 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,

License to keep inn, tavern, or ordinary, how obtained. Bond given. Its condition.—R. C., c. 79, s. 1. 1868, c. 20, s. 28.

Names of commissioners recorded.—R. C., c. 79, s. 2.

Rates of charges established by commiss'rs. Duty of ordinary keepers.—R. C., c. 79, s. 3.

or ordinary, there to be kept until the rates are altered, on pain of forfeiting forty dollars.

Ordinary
keeper, or re-
taller, not to
credit for li-
quors over ten
dollars.—R.
C., c. 79, s. 4.

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 matter of defence allowed by this section may be set up in the answer and given in evidence.

Penalty on or-
dinary keep-
ers entertain-
ing sailors,
&c.—R. C., c.
79, s. 5.

5. If any keeper of an inn, tavern or ordinary, or vendor or retailer of spirituous or other liquors, shall entertain 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 master of the vessel.

License to re-
tail spirituous
liquors, how
obtained.—R.
C., c. 79, s. 6.

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 board of county commissioners and obtain an order therefor, for one year and no longer; and the same shall be granted by the board only to such 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.—R. C.,
c. 79, s. 7.

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 82.

OVERSEERS.

1. Overseer leaving his employer to forfeit wages.

Overseer leav-
ing employer
to forfeit
wages.—R. C.,
c. 80.

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.

CHAPTER 83.

OYSTERS AND OTHER FISH.

SECTION

1. Trafficking in terrapins made unlawful.
2. Penalty for using dragnets in Pamlico Sound to catch terrapins; or instruments, except tongs, to take oysters, unless, &c.
3. Net, &c., not to be used in half mile of marshes between Croatan and Pamlico Sounds.
4. Non-residents forbid to fish, for sale, in waters of the State. *Proviso.*
5. Penalty therefor, \$100.
6. In what direction nets to be set in Pamlico Sound.
7. Fishing stakes in Pamlico and Albemarle Sounds, &c., to be removed by June.

SECTION

8. Masters of vessels wantonly injuring seines or nets, penalty on.
9. Fish offal not to be cast into navigable waters, &c.
10. Penalty for setting nets across navigable waters, or obstructing fish.
11. For erecting stand, &c, in waters required to be left open for passage of fish, or not keeping slopes open.
12. Offences herein created, indictable.
13. How oyster and clam beds may be planted.
14. Superior Courts authorized to grant license to make oyster or clam beds.
15. Injuring such beds a misdemeanor.
16. Penalty for injuring such beds.

1. ANY person who shall catch or take from the salt waters of North Carolina terrapins less in length than four inches, for the purpose of selling the same, and any person who shall sell or buy the same when so caught or taken, shall be guilty of a misdemeanor, and upon conviction thereof, before a justice of the peace, shall be fined not exceeding fifty dollars and be imprisoned not exceeding one month.

Trafficking in Terrapins unlawful. Penalty.—1871-'2, c. 184, s. 2.

2. 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 shall forfeit and pay one hundred dollars: *Provided, nevertheless,* that the owner or tenant of any private oyster ground may use any scoop, drag, or other instrument, to take oysters therein.

Penalty for using dragnets in Pamlico Sound to catch terrapins; or instruments, except tongs, to take oysters, unless, &c.—R. C., c. 81, s. 3.

3. 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.

Net, &c., not to be used in half mile of marshes between Croatan and Pamlico Sounds.—R. C., c. 81, s. 4. Non-residents forbid to fish for sale in waters of the State.—R. C., c. 81, s. 5.

4. 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

Proviso.

purpose aforesaid, any weir, hedge, net or seine, in the use of which any such non-resident person may have an interest: *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.—R. C., c. 81, s. 6.

5. 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 common school fund of the county where the offence is committed.

In what direction nets to be set in Pamlico Sound.—R. C., c. 81, s. 7.

6. 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.

Fishing stakes in Pam. and Alb. Sounds, &c., to be removed by June.—R. C., c. 81, s. 8.

7. 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.

Masters of vessels wantonly injuring seines or nets. Penalty on.—R. C., c. 81, s. 9.

8. 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.

Fish offal not to be cast into navigable waters, &c.—R. C., c. 81, s. 10.

9. 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.

Penalty for setting nets across nav. streams, or obstructing fish.—R. C., c. 81, s. 11.

10. 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 forfeit and pay forty dollars.

For erecting stand, &c., in waters left open for passage of fish, or not keeping slopes open.—R. C., c. 81, s. 12.

11. 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.

12. Every person who shall commit any of the offences in this chapter created shall be deemed to be guilty of a misdemeanor.

Offences here-
in created in-
dictable.—R.
C., c. 81, s. 13.

13. Any inhabitant of this State may make beds and plant oysters and clams in any of the waters of this State, having first obtained license as hereinafter directed, from the Superior Court of the county in which such beds may be, and may stake out the grounds so as to include any lot, farm or bed of any number of acres not exceeding ten in any such lot, farm or bed upon which he desires to make such beds, with good and substantial stakes, set at suitable distances, whereby the boundaries thereof may be clearly known and distinguished, and of such length as to be at least two feet above high water mark, and every such person who shall obtain such license shall hold the same and have exclusive privilege thereof to him, his heirs and assigns: *Provided*, that nothing herein contained shall affect the rights of any owner or proprietor of lands in which there may be creeks or inlets, or which may be adjacent to any navigable waters; and nothing herein contained shall be so construed as to authorize any person to appropriate to his own use, or to stake off and enclose any natural oyster or clam bed, or in any wise to infringe the common right of the citizens of the State to any natural oyster or clam bed, or to obstruct the free navigation of the waters aforesaid.

How oyster
and clam beds
may be plant-
ed.—1858-'9,
c. 33, s. 1.
1871-'2, c. 184.

14. The Superior Courts are hereby authorized, in their discretion, to grant license to any inhabitant of the State to make oyster or clam beds, who shall apply to the court by petition in writing, describing therein particularly the place upon which they desire to make such beds, not including therein more than ten acres, and the said license shall be forfeited by the failure to use such beds, or to keep them properly designated by stakes for the space of two years.

Superior
Courts may
grant license
to make oyster
and clam beds.
—1858-'9, c.
33, s. 2.
1871-'2, c. 214.

15. If any person, without permission of the owner, shall injure the same, or the stakes thereof, or commit any trespass upon the said beds, he shall be liable to indictment, and, on conviction, be fined at the discretion of the court, and shall be further liable to the forfeitures provided in the next ensuing section of this chapter.

Injuring such
beds a misde-
meanor.—1858
-'9, c. 33, s. 3.

16. If any person shall do any injury to such beds, or shall gather or take away any oysters or clams within the lines of the stakes aforesaid, without permission first had or obtained from the owner or owners thereof, he shall forfeit for each offence the sum of ten dollars; and if any person shall commit any such offence in the night time, he shall forfeit for each offence the sum of twenty-five dollars, and the offences herein created may be recovered by a warrant before a justice of the peace, by any one who may sue therefor; and such offender shall in addition to the penalties contained in this section, be guilty of a misdemeanor and upon conviction thereof, before a

Penalties for
injuring such
beds.—1858-
'9, c. 33, s. 4.
1871-'2, c. 184,
s. 4.

justice of the peace, shall be fined not exceeding fifty dollars and imprisoned not exceeding one month: *Provided*, that nothing in this chapter shall be construed to apply to those who catch oysters and clams to supply the local demand in the town of Beaufort and City of Morehead.

CHAPTER 84.

PARTITION.

SECTION

1. Appointment of commissioners.
2. Oath of commissioners.
3. Duty of commissioners.
4. May employ a surveyor.
5. Report of commissioners.
6. Decree of confirmation. Effect of.
7. Where land lies in several counties.
8. Sums to bear interest.
9. Sums charged on minors, when payable.
10. Compensation of commissioners. Penalty.
11. Costs, how paid.
12. Sale of real estate, application, how to be made.
13. When sale to be ordered, and terms.
14. Notice of sale.
15. Who authorized to sell.
16. Lands required to be sold for public purposes. Procedure.
17. Proceeds to be secured to certain persons.
18. Dower may be apportioned, when.
19. Compensation of persons appointed to sell.

SECTION

20. Proceedings when lands lie partly in this State and partly in another.
21. Court may decree partition.
22. Commissioners to be appointed, their duty; final decree. Court shall compel parties to execute and deliver deeds. When court to declare decree conclusive.
23. Decree for partition in another State when enforced in this State.
24. Judge to decide in reference to law passed by another State.
25. Time allowed married women, infants, &c.
26. Pay of commissioners.
27. Partition of personal property, how made.
28. Report, confirmation thereof.
29. When sale ordered.
30. Notice of sale, &c.
31. Confirmation and effect of deed.
32. Compensation of commissioners, &c.
33. Procedure as in special proceedings.

Appointment of commissioners.—
1868-'9, c. 122, s. 1.

Oath of commissioners.—
1868-'9, c. 122, s. 2.

Duty of commissioners.—
1868-'9, c. 122, s. 3.

1. THE Superior Courts, on petition of one or more persons claiming real estate as tenants in common, shall appoint three disinterested commissioners to divide and appropriate such real estate, or so much thereof as the court may deem best, among the several tenants in common.

2. The commissioners shall be sworn by a justice of the peace, or other person authorized to administer oaths, to do justice among the tenants in common, in respect to such partition, according to their best skill and ability.

3. The commissioners who shall be summoned by the sheriff, or any constable, must meet on the premises and partition the same among the tenants in common, according to their respective rights and interests therein, by dividing the land into

equal shares in point of value as nearly as possible, and for this purpose they are empowered to sub-divide the more valuable tracts as they may deem best, and to charge the more valuable dividends with such sums of money as they may think necessary, to be paid to the dividends of inferior value, in order to make an equitable partition.

4. The commissioners are authorized to employ the county surveyor, or in his absence, or if he be connected with the parties, some other surveyor, who shall make out a map of the premises showing the quantity, courses and distances of each share, which map shall accompany and form a part of the report of the commissioners.

May employ a surveyor.—
1868-'9, c. 122, s. 4.

5. The commissioners, within a reasonable time, not exceeding sixty days after the notification of their appointment, shall make a full and ample report of their proceedings, under the hands of any two of them, specifying therein the manner of executing their trust and describing particularly the land or parcels of land divided, and the share allotted to each tenant in severalty, with the sum or sums charged on the more valuable dividends to be paid to those of inferior value. The report shall be filed in the office of the Superior Court clerk, who shall give the parties or their attorneys ten days' notice to file exceptions thereto, before any motion to confirm such report is heard.

Report of commissioners.—
1868-'9, c. 122, s. 5.

6. Such report when confirmed, together with the decree of confirmation, shall be enrolled and certified to the register, and registered in the office of the county where such real estate is situated, and shall be binding among and between the claimants, their heirs and assigns.

Decree of confirmation, effect of.—1868-'9, c. 122, s. 6.

7. In cases where the real estate lies in several counties, the petition may be exhibited in the Superior Court of any one of such counties, in which a part thereof is situated.

Where land lies in several counties.—
1868-'9, c. 122, s. 7.

8. The sums of money due from the more valuable dividends shall bear interest until paid.

Suras to bear interest.—

9. When a minor, to whom a more valuable dividend shall fall is charged with the payment of any sum, the money shall not be payable until such minor arrives at the age of twenty-one years, but the general guardian, if there be one, must pay such sum whenever assets shall come into his hands, and in case the general guardian shall have assets which he did not so apply, he shall pay out of his own proper estate any interest that may have accrued in consequence of such failure.

1868-'9, c. 122, s. 8.
Sums charged on minors, when payable.
1868-'9, c. 122, s. 9.

10. The commissioners shall be allowed, each of them, the sum of one dollar *per diem* for their services, and if, after accepting the trust, they or any of them unreasonably delay or neglect to execute the same, every such delinquent commissioner shall be liable to the penalty of fifty dollars, to be recovered by action by the petitioners.

Compensation of commissioners, penalty.—
1868-'9, c. 122, s. 10.

11. The compensation of the commissioners, the expenses incurred for surveying, and all fees and costs of the proceeding shall be paid as the court may direct.

Costs, how paid.—1868-'9, c. 122, s. 11.

Sale of real estate, application, how to be made.—1868-'9, c. 122, s. 12.

When sale to be ordered, and terms.—1868-'9, c. 122, s. 13.

12. Application for the sale of real estate held in common may be made by petition preferred in the Superior Court of the county where such real estate or some part thereof lies, by one or more of the parties interested therein.

13. Whenever it appears by satisfactory proof that an actual partition of the lands cannot be made without injury to some or all of the parties interested, the Court shall order a sale of the property described in the petition, or any part thereof, on such terms as to size of lots, place or manner of sale, time of credit and security for payment of purchase money, as may be most advantageous to the parties concerned, and, on the coming in of the report of sale and confirmation thereof, the title shall be made to the purchaser or purchasers at such time and by such person as the court may direct.

Notice of sale.—1868-'9, s. 122, s. 14.

14. The notice of sale, under this proceeding, shall be the same as required by law on sales of real estate by sheriffs on execution.

Who authorized to sell.—1868-'9, c. 122, s. 15.

15. The court may authorize any officer thereof, or any other competent person, to be designated in the decree of sale, to sell the real estate under this proceeding. Such officer or person, shall file his reports of sale, giving full particulars thereof, within ten days after the sale in the office of the clerk of the Superior Court, who shall give the notice specified in section five of this chapter.

Lands required to be sold for public purposes; procedure.—1868-'9, c. 122, s. 16.

16. When the lands of joint tenants, or tenants in common, are required for public purposes, one or more of such tenants, or their guardians for them, may file a petition verified by oath, in the Superior Court of the county where the lands, or any part of them lie, setting forth therein that the lands are required for public purposes, and that their interests would be promoted by a sale thereof; whereupon the court, all proper parties being before it, and the facts alleged in the petition being ascertained to be true, shall order a sale of such lands, or so much thereof as may be necessary, in the manner and on the terms it deems expedient. And the expenses, fees and costs of this proceeding shall be paid in the discretion of the court.

Proceeds to be secured to certain persons.—1868-'9, c. 122, s. 17.

17. When a sale is made under sections thirteen and sixteen of this chapter, and any party to the proceedings be an infant, a married woman, *non compos*, imprisoned, or beyond the limits of the State, it shall be the duty of the court to decree the share of such party, in the proceeds of sale, to be so invested or settled that the same may be secured to such party or his real representative.

Dower may be apportioned, when.—1868-'9, c. 122, s. 18.

18. When there is dower or right of dower on any land, petitioned to be sold under this chapter, the woman entitled to dower or right of dower therein, may join in the petition; and on a decree of sale, the interest of one-third of the proceeds shall be secured and paid to her annually; or, in lieu of such annual interest, the value of an annuity of six per cent. on such third, during her probable life, shall be ascertained and paid out of the proceeds to her absolutely.

19. In sales of real estate under this chapter, the allowance for services, in making sale and title, to the officer or person appointed to sell, shall be as follows: For sales of five hundred dollars or less, not more than ten dollars; for sales of two thousand and not less than five hundred dollars, not more than two per centum; and, when the allowance shall amount to forty dollars, any additional compensation shall not exceed the rate of one per centum.

Compensation of person appointed to sell.—1868-'9, c. 122, s. 19.

20. 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 law 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 co-tenants, then, if such deceased person shall have been at the time of his death, a resident of the 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 petition in the Superior Court 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 co-tenants 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 petition 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 Superior Courts in this State.

Proceedings when lands lie partly in this State and partly in another.—1868-'9, c. 122, s. 20.

21. On the hearing of the petition, 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 situated.

Court may decree partition.—1868-'9, c. 122, s. 21.

22. The court making such decree, shall issue a commission to three 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 a majority of them, to make partition between the co-tenants, plaintiffs and defendants in said petition, and to assign each his respective share in the 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 co-tenants 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

Commissioners to be appointed, their duty; final decree. Court shall compel parties to execute and deliver deeds. When court to declare decree conclusive.—1868-'9, c. 122, s. 22.

charge the more valuable dividends with money to be paid to the tenants 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 this and other States, and the division among the co-tenants, according to such valuation; and the court may confirm such report, or, on sufficient cause shown, may correct and alter, or 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, that the sum charged shall not be paid till a future day, and the same shall bear interest at a rate not greater than allowed in this State: *Provided*, 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 hands 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, direct and compel the parties to execute and deliver deeds and assurances, sufficient, by the laws of this State and 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 petition 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 also be 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.

Decree for partition in another State when enforced in this State. 1868-'9, c. 122, s. 23.

23. 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 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 seised in any other State, the courts 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 provisions 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 of 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 Superior Court 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 a petition and regular proceedings had thereon, and the decree of the court of such other State, and the proceedings on it by petition in the Superior Court in this State confirming it and giving it validity, being enrolled in the said court of this State and registered in all the counties where the lands lie in this State, shall pass 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.

24. 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 Superior Court to be certified that its decree of a partition of lands without this State and within the territory of another State, can have effect therein, it shall be competent for the Judge of the Superior Court before which the existence of a law in such other State is to be proved, to decide whether any act of the legislature of such State has been passed.

Judge to decide in reference to law passed by another State.—1868-'9, c. 122, s. 24.

25. On petition under this chapter, as against *feme coverts*, infants, persons *non compos mentis*, and against all parties, against whom judgment shall be taken by default 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 in section twenty-seven of the Code of Civil Procedure.

Time allowed married women, infants, &c.—1868-'9, c. 122, s. 25.

26. The commissioners appointed to divide lands lying in Pay of com-

missioners.—
1868-'9, c. 122,
s. 26.

Partition of
personal prop-
erty, how
made.—1868-
'9, c. 122, s. 27.

Report, con-
firmation
thereof.—1868-
'9, c. 122, s.
28.

When sale or-
dered.—1868-
'9, c. 122, s.
29.

Notice of sale,
&c.—1868-'9,
c. 122, s. 30.

Confirmation
and effect of
deed.—1868-
'9, c. 122, s.
31.

Compensation
of commis-
sioners, &c.—
1868-'9, c. 122,
s. 32.

Procedure as
in special pro-
ceedings.—
1868-'9, c. 122,
s. 33.

this and another State, shall be entitled to three dollars per day for their services; which, with all fees, expenses and costs, shall be paid as the court may direct.

27. When any persons entitled as tenants in common of personal property, desire to have a division of the same, they, or either of them may file a petition in the Superior Court for that purpose; and the court, if it think the petitioners entitled to relief, shall appoint three disinterested commissioners, who, being first duly sworn, shall proceed within twenty days after notice of their appointment, to divide such property as near equally as possible among the tenants in common.

28. The commissioners shall report their proceedings under the hands of any two of them, and file their report in the office of the clerk of the Superior Court within five days after the petition was made, of which the clerk shall give the parties or their attorneys ten days' notice before any motion to confirm the same is heard; and if such report is confirmed, a decree shall be entered accordingly and vest in each tenant in common his share in severalty.

29. If a division of such personal property cannot be had without injury to some of the parties interested, and a sale thereof be deemed necessary, the court shall order a sale to be made by some officer of the court or other competent person; who shall file his report of sale in the office of the clerk of the court within ten days after sale made of which the parties shall have notice as prescribed in the last section.

30. The sale shall be made after twenty days' notice, by advertisement in three or more public places in the county, and shall be on such terms as the court may direct.

31. Upon confirmation of the report, the court shall secure to each tenant in common his ratable share in severalty of the proceeds of sale; and the deed of the officer or person appointed to sell, when such deed is directed to be made, shall convey to the purchaser such title and estate in the property as the tenants in common had.

32. The commissioners nominated to make a division, and the officer or person appointed to make a sale of personal property held in common, shall receive for their services a sum to be fixed by the court and taxed in the bill of fees and costs, all of which shall be paid by the parties in such manner as the court may decree.

33. The procedure in all cases by petition, under this chapter, shall be the same, in all respects, as prescribed by law in other special proceedings, except as modified by this chapter; and any person authorized by section sixty-one of the Code of Civil Procedure, may be made a party to any proceeding under this chapter.

CHAPTER 85.

PENITENTIARY.

SECTION

1. Penitentiary near Raleigh.
2. Stockade and cells for convicts. Walls, &c.
3. Lands, &c., may be taken.
4. Commissioners appointed. To select and purchase a site. Proviso.
5. Treasurer to pay commissioners. Requisitions signed by commissioner.
6. Labor of convicts.
7. Bond of commissioners. To make contracts, &c. Architects and other officers.
9. Governor to fill vacancies.
10. Governor to order convicts, &c. Proviso.
11. Offices of commissioners and others abolished.
12. Board of directors.
13. Warden and subordinate officers.
14. Compensation to board and officers.
15. Vacancies in board.
16. Powers of commissioners conferred on directors.
17. Transfers by commissioners.
18. Election of directors.
19. Contracts and awards.
20. Suspension of building penitentiary.
21. Inspection of work by practical architect. Condemnation of work done not according to contract.
22. Architect required to give bond.
23. Former contractors not allowed to resume work.
24. Sum appropriated for erection of wall, &c. Convict labor required.
25. Materials for work under former contracts not receivable.
26. Deductions of money in certain cases.

SECTION

27. Farming out convicts. Guard to be provided. Bond for safe keeping. Proviso.
28. Guard enlisted. Compensation.
29. Any surplus of money may be applied to the maintenance of convicts.
30. Compensation for apprehending escaped convicts.
31. Brick to be made.
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37. One wing of building to be finished.
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40. Sheriff to make out account, &c.
41. When sheriff to send prisoner.
42. When certain convicts to be received in penitentiary.
43. Convicts to be received as soon as practicable.
44. State not liable for expense until convicts are in penitentiary.
45. County commissioners may employ convicts, when. Powers conferred on officers in charge of convicts.
46. Further powers of commissioners.
47. When convict to be transferred to Insane Asylum.
48. Persons convicted in United States Courts may be imprisoned in the penitentiary.
49. Convicts to be received in penitentiary.

1 THE penitentiary required to be built by Article eleven, section three, of the Constitution shall be erected at or near Raleigh, Wake county, on a site selected by the commissioners.

2. A stockade including not less than four, nor more than six acres of land, shall be immediately erected inclosing said site; within this stockade shall be built five hundred cells for convicts, to be constructed in the most approved manner, after the most recent plans, to be sanctioned by the com-

Penitentiary near Raleigh. —1868-'9, c. 38, s. 1.
Stockade and cells for convicts. Walls, &c.—1868-'9, c. 38, s. 2.

missioners hereafter to be appointed, embracing all improvements and necessary accommodations, and security for safe keeping and health, required in institutions of this kind, and to construct it on a plan that will hereafter admit of having added thereto other cells as may be required by the necessities of the State, without destroying the symmetry of the building, but as completing the original design; and to be enclosed by a wall of such dimensions and solidity as is usual in the best constructed institutions of this kind in our country: *Provided*, that the outer wall of the penitentiary be constructed of granite rock or ground sand stone, and that the exterior wall of the cells be of the same durable and solid material, but that the walls in the interior, dividing the cells or forming corridors, may be of brick, if approved by aforesaid commissioners, and that the building be well ventilated and capable of being warmed as may be desired, by the use of the most recent and approved means.

Lands, &c.,
may be taken.
—1868-'9, c.
38, s. 3.

3. When any lands, right of way, quarry or quarries of rock, may be required for the construction of the penitentiary, or to make access to or egress from it convenient, and if for want of agreement, as to the value of such property, the same cannot be purchased from the owner or owners, the same may be taken by the commissioners at a valuation made by five disinterested persons, or a majority of them, to be appointed by the commissioners of the county in which the property is held. Said persons shall make a proper return to the clerk of the Superior Court of the award, which shall be placed on file in that office: *Provided, however*, that either party to this proceeding may have an appeal to the Superior Court. The award shall, on its final settlement, be paid by the commissioners.

Commissioners appointed
to select and
purchase a
site. Proviso.
—1868-'9, c.
38, s. 4.

4. C. L. Harris, Alfred Dockery, S. F. Patterson, Alfred Howe and G. Wm. Welker, are hereby appointed commissioners, who shall purchase the site selected, to consist of not less than twelve, nor more than twenty-five acres, if purchased, and have the conveyance of the same property made to the State and recorded in the office of the register of deeds for the county in which the penitentiary shall be erected: *Provided*, that if any person or persons shall make a free gift of the tract of land selected as the site for the penitentiary, they are authorized to have the same conveyed to the State for the use and benefit of the penitentiary, and to have the deed recorded as aforesaid.

Treasurer to
pay commis-
sioners. Re-
quisitions
signed by
commissioners.
—1868-'9,
c. 38, s. 5.

5. The treasurer is authorized to pay to said commissioners, from any moneys in the treasury not otherwise appropriated, such sums as may be needed for actual expenses in the erection of the said penitentiary, together with the necessary implements and machinery for the profitable employment of the convicts therein, not to exceed fifty thousand dollars in any one year, from the taxes collected by the revenue bill ratified on the day of eighteen hundred and sixty-nine, and

that act is so much amended as to embrace this appropriation. All requisitions shall be signed by the commissioners and approved by the Governor.

6. Said commissioners shall, in every instance possible, make use of the labor of the convicts in the preparation of the material and the erection of the cells and wall, in order to lessen the public expense, and that they be allowed to use all proper and humane means to prevent their escape.

Labor of convicts.—1868-'9, c. 38, s. 6.

7. Said commissioners shall give bond and approved security to the State, in a sum approved by the Governor, for the faithful application of the money drawn by them from the treasury: *Provided*, that the commissioners shall not pay over any portion of the sum authorized by section five, until all the proposals for the location of the penitentiary shall be fully complied with and shall report a full and correct account of the receipts and disbursements to the General Assembly every year until the building, as provided for in this chapter, is completed. They shall contract for the performance of the work provided for in this chapter, and the material used in the same by first-rate workmen, on such terms as are just and prudent: *Provided*, that in any contract so made, it shall be required that as much of the labor of the convicts as can be made available shall be used in the erection of the penitentiary, and in the quarrying and preparation of the stone, and on such terms as are equitable and just to the State and the contractor. The contractor shall be required to give bond and sufficient security for the proper fulfillment of the contract, and he shall not be released from its terms or the sum contracted for be paid him, until the General Assembly is satisfied that, in all respects, the contract has been complied with; and all contracts made by the commissioners shall be in writing, and shall be recorded in the office of the register of deeds for the county aforesaid.

Bond of commissioners. To make contracts, &c.—1868-'9, c. 38, s. 7.

8. The commissioners shall be authorized to appoint an architect, superintendent, assistants, and guard for the management and safe keeping of the prison, and fix their salaries until the meeting of the General Assembly. They shall also approve of the design of the building, and they may appoint one of their number, under instructions, to visit one or more of the largest and best managed State prisons or penitentiaries in this country, and to obtain information that will aid them in the prosecution of their work: *Provided*, that none of the aforesaid commissioners shall hold any position as superintendent or any other office of the institution, nor be interested, directly or indirectly, in any contract made for the construction of the penitentiary or any part relating thereto.

Architect and other officers.—1868-'9, c. 38, s. 8.

9. Any vacancy occurring in the board of commissioners by death, resignation or otherwise, shall be filled by the Governor. Said commissioners shall receive no compensation for their services over and above all the necessary and actual expenses incurred in the prosecution of the business intrusted to them by the General Assembly.

Governor to fill vacancies.—1868-'9, c. 38, s. 9.

Governor to order convicts, &c.—1868-'9, c. 38, s. 10.

Proviso.

Offices of commissioners and others abolished.—1870-'1, c. 191, s. 1.

Board of directors.—1870-'1, c. 191, s. 2.

Warden and subordinate officers.—1870-'1, c. 191, s. 3.

Compensation to board and officers.—1870-'1, c. 191, s. 4.

Vacancies in board.—1870-'1, c. 191, s. 5.

Powers of commissioners conferred on directors.—1870-'1, c. 191, s. 6.

Transfers by commissioners.—1870-'1, c. 190, s. 7.

Election of di-

10. So soon as provision is made for their safe keeping and support, the commissioners shall apply to the Governor, who shall order to be placed under their charge as many of the convicts, whose term of punishment is longest, as may be needed in the quarrying of stone, the preparation of the site and grounds, and in the erection of the cells: *Provided*, that until permanent cells are erected, the convicts shall be kept in temporary cells provided within the stockade, on the site and the quarry.

11. The offices of commissioners for the erection of a penitentiary, and the offices of architect and superintendent of said penitentiary, created or authorized by the act of one thousand eight hundred and sixty-eight and one thousand eight hundred and sixty-nine, chapter two hundred and thirty-eight, or by any other act, are hereby abolished, the abolition to take effect on the third Monday of April, Anno Domini one thousand eight hundred and seventy-one.

12. Alfred Dockery, of Richmond, Wm. Boylan, of Wake, M. A. Bledsoe, of Wake, G. W. Thompson, of Chatham, and C. H. Coffield, of Harnett, are appointed a board of directors of the penitentiary, to whom shall be committed the government of the institution, and who shall hold office for four years from the first day of January, one thousand eight hundred and seventy-one.

13. Said board shall have power to appoint a warden, who shall be a skilled engineer, and such subordinate officers, employees and guards as the said board shall deem necessary. The duties of the warden shall include the supervision of the erection of the penitentiary, as well as the general control therein, subject to the control of the board.

14. Said board shall be allowed all necessary expenses incurred in the discharge of their said duties, and shall have power to fix the pay of all subordinate officers and employees of said penitentiary.

15. Any vacancy occurring in said board shall be filled *ad interim* until the next meeting of the General Assembly by the board, a majority of those remaining voting in favor of the person so appointed, and three members of the board shall be a quorum for the transaction of any business.

16. All powers conferred, and all restrictions imposed by the aforementioned act on the board of commissioners, are re-enacted and made to apply to the board of directors, except in so far as they may conflict with this chapter.

17. Said board of directors shall go into office on the third Monday in April, Anno Domini one thousand eight hundred and seventy-one, and the board of commissioners aforesaid are directed to turn over all books, papers, money, material, &c., within the control of the penitentiary, to the board of directors, and to account with them fully for all public funds that shall have come into their hands.

18. The General Assembly shall, on the first Monday of

December, Anno Domini one thousand eight hundred and seventy-four, and on the first Monday of December, every fourth year thereafter, elect a board of directors of the penitentiary, who shall assume the duties and authority of office on the second Monday next following their said election.

19. No contract for work, material or other service shall be given or awarded to any member of the board of commissioners either directly or indirectly.

WHEREAS, The General Assembly is satisfied from the report made by a committee to investigate the building and works connected with the construction of the penitentiary, that the same has not been done according to contracts heretofore entered into for such construction; therefore,

20. *The General Assembly of North Carolina do enact,* That the building and erection of the penitentiary under the contract heretofore made, be and is hereby suspended.

21. The board of directors is authorized and required to employ some practical and skilled architect with a salary not to exceed four thousand dollars, whose duty it shall be to inspect the work now done and correctly measure the same, and reject and condemn such part of said work as is not according to contract and specifications, and have the same removed, and in the further progress of the work to enforce a strict compliance with the specifications as stated in the original contract; and if it shall be ascertained that the stone work done has been inaccurately estimated and over payments have been made for such work, the amount overpaid shall be charged against the contractors, Messrs. Coleman Bros., but if the work has been underestimated or measured, then the amount due the contractors for short measurement shall be placed to their credit, to be paid on a final adjudication and settlement with them.

22. It shall be the duty of the architect mentioned in section twenty-one of this chapter, to enter into good and sufficient bond, to be approved by the directors, in the sum of five thousand dollars, payable to the State of North Carolina, for the faithful performance of each and all the duties imposed upon him by this chapter, and further, that he shall exercise a general supervision of the works, the condition of the convicts, and all other matters under his care.

23. The contractors, Messrs. Coleman Bros., shall not be permitted to resume or prosecute said work until they shall have given a good and sufficient bond as required by chapter two hundred and thirty-eight, section seven of the laws of one thousand eight hundred and sixty-eight and one thousand eight hundred and sixty-nine, ratified April twelfth, Anno Domini one thousand eight hundred and sixty-nine, said bond to be approved by the board of directors; nor shall they be permitted to prosecute said work until they shall have removed and rebuilt at their own expense all such work as the architect, as provided for in section twenty-one of this chapter, shall reject

rectors.—1870
-'1, c. 191, s. 8.

Contracts and awards.—1870
-'1, c. 191, s. 9.

Preamble.—
1871-'2, c. 202.

Suspension of building penitentiary.—
1871-'2, c. 202, s. 1.
Inspection of work by practical architect.
Condemnation of work done not according to contract.—
1871-'2, c. 202, s. 2.

Architect required to give bond.—1871-'2, c. 202, s. 3.

Former contractors not allowed to resume work.—
1871-'2, c. 202, s. 4.

and condemn as not in accordance with the specification and contract for such work.

Sum appropriated for erection, wall, &c. Convict labor required.—1871-'2, c. 202, s. 5.

24. The sum of fifteen thousand dollars is appropriated out of the funds raised for the penitentiary to the erection of an exterior wall and temporary workshops, in which to employ convicts, said wall and shops to be done with convict labor, except such work as requires skilled labor.

Materials for work under former contracts not receivable.—1871-'2, c. 202, s. 6.

25. The board of directors are hereby directed and authorized to receive no iron doors or other material connected with the penitentiary under contracts heretofore made until the same are needed in the construction of the work from time to time, as it progresses.

Deduction of money in certain cases.—1871-'2, c. 202, s. 7.

26. In consequence of the failure of the contractors to employ convict labor, according to the contract, it is further enacted that the directors be authorized and directed to deduct twenty-five dollars each from the contract prices for the iron doors.

Farming out of convicts. Guard to be provided. Bond for safe keeping.—1871-'2, c. 202, s. 8.

27. The directors are hereby authorized and directed to farm out to railroad companies or other public corporations, each and every able-bodied convict who cannot be employed to advantage on the work above mentioned, on such terms as will best promote the interest of the State, for consideration not less than food and clothing. And the party so hiring shall provide a good and sufficient guard to prevent the escape of such convicts, and shall give bond for their safe keeping and proper treatment and return to the penitentiary on the termination of the contract: *Provided*, that no convict shall be farmed out who has been sentenced on a charge of murder and manslaughter and rape, attempt to commit rape, or arson.

Guard enlisted. Compensation.—1871-'2, c. 202, s. 9.

28. The said directors are hereby authorized and empowered to enlist for a term of from one to three years, a guard of men not to exceed fifty in number, to do guard duty, subject to and under such rules and regulations as govern the United States army, to be controlled and governed by one captain, to be appointed by the board of directors, and subject to their orders, such captain to receive not more than sixty dollars per month, and the men not more than twenty-five dollars per month and rations.

Any surplus of money may be applied to the maintenance of convicts.—1871-'2, c. 202, s. 10.

29. The amount of money raised over and above the fifteen thousand dollars, mentioned in section twenty-four of this chapter for penitentiary purposes, or so much thereof as may be necessary, shall be applied towards the maintenance of the convicts and the government of the penitentiary, and should there be a surplus of money on hand at the expiration of the year, the same shall be held and used in defraying the current expenses of the ensuing year.

Compensation for apprehending escaped convicts.—1871-'2, c. 202, s. 11.

30. The board of directors are hereby authorized to recommend a reasonable compensation to any one for the apprehension and return of any escaped convict to the penitentiary, on which recommendation the Governor is authorized to give his warrant on the Treasurer for the amount so recommended.

31. The board of directors or managers of the State penitentiary be, and the same are hereby, authorized and directed to manufacture within the inclosure during the coming summer, eight millions (or as many as possible of that number) of good and merchantable brick, such as are specified in the contract for the construction of the penitentiary, and to procure material for such purpose, they are authorized to send out of the penitentiary, on trains, convicts confined for short time and minor offences.

Brick to be made.—1872-'3, c. 157, s. 1.

32. The steward of the penitentiary shall be the disbursing officer of the institution, and shall give good and sufficient security for not less than eight thousand dollars; he shall also act as secretary of the board of directors, for all of which services he shall be entitled to a salary not to exceed one thousand three hundred and fifty dollars per annum.

Steward of institution.—1872-'3, c. 157, s. 2.

33. The board of directors shall be paid for their services their actual expenses, but shall not exceed the sum of three hundred dollars for any one member per annum, and the salary of officers connected with the penitentiary shall not exceed those now established by the board of directors.

Pay of directors.—1872-'3, c. 157, s. 3.

34. Said board is directed to prosecute to as early a completion as possible the construction of the penitentiary with convicts, with such additional skillful labor as may be necessary. In such construction the basement story shall be confined to the specifications prescribed in the contract with the Messrs. Coleman Brothers, the balance to be constructed with brick, to be made as provided in the thirty-first section of this chapter, with convict labor.

Convict labor. 1872-'3, c. 157, s. 4.

35. The said board is authorized and directed to employ some practical and skillful engineer or architect, with a salary not to exceed thirty-five hundred dollars, whose duty it shall be to superintend the construction and erection of said building, and who shall remain at and give his exclusive attention to said work, and he shall be required to give a good and valid bond for the faithful performance of the duties imposed upon him for five thousand dollars.

Engineer.—1872-'3, c. 157, s. 5.

36. Said board are authorized and directed to manufacture within the penitentiary all the iron doors necessary for the building, same to be in conformity to those contracted for in original contract.

Iron doors.—1872-'3, c. 157, s. 6.

37. In such construction the board shall use all diligence in completing one wing of the said building in order to furnish accommodations for as many convicts as possible at the very earliest day practicable.

One wing of building to be finished.—1872-'3, c. 157, s. 7.

38. The said board are hereby authorized and directed to deliver to the board of directors for the institution for the deaf and dumb and blind as many of the brick now at the penitentiary as may be necessary in the construction of the colored deaf and dumb and blind institution, and said board are directed to use as many convicts as practicable in the construction of such building.

Brick for colored asylum.—1872-'3, c. 157, s. 7.

Expenses of convict while awaiting transfer.—1869-'70, c. 180, s. 1.

Sheriff to make out account, &c.—1869-'70, c. 180, s. 2.

When sheriff to send prisoner.—1869-'70, c. 180, s. 3.

Certain convicts to be received into penitentiary.—1870-'1, c. 124, s. 1.

Convicts to be received as soon as practicable.—1870-'1, c. 124, s. 2.

State not liable for expense until convicts are in penitentiary.—1870-'1, c. 124, s. 3. County commissioners may employ convicts, when. Powers conferred on county commissioners. Powers conferred on

39. The expense of keeping, maintaining, conveying and guarding any convict who has heretofore been or may hereafter be sentenced to confinement in the penitentiary, shall be defrayed by the State treasury from the time of the sentence of such convict, and said expense shall not be borne by the county in which such convict may be imprisoned while awaiting transfer to the penitentiary.

40. Any sheriff having any such convict in his charge imprisoned in the county jail, may from time to time make out his account for keeping and maintaining such convict at the usual rates for prisoners in his jail, and adding thereto the actual and necessary costs of any guard for such convict, and said account being verified by the affidavit of such sheriff before the chairman of the board of county commissioners and duly audited by the auditor of State, shall be paid to such sheriff by the State treasurer.

41. The sheriff having such prisoner in charge shall proceed to send the same to the penitentiary within five days after the adjournment of the court at which they were sentenced: *Provided*, that no appeal has been taken to the Supreme Court. Criminals in any of the jails of the several counties under sentence of imprisonment for a longer term than twelve months may be conveyed by the sheriff to the penitentiary, and the treasurer of the State shall not pay anything for keeping, maintaining or guarding them if they are kept in jail for a longer time: *Provided*, that the provisions of this section shall not apply to any county until the sheriff of said county has received official information that such prisoners will be received at the penitentiary.

42. All convicts who are sentenced to imprisonment for the term of two years or any longer term, shall be received into the penitentiary, and the commissioners of such penitentiary shall have no power to make any order in contravention of this provision, or exercise any discretion in the matter.

43. Convicts sentenced to imprisonment for the term of one year or any longer term less than two years, shall be received as soon as practicable into the penitentiary, and the commissioners are allowed to exercise their discretion as to the reception of such convicts until further action by the legislature.

44. The state shall not be held liable for the expense of maintaining convicts until they shall have been received at the penitentiary, nor shall any moneys be paid out of the treasury for support of convicts prior to such reception.

45. The county commissioners of any county may provide for the employment of all convicts who have heretofore been sentenced to the penitentiary for a term less than two years, now remaining in county jails, work-houses and prisons, or that may hereafter be sentenced to imprisonment with hard labor for any term less than two years, as prescribed in chapter thirty-five of public laws of one thousand eight hundred and sixty-six, ratified the second day of March, one thousand

eight hundred and sixty-six, and all powers given to the justices of the court of pleas and quarter sessions in said chapter are hereby conferred upon the board of county commissioners of the several counties of the State, and in addition to the mode of employment prescribed in said chapter, such convicts may be employed in working upon the public roads or in any other useful labor the commissioners may order, and such guards may be employed as may be necessary to secure such convicts while at labor, and to take them forth and return them to the jail or workhouses when not employed in labor; and all powers given to the managers of the workhouse in said chapter are hereby conferred upon any officer appointed to take charge of such convicts, or upon the sheriffs of the respective counties.

46. The commissioners shall have the same power of providing for the expense of working public roads by convicts as are given to them for erecting workhouses and employment of convicts.

Further powers of commissioners.—1870-'1, c. 124, s. 5.

47. Whenever any convict of the penitentiary shall be found on examination by the superintendent of the insane asylum, the chairman of the board of directors and the physician to the penitentiary, to be a lunatic or otherwise insane, it shall be lawful to transfer said insane convict from the penitentiary to the insane asylum, under such rules and regulations as apply to other insane persons: *Provided*, such convict's term of imprisonment unexpired shall not be less than three months.

When convict to be transferred to Insane Asylum.—1871-'2, c. 212.

48. When after the ratification of this act, any person shall be convicted in any court of the United States, sitting in North Carolina, of any offence, the punishment of which shall be imprisonment in the penitentiary, it shall be competent for the said court to imprison the said convict in the penitentiary of this State.

Persons convicted in United States Courts may be imprisoned in penitentiary.—1872-'3, c. 101, s. 1.

49. The person or persons having the penitentiary of the State in charge shall receive the said convicts, and keep him or them, as in case of other prisoners, till the expiration of his or their sentence.

United States convicts to be received at penitentiary.—1872-'3, c. 101, s. 2.

NOTE.—In the case of the *People ex. rel. of G. W. Welker et al. vs. Bledsoe et al.*, 68 N. C. Rep., 457, it was held that the board of directors of the penitentiary could not be appointed by the General Assembly, but must be appointed by the Governor, by and with the advice and consent of the Senate, when that body is in session, and by the Governor alone in the recess. Con., Art. 3, sec. 10.

CHAPTER 86.

PENSIONS.

Pensions allowed persons disabled in militia service, and their widows and orphans. Mode of procuring the same.

Pensions allowed persons disabled in militia service, and their widows and orphans. Mode of procuring.—R. C., c. 84.

1. 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: *Provided*, that the provisions of this chapter shall not extend to any person or persons, or to the widows or orphans of such person or persons who were engaged in the late civil war.

CHAPTER 87.

PILOTS.

SECTION

1. Commissioners of navigation, how appointed, by mayor, &c., 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. When board shall grant license to pilots.
7. To grant three classes of licenses.
8. Bond given by pilots.

SECTION

9. Commission granted to pilots, when.
10. Number of pilots regulated, &c.
11. Board may cancel license.
12. 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.
13. Stay of execution not allowed. Appeals allowed.
14. Commissioners of navigation to fix rates of pilotage.
15. Same continued.
16. Apprentice not to act as pilot, when.

SECTION

17. Rate of pilotage when vessel is detained.
18. When master of vessel need not take pilot.
19. Notice given when rates of pilotage altered.
20. Number of boats to be prescribed for pilots.
21. Rights of pilots as to Main and New Inlet bars of Cape Fear.
22. Apprentices to be kept by pilots.
23. Penalty on pilots not attending when requested. Proviso.
24. Pilots refused, entitled to full pay.
25. One third fees only, due to pilots in certain cases.
26. Pilotage, when vessel deepened or lightened.
27. Pilot entitled to full pay though refused, when.
28. 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.
29. Penalty on coal vessels not raising flag.
30. Pilotage of, not to be altered, &c.
31. Commissioners of navigation for Newbern, Washington, and Edenton, yearly appointed. Mode of appointing. Vacancies, how filled.
32. Power of commissioners.
33. Commissioners of Washington, a body corporate. Their style and powers. May provide for receiving persons in quarantine. Employ physician, &c.
34. Commissioners appointed for the ports of Ocracoke and Hatteras. Meeting of board triennially. Pilotage. To keep an office at Ocracoke. Fees paid for branches, how disposed of. Vacancies, how filled. Commissioners to keep a journal and take oath. Branches to expire in three years.
35. Pilots required to give bond.

SECTION

36. To whom branches may be granted.
37. 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.
38. Bonds given by pilots.
39. To have a telescope or spy-glass.
40. May be removed for misconduct, &c. Penalty for acting after removal. Notice of removal published.
41. Penalty for acting without license.
42. Pay to pilots for detention. Pay when driven off coast, after boarding.
43. Penalty for neglecting to go to a vessel with a signal, &c.
44. Pilots, when refused, to have pay.
45. No pilotage on ships under 60 tons. Exception.
46. Rates of pilotage for Edenton, Washington, Newbern Ocracoke, and Hatteras pilots.
47. Harbor masters and clerks appointed by boards.
48. Commissioners of navigation for Beaufort and Morehead City, how elected.
49. Powers, &c., of said board.
50. How far authority to extend.
51. Harbor master to be appointed.
52. Charges, &c., of pilots.
53. Rates set up, &c.
54. Commissioners and their powers.
55. To take oath.
56. Rates of pilotage at Old Topsail.
57. Bogue inlet.
58. Fees of pilots annexed to branches.
59. Boards to designate where ballast, trash, &c., may be cast. Penalty for throwing ballast, stone, &c., into navigable water, or pulling down beacons, &c.
60. On pilots not informing thereof.
61. Penalties and fines, how disposed of. Annual report made thereof.

1. THE mayor and aldermen of the city of Wilmington shall at one of their regular meetings in the month of April of each and every year appoint five suitable persons to serve as commissioners of navigation and pilotage for the Cape Fear river

Commissioners, how appointed, by mayor, &c., of Wilmington.

—1869-'70, c.
235, s. 4.

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How styled.
To fill vacancies, and appoint a clerk. To have authority concerning navigation of the river, &c.—R. C., c. 85, s. 2.

Harbor master appointed.—R. C., c. 85, s. 3.

Pilot, stations and pilotage, &c., regulated by commissioners.—R. C., c. 85, s. 4.

Pilots appointed by board.—R. C., c. 85, s. 5.

and bars, who shall enter upon their duties on the first Monday in May of each and every year: *Provided*, that the mayor and commissioners of the town of Smithville shall at the same time appoint two suitable persons to serve as commissioners of navigation and pilotage: *Provided*, that the commissioners appointed by the city of Wilmington and town of Smithville shall have power to do and perform all acts heretofore authorized by law to be done by the board of commissioners of navigation and pilotage.

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; 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 Negro-head 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.

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.

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.

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 hands and seals, to act as pilots both for the bars and rivers, according as they shall be found qualified: *Provided*, that at

no one time shall there be over sixty-five bar and river pilots in commission for the Cape Fear river.

6. Before the commissioners of navigation shall grant a commission or license to pilot vessels on Cape Fear river or its bars, it shall be the duty of the board to require the applicant to prove, by at least three nautical men under oath, his competency to manage or work vessels, and such knowledge of the Cape Fear river and its bars as may be necessary to qualify him to pilot vessels.

When board shall grant licenses to pilots.—1858-'9, c. 23, s. 2.

7. The commissioners shall issue three classes of license, as follows: 1. A license to pilot vessels whose draught of water does not exceed nine feet, to such applicants above the age of twenty-one years, who have served as apprentices for at least three years, and complied with the provisions of this chapter. 2. A license to pilot vessels whose draught of water does not exceed twelve feet, to those who have served at least three years under a license of the first class. 3. An unlimited or full license to those who have served at least three years under a license of the second class, to pilot vessels of any draught of water.

Shall grant three classes of licenses.—1858-'9, c. 23, s. 3.

8. 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.

Bond given by pilots.—R. C., c. 85, s. 6.

9. The commissioners shall have power to grant permission in writing to any pilot in good standing and authorized to pilot vessels, to run regularly as pilot on steamers running between the port of Wilmington and other ports in the United States, said pilot to have all the rights and emoluments that belong to the river and bar pilots.

Permission granted to pilots, when.—1869-'70, c. 235, s. 5.

10. The number of pilots and apprentices shall hereafter be regulated by the board of commissioners of navigation and pilotage: *Provided*, the number of pilots shall not at any one time be reduced below the number of forty and apprentices below the number of twenty.

Number of pilots regulated, &c., 1869-'70, c. 235, s. 6.

11. The board of commissioners shall have power to call in and cancel the branch of any pilot who has refused or neglected, except in case of sickness, his branch for the space of two years in succession.

Board may cancel license.—1869-'70, c. 235, s. 7.

12. Each commissioner or any justice of the peace of the counties of New Hanover and Brunswick 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

Disputes between masters and pilots, decided by board. War-

rant for pilotage, forfeiture, &c., issued by a commissioner. Jurisdiction not to exceed §60. May summon witnesses, and administer oaths.—R. C., c. 85, s. 7. 1858-'9, c. 23.

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.

Stay of execution on judgment not allowed. Appeals allowed.—R. C., c. 85, s. 8.

13. 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.

Commissioners of navigation to fix rates of pilotage.—1858-'9, c. 23, s. 4. 1869-'70, c. 235.

14. The commissioners of navigation shall fix the rates of pilotage for vessels in the following manner, viz: vessels whose draught of water is six feet, seven feet, eight feet, nine feet, ten feet, eleven feet, twelve feet, thirteen feet, fourteen feet, fifteen feet, sixteen feet; and the commissioners of navigation shall not reduce the rates of pilotage below the rates established in one thousand eight hundred and sixty-nine.

Same continued.—1869-'70, c. 235, s. 3.

15. It shall be the duty of the commissioners to establish rates of pilotage for all vessels drawing odd inches over the even feet prescribed in section fourteen of this chapter *pro rata* with the rates for even feet established in one thousand eight hundred and sixty-nine by the commissioners of navigation and pilotage.

Apprentice not to act as pilot, when.—1858-'9, c. 23, s. 6.

16. No apprentice shall hereafter be authorized by the board to pilot any vessel of more than six feet draught of water.

17. Every master of a vessel who shall detain a pilot at the

time appointed, so that he cannot proceed to sea, though wind and weather should permit, shall pay to such pilot three dollars per day during the time of his actual detentions.

18. No master of a vessel shall be required to take or keep a pilot on board, or pay for pilotage in the river or over the bars, who is or has been a full branch pilot or employs a full branch pilot as first mate of his vessel.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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

Rate of pilotage when vessel is detained.—1858-'9, c. 23, s. 7.

When master of vessel need not take pilot.—1858-'9, c. 23, s. 8.

Notice given when rates of pilotage altered.—R. C., c. 85, s. 9.

Number of boats prescribed for pilots.—R. C., c. 85, s. 10.

Rights of pilots as to main and New Inlet bars of Cape Fear.—R. C., c. 85, s. 11.

Apprentices to be kept by pilots.—R. C., c. 85, s. 12.

Penalty on pilots not attending when requested.—R. C., c. 85, s. 13.

Proviso.

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.

Pilots refused entitled to full pilotage.—R. C., c. 85, s. 14.

24. When any master of a vessel, not having a pilot on board, coming over the bar into the Cape Fear river; or being 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. C., c. 85, s. 15.

25. 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. C., c. 85, s. 16.

26. 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.

Pilot entitled to full pay, though refused, when.—1856-7, c. 1: R. C., c. 85, s. 17.

27. When any master of a vessel shall refuse a pilot either up or down the Cape Fear river then each pilot so refused shall be entitled to the full pilotage in the same manner as he would have been had he been actually employed for the purpose of piloting such vessel. But any vessel under sixty tons burden shall not 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. Outward bound coal vessels, also. Penalty on captains, &c., falsely hoisting flag of coal vessels.—R. C., c. 85, s. 18.

28. 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 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.

29. 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.

30. The board of commissioners shall not alter the rules and regulations concerning pilotage, prescribed in the two preceding sections.

31. 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 commissioners of Beaufort, at their first meeting 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.

32. 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 Ocracoke 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.

33. 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 necessities, 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

Penalty on coal vessels for not raising flag.—K. C., c. 85, s. 19.

Pilotage of, not altered. &c.—R. C., c. 85, s. 20.

Com'rs of navigation for Newbern, Washington, and Edenton, yearly appointed. Mode of appointing. Vacancies, how filled.—R. C., c. 85, s. 21.

Powers of commissioners.—R. C., c. 85, s. 22.

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.—R. C., c. 85, s. 23.

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 quarantine in any respect whatever, as if the said persons so landed had remained on the vessel.

Commissioners appointed for ports of Ocracoke and Hatteras. Meeting of board triennially. Pilotage. To keep an office at Ocracoke. Fees paid for branches, how disposed of. Vacancies, how filled. Commissioners to keep a journal and take oath. Branches to expire in three years.—R. C., c. 85, s. 24. 1871-'2, c. 134.

34. Francis O'Neal and William Tolson, of the county of Hyde, John Rollarson and Stephen Fulcher, of the county of Dare, and William Dixon, of the county of Carteret, shall constitute a board of commissioners of navigation for the ports of Ocracoke and Hatteras inlet, whose duty it shall be to meet at Ocracoke 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 Ocracoke bar or Hatteras inlet over the swashes through Pamlico and Albemarle Sound, 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 Ocracoke, 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 Ocracoke, 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.

Pilots required to give bond.—1871-'2, c. 134, s. 3.

35. Every pilot licensed by said board shall give such bond, perform such duties, receive such fees or emoluments, have such remedies and be subject to such penalties and liabilities, as are prescribed by this chapter.

To whom branches may be granted.—1856-'7, c. 29.

36. The said board shall not issue or grant any branch to pilot vessels through Hatteras inlet to any person who does not reside in Hatteras precinct, which precinct extends from Cape Hatteras light-house to Hatteras inlet. And the said board shall not issue or grant a branch to pilot vessels through or over Ocracoke inlet to any person who does not reside upon the island of Ocracoke or in the precinct of Portsmouth.

Com'rs of nav-

37. Each of the boards of county commissioners of the

counties of Carteret, Onslow and Hyde shall, if not already done, appoint five commissioners of navigation; those appointed by the board of Carteret to be a board for Old Topsail inlet and the waters thereof; those appointed by the board of Onslow to be a board for Bogue inlet and its waters; those appointed by the board 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 board, which is directed to be done at the first meeting 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.

38. All pilots appointed by the commissioners of navigation for Newbern, Washington, Edenton, Ocracoke, 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.

39. 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.

40. 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.

41. 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.

42. 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

igation 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. C., c. 85, s. 25.

Bonds given by pilots.—R. C., c. 85, s. 26.

To have a telescope or spy-glass.—R. C., c. 85, s. 27.

May be removed for misbehavior, &c. Penalty for acting after removal. Notice of removal published.—R. C., c. 85, s. 28.

Penalty for acting as pilot, without license.—R. C., c. 85, s. 29.

Pay to pilots for detention. Pay when driven off

coast, after
boarding.—R.
C., c. 85,
s. 30.

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.

Penalty for
neglecting to
go to vessel,
having a sig-
nal, &c.—R.
C., c. 85, s. 31.

43. 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 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.
C., c. 85, s. 32.
1871-'2, c. 117.

44. 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: *Provided*, That the first pilot who shall speak such vessel so bound in shall be entitled to the pay provided for in this section and no other.

No pilotage on
ships under 60
tons. Ex-
ception.—R.
C., c. 85, s. 33.

45. 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.

Rates of pilot-
age for
Edenton,
Washington,
Newbern,
Ocracoke,
Hatteras.—R.
C., c. 85, s. 34.

46. Branch pilots of Edenton, Washington, Newbern, Ocracoke, 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 mas-
ters and clerks
appointed by
boards.—R.
C., c. 85, s. 35.

47. The several boards of commissioners may appoint a harbor master for their respective ports. They shall appoint a clerk to keep books, in which shall be recorded all their proceedings.

48. There shall be annually elected, by the qualified voters of the town of Beaufort, North Carolina, at the same time and in the same manner as commissioners of the town are elected, three electors, who shall act as commissioners of navigation and pilotage for the port of Beaufort, North Carolina, and old Topsail Inlet for the term of one year, or until their successors are qualified.

Commissioners of navigation for Beaufort, &c., how elected.—1868-'9, c. 208, s. 1. 1870-'1, c. 168, s. 1.

49. The commissioners aforesaid shall be styled the board of commissioners of navigation and pilotage for the port of Beaufort, and a majority of them may act in all cases. Said board shall have power to fill all vacancies as they occur in the board during their terms, 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 to establish, and as often as need may be, to alter and regulate the fees and charges of the pilots or harbor master of the port for services required of them by virtue of such rules, regulations and orders.

Powers, &c., of board.—1868-'9, c. 208, s. 2.

50. They shall have authority in all matters that may concern the navigation of the harbor, old Topsail Inlet and all the waters of the sounds and rivers within ten miles of the town of Beaufort, and in the construction of wharves, and when there is no harbor master, the commissioners aforesaid shall decide all disputes about the moving of vessels and other matters which properly fall within the department of harbor master.

How far authority to extend.—1868-'9, c. 208, s. 3.

51. The said commissioners immediately after their election shall appoint a harbor master for the port of Beaufort, who shall hold his office for the term of one year, unless sooner removed by the commissioners for neglect of duty; he shall be entitled to receive of the master of each vessel that shall enter said port, and for other services, such fees as the commissioners may prescribe.

Harbor master to be appointed.—1868-'9, c. 208, s. 4.

52. The branch pilots of old Topsail Inlet shall be entitled to receive of the commander of such vessel as they may have in charge, such rates of pilotage as the commissioners aforesaid may deem just and adequate, not to exceed twenty-five per cent. higher than that allowed by section fifty-six of this chapter, and the commissioners aforesaid shall revoke all branches now in force, and grant commissions or branches to such persons only as remain present at the port to discharge their duties, and shall charge for such commissions or branches such fees as they think just and reasonable.

Charges, &c., of pilots.—1868-'9, c. 208, s. 5.

53. 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 pilot branches certified under their hand.

Rates set up, &c.—1868-'9, c. 208, s. 6.

54. The commissioners aforesaid shall have all the powers conferred on commissioners of navigation and pilotage, in this chapter.

Commissioners and their powers.—1868-'9, c. 208, s. 7.

55. Before the commissioners aforesaid shall enter upon

To take oath.

--1868-'9, c.
208, s. 8.

the duties of their office, they shall take oath before the clerk of the Superior Court, or a justice of the peace, to faithfully discharge the duties of commissioners of navigation and pilotage for the port of Beaufort, North Carolina.

Rates of pilot-
age at Old
Topsail inlet.—
R. C., c. 85, s.
26.

56. 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 Shackelford 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. C., c. 85, s.
37.

57. 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-five cents per foot; and the same fees for pilotage outwards, as inwards.

Fees of pilots
annexed to
branches.—R.
C., c. 85, s. 38.

58. 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.

Boards to des-
ignate where
ballast, trash,
&c., may be
cast. Penalty
for throwing
ballast, stone,
&c., into nav-
igable water,
or pulling
down beacons,
&c.—R. C., c.
85, s. 40.

59. 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.

Penalty on
pilots for not
informing
thereof.—R.
C., c. 85, s. 41.

60. 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.

61. 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 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.

Penalties and fines, how disposed of. Annual report made thereof. —R. C., c. 85, s. 42.

SECTION 46. 5 Jones, 345.

CHAPTER 88.

POOR.

SECTION

1. Board of county commissioners to provide for the poor.
2. Legal settlements, how acquired:
 - (1.) By one year's residence.
 - (2.) Married women to have the settlement of their husbands, if, &c.
 - (3.) Legitimate children that of their father or mother, &c.
 - (4.) Illegitimate children that of their mother, &c.

SECTION

- (5.) Settlements to continue till others acquired.
3. Paupers to be removed to their settlements; unless sick and disabled. All charges to be paid by the county of his settlement. House keepers entertaining paupers to give notice.
4. Families of poor militia men on service supported.
5. Concerning certain indigent persons owning property.

1. THE board of county commissioners have power to provide by tax for the maintenance, and to do all such matters and things as they may deem expedient, for the comfort and well ordering of the poor; to employ biennially, by public letting or otherwise, some competent person as overseer of the poor; to institute proceedings by warrant of their chairman against any person coming into the county who is likely to become chargeable thereto, and to cause the removal of such person to the county where he was last legally settled; and to recover by action in the Superior Court of the said county, all charges and expenses whatever incurred for the maintenance or removal of such poor persons.

The board of county commissioners to provide for the poor.—1868, c. 20, s. 8, sub. 24.

2. 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.

Legal settlements, how acquired.

By one year's residence.—R. C., c. 86, 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; unless sick and disabled. All charges to be paid by the county of his settlement. Housekeepers entertaining paupers to give notice.—R. C., c. 86, s. 13.

3. Upon complaint made by the chairman of the board of county commissioners 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 warrant 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 county commissioners 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 board of commissioners of the county, to which such poor person belongs, shall refuse to receive and provide for him when removed as aforesaid, every commissioner, so refusing, shall forfeit and pay forty dollars, for the use of the county whence the removal was made; moreover, if the board of commissioners 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 board of commissioners of his county, or one of them, within one month, the person so offending shall forfeit and pay ten dollars.

Families of

4. 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 board of commissioners of his county, on application, shall make towards their maintenance such allowance as they think reasonable.

5. Whenever any indigent person becomes chargeable to a county for maintenance and support in accordance with the provisions of this chapter, owning any estate, it shall be the duty of the board of county commissioners of any county liable to pay the expenses of such indigent person, to cause the same to be sold for its indemnity or reimbursement in the manner provided in the chapter entitled Idiots and Lunatics.

poor militia-men on service supported.—R. C., c. 86, s. 14.

Concerning certain indigent persons, owning property.—1866, c. 49.

CHAPTER 89.

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.
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.
8. Prisoners may buy necessities. Penalty on jailers, for injuring prisoners.
9. Jailer to cleanse jail, furnish diet, &c.

SECTION

10. Blankets and bedclothing provided for prisoners.
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.
17. Power of commissioners to farm out convicts.

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

Keepers of jails to receive and keep prisoners of United States. To have same fees as for State prisoners.—R. C., c. 87, s. 1.

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.

When jail destroyed, prisoners sent to jail of adjoining county.—R. C., c. 87, s. 2.

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.

Or if no jail, or jail unsafe, courts may commit, &c.—R. C., c. 87, s. 3.

3. Whenever it shall happen that there shall be no public jail, or an unfit or insecure jail, in any county, the Superior Courts, judges, justices of the peace, and all judicial 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. C., c. 87, 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. Guard to be

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.

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.

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.

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.

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.

10. The county commissioners, 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 bed-clothing; which shall be securely preserved by the jailer, and furnished to the prisoners for their

paid.—R. C.,
c. 87, s. 5.

Prisoners for
crime, to pay
jail charges.—
R. C., c. 87, s.
6.

Expense of
guarding and
removing pris-
oners, &c.,
by what
county paid.—
R. C., c. 87, s.
7.

Prisoners may
buy necessa-
ries. Penalty
on jailers for
injuring pris-
oners.—R. C.,
c. 87, s. 8.

Jailer to
cleanse jail, fur-
nish diet, &c.
—R. C., c. 87,
s. 9.

Blankets and
bedclothing
provided for
prisoners.—R.
C., c. 87, s. 10.

use and comfort, as the season or other circumstances may require; and the sheriff, at least once in every year, shall report to the board of commissioners the condition and number of such blankets and bed-clothing.

Prison bounds for health of prisoners, laid out by court. Bond to keep bounds.—R. C., c. 87, s. 11.

11. For the preservation of the health of such persons as shall be committed to the county prisons, the board of county commissioners 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.

Bond in criminal cases, returned to court and deemed a recognizance.—R. C., c. 87, s. 12.

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.

In civil cases on *mesne process*, to stand as security for final judgment.—R. C., c. 87, s. 13.

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 case of imprisonment on final process, deemed a judgment. On breach of bond, debtor excluded from bounds.—R. C., c. 87, s. 14.

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 admit-

ted to deny the making of the bond in their answer, unless by affidavit, they prove the truth of the plea.

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, how transferred to sheriff's successor.—R. C., c. 87, s. 15.

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.

Prisoners to be confined in proper apartments. Penalty for confining otherwise.—R. C., c. 87, s. 16. Power of commissioners to farm out prisoners.—1872-'3, c. 174, s. 10.

17. The board of county commissioners of the several counties of this State are authorized to work the convicts on the public roads and streets of cities, or to hire out the convicts in the jails of their respective counties to any company, corporation or individual, to be worked on any work of internal improvement, said convicts not to be taken out of the county in the Superior Court of which such convict was sentenced, without the consent of the board of commissioners given in writing. The county commissioners shall provide in any contract, which may be made under the provisions of this section, for the proper and safe keeping of said convicts. This section shall apply only to persons convicted of felony or other offences, for which hard labor or imprisonment for one year may be inflicted.

SECTION 11. 4 Ire., 543; 8 Ire., 175; 1 Hawks, 427; 1 Mur., 421; 3 Mur., 270; 2 Ib., 369; 3 Jones, 286.

CHAPTER 90.

PROBATE COURTS.

SECTION

1. Judges of Probate.
2. Jurisdiction.
3. Disqualification to act.
4. Waiver of disqualification.
5. Removal of proceedings.
6. Commissioner appointed to audit accounts. Approval of Judge of Superior Court. Record made by Judge of Probate.
7. Enumeration of powers.
8. How party may appear.

SECTION

9. Judge of Probate not to act as attorney.
10. Seals.
11. Must file papers.
12. Records to be kept.
13. Books to be furnished by the Secretary of State and to be indexed.
14. What books to be furnished.
15. Clerks required to keep open office for probate business.
16. Forfeiture of office for failure.

Judges of
Probate.—C.
C. P., s. 417.
Jurisdiction.
—C. C. P., s.
418.

1. THE clerks of the Superior Courts are declared judges of probate in their respective counties.

2. They have jurisdiction:

(1.) To take proof of deeds, bills of sale, official bonds, letters of attorney or other instruments permitted or required by law to be registered;

(2.) To take proof of wills and grant letters testamentary and of administration;

(3.) To revoke letters testamentary and of administration;

(4.) To appoint and remove guardians of infants, idiots and lunatics;

(5.) To bind out apprentices and to cancel the indentures in such cases;

(6.) To audit the accounts of executors, administrators, and guardians;

(7.) To exercise jurisdiction conferred on them in every other case prescribed by law.

3. No judge of probate can act as such in relation to any estate or proceeding:

(1.) If he has, or claims to have, an interest by distribution, by will, or as creditor or otherwise;

(2.) If he is so related to any person, having or claiming such interest, that he would, by reason of such relationship, be disqualified as a juror; but the disqualification on this ground ceases, unless the objection is made at the first hearing of the matter before him;

(3.) If he or his wife is a party or a subscribing witness to any deed of conveyance, testamentary paper or nuncupative will; but this disqualification ceases when such deed, testamentary paper or will has been finally admitted to or refused probate in another probate court, or before the judge of the Superior Court;

(4.) If he or his wife is named as executor or trustee in any testamentary or other paper; but this disqualification ceases when the will or other paper is finally admitted to, or refused probate in another probate court, or before the judge of the Superior Court;

(5.) Or if he or she, as the case may be, shall renounce the executorship and endorse the same on the will or on some paper attached thereto, before it is propounded for probate, in which case the renunciation must be recorded with the will if admitted to probate.

Renouncing
the executor-
ship, &c.—
1871-2, c. 196,
s. 1.

Waiver of dis-
qualification.
—C. C. P., s.
420.

4. The parties may waive the disqualification specified in subdivisions 1, 2 and 3 of the preceding section, and upon filing in the office such waiver in writing, the judge of probate shall act as in other cases.

Removal of
proceedings.
—C. C. P., s.
421.

5. When any of the disqualifications specified in section three exists, and there is no waiver thereof, or cannot be such waiver, any party in interest may apply to the judge of the district for an order to remove the proceedings to the probate judge of an adjoining county in the same district.

6. In all cases where the judge of probate was or shall be executor or administrator of any estate at the time of his election to the office of probate judge, in order to enable the judge of probate to settle such estate, the judge of the superior court is empowered to make such order as may be necessary in the settlement of the estate; may audit the accounts or appoint a commissioner to audit the accounts of such executor or administrator, and report to the judge of the superior court for his approval, and when the accounts are so approved by the judge of the superior court, it shall be his duty to order the proper record to be made by the judge of probate, and the accounts to be filed in the probate court.

Commissioner appointed to audit accounts. Approval of Judge of Superior Court. Record made by Judge of Probate.—1871-'2, c. 197, s. 1.

7. Every judge of probate has power :

Enumeration of powers.—C. C. P., s. 422.

(1.) To issue subpoenas to compel the attendance of any witness residing, or being in the State, or the production of any paper, material to any inquiry pending in his court;

(2.) To administer oaths and take acknowledgments, whenever necessary, in the exercise of the powers and duties of his office;

(3.) To issue commissions to take the testimony of any witness without this State;

(4.) To issue citations and orders to show cause to parties in all matters cognizable in his court, and to compel the appearance of such parties;

(5.) To enforce all lawful orders and decrees by execution or otherwise, against those who fail to comply therewith or to execute lawful process. Process may be issued by the probate judge, to be executed in any county of the State, and to be returned before him;

(6.) To exemplify, under the seal of his court, all transcripts of deeds, papers or proceedings therein, which shall be received in evidence in all the courts of the State;

(7.) To preserve order in his court and to punish contempts;

(8.) To adjourn any proceeding pending before him from time to time;

(9.) To open, vacate, modify, set aside, or enter as of a former time, decrees or orders of his court, in the same manner as courts of general jurisdiction.

(10.) To award costs and disbursements as prescribed by law, to be paid personally, or out of the estate or fund, in any proceeding before him.

8. A party may appear in proceedings in which he is concerned in the probate court, either in person or by attorney.

How party may appear.—C. C. P., s. 423.

9. A judge of probate cannot act as attorney or counsel in a civil action, for or against an executor, administrator or guardian, over whom or whose accounts he might by law have jurisdiction, whether such action relates to business of the estate or not. He cannot act as attorney or counsel in any cause originating in his court; nor shall any partner or person connected in law business with him act as counsel or attorney in any pro-

Judge of Probate not to act as attorney.—C. C. P., s. 424.

ceeding before such judge of probate, or originating in his court.

Seals.—C. C. P., s. 425.

10. The seal to be used by the judges of probate must be the same as used by them in their capacity as clerks of the Superior Courts; but all orders, decrees, exemplifications or other papers relating to the probate court, or proceedings therein, must be signed by them as judges of probate, and not as clerks of the Superior Court.

Must file papers.—C. C. P., s. 426.

11. Every judge of probate must file and preserve all papers in proceedings before him, or belonging to the court; and all such papers and the books kept by him belong to and appertain to his office, and must be delivered to his successor.

Records to be kept.—C. C. P., s. 427.

12. The following books must be kept by each judge of probate:

(1.) A record of wills, in which must be recorded all wills, with the certificates of probate thereof;

(2.) A record of appointments of executors, administrators, guardians, collectors and masters of apprentices, with revocations of all such appointments;

(3.) A record of all orders and decrees passed in his office, which he is required to make in writing, and not required to be recorded in some other book;

(4.) A record of accounts, in which must be recorded the quarterly and annual accounts of executors, administrators, collectors and guardians, as audited by him from time to time;

(5.) A record of settlements, in which must be entered the final settlements of executors, administrators, collectors and guardians;

(6.) A fee-book, in which must be entered the items of all fees for services of the probate judge in each particular proceeding or estate, and when and by whom paid. And he must annually, during the first week in September, at his own expense, report to the Secretary of State a verified statement of all his fees received or charged during the year preceding the first day of September.

Books to be furnished by Secretary of State, and to be indexed.—C. C. P., s. 428.

13. The books required to be kept by the last section must be furnished to the judge of probate by the Secretary of State; and to each of such books there must be attached an alphabetical index securely bound in the volume, referring to the entries therein by the page of the book. These books must, at all proper times, be open to the inspection of any person.

What books to be furnished.—1868-'9, c. 159, s. 6.

14. The provision of section one hundred and forty-five of the Code of Civil Procedure shall be applicable to the furnishing of the books of the judge of probate in each county.

Clerks required to keep open office for Probate business.—1871-'2, c. 136, s. 1.
Forfeiture of

15. The clerks of the superior courts of this State shall open their offices every Monday, from nine, a. m. to four, p. m., for the transaction of probate business, and each succeeding day till such matter is disposed of.

16. Any clerk of the superior court failing to comply with

the last section (unless such failure is caused by sickness), shall forfeit his office.

office for failure.—1871-'2,
c. 136, s. 2.

SECTION 2. 64 N. C., 710, 714; 65 N. C., 67; 63 N. C., 251; 66 N. C., 450.

CHAPTER 91.

PROCESSIONING.

SECTION

1. Processioners of land appointed by county commissioners.
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 return it to clerk, &c. To be recorded.

SECTION

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.
8. Surveyors deemed processioners.
9. Their powers.

1. THE county commissioners 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 county commissioners.—R. C., c. 88, s. 1.—1869-'70, c. 130.

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 board of county commissioners.

Oath and term of office.—R. C., c. 88, 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. C., c. 88, 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.—R. C., c. 88, s. 4.

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 clerk of the superior court 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. C., c. 88, s. 5.

When line disputed, and processioneer forbidden to proceed, he shall report to court. Five freeholders then appointed with processioneer.—R. C., c. 88, s. 6.

6. In all cases where a line is disputed, and the processioneer 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 processioneer is appointed; and the court shall thereupon appoint five respectable freeholders, who shall appear with the processioneer on the line or lines so disputed, and proceed (after being sworn by the processioneer 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 processioneer and complete such survey; and the party against whom the decision is made shall pay all costs.

Person having land twice processioned, deemed owner. Who not bound by processioning.—R. C., c. 88, s. 7.

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.

Surveyors deemed to be processioners.—1872-'3, c. 57, s. 1.

8. The county surveyors of the several counties of the State shall be deemed and taken to be processioners in their respective counties, for the purpose of having processioned the lands of such persons as desire it.

Their powers.—1872-'3, c. 57, s. 2.

9. Each county surveyor shall have all the powers, and shall be subject to all the rules, regulations and restrictions of a processioneer, as provided in this chapter.

CHAPTER 92.

PUBLIC ARMS.

SECTION

1. Public arms to be deposited in arsenals, &c.
2. Keeper of arms at arsenals appointed by adjutant-general.
3. Volunteer companies, how to obtain arms.
4. A town or senior colonel may, on giving bond.
5. Arms distributed on invasion, &c.
6. Duty of officers receiving arms.

SECTION

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.

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.

Public arms to be deposited in public arsenals, &c.
—R. C., c. 89, s. 1.

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 semi-annually. 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.
—R. C., c. 89, s. 2.

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

Volunteer companies, how to obtain public arms.—
R. C., c. 89, s. 3.

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.

A town, or senior colonel may, on giving bond.—R. C., c. 89, s. 4.

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.

Arms distributed on invasion, &c.—R. C., c. 89, s. 5.

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 expedient, and to draw warrants on the Treasurer of the State for the sums necessary for that purpose.

Duty of militia officers receiving arms.—R. C., c. 89, s. 6.

6. When public arms shall be delivered to any colonel commanding, 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 same 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 commanding; 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. C., c. 89, 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. C., c. 89, 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.

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.

On death, &c., of a private, his arms delivered to successor.—R. C., c. 89, s. 9.

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.

Officers to demand public arms of persons not entitled.—R. C., c. 89, s. 10.

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. C., c. 89, s. 11.

CHAPTER 93.

PUBLIC CHARITIES.

SECTION

1. Board elected by General Assembly. Governor to fill vacancies.
2. Meetings, &c. Board to supervise public institutions. Compensation, &c.
3. Duty to report.
4. Special attention to be paid to causes of insanity, &c.
5. Visits and reports.
6. Insane persons.

SECTION

7. May require reports, &c.
8. Annual reports to be made by board.
9. Commissioners of counties to report to board. Board to furnish circulars.
10. County commissioners to require reports from trustees of township.
11. Penalty for refusing.

(See Constitution, art. XI.)

1. THE General Assembly shall, immediately on the ratification of this act, proceed by concurrent vote to select five electors who shall be styled the board of public charities of the State of North Carolina. One of the persons so elected shall hold office for one year; one for two years, one for three years, one for four years and one for five years, the term to begin the first of July, one thousand eight hundred and sixty-nine. Appoint-

Board elected by General Assembly. Governor to fill vacancies.—1868-'9, c. 170, s. 1.

ments to fill vacancies in this board caused by resignation or removal from the State, death, or from any other cause, may be made for the residue of such term by the Governor.

Meetings, &c.
Board to supervise public institutions.
Compensation.—1868-'9, c. 170, s. 2.

2. The board of public charities shall hold regular meetings on the first Tuesday in January, April, July and October, and as often besides as they may deem needful. They shall make such rules and orders for the regulation of their own proceedings as they may deem proper; they shall investigate and supervise the whole system of the charitable and penal institutions of the State, and shall recommend such changes and additional provisions as they may deem needful for their economical and efficient administration, and no changes shall be made in the management of any of the institutions without the advice or consent of the board. They shall receive no compensation for their services except their traveling expenses, which shall be allowed and paid.

Duty to report.—1868-'9, c. 170, s. 3.

3. The general condition of the State as affected by crimes, vagrancy and pauperism, shall also come under the view of the board, and it shall be their duty to report to the General Assembly when, in their judgment, it may become needful for the erection of the several reformatory institutions, whose organization is provided for in article eleven of the Constitution.

Special attention to be paid to causes of insanity, &c.—1868-'9, c. 170, s. 4.

4. The board shall also give special attention to the causes of insanity, defect or loss of the several senses, idiocy and the deformity and infirmity of the physical organization. They shall, besides their own observation, avail themselves of correspondence and exchange of facts of the labors of others in these departments, and thus be able to afford the General Assembly data to guide them in future legislation for the amelioration of the condition of the people, as well as to contribute to enlighten public opinion and direct it to interests so vital to the prosperity of the State.

Visits and reports.—1868-'9, c. 170, s. 5.

5. Personal visits may be required by the board, of one or more of its members, or otherwise, to make careful investigation into the condition of the several county jails and alms-houses, and the treatment of their unfortunate inmates, and report on these points, so that the provisions of section six, article eleven, of the Constitution may be enforced.

Insane persons.—1868-'9, c. 170, s. 6.

6. Whenever the board shall have reason to believe that any insane person, not incurable, is deprived of proper remedial treatment, and is confined in any alms-house or other place, whether such insane person is a public charge or otherwise, it shall be the duty of said board to cause such insane person to be conveyed to the State Asylum, there to receive the best medical attention. So also, it shall be their care that all the unfortunate shall participate in the charities of the State.

May require reports, &c.—1868-'9, c. 170, s. 7.

7. The board may require the superintendent, &c., of the several charitable and penal institutions of the State to report to them of any matter relating to its inmates, their manner of instruction and treatment, with structure of their buildings, and to furnish them any desired statistics at their command.

8. The board of public charities shall annually prepare and submit to the General Assembly a complete and full report of their doings during the preceding year, showing the actual condition of all the State institutions under their control, with such suggestions as they may deem necessary and pertinent, which they shall print.

Annual reports to be made by board.—1868-'9, c. 170, s. 8.

9. The commissioners of each county in this State shall in each year on or before the first Monday in November, report to the board of public charities such information in regard to the number and condition of the inmates of their poorhouse and prisons, together with the number of outdoor paupers, and the deaf, dumb, blind, idiotic and insane of their county not in asylum or almshouse, and such other information as may be desirable to get a complete view of the number and condition of these classes of persons in the State. The board of public charities shall prepare and furnish to the commissioners of each county carefully arranged circulars indicating the information desired, the blank column of which shall be correctly filled in the report.

County commissioners to report to board. Board to furnish circulars, &c.—1869-'70, c. 154, s. 1.

10. It shall be lawful for the commissioners of each county in aid of this purpose to require the trustees of each township in their county to prepare and furnish information to them of all the facts called for in the circular of the board of public charities.

County commissioners to require reports from trustees of townships.—1869-'70, c. 154, s. 2.

11. The commissioners of any county or the trustees of any township who shall refuse or neglect to furnish the information required by this chapter when they have been provided with the necessary blank forms for paupers, shall, on complaint being made before any judge of the Superior court, be fined a sum not exceeding one hundred dollars.

Penalty for refusing.—1869-'70, c. 154, s. 3.

CHAPTER 94.

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 to be executed, &c. Coupons of interest attached. Money where paya-

SECTION

- ble. No bond less than \$1,000 to issue; or be sold under par.
4. A memorandum of State bonds, with numbers, &c., to be kept.
5. What State bonds exempt from tax.
6. 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 one thousand eight hundred and forty-six, entitled

All bonds and certificates of debt issued by State to be

registered.—
R. C., c. 90, s.
1.

"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, one thousand eight 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 one thousand eight 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 one thousand eight 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 one thousand eight 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 year one thousand eight 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 trans-
fer.—R. C., c.
90, s. 2.

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 man-
ner State
bonds shall be
executed, &c.
Coupons of
interest at-
tached. Mon-
ey, where pay-
able. No
bonds under
1,000 to issue;
or be sold un-

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.

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.

5. The original bonds or certificates of debt of the State, which have been issued since the first day of January, one thousand eight 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. 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.

der par. — R.
C., c. 90, s. 3.

A memorandum of State bonds with numbers, &c., to be kept.—R. C., c. 90, s. 4.

What State bonds exempt from taxation.—R. C., c. 90, s. 5.

Title of the act, or date and chapter to be recited in the bond.—R. C., c. 90, s. 7.

CHAPTER 95.

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 Court

Public documents of federal government, how distributed.—R. C., c. 91, s. 1.

in each county, for the use of the courts; one copy to every judge of the Supreme Court, and the Superior Courts; one to the Attorney General; one to each solicitor; one in each of the offices of Governor, Secretary of State, Treasurer and Auditor; 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.

Secretary to furnish documents to New York Historical Society.—R. C., c. 91, s. 2.

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.

Library of documents established.—R. C., c. 91, s. 3.

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 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 96.

PUBLIC LIBRARIES.

SECTION

1. Librarian to be appointed. Salary.
2. Library hours. Libraries of Senate and House of Representatives.
3. Appointment of trustees of Supreme Court Library. Governor and one Judge a quorum. Clerk of Supreme Court to have charge of court library. Remuneration.
4. Five hundred dollars appropriated to library.
5. License tax to be applied to library of Supreme Court.
6. Governor, Superintendent of Public Instruction, and Secretary of State

SECTION

- made trustees for public libraries, State papers, &c. Two trustees a quorum.
7. Governor to designate documents to be preserved and bound. What books to be bound and labelled.
8. Penalty for injuring books.
9. State librarian to be librarian of Senate and House of Representatives.
10. Records, documents, &c., where to be kept.
11. State librarian to furnish libraries with documents, &c.

Librarian to be biennially appointed. Salary.—1870-'71, c. 70, s. 1.

1. A librarian shall be biennially elected by the joint vote of the two houses of the General Assembly at a salary not exceeding five hundred dollars a year, who shall give bond with security in such sum as the Governor may determine, payable to the State, of North Carolina, conditioned for the safe keeping of the books and the faithful discharge of his duties, and shall hold his place until his successor shall be elected and

qualified; *Provided, however*, that in case the office of librarian shall become vacant otherwise than by the expiration of the term, the governor is authorized to appoint some suitable person to discharge the duties thereof until the next succeeding session of the General Assembly.

2. The library shall be kept open on all days, Sundays and holidays excepted, from nine A. M. to twelve M., except during the sitting of the General Assembly and terms of the Supreme Court, when the library shall be kept open in addition to the above stated time, from two P. M. until five P. M.; that the librarian shall also keep the libraries in the Senate chamber and House of Representatives locked except during the sessions of the General Assembly.

Library hours.
Libraries of
Senate and
House of Rep-
resentatives.
—1870-'1, c.
70, s. 2.

3. The Governor and judges of the Supreme Court and their respective successors in office are appointed trustees of the Supreme Court library, and all moneys appropriated for its increase shall be laid out under their direction and supervision. The judges or a majority thereof, or the Governor and one of the judges shall constitute a quorum. (The clerk of the Supreme Court shall have charge of the court library and be responsible for the same under such rules and regulations, and entitled to such remuneration as the trustees may prescribe to be paid from the funds appropriated to said library.

Appointment
of the trustees
of the Su-
preme Court
library.
Governor and
one Judge
constitute a
quorum.
Clerk of Su-
preme Court
to have charge
of court Libra-
ry. Remuner-
ation.—1871-
'2, c. 169, s. 1.
\$500 yearly
appropriated
to library.—R.
C., c. 92, s. 1.
License tax to
be applied to
library of Su-
preme Court.
—Res. of 1872
-'3.

4. The sum of five hundred dollars is annually appropriated for the increase of the public library of the State.

5. The clerk of the Supreme Court of this State, under the direction of the judges of said court, is authorized, empowered and directed to expend annually the amount paid in by applicants for license to practice law, who are examined by the court, in the purchase of such law books as may be necessary to keep the Supreme Court library well appointed, and no other appropriation shall be allowed for that purpose.

6. The Governor, Superintendent of Public Instruction and Secretary of State, and their respective successors in office, are appointed trustees of the public libraries, documents and all books, papers and manuscripts belonging to the State of North Carolina; and under their directions all moneys appropriated shall be expended, whether to the increase of the library or other purposes, except the salary of the librarian, which shall be the same as specified in section one of this chapter. Any two of the trustees may constitute a quorum for the purpose of transacting any business; and the board of trustees shall make rules and regulations by which the librarian shall be governed for the protection and preservation of the books and library.

Governor, Su-
perintendent
of Instruction
and Sec. State
made trustees
for the public
libraries, State
papers, &c.,
of the State.
Two trustees
may constitute
a quorum.—
1871-'2, c. 169,
s. 3.

7. 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

Governor to
designate docu-
ments to be
preserved and
bound.
What books
to be bound

and labeled.--
R. C., c. 92, s.
4.

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.

Penalty for in-
juring books.
—R. C., c. 92,
s. 5.

8. 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.

State librarian
to be librarian
of Senate and
House of Rep-
resentatives.--
1858-'9, c. 41,
s. 1.

9. The State librarian shall be the librarian of the Senate and House of Representatives, and he shall collect and arrange in the archives of the Senate and House of Representatives all the records and papers belonging thereto, wherever they may be found. He shall also collect and have bound, or otherwise suitably preserved for the library of the Senate and House of Representatives, such acts of our General Assembly, reports and documents to the number of three copies each, at least, together with such reports and documents as are or may hereafter be printed by the several internal improvement companies, and other companies or associations within the State; and also such reports, documents and papers as have been printed by the federal government and the States and Territories of the Union, as may be proper to place therein, and which have not already been obtained, under the act of the year one thousand eight hundred and fifty-four, establishing a library of documents.

Records, doc-
uments, &c.,
where to be
kept.—1858-
'9, c. 41, s. 2.

10. For the better preservation of the records, documents and other papers by this chapter authorized to be collected, the State librarian shall cause to be erected in the offices of the clerk of the Senate and the House of Representatives and in the ante and committee rooms adjoining the chambers of the Senate and House of Representatives, such cases and shelves as will protect the same, and procure such furniture therefor as is necessary for the accommodation of persons using said libraries.

Librarian to
furnish libra-
ries with doc-
uments, &c.—
1858-'9, c. 41,
s. 3.

11. The State librarian is hereby directed to furnish the libraries of the Senate and House of Representatives with such documents, reports and other publications as are required by this chapter to be collected for the use thereof, and which may be in the State library or in the libraries of any of the departments: *Provided*, the same can be done without diminishing the number necessary, in his opinion, or the opinion of the heads of the

departments from which the same are taken, to be kept in each respectively ; and the documents now required by law to be furnished to the libraries of the Senate and House of Representatives, shall be arranged and bound under the direction of the librarian thereof.

NOTE.—From the decisions of the Supreme Court in the case of the *People, &c., vs. McKee, et. al.*, 68 N. C. Rep., 429; *People, &c., vs. Bledsoe et al.*, Ibid 457, and *People, &c., vs. McGowan*, Ibid, 520, it appears that the General Assembly has no right to elect the librarian, but he must be appointed by the Governor, with the advice and consent of the Senate, when that body is in session, and by the Governor alone in the recess.

CHAPTER 97.

PUBLIC PRINTING.

SECTION

1. Contract for public printing. Rates of printing.
2. Bond given with security.
3. How charges to be made. Qualification of printers. Proviso.
4. Accounts not audited until examined. Violation of this section a misdemeanor.
5. Contracting party to have binding done.
6. Requirements of public printer.
7. Paper furnished by Secretary of State.
8. Secretary of State to furnish copies of acts.
9. Duty of principal clerks.
10. Clerks to send Journals to Secretary.
11. Duty of printer.
12. Further duty of printer.
13. Public and private laws to be marked by Secretary.

SECTION

14. Public and private laws bound in one volume.
15. Number of copies to be printed. Who to receive copies.
16. How bound.
17. Number of journals to be printed.
18. Number of documents to be printed.
19. Printing to be done speedily.
20. When laws to be furnished.
21. Secretary of State to transmit copies, &c.
22. Sec. of State to deliver copies, &c.
23. Secretary to sell residue of laws.
24. To sell other matter.
25. In what manner bills to be printed.
26. Justices' names to be recorded by Secretary of State. Clerks of courts to furnish lists of justices.
27. Blank forms to be printed for offices of Governor, Treasurer, &c.
28. Compensation for transcribing journals.

1. THE joint committee on printing are directed and instructed, on the part of the State of North Carolina, to make, execute and deliver a contract for the public printing at the following rates: For every one thousand ems of plain work, eighty cents; for every one thousand ems of rule and figure work, one dollar and sixty cents. For every token of two hundred and forty impressions, fifty cents, and for all other work ordered by the State, the usual customary rates charged by

Contract for public printing. Rates of printing.—1871-'2, c. 180, s. 1.—1870-'1, c. 2.—1872-'3, c. 8.

printers for such work, to be approved by the auditing committee herein provided for, in section three of this chapter.

Bond given with security.
—1871-'2, c. 180, s. 2.

2. The party to whom said committee may award the public printing, shall give bond with approved security, payable to the State of North Carolina, in the sum of five thousand dollars, conditioned for the faithful performance of his duties and undertakings under the contract and under the provisions of this chapter, the surety or sureties herein required shall justify before some person authorized to administer oaths.

How charges to be made.
Qualification of printers.—
1871-'2, c. 180, s. 3.

3. Each bill against the State for printing shall be charged by the "quad em" and token, and shall be approved by two practical printers of integrity entirely disinterested in the matter, who shall be selected one by the Auditor and the other by the public printer. Said practical printers so chosen, shall, before entering upon any examination by this section required, qualify before some magistrate to impartially examine said printing and determine both the manner of its execution and the correctness of the account rendered for the same: *Provided, however,* that such practical printers shall not be called on to examine any printing or to determine the correctness of any account until the accounts rendered amount in the aggregate to one hundred dollars or more, except upon the final settlement of the public printer's accounts against the State.

Proviso.

Accounts not audited until examined.
Violation of this section a misdemeanor.
1871-'2, c. 180, s. 4.

4. That no account rendered for public printing under the contract herein directed to be made, shall be audited until the work charged for shall have been examined and the account shall have been approved by two practical printers, as provided in the preceding section, who shall certify that the workmanship of said printing is properly executed and the accounts for the same are just and accurate. Any violation of this section shall be a misdemeanor, and the Auditor on conviction thereof shall be fined and imprisoned at the discretion of the court.

Contracting party to have binding done.
—1871-'2, c. 180, s. 5.

5. The party contracting to do the public printing shall also undertake and agree to cause all necessary binding for the State to be done at usual and customary rates for the kind and quality of work. But accounts for binding must be approved by the Auditor, who may in his discretion call on two disinterested printers or binders to examine the work and under oath to certify to the justness and accuracy of the accounts.

Requirements of public printer.—1871-'2, c. 180, s. 6.

6. The public printer shall execute the public printing in such manner as is hereinafter prescribed; and shall furnish the number of copies of each piece of work required by existing law.

Paper furnished by Sec. of State.—1871-'2, c. 180, s. 7.

7. It shall be the duty of the Secretary of State to furnish the public printer, on his requisition and receipt for the same, such printing paper as may be necessary in executing the public printing.

Secretary to furnish copies of acts.—1872-'3, c. 45, s. 1.

8. It shall be the duty of the Secretary of State, immediately upon the receipt of any ratified act or resolution, to copy or cause the same to be copied forthwith, and affix thereto the usual marginal notes, to the end that the copy may be held in

readiness for the public printer, and shall be delivered to him or his agent when demanded.

9. It shall be the duty of the principal clerks of the two houses of the General Assembly to hasten the preparation of their journals for the public printer, so that in no case at any time shall the journal of either house of any one day's proceedings remain unprepared for the printer by the clerk for a longer period than six days after its approval.

Duty of principal clerks.—
1872-'3, c. 45,
s. 2.

10. The clerks aforesaid shall, immediately after the preparation aforesaid of any and every day's proceedings of their respective houses, send the same to the office of the Secretary of State.

Clerks to send journals to secretary.—
1872-'3, c. 45,
s. 3.

11. It shall be the duty of the printer aforesaid, in person or by agent, to call on the Secretary of State or his chief clerk at the office of said secretary daily, within office hours, during each and every session of the General Assembly, and apply for certified copies of the acts and resolutions of said Assembly, and for such proceedings of the two houses as have been filed by the clerks aforesaid in the office of said secretary. And these applications shall be continued daily by the public printer until all of the acts, resolutions and proceedings aforesaid of the session have been received by him.

Duty of printer.—1872-'3,
c. 45, s. 4.

12. It shall further be the duty of the public printer at all times immediately upon receiving from the Secretary of State a sufficient quantity of the acts, resolutions or proceedings aforesaid in manuscript to make sixteen pages of printed matter, to cause the same to be printed forthwith in such numbers as are prescribed in this chapter, and at once send them to the binder.

Further duty of printer.—
1872-'3, c. 45,
s. 5.

13. The Secretary of State shall determine which are public and which are private laws and resolutions, and it shall be his duty at the time of making marginal notes aforesaid to mark on the upper right hand corner of each act and resolution the word "public" or "private," and bills thus marked shall not be mixed by the printer in making up a form.

Public and private laws to be marked by Secretary.—
1872-'3, c. 45,
s. 6.

14. The public and private laws shall be bound in the same volume.

Public and private bound in one volume.—
1872-'3, c. 45,
s. 7.

15. Of the public and private laws the printer aforesaid shall print two thousand seven hundred copies, to be distributed as follows: One copy each to the Governor, Lieutenant Governor, Treasurer, Secretary of State, Auditor, Superintendent of Public Instruction, of the insane asylum, of the deaf and dumb asylum, of the penitentiary, Attorney General, each Superior Court clerk, each register of deeds, and each county commissioner for their respective offices, and each Senator, Representative, principal, assistant, engrossing and enrolling clerk, and to each justice of the peace and each of the Supreme and Superior Court judges, to the State library ten copies, to the Senate library sixteen copies, to the House library eighteen copies, to each State in the Union two copies.

Number of copies to be printed. Who to receive copies.—1872-'3, c. 45, s. 8.

16. Of the volumes to be printed under the preceding sec-

How bound.—

1872-'3, c. 45,
s. 9.

Number of
journals to be
printed.—1872
'3, c. 45, s. 10.

Number of
documents to
be printed.—
1872-'3, c. 45,
s. 11.

Printing to be
done speedily.
—1872-'3, c.
45, s. 12.

When laws to
be finished.—
1872-'3, c. 45,
s. 13.

Secretary of
State to trans-
mit copies,
&c.—1872-'3,
c. 45, s. 14.

Secretary of
State to deliv-
er copies, &c.
—1872-'3, c.
45, s. 15.

Secretary to
sell residue of
laws.—1872-'3,
c. 45, s. 16.

tion, one thousand shall be bound in full sheep and seventeen hundred in half sheep. The latter shall be for distribution among justices of the peace and county commissioners.

17. Of the Senate and House journals, of each of these there shall be printed three hundred copies bound in full sheep, to be distributed as follows: One each to the Governor, Lieutenant Governor, each Senator, Representative, principal, assistant, engrossing and enrolling clerk, and one to each Superior Court clerk; to the State library ten copies, to the Senate library eight copies, to the House library ten copies.

18. Of the public documents there shall be printed of each five hundred and thirty-five copies, seventy of which, stitched when necessary, shall be delivered to the clerk of the Senate as soon as printed for the use of the Senate, and one hundred and fifty to the clerk of the House, and the residue of said copies, three hundred and fifteen, shall be bound in volumes in full sheep and distributed as follows: To the Governor, Lieutenant Governor, Treasurer, Secretary of State, Auditor, Superintendent of Public Instruction, of the insane asylum, of the deaf and dumb asylum, of the penitentiary, attorney general, and each clerk of the Superior Courts, one each to their respective offices, and to each Representative and Senator, and each judge of the Supreme and Superior Courts one copy each; to the State library ten copies, to the Senate library six copies, to the House library eight copies.

19. It shall be the duty of the public printer to have the laws, documents and journals printed and bound with the utmost expedition, giving precedence to the laws, as far as may be, delivering to the Secretary of State each day such copies as the binders may have finished.

20. It shall further be the duty of the printer aforesaid to have all the copies of the laws, documents and journals printed and bound (which are to be bound under the provisions of this chapter) and delivered to the Secretary of State within *forty days* after the final adjournment of any session of the General Assembly, and for failure to do so the Auditor of State shall deduct from the account of said printer the sum of fifty dollars for each and every day's delay.

21. It shall be the duty of the Secretary of State, immediately upon the receipt of the first copies of the laws, (bound) to transmit the same by mail, at once, one each to the judges of the Supreme Court, and to the judges and clerks of the Superior Courts.

22. The residue of the laws, documents and journals, as soon as they are delivered to the Secretary of State, shall be transmitted and distributed by him according to the provisions of this chapter, by express or otherwise, as he may deem best.

23. Of such laws as may be printed under the provisions of this chapter in excess of the number ordered for distribution, the Secretary of State may sell at such price as he may deem

right, paying proceeds into the treasury, and in his annual report give an account of number sold and number on hand.

24. Annually, during the first week in July in each and every year, after advertisement in one or two newspapers for one month, the Secretary of State shall sell at public auction such volumes of the laws, documents and journals and other matter and worthless manuscript as may have been on hand for one year; report to be made and sales accounted for as other sales in section twenty-three of this chapter.

To sell other matter.—1872-3, c. 45, s. 17.

25. 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.

Bills, &c., in what manner printed.—R. C., c. 93, s. 3.

26. 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 Superior Courts shall, on the third Monday of November, one thousand eight hundred and seventy-four, 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.

Justices' names to be recorded by Sec. of State. Clerks of courts to furnish list of justices.—R. C., c. 93, s. 9.

27. The Governor, Secretary of State, Treasurer, Auditor 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 Auditor.

Blank forms to be printed for offices of Governor, Treasurer, &c.—R. C., c. 93, s. 10.

28. The principal clerks of the two houses of the General Assembly shall be allowed one hundred dollars each for transcribing a copy of their respective journals, to be filed in the office of the Secretary of State.

Compensation for transcribing journals.—1866-'7, c. 71, s. 2.

CHAPTER 98.

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 masters 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.
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.

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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 comm'rs. and comm'ers of towns.
19. Proviso to the foregoing sections.
20. Quarantine station established at mouth of Cape Fear River.
21. Governor to designate medical quarantine officer. Quarantine officer to advertise regulations. To make monthly report of receipts and disbursements.
22. To be furnished with boat. To employ crew, &c.
23. Hospital to be established.
24. Every vessel to pay a fee of five dollars. Fee of patient. Vessel liable for fee. What vessels subject to inspection.
25. Pilots to bring vessels to visiting station. Penalty for violation of law by pilots.
26. By master of vessel.
27. Further penalties. One half to informer.
28. Quarantine officer may issue warrant for arrest.
29. Compensation of officer. Of crew.
30. Sum of \$4,000 appropriated for buildings and boat. How to be expended.

Quarantine, when and by whom directed. Master and pilots to report health of vessel. Duty of those ordered to perform quarantine. Penalties on masters and pilots, failing in duty.—R. C., c. 94, s. 1.

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 sea-port 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.

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 commissioners 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;

Vessels coming from infected place, to anchor at quarantine ground. Coming into port without permission, master or pilot indictable.--R. C., c. 94, s. 2.

and upon conviction shall be fined not less than one thousand dollars, and imprisoned not exceeding one year.

Such vessel to be removed.—R. C., c. 94, s. 3.

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.

Port physicians appointed.—R. C., c. 94, s. 4.

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.

Penalty on passengers or crew breaking quarantine.—R. C., c. 94, s. 5.

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 justice 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.

On persons going on board without leave, and on master permitting it. Such person to remain on board.—R. C., c. 94, s. 6.

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.

Person breaking quarantine arrested and sent back.—R. C., c. 94, s. 7.

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.

Penalty for

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 mentined, 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 of 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 such by-laws, by imposing such penalties as they may think proper.

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

landing any articles.—R. C., c. 94, s. 8.

Affidavit of health required of master. Penalty for false statement.—R. C., c. 94, s. 9.

Provisions furnished vessels, &c.—R. C., c. 94, s. 10.

Penalties, how recovered and applied.—R. C., c. 94, s. 11.

Penalty on pilots, bringing in vessels without certificate.—R. C., c. 94, s. 12.

Commissioners of navigation may appoint harbor master and health officer, and enact by-laws, &c.—R. C., c. 94, s. 13.

Of seaport towns where no com'r of nav., to have like authority.—R. C., c. 94, s. 14.

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. C., c. 94, 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. Penalty for neglect. Com'rs may abate nuisance at owner's expense.—R. C., c. 94, s. 16.

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.

Officers of police, to provide against introduction of contagious diseases.—R. C., c. 94, 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.

Hospitals es-

18. The county commissioners 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 commissioners, 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.

established by county commissioners and commissioners of towns.—R. C., c. 94, s. 18.

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. C., c. 94, s. 19.

20. For the preservation of the public health, there shall be established opposite Deep Water Point, near the mouth of the Cape Fear River, a quarantine station, where all vessels subject to quarantine shall be brought to anchor, and await the inspection of the medical officer, and be subject to such rules and regulations as he may prescribe.

Quarantine station established at mouth of Cape Fear river.—1868, c. 33, s. 1.

21. It shall be the duty of the Governor to designate some physician of experience, who shall act as medical quarantine officer for the above station, and who shall prescribe such regulations as may be necessary for the protection of the inhabitants from infectious diseases, and all persons shall be bound by such regulations, under penalties to be hereafter designated. The quarantine officer shall duly advertise all quarantine regulations, and cause the pilots to be especially notified of them. He shall make a monthly report of all receipts and disbursements, and shall pay over all moneys to the Treasurer of the State, and shall be removable at the pleasure of the Governor.

Governor to designate medical quarantine officer. Quarantine officer to advertise regulations. To make monthly report of receipts and disbursements.—1868, c. 33, s. 2.

22. There shall be provided for the use of the quarantine officer, a suitable boat furnished with all necessary materials, and he shall employ a crew of four men, at such seasons as quarantine regulations are in force, or when the public health may require it. He shall cause the boat to be kept in repair and always ready for service, and may employ some competent person for the service; which shall be paid for out of the public treasury, on the certificate of the medical officer, that the services were necessary and the charges just and reasonable.

To be furnished with boat. To employ crew, &c.—1868, c. 33, s. 3.

23. There shall be established at the nearest convenient station upon the shore, a hospital sufficient for the accommodation of such sick persons as the quarantine medical officer may direct to be removed from vessels for better nursing and attendance, and the medical officer shall employ such attendants as may be necessary to take care of the sick, and may purchase such articles of food as they may require.

Hospital to be established.—1868, c. 33, s. 4.

24. Every vessel subject to visit and inspection shall pay a fee of five dollars, which shall be collected and accounted for by the medical officer, and every sick person taken to the hospital shall pay a fee not exceeding three dollars per day, until discharged by the medical officer, for the payment of which the

Every vessel to pay a fee of five dollars. Fee of patient. Vessel liable for fee.

What vessels subject to inspection.—1868, c. 33, s. 5.

vessel shall be responsible, and only such vessel shall be subject to visit and inspection as may be from posts designated, from time to time, by the medical officer, except that all vessels having sickness on board shall be brought to the visiting station for examination.

Pilots to bring vessels to visiting station. Penalty for violation of law by pilots.—1868, c. 33, s. 6.

25. It shall be the duty of all pilots to bring vessels to the visiting station, as they may be required from time to time by the quarantine officer, and they shall not take any vessel subject to quarantine or visitation, past the station, until released by the quarantine officer, and any pilot who shall wilfully violate any quarantine regulation shall forfeit his branch or commission, and from thence be deemed incapable to act as a pilot in any port in the State.

By master of vessel.—1868, c. 33, s. 7.

26. Any master of a vessel who shall refuse to obey the quarantine regulations shall forfeit and pay a fine of two hundred dollars for each day he shall refuse to obey the same, for which forfeiture the property of the captain, together with the vessel and cargo, shall be held responsible.

Further penalties. One-half to informer.—1868, c. 33, s. 8.

27. Any person who shall violate the quarantine regulations, as prescribed from time to time, by the medical officers, shall forfeit and pay the sum of two hundred dollars for each and every offence; and all penalties and forfeitures imposed by any of the provisions of this chapter, may be recovered before any jurisdiction having cognizance of the sum due and applied, one-half to the informer, the other half to the payment of the expenses of the quarantine establishment.

Quarantine officer may issue warrant for arrest.—1868, c. 33, s. 9.

28. The quarantine medical officer may issue a warrant to any sheriff or other officer, commanding him to arrest the body of any person violating the quarantine, and have him without delay before some competent jurisdiction for trial.

Compensation of officer. Or crew.—1868, c. 33, s. 10.

29. The compensation of the quarantine medical officer shall be six hundred dollars per year, and the compensation of the boat's crew shall be twenty dollars per month each, while regularly employed, provided that one of the crew may be designated by the quarantine officer, to take care of the buildings, boats and materials at an extra compensation of ten dollars per month while so employed.

Sum of \$4,000 appropriated for buildings and boat. How to be expended.—1868, c. 33, s. 11.

30. For the purchase of a site and for the erection of suitable hospital buildings, and for a boat and necessary materials and expenses for quarantine service, the sum of four thousand dollars is, and the same is hereby appropriated from any moneys in the public treasury not otherwise appropriated, to be expended under the direction of the quarantine officer and a commissioner to be appointed by the Governor: *Provided*, That the said commissioner shall receive no compensation for his services.

CHAPTER 99.

RAILROAD COMPANIES.

SECTION

1. Rules for forming railroad companies. Name of company. Route of railroad. Capital stock. Names and residences of directors. Articles to be filed in the office of Secretary of State. When declared a corporation.
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3. Presumptive evidence.
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5. President and directors. Term of office. Vote by shares. Vacancies. Qualification of officers. Title acquired. When a corporation.
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9. Insufficiency of stock to be increased. Meeting of stockholders. Time, place and object of meeting to be publicly notified.
10. Liabilities of stockholders. Execution against stockholders.
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14. Petition presented. Character of petition. Names and places of residence to be given. Copy of petition must be sent to Superior Court.
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 - (6.) Duty of court to appoint guardian for persons of unsound mind. Security required.

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- (7.) Cases not provided for must be directed by Superior Court.
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 - (4.) Grade of road.
 - (5.) Obstructions not allowable.
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34. Ejectment of passengers who violate rules of corporation.
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39. Injuries to railroads a misdemeanor.
40. Suit may be brought.
41. Chart of railroad to be made and filed.
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Rules for forming railroad companies. Name of company. Route of railroad. Capital stock. Names and residences of directors. Articles to be filed in the office Sec. State. When declared a corpora-

1. ANY number of persons, not less than twenty five, may form a company for the purpose of constructing, maintaining and operating a railroad for public use in the conveyance of persons and property, or for the purpose of maintaining and operating any unincorporated railroad already constructed for the like public use ; and for that purpose may make and sign articles of association, in which shall be stated the name of the company, the number of years the same is to continue, the places from and to which the road is constructed or maintained and operated, the length of such road as near as may be, and the name of each county in this State through or into which it

is made or intended to be made, the amount of the capital stock of the company, which shall not be less than five thousand dollars for every mile of road constructed or proposed to be constructed, and the number of shares of which said capital stock shall consist, and the names and places of residence of six directors of the company, who shall manage its affairs for the first year, and until others are chosen in their places. Each subscriber to such articles of association shall subscribe thereto his name, place of residence, and the number of shares of stock he agrees to take in said company. On compliance with the provisions of the next section, such articles of association may be filed in the office of the Secretary of State, who shall indorse thereon the day they are filed, and record the same in a book to be provided by him for that purpose: and thereupon the persons who have so subscribed such articles of association, and all persons who shall become stockholders in such company, shall be a corporation by the name specified in such articles of association, and shall possess the powers and privileges granted to corporations by this chapter.

tion.—1871-'2,
c. 138, s. 1.

2. Such articles of association shall not be filed and recorded in the office of the Secretary of State until at least one thousand dollars of stock for every mile of railroad proposed to be made is subscribed thereto, and five per cent. paid thereon in good faith, and in cash, to the directors named in said articles of association; nor until there is indorsed thereon or annexed thereto an affidavit made by at least three of the directors named in said articles, that the amount of stock required by this section has been in good faith subscribed and five per cent. paid in cash thereon as aforesaid, and that it is intended in good faith to construct or to maintain and operate the road mentioned in such articles of association, which affidavit shall be recorded with the articles of association, as aforesaid.

Stock must be subscribed before articles are filed. Affidavit made by directors.—1871-'2, c. 138, s. 2.

3. A copy of any articles of association filed and recorded in pursuance with this chapter or of the record thereof with a copy of the affidavit aforesaid indorsed thereon or annexed thereto, and certified to be a copy by the Secretary of this State or his deputy, shall be presumptive evidence of the incorporation of such company, and of the facts therein stated.

Presumptive evidence.—1871-'2, c. 138, s. 3.

4. When such articles of association and affidavit are filed and recorded in the office of the Secretary of State, the directors named in said articles of association may, in case the whole of the capital stock is not before subscribed, open books of subscription to fill up the capital stock of the company in such places and after giving such notice as they may deem expedient, and may continue to receive subscriptions until the whole of the capital stock is subscribed; the time for subscribing, every subscriber shall pay to the directors five per cent. on the amount subscribed by him in money, and no subscription shall be received or taken without such payment.

Directors' to open books of subscription.—1871-'2, c. 138, s. 4.

5. There shall be a board of six directors and a president of every corporation formed under this chapter to manage its af-

President and directors.

Term of office.
Vote by
shares. Va-
cancies.
Qualification
of officers.
Title acquired.
When a cor-
poration—
1871-'2, c. 138,
s. 5.

fares; and said directors and president shall be chosen annually by a majority of the votes of the stockholders voting at such election, in such manner as may be prescribed in the by-laws of the corporation, and they may and shall continue in office until others are elected in their places. In the election of directors and president each stockholder shall be entitled to one vote personally or by proxy on every share held by him thirty days previous to any such election; and vacancies in the board of directors shall be filled in such manner as shall be prescribed by the by-laws of the corporation. The inspectors of the first election of directors shall be appointed by the board of directors named in the articles of association. No person shall be a director or president unless he shall be a stockholder owning stock absolutely in his own right and qualified to vote for directors at the election at which he shall be chosen; and at every election of directors the books and papers of such company shall be exhibited to the meeting if a majority of the stockholders present shall require it. And whenever the purchaser or purchasers of the real estate, track and fixtures of any railroad corporation which has heretofore been sold or may be hereafter sold by virtue of any mortgage executed by such corporation or execution issued upon any judgment or decree of any court shall acquire title to the same in the manner prescribed by law, such purchaser or purchasers may associate with him and them any number of persons, and make and acknowledge and file articles of association as prescribed in this chapter; such purchaser or purchasers and their associates shall thereupon be a corporation with all the powers, privileges and franchises, and be subject to all the provisions of said chapter.

Officers ap-
pointed by the
president, &c.
—1871-'2, c.
138, s. 6.
Payment by
installments.
Stock forfeit-
ed.—1871-'2,
c. 138, s. 7.

6. The president and directors shall appoint a treasurer and secretary and such other officers and agents as shall be prescribed by the by-laws.

7. The directors may require the subscribers to the capital stock of the company to pay the amount by them respectively subscribed in such manner and in such installments as they may deem proper. If any stockholder shall neglect to pay any installment as required by a resolution of the board of directors, the said board shall be authorized to declare his stock and all previous payments thereon forfeited for the use of the company, but they shall not declare it so forfeited until they shall have caused a notice in writing to be served on him personally, or by depositing the same in the postoffice, properly directed to him at the postoffice nearest his usual place of residence, stating that he is required to make such payment at the time and place specified in said notice, and that if he fails to make the same, his stock and all previous payments thereon will be forfeited for the use of the company, which notice shall be served as aforesaid at least sixty days previous to the day on which payment is required to be made.

8. The stock of every company formed under this chapter shall

Stock to be
personal es-

be deemed personal estate and shall be transferable in the manner prescribed by the by-laws of the company.

9. In case the capital stock of any company formed under this chapter is found to be insufficient for constructing and operating its road, such company may with the concurrence of two-thirds in amount of all its stockholders, increase its capital stock from time to time to any amount required for the purposes aforesaid. Such increase must be sanctioned by a vote in person or by proxy of two-thirds in amount of all the stockholders of the company, at a meeting of such stockholders called by the directors of the company for that purpose, by a notice in writing to each stockholder, to be served on him personally or by depositing the same, properly folded and directed to him, at the post office nearest his usual place of residence, in the post office at least twenty days prior to such meeting. Such notice must state the time and place of the meeting and its object and the amount to which it is proposed to increase the capital stock. The proceedings of such meeting must be entered on the minutes of the proceedings of the company, and thereupon the capital stock of the company may be increased to the amount sanctioned by a vote of two-thirds in amount of all the stockholders of the company as aforesaid.

10. Each stockholder of any company formed under this chapter shall be individually liable to the creditors of such company, to an amount equal to the amount unpaid on the stock held by him, for all the debts and liabilities of such company until the whole amount of the capital stock so held by him shall have been paid to the company, and all the stockholders of any such company shall be jointly and severally liable for the debts due or owing to any of its laborers and servants, other than contractors, for personal services for thirty days' service performed for such company, but shall not be liable to an action therefor before an execution shall be returned unsatisfied in whole or in part against the corporation, and the amount due on such executions shall be the amount recoverable with costs against such stockholders; before such laborer or servant shall charge such stockholder for such thirty days' services he shall give him notice in writing within twenty days after the performance of such service that he intends so to hold him liable and shall commence such action therefor within thirty days after the return of such execution unsatisfied as above mentioned; and every such stockholder, against whom any such recovery by such laborer or servant shall have been had, shall have a right to recover the same of the other stockholders in said corporation in ratable proportion to the amount of the stock they shall respectively hold with himself.

11. No person holding stock in any such company as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholders of such company; but the person pledging such stock shall be considered as holding the same,

tate.—1871-'2,
c. 138, s. 8.

Insufficiency
of stock to be
increased.
Meeting of
stockholders.
Time, place
and object of
meeting to be
publicly noti-
fied.—1871-'2,
c. 138, s. 9.

Liabilities of
stockholders.
Execution
against stock-
holders.—
1871-'2, c. 138,
s. 10.

Stockholders
liable for their
wards.—1871-
'2, c. 138, s.
11.

and shall be liable as a stockholder accordingly; and the estates and funds in the hands of such executor, administrator, guardian or trustee, shall be liable in like manner and to the same extent as the testator or intestate or the ward or person interested in such trust fund would have been if he had been living and competent to act and hold the same stock in his own name.

Indebtedness
to laborers.
Time specified
for action.—
1871-'2, c. 138,
s. 12.

12. As often as any contractor for the construction of any part of a railroad which is in progress of construction shall be indebted to any laborer for thirty or any less number of days' labor performed in constructing said road, such laborer may give notice of such indebtedness to said company in the manner herein provided, and said company shall thereupon become liable to pay such laborer the amount so due him for such labor, and an action may be maintained against said company therefor. Such notice shall be given by said laborer to said company within twenty days after the performance of the number of days' labor for which the claim is made. Such notice shall be in writing, and shall state the amount and number of days' labor, and the time when the same was performed, for which the claim is made, and the name of the contractor from whom due, and shall be signed by such laborer, or his attorney, and shall be served on an engineer, agent or superintendent employed by said company having charge of the section of the road on which such labor was performed, personally, or by leaving the same at the office or usual place of business of such engineer, agent or superintendent, with some person of suitable age. But no action shall be maintained against any company under the provisions of this section, unless the same is commenced within thirty days after notice is given to the company by such laborer as above provided.

Right to acquire title.—
1871-'2, c. 138,
s. 13.

13. In case any company formed under this chapter is unable to agree for the purchase of any real estate required for the purposes of its incorporation, it shall have the right to acquire title to the same in the manner and by the special proceedings prescribed in this chapter.

Petition presented.
Character of petition.
Names and places of residence to be given. Copy of petition must be sent to Superior Court.—1871-'2, c. 138, s. 14.

14. For the purpose of acquiring such title the said company may present a petition praying for the appointment of commissioners of appraisal to the Superior Court held in the county in which the real estate described in the petition is situated. Such petition shall be signed and verified according to the rules and practice of such court. It must contain a description of the real estate which the company seeks to acquire; and it must, in effect, state that the company is duly incorporated, and that it is the intention of the company in good faith to construct and finish a railroad from and to the places named for that purpose in its articles of association; that the whole capital stock of the company has been in good faith subscribed, as required by this chapter; that the company has surveyed the line or route of its proposed road, and made a map or survey thereof, by which such route or line is designated, and that they have located their said road according to such survey, and

filed such certificates of such location, signed by a majority of the directors of the company, in the clerk's office of the several counties through or into which the said road is to be constructed; that the land described in the petition is required for the purpose of constructing or operating the proposed road; and that the company has not been able to acquire title thereto, and the reason of such inability. The petition must also state the names and places of residence of the parties, so far as the same can by reasonable diligence be ascertained, who own or have, or claim to own or have, estates or interests in the said real estate; and if any such persons are infants, their ages, or as near as may be, must be stated; and if any such persons are idiots or persons of unsound mind or are unknown, that fact must be stated, together with such other allegations and statements of liens or incumbrances in said real estate as the company may see fit to make. A copy of such petition, with a notice of the time and place the same will be presented to the Superior Court, must be served on all persons whose interests are to be affected by the proceedings, at least ten days prior to the presentation of the same to the said court.

(1.) If the person on whom such service is to be made resides in this State, and is not an infant, idiot or person of unsound mind, service of a copy of such petition and notice must be made on him or his agent or attorney, authorized to contract for the sale of the real estate described in the petition, personally or by leaving the same at the usual place of residence of the person on whom service must be made as aforesaid, with some person of suitable age;

Persons residing in this State must have service personally.

(2.) If the person on whom such service is to be made resides out of the State, and has an agent residing in this State, authorized to contract for the sale of the real estate described in the petition, such service may be made on such agent or on such person personally, out of the State, or it may be made by publishing the notice, stating briefly the object of the application, and giving a description of the land to be taken, in the State paper and in a paper printed in the county in which the land to be taken is situated, once in each week for one month next previous to the presentation of the petition. And if the residence of such person residing out of this State, but in any of the United States or any of the British colonies in North America is known, or can by reasonable diligence be ascertained, the company must, in addition to such publication as aforesaid, deposit a copy of the petition and notice in the postoffice, properly folded and directed to such person at the postoffice nearest to his place of residence, at least thirty days before presenting such petition to the court, and pay the postage chargeable thereon in the United States;

Non-residents having agents. Public notice to be given.

(3.) If any person on whom such service is to be made is under the age of twenty-one years and resides in this State, such service shall be made as aforesaid, on his general guardian; or if he has no such guardian, then on such infant per-

Guardians notified for infants.

sonally, if he is over the age of fourteen years; and if under that age, then on the person who has the care of, or with whom such infant resides;

Respecting
idiots.

(4.) If the person on whom such service is to be made is an idiot or of unsound mind, and resides in this State, such service may be made on the committee of his person or estate; or if he has no such committee, then on the person who has the care and charge of such idiot or person of unsound mind.

Parties un-
known are
publicly noti-
fied by papers
in the State.

(5.) If the person on whom such service is to be made is unknown, or his residence is unknown and cannot by reasonable diligence be ascertained, then such service may be made under the direction of the court, by publishing a notice, stating the time and place the petition will be presented, the object thereof, with a description of the land to be affected by the proceedings, in the State paper and in a paper printed in the county where the land is situated, once in each week for one month previous to the presentation of such petition.

Duty of court
to appoint
guardian for
persons of un-
sound mind.
Security re-
quired.

(6.) In case any party to be affected by the proceedings is an infant, idiot, or of unsound mind, and has no general guardian or committee the court shall appoint a special guardian or committee to attend to the interests of such person in the proceedings, but if a general guardian or committee has been appointed for such person in this State, it shall be the duty of such general guardian or committee to attend to the interests of such infant, idiot, or person of unsound mind, and the court may require such security to be given by such general or special guardian or committee as it may deem necessary to protect the rights of such infant, idiot, or person of unsound mind, and all notices required to be served in the progress of the proceedings may be served on such general or special guardian or committee.

Cases not pro-
vided for must
be directed by
Superior
Court.

(7.) In all cases not herein otherwise provided for service of orders, notices, and other papers in the special proceedings authorized by this chapter, may be made as the Superior Court shall direct.

Allegations
made against
petition.
Freeholders
appointed to
appraise the
estate.—1871-
'2, c. 133, s.
15.

15. On presenting such petition to the Superior Court as aforesaid, with proof of service of a copy thereof and notice as aforesaid, all or any of the persons whose estates or interests are to be affected by the proceedings may show cause against granting the prayer of the petition and may disprove any of the facts alleged in it. The court shall hear the proofs and allegations of the parties and if no sufficient cause is shown against granting the prayer of the petition it shall make an order for the appointment of three disinterested and competent freeholders who reside in the county or some adjoining county where the premises are to be appraised, the compensation to be made to the owners or persons interested in the real estate proposed to be taken in such county for the purposes of the company, and to fix the time and place for the first meeting of the commissioners.

16. The commissioners shall take and subscribe the usual oath taken by commissioners of award. Any one of them may issue subpoenas, administer oaths to witnesses, and any three of them may adjourn the proceedings before them from time to time, in their discretion. Whenever they meet, except by the appointment of the court or pursuant to adjournment, they shall cause reasonable notice of such meeting to be given to the parties who are to be affected by their proceedings, or their attorney or agent. They shall view the premises described in the petition, and hear the proofs and allegations of the parties, and reduce the testimony, if any is taken by them, to writing; and after the testimony is closed in each case, and without any unnecessary delay, and before proceeding to the examination of any other claim, a majority of them all being present and acting, shall ascertain and determine the compensation which ought justly to be made by the company to the party or parties owning or interested in the real estate appraised by them; and in determining the amount of such compensation they shall not make an allowance or deduction on account of any real or supposed benefits which the parties in interest may derive from the construction of the proposed railroad. They or a majority of them shall also determine and certify what sum ought to be paid to a general or special guardian or committee of an infant, idiot, or person of unsound mind, or to an attorney appointed by the court to attend to the interest of any unknown owner during the continuance of its corporate existence by virtue of this or any other chapter; and all persons who have been made parties to the proceedings shall be divested and barred of all right, estate and interest in such real estate during the corporate existence of the company as aforesaid. All real estate acquired by any company under and pursuant to the provisions of this chapter for the purpose of its incorporation, shall be deemed to be acquired for public use. Within twenty days after the confirmation of the report of the commissioners, as provided for in the seventeenth section of this chapter, either party may except, having first given notice in writing to the other, to the Superior Court to the appraisal and report of the commissioners. Such exceptions shall be heard by the Superior Court at any general or special term thereof, on such notice thereof being given according to the rules and practice of said court. On the hearing of such exceptions the court may direct a new appraisal before the same or new commissioners in its discretion; the second report shall be final and conclusive on all the parties interested. If the amount of the compensation to be made by the company is increased by the second report, the difference shall be a lien on the land appraised, and shall be paid by the company to the parties entitled to the same, or shall be deposited in the bank, as the court shall direct; and if the amount is diminished the difference shall be refunded to the company by the party to whom the same may have been paid, and judgment therefor may be rendered by the court on

Commissioners to take oath. Duties of commissioners. Compensation determined. No person can claim right to real estate during the existence of the company. Report of commissioners. Exceptions heard by Superior Court. Final report. Compensation regulated. Report to Superior Court. Compensation.—1871-'2, c. 138, s. 16.

the filing of the second report against the party liable to pay the same. Such appeal shall not affect the possession by such company of the land appraised or party in interest not personally served with notice of the proceedings, and who has not appeared, for costs, expenses and counsel fees. They shall make a report to the Superior Court, signed by them or a majority of them, of the proceedings before them, with the minutes of the testimony taken by them, if any. Said commissioners shall be entitled to three dollars for their expenses and services for each day they are engaged in the performance of their duties, to be paid by the company.

Company must notify attorneys, &c.—1871-'2, c. 138, s. 17.

17. On such report being made by said commissioners, the company shall give notice to the parties or their attorneys to be affected by the proceedings, according to the rules and practice of said court, at a general or special term thereof, for the confirmation of such report, and the court shall thereupon confirm such report, and shall make an order containing a recital of the substance of the proceedings in the matter of the appraisal, and a description of the real estate appraised for which compensation is to be made; and shall also direct to whom the money is to be paid, or in what bank, and in what manner it shall be deposited by the company.

Certified copy to be filed in clerk's office.—1871-'2, c. 138, s. 18.

18. A certified copy of the order so to be made as aforesaid shall be recorded at full length in the clerk's office of the county in which the land described in it is situated; and thereupon, and on the payment or deposit by the company of the sums to be paid as compensation for the land, and for costs, expenses and counsel fees as aforesaid, and as directed by said order, the company shall be entitled to enter upon, to take possession of, and use the said land for the purposes of its incorporation during the appeal and when the same is made by others than the company, it shall not be heard except on a stipulation of the party appealing not to disturb such possession.

Court must adjudge the rights of conflicting claimants.—1871-'2, c. 138, s. 19.

19. If there are adverse and conflicting claimants to the money, or any part of it, to be paid as compensation for the real estate taken, the court may direct the money to be paid into the said court by the company and may determine who is entitled to the same and direct to whom the same shall be paid, and may in its discretion order a reference to ascertain the facts on which such determination and order are to be made.

Attorney appointed by court to protect the rights of parties unknown or non-residents.—1871-'2, c. 138, s. 20.

20. The court shall appoint some competent attorney to appear for and protect the rights of any party in interest who is unknown or whose residence is unknown, and who has not appeared in the proceedings by an attorney or agent. The court shall also have power at any time to amend any defect or informality in any of the special proceedings authorized by this chapter as may be necessary, or to cause new parties to be added and to direct such further notices to be given to any party in interest as it deems proper; and also to appoint other

commissioners in place of any who shall die or refuse or neglect to serve or be incapable of serving.

21. In all cases of appraisal under this chapter where the mode or manner of conducting all or any of the proceedings to the appraisal and the proceedings consequent thereon are not expressly provided for by the statute, the courts before whom such proceedings may be pending shall have the power to make all the necessary orders and give the proper directions to carry into effect the object and intent of this chapter, and the practice in such cases shall conform as near as may be to the ordinary practice in such courts.

Court must take cognizance of all proceedings not provided for in this chapter.—1871-'2, c. 138, s. 21.

22. When any proceedings of appraisal shall have been commenced, no change of ownership by voluntary conveyance or transfer of the real estate or any interest therein or of the subject matter of the appraisal, shall in any manner affect such proceedings, but the same may be carried on and perfected as if no such conveyance or transfer had been made or attempted to be made.

Change of ownership not to affect appraisal.—1871-'2, c. 138, s. 22.

23. If at any time after an attempt to acquire title by appraisal of damages or otherwise it shall be found that the title thereby attempted to be acquired is defective, the company may proceed anew to acquire or perfect such title in the same manner as if no appraisal had been made, and at any stage of such new proceedings the court may authorize the corporation, if in possession, to continue in possession, and if not in possession, to take possession and use such real estate during the pendency, and until the final conclusion of such new proceedings, and may stay all actions or proceedings against the company on account thereof, on such company paying into court a sufficient sum or giving security as the court may direct to pay the compensation therefor when finally ascertained, and in every such case the party interested in such real estate may conduct the proceedings to a conclusion if the company delays or omits to prosecute the same.

Defective title, how remedied.—1871-'2, c. 138, s. 23.

24. Every company formed under this chapter, before constructing any part of their road into or through any county named in their articles of association, shall make a map and profile of the route intended to be adopted by such company in such county, which shall be certified by the president and engineer of the company or a majority of the directors and filed in the office of the clerk of each county through which the road is to be made. The company shall give written notice to all actual occupants of the land over which the route of the road is so designated and which has not been purchased by or given to the company of the route so designated. Any party feeling aggrieved by the proposed location may, within fifteen days after receiving notice as aforesaid, apply to the Superior Court by petition duly verified, setting forth his objections to the route designated, and the said court may, if it considers sufficient cause therefor to exist, appoint three disinterested persons, one of whom must be a practical engineer, commis-

Maps of route to be made. Notice given to occupants of land. Superior Court petitioned when route is objectionable. No alteration of route allowable, unless, &c. Time of certificate. Compensation.—1871-'2, c. 138, s. 24.

sioners to examine the proposed route, and after hearing the parties, to affirm or alter the same as may be consistent with the just rights of all parties and the public, but no alteration of the route shall be made except by the concurrence of the commissioner who is a practical civil engineer. The determination of the commissioners shall within thirty days after their appointment be made and certified by them and the certificate filed in the office of the county clerk. Said commissioners shall each be entitled to three dollars per day for their expenses and services, to be paid by the person who applied for their appointment, and if the proposed route of the road is altered or changed by the commissioners the company shall refund to the applicant the amount so paid.

Discretionary with directors to change route of railroad for its improvement. Certificate of alteration to be filed in clerk's office. No change made in city, unless sanctioned by majority of incorporators thereof. Compensation for lands.—1871-'2, c. 138, s. 25.

25. The directors of every company formed under this chapter may by a vote of two thirds of their whole number at any time alter or change the route or any part of the route of their road if it shall appear to them that the line can be improved thereby; and they shall make and file in the clerk's office of the proper county a survey, map and certificate of such alteration or change; and shall have the same right and power to acquire title to any lands required for the purposes of the company in such altered or changed route, as if the road had been located there in the first instance; and no such alteration shall be made in any city or village after the road shall have been constructed, unless the same is sanctioned by a vote of two-thirds of the corporate authorities of said city or trustees of said village; and in case of any alteration made in the route of any railroad after the company has commenced grading, compensation shall be made to all persons for injury so done to any lands that may have been donated to the company. All the provisions of this chapter relative to the first location and to acquiring title to land shall apply to every such new or altered portion of the route.

Highways, turnpike, &c., to prove no obstruction to railroads.—1871-'2, c. 138, s. 26.

26. Whenever the track of a railroad constructed by a company formed under this chapter shall cross a railroad, a highway, turnpike or plankroad, such highway, turnpike or plankroad may be carried under or over the track as may be found most expedient; and in cases where an embankment or cutting shall make a change in the line of such highway, turnpike or plankroad desirable, with a view to a more easy ascent or descent, the said company may take such additional lands for the construction of such road, highway, turnpike or plankroad on such new line as may be deemed requisite by the directors. Unless the lands so taken shall be purchased for the purposes aforesaid, compensation therefor shall be ascertained in the manner prescribed in this chapter for acquiring title to real estate, and duly made by said corporation to the owners and persons interested in such lands. The same when so taken shall become a part of such intersecting highway, turnpike or plankroad in such manner and by such tenure as the adjacent

parts of the same highway, turnpike or plankroad may be held for highway purposes.

27. The Secretary of State shall have power to grant to any railroad company, formed under this chapter, any land belonging to the people of this State which may be required for the purposes of their road, on such terms as may be agreed on by them, or such company may acquire title thereto by appraisal, as in the case of lands owned by individuals; and if any land belonging to a county or town is required by any company for the purposes of the road, the county or town officers having the charge of such land may grant such land to such company for such compensation as may be agreed upon.

Power of Sec. of State to grant land.—1871-'2, c. 138, s. 27.

28. In case any title or interest in real estate required by any company formed under this chapter for the purpose of its corporation, shall be vested in any trustee not authorized to sell, release, and convey the same, or in any infant, idiot or person of unsound mind, the Superior Court shall have power, by a summary proceeding, on petition, to authorize and empower such trustee or the general guardian or committee of such infant, idiot or person of unsound mind, to sell and convey the same to such company for the purpose of its incorporation, on such terms as may be just; and in case any such infant, idiot or person of unsound mind, has no general guardian or committee, the said court may appoint a special guardian or committee for the purpose of making such sale, release or conveyance, and may require such security from such general or special guardian or committee as said court may deem proper. But before any conveyance or release authorized by this section shall be executed, the terms on which the same is to be executed shall be reported to the court on oath; and if the court is satisfied that such terms are just to the party interested in such real estate, the court shall confirm the report and direct the proper conveyance or release to be executed, which shall have the same effect as if executed by an owner of said land, having legal power to sell and convey the same.

Superior Court empowered to authorize guardians to sell land of insane persons, for corporate purposes. Court may appoint special guardian. Terms of sale, &c., reported to court.—1871-'2, c. 138, s. 28.

29. Every corporation formed under this chapter shall have power:

Corporate powers.—1871-'2, c. 138, s. 29.

(1.) To cause such examination and surveys for its proposed railroad to be made as may be necessary to the selection of the most advantageous route; and for such purpose, by its officers or agents and servants, to enter upon the lands or waters of any person, but subject to responsibility for all damages which shall be done thereto;

To cause survey, &c.—

(2.) To take and hold such voluntary grants of real estate and other property as shall be made to it to aid in the construction, maintenance and accommodation of its railroad; but the real estate received by voluntary grant shall be held and used for the purposes of such grant only;

Voluntary grants.

(3.) To purchase, hold and use all such real estate and other property as may be necessary for the construction and maintenance.

Holding property.

nance of its railroad and the station and other accommodations necessary to accomplish the object of its incorporation ;

Grade of road.

(4.) To lay out its road not exceeding twelve rods in width, and to construct the same, and for the purpose of cuttings and embankments to take as much more land as may be necessary for the proper construction and security of the road, and to cut down any standing trees that may be in danger of falling on the road, making compensation therefor as provided in this chapter for lands taken for the use of the company ;

Obstructions not allowable.

(5.) To construct their road across, along, or upon any stream of water, water course, street, highway, plank-road, turnpike or canal which the route of its road shall intersect or touch, but the company shall restore the stream or water course, street, highway, plank-road and turnpike road thus intersected or touched, to its former state or to such state as not unnecessarily to have impaired its usefulness. Nothing in this chapter contained shall be construed to authorize the erection of any bridge or any other obstructions across, in, or over any stream or lake navigated by steam or sail-boats, at the place where any bridge or other obstructions may be proposed to be placed, nor to authorize the construction of any railroad not already located in, upon, or across any streets in any city without the assent of the corporation of such city ;

Conjunction of railroad, &c.

(6.) To cross, intersect, join and unite its railroad with any other railroad before constructed, at any point on its route, and upon the grounds of such other company, with the necessary turnouts, sidings and switches and other conveniences in furtherance of the objects of its connections. And every company whose railroad is or shall be hereafter intersected by any new railroad shall unite with the owners of such new railroad in forming such intersections and connections and grant the facilities aforesaid, and if the two corporations cannot agree upon the amount of compensation to be made therefor or the points and manner of such crossings and connections, the same shall be ascertained and determined by commissioners to be appointed by the court as is provided in this chapter in respect to acquiring title to real estate ;

Conveyance of persons and property.

(7.) To take and convey persons and property on their railroad by the power or force of steam or animals, or by any mechanical power, and to receive compensation therefor ;

Erection of necessary buildings.

(8.) To erect and maintain all necessary and convenient buildings, stations, fixtures and machinery for the accommodation and use of their passengers, freight and business ;

Regulation of time and manner of transportation.

(9.) To regulate the time and manner in which passengers and property shall be transported and the compensation to be paid therefor ; but such compensation for any passenger and his ordinary baggage shall not exceed five cents per mile ;

Manner of raising funds.

(10.) From time to time to borrow such sums of money as may be necessary for completing and finishing or operating their railroad, and to issue and dispose of their bonds for any amount so borrowed, and to mortgage their corporate property

and franchises to secure the payment of any debt contracted by the company for the purposes aforesaid, and the directors of the company may confer on any holder of any bond issued for money borrowed, as aforesaid, the right to convert the principal due or owing thereon into stock of said company at any time not exceeding ten years from the date of the bond, under such regulations as the directors may see fit to adopt.

30. Every conductor, baggage master, engineer, brakeman, or other servant of any railroad corporation employed in a passenger train, or at stations for passengers, shall wear upon his hat or cap a badge which shall indicate his office and the initial letters of the title of the corporation by which he is employed. No conductor or collector without such badge shall be entitled to demand or receive from any passenger any fare or ticket, or to exercise any of the powers of his office; and no officer or servant without such badge shall have authority to meddle or interfere with any passenger, his baggage or property.

31. Every railroad corporation formed under this chapter shall make an annual report to the Governor of the operations of the year ending on the thirtieth day of September, which report shall be verified by the oaths of the treasurer or president and acting superintendent of operations and be filed in the office of the Superintendent of Public Works by the fifteenth day of November in each year, and shall state:

- (1.) The amount of capital as by charter;
- (2.) The amount of stock subscribed;
- (3.) The amount paid in as by last report;
- (4.) The total amount now of capital stock paid in;
- (5.) The funded debt by last report;
- (6.) The total amount now of funded debt;
- (7.) The floating debt as by last report;
- (8.) The amount now of floating debt;
- (9.) The total amount now of funded and floating debt;
- (10.) The average rate per annum of interest on funded debt.

Railroad servants required to wear a badge.—1871-'2, c. 138, s. 30.

Annual report. Report to be verified on oath and filed in office of Superintendent of Public Works.—1871-'2, c. 138, s. 31. Statements made.

COST OF ROAD AND EQUIPMENT.

- (11.) For graduation and masonry by last report;
- (12.) The total amount now expended for the same;
- (13.) The amount for bridges by last report;
- (14.) The total amount now expended for the same;
- (15.) The amount for superstructure, including iron, by last report;
- (16.) Total amount now expended for the same;
- (17.) For passenger and freight stations, building and fixtures by last report;
- (18.) Total amount now expended for the same;
- (19.) For engine and car houses, machine shops, and machinery and fixtures by last report;
- (20.) Total amount now expended for the same;
- (21.) For land, damages and fences by last report;

Statements
made.

- (22.) Total amount now expended for the same;
- (23.) For locomotives and fixtures and snow plows by last report;
- (24.) Total amount now expended for the same;
- (25.) For passenger and baggage cars by last report;
- (26.) Total amount now expended for the same;
- (27.) For freight cars as by last report;
- (28.) Total amount now expended for the same;
- (29.) For engineering and agencies by last report;
- (30.) Total amount now expended for the same;
- (31.) Total cost of road and equipment.

CHARACTERISTICS OF ROAD.

- (32.) Length of road;
- (33.) Length of road laid;
- (34.) Length of double track, including sidings;
- (35.) Length of branches owned by the company laid;
- (36.) Length of double track on the same;
- (37.) Weight of rail by yard on main track;
- (38.) The number of engine houses and shops, of engines and cars and their character.

DOINGS OF THE YEAR IN TRANSPORTATION AND TOTAL MILES RUN.

- (39.) Miles run by passenger trains;
- (40.) Miles run by freight trains;
- (41.) The rate of fare for passengers charged for the respective classes per mile;
- (42.) Number of passengers carried in cars;
- (43.) Number of miles travelled by passengers;
- (44.) Number of tons, of two thousand pounds, of freight carried in cars;
- (45.) Number of miles carried or total movement of freight in miles, all to be accurately compiled from the daily records or evidences of earnings, manifests and way bills;
- (46.) Average rate of speed adopted by ordinary passenger trains, including stops;
- (47.) Average rate of speed adopted by ordinary passenger trains when in motion;
- (48.) Average rate of speed adopted by express trains, including stops;
- (49.) Average rate of speed adopted by express trains when in motion;
- (50.) Average rate of speed adopted by freight trains, including stops;
- (51.) Average rate of speed adopted by freight trains when in motion;
- (52.) Average weight in tons, of two thousand pounds, of passenger trains exclusive of passengers and baggage;

(53.) Average weight in tons of freight trains exclusive of freight; Statements made.

(54.) The amount of freight, specifying the quantity in tons, of the products of the forest, of animals, of vegetable food, other agricultural products, manufactures, merchandise and other articles.

EXPENSES OF MAINTAINING THE ROAD OR REAL ESTATE OF THE CORPORATION.

(56.) For repairs of road-bed and railway, excepting cost of iron, which shall be the cost of labor and materials used during the year, also use and cost of engines engaged in ballasting, also the renewal and repairs of gravel and stone cars and all items of cost connected with keeping the road in order;

(57.) For depreciation of way;

(58.) Length, in feet, of iron used in renewals, with weight and cost;

(59.) Repairs of buildings;

(60.) Repairs of fences and gates;

(61.) Taxes on real estate;

(62.) Total expenses of maintaining road or real estate for the year;

(63.) Expenses of machinery or personal property of the corporation;

(64.) Repairs of engines and tenders;

(65.) Depreciation of engines and tenders;

(66.) Repairs of passenger and baggage cars;

(67.) Depreciation of passenger and baggage cars;

(68.) Repairs of freight cars;

(69.) Depreciation of freight cars;

(70.) Repairs of tools and machinery in shops;

(71.) Incidental expenses, including fuel, oil, clerks, watchmen about shops;

(72.) Total expenses of repair of machinery;

(73.) Office expenses, stationery;

(74.) Agents and clerks;

(75.) Labor, handling freight, loading and unloading;

(76.) Porters, watchmen and switchmen;

(77.) Wood and water station attendants;

(78.) Conductors, baggage and brakemen;

(79.) Enginemen and firemen;

(80.) Fuel—first cost and labor preparing for use;

(81.) Oil and waste for engines and tenders;

(82.) Oil and waste for freight cars;

(83.) Oil and waste for baggage and passenger cars;

(84.) Loss and damage of goods and baggage;

(85.) Damages for injuries of persons;

(86.) Damages to property, including damages by fire, cattle killed on the road;

(87.) General superintendence;

Statements
made.

- (88.) Contingencies ;
- (89.) Total expenses of operating road ;
- (90.) The above statements are to be made without reference to the sums actually received or paid during the year.

The following statement of the earnings and cash receipts and payments are required :

- (91.) From passengers ;
- (92.) From freight ;
- (93.) From other sources ;
- (94.) The above to be stated without reference to the amount actually collected.
- (95.) Receipts during the year from freight ;
- (96.) From passengers ;
- (97.) From other sources, specifying what in detail ;
- (98.) Payment for transportation expenses ;
- (99.) For interest ;
- (100.) Dividends on stock, amount and rate per cent. ;
- (101.) Payment to surplus fund and total amount to said fund ;

(102.) The number of persons injured in life and limb, and the cause of the injury, and whether passengers or persons employed ; whether any such accidents have arisen from carelessness or negligence of any person in the employment of the corporation, and whether such person is retained in the service of the corporation ;

(103.) It shall be the duty of the proper State officer to arrange the information contained in such reports in a tabular form and prepare the same together with the said reports in a single document for printing for the use of the Legislature, and report the same to the Legislature on the first day of its session in each year ;

(104.) All the items under the heads of expenses of maintaining the road or real estate of the corporation ; expenses of machinery, of personal property of the corporation ; expenses of use of road and machinery or operating the road, shall be carried out under two heads, the one showing the cost of freight transportation, the other the cost of passenger transportation ;

(105.) The provisions of this section shall apply to all existing railroad corporations, and the report of the said existing railroad corporations, made in pursuance of the provisions of this section, shall be deemed to be a full compliance with any existing law or resolution requiring annual reports to be made by such corporation.

Penalty for
failing to re-
port.—1871-'2,
c. 138, s. 32.

32. Any such corporation which shall neglect to make the report as is provided in the preceding section shall be liable to a penalty of five hundred and fifty dollars, to be sued for in the name of the State of North Carolina for their use, in the Superior Court of Wake county.

Legislature
may reduce

33. The Legislature may, when any such railroad shall be opened for use, from time to time alter or reduce the rate of

freight, fare, or other profits upon such road, but the same shall not, without the consent of the corporation, be so reduced as to reduce said profits less than ten per centum per annum on the capital actually expended, nor unless on an examination of the amounts received and expended, to be made by the auditor, they shall ascertain that the net income derived by the company from all sources for the year then last past shall have exceeded an annual income of ten per cent. upon the capital of the corporation actually expended.

profits upon road, when.—1871-'2, c. 138, s. 33.

34. If any passenger shall refuse to pay his fare, or violate the rules of the corporation, it shall be lawful for the conductor of the train and the servants of the corporation to put him and his baggage out of the cars, using no unnecessary force, at any usual stopping place or near any dwelling-house, as the conductor shall elect, on stopping the train.

Ejection of passengers who violate the rules of corporation.—1871-'2, c. 138, s. 34.

35. Every such corporation shall start and run their cars for the transportation of passengers and property at regular times to be fixed by public notice, and shall furnish sufficient accommodation for the transportation of all such passengers and property as shall, within a reasonable time previous thereto, be offered for transportation at the place of starting and the junction of other railroads and at usual stopping places established for receiving and discharging way passengers and freights for that train, and shall take, transport and discharge such passengers and property at, from and to such places on the due payment of the freight or fare legally authorized therefor, and shall be liable to the party aggrieved, in an action for damages, for any neglect or refusal in the premises.

Rules for transportation.—1871-'2, c. 138, s. 25.

36. A check shall be affixed to every parcel of baggage when taken for transportation by the agent or servant of such corporation, if there is a handle, loop or fixture so that the same can be attached upon the parcel or baggage so offered for transportation, and a duplicate thereof given to the passenger or person delivering the same on his behalf; and if such check be refused on demand the corporation shall pay to such passenger the sum of ten dollars to be recovered in a civil action; and further, no fare or toll shall be collected or received from such passenger, and if such passenger shall have paid his fare the same shall be refunded by the conductor in charge of the train, and on producing said check if his baggage shall not be delivered to him, he may himself be a witness in any suit brought by him to prove the contents and value of said baggage.

Check and duplicate for baggage. Corporation liable for loss of baggage.—1871-'2, c. 138, s. 36.

37. In forming a passenger train, baggage, freight, merchandise or lumber cars shall not be placed in rear of the passenger cars; and if they or any of them shall be so placed, the officer or agent who so directed or knowingly suffered such an arrangement, and the conductor of the train, shall be deemed guilty of a misdemeanor and be punished accordingly.

How trains to be arranged.—1871-'2, c. 138, s. 37.

38. If any person shall, while in charge of a locomotive engine running upon the railroad of any such corporation or

Intoxication a misdemeanor.

—1871-'2, c. 138, s. 38.

while acting as the conductor of a car or train of cars on any such railroad, be intoxicated, he shall be deemed guilty of a misdemeanor.

Injuries to railroad a misdemeanor.—1871-'2, c. 138, s. 39.

39. If any person or persons shall wilfully do or cause to be done, any act or acts whatever whereby any building, construction or work of any railroad corporation or any engine, machine or structure or any matter or thing appertaining to the same shall be stopped, obstructed, impaired, weakened, injured or destroyed, the person or persons so offending shall be guilty of a misdemeanor, and shall forfeit and pay to the said corporation treble the amount of damages sustained by means of such offense.

Suit may be brought.—1871-'2, c. 138, s. 40.

40. All penalties imposed by this chapter may be sued for in the name of the State of North Carolina; and if such penalty be for a sum not exceeding one hundred dollars, then such suit may be brought before a justice of the peace, and may be commenced by serving a summons on any director of such company.

Chart of railroad to be made and filed.—1871-'2, c. 138, s. 41.

41. Every corporation shall, within a reasonable time after their road shall be constructed, cause to be made a map and profile thereof, and of the land taken or obtained for the use thereof, and file the same in the offices for recording deeds in each county through which such parts of said roads shall pass. Every such map shall be drawn on a scale and on paper, to be designated by the Superintendent of Public Works and certified and signed by the president or engineer of such corporation.

Injury to passengers.—1871-'2, c. 138, s. 42.

42. In case any passenger on any railroad shall be injured while on the platform of a car or on any baggage, wood or freight car, in violation of the printed regulations of the company posted up at the time in a conspicuous place inside of its passenger cars then in the train, such company shall not be liable for the injury: *Provided*, said company at the time furnished room inside its passenger cars sufficient for the proper accommodation of its passengers.

Railroad not constructed at the specified time, their corporate existence ceases.—1871-'2, c. 138, s. 43.

43. If any corporation formed under this chapter shall not within two years after its articles of association are filed and recorded in the office of the Secretary of State, begin the construction of its road and expend thereon ten per cent. of the amount of its capital, or shall not finish the road and put it in operation in ten years from the time of filing its articles of association as aforesaid, its corporate existence and powers shall cease.

Legislature may annul.—1871-'2, c. 138, s. 44.

44. The Legislature may at any time annul or dissolve any corporation formed under this chapter; but such dissolution shall not take away or impair any remedy given against any such corporation, its stockholders or officers for any liability which shall have been previously incurred.

Rights and privileges.—1871-'2, c. 138, s. 45.

45. All existing railroad corporations within this State shall respectively have and possess all the powers and privileges contained in this chapter; and they shall be subject to all the

duties, liabilities and provisions not inconsistent with the provisions of their charter contained in sections nine, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, (except subdivision nine,) thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, forty-five, forty-six, of this chapter.

46. Whenever two railroad companies shall, for a portion of their respective lines, embrace the same location of line, they may by agreement provide for the construction of so much of said line as is common to both of them, by one of the companies, and for the manner and terms upon which the business thereon shall be performed. Upon the making of such agreement, the company that is not to construct the part of the line which is common to both, may alter and amend its articles of association so as to terminate its line at the point of intersection, and may reduce its capital to a sum not less than five thousand dollars for each mile of the road proposed to be constructed in such amended articles of association.

Railroads embracing the same location of line.—1871-'2, c. 138, s. 46.

47. Whenever after due examination it shall be ascertained by the directors of any railroad company that a part of the line of railroad proposed to be made between any two points in this State ought to be located and constructed in an adjoining State, it may be so located and constructed by a vote of two-thirds of all the directors, and the sections of said railroad within this State shall be deemed a connected line according to the articles of association, and the directors may reduce the capital specified in their articles of association to such amount as may be deemed proper, but not less than the amount required by law for the number of miles of railroad to be actually constructed in this State.

Location of railroad in an adjoining State.—1871-'2, c. 138, s. 47.

48. Every railroad company which shall have had unclaimed freight, not perishable, in its possession for a period of one year at least, may proceed to sell the same at public auction, and out of the proceeds may retain the charges of transportation and storage of such freight and the expenses of advertising and sale thereof; but no such sale shall be made until the expiration of four weeks from the first publication of notice of such sale in a State paper and also in a newspaper published at or nearest the place at which such freight was directed to be left, and also at the place where such sale is to take place; and said notice shall contain a description of such freight, the place at which and the time when the same was left, as near as may be, together with the name of the owner or person to whom consigned, if known, and expenses incurred for advertising shall be a lien upon such freight in a ratable proportion, according to the value of each article or package or parcel, if more than one.

Unclaimed freight. Publication thereof.—1871-'2, c. 138, s. 48.

49. In case such unclaimed freight shall in its nature be Perishable

freight.—1871-
'2, c. 138, s. 49.

Unclaimed
funds to be
used for Uni-
versity of the
State.—1871-
'2, c. 138, s.
50.

Police estab-
lished.—1871-
'2, c. 138, s.
51.

Governor to
appoint police.
—1871-'2, c.
138, s. 52.

Oath adminis-
tered.—1871-
'2, c. 138, s.
53.

Badge of po-
licemen.—
1871-'2, c. 138,
s. 54.

Compensa-
tion.—1871-'2,
c. 138, s. 55.

Dismissal of
police.—1871-
'2, c. 138, s.
56.

Transfer of
capital stock.
Certificate
filed in office
of Sec. of
State.—1871-
'2, c. 138, s.
57.

perishable, then the same may be sold as soon as it can be on giving the notice required in the preceding section, after its receipt at the place where it was directed to be left.

50. Such railroad company shall make an entry of the balance of the proceeds of the sale, if any, of each parcel of freight owned by or consigned to the same person, as near as can be ascertained, and at any time within five years thereafter, shall refund any surplus so retained to the owner of such freight, his heirs or assigns, on satisfactory proof of such ownership; if no person shall claim such surplus within five years, said surplus shall be paid into the fund used for the support of the University of the State.

51. Any railroad corporation on which road steam is used as the motive power may apply to the Governor to commission such persons as the said corporation may designate to act as policemen for said corporation.

52. The Governor upon such application may appoint such persons or so many of them as he may deem proper to be such policemen, and shall issue to such person or persons so appointed a commission to act as such policemen.

53. Every policeman so appointed shall, before entering upon the duties of his office, take and subscribe the usual oath; such oath with a copy of the commission shall be filed with the Secretary of State and a certificate thereof by said Secretary be filed with the clerk of each county through or into which the railroad for which such policeman is appointed may run and in which it is intended he shall act, and such policemen shall severally possess within the limits of the property of the county all the powers of policemen in the several towns, cities and villages in which they shall be so authorized to act as aforesaid.

54. Such railroad police shall, when on duty, severally wear a metallic shield with the words "Railway Police," and the name of the corporation for which appointed inscribed thereon, and said shield shall always be worn in plain view except when employed as detectives.

55. The compensation of such police shall be paid by the companies for which the policemen are respectively appointed as may be agreed on between them.

56. Whenever any company shall no longer require the services of any policeman so appointed as aforesaid they may file a notice to that effect in the several offices in which notice of such appointment was originally filed and thereupon the power of such officer shall cease and be determined.

57. Any railroad corporation created by the laws of this State or its successors, now being the lessee of the road of any other railroad corporation, may take a surrender or transfer of the capital stock of the stockholders or any of them, in the corporation whose road is held under lease and issue in exchange therefor the like additional amount of its own capital stock at par or on such other terms and conditions as may be agreed

upon between the two corporations; and whenever the greater part of the capital stock of any such corporation shall have been so surrendered or transferred the directors of the corporation taking such surrender or transfer shall thereafter, on a resolution electing so to do to be entered on their minutes become ex-officio the directors of the corporation whose road is so held under lease and shall manage and conduct the affairs thereof as provided by law; and whenever the whole of said capital stock shall have been so surrendered or transferred and a certificate thereof filed in the office of the Secretary of State under the common seal of the corporation to whom such surrender or transfer shall have been made, the estate, property, rights, privileges and franchises of the said corporation whose stock shall have been so surrendered or transferred shall thereupon vest in and be held and enjoyed by the said corporation to whom such surrender or transfer shall have been made as fully and entirely and without charge or diminution as the same were before held and enjoyed, and be managed and controlled by the board of directors of the said corporation to whom such surrender or transfer of the said stock shall have been made in the corporate name of such corporation. The rights of any stockholder not so surrendering or transferring his stock shall not be in any way affected thereby, nor shall existing liabilities or the rights of creditors of the corporation where stock shall have been so surrendered or transferred be in any way affected or impaired by this chapter.

58. It shall and may be lawful for any railroad company or other corporation, organized under the laws of this State, or of this State and any other State, and operating a railroad or bridge either wholly within or partly within and partly without this State, to merge and consolidate its capital stock, franchises and property with the capital stock, franchises and property of any other railroad company or companies organized under the laws of this State, or under the laws of this State and any other State, or under the laws of any other State or States, whenever the two or more railroads of the companies or corporation so to be consolidated shall or may form a continuous line of railroad with each other or by means of any intervening railroad, bridge or ferry.

59. Said consolidation shall be made under the conditions, provisions and restrictions, and with the powers hereafter in this chapter mentioned and contained, that is to say:

(1.) The directors of the companies proposing to consolidate may enter into a joint agreement under the corporate seal of each company for the consolidation of said companies and railroads, and prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number and names of the directors and other officers thereof, and who shall be the first directors and officers, and their places of residence, the number of shares of the capital stock, the amount or par value of each share, and the man-

Consolidation
of railroads.—
1871-'2, c. 138,
s. 58.

Provisions in
relation there-
to.—1871-'2,
c. 138, s. 59.

Corporate
seal. Details
of corporation.

ner of converting the capital stock of each of the said companies into that of the new corporation, and how and when directors and officers shall be chosen, with such other details as they shall deem necessary to perfect such new organization and the consolidation of said companies or railroads.

Meeting of stockholders. Time specified. Publication of notice. Vote by ballot. Certificate to be filed in office of Sec. of State.

(2.) Said agreement shall be submitted to the stockholders of each of the said companies or corporations at a meeting thereof called separately for the purpose of taking the same into consideration; due notice of the time and place of holding said meeting, and the object thereof, shall be given by each company to its stockholders by written or printed notices, addressed to each of the persons in whose names the capital stock of such company stands on the books thereof, and delivered to such persons respectively or sent to them by mail when their postoffice address is known to the company, at least thirty days before the time of holding such meeting, and also by a general notice, published daily for at least four weeks in some newspaper printed in the city, town or county where such company has its principal office or place of business; and at the said meeting of stockholders the agreement of the said directors shall be considered and a vote by ballot taken for the adoption or rejection of the same, each share entitling the holder thereof to one vote, and said ballots shall be cast in person or by proxy, and if two-thirds of all the votes of all the stockholders shall be for the adoption of said agreement, then that fact shall be certified thereon by the secretaries of the respective companies under the seals thereof, and the agreement so adopted, or a certified copy thereof, shall be filed in the office of the Secretary of State, and shall from thence be deemed and taken to be the agreement and act of consolidation of the said companies; and a copy of the said agreement and act of consolidation, duly certified by the Secretary of State under his official seal, shall be evidence in all courts and places of the existence of said new corporation, and that the foregoing provisions of this chapter have been fully observed and complied with.

When considered one corporation.—1871-'2, c. 138, s. 60.

60. Upon the making and perfecting of such agreement and act of consolidation as hereinbefore provided, and filing the same or a copy thereof in the office of the Secretary of State as aforesaid, the said corporations, parties thereto, shall be deemed and taken to be one corporation by the name provided in said agreement and act, but such act of consolidation shall not release such new corporations from any of the restrictions, liabilities or duties of the several corporations so consolidated.

Rights, powers, &c., of the consolidated corporation.—1871-'2, c. 138, s. 61.

61. Upon the consummation of said act of consolidation as aforesaid, all and singular the rights, privileges, exemptions and franchises of each of said corporations, parties to the same, and all the property, real, personal and mixed, and all debts due on whatever account to either of said corporations as well as all stock subscriptions and other things in action belonging to either of said corporations shall be taken and deemed to be transferred to and vested in such new corporation without

further act or deed; and all claims, demands, property, rights of way and every other interest, shall be as effectually the property of the new corporation as they were of the former corporations, parties to the said agreement and act, and the title to all real estate taken by deed or otherwise, under the laws of this State vested in either of such corporations, parties to said agreement and act, shall not be deemed to revert or be in any way impaired by reason of this chapter or anything done by virtue thereof, but shall be vested in the new corporation by virtue of such act of consolidation.

62. The rights of all creditors and all liens upon the property of either of said corporations, parties to said agreement and act, shall be preserved unimpaired, and the respective corporations shall be deemed to continue in existence to preserve the same; and all debts and liabilities incurred by either of said corporations except mortgages, shall thenceforth attach to such new corporation and be enforced against it and its property to the same extent as if said debts or liabilities had been incurred or contracted by it. No suit, action or other proceeding pending before any court or tribunal in which either of said railroad companies is a party shall be deemed to have abated or been discontinued by the agreement and act of consolidation as aforesaid, but the same may be conducted in the name of the existing corporation to final judgment, or such new corporation may be, by order of the court, on motion, substituted as a party. Suits may be brought and maintained against such new corporation in the courts of this State for all causes of action in the same manner as against other railroad corporations therein.

63. The real estate of such new corporation, situate within this State, shall be assessed and taxed in the several towns and cities where the same shall be situated in like manner as the real estate of other railroad corporations is or may be taxed and assessed and such proportion of the capital stock and personal property of such new corporation shall in like manner be assessed and taxed in this State, as the number of miles of its railroad situate in this State bears to the number of miles of its railroad situate in the other State or States.

64. Nothing in this chapter contained shall be so construed as to allow such consolidated company to charge a higher rate of fare per passenger per mile upon any part of or portion of such consolidated line than is now allowed by law to be charged by each existing company respectively, nor shall this chapter apply to street railroads.

65. No companies or corporations of this State whose railroads run on parallel or competing lines shall be authorized by this chapter to merge or consolidate.

66. The county commissioners of the several counties in this State shall have power to subscribe stock to any railroad company or companies, when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest.

Corporate rights made binding.—1871-'2, c. 138, s. 62.

Real estate may be taxed.—1871-'2, c. 138, s. 63.

Mileage.—1871-'2, c. 138, s. 64.

Parallel lines not to consolidate.—1871-'2, c. 138, s. 65.
Subscription to stock may be made by county commissioners.—1868-'9, c. 171, s. 1.

Commissioners to agree, &c.—1868-'9, c. 171, s. 2.

67. The commissioners of any county proposing to take stock in any railroad company shall meet and agree upon the amount to be subscribed, and if a majority of the commissioners shall vote for the proposition, this shall be entered of record, which shall show the amount proposed to be subscribed, to what company, and whether in bonds, money or other property, and thereupon the commissioners shall order an election, to be held on a notice of not less than thirty days, for the purpose of voting for or against the proposition to subscribe the amount of stock agreed on by the county commissioners. And if a majority of the qualified voters of the county shall vote in favor of the proposition, the county commissioners, through their chairman, shall have power to subscribe the amount of stock proposed by them, and submitted to the people subject to all the rules, regulations and restrictions of other stockholders in such company or companies: *Provided, also*, that the counties, in the manner aforesaid, shall subscribe from time to time such amounts, either in bonds or money, as they may think proper.

Proviso.

Elections held by sheriffs.—1868-'9, c. 171, s. 3.

68. All elections ordered under the sixty-seventh section of this chapter shall be held by the sheriff under the laws and regulations provided for the election of members of the General Assembly. The votes shall be compared by the county commissioners, who shall make a record of the same.

Interest on bonds.—1868-'9, c. 171, s. 4.

69. In case the county shall subscribe the amount proposed in bonds, the commissioners shall have power to fix the rate of interest, not to exceed the rate of eight per cent., when the interest on said bonds shall be payable, and at what place, and shall also fix the time and places of paying the interest, and shall also determine the mode and manner of the same; and also to raise by taxation, from year to year, the amount necessary to meet the interest on said bonds.

How taxes paid.—1868-'9, c. 171, s. 5.

70. The taxes authorized by this chapter to be raised for the payment of interest or principal, shall be collected by the sheriff in like manner as other public taxes, shall be paid into the hands of the county treasurer, to be used by the chairman of the county commissioners as directed by this chapter.

CHAPTER 100.

REGISTER OF DEEDS.

SECTION

1. When and before whom to qualify.
2. Bond to be given.
3. Vacancy to be filled by county commissioners.
4. Office, where kept.

SECTION

5. Times of attendance may be fixed.
6. Judge of probate to hand over deeds and pay fees.
7. Penalty on judge of probate for failure.

SECTION

8. Within what time to register.
9. Penalty on register for failure.
10. Alphabetical files of original deeds.
11. Books transcribed and indexed.
12. General index.

SECTION

13. Omitted duties, how to be supplied.
14. Clerk of board of commissioners.
15. Tax list.
16. Marriage licenses.
17. Penalty for neglect of duty.

1. THE register of deeds shall take oath of office on the first Monday of September next after his election before the board of county commissioners.

When and before whom to qualify.—1868, c. 35, s. 2.
Bond to be given.—1868, c. 35, s. 3.

2. He shall give bond with sufficient security, to be approved by the board of commissioners, in the penalty of five thousand dollars, payable to the State and conditioned for the safe-keeping of the books and records, and for the faithful discharge of the duties of his office.

3. When a vacancy occurs from any cause in the office of register of deeds the board of commissioners shall fill such vacancy by the appointment of a successor for the unexpired term, who shall qualify and give bond as prescribed in the preceding section.

Vacancy to be filled by county commissioners.—1868, c. 35, s. 4.

4. The register shall keep his office at the court house unless the county commissioners shall deem it impracticable.

Office, where kept.—1868, c. 35, s. 5.
Times of attendance may be fixed.—1868, c. 35, s. 6.

5. The board of commissioners may fix by order, to be entered on their records, what days of each week, and at what hours of each day, the register shall attend at his office in person or by deputy, and he shall give his attendance accordingly.

6. The register of deeds shall, at least once a week, apply to the judge of probate of his county, for all instruments of writing admitted to probate and then remaining in the office of such judge for registration, and also for all fees for registration due thereon; which fees the judge of probate shall receive for the register.

Judge of probate to hand over deeds and pay fees.—1868, c. 35, s. 7.

7. In case the judge of probate fail to deliver such instruments of writing, and pay over such fees as are prescribed in the last section, on application of the register, the judge of probate shall forfeit and pay to the register one hundred dollars for every such failure; for which sum judgment may be entered at any time by the judge of the Superior Court of the district on motion in behalf of the register, on a notice of ten days thereof to the judge of probate.

Penalty on judge of probate for failure.—1868, c. 35, s. 8.

8. The register of deeds shall register all instruments in writing, delivered to him for registration within twenty days after such delivery, except mortgages and deeds in trust, or other instruments made to secure the payment of money, which he shall register forthwith after delivery to him. He shall endorse on each deed in trust and mortgage, the day on which it is presented to him for registration, and such endorsement shall be entered on his books and form a part of the registration, and he shall register such deeds in trust and mortgages in the order of time in which they were presented to him.

Within what time to register.—1868, c. 35, s. 9.

Penalty on register for failure.—1868, c. 35, s. 10.

Alphabetical files of original deeds.—1868, c. 35, s. 11.

Books transcribed and indexed.—1868, c. 35, s. 12.

General index.—1868, c. 35, s. 13.

Omitted duties, how to be supplied.—1868, c. 35, s. 14.

Clerk of the board of commissioners.—1868, c. 35, s. 15.

Tax lists.—1868, c. 35, s. 16.

Marriage licenses.—1868, c. 35, s. 17.

Penalty for neglect of duty.—1868, c. 35, s. 18.

9. In case of his failure to register any deed or other instrument within the time and in the manner required by the last section, the register shall be liable in an action to the party injured by such delay on his official bond.

10. The register shall keep 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 the same.

11. The county commissioners, where they deem it necessary, may direct the register of deeds to transcribe and index such of the books in the register's office as from decay or other cause, may require to be transcribed and indexed. They may allow him such compensation at the expense of the county for this work as they think just. The books when so transcribed and approved by the board of commissioners, shall be deemed and taken as public records in like manner, to all intents, as the original books, and copies therefrom may be certified accordingly.

12. The board of commissioners, at the expense of the county, shall cause to be made and consolidated into one book, a general index of all the deeds and other documents in the register's office, and the register shall afterwards keep up such index without any additional compensation.

13. Whenever, upon the determination for any cause of the term of office of the register, it appears that he has failed to perform any of the duties of his office, the commissioners shall cause the same to be performed by another person or the successor of any such defaulting register, such person or successor shall receive for his compensation the fees allowed for such services, and if any portion of the compensation has been paid by the county to such defaulting register, the same may be recovered by the board of commissioners, by suit on his official bond.

14. The register of deeds is *ex officio* clerk of the board of commissioners, and as such shall perform the duties imposed by law or by order of the commissioners.

15. The register shall make out the tax lists as directed by law, under the supervision of the board of commissioners.

16. The register of deeds is authorized to issue marriage licenses as prescribed in the chapter entitled "Marriage and Marriage Contracts."

17. If any register fails to perform any of the duties imposed or authorized by this chapter he shall be guilty of a misdemeanor, and on conviction thereof, besides other punishments at the discretion of the court, he shall be removed from office.

CHAPTER 101.

RELIGIOUS SOCIETIES.

SECTION

1. Donations to religious societies, to vest in them or their trustees.
2. Houses of worship on vacant lands, 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. Penalties for intoxication or disorder during worship.
9. Penalty under this chapter to be for the poor.
10. Quakers may wear hats in court.

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 trustees 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.

Donations to religious societies, to vest in them or their trustees.
—R. C., c. 97, s. 1.

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.

Houses of worship on vacant land, to belong to society erecting them.
—R. C., c. 97, s. 2.

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

Religious societies may appoint trustees to hold their property. Yearly value of lands, a church or society may hold.—R. C., c. 97, s. 3.

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.

Trustees may be removed, &c. To be accountable.—R. C., c. 97, s. 4.

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.

Penalty for stopping way to places of worship, springs, &c.—R. C., c. 97, s. 5.

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, jackass's, curiosities not to be exhibited in half a mile of congregation. Exception as to towns, &c.—R. C., c. 97, s. 6.

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.

Sale of liquor and goods within a mile forbidden. Exception. Penalty.—R. C., c. 97, s. 7.

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 then be celebrated, shall sell within one mile of such place, any spirituous liquor, or any liquor of which spirituous liquor shall be the 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.

Penalty for intoxication or disorder during worship.—R. C., c. 97, s. 8.

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.

Penalties un-

9. The penalties incurred for offences created by this chap-

ter 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.

der this chapter for the poor.—R. C., c. 97, s. 9.

10. The people called Quakers may wear their hats in courts of judicature or elsewhere according to the custom of their sect.

Quakers may wear hats in court.—R. C., c. 21, s. 181.

SECTION 3. 7 Ire., 44; 1 Dev., 189; 6. Ire. Eq., 380; 4 Ib., 19.

CHAPTER 102.

REVENUE.

SECTION

1. Valuation of lands, when to be made.
2. Meaning of the words land and real property.
3. Board shall be notified.
4. Board to advertise in their townships.
5. When list to be given in.
6. Where and when real property and farming stock to be given in.
7. When and where other property to be given in.
8. Tax payer to give in list of his property.
9. What list to contain;
 - (1.) Quantity of land in township.
 - (2.) Horses, mules, &c.
 - (3.) Farming utensils.
 - (4.) Money on hand or on deposit.
 - (5.) Solvent credits.
 - (6.) Stocks.
 - (7.) Other property.
 - (8.) Income.
 - (9.) Non-residents.
10. Guardians, executors, &c., to give in separately.
11. What property exempt from taxation.
12. List to refer to first of April.
13. How property to be valued.
14. Auditor to provide forms and sheriffs to distribute to boards of trustees.

SECTION

15. Boards to make abstract of tax lists.
16. County commissioners to revise lists, when.
17. How complaints of excess proceeded with.
18. Application for relief may be made, &c.
19. Persons not giving in to be charged with double tax and be deemed guilty of a misdemeanor.
20. County commissioners may exempt from poll tax.
21. Copies of revised tax lists, how distributed.
22. Clerks of commissioners to make returns.
23. Penalty on clerk for failure.
24. In case land be divided, how tax may be apportioned.
25. If valuation altered, what to be done.
26. When taxes may be paid. Receipts to be given.
27. Sheriff or deputy to attend at Court House, when.
28. How sheriff to collect.
29. Who is to be purchaser and what he shall pay.
30. Mode of sale of property.
31. Delinquent may redeem the property within twelve months.
32. If delinquent shall fail to redeem.

SECTION

33. In case the State becomes purchaser delinquent may redeem. How deed obtained from Secretary of State.
34. Sheriff to keep record.
35. When sheriff to settle taxes.
36. What may be deducted by Auditor.
37. Compensation to sheriff.
38. Failure to settle taxes. Treasurer shall recover judgement. Clerk to transmit copy of sheriff's bond to Auditor.
39. Sheriffs to pay county taxes, when.
40. County commissioners to appoint a committee to assist in settlement.
41. Penalty on sheriff for failure to account.
42. Other county officers, when to account. Penalty for failure.
43. Where there are tax collectors duty to be performed by them.
44. Extension of time for collection of taxes by county commissioners.
45. Settlements made after default, when amount is paid, are valid.
46. Treasurer may grant indulgences, when.
47. Public sale of property.
48. Secretary and Treasurer may administer oaths.
49. If sheriff die his sureties may collect.
50. Sheriff allowed one year after the first of October to collect.

II. TAXATION.

51. Assessment of taxes.
52. Poll tax. Limitation of time.
53. Objects of taxation.

Class I.

54. (1.) Classification of taxes.
55. (2.) Special tax for a deficiency in the treasury.
56. (3.) Asylum tax.
57. (4.) Penitentiary tax.

Class II.

58. (1.) Income tax. Deductions.
59. (2.) Real and personal estate.

SCHEDULE B.

Ad valorem tax. Proviso.

60. (1.) Theatres.
61. (2.) Concerts.
62. (3.) Museums.

SECTION

63. (4.) Circuses.
64. (5.) Itinerants. Exemptions.
65. (6.) Gift enterprises.
66. (7.) Bank agencies.
67. (8.) Billiard saloons.
68. (9.) Bowling alleys.
69. (10.) Liquor dealers.
70. (11.) Retailers.
71. (12.) Merchants of all classes. Exemptions. Persons to list taxes. Duty of register. Duty of sheriff. Power of register. Fees of register.
72. (13.) Hotels.
73. (14.) Ferries, &c.
74. (15.) Brokers.
75. (16.) Auctioneers.
76. (17.) Commission merchants.
77. (18.) Horses and vehicles. Proviso as to draymen.
78. (19.) Itinerant dentists, &c.
79. (20.) Peddlers.
80. (21.) Lightning rods.
81. (22.) Gypsies, &c.
82. (23.) Drummers. Misdemeanor.
83. (24.) Officers of banks. Certificate on oath.
84. (25.) Insurance companies. Failure of compliance a misdemeanor. Commission to sub-agents. Local agents.
85. (26.) Persons to list, when.
86. (27.) Trader's license. Proviso. Further proviso.
87. (28.) Form of license.
88. (29.) Rules for taking out license.
89. (30.) Validity of license.
90. (31.) Duty of register of deeds.
91. (32.) Penalty for failing to take out license.
92. (33.) Duty of sheriff.

SCHEDULE C.

93. (1.) Express companies.
94. (2.) Telegraph companies.
95. (3.) Tax on seals and scrolls. Compensation to officers collecting seal taxes.
96. (4.) Marriage licenses.
97. (5.) Charges of incorporation.
98. (6.) Fines.
99. (7.) Penalty.
100. (8.) Repealing clause. Proviso.
101. (9.) Laws repealed.
102. Tax on attorneys' license.

1. THE township board of trustees shall list the lands of the State, and re-value the same for the year one thousand eight hundred and seventy-three, subject to exception hereinafter made, and shall assess all the personal property of their township that is not exempt by this chapter, at the cash value, on the first day of April, one thousand eight hundred and seventy-three, and on the same day annually thereafter, and for such services shall be allowed not more than ten dollars each, annually, except in townships where cities and towns are located, and in that case such compensation as the commissioners of such county may allow. Whenever no legal board of trustees shall exist in any township, the county commissioners of such county, at a meeting to be held thirty days after the ratification of this act, shall appoint in every such township, three assessors, qualified to serve as jurors, two of whom shall be owners of real estate in the county, who shall constitute boards of trustees for the township, for the purpose of performing all the duties of a regular board of trustees required to be performed by this chapter. Said board shall be entitled to the same *per diem* as the regular board of trustees.

Valuation of lands, when to be made.—1872-'3, c. 115, s. 1.

2. The words "land and real property" shall be construed in this chapter to include not only the soil, but all buildings and erections thereon, all rights and franchises appurtenant thereto, and all mines or minerals on or under the surface.

Meaning of the words "lands and real property."—1872-'3, c. 115, s. 2.

3. The county commissioners, by their clerk, shall give to the township boards, previous to the fifteenth day of March, a notice to list the taxable lands and assessments of personal property according to the first section of this act, together with the proper blanks for the same: *Provided*, that ten days' notice after the reception of a copy of this chapter shall be allowed to the commissioners of the several counties of the State to give said notice for this year.

Board shall be notified.—1872-'3, c. 115, s. 3.

4. The board shall advertise in three or more public places within their township within ten days after they have been notified by the county commissioners, as provided for in section three.

Board to advertise in their townships.—1872-'3, c. 115, s. 4.

5. The list shall be given in by the person charged or his agent, within twenty days after due notice given, as herein prescribed. The property of a corporation shall be given in by the president, cashier, treasurer or other person appointed for that purpose.

When the list to be given in.—1872-'3, c. 115, s. 5.

6. All real property and all stock, farming utensils and other personal property used in connection with the cultivation of a farm subject to taxation shall be given in in the township in which said property is situated on the first day of April, and where the line of any township runs through any resident's land, the same shall be listed in the township of such resident.

Where and when real property and farming stock to be given in.—1872-'3, c. 115, s. 6.

7. All other personal property whatever, including moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, and all taxable polls, and all other subjects liable to taxation, except such franchise and personal property as are

When and where other property to be given in.—1872-'3, c. 115, s. 7.

herein specially provided for, shall be given in in the township in which the person so charged resides on the first day of April. The residence of a corporation, partnership or joint stock association, for the purpose of this chapter, shall be deemed to be in the township in which its principal office or place of business is situated; if, however, the corporation, partnership or association have separate places of business in more than one township, it shall be given in in each, the property or effects therein, but any body of lands belonging to persons or a corporation, partnership or association, and divided by township lines, shall be given in in that township in which the larger part thereof is situated.

Tax-payer to give in list of his property. —1872-'3, c. 115, s. 8.

8. At the time and place appointed by the board, the tax-payers shall attend, and the board shall read over to each one, giving in his list, all the articles and subjects of taxation, and thereupon he shall render to the board his or her list of taxables, at the same time taking the following oath: I, A. B., do solemnly swear (or affirm) that I have rendered a true and full statement of all subjects of taxation which I, in my own right or as agent of or in trust for any other person and in any other capacity, am by law required to list for taxation, according to my best knowledge, information and belief; so help me God.

What the list shall contain. —1872-'3, c. 115, s. 9. Quantity of land listed in township.

9. The list shall state the taxable property of the person giving in, and shall refer to the first day of April in that year.

(1.) The quantity of land listed in the township The land shall be described by name, if it has one, otherwise in such way that it may be identified, and shall be valued at a fair cash value, estimated at the price it would bring at a fair voluntary sale;

Horses, mules, &c.

(2.) The number of horses, mules, jacks, jennetts, goats, cattle, hogs and sheep, separately, and the value thereof, and they shall be valued at their fair cash value, estimated at the price they would bring at a fair voluntary sale;

Farming utensils.

(3.) The estimated value above one hundred dollars, without specifying the articles, of farming utensils, tools of mechanics, household and kitchen furniture, provisions, arms for muster, wearing apparel for use of owner and family, libraries and scientific instruments;

Money on hand or on deposit.

(4.) Money on hand or on deposit in any bank in or out of the State, including therein all funds invested within thirty days before, in United States bonds, national bank stock, or other non tax-paying property whatsoever, with the intent to evade the payment of State, county or other taxes;

Solvent credits.

(5.) The amount of solvent credits owing to the party whether in or out of the State, whether owing by bond, note, bill of exchange, open account, or due and payable, or whether owing by any government, except bonds of this State or the United States, exempt from taxation by law, except rent accruing for the current year for the hire of taxable property. If any credit be regarded as not entirely solvent, it shall be given in at its estimated value; the party may deduct from the amount of

debts owing to him the amount owing by him, the residue only shall be liable to taxation ;

(6.) Stocks in any incorporated company or joint stock association and their estimated value ; but the stock shall not be taxed if the company pay a tax ,

Stocks.

(7.) All other personal property whatever, including therein all musical instruments, plated and silverware, and the watches and jewelry possessed by the party, his wife or any minor child.

Other property.

(8.) The income of the party for the twelve months next preceding the first day of April in the current year, with a statement of the source or sources from which it was derived. From the amount of the income, five hundred dollars shall be deducted, and also the amount derived from any trade, purchase or possession taxed by the laws of this State ;

Income.

(9.) If the party be a non-resident of the county, and own land therein, he shall state his address, and may name any agent in the county to whom notices may be given respecting his taxes.

Non-residents.

10. Every guardian, executor, administrator or trustee shall in like manner, but on a separate list, give in the property held by him in that capacity, the value of the franchise of every railroad, canal, turnpike, plank road, navigation and banking company shall be given in by the president or chief officer of of the said several corporations on the day fixed by this chapter for the giving in of the taxable property to the Treasurer of the State, and shall be assessed by the said Treasurer, the Auditor and the Governor of the State ; and their valuation shall be returned to the county commissioners of any county in which any part of said roads or canals or navigation work shall be ; and the tax upon such franchise so valued shall be the same as upon property of equal value ; and the tax collected in each county and township shall be in proportion to the length of such road, canal, or works lying in such county or township respectively ; and such taxes shall be collected as other taxes are required by law to be. The rolling stock of every railroad company, and the vessels employed by any canal or navigation company, on its canals or works, shall be valued with the franchise.

Guardians, executors, &c., to give in separately.—1872-'3, c. 115, s. 10.

11. What property exempt from taxation :

(1.) The property belonging to the United States or this State, or any county or incorporated town ;

What property exempt from taxation.—1872-'3, c. 115, s. 11.

(2.) The property belonging to and set apart, and exclusively used for the University, colleges, institutes, academies, the masonic fraternity, order of Odd Fellows, Knights of Pythias, Good Templars and Friends of Temperance, schools for the education of the youth or support of the poor and afflicted, such property as may be set apart for, and appropriated to the exercise of divine worship or the propagation of the gospel, or used as parsonages, the same being the property of any religious denomination or society : *Provided*, that said exemption shall not extend to more than twenty acres of land if the excess

over twenty acres is of value exceeding one thousand dollars;

(3.) Such property, as may be set apart for graveyards or burial lots, except such as are held with a view to profit, or for the purpose of speculating in the sale thereof;

(4.) Such property of the State and county agricultural societies as may be set apart and used by them for agricultural fairs;

(5.) Arms for muster, wearing apparel and provisions for the use of the owner and his family, household and kitchen furniture, mechanical and agricultural implements of mechanics and farmers, libraries and scientific instruments, not exceeding in aggregate value one hundred dollars: *Provided*, that the exemption from taxation shall not exceed one hundred dollars in favor of any individual tax-payer;

(6.) If any township board of trustees in any county of the State shall fail to allow the exemptions prescribed in the last preceding sub-division, or shall knowingly allow tax-payers more than is exempted in said section, the members of said board concurring in said action shall be each personally guilty of a misdemeanor, and, on conviction, shall be punished in the discretion of the court.

12. The lists shall refer to the first day of April of the year in which they are given, and relate to the quantity, condition and value of the property, and to age of the party in reference to his liability to a poll tax on that day.

13. In the year prescribed for the valuation of the lands, the board shall affix to the description of each piece of land its true value in money on the first day of April in that year, as hereinbefore prescribed, and this value, unless altered as herein prescribed, shall be annually fixed to that land until a new valuation is made. They shall in every year value the personal property at its true value. The valuation found by them they shall affix to every species of property particularized in section nine of this chapter. If any person liable to be charged with taxes shall refuse to answer any question respecting his taxable property, he shall be guilty of a misdemeanor, and, on conviction, liable to be punished by fine or imprisonment, and it shall be the duty of the board to whom the refusal is made, to bind over the offender to appear at the next term of the Superior Court of the county, and to report the fact to the solicitor of the judicial district in order that the offender may be prosecuted. In valuing the property of railroads and other corporations in which the State is a stockholder the whole property shall be valued, but a part of the valuation shall be deducted proportionate to the interest of the State, and the tax levied on the residue only. The tax so levied, when paid by the corporations, shall be charged by the corporation on the individual stockholders only, and when any dividend shall be declared, the dividend to the State shall exceed that to individual corporations by the amount of all taxes previously paid. Stocks or

The lists to refer to the first day of April.—1872-'3, c. 115, s. 12.
How the property shall be valued.—1872-'3, c. 115, s. 13.

shares in incorporated companies shall not be taxed when the property of the company is taxed.

14. The Auditor of the State shall prepare a form to be used in listing property for taxation, and each year shall furnish the sheriff of each county, on or before the fifteenth day of March, with a sufficient number of printed copies, bound in book form with pasteboard backs, and the sheriff shall deliver to the board of each township a sufficient number of such forms for their use.

Auditor to provide forms, and sheriff to distribute to boards of trustees.—1872-'3, c. 115, s. 14.

15. The board shall make an abstract of the tax lists given in to them according to form, to be furnished by the Auditor of the State, and shall, on or before the first Monday in May in each year, return such abstract and the tax lists to the clerk of the commissioners. They shall also return a list of all property in the township if not given in for taxation, with a description and valuation thereof made by the board, and the names of the occupant and the supposed owner, and a list of the taxable polls of the township not given in for taxation. The returns so made shall be open to the inspection of all persons interested, and the clerk shall give to any persons desiring it a copy of so much thereof as relates to his property, on paying a fee of ten cents.

Board to make an abstract of their tax lists. 1872-'3, c. 115, s. 15.

16. The county commissioners of each county, by notice in newspapers, or by posters put up, shall meet on the third Monday in May and revise the tax lists and valuation reported to them, and complete the lists, by computing the tax payable by each person, and affixing the same opposite his name. They shall sit for three days at least, and when necessary shall sit until the revision is complete; and shall hear all persons objecting to the valuation of their property, or to the amount of tax charged against them. They shall have power to summon and examine witnesses, and shall correct the abstract of the township board as may be right and just, and so that the valuation of similar property throughout the county shall be as near uniform as possible. They shall have power to raise the valuation upon such property as they shall deem unreasonably low. The county commissioners, on the prescribed oath, may take the list of any person applying to list his taxables at any meeting of the commissioners held on or before the first Monday in July, upon his paying the clerk twenty-five cents for recording the same. The commissioners shall ascertain the value of their property by the examination of witnesses or otherwise, and insert it in the abstract; and without satisfactory excuse they shall add to the tax of the person so allowed to give in five per centum on the regular amount of his tax for that year.

County commissioners to revise lists, when.—1872-'3, c. 115, s. 16.

17. If any person shall complain before the commissioners that his property, either real or personal, has been improperly valued, or that he is charged with an excessive tax, he shall present his claim in writing, and they shall hear any evidence adduced by him and shall summon and examine any witnesses necessary for a just decision of the question. If they decide

How complaints of excess proceed—1872-'3, c. 115, s. 17.

against the complainant, they shall also give judgment against him for the costs of the investigation, but if the county commissioners shall find that he has cause for complaint, they shall direct the clerk to render a true account thereof, and the account thus rendered, certified by the clerk, shall be returned to the Auditor, who shall credit the sheriff with the overcharge in his settlement of that year.

Application for relief may be made, &c. 1872-'3, c. 115, s. 18.

18. If the application for relief be made to the commissioners after the sheriff shall have settled the accounts with the Auditor, the commissioners shall carefully examine the case, and if in their opinion, the applicant is entitled to relief, shall direct the clerk to record, on the record book, the cause of complaint and the amount which, in the opinion of the commissioners should be refunded to the applicant. The clerk shall make out a copy of such record, certify the same under the seal of the commissioners, and deliver to the applicant, who shall pay to the clerk a fee of fifty cents. Such copy then shall be transmitted to the Auditor of the State, who, on finding the proceedings in conformity with the requirements of this order, shall issue a warrant on the Treasurer of the State for the amount specified. The Treasurer shall, on presentation of such warrant, pay to the holder of the same the amount to be refunded.

Persons not giving in to be charged with double tax and be deemed guilty of a misdemeanor.—1872-'3, c. 115, s. 19.

19. The county commissioners shall insert in the abstract of the tax list for each township the description and valuation of all property not given in, with the name of the person supposed to be liable for the taxes thereon, and the names of all persons in each township liable for a poll tax who failed to give themselves in, and shall charge all such persons with double the tax with which they would otherwise be chargeable, unless satisfactory excuse therefor be rendered; and all persons who are liable for a poll tax and shall wilfully fail to give themselves in, and all persons who own property and wilfully fail to list it within the time allowed, before the list-taker and the county commissioners, shall be deemed guilty of a misdemeanor, and on conviction therefor shall be fined not more than fifty dollars, or imprisoned not more than thirty days.

The county commissioners may exempt from poll tax.—1872-'3, c. 115, s. 20.

20. The county commissioners shall have power to exempt any person from the payment of a poll tax on account of poverty and infirmity, and the clerk shall deliver to the sheriff a list of all persons so exempted, with the amount of taxes charged against them, and the sheriff shall be entitled to a deduction for such taxes in any settlement he may be required to make.

Copies of revised tax list, how distributed.—1872-'3, c. 115, s. 21.

21. The county commissioners shall cause to be made out two copies of the tax lists of each township as revised and settled by them according to a form to be furnished to them by the Auditor of the State. Such form shall show in different columns the amount due by each taxpayer to the State and to the county; one of said copies shall remain in the office of the clerk of the commissioners, the others shall be delivered to the sheriff or tax collector on or before the first Monday in July

in each year, and he shall receipt for the same. The clerk shall indorse on the copies given to the sheriff an order to collect the taxes therein mentioned, and such order shall have the force and effect of a judgment and execution against the property of the person charged in such list. In such list the clerk shall note all appeals from the judgment of the commissioners which have been perfected by the giving of bond as prescribed.

22. The clerk of the commissioners on or before the first Monday in September after the lists are returned, shall return to the Auditor an abstract of the same, showing the number of acres of land and their value, and the value of town lots, and the number of white and colored polls separately, and specify every other subject of taxation and the amount as State and county tax paid on each subject and the amount paid on the whole. At the same time the clerk shall return to the Auditor an abstract of the list of the poor, county and school taxes paid in his county, setting forth separately the tax levied on each poll and on each one hundred dollars value of real property for each purpose, and also the gross amount of taxes of every kind levied for county purposes.

Clerk of commissioners to make return.—1872-'3, c. 115, s. 22.

23. If any clerk shall make a default of any of the duties prescribed in the preceding section, or shall fail to deliver to the Auditor a copy of the sheriff's return, made, sworn to and subscribed as required in section thirty-three of this chapter, 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 State Solicitor, and it shall be the duty of the Auditor to inform the solicitor of such default.

Penalty on clerk for failure.—1872-'3, c. 115, s. 23.

24. In case, within the interval between two regular periods for the valuation of land or real property, any piece of land or real property shall become divided in ownership, either by partition or a sale of a portion thereof, or otherwise, either of the part owners, may at any time, upon five days' notice to the other part owners, apply to the township board of trustees for an apportionment of valuation, which shall be allowed as may be just, and all persons having tax lists are required to amend the same according to the judgment of said board, on the production of a certified copy thereof: *Provided*, that no amendment made after a tax on the land has become due shall operate to affect that tax.

In case land be divided, how tax may be apportioned.—1872-'3, c. 115, s. 24.

25. If after listing of any real or personal property, and before the tax thereon shall become due, the property shall become destroyed or depreciated over twenty-five per centum on its assessed value, otherwise than by act of the owner, the party charged may apply to the county commissioners and, upon proper proof, may have the valuation reduced, and the board of trustees shall thereupon immediately furnish to the clerk of the county commissioners, as well as the party, a certified copy of their order in the premises, or the party may

If valuation altered, what to be done.—1872-'3, c. 115, s. 25.

apply to the county commissioners, who shall make the proper order in relation thereto. If the property was insured, the amount of the insurance shall in such case be considered in altering the valuation. In like manner if property shall have increased twenty-five per centum over its assessed taxable value, the sheriff of the county upon ten days' notice to the owner, may apply to the board of trustees to alter the valuation of the property, and upon proper proof they shall do so; but the valuation shall not be altered if the appreciation has occurred in consequence of improvement made on the property by draining, clearing, building or the like.

When taxes may be paid. Receipt to be given.—1872-'3, c. 115, s. 26.

26. All taxes shall be due on the first Monday of July in each year. When paid, the sheriff or tax collector shall note on the tax list against the name of the party the date of payment and the amount paid; he shall also give a receipt to the parties, stating the amount of the State and county tax separately, and the date of payment: *Provided*, the sheriff shall not collect the taxes for any year until he shall have settled in full with the State and county treasurers for the taxes of the previous year, (if he was the sheriff or tax collector.) Before receiving the tax lists he shall produce the receipts of the State and county treasurer (if he was the sheriff for the previous year,) to the clerk of the county commissioners, and in the event the sheriff fail to produce the aforesaid receipt, the county commissioners shall appoint a tax collector who shall give bond as required by the sheriff to faithfully collect and pay over the taxes according to law. When the sheriff shall collect by his deputies who are not sworn, or other such persons, they shall, before the clerk of the board of commissioners, or before a justice of the peace of the county, take and subscribe an oath faithfully and honestly to account for the same with the sheriff or other person authorized to receive them. Said oath shall be filed and kept on the docket of the county board, and for failure of any deputy sheriff to pay over such tax as he may collect, he shall be guilty of a misdemeanor.

Sheriff or deputy to attend at Court-House, when.—1872-'3, c. 115, s. 27.

27. The sheriff or his deputy shall attend at the court-house or his office in the county town, during the months of August and September, for the purpose of receiving taxes; he shall also in like manner attend at least one day during the months of July and October, at some one or more places in each township, of which twelve days' notice shall be given by advertisement at three or more public places: *Provided*, that nothing in this section shall be construed to prevent the collecting officer from levying and selling after the first day of October, but he shall not sell before that day.

How sheriff to collect.—1872-'3, c. 115, s. 28.

28. Whenever the taxes shall be due and unpaid, the sheriff shall immediately proceed to collect them as follows:

(1.) If the party charged have personal property of a value equal to the tax charged against him, the sheriff shall seize and sell the same, as he is required to sell other property under execution.

(2.) And before sale of land no insolvent taxables shall be credited to the sheriff in the settlement with the Auditor, but such as shall be allowed by the county commissioners, a list whereof containing the names and amounts and subscribed by the sheriffs, he shall return to county commissioners before 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 lists were insolvent at and during the time when, by law, he ought to have endeavored to collect the taxes; such list shall be recorded in commissioners' docket, and a copy thereof shall be returned to the Auditor of the State on or before the day of settlement of the sheriff with the Treasurer.

How sheriff
to collect.

(3.) If the party charged has not personal property to be found in the county of sufficient value, the sheriff shall levy upon the lands of the delinquent, or any part thereof; said sheriff shall return a list of said levy to the clerk of the Superior Court, who shall enter the same in a book to be kept for that purpose, charging therefor ten cents for each levy; the sheriff shall notify the delinquent of such levy and the day and place of sale by service of a notice, stating those particulars, on him personally. If the delinquent cannot by reasonable diligence be found in the county, but has a known agent therein, and his own address is known, or can by reasonable diligence be ascertained, the notice shall be delivered to such agent, and shall be mailed, post-paid, to the delinquent. If the delinquent has no known agent in the county, or his address cannot with reasonable diligence be ascertained, the sheriff shall publish a notice substantially as above described at the court-house door and two other public places, and also in some newspaper published in the county where the land is situated, and if there be no newspaper published in the county, then in the nearest newspaper. The notice shall be served or published as aforesaid at least thirty days before the sale of the land; the sale shall be made at the court-house of the county in which the land lies, and shall be on one of the days prescribed for sale under execution, and shall be conducted in all respects as sales under execution are; if the delinquent resides out of the county, and his address be known, the sheriff within one month after the sale, shall mail to him notice of the sale and date thereof, of the name and address of the purchaser, of the sum bid, and of amount of taxes and costs to be paid by him as a condition of his redemption. If any person liable for taxes, not having property in the county where such taxes are due, shall have property in any other county, or shall remove from his county after the day of listing, or carrying his property therefrom, the collecting officer shall return the fact to the board of commissioners of the county who shall, through

their clerk, make an abstract of the same under their corporate seal, which abstract shall have the force of a tax list regularly indorsed for collection in any county in the State. The collecting officer shall forward the same to the proper collecting officer of the county where the person or property may be, who shall collect the amount due thereon with ten per cent. added, which percentage he may retain to his own use, the residue to be forwarded immediately to the officer from whom he received it, to be accounted for as other public taxes. It shall be the duty of the officer to whom such abstract shall be forwarded to make return of his action on the same within thirty days, and said abstract, or a duly certified copy, may be sent for collection to the same or any other county, until the amount due shall be collected.

(4.) It is expressly declared that the lands of a minor, lunatic, or person *non compos mentis*, shall in no case be liable to be sold for taxes; but should any guardian of the estate of such person not pay the taxes on the property of such person, when due, the tax list in the hands of the sheriff, charging him as guardian, shall be an execution, to be satisfied out of his individual property, or out of the personal property of such ward.

Who is to be purchaser and what he shall pay.—1872-'3, c. 115, s. 29.

29. The whole tract or contiguous body of land belonging to a 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, for the smallest part of the land.

Mode of sale of property—1872-'3, c. 115, s. 30.

30. If no one will on sale offer to pay the amount of taxes and charges for a less number of acres than the whole number of acres in said tract, then the sheriff shall bid off the property for the State, and upon proving the fact and tendering to the Auditor of the State a deed to the State for the property, duly registered in the county in which it lies, shall have credit for the amount of such tax and charges. The deed shall be deposited without delay by the Auditor with the Secretary of State. The property so purchased by the State shall be under the control of the board of education, but may be redeemed as hereinafter prescribed.

The delinquent may redeem the property within twelve months.—1872-'3, c. 115, s. 31.

31. The delinquent may retain the possession of the property for twelve months after the sale, and within that time may redeem it by paying or tendering to the purchaser the amount paid by him, and twenty-five per centum in addition thereto. If the purchaser shall accept the sum so tendered, he shall give a receipt therefor. If he shall refuse, the delinquent may pay the same to the clerk of the Superior Court, for the use of the purchaser, and the clerk shall give a receipt therefor. Such payment shall be equivalent to payment to the purchaser. The delinquent may cause the receipt of the purchaser or of the clerk to be registered, and the register of deeds shall refer to such registration on the margin of his registration of the receipts from the sheriff to the purchaser. After the payment to the purchaser, or to the clerk for his use, as aforesaid, his right

under the purchase shall cease. No sale of property by the purchaser or by the delinquent within twelve months shall convey to their respective vendees any other rights or estates than the parties themselves possess.

32. If the delinquent shall fail to redeem as prescribed in the preceding section, the purchaser may, within eighteen months after the purchase, pay to the sheriff the residue of the sum bid by him, together with the interest thereon, at the rate of one per centum per month, from the expiration of the twelve months next succeeding the sale to the day of payment, and demand a deed. The sheriff shall receive the money for the use of the delinquent and make the deed. The sheriff shall be entitled to retain from the money so paid, for his trouble in the premises, two dollars, and the residue he shall pay to the delinquent on demand. The deed from the sheriff to the purchaser shall be registered within six months, and when so registered shall convey to the grantee therein all the estate in the premises which the delinquent had at the time of the sale for taxes.

If the delinquent shall fail to redeem.—1872-'3, c. 115, s. 32.

33. In case the State becomes the purchaser, under section thirty, then within twelve months after the sale the delinquent may pay to the county treasurer the county taxes due, with twenty-five per centum added thereto, and to the Public Treasurer the State tax due, and twenty-five per centum added thereto, together with the costs allowed the sheriffs in the settlement under sub-division three, section thirty-six, of this chapter, and upon presentation of the several receipts of those officers respectively to the Secretary of State, that officer shall indorse upon the deed conveying the property to the State these words: "Taxes and costs paid, delinquent restored to his rights," and sign the said indorsement, annexing the seal of his office thereto, and charging thirty-five cents therefor, and shall deliver deed to delinquent or his agent. And upon presentation of said indorsement to the register of the county where the land lies, he shall enter the same on the margin of that page of the county records in which is registered the deed made to the State by the sheriff, charging fifteen cents therefor; and such indorsement, delivery and registration shall have the effect of reinvesting the delinquent with all his rights in the premises. That the time for redemption of any property heretofore bought by the State is hereby extended until the thirtieth day of November, one thousand eight hundred and seventy-three; that whenever the word delinquent is used in this chapter it shall be taken to mean delinquent or his heirs or assigns.

In case the State becomes purchaser delinquent may redeem. How deed obtained from Secretary of State.—1872-'3, c. 115, s. 33.

34. Every sheriff shall keep a record of the taxes collected by him from the clerk of the court, and under schedule B of the revenue act, and all forfeitures, arrears from insolvents, double taxes and taxes on unlisted subjects, and on or before the fourth Monday in September shall deliver to the clerk of the county commissioners a statement setting forth all sums received to that date, not previously accounted for, the date of

Sheriff to keep record.—1872-'3, c. 115, s. 34.

such receipts, the person from whom received, the amount received from such persons, the subjects on which received, and the aggregate amount, accompanied by an affidavit taken and subscribed before the clerk and attested by him that the statement is correct, and that no receipt has been omitted. And the clerk shall, by the first Monday in October, send a duplicate of said statement and affidavit to the Auditor of the State, register the name on a book kept in his office for that purpose, and keep a copy of the same in a conspicuous place in the court-house until the first of January next ensuing.

When sheriff
to settle taxes.
—1872-'3, c.
115, s. 35.

35. The sheriffs or other accounting officers shall, on or before the first Monday in December in each year, settle their State tax account with the Auditor, and pay the amount for which he is liable to the Treasurer of the State. The Auditor shall forthwith report to the State Treasurer the amount due from each accountant, setting forth therein the net amount due to each fund, and the Treasurer shall open an account against such officer and debit him accordingly. The sheriff, tax collector and other accounting officer, in making his settlement as aforesaid, shall render the Auditor a duplicate of the list required in section thirty-four of this chapter. In such settlement the sheriff or other officer shall be charged with the amount of public tax as the same appears by the abstract of taxables transmitted to the Auditor, also with all double tax and taxes on unlisted property by him received, and with other tax which he may have collected or for which he is chargeable. The Auditor shall give to each sheriff or tax collector a certified statement embracing the subjects of taxation contained in both lists, and the amount of tax on each subject, which the sheriff or tax collector shall deposit with the clerk of the commissioners of his county for public inspection.

What to be
deducted by
Auditor.—
1872-'3, c. 115,
s. 36.

36. What to be deducted by the Auditor :

(1.) The amount of taxes charged against any person whom the clerk of the commissioners shall certify to have appealed from a decision of the commissioners respecting his liability and to have given the bond required: *Provided*, that the clerk of the court to which the appeal was taken shall certify that it is pending and undecided. The sum so unliquidated shall be carried forward by the Auditor as a charge against the sheriff or tax collector on his next year's account, from year to year, until the decision of the appeal, after which they shall be collected and paid, or balanced, if the final decision be in favor of the appellant;

(2.) All poll tax and taxes on personal property certified by the clerk of the commissioners of the county, by order of the commissioners, to be insolvent and uncollectable;

(3.) The amount of State tax on land bid off by the State, with the cost attendant on the whole on producing the certificate of the Secretary of State, as is provided for in section thirty of this chapter. The cost allowed shall be for making the deed, fifty cents; for registering, twenty-five cents; and such other sums as were actually paid out by the sheriff;

(4.) All over payments made in former settlements by reason of any error in the clerk's abstracts of taxables ;

(5.) Five per centum commission on the amount collected.

37. For his settlement with the State Treasurer the sheriff or tax collector shall be paid three dollars for each day he may be necessarily engaged therein at the city of Raleigh, and traveling expenses to and from said city, at the rate of ten cents per mile by the usual route of travel, said compensation and expenses to be paid on the warrant of the Auditor.

Compensation to sheriff.—1872-'3, c. 115, s. 37.

38. In every case of failure by the sheriff or other accounting officer to settle his accounts within the time prescribed in this chapter for such settlement, and to take the oath required on his settlement, and pay the amount due the Treasurer and exhibit his receipt in full to the Auditor, the Auditor shall forthwith report to the Treasurer the account of such sheriff or officer, and furnish him with a copy of the official bond of said officer and his sureties, deducting therefrom nothing for commissions or insolvents, but adding thereto one thousand dollars and ten per centum of the amount of taxes with which said sheriff is charged for the amount of taxes supposed not to appear in the list transmitted by the clerk, and if the whole amount be not paid, the Treasurer, on motion of the solicitor of the sixth judicial district, in the Superior Court of Wake county, before the clerk thereof, within ten days after the default shall have occurred, shall recover judgment against him and his sureties, without other notice than is given by the delinquency of the officer. And to the end that their obligations and names may be known, the clerk of the Superior Court shall, on or before the second Monday in September in each year, transmit to the Auditor a copy, certified under seal of the court, of the bond of the sheriff and his sureties, 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 times as is provided in this section. If the sheriff or other accounting officer shall fraudulently and corruptly fail to account as aforesaid, or shall fraudulently make any deed to the State under section thirty of this chapter, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be sentenced to pay a fine in the discretion of the court and be imprisoned not less than three nor more than twelve months.

Fail'e to settle taxes. Treasurer shall recover judgment. Clerk to transmit copy of sheriff's bond to Auditor.—1872-'3, c. 115, s. 38.

39. The sheriff or the tax collector shall pay the county taxes to the county treasurer or other lawful officer. He shall at no time retain in hands over three hundred dollars for a longer time than ten days, under a penalty of ten per centum per month to the county upon all sums so unlawfully retained. On or before the eighth day of January in each year the sheriff shall account with the county treasurer or other lawful officer, for all taxes which have been collected by him for the county during the fiscal year, and on failure so to do, he shall pay to

Sheriffs to pay county taxes, when.—1872-'3, c. 115, s. 39.

the county treasurer two per centum per month on all sums unpaid, and this shall be continued until final settlement. He shall be charged with the sums appearing by the tax lists as due for the county taxes, and shall be allowed to deduct therefrom in like manner as is prescribed in sub-divisions one, two, four and five of section thirty-six of this chapter, respecting his settlement of State taxes, and also the amount of county tax on land laid off for the State on producing a certificate from the Secretary of State that a deed for the same has been deposited with him.

County commissioners to appoint a committee to assist in settlements.—1872-'3, c. 115, s. 40.

40. The county commissioners, at the last regular or other subsequent meeting in each year, shall appoint one or more of their number to be present and assist at the accounting and settlements between the sheriff and county treasurer provided for in the next preceding section, and also to audit and settle the accounts of the county treasurer, and of all other county officers authorized to receive or disburse the county funds. The accounts so audited shall be reported to the county commissioners, and when approved by them shall be filed with the clerk and recorded on his book, and shall be *prima facie* evidence of their correctness, and impeachable only for fraud or specified error.

Penalty of Sheriff for failing to account.—1872-'3, c. 115, s. 41.

41. In case the sheriff of a county shall fail, neglect or refuse to account with the county treasurer and assistant committee as above required, or to pay what may be rightfully found due in such account, he shall forfeit and pay to the State, for the use of the county, a penalty of twenty-five hundred dollars. It shall be the duty of the county treasurer, and if he neglect or refuse to perform it, of the chairman of the county commissioners, to cause an action to be brought in the Superior Court of the county on the bond of the sheriff against him and his sureties, to recover the amount owing by him and the penalty aforesaid; if the sheriff shall fraudulently and corruptly fail to account as aforesaid, he shall be criminally liable thereupon in like manner and with the same penalties imposed for such criminal defalcation in section thirty-eight.

Other county officers, when to account, and penalty for failure.—1872-'3, c. 115, s. 42.

42. In each year the county treasurer shall give five days' notice to all county officers (except the sheriff,) authorized to receive and disburse the county funds, to appear at the courthouse of the county on a certain day during the first ten days of January before him and the committee appointed by the county commissioners, and present an account of all sums received or disbursed for the county, with their vouchers, and any officer failing to attend and account shall be deemed guilty of a misdemeanor. The accounts when audited shall be reported to the county commissioners at their next meeting, and if approved by them, shall be filed with the clerk and recorded in their proceedings, together with their approval, and shall be deemed *prima facie* correct.

Where there are tax collec-

43. Wherever in this chapter a duty is imposed upon a sheriff of a county for which a tax collector has been appointed, it

shall be incumbent upon the tax collector to perform the said office instead of the sheriff, and such tax collector shall have all the emoluments, and be subject to all the penalties, as provided in the case of sheriffs in this chapter.

44. A majority of any board of county commissioners may extend the time for the collection and settlement of the county taxes in their respective counties, to such time as they may deem expedient, not to extend beyond the first day of May, in the year following that in which the taxes were levied.

45. Settlements hereafter made by the Treasurer of the State with sheriffs and tax collectors, after default, where the whole amount of taxes and other public dues have been paid into the treasury are declared valid, all costs to be paid by said sheriffs or collector.

46. The treasurer of the State, with the advice and approval of the Attorney-General, is authorized, when in their judgment it may be best to secure the interests of the State, and will not lose any lien held by the State, to grant indulgences to defendants in execution, and likewise to bid for in behalf of the State and purchase property of said defendants, where deemed necessary to secure the payment of the public dues.

47. Any property purchased as aforesaid shall be sold within two years at public auction, after thirty days' advertisement, on such terms as may be agreed on by the Treasurer, with the approval of the Attorney-General, and a report to the General Assembly shall be made by the Treasurer of all such purchases and sales.

48. Whenever by law, settlements of matters connected with the public revenue are required to be made with the Secretary of State or the Public Treasurer, said officers shall be authorized to administer oaths to verify the same.

49. 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.

50. 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.

tors, duty to be performed by them.—1872-'3, c. 115, s. 43.

Extension of time for collecting taxes, by county commissioners.—1871-'2, c. 66, s. 1.—1872-'3, c. 115, s. 39. Settlements made after default, when amount is paid, are valid.—1871-'2, c. 94, s. 1. Treasurer may grant indulgences, when.—1871-'2, c. 94, s. 2.

Public sale of property.—1871-'2, c. 94, s. 3.

Treasurer and Secretary may administer oaths.—1866-'7, c. 75.

If sheriff die, his sureties may collect taxes.—R. C., c. 99, s. 83.

Sheriff allowed one year after 1st Oct. to collect.—R. C., c. 99, s. 84.

II. TAXATION.

51. The taxes hereinafter designated, payable in the existing national currency, shall be assessed and collected under the rules and regulations prescribed by law.

Assessment of taxes.—1872-'3, c. 144, s. 1.

52. On each taxable poll or male between the ages of twenty-

Poll tax.

Limitation of
time.—1872-
'3, c. 144, s. 2.

one and fifty, except such poor and infirm persons as the county commissioners may declare and record fit subjects for exemption, there shall be annually levied and collected a tax of one dollar and five cents, the proceeds of such tax to be devoted to purposes of education as may be prescribed by law. If any poll tax shall not be paid within sixty days after the same shall be demandable, it shall be the duty of the sheriff, if he can find no property of the person liable sufficient to satisfy the same, to attach any debt or other property incapable of manual delivery due or belonging to the person liable, or that may become due to him before the expiration of the calendar year, and the person owing such debt or having such property in possession shall be liable for said tax.

Objects of tax-
ation.—1872-
'3, c. 144, s. 3.

53. The taxes hereinafter designated shall be applied to defray the expenses of the State government and to pay appropriations for charitable and penal institutions.

Class I.

Classification
of taxes.—
1872-'3, c. 144,
class 1, s. 1.

54. There shall be an *ad valorem* tax of twenty cents for the general fund on every one hundred dollars value of real and personal property in the State, subject to exemptions made by law, including moneys, credits, bonds, stocks, etc.

Special tax for
deficiency in
the treasury.
—1872-'3, c.
144, class 1, s.
2.

55. A special tax of seven cents on the one hundred dollars shall be levied and collected on all the taxable property of the State to meet an existing deficiency in the treasury.

Asylum tax.—
1872-'3, c. 144,
class 1, s. 3.

56. A special tax of nine cents on the one hundred dollars shall be levied and collected on all the taxable property of the State for the insane asylum and the institution for the deaf, dumb and blind.

Penitentiary
tax.—1872-'3,
c. 144, class 1,
s. 4.

57. A special tax of six cents on the one hundred dollars shall be levied and collected on all the taxable property of the State to be applied to the support of the convicts in the penitentiary and the erection of the outer wall around the same and for no other purpose.

Class II.

The subjects and persons mentioned in the following class shall be taxed as specially mentioned :

Income tax.—
1872-'3, c. 144,
class 2, s. 1.

58. On the net incomes and profits, other than that derived from property taxed, from any source whatever, during the year preceding the first day of April in each year there shall be a tax of one per centum. The income tax shall include interest on the securities of the United States, of this State or other States or governments. In estimating the net income the only deduction by way of expense shall be :

Deductions.

- (1.) Taxes other than the income tax due this State ;
- (2.) Rent for use of buildings or other property or interest on encumbrance on property used in the business from which the income is derived ;

(3.) Usual or ordinary repairs for the buildings from which the income is derived;

(4.) Cost or value of the labor, except that of the tax-payer himself, raw material, food and all other necessary expenses incidental to the business from which the income is derived, together with the necessary expenses of supporting the family, which shall in no instance exceed one thousand dollars;

(5.) The tax-payer shall return to the assessor the net amount of his income, which return the assessor shall file in the office of the county commissioners.

59. Upon all real and personal estate, whether legal or equitable, situated within the State, which shall descend or be devised or bequeathed to any collateral relation or person other than a lineal descendant or ancestor of the husband or wife of the deceased, or husband or wife of such ancestor or descendant, or to which such collateral relations may become entitled under the law for the distribution of the intestate estates, and which real and personal estates may not be required in payment of debts and other liabilities, the following per centum tax upon the value thereof shall be paid:

Real and personal estate.—
1872-'3, c. 144,
class 2, s. 2.

(1.) If such collateral relation be a brother or a sister of the father or mother of the deceased, or issue of such brother or sister, a tax of one per centum;

Collateral tax.

(2.) If such collateral relation be a more remote relation, or the devisee or legatee be a stranger, a tax of two and a half per centum. The real estate liable to taxation shall be listed by the devisee or heir in a separate column, designating its proper per centum tax. The personal estates or real estates reduced to assets, shall be liable to the tax in the hands of the executor or administrator, and shall be paid by him, before his administration account is audited or the real estate is settled, to the sheriff of the county. If the real estate descended or devised shall not be the entire inheritance, the heir or devisee shall pay a *pro rata* part of the tax, corresponding with the relative value of the estate or interest. If the legacy or distributive share to be received shall not be the entire property, such legatee or distributee shall in like manner pay a *pro rata* part of the tax, according to the value of his or her interest.

Duty of executors, &c.
Duty of Superior Court clerk.

Whenever the personal property in the hands of such administrator or executor (the same not being needed to be converted into money in the course of the administration,) shall be of uncertain value, he shall apply to the county commissioners to appoint three impartial men of probity to assess the value thereof, and such assessment being returned to the commissioners and being confirmed, shall be conclusive of the value. To facilitate the collection of tax on collaterals, every executor or administrator shall return in his inventory whether the estate of the deceased goes to the lineal or collateral relations, or to a stranger, and if to collaterals, whether such collateral belongs to the first or second class above mentioned, under a penalty of one hundred dollars, to be recovered in the name and for the

use of the State; and it shall be the duty of the Superior Court clerk of the county to furnish the sheriff with the names of the executors and the administrators who make such returns, after each and every term of his court. That wherever in any law or act of incorporation granted either under the general law or by special act, since the fourth of July, one thousand eight hundred and sixty-eight, there is any limitation of taxation, the same is hereby repealed, and all the property and effects of all such corporations shall be liable to full taxation, like property owned by individuals.

SCHEDULE B.

Ad valorem
tax.

The taxes in this schedule imposed are license tax for the privilege of carrying on the business or doing the act named; and nothing in this schedule contained shall be construed to relieve any person from the payment of the *ad valorem* tax on his property, as required by the preceding schedule, and no city, town or other municipal corporation shall have power to impose, levy or collect any greater sum on real and personal property than one and one-half per centum on the value thereof: *Provided*, that this act shall not apply to cities or towns where a rate of taxation is fixed in their charters.

Proviso.

Theatres.—
1872-'3, c. 144,
sch. B, s. 1.

60. Traveling theatrical companies shall pay five dollars for each exhibition. When the theatrical exhibitions are by the season of not less than one month, the tax shall be fifty dollars per month.

Concerts.—
1872-'3, c. 144,
sch. B, s. 2.
Museums.—
1872-'3, c. 144,
sch. B, s. 3.

61. On each concert or musical entertainment for profit shall be paid five dollars; on each lecture for reward, five dollars.

62. On museums, wax-works, or curiosities of any kind, natural or artificial, (except paintings and statuary,) on each day's and night's exhibition, shall be paid five dollars.

Circuses.—
1872-'3, c. 144,
sch. B, s. 4.

63. On every exhibition of a circus or menagerie, for each day or a part of a day, one hundred dollars, and for each side show to a circus or a menagerie, ten dollars.

Exemptions.—
—1872-'3, c.
144, sch. B, s.
5.

64. On all itinerant companies or persons, who exhibit for amusement of the public, otherwise than is mentioned in the four preceding sections, five dollars for each exhibition. Exhibitions given without charge for admission shall be exempt, and provided that all fairs or exhibitions for the promotion of religious, educational or charitable objects shall be exempt.

Gift enter-
prises.—1872-
'3, c. 144, sch.
B, s. 6.

65. On all gift enterprises, or on any person or establishment offering any article for sale, and proposing to present purchasers with any gift or prize as an inducement to purchase, ten dollars and one per centum upon the gross receipts. And on any lottery, whether known as a beneficial association or otherwise, five hundred dollars and five per centum on gross receipts, to be paid to the Treasurer of the State. This tax shall not be construed as a license, or to relieve such persons or establishments from any penalties incurred by a violation of the law.

66. Every agency of a bank incorporated out of the State, one hundred dollars, to be paid to the State Treasurer.

Bank agencies.—1872-'3, c. 144, sch. B, s. 7.
Billiard saloons.—1872-'3, c. 144, sch. B, s. 8.

67. The tax on billiard saloons shall be twenty dollars on each table. Every place where a billiard table is kept for hire shall be considered a billiard saloon, within the meaning of this act.

68. On every bowling alley, or alley of the like kind, or bowling saloon, bagatelle table, or any other table, stand or place for any other game or play, with or without a name, unless such alley, stand, place or game is kept for private amusement or exercise alone, and not prohibited by law, there shall be a license tax of twenty dollars.

Bowling alley.—1872-'3, c. 144, sch. B, s. 9.

69. Every dealer in spirituous liquors, vinous liquors, porter, lager beer or other malt liquors, shall pay a tax of five per centum on the amount of all purchases; and every agent who offers liquors for sale shall pay the tax on the value of all liquors of every description sold by him.

Liquor dealers.—1872-'3, c. 144, sch. B, s. 10.

70. Every person desiring to sell spirituous or malt liquors, wines or cordials in quantities less than a quart, shall, before engaging in said sale, obtain an order to the sheriff from the board of commissioners of the county in which he proposes to do business, to grant him license, which orders they may grant or refuse, at their option, and if granted, he may take out license for not less than one year, and shall pay a tax therefor of twenty-five dollars. Every retail dealer of malt liquors only shall pay a license tax of fifteen dollars per annum: *Provided*, this section shall not be construed to repeal or alter the provisions of any special act prohibiting or regulating the sale of liquors in any particular locality.

Retailers.—1872-'3, c. 144, sch. B, s. 11.

71. Every merchant, jeweler, grocer, druggist and every other trader, who, as principal or agent, carries on the business of buying or selling goods, wares or merchandise of whatever name or description, except such as are specially taxed elsewhere in this chapter, shall pay one-eighth of one per centum on the total amount of purchases in or out of the State, for cash or on credit, except the products of manufacturers and agricultural products of this State, and no retail merchants shall be required to pay any tax on purchases made from wholesale merchants residing in this State. Every person required by law to list his purchases shall, on the first day of January, April, July and October in each year, list on oath to the register of deeds the total amount of his purchases for the preceding quarter. The register of deeds shall keep a book in which shall be recorded the lists given in to him as herein required, and shall furnish the sheriff with a copy of said lists within ten days after the same are given in. It shall be the duty of the sheriff to collect from every person on the list furnished him by the register of deeds the taxes embraced therein. The register of deeds shall have power to require the merchant making his statement to submit his books for examination to him, and every merchant refusing on demand to submit his books to such

Merchants of all classes.
Exceptions.
Persons to list taxes.
Duty of register.
Duty of sheriff.
Power of register.
Fees of register.—1872-'3, c. 144, sch. B, s. 12.

examination shall be liable to a penalty to the State of two hundred dollars, to be prosecuted by the register of deeds and recovered in any court having jurisdiction of the same. It shall further be the duty of the register of deeds to bring suit against every merchant refusing as aforesaid in the Superior Court of the county as may be prescribed for special proceedings, to the end of obtaining such examination and compelling payment of the proper tax. And for such service the register of deeds shall be entitled to fifteen cents for each return made by any merchant, same to be paid by the commissioners of the county.

Hotels.—1872-'3, c. 144, sch. B, s. 13.

72. On the gross receipts of hotels, boarding-houses (except those used for educational purposes,) restaurants and eating-houses, the tax shall be one-fourth of one per centum.

Ferries, &c.—1872-'3, c. 144, sch. B, s. 14.

73. The tax on public ferries, toll-bridges and gates across highways, one-fourth of one per centum on gross receipts.

Brokers.—1872-'3, c. 144, sch. B, s. 15.

74. Every money, or exchange, bond or note broker, private banker or agent of a foreign broker or banker, in addition to the *ad valorem* tax on their capital invested, or the tax on their net income, shall pay, if employing a capital of twenty thousand dollars, a license tax of one hundred dollars; if a capital of less than twenty thousand dollars and not less than ten thousand dollars, fifty dollars; and if a capital of ten thousand dollars, or less, a tax of twenty-five dollars, and also ten dollars additional for each county in which they have an agency; the tax to be paid to the State Treasurer, the license to be given by the Auditor.

Auctioneers.—1872-'3, c. 144, sch. B, s. 16.

75. Every auctioneer on all goods, wares or merchandise, sold by himself or agent, whether by ascending or descending bids, or at public outcry, shall pay one per centum on the gross amount of his sales, subject to all the regulations and exemptions set forth in the chapter of this Revisal entitled "Auction and Auctioneers"; but this shall not apply to tobacco-warehousemen, who shall pay a license tax of thirty-five dollars a year, nor to persons who keep a warehouse exclusively for the sale of cotton, where all who wish may exhibit cotton for sale; but the person keeping such warehouse shall pay a license tax of fifty dollars.

Commission merchants.—1872-'3, c. 144, s. 17.

76. Every commission merchant shall pay a tax of one-eighth of one per centum on his sales as commission merchant: *Provided*, that when spirituous, vinous or malt liquors are sold by commission merchants, they shall pay a tax of five per centum on their sales of such liquors.

Horses and vehicles. Proviso as to draymen.—1872-'3, c. 144, sch. B, s. 18.

77. Every person whose occupation or business is to keep horses or vehicles for hire or to let, shall pay a tax of two dollars for every horse kept for that purpose at any time during the year, to be collected by the sheriff quarterly: *Provided*, that this section shall not apply to draymen.

Itinerant dentists, &c.—1872-'3, c. 144, sch. B, s. 19.

78. Every itinerant dentist, medical practitioner, portrait or miniature painter, daguerrean artist and other persons taking likenesses of the human face, five dollars for each county in

which he carries on his business. Every itinerant dealer in prize photographs one hundred dollars for each county in which said business is carried on.

79. Every person that peddles goods, wares or merchandise, either by land or water, or any drugs, nostrums or medicines, whether such persons shall travel on foot or with a conveyance or otherwise, except manufacturers or their agents selling by sample, shall obtain from the commissioners an order to the sheriff to grant him peddlers' license, to expire at the end of six months from its date, and the sheriff, on the production of a copy of such order, certified by the clerk of said commissioners, shall grant such license for his county on receipt of ten dollars tax, to-wit: 1st. That not more than one person shall peddle under the license. 2nd. That nothing in this section contained shall prevent any person freely selling live stock, vegetables, fruit, oysters, fish, books, charts, maps, printed music or the articles of his own growth or manufacture within this State. 3d. That nothing herein contained shall release peddlers from paying the tax imposed in this act on persons who deal in the same species of merchandise, which tax shall be collected or received in the same manner as is the case of other merchants and traders: *Provided*, that nothing herein contained shall be so construed as to require a tax to be paid by any person other than merchants and peddlers for bartering cotton, iron, earthenware, yarns, salt and heavy cotton domestics.

80. Every itinerant who deals in or puts up lightning rods, ten dollars for each county in which he carries on business.

81. Every company of gypsies or strolling company of persons who make a support by pretending to tell fortunes or begging, fifty dollars in each county in which they offer to practice any of their craft, recoverable out of any property belonging to any of the company, but nothing herein contained shall be so construed as to exempt them from indictment or penalties imposed by law.

82. Every drummer or traveling agent of any person who shall sell any spirituous, vinous or malt liquors, goods, wares or merchandise, by sample or otherwise, whether delivered or to be delivered, except agricultural implements and fruit trees, and articles of his own growth or manufacture, shall, before making any such sale, obtain a license to sell one year from the Public Treasurer, by paying said Treasurer an annual tax of fifty dollars, but shall not be liable to be taxed in any county because of his sales. Any person violating the provisions of this paragraph shall be deemed guilty of a petty misdemeanor, and upon conviction before any magistrate shall be fined not exceeding fifty dollars, or imprisoned not exceeding one month, and shall forfeit and pay besides two hundred dollars to the sheriff, to be collected by distress or otherwise, one-half of which shall be accounted for as other taxes, the other half to the use of the informer and sheriff equally.

Peddlers.—
1872-'3, c. 144,
sch. B, s. 20.

Lightning
rods.—1872-'3,
c. 144, sch. B,
s. 21.
Gypsies, &c.
1872-'3, c. 144,
sch. B, s. 22.

Drummers.
Misdemeanor.
—1872-'3, c.
144, sch. B, s.
23.

Officers of
banks. Certi-
ficate on oath.
—1872-'3, c.
144, sch. B, s.
24.

83. The chief officer of banks, including savings banks, and private bankers, shall, in April and October of each year, certify on oath, the amount of profits which have been earned, and shall pay on such profits five per centum to the State Treasurer; and such insurance companies as are incorporated by this State shall, in April and October of each year, certify on oath the amount of profits which have been earned, and shall pay on such profits five per centum to the State Treasurer. On failure to comply with the provisions of this section said banks, companies or persons shall pay as taxes one thousand dollars, to be collected by the Treasurer of the State.

Insurance
companies.
Failure of
compliance a
misdemeanor.
Commission
to sub-agents.
Proviso.—
1872-'3, c. 144,
sch. B, s. 25.

84. Every insurance or assurance company not incorporated in this State doing business therein, shall pay an annual tax of two per centum to the Treasurer of the State upon the gross receipts derived from the premiums charged for insurance obtained therein, unless the company shall exhibit to the Governor, Auditor and Treasurer a sworn statement of investments in real property situated in this State, or loans secured by mortgage to citizens of this State of an amount equal to one-half of such gross receipts, when the tax shall be one per centum, said tax to be paid quarterly, viz: on the first days of April, July, October and January of each year. Each general agent shall be required on the above named days to make a statement to the Treasurer, under oath, that the amount by him returned is a full and correct statement of such quarter. On failure to comply with the provisions of this section, every such company shall pay as a tax two thousand dollars, and the principal agent shall be liable therefor. Every such company shall be required to appoint a general agent, who shall obtain a license from the Treasurer before transacting any business therein, and before such license is granted the applicant shall show to the Treasurer his appointment as general agent, under seal of the company, and thereupon the license shall be granted by the payment of one hundred dollars, and such license shall be renewed annually by the payment of said sum. And it shall be the duty of said general agent to furnish each of his sub-agents with a commission authorizing him to do business. And any one found soliciting insurance without such commission shall be deemed guilty of a misdemeanor, and be fined not less than one thousand dollars and imprisoned not less than ninety days. The agent effecting insurance shall, on the first days of April, July, October and January, make return to the register of deeds of the county in which the insurance is effected, of all the business done by him during the preceding quarter in said county, and shall pay to the sheriff the county tax assessed on such business. The general agent shall also on the first days of April, July, October and January make return to the register of deeds of each county of the amount of gross receipts for premiums received from such county for such quarter. It shall further be required of the general agent or his local agent to pay to the sheriff of each county the county tax asses-

sed upon the gross receipts of premiums collected in such county, which shall not exceed one per centum on such gross receipts, at the time and in the manner as required by the State, and no municipal corporation shall be allowed to add any additional tax, and on failure to make returns or to pay as aforesaid, said agent shall pay twenty-five dollars for each policy effected or negotiated by him in such county: *Provided*, That no county or corporation shall be allowed to tax insurance agents for license.

85. Every person required in this chapter to pay a tax on receipts or sales shall list on oath to the register of deeds, on the first days of January, April, July and October of each year, the amount of receipts or sales for the preceding quarter, and the register of deeds shall keep a record of the same in a book kept for that purpose. The register of deeds shall, within ten days after the lists are given in, furnish the sheriff with a copy of said lists, and the sheriff shall immediately proceed to collect the taxes imposed upon the copy of lists furnished him. Any person failing to list his receipts or sales as required in this section shall be subject to double tax, to be charged against him by the register of deeds, and collected by the sheriff. The register of deeds shall have the same power to compel such persons to submit their books for inspection as is conferred upon him in section seventy-one of this chapter in respect to merchants, &c., and the same penalties prescribed in said section seventy-one of this chapter are hereby imposed for refusal on the part of any person referred to in this section to submit his books when demanded.

Persons to list, when.—1872-'3, c. 144, sch. B, s. 26.

86. No person shall follow any of the trades or professions taxed by this chapter or in any other chapter imposing taxes on trades and professions and franchises, without first listing the same to the register of deeds, and obtaining a license from the sheriff of the county in which the trade or profession is to be followed or the franchise enjoyed, or from the Treasurer of the State, when the Treasurer is required to grant a license: *Provided*, if any person is desirous of taking out a license between the months of January, April, July and October, he shall list the same to the register of deeds, who shall furnish said applicant with a copy of the list, whose duty it shall be to present the same to the sheriff, who shall collect said tax and grant the license. Such license shall give to the person obtaining it the right to practice the trade or profession, or to enjoy the franchise therein specified in the county of the sheriff by whom it is issued, and in none other, unless the law imposing the tax shall otherwise direct, from its date to the following first day of April: *Provided*, that nothing in this section shall apply to licensed practicing physicians, lawyers or dentists.

Traders license.—1872-'3, c. 144, sch. B, s. 27.

Proviso.

Proviso.

87. The form of the license shall be in substance as follows :

Form of license.—1872-'3, c. 144, sch. B, s. 28.

Received, this .. day of .., 18.., of .., dollars, of

which dollars is the tax to the State of North Carolina, and dollars is the tax to the county of, for his license to practice the trade (or profession) of until the first day of April next.

(Signed,)

A. B.

Sheriff of County.

(Countersigned,)

C. D.,

Register of Deeds for County.

Rule for taking out license.—1872-'3, c. 144, sch. B, s. 29.

88. Any person proposing to follow any taxed trade or profession may take out a license in advance of the time when he proposes to begin such trade or profession, or in advance of the expiration of a license already held by him. In such case the license shall be truly dated, and shall specify the time at which it shall begin to be of force, as well as the time when it shall expire, which shall always be on the first days of January, April, July or October.

Validity of license.—1872-'3, c. 144, sch. B, s. 30.

89. No license issued by the sheriff shall be valid until the same shall have been exhibited to and countersigned by the register of deeds of the county, who shall receive for the services imposed on him by this chapter in reference to licenses a fee of twenty-five cents from every person licensed.

Duty of register of deeds.—1872-'3, c. 144, sch. B, s. 31.

90. The register of deeds shall keep a book in which he shall record the name of the person licensed, the trade or profession to be followed or the franchise to be enjoyed, the date at which it begins to run and the amount of tax, and he shall annually during the month of September, send a certified copy of such record to the Auditor of the State, who shall charge the sheriff with the amount so appearing due. If any register shall fail to perform the duty imposed on him, he shall forfeit to the State a penalty of two hundred dollars, to be recovered of him and the sureties to his official bond, on motion of the Superior Court for the county of Wake; and on such motion, a certified copy of his official bond and the certificate of the Auditor of the State setting forth his failure to make the required return, shall be *prima facie* evidence entitling the State to judgment in the absence of any sufficient defence.

Penalty for failing to take out license.—1872-'3, c. 144, sch. B, s. 32.

91. Every person who shall practice any trade or profession or use any franchise taxed by law of North Carolina without having first paid the tax and obtained a license as herein required, shall be deemed guilty of a misdemeanor, and shall also forfeit and pay to the State a penalty not to exceed twenty dollars, at the discretion of the court, and in default of the payment of such fine, he may be imprisoned for not more than one month, at the discretion of the court, for every day on which he shall practice such trade or profession or use such franchise, except in such cases where the penalty is specially prescribed in this chapter, which penalty the sheriff of the county in which it has occurred shall cause to be recovered before any justice of the peace of the county.

92. The sheriff shall immediately report to the register of deeds all sums recovered by him as penalties under this chapter, and the register shall add three-fourths of each penalty recovered to the record of licenses required to be kept by him; the other fourth the sheriff may retain.

Duty of sheriff.—1872-'3, c. 144, sch. B, s. 33.

SCHEDULE C.

The taxes embraced in Schedule C shall be listed and paid as especially therein directed, and shall be for the privilege of carrying on the business or performing the act named.

93. Every express company shall make return to the Public Treasurer on or before the first Monday in January, April, July and October of each year of the entire gross earnings and receipts of such company within the State of North Carolina during the three months next preceding. The said report shall be verified by the oath of the chief officer or agent of the company at its principal office in this State. The said company shall, on or before the third Monday of each of the said months, pay on the gross receipts two per centum for each three months, and for failure to make such report or pay such tax the company shall pay as taxes two thousand dollars, to be collected by such sheriff as the Public Treasurer may designate, by distress or otherwise.

Express companies.—1872-'3, c. 144, sch. C, s. 1.

94. Every telegraph company doing business in this State shall, at the times and in the manner prescribed in the preceding section, make report of the entire receipts of said company within this State, and pay to the Public Treasurer two per centum for each three months, and in case of default of such report or payment, the company shall pay as tax one thousand dollars, to be collected by such sheriff as the Public Treasurer shall designate, by distress or otherwise.

Telegraph companies.—1872-'3, c. 144, sch. C, s. 2.

95. Whenever the seal of the State, of the Treasury department, of a notary public or other public officer, except clerks of the Supreme or Superior Courts, required by law to keep a seal, shall be fixed to any paper, except as is hereinafter excepted, the tax shall be as follows, to be paid by the party applying for the same: For the seal of the State, one dollar, to be collected and paid in the treasury by the Private Secretary of the Governor; for the seal of the State department, fifty cents, to be collected by the Secretary of State and paid by him into the treasury; for the seal of the Public Treasurer, to be collected by him and accounted for as other public moneys fifty cents; for the seal of the Supreme Court, fifty cents, to be collected by the clerk, and paid by him into the treasury; and for the seal of a notary public or other public officer, twenty-five cents, to be collected and paid over by the said officers to the sheriff of the county where such seal is kept. Said officers shall keep an account of the number of times their seals may be used, and shall deliver to the proper officer a sworn statement thereof. Whenever a scroll is used in the absence of a seal by any of

Tax on seals and scrolls. Compensation to officers collecting seal taxes.—1872-'3, c. 144, sch. C, s. 3.

said officers, the said tax shall be on scroll ; seals affixed for the use of any county or State or other government, or used on the commissions of officers in the militia, justices of the peace or other public officer not having a salary, or under the pension law, or upon any process of court, shall be exempt from taxation. The officers collecting the seal taxes may retain as compensation five per centum. Any person receiving taxes under this section and wilfully refusing or neglecting to pay the same as required, shall be guilty of embezzlement, and on conviction shall be fined not more than five hundred dollars or imprisoned in the State prison, in the discretion of the court.

Marriage licenses.—1872-3, c. 144, sch. C, s. 4.

96. On each marriage license fifty cents, and on each marriage contract, mortgage deed and deed in trust to secure creditors, where amount secured exceeds three hundred dollars, there shall be a tax of one dollar. The tax on marriage licenses shall be paid to the register of deeds when he issues the license, and the tax on the deeds to the judge of probate of the county in which the instrument is admitted to registration ; but if in two or more counties, then in the county in which it is first registered. It shall be the duty of the judge of probate and register of deeds to render annually to the sheriffs during the second week in the month of September sworn statements in detail of the taxes received by them respectively under this section, and at the same time pay him the money thus received, less four per centum commissions, and thereupon the sheriff shall file the statement of the judge of probate with the register of deeds, and that of the latter with the clerk of the Superior Court: *Provided*, that mortgages, deeds in trust or other conveyances made to secure agricultural advancements shall not be subject to any tax under this section.

Charters of incorporation.—1872-3, c. 144, sch. C, s. 5.

97. On every charter of incorporation of any company granted by the General Assembly, other than those for charity, benevolence or literature, where the corporation had powers to become incorporate under the provisions of any general law, whether originally granted by the General Assembly or secured by letters patent or otherwise, there shall be a tax of twenty-five dollars paid directly to the public Treasurer. No company shall be organized under such special act of incorporation without first obtaining a certified copy of such act from the Secretary of State, which shall be filed in the office of the said Secretary.

Fines.—1872-3, c. 144, sch. C, s. 6.

98. Whenever any officer receives or collects a fine, penalty or forfeiture in behalf of the State he shall within ten days after such reception or collection pay over and account for the same to the clerk of the Superior Court, who shall forward such fine, penalty or forfeiture to the treasurer of the board of education for the benefit of the fund for common schools.

Penalty.—1872-3, c. 144, sch. C, s. 7.

99. Any officer convicted of violating the preceding section shall be guilty of embezzlement, and may be punished not exceeding five years in the State prison, at the discretion of the Court.

100. All laws imposing taxes, the subjects of which are revised in this chapter, are hereby repealed: *Provided*, that this repeal shall not extend to the provisions of any law so far as they relate to the taxes listed or which ought to have been listed or which may be due previous to the ratification of this chapter.

Repealing clause.
Proviso.—
1872-'3, c. 144,
sch. C, s. 8.

101. All laws requiring taxes to be levied by the county commissioners on the first Monday in February of each year are hereby repealed.

Laws repealed.—1872-'3,
c. 144, sch. C,
s. 9.

102. There shall be a tax of twenty dollars upon each license to an attorney to practice law in the courts of the State, to be paid at the time of obtaining license, to the clerk of the Supreme Court, and he shall apply the same as prescribed in the fifth section of the ninety-sixth chapter of this revision, entitled "Public Libraries." The clerk shall be entitled to six per cent. for receiving and applying said money.

Tax on attorney's licenses.—
R. C., c. 99,
s. 4.
Resolution of
1872-'3.

CHAPTER 103.

RIVERS AND CREEKS.

SECTION

1. County commissioners may appoint commissioners to examine streams, and make improvements.
2. Overseers to be yearly appointed by county commissioners; their duty.
3. County Commissioners may direct flats, &c., to be procured.
4. Power of county commissioners of Johnston, Wayne, &c., as to Neuse river.

SECTION

5. Streams to be laid off into districts. One-fourth to be left open for passage of fish.
6. Obstructing boats by felling trees, &c., misdemeanor.
7. Duty of commissioners to examine streams and lay off gates, &c., in dams.
8. Report made and confirmed.
9. Gates, &c., how discontinued.
10. Penalty on owner of dam for failing to make gates, &c.

1. WHERE any inland river or stream shall run through the county, or be a line of their county, the county commissioners 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 county commissioners 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 to be laid off by the county commissioners.

County commissioners may appoint commissioners to examine streams and make improvements.—
R. C., c. 100,
s. 1.—1868, c.
20, s. 27.

Overseers appointed yearly by co. com-m'rs; their duty. Subject to same rules as overseers of roads. — R. C., c. 100, s. 2.

2. Every overseer shall be appointed by the county commissioners; 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 commissioners 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.

County commissioners may direct flats, &c., to be procured. — R. C., c. 100, s. 3.

3. The county commissioners 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.

Power of co. commissioners of Johnston, Wayne, &c., as to Neuse river. — R. C., c. 100, s. 4.

4. The county commissioners of the counties of Johnston, Wayne, Lenoir and Craven, at the first meeting 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 commissioners 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 commissioners 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 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.

Streams to be laid off into districts. One fourth to be left open for passage of

5. The county commissioners 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 slopes, dams,

and stands; and one-fourth part, including the deepest part, fish.—R. C., 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 commissioners a plan of such slopes, dams, and other parts of streams viewed and surveyed. c. 100, s. 5.

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. C., c. 100, s. 6.

7. The commissioners appointed by the county commissioners to examine and lay off the rivers and creeks within the county, or where the stream is a boundary between counties, pursuant to the provisions of the first section, shall have power to lay off gates, with slopes attached thereto, upon any mill-dam built across such stream, of such dimensions and construction as shall be sufficient for the convenient passage of floating logs and other timber, in cases where it may be deemed necessary by the said county commissioners; and they shall return to the county commissioners appointing them a plan of such gates, slopes and dams in writing. Duty of commissioners to examine streams and lay off gates in dams.—1858-'9, c. 26, s. 1.

8. Upon the confirmation of the report made by the commissioners, and notice thereof given to the owner or keeper of said mill, it shall be his duty forthwith to construct, and thereafter to keep and maintain, at his expense, such gate and slope, for the use of persons floating logs and other timber as aforesaid, so long as said dam shall be kept up, or until otherwise ordered by the county commissioners. Report made and confirmed.—1858-'9, c. 26, s. 2.

9. The commissioners at any time thereafter appointed as aforesaid, when they may deem such gate and slope no longer necessary, may report the fact to their respective county commissioners, and said county commissioners may order the same to be discontinued. Gates, &c., in dams, how discontinued.—1858-'9, c. 26, s. 3.

10. Any owner or keeper of a mill, whose dam is across any such stream, and who shall fail to build a gate and slope therein, or thereafter to keep and maintain the same as required under this chapter, shall be guilty of a misdemeanor. Penalty on owner of dam for failing to make gates, &c.—1858-'9, c. 26, s. 4.

CHAPTER 104.

ROADS, FERRIES AND BRIDGES.

SECTION

1. What shall be public roads and ferries. Trustees of townships and county commissioners to es-

SECTION

tablish and discontinue roads, ferries and bridges.

SECTION

2. Ferries or roads, how established, altered and discontinued.
3. Board may order how costs shall be paid.
4. Roads, how laid out.
5. When changed, how received.
6. How persons may turn roads on their own lands.
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. Clerk of board to furnish constable with orders appointing overseers within ten days. Constable to apply at clerk's office for summons and serve them. Penalty for neglect.
9. Overseers to summon hands.
10. Penalty for failure to work on public roads. Proviso.
11. Notice, how served.
12. Overseer competent to prove notice to hands.
13. No person excused from working, but by board of trustees.
14. Overseers may apportion road among hands. But still liable for any default.
15. What to be width of roads and causeways.
16. Timber and earth taken from adjoining lands.
17. Owners may petition board of trustees for pay.
18. Footways and hollow bridges made where board of trustees may order. Order presumed after ten years' use.
19. Sign-posts at fork of roads, to be set up by overseers. Penalty for neglect.
20. On persons removing or defacing posts or mile-marks.
21. Overseers to measure and mile-mark roads.
22. Penalty on overseers for general neglect of duty.
23. Bridges to be erected at county expense.
24. Contracts to build bridges binding on county.
25. Owners of mills and ditches to keep up bridges, when.

SECTION

26. Penalty for neglect.
27. Toll-bridges allowed by board of trustees, when. Builders to keep them in repair, or forfeit toll, and be indicted.
28. Tolls of ferry regulated by board of trustees. Penalty for neglect to keep it up.
29. Owner may build toll-bridge at his ferry. Draw in bridge, when made.
30. Bonds of keepers of ferries and owners of toll-bridges taken by board of trustees. Persons injured may recover damages.
31. Penalty for keeping ferry, &c., without authority. Proviso for mail carriers.
32. Fastening vessel to float-bridge, penalty.
33. Railroad companies, &c., to keep draw in bridges.
34. Owners of steamboats, &c., to notify owners of bridges, to construct draws. Penalty for neglect.
35. Counties to construct draws, when.
36. Railroad companies, &c., to keep bridges over county road. Penalty for failure.
37. Duty of solicitors to prosecute for injuries to bridges.
38. Cart-ways, in what cases, and how obtained. Proceedings therefor.
39. May be changed or discontinued, and gates and bars erected, &c. Penalty for injuring them.
40. License to erect gates across public roads, how obtained.
41. Who exempt from working on roads.
42. Expenses borne by whole county, when.
43. Road steamers may run upon public roads.
44. Vessels not to be fastened to bridges, &c.
45. Duty of township trustees to lay out roads to churches, &c.
46. Petition for the same.
47. Manner of laying out the roads.
48. Duty of board of trustees.
49. Not to affect public roads and cart-ways.
50. Obstruction of road a misdemeanor.

1. ALL roads and ferries that have been 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 boards of trustees of the townships and the boards of county commissioners 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.

What shall be public roads and ferries. Trustees of townships and county commissioners to establish and discontinue ferries, roads and bridges.—R. C., c. 101, s. 1.—1868-'9, c. 185, s. 14.—1868, c. 20, s. 11, 16, 17, 18. Ferries and roads, how established, altered, or discontinued.—R. C., c. 101, s. 2.

2. The said boards 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 board 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 office of the clerk of the board until the succeeding meeting of the board, and notice thereof be posted during the same period at the court-house door; at which meeting the board shall hear the allegations set forth in the petition; and if sufficient reason be shown, the board 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.

3. In all such applications, the board may decree how and by whom the costs shall be paid; and if any person shall appeal from the judgment of the board on such petition, he shall give bond to the opposing party as provided in other cases of appeal, and the Superior Court shall hear the whole matter anew.

Board may order how costs shall be paid. Appeal.—R. C., c. 101, 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. C., c. 101, s. 4.

5. Whenever, upon petition of any person, a road shall be changed, and, as a condition thereof, it shall be required by the board 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 the board where the same may be considered; and the board shall hear all persons interested in the matter of receiving or rejecting the road; and the decision of the board 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 board.

When changed, how received.—R. C., c. 101, s. 5.

6. In addition to the mode prescribed in the second section of this chapter, for turning roads, the following method may

How persons may turn roads

on their own land.—R. C., c. 101, s. 6.

be observed by any one who desires to change a road from one part of his land to another part, namely: Such person shall lay out the same, and after putting it in such 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 meeting of the board, 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. Their duty. Notice of appointment. Not bound to serve more than one year in three.—R. C., c. 101, s. 7.

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 township board of trustees 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 board, 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.

Clerks in 10 days, &c., to furnish constable with orders appointing overseers. Constable to apply at clerk's office for orders, and serve them in 20 days. Penalty on clerks and sheriffs for neglect.—R. C., c. 101, s. 8.

8. The clerk of the township board of trustees, within ten days after the rise of the board, shall furnish the constable with two copies of each order appointing overseers of roads, that may have been made during the sitting of the board. And the constable shall apply at the office of the clerk, within ten days after the rise of every meeting of the board for such orders, and, on receiving them, shall, within twenty days, serve each overseer of roads with a copy of the order, or leave the same at his usual habitation; and the other copy shall return to the next meeting of the board of trustees, 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 constable 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 solicitor, who shall prosecute the same in the name of the State.

Overseers to

9. It shall be the duty of the overseer of public roads, three

days before the day of working, to summon all males between the ages of eighteen and forty-five within the district, to meet at such times and places as to the overseer shall seem convenient, for the repairing or making of such roads as may be necessary; and the overseer shall, at the same time, give notice to each person what kind of tools they shall bring and work with on the road. And whoever shall, upon such summons, neglect the duty or any part thereof, required of him, shall forfeit and pay two dollars 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.

summon hands.—1866, c. 29.

10. If any person liable under existing laws, to work upon the public roads, shall wilfully refuse to work upon said roads, after being legally summoned for that purpose, or if said person or persons so liable to work as aforesaid shall attend at the place and time designated in the notice or summons from the overseer, and wilfully refuse or neglect to work on said road, the person or persons so offending shall, for every such offence, be deemed guilty of a misdemeanor, and upon conviction before a justice of the peace, shall be fined not less than two nor more than five dollars; *Provided, however*, That this section shall not be construed to affect any person liable to work as aforesaid, who shall furnish a good hand to work in his stead, or who for each day notified to attend, shall pay to the overseer the sum of one dollar, to be expended for labor on the road.

Penalty for failure to work on public roads.—1870-'1, c. 74.

Proviso.

11. 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 each person 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.—R. C., c. 101, s. 10.

12. Overseers, whenever compelled to warrant their 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. C., c. 101, s. 11.

13. No persons, between the ages prescribed shall be exempted from working upon the public roads, except such as shall be exempted by the General Assembly, or by the board of township trustees, on account of personal infirmity; of which the said board shall be the sole judge.

No person exempt from working but by board of trustees.—R. C., c. 101, s. 12.

14. 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

Overseers may apportion road among hands. But still liable for

any default.—
R. C., c. 101,
s. 13.

him and each person, 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.

What to be
width of roads
and cause-
ways.—R. C.,
c. 101, s. 14.

15. 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. C.,
c. 101, s. 15.

16. 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 board
of trustees,
for pay.—R.
C., c. 101, s.
16.

17. The owner of the land or timber thus used may file his petition before the board of township trustees of the county wherein the injury is done; and, for damages sustained thereby, the board 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
trustees may
order.
Order of trust-
tees presumed
after ten
years' use.—R.
C., c. 101, s.
17.

18. Every overseer of the road, when the township board of trustees may so direct, shall cause to be made and kept in repair, for the convenience of travelers 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 board 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 board, that they shall be erected and kept up, subject to be rebutted only by producing an order dispensing with them made within three years next before such presentment.

Sign-posts at
fork of roads.
to be set up by
overseers.
Penalty for
neglect.—R.
C., c. 101, s.
18.

19. 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.

20. Any person, who shall wantonly remove, knock down, or deface the said posts, arins, 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.

On persons removing or defacing posts or mile-marks.—R. C., c. 101, s. 19.
Overseer to measure and mile-mark roads.—R. C., c. 101, s. 20.

21. 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 board of trustees 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.

22. 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 overseer for general neglect of duty.—R. C., c. 101, s. 21.

23. When a bridge shall be necessary, and the overseer with his assistants cannot conveniently make it, the township board of trustees, with the concurrence of the county commissioners, 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 commissioners 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.

Board of trustees, &c., to have bridges erected at county expense.—R. C., c. 101, s. 22.

24. Every contract and order, by the board of township trustees and county commissioners 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 county.

Contracts to build bridges binding on county.—R. C., c. 101, s. 23.

25. 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

Owners of mills and ditches on and across roads to keep up bridges.—R. C., c. 101, s. 24.

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, 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. C., c. 101, s. 25.

26. 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 trustees, when. Builders to keep them in repair, or forfeit toll and be indicted.—R. C., c. 101, s. 26.

27. 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 township board of trustees of the county, or counties chargeable therewith, 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 board of trustees and the builder; which tolls shall be common to all persons. And such bridges shall be built in the manner the board or boards 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.

Tolls of ferry regulated by board of trustees. Penalty for refusing to keep it up.—R. C., c. 101, s. 27.

28. The board of trustees of each township shall, once a year, or oftener if necessary, at the meeting to be held next after the first day of January, rate the prices of such ferries as shall be kept within their respective townships; and any ferry keeper who shall ask, demand, or receive a greater price for ferriage than shall be rated by the board of trustees, 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 board, shall for every such offence forfeit five dollars.

Owner may build toll-bridge at his ferry. Draw bridge, when made.—R. C., c. 101, s. 28.

29. 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-seventh 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 board of trustees: *And provided, further*, that, in all such bridges, the proprietor shall erect a draw, where the free navigation of the stream may require it.

30. The board of trustees of each township 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 travelers 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.

31. 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.

32. 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.

33. 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.

34. 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

Bonds of owners of ferries and toll-bridges to be taken by board of trustees. Persons injured may recover damages.—R. C., c. 101, s. 29.

Penalty for keeping ferry, &c., without authority.

Proviso for mail carriers. R. C., c. 101, s. 30.

Fastening vessels to float-bridge. Penalty.—R. C., c. 101, s. 31.

Railroad co's, &c., to keep draw in bridge.—R. C., c. 101, s. 32.

Owners of steamboats, &c., to notify owners of bridges, to construct draws. Penalty for neglect.—R. C., c. 101, s. 33.

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.

Counties to erect draws, where necessary.—R. C., c. 101, s. 34.

35. The county or counties which may erect bridges shall, by their commissioners, 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. Penalty for failure.—R. C., c. 101, s. 35.

36. 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.

Duty of solicitors to prosecute for injuries to bridges.—R. C., c. 101, s. 36.

37. The solicitors of the Superior 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. Proceedings therefor.—R. C., c. 101, s. 37.

38. 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 before the trustees of the township praying for a cartway 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 board that the adverse party has had twenty days' notice of his intention, the board shall hear the allegations of the petitioner; and if sufficient reason be shown, shall order the constable 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 board shall cause such petition to be filed with their clerk until their

next meeting when they shall proceed to hear and determine the same.

39. 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 board 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.

May be changed or discontinued, and gates or bars erected, &c. Penalty for injuring them.—R. C., c. 101, s. 38.

40. Any person desirous to erect a gate across a public road may file his petition before the township trustees of the township where the road lies; whereupon publication shall be made at the court-house until the next succeeding meeting, of such application, specifying the road, the place for the gate and name of the petitioner; and all persons interested in the convenient traveling or transportation on said road, shall have leave to appear and defend, demur, or plead to said petition; and if, at that meeting, it shall appear that such publication has been made, the trustees 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. C., c. 101, s. 39.

41. The following persons shall be exempted from working on roads, namely: justices of the peace, constables, keepers of public grist-mills, county commissioners, teachers and pupils of schools, and lock-keepers on the Dismal Swamp canal.

Who exempt from working on roads.—R. C., c. 101, s. 40.

42. The expense of building and keeping up public bridges in the several counties of this state shall be borne by the whole people of each, and not by the people of the township separately, in which such bridges may be situated; and it shall be the duty of the commissioners to adjust this burden equally among the people of the respective counties, and they shall exercise a due supervision over the action of the respective township trustees, so as to prevent the boards of any township from establishing any unnecessary number of bridges in their respective townships.

Expenses borne by whole people of county, when.—1869-'70, c. 219.

43. It shall be lawful for any person or persons to run and use traction engines and road steamers upon the public roads in North Carolina.

Road steamers may run upon public roads.—1870-'71, c. 162.

44. No person shall fasten any vessel or other craft to any bridge, or so near thereto that such vessel or other craft shall float against said bridge, on pain of forfeiting twenty dollars if a vessel, and ten dollars if a flat or smaller craft, one half to the person warranting for the same, and the other to the county treasurer for the use of the county, which, in the case of a bridge that crosses a county line, may be recovered in either county.

Vessels not to be fastened to bridges, &c.—1858, c. 58, s. 1.

45. The township board of trustees in each township of the several counties of the State be and they are hereby authorized

Duty of township trustees

to lay out roads to churches, &c.—1872-'3, c. 189, s. 1.

and empowered in their respective townships to order the laying out of any and all necessary roads to and from any church or other place of public worship in their said townships, to discontinue such roads when they may be found useless, and to alter the same so as to make them more useful.

Petition for the same.—1872-'3, c. 189, s. 2.

46. The said township board of trustees shall not order the laying out of any such road or discontinue or alter the same except upon petition, in writing, nor shall they hear any such petition, unless it may be made to appear that every person over whose lands the said road may pass shall have had twenty days' notice of the intention to file such petition, by personal service of notice in writing, or if the owner be unknown or there be no owner, agent or attorney of such owner resident in this State, then by notice thereof posted up at the court-house door of the county in which the township is situate and at two public places in the township for the space of twenty days; and upon the hearing of the petition, if sufficient reason be shown, the said township board of trustees shall order the laying out or discontinue or alter the said road as the case may be.

Manner of laying out roads.—1872-'3, c. 189, s. 3.

47. All roads hereby provided for shall be laid out to the greatest advantage of the inhabitants and with as little prejudice as may be to lands and inclosures within twenty days from the notification of their appointment by three disinterested freeholders, to be appointed by the said township board, and such damage as any individuals may sustain shall be ascertained by the said freeholders, and a report thereof with the proceedings had by them, be made to the said township board of trustees; and all damages so assessed by the freeholders shall be paid by the petitioners, and until paid there shall be no confirmation of the report of the freeholders, and such laying out shall be of no effect.

Duty of board of trustees.—1872-'3, c. 189, s. 4.

48. In all such applications the township board of trustees, or in case of appeal, the court of final resort, may decide how and by whom the cost shall be paid; and any person dissatisfied with the judgment or decree of the township board of trustees may appeal to the board of county commissioners, from whose judgment or decree like appeal may be had to the Superior Court, and in every case of appeal the whole matter shall be heard anew.

Not to affect public roads, &c.—1872-'3, c. 189, s. 5.

49. The last four sections of this chapter shall not be construed to alter, modify or affect any law now in force touching public roads and cartways; and the right of way herein provided for shall terminate whenever the church or place of public worship shall cease to be used as such.

Obstruction of road a misdemeanor.—1872-'3, c. 189, s. 6.

50. If any person shall wilfully alter, change or obstruct any road leading to and from any church or other place of public worship, whether the right of way thereto be secured in the manner herein provided for by purchase, donation or otherwise, such person shall be deemed guilty of a misde-

meanor, and upon conviction thereof shall be fined or imprisoned, or both, at the discretion of the court.

- SECTION 1. 1 Ire., 432; 5 Ib., 369; Bus., 245; 4 Ire., 318; 11 Ib., 647; 3 Ire., 168; 11 Ib., 647; 2 Jones, 47; 5 Jones, 236; 8 Ib., 284; Winston, 269.
 SEC. 2. 7 Ire., 365; 1 Car. L. R., 249; 3 Ire., 108; 3 Hawks, 599; 1 Ire., 432; 2 D. & B., 451; 2 D. & B., 547; 6 Ire., 162; 2 Ire., 168; 3 Hawks, 312; 11 Ire., 9.
 SEC. 6. 2 D. & B., 547; Bus., 387.
 SEC. 7. 8 Ire., 436; 1 Jones, 133; 2 Jones, 48; 11 Ire., 278.
 SEC. 11. 2 Car. L. R., 633; 1 Jones, 231.
 SEC. 15. 11 Ire., 94; 8 Jones, 233.
 SEC. 18. 6 Ire. Eq., 613.
 SEC. 22. 11 Ire., 371.
 SEC. 25. 2 Hawks, 349.
 SEC. 27. 3 Ire. Eq., 613.
 SEC. 29. 3 Ire. Eq., 613.
 SEC. 29. 9 Ire., 15.

CHAPTER 105.

SALARIES AND FEES.

- | SECTION | SECTION |
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Salary of Governor and Treasurer.—1868-'9, c. 110, 1872-'3, c. 9.

Private Secretary of the Governor.—1870-'1, c. 81, s. 1,

Chief clerk of Treasurer. Assistant clerk.—

R. C., c. 102, s. 12.—1870-'1, c. 81, s. 2. Justices of the Supreme Court to be paid quarterly.—1868, c. 46, s. 4.

Salary of Judges of Superior Court. How paid. Additional pay for holding Special Term. How paid.—1868, c. 46, s. 6.—1872-'3, c. 165, and 106.

Judge of Superior Court to produce certificate.—1868, c. 46, s. 7.

Secretary of State. Clerk of Secretary of State.—1870-'1, c. 81, s. 3.

Auditor. Auditor's clerk.—1870-'1, c. 81, s. 4.

Superintendent of Public Instruction.—1870-'1, c. 81, s. 6.

1. THE salary of the Governor of the State shall be four thousand dollars per annum, and the salary of the Treasurer shall be three thousand dollars per annum, commencing with their term of office, payable quarterly.

2. The following salaries and fees shall be established for the officers herein named: The Governor shall be allowed a private secretary at a salary of seven hundred and fifty dollars per year, who may receive the following fees in addition, to be paid by the persons for whom the service is rendered: For commission of a judge, four dollars; for any other commission, two dollars; for a testimonial, one dollar; for suspension of a grant, seventy-five cents; for affixing a seal to a grant, twenty-five cents.

3. The Treasurer shall be allowed a chief clerk with a salary of fifteen hundred dollars per year. He shall also be allowed an assistant clerk with an annual salary of seven hundred and fifty dollars.

4. Each Justice of the Supreme Court shall be allowed an annual salary of twenty-five hundred dollars, to be paid quarterly: that is, on the first days of April, July, October and January, in every year.

5. The Judges of the Superior Court shall each have an annual salary of twenty-five hundred dollars, payable quarterly: that is, on the first days of April, July, October and January, in every year, 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 or additional term of the Superior Court, the Judge presiding shall receive ninety dollars for each week, 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.

6. Every Judge of the Superior Court shall produce a certificate from the clerk of the Superior Court for 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.

7. The Secretary of State shall have an annual salary of one thousand dollars. He shall be entitled to the fees of his office, as prescribed in section thirty-seven of this chapter. He shall also be allowed one clerk with an annual salary of one thousand dollars.

8. The annual salary of the Auditor shall be twelve hundred and fifty dollars. He shall be allowed one clerk at nine hundred dollars, and be authorized to employ additional clerical assistance in his office, and for that purpose he shall be allowed the sum of fifty dollars per month, to be paid by the public Treasurer out of moneys not otherwise appropriated. He shall also be allowed the fees of his office as prescribed by law.

9. The annual salary of the Superintendent of Public Instruction shall be fifteen hundred dollars; but he shall not be allowed any sum for traveling expenses, nor shall he be allowed

to appoint any assistant, neither shall any other person make any such appointment, the appointee to be paid out of the treasury or educational fund.

10. The annual salary of the Attorney-General shall be fifteen hundred dollars, and allowance for attendance on the Supreme Court, and the fees as prescribed by law. As reporter of decisions of the Supreme Court, he 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.

Attorney General.—1870-'1, c. 81, s. 7.
Of reporter of decisions of Supreme Court. He may print copies of his report on his own account. May contract with clerk to furnish copies for distribution.—R. C., c. 102, s. 6.—1871-'2, c. 112, s. 2.

11. The salary of the Adjutant General shall be three hundred dollars per annum. He shall not be allowed any traveling or other expenses, or any clerical assistance at the expense of the State.

Adjutant General.—1870-'1, c. 81, s. 8.

12. All annual salaries allowed by this chapter shall be paid quarterly, out of any money in the treasury not otherwise appropriated.

Salaries payable quarterly.—1870-'1, c. 81, s. 10.

13. The solicitors of the several judicial districts shall receive twenty dollars for each term of the Superior Court they shall attend, to be paid by the public Treasurer upon a certificate of such attendance from the clerk of the court, and the fees as prescribed in the following section.

Solicitors, salary of.—1870-'1, c. 81, s. 11.

14. The 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 traveling on such railroad; stealing or obliterating records; stealing, concealing, destroying or obliterating any will; maliciously burning, or attempting to burn, houses or bridges; misdemeanors or accessories after the fact to felonies; 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*

Solicitors for State, in Superior Court. Fees of Attorney General in Supreme Court.—1870-'1, c. 81, s. 11.—R. C., c. 102, s. 13.

than ten dollars shall be taxed for the 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.

Per diem of commissioners of county.—1870-'1, c. 139, s. 1.

Pay of county treasurers.—1870-'1, c. 139,

15. The county commissioners of their respective counties shall receive such *per diem*, not exceeding two dollars, as a majority of any board may fix upon.

16. County treasurers shall receive as a compensation in full of all services required of them by law, such a *per centum*, not exceeding two and a half, on amount of receipts and disbursements, as the county commissioners or a majority of them may deem adequate and proper.

Of entry-taker.—1870-'1, c. 139, s. 3.—R. C., c. 102, s. 32.

17. 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.—1870-'1, c. 139, s. 3.—R. C., c. 102, s. 33.

18. 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 appointed 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.

Of rangers.—1870-'1, c. 139, s. 3.—R. C., c. 102, s. 34.

19. Rangers shall receive the following fees, and no other, 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.

Of commissioners of affidavits.—1870-

20. Commissioners of affidavits, and those who are authorized by law to act as such, shall receive the following fees, and no other, namely: for an affidavit taken and certified, forty

cents; affixing the seal of court, when necessary, twenty-five cents.

21. (1.) Fees of sheriffs: Executing summons or any other writ or notice, by simply delivering a copy to the party or his attorney, sixty cents;

(2.) Arrest of a defendant in civil action and taking bail, including attendance to justify, and all services connected therewith, one dollar;

(3.) Arrest of a person indicted, including all services connected with the taking and justification of bail, one dollar;

(4.) Imprisonment of any person in a civil or criminal action, thirty cents; and release from prison, thirty cents;

(5.) Executing subpoena on a witness, thirty cents;

(6.) Conveying a prisoner to jail to another county, ten cents per mile;

(7.) For prisoners' guard, if any necessary, and approved by the county commissioners, going and returning, per mile for each, five cents;

(8.) Expenses of guard and all other expenses of conveying prisoner to jail, or from one jail to another for any purpose, or to any place of punishment, whatever sum may be allowed by the county commissioners of the county in which the indictment was found, on the affidavit of the officer in charge;

(9.) Feeding prisoners in county jail per day, to be fixed by the commissioners of the county;

(10.) Providing prisoners in county jail with suitable beds, bedclothing, other clothing and fuel, and keeping the prison and grounds cleanly, whatever sum shall be allowed by the commissioners of the county;

(11.) Collecting fine and costs from convict, two and a half per cent. on the amount collected;

(12.) Collecting executions for money in civil actions, two and a half per cent. on the amount collected;

(13.) Advertising a sale of property under execution at each public place required, fifteen cents;

(14.) Seizing specific property under order of a court, or executing any other order of a court or judge, not specially provided for, to be allowed by the judge;

(15.) Taking any bond, including furnishing the blanks, fifty cents;

(16.) The actual expense of keeping all property seized under process or order of court, to be allowed by the court on the affidavit of the officer in charge.

(17.) A capital execution, ten dollars, and actual expenses of burying the body;

(18.) Summoning a grand or petit jury, for each man summoned, thirty cents, and ten cents for each person summoned on a special *venire*;

(19.) For serving any writ or other process with the aid of the county, the usual fee of one dollar, and the expense necessarily incurred thereby, to be adjudged by the county commissioners, and taxed as other costs;

¹, c. 139, s. 3.
—R. C. c. 102,
s. 35.
Fees of sher-
iffs.—1870-¹,
c. 139, s. 4.

(20.) All just fees paid to any printer for any advertisement required by law to be printed by the sheriff;

(21.) Bringing up of a prisoner upon *habeas corpus*, to testify or answer to any court or before any judge, one dollar, and all actual and necessary expenses for such services, and ten cents per mile by the route most usually travelled, and all expenses for any guard actually employed and necessary;

(22.) For summoning and qualifying appraisers, and for performing all duties in laying off homesteads and personal property exemptions, or either, two dollars, to be included in the bill of costs;

(23.) For levying an attachment, one dollar;

(24.) For attendance to qualify jurors to lay off dower, of commissioners to lay off year's allowance, one dollar; and for attendance to qualify commissioners for any other purpose, seventy-five cents;

(25.) Executing a deed for land or any interest in land sold under execution, one dollar, to be paid by the purchaser;

(26.) Service of writ of ejectment, one dollar;

(27.) For every execution, either in civil or criminal cases, fifty cents.

Fees of constables.—1870
'1, c. 139, s. 5.

22. Fees of constables: (1.) Executing a summons, or any other writ or notice, simply by delivering a copy to the party or his attorney, forty cents;

(2.) Arrest of a defendant in a civil action, and taking bail, including attendance to justify, and all services connected therewith, fifty cents;

(3.) Executing subpoena on a witness, fifteen cents;

(4.) Collecting executions for money in civil actions, two and a half per cent. on the amount collected;

(5.) Summoning a jury, for each person summoned, fifteen cents;

(6.) Advertising a sale of property under an execution, at each public place required, ten cents;

(7.) And for all other services, same as are now allowed sheriffs.

Jurors' per diem.—1870-
'1, c. 139, s. 6

23. (1.) Jurors to the Superior Courts, per day, what shall be allowed by the county commissioners of the county, not exceeding one dollar and fifty cents;

(2.) Per mile of travel, going to and returning from court, not exceeding five cents, to be fixed by the county commissioners, and such ferriage and tolls as they may have to pay;

(3.) The same pay shall be allowed to special jurors when sworn to serve during the day, but no tolls, ferriage or mileage.

Salary and fees of clerk of Supreme Court.—1870-
'1, c. 139, s. 7.
—R. C., c. 102,
s. 25.

24. The clerk of the Supreme Court shall receive an annual salary of three hundred dollars, to be paid semi-annually, 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, 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 *fieri 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.

25. (1.) The registers of deeds shall be allowed, while and when acting as clerk to the board of commissioners, such *per diem* as their several boards may respectively allow, not exceeding two dollars; Register of deeds.—1870-'1, c. 139, s. 8.

(2.) Registering any deed or other writing authorized to be registered or recorded by them, with certificate of probate or acknowledgment and private examination of a married woman, containing not more than three copy sheets, eighty cents; and for every additional copy sheet, ten cents;

(3.) For a copy of any record or any paper in their offices, like fees as for registering the same;

(4.) For issuing each notice required by the county commissioners, including subpoenas for witnesses, fifteen cents;

(5.) Recording each order of commissioners, if over one copy sheet, for every one over, ten cents;

(6.) Making out original tax list, two cents for each name thereon; for each name on each copy required to be made, two cents;

(7.) Issuing marriage license, one dollar.

26. (1.) Justices shall receive no fees whatever, except the following: for attachment, twenty cents; Justices.—1870-'1, c. 139, s. 9.

(2.) Transcript of judgment, ten cents;

(3.) Summons, twenty cents; if more than one in same case, for each additional, ten cents;

(4.) Subpoena, for each witness, ten cents;

(5.) Trial of an issue and judgment, forty cents;

(6.) Taking an affidavit, bond or undertaking, ten cents;

(7.) For jury trial and entering verdict, forty cents;

(8.) Execution, twenty cents;

(9.) Renewal of execution, five cents;

(10.) Return to an appeal, thirty cents;

(11.) Order of arrest in civil action, twenty cents;

(12.) Warrant for arrest in criminal cases, or in bastardy, thirty cents;

(13.) Warrant of commitment, twenty cents;

(14.) Commissions to take depositions, fifteen cents;

(15.) Taking depositions on order or commission, per copy sheet, ten cents;

(16.) Making necessary certificate and return to same, thirty-five cents;

(17.) Each justice of the peace who is a member of the board of township trustees, shall receive one dollar *per diem* for each day's attendance upon the meeting of the board;

1871-'2, c. 186.

(18.) For examination of woman in case of bastardy, twenty-five cents;

(19.) For hearing petition for widow's year's allowance and issuing notice to freeholders, fifty cents;

(20.) For filing and docketing laborer's lien, fifty cents;

Coroners.—
1870-'1, c. 139,
s. 10.

27. (1.) Fees of coroners shall be the same as are or may be allowed sheriffs in similar cases;

(2.) For holding an inquest over a dead body, five dollars; if necessarily engaged more than one day, for each additional day, five dollars;

(3.) For burying a pauper over whom an inquest has been held, all necessary and actual expenses, to be approved by the county commissioners, and paid by the county;

(4.) It shall be the duty of every coroner, where he or any juryman shall deem it necessary 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 services, ten dollars, and such further sum as the commissioners of the county may deem reasonable;

Superior
Court clerks.
—1870-'1, c.
139, s. 11.

28. (1.) Superior Court clerk. For every original writ of summons or other original leading process, one dollar; and for each copy twenty five cents, and for every duplicate thereof, twenty-five cents;

(2.) Recording a return of a sheriff or other ministerial officer, ten cents;

(3.) Receiving, filing and noting on the docket any pleading or demurrer, and delivering copies filed to the parties to whom addressed, ten cents;

(4.) Entering order enlarging time for pleading, twenty-five cents;

(5.) Entering judgment and verdict, one dollar;

(6.) Judgment on any question authorized to be decided by him, if there be an appeal to the judge, including statement of the case on the appeal from his decision to the judge, and acknowledging receipt of decision of the judge, and notifying each attorney thereof, one dollar;

(7.) Transcript of record for a judge on issue of law joined on the pleadings, and acknowledging receipt of decision of the judge, and notifying each attorney thereof, fifty cents;

(8.) Taking an affidavit to witness or juror's ticket, or any other affidavit, ten cents;

(9.) Transcript of case and record for Supreme Court, two dollars;

(10.) Transcript of judgment, twenty-five cents;

(11.) Mailing transcript, postpaid, fifteen cents;

(12.) Docketing any judgment on execution docket, twenty-five cents;

(13.) Affixing seal of court when necessary, twenty-five cents;

(14.) Entering on record any order or judgment of a judge on a matter which he has jurisdiction to decide out of term,

if not more than one copy sheet, fifteen cents; if more than one copy sheet, for every one over the first, ten cents;

(15.) Issuing subpoena for witnesses, for each name, fifteen cents;

(16.) Copy of any record or other writing in his office, per copy sheet, ten cents;

(17.) Probate or acknowledgment of a deed, or a writing of any sort authorized to be proved, twenty-five cents; and taking private examination of a married woman, with a certificate thereof, fifty cents;

(18.) For ordering the registration of any deed or other written instrument which has been proved in any other county, ^{1871-'2, c. 146, s. 1.} twenty-five cents;

(19.) Probate of a will in common form with a certificate and issuing letters testamentary, one dollar;

(20.) Recording will or returns of executors, administrators, guardians or trustees required to make returns, ten cents per copy sheet;

(21.) Grant of letters of administration of any sort, and taking bond of administrator, including justification of sureties, one dollar;

(22.) Every notice required to be issued by clerks, ten cents;

(23.) Grant of guardianship, including taking bond and justification of sureties, one dollar;

(24.) Apprenticing infant, including indenture, one dollar;

(25.) Entering caveat on contested will, twenty cents;

(26.) Recording articles of agreement of proposed corporation, two dollars;

(27.) Issuing commission of any sort, seventy-five cents;

(28.) Entering return to commission, and order for registration of deed, ten cents;

(29.) Auditing account of executor, administrator, guardian or other trustee, required to return accounts, fifty cents, if not ^{1870-'1, c. 139, s. 11.} over three hundred dollars; eighty cents if over three hundred and not over one thousand dollars; if over one thousand dollars, one dollar;

(30.) Continuance of a cause, thirty cents;

(31.) Execution, thirty-five cents;

(32.) Issuing capias, one dollar;

(33.) Taking recognizance, twenty-five cents;

(34.) Entering judgment against a defaulting juror or witness on bail bond, or recognizance, twenty-five cents;

(35.) Justification of bail or sureties to an appeal, fifty cents;

(36.) Presentment or indictment, sixty cents each;

(37.) Auditing final settlement of executor, administrator, guardian and other trustee required to return accounts, one half of one per cent. of the amount on which commissions are allowed to such trustee, if not over one thousand dollars; but in no instance to exceed fifteen dollars;

(38.) Judgment on any question to be decided by him, if no appeal, fifty cents;

Amendments
to fees.—1871-
'2, c. 186, s. 1.

(39.) Notifying solicitor of removal of guardian, twenty-five cents;

(40.) Taking bond or undertaking of any kind, including justification, sixty cents;

(41.) Issuing writ of dower, possession, or similar process, seventy-five cents;

(42.) Receiving, filing and noting resignation of guardian, relinquishment of right of administrator or executor, ten cents;

(43.) Application for appointment of guardian, ten cents;

(44.) Recording reports, partition and widow's dower, for each copy sheet, ten cents;

(45.) For every jury impaneled, ten cents;

(46.) Motion in arrest of judgment, ten cents;

(47.) For every certificate, twenty-five cents;

(48.) All clerks shall be required to post and keep posted in their office a fee bill for public inspection and reference, under a penalty of fifty dollars for such neglect.

Attorneys —
1870-'1, c. 139,
s. 12.

29. Fees of attorneys: (1.) In all cases in the Supreme Court, fifteen dollars;

(2.) In all cases in the Superior Court, where the title to land comes in question, ten dollars;

(3.) In other cases in the Superior Court, including petitions, and in all cases of petition in special proceedings in the Superior and Probate Courts, four dollars.

Witnesses.—
1870-'1, c. 139,
s. 13.

30. The fees of witnesses, whether attending at a term of the Superior Court or before the clerk or a referee, shall be one dollar per day. They shall also receive mileage to be fixed by the county commissioners of their respective counties, at a rate not to exceed five cents per mile for every mile necessarily travelled from their respective homes in going to and returning from the place of examination by the ordinary route, and ferriage and toll paid in going and returning. If attending out of their counties, they shall receive one dollar per day and five cents per mile going and returning by the ordinary route, and toll and ferriage expenses: *Provided*, that witnesses before magistrates' courts, shall receive fifty cents per day in civil cases; *Provided further*, that experts, when compelled to attend and testify, shall be allowed such compensation and mileage as the court may in its discretion order.

Witness in
State case.—
1871-'2, c. 186,
s. 3.

31. No witnesses summoned in a State case shall be allowed to prove attendance in more than one State case for any one day, but such witness being on attendance because of more than one State case, may select in which case or cases he will have his attendance taxed.

Who shall pay
witness in
State case.—
1870-'1, c. 186,
s. 4.

32. 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, sheriffs, constables and witnesses half their fees only, except

in capital felonies and prosecutions for forgery, perjury and conspiracy, when they shall receive full fees.

33. The witness shall prove the number of days of his attendance, and the distance traveled, before the clerk of the court, or the referee or officer taking the inquest or examination, and receive a certificate thereof; the said certificate shall also state the case in which, and the party by whom, the witness was summoned; and it shall be as against the party to be charged thereon, presumptive evidence of the facts set forth therein.

How attendance of witness to be proved. — 1858-'9, c. 279, sub. c. 11, s. 2.

34. Witnesses are not entitled to receive their fees in advance; but no witness in a civil action or special proceeding, unless summoned on behalf of the State or a municipal corporation, shall be compelled to attend more than one day, if the party by or for whom he was summoned, shall, after one day's attendance on request and presentation of a certificate, fail or refuse to pay what then may be due, for traveling to the place of examination, and for the number of days of attendance.

How witness to be paid. — 1868-'9, c. 279, sub. c. 11, s. 3.

35. The fees of witnesses may be recovered by action before a justice of the peace, as is prescribed in other cases of actions.

May sue party who summoned him. — 1868-'9, c. 279, sub. c. 11, s. 4.

36. Mileage to county officers within their respective counties, is hereby abolished.

Mileage to county officers abolished. — 1870-'1, c. 139, s. 15.
Of Secretary of State. — 1870-'1, c. 81, s. 3. — R. C., c. 102, s. 13.

37. 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 procession-
ers.—1870-'1,
c. 139, s. 3.—
R. C., c. 102,
s. 36.
Of standard
keepers.—
1870-'1, c. 139,
s. 3.—R. C., c.
102, s. 37.

38. Processioners shall receive the same fees which are allowed by law to county surveyors.

39. Standard keepers shall be entitled to receive the following fees, and no other, 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.

Of jailers.—R.
C., c. 102, s.
38.

40. Jailers shall receive, for finding prisoner fuel, one pound of wholesome bread, one pound of good roasted or boiled flesh, and a sufficient quantity of water, with every necessary attendance, thirty cents per day, and no more; unless the county commissioners 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.

Of inspectors.
R. C., c. 102,
s. 39.

41. Inspectors shall receive the following fees, for the duties 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 two 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.—R.
C., c. 102, s.
40.

42. Tobacco pickers, for every one hundred pounds picked and prized, shall receive the fifteenth part.

Fees of no-
taries.—R. C.,
c. 102, s. 41.

43. Notaries public 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 fig-
ures, how
reckoned in
copy sheet.—
R. C., c. 102,
s. 42.

44. 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.

CHAPTER 106.

SHERIFFS.

SECTION	SECTION
1. County commissioners to take bond.	between Ocracoke and Portsmouth.
2. Who ineligible to the office of sheriff.	15. Sheriff to execute all process from courts. Penalty for neglect \$100. For false return \$500.
3. Sheriff ineligible who fails to settle public dues.	16. To give receipt for process, which shall be evidence.
4. Who may not serve as sheriff.	17. To take no obligation of any in custody but as payable to himself as sheriff, &c. Nor unlawful fees.
5. Sheriff shall renew his bond annually. Failure, to create vacancy.	18. Permitting escape of one in execution liable in an action for the debt.
6. Sheriff, how removed from office. Duty of Coroner in such cases.	19. Not to farm his office.
7. Coroner to give bonds and take oaths when called to act as sheriff.	20. To have custody of jail.
8. What bonds sheriffs shall give and their conditions. Form of bond for execution of process, &c.	21. To diligently collect claims.
9. County commissioners to examine bonds.	22. To furnish grand jury with list of retailers of spirituous liquors. Penalty for omission.
10. To take new bonds.	23. Outgoing sheriff subject to penalty of \$100 for not executing process in certain cases.
11. Commissioners liable for loss.	24. When process to issue to sheriff of adjoining county.
12. Sureties liable for fines, &c.	
13. May resign to county commissioners.	
14. Sheriff, &c., of Hyde and Carteret may serve process on shipboard	

(See Constitution, Art. 4, Sec. 30.)

1. THE board of county commissioners in each and every county shall take and approve the official bonds of the sheriffs, which they shall cause to be registered and the originals deposited with the clerk of the Superior Court for safe keeping.

2. 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.

3. 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 board permit such former sheriff to give bond for, or re-enter upon the duties of the office, until he has produced before the board the receipt in full of every officer, for such taxes.

4. No member of the General Assembly, or Council of State, nor any practising attorney, shall hold the appointment of sheriff.

5. The sheriff shall renew his bonds annually, and produce the receipts from the public Treasurer, county treasurer, and

County commissioners to take bonds.—1868, c. 20, s. 32.

Who ineligible to office of sheriff.—R. C., c. 105, s. 5.

Sheriff ineligible who fails to settle public dues.—R. C., c. 105, s. 6.

Who may not serve as sheriff.—R. C., c. 105, s. 7.

Shall renew bonds annu-

ally. Failure to create vacancy.—R. C., c. 105, s. 9.

Sheriff, removed from office. Duty of coroner in such case.—R. C., c. 105, s. 11.

Coroner to give bonds and take oaths, when called to act as sheriff.—R. C., c. 105, s. 12.

What bonds sheriff shall give, and their conditions.

Form of bond for execution of process, &c.—R. C., c. 105, s. 13.

Commissioners to examine bonds.—1868-'9, c. 245, s. 1.

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; and a failure of the sheriff elect to renew his bonds, or to exhibit the aforesaid receipts, shall create a vacancy.

6. If any sheriff shall be convicted 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 meeting of the county commissioners next succeeding such vacancy; when the board 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 board fail to fill such vacancy, the coroner shall continue to discharge the duties of sheriff until it shall be filled.

7. Any coroner called to discharge the duties of sheriff, shall, before he enters thereon, take the same oaths, and enter into the same bonds, that may be 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 of the board of county commissioners.

8. The sheriff shall execute three several bonds, payable to the State of North Carolina, and conditioned as follows: one, conditioned for the collection, payment and settlement of the county, poor, school and special taxes, as required by law, in a sum double the amount of said taxes; one, for the collection, payment and settlement of the public taxes, as required by law, in a sum double the amount of such taxes; and a third, in the sum of ten thousand dollars, conditioned as follows:

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 board of county commissioners shall demand and take, and cause to be acknowledged before them and recorded.

9. It shall be the duty of the county commissioners, in each and every county of the State, to make immediate examination of the bonds of sheriffs in their several counties, and if, on such examination, it shall be found, in the opinion of said com-

missioners, that such bond is insufficient to secure the faithful accounting of the revenue of the county and State, for the current year, the chairman shall forthwith notify said sheriff, in writing, to appear within ten days, and give other and better security, or justify his present security on his bond.

10. On the appearance of said sheriff, the county commissioners shall have power to take new bonds with sufficient security, in double the amount of the taxes to be placed in his hands for the current year, or to justify by proof or otherwise, his present bond; and in case such sheriff shall fail to appear on notice, or fail to give sufficient bond, or to justify his present bond, it shall be the duty of the county commissioners to elect forthwith some suitable person in the county to collect the taxes for the ensuing year, who shall give like bond and be subject to like obligations and penalties.

To take new bonds.—1868-'9, c. 245, s. 2.

11. If any county commissioners shall fail to comply in good faith with the provisions of this chapter, they shall be liable for all losses sustained in the collection of taxes, on motion to be made by the solicitor of the district, and also be guilty of a misdemeanor in office, and, on conviction, shall be fined not less than five hundred dollars, nor more than one thousand dollars.

Commissioners liable for loss.—1868-'9, c. 245, s. 3.

12. 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.

Sureties liable for fines, &c.—R. C., c. 105, s. 14.

13. Every sheriff may vacate his office by resigning the same to the county commissioners of his county; and thereupon the board may proceed to elect another sheriff.

May resign to county commissioners.—R. C., c. 105, s. 15.

14. 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 Ocracoke 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.

Sheriffs, &c., of Hyde and Carteret may serve process on shipboard between Ocracoke and Portsmouth.—R. C., c. 105, s. 16.

15. 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 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.

Sheriff to execute all process from courts. Penalty for neglect, \$100. For false return, \$500.—R. C., c. 105, s. 17.

To give receipt for process, which shall be evidence, &c.—R. C., c. 105, s. 18.

16. 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 take no obligation of any in custody, but as payable to himself as sheriff, &c. Nor unlawful fees.—R. C., c. 105, s. 19.

17. 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 court shall allow for *ex officio* services, and the allowance given and provided for by law.

Permitting escape of one in execution, liable in action for the debt.—R. C., c. 105, s. 20.

18. 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 judgment 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 for the 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.

Not to farm his office.—R. C., c. 105, s. 21.

19. 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.

To have custody of jail.—R. C., c. 105, s. 22.

20. The sheriff shall have the care and custody of the public jail in his county; and shall be, or appoint, the keeper thereof.

To diligently collect claims.—R. C., c. 105, s. 23.

21. When a claim, within the jurisdiction of a justice of the peace, shall be placed in the hands of any sheriff, or his deputy, 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. C., c. 105, s. 24.

22. 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 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 for-

feit 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.

23. 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 against such outgoing sheriff and his sureties.

Outgoing sheriff subject to a penalty of \$100, for not executing precepts in certain cases.—R. C., c. 105, s. 25.

24. In all cases where the sheriff of any county shall be interested, if there is no coroner in said county, process may be issued to and shall be executed by the sheriff of any adjoining county. All process heretofore issued or executed in accordance with the provisions of this section is declared valid.

When process to issue to sheriff of adjoining county.—1869-'70, c. 175, s. 1.

SECTION 3. 9 Ire. 347.

SEC. 8. 8 Ire., 104; Bus., 275; 5 Ire., 227; 7 Ib., 68; 8 Ire., 104; 9 Ire., 496; 3 Hawks, 42; 3 Hawks, 285; 1 Dev., 52; Ib., 65; 3 Dev., 365; 8 Ire., 415; Ib., 513; 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; 6 Ire., 347; 4 D. & B., 461; 1 Dev., 157; 7 Ire., 296; 3 Jones, 346; 5 Ib., 349; 6 Ib., 233; 7 Ib., 574; Phillips, 126.

SEC. 15. 4 D. & B., 489; 3 Hawks, 548; 13 Ire., 25; 1 Mur., 255; 7 Ire., 296; 3 Ire., 407; 8 Ire., 240; 10 Ire., 200; Ib., 242; 1 D. & B., 243; Ib., 252; 13 Ire., 444; 2 Car. L. R., 440; N. C. T. R., 79; 1 Car. L. R., 500; Bus., 377; 11 Ire., 627; 12 Ib., 198; 7 Ire., 317; Ib., 333; Ib., 412; 8 Ib., 312; 1 Dev., 153; 4 D. & B., 169; 2 Hawks, 246; 2 D. & B., 87; 13 Ire., 18; 5 Ib., 36; 1 Dev., 218; 3 Ib., 23; 7 Ire., 333; 11 Ib., 383; 3 Ib., 549; 2 D. & B., 204; 4 Ire., 226; 2 Dev., 538; 3 Jones, 533; Ib., 535; 4 Ib., 470; 7 Ib., 288; Ib., 465; 8 Ib., 469; Ib., 473; Ib., 433.

SEC. 17. 2 Dev., 136; 3 Ire., 181.

SEC. 18. 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; 10 Ire., 485; 2 Jones, 379; 3 Ib., 315; 8 Jones, 320; 63 N. C., 188.

SEC. 20. 11 Ire., 652; Phillips, 579.

SEC. 21. 7 Ire., 379.

CHAPTER 107.

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:

What words
spoken of
women shall
be actionable.
—R. C., c. 106.

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.

SECTION 1. 1 Dev., 210 ; 12 Irc., 848 ; 7 Jones, 82.

CHAPTER 108.

STATUTES, REPEAL, AND CONSTRUCTION OF.

SECTION

1. Repeal of statutes not to affect suits.
2. Rules for construing statutes.
 - (1.) Singular and plural number, masculine gender, &c.
 - (2.) Authority of public officers, &c., exercised by majorities, unless, &c.
 - (3.) "Month" and "year."
 - (4.) Leap year day, how counted.
 - (5.) "Oath" and "sworn."
 - (6.) "Person."

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- (7.) "Preceding" and "following."
- (8.) "Seal."
- (9.) "Will."
- (10.) "Written" and "in writing."
- (11.) "State" and "United States."
3. When statutes take effect.
4. How parts of acts amended to be considered.

Repeal of statutes not to affect suits.—R. C., c. 108, s. 1.

Rules for construing statutes.—R. C., c. 108, s. 2.

Singular and plural number masculine gender, &c.

Authority of public officers, &c., exercised by majorities, unless, &c.

Month and year.

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;

(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."

(4.) 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. C., c. 31, s. 108.

(5.) 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."

(6.) The word "person" may extend and be applied to bodies politic and corporate, as well as to individuals; "Person."

(7.) 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."

(8.) 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."

(9.) The term "will" shall be construed to include codicils as well as wills; "Will."

(10.) 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."

(11.) 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."

3. Every statute shall take effect on the twentieth day after its final passage, unless a different time be prescribed therein. When statutes to take effect.—1868-'9, c. 270, s. 21.—1868-'9.

4. Where a part of a statute is amended, it is not to be considered as having been repealed and re-enacted in the amended form; but the portions which are not altered are to be considered as having been the law since their enactment, and the new provisions as having been enacted at the time of the amendment. How parts of acts amended to be considered.—1868-'9, c. 270, s. 22.—1870-'1, c. 111.

CHAPTER 109.

STRAYS.

SECTION

1. Rangers appointed by county commissioners.

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2. Information of strays made to ranger.
Stray valued. Ranger to keep a

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- 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 treasurer. Owner may reclaim of county.
6. Taker-up to give bond, if value exceeds four dollars.
7. Not answerable for its death.

SECTION

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 commissioners.
11. Books of, may be inspected.
12. County treasurer 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 commissioners.—R. C., c. 109, s. 1.

Information of strays made to ranger.

Stray valued.

Ranger to keep a book. To advertise strays.—R. C., c. 109, s. 2.

1. THE board of county commissioners in each county shall appoint one or more rangers for their county, who shall hold their offices during good behaviour; 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 appraisement, 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 meeting of the board, 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 such stray, or it shall be allowed him in his settlement with the county treasurer, 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.

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

Reward to taker-up.—R. C., c. 109, s. 3.
Property not proved, to belong to taker-up, after one year.

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.

May be reclaimed.

Expense of keeping strays how ascertained.—R. C. c. 109, 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 treasurer 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 treasurer, the treasurer 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 board of commissioners by the oath of one or more indifferent witnesses, the court shall direct the county treasurer to pay to the owner the net sum of money which the ranger may have paid to the treasurer, after deducting the treasurer's commissions.

Stray not claimed within a year, two thirds of its value paid to co. treasurer.

Owner may reclaim of county.—R. C., c. 109, 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 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 treasurer, 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.

Taker-up to give bond, if value of stray exceeds four dollars.—R. C., c. 109, s. 6.

7. If within twelve months after the appraisement of any stray and entry thereof made with the ranger, it should die,

Not answerable for its death.—R. C., c. 109, s. 7.

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. C., c. 109, 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. C., c. 109, 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 commissioners.—R. C., c. 109, s. 10.

10. Every ranger shall make return of the strays entered, to his board of commissioners at their meeting, 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 said board shall make and deliver a copy to the county treasurer, to the end that he may proceed to the collection of the money due.

Books of, may be inspected.—R. C., c. 109, 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.

County treasurer to collect moneys accruing under this chapter.—R. C., c. 109, s. 12.

12. The treasurer 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 treasurer shall sue for the same.

Penalty on rangers for not paying over.—R. C., c. 109, 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 treasurer, the treasurer 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 treasurer 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. C., c. 109, 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.

Penalties under this chapter, to belong to county.—R. C., c. 109, s. 15.

15. Every penalty incurred by the violation of any of the provisions of this chapter, shall be recovered by the county treasurer, in the name of the State, for the use of the county.

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—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.

SECTION

5. Security may cause written notice to be given to creditor. Proviso.
6. Negligence to operate as discharge. Proviso.
7. Notice to be in writing.
8. Defendants may show they are sureties. Jury or justice to find the facts.
9. Property of principal to be first levied on and sold.

1. ANY person, who may have paid money for and on account of those for whom he became surety, upon producing to the Superior 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 sufficient 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. C., c. 110, 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 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. C., c. 110, 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 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.

May dissent from stay of execution, then not be liable to surety for the stay.

Officer, how to collect in such cases.—R. C., c. 110, s. 3.

4. Whenever a surety, or his representative, shall pay the debt of his deceased principal, the claim thus accruing shall

Surety, paying debt of dec'd

principal, to have priority as the creditor had, against the estate.—R. C., c. 110, s. 4. Security may cause written notice to be given to creditor.—1868-'9, c. 232, s. 1.

have such priority in the administration of the assets of the principal, as had the debt before its payment.

5. In all cases where any security or endorser on any note, bill, bond, or other written obligation, shall consider himself in danger of loss in consequence of his contingent liability, either from the insolvency or misconduct of the principal, in said note, bill, bond, or other written obligation, or from the negligence of the payee or holder of any such instrument, it shall be lawful for such security or endorser, at any time after such note, bill, bond, or other written obligation shall have become due and payable, to cause written notice to be given to the payee or holder of any such paper or obligation, requiring him to bring suit on said obligation, and to use all reasonable diligence to save harmless such security or endorser: *Provided*, nothing herein contained shall apply to official bonds, or bonds given by any person acting in a fiduciary capacity.

Proviso.

Negligence to operate as a discharge.—1868-'9, c. 232, s. 2.

6. Should the payee or holder of any such note, bond, bill, or other written obligation, refuse or fail, within thirty days from the service of said notice, to bring suit in the appropriate court in an effort to save harmless such security or endorser, such failure to sue, or negligence shall operate as a discharge of such security or endorser, from all liability whatever, on any such note, bond, bill, or other written obligation: *Provided*, that this notice shall not have the effect to discharge from liability any co-security who does not join in such notice, or who has not given a separate notice required by this act: *Provided further*, that this act shall not apply to holders of such note, bill, bond, or obligation, who hold the same as collateral security or in trust.

Proviso.

Notice to be in writing.—1868-'9, c. 232, s. 3.

7. And such notice shall be in writing and served by the sheriff or his deputy, who shall return it to the party for whose benefit the notice was issued, which shall be evidence of the fact in all the courts of this State.

Defts. may show they are sureties, and jury or justice to find the fact.—R. C., c. 31, s. 124.

8. 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.

Property of principal to be first levied on and sold.—R. C., c. 31, s. 125.

9. 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.

SECTION 1. 4 D. & B., 458; Ib., 404; Ib., 507; 1 Ire., 216; Ib., 339; 1 D. & B., 44; 11 Ire., 294; 12 Ire., 243; 7 Ire., 353; 1 Ib., 256; 3 Dev., 253; 4 D. & B., 458; 2 Ib., 460; 1 Ib., 437; 4 Dev. 360; 3 Dev., 380; Ib., 237; 1 D. & B., 437; 4 Dev., 529; 1 Ire., 216; 5 Ire. Eq., 91; Ib., 369.

SEC. 2. 3 Ire., 56; Ib., 286; 9 Ib., 10; 4 Ib., 377; Ib., 83; 1 Jones, Eq., 313; 6 Ire. Eq., 115. SEC. 4. Bus., 300.

CHAPTER 111

TOWNS.

SECTION

1. Incorporated towns may elect commissioners, who shall be a body corporate. How styled.
2. When and how elections held and conducted. Number of commissioners.
3. Inspectors of elections, their duty.
4. Election tied decided by lot.
5. Number of commissioners and time of election may be changed.
6. On change of time or failure to elect, officers in to hold, &c.
7. Vacancy, how filled.
8. Mayor may be elected. Tie vote, how determined. Term of office. Vacancy, how filled. Shall preside at meetings.
9. Qualification of voters.
10. Registration to be made.
11. Qualification of officers.
12. Challenging of voters. Exclusion from voting.
13. Time for municipal elections. To be held first Monday in May.
14. Mayor shall take oaths. His powers and duties.
15. Commissioners to take oath. Their powers to make by-laws, &c.
16. May lay tax, on what. Appoint constables and other officers, fix their compensation and take bonds
17. May establish and regulate markets.
18. May abate nuisances.
19. May keep streets and bridges in repair. May make improvements by assessments of labor, &c. Citizens exempt from working on roads. May appoint overseer of streets. Citizens liable for neglect as road hands. Town patrol.

SECTION

20. May enforce by-laws by penalties.
21. May regulate quality and weight of baker's bread.
22. List of taxables to be taken by mayor. Double tax, when paid. Assessors of real estate appointed, their oath and duty.
23. Town constables; their oaths, powers and duties.
24. Shall give bond, collect tax and have the powers of sheriff for collection.
25. Town officers refusing to qualify to pay \$25.
26. Provisions of this chapter to apply to all incorporated towns unless, &c.
27. Tax on dogs, if not paid how enforced.
28. Annual statement of taxes and expenditures to be published.
29. Municipal authorities may purchase land for cemeteries.
30. Officers of cities and towns in this State to be granted the duties of justices of the peace. Proviso.
31. Violation of ordinance a misdemeanor.
32. How debts of municipal corporations shall be paid.
33. Municipal officers to transfer property to successors. Penalty for failure.
34. Tax list may be corrected.
35. Mayor and commissioners of towns, &c., may sell property.
36. County commissioners may sell property of villages, &c., not incorporated.
37. Title to land so sold.

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.—R. C., c. 111, s. 1.

2. Every election for commissioners shall be held under the When and

how elections held and conducted. Number of commissioners.—R. C., c. 111, s. 4.

inspection of such persons, not exceeding three, as the county commissioners 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 commissioners 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.

Inspectors of elections; their duty.—R. C., c. 111, s. 5.

3. 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.

Election tied, decided by lot.—R. C., c. 111, s. 6.

4. 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.

Number of commissioners and time of election may be changed.—R. C., c. 111, s. 7.

5. 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 number of commissioners, so that the number be not more than seven nor less than three; and thenceforth the number of commissioners agreed on shall be chosen.

On change of time, or failure to elect, officers in to hold, &c.—R. C., c. 111, s. 8.

6. 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.—R. C., c. 111, s. 9. Mayor may be elected.—R. C., c. 111, s. 10.

7. In case of a vacancy after election, in the office of commissioner, the others may fill it until the next election.

Tie vote, how determined.—R. C., c. 111, s. 10. Term of office. Vacancy, how filled. Shall preside at meetings.

8. 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.

Qualification of voters.—

9. No person shall be entitled to vote for mayor, intendant of police, commissioners, aldermen or other officers of an incor-

porated city or town, or at any election held therein for any municipal purpose, unless he shall be an elector of the State of North Carolina and shall have resided next preceding the day of election, ninety days within the corporation and ten days within the ward in which he claims to be a voter.

1870-'1, c. 24, s. 1.

10. It shall be the duty of the corporate authorities of every city and town to cause a registration to be made of all voters qualified as above mentioned, under the rules and regulations heretofore used.

Registration to be made.—1870-'1, c. 24, s. 2.

11. No person shall be a mayor, commissioner, intendant of police, alderman or other chief corporate officer of any city or town, unless he shall be a qualified voter therein.

Qualification of officers.—1870-'1, c. 24, s. 3.

12. It shall be lawful to challenge the right of any person to vote, either on the day of election when he offers to vote, or on the day of registration when he offers to register, and if it shall appear to the judges of election or a majority thereof, or to the registering officer that such person is disqualified, he shall be excluded from registration, or, if he has been registered, from voting.

Challenging of voters.—1870-'1, c. 24, s. 4. Exclusion from voting.

13. The time for the regular election for municipal officers in the cities, towns and incorporated villages of this State, shall hereafter be the first Monday in May in each year.

Time for municipal elections to be first Monday in May.—1870-'1, c. 24, s. 6.

14. 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.

Mayor shall take oaths.—R. C., c. 111, s. 11.

15. 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.—R. C., c. 111, s. 12. Their powers to make by-laws, &c.—R. C., c. 111, s. 12.

16. 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.

May lay tax, on what. Appoint constables and other officers; fix their compensation, and take bonds.—R. C., c. 111, s. 13.

17. They may establish and regulate their markets, and prescribe at what place, within the corporation, shall be sold mar-

Markets, may establish and

regulate.—R. C., c. 111, s. 14.

Nuisances abate.—R. C., c. 111, s. 15. Streets and bridges, keep in repair.—R. C., c. 111, s. 15. Improvements make by assessment of labor, &c.—R. C., c. 111, s. 16. Citizens exempt from working on roads. May appoint overseer of streets. Citizens liable for neglect, as road hands. Town patrol.—R. C., c. 111, s. 16. By-laws, may enforce by penalties.—R. C., c. 111, s. 17. Baker's bread, its quality and weight regulated.—R. C., c. 111, s. 18.

List of taxables to be taken by mayor.—R. C., c. 111, s. 19. Double tax, when paid. Assessors of real estate appointed; their oath and duty.

Town constables, their oath, power, and duties.—R. C., c. 111, s. 20.

Shall give

ketable 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.

18. They may pass laws for abating or preventing nuisances of any kind, and for preserving the health of the citizens.

19. 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.

20. 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.

21. 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.

22. 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 any person fail to list his 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.

23. 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.

24. He shall have the same power to collect the taxes im-

posed by the commissioners, as sheriffs have to collect the taxes imposed by the county commissioners; 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. It shall be lawful for the commissioners or other municipal authority of any city, town or incorporated village in the State of North Carolina, to buy and hold either within or without such corporation, as much land as in the opinion of such commissioners or other municipal authority, may be sufficient for the purpose of a cemetery, not exceeding twenty-five acres.

30. It shall and may be lawful for the chief officers of all the cities and towns in this State, by whatever name or title such chief officers may be named, and it shall be their duty to have and exercise all the jurisdiction, powers and duties given to justices of the peace in the chapter entitled "Criminal Proceedings," subject to the restrictions and limitations contained in that chapter: *Provided*, no such officer shall take jurisdiction of any offence committed beyond the limits of the city or town of which he is such chief officer. Nothing in this chapter shall be held to impair the jurisdiction heretofore given to justices of the peace of the county.

31. Any person or persons violating any ordinance of any city or town of this State shall be deemed guilty of a misdemeanor, and shall be subject to the provisions of this chapter.

32. Debts contracted by a municipal corporation in pursuance of authority vested in it, shall not be levied out of any property belonging to such corporation and used by it in the

bond, collect tax, and have the powers of sheriff for collection.
—R. C., c. 111, s. 21.

Town officers refusing to qualify, to pay \$25.—R. C., c. 111, s. 22.

Provisions of this chapter to apply to all incorporated towns, unless, &c.—R. C., c. 111, s. 23.
Tax on dogs. If not paid, how enforced.
—R. C., c. 111, s. 24.

Annual statement of taxes and expenditures to be published.
—R. C., c. 111, s. 25.

Municipal authorities may purchase land for cemeteries.—1870
'1, c. 38, s. 1.

Officers of cities and towns in this State to be granted the duties of justice of the peace.—1871
'2, c. 195, s. 1.
Proviso.

Violation of ordinance, a misdemeanor.
—1871-'2, c. 195, s. 2.
How debts of municipal corporations

shall be paid.
—1870-'1, c.
99, s. 1,

discharge and execution of its corporate duties and trusts, nor out of the property or estate of any individual who may be a member of such corporation or may have property within the limits thereof. But all such debts shall be paid alone by taxation upon subjects properly taxable by such corporation: *Provided, however*, that whenever any individual, by his contract, shall become bound for such debt, or any person may become liable therefor by reason of fraud, such person may be subjected to pay said debts according to the course of the law in other cases.

Municipal officers to transfer property to successors.
—1870-'1, c.
177, s. 1.

33. All municipal officers, mayors, aldermen, commissioner or tax collector, of any town or city, who shall, on demand, fail to turn over to their successors in office the property, books, moneys, seals or effects, of such town or city, shall be deemed guilty of a misdemeanor, and, upon conviction before the Superior Court of the county in which such town or city is located, shall be imprisoned for not more than five years, and fined not exceeding one thousand dollars, at the discretion of the court.

Penalty for failure.

Tax lists may be corrected.
—1870-'1, c.
177, s. 2.

34. All tax lists, either county or municipal, which have or may hereafter be placed in the hands of any sheriff or tax collector, shall be at all times under the control of the authorities imposing the tax, and subject to be corrected or altered by them, and shall be open for inspection by the public, and upon demand by the authorities imposing the tax, or their successors in office, shall be surrendered to the lawful authorities for such inspection or correction, and any sheriff or tax collector who shall refuse or fail to surrender his list upon such demand, shall be deemed guilty of a misdemeanor, and, upon conviction, be subject to the penalties imposed by the thirty-third section of this chapter.

Mayor and commissioners of towns, &c., may sell property.—1872-'3, c. 112, s. 2.

35. The mayor and a majority of the commissioners of any incorporated city, town or village in the State shall have power at all times to sell at public outcry, (after thirty days' notice,) to the highest bidder, any property, real or personal, belonging to any such incorporated place, and apply the means as they may think best.

County commissioners may sell property of villages, &c., not incorporated.
—1872-'3, c. 112, s. 2.
Title to land so sold.—
1872-'3, c. 112, s. 3.

36. In any town or village not incorporated, or where there is no mayor or commissioners, the county commissioners shall have the power given in the preceding section of this chapter.

37. The mayor of any village, town or city, or the chairman of any board of commissioners, town or county, is fully authorized to make title to any property sold under this chapter.

CHAPTER 112.

TOWNSHIPS.

SECTION

1. Districts approved. Counties.
2. Proceedings in name of board of trustees.
3. Of whom board of trustees to consist.
4. Number of justices in cities or towns.
5. Trustees and term of office.
6. How elections held.
7. Persons elected to qualify.
8. Board to decide contested elections.
9. Election of constable.
10. Place for holding meetings of trustees. Proviso.
11. Appoint meetings.
12. Quorum.
13. Trustees to lay out highways, &c.; to build bridges; to appoint overseers.
14. Appeals allowed.

SECTION

15. Party appealing to give bond.
16. May assess property.
17. Report of board.
18. Board to audit and settle.
19. To lay and collect taxes.
20. Clerk to record proceedings.
21. Per diem of justice and clerk.
22. County Commissioners to designate townships, when.
23. Who shall be township treasurer.
24. When elected.
25. When to be qualified.
26. Vacancy, how filled.
27. When board of trustees shall fail to appoint.
28. Township treasurer to give bond.
29. Trustees may enlarge bond, &c.
30. When county commissioners to decide on bond.

1. THE districts reported by the commissioners of the following counties of the State to the present session of the General Assembly, are hereby approved, and said districts, in obedience to article seven, sections three and four of the Constitution, to-wit: Craven, Granville, Halifax, New Hanover, Chatham, Cumberland, Davidson, Duplin, Edgecombe, Franklin, Guilford, Iredell, Johnston, Mecklenburg, Northampton, Orange, Randolph, Rockingham, Rowan, Warren, Wayne, Alamance, Alexander, Alleghany, Anson, Ashe, Beaufort, Bertie, Bladen, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Camden, Carteret, Catawba, Clay, Cleveland, Columbus, Currituck, Davie, Forsythe, Gaston, Greene, Harnett, Henderson, Haywood, Hertford, Hyde, Jones, Lenoir, Lincoln, Macon, Madison, Martin, McDowell, Mitchell, Montgomery, Moore, Nash, Onslow, Pasquotank, Perquimans, Person, Richmond, Rutherford, Sampson, Stanly, Stokes, Surry, Transylvania, Tyrrell, Union, Watauga, Wilkes, Wilson, Yadkin, Yancey, Caswell, Chowan, Washington, Gates and Polk, shall have corporate powers and shall be known as townships by the boundaries and by the names respectively designated in said reports; but the said districts may be altered or divided, or new townships may be erected, by the county commissioners in the manner specified in subdivision fifteen, section eight of an act of the General Assembly entitled "An act concerning the government of counties," and ratified the fourteenth day of August, Anno Domini, eighteen hundred and sixty-eight.

Districts approved,
—1868-'9, c.
185, s. 1.

Counties.

Proceedings in name of board of trustees.—1868-'9, c. 185, s. 2.
Of whom board of trustees to consist. 1868-'9, c. 195, s. 3.

Number of justices in cities or towns.—1868-'9, c. 185, s. 4.

Trustees and term of office. 1869-'70, c. 2, s. 1.

How election held.—1868-'9, c. 185, s. 6.

Persons elected to qualify.—1868-'9, c. 165, s. 1.

Board to decide contested election.—1868-'9, c. 165, s. 8.
Election of constable.—1868-'9, c. 165, s. 10.

Place of holding meetings of trustees.—1871-'2, c. 83, s. 2.
Proviso.

2. All acts or proceedings by or against a township, in its corporate capacity, shall be in the name of the board of trustees of the township.

3. The board of trustees of each township shall consist of a clerk and two justices of the peace, except as otherwise provided for in this chapter in respect to justices of the peace, in those townships in which cities and towns are situated.

4. In every township in which any city or town is situated, or which may consist of a city or town, the number of justices of the peace to be elected shall be two more than the number of wards in such city or town, or in case such city or town is not divided into wards, then one additional justice for each five hundred inhabitants, or if there are less than five hundred inhabitants, one additional justice; for the purpose of obtaining the number of inhabitants in any such city or town, the corporate authorities shall have power to take a census thereof.

5. The first election for township boards of trustees shall be held on the first Thursday of February, in the year one thousand eight hundred and seventy. and the persons thus elected shall continue in office until the first Thursday in August, in the year one thousand eight hundred and seventy-one, and until their successors shall have qualified, and thereafter the regular election for said officers shall be held every two years.

6. Such election shall be held in all respects under the rules and regulations now prescribed by law, at such place in each township as the county commissioners may designate, and the return thereof shall be made to the board of commissioners of each county, who shall declare the result of said election, and within five days thereafter shall notify the persons receiving the majority of votes in each township, of their election.

7. The persons who are elected at such election shall appear, within five days after service of notice, before the county commissioners and qualify by taking and subscribing oath of office, which oath shall be filed with the clerk of the board of commissioners.

8. The board of commissioners is authorized to decide in all cases of contested election, subject to appeal to the Superior Court of the county.

9. At the time and in the manner authorized by this act for the election of township boards of trustees, there shall be held an election for one constable in each township, who shall give bond and security in such reasonable sum as the board of trustees may deem sufficient, to be not less than five hundred dollars nor more than two thousand dollars, and take the oath of office as now prescribed by law.

10. It may be lawful for the township board of trustees to rent, at a moderate rate, some room near the centre of their township to hold its sessions in: *Provided*, that nothing contained in this act shall be construed to interfere with property that has been purchased by township trustees before the passage of this chapter.

11. The board shall have power to appoint its own meetings, and to adjourn from time to time. Appoint meetings.—1868-'9, c. 185, s. 12.

12. A majority of the trustees shall constitute a quorum. Quorum.—1868-'9, c. 185, s. 13.

13. The board of trustees shall have authority, within their respective townships, to lay out, alter, repair or discontinue highways; to establish and settle ferries; to build and keep up bridges, subject to sub-division eleven, section eight, of the before recited acts concerning the government of counties; to lay off or discontinue cartways; to appoint overseers of highways; to allow and contract for the building of toll bridges, and to license the erection of gates across highways. This authority shall be exercised under the rules, regulations, restrictions and penalties, in all respects, prescribed and imposed in chapter one hundred and four of this revisal, entitled "Roads, Ferries and Bridges." Trustees to lay out highways, &c. Build bridges. Appoint overseers.—1868-'9, c. 185, s. 14.

14. In all cases of the exercise of authority under the preceding section, either party may appeal from the decision of the township board of trustees to the board of commissioners of the county; and from the decision of the board of commissioners of the county to the next term of the Superior Court thereof, and from the decision of said Superior Court to the Supreme Court; and in all cases of appeal from the decision of the township board of trustees, their clerk shall file with the clerk of the board of commissioners of the county all the papers in the cause; and in case of appeal from the decision of the board of commissioners of the county, their clerk shall file with the clerk of the Superior Court of the county a transcript of all the papers and records in such proceeding, to be attested by his seal of office. Appeals allowed.—1872-'3, c. 86, s. 1.

15. The party appealing shall give bond with sufficient surety in the penal sum of two hundred and fifty dollars, payable to the appellee, which bond shall be void in case the appellant shall perform such judgment as shall be rendered in the proceeding, and pay all such costs as may be adjudged against him. Bond of party appealing.—1870-'71, c. 36, s. 2.

16. The township board of trustees shall assess the taxable property of their townships, and make return to the county commissioners for revision, as may be prescribed by law. Assess property.—1868-'9, c. 185, s. 16.

17. The board of trustees of each township shall make out a written report upon the condition of the roads and bridges in their respective townships to the county commissioners, at least ten days before regular terms of the Superior Courts of the county. Board to report on roads, &c.—1868-'9, c. 185, s. 17.

18. The board of trustees shall audit all accounts against the township, as directed in section ten of the chapter concerning the government of counties; and shall cause semi-annual publications of all accounts so audited to be posted at the township house, or other place of meeting, if there be no township house, and three other public places in the township. Board to audit and settle accounts.—1868-'9, c. 185, s. 18.

19. The board of trustees shall have power to lay and collect all taxes which may be required to defray the necessary Power to lay and collect taxes.—1868-'9, c. 185, s. 19.

expenses of the township, and the township constable shall collect all taxes so laid and assessed.

Clerk to record proceedings.—1868-'9, c. 185, s. 20.

20. The clerk of the board of trustees shall record the proceedings of the board in a book to be provided for that purpose, and keep all its papers and hold them open to the examination of all persons except on the Sabbath; disburse all moneys belonging to the township, under the order of the board, taking proper vouchers therefor, and making quarterly returns to the board, if required, of all his receipts and disbursements.

Per diem of justice and clerk.—1868-'9, c. 185, s. 21.

21. Each justice of the peace, who is a member of the board, shall receive two dollars *per diem* for each day's attendance upon the meetings of the board; and the clerk shall receive the same *per diem*, with such additional compensation for his duties as clerk as the board may allow.

County commissioners to designate townships, when.

22. The commissioners of any county not included in this chapter shall have power to designate their present election precincts as townships for school and assessment purposes, until a proper survey is made and a report of the same is made to this body.

Who shall be township treasurer.—1869-'70, c. 203, s. 1.

23. The clerk of the board of trustees shall be also *ex officio* treasurer of the township.

When elected.—1869-'70, c. 203, s. 2.

24. The treasurer of the township shall be biennially elected in the manner provided by law.

When to be qualified.—1869-'70, c. 203, s. 3.

25. He shall qualify on the last Monday of August next ensuing his election, by taking and subscribing an oath of office before the other members of the board of trustees, either of whom is hereby authorized to administer such oath of office. The oath shall be filed with the clerk of the board of commissioners.

Vacancy, how filled.—1868-'9, c. 203, s. 4.

26. When a vacancy exists or shall occur from any cause in the office of treasurer of township, the other members of the board of trustees shall proceed forthwith to fill such vacancy by appointing a successor, who shall qualify as prescribed by law.

When board of trustees shall fail to appoint.—1868-'69, c. 203, s. 5. Township treasurer to give bond.—1868-'9, c. 203, s. 6.

27. If from any cause the board of trustees cannot agree, after ten ballots, in filling a vacancy, the board of county commissioners, to whom the fact shall be immediately reported, shall proceed to appoint a successor.

28. Every township treasurer, before entering upon the duties of his office, shall give a bond in the penal sum of at least five hundred dollars, and always equal to the probable amount of the taxes, other than school taxes, to be collected in one year in the township, payable to the State for the faithful accounting and disbursing of all moneys which may come into his hands, and for the discharge of all his duties as treasurer, which bond shall be signed by two or more sufficient sureties, and shall be proved by the oath of a subscribing witness, or acknowledged by the parties thereto, before the other members of the board of trustees, who shall approve the same and endorse their approval thereon, and then cause said bond to be

registered in the book of official bonds in the register's office, and the original deposited with the clerk of the Superior Court for safe keeping. The bond shall annually be renewed on the last Monday of August of each year.

29. The board of trustees or county commissioners may at any time require the township treasurer to enlarge his bond or justify his present securities to his bond, so as at all times amply to protect the public funds of the township, and if, upon service of such an order to enlarge or justify his bond, the township treasurer fails or refuses for ten days to so enlarge or justify, he shall be deemed to have vacated his office, and the trustees of the township shall proceed to fill such vacancy.

30. In case of any conflict or disagreement respecting the acceptance of a bond of any township treasurer the question shall be referred to the commissioners, whose acceptance or rejection shall be final.

Trustees may enlarge bond, &c.—1868-'9, c. 203, s. 7.

When county commissioners to decide on bond.—1868-'9, c. 203, s. 8.

SECTION 4. 66 N. C., 662.

SEC. 13. 65 N. C., 488.

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. Shall be avoided by plea.
10. Incapable of confirmation.
11. University endowed with escheats.

1. ANY license granted to retail spirituous liquor, wine, or cordials at Chapel Hill, or within two miles thereof, shall be 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.

3. No person in the State, without permission in writing from the president of the university, or some member of its faculty, shall sell, or offer to sell, or deliver to any student of the university, or to any other person, any wine, cordial, spir-

License to retail at Chapel Hill, &c., void.—R. C., c. 113, s. 1. Places in two miles of, for sale of liquors, forbidden.—R. C., c. 113, s. 2. No person without written permit, to sell liquor to be used in two

miles of Chapel Hill.—R. C., c. 113, s. 3.

Electioneering treats forbidden.—R. C., c. 113, s. 4. Also billiard and gaming-tables in five miles.—R. C., c. 113, s. 5. Also exhibitions in five miles without license.—R. C., c. 113, s. 6.

Violating preceding sections, misdemeanor.—R. C., c. 113, s. 7. Contracts with minor students without permission, void.—R. C., c. 113, s. 8.

Shall be avoided by plea.—R. C., c. 113, s. 9.

Incapable of confirmation.—R. C., c. 113, s. 10. Endowed with escheats.—R. C., c. 113, s. 11.

ituous 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 before hand, shall exhibit at Chapel Hill, or within five miles thereof, any theatricals, sleight 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 avoided by plea. 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.

CHAPTER 114.

USURY.

Legal rate of interest. Proviso.

1. THE legal rate of interest upon all sums of money, where interest is allowed, shall be six per cent. per annum for such time as interest may accrue, and no more: *Provided, however,* that any person may for the loan of money, but upon no other account, take interest at a rate so great as eight per cent., if both the consideration and rate of interest shall be set forth in an obligation signed by the party to be charged or his agent. And if any person shall agree to take a greater rate of interest than six per cent. per annum where no rate is named in the obligation, or a greater rate than eight per cent., where the rate is named, the interest shall not be recoverable at law; and in all trials at law, when the plea of usury shall be relied on, the defendant may examine the plaintiff on oath, either by deposition or in open court, according to the course of the court.

Legal rate of interest. Proviso.—1866, c. 24.

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 excepted,) 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.

No person to work on Sunday, under penalty of one dollar.—R. C., c. 115, s. 1.

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.

Penalty for swearing before a justice, &c.—R. C., c. 115, s. 2.

CHAPTER 116.

WEIGHTS AND MEASURES.

SECTION

1. Weights and measures to be used.
2. County commissioners 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 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.

SECTION

7. Acre of land, of what measure to be.
8. Governor to set apart a room in the Capitol for the safe keeping of standards.
9. To appoint a standard keeper.
10. Compensation of standard keeper.
11. State standard keeper shall supply counties.
12. Standard keeper to keep a record.
13. Standard keeper to destroy balances, when.

Weights and measures to be used.—R. C., c. 117, s. 1.—1866-'7, c. 125.

1. No trader or other person shall buy or sell, or otherwise use in trading, any other weights and measures than are made and used according to the standard prescribed by the Congress of the United States: *Provided*, that the provision of this chapter shall not prevent the citizens of the State from buying and selling grain by measure as may be agreed upon between the parties.

Board of county commissioners to procure weights and stamps.—R. C., c. 117, s. 2.—1868, c. 20, s. 26

2. The board of county commissioners 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, half pound, one quarter pound, two ounces, one ounce, and half ounce: 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.

Governor to procure measures.—R. C., c. 117, s. 3.—1867, c. 126, s. 5.

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, gauging rod and waists sticks, 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, half peck, quarter peck, one-eighth peck, gallon, half-gallon, quart, pint, half-pint, and gill measures, to be duly stamped with the letters N. C.

Standard keeper appointed. His oath and

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 board of county

commissioners; and the person thus elected shall, before the board of county commissioners, 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.

5. Every person using weights or measures, shall bring all his weights and measures and steelyards, embracing ballances and other instruments used in weighing, 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.

8. The Governor is authorized to set apart any room in the capitol, not occupied by any of the officers of the State, as a receptacle, and for the safe keeping of the balances to be furnished by the United States, for the adjustment of standard weights and capacity measures, and for all the standard weights and measures belonging to the State, and to have such alterations and arrangements made in said room as he may deem necessary to adapt the same to the purposes intended; and if he can find no such room in the capitol, that he have a portion of the old arsenal building fitted up for that purpose, and that he draw on the Public Treasurer, out of any money not otherwise appropriated, for the expense incurred.

bond.—R. C.,
c. 117, s. 4.

Weights and
measures to be
tried by stand-
ard keeper,
once in two
years; and
certificate
given. Pen-
alty for not
having them
examined.—R.
C., c. 117, s. 5.
—1867, c. 126,
s. 3.

For selling or
buying by,
when not
branded or
stamped.—R.
C., c. 117, s. 6.

Acre of land,
of what meas-
ure to be.—R.
C., c. 117, s. 8.

Governor to
set apart a
room in the
capitol for the
safe keeping
of standards.
—1867, res.,
p. 228.

To appoint a standard keeper.—1867, res., p. 228.

9. The Governor is further authorized to appoint a suitable person to take care of such balances and weights and measures, and perform the duties relating to weights and measures, now imposed by law on the Governor, and such other duties as the Governor may prescribe, touching said ballances and weights and measures; and that he take from such person a bond, with security, (to be approved by the Governor,) in the penal sum of five hundred dollars, for the safe keeping of said weights and measures, and for the performance of all his duties.

Compensation of standard keeper.—1867, res., p. 228.

10. Such person shall be allowed such compensation for his services as the Governor shall deem adequate, not exceeding two hundred dollars a year, to be paid quarterly, on the warrant of the Governor.

State standard keeper shall supply counties.—1867, c. 126, s. 1.

11. It shall be the duty of the State standard keeper to supply to each county, which shall call for the same, such standard weights as the standard keeper of such county shall demand, duly sealed according to law, such county paying to the Public Treasurer the actual costs of such weights, upon the certificate of the State standard keeper.

Standard keeper to keep a record.—1867, c. 126, s. 2.

12. It shall be the duty of the State standard keeper to keep a book, in which he shall keep an accurate account of all the weights and measures by him delivered, and the expenses incurred by him in the purchase of such weights and measures, subject to the inspection of the Public Treasurer and the General Assembly.

Standard keeper shall destroy balances that can not be adjusted.—1867, c. 126, s. 4.

13. In every instance where the standard keeper shall have before him for adjustment, or shall find in the possession of any person, intending to use the same, any weight or measure that cannot be adjusted so as to meet the requirements of the law, it shall be the duty of the standard keeper to destroy the same.

CHAPTER 117.

WIDOWS.

SECTION

1. To what dower a widow entitled.
2. Widows of intestates and widows dissenting from husband's will entitled to one-third in value of her husband's estate, including dwelling house, &c.
3. Dower not liable to be sold under execution.
4. Alienation by husband to pass only two-thirds.
5. When widow barred.

SECTION

6. Widow may dissent from husband's will.
7. Effect of dissent.
8. When dower assigned by heir or devisee with consent of widow.
9. How dower may be applied for.
10. Who must be parties.
11. How dower assigned.
12. Notices to such parties.
13. Bona fide conveyances not affected, when.

SECTION

14. What widows entitled to a year's support.
15. From what assigned.
16. Value of allowance.
17. Family defined.
18. Duty of administrator, &c., to assign.
19. How value of articles assigned to be ascertained. Proviso.
20. On application of widow personal representative may apply to justice of township, &c. Proviso.
21. Duty of commissioners.
22. Appeal may be taken to the Superior Court.
23. Duty of appellant.
24. Sum allowed to widow to be credited to executor, [unless impeached for fraud.

SECTION

25. When allowance shall be in full.
26. When not in full.
27. Application to be by summons.
28. What to be set forth in complaint.
29. What judgment shall be given.
30. Duty of commissioners. How report returned.
31. Party interested may except.
32. If report confirmed, what judgment and execution.
33. Costs, how to be paid.
34. Fees of commissioner, justice and sheriff.
35. Provisions heretofore laid off, validated.
36. Widows unprovided for allowed to proceed under this chapter.

1. WIDOWS shall be endowed as at common law, as in this chapter defined.

2. Every married woman, upon the death of her husband intestate, or in case she shall dissent from his will, shall be entitled to an estate for her life in one-third in value of all the lands, tenements and hereditaments whereof her husband was seized and possessed at any time during the coverture, in which third part shall be included the dwelling house in which her husband usually resided, together with offices, out houses, buildings and their improvements thereunto belonging or appertaining; she shall in like manner be entitled to such an estate in all legal rights of redemption and equities of redemption or other equitable estates in lands, tenements and hereditaments whereof her husband was seized in fee at any time during the coverture, subject to all valid incumbrances existing before the coverture or made during it with her free consent lawfully appearing thereto.

3. Dower, or right of dower, shall, in no case, be subject to seizure on execution for the payment of any debt of the husband during the term of the life of the wife.

4. No alienation of the husband alone, with or without covenant of warranty, shall have any other or further effect than to pass his two-thirds interest in such estate: *Provided*, that a mortgage or trust deed by the husband to secure the purchase money, or any part thereof, of land bought by him, shall, without the wife executing the deed, be effectual to pass the whole interest according to the provisions of the said deed.

5. The right to dower under this act shall pass and be effectual against any widow or person claiming under her upon the wife joining with her husband in the deed of conveyance and being privately examined as to her consent thereto in the manner prescribed by law.

To what dower a widow is entitled.—1868-'9, c. 93, s. 32.

Widows of intestates, and widows dissenting from will entitled to a third in value of her husband's estate, including dwelling house, &c.—1869-'70, c. 176, s. 1.

Dower not liable to be sold under execution.—1868-'9, c. 93, s. 34. Alienation by husband pass only two-thirds.—1868-'9, c. 93, s. 35.

When widow barred.—1868-'9, c. 93, s. 36.

Widow may dissent from husband's will.—1868-'9, c. 93, s. 37.

Effect of dissent.—1868-'9, c. 93, s. 38.

When dower assigned by heir or devisee with consent of widow.—1868-'9, c. 93, s. 39.

How dower may be applied for.—1868-'9, c. 93, s. 40.
Who must be parties.—1868-'9, c. 93, s. 41.
How dower assigned.—1868-'9, c. 93, s. 42.

Notices to such parties.—1868-'9, c. 93, s. 43.

Bona fide conveyances not affected, when.—1869-'70, c. 158.

What widows entitled to a year's support.—1868-'9, c. 93, s. 8.

From what assigned.—1868-'9, c. 93, s. 9.

6. Every widow may dissent from her husband's will before the court of probate of the county in which such will is proved, at any time within six months after the probate. The dissent may be in person, or by attorney, authorized in writing, executed by the widow and attested by at least one witness and duly proved and registered. The dissent, whether in person or by attorney, shall be filed as a record of court. If the widow be an infant or insane, she may dissent by her guardian.

7. Upon such dissent, the widow shall have the same rights and estates in the real and personal property of her husband as if he had died intestate.

8. If the personal property of a decedent be sufficient to pay his debts and charges of administration, the heir or devisee with the widow may, by deed, agree to an assignment of her dower.

9. If no such agreement be made, a widow may apply for assignment of dower by the petition in the Superior Court as in other cases of special proceedings.

10. The heirs, devisees, and other persons in possession of or claiming estates in the lands, shall be parties to such proceeding.

11. If dower be adjudged, it shall be assigned by a jury of five persons qualified to act as jurors, unless one of the parties demand a greater number, not exceeding twelve, who shall be summoned by the sheriff to meet on the premises or some part thereof, and being duly sworn by the sheriff, shall proceed to allot and set apart to the widow her dower in said premises according to law and make a report of their proceedings under their hands to court, which the sheriff shall return within five days to the clerk of said court.

12. The parties, or their attorneys, to such proceeding, shall be notified of the time and place of meeting of the jury appointed to assign dower, at least five days before the meeting.

13. The provisions of the act of the General Assembly entitled "An act restoring to married women their common law rights of dower," chapter fifty-four, ratified on the second day of March, one thousand eight hundred and sixty-seven, shall not be so construed as to affect the right or title of any person claiming real estate under a conveyance made within thirty-days after the passage of the said act, but all such conveyances shall have the like force and effect as if the said act had been enacted to take effect at the end of thirty days after the passage of the same.

14. Every widow of a deceased intestate, or of a testator from whose will she has dissented, shall be entitled, besides her distributive share in her husband's personal estate, to an allowance therefrom, for the support of herself and her family for one year after his decease.

15. Such allowance shall be assigned from the crop, stock, and provisions of the deceased in his possession, at the time of his death, if there be a sufficiency thereof in value, and if there

be a deficiency, it shall be made up by the personal representative from the personal estate of the deceased.

16. Except in cases in which a larger allowance is hereinafter provided for, the value of a year's allowance shall be three hundred dollars and one hundred dollars in addition thereto for every member of the family besides the widow.

Value of the allowance.—1868-'9, c. 93, s. 10.

17. The family of the deceased, for the purposes of this chapter, shall be deemed to be, besides the widow, every child, either of the deceased or of the widow, and every other person to whom the deceased or widow stood in place of a parent, who was residing with the deceased at his death, and whose age did not then exceed fifteen years.

Family defined.—1868-'9, c. 93, s. 11.

18. It shall be the duty of every administrator, collector, or executor, or executor of a will, from which the widow of the testator has dissented, on application in writing, signed by the widow of such intestate or testator, at any time within one year after the decease of the husband, to assign to her in the manner prescribed in this chapter, to the value herein prescribed, deducting therefrom the value of any articles consumed by the widow and her family since the death of her husband to the time of the assignment.

Duty of the administrator, &c., to assign.—1868-'9, c. 93, s. 12.

19. The value of stock, crop and provisions assigned to the widow, as well as that of the articles consumed, shall be ascertained by a justice of the peace and two persons qualified to act as jurors of the county in which administration was granted or the will was proved.

How value of articles assigned to be ascertained.—1868-'9, c. 93, s. 13.

20. Upon the application of the widow, the personal representative of the deceased shall apply to a justice of the peace of the township in which the deceased resided, or of some adjoining township, to summon two persons qualified to act as jurors, who having been sworn by the justice to act impartially, shall, with him, ascertain the number of the family of the deceased according to the definition given in section seventeen of this chapter, and examine his stock, crop and provision on hand, and assign to the widow so much thereof as will not exceed the value limited in section sixteen of this chapter, subject to the deduction prescribed in section eighteen of this chapter: *Provided, however*, that in case there shall be no administration upon said estate, the widow herself may make the application, and it shall be the duty of the justice to proceed in the same manner as though the application had been made by the administrator: *Provided, further*, that in all cases, if there be no crop, stock or provision on hand, or not a sufficient amount, the commissioners may allot to the widow any articles of personal property of the intestate, and also any debt or debts known to be due such intestate, and such allotment shall vest in the widow the right to collect the debts thus allotted.

Upon application of widow, personal representative to apply to justice of township, &c.—1870-'1, c. 260.

Proviso.

21. The commissioners shall make and sign three lists of the articles assigned to the widow, stating the quantity and value of each, the number of the family, and the deficiency to be paid by the personal representatives. One of these lists

Duty of the commissioners.—1868-'9, c. 93, s. 15.

shall be delivered to the widow, one to the personal representative and one returned by the justice, within twenty days after the assignment to the Superior Court of the county, and the clerk shall file and record the same and enter judgment against the personal representative, to be paid when the assets shall come into his hands, for any residue found in favor of the widow.

Appeal may be taken to Superior Court.—1868-'9, c. 93, s. 16.

22. The personal representative, or the widow, or any creditor legatee, or as distributee of the deceased, may appeal from the finding of the commissioners to the Superior court of the county, and cite the adverse party to appear before such court on a certain day, within ten days from the assignment.

Duty of appellant.—1868-'9, c. 93, s. 17.

23. At or before the day named, the appellant shall file with the clerk a copy of the assignment and a statement of his exceptions thereto, and the issues thereby raised shall be decided by the court as other issues are directed to be; when the issues shall have been decided, judgment shall be entered accordingly, if it may be without injustice, without remitting the proceedings to the commissioners.

Sum allowed to widow to be credited to executor, &c., unless impeached for fraud.—1868-'9, c. 93, s. 18. When above allowance shall be in full.—1868-'9, c. 93, s. 19.

24. Upon the settlement of the accounts of the personal representative, he shall be credited with the articles assigned, and the value of the deficiency assessed as aforesaid, if the same shall have been paid, unless the allowance be impeached for fraud or gross negligence in him.

25. If the estate of a deceased be insolvent, or if his personal estate does not exceed two thousand dollars, the allowance for the year's support of his widow and her family shall not, in any case, exceed the value prescribed above; and the allowance made to her as above prescribed, shall preclude her from any further allowance.

When not in full.—1868-'9, c. 93, s. 20.

26. It shall not, however, be obligatory on a widow to have her support assigned as above prescribed, without applying to the personal representative of her deceased husband; or after an allowance shall have been made to her on her application in manner aforesaid, she may, at any time within one year after the death of her husband, apply to the Superior Court of the county in which the will was proved, or administration granted, to have a year's support for herself and her family assigned to her.

Application to be made by summons, &c.—1868-'9, c. 93, s. 21.

27. The application shall be by summons, as is prescribed for special proceedings, in which the personal representative of the deceased, if there be one other than the plaintiff, the largest known creditor, or legatee, or some distributee of the deceased, living in the county, shall be made a defendant, and the proceedings shall be as prescribed for special proceedings between parties.

What to be set forth in complaint.—1868-'9, c. 93, s. 22.

28. In her complaint the widow shall set forth, beside the facts entitling her to a year's support and the value thereof, as claimed by her, the further facts, that the estate of the deceased is not insolvent, and that the personal estate of which he died possessed exceeded two thousand dollars, and also whether or

not she had an allowance made her, and the nature and value thereof; and if no allowance has been made, the quantities and values of the articles consumed by her and her family since the death of her husband.

29. If the material allegations of the complaint be found true, the judgment shall be that she is entitled to the relief sought; and the court shall thereupon issue an order to the sheriff or other proper officer of the county, commanding him to summon a justice of the peace and two indifferent persons qualified to act as jurors of the county, to assign to the plaintiff from the crop, stock, and provisions of the deceased, a sufficiency for the support of herself and her family, for one year from the death of her husband; and if there be a deficiency thereof to assess such deficiency, to be paid by the personal representative from the personal assets of the deceased; deducting, nevertheless, in all cases from such allowance the articles, or the value thereof, consumed by the widow and her family before such assignment, and also any sum previously assigned to her.

What judgment shall be given.—1868-'9, c. 93, s. 23.

30. The said commissioners shall be sworn by the justice and shall proceed as prescribed in sections nineteen and twenty of this chapter; except that they may assign to the widow to a value sufficient for the support of herself and her family according to the estate and condition of her husband and without regard to the limitation in section sixteen of this chapter; but the value allowed shall not in any case exceed the one half of the annual net income of the deceased for the three years next preceding his death. Their report shall be returned by the sheriff, instead of by the justice.

Duty of commissioners, how report returned.—1868-'9, c. 93, s. 24.

31. The personal representative, or any creditor, distributee or legatee of the deceased, within twenty days after the return of the report, may file exceptions thereto; the plaintiff shall be notified thereof and cited to appear before the court on a certain day, within twenty, and not less than ten days after service of the notice and answer the same, the case shall thereafter be proceeded in, heard, and decided as herein provided for in special proceedings between parties.

Party interested may except.—1868-'9, c. 93, s. 25.

32. If the report shall be confirmed, the court shall so declare, and execution shall issue to enforce the judgment as in like cases.

If the report confirmed, what judgment and execution.—1868-'9, c. 93, s. 26. Costs, how to be paid.—1868-'9, c. 93, s. 27.

33. If the widow shall recover final judgment for a value greater than that mentioned in section sixteen of this chapter, for an additional value after having received the value therein mentioned, it shall be in the discretion of the court to adjudge the whole or any part of the costs against the widow or the personal representative of the party excepting as may seem just; but if the widow shall fail to recover more than the value allowed by said section sixteen, computing as part of her recovery any value which may have been assigned to her on application, to the personal representative, she shall pay the whole cost of the proceeding. If the personal representative shall have failed

for thirty days after the widow's application, to have her year's support assigned to her, he shall pay the whole cost of her proceeding personally.

Fees of commissioner, sheriff and justice.—1868-'9, c. 93, s. 23. Year's provisions heretofore laid off, validated.—1868-'9, c. 93, s. 30.

Widows unprovided for, allowed to proceed under this chapter.—1868-'9, c. 93, s. 31.

34. The fees of the justice, and commissioners, and sheriff, each, shall be one dollar for the assignment; the other fee and cost shall be as prescribed in other cases.

35. All the widows' year's provisions heretofore laid off by any court or proceeding, since the present Constitution of the State was ratified, shall be and the same are hereby validated: *Provided*, the same are satisfactory to the parties.

37. Every widow, whose year's support has not been allowed and assigned to her by some court or proceeding since the present Constitution was ratified, may proceed to have the same allotted to her under the provisions of this chapter, deducting for the time which has elapsed up to the date of such allotment.

SECTION 1. 66 N. C., 172; *Ib.*, 189; *Ib.*, 192; *Ib.*, 197.

SEC. 2. 63 N. C., 231.

SEC. 9. 66 N. C., 195.

SEC. 10. 64 N. C., 90; *Ib.*, 113; *Ib.*, 426.

SEC. 14. 63 N. C., 137.

CHAPTER 118.

WILD FOWL.

SECTION

1. Restrictions on hunting in Currituck county.
2. Non-residents of State not to kill or take wild fowl by blinds, &c. Proviso.
3. Penalty for violation of this chapter.

SECTION

4. Fines to go to school fund of county. Proviso.
5. Justices of the peace to issue warrant of arrest for offenders.
6. Hunting by fire on Sabbath in certain counties prohibited.
7. Informer to receive half the fine.

Restrictions on hunting in Currituck county.—1870-'1, c. 27, s. 2.

Non-residents of State not to kill or take wild fowl by blinds, &c.—1870-'1, c. 27, s. 3.—1870-'1, c. 100, s. 1, 2.

1. It shall not be lawful for any person to hunt or shoot wild fowl in the county of Currituck on the Sabbath day, or hunt or shoot them on any day of the week after the hour of sunset and before the hour of daylight in the morning, with gun or fire, or use any gun other than can be fired from the shoulder.

2. It shall not be lawful for any non-resident of this State to build or use any blinds, boxes, batteries or floats, or use any wood decoys, ducks or geese, or live ducks or geese for decoys in any of the waters of said county for the purpose of killing or taking wild fowl: *Provided*, that this section shall not apply to such non-residents who resort to the waters of Currituck sound for the sole purpose of shooting game as sportsmen, and who shoot over or on land or marshes owned or leased by them,

and who do not kill game for a foreign market: *And provided, further*, it shall not be construed to limit, abridge, or impair the rights or privileges of any *bona fide* owner or lessee of marshes or lands in the county of Currituck, or of such persons as shall obtain the consent or permission of such owners or lessees to occupy their grounds for gaming purposes whether actual residents of the State or otherwise.

3. Any person violating the provisions of the first and second sections of this chapter shall be guilty of a misdemeanor, and, upon conviction in the Superior Court of Currituck county, shall be fined not less than one hundred dollars or imprisoned not less than thirty days, at the discretion of the court.

Penalty for violation of this chapter. 1870-'1, c. 27, s. 4.

4. That all fines collected or imposed under the provisions of this chapter, shall go to the common school fund of Currituck county: *Provided*, any person giving information of the violation of this chapter to the proper persons, shall, upon conviction of the parties, be entitled to receive one-half of said fine.

Fines to go to school fund of county. *Proviso*.—1870-'1, c. 27, s. 5.

5. It shall be the duty of the justices of the peace in said county of Currituck, upon information of the violation of this act, to issue his warrant for the arrest of the offender, and, if found guilty by him, he shall bind them over in such sums as he thinks proper: (*Provided*, that such amount shall not exceed two hundred and fifty dollars,) to the next term of the Superior Court for the county of Currituck.

Justices of the peace to issue warrants of arrest for offenders.—1870-'1, c. 27, s. 6.

WHEREAS, Much evil exists in the counties of Carteret, Craven, Hyde, Currituck, Tyrrell and Robeson, from the practice of hunting wild fowl with fire in said counties; therefore,

Preamble.

6. If any person whatsoever shall hunt wild fowl in the counties of Carteret, Craven, Hyde, Currituck, Tyrrell and Onslow with fire, from and after the passage of this act, such person shall be guilty of a misdemeanor, and, upon conviction for the same, shall be fined not less than twenty nor more than fifty dollars, and shall be imprisoned not less than ten nor more than thirty days.

Hunting by fire on Sabbath in certain counties prohibited.—1868-'9, c. 250, s. 1.

7. That any person who shall inform the court or solicitor of the district, or any justice of the peace, of the name of any person guilty of such violation of this act, shall be entitled to receive one-half of said fine.

Informers to receive half of fine.—1868-'9, c. 250, s. 2.

CHAPTER 119.

WILLS AND TESTAMENTS.

SECTION

1. Wills of real and personal estate, how executed.
2. Ages of testators and executors.

SECTION

3. Wills of married women, how and where proved.
4. Appointment by will executed as

SECTION	SECTION
wills. Valid, though other required forms be not observed.	26. Costs, how paid.
5. All property, rights, and interests may be disposed of by will.	27. Who is disqualified to serve as executor.
6. Wills to speak at the death of testator.	28. Executor may renounce.
7. Lapsed and void devises to pass under residuary clause.	29. When executor deemed to have renounced.
8. A general gift to include estates which testator has power to appoint.	30. Executor under disqualification of age or absence.
9. Executor competent witness.	31. Letters of administration with the will annexed to be granted, when and to whom.
10. Devises, &c., to witnesses, void.	32. Qualifications, &c., of such administrators.
11. When probate judge has jurisdiction of the estate.	33. Will of testator to be observed.
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Wills of real and personal estate, how executed.—R. C., c. 119, s. 1.

1. No last will or testament shall be good or sufficient, in law, 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 presence 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.

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, as in the case of other wills.

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.

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 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.

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.

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.

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 man-

Ages of testators and executors.—R. C., c. 119, s. 2.

Wills of married women, how and where proved.—R. C., c. 119, s. 3.

Appointments by will, executed like wills. Valid, though other required forms be not observed.—R. C., c. 119, s. 4.

All property, rights, and interests may be disposed of by will.—R. C., c. 119, s. 5.

Wills to speak as at the death of testator.—R. C., c. 119, s. 6.

Lapsed and void devises to pass under residuary clause.—R. C., c. 119, s. 7.

A general gift to include estates which testator has

power to appoint.—R. C., c. 119, s. 8.

ner, 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.—R. C., c. 119, c. 9.

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.—R. C., c. 119, s. 10.

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.

When probate judge has jurisdiction of the estate.—C. C. P., s. 433.

11. The Judge of Probate of each county has jurisdiction, within his county, to take proof of wills and to grant letters testamentary, letters of administration with the will annexed, and in cases of intestacy, in the following cases:

(1.) Where the decedent at, or immediately previous to his death, was domiciled in the county of such Probate Judge, in whatever place such death may have happened.

(2.) Where the decedent at his death, had fixed places of domicile in more than one county, the Judge of Probate of any such counties has jurisdiction.

(3.) Where the decedent, not being domiciled in this State, died out of the State, leaving assets in the county of such Judge of Probate, or assets of such decedent thereafter come into the county of such Probate Judge.

(4.) Where the decedent, not being domiciled in this State, died in the county of such Judge of Probate, leaving assets in the State, or assets of such decedent thereafter come into the State.

Probate judge first acquiring jurisdiction to have exclusive jurisdiction.—C. C. P., s. 434. How wills admitted to probate

12. The Judge of Probate, who first gains and exercises jurisdiction under sub-divisions two and three of the preceding section, thereby acquires sole and exclusive jurisdiction over the decedent's estate.

13. Wills and testaments must be admitted to probate only in the following manner:

(1.) In case of a written will, with witnesses, on the oath of at least two of the subscribing witnesses, if living; but when any one or more of the subscribing witnesses to such will are dead, or reside out of the State, or are insane or otherwise incompetent to testify, then such proof may be taken of the handwriting, both of the testator and of the witness or witnesses so dead, absent, insane or incompetent, and also of such other circumstances, as will satisfy the judge of probate of the genuineness and the due execution of such will.

bate.—C. C. P., s. 435.

(2.) In case of a holograph will, on the oath of at least three credible witnesses, who state that they verily believe such will and every part thereof is in the handwriting of the person whose will it purports to be, and whose name must be subscribed thereto, or inserted in some part thereof. It must further appear on the oath of some one of said witnesses, or of some other credible person, that such will was found among the valuable papers and effects of the decedent, or was lodged in the hands of some person for safe keeping.

(3.) In case of a nuncupative will, where the estate exceeds two hundred dollars, on the oath of at least two credible witnesses present at the making thereof, who state that they were specially required to bear witness thereto by the testator himself.

It must also be proved that such nuncupative will was made in the testator's last sickness, in his own habitation, or where he had been previously resident for at least ten days, unless he died on a journey or from home.

No nuncupative will shall be proved by the witnesses after six months from the making thereof, unless it was put in writing within ten days from such making; nor shall it be proved till a citation has been first issued or publication been made for six weeks in some newspaper printed in the State, to call in the widow and next of kin to contest such will if they think proper.

14. Every judge of probate shall take in writing the proofs and examinations of the witnesses touching the execution of a will; and he shall embody the substance of such proofs and examinations, in case the will is admitted to probate, in his certificate of the probate thereof, which certificate must be recorded with the will. The proofs and examinations as taken must be filed in the office.

Proofs and examinations in writing.—C. C. P., s. 437.

15. Such record and probate is conclusive in evidence of the validity of the will, until it is vacated on appeal or declared void by a competent tribunal.

Probate, how far conclusive.—C. C. P., s. 438.

16. Any executor named in a will may, at any time after the death of the testator, apply to the judge of probate, having jurisdiction, to have the same admitted to probate.

Who may apply for probate.—C. C. P., s. 439.

17. If no executor apply to have the will proved within sixty days after the death of the testator, any devisee or legatee named in the will, or any other person interested in the estate, may

Who may apply when executor does not.—C. C. P., s. 440.

make such application, upon ten days' notice thereof to the executor.

What to be shown on application.—C. C. P., s. 441.

18. On application to the judge of probate, he must ascertain by affidavit of the applicant:

(1.) That such applicant is the executor, devisee or legatee named in the will, or is some other person interested in the estate, and how so interested.

(2.) The value and nature of the testator's property, as near as can be ascertained.

(3.) The names and residence of all parties entitled to the testator's property, if known, or that the same on diligent inquiry cannot be discovered; which of said parties in interest are minors, and whether with or without guardians, and the names and residence of such guardians, if known.

Such affidavit shall be recorded with the will and the certificate of probate thereof, if the same is admitted to probate.

Production of will compelled by process.—C. C. P., s. 442.

19. Every judge of probate having jurisdiction, on application by affidavit setting forth the facts, shall, by summons, compel any person in the State, having in possession the last will of any decedent, to exhibit the same in his court for probate; and whoever being duly summoned, refuses in contempt of the court, to produce such will, or (the same having been parted with by him) refuses to inform the court on oath where such will is, or in what manner he has disposed of it, shall, by order of the probate judge, be committed to the prison of the county, there to remain without bail till such will be produced or accounted for, and due submission made for the contempt.

Will made without the State; how proved.—C. C. P., s. 443.

20. Whenever it is suggested to the probate court, by affidavit or otherwise, that a will has been made without the State, disposing of or charging land or other property within the State, the judge of probate of the county where the property is situated may issue a commission to such person as he may select, authorizing the commissioner to take the examination of such witnesses as may be produced, touching the execution thereof, and upon return of such commission, with the examination, he may adjudge the said will to be duly proved or otherwise, as in cases on the oral examination of witnesses before him, and if duly proved, such will shall be recorded.

Will of citizen or subject of another country; how allowed and recorded in this State.—C. C. P., s. 444.

21. Whenever any will, made by a citizen or subject of any other State or country, is duly proved and allowed in such State or country, according to the laws thereof, a copy or exemplification of such will, duly certified and authenticated, when produced or exhibited before the judge of probate of any county, wherein any property of the testator may be, shall be allowed, filed and recorded in the same manner as if the original, and not the copy, had been produced, proved and allowed before such probate judge. But when any such will contains any devise or disposition of real estate in this State, such devise or disposition shall not have any validity or operation, unless the will is executed according to the laws of this State; and that fact must appear affirmatively in the certified probate or exemplification of the will; and if it do not so appear, the

judge of probate before whom the copy is exhibited, shall have power to issue a commission for taking proofs, touching the execution of the will, as prescribed in the preceding section; and the same may be adjudged duly proved, and shall be recorded as therein provided.

22. When a will, made by a citizen of this State is 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, for probate in this State; the probate judge of the county where the testator had his last usual residence or has any property, upon a duly certified copy or exemplification of such will being exhibited to him for probate, shall take every order and proceeding for proving, allowing and recording said copy as by law might be taken upon the production of the original.

Will of citizen of this State proved elsewhere; how proved and recorded here.—C. C. P., s. 445.

23. At the time of application for the probate of any will, or at any time thereafter, as prescribed by law, any person entitled under such will or interested in the estate, may appear in person or by attorney before the probate court, and enter a caveat to the probate of such will.

Caveat.—C. C. P., s. 446.

24. Upon any caveator giving bond, with sufficient surety to be approved by the probate judge, in the sum of two hundred dollars, payable to the propounder of the will, conditioned to pay all costs which may be adjudged against such caveator in the Superior Court, by reason of his failure to prosecute his suit with effect; the probate judge shall transfer the cause to the Superior Court for trial; and he shall also forthwith issue a citation to all devisees, legatees or other parties in interest within the State, and cause publication to be made, for six weeks, in some newspaper printed in the State, for non-residents to appear at the term of the Superior Court, to which the proceeding is transferred, and to make themselves proper parties to the said proceeding, if they choose.

Transferred to Superior Court; when.—C. C. P., s. 447.

25. Where a caveat is entered and bond given, as directed in the last two sections, the judge of probate shall forthwith issue an order to any personal representative, having the estate in charge, to suspend all further proceedings in relation to the estate, except the preservation of the property and the collection of debts, until a decision of the issue is had.

Order to suspend proceedings.—C. C. P., s. 448.

26. The costs in all cases of caveated wills and testaments shall be paid as the court may in its discretion direct.

Costs, how paid.—1861, c. 61.

27. The judge of probate shall not issue letters testamentary to any person who, at the time of applying to qualify, is

Who is disqualified to serve as executor.—C. C. P., s. 449.

(1.) Under the age of twenty-one years;

(2.) A person convicted of an infamous crime;

(3.) Who, on proof, is adjudged by the probate court, incompetent to execute the duties of such trust, by reason of drunkenness, impropriety, or want of understanding;

(4.) Who fails to take the oath or to give bond in cases where executors are required by law to give bond;

(5.) Who has renounced his executorship.

Executor may renounce.—C. C. P., s. 450.

28. Any person appointed an executor may renounce the office by a writing signed by him, and on the same being acknowledged or proved to the satisfaction of the probate judge, it shall be filed.

When executor deemed to have renounced.—C. C. P., s. 451.

29. If any person appointed an executor does not qualify or renounce within sixty days after the will is admitted to probate, the judge of probate, on the application of any other executor named in the same will, or any party interested, shall issue a citation to such person to show cause why he should not be deemed to have renounced. If, upon service of the citation, he does not qualify or renounce within such time, not exceeding thirty days, as is allowed in the citation, an order must be entered by the judge of probate decreeing that such person has renounced his appointment as executor.

Executor under disqualification of age or absence.—C. C. P., s. 452.

30. Where an executor named in the will is under the disqualification of non-age, specified in section twenty-seven, or is temporarily absent from the State, such executor is entitled to six months, after coming of age or after his return to the State, in which to make application to qualify and take letters testamentary.

Letters of administration with will annexed to be granted; when and to whom.—C. C. P., s. 453.

31. If there is no executor appointed in the will, or if, at any time, by reason of death, incompetency adjudged by the probate court, renunciation, actual or decreed, or removal by order of the court, or on any other account, there is no executor qualified to act, the judge of probate may issue letters of administration, with the will annexed, to some suitable person or persons, in the order prescribed in chapter forty-five of this Revisal, entitled executors and administrators.

Qualifications, &c., of such administrators.—C. C. P., s. 454.
Will of testator to be observed.—C. C. P., s. 455.

32. Administrators (in cases prescribed in the preceding section) shall have the same qualifications and give the same bond as other administrators.

Oaths, &c.—C. C. P., s. 467.

33. In all cases, where letters of administration with the will annexed, are granted, the will of the testator must be observed and performed by the administrator with the will annexed, both in respect to real and personal property, and an administrator with the will annexed, has all the rights and powers, and is subject to the same duties as if he had been named executor in the will.

Revocation of letters on proof of will, &c.—C. C. P., s. 469.

34. Before letters testamentary, letters of administration with the will annexed, letters of administration or letters of collection, are issued to any person, he must take and subscribe an oath or affirmation, before the judge of probate, that he will faithfully and honestly discharge the duties of his trust, which oath must be filed in the office of the probate judge.

35. If, after letters of administration are issued, a will is subsequently proved and letters testamentary are issued thereon; or, if, after letters testamentary are issued, a revocation of the will, or a subsequent testamentary paper revoking the appointment of executors, is proved and letters are issued thereon, the judge of probate must thereupon revoke the letters first issued, by an order in writing to be served on the person, to whom

such first letters were issued; and, until service thereof, the acts of such person, done in good faith, are valid.

36. If, after any letters have been issued, it appears to the probate judge, or if complaint is made to him on affidavit, that any person to whom they were issued, is legally incompetent to have such letters, or that such person has been guilty of default or misconduct in the due execution of his office, or that the issue of such letters was obtained by false representations made by such person, the judge of probate shall issue an order requiring such person to show cause why the letters should not be revoked. On the return of such order, duly executed, if the objections are found valid, the letters issued to such person must be revoked and superseded, and his authority shall thereupon cease.

Revocation on ground of disqualification or default.—C. C. P., s. 470.

37. All letters must be issued in the name of the State, and tested in the name of the judge of probate, signed by him, and sealed with his seal of office.

Letters, how issued and tested.—C. C. P., s. 471.

38. 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.

Wills filed in clerk's office.—R. C., c. 119, s. 19.

39. 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.

No will effectual, without probate. Probate conclusive, when.—R. C., c. 119, s. 20.

40. 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.

Copies of, evidence.—R. C., c. 119, s. 21.

41. 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

Written wills, how revoked.—R. C., c. 119, s. 22.

be in the handwriting of the testator, by three witnesses at least.

Revoked by marriage.—R. C., c. 119, s. 23.

42. 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.

Not by altered circumstances.—R. C., c. 119, s. 24.

43. No will shall be revoked by any presumption of an intention, on the ground of an alteration in circumstances.

Nor by conveyances after will executed.—R. C., c. 119, s. 25.

44. 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.

Devises construed in fee, unless contrary appear.—R. C., c. 119, s. 26.

45. 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.

Copies of wills, in the office of secretary, to be evidence.—R. C., c. 44, s. 12. 1856-'7, c. 22.

46. 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: *Provided*, That no such will may be given in evidence in any court nor taken as sufficient proof of the devise unless a certificate of probate appear thereon.

WHEREAS, By reason of the uncertainty of the boundary lines of many of the counties of the State, wills have been proved, recorded and registered in the wrong county, whereby titles are become insecure; for remedy whereof:

The registry of will recorded in wrong counties evidence.—1858-'9, c. 18.

47. The registry or duly certified copy of the record of any will, duly recorded, may be given in evidence in any of the courts of this State.

Copy of lost or destroyed wills evidence, when.—1866-'7, c. 127.

48. When any will which may have been proved and ordered to be recorded, shall have been destroyed during the late war, before it was recorded, a copy of such will, so entitled to be admitted to record, though not certified by any officer, shall, when the court shall be satisfied with the genuineness thereof, be ordered to be recorded, and shall be received in evidence whenever the original or duly certified exemplification would be; and such copies may be proved and admitted to record under the same rules, regulations and restrictions as are prescribed in chapter fourteen of this Revisal, entitled "Burnt and Lost Records and other Papers."

SECTION 1. 2 D. & B. Eq., 463; 6 Ire. Eq., 248; 1 Jones, 321; 10 Ire., 219; 11 Ib., 632; 1 Ib., 561; 1 Mur., 176; Bus., 454; 3 D. & B., 40; 2 Hawks, 368; 13 Ire., 259; 1 Mur., 258; 9 Ire., 288; 12 Ib., 355; 6 Ire. Eq., 55; 1 Jones, 150; 4 Ire., 335; 1 Dev., 296; 1 Hawks, 384; 6 Ire. Eq., 248; 3 Jones, 202; Ib., 441; 4 Jones, 297; 6 Jones, 518; 7 Jones, 593; 3 Jones, 516; 4 Jones, 494; 7 Jones, 184; 8 Jones, 56; Phillips, 122; Ib., 251; 63 N. C., 637; 64 N. C., 52; 66 N. C., 51; 64 N. C., 493.
 SEC. 3. 9 Ire., 170; 1 Ib., 514; 3 Ire. Eq., 242.
 SEC. 6. 12 Ire., 21; Bus. Eq., 246.
 SEC. 13. 5 Jones, 95; 1 Winston, 253; 63 N. C., 637; 64 N. C., 52; 66 N. C., 51.
 SEC. 39. 10 Ire., 186; 2 Dev., 527; 1 Jones, 111.
 SEC. 41. 1 Jones, 197; 10 Ire., 139; 3 Ire., 303; 2 D. & B., 311.
 SEC. 42. Bus., 17.
 SEC. 45. 5 Ire., 430.

CHAPTER 120.

WRECKS.

SECTION

1. Wreck districts in certain counties, how laid off.
2. Commissioners of wrecks appointed by Governor. 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. Sales advertised; how long and where. How to proceed when property is damaging.
7. Commissioner not to take salvage. No person to interfere with his rights.

SECTION

8. Proceedings when there is a wreck and no person claiming. Goods sold and proceeds sent to Superior 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.
15. Penalty on commissioner for violation of this chapter.

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 a large pine standing on the main road about one hundred yards south of Samuel Tillitt's seine road, south of the graveyard, thence running a due east course from said pine to the sea and a west course to the sound; the fourth from the line just above described, on the south side of said line, to New inlet; the county of Carteret, into five districts; the

Wreck districts in certain counties, how laid off.
 —R. C., c. 120, s. 1.—1860-'1, c. 49.—1869-'70, c. 133, s. 1.

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 of Hyde shall be divided into two districts, beginning and bounded as follows: the first beginning at Dare county line and running thence to the eastern point of the Great swash; the second beginning at the said eastern point of the Great swash and running to the Carteret county line.

Commissioner of wrecks appointed by Governor. Their bond and oath.—1868, c. 18, s. 1.

2. The Governor shall, whenever it may be necessary, appoint a commissioner of wrecks for each district, who shall hold his office for two years from date of appointment, and shall, at the time of his appointment, enter into bond with good security in the sum of five 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 Superior 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 clerk of the Superior Court, or any officer qualified to administer an oath, take the oath prescribed by the Constitution and laws of North Carolina.

To reside in district—not to be pilot, or officer under U. S.—R. C., c. 120, s. 3.—1869-70, c. 104, s. 1.

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: *Provided*, that the restriction herein imposed as to the distance of the residence of the commissioner from the district for which he is appointed shall not apply to Hyde county.

Their duty when vessels in danger. Salvors to be paid. Sum ascertained, by referees, if parties disagree. Superior Court may examine award.—R. C., c. 120, s. 4.

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 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 re-examined, and pronounce such judgment thereon as they may deem just: and in the meantime, 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 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 townships 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 towns in the judicial district of which his county forms a part: *Provided, however*, that the commissioners of the first, second, third and fourth wreck districts in the county of Currituck, may advertise when practicable in some newspaper published in Norfolk, Virginia, in cases where they are required to advertise in a newspaper: *Provided, further*, that in case

Commissioners to take charge of, sell, &c., wrecked property. To render account of sales. Compensation.—R. C., c. 120, s. 5.

Sale advertised; how long and when.—1868, c. 18, s. 2.

Proviso.

Further proviso.

How to proceed where property is damaging.—1856-'7, c. 42.

Commissioner not to take salvage. No person to interfere with his rights.—R. C., c. 120, s. 7.

When there is a wreck and no person claiming, what to be done. Goods sold and proceeds sent to Superior Court. If not claimed in one year, to belong to public treasury.—R. C., c. 120, s. 8.—1868, c. 18, s. 3.

Finders of wrecked property, to notify commissioner. Penalty for concealing it.—R. C., c. 120, s. 9.

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 the sale. And if any portion of the damaged cargo be grain or provisions may sell by advertising five days if the sale be ordered by two disinterested merchants, and they shall be paid for their services from the amount of said sales by the wreck-masters.

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 Superior 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 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.

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.

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; and shall thereafter be incapable of acting as a commissioner.

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.

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.

15. Any commissioner of wrecks who shall wilfully violate the provisions of this chapter shall, on conviction thereof, in the Superior Court, forfeit and pay a fine of not less than one hundred nor more than two thousand dollars, and be imprisoned for not less than one month nor more than two years, at the discretion of the court.

Finders concealing stranded goods deemed guilty of larceny.—R. C., c. 120, s. 10.

Embezzlers, or receivers of goods, punished as for larceny, &c.—R. C., c. 120, s. 11.

Penalty on commissioners for abuse of trust.—R. C., c. 120, s. 12.

On persons refusing to aid in saving vessels, &c. Summons proved by commissioner.—R. C., c. 120, s. 13.

Finder of wrecked property at sea, to deliver it to commissioner. R. C., c. 120, s. 14.

Penalty for violation of law.—1868, c. 18, s. 4.

ADDENDA TO THE CODE OF CIVIL PROCEDURE.

Jurors to be summoned, and to attend till discharged by court. Tales jurors may be summoned.—R. C., c. 31, s. 29.

229p. The clerk of the board of county commissioners shall deliver the list of the jurors drawn for the Superior Courts to the sheriff of the county, who shall summon the persons therein named to attend as jurors at such courts, 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, 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.

Jurors not attending fined, twenty dollars. To have till next term to make excuse. Tales jurors two dollars.—R. C., c. 31, s. 30.

229q. 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.

Exempt from service of process.—R. C., c. 31, s. 31.

229r. 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.

Grand jury, how drawn.—R. C., c. 31, s. 33.

229s. The judges of the Superior Courts, at the terms of their 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.

Petit jurors sworn in civil cases. In State cases not capital, how. Right of challenge not affected thereby.—R. C., c. 31, s. 34.

229t. 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." *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 sup-

plied by any of the original *venire*, or of the bystanders qualified to serve as jurors.

229u. 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. C., c. 31, s. 35.

CHAPTER 121.

CONCERNING BATTLE'S REVISAL.

SECTION

1. When revisal to take effect.
2. What acts to be repealed.
3. Effect of repeal.
4. Offences and penalties not affected.
5. Suits or prosecutions not affected.
6. Acts heretofore repealed not affected.
7. Officers to continue, &c.
8. What acts not repealed.
9. How published. Arrangement of

SECTION

- the work. Preamble to volume.
- What volume to contain.
10. Number of copies to be published.
11. Compensation of superintendent.
12. Copies of revisal to be received as evidence.
13. Distribution of copies. Residue to be sold.
14. When to be in force.

1. ALL the provisions contained in the chapters revised and reported by the commissioner and to be known as "Battle's Revisal," shall take effect and go into operation on the first day of January, in the year one thousand eight hundred and seventy-four, except only such parts thereof as to which a different provision may be made therein.

When revisal to take effect.—1872-'3, c. 74, s. 1.

2. All acts and parts of acts passed before the present session of this General Assembly, the subjects whereof are digested and compiled in this "revisal," or which are repugnant to the provisions thereof, are hereby declared to be repealed and of no force and effect from and after the first day of January next, with the exceptions and limitations hereafter mentioned.

What acts to be repealed.—1872-'3, c. 74, s. 2.

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 this time; but the proceedings in every such case shall be conformed, when necessary, to the provisions of the "revisal."

Effect of repeal.—1872-'3, c. 74, s. 3.

4. No offence committed, and no penalty or forfeiture incurred under any of the acts hereby repealed, shall be affected by the repeal, except that where any punishment, penalty or forfeiture shall have been mitigated by the provisions of "Bat-

Offences and penalties not affected.—1872-'3, c. 74, s. 4.

tle's Revisal," such provisions may be extended or applied to any judgment to be pronounced after the repeal.

Suits or prosecutions not affected.—
1872-'3, c. 74,
s. 5.

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

Acts heretofore repealed not affected.—
1872-'3, c. 74,
s. 6.
Officers to continue, &c.
—1872-'3, c.
74, s. 7.

6. No act or law which has heretofore been repealed shall be revised by the repeal contained in this chapter of any of the acts hereinbefore mentioned.

7. All persons who at this time 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 "revisal."

What acts not repealed.—
1872-'3, c. 74,
s. 8.

8. No act of a private or local nature; no act containing a grant of corporate privileges for any purpose; no act granting privileges or imposing duties in any particular county inconsistent with the general provisions of law; no act 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.

How published. Arrangement of the work. Preamble to volume.

9. The "revisal" shall not be published in the usual pamphlet form, with the other acts of the present session, but shall be published in a volume, under the superintendence and direction of the commissioner who has prepared this "revisal," and in case of a vacancy caused by his death, resignation or otherwise, the Governor shall fill the same; the superintendent 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 letters, 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 collecting, digesting and compiling all the public statute laws of the State, now in force or in use. Whereas, it is expedient that all the public statute laws of the State in force or in use shall be collated, digested and compiled in proper titles, divisions and sections, so that the said public statute laws shall be rendered more plain and easy to be understood; therefore,

The General Assembly of North Carolina do enact, In man-

ner and form following, that is to say :” In the volume shall also be published the acts of a public or general nature passed at this session and not included in the “revisal,” 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; and there shall likewise be published in this volume the Constitution of the United States, the Constitution and declaration of rights of this State; the act of Congress approved May the twenty-sixth, A. D. one thousand seven hundred and ninety, and an act supplementary thereto, approved March the twenty-seventh, A. D. one thousand eight hundred and four, prescribing the mode in which records and judicial proceedings in each State 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, together with the old Constitution of this State.

What volume shall contain.—1872-'3, c. 74, s. 9.

10. There shall be published of the said “revisal,” five thousand copies, the copyright whereof shall be secured to the State by the superintendent, 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 superintendent.

Number of copies to be published.—1872-'3, c. 74, s. 10.

11. The volume shall be published as speedily as practicable, and when completed and delivered to the order of the Governor, the superintendent shall receive such compensation as to the Governor shall seem just and reasonable, to be paid by the public Treasurer upon his warrant.

Compensation to superintendent.—1872-'3, c. 74, s. 11.

12. The copies of the said “revisal,” which shall be printed as aforesaid, shall be received as evidence of the law before all the 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.

Copies of revisal to be received as evidence.—1872-'3, c. 74, s. 12.

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, Auditor, Superintendent of Public Instruction and Attorney-General, 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 clerk of the Supreme Court, and the clerks of the Superior Courts, one copy each for the use of their respective courts; to the Judges of the Supreme and Superior Courts, one copy each; to the superintendent of publication, one copy; to the members of the present General Assembly, who are not justices of the peace, one copy each, and to the justices of

Distribution of copies. Residue to be sold.—1872-'3, c. 74, s. 13.

peace, registers of deeds and commissioners 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.

When to be in
force.—1872-
'3, c. 74. s. 14.

14. This act shall be in force from and after its ratification, except those parts of it which contain a different provision as to the time when they will take effect.

APPENDIX.

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,
ARCHD 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.

CRAYEN COUNTY.

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

CUMBERLAND COUNTY.

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

CURRITUCK COUNTY.

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

DOBBS COUNTY.

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

DUPLIN COUNTY.

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

EDGCOMBE COUNTY.

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

GRANVILLE COUNTY.

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

GUILFORD COUNTY.

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

HALIFAX COUNTY.

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

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 MOSELY,
JOHN HOLLINGSWORTH.

NORTHAMPTON COUNTY.

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

ONSWLOW COUNTY.

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

ORANGE COUNTY.

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

PASQUOTANK COUNTY.

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

PERQUIMONS COUNTY.

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

PITT COUNTY.

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

ROWAN COUNTY.

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

SURREY COUNTY.

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

TRYON COUNTY.

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

TYRRELL COUNTY.

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

WAKE COUNTY.

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

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

Towns of

BATH,
BRUNSWICK,
CAMPBELTON,
EDENTON,
HALIFAX,
NEWBERN,
SALISBURY,

WM. BROWN,
PARKER QUINCE,
THOMAS HADLEY,
JOSEPH HEWES,
WILLIE JONES,
ABNER NASH,
DAVID NESBIT.

THE

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.
Right of Gov-
ernment in the
people.

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

SEC. 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.

SEC. 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 separate.

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

Suspension of
laws forbid-
den.

SEC. 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.

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

Rights of ac-
cused in crim-
inal prosecu-
tions.

SEC. 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 pros-
ecution pre-
scribed.

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

Jury trial in
criminal pros-
ecutions.

SEC. 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.

Bail, fines,
and punish-
ments to be
reasonable.

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

General war-
rants forbid-
den.

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

None to be de-
prived of lib-
erty or prop-

SEC. 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.

SEC. 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.

SEC. 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.

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

SEC. 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.

SEC. 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.

SEC. 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.

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

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

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

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

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

SEC. 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.

SEC. 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,

erty, but by the law of the land.
Habeas corpus.

Jury trial in civil causes.

Freedom of the press not to be restrained.

Taxes not to be imposed but by General Assembly.

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

Instruction, right of.

Religious worship, right of.

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 sovereign-
ty. Saving
the rights of
Indians.
Other govern-
ments may be
established
west.
Present titles
confirmed.

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.

December the seventeenth day, Anno Dom. one }
thousand seven hundred and seventy-six, read }
the th rd time and ratified in open Congress. }

R. CASWELL, *Pres.*

JAMES GREEN, JUN., *Secretary.*

NOTE.

SECTION 7. 11 Ire., 513; 7 Ib., 225.

SEC. 12. State *vs.* Manuel, 4 D. & B., 20; Hoke *vs.* Henderson, 4 Dev., 1; see also 13 Ire., 75; University *vs.* Foy, 1 Mur., 58; Same *vs.* Maulsby, 8 Ire. Eq., 257; 1 Ire., 414; 1 Car. L. R., 385; 10 Ire., 377; 1 Mur., 500; 10 Ire., 543; 4 D. & B., 319; 2 Ib., 555; 2 Ire., 66.

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

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

SEC. 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.

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:

SECTION 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.

SEC. 2. That the Senate shall be composed of representa-

Allegiance and protection being reciprocal, and Great Britain having withdrawn her protection and waged war upon the colonies, they are absolved from allegiance.

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

Legislative authority vested in two branches. Senate.

tives [*annually*] chosen by ballot, one from each [*county*] in this State.*

House of Commons.

SEC. 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.*]

When convened denominated the General Assembly. Qualification of members of Senate.

SEC. 4. That the Senate and House of Commons, assembled for the purpose of legislation, shall be denominated the General Assembly.

SEC. 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.

Of members of House of Commons.

SEC. 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 voters for Senators.

SEC. 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 members of House of Commons.

SEC. 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.

[SEC. 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; is-

SEC. 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 election of their members, sit upon their own adjournments from day to day,

* Those sections of the Constitution in which material amendments have been made are printed in *italics* between brackets.

and prepare bills to be passed into laws. The two houses shall direct writs of election for supplying intermediate vacancies, and shall also jointly, by ballot, adjourn themselves to any future day and place.

SEC. 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.

SEC. 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.

SEC. 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.

[SEC. 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.*]

SEC. 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.

SEC. 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.

SEC. 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.

SEC. 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.

SEC. 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

sue writs of election; jointly to adjourn, when.

Bills to be read three times in each House and signed by the speaker. Members and officers to take oath of office and to the State.

Judges appointed by General Assembly, and commissioned by Governor during good behavior. General Assembly to appoint officers of militia.

Two Houses jointly to elect Governor. His qualifications.

Shall elect seven persons, counsellors of State. Their duty. To keep a journal of their proceedings.

Great seal to be kept by Governor and affixed to grants and commissions, etc. Governor to be commander-in-chief of militia.

His powers and duties. In case of vacancy, who to fill the office.

may, by and with the advice of the council of State, lay embargoes, or prohibit the exportation of any commodity, for any term, not exceeding thirty days at any one time, in the recess of the General Assembly, and shall have the power of granting pardons and reprieves, except where the prosecution shall be carried on by the General Assembly, or the law shall otherwise direct; in which case he may, in the recess, grant a reprieve until the next sitting of the General Assembly; and may exercise all the other executive powers of government, limited and restrained as by this constitution is mentioned, and according to the laws of the State; and on his death, inability or absence from the State, the Speaker of the Senate for the time being, and in case of his death, inability or absence from the State, the Speaker of the House of Commons shall exercise the powers of the Governor, after such death, or during such absence or inability of the Governor or Speaker of the Senate, [*or until a new nomination is made by the General Assembly.*]

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

SEC. 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.

SEC. 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.

SEC. 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.

SEC. 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.

SEC. 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.

SEC. 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.

SEC. 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.

SEC. 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.

SEC. 28. That no member of the Council of State shall have a seat either in the Senate or House of Commons.

SEC. 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.

SEC. 30. That no Secretary of this State, Attorney-General, or clerk of any court of record, shall have a seat in the Senate, House of Commons or Council of State.

SEC. 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.

SEC. 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.

SEC. 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.

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

SEC. 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.

SEC. 36. That all commissions and grants shall run in the

Officers of army or navy of United States, and agents to supply the army and navy, ineligible.

Members, etc., accepting such places to vacate their seats, etc. Counsellor of State ineligible.

Judges ineligible, nor to be of the council.

Sec. of State, Att'y Gen., and clerks of courts ineligible, nor to be of the council. Clergymen, exercising pastoral functions ineligible, nor to be of the council.

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

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

No religious establishment. All may use their own mode of worship.

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

Commissions,

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

Delegates to Continental Congress.

Sheriff, coroner, and constables for each county. Debtor not to be imprisoned unless, etc. Prisoners bailable, unless, etc.

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

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

Purchase of lands from Indians, prohibited.

Entails in perpetuity, forbidden.

Declaration of Rights a part of the constitution.

Members of General Assembly may protest of record.

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.

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."

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

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

SEC. 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.

SEC. 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.

SEC. 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.

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

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

SEC. 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.

SEC. 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.

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

This constitution is not intended to preclude the present

Congress from making a temporary provision for the well ordering of this State, until the General Assembly shall establish government agreeable to the mode herein before prescribed.

December the eighteenth, one thousand seven }
hundred and 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 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 facts 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:—

Preamble rec-
iting the au-
thority by
which the
convention
was called to
amend the
constitution.
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. No county to be divided, etc.

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.

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

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.

Apportionment of members, when made.

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.

Ratio of representation. How ascertained.

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.

SECTION II.

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, Johnston; 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 Senate to be composed until first session after 1841.

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, Edgcombe, Franklin, Johnston, Montgomery, New-Hanover, Northampton, Person, Pitt, Randolph, Robeson, Richmond, Rockingham, Sampson, Warren, Wayne and Wilkes shall elect

How House of Commons to be composed till then.

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.

Qualification
of Senators.

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.

Of voters for
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.

Free persons
of color not to
vote for mem-
bers of either
house.

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.

SECTION IV.

In elections of
officers, Gen-
eral Assembly
to vote *viva*
voce.

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*.

May regulate
the appointing
and removal of
militia officers.
May pass laws
to regulate,
but shall not
grant, di-
vorces, etc.

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

Shall not alter
names, nor le-
gitimate bas-
tards, etc.,
but may pass
laws for the
purpose.

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.

Nor pass pri-
vate laws, but
on notice of
thirty days.

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 person not born in lawful wedlock, or to restore to the rights of citizenship any person convicted of any infamous crime; but shall have power to pass general laws regulating the same.

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

CL. 6. If vacancies shall occur by death, resignation or oth-

erwise, before the meeting of the General Assembly, writs may be issued by the Governor, under such regulations as may be prescribed by law.

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.

membership,
before meeting
of Assembly,
how filled.

Sessions biennial, election of Secretary of State, Treasurer, and council.

ARTICLE II.

CL. 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.

Governor,
how chosen.

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.

Term of office
when ineligible.

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.

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

CL. 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;

How punished
on conviction.

but the party convicted may, nevertheless, be liable to indictment, trial, judgment and punishment according law.

House of Commons shall impeach; and the Senate shall try. Mode of trial.

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.

SECTION II.

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

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.

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. Proceedings

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. 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.

by General
Assembly.
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 testi-
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
office under
this State, and
ineligible to
General As-
sembly.

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.

Amendments to Constitution submitted to the people. Polls to be kept open three days, and results certified by sheriffs. The vote, how given.

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*."

Duplicate statements of polls. One sent to 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.

To be opened by the Governor. If ratified, proclamation to be made by Governor. Ratification to be certified on the amendments by the Governor, under the great seal, etc.

Be it further ordained by the authority of the same, That when the returns aforesaid shall have been received, the same shall be opened by the Governor in the presence of the Secretary of State and Treasurer; and in case a majority of the votes polled shall be in favor of a ratification of the amendments, the same shall be forthwith made known by a proclamation of the Governor to the people of the State. And thereupon, the Governor shall cause to be indorsed on the amendments, as enrolled by order of the Convention, or shall annex thereunto, a certificate under his signature declaring that the said amendments have been ratified by the people of North Carolina, and the Secretary of State shall countersign the said certificate, and annex thereto the great seal of the State, and the said amendments so enrolled with the certificate aforesaid shall be forever kept among the archives of the State in the office of the Secretary aforesaid.

Be it further ordained by the authority aforesaid, That the amendments thus ratified shall take effect, and be in force from and after the first day of January, A. D. one thousand eight hundred and 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.*

NOTE.

SECTION 8. 4 D. & B., 256; Opinion of judges, App. to 8 Ire. Eq. Rep.
 SEC. 40. 3 Ire., 141; 5 Ire. Eq., 207; 4 Dev., 247; 3 Dev., 188.

Amendments
 to be in force
 first of Janu-
 ary, A. D., 1836

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.

Laws, records,
and judicial
proceedings of
the several
States, how to
be authenti-
cated; and
the effect
thereof. May
26, 1790.

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.

AN ACT SUPPLEMENTARY TO THE FOREGOING ACT.

Records, &c.,
of office books,
how authenti-
cated. March
27, 1804.

SECTION 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 Governor, 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.

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 to 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.

Mode of authenticating laws, &c., in territories the same. March 27, 1804.

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. Duryce*, 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, 484; *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 Irc., 14; *Pigot v. Davis*, 3 Hawks, 23; *Irby v. Wilson*, 1 D. & B. Eq., 565; *Picket v. Johns*, 1 Dev. Eq., 123.

For the mode of authenticating the statutes of another State, see *State v. Cheek*, 13 Irc., 114; *McDougald v. Smith*, 11 Irc., 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. Gwyn*, 5 Irc., 187. What the law of another State is, when not contained in a statute, is a matter for the jury. *Ib.*

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, Article 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.)

Declaration by alien previous to naturalization.

ARTICLE 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 *bona 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)

- (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 citizen 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.

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, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one thousand eight hundred and two, and who has continued to reside within the same. (2)

Exception as to aliens residing in U. S. between 18th June, 1798, and 14th April, 1802.
(2) Act March 26, 1804, s. 1.

4. Nothing in the first section, act twenty-second of March, one thousand eight hundred and sixteen,* 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 twenty-six of March, one thousand eight hundred and four. 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

Further provisions respecting such aliens.

*The first section of act 22d March, 1816, was repealed by act 24th May, 1828.

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 residing within the U. States, between 14th April, 1802, and 18th June, 1812.

5. That any alien, being a free white person, who was residing within the limits and under the jurisdiction of the United States, between the fourteenth day 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)

(1) Act May 24, 1828, s. 2.

Exception as to alien minors.

6. Any alien, being a free white person and 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 *bona 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)

(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 particularly, 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)

Oaths required from alien.

(3) Act April 14, 1802, s. 1, Con. 2.

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)

Court to be satisfied of certain qualifications.

(4) Act April 14th, 1802, s. 1, Con. 3.

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)

Renunciation of titles and orders.

(1) Act April 14, 1802, s. 1, Con. 4.

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 two, act fourteenth April, one thousand eight hundred and two,* 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)

Provision relative to widow and children of aliens.

(2) Act March 26th, 1804, s. 2.

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

Minor children of naturalized citizens become citizens, when.

*This second section was repealed by act 24th May, 1828. It provided for the registry of the alien.

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 fourteenth of April, one thousand eight hundred and two, under age at the time of their parents' naturalization, were, if dwelling in the United States on the fourteenth of April, one thousand eight hundred and two, to be considered as citizens of the United States. (3)

(3) Act April 14, 1802, s. 4, *Campbell v. Gordan et al.*, 6 Cr. 177.

What court may administer the naturalization laws.

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)

(4) Act April 14, 1802, s. 3.

Five years' residence necessary, when.

13. No person who shall arrive in the United States after February the seventeenth, one thousand eight hundred and fifteen, 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.*

(5) Act March 3, 1813, s. 12. 26th June, 1848, c. 72.

Children born abroad to be citizens.—10th Feb., 1855, s. 1, 10 stat. 604.

14. Persons heretofore born, or hereafter to be born, out of the limits and jurisdiction of the United States, whose fathers were or shall be, at the time of their birth, citizens of the United States, shall be deemed and considered, and are hereby,

*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. Con., 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.

declared to be citizens of the United States: *Provided, however*, that the rights of citizenship shall not descend to persons whose fathers never resided in the United States.

15. Any woman who might be lawfully naturalized under the existing laws, married, or who shall be married, to a citizen of the United States, shall be deemed and taken to be a citizen. Wives of citizens.—Ibid, s. 2.

NOTE.—See *Kane vs. McCarthy*, 63 N. C. Rep. 299 for the construction of the last section of the act of 10th February, 1855.

CONSTITUTIONAL AMENDMENTS.

AN ACT TO ALTER THE CONSTITUTION OF NORTH CAROLINA IN RELATION TO STATE CENSUS.

Preamble.

WHEREAS, At the session of the last General Assembly, begun and held at Raleigh, on the third Monday of November, in the year of our Lord one thousand eight hundred and seventy-one, a bill entitled "A bill to alter the Constitution of North Carolina," was read three times in each House of said General Assembly, and agreed to by three-fifths of the whole number of members of each House respectively; and whereas, the bill so agreed to has been duly published six months previous to the election of the members of this present General Assembly, as required by section two, article thirteen of the Constitution; and it is the intention of this bill to agree to the following alteration proposed by the last General Assembly in the bill aforesaid:

The General Assembly of North Carolina do enact, (two-thirds of the whole representation in each House of the General Assembly concurring,) That the Constitution of this State be altered as follows, to-wit:

Amendment
of the Consti-
tution as to
State Census.
—1872-'3, c.
81.

Amend section five of the second article, by striking out all that precedes the words, "the said Senate district," and by striking out the phrase, "as aforesaid or," in said section; the part so stricken out having reference to the State census.

Ratified the twenty-fourth day of February, one thousand eight hundred and seventy-three.

AN ACT TO ALTER THE CONSTITUTION OF NORTH CAROLINA IN RELATION TO THE SESSIONS OF THE GENERAL ASSEMBLY.

Preamble.

WHEREAS, &c.:

The General Assembly of North Carolina do enact, (two-thirds of the whole representation in each House of the General Assembly concurring,) That the Constitution of this State be altered as follows, to-wit:

Amendment
to the Consti-
tution in rela-
tion to the
sessions of the
General As-
sembly.—1872
-'3, c. 82.

Amend section two of the second article, by striking out the word "annually" and inserting in lieu thereof the word "biennially," being in reference to the sessions of the General Assembly.

Amend section six of the third article, by striking out the word "annually" and inserting in lieu thereof the word "bi-

ennially," so as to conform to the provisions respecting the Sessions of the General Assembly.

Ratified the twenty-fourth day of February, 1873.

AN ACT TO ALTER THE CONSTITUTION OF NORTH CAROLINA IN
RELATION TO EXEMPTIONS.

WHEREAS, &c.:

Preamble.

The General Assembly of North Carolina do enact, (two thirds of the whole representation in each House of the General Assembly concurring,) That the Constitution of this State be altered as follows, to-wit:

Amend section sixth of the fifth article, by inserting after the word "instrument," in said section, the words, "or any other personal property."

Amendment to the Constitution in relation to exemptions.—1872-'3, c. 83.

Ratified the twenty-fourth day of February, 1873.

AN ACT TO ALTER THE CONSTITUTION OF NORTH CAROLINA IN
RELATION TO THE OFFICE OF SUPERINTENDENT OF PUBLIC
WORKS.

WHEREAS, &c.:

Preamble.

The General Assembly of North Carolina do enact, (two thirds of the whole representation in each House of the General Assembly concurring,) That the Constitution of this State be altered as follows, to-wit:

Strike out the words "Superintendent of Public Works," wherever they occur in the Constitution, thus abolishing that office.

Amendment to the Constitution abolishing the office of Superintendent of Public Works.—1872-'3, c. 84.

Ratified the twenty-fourth day of February, 1873.

AN ACT TO ALTER THE CONSTITUTION OF NORTH CAROLINA IN
RELATION TO THE PUBLIC DEBT.

WHEREAS, &c.:

Preamble.

The General Assembly of North Carolina do enact, (two thirds of the whole representation in each House of the General Assembly concurring,) That the Constitution of this State be altered as follows, to-wit:

Amend section six of the first article, by striking out the Amendment

to the Constitution in relation to the State debt.—
1872-'3, c. 85.

first clause thereof, down to and including the word "but," this being the clause relating to the State debt.

Strike out section four of the fifth article, relating to taxation to pay the State debt and interest.

Ratified the twenty-fourth day of February, 1873.

AN ACT TO ALTER THE CONSTITUTION OF NORTH CAROLINA IN
RELATION TO THE UNIVERSITY.

Preamble.

WHEREAS, &c. :

The General Assembly of North Carolina do enact, (two-thirds of the whole representation in each House of the General Assembly concurring,) That the Constitution of this State be altered as follows, to-wit :

Amendment
to the Constitution in relation to the University.—
1872-'3, c. 86.

Strike out the fifth section of the ninth article, and in lieu thereof, insert the following: "The General Assembly shall have power to provide for the election of Trustees of the University of North Carolina, in whom, when chosen, shall be vested all the privileges, rights, franchises and endowments thereof, in any wise granted to or conferred upon the Trustees of said University; and the General Assembly may make such provisions, laws and regulations from time to time, as may be necessary and expedient for the maintenance and management of said University."

Strike out sections thirteen, fourteen and fifteen of the ninth article, relating to the University of North Carolina.

Ratified the twenty-fourth day of February, 1873.

AN ACT TO ALTER THE CONSTITUTION OF NORTH CAROLINA IN
RELATION TO THE CODE COMMISSION.

Preamble.

WHEREAS, &c. :

The General Assembly of North Carolina do enact, (two-thirds of the whole representation in each House of the General Assembly concurring,) That the Constitution of the State be altered as follows, to-wit :

Amendment
to the Constitution in relation to the Code Commission.—1872-'3,
c. 87.

Strike out sections two and three of the fourth article, being the provisions which refer to the appointment and duties of the Code Commissioners.

Ratified the twenty-fourth day of February, 1873.

AN ACT TO ALTER THE CONSTITUTION OF NORTH CAROLINA IN
RELATION TO FEDERAL AND OTHER OFFICERS HOLDING OFFICE.

WHEREAS, &c. :

Preamble.

The General Assembly of North Carolina do enact, (two-thirds of the whole representation in each House of the General Assembly concurring,) That the Constitution of this State be altered as follows, to-wit :

Alter section seven of the fourteenth article, so that said section shall read as follows : "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 under 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, justices of the peace, commissioners of public charities, or commissioners for special purposes.

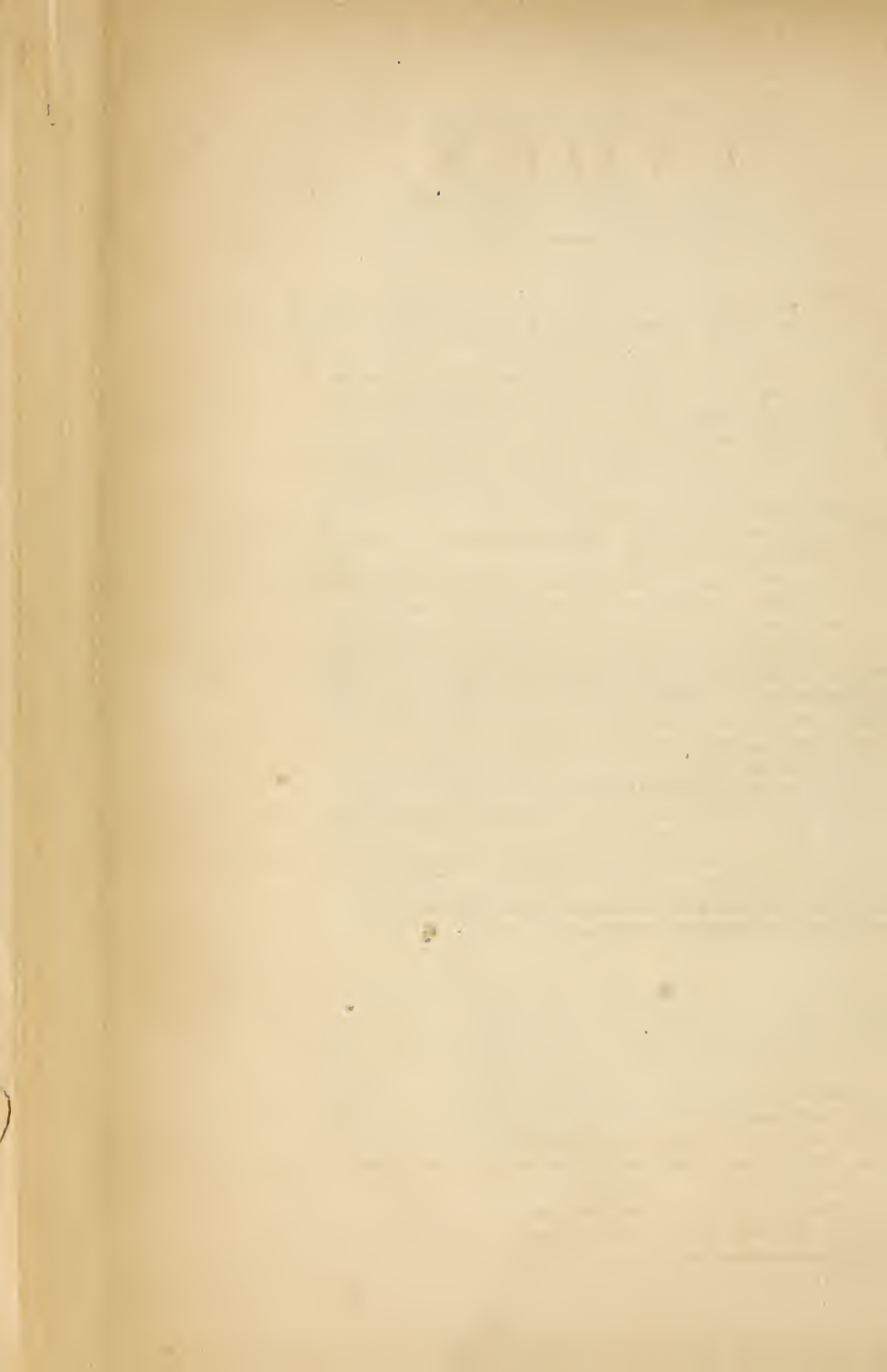
Amendment to the Constitution in relation to holding office.—1872-'3, c. 88.

Ratified the twenty-fourth day of February, 1873.

NOTE.—By an act, ratified the third day of March, one thousand eight hundred and seventy-three, entitled "An act to submit the proposed amendments of the Constitution to the people of the State for ratification or rejection," the above amendments were voted upon the first Thursday in August, one thousand eight hundred and seventy-three, and were all ratified by a vote of nearly forty thousand majority.

The seventh section of the act provides as follows :

It shall be the duty of the Governor on the first Monday in December next, in the presence of the Secretary of State, the Treasurer and Auditor, to compare the votes for and against a ratification of said amendments, and if it shall appear that a majority of the votes polled are in favor of them, or any of them, he shall forthwith issue his proclamation announcing the result, and thereupon the Governor shall cause to be indorsed on said amendments as enrolled by the two Houses of this General Assembly, or annexed thereto a certificate under his signature, declaring that the said amendments have been ratified by the people of North Carolina. 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 certificates aforesaid, shall be forever kept among the archives of the State, in the office of the Secretary aforesaid.



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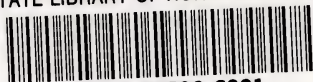
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