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# THE CODE.

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LAWS OF 1881.

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BY

WILLIAM T. DORTCH, JOHN MANNING AND  
JOHN S. HENDERSON.

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In One Volume.

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## REPORT OF COMMISSIONERS.

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### *To the General Assembly:*

The undersigned, Commissioners appointed to revise and consolidate the public statutes, pursuant to chapters one hundred and forty-five and three hundred and fifteen, of the laws of the year one thousand eight hundred and eighty-one, herewith submit the result of their labors, in the form of a bill to be entitled "An act for revising and consolidating the public and general statutes of the state of North Carolina, to be known as THE CODE."

The Commissioners have devoted to this work an immense amount of time and labor, and have barely been enabled to get the said bill ready for the action and consideration of the General Assembly, at its present session. The printing has just been completed. The *errata* and corrections will be found noted in the pages preceding the title of the said bill.

It has been found impossible, within the limited time at the disposal of the Commissioners, between the date of the final printing and the meeting of the General Assembly, to prepare such an index as the law requires. But a temporary index has been printed for the use of the members. This index is not upon the plan determined upon by the Commissioners, and for the reason given is necessarily imperfect and incomplete. It will, however, be found useful to the members of the General Assembly, and will somewhat lessen their labors. A full alphabetical index will be prepared for the whole work after the General Assembly shall have duly considered and enacted the proposed Code.

The Commissioners recommend that they be authorized to include in the said Code, such general acts as may be enacted by the General Assembly at its present session, and that they may also be authorized to re-number and transpose the sections and head-notes of the Code, if deemed expedient, before the book shall be published.

The references to the statutes and to the decisions will be found noted on the margin of, and under, each section. These references, if not altogether complete, will be found to be very full. They will be made much more numerous before the Code is ready for the use of the



public, and it is the purpose of the Commissioners to bring down the references to the decisions to the very date of publication.

The Commissioners have performed the duties devolving upon them in relation to the Constitutions of the State and of the United States, and to certain acts of Congress; but have not caused them to be printed with the proposed Code, because they considered such printing at this time to be an unnecessary expense to the State. The said Constitutions and acts, with full references to the decisions, will be bound up with the Code when finally published.

WILLIAM T. DORTCH,

JOHN MANNING,

JOHN S. HENDERSON.

*January 3, 1883.*

## ADDENDA AND ALTERATIONS.

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### SECTION.

2. Marginal reference, "ch. 155."
8. Line 3, strike out all to word "They," line 7.
9. Line 3, strike out "shall."
13. Line 50, after "hatching," add "and."
15. Line 13, strike out "in section eight."
21. Line 5, after "water," add "and;" strike out "air," &c., and insert "such articles."
36. Line 1, before "society" add "aid."
38. Line 1, strike out "public," and add "state."
52. Add to marginal reference, "1874-'5, c. 89."
191. Line 4, "section" for "chapter."  
Line 1, "the preceding" for "this."  
Marginal reference, "s. 5,"
200. Line 1, read "Auctioneers," (3), strike out "the," (5) after "com." add "or other authority."
204. Add "If the putative father shall escape or be in any other county out of the jurisdiction of such justice issuing the warrant, it shall be issued, indorsed, executed and returned as provided in section 1521."
209. Strike out "reputed," line 1.
210. Line 13, after "court," add "and the price obtained shall be paid to the county treasurer," and strike out the same in line 15.
258. Read "The board of public buildings shall appoint a keeper."
299. 300. Read "justices" for "trustees."
437. Add "and provided also that in all cases the word 'comptroller' shall be construed to mean auditor."
453. Marginal reference, s. "19" for "10."
467. Line 5, read "deemed."
468. (4). After "idiots," add "inebriates."  
(6) After "administrators," add "collectors."  
Add "74 N. C., 726."
469. (5) Strike out "or she as the case may be."
470. Line 2, add "three."
504. Line 7, strike out "and such possession so held."
519. Line 3, after "adm'r," add "collector."
520. Line 14, same as above.  
(9) Add "1879, c. 251."
536. Line 4, "repel" for "compel."
549. Line 1, after "be" add "made."
560. Line 4, before "changed," add "had in the proper county and the place of trial be there-upon."
580. For "service" read "summons."
582. Reference, "C. C. P., s. 81."
583. Line 4, read "other" for "to the," line 5, "thereof" for "thereon."
587. Line 9, after "any," add "if not, then in some newspaper published in Raleigh."
588. Line 2, read "one" for "two."
- 601, 602. Reference, "1879, c. 217."
609. Line 4, after "thereof" add "sufficient."
633. Line 6, read "express."
640. Line 3, strike out "by this chapter;" line ten, for "chapter," "code."
649. Line 3, for "twenty," "ten."
652. "72 N. C. Rep., 198."
655. Line 3, "affecting" for "effecting."
677. Line 4, after "judge" add "court or justice of the peace."  
Line 5, after "sheriff" add "or other officer."
678. Lines 3, 6, after "clerk," add "or other officer."
- 701, 702. Reference, "1876-'7, c. 232, ss. 1, 2."
711. Line 5, "notice" read "motion."
713. Line 8, strike out "chapter twenty-one" and insert "sections 584, 585."
744. Line 2, before "shall" add "title nine, sub-chapter three."
789. Line 1, read "joined."
798. Pluralize "receiver."
801. Line 23, after "twenty-one," read "title thirteen."
813. Line 6, for "eight" read "nine."  
Line 8, read "as provided in title nine, sub-chapter one of this chapter."
814. Reference, "1870-'1, c. 42, s. 7."

## SECTION.

834. Line 4, after "court" add "or before a justice of the peace as the case may be."  
Line 8, add "or justice."
867. Line 1, read "alleged."
869. Line 3, strike out all after "disbursements."
871. After line 55, add "78 North Carolina, 247."
890. Line 2, read "allotted."
896. Line 7, before justice insert "a."
906. Line 11, for first "and" read "of,"
911. Line 2, strike out "or criminal."
925. Line 4, for "at least two," "one or more."
928. Line 4, for "two" read "one or more."
931. Line 2, after "of" add "one of;" strike out "they are each" and add "he is."
932. Line 3, add "nine hundred and twenty-nine."  
Line 4, read "twenty-five."
959. Line 7, strike out first "the."  
Line 8, strike out to "one of, etc.," in line 9.
960. Line 7, strike out "the same."
964. Line 4, read "such" for "that."
965. Line 2, strike out "or set-off;" line 6, read "ten" for "twenty."
970. For "this chapter" read "the preceding section."
977. Line 6, pluralize "person."
989. For "*quo warranto*" read "action."
1004. Line 5, read "where."
1049. Line 3, after "to" insert "the."
1052. Line 3, strike out "or."
1065. Line 13, before "action" add "an."
1073. Line 9, before "and" add "nor shall the property, franchise or profits of such new corporation be exempt from taxation."
1082. Line 11, add "the" before "taxes."  
Lines 73, 74, strike out "when fully completed,"
1083. Line 1, after "upon" add "the duties of."
1104. Line 6, "official" for "original."
1133. Line 2, "June" for "August."
1144. Line 6, "cover" for "recover."
1159. Line 4, strike out "board of."
1162. Line 2, "time" for "term."
1182. Line 5, after "first," add "day."  
Line 11, after "shall," strike out to "determine," line 12.
1185. Line 1, "discontinued;" line 3, "by" before "any."
1187. Line 3, "these" for "their."
1222. Line 9, after "constable," add "or other lawful officer."
1229. Line 2, "summons" for "attachment."
1283. Lines 2, 6, before "or," add "criminal."
1289. Strike out all after "but," in line 3.
- 1299 to 1303, inclusive, are struck out.
1332. "Writs," in line 1, should be "suits."
1336. Line 16, read "twenty-one."
1339. Line 5, strike out all between "by" and "the justices."
1346. Before line 1, add "The justices of the supreme court shall appoint a clerk who shall hold his office for four years."
1364. Line 2, insert "or" before "advise."
1366. Line 8, after convicted, add "or."
1394. Strike out lines 7, 8.
1411. Strike out last line.
1430. Line 3, strike out "of cards."
- 1441 is stricken out.
1469. Line 10, strike out "the property injured."
1471. Line 1, read "fourteen," and strike out proviso.
1475. Line 5, after "works," add "or for the escape of water therefrom."
1478. Line 1, strike out "of the superior court."
1485. Line 22, "twelve" for "six."
1486. Line 6, "twelve" for "six."
1506. Line 8, first "has" is "have"; line 9, "It is," is "they are"; line 17, "was," is "were."
1509. Line 5, "stream" for "course."
1546. Line 5, add "in all cases."
1572. Line 6, strike out "either in law or equity."
1620. Line 4, add "and the appeal shall be perfected and the case from the supreme court settled as provided in civil actions."
1629. Line 10, read "may."
1642. Line 2, add "such" before "animal."
1643. Strike out all after "incorporated," line 5.



SECTION.

1645. Line 2, strike out "the singular shall include plural"; line 7, after "permitted," strike out to "but," in line 8; line 9, add "lawful" before "shooting."
1652. Line 1, read "in any court," and strike out "of justice."
1655. Line 124, read "or" for "and."
1661. Line 2, strike out "adjoining"; line 3, read "when" for "so"; line 4, before "may," add "in the county where the land is situate."
1678. After form, add "provided that no sale under any chattel mortgage shall be had without giving at least twenty day's notice of time of sale."
1682. Line 11, read "section" for "chapter."
1684. Line 6, read "code" for "chapter."
1687. Line 2, strike out all after "either."
1709. Line 1, after "canal," add "or ditch"; line 2, read "or" for "and."
1845. Line 4, add "and such other powers as the said board may confer."
1885. Lines 2, 3, strike out "white"; to line 13, add "provided further, that the white schools shall be for the white children, and the colored schools shall be for the colored children exclusively."
1919. Line 2, add "county" before "candidates."
1921. Line 3, change "one week" into "on the tenth day;" line 38, "tenth" for "seventh."
1923. Line 22, "eleventh" for "eighth."
1927. Strike out after "election," line 1, to "or any," line 2; strike out after "of heirs," line 4, to "shall," line 6.
1928. Strike out all after "state," line 13.
1941. Line 4, "eighty-four" for "seventy-eight."
1962. Line 3, add "four" after "eighty."
2037. Line 1, after "chapter" add "except as provided in the preceding section."
2040. Line 6, before "attorney" add "adverse party or his," and strike out "for the adverse party."
- Line 10, strike out "attorney for" and add "or his attorney," after party.
2052. Line 7, after "state" add "and municipal corporations."
2063. Line 2, strike out "specified in section four."
2110. Add to reference, "1872-3, c. 141."
2117. For first "the," line 10, read "this."
2161. Strike out first sentence.
2180. Line 4, add "the value of" before "the same."
2197. Line 4, after "competent" read "for."
2244. Lines 17, 18, strike out "qualified to act as juror;" lines 2, 3, strike out "persons qualified to act as."
2257. Line 2, read "the stock law" for "this act."
2266. Line 4, after "the" change to "chapter on railroads."
2270. Line 8, add "goods and chattels."
2278. Add to references "1868-9, c. 156, s. 33."
2284. Line 1, after "export," add "or transport."
2307. Line 3, for "the place" read "his residence."
2386. Lines 2, 5, 10, 13, after "infant," add "idiot, inebriate or lunatic."
2398. Line 8, "applicant" for "appellant;" line 12, "for" in place "of;" line 19, "application" for "complaint."
2400. Line 1, "to" for "of."
2409. Strike out "2404," and add, "2406."
2424. Line 4, after "superior" add "or criminal."
2444. Line 4, after "city" add "county."
2445. Line 12, 13, before "town" add "county."
2486. Strike out, see. 2386.
- 2489, 2490. Strike out, see 2387, 2332.
2545. Strike out "chapter twenty-one" and add "section 666."
2559. Line 9, strike out "equally."
2577. Line 12, add "1419."
2650. Line 10, read "recover."
2651. Line 20, read "taken" for "granted."
2654. Line 6, "section" for "chapter;" line 8, "of" for "or."
2659. Line 22 "of" after "securities."
2687. Line 4, add "3459 and 3467 both inclusive."
2709. Line 7, after "court" add "he."
2710. Line 2, before "or" add "on."
2759. Line 3, "is" for "are."
2771. Line 2, read "personal property" for "homestead."
2786. Line 5, after "on" add "light house keeper's dwellings, life saving stations, bouys, coal depots and other buildings connected therewith"; line 8, strike out "a light house" and add "the aforementioned buildings."
2812. Lines 3, 5, after "county" add "town."
2817. Line 3, before "persons" add "proper."
2840. Line 6, after "registration" add "of such deed."
2853. Strike out proviso.

## SECTION.

2856. Line 8, read "or" for "and."  
 2866. Line 4, read "to" for "by."  
 2877. Line 8, transpose "of" and "for."  
 3028. Line 6, after "as" add "have an interest in the controversy" and strike out to "and" line 7; strike out last sentence.  
 3037. Read "authorized" for "required," line 5, and capitalize "in" line 6.  
 3053. Line 16, transpose "court, the judge," after "criminal."  
 3066. Line 9, add "he" after "and" and strike out "after repeating the words 'so help me, God.'"  
 3076. Line 2, "any" for "the" and strike out "of sheriff, coroner or coroner or constable"; line 6, after "and," add "all officers" and strike out "sheriffs," &c.  
 3087. Line 7, strike out "to whom, &c., payable."  
 3091. Line 3, strike out "and, &c., committed."  
 3095. Line 2, strike out "or board of township trustees"; strike out first proviso.  
 3099. Line 20, add "and may draw his warrant on the treasurer to compensate said counsel."  
 3104. Strike out "permanently."  
 3107. Line 2, after "to," add "and a seal for each department of the state government."  
 3108. Line 1, after "state" add "the seal of any department."  
 3110. Line 4, strike out "the secretary to put" and add after "seal" "to be put."  
 3117. Strike out lines 10, 11, 12; line 16, after "manner" strike out and add "prescribed by law."  
 3118. Line 6, strike out "in the capitol."  
 3134. Line 1, strike out "within ten days."  
 3137. Line 2, "thirtieth" for "thirteenth."  
 3138. Strike out lines 19, 20.  
 3143. Line 13, strike "of the, &c., college."  
 3169. Line 11, read "or" for "and."  
 3185. Line 8, before "shall" add "under this section."  
 3213. Line 33, after "lie" add "in this state."  
 3217. Line 3, "partition" for "petition."  
 3308. Line 15, "authorized" for "prescribed."  
 3432. Line 5, read "eighty" for "seventy."  
 3434. Line 1, strike out "biennially" and "governor," and add after "the," "trustees of the public libraries"; line 3, strike out "governor" and add "said trustees."  
 3436. Line 1, strike out "governor and"; line 4, after "justices," strike out to "shall," in line 6; line 7, after "and," read "shall appoint a librarian who shall be removed at their pleasure, and shall perform his duties"; take out "be responsible for the same."  
 3475. Strike out lines 11, 13, 15.  
 17, 18, read "total amount expended for graduation and masonry."  
 19, 20, read, "total amount expended for bridges."  
 21, 23, read "total amount expended for superstructure, including iron."  
 Make corresponding change throughout.  
 Line 41, read "length of road and track laid," and strike out 42, 43, 45.  
 Line 49, read "by passenger and freight trains separately," and strike out 50.  
 Line 51, before "rate," add "number of miles and"; after fare, add "and number of miles traveled." Strike out "for passengers."  
 Strike out 53, 54.  
 Line 55, strike out "of two thousand pounds," and after "freight," add "and miles."  
 Strike out 57, 58, 59, 62, 66, 70, 75, 76, 77; consolidate 86, 87, and strike out 89.  
 Line 91, read "expenses, repairs and depreciation of machinery and personal property itemized," and strike out to line 99 inclusive.  
 Line 100, add "agents" after "clerks," and "stationary" after "watchmen," and strike out to 104, inclusive.  
 Line 105, "expense of employees," and strike out to line 113, inclusive.  
 Line 115, add "and property including damages by fire and cattle killed," and strike out 116, 117, 118.  
 Line 125, add "freight and other services," and strike out 126, 127.  
 Line 130, add "passengers and other sources," and strike out 131, 132.  
 3476. Line 3, strike out "fifty,"  
 3477. Line 7, after "auditor," add "or other officer charged with the duty."  
 3486. Line 22, after "may" add "by an action recover the value of said trunk or baggage," and strike out the balance of section.  
 3494. Line 6, before "as," add "or passage of its charter."  
 3528. Is taken out. See "Crimes," etc.  
 3529. Add to reference, "1876-7, c. 276, s. 5,"  
 3559. For "this" in line 1, read, "the preceding."  
 3575. Line 4, read "collecting" for "soliciting,"  
 3578. Line 11 after "registered," strike out balance of sentence.  
 3579. Line 2, strike out "fee simple."  
 3580. Line 1. Insert "twelve" for "two"; line 19, after "to" add "be appropriated to."  
 3588. Line 5, add "county" before "funds."  
 3599. Line 3, add "shall be" before "obstructed."  
 3605. Line 7 read "three" for "two."

## SECTION.

3606. Add to section, "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."
3707. Strike out, see 3606.
3608. Line 13, after "duty of" strike out and add "said supervisors."
- Strike out 3612, 3613. See 3535.
3623. Line 5, strike out "levy the" and add "the same shall be a."
3625. Line 16, strike out "and occupiers" and add after "mill," "or other property."
3626. Line 1, after "person" add "who shall fail to perform the duties imposed upon him."
3627. Line 1, after "applications" add "provided for in section 3330."
3629. Line 2, after "board" add "of supervisors," lines 7, 8, before "board" read "said."
3631. Line 13, after "board" add "of supervisors."
3645. Line 9, "ten" for "twenty."
3652. Lines 5, 11, read "ten for twenty."
3654. Line 1, before "road" add "highway, cartway, mill road or."
3683. Line 1, after "jurors" add "shall receive."
3684. Strike out line 16.
3688. Line 37, add "or court;" line 33 after "bond" add "or undertaking."
3692. Line 11, "justices" for "magistrates."
3694. Line 8, "authorized" for "required."
3699. Line 2, "process" for "writs."
3712. Line 15, before "deputies" add "every sheriff and his;" line 23, strike out all after "at" and add "the next term of the court after."
3742. Line 1, change "from" to "for."
3791. Line 1, after "civil" add "or criminal."
3812. Add to reference "1866-'7, c. 126;" line 5, before "sticks" add "waist."
3815. Line 8, add "re" to "examined."
3826. Line 19, read "on" for "in."
3840. Line 3, add "not" before "sufficiency."
3851. Line 2, a period after "prescribed," and capitalize "without."
3860. Line 6, after "estate" add "except as hereinafter provided."
- Strike out, see 3870, 3871, and see 2057, 2058.
3872. Line 21, strike out "where the estate, etc., dollars."
3898. Line 2, after "court," add "of the proper county, and a duly certified copy thereof shall be recorded in the office of the superior court clerk of the county where the land is situate."
3908. Add to reference "1860-'61, c. 49; 1869-'70, c. 133, s. 1."
3922. Line 5, "thirty days" for "one month."
3923. Line 2, "November" for "March."
- Strike out 3933.





STATE OF NORTH CAROLINA.

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IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND  
EIGHTY-THREE,

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AN ACT

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

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*The General Assembly of North Carolina do enact* the following named  
chapters and sections, to be known as THE CODE, that is to say :—

## CHAPTER ONE.

## ADOPTION OF MINOR CHILDREN.

## SECTION.

1. Person 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 party of record

**Section 1. Person desirous of adopting minor children may file petition in superior court.**

1872-'3, c. 155, s. 1.

Any person desiring to adopt any minor child may file a petition in the superior court of the county wherein such child resides, setting forth the name and age of such child 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.

**Sec. 2. Court may grant letters of adoption.**

1872-'3, c. 156, s. 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.

**Sec. 3. Effect of order.**

1872-'3, c. 155, s. 3.

Such order, when made, shall have the effect forthwith to establish the relations of parent and child between the petitioner and the child 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 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, 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 intention.



**Sec. 4. Bond to be given if the minor be an orphan having property.**

If such child be an orphan and without guardian, and shall be 1872-'3, c. 155, s. 4.  
 2 possessed of any estate, the court shall require from the petitioner  
 3 such bond as is required by law to be given by guardians.

**Sec. 5. Order to be recorded.**

The order granting letters of adoption shall be recorded in the 1872-'3, c. 155, s. 5.  
 2 office of the clerk of the superior court of the county in which it  
 3 is made, and may be revoked at any time by the court for good  
 4 cause shown.

**Sec. 6. Parent or guardian must be party of record.**

The parent or guardian, or the person having charge of such 1872-'3, c. 155, s. 6.  
 2 child, or with whom it may reside, must be party of record in this  
 3 proceeding.

CHAPTER TWO.

AGRICULTURE AND GEOLOGY.

SECTION.

7. Department of agriculture, immigration and statistics, and for the encouragement of sheep husbandry; the board.
8. Transaction of business by the board,—their compensation.
9. Duties of the commissioner.
10. Powers of the board.
11. The board to prescribe forms and furnish blanks.
12. Duty of the secretary of state.
13. Duties of the board.
14. Tax on fertilizers; seizure, &c., of fertilizers offered for sale without license.
15. Packages to be labeled; copy of label to be filed with commissioner at or before shipment into the state, &c.
16. Proceedings to condemn fertilizers to be by civil action, &c.; affidavit; clerk to issue order of seizure; duty of sheriff; bond of defendant; judgment.
17. Any merchant selling any commercial fertilizer without label or stamp attached liable to a fine of ten dollars, to be collected by sheriff; any person offering for sale condemned fertilizers guilty of a misdemeanor.
18. Power of the department.
19. Agents of railroad and steamboat companies to furnish monthly statements of the quantity of fertilizers transported by them; on failure to do so, guilty of a misdemeanor.
20. Establishment of an agricultural experiment and fertilizer central station; duties of the chemist.

SECTION.

21. Analysis of soils, water, food, &c.
22. State geologist to prepare illustrations of agricultural industries, &c., of the state; to make abstracts of surveys; marls, soils, &c., analyzed by state chemist, free of charge; to deliver lectures free at the University.
23. Department to prepare illustrative handbook, containing information of attractions and advantages which the state affords.
24. Immigration agents.
25. Land and mining registry; contract for lands, &c.
26. Non-residents required to obtain license for taking fish in large quantities; penalty for violating the provisions of this section.
27. Department to receive from manufacturers specimens of fertilizers; the same to be distributed throughout the state; reports of experiments to be registered in office of department.
28. Moneys to be paid into state treasury.
29. State geologist, how appointed.
30. Compensation of geologist fixed by department of agriculture.
31. Expenditures, how defrayed.
32. Duty of the surveyor.
33. Surveyor to deliver lectures.
34. North Carolina Agricultural Society and county societies incorporated; amount of property which may be held.
35. Shall elect president and other officers.
36. Society may alter or modify by-laws.

## SECTION.

37. Shall provide a place for holding annual fairs.  
 38. State treasurer to conditionally appropriate fifteen hundred dollars yearly.  
 39. Money, how appropriated.  
 40. County societies, how formed; what amount of property they may hold.  
 41. How organized; to continue during the will of the legislature.  
 42. When organized, it shall be certified, and certificate filed in Clerk's office; one society only in a county.

## SECTION.

43. Funds of society to be appropriated in premiums, &c.  
 44. Shall transmit to state treasurer annual statement of money received from state; members, experiments.  
 45. Shall annually publish statements of their experiments, reports, &c.  
 46. Secretary to keep a record of the proceedings.

**Sec. 7. Department of agriculture, immigration and statistics, and for the encouragement of sheep husbandry; the board.**

1876-'7, c. 274, s. 1.

A department of agriculture, immigration and statistics is hereby created and established, which shall be under the control and supervision of a board, which shall be constituted as follows, to wit: The governor, who shall be *ex-officio* chairman; the state geologist, the master of the state grange patrons of husbandry, the president of the state agricultural society, and the president of the agricultural college of the state, and two agriculturists (who shall be appointed by the board, so as to keep the representation of the different sections of the state as nearly equal as may be,) and their successors in office.

**Sec. 8. Transaction of business by the board; their compensation.**

1876-'7, c. 274, s. 2.  
 1879, c. 175.

The board shall meet for the transaction of business in the city of Raleigh as often as they may deem expedient, but at least twice in each year. They shall receive no compensation but shall be allowed, except the governor, the state geologist, and president of the agricultural college, the sum of three dollars per diem for their personal expenses while engaged in the duties of the board, not exceeding fifteen days in any one year. They shall receive no compensation except their actual expenses, while engaged in the duties of the board as herein prescribed.

**Sec. 9. Duties of the commissioner.**

1876-'7, c. 274, s. 3.

The board shall appoint and prescribe the duties and regulate the pay of the commissioner of agriculture, who shall be an agriculturist. And they shall also, whenever they shall deem it necessary, have power to employ a secretary and prescribe his duties.

**Sec. 10. Powers of the board.**

1876-'7, c. 274, s. 4.

The board shall be empowered to hold in trust, and exercise control over, donations or bequests made to them for promoting the interests or purposes of this chapter.

**Sec. 11. The board to prescribe forms and furnish blanks.**

1876-'7, c. 274, s. 5.

They may prescribe forms for, and regulate the returns of, such county agricultural societies as may be chartered by the state, and furnish such blanks as may be necessary to secure uniform and reliable statistics of their operations.

**Sec. 12. Duty of the secretary of state.**

In order to facilitate the collection of reliable statistics, it is made 1876-'7, c. 274, s. 6.  
2 the duty of the secretary of state to prepare and send to the board  
3 of commissioners of the several counties, who shall distribute  
4 to each person in the county whose duty it is to list the taxable  
5 property thereof, blanks prepared according to the directions of the  
6 department of agriculture; and the person listing the taxes as  
7 aforesaid, shall require each citizen, at the time of listing his taxa-  
8 ble property, to give in likewise the amount of his productions for  
9 the previous year as far as practicable without oath, which blanks  
10 when completed shall be returned to the board of county commis-  
11 sioners, who shall collate the same on one blank form and transmit  
12 the same to the commissioner of agriculture on or before the first  
13 day of November in each year.

**Sec. 13. Duties of the board.**

The board shall investigate such subjects relating to the im- 1876-'7, c. 274, s. 7.  
2 provement of agriculture, and for the inducement of immigration  
3 and capital, as they may think proper; but they are especially  
4 charged,

5 (1.) With such investigations as may seem best adapted to pro-  
6 mote the improvement and extension of sheep husbandry, and shall  
7 collect and publish, from time to time, all available statistics on the  
8 subject, and shall suggest to the general assembly such measures as  
9 may be useful for the encouragement of this industry, and more  
10 particularly for the suppression of the ravages of dogs.

11 (2.) With investigations relating to the diseases of cattle and  
12 other domestic animals, and shall publish and distribute, from  
13 time to time, circulars of information relative to any contagious dis-  
14 eases of stock, and shall have power in such cases to quarantine  
15 infected animals, and to regulate the transportation of stock in this  
16 state, or from one section of it to another; and any person wilfully  
17 violating such regulations shall be guilty of a misdemeanor.

18 (3.) With investigations relating to the ravages of insects, and  
19 with the dissemination of such information as may be deemed  
20 essential for their abatement.

21 (4.) With investigations and experiments directed to the intro-  
22 duction and fostering of new agricultural industries, adapted to the  
23 various climates and soils of the state, especially the culture of  
24 silk, the sugar beet, the grape and other fruits.

25 (5.) With the investigation of the subject of drainage and  
26 irrigation, and shall publish circulars of information as to the best  
27 methods and formula of both, and what surfaces, soils and local-  
28 ities may be most benefited by such improvements, also, with the  
29 collection and publication of information in regard to localities,  
30 character, accessibility, cost, and modes of utilization of native



31 mineral and other domestic sources of fertilizers, including formula  
32 for composting adapted to different crops, soils and materials.

33 (6.) With the collecting of statistics relating to the subject of  
34 fences, with suggestions for diminishing their cost, and the condi-  
35 tions under which they may be dispensed with altogether.

36 (7.) With the supervision of all measures for the protection, prop-  
37 agation and culture of fish in the rivers and other inland waters of  
38 this state, and to this end they shall at once provide for stocking all  
39 available waters of the state with the most approved breeds of fishes,  
40 and shall avail themselves of such aid as the fish commissioners  
41 of the United States may be induced to extend, and they shall  
42 inquire into and report upon the practicability of constructing  
43 fish-ways over dams and other obstructions of the waters of the  
44 state, and secure as far as practicable the co-operation of mill  
45 owners. They shall select proper locations for the hatching and  
46 care of the young fish, and shall provide the necessary hatching  
47 houses and such appliances as may be needed, and employ such  
48 labor as may be necessary to this end, and they may appoint agents  
49 at such convenient points to aid them in the distribution and  
50 hatching protection of the ova and young fish, provided such agents  
51 shall receive no compensation.

52 (8.) They shall transmit to the general assembly at each session  
53 a report of the operations of the said department, together with  
54 suggestions of such legislation as may be needful, and it shall be  
55 the duty of the board to prosecute all offenders against the laws  
56 which have been or may be passed in this behalf, and they shall  
57 endeavor to secure the co-operation of adjoining states to remove  
58 obstructions in the passage of fish in those rivers or streams which  
59 are partly in this state and partly in such adjoining states.

60 (9.) With the enforcement and supervision of the laws and reg-  
61 ulations which are or may be enacted in this state for the sale of  
62 commercial fertilizers and seeds.

**Sec. 14. Tax on fertilizers; seizure, &c., of fertilizers offered for sale without license.**

1876-'7, c. 274, s. 8.  
1876-'7, c. 291.  
1881, c. 118.

No manipulated guanos, superphosphate or other commer-  
2 cial fertilizer shall be sold, or offered for sale in this state, until  
3 the manufacturer or person importing the same shall first obtain  
4 a license therefor from the treasurer of the state, for which shall  
5 be paid a privilege tax of five hundred dollars per annum, for each  
6 separate brand or quality. Any person, corporation or company  
7 who shall violate the provisions of this chapter, or who shall sell  
8 or offer for sale any such fertilizer contrary to the provisions  
9 above set forth, shall be guilty of a misdemeanor, and upon con-  
10 viction shall be fined or imprisoned at the discretion of the court.  
11 And all fertilizers so sold, or offered for sale, shall be subject to  
12 seizure and condemnation in the same manner as is provided in

13 section one of this chapter for the seizure and condemnation of  
14 spurious fertilizers, subject however to the discretion of the board  
15 of agriculture to release the fertilizers so seized and condemned,  
16 upon the payment of the license tax, and all costs and expenses  
17 incurred by the department in such proceeding.

**Sec. 15. Packages to be labeled; copy of label to be filed with commissioner at or before shipment into the state, &c.**

Every bag, barrel or other package of such fertilizer as 1876-'7, c. 274, s. 9.  
2 above designated, offered for sale in this state, shall have thereon  
3 plainly printed a label or stamp, a copy of which shall be filed with  
4 the commissioner of agriculture at or before the shipment of such  
5 fertilizer into this state, and which shall be uniformly used, and  
6 shall not be changed during the year for which the license is issued;  
7 and the said label or stamp shall truly set forth the name, location  
8 and trade-mark of the manufacturer; also the chemical composition  
9 of the contents of such package, and the real percentage of any of  
10 the following ingredients asserted to be present, to-wit: soluble  
11 and precipitated phosphoric acid, soluble potassa, ammonia, or its  
12 equivalent in nitrogen, together with the date of its analyzation,  
13 and that the privilege tax provided for in section eight has been  
14 paid; and any such fertilizer as shall be ascertained by analysis  
15 not to contain the ingredients and percentage set forth as above  
16 provided shall be liable to seizure and condemnation as here-  
17 inafter prescribed, and when condemned shall be sold by the board  
18 of agriculture for the exclusive use and benefit of the department  
19 of agriculture.

**Sec. 16. Proceedings to condemn fertilizers to be by civil action, &c.; affidavit; clerk to issue order of seizure; duty of sheriff; bond of defendant; judgment.**

The proceeding to condemn the same shall be by civil action 1881, c. 118.  
2 in the superior court of the county where the fertilizer is on sale,  
3 and in the name of the board of agriculture, who shall not be  
4 required to give bond for the prosecution of said action. And at  
5 or before the summons is issued, the said board shall by its agent  
6 make affidavit before the clerk of said court of these facts:  
7 (1.) That a license has been obtained for the sale of a fertilizer  
8 of a particular brand.  
9 (2.) That samples of the same have been analyzed under author-  
10 ity of the board, and found to correspond with the label attached  
11 to the same.  
12 (3.) That the defendant in the summons has in his possession,  
13 and on sale, fertilizers of the same name and brand, and bearing  
14 a label or stamp representing the analysis made.  
15 (4.) That the fertilizers on hand and on sale are spurious and do  
16 not in fact contain the ingredients, or in the proportion repre-  
17 sented by the stamp or label on them. Whereupon the clerk

18 shall issue his order to the sheriff of the county to seize and hold  
19 all the fertilizers in the possession of the defendant labeled or  
20 stamped as the affidavit described. And the sheriff shall seize and  
21 hold the fertilizers so seized until ordered to be surrendered by the  
22 judge in term time: unless the defendant shall give bond with jus-  
23 tified surety, in double the value of the fertilizers seized, to answer  
24 the judgment of the court, in which case he shall surrender the  
25 fertilizer to the defendant and file this bond in the office of the  
26 clerk of the superior court, and thereafter the action shall be  
27 prosecuted according to the course of the court. And if it shall be  
28 established in the trial that the fertilizers seized are deficient, or  
29 inferior to the analysis represented on the stamp or brand, then the  
30 plaintiff in said action shall recover judgment on the defendant's  
31 bond for the value of the fertilizers seized.

**Sec. 17. Any merchant selling any commercial fertilizer without label or stamps attached liable to a fine of ten dollars, to be collected by sheriff; any person offering for sale condemned fertilizers guilty of a misdemeanor.**

1876-'7, c. 274, s. 9.

Any merchant, trader, manufacturer or agent, who shall sell or  
2 offer for sale any commercial fertilizer without having such labels  
3 and stamps, as hereinbefore provided, attached thereto, shall be  
4 liable to a fine of ten dollars for each separate bag, barrel or pack-  
5 age sold or offered for sale, to be sued for before any justice of the  
6 peace, and to be collected by the sheriff, by distress or otherwise, one-  
7 half, less the cost, to go to the party suing and the remaining half  
8 to the department; and if any such fertilizer shall be condemned,  
9 as herein provided, it shall be the duty of the department to have  
10 an analysis made of the same, and cause printed tags or labels, ex-  
11 pressing the true chemical ingredients of the same, put upon each  
12 bag, barrel or package, and shall fix the commercial value thereof  
13 at which it may be sold. And any person who shall sell or offer  
14 for sale any such fertilizer, in violation of the provisions of this  
15 section, shall be guilty of a misdemeanor.

**Sec. 18. Power of the department.**

1876-'7, c. 274, s. 10.

The department of agriculture shall have power and authority,  
2 at all times, to have collected samples of any commercial fertilizer  
3 offered for sale in this state, and have the same analyzed, and such  
4 samples shall be taken from at least ten per centum of the lot from  
5 which they may be selected.

**Sec. 19. Agents of railroad and steamboat companies to furnish monthly statements of the quantity of fertilizers transported by them; on failure to do so, guilty of a misdemeanor.**

1876-'7, c. 274, s. 11.

It shall be lawful for the department of agriculture to require  
2 the officers, agents or managers of any railroad or steamboat com-  
3 pany, transporting fertilizers in this state, to furnish monthly state-  
4 ments of the quantity of fertilizer, with the name of the consignor



5 or consignee, delivered on their respective lines, at any and all  
6 points within this state. And said department is hereby empow-  
7 ered to compel said officers, agents or managers to submit their  
8 books for examination, if found expedient so to do; and any such  
9 agents, officers or managers failing or refusing to comply shall be  
10 guilty of a misdemeanor.

**Sec. 20. Establishment of an agricultural experiment and fertilizer central station; duties of the chemist.**

The department of agriculture shall establish, in connection  
2 with the chemical laboratory of the University at Chapel Hill, an  
3 agricultural experiment and fertilizer central station; and the de-  
4 partment of agriculture, with the approval of the board of trus-  
5 tees of the University, shall employ an analyst, skilled in agricul-  
6 tural chemistry. It shall be the duty of said chemist to analyze  
7 such fertilizers and products as may be required by the depart-  
8 ment of agriculture, and to aid as far as practicable in suppress-  
9 ing fraud in the sale of commercial fertilizers. He shall, also, under  
10 the direction of said department, carry on experiments on the  
11 nutrition and growth of plants, with a view to ascertain what fer-  
12 tilizers are best suited to the various crops of this state; and  
13 whether other crops may not be advantageously grown on its soil,  
14 and shall carry on such other investigations as the said depart-  
15 ment may direct. He shall make regular reports to the said  
16 department, of all analyses and experiments made, which shall be  
17 furnished, when deemed needful, to such newspapers as will pub-  
18 lish the same. Said chemist shall be subject to the rules and regu-  
19 lations of the University laboratory, and the other rules and regu-  
20 lations of the University, and his salary shall be paid out of the  
21 funds of the department of agriculture.

1876-'7, c. 174, s. 12.  
1879, c. 175.

**Sec. 21.—Analysis of soils, water, food, &c.**

Analysis for purposes connected with the hygienic duties of the  
2 superintendent of health shall in like manner be made by the  
3 said chemist, upon requisition signed and approved by the secre-  
4 tary of the state board of health. Such analysis will include  
5 soil, drinking water, articles of food, air, &c., to be packed for trans-  
6 mission by direction of the chemist of the agricultural station.

1879, c. 117.

**Sec. 22. State geologist to prepare illustrations of agricultural industries, &c., of the State; make abstracts of surveys; marls, soils, &c., analyzed by state chemist free of charge; to deliver free lectures at the University.**

The geological survey is hereby made and constituted a co-op-  
2 erative department with the department of agriculture, and the  
3 geological museum, and the collections therein, shall at all times  
4 be accessible to the said department. The geologist shall, as far  
5 as practicable, prepare illustrations of the agricultural industries,  
6 products and resources of the state, and arrange and care for such

1876-'7, c. 174, s. 13.  
1879, c. 175, ss. 3, 5.



7 collections as the said department may make for this purpose. He  
 8 shall also prepare abstracts of the survey, from time to time, as  
 9 may be required for the use of the department, in their hand-book  
 10 and circular for publication, in illustration of the advantages of  
 11 this state, and in promotion of the general purposes of immigra-  
 12 tion. In return for such service, the state geologist may have all  
 13 his marls, soils, minerals, and other products analyzed by the chem-  
 14 ist, at the laboratory of the department station, free of charge, and  
 15 the board of agriculture is hereby authorized to pay the rent  
 16 and other necessary expenses of the geological museum; and they  
 17 may authorize and supervise the publication by the public printer  
 18 of the second volume of the "Geology of North Carolina," as soon  
 19 as ready, and may furnish the necessary maps and other engrav-  
 20 ings for its proper illustration; and in like manner they may au-  
 21 thorize the printing, by the public printer, in pamphlet form, for  
 22 free distribution, such parts of volumes one and two as they may  
 23 deem advisable. And they may furnish copies of volume two to  
 24 state, college and other public libraries, to geologists and other  
 25 scientific men, and to every newspaper in the state, and shall fur-  
 26 nish the secretary of state a copy for each county, to be forwarded  
 27 with other public documents to the clerk of the superior court  
 28 and to other persons at the cost of paper and printing. The state  
 29 geologist, at the request of the trustees of the University, shall,  
 30 whenever the board of agriculture shall deem it not interfering  
 31 with the regular duties of his office, deliver at the University a  
 32 course of free lectures on the geology and mineralogy of this state.

**Sec. 23. Department to prepare illustrative hand book, containing information of attractions and advantages which the state affords.**

1876-7, c. 174, s. 15.

The department shall, as soon as practicable, prepare a conven-  
 2 ient hand book, with the necessary illustrative maps, which shall  
 3 contain all necessary information as to the mines, minerals, forests,  
 4 soils, climates, waters and water powers, fisheries, mountains,  
 5 swamps, industries, and all such statistics as are best adapted to give  
 6 proper information of the attractions and advantages which this  
 7 state affords to immigrants, and shall make illustrative exposition  
 8 thereof whenever practicable at international exhibitions.

**Sec. 24. Immigration agents.**

1876-7, c. 174, s. 16.

The said department shall be authorized, in the interest of im-  
 2 migration, to employ an agent or agents at such points, in this or  
 3 any foreign country, as they may deem expedient and desirable.

**Sec. 25. Land and mining registry; contracts for lands, &c.**

1876-7, c. 174, s. 17.

The said department is authorized and directed to establish and  
 2 keep in its office, in the city of Raleigh, a general land and mining  
 3 registry, wherein shall be recorded (if the owners shall so request)

4 all the farming, mineral or other lands offered for sale in this state,  
5 with a brief and truthful description of the same. And the depart-  
6 ment shall act as agent for the sale or disposition of such property  
7 as may be registered as hereinbefore provided, and shall sell or  
8 dispose of such property upon the terms and conditions as stated  
9 and fixed by the owner thereof; and the department shall be allow-  
10 ed the sum of one dollar for registration, and two and one-half per  
11 cent. commission on gross amount of said transaction. The said  
12 department shall have authority to contract for, and hold bodies  
13 of lands, for the settlement of colonies, with exclusive control of  
14 the sale of the same at such prices, and for such a period, as may  
15 be agreed upon by the owner thereof.

**Sec. 26. Non-residents required to obtain license for taking fish in large quantities; penalty for violating the provisions of this section.**

No person, company or corporation, being non-residents of 1876-'7, c. 174, s. 18.  
2 this state, shall catch fish by seines, nets, or other appliances for  
3 taking fish in large quantities, in any waters within the jurisdic-  
4 tion of this state, without first obtaining therefor a license from the  
5 public treasurer, for which he or they shall pay a privilege tax of  
6 one thousand dollars per annum. And any such person or persons  
7 who shall violate the provisions of this section shall forfeit and  
8 pay the sum of two hundred dollars for each day engaged in fish-  
9 ing as aforesaid, to be collected by the sheriff of the county wherein  
10 such violation may be committed, and shall also be guilty of a  
11 misdemeanor. And any citizen of this state who shall form an  
12 alliance or co-partnership with a non-resident for the purpose of  
13 evading any of the provisions of this section shall be guilty of a  
14 misdemeanor, and upon conviction shall be fined and imprisoned  
15 at the discretion of the court, and the nets, seines or appliances of  
16 such person or firm shall be liable to seizure and confiscation for  
17 the benefit of the department of agriculture.

**Sec. 27. Department to receive from manufacturers specimens of fertilizers; the same to be distributed throughout the state; reports of experiments to be registered in office of department.**

It is hereby made the duty of the said department of agriculture 1876-'7, c. 174, s. 21  
2 to receive from any manufacturer or dealer in fertilizers any spec-  
3 imen quantities not less than a fourth of a ton, contributed by such  
4 party, and have the same sent to different sections of the state for  
5 actual experiment by practical farmers; and the person so experi-  
6 menting shall be required to make a careful report of the results,  
7 which shall be registered in the office of said department, and a  
8 certified copy of the same shall be transmitted to the contributor.

**Sec. 28. Moneys to be paid into the state treasury.**

All moneys arising from the tax or licenses, from fines and for- 1876-'7, c. 174, s. 22.  
2 feitures, fees for registration and sale of lands not herein other-

3 wise provided for, shall be paid into the state treasury and shall be  
4 kept on a separate account by the treasurer as a fund for the exclu-  
5 sive use and benefit of the department of agriculture.

**Sec. 29. State geologist, how appointed; removal.**

1879, c. 50, s. 2.

The governor shall appoint, by and with the consent of the sen-  
2 ate, a suitable person to conduct, under the supervision of the de-  
3 partment of agriculture, immigration and statistics, a geological,  
4 mineralogical, botanical and agricultural survey of the state;  
5 such officer shall hold office for two years: *Provided*, that the per-  
6 son so appointed shall be liable to removal at any time by the  
7 governor, by and with the consent of the board of agriculture,  
8 immigration and statistics.

**Sec. 30. Compensation of geologist fixed by department of agriculture.**

1879, c. 50, s. 3.

The compensation of the person so appointed shall be fixed by  
2 the said department of agriculture, immigration and statistics,  
3 but shall never exceed a greater rate than two thousand dollars per  
4 annum.

**Sec. 31. Expenditures, how defrayed.**

1879, c. 50, s. 4.

The expenditures incurred in making said surveys and reports  
2 shall be defrayed from the funds provided for the support and  
3 maintenance of the said department of agriculture, immigration  
4 and statistics: *Provided, however*, that the sum hereby authorized to  
5 be used, including the salary or compensation of the person ap-  
6 pointed to make said surveys, shall not exceed the sum of five thou-  
7 sand dollars per annum.

**Sec. 32. Duty of the surveyor.**

R. C. c. 2, s. 14.  
1850, c. 92, s. 2.

The person appointed shall examine and survey each and every  
2 county of the state and ascertain the different geological forma-  
3 tions of each county and section of the state; the nature, charac-  
4 ter, and value of its minerals; the nature and character of its soils,  
5 and the best mode of improving the same; the nature and kind of  
6 its productions, and their position and relative value; its facilities  
7 for manufactories; the extent and value of its water power; the  
8 character and value of its botanical productions; the character  
9 and value of its timber; and all other facts connected with the  
10 subjects of geology, mineralogy, botany, and agriculture which  
11 may tend to a full development of the resources of the state; and  
12 such person is authorized to employ as many proper agents and  
13 assistants, to be approved by the governor, as may be necessary to  
14 enable him speedily and successfully to accomplish the objects  
15 committed to his charge; and he shall, from time to time, com-  
16 municate to the governor, to be by him communicated to the leg-  
17 islature, a report or reports, in writing, setting forth fully the re-



18 sults of his survey; which reports shall be published under the  
19 supervision of the governor and board of literature.

**Sec. 33. Surveyor to deliver lectures.**

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

R. C. c. 2, s. 16.  
1850, c. 92, s. 4.

**Sec. 34. North Carolina State Agricultural Society and county societies incorporated; amount of property which may be held.**

The North Carolina Agricultural Society as organized by a vol-  
2 untary association, on the eighth day of October, A. D., one thou-  
3 sand eight hundred and fifty-two, at the city of Raleigh, shall be  
4 incorporated under the name and style of "The North Carolina  
5 Agricultural Society," and may take and hold real and personal  
6 estate of the value of fifty thousand dollars, and no more, for the  
7 purposes hereinafter specified.

R. C. c. 2, s. 1.  
1852, c. 1, ss. 1, 3.

**Sec. 35. Shall elect president and other officers.**

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

R. C. c. 2, s. 2.  
1852, c. 1, s. 2.

**Sec. 36. Society may alter or modify its by-laws.**

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

1860, c. 1.

**Sec. 37. Shall provide a place for holding annual fairs.**

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

R. C. c. 2, s. 3.

**Sec. 38. State treasurer to conditionally appropriate fifteen hundred dollars yearly.**

It shall be the duty of the public treasurer to pay to the treas-  
2 urer of the North Carolina Agricultural Society, on the first Mon-  
3 day of October, during each and every year, out of any moneys  
4 not otherwise appropriated, the sum of fifteen hundred dollars, to  
5 be disposed of in the payment of premiums, as hereinafter di-

R. C. c. 2, s. 4.  
1854, c. 1, s. 1.



6 rected: *Provided, however,* that the treasurer of the said society shall  
 7 first produce a certificate from the president thereof, showing that  
 8 during the past twelve months the like sum has been raised by the  
 9 said society for the same purposes.

**Sec. 39. Money, how applied.**

R. C. c. 2, s. 5.  
 1854, c. 1, s. 2.

The money hereby appropriated shall be applied, under the di-  
 2 rection of said society, to the payment of premiums upon agricul-  
 3 tural productions, implements of husbandry, and domestic ani-  
 4 mals, and to such other purposes as may, in the judgment of said  
 5 society, be calculated to advance the interest of agriculture and  
 6 manufactures.

**Sec. 40. County societies, how formed; what amount of property they may hold.**

R. C. c. 2, s. 6.  
 1852, c. 2, ss. 1, 2.

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

**Sec. 41. How organized; to continue during the will of the legislature.**

R. C. c. 2, s. 7  
 1852, c. 2, s. 3.

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

**Sec. 42. When organized it shall be certified, and certificate filed in clerk's office; one society only in a county.**

R. C. c. 2, s. 8.  
 1852, c. 2, ss. 3, 6.

When such society shall be fully organized, the organization  
 2 thereof shall be certified by the president and signed by the secre-  
 3 tary to the board of county commissioners, and thereupon the  
 4 board shall order the same to be filed in the office of their clerk  
 5 and there kept; and the clerk, under the seal of the board, shall  
 6 certify a copy of the same, together with the order of the board to  
 7 the treasurer of the state, who, if by the said certificate it shall ap-  
 8 pear to him that such society has been duly organized, according  
 9 to this chapter, and it shall likewise be made to appear to him by  
 10 the certificate of the treasurer of said society, signed by the presi-

11 dent, and certified by the clerk of the board under the seal thereof,  
12 that the sum of fifty dollars has been actually paid to said society  
13 by the members thereof, within one year preceding, for the sole  
14 benefit of such society, shall pay to the treasurer of said society  
15 fifty dollars out of the public treasury for the like sole use and  
16 benefit; and such payment shall be annually made by the treas-  
17 urer of the state on the terms and conditions above and hereinafter  
18 specified: *Provided, however,* that only one society for each county  
19 shall be entitled to the benefits of this chapter; and the board of  
20 county commissioners, in case of a conflict between two claimants,  
21 shall determine which shall be the corporate body for the county.

**Sec. 43. Funds of society to be appropriated in premiums, &c.**

All moneys so subscribed, as well as that received from the state  
2 treasury as herein provided, shall, after paying the necessary inci-  
3 dental expenses of such society respectively, be annually paid out  
4 for premiums awarded by such societies, in such sums, and in such  
5 way and manner as they severally, under their by-laws, rules and  
6 regulations, shall direct, on such live animals, articles of produc-  
7 tion, and agricultural implements and tools, domestic manufac-  
8 tures, mechanical implements, tools, and productions, as are of the  
9 growth and manufacture of the county, and also on such experi-  
10 ments, discoveries, or attainments in scientific or practical agri-  
11 culture, as are made within the county wherein such societies are  
12 respectively organized.

R. C. c. 2, s. 9.  
1852, c. 2, s. 7.

**Sec. 44. Shall transmit to state treasurer annual statement of money received from state; members, experiments.**

Each agricultural society, entitled to receive money from the  
2 state treasury, shall, through its treasurer, transmit to the treas-  
3 urer of the state, in the month of December or before, a statement  
4 of the money received from the state, together with the amount  
5 received from the members of the society for the preceding year, a  
6 statement of the expenditures of all such sums, and the number of  
7 the members of said society.

R. C. c. 2, s. 10.  
1852, c. 2, s. 8.

**Sec. 45. Shall annually publish statements of their experiments, reports, &c.**

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

R. C. c. 2, s. 11.  
1852, c. 2, s. 9.

**Sec. 46. Secretary to keep a record of the proceedings.**

R. C. c. 2, s. 12,  
1852, c. 2, s. 5.

The secretary of said 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.

## CHAPTER THREE.

## ALIENS.

## SECTION.

47. Aliens may take and hold lands.

## SECTION.

48. Prior contracts made valid.

**Sec. 47. Aliens may take and hold lands.**

1870-'71, c. 255, s. 1.

It shall be lawful for aliens to take both by purchase and descent or other operation of law, any lands, tenements or hereditaments, 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.

**Sec. 48. Prior contracts made valid.**

1870-'71, c. 255, s. 2.

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 FOUR.

## APPRENTICES.

## SECTION.

49. Binding to be by indenture.  
50. Remedy thereon.  
51. Who may be apprenticed.  
52. For what time bound.

## SECTION.

53. Duties of masters.  
54. Duty of clerk.  
55. Apprentices, how compelled to serve.  
56. Misconduct of masters.

**Sec. 49. Binding to be by indenture.**

C. C. P. s. 482.

The binding of apprentices shall be by indenture, made in the name of the clerk of the superior court 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 clerk of the superior court.

**Sec. 50. Remedy thereon.**

C. C. P. s. 483.

The apprentice may bring an action on such indenture in the



2 name of the clerk and his successors, and recover any damages  
3 sustained by reason of the breach of the covenants contained in  
4 said indenture.

Sec. 51. Who may be apprenticed.

The clerks of the superior courts in their respective counties C. C. P., s. 484.

2 shall bind out as apprentices:

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

Stout v. Woody, 63—37; Mitchell v. Mitchell, 67—307; Spears v. Snell, 74—210.

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

Stout v. Woody, 63—37.

7 (3.) All infants (not living with the father) whose mother has  
8 secured to her such property as the infants may thereafter acquire,  
9 provided the clerk deems it improper to permit such infants to re-  
10 main with the mother;

11 (4.) All infants who make application to the board of commis-  
12 sioners of the county for relief out of the funds for the poor, and  
13 such fact is certified by the board to the clerk;

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

Sec. 52. For what time bound.

Every male apprentice shall be bound to some discreet person 1869-70, c. 7.  
C. C. P., s. 485.

2 approved by the clerk, till the age of twenty-one, and every female  
3 apprentice until the age of eighteen years: *Provided*, that no white  
4 child shall be bound to a colored master or mistress.

Sec. 53. Duties of masters.

The master shall provide for the apprentice: C. C. P., s. 486.

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

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

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

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

Sec. 54. Duty of clerk.

On application of any person to have an apprentice bound to C. C. P., s. 487.

2 him, it is the duty of the clerk to inform himself of the circum-  
3 stances of the case; and for this purpose he may cite before him  
4 the relatives of the orphan or infant, for examination on oath; and  
5 he may also examine such other persons as he deems proper. In  
6 the selection of a master he shall prefer, so far as may be consist-



7 ent in other respects with the comfort and interest of the appren-  
8 tice, some tradesman of a useful art or mystery.

**Sec. 55. Apprentices, how compelled to serve.**

C. C. P., s. 488.

If an apprentice refuses to serve as required by the indenture or  
2 by law, the clerk may, on application of the master, compel  
3 him, by citation or otherwise, to appear for inquiry into the facts;  
4 and if the complaint is well-founded, and the apprentice persists  
5 in such refusal, the clerk may commit him by warrant to the house  
6 of correction or the common jail of the county until he consents.

**Sec. 56. Misconduct of masters.**

1762, ss. 19, 20.  
C. C. P., s. 489.

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

Dowd v. Davis, 4 Dev., 61; Wyatt v. Morris, 2 Dev. & Bat., 108; Goodbread v. Wells, 2 Dev. & Bat., 476; McKay v. Bryson, 5 Ire., 216; Hiatt v. Gilmer, 6 Ire., 450; Hooks v. Perkins, Busb., 21; Allison v. Norwood, Busb., 414; Midgett v. McBryde, 3 Jon., 21; Owens v. Chaplain, 3 Jon., 323; Prue v. Hight, 6 Jon., 265; Ferrell v. Boykin, Phil., 9; In the matter of Ambrose, Phil., 91; Beard v. Hudson, Phil., 180; State v. Elam, Phil., 460; Biggs v. Harris, 64—413.

## CHAPTER FIVE.

### ASYLUMS.

#### DEAF AND DUMB AND THE BLIND.

**SECTION.**

57. The institution for the deaf and dumb and the blind to remain a corporation; its name.
58. Board of trustees, to be classified.
59. President and executive committee; principal, steward and physician; their terms of office and compensation; trustees may erect buildings.
60. Meetings of the board.
61. Admission into the asylum; questions to be answered in application for admission of deaf mutes, and the blind.
62. Admission of pupils from other states.
63. Board authorized to confer degrees.
64. Principal; his qualifications and duties; officers, &c.; when elected.

**SECTION.**

65. State treasurer *ex-officio* treasurer of the institution; to make report to the board; trustees to report to the governor.
66. Removal of officers; notice thereof; vacancies, how filled.
67. Employees; their compensation.
68. Necessary clothing and traveling expenses of indigent deaf mutes and blind pupils to be paid out of the state treasury; amount to be charged to county.
69. Lot in front of colored asylum to be used as a garden; contracts of sale for portions of lot to be cancelled with consent of purchasers.

## NORTH CAROLINA INSANE ASYLUM.

## SECTION.

70. Insane asylum to remain a corporation; its name; authorized to acquire and hold property.
71. Directors; their term of office; quorum, &c
72. Executive committee.
73. Duties and powers of the board.
74. Meetings of the board; to report to the general assembly.
75. Superintendent; his qualifications, term of office and removal.
76. Assistant physician; his term of office and removal.
77. Steward, matron and engineer; their terms of office and removal; treasurer.
78. Board to arrange salaries, &c.
79. Superintendent to have exclusive control of subordinate officers and employees.
80. By-laws, &c., to be published with report to the general assembly.
81. Insane persons confined in jail, to be removed to the asylum by order of superior court clerk.
82. Criminals confined in jail found to be insane, to be sent to the asylum; order granted by judges of the superior court.
83. Proceeding to obtain admission to the asylum; affidavit before justice of the peace; justice's warrant; proceedings before him, &c.
84. Justices to report proceedings to superior court clerk.
85. Questions and answers to be forwarded the board.
86. Superintendent to refer doubtful cases to the board.
87. Incurable insane; to be returned in certain cases.
88. When an insane person whose estate will support him, to be brought before justice of the peace.
89. Justice to issue process to the sheriff, to carry insane person to the asylum.
90. Proceedings before justice to be certified to clerk of superior court. Clerk to make proper orders concerning expenses, &c.

## SECTION.

91. Persons discharged from the asylum by order of judges of the supreme or superior courts; bonds for restraining insane persons from committing injuries; action on bond.
92. Form of bond.
93. If conditions of bond not complied with, insane person to be sent to asylum.
94. Support of asylum; dues payable to the treasurer.
95. Board to regulate admissions.
96. How appropriations for asylum to be drawn from treasury.
97. Money, &c., belonging to the asylum to be paid into the treasury; donations; state treasurer to keep accounts and pay money on warrant of superintendent.
98. Officers and employees exempt from jury duty, &c.
99. Board to keep record of proceedings; may employ a clerk; his compensation; books open to inspection of general assembly and board of public charities.
100. General assembly and board of public charities *ex-officio* visitors to asylum; duty of board; superintendent to furnish statistics and make reports.
101. Fiscal year to close December 31st.
102. Proceedings to place insane persons who are possessed of sufficient income in asylum outside of the state.
103. Duty of person having custody of estate of such insane person to supply necessary funds, &c.
104. Justice of the peace to report proceedings to clerk of superior court.
105. Clerk to lay proceedings before judge, &c.
106. Certified copy of proceedings with approval of judge sufficient warrant to authorize removal to asylum designated.
107. Indigent insane to have priority of admission to asylum.

## WESTERN NORTH CAROLINA INSANE ASYLUM.

## SECTION.

108. Incorporation; authorized to acquire and hold property.
109. Buildings to be completed.
110. Board of directors; quorum; term of office; classification.
111. Executive committee; their powers, &c.
112. The board, their duties; traveling expenses.
113. Meetings of the board; their report to general assembly.
114. Superintendent; his qualifications, term of office and removal.
115. Assistant physician; his term of office and removal.
116. Steward, matron and other officers; their terms of office and removal; treasurer.

## SECTION.

117. Superintendent and other officers and employees; their salaries fixed by the board.
118. Superintendent to control other officers.
119. Board to make by-laws; report of the superintendent, &c., to be published; copies to be sent to clerks of the superior courts.
120. When officers to be appointed.
121. When asylum ready, patients to be received from North Carolina Insane Asylum; not to exceed one hundred; additional patients provided for.
122. Removal to asylum of insane persons confined in jail otherwise than for crime.
123. Judge to remove to the asylum insane persons held in jail on a criminal charge.

## SECTION.

124. Proceedings to secure admission of insane person to the asylum.
125. Justices of the peace to report proceedings to superior court clerk.
126. Questions and answers to be submitted to board of directors.
127. Board to determine question of admission in doubtful cases.
128. Removal of incurable insane from the asylum; expenses of removal.
129. Proceedings to secure transfer to asylum of dangerous lunatics whose estates are solvent.
130. When and how carried to the asylum.
131. Justice to return copy of proceedings to superior court clerk.
132. Discharge of insane person by order of judge; bond for his safe keeping, &c.; action by person injured; action by solicitor for benefit of insane person.
133. Form of bond.
134. When insane person to be sent back to asylum; not to be re-discharged on bond of defaulting obligor.
135. Asylum to be supported by appropriations.
136. Board to regulate admissions to asylum.
137. How money to be drawn from state treasury for the support of the asylum.

## SECTION.

138. Money belonging to the asylum payable into the state treasury; donations.
139. Officers and employees exempt from service on juries, &c.
140. Board to keep record of proceedings; their clerk and his compensation; books open to inspection.
141. General assembly and board of public charities *ex-officio* visitors to asylum; duties of board.
142. Fiscal year.
143. When county commissioners to order discharge of insane person not in asylum.
144. Proceedings to place insane persons possessed of sufficient income in asylum out of state.
145. Duty of person having custody of estate of such insane persons, to supply necessary means.
146. Justices to report proceedings to superior court clerk.
147. Clerk to lay proceedings before judge.
148. Certified copy of proceedings with approval of judge sufficient warrant to authorize removal to asylum designated.
149. Indigent insane to have priority of admission to asylum.

## EASTERN NORTH CAROLINA INSANE ASYLUM.

## SECTION.

150. The Eastern North Carolina Insane Asylum incorporated; its name and corporate powers.
151. Board of directors; their term of office, classification, &c.
152. Executive committee; their powers, &c.
153. Duties of the board; their traveling expenses allowed.
154. The board; their meetings, and report to the general assembly.
155. Superintendent; his qualifications, term of office and removal.
156. Assistant physician; his term of office and removal.
157. Steward and other officers; their removal; treasurer.
158. Board to regulate salaries, &c.
159. Superintendent to have control of other officers.
160. Board to make by-laws; by-laws and report of the superintendent to be published; copies to be sent to clerks of superior courts.
161. Meetings of the board.
162. Removal to asylum of insane colored persons confined in jail otherwise than for crime.
163. Removal of insane colored persons, confined for crime, &c.
164. Proceedings to procure admission of insane persons to the asylum.
165. Justices of the peace to report proceedings to clerk of the superior court; questions and answers to be transmitted to the board.
166. Board to determine question of admission in doubtful cases.
167. Removal of incurable insane from the asylum.

## SECTION.

168. Proceedings to secure the transfer to asylum of dangerous lunatics, &c., whose estates are solvent.
169. When and how conveyed to asylum.
170. Justices to return copy of proceedings to superior court clerk; clerk to make order concerning expenses.
171. Discharge of insane person from asylum by order of judge; bond for his safe keeping, &c.; action by injured person; action by solicitor for benefit of insane person.
172. Form and condition of the bond.
173. When insane person re-sent to asylum, not to be re-discharged on new bond of defaulting obligor.
174. Dues to asylum payable to state treasurer; to be supported by appropriations; how money to be drawn from state treasury for support of asylum; disbursements made on warrant of superintendent.
175. Money belonging to asylum payable into state treasury; donations.
176. The board authorized to compromise claims for board of patients.
177. Board to regulate admissions to asylum.
178. Officers and employees exempt from serving on juries, &c.
179. Board to keep records of proceedings; their clerk and his compensation; books open to inspection of general assembly.
180. Board of public charities and members of general assembly *ex-officio* visitors to the asylum; duties of the board of public charities.
181. Fiscal year; its close.



## DEAF AND DUMB AND THE BLIND.

Sec. 57. The institution for the deaf and dumb and the blind to remain a corporation ; its name.

The institution for the education of the deaf and dumb and the 1881, c. 211, s. 1.  
2 blind located in the city of Raleigh, on Caswell square, and on a  
3 lot located in the eastern part of the city, belonging to the state,  
4 and on which the institution for the colored children is located,  
5 shall be a corporation under the name and style of "The North Car-  
6 olina Institution for the Education of the Deaf and Dumb and the  
7 Blind," and shall be under the management of a board of trustees  
8 and principal.

Sec. 58. Board of trustees, to be classified.

The governor shall, by and with the consent of the senate, ap- 1881, c. 211, s. 2.  
2 point seven trustees for said institution, and they shall, at their  
3 first meeting in the year A. D. one thousand eight hundred and  
4 eighty-one, elect of their number trustees to be classified as fol-  
5 lows: The first class to consist of three, and their terms shall be  
6 for six years; the second class of two, and their terms shall be for  
7 four years; the third class consisting of two, shall hold for two  
8 years: *Provided*, that when the terms shall expire, their successors  
9 shall be appointed for six years: *And provided*, that the trustees  
10 shall hold until their successors are appointed and confirmed by  
11 the senate.

Sec. 59. President and executive committee; principal, steward and physician; their terms of office and compensation; trustees may erect buildings.

The board of trustees shall organize by electing one of their 1881, c. 211, s. 3.  
2 number president and three an executive committee. The terms  
3 of office in each case shall be for two years. They shall elect a  
4 principal, who shall be *ex-officio* secretary of the board, and whose  
5 term of office shall be for three years, also a steward and physi-  
6 cian whose term shall be for two years, and such other officers,  
7 agents and teachers as shall be deemed necessary. The compensa-  
8 tion for officers and agents and teachers, mentioned in this section,  
9 shall be fixed by the board, and shall not be increased nor reduced  
10 during their term of service. The board shall have power to erect  
11 any and all buildings necessary, make improvements, or in gen-  
12 eral do all matters and things which may be beneficial to the good  
13 government of the institution, and to this end may make by-laws  
14 for the government of the same.

Sec. 60. Meetings of the board.

The board shall meet at stated times and also at such other 1881, c. 211, s. 4.  
2 times as they may deem necessary.

**Sec. 61. Admission into asylum; questions to be answered in application for admission of deaf mutes, and the blind.**

1881, c. 211, s. 5.

The board of trustees shall, on application, receive in the institution for the purpose of education, in the main department, all white deaf mutes and blind children, and in the department for the colored all colored deaf mutes and blind children, residents of this state, not of confirmed immoral character, nor imbecile or unsound in mind, or incapacitated by physical infirmity for useful instruction, who are between the age of eight and twenty-one years: *Provided*, that applications shall be made and applicants received at stated times, and shall be at the commencement of some scholastic year. In case of deaf mutes the following questions shall be answered:

- 12 Name?
- 13 Is the child white or colored?
- 14 When and where was he born?
- 15 Was he born deaf?
- 16 At what age did he lose his hearing?
- 17 By what disease or accident did he become deaf?
- 18 Is the deafness total or partial?
- 19 Have any attempts been made to remove the deafness?
- 20 Is there any ability to articulate or read on the lips?
- 21 Have any attempts been made to communicate instruction?
- 22 Is he laboring under any bodily infirmity?
- 23 Does he show any signs of mental imbecility or idiocy?
- 24 Has he had the small-pox or been vaccinated?
- 25 Has he had the scarlet fever?
- 26 Has he had the measles?
- 27 Has he had the mumps?
- 28 Has he had the whooping-cough?
- 29 Are there any other cases of deafness in the family?
- 30 Are there any cases of deafness among relatives or ancestors?
- 31 What is the name of the father?
- 32 What is the name of the mother?
- 33 What is the occupation of the father?
- 34 What is his post-office address?
- 35 Is either of the parents dead?
- 36 Has a second connection been formed by marriage?
- 37 Was there any relationship between the parents previous to marriage?
- 38 In case of blind applicants, the following questions shall be answered:
- 41 Name?
- 42 Is the child white or colored?
- 43 When and where was he born?
- 44 Was he born blind?
- 45 At what age did he become blind?

- 46 By what disease or accident did he become blind?  
 47 Is the blindness total or partial?  
 48 Have any attempts been made to remove the blindness?  
 49 Have any attempts been made to communicate instruction?  
 50 Is he laboring under any bodily infirmity?  
 51 Does he show any signs of mental imbecility or idiocy?  
 52 Has he had the small-pox or been vaccinated?  
 53 Has he had the scarlet fever?  
 54 Has he had the measles?  
 55 Has he had the mumps?  
 56 Has he had the whooping-cough?  
 57 Are there any other cases of blindness in the family?  
 58 Are there any cases of blindness among relatives or ancestors?  
 59 What is the name of the father?  
 60 What is the name of the mother?  
 61 What is the occupation of the father?  
 62 What is his post-office address?  
 63 Is either of the parents dead?  
 64 Has a second connection been formed by marriage?  
 65 Was there any relationship between the parents previous to  
 66 marriage?  
 67 When the application is made, it shall be filed in the office of  
 68 the principal, and on reception of applicant, a record of such pupil  
 69 shall be made and entered in a book to be kept for that purpose.

**Sec. 62. Admission of pupils from other states.**

The board may, on such terms as they deem proper admit as  
 2 pupils, persons from any other state of like infirmity: *Provided*,  
 3 That such power shall not be exercised to the exclusion of any  
 4 child of this state, and that the person so admitted shall not ac-  
 5 quire the condition of residents of the state by virtue of such  
 6 pupilage. 1881, c. 211, s. 6.

**Sec. 63. Board authorized to confer degrees.**

The board may, upon the recommendation of the principal and  
 2 faculty, confer such degree or marks of literary distinction as may  
 3 be thought best to encourage merit. 1881, c. 211, s. 7.

**Sec. 64. Principal; his qualifications and duties; officers, &c.; when elected.**

The board of trustees shall, on the second Monday in June, one  
 2 thousand eight hundred and eighty-one, and every three years  
 3 thereafter, elect an officer to be known and styled as principal.  
 4 He shall be a married man, of good moral character, and qualified  
 5 by education and experience to perform the duties of the position.  
 6 He shall have charge of the institution in all its departments; do  
 7 and perform such duties and exercise such supervision as is in-  
 8 cumbent upon such officer. The officers, agents, and teachers men- 1881, c. 211, s. 8.



tioned in section three of this chapter shall be elected at the same time for their respective terms: *Provided*, That this shall not apply to the president of the board nor to the executive committee.

**Sec. 65.** State treasurer ex-officio treasurer of the institution; to make report to the board; trustees to report to the governor.

1881, c. 211, s. 9.

The state treasurer shall be *ex-officio* treasurer of the institution. He shall report to the board at such times as they may call on him showing the amount received on account of the institution, amount paid out, and amount on hand. The board shall make a report to the governor on the first of January next before the regular meeting of the legislature, showing the condition of the institution in its various departments. They shall give any information the governor shall desire from time to time.

**Sec. 66.** Removal of officers; notice thereof; vacancies, how filled.

1881, c. 211, s. 10.

The board shall have power to remove any officer mentioned in this chapter for gross immorality, wilful neglect of duty, or any other good and sufficient cause; but in any such case notice in writing of the charges shall be served on the accused, proved and entered on record. They shall fill all vacancies which may occur from any cause.

**Sec. 67.** Employees; their compensation.

1881, c. 211, s. 11.

The principal shall have power to employ all employees and fix their compensation, and to discharge them at pleasure.

**Sec. 68.** Necessary clothing and traveling expenses of indigent deaf-mutes and blind pupils to be paid out of state treasury; amount to be charged to county.

1879, c. 332, s. 1.

Where it shall appear to the satisfaction of the governor, upon the affidavit of two respectable citizens, that the parents of any deaf-mute or blind child are unable to provide said child with clothing and for expenses to and from the institution, or where the child has no living parents, then the governor shall draw upon the auditor for an amount sufficient to clothe and pay said expenses, and the auditor, upon the state treasurer, who shall pay the same: *Provided*, that the auditor shall charge said amount to the county from which said child came and add it to the tax list of the sheriff of said county and collect the same as other amounts due the state: *Provided further*, that the amount charged shall in no case exceed twenty dollars per year for any pupil.

**Sec. 69.** Lot in front of colored asylum to be used as a garden; contracts of sale for portions of lot to be cancelled with consent of purchasers.

1879, c. 332, s. 2.

The board of directors shall have the lot in front of the colored institution for the purpose of a garden for the pupils, and the sale of a portion of said lot, and all notes and papers may be cancelled,

4 provided the purchasers will agree to give up the bonds, receive  
5 their notes and the amount of money advanced by them, and to  
6 this end the governor is fully empowered to effect this arrangement.

#### NORTH CAROLINA INSANE ASYLUM.

Sec. 70. Insane asylum to remain a corporation; its name; authorized to acquire and hold property.

The "North Carolina Insane Asylum," situated near Raleigh, 1881, c. 133, s. 1.  
2 shall be a corporation under that name; and the said North  
3 Carolina Insane Asylum may acquire and hold for the purpose  
4 of the establishment of the institution all such property and  
5 estate as may be devised, bequested, or in any way given or con-  
6 veyed to it.

Sec. 71. Directors; their term of office; quorum, &c.

The affairs of the North Carolina Insane Asylum shall be man- 1881, c. 133, s. 2.  
2 aged by a board of nine directors, of whom five shall be a quorum  
3 for the transaction of business. And the term of office of the first  
4 board appointed under this chapter shall begin on the first day  
5 of March, Anno Domini one thousand eight hundred and eighty-  
6 one, or as soon thereafter as the board appointed under this  
7 chapter shall be confirmed by the senate. At the first meeting of  
8 said board, the directors shall be divided into three classes; the  
9 seats of the first class shall be vacated at the expiration of the sec-  
10 ond year, of the second class at the expiration of the fourth year,  
11 and of the third class at the expiration of the sixth year, from the  
12 time of their appointment, and afterwards their successors shall be  
13 appointed at the expiration of the respective terms for six years.

Sec. 72. Executive committee.

The board of directors shall out of their number appoint three 1881, c. 133, s. 3.  
2 members as an executive committee, two of whom shall reside in  
3 or near the city of Raleigh, who shall hold their office as such for  
4 one year, and shall have such powers and be subject to such duties  
5 as the board of directors may delegate to them.

Sec. 73. Duties and powers of the board.

The board of directors shall direct and manage the affairs of the 1881, c. 133, s. 4.  
2 institution, and for its better government make all necessary by-  
3 laws not inconsistent with the laws of the state; shall have power  
4 to receive, hold, manage, convey or otherwise dispose of, in the  
5 name of the institution, all such property or estate as may here-  
6 after be given or otherwise conveyed to the asylum; and the mem-  
7 bers of the board shall serve without reward, save their traveling  
8 expenses incurred in the discharge of their official duties.

**Sec. 74. Meetings of the board ; to report to the general assembly.**

1881, c. 133, s. 5.

The board of directors shall convene at the asylum on the first  
 2 Wednesday after the first Monday in January, and quarterly there-  
 3 after. They shall investigate the administration of the affairs of  
 4 the institution, and report on the same to the general assembly,  
 5 with such remarks and recommendations, as to them shall seem  
 6 expedient.

**Sec. 75. Superintendent ; his qualifications, term of office and removal.**

1881, c. 133, s. 6.

The board of directors shall appoint a superintendent of the in-  
 2 stitution, and prescribe his duties. He shall be a skillful physi-  
 3 cian, educated to his profession, of good moral character, of prompt  
 4 business habits, of kindly disposition, and a married man. He  
 5 shall hold his office for six years from and after his appointment,  
 6 unless sooner removed by the board, who may, for infidelity to his  
 7 trust, gross immorality, incompetency to discharge the duties of  
 8 his office, fully proved and declared, and the proof thereof recorded  
 9 in the book of their proceedings, remove him and appoint another  
 10 in his place.

**Sec. 76. Assistant physician ; his term of office and removal.**

1881, c. 133, s. 7.

The board of directors shall appoint an assistant physician, and,  
 2 with the advice and consent of the superintendent, prescribe his  
 3 duties. He shall hold his place for four years from and after his  
 4 appointment unless sooner removed by the board, for good cause,  
 5 which shall be specified and recorded in the proceedings.

**Sec. 77. Steward, matron and engineer ; their terms of office and removal ; treasurer.**

1881, c. 133, s. 8.

The board of directors, at their annual meeting, shall appoint a  
 2 steward, matron and engineer, who shall hold their places for one  
 3 year, unless sooner removed by the board for good cause, which  
 4 cause shall be specified in their proceedings, and other officers shall  
 5 be appointed for the unexpired term of those removed. The pub-  
 6 lic treasurer shall be treasurer *ex-officio*.

**Sec. 78. The board to arrange salaries, &c.**

1881, c. 133, s. 9.

The board of directors shall fix the salaries and compensation  
 2 of the superintendent, and the officers and employees whose ser-  
 3 vices may be necessary for the management of the asylum: *Pro-*  
 4 *vided*, that the salaries shall not be diminished during the term of  
 5 the incumbent.

**Sec. 79. Superintendent to have exclusive control of subordinate officers and employees.**

1881, c. 133, s. 10.

The superintendent shall exercise exclusive direction and con-  
 2 trol over all the subordinate officers and employees engaged in the



3 service and labors of the asylum, and in every case of misconduct  
4 may discharge such employees as have been employed by himself  
5 or his predecessors, and shall report to the board of directors the  
6 misconduct of all other subordinates.

Sec. 80. By-laws, &c., to be published with report to the general assembly.

The board of directors shall make all such by-laws and regula- 1881, c. 133, s. 11.  
2 tions for the government of the institution as shall be necessary ;  
3 among which regulations shall be such as shall, in the language  
4 of the constitution, be as nearly self-supporting as is consistent  
5 with the purpose of its creation. The board shall cause the by-  
6 laws and regulations, the report of the superintendent and that of  
7 the treasurer, to be published with their report to the general as-  
8 sembly, copies of which shall be sent to the clerk of the superior  
9 court of each and every county in the state.

Sec. 81. Insane persons confined in jail, to be removed to the asylum by order of superior court clerk.

Every insane person confined in jail for any other cause than 1881, c. 133, s. 12.  
2 crime, may be removed to the asylum upon the order of the clerk  
3 of the superior court of the county in which the jail is situated.

Sec. 82. Criminals confined in jail found to be insane, to be sent to the asylum ; order granted by judges of the superior court.

The judges of the superior court in their respective districts 1881, c. 133, s. 13.  
2 shall allow to be committed to the asylum, as a patient, any per-  
3 son who may be confined in jail, on a criminal charge of any kind,  
4 or degree, or upon a peace warrant, whenever the judge shall be  
5 satisfied by a verdict of jury of inquisition that the alleged crim-  
6 inal act was committed while such person was insane.

Sec. 83. Proceeding to obtain admission to the asylum ; affidavit before justice of the peace ; justice's warrant ; proceedings before him, &c.

For admission into the asylum in other cases, the following pro- 1881, c. 133, s. 14.  
2 ceedings shall be had : Some respectable citizen, residing in the  
3 county of the alleged insane person, shall make before and file with  
4 a justice of the peace of the county, an affidavit in writing, which  
5 shall be substantially as follows :

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

The undersigned, residing in said county, maketh oath that he hath 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.

Dated, ..... day of ....., 18.....

A..... B....., (Affiant.)

Subscribed and sworn to C..... D....., J. P.

6 Whereupon, unless the person or persons in whose care or cus-  
7 tody the alleged insane is, will agree to bring him or her before

8 the said justice without a warrant, the justice shall issue a precept,  
9 directed to the sheriff or a constable as follows :

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 insane condition.

Given under my hand, this ..... day of ..... 18 ....

C..... D....., J. P.

10 Upon the bringing of the alleged insane person before the jus-  
11 tice by his or her friends, or upon the return of the precept with  
12 the body of the insane person, the justice shall cause to be associa-  
13 ted with him two or more justices of the county, who together shall  
14 proceed to examine into the condition of mind of the supposed in-  
15 sane person, and shall take the testimony of at least one respecta-  
16 ble physician, and such other of them as they may think proper.  
17 If the justice, or any two of them, shall decide that such person is  
18 insane, and some friend, as he may do, will not become bound,  
19 with good security, to restrain him or her from committing injur-  
20 ies, and to keep, support and take care of him or her until the cause  
21 for confinement shall cease, the said justices, or any two of them,  
22 shall direct the insane person to be removed to the asylum as a  
23 patient; and to that end they shall direct a warrant to the sheriff  
24 or constable, and at the same time shall transmit to the board of  
25 directors the examination of the witnesses, and a statement of such  
26 facts as the said justices shall deem pertinent to the subject matter,  
27 which warrant shall be substantially as follows:

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 North Carolina Insane Asylum, 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.

#### Sec. 84. Justices to report proceedings to superior court clerk.

1881, c. 133, s. 15.

Whenever the justices of the peace, under the provisions of the  
2 preceding section, shall direct any insane person to be removed to  
3 the asylum as a patient for safe keeping, it shall be their duty to  
4 make a full report of their proceedings to the clerk of the superior  
5 court of their county.

#### Sec. 85. Questions and answers to be forwarded the board.

1881, c. 133, s. 16.

The following interrogations with their respective answers by

2 competent witnesses, shall likewise be transmitted with the other  
3 papers to the board of directors :

4 Question 1. What is the name of the patient ?

5 Question 2. Is he or she white or colored ?

6 Question 3. What is his or her age ?

7 Question 4. Is he or she married or single ?

8 Question 5. What is the supposed cause of insanity ?

9 Question 6. In what way is the disease exhibited ?

10 Question 7. Has any medical treatment been pursued ; if so,  
11 what kind and by whom ?

12 Question 8. How long has he or she been insane ? Count from  
13 first symptoms.

14 Question 9. Has the patient manifested any propensity to injure  
15 himself or others ; if so, in what way ?

16 Question 10. Has he or she been subject to epilepsy ?

17 Question 11. Have any of his or her ancestors been insane ; if so,  
18 state what ancestor, and what was the character of their insanity ?

19 Question 12. Has he or she any family, and, if so, what persons  
20 compose it ?

21 Question 13. Are any of them insane, and what is the character  
22 of such insanity ?

23 Question 14. What is the occupation of the patient ?

24 Question 15. How many attacks of mental disease has the pa-  
25 tient had ?

26 Question 16. Are parents of the insane person related by blood ;  
27 if so, what is the degree of relationship ?

28 Question 17. Has the applicant property ; if so, state in what  
29 such property consists, and what is the value thereof ?

30 Question 18. Is the applicant under any forcible restraint ; if  
31 so, what ?

32 Question 19. Has the patient received any aid from the county ;  
33 if so, what ?

34 Question 20. Give name and address of the friends of the pa-  
35 tient, with whom the superintendent of the insane asylum can cor-  
36 respond, as circumstances require, for the benefit of the patient.

37 Question 21. Give any information in your possession not em-  
38 braced in the above questions, which may throw light on the men-  
39 tal or physical condition of the patient.

**Sec. 86. Superintendent to refer doubtful cases to the board.**

Whenever an insane person shall be conveyed to the asylum,  
2 and the superintendent is in doubt as to the propriety of his or her  
3 admission, he may convene the board of directors (any three of  
4 whom shall constitute a board) for the purpose of examining and  
5 deciding if such person is a proper subject for admission ; and if a  
6 majority of such board decide that he or she is such, he shall be  
7 received into the asylum ; but such board may at any time there-  
1881, c. 133, s. 17.



8 after deliver said insane person to any friend who will become  
 9 bound, with good security, to restrain him or her from commit-  
 10 ting injuries, and to keep, maintain and take care of him or her,  
 11 in the same manner as he or she might have become bound under  
 12 the authority of the justices of the peace.

**Sec. 87. Incurable insane; to be returned in certain cases.**

1881, c. 133, s. 18.

Whenever the superintendent shall deem an insane person to be  
 2 incurable, and that his or her being at large would not be injuri-  
 3 ous to himself or herself, or dangerous to the community, he shall  
 4 certify the fact to the clerk of the superior court of the county  
 5 from which the patient was sent, and also to the board of directors,  
 6 (any three of whom shall constitute a board) who may, if deemed  
 7 expedient, remove such patient from the asylum, and it shall be  
 8 the duty of the sheriff of the county from which the patient was  
 9 sent, to convey said patient from the asylum to the county of his  
 10 settlement, at the expense of said county.

**Sec. 88. When an insane person whose estate will support him, to be brought before justice of the peace.**

1881, c. 133, s. 19.

When an affidavit in writing shall be made before a justice of  
 2 the peace, by any citizen of the state, that any person who has  
 3 been found by the inquisition of a jury to be an idiot, lunatic or  
 4 *non compos mentis*, and whose estate in the hands of his or her  
 5 guardian shall be sufficient to support him or her and family, if  
 6 he or she has any, is mischievously inclined, and that his or her  
 7 going at large is dangerous to the community, it shall be lawful  
 8 for said justice to issue his warrant requiring the sheriff to bring  
 9 him or her before two justices of the peace within ten days, in  
 10 order that the complaint may be duly examined, and the sheriff  
 11 when he executes the warrant is to notify the guardian.

**Sec. 89. Justice to issue process to the sheriff, to carry insane person to the asylum.**

1881, c. 133, s. 20.

If the said justices on the return of the warrant are satisfied  
 2 that the facts stated in the complaint are true, it shall be their  
 3 duty to issue process to the sheriff commanding him to take such  
 4 insane person and convey him or her to the North Carolina Insane  
 5 Asylum, and there deliver him or her to the superintendent thereof  
 6 for safe keeping: *Provided, however,* that the mischievous disposi-  
 7 tion of such insane person shall have been proven by at least two  
 8 competent witnesses who have been acquainted with him or her  
 9 for more than twelve months.

**Sec. 90. Proceedings before justice to be certified to clerk of superior court. Clerk to make proper orders concerning expenses, &c.**

881, c. 133, s. 21.

If the insane person mentioned in the preceding section be sent  
 2 to the asylum, a copy of the proceedings shall be returned by the

3 justices to the clerk of the superior court of his county, who shall  
4 have power from time to time to make such orders or decrees con-  
5 cerning the payments of the expenses of sending him or her to  
6 said aylum, or sending him or her back should he or she be dis-  
7 charged therefrom, as to said clerk shall seem just and reasonable  
8 under all the circumstances of the case.

Sec. 91. Persons discharged from the asylum by order of judges of the supreme or superior court; bonds for restraining insane persons from committing injuries; action on bond.

Any judge of the superior or supreme court may make an order 1881, c. 133, s. 22.  
2 for the discharge from the asylum of any person confined there  
3 under this chapter if the superintendent thereof shall certify to him  
4 in writing that he is well satisfied that such person is not mischiev-  
5 ous, and would not be dangerous to the community if discharged:  
6 *Provided*, that the signature to the certificate be duly acknowledged  
7 or proved before the clerk of the superior court for Wake county,  
8 and shall be certified by him under his official seal. All bonds  
9 executed for restraining insane persons from committing injuries,  
10 and for their safe keeping, support and care, shall be payable to  
11 the state of North Carolina in the sum of five hundred dollars at  
12 least, and shall be transmitted to the clerk of the superior court of  
13 the county wherein the insane person is settled for safe keeping,  
14 and may be put in suit by any person injured by the insane per-  
15 son by reason of his or her insane condition, and shall be put in  
16 suit by the solicitor for the judicial district in which the county  
17 of the insane person's residence is situated, for any other breach  
18 thereof, wherein the damages received shall be for the use of the  
19 insane person, and shall be at least fifty dollars.

Sec. 92. Form of bond.

The form of the bond mentioned in the preceding section shall 1881, c. 133, s. 23.  
2 be as follows:

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

Know all men by these presents, that we, A..... B....., principal, and C..... D.....  
and E ..... F....., sureties, are held and firmly bound unto the state of North Carolina, in  
the sum of ..... dollars, for the payment whereof we bind ourselves and each of us.

Witness our hands and seals this ..... 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 North Carolina Insane Asylum (or to 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: other-  
wise it shall be in full force.

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

Sec. 93. If conditions of bond not complied with, insane person to be sent to asylum.

Whenever it shall be made to appear to the clerk of the superior 1881, c. 133, s. 24.

2 court of the county in which such insane person was resident, that  
3 the conditions of the bond are not faithfully complied with, the  
4 insane person shall be sent to the asylum by such clerk of the  
5 superior court, unless some other responsible and discreet friend  
6 will undertake to fulfil the duties of said obligations; and when-  
7 ever said insane person shall be sent back to the asylum, he or she  
8 shall not be delivered on any new bond of the defaulting obligor.

**Sec. 94. Support of asylum; dues payable to the treasurer.**

1881, c. 133, s. 25.

All dues to the asylum from any and all sources shall be paid  
2 into the public treasury; and the said asylum shall be supported  
3 by appropriations from the public treasury.

**Sec. 95. Board to regulate admissions.**

1881, c. 133, s. 26.

The board of directors shall have power to regulate admissions  
2 into the asylum, having regard to the probabilities of curing the  
3 parties of their mental diseases.

**Sec. 96. How appropriations for asylum to be drawn from treasury.**

1881, c. 133, s. 27.

All money applied for the use and support of the insane asylum,  
2 and the insane therein, shall be paid out of the public treasury on  
3 warrants drawn by a majority of the board of directors, or by the  
4 superintendent, and countersigned by at least two of the board of  
5 directors and approved by the governor.

**Sec. 97. Money, &c., belonging to the asylum to be paid into the treasury; dona-  
tions; state treasurer to keep accounts and pay money on warrant of superin-  
tendent.**

1881, c. 133, s. 28.

All money and proceeds of property given to the asylum, and  
2 all money arising from any estate which may be owned by the  
3 asylum, shall be paid into the public treasury, and all donations in  
4 which there shall be special directions for their application, shall  
5 be kept as a distinct fund and shall be faithfully applied as the donor  
6 may have directed. The public treasurer shall keep all accounts  
7 of the institution as may be regulated by the board of directors,  
8 and he shall pay out money only upon the warrant of the superin-  
9 tendent.

**Sec. 98. Officers and employees exempt from jury duty, &c.**

1881, c. 133, s. 30.

In order to secure their constant supervision and attendance, the  
2 officers and employees of the asylum shall be exempt from serving  
3 on juries, in the militia, and from the duty of working on the pub-  
4 lic roads.

**Sec. 99. Board to keep record of proceedings; may employ a clerk; his compensa-  
tion; books open to inspection of general assembly and board of public charities.**

1881, c. 133, s. 31.

The board of directors shall cause all their proceedings to be  
2 faithfully and carefully written and recorded in books, and to this



3 end may employ a clerk and pay him a reasonable compensation  
4 for his services. The books shall at all times be opened to the  
5 inspection of the board of public charities and of the general assem-  
6 bly.

**Sec. 100.** General assembly and board of public charities ex-officio visitors to asylum; duty of board; superintendent to furnish statistics and make reports.

The board of public charities and the members of the general 1881, c. 133, s. 32.  
2 assembly shall be *ex-officio* visitors of the insane asylum. It shall  
3 be the duty of the board of public charities to visit the asylum  
4 from time to time as they may deem expedient to examine into its  
5 condition, and make report thereon to the general assembly, with  
6 such suggestions and remarks as they think proper. And to said  
7 board, and to the board of directors of the asylum, and to the gen-  
8 eral assembly only, shall the superintendent be required to make  
9 reports or furnish statistics.

**Sec. 101.** Fiscal year to close December 31st.

The close of the fiscal year shall be the thirty-first of December 1881, c. 133, s. 33.  
2 in each and every year and all accounts and estimates shall be  
3 made with reference thereto.

**Sec. 102.** Proceedings to place insane persons who are possessed of sufficient income in asylum outside of the state.

Whenever any person shall be found to be insane in the mode 1881, c. 133, s. 34.  
2 hereinbefore prescribed, and such person shall be possessed of an  
3 income amply sufficient to support those who may be legally de-  
4 pendent for support on the estate of such insane person, and more-  
5 over to support and maintain such insane person in any named  
6 asylum situated out of the state; and such insane person, if of  
7 capable mind to signify such preference, shall in writing declare his  
8 or her wish to be placed in such asylum without the state, instead  
9 of being in the asylum established by the state; and two respecta-  
10 ble physicians who shall have examined such insane person with  
11 the justices appointed by this chapter to make the examination  
12 shall deem it proper, then it may be lawful for said justices of the  
13 peace, together with the said physicians, to recommend in writing  
14 that such insane person shall be placed in the asylum so chosen as  
15 a patient thereof.

**Sec. 103.** Duty of person having custody of estate of such insane person to supply necessary funds, &c.

It shall be the duty of any person having the legal custody of 1881, c. 133, s. 35.  
2 the estate of such insane person, to supply the funds for his or her  
3 support in the asylum in which he or she may be placed, during  
4 his or her stay therein, and so long as they may be sufficient for  
5 that purpose, over and beyond maintaining and supporting those  
6 persons who may be legally dependent on the estate as aforesaid.

**Sec. 104. Justice of the peace to report proceedings to clerk of superior court.**

1881, c. 133, s. 36.

It shall be the duty of said justices to report the proceedings in  
2 all such cases to the clerk of the superior court of the county in  
3 which such insane person may reside or be domiciled as provided.

**Sec. 105. Clerk to lay proceedings before judge, &c.**

1881, c. 133, s. 37.

The clerk of the court shall lay the said proceedings before the  
2 judge of the superior court of the district in which the insane per-  
3 son may reside or be domiciled, and if he approve them he shall  
4 so declare in writing, and such proceedings, with the approval  
5 thereof, shall be recorded by said clerk.

**Sec. 106. Certified copy of proceedings with approval of judge sufficient warrant to authorize removal to asylum designated.**

1881, c. 133, s. 38.

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

**Sec. 107. Indigent insane to have priority of admission to asylum.**

1881, c. 133, s. 39.

In the admission of patients to the North Carolina Insane Asy-  
2 lum, priority of admission shall be given to the indigent insane:  
3 *Provided, however,* that the board of directors may regulate admis-  
4 sion, having in view the curability of patients, and the welfare of  
5 the institution.

**WESTERN NORTH CAROLINA INSANE ASYLUM.****Sec. 108. Incorporation; authorized to acquire and hold property.**

1881, c. 297, s. 1.

The "Western North Carolina Insane Asylum," situated near  
2 Morganton, is hereby constituted a corporation, and shall be and  
3 remain a corporation under that name, and it may acquire and  
4 hold for the purposes of its establishment all such property and  
5 estate as may be devised, bequeathed or in any way given or con-  
6 veyed to it.

**Sec. 109. Buildings to be completed.**

1881, c. 297, s. 2.

The commissioners shall complete that part of the asylum build-  
2 ings heretofore authorized by law to be constructed, including the  
3 main building and one wing and such other structures as are  
4 necessary to its equipment for occupancy, and, when ready, turn  
5 the same over to the board of directors.

**Sec. 110. Board of directors; quorum; term of office; classification.**

1881, c. 297, s. 3.

The affairs of the Western North Carolina Insane Asylum shall  
2 be managed by a board of nine directors, of whom five shall be a  
3 quorum for the transaction of business. And the term of office of  
4 the first board appointed under this act shall begin as soon as may

5 be necessary to organize the institution. At the first meeting of  
6 said board, the directors shall be divided into three classes: the  
7 seats of the first class shall be vacated March the first, one thous-  
8 and eight hundred and eighty-three, of the second class two years  
9 thereafter, and the third class at the expiration of the fourth year  
10 from the date aforesaid, and afterwards their successors shall be  
11 appointed at the expiration of the respective terms, for six years.

**Sec. 111. Executive committee; their powers, &c.**

The board of directors shall out of their number appoint three 1881, c. 297, s. 4.  
2 members as an executive committee, two of whom shall reside in  
3 or near the town of Morganton, who shall hold their office as such  
4 for one year, and shall have such powers and be subject to such  
5 duties as the board of directors may delegate to them.

**Sec. 112. The board, their duties; traveling expenses.**

The board of directors shall direct and manage the affairs of the 1881, c. 297, s. 5.  
2 institution, and for its government shall make all necessary by-  
3 laws not inconsistent with the laws of the state, shall have power  
4 to receive, hold, manage, convey, or otherwise dispose of, in the  
5 name of the institution, all such property or estate as may hereaf-  
6 ter be given or otherwise conveyed to said asylum; and the mem-  
7 bers of the board shall serve without reward save their traveling  
8 expenses incurred in the discharge of their official duties.

**Sec. 113. Meetings of the board; their report to general assembly.**

The board of directors shall convene at said asylum as soon as 1881, c. 297, s. 6.  
2 convenient after their appointment, and at such other times as the  
3 interests of the institution may require and the board may appoint.  
4 They shall investigate the administration of the affairs of the insti-  
5 tution, and report on the same to the general assembly, with such  
6 remarks and recommendations as to them shall seem expedient.

**Sec. 114. Superintendent; his qualifications, term of office and removal.**

The board of directors shall appoint a superintendent of the 1881, c. 297, s. 7.  
2 institution, and prescribe his duties. He shall be a skilful physi-  
3 cian, educated to his profession, of good moral character, of prompt  
4 business habits, of kindly disposition, and a married man. He  
5 shall hold his office for six years from and after his appointment,  
6 unless sooner removed by the board, who may, for infidelity to his  
7 trust, gross immorality, incompetency to discharge the duties of  
6 his office, fully proved and declared, and the proof thereof recorded  
7 in the book of their proceedings, remove him and appoint another  
8 in his place.

**Sec. 115. Assistant physician; his term of office and removal.**

The board of directors shall appoint an assistant physician, and 1881, c. 297, s. 8.



2 with the advice and consent of the superintendent, prescribe his  
3 duties. He shall hold his place for four years from and after his  
4 appointment, unless sooner removed by the board for good cause,  
5 which shall be specified and recorded in their proceedings.

**Sec. 116. Steward, matron and other officers; their terms of office and removal; treasurer.**

1881, c. 297, s. 9.

The board of directors, at their annual meeting, shall appoint a  
2 steward and matron, on the nomination of the superintendent,  
3 who shall hold their places for one year, unless sooner removed by  
4 the board for good cause, which cause shall be specified in their  
5 proceedings, and other officers shall be appointed for the unexpired  
6 term of those removed. The state treasurer shall be treasurer  
7 *ex-officio* of the institution.

**Sec. 117. Superintendent and other officers and employees; their salaries fixed by the board.**

1881, c. 297, s. 10.

The board of directors shall fix the salaries and compensation of  
2 the superintendent, and the officers and employees whose services  
3 may be necessary for the management of the asylum; *Provided*,  
4 that the salaries shall not be diminished during the term of the  
5 incumbents.

**Sec. 118. Superintendent to control other officers.**

1881, c. 297, s. 11.

The superintendent shall exercise exclusive direction and con-  
2 trol over all the subordinate officers and employees engaged in the  
3 service and labors of the asylum, and in every case of misconduct,  
4 may discharge such employees as have been employed by himself  
5 or his predecessors, and shall report to the board of directors the  
6 misconduct of all other subordinates.

**Sec. 119. Board to make by-laws; report of the superintendent, &c., to be published; copies to be sent to clerks of superior court.**

1881, c. 297, s. 12.

The board of directors shall make all such by-laws and regula-  
2 tions for the government of the institution as shall be necessary,  
3 among which regulations shall be such as shall, in the language of  
4 the constitution, make the institution as nearly self-supporting as  
5 is consistent with the purpose of its creation. The board shall  
6 cause the by-laws and regulations, the report of the superintendent  
7 and that of the treasurer to be published with their report to the  
8 general assembly, copies of which shall be sent to the clerk of the  
9 superior court of each and every county in the state.

**Sec. 120. When officers to be appointed.**

1881, c. 297, s. 13.

The first appointments to office under this chapter shall take  
2 place at such times as in the judgment of the board of directors  
3 shall best subserve the interests of the institution.

Sec. 121. When asylum ready, patients to be received from North Carolina Insane Asylum; not to exceed one hundred; additional patients provided for.

When in the judgment of the board of directors, the Western North Carolina Insane Asylum shall be ready for the accommodation of patients, the board of directors of said asylum shall receive from the board of directors of the North Carolina Insane Asylum, at Raleigh, such of the patients of said institution as may have their counties of settlement most convenient to the Western North Carolina Insane Asylum, to be designated by the board aforesaid, and not to exceed one hundred in number. And such additional patients as the Western North Carolina Insane Asylum may be prepared to accommodate, shall be received under the provisions of the sections of this chapter, hereinafter recited, and upon the warrant of the governor draw such sums as may be actually necessary for their support and maintenance.

Sec. 122. Removal to asylum of insane persons confined in jail otherwise than for crime.

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.

Sec. 123. Judge to remove to the asylum insane persons held in jail on a criminal charge.

The judges of the superior court in their 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.

Sec. 124. Proceedings to secure admission of insane person to the asylum.

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:

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

The undersigned, residing in said county, maketh oath that he hath 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.

Dated, ..... day of ....., 18.....

A..... B....., (Affiant.)

Subscribed and sworn to C..... D....., J. P.

Whereupon, unless the person or persons in whose care or 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:

## 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 insane condition.

Given under my hand, this ..... day of ..... 18 .....

C..... D....., J. P.

10 Upon the bringing of the alleged insane person before the jus-  
 11 tice by his or her friends, or upon the return of the precept with  
 12 the body of the insane person, the justice shall cause to be associa-  
 13 ted with him two or more justices of the county, who together shall  
 14 proceed to examine into the condition of mind of the supposed in-  
 15 sane person, and shall take the testimony of at least one respecta-  
 16 ble physician, and such other of them as they may think proper.  
 17 If the justice, or any two of them, shall decide that such person is  
 18 insane, and some friend, as he may do, will not become bound,  
 19 with good security, to restrain him or her from committing injur-  
 20 ies, and to keep, support and take care of him or her until the cause  
 21 for confinement shall cease, the said justices, or any two of them,  
 22 shall direct the insane person to be removed to the asylum as a  
 23 patient; and to that end they shall direct a warrant to the sheriff  
 24 or constable, and at the same time shall transmit to the board of  
 25 directors the examination of the witnesses, and a statement of such  
 26 facts as the said justices shall deem pertinent to the subject matter,  
 27 which warrant shall be substantially as follows:

## 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 Western North Carolina Insane Asylum, 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.

**Sec. 125. Justices of the peace to report proceedings to superior court clerk.**

1881, c. 297, s. 18.

Whenever the justices of the peace, under the provisions of the  
 2 preceding section, shall direct any insane person to be removed to  
 3 the asylum as a patient for safe keeping, it shall be their duty to  
 4 make a full report of their proceedings to the clerk of the superior  
 5 court of their county.

**Sec. 126. Questions and answers to be submitted to board of directors.**

1881, c. 297, s. 19.

The following questions with their respective answers by com-  
 2 petent witnesses, shall likewise be transmitted with the other  
 3 papers to the board of directors:

4 Question 1. What is the name of the patient?

5 Question 2. Is he or she white or colored?



- 6 Question 3. What is his or her age?  
 7 Question 4. Is he or she married or single?  
 8 Question 5. What is the supposed cause of insanity?  
 9 Question 6. In what way is the disease exhibited?  
 10 Question 7. Has any medical treatment been pursued; if so,  
 11 what kind and by whom?  
 12 Question 8. How long has he or she been insane? Count from  
 13 first symptoms.  
 14 Question 9. Has the patient manifested any propensity to injure  
 15 himself or others; if so, in what way?  
 16 Question 10. Has he or she been subject to epilepsy?  
 17 Question 11. Have any of his or her ancestors been insane; if so,  
 18 state what ancestors, and what was the character of their insanity?  
 19 Question 12. Has he or she any family, and, if so, what persons  
 20 compose it?  
 21 Question 13. Are any of them insane, and what is the character  
 22 of such insanity?  
 23 Question 14. What is the occupation of the patient?  
 24 Question 15. How many attacks of mental disease has the pa-  
 25 tient had?  
 26 Question 16. Are parents of the insane person related by blood;  
 27 if so, what is the degree of relationship?  
 28 Question 17. Has the applicant property; if so, state in what  
 29 such property consists, and what is the value thereof?  
 30 Question 18. Is the applicant under any forcible restraint; if  
 31 so, what?  
 32 Question 19. Has the patient received any aid from the county;  
 33 if so, what?  
 34 Question 20. Give name and address of the friends of the pa-  
 35 tient, with whom the superintendent of the insane asylum can cor-  
 36 respond, as circumstances require, for the benefit of the patient.  
 37 Question 21. Give any information in your possession not em-  
 38 braced in the above questions, which may throw light on the men-  
 39 tal or physical condition of the patient.

**Sec. 127. Board to determine question of admission in doubtful cases.**

Whenever an insane person shall be conveyed to the asylum, 1881, c. 297, s. 20.  
 2 and the superintendent is in doubt as to the propriety of his or her  
 3 admission, he may convene the board of directors (any three of  
 4 whom shall constitute a quorum) for the purpose of examining and  
 5 deciding if such person is a proper subject for admission; and if a  
 6 majority of such board decide that he or she is a proper subject, he  
 7 shall be received into the asylum; but such board may at any time  
 8 thereafter deliver said insane person to any friend who will become  
 9 bound, with good security, to restrain him or her from commit-  
 10 ting injuries, and to keep, maintain and take care of him or her,  
 11 in the same manner as he or she might have become bound under  
 12 the authority of the justices of the peace.

**Sec. 128. Removal of incurable insane from the asylum; expenses of removal.**

1881, c. 297, s. 21.

Whenever the superintendent shall deem an insane person to be  
2 incurable, and that his or her being at large would not be injuri-  
3 ous to himself or herself, or dangerous to the community, he shall  
4 certify the fact to the clerk of the superior court of the county  
5 from which the patient was sent, and also to the board of directors,  
6 (any three of whom shall constitute a board) who may, if deemed  
7 expedient, remove such patient from the asylum, and it shall be  
8 the duty of the sheriff of the county from which the patient was  
9 sent, to convey said patient from the asylum to the county of his  
10 settlement, at the expense of said county.

**Sec. 129. Proceedings to secure transfer to asylum of dangerous lunatics whose estates are solvent.**

1881, c. 297, s. 22.

When an affidavit in writing shall be made before a justice of  
2 the peace, by any citizen of the state, that any person who has  
3 been found by the inquisition of a jury to be an idiot, lunatic or  
4 *non compos mentis*, and whose estate in the hands of his or her  
5 guardian shall be sufficient to support him or her and family, if  
6 he or she has any, is mischievously inclined, and that his or her  
7 going at large is dangerous to the community, it shall be lawful  
8 for said justice to issue his warrant requiring the sheriff to bring  
9 him or her before two justices of the peace within ten days, in  
10 order that the complaint may be duly examined, and the sheriff  
11 when he executes the warrant is to notify the guardian.

**Sec. 130. When and how carried to the asylum.**

1881, c. 297, s. 23.

If the said justices on the return of the warrant are satisfied  
2 that the facts stated in the complaint are true, it shall be their  
3 duty to issue process to the sheriff commanding him to take such  
4 insane person and convey him or her to the Western North Caro-  
5 lina Insane Asylum, and there deliver him or her to the superin-  
6 tendent thereof for safe keeping: *Provided, however,* that the mis-  
7 chievous disposition of such insane person shall have been proved  
8 by at least two competent witnesses who have been acquainted  
9 with him or her for more than twelve months.

**Sec. 131. Justice to return copy of proceedings to superior court clerk; clerk to make order for expenses.**

1881, c. 297, s. 24.

If the insane person mentioned in the preceding section be sent  
2 to the asylum, a copy of the proceedings shall be returned by the  
3 justices to the clerk of the superior court of his county, who shall  
4 have power from time to time to make such orders or decrees con-  
5 cerning the payments of the expenses of sending him or her to  
6 said asylum, or sending him or her back should he or she be dis-  
7 charged therefrom, as to said clerk shall seem just and reasonable  
8 under all the circumstances of the case.

Sec. 132. Discharge of insane person by order of judge; bond for his safe keeping, &c.; action by person injured; action by solicitor for benefit of insane person.

Any judge of the superior or supreme court may make an order 1881, c. 297, s. 25.  
2 for the discharge from the asylum, of any person confined there  
3 under this chapter, if the superintendent thereof shall certify to him  
4 in writing that he is well satisfied that such person is not mischiev-  
5 ous, and would not be dangerous to the community if discharged :  
6 *Provided*, that the signature to the certificate be duly acknowledged  
7 or proved before the clerk of the superior court for Burke county,  
8 and shall be certified by him under his official seal. All bonds  
9 executed for restraining insane persons from committing injuries,  
10 and for their safe keeping, support and care, shall be payable to  
11 the state of North Carolina in the sum of five hundred dollars at  
12 least, and shall be transmitted to the clerk of the superior court of  
13 the county wherein the insane person is settled for safe keeping,  
14 and may be put in suit by any person injured by the insane per-  
15 son by reason of his or her insane condition, and shall be put in  
16 suit by the solicitor for the judicial district in which the county  
17 of the insane person's residence is situated, for any other breach  
18 thereof, wherein the damages received shall be for the use of the  
19 insane person, and shall be at least fifty dollars.

Sec. 133. Form of bond.

The form of the bond mentioned in the preceding section shall 1881, c. 297, s. 26.  
2 be as follows :

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

Know all men by these presents, that we, A..... B....., principal, and C.....D.....  
and E..... F....., sureties, are held and firmly bound unto the state of North Carolina,  
in the sum of ..... dollars, for the payment whereof we bind ourselves and each of us.

Witness our hands and seals this ..... 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 Western North Carolina Insane Asylum (or to 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.]

Sec. 134. When insane person to be sent back to asylum; not to be re-discharged on bond of defaulting obligor.

Whenever it shall be made to appear to the clerk of the superior 1881, c. 297, s. 27.  
2 court of the county in which such insane person was resident, that  
3 the conditions of the bond are not faithfully complied with, the  
4 insane person shall be sent to the asylum by such clerk of the  
5 superior court, unless some other responsible and discreet friend  
6 will undertake to fulfil the duties of said obligation; and when-  
7 ever said insane person shall be sent back to the asylum, he or she  
8 shall not be delivered on any new bond of the defaulting obligor.



**Sec. 135. Asylum to be supported by appropriations.**

1881, c. 297, s. 28.

All dues to the asylum from any and all sources shall be paid  
2 into the state treasury; and the said asylum shall be supported  
3 by appropriations from the state treasury.

**Sec. 136. Board to regulate admissions to asylum.**

1881, c. 297, s. 29.

The board of directors shall have power to regulate admissions  
2 into the asylum, having regard to the probabilities of curing the  
3 parties of their mental diseases.

**Sec. 137. How money to be drawn from state treasury for the support of the asylum.**

1881, c. 297, s. 29.

All money applied for the use and support of the Western Insane  
2 Asylum, and the insane therein, shall be paid out of the state treas-  
3 ury on warrants drawn by a majority of the board of directors, or  
4 by the superintendent, and countersigned by at least two of the  
5 board of directors and approved by the governor.

**Sec. 138. Money belonging to the asylum payable into the state treasury; donations.**

1881, c. 297, s. 29.

All money and proceeds of property given to the asylum, and  
2 all money arising from any estate which may be owned by the  
3 asylum, shall be paid into the state treasury, and all donations in  
4 which there shall be special directions for its application, shall be  
5 kept as a distinct fund, and shall be faithfully applied as the donor  
6 may have directed.

**Sec. 139. Officers and employees exempt from service on juries, &c.**

1881, c. 297, s. 32.

In order to secure their constant supervision and attendance, the  
2 officers and employees of the asylum shall be exempt from serving  
3 on juries, in the militia, and from the duty of working on the pub-  
4 lic roads.

**Sec. 140. Board to keep record of proceedings; their clerk and his compensation; books open to inspection.**

1881, c. 297, s. 33.

The board of directors shall cause all their proceedings to be  
2 faithfully and carefully written and recorded in books, and to this  
3 end may employ a clerk and pay him a reasonable compensation  
4 for his services. The books shall at all times be open to the inspec-  
5 tion of the board of public charities and of the general assembly.

**Sec. 141. General assembly and board of public charities ex-officio visitors to asylum; duties of board.**

1881, c. 297, s. 34.

The board of public charities and the members of the general as-  
2 sembly shall be *ex officio* visitors of the Western Insane Asylum. It  
3 shall be the duty of the board of public charities to visit the asylum  
4 from time to time as they may deem expedient to examine into its  
5 condition, and make report thereon to the general assembly, with

6 such suggestions and remarks as they think proper. And to said  
7 board of public charities, and to the board of directors of the asylum  
8 only shall the superintendent be required to make reports or  
9 furnish statistics.

**Sec. 142. Fiscal year.**

The close of the fiscal year shall be the thirty-first day of Decem- 1881, c. 297, s. 35.  
ber in each and every year and all accounts and estimates shall be  
3 made with reference thereto.

**Sec. 143. When county commissioners to order discharge of insane person not in asylum.**

It shall be the duty of the board of county commissioners, by 1881, c. 297, s. 36.  
2 proper order to that effect, to discharge any ascertained lunatic in  
3 their county not admitted to the insane asylum, when it shall  
4 appear upon the certificate of two respectable physicians and the  
5 chairman of their board that such lunatic ought to be discharged  
6 if in the insane asylum.

**Sec. 144. Proceedings to place insane persons possessed of sufficient income in asylum outside of the state.**

Whenever any person shall be found to be insane in the mode 1881, c. 297, s. 37.  
2 hereinbefore prescribed, and such person shall be possessed of an  
3 income amply sufficient to support those who may be legally de-  
4 pendent for support on the estate of such insane person, and more-  
5 over to support and maintain such insane person in any named  
6 asylum situate out of the state; and such insane person, if of capa-  
7 ble mind to signify such preference, shall in writing declare his or  
8 her wish to be placed in such asylum without the state, instead of  
9 of being in one of the asylums established by the state; and two  
10 respectable physicians who shall have examined such insane per-  
11 son with the justices appointed by said chapter to make the exam-  
12 ination shall deem it proper, then it may be lawful for said justices  
13 of the peace, together with said physicians, to recommend in writ-  
14 ing that such insane person shall be placed in the asylum so chosen  
15 as a patient thereof.

**Sec. 145. Duty of person having custody of estate of such insane persons, to supply necessary means.**

It shall be the duty of any person having the legal custody of 1881, c. 297, s. 38.  
2 the estate of such insane person, to supply the funds for his or her  
3 support in the asylum in which he or she may be placed, during  
4 his or her stay therein, and so long as they may be sufficient for  
5 that purpose, over and beyond maintaining and supporting those  
6 persons who may be legally dependent on the estate as aforesaid.

**Sec. 146. Justices to report proceedings to superior court clerk.**

It shall be the duty of said justices to report the proceedings in 1881, c. 297, s. 39.

2 all such cases to the clerk of the superior court of the county in  
3 which such insane person may reside or be domiciled as provided.

**Sec. 147. Clerk to lay proceedings before judge.**

1881, c. 297, s. 40.

The clerk of the court shall lay the said proceedings before the  
2 judge of the superior court of the district in which the insane per-  
3 son may reside or be domiciled, and if he approve them he shall  
4 so declare in writing, and such proceedings, with the approval  
5 thereof, shall be recorded by said clerk.

**Sec. 148. Certified copy of proceedings with approval of judge sufficient warrant to authorize removal to asylum designated.**

1881, c. 297, s. 41.

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

**Sec. 149. Indigent insane to have priority of admission to asylum.**

1881, c. 297, s. 42.

In the admission of patients to the Western North Carolina  
2 Insane Asylum, priority of admission shall be given to the indi-  
3 gent insane: *Provided, however,* that the board of directors may  
4 regulate admissions, having in view the curability of patients, and  
5 the welfare of the institution.

**EASTERN NORTH CAROLINA INSANE ASYLUM.**

**Sec. 150. The Eastern North Carolina Insane Asylum incorporated; its name and corporate powers.**

1881, c. 206, s. 1.

The Eastern North Carolina Insane Asylum is hereby constituted  
2 a corporation and shall be and remain a corporation under that  
3 name, and the said Eastern North Carolina Insane Asylum is here-  
4 by invested with all the property and rights held by the Colored  
5 Insane Asylum near Goldsboro, and by that name to-wit, The  
6 Eastern North Carolina Insane Asylum, it may acquire and hold  
7 for the purpose of the accommodation, maintenance, support and  
8 care of the colored insane of this state all such property and estate  
9 as may be devised, bequeathed or in any way given or conveyed  
10 to it.

**Sec. 151. Board of directors; their term of office, classification, &c.**

1881, c. 206, s. 2.

The affairs of the Eastern North Carolina Insane Asylum shall  
2 be managed by a board of nine directors, of whom five shall be a  
3 quorum for the transaction of business. And the term of office of  
4 the first to be board appointed under this chapter shall begin March  
5 first, one thousand eight hundred and eighty-one, or as soon there-  
6 after as they may be confirmed by the senate, and continue until the  
7 first meeting, at which time they shall be divided into three classes:  
8 the seats of the first class shall be vacated at the expiration of the



9 second year, of the second class at the expiration of the fourth year,  
10 and of the third class at the expiration of the sixth year, from the  
11 time of their appointment, and afterwards they shall be appointed  
12 at the expiration of their respective terms for six years.

**Sec. 152. Executive committee; their powers, &c.**

The board of directors shall out of their number appoint three 1881, c. 206, s. 3.  
2 members as an executive committee, two of whom shall reside in  
3 or near the town of Goldsboro, who shall hold their office as such  
4 for one year, and shall have such powers and be subject to such  
5 duties as the board of directors may prescribe, not inconsistent with  
6 the provisions of this chapter.

**Sec. 153. Duties of the board; their traveling expenses allowed.**

The board of directors shall complete the erection of the asylum 1881, c. 206, s. 4.  
2 and such out-buildings as may be necessary for the purposes of its  
3 construction, as appropriations may be made for that object, and  
4 they shall direct and manage the affairs of the institution, and for  
5 its better government make all necessary by-laws not inconsistent  
6 with the laws of the state; shall have power to receive, hold, man-  
7 age, convey or otherwise dispose of, in the name of the institution,  
8 all such property or estate as may hereafter be given or otherwise  
9 conveyed to the asylum; and the members of the board shall serve  
10 without reward, save their traveling expenses incurred in the dis-  
11 charge of their official duties.

**Sec. 154. The board; their meetings, and report to the general assembly.**

The board of directors shall convene at the asylum on the first 1881, c. 206, s. 5.  
2 Wednesday after the first Monday in each year, and at such other  
3 times as they shall appoint, and investigate the administration of  
4 its affairs and report on the same to the general assembly, with  
5 such remarks and recommendations, as to them shall seem expe-  
6 dient.

**Sec. 155. Superintendent; his qualifications, term of office and removal.**

The board of directors shall appoint a superintendent of the in- 1881, c. 206, s. 6.  
2 stitution, and prescribe his duties. He shall be a skillful physi-  
3 cian, educated to his profession, of good moral character, of prompt  
4 business habits, of kindly disposition, and a married man; and he  
5 shall reside in the institution. He shall hold his office for six  
6 years from and after his appointment, unless sooner removed by  
7 the board, who may, for infidelity to his trust, gross immorality,  
8 incompetency to discharge the duties of his office, fully proved  
9 and declared, and the proof thereof recorded in the book of their  
10 proceedings, remove him and appoint another in his place.

**Sec. 156. Assistant physician; his term of office and removal.**

1881, c. 206, s. 7.

The board of directors, when in their judgment it may become  
 2 necessary, may appoint an assistant physician, and, with the  
 3 advice and consent of the superintendent, prescribe his duties.  
 4 He shall hold his place for four years from and after his  
 5 appointment unless sooner removed by the board, for good cause,  
 6 which shall be specified and recorded in their proceedings.

**Sec. 157. Steward and other officers; their removal; treasurer.**

1881, c. 206, s. 8.

The board of directors, at their annual meeting, shall, on the  
 2 nomination of the superintendent, appoint a steward, matron and  
 3 other officers whose appointment is not elsewhere vested, who shall  
 4 hold their places for one year from the first of January ensuing  
 5 their appointment, unless sooner removed by the board for good  
 6 cause, which cause shall be specified in their proceedings, and  
 7 other officers shall be appointed for the unexpired term of those  
 8 removed. The state treasurer shall be treasurer *ex-officio*.

**Sec. 158. The board to regulate salaries, &c.**

1881, c. 206, s. 9.

The board of directors, at their annual meeting, shall fix the  
 2 salaries and compensation of the superintendent, and the officers  
 3 and employees whose services may be necessary for the manage-  
 4 ment of the asylum? *Provided*, that the salaries shall not be dimin-  
 5 ished during the term of the incumbents.

**Sec. 159. Superintendent to have control of other officers.**

1881, c. 206, s. 10.

The superintendent shall exercise exclusive direction and con-  
 2 trol over all the subordinate officers and employees engaged in the  
 3 service and labors of the asylum, and in every case of misconduct  
 4 may discharge such employees as have been employed by himself  
 5 or his predecessor, and shall report to the board of directors the  
 6 misconduct of all other subordinates.

**Sec. 160. Board to make by-laws; by-laws and report of the superintendent to be published; copies to be sent to clerks of superior court.**

1881, c. 206, s. 11.

The board of directors shall make all such by-laws and regula-  
 2 tions for the government of the institution as shall be necessary ;  
 3 among which regulations shall be such as shall, in the language  
 4 of the constitution, make the institution as nearly self-supporting  
 5 as is consistent with the purpose of its creation. The board shall  
 6 cause the by-laws and regulations, the report of the superintendent  
 7 and that of the treasurer, to be published with their report to the  
 8 general assembly, copies of which shall be sent to the clerk of the  
 9 superior court of each and every county in the state.

**Sec. 161. Meetings of the board.**

1881, c. 206, s. 12.

The board of directors shall hold meetings at the asylum from

2 time to time, and diligently examine into the government and  
3 condition, as often as they may deem necessary.

Sec. 162. Removal to asylum of insane colored persons confined in jail otherwise than for crime.

Every insane colored person confined in jail for any other cause 1881, c. 206, s. 13.  
2 than crime, may be removed to the Eastern North Carolina Insane  
3 Asylum upon the order of the clerk of the superior court of the  
4 county in which the jail is situated.

Sec. 163. Removal of insane colored persons confined for crime, &c.

The judges of the superior court in their respective districts 1881, c. 206, s. 14.  
2 shall allow to be committed to the asylum as a patient, any per-  
3 son who may be confined in jail, on a criminal charge of any kind,  
4 or degree, or upon a peace warrant, whenever the judge shall be  
5 satisfied by a verdict of a jury of inquisition that the alleged crim-  
6 inal act was committed while such person was insane.

Sec. 164. Proceedings to procure admission of insane persons to the asylum.

For admission into the asylum in other cases, the following pro- 1881, c. 206, s. 15.  
2 ceedings shall be had: Some respectable citizen, residing in the  
3 county of the alleged insane person, shall make before and file with  
4 a justice of the peace of the county an affidavit in writing, which  
5 shall be substantially as follows:

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

The undersigned, residing in said county, maketh oath that he hath carefully examined  
....., the alleged lunatic, and believes him or her to be an insane person and he or  
she is, in the opinion of the undersigned, a fit subject for admission into the insane asylum.  
Dated, ..... day of ....., 18.....  
A..... B....., (Affiant.)

Subscribed and sworn to C..... D....., J. P.

6 Whereupon, unless the person or persons' in whose care and cus-  
7 tody the alleged insane is, will agree to bring him or her before  
8 the said justice without a warrant, the justice shall issue a precept,  
9 directed to the sheriff or a constable as follows:

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.  
Given under my hand, this ..... day of ..... 18 .....

C..... D....., J. P.

10 Upon the bringing of the alleged insane person before the jus-  
11 tice by his or her friends, or upon the return of the precept with  
12 the body of the insane person, the justice shall cause to be associ-  
13 ated with him two or more justices of the county, who together shall  
14 proceed to examine into the condition of mind of the supposed in-



15 sane person, and shall take the testimony of at least one respecta-  
 16 ble physician, and such other of them as they may think proper.  
 17 If the justices, or any two of them, shall decide that such person is  
 18 insane, and some friend, as he may do, will not become bound,  
 19 with good security, to restrain him or her from committing injur-  
 20 ies, and to keep, support and take care of him or her until the cause  
 21 for confinement shall cease, the said justices, or any two of them,  
 22 shall direct the insane person to be removed to the asylum as a  
 23 patient; and to that end they shall direct a warrant to the sheriff  
 24 or constable, and at the same time shall transmit to the board of  
 25 directors the examination of the witnesses, and a statement of such  
 26 facts as the said justices shall deem pertinent to the subject matter,  
 27 which warrant shall be substantially as follows:

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 Eastern North Carolina Insane Asylum at Goldsboro, 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.

**Sec. 165. Justices of the peace to report proceedings to clerk of the superior court; questions and answers to be transmitted to the board.**

1881, c. 206, s. 16.

Whenever the justices of the peace, under the provisions of the  
 2 preceding section, shall direct any insane person to be removed to  
 3 the asylum as a patient for safe keeping, it shall be their duty to  
 4 make a full report of their proceedings to the clerk of the superior  
 5 court of their county. The following interrogatories with their  
 6 respective answers by competent witnesses, shall likewise be trans-  
 7 mitted with the other papers to the board of directors:

8 Question 1. What is the name of the patient?  
 9 Question 2. Is he or she white or colored?  
 10 Question 3. What is his or her age?  
 11 Question 4. Is he or she married or single?  
 12 Question 5. What is the supposed cause of insanity?  
 13 Question 6. In what way is the disease exhibited?  
 14 Question 7. Has any medical treatment been pursued; if so,  
 15 what kind and by whom?  
 16 Question 8. How long has he or she been insane? Count from  
 17 first symptoms.  
 18 Question 9. Has the patient manifested any propensity to injure  
 19 himself or others; if so, in what way?  
 20 Question 10. Has he or she been subject to epilepsy?  
 21 Question 11. Have any of his or her ancestors been insane; if so,  
 22 state what ancestors, and what was the character of their insanity?

23 Question 12. Has he or she any family, and, if so, what persons  
24 compose it?

25 Question 13. Are any of them insane, and what is the character  
26 of such insanity?

27 Question 14. What is the occupation of the patient?

28 Question 15. How many attacks of mental disease has the pa-  
29 tient had?

30 Question 16. Are the parents of the insane person related by  
31 blood; if so, what is the degree of relationship?

32 Question 17. Has the applicant property; if so, state in what  
33 such property consists, and what is the value thereof?

34 Question 18. Is the applicant under any forcible restraint; if  
35 so, what?

36 Question 19. Has the patient received any aid from the county;  
37 if so, what?

38 Question 20. Give name and address of the friends of the pa-  
39 tient, with whom the superintendent can regularly correspond in  
30 his behalf.

**Sec. 166. Board to determine question of admission in doubtful cases.**

Whenever an insane person shall be conveyed to the asylum, 1881, c. 206, s. 17.  
2 and the superintendent is in doubt as to the propriety of his or her  
3 admission, he may convene the board of directors (any three of  
4 whom shall constitute a quorum) for the purpose of examining and  
5 deciding if such person is a proper subject for admission; and if a  
6 majority of such board decide that he or she is a proper subject, he  
7 or she shall be received into the asylum; but such board may at any  
8 time thereafter deliver said insane person to any friend who will  
9 become bound, with good security, to restrain him or her from  
10 committing injuries, and to keep, maintain and take care of him  
11 or her, in the same manner as he or she might have become bound  
12 under the authority of the justices of the peace.

**Sec. 167. Removal of incurable insane from the asylum.**

Whenever the superintendent shall deem an insane person to be 1881, c. 206, s. 18.  
2 incurable, and that his or her being at large would not be injuri-  
3 ous to himself or herself, or dangerous to the community, he shall  
4 certify the fact to the clerk of the superior court of the county  
5 from which the patient was sent, and also to the board of directors,  
6 (any three of whom shall constitute a quorum) who may, if deemed  
7 expedient, remove such patient from the asylum.

**Sec. 168. Proceedings to secure the transfer to asylum of dangerous lunatics, &c.,  
whose estates are solvent.**

When an affidavit in writing shall be made before a justice of 1881, c. 206, s. 19.  
2 the peace, by any citizen of the state, that any person who has  
3 been found by the inquisition of a jury to be a lunatic or

4 *non compos mentis*, and whose estate in the hands of his or her  
 5 guardian shall be sufficient to support him or her and family, if  
 6 he or she has any, is mischievously inclined, and that his or her  
 7 going at large is dangerous to the community, it shall be lawful  
 8 for said justice to issue his warrant requiring the sheriff to bring  
 9 him or her before two justices of the peace within ten days, in  
 10 order that the complaint may be duly examined, and the sheriff  
 11 when he executes the warrant is to notify the guardian.

**Sec. 169. When and how conveyed to asylum.**

1881, c. 206, s. 20.

If the said justices on the return of the warrant are satisfied  
 2 that the facts stated in the complaint are true, it shall be their  
 3 duty to issue process to the sheriff commanding him to take such  
 4 insane person and convey him or her to the Eastern North Caro-  
 5 lina Insane Asylum, and there deliver him or her to the superin-  
 6 tendent thereof for safe keeping: *Provided, however,* that the mis-  
 7 chievous disposition of such insane person shall have been proved  
 8 by at least two competent witnesses who have been acquainted  
 9 with him or her for more than twelve months.

**Sec. 170. Justices to return copy of proceedings to superior court clerk; clerk to make order concerning expenses.**

1881, c. 206, s. 21.

If the insane person mentioned in the preceding section be sent  
 2 to the asylum, a copy of the proceedings shall be returned by the  
 3 justices to the clerk of the superior court of his county, who shall  
 4 have power from time to time to make such orders or decrees con-  
 5 cerning the payment of the expenses of sending him or her to  
 6 said ayllum, or sending him or her back should he or she be dis-  
 7 charged therefrom, as to said clerk shall seem just and reasonable  
 8 under the circumstances of the case.

**Sec. 171. Discharge of insane person from asylum by order of judge; bond for his safe-keeping, &c.; action by injured person; action by solicitor for benefit of insane person.**

1881, c. 206, s. 22.

Any judge of the superior or supreme court may make an order  
 2 for the discharge from the asylum, of any person confined there  
 3 under this chapter, if the superintendent thereof shall certify to him  
 4 in writing that he is well satisfied that such person is not mischiev-  
 5 ous, and would not be dangerous to the community if discharged:  
 6 *Provided,* that the signature to the certificate be duly acknowledged  
 7 or proved before the clerk of the superior court for Wayne county  
 8 and shall be certified by him under his official seal. All bonds  
 9 executed for restraining insane persons from committing injuries,  
 10 and for their safe keeping, support and care, shall be payable to  
 11 the state of North Carolina in the sum of five hundred dollars at  
 12 least, and shall be transmitted to the clerk of the superior court of  
 13 the county wherein the insane person is settled for safe keeping,  
 14 and may be put in suit by any person injured by the insane per-



15 son by reason of his or her insane condition, and shall be put in  
16 suit by the solicitor for the judicial district in which the county  
17 of the insane person's residence is situated, for any other breach  
18 thereof, wherein the damages received shall be for the use of the  
19 insane person, and shall be at least fifty dollars.

Sec. 172. Form and condition of the bond.

The form of the bond mentioned in the preceding section shall 1881, c. 206, s. 23.  
2 be as follows :

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

Know all men by these presents, that we, A..... B....., principal, and C ..... D.....  
and E ..... F....., sureties, are held and firmly bound unto the state of North Carolina, in  
the sum of ..... dollars, for the payment whereof we bind ourselves and each of us.

Witness our hands and seals this ..... 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 Eastern North Carolina Insane Asylum (or to 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.]

Sec. 173. When insane person re-sent to the asylum ; not to be re-discharged on  
new bond of defaulting obligor.

Whenever it shall be made to appear to the clerk of the superior 1881, c. 206, s. 24.

2 court of the county in which such insane person was resident, that  
3 the conditions of the bond are not faithfully complied with, the  
4 insane person shall be sent to the asylum by such clerk of the  
5 superior court, unless some other responsible and discreet friend  
6 will undertake to fulfil the duties of said obligation ; and when-  
7 ever said insane person shall be sent back to the asylum, he or she  
8 shall not be delivered on any new bond of the defaulting obligor.

Sec. 174. Dues to asylum payable to state treasurer ; to be supported by appro-  
priations ; how money to be drawn from state treasury for support of asylum ;  
disbursements made on warrant of superintendent.

All dues to the asylum from any and all sources shall be paid 1881, c. 206, s. 25.

2 into the state treasury, and the said Eastern North Carolina  
3 Insane Asylum shall be supported by appropriations from the  
4 state treasury. All moneys applied for the use and support of  
5 the institution and the insane therein, shall be paid out of the  
6 state treasury, on warrants drawn by the majority of the board  
7 of directors, or by the superintendent, and countersigned by at  
8 least two of the board of directors, and approved by the governor,  
9 and all disbursements shall be made upon the warrant of the super-  
10 intendent.

**Sec. 175. Money belonging to asylum payable into state treasury ; donations.**

1881, c. 206, s. 26.

All money and proceeds of property given to the asylum, and  
2 all money arising from any estate which may be owned by the  
3 asylum, and all sums derived from the payments for the support  
4 and care of paying patients, the charges for whose maintenance  
5 shall be fixed by the board of directors, shall be paid into the state  
6 treasury, and all donations in which there shall be special direc-  
7 tions for its application, shall be kept as a distinct fund and shall  
8 be faithfully applied as the donor may have directed.

**Sec. 176. The board authorized to compromise claims for board of patients.**

1881, c. 206, s. 27.

The board of directors shall have power to compromise or settle,  
2 on such terms as may seem to them equitable, all claims due the  
3 asylum for board of paying patients, whether in suit or otherwise.

**Sec. 177. Board to regulate admissions to the asylum.**

1881, c. 206, s. 28.

The board of directors shall have power to regulate admissions  
2 into the asylum, having regard to probabilities of curing the  
3 parties of their mental diseases, and, in the admission of patients,  
4 preference shall be given to the indigent insane: *Provided*, that  
5 the board of directors shall have power to regulate admissions as  
6 to receive cases of probable curability, as may best subserve the  
7 purpose of the institution.

**Sec. 178. Officers and employees exempt from serving on juries, &c.**

1881, c. 206, s. 29.

In order to secure their constant supervision and attendance, the  
2 officers and employees of the asylum shall be exempt from serving  
3 on juries, in the militia, and from the duty of working on the pub-  
4 lic roads.

**Sec. 179. Board to keep records of proceedings ; their clerk and his compensation ; books open to inspection of general assembly.**

1881, c. 206, s. 30.

The board of directors shall cause all their proceedings to be  
2 faithfully and carefully written and recorded in books, and to this  
3 end may employ a clerk, who may be the treasurer, and pay him a  
4 reasonable compensation for his services. The books shall at all  
5 times be open to the inspection of the general assembly.

**Sec. 180. Board of public charities and members of general assembly ex-officio visitors to the asylum ; duties of the board of public charities.**

1881, c. 206, s. 31.

The board of public charities and the members of the general as-  
2 sembly shall be *ex-officio* visitors of the Eastern Insane Asylum. It  
3 shall be the duty of the board of public charities to visit the asylum  
4 from time to time as they may deem expedient to examine into its  
5 condition, and make report thereon to the general assembly, with  
6 such suggestions and remarks as they think proper.

Sec. 181. Fiscal year, its close.

The close of the fiscal year shall be the thirty-first of Decem- 1881, c. 206, s. 32.  
ber in each and every year and all accounts and estimates shall be  
3 made with reference thereto.

CHAPTER SIX.  
ATTORNEYS AT LAW.

SECTION.  
182. Attorneys licensed by justices of supreme court.  
183. Persons from other states licensed, when.  
184. Attorney to take oaths.  
185. Tax on attorney's license.  
186. To pay a tax for license.  
187. To pay costs of suit dismissed for his failure to file a complaint.  
188. Guilty of fraud, to pay double damages.  
189. Judgment against attorney for wilful failure to pay over money collected for client upon demand.

SECTION.  
190. To be disbarred for such failure upon notice and production of the judgment.  
191. Justices of the peace not to practice as attorneys.  
192. Clerks of courts forbidden to practice law.  
193. Penalty.  
194. Power of attorney to be produced and filed by attorney, if required; if necessary to retain the power, what to be done.  
195. Right of attorney to speak.

Sec. 182. Attorneys licensed by justices of supreme court.

Persons who may apply for admission to practice as attorneys in 2 any court, shall undergo an examination before two or more of the 3 justices of the supreme court; and, on receiving certificates from 4 said justices of their competent law knowledge and upright charac- 6 ter, shall be admitted as attorneys in the courts specified in such 7 certificates.

*Ex parte* Thompson, 3 Haw., 355.

Sec. 183. Persons from other states licensed, when.

No person coming into this state from any other state, or from 2 any foreign country, with an intention to practice the law, shall be 3 admitted to practice as an attorney, unless he shall have previously 4 resided one year in this state, or shall produce to the said justices a 5 testimonial from the chief magistrate of such state or country, or 6 from some other competent authority, that he is of unexception- 6 able moral character.

Sec. 184. Attorney to take oaths.

Attorneys before they shall be admitted to practice law shall, in 2 open court before the judges thereof, take the oath prescribed for 3 attorneys, and also the oaths of allegiance to the state, and to sup- 4 port the constitution of the United States, prescribed for all public 5 officers; and, upon such qualification had, and oath taken, may 6 act as attorneys during their good behavior.

R. C., c. 9, s. 3.  
1777, c. 115, s. 8.



**Sec. 185. Tax on attorney's license.**

R. C., c. 99, s. 4.  
Resolution of  
1872-'3.

There shall be a tax of twenty dollars upon each license to an  
2 attorney to practice law in the courts of the state, to be paid at the  
3 time of obtaining license, to the clerk of the supreme court, and he  
4 shall apply the same as prescribed in the chapter of this code, en-  
5 titled "Public Libraries." The clerk shall be entitled to six per  
6 cent. for receiving and applying said money.

**Sec. 186. To pay a tax for license.**

R. C., c. 9, s. 4.  
1806, c. 698.

No attorney shall be permitted to practice until he shall produce  
2 the receipt of the clerk, showing that he has paid the tax for his  
3 license.

**Sec. 187. To pay costs of suit dismissed for his failure to file a complaint.**

R. C., c. 9, s. 5.  
1786, c. 253, s. 6.

When a plaintiff shall be compelled to pay the costs of his suit,  
2 in consequence of a failure on the part of his attorney to file his  
3 complaint in proper time, he may warrant such attorney for all  
4 the costs by him so paid, and the receipt of the clerk may be given  
5 in evidence in support of such claim.

Robbins and Jackson, *ex parte*, 63-309.

**Sec. 188. Guilty of fraud, to pay double damages.**

R. C., c. 9, s. 6.  
1743, c. 37.

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

**Sec. 189. Judgment against attorney for wilful failure to pay over money collected for client upon demand.**

1881, c. 129, s. 1.

Any attorney into whose hands shall be placed for collection any  
2 promissory note, bond, account, chose in action, writing obligatory  
3 or any claim calling for the payment of money, who shall collect  
4 the same, and, upon the demand of his client, wilfully fail to pay  
5 over the amount so collected, shall, upon the ascertainment of the  
6 fact by jury, have judgment taken against him for the amount of  
7 his delinquency together with interest on the amount of the judg-  
8 ment until the same shall be paid.

**Sec. 190. To be disbarred for such failure upon notice and production of the judgment.**

1881, c. 129, s. 2.

Any practicing attorney who shall wilfully fail as aforesaid to  
2 pay over on demand to his client any moneys which may be due  
3 as above set forth, may, upon motion before any superior court  
4 judge, and the production of the judgment mentioned in the pre-  
5 ceding section, be debarred from practicing in any courts of the  
6 state.

**Sec. 191. Justices of the peace not to practice as attorneys.**

It shall not be lawful for a justice of the peace to practice law as  
2 an attorney in any of the judicial courts held for the county wherein  
3 he holds the office of justice of the peace. And any person offend-  
4 ing against the provisions of this chapter shall be guilty of a mis-  
5 demeanor, and, upon conviction, be fined at the discretion of the  
6 court not less than two hundred dollars, and be removed by judg-  
7 ment of the court from the office of justice of the peace.

1870-'1, c. 90, s. 1.

**Sec. 192. Clerks of courts forbidden to practice law.**

It shall not be lawful for any deputy or assistant clerk of the  
2 superior court clerk of any county to practice law as an attorney  
3 in any of the judicial courts held for the county in which he per-  
4 forms the duties of a deputy or assistant clerk as aforesaid.

1871-'2, c. 120, s. 1.  
1890, c. 43.**Sec. 193. Penalty.**

Any person offending against the provisions of this section shall  
2 be guilty of a misdemeanor, and upon conviction be fined at the  
3 discretion of the court, not less than two hundred dollars.

1871-'2, c. 120, s. 1.

**Sec. 194. Power of attorney to be produced and filed by attorney, if required; if necessary to retain the power, what to be done.**

Every attorney who shall claim to enter an appearance for any  
2 person shall, upon being required so to do, produce and file in the  
3 clerk's office of the court, in which he shall claim to enter an ap-  
4 pearance, a power or authority to that effect signed by the persons  
5 or some one of them for whom he is about to enter an appearance,  
6 or by some person duly authorized in that behalf, otherwise he  
7 he shall not allowed so to do: *Provided*, that when any attorney  
8 shall claim to enter an appearance by virtue of a letter to him  
9 directed, (whether such letter purport a general or particular em-  
10 ployment,) and it shall be necessary for him to retain the letter in  
11 his own possession, he shall, on the production of said letter set-  
12 ting forth such employment, be allowed to enter his appearance,  
13 and the clerk shall note to that effect upon the docket.

R. C., c. 31, s. 57.  
(16).  
1844, c. 13.

Day v. Adams, 63—251; City of New Berne v. Jones, 63—606; Alsbaugh v. Jones, 64—29;  
Petteway v. Dawson, 64—450; Koonce v. Brittain, 84—221.

**Sec. 195. Right of attorney to speak.**

Any attorney appearing in any civil or criminal action shall be  
2 entitled to address the court or the jury for such a space of time as  
3 in his opinion may be necessary for the proper development and  
4 presentation of his case.

1874-'5, c. 114.

Leach v. Strange, 3 Hawks, 601; Grice v. Ricks, 3 Dev., 62; Greenlee v. McDowell, 4 Ire. Eq.,  
481; Potts v. Francis, 8 Ire. Eq., 300; Walton v. Sugg, Phil., 98; Kesler v. Hall, 64—60; *Ex parte*  
Schenck, 65—353; State v. Williams, 65—505; Kane v. Haywood, 66—1; Moye v. Cogdell, 69—93;  
Caldwell v. Beatty, 69—365; Mordecai v. Devereux, 74—673; State v. Miller, 75—73; Davis v. Hill,  
75—224; Coble v. Coble, 79—539; York v. Merritt, 80—285; Rogers v. McKenzie, 81—164.

## CHAPTER SEVEN.

## AUCTIONEERS.

## SECTION.

196. Auctioneers; how appointed.  
 197. Duties of auctioneers; to render semi-yearly to clerk sworn account of auction sales and amount of tax.  
 198. Penalty of two hundred dollars for acting without appointment.

## SECTION.

199. What sales exempt from auction tax.  
 200. Fees not over two and a half per cent.; one per cent. to be paid by town auctioneers to the town.

## Sec. 196. Auctioneers; how appointed.

R. C., c. 10, s. 1.  
 1818, c. 966, s. 2.  
 1824, c. 1249, s. 2.  
 1833, c. 22.

Any citizen of the state, desiring to exercise the business of an  
 2 auctioneer, shall apply to the board of county commissioners, or the  
 3 commissioners or other authority of incorporated towns in the  
 4 county in which he proposes to carry on such business, and, upon  
 5 his giving bond in the sum of five thousand dollars, payable to the  
 6 state of North Carolina, to be approved by said commissioners or  
 7 other authority conditioned that he will perform faithfully all the  
 8 duties required of auctioneers, the sheriff shall issue to him a license  
 9 to act as an auctioneer in said county for twelve months from the  
 10 date of the license.

Commissioners of Raleigh v. Holloway, 3 Haw., 234.

## Sec. 197. Duties of auctioneers; to render semi-yearly to clerk sworn account of auction sales and amount of tax.

R. C., c. 10, s. 2.  
 1818, c. 966, s. 2.  
 1824, c. 1249, s. 2.  
 1833, c. 22.

It shall be the duty of such auctioneers, on the first days respec-  
 2 tively of October and April, to render to the clerks of the superior  
 3 court of their respective counties, a true and particular account in  
 4 writing of all the moneys made liable to duty by law, for which  
 5 any goods, wares, or merchandise may have been sold at auction,  
 6 and also at private sale, where the price of the goods, wares, and  
 7 merchandise sold at private sale was fixed or agreed upon or gov-  
 8 erned by any previous sale at auction, of any goods, wares, and  
 9 merchandise of the same kind; which account shall contain a state-  
 10 ment of the gross amount of sales by them made for each particular  
 11 person or company at one time, the date of each sale, the names of  
 12 the owners of the goods, wares, and merchandise sold, and the  
 13 amount of the tax due thereon, which tax they shall pay as directed  
 14 by law: And which statement shall be subscribed by them, and  
 15 sworn to before the clerk of the said court, who is hereby author-  
 16 ized to administer the oath. And it shall be their further duty to  
 17 account with and pay to the person entitled thereto, the moneys  
 18 received on the sales by them made.

## Sec. 198. Penalty of two hundred dollars for acting without appointment.

R. C., c. 10, s. 3.  
 1820, c. 1065.

No person shall exercise the trade or business of an auctioneer,  
 2 by selling any goods, wares, or merchandise by auction, or by any



3 other mode of sale whereby the best or highest bidder is deemed  
4 to be the purchaser, unless such person shall be appointed an auc-  
5 tioneer pursuant to the provisions of this chapter, on pain of for-  
6 feiting to the state, for every such sale, the sum of two hundred  
7 dollars, which shall be prosecuted to recovery by the solicitor of  
8 the district.

**Sec. 199. What sales exempt from auction tax.**

Nothing in this chapter contained shall extend to any sale by  
2 auction of goods, wares and merchandise, made pursuant to, and in  
3 execution of, any order, decree, or judgment of the courts of the  
4 United States or of this state; or made in consequence of any  
5 assignment of property and estate for the benefit of creditors; or  
6 made by executors, administrators, or guardians; or made pursu-  
7 ant to any law touching the collection of any tax or duty, or sale  
8 of any wrecked goods; or to any article the product of the agricul-  
9 ture of this state, in its natural or unmanufactured state; or to any  
10 species of stock or domestic animals; or to any articles of house-  
11 hold furniture, or farming utensils which have been in use; but  
12 shall extend only to such articles of goods, wares, and merchandise  
13 as are the ordinary subject of traffic and sale by merchants and  
14 traders.

Clark v. Latham, 8 Jon., 1.

R. C., c. 10, s. 6.  
1818, c. 966, s. 1.  
1819, c. 993.

**Sec. 200. Fees not over two and a half per cent.; one per cent. to be paid by town auctioneer to the town.**

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

R. C. c. 10, s. 7.  
1818, c. 966, s. 5.  
1824, c. 1249, ss. 3, 4.

## CHAPTER EIGHT.

### BANKS.

**SECTION.**

201. May receive and pay out lawful currency, deal in exchange, &c.; hold real estate for transaction of business, or to secure debts; sell the same; lend money; receive deposits; guardians, &c., not exempt from liability on account of this section.

**SECTION.**

202. Actions by banks; notes of banks a set-off; judgments and executions in favor of bank paid off by notes of bank.

**Sec. 201. May receive and pay out lawful currency, deal in exchange, &c.; hold real estate for transaction of business, or to secure debts; sell the same; lend money; receive deposits; guardians, &c., not exempt from liability on account of this section.**

All banking institutions incorporated under the laws of this 1874-'5, c. 117.

2 state may receive and pay out the lawful currency of this state, or  
 3 of any of the states of the United States, deal in exchange, gold  
 4 and silver coin, bullion, uncurrent paper bonds and stocks, and  
 5 public or other securities, manufactured goods, cotton or other pro-  
 6 ducts of the country ; may purchase and hold real estate for the  
 7 transaction of business, or such as may be conveyed to secure debts  
 8 to said banks, or for other purposes, and may sell and convey the  
 9 same ; and may also hold such personal property as may be con-  
 10 veyed to secure debts, or acquired for other purposes, and at pleasure  
 11 sell or exchange the same ; may discount notes and other evidences of  
 12 debts and lend money at the legal rate of interest of this state, which  
 13 interest may be taken in advance at the time of loan in discount. It  
 14 may receive on deposit moneys on terms to be agreed on between  
 15 the officers and depositors, not exceeding the rate allowed by law.  
 16 The bank may also receive on deposit moneys held in trust by  
 17 administrators, executors, guardians or others, may issue certifi-  
 18 cates of deposit bearing interest not exceeding the legal rates,  
 19 *Provided*, that no administrator, executor, guardian or other person  
 20 acting in a fiduciary capacity shall be exempt from any liability on  
 21 their official bonds as such by the provisions mentioned in this sec-  
 22 tion. Bills, notes, certified checks or other obligations, which, when  
 23 signed by the proper officers of the bank, shall be as binding as if  
 24 under the seal of the bank ; those which are payable to order shall  
 25 be assignable by endorsement, and those which are payable to  
 26 bearer shall be negotiable and payable by delivery only.

**Sec. 202. Actions by banks ; notes of banks a set-off ; judgments and executions in favor of bank paid off by notes of bank.**

1866, c. 17, s. 15.  
 1868-'9, c. 77.

In all actions brought by any bank of the state, or by any  
 2 assignee or endorsee of said bank, or any officer of said bank, or  
 3 by a receiver appointed by court for said bank, it shall and may  
 4 be lawful for the defendant or defendants to set off by pleas  
 5 or on trial any note issued by said bank or its branches, whether  
 6 the same has been presented for payment or not, any law or usage  
 7 to the contrary notwithstanding, but said plea of set-off, or set-off  
 8 on trial, shall not avail to carry costs against the plaintiff, unless  
 9 there has been a tender of such payment before suit has been  
 10 brought, and all judgments and executions in favor of such bank,  
 11 or for the benefit of such bank may be paid off and discharged in  
 12 the notes of such bank : *Provided*, that this section shall not apply  
 13 to any debt reduced by the scale of depreciation of Confederate  
 14 currency, nor to any debt to any of said banks contracted since the  
 15 first day of May, one thousand eight hundred and sixty-five, the  
 16 consideration for which was specie, nor to costs.

## CHAPTER NINE.

## BASTARDY.

## SECTION.

203. Justices of the peace to have exclusive original jurisdiction; warrant issued upon complaint of woman or affidavit of county commissioners.
204. Proceedings; warrant issued for woman; warrant for putative father; issue of paternity; appeal, &c.
205. Upon appeal, parties and witnesses to be recognized; putative father making default; issue to be tried.
206. Upon issue of paternity, judge or justice to continue the case if he sees fit, until woman is delivered; in the meantime, to recognize defendant with surety for his appearance.

## SECTION.

207. Fine to be ten dollars, and allowance not to exceed fifty dollars.
208. Examinations to be taken within three years.
209. Execution may issue for maintenance.
210. In certain cases, putative father may be committed to house of correction, or instead thereof apprenticed.
211. Illegitimate children may be legitimated by superior court or judge.
212. Effects of such legitimation; legitimate in all respects as to father.

Sec. 203. Justices of the peace to have exclusive original jurisdiction; warrant issued upon complaint of woman or affidavit of county commissioners.

Justices of the peace of the several counties shall have exclusive original jurisdiction to issue, try and determine all proceedings in cases of bastardy in their respective counties. A warrant in bastardy shall be issued only, upon the voluntary affidavit and complaint of the mother of the bastard; or, upon the affidavit of one of the county commissioners, setting forth the fact that the bastard is likely to become a county charge.

1879, c. 92, s. 2.  
1879, c. 116.

State v. Collins, 85—511; State v. Wilkie, 85—513; State v. Crouse, 86—617.

Sec. 204. Proceedings; warrant issued for woman; warrant for putative father; issue of paternity; appeal, &c.

When complaint is made on affidavit by one of the county commissioners as set forth in the preceding section, to any justice of the peace of the county in which the woman resides, that any single woman within his county is big with child, or delivered of a child or children, he 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 surety, 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, or if proceedings have been instituted upon her own affidavit and complaint, she shall accuse any man of being the father of such child or children, the justice shall cause him to be brought before some justice of the peace of such county to answer the charge; and, if he shall, upon oath, deny that he is the father of such child or

R. C., c. 12, ss. 1, 4.  
1741, c. 30, s. 10.  
1799, c. 531, s. 2.  
1832, c. 10.  
1832, c. 17.  
1850, c. 14.  
1879, c. 92, s. 2.  
1879, c. 116.



19 children, the justice shall proceed to try the issue of paternity, and  
 20 if it shall be found that he is the father of the child or children, or  
 21 if he shall not deny upon oath that he is the father of the child or  
 22 children, then he shall stand charged with the maintenance there-  
 23 of, as the court may order, and shall give bond, with sufficient  
 24 surety, payable to the state of North Carolina, to perform said  
 25 order, and to indemnify the county where such child or children  
 26 shall be born, from charges for his or their maintenance, and may  
 27 be committed to prison until he find surety for the same, and shall  
 28 be liable for the costs of the issue or proceeding, and from this  
 29 judgment and finding, the affiant, the woman, or the defendant,  
 30 may appeal to the next term of the superior court of the county,  
 31 where the trial is to be had *de novo*. And upon the trial of the  
 32 issue, whether before the justice or at term, the examination of the  
 33 woman, as aforesaid, taken and returned, shall be presumptive evi-  
 34 dence against the person accused, subject to be rebutted by other  
 35 testimony which may be introduced by the defendant; and, if the  
 36 jury at term shall find that the person accused is the father of the  
 37 child or children, then the judge shall make the order for the mainte-  
 38 nance and for costs of proceeding, and shall take bond from the de-  
 39 fendant and his sureties for the maintenance of the child or chil-  
 40 dren, and to indemnify the county, and pay the costs; and, in de-  
 41 fault thereof, may imprison the defendant.

Wilkie v. West, 1 Murph. 319; State v. Barrow, 3 Murph. 121; State v. Petaway, 3 Hawks, 623; State v. Carson, 2 Dev. & Bat. 368; State v. Harshaw, 4 Dev. & Bat. 371; State v. Robeson, 2 Ire. 46; State v. Ledbetter, 4 Ire. 242; State v. Thompson, 4 Ire. 484; State v. Patton, 5 Ire. 180; State v. Lee, 7 Ire. 265; State v. Cordon, 8 Ire. 179; State v. Long, 9 Ire. 488; State v. Wilson, 10 Ire. 131; State v. Roberts, 10 Ire. 350; State v. Haithecock, 11 Ire. 32; State v. Jenkins, 12 Ire. 121; State v. Ellis, 12 Ire. 264; State v. Auman, 13 Ire. 241; State v. Floyd, 13 Ire. 382; State v. Herman, 13 Ire. 502; State v. Pate, Busbee, 244; State v. Brown, 1 Jones, 129; Adams v. Pate, 2 Jon. 14; State v. Thompson, 3 Jon. 365; Ward v. Bell, 7 Jon. 79; Clements v. Durham's Adm'rs, 7 Jon. 100; State v. Henderson, Phil. 229; State v. Allison, Phil. 346; State v. Elam, Phil. 460; State v. Palin, 63—471; State v. Waldrop, 63—507; State v. McQuaig, 63—550; State v. McIntosh, 64—607; State v. Hales, 65—244; State v. Beatty, 66—648; State v. Woodruff, 67—89; State v. Broadway, 69—411; State v. Green, 71—172; State v. Higgins, 72—226; State v. Hickerson, 72—421; State v. Beasley, 75—211; State v. Rose, 75—239; State v. Bennett, 75—305; State v. Britt, 78—439; State v. Rogers, 79—609; State v. Price, 81—516; State v. Bryan, 83—611; State v. Parish, 83—613; State v. Collins, 85—511; State v. Wilkie, 85—513; State v. Ingram, 85—515.

Sec. 205. Upon appeal parties and witnesses to be recognized; putative father making default, issue to be tried.

R. C., c. 12, s. 3.  
 1799, c. 531, s. 1.

When an appeal shall be taken as provided for in the preceding  
 2 section, the justice shall recognize the woman, and the person  
 3 accused of being the father of the child or children, with sufficient  
 4 surety, for the appearance of such woman and putative father at  
 5 the next term of the superior court for the county, and to abide by,  
 6 and perform the order of the court; said justice shall also recog-  
 7 nize the witnesses to appear at said superior court, and shall return  
 8 to said court the original papers in the proceeding and a transcript  
 9 of his proceedings, as required in other cases of appeal. If the puta-  
 10 tive father fails to appear, unless for good cause shown, the judge  
 11 shall direct the issue of paternity to be tried, and if the issues be

12 found against the person accused, he shall order a *capias* or attach-  
13 ment to be issued for the father, and may also enter up judgment  
14 against the father and his surety upon his recognizance.

Sec. 206. Upon issue of paternity, judge or justice to continue the case if he sees  
fit until woman is delivered; in the mean time to recognize defendant with  
surety for his appearance.

When the judge or justice trying the issue of paternity, as the  
2 case may be, shall deem it proper, he may continue the case until  
3 the woman shall be delivered of the child; but when a continu-  
4 ance is granted, the court shall recognize the person accused of  
5 being the father of the child with surety for his appearance either  
6 at the next term of the court or at a time to be fixed by the jus-  
7 tice granting the continuance, which shall be after the delivery of  
8 the woman.

R. C., c. 12, s. 2.  
1741, c. 30, s. 11.  
1799, c. 531, s. 2.  
1850, c. 14.

Sec. 207. Fine to be ten dollars, and allowance not to exceed fifty dollars.

When the issue of paternity shall be found against the putative  
2 father, or when he admits the paternity, he shall be fined by the  
3 judge or justice not exceeding the sum of ten dollars, which shall  
4 go to the school fund of the county, and the court shall make an  
5 allowance to the woman not exceeding the sum of fifty dollars, to  
6 be paid in such instalments as the judge or justice shall see fit,  
7 and he shall give bond to indemnify the county as prescribed in  
8 section two hundred and four; and in default of such payment  
9 he shall be committed to prison.

1879, c. 92, s. 2.

State v. Harshaw, 4 Dev. & Bat., 371; State v. Ellis, 12 Ire., 264.

Sec. 208. Examinations to be taken within three years after birth.

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

R. C., c. 12, s. 6.  
1814, c. 871, s. 1.

Sec. 209. Execution may issue for maintenance.

When the judge or justice shall charge the reputed father of a  
2 bastard child with its maintenance, and the father shall neglect to  
3 pay the same, then the judge or justice, notice being served on the  
4 defendant at least ten days before the return day stated in the  
5 notice, or such notice being returned by the sheriff or constable  
6 that the defendant is not to be found, may order an execution  
7 against the goods, chattels, lands and tenements of the father, for  
8 such sum as the court shall adjudge sufficient for the maintenance  
9 of the bastard child: *Provided*, that the party aggrieved by such  
10 non-payment shall apply for the same.

R. C., c. 12, s. 7.  
1799, c. 531, s. 3.

McPherson v. McCoy, 2 Dev. 391; Shaw v. Stewart, 1 Dev. & Bat., 412; State v. Beatty, 66-648.

**Sec. 210.** In certain cases putative father may be committed to house of correction, or instead thereof apprenticed.

1866-7, c. 10.

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.

**Sec. 211.** Illegitimate children may be legitimated by superior court at term.

R. C., c. 12, s. 8.  
1829, c. 19, s. 1.

The putative father of any illegitimate child 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.

*Drake v. Drake*, 4 Dev., 110; *Perry v. Newsom*, 1 Ire. Eq., 28.

**Sec. 212.** Effects of such legitimation; legitimate in all respects as to father.

R. C., c. 12, s. 9.  
1829, c. 19, s. 3.

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.

*Ivey v. Granberry*, 66-223.



## CHAPTER TEN.

## BILLS, BONDS AND PROMISSORY NOTES.

## SECTION.

213. Bills, bonds, and notes for money negotiable as inland bills of exchange; indorsee may sue when the obligee may sue.
214. Orders in writing; drawer or acceptor liable thereon; protest and notice thereof before action against drawer.
215. Days of grace on bills, &c.; except those payable on demand.
216. Interest on bills, &c.; when to accrue.
217. Bills, &c., payable on demand to bear interest.

## SECTION.

218. Contracts for delivery of articles bear interest as moneyed contracts.
219. Bills of exchange bear interest from time of payment.
220. Damages on protested bills of exchange at various places.
221. Protest of notary, justice of peace, or clerk of a court of record, evidence of demand.
222. Indorsers of negotiable securities liable as sureties.
223. Bonds payable to clerk, &c., for benefit of suitors, suable in name of state.

**Sec. 213.** Bills, bonds, and notes for money negotiable as inland bills of exchange; indorsee may sue when the obligee may sue.

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.*

R. C., c. 13, s. 1.  
1762, c. 70, s. 2.  
1786, c. 248, s. 1.  
1789, c. 314, s. 3.

2 Hawks, 269; Goodloe v. Taylor, 3 Hawks, 458; Lawrence v. Mabry, 2 Dev., 473; Hatcher v. McMorine, 3 Dev., 228; Hatcher v. McMorine, 4 Dev., 122; Purtel v. Morehead, 2 Dev. & Bat., 239; Haywood v. McNair, 2 Dev. & Bat., 283; Elliott v. Smitherman, 2 Dev. & Bat., 338; Alexander v. Oaks, 2 Dev. & Bat., 513; Dawson v. Pettway, 4 Dev. & Bat., 396; French v. Barney, 1 Ire., 219; Hubbard v. Williamson, 4 Ire., 266; Hubbard v. Williamson, 5 Ire., 397; Reddick v. Jones, 6 Ire., 107; Phelps v. Call, 7 Ire., 262; Ford v. Vandyke, 11 Ire., 227; Marsh v. Brooks, 11 Ire., 409; Ormond v. Moye, 11 Ire., 564; Hoke v. Carter, 12 Ire., 324; State Bank v. Bank of Cape Fear, 13 Ire., 75; Respass v. Latham, Busb. 138; Dickey v. Johnson, Busb., 405; McCall v. Clayton, Busb., 422; Martin v. Hayes, Busb., 423; Knight v. W. & M. R. R. Co., 1 Jon., 357; Nichols v. Pool, 2 Jon., 23; Gregory v. Dozier, 6 Jon., 4; Grace v. Hannah, 6 Jon., 94; McLean v. McDugald, 8 Jon., 383; Johnson v. Olive, Winst., 215; Parker v. Stallings, Phil., 590; Burroughs v. Bank of Charlotte, 70—283; Barden v. Southerland, 70—528; Miller v. Tharel, 75—148; Johnson v. Henderson, 76—227; Meadows v. Cozart, 76—450; Belo v. Commissioners of Forsyth, 76—489; Henderson v. Lemly, 79—169; Brown v. Kinsey, 81—245; Hill v. Shields, 81—250; Pate v. Brown, 85—166; Havens v. Potts, 86—31; Tredwell v. Blount, 86—33; Pugh v. Grant, 86—39.

**Sec. 214. Orders in writing; drawer or acceptor liable thereon; protest and notice thereof before action against drawer.**

R. C., c. 13, s. 2.  
1762, c. 70, ss. 3, 4.

When any person, by order in writing signed by him, shall  
2 direct the payment of any sum of money in the hands or posses-  
3 sion of any other person, to the bearer, or any person whatsoever,  
4 the money therein specified shall, by virtue thereof, be due and  
5 payable to such person to whom the same is drawn payable, and  
6 may be put in suit against him who shall draw the same, or against  
7 the person on whom the same shall be drawn, after the acceptance  
8 thereof by him, by whom the same shall be made payable, and  
9 damages may be recovered: *Provided, nevertheless*, that none shall  
10 commence any action against him who shall give such order for  
11 the money therein mentioned, before the same shall have been  
12 first protested for non-acceptance, and notice given thereof to the  
13 drawer; and if suit shall be brought on such order before notice  
14 and refusal to pay as aforesaid, the plaintiff shall be nonsuited.

— v. Staunton, 1 Hay., 312, (271); Bank of Cape Fear v. Seawell, 2 Haw., 560; Bank of the United States v. Lane, 3 Haw., 453; Taribault v. Ely, 2 Dev., 67; Bissell v. Bozman, 2 Dev. Eq., 154; Jordan v. Farkington, 4 Dev., 357; Spear and Patton v. Atkinson, 1 Ire., 262; Hubbard v. Troy, 2 Ire., 134; Moore v. Tucker, 3 Ire., 347; Denny v. Palmer, 5 Ire., 610; Runyon v. Montfort, Busb., 371; Folk v. Howard, 72—527.

**Sec. 215. Days of grace on bills, &c., except those payable on demand.**

R. C., c. 13, s. 3.  
1848, c. 9.

All bills of exchange payable within the state, at sight, or at a  
2 future day certain, in which there is no express stipulation to the  
3 contrary, shall be entitled to days of grace as the same are allowed  
4 by the custom of merchants on foreign bills of exchange payable at  
5 the expiration of a certain period after date or sight: *Provided*, that  
6 no days of grace shall be allowed on any bill of exchange, promis-  
7 sory note, or draft payable on demand.

Jarvis v. McMain & Simmons, 3 Haw., 10; Fields v. Mallett, 3 Haw., 465.

**Sec. 216. Interest on bills, &c.; when to accrue.**

R. C., c. 13, s. 4.  
1786, c. 248, s. 3.

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

Yellowly v. Commissioners of Pitt, 73—164.

**Sec. 217. Bills, &c., payable on demand to bear interest.**

All bills, bonds, or notes payable on demand, shall be held and  
 2 deemed to be due when demandable by the creditor, and shall  
 3 bear interest from the time they are demandable, unless otherwise  
 4 expressed.

R. C., c. 13, s. 5.  
 1786, c. 248, s. 4.

Ormand v. Moye, 11 Ire., 564.

**Sec. 218. Contracts for delivery of articles bear interest as moneyed contracts.**

All securities for the payment or delivery of specific articles  
 2 shall bear interest as moneyed contracts; and the articles shall be  
 3 rated by the jury at the time they become due.

R. C., c. 13, s. 6.  
 1786, c. 248, s. 5.

**Sec. 219. Bills of exchange bear interest from time of payment.**

Bills of exchange which shall be drawn or indorsed in the state,  
 2 and shall be protested, shall carry interest, not from the date  
 3 thereof, but from the time of payment therein mentioned.

R. C., c. 13, s. 7.  
 1828, c. 2, s. 1.

**Sec. 220. Damages on protested bills of exchange at various places.**

The damages on such protested bills shall be as follows: that is  
 2 to say, where the bill shall be drawn or indorsed in this state upon  
 3 any person or corporation in any other of the United States, or in  
 4 any of the territories thereof, three per cent. upon the principal  
 5 sum; where such bill shall be drawn or indorsed upon any person  
 6 or corporation in any other place in North America, (excepting  
 7 the north-west coast of America,) or in any of the West India or  
 8 Bahama Islands, ten per cent. upon the principal sum; where such  
 9 bill shall be drawn or indorsed upon any person or corporation in  
 10 the island of Madeira, the Canaries, the Azores, the Cape de Verd  
 11 Islands, or in any other state or place in Europe or South America,  
 12 fifteen per cent. on the principal sum; and where such bill shall  
 13 be drawn or indorsed on any person or corporation in any other  
 14 part of the world, twenty per cent. on the principal sum.

R. C., c. 13, s. 8.  
 1741, c. 31.  
 1796, c. 464, ss. 1, 2.  
 1828, c. 2, s. 2.  
 1840, c. 1.

Runyon v. Latham, 5 Ire., 551.

**Sec. 221. Protest of notary, justice of peace, or clerk of a court of record, evidence of demand.**

In all actions wherein it may be necessary to prove a demand  
 2 upon, or notice to the drawer, or indorser of a bill of exchange,  
 3 or promissory note, or other negotiable security; or where it may  
 4 be necessary to prove a demand upon the acceptor or drawee of a  
 5 bill of exchange, in any action against the drawer or indorser  
 6 thereof, the protest of a notary public, or for want of a notary  
 7 public, of a justice of the peace or clerk of a court of record, set-  
 8 ting forth that he made such demand, or gave such notice, and the  
 9 manner in which he did the same; shall be *prima facie* evidence  
 10 that such demand was made, or notice given in manner set forth  
 11 in the protest.

R. C., c. 13, s. 9.  
 1812, c. 844.  
 1819, c. 1003.  
 1826, c. 15.



**Sec. 222. Indorsers of negotiable securities liable as sureties.**

R. C., c. 13, s. 10.  
1827, c. 2.

Whenever any bill, or negotiable bond, or promissory note, shall  
2 be indorsed, such indorsement, unless it be otherwise plainly  
3 expressed therein, shall render the indorser liable as surety to any  
4 holder of such bill, bond, or promissory note; and no demand on  
5 the maker shall be necessary previous to an action against the  
6 indorser: *Provided*, that nothing herein contained shall in any  
7 respect apply to bills of exchange, inland or foreign.

Hatcher v. McMorine, 4 Dev., 122; Topping v. Blount, 11 Ire., 62; Johnson v. Hooker, 2  
Jen., 29; Crawford v. Lytle, 70—385; Henderson v. Lemly, 79—169; Hoffman v. Moore, 82—313.

**Sec. 223. Bonds payable to clerk, &c., for benefit of suitors, suable in name of state.**

R. C., c. 13, s. 11.

Bonds and other obligations taken in the course of any proceed-  
2 ing in law, under the direction of the court, and payable to any  
3 clerk, commissioner, or officer of the court, for the benefit of the  
4 suitors in the cause, or others having an interest in such obliga-  
5 tion, may be put in suit in the name of the state.

## CHAPTER ELEVEN.

## BOATS AND CANOES.

## SECTION.

224. Trespass on boats, &c.; penalty and dam-  
ages.

## SECTION.

225. Penalty not to extend to certain cases.

**Sec. 224. Trespass on boats, &c.; penalty and damages.**

R. C., c. 14, s. 1.  
1741, c. 29, ss. 2, 3,  
4, 6.

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

**Sec. 225. Penalty not to extend to certain cases.**

R. C., c. 14, s. 3.  
1741, c. 29, s. 5.

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

CHAPTER TWELVE.

BOUNDARIES OF STATE.

SECTION.

226. Governor to appoint commissioner to re-run and re-mark lines, &c.  
227. Expenses, how and when paid.  
228. Arbitrators to be appointed in case of disagreement.

SECTION.

229. Governor to report serious disagreement of arbitrators to general assembly.  
230. Survey to be communicated by governor to general assembly; no force until adopted by general assembly.

Sec. 226. Governor to appoint commissioner to re-run and re-mark lines, &c.

The governor is authorized to appoint a competent commissioner 1881, c. 347, s. 1.  
2 on the part of the state, to act with the surveyors or commissioners  
3 appointed or to be appointed by any of the contiguous states of  
4 Virginia, South Carolina, Georgia or Tennessee, to re-run and re-  
5 mark by some permanent monument at convenient intervals, not  
6 greater than five miles, the boundary lines between this state and  
7 any of the said states.

Sec. 227. Expenses, how and when paid.

When the line has been re-run and re-marked as above provided 1881, c. 347, s. 2.  
2 between this state and any of the contiguous states, or such portion  
3 of said lines as shall be mutually agreed by the commissioners, the  
4 governor is authorized to issue his warrant upon the state treasurer  
5 for such portion of the expenses as shall fall to the share of this  
6 state.

Sec. 228. Arbitrators to be appointed in case of disagreement.

If any disagreement shall arise between the commissioners, the 1881, c. 347, s. 3.  
2 governor is hereby authorized to appoint arbitrators to act with  
3 similar officers to be appointed by the other states in the settlement  
4 of the exact boundary.

Sec. 229. Governor to report serious disagreement of arbitrators to general assembly.

In case of any serious disagreement and inability on the part of 1881, c. 347, s. 4.  
2 the said arbitrators to agree upon said boundary, such fact shall  
3 be reported by the governor to the next general assembly for their  
4 action.

Sec. 230. Survey to be communicated by governor to the general assembly; no force until adopted by general assembly.

When the commissioners shall have completed the survey as 1881, c. 347, s. 5.  
2 provided for in this chapter, they shall report the same to the gov-  
3 ernor, who shall communicate the same to the next general assem-  
4 bly for their action, and said survey shall be of no force until the  
5 same has been adopted and approved by the general assembly.

## CHAPTER THIRTEEN.

## BUILDING AND LOAN ASSOCIATIONS.

## SECTION.

231. Associations authorized; deposit with clerk of superior court copy of articles and pay tax.  
 232. Alterations in articles to be certified and recorded.  
 233. Number of shares, &c.  
 234. May compel payment of dues.

## SECTION.

235. New members to pay sum sufficient to put them on same footing with original members; may make additional class or classes.  
 236. May make advances to members.  
 237. Loans secured by mortgage; proviso.

1869-'70, c. 129, s. 1.

**Sec. 231.** Associations authorized; deposit with clerk of superior court copy of articles and pay tax.

It shall be lawful for 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 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, and shall pay a tax of twenty-five dollars to said clerk, which tax shall be paid over by the clerk to the treasurer of the county, to the use of the school fund of the county.

*Smith v. Mechanics' Building and Loan Association, 73—372; Buie v. Mechanics' Building and Loan Association, 74—117; Mills v. Salisbury Building and Loan Association, 75—292; Han ner v. Greensboro Building and Loan Association, 78—188; Overby v. Fayetteville Building and Loan Association, 81—56.*

1869-'70, c. 129, s. 2.

**Sec. 232.** Alterations in articles to be certified and recorded.

Any addition, alteration or amendment 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.



**Sec. 233. Number of shares, &c.**

Any corporation created under and by virtue of the provisions 1869-'70, c. 12, s. 3.  
2 of this chapter, shall have power to declare in their articles of asso-  
3 ciation the number of shares of which the capital stock of such  
4 corporation shall consist, the par value of the same, to limit the  
5 number which each stockholder may be allowed to hold, to pre-  
6 scribe the entrance fee to be paid by each stockholder at the time  
7 of subscribing, to regulate the instalments to be paid on each  
8 share, and the times at which the same shall be paid and payable.

**Sec. 234. May compel payment of dues.**

Any such corporation shall have power to issue to each member 1869-'70, c. 129, s. 4.  
2 of such corporation a certificate of the shares of stock held by him,  
3 and to enforce the payment of all instalments and other dues due  
4 to said corporation from the members or stockholders by such fines  
5 and forfeitures as the corporation may, from time to time, provide  
6 in the by-laws or articles of association of such corporation.

**Sec. 235. New members to pay sum sufficient to put them on same footing with original members ; may make additional class or classes.**

Any person applying for membership or stock in any such 1869-'70, c. 129, s. 5.  
2 corporation after the end of a month from the date of its 1874-'5, c. 78.  
3 incorporation, may be required to pay, on subscribing such sums  
4 or assessments as may from time to time be fixed, and assessed in  
5 manner as may be provided by said corporation, in order to place  
9 such new member or stockholder on like footing with the original  
10 members and others holding stock at the time of such application:  
11 *Provided*, that any association that has been or may be organized  
12 under this chapter shall be authorized and empowered to establish  
13 one or more additional class or classes of shares, under such rules,  
14 regulations and restrictions for issuing, paying and redeeming the  
15 same as to them shall appear expedient and proper, not inconsistent  
16 with the general provisions of this chapter, or laws of North  
17 Carolina.

**Sec. 236. May make advances to members.**

It shall be lawful for any such corporation at any time in 1869-'70, c. 129, s. 6.  
2 in advance of the time at which such corporation shall cease to 1881, c. 365.  
3 exist, according to the plan contained in the article of association  
4 thereof, to advance to any member thereof for such premium as  
5 may be agreed upon, the same which he would be entitled to  
6 receive upon the dissolution thereof, for any number of shares  
7 therein held by him, or to purchase from any member the share  
8 or shares of stock held by him at such price or sum as, according  
9 to the articles of association, such member may agree to receive,  
10 and on payment of said sum of money, to receive from such mem-  
11 ber security as is hereinafter mentioned for the payment by such

12 members to said corporation of the unpaid instalments, to be paid on  
 13 the share or shares of stock so sold or redeemed, together with inter-  
 14 est at the rate of eight per cent. per annum, on the sum of money so  
 15 paid or advanced to such member at such times, and under and  
 16 subject to such fines and penalties for non-payment thereof as may  
 17 be prescribed by the articles of association of such corporation.

**Sec. 237. Loans secured by mortgage; proviso.**

1869-'70, c. 129, s. 7.  
 1870-'71, c. 156.

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

## CHAPTER FOURTEEN.

### BURNING WOODS.

**SECTION.**

238. No person to fire woods except his own,  
 and notice thereof to be given.

239. Penalty fifty dollars; guilty of a misde-  
 meanor.

**SECTION.**

240. Wagoners not extinguishing camp-fires  
 liable to a penalty of fifty dollars and  
 amount of damages.

**Sec. 238. No person to fire woods except his own, and notice thereof to be given.**

R. C., c. 16, s. 1.  
 1777, c. 123, s. 2.

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

Wright v. Yarborough, N. C. Term Rep., 263, (687); Tyson v. Rasberry, 1 Haw., 60; Averitt  
 v. Murrell, 4 Jon., 322; Hall v. Cranford, 5 Jon., 3; Garrett v. Freeman, 5 Jon., 78; Roberson v.  
 Kirby, 7 Jon., 477; Achenbach v. Johnston, 84—264.

Sec. 239. Penalty fifty dollars; guilty of a misdemeanor.

Every person wilfully offending against the provisions of the  
2 preceding section shall, for every such offence, forfeit and pay to  
3 any person who will sue for the same fifty dollars, and be liable to  
4 any one injured in an action, and shall moreover be guilty of a mis-  
5 demeanor.

R. C., c. 16, s. 2.  
1777, c. 123, s. 1.

Roberson v. Kirby, 7 Jon., 477.

Sec. 240. Wagoners not extinguishing camp-fires liable to a penalty of fifty dollars and amount of damages.

If any wagoner or other person encamping in the open air shall  
2 leave his camp without totally extinguishing his camp-fire, he  
3 shall be lable to a penalty of ten dollars, to be recovered by any  
4 person suing for the same, and shall be further liable for the full  
5 amount of damages that any individual may sustain by reason of  
6 any fire getting out from said camp, to be recovered by action  
7 in the superior court for the county in which said camp may be  
8 situated, or in which said damage may be done: *Provided*, that  
9 this section shall apply only to the counties of Cumberland, Har-  
10 nett, Bladen, Moore, Hertford and Chowan.

1865-'6, c. 33.

CHAPTER FIFTEEN.

BURNT AND LOST RECORDS.

SECTION.

- 241. Copies of burnt or destroyed records certified by proper officer, to be received in evidence.
- 242. How original papers may be again recorded or registered; conveyances of real estate lost, how re-surveyed and estate declared, and its effect.
- 243. Copies of lost will may be admitted to probate.
- 244. Copies of wills under certificate of clerk of the superior court shall be competent evidence; letters testamentary to issue.
- 245. Contents of destroyed wills, how established.
- 246. Destroyed judgments, how perpetuated.
- 247. Color of title, how determined.
- 248. Actions on destroyed official bonds, how prosecuted.
- 249. Destroyed witness tickets, how made good.

SECTION.

- 250. Lost conveyances, how replaced.
- 251. Records of any court in, or out of the state admissible, to prove existence and contents of wills, deeds, &c., destroyed.
- 252. Copies of deeds, &c., mentioned in preceding section may be recorded.
- 253. Rules to be observed in petitions and motions under this chapter.
- 254. Records and registries under this chapter to have the same force and effect as original registries.
- 255. Written evidence prior to destruction of said recorded deed, registry, will, &c., to be *prima facie* evidence of its existence.
- 256. Such deeds and conveyances to be received as *prima facie* evidence of the recitals.
- 257. To what records, &c., the provisions of this chapter are applicable.

Sec. 241. Copies of burnt or destroyed records certified by the proper officer, to be received in evidence.

Whenever the office of any registry shall have been, or may be  
2 destroyed by fire or other accident, and the records and other

1866, c. 41, ss. 1, 2.



3 papers thereof be burnt or destroyed, the copies of all such proceed-  
4 ings, instruments and papers as are of record or registry, certified  
5 by the proper officer, though without the seal of office, shall be  
6 received in evidence whenever the original or duly certified exem-  
7 plifications would be. Such copies, when the court shall be satis-  
8 fied of their genuineness, may be ordered to be recorded or  
9 registered.

Sec. 242. How original papers may be again recorded or registered; conveyances  
of real estate lost, how re-surveyed and estate declared, and its effect.

1866, c. 41, s. 3.

All original papers, once admitted to record or registry, whereof  
2 the record or registry is destroyed, may, on motion, be again  
3 recorded or registered, on such proof as the court shall require.  
4 Whenever any conveyance of real estate, or any right or interest  
5 therein shall have been lost, the registry thereof being also destroyed,  
6 any person claiming under the same may cause the boundaries  
7 thereof to be established in the manner provided for procession-  
8 ing land, or he may proceed in the following manner to establish  
9 both the boundaries and nature of his estate: He shall file his  
10 petition before the clerk of the superior court, setting forth the  
11 location and boundaries of his land, whose land it adjoins, and the  
12 estate claimed therein, and praying to have his own boundaries  
13 established, and the nature of his estate declared. All persons  
14 claiming any estate in the premises, and those whose lands  
15 adjoin, shall be notified of the proceedings, and thereupon, unless  
16 they or some of them shall, by answer on oath, deny the truth  
17 of the matters alleged, or some of them, the clerk of the superior  
18 court shall order a surveyor to run and designate the boundaries  
19 of the petitioner's land, return his survey, with the plot thereof to  
20 court, which, when confirmed, shall, with the declaration of the  
21 court, as to the nature of the estate of the petitioner, be registered  
22 and have, as to the persons notified, the effect of a deed for the  
23 same, executed by the person possessed of the same, next before  
24 the petitioner: *Provided, however,* that in all cases wherein the pro-  
25 cess of surveying shall be disputed, and the surveyor shall be for-  
26 bidden to proceed by any person interested, the same proceedings  
27 shall be had as in like cases of processioning land. The petitioner  
28 shall set forth the whole substance of the conveyance as truly and  
29 specifically as he can, and if any of the persons notified shall, by  
30 answer, deny the truth thereof, the clerk of the superior court shall  
31 transfer the issues of fact to the superior court at term, to be tried  
32 as other issues of fact are required by law to be tried, and on their  
33 verdict and the pleadings, the judge shall adjudge the rights of the  
34 parties, and declare the contents of the deed, if any deed be found  
35 by the jury, and allow the registration of such judgment and  
36 declaration, which shall have the force and effect of a deed.

**Sec. 243. Copies of lost will may be admitted to probate.**

In all counties where the original wills on file in the office of 1868-'9, c. 160, s. 1.  
2 clerks of superior courts, and will-books containing copies, have  
3 been or may be lost or destroyed, if the executor or any other per-  
4 son has preserved a copy of a will, (the original being so lost or  
5 destroyed,) with a certificate appended, signed by a clerk of the  
6 court in whose office the will was, or is required to be filed, and  
7 stating that said copy is a correct one, such copy may be admitted  
8 to probate, under the same rules and in the same manner as now  
9 prescribed by law for proving wills; and the proceedings in such  
10 cases shall be the same as though such copy was the original  
11 offered for the first time for probate, except that the clerk who  
12 signed such certificate, shall, on oath, acknowledge his signature,  
13 or in case it shall appear that said clerk has died or left the state,  
14 then his signature shall be proven by a competent witness; and  
15 the witness or witnesses to the original, who may be examined,  
16 shall be required to swear that he or they signed in the presence  
17 of the testator and by his direction a paper writing purporting to  
18 be his last will and testament.

**Sec. 244. Copies of wills under certificate of clerk of the superior court shall be competent evidence; letters testamentary to issue.**

In any action or proceeding at law, wherein it may become nec- 1868-'9, c. 160, s. 2.  
2 essary to introduce such will to establish title, or for any other pur-  
3 pose, a copy of the will and of the record of the probate, with a  
4 certificate signed by the clerk of the superior court for the county  
5 where the will may be recorded, stating that said record and copy  
6 are full and correct, shall be admitted as competent evidence; and  
7 when a copy of a will shall have been admitted to probate, as pro-  
8 vided in the first section above, the clerk of the superior court  
9 shall thereupon issue letters testamentary.

**Sec. 245. Contents of destroyed wills, how established.**

Any person desirous of establishing the contents of a will de- 1866, c. 41, s. 4  
2 stroyed as aforesaid, there being no copy thereof, may file his peti-  
3 tion in the office of the clerk of the superior court, setting forth  
4 the entire contents thereof, according to the best of his knowledge,  
5 information and belief, and all persons having an interest under  
6 the same shall be made parties, and if the truth of such petition  
7 be denied, the issues of fact shall be transferred to the superior  
8 court at term for trial by a jury, whether the will was recorded,  
9 and if so recorded, the contents thereof, and the declarations of the  
10 judge, shall be recorded as the will of the testator; any devisee or  
11 legatee shall be a competent witness as to the contents of every  
12 part of said will, except such as may concern his own interest in  
13 the same.

**Sec. 246. Destroyed judgments, how perpetuated.**

1866, c. 41, s. 5.

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 in the court having jurisdiction of like matters with the original proceeding, 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.

**Sec. 247. Color of title, how determined.**

1866, c. 41, s. 6.

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 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, nor 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.

Hill v. Overton, 81-393.

**Sec. 248. Actions on destroyed official bonds, how prosecuted.**

1866, c. 41, s. 7.

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



**Sec. 249. Destroyed witness tickets, how made good.**

The court having jurisdiction of the action may allow other  
2 witness tickets to be filed in place of such as may be destroyed,  
3 upon the oath of the witness or other satisfactory proof. 1866, c. 41, s. 8.

**Sec. 250. Lost conveyances, how replaced.**

Where any conveyance executed by any person, sheriff, clerk  
2 and master, or commissioner of court, has been lost, and registry  
3 thereof destroyed as aforesaid, and there is no copy thereof, such  
4 persons, whether in or out of office, may execute another of like  
5 tenor and date, reciting therein that the same is a duplicate, and  
6 such deed shall be evidence of the facts therein recited, in all cases  
7 wherein the parties thereto are dead, or are incompetent witnesses  
8 to prove the same, to the extent as if it was the original convey-  
9 ance. 1866, c. 41, s. 9.

**Sec. 251. Records of any court in or out of the state admissible to prove existence and contents of wills, deeds, &c., destroyed.**

The records of any court in or out of the state, and all tran- 1866, c. 41, s. 10.  
2 scripts of such records, and the exhibits filed therewith in any  
3 case, shall be admissible to prove the existence and contents of all  
4 deeds, wills, conveyances, depositions and other papers, copies  
5 whereof are therein set forth or exhibited, in all cases where the  
6 records and registry of such as were or ought to have been recorded  
7 and registered, or the originals of such as were not proper to be  
8 recorded or registered, have been destroyed as aforesaid, although  
9 such transcripts or exhibits may have been informally certified;  
10 and when offered in evidence shall have the like effect as though  
11 the transcript or record was the record of the court whose records  
12 are destroyed, and the deeds, wills and conveyances, depositions  
13 and other papers therein copied or therewith exhibited, were orig-  
14 inal.

**Sec. 252. Copies of deeds, &c., mentioned in preceding section may be recorded.**

The copies aforesaid of all such deeds, wills, conveyances and 1866, c. 41, s. 11.  
2 other instruments proper to be recorded or registered, as are men-  
3 tioned in the preceding section, may be recorded or registered on  
4 application to the clerk of the superior court, and due proof that  
5 the original thereof was genuine.

**Sec. 253. Rules to be observed in petitions and motions under this chapter.**

The following rules shall be observed in petitions and motions 1866, c. 41, s. 12.  
2 under this chapter: The facts stated in every petition or motion 1874-'5, c. 51.  
3 shall be verified by affidavit of the petitioner that they are true 1874-'5, c. 254, s. 3.  
4 according to the best of his knowledge, information and belief;  
5 the instrument or paper sought to be established by any petition  
6 shall be fully set forth in its substance, and its precise language

7 shall be stated when the same is remembered. All persons inter-  
 8 ested in the prayers of the petition or decree, shall be made parties.  
 9 No petition to declare the contents of a deed or will, or any matter  
 10 of record, shall be filed but within five years next after the loss  
 11 or destruction thereof: *Provided, however,* that infants, *femes covert*s,  
 12 persons of non-sane memory and non-residents, may file such peti-  
 12 tion within one year after the disability is removed. Petitions to  
 13 establish a record of any court shall be filed at term in the supe-  
 14 rior court of the county where the record is sought to be established.  
 15 Other petitions may be filed in the office of the clerk of the supe-  
 16 rior court. The costs of every action under this chapter shall be  
 17 paid as the court may decree. Appeals shall be allowed as in all  
 18 other cases, and where the error alleged shall be an erroneous find-  
 19 ing by the superior court at term, of a matter of fact, the same  
 20 may be removed on appeal to the supreme court, and the proper  
 21 judgments directed to be entered below. And it shall be presumed  
 22 that any order or record of the court of pleas and quarter sessions,  
 23 which was made and has been lost or destroyed, was made by a  
 24 legally constituted court, and the requisite number of justices,  
 25 without naming said justices.

Dall v. Sugg, 85—104.

Sec. 254. Records and registries under this chapter to have the same force and effect as original registries.

1866, c. 41, s. 14.

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

Sec. 255. Written evidence prior to destruction of said recorded deed, registry, will, &c., to be *prima facie* evidence of its existence.

1871-'2, c. 64, s. 1.

The recitals, reference to, or mention of any decree, order, judg-  
 2 ment or other record of any court of record of any county in which  
 3 the court-house, or records of said courts, or both, have been de-  
 4 stroyed by fire or otherwise, contained, recited or set forth in any  
 5 deed of conveyance, paper writing, or other *bona fide* written evi-  
 6 dence of title, executed prior to the destruction of the court-house  
 7 and records of said county, by any executor or administrator with  
 8 a will annexed, or by any clerk and master, superior court clerk,  
 9 clerk of the court of pleas and quarter sessions, sheriff, or other  
 10 officer, or commissioners appointed by either of said courts, and  
 11 authorized by law to execute said deed or other paper writing,  
 12 shall be deemed, taken and recognized as true in fact, and shall be  
 13 *prima facie* evidence of the existence, validity and binding force of  
 14 said decree, order, judgment or other record so referred to or recited  
 15 in said deed, or paper writing, and shall be to all intents and pur-  
 16 poses binding and valid against all persons mentioned or described  
 17 in said instrument of writing, deed, &c., as purporting to be par-

18 ties thereto, and against all persons who were parties to said decree,  
19 judgment, order or other record so referred to or recited, and  
20 against all persons claiming by, through or under them or either  
21 of them.

Dall v. Sugg, 85-104.

Sec. 256. Such deeds and conveyances to be received as prima facie evidence of the recitals.

Said deed of conveyance, or other paper writing, executed as  
2 aforesaid, and registered according to law, shall be allowed to be  
3 read in any suit now pending or which may hereafter be instituted  
4 in any court of this state, as *prima facie* evidence of the existence  
5 and validity of the decree, judgment, order, or other record upon  
6 which the same purports to be founded, without any other or fur-  
7 ther restoration or re-instatement of said decree, order, judgment,  
8 or record, than is contained in the provisions of this chapter.

1870-'71, c. 86, s. 2.

Dall v. Sugg, 85-104.

Sec. 257. To what records, &c., the provisions of this chapter are applicable.

The provisions of this chapter shall extend to records of any  
2 court which has been, or may be destroyed by fire or otherwise,  
3 and to any deed of conveyance, paper writing, or other *bona fide*  
4 evidence of title executed before the destruction of said records.

1871-'2, c. 64, s. 2.  
1874-'5, c. 254, s. 2.

Dall v. Sugg, 85-104.

CHAPTER SIXTEEN.

CAPITOL, BUILDINGS AND GROUNDS.

SECTION.

- 258. Keeper of capitol to be elected by the general assembly; his powers and duties; board appointed.
- 259. Keeper of capitol to have charge of arsenal; compensation therefor fifty dollars per annum.
- 260. Board to take charge of public buildings, &c.; duty of keeper under board; shall be paid by the treasurer.
- 261. Rooms of capitol not to be used as sleeping apartments.
- 262. Rooms assigned to different officers.
- 263. Keeper to give bond.
- 264. Disorderly conduct in capitol prohibited; penalty.
- 265. Penalties against infants paid by parents or guardians.

SECTION.

- 266. Amount to be used in caring for grounds.
- 267. Accounts to be sworn to before secretary of state, and certified by him.
- 268. Accounts for wood, coal and fuel to be sworn to before secretary of state, and certified by him.
- 269. Governor to lease executive mansion, and to repair the same.
- 270. Keeper of capitol supervisor of public lots.
- 271. Penalties for trespassing on public lots.
- 272. Moore and Nash squares to be ornamented, and vacant lots to be improved.
- 273. Free access to lots and squares allowed.
- 274. Keeper of capitol under direction of board; to keep walks, &c., in repair.



Sec. 258. Keeper of capitol to be elected by the general assembly; his powers and duties; board appointed.

1870-'71, c. 8.  
1870-'71, c. 175, s. 1.  
1880, c. 61, s. 1.

The general assembly shall, on the fourth Wednesday of each 2 and every session, elect a keeper of the capitol, public grounds and 3 arsenal, who shall hold his place until his successor is elected, and 4 files his bond, as required in this chapter. The keeper of the capitol shall perform all the duties and have all the rights as herein- 5 itol shall perform all the duties and have all the rights as herein- 6 after prescribed; as to the manner of performing his duties he 7 shall be under the general directions of a board, known as the 8 board of public buildings, consisting of the governor, secretary of 9 state, treasurer and attorney general; but he shall have the absolute right to appoint and control all lawful subordinates, such as 10 watchman of the capitol, workmen on the grounds, and servants 11 about the capitol and its appurtenances, except the servant and 12 messenger waiting and attending upon the supreme court. 13

Sec. 259. Keeper of capitol to have charge of arsenal; compensation therefor fifty dollars per annum.

1870-'71, c. 175, s. 3.

The keeper of the capitol shall also have charge of the arsenal 2 located in the capitol square, under the superintendence of the 3 adjutant general, and shall receive fifty dollars per annum for the 4 performance of his duties in that particular; and the separate 6 office of keeper of the arsenal is hereby abolished.

Sec. 260. Board to take charge of public buildings, &c.; duty of keeper under board; shall be paid by the treasurer.

R. C., c. 103, s. 3.  
1840, c. 3, s. 1.  
1842, c. 47, s. 1.

The board shall take charge of and keep in repair the public 2 buildings of the state in the city of Raleigh; shall, from time to 3 time, as the same may be needed, procure, furnish, and keep in 4 repair for the public offices of the capitol, all necessary office furniture, and the keeper shall take care of the furniture, sweep and 6 cleanse off cobwebs and dust from all the unoccupied parts of the 7 buildings; keep the keys of the several doors not occupied as 8 offices, and conduct visitors through the capitol, whenever requested to do so; shall, under the direction of the board, trim or 10 remove trees standing in the public square, and remove the leaves 11 and other rubbish as often as may be necessary; and shall perform any other duty required by this chapter, of which he is capable, whenever especially ordered by the board to do so. For which 14 services the keeper shall receive a reasonable and just price; 15 which, as well as all other expenditures allowed by this chapter, 16 shall be paid by the treasurer, on a certificate by the board, of the 17 work done and the price allowed for it. The board at all times 18 are required to use such means as may secure the capitol from fire.

**Sec. 261. Rooms of capitol not to be used as sleeping apartments.**

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.

R. C., c. 103, s. 4.  
1842, c. 47, s. 1.

**Sec. 262. Rooms assigned to different officers.**

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 state 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.

R. C., c. 103, s. 5.  
1842, c. 54.

**Sec. 263. Keeper to give bond.**

Before entering upon the duties of his office, the keeper of the capitol shall execute a 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.

R. C., c. 103, s. 6.  
1840, c. 3, s. 2.

**Sec. 264. Disorderly conduct in capitol prohibited; penalty.**

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 who 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.

R. C., c. 103, s. 7.  
1819, c. 29, s. 1.  
1842, c. 47, s. 1.

**Sec. 265. Penalties against infants paid by parents or guardians.**

R. C., c. 103, s. 8.  
1829, c. 29, s. 2.

If such offence be committed by an infant under the age of  
2 twenty-one years, his guardian or parent, (as the case may be,)  
3 shall also be liable to the penalty prescribed by this chapter, to be  
4 recovered as above directed.

**Sec. 266. Amount to be used in caring for grounds.**

1870-'71, c. 80, s. 1.

A sum not exceeding six hundred dollars shall be set apart an-  
2 nually, out of any money in the treasury not otherwise appropri-  
3 ated, which may be used in caring for the capitol square and pub-  
4 lic grounds in the city of Raleigh.

**Sec. 267. Accounts to be sworn to before secretary of state, and certified by him.**

1870-'71, c. 80, s. 2.

No account for work or labor done on the capitol square or pub-  
2 lic grounds in the city of Raleigh, or in the senate chamber, or  
3 house of representatives, or in any room or office in the capitol, or  
4 in any building connected with the square or grounds aforesaid,  
5 shall be audited or paid, until the same is sworn to before the sec-  
6 retary of state, to be just and true, and so certified by that officer.  
7 Nor shall the secretary of state certify the account of any laborer  
8 for work done or services rendered in any of said buildings or on  
9 any of said grounds, unless it be made to appear that said laborer  
10 or employee has been employed by the keeper of the capitol.

**Sec. 268. Accounts for wood, coal and fuel to be sworn to before secretary of state and certified by him.**

1870-'71, c. 80, s. 3.

No account for wood, or fuel or for coal shall be audited or paid  
2 until the claimant make oath as above, that the account is just and  
3 true, and that the number of cords of wood, or tons of coal, charged  
4 for, have been delivered within the enclosure of the capitol square.

**Sec. 269. Governor to lease executive mansion and to repair the same.**

1870-'71, c. 282, s. 1.

The governor is authorized and directed to lease the executive  
2 mansion and the ground attached to the same, provided he does  
3 not choose to occupy the same as a family residence, to some suit-  
4 able and discreet person or persons for the period of twelve months,  
5 and at such price as he may deem reasonable and just; and he is  
6 authorized to have such repairs made upon the said building and  
7 outhouses and fences enclosing the same as he may deem necessary  
8 to preserve the property and keep it from ruin and decay, and for  
9 such purposes he may use the proceeds of the lease of this property,  
10 and the proceeds of the lease of other public lots, and such sums  
11 of money as may be collected for rents now due.

**Sec. 270. Keeper of capitol supervisor of public lots.**

1870-'71, c. 282, s. 3.

The keeper of the capitol is appointed supervisor of all the other  
2 public lots belonging to the state in the city of Raleigh, except



3 such as may be occupied by the institution for the deaf and dumb,  
4 and the public schools, and he is authorized to lease such lots or  
5 such part thereof as it may be proper to lease, and upon such  
6 terms as may be reasonable and proper, for the period of twelve  
7 months; and he is required to turn over the proceeds of such rent-  
8 ing to the governor whenever the same may be demanded, after  
9 retaining for his services ten per cent. thereof.

**Sec. 271. Penalties for trespassing on public lots.**

If any person or persons shall wilfully trespass upon any of the 1870-'1, c. 282, s. 4  
2 public lots aforesaid, or shall cut any timber or commit any waste,  
3 or shall refuse to surrender possession after the expiration of their  
4 leases, or if any person or persons now in possession of any of said  
5 lots above mentioned shall refuse to leave the same and shall fur-  
6 ther refuse to surrender possession within ten days after de-  
7 mand made by the keeper of the capitol, said person or persons  
8 shall be guilty of a misdemeanor, and may be indicted in the  
9 superior court of Wake county; and it shall be the duty of said  
10 keeper of the capitol to report all such violations of law to the gov-  
11 ernor or to the attorney general, and if any of the said persons shall  
12 be convicted they shall be fined or imprisoned at the discretion of  
13 the court.

**Sec. 272. Moore and Nash squares to be ornamented, and vacant lots to be im-  
proved.**

The board of aldermen of the city of Raleigh shall have power 1871-'2, c. 205, s. 1.  
2 to grade, lay out in walks, plant with trees, shrubbery and flowers,  
3 and otherwise adorn Moore square and Nash square in said city,  
4 so as to make the same an ornament to the city, and to that end  
5 they shall have the general charge and management of said  
6 squares. They may improve in like manner any of the vacant  
7 lots belonging to the state within the city limits not otherwise  
8 specially appropriated.

**Sec. 273. Free access to lots and squares allowed.**

Nothing herein contained shall be construed to authorize said 1871-'2, c. 205, s. 2.  
2 aldermen to prevent the free access of well behaved persons to said  
3 square and lots except at unreasonable hours or for some tempo-  
4 rary purpose specially to be designated by the board.

**Sec. 274. Keeper of capitol under direction of board; to keep walks &c., in repair.**

Whenever the walks in and immediately around the capitol 1881, c. 325, ss. 1, 2.  
2 square become so worn by action of the weather or other causes,  
3 that in the judgment of the board of public buildings they should  
4 be repaired, the said board are hereby authorized to direct the  
5 keeper of the capitol to contract for suitable material for such re-  
6 pairs; but the work shall be done by convict labor as far as the

7 same can be used; and the auditor shall audit the accounts for  
 8 said material and labor on the approval of the board of public  
 9 buildings and the keeper of the capitol.

## CHAPTER SEVENTEEN.

### CATTLE AND OTHER LIVE STOCK.

#### SECTION.

275. Owner of stock to have a brand or mark; to be recorded.  
 276. Penalty for killing in the woods and not showing head, ears and hide in two days.  
 277. Cattle not to be driven into this state from other states between the first of April and the last of November; penalty, five dollars; non-residents within five miles of, or owning land in the state exempt from penalty, when; proviso.  
 278. Cattle not to be driven from certain places into the highlands, when.  
 279. When driven from one part of the state through another, must be certified to be healthy, &c.; misdemeanor for justice to grant certificate without affidavit.  
 280. Persons allowing distempered cattle to go at large to be guilty of misdemeanor, &c.

#### SECTION.

281. When subject to damage only.  
 282. When not subject to penalty.  
 283. Stone-horses and stone-mules two years old not to go at large; penalty, twenty dollars.  
 284. Remedy before justice for stock killed on railroads, &c.  
 285. What shall be evidence of negligence.  
 286. Live stock killed or injured upon railroads in certain counties a misdemeanor; who liable to indictment; proviso.  
 287. Penalty on conviction.  
 288. Killing or injuring *prima facie* evidence of negligence.  
 289. Indictment not to be until party damaged has proposed a reference.

#### Sec. 275. Owner of stock to have a brand or mark; to be recorded.

R. C., c. 17, s. 1.  
 1741, c. 26, s. 6.

Every person who hath any horses, cattle, hogs or sheep, shall  
 2 have an ear-mark or brand different from the ear-mark or brand  
 3 of all other persons, which he shall record with the clerk of the  
 4 board of commissioners of the county where his horses, cattle, hogs,  
 5 or sheep are; and he shall brand all horses eighteen months old  
 6 and upwards with the said brand, and ear-mark all his hogs and  
 7 sheep six months old and upwards with the said ear-mark; and  
 8 ear-mark or brand all his cattle twelve months old and upwards;  
 9 and if any dispute shall arise about any ear-mark or brand, the  
 10 same shall be decided by the record thereof.

State v. King, 84-737.

#### Sec. 276. Penalty for killing in the woods and not showing head, ears and hide in two days.

R. C., c. 17, s. 2.  
 1741, c. 26, s. 5.  
 1803, c. 627, s. 1.

If any person shall kill any neat cattle, sheep, or hogs in the  
 2 woods, he shall, within two days, show the hide and ears of such  
 3 hog or sheep, and the hide, with the ears on, of such neat beast or  
 4 cattle, to the next magistrate, or to two substantial freeholders,  
 5 under penalty of ten dollars, to any person who will sue for the  
 6 same.

Sec. 277. Cattle not to be driven into this state from other states between first of April and the last of November; penalty, five dollars; non-residents within five miles of, or owning land in the state exempt from penalty, when; proviso.

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, one-half to the party suing for the same, the other half to the school fund of the county. *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 twenty head of any of said beasts, for every two hundred acres of land owned by him in manner aforesaid, in said county: *Provided further,* that nothing in this section shall apply to the counties of Jackson, Swain, Macon, Cherokee, Graham and Clay: *And provided further,* this section shall not apply to any person or persons driving oxen to and from market from the fifteenth of October to the first of March, or to imported cattle shipped for breeding purposes at any time: *Provided further,* this section shall not apply to any person or persons in the counties of Caldwell, Wilkes, Surry, Yadkin and Alexander, owning lands west of the Blue Ridge: *And provided further,* this section shall not apply to persons driving cattle to Watauga county to pasture for hire.

R. C., c. 17, s. 3.  
1795, c. 439, s. 1.  
1838, c. 52, ss. 1, 2.  
1846, c. 58.  
1879, c. 95.  
1881, c. 333.

Sec. 278. Cattle not to be driven from certain places into the highlands, when.

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 provided in the preceding section.

R. C., c. 17, s. 4.  
1795, c. 439, s. 2.

Sec. 279. When driven from one part of the state through another, must be certified to be healthy, &c.; misdemeanor for justice to grant certificate without affidavit.

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 pur-

R. C., c. 17, s. 5.  
1795, c. 439, s. 3.



7 chased, or had ranged as aforesaid, and describing therein the  
 8 nature of the soil and growth of timber on such place; and also  
 9 that said cattle were, at the time of purchase or removal, sound  
 10 and free from any infectious distemper. And if any justice shall  
 11 grant such certificate without such affidavit of the owner, it shall  
 12 be a misdemeanor in office.

**Sec. 280. Persons allowing distempered cattle to go at large to be guilty of misdemeanor, &c.**

1868-'9, c. 50, s. 1.

If any person shall drive or cause to be driven any cattle from  
 2 any county in this state, or from any county or district in any  
 3 other state into any county in this state, at any time between the  
 4 first day of April and the first day of November, knowing such cattle  
 5 to be distempered or otherwise infected, or shall permit any dis-  
 6 tempered cattle to roam at large and enter any uninfected district,  
 7 he shall be guilty of a misdemeanor, and upon conviction, be subject  
 8 to fine and imprisonment at the discretion of the court, and be  
 9 further liable to an action for all damages which may arise from  
 10 a violation of this section.

**Sec. 281. When subject to damage only.**

1868-'9, c. 50, s. 2.

If any person shall drive or cause to be driven any cattle as  
 2 aforesaid, not knowing them to be infected, and losses should be  
 3 sustained by the spreading of distempers or infection from said  
 4 cattle, he shall be subject to damages only.

**Sec. 282. When not subject to penalty.**

1868-'9, c. 50, s. 3.

If any person complies with the requirements of section two  
 2 hundred and seventy-nine, without regard to growth or locality,  
 3 said person shall not be subject to the above penalties.

**Sec. 283. Stone-horses and stone-mules two years old not to go at large; penalty, twenty dollars.**

R. C., c. 17, s. 6.  
 1801, c. 594.

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

**Sec. 284. Remedy before justice for stock killed on railroads, &c.**

R. C., c. 17, s. 7.  
 1833, c. 28, s. 3.

When any cattle or other live stock shall be killed, or otherwise in-  
 2 jured, by the engines or cars running upon any railroad, the owner  
 3 may sue out a warrant from any justice of the peace, if the value  
 4 of said cattle or other live stock does not exceed the sum of fifty  
 5 dollars, and have the same served on the president, or any direc-  
 6 tor, stockholder, or acting agent for such railroad company; and,  
 7 upon return thereof, such justice shall cause two freeholders to be  
 8 summoned, who after being duly sworn by him, shall hear evi-

9 dence, and upon proof of such injury, shall assess the amount of  
10 damages which the owner shall have sustained; and the justice  
11 shall enter judgment, and issue execution therefor against the said  
12 company.

Nance v. C. C. Railway Co., 78-9.

Sec. 285. What shall be evidence of negligence.

When any cattle or other live stock shall be killed or injured 1856-7, c. 7.  
2 by the engines or cars running upon any railroad, it shall be  
3 *prima facie* evidence of negligence on the part of the company in  
4 any action for damages against said company: *Provided, however,*  
5 that no person shall be allowed the benefit of this section unless  
6 he shall bring his action within six months after his cause of  
7 action shall have accrued.

Proctor v. W. & W. Railroad Co., 72-579; Pippen v. Will., Columbia & Augusta Railroad Co.,  
75-54; Doggett v. Richmond & Danville Railroad Co., 81-459; Durham v. W. & W. Railroad  
Co., 82-352.

Sec. 286. Live stock killed or injured upon railroads in certain counties a misdemeanor; who liable to indictment; proviso.

When any cattle, horses, mules, sheep, or other live stock shall 1880, c. 13, s. 1.  
2 be killed or injured by any car or engine running on any  
3 railroad in the counties of Columbus, New Hanover, Brunswick,  
4 Bladen, Robeson, Richmond, Anson, Union, Gaston, Lincoln,  
5 Cleveland and Burke, it shall be a misdemeanor, and the pres-  
6 ident, receiver and the superintendent of such road, and also  
7 the engineer and conductor in charge of the train or engine  
8 by which such killing or injury is done, may be indicted for  
9 such killing or injury: *Provided,* that if the parties indictable under  
10 this section shall within six months after the killing as afore-  
11 said of any stock mentioned in this section, and before any  
12 indictment is preferred or warrant issued, pay the owner of such  
13 stock as may be killed his charges for said stock, or in the  
14 event the charges are too high, or thought to be so, such sum or  
15 sums as may be assessed by three commissioners, one to be chosen  
16 by the party whose stock is killed or injured, a second by the party  
17 accused of killing the same, and the third by the two commission-  
18 ers chosen as above indicated, who shall meet at some place in the  
19 county where the stock is killed or injured, to be selected by the  
20 parties interested, within thirty days after they are chosen and ac-  
21 cepted, such payment shall be a bar to any prosecution under this  
22 section, and the decision of two of the said commissioners shall be  
23 final for the purposes of this section: *Provided further,* that if any per-  
24 son or persons liable to indictment under this section shall within  
25 the time prescribed propose to the party endamaged to refer the  
26 matter of damages in the manner hereinbefore indicated to three  
27 commissioners, and the party endamaged shall refuse or decline  
28 such proposition, such refusal or declining shall be a bar to any

29 prosecution under this section: *Provided further*, that if the party  
 30 endamaged shall at any time before indictment is preferred, or war-  
 31 rant issued, directly or indirectly receive any sum in full compen-  
 32 sation of his damages, such compensation shall be a bar to any pros-  
 33 ecution under this section; and if any compensation be so received  
 34 after indictment is preferred or warrant issued, or if after said time  
 35 the party accused shall pay or tender to the owner of the stock  
 36 killed the value of the same as decided by the commissioners, as  
 37 above provided or a majority of them, in either case the prosecu-  
 38 tion shall go no further and the accused shall be charged only with  
 39 accrued cost.

**Sec. 287. Penalty on conviction.**

1880, c. 13, s. 2.

In any conviction under the preceding section, the party found  
 2 guilty shall be fined not exceeding the sum of fifty dollars, or im-  
 3 prisoned not exceeding thirty days.

**Sec. 288. Killing or injuring *prima facie* evidence of negligence.**

1880, c. 13, s. 3.

When any cattle, horses, mules, sheep or other live stock shall  
 2 be killed or injured by the engines or cars, running on any rail-  
 3 road in the aforementioned counties, and such killing is proved, it  
 4 shall be *prima facie* evidence of negligence in any indictment  
 5 under this chapter.

**Sec. 289. Indictment not to be until party damaged has proposed a reference.**

1880, c. 13, s. 4.

The indictment provided for in this chapter against the offi-  
 2 cers of railroad companies, shall not lie until a proposition to  
 3 refer the matter has been proposed by the party claiming that he  
 4 has been damaged.

## CHAPTER EIGHTEEN.

### CHARITIES, PUBLIC AND PRIVATE.

#### CHARITIES, PUBLIC.

**SECTION.**

- 290. Board of charities elected by general assembly; terms; how vacancies to be filled.
- 291. Meetings, duties and compensation.
- 292. To make reports.
- 293. Special attention to causes of insanity, idiocy, &c.
- 294. Visits and reports may be required.
- 295. Insane persons may be removed to asylum.

**SECTION.**

- 296. May require reports from superintendent, &c.
- 297. Reports to general assembly biennially.
- 298. County commissioners to report to board; board to furnish circulars, &c.
- 299. County commissioners to require reports from trustees of townships.
- 300. Penalty for refusing.



## CHARITIES, PRIVATE.

## SECTION.

301. Trustees of charities to return account of their trusts to clerk of superior court on first Monday in February of each year.
302. Trustees mismanaging trusts, solicitor to institute action.

## SECTION.

303. Solicitor to sue at the suggestion of two citizens.
304. Attorney general and solicitor allowed fees.

## CHARITIES, PUBLIC.

**Sec. 290. Board of charities elected by general assembly; terms; how vacancies to be filled.**

The general assembly shall proceed by concurrent vote to select 1868-'9, c. 170, s. 1.

2 five electors who shall be styled the board of public charities of the

3 state of North Carolina. One of the persons so elected shall hold

4 office for one year, one for two years, one for three years, one for four

5 years and one for five years, the term to begin the first day of July,

6 one thousand eight hundred and sixty-nine. Appointments to fill

7 vacancies in this board, caused by resignations or removal from

8 the state, death, or from any other cause, may be made for the res-

9 idue of such term by the governor.

**Sec. 291. Meetings, duties and compensation.**

The board of public charities shall hold regular meetings on 1868-'9, c. 170, s. 2.

2 the first Tuesday in January, April, July and October, and as often 1870-'1, c. 106, s. 1.

3 besides as they may deem needful. They shall make such rules

4 and orders for the regulation of their own proceedings as they may

5 deem proper; they shall investigate and supervise the whole sys-

6 tem of the charitable and penal institutions of the state, and shall

7 recommend such changes and additional provisions as they may

8 deem deedful for their economical and efficient administration:

9 *Provided*, that the said board shall be allowed their traveling ex-

10 penses for attending one meeting.

**Sec. 292. To make reports.**

The general condition of the state as affected by crimes, va- 1868-'9, c. 170, s. 3.

2 grancy and pauperism, shall also come under the view of the board,

3 and it shall be their duty to report to the general assembly when,

4 in their judgment, it may become needful for the erection of the

5 several reformatory institutions, whose organization is provided

6 for in article eleven of the constitution.

**Sec. 293. Special attention to causes of insanity, idiocy, &c.**

The board shall also give special attention to the causes of in- 1868-'9, c. 170, s. 4.

2 sanity, defect or loss of the several senses, idiocy and the deformity

3 and infirmity of the physical organization. They shall, besides

4 their own observation, avail themselves of correspondence and

5 exchange of facts of the labors of others in these departments, and

6 thus be able to afford the general assembly data to guide them in

7 future legislation for the amelioration of the condition of the peo-

8 ple, as well as to contribute to enlighten public opinion and direct  
9 it to interests so vital to the prosperity of the state.

**Sec. 294. Visits and reports may be required.**

1868-'9, c. 170, s. 5.

Personal visits may be required by the board of one or more of  
2 its members, or otherwise to make careful investigation into the  
3 condition of the several county jails and alms-houses, and the  
4 treatment of their unfortunate inmates, and report on these points,  
5 so that the provisions of section six, article eleven of the constitu-  
6 tion, may be enforced.

**Sec. 295. Insane persons may be removed to asylum.**

1868-'9, c. 170, s. 6.

Whenever the board shall have reason to believe that any insane  
2 person, not incurable, is deprived of proper remedial treatment,  
3 and is confined in any alms-house or other place, whether such  
4 insane person is a public charge or otherwise, it shall be the duty  
5 of said board to cause such insane person to be conveyed to the  
6 asylum, there to receive the best medical attention. So also it  
7 shall be their care that all the unfortunate shall participate in the  
8 charities of the state.

**Sec. 296. May require reports from superintendent, &c.**

1868-'9, c. 170, s. 7.

The board may require the superintendent, &c., of the several  
2 charitable and penal institutions of the state to report to them of  
3 any matter relating to its inmates, their manner of instruction and  
4 treatment, with structure of their buildings, and to furnish them  
5 any desired statistics at their command.

**Sec. 279. Reports to general assembly biennially.**

1868-'9, c. 170, s. 8.  
1870-'1, c. 106.

The board of public charities shall biennially prepare and sub-  
2 mit to the general assembly a complete and full report of their  
3 doings during the preceding two years, showing the actual condi-  
4 tion of all the state institutions under their control, with such  
5 suggestions as they may deem necessary and pertinent, which they  
6 shall print.

**Sec. 298. County commissioners to report to board; board to furnish circulars, &c.**

1869-'70, c. 154, s. 1.

The board of commissioners of each county shall in each  
2 year on or before the first Monday in November, report to the  
3 board of public charities such information in regard to the num-  
4 ber and condition of the inmates of their poor-house and prison,  
5 together with the number of out-door paupers, and the deaf, dumb,  
6 blind, idiotic and insane of their county not in asylum or alms-  
7 house, and such other information as may be desirable, to get a  
8 complete view of the number and condition of these classes of  
9 persons in the state. The board of public charities shall prepare  
10 and furnish to the board of commissioners of each county carefully

11 arranged circulars indicating the information desired, the blank  
12 column of which shall be correctly filled in the report.

**Sec. 299. County commissioners to require reports from trustees of townships.**

It shall be lawful for the board of commissioners of each county  
2 in aid of this purpose to require the trustees of each township in  
3 their county to prepare and furnish information to them of all the  
4 facts called for in the circular of the board of public charities. 1869-'70, c. 154, s. 2.

**Sec. 300. Penalty for refusing.**

The board of commissioners of any county or the trustees of  
2 any township who shall refuse or neglect to furnish the information  
3 required by this chapter when they have been provided with the  
4 necessary blank forms for paupers, shall, on complaint being made  
5 before any judge of the superior court, be fined a sum not exceed-  
6 ing one hundred dollars. 1869-'70, c. 154, s. 3.

**CHARITIES, PRIVATE.**

**Sec. 301. Trustees of charities to return account of their trusts to clerk of superior court on first Monday in February of each year.**

When real or personal property may have been granted by  
2 deed, will or otherwise, for such charitable purposes as are allowed  
3 by law, it shall be the duty of those, to whom are confided the  
4 management of the property and the execution of the trust, to  
5 deliver in writing a full and particular account thereof to the clerk  
6 of the superior court of the county where the charity is to take  
7 effect, on the first Monday in February in each year, to be filed  
8 among the records of the court, and spread upon the record of  
9 accounts. R. C., c. 18, s. 1.  
43 Eliz., c. 4.  
1832, c. 14, s. 1.

*Griffin v. Graham*, 1 Haw., 96; *Cameron v. Commissioners of Raleigh*, 1 Ire. Eq., 436; *State v. McGowen*, 2 Ire. Eq., 9; *State v. Gerard*, 2 Ire. Eq., 210; *Holland v. Peck*, 2 Ire. Eq., 255; *White v. University*, 4 Ire. Eq., 19; *Bridges v. Pleasants*, 4 Ire. Eq., 26; *Kirkpatrick v. Rogers*, 6 Ire. Eq., 130; *Deaf and Dumb Institute v. Norwood*, Busb. Eq., 65.

**Sec. 302. Trustees mismanaging trusts, solicitor to institute action.**

If the foregoing requisition be not complied with, or there be  
2 reason to believe that the property has been mismanaged through  
3 negligence or fraud, it shall be the duty of the clerk of the supe-  
4 rior court to give notice thereof to the attorney general or solici-  
5 tor, who represents the state in the superior court for that county;  
6 and it shall be his duty to bring an action in the name of the state  
7 against the grantees, executors, or trustees of the charitable fund,  
8 calling on them to render a full and minute account of their pro-  
9 ceedings in relation to the administration of the fund and the exe-  
10 cution of the trust. R. C., c. 18, s. 2.  
1832, c. 14, s. 2.



**Sec. 303. Solicitor to sue at the suggestion of two citizens.**

R. C., c. 18, s. 3.  
1832, c. 14, s. 3.

The attorney general or solicitor may also, at the suggestion of  
2 two reputable citizens, commence an action as aforesaid; and, in  
3 either case, the court may make such order and decree as shall  
4 seem best calculated to enforce the performance of the trust.

**Sec. 304. Attorney general and solicitor allowed fees.**

R. C., c. 18, s. 4.  
1832, c. 14, s. 4.

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

## CHAPTER NINETEEN.

## CHEROKEE LANDS.

## SECTION.

- 305. Lands reserved to the Cherokee Indians.
- 306. Penalty for entering, &c., Cherokee lands; such entries void, &c.
- 307. All purchases of said lands to be void; penalty on persons purchasing, &c., the same.
- 308. No persons to hunt, range or drive stock on their lands; penalty.
- 309. The governor to appoint commissioners.
- 310. Principal surveyor; his duties; deputy chain carrier, &c.
- 311. Duty of surveyor in noting mines, &c.; three plots of the whole land to be made.
- 312. Site for public buildings.
- 313. So much of land only as will sell for fifty cents an acre to be laid out; and no part of the land to be subject to entry.
- 314. Governor to give notice of sale, &c.
- 315. Terms of sale.
- 316. Minimum of price; sales postponed.
- 317. When grants are to be issued.
- 318. Bonds for purchases to be filed with treasurer.
- 319. Provides for purchasers who may have lost their receipts.
- 320. Commissioners to make return to the Comptroller, &c.
- 321. Temporary jurisdiction of the county.
- 322. Discount of eight per cent. for prompt payment.
- 323. Occupants may be ejected by the purchasers.
- 324. Governor to appoint commissioners to sell the lands.
- 325. Occupants entitled to their crops.
- 326. Discount allowed on payments in advance.
- 327. Fine for disobedience; proviso.
- 328. White men may extinguish Indians' right to lands.

## SECTION.

- 329. Penalty for buying, &c., from Indians, remitted.
- 330. Governor to direct the sale of Cherokee lands.
- 331. Commissioners to postpone sale if the lands do not command the proper prices.
- 332. Commissioners to ascertain what lands are in dispute between Indians and persons claiming under the state.
- 333. Month's notice of sale by advertisement.
- 334. If lands do not bring their value, sale to be postponed; commissioners to bid for the state in certain cases.
- 335. Governor to appoint two commissioners to meet and contract with said Indians.
- 336. To ascertain whether said Indians have sold their titles to individuals.
- 337. Commissioners to report to the next general assembly.
- 338. Purchasers may transfer their rights.
- 339. Contract ratified and confirmed; except as to the claim of Morris and others.
- 340. Contract to be enrolled and printed with the laws of the state.
- 341. Commissioners to be appointed to carry the contract into effect.
- 342. Releases and conveyances to be taken from the parties.
- 343. Contract to be registered in Haywood county.
- 344. Commissioners to report to the governor.
- 345. Governor to appoint commissioners their duty.
- 346. Lands for sale, to be classed by the commissioners; sales to be postponed under certain circumstances.
- 347. For the benefit of those already settled on said lands.

## SECTION.

348. Bidders who fail to comply with terms of sale within twenty-four hours to forfeit their bid, and the next highest bid to be received; proviso; commissioners empowered to sell lots in the town of Franklin.
349. Certificate of state treasurer may be received as evidence of payment.
350. Secretary may issue a grant on affidavit of purchaser; proviso.
351. Governor authorized to direct the sale, and to appoint a commissioner for that purpose.
352. Lots in Franklin may be surveyed and sold.
353. Governor to convey certain lands to the justices of Haywood county court.
354. Justices to dispose of said lands.
355. Governor shall appoint commissioners and surveyor.
356. Site for public buildings to be fixed upon.
357. Lands to be laid off into districts and tracts; qualities and prices of lands, &c.
358. What surveyor shall note; maps required to be made.
359. Governor to issue proclamation of sale, &c.
360. Governor shall appoint commissioners of sale, who, upon giving bond, shall proceed to sell, &c.
361. Payments required of purchaser.
362. Certificate and grant, how given.
363. Commissioners to pay over moneys.
364. Commissioners shall deposit bonds with treasurer, &c.
365. Advance payments.
366. Purchaser may institute action of ejectment.
367. Section subject to jurisdiction of Macon.
368. No transfer allowed.
369. Cutting timber indictable.
370. Eight lots to be sold by commissioners.
371. Sale of reservations in Macon and of lands already surveyed; name of county site.
372. An agent to be appointed and to reside in Macon or Cherokee; to receive money due from purchasers of lands.
373. The state treasurer to place such bonds in his hands as he and the governor may think proper for collection.
374. State treasurer to take proper receipts from the agent for such bonds as he may deliver to him for collection.
375. Collections suspended.
376. Who shall not be entitled to the benefit of this chapter.
377. Not to prevent voluntary payments.
378. Treasurer to make out statement, &c.
379. Agent may require renewal.
380. Agent to collect moneys, &c.
381. Commissioner to be appointed by the governor; duties.
382. Insolvents shall surrender the lands purchased and be released from their obligations.
383. Release, how proved; agent to certify.
384. How solvent bonds shall be paid; provisos.
385. Commissioner and agent to take oath.
386. Their pay.
387. Provisions extended to securities of insolvent purchasers.

## SECTION.

388. Duty of agent.
389. Lands surrendered by insolvents to be sold under the valuation of board appointed by court and the governor.
390. Pre-emption right to first purchasers, and how bonds are payable.
391. If persons who surrendered do not comply, agent to sell or report to governor, who shall direct public sale.
392. Governor to advertise; duty of commissioners.
393. How agent to proceed when part of tract had been sold.
394. Pre-emption to extend to settlers only.
395. Of ejectment.
396. Duty of commissioner, when original purchaser has not paid.
397. Secretary's duty; grant to issue to surety.
398. Grant not to issue until whole amount of bond is paid.
399. Agent to return statement.
400. Comptroller's duty.
401. Agent authorized to suspend further collection of debts due on Cherokee bonds, &c.
402. Copies of certain papers on file in the office of secretary of state, shall be evidence in certain cases.
403. Grant, evidence on which to issue.
404. Board of valuation of surrendered lands; governor to appoint.
405. Lowest valuation.
406. Board, when and where to meet; persons desiring the benefit, &c.
407. Oath.
408. Statement, comptroller to furnish.
409. Of bonds to be canceled; proviso.
410. No commissioner allowed to become a purchaser of, &c.
411. Commissioners to value land.
412. Commissioners to furnish occupants and agents with certificates, &c.
413. Pre-emption right on certain conditions.
414. Surveyed lands in Macon embraced.
415. Pre-emption to extend to settlers on vacant lands in Macon.
416. Fine for locating, &c., limited, &c.
417. Extends the pre-emption right to residents in Cherokee.
418. Certificates.
419. Advance payments.
420. Two occupants.
421. Time of privilege limited.
422. Taxes.
423. Office of entry taker established in Cherokee.
424. When, how and at what price lands may be entered.
425. Persons entering lands to file their bonds with the entry taker, &c.
426. What grants governor may sign.
427. Vacant lands in Macon and Haywood may be entered.
428. Surveyor for Cherokee elected.
429. How surveyed lands to be sold.
430. Agent for superintending the making of said road to appoint overseers; their powers and duties.
431. Penalty for breaking through gates to avoid paying toll.
432. Rights and privileges of occupants of state lands.

## SECTION.

433. Duty of agent for collecting Cherokee bonds.

434. Amount agent must pay to the state treasurer.

435. How agent must collect said sum.

## SECTION.

436. Persons who have heretofore entered lands must file bonds; if not, others may enter the same lands; proviso.

437. Cherokee lands subject to entry as other public lands.

R. S., vol. ii, p. 133.  
Act 1783, s. 5.

## Sec. 305. Lands reserved to the Cherokee Indians.

The Cherokee Indians shall have and enjoy all that tract of  
 2 land bounded as follows, to-wit: Beginning on the Tennessee  
 3 where the southern boundary of this state intersects the same near-  
 4 est to the Chickamawga towns, thence up the middle of the Ten-  
 5 nessee and Holstein to the middle of French Broad, thence up the  
 6 middle of French Broad river (which lines are not to include any  
 7 island or islands in the said river) to the mouth of Big Pidgeon  
 8 river, thence up the same to the head thereof, thence along the di-  
 9 viding ridge between the waters of Pidgeon river and Tuckasejah  
 10 river, to the southern boundary of this state; and the lands con-  
 11 tained within the aforesaid bounds shall be reserved unto the said  
 12 Cherokee Indians and their nation forever, anything herein to  
 13 the contrary notwithstanding.

## Sec. 306. Penalty for entering, &amp;c., Cherokee lands; such entries void, &amp;c.

1783, s. 6.

No person shall enter and survey any lands within the bounds  
 2 set apart for the said Cherokee Indians, under the penalty of fifty  
 3 pounds specie for every such entry so made, to be recovered in any  
 4 court of law in this state, by and to the use of any person who will  
 5 sue for the same; and all such entries, and grants thereupon, if  
 6 any should be made, shall be utterly void.

## Sec. 307. All purchases of said lands to be void; penalty on persons purchasing, &amp;c., the same.

1783, s. 7.

No person, for any consideration whatever, shall purchase or  
 2 buy, or take any gift or lease of any tract of land within the said  
 3 bounds, of any Indian or Indians, but all such bargains, sales, gifts  
 4 and leases shall be declared to be null and void; and the person  
 5 so purchasing, buying, leasing or taking any gift of any land, of  
 6 any Indian or Indians as aforesaid, shall moreover forfeit the sum  
 7 of one hundred pounds specie for every hundred acres so pur-  
 8 chased, bought, leased or taken as aforesaid, one-half to the use of  
 9 the state, and the other half to him that will sue for the same, to  
 10 be recovered in the manner as aforesaid.

## Sec. 308. No person to hunt, range or drive stock on their lands; penalty.

1783, s. 8.

Whereas, the said Indians may receive injuries from people  
 2 hunting, ranging or driving stocks of horses, cattle or hogs, on the  
 3 lands hereby allotted them: For remedy whereof, it shall not be  
 4 lawful for any person or persons whatsoever to hunt or range on  
 5 the said lands, or to drive stocks of cattle, horses or hogs thereon,



6 on pain of forfeiting the sum of fifty pounds specie for every such  
7 offence, together with such stock or stocks of horses, cattle or hogs, so  
8 driven ; to be recovered by any person who shall sue for the same  
9 in the manner aforesaid.

Act of 1819.

**Sec. 309. The governor to appoint commissioners.**

As soon as may be convenient, after the passage of this section,  
2 the governor shall appoint two commissioners whose duty it shall  
3 be to superintend and direct the manner in which the lands lately  
4 acquired by treaty from the Cherokee Indians shall be surveyed  
5 and laid off into sections containing from fifty to three hundred  
6 acres of land : they shall further cause the principal surveyor to  
7 note down in each of the said sections the quality of the land con-  
8 tained therein, stating that it is of the first, second or third quality ;  
9 and in all cases where it can be done with convenience, or the sit-  
10 uation of the land will admit of it, such portion of the adjoining  
11 mountainous lands shall be included in each section as may be  
12 deemed sufficient for buildings, fences, fuel and other necessary  
13 improvements.

R. S., vol. II, p. 189.  
1819, s. 1.

**Sec. 310. Principal surveyor ; his duties ; deputy chain carrier, &c.**

One principal surveyor of skill and integrity shall also be ap-  
2 pointed by the governor, with full power and authority to appoint  
3 as many deputy surveyors, chain carriers and markers, and to  
4 employ as many pack-horses as may be thought necessary to com-  
5 plete the said survey in the most speedy and effectual manner ; for  
6 whose conduct the said principal surveyor shall be responsible.  
7 And the principal surveyor shall give bond and security in the  
8 sum of ten thousand dollars, payable to the governor for the time  
9 being, for the faithful discharge of the several duties imposed by  
10 this section. It shall further be the duty of the said principal  
11 surveyor, under the directions of the commissioners aforesaid, to  
12 cause each section by him surveyed, to be measured and marked,  
13 and the corners to be clearly designated on trees, or otherwise,  
14 with the number of each section.

1819, s. 2.

**Sec. 311. Duty of surveyor in noting mines, &c. ; three plots of the whole land to be made.**

Each surveyor shall note in his field book the true situation of  
2 all mines, springs, mill seats, and water courses, over which the  
3 lines he runs shall pass, and those contiguous thereto : the said field  
4 book shall be returned to the commissioners, who shall cause their  
5 principal surveyor therefrom to make a description of the whole  
6 lands surveyed, in three connected plots, one of which when com-  
7 pleted shall be transmitted to his excellency, the governor, one to

1819, s. 3.

8 the secretary's office, and the other lodged and recorded in the  
9 clerk's office of the county of Haywood.

**Sec. 312. Site for public buildings.**

1819, s. 4.

It shall further be the duty of the said commissioners to ascertain and fix upon some central and eligible spot for the erection of the necessary public buildings, whenever that section of the state may be erected into a separate county, and four hundred acres surrounding the said site shall be reserved for the future disposition of the legislature.

**Sec. 313. So much of land only as will sell for fifty cents an acre to be laid out; and no part of the land to be subject to entry.**

1819, s. 5.

No portion of said lands shall be surveyed and laid off into sections, except so much thereof as in the estimation of said commissioners will sell for fifty cents per acre; and the residue of said lands shall be reserved for the future disposition of the legislature, and no part or portion thereof shall be liable to be entered in the entry taker's books for the county of Haywood, or elsewhere, until provision be made by law for the disposal thereof; and entries heretofore made, or grants obtained, or which may hereafter be made, otherwise than as provided by this section, are hereby declared to be utterly void and of none effect.

**Sec. 314. Governor to give notice of sale, &c.**

1819, s. 6.

The governor, on receipt of the plots and drafts heretofore provided for in this chapter, shall give notice by proclamation in all the newspapers published in the city of Raleigh, and in such other papers in the adjoining states of South Carolina, Georgia, Virginia and Tennessee, of the time and place of sale, as he may deem advisable, which in no case shall be less than two months from the date of the notice: the said lands shall be exposed at public sale to the highest bidder at Waynesville, in the county of Haywood, under the superintendence of the said commissioners; and the sale shall be kept open for the space of two weeks and no longer.

**Sec. 315. Terms of sale.**

1819, s. 7.

The said commissioners shall require of each and every purchaser to pay down at the time of sale one-eighth part of the purchase money, and shall take bond and security for the payment of the balance in the following instalments, viz: The balance of one-fourth at the expiration of twelve months, one other fourth at the expiration of two years, one other fourth at the end of three years, and the remaining fourth at the end of four years; and in no instance shall a grant or grants issue to the purchaser, until the

9 whole of the purchase money be paid; and in case of fail-  
10 ure to pay the whole when due, and money cannot be obtained  
11 by a judgment on their bond, then the land shall revert to the  
12 state, and be liable again to be sold for the use and benefit of the  
13 state.

**Sec. 316. Minimum of price; sales postponed.**

If, during the time of said sale, any section of land noted to be 1819, s. 8.  
2 of the first quality, shall not command in the market the sum of  
3 four dollars per acre, the said commissioners shall postpone the  
4 sale of such section until further directed by the legislature; and  
5 in like manner lands of the second quality not commanding three  
6 dollars, and lands of the third quality not commanding two dol-  
7 lars, shall be postponed as aforesaid, and report thereof made to  
8 the governor.

**Sec. 317. When grants are to be issued.**

The said commissioners shall give to each purchaser a certificate 1819, s. 10.  
2 describing the land by him purchased, with a plot of the lot and R. S., vol. II, p. 207.  
3 number of the section conformable to the plan returned to the sec- 1831.  
4 retary's office; upon the production of which and proof of the pay-  
5 ment of the purchase money made to the secretary by the treasurer's  
6 receipt, it shall be the duty of said secretary to issue a grant to the  
7 purchaser for the said lot of land in the usual and common form.  
8 In all cases where certificates may have been lost or destroyed, it  
9 shall be the duty of the secretary (on receiving the affidavit of the  
10 purchaser, his heirs or assigns, taken before some justice of the  
11 peace for his county, setting forth the number of the section and  
12 district, and that the certificate of his purchase has been lost or  
13 destroyed) to make out a copy of the plot and field notes from the  
14 books in his office, and issue a grant in the usual way: *Provided*,  
15 that no grant shall issue where the number of the section and dis-  
16 trict set forth in the affidavit does not agree with the books in the  
17 office, nor without a receipt or certificate from the state treasurer,  
18 setting forth the payment of the purchase money.

**Sec. 318. Bonds for purchases to be filed with treasurer.**

The bonds to be taken by the said commissioners for securing 1819, s. 12.  
2 the balance of the purchase money, shall be by them lodged with  
3 the treasurer of the state, and they shall take from him duplicate  
4 receipts, one of which shall be filed with the comptroller, who shall  
5 thereupon raise an account with the obligors.

**Sec. 319. Provides for purchasers who may have lost their receipts.**

Whenever any of the purchasers of the Cherokee lands shall R. S., vol. II, p. 204.  
2 have lost or mislaid the receipt or receipts that shall have been 1828.  
3 given by the treasurer, if it shall appear from the books of the



4 treasury office that the whole amount due from any purchaser has  
 5 been paid, the treasurer shall make out a certificate of such pay-  
 6 ment, and upon the same being filed with the secretary of state to-  
 7 gether with other certificates, as prescribed by the preceding  
 8 section, the secretary of state shall issue a grant to such purchaser,  
 9 in the same manner as directed by said section.

**Sec. 320. Commissioners to make return to the comptroller, &c.**

1819, s. 13.

The said commissioners shall render an account upon oath to  
 2 the comptroller, of all moneys by them received from purchasers  
 3 on the several days of sale, and pay the amount thereof into the  
 4 treasurer's office, at as early a period as possible after the said sales  
 5 are over.

**Sec. 321. Temporary jurisdiction of the county.**

Until the said section of county is laid off into a separate and  
 2 distinct county, it shall be subject to the jurisdiction of the county  
 3 of Haywood, and shall form a part thereof.

**Sec. 322. Discount of eight per cent. for prompt payment.**

1819, s. 16.

If any purchaser shall be disposed to pay the whole of the pur-  
 2 chase money, or any particular instalment in advance, the treasurer  
 3 or the commissioners are authorized to receive the same, and he  
 4 shall be allowed a discount at the rate of eight per cent. per  
 5 annum on such advancement.

**Sec. 323. Occupants may be ejected by the purchasers.**

1819, s. 18.

Each and every purchaser of any section or sections of said land,  
 2 having obtained a certificate from the commissioners as heretofore  
 3 provided in this chapter, his heirs and assigns, shall have full power  
 4 and authority to institute an action of ejectment in the name of the  
 5 state of North Carolina, against any person or persons, who may be  
 6 in possession of such section of land, and shall, on application,  
 7 refuse to deliver up quiet and peaceable possession thereof. And  
 8 the certificate of the commissioners to such person shall be evi-  
 9 dence of title and right to sustain said action, unless it shall appear  
 10 to the court before whom such action is tried, that said purchaser  
 11 has forfeited his right under said purchase as in this chapter pro-  
 12 vided: *Provided*, that said purchaser shall give bond and security  
 13 for the payment of all costs accruing in said action in case of his fail-  
 14 ure to recover.

Act of 1820.

R. S., vol. ii, p. 192.  
 1820, s. 1.

**Sec. 324. Governor to appoint commissioners to sell the lands.**

The governor is hereby authorized and empowered, to direct the  
 2 sale of so much of the lands lately acquired by treaty from the  
 3 Cherokee Indians as have been surveyed and yet remain unsold,

4 at such time and place as he may deem proper, under the direction  
5 and superintendence of two commissioners, to be by him appointed  
6 for that purpose, after having first advertised the same for one  
7 month in the public newspapers published at this place, which sale  
8 shall be kept open for one week, and no longer.

**Sec. 325. Occupants entitled to their crops.**

The persons that have already settled on said lands, waiting for  
2 the sale thereof, shall be entitled to the benefit of the crops that  
3 they have planted previous to the sale above recited. 1820, s. 4.

**Sec. 326. Discount allowed on payments in advance.**

If any purchaser shall be disposed to pay the whole of the pur- 1820, s. 5.  
2 chase money, or any particular instalment, in advance, the treas-  
3 urer or the commissioners are authorized to receive the same, and  
4 he shall be allowed a discount at the rate of eight per cent. on such  
5 advancement.

**Sec. 327. Fine for disobedience; proviso.**

From and after the first day of January, one thousand eight hun- R. S., vol. II, p. 193.  
1820, s. 1.  
2 dred and twenty-one, it shall not be lawful for any white man to  
3 buy, rent, lease or cultivate any of the lands reserved to the Chero-  
4 kee Indians by the late treaties in eighteen hundred and seventeen,  
5 and eighteen hundred and nineteen, nor to act as agent, attorney  
6 or trustee, in buying, renting, leasing or cultivating such lands:  
7 and any person violating the provisions of this section shall forfeit  
8 five hundred dollars, to be recovered in any court having cogni-  
9 zance of the same, the one half to any person suing for the same,  
10 and the other half to the state: *Provided, nevertheless*, that this sec-  
11 tion shall not extend or be so construed as to prevent Richard  
12 Walker, or the Big Bear, from managing the lands allotted to them  
13 as they may think proper.

**Sec. 328. White men may extinguish Indians' right to lands.**

Any white man who shall have purchased from this state, at the R. S., vol. II, p. 193.  
1821, s. 1.  
2 sales made by commissioners according to law, lands reserved for  
3 certain Cherokee Indians, may purchase or extinguish the right of  
4 the Indians, to whom said lands were reserved, to the land so sold  
5 by the authority of this state; any thing in the above recited sec-  
6 tion to the contrary notwithstanding.

**Sec. 329. Penalty for buying, &c., from Indians, remitted.**

The penalty incurred by any persons, in buying, renting, leasing 1821, s. 2.  
2 or cultivating lands from Indians, which lands such persons had  
3 previously purchased from this state, as hereinbefore mentioned, is  
4 hereby remitted and discharged.

**Sec. 330. Governor to direct the sale of Cherokee lands.**

1821, s. 1

The governor is hereby authorized to direct the sale of so much  
2 of the lands acquired from the Cherokee Indians as have been sur-  
3 veyed, and yet remain unsold, at such time and place as he may  
4 deem proper, under the direction of a commissioner to be by him  
5 appointed for that purpose, after having first advertised the same  
6 for at least one month in the papers of this city, in the Western  
7 Carolinian, of Salisbury, and in such other papers as he may think  
8 proper; which sale shall be kept open for two weeks, and no longer.

**Sec. 331. Commissioner to postpone sale if the lands do not command the proper prices.**

1821, s. 4.

If, during the sale, any section of land noticed to be of the first  
2 quality shall not command in market the sum of three dollars,  
3 and in like manner lands of second quality not commanding two  
4 dollars, and lands of third quality not commanding one dollar  
5 and fifty cents, the commissioner shall postpone the sale of such  
6 lands until further directed by the legislature; and where the com-  
7 missioner discovers that any section of land is likely to bring less  
8 than its value, either for the want of competition, or from a com-  
9 bination among the bidders, he shall bid off the same for the state.

**Sec. 332. Commissioner to ascertain what lands are in dispute between Indians and persons claiming under the state.**

1821, s. 5.

The commissioner aforesaid shall ascertain what sections or  
2 pieces of lands are now in dispute between the Indians claiming  
3 under the treaties and the persons holding under the state, and  
4 report the same to the treasurer, who, upon this or any correct  
5 information, shall forbear to proceed in the collection of the bonds  
6 due from such persons until the controversy shall be decided by  
7 the proper tribunal; and, in the event the persons holding under  
8 the state are ejected by the Indians, then, upon due proof of that  
9 fact, the treasurer shall refund to such persons ejected whatever  
10 sums of money they may have paid to the state, with interest  
11 thereon from the time of such payments, and further deliver over  
12 to them the bonds held for the balance of the purchase money.

**Sec. 333. Month's notice of sale by advertisement.**

1822, s. 1.

The governor is hereby authorized to direct the sale of so much  
2 of the lands lately acquired by treaty from the Cherokee Indians,  
3 as have been surveyed and remain unsold, at such time and place  
4 as he may deem proper, under the direction of a commissioner to  
5 be by him appointed for that purpose, after having advertised the  
6 same at least one month, in the papers of this city, the Western  
7 Carolinian, of Salisbury, and such other papers as he may think  
8 proper; which sale shall be kept open one week, and no longer.



Sec. 334. If lands do not bring their value, sale to be postponed; commissioner to bid for the state in certain cases.

If, during the sale, any section of land noticed to be of the first 1822, s. 2.  
2 quality shall not command in the market the sum of three dollars,  
3 and in like manner, lands of the second quality not commanding  
4 the sum of two dollars, and lands of the third quality not com-  
5 manding one dollar, the commissioner shall postpone the sale of  
6 such lands; and when the commissioner discovers that any sec-  
7 tion of land is likely to bring less than its value, either for want  
8 of competition, or from combination among the bidders, he shall  
9 bid off the same for the state.

Sec. 335. Governor to appoint two commissioners to meet and contract with said Indians.

Two commissioners shall be appointed by the governor, whose R. S., vol. II, p. 193.  
2 duty it shall be, at some time before the next session of the gen- 1823, s. 1.  
3 eral assembly, to meet at some convenient place in the county of  
4 Haywood, and inquire into the titles of certain tracts of land  
5 claimed by individuals of the Cherokee nation of Indians, under  
6 certain provisions made in the treaties concluded between the United  
7 States and the said nation, in the years one thousand eight hun-  
8 dred and seventeen, and one thousand eight hundred and nineteen;  
9 and said commissioners are hereby authorized to contract with any  
10 of the said Indians, or with any agent or agents duly authorized  
11 by them, for the purchase of the tract or tracts to which the said  
12 commissioners shall believe the said Indians, or any of them, shall  
13 have a good and valid title under the provisions of the said trea-  
14 ties; such contract to be made subject to the further ratification  
15 of the general assembly.

Sec. 336. To ascertain whether said Indians have sold their titles to individuals.

It shall be the duty of the said commissioners to ascertain the 1823, s. 2.  
2 fact, if practicable, whether the said Indians, or any of them, have  
3 sold their titles to individuals, and the names of those individuals,  
4 and report the same to the next general assembly.

Sec. 337. Commissioners to report to the next general assembly.

It shall be the duty of the said commissioners to report to the 1823, s. 3.  
2 general assembly, at their next session, their proceedings under  
3 the foregoing section, and whether the said Indians will consent  
4 to sell the said lands; if so, an account of each contract they may  
5 enter into with the said Indians, and such contracts, when ratified  
6 by the general assembly, shall be binding on the state, and not  
7 otherwise.

**Sec. 338. Purchasers may transfer their rights.**

1823, S. 3.

Any purchaser of any tract of said land, or the heirs of such purchaser, may assign and transfer his or her right under the certificate of his purchase, granted by the commissioners to such purchaser, by deed for good or valuable consideration; and such deed being proved or acknowledged and recorded, as other deeds of land are by law required to be proved or acknowledged and recorded, and such deed being filed in the office of the secretary of state, and a certificate from the treasurer of the state that the purchase money of said land has been paid to the state, it shall be lawful for the secretary of state to issue a grant for such land to the assignee aforesaid, expressing in such grant that the said grant is made to the said grantee, by virtue of the assignment from the original purchaser.

**Sec. 339. Contract ratified and confirmed; except as to the claim of Morris and others.**

R. S., vol. II, p. 198.  
1824, S. 1.

The contract entered into between Benjamin Robinson and William Robards, commissioners for that purpose, appointed in conformity with the act of one thousand eight hundred and twenty-three, on the one part, and the following heads of Cherokee Indian families, to-wit: Jack, Sharp-fellow, Jacob, Oo-lah-nottee, Johnson, Connaught, Bag, or Sap-Sucker, Club, Wha-ya-kah, or Grass Grower, Old Nanny, Eu-noch, or Trout by Skilkee, Am-ma-cher, or Water going under the Ground, Tau-neh, for self and heirs, John, Bear going-in-the-hole, Too-naugh-he-all, Beaver-toter, John Quickly, Fence, Parch-corn-flour, Jenny, for self and heirs of Skekin, Ca-tee-hee, Yellow-Bear, Sally Little-Deer, for self and heirs, Jenny, Wolf, W. Reid, John Ben, Thomas, Cul-sow-wee-hee, Old Mouse, Panther, Back-water, Yono-na-gis-kah, Eu-che-lah, Tegen-tos-ah, Tom for self and Aquallah, widow and heir of Too-lah-notah, and Gideon F. Morris, on the other part; which contract was executed at Franklin, in the county of Haywood, on the twentieth day of August, one thousand eight hundred and twenty-four, witnessed by Humphrey Posey, Joshua Robards, Saul Smith and G. Stephens, is hereby ratified and confirmed, except as to the claim of Gideon F. Morris, Tau-neh, and the heirs of Ah-leach, Jenny, and the heirs Skekin, Sally Little-Deer, and the heirs of Little-Deer, Aquallah and Tom, widow and heir of Too-lee-noo-tah, Parch-corn-flour, Jenny, Ca-tee-hee, Yellow-Bear, Cul-sow-wee-hee, Old Mouse and Panther, and as to whom the said contract and treaty is not ratified and confirmed.

**Sec. 340. Contract to be enrolled and printed with the laws of the state.**

1824, S. 2.

The said contract shall be enrolled and printed with the laws of the state, and the secretary of state shall cause to be registered in a suitable book to be procured for that purpose, the certificates

4 and surveys of the parties, together with the memorandum of evi-  
5 dence, and shall safely keep the originals, and all other papers  
6 relating to the contracts, amongst the records of his office.

**Sec. 341. Commissioners to be appointed to carry the contract into effect.**

Two commissioners shall be appointed by the governor, who, 1824, s. 4.  
2 upon the governor's warrant, shall draw from the treasury the sum  
3 of nineteen thousand, nine hundred and forty dollars, set apart for  
4 the purpose of carrying the aforesaid contract into effect, whose  
5 duty it shall be to proceed to the town of Franklin, in the county  
6 of Haywood; and on notification to the parties, to meet them at  
7 that place, between the twentieth day of April and the second day  
8 of May, one thousand eight hundred and twenty-five, they shall  
9 pay the said parties, respectively, the sums stipulated to be paid  
10 them by the said contract.

**Sec. 342. Releases and conveyances to be taken from the parties.**

The commissioners to be appointed as aforesaid, on the payment 1824, s. 5.  
2 of the money, as in section three hundred and forty-one provided,  
3 shall take a release from the parties against all suits, and take con-  
4 veyances from the several persons as to whom the said contract is  
5 ratified, of all their title and claim to their said reservations within  
6 this state, in such form as shall be good and sufficient to convey the  
7 same, and cause the same to be proved and registered in the proper  
8 office of Haywood county; and after the same shall have been  
9 registered, that they cause the same to be transmitted to the gov-  
10 ernor.

**Sec. 343. Contract to be registered in Haywood county.**

The said contract, after it shall have been enrolled, shall be de- 1824, s. 6.  
2 livered by the secretary of state to the commissioners, to be ap-  
3 pointed as aforesaid, whose duty it shall be to carry the same into  
4 the county of Haywood, and cause the same to be proved and reg-  
5 istered in the proper office of said county; and after the same shall  
6 have been registered, they shall cause the same to be returned  
7 to the governor.

**Sec. 344. Commissioners to report to the governor.**

The commissioner or commissioners, to be appointed as herein- 1824, s. 11.  
2 before mentioned, shall report to the governor on or before the first  
3 day of November next, what he or they may have done in con-  
4 formity to this chapter.

**Sec. 345. Governor to appoint commissioners; their duty.**

As soon as may be convenient after the passage of this act, the R. S., vol. 11, p. 201.  
1826, s. 1.  
2 governor shall appoint one or two commissioners, as may be deemed



3 necessary, whose duty it shall be to superintend and direct the  
 4 manner in which all the said lands, which have not been hereto-  
 5 fore surveyed, and which, in the estimation of the commissioner  
 6 or commissioners, shall be worth fifty cents an acre, shall be sur-  
 7 veyed and laid off into sections, containing from fifty to three hun-  
 8 dred acres of land; he or they shall further cause the principal  
 9 surveyor to note down, in each of the said sections, the quality of  
 10 the land contained therein, stating that it is of the first, second or  
 11 third quality; and, in all cases where it can be done with conve-  
 12 nience, or the situation of the land will admit, such portion  
 13 of the adjoining mountainous lands shall be included in each sec-  
 14 tion as may be deemed sufficient for buildings, fences, fuel, and  
 15 other necessary improvements: *Provided*, that no reservation se-  
 16 cured by treaty to any Indian shall be surveyed or sold.

**Sec. 346.** Lands for sale, to be classed by the commissioners; sales to be postponed under certain circumstances.

1826, s. 4.

Previously to the sale, the commissioner or commissioners shall  
 2 designate all the lands to be surveyed under the directions of this  
 3 chapter, into three classes, according to quality: that which is of  
 4 the first quality, to belong to the first class; the second quality, to  
 5 the second class; and the third quality, to the third class; and if,  
 6 during the time of the sale hereinafter provided for, any section of  
 7 land noted to be of the first class, shall not command the sum of  
 8 two dollars per acre in the market, the said commissioner or com-  
 9 missioners shall postpone the sale of such section until further di-  
 10 rected by the legislature; in like manner, lands of the second class,  
 11 not commanding one dollar, and lands of the third class, not com-  
 12 manding fifty cents per acre, shall be postponed as aforesaid, and  
 13 report thereof made to the governor.

**Sec. 347.** For the benefit of those already settled on said lands.

1826, s. 7.

The persons already settled on said lands, waiting for the sale  
 2 thereof, shall be entitled to the benefit of the crops, which they  
 3 may have planted or sown, previously to the sale hereinbefore di-  
 4 rected.

**Sec. 348.** Bidders who fail to comply with terms of sale within twenty-four hours to forfeit their bid, and the next highest bid to be received; proviso; commissioners empowered to sell lots in the town of Franklin.

1826, ss. 8, 9.

If any person shall bid off lands at the sales, and shall not com-  
 2 ply with the terms of such sale within twenty-four hours thereaf-  
 3 ter, if so required to do by the commissioner or commissioners, he,  
 4 she, or they shall forfeit their bid, and the commissioner or com-  
 5 missioners may, in such case, receive the bid of the next highest  
 6 bidder, in the same manner as if he had been the highest bidder:  
 7 *Provided always*, that such bid is not below the minimum price of  
 8 said land, and that the commissioner or commissioners may, in

9 in their discretion, sue for, and recover of the highest bidder, who  
10 has refused to comply with the terms of sale, the difference be-  
11 tween his bid and the bid of the next highest, in case the commis-  
12 sioner or commissioners should receive the same. At the time of  
13 said sale, the commissioner or commissioners shall have power to  
14 sell lots numbers three, nine, thirteen and nineteen, in the town  
15 of Franklin, on the same terms of credit, and under the same rules  
16 and regulations herein prescribed for the sale of the aforesaid  
17 lands.

**Sec. 349. Certificate of state treasurer may be received as evidence of payment.**

The certificate of the state treasurer, certifying that full pay-  
2 ment has been made for any particular tract of land sold by the  
3 commissioners appointed to sell the lands aforesaid, describing the  
4 same by district and section, shall be taken by the secretary of  
5 state as evidence of payment; on which he is authorized to issue  
6 grants as by law he is now authorized to issue on the production  
7 of the treasurer's receipts.

R. S., vol. II, p. 205  
1829.

**Sec. 350. Secretary shall issue a grant on affidavit of purchaser; proviso.**

In all cases where certificates may have been lost or destroyed, it  
2 shall be the duty of the treasurer to remit all the interest which  
3 may have accrued on such bonds from their date until the first  
4 day of December, one thousand eight hundred and twenty-nine, or  
5 so much thereof as may be commensurate with the injury actually  
6 sustained: *Provided*, that the provisions of this section shall not  
7 extend to any person whose lands have not been materially and  
8 injuriously interfered with by such Indian reservations as have  
9 been recognized as good and valid by Romulus M. Saunders and  
10 Humphrey Posey, as commissioners of the United States, and pur-  
11 chased by them as such.

R. S., vol. II, p. 207.  
1831.

**Sec. 351. Governor authorized to direct the sale, and to appoint a commissioner for that purpose.**

The governor is hereby authorized to direct the sale of so much  
2 of the lands lately acquired by treaty from the Cherokee Indians as  
3 have been surveyed and remain unsold, at such time and place as  
4 he may deem proper, under the direction of a commissioner to be  
5 by him appointed for that purpose, after having advertised the  
6 same at least three months in the public newspapers of this city,  
7 the Western Carolinian of Salisbury, and such other papers as he  
8 may think proper; which sale shall be kept open one week, and  
9 no longer.

R. S., vol. II, p. 208.  
1833, s. 1.

**Sec. 352. Lots in Franklin may be surveyed and sold.**

1833, s. 4.

The governor is hereby authorized to cause twelve additional  
2 lots to be surveyed in the town of Franklin, out of the four hun-  
3 dred acres reserved to the state, which may, together with those  
4 already surveyed, be exposed to sale under like rules and regula-  
5 tions as is prescribed in the before recited sections: *Provided always*,  
6 that the said commissioner be authorized, if in his opinion the  
7 interest of the state require it, to purchase in the same for the state.

**Sec. 353. Governor to convey certain lands to the justices of Haywood county court.**R. S., vol. II, p. 209.  
1835, s. 1.

It shall be the duty of the governor of the state to convey to the  
2 justices of Haywood county court, in trust for the said county, any  
3 tracts of land commonly called Cherokee lands, remaining unsold  
4 within the limits of said county, whenever the said justices shall  
5 execute and deliver to the state treasurer bonds with securities,  
6 to be approved by him for such sum, as the said lands may be  
7 ascertained to come to at the prices prescribed by law as the min-  
8 imum prices for lands of the quality, that the said tracts were  
9 apportioned to be by the commissioners, by whom the same were  
10 surveyed.

**Sec. 354. Justices to dispose of said lands.**

1835, s. 3.

It shall and may be lawful for the justices of said court to dis-  
2 pose of lands mentioned in the preceding section, for the use and  
3 benefit of Haywood county, under the direction of such commis-  
4 sioners, at such time and places, and upon such terms as may be  
5 determined by said court, a majority of the justices being present.

**Sec. 355. Governor shall appoint commissioners and surveyor.**R. S., vol. II, p. 209.  
1836, s. 1.

As soon as may be convenient after the passage of this section,  
2 it shall be the duty of the governor to appoint two commissioners,  
3 whose duty it shall be to superintend and direct the manner in  
4 which the said lands shall be surveyed and laid off; and it shall  
5 be the further duty of the governor to appoint one principal sur-  
6 veyor, of skill and integrity, with full power and authority to  
7 appoint as many deputy surveyors, chain carriers and markers, and  
8 to employ as many pack-horses, as may be necessary to complete  
9 the said surveying in the most speedy and effectual manner; and  
10 the said principal surveyor shall be responsible for the conduct of  
11 his said deputy surveyors in their official duty.

**Sec. 356. Site for public buildings to be fixed upon.**

1836, s. 3.

It shall be the duty of the said commissioners and principal sur-  
2 veyor to ascertain and fix upon some central and eligible site for  
3 the erection of the public buildings, which may hereafter become  
4 necessary when that portion of the state may be erected into a sep-



5 arate and distinct county; and to lay off four hundred acres of land  
6 immediately surrounding the said site, and to be reserved for the  
7 future disposition of the legislature, (except as herein provided.)  
8 It is hereby the duty of the said commissioners and principal sur-  
9 veyor to lay out, within the said four hundred acres of land, one  
10 acre for the public square; and to lay off two streets, crossing each  
11 other at right angles, which streets shall be one hundred feet in  
12 width; and to lay off twenty-four lots, of one-half acre each, so  
13 that each lot may be one hundred and five feet fronting the street;  
14 and three fair plots of which shall be made by the surveyor, and  
15 by him returned to the commissioners, and by them deposited as  
16 hereinafter provided for the returns of maps of survey.

**Sec. 357. Lands to be laid off into districts and tracts; qualities and prices of lands, &c.**

It shall be the duty of the said principal surveyor, under the 1836, s. 4.  
2 directions of the commissioners aforesaid, to cause all the lands of  
3 this state, lately acquired by treaty from the Cherokee Indians, to  
4 be laid off into suitable districts for the convenience of surveying,  
5 and to number the said districts progressively; and to lay off and  
6 survey each district, or so much thereof as they may deem practi-  
7 cable, into tracts, containing from fifty to four hundred acres, and  
8 to be so laid out where the same can be done, as that each tract  
9 may include a suitable and necessary portion of the timbered,  
10 mountainous or broken land as will be sufficient for building  
11 fences, for fuel and other necessary purposes: and the principal sur-  
12 veyor shall cause to be plainly marked on the beginning corner of  
13 each tract, and fronting said tract, the number of the district and  
14 tract, as the case may be; and shall cause all other corners to be  
15 plainly marked in the usual manner; and shall cause all lines by  
16 him run to be measured and plainly marked, where the same may  
17 be practicable; and shall lay down in his field book a fair plot of  
18 each and every tract by him surveyed, together with the district  
19 and number of the tract, as well as the quantity and quality: being  
20 first, second, third, fourth and fifth, as also a descriptive account  
21 of the lines and corners of each tract by him surveyed. And the  
22 said principal surveyor, under the directions of the commissioners  
23 shall cause to be surveyed so much of the said Cherokee lands as,  
24 in their opinion, will command the sum of twenty cents per acre;  
25 and the residue of said land shall remain subject to the disposition  
26 of a future legislature, and shall not be liable to be entered in the  
27 entry taker's office of the county of Macon; and when hereafter  
28 exposed to public sale, lands of the first quality shall not be sold  
29 for a less sum than four dollars per acre; and lands of second qual-  
30 ity, not less than two dollars per acre; and lands of the third qual-  
31 ity, not less than one dollar per acre; and lands of the fourth

32 quality, not less than fifty cents per acre; and lands of the fifth  
33 quality, not less than twenty cents per acre.

**Sec. 358. What surveyor shall note; maps required to be made.**

1836, §. 5.

The surveyor shall note, in his field book, the true situation of  
2 all mines which may come to his knowledge, as also all mineral  
3 springs, mill seats and principal water courses, over which the  
4 line he runs may pass, and those contiguous thereto; and the said  
5 field books shall be delivered to the principal surveyor, whose duty  
6 it shall be therefrom to cause to be made three correct maps of  
7 the whole lands by him surveyed; and shall insert the quality of  
8 each tract so laid down in his map; and the said maps, when so  
9 completed, shall be delivered to the commissioners, together with  
10 the field book of all such surveys, on or before the first day of No-  
11 vember, one thousand eight hundred and thirty-seven, and shall  
12 be by the commissioners deposited in the following manner, to-wit:  
13 one map in the office of the county court clerk for the county of  
14 Macon; one other in the office of his excellency the governor; and  
15 the remaining one in the office of the secretary, together with the  
16 field books of all the surveys, made in pursuance of this chapter;  
17 and the said commissioners aforesaid, upon the receipt of the maps  
18 and field books, shall, within two months therefrom, file the same  
19 in the different offices as by this section directed.

**Sec. 359. Governor to issue proclamation of sale, &c.**

1836, §. 6.

It shall be the duty of the governor, upon the return of the maps  
2 and field books as heretofore directed, to issue his proclamation,  
3 which he shall cause to be published in all the newspapers  
4 in the city of Raleigh, as also such other papers in the adjoining  
5 states of South Carolina, Georgia, Virginia and Tennessee, as he  
6 may deem necessary, of the time and place of sale of the said land;  
7 which notice shall be given at least four months previous to said  
8 sale; and the said sale shall be appointed and held in the town of  
9 Franklin, in the county of Macon, commencing on the first Mon-  
10 day of September, in the year of our Lord one thousand eight hun-  
11 dred and thirty-eight; and to continue from day to day, for the  
12 space of three weeks, and no longer.

**Sec. 360. Governor shall appoint commissioners of sale, who, upon giving bond, shall proceed to sell, &c.**

1836, §. 7.

It shall be the further duty of the governor to appoint two other  
2 commissioners to superintend the said sales, who shall, before  
3 entering on the duties by this chapter required, give bond, with  
4 sufficient security, in the sum of fifty thousand dollars each, paya-  
5 ble to the state of North Carolina, conditioned for the faithful dis-  
6 charge of their duty as commissioners of sale; and the said com-  
7 missioners so appointed, and having given bond as heretofore re-

8 quired, shall proceed, at the time and place by this chapter directed,  
9 to expose to public sale to the highest bidder, commencing with  
10 the first district and first tract, and so on progressively, until the  
11 whole shall be so offered for sale according to the provisions of  
12 this chapter; and it shall be the duty of the said commissioners to sell  
13 by tracts; and having once offered for sale any tract, and the same  
14 cannot be sold for the minimum price, to postpone the sale: *Pro-*  
15 *vided always*, that if, after any tract shall have been so postponed,  
16 any individual or individuals shall make known to the said com-  
17 missioners, in writing, that he or they are willing to give the min-  
18 imum price of any tract so postponed, then in that case, it shall be  
19 the duty of the commissioners to offer the same to public sale to  
20 the highest bidder a second time, first giving notice by the public  
21 crier by them employed for the land sales, at least one day previ-  
22 ous thereto, setting forth the particular tract or tracts so intended  
23 to be offered, as also the day on which the same shall be so offered;  
24 and shall be conducted under the same rules and regulations as  
25 other sales by this chapter directed.

**Sec. 361. Payments required of purchaser.**

The said commissioners shall require of each and every pur- 1836, s. 8.  
2 chaser to pay down, at the time of said purchase, one-eighth part  
3 of the purchase money; and shall take bond and security for the  
4 payment of the balance of the purchase money in the following  
5 manner, to-wit: the balance of one fourth at the expiration of one  
6 year from the date of the sale, and one other fourth at the expira-  
7 tion of two years, and one other fourth at the expiration of three  
8 years, and the remaining fourth at the end of four years; and in  
9 no instance shall a grant or grants issue to the purchaser until the  
10 whole of the purchase money shall be paid in full; and in case of  
11 failure to pay the whole when due, and the money cannot be  
12 obtained by judgment on their bonds, the lands so purchased  
13 shall revert to the state, and shall again be liable to be sold to any  
14 other person, for the use and benefit of the state:

**Sec. 362. Certificate and grant, how given.**

The commissioners shall give to each purchaser a certificate, 1836, s. 9.  
2 describing the land by him or them purchased, with a plot of the  
3 lot and number of tract, conformable to the plan returned to the  
4 secretary's office; upon the production of which, and proof of the  
5 payment of the purchase money, made to the secretary, by the  
6 treasurer's receipt, it shall be the duty of said secretary to issue a  
7 grant to the purchaser, for the said lot or tract of land, in the  
8 usual and common form.

**Sec. 363. Commissioners to pay over moneys.**

The before mentioned commissioners of sale shall faithfully 1836, s. 10.



2 account for, upon oath, and pay over to the treasurer, all moneys  
3 by them received, in pursuance of the sale of said lands as here-  
4 tofore provided.

**Sec. 364. Commissioners shall deposit bonds with treasurer, &c.**

1836, s. 11.

The bonds taken by the commissioners, for securing the balance  
2 of the purchase money, shall be by them lodged with the treasurer  
3 of the state; and they shall take from him duplicate receipts, one  
4 of which shall be filed with the comptroller, who shall thereupon  
5 raise an account with the obligors, and shall render an account,  
6 on oath, to the comptroller, of all moneys by them received and  
7 paid over to the treasurer; which duties they shall perform at as  
8 early a day as may be after said sale.

**Sec. 365. Advance payments.**

1836, s. 12.

If any purchaser shall be disposed to pay the whole of the pur-  
2 chase money, or any part thereof in advance, the commissioners  
3 are hereby authorized to receive the same, and to deduct at the  
4 rate of six per cent. per annum on such advancement.

**Sec. 366. Purchaser may institute action of ejectment.**

1836, s. 15.

Each and every purchaser of any tract or tracts of said land,  
2 having obtained a certificate from the commissioners as heretofore  
3 provided in this chapter, his heirs and assigns shall have full  
4 power and authority to institute an action of ejectment, in the state  
5 of North Carolina, against any person or persons who may be in  
6 possession of such tract or tracts of land, and shall, on application,  
7 refuse to deliver up peaceable and quiet possession thereof; and  
8 the certificate of the commissioners to such person shall be evi-  
9 dence of title and right to sustain said action, unless it shall appear  
10 to the court before whom such action is tried, that said purchaser  
11 has forfeited his right under said purchase, as in this chapter pro-  
12 vided: *And provided further*, that the said purchaser shall give  
13 bond and security for the payment of all costs accruing in said  
14 action, in case of his failure to recover.

**Sec. 367. Section subject to jurisdiction of Macon.**

1836, s. 16.

Until the said section of country is laid off into a separate and  
2 distinct county, it shall be subject to the jurisdiction of the county  
3 of Macon, and form a part thereof.

**Sec. 368. No transfer allowed.**

1836, s. 17.

No purchaser of lands under this chapter shall be at liberty to  
2 transfer their interest in said purchase, only subject to the lien of  
3 the security or securities for such part as they may be compelled  
4 to pay on their bonds as security; and said lien shall be good and  
5 valid in law as an indemnity to said security as aforesaid.

**Sec. 369. Cutting timber indictable.**

Any person cutting or removing timber from, or cultivating any 1836, s. 18.  
2 portion of the four hundred acres of lands heretofore reserved by  
3 this chapter, for the future disposition of the legislature, will be  
4 indictable in the inferior and superior courts of said county, and  
5 shall be punishable by fine, at the discretion of the court before  
6 which the conviction takes place: *Provided, nevertheless*, that all  
7 settlers on any other portion of public land and waiting for the  
8 sale thereof, shall be entitled to such crop as they may have grow-  
9 ing at the time of the sale provided for by this chapter.

**Sec. 370. Eight lots to be sold by commissioners.**

The commissioners of sale heretofore appointed shall expose to 1836, s. 19.  
2 public sale, to the highest bidder, eight lots heretofore provided to  
3 be laid out within the four hundred acres, in the following order:  
4 two lots adjoining the public square, and the other six lots in such  
5 order as that no two lots so sold shall be adjoining to each other;  
6 and the said sales shall be under the same rules and regulations,  
7 and the said commissioners shall make return and account for  
8 them as heretofore provided.

**Sec. 371. Sale of reservations in Macon and of lands already surveyed; name of county site.**

It shall be the duty of the commissioners to be appointed by 1836, ss. 20, 21, 22.  
2 virtue of this chapter, to cause to be surveyed and offered for sale,  
3 all the reservations remaining undisposed of in the county of  
4 Macon, under the same rules and regulations that are provided for  
5 the surveying and selling the lands lately acquired by treaty from  
6 the Cherokee Indians. And it shall be the duty of the said com-  
7 missioners of sale, to expose again to sale, all the lands already  
8 surveyed and now remaining unsold in the county of Macon afore-  
9 said. And the county site hereby directed to be laid out by the  
10 commissioners aforesaid, shall be known by the name of Murphy.

**Sec. 372. An agent to be appointed and to reside in Macon or Cherokee; to receive money due from purchasers of lands.**

The governor of this state is hereby authorized, after the first 1840-'1, c. 4, s. 1.  
2 day of March, one thousand eight hundred and forty-one, to ap-  
3 point an agent, who shall, after his appointment, reside in the  
4 county of Macon or Cherokee, whose duty it shall be to receive  
5 payment, from time to time, from all purchasers of Cherokee lands,  
6 all or any part of the money due on their several bonds; to as-  
7 certain and report to the treasury department, once every three  
8 months, the condition of the debtors as solvent, doubtful or other-  
9 wise, and guard and protect the general interest of the state in con-  
10 nection with the said lands, whether sold or unsold.

**Sec. 373.** The state treasurer to place such bonds in his hands as he and the governor may think proper for collection.

1840-'1, c. 4, s. 2.

The agent so appointed shall be authorized to receive from the state treasurer such of the bonds given for Cherokee lands, as the state treasurer, with the advice of the governor, shall deem proper, for which said agent shall execute to the treasurer his receipt: *Provided*, that at no time shall the said agent hold in his hands bonds and moneys received thereupon, to an amount beyond the penalty of his bond; he shall take the bonds to the county of his residence, and there receive all such payments as may be voluntarily made, and institute suit in all cases, when he shall be directed to do so by the state treasurer, or when the interest of the state shall in the least seem to require.

**Sec. 374.** State treasurer to take proper receipts from the agent for such bonds as he may deliver to him for collection.

1840-'1, c. 5, s. 1.

It shall be the duty of the treasurer whenever he shall deliver to the agent appointed by the act ratified thirtieth December, A. D. one thousand eight hundred and forty, any Cherokee bonds, to take from the said agent a memorandum or receipt, specifying the names of the obligors in said bonds, the amount for which they were given, and the time when they become due, and also the payments made on them severally, and in the event of any of said bonds being lost or destroyed before they may be collected, a copy of the memorandum or receipt, certified to be accurate by the treasurer, whose handwriting may be proven by the oath of any person knowing it, shall be received as evidence in the same manner as the original bonds, and a recovery shall be had on them, without the production of said bonds, any law, custom or usage to the contrary notwithstanding; *Provided, however*, as preparatory to the introduction of such receipts as evidence in the cases above specified, the loss of the bonds shall be proved in the manner usual in other cases when secondary evidence is offered in lieu of evidence of the first degree.

**Sec. 375.** Collections suspended.

1842-'8, c. 56, s. 1.

The further collection of the principal moneys now due on the bonds executed to the state of North Carolina, by the purchasers of Cherokee lands, is hereby suspended for the term of two years, from and after the first day of January, A. D. one thousand eight hundred and forty-three: *Provided, nevertheless*, that all persons claiming the benefit of this chapter shall be required to pay to the treasurer or to the agent authorized by law to receive the same, on or before the first day of January, A. D. one thousand eight hundred and forty-four, all the interest that shall have accrued on their bonds up to that period, and shall thereafter pay annually the accruing interest until the first day of January, A. D. one thousand eight hundred and forty-five.



**Sec. 376. Who shall not be entitled to the benefit of this chapter.**

No person or persons shall be entitled to the benefit of this chapter until the said person or persons shall have made the payments herein before required to be made; and all persons refusing or neglecting to make said payments, within twenty days after the expiration of the periods herein before specified for making the same, shall and may be proceeded against by suit or suits, at law or in equity, in the same manner and under the same rules, regulations and restrictions, as heretofore prescribed. 1842-'3, c. 56, s. 2.

**Sec. 377. Not to prevent voluntary payments.**

Nothing in this chapter contained shall be so construed as to prevent persons coming within the purview of its provisions, from paying the whole, or any portion of the respective amounts due on their bonds, at any time they may think proper. 1842-'3, c. 56, s. 3.

**Sec. 378. Treasurer shall make out statement, &c.**

The treasurer of the state is hereby authorized and directed to make out a fair statement of the amounts due upon each of the bonds respectively given by the purchasers of Cherokee lands, together with the names of the obligors, and the amount of interest that may be due on each bond separately, up to the first of January, A. D. one thousand eight hundred and forty-four, and forward the same to the agent for the collection of Cherokee bonds. 1842-'3, c. 56, s. 3.

**Sec. 379. Agent may require renewal.**

Nothing in this chapter contained shall be so construed as to prevent the agent from requiring a renewal of the bonds whenever, in his opinion, the public interest shall require it, or from instituting suit on said bonds, in case of failure on the part of the principal obligor or obligors therein to give further and additional securities, when required to do so by the agent now authorized by law to demand the same. 1842-'3, c. 56, s. 4.

**Sec. 380. Agent to collect moneys, &c.**

It shall be the duty of the agent of agents employed to collect moneys arising from the sale of Cherokee lands to transmit or deliver to the comptroller a duplicate statement of all said moneys which may hereafter be paid into the treasury by such agent or agents. 1844-'5, c. 1, s. 1.

**Sec. 381. Commissioner to be appointed by the governor; duties.**

The governor shall appoint some discreet person a commissioner, who, with the agent appointed under the act passed at the session of the general assembly held on the third Monday of November, A. D. one thousand eight hundred and forty, entitled "an act authorizing the governor to appoint an agent in the county of Macon or Cherokee," shall constitute a board charged with the fol- 1844-'5, c. 2, s. 1.

7 lowing duties, that is to say, the board shall as soon as convenient  
8 carefully examine all bonds given by purchasers of Cherokee lands,  
9 and ascertain in which of said bonds the principals are solvent, and  
10 in which the principals are insolvent; and when this examination  
11 shall have been completed, they shall make out duplicate lists of  
12 each class of bonds, setting out therein the names of the principals  
13 and sureties; the amount of said bonds; the payments if any  
14 made thereon; and the residue due upon the same, respectively;  
15 and shall certify under their hands that the said lists contain a  
16 true and faithful account of the matters stated therein; and shall  
17 transmit without delay one list of each class of bonds to the gov-  
18 ernor, and the said agent shall retain the other of said lists.

**Sec. 382.** Insolvents shall surrender the lands purchased and be released from their obligations.

1844-'5, c. 2, s. 2.

The governor is hereby authorized to cancel or surrender up to  
2 be canceled all the bonds in which the principals shall be certified  
3 to be insolvent when their securities are purchasers as aforesaid,  
4 upon the following conditions, that is to say, that the purchasers  
5 respectively, their heirs, devisees or assigns, shall, within three  
6 months after such lists shall have been made, surrender to the said  
7 agent, for the use of the state, possession of the land purchased,  
8 with all houses and other improvements which have now been or  
9 shall be made thereon at the time of such surrender; and that the  
10 purchasers, their heirs, devisees or assigns respectively shall de-  
11 liver to the governor a written surrender or release of all right  
12 under such purchases, and of all claim to any money which may  
13 have been paid on account thereof; and if the said purchasers,  
14 their heirs, devisees or assigns shall fail, refuse, or neglect to sur-  
15 render possession of the said lands, with all the improvements  
16 thereon, and deliver to the governor a written surrender or release  
17 of all right under such purchases, and of all claim to any money  
18 which may have been paid on account thereof, within the time  
19 prescribed in this section, then it shall be the duty of the governor  
20 to direct the collection of the bonds given by such purchasers, by  
21 causing suit to be brought thereon.

**Sec. 383.** Release, how proved; agent to certify.

1844-'5, c. 2, s. 3.

In order to ascertain to the governor the performance by the  
2 parties respectively of the said precedent conditions, the said writ-  
3 ten release shall be proved or acknowledged before one of the  
4 judges: or, where the parties or witnesses reside beyond the state,  
5 shall be proved or acknowledged in the mode prescribed in the  
6 chapter of the code entitled "Deeds and Conveyances;" and the  
7 said agent shall certify to the governor that possession of the  
8 lands, with the improvements, has been surrendered to him as  
9 required by the preceding section, after which and not before the

10 governor may cancel or deliver up to be canceled the said bonds  
11 respectively.

**Sec. 384. How solvent bonds shall be paid; provisos.**

On the bonds in which the principals shall be ascertained in 1844-'5, c. 2, s. 4.  
2 manner aforesaid to be solvent, payment shall and may be received  
3 in the manner and at the times following, that is to say, one-twen-  
4 tieth part of principal and interest shall be paid on the first day of  
5 December, one thousand eight hundred and forty-five; and one-  
6 twentieth of the principal and interest due on said first day of De-  
7 cember, one thousand eight hundred and forty-five, together with  
8 all accruing interest thereon, shall be paid on the twenty-fifth day  
9 of December in each and every year thereafter, until the payment  
10 of the whole shall be made: *Provided*, that if the parties to any of  
11 said bonds shall fail to make the said payments, or any of them,  
12 at the time when the same shall respectively become due, the gov-  
13 ernor may direct the immediate collection by suit of the whole  
14 amount, which may be due on such bonds at the time of such fail-  
15 ure: *And provided also*, that when by any report of said agent to  
16 the treasurer, which may be made under the first section of the  
17 before recited chapter, it shall appear that the debtors bound by  
18 such bonds, or any of them, are in doubtful circumstances, it shall  
19 be the duty of the governor to direct the immediate collection by  
20 suit of a full amount due on such bond or bonds; and the treas-  
21 urer shall, immediately after receiving any report showing any  
22 such matters, communicate the same to the governor for his action  
23 thereupon.

**Sec. 385. Commissioner and agent to take oath.**

Before entering upon the duties prescribed by this chapter, the 1844-'5, c. 2, s. 5.  
2 said agent and commissioner shall, before the governor, or one of  
3 the judges of the supreme court or superior courts, take and sub-  
4 scribe an oath faithfully and diligently, without favor, partiality  
5 or prejudice, to discharge all the said duties; and if the said oath  
6 shall be taken before a judge, the same shall be transmitted to the  
7 governor and kept by him.

**Sec. 386. Their pay.**

As a full compensation for the performance by them of the duties 1844-'5, c. 2, s. 6.  
2 mentioned in the first section of chapter two, laws of one thousand  
3 eight hundred and forty-four and five, the said agent and com-  
4 missioner shall each be entitled to receive two dollars for each day  
5 they shall be necessarily employed therein, to be allowed by the  
6 governor, upon the affidavits of the said agent and commissioner,  
7 verifying the number of days so employed, and, when allowed, to  
8 be paid out of the state treasury: *Provided*, that neither the said  
9 agent nor commissioner shall receive, on account of such services,  
10 not more than two hundred dollars.



**Sec. 387. Provisions extended to securities of insolvent purchasers.**

1846-'7, c. 5, s. 1.

The provisions of the act of one thousand eight hundred and twenty-four and five are extended to the securities of insolvent purchasers, whenever it is ascertained to the governor by the agent of the state, the principals are so insolvent and have removed beyond the limits of the state, so that releases from them cannot be had, then, and in that case, whenever the said securities, as aforesaid, shall release in manner prescribed, for the principals in said act, the governor is hereby authorized to deliver up such bonds, to be canceled in the same manner as if such releases were made by the principals, anything in that law to which this is an amendment to the contrary notwithstanding.

**Sec. 388. Duty of agent.**

1846-'7, c. 13, s. 1.

It shall be the duty of the agent appointed to receive payment for Cherokee lands, to attend at the town of Murphy, in the county of Cherokee, on the first three days of each superior court for said county, for the purpose of receiving payments upon all bonds entrusted to his care by virtue of such agency.

**Sec. 389. Lands surrendered by insolvents to be sold under valuation of board appointed by court and the governor.**

1846-'7, c. 14, s. 1.

All the lands surrendered by insolvents under the provisions of act of one thousand eight hundred and forty-four and five, shall be again sold, under the following rules and restrictions, that is to say, the county court of Cherokee (a majority of justices of said county being present), shall appoint one discreet person, residing in Cherokee county, and the governor shall appoint two others, not residents of Cherokee county, who shall constitute a board of valuation, whose duty it shall be to value the lands so surrendered to the state, at a fair cash valuation, in the following manner: first, at their present worth, including the improvements placed upon them by the former purchasers or their assigns; secondly, the worth of said lands when sold by the state in September, one thousand eight hundred and thirty-eight, including such improvements as were on them at that time; taking into consideration in both cases the locality of said lands, and the facilities the purchasers may have in transporting their produce to market; and the said board of valuation shall make out duplicate lists of each class of valuation, as soon as may be, one copy of each class of such lists to be filed in the clerk's office of the county court of Cherokee, and the other they shall transmit to the governor; and such copy filed in the clerk's office, as by this section directed, shall be kept by the clerk among the records of said court: *Provided*, that in no case shall the board of valuation hereby authorized place a less valuation upon the aforesaid land, than the rate fixed by the act of the

25 assembly of one thousand eight hundred and thirty-six, for the  
26 respective classes.

Sec. 390. Pre-emption right to first purchasers, and how bonds are payable.

The first purchasers who have surrendered said lands, their <sup>1846-'7, c. 14, s. 2.</sup>  
2 heirs, devisees or assignees, respectively, shall have a pre-emption  
3 right to purchase the lands they, or either of them, have so sur-  
4 rendered, at the second valuation by the said board: *Provided*, the  
5 right of pre-emption aforesaid shall extend to no assignee, who  
6 may have become such since the surrender aforesaid; the said  
7 purchasers first paying one-fourth of the purchase money, and  
8 giving bond with two or more approved securities (each of whom  
9 shall be considered good in his individual capacity for the whole  
10 debt) to the agent of the state heretofore appointed under act  
11 passed at the session of the general assembly, held on the third  
12 Monday of November, A. D., one thousand eight hundred and  
13 forty, entitled "an act authorizing the governor to appoint an  
14 agent in the county of Macon or Cherokee;" and such bonds for  
15 the residue of the payment of the purchase money shall be made  
16 payable in four annual instalments, bearing interest from date;  
17 and upon such bonds, when due and unpaid, suit shall be brought  
18 as upon the other bonds given for Cherokee lands under the laws  
19 now in force concerning Cherokee bonds: *Provided, nevertheless*,  
20 that no suit shall be instituted in any court of the state when the  
21 account due is within the jurisdiction of a justice of the peace;  
22 and in all such cases the agent is hereby required to warrant for  
23 the same before some justice of the peace: *And provided further*,  
24 that in all cases where it may be necessary to bring a suit in court  
25 on any of the Cherokee bonds, the amount due and owing by the  
26 same parties (although the same may be on several bonds) shall be  
27 consolidated in one action.

Sec. 391. If persons who surrendered do not comply, agent to sell or report to governor, who shall direct public sale.

If the person or persons who surrendered said lands, his, her or <sup>1846-'7, c. 14, s. 3.</sup>  
2 their heirs, devisees, or assigns should fail to comply with the re-  
3 quirements of the preceding section within three months after the  
4 valuation of said board, then and in that case, the said agent for  
5 the state is hereby authorized and required to sell and dispose of  
6 any tract or tracts so surrendered, to any person or persons desir-  
7 ous of purchasing the same, at the price of improved lands, upon  
8 such purchaser or purchasers first paying one-fourth of the pur-  
9 chase money and giving the necessary bonds as required in said  
10 section: *Provided, however*, that if the agent of the state shall not be  
11 able to sell or dispose of the said lands at the price of improved  
12 lands, as herein provided, within six months from the expiration  
13 of the three months mentioned in this section, then, and in that

14 case, it shall be his duty to report that fact to the governor, accom-  
 15 panied by a list of such lands so remaining unsold, and the gov-  
 16 ernor, if he shall deem the same expedient, shall appoint one or  
 17 two commisioners, as in his judgment may be deemed necessary,  
 18 to superintend the sale of the said lands, at public auction, who  
 19 before entering on the discharge of their duty, shall execute to the  
 20 governor, for the use of the state, a bond with approved security,  
 21 in the sum of ten thousand dollars each, conditioned for the faith-  
 22 ful performance of their duty, and accounting for all moneys com-  
 23 ing into their hands by virtue of their appointment as commis-  
 24 sioners aforesaid.

**Sec. 392. Governor to advertise; duty of commissioners.**

1846-7, c. 14, s. 4.

In the event of a public sale being directed by the governor as  
 2 aforesaid, it shall be his duty to advertise the same for at least six  
 3 weeks in not less than three newspapers of this state, setting forth  
 4 the time and place of sale, which shall be held at the town of Mur-  
 5 phy, in the county of Cherokee, and at such time as the governor  
 6 may appoint; and he shall also set forth in said advertisement the  
 7 terms and conditions of said sale, which shall be the same as those  
 8 mentioned in the second section of the act of one thousand eight  
 9 hundred and forty-six and seven, chapter fourteen, and the com-  
 10 missioners appointed as aforesaid shall make a full report of their  
 11 proceedings, together with an account of the cash by them received,  
 12 to the governor within two months from the close of said sales; and  
 13 shall pay over at the same time to the state treasurer all sums of  
 14 money by them received on account of said sales; for which ser-  
 15 vices they shall be allowed such sum as the governor may deem  
 16 just and reasonable, not exceeding three dollars per day for every  
 17 day they may be engaged in traveling to the place and superintend-  
 18 ing the said sales, and making the necessary returns to the seat of  
 19 government: *Provided, however,* that the public sale hereby author-  
 20 ized shall not continue for a longer time than two weeks.

**Sec. 393. How agent to proceed when part of tract had been sold.**

1846-7, c. 14, s. 5.

Whenever it shall appear to said agent that a part of any tract  
 2 of land surrendered under the act of one thousand eight hundred  
 3 and forty-four had been previously sold by the purchaser from the  
 4 state to any other person or persons, then and in that case it shall  
 5 be the duty of the agent to have due regard to the interest of such  
 6 sub-purchaser at the time of surrender, and to re-sell to each under  
 7 the provisions of this chapter according to the interest he or she  
 8 may have had at the time of such surrender.

**Sec. 394. Pre-emption to extend to settlers only.**

1846-7, c. 14, s. 6.

The pre-emption right, granted by this chapter, shall not extend  
 2 to any person or persons who are not actual settlers on the lands,



3 or who do not desire to become permanent residents in said coun-  
4 ties of Cherokee and Macon: *Provided*, that nothing in this chapter  
5 contained shall interfere with any right which any person or per-  
6 sons may have acquired under any existing law of the state.

**Sec. 395. Of ejectment.**

Each and every purchaser of any section or sections of said land, <sup>1846-'7, c. 14, s. 7.</sup>  
2 having obtained a certificate from the board constituted by this  
3 chapter, shall have full power and authority to institute an action  
4 of ejectment in the name of the state of North Carolina, against  
5 any person or persons, who may be in possession of such section of  
6 land, and shall, on application, refuse to deliver up quite and peace-  
7 able possession thereof, or who shall intrude upon said purchasers,  
8 after they enter into possession, or who may hold over after their  
9 tenancy shall have expired. And the certificate of the board, to  
10 such purchaser, or his assignee, shall be evidence of title and right  
11 to sustain such action: *Provided, nevertheless*, the said purchaser shall  
12 give bond and security for the payment of all costs accruing in  
13 said action, in case of his failure to recover.

**Sec. 396. Duty of commissioner, when original purchaser has not paid.**

In all cases where the original purchasers, or their surety or <sup>1848-'9, c. 48, s. 1.</sup>  
2 sureties, of Cherokee lands, has failed to pay for the same, it shall  
3 be the duty of the agent of the state for the collection of debts due  
4 for said Cherokee lands to receive payment from any assignee of  
5 said original purchaser, his heirs, devisee or assignee, for any tract  
6 so assigned; and to give said assignee, his heirs, devisee or assignee  
7 a receipt for the same, particularly specifying and describing the  
8 tract or parcel so assigned and paid for; and it shall be the duty -  
9 of the secretary of state, upon presentation of said agent's receipt,  
10 to issue a grant for the tract or tracts of land, specified in the re-  
11 ceipt, to the person or persons so paying for the same.

**Sec. 397. Secretary's duty; grant to issue to surety.**

Whenever, in any case, the purchase money for Cherokee lands <sup>1848-'9, c. 48, s. 2.</sup>  
2 has been paid by, or collected from, the sureties to the original  
3 purchaser, to the full amount of the bond or bonds given by them,  
4 it shall be the duty of the secretary of state, whenever the fact of  
5 such payment has been satisfactorily certified to him by said agent  
6 of the state, to issue a grant or grants for the lands so paid for, to  
7 the person paying for the same.

**Sec. 398. Grant not to issue until whole amount of bond is paid.**

Nothing in the two preceding sections shall authorize the agent <sup>1848-'9, c. 48, s. 3.</sup>  
2 to receipt for, or the secretary of state to issue grants for, any tract  
3 of land to the original purchaser, or to his surety, unless the whole

4 amount of the bond in which the price of said tract is included,  
5 shall have been fully paid off and satisfied.

**Sec. 399. Agent to return statement.**

1848-'9, c. 49, s. 1.

The Cherokee land agent shall, on or before the first day of May,  
2 one thousand eight hundred and forty-nine, return to the comptrol-  
3 ler's office a full and complete statement of all the surrendered  
4 lands, valued and resold under the act entitled "an act to provide  
5 for the sale of certain lands in Cherokee and Macon counties, which  
6 have been surrendered to the state," setting forth the names of the  
7 purchasers, the amount of each purchase, the amount paid, the  
8 amount due, and when due. And in all cases where the bonds of  
9 the original purchasers have been canceled, he shall return a state-  
10 ment thereof to the comptroller, who shall credit the respective  
11 accounts of said purchasers with the amount of said bonds.

**Sec. 400. Comptroller's duty.**

1848-'9, c. 49, s. 2.

Upon the return of the statement of the agent to the comptrol-  
2 ler's office, showing the account of sales as aforesaid, the comptrol-  
3 ler shall charge the obligors respectively in his books with the  
4 amount of each bond; and when payments are made thereon,  
5 either to the state treasurer or to the agent aforesaid, the comptrol-  
6 ler, on being furnished with the evidence of such payment, shall  
7 enter the proper credit for the same.

**Sec. 401. Agent authorized to suspend further collection of debts due on Cherokee bonds, &c.**

1848-'9, Resolu-  
tion.

Jacob Siler, the agent of the state for collection of Cherokee bonds,  
2 is hereby instructed to suspend the further collection of debts due  
3 on Cherokee bonds, until the turnpike road authorized by the gen-  
4 eral assembly of one thousand eight hundred and forty-eight and  
5 nine, to be laid out and constructed from Salisbury west to the  
6 Georgia line, is laid off and the contracts let out: *Provided*, the  
7 same be properly secured.

**Sec. 402. Copies of certain papers on file in the office of secretary of state, shall be evidence in certain cases.**

1850-'1, c. 22, s. 1.

The list made and transmitted to the governor, in pursuance of  
2 section one of an act ratified on January seventh, one thousand  
3 eight hundred and forty-five, entitled "an act more effectually  
4 to secure the debts due from Cherokee lands, and to facilitate  
5 the collection of the same by the commissioners appointed un-  
6 der the provisions of said act." And all the reports and certifi-  
7 cates made to the governor by Jacob Siler, the agent for the state,  
8 in pursuance of any statute relating to his office, or prescribing  
9 the duties thereof; and all deeds or written evidences of the sur-  
10 render of Cherokee lands by the purchasers thereof, their heirs,

11 devisees, assigns or sureties, executed in pursuance of the act  
12 aforesaid, or of "an act entitled an act to amend an act passed at the  
13 last session of the general assembly, entitled 'an act more effec-  
14 tually to secure the debts due for Cherokee lands, and to facilitate  
15 the collection of the same,'" shall be held to be records; and any  
16 part of the list aforesaid, certified to be such by the secretary of  
17 state and countersigned by the governor, or a copy of any such  
18 deed or written evidence of surrender, report or certificate certified  
19 by the secretary of state, and countersigned by the governor in  
20 like manner, shall be received in evidence by all courts of the  
21 state, without further proof.

**Sec. 403. Grant, evidence on which to issue.**

Hereafter, the receipts of the agent of the state for the collection 1850-'1, c. 23, s. 3.  
2 of Cherokee bonds, showing that full payment has been made for  
3 any tract of land in the counties of Haywood, Macon or Cherokee,  
4 together with the proper certificate of sale, transfer, deed or war-  
5 rant and certificate of survey, shall be sufficient evidence on which  
6 the secretary of state may issue a grant to the purchaser or enterer  
7 of said tract of land.

**Sec. 404. Board of valuation of surrendered lands; governor to appoint.**

By acts of the general assembly passed at the sessions of one 1850-'1, c. 24.  
2 thousand eight hundred and forty-four and five, and of one thou-  
3 sand eight hundred and forty-six and seven, all persons who pur-  
4 chased lands at the sale in the year one thousand eight hundred  
5 and thirty-eight, and who were unable to pay for them, were au-  
6 thorized to surrender said lands to the state; and whereas, a large  
7 number of tracts were surrendered under the provisions of said  
8 acts; and whereas, by the subsequent act of one thousand eight  
9 hundred and forty-six and seven, those lands were assessed by  
10 agents appointed under said act, and the purchasers were, upon  
11 giving new bonds with approved security, permitted to take up  
12 the land surrendered at the price fixed upon by the agents of the  
13 state; and whereas, it is but just and right that all purchasers  
14 should have the same measure of relief extended to them. The  
15 governor of the state shall appoint three persons, non-residents of  
16 Cherokee county, who shall constitute a board of valuation, whose  
17 duty it shall be to value all the lands surrendered to the state and  
18 have not been taken up, also the lands of insolvent purchasers  
19 which have not been surrendered, as well as the lands of solvent  
20 purchasers (if desired to do so by such solvent purchasers) at a fair  
21 valuation: *Provided*, that no money shall be paid to any claimant  
22 on account of any loss or damage which he or they may have sus-  
23 tained previous to the passage of the act of one thousand eight hun-  
24 dred and fifty and fifty-one, chapter twenty-four.



**Sec. 405. Lowest valuation.**

1850-'1, c. 24, s. 2.

In order to guard the interest of the state, the said board of commissioners shall have no power to reduce the price of any lands valued by them, below the valuation placed thereon by the commissioners appointed to superintend their survey under the act of one thousand eight hundred and thirty-six, under which act the first quality was valued at four dollars per acre, the second quality at two dollars per acre, and the third quality at one dollar per acre, the fourth quality at fifty cents per acre, and the fifth quality at twenty cents per acre: *Provided further*, that the said board of commissioners, in valuing the lands of solvent purchasers, under this act, shall have no power to reduce the price of any tract below one half of what it sold for in the year one thousand eight hundred and thirty-eight; and it shall be the duty of the board of valuation to make out duplicate lists of such valuation as soon as may be; one copy of which shall be filed in the office of the clerk of the county court of Cherokee, and the other they shall transmit to the governor of the state, to be filed in his office, and the same shall form a part of the records of said offices.

**Sec. 406. Board, when and where to meet; persons desiring the benefit, &c.**

1850-'1, c. 24, s. 3.

The commissioners hereby authorized to be appointed shall, within sixty days after the acceptance of their appointment, meet at the town of Murphy, in the county of Cherokee, for the purpose of proceeding in the execution of their duties; the commissioners appointed by the county court of Cherokee county shall advertise for thirty days previously, at the court house and three other public places in said county, and also in both the newspapers published at Asheville, the time and place of meeting of the said commissioners. And all persons desirous of taking the benefit of this chapter shall, within ten days next preceding the day appointed for the meeting of the commissioners aforesaid, apply either in person or by agent to the commissioner appointed by the county court of Cherokee county, whose duty it shall be to attend for that purpose, and render unto him a list containing the number of the tracts of land, the district in which they lie, and the number of the sections of all the lands they desire to be valued under the provisions of this chapter. And the said commissioner shall enter the same in regular order, in a book prepared for that purpose, so that the board of valuation may, when they meet, proceed in the performance of their duty as herein required.

**Sec. 407. Oath.**

1850-'1, c. 24, s. 4.

The commissioners aforesaid shall take and subscribe an oath, before some justice of the peace of Cherokee county, that they will in accordance with the provisions of this chapter, and to the best of their judgments, value the land aforesaid fairly and impartially

5 as between the purchasers or those entitled to their privileges and  
6 the state, and that they will endeavor to do equal and impartial  
7 justice between the purchasers themselves; and the said board  
8 shall give to each of the purchasers, or the persons entitled to their  
9 privileges, whose lands they may value, a certificate setting forth  
10 the district and valuation of each tract valued by them as aforesaid.

**Sec. 408. Statement, comptroller to furnish.**

The comptroller of public accounts shall furnish, as soon as may  
2 be, after the passage of the act of one thousand eight hundred and  
3 fifty and fifty-one, chapter twenty-four, to the agent of the state,  
4 who may be entrusted by law with the collection of Cherokee bonds,  
5 a full and complete statement, containing the names of all the pur-  
6 chasers of Cherokee lands at the sale of the year one thousand  
7 eight hundred and thirty-eight, who were returned solvent under  
8 the act of one thousand eight hundred and forty-four; also the  
9 names of all the purchasers whose lands have been surrendered to  
10 the state; which statement shall exhibit the amount of the bonds  
11 given for the original purchase of each tract of land, together with  
12 the date of the same and the several payments made thereon, to-  
13 gether with the date of each payment, and upon the receipt of the  
14 said statement, the agent shall proceed upon application of the  
15 purchasers aforesaid; and upon their producing the certificate of  
16 the board of valuation, showing the amount of the valuation of  
17 each tract, to deduct the payments which have been made to the  
18 state on each tract, from the valuation thereof, and for the balance  
19 due, if any, he shall take from the purchasers, or such other person  
20 or persons as may be entitled to the privileges of the original pur-  
21 chaser, bonds with good and sufficient security, payable in four  
22 annual instalments.

1850-'1, c. 24, s. 5.

**Sec. 409. Of bonds to be canceled; proviso.**

Upon the settlement provided for in the preceding section being  
2 made, and new bonds with good and sufficient security, to be ap-  
3 proved of by the agent of the state, being given, the said agent is  
4 hereby authorized to cancel and surrender up to said purchasers,  
5 their heirs, devisees or assignees all the bonds given to the state for  
6 said lands: *Provided, nevertheless,* that in case more than one tract shall  
7 be included in the same bonds and only a part of the tracts valued,  
8 then and in that case the agent shall not deliver up the bonds to  
9 the purchaser, but credit them for the tracts valued upon new  
10 bonds being given for such tracts, as in other cases where separate  
11 bonds had been given for each tract.

1850-'1, c. 24, s. 6.

**Sec. 410. No commissioner allowed to become a purchaser of, &c.**

None of the commissioners herein allowed and authorized to be

1850-'1, c. 24, s. 8.

2 appointed shall be purchasers of the Cherokee lands, or liable on  
3 Cherokee bonds, or in any way interested in either.

**Sec. 411. Commissioners to value land, &c.**

1850-'1, c. 25, s. 1.

It shall be the duty of the board of commissioners who may be  
2 appointed under an act "for the relief of the purchasers of Chero-  
3 kee lands and to secure debts due to the state," in addition to val-  
4 uing the lands, as therein provided for, to value all the lands  
5 which were surveyed under the act of one thousand eight hundred  
6 and thirty-six, and which were not sold by the state in the year  
7 one thousand eight hundred and thirty-eight; and in fixing a val-  
8 uation upon said lands, as well as those aforementioned, it shall be  
9 the duty of the said board of commissioners to take into considera-  
10 tion the localities of said lands, and the facilities which the pur-  
11 chasers may have in transportation of their produce to market,  
12 and all other circumstances which tend to increase or diminish  
13 the value of those lands, except the improvements which are not  
14 to be included in the valuation.

**Sec. 412. Commissioners to furnish occupants and agents with certificates, &c.**

1850-'1, c. 25, s. 2.

Whereas, many poor persons being destitute of homes have set-  
2 tled on said lands, who have made improvements thereon with the  
3 intention of becoming purchasers when they were disposed of, in  
4 order to furnish all such persons an opportunity of becoming pur-  
5 chasers, who desire to do so, after said valuation is made, it shall  
6 be the duty of said commissioners to furnish each occupant with a  
7 certificate, setting forth the district and number of the tract by him  
8 or her occupied, and also to furnish the agent of Cherokee bonds  
9 with a list of all such tracts valued, setting forth the value of each,  
10 and the name of each person entitled, in their opinion, to the pre-  
11 emptory privilege under the act of eighteen hundred and fifty and  
12 fifty-one, chapter twenty-five.

**Sec. 413. Pre-emption right on certain condition.**

1850-'1, c. 25, s. 3.

All persons who reside on any of the tracts of land to be valued  
2 under the preceding section, or have made or own improvements  
3 thereon, which add value to the land, shall have a pre-emption  
4 right to purchase the lands they or either of them have occupied  
5 or improved, at the valuation placed thereon by said board; and  
6 upon such person or persons presenting to the agent the certificate  
7 of the commissioners, to be issued under the preceding section, and  
8 entering into bonds, with two or more securities, to be approved  
9 by the agent, payable to the state in four annual instalments for  
10 the said valuation, it shall be the duty of said agent, upon receiv-  
11 ing the said certificates and bonds, to issue a certificate to the pur-  
12 chaser, setting forth the tract by him or her purchased.



**Sec. 414. Surveyed lands in Macon embraced.**

The provisions of the preceding section shall extend to the surveyed tracts, if any, in the county of Macon, and shall entitle the persons who may reside thereon, or own improvements on said tracts of land, to pre-emption rights to purchase said lands at the minimum price thereof; and, upon giving bonds as required in said preceding section, shall be entitled to receive of the agents certificates of purchase as therein provided for.

1850-'1, c. 25, s. 4.

**Sec. 415. Pre-emption to extend to settlers on vacant lands in Macon.**

The rights of pre-emption, provided for in the foregoing sections of this chapter, shall extend to all settlers upon the vacant lands in the county of Macon, which have not been subject to entry under the act of one thousand eight hundred and thirty-six; and upon such person or persons making satisfactory proof to the entry-taker that he or she reside on, or have improved any of the vacant lands aforesaid, it shall be the duty of the entry-taker to issue a warrant to the surveyor of the county to survey such person one hundred acres, to include his or her improvements; and upon the payment to the state of the sum required to be paid for other vacant land in said county, the grants shall issue as in other cases of entries upon the lands which have been subject to entry; and the same fees shall be paid to the entry-taker, surveyor and secretary of state.

1850-'1, c. 25, s. 5.

**Sec. 416. Fine for locating, &c., limited, &c.**

The persons entitled to pre-emption privilege under this chapter shall make their locations, and pay the money therefor to the state by the first day of August, one thousand eight hundred and fifty-one; after which time all of said lands that shall remain vacant or not paid for, shall be liable to be entered as other vacant lands are now entered in the county of Macon, to be paid for at the same price, within six months from the time the location is made; otherwise the same shall be void.

1850-'1, c. 25, s. 6.

**Sec. 417. Extends the pre-emption right to residents in Cherokee.**

And whereas, many poor persons, being destitute of homes, have also settled upon the unsurveyed lands in the county of Cherokee, which lands were not surveyed under the act of one thousand eight hundred and thirty-six, because they were not considered worth twenty cents per acre; all persons who, prior to the first day of January, one thousand eight hundred and fifty-one, resided on any of said lands, or had made any improvements thereon which add value to the land, shall be entitled to a pre-emption privilege to one hundred acres, to include their improvements, at twenty cents per acre; and upon making satisfactory proof to the agent of Cherokee bonds that he or she is entitled to the pre-emption privilege within the meaning of this section, it shall be his

1850-'1, c. 25, s. 7.

13 duty to issue a certificate to such person claiming the pre-emption  
14 privilege, setting forth the location of the one hundred acres  
15 claimed; and upon such certificate it shall be competent for the  
16 persons entitled to the pre-emption privilege to have the said lands  
17 surveyed, at his or her own expense, in a square or oblong square,  
18 to include his or her improvements; and duplicate copies of such  
19 survey shall be made, one to be forwarded to the secretary of state,  
20 and the other to be presented, with the original certificate of occu-  
21 pancy, to the agent; and upon payment being made to him, one-  
22 fourth of the price of said land, and upon entering into bonds  
23 with two or more securities, to be approved by the agent, payable  
24 to the state in three annual instalments, for the remaining three-  
25 fourths, to issue to said purchasers certificates of purchase, setting  
26 forth the number of the tract, the district in which situated, the  
27 number of acres and the price sold for.

**Sec. 418. Certificates.**

1850-'1, c. 25, s. 8.

The certificates issued to the purchasers under this chapter, shall  
2 entitle them to all rights and privileges the holders of certificates  
3 were entitled to under the act of one thousand eight hundred and  
4 thirty-six.

**Sec. 419. Advance payments.**

1850-'1, c. 25, s. 9.

All persons who make advance payments under this chapter,  
2 shall be entitled to the same discount as provided for under the  
3 twelfth section of the act of one thousand eight hundred and thir-  
4 ty-six, prescribing the mode of selling Cherokee lands.

**Sec. 420. Two occupants.**

1850-'1, c. 25, s. 10.

In all cases where two occupants occupy the same lands, or live  
2 near each other, unless otherwise agreed upon between themselves,  
3 the line shall be run so as to divide the distance equally between  
4 their dwelling-houses; and in case two persons claim the same  
5 improvements and the occupant right thereto, the person having  
6 the prior right, unless he has conveyed his claim to the subsequent  
7 settler, shall have the right of pre-emption.

**Sec. 421. Time of privilege limited.**

1850-'1, c. 25, s. 11.

The rights of pre-emption hereby granted to persons residing on,  
2 or who own improvements on the surveyed lands in the counties  
3 of Macon and Cherokee, and also upon the vacant lands in the  
4 last named county, provided for in the act of eighteen hundred and  
5 fifty and fifty-one, chapter twenty-five, shall have until the first day  
6 of October, one thousand eight hundred and fifty-one, to avail them-  
7 selves of the pre-emption privilege and to give bonds as required  
8 by this chapter.

**Sec. 422. Taxes.**

In the case the act for the relief of purchasers of Cherokee lands, 1850-'1, c. 25, s. 12.  
2 and this act granting pre-emption rights, shall pass, all lands held  
3 under certificates in the county of Cherokee shall be liable to the  
4 same taxes both state and county, as other lands in this state.

**Sec. 423. Office of entry-taker established in Cherokee.**

An entry-taker's office shall be opened in the county of Chero- 1852, c. 119, s. 1.  
2 kee, for the entry of vacant lands in said county, and an entry-  
3 taker shall be elected as is required in other counties of this state,  
4 and until such election shall be made, the governor shall have the  
5 power to appoint some suitable person, resident in said county,  
6 to discharge the duties of said office as hereinafter directed.

**Sec. 424. When, how and at what price lands may be entered.**

From the first day of February, one thousand eight hundred and 1852, c. 119, s. 2.  
2 fifty-three, till the first day of June thereafter, any one may enter  
3 any of the unsold lands in said county at the rate of fifty cents per  
4 acre, and thereafter any land remaining may be entered at the  
5 rate of twenty cents per acre for the next three months from the  
6 first day of June, and thenceafter all of said unsold lands that may  
7 be unentered may be entered at ten cents per acre for twelve  
8 months, and thereafter at the same rates of other vacant lands in  
9 this state.

**Sec. 425. Persons entering lands to file their bonds with the entry-taker, &c.**

It shall be lawful for all persons entering vacant lands in said 1852, c. 119, s. 3.  
2 county of Cherokee to file their bonds, with approved security,  
3 with the entry-taker, payable to the state in four equal annual in-  
4 stalments, which shall, when paid, be in full of the purchase  
5 money for the tract or tracts so entered, and upon proof of such  
6 payment as herein provided, the secretary of state shall issue the  
7 grant or grants according to the entry and survey thereon, and in  
8 case the land shall have been surveyed by authority of the state,  
9 the grant shall issue according to the survey so made, and not  
10 otherwise, and no portion of any tract so surveyed shall be granted  
11 without the whole.

**Sec. 426. What grants governor may sign.**

The governor of the state shall sign no grants on entries and sur- 1852, c. 119, s. 4.  
2 veys made under the provisions of this chapter, unless as much as  
3 fifty acres shall be included in such survey, and unless such sur-  
4 vey shall be a square rectangle not more than twice as long as wide.

**Sec. 427. Vacant lands in Macon and Haywood may be entered.**

All the vacant lands in the counties of Macon and Haywood may 1852, c. 119, s. 5.  
2 be entered under the provisions of this chapter at the present rates;



3 and all the lands in said counties heretofore entered and not paid  
4 for, may be paid for, as herein provided for the lands lying in  
5 Cherokee county, and all the money and lands that may be received  
6 by the entry-taker of either of the said counties of Cherokee, Macon,  
7 and Haywood, shall be paid to contractors for making the said  
8 Western Turnpike Road, on the certificate of the agent for making  
9 said road, until the same is completed.

**Sec. 428. Surveyor for Cherokee elected.**

1852, c. 119, s. 6.

A surveyor shall be elected for the county of Cherokee, under the  
2 same rules and regulations, and shall perform all the duties and  
3 be under all the penalties, as other county surveyors in this state.

**Sec. 429. How surveyed lands to be sold.**

1852, c. 119, s. 7.

All the surveyed lands shall be sold to the highest bidder by the  
2 agent for building said road, at prices not less than it is assessed  
3 at, on a credit of one, two, three, and four years, on bond and se-  
4 curity being given, the sale to be made after the first day of June  
5 next, after forty days' public notice.

**Sec. 430. Agent for superintending the making of said road to appoint overseers;  
their powers and duties.**

1852, c. 119, s. 8.

The agent for superintending the making of said road shall have  
2 power to appoint overseers on the completed portions of said road  
3 and to see that it is kept in repair, and the overseers appointed shall  
4 have the power to call out the laboring hands subject to work on  
5 said road, and to direct their labor as other overseers of roads are  
6 authorized to do, and they shall be liable to indictment as other  
7 overseers of roads for failure or neglect of duty; and the said agent  
8 may make any part or portion of said road or bridges first, that he  
9 may find requiring it more than other portions; and all the tolls  
10 and money received on account of said road shall, by said agent,  
11 be faithfully applied to the making of said road until it is com-  
12 pleted; and said agent shall hereafter receive for his services three  
13 dollars per day, and shall have full power to erect toll-gates on  
14 said road, and appoint keepers of such gates, subject to be removed  
15 by the board of internal improvement.

**Sec. 431. Penalty for breaking through gates to avoid paying toll.**

1852, c. 119, s. 9.

Any one who shall break through or go around any of said gates  
2 to avoid the payment of the tolls, shall forfeit and pay the sum of  
3 ten dollars, to be recovered in the name of the state, before any jus-  
4 tice of the peace for the county where such suit may be brought  
5 and applied to the improvement of said road.

**Sec. 432. Rights and privileges of occupants of state lands.**

1852, c. 119, s. 10.

The occupant of every tract of said vacant land shall have a pref-  
2 erence in entering such tract or tracts, and such prior claims or

3 right shall extend for the first three months after the entry office  
4 is opened, at the rate of twenty cents per acre, until the price,  
5 according to this bill, is reduced below that sum, and shall there-  
6 after have the exclusive right for two months at the reduced rate,  
7 and that any one having an improvement worth ten dollars on any  
8 any of said land on which he or she does not reside, shall have the  
9 like pre-emption.

**Sec. 433. Duty of agent for collecting Cherokee bonds.**

It shall be the duty of the agent for collecting Cherokee bonds 1852, c. 119, s. 11.  
2 to refund to the state treasury the money paid for the survey of  
3 the Western Turnpike Road, as well as the amount that may be  
4 paid for the survey of the railroad route under the act for that pur-  
5 pose, out of the first money collected by him on Cherokee bonds,  
6 and it shall be the duty of the agent to retain the bonds and col-  
7 lect the sums required for that purpose.

**Sec. 434. Amount agent must pay to the state treasurer.**

The agent for the collection of the Cherokee bonds is hereby au- 1852, c. 120, s. 1.  
2 thorized and required to pay to the state treasurer, out of the first  
3 moneys which shall hereafter come into his hands arising from  
4 any bonds, judgments or other effects, the sum of eleven thousand  
5 four hundred and fifty-seven dollars and thirty-two cents with  
6 interest thereon from the twentieth of November, one thousand  
7 eight hundred and fifty, the amount of money which was expended  
8 in the survey of the Salisbury and Western Turnpike Road, and the  
9 state treasurer is hereby authorized to return said moneys to the  
10 state treasury.

**Sec. 435. How agent must collect said sum.**

It shall be the duty of the agent to collect the amount by suit or 1852, c. 120, s. 2.  
2 otherwise, out of the said bonds and pay the same over according  
3 to the provisions of this chapter.

**Sec. 436. Persons who have heretofore entered lands must file bonds; if not, others may enter the same lands; proviso.**

All persons who have, previous to February the fifteenth, one 1854-'5, c. 22, s. 1.  
2 thousand eight hundred and fifty-five, entered any of the vacant  
3 lands in the counties of Cherokee, Macon, Jackson and Haywood,  
4 pursuant to the provisions of an act of the general assembly at its  
5 session of one thousand eight hundred and fifty-two and three,  
6 chapter one hundred and nineteen, entitled "an act to bring into  
7 market the lands pledged for the completion of the Western Turn-  
8 pike Road," which have not yet been surveyed, and bonds filed for  
9 the purchase money, according to said entry or entries, shall cause  
10 the same to be surveyed and file bonds for the same, on or before  
11 the first day of May, one thousand eight hundred and fifty-six;  
12 and in case the said entry or entries be not surveyed, nor the en-

13 try-takers of said counties notified within the aforesaid time, that  
 14 it is his intention to become the purchaser, accordingly, then it  
 15 shall be lawful for any other person, who has entered the same  
 16 lands, to cause the same to be surveyed and to file his bonds for  
 17 the same, on or before the first day of July, one thousand eight  
 18 hundred and fifty-six; and in case the person or persons who have  
 19 heretofore entered any of the vacant lands aforesaid, shall fail or neg-  
 20 lect to comply strictly with the provisions of this section, according  
 21 to their true meaning, then it shall be lawful for any other per-  
 22 son or persons to enter said lands, and be allowed three months to  
 23 survey and file bonds for the same; and the said time of three  
 24 months shall be allowed in any other instance, from and after the  
 25 date of said entry, unless otherwise provided for: *Provided, how-*  
 26 *ever,* and it is the true meaning of this section, that the right to  
 27 take the said lands in whatsoever manner entered heretofore or  
 28 hereafter, shall be regulated according to priority of entry.

**Sec. 437. The Cherokee lands subject to entry as other public lands.**

From and after the first day of March, one thousand eight hun-  
 2 dred and eighty-three, the Cherokee lands shall be subject to entry  
 3 under the same rules and regulations as are prescribed in the  
 4 chapter entitled "Entries and Grants," for the other public lands  
 5 of the state: *Provided, however,* that nothing contained in this sec-  
 6 tion, nor in the chapter entitled "Entries and Grants" shall be  
 7 construed to prevent any purchaser, at any of the sales of the  
 8 Cherokee lands, or the heir or assignee of such purchaser from  
 9 perfecting his title by grant in manner and form as heretofore  
 10 provided.

## CHAPTER TWENTY.

### CLERKS OF THE SUPERIOR COURT.

**SECTION.**

- 438. Bond of clerk.
- 439. Bond, how approved, &c.
- 440. Qualification of clerks.
- 441. May appoint deputies, &c.
- 442. Failure to give bond, &c.
- 443. Renewed annually; clerk to produce re-  
ceipts for all public moneys paid before  
renewing.
- 444. Clerks may resign.
- 445. Penalty for acting without qualifying.
- 446. Office, where to be kept, when to open.
- 447. To receive official papers, &c.
- 448. To keep record, &c.
- 449. Books to be kept by clerks.
- 450. Books to be furnished by board of com-  
missioners.

**SECTION.**

- 451. Money judgments of clerk to be entered  
on judgment docket.
- 452. Papers in each action to be kept separate  
and filed together.
- 453. Clerks going out of office, and having  
failed to perform their duties, the court  
may cause them to be done, and recover  
the amount paid for such service.
- 454. Solicitor to examine records.
- 455. Superior court clerk to certify to secre-  
tary of state names of appointees to fill  
vacancies in office of justice of the peace,  
&c.
- 456. To make annual reports of all public  
funds which come into their hands.



SECTION.

457. To be approved and registered.
458. Failure to report.
459. The duties of clerk of the superior courts in relation to bills of cost; clerks to insert detailed items.
460. Statement of costs to be made in thirty days.
461. Clerks to keep an itemized statement of all fines received by them, and to properly account for the same.
462. Fines, &c., to be paid to county treasurer within sixty days; treasurer to keep an itemized account, &c.
463. Certified statement of account to be filed with superior court clerk.
464. Fines, &c., heretofore collected, to be paid to the treasurer.
465. Fines, &c., appropriated to the common schools.
466. Failure to perform duty a misdemeanor.
467. Office of probate judge abolished.
468. Clerks of the superior court; their jurisdiction.
469. Disqualification to act.
470. Waiver of disqualification.
471. Removal of proceedings.
472. Commissioner appointed to audit accounts; approval of judge of superior court; record made by clerk of superior court.

SECTION.

473. Enumeration of powers.
474. How party may appear.
475. Clerk not to act as attorney.
476. Clerk must file papers.
477. Records to be kept by clerk.
478. Books to be furnished by board of commissioners; to be indexed.
479. Clerks required to keep open office for probate business.
480. Forfeiture of office for failure.
481. Issues of fact joined before the clerk to be transferred to the superior court; appeals shall lie to the judge.
482. Lawful to deposit mortgage in lieu of prosecution bond.
483. Executors, &c., and officers may execute mortgage in lieu of bond.
484. Additional security may be required.
485. Any person may execute mortgage in lieu of bond; pro viso.
486. Affidavit of value required in certain cases.
487. Clerk may deposit mortgage.
488. Punishment of the clerk of the superior court on conviction of an infamous crime.
489. Going out of office, to transfer records to successor; judge may give order for delivery of records, &c.

Sec. 438. Bond of Clerk.

At the first meeting of the board of commissioners of each county C. C. P., s. 137.

2 after the election or appointment of any clerk of a superior court

3 it shall be the duty of the clerk to deliver to such commissioners

4 a bond with sufficient sureties, to be approved by them, in a pen-

5 alty of ten thousand dollars, payable to the state of North Caro-

6 lina, and with a condition to be void, if he shall account for, and

7 pay over, according to law, all moneys and effects which have

8 come or may come into his hands, by virtue or color of his office,

9 and shall diligently preserve and take care of all books, records,

10 papers and property, which have come, or may come into his pos-

11 session, by virtue or color of his office, and shall in all things

12 faithfully perform the duties of his office as they are, or thereafter

13 shall be prescribed by law. Each surety shall take and subscribe

14 an oath, before the register of deeds, that he is worth a certain sum,

15 which shall not be less than one thousand dollars over and above

16 all his debts and liabilities and his homestead and personal prop-

17 erty exemption, and the sum thus sworn to shall not be less in the

18 aggregate than the penalty of the bond.

Ex parte Daughtry, 6 Ired., 155; City of Wilmington v. Nutt, 78—177; Buckman v. Com'rs of Beaufort, 80—121; City of Wilmington v. Nutt, 80—265; Saunders v. Gatling, 81—298; Clark v. Carpenter, 81—309; Rogers v. Odom, 86—433.

Sec. 439. Bond, how approved, &c.

The approval of said bond by the board of commissioners, or a C. C. P., s. 138.

2 majority of them, shall be recorded by their clerk. Any commis-

3 sioner approving a bond which he knows or believes to be insuffi-

4 cient, shall be personally liable as if he were a surety thereto. The  
 5 said bond shall be acknowledged by the parties thereto, or proved  
 6 by a subscribing witness, before the clerk of said board of commis-  
 7 sioners, or their presiding officer, registered in the register's office  
 8 in a separate book to be kept by him for the registration of official  
 9 bonds; and the original, with the approval thereof endorsed, depos-  
 10 ited with the register for safe-keeping. The like remedies shall be  
 11 had upon said bond as are or may be given by law on official bonds.

Judges v. Williams, 1 Dev., 426; State v. Ebringhaus, 8 Ire., 7; State v. Gaines, 8 Ire., 168; State v. Biggs, 1 Jones, 364; White v. Smith, 2 Jones, 4; Richardson v. Smith, 2 Jones, 8; Hunter v. Routledge, 6 Jones, 216; Short v. Currie, 8 Jones, 42; Erwin v. Lowrance, 64—483; McIntyre v. Merritt, 65—558; Cooper v. Williams, 75—94; Havens v. Lathene, 75—905; Cox v. Blair, 76—78; City of Wilmington v. Nutt, 78—177; Gregory v. Morisey, 79—559; City of Wilmington v. Nutt, 80—265; Curtis' Heirs, 82—435.

#### Sec. 440. Qualification of clerks.

C. C. P., s. 139.

The clerks of the superior court, before entering on the duties of  
 2 their office, shall take and subscribe before some officer authorized  
 3 by law to administer an oath, the oaths prescribed by law, and file  
 4 such oaths with the register of deeds for the county.

#### Sec. 441. May appoint deputies, &c.

R. C., c. 19, s. 15.  
 1777, c. 115, s. 86.

Clerks of the superior court may appoint deputies, who shall  
 2 take and subscribe the oath prescribed in the preceding section.

Shepherd v. Lane, 2 Dev., 148; Burke v. Elliott, 4 Ire., 355; Suddereth v. Smyth, 13 Ire., 452.

#### Sec. 442. Failure to give bond, &c.

C. C. P., s. 140.

In case any clerk shall fail to give bond and qualify as above  
 2 directed, the presiding officer of the board of commissioners of his  
 3 county shall immediately inform the resident judge of the judicial  
 4 district thereof, who shall thereupon declare the office vacant and  
 5 fill the same, and the appointee shall give bond and qualify as  
 6 above directed.

Buckman v. Com'rs of Beaufort, 80—121.

#### Sec. 443. Renewed annually; clerk to produce receipts for all public moneys paid before renewing.

R. C., c. 19, s. 12.  
 1793, c. 384, s. 4.  
 1806, c. 699, s. 1.  
 1819, c. 990.  
 1874—75, c. 151.  
 1876—77, c. 276.

The clerks of the superior court shall renew their bonds for the  
 2 faithful discharge of their duties in office, with good and sufficient  
 3 surety, annually, on the first Monday of December; and such as  
 4 shall neglect to renew their bonds at the time before mentioned,  
 5 and give other and better sureties when judged necessary by the  
 6 board of county commissioners, shall be considered as having for-  
 7 feited their offices: *Provided always*, that no clerk shall be permit-  
 8 ted to renew his bond, unless he shall produce from the treasurer,  
 9 state and county, receipts in full of all moneys by him received for  
 10 the use of the state and county, for which he shall have been ac-  
 11 countable.

Oats v. Bryan, 3 Dev., 451; Hunter v. Routledge, 6 Jones, 216; Moore v. Boudinot, 64—190.

**Sec. 444. Clerks may resign.**

Any clerk of the superior court may resign his office to the judge  
 2 of the superior court, residing in the district in which is situated  
 3 the county of which he is clerk, and said judge shall fill the va-  
 4 cancy.

Const., Art. iv., s.  
 29.

**Sec. 445. Penalty for acting without qualifying.**

If any clerk shall enter on the duties of his office, before he exe-  
 2 cutes and delivers to the authority entitled to receive the same, the  
 3 bond required by law, he shall be guilty of a misdemeanor.

R. C., c. 19, s. 16.  
 1777, c. 115, ss. 4, 61.  
 1827, c. 9, s. 5.

**Sec. 446. Office, where to be kept, when to be open.**

He shall have an office in the court-house or other place provided  
 2 by the board of commissioners, in the county town of his county.  
 3 He shall give due attendance, in person or by deputy, at his office  
 4 daily, Sundays and holidays excepted, from nine o'clock, a. m.,  
 5 to three o'clock, p. m., and longer when necessary, for the dispatch  
 6 of business.

C. C. P., s. 141.

Shepherd v. Lane, 2 Dev., 148; Burke v. Elliott, 4 Ire., 355; Suddereth v. Smyth, 13 Ire., 452;  
 People v. Heaton, 77—18; State v. Norman, 82—687.

**Sec. 447. To receive official papers, &c.**

Immediately after he shall have given bond and qualified as  
 2 aforesaid, he shall receive from the late clerk of the superior court  
 3 all the records, books, papers, moneys and property of his office,  
 4 and give receipts for the same, and if any clerk shall refuse, or fail  
 5 within a reasonable time after demand to deliver such records,  
 6 books, papers, moneys and property, he shall be liable on his official  
 7 bond for the value thereof, and be guilty of a misdemeanor.

C. C. P., s. 142.

**Sec. 448. To keep record, &c.**

He shall be furnished with the requisite stationery and furniture,  
 2 for official use, by the board of commissioners. He shall keep in  
 3 bound volumes a complete and faithful record of all his official acts,  
 4 and give copies thereof to all persons desiring them, on payment  
 5 of the legal fees. He shall be answerable for all records belonging  
 6 to his office, and all papers filed in the court, and they shall not be  
 7 taken from his custody, unless by special order of the court, or on  
 8 the written consent of the attorneys of record of all the parties; but  
 9 parties may at all times have copies upon paying the clerk therefor.

C. C. P., s. 143.  
 1868-'9, c. 159, s. 4.

**Sec. 449. Books to be kept by clerks.**

Each clerk shall keep the following books:

2 (1.) A docket of all writs, summons or other original processes  
 3 issued by him, or returned to his office, which are made returnable  
 4 to a regular term of the superior court; this docket shall contain

C. C. P., s. 144.  
 1868-'9, c. 159, s. 1.



5 a brief note of every proceeding whatever in each action, up to the  
6 final judgment inclusive.

7 (2.) A judgment docket in which the substance of the judgment  
8 shall be recorded, and every proceeding subsequent thereto, noted.

Dall v. Sugg, 85—104.

9 (3.) A docket of all issues of fact joined upon the pleadings, and  
10 of all other matters for hearing before the judge at a regular term  
11 of the court, a copy of which shall be furnished to the judge at the  
12 commencement of each term.

13 (4.) A direct and reverse alphabetical index of all final judg-  
14 ments in civil actions rendered in the court, with the dates and  
15 numbers thereof, and also of all final judgments rendered in other  
16 courts and authorized by law to be entered on his judgment docket.

17 (5.) A docket of all criminal actions, containing a note of every  
18 proceeding in each.

19 (6.) A minute docket, in which shall be entered a record of all  
20 proceedings had in the court during term, in the order in which  
21 they occur, and such other entries as the judge may direct to be  
22 made therein.

23 (7.) A docket of all writs, summons, petitions, or other original  
24 process issued by him, or returnable to his office, and not returna-  
25 ble to a regular term; this docket shall contain a brief note of  
26 every proceeding, up to the final judgment inclusive.

27 (8.) A minute docket, in which shall be entered a record of all  
28 proceedings had before the clerk, in actions or proceedings not re-  
29 turnable to a regular term of the court.

Norwood v. Thorp, 64—682; Dall v. Sugg, 85—104.

**Sec. 450. Books to be furnished by board of commissioners.**

C. C. P., s. 145.

The books specified in the above section shall be supplied to the  
2 clerks of the several counties by the board of commissioners of the  
3 respective counties, at the expense of the county.

**Sec. 451. Money judgments of clerk to be entered on judgment docket.**

Judgments for money, rendered by the clerk, shall be entered  
2 on the judgment docket of the superior court, and shall have the  
3 same effect as to lien, from the time of docketing, as if they had  
4 been taken in term time.

**Sec. 452. Papers in each action to be kept separate, and filed together.**

C. C. P., s. 146.

The clerk shall keep the papers in each action in a separate roll  
2 or bundle, and at its termination attach them together, properly  
3 labeled, and file them in the order of the date of the final judg-  
4 ment.

**Sec. 453.** Clerks going out of office, and having failed to perform their duties, the court may cause them to be done, and recover the amount paid for such service.

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

R. C., c. 19, s. 10.  
1844, c. 5, s. 6.

**Sec. 454.** Solicitor to examine records.

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 misdemeanor, 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.

C. C. P., s. 147.

**Sec. 455.** Superior court clerk to certify to secretary of state names of appointees to fill vacancies in office of justice of the peace, &c.

In every case of an appointment to fill a vacancy in the office of justice of the peace, it shall be the duty of the clerk of the superior court making the appointment, within ten days after such appointment, to certify and report under his hand and seal of office to the secretary of state the name of the appointee, together with that of the justice whom he succeeds.

1881, c. 328.

**Sec. 456.** To make annual reports of all public funds which come into their hands.

Clerks of the superior court, into whose hands any public funds may come by virtue or under color of their office, shall make an annual report of the amount and management of the same, on the first Monday in December, or oftener if required, of each and every year to the board of commissioners of the several counties. Such report shall give an itemized and detailed account of the public funds received and disbursed, the amount, date and source from which it was received, and the amount, date and person to whom disbursed, shall be addressed to the chairman of the board of commissioners for the county for which such report is made, and shall be subscribed and verified by the oath of the party making the same before any person allowed to administer oaths.

1874-'5, c. 151.  
1876-'7, c. 276.

**Sec. 457.** To be approved and registered.

The board of commissioners, if they shall approve of the reports

1874-'5, c. 151.  
1876-'7, c. 276.

2 mentioned in the preceding section, shall cause the same to be  
 3 registered in the office of the register of deeds in a book to be fur-  
 4 nished to the register of deeds for the several counties by the board  
 5 of commissioners, which book shall be marked and styled "record  
 6 of official reports," with a proper index of all reports recorded  
 7 therein, and each original report shall, if approved, be endorsed by  
 8 the chairman of the board with the word "approved," the date of  
 9 approval, and the endorsement signed by the chairman, and when  
 10 recorded by the register he shall endorse thereon the date of regis-  
 11 tration, the page of the "record of official reports" upon which the  
 12 same is registered, sign the same and file it in his office.

**Sec. 458. Failure to report.**

1874-'5, c. 151, s. 3.  
 1876-'7, c. 276.

If any clerk shall fail to report, or if after a report has been  
 2 made, the board of commissioners disapprove the same, such board  
 3 may take legal steps to compel a proper report to be made, by suit  
 4 on the bond of such clerk. Any clerk wilfully and falsely swear-  
 5 ing to any report made, shall be guilty of a misdemeanor, and on  
 6 conviction shall be fined or imprisoned, or both, in the discretion  
 7 of the court.

**Sec. 459. The duties of clerks of the superior court in relation to bills of cost ;  
 clerks to insert detailed items.**

1873-'4, c. 116, s. 1.

The clerks of the several superior courts shall insert in the entry  
 2 of judgment in every criminal action tried at the several terms,  
 3 whether regular or special, of the superior courts of their coun-  
 4 ties ; and in the bills of cost in such cases where there is no trial, a  
 5 detailed statement of the different items of cost in such cases, and  
 6 to whom due, which statements shall at all times be open to the  
 7 inspection of all persons interested in the same.

**Sec. 460. Statement of costs to be made in thirty days.**

1873, c. 116, s. 3.

In all criminal actions in the superior court, where the state is  
 2 liable in whole or part for the costs, it shall be the duty of the clerk  
 3 of the superior court to make out a statement of such costs from  
 4 the record or docket, within thirty days after the regular or special  
 5 terms of the superior court, and file the same with the board of  
 6 commissioners of their counties ; for which services they shall re-  
 7 ceive the same fees as are now provided by law for like duties.

**Sec. 461. Clerks to keep an itemized statement of all fines received by them, and  
 to properly account for the same.**

1879, c. 96, s. 1.

It shall be the duty of the clerks of the several courts to enter in  
 2 a book, to be supplied by the board of commissioners of the county,  
 3 an itemized and detailed statement of the respective amounts re-  
 4 ceived by them in the way of fines, penalties and forfeitures, and  
 5 said book shall at all times be open to the inspection of the public.



**Sec. 462.** Fines, &c., to be paid to county treasurer within sixty days; treasurer to keep itemized account, &c.

All fines, penalties and forfeitures so received by any clerk shall  
2 within sixty days after being received, be paid over to the county  
3 treasurer, or person legally acting as such, who shall give a receipt  
4 to every such clerk for the same, and said county treasurer or per-  
5 son legally acting as such shall enter in a book to be kept by him  
6 the exact amount of any fine, penalty or forfeiture so paid over to  
7 him, giving the date of payment, the name of the clerk so paying  
8 the same, the name of the party from whom such fine, penalty or  
9 forfeiture was collected, and in what case. 1879, c. 96, s. 2.

**Sec. 463.** Certified statement of account to be filed with superior court clerk.

It shall be the duty of the county treasurer, or person legally  
2 acting as such, to file a certified statement, itemized as aforesaid, in  
3 the office of the clerk of the superior court, and it shall be the  
4 duty of the said clerk to record said statement in a book to be  
5 kept in his office for that purpose. Said certified statement shall  
6 be filed by said treasurer, or person so acting, in said clerk's office,  
7 on the first days of January, April, July and October, in each and  
8 every year. 1879, c. 96, s. 3.

**Sec. 464.** Fines, &c., heretofore collected, to be paid to the treasurer.

All fines, penalties and forfeitures heretofore collected by any  
2 such clerks, and which have not been accounted for, shall be paid  
3 over to such treasurer or person acting as such. 1879, c. 96, s. 4.

**Sec. 465.** Fines, &c., appropriated to the common schools.

All fines, penalties and forfeitures above mentioned shall be  
2 appropriated and paid out by the county treasurer as aforesaid for  
3 the use of the free common schools of the county in which said  
4 fines, penalties and forfeitures are collected. 1879, c. 96, s. 5.

**Sec. 466.** Failure to perform duty a misdemeanor.

If any clerk, county treasurer, or person acting as such, shall fail  
2 or neglect to perform any of the duties or requirements above  
3 named, of this chapter, he shall be guilty of a misdemeanor,  
4 and upon conviction shall be fined or imprisoned, in the discretion  
5 of the court. 1879, c. 96, s. 6.

**Sec. 467.** Office of probate judge abolished.

The office or place of probate judge is abolished, and the duties  
2 heretofore pertaining to clerks of the superior court as judges of  
3 probate, shall be performed by the clerks of the superior court as  
4 clerks of said court, and all matters pending before said judges of  
5 probate shall be decreed transferred to the clerks of the superior  
6 court.

**Sec. 468. Clerks of the superior court; their jurisdiction.**

C. C. P., ss. 417, 418.

The clerks of the superior court have jurisdiction :

- 2 (1.) To take proof of deeds, bills of sale, official bonds, letters of
- 3 attorney or other instruments permitted or required by law to be
- 4 registered;
- 5 (2.) To take proof of wills and grant letters testamentary and of
- 6 administration;
- 7 (3.) To revoke letters testamentary and of administration;
- 8 (4.) To appoint and remove guardians of infants, idiots and luna-
- 9 tics;
- 10 (5.) To bind out apprentices and to cancel the indentures in such
- 11 cases;
- 12 (6.) To audit the accounts of executors, administrators and
- 13 guardians;
- 14 (7.) To exercise jurisdiction conferred on them in every other
- 15 case prescribed by law.

Wadsworth v. Davis, 63—251; Hunt v. Sneed, 64—176; Hunt v. Sneed, 64—180; Reynolds v. State of North Carolina, 64—460; Hellig v. Foard, 64—710; Rowland v. Thompson, 64—714; Miller v. Barnes, 65—67; Sprinkle v. Hutchinson, 66—450; Guion v. Melvin, 69—242; Bryan v. Hubbs, 69—423; Wilson v. Abrams, 70—324; Davis v. Cureton, 70—667; Taylor v. Biddle, 71—1; Ballard v. Kilpatrick, 71—281; Bidwell v. King, 71—287; Williams v. Williams, 71—427; Patterson v. Miller, 72—516; Hodge v. Hodge, 72—616; Williams v. Williams, 74—1; Spears v. Snell, 74—210; Spiers v. Halstead, Haines and Co., 74—624; Gardner v. Anderson, 79—24; Haywood v. Haywood, 79—42; Blue v. Blue, 79—69; Wood v. Skinner, 79—92; Sanderson v. Sanderson, 79—369; Barnes v. Brown, 79—401; Bratton v. Davidson, 79—423; Smith v. Pipkin, 79—569; Hoff v. Crafton, 79—592; Southall v. Shields, 81—28; McFadgen v. Council, 81—195; Gregory v. Ellis, 82—225; Simpson v. Jones, 82—323; Pegram v. Armstrong, 82—326.

**Sec. 469. Disqualification to act.**

C. C. P., s. 419.

No clerk can act as such in relation to any estate or proceeding :

- 2 (1.) If he has, or claims to have, an interest by distribution, by
- 3 will, or as creditor, or otherwise;
- 4 (2.) If he is so related to any person, having or claiming such in-
- 5 terest, that he would, by reason of such relationship, be disquali-
- 6 fied as a juror; but the disqualification on this ground ceases, un-
- 7 less the objection is made at the first hearing of the matter before
- 8 him.
- 9 (3.) If he or his wife is a party or a subscribing witness to any deed
- 10 of conveyance, testamentary paper or nuncupative will; but this
- 11 disqualification ceases when such deed, testamentary paper, or will
- 12 has been finally admitted to or refused probate by another clerk,
- 13 or before the judge of the superior court.
- 14 (4.) If he or his wife is named as executor or trustee in any testa-
- 15 mentary or other paper; but this disqualification ceases when the
- 16 will or other paper is finally admitted to or refused probate by
- 17 another clerk, or before the judge of the superior court;
- 18 (5.) Or if he or she, as the case may be, shall renounce the execu-
- 19 torship and endorse the same on the will or on some paper attached
- 20 thereto, before it is propounded for probate, in which case the re-
- 21 nunciation must be recorded with the will if admitted to probate.

1871-'2, c. 196, s. 1.

Barlow v. Norfleet, 72—535; Gregory v. Ellis, 82—225.

**Sec. 470. Waiver of disqualification.**

The parties may waive the disqualification specified in sub-  
2 divisions one, two and five of the preceding section, and upon  
3 filing in the office such waiver in writing, the clerk shall act as in  
4 other cases. C. C. P., s. 420.

**Sec. 471. Removal of proceedings.**

When any of the disqualifications specified in section four hun-  
2 dred and sixty-nine exist, and there is no waiver thereof, or can-  
3 not be such waiver, any party in interest may apply to the judge  
4 of the district for an order to remove the proceedings to the clerk  
5 of the superior court of an adjoining county in the same district. C. C. P., s. 421.

**Sec. 472. Commissioner appointed to audit accounts; approval of judge of superior court; record made by clerk of superior court.**

In all cases where the clerk of the superior court shall be exec-  
2 utor or administrator of any estate at the time of his election to  
3 office, in order to enable him to settle such estate, the judge of the  
4 superior court is empowered to make such order as may be neces-  
5 sary in the settlement of the estate; may audit the accounts or  
6 appoint a commissioner to audit the accounts of such executor or  
7 administrator, and report to the judge of the superior court for his  
8 approval, and when the accounts are so approved by the judge of  
9 the superior court, it shall be his duty to order the proper record  
10 to be made by the clerk, and the accounts to be filed in court. 1871-'2, c. 197, s. 1.

Wilson v. Abrams, 70—324.

**Sec. 473. Enumeration of powers.**

Every clerk has power:

C. C. P., s. 422.

- 2 (1) To issue subpoenas to compel the attendance of any witness  
3 residing or being in the state, or to compel the production of any  
4 bond or paper, material to any inquiry pending in his court;
- 5 (2) To administer oaths and take acknowledgments, whenever  
6 necessary, in the exercise of the powers and duties of his office;
- 7 (3) To issue commissions to take the testimony of any witness  
8 without this state;
- 9 (4) To issue citations and orders to show cause to parties in all  
10 matters cognizable in his court, and to compel the appearance of  
11 such parties;
- 12 (5) To enforce all lawful orders and decrees by execution or  
13 otherwise, against those who fail to comply therewith or to execute  
14 lawful process. Process may be issued by the clerk, to be executed  
15 in any county of the state, and to be returned before him;
- 16 (6) To exemplify, under seal of his court, all transcripts of deeds,  
17 papers or proceedings therein, which shall be received in evidence  
18 in all the courts of the state;
- 19 (7) To preserve order in his court and to punish contempts;



20 (8) To adjourn any proceeding pending before him from time to  
21 time;

22 (9) To open, vacate, modify, set aside, or enter as of a former time,  
23 decrees or orders of his court, in the same manner as courts of  
24 general jurisdiction;

25 (10) To award costs and disbursements as prescribed by law, to be  
26 paid personally, or out of the estate or fund, in any proceeding  
27 before him.

**Sec. 474. How party may appear.**

C. C. P., s. 423.

A party may appear in proceedings in which he is concerned,  
2 either in person or by attorney.

**Sec. 475. Clerk not to act as attorney.**

C. C. P., s. 424.

A clerk cannot act as attorney or counsel in a civil action, for or  
2 against an executor, administrator or guardian, over whom, or over  
3 whose accounts he might by law have jurisdiction, whether such  
4 action relates to business of the estate or not. He cannot act as  
5 attorney or counsel in any cause originating in his court; nor shall  
6 any partner or person connected in law business with him act as  
7 counsel or attorney in any proceeding before him, or originating  
8 in his court.

**Sec. 476. Clerk must file papers.**

C. C. P., s. 426.

Every clerk must file and preserve all papers in proceedings before  
2 him, or belonging to the court; and all such papers and the books  
3 kept by him belong to, and appertain to, his office, and must be  
4 delivered to his successor.

**Sec. 477. Records to be kept by clerk.**

C. C. P., s. 427.

The following books must be kept by each clerk:

2 (1) A record of wills, in which must be recorded all wills, with  
3 the certificates of probate thereof;

4 (2) A record of appointments of executors, administrators, guar-  
5 dians, collectors and masters of apprentices, with revocations of all  
6 such appointments;

7 (3) A record of all orders and decrees passed in his office, which  
8 he is required to make in writing, and not required to be recorded  
9 in some other book;

10 (4) A record of accounts, in which must be recorded the quar-  
11 terly and annual accounts of executors, administrators, collectors  
12 and guardians, as audited by him from time to time;

13 (5) A record of settlements, in which must be entered the final  
14 settlements of executors, administrators, collectors and guardians.

**Sec. 478. Books to be furnished by board of commissioners; to be indexed.**

C. C. P., s. 428.

The books required to be kept by the last section must be fur-

2 nished to the clerk by the board of commissioners ; and to each of  
3 such books there must be attached an alphabetical index securely  
4 bound in the volume, referring to the entries therein by the page  
5 of the book. These books must, at all proper times, be open to  
6 the inspection of any person.

**Sec. 479. Clerks required to keep open office for probate business.**

The clerks of the superior court shall open their offices every 1871-'2, c. 136, s. 1.  
2 Monday, from nine a. m. to four p. m., for the transaction of pro-  
3 bate business, and on each succeeding day till such matter is dis-  
4 posed of.

*People v. Heaton, 77—18; State v. Norman, 82—687.*

**Sec. 480. Forfeiture of office for failure.**

Any clerk of the superior court failing to comply with the last 1871-'2, c. 136, s. 2.  
2 section, unless such failure be caused by sickness, shall forfeit his  
3 office.

*People v. Heaton, 77—18; State v. Norman, 82—687.*

**Sec. 481. Issues of fact joined before the clerk to be transferred to the superior court; appeals shall lie to the judge.**

All issues of fact joined before the clerk shall be transferred to C. C. P., ss. 490, 491,  
2 the superior court for trial at the next succeeding term of said 492.  
3 court; and appeals shall lie to the judge of the superior court hav- 1873-'4, c. 34, s. 3.  
4 ing jurisdiction, either in term time or vacation, from judgments 1876-'7, c. 241, s. 5.  
5 of the clerk of the superior court in all matters of law. In case of  
6 such transfer or appeal, neither party shall be required to give an  
7 undertaking for costs ; and the clerk shall transmit, on such trans-  
8 fer or appeal, to the superior court, or to the judge thereof, the plead-  
9 ings, or other papers, on which the issues of fact or of law arise.  
10 An appeal must be taken within twenty days after the entry of the  
11 order or judgment of the clerk. But an appeal can only be taken  
12 by a party aggrieved, who appeared and moved for, or opposed the  
13 order or judgment appealed from, or who, being entitled to be  
14 heard thereon, had no opportunity of being heard, which fact may  
15 be shown by affidavit or other proof.

*Rowland v. Thompson, 64—714; King v. Kinsey, 71—407; Wood v. Skinner, 79—92.*

**Sec. 482. Lawful to deposit mortgage in lieu of prosecution bond.**

It shall be lawful for any person desiring to commence any civil 1874-'5, c. 103, s. 1.  
2 action or special proceeding, or to defend the same, his agent or  
3 surety, to execute a mortgage on real estate of the value of the bond  
4 or undertaking, required to be given at the beginning of said action,  
5 or at any stage thereof, to the party to whom the bond or under-  
6 taking would be required to be made, conditioned to the same effect  
7 as such bond or undertaking with power of sale, which power of  
8 sale may be executed upon a breach of any of the conditions of the  
9 said mortgage after advertisement for thirty days.

**Sec. 483. Executors, &c., and officers may execute mortgage in lieu of bond.**

1874-'5, c. 103, s. 2.

Any administrator, executor, guardian, collector or receiver, or  
2 any officer required to give any official bond, or the agent or surety  
3 of such person or officer, may execute a mortgage on real estate, of  
4 the value of the bond required to be given by such administrator,  
5 executor, guardian, collector, receiver or officer, to the state of  
6 North Carolina, conditioned to the same effect as the bond should  
7 be, were the same given, with a power of sale, which power of sale  
8 may be executed by the clerk of the superior court, with whom  
9 said mortgage shall be deposited, upon a breach of any of the con-  
10 ditions of said mortgage, after advertisement for thirty days.

**Sec. 484. Additional security may be required.**

1874-'5, c. 103, s. 5.

If, from any cause, the property mortgaged in the cases provided  
2 for in the two preceding sections, shall become of less value than  
3 the amount of the bond, in lieu of which the mortgage is given,  
4 and it shall so appear upon affidavit of any person having any  
5 interest in the matter as a security for which the mortgage was  
6 given, it shall be the duty of the mortgagor to give additional  
7 security by a deposit of money, or the execution of a mortgage  
8 on more property, or justify as required in cases where bond or  
9 undertaking is given.

**Sec. 485. Any person may execute mortgage in lieu of bond; proviso.**

1874-'5, c. 103, s. 3.

Any person required to give a bond or undertaking, or required  
2 to enter into a recognizance for his appearance at any court, in  
3 any criminal proceeding, or for the security of any costs or fine in  
4 any criminal action, may also execute a mortgage on real property  
5 of the value of such bond or recognizance, payable to the state of  
6 North Carolina, conditioned as such bond or recognizance would  
7 be required, with power of sale, which power shall be executed by  
8 the clerk of the court in which said mortgage shall be executed,  
9 upon a breach of any of the conditions of said mortgage: *Provided*,  
10 that when said mortgage is executed before a justice of the peace,  
11 the power of sale shall be executed by the clerk of the court, to  
12 which the proceedings are returned.

**Sec. 486. Affidavit of value required in certain cases.**

1874-'5, c. 103, s. 4.

In all cases where a mortgage is executed, as hereinbefore per-  
2 mitted, it shall be the duty of the clerk of the court in which it is  
3 executed, or of the justice, to require an affidavit of the value of  
4 the property mortgaged, to be made by at least one witness, not  
5 interested in the matter, action or proceeding, in which the mort-  
6 gage is given.

**Sec. 487. Clerk may deposit mortgage.**

1874-'5, c. 103, s. 6.

In all cases where the clerk of the superior court may be re-



2 quired to give surety, he may deposit a mortgage with the register  
3 of deeds, payable to the state, and conditioned as the bond would  
4 have been required, with power of sale, which power of sale shall  
5 be executed by the register of deeds, upon a breach of any of the  
6 conditions of said mortgage; and the register of deeds shall in all  
7 cases immediately register the same, at the expense of the said  
8 clerk.

**Sec. 488. Punishment of the clerk of the superior court on conviction of an infamous crime.**

Upon the conviction of any clerk of the superior court of an 1868-'9, c. 201, s. 53.  
2 infamous crime, or of corruption and malpractice in office, he shall  
3 be removed from office, and he shall be disqualified from holding  
4 or enjoying any office of honor, trust or profit under this state.

Clarke v. Carpenter, 81—309.

**Sec. 489. Going out of office, to transfer records to successor; judge may give order for delivery of records, &c.**

Upon going out of office for whatever reason, of any clerk of the R. C., c. 19, s. 14.  
2 superior, inferior, or criminal court, he shall transfer and deliver  
3 to his successor, (or to such person, before his successor in office  
4 may be appointed, as the court may designate), all records, docu-  
5 ments, papers, and money belonging to the office. And the judge  
6 appointing any clerk to a vacancy in the clerkship of the superior  
7 court, may give to such person an order for the delivery to him,  
8 by the person having the custody thereof, of the records, docu-  
9 ments, papers and moneys belonging to the office, and he shall  
10 deliver the same in obedience to such order. And in case any  
11 clerk going out of office as aforesaid, or other person having the  
12 custody of such records, documents, papers, and money as afore-  
13 said, shall fail to transfer and deliver them as herein directed, he  
14 shall forfeit and pay to the state one thousand dollars, which shall  
15 be sued for by the prosecuting officer of that court.

## CHAPTER TWENTY-ONE.

## THE CODE OF CIVIL PROCEDURE---Acts 1868.

Mitchell v. Henderson, 63—643; Ragland v. Currin, 64—355; Clerk's office v. Huffsteller 67—449; Boylston Ins. Company v. Davis, 74—78; Lash v. Thomas, 86—313.

## TITLE I.

## GENERAL DEFINITIONS AND DIVISIONS.

## SECTION.

490. Remedies.

491. Actions.

492. Special proceedings.

493. Division of actions.

## SECTION.

494. Criminal action.

495. Civil action.

496. Remedies not merged.

497. Definition of court; to mean clerk, when.

## Sec. 490. Remedies.

C. C. P., s. 1.

Remedies in the courts of justice are divided into—

- 2 (1) Actions.
- 3 (2) Special proceedings.

## Sec. 491. Actions.

C. C. P., s. 2.  
1868-'9, c. 277, s. 2.

An action is an ordinary proceeding in a court of justice, by  
 2 which a party prosecutes another party, for the enforcement or  
 3 protection of a right, the redress or prevention of a wrong, or the  
 4 punishment or prevention of a public offence,

Wilson & Shoher v. Moore, 72—558.

## Sec. 492. Special proceedings.

C. C. P., s. 3.

Every other remedy is a special proceeding.

Hunt v. Sneed, 64—176; State v. McIntosh, 64—607; Tate v. Powe, 64—644; Woodley v. Gilham, 64—649; Sumner v. Miller, 64—683; Hyman v. Jarnigan, 65—96; Felton v. Elliott, 66—195; Howerton v. Tate, 66—231; Badger v. Jones, 66—305; Sprinkle v. Hutchinson, 66—450; Pelletier v. Saunders, 67—261; Bell v. King, 70—330; Herring v. Outlaw, 70—330; Jenkins v. Carter, 70—500; Patterson v. Miller, 72—516; Barnes v. Brown, 79—401.

## Sec. 493. Division of actions.

C. C. P., s. 4.

Actions are of two kinds—

- 2 (1) Civil.
- 3 (2) Criminal.

Sutton v. Owen, 65—123.

## Sec. 494. Criminal action.

C. C. P., s. 5.

A criminal action is:

- 2 (1) An action prosecuted by the state as a party, against a person
- 3 charged with a public offence, for the punishment thereof.

State v. Lupton, 63—483; State v. Simons, 68—378.

4 (2) An action prosecuted by the state, at the instance of an indi-  
5 vidual, to prevent an apprehended crime, against his person or  
6 property.

State v. Locust & Pearson, 63—574.

#### Sec. 495. Civil action.

Every other is a civil action.

C. C. P., s. 6.

State v. McIntosh, 64—607; Tate v. Powe, 64—644; Woodley v. Gilliam, 64—649; Rowland v. Thompson, 65—110; Murphy v. Harrison, 65—246; Howerton v. Tate, 66—231; Bunting v. Stancill, 79—180.

#### Sec. 496. Remedies not merged.

Where the violation of a right admits both of a civil and a crim- C. C. P., s. 7.  
2 inal remedy, the right to prosecute the one is not merged in the  
3 other.

#### Sec. 497. Definition of court; to mean clerk, when.

In those of the following enactments, which confer jurisdiction C. C. P., s. 9.  
2 or power, or impose duties, when the words superior court, or  
3 “court,” in reference to a superior court are used, they mean the  
4 clerk of the superior court, unless otherwise specially stated, or  
5 unless reference is made to a regular term of the court, in which  
6 cases the judge of the court alone is meant.

McAdoo v. Benbow, 63—461; Pelletier v. Sanders, 67—261.

## TITLE II.

### GENERAL PROVISIONS AS TO CIVIL ACTIONS.

#### SECTION.

498. Forms of civil actions; distinction be-  
tween actions at law and suits in equity  
abolished.

#### SECTION.

499. Parties designated plaintiff and defend-  
ant.  
500. Feigned issues abolished.

#### Sec. 498. Forms of civil actions; distinction between actions at law and suits in equity abolished.

The distinction between actions at law and suits in equity, and C. C. P., s. 12.  
2 the forms of all such actions and suits, heretofore existing, are  
3 abolished; and there shall be hereafter but one form of action for  
4 the enforcement or protection of private rights, and the redress of  
5 private wrongs, which shall be denominated a civil action. Cons., Art. iv, s. 1.

Matthews v. McPherson, 65—189; Parsley and Co. v. Nicholson, 65—207; Garrett v. Trotter, 65—430; Oates v. Gray, 66—442; Froelich v. So. Exp. Co., 67—1; Moore v. Edmiston, 70—510; Belmont and Co. v. Reilly, 71—260; Bitting v. Thaxton, 72—541.



**Sec. 499. Parties designated plaintiff and defendant.**

C. C. P., s. 13.

In such action, the party complaining shall be known as the  
2 plaintiff, and the adverse party as the defendant.

Garrett v. Trotter, 65—430.

**Sec. 500. Feigned issues abolished.**

C. C. P., s. 15.

Feigned issues are abolished; and instead thereof, in the cases  
2 where the power formerly existed to order a feigned issue, or when  
3 a question of fact not put in issue by the pleadings, is to be tried  
4 by a jury, an order for the trial may be made by the judge, stating  
5 distinctly and plainly the question of fact to be tried; and such  
6 order shall be the only authority necessary for a trial.

McAdoo v. Benbow, 63—461; Harkey v. Houston, 65—187; Abrams v. Cureton, 74—523; Blake  
v. Askeu, 76—325.

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## TITLE III.

### LIMITATION OF ACTIONS.

#### Chap. I. ACTIONS IN GENERAL.

#### II. ACTIONS FOR THE RECOVERY OF REAL PROPERTY—TIME OF COMMENCING.

#### III. ACTIONS OTHER THAN FOR THE RECOVERY OF REAL PROP- ERTY—TIME OF COMMENCING.

#### IV. GENERAL PROVISIONS AS TO THE TIME OF COMMENCING ACTIONS.

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## CHAPTER ONE.

### ACTIONS IN GENERAL.

#### SECTION.

501. To what actions this chapter shall extend.  
502. Time between the 20th May, 1861, and the  
1st January, 1870, not to be counted.

#### SECTION.

503. Period of limitation—objection must be  
taken by answer.

**Sec. 501. To what actions this chapter shall extend.**

C. C. P., s. 16.

This title shall not extend to actions commenced before the twen-  
2 ty-fourth day of August, one thousand eight hundred and sixty-  
3 eight, nor to cases where the right of action accrued before that  
4 date, but the statutes in force previous to that date shall be appli-  
5 cable to such actions and cases.

Ragland v. Currin, 64—355; Williams v. Williams, 70—189; Knight v. Braswell, 70—709; Lib-  
bett v. Maultsby, 71—345; Woodhouse v. Simmons, 73—30; Barham v. Lomax, 73—76; Ellis v.  
Scott, 75—108; Covington v. Stewart, 77—148; Batts v. Winstead, 77—238; Johnson v. Parker,  
79—475; Cannon v. Morris, 81—139; Blue v. Gilchrist, 84—239; Young v. Griffith, 84—715; White  
v. Beaman, 85—3.

Sec. 502. Time between the twentieth of May, one thousand eight hundred and sixty-one, and the first of January, one thousand eight hundred and seventy, not to be counted.

The time between the twentieth day of May, one thousand eight hundred and sixty-one, and the first day of January, one thousand eight hundred and seventy, shall not to be counted, so as to bar actions or suits, or to presume satisfaction or abandonment of rights.

1866-'7, c. 17, s. 8.  
1873-'4, c. 34, s. 5.

Neely v. Craig, Phil., 187; Morris v. Avery, Phil., 238; Hinton v. Hinton, Phil., 410; Johnson v. Winslow, 63—552; Howell v. Buie, 64—446; Plott v. W. N. C. R. Co., 65—74; Smith v. Rogers, 65—181; Williams v. Williams, 70—189; Benbow v. Robbins, 71—338; Lippard v. Troutman, 72—551; Faison v. Bowden, 74—43; Edwards v. Jarvis, 74—315; Hawkins v. Savage, 75—133; Melvin v. Waddell & Little, 75—381; Lane v. Richardson, 79—159; Badger v. Daniel, 79—372; Pearsall v. Kenan, 79—472; Johnson v. Parker, 79—475; Kitchen v. Wilson, 80—191.

Sec. 503. Period of limitation; objection must be taken by answer.

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.

C. C. P., s. 17.

Pegram v. Stoltz, 67—144; Green v. N. C. R. Co., 73—524; Lewis v. Latham, 74—283; Daniel v. Board of Com'rs of Edgecombe, 74—494; Wordsworth v. Davis, 75—159; Privett v. Calloway, 75—233; Robertson v. Pickrel, 77—302; Kahnweiler v. Anderson, 78—133; Long v. Bank, 81—41; Freeman v. Sprague, 82—366; Bacon v. Berry, 85—124.

## CHAPTER TWO.

### ACTIONS FOR THE RECOVERY OF REAL PROPERTY—TIME OF COMMENCING.

#### SECTION.

504. When the state will not sue.
505. Such possession valid against claimants under the state.
506. When person having title must sue.
507. Proviso, in case of judgment for plaintiff reversed, &c.
508. Zeisin within twenty years when necessary.
509. When adverse possession for twenty years.

#### SECTION.

510. Action after entry.
511. Possession presumed; occupation when deemed under legal title.
512. Relation of landlord and tenant.
513. Persons under disabilities.
514. Cumulative disabilities.
515. Railroads, &c., not barred.

Sec. 504. When the state will not sue; thirty years' possession.

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:

C. C. P., s. 13.

(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.

Osborne v. Johnston, 65—22; Melvin v. Waddell & Little, 75—381; Malloy v. Bruden, 86—251.

**Twenty-one years' possession under colorable title.**

9 (2) When the person in possession thereof, or those under whom  
 10 he claims, shall have been in possession under colorable title for  
 11 twenty-one years, such possession having been ascertained and  
 12 identified under known and visible lines or boundaries.

Malloy v. Bruden, 86—251.

**Sec. 505. Such possession valid against claimants under the state.**

C. C. P., s. 19.

All such possession as is described in the preceding section, un-  
 2 der such title as is therein described, is hereby ratified and con-  
 3 firmed, and declared to be a good and legal bar against the entry  
 4 or suit of any person, under the right or claim of the state.

**Sec. 506. When person having title must sue.**

C. C. P., s. 20.

When the person in possession of any real property, or those  
 2 under whom he claims, shall have been possessed of the same,  
 3 under known and visible lines and boundaries, and under color-  
 4 ble title for seven years, no entry shall be made or action sustained  
 5 against such possessor, by any person having any right or title to  
 6 the same, except during the seven years next after his right or  
 7 title shall have descended or accrued, who in default of suing  
 8 within the time aforesaid, shall be excluded from any claim there-  
 9 after to be made; and such possession, so held, shall be a perpetual  
 10 bar against all persons; subject to the qualifications in sections five  
 11 hundred and thirteen, five hundred and fourteen and five hundred  
 12 and fifteen of this title.

McConnell v. McConnell, 64—342; Linker v. Benson, 67—150; Moore v. Thompson, 69—120; Day  
 v. Howard & Baker, 73—1; Williams v. Wallace, 78—354; Davis v. McArthur, 78—357; Johnson  
 v. Parker, 79—475; Neely v. Neely, 79—478; Parker v. Banks, 79—480; Dickens v. Barnes, 79—490;  
 Gudger v. Hensley, 82—481; Pope v. Matthis, 83—169; Scott v. Elkins, 83—424; Isler v. Dewey,  
 84—345; Christenbury v. King, 85—229; Edwards v. Tipton, 85—479; Malloy v. Bruden, 86—251.

**Sec. 507. Proviso, in case of judgment for plaintiff reversed, &c.**

C. C. P., s. 21.

If in any action for real property, the plaintiff be non-suited or  
 2 judgment be given for him, and the same be reversed for error, or  
 3 a verdict pass for the plaintiff, and judgment thereon be arrested,  
 4 then in any such case the plaintiff may commence a new action  
 5 from time to time, within one year after nonsuit, judgment reversed  
 6 or stayed as aforesaid, notwithstanding the time limited in the  
 7 preceding section for bringing such action as may have expired, if  
 8 the action first brought was commenced within the time above  
 9 prescribed for bringing such actions.

**Sec. 508. Seizen within twenty years when necessary.**

C. C. P., s. 22.

No action for the recovery of real property, or the possession  
 2 thereof, shall be maintained, unless it appear that the plaintiff, or  
 3 those under whom he claims, was seized or possessed of the prem-  
 4 ises in question within twenty years before the commencement of  
 5 such action; subject to the qualifications in sections five hundred



6 and thirteen, five hundred and fourteen and five hundred and  
7 fifteen.

Covington v. Stewart, 77—148; Neely v. Neely, 79—478.

**Sec. 509. When adverse possession for twenty years.**

No action for the recovery of real property, or the possession thereof, C. C. P., s. 23.  
2 or the issues and profits thereof, shall be maintained when the  
3 person in possession thereof, or the defendant in such action, or  
4 those under whom he claims, shall have possessed such real prop-  
5 erty under known and visible lines and boundaries adversely to  
6 all other persons for twenty years; and such possession so held,  
7 shall give a title in fee to the possessor, in such property, against  
8 all persons not under disability.

Mode v. Long, 64—433; McNeill v. Riddle, 66—290; Melvin v. Waddell & Little, 75—361;  
Covington v. Stewart, 77—148; Malloy v. Bruden, 86—251.

**Sec. 510. Action after entry.**

No entry upon real estate shall be deemed sufficient or valid, as C. C. P., s. 24.  
2 a claim, unless an action be commenced thereupon within one year  
3 after the making of such entry, and within the time prescribed in  
4 this title.

**Sec. 511. Possession presumed; occupation when deemed under legal title.**

In every action for the recovery of real property, or the posses- C. C. P., s. 25.  
2 sion thereof, or damages for a trespass on such possession the per-  
3 son establishing a legal title to the premises shall be presumed to  
4 have been possessed thereof within the time required by law; and  
5 the occupation of such premises by any other person shall be  
6 deemed to have been under, and in subordination to, the legal  
7 title, unless it appears that such premises have been held and pos-  
8 sessed adversely to such legal title, for the time prescribed by law  
9 before the commencement of such action.

Malloy v. Bruden, 86—251.

**Sec. 512. Relation of landlord and tenant.**

Whenever the relation of landlord and tenant shall have existed C. C. P., s. 26.  
2 between any persons, the possession of the tenant shall be deemed  
3 the possession of the landlord, until the expiration of twenty years  
4 from the termination of the tenancy; or where there has been no  
5 written lease, until the expiration of twenty years from the time of  
6 the last payment of rent, notwithstanding that such tenant may  
7 have acquired another title, or may have claimed to hold adversely  
8 to his landlord. But such presumptions shall not be made after  
9 the periods herein limited.

Day v. Howard, 73—1; Reid v. Chatham, 75—86; Melvin v. Waddell & Little, 75—361.

**Sec. 513. Persons under disabilities.**

If a person entitled to commence any action for the recovery of C. C. P., s. 27.  
2 real property, or to make an entry or defence founded on the title

3 to real property or to rents and services out of the same, be, at the  
4 time such title shall descend or accrue, either,

5 (1) Within the age of twenty-one years, or

6 (2) Insane, or

7 (3) Imprisoned on a criminal charge, or in execution upon con-  
8 viction of a criminal offence, or

9 (4) A married woman ;

10 Then such person may, notwithstanding the time of limitation  
11 prescribed in this title be expired, commence his action, or make  
12 his entry, within three years next after full age, coming of sound  
13 mind, enlargement out of prison, or discovery; and at no time  
14 thereafter.

Lippard v. Troutman, 72—551.

#### Sec. 514. Cumulative disabilities.

C. C. P., s. 28.

When two or more disabilities shall co-exist, or when one disa-  
2 bility shall supervene an existing one, the period prescribed within  
3 which an action may be brought shall not begin to run until the  
4 termination of latest disability.

Lippard v. Troutman, 72—551.

#### Sec. 515. Railroads, &c., not barred.

C. C. P., s. 29.

No railroad, plank road, turnpike or canal company, shall be  
2 barred of, or presumed to have conveyed, any real estate, right of  
3 way, easement, leasehold, or other interest in the soil which may  
4 have been condemned, or otherwise obtained for its use, as a right  
5 of way, depot, station-house or place of landing, by any statute of  
6 limitation or by occupation of the same by any person whatever.

## CHAPTER THREE.

### ACTIONS OTHER THAN FOR THE RECOVERY OF REAL PROPERTY—TIME OF COMMENCING.

#### SECTION.

516. Periods of limitation prescribed.

517. Ten years—

- (1) Upon a judgment, &c., of any court of the United States or state;
- (2) Upon a sealed instrument;
- (3) For foreclosure of a mortgage, &c.;
- (4) For the redemption of a mortgage.

518. Seven years—

- (1) On a judgment of a justice of the peace;
- (2) Against a personal or real representative.

519. Six years—

- (1) Upon the official bond of a public officer;
- (2) Against an executor, administrator or guardian, on his bond;

#### SECTION.

(3) For injury to any incorporeal hereditament.

520. Three years—

- (1) For any contract or obligation not embraced in the preceding section;
- (2) Under liability created by statute, other than a penalty, &c.;
- (3) Trespass upon real property;
- (4) For converting, &c., any goods and chattels, or for their specific recovery;
- (5) Criminal conversation, or any other injury not arising under contract;
- (6) Against sureties of administrator, &c., on official bond of their principal;

- |  |  |
|--|--|
| <p>(7) Against bail ;</p> <p>(8) Or fees due any officer by judgment ;</p> <p>(9) For relief on the ground of fraud or mistake.</p> <p>521. One year—</p> <p>(1) Against sheriff, &amp;c., for trespass under color of office ;</p> <p>(2) Upon a statute for a penalty or forfeiture ;</p> <p>(3) Libel, assault, battery or false imprisonment ;</p> <p>(4) Against a sheriff or other officer for an escape ;</p> | <p>(5) By creditor of a deceased person against his personal representative.</p> <p>522. Six months—</p> <p>For slander.</p> <p>523. For other relief within ten years.</p> <p>524. Limitations to apply to actions by the state.</p> <p>525. Actions upon an account current, when cause accrues.</p> |
|--|--|

**Sec. 516. Periods of limitation prescribed.**

The periods prescribed for the commencement of actions, other C. C. P., s. 30  
2 than for the recovery of real property, shall be as follows :

**Sec. 517. Ten years.**

Within ten years—

- 2 (1) An action upon a judgment, or decree of any court of this C. C. P., ss. 14, 31  
3 state, or of the United States, or of any state or territory thereof,  
4 from the date of the rendition of said judgment or decree. But  
5 no such action shall brought more than once, nor have the effect  
6 to continue the lien of the original judgment ;

Broyles v. Young, 81—315; Pasour v. Rhyne, 82—149; Lyon v. Russ, 84—588; Warren v. Warren, 84—614; Fox v. Kline, 85—173; McDonald v. Dickson, 85—248; Cotten v. McClenahan, 85—254.

- 7 (2) An action upon a sealed instrument against the principal  
8 thereto ;

Torrence v. Alexander, 85—143.

- 9 (3) An action for the foreclosure of a mortgage, or deed in trust  
10 for creditors with a power of sale, of real property, where the  
11 mortgagor or grantor has been in possession of the property, within  
12 ten years after the forfeiture of the mortgage, or after the power of  
13 sale became absolute, or within ten years after the last payment on  
14 the same ;

- 15 (4) An action for the redemption of a mortgage, where the  
16 mortgagee has been in possession, or for a residuary interest under  
17 a deed in trust for creditors, where the trustee or those holding  
18 under him, shall have been in possession ; within ten years after  
19 the right of action accrued.

Edwards v. Tipton, 85—478.

**Sec. 518. Seven years.**

Within seven years—

C. C. P., s. 32.

- 2 (1) An action on a judgment rendered by a justice of the peace,  
3 from the date thereof ;

Barringer v. Allison, 78—79; Broyles v. Young, 81—315.

- 4 (2) By any creditor of a deceased person against his personal or  
5 real representative, within seven years next after the qualification  
6 of the executor or administrator and his making the advertise-  
7 ment required by law, for creditors of the deceased to present their



8 claims, where no personal service of such notice in writing is  
9 made upon the creditor; and a creditor thus barred of a recovery  
10 against the representative of any principal debtor shall also be  
11 barred of a recovery against any surety to such debt.

*McKeithan v. McGill*, 83—517; *Cox v. Cox*, 84—138; *Bacon v. Berry*, 85—124.

**Sec. 519. Six years.**

C. C. P., s. 33.

Within six years—

2 (1) An action upon the official bond of any public officer ;

*Hewlett v. Schenck*, 82—234; *Hughes v. Newsom*, 86—424.

3 (2) An action against any executor, administrator, or guardian  
4 on his official bond, within six years after the auditing of his final  
5 accounts by the proper officer, and the filing of such audited ac-  
6 count as required by law ;

*Briggs v. Smith*, 83—306.

7 (3) An action for injury to any incorporeal hereditament.

*Boyden v. Achenbach*, 79—589.

**Sec. 520. Three years.**

C. C. P., s. 34.

Within three years—

2 (1) An action upon a contract, obligation or liability arising out  
3 of a contract, expressed or implied, except those mentioned in the  
4 preceding sections ;

*Western R. R. Co. v. Avery*, 64—491; *Knight v. Braswell*, 70—709; *Navassa Guano Co. v. Willard*, 73—521; *Blackwell v. Claywell*, 75—215; *Austin v. Dawson*, 75—523; *Egerton v. Logan*, 81—172; *Hewlett v. Schenck*, 82—234; *Welfare v. Thompson*, 83—276; *Green v. Greensboro College*, 83—449; *Capell v. Long*, 84—17; *Reed v. Exum*, 84—130; *Jates v. Lilly*, 84—643; *Timberlake v. Green*, 84—658; *Miller v. Lash*, 85—51; *Torrence v. Alexander*, 85—143.

5 (2) An action upon a liability created by statute, other than a  
6 penalty or forfeiture, unless some other time be mentioned in the  
7 statute creating it ;

8 (3) An action for trespass upon real property ;

*Spilman v. Roanoke Nav. Co.*, 74—675; *King v. Little*, 77—138.

9 (4) An action for taking, detaining, converting or injuring any  
10 goods or chattels, including action for their specific recovery ;

*Hewlett v. Schenck*, 82—234; *Etheridge v. Woodley*, 83—11; *Currie v. McNeill*, 83—176.

11 (5) An action for criminal conversation, or for any other injury  
12 to the person or rights of another, not arising on contract and not  
13 hereinafter enumerated ;

14 (6) An action against the sureties of any executor, administrator  
15 or guardian, on the official bond of their principal; within three  
16 years after the breach thereof complained of ;

*Bushee v. Surles*, 77—62; *Spruill v. Sanderson*, 79—466.

17 (7) An action against bail; within three years after judgment  
18 against the principal, but bail may discharge himself by a surren-

19 der of the principal, at any time before final judgment against the  
20 bail;

21 (8) Fees due to any clerk, sheriff or other officer, by the judg-  
22 ment of a court; within three years from the time of the judgment  
23 rendered, or of the issuing of the last execution therefor;

24 (9) An action for relief, on the ground of fraud or mistake, in  
25 cases which heretofore were solely cognizable by courts of equity,  
26 the cause of action in such cases not to be deemed to have accrued,  
27 until the discovery by the aggrieved party of the facts constituting  
28 such fraud or mistake.

Young v. Phifer, 72—529; Barham v. Lomax, 73—76; Ross v. Henderson, 77—170; Wilson v. Western N. C. Land Co., 77—445; Blount v. Parker, 78—128; Kahnweiler v. Anderson, 78—133; Spruill v. Sanderson, 79—466; Egerton v. Logan, 81—172; Briggs v. Smith, 83—306; Day v. Day, 84—408; Hughes v. Whitaker, 84—640.

#### Sec. 521. One year.

Within one year—

C. C. P., s. 35.

2 (1) An action against a sheriff, coroner or constable, or other  
3 public officer, for a trespass under color of his office;

Hewlett v. Nutt, 79—263.

4 (2) An action upon a statute, for a penalty or forfeiture, where  
5 the action is given to the state alone, or in whole or in part, to the  
6 party grieved, or to a common informer, except where the statute  
7 imposing it prescribes a different limitation;

Hewlett v. Nutt, 79—263.

8 (3) An action for libel, assault, battery or false imprisonment;

9 (4) An action against a sheriff, or other officer, for the escape of  
10 a prisoner arrested or imprisoned on civil process;

11 (5) An action by a creditor of any deceased person, on whom  
12 personal notice in writing, to present his claim to the personal  
13 representative of the deceased, has been served, and who has failed  
14 so to do, within one year after the service of such notice; and any  
15 such creditor, barred of a recovery against the personal represent-  
16 ative of a principal debtor, by reason of such default, shall also  
17 be barred of a recovery against the surety for such debt.

#### Sec. 522. Six months.

Within six months—

C. C. P., s. 36.

2 An action for slander.

#### Sec. 523. For other relief within ten years.

An action for relief not herein provided must be commenced  
2 within ten years after the cause of action shall have accrued.

C. C. P., s. 37.

Libbett v. Maultsby, 71—345; Ross v. Henderson, 77—170; McDonald v. Dickson, 85—248.

#### Sec. 524. Limitations to apply to actions by the state.

The limitations prescribed in this chapter shall apply to civil  
2 actions brought in the name of the state, or for its benefit, in the  
3 same manner as to actions by or for the benefit of private parties.

C. C. P., s. 38.

**Sec. 525. Actions upon an account current, when cause accrues.**

C. C. P., s. 39.

In an action brought to recover a balance due upon a mutual, 2 open and current account, where there have been reciprocal de- 3 mands between the parties, the cause of action shall be deemed to 4 have accrued from the time of the latest item proved in the ac- 5 count, on either side.

Robertson v. Pickerell, 77--302; Mauney v. Coit, 86--463.

## CHAPTER FOUR.

## GENERAL PROVISIONS AS TO TIME OF COMMENCING ACTIONS.

## SECTION.

526. When action deemed commenced.  
 527. Time for commencement of action, or enforcement of judgment against defendant out of the state.  
 528. Exceptions, persons under disabilities.  
 529. Death of a person entitled before limitation expires; action on claims filed by administrator, &c., and admitted, not barred, &c., applicable to claims already filed.  
 530. Actions by aliens, time of war not counted.  
 531. When judgment reversed, &c., plaintiff may commence new action.  
 532. Time of stay by injunction, &c., not counted.  
 533. Time during controversy about probate of will, &c., not counted.

## SECTION.

534. Disability must exist when the right of action accrued.  
 535. Where several disabilities, all must be removed.  
 536. Acknowledgement by partner, &c., after dissolution.  
 537. Acknowledgment or new promise must be in writing.  
 538. Co-tenants; when some barred, others not.  
 539. Title not to affect action to enforce payment of bills, &c.  
 540. Nor actions against directors, &c., of moneyed corporations, or banking associations; limitations in such cases prescribed.  
 541. Certain suits against banks barred.

**Sec. 526. When action deemed commenced.**

C. C. P., s. 40.

An action is commenced as to each defendant when the summons is issued against him.

Wheeler v. Cobb, 75--21; Etheridge v. Woodley, 83--11.

**Sec. 527. Time for commencement of action, or enforcement of judgment against defendant out of the state.**

C. C. P., s. 41.

1881, c. 258, ss. 1, 2.

If, when the cause of an action accrue or judgment be rendered 2 or docketed against any person, he shall be out of the state, such 3 action may be commenced, or judgment enforced, within the time 4 herein respectively limited, after the return of such person into this 5 state; and if, after such cause of action shall have accrued or judgment rendered or docketed, such person shall depart from, and re- 6 side out of, this state, or remain continuously absent therefrom for 7 the space of one year or more, the time of his absence shall not be 8 deemed or taken as any part of the time limited for the commencement of such action, or the enforcement of such judgment. 9  
 10 This section shall apply to all actions that have accrued and 11



12 judgments rendered, transferred or docketed since the twenty-fourth  
13 day of August, one thousand eight hundred and sixty-eight.

Blue v. Gilchrist, 84—239.

**Sec. 528. Exceptions, persons under disabilities.**

If a person entitled to bring an action mentioned in the last C. C. P., s. 42.

2 chapter, except for a penalty or forfeiture, or against a sheriff or  
3 other officer for an escape, be at the time the cause of action ac-  
4 crued, either—

5 (1) Within the age of twenty-one years; or

6 (2) Insane; or

7 (3) Imprisoned on a criminal charge, or in execution under the  
8 sentence of a criminal court for a term less than his natural life; or

9 (4) A married woman;

10 Then such person may bring his action within the times before  
11 limited, after the disability shall be removed.

Lippard v. Troutman, 72—551; Briggs v. Smith, 83—306.

**Sec. 529. Death of a person entitled before limitation expires; action on claims filed by administrator, &c., and admitted, not barred, &c., applicable to claims already filed.**

If a person entitled to bring an action die before the expiration C. C. P., s. 43, 1881, c. 80.

2 of the time limited for the commencement thereof, and the cause  
3 of action survive, an action may be commenced by his representa-  
4 tives after the expiration of that time, and within one year from  
5 his death. If a person against whom an action may be brought  
6 die before the expiration of the time limited for the commencement  
7 thereof, and the cause of action survive, an action may be com-  
8 menced against his personal representative after the expiration of  
9 that time, and within one year after the issuing of letters testa-  
10 mentary or of administration. But if the claim upon which such  
11 cause of action is based be filed with the personal representative  
12 within the time above specified, and the same shall be admitted  
13 by him, it shall not be necessary to bring an action upon such  
14 claim to prevent the bar: *Provided*, that no action shall be brought  
15 against the personal representative upon such claim after his final  
16 settlement; and this shall apply to claims already filed.

Flemming v. Flemming, 85—127.

**Sec. 530. Actions by aliens, time of war not counted.**

When a person shall be an alien, subject or citizen of a country C. C. P., s. 44.

2 at war with the United States, the time of the continuance of the  
3 war shall not be part of the period limited for the commencement  
4 of the action.

**Sec. 531. When judgment reversed, &c., plaintiff may commence new action.**

If an action shall be commenced within the time prescribed C. C. P., s. 45,

2 therefor, and the plaintiff be nonsuited, or a judgment therein be

3 reversed on appeal, or be arrested, the plaintiff, or if he die and  
4 the cause of action survive, his heir or representative, may com-  
5 mence a new action within one year after such nonsuit, reversal, or  
6 arrest of judgment.

McDowell v. Asbury, 66—444; Straus & Co. v. Beardsley, 79—59; Martin v. Young, 85—156.

**Sec. 532. Time of stay by injunction, &c., not counted.**

C. C. P., s. 46.

When the commencement of an action shall be stayed by in-  
2 junction or statutory prohibition, the time of the continuance of  
3 the injunction or prohibition shall not be part of the time limited  
4 for the commencement of the action.

Walton v. Pearson, 85—34.

**Sec. 533. Time during controversy about probate of will, &c., not counted.**

C. C. P., s. 47.

In reckoning time when pleaded as a bar to actions, that period  
2 shall not be counted which elapses during any controversy on the  
3 probate of a will or granting letters of administration, unless there  
4 be an administrator appointed during the pendency of the action,  
5 and it be provided by law that action may be brought against  
6 him.

**Sec. 534. Disability must exist when the right of action accrued.**

C. C. P., s. 48.

No person shall avail himself of a disability, unless it existed  
2 when his right of action accrued.

**Sec. 535. Where several disabilities, all must be removed.**

C. C. P., s. 49.

Where two or more disabilities shall co-exist at the time the  
2 right of action accrues, the limitation shall not attach until they  
3 all be removed.

**Sec. 536. Acknowledgment by partner, &c., after dissolution.**

C. C. P., s. 50.

No act, admission or acknowledgement by any partner after the  
2 dissolution of the co-partnership, or by any of the makers of a  
3 promissory note or bond after the statute of limitations shall have  
4 barred the same, shall be received as evidence to compel the statute,  
5 except against the partner or maker of the promissory note or  
6 bond, doing the act or making the admission or acknowledgment.

Lane v. Richardson, 79—159; Green v. Greensboro College, 83—449.

**Sec. 537. Acknowledgment or new promise must be in writing.**

C. C. P., s. 51.

No acknowledgment or promise shall be received as evidence of  
2 a new or continuing contract, whereby to take the case out of the  
3 operation of this title, unless the same be contained in some  
4 writing signed by the party to be charged thereby; but this section  
5 shall not alter the effect of any payment of principal or interest.

Simonton v. Clark, 65—525; Hornthal v. McRae, 67—21; Fraley v. Kelley, 67—78; Knight v. Braswell, 70—709; Libbett v. Maulsby, 71—345; Faison v. Bowden, 74—43; State v. Bryant, 74—207; Henly v. Lanier, 75—172; Kull v. Farmer, 78—339; Lane v. Richardson, 79—159; Green v. Greensboro College, 83—449; Grant v. Burgwyn, 84—530; Pool v. Bledsoe, 85—1; White v. Beaman, 85—3; Flemming v. Flemming, 85—127; Riggs v. Roberts, 85—151; Haymore v. Com'rs, 85—208.

**Sec. 538. Co-tenants; when some barred, others not.**

In actions by tenants in common or joint tenants of personal C. C. P., s. 52.  
2 property to recover the same, or damages for the detention of or  
3 injury thereto, and any of them shall be barred of their recovery  
4 by limitation of time, the rights of the others shall not be affected  
5 thereby; but they may recover according to their right and inter-  
6 est, notwithstanding such bar.

**Sec. 539. Title not to affect action to enforce payment of bills, &c.**

This title shall not affect actions to enforce the payment of bills, C. C. P., s. 53.  
2 notes or other evidences of debt, issued or put in circulation as 1874-'5, c. 170.  
3 money by moneyed corporations incorporated under the laws of  
4 the state.

**Sec. 540. Nor actions against directors, &c., of moneyed corporations or banking associations; limitations in such cases prescribed.**

This title shall not affect actions against directors or stockholders C. C. P., s. 54.  
2 of any moneyed corporation, or banking association incorporated  
3 under the laws of this state, to recover a penalty or forfeiture im-  
4 posed, or to enforce a liability created by law; but such actions  
5 must be brought within three years after the discovery by the ag-  
6 grieved party, of the facts upon which the penalty or forfeiture  
7 attached, or the liability was created.

**Sec. 541. Certain suits against banks barred.**

WHEREAS, many citizens of the state of North Carolina were C. C. P., s. 54. (a).  
2 stockholders in banking institutions chartered in other states be- 1872-'3, c. 120.  
3 fore the year one thousand eight hundred and sixty-one, which  
4 contain individual liability clauses in the nature of penalties, in  
5 the event of failure on the part of said banking corporations to  
6 meet their liabilities; and,  
7 WHEREAS, said banking corporations have become insolvent by  
8 the results of the late war, thereby entailing upon the stockholders  
9 the loss of the investment of their capital therein, and they are  
10 threatened with futher loss, by reason of said individual liability  
11 clauses; therefore,  
12 All such causes of action as have not hitherto been commenced  
13 in this state against citizens thereof, are hereby declared to be  
14 barred by lapse of time.



## TITLE IV.

## PARTIES TO CIVIL ACTIONS.

## SECTION.

542. Action to be by party in interest; action by grantee of land held adversely; assignment of thing in action.

543. Action by and against a married woman.

544. Action by executor, trustee, &c.

545. Infants to sue by guardian or next friend.

546. Infants, &c., to defend by guardian *ad litem*.

547. Guardian *ad litem* to file answer.

## SECTION.

548. Who to be plaintiffs.

549. Who to be defendants.

550. Parties to be joined.

551. Parties to bills and notes, &c.

552. Joint contracts of co-partners.

553. Actions, when not to abate.

554. Court may determine controversy and interpleader.

Sec. 542. Action to be by party in interest; action by grantee of land held adversely; assignment of thing in action.

C.C.P., s. 55.  
1874-'5, c. 256, s. 1.

Every action must be prosecuted in the name of the real party in interest, except as otherwise provided; 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 real estate in his own name, whenever he or any grantor or other person through whom he may derive title, might maintain such action, notwithstanding the grant of such grantor or other conveyance be void, by reason of the actual possession of a person claiming under a title adverse to that of such grantor, or other person, at the time of the delivery of such grant or other conveyance. 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.

Calvert v. Williams, 64—168; McConnaughey v. Chambers, 64—284; Rankin v. Allison, 64—673; Neal & Johnston v. Lea, 64—678; Sutton v. Owen, 65—123; Johnson v. Mangum, 65—146; Harris v. Burwell, 65—584; Battle v. Davis, 66—252; School Comm. v. Kesler, 66—323; Mebane v. Mebane, 66—334; Biggs v. Williams, 66—427; Martin v. Richardson, 68—255; McNinn v. Freeman, 68—341; Andrews v. McDaniel, 68—385; Setzer v. Lewis, 69—133; Leach v. Harris, 69—532; Brown v. Turner, 70—93; Utley v. Foy, 70—303; Wilson v. Arentz, 70—670; Boyle v. Robbins, 71—130; Etheridge v. Vernoy, 71—184; Shuler v. Millsaps, 71—297; Murray, Ferries & Co. v. Blackledge, 71—492; Abrams v. Cureton, 74—523; Miller v. Tharel, 75—148; Bule v. Carver, 75—559; Justice v. Eddings, 75—581; Henley v. Willson, 77—216; Alexander v. Wriston, 81—191; Jackson v. Love, 82—405; Bank v. Bynum, 84—24; Havens v. Potts, 86—31.

Sec. 543. Action by and against a married woman.

C.C.P., s. 56.

When a married woman is a party, her husband must be joined with her except that,  
(1) When the action concerns her separate property, she may sue alone;

Tredwell v. Blount, 86—33; Pugh v. Grant, 86—39.

(2) When the action is between herself and her husband, she may sue or be sued alone;

7 And in no case need she prosecute or defend by a guardian or  
8 next friend.

Wilson v. Arentz, 70—670; Shuler v. Millsaps, 71—297; Lippard v. Troutman, 72—551; Huntley v. Whitner, 77—392; Manning v. Manning, 79—293; Vick v. Pope, 81—22; Gulley v. Macy, 81—356; Isler v. Koonce, 83—55; Hollingsworth v. Harman, 83—153; Briggs v. Smith, 83—306; McCormac v. Wiggins, 84—278.

#### Sec. 544. Action by executor, trustee, &c.

An executor or administrator, a trustee of an express trust, or a  
2 person expressly authorized by statute, may sue without joining  
3 with him the person for whose benefit the action is prosecuted. A  
4 trustee of an express trust, within the meaning of this section,  
5 shall be construed to include a person with whom, or in whose  
6 name, a contract is made for the benefit of another.

Rankin v. Allison, 64—673; Battle v. Davis, 66—252; School Com. v. Kesler, 66—323; Biggs v. Williams, 68—427; Davidson v. Elms, 67—228; Andrews v. McDaniel, 68—385; Flack v. Dawson, 69—42; Davis v. Fox, 69—435; Abrams v. Cureton, 74—523; Buie v. Carver, 75—559.

#### Sec. 545. Infants to sue by guardian or next friend.

In actions and special proceedings whenever any of the parties  
2 plaintiff are infants, idiots, lunatics, or persons *non compos mentis*,  
3 whether said infants, idiots, lunatics or persons *non compos mentis*,  
4 be residents or non-residents of this state; said infants, idiots,  
5 lunatics or persons *non compos mentis* shall appear by their general  
6 or testamentary guardian, if they have any within the state; and  
7 if there shall be no such guardian, then said infants, idiots, luna-  
8 tics or persons *non compos mentis* may appear by their next friend.

Rankin v. Allison, 64—673; George v. High, 85—113.

C. C. P., s. 57.  
1870—1, c. 233, s. 1.  
1871—2, c. 95, s. 1.

#### Sec. 546. Infants, &c., to defend by guardian ad litem.

In all actions and special proceedings whenever any of the de-  
2 fendants are infants, idiots, lunatics, or persons *non compos mentis*,  
3 said infants, idiots, lunatics or persons *non compos mentis*, shall de-  
4 fend by their general or testamentary guardian, if they have any  
5 within this state, whether said infants, idiots, lunatics, or persons  
6 *non compos mentis*, are residents or non residents of this state; and if  
7 said infants, idiots, lunatics, or persons *non compos mentis*, have no  
8 general or testamentary guardian within this state, and any of the  
9 defendants in said action or special proceeding shall have been sum-  
10 moned, then it shall be lawful for the court, wherein said action or  
11 special proceeding is pending, upon motion of any of the parties  
12 to the said action, or special proceeding, to appoint some discreet  
13 person to act as guardian *ad litem*, to defend in behalf of such in-  
14 fants, idiots, lunatics, or persons *non compos mentis*, and such guar-  
15 dian so appointed, shall, if the cause in which he is appointed be  
16 a civil action, file his answer to the complaint within the time re-  
17 quired for other defendants, unless such time be extended by the  
18 court for good cause, and if the cause in which he is so appointed  
19 be a special proceeding, a copy of the complaint, with the sum-

C. C. P., s. 59.  
1870—1, c. 233, s. 5.  
1871—2, c. 95, s. 2.

20 mons, shall be served on said guardian *ad litem*, and after twenty  
 21 days' notice of said summons and complaint in such special pro-  
 22 ceeding, and after answer filed as above prescribed in such civil  
 23 action, the court may proceed in the cause to final judgment, and  
 24 decree therein in the same manner as if there had been personal  
 25 service upon the said infant, idiot, lunatic or person *non compos*  
 26 *mentis*, defendants, and any decree or judgment in the case shall  
 27 conclude the infant, idiot, lunatic, or person *non compos mentis*, de-  
 28 fendants, as effectually as if he or they had been personally sum-  
 29 moned.

Hyman v. Jarnigan, 65—96; Isler v. Murphy, 71—436; Allen v. Shields, 72—504; Moore v. Gidney, 75—34; Chambers v. Penland, 78—53; Bass v. Bass, 78—374; Gulley v. Macy, 81—356; Nicholson v. Cox, 83—44; Matthews v. Joyce, 85—253.

#### Sec. 547. Guardian ad litem to file answer.

1870-'1, c. 233, s. 4.

Whenever any guardian *ad litem* shall be appointed, he shall  
 2 file an answer in said action or special proceeding, admitting or  
 3 denying the allegations thereof; the costs and expenses of which  
 4 said answer, in all applications to sell or divide the real estate of  
 5 said infants, shall be paid out of the proceeds of the property, or  
 6 in case of a division, shall be charged upon the land, if the sale or  
 7 division shall be ordered by the court, and if not ordered in any  
 8 other manner the court shall direct.

Moore v. Gidney, 75—34; Gulley v. Macey, 81—356.

#### Sec. 548. Who to be plaintiffs.

C. C. P., s. 60.

All persons having an interest in the subject of the action, and  
 2 in obtaining the relief demanded, may be joined as plaintiffs ex-  
 3 cept as otherwise provided.

KoKesson & Hunt v. Mendenhall, 64—502; Flack v. Dawson, 69—42; Gregory v. Gregory, 69—522; Wade & Smitherman v. Saunders, 70—277; State *ex rel.* Cox v. Blair, 76—78; Rollins v. Rollins, 76—284; Owens v. Alexander, 78—1; Mebane v. Layton, 86—571.

#### Sec. 549. Who to be defendants.

C. C. P., s. 61.

Any person may be a defendant who has, or claims, an interest  
 2 in the controversy adverse to the plaintiff, or who is a necessary  
 3 party to a complete determination or settlement of the questions  
 4 involved therein; and in an action to recover the possession of  
 5 real estate, the landlord and tenant thereof may be joined as de-  
 6 fendants; and any person claiming title or right of possession to  
 7 real estate may be made party plaintiff or defendant, as the case  
 8 may require, to any such action.

Moore *ex parte*, 64—90; Carney v. Whitehurst, 64—426; Harkey v. Houston, 65—137; Bear v. Cohen, 65—511; Falls v. Gamble, 66—455; Isler v. Foy, 66—547; Batchelor v. Macon, 67—181; Rowland v. Gardner, 69—53; Gregory v. Gregory, 69—522; Wade & Smitherman v. Saunders, 70—270; Wade & Smitherman v. Saunders, 70—277; Rollins v. Rollins, 76—284; Colgrove v. Koonce, 76—383; Long v. Swindell, 77—176; Attorney General v. Simonton, 78—57; Winfield v. Burton, 79—388; Paschall v. Brandon, 79—504; Beard v. Hall, 79—506; Cecil v. Smith, 81—235; Gill v. Young, 82—273; Lytle v. Bergen, 82—301; McCaskill v. Lancashire, 83—393; Keathly v. Branch, 84—202; Swepson v. Johnston, 84—449; Maddrey v. Long, 86—383.

#### Sec. 550. Parties to be joined, &c.

C. C. P., s. 62.

Of the parties to the action, those who are united in interest  
 2 must be joined as plaintiffs or defendants; but if the consent of



3 any one who should have been joined as plaintiff cannot be ob-  
 4 tained, he may be made a defendant, the reason thereof being  
 5 stated in the complaint; and when the question is one of a com-  
 6 mon or general interest of many persons, or where the parties may  
 7 be very numerous, and it may be impracticable to bring them all  
 8 before the court, one or more<sup>e</sup> may sue or defend for the benefit of  
 9 the whole.

Lewis v. McNatt, 65—63; Merwin v. Ballard, 65—163; Flack v. Dawson, 69—42; Gregory v. Gregory, 69—522; Wilson v. Arentz, 70—670; VonGlahn v. Harris, 73—323; VonGlahn v. Lattimer, 73—333; Ten-Broeck v. Orchard, 74—409; VonGlahn v. DeRosset, 76—292; Long v. Swindell, 77—176; Gill v. Young, 82—273; McCormac v. Wiggins, 84—278; Bronson v. Ins. Co., 85—411.

#### Sec. 551. Parties to bills and notes, &c.

Persons severally liable upon the same obligation or instrument, C. C. P., s. 63.  
 2 including the parties to bills of exchange and promissory notes,  
 3 may all or any of them be included in the same action at the op-  
 4 tion of the plaintiff.

Merwin v. Ballard, 65—168; Gudger v. Baird, 66—438; Wooten v. Maulsby, 69—162; Logan v. Wallis, 76—416; Syme v. Bunting, 86—175.

#### Sec. 552. Joint contracts of co-partners.

In all cases of joint contracts of co-partners in trade or others, R. C., c. 31, s. 84.  
 2 suit may be brought and prosecuted on the same against all, or 1871-2, c. 24, s. 1.  
 3 any number of the persons making such contracts.

#### Sec. 553. Actions, when not to abate.

(1) No action shall abate by the death, marriage or other disabil- C. C. P., s. 64.  
 2 ity of a party, or by the transfer of any interest therein, if the R. C., c. 1, s. 4.  
 3 cause of action survive or continue. In case of death, except in R. C., c. 46, s. 43.  
 4 suits for penalties, and for damages merely vindictive, marriage or  
 5 other disability of a party, the court, on motion at any time within  
 6 one year thereafter, or afterwards on a supplemental complaint,  
 7 may allow the action to be continued by, or against, his represent-  
 8 ative or successor in interest. In case of any other transfer of  
 9 interest, the action shall be continued in the name of the original  
 10 party, or the court may allow the person to whom the transfer is  
 11 made, to be substituted in the action.

Thompson v. Badham, 70—141; Baggarly v. Calvert, 70—688; Shields v. Lawrence, 72—43;  
 Sledge v. Reid, 73—440; Moore v. N. C. R. R. Co., 74—528; Pennington v. Pennington, 75—356;  
 Lord v. Beard, 79—5.

12 (2) After a verdict shall be rendered in any action for a wrong,  
 13 such action shall not abate by the death of a party.

Thompson v. Badham, 70—141; Shields v. Lawrence, 72—43; Sledge v. Reid, 73—440.

14 (3) At any time after the death, marriage, or other disability of  
 15 the party plaintiff, the court in which an action is pending, upon  
 16 notice to such persons as it may direct, and upon application of any  
 17 person aggrieved, may, in its discretion, order that the action be  
 18 deemed abated, unless the same be continued by the proper parties,

19 within a time to be fixed by the court, not less than six months,  
20 nor exceeding one year from the granting of the order.

*Baggarly v. Calvert*, 70—688.

**Sec. 554. Court may determine controversy and interpleader.**

C. C. P., s. 65.

The court either between the terms, or at a regular term, according to the nature of the controversy, 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 matter 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, upon proof by affidavit that a person not a party to the action makes a demand against him for the same debt or property without collusion with him, may at any time before answer, apply to the court, upon notice to that person and the adverse party, for an order to substitute that person in his place, and to discharge him from liability to either, on his paying into court the amount of the debt, or delivering the possession of the property or its value to such person as the court shall direct. The court, in its discretion, may make such an order.

*Ramsour v. Ramsour*, 63—231; *McKesson v. Mendenhall*, 64—286; *Harkey v. Houston*, 65—137; *Matthews v. McPherson*, 65—189; *Dewey v. White*, 65—225; *Bates v. Lilly*, 65—232; *Bear v. Cohen*, 65—511; *Clemmons v. Hampton & March*, 70—534; *Shuler v. Millsaps*, 71—297; *Thomas v. Kelly*, 74—416; *Isler v. Murphy*, 76—52; *Colgrove v. Koonce*, 76—363; *Attorney General v. Simonton*, 78—57; *Winfield v. Burton*, 79—388; *Cecil v. Smith*, 81—285; *Sims v. Goettle*, 82—268; *Lytle v. Burgen*, 82—301; *Fox v. Kline*, 85—173; *Maddrey v. Long*, 86—383.

## TITLE V.

### OF THE PLACE OF TRIAL.

**SECTION.**

- 555. Actions to be tried where subject matter situated.
- 556. Actions to be tried where cause of action arose.
- 557. Actions to be tried where plaintiff or defendant resides.
- 558. Actions against executors and administrators, and upon official bonds.
- 559. Actions against foreign corporations; where and by whom brought.

**SECTION.**

- 560. Change of place of trial.
- 561. Judges authorized to remove causes from one county to another.
- 562. What requisite to authorize such removal.
- 563. Criminal action.
- 564. On removal of an action, what to be sent with transcript.

**Sec. 555. Actions to be tried where subject matter situated.**

Actions for the following causes must be tried in the county in

C. C. P., s. 66.

2 which the subject of the action, or some part thereof, is situated,  
3 subject to the power of the court to change the place of trial, in  
4 the cases provided in this code:

5 (1) For the recovery of real property, or of an estate or interest  
6 therein, or for the determination in any form of such right or  
7 interest, and for injuries to real property;

8 (2) For the partition of real property;

9 (3) For the foreclosure of a mortgage of real property;

10 (4) For the recovery of personal property distrained for any  
11 cause.

*Fraley v. March*, 68—160; *Phillips v. Holmes*, 71—250; *Attorney General v. Simonton* 78—57; *Askew v. Bynum*, 81—359.

#### Sec. 556. Actions to be tried where cause of action arose.

Actions for the following causes must be tried in the county C. C. P., s. 67.

2 where the cause, or some part thereof, arose, subject to the like  
3 power of the court to change the place of trial, in the cases pro-  
4 vided in this code:

5 (1) For the recovery of a penalty or forfeiture, imposed by stat-  
6 ute; except that, when it is imposed for an offence committed on  
7 a sound, bay, river, or other body of water, situated in two or  
8 more counties, the action may be brought in any county bordering  
9 on such sound, bay, river, or other body of water, and opposite to  
10 the place where the offence was committed;

11 (2) Against a public officer or person especially appointed to  
12 execute his duties, for an act done by him by virtue of his office;  
13 or against a person who by his command or in his aid, shall do  
14 anything touching the duties of such officer.

*Johnston v. Commissioners of Cleaveland County*, 67—101; *Alexander v. Commissioners of McDowell County*, 67—330; *Jones v. Commissioners of Bladen County*, 69—412; *Steele v. Commissioners of Rutherford County*, 70—137; *Phillips v. Holmes*, 71—250.

#### Sec. 557. Actions to be tried where plaintiff or defendant resides.

In all other cases the action shall be tried in the county in which  
2 the plaintiffs or the defendants, or any of them, shall reside at the  
3 commencement of the action; or if none of the defendants shall  
4 reside in the state, then in the county in which the plaintiffs, or  
5 any of them, shall reside; and if none of the parties shall reside  
6 within the state, then the same may be tried in any county, which  
7 the plaintiff shall designate in his summons and complaint, sub-  
8 ject, however, to the power of the court to change the place of trial,  
9 in the cases provided by statute.

C. C. P., s. 68.  
1868-'9, c. 59,  
1868-'9, c. 277, s. 6.

*Rankin v. Allison*, 64—673; *Dewey v. White*, 65—225; *Phillips v. Holmes*, 71—250; *Abrams v. Cureton*, 74—523.

#### Sec. 558. Actions against executors and administrators, and upon official bonds.

All actions upon official bonds or against executors and admin-  
2 istrators in their official capacity, shall be instituted in the county  
3 where the bonds shall have been given, if the principal or any of

C. C. P., s. 68. (a.)  
1868-'9, c. 258, s. 1.



4 the sureties on the bond is in the county; if not, then in the  
5 plaintiff's county.

*Cloman v. Staton*, 78—235; *Devereux v. Devereux*, 81—12.

**Sec. 559. Actions against foreign corporations; where and by whom brought.**

C. C. P., s. 361.  
1876-'7, c. 170.

An action against a corporation created by or under the laws of  
2 any other state, government, or country, may be brought in the  
3 superior court of any county in which the cause of action arose, or  
4 in which it usually did business, or in which it has property, or in  
5 which the plaintiffs, or either of them, shall reside, in the follow-  
6 ing cases:

- 7 (1) By a resident of this state, for any cause of action;
- 8 (2) By a plaintiff, not a resident of this state, when the cause of  
9 action shall have risen, or the subject of the action shall be sit-  
10 uated within this state.

**Sec. 560. Change of place of trial.**

C. C. P., s. 69.

If the county designated for that purpose, in the summons and  
2 complaint, be not the proper county, the action may, notwith-  
3 standing, be tried therein, unless the defendant, before the time of  
4 answering expires, demand in writing that the trial be changed  
5 by consent of parties, or by order of the court.

6 The court may change the place of trial in the following cases:

- 7 (1) When the county designated for that purpose is not the  
8 proper county;
- 9 (2) When the convenience of witnesses and the ends of justice  
10 would be promoted by the change;
- 11 (3) When the judge shall have been, at any time, interested as  
12 party or counsel. When the place of trial is changed, all other  
13 proceedings shall be had in the county to which the place of trial  
14 is changed, unless otherwise provided by the consent of the par-  
15 ties in writing duly filed, or by order of court; and the papers shall  
16 be filed or transferred accordingly.

*Rankin v. Allison*, 64—673; *Carter v. W. D. of the W. N. C. R. R.*, 63—346; *Stanley v. Mason*, 69—1; *Jones v. Commissioners of Bladen County*, 69—412; *Phillips v. Holmes*, 71—250; *Cloman v. Staton*, 78—235; *State v. Swepson*, 81—571. See R. C., c. 31, ss. 115—118; 1870-'1, c. 20, s. 1.

**Sec. 561. Judges authorized to remove causes from one county to another.**

1879, c. 45.

In all civil and criminal actions in the superior and criminal  
2 courts, in which it shall be suggested on oath, or by affirmation,  
3 on behalf of the state, or the traverser of the bill of indictment, or  
4 of the plaintiff or defendant, that there are probable grounds to  
5 believe that justice cannot be obtained in the county in which the  
6 action shall be pending, the judge shall be authorized to order a  
7 copy of the record of said action to be removed to some adjacent  
8 county for trial, if he shall be satisfied that a fair trial cannot be  
9 had in said county, after hearing all the testimony which may be  
10 offered on either side by affidavits.

See *Smith v. Greenlee*, 3 Dev., 387; *State v. Seaborn*, 4 Dev., 305; *State v. Duncan*, 6 Ire., 98; *State v. Shepherd*, 8 Ire., 195; *Boyden v. Williams*, 84—603.

Sec. 562. What requisite to authorize such removal.

No action, whether civil or criminal, shall be so removed, unless  
2 the affidavit shall set forth particularly and in detail the ground  
3 of the application. And it shall be competent for the other side  
4 to controvert the allegations of fact in said application, and to of-  
5 fer counter affidavits to that end. And the judge shall not order  
6 the removal of any such action, unless he shall be satisfied after  
7 thorough examination of the evidence as aforesaid, that the ends  
8 of justice demand it.

1879, c. 45.

Sec. 563. Criminal action.

No criminal action shall be removed unless application as here-  
2 inbefore required, shall be made before the issuing of the order  
3 summoning a special *venire*, when such shall be required for the  
4 trial of such action, and no action, either civil or criminal, shall,  
5 under any circumstances, be removed more than once by the same  
6 party.

1879, c. 45.

State v. Swepson, 81—571.

Sec. 564. On removal of an action, what to be sent with transcript.

When a cause shall be directed to be removed, the clerk shall  
2 transmit to the court, to which the same is removed, a transcript  
3 of the record of the case, with the prosecution bond, bail bond, and  
4 the depositions, and all other written evidences filed therein.

R. C., c. 31, s. 113.  
1896, c. 694, s. 12.  
1810, c. 787.

State v. Collins, 3 Dev., 117; State v. Reid, 1 D. & B., 377; State v. Duncan, 6 Ire., 236; State v. Barfield, 8 Ire., 344; State v. Swepson, 81—571; Phillips v. Lentz, 83—240.

TITLE VI.

OF THE MANNER OF COMMENCING CIVIL ACTIONS.

SECTION.

- 565. Civil actions commenced by summons.
- 566. Summons in actions returnable to a regular term of the superior court.
- 567. Summons returnable.
- 568. When the summons is issued more than ten days before the next succeeding term.
- 569. Summons to be attested.
- 570. Summons in the same action may issue to several counties at the same time.
- 571. Sheriff returning that defendant is not to be found, plaintiff may issue *alias* or *pluries* summons.
- 572. Filing of complaint.
- 573. Answer of defendant.
- 574. Reply to answer.
- 575. Before issuing summons clerk to take undertaking, &c.
- 576. How to sue as a pauper; how obtained.
- 577. Court may assign counsel.
- 578. No costs or fees recoverable.
- 579. What summons to contain.
- 580. Service of summons.
- 581. Actions against executors and administrators.

SECTION.

- 582. Notice of no personal claim.
- 583. Manner of service of summons.
- 584. Service by publication.
- 585. Manner of publication.
- 586. Defendant allowed to defend before and after judgment.
- 587. Actions for foreclosure of mortgage.
- 588. Joint and several debtors; partners.
- 589. Parties not summoned in action, on joint contract, may be summoned after judgment.
- 590. Party summoned may answer or defend.
- 591. Subsequent pleadings and proceedings same as in action.
- 592. Answer and reply to be verified as in an action.
- 593. When service complete.
- 594. Proof of service.
- 595. Jurisdiction; appearance; notice of *lis pendens*.
- 596. Parties may apply for relief to the superior court in vacation or in term time.

**Sec. 565. Civil actions commenced by summons.**

C. C. P., s. 70.

Civil actions shall be commenced by issuing a summons.

Patrick v. Joyner, 63—573; Heilig v. Stokes & Pennington, 63—612; McArthur v. McEachin, 64—72; Thompson v. Berry, 64—79; Woodley v. Gilliam, 64—649; Gulon v. Melvin, 69—242; Steele v. Com'rs of Rutherford, 70—137; Belmont & Co. v. Reilly, 71—260; Calvert v. Peebles, 82—334.

**Sec. 566. Summons in actions returnable to a regular term of the superior court.**

1876-'7, c. 85, s. 1.

The summons shall run in the name of the state, be signed by  
2 the clerk of the superior court having jurisdiction to try the action,  
3 and shall be directed to the sheriff or other proper officer of the  
4 county in which the defendant, or one or more of the defendants,  
5 resides or may be found. It shall be returnable to the regular  
6 term of the superior court of the county, where the plaintiff, or  
7 one or more of them, or the defendant, or one or more of them,  
8 resides, and from which it issued; and shall command the sheriff,  
9 or other proper officer, to summon the defendant, or defendants, to  
10 appear at the next ensuing term of the superior court and answer  
11 the complaint of the plaintiff, and shall be dated on the day of its  
12 issue. The officer to whom the summons is addressed shall note  
13 on it the day of its delivery to him, and shall execute it at least  
14 ten days before the beginning of the term to which it shall be re-  
15 turnable, and shall return it on the first day of the term.

Johnson v. Futrell, 86—122.

**Sec. 567. Summons returnable.**

1876-'7, c. 85, s. 2.

If any summons shall be issued within less than ten days of  
2 the beginning of the next term of the superior court for the county  
3 in which it is issued, it shall be made returnable to the second  
4 term of said court next after the date of its issuing, and shall be  
5 executed and returned by the proper officer accordingly.

**Sec. 568. When the summons is issued more than ten days before the next succeeding term.**

1876-'7, c. 85, s. 3.

When the summons shall be issued more than ten days before  
2 the next succeeding term of the superior court of the county to  
3 which it is returnable, and shall be executed by the proper officer  
4 within less than ten days of said term, it shall be returned as if  
5 executed in proper time, and the case placed on the summons  
6 docket and continued to the next succeeding term, at which term  
7 it shall be treated in all respects as if said next succeeding term had  
8 been the return term thereof: *Provided*, that the parties to the action  
9 may, by agreement, make up the pleadings at the term to which  
10 the summons is returnable: *And, provided further*, that nothing  
11 herein contained shall be construed to release or discharge the  
12 sheriff or other officer from any liability he may incur, by failing  
13 to execute the summons in due time.

**Sec. 569. Summons to be attested.**

1876-'7, c. 85, s. 4.

Every summons addressed to the sheriff or other officer of any



2 county, other than that from which it issued, shall be attested by  
 3 the seal of the court; but when it shall be addressed to the sheriff  
 4 or other officer of the county in which it issued, it shall not be at-  
 5 tested by the seal of the court.

Jones v. Gupton, 65—48; Johnson & Sinclair v. Kenneday, 70—435; Cheatham v. Crews, 81—343; Taylor v. Harris, 82—25; Bank v. McArthur, 82—107; Calvert v. Peebles, 82—334; Lee v. Eure, 82—428; Yeargin v. Siler, 83—348.

**Sec. 570.** Summons in the same action may issue to several counties at the same time.

The plaintiff may issue writs of summons, directed to the sheriff  
 2 of any county where a defendant is most likely to be found, noting  
 3 on each summons that it is issued in the same action; and when  
 4 the said writs are returned, they shall be docketed as if only one  
 5 had issued, and if any defendant shall not be served with such  
 6 process, the same proceeding shall be had as in other cases of simi-  
 7 lar process not executed.

R. C., c. 31, s. 44.  
 1789, c. 314, ss. 1, 2.  
 1831, c. 14, s. 2.

**Sec. 571.** Sheriff returning that defendant is not to be found, plaintiff may issue alias or pluries summons.

When the sheriff shall return in a civil action or special proceed-  
 2 ing, that the defendant is not to be found in his county, the plain-  
 3 tiff may sue out an *alias* or *pluries* summons, returnable in the  
 4 same manner as original process.

R. C., c. 31, s. 52.  
 1777, c. 115, ss. 23, 71.

See McMillan v. Parsons, 7 Jones, 163; Deaver v. Keith, Phil., 428.

**Sec. 572.** Filing of complaint.

The plaintiff shall file his complaint in the clerk's office on or  
 2 before the third day of the term to which the action is brought,  
 3 otherwise the suit shall, on motion, be dismissed at the cost of the  
 4 plaintiff.

1868-'9, c. 76, s. 3.  
 1870-'1, c. 42, s. 3.

McAdoo v. Benbow, 63—461; Haywood v. Bryan and Sugg, 63—571; McArthur v. McEachin, 64—72; Moore v. N. C. R. R. Co., 67—209; Hervey & Co. v. Edmunds, 68—243; Gilchrist v. Kitchen, 86—20.

**Sec. 573.** Answer of defendant.

The defendant shall appear and demur, or answer at the same  
 2 term to which the summons shall be returnable, otherwise the  
 3 plaintiff may have judgment by default.

1870-'1, c. 42, s. 4.

**Sec. 574.** Reply to answer.

The plaintiff shall join issue on the demurrer or reply to the  
 2 answer at the same term to which such demurrer or answer may  
 3 be filed; and the issues, whether of law or of fact, shall stand for  
 4 trial at the next term succeeding the term at which the pleadings  
 5 are completed.

1870-'1, c. 42, s. 5.

McAdoo v. Benbow, 63—461; Witkowsky & Rintels v. Wasson, 69—38; Woody v. Jordan, 69—189; Wilson & Shober v. Moore, 72—553; Manix v. Howard, 82—125; Boddie v. Woodard, 83—2.

**Sec. 575. Before issuing summons clerk to take undertaking, &c.**

C. C. P., s. 71.  
1868-'9, c. 277, s. 13.

Before issuing the summons, the clerk shall require of the plaintiff, either to give an undertaking 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 or clerk of a superior court, authorizing the plaintiff to sue as a pauper.

Bledsoe v. Nixon, 69—81; Hallman v. Dellinger, 84—1; Matthews v. Joyce, 85—258.

**Sec. 576. How to sue as a pauper; how obtained.**

C. C. P., s. 72.  
1868-'9, c. 96, s. 1.

Any judge 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.

Corn v. Stepp, 84—599; Bushee v. Surles, 85—90.

**Sec. 577. Court may assign counsel.**

1868-'9, c. 96, s. 2.

The court to which such summons is made returnable may, at its discretion, assign to the person, suing as a pauper, learned counsel, who shall prosecute his action.

**Sec. 578. No costs or fees recoverable.**

1868-'9, c. 96, s. 3.

Whenever any person shall sue as a pauper, no officer shall require of him any fee, and he shall recover no costs.

Rowark v. Gaston, 67—291; Deal v. Palmer, 68—215; Porter v. Jones, 68—320; Brendle v. Heron, 68—496; Miazza v. Calloway, 74—31; Sumner v. Candler, 74—265.

**Sec. 579. What summons to contain.**

C. C. P., s. 74.  
1876-'7, c. 241, s. 1.

There shall be inserted in the summons a notice in substance as follows: 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.

Graham v. Charlotte & S. C. Railroad Co., 64—631; Rankin v. Allison, 64—673; Woody v. Jordan, 69—189; Phillips v. Holland, 78—81; Nicholson v. Cox, 83—44; Nicholson v. Cox, 83—48.

**Sec. 580. Service of summons.**

1876-'7, c. 241, s. 2.

The service shall be served in all cases, except as hereinafter provided, by the sheriff or other officer, reading the same to the party or parties named as defendant, and such reading shall be a legal and sufficient service.

Middleton v. Duffie, 73—72; Johnson v. Futrell, 86—122; Webster v. Laws, 86—178.

**Sec. 581. Actions against executors and administrators.**

In addition to the remedy by special proceeding, as provided by 1876-'7, c. 241, s. 6.  
2 law, actions against executors, administrators, collectors and guar-  
3 dians may be brought originally to the superior court at term  
4 time; and in all such cases it shall be competent to the court in  
5 which said actions shall be pending to order an account to be  
6 taken by such person or persons as said court may designate, and  
7 to adjudge the application or distribution of the fund ascertained,  
8 or to grant other relief, as the nature of the case may require.

Pegram v. Armstrong, 82—326.

**Sec. 582. Notice of no personal claim.**

In case of a defendant, against whom no personal claim is made,  
2 the plaintiff may deliver to such defendant with the summons, a  
3 notice subscribed by the plaintiff or his attorney, setting forth the  
4 general object of the action, a brief description of the property  
5 affected by it, if it affects real or personal property, and that no  
6 personal claim is made against such defendant. If a defendant on  
7 whom such notice is served, unreasonably defends the action, he  
8 shall pay costs to the plaintiff.

**Sec. 583. Manner of service of summons.**

The summons shall be served by delivering a copy thereof in C. C. P., s. 82.  
1874-'5, c. 168, s. 1.  
2 the following cases:

3 (1) If the action be against a corporation, to the president  
4 or to the head of the corporation, secretary, cashier, treasurer,  
5 director, managing or local agent thereon: *Provided*, that any  
6 person receiving or collecting moneys within this state for, or  
7 on behalf of, any corporation of this or any other state or  
8 government, shall be deemed a local agent for the purpose of this  
9 section; but such service can be made in respect to a foreign cor-  
10 poration only when it has property within this state, or the cause  
11 of action arose therein, or when the plaintiff resides in the state,  
12 or when such service can be made within the state, personally  
13 upon the president, treasurer or secretary thereof;

Kirkland v. Hogan, 65—144; Cunningham v. So. Ex. Co., 67—425; Turner v. Richmond &  
Danville Railroad Co., 70—1; Isler v. Murphy, 71—436; Katzenstein v. R. & G. R. R. Co., 78—286;  
Gulley v. Macy, 81—356.

14 (2) If against a minor under the age of fourteen years, to such  
15 minor personally, and also to his father, mother or guardian, or if  
16 there be none within the state, then to any person having the care  
17 and control of such minor, or with whom he shall reside, or in  
18 whose service he shall be employed;

19 (3) If against a person judicially declared to be of unsound  
20 mind, or incapable of conducting his own affairs in consequence  
21 of habitual drunkenness, and for whom a committee or guardian  
22 has been appointed, to such committee and to the defendant per-  
23 sonally.

McAden v. Hooker, 74—24.



## Sec. 584. Service by publication.

C. C. P., s. 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 to a judge thereof, and it in like manner appears that a cause of action exists against the defendant in respect to whom 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 publication of a notice in either of the following cases:

(1) Where the defendant is a foreign corporation, and has property within the state, or the cause of action arose therein;

*Turner v. R. & D. R. R. Co.*, 70—1; *Spiers v. Halstead, Haines & Co.*, 71—209; *Wheeler v. Cobb*, 75—21; *Branch v. Frank*, 81—180; *Weaver v. Roberts*, 84—493.

(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;

*Spiers v. Halstead, Haines & Co.*, 71—209; *Pender v. Griffin*, 72—270; *Wheeler v. Cobb*, 75—21; *Windley v. Bradway*, 77—333.

(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, and in all cases where publication is made, the complaint must be first filed.

*King v. King*, 84—32.

## Sec. 585. Manner of publication.

C. C. P., s. 84.  
1876-'7, c. 241, s. 3.

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, a notice, giving the title of the action, the purpose of the same, and requiring the defendant to appear and answer, or demur to the complaint at a time and place therein mentioned; and no publication of the summons, nor mailing of the summons and complaint, shall be deemed necessary.

*Pender v. Griffin*, 72—270; *Burwell & Parham v. Lafferty*, 76—383; *Price v. Cox*, 83—261.

**Sec. 586. Defendant allowed to defend before and after judgment.**

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 shall have been collected, or otherwise enforced, such restitution may thereupon be compelled as the court may direct; but title to property sold under such judgment to a purchaser in good faith shall not be thereby affected.

Utley v. Peters, 72—525.

**Sec. 587. Actions for foreclosure of mortgage.**

In actions for the foreclosure of mortgages on real estate 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 a notice be served on such unknown party by publishing for six weeks, once in each week successively, 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.

**Sec. 588. Joint and several debtors; partners.**

Where the action is against two or more defendants, and the summons is served on two 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,

(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

20 passed against the defendants named in the summons, and such  
 21 omission shall not have been pleaded in such action, the plaintiff  
 22 in case the judgment therein shall remain unsatisfied, may by  
 23 action recover of such partner separately, upon proving his joint  
 24 liability, notwithstanding he may not have been named in the orig-  
 25 inal action; but the plaintiff shall have satisfaction of only one  
 26 judgment rendered for the same cause of action.

*Merwin v. Ballard*, 65—168; *Navassa Guano Co. v. Willard*, 73—521.

**Sec. 589.** Parties not summoned in action, on joint contract, may be summoned after judgment.

C. C. P., s. 318.

When a judgment shall be recovered against one or more of sev-  
 2 eral persons jointly indebted upon a contract by proceeding as pro-  
 3 vided in the preceding section, those who were not originally sum-  
 4 moned to answer the complaint may be summoned to show cause  
 5 why they should not be bound by the judgment, in the same man-  
 6 ner as if they had been originally summoned.

*Navassa Guano Co. v. Willard*, 73—521; *Lane v. Richardson*, 79—159; See C. C. P., section 87.

**Sec. 590.** Party summoned may answer or defend.

C. C. P., s. 322.

Any party so summoned may answer within the time specified  
 2 denying the judgment, or setting up any defence thereto which  
 3 may have arisen subsequently to such judgment; and may make  
 4 any defence which he might have made to the action if the sum-  
 5 mons had been served on him at the time when the same was  
 6 originally commenced and such defence had been then interposed  
 7 to such action.

*Navassa Guano Co. v. Willard*, 73—521.

**Sec. 591.** Subsequent pleadings and proceedings same as in action.

C. C. P., s. 323.

The party issuing the summons may demur or reply to the  
 2 answer, and the party summoned may demur to the reply; and  
 3 the issues may be tried and judgment may be given in the same  
 4 manner as in an action, and enforced by execution, if necessary.

**Sec. 592.** Answer and reply to be verified as in an action.

C. C. P., s. 324.

The answer and reply shall be verified in the like cases and  
 2 manner and be subject to the same rules as the answer and reply  
 3 in an action.

**Sec. 593.** When service complete.

C. C. P., s. 88.

In the cases in which service by publication is allowed, the sum-  
 2 mons shall be deemed served at the expiration of the time pre-  
 3 scribed by the order of publication.

**Sec. 594.** Proof of service.

C. C. P., s. 89.

Proof of the service of the summons or notice must be:  
 2 (1) By the certificate of the sheriff or other proper officer;



3 (2) In case of publication, the affidavit of the printer, or of his  
4 foreman or principal clerk, showing the same;

5 (3) The written admission of the defendant.

Hyman v. Jarnigan, 65—96; Middleton v. Duffy, 73—72; First National Bank of Charlotte  
v. Wilson, 80—200; Nicholson v. Cox, 83—44.

Sec. 595. Jurisdiction; appearance; notice of *lis pendens*.

From the time of the service of the summons in a civil action, C. C. P., s. 90.  
2 or the allowance of a provisional remedy, the court is deemed to  
3 have acquired jurisdiction, and to have control of all subsequent  
4 proceedings. A voluntary appearance of a defendant is equiva-  
5 lent to personal service of the summons upon him. In an action  
6 affecting the title to real property, the plaintiff, at the time of filing  
7 the complaint, or at any time afterwards, or whenever a warrant  
8 of attachment shall be issued, or at any time afterwards, the  
9 plaintiff, or a defendant when he sets up an affirmative cause of  
10 action in his answer and demands substantive relief, at the time of  
11 filing his answer, or at any time afterwards, if the same be in-  
12 tended to affect real estate, may file with the clerk of each county  
13 in which the property is situated, a notice of the pendency of the  
14 action, containing the names of the parties, the object of the action,  
15 and the description of the property in that county affected thereby;  
16 and if the action be for the foreclosure of a mortgage, such notice  
17 must be filed twenty days before judgment, and must contain the  
18 date of the mortgage, the parties thereto, and the time and place  
19 of registering the same. From the time of filing only, shall the  
20 pendency of the action be constructive notice to a purchaser or  
21 incumbrancer of the property affected thereby; and every person  
22 whose conveyance or incumbrance is subsequently executed or  
23 subsequently registered, shall be deemed a subsequent purchaser  
24 or incumbrancer, and shall be bound by all proceedings taken  
25 after the filing of such notice; to the same extent as if he were  
26 made a party to the action. For the purposes of this section, an  
27 action shall be deemed to be pending from the time of filing such  
28 notice: *Provided, however*, that such notice shall be of no avail  
29 unless it shall be followed by the first publication of notice of the  
30 summons or by an order therefor, or by the personal service on the  
31 defendant within sixty days after such filing. And the court in  
32 which the said action was commenced may, in its discretion, at  
33 any time after the action shall be settled, discontinued or abated,  
34 on application of any person aggrieved, and on good cause shown,  
35 and on such notice as shall be directed or approved by the court,  
36 order the notice authorized by this section to be canceled of record,  
37 by the clerk of any county in whose office the same may have  
38 been filed or recorded; and such cancelation shall be made by an  
39 indorsement to that effect on the margin of the record, which shall

40 refer to the order, and for which, the clerk shall be entitled to a  
41 fee of twenty-five cents.

Toms v. Warson, 66—417; Badger v. Daniel, 77—251; Rollins v. Henry, 78—342; Todd v. Outlaw, 79—235.

Sec. 596. Parties may apply for relief to the superior court in vacation, or in term time.

1871-'2, c. 3, s. 1.

In all cases where the superior court in vacation has jurisdiction, 2 and all of the parties unite in the proceedings, they may apply for 3 relief to the superior court in vacation, or in term time, at their 4 election.

## TITLE VII.

### THE PLEADINGS IN CIVIL ACTIONS.

- Chap. I. THE COMPLAINT.  
II. THE DEMURRER.  
III. THE ANSWER.  
IV. THE REPLY.  
V. DUTIES AND POWERS OF THE CLERK IN RELATION TO  
THE PLEADINGS AND COLLATERAL MATTER.  
VI. GENERAL RULES OF PLEADING.  
VII. MISTAKES IN PLEADINGS AND AMENDMENTS.

## CHAPTER ONE.

### THE COMPLAINT.

#### SECTION.

597. Forms of pleading.  
598. Complaint.  
599. Complaint, what to contain.  
600. Complaint in action to recover debt contracted for the purchase of land, what to set forth.

#### SECTION.

601. If answer denies that debt was contracted for purchase of land, issue to be submitted to jury.  
602. Form of judgment and execution upon judgment for plaintiff.  
603. Defendant to file bond in action for real property.

Sec. 597. Forms of pleading.

C. C. P., s. 91.

The forms of pleading in civil actions in courts of record, and 2 the rules by which the sufficiency of the pleadings is to be deter- 3 mined, are those prescribed by chapter twenty-one.

Crump v. Mims, 64—767; Parsley v. Nicholson, 65—207; Garrett v. Trotter, 65—430; Oates v. Gray, 66—442; Moore v. Edmiston, 70—510; Pescud v. Hawkins, 71—299; Bitting v. Thaxton, 72—541; Moore v. Hobbs, 79—535; Jones v. Mial, 82—252; Gorman v. Bellamy, 82—496.

**Sec. 598. Complaint.**

The first pleading on the part of the plaintiff is the complaint. C. C. P., s. 92.

**Sec. 599. Complaint, what to contain.**

The complaint shall contain :

C. C. P., s. 93.

2 (1) The title of the cause, specifying the name of the court in  
3 which the action is brought, the name of the county in which the  
4 trial is required to be had, and the names of the parties to the  
5 action, plaintiff and defendant ;

6 (2) A plain and concise statement of the facts constituting a  
7 cause of action, without unnecessary repetition ; and each material  
8 allegation shall be distinctly numbered ;

Harkey v. Houston, 65—137; Garrett v. Trotter & Fields, 65—430; Oates v. Gray, 66—442;  
Shelton v. Davis, 69—324; N. C. Land Co. v. Beatty, 69—329; Moore v. Hobbs, 77—65; Com'rs of  
Pender v. McPherson, 79—524; Moore v. Hobbs, 79—535; Boyden v. Achenbach, 79—539; Young  
v. Young, 81—91; Jones v. Mial, 82—252; Gorman v. Bellamy, 82—496; Womble v. Leach, 83—84;  
Johnston v. Pate, 83—110; Brown v. Morris, 83—251.

9 (3) A demand of the relief to which the plaintiff supposes him-  
10 self entitled. If the recovery of money be demanded, the amount  
11 thereof must be stated.

Dunn v. Barnes, 73—273; Knight v. Houghtalling, 85—17.

**Sec. 600. Complaint in action to recover debt contracted for the purchase of land, what to set forth.**

In actions for the recovery of a debt contracted for the purchase 1879, c. 217.  
2 of land, it shall be the duty of the plaintiff to set forth in his com-  
3 plaint that the consideration of the debt sued on was the purchase  
4 money of certain land, describing said land in an intelligible  
5 manner, such as the number of acres, how bounded, and where  
6 situated.

**Sec. 601. If answer denies that debt was contracted for purchase of land, issue to be submitted to jury.**

If the defendant shall deny in his answer, that the obligation  
2 sued on, was for the purchase money of the land described in the  
3 complaint, it shall be the duty of the court to submit the issue so  
4 joined to the jury.

**Sec. 602. Form of judgment and execution, upon judgment for plaintiff.**

If the answer does not deny the said allegation so set forth in the  
2 complaint, or if the said issue shall be found by the jury in favor  
3 of the plaintiff, it shall be the duty of the court to have embodied  
4 in the judgment, that the debt sued on was one contracted for the  
5 purchase money of said land, describing it briefly; and it shall  
6 also be the duty of the clerk to set forth in the execution, that the  
7 said debt was one contracted for the purchase of said land, the  
8 description of which shall be set out briefly as in the complaint.

Durham v. Bostick & Martin, 72—353.



**Sec. 603. Defendant to file bond in action for real property.**

1869-'70, c. 193, s. 1.

In all actions for the recovery of real property, or for 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, an undertaking with good and sufficient sureties, in an amount to be fixed by the court, not less than two hundred dollars, to be void upon condition that the defendant pay to the plaintiff all such costs and damages as the plaintiff may recover in the action, including damages for the loss of rents and profits: *Provided*, that no such undertaking shall be required if an attorney practicing in the court wherein the action is pending will certify to the court in writing that he has examined the case of the defendant, and is of the opinion that the plaintiff is not entitled to recover; and if the defendant will also file an affidavit, stating that he is not worth the amount of said undertaking, in any property whatsoever, and is unable to give the same.

Harkey v. Houston, 65—137; Deal v. Palmer, 68—215; Jones v. Fortune, 69—322; Justice v. Eddings, 75—581; Rollins v. Henry, 77—467; Rollins v. Henry, 84—580.

## CHAPTER TWO.

## THE DEMURRER.

## SECTION.

604. Defendant to demur or answer.

605. When defendant may demur.

606. Demurrer must specify grounds of objection.

## SECTION.

607. Objection not appearing on complaint.

608. Objection when deemed waived.

**Sec. 604. Defendant to demur or answer.**

C. C. P., s. 94.

The only pleading on the part of the defendant is either a demurrer or an answer. If the plaintiff shall have failed to file his complaint within the time limited for the purpose, the defendant may move for judgment of non-suit.

Hyman v. Devereux, 63—624; Ransom v. McClees, 64—17; McKesson & Hunt v. Mendenhall, 64—502; Harris v. Johnson, 65—473; Andrews v. Pritchett, 66—387; Oates v. Gray, 66—442; Pescud v. Hawkins, 71—299; Green v. N. C. R. R. Co., 73—524; VonGhlan v. DeRossett, 76—292; Pearce v. Mason, 78—37; McClenahan v. Cotten, 83—332; Finch v. Baskerville, 85—205.

**Sec. 605. When defendant may demur.**

C. C. P., s. 95.

The defendant may demur to the complaint when it shall appear upon the face thereof, either:

Love v. Commissioners of Chatham, 64—706; Walston v. Bryan, 64—764; Lewis v. McNatt, 65—63; Merwin v. Ballard, 65—168; Merwin v. Ballard, 66—398; Davidson v. Elms, 67—228; Green v. Green, 69—294; N. C. Land Co. v. Beatty, 69—329; Hargrove v. Hunt, 73—24; Dunn v. Barnes, 73—273; Green v. N. C. R. R. Co., 73—524; Sloan & Co. v. McDowell, 75—29; Cowan v. Baird, 77—201.

3 (1) That the court has no jurisdiction of the person of the defendant, or of the subject of the action; or

Jacobs v. Smallwood, 63—112; Rives v. Williams, 63—128; Holt v. Iseley, 63—129; Swepson v. Chapman, 63—130; Walton v. McKesson, 64—77; Winslow v. Perquimans County, 64—218; Bank of Charlotte v. Britton, 66—365; Winslow v. Weith, 66—432; Flack v. Dawson, 69—42; Green v. Green, 69—294; Hodge v. Hodge, 72—616; McFarland v. McKay, 74—258; Oliver v. Wiley, 75—320; Finley v. Hayes, 81—368; Capps v. Capps, 85—403; Pearson v. Boyden, 86—585.

5 (2) That the plaintiff has not legal capacity to sue; or

Peebles v. Newsom, 74—473; Gordon v. Lowther, 75—193.

6 (3) That there is another action pending between the same parties for the same cause; or

Harris v. Johnson, 65—478; Woody v. Jordan, 69—189; Burns v. Ashworth, 72—496; Glenn v. Farmer's Bank, 72—626; Righton v. Pruden, 73—61; Dunn v. Barnes, 73—273; Green v. N. C. R. Co., 73—524; Sloan & Co. v. McDowell, 75—29; Smith v. Moore, 79—82; Tuttle v. Harrell, 85—456; Webster v. Laws, 86—178.

8 (4) That there is a defect of parties plaintiff or defendant; or

Lewis v. McNatt, 65—63; Merwin v. Ballard, 65—168; Gudger v. Baird, 66—438; Davidson v. Elms, 67—228; Flack v. Dawson, 69—42; Rowland v. Gardner, 69—53; Green v. Green, 69—294; Wilson v. Arentz, 70—670; Hargrove v. Hilliard, 72—169; Burns v. Ashworth, 72—496; Goodman v. Goodman, 72—508; Wilson & Shoher v. Bank of Lexington, 72—621; Hargrove v. Hunt, 73—24; Righton v. Pruden, 73—61; VonGhlan v. Harris, 73—323; Buie v. M. Building and Loan Association, 74—117; McFarland v. McKay, 74—258; Peebles v. Newsom, 74—473; McMillan v. Edwards, 75—81; Oliver v. Wiley, 75—320; Gaster v. Hardie, 75—460; Gill v. Young, 82—273; Hoover v. Berryhill, 84—132; McCormac v. Wiggins, 84—278; Bronson v. Insurance Co., 85—411; Leach v. Flemming, 85—447; Mebane v. Layton, 86—571.

9 (5) That several causes of action have been improperly united; or,

N. C. Land Co. v. Beatty, 69—329; Wooten v. Maulsby, 69—462; Edgerton v. Powell, 72—64; Adams v. Quinn, 74—359; McMillan v. Edwards, 75—81; Bank v. Harris, 84—206; Syme v. Bunting, 86—175; England v. Garner, 86—366.

11 (6) That the complaint does not state facts sufficient to constitute a cause of action.

Foard v. Alexander, 64—69; Leak v. Richmond County, 64—132; Harshaw v. Dobson, 64—384; Whitaker v. Forbes, 68—228; Cox v. Long, 69—7; King v. Weeks, 70—372; Howie v. Rea, 70—559; Wilson v. Arentz, 70—670; Tally v. Reid, 72—336; Jones v. Bladen County, 73—182; Haywood v. Rogers, 73—320; Wall v. Fairley, 73—464; Barnes v. Piedmont & Arlington Insurance Co., 74—22; Womble v. Little, 74—255; Adams v. Quinn, 74—359; Gordon v. Lowther, 75—193; Powell v. Allen, 75—450; University v. N. C. R. Co., 76—108; Littlejohn v. Egerton, 76—468; Bumpass v. Chambers, 77—357; Netherton v. Candler, 78—88; Commissioners of Pender v. McPherson, 79—524; Moore v. Hobbs, 79—535; Newhart v. Peters, 80—166; Wilson v. Lineberger, 82—412; Johnston v. Pate, 83—110; Alexander v. Wolfe, 83—272; Foy v. Haughton, 83—467; Hurst v. Ad-dington, 84—143; George v. High, 85—99; Lowery v. Perry, 85—131; Bank v. Bogle, 85—203; Oldham v. Bank, 85—240; Jones v. Commissioners, 85—278.

**Sec. 606. Demurrer must specify grounds of objection.**

The demurrer shall distinctly specify the grounds of objection C. C. P., s. 93.

2 to the complaint. Unless it does so, it may be disregarded. It  
3 may be taken to the whole complaint, or to any of the alleged  
4 causes of action stated therein.

Ransom v. McClees, 64—17; Clark v. Clark, 64—150; Love v. Commissioners of Chatham, 64—706; Crump v. Mimmis, 64—767; Garrett v. Trotter, 65—430; State *ex rel.* Sumner v. Young, 65—579; Bank v. Bogle, 85—203; Johnston v. Smith, 86—498.

**Sec. 607. Objection not appearing on complaint.**

C. C. P., s. 98.

When any of the matters enumerated as grounds of demurrer 2 do not appear upon the face of the complaint, the objection may 3 be taken by answer.

Lewis v. McNatt, 65—63; Durham v. Bostick, 72—353; Burns v. Ashworth, 72—496.

**Sec. 608. Objection when deemed waived.**

C. C. P., s. 99.

If no such objection be taken either by demurrer or answer, the 2 defendant shall be deemed to have waived the same, excepting 3 only to the objection, to the jurisdiction of the court, and the ob- 4 jection, that the complaint does not state facts sufficient to consti- 5 tute a cause of action.

Ransom v. McClees, 64—17; Love v. Com'rs of Chatham, 64—706; Lewis v. McNatt, 65—63; Garrett v. Trotter, 65—430; Pescud v. Hawkins, 71—299; Durham v. Bostick, 72—353; Burns v. Ashworth, 72—496; McDougald & Sinclair v. Graham, 75—310; Moore v. Hobbs, 77—65; Pearce v. Mason, 78—37; Young v. Young, 81—91; Finch v. Baskerville, 85—205; Jones v. Commissioners, 85—278; Tucker v. Baker, 86—1.

## CHAPTER TWO.

## THE ANSWER.

## SECTION.

609. Answer; what to contain.

610. Counter-claim.

611. Several defences.

## SECTION.

612. Demurrer and answer.

613. Sham and irrelevant defences.

**Sec. 609. Answer; what to contain.**

C. C. P., s. 100.

The answer of the defendant must contain:

- 2 (1) A general or specific denial of each material allegation of
- 3 the complaint controverted by the defendant, or of any knowledge
- 4 or information thereof, to form a belief;

Erwin v. Lowery, 64—321; Garrett v. Trotter, 65—430; Walsh v. Hall, 66—233; Swepson v. Harvey, 66—436; Flack v. Dawson, 69—42; Howie v. Rea, 70—559; Schehan v. Malone 71—440; Bitting v. Thaxton, 72—541; Johnson v. Bell, 74—355; Farmers' & Merchants' Bank v. Charlotte, 75—45; Heyer v. Beatty, 76—23; Boyett v. Vaughan, 79—523; Hull v. Carter, 83—249; Graybeal v. Powers, 83—561.

- 5 (2) A statement of any new matter constituting a defence or
- 6 counter-claim, in ordinary and concise language, without repeti-
- 7 tion.

Gaither v. Gibson, 63—93; Harriss v. Burwell, 65—584; Walsh v. Hall, 66—233; Martin v. Richardson, 68—255; Utley v. Foy, 70—303; Sloan v. McDowell, 71—356; Hall v. Commissioners of Guilford, 74—130; Johnson v. Bell, 74—355; Francis v. Edwards, 77—271; Kitchen v. Wilson, 80—191; Hull v. Carter, 83—249; Holliday v. McMillan, 83—270; McClennahan v. Cotton, 83—332; Bank v. Bynum, 84—24; Reed v. Exum, 84—430; Brown v. Brittain, 84—552; Durden v. Simmons, 84—555; Boyett v. Vaughan, 85—363; Meneely v. Craven, 86—364; Love v. Rhyne, 86—576.

**Sec. 610. Counter-claim.**

C. C. P., s. 101.

The counter-claim mentioned in the last section must be one 2 existing in favor of a defendant, and against a plaintiff, between



3 whom a several judgment might be had in the action, and arising  
4 out of one of the following causes of action :

5 (1) A cause of action arising out of the contract or transaction  
6 set forth in the complaint as the foundation of the plaintiff's claim,  
7 or connected with the subject of the action ;

Hogan v. Kirkland, 64—250; McKesson v. Mendenhall, 64—286; Russell v. Adderton, 54—417; Pearsall v. Mayers, 64—549; Harshaw v. Woodfin, 64—568; Johnson v. McArthur, 64—675; Nea<sup>1</sup> & Johnston v. Lea, 64—678; Mann v. Blount, 65—99; Battle v. Thompson, 65—406; Harris v. Burwell & Parham, 65—584; Street v. Bryan, 65—619; Clark v. Clark, 65—655; Ivey v. Granberry, 66—224; Walsh v. Hall, 66—233; Terrell v. Walker, 66—244; Burton v. Wilkes, 66—604; Bank of Columbia v. Tiddy, 67—169; Blount v. Windley, 68—1; Flack v. Dawson, 69—42; Woody v. Jordan, 69—189; Winslow v. Wood, 70—430; Johnson v. Kenneday, 70—435; Howie v. Rea, 70—559; Lusk v. Patton, 70—701; Bittig v. Thaxton, 72—541; Johnson v. Bell, 74—355; State v. Quinn, 74—359; Faison v. Johnson, 78—78; Mauney v. Ingram, 78—96; Whedbee v. Reddick, 79—521; Boyett v. Vaughan, 79—528; Johnson v. Rowland, 80—1; Thomas v. Simpson, 80—4; Pernall v. Vaughan, 80—46; Walker v. Dicks, 80—263; Devries v. Warren, 82—356; Hull v. Carter, 83—249; McClenahan v. Cotten, 83—332; Scott v. Timberlake, 83—332; Derr v. Stubbs, 83—539; Boyett v. Vaughan, 85—363; Meneely v. Craven, 86—364.

8 (2) In an action arising on contract, any other cause of action  
9 arising also on contract, and existing at the commencement of  
10 the action.

Ransom v. McClees, 64—17; McKesson v. Mendenhall, 64—286; Johnston v. Lea, 64—678; Rjdick v. Moore, 65—382; McLean v. Leach, 68—95; Sloan v. McDowell, 71—356; Daniel v. Crump<sup>1</sup>ler, 75—184; Hull v. Carter, 83—249; McClenahan v. Cotten, 83—332; Barbee v. Green, 86—158.

#### Sec. 611. Several defences.

The defendant may set forth by answer as many defences and C. C. P., s. 102.  
2 counter-claims as he may have, whether they be such as have been  
3 heretofore denominated legal, equitable, or both. They must  
4 each be separately stated and numbered, and refer to the cause of  
5 action which they are intended to answer, in such manner that  
6 they may be intelligibly distinguished.

Sumner v. Shipman, 55—623; Clark v. Clark, 65—655; Walsh v. Hall, 66—233; Hutchinson v. Smith, 68—351; Ten-Broeck v. Orchard, 79—518; Melvin v. Stephens, 82—283.

#### Sec. 612. Demurrer and answer.

The defendant may demur to one or more of several causes of C. C. P., s. 103.  
2 action stated in the complaint, and answer to the residue.

State ex rel Sumner v. Young, 65—579; VonGlahn v. DeRossett, 76—292.

#### Sec. 613. Sham and irrelevant defences.

Sham and irrelevant answers and defences may be stricken out C. C. P., s. 104.  
2 on motion, and upon such terms as the court may in its discretion  
3 impose.

Erwin v. Lowery, 64—321; Swepson v. Harvey, 66—436; Flack v. Dawson, 69—42; Moore v. Edmiston, 70—510; Schehan v. Malone, 71—440; Commissioners of Yancey v. Piercy, 72—181; Dunn v. Barnes, 73—273; F. and M. Bank of Baltimore v. Charlotte, 75—45; Cowan v. Baird, 77—201; Long v. Bank, 81—41; Rowland v. Windley, 82—131; Hull v. Carter, 83—249; Brogden v. Henry, 83—274; Foy v. Haughton, 83—467; Boone v. Hardie, 83—470; Hurst v. Addington, 84—143.

## CHAPTER FOUR.

## THE REPLY.

## SECTION.

614. Reply; demurrer to answer.

615. Motion for judgment on answer.

## SECTION.

616. Demurrer to reply.

**Sec. 614. Reply; demurrer to answer.**

C. C. P., s. 105.

When the answer contains new matter constituting a counter-claim, the plaintiff may 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.

Culver v. Eggers, 63—630; Harris v. Johnson, 65—478; Blackwell v. Willard, 65—555; University v. McIver, 72—76; People v. Hilliard, 72—169; Lee v. Beaman, 73—410; Tucker v. City of Raleigh, 75—267; Boyett v. Vaughan, 79—528; Jones v. Cohen, 82—75; Foy v. Haughton, 83—467; Barnhardt v. Smith, 86—473.

**Sec. 615. Motion for judgment on answer.**

C. C. P., s. 106.

If the answer contain a statement of new matter constituting a counter-claim, and the plaintiff fail to reply or demur thereto, 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.

Barnhardt v. Smith, 86—473.

**Sec. 616. Demurrer to reply.**

C. C. P., s. 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.

## CHAPTER FIVE.

DUTIES AND POWERS OF THE CLERK IN RELATION TO THE PLEADINGS  
AND COLLATERAL MATTER.

## SECTION.

617. Jurisdiction of clerk on pleadings, &amp;c.

618. Any party may appeal.

619. Appeals, when taken, and by whom.

620. Duty of clerk on appeal prayed.

## SECTION.

621. Duty of judge on appeal.

622. Judgment on matter of law may be appealed from.

## Sec. 617. Jurisdiction of clerk on pleadings, &amp;c.

The clerk of the superior court shall have jurisdiction to hear  
2 and decide all questions of practice and procedure in this court,  
3 and all other matters whereof jurisdiction is given to the superior  
4 court, unless the judge of said court, or the court at a regular term  
5 thereof, be expressly referred to.

McAdoo v. Benbow, 63—461; McAdoo v. Banister, 63—473; Johnson v. Judd, 63—498; Tate v. Powe, 64—644; Marsh v. Cohen, 68—283; Com'rs of Forsyth v. Blackburn, 68—406; Brendle v. Heron, 68—406; Bryan v. Hubbs, 69—423; Palmer v. Boshier, 71—291; McKethan v. McNeill, 74—663.

## Sec. 618. Any party may appeal.

Any party may appeal from any decision of the clerk of the  
2 superior court, on an issue of law or legal inference to the judge  
3 without undertaking.

Capps v. Capps, 85—408.

## Sec. 619. Appeals, when taken, and by whom.

An appeal must be taken within ten days after the entry of the  
2 order or judgment of the court; but an appeal can only be taken  
3 by a party aggrieved, who appeared and moved for or opposed the  
4 order or judgment appealed from, or who being entitled to be  
5 heard thereon, had no notice or opportunity to be heard; which  
6 fact may be shown by affidavit or other proof.

## Sec. 620. Duty of clerk on appeal prayed.

On such appeal, the clerk, within three days thereafter, shall  
2 prepare a statement of the case, of his decision, and of the appeal,  
3 and shall sign the same; he shall, within the time aforesaid, ex-  
4 hibit such statement to the parties or their attorneys on request;  
5 if such statement is satisfactory, the parties or their attorneys shall  
6 sign the same; if either party object to the statement as partial or  
7 erroneous, he may put his objections in writing, and the clerk  
8 shall attach such writing to his statement, and within two days  
9 thereafter he shall send such statement, together with the objec-  
10 tions, and copies of all necessary papers, by mail or otherwise;



11 to the judge residing in the district, or in his absence, to the judge  
12 holding the courts of the district for his decision.

McAden v. Banister, 63—478; Rowland v. Thompson, 64—714; Bear v. Cohen, 65—511; Myers v. Hamilton, 65—567; Morris v. Whitehead, 65—637; Westcott v. Hewlett, 67—191; Lovinier v. Pearce, 70—167; Jones v. Hemphill, 77—42.

**Sec. 621. Duty of judge on appeal.**

C. C. P., s. 113.

It shall be the duty of the judge on receiving a statement of  
2 appeal from the clerk, or the copy of the record of an issue of law,  
3 to decide the questions presented within ten days. But if he shall  
4 have been informed in writing, by the attorney of either party,  
5 that he desires to be heard on the questions, the judge shall fix a  
6 time and place for such hearing, and give the attorneys of both  
7 parties reasonable notice thereof. He shall transmit his decision  
8 in writing, endorsed on, or attached to, the record, to the clerk of  
9 the court, who shall immediately acknowledge the receipt thereof,  
10 and within three days after such receipt, notify the attorneys of the  
11 parties, of the decision, and on request, and the payment of his legal  
12 fees, give them a copy thereof; and the parties receiving such  
13 notice may proceed thereafter according to law.

Jones v. Hemphill, 77—42; Capps v. Capps, 85—406.

**Sec. 622. Judgment on matter of law may be appealed from.**

C. C. P., s. 115.

Any party within ten days after notice of such judgment, may  
2 appeal to the supreme court of the state from such judgment, upon  
3 any matter of law or legal inference therein, under the regulations  
4 provided for appeals in other cases. But execution shall not be  
5 suspended until the undertakings required by the provisions of  
6 this code shall have been given. If issues, both of law and of fact, or  
7 issues of fact only, are raised before the clerk of the superior court,  
8 he shall transfer the case to the civil issue docket for trial of the  
9 issues at the ensuing term of the superior court.

Jones v. Hemphill, 77—42.

## CHAPTER SIX.

### GENERAL RULES OF PLEADING.

**SECTION.**

- 623. Pleadings to be subscribed and verified.
- 624. Pleadings, how verified.
- 625. Items of account; particulars to be furnished, when.
- 626. Pleadings, how construed.
- 627. Irrelevant or redundant; indefinite or uncertain.
- 628. Judgments, how to be pleaded.
- 629. Conditions precedent, how to be pleaded; instrument for payment of money only.

**SECTION.**

- 630. Private statutes, how pleaded.
- 631. Libel and slander, how stated in complaint.
- 632. Answer in such cases.
- 633. What causes of action may be joined in the same complaint.
- 634. Allegation not denied, when to be deemed true.

**Sec. 623. Pleadings to be subscribed and verified.**

Every pleading in a court of record must be subscribed by the  
2 party or his attorney; and when any pleading is verified, every  
3 subsequent pleading, except a demurrer, must be verified also.

C. C. P., s. 116.

Haywood v. Bryan, 63—521; Rankin v. Allison, 64—673; Harkey v. Houston, 65—137; Cowles  
v. Hardin, 79—577.

**Sec. 624. Pleadings, how verified.**

The verification must be to the effect that the same is true to the  
2 knowledge of the person making it, except as to those matters  
3 stated on information and belief, and as to those matters he be-  
4 lieves it to be true; and must be by affidavit of the party, or if  
5 there be several parties united in interest, and pleading together,  
6 by one at least of such parties acquainted with the facts, if such  
7 party be within the county where the attorney resides, and capable  
8 of making the affidavit. The affidavit may also be made by the  
9 agent or attorney, if the action or defence be founded upon a written  
10 instrument for the payment of money only, and such instrument  
11 be in the possession of the agent or attorney, or if all the material  
12 allegations of the pleading be within the personal knowledge of  
13 the agent or attorney. When the pleading is verified by any other  
14 person than the party, he shall set forth in the affidavit his knowl-  
15 edge, or the grounds of his belief on the subject, and the reasons  
16 why it is not made by the party. When a corporation is a party,  
17 the verification may be made by any officer thereof; and when  
18 the state, or any officer thereof in its behalf, is a party, the verifica-  
19 tion may be made by any person acquainted with the facts. The  
20 verification may be omitted when an admission of the truth of  
21 the allegation might subject the party to prosecution for felony.  
22 And no pleading can be used in a criminal prosecution against the  
23 party, as proof of a fact admitted or alleged in such pleading.  
24 Any judge, or clerk of the superior court, notary public, or justice  
25 of the peace, shall be competent to take affidavits for the verification  
26 of pleadings, in any court or county in the state, and for general  
27 purposes.

C. C. P., s. 117.  
1868-'9, c. 159, s. 7.

Benedict, Hall & Co. v. Hall, 76—113; Paige v. Price, 78—10; Alspaugh v. Winstead, 79—526;  
Cowles v. Hardin, 79—577; Bruff v. Stern, 81—183.

**Sec. 625. Items of account; particulars to be furnished, when.**

It shall not be necessary for a party to set forth in a pleading  
2 the items of an account therein alleged; but he shall deliver to  
3 the adverse party, within ten days after a demand thereof in  
4 writing, a copy of the account, which, if the pleading is verified,  
5 must be verified by his own oath, or that of his agent or attorney,  
6 if within the personal knowledge of such agent or attorney, to the  
7 effect that he believes it to be true, or be precluded from giving  
8 evidence thereof. The court or the judge thereof may order a  
9 further account when the one delivered is defective; and the court

C. C. P., s. 118.

10 may, in all cases, order a bill of particulars, of the claim of either  
11 party to be furnished.

**Sec. 626. Pleadings, how construed.**

C. C. P., s. 119.

In the construction of a pleading for the purpose of determining  
2 its effect, its allegations shall be liberally construed, with a view of  
3 substantial justice between the parties.

Wright v. McCormick, 67—27; Moore v. Edmiston, 70—510; Com'rs of Yancey v. Piercy, 72—181; Jones v. Commissioners of Bladen, 73—182.

**Sec. 627. Irrelevant or redundant; indefinite or uncertain.**

C. C. P., s. 120.

If irrelevant or redundant matter be inserted in a pleading, it  
2 may be stricken out, on motion of any person aggrieved thereby,  
3 but this motion must be made before answer or demurrer, or be-  
4 fore an extension of time to plead is granted. And when the alle-  
5 gations of a pleading are so indefinite or uncertain that the precise  
6 nature of the charge or defence is not apparent, the court may re-  
7 quire the pleading to be made definite and certain by amendment.

Erwin v. Lowry, 64—321; Swepson v. Harvey, 66—436; Flack v. Dawson, 69—42; Moore v. Edmiston, 70—510; Schehan v. Malone, 71—440; Com'rs of Yancey v. Piercy, 72—181; Jones v. Com'rs of Bladen, 73—182; Womble v. Fraps, 77—198; Ten-Broeck v. Orchard, 79—518; Dail v. Harper, 83—4; Hull v. Carter, 83—249; Brogden v. Henry, 83—274; Boon v. Hardie, 83—470; Best v. Clyde, 86—4.

**Sec. 628. Judgments, how to be pleaded.**

C. C. P., s. 121.

In pleading a judgment or other determination of a court or of  
2 an officer of special jurisdiction, it shall not be necessary to state the  
3 facts conferring jurisdiction, but such judgment or determination  
4 may be stated to have been duly given or made. If such allega-  
5 tion be controverted, the party pleading shall be bound to estab-  
6 lish, on the trial, the facts conferring jurisdiction.

**Sec. 629. Conditions precedent, how to be pleaded; instrument for payment of money only.**

C. C. P., s. 122.

In pleading the performance of conditions precedent in a con-  
2 tract, it shall not be necessary to state the facts showing such per-  
3 formance; but it may be stated generally that the party duly per-  
4 formed all the conditions on his part; and if such allegation be  
5 controverted, the party pleading shall be bound to establish, on the  
6 trial, the facts showing such performance. In an action or defence  
7 founded upon an instrument for the payment of money only, it  
8 shall be sufficient for the party to give a copy of the instrument,  
9 and to state that there is due to him thereon, from the adverse  
10 party, a specified sum which he claims.

**Sec. 630. Private statutes, how pleaded.**

C. C. P., s. 123.

In pleading a private statute or right derived therefrom, it shall  
2 be sufficient to refer to such statute by its title and the day of its



3 ratification, and the court shall thereupon take judicial notice  
4 thereof.

Trustees of N. C. Endowment Fund v. Satchwell, 71—111.

**Sec. 631. Libel and slander, how stated in complaint.**

In an action for libel or slander, it shall not be necessary to state C. C. P., s. 124.  
2 in the complaint any extrinsic facts, for the purpose of showing  
3 the application to the plaintiff, of the defamatory matter out of  
4 which the cause of action arose; but it shall be sufficient to state  
5 generally that the same was published or spoken concerning the  
6 plaintiff; and if such allegation be controverted, the plaintiff shall  
7 be bound to establish, on trial, that it was so published or spoken.

Carson v. Mills, 69—122.

**Sec. 632. Answer in such cases.**

In the actions mentioned in the preceding section, the defendant C. C. P., s. 125.  
2 may, in his answer, allege both the truth of the matter charged as  
3 defamatory, and any mitigating circumstances to reduce the amount  
4 of damages; and whether he prove the justification or not, he may  
5 give in evidence the mitigating circumstances.

Moore v. Edmiston, 70—510.

**Sec. 633. What causes of action may be joined in the same complaint.**

The plaintiff may unite in the same complaint several causes of C. C. P., s. 126.  
2 action, whether they be such as have been heretofore denominated  
3 legal, or equitable, or both, where they all arise out of:

Lee v. Pearce, 68—76; N. C. Land Co. v. Beatty, 69—329; Wooten v. Maulsby, 69—462; Edger-  
ton v. Powell, 72—64; Sutton v. McMillan, 72—102; Burns v. Ashworth, 72—496; Hamlin v.  
Tucker, 72—502; Logan v. Wallis, 76—416; Doughty v. A. & N. C. R. R. Co., 78—22; Street v.  
Tuck, 84—605; Finch v. Baskerville, 85—205; Syme v. Bunting, 86—175; England v. Garner,  
86—366; Mebane v. Layton, 86—571.

4 (1) The same transaction; or transactions connected with the  
5 same subject of action;

Sumner v. Shipman, 65—623; N. C. Land Co. v. Beatty, 69—329; Wooten v. Maulsby, 69—462;  
Edgerton v. Powell, 72—64; Burns v. Ashworth, 72—496; Hamlin v. Tucker, 72—502; Logan v.  
Wallis, 76—416; Doughty v. A. & N. C. R. R. Co., 78—22.

6 (2) Contract, expressed or implied; or,

Sutton v. McMillan, 72—102; Logan v. Wallis, 76—416.

7 (3) Injuries with or without force to person and property, or to  
8 either; or,

9 (4) Injuries to character; or,

10 (5) Claims to recover real property, with or without damages  
11 for the withholding thereof; and the rents and profits of the  
12 same; or,

13 (6) Claims to recover personal property, with or without dam-  
14 ages for the withholding thereof; or,

Logan v. Wallis, 76—416; Doughty v. A. & N. C. R. R. Co., 78—22; Young v. Young, 81—91.

15 (7) Claims against a trustee, by virtue of a contract, or by opera-  
16 tion of law.

17 But the causes of action so united must all belong to one of these  
18 classes, and except in actions for the foreclosure of mortgages,  
19 must affect all the parties to the action, and not require different  
20 places of trial, and must be separately stated. In actions to fore-  
21 close mortgages, the court shall have power to adjudge and direct  
22 the payment by the mortgager, of any residue of the mortgage  
23 debt that may remain unsatisfied after a sale of the mortgaged  
24 premises, in cases in which the mortgager shall be personally lia-  
25 ble for the debt secured by such mortgage; and if the mortgage  
26 debt be secured by the covenant or obligation of any person other  
27 than the mortgager, the plaintiff may make such person a party  
28 to the action, and the court may adjudge payment of the residue  
29 of such debt remaining unsatisfied after a sale of the mortgaged  
30 premises, against such other person, and may enforce such judg-  
31 ment as in other cases.

*N. C. Land Co. v. Beatty*, 69—329; *Sutton v. Millan*, 72—102; *Logan v. Wallis*, 76—416.

**Sec. 634. Allegation not denied, when to be deemed true.**

C. C. P., §. 127.

Every material allegation of the complaint not controverted by  
2 the answer, and every material allegation of new matter in the an-  
3 swer, constituting a counter-claim, not controverted by the reply,  
4 shall for the purposes of action, be taken as true. But the alle-  
5 gation of new matter in the answer, not relating to a counter-  
6 claim, or of new matter in reply, is to be deemed controverted by  
7 the adverse party as upon a direct denial or avoidance, as the case  
8 may require.

*McKesson v. Mendenhall*, 64—286; *Erwin v. Lowery*, 64—321; *Jenkins v. N. C. Ore Dressing Co.*, 65—563; *Oates v. Gray*, 66—442; *Moore v. Edmiston*, 70—510; *Price v. Eccles*, 73—162; *F. & M. Bank of Baltimore v. City of Charlotte*, 75—45; *Skinner v. Wood*, 76—109; *Green v. N. C. R. R. Co.*, 77—95; *Bonham v. Craig*, 80—224.

## CHAPTER SEVEN.

### MISTAKES IN PLEADINGS AND AMENDMENTS.

#### SECTION.

- 635. Material variance.
- 636. Immaterial variance.
- 637. A failure of proof, when.
- 638. Amendments of course after allowance of demurrer.
- 639. Amendments by order.
- 640. Relief in case of mistake, surprise or excusable neglect.

#### SECTION.

- 641. When plaintiff ignorant of name of defendant.
- 642. Errors or defects not substantial, to be disregarded.
- 643. Supplemental pleadings.

**Sec. 635. Material variance.**

C. C. P., §. 128.

No variance between the allegation in a pleading and the proof

2 shall be deemed material, unless it has actually misled the adverse  
3 party, to his prejudice in maintaining his action upon the merits.  
4 Whenever it shall be alleged that a party has been so misled, that  
5 fact shall be proved to the satisfaction of the court, and in what  
6 respect he has been misled; and thereupon the judge may order  
7 the pleading to be amended upon such terms as shall be just.

Garrett v. Trotter, 65—430; Gibbs v. Fuller, 66—116; Pegram v. Stoltz, 67—144; McKee v. Lineberger, 69—217; Shelton v. Davis, 69—324; Horton v. Newberry, 69—456; Moore v. Edmiston, 70—510; Wilson & Shober v. Moore, 72—558; Com'rs of Alamance v. Blair, 76—136; Clawson v. Wolfe, 77—100; Ten-Broeck v. Orchard, 79—518; Webb v. Taylor, 80—305; Hoffinan v. Moore, 82—313; Brown v. Morris, 83—251.

#### Sec. 636. Immaterial variance.

Where the variance is not material as provided in the preceding C. C. P., s. 129.  
2 section, the judge may direct the fact to be found according to the  
3 evidence, or may order an immediate amendment without costs.

Shelton v. Davis, 69—324; Haughton v. Newberry, 69—456; Wilson & Shober v. Moore, 72—558; Com'rs of Alamance v. Blair, 76—136; Webb v. Taylor, 80—305; Brown v. Morris, 83—251.

#### Sec. 637. A failure of proof, when.

Where, however, the allegation of the cause of action or defence C. C. P., s. 130.  
2 to which the proof is directed is unproved, not in some particular  
3 or particulars only, but in its entire scope and meaning, it shall  
4 not be deemed a case of variance within the preceding section, but a  
5 failure of proof.

#### Sec. 638. Amendments of course after allowance of demurrer.

Any pleading may be once amended of course, without costs, C. C. P., s. 131.  
2 and without prejudice to the proceedings already had, at any time  
3 before the period for answering it expires; or it can be so amended  
4 at any time, unless it be made to appear to the court that it was  
5 done for the purpose of delay, and the plaintiff or defendant will  
6 thereby lose the benefit of a term for which the cause is, or may be,  
7 docketed for trial; and if it appear to the court or judge that such  
8 amendment was made for such purpose, the same may be stricken  
9 out, and such terms imposed as to the court or judge may seem  
10 just. After the decision of a demurrer, the judge shall, if it  
11 appear that the demurrer was interposed in good faith, allow the  
12 party to plead over upon such terms as may be just. If the de-  
13 murrer be allowed for the reason that several causes of action have  
14 been improperly united, the judge shall, upon such terms as may  
15 be just, order the action to be divided into as many actions as may  
16 be necessary to the proper determination of the causes of action  
17 therein mentioned.

Ransom v. McClees, 64—17; Love v. Com'rs of Chatham, 64—706; Merwin v. Ballard, 65—168; Garrett v. Trotter, 65—430; Brown v. Hawkins, 65—645; Walsh v. Hall, 66—233; Wilson & Shober v. Moore, 72—558; Dunn v. Barnes, 73—273; Hinton v. Deans, 75—18; Adams v. Reeves, 76—412; Moore v. Hobbs, 77—65; Cowan v. Baird, 77—201; Doughty v. A. & N. C. R. R. Co., 78—22; Pearce v. Mason, 78—37; Mabry v. Erwin, 78—45; Netherton v. Candler, 78—88; Matthews v. Copeland, 80—30; Street v. Tuck, 84—605; Finch v. Baskerville, 85—205; Bronson v. Insurance Co., 85—411; England v. Garner, 86—366.



**Sec. 639. Amendments by order.**

C. C. P., § 132.

The judge or court may, before and after judgment, in further-  
 2 ance of justice, and on such terms as may be proper, amend any  
 3 pleading, process or proceeding, by adding or striking out the name  
 4 of any party; or by correcting a mistake in the name of a party, or  
 5 a mistake in any other respect; or by inserting other allegations  
 6 material to the case; or when the amendment does not change sub-  
 7 stantially the claim or defence, by conforming the pleading or pro-  
 8 ceeding to the facts proved.

Penny v. Smith, Phil., 35; Thomas v. Womaek, 64—657; Garrett v. Trotter, 65—430; Bullard v. Johnson, 65—436; Robinson v. Willoughby, 67—84; Oats v. Kendall, 67—241; Deal v. Palmer, 68—215; Bledsoe v. Nixon, 69—81; Shelton v. Davis, 69—324; Haughton v. Newberry, 69—456; State v. Cauble, 70—62; Williams v. Sharpe, 70—582; Stafford v. Harris, 72—198; Lippard v. Roseman, 72—427; Righton v. Pruden, 73—61; Hinton v. Deans, 75—18; Heyer v. Beatty, 76—23; Com'rs of Alamance v. Blair, 76—136; Adams v. Reeves, 76—412; Murrill v. Humphrey, 76—414; Lane v. Morton, 78—7; Pearce v. Mason, 78—37; Faison v. Johnson, 78—78; Dobson v. Chambers, 78—334; Askew v. Capehart, 79—17; March v. Verble, 79—19; Todd v. Outlaw, 79—235; Johnson v. Rowland, 80—1; Thomas v. Simpson, 80—4; Bank of Washington v. Creditors, 80—9; Glenn v. Farmer's Bank, 80—97; Webb v. Taylor, 80—305; Weiller v. Lawrence, 81—65; Henderson v. Graham, 84—496; Walton v. Pearson, 85—34; Martin v. Young, 85—156; Gilchrist v. Kitchen, 86—20; Henry v. Cannon, 86—24.

**Sec. 640. Relief in case of mistake, surprise or excusable neglect.**

C. C. P., § 133.

The judge may likewise, in his discretion, and upon such terms  
 2 as may be just, allow an answer or reply to be made, or other act to  
 3 be done, after the time limited by this chapter, or by an order to  
 4 enlarge such time; and may also in his discretion, and upon such  
 5 terms as may be just, at any time within one year after notice  
 6 thereof, relieve a party from a judgment, order or other proceeding  
 7 taken against him through his mistake, inadvertence, surprise or  
 8 excusable neglect, and may supply an omission in any proceeding;  
 9 and whenever any proceeding taken by a party fails to conform in  
 10 any respect to the provisions of this chapter, the judge may, in like  
 11 manner and upon like terms, permit an amendment of such pro-  
 12 ceeding, so as to make it conformable thereto.

Jacobs v. Burgwin, 63—196; Jarman v. Saunders, 64—367; Waddell v. Wood, 64—624; Griel v. Vernon, 65—76; Hudgins v. White, 65—393; Burke v. Stokely, 65—569; Clegg v. T. N. Y. White Soapstone Co., 66—391; Kirkman v. Dixon, 66—406; Powell v. Weith, 66—423; McDowell v. Asbury, 66—444; Watson v. Shields, 67—235; Clegg v. N. Y. White Soapstone Co., 67—302; Williams v. Green, 68—183; Deal v. Palmer, 68—215; McCullock v. Doak, 68—267; Powell v. Weith, 68—342; Perry v. Pearce, 68—387; McRae v. McNair, 69—12; Isler v. Brown, 69—125; Cowles v. Hayes, 69—406; Austin v. Clarke, 70—458; Williams v. Sharpe, 70—582; Williams v. Williams, 70—665; Howell v. Harrell, 71—161; White v. Snow, 71—232; Simonton v. Lanier, 71—198; Long v. Cole, 72—20; Harris v. Jenkins, 72—183; Coffield v. Warren, 72—223; Johnson v. Duckworth, 72—244; Daniel v. Owen, 72—340; Smith v. City of NewBerne, 73—303; Wade v. City of NewBerne, 73—318; Long v. Cole, 74—267; Horne v. Horne, 75—101; Skinner v. Brice, 75—287; Sluder v. Rollins, 76—271; Quincy v. Perkins, 76—295; McDaniel v. Watkins, 76—399; Bradford v. Coit, 77—72; Bank of Statesville v. Foot, 77—131; Simmons v. Dowd, 77—155; Pearce v. Mason, 78—37; Mabry v. Erwin, 78—45; Rollins v. Henry, 78—342; Askew v. Capehart, 79—17; Harrell v. Peebles, 79—26; Blue v. Blue, 79—69; Monroe v. Whitted, 79—508; Jones v. Swepson, 79—510; Hyman v. Capehart, 79—511; Com'rs of Pender v. McPherson, 79—524; Oldham v. Sneed, 80—15; Kerchner v. Fairley, 80—24; Mebane v. Mebane, 80—34; Boyden v. Williams, 80—95; Smith v. Hahn, 80—240; Paschall v. Bullock, 80—329; Vick v. Pope, 81—22; Hodgin v. Matthews, 81—289; Cobb v. O'Hagan, 81—293; Kerchner v. Baker, 82—169; Hiatt v. Waggoner, 82—173; Clayton v. Johnston, 82—423; Weaver v. Jones, 82—440; University v. Lassiter, 83—38; Nicholson v. Cox, 83—48; Mabry v. Henry, 83—298; Walker v. Gurley, 83—429; Hutchison v. Rumpfelt, 83—441; Parker v. Railroad, 84—118; McLean v. McLean, 84—386; Bryant v. Fisher, 85—69; Henry v. Clayton, 85—371; DePriest v. Patterson, 85—376; Smith v. Reeves, 85—594; Gilchrist v. Kitchen, 86—20; Henry v. Cannon, 86—24; Wynne v. Prairie, 86—73; Franks v. Sutton, 86—78; Norwood v. King, 86—80; Twitty v. Logan, 86—712.

Sec. 641. When plaintiff ignorant of name of defendant.

When the plaintiff shall be ignorant of the name of a defendant, C. C. P., s. 134.  
2 such defendant may be designated in any pleading or proceeding  
3 by name; and when his true name shall be discovered, the plead-  
4 ing or proceeding may be amended accordingly.

Sec. 642. Errors or defects not substantial to be disregarded.

The court and the judge thereof shall, in every stage of the C. C. P., s. 135.  
2 action, disregard any error or defect in the pleadings or proceed-  
3 ings, which shall not affect the substantial rights of the adverse  
4 party; and no judgment shall be reversed or affected, by reason of  
5 such error or defect.

Simpson v. Simpson, 64—427; Oates v. Kendall, 67—241; Moore v. Edmiston, 70—510; Comr's  
of Alamance v. Blair, 76—136; Clawson v. Wolfe, 77—100; Jones v. Mial, 82—252; Gorman v.  
Bellamy, 82—496.

Sec. 643. Supplemental pleadings.

The plaintiff and defendant respectively may be allowed on C. C. P., s. 136,  
2 motion to make a supplemental complaint, answer or reply, alleg-  
3 ing facts material to the case occurring after the former complaint,  
4 answer or reply, or of which the party was ignorant when his  
5 former pleading was made, and either party may set up by a sup-  
6 plemental pleading, the judgment or decree of any court of com-  
7 petent jurisdiction, rendered since the commencement of such  
8 action, determining the matter in controversy in said action, or  
9 any part thereof, and if said judgment be set up by the plaintiff,  
10 the same shall be without prejudice to any provisional remedy  
11 theretofore issued or other proceedings had, in said action, on his  
12 behalf.

Crump v. Mims, 64—767.

TITLE VIII.

PROCEDURE IN SPECIAL PROCEEDINGS.

SECTION.  
644. Provisions of code applicable to special  
proceedings.  
645. Summons in special proceedings; what  
to contain.  
646. Return of summons.  
647. Complaint in case of special proceedings;  
when filed.  
648. Plaintiff failing to file complaint or peti-  
tion within the time for defendant's ap-  
pearance, may be non-suited.

SECTION.  
649. Time of filing pleadings may be enlarged.  
650. When all parties ask same relief.  
651. In what cases clerk may hear summarily.  
652. If any of the petitioners are infants, judge  
must review order.  
653. How special proceedings to be com-  
menced.  
654. Orders, &c., to be signed by judge.  
655. No reports set aside for trivial defects.

Sec. 644. Provisions of code applicable to special proceedings.

The provisions of the code of civil procedure are applicable to  
2 special proceedings, except as otherwise provided.

**Sec. 645. Summons in special proceedings; what to contain.**

The summons in special proceedings shall command the officer  
2 to summon the defendant to appear at the office of the clerk of  
3 the superior court, on a day named in the summons, to answer the  
4 complaint or petition of the plaintiff. The number of days within  
5 which the defendant is summoned to appear shall in no case be  
6 less than ten exclusive of the day of service.

*Guion v. Melvin*, 69—242; *Phillips v. Holland*, 78—31.

**Sec. 646. Return of summons.**

C. C. P., s. 75.

The officer to whom the summons is addressed, shall note on it  
2 the day of its delivery to him; if required by the plaintiff, he shall  
3 execute the same immediately. When executed, he shall imme-  
4 diately return the summons with the date and manner of its exe-  
5 cution, by mail or otherwise, to the clerk of the court issuing it.

*Jones v. Gupton*, 65—48; *Johnson v. Kenneday*, 70—435; *Wasson v. Linster*, 83—575.

**Sec. 647. Complaint in case of special proceedings; when filed.**

C. C. P., s. 76.  
1876-'7, c. 241, s. 4.

It shall be sufficient for the plaintiff to file his complaint or  
2 petition with the clerk of the court, to which the summons is  
3 returnable, at the time of issuing the summons, or within ten days  
4 thereafter.

**Sec. 648. Plaintiff failing to file complaint or petition within the time for defendant's appearance, may be non-suited.**

C. C. P., s. 78.

If the plaintiff shall fail to file his complaint or petition within  
2 the time limited by the summons for the appearance and answer  
3 of the defendant, the defendant shall be entitled to demand judg-  
4 ment of non-suit against the plaintiff.

*McKesson v. Mendenhall*, 64—502; *Andrews v. Pritchett*, 63—337; *Purnell v. Vaughan*, 80—46.

**Sec. 649. Time of filing pleadings may be enlarged.**

C. C. P., s. 79.

The time for filing the complaint, petition, or of any pleading  
2 whatever, may be enlarged by the court for good cause shown by  
3 affidavit, but it shall not be enlarged by more than twenty addi-  
4 tional days, nor more than once, unless the default shall have been  
5 occasioned by accident over which the party applying had no con-  
6 trol, or by the fraud of the opposing party.

**Sec. 650. When all parties ask same relief.**

C. C. P., s. 418.  
1868-'9, c. 93, s. 1.

If all the parties in interest join in the proceeding and ask the  
2 same relief, the commencement of the proceeding shall be by peti-  
3 tion, setting forth the facts entitling the petitioners to relief, and  
4 the nature of the relief demanded.

*Fulton v. Elliott*, 66—195; *Ballard v. Kilpatrick*, 71—281.



**Sec. 651. In what cases clerk may hear summarily.**

In such cases, if all persons to be affected by the decree, or their  
2 attorney, shall have signed the petition, and they be of full age,  
3 the clerk of the superior court shall have power to hear the petition  
4 summarily, and to decide the same, if either or any of the peti-  
6 tioners shall be residing out of the state, an authority from him or  
7 them, to the attorney, in writing, must be filed with the clerk,  
8 before he shall make any order or decree to prejudice their rights.

C. C. P., s. 419.  
1868-'9, c. 93, s. 2.

**Sec. 652. If any of the petitioners are infants, judge must review order.**

If any of the petitioners be an infant, or the guardian of an  
2 infant, acting for him, no order or judgment of the clerk, affecting  
3 the merits of the case, and capable of being prejudicial to the  
4 infant, shall be valid, unless submitted to, and approved by, the  
5 judge of the court in or out of term.

C. C. P., s. 420.  
1868-'9, c. 93, s. 3.

**Sec. 653. How special proceedings to be commenced.**

When special proceedings are had against adyerse parties, they  
2 shall be commenced as is prescribed for civil actions.

C. C. P., s. 421.  
1868-'9, c. 93, s. 4.

**Sec. 654. Orders, &c., to be signed by judge.**

Every order or judgment in a special proceeding, which is re-  
2 quired to be made by a judge of the superior court, either in or  
3 out of term, shall be authenticated by his signature.

C. C. P., s. 422.  
1868-'9, c. 93, s. 5.  
1872-'3, c. 100.

Thompson v. Berry, 64—81; Foreman v. Bibb, 65—128; McDowell v. Ashbury, 66—444; Guion  
v. Melvin, 69—242; Rollins v. Henry, 78—342; Matthews v. Joyce, 85—258.

**Sec. 655. No report set aside for trivial defects.**

No report or return made by any commissioners shall be set  
2 aside and sent back to them, or others for a new report, by reason  
3 of any defect or omission not effecting the substantial rights of the  
4 parties, but such defect or omission may be amended by the court,  
5 or by the commissioners, by permission of the court.

C. C. P., s. 424.  
1868-'9, c. 93, s. 7.

Tate v. Powe, 61—644.

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## TITLE IX.

### OF THE PROVISIONAL REMEDIES IN CIVIL ACTIONS.

#### Chap. I. ARREST AND BAIL.

#### II. CLAIM AND DELIVERY OF PERSONAL PROPERTY.

#### III. INJUNCTION.

#### IV. ATTACHMENT.

#### V. APPOINTMENT OF RECEIVERS AND OTHER PROVISIONAL REMEDIES.

## CHAPTER ONE.

## ARREST AND BAIL.

## SECTION.

656. No person to be arrested except as prescribed.  
 657. In what cases.  
 658. Order of arrest; from whom obtained.  
 659. Order obtained on affidavit, and to what actions applicable.  
 660. Undertaking required before issuing or der.  
 661. Time when order may issue, its form; time to answer or move to vacate.  
 662. Sheriff to have order and affidavits, and copies to be delivered to defendant by sheriff on his arrest.  
 663. Order, how executed.  
 664. Defendant, how discharged.  
 665. Undertaking of defendant; form of.  
 666. Surrender of defendant.  
 667. Bail may arrest defendant.  
 668. Bail to be proceeded against by action.  
 669. Bail, how exonerated.  
 670. Undertaking of bail to be delivered to clerk and notice thereof to plaintiff, and its acceptance or rejection by him.  
 671. Notice of justification; new bail.  
 672. Qualifications of bail.  
 673. Justification of bail.

## SECTION.

674. If bail adjudged sufficient, examination to be certified, and sheriff exonerated.  
 675. Defendant may make deposit instead of bail with sheriff.  
 676. Sheriff within four days to pay deposit into court.  
 677. Bail substituted for deposit and deposit refunded.  
 678. Plaintiff obtaining judgment, deposit applied to its payment.  
 679. Sheriff liable as bail, when.  
 680. Judgment against sheriff; action on his official bond.  
 681. Bail liable to sheriff.  
 682. Defendant before judgment may apply on motion to vacate.  
 683. Motion to vacate made on affidavit; plaintiff may oppose the same by affidavits or other proof.  
 684. Defendant confined for want of bail, may give bail, and bond returned to next court.  
 685. Bail to pay costs in certain cases.  
 686. Bail not discharged by amendment of process.

**Sec. 656. No person to be arrested except as prescribed.**

C. C. P., s. 148.

No person shall be arrested in a civil action, except as prescribed  
 2 by this chapter; but this provision shall not apply to proceedings  
 3 for contempt.

Jarman v. Ward, 67—32; Houston v. Walsh, 79—35.

**Sec. 657. In what cases.**C. C. P., s. 149.  
1869-'70, c. 79, s. 1.

The defendant may be arrested, as hereinafter prescribed, in the  
 2 following cases:

3 (1) In an action for the recovery of damages, on a cause of action  
 4 not arising out of contract, where the defendant is not a resident of  
 5 the state, or is about to remove therefrom, or where the action is  
 6 for an injury to person or character, or for injuring, or for wrong-  
 7 fully taking, detaining or converting property;

Hughes v. Person, 63—548; Wilson v. Barnhill, 64—121; Wood v. Harrell, 74—338; Houston  
 v. Walsh, 79—35; Hoover v. Palmer, 80—313; Peebles v. Foote, 83—102.

8 (2) In an action for a fine or penalty, or for seduction, or for  
 9 money received, or for property embezzled or fraudulently misap-  
 10 plied by a public officer, or by an attorney, solicitor or counsellor,  
 11 or by an officer or agent of a corporation or banking association,  
 12 in the course of his employment as such, or by any factor, agent,

13 broker or other person in a fiduciary capacity, or for any miscon-  
 14 duct or neglect in office, or in a professional employment ;

*Melvin v. Melvin*, 72—384; *McNeely v. Haynes*, 76—122; *Moore v. Mullen*, 77—327; *Peebles v. Foote*, 83—302.

15 (3) In an action to recover the possession of personal property,  
 16 unjustly detained, where the property, or any part thereof, has  
 17 been concealed, removed or disposed of, so that it cannot be found  
 18 or taken by the sheriff, and with the intent that it should not be so  
 19 found or taken, or with the intent to deprive the plaintiff of the  
 20 benefit thereof;

21 (4) When the defendant has been guilty of a fraud in contract-  
 22 ing the debt, or incurring the obligation for which the action is  
 23 brought, or in concealing or disposing of the property for the tak-  
 24 ing, detention or conversion of which, the action is brought, or  
 25 when the action is brought to recover damages for fraud or deceit;

*Melvin v. Melvin*, 72—384; *McNeely v. Haynes*, 76—122; *Bahnsen v. Chesebro*, 77—325.

26 (5) When the defendant has removed, or disposed of, his prop- R. C., c. 31, s. 51.  
1777, c. 118, s. 6.  
 27 erty, or is about to do so, with intent to defraud his creditors ;

28 But no woman shall be arrested in any action, except for a wilful  
 29 injury to person, character or property ; and no person shall be  
 30 arrested on Sunday.

*Smith v. Gibson*, 74—684; *Paige v. Price*, 78—10; *Hoover v. Palmer*, 80—313.

#### Sec. 658. Order of arrest; from whom obtained.

An order for the arrest of the defendant must be obtained from C. C. P., s. 150.  
 2 the court in which the action is brought, or from a judge thereof.

*Woody v. Jordan*, 69—189; *Tucker v. Davis*, 77—330; *Houston v. Walsh*, 79—35.

#### Sec. 659. Order obtained on affidavit, and to what actions applicable.

The order may be made where it shall appear to the court or C. C. P., s. 151.  
1869—70, c. 79, s. 1.  
 2 judge thereof, by the affidavit of the plaintiff, or of any other per-  
 3 son, that a sufficient cause of action exists, and that the case is one  
 4 of those provided for in this chapter.

*Wilson v. Barnhill*, 64—121; *Clark v. Clark*, 64—150; *Benedict v. Hall*, 76—113; *Bahnsen v. Chesebro*, 77—325; *Tucker v. Davis*, 77—330; *Paige v. Price*, 78—10; *Johnston v. Pate*, 83—110; *Devries v. Summit*, 86—126.

#### Sec. 660. Undertaking required before issuing order.

Before making the order, the court or judge shall require a C. C. P., s. 152.  
1868—9, c. 277, s. 7.  
 2 written undertaking on the part of the plaintiff, with sureties pay-  
 3 able to the defendant, to the effect that if the defendant recover  
 4 judgment, the plaintiff will pay all damages which he may sus-  
 5 tain by reason of the arrest, not exceeding the sum specified in the  
 6 undertaking, which shall be at least one hundred dollars.

*Rowark v. Homesley*, 68—91.



**Sec. 661. Time when order may issue, its form; time to answer or move to vacate.**

C. C. P., s. 153.

The order may be made to accompany the summons, or to 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 chapter twenty-one for the service of other notice.

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 move to vacate the order of arrest, or to reduce the amount of bail.

Houston v. Walsh, 79—35.

**Sec. 662. Sheriff to have order and affidavits, and copies to be delivered to defendant by sheriff on his arrest.**

C. C. P., s. 154.

The affidavit and order of arrest shall be delivered to the sheriff, who, upon arresting the defendant, shall deliver him a copy thereof.

**Sec. 663. Order, how executed.**

C. C. P., s. 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.

**Sec. 664. Defendant, how discharged.**

C. C. P., s. 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.

C. C. P., s. 157.

**Sec. 665. Undertaking of defendant; form of.**

The defendant may give bail by causing a written undertaking, payable to the plaintiff, to be executed by two or more sufficient sureties, 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 section six hundred and fifty-seven, an undertaking to the same effect as that provided by section six hundred and ninety-two.

Sedberry v. Carver, 77—319; Miller v. Hahn, 84—226.

**Sec. 666. Surrender of defendant.**

At any time before final judgment against them, the bail may  
 2 surrender the defendant in their exoneration, or he may surrender  
 3 himself to the sheriff of the county where he was arrested in the  
 4 following manner:

5 (1) A certified copy of the undertaking of the bail shall be de-  
 6 livered to the sheriff, who shall detain the defendant in his cus-  
 7 tody thereon, as upon an order of arrest, and shall, by a certificate  
 8 in writing, acknowledge the surrender.

9 (2) Upon the production of a copy of the undertaking and sheriff's  
 10 certificate, the court, or a judge thereof, may, upon a notice to the  
 11 plaintiff of ten days, with a copy of the certificate, order that the  
 12 bail be exonerated; and on filing the order and papers used on  
 13 said application, they shall be exonerated accordingly. But this  
 14 section shall not apply to an arrest for cause mentioned in sub-  
 15 division three of section six hundred and fifty-seven, so as to dis-  
 16 charge the bail from an undertaking given to the effect provided  
 17 by section six hundred and ninety-two.

**Sec. 667. Bail may arrest defendant.**

For the purpose of surrendering the defendant, the bail, at any  
 2 time or place, before they are finally charged, may themselves  
 3 arrest him, or by a written authority, indorsed on a certified copy  
 4 of the undertaking, may empower any person over twenty-one years  
 5 of age to do so.

*Sedberry v. Carver*, 77—319.

**Sec. 668. Bail to be proceeded against by action.**

In case of failure to comply with the undertaking, the bail may  
 2 be proceeded against by action only.

*Charleton v. Sloan*, 64—702; *McDowell v. Ashbury*, 66—444; *Boylston Insurance Co. v. Davis*,  
 74—78.

**Sec. 669. Bail, how exonerated.**

The bail may be exonerated, either by the death of the defend-  
 2 ant, or his imprisonment in a state prison, or by his legal discharge  
 3 from the obligation to render himself amenable to the process, or  
 4 by his surrender to the sheriff of the county where he was arrested,  
 5 in execution thereof, at any time before final judgment against the  
 6 bail.

*Adrian & Volliers v. Scanlin*, 77—317; *Sedberry v. Carver*, 77—319.

**Sec. 670. Undertaking of bail to be delivered to clerk and notice thereof to plain-  
tiff, and its acceptance or rejection by him.**

Within the time limited for that purpose, the sheriff shall deliver  
 2 the order of arrest to the clerk of the court in which the suit is  
 3 brought, with his return indorsed, and a certified copy of the under-  
 4 taking of the bail, and notify the plaintiff or his attorney thereof.

5 The plaintiff, within ten days thereafter, may serve upon the sheriff  
 6 a notice that he does not accept the bail, or he shall be deemed to  
 7 have accepted it, and the sheriff shall be exonerated from the lia-  
 8 bility.

**Sec. 671. Notice of justification; new bail.**

C. C. P., s. 163.

On the receipt of such notice, the sheriff or defendant may,  
 2 within ten days thereafter, give to the plaintiff, or his attorney,  
 3 notice of the justification of the same or other bail (specifying the  
 4 places of residence and occupation of the latter) before the court,  
 5 justice of the peace, or judge, at a specified time and place; the  
 6 time to be not less than five nor more than ten days thereafter. In  
 7 case other bail be given, there shall be a new undertaking, in the  
 8 form prescribed in section six hundred and sixty-five.

**Sec. 672. Qualifications of bail.**

C. C. P., s. 164.

The qualifications of bail must be as follows:

- 2 (1) Each of them must be a resident and householder or free-  
 3 holder within the state;
- 4 (2) They must each be worth the amount specified in the order  
 5 of arrest, exclusive of property exempt from execution; but the  
 6 judge, on justification, may allow more than two bail to justify  
 7 severally in amounts less than that expressed in the order, if the  
 8 whole justification be equivalent to that of two sufficient bail.

**Sec. 673. Justification of bail.**

C. C. P., s. 165.

For the purpose of justification, each of the bail shall attend  
 2 before the court or judge, or a justice of the peace, at the time and  
 3 place mentioned in the notice, and may be examined on oath, on  
 4 the part of the plaintiff, touching his sufficiency, in such a manner  
 5 as the court, the justice of the peace, or the judge, in his discretion,  
 6 may think proper. The examination shall be reduced to writing,  
 7 and subscribed by the bail, if required by the plaintiff.

**Sec. 674. If bail adjudged sufficient, examination to be certified, and sheriff exonerated.**

C. C. P., s. 166.

If the court, justice of the peace or judge find the bail sufficient,  
 2 he shall annex the examination to the undertaking, indorse his  
 3 allowance thereon, and cause them to be filed with the clerk; and  
 4 the sheriff shall thereupon be exonerated from liability.

**Sec. 675. Defendant may make deposit instead of bail with sheriff.**

C. C. P., s. 167.

The defendant may, at the time of his arrest, instead of giving  
 2 bail, deposit with the sheriff the amount mentioned in the order.  
 3 The sheriff shall thereupon give the defendant a certificate of the  
 4 deposit, and the defendant shall be discharged from custody.



**Sec. 676. Sheriff within four days to pay deposit into court.**

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 delinquencies. C. C. P., s. 168.

**Sec. 677. Bail substituted for deposit and deposit refunded.**

If money be deposited, as provided in the two preceding sections, bail may be given and justified upon notice, as prescribed in section six hundred and seventy-three, 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. C. C. P., s. 169.

**Sec. 678. Plaintiff obtaining judgment, deposit applied to its payment.**

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. C. C. P., s. 170.

**Sec. 679. Sheriff liable as bail, when.**

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 six hundred and seventy-one, six hundred and seventy-two, six hundred and seventy-three and six hundred and seventy-four, at any time before process against the person of the defendant, to enforce an order or judgment in the action. C. C. P., s. 171.

**Sec. 680. Judgment against sheriff; action on his official bond.**

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. C. C. P., s. 172.

**Sec. 681. Bail liable to sheriff.**

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. C. C. P., s. 173.

**Sec. 682. Defendant before judgment may apply on motion to vacate.**

C. C. P., s. 174.

A defendant arrested may at any time before judgment apply, on  
2 motion, to vacate the order of arrest, or to reduce the amount of  
3 bail.

Clark v. Clark, 64—150; Bear v. Cohen, 65—511; Rowark v. Homesley, 68—91.

**Sec. 683. Motion to vacate made on affidavit; plaintiff may oppose the same by affidavits or other proofs.**

C. C. P., s. 175.

If the motion be made upon affidavits on the part of the defend-  
2 ant, but not otherwise, the plaintiff may oppose the same by affida-  
3 vits, or other proof, in addition to those on which the order of  
4 arrest was made.

Wilson v. Barnhill, 64—121; Clark v. Clark, 64—150; Weiller v. Lawrence, 81—65; Devries v. Summit, 86—126.

**Sec. 684. Defendant confined for want of bail, may give bail, and bond returned to next court.**

R. C., c. 11, s. 8.  
C. C. P., s. 175 (a).

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

**Sec. 685. Bail to pay costs in certain cases.**

R. C., c. 11, s. 10.  
C. C. P., s. 175 (b).

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

Clark v. Latham, 8 Jones, 1.

**Sec. 686. Bail not discharged by amendment of process.**

R. C., c. 11, s. 11.  
C. C. P., s. 175. (c)

No amendment of process shall discharge the bail of the party  
2 arrested thereon, unless the amendment be to enlarge the sum de-  
3 manded beyond the sum expressed in the bail-bond.

## CHAPTER TWO.

## CLAIM AND DELIVERY OF PERSONAL PROPERTY.

## SECTION.

687. Delivery to be claimed at the time of issuing the summons.

688. Affidavit and requisites.

689. Fiat of clerk to sheriff to deliver property.

690. Undertaking of plaintiff for delivery of property.

691. Exceptions to undertaking.

692. Undertaking of defendant to retain property.

693. Justification of defendant's sureties.

694. Qualification and justification of defendant's sureties, how.

## SECTION.

695. Property concealed in buildings, how taken.

696. Property when taken, how kept.

697. Property taken, claimed by a third person.

698. Sheriff not bound to keep the property, but may deliver to claimant.

699. Undertaking and affidavit, when and where to be filed.

Patapsco Co. v. Magee, 86—350.

**Sec. 687. Delivery to be claimed at the time of issuing the summons.**

The plaintiff, in an action to recover the possession of personal C. C. P., s. 176.  
2 property, may, at the time of issuing the summons, or at any time  
3 before answer, claim the immediate delivery of such property, as  
4 provided in this chapter.

Hirsh v. Whitehead, 65—516; Jarman v. Ward, 67—32; Woody v. Jordan, 69—189; Haughton v. Newberry, 69—456; Holmes v. Godwin, 69—467; Clemmons v. Hampton, 70—534; Potter v. Mardre, 74—36; Hopper v. Miller, 76—402; Ray v. Horton, 77—334; Jones v. Ward, 77—337; Churchill v. Lee, 77—341; Mauny v. Ingram, 78—96; Manix v. Howard, 79—553; Webb v. Taylor, 80—305; Williamson v. Buck, 80—308.

**Sec. 688. Affidavit and requisites.**

Where a delivery is claimed, an affidavit must be made, before C. C. P., s. 177.  
2 the clerk of the court in which the action is required to be tried, 1881, c. 134.  
3 or before some person competent to administer oaths, by the  
4 plaintiff, or some one in his behalf, showing :

Hirsh v. Whitehead, 65—516; Jarman v. Ward, 67—32; Webb v. Taylor, 80—305; Manix v. Howard, 82—125; Cotton v. Willoughby, 83—75; Rhea v. Deaver, 85—337.

5 (1) That the plaintiff is the owner of the property claimed (par-  
6 ticularly describing it,) or is lawfully entitled to the possession  
7 thereof, by virtue of a special property therein, the facts in respect  
8 to which shall be set forth ;

Blakeley v. Patrick, 67—40; Potter v. Mardre, 74—36; Hopper v. Miller, 76—402; Cotton v. Willoughby, 83—75.

9 (2) That the property is wrongfully detained by the defendant ;

10 (3) The alleged cause of the detention thereof, according to his  
11 best knowledge, information and belief ;

12 (4) That the same has not been taken for tax, assessment, or  
13 fine, pursuant to a statute ; or seized under an execution or attach-  
14 ment against the property of the plaintiff ; or, if so seized, that it  
15 is, by statute, exempt from such seizure ; and,

Hirsh v. Whitehead, 65—516; Baxter v. Baxter, 77—118; Jones v. Ward, 77—337; Churchill v. Lee, 77—341.



## 16 (5) The actual value of the property.

Hirsh v. Whitehead, 65—516; Jarman v. Ward, 67—32.

**Sec. 689. Fiat of clerk to sheriff, to deliver property.**

C. C. P., s. 178.

The clerk of the court shall, thereupon, by an indorsement in  
2 writing upon the affidavit, require the sheriff of the county where  
3 the property claimed may be, to take the same from the defendant  
4 and deliver it to the plaintiff: *Provided*, the plaintiff shall give the  
5 undertaking prescribed in the succeeding section.

Hirsh v. Whitehead, 65—516; Jarman v. Ward, 67—32; Boylston Ins. Co. v. Davis, 68—17;  
Woody v. Jordan, 69—189; Potter v. Mardre, 74—36; Phillips v. Holland, 78—31.

**Sec. 690. Undertaking of plaintiff for delivery of property.**

C. C. P., s. 179

Upon the receipt of the order from the clerk with a written  
2 undertaking payable to the defendant executed by one or more  
3 sufficient sureties, approved by the sheriff, to the effect that they  
4 are bound in double the value of the property, as stated in the  
5 affidavit for the prosecution of the action, for the return of the  
6 property to the defendant, if return thereof be adjudged, and for  
7 the payment to him of such sum as may, for any cause, be recov-  
8 ered against the plaintiff, the sheriff shall forthwith take the prop-  
9 erty described in the affidavit, if it be in the possession of the  
10 defendant or his agent, and retain it in his custody. He shall  
11 also, without delay, serve on the defendant a copy of the affidavit,  
12 notice, and undertaking, by delivering the same to him personally,  
13 if he can be found, or to his agent, from whose possession the  
14 property is taken; or, if neither can be found, by leaving them at  
15 the usual place of abode of either, with some person of suitable  
16 age and discretion.

Hirsh v. Whitehead, 65—516; Jarman v. Ward, 67—32; Woody v. Jordan, 69—189; Hopper v.  
Miller, 76—402; Mannix v. Howard, 82—125.

**Sec. 691. Exceptions to undertaking.**

C. C. P., s. 180.

The defendant may, within three days after the service of a copy  
2 of the affidavit and undertaking, give notice to the sheriff person-  
3 ally, or by leaving a copy at his office in the county town of the  
4 county, or if he have no such office, at the office of the clerk of  
5 the court, that he accepts to the sufficiency of the sureties. If he  
6 fail to do so, he shall be deemed to have waived all objection to  
7 them. When the defendant excepts, the sureties shall justify on  
8 notice, in like manner as upon bail on arrest. And the sheriff  
9 shall be responsible for the sufficiency of the sureties, until the  
10 objection to them is either waived as above provided, or until they  
11 shall justify, or until new sureties shall be substituted and justify.  
12 If the defendant except to the sureties, he cannot reclaim the prop-  
13 erty as provided in the succeeding section.

Hirsh v. Whitehead, 65—516.

**Sec. 692. Undertaking of defendant to retain property.**

At any time before the delivery of the property to the plaintiff, C. C. P., s. 181.  
2 the defendant may, if he do not except to the sureties of the  
3 plaintiff, require the return thereof, upon giving to the sheriff a  
4 written undertaking, payable to the plaintiff, executed by two or  
5 more sufficient sureties, to the effect that they are bound in double  
6 the value of the property, as stated in the affidavit of the plaintiff,  
7 for the delivery thereof to the plaintiff, if such delivery be ad-  
8 judged, and for the payment to him of such sum as may, for any  
9 cause, be recovered against the defendant. If a return of the  
10 property be not so required, within three days after the taking and  
11 service of notice to the defendant, it shall be delivered to the  
12 plaintiff, except as provided in section six hundred and ninety-  
13 seven.

Hirsh v. Whitehead, 65—516; Boylston Ins. Co. v. Davis, 74—78; Miller v. Hahn, 84—226;  
Hughes v. Newsom, 86—424.

**Sec. 693. Justification of defendant's sureties.**

The defendant's sureties, upon a notice to the plaintiff of not less C. C. P., s. 182.  
2 than two nor more than six days, shall justify before the court, a  
3 judge or justice of the peace, in the same manner as upon bail on  
4 arrest; upon such justification, the sheriff shall deliver the prop-  
5 erty to the defendant. The sheriff shall be responsible for the de-  
6 fendant's sureties, until they justify, or until justification is com-  
7 pleted or expressly waived, and may retain the property until that  
8 time; but if they, or others in their place, fail to justify at the  
9 time and place appointed, he shall deliver the property to the  
10 plaintiff.

Hirsh v. Whitehead, 65—516.

**Sec. 694. Qualification and justification of defendant's sureties, how.**

The qualifications of sureties, and their justification, shall be as C. C. P., s. 183.  
2 prescribed by sections six hundred and seventy-two and six hun-  
3 dred and seventy-three, in respect to bail upon an order of arrest.

Hirsh v. Whitehead, 65—516.

**Sec. 695. Property concealed in buildings, how taken.**

If the property, or any part thereof, be concealed in a building C. C. P., s. 184.  
2 or enclosure, the sheriff shall publicly demand its delivery. If it  
3 be not delivered, he shall cause the building or enclosure to be  
4 broken open, and take the property into his possession; and, if  
5 necessary, he may call to his aid the power of his county.

Hirsh v. Whitehead, 65—516.

**Sec. 696. Property when taken, how kept.**

When the sheriff shall have taken property, as in this chapter C. C. P., s. 185.  
2 provided, he shall keep it in a secure place, and deliver it to the

3 party entitled thereto, upon receiving his lawful fees for taking,  
4 and his necessary expenses for keeping the same.

*Hirsh v. Whitehead*, 65—516.

**Sec. 697. Property taken, claimed by a third person.**

R. C., c. 7, s. 10,  
1810, c. 583, ss. 1, 2  
C. C. P., s. 186.

When the property taken by the sheriff shall be claimed by any  
2 person other than the plaintiff or the defendant, the claimant may  
3 interplead upon his filing an affidavit of his title and right to the  
4 possession of the property; stating the grounds of such right and  
5 title; and upon his delivering to the sheriff an undertaking in an  
6 amount double the value of the property specified in plaintiff's  
7 complaint, for the delivery of the property to the person entitled  
8 to the same, and for the payment of all such costs and damages as  
9 may be awarded against him; this undertaking to be executed  
10 by two or more sufficient sureties, accompanied by their affidavits  
11 that they are each worth double the value of property. A copy of  
12 this undertaking and accompanying affidavits to be served by the  
13 sheriff on the plaintiff and defendant at least ten days before the  
14 return day of the summons in said action, when the court trying  
15 the same shall order a jury to be impaneled to inquire in whom  
16 is the right to the property specified in plaintiff's complaint; and  
17 the finding of the jury shall be conclusive as to the parties then  
18 in court, and the court shall adjudge accordingly, unless it is re-  
19 versed upon appeal.

*Simpson v. Harry*, 1 Dev. & Bat., 202; *McLean v. Douglass*, 6 Iredell, 233; *Evans v. Governor's Creek Transportation Co.*, 5 Jones, 331; *Cherry v. Nelson*, 7 Jones, 141; *Bank of Fayetteville v. Spurling*, 7 Jones, 398; *Bear v. Cohen*, 65—511; *Hirsh v. Whitehead*, 65—516; *Clemmons v. Hampton*, 70—534; *Sims v. Goettle*, 82—268; *Sims v. Goettle*, 82—271.

**Sec. 698. Sheriff not bound to keep the property, but may deliver to claimant.**

R. C., c. 7, s. 10,  
1810, c. 583, ss. 1, 2,  
C. C. P., s. 186. (a.)

Upon the filing by the claimant of the undertaking set forth in  
2 the preceding section, the sheriff shall not be bound to keep the  
3 property, or to deliver it to the plaintiff; but may deliver it to the  
4 claimant, unless the plaintiff shall execute and deliver to him a  
5 similar undertaking to that required of claimant; and notwith-  
6 standing such claim, when so made, the sheriff may retain the  
7 property a reasonable time to demand such indemnity.

**Sec. 699. Undertaking and affidavit, when and where to be filed.**

C. C. P., s. 187.

The sheriff shall return the undertaking, notice and affidavit  
2 with his proceedings thereon to the court in which the action is  
3 pending within ten days after taking the property mentioned  
4 therein.

*Hirsh v. Whitehead*, 65—516; *Boylston Insurance Co. v. Davis*, 74—78; *Harker v. Arendell*, 74—85.



## CHAPTER THREE.

## INJUNCTION.

## SECTION.

700. Injunction as a provisional remedy abolished, and injunction by order substituted.

701. What judge to grant injunctions and restraining orders.

702. Before what judge returnable.

703. Injunction, in what cases allowed.

704. At what time granted; copy of affidavit to be served.

705. Injunction after answer, allowed upon notice.

706. Undertaking upon injunction; damages, how ascertained.

## SECTION.

707. Order to show cause; restraint in the meantime.

708. Injunction to suspend business of corporation not granted, unless undertaking is given.

709. Injunction without notice, vacated or modified upon notice.

710. Application to modify or vacate upon affidavit, may be opposed by affidavit.

711. Motion; what shall have preference; shall not be granted for more than twenty days without notice.

**Sec. 700. Injunction as a provisional remedy abolished, and injunction by order substituted.**

The writ of injunction as a provisional remedy is abolished, and a temporary injunction by order is substituted therefor. The order may be made by any judge of a superior court, in the cases provided in section seven hundred and three, 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.

C. C. P., s. 188.

**Sec. 701. What judge to grant injunctions and restraining orders.**

The judges of the superior court of this state shall have jurisdiction to grant injunctions and issue restraining orders in all civil actions and proceedings, which are authorized by law: *Provided*, that a judge holding a special term in any county may grant an injunction, or issue a restraining order, returnable before himself, in any case which he may have jurisdiction to hear, and determine under the commission issued to him, and the same shall be returnable as directed by the judge in the order.

C. C. P., s. 188, (a).  
1879, c. 63, ss. 1, 3.

Galbreath v. Everett, 84—546.

**Sec. 702. Before what judge returnable.**

All restraining orders and injunctions granted by any of the judges of the superior court, except a judge holding a special term in any county, shall be made returnable before the resident judge of the district, or the judge assigned to the district, or holding by exchange the courts of the district where the civil action or special proceeding is depending, within twenty days from date of order. And if the judge before whom the same is returned shall, from sickness, inability, or from any cause, fail to hear said motion and application, or to continue the same to some other time and place, then it shall be competent for any judge resident in some adjoining district, or a judge assigned to hold the court of some adjoining district, or the judge holding by exchange the court of some adjoining district, to hear and determine the said motion

C. C. P., s. 188 (b).  
1879, c. 63, ss. 2, 3.  
1881, c. 51, s. 1.

14 and application, after giving ten days' notice to the parties inter-  
 15 ested in the application or motion, upon its being satisfactorily  
 16 shown to him by affidavit or otherwise, that the judge before whom  
 17 the same was returnable failed to act upon the same, or to continue  
 18 the same to some other time and place. The effect of such re-  
 19 moval shall be to continue in force the motion and application  
 20 theretofore granted, till the same can be heard and determined by  
 21 the judge having jurisdiction of the same.

*Galbreath v. Everett*, 84—546.

### Sec. 703. Injunction, in what cases allowed.

(1) DEPENDS UPON NATURE OF THE ACTION.

C. C. P., s. 189.

(1) When it shall appear by the complaint that the plaintiff is  
 2 entitled to the relief demanded, and such relief, or any part thereof,  
 3 consists in restraining the commission, or continuance of some act,  
 4 the commission or continuance of which, during the litigation,  
 5 would produce injury to the plaintiff; or .

(2) AND (3) DEPEND UPON EXTRINSIC FACTS.

6 (2) When, during the litigation, it shall appear by affidavit of  
 7 plaintiff or any other person, that the defendant is doing, or  
 8 threatens, or is about to do, or procuring or suffering some act to  
 9 be done in violation of the plaintiff's rights respecting the subject  
 10 of the action, and tending to render the judgment ineffectual, a  
 11 temporary injunction may be granted to restrain him therefrom;

*Heilig v. Stokes*, 63—612; *Wilder v. Lee*, 64—50; *Foard v. Alexander*, 64—69; *Jones v. Hill*,  
 64—198; *Smith & Penland v. Dewey*, 64—463; *Patterson v. Hubbs*, 65—119; *Howes v. Mauney*,  
 66—218; *Sprinkle v. Hutchinson*, 66—450; *W. & T. R. R. Co. v. Battle* 66—540; *Dockery v. French*,  
 69—308; *Bryan v. Hubbs*, 69—423; *Johnston v. Rankin*, 70—550; *Faison v. McIlwaine*, 72—312;  
*Chambers v. Penland*, 73—53; *Dobson v. Simonton*, 73—63; *Jones v. Thorne*, 80—72; *Banks v.*  
*Parker*, 80—157; *Tillery v. Wrenn*, 86—217; *Walton v. Mills*, 86—280.

12 (3) And where, during the pendency of an action, it shall ap-  
 13 pear by affidavit of plaintiff or any other person, that the defend-  
 14 ant threatens, or is about to remove or dispose of his property,  
 15 with intent to defraud the plaintiff, a temporary injunction may  
 16 be granted to restrain such removal or disposition.

*Bell v. Chadwick*, 71—329; *German v. Clarke*, 71—417; *Baldwin v. York*, 71—463; *N. C. Gold*  
*Amalgamating Co. v. N. C. Ore Dressing Co.*, 73—468; *Campbell v. Wolfenden*, 74—103; *Johnson*  
*v. Jones*, 75—206; *McCorkle v. Brem*, 76—407; *Cohen v. Com'rs of Goldsboro*, 77—2; *Baxter v.*  
*Baxter*, 77—118; *Moore v. Valentine*, 77—188; *Capehart v. Biggs*, 77—261; *Purnell v. Vaughan*,  
 77—268.

### Sec. 704. At what time granted; copy of affidavit to be served.

C. C. P., s. 190.

The injunction may be granted at the time of commencing the  
 2 action, or at any time afterwards, before judgment upon its appear-  
 3 ing satisfactorily to the judge, by the affidavit of the plaintiff, or of  
 4 any other person, that sufficient grounds exist therefor. A copy  
 5 of the affidavit must be served with the injunction.

*Patrick v. Joyner*, 63—573; *Heilig v. Stokes*, 63—612; *Foard v. Alexander*, 64—69; *McArthur*  
*v. McEachin*, 64—72; *Backalan v. Littlefield*, 64—233; *Hirsh v. Whitehead*, 65—516; *Martin v.*  
*Sloan*, 69—128.

**Sec. 705. Injunction after answer, allowed upon notice.**

An injunction shall not be allowed after the defendant shall have  
2 answered, unless upon notice, or upon an order to show cause; but  
3 in such case the defendant may be restrained until the decision of  
4 the judge granting or refusing the injunction.

Heilig v. Stokes, 63—612; Foard v. Alexander, 64—69; Jarmon v. Saunders, 64—367; Faison v. McIlwaine, 72—312.

**Sec. 706. Undertaking upon injunction; damages, how ascertained.**

Upon granting an order for an injunction, the judge shall re-  
2 quire as a condition precedent to the issuing thereof, that the clerk  
3 shall take from the plaintiff a written undertaking, with sufficient  
4 sureties to be justified before, and approved by, the said clerk, or  
5 by the judge, in an amount to be fixed by the judge, to the effect  
6 that the plaintiff will pay to the party enjoined such damages, not  
7 exceeding an amount to be specified, as he may sustain by reason  
8 of the injunction, if the court shall finally decide that the plaintiff  
9 was not entitled thereto. The damages may be ascertained by a  
10 reference or otherwise, as the judge shall direct, and the decision  
11 of the court thereupon shall be conclusive as to the amount of dam-  
12 ages upon all the persons who have an interest in the undertaking.

Sledge v. Blum, 63—374; McArthur v. McEachin, 64—72; Richards v. Baurman, 65—162; Hirsh v. Whitehead, 65—516; Burke v. Stokely, 65—569; Hyman v. Devereux, 65—588; McKesson v. Hennessee, 66—473; Miller v. Parker, 73—53; N. C. Gold Amalgamating Co. v. N. C. Ore Dressing Co., 79—48; Burnett v. Nicholson, 79—548.

**Sec. 707. Order to show cause; restraint in the meantime.**

If the judge deem it proper that the defendant, or any of several  
2 defendants, should be heard before granting the injunction, an  
3 order may be made requiring cause to be shown, at a specified  
4 time and place, why the injunction should not be granted; and  
5 the defendant may, in the meantime, be restrained.

Faison v. McIlwaine, 72—312.

**Sec. 708. Injunction to suspend business of corporation not granted, unless undertaking is given.**

An injunction to suspend the general and ordinary business of  
2 a corporation shall not be granted without due notice of the appli-  
3 cation therefor, to the proper officers of the corporation, except  
4 where the state is a party to the proceeding, unless the plaintiff  
5 shall give a written undertaking, executed by two sufficient sureties,  
6 to be approved by the judge, to the effect that the plaintiff will pay  
7 all damages, not exceeding the sum to be mentioned in the under-  
8 taking, which such corporation may sustain by reason of the  
9 injunction, if the court shall finally decide that the plaintiff was  
10 not entitled thereto. The damages may be ascertained by a refer-  
11 ence, or otherwise, as the court shall direct.



**Sec. 709. Injunction without notice, vacated or modified upon notice.**

C. C. P., s. 195.

If the injunction be granted without notice, the defendant, at any time before the trial, may apply, upon ten days' notice to the judge having jurisdiction thereof, 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 answer; but if no such application be made, the injunction shall continue, and be in force until such application shall be made and determined by the judge, and a verified answer has the effect only of an affidavit.

Sharpe v. King, 3 Ire. Eq., 402; Perkins v. Hollowell, 5 Ire. Eq., 21; Sledge v. Blum, 63—374; Bear v. Cohen, 65—511; Perry v. Michaux, 79—94.

**Sec. 710. Application to modify or vacate upon affidavit, may be opposed by affidavit.**

C. C. P., s. 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 proof, in addition to those on which the injunction was granted.

Clark v. Clark, 64—150; Howerton v. Sprague, 64—451; Craycroft v. Morehead, 67—422; Woodfin v. Beach, 70—456; Lowe v. Com'rs of Davidson, 70—532; Ponton v. McAdoo, 71—101; Mitchell v. Com'rs of Craven, 74—487; Chambers v. Penland, 78—53; Jones v. Boyd, 80—258; Weiller v. Lawrence, 81—65; Young v. Rollins, 85—485.

**Sec. 711. Motion; what shall have preference; shall not be granted for more than twenty days without notice.**

C. C. P., s. 345.

- (1) An application for an order is a motion.
- (2) A motion to vacate or modify an injunction or restraining order shall have preference over all other motions, except those concerning other provisional remedies.
- (3) The decision of a judge before whom notice to vacate or modify is made, must be rendered and made known within ten days after the day upon which motion shall or may be submitted to him for decision.
- (4) No restraining order, or order to stay proceedings for a longer time than twenty days, shall be granted by a judge out of court, except upon due notice to the adverse party; but the said order shall continue and remain in force until vacated upon notice, as is provided in section seven hundred and nine.

## CHAPTER FOUR.

## ATTACHMENT.

## SECTION.

712. In what actions attachment may be issued.
713. Warrant to accompany summons, or to be issued afterwards.
714. What must be shown to procure warrant.
715. Warrant issued by justice of the peace; publication to be made.
716. Warrant, by whom granted.
717. Warrant, how served.
718. When warrant granted by a justice of the peace.
719. Justice's attachments levied on land; what to be done.
720. Warrant procured; affidavits to be filed.
721. Undertaking before issuing warrant.
722. Warrant, to whom directed and what to require.
723. Validity of undertaking.
724. Warrant, how executed.
725. Proceedings when property attached is perishable, or a vessel.
726. Defendant may replevy before sale.
727. Interest in corporations or associations liable to attachment.
728. Attachment, how executed on property incapable of manual delivery.
729. A garnishee summoned to answer on oath; judgment against garnishee.
730. Proceedings against garnishee failing to appear.

## SECTION.

731. Garnishee denying he has any property; issue to be made up.
732. Articles confessed by garnishee, to be valued by jury and judgment for their value; in what cases garnishee excused.
733. Judgment conditional against garnishee, when.
734. Certificate of defendant's interest to be furnished.
735. Judgment, how satisfied.
736. When action to recover notes, &c., of defendant may be prosecuted by plaintiff in the action in which the attachment issued.
737. Bond of plaintiff, how disposed of, or judgment for defendant.
738. Attachment discharged, and property or its proceeds returned to defendant on his appearance in action.
739. Undertaking of defendant on appearance to discharge the property.
740. Property claimed by third party, may interplead.
741. When the sheriff to return warrant, with his proceedings thereon.
742. Motion to vacate or modify a warrant, or increase security.
743. Exception to and jurisdiction of sureties.

## Sec. 712. In what actions attachment may be issued.

- A warrant of attachment against the property of one or more C. C. P., s. 197.
- 2 defendants in an action, may be granted upon the application of
- 3 the plaintiff, as specified in this chapter, when the action is to re-
- 4 cover a sum of money only, or damages for one or more of the fol-
- 5 lowing causes:
- 6 (1) Breach of contract, express or implied;
- 7 (2) Wrongful conversion of personal property;
- 8 (3) Any other injury to personal property, in consequence of
- 9 negligence, fraud, or other wrongful act.

Maxwell v. McBrayer, Phil., 527; Marsh v. Williams, 63—371; Hughes v. Person, 63—548; Wilson v. Barnhill, 64—121; Backalan v. Littlefield, 64—233; Mixer, Whitman & Co. v. Ex. Oil & Guano Co., 65—552; Toms v. Warson, 66—417; Wheeler v. Cobb, 75—21; Montgomery Co. v. Riley, 75—144; Windley v. Bradway, 77—333; Grant v. Burgwyn, 79—513; Price v. Cox, 83—261; Faulk v. Smith, 84—501.

## Sec. 713. Warrant to accompany summons, or to be issued afterwards.

- The warrant of attachment may be granted to accompany the C. C. P., s. 197.
- 2 summons, or at any time after the commencement of the action.
- 3 Personal service of the summons must be made upon the defend-
- 4 ant against whose property the attachment is granted, within
- 5 thirty days after the granting thereof, or else upon the expiration

6 of the same time, service of summons by publication must be com-  
 7 menced, or service thereof must be made without the state, pur-  
 8 suant to an order obtained therefor, as prescribed in chapter  
 9 twenty-one; and if publication has been, or is thereafter com-  
 10 menced, the service must be made complete, by the continuance  
 11 thereof.

**Sec. 714. What must be shown to procure the warrant.**

C. C. P., s. 201.

To entitle the plaintiff to such a warrant, he must show by affi-  
 2 davit to the satisfaction of the court granting the same, as follows :  
 3 (1) That one of the causes of action specified in section seven  
 4 hundred and twelve, exists against the defendant. If the action  
 5 is to recover damages for breach of contract, the defendant must  
 6 show that the plaintiff is entitled to recover a sum stated therein,  
 7 over and above all counter-claims known to him.  
 8 (2) That the defendant is either a foreign corporation, or not a  
 9 resident of the state ; or, if he is a natural person, and a resident  
 10 of the state, that he has departed therefrom, with intent to defraud  
 11 his creditors, or to avoid service of summons, or keeps himself con-  
 12 cealed therein with like intent ; or, if the defendant is a natural  
 13 person, or a domestic corporation, that he or it has removed, or is  
 14 about to remove property from the state, with intent to defraud his  
 15 or its creditors ; or has assigned, disposed of, or secreted, or is about  
 16 to assign, dispose of, or secrete, property with the like intent.

Marsh v. Williams, 63—371; Hughes v. Person, 63—548; Gashine v. Baer, 64—108; Wilson v. Barnhill, 64—121; Clark v. Clark, 64—150; Backalan v. Littlefield, 64—233; Brown v. Hawkins, 65—645; Love v. Young, 69—65; Spiers v. Halstead, Haines & Co., 71—209; Palmer v. Bosher, 71—291; Wood & Hathaway v. Harrell, 74—338; Smith v. Gibson, 74—684; Wheeler v. Cobb, 75—21; Burwell & Parham v. Lafferty, 76—383; Hess v. Brower, 76—428; Windley v. Bradway, 77—333; Branch v. Frank, 81—180; Peebles v. Foote, 83—102; Faulk v. Smith, 84—501; Devries v. Summit, 86—126.

**Sec. 715. Warrant issued by justice of the peace ; publication to be made.**

C. C. P., s. 198.  
 1868-'9, c. 95, s. 3.  
 1870-'1, c. 166, ss. 4,  
 1874-'5, c. 111.

The plaintiff, within thirty days after obtaining a warrant of  
 2 attachment from a justice of the peace, shall cause publication  
 3 thereof to be made for four successive weeks at the court-house  
 4 door and four other public places in the county where the warrant  
 5 is returnable.

Marsh v. Williams, 63—371; Love v. Young, 69—65; Spiers v. Halstead, Haines & Co., 71—209; Wheeler v. Cobb, 75—21; Burwell & Parham v. Lafferty, 76—383.

**Sec. 716. Warrant, by whom granted.**

C. C. P., s. 199.  
 1868-'70, c. 147.  
 1870-'1, c. 166, ss. 1,  
 3.  
 1874-'5, c. 111.  
 1876-'7, c. 251, s. 1.

If the action be not founded on a contract, or if founded on a  
 2 contract, and the sum demanded exceed two hundred dollars, a  
 3 warrant of attachment may be obtained from the judge of the dis-  
 4 trict embracing the county in which the action has been instituted,  
 5 or from the clerk of the superior court from which the summons  
 6 in the action issued ; and it may be issued to any county in the  
 7 state where the defendant has property, money, effects, choses in  
 8 action or debts due him, and shall be made returnable in term  
 9 time to the court from which the summons issued.



**Sec. 717. Warrant, how served.**

When the warrant of attachment is taken out at the time of 1870-'1, c. 166, s. 3.  
2 issuing the summons, and the summons is to be served by publi- 1874-'5, c. 111, s. 2.  
3 cation, the order shall direct that notice be given in said publica-  
4 tion to the defendant of the issuing of the attachment, and when  
5 the warrant of attachment is obtained after the issuing of the sum-  
6 mons, the defendant shall be notified by publication of the fact for  
8 four successive weeks in some newspaper published in the county to  
9 which it is returnable, or if there be none such, then in one pub-  
10 lished in the judicial district including said county, and if there  
11 be no newspaper published in the district, then in any newspaper  
12 published in the state. Said publication shall state the names of  
13 the parties, the amount of the claims, and in a brief way the na-  
14 ture of the demand and the time and place to which the warrant is  
15 returnable: *Provided*, that in proceedings by attachment begun  
16 and had before justices of the peace, advertisement in a newspaper  
17 shall not be necessary, but in all such cases, advertisement at the  
18 court-house door and four other public places in the county shall  
19 be sufficient publication, both as to the summons and warrant of  
20 attachment.

**Sec. 718. When warrant granted by a justice of the peace.**

If the action be not founded on contract, and the value of the C. C. P., s. 200.  
2 property in controversy does not exceed the sum of fifty dollars, 1876-'7, c. 251.  
3 the warrant of attachment may, or if the action be founded on  
4 contract, and the sum demanded does not exceed two hundred  
5 dollars, the warrant of attachment must be obtained from, and  
6 made returnable before some, justice of the peace of a county, to  
7 the superior court of which it might have been returnable, had  
8 the sum demanded exceeded two hundred dollars, or had the action  
9 not have been founded on contract.

Grier v. Rhyne, 67—338.

**Sec. 719. Justice's attachment levied on land; what to be done.**

If the attachment be levied on real property, the justice shall 1868-'9, c. 95, s. 4.  
2 proceed to try the action, but shall issue no execution to sell the  
3 real property, and shall return the papers in the case to the office  
4 of the clerk of the superior court of his county, where the judg-  
5 ment shall be docketed. The levy of the attachment, however,  
6 shall be a lien on the real estate.

**Sec. 720. Warrant procured; affidavits to be filed.**

It shall be the duty of the plaintiff procuring a warrant of at- C. C. P., s. 201.  
2 tachment, within ten days from the issuing thereof, to file the  
3 affidavits on which the same was granted in the office of the clerk  
4 of the superior court to which, or with the justice of the peace  
5 before whom the process is made returnable.

**Sec. 721. Undertaking before issuing a warrant.**

C. C. P., s. 202.

Before issuing the warrant, the officer issuing the same shall  
2 require a written undertaking on the part of the plaintiff, with  
3 sufficient surety, to the effect, that if the defendant recover judg-  
4 ment, or the attachment be set aside by order of the court, the  
5 plaintiff will pay all costs that may be awarded to the defendant,  
6 and all damages which he may sustain by reason of the attach-  
7 ment, not exceeding the sum specified in the undertaking, which  
8 shall be at least two hundred dollars.

Wheeler v. Cobb, 75—21.

**Sec. 722. Warrant, to whom directed and what to require.**

C. C. P., s. 203.

The warrant shall be directed to the sheriff of any county in  
2 which the property of such defendant may be, or in case it be  
3 issued by a justice of the peace to such sheriff, or to any constable  
4 of such county, provided such county be that of the justice issuing  
5 the warrant, and shall require such sheriff or constable to attach  
6 and safely keep all the property of such defendant within his  
7 county, or so much thereof as may be sufficient to satisfy the  
8 plaintiff's demand, the amount of which must be stated in con-  
9 formity with the complaint, together with costs and expenses; it  
10 must also state when and where it shall be returned. Several  
11 warrants may be issued at the same time to the sheriffs of different  
12 counties.

Backalan v. Littlefield, 64—233; Wade v. City of New Berne, 72—498; Gamble v. Rhyne, 80—183.

**Sec. 723. Validity of Undertaking.**

It shall not be a defence to an action upon an undertaking, given  
2 upon granting a warrant of attachment, that the warrant was  
3 granted improperly, for want of jurisdiction, or for any other cause.

**Sec. 724. Warrant, how executed.**

C. C. P., s. 234.

The officer to whom such warrant of attachment is directed and  
2 delivered, shall seize and take into his possession the tangible per-  
3 sonal property of the defendant, or so much thereof as may be nec-  
4 essary, and he shall be liable for the care and custody of such prop-  
5 erty, as if the same had been seized under execution; he shall levy  
6 on the real estate of the defendant as prescribed for executions; he  
7 shall make and return with the warrant, an inventory of the prop-  
8 erty seized or levied on; subject to the direction of the court, he  
9 shall collect and receive into his possession all debts owing to the  
10 defendant, and take such legal proceedings, either in his own name,  
11 or in that of the defendant, as may be necessary for that purpose.

Backalan v. Littlefield, 64—233; Alexander v. Com'rs of McDowell, 67—330; Boylston Insurance Co. v. Davis, 68—17; Palmer v. Bosher, 71—291; Com'rs of Montgomery Co. v. Riley, 75—144; Carmer v. Evers, 80—55; Gamble v. Rhyne, 80—183.

**Sec. 725. Proceedings when property attached is perishable, or a vessel.**

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, and the person to whom it belongs, or his agent, shall not within ten days after the serving of such attachment, reclaim the same, the sheriff or other officer having possession thereof, shall 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, and the proceeds of such sale shall be liable to the judgment obtained upon such attachment, and shall be retained by the sheriff or other officer to await such judgment.

Haywood v. Hardie, 76—384.

R. C., c. 7, s. 6.  
1777, c. 115, s. 28.  
C. C. P., s. 205.

**Sec. 726. Defendant may replevy before sale.**

The person owning the property, advertised to be sold according to the provisions of this chapter, his agent or attorney may, at any time before sale, replevy the same, by giving an undertaking, in double the amount of the value of the property, with sufficient sureties to the effect that he will return the property to the sheriff, or other officer, if return thereof be adjudged by the court, and pay all costs that may be awarded against him; and if return of said property cannot be had, then that he will pay plaintiff the value of said property, and all costs and damages that may be awarded against him. And upon the execution of this undertaking, the sheriff, or other officer, shall deliver said property to the person owning the same.

Cherry v. Nelson, 7 Jones, 141; Barry v. Sinclair, Phil. L., 7.

R. C., c. 7, s. 5.  
1777, c. 115, s. 28.

**Sec. 727. Interest in corporations or associations liable to attachment.**

The rights or shares which the 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.

C. C. P., s. 206.

**Sec. 728. Attachment, how executed on property incapable of manual delivery.**

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 attachment with the president or other head of the association or corporation, or with the secretary, cashier or managing agent thereof, or with the debtor or individual holding such property, with a notice showing the property levied on.

C. C. P., s. 207.



**Sec. 729. A garnishee summoned to answer on oath; judgment against garnishee.**

R. C., c. 7, s. 7.  
1777, c. 115, s. 28.

When the sheriff or other officer shall serve an attachment on  
2 any person supposed to be indebted to, or to have any effects of  
3 the defendant in the attachment, he shall at the time summon  
4 such person as a garnishee in writing, to appear at the court to  
5 which the attachment shall be returnable, or if issued by a justice  
6 of the peace at a place and time named in the notice, not exceed-  
7 ing twenty days from date of notice, to answer upon oath what  
8 he owes to the defendant, and what effects of the defendant he  
9 hath in his hands, and had at the time of serving such attachment,  
10 and what effects or debts of the defendant there are in the hands  
11 of any other, and what person, to his knowledge and belief; and  
12 when an attachment shall be served on any garnishee in manner  
13 aforesaid, it shall be lawful upon his appearance and examination  
14 to enter up judgment and award execution for the plaintiff against  
15 such garnishee, for all sums of money due to the defendant from  
16 him, and for all effects and estates of any kind belonging to the  
17 defendant, in his possession or custody for the use of the plaintiff, or  
18 so much thereof as shall be sufficient to satisfy the debt and costs  
19 and all charges incident to levying the same; and all goods and  
20 effects whatsoever in the hands of any garnishee belonging to the  
21 defendant, shall be liable to satisfy the plaintiff's judgment, and  
22 shall be delivered to the sheriff or other officer serving the attach-  
23 ment.

Russell v. Hinton, 1 Murphy, 468; Freeman v. Grist, 1 Dev. & Bat., 217; Patton v. Smith, 7 Ire., 438; Myers v. Beeman, 9 Ire., 116; Houston v. Porter, 10 Ire., 174; Ormond v. Moye, 11 Ire., 564; Tindell v. Wall, Busbee's Law, 3; Spruill v. Trader, 5 Jones, 39; Cherry v. Nelson, 7 Jones, 141; Barry v. Sinclair, Phil. L., 7; Parker v. Scott, 64—118; Shuler v. Bryson, 65—201; Tate v. Morehead, 65—681.

**Sec. 730. Proceedings against garnishee failing to appear.**

R. C., c. 7, s. 8.  
1777, c. 115, s. 28.  
1838, c. 2.

When any garnishee shall be summoned as aforesaid, and shall  
2 fail to appear and discover on oath as directed, the court, after sol-  
3 emnly calling the garnishee, shall enter a conditional judgment  
4 against him, and thereupon a notice shall issue against him return-  
5 able to the court having jurisdiction, to show cause why final  
6 judgment shall not be entered against him; and if, upon due  
7 execution thereof, such garnishee shall fail to appear at the time  
8 and place named in the notice, and discover on oath in manner  
9 aforesaid, the court shall confirm said judgment and award  
10 execution for the plaintiff's whole judgment and costs; and if,  
11 upon examination of the garnishee, it shall appear to the court  
12 that there is any of the defendant's estate in the hands of  
13 any person who has not been summoned, the court shall, upon  
14 motion of the plaintiff, grant a judicial attachment, to be levied  
15 in the hands of every such person having any of the estate of the  
16 defendant in his custody or possession, who shall appear and  
17 answer, and shall be liable as other garnishees.

**Sec. 731. Garnishee denying he has any property; issue to be made up.**

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

Cowles v. Oaks, 3 Dev., 96.

R. C., c. 7, s. 9.  
1793, c. 389, s. 2.

**Sec. 732. Articles confessed by garnishee, to be valued by jury and judgment for their value; in what cases garnishee excused.**

When a garnishee shall on oath confess that he has in his hands any property of the defendant of a specific nature, or is indebted to such defendant by any security or assumption for the delivery of any specific article, except as hereinafter excepted, then the court shall immediately order a jury to be impaneled and sworn to inquire of the value of such specific property, and the verdict of the jury shall subject such garnishee to the payment of the valuation, or so much thereof as shall be sufficient to satisfy the debt or damages, and costs to the plaintiff: *Provided*, that if such garnishee shall also state in his answer that said specific property was left, or deposited, in his possession by the defendant as a bailment, or that he hath tendered said specific articles agreeable to contract, and that they were refused by the defendant, and that he then was, and always had been, ready to deliver the same; or that he had such specific articles at the time and place specified in such covenant or agreement ready to be delivered, and is still ready to deliver the same; and such statement shall be admitted by the plaintiff or found by a jury, then in any such case, the garnishee shall be exonerated by the delivery of such specific articles to the sheriff, who shall proceed as if the attachment had been originally levied on the property.

Cherry v. Hooper, 7 Jones, 82.

R. C., c. 7, s. 11.  
1793, c. 389, s. 1.  
1794, c. 424, s. 1.

**Sec. 733. Judgment conditional against garnishee, when.**

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

R. C., c. 7, s. 12.  
1794, c. 424, s. 2.

**Sec. 734. Certificate of defendant's interest to be furnished.**

Whenever the sheriff or other lawful officer with a warrant of attachment or execution, shall apply to any officer mentioned in section seven hundred and twenty-eight, or to any debtor or indi-

C. C. P., s. 208.

4 vidual, for the purpose of attaching or levying on the property of  
5 the defendant in such warrant, such officer, debtor or individual  
6 shall furnish him with a certificate under his hand, designating  
7 the number of rights or shares of the defendant in such association  
8 or corporation, with any dividend or any incumbrance thereon, or  
9 the amount and description of the property held by such associa-  
10 tion, corporation, or individual, for the benefit of, or debt owing to  
11 the defendant. If such officer, debtor or individual refuse to do so,  
12 he may be required by the court or judge to attend before him,  
13 and be examined on oath concerning the same, and obedience to  
14 such order may be enforced by attachment.

Gamble v. Rhyne, 80—183.

**Sec. 735. Judgment, how satisfied.**

C. C. P., s. 209.

In case judgment be entered for the plaintiff in such action, the  
2 sheriff shall satisfy the same out of the property attached by him,  
3 if it shall be sufficient for that purpose:

4 (1) By paying over to such plaintiff the proceeds of all property  
5 sold by him, and of all debts or credits collected by him, or so  
6 much as shall be necessary to satisfy such judgment;

7 (2) If any balance remain due, and an execution shall have  
8 been issued on such judgment, he shall proceed to sell under such  
9 execution so much of the attached property, real or personal, ex-  
10 cept as provided in sub-division four of this section, as may be  
11 necessary to satisfy the balance, if enough for that purpose shall  
12 remain in his hands; and in case of the sale of any rights or shares  
13 in the stock of a corporation or association, the sheriff shall exe-  
14 cute to the purchaser a certificate of sale thereof, and the purchaser  
15 shall thereupon have all the rights and privileges in respect thereto  
16 which were had by such defendant;

17 (3) If any of the attached property belonging to the defendant,  
18 shall have passed out of the hands of the sheriff without having  
19 been sold or converted into money, such sheriff shall repossess  
20 himself of the same, and for that purpose, shall have all the au-  
21 thority which he had to seize the same under the attachment: and  
22 any person who shall wilfully conceal or withhold such property  
23 from the sheriff, shall be liable to double damages at the suit of  
24 the party injured;

25 (4) Until the judgment against the defendant shall be paid, the  
26 sheriff may proceed to collect the notes and other evidences of  
27 debt, and the debts that may have been seized or attached, under  
28 the warrant of attachment, and to prosecute any bond he may  
29 have taken in the course of such proceedings, and apply the pro-  
30 ceeds thereof to the payment of the judgment.

31 At the expiration of six months, from the docketing of the  
32 judgment, the court shall have power upon the petition of the  
33 plaintiff, accompanied by an affidavit setting forth fully all the



34 proceedings which have been had by the sheriff, since the service  
35 of the attachment, the property attached, and the disposition  
36 thereof, and also the affidavit of the sheriff that he has used due  
37 diligence, and endeavored to collect the evidences of debt in his  
38 hands so attached, and that there remains uncollected of the same,  
39 any part or portion thereof, to order the sheriff to sell the same  
40 upon such terms and in such manner as shall be deemed proper.  
41 Notice of such application shall be given to the defendant or to his  
42 attorney, if the defendant shall have appeared in the action. In  
43 case the summons has not been personally served on the defend-  
44 ant, the court shall make such rule or order, as to service of  
45 notice, and time of service, as shall be deemed just. When  
46 the judgment and all costs of the proceedings shall have been paid,  
47 the sheriff upon reasonable demand, shall deliver over to the  
48 defendant the residue of the attached property, or the proceeds  
49 thereof.

Deep River Copper Co. v. Martin, 70—300; Com'rs of Montgomery v. Riley, 75—144; Gamble v. Rhyne, 80—183.

**Sec. 736.** When action to recover notes, &c., of defendant may be prosecuted by plaintiff in the action in which the attachment issued.

The actions herein authorized to be brought by the sheriff may C. C. P., s. 210.  
2 be prosecuted by the plaintiff, or under his direction, upon the de-  
3 livery by him to the sheriff, of an undertaking executed by two  
4 sufficient sureties, to the effect that the plaintiff will indemnify the  
5 sheriff from all damages, costs and expenses on account thereof,  
6 not exceeding two hundred and fifty dollars in any one action.  
7 Such sureties shall, in all cases when required by the sheriff, jus-  
8 tify by making an affidavit that each is a householder or free-  
9 holder, and worth double the amount of the penalty of the bond,  
10 over and above all demands, liabilities, and exemptions.

Shuler v. Bryson, 65—201; Carmer v. Evers, 80—55.

**Sec. 737.** Bond of plaintiff, how disposed of, on judgment for defendant.

If the foreign corporation, or the absent, absconding, or concealed C. C. P., s. 211.  
2 defendant, recover judgment against the plaintiff in such action,  
3 any bond taken upon the issuing of the warrant of attachment,  
4 and any bond taken by the sheriff, except such as are mentioned  
5 in the preceding section, all the proceeds of sales and moneys col-  
6 lected by him, and all the property attached remaining in his  
7 hands, shall be delivered by him to the defendant or to his agent,  
8 on request, and the warrant shall be discharged and the property  
9 released.

**Sec. 738.** Attachment discharged, and property or its proceeds returned to the defendant on his appearance in action.

Whenever the defendant shall have appeared in such action, he C. C. P., s. 212.  
2 may apply to the court in which the action is pending, or to the 1870-'1, c. 166.

3 judge thereof, for an order to discharge the same; and if the same  
4 be granted, all the proceeds of sale, and moneys collected in such  
5 action, and all the property attached remaining in the hands of  
6 any officer of the court, under any process or order in such action,  
7 shall be delivered or paid to the defendant or to his agent, and re-  
8 leased from the attachment. And where there is more than one  
9 defendant, and several property of either of the defendants has  
10 been seized by virtue of the order of attachment, the defendant,  
11 whose several property has been seized, may apply in like manner  
12 for relief.

*Bear v. Cohen*, 65—511; *Palmer v. Boshier*, 71—291; *Rahity v. Stringfellow & Friend*, 72—323;  
*Palmer v. Boshier*, 72—371; *Devries v. Summit*, 86—126.

**Sec. 739. Undertaking of defendant on appearance to discharge the property.**

C. C. P., s. 213.

Upon such application the defendant shall deliver to the court  
2 an undertaking, executed by two sureties residing in this state, ap-  
3 proved by such court, to the effect that such surety will, on demand,  
4 pay to the plaintiff the amount of judgment that may be recovered  
5 against the defendant in the action, not exceeding the sum speci-  
6 fied in the undertaking, which shall be at least double the amount  
7 claimed by the plaintiff in his complaint. If it shall appear by  
8 affidavit, that the property attached be of less value than the  
9 amount claimed by the plaintiff, the court or judge may order the  
10 same to be appraised, and the amount of the undertaking shall  
11 then be double the amount so appraised. And where there is  
12 more than one defendant, and several property of either of the de-  
13 fendants has been seized by virtue of the order of attachment, the  
14 defendant whose several property has been seized may deliver to  
15 the court an undertaking, in accordance with the provision of this  
16 section, to the effect that he will, on demand, pay to the plaintiff  
17 the amount of judgment that may be recovered against such de-  
18 fendant. And all the provisions of this section, applicable to such  
19 an undertaking, shall be applied thereto.

*Stephenson v. Todd, Pugh & Co.*, 63—368; *Bear v. Cohen*, 65—511; *Myers v. Hamilton*, 65—567;  
*Brown, Daniel & Co. v. Hawkins*, 65—645; *Canal Co. v. McAllister*, 74—159; *Weiller v. Lawrence*, 81—65; *Bruff v. Stern*, 81—183.

**Sec. 740. Property claimed by third party, may interplead.**

R. C., c. 7, s. 10.  
1793, c. 389, s. 3.

When the property attached shall be claimed by any other per-  
2 son, the claimant may interplead, first giving security for such costs  
3 and damages as may be awarded against him, and shall at the same  
4 time file a petition in writing, setting forth the particular property  
5 claimed, and by what right or title he claims the same; a copy of  
6 which petition shall be served on the plaintiff at least ten days be-  
7 fore the trial of the action, when the court shall order a jury to be  
8 impaneled to inquire in whom is the right of the property levied

9 upon; and the finding of the jury shall be conclusive as to the  
10 parties then in court, and the court shall adjudge accordingly.

Simpson v. Harry, 1 Dev. & Bat., 202; McLean v. Douglass, 6 Ire., 233; Evans v. Governor's  
Creek Transportation and Mining Co., 5 Jones, 331; Cherry v. Nelson, 7 Jones, 141; Bank of  
Fayetteville v. Spurling, 7 Jones, 398; Sims v. Goettle, 82—268; Sims v. Goettle, 82—271.

**Sec. 741. When the sheriff to return warrant, with his proceedings thereon.**

The sheriff shall return the warrant of attachment, and the un- C. C. P., s. 214.  
2 dertakings provided for in this chapter, with a statement of his  
3 proceedings thereon, at the time and place at which it is on its  
4 face returnable, and upon, or at any time after, such return, he  
5 may obtain from the court to which the same was returnable, a  
6 certified copy thereof, which shall be held and deemed for the pur-  
7 pose of giving him authority, the same as the original, and when  
8 the warrant shall have been fully executed or discharged, the  
9 sheriff shall return the same, with his proceedings, to said court.

**Sec. 742. Motion to vacate or modify warrant, or increase security.**

The defendant, or a person who has acquired a lien upon, or in-  
2 terest in, his property after it was attached, may at any time before  
3 the actual application of the attached property, or the proceeds  
4 thereof, to the payment of a judgment recovered in the action,  
5 apply to the court having jurisdiction to vacate or modify the  
6 warrant, or to increase the security given by the plaintiff, or for  
7 one or more of those forms of relief, together or in the alternative,  
8 as in cases of other provisional remedies.

Bear v. Cohen, 65—511; Brown, Daniel & Co. v. Hawkins, 65—645; Bruff v. Stern, 81—183;  
Devries v. Summit, 86—126.

**Sec. 743. Exception to and justification of sureties.**

The sureties to all undertakings in all proceedings for attach-  
2 ment may be excepted to, and justified as required in action for  
3 claim and delivery.

CHAPTER FIVE.

APPOINTMENT OF RECEIVERS AND OTHER PROVISIONAL REMEDIES.

SECTION.

- 744. Appointment of receivers.
- 745. Property held by trustees.
- 746. Judge may punish disobedience to order.

SECTION.

- 747. Judgment for sum admitted to be due.
- 748. Receiver to give security.

**Sec. 744. Appointment of receivers.**

A judge of the superior court having authority to grant restrain-  
2 ing orders and injunctions, as prescribed in chapter twenty-one, shall

C. C. P., s. 215.  
1876-7, c. 223.  
1879, c. 63.  
1881, c. 51.



3 have the like jurisdiction in appointing receivers, and all motions  
4 to show cause shall be returnable as is provided for injunctions.

5 A receiver may be appointed—

6 (1) Before judgment, on the application of either party, when  
7 he establishes an apparent right to property which is the subject  
8 of the action, and which is in the possession of an adverse party,  
9 and the property, or its rents and profits, are in danger of being  
10 lost, or materially injured or impaired; except in cases where  
11 judgment upon failure to answer may be had on application to the  
12 court;

13 (2) After judgment, to carry the judgment into effect;

14 (3) After judgment, to dispose of the property according to the  
15 judgment, or to preserve it during the pendency of an appeal, or  
16 when an execution has been returned unsatisfied, and the judg-  
17 ment debtor refuses to apply his property in satisfaction of the  
18 judgment;

19 (4) In cases provided in said chapter and by special statutes, when  
20 a corporation has been dissolved, or is insolvent, or in imminent  
21 danger of insolvency, or has forfeited its corporate rights; and in  
22 like cases, of the property within this state of foreign corporations.  
23 Receivers of the property within this state of foreign or other  
24 corporations shall be allowed such commissions as may be fixed  
25 by the judge appointing them, not exceeding five per cent. on the  
26 amount received and disbursed by them.

*Parks v. Sprinkle*, 64—637; *Richards v. Baurman*, 65—162; *Skinner v. Maxwell*, 66—45;  
*Howes v. Mauney*, 66—218; *Battle v. Davis*, 66—252; *Skinner v. Maxwell*, 68—400; *Rankin v.*  
*Minor*, 72—424; *Righton v. Pruden*, 73—61; *Gray v. Gaither*, 74—237; *Ten-Broeck v. Orchard*,  
74—409; *Rollins v. Henry*, 77—467; *Dobson v. Simonton*, 78—63; *Kerchner v. Fairley*, 80—24;  
*Twitty v. Logan*, 80—69; *Corbin v. Berry & McGowan*, 83—27; *Oldham v. Bank*, 84—304.

#### Sec. 745. Property held by trustees.

C. C. P., s. 215.

When it is admitted, by the pleading or examination of a party  
2 that he has in his possession, or under his control, any money or  
3 other thing capable of delivery, which, being the subject of the liti-  
4 gation, is held by him as trustee for another party, or which belongs  
5 or is due to another party, the judge may order the same to be de-  
6 posited in court, or delivered to such party, with or without secu-  
7 rity, subject to the further direction of the judge.

#### Sec. 746. Judge may punish disobedience to order.

C. C. P., s. 215.

Whenever, in the exercise of his authority, a judge shall have  
2 ordered the deposit, delivery or conveyance of money or other prop-  
3 erty, and the order is disobeyed, the judge, besides punishing the  
4 disobedience as for contempt, may make an order requiring the  
5 sheriff to take the money or property, and deposit, deliver, or con-  
6 vey it, in conformity with the direction of the judge.

Sec. 747. Judgment for sum admitted to be due.

When the answer of the defendant expressly, or by not denying, C. C. P., s. 215.  
2 admits part of the plaintiff's claim to be just, the judge, on motion,  
3 may order such defendant to satisfy that part of the claim, and  
4 may enforce the order as it enforces a judgment or provisional  
5 remedy.

Skinner v. Maxwell, 68—400; Rankin v. Minor, 72—424; Gray v. Gaither, 74—237; Rollins v. Henry, 77—467.

Sec. 748. Receiver to give security.

A receiver appointed in an action or special proceeding must,  
2 before entering upon his duties, execute and file with the clerk of  
3 the court wherein the action is pending, an undertaking payable  
4 to the adverse party with at least two sufficient sureties in a pen-  
5 alty fixed by the judge or justices, making the appointment condi-  
6 tioned for the faithful discharge of his duties as receiver. And the  
7 judge or justices, having jurisdiction thereof, may at any time re-  
8 move the receiver, or direct him to give a new undertaking, with  
9 new sureties, with the like condition. But this section does not  
10 apply to a case where special provision is made by law, for the  
11 security to be given by a receiver, nor for increasing the same, nor  
12 for removing a receiver.

Lord v. Meroney, 79—14; Bank v. Creditors, 86—223.

TITLE X.

OF THE TRIAL AND JUDGMENT IN CIVIL ACTIONS.

- Chap. I. JUDGMENT UPON FAILURE TO ANSWER.  
II. ISSUES AND THE MODE OF TRIAL.  
III. TRIAL BY JURY.  
IV. TRIAL BY COURT.  
V. TRIAL BY REFEREES.  
VI. THE MANNER OF ENTERING JUDGMENT.

CHAPTER ONE.

JUDGMENT UPON FAILURE TO ANSWER.

SECTION.	SECTION.
749. Judgment defined.	753. Judgment on frivolous demurrer, answer or reply.
750. Judgment by default final, in what cases.	754. Provisions of this chapter applicable to courts of justices of the peace.
751. In all other actions upon failure to answer, judgment by default and inquiry.	755. In actions to recover real property or the possession thereof.
752. Judgment against infants in certain cases validated.	

**Sec. 749. Judgment defined.**

C. C. P., s. 216.

A judgment is either interlocutory, or the final determination of the rights of the parties in the action.

Gibson v. Greener, 63—10; Mitchell v. Henderson, 63—643; Garrett v. Smith, 64—93; Brown v. Foust, 64—672; Lee v. Pearce, 68—76; Hutchinson v. Smith, 68—354; Dunn v. Barnes, 73—273; Miller v. Justice, 86—26.

**Sec. 750. Judgment by default final, in what cases.**C. C. P., s. 217.  
1870-'1, c. 42.

Judgment by default final may be had on failure of defendant to answer, as follows:

(1) Where complaint sets forth one or more causes of action, each consisting of the breach of an express or implied contract to pay, absolutely or upon a contingency, a sum or sums of money fixed by the terms of the contract, or capable of being ascertained therefrom by computation. Upon proof of personal service of summons, or of service of summons by publication, on one or more of the defendants, and upon the complaint being verified, judgment shall be entered at the return term for the amount mentioned in the complaint, against the defendant or defendants, or against one or more of several defendants, in the cases provided in section five hundred and eighty-eight.

(2) 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 court a statement admitting such counter-claim, which statement shall be annexed to and be a part of the judgment-roll.

(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 said judgment, in case the defendant or his representatives shall apply and be admitted to defend the action, and shall succeed in such defence.

Wynne v. Prairie, 86—73; Rogers v. Moore, 86—85.



**Sec. 751.** In all other actions upon failure to answer, judgment by default and inquiry.

In all other actions, except those mentioned in the preceding 2 section, when the defendant shall fail to answer, and upon a like 3 proof, judgment by default and inquiry may be had at the return 4 term, and inquiry shall be executed at the next succeeding term. 5 If the taking of an intricate or long account be necessary to exe- 6 cute properly the inquiry, the court, at the return term, may order 7 the account to be taken by the clerk of the court, or some other 8 fit person, and the referee shall make his report at the next suc- 9 ceeding term; in all other cases, the inquiry shall be executed by 10 a jury, unless by consent the court is to try the facts as well as the 11 law.

*Wynne v. Prairie*, 86—73; *Rogers v. Moore*, 86—85.

**Sec. 752.** Judgment against infants in certain cases validated.

In any and all civil actions, and special proceedings pending on the 2 fourteenth day of March, one thousand eight hundred and seventy- 3 nine, or theretofore determined, in any of the courts, wherein any 4 or all of the defendants were infants, idiots, lunatics or persons 5 *non compos mentis*, on whom there was no personal service of the 6 summons, the proceedings, actions, decrees and judgments taken, had 7 and made by such courts in such civil actions and special proceed- 8 ings shall be valid, effectual and binding against and upon such 9 infants, idiots, lunatics and persons *non compos mentis*, and their 10 rights and estates in like manner, as if they had been personally 11 served with a summons therein: *Provided*, that this section shall 12 not have the effect, nor be construed, to prevent any of the pro- 13 ceedings, actions, judgments or decrees hereby rendered regular 14 and confirmed, from being impeached and set aside for fraud.

1879, c. 257.  
1880, c. 23.

*Gully v. Macy*, 86—721.

**Sec. 753.** Judgment on frivolous demurrer, answer or reply.

If a demurrer, answer or reply be frivolous, the party preju- 2 diced thereby may apply to the court, or to the judge thereof, upon 3 a previous notice of five days, for judgment thereon, and judg- 4 ment may be given accordingly.

C. C. P., s. 218.  
1870—'1, c. 42.

*Erwin v. Lowery*, 64—321; *Clayton v. Jones*, 68—497; *Moore v. Edmaiston*, 70—510; *Stith v. Lookabill*, 71—25; *Baldwin v. York*, 71—463; *Dunn v. Barnes*, 73—273; *Mabry v. Erwin*, 78—45; *Twitty v. Logan*, 80—69.

**Sec. 754.** Provisions of this chapter applicable to courts of justices of the peace.

The provisions of this chapter shall apply, as near as may be, to 2 proceedings in courts of justices of the peace.

**Sec. 755.** In actions to recover real property or the possession thereof.

In all actions in the superior court for the recovery of real prop- 2 erty, or for the possession thereof, upon failure of the defendant to

1869—70, c. 193, s. 4

3 file the undertaking required by section six hundred and three, or  
 4 upon failure of sureties to justify as provided in section nine hun-  
 5 dred and thirty-one, the plaintiff shall have judgment for the relief  
 6 demanded in the complaint, unless the defendant is excused from  
 7 giving said undertaking before answering, as provided in section  
 8 six hundred and three.

Jones v. Fortune, 69—322; Lambert v. Kinnery, 74—348; Justice v. Eddings, 75—581; Rol-  
 lins v. Henry, 77—467.

## CHAPTER TWO.

### ISSUES AND THE MODE OF TRIAL.

#### SECTION.

756. Issues defined; different kinds of issues.  
 757. Issue of law.  
 758. Issue of fact.  
 759. On issues of both law and fact, issue of  
 law to be tried first.  
 760. When and by whom issues to be made  
 up.  
 761. Issues should be in concise and direct  
 terms.  
 762. Trial defined.

#### SECTION.

763. Issues, how tried.  
 764. Other issues to be tried by the court or  
 judge.  
 765. Issues of fact, when to be tried.  
 766. Trial may be postponed by clerk or judge  
 before the trial term on notice.  
 767. Trial postponed by judge in term time,  
 when.  
 768. Order of business.

#### Sec. 756. Issues defined; different kinds of issues.

C. C. P., s. 219.

Issues arise upon the pleadings, when a material fact or conclu-  
 2 sion of law is maintained by the one party and controverted by  
 3 the other. They are of two kinds:  
 4 (1) Of law; and  
 5 (2) Of fact.

Heilig v. Stokes, 63—612; Kluttz v. McKenzie, 65—102; Clegg v. N. Y. W. Soapstone Co.,  
 66—391; Foushee & Thompson v. Pattershall, 67—453; Armfield v. Brown, 70—27; Keener v.  
 Finger, 70—35; Lippard v. Roseman, 72—427; Moore v. Hill, 85—218; Alexander v. Robin-  
 son, 85—275.

#### Sec. 757. Issue of law.

C. C. P., s. 220.

An issue of law arises upon a demurrer to the complaint, an-  
 2 swer or reply, or to some part thereof.

Kluttz v. McKenzie, 65—103; Swepson v. Harvey, 69—387.

#### Sec. 758. Issue of fact.

C. C. P., s. 221.

An issue of fact arises—  
 2 (1) Upon a material allegation in the complaint controverted by  
 3 the answer; or,  
 4 (2) Upon new matter in the answer, controverted by the re-  
 5 ply; or,

6 (3) Upon new matter in the reply, except an issue of law is  
7 joined thereon.

Neal v. Fesperman, 1 Jones, 446; Martin v. Milbourne, 66—321; Albright v. Mitchell, 70—445; McBryde v. Patterson, 73—478; McRae v. Lawrence, 75—289; Jones v. Hemphill, 77—42; Brandon v. Phelps, 77—44; Churchill v. Lee, 77—341; Hudson v. Wetherington, 79—3; Fickey v. Merrimon, 79—585; Hoff v. Crafton, 79—592; McElwee v. Blackwell, 82—345; Cedar Falls v. Wallace, 83—225.

**Sec. 759. On issues of both law and fact, issue of law to be tried first.**

Issues both of law and of fact may arise upon different parts of C. C. P., s. 222.  
2 the pleadings in the same action. In such cases the issues of law  
3 must be first tried, unless the court otherwise direct.

**Sec. 760. When and by whom issues to be made up.**

During the term at which the reply is filed, or ten days thereaf-  
2 ter, the attorney of the plaintiff will draw up in writing such issues  
3 arising upon the pleadings, as he deems material to be tried, and  
4 submit the statement to the attorney of the defendant, and if he  
5 concurs, the statement signed by the attorneys will be filed with  
6 the clerk; otherwise the defendant's attorney will make a like  
7 statement, and the two will be handed to the judge, who will settle  
8 the issues and file them with the clerk to stand for trial at the next  
9 term.

Rule III. of Sup.  
Ct., June Term,  
1871.

**Sec. 761. Issues should be in concise and direct terms.**

Issues shall be framed in concise and direct terms, and prolixity  
2 and confusion must be avoided, by not having too many issues.

Rule IV. of Sup.  
Ct., June Term,  
1871.

School Committee of Providence Township v. Kesler, 66—323.

**Sec. 762. Trial defined.**

A trial is the judicial examination of the issues between the par- C. C. P., s. 223.  
2 ties, whether they be issues of law or of fact.

**Sec. 763. Issues, how tried.**

An issue of law must be tried by the judge or court unless it be  
2 referred, as provided in sections seven hundred and eighty-six and  
3 seven hundred and eighty-seven. An issue of fact must be tried  
4 by a jury, unless a trial by jury be waived, as provided in section  
5 seven hundred and eighty-two, or a reference be ordered, as pro-  
6 vided in sections seven hundred and eighty-six and seven hundred  
7 and eighty seven.

C. C. P., s. 224.

Erwin v. Lowery, 64—321; Andrews v. Pritchett, 66—387; Swepson v. Harvey, 66—436; Goldsborough v. Turner, 67—403; Armfield v. Brown, 70—27; Isler v. Murphy, 71—436; Lippard v. Roseman, 72—427; Womble v. Fraps, 77—198; Chasteen v. Martin, 81—51.

**Sec. 764. Other issues to be tried by the court or judge.**

Every other issue is triable by the court, or the judge thereof, C. C. P., s. 225.  
2 who, however, may order the whole issue, or any specific question  
3 of fact involved therein, to be tried by a jury, or may refer it, as



4 provided in sections seven hundred and eighty-six and seven hun-  
 5 dred and eighty-seven. And when a compulsory reference is or-  
 6 dered under this or the preceding section, as provided in section  
 7 seven hundred and eighty-seven, either party has the right to have  
 8 the issues of fact tried by a jury.

Andrews v. Pritchett, 66—387; Goldsborough v. Turner, 67—403; Green v. Castlebury, 70—20;  
 Keener v. Finger, 70—35; Stith v. Lookabill, 71—25.

**Sec. 765. Issues of fact, when to be tried.**

C. C. P., s. 226.

Every issue of fact joined on the pleadings, and inquiry of dam-  
 2 ages required to be tried by a jury, shall be tried at the term of  
 3 the court next ensuing such joinder of issue or order for inquiry :  
 4 *Provided*, such issue shall have been joined or order for inquiry  
 5 made, more than thirty days before such term, but if not, they  
 6 shall be tried at the second term after such joinder or order.

**Sec. 766. Trial may be postponed by clerk or judge before the trial term on notice.**

C. C. P., s. 227.

Any part to an action may apply to the court in which it is  
 2 pending, or to the judge thereof, after three days' notice in writing  
 3 to the adverse party, to have the trial deferred to a term subse-  
 4 quent to that in which it is regularly triable; such application  
 5 must be made thirty days before the trial term, and must be on  
 6 affidavit. The court or judge may defer the trial as asked for, on  
 7 such terms as shall be just, if satisfied—

8 (1) That the applicant has used due diligence to have his case  
 9 ready for trial; and,

10 (2) That by reason of circumstances beyond his control, which  
 11 he shall set forth, he cannot have a fair trial at the regular trial  
 12 term; if the application is made by reason of the expected ab-  
 13 sence of a witness, it shall state the name and residence of the  
 14 witness, the facts expected to be proved by him, and the grounds  
 15 for the expectation of his non-attendance, and that the applicant  
 16 expects to procure his evidence at or before some named subse-  
 17 quent term. The applicant shall in all cases pay the costs of the  
 18 application.

\*

**Sec. 767. Trial postponed by judge in term time, when.**

C. C. P., s. 228.

The judge at any time during the term at which an action is  
 2 triable, may postpone the trial on the application of either party,  
 3 and on such terms as shall be just, if satisfied:

4 (1) That the applicant has used due diligence to be ready for  
 5 trial;

6 (2) That he cannot have a fair trial at that term, by reason of  
 7 circumstances stated, and if the ground of application be the non-  
 8 attendance of a witness, the affidavit shall contain the particulars  
 9 required by sub-division two of section seven hundred and sixty-  
 10 six. Unless the applicant shall also set forth in his affidavit that  
 11 the facts upon which his application is grounded occurred or came

12 to his knowledge too late to allow him to apply as prescribed in  
13 the preceding section, and that his application is made as soon as  
14 it reasonably could be after the knowledge of such facts, the post-  
15 ponement shall not be granted, except on the terms of the payment  
16 of the costs in the action for the term.

Moore v. Dickson, 74—423; Isler v. Dewey, 79—1. See R. C. c. 31, s. 57, (13, 14).

**Sec. 768. Order of business.**

The criminal calendar shall be first disposed of, unless, by con- C. C. P., s. 229.

1 sent of counsel, or for reasons satisfactory to the judge, particular  
3 criminal actions may be deferred. The issues on the civil calendar  
4 shall be disposed of in the following order, unless, for the conve-  
5 nience of parties or the dispatch of business, the court shall other-  
6 wise direct :

- 7 (1) Issues of fact to be tried by a jury ;
- 8 (2) Issues of fact to be tried by the court ;
- 9 (3) Issues of law.

Armfield v. Brown, 70—27; Lippard v. Roseman, 72—427.

CHAPTER THREE.

TRIAL BY JURY.

SECTION.

- 769. Jury, how drawn.
- 770. Petit jurors sworn in civil cases; defaulting persons fined.
- 771. Names of jurors to be called before impaneled; right of challenge.
- 772. Separate trials.
- 773. Judge to be furnished with copy of pleadings, &c.
- 774. General and special verdicts defined.
- 775. When jury may render either a general or special verdict, and when judge may direct a special finding.

SECTION.

- 776. On special finding with general verdict, former to control.
- 777. Jury to assess defendant's damages in certain cases.
- 778. Entry of the verdict; motion for new trial on judge's minutes.
- 779. Judge to explain law, but to express no opinion on facts.
- 780. Judge to put his instructions in writing.
- 781. Counsel to put their prayers for instruction in writing.

**Sec. 769. Jury, how drawn.**

The judges of the superior court, at the terms of their courts, R. C., c. 31, s. 33.  
1779, c. 157, s. 11.

2 shall direct the names of all persons returned as jurors to be writ-  
3 ten on scrolls of paper and put into a box or hat and drawn out by  
4 a child under ten years of age; whereof the first eighteen drawn,  
5 shall be a grand jury for the court; and the residue shall serve as  
6 petit jurors for the court.

State v. Heaton, 77—505.

**Sec. 770. Petit jurors sworn in civil cases; defaulting persons fined.**

The clerk shall, at the beginning of the court, swear such of the R. C., c. 31, s. 34.  
1790, c. 321.  
1822, c. 1133, s. 1.

2 petit jury as are of the original panel, to try all civil cases; and if

3 there should not be enough of the original panel, the talesmen  
 4 shall be sworn; and the petit jurors of the original panel, as well  
 5 as talesmen, shall be sworn as prescribed in the chapter entitled  
 6 "Oaths": *Provided*, that nothing herein contained shall be con-  
 7 strued to disallow the usual challenges in law to the whole jury so  
 8 sworn or to any of them; and if by reason of such challenge, any  
 9 juror shall be withdrawn, his place on the jury shall be supplied  
 10 by any of the original *venire*, or from the bystanders qualified to serve  
 11 as jurors. Any juror failing to appear shall be fined by the court  
 12 the sum of forty dollars, and notice shall issue to such juror to ap-  
 13 pear at the next term of the court and show cause why the judg-  
 14 ment should not be made absolute.

**Sec. 771. Names of jurors to be called before impaneled; right of challenge.**

R. C., c. 31, s. 35.  
 1796, c. 452, s. 2.  
 1812, c. 833.

The clerk, before a jury shall be impaneled to try the issues in  
 2 any civil suit, shall read over the names of the jury upon the  
 3 panel in the presence and hearing of the parties or their counsel;  
 4 and the parties, or their counsel for them, may challenge peremp-  
 5 torily four jurors upon the said panel, without showing any cause  
 6 therefor, which shall be allowed by the court.

*Bryan v. Harrison*, 76—360.

**Sec. 772. Separate trials.**

C. C. P., s. 230.

A separate trial between a plaintiff and any of the several de-  
 2 fendants may be allowed by the court, whenever, in its opinion,  
 3 justice will thereby be promoted.

**Sec. 773. Judge to be furnished with copy of pleadings, &c.**

C. C. P., s. 231.

The clerk shall furnish the judge with a copy of the summons  
 2 and pleadings, and with the offer of the defendant if any shall have  
 3 been made.

**Sec. 774. General and special verdicts defined.**

C. C. P., s. 232.

A general verdict is that, by which the jury pronounce generally  
 2 upon all or any of the issues, either in favor of the plaintiff or de-  
 3 fendant. A special verdict is that by which the jury find the facts  
 4 only, leaving the judgment to the court.

*School Committee of Providence Township v. Kesler*, 66—323.

**Sec. 775. When jury may render either a general or special verdict; and when judge may direct a special finding.**

C. C. P., s. 233.

In an action for the recovery of specific personal property, if the  
 2 property has not been delivered to the plaintiff, or the defendant  
 3 by his answer claims a return thereof, the jury shall assess the value  
 4 of the property, if their verdict be in favor of the plaintiff; or if  
 5 they find in favor of the defendant, and that he is entitled to a re-  
 6 turn thereof, they may at the same time assess the damages, if any  
 7 are claimed in the complaint or answer, which the prevailing party



8 has sustained by reason of the detention or taking and withhold-  
9 ing such property. In every action for the recovery of money only,  
10 or specific real property, the jury, in their discretion, may render a  
11 general or special verdict. In all other cases, the court may direct  
12 the jury to find a special verdict in writing, upon all or any of the  
13 issues; and in all cases may instruct them if they render a general  
14 verdict, to find upon particular questions of fact, to be stated in  
15 writing, and may direct a written finding thereon. The special  
16 verdict or finding shall be filed with the clerk, and entered upon  
17 the minutes.

Outlaw v. Hurdle, 1 Jones, 150; Watson v. Davis, 7 Jones, 173; Henry v. Rich, 64—379;  
Coughlan, Randall & Co., v. White, 66—102; School Committee v. Kesler, 66—323; Holmes v.  
Godwin, 69—467; Armfield v. Brown, 70—27; Williams v. Thomas, 78—47.

**Sec. 776. On special finding with general verdict, former to control.**

Where a special finding of facts shall be inconsistent with the  
2 general verdict, the former shall control the latter, and the court  
3 shall give judgment accordingly. C. C. P., s. 234.

**Sec. 777. Jury to assess defendant's damages in certain cases.**

When a verdict is found for the plaintiff in an action for the  
2 recovery of money, or for the defendant when a set-off for the  
3 recovery of money is established, beyond the amount of the  
4 plaintiff's claim as established, the jury must also assess the  
5 amount of the recovery; they may also, under the direction of  
6 the court, assess the amount of the recovery when the court gives  
7 judgment for the plaintiff on the answer. If a set-off, established  
8 at the trial, exceed the plaintiff's demand so established, judgment  
9 for the defendant must be given for the excess; or if it appear  
10 that the defendant is entitled to any other affirmative relief, judg-  
11 ment must be given accordingly. C. C. P., s. 235.

**Sec. 778. Entry of the verdict; motion for new trial on judge's minutes.**

(1) Upon receiving a verdict, the clerk shall make an entry in  
2 his minutes, specifying the time and place of the trial, the names  
3 of the jurors and witnesses, the verdict, and either the judgment  
4 rendered thereon, or an order that the cause be reserved for argu-  
5 ment or further consideration. If a different direction be not  
6 given by the court, the clerk must enter judgment in conformity  
7 with the verdict. C. C. P., s. 236.

(2) If an exception be taken, it may be reduced to writing at  
9 the time, or entered in the judge's minutes, and afterwards settled  
10 as provided by the rules of the court, and then stated in writing  
11 in a case or separately, with so much of the evidence as may be  
12 material to the question to be raised, but a bill of exceptions need  
13 not be made.

(3) If the exceptions be in the first instance stated in a case, and  
15 it be necessary to separate them, the separation may be made under  
16 the direction of the judge.

17 (4) The judge who tries the cause may, in his discretion, enter-  
 18 tain a motion, to be made on his minutes, to set aside a verdict  
 19 and grant a new trial upon exceptions, or for insufficient evidence,  
 20 or for excessive damages; but such motion can only be heard at  
 21 the same term at which the trial is had. When such motion is  
 22 heard and decided upon the minutes of the judge, and an appeal  
 23 is taken from the decision, a case or exceptions must be settled in  
 24 the usual form, upon which the argument of the appeal must be  
 25 had.

Bledsoe v. Nixon, 69—81; Holmes v. Godwin, 69—467; Armfield v. Brown, 70—27; Shehan v. Malone, 72—59; Winburne v. Bryan, 73—47; England v. Duckworth, 75—309; Quincy v. Perkins, 76—295; Henry v. Smith, 78—27; Tankard v. Tankard, 79—54; Ballard v. Stanly, 79—627.

**Sec. 779. Judge to explain law, but to express no opinion on facts.**

C. C. P., s. 237.  
 R. C., c. 31, s. 130.  
 1796, c. 452, s. 1.

No judge, in giving a charge to the petit jury, shall give an  
 2 opinion whether a fact is fully or sufficiently proven, such matter  
 3 being the true office and province of the jury; but he shall state  
 4 in a plain and correct manner the evidence given in the case, and  
 5 declare and explain the law arising thereon.

Orbison v. Morrison, 3 Murph., 551; Tate v. Greenlee, 3 Murph., 556; Sneed v. Creath, 1 Haw., 309; Reel v. Reel, 2 Haw., 63; McNeill v. Massey, 3 Haw., 91; State v. Morris, 3 Haw., 388; Reed v. Shenck, 2 Dev., 415; State v. Moses, 2 Dev., 452; State v. Lipsey, 3 Dev., 485; State v. May, 4 Dev., 328; State v. Davis, 4 Dev., 612; State v. Haney, 2 Dev. & Bat., 390; State v. Johnson, 1 Ire., 551; State v. Angel, 7 Ire., 27; McEntire v. Durham, 7 Ire., 151; Bynum v. Rynum, 11 Ire., 632; Overman v. Coble, 13 Ire., 1; Baily v. Pool, 13 Ire., 404; Melvin v. Easley, 1 Jon., 386; State v. Cain, 2 Jon., 201; Wells v. Clements, 3 Jon., 168; State v. Whit., 5 Jon., 224; State v. Clara, 8 Jon., 25; State v. Dick, 2 Winst., 45; State v. Summey, 2 Winst., 108; State v. Vinson, 63—335; Glenn v. R. R. Co., 63—510; State v. Dunlop, 65—288; State v. Parker, 66—624; Reiger v. Davis, 67—185; State v. Jones, 67—285; Powell v. W. & W. R. R. Co., 68—395; Witkowsky & Rintels v. Wasson, 71—451; Johnson v. Ray, 72—273; Barlow v. Norfleet, 72—535; Davis v. Hill, 75—224; State v. Dixon, 75—275; State v. Locke, 77—481; State v. Dancy, 78—437; State v. Matthews, 78—523; State v. Browning, 78—555; State v. Laxton, 78—504; March v. Verble, 79—19; Sever v. McLaughlin, 79—153; Wiseman v. Penland, 79—197; Fickey v. Merrimon, 79—585; State v. Sykes, 79—618; State v. Austin, 79—624; Wilson v. White, 80—280; State v. Hardee, 83—619.

**Sec. 780. Judge to put his instructions in writing.**

C. C. P., s. 238.

Every judge, at the request of any party to an action on trial,  
 2 made at or before the close of the evidence, before instructing the  
 3 jury on the law, shall put his instructions in writing, and read  
 4 them to the jury; he shall then sign and file them with the clerk  
 5 as a part of the record of the action.

Stout v. Woody, 63—37; Powell v. W. & W. R. R. Co., 68—395; Morgan v. Smith, 77—37; Brink v. Black, 77—59; Williamson v. Canal Co., 78—156.

**Sec. 781. Counsel to put their prayers for instruction in writing.**

C. C. P., s. 239.

Counsel praying of the judge instructions to the jury, shall put  
 2 their request in writing entitled of the cause, and sign them; oth-  
 3 erwise the judge may disregard them; they shall be filed with the  
 4 clerk as a part of the record.

Stout v. Woody, 63—37; Brink v. Black, 77—50; Williamson v. Canal Co., 78—156.

## CHAPTER FOUR.

## TRIAL BY THE COURT.

## SECTION.

782. Trial by jury, how waived.

783. On trial by the court, judgment, how given.

## SECTION.

784. Exceptions, how and when taken.

785. Proceedings upon judgment on issue of law.

**Sec. 782. Trial by jury, how waived.**

Trial by jury may be waived by the several parties to an issue C. C. P., s. 240.

2 of fact, in actions on contract, and with the assent of the court in  
3 other actions, except actions to annul a marriage, or for a divorce  
4 and separation, in the manner following :

5 (1) By failing to appear at the trial ;

6 (2) By written consent, in person or by attorney, filed with the  
7 clerk ;

8 (3) By oral consent, entered in the minutes.

Armfield v. Brown, 70—27; Isler v. Murphy, 71—436; Benbow v. Robbins, 72—422; Straus & Co. v. Beardsley, 79—59; Chastain v. Coward, 79—543; Chasteen v. Martin, 81—51; University v. Lassiter, 83—38; Isler v. Koonce, 83—55.

**Sec. 783. On trial by the court, judgment, how to be given.**

Upon the trial of a question of fact by the court, its decision C. C. P., s. 241.

2 shall be given in writing, and shall contain a statement of the  
3 facts found, and the conclusions of law, separately; and upon a  
4 trial of an issue at law, the decision shall be made in the same  
5 manner, stating the conclusions of law. Such decision shall be  
6 filed with the clerk during the court at which the trial takes place.  
7 Judgment upon the decision shall be entered accordingly.

Jacobs v. Burgwin, 63—196; McAden v. Banister, 63—478; Heilig v. Stokes & Pennington, 63—612; Clegg v. N. Y. White Soapstone Co., 66—391; Foushee v. Pattershall, 67—453; Straus & Co. v. Beardsley, 79—59; Chastain v. Coward, 79—543; Meekins v. Tatem, 79—546; Burke v. Turner, 85—500.

**Sec. 784. Exceptions, how and when taken.**

(1) For the purposes of an appeal, either party may except to a C. C. P., s. 242.

2 decision on a matter of law arising upon such trial within ten  
3 days after the judgment, in the same manner and with the same  
4 effect as upon a trial by jury: *Provided, however*, that where the de-  
5 cision does not authorize a final judgment, but directs further pro-  
6 ceedings before a referee or otherwise, either party may except  
7 thereto, and make a case or exception as above provided in case of  
8 an appeal.

9 (2) And either party desiring a review, upon the evidence ap-  
10 pearing on the trial of the questions of law, may at any time within  
11 ten days after the judgment, or within such time as may be pre-  
12 scribed by the rules of the court, make a case or exceptions in like  
13 manner as upon a trial by jury, except that the judge, in settling



14 the case, must briefly specify the facts found by him, and his con-  
15 elusions of law.

Jacobs v. Burgwin, 63—196; Foushee v. Pattershall, 67—453; Green v. Castleberry, 70—20;  
Burke v. Turner, 85—500.

#### Sec. 785. Proceedings upon judgment on issue of law.

C. C. P., s. 243.

On a judgment for the plaintiff upon an issue of law, the plain-  
2 tiff may proceed in the manner prescribed by the first two subdi-  
3 visions of section seven hundred and fifty, upon failure of the  
4 defendant to answer, where the summons was personally served.  
5 If judgment be for the defendant, upon an issue of law, and if tak-  
6 ing of an account or the proof of any fact be necessary to enable  
7 the court to complete the judgment, a reference or assessment by  
8 jury may be ordered, as provided in section seven hundred and  
9 fifty-one.

Ransom v. McClees, 64—17.

## CHAPTER FIVE.

### TRIAL BY REFEREES.

#### SECTION.

786. All issues referable by consent.

787. When reference may be compulsorily  
ordered.

#### SECTION.

788. Mode of trial; effect of report; review.

789. Referees, how chosen; who may be ref-  
eree; report.

C. C. P., s. 244.

#### Sec. 786. All issues referable by consent.

All, or any, of the issues in the action, whether of fact or of law,  
2 or both, may be referred, upon the written consent of the parties,  
3 except in actions to annul a marriage, or for divorce and separation.

Hall v. Craige, 65—51; Kluttz v. McKenzie, 65—102; Gudger v. Baird, 66—438; Johnston v.  
Haynes, 68—509; Green v. Castleberry, 70—20; Armfield v. Brown, 70—27; Keener v. Finger,  
70—35; Lusk v. Clayton, 70—184; Lippard v. Roseman, 72—427; Armfield v. Brown, 73—81;  
Price v. Eccles, 73—162; Perry v. Tupper, 77—413; Atkinson v. Whitehead, 77—418; Grant v.  
Reese, 82—72; Sloan v. McMahon, 85—296; Neal v. Becknell, 85—299; Barrett v. Henry, 85—321;  
Syme v. Bunting, 88—175; White v. Utley, 88—415.

C. C. P., s. 245.

#### Sec. 787. When reference may be compulsorily ordered.

Where the parties do not consent, the court may, upon the ap-  
2 plication of either, or of its own motion, except where the investi-  
3 gation will require the decision of difficult questions of law, direct  
4 a reference in the following cases:

- 5 (1) Where the trial of an issue of fact shall require the examina-  
6 tion of a long account on either side; in which case the referee may  
7 be directed to hear and decide the whole issue, or to report upon  
8 any specific question of fact involved therein; or,  
9 (2) Where the taking of an account shall be necessary for the

- \*10 information of the court, before judgment, or for carrying a judgment order into effect; or,  
 12 (3) When the case involves a complicated question of boundary, or one which requires a personal view of the premises;  
 14 (4) Where a question of fact, other than upon the pleadings, shall arise, upon motion or otherwise, in any stage of the action. But the compulsory reference under this section shall not deprive either party of his right to a trial of the issues of fact arising on the pleadings, by a jury.

Douglas v. Caldwell, 64—372; Heilig v. Foard, 64—710; Hall v. Craig, 65—51; Kluttz v. McKenzie, 65—102; Rowland v. Thompson, 65—110; Riddick v. Moore, 65—382; Martin v. Wilbourne, 66—321; Eubanks v. Mitchell, 67—34; Maxwell v. Maxwell, 67—383; Johnston v. Haynes, 68—509; Flack v. Dawson, 69—42; Green v. Green, 69—294; Green v. Castleberry, 70—20; Armfield v. Brown, 70—27; Armfield v. Brown, 73—81; Wall v. Covington, 76—150; Atkinson v. Whitehead, 77—418; N. C. Gold Co. v. N. C. Ore Co., 79—48; Bernheim v. Waring, 79—56; Sutton v. Schonwald, 80—20; University v. Lassiter, 83—38; Isler v. Koonce, 83—55; Com'rs v. Magnin, 85—114; Sloan v. McMahon, 85—296; McPeters v. Ray, 85—462.

#### Sec. 788. Mode of trial; effect of report; review.

The trial by referees shall be conducted in the same manner as C. C. P., s. 246.  
 2 a trial by the court. They shall have the same power to grant  
 3 adjournments and to allow amendments to any pleadings and to  
 4 the summons, as the court upon such trial, upon the same terms  
 5 and with like effect. They shall have the same power to preserve  
 6 order and punish all violations thereof upon such trial, and to  
 \*7 compel the attendance of witnesses before them by attachment  
 8 and to punish them as for contempt for non-attendance or refusal  
 9 to be sworn or testify, as is possessed by the court. They must  
 10 state the facts found and the conclusions of law separately; and  
 11 their decision must be given, and may be excepted to and reviewed  
 12 in like manner, and with like effect in all respects as in cases of  
 13 appeal under section seven hundred and eighty-four; and they  
 14 may in like manner settle a case or exceptions. The report of the  
 15 referees upon the whole issue shall stand as the decision of the  
 16 court, and judgment may be entered thereon upon application to  
 17 the judge, and his order. When the reference is to report the facts,  
 18 the report shall have the effect of a special verdict.

Kluttz v. McKenzie, 65—102; Gudger v. Baird, 66—438; Green v. Castleberry, 70—20; Armfield v. Brown, 70—27; Whitford v. Foy, 71—527; Earp v. Richardson, 75—84; Green v. Castleberry, 77—164; Cain v. Nicholson, 77—411; Green v. Jones, 78—265; Suit v. Suit, 78—272; N. C. Gold Co. v. N. C. Ore Co., 79—48; Bushee v. Surles, 79—51; Lawrence v. Hyman, 79—209; Norment v. Brown, 79—363; Morrison v. Baker, 81—76; LaFontaine v. Southern Underwriters, 83—132; Com'rs v. Magnin, 85—114; Hanner v. McAdoo, 86—370; Long v. Logan, 86—535; White v. Utley, 86—415.

#### Sec. 789. Referees, how chosen; who may be referee; report.

In all cases of reference the parties as to whom issues are formed C. C. P., s. 247.  
 2 in the action (except when the defendant is an infant or an absentee) may agree in writing upon a person or persons, not exceeding  
 3 three, and a reference shall be ordered to him or them, and to no  
 4 other person or persons. And if such parties do not agree, the  
 5 court shall appoint one or more referees, not more than three, who

7 shall be free from exception. And no person shall be appointed  
 8 referee to whom all parties in the action shall object. And no  
 9 judge or justice of any court shall sit as referee in any action pend-  
 10 ing in the court of which he is judge or justice, and not already  
 11 referred, unless the parties otherwise stipulate. The referee or  
 12 referees shall make and deliver a report within sixty days from  
 13 the time the action shall be finally submitted; and in default  
 14 thereof, and before the report is delivered, either party may serve  
 15 notice upon the opposite party that he elects to end the reference;  
 16 and thereupon the action shall proceed as though no reference had  
 17 been ordered, and the referees shall not in such case be entitled to  
 18 any fees. The report of the referee shall be made to the clerk of  
 19 the court in which the action is pending: either party after ten  
 20 days' notice to the adverse party may move the judge to review  
 21 such report, and set aside, modify, or confirm the same in whole  
 22 or in part, and no judgment shall be entered on any reference  
 23 except by order of the judge.

Gudger v. Baird, 66—438; Maxwell v. Maxwell, 67—383; Green v. Green, 69—294; Green v. Castleberry, 70—20; Armfield v. Brown, 70—27; Schehan v. Malone & Co., 71—440; Earp v. Richardson, 75—84; McCampbell v. McClung, 75—393; Cain v. Nicholson, 77—411; Perry v. Tupper, 77—413; Flemming v. Roberts, 77—415; Williams v. Thomas, 78—47.

## CHAPTER SIX.

### MANNER OF ENTERING JUDGMENT.

#### SECTION.

- 790. 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 woman.
- 791. The relief to be awarded to the plaintiff.
- 792. Judgment in certain cases to be a conveyance of title.
- 793. Judgment to be regarded as a deed and to be registered.
- 794. Copy of judgment from register's office to be evidence.
- 795. Judgment to be registered as deeds.
- 796. Rates of damages where damages are recoverable.

#### SECTION.

- 797. Judgment in action for recovery of personal property.
- 798. What judge to approve judgments, orders and decrees.
- 799. Judgments to be docketed and indexed; judgments at same term, when held to be docketed.
- 800. Judgment roll.
- 801. Judgments, when and how to be docketed; secured on appeal.
- 802. Judgments in supreme court may be docketed in superior court; lien of judgment; when transcript may be obtained.

Sec. 790. 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 woman.

C. C. P., s. 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;



5 (2) And it may grant to the defendant any affirmative relief to  
6 which he may be entitled;

7 (3) In an action against several defendants, the court may, in its  
8 discretion, render judgment against one or more of them, leaving  
9 the action to proceed against the others, whenever a several judg-  
10 ment may be proper;

11 (4) The court may also dismiss the complaint, with costs in favor  
12 of one or more defendants, in case of unreasonable neglect on the  
13 part of the plaintiff to serve the summons on other defendants, or  
14 to proceed in the cause against the defendant or defendants served.  
15 In an action brought by or against a married woman, judgment  
16 may be given against her as well for costs as for damages, or both,  
17 for such costs and for such damages, in the same manner as against  
18 other persons, to be levied and collected of her separate estate, and  
19 not otherwise.

Harkey v. Houston, 65—137; Burke v. Stokely & Oldham, 65—569; Ivey v. Granberry, 66—223; Walsh v. Hall, 66—233; Hutchinson v. Smith, 68—354; Lusk v. Clayton, 70—184; Clark v. Williams, 70—679; Sloan & Co., v. McDowell, 71—356; Sloan & Co. v. McDowell, 75—29; Hare v. Jernigan, 76—471; Bradford v. Coit, 77—72; Long v. Swindell, 77—176; Harrell v. Peebles, 79—26; Weeks v. Weeks, 79—77; Wiseman v. Penland, 79—197; Beard v. Hall, 79—506; Fickey v. Merrimon, 79—585; Halyburton v. Carson, 80—16; Hughes v. Boone, 81—204; Ruffin v. Harrison, 81—208; Melvin v. Stephens, 82—233.

#### Sec. 791. The relief to be awarded to the plaintiff.

The relief granted to the plaintiff, if there be no answer, cannot C. C. P., s. 249.

2 exceed that which he shall have demanded in his complaint; but  
3 in any other case the court may grant him any relief consistent  
4 with the case made by the complaint and embraced within the  
5 issue.

Foard v. Alexander, 64—69; Powell v. Hill, 64—169; Gudger v. Baird, 66—438; Oates, Wil-  
• Hams & Co. v. Kendall, 67—241; Haughton v. Newberry, 69—456; Jones v. Mial, 79—164; Jones  
v. Mial, 82—252.

#### Sec. 792. Judgment in certain cases to be a conveyance of title.

In any action, wherein the court shall declare that a party is  
2 entitled to the possession of property, real or personal, the legal  
3 title whereof may be in another or others, parties to the suit, and  
4 the court shall order a conveyance of such legal title to him so  
5 declared to be entitled, or where, for any cause, the court shall order  
6 that one of the parties holding property in trust shall convey the  
7 legal title therein to be held in trust to another person, although  
8 not a party, the court, after declaring the right and ordering the  
9 conveyance, shall have power also, to be used in its discretion, to  
10 declare in the order then made, or in any, made in the progress of  
11 the cause, that the effect thereof shall be to transfer to the party to  
12 whom the conveyance is directed to be made, the legal title of the  
13 said property, to be held in the same plight, condition and estate  
14 as though the conveyance ordered was in fact executed; and shall  
15 bind and entitle the parties ordered to execute or to take benefit of  
16 the conveyance, in and to all such provisions, conditions and cove-

R. C., c. 32, s. 24.  
1850, c. 107, s. 1.  
1874-'5, c. 17, s. 1.

17 nants as may be adjudged to attend the conveyance, in the same  
 18 manner and to the same extent as the conveyance would if the  
 19 same were executed according to the order. And any party taking  
 20 benefit under the judgment may have the same redress at law on  
 21 account of the matter adjudged as he might on the conveyance, if  
 22 the same had been executed.

Thaxton v. Williamson, 72—125; Rollins v. Henry, 78—342; Davis v. Rogers, 84—412.

**Sec. 793. Judgment to be regarded as a deed, and to be registered.**

R. C., c. 32, s. 25.  
 1850, c. 17, s. 3.  
 1874-'5, c. 17, s. 2.

Every judgment, in which the transfer of title shall be so de-  
 2 clared, shall be regarded as a deed of conveyance, executed in due  
 3 form and by capable persons, notwithstanding the want of capacity  
 4 in any person ordered to convey, and shall be registered in the  
 5 proper county, under the same rules and regulations as may be  
 6 prescribed for conveyances of similar property executed by the  
 7 party; and all laws which may be passed for extending the time  
 8 for registration of deeds shall be deemed to include such judg-  
 9 ments, provided the conveyance, if actually executed, would be so  
 10 included.

Rollins v. Henry, 78—342.

**Sec. 794. Copy of judgment from register's office to be evidence.**

R. C., c. 32, s. 26.  
 1850, c. 107, s. 3.  
 1874-'5, c. 17, s. 3.

In all legal proceedings, touching the right of parties derived  
 2 under such judgment, a certified copy thereof from the register's  
 3 books shall be evidence of its existence and of the matters therein  
 4 contained, as fully as if the same were proved by a perfect tran-  
 5 script of the whole case.

Rollins v. Henry, 78—342.

**Sec. 795. Judgment to be registered as deeds.**

R. C., c. 32, s. 27.  
 1850, c. 107, s. 4.  
 1874-'5, c. 17, s. 4.

The party desiring registration of such judgment shall produce  
 2 to the register a copy thereof, certified by the clerk of the court in  
 3 which it is enrolled, under the seal of the court, and the register  
 4 shall record both the judgment and certificate.

Rollins v. Henry, 78—342.

**Sec. 796. Rates of damages where damages are recoverable.**

C. C. P., s. 250.

Whenever damages are recoverable, the plaintiff may claim and  
 2 recover, if he show himself entitled thereto, any rate of dam-  
 3 ages which he might have heretofore recovered for the same  
 4 cause of action.

**Sec. 797. Judgment in action for recovery of personal property.**

C. C. P., s. 251.

In an action to recover the possession of personal property, judg-  
 2 ment for the plaintiff may be for the possession, or for the recovery  
 3 of possession, or for the value thereof, in case a delivery cannot be  
 4 had, and the damages for the detention. If the property has  
 5 been delivered to the plaintiff, and the defendant claims a return

6 thereof, judgment for the defendant may be for a return of the  
7 property, or for the value thereof in case a return cannot be had,  
8 and damages for taking and withholding the same.

Jarman v. Ward, 67—32; Woody v. Jordan, 69—180; Patapsco Co. v. Magee, 86—850.

**Sec. 798. What judge to approve judgments, orders and decrees.**

In all cases where a judgment, decree or order of the superior  
2 court shall require to be approved by a judge, it shall be approved  
3 by the judge having jurisdiction of receiver and injunctions, as  
4 provided in sections seven hundred and one, seven hundred and  
5 two and seven hundred and three.

1876-'7, c. 233, s. 3.  
1879, c. 63.  
1881, c. 51.

**Sec. 799. Judgments to be docketed and indexed; judgments at the same term, when held to be docketed.**

Every judgment of the superior court, affecting the right to real  
2 property, and any judgment requiring in whole or in part the pay-  
3 ment of money, shall be entered by the clerk of said superior court  
4 on the judgment docket of said court. The entry shall contain the  
5 names of the parties, and the relief granted, date of judgment and  
6 date of docketing; and the clerk shall keep a cross index of the  
7 whole, with the dates and numbers thereof. All judgments ren-  
8 dered in any county by the superior court thereof, during a term  
9 of the court, and docketed during the same term, or within ten  
10 days thereafter, shall be held and deemed to have been rendered  
11 and docketed on the first day of said term.

C. C. P., s. 252.  
Rule XVIII.

**Sec. 800. Judgment roll.**

Unless the party or his attorney shall furnish a judgment-roll,  
2 the clerk, immediately after entering the judgment, shall attach  
3 together, and file the following papers, which shall constitute the  
4 judgment-roll:

C. C. P., s. 253.

5 (1) In case the complaint be not answered by any defendant, the  
6 summons and complaint, or copies thereof, proof of service, and  
7 that no answer has been received, the report, if any and a copy of  
8 the judgment;

9 (2) In all other cases, the summons, pleadings, or copies thereof,  
10 and a copy of the judgment, with any verdict or report, the offer  
11 of the defendant, exceptions, case, and all orders and papers in  
12 any way involving the merits and necessarily affecting the judg-  
13 ment.

**Sec. 801. Judgments, when and how to be docketed; secured on appeal.**

Upon filing a judgment-roll upon a judgment affecting the title  
2 of real property, or directing in whole or in part the payment of  
3 money, it shall be docketed on the judgment-docket of the superior  
4 court of the county where the judgment-roll was filed, and may be  
5 docketed on the judgment docket of the superior court of any  
6 other county upon the filing with the clerk thereof a transcript of

C. C. P., s. 254.



7 the original docket, and shall be a lien on the real property in  
 8 the county where the same is docketed, of every person against  
 9 whom any such judgment shall be rendered, and which he may  
 10 have at the time of the docketing thereof in the county in which  
 11 such real property is situated, or which he shall acquire at any  
 12 time thereafter, for ten years from the date of the rendition of the  
 13 judgment. But the time during which the party recovering or  
 14 owning such judgment shall be, or shall have been, restrained from  
 15 proceeding thereon by an order of injunction, or other order, or  
 16 by the operation of any appeal, or by a statutory prohibition, shall  
 17 not constitute any part of the ten years aforesaid, as against the  
 18 defendant in such judgment, or the party obtaining such orders or  
 19 making such appeal, or any other person who is not a purchaser,  
 20 creditor or mortgagee in good faith. But whenever an appeal from  
 21 any judgment shall be pending, and the undertaking requisite to  
 22 stay execution on such judgment shall have been given, and the  
 23 appeal perfected as provided in chapter twenty-one, the court in  
 24 which such judgment was recovered may, on special motion, after  
 25 notice to the person owning the judgment, on such terms as they  
 26 shall see fit, direct an entry to be made by the clerk on the docket  
 27 of such judgment, that the same is secured on appeal, and there-  
 28 upon it shall cease, during the pendency of said appeal, to be a  
 29 lien on the real property of the judgment-debtor, as against pur-  
 30 chasers and mortgagees in good faith.

*Harris v. Ricks*, 63—653; *Rule xviii*, 63—669; *Thompson v. Berry*, 64—79; *Norwood v. Thorp*, 64—682; *Perry v. Morris*, 65—221; *McKeithan v. Walker*, 66—95; *Hutchinson v. Symons*, 67—156; *Hoppock, Glenn & Co. v. Shober*, 69—153; *Bryan v. Hubbs*, 69—423; *Dougherty v. Logan*, 70—558; *Murchison v. Williams*, 71—135; *Halyburton v. Greenlee*, 72—316; *Rhyne v. McKee*, 73—259; *Isler v. Colgrove*, 75—334; *Sharpe v. Williams*, 76—87; *Manix v. Ihrie*, 76—299; *King v. Portis*, 77—25; *Wall v. Fairley*, 77—105; *Green v. Castleberry*, 77—164; *Williams v. Green*, 80—76; *Canon v. Parker*, 81—320; *Dixon v. Dixon*, 81—323; *King v. Portis*, 81—382; *Pasour v. Rhyne*, 82—149; *Whitehead v. Latham*, 83—232; *Morton v. Rippy*, 84—611; *Fox v. Cline*, 85—173; *McDonald v. Dickson*, 85—248; *Cotten v. McClenehan*, 85—254; *Williams v. Williams*, 85—383; *Worsley v. Bryan*, 86—343; *Rollins v. Henry*, 86—714.

**Sec. 802. Judgments in supreme court may be docketed in superior court; lien of judgment; when transcript may be obtained.**

1881, c. 75, ss. 1, 4.

It shall be the duty of the clerk of the supreme court, on appli-  
 2 cation of the party obtaining judgment in said court, directing in  
 3 whole or in part the payment of money, or affecting the title to  
 4 real estate, or on the like application of the attorney of record of  
 5 said party, to certify under his hand and the seal of said court a  
 6 transcript of said judgment, setting forth the title of said court,  
 7 the names of the parties thereto, the relief granted, that said judg-  
 8 ment was so rendered by said court, the amount and date of said  
 9 judgment, what part thereof bears interest and from what time;  
 10 and said clerk shall send such certificate and transcript to the  
 11 clerks of the superior court of such counties as he may be di-  
 12 rected; and the clerk of the superior court receiving the said cer-  
 13 tificate and transcript shall docket the same in like manner as

14 judgment-rolls of the superior court may be docketed. And when  
15 so docketed, the lien of said judgment shall be the same in all  
16 respects, be subject to the same restrictions and qualifications, and  
17 the time shall be reckoned as is provided and prescribed in the  
18 preceding sections for judgments of the superior court, so far as  
19 the same may be applicable. The party desiring the certificate  
20 and transcript provided for in this section, may obtain the same at  
21 any time after such judgment has been rendered, unless the supreme  
22 court shall otherwise direct.

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## TITLE XI.

### OF THE EXECUTION OF THE JUDGMENT IN CIVIL ACTIONS.

#### Chap. I. THE EXECUTION.

##### II. DEFENDANT'S CLAIM FOR IMPROVEMENTS BEFORE EXECUTION.

##### III. PROCEEDINGS SUPPLEMENTARY TO EXECUTION.

##### IV. EXEMPTIONS FROM EXECUTIONS.

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## CHAPTER ONE.

### THE EXECUTION.

#### SECTION.

- 803. Execution within three years of course.
- 804. After judgment party may pay the same, although no execution has been issued.
- 805. Clerk to pay the money to the party entitled.
- 806. After three years, to be issued only by leave of court; leave, how obtained.
- 807. Judgments, how enforced.
- 808. The different kinds of execution.
- 809. To what counties execution may be issued; execution against a married woman.
- 810. Executions to issue from the court in which the judgment was rendered, and return made to the same court.
- 811. Returns on executions to be noted on judgment docket, and in certain cases clerk to send copies.
- 812. Notice of judgment nisi, how given.
- 813. Execution against the person, in what cases.
- 814. Form of execution.
- 815. Executions tested as of preceding term, and returnable to the next succeeding term.

#### SECTION.

- 816. Execution against decedent's property.
- 817. Leave, how obtained to issue execution in the foregoing section.
- 818. Execution against surviving judgment debtors.
- 819. What may be sold under execution.
- 820. On sale of equity of redemption, what sheriff to set forth in deed.
- 821. Sale of trust estates; purchaser holds the same discharged of trust.
- 822. Execution not to be levied on growing crops.
- 823. Sale days under execution, or by order.
- 824. Sale may be postponed from day to day, but not more than three days.
- 825. Sale, how advertised.
- 826. Notice of sale to be served on defendant, and in certain cases on the governor.
- 827. All private acts allowing land to be sold repealed.
- 828. Time of commencing sale.
- 829. Sale of personal property under execution, when and where advertised.
- 830. Penalty for selling contrary to law.

## SECTION.

831. No sale for want of bidders, what officer shall state; penalty.  
 832. Forthcoming bond may be taken for personal property.  
 833. Surety to be furnished with a list of the property.  
 834. Officer, how to proceed on bond, if condition broken.  
 835. Officer allowed pay for keeping horses, &c.  
 836. Officer to make out his account and file with execution.  
 837. Purchaser at execution sale may recover of defendant in the execution, when the title to the property sold is disputed.

## SECTION.

838. Defendant dying in execution, debt not discharged; new execution against property.  
 839. Clerks to issue execution within six weeks; penalty one hundred dollars for failure.  
 840. Officer to prepare deeds for property sold.  
 841. Costs on executions satisfied in part or in whole to be paid to clerk; penalty forty dollars for failure.  
 842. Sheriff to make due return of execution; penalty for failure.

**Sec. 803. Execution within three years of course.**

C. C. P., s. 255.

The party in whose favor judgment has been heretofore or shall  
 2 hereafter be given, and in case of his death his personal represent-  
 3 atives duly appointed, may at any time within three years after the  
 4 entry of judgment, proceed to enforce the same, by execution, as  
 5 provided in this chapter.

Williams v. Williams, 85—383.

**Sec. 804. After judgment party may pay the same, although no execution has been issued.**R. C., c. 31, s. 127.  
1823, c. 1212, s. 1.

The party against whom any judgment for the payment of money  
 2 may be rendered, by any court of record, may pay the whole, or  
 3 any part thereof, to the clerk of the court in which the same may  
 4 have been rendered, at any time thereafter, although no execution  
 5 may have issued on such judgment; and such payment of money  
 6 shall be good and available to the party making the same, and the  
 7 clerk shall enter the payment on the judgment docket of the court,  
 8 and immediately forward a certificate thereof to the clerk of the  
 9 superior court of each county, to whom a transcript of said judg-  
 10 ment has been sent, and the clerk of such superior court shall  
 11 enter the same on the judgment docket of such court, and file the  
 12 original with the judgment-roll in the action.

Purvis v. Jackson, 69—474; Bynum v. Barefoot, 75—576.

**Sec. 805. Clerk to pay the money to the party entitled.**R. C., c. 31, s. 128.  
1823, c. 1212, s. 2.

The clerk, to whom money shall be paid as aforesaid, shall pay  
 2 the same to the party entitled to receive it, under the same rules  
 3 and penalties as if the money had been paid into his office by vir-  
 4 tue of an execution.

Blackburn v. Brooks, 65—413.

**Sec. 806. After three years, to be issued only by leave of court; leave, how obtained.**

C. C. P., s. 256.

After the lapse of three years from the entry of judgment, an  
 2 execution can be issued only by leave of the court, upon motion,  
 3 with personal notice to the adverse party, unless he be absent or  
 4 non-resident, or cannot be found to make such service, in which



5 case such service may be made by publication, or in such other  
6 manner as the court shall direct. Such leave shall not be given  
7 unless it be established by the oath of the party or by other satisfac-  
8 tory proof, that the judgment, or some part thereof, remains unsat-  
9 isfied and due. But the leave shall not be necessary when execu-  
10 tion has been issued on the judgment within the three years next  
11 preceding the suing for execution, and return thereof unsatisfied  
12 in whole or in part.

McAden v. Banister, 63—478; McDowell v. Ashbury, 66—444; Phillips v. Trezevant, 70—176; Aycock v. Harrison, 71—432; Isler v. Murphy, 71—436; Baldwin v. York, 71—463; Blum v. Ellis, 73—293; Moore v. N. C. R. R. Co., 74—523; McKethan v. McNeill, 74—663; Dawson v. Hartsfield, 79—334; Withers v. Stinson, 79—341; Bell v. Cunningham, 81—83; Broyles v. Young, 81—315; Latham v. Dixon, 82—55; Lee v. Eure, 82—428; Sanderson v. Dally, 83—67; Rush v. Halcyon Steamboat Co., 84—703; McDonald v. Dickson, 85—248; Williams v. Williams, 85—333.

#### Sec. 807. Judgments, how enforced.

Where a judgment requires the payment of money, or the de- C. C. P., s. 257.  
2 livery of real or personal property, the same may be enforced in  
3 those respects by execution, as provided in this title. Where it  
4 requires the performance of any other act, a certified copy of the  
5 judgment may be served upon the party against whom it is given,  
6 or upon the person or officer who is required thereby or by law to obey  
7 the same, and his obedience thereto enforced. If he refuse, he may  
8 be punished by the court as for contempt.

#### Sec. 808. The different kinds of execution.

There shall be three kinds of execution: one against the prop- C. C. P., s. 258.  
2 erty of the judgment debtor, another against his person, and the  
3 third for the delivery of the possession of real or personal property,  
4 or such delivery with damages for withholding the same. They  
5 shall be deemed the process of the court, and shall be subscribed  
6 by the clerk, and when to run out of his county, must be sealed  
7 with the seal of his court.

Finley v. Smith, 4 Dev., 95; Bryan v. Hubbs, 69—423; Houston v. Walsh, 79—35.

#### Sec. 809. To what counties execution may be issued; execution against a married woman.

When the execution is against the property of the judgment C. C. P., s. 259.  
2 debtor, it may be issued to the sheriff of any county where the  
3 judgment is docketed. When it requires the delivery of real or  
4 personal property, it must be issued to the sheriff of the county  
5 where the property, or some part thereof, is situated. Executions  
6 may be issued at the same time to different counties.  
7 Real property adjudged to be sold must be sold in the county  
8 where it lies, by the sheriff of the county, or by a referee appointed  
9 by the court for that purpose; and thereupon the sheriff or referee  
10 must execute a conveyance to the purchaser, which conveyance  
11 shall be effectual to pass the rights and interests of the parties ad-  
12 judged to be sold.

13 An execution may issue against a married woman, and it shall  
14 direct the levy and collection of the amount of the judgment  
15 against her from her separate property, and not otherwise.

Rollins v. Henry, 78—342; Mebane v. Mebane, 80—34; Kidder v. McIlhenny, 81—123; Pasour v. Rhyne, 82—149.

Sec. 810. Executions to issue from the court in which the judgment was rendered, and return made to the same court.

1871-'2 c. 74, s. 1.  
1881, c. 75.

The executions provided in this chapter, and other process for  
2 the enforcement of such judgments, shall issue only from the  
3 court in which the judgment for the enforcement of such execu-  
4 tion, other final process, or any of them may issue, was ren-  
5 dered; and such executions or other final process against the  
6 property of the defendant or defendants, or any one or more of  
7 them, may be issued under the seal of the court to any county in  
8 which such last mentioned judgment may be docketed; and such  
9 executions or other final process may issue to two or more counties  
10 at the same time as now provided by law, and executions against  
11 the person or persons of the defendant or defendants, or any of  
12 them, may issue to any one, or more counties; and the returns of  
13 all such executions or other final process shall be made to the  
14 court of the county from which the same is issued.

Sec. 811. Returns on executions to be noted on judgment docket, and in certain cases clerk to send copies.

1871-'2, c. 74, s. 2.  
1881, c. 75.

When any such execution shall be returned as herein provided,  
2 the return of the sheriff or other officer shall be noted by the clerk  
3 on the judgment docket; and when the same shall be returned  
4 satisfied, or partially satisfied, it shall be the duty of the clerk of the  
5 court to which the same is returned to send a copy of such last  
6 mentioned return, under his hand, to the clerk of the superior  
7 court of each county in which such judgment is docketed, whose  
8 duty it shall be to note such copy in his judgment docket, oppo-  
9 site said judgment, and to file said copy with the transcript of the  
10 docket of said judgment in his office. Any clerk failing to send  
11 a copy of the payments on said execution or judgment to the clerks  
12 of the superior court of the counties wherein a transcript of the  
13 judgment has been docketed, and any clerk failing to note said  
14 payment on the judgment docket of his court, shall, on motion, be  
15 fined one hundred dollars *nisi* for said failure, and said conditional  
16 judgment shall be made absolute upon notice to show cause at the  
17 succeeding term of the superior court of his county.

Sec. 812. Notice of judgment *nisi*, how given.

1871-'2, c. 74, s. 4.

In all cases where any sheriff, or other officer, shall be amerced  
2 for failure to make due return of any execution, or other process  
3 placed in his hands, or for any default whatsoever in office, and  
4 judgment *nisi* or otherwise, for the penalty or forfeiture in such

5 case made and provided, shall be entered, it shall be sufficient to  
6 give such sheriff notice, according to law, under the hand of the  
7 clerk and seal of the court, where such judgment may be entered  
8 of a motion for a judgment absolute, or for execution as the case  
9 may be, and no other notice, summons or suit shall be necessary to  
10 enforce the same; and such proceedings shall be deemed and held  
11 in aid of a suit or other proceedings already instituted in court.

Franks v. Sutton, 86—78.

**Sec. 813. Execution against the person, in what cases.**

If the action be one in which the defendant might have been C. C. P., s. 260.  
2 arrested, as provided in sections six hundred and fifty-seven and  
3 six hundred and fifty-eight, an execution against the person of the  
4 judgment debtor may be issued to any county within the state,  
5 after the return of an execution against his property unsatisfied in  
6 whole or in part. But no execution shall issue against the person  
7 of a judgment debtor, unless an order of arrest has been served, as  
8 in this chapter provided, or unless the complaint contains a state-  
9 ment of facts showing one or more of the causes of arrest required  
10 by section six hundred and fifty-seven.

McAden v. Banister, 63—478; Claflin & Co. v. Underwood, 75—485; Houston v. Walsh, 79—85;  
Peebles v. Foote, 83—102.

**Sec. 814. Form of execution.**

The execution must be directed to the sheriff, or coroner when the C. C. P., s. 261.  
2 sheriff is a party or interested, subscribed by the clerk of the court, 1868-'9, c. 148, s. 1.  
3 and must intelligibly refer to the judgment, stating the county 1870-'1, c. 43, s. 7.  
4 where the judgment-roll of transcript is filed, the names of the par-  
5 ties, the amount of the judgment, if it be for money, and the amount  
6 actually due thereon, and the time of docketing in the county to  
7 which the execution is issued, and shall require the officer substan-  
8 tially as follows:

Peebles v. Pate, 86—437.

**AGAINST PROPERTY—NO LIEN ON PERSONAL PROPERTY UNTIL LEVY.**

(1) If it be against the property of the judgment debtor, it shall  
9 require the officer to satisfy the judgment out of the personal prop-  
10 erty of such debtor; and if sufficient personal property cannot  
11 be found, out of the real property belonging to him on the day  
12 when the judgment was docketed in the county, or at any time  
13 thereafter; but no execution against the property of a judgment  
14 debtor shall be a lien on the personal property of such debtor, as  
15 against any *bona fide* purchaser from him for value, or as against  
16 any other execution, except from the levy thereof.

Harris v. Ricks, Hill & Co., 63—653; Phillips v. Trezevant, 70—176; Grant v. Hughes, 82—216;  
Peebles v. Pate, 86—437.

**AGAINST PROPERTY IN HANDS OF PERSONAL REPRESENTATIVE.**

17 (2) If it be against real or personal property in the hands of



18 personal representatives, heirs, devisees, legatees, tenants of real  
 19 property or trustees, it shall require the officer to satisfy the judg-  
 20 ment out of such property.

*Grant v. Newsom*, 81—36; *Kidder v. McIlhenny*, 81—123.

#### AGAINST THE PERSON.

21 (3) If it be against the person of the judgment debtor, it shall  
 22 require the officer to arrest such debtor, and commit him to the  
 23 jail of the county until he shall pay the judgment or be discharged  
 24 according to law.

#### FOR DELIVERY OF SPECIFIC PROPERTY.

25 \* (4) If it be for the delivery of the possession of real or personal  
 26 property, it shall require the officer to deliver the possession of  
 27 the same, particularly describing it, to the party entitled thereto,  
 28 and may at the same time require the officer to satisfy any costs,  
 29 damages, rents or profits recovered by the same judgment, out of  
 30 the personal property of the party against whom it was rendered,  
 31 and the value of the property for which the judgment was recov-  
 32 ered, to be specified therein; if a delivery thereof cannot be had,  
 33 and if sufficient personal property cannot be found, then out of  
 34 the real property belonging to him on the day when the judgment  
 35 was docketed, or at any time thereafter, and shall in that respect  
 36 be deemed an execution against property.

*Johnson v. Nevill*, 65—677; *Grier v. Rhyne*, 69—346; *Whissenhunt v. Jones*, 78—361; *Clarke v. Wagner*, 78—387.

#### Sec. 815. Executions tested as of preceding term, and returnable to the next succeeding term.

1870-'1, c. 42, s. 7.  
 1873-'4, c. 7, s. 668.

All executions issued under the provisions of this chapter shall  
 2 be tested as of the term next before the day on which they were  
 3 issued, and shall be returnable to the term of the court next after  
 4 that from which they bear teste, and no execution against property  
 5 shall issue until the end of the term during which the judgment  
 6 was rendered.

#### Sec. 816. Execution against decedent's property.

After the expiration of one year from the death of a party  
 2 against whom final judgment for a sum of money, or for directing  
 3 the payment of a sum of money, is rendered, the judgment may  
 4 be enforced by execution against any property upon which it is  
 5 a lien with like effect as if the judgment debtor was still living.  
 6 But such an execution shall not be issued, unless an order granting  
 7 leave to issue it is procured from the judge of the court from which  
 8 the execution is to issue, and a decree from the clerk of the supe-  
 9 rior court, who has duly granted letters testamentary or letters of  
 10 administration upon the estate of the deceased judgment debtor.

11 When the lien of the judgment was created as prescribed in sec-  
12 tion eight hundred and one, neither the order, nor the decree, can  
13 be made until the expiration of three years after letters testament-  
14 ary or letters of administration have been duly granted upon the  
15 estate of the decedent; and for that purpose such a lien existing  
16 at decedent's death continues for three years thereafter, notwith-  
17 standing the expiration of ten years from the filing of the judg-  
18 ment-roll.

**Sec. 817. Leave, how obtained to issue execution in the foregoing section.**

Leave to issue an execution as prescribed in the preceding sec-  
2 tion must be procured as follows:

3 (1) Notice of the application, to the court from which the execu-  
4 tion is to issue, for an order, granting leave to issue the execu-  
5 tion, must be given to the person or persons whose interest in the  
6 property will be affected by a sale by virtue of the execution, and  
7 also to the executor or administrator of the judgment debtor, if  
8 there is one, and this notice must be served at least ten days before  
9 the next term of the court at which the application is to be made.  
10 Leave shall not be granted, except upon proof by affidavit to the  
11 satisfaction of the court that the judgment remains unsatisfied.

12 (2) For the purpose of procuring a decree from the clerk of the  
13 superior court granting leave to issue the execution, the judgment  
14 creditor must present to the clerk a written petition duly verified,  
15 setting forth the facts and praying for such a decree; and that the  
16 persons specified in the first subdivision of this section may be  
17 cited to show cause why it should not be granted. Upon the pre-  
18 sentation of such a petition, the clerk must issue a citation accord-  
19 ingly; and upon a return thereof, he must make such a decree in  
20 the premises as justice requires.

**Sec. 818. Execution against surviving judgment debtors.**

The two preceding sections do not affect the right of a judgment  
2 creditor to enforce a judgment against the property of one or more  
3 surviving judgment debtors, as if all the judgment debtors were liv-  
4 ing. In that case an execution must be issued in the usual form;  
5 but the attorney for the judgment creditor must indorse thereupon  
6 a notice to the sheriff, reciting the death of the deceased judgment  
7 debtor, and requiring the sheriff not to collect the execution out of  
8 any property which belonged to him.

**Sec. 819. What may be sold under execution.**

The property, estate and effects of the judgment debtor, not ex-  
2 empted from sale under the constitution and laws of this state,  
3 may be levied on and sold under execution as hereinafter pre-  
4 scribed:

R. C., c. 45, ss. 1, 3,  
4, 5.  
5 Geo. II, c. 7, s. 4.  
1777, c. 115, s. 29.  
1812, c. 830, ss. 1, 2.  
1822, c. 1172.

5 (1) The goods, chattels, houses, lands, tenements and other here-  
6 ditaments, and real estate belonging to him;

Perkins v. Bullinger, 1 Haywood 442 (368); Allemong v. Allison, 1 Hawks, 325; Gilkey v. Dickerson, 2 Hawks, 341; Brasfield v. Whitaker, 4 Hawks, 309; Yarborough v. State Bank, 2 Dev., 23; Palmer v. Clarke, 2 Dev., 354; Arrington v. Sledge, 2 Dev., 3; Hoke v. Henderson, 3 Dev., 12; Hardy v. Jasper, 3 Dev., 158; Rieks v. Blount, 4 Dev., 123; Wood v. Harrison, 1 D. & B., 365; Poppleston v. Skinner, 4 D. & B., 156; Jones v. Judkins, 4 D. & B., 454; Finley v. Smith, 2 Ire., 225; Spencer v. Hawkins, 4 Ire. Eq., 238; Mangum v. Hamlet, 8 Ire., 44; Williamson v. James, 10 Ire., 162; Brazier v. Thomas, Busbee, 28; Campbell v. Smith, 1 Jones' Eq., 156; Jimmerson v. Duncan, 3 Jones, 537; Williams v. Council, 4 Jones, 206; Morris v. Rippy, 4 Jones, 533; Nixon v. Harrell, 5 Jones 76; Woodley v. Gilham, 67—237; Thompson v. Peebles, 85—418; Worsley v. Bryan, 86—343; Peebles v. Pate, 86—437.

7 (2) All leasehold estates of three years' duration or more, owned  
8 by him;

9 (3) The equity of redemption, and legal right of redemption, in  
10 lands, tenements, rents or other hereditaments, pledged or mort-  
11 gaged by him;

Camp v. Cox, 1 Dev. & Bat., 52; Davis v. Evans, 5 Ire., 525; McRary v. Fries, 4 Jones' Eq., 233; McKeithan v. Walker, 66—95; Hutchison v. Symons, 67—156; Hinsdale v. Thornton, 75—381; Joyner v. Farmer, 78—196; Rollins v. Henry, 86—714.

12 (4) Any lands, tenements, rents and hereditaments, or any goods  
13 and chattels, of which any person shall be seized or possessed in  
14 trust for him.

Brown v. Graves, 4 Hawks, 342; Harrison v. Battle, 1 Dev. Eq., 537; Mordecai v. Parker, 3 Dev., 425; Gillis v. McKay, 4 Dev., 172; Cloud v. Martin, 1 Dev. & Bat., 397; Burgin v. Burgin, 1 Ire., 160; Gowing v. Rich, 1 Ire., 553; Davis v. Garrett, 3 Ire., 459; Frost v. Reynolds, 4 Ire. Eq., 494; Barham v. Massey, 5 Ire., 192; McGee v. Hussey, 5 Ire., 255; Battle v. Petway, 5 Ire., 576; Williams v. Williams, 6 Ire. Eq., 20; McLeran v. McKeithan, 7 Ire. Eq., 70; Page v. Goodman, 8 Ire. Eq., 16; Badham v. Cox, 11 Ire., 456; Jennings v. Hardin, Busbee's Eq., 275; Nelson v. Hughes, 2 Jones' Eq., 33; McKeithan v. Walker, 66—95; Hutchinson v. Symons, 67—156; Hinsdale v. Thornton, 74—167; Tally v. Reed, 74—463; Hinsdale v. Thornton, 75—381.

#### Sec. 820. On sale of equity of redemption, what sheriff to set forth in deed.

R. C., c. 45, s. 5.  
1812, c. 830, s. 2.  
1822, c. 1172.

The sheriff selling the equity of redemption and legal right of  
2 redemption, as set forth in the preceding section, subdivision three,  
3 shall set forth in the deed to the purchaser thereof that the said  
4 estates were under mortgage at the time of judgment, or levy in  
5 the case of personal property, and sale.

Bruce v. Faucett, 4 Jones, 391.

#### Sec. 821. Sale of trust estates; purchaser holds the same discharged of trust.

R. C., c. 45, s. 4.  
1812, c. 830, s. 1.

Upon the sale under execution of the estates mentioned in sec-  
2 tion eight hundred and nineteen, sub-division four, the sheriff shall  
3 execute a deed to the purchaser, and the purchaser thereof shall  
4 hold and enjoy the same freed and discharged from all encum-  
5 brances of the person so seized, or possessed in trust as aforesaid.

#### Sec. 822. Execution not to be levied on growing crops.

R. C., c. 45, s. 11.  
1844, c. 35.

No execution shall be levied on growing crops until the same  
2 are matured.

Smith v. Tritt, 1 Dev. & Bat., 241; State v. Poor, 4 Dev. & Bat., 384; Shannon v. Jones, 12 Ire., 206.



**Sec. 823. Sale days under execution, or by order.**

All real property sold under execution, or by order of court, shall  
2 be sold at the court-house door of the county in which the property  
3 or some part thereof is situate, on the first Monday in every month,  
4 or during the first three days of the term of the superior court of  
5 said county, unless in the order directing the sale, some other place  
6 and time is designated; and then it shall be sold as directed in  
7 such order. 1876-'7, c. 216, ss. 2, 3.

**Sec. 824. Sale may be postponed from day to day, but not more than six days.**

The sheriff or other person making the sale, for the absence of  
2 bidders or any other just cause, may postpone the same from day  
3 to day, but not for more than six days in all, and upon such post-  
4 ponement he shall post a notice thereof on the court house door  
5 of his county. 1868-'9, c. 237, s. 9.

**Sec. 825. Sale, how advertised.**

No real property shall be sold until notice of said sale shall have  
2 been published once a week for four weeks, immediately preced-  
3 ing such sale, in a newspaper, if any there be, published in the  
4 county where such sale is to be made: *Provided*, that the costs of  
5 such publication shall not, in any case, exceed three dollars, to be  
6 taxed as other costs in such proceedings or action. 1876-'7, c. 216.  
1881, c. 278.  
7 If no newspaper be published in a county wherein the sale is to  
8 take place, then, in lieu of such publication, notice of such sale  
9 shall be posted for thirty days at the door of the court house of the  
10 county in which the sale is to take place, and at three other public  
11 places in such county.

**Sec. 826. Notice of sale to be served on defendant, and in certain cases on the governor.**

In addition to the advertisement above required, the sheriff shall  
2 in every case, at least ten days before a sale of real property under  
3 execution, serve a copy of so much of the advertisement as relates  
4 to the real property of any defendant on him personally, if he be  
5 found in the county, or on his agent if he have a known agent  
6 therein, or if he cannot be found within the county, and has no  
7 known agent therein, but his address be known, by mail to such  
8 address; and the date of service shall be ascertained by the usual  
9 course of the mail from the place where sent to the place of its ad-  
10 dress: *Provided*, that in case of the sale under execution, or under  
11 the order of any court, of any property, real or personal, in which  
12 the state shall be interested as a stockholder or otherwise, notice  
13 in writing shall be served upon the governor and attorney general,  
14 at least thirty days before the sale, of the same time and place of  
15 sale, and under what process the sale is made, otherwise said sale  
16 shall be invalid. 1868-'9, c. 237, s. 11.  
1876-'7, c. 224, s. 1.

**Sec. 827. All private acts allowing land to be sold repealed.**

1868-'9, c. 237, s. 12.

All private acts, by which lands in particular counties are re-  
 2 quired or allowed to be sold at places, or at times, other than those  
 3 hereinafter prescribed, are hereby repealed.

**Sec. 828. Time of commencing sale.**R. C., c. 45, s. 17.  
1794, c. 41, s. 1.

No sale under an execution or decree shall commence before ten  
 2 o'clock in the morning, or after four o'clock in the evening, of the  
 3 day on which the sale is to be made.

**Sec. 829. Sale of personal property under execution, when and where advertised.**R. C., c. 45, s. 16.  
1808, c. 753, s. 2.  
1820, c. 1066, s. 1.

No sale of personal property under execution shall be made  
 2 until the same has been advertised for ten days at the door of the  
 3 court house of the county in which the same is to be sold, and at  
 4 three other public places in said county, and the advertisement  
 5 shall designate the place and the time of said sale.

**Sec. 830. Penalty for selling contrary to law.**R. C., c. 45, s. 18.  
1820, c. 1566, s. 2.  
1822, c. 1153, s. 3.

Any sheriff or other officer, who shall make any sale contrary  
 2 to the true intent and meaning of this chapter, shall forfeit and  
 3 pay two hundred dollars to any person suing for the same, one-  
 4 half for his own use and the other half to the use of the county  
 5 where the offence is committed.

McKee v. Lineberger, 69—217.

**Sec. 831. No sale for want of bidders, what officer shall state; penalty.**R. C., c. 45, s. 19.  
1815, c. 887, s. 1.

Whenever a sheriff or other officer shall return upon any execu-  
 2 tion, that he has made no sale for want of bidders, he shall state  
 3 in his return the several places at which he has advertised the sale  
 4 of the property levied on, and the places at which he hath offered  
 5 the same for sale; and any officer failing to make such specifica-  
 6 tion, shall be subject to a fine of forty dollars; and every consta-  
 7 ble, for a like omission of duty, shall be subject to a fine of ten  
 8 dollars, for the use and benefit of the plaintiff in the execution;  
 9 for which, on motion of the plaintiff, judgment shall be granted  
 10 by the court to which the execution shall be returned; or, in the  
 11 case of a justice's execution, by any justice to whom the execution  
 12 shall be returned: *Provided*, that nothing in this section con-  
 13 tained, nor any recovery under the same, shall be a bar to any  
 14 action for a false return against the sheriff or other officer.

**Sec. 832. Forthcoming bond may be taken for personal property.**R. C., c. 45, s. 21.  
1807, c. 731, s. 3.  
1828, c. 12, s. 2.

If any sheriff or other officer, who may have levied an execu-  
 2 tion or other process upon personal property, shall permit the same  
 3 to remain with the possessor, such officer may take a bond for the  
 4 forthcoming thereof to answer the said execution or process, which  
 5 bond shall be attested by a credible witness; but the officer shall

6 nevertheless, in all respects, remain liable as heretofore to the  
7 plaintiff's claim.

Foster v. Frost, 4 Dev., 424; Gray v. Bowles, 1 Dev. & Bat., 437; Poteet v. Bryson, 7 Ire., 337;  
Grady v. Threadgill, 13 Ire., 228.

**Sec. 833. Surety to be furnished with a list of the property.**

When such a bond shall be taken, the officer shall specify therein  
2 the property levied upon, and shall furnish to the surety a list of  
3 the property in writing under his hand, attested by at least one  
4 credible witness, and stating therein the day of sale; and the prop-  
5 erty so levied upon shall be deemed in the custody of the surety,  
6 as the bailee of the officer: and all other executions thereafter  
7 levied on said property shall create a lien on the same from and  
8 after the respective levies, and shall be satisfied accordingly out of  
9 the proceeds of the sale of said property; but the officer thereafter  
10 levying shall not take the property out of the custody of the surety:  
11 *Provided*, that in all such cases, sales of chattels shall take place  
12 within thirty days after the first levy; and, if sale shall not be  
13 made within the time aforesaid, any other officer who may have  
14 levied upon the property, may seize and sell the same.

R. C., c. 45, s. 22.  
1844, c. 34.  
1846, c. 50.

**Sec. 834. Officer, how to proceed on bond, if condition broken.**

If the condition of such bond be broken, the sheriff or other  
2 officer, on giving ten days' previous notice in writing, to any ob-  
3 ligor therein, may, on motion, have judgment against him in a  
4 summary manner, before the superior court of the county in which  
5 such officer may reside, for all such damages as said officer may  
6 have sustained, or be adjudged liable to sustain, not exceeding the  
7 penalty of the bond, to be ascertained by a jury, under the direc-  
8 tion of the court.

R. C., c. 45, s. 23.  
1822, c. 1141, s. 1.

**Sec. 835. Officer allowed pay for keeping horses, &c.**

The court or justice shall make a reasonable allowance to offi-  
2 cers for keeping and maintaining horses, cattle, hogs or sheep, and  
3 all other property, the keeping of which may be chargeable to  
4 them, taken into their custody under legal process; and such al-  
5 lowance may be retained by the officers out of the sales of the  
6 property, in preference to the satisfaction of the process under which  
7 the property was seized or sold.

R. C., c. 45, s. 25.  
1807, c. 731, s. 1.

**Sec. 836. Officer to make out his account and file it with execution.**

Every such officer shall make out his account, and if required  
2 shall give the debtor or his agent a copy thereof, signed by his own  
3 hand, and shall return the account with the execution or other  
4 process, under which the property has been seized or sold, to the  
5 justice or the court to whom the execution or process is returnable,  
6 and shall swear to the correctness of the several items therein set  
7 forth; otherwise he shall not be permitted to retain the same.

R. C., c. 45, s. 26.  
1807, c. 731, s. 2.



Sec. 837. Purchaser at execution sale may recover of defendant in the execution, when the title to property sold is disputed.

R. C., c. 45, s. 27.  
1807, c. 723.

Where property, real or personal, shall be sold on any execution 2 or decree, by any officer authorized to make the sale, and the sale 3 is legally and in good faith made, and such property be not the prop- 4 erty of the person against whose estate such execution or decree 5 may have issued, by reason of which the purchaser may have been 6 deprived of the same property, or may have been compelled to 7 pay damages in lieu thereof to the owner; in every such case the 8 purchaser, his executors or administrators, may sue the person 9 against whom such execution or decree may have issued, or the 10 person legally representing him, in a civil action, and recover such 11 sum as he may have paid for the property, with interest from the 12 time of payment: *Provided always*, that such property, if the same 13 is personal property, be present at the sale, and actually delivered 14 to the purchaser.

Halcombe v. Loudermilk, 3 Jones, 491; Laws v. Thompson, 4 Jones, 104; Brown v. Smith, 8 Jones, 331; McDougald v. McLean, 1 Winston, 120; Pemberton v. McRae, 75—497; Wall v. Fairley, 77—105; Holliday v. McMillan, 83—270.

Sec. 838. Defendant dying in execution, debt not discharged; new execution against the property.

R. C., c. 45, s. 2.  
21 James 1, c. 24, s.  
223.

Parties, at whose suit the body of any person shall be taken in 2 execution for any judgment recovered, their executors or admin- 3 istrators may, after the death of the person so taken and dying in 4 execution, have new execution against the property of the person 5 deceased, as they might have had if such person had never been 6 in execution.

Sec. 839. Clerks to issue executions within six weeks; penalty of one hundred dollars for failure.

R. C., c. 45, s. 29.  
1850, c. 17, ss. 1, 2, 3.

The clerks of the superior court shall issue executions on all 2 judgments rendered in their respective courts, unless otherwise 3 directed by the plaintiff therein, within six weeks of the rendi- 4 tion of the judgment, and shall indorse upon the record the date 5 of such issue; and if the executions issued are not returned satis- 6 fied to the courts to which they are made returnable, the clerks 7 shall issue *alias* executions, within six weeks thereafter, unless 8 otherwise instructed as aforesaid. And every clerk, who shall fail 9 to comply with the requirements of this section, shall be liable to 10 be amerced in the sum of one hundred dollars, for the benefit of the 11 party aggrieved, under the same rules that are provided by law 12 for amercing sheriffs, and shall be further liable to the party in- 13 jured by suit upon his bond.

Bank of Cape Fear v. Stafford, 2 Jones, 98; State v. McLeod, 5 Jones, 318; Simpson v. Simpson, 63—534; Badham v. Jones, 64—655; *ex parte* Schenck, 65—353; McKee v. Lineberger, 69—217.

Sec. 840. Officer to prepare deeds for property sold.

Sheriffs or other officers, selling lands by authority of any exe-

2 cution or process, shall, upon payment of the price, prepare, exe-  
 3 cuted, and deliver to the purchaser a deed for the property pur-  
 4 chased: *Provided*, that the purchaser of land shall furnish the offi-  
 5 cer with a description of the land.

R. C., c. 45, s. 30.  
 1848, c. 39.

Sec. 841. Costs on execution satisfied in part or in whole to be paid to clerk; pen-  
 alty forty dollars for failure.

The sheriff or other officer shall pay the costs on all executions,  
 2 which shall be satisfied in whole or in part, to the clerk of the court  
 3 from which the execution issued, and to no other person, on the  
 4 second day of the term of the court; and any such officer making  
 5 default herein shall forfeit and pay forty dollars for the benefit of  
 6 the party aggrieved, under the same rules that are provided by  
 7 law for amercing sheriffs.

R. S., c. 76, s. 5.  
 1822, c. 1149, s. 1.

Sec. 842. Sheriff to make due return of execution; penalty for failure.

Every sheriff shall make due return of every summons, execu-  
 2 tion or other process delivered to him, under the penalty of forfeit-  
 3 ing one hundred dollars for each neglect, when such process shall  
 4 be delivered to him fifteen days before the sitting of the court to  
 5 which the same is returnable, to be paid to the party aggrieved, by  
 6 order of the court, upon motion and proof of such delivery, unless  
 7 such sheriff can show sufficient cause to the court, at the next suc-  
 8 ceeding term after the order; and for every false return the sheriff  
 9 shall forfeit and pay five hundred dollars to the party aggrieved,  
 10 and moreover be further liable to the party aggrieved for damages.

R. C., c. 105, s. 17.  
 1777, c. 18, s. 5.  
 1821, c. 1110.

Douglas v. Auld, 1 Car. Law Rep., 500; Holding v. Holding, 2 Car. Law Rep., 440; Crumpler v. Glisson, N. C. Term Rep., 79; Branton v. Dixon, 1 Murphy., 225; State v. Armfield, 2 Hawks, 246; Lindsay v. Armfield, 3 Hawks, 548; Governor v. Twitty, 1 Dev., 153; Banner v. McMurray, 1 Dev., 218; Mitchell v. Durham, 2 Dev., 538; Dowell v. Vannoy, 3 Dev., 23; McRae v. Evans, 1 Dev. & Bat., 243; Troy v. Williamson, 1 Dev. & Bat., 252; Tarkinton v. Alexander, 2 Dev. & Bat., 87; State v. Benton, 2 Dev. & Bat., 196; Farley v. Lea, 4 Dev. & Bat., 169; Spruill v. Bateman, 4 Dev. & Bat., 489; McLin v. Hardie, 3 Ire., 407; Satterwhite v. Carson, 3 *Ibid.*, 549; Lyle v. Wilson, 4 *Ibid.*, 226; State v. Allen, 5 *Ibid.*, 36; State v. Woodside, 7 *Ibid.*, 296; Lemit v. Freeman, *Ibid.*, 317; Houser v. Wilson v. Hampton, *Ibid.*, 333; Parks v. Alexander, *Ibid.*, 412; Halcombe v. Rowland, 8 *Ibid.*, 240; Sherrill v. Shuford 10 *Ibid.*, 200; State v. Edwards, *Ibid.*, 242; Patterson v. Britt, 11 *Ibid.*, 383; Sloan v. Stanly, *Ibid.*, 627; Judge v. Houston, 12 *Ibid.*, 108; Hampton v. Brown, 13 *Ibid.*, 18; Bowen v. Jones, *Ibid.*, 25; Patten v. Mann, *Ibid.*, 444; Patton v. Marr, Busbee's Law, 377; Waugh v. Brittain, 4 Jones, 470; Martin v. Martin 5 *Ibid.*, 346; *Ibid.*, 349; State v. Latham, 6 *Ibid.*, 233; Cockerham v. Baker, 7 *Ibid.*, 288; Hassell v. Latham, *Ibid.*, 465; Tomlinson v. Long, 8 *Ibid.*, 469; Albright v. Tapscott, *Ibid.*, 473; McKeithan v. Terry, 64—25; Francks v. Sutton, 86—78.

## CHAPTER TWO.

## DEFENDANT'S CLAIM FOR IMPROVEMENT BEFORE ISSUING EXECUTION.

## SECTION.

843. Petition to be filed by claimant; execution suspended; jury to assess damages and allowance.
844. Jury to estimate the annual value of land.
845. Defendant not liable for more than three years, unless he claims improvements.
846. Value of defendant's improvements to be estimated.
847. Improvements to balance rents.
848. Jury to find a verdict for the balance for plaintiff or defendant.
849. Balance due defendant to constitute a lien until paid.
850. Plaintiff claiming a less estate, and paying defendant allowance, may recover out of remainderman.

## SECTION.

851. Does not apply to action brought by mortgagee.
852. Defendant claiming allowance, plaintiff may have his estate valued without improvement.
853. Value of premises, how made.
854. Plaintiff may elect to let defendant take premises at valuation.
855. Payments to be made in court; land bound; if payments not made, land sold.
856. When plaintiff is a *feme covert*, minor or insane, what is to be done with proceeds.
857. When defendant evicted by force of a better title, he or his representatives may recover from plaintiff.

**Sec. 843. Petition to be filed by claimant; execution suspended; jury to assess damages and allowance.**

1871-'2, c. 147, s. 1.

Any defendant against whom a judgment shall be rendered for  
2 land, may, at any time before the execution of such judgment,  
3 present a petition to the court rendering the same, stating that he,  
4 or those under whom he claims, while holding the premises under  
5 a color of title believed by him or them to be good, have made per-  
6 manent improvements thereon, and praying that he may be allowed  
7 for the same, over and above the value of the use and occupation  
8 of such land; and thereupon the court may, if satisfied of the prob-  
9 able truth of the allegation, suspend the execution of such judg-  
10 ment and impanel a jury to assess the damages of the plaintiff and  
11 the allowance to the defendant for such improvements.

Pope v. Whitehead, 68—191; Daniel v. Crumpler, 75—184; Merritt v. Scott, 81—385; Scott v. Battle, 85—184.

**Sec. 844. Jury to estimate the annual value of land.**

1871-'2, c. 147, s. 2.

The jury in assessing such damages, shall estimate against the  
2 defendant the clear annual value of the premises during the time  
3 he was in possession thereof, exclusive of the use by the tenant of  
4 the improvements thereon made by himself or those under whom  
5 he claims, and also the damages for waste, or other injury, to the  
6 premises committed by the defendant.

Wetherell v. Gorman, 74—603.

**Sec. 845. Defendant not liable for more than three years, unless he claims im-  
provements.**

1871-'2, c. 147, s. 3.

The defendant shall not be liable for such annual value for any  
2 longer time than three years before the suit, or for damages for  
3 any such waste or other injury done before said three years, unless  
4 when he claims for improvements as aforesaid.



**Sec. 846. Value of defendant's improvements to be estimated.**

If the jury shall be satisfied that the defendant, or those under  
2 whom he claims, made on the premises, at a time when there was 1871-'2, c. 147, s. 4.  
3 reason to believe the title good under which he or they were hold-  
4 ing the said premises, permanent and valuable improvements,  
5 they shall estimate in his favor, the value of such improvements  
6 as were so made before notice, in writing of the title under which  
7 the plaintiff claims, not exceeding the amount actually expended  
8 in making them and not exceeding the amount to which the value  
9 of the premises is actually increased thereby at the time of the  
10 assessment.

Daniel v. Crumpler, 75—184.

**Sec. 847. Improvements to balance rents.**

If the sum estimated for the improvements exceed the damages 1871-'2, c. 147, s. 5  
2 estimated by the jury against the defendant as aforesaid, they shall  
3 then estimate against him for any time before the said three years,  
4 the rents and profits accrued against, or damages for waste or other  
5 injury done by him, or those under whom he claims, so far as may  
6 be necessary to balance his claim for improvements; but in such case  
7 he shall not be liable for the excess, if any, of such rents, profits,  
8 or damages beyond the value of improvements.

**Sec. 848. Jury to find a verdict for the balance, for plaintiff or defendant.**

After offsetting the damages assessed for the plaintiff, and the 1871-'2, c. 147, s. 6.  
2 allowances to the defendant for the improvements, if any, the jury  
3 shall find a verdict for the balance for the plaintiff or defendant,  
4 as the case may be, and judgment shall be entered therefor accord-  
5 ing to the verdict.

**Sec. 849. Balance due defendant to constitute a lien until paid.**

Any such balance due to the defendant shall constitute a lien 1871-'2, c. 147, s. 7.  
2 upon the land recovered by the plaintiff until the same shall be  
3 paid.

**Sec. 850. Plaintiff claiming a less estate, and paying defendant allowance, may recover out of remainderman.**

If the plaintiff claim only an estate for life in the land recov- 1871-'2, c. 147, s. 8.  
2 ered and pay any sum allowed to the defendant for improvements,  
3 he or his personal representative may recover at the determination  
4 of his estate from the remainderman or reversioner, the value of  
5 the said improvements as they then exist, not exceeding the amount  
6 as paid by him, and shall have a lien therefor on the premises in  
7 like manner as if they had been mortgaged for the payment  
8 thereof, and may keep possession of said premises until it be paid.

**Sec. 851. Does not apply to action brought by mortgagee.**

1871-'2, c. 147, s. 9.

Nothing herein shall extend or apply to any suit brought by a  
2 mortgagee or his heirs or assigns against a mortgager or his heirs  
3 or assigns for the recovery of the mortgaged premises.

**Sec. 852. Defendant claiming allowance, plaintiff may have his estate valued without improvement.**

1871-'2, c. 147, s. 10.

When the defendant shall claim allowance for improvements,  
2 the plaintiff may by entry on the record require that the value of  
3 his estate in the premises without the improvements shall also be  
4 ascertained.

**Sec. 853. Value of premises, how made.**

1871-'2, c. 147, s. 11.

The value of the premises in such cases shall be estimated as it  
2 would have been at the time of the inquiry, if no such improve-  
3 ments had been made on the premises by the tenant or any person  
4 under whom he claims, and shall be ascertained in the manner  
2 hereinbefore provided, for estimating the value of improvements.

**Sec. 854. Plaintiff may elect to let defendant take premises at valuation.**

1871-'2, c. 147, s. 12.

The plaintiff in such case, if judgment is rendered for him, may,  
2 at any time during the same term, or before judgment is rendered  
3 on the assessment of the value of the improvements, in person or  
4 by his attorney in the cause, enter on the record his election to re-  
5 linquish his estate in the premises to the defendant at the value as  
6 ascertained, and the defendant shall thenceforth hold all the estate  
7 that the plaintiff had therein at the commencement of the suit  
8 *Provided*, he pay therefor the said value with interest in the man-  
9 ner in which the court may order it to be paid.

**Sec. 855. Payments to be made in court; land bound; if payments not made, land sold.**

1871-'2, c. 147, s. 13.

The payments shall be made to the plaintiff, or into court for his  
2 use, and the land shall be bound therefor, and if the defendant fail  
3 to make the said payments within or at the times limited therefor  
4 respectively, the court may order the land to be sold and the pro-  
5 ceeds applied to the payment of said value and interest, and the  
6 surplus, if any, to be paid to the defendant; but if the said net pro-  
7 ceeds be insufficient to satisfy the said value and interest, the de-  
8 fendant shall not be bound for the deficiency.

**Sec. 856. When plaintiff is a feme covert, minor, or insane, what is to be done with proceeds.**

1871-'2, c. 147, s. 14.

If the party by or for whom the land is claimed in the suit be a  
2 *feme covert*, minor, or insane, such value shall be deemed to be real  
3 estate, and be disposed of as the court may consider proper for the  
4 benefit of the persons interested therein.

Sec. 857. When defendant evicted by force of a better title, he or his representatives may recover from plaintiff.

If the defendant, his heirs or assigns shall, after the premises 1871-'2, c. 147, s. 15.  
2 are so relinquished to him, be evicted thereof by force of any better  
3 title than that of the original plaintiff, the person so evicted may  
4 recover from such plaintiff or his representatives, the amount so  
5 paid for the premises, as so much money had and received by such  
6 plaintiff in his lifetime for the use of such person, with lawful in-  
7 terest thereon from the time of such payment.

### CHAPTER THREE.

#### PROCEEDINGS SUPPLEMENTARY TO THE EXECUTION.

##### SECTION.

858. (1) Execution returned unsatisfied, order to answer concerning his property.  
(2) Execution issued, not returned, order to issue upon affidavit.  
(3) Either party to be examined as witness.  
(4) Debtor leaving the state, or concealing himself, upon affidavit of plaintiff that he has property which he refuses to apply, may be arrested and ordered to give undertaking.  
(5) No person to be excused from answering because it may criminate him, nor because he has executed a conveyance, but his answer not to be used against him in any criminal prosecution.  
(6) Court or judge may forbid transfer of property.  
859. Execution issued, any debtor of judgment debtor may pay to sheriff.  
860. Execution issued and returned, upon affidavit, order to issue to any person having property of judgment debtor or to any person indebted to him over ten dollars, to appear and answer; proceedings against joint debtors.  
861. Witness required to testify as on trial of an issue.

##### SECTION.

862. Party or witness to appear before referee and compelled to answer under oath; examination certified to by judge; corporations to answer by an officer.  
863. Property of debtor not exempt from execution to be applied to payment of judgment; exception.  
864. Judge to appoint receiver; transfer of property forbidden; other creditors having instituted supplementary proceedings to be notified; no more than one receiver appointed.  
865. Clerk of superior court to file order, record it, provide receiver with a copy; receiver to be vested with property; receiver subject to control of judge.  
866. Order to be filed in the office of what clerk, before vested with real property.  
867. Property claimed by a third party, or debt denied, receiver to bring action, and in meantime transfer or payment forbidden.  
868. Judge may order a reference, to report the evidence or facts.  
869. Costs to be allowed.  
870. Disobedience to order; punishment.

Sec. 858. Execution returned unsatisfied, order to answer concerning his property.

(1) When an execution against property of the judgment debtor, C. C. P., s. 264.  
2 or any one of several debtors in the same judgment, issued to the 1868-'9, c. 95, s. 2.  
3 sheriff of the county where he resides or has a place of business, or  
4 if he do not reside in the state, to the sheriff of the county where  
5 a judgment roll or a transcript of a justice's judgment is filed, is  
6 returned unsatisfied, in whole or in part, the judgment creditor,  
7 at any time after such return made, and within three years from



8 the time of issuing the execution, is entitled to an order from the  
 9 court to which the execution is returned, or from the judge there-  
 10 of, requiring such debtor to appear and answer concerning his  
 11 property, before such court or judge, at a time and place specified  
 12 in the order, within the county to which the execution was issued.

Hogan v. Kirkland, 61—250; Parks v. Sprinkle, 61—637; Walston v. Bryan, 64—764; Mc-  
 Keithan v. Walker, 66—95; Hutchison v. Symons, 67—156; Woody v. Jordan, 69—189; Rankin  
 v. Minor, 72—424; Whitehead v. Hellen, 74—679; Hasty v. Simpson, 77—69; Blake v. Respass,  
 77—193; Rand v. Rand, 78—12; LaFountaine v. Southern Underwriters, 79—514; Runion v. Ram-  
 say, 80—60; Weiller v. Lawrence, 81—35; LaFountaine v. Southern Underwriters, 83—132;  
 Hinsdale v. Sinclair, 83—333; Bronson v. Ins. Co., 85—411.

#### EXECUTION ISSUED, NOT RETURNED, ORDER TO ISSUE UPON AFFIDAVIT.

13 (2) After the issuing of an execution against property, and upon  
 14 proof by affidavit, of a party, his agent or attorney, to the satis-  
 15 faction of the court, or a judge thereof, that any judgment debtor  
 16 residing in the judicial district where such judge or officer resides,  
 17 has property which he unjustly refuses to apply towards the satis-  
 18 faction of the judgment, such court or judge may, by an order,  
 19 require the judgment debtor to appear at a specified time and  
 20 place, to answer concerning the same; and such proceedings may  
 21 thereupon be had for the application of the property of the judg-  
 22 ment debtor towards the satisfaction of the judgment as are pro-  
 23 vided upon the return of an execution, and the judgment creditor  
 24 shall be entitled to the order of examination under this sub-di-  
 25 vision, and under sub-division one of this section, although the  
 26 judgment debtor may have an equitable estate in land subject to  
 27 the lien of the judgment, or may have choses in action, or other  
 28 things of value unaffected by the lien of the judgment, and inca-  
 29 pable of levy.

Howey v. Miller, 87—459; Bronson v. Insurance Co., 85—411; Young v. Rollins, 85—485.

#### EITHER PARTY TO BE EXAMINED AS WITNESSES.

30 (3) On an examination under this section, either party may ex-  
 31 amine witnesses in his behalf, and the judgment debtor may be  
 32 examined in the same manner as a witness.

LaFountaine v. Southern Underwriters, 83—132; Bronson v. Insurance Co., 85—411.

#### DEBTOR LEAVING THE STATE, OR CONCEALING HIMSELF, UPON AFFIDAVIT OF PLAINTIFF, THAT HE HAS PROPERTY WHICH HE REFUSES TO APPLY, MAY BE ARRESTED AND ORDERED TO GIVE UNDERTAKING.

1868-'9, c. 148, s. 4.  
 1868-'9, c. 277.

33 (4) Instead of the order requiring the attendance of the judg-  
 34 ment debtor, the court or judge may, upon proof by affidavit or  
 35 otherwise, to his satisfaction, that there is danger of the debtor  
 36 leaving the state, or concealing himself, and that there is reason  
 37 to believe that he has property which he unjustly refuses to apply  
 38 to such judgment, issue a warrant requiring the sheriff of any  
 39 county where such debtor may be, to arrest him and bring him  
 40 before such court or judge. Upon being brought before the court  
 41 or judge, he may be examined on oath, and, if it then appears that  
 42 there is danger of the debtor leaving the state, and that he has  
 43 property which he has unjustly refused to apply to such judgment,

44 he shall be ordered to enter into an undertaking, with one or more  
 45 sureties, that he will, from time to time, attend before the court or  
 46 judge as he shall direct, and that he will not, during the pendency  
 47 of the proceedings, dispose of any property not exempt from exe-  
 48 cution. In default of entering into such undertaking, he may be  
 49 committed to prison by warrant of the court or judge, as for a  
 50 contempt.

*Bronson v. Ins. Co.*, 85—411.

NO PERSON TO BE EXCUSED FROM ANSWERING BECAUSE IT MAY CRIMINATE HIM, NOR BECAUSE HE HAS EXECUTED A CONVEYANCE, BUT ANSWER NOT TO BE USED AGAINST HIM IN ANY CRIMINAL PROSECUTION.

51 (5) No person shall, on examination pursuant to this chapter,  
 52 be excused from answering any question on the ground that his  
 53 examination will tend to convict him of the commission of a  
 54 fraud; but his answer shall not be used as evidence against him  
 55 in any criminal proceeding or prosecution. Nor shall he be ex-  
 56 cused from answering any question, on the ground that he has,  
 57 before the examination, executed any conveyance, assignment or  
 58 transfer of his property for any purpose, but his answer shall not  
 59 be used as evidence against him in any criminal proceeding or  
 60 prosecution.

COURT OR JUDGE MAY FORBID TRANSFER OF PROPERTY.

61 (6) The court or judge may, by order, forbid a transfer or other  
 62 disposition of the property of the judgment debtor not exempt  
 63 from execution, or any interference therewith.

*Biggs ex parte*, 64—202; *Hogan v. Kirkland*, 64—250; *Parks v. Sprinkle*, 64—637; *Walston v. Bryan*, 64—764; *Howey v. Miller*, 67—459; *Phillips v. Trezevant*, 70—176; *Perry v. Merchants' Bank of New Berne*, 70—309; *Righton v. Pruden*, 73—61; *LaFontaine v. Southern Underwriters* 79—514; *Ibid.*, 83—132; *Bronson v. Insurance Co.*, 85—411.

#### Sec. 859. Execution issued, any debtor of judgment debtor may pay to sheriff.

After the issuing of execution against property, any person in-  
 2 debted to the judgment debtor, or to any one of several debtors in  
 3 the same judgment, may pay to the sheriff the amount of his debt,  
 4 or so much thereof as shall be necessary to satisfy the execution;  
 5 and the sheriff's receipt shall be a sufficient discharge for the  
 6 amount so paid.

C. C. P., s. 265.

*Clerk's office v. Allen*, 7 Jones, 156; *Parks v. Sprinkle*, 64—637; *Clerk's office v. President, Directors and Co. of Bank of Cape Fear*, 66—214; *Howey v. Miller*, 67—459; *Phillips v. Trezevant*, 70—176; *Righton v. Pruden*, 73—61; *Weiller v. Lawrence*, 81—65; *Smith v. McMillan*, 84—593; *Bronson v. Ins. Co.*, 85—411.

#### Sec. 860. Execution issued and returned, upon affidavit, order to issue to any person having property of judgment debtor or to any person indebted to him over ten dollars to appear and answer; proceedings against joint debtors.

After the issuing or return of an execution against property of  
 2 the judgment debtor, or of any one of several debtors in the same  
 3 judgment, and upon affidavit that any person or corporation has  
 4 property of such judgment debtor, or is indebted to him in an  
 5 amount exceeding ten dollars, the court or judge may, by an order,

C. C. P., s. 266.<sup>1</sup>  
 1869-'70, c. 79, s. 2.

6 require such person or corporation, or any officer or members  
7 thereof, to appear at a specified time and place, and answer con-  
8 cerning the same. The court or judge may also, in its or his dis-  
9 cretion, require notice of such proceeding to be given to any party  
10 to the action, in such manner as may seem to him or it proper.

11 The proceedings mentioned in this section and in section eight  
12 hundred and fifty-eight may be taken upon the return of an exe-  
13 cution unsatisfied, issued upon a judgment recovered in an action  
14 against joint debtors, in which some of the defendants have not  
15 been served with the summons by which said action was com-  
16 menced, so far as relates to the joint property of such debtors; and  
17 all actions by creditors to obtain satisfaction of judgments out of  
18 the property of joint debtors are maintainable in the like manner  
19 and to the like effect. These provisions shall apply to all pro-  
20 ceedings and actions now pending and to those terminated by  
21 final decree or judgment.

*Parks v. Sprinkle*, 64—637; *McKeithan v. Walker*, 66—95; *Sutton v. Askew*, 66—172; *Hutchinson v. Symons*, 67—156; *Howey v. Miller*, 67—459; *Keener v. Finger*, 70—35; *Phillips v. Trezevant*, 70—176; *Perry v. Merchants' Bank of New Berne*, 70—309; *Righton v. Pruden*, 73—61; *Blake v. Respass*, 77—193; *Rand v. Rand*, 78—12; *LaFountaine v. Southern Underwriters*, 79—514; *Weiller v. Lawrence*, 81—65; *In re Davis*, 81—72; *Bronson v. Ins. Co.*, 85—411.

**Sec. 861. Witness required to testify as on trial of an issue.**

C. C. P., s. 267.

Witnesses may be required to appear and testify on any proceed-  
2 ings under this chapter, in the same manner as upon the trial of  
3 an issue.

*Bronson v. Insurance Co.*, 85—411.

**Sec. 862. Party or witness to appear before referee, and compelled to answer under oath; examination certified to by judge; corporations to answer by an officer.**

C. C. P., s. 268.  
1870-'1, c. 245, s. 1.

The party or witness may be required to attend before the court  
2 or judge, or before a referee appointed by the court or judge; if  
3 before a referee, the examination shall be taken by the referee, and  
4 certified to the court or judge. All examinations and answers be-  
5 fore a court or judge or referee, under this chapter, shall be on  
6 oath, except that when a corporation answers, the answer shall be  
7 on the oath of an officer thereof.

*Clerk's office v. Bank of Cape Fear*, 66—214; *Hasty v. Simpson*, 77—69; *LaFountaine v. Southern Underwriters*, 83—132; *Bronson v. Ins. Co.*, 85—411.

**Sec. 863. Property of debtor not exempt from execution to be applied to payment of judgment; exception.**

C. C. P., s. 269.  
1870-'1, c. 245, s. 1.

The court or judge may order any property, whether subject or  
2 not to be sold under execution, (except the homestead and personal  
3 property exemptions of the judgment debtor,) in the hands either  
4 of himself or any other person, or due to the judgment debtor, to  
5 be applied towards the satisfaction of the judgment; except that  
6 the earnings of the debtor for his personal services, at any time  
7 within sixty days next preceding the order, cannot be so applied  
8 when it is made to appear, by the debtor's affidavit or otherwise,



9 that such earnings are necessary for the use of a family supported  
10 wholly or in part by his labor.

Clerk's office v. Allen, 7 Jones, 156; Clerk's office v. Bank of Cape Fear, 66—214; Rand v. Rand, 78—12; Bronson v. Ins. Co., 85—411.

**Sec. 864. Judge to appoint receiver; transfer of property forbidden; other creditors having instituted supplementary proceedings to be notified; no more than one receiver appointed.**

The court or judge having jurisdiction over the appointment of  
2 receivers as set forth in sections seven hundred, seven hundred and  
3 one, seven hundred and two and seven hundred and forty-four,  
4 may also by order in like manner, and with like authority, appoint  
5 a receiver in proceedings under this chapter, of the property of the  
6 judgment debtor, whether subject or not to be sold under execu-  
7 tion, except the homestead and personal property exemptions. But  
8 before the appointment of such receiver, the court or judge shall  
9 ascertain, if practicable, by the oath of the party or otherwise,  
10 whether any other supplementary proceedings are pending against  
11 the judgment debtor, and if such proceedings are so pending, the  
12 plaintiff therein shall have notice to appear before him, and shall  
13 likewise have notice of all subsequent proceedings in relation to  
14 said receivership. No more than one receiver of the property of a  
15 judgment debtor shall be appointed. The court or judge may also,  
16 forbid a transfer or other disposition of the property of the judg-  
17 ment debtor not exempt from execution, as homestead or personal  
18 property exemptions, and any interference therewith. The title of  
19 the receiver shall relate back to the service of the restraining order,  
20 hereinbefore and hereinafter provided for.

C. C. P., s. 270.  
1870-'1, c. 245, s. 1.  
1876-'7, c. 223.  
1879, c. 63.  
1881, c. 51.

Parks v. Sprinkle, 64—637; LaFountaine v. Southern Underwriters, 79—514; Bronson v. Ins. Co., 85—411.

**Sec. 865. Clerk of superior court to file order, record it, provide receiver with a copy; receiver to be vested with property; receiver subject to control of judge.**

Whenever the court or a judge shall grant an order for the ap-  
2 pointment of a receiver of the property of the judgment debtor,  
3 the same shall be filed in the office of the clerk of the superior  
4 court of the county where the judgment roll in the action or  
5 transcript from justice's judgment, upon which the proceedings  
6 are taken, is filed; and the clerk shall record the order in a book  
7 to be kept for that purpose in his office, to be called "book of  
8 orders, appointing receivers of judgment debtors," and shall note  
9 the time of the filing of said order therein. A certified copy of  
10 said order shall be delivered to the receiver named therein, and he  
11 shall be vested with the property and effects of the judgment  
12 debtor from the time of the service of the restraining order, if such  
13 restraining order shall have been made, and if not, from the time  
14 of the filing and recording of the order for the appointment of a  
15 receiver. The receiver of the judgment debtor shall be subject to

C. C. P., s. 270.  
1870-'1, c. 245, s. 1.

16 the direction and control of the court in which the judgment was  
17 obtained upon which the proceedings are founded.

*Rankin v. Minor*, 72—424; *Righton v. Pruden*, 73—61; *Rand v. Rand*, 78—12; *Corbin v. Berry*  
83—27; *Bronson v. Insurance Co.*, 85—411.

**Sec. 866. Order to be filed in the office of what clerk, before vested with real property.**

C. C. P., s. 270.

But before the receiver shall be vested with any real property of  
2 such judgment debtor, a certified copy of said order shall also be  
3 filed and recorded on the execution docket, in the office of the  
4 clerk of the superior court of the county in which any real estate  
5 of such judgment debtor sought to be affected by such order is  
6 situated, and also in the office of the clerk of the superior court of  
7 the county in which such judgment debtor resides.

*Bronson v. Ins. Co.*, 85—411.

**Sec. 867. Property claimed by a third party, or debt denied, receiver to bring action, and in meantime transfer or payment forbidden.**

C. C. P., s. 271.  
1870—71, c. 245, s. 1.

If it appear that a person or corporation allege to have property  
2 of the judgment debtor, or indebted to him, claims an interest in  
3 the property adverse to him, or denies the debt, such interest or  
4 debt shall be recoverable only in an action against such person or  
5 corporation by the receiver; but the court or judge may, by order,  
6 forbid a transfer or other disposition of such property or interest,  
7 till a sufficient opportunity be given to the receiver to commence  
8 the action, and prosecute the same to judgment and execution, but  
9 such order may be modified or dissolved by the court or judge  
10 having jurisdiction over the same, under sections seven hundred,  
11 seven hundred and one, seven hundred and two and seven hun-  
12 dred and forty-four, at any time, on such security as he shall direct.

*Williams v. Green*, 68—183; *Bronson v. Ins. Co.*, 85—411.

**Sec. 868. Judge may order a reference, to report the evidence or facts.**

C. C. P., s. 272.

The court or judge may, in his discretion, order a reference to a  
2 referee agreed upon by the parties, or appointed by him, to report  
3 the evidence or the facts, and may, in his discretion, appoint such  
4 referee in the first order, or at any time.

*Hasty v. Simpson*, 77—69; *Bronson v. Ins. Co.*, 85—411.

**Sec. 869. Costs to be allowed.**

C. C. P., s. 273.

The court or judge may allow to the judgment creditor, or to  
2 any party so examined, whether a party to the action or not, wit-  
3 nesses' fees and disbursements, and a fixed sum in addition, not  
4 exceeding thirty dollars, as costs.

*Bronson v. Ins. Co.*, 85—411.

**Sec. 870. Disobedience to order; punishment.**

C. C. P., s. 274.  
1869—70, c. 79, s. 3.

If any person, party, or witness, disobey an order of the court  
2 or judge or referee, duly served, such person, party, or witness,

3 may be punished by the judge as for a contempt. And in all  
4 cases of commitment under this chapter, the person committed  
5 may, in case of inability to perform the act required, or to endure  
6 the imprisonment, be discharged from imprisonment by the judge  
7 committing him, or the judge having the jurisdiction of the same  
8 under sections seven hundred, seven hundred and one, seven hun-  
9 dred and two, and seven hundred and forty-four, on such terms as  
10 may be just.

Parks v. Sprinkle, 64—637; Bond v. Bond, 69—97; Justice v. Bank of New Berne, 83—8; Eth-  
eridge v. Woodley, 83—11; Bronson v. Ins. Co., 85—411.

## CHAPTER FOUR.

### PROPERTY EXEMPT FROM EXECUTION, AND PROCEEDINGS TO LAY OFF THE SAME.

#### SECTION.

- 871. Exemptions from sale under execution in force at the time the debt was contracted, or cause of action arose, are to be set apart.
- 872. Sheriff to summon appraisers.
- 873. Duty of appraisers.
- 874. Appraisers to make return.
- 875. Levy to be made on the excess.
- 876. No election; appraisers to elect.
- 877. Personal property, how appraised; how return to be made.
- 878. Appraisers to take an oath; fees of.
- 879. Tracts not contiguous, may be included in homestead.
- 880. Costs, how taxed and by whom paid.
- 881. Homestead and personal property exemption may be set off upon petition.
- 882. Assessors to set apart personal property, and return the same to register of deeds.
- 883. Register to endorse on return the date, and register the same.

#### SECTION.

- 884. When persons die, homestead not set apart, who may have the same set apart.
- 885. How petition is to be filed, and advertisement made.
- 886. Liability of officer making levy, refusing or neglecting to lay off homestead.
- 887. Liability of officer, appraiser or assessor conspiring with debtor.
- 888. Liability of officer, appraiser or assessor conspiring with creditor.
- 889. Judgment creditor dissatisfied, how to proceed.
- 890. When exemption made or re-allotted on petition; objection thereto, how to be made.
- 891. Cost of re-assessment, how paid.
- 892. Undertaking of objector.
- 893. Appraisal or assessment may be set aside for what.
- 894. Return to be registered—forms.

**Sec. 871.** Exemptions from sale under execution in force at the time the debt was contracted, or cause of action arose, are to be set apart.

There shall be exempt from sale under execution or other final  
2 process issued for the collection of any debt upon all judgments  
3 heretofore, or which may be hereafter rendered, such property as  
4 the judgment debtor may have been entitled to have set apart and  
5 allotted to him at the time the debt was contracted, or cause of  
6 action accrued, as follows :

1879, c. 256, s. 1.

Earle v. Hardie, 80—177; Carlton v. Watts, 82—212; Grant v. Hughes, 82—216; Dail v. Sugg,  
85—104; Leach v. Jones, 86—404.



(1) UPON DEBTS CONTRACTED PRIOR TO FEBRUARY TWENTY-FIFTH, ONE THOUSAND EIGHT HUNDRED AND SIXTY-SEVEN.

R. C., c. 45, s. 7.  
1848, c. 38, s. 1.

7 The wearing apparel, working tools, arms for muster, one wheel  
8 and two pairs of cards, one loom, one Bible and testament, one hymn-  
9 book, one prayer-book, and all necessary school books, the prop-  
10 erty of the defendant, shall be exempt from seizure under execu-  
11 tion, and

Henson v. Edwards, 10 Iredell, 43; Abrams v. Pender, Busbee, 260.

R. C., c. 45, s. 8.  
1844, c. 32.  
1846, c. 53.  
1848, c. 38, s. 8.

12 In addition to the foregoing articles there shall be, in favor of  
13 every housekeeper complying with the provisions of this chapter,  
14 exempt from execution on debts contracted since the first day of  
15 July, one thousand eight hundred and forty-five, and prior to Feb-  
16 ruary twenty-fifth day, one thousand eight hundred and sixty-  
17 seven, the following property, provided the same shall have been  
18 set apart before seizure, to-wit: one cow and calf, ten bushels of  
19 corn or wheat, fifty pounds of bacon, beef, or pork, or one barrel of  
20 fish, all necessary farming tools for one laborer, one bed, bedstead,  
21 and covering for every two members of the family, and such other  
22 property as the freeholders appointed for that purpose may deem  
23 necessary for the comfort and support of such debtor's family; such  
24 other property not to exceed in value the sum of fifty dollars at  
25 cash valuation: *Provided, however,* that the provisions of this sec-  
26 tion shall not be extended to any person, against whom judgment  
27 is obtained and execution awarded for liability incurred for failure  
28 or neglect to work on the public roads, or to muster, or pay his poll  
29 tax.

Ballard v. Waller, 7 Jones, 84; Massey v. Warren, 7 Jones, 143; Lloyd v. Durham, Winston, 288; Weaver v. Parker, 1 Phillips, 479; Carlton v. Watts, 82—212; Grant v. Hughes, 82—216.

(2) DEBTS CONTRACTED SINCE FEBRUARY TWENTY-FIFTH, ONE THOUSAND EIGHT HUNDRED AND SIXTY-SEVEN, AND PRIOR TO APRIL TWENTY-FOURTH, ONE THOUSAND EIGHT HUNDRED AND SIXTY-EIGHT.

1866-'67, c. 61, s. 7.  
1879, c. 256, s. 1.

30 The wearing apparel, working tools, arms for muster, one wheel  
31 and two pair of cards, one loom, one Bible and testament, one  
32 hymn-book, one prayer-book, and all necessary school books, the  
33 property of the defendant, shall be exempt from seizure under exe-  
34 cution. And the following property of each head of a family or  
35 housekeeper shall be exempt from execution except for taxes: All  
36 necessary farming and mechanical tools, one work horse, one yoke  
37 of oxen, one cart or wagon, one milch cow and calf, fifteen head of  
38 hogs, five hundred pounds of pork or bacon, fifty bushels of corn,  
39 twenty bushels of wheat or rice, household and kitchen furniture  
40 not to exceed in value two hundred dollars, the libraries of licensed  
41 attorneys at law, practicing physicians and ministers of the gospel,  
42 and the instruments of surgeons and dentists used in their profes-  
43 sions: *Provided,* that the value of the personal property exemptions  
44 shall not exceed five hundred dollars.

Carlton v. Watts, 82—212; Grant v. Hughes, 82—216.

(3) UPON DEBTS CONTRACTED AND CAUSES OF ACTIONS ACCRUED SINCE APRIL THE TWENTY-FOURTH, ONE THOUSAND EIGHT HUNDRED AND SIXTY-EIGHT, AND PRIOR TO MAY FIRST, ONE THOUSAND EIGHT HUNDRED AND SEVENTY-SEVEN.

45 The property, real and personal, as set forth in article ten of the  
46 constitution of the state.

Hill v. Kessler, 63—437; McKethan v. Terry, 64—25; Horton v. McCall, 66—159; Ladd v. Adams, 66—164; Johnson v. Cross, 66—167; Watts v. Leggett, 66—197; Dellinger v. Tweed, 66—206; Burnes v. Harris, 67—140; Martin v. Hughes, 67—293; Barrett v. Richardson, 76—429; Wyche v. Wyche, 85—96; McDonald v. Dickson, 85—248; Cotten v. McClenahan, 85—254; Grant v. Edwards, 86—513.

(4) UPON DEBTS CONTRACTED OR CAUSES OF ACTION ACCRUING SINCE MAY FIRST, ONE THOUSAND EIGHT HUNDRED AND SEVENTY-SEVEN.

47 The property, real and personal, specified in subdivision three of  
48 this section and the homestead of any resident of this state shall not  
49 be subject to the lien of any judgment or decree of any court, or to  
50 sale under execution or other process thereon, except such as may be  
51 rendered or issued to secure the payment of obligations contracted  
52 for the purchase of the said real estate, or for laborers' or mechanics'  
53 liens, for work done and performed for the claimant of said  
54 homestead, or for lawful taxes; and the said claimant shall hold  
55 the same in fee simple.

1876-'7, c. 253, s. 1.

Gamble v. Watterson, 83—573; Smith v. High, 85—93; McDonald v. Dickson, 85—248; Gregory v. Ellis, 86—579.

#### Sec. 872. Sheriff to summons appraisers.

Before levying upon the real estate of any resident of this state,  
2 who is entitled to a homestead under the provisions of this chap-  
3 ter, and the constitution of this state, article ten, the sheriff or  
4 other officer charged with such levy, shall summon three discreet  
5 persons qualified to act as jurors, to whom he shall administer the  
6 following oath: "I, A. B., do solemnly swear (or affirm) that I  
7 have no interest, near or remote, in the homestead exemption of  
8 C. D., and that I will faithfully perform the duties of appraiser  
9 (or assessor, as the case may be,) in valuing and laying off the  
10 same. So help me, God."

1868-'9, c. 137, s. 2.

Lute v. Reilly, 65—20; Coble & Ross v. Thom., 72—121; Whitaker v. Elliott, 73—186; Chambers v. Penland, 74—340; Lambert v. Kinnery, 74—348; Littlejohn v. Egerton, 77—379; Grant v. Edwards, 86—513.

#### Sec. 873. Duty of appraisers.

The said appraisers shall thereupon proceed to value the home-  
2 stead, with its dwelling and buildings thereon, and lay off to said  
3 owner such portion as he may select, or to any agent, attorney, or  
4 other person in his behalf, not exceeding in value one thousand  
5 dollars, and to fix and describe the same by metes and bounds.

1868-'9, c. 137, s. 3.

Lambert v. Kinnery, 74—348; Hoskins v. Wall, 77—249; Littlejohn v. Egerton, 77—379.

#### Sec. 874. Appraisers to make return.

They shall then make and sign in the presence of the officer a  
2 return of their proceedings, setting forth the property exempted,

1868-'9, c. 137, s. 4.

3 which shall be returned by the officer to the clerk of the court for  
4 the county in which the homestead is situated and filed with the  
5 judgment roll in the action, and a minute of the same entered on  
6 the judgment docket, and a certified copy thereof under the hand  
7 of the clerk shall be registered in the office of the register of deeds  
8 for the county, and in all judicial proceedings the original return  
9 or a certified copy thereof may be read in evidence.

**Sec. 875. Levy to be made on the excess.**

1868-'9 c. 137, s. 5.

The levy may be made upon the excess of the homestead, not  
2 laid off according to the provisions of this chapter, and the officer  
3 shall make substantially the following return upon the execution :  
4 "A. B., C. D., and E. F., summoned and qualified as appraisers or  
5 assessors, (as the case may be,) who set off to X. Y., the homestead  
6 exempt by law. Levy made upon the excess."

Scott v. Walton, 67—109; Andrews v. Pritchett, 72—135; Edwards v. Kearsey, 74—241; Lambert v. Kinnery, 74—348; Waters v. Stubbs, 75—28; Brodie v. Batchelor, 75—51.

**Sec. 876. No election; appraisers to elect.**

1868-'9, c. 137, s. 6.

In case no election is made by the owner, his agent, attorney,  
2 or any one acting in his behalf, of the homestead, to be laid off as  
3 exempt, the appraisers shall make such election for him, including  
4 always the dwelling and buildings used therewith.

**Sec. 877. Personal property, how appraised; how return to be made.**

1868-'9, c. 137, ss. 12,  
13.

Whenever the personal property of any resident of this state shall  
2 be levied upon by virtue of any execution or other final process  
3 issued for the collection of any debt, and the owner or any agent,  
4 or attorney in his behalf, shall demand that the same, or any part  
5 thereof, shall be exempt from sale under such execution, the sheriff  
6 or other officer making such levy, shall summon three appraisers,  
7 as heretofore provided, who having been first duly sworn, shall ap-  
8 praise and lay off to the judgment debtor such articles of personal  
9 property as he, or another in his behalf, may select, and to which  
10 he may be entitled under this chapter and the constitution of the  
11 state, in no case to exceed in value five hundred dollars, which  
12 articles shall be exempt from said levy, and return thereof shall be  
13 made by the appraisers, as provided in section eight hundred and  
14 seventy-four, upon the laying off of a homestead exemption.

Dellinger v. Tweed, 66—206; Duval v. Rollins, 68—220; Frost v. Naylor, 68—325; Smith v. Hunt, 68—482; State v. Carr, 71—106; Duvall v. Rollins, 71—218; Curlee v. Thomas, 74—51; Commissioners of Montgomery v. Riley, 75—144; Carlton v. Watts, 82—212; Grant v. Hughes, 82—216.

**Sec. 878. Appraisers to take an oath; fees of.**

1868-'9, c. 137, s. 14.

The persons summoned to appraise the personal property ex-  
2 emption shall take the same oath and be entitled to the same fees  
3 as the appraisers of the homestead, and when both exemptions are



4 claimed by the judgment debtor, at the same time, one board of  
5 appraisers shall lay off both and be entitled to but one fee.

**Sec. 879. Tracts not contiguous may be included in homestead.**

Different tracts or parcels of land not contiguous may be in- 1868-'9, c. 137, s. 15.  
2 cluded in the same homestead, when a homestead of contiguous  
3 lands is not of the value of one thousand dollars.

*Martin v. Hughes*, 67—293; *Mayho v. Cotten*, 69—289.

**Sec. 880. Costs, how taxed and by whom paid.**

The costs and expenses of appraising and laying off the home- 1868-'9, c. 137, s. 16.  
2 stead or personal property exemptions, when the same is made  
3 under execution, shall be charged and included in the officer's bill  
4 of fees upon such execution or other final process; and when made  
5 upon the petition of the owner, they shall be paid by such owner,  
6 and the latter costs shall be a lien on said homestead.

**Sec. 881. Homestead and personal property exemption may be set off upon petition.**

Whenever any resident of this state may desire to take the ben- 1868-'9, c. 137, s. 7.  
2 efit of the homestead and personal property exemption as guaran-  
3 teed by article ten of the constitution of this state, or by the pro-  
4 visions of this chapter, such resident, his agent or attorney, shall  
5 apply to any justice of the peace of the county in which he  
6 resides, and said justice of the peace shall appoint as assessors,  
7 three disinterested persons, qualified to act as jurors residing in  
8 said county, who shall, on notice by order of said justice, meet at  
9 the applicant's residence, and, after taking the oath prescribed in  
10 section eight hundred and seventy-two for appraisers before some  
11 officer authorized to administer an oath, lay off and allot to the  
12 applicant a homestead with metes and bounds, according to the  
13 applicant's direction, not to exceed one thousand dollars in value,  
14 and make and sign a descriptive account of the same and return  
15 it to the office of the register of deeds.

*Lute v. Reilly*, 65—20; *Taylor & Duncan v. Rhyne*, '65—530; *Vannoy v. Haymore*, 71—128;  
*McAfee v. Bettis*, 72—28; *Bruce v. Strickland*, 81—267.

**Sec. 882. Assessors to set apart personal property, and return the same to register of deeds.**

Said assessors shall set apart of the personal property of said ap- 1868-'9, c. 137, s. 8.  
2 plicant, to be by him selected, articles of personalty to which he  
3 may be entitled under the provisions of this chapter, not exceeding  
4 in value the sum of five hundred dollars, and make and sign a de-  
5 scriptive list thereof, and return the same to the register of deeds.

**Sec. 883. Register to indorse on return the date, and register the same.**

It shall be the duty of the register of deeds to endorse on each 1868-'9, c. 137, s. 9.  
2 of said returns the date when received for registration, and to cause  
3 the same to be registered without unnecessary delay. The said

4 register shall receive for registering the said returns the same fees  
5 that may be allowed him by law for other similar or equivalent  
6 services, which fees shall be paid by said resident applicant, his  
7 agent or attorney, upon the reception of said returns by the reg-  
8 ister.

**Sec. 884.** When persons die, homestead not set apart, who may have the same set apart.

1868-'9, c. 237, s. 10.

If any person entitled to a homestead and personal property  
2 exemption, die without having had the same set apart, his widow,  
3 if he leave one, or his child or children under the age of twenty-  
4 -one years, if he leave such, may proceed to have said homestead  
5 and personal property exemption laid off to according to the pro-  
6 visions of sections eight hundred and eighty-one and eight hun-  
7 dred and eighty-two.

Johnson v. Cross, 66—167; Watts v. Leggett, 66—197; Hager v. Nixon, 69—108; Allen v. Shields, 72—504; Wharton v. Leggett, 80—169; Gregory v. Ellis, 86—579.

**Sec. 885.** How petition is to be filed and advertisement made.

1868-'9, c. 137, s. 11.

When any person entitled to a homestead and personal property  
2 exemption shall file his or her petition before a justice of the peace  
3 to have the same laid off and set apart under the provisions of  
4 sections eight hundred and eighty-one, eight hundred and eighty-  
5 two, eight hundred and eighty-three, and eight hundred and  
6 eighty-four, the said justice shall make advertisement in some  
7 newspaper published in the county, if there be one, for six succes-  
8 sive weeks, and if there be no newspaper in the county, then at  
9 the court house door of the county in which the petition is filed  
10 notifying all creditors of said applicant of the time and place,  
11 when and where the said petition will be heard; and the same  
12 shall not be heard nor any decree made in the cause in less than  
13 six months nor more than twelve months, from the day of making  
14 advertisement as above required.

**Sec. 886.** Liability of officer making levy, refusing or neglecting to lay off home-  
stead.

1868-'9, c. 137, s. 17.

Any officer making a levy, who shall refuse or neglect to sum-  
2 mon and qualify appraisers as heretofore provided, or who shall fail  
3 to make due return of their proceedings, or who shall levy upon  
4 the homestead set off by said appraisers or assessors, (as the case  
5 may be,) except as herein provided, shall be liable to indictment  
6 for a misdemeanor, and he and his sureties shall be liable to the  
7 owner of said homestead for all costs and damages in a civil ac-  
8 tion.

State v. Carr, 71—106; Lambert v. Kinnery, 74—348; Richardson v. Wicker, 80—172.

**Sec. 887.** Liability of officer, appraiser or assessor conspiring with debtor.

1868-'9, c. 137, s. 18.

Any officer, appraiser or assessor, (as the case may be,) who  
2 shall wilfully or corruptly conspire with any judgment debtor or

3 other appraiser or assessor, (as the case may be,) to undervalue the  
4 homestead or personal property exemption of such debtor, or shall  
5 assign false metes and bounds, or make or procure to be made a  
6 false and fraudulent return thereof, shall be liable to indictment  
7 for a misdemeanor, and shall be answerable to the judgment cred-  
8 itor for all costs and damages in a civil action.

**Sec. 888. Liability of officer, appraiser or assessor conspiring with creditor.**

Any officer, appraiser or assessor who shall wilfully or cor- 1868-'9, c. 137, s. 19.  
2 ruptly conspire with any judgment creditor, or other appraiser or  
3 assessor, to overvalue the homestead or personal property exemp-  
4 tion of any debtor or applicant, or shall assign false metes and  
5 boundaries, or make, or procure to be made, false and fraudulent  
6 return thereof, shall be liable to indictment for a misdemeanor,  
7 and shall be answerable to the party injured for all costs and dam-  
8 ages in a civil action.

**Sec. 889. Judgment creditor dissatisfied, how to proceed.**

If the judgment creditor for whom levy is made, or judgment  
2 debtor or other person entitled to homestead and personal property  
3 exemption, shall be dissatisfied with the valuation and allotment  
4 of the appraisers or assessors, (as the case may be), he may, within  
5 ten days thereafter, or any other creditor within six months, and  
6 before sale under execution of the excess, notify the adverse party  
7 and the sheriff of said county, and file with the clerk of the supe-  
8 rior court a transcript of the return of the appraisers or assessors,  
9 (as the case may be), together with his objections in writing to  
10 said return; and thereupon the said clerk shall put the same on  
11 the civil issue docket of said superior court, for trial at the next  
12 term thereof as other civil actions. And the sheriff shall not sell  
13 the excess until after the determination of said action.

**Sec. 890. When exemption made or re-allotted on petition; objection thereto, how to be made.**

When the homestead or personal property exemption is made or  
2 re-allotted on the petition of the person entitled thereto, any cred-  
3 itor may, within six months from the time of said assessment or  
4 appraisal, and upon ten days' notice to the petitioner, file his ob-  
5 jections with the register of deeds of the county in which the prem-  
6 ises are situated, and the register of deeds shall return the same to  
7 the clerk of the superior court of said county, who shall place the  
8 same on the civil issue docket, and the same shall be tried as pro-  
9 vided in the preceding section for homestead and personal prop-  
10 erty exemptions set off under execution.

**Sec. 891. Costs of re-assessment, how paid.**

If the superior court at term shall confirm the appraisal or



2 assessment, or shall increase the exemption allowed the debtor or  
 3 claimant, the levy shall stand only upon the excess remaining, and  
 4 the creditor shall pay all the costs of the proceeding in court. If  
 5 the amount allowed the debtor or claimant shall be reduced, the  
 6 costs of the proceeding in court shall be paid by the debtor or  
 7 claimant, and the levy shall cover the excess then remaining.

**Sec. 892. Undertaking of objector.**

The creditor, debtor, or claimant objecting to the allotment  
 2 made by the appraisers or assessors (as the case may be) under exe-  
 3 cution or petition, shall file with the clerk of the superior court an  
 4 undertaking in the sum of one hundred dollars for the payment to  
 5 the adverse party, of such costs as shall be adjudged against him,  
 6 according to the preceding section, and of section eight hundred  
 7 and eighty.

**Sec. 893. Appraisal or assessment may be set aside, for what.**

Any appraisal or allotment by appraisers or assessors, hereinbe-  
 2 fore provided, may be set aside for fraud, complicity or other  
 3 irregularity; but whenever any allotment or assessment shall be  
 4 made or confirmed by the superior court at term time, as herein-  
 5 before provided, the said homestead shall not thereafter be set  
 6 aside or again laid off by any other creditor.

**Sec. 894. Return to be registered--forms.**

When the homestead and personal property exemption shall be  
 2 decided by the court at term time, the clerk of the superior court  
 3 shall immediately file with the register of deeds of the county a  
 4 copy of the same, which copy shall be registered as deeds are now  
 5 registered by law; and in all judicial proceedings the original or a  
 6 certified copy of said return may be introduced in evidence.

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The following forms shall be substantially followed in proceedings  
 under this chapter :

[No. 1.]

**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 home-  
 stead and personal property exemption 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 build-  
 ings 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 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 ..... J. P.  
..... County.

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.

[No. 3.]

III. FORM FOR APPRAISAL OF PERSONAL PROPERTY EXEMPTION.

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 INDORSED 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.....

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..

TITLE XII.

OF THE COSTS IN CIVIL ACTIONS.

SECTION.

- 895. Fee bill of attorneys abolished.
- 896. When allowed of course to the plaintiff; several actions on one instrument.
- 897. When allowed to defendant.
- 898. When allowed to either party in the discretion of the court.
- 899. What costs allowed.
- 900. Interest, when allowed.
- 901. Interest on contracts, except penal bonds, and on all judgments; jury to distinguish principal from interest.
- 902. In judgments final by default, interest ascertained by clerk.
- 903. Costs, how to be inserted in judgment; interlocutory costs adjusted.
- 904. Referee's fees.
- 905. Costs against infant plaintiff.

SECTION.

- 906. Costs in action by or against an executor or administrator, trustee of an express trust, or person expressly authorized by statute to sue.
- 907. Costs in civil actions by the state.
- 908. Costs in action by the state for a private person.
- 909. Costs in appeals by state to the supreme court of the United States.
- 910. Costs against assignee after action brought.
- 911. Costs on appeals generally.
- 912. Costs in special proceedings.
- 913. Costs on appeals from justices of the peace.
- 914. Judgment for costs against plaintiff and sureties on failure to maintain action.

Sec. 895. Fee bill of attorneys abolished.

C. C. P., s. 275.  
1879, c. 41.

The clerks of the supreme and superior courts shall not tax in 2 any bill of costs an attorney's fee in any civil action.

Hyman v. Devereux, 65—588; Brinkley v. Swicegood, 65—626; Patterson v. Miller, 72—516.

Sec. 896. When allowed of course to the plaintiff; several actions on one instrument.

C. C. P., s. 276.

Costs shall be allowed of course to the plaintiff, upon a recovery, 2 in the following cases:

- 3 (1) In an action for the recovery of real property, or when a
- 4 claim of title to real property arises on the pleadings, or is certi-
- 5 fied by the court to have come in question at the trial;
- 6 (2) In an action to recover the possession of personal property;
- 7 (3) In actions of which a court of justice of the peace has no
- 8 jurisdiction;
- 9 (4) In an action for assault, battery, false imprisonment, libel, slan-
- 10 der, malicious prosecution, criminal conversation or seduction, if
- 11 the plaintiff recovers less than fifty dollars damages, he shall re-
- 12 cover no more costs than damages. When several actions shall
- 13 be brought on one bond, recognizance, promissory note, bill of

1874-'5, c. 119, s. 2



16 exchange or instrument in writing, or in any other case, for the  
 17 same cause of action against several parties who might have been  
 18 joined as defendants in the same action, no costs other than dis-  
 19 bursements shall be allowed to the plaintiff in more than one of  
 20 such actions, which shall be at his election, provided the party or  
 21 parties proceeded against in such other action or actions shall have  
 22 been within the state and not secreted at the commencement of  
 23 the previous action or actions.

Wall v. Covington, 76—150; Noble v. Koence, 76—405; Porter v. Durham, 79—596; Vestal v. Sloan, 83—555; See R. C., c. 31, s. 78, Ceates v. Stephenson, 7 Jen., 124.

**Sec. 897. When allowed to defendant.**

Costs shall be allowed of course to the defendant, in the actions C. C. P., s. 277.  
 2 mentioned in the preceding section, unless the plaintiff be entitled  
 3 to costs therein.

Swain v. McCulloch, 75—495; Wall v. Covington, 76—150.

**Sec. 898. When allowed to either party in the discretion of the court.**

In other actions, costs may be allowed or not, in the discretion C. C. P., s. 278.  
 2 of the court. In all actions where there are several defendants  
 3 not united in interest, and making separate defences by separate  
 4 answers, and the plaintiff fails to recover judgment against all,  
 5 the court may award costs to such of the defendants as have judg-  
 6 ment in their favor or any of them. In the following cases the  
 7 costs of an appeal to any court shall be in the discretion of the  
 9 court:

- 10 (1) When a new trial shall be ordered;
- 11 (2) When a judgment shall be affirmed in part, and reversed in  
 12 part.

Mitchell v. Henderson, 63—643; Sedberry v. Commissioners of Chatham, 66—486; Jones v. Mial, 85—597.

**Sec. 899. What costs allowed.**

To either party for whom judgment shall be given there shall be C. C. P., s. 279.  
 2 allowed as costs his actual disbursements for fees to the officers,  
 3 witnesses, and other persons entitled to receive the same.

**Sec. 900. Interest, when allowed.**

When the judgment is for the recovery of money, interest from C. C. P., s. 282.  
 2 the time of the verdict or report until judgment be finally entered  
 3 shall be computed by the clerk and added to the costs of the party  
 4 entitled thereto.

**Sec. 901. Interest on contracts, except penal bonds, and on all judgments; jury to distinguish principal from interest.**

All sums of money due by contract of any kind whatsoever, R. C., c. 31, s. 90.  
 2 excepting money due on penal bonds, shall bear interest, and 1786, c. 253, s. 1.  
 8 when a jury shall render a verdict therefor they shall distinguish 1789, c. 314, s. 4;  
 4 the principal from the sum allowed as interest; and the principal 1807, c. 721.

5 sum due on all such contracts shall bear interest from the time of  
6 rendering judgment thereon until it be paid and satisfied. In like  
7 manner, the amount of any judgment or decree, except the costs,  
8 rendered or adjudged in any kind of action, though not on con-  
9 tract, shall bear interest till paid, and the judgment and decree of  
10 the court shall be rendered according to the provisions of this sec-  
11 tion.

*Deloach v. Worke*, 3 Haw., 36; *Trice v. Turrentine*, 13 Ire., 212; *Hall v. Craig*, 68—305; *Barlow v. Norfleet*, 72—535; *Farmer v. Willard*, 75—401; *Wall v. Covington*, 83—144; *Long v. Long*, 85—415; *Patapsco v. Magee*, 86—350; *Jolly v. Bryan*, 86—457.

**Sec. 902. In judgments final by default, interest ascertained by clerk.**

R. C., c. 31, s. 91.  
1797, c. 475, s. 1.

Whenever a suit shall be instituted on a single bond, a covenant  
2 for the payment of money, bill of exchange, promissory note, or a  
3 signed account, and the defendant shall not plead to issue thereon,  
4 upon judgment the clerk of the court shall ascertain the interest  
5 due by law, without a writ of inquiry, and the amount shall be in-  
6 cluded in the final judgment of the court as damages, which judg-  
7 ment shall be rendered therein in the manner prescribed by the  
8 preceding section.

*Hartsfield v. Jones*, 4 Jon., 309; *Griffin v. Hinson*, 6 Jon., 154; *Moore v. Mitchell*, Phil., 304; *Parker & Gatling v. Smith*, 64—291.

**Sec. 903. Costs, how to be inserted in judgment; interlocutory costs adjusted.**

C. C. P., s. 283.  
1869—70, c. 192.

The clerk shall insert in the entry of judgment the sum of the  
2 allowances for cost, as provided in chapter twenty-one, the necessary  
3 disbursements, including the fees of officers allowed by law, the fees  
4 of witnesses, the reasonable compensation of commissioners in  
5 taking depositions, the fees of referees, and the expense of printing  
6 papers for any hearing where required by a rule of the court.  
7 The disbursements shall be stated in detail. Whenever it shall  
8 be necessary to adjust costs in any interlocutory proceedings, or in  
9 any special proceedings, the same shall be adjusted by the clerk of  
10 the court to which the proceedings were returned, except in those  
11 matters in which the allowance is required and to be made by the  
12 judge.

**Sec. 904. Referee's fees.**

C. C. P., s. 285.

The fees of a referee shall be fixed by the court or judge, unless  
2 the parties themselves shall agree upon a rate of compensation.

*Wall v. Covington*, 76—150.

**Sec. 905. Costs against infant plaintiff.**

C. C. P., s. 186.

When costs are adjudged against an infant plaintiff, the guar-  
2 dian by whom he appeared in the action shall be responsible  
3 therefor.

Sec. 906. Costs in action by or against an executor or administrator, trustee of an express trust, or a person expressly authorized by statute to sue.

(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 out 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. C. C. P., s. 287.

Lewis v. Johnston, 67—38; Lewis v. Johnston, 69—392; Wall v. Covington, 76—150; Hewlett v. Nutt, 79—263.

(2) And whenever any claim against a deceased person shall be referred, the prevailing party shall be entitled to recover the fees and referees and witnesses, and other necessary disbursements, to be taxed according to law.

Wall v. Covington, 76—150; See sections 276, 277, 343, C. C. P.

Sec. 907. Costs in civil actions by the state.

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. C. C. P., s. 288.

State v. Richmond & Danville R. R. Co., 74—287.

Sec. 908. Costs in action by the state for a private person.

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. C. C. P., s. 289.

Sec. 909. Costs in appeals by state to the supreme court of the United States.

In all cases, whether civil or criminal, 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, it shall be the duty of the attorney general to certify the amount of such costs to the governor, who shall thereupon issue a warrant for the same, directed to the state treasurer, who shall pay the same out of any moneys in the treasury not otherwise appropriated. C. C. P., s. 289 (a.) 1871-'2, c. 26, s. 1.



**Sec. 910. Costs against assignee after action brought.**

C. C. P., s. 290.

In actions in which the cause of action shall become by assignment after the commencement of the action, or in any other manner, 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.

**Sec. 911. Costs on appeals generally.**

C. C. P., s. 292.

On an appeal from a justice of the peace to a superior court, or from a superior or criminal 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. 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.

**Sec. 912. Costs in special proceedings.**

C. C. P., s. 294.

The costs in special proceedings shall be as herein allowed in civil actions, unless where otherwise specially provided.

*Noble v. Koonce*, 76—405; *Mayo v. Jones*, 78—406.

**Sec. 913. On appeals from justices of the peace.**

C. C. P., s. 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.

*Smith v. R. & D. R. R. Co.*, 72—62.

**Sec. 914. Judgment for costs against plaintiff and sureties on failure to maintain action.**

R. C., c. 31, s. 126.  
1831, c. 46, ss. 1, 2.

Whenever an action shall be brought in any court in which security shall be given for the prosecution thereof, or when any case shall be brought up to a court by an appeal or otherwise, in which security for the prosecution of the suit shall have been given, and judgment shall be rendered against the plaintiff for the costs of the defendant, the appellate court, upon motion of the defendant, shall also give judgment against the surety for said costs, and execution may issue jointly against the plaintiff and his surety.

## TITLE XIII.

## OF APPEAL IN CIVIL ACTIONS.

## SECTION.

915. Writs of error abolished and appeals substituted.
916. Writs of *certiorari*, *recordari* and *supersedeas*.
917. Orders made out of court, how vacated or modified.
918. Who may appeal.
919. Appeal, in what cases may be taken.
920. When taken, execution not suspended, when.
921. Appeals to be entered by clerk on judgment docket; case, how stated and settled.
922. Clerk to make copy of judgment roll, and send to clerk of supreme court.
923. On appeal security must be given or deposit made, unless waived.
924. Appeal *in forma pauperis*.
925. On judgment for money, security to stay execution; new undertaking, on sureties on first becoming insolvent.
926. If judgment be to deliver document, or personal property, it must be deposited or security be given.
927. If to execute conveyance, it must be executed and deposited.
928. Security where judgment is to deliver real property, or for a sale of mortgaged premises.

## SECTION.

929. Stay of proceedings upon security being given.
930. Undertaking may be in one instrument or several.
931. Sureties to justify, or undertaking of no effect.
932. Perishable property may be sold notwithstanding appeal.
933. Undertaking must be filed with clerk.
934. Intermediate orders affecting the judgment may be reviewed on appeal.
935. Judgment on appeal; restitution; undertakings on appeals and writs of *certiorari*.
936. On appeal, or *recordari* of defendant from justice's judgment, court may compel plaintiff to secure costs.
937. Appeals from a justice to be tried at first term of court; judgment against party cast and his sureties; how to; have amount of judgment ascertained in case of default.
938. If plaintiff appeal and do not recover a greater sum, he shall not recover costs, but be liable to pay.

**Sec. 915. Writs of error abolished, and appeals substituted.**

Writs of error in civil actions are abolished; and the only mode  
2 of reviewing a judgment, or order, in a civil action, shall be that  
3 prescribed by this title.

C. C. P., s. 296.

Teague v. James, 63—91; State v. Swepson, 82—541.

**Sec. 916. Writs of *certiorari*, *recordari*, and *supersedeas*.**

Writs of *certiorari*, *recordari* and *supersedeas* are hereby authorized  
2 as heretofore in use. The writs of *certiorari* and *recordari*, when  
3 used as substitutes for an appeal, may issue when ordered upon  
4 the applicant filing a written undertaking for the costs only; but  
5 the *supersedeas*, to suspend execution, shall not issue until an un-  
6 dertaking is filed, or a deposit made to secure the judgment sought  
7 to be vacated, as in cases of appeal where the execution is stayed.

1874-'5, c. 109.

Syme v. Broughton, 84—114; Brown v. Williams, 84—116; Parker v. Railroad, 84—118.

For cases relating to *certiorari*, see Bat. Digest, vol. 1, page 208 *et seq.*; vol. 3, page 26; vol. 4, page 64; Bailey's Digest, page 61; State v. Lawrence, 81—522.

For *recordari*, see Bat. Digest, vol. 2, page 1040, *et seq.*; Bailey's Digest, page 436.

**Sec. 917. Orders made out of court, how vacated or modified.**

An order made out of court, without notice to the adverse party,  
2 may be vacated or modified, without notice, by the judge who

C. C. P., s. 297.

3 made it, or may be vacated or modified on notice, in the manner  
4 in which other motions are made.

*Sledge v. Blum*, 63—374; *Bank of Charlotte v. Jenkins*, 64—719; *Mitchell v. Sloan*, 69—10; *Gray v. Gaither*, 71—55; *State v. Hawkins*, 72—180; *State v. Patrick*, 72—217; *Blue v. Blue* 79—69; *Capel v. Peebles*, 80—90; *State v. Spurtin*, 80—362.

#### Sec. 918. Who may appeal.

C. C. P., s. 298.

Any party aggrieved may appeal in the cases prescribed in this  
2 title.

*Rush v. Halcyon Steamboat Co.*, 67—47; *Clemmons v. Hampton & March*, 70—534; *Rollins v. Rollins*, 76—264.

#### Sec. 919. Appeal, in what cases it may be taken.

C. C. P., s. 299.

An appeal may be taken from every judicial order or determina-  
2 tion of a judge of a superior court, upon or involving a matter of  
3 law or legal inference, whether made in or out of term, which  
4 affects a substantial right claimed in any action or proceeding; or  
5 which in effect determines the action, and prevents a judgment  
6 from which an appeal might be taken; or discontinues the action,  
7 or grants or refuses a new trial.

*State v. Bullock*, 63—570; *Smith v. Mitchell*, 63—620; *Simonton v. Chipley*, 64—152; *Carroll v. Haywood*, 64—481; *Bank of Charlotte v. Jenkins*, 64—719; *Jenkins v. N. C. Ore Dressing Co.*, 65—563; *Rush v. Halcyon Steamboat Co.*, 67—47; *Ex. Bank of Columbia v. Tiddy*, 67—169; *Skinner v. Maxwell*, 67—257; *Bryan v. Heck*, 67—322; *Vest v. Cooper*, 68—131; *Johnston v. Neville*, 68—177; *Childs v. Martin*, 68—307; *Falkner v. Hunt*, 68—475; *Loviner v. Pearce*, 70—167; *Moore v. Edmiston*, 70—471; *Gray v. Gaither*, 71—55; *Hinton v. Whitehurst*, 71—66; *Mason v. Osgood*, 71—212; *Watts v. Bell*, 71—405; *State v. Hawkins*, 72—180; *State v. Patrick*, 72—217; *Maxwell v. Caldwell*, 72—450; *Wade v. City of New Berne*, 72—498; *Horne v. Horne*, 72—534; *Windburne v. Bryan*, 73—47; *Bellamy v. Pippin*, 74—46; *Johnson v. Bell*, 74—355; *Wallington v. Montgomery*, 74—372; *Rouse v. Quinn*, 75—354; *French & McRae v. City of Wilmington*, 75—387; *Rollins v. Rollins*, 76—264; *Perry v. Whitaker*, 77—102; *Crawley v. Woodfin*, 78—4; *Wake County v. Mag- nin*, 78—181; *Sutton v. Schonwald*, 80—20; *Capel v. Peebles*, 80—90; *C. & L. R. R. v. Richardson*, 82—343; *Gay v. Brookshire*, 82—409; *Wilson v. Lineberger*, 82—412; *May v. Darden*, 83—237; *Telegraph Co. v. W., C. & A. R. R. Co.*, 83—420; *Wilson v. Seagle*, 84—110; *Syme v. Broughton*, 84—114; *Hines v. Hines*, 84—122; *Tulington v. Williams*, 84—125; *State v. McDowell*, 84—798; *Sternberger v. Hawley*, 85—141; *Moore v. Askew*, 85—199; *Spaugh v. Boner*, 85—208; *Cromartie v. Com'rs*, 85—211; *Moore v. Hill*, 85—218; *Alexander v. Robinson*, 85—275; *Sloan v. McMahon*, 85—296; *Best v. Clyde* 86—4; *Long v. Logan*, 86—535; *Long v. Gooch*, 86—709.

#### Sec. 920. When taken, execution not suspended, when.

C. C. P., s. 300.

The appeal must be taken from a judgment rendered out of term  
2 within ten days after notice thereof, and from a judgment rendered  
3 in term within ten days after its rendition, but execution shall not  
4 be suspended until the giving by the appellant of the undertak-  
5 ings hereinafter required by sections nine hundred and twenty-  
6 three, and nine hundred and twenty-five to nine hundred and  
7 thirty-three, both inclusive.

See *C. C. P.*, 303—312; *Rowland v. Thompson*, 64—714; *Skinner v. Maxwell*, 67—257; *Bryan v. Hubbs*, 69—423; *Richardson v. Debnam*, 75—390; *Applewhite v. Fort*, 85—596.

#### Sec. 921. Appeals to be entered by clerk on judgment docket; case, how stated and settled.

C. C. P., s. 301.

Within the time prescribed in the preceding section, the appel-  
2 lant shall cause his appeal to be entered by the clerk on the judg-  
3 ment docket, and notice thereof to be given to the adverse party.



4 He shall cause to be prepared a concise statement of the case, em-  
 5 bodying the instructions of the judge as signed by him, if there be  
 6 an exception thereto, and the requests of the counsel of the parties  
 7 for instructions if there be any exception on account of the grant-  
 8 ing or withholding thereof, and stating separately in articles num-  
 9 bered, the errors alleged. A copy of this statement shall be served  
 10 on the respondent within five days from the entry of the appeal  
 11 taken; within three days after such service, the respondent shall  
 12 return the copy with his approval or specific amendments indorsed  
 13 or attached; if the case be approved by the respondent, it shall be  
 14 filed with the clerk as a part of the record; if not returned with  
 15 objections within the time prescribed, it shall be deemed approved;  
 16 if returned with objections as prescribed, the appellant shall imme-  
 17 diately request the judge to fix a time and place for settling the  
 18 case before him; and the judge shall forthwith notify the attorneys  
 19 of the parties to appear before him for that purpose at a certain  
 20 time and place, within the judicial district, which time shall not be  
 21 more than twenty days from the receipt of such request; and at  
 22 the time and place stated, the judge shall settle and sign the case,  
 23 and deliver a copy to the attorney of each party, or if the attorneys  
 24 be not present, file a copy in the office of the clerk of the court. In  
 25 settling the case, the written instructions signed by the judge, and  
 26 the written requests for instructions signed by the counsel, and  
 27 filed as prescribed in sections seven hundred and eighty and seven  
 28 hundred and eighty-one, shall be deemed conclusive as to what  
 29 such instructions and requests were. If a copy of the case settled  
 30 was delivered to the appellant, he shall within five days thereafter,  
 31 file the same with the clerk, and in case he fails to do so, the re-  
 32 spondent may file his copy.

Kane v. McCarthy, 63—299; Campbell v. Allison, 63—568; Bland v. O'Hagan, 64—471; Card-  
 well v. Cardwell, 64—621; Whitesides v. Williams, 66—141; Kirkman v. Dixon, 66—406; Skin-  
 ner v. Maxwell, 67—257; Sudderth v. McCombs, 67—353; Marsh v. Cohen, 68—283; Green v.  
 Castlebury, 70—20; Armfield v. Brown, 70—27; Sampson v. A. & N. C. R. R. Co., 70—404; Duval  
 v. Rollins, 71—218; Schehan v. Malone, 71—440; Brumble v. Brown, 71—513; Isler v. Haddock,  
 72—119; Mason v. Osgood, 72—120; Wade v. City of NewBerne, 72—498; Adams v. Reeves, 74—106;  
 Wilson v. Hutchinson, 74—432; Swepson v. Summey, 74—551; Kirk v. Barnhart, 74—653; Brink  
 v. Black, 77—59; Taylor v. Brower, 78—8; McNeill v. Chadbourn, 79—149; Meekins v. Tatem,  
 79—546; Eure v. Paxton, 80—17; Smith v. Lyon, 82—2; Sanders v. Norris, 82—4; State v. Thomp-  
 son, 83—595; Turner v. Foard, 83—683.

**Sec. 922. Clerk to make copy of judgment roll, and send to clerk of supreme court.**

The clerk on receiving a copy of the case settled, as required in  
 2 the preceding section, shall make a copy of the judgment roll and  
 3 of the case, and within twenty days transmit the same, duly certi-  
 4 fied, to the clerk of the supreme court.

C. C. P., s. 302.

Morrison v. Cornelius, 63—346; McLean v. Chisholm, 64—323; Skinner v. Maxwell, 67—257;  
 Sudderth v. McCombs, 67—353; Farmer v. Willard, 75—401; Bradley v. Jones, 76—204.

**Sec. 923. On appeal security must be given or deposit made, unless waived.**

To render an appeal effectual for any purpose in any civil cause  
 2 or special proceeding, a written undertaking must be executed on

C. C. P., s. 303.  
 1871-'2, c. 31, s. 1.

3 the part of the appellant, with good and sufficient surety, in such  
 4 sum as may be ordered by the court, not to exceed the sum of two  
 5 hundred and fifty dollars, to the effect that the appellant will pay  
 6 all costs which may be awarded against him on the appeal; or such  
 7 sum as may be ordered by the court must be deposited with the  
 8 clerk by whom the judgment or order was entered, to abide the  
 9 event of the appeal; such undertaking or deposit may be waived  
 10 by a written consent on the part of the respondent.

Robeson v. Lewis, 64—734; Felton v. Elliott, 66—195; Weber v. Taylor, 66—412; Clerk's Office v. Huffsteller, 67—449; Bledsoe v. Nixon, 69—81; Bryan v. Hubbs, 69—423; State v. Dixon, 71—204; Mason v. Osgood, 71—212; Smith v. Richmond & Danville Railroad Co., 72—62; Martin v. Chasteen, 75—96; State v. Morgan, 77—510; Hancock v. Bramlett, 85—393; Bryson v. Lucas, 85—397; Smith v. Reeves, 85—594.

#### Sec. 924. Appeal in *forma pauperis*.

1873-'4, c. 60.

When any party to a civil action tried and determined in the  
 2 superior court shall, at the time of trial, desire an appeal from the  
 3 judgment rendered in said action to the supreme court, and shall  
 4 be unable, by reason of his poverty, to make the deposit or to give  
 5 the security required by law for said appeal, it shall be the duty of  
 6 the judge of said superior court to make an order allowing said  
 7 party to appeal from said judgment to the supreme court as in  
 8 other cases of appeal, without giving security therefor: *Provided*,  
 9 *however*, that the party desiring to appeal from said judgment shall  
 10 make affidavit that he is unable by reason of his poverty to give  
 11 the security required by law for said appeal, and that said party is  
 12 advised by counsel learned in the law that there is error in matter  
 13 of law in the decision of the superior court in said action: *Pro-*  
 14 *vided further*, that said affidavit shall be accompanied by a written  
 15 statement from a practicing attorney of said superior court that  
 16 he has examined the affiant's case, and that he is of opinion that  
 17 the decision of the superior court, in said action, is contrary to  
 18 law.

Mitchell v. Sloan, 69—10; Mason v. Osgood, 71—212; Martin v. Chasteen, 75—96; Lindsay v. Moore, 83—444; Stell v. Barham, 85—88; Leach v. Jones, 86—404; Stell v. Barham, 86—727.

#### Sec. 925. On judgment for money, security to stay execution; new undertaking, on sureties on first becoming insolvent.

C. C. P., s. 304.

If the appeal be from a judgment directing the payment of  
 2 money, it shall not stay the execution of the judgment, unless a  
 3 written undertaking be executed on the part of the appellant,  
 4 by at least two sureties, to the effect that if the judgment appealed  
 5 from, or any part thereof, be affirmed, or the appeal be dis-  
 6 missed, the appellant will pay the amount directed to be paid  
 7 by the judgment, or the part of such amount as to which the  
 8 judgment shall be affirmed, if it be affirmed only in part, and all  
 9 damages which shall be awarded against the appellant upon the  
 10 appeal. Whenever it shall be satisfactorily made to appear to the  
 11 court that since the execution of the undertaking the sureties have

12 become insolvent, the court may, by rule or order, require the ap-  
 13 pellant to execute, file and serve a new undertaking, as above;  
 14 and in case of neglect to execute such undertaking within twenty  
 15 days after the service of a copy of the rule or order requiring such  
 16 new undertaking, the appeal may, on motion to the court, be dis-  
 17 missed with costs. Whenever it shall be necessary for a party to  
 18 any action or proceeding to give a bond or an undertaking, with  
 19 surety or sureties, he may in lieu thereof, deposit with the offi-  
 20 cer into court as the case may require, money to the amount  
 21 for which such bond or undertaking is to be given. The court  
 22 in which such action or proceeding is pending may direct what  
 23 disposition shall be made of such money pending the action  
 24 or proceeding. In any case where, by this section, the money is to  
 25 be deposited with an officer, a judge of the court, at any time, upon  
 26 the application of either party, may, before such deposit is made,  
 27 order it to be deposited in court instead of with such officer; and  
 28 a deposit made, pursuant to such order, shall be of the same effect  
 29 as if made with such officer.

Clerk's Office v. Huffstetter, 67—449; Cox v. Hamilton, 69—30; Bledsoe v. Nixon, 69—81;  
 Bryan v. Hubbs, 69—423; Hancock v. Bramlett, 85—393; Leach v. Jones, 86—404; Burnett v.  
 Nicholson, 86—728.

**Sec. 926.** If judgment be to deliver document, or personal property, it must be deposited or security be given.

If the judgment appealed from direct the assignment or delivery C. C. P., s. 305.  
 2 of documents or personal property, the execution of the judgment  
 3 shall not be stayed by appeal, unless the things required to be  
 4 assigned or delivered be brought into court, or placed in the cus-  
 5 tody of such officer or receiver as the court shall appoint, or unless  
 6 an undertaking be entered into on the part of the appellant, by  
 7 at least two sureties, and in such amount as the court or a judge  
 8 thereof shall direct, to the effect that the appellant will obey the  
 6 order of the appellate court upon the appeal.

Bryan v. Hubbs, 69—423; Hancock v. Bramlett, 85—393.

**Sec. 927.** If to execute conveyance, it must be executed and deposited.

If the judgment appealed from direct the execution of a con- C. C. P., s. 306.  
 2 veyance or other instrument, the execution of the judgment shall  
 3 not be stayed by the appeal until the instrument shall have been  
 4 executed and deposited with the clerk with whom the judgment is  
 5 entered, to abide the judgment of the appellate court.

Tate v. Powe, 64—644; Bryan v. Hubbs, 69—423; Hancock v. Bramlett, 85—393.

**Sec. 928.** Security where judgment is to deliver real property, or for a sale of mortgaged premises.

If the judgment appealed from direct the sale or delivery of pos- C. C. P., s. 307.  
 2 session of real property, the execution of the same shall not be  
 3 stayed, unless a written undertaking be executed on the part of  
 4 the appellant, with two sureties, to the effect that, during the pos-  
 5 session of such property by the appellant, he will not commit, or



6 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.

*Tate v. Powe*, 64—644; *Cox v. Hamilton*, 69—30; *Bryan v. Hubbs*, 69—423; *Meroney v. Wright*, 84—336; *Hancock v. Bramlett*, 85—393.

**Sec. 929. Stay of proceedings upon security being given.**

C. C. P., s. 308.

Whenever an appeal is perfected as provided by sections nine hundred and twenty-three, nine hundred and twenty-five, nine hundred and twenty-six, and nine hundred and twenty-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 nine hundred and twenty-five, nine hundred and twenty-six and nine hundred and twenty-eight, 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 nine hundred and twenty-six, nine hundred and twenty-seven and nine hundred and twenty-eight, where it would otherwise, according to those sections, exceed that sum.

See C. C. P., sections 304, 305, 306, 307; *Bledsoe v. Nixon*, 69—81; *Johnston v. Rankin*, 70—550; *Carlton v. Byers*, 71—331; *Phifer v. C. C. R. R. Co.*, 72—433; *McRae v. New Hanover Co.*, 74—415; *Leach v. Jones*, 86—404.

**Sec. 930. Undertaking may be in one instrument or several.**

C. C. P., s. 309.

The undertakings prescribed by sections nine hundred and twenty-five, nine hundred and twenty-six, and nine hundred and twenty-seven, may be in one instrument or several, at the option of the appellant; and a copy, including the names and residences of the sureties, must be served on the adverse party, with the notice of appeal, unless a deposit is made as provided in section nine hundred and twenty-eight, and notice thereof given.

See C. C. P., sections 304, 305, 306, 307. *Robeson v. Lewis*, 64—734; *Bryan v. Hubbs*, 69—423.

**Sec. 931. Sureties to justify, or undertaking of no effect.**

C. C. P., s. 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

5 after the notice of the appeal; and unless they or other sureties  
 6 justify before the judge or court below, or as prescribed by sections  
 7 six hundred and seventy-three and six hundred and seventy-four,  
 8 within ten days thereafter, the appeal shall be regarded as if no  
 9 undertaking had been given. The justification shall be upon a  
 10 notice of not less than five days.

See C. C. P., sections 165, 166; *Saulsbury v. Cohen*, 68—239; *Bryan v. Hubbs*, 69—423; *Wade v. City of New Berne*, 72—498; *Hancock v. Bramlett*, 85—393; *Bryson v. Lucas*, 85—397; *Smith v. Reeves*, 85—594; *Mauney v. Gidney*, 86—717.

**Sec. 932. Perishable property may be sold notwithstanding appeal.**

In the cases not provided for in sections nine hundred and twenty-six, nine hundred and twenty-seven and nine hundred and twenty-eight, and the perfecting of an appeal, by giving the undertaking mentioned in section nine hundred and twenty-nine, 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. C. C. P., s. 311.

See C. C. P., sections 304, 305, 306, 307, 308.

**Sec. 933. Undertaking must be filed with clerk.**

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. C. C. P., s. 312.

*Jacobs v. Burgwyn*, 63—196; *Bryan v. Hubbs*, 69—423.

**Sec. 934. Intermediate orders affecting the judgment may be reviewed on appeal.**

Upon an appeal from a judgment, the court may review any intermediate order involving the merits and necessarily affecting the judgment. C. C. P., s. 313.

*Long v. Holt*, 68—53; *McKethan v. Ray*, 71—165; *Hinton v. Deanes*, 75—18.

**Sec. 935. Judgment on appeal; restitution; undertakings on appeals and writs of *certiorari*.**

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. C. C. P., s. 314.

Undertakings 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 or per-

R. C., c. 4, s. 10,  
 1785, c. 233, s. 2.  
 1810, c. 793, s. 1.  
 1831, c. 46, s. 2.

11 son prosecuting the writ of *certiorari* and his sureties, in all cases  
 12 where judgment shall be rendered against the appellant or person  
 13 prosecuting said writ.

Whitehead v. Smith, 8 Jones, 351; Clerk's Office v. Huffstetter, 67-449; Wade v. City of NewBerne, 72-494; Green v. Hobgood, 74-234; Slate v. R. & D. R. R. Co., 74-287; Rouse v. Quinn, 75-354; Boyett v. Vaughan, 86-725.

**Sec. 936.** On appeal, or *recordari* of defendant from justice's judgment, court may compel plaintiff to secure costs.

R. C., c. 31, s. 104.  
 1831, c. 29, s. 1.

When any defendant shall appeal from the judgment of a justice of the peace to the superior court, or when the judgment of such justice shall be removed by the defendant, by *recordari* or otherwise, to a superior court, the court having cognizance of such appeal or *recordari* may, upon sufficient cause shown by affidavit, compel the plaintiff to give an undertaking, with sufficient surety, for payment of the costs of the suit, in the event of his failing to prosecute the same with effect.

Lea v. Brooks, 4 Jones, 423.

**Sec. 937.** Appeals from a justice to be tried at first term of court; judgment against party cast and his sureties; how to have amount of judgment ascertained in case of default.

R. C., c. 31, s. 105.  
 1777, c. 113, s. 63.  
 1794, c. 414, s. 1.

When an appeal shall be taken from the judgment of a justice of the peace to a superior court, the same shall be reheard by the court; whereupon an issue shall be made up and tried by a jury at the first term to which it is returned, unless continued; and judgment shall be given therein against the party cast and his sureties. And when the defendant shall make default, the plaintiff in actions instituted on a single bond, a covenant for the payment of money, bill of exchange, promissory note, or a signed account, shall have judgment, and in other cases may have his inquiry of damages executed forthwith by a jury.

Ramsour v. Harshaw, 8 Ire., 480; Williams v. Beasley, 13 Ire., 112; Hartsfield v. Jones, 4 Jon., 309; Spough v. Boner, 85-208.

**Sec. 938.** If plaintiff appeal and do not recover a greater sum, he shall not recover costs, but be liable to pay.

R. C., c. 31, s. 106.  
 1794, c. 414, s. 17.

If judgment be entered for the plaintiff, and he shall not recover on his appeal a greater sum than was recovered before the justice, besides interest accrued since the rendition of the judgment, he shall not recover the costs of the appeal, but shall be liable at the discretion of the court to pay the same.



TITLE XIV.

OF THE MISCELLANEOUS PROCEEDINGS IN CIVIL ACTIONS, AND GENERAL PROVISIONS.

- Chap. I. SUBMITTING A CONTROVERSY WITHOUT ACTION.  
II. PROCEEDINGS AGAINST JOINT DEBTORS.  
III. CONFESSION OF JUDGMENT WITHOUT ACTION.  
IV. OFFER OF THE DEFENDANT TO COMPROMISE THE WHOLE OR A PART OF THE ACTION.  
V. ADMISSION OR INSPECTION OF WRITINGS.  
VI. EXAMINATION OF PARTIES.  
VII. EXAMINATION OF WITNESSES.  
VIII. MOTIONS AND ORDERS.  
IX. COMPUTATION OF TIME.  
X. NOTICES AND FILING AND SERVICE OF PAPERS.  
XI. DUTIES OF SHERIFFS AND CORONERS.  
XII. POWERS OF REFEREES.  
XIII. MISCELLANEOUS PROVISIONS.

CHAPTER ONE.

SUBMITTING A CONTROVERSY WITHOUT ACTION.

SECTION.	SECTION.
639. Controversy, how submitted without action.	941. Judgment, how enforced and appealed from.
940. Judgment roll.	

Sec. 939. Controversy, how submitted without action.

Parties to a question in difference, which might be the subject of C. C. P., s. 315.  
2 a civil action, may, without action, agree upon a case containing  
3 the facts upon which the controversy depends, and present a sub-  
4 mission of the same to any court which would have jurisdiction if  
5 an action had been brought. But it must appear by affidavit that  
6 the controversy is real, and the proceeding in good faith to deter-  
7 mine the rights of the parties. The judge shall thereupon hear  
8 and determine the case, and render judgment thereon as if an ac-  
9 tion were depending.

Bates v. Lilly, 65—232; Johnson v. Cross, 66—167; Hervey & Co. v. Edmunds, 68—243; Pul-  
len v. City of Raleigh, 68—451; Hager v. Nixon, 68—108; McKethan v. Ray, 71—165; Lewis v.  
County of Wake, 74—194; Holland v. Isler, 77—1; Dixon v. Coke, 77—205; Miller v. Churchill,  
78—372; Harrell v. Peebles, 79—26; Davis v. Moss, 81—303; State v. Alphin, 81—566; Busbee v.  
Macy, 85—329; Busbee v. Lewis, 85—332; Pearson v. Boyden, 86—585.

Sec. 940. Judgment roll.

Judgment shall be entered in the judgment docket, as in other C. C. P., s. 316.  
2 cases, but without costs for any proceeding prior to trial. The

3 case, the submission, and a copy of the judgment, shall constitute  
4 the judgment roll.

**Sec. 941. Judgment, how enforced and appealed from.**

C. C. P., s. 317.

The judgment may be enforced in the same manner as if it had  
2 been rendered in an action, and shall be subject to appeal in like  
3 manner.

## CHAPTER TWO.

### CONFESSION OF JUDGMENT WITHOUT ACTION.

**SECTION.**

942. Judgment may be confessed for debt due  
on contingent liability.

**SECTION.**

943. Statement in writing and form thereof.  
944. Judgment and execution.

**Sec. 942. Judgment may be confessed for debt due on contingent liability.**

C. C. P., s. 325.

A judgment by confession may be entered, without action, either  
2 in or out of term, either for money due or to become due, or to  
3 secure any person against contingent liability on behalf of the  
4 defendant, or both, in the manner prescribed by this chapter.

*Hervey & Co. v. Edmunds*, 68—243; *McAden v. Hooker*, 74—24.

**Sec. 943. Statement in writing and form thereof.**

C. C. P., s. 326.

A statement in writing must be made, signed by the defendant,  
2 and verified by his oath, to the following effect:

3 (1) It must state the amount for which judgment may be entered,  
4 and authorize the entry of judgment therefor;

5 (2) If it be for money due, or to become due, it must state con-  
6 cisely the facts out of which it arose, and must show that the sum  
7 confessed therefor is justly due, or to become due;

8 (3) If it be for the purpose of securing the plaintiff against a con-  
9 tingent liability, it must state concisely the facts constituting the  
10 liability, and must show that the sum confessed therefor does not  
11 exceed the same.

*McAden v. Hooker*, 74—24; *Davidson v. Alexander*, 84—621.

**Sec. 944. Judgment and execution.**

C. C. P., s. 327.

The statement may be filed with the clerk of the superior court  
2 of the county in which the defendant resides, or if he does not re-  
3 side in the state, of some county in which he has property. The  
4 clerk shall indorse upon it and enter on his judgment docket a  
5 judgment of the court for the amount confessed, with three dollars  
6 costs, together with disbursements. The statement and affidavit,  
7 with the judgment indorsed, shall thenceforth become the judg-  
8 ment roll. Executions may be issued and enforced thereon in the

9 same manner as upon judgments in other cases in such courts.  
 10 When the debt for which the judgment is recovered is not all due,  
 11 or is payable in instalments, and the instalments are not all due,  
 12 the execution may issue upon such judgment for the collection of  
 13 such instalments as have become due, and shall be in the usual  
 14 form; but shall have indorsed thereon, by the attorney or person  
 15 issuing the same, a direction to the sheriff to collect the amount  
 16 due on such judgment, with interest and costs, which amount shall  
 17 be stated, with interest thereon, and the costs of said judgment.  
 18 Notwithstanding the issue and collection of such execution, the  
 19 judgment shall remain as security for the instalments thereafter to  
 20 become due; and whenever any further instalments become due,  
 21 execution may, in like manner, be issued for the collection and  
 22 enforcement of the same.

McAden v. Hooker, 74—24.

### CHAPTER THREE.

#### OFFER OF THE DEFENDANT TO COMPROMISE THE WHOLE OR A PART OF THE ACTION.

##### SECTION.

945. Offer of compromise.

946. Effect of compromises in general.

947. Defendant may offer to liquidate damages conditionally.

##### SECTION.

948. Effect of acceptance or refusal of offer.

949. In trespass upon real property, defendant may disclaim title and plead tender in bar.

#### Sec. 945. Offer of compromise.

The defendant, at any time before the trial or verdict, may serve C C. P., s. 323, (1.)  
 2 upon the plaintiff an offer in writing to allow judgment to be  
 3 taken against him for the sum or property, or to the effect therein  
 4 specified, with costs. If the plaintiff accept the offer, and give  
 5 notice thereof in writing within ten days, he may file the sum-  
 6 mons, complaint, and offer, with an affidavit of notice of accep-  
 7 tance, and the clerk must thereupon enter judgment accordingly.  
 8 If the notice of acceptance be not given, the offer is to be deemed  
 9 withdrawn, and cannot be given in evidence; and if the plaintiff  
 10 fail to obtain a more favorable judgment he cannot recover costs,  
 11 but must pay the defendant's costs from the time of the offer; and  
 12 in case the defendant shall set up a counter-claim in his answer to  
 13 an amount greater than the plaintiff's claim, or sufficient to reduce  
 14 the plaintiff's recovery below fifty dollars, then the plaintiff may  
 15 serve upon the defendant an offer in writing, to allow judgment to  
 16 be taken against him for the amount specified, or to allow said  
 17 counter-claim to the amount specified with costs. If the defendant  
 18 accept the offer, and give notice thereof in writing within ten days,  
 19 he may enter judgment as above for the amount specified, if the



20 offer entitle him to judgment, or if the amount specified in said offer  
 21 shall be allowed him in the trial of the action. If the notice of  
 22 acceptance be not given, the offer is to be deemed withdrawn, and  
 23 cannot be given in evidence; and if the defendant fail to recover  
 24 a more favorable judgment, or to establish his counter-claim for a  
 25 greater amount than is specified in said offer, he cannot recover  
 26 costs, but must pay the plaintiff's costs from the time of the offer.

**Sec. 946. Effect of compromises in general.**

1874-'5, c. 178, s. 1.

In all claims, or money demands, of whatever kind, and howso-  
 2 ever due, where an agreement shall have been or shall be made  
 3 and accepted for a less amount than that demanded or claimed to  
 4 be due, in satisfaction thereof, the payment of such less amount  
 5 according to any such agreement in compromise of the whole,  
 6 shall be a full and complete discharge of the same.

Curry v. Kennedy, 78—81; Fickey v. Merrimon, 79—585; Williamson v. Canal Co., 84—629.

**Sec. 947. Defendant may offer to liquidate damages conditionally.**

C. C. P., s. 329.

In an action arising on contract, the defendant may, with his  
 2 answer, serve upon the plaintiff an offer in writing, that if he fails  
 3 in his defence, the damages be assessed at a specified sum; and if  
 4 the plaintiff signify his acceptance thereof in writing, ten days  
 5 before the trial, and on the trial have a verdict, the damages shall  
 6 be assessed accordingly.

**Sec. 948. Effect of acceptance or refusal of offer.**

C. C. P., s. 330.

If the plaintiff does not accept the offer, he shall prove his dam-  
 2 ages, as if it had not been made, and shall not be permitted to  
 3 give it in evidence. And if the damages assessed in his favor  
 4 shall not exceed the sum mentioned in the offer, the defendant  
 5 shall recover his expenses incurred in consequence of any necessary  
 6 preparation or defence in respect to the question of damages. Such  
 7 expense shall be ascertained at the trial.

**Sec. 949. In trespass upon real property, defendant may disclaim title and plead tender in bar.**

R. C., c. 31, s. 79.  
 1715, c. 2, s. 7.

In actions of trespass upon real estate, wherein the defendant in  
 2 his answer shall disclaim to make any title or claim to the lands  
 3 on which the trespass is by the complaint supposed to be done,  
 4 and the trespass be by negligence or involuntary, the defendant  
 5 shall be permitted to make a disclaimer, and that the trespass was  
 6 by negligence or involuntary, and a tender or offer of sufficient  
 7 amends for such trespass; whereupon, or upon some of them, the  
 8 plaintiff shall join issue, and if the issue be found for the defend-  
 9 ant, or if the plaintiff shall be nonsuited, he shall be barred  
 10 from the said action and all other suits concerning the same.

Blackburn v. Bowman, 1 Jon., 441; Wooley v. Robinson, 7 Jon., 30.

## CHAPTER FOUR.

## ADMISSION OR INSPECTION OF WRITINGS.

## SECTION.

950. Inspection and copy of books, papers,  
and documents, how obtained.

## Sec. 950. Inspection and copy of books, papers, and documents, how obtained.

Either party may exhibit to the other, or to his attorney at any  
2 time before the trial, any paper material to the action, and request  
3 an admission in writing of its genuineness. If the adverse party,  
4 or his attorney, fail to give the admission within four days after  
5 the request, and if the party exhibiting the paper be afterwards  
6 put to expense in order to prove its genuineness, and the same be  
7 finally proved or admitted on the trial, such expense to be ascer-  
8 tained at the trial, shall be paid by the party refusing the admis-  
9 sion, unless it appear to the satisfaction of the court that there were  
10 good reasons for the refusal. The court before which an action is  
11 pending, or a judge thereof, may, in their discretion, and upon due  
12 notice, order either party to give to the other, within a specified  
13 time, an inspection and copy, or permission to take a copy, of any  
14 books, papers and documents in his possession or under his con-  
15 trol, containing evidence relating to the merits of the action or the  
16 defence therein. If compliance with the order be refused, the  
17 court, on motion, may exclude the paper from being given in evi-  
18 dence, or punish the party refusing, or both.

C. C. P., s. 331

Graham v. Hamilton, 3 Ire., 381; McGibboney v. Mills, 13 Ire., 163; Branson v. Fentress, 13 Ire., 165; Fuller v. McMillan, Busb., 206; Ward v. Simmons, 1 Jones, 404; Murchison v. McLeod, 2 Jones, 239; Maxwell v. McDowell, 5 Jones, 391; Morrow v. Allman, 65—508; Justice v. Bank of New Berne, 83—8; Knight v. Houghtalling, 85—17; Com'rs v. Lemly, 85—341; R. C., c. 31, s. 82; R. S., c. 31, s. 86; 1821, c. 1095; 1823, c. 7.

## CHAPTER FIVE.

## EXAMINATION OF PARTIES.

## SECTION.

951. Action for discovery abolished.  
952. A party may be examined as a witness  
except in certain cases.  
953. Such examination also allowed before  
trial.  
954. Party, how compelled to attend.  
955. Testimony of party may be rebutted.  
956. Effect of refusal to testify.

## SECTION.

957. Testimony of a party not responsive to  
the inquiries may be rebutted by the  
oath of the party calling him.  
958. Persons for whom action is brought or  
defended may be examined.  
959. Examination of co-plaintiff or co-defend-  
ant.  
960. Husband and wife witnesses.

## Sec. 951. Action for discovery abolished.

No action to obtain discovery under oath, in aid of the prosecu-  
2 tion or defence of another action, shall be allowed, nor shall any

C. C. P., s. 332.

3 examination of a party be had, on behalf of the adverse party,  
4 except in the manner prescribed by this chapter.

*School Committee v. Kesler*, 66—323; *Strudwick v. Brodnax*, 83—401; *Com'rs v. Lemly*, 85—341.

**Sec. 952.** A party may be examined as a witness except in certain cases.

C. C. P., s. 333,  
1879, c. 183.

A party to an action may be examined as a witness at the instance  
2 of the adverse party, or of any one of several adverse parties, and for  
3 that purpose may be compelled, in the same manner and subject  
4 to the same rules of examination as any other witness to testify,  
5 either at the trial or conditionally or upon commission: *Provided*,  
6 that no person who is or shall be a party to an action founded on  
7 a judgment rendered before the first day of August, one thousand  
8 eight hundred and sixty-eight, or on a bond for the payment of  
9 money, or conditioned to pay money, executed before the first  
10 day of August, one thousand eight hundred and sixty-eight, shall  
11 be a competent witness; but the rules of evidence in force when  
12 said judgment was rendered, or said bond was executed, shall be  
13 applicable to said action.

*Whitesides v. Green*, 64—307; *McKesson v. Hennessee*, 66—473; *Taylor v. Taylor*, 76—433; *Smith v. Hanes*, 82—448; *Strudwick v. Brodnax*, 83—401; *Macay, ex parte*, 83—63; *Jones v. Henry*, 84—320; *Com'rs v. Lemly*, 85—341; *Pugh v. Grant*, 86—89; *Morgan v. Bunting*, 86—66.

**Sec. 953.** Such examination also allowed before trial.

C. C. P., s. 334.

The examination instead of being had at the trial, as provided  
2 in the preceding section, may be had at any time before the trial,  
3 at the option of the party claiming it, before a judge or clerk of the  
4 court, on a previous notice to the party to be examined, and any  
5 other adverse party, of at least five days, unless for good cause  
6 shown the judge shall order otherwise. But the party to be exam-  
7 ined shall not be compelled to attend in any county other than that  
8 of his residence, or where he may be served with a summons for  
9 his attendance.

*Strudwick v. Brodnax*, 83—401; *Com'rs v. Lemly*, 85—341.

**Sec. 954.** Party, how compelled to attend.

C. C. P., s. 335.

The party to be examined, as in the preceding section provided,  
2 may be compelled to attend in the same manner as a witness who  
3 is to be examined conditionally; and the examination shall be  
4 taken and filed by the judge or clerk in like manner, and may be  
5 read by either party on the trial.

*Strudwick v. Brodnax*, 83—401; *Com'rs v. Lemly*, 85—341.

**Sec. 955.** Testimony of party may be rebutted.

C. C. P., s. 336.

The examination of the party thus taken may be rebutted by  
2 adverse testimony.

*Strudwick v. Brodnax*, 83—401; *Com'rs v. Lemly*, 85—341.



**Sec. 956. Effect of refusal to testify.**

If a party refuses to attend and testify, as in the four preceding  
2 sections provided, he may be punished as for a contempt, and his  
3 complaint, answer, or reply may be stricken out. C. C. P., s. 337.

Phillips v. Trezevant, 70—176; Strudwick v. Brodnax, 83—401; Com'rs v. Lemly, 85—341.

**Sec. 957. Testimony of a party not responsive to the inquiries may be rebutted by the oath of the party calling him.**

A party examined by an adverse party, as in this chapter pro-  
2 vided, may be examined on his own behalf, subject to the same C. C. P., s. 338.  
3 rules of examination as other witnesses. But if he testify to any  
4 new matter, not responsive to the inquiries put to him by the ad-  
5 verse party, or necessary to explain or qualify his answers thereto,  
6 or discharge when his answers would charge himself, such adverse  
7 party may offer himself as a witness on his own behalf in respect to  
8 such new matter, subject to the same rules of examination as other  
9 witnesses, and shall be so received.

Taylor v. Taylor, 76—433; Strudwick v. Brodnax, 83—401; Com'rs v. Lemly, 85—341.

**Sec. 958. Persons for whom action is brought or defended may be examined.**

A person for whose immediate benefit the action is prosecuted  
2 or defended, though not a party to the action, may be examined C. C. P., s. 339.  
3 as a witness, in the same manner, and subject to the same rules of  
4 examination, as if he were named as a party.

Strudwick v. Brodnax, 83—401; Com'rs v. Lemly, 85—341.

**Sec. 959. Examination of co-plaintiff or co-defendant.**

A party may be examined on behalf of his co-plaintiff or of a  
2 co-defendant as to any matter in which he is not jointly interested C. C. P., s. 340.  
3 or liable with such co-plaintiff or co-defendant, and as to which a  
4 separate and not joint verdict or judgment can be rendered. And  
5 he may be compelled to attend in the same manner as at the in-  
6 stance of an adverse party; but the examination thus taken shall  
7 not be used in the behalf of the party examined. And whenever,  
8 in the case mentioned in sections nine hundred and fifty-two and  
9 nine hundred and fifty-three, one of several plaintiffs or defendants  
10 who are joint contractors, or are united in interest, is examined by  
11 the adverse party, the other of such plaintiffs or defendants may  
12 offer himself as a witness to the same cause of action or defence,  
13 and shall be so received.

Boykin v. Boykin, 70—262; Penny v. Brink, 75—68; Strudwick v. Brodnax, 83—401; Com'rs v. Lemly, 85—341. See. C. C. P., ss. 333, 334; 1866, c. 43, s. 2.

**Sec. 960. Husband and wife witnesses.**

In any trial or inquiry in any suit, action or proceeding in any  
2 court, or before any person having, by law or consent of parties, C. C. P., s. 341.  
3 authority to examine witnesses or hear evidence, the husband or  
4 wife of any party thereto, or of any person in whose behalf any  
5 such suit, action or proceeding is brought, prosecuted, opposed or

6 defended, shall, except as hereinafter stated, be competent and  
 7 compellable to give evidence, the same as any other witness, on  
 8 behalf of any party to such suit, action or proceeding. Nothing  
 9 herein contained shall render any husband or wife competent or  
 10 compellable to give evidence for or against the other, in any crim-  
 11 inal action or proceeding (except to prove the fact of marriage in  
 12 case of bigamy,) or in any action or proceeding in consequence of  
 13 adultery, or in any action or proceeding for divorce on account of  
 14 adultery, (except to prove the fact of marriage,) or in any action  
 15 or proceeding for or on account of criminal conversation. No  
 16 husband or wife shall be compellable to disclose any confidential  
 17 communication made by one to the other during their marriage.

*Rice v. Keith*, 63—319; *Barringer v. Barringer*, 69—179; *Boykin v. Boykin*, 70—262; *Horne v. Horne*, 75—101; *Taylor v. Taylor*, 76—433; *Com'rs v. Lemly*, 85—341; (1866, c. 40, s. 2.)

## CHAPTER SIX.

### EXAMINATION OF WITNESSES.

#### SECTION.

961. Interest not to exclude a witness.

962. When party may be examined and when not.

963. In what actions, for what sums, and within what time book accounts may be proved by a party.

#### SECTION.

964. Book accounts, how proved by executors and administrators.

965. Copies of account are evidence unless notice given to produce original.

#### Sec. 961. Interest not to exclude a witness.

C. C. P., s. 342.

No person offered as a witness shall be excluded by reason of his  
 2 interest in the event of the action.

*State v. McIntosh*, 64—607; *Isenhour v. Isenhour*, 64—640; *Gray v. Cooper*, 65—183; *Murray, Ferris & Co., v. Blackledge*, 71—492; *Ballard v. Ballard*, 75—190; *Lewis v. Fort*, 75—251; *Mason v. McCormick*, 75—263; *Taylor v. Taylor*, 76—433; *Gidney v. Logan*, 79—214; *Pepper v. Broughton*, 80—251.

#### Sec. 962. When party may be examined and when not.

Upon the trial of an action, or the hearing upon the merits of a  
 2 special proceeding, a party or a person interested in the event, or a  
 3 person from, through or under whom such a party or interested  
 4 person derives his interest or title by assignment or otherwise, shall  
 5 not be examined as a witness in his own behalf or interest, or in  
 6 behalf of the party succeeding to his title or interest against the  
 7 executor, administrator or survivor of a deceased person, or the  
 8 committee of a lunatic, or a person deriving his title or interest  
 9 from, through or under a deceased person or lunatic, by assignment  
 10 or otherwise, concerning a personal transaction or communication  
 11 between the witness and the deceased person or lunatic; except  
 12 where the executor, administrator, survivor, committee or person  
 13 so deriving title or interest is examined in his own behalf, or the

14 testimony of the lunatic or deceased person is given in evidence  
15 concerning the same transaction or communication.

Whitesides v. Green, 64—307; Merony v. Avery, 64—312; Peoples v. Maxwell, 64—313; State v. McIntosh, 64—607; Isenhour v. Isenhour, 64—640; Brower v. Hughes, 64—642; Halyburton v. Harshaw, 65—88; Gray v. Cooper, 65—183; Isler v. Dewey, 67—93; Howerton v. Lattimer, 68—370; Gilmer v. McNairy, 69—335; Bryant v. Morris, 69—444; Redman v. Redman, 70—257; Leggett v. Glover, 71—211; Woodhouse v. Simmons, 73—30; Henry v. Willard, 73—35; Jackson v. Evans, 73—128; Murphy v. Ray, 73—588; Lewis v. Wake Co., 74—194; McCanless v. Reynolds, 74—301; Thomas v. Kelly, 74—416; Kirk v. Barnhart, 74—653; Penny v. Brink, 75—68; Ballard v. Ballard, 75—190; Lewis v. Fort, 75—251; Mason v. McCormick, 75—263; Taylor v. Taylor, 76—433; Bushee v. Surles, 77—62; Peebles v. Stanley, 77—243; March v. Verble, 79—19; Lawrence v. Hyman, 79—209; Gidney v. Logan, 79—214; Shields v. Smith, 79—517; Mason v. McCormick, 80—244; Pepper v. Broughton, 80—251; Gregg v. Hill, 80—255; Molyneux v. Huey, 81—106; Latham v. Dixon, 82—55; Williams v. Johnston, 82—288; Tabor v. Ward, 83—291; Wilkerson v. Buchanan, 83—296; Thompson v. Humphrey, 83—416; Perry v. Jackson, 84—230; McLearnly v. Norment, 84—235; Syme v. Broughton, 85—367; Mull v. Martin, 85—406; Hawkins v. Carpenter, 85—482; Allen v. Gilkey, 86—64; Morgan v. Bunting, 86—66; Sumner v. Candler, 86—71; Lockhart v. Bell, 86—443. See C. C. P., s. 343.

Sec. 963. In what actions, for what sums, and within what time book accounts may be proved by a party.

When any person shall bring an action upon a contract, or shall  
2 plead, or give notice of, a set-off or counter-claim for goods, wares  
3 and merchandise by him sold and delivered, or for work done and  
4 performed, he shall file his account with his complaint, or with his  
5 plea or notice of set-off or counter-claim, and if upon the trial of  
6 the issue, or executing a writ of inquiry of damages in such action,  
7 he shall declare upon his oath that the matter in dispute  
8 is a book account, and that he hath no means to prove the delivery  
9 of any of the articles which he then shall propose to prove by him-  
10 self but by this book; in that case such book may be given in evi-  
11 dence, if he shall make out by his own oath that it doth contain a  
12 true account of all the dealings, or the last settlement of accounts  
13 between himself and the opposing party, and that all the articles  
14 therein contained, and by him so proved were *bona fide* delivered,  
15 and that he hath given the opposing party all just credits; and  
16 such book and oath shall be received as evidence for the several  
17 articles so proved to be delivered within two years next, before the  
18 commencement of the action, but not for any article of a longer  
19 standing, nor for any greater amount than sixty dollars.

Mitchell v. Clarke, Martin, 25; Carlton v. Lawry, Martin, 26; Thomeguex v. Bell, Martin 44; Kitchen v. Tyson, 3 Murphy, 314; Stevelie v. Greenlee, 1 Dev., 317; Colbert v. Piercy, 3 Ire., 77; McWilliams v. Cosby, 4 Ire., 110; Adkinson v. Simmons, 11 Ire., 416; Alexander v. Smoot 13 Ire., 461; Pannell v. Scroggin, 8 Jones, 408; Bland v. Warren, 65—372; Leggett v. Glover, 71—211.

Sec. 964. Book accounts, how proved by executors and administrators.

In actions where executors and administrators are parties, such  
2 book account for all articles delivered within two years previous  
3 to the death of the deceased may be proved under the like circum-  
4 stances, rules and conditions; and in that case, the executor or  
5 administrator may prove by himself that he found the account so  
6 stated on the books of the deceased; that there are no witnesses,  
7 to his knowledge, capable of proving the delivery of the articles

R. C., c. 15, s. 1.  
1756, c. 57, ss. 2, 6, 7.  
C. C. P., s. 343 (a.)

R. C., c. 15, s. 2.  
1756, c. 57, s. 2.  
1796, c. 465.  
C. C. P., s. 343 (b.)



8 which he shall propose to prove by said book, and that he believes  
9 the same to be just, and doth not know of any other or further  
10 credit to be given than what is therein mentioned: *Provided, how-*  
11 *ever,* that if two years shall not have elapsed previous to the death  
12 of the deceased, the executor or administrator may prove the said  
13 book account, if the suit shall be commenced within three years  
14 from the delivery of the articles: *And provided further,* that when-  
15 ever by the aforesaid proviso the time of proving a book account  
16 in manner aforesaid is enlarged as to the one party, to the same  
17 extent shall be enlarged the time as to the other party.

Stevellie v. Greenlee, 1 Dev., 317; Coxe v. Skeen, 3 Ire., 443.

Sec. 965. Copies of account are evidence unless notice given to produce original.

R. C., c. 15, s. 3.  
1756, c. 57, s. 3.  
C. C. P., s. 343 (c.)

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

Morgan v. Bass, 3 Ire., 243.

CHAPTER SEVEN.

MOTIONS AND ORDERS.

SECTION.

966. Definition of an order; motions, how  
and where made; compelling parties to  
testify; decision on motion.

SECTION.

967. Notice of motion.

Sec. 966. Definition of an order; motions, how and where made; compelling parties to testify; decision on motion.

C. C. P., ss. 344, 345.

Every direction of a court or judge, made or entered in writing,  
2 and not included in a judgment, is denominated an order:  
3 (1) An application for an order is a motion;  
4 (2) Motions may be made to a clerk of a superior court, or to a  
5 judge out of court, except for a new trial on the merits;  
6 (3) Motions must be made within the district in which the action  
7 is triable;  
8 (4) A motion to vacate or modify a provisional remedy, and an  
9 appeal from an order allowing a provisional remedy, shall have  
10 preference over all other motions;  
11 (5) When any party intends to make or oppose a motion in any  
12 court of record, and it shall be necessary for him to have the affi-

13 davit of any person who shall have refused to make the same, such  
 14 court may, by order, appoint a referee to take the affidavit or depo-  
 15 sition of such person. Such person may be subpœnaed and com-  
 16 pelled to attend and make an affidavit before such referee, the  
 17 same as before a referee to whom it is referred to try an issue;

18 (6) Whenever a motion shall be made in any cause or proceed-  
 19 ing in any of the courts, to obtain an injunction order, order of ar-  
 20 rest, or warrant of attachment, granted in any such case or proceed-  
 21 ing, it shall be the duty of the judge before whom such motion is  
 22 made, to render and make known his decision on such motion  
 23 within ten days after the day upon which such motion shall or  
 24 may be submitted to him for decision.

Foard v. Alexander, 64—69; Erwin v. Lowery, 64—321; Williams v. Rockwell, 64—325; Jar-  
 man v. Saunders, 64—367; Church v. Furniss, 64—659; Foreman v. Bibb, 65—128; McDowell v.  
 Asbury, 60—444; Seymour v. Cohen, 67—345; Birdsey v. Harris, 68—92; Deal v. Palmer, 68—215;  
 Childs v. Martin, 68—307; Clayton v. Jones, 68—497; Aycock v. Harrison, 71—432; Mauney v.  
 Montgomery County, 71—486; Long v. Cole, 72—20; Sutton v. McMillan, 72—102; Faxton v.  
 Williamson, 72—125; Lyon v. McMillan, 72—392; Folk v. Howard, 72—527.

#### Sec. 967. Notice of motion.

When notice of a motion is necessary, it must be served ten C. C. P., s. 346.  
 2 days before the time appointed for the hearing; but the court or  
 3 judge may, by an order to show cause, prescribe a shorter time.

Weiller v. Lawrence, 81—65.

## CHAPTER EIGHT.

### COMPUTATION OF TIME.

#### SECTION.

968. Time, how computed.

#### Sec. 968. Time, how computed.

The time within which an act is to be done, as herein provided, C. C. P., s. 348.  
 2 shall be computed, by excluding the first day and including the  
 3 last. If the last day be Sunday, it shall be excluded.

## CHAPTER NINE.

### NOTICES AND FILING AND SERVICE OF PAPERS.

#### SECTION.

969. Notices and other papers, how served;  
 subpoena for witnesses.

#### SECTION.

970. When this chapter does not apply.

#### Sec. 969. Notices and other papers, how served; subpoena for witnesses.

Notices shall be in writing; notices and other papers may be C. C. P., s. 349,

1876-'7, c. 64, s. 1.

2 served on the party or his attorney personally, where not otherwise  
3 provided in this chapter :

4 (1) If upon an attorney, service may be made during his absence  
5 from his office, by leaving the paper with his clerk therein, or with  
6 a person having charge thereof; or, when there is no person in the  
7 office, by leaving it, between the hours of six in the morning and  
8 nine in the evening, in a conspicuous place in the office; or, if it  
9 be not open so as to admit of such service, then by leaving it at the  
10 attorney's residence, with some person of suitable age and discre-  
11 tion;

12 (2) If upon a party, it may be made by leaving the paper at his  
13 residence, between the hours of six in the morning and nine in the  
14 evening, with some person of suitable age and discretion;

15 (3) If upon a person who cannot be found after due diligence, or  
16 who is not a resident of this state, the service thereof may be  
17 made by the publication of the notice once a week for four suc-  
18 cessive weeks in some newspaper published in the county from  
19 which the notice is issued; and if no newspaper be published  
20 therein, then in some newspaper published within the judicial  
21 district; and the proof of service shall be as is required by law in  
22 the case of a service of a summons by publication;

23 (4) Service of a subpoena for witnesses may be made by a sheriff,  
24 coroner or constable, and proved by the return of such officer; or  
25 the service may be made by any person not a party to the action,  
26 and proved by his oath. A subpoena for witnesses need not be  
27 signed by the clerk of the court; it shall be sufficient if subscribed  
28 by the party or by his attorney.

Faison v. McIlwaine, 72—312.

Sec. 970. When this chapter does not apply.

C. C. P., s. 353.

The provisions of this chapter shall not apply to the service of  
2 a summons, or other process, or of any paper, to bring a party into  
3 contempt.

## CHAPTER TEN.

### DUTIES OF SHERIFFS AND CORONERS.

#### SECTION.

971. Duty of sheriff and coroner in serving or  
executing process, and how enforced;  
may return process by mail.

Sec. 971. Duty of sheriff and coroner in serving or executing process, and how  
enforced; may return process by mail.

C. C. P., s. 354.

Whenever, pursuant to this chapter, the sheriff may be required to  
2 serve or execute any summons, order or judgment, or to do any other



3 act, he shall be bound to do so in like manner as upon process  
 4 issued to him, and shall be equally liable in all respects for neglect  
 5 of duty; and if the sheriff be a party, the coroner shall be bound  
 6 to perform the service, as he is now bound to execute process where  
 7 the sheriff is a party; and all the provisions of this chapter rela-  
 8 ting to sheriffs shall apply to coroners when the sheriff is a party.  
 9 Sheriffs and coroners may return process by mail. Their liabilities  
 10 in respect to the execution of process shall be as prescribed by law.

Thompson v. Berry, 64—79; Tate v. Powe, 64—64; Jones v. Gupton, 65—48.

## CHAPTER ELEVEN.

### POWERS OF REFEREES.

#### SECTION.

972. Powers of referees.

#### Sec. 972. Powers of referees.

Every referee shall have power to administer oaths in any pro- C. C. P., s. 356.  
 2 ceeding before him, and shall have generally the power vested in  
 3 a referee by law.

## CHAPTER TWELVE.

### MISCELLANEOUS PROVISIONS.

#### SECTION.

973. Paper lost or withheld, copy to be used.  
 974. Where undertakings to be filed.

#### SECTION.

975. Time for publication of notices, how com-  
 puted.

#### Sec. 973. Paper lost or withheld, copy to be used.

If an original pleading or paper be lost or withheld by any per- C. C. P., s. 357.  
 2 son, the court may authorize a copy thereof to be filed and used  
 3 instead of the original.

#### Sec. 974. Where undertakings to be filed.

The various undertakings required to be given by chapter C. C. P., s. 358.  
 2 twenty-one must be filed with the clerk of the court, unless the  
 3 court expressly provides for a different disposition thereof, except  
 4 that the undertakings provided for by the chapter on claim  
 5 and delivery of personal property, after the justification of the  
 6 sureties, shall be delivered by the sheriff, or filed as therein pro-  
 7 vided.

#### Sec. 975. Time for publication of notices, how computed.

The time for publication of legal notices shall be computed so C. C. P., s. 359.

- 2 as to exclude the first day of publication and include the day on  
 3 which the act or event of which notice is given is to happen, or  
 4 which completes the full period required for publication.

## TITLE XV..

### ACTIONS IN PARTICULAR CASES.

- Chap. I. ACTIONS IN PLACE OF SCIRE FACIAS, QUO WARRANTO,  
 AND OF INFORMATIONS IN THE NATURE OF QUO WAR-  
 RANTO.  
 II. MANDAMUS.  
 III. ACTIONS FOR WASTE AND NUISANCE.

## CHAPTER ONE.

### ACTIONS IN PLACE OF SCIRE FACIAS, QUO WARRANTO, AND OF INFOR- MATIONS IN THE NATURE OF QUO WARRANTO.

#### SECTION.

976. *Scire facias* and *quo warranto* abolished, and this chapter substituted.  
 977. Action may be brought by attorney general to vacate a charter, by direction of the legislature.  
 978. Action to annul a corporation, when and how brought by the attorney general, by leave of the supreme court.  
 979. Leave, how obtained.  
 980. Action upon information or complaint.  
 981. When attorney general to grant leave to private relator to bring action.  
 982. Complaint and arrest of defendant, in action for usurping an office.  
 983. Judgment in such actions.  
 984. Assumption of office by relator, when judgment in his favor.

#### SECTION.

985. Proceedings against defendant on refusal to deliver books or papers.  
 986. Damages, how recovered.  
 987. One action against several persons, claiming office or franchise.  
 988. Penalty for usurping office or franchise, how awarded.  
 989. Trial in such cases to be expedited.  
 990. Judgment of forfeiture against a corporation.  
 991. Costs against corporation or persons claiming to be such, how collected.  
 992. Restraining corporation and appointment of receiver.  
 993. Copy of judgment roll, where to be filed.  
 994. Action for forfeiture of property to state.

Sec. 976. *Scire facias* and *quo warranto* abolished and this chapter substituted.

C. C. P., s. 362.

The writ of *scire facias*, the writ of *quo warranto*, and proceedings  
 2 by information in the nature of *quo warranto*, are abolished; and  
 3 the remedies obtainable in those forms may be obtained by civil  
 4 actions under the provisions of this chapter.

Parker v. Shannonhouse, 1 Phil., 209; Mardre v. Felton, 1 Phil., 279; Riddick v. Hinton, 1 Phil., 291; Bingham v. Richardson, 1 Phil., 315; Kingsbury v. Hughes, 1 Phil., 323; Thompson v. Berry, 64—79; Jones v. Gupton, 65—48; McDowell v. Asbury, 66—444; Lewis v. Johnston, 69—392; Brown v. Turner, 70—93; Saunders v. Gatling, 81—298; see R. C., c. 26, sections 5, 25.

Sec. 977. Action may be brought by attorney general to vacate a charter, by direction of the legislature.

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. C. C. P., s. 363.

Sec. 978. Action to annul a corporation, when and how brought by the attorney general, by leave of the supreme court.

An action may be brought by the attorney general in the name of the state, on leave granted by the supreme court or a justice thereof, for the purpose of vacating the charter or annulling the existence of a corporation, other than municipal, whenever such corporation shall— C. C. P., s. 364.

(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 power; 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;

(6) For non-user of its powers for two or more years consecutively;

(7) 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 entry or principal place of business.

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.

Sec. 979. Leave, how obtained.

Leave to bring the action may be granted upon the application of the attorney general; and the court or justice 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. C. C. P., s. 365.



**Sec. 980. Action upon information or complaint.**

C. C. P., s. 386.

An action may be brought by the attorney general in the name  
2 of the state, upon his own information, or upon the complaint of  
3 any private party, against the parties offending in the following  
4 cases:

5 (1) When any person shall usurp, intrude into, or unlawfully  
6 hold or exercise any public office, civil or military, or any fran-  
7 chise within this state, or any office in a corporation created by  
8 the authority of this state; or,

9 (2) When any public officer, civil or military, shall have done  
10 or suffered an act which, by the provisions of law, shall make a  
11 forfeiture of his office; or,

12 (3) When any association or number of persons shall act within  
13 this state as a corporation, without being duly incorporated.

*Culver v. Eggers*, 63—630; *Patterson v. Hubbs*, 65—119; *Loftin v. Sowers*, 65—251; *Clark v. Stanley*, 66—59; *Howerton v. Tate*, 66—231; *Ellis v. N. C. Inst. Deaf and Dumb and the Blind*, 63—423; *Nichols v. McKee*, 63—429; *Welker v. Bledsoe*, 63—457; *Howerton v. Tate*, 63—546; *Brown v. Turner*, 70—93; *Hargrove v. Hilliard*, 72—169; *Hargrove v. Hunt*, 73—24; *Norfleet v. Staton*, 73—546; *Moore v. Jones*, 76—182; *People v. Heaton*, 77—18; *Saunders v. Gatling*, 81—298; *Davis v. Moss*, 81—303; *State v. Norman*, 82—687.

**Sec. 981. When attorney general to grant leave to private relator to bring action.**1874-'5, c. 76, s. 1,  
1881, c. 330.

When application shall be made to the attorney general by a  
2 private relator to bring such an action, he shall grant leave for the  
3 same to be brought in the name of the state, upon the relation of  
4 such applicant, upon his tendering to the attorney general satis-  
5 factory security to indemnify the state against all costs and ex-  
6 penses, which may accrue in consequence of the bringing of such  
7 action.

*Patterson v. Hubbs*, 65—119; *Loftin v. Sowers*, 65—251; *Howerton v. Tate*, 66—231; *Ray v. Castle*, 79—580; *Saunders v. Gatling*, 81—298.

**Sec. 982. Complaint and arrest of defendant, in action for usurping an office.**

C. C. P., s. 369.

Whenever such action shall be brought against a person for  
2 usurping an office, the attorney general, in addition to the state-  
3 ment of the cause of action, may also set forth in the complaint  
4 the name of the person rightfully entitled to the office, with a  
5 statement of his right thereto; and in such case, upon proof by  
6 affidavit that the defendant has received fees or emoluments be-  
7 longing to the office, and by means of his usurpation thereof, an  
8 order may be granted by a justice of the supreme court for the  
9 arrest of such defendant, and holding him to bail; and thereupon  
10 he shall be arrested and held to bail in the manner, and with the  
11 same effect, and subject to the same rights and liabilities, as in  
12 other civil actions where the defendant is subject to arrest.

*Patterson v. Hubbs*, 65—119; *Tate v. Morehead*, 65—631; *Howerton v. Tate*, 70—161; *Threadgill v. C. C. Railway Co.*, 73—178; *Bladen Co. v. Clarke*, 73—255; *Norfleet v. Staton*, 73—255; *State v. Long*, 76—254; *Vann v. Pipkin*, 77—408; *Saunders v. Gatling*, 81—298.

**Sec. 983. Judgment in such actions.**

In every such case judgment shall be rendered upon the right C. C. P., s. 370.  
2 of the defendant, and also upon the right of the party so alleged  
3 to be entitled, or only upon the right of the defendant, as justice  
4 shall require.

*People v. Bledsoe*, 68—457; *Hargrove v. Hilliard*, 72—169.

**Sec. 984. Assumption of office, &c., by relator, when judgment in his favor.**

If the judgment be rendered upon the right of the person so C. C. P., s. 371.  
2 alleged to be entitled, and the same be in favor of such person, he  
3 shall be entitled, after taking the oath of office, and executing such  
4 official bond as may be required by law, to take upon himself the  
5 execution of the office; and it shall be his duty, immediately  
6 thereafter, to demand of the defendant in the action all the books  
7 and papers in his custody, or within his power, belonging to the  
8 office from which he shall have been excluded.

**Sec. 985. Proceedings against defendant on refusal to deliver books or papers.**

If the defendant shall refuse or neglect to deliver over such C. C. P., s. 372.  
2 books or papers, pursuant to the demand, he shall be guilty of a  
3 misdemeanor, and the same proceedings shall be had, and with  
4 the same effect, to compel delivery of such books and papers as are  
5 prescribed by law.

**Sec. 986. Damages, how recovered.**

If judgment be rendered, upon the right of the person so alleged C. C. P., s. 373.  
2 to be entitled, in favor of such person, he may recover by action  
3 the damages which he shall have sustained by reason of the usur-  
4 pation by the defendant of the office from which such defendant  
5 has been excluded.

*Howerton v. Tate*, 70—161; *Swain v. McRae*, 80—111; *Jones v. Jones*, 80—127.

**Sec. 987. One action against several persons claiming office or franchise.**

Where several persons claim to be entitled to the same office or C. C. P., s. 374.  
2 franchise, one action may be brought against all such persons, in  
3 order to try their respective rights to such office or franchise.

**Sec. 988. Penalty for usurping office or franchise how awarded.**

When the defendant, whether a natural person or a corporation, C. C. P., s. 375.  
2 against whom such action shall have been brought, shall be ad-  
3 judged guilty of usurping or intruding into, or unlawfully hold-  
4 ing or exercising any office, franchise or privilege, judgment shall  
5 be rendered that such defendant be excluded from such office,  
6 franchise or privilege, and also that the plaintiff recover costs  
7 against such defendant. The court may also, in its discretion, fine  
8 such defendant a sum not exceeding two thousand dollars, which  
9 fine, when collected, shall be paid into the treasury of the state.

**Sec. 989. Trial in such cases to be expedited.**

1874-'5, c. 173.

All actions to try the title, or right to any office, state, county or municipal, shall stand for trial at the return term of the summons, if a copy of the complaint shall have been served with the summons, at least ten days before the return day thereof; and it shall be the duty of the judges to expedite the trial of such actions, and to give them precedence over all other actions, civil or criminal. But it shall be unlawful to appropriate any public funds to the payment of counsel fees in any such *quo warranto*.

Nichols v. McKee, 68—429.

**Sec. 990. Judgment of forfeiture against a corporation.**

C. C. P., s. 376.

If it shall be adjudged that a corporation against which an action shall have been brought pursuant to this chapter, has forfeited by neglect, abuse, or surrender, 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.

**Sec. 991. Costs against corporation or persons claiming to be such, how collected.**

C. C. P., s. 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.

**Sec. 992. Restraining corporation and appointment of receiver.**

C. C. P., s. 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.

**Sec. 993. Copy of judgment roll, where to be filed.**

C. C. P., s. 379.

Upon the rendition of such judgment against a corporation, 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.

**Sec. 994. Action for forfeiture of property to state.**

C. C. P., s. 381.

Whenever any property, real or personal, shall be forfeited to the state, or to any officer for its 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.

Brown v. Turner, 70—93; Steele v. Rutherford Co., 70—137; Belmont &amp; Co. v. Riley, 71—260



## CHAPTER TWO.

## MANDAMUS.

## SECTION.

995. Applications for writs of *mandamus*.996. Manner in which summons for applications for writs of *mandamus* shall issue.Sec. 995. Application for writs of *mandamus*.

All applications for writs of *mandamus* shall be made by summons and complaint, and the complaint shall be duly verified. 1871-'2, c. 75.

Sec. 996. Manner in which summons for applications for writs of *mandamus* shall issue.

In all such applications, when the plaintiff seeks to enforce a money demand, the summons, pleadings and practice shall be the same as is prescribed for civil actions. When the plaintiff seeks relief other than the enforcement of a money demand, the summons shall be made returnable before a judge of the superior 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 action, both as to law and fact: *Provided, however*, that when an issue of fact is raised by the pleading, it shall be the duty of the court, upon the motion of either party, to continue the action until said issue of fact can be decided by a jury at the next regular term of the court. 1871-'2, c. 75, ss. 2, 3.

Worthy v. Barrett, 63—199; Pegram v. Com'rs of Cleveland, 64—557; Carson v. Com'rs of Cleveland, 64—566; Gooch v. Gregory, 65—142; North Western N. C. Railroad v. Jenkins 65—173; Lutterloh v. Com'rs of Cumberland, 65—403; Howerton v. Tate, 66—231; Bayne & Co. v. Jenkins, 66—356; Sedberry v. Com'rs of Chatham, 66—486; Thomas v. Com'rs of Carteret, 66—522; Johnston v. Com'rs of Cleveland, 67—101; Alexander v. Com'rs of McDowell, 67—330; R. & A. A. L. R. R. Co. v. Jenkins, 68—502; Steele v. Com'rs of Rutherford, 70—137; Webb v. Com'rs of the Town of Beaufort, 70—307; Uzzle v. Com'rs of Franklin, 70—564; Edwards v. Com'rs of Wilkes, 70—571; Gas Light Co. v. Raleigh, 75—274; Moore v. Jones, 76—182; Moore v. Jones, 76—188; Fry v. Com'rs of Montgomery, 82—304.

## CHAPTER THREE.

## ACTIONS FOR WASTE AND NUISANCE.

## SECTION.

997. Waste, how remediable.

998. For and against whom an action for waste lies.

999. Tenant for life aliening, still liable.

1000. Action by tenant against co-tenant.

## SECTION.

1001. Heirs shall have the action.

1002. Judgment for treble damages and place wasted.

1003. Remedies for injuries heretofore remediable by writ of nuisance.

## Sec. 997. Waste, how remediable.

Wrongs, remediable by the old action of waste, are subjects of C. C. P., s. 383.

2 action as other wrongs; and the judgment may be for damages,  
 3 forfeiture of the estate of the party offending, and eviction from  
 4 the premises.

*Shields v. Lawrence*, 72—43; *McCormick v. Nixon*, 83—113.

**Sec. 998. For and against whom an action for waste lies.**

R. C., c. 116, s. 1.  
 52 Hen. III, c. 23.  
 6 Edw. I, c. 16.  
 20 Edw. I, s. 2.  
 11 Hen. VI, c. 5.

In all cases of waste, an action shall lie in the superior court at  
 2 the instance of him in whom the right is, against all persons com-  
 3 mitting the same, as well tenant for term of life as tenant for term  
 4 of years and guardians.

*Ballentine v. Poyner*, 2 Haywood, 110; *Ward v. Sheppard*, 2 Haywood, 283; *Parkins v. Cox*, 2 Haywood, 330; *Brown v. Blick*, 3 Murphy, 511; *Shine v. Wilcox*, 1 D. & B. Eq., 631; *Carr v. Carr*, 4 D. & B., 179; *Davis v. Gilliam*, 5 Ire. Eq., 308; *Dalton v. Dalton*, 7 Ire. Eq., 197; *Williams v. Lanier*, Busbee, 30; *Smith v. Sharpe*, Busbee, 91; *Dozier v. Gregory*, 1 Jones, 100; *Thompson v. Williams*, 1 Jones Eq., 176; *Bogey v. Shute*, 1 Jones Eq., 180; *McCormick v. Nixon*, 83—113.

**Sec. 999. Tenant for life aliening, still liable.**

R. C., c. 116, s. 2.  
 11 Hen. VI, c. 5.

Where tenant for life or years grants his estate to another, and  
 2 still continues in the possession of the lands, tenements, or here-  
 3 ditaments, an action shall lie against the said tenant for life or  
 4 years.

*Southerland v. Jones*, 6 Jones, 321.

**Sec. 1000. Action by tenant against co-tenant.**

R. C., c. 116, s. 4.  
 13 Edw. I, c. 22.

Where a joint-tenant or a tenant in common commits waste, an  
 2 action shall lie against him at the instance of his co-tenant or  
 3 joint-tenant.

**Sec. 1001. Heirs shall have the action.**

R. C., c. 116, s. 5.  
 52 Hen. III, c. 23.  
 6 Edw. I, c. 5.  
 11 Hen. VI, c. 5.  
 20 Edw. I, st. 2.

Every heir shall have his action for waste committed on lands,  
 2 tenements, or hereditaments of his own inheritance, as well in the  
 3 time of his ancestor as in his own.

**Sec. 1002. Judgment for treble damages and place wasted.**

R. C., c. 116, s. 3.  
 6 Edw. I, c. 5.  
 20 Edw. I, st. 2.

In all cases of waste, when judgment shall be against the de-  
 2 fendant, the court may give judgment for thrice the amount of  
 3 the damages assessed by the jury, and also that the plaintiff re-  
 4 cover the place wasted, if the said damages shall not be paid on or  
 5 before a day to be named in the judgment.

**Sec. 1003. Remedies for injuries heretofore remediable by writ of nuisance.**

C. C. P., s. 387.

Injuries remediable by the old writ of nuisance are subjects of  
 2 action as other injuries; and in such action there may be judg-  
 3 ment for damages, or for the removal of the nuisance, or for both.

CHAPTER TWENTY-TWO.

COMMISSIONERS OF AFFIDAVITS.

SECTION.

1004. Clerks and commissioners to take and certify affidavits.  
 1005. Governor may appoint commissioners to take and certify probate of deeds, &c., in other states and foreign countries.  
 1006. Such commissioner to take an oath, to be filed in secretary of state's office; his power and authority.  
 1007. Commissioners recorded by secretary of state and certified to clerks of courts, and there recorded; certified copy of appointment or removal, evidence.

SECTION.

1008. Secretary of state to prepare list of commissioners.  
 1009. List to be printed.  
 1010. To be printed in all subsequent volumes of acts of assembly.  
 1011. List to be conclusive evidence.  
 1012. List of revocations to be published.  
 1013. Clerk of a court of record in any other state, a commissioner of affidavits and deeds.

Sec. 1004. Clerks and commissioners to take and certify affidavits.

The clerks of the supreme and superior courts and notaries public, 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 by a clerk shall be certified under the hands of the said clerk, and if to be used out of the county when taken, also under the seal of the court of which they are respectively clerks, and if by a notary, under his notarial seal.

R. C., c. 21, s. 1.  
 1818, c. 965, s. 1.  
 1876-'7, c. 207.

Sec. 1005. Governor may appoint commissioners to take and certify probate of deeds, &c., in other states and foreign countries.

The governor is hereby authorized to appoint and commission one or more commissioners in any foreign country, state or republic; and 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 for two years from the date of their appointment, unless sooner removed by 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.

R. C., c. 21, s. 2.  
 1830, c. 31, s. 1.  
 1873-'4, c. 73.  
 1873-'4, c. 173.

Sec. 1006. Such commissioner to take an oath to be filed in secretary's office; his power and authority.

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

R. C., c. 21, s. 3.  
 1830, c. 31, s. 2.



5 and faithfully to execute and perform all the duties of such com-  
 6 missioner, according to the laws of North Carolina; which oath  
 7 shall be filed in the office of the secretary of state: And there-  
 8 upon he shall have full power and authority to administer an oath  
 9 or affirmation to any person, who shall be willing or desirous to  
 10 make such oath or affirmation before him, and to take depositions  
 11 and to examine witnesses under any commission emanating from  
 12 the courts of this state, relating to any cause depending, or to be  
 13 brought in said courts, and every deposition, affidavit, or affirma-  
 14 tion made before him, shall be as valid as if taken before any  
 15 proper officer in this state.

Young v. Rollins, 85—485.

**Sec. 1007.** Commissioners 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.  
 1830, c. 31, s. 1.  
 1873-'4, c. 73.

It shall be the duty of the governor to cause to be recorded by  
 2 the secretary of state the names of the persons who are appointed  
 3 and qualified as commissioners, and for what state, territory,  
 4 county, city, or town; and the secretary of state, when the oath of  
 5 the commissioner shall be filed in his office, shall forthwith certify  
 6 the appointment to the several clerks of the superior court of the  
 7 state, who shall record the certificate of the secretary at length;  
 8 and all removals of commissioners by the governor, and all com-  
 9 missioners whose commissions have expired by law, and which  
 10 have not been renewed, shall be recorded and certified in like man-  
 11 ner; and a certified copy thereof from the clerk, or a certificate of  
 12 the appointment or removal aforesaid from the secretary of state,  
 13 shall be sufficient evidence of the appointment or removal of such  
 14 commissioner.

**Sec. 1008.** Secretary to prepare list of commissioners.

1869-'70, c. 194, s. 2.  
 1873-'4, c. 73.

The secretary of state shall, as soon as may be, prepare and cause  
 2 to be printed a list of all persons who, since the first day of Janu-  
 3 ary, one thousand eight hundred and eighty-one, have been ap-  
 4 pointed commissioners of affidavits and to take the probate of  
 5 deeds in any foreign country and in the several states and territo-  
 6 ries of the United States and in the District of Columbia, under  
 7 this chapter setting forth the states, territory or district or foreign  
 8 country, for which such persons were appointed, and the dates of  
 9 their respective appointments, and he shall send a certified copy  
 10 of said list to every clerk of a court in this state.

**Sec. 1009.** List to be printed.

1869-'70, c. 194, s. 2.

The secretary of state shall cause a copy of said list to be printed  
 2 in the next volume of the acts of the general assembly.

**Sec. 1010.** To be printed in all subsequent volumes of acts of assembly.

1869-'70, c. 194, s. 3.

He shall also have printed in every subsequent volume of the

2 acts of the general assembly a list as aforesaid of all such commis-  
3 sioners appointed since the date of the previous list.

**Sec. 1011. List to be conclusive evidence.**

The list of commissioners so published in any volume of the acts 1869-'70, c. 194, s. 4.  
2 of the general assembly shall be conclusive evidence in all courts  
3 of the appointments therein stated, and of the dates thereof.

**Sec. 1012. List of revocations to be published.**

The secretary shall also add to each of said lists that may be pub- 1869-'70, c. 194, s. 5.  
2 lished after that provided for in this chapter a list of all such com-  
3 missioners whose appointments have been revoked, or have re-  
4 signed, removed or died since the date of the list previously pub-  
5 lished, as far as the same may be known to him, with the dates of  
6 such revocation, resignation, removal or death.

**Sec. 1013. Clerk of a court of record in any other state, a commissioner of affidavits and deeds.**

Every clerk of a court of record in any other state shall have full 1879, c. 77.  
2 power as a commissioner of affidavits and deeds as is vested in reg-  
3 ularly appointed commissioners of affidavits and deeds for the  
4 state.

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## CHAPTER TWENTY-THREE.

### COMMON LAW.

**SECTION.**

1014. Common law declared to be in force. |

**Sec. 1014. Common law declared to be in force.**

All such parts of the common law as were heretofore in force R. C., c. 22.  
2 and use within this state, or so much of the common law as is 1715, c. 5, ss. 2, 3.  
3 not destructive of, or repugnant to, or inconsistent with, the free- 1778, c. 133.  
4 dom and independence of this state and the form of government  
5 therein established, and which has not been otherwise provided  
6 for in whole or in part, not abrogated, repealed, or become obso-  
7 lete, are hereby declared to be in full force within this state.

*Sherrod v. Davis*, 1 Hay., 327, (282); *Shaw v. Moore*, 4 Jon., 25; *Winder v. Blake*, 4 Jon., 332;  
In the matter of *Bryan, Winst.*, 1; *State v. Haughton*, 63—491.

## CHAPTER TWENTY-FOUR.

## CONSTABLES.

[See Constitution, Art. IV., s. 24.]

## SECTION.

1015. Oath of office to be taken.  
 1016. Power and duty of constable.  
 1017. Constables to execute notices concerning matters within justice's jurisdiction, by delivering copy; return evidence.  
 1018. Special constables in certain cases appointed by justices.

## SECTION.

1019. City and town constables authorized to serve civil process, as in case of other constables.  
 1020. Vacancies filled by board of commissioners.  
 1021. Bond to be given by constable to be registered; copy to be read in evidence; fees, how paid.

**Sec. 1015. Oath of office to be taken.**

R. C., c. 24, s. 8.  
 1741, c. 24, s. 2.  
 1791, c. 342, ss. 1, 2.

- All constables, before they shall be qualified to act, shall take  
 2 before the board of county commissioners the oaths prescribed for  
 3 public officers, and also an oath of office.

**Sec. 1016. Power and duty of constables.**

R. C., c. 24, s. 9.  
 1741, c. 24, s. 3.  
 1790, c. 330, s. 1.  
 1874-'5, c. 253.

- Constables are hereby invested with, and may execute the same  
 2 power and authority as they have been by law heretofore vested  
 3 with, and have executed; and, in discharge of their duties, they  
 4 shall execute all precepts and process of whatever nature, to them  
 5 directed by any justice of the peace or other competent authority,  
 6 within their county or upon any bay, river, or creek adjoining  
 7 thereto; and the said precepts and process shall be returned to the  
 8 magistrates, or other proper authority.

**Sec. 1017. Constables to execute notices concerning matters within justice's jurisdiction, by delivering copy; return evidence.**

R. C., c. 24, s. 10.  
 1796, c. 466, s. 1.  
 1800, c. 557, s. 1.

- Constables shall likewise execute, within the places aforesaid, all  
 2 notices tendered to them, which are required by law to be given  
 3 for the commencement, or in the prosecution of any cause before  
 4 a justice of the peace; and the service thereof shall be made by  
 5 delivering a copy to the person to be notified, or by leaving a copy  
 6 at his usual place of abode, if in the jurisdiction of said constable;  
 7 which service, with the time thereof, he shall return on the notice;  
 8 and such return shall be evidence of its service; and, on demand  
 9 of the same, the constable shall deliver the notice to the party at  
 10 whose instance it was issued.

**Sec. 1018. Special constables in certain cases appointed by justices.**

R. C., c. 24, s. 11.  
 1741, c. 24, s. 9.

- For the better executing any precept or mandate in extraor-  
 2 dinary cases, any justice of the peace may direct the same in the  
 3 absence of, or for want of a constable, to any person not being a  
 4 party, who shall be obliged to execute the same, under like penalty  
 5 that any constable would be liable to.



Sec. 1019. City and town constables authorized to serve civil process, as in case of other constables.

It shall be lawful for city and town constables to serve all civil  
 2 process that may be directed to them from any court within their  
 3 respective counties, under the same regulations and penalties as  
 4 are or may be prescribed by law in the case of other constables.

1879, c. 266, s. 1.

Sec. 1020. Vacancies filled by board of commissioners.

Upon the death, failure to qualify or removal of any constable  
 2 out of the township in which he was elected or appointed constable,  
 3 the board of commissioners may appoint another person to  
 4 fill the vacancy, who shall be qualified and act until the next elec-  
 5 tion of constables.

R. C., c. 24, s. 6.  
 1741, c. 24, s. 7.

Sec. 1021. Bond to be given by constable to be registered; copy to be read in evidence; fees, how paid.

The board of commissioners of each county shall require of each  
 2 constable, elected or appointed for a township, on entering upon  
 3 the duties of his office, to give a bond with good surety, payable to  
 4 the state of North Carolina, in a sum not less than five hundred  
 5 dollars, nor more than two thousand dollars, conditioned as well  
 6 for the faithful discharge of his duty as constable, as for his dili-  
 7 gently endeavoring to collect all claims put into his hands for col-  
 8 lection, and faithfully paying over all sums thereon received, either  
 9 with or without suit, unto the persons to whom the same may be  
 10 due. Said bond shall be duly proved and registered, and after  
 11 registration, filed in the office of the register of deeds; and certi-  
 12 fied copies of the same from the register's office shall be received  
 13 and read in evidence in all actions and proceedings where the  
 14 original might be.

R. C., c. 24, s. 7.  
 1818, c. 980, s. 1.  
 1820, c. 1045, s. 2.  
 1833, c. 17.  
 1869-'9, c. 185, s. 10.

15 The fees for proving and registering the bond of constable shall  
 16 be paid by the constable.

Dade v. Morris, 3 Murphy, 146; Governor v. Bailey, 3 Hawks, 463; Governor v. Franklin, 4 Hawks, 274; Governor v. Coble, 2 Dev., 489; Governor v. Davidson, 3 Dev., 361; Governor v. Carraway, 3 Dev., 436; State v. Halcombe, 2 Ire., 211; State v. Lackey, 3 Ire., 25; State v. Stephens, 3 Ire., 92; State v. Sugg, 3 Ire., 96; Williams v. Williamson, 6 Ire., 281; State v. Johnson, 7 Ire., 77; Miller v. Davis, 7 Ire., 198; State v. Wall, 9 Ire., 20; State v. Corpening, 10 Ire., 58; State v. Outland, 11 Ire., 134; State v. Hooks, 11 Ire., 371; State v. McGowan, 12 Ire., 44; Morgan v. Horne, Busb., 25; State v. Bean, Busb., 318; Grier v. Hill, 6 Jones, 572; Nixon v. Bagby, 7 Jon., 4; Hearne v. Parker, 7 Jones, 150; Dunton v. Doxey, 7 Jones, 222; Reid v. Humphreys, 7 Jones, 258; Chipley v. Albea, 8 Jones, 204; Lipscomb v. Cheek, Phil., 332; Kivett v. Massey, 63—240; State v. Furguson, 76—199; State v. James, 78—455; King v. McLure, 84—153.

## CHAPTER TWENTY-FIVE.

## CONTEMPT.

## SECTION.

1022. What constitutes contempt.  
 1023. Contempt, its punishment.  
 1024. Court may punish summarily.  
 1025. Who may punish.  
 1026. Commissioners may punish.  
 1027. When offender to appear and show cause.  
 1028. Punish as for contempt.

## SECTION.

1029. Proceedings as for contempt, how prosecuted.  
 1030. What necessary to sustain a proceeding.  
 1031. Attorney not to be disbarred except upon conviction or confession in open court of some criminal offense.

## Sec. 1022. What constitutes contempt.

1868-'9, c. 177, s. 1.  
 1870-'1, c. 216, ss.  
 2, 3.

- Any person guilty of any of the following acts may be punished  
 2 for contempt :
- 3 (1) Disorderly, contemptuous, or insolent behavior committed  
 4 during the sitting of any court of justice, in immediate view and  
 5 presence of the court, and directly tending to interrupt its proceed-  
 6 ings, or to impair the respect due to its authority ;
- 7 (2) Behavior of the like character committed in the presence of  
 8 any referee or referees, while actually engaged in any trial or hear-  
 9 ing pursuant to the order of any court, or in the presence of any  
 10 jury while actually sitting for the trial of a cause, or upon any  
 11 inquest or other proceedings authorized by law ;
- 12 (3) Any breach of the peace, noise or other disturbance directly  
 13 tending to interrupt the proceedings of any court ;
- 14 (4) Wilful disobedience of any process or order lawfully issued by  
 15 any court ;
- 16 (5) Resistance wilfully offered by any person to the lawful order  
 17 or process of any court ;
- 18 (6) The contumacious and unlawful refusal of any person to be  
 19 sworn as a witness, or when so sworn, the like refusal to answer  
 20 any legal and proper interrogatory ;
- 21 (7) The publication of grossly inaccurate reports of the proceed-  
 22 ings in any court, about any trial, or other matter pending before  
 23 said court, made with intent to misrepresent or to bring into con-  
 24 tempt the said court ; but no person can be punished as for a con-  
 25 tempt in publishing a true, full and fair report of any trial, argu-  
 26 ment, decision or proceeding had in court ;
- 27 (8) Misbehavior of any officer of the court in any official trans-  
 28 action ;
- 29 (9) The several acts, neglects and omissions of duty, malfeasances,  
 30 misfeasances, and nonfeasances, above specified and described, shall  
 31 be the only acts, neglects and omissions of duty, malfeasances, mis-  
 32 feasances and nonfeasances which shall be the subject of contempt  
 33 of court. And if there be any parts of the common law now in  
 34 force in this state which recognized other acts, neglects, omissions

35 of duty, malfeasances, misfeasances and nonfeasances besides those  
36 specified and described above, the same are hereby repealed and  
37 annulled.

In the matter of Moore, 63—397; Biggs, *ex parte*, 64—202; *Ex parte* Schenck, 65—353; Kane v. Haywood, 66—1; Bond v. Bond, 69—97; Phillips v. Trezevant, 70—176; Daniel v. Owen, 72—340; In the matter of Brinson, 73—278; Pain v. Pain, 80—322; *In re* Davis, 81—72; LaFontaine v. So. Underwriters, 83—132; Cromartie v. Comm'rs, 85—211; Baker v. Cordon, 86—116.

**Sec. 1023. Contempt, its punishment.**

Punishment for contempt for matters set forth in the preceding 1868-'9, c. 177, s. 2.  
2 section, shall be by fine or imprisonment, or both, in the discre-  
3 tion of the court. The fine not to exceed two hundred and fifty  
4 dollars, and the imprisonment not to exceed thirty days.

*In re* Walker, 82—95.

**Sec. 1024. Court may punish summarily.**

Contempt committed in the immediate view and presence of the 1868-'9, c. 177, s. 3.  
2 court may be punished summarily, but the court shall cause the  
3 particulars of the offence to be specified on the record, and a copy  
4 of the same to be attached to every committal, attachment or pro-  
5 cess in the nature of an execution founded on such judgment or  
6 order.

**Sec. 1025. Who may punish.**

Every justice of the peace, referee, commissioner, clerk of the 1868-'9, c. 177, s. 4.  
2 superior court, inferior court, criminal court, or judge of the supe-  
3 rior court, or justice of the supreme court, shall have power to pun-  
4 ish for contempt while sitting for the trial of causes or engaged in  
5 official duties.

**Sec. 1026. Commissioners may punish.**

The board of commissioners of each county shall have power to 1868-'9, c. 177, s. 5.  
2 punish for contempt for any disorderly conduct or disturbance,  
3 tending to interrupt them in the transaction of their official busi-  
4 ness.

**Sec. 1027. When offender to appear and show cause.**

Whenever the contempt shall not have been committed in the 1868-'9, c. 177, s. 6.  
2 immediate presence of the court, or so near as to interrupt its busi-  
3 ness, proceedings thereupon shall be by an order directing the of-  
4 fender to appear, within reasonable time, and show cause why he  
5 should not be attached for contempt. At the time specified in the  
6 order, the person charged with the contempt may appear and an-  
7 swer, and, if he fail to appear and show good cause why he should  
8 not be attached for the contempt charged, he shall be punished as  
9 provided in section one thousand and twenty-three of this code.



**Sec. 1028. Punish as for contempt.**

1868-'9, c. 177, s. 7.

Every court of record shall have power to punish as for contempt:

(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 ;

Cromartie v. Commissioners, 85—211.

(2) Parties to suits, attorneys, and all other persons for the non-payment of any sum of money ordered by such court, in cases where execution cannot be awarded for the collection of the same ;

(3) All persons for assuming to be officers, attorneys or counselors 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 ;

(4) All persons summoned as witnesses in refusing or neglecting to obey such summons to attend, be sworn, or answer, as such witness ;

LaFontaine v. Southern Underwriters, 83—132.

(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 ;

(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 ;

(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.

**Sec. 1029. Proceedings as for contempt, how prosecuted.**

1868-'9, c. 177, s. 8.

Proceedings as for contempt shall be prosecuted and carried on, as provided in other special proceedings.

**Sec. 1030. What necessary to sustain a proceeding.**

1868-'9, s. 177, s. 9.

To sustain a proceeding 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.

Sec. 1031. Attorney not to be disbarred except upon conviction or confession in open court of some criminal offence.

No person who shall have been duly licensed to practice law as 1870-'1, c. 216, s. 4.  
2 an attorney shall be debarred or deprived of his license and right  
3 so to practice law either permanently or temporarily, unless he  
4 shall have been convicted, or in open court confessed himself guilty  
5 of some criminal offence, showing him to be unfit to be trusted in  
6 the discharge of the duties of his profession.

*Ex parte Schenck*, 65—353.

CHAPTER TWENTY-SIX.

CORONER.

SECTION.

1032. Coroner to hold inquests; his duty; physician to be summoned at the request of the jury.

1033. When there is no sheriff, coroner to act.

1034. Jurors at coroner's inquest allowed compensation.

SECTION.

1035. Coroner to take proof of number of days and mileage of jurors; audited by board of commissioners.

1036. Bond given and recorded annually; oath taken.

1037. Bonds, to be registered.

Sec. 1032. Coroner to hold inquests; his duty; physician to be summoned at the request of the jury.

It shall be the duty of the several coroners, whenever it is made  
2 to appear, by the affidavit of some responsible person, that the de-  
3 ceased probably came to his death by the criminal act or default  
4 of some person or persons, to go to the place, where the body of such  
5 deceased person is and forthwith to summon a jury of six good and  
6 lawful men; whereupon the coroner, upon oath of said jury at the  
7 said place, shall make inquiry when, how, and by what means such  
8 deceased person came to his death, and his name if it was known,  
9 together with all the material circumstances attending his death.  
10 And if it shall appear that the deceased was slain, then who was  
11 guilty either as principal or accessory, if known, or in any manner  
12 the cause of his death. And as many persons as are found culpa-  
13 ble, by inquisition in manner aforesaid, shall be taken and deliv-  
14 ered to the sheriff and committed to jail; and such persons as are  
15 found to know anything of the matters aforesaid and are not culpa-  
16 ble themselves, shall be bound in a recognizance with sufficient  
17 surety to appear at the next superior court to give evidence; of all  
18 which matters and things the coroner must note up a record of his  
19 inquisition signed by the jurors, and return the same to the next  
20 superior court of his proper county. It shall be the duty of every  
21 coroner, when the jury investigating the case shall require it, to

R. C., c. 25, s. 4.  
4 Edw. 1. st., s. 4;  
1881, c. 263.  
1881, c. 308.

22 summon a physician or surgeon, who shall be paid for his attend-  
 23 ance and service such sum as the court may deem reasonable.

State v. Knight, 84—789.

**Sec. 1033. When there is no sheriff, coroner to act.**

R. C., c. 25, s. 5.  
 1779, c. 156, s. 1.

If at any time there be no person properly qualified to act as  
 2 sheriff in any county, the coroner of such county is hereby required  
 3 to execute all process, civil or criminal, lawfully issuing on judg-  
 4 ments, orders, or sentences of any court, and in all other things to  
 5 act as sheriff, until some person shall be appointed sheriff in said  
 6 county; and such coroner shall be under the same rules and regu-  
 7 lations, and subject to the same forfeitures, fines, and penalties as  
 8 sheriffs are by law, for neglect or disobedience of the same duties.

Edwards v. Tipton, 77—222.

**Sec. 1034. Jurors at coroner's inquest allowed compensation.**

1881, c. 53, s. 1.

All persons who may be summoned to act as jurors in any in-  
 2 quest held by a coroner over dead bodies, and who, in obedience  
 3 thereto, shall appear and act as such jurors, shall be entitled to  
 4 the same compensation in per diem and mileage as is now allowed  
 5 by law to jurors acting in the superior courts.

**Sec. 1035. Coroner to take proof of number of days and mileage of jurors; audited by board of commissioners.**

1881, c. 53, s. 2.

The coroners of the respective counties are hereby authorized  
 2 and empowered to take proof of the number of days of service of  
 3 each juror so acting and also of the number of miles traveled by  
 4 such juror in going to and returning from such place of inquest,  
 5 and shall file with the board of commissioners of the county a  
 6 correct account of the same, which shall be, by such commissioners,  
 7 audited and paid in the manner now provided for the pay of jurors  
 8 acting in the superior courts.

**Sec. 1036. Bond given and renewed annually; oath taken.**

R. C., c. 25, s. 2.  
 1791, c. 342, ss. 1, 2.  
 1820, c. 1047, ss. 1, 2.

Every coroner shall execute an undertaking for the faithful dis-  
 2 charge of the duties of his office with good surety, in the sum of  
 3 two thousand dollars, (or in a larger sum if required by the court,)   
 4 payable to the state of North Carolina and approved by the board  
 5 of county commissioners, which he shall annually renew, or no  
 6 longer hold said office. He shall also take the oaths of public  
 7 officers and an oath of office.

Mabry v. Turrentine, 8 Ire., 201.

**Sec. 1037. Bonds to be registered.**

1860-'61, c. 18.

All official bonds of coroners shall be duly proved, certified,  
 2 registered and filed as sheriffs' bonds are required to be; and cer-  
 3 tified copies of the same, from the register's office, shall be received



4 and read in evidence in the like cases, and in like manner as such  
5 copies of sheriffs' bonds are now allowed to be read in evidence.

See *Green v. Wynne*, 66—530; *Heilig v. Lemly*, 74—250; *Yeargin v. Siler*, 83—343; *State v. Knight*, 84—789.

## CHAPTER TWENTY-SEVEN.

### CORPORATIONS.

#### SECTION.

1038. General powers of corporations.
1039. By-laws to determine the manner of calling and conducting meetings, &c.
1040. First meeting, how notified when not provided for specially.
1041. Land may be held and conveyed.
1042. Corporations to continue three years after charter expires, to close their concerns.
1043. When corporations expire, &c., receivers or trustees appointed to settle their affairs; their powers.
1044. Jurisdiction over receivers or trustees.
1045. Receivers to pay debts and distribute surplus.
1046. What executions to issue, and what may be sold.
1047. Executions levied on personal property; property may be sold independent of the franchise and real property belonging to such Corporation.
1048. Who shall be deemed the highest bidder.
1049. Officer making sale to convey the right of fare and toll, and deliver possession of property connected with franchise.
1050. Purchaser of franchise to have same remedies as corporation for damages.
1051. Liabilities of corporation to continue after sale.
1052. How certain business and other corporations may be formed; corporations to enter into articles of agreement; what articles to set forth.
1053. Articles to be proved and recorded; book to be kept for that purpose; index to be made; twenty-five dollars to be collected by clerk for benefit of school fund; penalty for not collecting, &c.; sureties on clerk's bond responsible, and also a misdemeanor.
1054. Clerk to issue letters declaring its incorporation; notice thereof to be published in some newspaper; notice to set forth substance of articles.
1055. Fees of clerk.
1056. No dividend, if debts exceed two-thirds of assets.

#### SECTION.

1057. Copies of letters admissible in evidence, and *prima facie* evidence of incorporation.
1058. Contracts exceeding one hundred dollars to be in writing.
1059. Such corporations forbidden to bank.
1060. How corporations may convey by deed; void as to existing creditors.
1061. Attorney general may bring an action to restrain corporations from exercising powers not granted, and to bring certain officers to account, &c.; managers of corporations personally liable for fraud.
1062. Corporations, how long to exist; dissolution not to extinguish debts.
1063. Two years of non-user a forfeiture of charter.
1064. Shares in corporations personal estate.
1065. Corporations may hold not over thirty years; when lands may be forfeited to the state.
1066. Duty of grand jury and solicitor.
1067. Lands how sold, &c.
1068. Existing corporation affected.
1069. How corporations may be dissolved; abuse of power; non-user; insolvency; criminal conviction.
1070. How summons in such cases served.
1071. Tax on bills for incorporation presented to general assembly.
1072. Sales under deeds of trust.
1073. Corporation created by sale shall succeed to rights, &c., and when it expires, property to go to pay debts, &c.
1074. Tax collectors to levy upon and take into possession property of corporations, &c., whether in hands of receiver or not.
1075. Not necessary to obtain order of court for the payment of tax, if property in hands of receiver.
1076. Provisions of this chapter to apply to all corporations, unless otherwise declared herein, or in the chapter on railroads and telegraphs.

*Passim*, *Railroad Co. v. Leach*, 4 Jones, 340; *Bank v. Charlotte*, 85—433.

#### Sec. 1038. General powers of corporations.

All corporations shall, where no other provision is specially  
2 made, be capable in their corporate name to sue and be sued, ap-  
3 pear, prosecute and defend to final judgment and execution, in any

R. C., c. 26, s. 1,  
1850, c. 50.

4 courts or elsewhere; to have a common seal, which they may alter  
 5 at pleasure; to elect, in such manner as they shall determine to be  
 6 proper, all necessary officers, and to fix their compensation and  
 7 define their duties and obligations; and to make by-laws and reg-  
 8 ulations, consistent with the laws of the state, for their own gov-  
 9 ernment, and for the due and orderly conducting of their affairs,  
 10 and the management of their property.

Mauney v. Motz, 4 Ire. Eq., 195; Thompson v. Guion, 5 Jones Eq., 113; W. & M. R. R. Co. v. Wright, 5 Jones, 304; Railroad Co. v. Thompson, 7 Jones, 337.

**Sec. 1039. By-laws to determine the manner of calling and conducting meetings, &c.**

R. C., c. 26, s. 2.  
 1850, c. 50.

All corporations may, by their by-laws, where no other provis-  
 2 ion is specially made, determine the manner of calling and con-  
 3 ducting all meetings; the number of members that shall consti-  
 4 tute a quorum; the number of shares that shall entitle the mem-  
 5 bers to one or more votes; the mode of voting by proxy; the  
 6 mode of selling shares for the non-payment of assessments; and  
 7 the tenure of office of the several officers; and the manner in  
 8 which vacancies in any of the offices shall be filled till a regular  
 9 election; and they may annex suitable penalties to such by-laws,  
 10 not exceeding in any case the sum of twenty dollars for any one  
 11 offence: *Provided*, that no such by-law shall be made by any cor-  
 12 poration repugnant to any provision of its charter: *And provided*  
 13 *further*, that if the chief or other authorized officer of any company  
 14 shall issue any certificate of stock in any other way or to any other  
 15 person than as provided by the by-laws of said company, the officer  
 16 issuing such certificate shall be guilty of a misdemeanor, and upon  
 17 conviction, shall be punished by fine or imprisonment, or both, at  
 18 the discretion of the court.

**Sec. 1040. First meeting, how notified when not provided for specially.**

R. C., c. 26, s. 3.  
 1850, c. 50.

The first meeting of all corporations, unless otherwise provided  
 2 for in their acts of incorporation, shall be called by a notice signed  
 3 by any one or more of the persons named in the act of incorpora-  
 4 tion, and setting forth the time, place and purposes of the meeting;  
 5 and such notice, ten days at least before the meeting, shall be  
 6 delivered to each member or published in some newspaper printed  
 7 nearest to the proposed place of meeting.

**Sec. 1041. Land may be held and conveyed.**

R. C., c. 26, s. 4.  
 1881, c. 124.

Every corporation may hold lands to an amount authorized by  
 2 law, and may convey the same. But no corporation formed under  
 3 this chapter, except mining and manufacturing companies, and  
 4 companies for supplying the cities and towns of the state with  
 5 water, shall have power to hold at the same time more than three  
 6 hundred acres of land in fee simple, or for a longer term than  
 7 thirty years.

**Sec. 1042.** Corporations to continue three years after charter expires, to close their concerns.

All corporations, whose charters shall expire by their own limitation, or shall be annulled by forfeiture or otherwise, shall nevertheless be continued bodies corporate for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending actions by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock; but not for the purpose of continuing the business for which such corporations may have been established.

R. C., c. 26, s. 5.

Von Glahn v. Harris, 73—323; Von Glahn v. DeRosset, 81—467.

**Sec. 1043.** When corporations expire, &c., receivers or trustees appointed to settle their affairs; their powers.

When the charter of any corporation shall expire or be annulled as provided in the preceding section, or the corporation is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights, either for non-user or abuser, or any other cause, the judge of the superior court having jurisdiction of the appointment of receivers as provided in chapter twenty-one, on application of any creditor of such corporation, or of any stockholder or member thereof at any time within said three years, or if for insolvency within three years from the time of said insolvency may appoint one or more persons to be receivers or trustees of and for such corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation, or in the name of such receivers or trustees, all such actions as may be necessary or proper for the purpose aforesaid; and to appoint agents under them, and to do all other acts which might be done by such corporation, if in being, that may be necessary for the final settlement of the unfinished business of the corporation; and the powers of such receivers may be continued beyond the said three years, and as long as the court shall think necessary for the purposes aforesaid.

R. C., c. 26, s. 6.

Fox v. Horah, 1 Ire. Eq., 358; Von Glahn v. DeRosset, 81—467; Attorney General v. Roanoke Navigation Co., 84—705; Young v. Rollins, 85—485; Dobson v. Simonton, 86—492.

**Sec. 1044.** Jurisdiction over receivers or trustees.

The court or judge shall have jurisdiction of such application and of all questions arising in the proceedings thereon, and make such orders, injunctions and decrees therein as justice and equity shall require.

R. C., c. 26, s. 7.

**Sec. 1045.** Receivers to pay debts, and distribute surplus.

The said receivers shall pay all debts due from the corporation, if the funds in their hands shall be sufficient therefor; and if not, they shall distribute the same ratably among all the creditors, who

R. C., c. 26, s. 8.



4 shall prove their debts in the manner that shall be directed by any  
 5 order or decree of the court for that purpose ; and if there shall be  
 6 any balance remaining after the payment of said debts, the receiv-  
 7 ers shall distribute and pay the same to and among those who  
 8 shall be justly entitled thereto, as having been stockholders or  
 9 members of the corporation, or their legal representatives.

**Sec. 1046. What executions to issue, and what may be sold.**

R. C., c. 26, s. 9,  
 1820, c. 1056, s. 4.

If any judgment or decree shall be rendered against a corpora-  
 2 tion, the plaintiff may sue out such executions against the property  
 3 of a corporation as is provided in this code to be issued against  
 4 the property of natural persons, which executions may be levied  
 5 as well on the current money as on the goods, chattels, lands and  
 6 tenements of such corporation ; and if the judgment or decree be  
 7 against any corporation authorized to receive fare or tolls, the  
 8 franchise of such corporation, with all the rights and privileges  
 9 thereof, so far as relates to the receiving of fare or tolls, and also  
 10 all other corporate property, real and personal, may be taken on  
 11 execution and sold under the rules regulating the sale of real  
 12 estate.

State v. Rives, 5 Ire., 297; Gooch v. McGee, 83—59; Attorney General v. Roanoke Navigation Company, 84—705.

**Sec. 1047. Executions levied on personal property; property may be sold independent of the franchise and real property belonging to such corporation.**

When an execution has been sued out and levied upon the per-  
 2 sonal property of a corporation, such personal property may be  
 3 sold, and the title to such property shall pass to the purchaser at  
 4 said sale, independent of the franchise and real estate of such cor-  
 5 poration.

Attorney General v. Roanoke Nav. Co., 84—705.

**Sec. 1048. Who shall be deemed the highest bidder.**

R. C., c. 26, s. 10.

In the sale of the franchise of any corporation, the person who  
 2 shall satisfy the execution with all costs thereon, or who shall agree  
 3 to take such franchise for the shortest period of time, and to re-  
 4 ceive during that time all such fare and toll as the said corpora-  
 5 tion would by law be entitled to demand, shall be considered as  
 6 the highest bidder.

Taylor v. Jerkins, 6 Jones, 316; Gooch v. McGee, 83—59; Attorney General v. Roanoke Nav. Co., 84—705.

**Sec. 1049. Officer making sale to convey the right of fare and toll, and deliver possession of property connected with franchise.**

R. C., c. 26, s. 11.

The officer making sale shall by deed convey to the purchaser  
 2 all the immunities and privileges which by law belong to the cor-  
 3 poration, so far as relates to right of demanding fare and toll ; and  
 4 the officer shall, immediately after such sale, deliver to the pur-

5 chaser possession of all the corporate real property connected with  
 6 the franchise belonging to such corporation, in whatever county  
 7 the same may be situated ; and the purchaser may thereupon de-  
 8 mand and receive to his own use all the fare and toll which may  
 9 accrue within the time limited by the term of his purchase in the  
 10 same manner and under the same regulations as such corporation  
 11 was before authorized to demand and receive the same.

*Gooch v. McGee*, 83—59; *Attorney General v. Roanoke Nav. Co.*, 84—705.

**Sec. 1050. Purchaser of a franchise to have same remedies as corporation for damages.**

Any person who may have purchased, or shall, under the pro-  
 2 visions of this chapter, hereafter purchase the franchise of any  
 3 corporation, and the assignee of such person may recover in such  
 4 action as the corporation might have brought, any penalties im-  
 5 posed by law for an injury to the franchise or for any other cause,  
 6 and which such corporation would have been entitled to recover,  
 7 during the time limited in the said purchase of the franchise; and  
 8 during that time, the corporation shall not be entitled to prosecute  
 9 for such penalties.

R. C., c. 26, s. 12.

*Attorney General v. Roanoke Nav. Co.*, 84—705.

**Sec. 1051. Liabilities of corporation to continue after sale.**

The corporation whose franchise shall have been sold as afore-  
 2 said shall in all other respects retain the same powers and be bound  
 3 to the discharge of the same duties and liable to the same penalties  
 4 and forfeitures as before such sale.

R. C., c. 26, s. 13.

**Sec. 1052. How certain business and other corporations may be formed; corporations to enter into articles of agreement; what articles to set forth.**

Any number of persons not less than three who may be desirous  
 2 of engaging in any business not unlawful, except building railroads,  
 3 or banking or insurance, at any place within the state, may, if it  
 3 please them, become incorporated in the manner following, that  
 4 is: such persons shall, by articles of agreement, under their hands  
 5 and seals, set forth before the clerk of the superior court of the  
 6 county where such mining is to be conducted or manufactory es-  
 7 tablished, and in case of any other association, before the clerk of  
 8 the superior court of the county where the meetings may be held:  
 9 1. The corporate name. 2. The business proposed. 3. The place  
 10 where it is proposed to be carried on. 4. The length of time de-  
 11 sired, not exceeding thirty years, except as to mining corporations,  
 12 the term for which shall not exceed sixty years. 5. The names of  
 13 persons who have subscribed. And, in the case of mining and  
 14 manufacturing, shall also state: 6. The amount of capital; and  
 15 7. The number of shares, and the amount of each (the same not  
 16 less than fifty dollars each).

R. C., c. 26, s. 14.  
 1866—7, c. 78.  
 1871—2, c. 199, s. 1.

Sec. 1053. Articles to be proved and recorded; book to be kept for that purpose; index to be made; twenty-five dollars to be collected by clerk for benefit of school fund; penalty for not collecting, &c.; sureties on clerk's bond responsible, and also a misdemeanor.

The said articles of agreement, after having been proved by a  
 2 subscribing witness, or acknowledged before the clerk, shall be  
 3 recorded by the said clerk in a book to be kept for this purpose in  
 4 his office and marked "record of incorporations," and said clerk  
 5 shall keep in said book an alphabetical index of the names of the  
 6 corporations: *Provided*, that the said clerk, before recording the  
 7 said articles of agreement, shall collect from the persons signing  
 8 said articles, the sum of twenty-five dollars, to be paid by the said  
 9 clerk to the treasurer of the county, for the benefit of the public  
 10 school fund of the county; and the said clerk shall, at the next  
 11 regular meeting of the board of commissioners of the county,  
 12 report the fact of such collection and payment to the treasurer, to  
 13 the said board, to the end that the said treasurer may be charged  
 14 with the same: *And provided further*, that if said clerk shall fail to  
 15 collect said sum of twenty-five dollars, or when collected, shall fail  
 16 to pay over the same to the county treasurer, or shall fail to report  
 17 the fact of such collection and payment to the board of commis-  
 18 sioners, he shall forfeit and pay the sum of fifty dollars, one-half  
 19 to the use of the public school fund of the county, and the other  
 20 half to the person suing for the same; and his sureties on his official  
 21 bond shall also be liable for said penalty, and said clerk shall be  
 22 guilty of a misdemeanor, and fined not exceeding fifty dollars.

Sec. 1054. Clerk to issue letters declaring its incorporation; notice thereof to be published in some newspaper; notice to set forth substance of articles.

R. C., c. 26, s. 15.  
 1852, c. 67, ss. 1, 2.  
 1852, c. 81, ss. 1, 2, 3.

After the said articles of agreement shall have been recorded,  
 2 the clerk under the seal of the superior court, shall issue letters  
 3 declaring said persons and their successors to be, and thenceforth  
 4 they shall be, a corporation, for the purpose and according to the  
 5 terms prescribed in said articles, and shall cause notice thereof to  
 6 be published in some newspaper, if any there be, printed in the  
 7 county, or nearest to the place where said articles may be recorded,  
 8 in which shall be set forth the substance of the articles, and (in  
 9 case of companies having a capital,) the amount of capital, and  
 10 value of shares.

Sec. 1055. Fees of clerk.

R. C., c. 26, s. 15.  
 1852, c. 67, s. 3.  
 1852, c. 81, ss. 4-10.

Every company incorporated by letters under articles of agree-  
 2 ment, shall pay the clerk of the superior court a fee of two dollars  
 3 for taking the probate and recording the articles of agreement,  
 4 also the expense of publication, and one dollar for the certificate  
 5 declaring its incorporation.



**Sec. 1056. No dividend, if debts exceed two-thirds of assets.**

No such company shall declare any dividend, when its debts, R. C., c. 26, s. 18.  
1852, c. 81, s. 5.  
2 whether due or not, shall exceed two-thirds of its assets.

**Sec. 1057. Copies of letters admissible in evidence, and *prima facie* evidence of incorporation.**

All such letters issued under the authority of this chapter, and R. C., c. 26, ss. 19,  
20.  
1852, c. 81, ss. 7, 8.  
2 copies thereof certified by the clerk of the superior court of the  
3 county where the same are recorded, shall in all cases be admissi-  
4 ble in evidence; and the letters aforesaid shall, in all judicial pro-  
5 ceedings, be deemed *prima facie* evidence of the complete organi-  
6 zation and incorporation of the company, purporting thereby to  
7 have been established.

**Sec. 1058. Contracts exceeding one hundred dollars to be in writing.**

Every contract of every corporation, by which a liability may 1871-'2, c. 199, s. 23.  
2 be incurred by the company exceeding one hundred dollars, shall  
3 be in writing, and either under the common seal of the corpora-  
4 tion or signed by some officer of the company authorized thereto.

**Sec. 1059. Such corporations forbidden to bank.**

No corporation created by letters of agreement under this chap- R. C., c. 26, s. 21.  
1852, c. 81, s. 9.  
2 ter for the purposes herein allowed shall, under any pretence, en-  
3 gage in the business of banking: *Provided, however,* that in the trans-  
4 action of their business, they may make, and take and indorse,  
5 when necessary, all such bonds, notes and bills of exchange, as the  
6 particular business may require.

**Sec. 1060. How corporations may convey by deed; void as to existing creditors.**

Any corporation may convey lands, and all other property which R. C., c. 26, s. 22.  
1793, c. 514, s. 4.  
2 is transferable by deed, by deed of bargain and sale, or other proper  
3 deed, sealed with the common seal and signed by the president or  
4 presiding member or trustee, and two other members of the corpo-  
5 ration, and attested by witnesses. But any conveyance of its prop-  
6 erty, whether absolutely or upon condition, in trust, or by way of  
7 mortgage executed by any corporation, shall be void and of no  
8 effect as to the creditors of said corporation, existing prior to, or at  
9 the time of the execution of said deed, and as to torts committed  
10 by such corporation, its agents or employees, prior to, or at the time  
11 of the execution of said deed: *Provided,* said creditors, or persons  
12 injured, or their representatives shall commence proceedings or ac-  
13 tions to enforce their claims against said corporation within sixty  
14 days after the registration of said deed, as required by law.

Taylor v. Heggie, 83—244.

NOTE.—For proceedings against corporations to vacate charter, &c., see C. C. P., sec. 994  
*et seq.*

Sec. 1061. Attorney general may bring an action to restrain corporations from exercising powers not granted, and to bring certain officers to account, &c.; managers of corporations personally liable for fraud.

R. C., c. 26, s. 28.  
1831, c. 24, s. 5.

It shall be the duty of the attorney general to bring an action in  
2 the superior court of the county as in this code directed, to restrain  
3 by injunction, any corporation from assuming or exercising any  
4 franchise, or transacting any business not allowed by its charter;  
5 to restrain any person from exercising corporate franchises not  
6 granted; to bring directors, managers, and officers of a corporation,  
7 or the trustees of funds given for a public or charitable purpose, to  
8 an account for the management and disposition of the property con-  
9 fided to their care; to remove such officers or trustees upon proof  
10 of gross misconduct; to secure for the benefit of all interested the  
11 property or funds aforesaid; to set aside and restrain improper  
12 alienations thereof, and generally to compel the faithful perform-  
13 ance of duty, and prevent all malversation, speculation, and waste.  
14 And in case of fraud by the president, directors, managers, or stock-  
15 holders, in any corporation, the court shall render personally lia-  
16 ble to creditors and others injured thereby such of the directors,  
17 and stockholders as may have been concerned in the fraud.

See sections 977, 978, C. C. P.; *Attorney General v. Petersburg & Roanoke R. R. Co.*, 6 Ire. 456; *Railroad Co. v. Leach*, 4 Jones, 340; *Bank v. Charlotte*, 85—433.

Sec. 1062. Corporations, how long to exist; dissolution not to extinguish debts.

R. C., c. 26, s. 29.  
1836, c. 10, s. 1.

No body corporate, hereafter to be established, shall exist for a  
2 longer term than sixty years, unless otherwise provided in the act  
3 creating the same; but in the case of a dissolution of a corporation  
4 by any judgment or decree, the debts due to, or from it, shall not  
5 be extinguished.

*Von Glahn v. DeRosset*, 81—467.

R. C., c. 26, s. 30.  
1836, c. 10, s. 2.

Sec. 1063. Two years of non-user a forfeiture of charter.

When any act shall have passed, or letters of agreement, as pro-  
2 vided in this chapter, shall have been recorded, creating a body  
3 corporate, and the corporators, for two years, shall neglect or fail to  
4 organize the company, and carry into effect the intent of the act;  
5 or when organized, if they at any time for two years together shall  
6 cease to act, then such disuse of their corporate privileges and  
7 powers shall be deemed and taken as a forfeiture of the charter.

R. C., c. 26, s. 31.  
1836, c. 11.

Sec. 1064. Shares in corporations personal estate.

The shares of stock in all incorporated joint-stock companies  
2 shall be deemed personal estate.

*Redding v. Allen*, 3 Jones Eq., 358.

**Sec. 1065.** Corporations may hold not over thirty years; when lands may be forfeited to the state.

Any corporation may take a mortgage upon any quantity of  
 2 land to secure a debt owing to the corporation, and may take a  
 3 conveyance of any quantity of land in partial or total satisfaction  
 4 of a debt due the corporation; and may purchase any quantity of  
 5 land at a sale under execution against a debtor of the corporation  
 6 or at any individual sale of the property of a debtor of the cor-  
 7 poration; but the corporation purchasing such land to a quantity  
 8 exceeding, with its lands previously owned, three hundred acres,  
 9 shall not be capable of holding the same for more than thirty  
 10 years from the date of such purchase, and all lands so purchased  
 11 in excess of the limited quantity and held by any corporation shall  
 12 at the end of thirty years from the date of such purchase be for-  
 13 feited to the state, and may be recovered in action brought in  
 14 the name of the state by its proper officer. The corporation purchas-  
 15 ing such land may at any time within thirty years next ensuing  
 16 the date of its purchase convey by deed to a *bona fide* purchaser for  
 17 value under its common seal such estate in said lands as it would  
 18 have had under its purchase but for the limitation herein contained.

1871-'2, c. 199, s. 29.

**Sec. 1066.** Duty of grand jury and solicitor.

It shall be the duty of the grand jury in each county to inquire  
 2 and report to the solicitor what lands at any time are held by any  
 3 corporation in violation of the provisions of this chapter; and it  
 4 shall be the duty of every solicitor, either upon or without such re-  
 5 port, to institute proceedings for the forfeiture of all such lands,  
 6 and to report the same to the governor from time to time.

1871-'2, c. 199, s. 30.

**Sec. 1067.** Lands, how sold, &c.

The lands recovered by the state under this chapter shall not be  
 2 the subject of entry, but shall be sold at public sale for cash, under  
 3 the direction of the governor and attorney general, and the pro-  
 4 ceeds paid into the state treasury; and the sale shall be reported  
 5 to the general assembly at its next ensuing session.

1871-'2, c. 199, s. 31.

**Sec. 1068.** Existing corporations affected.

All corporations (except railroad, mining, manufacturing cor-  
 2 porations, and companies to supply the cities and towns of the  
 3 state with water,) which shall be seized in fee, or for a longer term  
 4 than three lives in being, or possessed for a longer time than thirty  
 5 years of any lands or tenements, exceeding three hundred acres  
 6 in quantity, are required, within said time, to dispose of such  
 7 excess.

1871-'2, c. 199, s. 32.  
 1881, c. 124.

**Sec. 1069.** How corporations may be dissolved; abuse of power; non-user; insolvency; criminal conviction.

All corporations formed under this chapter may be dissolved by  
 2 special proceeding, instituted by the company or by any corporator,

1871-'2, c. 199, ss. 33,  
 34, 35, 36, 37.



3 or by any judgment creditor, whose execution issued to the county  
4 in which the corporation has its only or principal place of busi-  
5 ness, shall be returned unsatisfied, or by the authority of the attor-  
6 ney general in the name of the state, for the causes hereinafter  
7 mentioned, to-wit:

8 (1) For any abuse of its powers to the injury of the public or of  
9 the corporators, or of its creditors or debtors;

10 (2) For non-user of its powers for two years or more consecu-  
11 tively;

12 (3) For insolvency manifested by the return of an execution  
13 unsatisfied upon a judgment against the company, docketed in the  
14 superior court of the county where it has its only or principal  
15 place of business;

16 (4) Upon any conviction of the company of a criminal offence  
17 if such offence be persistent.

**Sec. 1070. How summons in such cases served.**

1871-'2, c. 199, s. 38.

Upon any special proceedings for the dissolution of a corporation,  
2 the summons shall be served on the chief or other officer of the  
3 corporation authorized for that purpose as writs of summons are  
4 required to be in like cases, and shall be served on the corporators,  
5 creditors, dealers and others interested in the affairs of the com-  
6 pany, by publishing a copy thereof at least weekly for not less than  
7 three successive weeks in some newspaper printed in the county in  
8 which such corporation has its only or principal place of business,  
9 or if there be no such newspaper published, then by posting a  
10 copy of such summons at the door of the court house of such  
11 county, and publishing a copy thereof for the time and in the  
12 manner aforesaid in the newspaper published nearest the county  
13 seat of the county in which such corporation has its only or prin-  
14 cipal place of business or in some newspaper published in the city  
15 of Raleigh; and such publication shall be deemed and held suffi-  
16 cient service on all the corporators, creditors of, or dealers with,  
17 such corporation, and all such corporators, creditors or dealers or  
18 other parties interested, may intervene in said proceedings and be-  
19 come parties thereto for themselves, or for others in like interest,  
20 under such rules as the court for the purpose of justice shall pre-  
21 scribe.

**Sec. 1071. Tax on bills for incorporation presented to general assembly.**

1881, c. 116.  
Sch. C., s. 6.

Every bill introduced in either house of the general assembly,  
2 to incorporate any company, or for the benefit thereof, or to amend  
3 any act relating to such company or corporation, shall be accom-  
4 panied by a receipt from the state treasurer for one hundred dol-  
5 lars. This section shall not be construed to apply to benevolent,  
6 charitable, literary or religious associations, nor to rail road com-  
7 panies.

## Sec. 1072. Sales under deeds of trust.

If a sale be made under a deed of trust or mortgage executed by  
 2 any corporation on all its works and property, and there be a con-  
 3 veyance pursuant thereto, such sale and conveyance shall pass to  
 4 the purchaser at the sale, not only the works and property of the  
 5 corporation as they were at the time of making the deed of trust or  
 6 mortgage, but any works which the corporation may after that  
 7 time and before the sale have constructed, and all other property  
 8 of which it may be possessed at the time of the sale other than  
 9 debts due to it. Upon such conveyance to the purchaser, the said  
 10 corporation shall *ipso facto* be dissolved, and the said purchaser  
 11 shall forthwith be a new corporation by any name which may be  
 12 set forth in the said conveyance, or in any writing signed by him  
 13 and recorded, in the same manner in which the conveyance shall  
 14 be recorded.

Gooch v. McGee, 83—59.

## Sec. 1073. Corporation created by sale shall succeed to rights, &amp;c., and when it expires, property to go to pay debts, &amp;c.

The corporation created by, or in consequence of, such sale and  
 2 conveyance shall succeed to all such franchises, rights and privi-  
 3 leges, and perform all such duties as would have been, or should  
 4 have been, performed by the first corporation, but for such sale  
 5 and conveyance, save only, that the corporation so created, shall  
 6 not be entitled to the debts due to the first corporation, and shall  
 7 not be liable for any debts of, or claims against, the first corpora-  
 8 tion, which may not be expressly assumed in the contract of pur-  
 9 chase; and that the whole profits of the business done by such  
 10 corporation shall belong to the said purchaser and his assigns.  
 11 His interest in the corporation shall be personal estate, and he or his  
 12 assigns may create so many shares of stock therein, as he or they  
 13 may think proper, not exceeding the amount of stock in the first  
 14 corporation at the time of the sale, and assign the same in a book  
 15 to be kept for that purpose. The said shares shall thereupon be on  
 16 the footing of shares in joint stock companies generally, except  
 17 only, that the first meeting of the stockholders shall be held on  
 18 such day, and at such place, as shall be fixed by the said purchaser,  
 19 of which notice shall be published for two weeks in a newspaper.  
 20 And when a corporation shall expire or be dissolved, or its corpor-  
 21 ate rights and privileges shall have ceased, all its works and prop-  
 22 erty and debts due it, shall be subject to the payment of debts  
 23 due by it, and then to distribution among the members accord-  
 24 ing to their respective interests; and such corporation may sue  
 25 and be sued as before, for the purpose of collecting debts due it,  
 26 prosecuting rights under previous contracts with it, and enforcing  
 27 its liabilities and distributing the proceeds of its works, property  
 28 and debts among those entitled thereto.

Gooch v. McGee, 83—59; Young v. Rollins, 85—485.

Sec. 1074. Tax collectors to levy upon and take into possession property of corporations, &c., whether in hands of receiver or not.

Whenever taxes are duly assessed, charged and extended against  
1879, c. 245, s. 1. 2 any corporation having chartered rights, or doing business in this  
3 state, or having property in this state, or against any person resi-  
4 dent in this state or doing business, or having property in this  
5 state, and the tax list is in the hands of any officer or tax collector,  
6 it shall be competent for such officer or tax collector, whenever said  
7 taxes, whether listed or unlisted, are due and unpaid, to levy upon,  
8 seize and take into his possession such part of the property belong-  
9 ing to such person or corporation as may be necessary to pay such  
10 taxes listed or unlisted, whether the property of such corporation  
11 or person be in the hands of a receiver duly appointed or not.

Sec. 1075. Not necessary to obtain order of court for the payment of tax, if property in hands of receiver.

In all cases provided for in the preceding section, it shall not  
1879, c. 245, ss. 2, 3, 4. 2 be necessary for such officer or tax collector to apply to and obtain  
3 from the court appointing such receiver, or having jurisdiction  
4 of the property or of the receiver, an order for the payment of  
5 such taxes, but the same may be collected as aforesaid, by dis-  
6 traint and seizure, as if the property or corporation was not in the  
7 hands of a receiver. The provisions of this section and of the pre-  
8 ceding section shall apply to all taxes, whether state, county, town,  
9 or municipal; and their provisions shall be liberally construed  
10 in favor of, and in furtherance of, the collection of said taxes.

Sec. 1076. Provisions of this chapter to apply to all corporations, unless otherwise declared herein, or in the chapter on railroads and telegraphs.

The provisions of this chapter, unless otherwise declared herein,  
2 or in the chapter entitled Railroads and Telegraphs, shall apply to  
3 all corporations, whether created by special act of assembly, by  
4 letters of agreement under this chapter, or by the provisions of  
5 the chapter entitled Railroads and Telegraphs. And the provis-  
6 ions of this chapter and of the chapter on Railroads and Tele-  
7 graphs, so far as the same are applicable to railroad corporations,  
8 shall govern and control anything in the special act of assembly  
9 to the contrary notwithstanding, unless in the act of the general  
10 assembly creating the corporation, the section or sections of this  
11 chapter, and of the chapter entitled Railroads and Telegraphs,  
12 intended to be repealed, shall be specially referred to by number,  
13 and as such, specially repealed.



## CHAPTER TWENTY-EIGHT.

## COUNTIES, COUNTY COMMISSIONERS AND COUNTY GOVERNMENT.

## SECTION.

1077. Every county a body politic.  
 1078. How its powers can be exercised.  
 1079. Corporate powers.  
 1080. Proceedings by or against a county.  
 1081. Meetings of the board.  
 1082. Powers of the board of commissioners.  
 1083. When the board to qualify and enter upon office.  
 1084. Compensation of the board.  
 1085. Compensation of clerk of the board.  
 1086. Neglect of duty by commissioner a misdemeanor.  
 1087. Duty of clerk.  
 1088. Clerk to publish an annual statement.  
 1089. Neglect of clerk to publish statement a misdemeanor.

## SECTION.

1090. Certified copies of records of board may be read in evidence.  
 1091. The board to be elected by the justices of the peace.  
 1092. Meetings of justices of the peace.  
 1093. Purchase of county indebtedness.  
 1094. Vacancies in boards of county commissioners to be filled by justices of the peace.  
 1095. The board of commissioners to fill certain vacancies.  
 1096. Disputed lines between counties, how settled.  
 1097. The boards of commissioners to be sworn and paid.

## Sec. 1077. Every county a body politic.

Every county is a body politic and corporate, and shall have the  
 2 powers prescribed by statute, and those necessarily implied by law,  
 3 and no other.

Winslow v. Com'rs of Perquimans, 64—218; Satterthwaite v. Com'rs of Beaufort Co., 76—153.

## Sec. 1078. How its powers can be exercised.

Its powers can only be exercised by the board of commissioners,  
 2 or in pursuance of a resolution adopted by them.

Pegram v. Com'rs of Cleveland, 65—114.

## Sec. 1079. Corporate powers.

A county is authorized:

- 2 (1) To sue and be sued in the name of the board of commission- 1868, c. 20, s. 3.  
 3 ers;  
 4 (2) To purchase and hold lands within its limits and for the use  
 5 of its inhabitants, subject to the supervision of the general assem-  
 6 bly;  
 7 (3) To make such contracts, and to purchase and hold such per-  
 8 sonal property, as may be necessary to the exercise of its powers;  
 9 (4) To make such orders for the disposition or use of its property  
 10 as the interest of its inhabitants require.

Winslow v. Com'rs of Perquimans, 61—218; Gooch v. Gregory, 65—142.

## Sec. 1080. Proceedings by or against a county.

All actions or proceedings by or against a county, in its corpor- 1868, c. 20, s. 4.  
 2 ate capacity, shall be in the name of the board of commissioners  
 3 of the county.

Pegram v. Com'rs of Cleveland, 65—114; Askew v. Pollock, 66—49; Steele v. Com'rs of Ruth-  
 erford, 70—137.

## Sec. 1081. Meetings of the board.

1863, c. 20, ss. 5, 6, 7.  
1863-'9, c. 259.  
1881, c. 287.

The board of commissioners in each county shall hold a regular meeting at the court house, on the first Mondays in December and June. Special meetings may be held on the first Monday in every month, but shall not continue longer in session than two days. Meetings may be held at other times for the more convenient dispatch of business at the call of the chairman, on the written request of one member of the board, but public notice of the time and place of all such called meetings shall be posted at the court house door for not less than six days, and published one time in a county newspaper, if there is one. The board shall receive no compensation for attending such called meetings. The board may adjourn its regular meetings in December and June from day to day until the business before it is disposed of. Every meeting shall be open to all persons. A majority of the board shall constitute a quorum. At each regular December meeting the board shall choose one of its members as chairman for the ensuing year; in his absence the members present shall choose a temporary chairman.

King v. Hunter, 65—603; People v. Green, 75—329.

## Sec. 1082. Powers of the board of commissioners.

1868, c. 20, s. 8.  
1871-'2, c. 66, s. 1.  
1876-'7, c. 141, s. 1.

(1) WHEN, HOW AND BY WHOM COUNTY TAXES TO BE LEVIED, TIME FOR THE COLLECTION MAY BE EXTENDED.

The board of commissioners is authorized, with the concurrence of a majority of the justices of the peace sitting with them, to levy, in like manner with the state taxes, the necessary taxes for county purposes; but the taxes so levied, shall never exceed the double of the state tax, except for a special purpose, and with the special approval of the general assembly. All county taxes shall be levied at the regular meeting of the board and of the justices on the first Monday in June. The board may extend the time for the collection and settlement of the county taxes to such time as may be deemed expedient, not to extend beyond the first day of May next, after taxes were levied;

Winslow v. Com'rs of Perquimans, 64—218; Mauney v. Com'rs of Montgomery, 71—486; Satterthwaite v. Com'rs of Beaufort, 76—153; Long v. Com'rs of Richmond, 76—273; Com'rs of Currituck v. Com'rs of Dare, 79—565; Watson v. Com'rs of Pamlico, 82—17; Fry v. Com'rs of Montgomery, 82—304; State v. Selby, 83—617.

## (2) EXEMPTION FROM CAPITATION TAX.

12 To exempt from capitation tax in special cases, on account of  
13 poverty and infirmity;

## (3) TO PROVIDE FOR THE PAYMENT OF DEBT.

14 To provide by taxation or otherwise, for the prompt and regular  
15 payment with interest, of any existing debt owing by any county;

Trull v. Com'rs of Madison, 72—388; Davis v. Com'rs of Stokes, 74—374; French v. Com'rs of New Hanover, 74—692; Belo v. Com'rs of Forsyth, 76—489; Brickell v. Com'rs of Halifax, 81—240.

## (4) TO SUBMIT PROPOSITIONS TO CONTRACT DEBT TO A VOTE OF ELECTORS.

16 To submit to a vote of the qualified electors in the county, after  
17 having obtained the approval of the general assembly, any propo-  
18 sition to contract a debt, or loan the credit of the county, under sec-  
19 tion seven, article seven, of the constitution; to order the time for  
20 voting upon such proposition, which shall be upon public notice  
21 thereof at one or more places in each township in the county, and  
22 publication in one or more county newspapers, if there be any, for  
23 three months next immediately preceding the time fixed on; and  
24 such election shall take place and be conducted under the laws as  
25 prescribed for the election of members of the general assembly; and  
26 the commissioners shall provide for giving effect, in case of the  
27 adoption of the proposition, to the expressed will of a majority of  
28 the qualified voters in such election;

## (5) TO MAKE ORDERS RESPECTING CORPORATE PROPERTY.

29 To make such orders respecting the corporate property of the  
30 county as may be deemed expedient;

## (6) TO AUDIT ACCOUNTS.

31 To audit accounts against the county, and direct the raising of the  
32 sums necessary to defray them;

*Winslow v. Commissioners of Perquimans, 64—218; Mauney v. Commissioners of Mont-  
gomery, 71—486; Cromartie v. Commissioners, 85—271.*

## (7) TO PURCHASE PROPERTY FOR ANY PUBLIC BUILDING, AND AT EXECUTION SALE.

33 To purchase real property necessary for any public county build- 1879, c. 144, s. 1.  
34 ing, and for the support of the poor; and to determine the site  
35 thereof, where it has not been already located; and to purchase  
36 land at any execution sale, when it shall be deemed expedient to  
37 do so, to secure a debt due the county. The deed shall be made to  
38 the board of commissioners, and the board may, in its discretion,  
39 sell any lands so purchased;

## (8) TO DESIGNATE SITE FOR COUNTY BUILDINGS.

40 With the concurrence of a majority of the justices of the peace  
41 sitting with them to remove or designate a new site for any county  
42 building; but the site of any county building already located shall  
43 not be changed, unless by an unanimous vote of all the members  
44 of the board and by a majority of the justices at the regular Decem-  
45 ber meeting, and unless upon notice of the proposed change, spe-  
46 cifying the new site. Such notice shall be published in a newspa-  
47 per printed in the county, if there is one, and posted in one or  
48 more public places in every township in the county for three  
49 months, next immediately preceding the annual meeting, at which  
50 the final vote on the proposed change is to be taken. Such new  
51 site shall not be more than one mile distant from the old, except  
52 upon the special approval of the general assembly;

*Winslow v. Commissioners of Perquimans, 64—218.*



## (9) TO ERECT AND REPAIR COUNTY BUILDINGS.

53 With the concurrence of a majority of the justices of the peace,  
 54 to erect and repair the necessary county buildings, and to raise by  
 55 taxation, the moneys therefor;

Winslow v. Commissioners of Perquimans, 64—218; Long v. Commissioners of Richmond,  
 76—273.

## (10) TO CONSTRUCT AND REPAIR BRIDGES.

56 To construct and repair bridges in the county, and to raise by  
 57 tax, the money necessary therefor, and when a bridge is necessary  
 58 over a stream, which divides one county from another, the board  
 59 of commissioners of each county shall join in constructing or re-  
 60 pairing such bridge; and the charge thereof shall be defrayed by  
 61 the counties concerned, in proportion to the number of taxable  
 62 polls in each: *Provided*, the cost of said bridges does not exceed  
 63 five hundred dollars; and, if the costs exceed five hundred dollars,  
 64 with the concurrence of a majority of the justices of the peace;

Winslow v. Commissioners of Perquimans, 64—218; Long v. Commissioners of Richmond,  
 76—273.

## (11) TO BORROW MONEY.

65 To borrow money for the necessary expenses of the county with  
 66 the assent of a majority of the justices of the peace therein, and not  
 67 otherwise, and to provide for its payment, with interest, in yearly  
 68 instalments, by taxation;

Winslow v. Commissioners of Perquimans, 64—218.

## (12) TO RAISE HIGHWAY MONEYS.

69 To raise by tax the necessary highway moneys, in such manner  
 70 as may be prescribed by law;

Winslow v. Commissioners of Perquimans, 64—218; Long v. Commissioners of Richmond,  
 76—273.

## (13) TO DIVIDE COUNTY INTO DISTRICTS.

71 To divide each county into convenient districts, called town-  
 72 ships, and to determine the boundaries, and prescribe the names  
 73 of said townships. A map and survey of said townships when  
 74 fully completed, shall be filed in the office of the clerk of the board  
 75 of commissioners, and also in the office of the secretary of state;

Winslow v. Commissioners of Perquimans, 64—218.

## (14) TO ERECT, DIVIDE OR ALTER TOWNSHIPS.

76 To erect, divide or alter townships in the manner following: In  
 77 any county, any three freeholders of each township to be affected,  
 78 may, after the notice presently to be mentioned, apply by petition  
 79 to the board of commissioners, to erect a new township, or divide  
 80 an existing township, or alter the boundaries thereof. Notice of  
 81 the application shall be posted in one or more public places in each  
 82 of such townships, and published in a newspaper printed in the  
 83 county, if there is one, for at least four weeks preceding the meet-

84 ing at which the application is made to the board. But the action  
 85 of the board in creating or altering townships shall not be oper-  
 86 ative, until approved by the justices of the peace at a regular meet-  
 87 ing. No township shall have or exercise any corporate powers  
 88 whatsoever, unless authorized by an act of the general assembly, to  
 89 be exercised under the supervision of the board of commissioners;

(15) TO ORDER THE LAYING OUT, ALTERATION OR DISCONTINUING OF HIGH-  
 WAYS.

90 To exercise authority in laying out, altering, repairing and dis-  
 91 continuing highways; in establishing and settling ferries; in  
 92 building and keeping up bridges; in laying off or discontinuing  
 93 cart-ways; in providing draws in all bridges, where the same may  
 94 be necessary for the convenient passage of vessels; in appointing  
 95 overseers of highways; in excusing persons from working on the  
 96 highways; in allowing and contracting for the building of toll-  
 97 bridges, and taking bond from the builders thereof; and in licen-  
 98 sing the erection of gates across highways. This authority shall  
 99 be exercised under the rules, regulations, restrictions and penal-  
 100 ties in all respects prescribed and imposed in the chapter entitled  
 101 Roads, Ferries and Bridges;

McArthur v. McEachin, 64—454.

(16) TO APPOINT AN INSPECTOR OF HIGHWAYS AND BRIDGES.

102 To appoint an inspector of highways and bridges for the  
 103 county, if deemed necessary; to fix and provide for his compen-  
 104 sation and regulate his duties, not inconsistent with the laws of  
 105 the state. The commissioners of two or more counties may unite  
 106 in employing an inspector of highways and bridges, and appor-  
 107 tioning his compensation between the respective counties as may  
 108 be agreed;

(17) TO PROVIDE FOR A HOUSE OF CORRECTION.

109 With the concurrence of a majority of the justices of the  
 110 peace, to make provision for the erection in each county of a  
 111 house of correction, where vagrants and persons guilty of misde-  
 112 meanors shall be restrained and usefully employed; to regulate  
 113 the employment of labor therein; to appoint a superintendent  
 114 thereof, and such assistants as may be deemed necessary, and to  
 115 fix their compensation.

State v. Garrell, 82—589.

(18) TO PROVIDE FOR THE EMPLOYMENT OF PRISONERS.

116 To provide for the employment on the highway or public  
 117 works in the county, of all persons condemned to imprisonment  
 118 with hard labor, and not sent to the penitentiary;

State v. Shaft, 78—464.

## (19) TO APPOINT PROXIES TO REPRESENT COUNTY.

119 To appoint proxies to represent in any annual or other meeting,  
120 the shares or interest held by any county, a railroad company, or  
121 other corporation, under the charter of such corporation, or under  
122 any special acts of the general assembly, authorizing county sub-  
123 scriptions in such cases;

## (20) TO SELL OR LEASE REAL PROPERTY.

124 To sell or lease any real property of the county, with the as-  
125 sent of a majority of the justices therein, and to make deeds or  
126 leases for the same to any purchaser or lessee;

## (21) TO PROVIDE FOR THE MAINTENANCE OF THE POOR.

127 To provide by tax for the maintenance, comfort and well-order-  
128 ing of the poor; to employ, biennially, by public letting or oth-  
129 erwise, some competent person as overseer of the poor; to insti-  
130 tute proceedings by the warrant of the chairman against any  
131 person coming into the county who is likely to become chargea-  
132 ble thereto, and cause the removal of such poor person to the county  
133 where he was last legally settled; and to recover by action in the  
134 superior court from the said county, all the charges and expenses  
135 whatever, incurred for the maintenance or removal of such poor  
136 person;

Long v. Com'rs of Richmond, 76—273.

## (22) TO ESTABLISH PUBLIC HOSPITALS.

137 To establish public hospitals for the county in cases of necessity,  
138 and to make rules, regulations and by-laws for preventing the  
139 spread of contagious and infectious diseases, and for taking care  
140 of those afflicted thereby, the same not being inconsistent with  
141 the laws of the state; and to raise by taxation the necessary  
142 moneys to defray the charges and expenses so incurred;

## (23) TO PROCURE WEIGHTS AND MEASURES.

R. C., c. 117, s. 4.  
1868, c. 20, s. 26.

143 To procure for each county sealed weights and measures, ac-  
144 cording to the standard prescribed by the congress of the United  
145 States; and to elect a standard-keeper, who shall qualify before  
146 the board and give bond approved by the board, as prescribed by  
147 law;

## (24) TO APPOINT COMMISSIONERS TO OPEN RIVERS AND CREEKS.

148 To appoint a commissioner to open and clear the rivers and  
149 creeks within the county, or where such river or creek forms a  
150 county line or a part thereof. For this purpose the board is  
151 authorized to withdraw from the public roads such hands as may  
152 be deemed necessary, and allot them to such work under over-  
153 seers and the direction of the commissioner. The board may im-  
154 pose the duties of this sub-division on the inspector of highways



155 and bridges when appointed; and shall in all respects conduct  
156 the opening and clearing of such rivers and creeks as prescribed  
157 by law;

(25) TO LICENSE PEDDLERS AND RETAILERS OF SPIRITUOUS LIQUORS.

158 To license peddlers and retailers of spirituous and other liquors  
159 as prescribed by law. No license shall be good for more than  
160 one year, nor granted to two or more persons to peddle as part-  
161 ners in trade. And the board of commissioners shall grant  
162 licenses for the sale of spirituous liquors to all persons possessing  
163 the qualifications required by law, except in those localities where  
164 the sale of spirituous liquors shall be prohibited by law;

(26) TO ESTABLISH PUBLIC LANDINGS, PLACES OF INSPECTION, AND INSPECTORS

165 To establish such public landings and places of inspection as  
166 the board of commissioners may think proper; and to appoint  
167 such inspectors in any town or city as may be authorized by law

(27) TO LICENSE AUCTIONEERS.

168 To license for the term of one year any number of persons to  
169 exercise the trade and business of auctioneers in each county, and  
170 to take their bonds as prescribed by law;

(28) TO INDUCT INTO OFFICE COUNTY OFFICERS AND TO APPROVE THEIR BONDS.

171 To qualify and induct into office at the meeting of the board 1874-'5, c. 237, s. 3.  
172 on the first Monday in the month next succeeding their election  
173 or appointment the following named county officers, to-wit:  
174 clerk of the superior court, clerk of the inferior court, sheriff,  
175 coroner, treasurer, register of deeds, surveyor and constable; and  
176 to take and approve the official bonds of said officers, which the  
177 board shall cause to be registered in the office of the register of  
178 deeds. The original bonds shall be deposited with the clerk of  
179 the superior court, except the bond of the said clerk, which shall  
180 be deposited with the register of deeds for safe keeping;

Com'rs of Wake v. Magnin, 78—182; Dixon v. Com'rs of Beaufort, 80—118; Jones v. Jones  
80—127; Worley v. Smith, 80—305; Swain v. McRae, 80—111; Worley v. Smith, 81—304.

(29) TO REQUIRE FROM ANY COUNTY OFFICER A REPORT UNDER OATH.

181 To require from any county officer, or other person employed  
182 and paid by the county, a report under oath at any time, on any  
183 matters connected with his duties. A neglect to comply with  
184 such requirement by any such officer shall be a misdemeanor;

McNeil v. Green, 75—329.

(30) TO AUTHORIZE CHAIRMAN TO ISSUE SUBPŒNAS.

185 To authorize the chairman to issue subpœnas to compel the  
186 attendance before the board, of persons, and the production of  
187 books and paper relating to the affairs of the county, for the pur-  
188 pose of examination on any matter within the jurisdiction of the

189 board. The subpoena shall be served by the sheriff or any con-  
 190 stable to whom it is delivered; and upon return of personal ser-  
 191 vice thereof, whoever neglects to comply with the subpoena or  
 192 refuses to answer any proper question, shall be guilty of contempt  
 193 and punishable therefor by the board. A witness is bound in  
 194 such case to answer all the questions which he would be bound  
 195 to answer in like case in a court of justice; but his testimony  
 196 given before the board shall not be used against the witness on  
 197 the trial of any criminal prosecution other than for perjury com-  
 198 mitted on the examination;

McNeill v. Green, 75—329.

(31) TO ADOPT A COUNTY SEAL.

199 To adopt a seal for the county, a description and impression  
 200 whereof shall be filed in the office of superior court clerk and of  
 201 the secretary of state.

Sec. 1083. When the board to qualify and enter upon office.

1868, c. 20, s. 14.

The board of commissioners shall qualify and enter upon their  
 2 office on the first Monday of December next succeeding their elec-  
 3 tion, and they may take the oaths of office before any person  
 4 authorized by law to administer oaths. The oaths of office sever-  
 5 ally taken and subscribed by them, shall be deposited with the  
 6 clerk of the superior court.

Jones v. Jones, 80—127.

Sec. 1084. Compensation of the board.

1868, c. 20, s. 15.  
 1872-'3, c. 108.  
 1881, c. 318.

Except where otherwise provided by law, each commissioner  
 2 shall receive for his services and expenses in attending the meet-  
 3 ings of the board not exceeding two dollars per day, as a majority  
 4 of the board may fix upon, and they may be allowed mileage to  
 5 and from their respective places of meeting, not to exceed five  
 6 cents per mile: *Provided*, that in the counties of Mecklenburg,  
 7 Pasquotank and Halifax, a majority of the justices of the peace  
 8 may allow the chairman of the board such compensation as they  
 9 shall think proper. The accounts of each commissioner shall be  
 10 audited and verified, as other claims.

Sec. 1085. Compensation of clerk of the board.

1868, c. 20, s. 16.

The board shall fix the compensation of its clerk.

Sec. 1086. Neglect of duty by commissioner a misdemeanor.

1868, c. 20, s. 17.

Any commissioner who shall neglect to perform any duty required  
 2 of him by law as a member of the board, shall be guilty of a mis-  
 3 demeanor, and shall also be liable to a penalty of two hundred  
 4 dollars for each offence, to be paid to any person who shall sue for  
 5 the same.

**Sec. 1087. Duty of clerk.**

It is the clerk's duty:

1868, c. 20, s. 13.

- 2 (1) To record in a book to be provided for the purpose all the  
3 proceedings of the board;
- 4 (2) To enter every resolution or decision concerning the payment  
5 of money;
- 6 (3) To record the vote of each commissioner on any question sub-  
7 mitted to the board, if required by any member present.
- 8 (4) To preserve and file in alphabetical, or other due order, all  
9 accounts presented or acted on by the board, and to designate upon  
10 every account audited, the amount allowed and the charges for  
11 which it was allowed;
- 12 (5) To keep the books and papers of the board free to the exam-  
13 ination of all persons.

**Sec. 1088. Clerk to publish an annual statement.**

The clerk shall annually, on or within five days next before the 1868, c. 20, s. 19.

- 2 first Monday of December, make out and certify, and cause to be  
3 posted at the court house, and published in a newspaper printed in  
4 the county, if there be one, for at least four weeks, a statement for  
5 the preceding year, showing:
- 6 (1) The amount, items and nature of all compensation audited  
7 by the board to the members thereof severally;
- 8 (2) The number of days the board was in session, and the dis-  
9 tance traveled by the members respectively in attending the same;
- 10 (3) Whether any unverified accounts were audited, and if any,  
11 how much and for what.

**Sec. 1089. Neglect of clerk to publish statement a misdemeanor.**

Any clerk who intentionally neglects to post and publish the 1868, c. 20, s. 20.

- 2 statement required by the preceding section, or knowingly posts  
3 and publishes a false statement, shall be guilty of a misde-  
4 meanor.

**Sec. 1090. Certified copies of records of the board may be read in evidence.**

Copies of the records of the board, certified by the clerk under 1868, c. 20, s. 21.

- 2 his hand and the seal of the county, are declared evidence in all  
3 the courts of the state.

**Sec. 1091. Board of commissioners to be elected by the justices of the peace.**

The justices of the peace for each county, on the first Monday in 1876-'77, c. 141, s. 54

- 2 June, one thousand eight hundred and eighty-four, and on the first  
3 Monday in June every two years thereafter, shall assemble at the  
4 court house of their respective counties, and a majority being  
5 present, shall proceed to the election of not less than three nor  
6 more than five persons, to be chosen from the body of the county,  
7 other than the justices of the peace, who shall be styled the board



8 of commissioners for the county of ....., and shall hold their  
 9 offices for two years from the date of their qualification, and until  
 10 their successors shall be elected and qualified. They shall be  
 11 qualified by taking the oath of office before the clerk of the supe-  
 12 rior court, or some judge or justice of the peace, and the register  
 13 of deeds shall be *ex officio* clerk of the board of commissioners.

**Sec. 1092. Meetings of the justices of the peace.**

1876-'7, c. 141, s. 5.

For the proper discharge of their duties, the justices of the peace  
 2 shall meet annually with the board of commissioners on the first  
 3 Monday in June, unless they shall be oftener convened by the  
 4 board of commissioners, which is empowered to call together the  
 5 justices of the peace not oftener than once in three months. For  
 6 attending such meetings, the justices of the peace shall receive no  
 7 compensation; but they shall keep a record of their meetings.  
 8 The register of deeds shall be *ex officio* the clerk of the justices of  
 9 the peace, and he shall receive such compensation for his services  
 10 as the board of commissioners shall provide.

**Sec. 1093. Purchase of county indebtedness.**

1868-'9, c. 269, s. 2.

The board of commissioners may purchase at any price, not ex-  
 2 ceeding their par value and accumulated interest, any of the out-  
 3 standing bonds or other indebtedness of the county.

**Sec. 1094. Vacancies in boards of county commissioners to be filled by justices of the peace.**

1879, c. 231.

In case of a vacancy occurring in the board of commissioners of  
 2 a county, the justices of the peace for the county shall appoint to  
 3 said office for the unexpired term.

**Sec. 1095. The board of commissioners to fill certain vacancies.**

1868, c. 4.  
 Const., Art. IV, s.  
 24.

Whenever a vacancy shall occur in the offices of sheriff, consta-  
 2 ble, coroner, register of deeds, county treasurer or county surveyor,  
 3 the board of commissioners of the county shall fill the same by  
 4 appointment.

Jones v. Jones, 80—127; Sneed v. Bullock, 80—132.

**Sec. 1096. Disputed lines between counties, how settled.**

R. C., c. 27, s. 1.  
 1836, c. 3, s. 1.

Whenever there shall be any dispute concerning the dividing  
 2 line between counties, the board of commissioners of each county  
 3 interested in the adjustment of said line, a majority of the board  
 4 consenting thereto, may appoint one or more commissioners, on  
 5 the part of each county, to settle and fix the line in dispute; and  
 6 their report, when ratified by a majority of the commissioners in  
 7 each county, shall be conclusive of the location of the true line,  
 8 and shall be recorded in the register's office of each county, and in  
 9 the office of the secretary of state.

**Sec. 1097. Commissioners to be sworn and paid.**

The commissioners, before entering on the duties assigned  
 2 them, shall be sworn before a justice of the peace; and they,  
 3 with all others employed, shall be allowed reasonable pay for  
 4 their labors.

R. C., c. 27, s. 2  
 1836, c. 3, s. 2.

## CHAPTER TWENTY-NINE.

COUNTY REVENUE AND CHARGES, AND COSTS IN  
CRIMINAL ACTIONS.

## SECTION.

- 1098. County taxes collected by sheriff as state taxes.
- 1099. Fines, forfeitures and penalties to be paid to county treasurer.
- 1100. Clerks and justices to keep itemized statement of fines, &c.
- 1101. Fines, &c., to be paid to county treasurer within sixty days.
- 1102. County treasurer to file certified statement with superior court clerk.
- 1103. County officers to make annual reports of public funds to the board of commissioners.
- 1104. Reports to be registered, if approved by the board of commissioners.
- 1105. Failure of officers to report.
- 1106. Penalty for wilfully swearing falsely to report.
- 1107. Tax fees in criminal actions to be set apart for the payment of jurors.
- 1108. Bills of costs in criminal actions to be itemized and audited.
- 1109. Justices of the peace to make out itemized bills of costs.
- 1110. Bills of costs to be open to the public.
- 1111. Statement of costs for which the county is liable, to be filed with board of commissioners.
- 1112. Costs to be paid by prosecutor in certain cases.
- 1113. Prosecutor, when imprisoned for non-payment of costs.
- 1114. Costs to be paid by the county in certain cases.
- 1115. Witnesses for state, when paid by county.
- 1116. County wherein the offence is committed to pay costs and receive fines, &c.
- 1117. Costs incurred by county in prosecuting charges of bribery, in certain cases to be a charge against the state.
- 1118. When witness before grand jury to be paid for attendance.
- 1119. When witness on the trial of criminal action to be paid; not more than two witnesses to be paid.
- 1120. On appeal from justice in criminal action only two witnesses to be bound over.

## SECTION.

- 1121. Witnesses to be discharged by solicitor, who shall file a certificate of their attendance with clerk.
- 1122. When court to order county to pay defendant's witnesses.
- 1123. No witness entitled to his fees unless his name is included in the certificate of solicitor or order of court.
- 1124. Confession of judgment to secure fine and costs not to operate as discharge of original judgment.
- 1125. Defendant failing to pay fine and costs may again be arrested.
- 1126. Claims, &c., against county numbered by clerk and copy furnished to chairman annually.
- 1127. Publication to be made annually of county revenue and charges.
- 1128. Power of board of commissioners to dispose of county funds.
- 1129. No account shall be audited unless itemized and verified by claimant.
- 1130. Accounts to be numbered.
- 1131. Claims against county, cities and towns to be presented for payment within two years after maturity or forever barred of collection.
- 1132. Claims against municipal corporations must be presented for payment and refused, before an action can be maintained because of their non-payment.
- 1133. Finance committee.
- 1134. Finance committee may send for persons and papers.
- 1135. Penalty on officer failing to settle after ten days' notice.
- 1136. Finance committee to publish statement.
- 1137. Oath of members of finance committee.
- 1138. Compensation of finance committee.
- 1139. Penalty on clerks and other county officers for failing to account for and pay over county funds.
- 1140. Failure of clerk or other officer to perform requirements of this chapter a misdemeanor.

**Sec. 1098. County taxes collected by sheriff as state taxes.**

R. C., c. 28, s. 2.  
1798, c. 509, s. 2.  
1811, c. 823.

The county taxes shall be collected by the sheriff of the county,  
2 who shall be entitled to the same commissions and subject to the  
3 same rules and regulations in respect to his settlement of the said  
4 taxes with the county treasurer as he is in his settlement of the  
5 public taxes with the treasurer of the state; and he shall also settle  
6 with the county treasurer or board of commissioners for the taxes  
7 on the unlisted property in his county, under the same rules and  
8 regulations as he accounts with the auditor of the state.

*Lockhart v. Harrington*, 1 Hawks, 408; *King v. Hunter*, 65—603; *Davis v. Com'rs of Stokes*, 74—374.

**Sec. 1099. Fines, forfeitures and penalties to be paid to county treasurer.**

R. C., c. 28, s. 3.  
Const., Art. IX, s.  
5.  
1879, c. 96, s. 5.

All fines, forfeitures, penalties and amercements collected in the  
2 several counties by any court or otherwise, shall be accounted for  
3 and paid to the county treasurer by the officials receiving them,  
4 and shall be faithfully appropriated by the board of commission-  
5 ers for the establishment and maintenance of free public schools;  
6 and the amounts collected in each county shall be annually re-  
7 ported to the superintendent of public instruction on or before the  
8 first Monday in January, by the board of commissioners.

**Sec. 1100. Clerks and justices to keep itemized statement of fines, &c.**

1873-'4, c. 116, s. 4.  
1879, c. 96, s. 1.

It shall be the duty of the clerks of the several courts, and of  
2 the several justices of the peace, to enter in a book, to be supplied  
3 by the county, an itemized and detailed statement of the respective  
4 amounts received by them in the way of fines, penalties, amerce-  
5 ments and forfeitures, and said books shall at all times be open to  
6 the inspection of the public.

**Sec. 1101. Fines, &c., to be paid to county treasurer within sixty days.**

R. C., c. 28, s. 6.  
1830, c. 1, s. 13.  
1879, c. 96, s. 2.

All fines, penalties, amercements and forfeitures received by any  
2 clerk or justice of the peace shall within sixty days thereafter be  
3 paid over to the county treasurer, who shall give a receipt to every  
4 such clerk or justice for the same; and said county treasurer shall  
5 enter in a book to be kept by him the exact amount of any fine,  
6 penalty or forfeiture so paid over to him, giving the date of pay-  
7 ment, the name of the clerk or justice so paying the same, the  
8 name of the party from whom such fine, penalty or forfeiture was  
9 collected, and in what case.

**Sec. 1102. County treasurer to file certified statement with superior court clerk.**

1879, c. 96, s. 3.

It shall be the duty of the county treasurer to file a certified state-  
2 ment itemized as aforesaid in the office of the clerk of the superior  
3 court, and it shall be the duty of the said clerk to record said state-  
4 ment in a book to be kept in his office for that purpose. Said cer-  
5 tified statement shall be filed by said treasurer in said clerk's office,  
6 on the first days of January, April, July and October in each year.



**Sec. 1103. County officers to make annual reports of public funds to the board of commissioners.**

Sheriffs, treasurers, clerks of any court, registers of deeds, and all other officers of the several counties, into whose hands any public funds may come by virtue or under color of their office, shall make an annual account and report of the amount and management of the same, on the first Monday of December, or oftener if required, in each year, to the board of commissioners. Such report shall give an itemized and detailed account of the public funds received and disbursed, the amount, date and source from which it was received, and the amount, date and person to whom paid, shall be addressed to the chairman of the board of commissioners for the county; and shall be subscribed and verified by the oath of the party making the same, before any person authorized to administer oaths.

1874-'5, c. 151, s. 1.  
1876-'7, c. 276, s. 1.

**Sec. 1104. Reports to be registered, if approved by the board of commissioners.**

The board of commissioners, if it shall approve of any of the said reports, shall cause the same to be registered in the office of the register of deeds in a book to be furnished to the register of deeds by the county, which book shall be marked and styled "Record of Official Reports," with a proper index of all reports recorded therein, and each original report shall, if approved, be indorsed by the chairman of the board with the word "approved," with the date of approval, and when recorded by the register of deeds he shall indorse thereon the date of registration, the page of the "Record of Official Reports" upon which the same is registered, sign the same and file it in his office.

1874-'5, c. 151, s. 2.  
1876-'7, c. 276, s. 2.

**Sec. 1105. Failure of officers to report.**

If any person required to make any of the reports hereinbefore provided, shall fail to do so, or if, after a report has been made, the board of commissioners shall disapprove the same, such board may take such legal steps to compel a proper report to be made, either by suit on the bond of such officer failing to comply or otherwise, as said board may deem best.

1874-'5, c. 151, s. 3.  
1876-'7, c. 276, s. 3.

**Sec. 1106. Penalty for wilfully swearing falsely to report.**

Any person wilfully swearing falsely to any report made as herein required, shall be guilty of a misdemeanor, and on conviction, shall be fined or imprisoned, or both, in the discretion of the court.

1874-'5, c. 151, s. 4.  
1876-'7, c. 276, s. 4.

**Sec. 1107. Tax fees in civil and criminal actions to be set apart for the payment of jurors.**

On every indictment or criminal proceeding, tried or otherwise disposed of in the superior, criminal or inferior courts, the party convicted, or who shall be adjudged to pay the costs, shall pay a

R. C., c. 28, s. 4.  
1830, c. 1, s. 8.  
1879, c. 325.  
1881, c. 249.

4 tax of two dollars. In every civil action in any court of record,  
 5 the party who shall be adjudged to pay the costs shall pay a tax of  
 6 three dollars. Said tax fees shall be charged by the clerks in the  
 7 bill of costs, and collected by the sheriff, and by him paid into the  
 8 county treasury. And the fund thus raised in any county, shall  
 9 be set apart for the payment of the jurors attending the courts  
 10 thereof.

See *Hunter v. Routledge*, 6 Jon., 216; *Little v. Richardson*, 6 Jon., 305; *Hewlett v. Nutt*, 79—263.

**Sec. 1108. Bills of costs in criminal actions to be itemized and audited.**

1879, c. 264, s. 5.

It shall be the duty of the clerks of the several courts of record,  
 2 at each term of the court, to make up an itemized statement of the  
 3 bill of costs in every criminal action tried or otherwise disposed of  
 4 at said term, which shall be signed by the clerk, approved by the  
 5 solicitor, and then presented to the presiding judge or justice, who  
 6 shall thereupon make an order, to be filed with the bill of costs,  
 7 directing how, when and by whom the costs shall be paid. And  
 8 the said judge or justice, may, in his discretion, for satisfactory  
 9 cause appearing, direct that the witnesses, or any of them, shall  
 10 receive no pay, or only a portion of the compensation authorized  
 11 by law. And no county shall pay any such costs, unless the same  
 12 shall have been approved, audited and adjudged against the county  
 13 as herein provided. The clerk shall receive for every such bill of  
 14 costs the sum of twenty-five cents, to be taxed as a part of said costs.

See 1873-'4, c. 116, s. 1.

**1109. Justices of the peace to make out itemized bills of costs.**

1873-'4, c. 116, s. 2.

It shall be the duty of every justice of the peace to insert in the  
 2 entry of judgment in every criminal action tried or otherwise dis-  
 3 posed of by him, a detailed statement of the different items of  
 4 costs, and to whom due.

**Sec. 1110. Bills of costs to be open to the public.**

1873-'4 c. 116, ss. 1,  
 2.

Every bill of costs shall at all times be open to the inspection of  
 2 any person interested therein.

**Sec. 1111. Statement of costs for which the county is liable to be filed with the board of commissioners.**

1873-'4, c. 116, s. 3.

In all criminal actions in the superior, criminal or inferior courts,  
 2 or before justices of the peace, where the county is liable in whole  
 3 or in part for such costs, it shall be the duty of the clerks of such  
 4 courts, and of the justices of the peace, to make out a statement of  
 5 such costs from the record or docket, within thirty days after the  
 6 hearing, trial, determination, or other disposition thereof, and file  
 7 the same with the board of commissioners of the county.

**Sec. 1112. Costs to be paid by prosecutor in certain cases.**

In all criminal actions, if the defendant be acquitted, *nolle prosequi* entered, or judgment against him arrested, the costs including the fees of all witnesses summoned for the accused, whom the judge, court or justice of the peace before whom the trial took place shall certify to have been proper for the defence, shall be paid by the prosecutor, whether marked on the bill or warrant or not, whenever the judge, court or justice shall be of opinion that there was not reasonable ground for the prosecution, or that it was not required by the public interest. And every judge, court or justice is hereby fully authorized to determine who the prosecutor is at any stage of a criminal proceeding, whether before or after the bill of indictment shall have been found, or the defendant acquitted: *Provided, however*, that no person shall be made a prosecutor after the finding of the bill, unless he shall have been notified to show cause why he should not be made the prosecutor of record.

State v. Lupton, 63—483; State v. Darr, 63—516; Moore v. Com'rs of Alamance, 70—340; State v. Hodson; 74—151; Pegram v. Com'rs of Guilford, 75—120; State v. Cannady, 79—559; State v. Spencer, 81—519; State v. Crocket, 81—579; State v. Hughes, 83—665; State v. Norwood, 84—794; State v. Moore, 84—724; State v. Adams, 85—560; State v. Murdock, 85—598; State v. Powell, 86—640; See R. C., c. 35, s. 37; 1799, c. 4, s. 19; 1800, c. 558, s. 1; 1868-9, c. 277; C. C. P. s. 560; 1874-5, c. 151, s. 1.

**Sec. 1113. Prosecutor, when imprisoned for non-payment of costs.**

Every such prosecutor may be adjudged not only to pay the costs, but he shall also be imprisoned for the non-payment thereof, when the judge, court, or justice of the peace before whom the case was tried shall adjudge that the prosecution was frivolous or malicious.

R. C., c. 35, s. 37.  
1800, c. 558, s. 1.  
1879, c. 49, s. 2.  
1881, c. 176.

State v. Lumbrick, 1 C. L. R., 543; State v. Lupton, 63—483; Pegram v. Commissioners of Guilford, 75—120; State v. Cannady, 78—539; State v. Hughes, 83—665.

**Sec. 1114. Costs to be paid by the county in certain cases.**

If there be no prosecutor in a criminal action, and the defendant shall be acquitted or convicted, and unable to pay the costs, or a *nolle prosequi* be entered, or judgment arrested, the county shall pay the clerks, sheriffs, constables, justices and witnesses one-half their lawful fees only; except in capital felonies and in prosecutions for forgery, perjury and conspiracy, when they shall receive full fees. But in no case shall the county be liable to pay any costs which should have been adjudged against the prosecutor.

1874-5, c. 247, s. 1.

Moore v. Com'rs of Alamance, 70—340; Cantwell v. Com'rs of New Hanover, 71—154; Bunting v. Com'rs of Wake, 74—633; Clerk's office v. Com'rs of Richmond, 79—598; State v. Cronet, 81—579; State v. Hughes, 83—665. R. C., c. 23, s. 8; R. S., c. 28, s. 12; 1820, c. 1048; 1830, c. 1, s. 7; 1868-9, c. 279; C. C. P., s. 561; 1871-2, c. 186, s. 4.

**Sec. 1115. Witnesses for state, when paid by county.**

Witnesses summoned or recognized on behalf of the state to attend on any criminal prosecution in the superior, inferior, or criminal courts where the defendant is insolvent, or by law shall not be bound to pay the same, and the court does not order them to be paid by the prosecutor, shall be paid by the county in which

R. C., c. 28, s. 9.  
1804, c. 665, ss. 1, 2,  
3.  
1819, c. 1008.  
1824, c. 1253.



6 the prosecution was commenced. And in all cases wherein wit-  
 7 nesses may be summoned or recognized to attend any such court  
 8 to give evidence in behalf of the state, and the defendant shall be  
 9 discharged, and in cases where the defendant shall break jail and  
 10 shall not afterwards be retaken, the court shall order the witnesses  
 11 to be paid.

Moore v. Com'rs of Alamance, 70—340; Lewis v. Com'rs of Wake, 74—194; Pegram v. Com'rs of Guilford, 75—120.

**Sec. 1116.** County wherein the offence is committed to pay costs and receive fines, &c.

R. C., c. 28, s. 10.  
 1810, c. 799, s. 1.

In all cases where the county is liable to pay costs, that county  
 2 wherein the offence shall have been charged to be committed shall  
 3 pay them. And all fines, forfeitures and amercements accruing in  
 4 the case shall be accounted for and paid to the treasurer of that  
 5 county.

Moore v. Com'rs of Alamance, 70—340; Pegram v. Com'rs of Guilford, 75—120.

**Sec. 1117.** Costs incurred by county in prosecuting charges of bribery, in certain cases to be a charge against the state.

1868-'9, c. 176, s. 6.  
 1874-'5, c. 5.

The expenses which shall be incurred by any county in investi-  
 2 gating and prosecuting any charge of bribery, or attempt to bribe  
 3 any state officer or member of the general assembly within said  
 4 county, and of receiving bribes by any state officer or member of  
 5 the general assembly in said county, shall be a charge against the  
 6 state, and the properly attested claim of the county commissioners  
 7 shall be paid by the treasurer of the state.

**Sec. 1118.** When witness before grand jury to be paid for attendance.

1879, c. 264, s. 1.

No witness shall receive pay for attendance in a criminal case  
 2 before a grand jury unless such witness shall have been summoned  
 3 by direction in writing of the foreman of the grand jury, or of the  
 4 solicitor prosecuting, addressed to the clerk of the court, command-  
 5 ing him to summon such witness, stating the name or names of  
 6 the parties against whom his or her testimony may be needed, or  
 7 shall have been bound or recognized by some justice of the peace  
 8 to appear before the grand jury.

**Sec. 1119.** When witness on the trial of criminal action to be paid; not more than two witnesses to be paid.

1879, c. 264, s. 2.

No person shall receive pay as a witness for the state on the trial  
 2 of any criminal action unless such person shall have been sum-  
 3 moned by the clerk under the direction of the solicitor prose-  
 4 cuting in the court in which the action originated, or in which it  
 5 shall be tried if removed; and no solicitor shall direct that more  
 6 than two witnesses shall be summoned for the state in any prose-  
 7 cution for a misdemeanor, nor shall any county or defendant in  
 8 any such such prosecution be liable for or taxed with the fees of  
 9 more than two witnesses, unless the court, upon satisfactory reasons

10 appearing, shall otherwise direct. And no witness summoned in a  
11 criminal action or proceeding shall be paid by the county for at-  
12 tendance in more than one case for any one day; nor shall the  
13 county be required to pay any such witness if his attendance shall  
14 be taxed in more than one case on the same day.

Sec. 1120. On appeal from justice in criminal action, only two witnesses to be bound over.

When either the complainant or defendant shall appeal from  
2 the judgment of a justice of the peace, in any criminal action,  
3 it shall be the duty of such justice of the peace to select and  
4 bind over on behalf of the state not more than two witnesses, and  
5 neither the county nor the defendant or other party shall be liable  
6 for the fees of more than two witnesses on such appeal, unless ad-  
7 ditional witnesses shall be sommoned by order of the appellate  
8 court as provided in the preceding section.

1879, c. 264, s. 3.

Sec. 1121. Witnesses to be discharged by solicitor, who shall file a certificate of their attendance with clerk.

It shall be the duty of all solicitors prosecuting in the several  
2 courts, as each criminal prosecution shall be disposed of by trial,  
3 removal, continuance or otherwise, to call and discharge the wit-  
4 nesses for the state, either finally or otherwise, as the disposition of  
5 the case may require; and he shall thereupon file with the clerk  
6 of the court a certificate giving the names of the witnesses entitled  
7 to prove their attendance, with the date of their discharge. The  
8 said certificate shall be in the following or similar form, and blanks  
9 thereof shall be furnished to the solicitor by the clerk at the county  
10 expense, viz:

1879, c. 264, s. 4.  
1881, c. 312, s. 1.

NORTH CAROLINA, } ..... Court, ..... Term, 188...  
.....COUNTY. } State vs. ....  
Witness: .....  
.....  
discharged ..... day of ..... 188...  
..... Solicitor.

Sec. 1122. When court to order county to pay defendant's witnesses.

When the defendant shall be acquitted, a *nolle prosequi* entered,  
2 or judgment against him arrested, and it shall be made to appear  
3 to the court by certificate of counsel or otherwise, that said defend-  
4 ant had witnesses, duly subpoenaed, bound or recognized, in attend-  
5 ance, and that they were necessary for his defence, it shall be the  
6 duty of the court, unless the prosecutor be adjudged to pay the  
7 costs, to make and file an order in the cause directing that  
8 said witnesses be paid by the county in such manner and to such  
9 extent as is authorized by law for the payment of state's witnesses  
10 in like cases.

1879, c. 264, s. 4.  
1881, c. 312, s. 1.

**Sec. 1123.** No witness entitled to his fees unless his name is included in the certificate of the solicitor or order of court.

1879, c. 264, s. 4.  
1881, c. 312, s. 2.

No county, prosecutor or defendant, shall be liable to pay any  
2 witness, nor shall his fees be embraced in the bill of costs to be  
3 made up as hereinbefore provided, unless his name be certified to  
4 the clerk by the solicitor, or included in the order of the court as  
5 required by the preceding section: *Provided, however,* that the court,  
6 at any time within one year after judgment, may order that any  
7 witness may be paid, who for any good reason satisfactory to the  
8 court failed to have his fees included in the original bill of costs.

**Sec. 1124.** Confession of judgment to secure fine and costs not to operate as a discharge of original judgment.

1879, c. 264, s. 6.

In cases where the court permits a defendant convicted of any  
2 criminal offence, to give bond or confess judgment, with sureties to  
3 secure the fine and costs which may be imposed, the acceptance of  
4 such security shall be upon the condition that it shall not operate  
5 as a discharge of the original judgment against the defendant nor  
6 as a discharge of his person from the custody of the law until the  
7 fine and costs are paid.

**Sec. 1125.** Defendant failing to pay fine and cost may again be arrested.

1879, c. 264, s. 7.

In default of payment of such fine and costs, it shall be the duty  
2 of the court at any subsequent term thereof on motion of the  
3 solicitor of the state to order a *capias* to issue to the end that such  
4 defendant may be again arrested and held for the fine and costs  
5 until discharged according to law.

**Sec. 1126.** Claims, &c., against county numbered by clerk and copy furnished to chairman annually.

R. C., c. 28, s. 12.  
1793, c. 387, s. 1.

The clerk of the board of commissioners, if so ordered by the  
2 board, shall number all claims, orders and certificates that may  
3 be allowed by the board in a book kept for that purpose, and he  
4 shall annually, the day before the board proceeds to lay a county  
5 tax for the ensuing year, furnish the chairman of the board with  
6 a copy of the same.

**Sec. 1127.** Publication to be made annually of county revenue and charges.

R. C., c. 28, s. 14.  
1786, c. 256, s. 4.  
1868, c. 20, s. 13.  
1873-4, c. 143.  
1876-7, c. 264.  
1881, c. 278.

The board shall cause to be posted at the court house within five  
2 days after each regular December meeting and for at least four  
3 successive weeks, the name of every individual whose account has  
4 been audited, the amount claimed and the amount allowed; and  
5 also at the same time a full statement of county revenue and  
6 charges, showing by items the income from every source and the  
7 disbursements on every account for the past year, together with  
8 the permanent debt of the county, if any, when contracted, and  
9 the interest paid or remaining unpaid thereon. The board shall  
10 also publish the said statement in some newspaper in the county:



11 *Provided*, the cost of such publication shall not exceed one-half of  
12 a cent a word.

**Sec. 1128. Power of board of commissioners to dispose of county funds.**

The board of commissioners is invested with full power to direct  
2 the application of all moneys arising by virtue of this chapter for  
3 the purposes herein mentioned, and to any other good and neces-  
4 sary purpose for the use of the county.

R. C., 23, s. 16.  
1777, c. 129, s. 4.

State v. McAlpin, 4 Ire., 140.

**Sec. 1129. No account shall be audited unless itemized and verified by claimant.**

No account shall be audited by the board for any services or dis-  
2 bursements, unless it is first made out in items and has attached  
3 to and filed with it the affidavit of the claimant that the services  
4 therein charged have been in fact made and rendered, and that no  
5 part thereof has been paid or satisfied. Each account shall state  
6 the nature of the services, and where no specific compensation is  
7 provided by law, it shall also state the time necessarily devoted to  
8 the performance thereof. The board may disallow or require  
9 further evidence of the account, notwithstanding the verification

1868, c. 20, s. 10.

Leach v. Com'rs of Fayetteville, 84—829.

**Sec. 1130. Accounts to be numbered.**

All accounts presented in any year, beginning at each regular  
2 meeting in December, shall be numbered from one upwards, in the  
3 order in which they are presented; and the time of presentation,  
4 the names of the persons in whose favor they are made out, and by  
5 whom presented, shall be carefully entered on the minutes of the  
6 board; and no such account shall be withdrawn from the custody  
7 of the board or its clerk, except to be used as evidence in a judicial  
8 proceeding; and after being so used it shall be promptly returned.

1868, c. 20, s. 12.

**Sec. 1131. Claims against counties, cities and towns to be presented for payment within two years after maturity or forever barred of collection.**

All claims against the several counties, cities and towns of this  
2 state, whether by bond or otherwise, shall be presented to the  
3 chairman of the board of county commissioners or to the chief offi-  
4 cers of said cities and towns, as the case may be, within two years  
5 after the maturity of such claims, or the holders of such claims  
6 shall be forever barred from a recovery thereof.

1874-'5, c. 243, s. 1.

Wharton v. Com'rs of Currituck, 82—11.

**Sec. 1132. Claims against municipal corporations must be presented for payment and refused, before an action can be maintained because of their non-payment.**

No person shall sue any city, county, town, or other municipal  
2 corporation for any debt or demand whatsoever unless the claimant  
3 shall have made a demand upon the proper municipal authorities.  
4 And every such action shall be dismissed unless the complaint shall

5 be verified and contain the following allegations: (1) That the claim-  
 6 ant presented his claim to the lawful municipal authorities to be  
 7 audited and allowed, and that they had neglected to act upon it,  
 8 or had disallowed it; or (2) that he had presented to the treasurer  
 9 of said municipal corporation the claim sued on, which had been  
 10 so allowed and audited, and that such treasurer had notwithstand-  
 11 ing neglected to pay it.

Love v. Com'rs of Chatham, 64—706; Jones v. Com'rs of Bladen, 73—182; Cromartie v. Com'rs,  
 85—211.

#### Sec. 1133. Finance Committee.

R. C., c. 28, s. 17.  
 1838, c. 31, s. 1.  
 1871-'2, c. 71, s. 1.

The justices of the peace at their meeting on the first Monday  
 2 in August in each year, a majority of them being present, may  
 3 elect by ballot three discreet, intelligent, tax-paying citizens, to be  
 4 known as the "finance committee," whose duty it shall be to in-  
 5 quire into, investigate and report by public advertisement, at the  
 6 court house and one public place in each township of the county,  
 7 or in a newspaper, at their option, if one be published in the  
 8 county, a detailed and itemized account of the condition of the  
 9 county finances, together with any other information appertaining  
 10 to any funds, misappropriation of county funds, or any malfeas-  
 11 ance in office by any county officers.

King v. Hunter, 65—603.

#### Sec. 1134. Finance committee may send for persons and papers.

1871-'2, c. 71, s. 2.

The finance committee shall have power and authority to send  
 2 for persons and papers; and any person failing to obey their sum-  
 3 mons, or to produce promptly any paper relating or supposed to re-  
 4 late to any matter appertaining to the duties of the finance com-  
 5 mittee, shall be guilty of a misdemeanor, and on conviction in the  
 6 superior court, shall be fined and imprisoned at the discretion of  
 7 the court.

See Revised Code, chapter 28, section 9; 1831, chapter 31, section 3.

#### Sec. 1135. Penalty on officer failing to settle after ten days' notice.

R. C., c. 28, s. 19.  
 1831, c. 31, s. 3.

If any clerk, sheriff, constable, county treasurer, register of deeds,  
 2 justice of the peace, or other officer or commissioner, who may  
 3 hold any county money, shall fail duly to account for the same,  
 4 the finance committee shall give such person ten days' previous  
 5 notice, in writing, of the time and place at which they will attend  
 6 to make a settlement; and every officer receiving notice and failing  
 7 to make settlement as required by this chapter, shall forfeit the sum  
 8 of five hundred dollars, to be sued for in the name of the state and  
 9 prosecuted for the use and at the expense of the county, unless the  
 10 court shall release the officers from the forfeiture.

#### Sec. 1136. Finance committee to publish statement.

1871-'2, c. 71, s. 3.

It shall be the duty of the finance committee to make and pub-  
 2 lish their report as hereinbefore directed on or before the first  
 3 Monday of December in each year.

**Sec. 1137. Oath of members of finance committee.**

The members of the finance committee before entering upon  
 2 their duties shall, before the clerk of the superior court, subscribe  
 3 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."

**Sec. 1138. Compensation of finance committee.**

The members of the finance committee shall each receive such  
 2 compensation for the performance of his duties as the board of  
 3 commissioners may allow, not exceeding three dollars per day; but  
 4 they shall not be paid for more than ten days in any one year.

**Sec. 1139. Penalty on clerks and other county officers for failing to account for and pay over county funds.**

If any clerk, sheriff, justice of the peace, or other officer, shall  
 2 fail or neglect to account for and pay over as required by law any  
 3 taxes on suits, or any fines, forfeitures and amercements as required  
 4 by this chapter, or shall fail to make the returns herein specified,  
 5 he shall forfeit and pay five hundred dollars, to be recovered in  
 6 the name of the board of commissioners for the use of the county.

**Sec. 1140. Failure of clerk or other officer to perform requirements of this chapter a misdemeanor.**

If any clerk, justice of the peace, sheriff, register of deeds, con-  
 2 stable, commissioner, county treasurer, or other county officer,  
 3 shall neglect to perform any of the requirements of this chapter,  
 4 he shall be guilty of a misdemeanor, and upon conviction shall be  
 5 fined or imprisoned in the discretion of the court.

See 1879, ch. 96, s. 6.

## CHAPTER THIRTY.

## COUNTY TREASURER.

## SECTION.

- 1141. County treasurer to give good bond.
- 1142. Delivering of books, papers and money to successor.
- 1143. Justices of the peace may abolish office of treasurer.
- 1144. Bond of sheriff, acting as treasurer, to cover his liabilities as such.
- 1145. County treasurer to include party acting as such.
- 1146. The board of commissioners to bring action on treasurer's bond.

## SECTION.

- 1147. County treasurer not to speculate in county claims.
- 1148. Duties of county treasurer prescribed.
- 1149. Compensation of examining committee.
- 1150. Penalty for refusal by officers to account and pay over funds when collected.
- 1151. Penalty for failure of treasurer to perform duties.
- 1152. County treasurer to pay no claim against the county unless the board of commissioners shall audit it.



## SECTION.

1153. Property held in trust by any person for a county to be held and administered by the county treasurer.
1154. The county treasurer to take charge of all such trust funds and property.

## SECTION.

1155. The board of commissioners to keep a record of such property or funds.
1156. County treasurer to exhibit to the board of commissioners the amount and condition of all trust funds and property.

**Sec. 1141. County treasurer to give good bond.**

1868-'9, c. 157, s. 4.

The county treasurer, before entering upon the duties of his office, shall give bond in three or more sufficient sureties, to be approved by the board of 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.

Commissioners of Wake v. Magnin, 86—285.

**Sec. 1142. Delivering of books, papers and money to successor.**

1868-'9, c. 157, s. 5.

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.

Commissioners of Wake v. Magnin, 86—285.

**Sec. 1143. Justices of the peace may abolish office of treasurer.**

R. C., c. 29, s. 10.  
1852, c. 6.  
1876-'7, c. 141, s. 2.  
1881, c. 362.

A majority of the justices of the peace in any county may abolish the office of county treasurer; and thereupon, the duties and liabilities attached to the office shall devolve upon the sheriff, who shall be *ex-officio* county treasurer. And in any county where the office of treasurer has been abolished, the justices of the peace may also, if they shall deem it expedient to do so, restore the office of treasurer.

**Sec. 1144. Bond of sheriff, acting as treasurer, to cover his liabilities as such.**

1879, c. 202, s. 1.

In counties where the office of county treasurer may be abolished, and where the sheriff is authorized to perform the duties of county treasurer, the bond he gives as sheriff shall be construed to include his liabilities and duties as such county treasurer, and may be increased to such amount by the board of commissioners, as may be deemed necessary to recover the trust funds coming into his hands.

**Sec. 1145. County treasurer to include person acting as such.**

The office of county treasurer shall always be construed to refer  
 2 to, and include, the person authorized by law to perform the duties  
 3 of that office in any county, if there is no county treasurer therein.  
 4 The county treasurer shall be *ex-officio* the treasurer of the county  
 5 board of education.

Commissioners of Wake v. Magnin, 78—181.

**Sec. 1146. The board of commissioners to bring action on treasurer's bond.**

The board of commissioners shall bring an action on the treas-  
 2 urer's bond, whenever they have knowledge or a reasonable belief  
 3 of any breach of the bond.

Commissioners of Wake v. Magnin, 78—181; Commissioners of Wake v. Magnin, 86—285.

**Sec. 1147. County treasurer not to speculate in county claims.**

No county treasurer purchasing a claim against the county at  
 2 less than its face value, shall be entitled to charge the county a  
 3 greater sum than what he actually paid for the same; and the  
 4 board of commissioners may examine him as well as any other  
 5 person on oath concerning the matter; and any county treasurer  
 6 who shall be concerned or interested in any such speculation shall  
 7 forfeit his office.

See 1868-'9, c. 260.

**Sec. 1148. Duties of county treasurer prescribed.**

It shall be the duty of the treasurer—

**(1) TO KEEP COUNTY MONEYS.**

To receive all moneys belonging to the county, and all other  
 2 moneys by law directed to be paid to him, to keep them separate  
 3 and apart from his own affairs, and to apply them and render ac-  
 4 count of them as required by law.

State v. McAlpin, 4 Ire., 140; Jones v. Com'rs of Bladen, 73—182; Hewlett v. Nutt, 79—263;  
 Com'rs of Pender v. McPherson, 79—524; Cromartie v. Com'rs, 85—211. See R. C., c. 29, s. 4.

**(2) TO KEEP TRUE ACCOUNTS.**

5 To keep a true account of the receipts and expenditures of all  
 6 such moneys, taking proper vouchers in every case in books pro-  
 7 vided for that purpose at the expense of the county, and to post at  
 8 the court house door on the first Monday in each month, a correct  
 9 statement of such receipts and expenditures, showing the amount  
 10 received, and from what source, and the amounts paid out, and to  
 11 whom, and for what purpose, and the balance in his hands belong-  
 12 ing to the county.

**(3) TO CALL ON COUNTY OFFICERS FOR FUNDS IN THEIR HANDS.**

13 To call on the sheriff, or the clerk of the superior court, or other  
 14 officer having county moneys in his hands, at least once in each

15 month, or oftener if necessary, to pay over to him, and to account  
16 for all such moneys.

*State v. McAlpin*, 4 Ire., 140; *State v. Woodside*, 9 Ire., 496; *McKenzie v. Buchanan*, 6 Jon., 31; *Mitchell v. Ward*, 6 Jon. Eq., 66; *Buchanan v. McKenzie*, 8 Jon., 93. See R. C., c. 29, s. 4; 1777, c. 129, s. 3.

(4) TO EXHIBIT TO THE BOARD OF COMMISSIONERS HIS BOOKS AND ACCOUNTS  
AS TREASURER FOR EXAMINATION.

17 To exhibit his books and accounts and moneys once every three  
18 months, or oftener, if the board of commissioners of his county  
19 deem it necessary, to a committee to be composed of the chairman  
20 of the board of commissioners and one other person to be selected  
21 by the board of commissioners, who shall be an expert accountant ;  
22 and it shall be the duty of this committee to examine the books  
23 and accounts of his office, and to see that the accounts are correctly  
24 and properly kept, and to count the money in the hands of the  
25 treasurer, and to see that it corresponds with the amount shown  
26 by the books to be in his hands. And if at any time there shall  
27 be a deficit in the amount of money in the hands of the treasurer,  
28 the committee shall so report to the board of commissioners, whose  
29 duty it shall be to institute proceedings in the superior court  
30 against said treasurer for violation of his official duties.

**Sec. 1149. Compensation of examining committee.**

1879, c. 33, s. 1.  
Sub. s. 6.

The board of commissioners shall allow to the committee who  
2 examine the books and moneys of the treasurer the same pay per  
3 diem that is received by a member of the board, not to exceed pay  
4 for one day's service for each examination.

**Sec. 1150. Penalty for refusal by officers to account and pay over funds when called on.**

1868-9, c. 157, s. 10.

In case of the failure or refusal of a sheriff, clerk, or other offi-  
2 cer to account and pay over, when called on as directed in this  
3 chapter, the treasurer shall report the facts to the board of commis-  
4 sioners, who may forthwith bring suit on the official bond of such  
5 delinquent officer, and the said board is also allowed to bring suit  
6 on the official bond of the clerk of the superior court of any ad-  
7 joining county.

*Jones v. Com'rs of Bladen*, 73—182; *Com'rs of Bladen v. Clarke*, 73—255; *Com'rs of Wake v. Magnin*, 78—181; *Hewlett v. Nutt*, 79—263.

**Sec. 1151. Penalty for failure of treasurer to perform duties.**

1879, c. 33, s. 2.

Any treasurer or other disbursing officer, failing to perform any  
2 of the duties herein enjoined, shall be guilty of a misdemeanor,  
3 and upon conviction thereof, in addition to other punishment at  
4 the discretion of the court, shall be removed from office, and his  
5 successor appointed in the manner provided by law, in case of a  
6 vacancy from other causes.

See 1868-9, chap. 157, sec. 11.



**Sec. 1152.** County treasurer to pay no claim against the county unless the board of commissioners shall audit it.

It shall not be lawful for the county treasurer to pay a claim  
2 against the county, unless the same shall have been audited and  
3 allowed by the board of commissioners.

1868, c. 19.

Love v. Com'rs of Chatham, 64—706; Jones v. Com'rs of Bladen, 73—182.

**Sec. 1153.** Property held in trust by any person for a county to be held and administered by the county treasurer.

In all cases where any property, real or personal, shall have  
2 been held by deed, will or otherwise, by any person or officer in  
3 trust for any county, or for any charitable use to be administered  
4 in, and for, the benefit of such county, or the citizens thereof, such  
5 property shall be transferred to, and vest in the county treasurer,  
6 to be administered and applied by him under the direction of the  
7 board of commissioners, upon the same uses, purposes and trusts  
8 as declared by the grantor, testator, or other person in the original  
9 deed, devise or other instrument of donation.

1869-'70, c. 85, s. 1.

**Sec. 1154.** The county treasurer to take charge of all such trust funds and property.

It shall be the duty of the county treasurer to take charge of all  
2 such trust funds and property; but he shall not be qualified to do  
3 so, without giving a bond payable to the state, in a penalty double  
4 the estimated value of said property or funds, with three or more  
5 sureties, each of whom shall be worth at least the amount of the  
6 penalty of the bond, over and above all his liabilities, and property  
7 exempt from such execution, which bond shall be taken by the  
8 board of commissioners, and shall be recorded and otherwise  
9 treated, and dealt with, as the official bond of the treasurer.

1869-'70, c. 85, s. 2.

**Sec. 1155.** The board of commissioners to keep a record of such property or funds.

The board of commissioners shall keep a proper record of all  
2 such trust property or charitable funds, and when necessary shall  
3 institute proceedings to recover for the treasurer, all such as may  
4 be unjustly withheld.

1869-'70, c. 85, s. 3.

**Sec. 1156.** County treasurer to exhibit to the board of commissioners the amount and condition of all trust funds and property.

The county treasurer, whenever he is required to exhibit to the  
2 board of commissioners the financial condition of the county, shall  
3 exhibit also distinctly and separately the amount and condition of  
4 all such trust funds and property, how invested, secured, used, and  
5 other particulars concerning the same.

1869-'70, c. 84, s. 4.

## CHAPTER THIRTY-ONE.

## COURT HOUSES, PRISONS AND WORK HOUSES.

## SECTION.

1157. Court houses and jails to be built and kept in repair by the board of commissioners.
1158. Jails to have separate apartments.
1159. Common jails to be heated by furnaces, stoves or otherwise.
1160. The grand jury to visit the jail at each court.
1161. Treasurer of public buildings appointed by board of county commissioners; his duty, bond and compensation.
1162. Treasurer of public buildings to settle his accounts annually; for failure to settle or pay, judgment, on motion, to be entered against him and his sureties for a penalty of one hundred dollars.
1163. Treasurer recommending repairs, what to be done.
1164. Board of commissioners may establish public work houses.
1165. Board to appoint directors, their duties, &c.
1166. Board to appoint a bonded manager, his duties, &c.

## SECTION.

1167. Compensation of manager and his subordinates.
1168. Board empowered to levy taxes.
1169. Penalties incurred by absconding offenders.
1170. Vagrant persons may be released.
1171. Duties of sheriffs.
1172. Managers to assign offenders employment.
1173. Term of office of directors.
1174. Board may issue bonds to establish work houses.
1175. Whenever a work house established, chairman of board to certify the same to governor.
1176. Suit to be brought in name of board of county commissioners.
1177. Any two or more counties may jointly establish work houses.
1178. A general board of directors appointed.
1179. General manager appointed by the general board of directors.

## Sec. 1157. Court houses and jails to be built and kept in repair by the board of commissioners.

R. C., c. 30, s. 1.  
1741, c. 43, ss. 1, 2.  
1795, c. 432, s. 1.  
1816, c. 911, s. 1.

There shall be kept and maintained in good and sufficient repair  
2 in every county, a court house and common jail, at the expense of  
3 the county, wherein the same are situated; and the boards of com-  
4 missioners of the several counties respectively shall lay and collect  
5 taxes, from year to year, as long as may be necessary, for the pur-  
6 pose of building, repairing and furnishing, their several court houses  
7 and jails, in such manner as they shall think proper; and from  
8 time to time shall order and establish such rules and regulations  
9 for the preservation of the court house, and for the government  
10 and management of the prisons, as may be conducive to the inter-  
11 ests of the public, and the security and comfort of the persons con-  
12 fined.

State v. Justices of Lenoir, 4 Haw., 194; McKenzie v. Buchanan, 6 Jones, 31.

## Sec. 1158. Jails to have separate apartments.

R. C., c. 30, s. 2.  
1795, c. 432, s. 4.  
1816, c. 911, s. 1.

The common jails of the several counties shall be provided with  
2 at least five separate and suitable apartments; one for the confine-  
3 ment of white male criminals; one for white female criminals; one  
4 for colored male criminals; one for colored female criminals; and  
5 one for other prisoners.

## Sec. 1159. Common jails to be heated by furnaces, stoves, or otherwise.

1879, c. 25.

It shall be the duty of the board of commissioners in every  
2 county to have the common jails so heated by furnaces, stoves, or

3 otherwise, as to render them warm and comfortable. And any  
4 board of county commissioners failing to comply with the require-  
5 ments of this section, shall be liable to indictment, and upon con-  
6 viction, may be punished by fine or imprisonment, or both, in the  
7 discretion of the court.

**Sec. 1160. The grand jury to visit the jail at each court.**

Every grand jury, while the court is in session, shall visit the  
2 jail, examine the same, and especially the apartments in which  
3 prisoners shall be confined; and they shall report to the court the  
4 condition of the jail and of the prisoners confined therein, and also  
5 the manner in which the jailor has discharged his duties.

R. C., c. 30, s. 3.  
1816, c. 911, s. 3.

**Sec. 1161. Treasurer of public buildings appointed by board of county commis-  
sioner; his duty, bond and compensation.**

The several boards of county commissioners may, in their dis-  
2 cretion, annually, at the first meeting which shall be held after  
3 the first day of January in every year, appoint a suitable person  
4 to act as treasurer of public buildings, who, after having given  
5 bond with satisfactory security payable to the state of North Caro-  
6 lina, in such sum as may be required, for the faithful discharge of  
7 the trust reposed in him, shall superintend the public buildings,  
8 and from time to time report their state and condition; shall  
9 recommend alterations, repairs, or improvements, together with  
10 the sums requisite for making them; shall call to account, by suit  
11 if necessary, and settle with all persons who may have previously  
12 received county moneys for such purposes; shall hear the com-  
13 plaints of persons confined, respecting their diet and treatment;  
14 shall examine into the conduct and character of the jailor, and  
15 make information thereof to the board or grand jury of the county,  
16 as circumstances may require; shall apply for and obtain from the  
17 clerk all papers and documents, properly attested, which may be  
18 necessary for the collection of taxes laid by the board; shall see  
19 that the same be collected, accounted for, and applied, according  
20 to the intent of this chapter. He shall hold his office during one  
21 year; and, as a compensation for his services, shall be entitled to  
22 such sum as the board of county commissioners may allow him.

R. C., c. 30, s. 4.  
1795, c. 433, ss. 2, 3.  
1797, c. 488, ss. 1, 3.

**Sec. 1162. The treasurer of public buildings to settle his accounts annually; for  
failing to settle or pay, judgment, on motion, to be entered against him and  
his sureties for a penalty of one hundred dollars.**

Treasurers of public buildings are hereby expressly required, at  
2 the term of their election, and before the election, to settle their  
3 accounts with the board of commissioners, by exhibiting a fair  
4 account of their receipts and expenditures, setting forth the moneys  
5 received, and at what time; the sums expended, to whom paid, for  
6 what use and at what time; a complete transcript of which account

R. C., c. 30, s. 6.  
1795, c. 433, s. 3.  
1797, c. 488, s. 2.



7 shall be posted up in the court house for public inspection; and  
 8 if any treasurer of public buildings shall fail to settle, as above  
 9 directed, or to pay the balance which may appear to be due from  
 10 him on such settlement, his successor, on giving him and his  
 11 sureties ten days' previous notice, shall, on motion in any court of  
 12 his county, be entitled to have judgment entered against him  
 13 and his sureties, for all moneys received by him, with interest  
 14 from the day of receiving the same and the further sum, as a pen-  
 15 alty, of one hundred dollars, for the use of the county.

**Sec. 1163. Treasurer recommending repairs, what to be done.**

R. C., c. 30, s. 7.  
 1795, c. 433, s. 3.

When the treasurer, in his report, shall recommend alterations,  
 2 repairs, and improvements, the board of commissioners, being sat-  
 3 isfied of their utility, may appoint one or more commissioners, in  
 4 conjunction with the treasurer, to contract for carrying the same  
 5 into effect; but, such contract being concluded, the powers of the  
 6 commissioners shall cease; and the moneys payable thereon shall  
 7 be advanced by the treasurer, who shall be solely responsible and  
 8 accountable to the board of commissioners for the sufficiency of  
 9 the work, and the disbursement of the money.

**Sec. 1164. Board of commissioners may establish public work houses.**

1866, c. 35, s. 1.

The board of commissioners may, when they deem it necessary,  
 2 establish within their respective counties, one or more convenient  
 3 houses of correction, with work shops and other suitable buildings  
 4 for the safe keeping, correcting, governing, and employing of  
 5 offenders legally committed thereto. They may also, to that end,  
 6 procure machinery and material suitable for such employment in  
 7 said houses, or on the premises; and moreover attach thereto a  
 8 farm or farms; and all lands purchased for the purposes aforesaid,  
 9 shall vest in the directors hereinafter provided for, and their suc-  
 10 cessors in office. The said board shall also have power to make,  
 11 from time to time, such rules and regulations as it may deem  
 12 proper, for the kind and mode of labor, and the general manage-  
 13 ment of the said houses.

**Sec. 1165. Board of commissioners to appoint directors; duties of directors.**

1866, c. 35, s. 2.

The board of commissioners shall, annually, appoint not less than  
 2 five nor more than nine directors for each house of correction  
 3 which may be established, whose duty it shall be to superintend  
 4 and direct the manager hereinafter named in the discharge of his  
 5 duties; to visit said houses at least once in every three months; to see  
 6 that the laws, rules and regulations relating thereto are duly exe-  
 7 cuted and enforced, and that the persons committed to his charge  
 8 are properly cared for, and not abused or oppressed. The directors  
 9 shall keep a journal of their proceedings, and publish annually an  
 10 account of the receipts and expenditures. They shall further make

11 a quarterly report to their respective county commissioners of the  
12 general condition of their charge, and of the receipts and expendi-  
13 tures of the institution. They shall also make such by-laws and  
14 regulations for the government thereof as shall be necessary, which  
15 shall be reported to, and approved by, the said commissioners. The  
16 directors shall be paid for the services rendered, by the county  
17 treasurer, each director first making appear to the satisfaction of  
18 the board of county commissioners, by his oath, the character and  
19 extent of the services rendered for which he claims compensation ;  
20 and such payment shall be made by the county treasurer out of  
21 any funds in his hands not otherwise appropriated.

**Sec. 1166. The board of commissioners to appoint a bonded manager; duties of manager.**

The board of commissioners shall appoint a manager for each 1866, c. 35, s. 3.  
2 house or establishment, who shall give a bond, with two or more  
3 able sureties, in such sum as may be required, payable to the state  
4 of North Carolina, conditioned for the faithful discharge of his du-  
5 ties. He shall hold his office during the pleasure of the board, and  
6 be at all times under the supervision of the directors; and in case  
7 of his misconduct, of which they shall be the sole judges, he may be  
8 forthwith removed by them and a successor appointed, who shall dis-  
9 charge the duties of the office until another manager shall be ap-  
10 pointed by the board of commissioners. It shall be the duty of  
11 the manager to receive all persons sent to the house of correction,  
12 to keep them during the time of their sentence, and to employ and  
13 control them according to the rules and regulations established  
14 therefor. He shall have the direction and control over the sub-  
15 ordinate officers, assistants and servants, who may be appointed by  
16 the directors. He shall make monthly reports to the directors of  
17 his management of the institution and his receipts and expenditures.

**Sec. 1167. Compensation of manager and his subordinates.**

The said board of commissioners shall direct what compensation 1866, c. 35, s. 4.  
2 the manager and such subordinate officers, assistants and servants,  
3 as shall be appointed, shall receive, and shall provide the payment  
4 thereof.

**Sec. 1168. The board of commissioners empowered to levy taxes.**

The board of commissioners, with the assent of a majority of 1866, c. 35, s. 5.  
2 the justices of the peace, in addition to the ordinary county taxes,  
3 shall also, at the time said taxes are laid, lay such tax as may be nec-  
4 essary to carry into effect the necessary provisions of this chapter,  
5 which shall be collected and paid to the manager at the same time  
6 as other county taxes are to be paid; for which, and such other  
7 funds as may come into his hands as manager, he shall be account-  
8 able, and he shall disburse the same under the authority of the  
9 directors.

**Sec. 1169. Penalties incurred by absconding offenders.**

1866, c. 35, s. 6.

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 held to labor in the house of correction for the term of one month in addition to the time for which he was first committed.

**Sec. 1170. Vagrant persons may be released.**

1866, c. 35, s. 7.

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.

**Sec. 1171. Duties of sheriffs.**

1866, c. 35, s. 8.

Whenever any person shall be sentenced to a work house, 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 work house, and deliver him to the manager with the certified copy aforesaid, and take the manager's receipt for the body; which receipt the sheriff shall return to the clerk of the board of commissioners, with his indorsement 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.

**Sec. 1172. Manager to assign offenders employment.**

1866, c. 35, s. 9.

The manager shall assign to each person sent to the work house the kind of work in which such person is to be employed.

**Sec. 1173. Term of office of directors.**

1866, c. 35, s. 10.

The directors shall continue in office until others shall be appointed; and if any vacancy happens among them, it shall be filled by the residue of the directors.

**Sec. 1174. Board of commissioners may issue bonds to establish work houses.**

1866, c. 35, s. 11.

The board of commissioners, with the assent of a majority of the justices of the peace, may, if deemed advisable by them, issue county bonds to raise money to establish the houses and farms herein provided for.



**Sec. 1175.** Whenever a work house is established, the chairman of the board of commissioners to certify fact to governor.

Whenever any work house 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 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. 1866, c. 35, s. 12.

**Sec. 1176.** Suit to be brought in name of board of county commissioners.

All suits brought on behalf of the institution shall, unless it be otherwise prescribed, be brought in the name of the board of commissioners of the county, to the use of the directors of the work house, without designating such directors by name. 1866, c. 35, s. 13.

**Sec. 1177.** Any two or more counties may jointly establish work houses.

Any two or more counties, acting through their respective boards of commissioners, may jointly establish one or more convenient houses of correction, as is provided in the preceding sections, 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. 1866-'7, c. 130, s. 1.

**Sec. 1178.** A general board of directors appointed.

The board of 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 appointed by each of such counties shall together constitute the general board of directors of any such joint establishment. 1866-'7, c. 130, s. 2.

**Sec. 1179.** General managers to be appointed by the general board of directors.

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 1866-'7, c. 130, s. 3.

13 of this chapter. The compensation of the manager and such  
 14 subordinate officers, assistants and servants, as may be appointed  
 15 by the general board, shall be fixed by said general board.

## CHAPTER THIRTY-TWO.

### COURTS INFERIOR.

#### SECTION.

- 1180. Inferior courts.
- 1181. May decline to elect justices of the inferior court.
- 1182. Terms, how often held in each year.
- 1183. If the business cannot be determined in one day, courts to adjourn from day to day.
- 1184. Majority of the court failing to meet, sheriff to adjourn from day to day.
- 1185. Process continued.
- 1186. Jurisdiction.

#### SECTION.

- 1187. Practice, pleading, &c.; appeals.
- 1188. Issues of fact.
- 1189. Jurors provided in same manner as for superior courts.
- 1190. Justices may elect a clerk.
- 1191. Notices, summons, executions and other process.
- 1192. Justices shall elect an attorney.
- 1193. Presiding justice; compensation.
- 1194. Vacancies, how filled.
- 1195. May enforce its orders, &c.

#### Sec. 1180. Inferior courts.

1876-'7, c. 154, s. 1.

Courts of record inferior to the supreme court are established for  
 2 the trial of criminal actions, and such courts shall have all the  
 3 rights and powers incident to courts of record, and shall have such  
 4 jurisdiction as shall be conferred and prescribed by law. The  
 5 courts herein provided for shall be held by three persons, to be  
 6 chosen by the justices of the peace, or a majority of them, from  
 7 the body of the county, the justices included; such persons shall  
 8 be of good moral character, of fair ability, and men of integrity,  
 9 and when so elected shall be the justices of said inferior court.  
 10 They shall hold their offices for two years, and until their succes-  
 11 sors are elected and qualified.

#### Sec. 1181. May decline to elect justices of the inferior court.

1876-'7, c. 154, s. 2.

If, in the opinion of the justices of the peace of any county, or a  
 2 majority of them, it will not promote the best interests of the peo-  
 3 ple for such courts to be held in such county, it shall be lawful for  
 4 the said justices of the peace, or a majority of them, to decline to  
 5 elect the justices of such inferior courts, and in that event there  
 6 shall be no inferior court held in such county; but if, in the opin-  
 7 ion of the justices of the peace, or a majority of them, the general  
 8 good of the county would be promoted, then, and in that event,  
 9 the said justices of the peace, or a majority of them, shall provide  
 10 that said inferior courts shall be held for the trial of criminal ac-  
 11 tions only; and in such case such inferior courts shall exercise  
 12 only the criminal jurisdiction hereinafter conferred.

**Sec. 1182. Terms, how often held in each year.**

Said courts shall be held for their respective counties four times 1876-7, c. 154, s. 3.  
2 in each year, unless otherwise determined, on such days as may be  
3 determined on and fixed by a majority of the justices of the peace;  
4 but no term of said courts shall be held within less than three  
5 months, from and after the first of the preceding term; and when-  
6 ever the justices of the peace of any county shall have elected the  
7 justices of the said inferior courts, the said inferior courts shall  
8 continue to be held; but after three months' notice to that effect,  
9 to be posted at the court house door and at one or more public  
10 places in each township in the county, the justices of the peace of  
11 any county, or a majority of them, shall, at a regular term of  
12 said courts, in the presence of the justices of said courts, determine  
13 to discontinue the holding of said courts; then the said courts  
14 shall be discontinued, and the records, books and papers of said  
15 courts shall be filed in the office of the clerk of the superior court  
16 of said county, and all causes and matters and things then pending  
17 shall be transferred to the said superior courts, to be therein pro-  
18 ceeded in and tried as if the same had been therein docketed upon  
19 appeals from courts of justices of the peace: *Provided*, that no case  
20 herein transferred shall be dismissed for want of jurisdiction in  
21 justices of the peace.

**Sec. 1183. If the business cannot be determined in one day, court to adjourn from day to day.**

If the business of the said courts cannot be determined on the 1876-7, c. 154, s. 4.  
1881, c. 332.  
2 first day of the term, the courts may adjourn from day to day not  
3 exceeding six days, except in the counties of Wake, New Hanover,  
4 Granville and Mecklenburg, in which the courts may be held for  
5 two weeks, at the end of which time the causes and matters which  
6 may be pending, and not finally determined, shall be continued  
7 to the next succeeding term.

**Sec. 1184. Majority of the court failing to meet, sheriff to adjourn from day to day.**

If, for any cause, a majority of any court shall not meet for hold- 1876-7, c. 154, s. 5.  
2 ing the term on a day appointed, any one of the court, and, in the  
3 absence of all the members of the court, then the sheriff, may ad-  
4 journ the court from day to day not exceeding three days, until a  
5 sufficient number of the justices of court can attend.

**Sec. 1185. Process continued.**

No inferior court, nor any process there pending, shall be con- 1876-7, c. 154, s. 6.  
2 tinued by reason of its justices failing to hold court upon the day  
3 appointed, or of any alteration of the day appointed for holding it;  
4 but in every such case, all process, matters and things pending  
5 shall stand continued; and all appearances, upon returns of pro-



cess, shall be made to the next succeeding term, in the same manner as if such succeeding term had been the term to which said process had been continued, or such returns or appearance had been made; and all recognizances, bonds and obligations for appearances, and all returns, shall be of the same force and validity for the appearance of any person at such succeeding term, and all subpoenas for witnesses as effectual as if the next succeeding term had been expressly mentioned therein.

#### Sec. 1186. Jurisdiction.

1876-'7, c. 154, s. 7.  
1879, c. 92, s. 11.  
1881, c. 210.

Said inferior courts shall have jurisdiction to inquire of, try, hear and determine all crimes and misdemeanors, except those whereof exclusive original jurisdiction is given to courts of justices of the peace, and except the crimes of murder, manslaughter, arson, rape, assault with intent to commit rape, burglary, horse-stealing, libel, perjury, forgery and highway robbery. Said inferior courts shall also have jurisdiction of all such affrays as shall be committed within one mile of the place where and during the time such courts are being held, and of all offences whereof exclusive original jurisdiction is given to justices of the peace, if some justice of the peace shall not, within six months after the commission of the offence, proceed to take official cognizance thereof.

State v. Lane, 78—547; State v. Spurtin, 80—362; State v. Williamson, 81—540; State v. Moore, 82—659; State v. Benthall, 82—664; State v. Ham, 83—590; State v. Thompson, 83—595; State v. Taylor, 83—601; State v. Taylor, 84—743; State v. Reaves, 85—553.

#### Sec. 1187. Practice, pleading, &c.; appeals.

1876-'7, c. 154, s. 9.  
1879, c. 141.  
Const. Art. IV, s. 8.

The practice, pleading, process and procedure in such courts shall be, in all respects, as provided for the superior courts. Appeals may be taken from their courts to the superior courts in term time for error assigned in matters of law in the same manner and under the same restrictions provided by law for appeals from the superior courts to the supreme court, and the final decision of each superior court shall be certified to the court below, that final judgment may be rendered.

State v. Lane, 78—547; State v. Spurtin, 80—362; State v. Ham, 83—590; State v. Thompson, 83—595; State v. Pollard, 83—597; State v. Moore, 84—721; State v. McDowell, 84—798.

#### Sec. 1188. Issues of fact.

1876-'7, c. 154, s. 11.

In all issues of fact, founded upon trials of petit misdemeanors, the parties may, by a written stipulation filed in the cause, waive their right to have the same determined by a jury, and submit it to a decision of the justices of said inferior courts, and the finding of said justices, or a majority of them, upon the facts, shall have the force and effect of a verdict of a jury.

**Sec. 1189. Jurors provided in same manner as for superior court.**

Thirty jurors shall be provided for each term of said courts in 1876-'7, c. 154, s. 12.  
2 the same manner that jurors are provided for the superior courts,  
3 of which jurors, fifteen, drawn and sworn in the same manner that  
4 grand jurors are drawn and sworn in the superior courts, shall  
5 constitute the grand jury, with the same powers and duties of  
6 grand juries in the superior courts; the other fifteen shall be petit  
7 jurors for the trial of causes, and when the regular pannel shall be  
8 exhausted, talesmen may be summoned and sworn under the same  
9 rules as govern such cases in the superior courts.

**Sec. 1190. Justices may elect a clerk.**

In each county in which the said courts shall be held, a majority 1876-'7, c. 154, s. 13.  
2 of the justices of the peace may elect a clerk of said inferior court,  
3 who shall enter into a good and sufficient bond in a sum not less  
4 than five thousand dollars, with sureties thereto, to be approved by  
5 the justices of the county, for the discharge of all the duties of his  
6 office, who shall keep the records of his court in suitable manner,  
7 in books to be furnished by the board of county commissioners,  
8 and shall receive the same fees for services by him rendered as are  
9 provided for clerks of the superior courts for similar services, and  
10 shall hold his office for two years, and until his successor is chosen  
11 and qualified, and shall be subject to the same laws and regu-  
12 lations as are provided for the qualifications, duties, responsibili-  
13 ties and liabilities of clerks of the superior courts: *Provided, never-*  
14 *theless*, that if the justices of the peace of any county, or a majority  
15 of them, shall fail or decline to elect a clerk, as herein provided,  
16 then and in that event, the clerk of the superior court shall be *ex*  
17 *officio* clerk of said inferior court, and shall give like bond, and be  
18 subject to the same duties and be liable in the same manner and  
19 to the same extent as if he had been elected by the justices of the  
20 peace.

Davis v. Moses, 80—141.

**Sec. 1191. Notices, summons, executions and other process.**

It shall be the duty of the clerks of said inferior courts to issue 1876-'7, c. 154, s. 14.  
2 all notices, summons, executions and other process that may be re-  
3 quired by said courts; and it shall be the duty of the sheriff, deputy  
4 sheriffs or coroner, as the case may be, to execute the same, and  
5 make due returns thereon, as now required in the superior courts,  
6 and they shall be entitled to like fees, and liable to the same fines  
7 and penalties as in the superior courts.

**Sec. 1192. Justices shall elect an attorney.**

The justices of the peace of such county, a majority being pres- 1876-'7, c. 154, s. 15,  
2 ent, shall elect an attorney, properly qualified to act for and in be-

3 half of the state, in the county, who shall hold his office for the  
 4 term of two years, and until his successor is chosen and qualified,  
 5 and shall prosecute all matters cognizable in such court in behalf  
 6 of the state, and he shall receive the same fees on conviction as are  
 7 allowed solicitors in the superior courts.

**Sec. 1193. Presiding justice; compensation.**

1876-'7, c. 154, s. 16.

The court shall elect one of their own number presiding justice,  
 2 who shall hold his office until his successor is appointed. The  
 3 compensation of each member of the court shall be fixed by a  
 4 majority of the justices of the peace of the county, not to exceed  
 5 the sum of three dollars per day each; *Provided, however*, in coun-  
 6 ties where the business of the court would be thereby facilitated,  
 7 a majority of the justices of the peace may allow the presiding  
 8 justice such compensation as they may deem proper and necessary.

**Sec. 1194. Vacancies, how filled.**

1876-'7, c. 154, s. 17.

The justices of the peace of any county, or a majority of them,  
 2 shall fill all vacancies occurring in any of the offices herein pro-  
 3 vided.

**Sec. 1195. May enforce its orders, &c.**

1876-'7, c. 154.

The said courts shall have the same power and authority to en-  
 2 force their orders, judgments and decrees, and the general conduct  
 3 of their business and punish contempts as are conferred upon the  
 4 superior courts. Each court shall have a seal with the proper de-  
 5 vice, and stamped with the words, "inferior court, ..... county,  
 6 ....., " and the clerk of the court shall affix the same to his offi-  
 7 cial acts and signatures when necessary.

## CHAPTER THIRTY-THREE.

### COURTS—JUSTICES OF THE PEACE.

**SECTION.**

- 1196. Provisions of article seven of the con-  
stitution abrogated; exceptions.
- 1197. Justices of the peace to be elected by the  
general assembly; additional justices  
for cities and towns; secretary of state  
to give certificate; governor to appoint.
- 1198. Within what time to qualify.
- 1199. Removal out of township six months,  
to forfeit office.
- 1200. Resignation.
- 1201. May issue process and try causes, where.
- 1202. Office under the United States.

**SECTION.**

- 1203. Punishment on conviction of infamous  
crimes, &c.
- 1204. Filing dockets with clerks.
- 1205. Delivery of unfilled dockets to successor.
- 1206. Filing and delivery, how enforced.
- 1207. Summons.
- 1208. A civil and a criminal docket to be fur-  
nished each justice.
- 1209. Summons, by whom issued.
- 1210. Service and return of summons.
- 1211. Jurisdiction.



SECTION.

- 1212. Justices to dismiss action when the principal sum demanded exceeds two hundred dollars.
- 1213. Answer where title to real estate is brought in issue.
- 1214. Action to be dismissed, when.
- 1215. Another action may be brought.
- 1216. Docketing justice's judgment.
- 1217. Rules of proceeding in justice's court.
- 1218. Execution, on what and from what time, a lien.
- 1219. Stay of execution; stay granted by justice.
- 1220. Surety on stay of execution.
- 1221. Former judgment.
- 1222. Application for rehearing.
- 1223. Justice's judgment removed to another county, how.
- 1221. Witnesses, penalties, &c.
- 1225. Provisions of Code of Civil Procedure applicable.
- 1226. Arrest, in what cases.
- 1227. Order of arrest, by whom made.
- 1228. Affidavit to obtain order.
- 1229. Provisions of code of civil procedure applicable.
- 1230. Jury list furnished to each justice.
- 1231. Justice to keep jury box.
- 1232. Names of jurors to be deposited in jury box.
- 1233. When trial by jury demanded or waived.
- 1234. Jury drawn and trial postponed.
- 1235. Summoning of the jury.
- 1236. The jury for the trial of the cause.
- 1237. Challenge.
- 1238. What names to be returned to the jury box, or destroyed.
- 1239. Tales jurors may be summoned.
- 1240. Jury sworn and impaneled; verdict.
- 1241. New trial; appeal.
- 1242. Less than six may be a jury, when.
- 1243. Not compelled to serve out of township.
- 1244. Jurors serving on trial.
- 1245. Deposit of jury fees.
- 1246. Adjournment after return of the jury.
- 1247. No process issued by justices outside his own county, &c.
- 1248. Process issued 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.
- 1249. Certificate of the clerk of superior court; entry of date.
- 1250. No process served under ten days' notice.
- 1251. Appeal; execution.
- 1252. Appeal, when to be taken.
- 1253. When appellant not to give written notice.
- 1254. Justice to make return of the appeal to the clerk of appellate court within ten days.

SECTION.

- 1255. If return defective, it may be amended.
- 1256. Clerk of superior court to docket appeal.
- 1257. The appeal to be heard on the original papers.
- 1258. Execution of judgment, how stayed.
- 1259. Appellant may give undertaking.
- 1260. Same, undertaking to be given.
- 1261. Same, delivery and service of order on whom.
- 1262. Restitution.
- 1263. Jurisdiction, where property does not exceed fifty dollars.
- 1264. Recovery of damages to real estate.
- 1265. Claim and delivery of personal property.
- 1266. When a delivery is claimed.
- 1267. Sufficiency of surety.
- 1268. Criminal jurisdiction of justices of the peace.
- 1269. Additional jurisdiction, peace warrants, bastardy, &c.
- 1270. Proceedings on peace warrant.
- 1271. When justices of the peace to issue bastardy warrant.
- 1272. Party convicted to pay costs; if accused acquitted, complainant to pay costs.
- 1273. When justice has not final jurisdiction, must commit accused to prison, or require recognizance for his appearance to the next term of the court having jurisdiction.
- 1274. When justice is satisfied that he has jurisdiction, he shall proceed to determine the case.
- 1275. Jury to be allowed if asked for.
- 1276. What to be submitted to the jury.
- 1277. Either party may appeal; trial *de novo* in superior court.
- 1278. Justice to transmit papers to clerk of appellate court; what his return to set forth.
- 1279. Either party paying fees, entitled to copy of complaint and other papers.
- 1280. Finding and sentence pleaded in bar of indictment.
- 1281. Justice to imprison the guilty party, if fine and cost not paid.
- 1282. Imprisoned party to pay costs before discharged.
- 1283. Justices of the peace to make returns of all criminal actions disposed of by them to the clerk of the superior or inferior court.
- 1284. Actions removable from one justice of the peace to another upon affidavit; proviso.
- 1285. Process, &c., not to be quashed for want of form.
- 1286. Forms to be used in justice's court.

**Sec. 1196. Provisions of article seven of the constitution abrogated; exceptions.**

All the provisions of article seven of the constitution inconsistent with this chapter, except those contained in sections seven, nine and thirteen, are hereby abrogated, and the provisions of this chapter substituted in their place; subject however, to the power of

1876-'7, c. 141, s. 7.

5 the general assembly to alter, amend or abrogate the provisions of  
6 this chapter, and to substitute others in their stead, as provided in  
7 section fourteen of article seven of the constitution.

**Sec. 1197.** Justices of the peace to be elected by the general assembly; additional justices for cities and towns; secretary of state to give certificate; governor to appoint.

1876-'77, c. 141, s. 4.

Justices of the peace shall be elected by the general assembly.  
2 At each regular biennial session, one justice of the peace shall be  
3 elected for each township in the several counties of the state, and  
4 shall hold his office for the term of six years. In addition to the  
5 justices of the peace above provided for, and when the terms of  
6 those now in office shall expire, there shall be elected by the gen-  
7 eral assembly, for each township in which any city or incorporated  
8 town is situated, one justice of the peace, and also one for every  
9 one thousand inhabitants in such city or town, who shall hold his  
10 office for the term of six years. The term of office of a justice of  
11 the peace shall begin on the first Thursday in August next after  
12 his election; and those heretofore, or hereafter elected, shall re-  
13 main in office until their respective terms expire. The secretary  
14 of state shall certify to the clerks of the superior court of the several  
15 counties in the state, a list of all justices of the peace elected for  
16 their several counties, and this shall be their commission, and the  
17 clerk of the superior court shall notify said justices of their elec-  
18 tion. When new townships shall be established, if the general  
19 assembly shall not be in session, the governor shall appoint the  
20 justices of the peace therein, and they shall hold their office until  
21 the next meeting of the general assembly, and until their succes-  
22 sors shall be elected and qualified.

**Sec. 1198.** Within what time to qualify.

C. C. P., s. 546.

Every person elected or appointed a justice of the peace, shall,  
2 within thirty days after his term of office begins, take and sub-  
3 scribe the prescribed oath of office before the clerk of the superior  
4 court; which oath shall be filed by the clerk of said court. And  
5 any person presuming to execute the office of a justice of the peace  
6 without qualifying as herein directed, shall be guilty of a misde-  
7 meanor.\*

State v. Cansler, 75--442.

**Sec. 1199.** Removal out of township six months to forfeit office.

C. C. P., s. 547.

When any justice of the peace removes out of his township and  
2 does not return therein for the space of six months, he shall forfeit  
3 and lose his office; and any such justice of the peace presuming to  
4 act thereafter, contrary to the provisions of this section, unless re-  
5 elected or re-appointed, shall be guilty of a misdemeanor.

**Sec. 1200. Resignation.**

Justices of the peace wishing to resign, must deliver their letters  
2 of resignation to the clerk of the superior court, who shall file the  
3 same. C. P. P., s. 548.

**Sec. 1201. May issue process and try causes, where.**

A justice of the peace may issue a summons or other process any- C. C. P., s. 549.  
2 where in his county, but he shall not be compelled to try a cause  
3 out of the township for which he was elected or appointed.

**Sec. 1202. Office under the United States.**

Any justice of the peace may accept a civil office or appointment C. C. P., s. 550.  
2 of trust or profit, under the authority of the United States, the du-  
3 ties of which confine him to the county where he is resident.

**Sec. 1203. Punishment on conviction of infamous crimes, &c.**

Upon the conviction of any justice of the peace, of an infamous C. C. P., s. 551.  
2 crime, of corruption and malpractice in office, he shall be removed  
3 from office, and he shall be disqualified from holding or enjoying  
4 any office of honor, trust or profit under this state.

*State v. Zachary, Busb., 432; State v. Hawkins, 77—494; State v. Sneed, 84—816.*

**Sec. 1204. Filing dockets with clerks.**

Each justice of the peace, as often as he has filled his docket, C. C. P., s. 552.  
2 shall file the same with the clerk of the superior court for his  
3 county.

**Sec. 1205. Delivery of unfilled docket to successor.**

When a vacancy exists, from any cause, in the office of a justice C. C. P., s. 553.  
2 of the peace, whose docket is not filled, or when such justice goes  
3 out of office by expiration of his term, such former justice, if liv-  
4 ing, and his personal representative, if dead, shall deliver such  
5 docket, and all official papers to his successor, who is authorized  
6 to hear and determine any unfinished action on said docket, in  
7 the same manner as if such action had been originally brought  
8 before such successor.

**Sec. 1206. Filing and delivery, how enforced.**

The duty imposed on the justice, or his personal representative, C. C. P., s. 554.  
2 by the two preceding sections may be enforced, on ten days' notice  
3 in writing to such justice or his representative, by attachment.

**Sec. 1207. Summons.**

Civil actions in these courts shall be commenced by the issuing C. C. P., s. 495.  
2 of a summons. 1868-'9, c. 159, s. 9.

*Kirkland v. Hogan, 65—144.*



**Sec. 1028.** A civil and a criminal docket to be furnished each justice.

A civil and a criminal docket shall be furnished each justice, at  
2 the expense of the county, by the board of county commissioners,  
3 in which shall be entered a minute of every proceeding had in  
4 any action before such justice.

**Sec. 1209.** Summons, by whom issued.

C. C. C., s. 496.  
1874-'5, c. 234.

The summons shall be issued by the justice and signed by him.  
2 It shall run in the name of the state, and be directed to any con-  
3 stable or other lawful officer, commanding him to summon the  
4 defendant to appear and answer the complaint of the plaintiff at a  
5 place, within the county, to be therein specified, and at a time to  
6 be therein named, not exceeding thirty days from the date of the  
7 summons. It shall also contain the amount of the sum demanded  
8 by the plaintiff.

**Sec. 1210.** Service and return of summons.

C. C. P., s. 497.

The officer to whom the summons is delivered shall execute the  
2 same within five days after its receipt by him, or immediately, if  
3 required to do so by the plaintiff. Before proceeding to execute it,  
4 he is entitled to require of the plaintiff his fees for the service.  
5 When executed he shall immediately return the summons, with  
6 the date and manner of the service, to the justice who issued the  
7 same.

**Sec. 1211.** Jurisdiction.

C. C. P., s. 498.  
1868-'9, c. 159, s. 2.

Justices of the peace shall have exclusive original jurisdiction of  
2 all civil actions founded on contract, except:  
3 (1) Wherein the sum demanded, exclusive of interest, exceeds  
4 two hundred dollars.  
5 (2) Wherein the title to real estate is in controversy.

City of Wilmington v. Davis, 63—582; Hedgecock v. Davis, 64—650; Edenton v. Wool and  
Crawlin, 65—379; Steadman v. Jones, 65—388; Winslow v. Weith, 66—432; Froelick v. So. Ex-  
press Co., 67—1; Rowark v. Gaston, 67—291; State v. Porter, 69—140; Caldwell v. Beatty, 69—365;  
Boyle v. Robbins, 71—130; Templeton v. Summers, 71—269; Latham v. Rollins, 72—454; Town of  
Washinton v. Hammond, 76—33; London v. Headen, 76—72; State v. Rice, 76—194; Green v.  
N. C. R. R. Co., 77—95; Perry v. Shepherd, 78—83; Evans v. Williamson, 79—86; Reeves v. Da-  
vis, 80—209; Burnh3ld v. Freeman, 80—212; McDonald v. Cannon, 82—245; Dalton v. Webster,  
82—279; Davis v. Davis, 83—71; Womble v. Leach, 83—84; Jones v. Palmer, 83—303; Derr v.  
Stubbs, 83—539; Fisher v. Webb, 84—44; Robinson v. Howard, 91—151; Katzenstein v. R. R. Co.,  
84—688; Morris v. Saunders, 85—138.

**Sec. 1212.** Justices to dismiss action when the principal sum demanded exceeds two hundred dollars.

C. C. P., s. 499.  
1868-'9, c. 159, s. 3.  
1876-'7, c. 63.

Where it appears, in any action brought before a justice, that  
2 the principal sum demanded exceeds two hundred dollars, the jus-  
3 tice shall dismiss the action and render a judgment against the plain-  
4 tiff for the costs, unless the plaintiff shall remit the excess of prin-  
5 cipal, above two hundred dollars, with the interest on said excess,  
6 and shall, at the time of filing his complaint, direct the justice to  
7 make this entry: "The plaintiff, in this action, forgives and re-  
8 mits to the defendant so much of the principal of this claim as, in

9 excess of two hundred dollars, together with the interest on said  
10 excess.

Murphy v. McNeill, 82—221; Fisher v. Webb, 84—44; Brickell v. Bell, 84—82.

**Sec. 1213. Answer where title to real estate is brought in issue.**

In every action brought in a court of a justice of the peace, where  
2 the title to real estate comes in controversy, the defendant may,  
3 either with or without other matter of defence, set forth, in his an-  
4 swer, any matter showing that such title will come in question.  
5 Such answer shall be in writing, signed by the defendant or his  
6 attorney, and delivered to the justice.

Heyer v. Beatty, 76—28; Evans v. Williamson, 79—86.

**Sec. 1214. Action to be dismissed, when.**

If it appears on the trial, that the title to real estate is in contro-  
2 versy, the justice shall dismiss the action and render judgment  
3 against the plaintiff for costs.

Dulin v. Howard, 66—433; Davis v. Davis, 83—71; Nesbit v. Turrentine, 83—535; Parker v.  
Allen, 84—466.

**Sec. 1215. Another action may be brought.**

When an action, before a justice, is dismissed upon answer, and  
2 proof by the defendant, that the title to real estate is in contro-  
3 versy in the case, the plaintiff may prosecute an action for the  
4 same cause in the superior court, and the defendant shall not be  
5 admitted in that court, to deny the jurisdiction by an answer con-  
6 tradicting this answer in the justice's court.

Dulin v. Howard, 66—433; Evans v. Williamson, 79—86.

**Sec. 1216. Docketing justice's judgment.**

A justice of the peace, on the demand of a party in whose favor  
2 he has rendered a judgment, shall give a transcript thereof, which  
3 may be filed and docketed in the office of the superior court clerk  
4 of the county where the judgment was rendered. Or in such case  
5 he shall also deliver to the defendant, or his attorney, a transcript  
6 of any stay of execution issued, or which may thereafter be issued,  
7 by him in such judgment, which may be in like manner filed  
8 and docketed in the office of the clerk of said court. The time of  
9 the receipt of the transcript by the clerk shall be noted thereon  
10 and entered on the docket; and from that time the judgment shall  
11 be a judgment of the superior court in all respects. The execu-  
12 tion thereon shall be issued by the clerk of the superior court to  
13 the sheriff of the county, and shall have the same effect, and be exe-  
14 cuted in the same manner, as other executions of the superior court:  
15 *Provided*, that in case a stay of execution upon such judgment  
16 shall be granted, as provided herein, executions upon such judg-  
17 ment shall not be issued by the clerk of the superior court until  
18 the expiration of such stay. A certified transcript of such judg-

C. C. P., s. 503.  
1868-'9, c. 272, s. 3.

19 ment may be filed and docketed in the superior court clerk's office  
 20 of any other county, and with the like effect, in every respect, as  
 21 in the county where the judgment was rendered, except that it  
 22 shall be a lien only from the time of filing and docketing such  
 23 transcript.

McAdoo v. Benbow, 63—461; McAden v. Banister, 63—478; Norwood v. Thorpe, 64—682;  
 Bates v. Bank of Fayetteville, 65—81; Bates v. Hinsdale, 65—423; McKeithan v. Walker, 66—85;  
 Morton v. Ripey, 84—611.

**Sec. 1217. Rules of proceeding in justice's court.**

C. C. P., s. 504.

**RULE I.**

The pleadings in these courts are—

- 2 (1) The complaint of the plaintiff;
- 3 (2) The answer of the defendant.

**RULE II.**

4 The pleadings may be either oral or written; if oral, the sub-  
 5 stance must be entered by the justice on his docket; if written,  
 6 they must be filed by the justice, and a reference to them be made  
 7 on his docket.

**RULE III.**

8 The complaint must state, in a plain and direct manner, the  
 9 facts constituting the cause of action.

**RULE IV.**

10 The answer may contain a denial of the complaint, or of any  
 11 part thereof, and also a notice, in a plain and direct manner, of  
 12 any facts constituting a defence or counter-claim.

Derr v. Stubbs, 83—539; Boyett v. Vaughan, 85—363.

**RULE V.**

13 Pleadings are not required to be in any particular form, but  
 14 must be such as to enable a person of common understanding to  
 15 know what is meant.

**RULE VI.**

16 Where a defendant does not appear and answer, the plaintiff  
 17 must still prove his case before he can recover.



## RULE VII.

18 In an action or defence, founded on an account or an instrument  
19 for the payment of money only, it is sufficient for a party to de-  
20 liver the account or instrument to the justice and state that there  
21 is due him thereon from the adverse party a specified sum,  
22 which he claims to recover or set off.

*Evans v. Williamson, 79—86.*

## RULE VIII.

23 A variance between the evidence on the trial and the allegations  
24 in a pleading, shall be disregarded as immaterial, unless the court  
25 is satisfied that the adverse party has been misled to his prejudice  
26 thereby.

## RULE IX.

27 The pleadings may be amended at any time, before the trial, or  
28 during the trial, or upon appeal, when, by such amendment, sub-  
29 stantial justice will be promoted. If the amendment be made after  
30 the joining of the issue, and it appears to the satisfaction of the  
31 court, by oath, that an adjournment is necessary to the adverse  
32 party, in consequence of such amendment, an adjournment shall be  
33 granted. The court may also, in its discretion, require as a con-  
34 dition of an amendment the payment of costs to the adverse party.

*Hinton v. Deans, 75—18.*

## RULE X.

35 The justice may, at the joining of issue, require either party, at  
36 the request of the other, at that or some other specified time to ex-  
37 hibit his account or demand, or state the nature thereof as far forth  
38 as may be in his power; and in case of his default, the justice shall  
39 preclude him from giving evidence of such parts thereof as have  
40 not been so exhibited or stated.

## RULE XI.

41 Either party may demur to a pleading of his adversary, or to  
42 any part thereof, when it is not sufficiently explicit to enable him  
43 to understand it, or it contains no cause of action or defence, al-  
44 though it be taken as true.

## RULE XII.

45 If the justice deem the objection well founded, he shall order the  
46 pleading to be amended on such terms as he may think just; and

47 if the party refuse to amend, the defective pleading shall be disre-  
48 garded.

## RULE XIII.

49 The justice shall enter all his proceedings in a cause tried before  
50 him in his docket. No part of such proceedings must be entered  
51 on the summons, on the pleadings or on any other paper in the  
52 cause.

## RULE XIV.

53 Execution may be issued on a judgment, rendered in a justice's  
54 court, at any time within one year after the rendition thereof, and  
55 shall be returnable sixty days from the date of the same.

## RULE XV.

56 The provisions of the code of civil procedure, respecting forms  
57 of actions, parties to actions, the times of commencing actions, and  
58 the service of process upon corporations, shall apply to justice's  
59 courts.

Katzenstein v. R. & G. R. R. Co., 78—286.

## RULE XVI.

60 The defendant may, on the return of process and before answer-  
61 ing, make an offer in writing to allow judgment to be taken  
62 against him for an amount, to be stated in such offer, with costs.  
63 The plaintiff shall thereupon, and before any other proceeding be  
64 had in the action, determine whether he will accept or reject such  
65 offer. If he accept the offer, and give notice thereof in writing,  
66 the justice shall file the offer and the acceptance thereof, and ren-  
67 der judgment accordingly. If notice of acceptance be not given,  
68 and if the plaintiff fail to obtain judgment for a greater amount,  
69 exclusive of costs, than has been specified in the offer, he shall not  
70 recover costs, but shall pay to the defendant his costs accruing  
71 subsequent to the offer.

Rand v. Harris, 83—486.

## RULE XVII.

72 Any justice before whom an action is brought, may, on sufficient  
73 excuse therefor shown on the affidavit of either party or any per-  
74 son for him, continue such action from time to time for trial; but  
75 such continuance shall not exceed thirty days.

**Sec. 1218. Execution, on what and from what time, a lien.**

Executions issued by a justice, which must be directed to any  
 2 constable or other lawful officer of the county, shall be a lien on  
 3 the goods and chattels of the defendant named therein, from the  
 4 levy thereof only, but shall not be levied on or enforced in any  
 5 manner against real estate; but when such shall be made a judg-  
 6 ment of the superior court, as is elsewhere provided, it shall be  
 7 capable of being levied and collected out of any property of the  
 8 defendant, in execution, and it shall be a lien on the real estate  
 9 of said defendant, from the time when it becomes a judgment of the  
 10 superior court.

C. C. P., s. 505.  
 1868, c. 159, s. 5.

**Sec. 1219. Stay of execution; stay granted by justice.**

In all actions founded on contract, whereon judgments are ren-  
 2 dered in justices' courts, stay of execution, if prayed for at the trial  
 3 by the defendant or his attorney, shall be granted by the justices  
 4 in the following manner: For any sum not exceeding twenty-five  
 5 dollars, one month; any sum above twenty-five dollars and not  
 6 exceeding fifty dollars, three months; for any sum above fifty dol-  
 7 lars and not exceeding one hundred dollars, four months; for any  
 8 sum above one hundred dollars, six months. But no stay of exe-  
 9 cution shall be allowed in any action wherein judgment is ren-  
 10 dered on a former judgment taken before a justice of the peace.

C. C. P., s. 505 (a).  
 1868-'9, c. 272

**Sec. 1220. Security on stay of execution.**

The party praying for a stay of execution shall, within ten  
 2 days after the trial, give sufficient security, approved by the justice,  
 3 for payment of the judgment, with interest thereon till paid, and  
 4 cost; and the acknowledgment of the surety, entered by the justice  
 5 in his docket and signed by the surety, shall be sufficient to bind  
 6 such surety. If the judgment be not discharged at the time to  
 7 which execution has been stayed, the justice who awarded the  
 8 judgment shall issue execution against the principal, or surety, or  
 9 both.

C. C. P., s. 506.

*Barringer v. Allison*, 78—79.

**Sec. 1221. Former judgment.**

On the trial of an action founded on a former judgment, the  
 2 judgment itself shall be evidence of the debt, subject to such pay-  
 3 ments as have been made.

C. C. P., s. 507.

**Sec. 1222. Application for re-hearing.**

When a judgment has been rendered by a justice, in the absence  
 2 of either party, and when such absence was caused by the sickness,  
 3 excusable mistake or neglect of the party, such absent party, his  
 4 agent or attorney, may, within ten days after the date of such judg-  
 5 ment, apply for relief to the justice who awarded the same, by affi-  
 6 davit, setting forth the facts, which affidavit must be filed by the

C. C. P., s. 508



7 justice; whereupon the justice, if he deem the affidavit sufficient,  
 8 shall open the case for reconsideration; and to this end, he shall  
 9 issue a summons, directed to a constable, to cause the adverse party,  
 10 together with the witnesses on both sides, to appear before him at  
 11 a place and at a time, not exceeding twenty days, to be specified in  
 12 the summons, when the complaint shall be re-heard, and the same  
 13 proceedings had as if the case had never been acted on. If execu-  
 14 tion has been issued on the judgment, the justice shall direct an  
 15 order to the officer having such execution in his hands, command-  
 16 ing him to forbear all further proceedings thereon, and to return  
 17 the same to the justice forthwith.

*Froneburger v. Lee*, 66—333.

**Sec. 1223. Justice's judgment removed to another county, how.**

C. C. P., s. 509.

Any person, who may desire to have a justice's judgment in his  
 2 favor removed to another county to be enforced against the goods  
 3 and chattels of the defendant, must obtain from the justice who  
 4 rendered the judgment a transcript thereof, under his hand; and  
 5 must further procure a certificate from the clerk of the superior  
 6 court of the county where the judgment was rendered, under the  
 7 seal of his court, that the justice who gave the judgment was, at  
 8 the rendition thereof, a justice of said county. On such transcript  
 9 of the judgment, thus certified, any justice in any other county  
 10 may award execution for the sum therein expressed.

**Sec. 1224. Witnesses, penalties, &c.**

C. C. P., s. 510.

The justice, on application of either party, shall, by a subpoena  
 2 or by an order in writing on the process, direct the constable or  
 3 other officer to summon witnesses to appear and give testimony at  
 4 the time and place appointed for the trial. Each witness, failing  
 5 to appear, shall forfeit and pay eight dollars to the party at whose  
 6 instance he was summoned, and shall be further liable to such  
 7 party for all damage sustained by non-attendance. The fine herein  
 8 imposed may be recovered, on motion, before a justice who tried  
 9 the action, unless the witness, on a notice of five days, by affidavit  
 10 or other proof, show sufficient excuse for his failure to attend.

**Sec. 1225. Provisions of code of civil procedure applicable.**

C. C. P., s. 511.

The provisions of the code of civil procedure are applicable, ex-  
 2 cept as herein otherwise directed, to proceedings in justice's courts  
 3 concerning "*arrest and bail*," substituting the word "*constable*" for  
 4 the word "*sheriff*," and the words "*justice of the peace*" for the words  
 5 "*judge, court or clerk*," whenever they occur in said chapter.

**Sec. 1226. Arrest, in what cases.**

C. C. P., s. 512.

The defendant may be arrested in the following cases:  
 2 (1) When the defendant has been guilty of a fraud in contract-  
 3 ing the debt or obligation for which the action is brought;

4 (2) When the defendant is not a resident of the state, or is about  
5 to remove therefrom ;

6 (3) When the defendant has removed or disposed of his prop-  
7 erty, or is about to do so, with intent to defraud his creditors.

**Sec. 1227. Order of arrest, by whom made.**

An order for the arrest of the defendant must be obtained from C. C. P., s. 513.  
2 the justice of the peace before whom the action is brought.

**Sec. 1228. Affidavit to obtain order.**

The order may be made where it appears to the justice of the C. C. P., s. 514.  
2 peace, by affidavit of the plaintiff or of any other person, that a  
3 sufficient cause of action exists, and that the case is one of those  
4 mentioned in section twelve hundred and twenty-six of this chapter.

**Sec. 1229. Provisions of code of civil procedure applicable.**

The provisions of the code of civil procedure are applicable to C. C. P., s. 516.  
2 proceedings by attachment before justices of the peace, in all cases  
3 founded on contract wherein the sum demanded does not exceed two  
4 hundred dollars, and where the title to real estate is not in con-  
5 troversy.

Weaver v. Roberts, 84—493; Faulk v. Smith, 84—501.

**Sec. 1230. Jury list furnished to each justice.**

The clerk of the board of commissioners shall furnish, on de- C. C. P., s. 517.  
2 mand, to each justice of the peace in the county, a list of the jurors  
3 for the township for which such justice is elected or appointed.

**Sec. 1231. Justice to keep jury box.**

Each justice shall keep a jury box, having two divisions marked C. C. P., s. 518.  
2 respectively number one and number two, and having two locks,  
3 the key to be kept by the justice.

**Sec. 1232. Names of jurors to be deposited in jury box.**

Each justice shall cause the names on his jury list to be written C. C. P., s. 519.  
2 on small scrolls of paper of equal size, and to be placed in the jury  
3 box, in division marked number one, until drawn out for the trial  
4 of an issue as required by law.

**Sec. 1233. When trial by jury demanded or waived.**

A trial by jury must be demanded at the time of joining the C. C. P., s. 520.  
2 issue of fact; and if neither party demand at such time a jury,  
3 they shall be deemed to have waived a trial by jury.

**Sec. 1234. Jury drawn and trial postponed.**

When a trial by jury is demanded, the justice shall immediately, C. C. P., s. 521.  
2 in the presence of the parties, proceed to draw the names of twelve  
3 jurors from division marked number one of the jury box; and the

4 trial of the cause shall thereupon be postponed to a time and place  
5 to be fixed by the justice.

**Sec. 1235. Summoning of the jury.**

C. C. P., s. 522.

A list of the jurors so drawn shall be immediately delivered by  
2 the justice to any constable, or other lawful officer, with an order  
3 indorsed thereon, directing him to summon the persons named in  
4 the list to appear as jurors at the time and place fixed for the trial;  
5 and it is the duty of the officer to proceed forthwith to summon  
6 such jurors, or so many of them as can be found, according to the  
7 order; and he shall make return thereof at the time and place ap-  
8 pointed, stating in his return the names of the jurors summoned  
9 by him.

**Sec. 1236. The jury for the trial of the cause.**

C. C. P., s. 523.

At the time and place appointed, and on return of the order, if  
2 the trial be not further adjourned, and if adjourned, then at the  
3 time and place to which the trial shall be adjourned, the justice  
4 shall proceed, in the presence of the parties, to draw from the  
5 jurors summoned the names of six persons to constitute the jury  
6 for the trial of the issue.

**Sec. 1237. Challenge.**

C. C. P., s. 524.

Each party shall be entitled to challenge, peremptorily, two of  
2 the persons drawn as jurors.

**Sec. 1238. What names to be returned to the jury box, or destroyed.**

C. C. P., s. 525.

The scrolls containing the names of jurors not summoned, if  
2 any, and of those summoned, but not drawn, and of those drawn,  
3 but challenged and set aside, must be returned by the justice to  
4 his jury box, in division marked number one; *Provided*, that the  
5 scrolls containing the names of such as are not legally liable,  
6 or legally qualified to serve as jurors, shall be destroyed.

**Sec. 1239. Tales jurors may be summoned.**

C. C. P., s. 526.

If a competent and indifferent jury is not obtained from the  
2 twelve jurors drawn as specified in section twelve hundred and  
3 thirty-four, the justice may direct others to be summoned, from  
4 the bystanders, sufficient to complete the jury.

**Sec. 1240. Jury sworn and impaneled; verdict.**

C. C. P., s. 527.

The jury shall be sworn and impaneled by the justice, who  
2 shall record their verdict in his docket and enter a judgment in  
3 the case according to such verdict.

**Sec. 1241. New trial; appeal.**

C. C. P., s. 528.

A new trial is not allowed in a justice's court in any case what-



2 ever; but either party dissatisfied with the judgment in such court  
3 may appeal therefrom to the superior court, as hereinafter pre-  
4 scribed.

Froneberger v. Lee, 66—333.

**Sec. 1242. Less than six may be a jury, when.**

Six jurors shall constitute a jury in a justice's court, but, by C. C. P., s. 529.  
2 consent of both parties, a less number may constitute it.

**Sec. 1243. Not compelled to serve out of township.**

No person is compelled to serve as a juror in a justice's court, C. C. P., s. 530.  
2 out of his own township, except as a talesman.

**Sec. 1244. Jurors serving on trial.**

The scrolls containing the names of the jurors who serve on the C. C. P., s. 531  
2 trial of an issue must be placed in the jury-box in division marked  
3 number two, until all the scrolls in division marked number one  
4 have been drawn out. As often as that may happen, the whole  
5 number of scrolls shall be returned to division marked number  
6 one, to be drawn out as in the first instance.

**Sec. 1245. Deposit of jury fees.**

Before a party is entitled to a jury, he shall deposit with the jus- C. C. P., s. 532.  
2 tice the sum of three dollars for jury fees, and the justice shall pay  
3 to all persons who attend, pursuant to the summons, as well to  
4 those who do not actually serve as to those who do serve, twenty-  
5 five cents each, to be included in the judgment as part of the costs,  
6 in case the party demanding the jury recover judgment, but not  
7 otherwise. The justice shall refund to the party the fees of all  
8 jurors who do not attend.

**Sec. 1246. Adjournment after return of the jury.**

No adjournment shall be granted after the return of the jury, C. C. P., s. 533  
2 unless the party asking the same shall, in addition to the other  
3 conditions imposed on him by law or by the justice, deposit with  
4 the justice, to be immediately paid to the jurors attending, the sum  
5 of twenty-five cents each, such amount to be in no case included  
6 in the judgment as part of the costs. On such adjournment, the  
7 jurors shall attend at the time and place appointed, without further  
8 summons or notice; and the fees for the jury, deposited with the  
9 justice according to the preceding section, shall remain in his  
10 hands until the jury are impaneled on the trial, and shall be then  
11 immediately paid to the jurors or to the party entitled thereto.

**Sec. 1247. No process issued by justice outside his own county, &c.**

No process shall be issued by any justice of the peace to any 1876-'7, c. 237, s. 1.  
2 county other than his own, unless one or more *bona fide* defendants  
3 shall reside in, and also one or more *bona fide* defendants shall re-

4 side outside of, his county; in which case, only, he may issue pro-  
 5 cess to any county in which any such non-resident defendant re-  
 6 sides.

Lilly v. Purcell, 78—82.

**Sec. 1248.** Process issued from a justice of the peace in one county on a party in another county rendered valid by indorsement of justice in defendant's county.

1870-'1, c. 60, s. 1.

In all civil actions in courts of justices of the peace where one  
 2 or more of the defendants may reside in a county other than that  
 3 of the plaintiff, it shall be lawful for any justice of the peace within  
 4 the county where such defendant or defendants may reside, upon  
 5 proof of the hand-writing of the justice of the peace who issued  
 6 the process, to indorse his name on the same, or a duplicate thereof,  
 7 and such process so indorsed shall be executed in like manner as  
 8 if it had been originally issued by the justice indorsing it.

Wooten v. Maulsby, 69—462; Self v. Jenkins, 71—578; Sossamer v. Hinson, 72—578; Lilly v. Purcell, 78—82.

**Sec. 1249.** Certificate of the clerk of superior court; entry of date.

1870-'1, c. 60, s. 2.

In all cases referred to in the preceding section, it shall be lawful  
 2 for the clerk of the superior court of the county in which the ac-  
 3 tion is brought, to certify, under the seal of his court, on the pro-  
 4 cess or a duplicate thereof, that the justice of the peace who issued  
 5 the same is an acting justice of the peace in his county. And in  
 6 all such cases it shall be the duty of any sheriff or constable to  
 7 whom it may be directed, to make an entry of the date of its re-  
 8 ception, and to execute the same as provided for the service of civil  
 9 process in courts of justices of the peace, and return it by mail to  
 10 the justice of the peace from whose court it issued.

**Sec. 1250.** No process served under ten days' notice.

1870-'1, c. 60, s. 3.  
 1876-'7, c. 57.

No justice of the peace shall enter a judgment under the pro-  
 2 visions of the two preceding sections against any defendant who  
 3 may be a non-resident of his county, unless it shall appear that  
 4 the process was duly served upon him at least ten days before the  
 5 return day of the same.

**Sec. 1251.** Appeal; execution.

C. C. P., s. 534.  
 1876-'7, c. 251, s. 6.

The party against whom judgment is rendered in any civil ac-  
 2 tion in a justice's court may appeal to the superior court from the  
 3 same; but no appeal shall prevent the issuing of an execution on  
 4 such judgment or work a stay thereof, except as hereinafter pro-  
 5 vided.

Marshall v. Lester, 2 Mur., 227; Grissett v. Smith, Phil., 164; Critcher v. McCadden, 64—262; Steadman v. Jones, 65—388; Froneberger v. Lee, 66—333; Marsh v. Cohen, 68—283; Green v. Hobgood, 74—234; Carmer v. Evers, 80—55; Koonce v. Pelletier, 82—236.

**Sec. 1252.** Appeal; when to be taken.

C. C. P., s. 535.  
 1876-'7, c. 251, s. 7.

The appellant shall, within ten days after judgment, serve a

2 notice of appeal, stating the grounds upon which the appeal is  
3 founded. If the judgment is rendered upon process not personally  
4 served, and the defendant did not appear and answer, he shall  
5 have fifteen days, after personal notice of the rendition of the  
6 judgment, to serve the notice of appeal herein provided for.

Steadman v. Jones, 65—388; Marsh v. Cohen, 68—283; Green v. Hobgood, 74—234; McDonald v. Watkins, 76—399; Sparrow v. Davidson College, 77—35; Chester and Lenoir R. R. Co. v. Richardson, 82—343.

**Sec. 1253. When appellant not to give written notice.**

Where any party prays an appeal from a judgment rendered in  
2 a justice's court, and the adverse party is present in person or by  
3 attorney at the time of the prayer, the appellant shall not be com-  
4 pelled to give any written notice of appeal either to the justice or  
5 to the adverse party.

1869-'70, c. 187, s. 1.  
1876-'7, c. 251, s. 8.

Shepherd v. Lane, 2 Dev., 148; Croom v. Morrissey, 63—591; Steadman v. Jones, 65—388; Marsh v. Cohen, 68—283; Com'rs of Edenton v. Capeheart, 71—156; Richardson v. Debnam, 75—399; Suttle v. Green, 78—76.

**Sec. 1254. Justice to make return of the appeal to the clerk of the appellate court within ten days.**

The justice shall, within ten days after the service of the notice  
2 of appeal on him, make a return to the appellate court and file  
3 with the clerk thereof the papers, proceedings and judgment in  
4 the case, with the notice of appeal served on him. He may be  
5 compelled to make such return by attachment. But no justice  
6 shall be bound to make such return until the fees, prescribed by  
7 law for this service, be paid him. The fee so paid shall be in-  
8 cluded in the costs, in case the judgment appealed from is reversed.

C. C. P., s. 537.

Ledbetter v. Osborne, 66—379.

**Sec. 1255. If return defective, it may be amended.**

If the return be defective, the judge or clerk of the appellate court  
2 may direct a further or amended return, as often as may be neces-  
3 sary, and may compel a compliance with the order by attachment.

C. C. P., s. 538.

**Sec. 1256. Clerk of superior court to docket appeal.**

When the return is made, the clerk of the appellate court shall  
2 docket the case on his trial docket, for a new trial of the whole mat-  
3 at the ensuing term of said court.

C. C. P., s. 539.  
1876-'7, c. 251, s. 8.

Cowles v. Hays & Cooper, 67—128; Com'rs of Jackson v. Addington, 68—254; Com'rs of Edenton v. Capeheart, 71—156.

**Sec. 1257. The appeal to be heard on the original papers.**

The appeal shall, in all cases, be heard on the original papers,  
2 and no copy thereof need be furnished for the use of the appellate  
3 court.

C. C. P., s. 540.

Ledbetter v. Osborne, 66—379; Com'rs of Edenton v. Capeheart, 71—156.



**Sec. 1258. Execution of judgment, how stayed.**

C. C. P., s. 541.

If the appellant desire a stay of execution of the judgment, he  
2 may apply, at any time, to the clerk of the appellate court for leave  
3 to give the undertaking, as provided in a subsequent section; who  
4 shall, upon the undertaking being given, make an order that all  
5 proceedings on the judgment be stayed.

Rush v. Halcyon Steamboat Co., 68—82; Derr v. Stubbs, 83—539.

**Sec. 1259. Appellant may give undertaking.**

1869-70, c. 187, s. 2.

In all cases of appeal from justices' courts the appellant may  
2 give an undertaking for the appeal before the justice who tried the  
3 cause, and who shall indorse his approval thereon, instead of be-  
4 fore the clerk of the appellate court.

**Sec. 1260. Same, undertaking to be given.**C. C. P., s. 542.  
1879, c. 68.

The undertaking shall be in writing, executed by one or more  
2 sufficient sureties, to be approved by the justice or clerk making  
3 the order, to the effect that if judgment be rendered against the  
4 appellant, the sureties will pay the amount together with all costs  
5 awarded against the appellant, and when judgment shall be ren-  
6 dered against the appellant, the appellate court shall give judg-  
7 ment against the said sureties.

Rush v. Halcyon Steamboat Co., 68—72; Bank v. McArthur, 82—107; Hamilton v. Mooney,  
84—12; Brown v. Brittain, 84—552.

**Sec. 1261. Same, delivery and service of order on whom.**

C. C. P., s. 543.

A delivery of a certified copy of the order hereinbefore men-  
2 tioned to the justice of the peace, shall stay the issuing of the exe-  
3 cution on the judgment; if it have been issued, the service of a  
4 certified copy of such order on the officer holding the execution  
5 shall stay further proceedings thereon. A certified copy of such  
6 order shall also be served on the respondent, or on his agent or  
7 attorney, within ten days after the making thereof.

**Sec. 1262. Restitution.**

C. C. P., s. 544.

If the judgment appealed from, or any part thereof, be paid or  
2 collected, and the judgment be afterwards reversed, the appellate  
3 court shall order the amount paid or collected to be restored, with  
4 interest from the time of such payment or collection. The order  
5 may be obtained on proof of the facts made at or after the hearing  
6 of the appeal, on a previous notice of six days. If the order be  
7 obtained before the judgment of reversal is entered, the amount  
8 may be included in the judgment.

**Sec. 1263. Jurisdiction, where property does not exceed fifty dollars.**

1876-7, c. 251, s. 1.

Justices of the peace shall have concurrent jurisdiction of civil

2 actions not founded on contract, wherein the value of the property  
3 in controversy does not exceed fifty dollars.

Krider v. Ramsay, 79—354; McDonald v. Cannon, 82—245; Womble v. Leach, 83—84; Jones v. Palmer, 83—303; Boyce v. Williams, 84—275.

**Sec. 1264. Recovery of damages to real estate.**

All actions in a court of a justice of the peace for the recovery 1876-'7, c. 251, s. 2.  
2 of damages to real estate, or for the conversion of personal property,  
3 or any injury thereto, shall be commenced and prosecuted to judg-  
4 ment under the same rules of procedure as provided in civil ac-  
5 tions in a justice's court.

**Sec. 1265. Claim and delivery of personal property.**

The provisions of the code of civil procedure are applicable, ex- 1876-'7, c. 251, s. 3.  
2 cept as herein otherwise provided, to proceedings in justices'  
3 courts concerning claim and delivery of personal property, substi-  
4 tuting the words "justice of the peace" for "clerk or clerks of the  
5 court," and inserting the words, "or constable" after "sheriff,"  
6 whenever they occur.

**Sec. 1266. When a delivery is claimed.**

When a delivery is claimed an affidavit must be made by the 1876-'7, c. 251, s. 4.  
2 plaintiff, his agent or attorney, before the justice in whose court  
3 the action is to be tried or some other justice of the peace, showing:  
4 (1) That the plaintiff is the owner of the property claimed (par-  
5 ticularly describing it) or is lawfully entitled to its possession by  
6 virtue of a special property therein, the facts in respect to which  
7 shall be set forth;  
8 (2) That the property is wrongfully detained by the defendant;  
9 (3) The alleged cause of detention thereof according to his best  
10 knowledge, information and belief;  
11 (4) That the same has not been taken for a tax assessment or  
12 fine pursuant to a statute, or seized under an execution or attach-  
13 ment against the property of the plaintiff, or if so seized that it is  
14 by statute exempt from such seizure; and  
15 (5) The actual value of this property.

**Sec. 1267. Sufficiency of sureties.**

The defendant within three days after the service of a copy of 1876-'7, c. 251, s. 5.  
2 the affidavit and undertaking may give notice to the officer serv-  
3 ing the same, to the plaintiff or his attorney, that he excepts to  
4 the sufficiency of the sureties; if he fail to do so he shall be deemed  
5 to have waived all objection to them. When the defendant excepts  
6 to the sureties they shall justify before the justice on giving to the  
7 defendant or his attorney notice of the time and place, which shall  
8 not be more than three days from the service of notice of the ex-  
9 ception, and the sheriff or constable shall be responsible for the  
10 sufficiency of the sureties until the objection to them is waived as

11 above provided, or until they shall justify or new sureties shall be  
12 substituted and justify.

**Sec. 1268. Criminal jurisdiction of justices of the peace.**

Const., Art. IV, s.  
27.  
1879, c. 92, ss. 2, 11.  
1881, c. 210.

Justices of the peace shall have exclusive original jurisdiction  
2 of all assaults, assaults and batteries, and affrays, where no deadly  
3 weapon is used and no serious damage is done, and of all criminal  
4 matters arising within their counties, where the punishment pre-  
5 scribed by law shall not exceed a fine of fifty dollars, or imprison-  
6 ment for thirty days: *Provided*, that justices of the peace shall  
7 have no jurisdiction over assaults with intent to kill, or assaults  
8 with intent to commit rape, except as committing magistrates:  
9 *And provided further*, that nothing in this section shall prevent the  
10 superior, inferior or criminal courts from finally hearing and  
11 determining such affrays as shall be committed within one mile of  
12 the place where and during the time such court is being held; nor  
13 shall this section be construed to prevent said courts from assum-  
14 ing jurisdiction of all offences whereof exclusive original juris-  
15 diction is given to justices of the peace, if some justice of the  
16 peace, within six months after the commission of the offence, shall  
17 not have proceeded to take official cognizance of the same.

*State v. Johnson*, 64—581; *State v. Hampton*, 77—526; *State v. Edney*, 80—360; *State v. Moore*, 82—659; *State v. Taylor*, 84—773; *State v. Reaves*, 85—553. See *passim*, 1868—'9, c. 178, sub c. 4, s. 2.

**Sec. 1269. Additional jurisdiction, peace warrants, bastardy, &c.**

1879, c. 92, s. 2.

Justices of the peace shall also have exclusive original jurisdic-  
2 tion of all such peace warrants and proceedings thereunder as they  
3 shall assume jurisdiction of, and of all bastardy proceedings and  
4 issues arising thereunder, and to take bonds from defendants in  
5 such proceedings, as provided for in the chapter entitled "Bas-  
6 tardy."

*State v. Bass*, 75—139; *State v. Cooley*, 78—538; *State v. Parish*, 83—613; *State v. Sneed*, 84—816.

**Sec. 1270. Proceedings on peace warrant.**

1879, c. 92, s. 9.

Whenever any person complained of on a peace warrant shall  
2 be brought before a justice of the peace, such person may be re-  
3 quired to enter into a recognizance, payable to the state of North  
4 Carolina in such sum not exceeding one thousand dollars, as such  
5 justice shall direct, with one or more sufficient sureties, to appear  
6 before some justice of the peace within a period not exceeding six  
7 months, and not depart the court without leave, and in the mean-  
8 while to keep the peace and be of good behavior towards all the  
9 people of the state, and particularly towards the person requiring  
10 such security.

**Sec. 1271. When justices of the peace to issue bastardy warrant.**

1879, c. 116.

No justice of the peace shall issue any warrant in bastardy cases  
2 except on the voluntary affidavit and complaint of the mother of



3 the child, or on the affidavit of one of the board of county commis-  
 4 sioners that said bastard child is a pauper and about to become  
 5 chargeable to the county.

**Sec. 1272.** Party convicted to pay costs; if accused acquitted, complainant to pay costs.

The party convicted in a criminal action or proceeding before a  
 2 justice, shall always be adjudged to pay the costs; and if the party  
 3 charged be acquitted, the complainant shall be adjudged to pay  
 4 the costs; and may be imprisoned for the non-payment thereof, if  
 5 the justice shall adjudge that the prosecution was frivolous or  
 6 malicious. But in no action or proceeding, commenced or tried in  
 7 a court of a justice of the peace, shall the county be liable to pay  
 8 any costs.

1868-'9, c. 178, sub  
 chap. 4, s. 19.  
 1879, c. 92, s. 3.  
 1881, c. 176.

**Sec. 1273.** When justice has not final jurisdiction, must commit accused to prison, or require recognizance for his appearance to the next term of the court having jurisdiction.

In all cases where a justice of the peace shall not have final ju-  
 2 risdiction of the offence, he shall desist from any final determina-  
 3 tion of the action or complaint, and either commit the accused to  
 4 prison, or require from him a recognizance with sufficient sureties  
 5 and in a sufficient amount for his appearance at the next term of  
 6 any court of his county having jurisdiction, to answer the charge.  
 7 He shall also bind the complainant and the witnesses over to ap-  
 8 pear in like manner and testify; and he shall return the papers,  
 9 with a statement of his proceedings to the clerk of the court on or  
 10 before the first day of the next term thereof.

1868-'9, c. 178, sub  
 chap. 4, s. 7.  
 1879, c. 302, s. 2.

*State v. Sneed, 84—816.*

**Sec. 1274.** When justice is satisfied that he has jurisdiction, he shall proceed to determine the case.

When the justice shall be satisfied that he has jurisdiction, if no  
 2 jury shall be asked for he shall proceed to determine the case, and  
 3 shall either acquit the accused or find him guilty, and sentence  
 4 him to such punishment as the case may require, not to exceed  
 5 in any case a fine of fifty dollars, or imprisonment in the county  
 6 jail for thirty days.

1868-'9, c. 178, sub  
 chap. 4, s. 8.

**Sec. 1275.** Jury to be allowed, if asked for.

If either the complainant or the accused shall ask for it, the jus-  
 2 tice shall all allow a trial by jury, as is provided in civil actions be-  
 3 fore justices of the peace.

1868-'9, c. 178, sub  
 chap. 4, s. 9.

**Sec. 1276.** What to be submitted to the jury.

In case a trial by jury shall be had, the justice shall submit to  
 2 the jury in each case simply the question of the guilt or innocence  
 3 of the accused of the offence charged, and shall enter the verdict on  
 4 his docket, and adjudge accordingly.

1868-'9, c. 178, sub  
 chap. 4, s. 10.

**Sec. 1277. Either party may appeal; trial *de novo* in superior court.**

1868-'9, c. 178, sub  
chap. 4, s. 11.  
1879, c. 92, s. 10.

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.

State v. Quick, 72—241; State v. Murdock, 85—598.

**Sec. 1278. Justice to transmit papers to clerk of appellate court; what his return to set forth.**

1868-'9, c. 178, sub  
chap. 4, s. 12.

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 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.

**Sec. 1279. Either party paying fees, entitled to copy of complaint and other papers.**

1868-'9, c. 178, sub  
chap. 4, s. 13.

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.

**Sec. 1280. Finding and sentence pleaded in bar of indictment.**

1868-'9, c. 178, sub  
chap. 4, s. 14.

Such finding and sentence may be pleaded in bar of any indictment subsequently found for the same offence.

**Sec. 1281. Justice to imprison the guilty party, if fine and costs not paid.**

1868-'9, c. 178, sub  
chap. 4, s. 15.

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 jail until the same shall be paid, or until he shall be otherwise discharged according to law.

**Sec. 1282. Imprisoned party to pay costs before discharged.**

1868-'9, c. 178, sub  
chap. 4, s. 16.

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 until he shall otherwise be discharged according to law.

State v. Cannady, 78—539.

**Sec. 1283.** Justices of the peace to make returns of all criminal actions disposed of by them to the clerk of the superior or inferior court.

It shall be the duty of each justice of the peace on or before 1869-'70, c. 110.  
 2 Monday of every term of the superior or inferior court of his  
 3 county, to furnish the clerk of said court with a list of the names  
 4 and offences of all parties tried and finally disposed of by such  
 5 justice of the peace, together with the papers in each case, in all  
 6 criminal actions, since the last term of the superior or inferior  
 7 court. The clerk of the court shall hand a copy of such list to  
 8 the solicitor and to the grand jury at each term of the court; and  
 9 no indictment shall be found against any party whose case has  
 10 been so finally disposed of by any justice of the peace: *Provided*,  
 11 that this section shall not be deemed to extend or enlarge or other-  
 12 wise affect the jurisdiction of justices of the peace, except as pro-  
 13 vided by law.

**Sec. 1284.** Actions removable from one justice of the peace to another upon affidavit; proviso.

In all proceedings and trials, both criminal and civil, before jus- 1880, c. 15.  
 2 tices of the peace, the justice before whom the writ or summons is  
 3 returnable, shall upon affidavit made by either party to the action  
 4 that he is unable to obtain justice before him, move the same to  
 5 some other justice residing in the same township, or to the justice  
 6 of some neighboring township if there be no other justice in said  
 7 township: *Provided*, that no cause shall be more than once re-  
 8 moved.

**Sec. 1285.** Process, &c., not to be quashed for want of form.

No process or other proceeding begun before a justice of the  
 2 peace, whether in a civil or a criminal action, shall be quashed or  
 3 set aside, for the want of form, if the essential matters are set forth  
 4 therein; and the court in which any such action shall be pending,  
 5 shall have power to amend any warrant, process, pleading or pro-  
 6 ceeding in such action, either in form or substance, for the further-  
 7 ance of justice, on such terms as shall be deemed just, at any time  
 8 either before or after judgment.

Clark v. Hellen, 1 Ire., 421; Green v. DeBerry, 2 Ire., 344; Green v. Cole, 13 Ire., 425; State v. Bryson, 84—780.

**Sec. 1286.** Forms to be used in justice's court.

The following forms, or substantially similar, shall be sufficient 1868-'99, c. 191.  
 2 in all cases of proceedings in civil actions, provided for in this  
 3 chapter:



## [ No. 1. ]

## COMMON FORM.

A..... B..... }  
                   *against*  
 C..... D..... } Justice's Court.

State of North Carolina, to any constable or other lawful officer of ..... county, GREETING:

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.

(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;

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. ]

## AFFIDAVIT TO OBTAIN ATTACHMENT.

*General Form.*

A..... B..... }  
                   *against*  
 C..... D..... } County of .....

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, §§714, 718.)

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, §714. 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.)

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.....  
                    *against*  
The Highland Mining Company. } County of .....

A. B., the plaintiff above named, being duly sworn, deposes and says:  
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.

(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:  
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.

A..... B.....  
                    *vs.*  
C..... D..... } Justice's Court.

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 giving the undertaking as 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 INDORSED ON ATTACHMENT.

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.

A..... B..... }  
           *against* } County of .....  
 C..... D..... }

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.)

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.

A..... B..... }  
           *against* } Justice's Court.  
 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.)

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.

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 indebtedness, 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 indorse on the copy of the attachment served with the above notice, the following 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.

A..... B..... }  
*against.* } Justice's Court.  
C..... D..... }

County of .....

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.

A..... B..... }  
*against* } Justice's court.  
C..... D..... }

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.)

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.

(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;

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 .....

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.

A..... B.....  
          *against*  
C..... D..... } Justice's Court.

County of .....

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.

A..... B.....  
          *against*  
C..... D..... } Attachment.

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 case may be,) on the ..... day of ....., 18....., when and where the defendant is required to appear and answer the complaint.

Dated this ..... day of ....., 18.....

A. B....., *Plaintiff.*

[No. 17.]

#### AFFIDAVIT FOR ARREST ON DEBT FRAUDULENTLY CONTRACTED.

A..... B.....  
          *against*  
C..... D..... } County of .....

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 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 the order of plaintiff;

2. 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 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.

(Title as in preceding form.)

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 to and subscribed before me, this ..... day ....., 18...

G. W. H.....,

*Justice of the Peace.*

[ No. 19. ]

UNDERTAKING ON ARREST.

A..... B..... }  
*against*  
 C..... D..... } County of .....

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.

A..... B..... }  
*against*  
 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:

For the causes stated in the annexed affidavit:

You are required forthwith to arrest C. D., the defendant named above, and hold him to





[ No. 25.]

JUSTIFICATION OF BAIL.

A..... B..... }  
    *against*                 } Justice's court.  
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:

- 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.)  
(And 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.

A..... B..... }  
    *against*                 } Justice's court.  
C..... D..... }

County of .....

The bail of the defendant, C. D., within mentioned, having appeared before me and justified, I do find the said bail sufficient and allow the same.

Dated this ..... day of ....., 18....

G. W. H.....  
Justice of the Peace.

[No. 27.]

SUBPÆNA TO TESTIFY.

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

To S. T..... Greeting: (The Justice may insert any number of necessary 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 pending 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 subpœna, indorse 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 number 27 as far down as the asterisk\*; and then add the following clause:

"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 number 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.

[No. 31.]

## PROCEEDINGS AGAINST DEFAULTING WITNESS.

When a witness, under subpœna, fails to attend, the justice will note the fact in his docket by some such entry as the following:

"R. P., a witness summoned on behalf of the plaintiff, called and failed."

If the party, who suffers by default of the witness, wishes to move for the penalty against him, he will serve substantially the following notice on the witness:

A..... B..... }  
                   *against* } County of .....  
 C..... D..... }

To R. P.:

Take notice, that on the ..... of ....., 18..., 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 ..... dollars, forfeited by reason of your failure to appear and give evidence on said trial as you were summoned to do.

Dated this ..... day of ....., 18...

A. B.....  
*Plaintiff.*

The justice will enter the proceedings on the foregoing notice on his docket as follows:

A..... B..... } Justice's Court.  
                   *against* } Motion for penalty against R. P., defaulting witness.  
 C..... D..... }

..... day of ....., 18...: A. B. above named appears, and, according to a notice filed and duly served on R. P., moved for the penalty of ..... 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 on 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 ..... dollars, penalty forfeited by reason of the premises, and the further sum of ..... dollars, costs of this motion.

## [ No. 32.]

## FORM OF A VENIRE.

The justice will make a list of the persons drawn by him as jurors, and indorse 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 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 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. H., Esq., a justice of the peace for your county, at his office in said county, on ..... 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 plaintiff, 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 justice, this ..... day of ....., 18...

G. W. H.....  
*Justice of the Peace.*

## [No. 36.]

## DEMURRER TO COMPLAINT.

A..... B..... }  
                   *against* } Justice's court.  
 C..... D..... }

County of .....

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.

(Title as above.)

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 understand it.)

(Signature of plaintiff or plaintiff's attorney.)

## [No. 38.]

## JUDGMENT UPON DEMURRER.

NOTE.—If the justice thinks the objection raised by the demurrer to the pleadings is well founded, he will make this entry on 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 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 deem 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.]

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..... }  
                   *against* } Justice's Court.  
 C..... D..... }

..... 18.... Summons issued; returnable on the .... instant, at my office.  
 ..... 18.... Summons returned, served on defendant by O. P. M., constable, on the  
 ..... instant; both parties appear, the plaintiff in person, the defendant by R. H. R., Esq., at-  
 torney.

The plaintiff complains of a promissory note executed by the defendant to him, dated  
 ..... 18...., payable one day after date, for \$....., and also for goods, sold and delivered to  
 the defendant, and claims damages for \$.....

The defendant answers and denies each and every allegation in the complaint; and claims  
 a set off of \$..... for wood sold and delivered to the plaintiff, and also of \$.... 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 .....  
 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.

..... 18.... 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 ap-  
 pear. (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 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 return into open court and publicly deliver their verdict, by which they find in  
 favor of the plaintiff for \$..... damages; whereupon, I adjudge that the plaintiff do recover of  
 the defendant—

Damages,.....\$.....

Costs,.....

..... 18.... Execution issued for above judgment to O. P. M., constable.

..... 18.... 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.

## CHAPTER THIRTY-FOUR.

### COURTS—SUPERIOR.

#### SECTION.

- 1287. Superior courts; state divided into nine  
       judicial districts; courts, how opened  
       and held.
- 1288. Rotation of judges.
- 1289. Notification of ridings.
- 1290. Special terms; exchange of courts.

#### SECTION.

- 1291. Special terms.
- 1292. Notice to chairman.
- 1293. Powers, &c.
- 1294. Terms to last, how long.
- 1295. Certificate of attendance.



## SECTION.

1296. All persons bound to attend, as at regular terms; no process except subpoenas returnable thereto.
1297. Subpoenas.
1298. Grand juries.
1299. Parties may apply to superior court for relief in vacation.
1300. Court of oyer and terminer; powers and appeals.
1301. Where held, &c.
1302. Judge to fix time of session, &c.
1303. Special venire.
1304. Witnesses to be summoned, &c.
1305. Courts of oyer and terminer may remove trials to another county.
1306. Commission to be copied and recorded, when.
1307. Notification shall be given in case of removal of any cause or trial.
1308. As many courts shall be held as necessary.
1309. Original jurisdiction of superior court.
1310. Appellate jurisdiction.
1311. Judge to take oath; oaths subscribed and returned to secretary of state.
1312. Minutes of preceding day to be read each morning.
1313. If judge of a superior court not present, court to be adjourned, when.
1314. Constable attending juries to be sworn, for what purpose.
1315. Process not to be executed on Sunday.
1316. When there is no officer, or he will not execute process, on affidavit, the clerk shall direct process to the sheriff of adjoining county.

## SECTION.

1317. When process to issue to sheriff of adjoining county.
1318. Sheriff executing process out of his county to have extra pay.
1319. If defendant in penal suit plead former judgment, plaintiff may reply fraud; release of the action void; defendant pleading falsely indictable.
1320. Payment or satisfaction may be pleaded in suits on bond and judgment; also payment or satisfaction after the day of paying; in suits or bonds conditioned to be discharged by a less sum.
1321. In suits on penal bonds, the sum due, interest and costs being brought into court, penalty shall be discharged.
1322. Judgments to stand till reversed.
1323. Leap year day, how counted.
1324. Non-suit not allowed after verdict.
1325. Party in execution not to be discharged on habeas corpus.
1326. Death between verdict and judgment, not error, if, &c.
1327. Surveys ordered in cases of disputed boundary; how and by whom made; charges for surveys to be taxed as costs.
1328. Return on notice; evidence.
1329. Speedy collection of proceeds of judicial sales, by motion.
1330. Purchasers under judicial sales protected; deemed legal owners.
1331. Quakers may wear hats in court.
1332. Certain cases pending in courts of equity and county courts to be transferred.

**Sec. 1287. Superior courts; state divided into nine judicial districts; courts, how opened and held.**

Const. Art. IV, s.  
10.  
1866-'7, c. 255.

A superior court shall be held by a judge thereof at the court house in each county. The state shall be divided into nine judicial districts, and the superior courts in the several counties shall be opened and held at the times hereinafter expressed, and each court shall continue in session one week or more, as the business may require and this chapter will allow, unless the business thereof shall be sooner disposed of, namely :

## FIRST JUDICIAL DISTRICT.

1876-'7, c. 251, s. 1.  
1876-'7, c. 288, ss. 1,  
2.  
1879, c. 20, s. 1.  
1879, c. 275, ss. 1, 2.

8 The first judicial district shall be composed of the following  
9 counties, and the superior courts thereof shall be held at the fol-  
10 lowing times, to-wit :

- 11 *Currituck*—First Monday of March and September.
- 12 *Camden*—Second Monday of March and September.
- 13 *Pasquotank*—Third Monday of March and September.
- 14 *Perquimans*—Fourth Monday of March and September.

- 15 *Chowan*—First Monday after the fourth Monday of March and  
 16 September.  
 17 *Gates*—Second Monday after the fourth Monday of March and  
 18 September.  
 19 *Hertford*—Third Monday after the fourth Monday of March and  
 20 September.  
 21 *Washington*—Fourth Monday after the fourth Monday of March  
 22 and September.  
 23 *Tyrrell*—Fifth Monday after the fourth Monday of March and  
 24 September.  
 25 *Dare*—Sixth Monday after the fourth Monday of March and  
 26 September.  
 27 *Hyde*—Seventh Monday after the fourth Monday of March and  
 27 September.  
 28 *Pamlico*—Eighth Monday after the fourth Monday of March and  
 29 September.  
 30 *Beaufort*—Ninth Monday after the fourth Monday of March and  
 31 September, and continue two weeks.  
 32 *Martin*—Eleventh Monday after the fourth Monday of March  
 33 and September, and continue two weeks.

- 34 The second judicial district shall be composed of the following  
 35 counties, and the superior courts thereof shall be held at the fol-  
 36 lowing times, to-wit:

1876-'7, c. 255, s. 1.  
 1879, c. 292.  
 1879, c. 307.

## SECOND JUDICIAL DISTRICT.

- 37 *Wake*—First Monday in January, second Monday in February,  
 38 fourth Monday in June, second Monday in August, and shall con-  
 39 tinue three weeks.  
 40 *Warren*—First Monday in March and September, and continue  
 41 two weeks.  
 42 *Halifax*—Third Monday after the first Monday of March and  
 43 September.  
 44 *Northampton*—Fourth Monday after the first Monday of March  
 45 and September.  
 46 *Edgecombe*—Sixth Monday after the first Monday of March and  
 47 September.  
 48 *Bertie*—Eighth Monday after the first Monday of March and  
 49 September.  
 50 *Craven*—Twelfth Monday after the first Monday of March and  
 51 September.

- 52 The third judicial district shall be composed of the following  
 53 counties, and the superior courts thereof shall be held at the fol-  
 54 lowing times, to-wit:

1876-'7, c. 255, s. 1.  
 1881, c. 123.  
 1881, c. 229.

## THIRD JUDICIAL DISTRICT.

- 55 *Nash*—Second Monday before the first Monday of March and  
 56 September, and continue two weeks.  
 57 *Wilson*—First Monday of March and September, and continue  
 58 two weeks.  
 59 *Pitt*—Third Monday of March and September, and continue two  
 60 weeks.  
 61 *Greene*—Fourth Monday after the first Monday of March and  
 62 September.  
 63 *Jones*—Fifth Monday after the first Monday of March and Sep-  
 64 tember.  
 65 *Onslow*—Sixth Monday after the first Monday of March and  
 66 September.  
 67 *Lenoir*—Seventh Monday after the first Monday of March and  
 68 September.  
 69 *Carteret*—Eighth Monday after the first Monday of March and  
 70 September.  
 71 *Wayne*—Ninth Monday after the first Monday of March and  
 72 September, and continue two weeks.  
 73 *Duplin*—Eleventh Monday after the first Monday of March and  
 74 September.  
 75 *Sampson*—Twelfth Monday after the first Monday of March and  
 76 September.  
 77 *New Hanover*—Thirteenth Monday after the first Monday of  
 78 March and September, and continue two weeks.  
 79 *Pender*—Fifteenth Monday after the first Monday of March and  
 80 September.

1876-'7, c. 255, s. 1.  
 1880, c. 20.  
 1881, c. 323, s. 1.

- 81 The fourth judicial district shall be composed of the following  
 82 counties, and the superior courts thereof shall be held at the fol-  
 83 lowing times, to-wit :

## FOURTH JUDICIAL DISTRICT.

- 84 *Moore*—First Monday of February and August, and continue  
 85 two weeks.  
 86 *Harnett*—Third Monday of February and August.  
 87 *Cumberland*—First Monday after the third Monday of February  
 88 and August, and continue three weeks.  
 89 *Bladen*—Fourth Monday after the third Monday of February  
 90 and August.  
 91 *Columbus*—Fifth Monday after the third Monday of February  
 92 and August, and continue two weeks.  
 93 *Brunswick*—Seventh Monday after the third Monday of Febru-  
 94 ary and August. •



- 95 *Johnston*—Eighth Monday after the third Monday of February  
 96 and August, and continue two weeks.  
 97 *Robeson*—Tenth Monday after the third Monday of February  
 98 and August, and continue two weeks.  
 99 *Anson*—Twelfth Monday after the third Monday of February  
 100 and August, and continue two weeks.  
 101 *Richmond*—Fourteenth Monday after the third Monday of  
 102 February and August, and continue two weeks.

- 103 The fifth judicial district shall be composed of the following  
 104 counties, and the superior courts thereof shall be held at the fol-  
 105 lowing times, to-wit:

1876-'7, c. 255, s. 1.  
 1876-'7, c. 293, ss. 1,  
 2.  
 1879, c. 53.

## FIFTH JUDICIAL DISTRICT.

- 106 *Alamance*—Second Monday before the first Monday of March  
 107 and September.  
 108 *Randolph*—Monday before the first Monday of March and Sep-  
 109 tember.  
 110 *Guilford*—First Monday of March and September, and continue  
 111 two weeks.  
 112 *Chatham*—Second Monday after the first Monday of March and  
 113 September.  
 114 *Orange*—Fourth Monday after the first Monday of March and  
 115 September, and continue two weeks.  
 116 *Granville*—Sixth Monday after the first Monday of March and  
 117 September, and continue two weeks.  
 118 *Franklin*—Eighth Monday after the first Monday of March and  
 119 September, and continue two weeks.  
 120 *Person*—Tenth Monday after the first Monday of March and  
 121 September.  
 122 *Caswell*—Eleventh Monday after the first Monday of March and  
 123 September.  
 124 *Rockingham*—Twelfth Monday after the first Monday of March  
 125 and September.  
 126 *Vance*—Monday after the Rockingham Fall and Spring  
 127 terms.  
 128 *Durham*—First Monday of February and August.

- 129 The sixth judicial district shall be composed of the following  
 130 counties, and the superior courts thereof shall be held at the fol-  
 131 lowing times, to-wit:

1876-'7, c. 255, s. 1.  
 1879, c. 23.  
 1879, c. 110.  
 1881, c. 298, ss. 1, 2,  
 3.

## SIXTH JUDICIAL DISTRICT.

- 132 *Mecklenburg*—Last Monday of February and August, and con-  
 133 tinue three weeks.

- 134 *Cabarrus*—Third Monday of March and September.  
 135 *Stanly*—Fourth Monday of March and September.  
 136 *Montgomery*—First Monday after the fourth Monday of March  
 137 and September.  
 138 *Union*—Second Monday after the fourth Monday of March and  
 139 September, and continue two weeks.  
 140 *Lincoln*—Fourth Monday after the fourth Monday of March  
 141 and September.  
 142 *Gaston*—Fifth Monday after the fourth Monday of March and  
 143 September.  
 144 *Cleveland*—Sixth Monday after the fourth Monday of March  
 145 and September, and continue two weeks.  
 146 *Rutherford*—Eighth Monday after the fourth Monday of March  
 147 and September, and continue two weeks.  
 148 *Polk*—Tenth Monday after the fourth Monday of March and  
 149 September, and continue two weeks:

1876-'7, c. 255, s. 1;  
 1879, c. 90.

- 150 The seventh judicial district shall be composed of the following  
 151 counties, and the superior courts thereof shall be held at the fol-  
 152 lowing times, to-wit:

## SEVENTH JUDICIAL DISTRICT.

- 153 *Davidson*—First Monday of March and September, and con-  
 154 tinue two weeks.  
 155 *Davie*—Third Monday of March and September.  
 156 *Yadkin*—Fourth Monday of March and September.  
 157 *Wilkes*—First Monday after the fourth Monday of March and  
 158 September, and continue two weeks.  
 159 *Alleghany*—Third Monday after the fourth Monday of March  
 160 and September.  
 161 *Surry*—Fourth Monday after the fourth Monday of March and  
 162 September.  
 163 *Stokes*—Sixth Monday after the fourth Monday of March and  
 164 September.  
 165 *Forsyth*—Seventh Monday after the fourth Monday of March  
 166 and September, and continue two weeks.  
 167 *Rowan*—Ninth Monday after the fourth Monday of March and  
 168 September, and continue two weeks.

1876-'7, c. 255, s. 1.  
 1879, c. 79.  
 1879, c. 277.  
 1880, c. 4.  
 1881, c. 66.  
 1881, c. 142.

- 169 The eighth judicial district shall be composed of the following  
 170 counties, and the superior courts thereof shall be held at the fol-  
 171 lowing times, to-wit:

## EIGHTH JUDICIAL DISTRICT.

- 172 *Catawba*—Last Monday of August and February, and continue  
 173 two weeks.

174 *Burke*—Second Monday of March and September, and continue  
175 two weeks.

176 *McDowell*—Fourth Monday of March and September, and con-  
177 tinue two weeks.

178 *Yancey*—Second Monday after the fourth Monday of March and  
179 September, and continue two weeks.

180 *Mitchell*—Fourth Monday after the fourth Monday of March  
181 and September.

182 *Watauga*—Sixth Monday after the fourth Monday of March  
183 and September, and continue two weeks.

184 *Ashe*—Seventh Monday after the fourth Monday of March and  
185 September, and continue two weeks.

186 *Caldwell*—Ninth Monday after the fourth Monday of March  
187 and September.

188 *Alexander*—Tenth Monday after the fourth Monday of March  
189 and September, and continue two weeks.

190 *Iredell*—Second Monday before the last Monday of August and  
191 February, and continue two weeks.

192 The ninth judicial district shall be composed of the following 1881, c. 322.  
193 counties, and the superior courts thereof shall be held at the fol-  
194 lowing times, to-wit:

NINTH JUDICIAL DISTRICT.

195 *Buncombe*—Second Monday of March and August, and continue  
196 three weeks.

197 *Madison*—First Monday of March and August, and continue  
198 two weeks.

199 *Henderson*—Third Monday after the fourth Monday of March  
200 and August.

201 *Transylvania*—Fourth Monday after the fourth Monday of  
202 March and August.

203 *Haywood*—Fifth Monday after the fourth Monday of March and  
204 August, and continue two weeks.

205 *Jackson*—Seventh Monday after the fourth Monday of March  
206 and August.

207 *Macon*—Eighth Monday after the fourth Monday of March  
208 and August.

209 *Clay*—Ninth Monday after the fourth Monday of March and  
210 August.

211 *Cherokee*—Tenth Monday after the fourth Monday of March  
212 and August, and continue two weeks.

213 *Graham*—Twelfth Monday after the fourth Monday of March  
214 and August.

215 *Swain*—Thirteenth Monday after the fourth Monday of March  
216 and August.



**Sec. 1288. Rotation of judges.**

1879, c. 11.

The judges of the superior court shall hold the courts of the 2 several judicial districts successively, as provided in chapter eleven 3 of the public acts of the year one thousand eight hundred and 4 seventy-nine.

See R. C., c. 31, s. 20; 1876-7, c. 27.

**Sec. 1289. Notification of ridings.**

1879, c. 11, s. 11.

The judges shall cause a notification of the ridings to be pub- 2 lished in some newspaper by the first of January and first of July 3 preceding each circuit, but the notice of the first riding under this 4 section shall be published by the secretary of state, within two 5 days after the ratification of this section.

**Sec. 1290. Special terms; exchange of courts.**

1879, c. 11, s. 12.

The governor shall have power to appoint any judge to 2 hold special terms of the superior court in any county, and by 3 consent of the governor, the judges may exchange the courts of a 4 particular county or counties; but no judge shall be assigned to 5 hold the courts of any district oftener than once in four years; 6 and whenever a judge shall die or resign, his successor shall hold 7 the courts of the district allotted to his predecessor.

State v. Adair, 66—298; State v. Watson, 75—136; State v. Graham, 75—256; State v. Monroe, 80—373; State v. McGimsey, 80—377; State v. Bowman, 80—432. See R. C., c. 31, s. 20.

**Sec. 1291. Special terms.**1868-'9, c. 273, s. 1.  
1876-'7, c. 44.

Whenever it shall appear to the governor by the certificate of 2 any judge, a majority of the board of county commissioners, or 3 otherwise, that there is such an accumulation of criminal or civil 4 actions in the superior court of any county, as to require the hold- 5 ing of a special term for its dispatch, he shall issue an order to the 6 judge of the judicial district, in which such county is, or to any 7 other judge of the superior court, requiring him to hold a special 8 term of the superior court for such county, to begin on a certain 9 Monday, not to interfere with any of the regular terms of the 10 courts of his district. The judge shall attend and hold such court.

State v. Ketchey, 70—621. See R. C., c. 31, s. 22; Royster v. Chandler, 6 Ire. Eq., 291.

**Sec. 1292. Notice to chairman.**

1868-9, c. 273, s. 2.

Whenever the governor shall call a special term of the superior 2 court for any county, he shall notify the chairman of the board of 3 commissioners of the county of such call, and such chairman 4 shall take immediate steps to cause twenty-four, or if a grand jury 5 be needed, thirty-eight qualified persons to be drawn and sum- 6 moned as jurors for said term; and also to advertise said term at 7 the court house and at one public place in every township of his 8 county, or by publication of at least two weeks in some newspaper 9 published in his county, in lieu of such township advertisement

**Sec. 1293. Powers, &c.**

The special terms of the superior court held in pursuance of 1868-'9, c. 273, s. 3.  
2 this chapter shall have all the jurisdiction and powers that regular  
3 terms of the superior court have.

**Sec. 1294. Terms to last, how long.**

The said terms shall last until all the business of the court shall 1868-'9, c. 273, s. 4.  
2 be disposed of.

**Sec. 1295. Certificate of attendance.**

The clerk shall give the judge a certificate of attendance for the 1868-'9, c. 273, s. 5.  
2 number of days occupied by the court, and the judge shall there-  
3 upon be entitled to receive from the commissioners of the county  
4 in which the court is held, his expenses, at the rate of one hundred  
5 dollars per week as his compensation for holding said term.

Buxton v. Com'rs of Rutherford, 82—91.

**Sec. 1296. All persons bound to attend as at regular terms; no process except subpœnas returnable thereto.**

All persons and witnesses summoned at the regular or special R. C., c. 31, ss. 23,  
2 term, and officers or others who may be bound to attend the next 24.  
3 regular term of the court, shall attend the special term, under the 1844, c. 10, s. 2.  
4 same rules, forfeitures and penalties as if the term were a regular 1848, c. 29.  
5 term. But no process shall be made returnable thereto except  
6 subpœnas, or other process for the attendance of witnesses.

Askew v. Stevenson, Phil., 288.

**Sec. 1297. Subpœnas, &c.**

Subpœnas may issue returnable on any day of any special term. 1868-'9, c. 273, s. 8.

**Sec. 1298. Grand Juries.**

There shall be no grand jury at any special term, unless the 1868-'9, c. 273, s. 9.  
2 same shall be ordered by the governor.

**Sec. 1299. Parties may apply to superior court for relief in vacation.**

In all cases where the superior court in vacation has jurisdiction 1871-'2, c. 3, s. 1.  
2 under the existing laws of the state, and all of the parties unite in  
3 the proceedings, they may apply for relief to the superior court  
4 in vacation or in term time, at their election.

**Sec. 1300. Court of oyer and terminer; powers and appeals.**

On application for a court of oyer and terminer, by any board of 1863, c. 7, s. 1.  
2 county commissioners in behalf of its county, or of the attorney  
3 general, or of the solicitor on behalf of any county within his dis-  
4 trict, the governor shall issue a commission therefor to a judge of  
5 the superior court, who shall hold the same; and such court shall  
6 have like jurisdiction by a grand jury to inquire of, and by a *petit*  
7 jury to hear and determine, all felonies and larcenies whatever,

8 and also all other crimes, whereof the superior court of that county  
9 hath jurisdiction; and the court thus appointed shall have like  
10 power as a regular superior court to continue or remove cases; and  
11 all such cases whereof jurisdiction is hereby conferred, pending for  
12 trial in the superior court of any county, shall be deemed in the  
13 court of oyer and terminer, held for that county during its session,  
14 and on the adjournment thereof, shall be deemed in the superior  
15 court for the county. And in all cases of appeals from any judg-  
16 ment in a court of oyer and terminer, the certificate from the  
17 supreme court shall be sent to the clerk of the superior court and  
18 the same proceedings shall be had therein as if the appeal had  
19 been taken from the superior court.

State v. Baker and others, 63—276; State v. Henderson, 63—348.

**Sec. 1301. Where held, &c.**

1863 c. 7, s. 2,

The said court shall be held where the superior court is held,  
2 and shall be attended by the same officers, who shall have like  
3 fees for their services. And the jurors for said court shall be the  
4 same in number and qualification, and be drawn in like manner  
5 as for the superior court.

**Sec. 1302. Judge to fix time of session, &c.**

1861, c. 7, s. 3.

The judge commissioned to hold the court shall fix the time of  
2 its session and he shall forthwith notify the clerk of the superior  
3 court thereof, and also the prosecuting officer of the district in  
4 which said court is to be held; and the clerk of the superior court  
5 shall forthwith notify the chairman of the board of commissioners  
6 to draw the jurors, and deliver the *venire* to the sheriff, who shall  
7 summon the jury.

**Sec. 1303. Special venire.**

1863, c. 7, s. 4.

The judge shall have like discretion as at a regular term, to  
2 order a special *venire*.

**Sec. 1304. Witnesses to be summoned, &c.**

1862, c. 5.

The clerk of the superior court shall issue subpoenas for witnesses  
2 to attend the sessions of the courts of oyer and terminer, and the  
3 witnesses when summoned shall attend under the same rules, for-  
4 feitures and penalties, and with the same privileges as if the term  
5 were a regular term.

**Sec. 1305. Courts of oyer and terminer may remove trials to another county.**

1864, c. 10, s. 1.

It shall be competent for any judge holding a court of oyer and  
2 terminer, when any case in such court, pending, and for any  
3 cause removed for trial to another county, to proceed at such time  
4 as said judge may designate, to such county to which said case  
5 may be removed, and there hold a court of oyer and terminer for



6 the purpose of the trial of such case so removed ; and all persons  
7 charged with such crimes and misdemeanors as a court of oyer  
8 and terminer may take jurisdiction of, under the same rules and  
9 regulations as are herein prescribed: *Provided*, That the com-  
10 mission issued by the governor to such judge, authorizing him to  
11 hold such court of oyer and terminer shall be sufficient authority  
12 for holding such other courts of oyer and terminer as may be ren-  
13 dered necessary by such removal of any such cases, if the trans-  
14 script of the record therein shall set out and contain a copy of  
15 such commission.

**Sec. 1306. Commission to be copied and recorded, when.**

It shall be the duty of the judge holding the court of oyer and 1864, c. 10, s. 2.  
2 terminer, except in cases where such courts are rendered necessary  
3 by the removal of cases for trial as hereinbefore provided, to cause  
4 the commission issued to such judge by the governor, authorizing  
5 him to hold such court, to be copied into the record of such court ;  
6 and such copy shall constitute a part of the record thereof, and  
7 such record shall be sufficient authority for holding any court of  
8 oyer and terminer rendered necessary by the removal of any case  
9 as hereinbefore provided.

**Sec. 1307. Notification shall be given in case of removal of any case for trial.**

When the judge shall fix the time for holding a court of oyer 1864, c. 10, s. 3.  
2 and terminer, rendered necessary by the removal of any case as  
3 hereinbefore provided, he shall forthwith notify the clerk of the  
4 superior court of the county in which such court is to be held, and  
5 also the prosecuting officer of the district in which such county is  
6 situate ; and the clerk of the superior court being so notified  
7 shall forthwith notify the chairman of the board of commissioners  
8 to draw jurors and deliver the *venire* to the sheriff, who shall sum-  
9 mon the jury under the same rules and regulations as are pre-  
10 scribed by law, and such courts of oyer and terminer shall have  
11 all the powers and shall be governed by the same rules and  
12 regulations now incident to courts of oyer and terminer, and the  
13 expenses of the judge holding such court shall be paid as if he  
14 he were holding a regular term of the superior court, and the so-  
15 licitor for the state shall be entitled for attending such court, to be  
16 paid as if attending a regular term of the superior court.

**Sec. 1308. As many courts shall be held as necessary.**

The judge holding a court of oyer and terminer may hold as 1864, c. 10, s. 4.  
2 many courts of oyer and terminer under the provisions of this  
3 chapter as may be rendered necessary by the removal of any case  
4 therein, and if any case shall be removed more than once, the  
5 judge holding such court may continue to hold such courts of

6 over and terminer as herein provided, until such case is tried ac-  
7 cording to law.

State v. Baker and others, 63—276; State v. Henderson, 68—348.

#### Sec. 1309. Original jurisdiction of superior court.

Const., Art. IV.,  
ss. 12, 27.  
1866—7, c. 251.  
1879, c. 92, s. 11.  
1881, c. 210.

The superior court shall have original jurisdiction of all civil  
2 actions whereof exclusive original jurisdiction is not given to some  
3 other court; and of all criminal actions in which the punishment  
4 may exceed a fine of fifty dollars, or imprisonment for thirty days;  
5 and of all such affrays as shall be committed within one mile of  
6 the place where, and during the time, such court is being held;  
7 and of all offences whereof exclusive original jurisdiction is given  
8 to justices of the peace, if some justice of the peace shall not within  
9 six months after the commission of the offence proceed to take  
10 official cognizance thereof.

Rives v. Guthrie, 1 Jon., 84; Donaldson v. Waldrop, 63—507; City of Wilmington v. Davis, 63—582; State v. Johnson, 64—581; Hedgecock v. Davis, 64—650; Credle v. Gibbs, 65—192; Edenton v. Wool & Crawlin, 65—379; State v. Deaton, 65—496; State v. Pendleton, 65—617; Froneberger v. Lee, 66—333; Winslow v. Weith, 66—432; Dulin v. Howard, 66—433; Froelich v. S. Ex. Co., 67—1; Davis v. Baker, 67—383; State v. Porter, 69—149; Caldwell v. Beatty, 69—365; State v. Yarborough, 70—250; State v. Heidelberg, Potter, *et al.*, 70—496; The A., T. & O. R. R. Co. v. Johnson, 70—509; Bullinger v. Marshall, 70—520; Brandon v. Com'rs of Caswell, 71—62; State v. Rouseau & Brown, 71—194; State v. Vermington, 71—264; Templeton v. Summers, 71—269; Griffith v. Com'rs of Caswell, 71—340; Watts v. Bell, 71—405; Barnes v. Brown, 71—507; State v. Perry & Briggs, 71—522; Sutton v. McMillan, 72—102; State v. Upchurch, 72—146; State v. Pressly, 72—204; State v. Quick, 72—241; Willoughby v. Threadgill, 72—433; Latham v. Rollins, 72—454; State v. Bailey, 73—70; State v. Buck, 73—266; State v. Buck, 73—630; Bellamy v. Pippin, 74—46; Forsythe v. Bullock, 74—135; State v. Griffice, 74—316; Hendrick v. Mayfield, 74—626; Pullen v. Green, 75—215; Privett v. Calloway, 75—233; Oliver v. Wiley, 75—320; Nance v. The C. C. Railway Co., 76—9; State v. Threadgill, 76—17; Town of Washington v. Hammond, 76—33; State v. Styles, 76—156; Brown v. Hoover, 77—40; Claywell v. Sudderth, 77—287; Com'rs of Craven v. The A. & N. C. R. R. Co., 77—297; McMillan v. Hamilton, 77—300; State v. Hampton, 77—526; Perry v. Shepherd, 78—83; Netherton v. Candler, 78—83; Evans v. Williamson, 79—86; Bratton v. Davidson, 79—423; Walton v. Walton, 80—26; First National Bank of Charlotte v. Wilson, 80—200; State v. Edney, 80—360; State v. Monroe, 80—373; State v. Anderson, 80—429; Murphy v. McNeill, 82—221; McDonald v. Cannon, 82—245; State v. Moore, 82—659; State v. Taylor, 83—601; State v. Berry, 83—603; State v. Mitchell, 83—674; Brickell v. Bell, 84—32; Greer v. Cagle, 84—385; State v. Reeves, 85—553; Kirkman v. Phipps, 86—423.

#### Sec. 1310. Appellate jurisdiction.

Const., Art. IV., s.  
16.

The superior court shall have appellate jurisdiction of all is-  
2 sues of law or of fact, determined by a clerk of the superior court  
3 or a justice of the peace, and of all appeals from inferior courts  
4 for error assigned, in matters of law as provided in this code.

Pearce v. Lovinier, 71—248; Smith v. R. & D. R. R. Co., 72—62; McBryde *et al.* v. Patterson, 73—478; McDaniel v. Watkins, 76—399; Suttle v. Green, 78—76; Faison v. Johnson, 78—78; Evans v. Williamson, 79—86; Brown v. Brittain, 84—552; State v. Mott, 86—621.

#### Sec. 1311. Judge to take oath; oaths subscribed and returned to secretary of state.

R. C., c. 31, ss. 13,  
19.  
1777, c. 115, ss. 5, 6.  
1806, c. 694, s. 13.  
1848, c. 45.

Every judge before he shall act as such, shall, in open court, or  
2 before the governor, or before one of the judges of the supreme or  
3 superior courts, or before some justice of the peace, take the oath  
4 appointed for public officers, and also an oath of office. The offi-  
5 cer or court before whom said judge shall qualify, shall cause the  
6 judge to subscribe the oaths by him taken, and having certified  
7 the same, shall return said oaths to the secretary of state, who shall

8 carefully preserve them; and if any judge shall act in his office  
 9 before he shall have taken the oaths directed, he shall forfeit and  
 10 pay two thousand dollars, one-half to the use of the state and the  
 11 other half to the person who shall sue for the same.

**Sec. 1312. Minutes of preceding day to be read each morning.**

Every morning during the term the judge presiding shall order 1861, c. 3.  
 2 the reading of the minutes of said court for the day preceding, and  
 3 the minutes of the last day shall be read immediately preceding  
 4 the final adjournment of said term.

**Sec. 1313. If judge of a superior court not present, court to be adjourned, when.**

If the judge of a superior court shall not be present to hold any C. C. P., s. 396.  
 2 term of a court at the time fixed therefor, it shall be the duty of  
 3 the sheriff to adjourn the court from day to day until the fourth  
 4 day of the term inclusive, unless he shall be sooner informed that  
 5 the judge from any cause cannot hold the term; if by sunset on  
 6 the fourth day the judge shall not appear to hold the term, or if  
 7 the sheriff shall be sooner advised that the judge cannot hold the  
 8 term, it shall then be the duty of the sheriff to adjourn the court  
 9 until the next term.

Williams v. Rockwell, 64—325; Norwood v. Thorp, 64—682; State v. McGimsey, 80—377. See  
 R. C., c. 31, s. 21; 1879, c. 11.

**Sec. 1314. Constable attending juries to be sworn, for what purpose.**

When any officer (except such as are appointed to attend the R. C., c. 31, s. 36.  
 2 grand jury) shall be appointed or summoned to attend any supe- 1801, c. 592, s. 2.  
 3 rior court, the clerk, at the time of the first going out of a jury on  
 4 the trial of any civil or criminal action, shall administer an oath  
 5 to the constable, faithfully to attend the several juries that may  
 6 be put under his care during that term, that shall be charged in  
 7 the trial of any civil or criminal action; and after the constable  
 8 shall be once so sworn, he shall be considered to all intents and  
 9 purposes as acting upon the same oath while attending every jury,  
 10 that he may be called to attend during that term.

**Sec. 1315. Process not to be executed on Sunday.**

It shall not be lawful for any sheriff, constable, or other officer R. C., c. 31, s. 54.  
 2 to execute any summons, *capias*, or other process on Sunday, un- 1777, c. 118, s. 6.  
 3 less the same be issued for treason, felony or misdemeanor.

Cowles v. Brittain, 2 Haw., 204; Bland v. Whitfield, 1 Jon., 122; Devries v. Summit, 86—126.

**Sec. 1316. When there is no officer, or he will not execute process, on affidavit, the clerk shall direct process to the sheriff of adjoining county.**

If at any time there should not be in the county a proper officer R. C., c. 31, s. 55.  
 2 to whom precepts or process, original, mesne or final, of a court of 1879, c. 156, s. 3.  
 3 record, shall or ought to be directed, who can lawfully execute the 1821, c. 1080.  
 4 same; or if there be such officer who shall refuse or neglect to exe- 1822, c. 1132, s. 1.  
 1846, c. 61.



5 cute such precept or process, then the clerk of the court from  
6 which the same hath issued or shall issue, upon the facts being  
7 verified before him by written affidavit, subscribed by the plain-  
8 tiff or his agent, shall issue such precept or process to the sheriff  
9 of any adjoining county, who shall have power to execute, and  
10 shall execute the same, in like manner as if he were sheriff of the  
11 county.

*Collais v. McLeod*, 8 Ire., 221; *Bowen v. Jones*, 13 Ire., 25.

**Sec. 1317. When process to issue to sheriff of adjoining county.**

1869-'70, c. 175, s. 1.

In all cases where the sheriff of any county shall be interested,  
2 if there is no coroner in said county, process may be issued to and  
3 shall be executed by the sheriff of any adjoining county.

*Yeargin v. Siler*, 83—348.

**Sec. 1318. Sheriff executing process out of his county to have extra pay.**

R. C., c. 31, s. 56.  
1822, c. 1132, s. 2.

Whenever any precept or process shall be directed to the sheriff  
2 of an adjoining county, to be served out of his county as aforesaid,  
3 such sheriff shall have for such service, not only the fees allowed  
4 by law, but a further compensation of five cents for every mile of  
5 travel in going to and returning from service of such precept or  
6 process: *Provided, however*, that whenever any execution of five  
7 hundred dollars or upwards shall be directed to the sheriff of an  
8 adjoining county, under the provisions of this chapter, such sheriff  
9 shall not be allowed mileage, but only the commissions to which  
10 he shall be entitled.

**Sec. 1319. If defendant in penal suit plead former judgment, plaintiff may reply fraud; release of the action void; defendant pleading falsely indictable.**

R. C., c. 31, s. 100.  
4 Hen. VII, c. 20.

If an action be brought in good faith by any person to recover a  
2 penalty under a law of this state, or of the United States, and the  
3 defendant shall set up in bar thereto a former judgment recovered  
4 by or against him in a former action brought by any other person  
5 for the same cause, then the plaintiff in such action, brought in  
6 good faith, may reply that the said former judgment was obtained  
7 by covin; and if the collusion or covin so averred be found, the  
8 plaintiff in the action sued with good faith shall have recovery;  
9 and no release made by such party suing in covin, whether before  
10 action brought or after, shall be in anywise available or effectual;  
11 and every person pleading such false defence shall be guilty of a  
12 misdemeanor.

**Sec. 1320. Payment or satisfaction may be pleaded in suits on bond and judgment; also payment or satisfaction after the day of paying in suits on bond, conditioned to be discharged by a less sum.**

R. C., c. 31, s. 101.  
4 Hen. VII, c. 20.

When an action shall be brought on any single bill or on any  
2 judgment, if the defendant hath paid the money due upon such  
3 bill or judgment before action brought, or where the defendant  
4 hath made satisfaction to the plaintiff of the money due on such

5 bill or judgment in other manner than by payment thereof, such  
 6 payment or satisfaction may be pleaded in bar of such action; and  
 7 where only part of the money due on such single bill or judgment  
 8 hath been paid by the defendant, or satisfied in other manner than  
 9 by payment of money, such part payment or part satisfaction may  
 10 be pleaded in bar of so much of the money due on such single bill  
 11 or judgment, as the same may amount to; and where an action  
 12 is brought on any bond which hath a condition or defeasance to  
 13 make void the same upon the payment of a lesser sum at a day or  
 14 place certain, if the obligor, his heirs, executors or administrators  
 15 have, before the action brought, paid to the obligee, his executor  
 16 or administrator, the principal and interest due by the condition  
 17 or defeasance of such bond, though such payment were not made  
 18 strictly according to the condition or defeasance; or if such ob-  
 19 ligor, his heirs, executors or administrators have before action  
 20 brought made satisfaction to the plaintiff of the principal and in-  
 21 terest due by the condition or defeasance of such bond, in other  
 22 manner than by payment thereof, yet the said payment or satis-  
 23 faction may be pleaded in bar of such action, and shall be effectual  
 24 as a bar thereof, in like manner as if the money had been paid at  
 25 the day and place, according to the condition or defeasance, and so  
 26 pleaded.

**Sec. 1321.** In suits on penal bonds, the sum due, interest and costs being brought into court, penalty shall be discharged.

If at any time, pending an action on any such bond with a pen-  
 2 alty, the defendant shall bring into court, where the action shall  
 3 be pending, all the principal money and interest due, and also all  
 4 such costs as have been expended in any suit upon such bond, the  
 5 said money shall be deemed and taken to be in full satisfaction  
 6 and discharge of said bond, and the court shall give judgment  
 7 accordingly.

R. C., c. 31, s. 102.  
 4 Anne, c. 16, s. 13.

The Governor v. Sutton, 4 Dev. & Bat., 484; Thoroughgood v. Walker, 2 Jon., 15.

**Sec. 1322.** Judgments to stand till reversed.

Every judgment given in a court of record having jurisdiction  
 2 of the subject, shall be, and continue in force until reversed accord-  
 3 ing to law.

R. C., c. 31, s. 103.  
 4 Hen. IV, c. 23.

Hamilton v. Wright, 4 Haw., 288; Armstrong v. Harshaw, 1 Dev., 187; White v. Albertson, 3 Dev., 241; Jones v. Jones, 3 Dev., 360; Barnard v. Roe & Ethridge, 4 Dev., 295; Irby v. Wilson, 1 Dev. & Bat. Eq., 538; Skinner v. Moore, 2 Dev. & Bat., 138; Winslow v. Anderson & Duckworth, 3 Dev. & Bat., 9; Jennings v. Stafford, 1 Ire., 404; Hafner v. Erwin, 4 Ire., 529.

**Sec. 1323.** Leap-year day, how counted.

In every leap-year the increasing day and the day before, in all  
 2 legal proceedings, shall be counted as one day.

R. C., c. 31, s. 108.  
 21 Hen. III.

**Sec. 1324. Non-suit not allowed after verdict.**

R. C., c. 31, s. 110.  
2 Hen. IV., c. 7.

In actions where a verdict shall pass against the plaintiff, he  
2 shall not be non-suited.

**Sec. 1325. Party in execution not to be discharged on *habeas corpus*.**

R. C., c. 31, s. 111.  
2 Hen. V., c. 2.

When a *certiorari* or writ of *habeas corpus cum causa* shall issue,  
2 and the sheriff or other officer to whom it is directed shall return  
3 upon the same that the prisoner is condemned, by judgment given  
4 against him, and held in custody by virtue of an execution issued  
5 against him, the prisoner shall not be let to bail, but shall be pres-  
6 ently remanded, where he shall remain until discharged in due  
7 course of law.

**Sec. 1326. Death between verdict and judgment, not error, if, &c.**

R. C., c. 31, s. 112.  
17 Chas. II., c. 8, s.  
1.

In no action shall the death of either party between the verdict  
2 and the judgment be alleged for error, if such judgment be entered  
3 within two terms after the verdict.

**Sec. 1327. Surveys ordered in cases of disputed boundary; how and by whom made; charges for surveys to be taxed as costs.**

R. C., c. 31, s. 119.  
1779, c. 157, s. 7.  
1786, c. 252, ss. 1, 2.

Whenever in any suit pending in the superior court, the bounds  
2 of lands shall be drawn in question, the court may, if deemed nec-  
3 essary, order a survey of the lands in dispute, agreeable to the  
4 bounds and lines expressed in each party's titles, and such other  
5 surveys as shall be deemed useful; which surveys shall be made  
6 by two surveyors appointed by the court, one to be named by each  
7 of the parties, or by one surveyor, if the parties agree; and the  
8 surveyors shall attend according to the order of the court, and  
9 make the surveys, and shall make as many accurate plans thereof  
10 as shall be ordered by the court; and for such surveys, the court  
11 shall make a proper allowance, to be taxed as among the costs of  
12 the suit.

**Sec. 1328. Return on notice, evidence.**

R. C., c. 31, s. 123.  
1799, c. 537.

When a notice shall issue to the sheriff, his return thereon that  
2 the same has been executed shall be deemed sufficient evidence of  
3 the service thereof.

**Sec. 1329. Speedy collection of proceeds of judicial sales, by motion.**

R. C., c. 31, s. 129. 7

The supreme and other courts ordering a judicial sale, or having  
2 possession of the bonds which may have been taken on such sale,  
3 may, on motion, after ten days' notice thereof in writing, enter  
4 judgment as soon as the money may become due against the  
5 debtors or any of them, unless for good cause shown the court shall  
6 direct some other mode of collection.

Cotten *ex parte*, Phil. Eq., 79; Blackburn v. Brooks & Davis, 65—413; Mauney v. Pemberton, 75—219; Chambers v. Penland, 78—53; Smith v. Moore, 79—82.



**Sec. 1330. Purchasers under judicial sales protected ; deemed legal owners.**

1858-'9, c. 50.

Any person let into possession under any judicial sale con-  
 2 firmed, where the title may be detained as a security for the price,  
 3 shall be deemed the legal owner of the premises for all purposes of  
 4 bringing suits for injuries thereto, after the day of sale, by tres-  
 5 pass or wrongful possession taken or continued, in the same man-  
 6 ner as if the title had been conveyed to him on day of sale, unless  
 7 restrained by some order of the court directing the sale; and the  
 8 suit so brought shall be under the control of the court ordering the  
 9 sale.

**Sec. 1331. Quakers may wear hats in court.**

The people called Quakers may wear their hats in courts of judi-  
 2 cature, as elsewhere, according to the custom of their sect.

R. C., c. 31, s. 131.  
 1784, c. 209.

**Sec. 1332. Certain cases pending in courts of equity and county courts to be trans-  
 ferred.**

All writs, petitions and other proceedings pending in the late  
 2 courts of equity, and in the late courts of pleas and quarter ses-  
 3 sions, and not determined by final judgment or decree, and all  
 4 such cases wherein any act was decreed to be done or deed to be  
 5 executed, and said act was not done nor deed executed, may be  
 6 transferred to the superior court of the county in which they were  
 7 pending, at the instance of any person interested. And said supe-  
 8 rior court shall have power to make all orders, judgments and de-  
 9 crees as shall be necessary for finally adjudicating and settling the  
 10 same.

1871-'2, c. 161.

CHAPTER THIRTY-FIVE.

COURTS—SUPREME.

SECTION.

- 1333. Supreme court, its jurisdiction.
- 1334. Cases, how taken to the supreme court.
- 1335. Claims against the state.
- 1336. Manner of prosecuting claims against the state.
- 1337. Justices of the supreme court may take probate of deeds, &c.
- 1338. Justices of the supreme court to appoint a marshal; how paid.
- 1339. Compensation of servant of supreme court to be fixed by the court; how selected or removed.
- 1340. Rooms set apart for preserving certain records.
- 1341. Supreme court to convene on the first Mondays in February and October.

SECTION.

- 1342. To sit till business is dispatched; name and style of court; to stand adjourned if no justice attends during first week.
- 1343. Judges to take and subscribe oaths to be filed, &c.
- 1344. Two, in case of illness, &c., to hold court.
- 1345. Court to render judgment on view of record; if to superior court, final judgment to be certified to that court; in criminal cases, decision certified to court below; how that court to proceed.
- 1346. Clerk of supreme court, his bond and oath; where office to be kept.

## SECTION.

1347. Clerk to record such parts of proceedings as the court shall direct.
1348. Clerk's pay for such services.
1349. Justices to prescribe rules of practice for supreme and superior courts.
1350. On appeals from interlocutory judgment, &c., no judgment to be entered; opinion with instructions to be certified to court below.
1351. Exhibits in cases proved by witnesses; to be examined by supreme court; rules as to such witnesses.
1352. Justices to deliver their opinions in writing; no certificate of decision, no execution to be issued until the opinion of the court is delivered to the clerk.

## SECTION.

1853. Court may amend any proceeding; may amend by making parties; may allow further testimony to be taken.
1854. When petition to rehear final judgment may be filed, &c.
1855. Suits may be dismissed for failure to prosecute after notice.
1856. Certificates of decisions transmitted to court below of the rise of the court; execution for costs in supreme and superior courts is issued from those courts respectively.
1857. In the absence of the attorney general, court to appoint counsel for the state.

## Sec. 1333. Supreme court, its jurisdiction.

Const., Art. IV, s.  
8.  
C. C. P., s. 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. And the jurisdiction of said court over "issues of fact" and "questions of fact" shall be the same exercised by it before the adoption of the constitution of one thousand eight hundred and sixty-eight, and the court shall have the power to issue any remedial writs necessary to give it a general supervision and control over the proceedings of the inferior court.

Bethea v. McLennon, 1 Ire., 523; Runyon v. Anderson, 3 Ire., 586; Am. Bible So. v. Ex'rs of Hollister, 1 Jon., Eq., 10; Smith v. Cheek, 5 Jon., 213; State v. Jenkins, 6 Jon., 19; Caroon v. Rogers, 6 Jon., 240; Rodman v. Davis, 8 Jon., 134; Cates v. Whitfield, 8 Jon., 266; Grissett v. Smith, Phil., 297; Heilig v. Stokes, 63—612; Biggs, *ex parte*, 64—202; Rogers v. Goodwin, 64—278; Walton v. Jordan, 65—170; State v. Jefferson, 66—309; Isler v. Brown, 67—175; Foushee v. Pattershall, 67—453; Rush v. Halcyon Steamboat Co., 68—72; McKinnon v. Faulk, 68—279; Keener v. Finger, 70—35; State v. Ketchey, 71—147; Duvall v. Rollins, 71—218; State v. West, 71—263; Holmes v. Godwin, 71—306; Perry v. Tupper, 71—380; Sprinkle v. Foote, 71—411; Williams v. Williams, 71—427; State v. Armstrong, 72—193; Watson v. Dodd, 72—240; Whitford v. Foy, 72—247; Benbow v. Robbins, 72—422; Phifer v. The Carolina Central, 72—433; Maxwell v. Caldwell, 72—450; Horne v. Horne, 72—534; State v. Powell, 74—270; State v. R. & D. R. R. Co., 74—287; Brink v. Black, 74—329; Johnson v. Bell, 74—355; Wallington v. Montgomery, 74—372; McRae v. Com'rs of New Hanover, 74—415; Mitchell v. Kilburn, 74—438; Swepson v. Summey, 74—551; *In re* Schenck, 74—607; Hinton v. Deans, 75—18; Horne v. Horne, 75—101; State v. Applewhite, 75—229; Oliver v. Wiley, 75—320; Rouse v. Quinn, 76—354; Barnes v. Fort, 77—28; Cansler v. Jobb, 77—30; Long v. Swindell, 77—176; Gragg v. Wagner, 77—246; Com'rs of Craven v. A. & N. C. R. R. Co., 77—297; Rollins v. Henry, 77—467; Crawley v. Woodfin, 78—4; Bernard v. Johnston, 78—25; Henry v. Smith, 78—27; Williamson v. Canal Co., 78—156; Com'rs of Wake v. Magnin, 78—181; McBryde v. Patterson, 78—412; Driver's case, 78—423; State v. Lindsey, 78—499; State v. Lane, 78—547; State v. Smallwood, 78—560; Smith v. Moore, 79—82; Oldham v. Kerchner, 79—106; Dobson v. Chambers, 79—142; Hill v. Oxendine, 79—331; Chastain v. Coward, 79—543; Meekins v. Tatem, 79—546; Paschall v. Bullock, 80—8; Bank of Washington v. Creditors, 80—9; Brooks v. Headen, 80—11; Skinner v. Badham, 80—14; Oldham v. Sneed, 80—15; Halyburton v. Carson, 80—16; Sutton v. Schonwald, 80—20; Jones v. Boyd, 80—258; Pain v. Pain, 80—322; Whissenhuut v. Jones, 80—348; State v. Edney, 80—360; State v. Spurtin, 80—362; State v. Murray, 80—364; State v. Scott, 80—385; State v. McGimsey, 80—377; State v. Davjs, 40—384; State v. Secret, 80—450; State v. Keeter, 80—472; State v. Blackburn, 80—474; Earp v. Richardson, 81—5; Haywood v. Daves, 81—8; Devereux v. Devereux, 81—12; Lewis v. Rountree, 81—20; *In re* Daves, 81—72; Bell v. Cunningham, 81—83; Simmons v. Foscue, 81—86; Kidder v. McIlhenny, 81—123; Cannon v. Morris, 81—139; Clifton v. Wynne, 81—160; State v. Lawrence, 81—522; State v. Thorne, 81—555; State v. Fox, 81—576; Mizell & Walker v. Simmons, 82—1; Sanders v. Norris, 82—4; White v. Clark, 82—6; Grant v. Reese, 82—72; Williams v. Kivett, 82—110; Saunders v. Norris, 82—243; Dalton v. Webster, 82—297; McCurry v. McCurry, 82—296; Chester Rail Road Company v. Richardson, 82—343; Ammon v. Ammon, 82—398; Gay v. Brookshire, 82—409; Wilson v. Lineberger, 82—412; Clayton v. Johnston, 82—433; Badger v. Daniel, 82—468; Bank of Statesville v. Graham, 82—489; Gorman v. Belamy, 82—496; Shields v. Whitaker, 82—516; Sudderth v. McCombs, 82—535; State v. Leitch, 82—539; State v. Hinson, 82—540; State v. Swepson, 82—541; State v. Padgett, 82—544; State v. Keeter, 82—547; State v. Crockett, 82—590; State v. Baxter, 82—602; State v. Jones, 82—691; State v. Braswell, 82—693; Gordon v. Sanderson, 83—1; Corbin v. Berry, 83—27; Sanderson v. Dailey,

83—67; *Womble v. Leach*, 83—84; *Jones v. Holmes*, 83—108; *May v. Darden*, 83—237; *Phillips v. Lentz*, 83—240; *Hull v. Carter*, 83—249; *Perry v. Adams*, 83—266; *Walton v. Pearson*, 83—309; *Wellons v. Jordan*, 83—371; *Bank of Statesville v. Pinkers*, 83—377; *Telegraph Co. v. W., C. & A. R. R. Co.*, 83—420; *Hutchinson v. Rumpfelt*, 83—441; *Lindsay v. Moore*, 83—444; *Andrews v. Whisnant*, 83—446; *Foy v. Haughton*, 83—467; *Adams v. Thomas*, 83—521; *Howell v. Ray*, 83—553; *State v. Swepson*, 83—584; *State v. Ham*, 83—590; *State v. Pollard*, 83—597; *State v. Hardee*, 83—619; *State v. Keath*, 83—626; *State v. Grady*, 83—643; *State v. Donaldson*, 83—683; *Town of Greensboro v. Scott*, 84—181; *Belden v. Snead*, 84—243; *McMillan v. Baker*, 85—291; *Tucker v. Baker*, 86—1; *Allen v. Baker*, 86—91; *Ray v. Patton*, 86—386; *Howerton v. Henderson*, 86—718; *Burnett v. Nicholson*, 86—728.

### Sec. 1334. Cases, how taken to the supreme court.

Cases shall be taken to the supreme court by appeal as provided C. C. P., s. 414.  
2 in this code.

*Grissett v. Smith*, Phil., 297; *Clerk's office v. Huffstetter*, 67—449; *State v. Ketchy*, 71—147; *State v. Griffin*, 71—301; *State v. Hawkins*, 72—180; *State v. Patrick*, 72—217; *Wade v. City of NewBerne*, 72—498; *Adams v. Reeves*, 74—106; *Green v. Hobgood*, 74—234; *Wilson & Shober v. Hutchinson*, 74—432; *Kirk v. Barnhart*, 74—653; *Martin v. Chasteen*, 75—96; *Richardson v. Debnam*, 75—390; *Bradley v. Jones*, 76—204; *Green v. Castleberry*, 77—164; *State v. Morgan*, 77—510; *Taylor v. Brower*, 78—8; *Meekins v. Tatem*, 79—546; *Sutton v. Schonwald*, 80—20; *State v. Spurlin*, 80—362; *State v. Scott*, 80—365; *State v. Keeter*, 80—472; *Smith v. Lyon*, 82—2; *Sever v. McLaughlin*, 82—332; *Wadsworth v. Carroll*, 82—333; *Hutchinson v. Rumpfelt*, 82—425; *Walton v. Pearson*, 82—464; *State v. Walker*, 82—696; *State v. Donaldson*, 83—683; *Brown v. Williams*, 83—684; *Wilson v. Seagle*, 84—110; *Syme v. Broughton*, 84—114; *Brown v. Williams*, 84—116; *Parker v. R. R. Co.*, 84—118; *Hines v. Hines*, 84—122; *Turlington v. Williams*, 84—125; *State v. Vann*, 84—722; *State v. Moore*, 84—724; *State v. McDowell*, 84—798.

### Sec. 1335. Claims against the state.

The supreme court shall have original jurisdiction to hear  
2 claims against the state, but its decision shall be merely recom-  
3 mendatory; no process in the nature of execution shall issue  
4 thereon; they shall be reported to the next session of the general  
5 assembly for its action.

C. C. P., s. 415.  
Const., Art. IV, s.  
9.

*Bledsoe v. The State*, 64—392; *Reynolds v. The State*, 64—460; *Rand v. The State*, 65—194; *Battle v. Thompson*, 65—406; *Boner v. Adams*, 65—639; *Bayne & Co. v. Jenkins*, 66—356; *Sinclair, Owens & Brown v. The State*, 69—47; *Clements v. State*, 77—142; *Horne v. The State*, 82—382; *Horne v. The State*, 84—362.

### Sec. 1336. Manner of prosecuting claims against the state.

Any person having any claim against the state may file his com- C. C. P., s. 416.  
2 plaint in the office of the clerk of the supreme court, setting forth  
3 the nature and grounds of his claim. He shall cause a copy of  
4 his complaint to be served on the governor, and therein request  
5 him to appear on behalf of the state and answer his claim. The  
6 copy shall be served at least twenty days before application for re-  
7 lief shall be made to the court. In case of an appearance for the  
8 state by the governor, or any other authorized officer, the plead-  
9 ings and trial shall be conducted in such manner as the court shall  
10 direct. If an issue of fact shall be joined on the pleadings, the  
11 court shall transfer it to the superior court of some convenient  
12 county for trial by a jury, as other issues of fact are directed to be  
13 tried; and the judge of the court before whom the trial is had  
14 shall certify to the supreme court, at its next term, the verdict and  
15 the case, if any, made up and settled as prescribed in section nine  
16 hundred and twenty. If the state shall not appear in the action  
17 by any authorized officer, the court may make up issues and



18 send them for trial, as aforesaid. The supreme court shall in  
 19 all cases report the facts found, and their recommendation thereon,  
 20 with the reasons thereof, to the general assembly at its next term.

*Bledsoe v. The State*, 64—392; *Boner v. Adams*, 65—639; *Henry v. The State* 68—465; *Clements v. The State*, 76—199; *Clements v. The State*, 67—142; *Horne v. The State*, 82—382.

**Sec. 1337. Justices of supreme court may take probate of deeds, &c.**

C. C. P., s. 417.  
 1868-9, c. 277, s. 11.

The several justices of the supreme court shall have like powers  
 2 to take the probate of deeds, and to examine married women re-  
 3 specting their free consent to deeds made by them, to issue and  
 4 hear writs of *habeas corpus*, to issue warrants for the arrest of per-  
 5 sons charged with crime, and to discharge such persons on bail, as  
 6 is or may be given to the judges of the superior courts.

In the matter of *J. C. Bryan*, 1 *Winst.*, 1.

**Sec. 1338. Justices of the supreme court to appoint a marshal, how paid.**

1873-'4, c. 34.  
 1881, c. 306.

The justices of the supreme court may appoint an officer to be  
 2 styled marshal of the supreme court, removable at will, who shall  
 3 attend upon the court during its sessions, and said marshal shall be  
 4 entitled to receive five hundred dollars per annum, payable  
 5 monthly by the state treasurer upon the certificate of the clerk of  
 6 the court.

**Sec. 1339. Compensation of servant of supreme court to be fixed by the court; how selected or removed.**

1873-'4, c. 122.  
 1880, c. 61.

The servant and messenger attending and waiting upon the  
 2 supreme court and attorney general's office shall be allowed such  
 3 pay for his services, per month, as may be fixed and certified to by  
 4 the justices of said court; said servant or messenger to be selected  
 5 or removed by the clerk of said court with the consent of the jus-  
 6 tices thereof.

**Sec. 1340. Rooms set apart for preserving certain records.**

1873-'4, c. 117.

The room in the capitol heretofore occupied as the office of the  
 2 superintendent of public works, is assigned to the clerk of the  
 3 supreme court for the proper care and safety of records of said  
 4 court.

**Sec. 1341. Supreme court to convene on the first Mondays in February and October.**

1881, c. 178.

There shall be held at the seat of government of the state in  
 2 each year two terms of the supreme court, commencing on the first  
 3 Monday in February and the first Monday in October.

**Sec. 1342. To sit till business is dispatched; name and style of court; to stand adjourned if no justice attends during first week.**

R. C., c. 33, s. 2.  
 1804, c. 660, s. 2.  
 1805, c. 674, s. 1.  
 1818, c. 962, s. 2.  
 1828, c. 13.  
 1842, c. 15.  
 1846, cs. 28, 29.

The court shall sit at each term until all the business on the  
 2 docket shall be determined or continued on good cause shown.  
 3 The court shall bear the name and style of "The Supreme Court

4 of North Carolina," and shall be a court of record; and the papers  
5 and records belonging to the clerk's office thereof shall be con-  
6 stantly kept within the city of Raleigh: *Provided, however*, that in  
7 case no one of the justices shall attend the term during the first  
8 week thereof, at the end of that time the court shall stand adjourned  
9 till the next term, and the causes on the docket be continued.

**Sec. 1343. Justices to take and subscribe oaths to be filed, &c.**

The justices, before they act as such shall, before the governor or  
2 some judicial officer take and subscribe the oaths appointed for the  
3 qualification of public officers, and also an oath of office, which  
4 shall be certified by the officer taking the same and delivered to  
5 the secretary of state, to be safely kept.

R. C., c. 38, s. 2.  
1818, c. 963, s. 1.

**Sec. 1344. Two, in case of illness, &c., to hold court.**

When any one of the justices is disabled from attending, from  
2 illness or other inevitable cause, two of the justices shall hold the  
3 court, hear and determine causes, and possess and exercise every  
4 other authority which by law may appertain to said court as fully  
5 to all intents and purposes as if all the justices of the court were  
6 present.

R. C., c. 33, s. 4.  
1831, c. 13.

**Sec. 1345. Court to render judgment on review of record; if to superior court, final judgment to be certified to that court; in criminal cases, decisions certified to court below; how that court to proceed.**

In every case the court may render such sentence, judgment and  
2 decree as on inspection of the whole record it shall appear to them  
3 ought in law to be rendered thereon; and it may at its discretion  
4 make the writs of execution which it may issue returnable either  
5 to the said court, or to the superior court: *Provided, however*, that  
6 when an execution shall be made returnable as last mentioned, a  
7 certificate of the final judgment of the supreme court shall always  
8 be transmitted to the superior court aforesaid, and there be re-  
9 corded: *And provided further*, that the said superior court may en-  
10 force obedience to the execution, and in the event of its not being  
11 executed may issue new or further execution or process thereon in  
12 the same manner as though the first execution had issued from  
13 the said superior court: *And provided further*, that in criminal cases  
14 the decision of the supreme court shall be certified to the superior  
15 court from which the case was transmitted, which superior court  
16 shall proceed to judgment and sentence agreeable to the decision  
17 of the supreme court and the laws of the state.

R. C., c. 33, s. 6.  
1799, c. 520, ss. 1, 3.  
1818, c. 963, s. 4.  
1830, c. 2, s. 1.  
1868, c. 962, s. 4.

Bethea v. McLennon, 1 Ire., 523; Runyon v. Anderson, 3 Ire., 586; State v. McIntyre, 1 Jon., 1; Am. Bible Society v. Executors of Hallister, 1 Jon. Eq., 10; State v. Jacobs, 2 Jon., 52; Smith v. Cheek, 5 Jon., 213; Caroon v. Rogers, 6 Jon., 240; Jones v. McLaurine, 7 Jon., 392; Rodman v. Davis, 8 Jon., 134; Cates v. Whitfield, 8 Jon., 266; Grissett v. Smith, Phil. Law, 297; Greenlee v. Sudderth, 65—470; Rush v. Halcyon Steamboat Co., 68—72; State v. Ketchey, 71—147; Simmons v. Foscue, 81—96.

R. C., c. 33, s. 9.  
1812, c. 829, s. 2.  
1818, c. 963, s. 5.  
1846, c. 28, s. 3.

Sec. 1346. Clerk of the supreme court, his bond and oath; where office to be kept.

Before undertaking its duties, such clerk shall enter into bond,  
2 with sufficient security, payable to the state of North Carolina, in  
3 the sum of fifteen thousand dollars, conditioned for the faithful  
4 discharge of his duties and for the safe-keeping of all records com-  
5 mitted to his custody, which bond shall be lodged with the secre-  
6 tary of state; and he shall also before said justices, or one of them,  
7 take the oaths which are prescribed for clerks of the superior court,  
8 and shall keep his office in the city of Raleigh.

R. C., c. 33, s. 11.  
1831, c. 20, s. 1.

Sec. 1347. Clerk to record such parts of proceedings as the court shall direct.

The court may order the clerk to record such parts of the record  
2 cases as it may deem necessary.

R. C., c. 33, s. 12.  
1831, c. 20, s. 2.

Sec. 1348. Clerk's pay for such services.

In estimating the allowance to the clerk for making the record  
2 as directed, the justices shall not exceed the sum of thirty cents for  
3 each page recorded.

R. C., c. 33, s. 13.  
C. C. P., s. 394.  
1818, c. 963, s. 0.

Sec. 1349. Justices to prescribe rules of practice for supreme and superior courts.

The justices of the supreme court shall prescribe and establish  
2 from time to time rules of practice for that court and also for the  
3 superior court. The clerk shall certify to the judges of the supe-  
4 rior court the rules of practice for said court, to be entered on the  
5 records thereof in each county.

Johnson v. Sedberry, 65—1; Perry v. Morris; 65—221; Rules of the Supreme Court, 80—488  
81—609, 83—689.

R. C., c. 33, s. 14.  
1831, c. 20, s. 3.

Sec. 1350. On appeal from interlocutory judgment, &c., no judgment to be entered;  
opinion with instructions to be certified to court below.

When an appeal shall be taken to the supreme court from any  
2 interlocutory judgment, the supreme court shall not enter any  
3 judgment reversing, affirming or modifying the judgment, order or  
4 decree so appealed from, but shall cause their opinion to be certi-  
5 fied to the court below, with instructions to proceed upon such  
6 order, judgment or decree, or to reverse or modify the same accord-  
7 ing to said opinion, and the court below shall enter upon its records  
8 the opinion at length, and proceed in the cause according to the  
9 instructions.

Grissett v. Smith, Phil. Law, 297.

Sec. 1351. Exhibits in cases proved by witnesses to be examined by supreme  
court; rules as to such witnesses.

R. C., c. 32, s. 20.  
R. C., c. 33, s. 15.  
1818, c. 962, s. 5.  
1820, c. 1043.  
1848, c. 30.

Exhibits or other documents relative to cases pending in the  
2 supreme court may be proved by the parol testimony of witnesses  
3 to be examined in said court in the same manner and under the  
4 same rules as such exhibits or documents may be proved in the  
5 superior court; and suitors in said court may have subpoenas to



6 enforce the attendance of witnesses, who shall be liable to the  
 7 same penalties and actions for non-attendance, and be entitled to  
 8 the same pay for traveling, ferriage and attendance as witnesses in  
 9 the superior court: *Provided*, that witnesses attending the supreme  
 10 court shall be taxed in the bill of costs and paid by the party on  
 11 whose behalf they may be summoned.

Ray v. Ray, 6 Ire. Eq., 355.

**Sec. 1352.** Justices to deliver their opinions in writing; no certificate of decision, nor execution to be issued, until the opinion of the court is delivered to the clerk.

The justices shall deliver their opinions or judgments in writing,  
 2 and the clerk shall make no entry upon the records of the court  
 3 that any cause pending therein is decided, nor give to any per-  
 4 son a certificate of such decision, nor issue execution in such suit,  
 5 until after the opinion of the court shall have been delivered pub-  
 6 licly in open court, and a written copy of the same opinion shall  
 7 have been delivered to the clerk; which shall afterwards be filed  
 8 among the records of the court and published in the reports of  
 9 the decisions made by the court.

R. C., c. 33, s. 16  
 1810, c. 794.

State v. Ketchey, 71—147.

**Sec. 1353.** Court may amend any proceeding; may amend by making parties; may allow further testimony to be taken.

The supreme court shall have power to amend any process,  
 2 pleading or proceeding at law either in form or substance for the  
 3 purpose of furthering justice, on such terms as shall be deemed  
 4 just at any time before final judgment. Also to amend by making  
 5 proper parties to any case where the court may deem it necessary  
 6 and proper for the purposes of justice and on such terms as the  
 7 court may prescribe. And also whenever it shall appear necessary  
 8 for the purposes of justices, to allow and direct the taking of further  
 9 testimony in any case which may be pending in said court under  
 10 such rules as may be prescribed, or the court may remand the case  
 11 to the intent that amendments may be made, further testimony  
 12 taken or other proceedings had in the court below.

R. C., c. 33, s. 17.  
 1777, c. 115, s. 75.  
 1785, c. 233, s. 2.  
 1792, c. 300, s. 1.  
 1831, c. 46, s. 2.

Kent v. Bottoms, 3 Jon. Eq., 69; Emmons v. McKesson, 5 Jon. Eq., 92; Fleming v. Murph,  
 6 Jon. Eq., 59.

**Sec. 1354.** When petition to re-hear final judgment may be filed, &c.

A petition to re-hear may be filed during the vacation succeed-  
 2 ing the term of the court at which the judgment was rendered,  
 3 or within twenty days after the commencement of the succeeding  
 4 term, and upon the filing of such petition the chief justice, or  
 5 either of the associate justices, may, upon such terms as he sees  
 6 fit, make an order restraining the issuing of an execution, or the  
 7 collection and payment of the same, until the next term of said  
 8 court, or until the petition to rehear shall have been determined.

R. C., c. 33, s. 18.

Mauney v. Gidney, 86—717.

**Sec. 1355. Suits may be dismissed for failure to prosecute after notice.**

R. C., c. 33, s. 20.  
1848, c. 28, s. 2.

Suits and appeals pending in the supreme court may be dismissed on failure to prosecute the same, after a rule obtained for that purpose and served on the plaintiff or appellant, his agent or attorney, at least thirty days before the term next ensuing that of entering the rule; when, if the party shall fail to prosecute his suit or appeal, the court shall, at the election of the adverse party, dismiss the suit or appeal at the costs of the plaintiff or appellant, or proceed to hear and determine it.

Thompson v. Burnett, 6 Jon., 486; Burnett v. Thompson, 7 Jon., 407.

**Sec. 1356. Certificates of decisions transmitted to courts below on the rise of the court; execution for costs in the supreme and superior courts is issued from those courts respectively.**

R. C., c. 33, s. 21.  
1820, c. 1070.  
1825, c. 1282.  
1842, c. 1, s. 3.

The clerk shall immediately after the rise of each term thereof transmit by some safe hand or by mail to the clerks of the superior court certificates of the decisions of the supreme court in cases sent from said court; and thereupon the said clerks respectively shall issue execution for the costs incurred in the courts from which the cases were sent: and the clerk of the supreme court shall issue execution for the costs incurred in that court, including all publications in newspapers made in the progress of the cause in that court, and by order of the same, and all postage of letters which concern the transfer of original papers. And if the clerk shall fail for the space of twenty days to perform the duty herein enjoined of transmitting the said certificates of decisions, he shall forfeit and pay to the party or parties in whose favor the supreme court shall have decided, one hundred dollars.

Sparks v. Wood, 1 Dev. & Bat., 639.

**Sec. 1357. In the absence of the attorney general, court to appoint counsel for the state.**

R. C., c. 33, s. 22.  
1846, c. 29, c. 4.

If the attorney general should fail at any term of the supreme court to attend to the business which by law is assigned him, the court may appoint some counsel learned in the law to discharge his duties during the term.

## CHAPTER THIRTY-SIX.

## CRIMES AND PUNISHMENTS.

## SECTION.

- 1358. Abandonment of wife and children by husband.
- 1359. Abandonment, failure to provide support presumptive evidence thereof.
- 1360. Adequate support, failure of husband to provide, for wife and children.
- 1361. Abduction of children.
- 1362. Abduction; conspiracy.
- 1363. Abortion, felony to administer to a woman pregnant any medicine to destroy her child, or to use an instrument with the same intent.
- 1364. Abortion, misdemeanor to administer medicine to pregnant woman, or use any instrument with intent to procure miscarriage.
- 1365. Accessories to felonies before the fact, when, where and how tried and punished.
- 1366. Accessories to felonies after the fact, when, where, and how tried and punished.
- 1367. Accessories, how proceeded against and punished where principal is not attainted.
- 1368. Accessories before the fact, how punished.
- 1369. Advertisements and legal notices, destruction or defacement of, punished.
- 1370. Adulterated liquors, penalty for making or selling.
- 1371. Adulterated and poisonous liquors, penalty for manufacturing or selling.
- 1372. Adulterating liquors, penalty for selling recipes for.
- 1373. Arson and other burnings, punishment for.
- 1374. Assault, punishment therefor.
- 1375. Bigamy, what and how punished.
- 1376. Blackmailing by accusation, threatening letter or other threats.
- 1377. Bribery of jurors.
- 1378. Bribery; officers receiving bribes, guilty of felony.
- 1379. Bribery; offering a bribe punished.
- 1380. Buoys, mooring vessels to, prohibited.
- 1381. Burglary, how punished.
- 1382. Burglary, breaking out of dwelling house in the night time.
- 1383. Burglary, breaking into certain houses or buildings, a misdemeanor.
- 1384. Burglary or other felony, the intent to commit, an infamous crime.
- 1385. Buying and selling offices.
- 1386. Castration with malice aforethought.
- 1387. Castration or maiming without malice aforethought.
- 1388. Cattle and live stock, mismarking, a misdemeanor.
- 1389. Cattle and live stock, the wilful killing or injuring of, running at large in the range.
- 1390. Cattle and live stock, injury to, in unlawful inclosure.

## SECTION.

- 1391. Cattle and live stock, pursuing with intent to steal, punished as larceny.
- 1392. Concealing birth of child.
- 1393. Concealed weapons, the carrying of unlawfully, a misdemeanor.
- 1394. Cotton, sale of within certain hours prohibited.
- 1395. Cotton, weighing of, regulated.
- 1396. Cotton weigher's oath, the failure of the weigher to make, subscribe and file with the register of deeds, a misdemeanor.
- 1397. County claims, speculation in, indictable.
- 1398. Crime against nature.
- 1399. Directors, commissioners and other public officers forbidden to become contractors.
- 1400. Dueling, sending, accepting or bearing a challenge, a misdemeanor.
- 1401. Dueling, when death ensues, murder.
- 1402. Embezzlement, punished as larceny.
- 1403. Embezzlement of state bonds or other property of the state, by state officers or employees.
- 1404. Embezzlement of trust funds by public officers, felony.
- 1405. Embezzlement by treasurer of benevolent or religious institution, a misdemeanor.
- 1406. Embezzlement by officer of railroad company, felony.
- 1407. Embezzlement, conspiracy with officer of railroad.
- 1408. Embezzlement, sufficiency of indictment for.
- 1409. Escape, prison-breach by criminal.
- 1410. Escape, officer indictable for, what necessary for state to prove.
- 1411. Escape, duty of solicitor in such a case.
- 1412. False lights, holding out, on or near sea shore.
- 1413. False pretence and false token, cheating by.
- 1414. False pretence, obtaining signature by.
- 1415. False pretence, obtaining advances upon representation of ownership of property, and promising to apply the same to payment of the debt, and failing to do so.
- 1416. Forcible entry and detainer.
- 1417. Forgery, how punished.
- 1418. Forgery and counterfeiting of bank notes, checks and other securities.
- 1419. Forgery and counterfeiting, passing, or attempting to pass, notes forged or counterfeited.
- 1420. Forgery and counterfeiting of certificates of stock by officer or agent of a corporation.
- 1421. Forgery and counterfeiting, selling forged judgments, bonds or other securities.
- 1422. Forgery and counterfeiting of foreign coin, passing, or attempting to pass, such coin.



## SECTION.

1423. Forgery and counterfeiting, having in possession instruments for counterfeiting foreign coin.
1424. Forgery and, counterfeiting, fraudulently connecting different parts of several genuine bank notes, or other instruments.
1425. Forgery and counterfeiting of private marks, stamps or labels.
1426. Forgery and counterfeiting; penalty for selling merchandise with forged or counterfeited marks, stamps or labels.
1427. Forgery and counterfeiting, fraudulent use of brands.
1428. Fornication and adultery.
1429. Gambling, betting at cards in tavern or retail house, a misdemeanor.
1430. Gambling, keeper of tavern or liquor shop, allowing cards to be played in his house guilty of a misdemeanor.
1431. Gambling, faro-banks and tables prohibited.
1432. Gambling, gaming tables of every kind prohibited.
1433. Gambling, person allowing gaming tables on his premises indictable.
1434. Gambling, lotteries forbidden.
1435. Gambling, sale of lottery tickets forbidden.
1436. Gambling, justices of the peace, and other officers, directed to destroy gaming tables.
1437. Gambling, justices, and other judicial officers authorized to summon witnesses touching the whereabouts of gaming tables.
1438. Gambling, money or property bet at any prohibited game, liable to be seized.
1439. Gambling, persons opposing destruction of gaming tables or seizure of moneys staked on forbidden games, how punished.
1440. Ginsing, penalty for digging between April and September.
1441. Highways and public roads, penalty for failure to work on.
1442. Highways and public roads, overseer of, neglecting his duty.
1443. Homicide, manslaughter, punishment therefor.
1444. Homicide, manslaughter, punishment for second offence.
1445. Homicide, murder, its punishment.
1446. Hunting for deer by fire light.
1447. Hunting by fire light, accomplices.
1448. Incest, carnal intercourse between grand parent and grand child, parent and child, brother and sister, a felony.
1449. Incest, carnal intercourse between uncle and niece, nephew and aunt, a misdemeanor.
1450. Injuries to houses, churches and fences.
1451. Injuries, landmarks, penalty for altering or removing.
1452. Larceny or robbery of bank notes and other securities.
1453. Larceny, by servant of master's goods.
1454. Larceny, horse stealing.
1455. Larceny, stealing horse for temporary use or purpose.

## SECTION.

1456. Larceny, the felonious injury to, or pursuit of, live stock, with intent to appropriate the same, a misdemeanor.
1457. Larceny of growing crops or vegetables.
1458. Larceny of wood, or other property growing or being upon land.
1459. Larceny or obliteration of public records, or fraudulent removal of registration books; unnecessary to allege ownership or value.
1460. Larceny, fraudulent concealment or destruction of wills.
1461. Larceny, fraudulent disposition by clerk, or other custodian of the public laws, reports of supreme court, or other public documents, a misdemeanor.
1462. Larceny, receivers of stolen goods, punishment of.
1463. Larceny, distinction between grand and petit larceny abolished.
1464. Liquor selling, retailing without license.
1465. Liquor selling to minors forbidden.
1466. Liquor selling to minors; the father, mother, guardian and employer of minor may sue liquor dealer for damages.
1467. Liquor selling within two miles of public, political speakings, prohibited.
1468. Maiming, with malice aforethought.
1469. Malicious injury to real property.
1470. Malicious injury to personal property.
1471. Marriages, unlawful with females under fifteen years of age without consent of father.
1472. Marriages, unlawful between whites and negroes.
1473. Marriages, unlawful for register of deeds, clergymen and justices of the peace to consent to the marriage of a negro to a white person.
1474. Mills, owners of, to keep up bridges over ditches, drains and canals.
1475. Mills, the destruction or obstruction of dams, canals or water channels, connecting with a mill, factory or machine works, indictable.
1476. Monuments and tombstones, unlawful to remove or deface.
1477. Mortgaged property, unlawful to dispose of.
1478. Officers failing to discharge their duties, may be indicted and removed from office.
1479. Peddling without license.
1480. Perjury, its punishment.
1481. Perjury, subornation of.
1482. Political societies, secret, prohibited.
1483. Punishment for felonies not specified.
1484. Punishment for misdemeanors not specified.
1485. Railroads, plank roads, turnpikes and canals, maliciously destroying, obstructing and injuring, penalty when death ensues, and when not.
1486. Railroads, wilful injuries to, without malice.
1487. Railroads, shooting at or throwing into cars, locomotives or trains, punishment.
1488. Rape punished with death.
1489. Rape, assault with intent to commit, a misdemeanor.

SECTION.

1490. Rape, carnal knowledge of a married woman by fraud in personating her husband is not, but declared to be felony.
1491. Rape, assault with intent to have carnal knowledge of married woman by fraud in personating her husband, how punished.
1492. Rape and buggery, what proof sufficient in.
1493. Rebellion or insurrection against the state, a high crime.
1494. Rebellion or insurrection, conspiracy to destroy the government of the state by.
1495. Seamen, enticing from vessels, a misdemeanor.
1496. Seamen, unlawful to secrete or harbor those who have deserted.
1497. Seamen, justices of the peace authorized to issue search warrants for those who have deserted.
1498. Seamen, either party may appeal, justice to reduce to writing testimony of all material witnesses, and return to appellate court, fees of justice.

SECTION.

1499. Sheriffs, constables or other officers failing to execute process, making a false return thereon, or refusing to discharge any other duties, indictable.
1500. Slander of women by charge of incontinency, penalty.
1501. Springs, wells and cisterns, wilful injuring, penalty.
1502. Sunday, hunting on, prohibited.
1503. Sunday, sale of intoxicating liquors on, a misdemeanor.
1504. Telegraph poles or wires, injury to, a misdemeanor.
1505. Treasurer of the state, fraudulent entries and statements by, a misdemeanor.
1506. Trespass on lands without a license, after being forbidden, a misdemeanor.
1507. Trespass on public lands, penalty therefor.
1508. Trout, unlawful to catch mountain trout with seine at all times; the taking by shooting or otherwise between the fifteenth day of October and the thirteenth day of December, a misdemeanor.
1509. Water courses, obstruction of, penalty.

Sec. 1358. Abandonment of wife and children by husband.

If any husband shall wilfully abandon his wife without providing adequate support for such wife, and the children which he may have begotten upon her, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars, or imprisoned not exceeding thirty days.

State v. Deaton, 65—496; State v. Brown, 67—470; State v. Dunston, 78—418; State v. Davis, 79—603.

1868-'9, c. 209, s. 1.  
1873-'4, c. 176, s. 10.  
1879, c. 92.

Sec. 1359. Abandonment, failure to provide support presumptive evidence thereof.

If the fact of abandonment and failure to provide adequate support of wife and children shall be proved, or while being with such wife, neglect by the husband to provide for the adequate support of such wife 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.

1868-'9, c. 209, s. 3.

Sec. 1360. Adequate support, failure of husband to provide, for wife and children.

If any husband, while living with his wife, shall wilfully neglect to provide adequate support for such wife or the children which he has begotten upon her, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars, or imprisoned not exceeding thirty days.

State v. Davis, 79—603.

1868-'9, c. 209, s. 2.  
1873-'4, c. 176, s. 11.  
1879, c. 92.

**Sec. 1361. Abduction of Children.**

1879, c. 81.

Any one who shall abduct, or by any means induce any child under the age of fourteen years, who shall reside with the father, mother, uncle, aunt, brother, or elder sister, or shall reside at a school, or be an orphan and reside with a guardian, to leave such person or school, shall be guilty of a crime, and on conviction shall be fined or imprisoned at the discretion of the court, or may be sentenced to the penitentiary for a period not exceeding fifteen years.

**Sec. 1362. Abduction; conspiracy.**

1879, c. 81, s. 2.

Every one who shall conspire to abduct, or by any means to induce any child under the age of fourteen years, who shall reside with any of the persons aforesaid, or at school, to leave the persons aforesaid or the school, shall be guilty of a like offence, and on conviction shall be punished as prescribed in the preceding section: *Provided, however*, that no one who may be a nearer blood-relation to the child than the persons named in said section shall be indicted for either of said offences.

State v. Sullivan, 85—506.

**Sec. 1363. Abortion, felony to administer to a woman pregnant any medicine to destroy her child, or to use an instrument with the same intent.**

1881, c. 351, s. 1.

Every person who shall wilfully administer to any woman either pregnant or quick with child, or prescribe for any such woman, or advise or procure any such woman to take any medicine, drug or substance whatever, or shall use or employ any instrument or other means with intent thereby to destroy said child, unless the same shall have been necessary to preserve the life of such mother shall be guilty of a felony, and shall be imprisoned in the penitentiary for not less than one year nor more than ten years, and be fined at the discretion of the court.

**Sec. 1364. Abortion, misdemeanor to administer medicine to pregnant woman or use any instrument with intent to procure miscarriage.**

1881, c. 351, s. 2.

Every person who shall administer to any pregnant woman, or prescribe for any such woman, advise and procure such woman to take any medicine, drug or anything whatsoever, with intent thereby to procure the miscarriage of any such woman, or to injure or destroy such woman, or shall use any instrument or application for any of the above purposes, shall be guilty of a misdemeanor, and, on conviction, shall be imprisoned in the jail or penitentiary for not less than one year nor more than five years, and be fined, at the discretion of the court.

**Sec. 1365. Accessories to felonies before the fact, when, where and how tried and punished.**R. C., c. 34, s. 53.  
1797, c. 485, s. 1.  
1852, c. 58.

If any person shall counsel, procure or command any other person to commit any felony, whether the same be felony at common



4 a law or by virtue of any statute the person so counseling, pro-  
 5 curing, or commanding, shall be guilty of felony, and may  
 6 be indicted and convicted, either as an accessory before the fact to  
 7 the principal felony, together with the principal felon, or after  
 8 the conviction of the principal felon; or may be indicted and  
 9 convicted of a substantive felony, whether the principal felon  
 10 shall or shall not have been previously convicted, or shall or shall  
 11 not be amenable to justice, and may be punished in the same  
 12 manner as any accessory before the fact to the same felony, if con-  
 13 victed as an accessory, may be punished; and the offence of the  
 14 person so counseling, procuring, or commanding, howsoever in-  
 15 dicted, may be inquired of, tried, determined and punished by any  
 16 court which shall have jurisdiction to try the principal felon, in  
 17 the same manner as if such offence had been committed at the  
 18 same place as the principal felony or where the principal felony  
 19 is triable, although such offence may have been committed at any  
 20 place within or without the limits of the state; and in case the  
 21 principal felony shall have been committed within the body of any  
 22 county, and the offence of counseling, procuring or commanding  
 23 shall have been committed within the body of any other county,  
 24 the last mentioned offence may be inquired of, tried, determined,  
 25 and punished in either of such counties: *Provided always*, that no  
 26 person who shall be once duly tried for any such offence, whether  
 27 as an accessory before the fact, or as for a substantive felony, shall  
 28 be liable to be again indicted or tried for the same offence.

State v. Mann, 1 Hay., 4; State v. Graff, 1 Murph., 270; State v. Barden, 1 Dev., 518; State v. Hardin, 2 Dev. & Bat., 407; State v. Hildreth, 9 Ire., 440; State v. Cheek, 13 Ire., 114; State v. Dewey & Battle, 65—572.

**Sec. 1366. Accessories to felonies after the fact, when, where and how tried and punished.**

• If any person shall become an accessory after the fact to any  
 2 felony, whether the same be a felony at common law or by vir-  
 3 tue of any statute or statutes made, or to be made, such person  
 4 shall be guilty of a misdemeanor, and may be indicted and con-  
 5 victed together with the principal felon, or after the conviction  
 6 of the principal felon, or may be indicted and convicted for such  
 7 misdemeanor, whether the principal felon shall or shall not have  
 8 been previously convicted, shall or shall not be amenable to jus-  
 9 tice, and shall be punished by imprisonment in the peniten-  
 10 tiary or county jail, for not less than four months nor more than  
 11 ten years; and may also be fined in the discretion of the court.  
 12 And the offence of such person may be inquired of, tried, deter-  
 13 mined and punished by any court which shall have jurisdiction of  
 14 the principal felon, in the same manner as if the act, by reason  
 15 whereof such person shall have become an accessory, had been  
 16 committed at the same place as the principal felony, although  
 17 such act may have been committed without the limits of the state;  
 18 and in case the principal felony shall have been committed

R. C., c. 34, s. 54.  
 1797, c. 185, s. 1.  
 1852, c. 58.

19 within the body of any county, and the act by reason whereof any  
 20 person shall have become accessory shall have been committed  
 21 within the body of any other county, the offence of such person  
 22 guilty of a misdemeanor as aforesaid, may be inquired of, tried, deter-  
 23 mined, and punished in either of said counties: *Provided always,*  
 24 that no person, who shall be once duly tried for such misdemeanor,  
 25 shall be again indicted or tried for the same offence.

State v. Chittam, 2 Dev., 49; State v. Smith, 2 Ire., 402; State v. Duncan, 6 Ire., 98, 236; State v. Ives, 13 Ire., 339; State v. Beatty, 1 Phil., 52; State v. Ludwick, Phil., 401; State v. Winton, Phil., 196.

**Sec. 1367. Accessories, how proceeded against and punished where principal is not attainted.**

R. C., c. 34, s. 55.

In order that accessories may be convicted and punished in  
 2 cases where the principal felon is not attainted, it is enacted,  
 3 that if any principal offender shall be in anywise convicted, it shall  
 4 be lawful to proceed against an accessory, either before or after the  
 5 fact, in the same manner as if the principal felon shall die or be  
 6 pardoned, or otherwise delivered before attainder; and every such  
 7 accessory shall suffer the same punishment, if he be in anywise  
 8 convicted, as he should have suffered if the principal had been at-  
 9 tainted.

**Sec. 1368. Accessories before the fact, how punished.**

1868, c. 31, s. 2.  
 1874-'5, c. 212.

Any person who shall be convicted as an accessory before the  
 2 fact in either of the crimes of murder, arson, burglary or rape,  
 3 shall be imprisoned for life in the penitentiary. An accessory be-  
 4 fore the fact to the stealing of any horse, mare, gelding or mule,  
 5 on being duly convicted therefor, shall be imprisoned at hard labor  
 6 in the penitentiary for not less than five nor more than twenty  
 7 years, in the discretion of the court. Every accessory before the  
 8 fact, in any other felony, shall be punished by imprisonment in  
 9 the penitentiary or county jail, for not more than ten years, or may  
 10 be fined, in the discretion of the court.

**Sec. 1369. Advertisements and legal notices, destruction or defacing of, punished.**

1876-'7, c. 215.

Any person who shall wilfully and unlawfully deface, tear down,  
 2 remove or destroy any legal notice or advertisement authorized by  
 3 law to be posted by any officer or other person, the same being  
 4 actually posted at the time of such defacing, tearing down, re-  
 5 moving or destruction during the time for which such legal notice  
 6 or advertisement shall be authorized by law to be posted, shall  
 7 be guilty of a misdemeanor; and upon conviction shall be fined  
 8 not exceeding fifty dollars, or imprisoned not exceeding thirty  
 9 days.

**Sec. 1370. Adulterated liquors, penalty for making or selling.**

1858-'9, c. 57, ss. 1, 4.

If any person shall adulterate any spirituous, alcoholic, vinous

2 or malt liquors by mixing the same with any substance of what-  
 3 ever kind, except as hereinafter provided, or if any person shall  
 4 sell or offer to sell any spirituous, alcoholic, vinous or malt liquors,  
 5 knowing the same to be thus adulterated, or shall import into this  
 6 state any spirituous or intoxicating liquors, and sell or offer to sell  
 7 such liquor, knowing the same to be adulterated, shall be guilty of  
 8 a misdemeanor, and upon conviction thereof shall be fined and  
 9 imprisoned, one or both, at the discretion of the court before which  
 10 the trial shall be had.

**Sec. 1371. Adulterated and poisonous liquors, penalty for manufacturing or selling.**

Any person who shall manufacture, sell, or in any way deal out  
 2 spirituous liquors, of any name or kind, to be used as a drink or  
 3 beverage, and the same shall be found to contain any foreign prop-  
 4 erties or ingredients poisonous to the human system, shall be  
 5 guilty of a high misdemeanor, and upon conviction shall be im-  
 6 prisoned in the penitentiary not less than five years, and may be  
 7 fined in the discretion of the court. It shall be competent for any  
 8 citizen after making purchase of any spirituous liquors, to cause  
 9 the same to be analyzed by some known competent chemist, and  
 10 if upon such analysis it shall be found to contain any foreign pois-  
 11 onous matter it shall be *prima facie* evidence against the party  
 12 making such a sale, and a certificate of such analysis may be used  
 13 as evidence against such offender.

1873-'4, c. 180, ss. 1,  
2.

**Sec. 1372. Adulterating liquors, penalty for selling recipes for.**

Any person who shall sell or offer to sell any recipe or formula  
 2 whatever for adulterating any spirituous or alcoholic liquors, by  
 3 mixing the same with any substance of whatever kind, except as  
 4 is hereinafter provided, shall be guilty of a misdemeanor, and upon  
 5 conviction thereof, shall be fined and imprisoned as is provided in  
 6 the preceding section of this chapter: *Provided*, that the provisions  
 7 of this section and of the next preceding section shall not be so  
 8 construed as to prevent druggists, physicians, and persons engaged  
 9 in the mechanical arts, from adulterating liquors for medical and  
 10 mechanical purposes.

1858-'9, c. 57, ss. 2, 3.

**Sec. 1373. Arson and other burnings, punishment for.**

(1) Any person convicted according to due course of law of the  
 2 crime of arson, shall suffer death.

1870-'1, c. 222.

See R. C., c. 34, s. 2.

3 (2) Every person convicted of any wilful burning of any gin  
 4 house or tobacco house, or any part thereof, or, in the night time,  
 5 of any stable containing a horse or a mule, shall be imprisoned in  
 6 the penitentiary not less than five, nor more than ten years.

1863, c. 17  
1868-'9, c. 167, s. 5.

State v. England, 78—552.



R. C., c. 34, s. 7.  
1830, c. 41, s. 1.

7 (3) Any person who shall wilfully or maliciously burn the state  
8 house, or any of the public offices of the state, or any court house,  
9 jail, arsenal, clerk's office, register's office, or any house belonging to  
10 any county or incorporated town in the state, or to any incorpo-  
11 rated company whatever, in which are kept the archives, docu-  
12 ments, or public papers of such county, town, or corporation,  
13 shall, on conviction, be imprisoned in the penitentiary for not  
14 less than five, nor more than ten years.

State v. Mitchell, 5 Ire., 350; State v. Upchurch, 9 Ire., 454.

R. C., c. 34, s. 30.  
1825, c. 1273.

15 (4) If any person, with intent to destroy the same, shall wilfully  
16 and maliciously set fire to and burn any public bridge, or private  
17 toll-bridge, or the bridge of any incorporated company, or any fire-  
18 engine house, or any house belonging to any county or incorpo-  
19 rated town, used for public purposes other than the keeping of  
20 archives, documents and public papers, or any house belonging to  
21 an incorporated company and used in the business of such com-  
22 pany; or if any person shall wilfully and maliciously attempt to  
23 burn any of the said houses or bridges, or any of the houses or  
24 buildings mentioned in this chapter, the person so offending shall  
25 be guilty of a misdemeanor, and being convicted thereof, shall  
26 be punished by imprisonment in the penitentiary or county  
27 jail, for not less than four months nor more than ten years.

4-5, c. 133.

28 (5) Any person who shall wilfully burn or destroy any other  
29 person's corn, cotton, wheat, barley, rye, oats, buckwheat, rice,  
30 tobacco, hay, straw, fodder, shucks or other provender in a stack,  
31 hill, rick or pen, or secured in any other way out of doors, shall be  
32 guilty of a misdemeanor, and on conviction thereof shall be pun-  
33 ished by imprisonment in the county jail or penitentiary for not  
34 less than four months nor more than five years.

1874-75, c. 228.  
7 and 8 Geo. IV c.  
31, s. 2.

35 (6) Whoever shall unlawfully and maliciously set fire to any  
36 church, chapel or meeting house, or shall unlawfully or maliciously  
37 set fire to any stable, coach-house, out-house, warehouse, office,  
38 shop, mill, barn or granary, or to any building or erection used in  
39 carrying on any trade or manufacture, or any branch thereof,  
40 whether the same or any of them respectively shall then be in the  
41 possession of the offender, or in the possession of any other person,  
42 with intent thereby to injure or defraud any person or persons, body  
43 politic or corporation, shall be guilty of felony, and on being con-  
44 victed thereof shall be imprisoned in the penitentiary for not less  
45 than five nor more than forty years.

State v. Janes, 78—504; State v. England, 78—552; State v. Thorne, 81—555; State v. Jenkins,  
84—812.

1876-77, c. 13.

46 (7) Any person who shall wilfully attempt to burn any dwelling  
47 house, uninhabited house, barn, stable, or out-house, or mill, man-  
48 ufacturing house, cotton gin, tobacco barn, granary or turpentine  
49 distillery, the property of another, the person so offending, on con-  
50 viction thereof, shall be guilty of a misdemeanor, and shall be

51 punished by imprisonment in the penitentiary or county jail, and  
52 may also be fined, in the discretion of the court.

State v. Gillis, 4 Dev., 606; State v. Sandy, 3 Ire., 570; State v. Clark, 7 Jones, 167; State v. Laughlin, 8 Jones, 354, 455; State v. Jim, 8 Jones, 450; State v. Cherry, 63—493; State v. Wise, 66—120; State v. Jones, 69—364; State v. King, 69—419; State v. Gallor, 71—88.

Sec. 1374. Assault, punishment therefor.

In all cases of an assault, with or without intent to kill or injure,  
2 the person convicted shall be punished by fine or imprisonment,  
3 or both, at the discretion of the court: *Provided*, that where no  
4 deadly weapon has been used and no serious damage done, the  
5 punishment in assaults, assaults and batteries, and affrays, shall  
6 not exceed a fine of fifty dollars or imprisonment for thirty days;  
7 but this proviso shall not apply to cases of assault with intent to  
8 kill, or with intent to commit rape.

1870-71, c. 43, s. 2.  
1873-74, c. 176, s. 6.  
1879, c. 92, ss. 2, 6.

State v. Heidelberg, 70—496; *In re Schenck*, 74—607; State v. McNeill, 75—15; State v. Miller, 75—73; State v. Taylor, 83—601; State v. Berry, 83—603.

Sec. 1375. Bigamy, what and how punished.

If any person being married, shall marry any other person,  
2 during the life of the former husband or wife, whether the second  
3 marriage shall have taken place in the state of North Carolina, or  
4 elsewhere, every such offender, and every person counseling, aid-  
5 ing or abetting such offender, shall be guilty of felony, and on con-  
6 viction, shall be liable to be imprisoned in the penitentiary or  
7 county jail, for any term not less than four months nor more than  
8 ten years; and any such offence may be dealt with, tried, deter-  
9 mined and punished in the county where the offender shall be  
10 apprehended, or be in custody, as if the offence had been actually  
11 committed in that county: *Provided, always*, that nothing herein  
12 contained shall extend to any person marrying a second time,  
13 whose husband or wife shall have been continually absent from  
14 such person for the space of seven years then last past, and shall  
15 not have been known by such person to have been living within  
16 that time, nor shall extend to any person who at the time of such  
17 second marriage shall have been lawfully divorced from the bond  
18 of the first marriage, nor to any person whose former marriage  
19 shall have been declared void by the sentence of any court of com-  
20 petent jurisdiction.

9 Geo. IV, c. 31, s. 22.

See R. C., c. 34, s. 15; 1790, c. 323; 1809, c. 783; 1829, c. 9. State v. Norman, 2 Dev., 222; State v. Patterson, 2 Ire., 346; State v. Robbins, 6 Ire., 23; State v. Bray, 13 Ire., 289; State v. Barnett, 83—615.

Sec. 1376. Blackmailing by accusation, threatening letter or other threats.

If any person shall knowingly send or deliver any letter or  
2 writing demanding of any person, with menaces, and without any  
3 reasonable or probable cause, any chattel, money, or valuable secu-  
4 rity; or if any person shall accuse, or threaten to accuse, or shall

R. C., c. 34, s. 110

5 knowingly send or deliver any letter or writing, accusing or threat-  
 6 ening to accuse any person of any crime punishable by law with  
 7 death, or imprisonment in the penitentiary, with a view or intent  
 8 to extort or gain from such person any chattel, money, or valuable  
 9 security, every such offender shall be guilty of a misdemeanor.

**Sec. 1377. Bribery of Jurors.**

R. C., c. 34, s. 84.  
 5 Edw. III, c. 10.  
 34 Edw. III, c. 8.  
 38 Edw. III, c. 12.

If any juror, either directly or indirectly, shall take anything  
 2 from the plaintiff or defendant in a civil suit, or from any defend-  
 3 ant in a state prosecution, or from any other person, to give his  
 4 verdict, every such juror, and the person who shall give such juror  
 5 any fee or reward to influence his verdict, or induce or procure  
 6 him to make any gain or profit by his verdict, shall be guilty of  
 7 an infamous crime, and on conviction shall be imprisoned in the  
 8 penitentiary or county jail, not less than four months nor more  
 9 than ten years.

**Sec. 1378. Bribery; officers receiving bribes, guilty of felony.**

1868-'9, c. 176, s. 2.

Any person holding office under the laws of this state who, ex-  
 2 cept in payment of his legal salary, fees or perquisites, shall re-  
 3 ceive, or consent to receive, directly or indirectly, anything of  
 4 value or personal advantage, or the promise thereof, for perform-  
 5 ing or omitting to perform any official act, or with the express or  
 6 implied understanding that his official action, or omission to act,  
 7 is to be in any degree influenced thereby, shall be guilty of a fel-  
 8 ony, and on conviction shall be punished by imprisonment in the  
 9 penitentiary for a term not exceeding five years, or fined not ex-  
 10 ceeding five thousand dollars, or both, in the discretion of the  
 11 court.

**Sec. 1379. Bribery; offering a bribe punished.**

1870-'1, c. 232.

Any person offering a bribe, whether it be accepted or not, shall  
 2 be guilty of felony, and on conviction shall be punished by im-  
 3 prisonment for a term not less than one year nor more than five  
 4 years in the penitentiary or county jail, in the discretion of the  
 5 court.

**Sec. 1380. Buoys, mooring vessels to, prohibited.**

1858-'9, c. 58, ss. 2, 3.

Any person mooring any vessel to any of the buoys, beacons or  
 2 stakes, placed in the navigable waters of this state by the United  
 3 States Light-House Board, or in any manner hanging on with a  
 4 boat or vessel to any such buoy, stake or beacon in said waters,  
 5 shall forfeit and pay the sum of fifty dollars for every offence; and  
 6 any person who shall wilfully remove, break or otherwise damage  
 7 any such buoy, beacon or stake, shall be guilty of a misdemeanor,  
 8 and in addition thereto shall forfeit and pay the sum of one hun-  
 9 dred dollars. The penalties shall be recovered by the superintend-



ent 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.

**Sec. 1381. Burglary, how punished.**

Any person convicted, according to due course of law, of the crime of burglary, shall suffer death. 1870-'1, c. 222.

*State v. Wise*, 66—120, 67—231; *State v. Evans*, 69—40; *State v. Jones*, 69—364; *State v. Johnson*, 75—123.

**Sec. 1382. Burglary breaking out of dwelling house in the night time.**

If any person shall enter the dwelling house of another with intent to commit any felony or other infamous crime therein, or being in such dwelling house, shall commit any felony or other infamous crime therein, and shall, in either case, break out of the said dwelling house, in the night time, such person shall be guilty of burglary. R. C., c. 34, s. 8.  
78 Geo. IV, c. 29, s. 11.  
24, 25, Vic. c. 96, s. 51.

*State v. Henry*, 9 Ire., 463; *State v. Boone*, 13 Ire., 241; *State v. Whit.*, 4 Jon., 349; *State v. Jenkins*, 5 Jon., 430; *State v. Willis*, 7 Jon., 190; *State v. McDaniel*, Winst., 249; *State v. Jake*, 2 Winst., 80; *State v. Johnson*, Phil., 136; *State v. McPherson*, 70—239. See, *passim*, 12 Anne, c. 7, s. 3.

**Sec. 1383. Burglary, breaking into certain houses or buildings, a misdemeanor.**

If any person shall break and enter a dwelling house otherwise than by burglary; or shall break and enter a store-house, shop, ware-house, bankinghouse, counting-house, or other building, where any merchandise, chattel, money, valuable security, or other personal property shall be; or shall break and enter any uninhabited house, with intent to commit a felony or other infamous crime therein, every such person shall be guilty of an infamous crime, and on conviction thereof shall be imprisoned in the penitentiary or county jail, not less than four months, nor more than ten years. 1874-'5, c. 166.  
1879, c. 323.

See *State v. Dozier*, 73—117.

**Sec. 1384. Burglary or other felony, the intent to commit, an infamous crime.**

If any person shall be found by night, armed with any dangerous or offensive weapon, with the intent to break or enter a dwelling, or other building whatsoever, and to commit a felony or other infamous crime therein; or shall be found by night, having in his possession, without lawful excuse, any pick-lock, key, bit or other implement of house-breaking; or shall be found by night in any such building, with intent to commit a felony or other infamous crime therein, such person shall be guilty of an infamous crime, and shall be punished by fine or imprisonment, or both, in the discretion of the court. 24, 25 Vict., c. 96,  
s. 58.

See *State v. Dozier*, 73—117.

**Sec. 1385. Buying and selling offices.**

If any person shall bargain or sell an office or deputation of an R. C., c. 34, s. 33.  
5, 6 Edw. VI, c. 16,  
ss. 1, 5.

2 office, or any part or parcel thereof, or shall take money, reward,  
 3 or other profit, directly or indirectly, or shall take any promise,  
 4 covenant, bond or assurance for money, reward or profit, for an  
 5 office or the deputation of an office, or any part thereof, which  
 6 office or any part thereof shall touch or concern the administration  
 7 or execution of justice, or the receipt, collection, control, or dis-  
 8 bursement of the public revenue, or shall concern or touch any  
 9 clerkship in any court of record wherein justice is administered;  
 10 or if any person shall give or pay money, reward or profit, or shall  
 11 make any promise, agreement, bond or assurance for any of the  
 12 said offices, or for the deputation of any of them, or for any part of  
 13 them, the person so offending in any of the cases aforesaid shall  
 14 be guilty of a misdemeanor, and on conviction thereof shall forfeit  
 15 all his right, interest and estate in such office, and every part and  
 16 parcel thereof, and shall be imprisoned and fined at the discretion  
 17 of the court.

**Sec. 1386. Castration with malice aforethought.**

R. C., c. 34, s. 4.  
 1831, c. 40, s. 1.  
 1868-9, c. 167, s. 6.

If any person, of malice aforethought, shall unlawfully castrate  
 2 any other person, or cut off, maim, or disfigure any of the privy  
 3 members of any person, with intent to murder, maim, disfigure,  
 4 disable or render impotent such person, the person so offending  
 5 shall suffer imprisonment in the penitentiary for not less than five  
 6 nor more than sixty years.

State v. King, 69—419.

**Sec. 1387. Castration or maiming without malice aforethought.**

R. C., c. 34, s. 47.  
 1754, c. 56.  
 1791, c. 339, ss. 2, 3.  
 1831, c. 40, s. 2.

If any person shall, on purpose and unlawfully, but without  
 2 malice aforethought, cut or slit the nose, bite or cut off a nose,  
 3 lip or ear, or disable any limb or member of any other person, or  
 4 castrate any other person, or cut off, maim, or disfigure any of the  
 5 privy members of any other person, with intent to kill, maim, dis-  
 6 figure, disable or render impotent such person—in any such case  
 7 the person so offending shall, on conviction thereof, be imprisoned  
 8 in the county jail or penitentiary not less than six months nor  
 9 more than ten years, and fined, in the discretion of the court.

State v. Irwin, 1 Hay., 112; State v. Evans, 1 Hay., 281; State v. Orman, 1 Dev. & Bat., 119;  
 State v. Martin, 3 Dev., 329; State v. Girkin, 1 Ire., 121; State v. Green, 7 Ire., 39; State v. Miller,  
 75—73.

**Sec. 1388. Cattle and live stock, mismarking, a misdemeanor.**

R. C., c. 34, s. 57.  
 1797, c. 485, s. 2.

If any person shall knowingly alter or deface the mark or brand  
 2 of any other person's horse, mule, or ass, neat cattle, sheep, goat,  
 3 or hog, or shall knowingly mismark or brand any such beast that  
 4 may be unbranded or unmarked, not properly his own, with intent  
 5 to defraud any other person, the person so offending shall be guilty  
 6 of a misdemeanor, and shall be punished as if convicted of lar-  
 7 ceny.

State v. Goode, 1 Haw., 463; State v. Collins, 3 Dev., 117; State v. Davis, 2 Ire., 153; State v.  
 O'Neal, 7 Ire., 251; State v. Allen, 72—114; State v. King, 84—737.

Sec. 1389. Cattle and live stock, the wilful killing or injuring of, running at large in the range.

If any person shall unlawfully and on purpose kill, maim, or  
2 injure any live stock, lawfully running at large in the range, or  
3 in the field or pasture of the owner, whether done with the actual  
4 intent to injure the owner, or to drive the stock from the range,  
5 or any other unlawful intent, every such person, his counselors,  
6 aiders, and abettors, shall be guilty of a misdemeanor: *Provided*,  
7 *however*, that nothing herein contained shall prohibit any person  
8 from driving out of the range any stock unlawfully brought from  
9 other states or places.

R. C., c. 34, s. 104.  
1850, c. 94, ss. 1, 2.

State v. Waters, 6 Jones, 276; State v. Butler, 65—309; State v. Manuel, 72—201; State v. Simpson, 73—269; State v. Pollard, 83—597.

Sec. 1390. Cattle and live stock, injury to, in unlawful inclosure.

If any person shall wilfully and unlawfully kill or abuse any  
2 horse, mule, hog, sheep or other cattle, the property of another,  
3 in any inclosure not surrounded by a lawful fence, such person  
4 shall be guilty of a misdemeanor, and on conviction shall be fined  
5 or imprisoned at the discretion of the court: *Provided*, that this  
6 section shall not apply to any county or territory where the stock  
7 law prevails.

1868-'9, c. 253.

State v. Staton, 60—640; State v. Allen, 69—23; State v. Painter, 70—70; State v. Manuel, 72—201; State v. Simpson, 73—269; State v. Hill, 79—656; State v. Parker, 81—531, 548; State v. Whitaker, 85—566.

Sec. 1391. Cattle and live stock, pursuing with intent to steal, punished as larceny.

If any person shall pursue, kill or wound any horse, mule, ass,  
2 jenny, cattle, hog, sheep or goat, the property of another, with the  
3 intent unlawfully and feloniously to convert the same to his own  
4 use, he shall be guilty of a misdemeanor, and on conviction shall  
5 be punishable, in all respects, as if convicted of larceny, though  
6 such animal may not have come into the actual possession of the  
7 person so offending. And all persons commanding, counseling,  
8 advising, aiding or abetting any of such unlawful acts, shall be  
9 punished in like manner, and may be prosecuted alone, or with the  
10 principal actor.

1896, c. 57.

State v. Butler, 65—309.

Sec. 1392. Concealing birth of child.

If any woman who shall be delivered of a child shall, by secretly  
2 burying or otherwise disposing of the dead body of the said child,  
3 endeavor to conceal the birth thereof, she shall be guilty of a mis-  
4 demeanor, and on conviction shall be punished by a fine not ex-  
5 ceeding five hundred dollars, and imprisoned not exceeding one  
6 year: *Provided*, that nothing in this section shall be construed to  
7 prevent the mother, who may be guilty of the homicide of her  
8 child, from being prosecuted and punished for the same, according

R. C., c. 34, s. 28,  
1818, c. 985.



9 to the principles of the common law. And any person aiding,  
10 counseling or abetting any woman in concealing the birth of her  
11 child, shall be guilty of a misdemeanor.

See 21 Jac. I, c. 27; 43 Geo. III, c. 58, s. 3; 9 Geo. IV, c. 31, s. 14. State v. Jeffreys, 3 Mur., 480; State v. Joiner, 4 Haw., 350.

**Sec. 1393. Concealed weapons, the carrying of unlawfully, a misdemeanor.**

1879, c. 127.

If any one, except when on his own premises, shall carry concealed about his person any pistol, bowie knife, dirk, dagger, slung-shot, loaded cane, brass, iron or metallic knuckles, or other deadly weapon of like kind, he shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned at the discretion of the court. And if any one, not being on his own lands, shall have about his person any such deadly weapon, such possession shall be *prima facie* evidence of the concealment thereof. This section shall not apply to the following persons: officers and soldiers of the United States army, civil officers of the United States while in the discharge of their official duties, officers and soldiers of the militia and the state guard when called into actual service, officers of the state, or of any county, city or town, charged with the execution of the laws of the state, when acting in the discharge of their official duties.

State v. Wilson, 84—777.

**Sec. 1394. Cotton, sale of, within certain hours prohibited.**

1873-'4, c. 62.  
1874-'5, c. 70.

If any person shall buy, sell, deliver or receive, for a price, or for any reward whatever, any cotton in the seed, or any unpacked lint cotton, brought or carried in a basket, hamper or sheet, or in any mode where the quantity is less than what is usually baled, or where the cotton is not baled, between the hours of sunset and sunrise, such person so offending shall be guilty of a misdemeanor, and on conviction shall be fined not exceeding fifty dollars, or imprisoned not exceeding thirty days.

**Sec. 1395. Cotton, weighing of, regulated.**

1874'5, c. 58, ss. 1, 2.

If any weigher or purchaser of cotton shall make any deduction from the weight of any bag, bale or package of lint cotton, for or on account of the draft, turn, or break of the scales, steelyards, or other implement used in weighing the same, or for any other cause except as herein allowed, the person so offending shall be guilty of a misdemeanor, and on conviction shall be fined three hundred dollars or imprisoned, in the discretion of the court: *Provided*, however, that the weigher may make such proper deduction as shall be agreed on by him, and the seller, or his agent, for water, dirt or other foreign substance, in or on such bag, bale, or package of cotton, or for other just cause.

Sec. 1396. Cotton weigher's oath, the failure of the weigher to make, subscribe, and file with the register of deeds, a misdemeanor.

Every public weigher of cotton shall, before entering on the  
 2 duties of his office, make and subscribe the following oath before  
 3 some person entitled to administer it, viz:

I, ....., public weigher for the city of ....., (or as the case may be,) do solemnly swear, that I will justly, impartially and without any deduction, except as may be allowed by law, weigh all cotton that may be brought to me for that purpose, and will tender a true account thereof to the parties concerned if required so to do: so help me, God.

4 Such oath, when made, shall be filed in the office of the register of  
 5 deeds for the county in which the person acts as weigher, and said  
 6 register shall make a note of the same, and any person acting as  
 7 weigher without making and filing the above or some equivalent  
 8 oath, shall be guilty of a misdemeanor, and upon conviction before  
 9 any justice of the peace, shall be fined twenty-five dollars for every  
 10 bag, bale, or package of cotton which he shall have unlawfully  
 11 weighed before being qualified to do so.

Sec. 1397. County claims, speculation in, indictable.

If any clerk, sheriff, register of deeds, county treasurer, or other  
 2 county, city, town or state officer shall engage in the purchasing  
 3 of any county, city, town or state claim at a less price than its full  
 4 and true value, or at any rate of discount thereon, or be interested  
 5 in any speculation in any such claims, he shall be guilty of a mis-  
 6 demeanor, and on conviction thereof shall be fined or imprisoned,  
 7 and also shall be liable to removal from office at the discretion of  
 8 the court.

Sec. 1398. Crime against nature.

If any person shall commit the abominable and detestable crime  
 2 against nature, with mankind or beast, he shall be imprisoned in  
 3 the penitentiary not less than five, nor more than sixty years.

State v. King, 69—419; 25 Hen. VIII, c. 6; 5 Eliz., c. 17.

Sec. 1399. Directors, commissioners and other public officers forbidden to become contractors.

No person, appointed or elected a commissioner or director to  
 2 discharge any trust wherein the state or any county, city, or town  
 3 may be in any manner interested, shall become an undertaker, or  
 4 make any contract for his own benefit, under such authority, or be  
 5 in any manner concerned or interested in making such contract,  
 6 or in the profits thereof, either privately or openly, singly or jointly  
 7 with another; and any person so offending shall be guilty of a  
 8 misdemeanor.

Sec. 1400. Dueling, sending, accepting or bearing a challenge, a misdemeanor.

If any person shall send, accept or bear a challenge to fight a  
 2 duel, though no death ensue, he, and all such as counsel, aid and

2 abet him, shall be guilty of a misdemeanor, and on conviction  
3 thereof shall be punished accordingly, and moreover, be ineligible  
4 to any office of trust, honor or profit in the state, any pardon or  
5 reprieve notwithstanding.

State v. Farrier, 1 Haw., 487.

**Sec. 1401. Dueling, when death ensues, murder.**

R. C., c. 31, s. 3.  
1802, c. 608, s. 2.

If any person fight a duel in consequence of a challenge sent or  
2 received, and either of the parties shall be killed, then the survi-  
3 vor, on conviction thereof, shall suffer death; and all their aiders  
4 or abettors shall be considered accessories before the fact.

**Sec. 1402. Embezzlement punished as larceny.**

1871-'2, c. 145, s. 2.

If any officer, agent, clerk, employee or servant of any corpora-  
2 tion, person or copartnership, (except apprentices and other per-  
3 sons under the age of sixteen years,) shall embezzle or fraudulently  
4 convert to his own use, or shall take, make way with or secrete,  
5 with intent to embezzle or fraudulently convert to his own use any  
6 money, goods or other chattels, bank note, check or order for the  
7 payment of money issued by or drawn on any bank or other cor-  
8 poration, or any treasury warrant, treasury note, bond or obliga-  
9 tion for the payment of money issued by the United States or by  
10 any state, or any other valuable security whatsoever belonging to  
11 any other person or corporation, which shall have come into his  
12 possession or under his care, he shall be guilty of felony, and upon  
13 conviction thereof shall be punished as in cases of larceny.

See 21 Hen. VII, c. 7; 39 Geo. III, c. 85; 7 and 8 Geo. IV, c. 39, s. 47; 24 and 25 Vict., c. 96, s. 68.

**Sec. 1403. Embezzlement of state bonds or other property of the state, by state officers or employees.**

1871-5, c. 52.

If any officer, agent or employee of the state, or other person hav-  
2 ing or holding in trust for the same any bonds issued by said  
3 state, or any security, or other property and effects of the same,  
4 shall embezzle or knowingly and wilfully misapply or convert the  
5 same to his own use, or otherwise wilfully or corruptly abuse the  
6 said trust, such offender and all persons aiding and abetting, or  
7 otherwise assisting therein, shall be guilty of felony, and upon con-  
8 viction thereof shall be fined not less than ten thousand dollars, or  
9 imprisoned in the penitentiary not less than twenty years, or both,  
10 at the discretion of the court.

**Sec. 1404. Embezzlement of trust funds by public officers, felony.**

1876-'7, c. 47.

If any officer, agent, or employee of any city, county, or incorpo-  
2 rated town, or of any penal, charitable, religious or educational in-  
3 stitution; or if any person having or holding any moneys or prop-  
4 erty in trust for any city, county, incorporated town, penal, chari-  
5 table, religious or educational institution, shall embezzle or other-  
6 wise wilfully and corruptly use or misapply the same for any pur-



7 pose other than that for which such moneys or property is held,  
 8 such person shall be guilty of felony, and upon conviction shall be  
 9 fined and imprisoned in the discretion of the court.

**Sec. 1405. Embezzlement by treasurer of benevolent or religious institution, a misdemeanor.**

If any treasurer or other financial officer of any benevolent or 1879, c. 105.  
 2 religious institution, society or congregation shall lend any of the  
 3 moneys coming into his hands to any other person or association  
 4 without the consent of the institution, association or congregation,  
 5 to whom such moneys belong; or, if he shall fail to account for such  
 6 moneys when called on, he shall be guilty of a misdemeanor, and  
 7 on conviction shall be punished by fine or imprisonment, or both,  
 8 in the discretion of the court.

**Sec. 1406. Embezzlement by officer of railroad company, felony.**

If any president, secretary, treasurer, director, engineer, agent, 1870-'1, c. 103, s. 1.  
 2 or other officer of any railroad company, shall embezzle any  
 3 moneys, bonds, or other valuable funds, or securities, with which  
 4 such president, secretary, treasurer, director, engineer, agent, or  
 5 other officer, shall be charged by virtue of his office, or agency, or  
 6 shall in any way, directly or indirectly, apply or appropriate the  
 7 same, for the use or benefit of himself, or any other person, state,  
 8 or corporation, other than the company of which he is president,  
 9 secretary, treasurer, director, engineer, agent, or other officer, for  
 10 every such offence the person so offending shall be guilty of felony,  
 11 and on conviction in the superior or criminal court of any county  
 12 through which the railroad of such company shall pass, shall be  
 13 imprisoned in the penitentiary, not less than three, nor more than  
 14 ten years, and fined not less than one thousand, nor more than  
 15 ten thousand dollars.

State v. Jackson, 82—565.

**Sec. 1407. Embezzlement, conspiracy with officer of railroad.**

If any person shall agree, combine, collude, or conspire with the 1870-'1, c. 103, s. 2;  
 2 president, secretary, treasurer, director, engineer or agent of any  
 3 railroad company, to commit any offence specified in the preced-  
 4 ing section, such person so offending shall be guilty of felony, and  
 5 on conviction in the superior or criminal court of a county through  
 6 which the railroad of any company against which such offence  
 7 may be perpetrated passes, shall be imprisoned in the penitentiary  
 8 for not less than three, nor more than ten years, and fined not less  
 9 than one thousand, nor more than ten thousand dollars.

State v. Jackson, 82—565.

**Sec. 1408. Embezzlement, sufficiency of indictment for.**

In indictments for embezzlement, except when the offence shall 1871-'2, c. 145, s. 2.  
 2 relate to a chattel, it shall be sufficient to allege the embezzlement

3 to be of money, without specifying any particular coin or valuable  
4 security; and such allegation, so far as regards the description of  
5 the property, shall be sustained if the offender shall be proved to  
6 have embezzled any amount, although the particular species of  
7 coin or valuable security of which such amount was composed  
8 shall not be proved.

**Sec. 1409. Escape, prison-breach by criminal.**

R. C., c. 34, s. 19.  
1 Edw. II, st. 2d.

Any person who shall break prison, being lawfully confined  
2 therein, shall be guilty of a misdemeanor.

**Sec. 1410. Escape, officer indictable for, what necessary for state to prove.**

R. C., c. 34, s. 35.  
1791, c. 343, s. 1.

When any person charged with a crime or misdemeanor, or sen-  
2 tenced by the court upon conviction of any offence, shall be legally  
3 committed to any sheriff, constable or jailer, or shall be arrested  
4 by any sheriff, deputy sheriff or coroner acting as sheriff, by virtue  
5 of any *capias* issuing on a bill of indictment, information, or other  
6 criminal proceeding, and such sheriff, deputy sheriff, coroner, con-  
7 stable or jailer, wilfully or negligently, shall suffer such person, so  
8 charged, or sentenced and committed, to escape out of his custody,  
9 the sheriff, deputy sheriff, coroner, constable or jailer so offending,  
10 being thereof convicted, shall be removed from office, and fined at  
11 the discretion of the court before whom the trial may be had; and  
12 in all such cases it shall be sufficient, in support of the indictment  
13 against such sheriff or other officer, to prove that such person so  
14 charged or sentenced was committed to his custody, and it shall  
15 lie upon the defendant to show that such escape was not by his  
16 consent or negligence, but that he had used all legal means to pre-  
17 vent the same, and acted with proper care and diligence: *Provided*,  
18 that such removal of a sheriff shall not affect his duty or power as  
19 a collector of the public revenue, but he shall proceed on such  
20 duty and be accountable, as if such conviction and removal had  
21 not been had.

**Sec. 1411. Escape, duty of solicitor in such a case.**

R. C., c. 34, s. 36.  
1791, c. 343, s. 2.

It is hereby declared to be the duty of solicitors, when they  
2 shall be informed or have knowledge of any felon, or person oth-  
3 erwise charged with any crime or offence against the state, having  
4 within their respective districts escaped out of the custody of any  
5 sheriff, deputy sheriff, coroner, constable or jailer, to take the nec-  
6 essary measures to prosecute such sheriff, or other officer so offend-  
7 ing; and in such cases the governor may be indorsed as prosecutor.

**Sec. 1412. False lights, holding out, on or near seashore.**

R. C., c. 34, s. 38.  
1831, c. 42.

Any person who shall make or display, or cause to be made or  
2 displayed any false light or beacon, on or near the sea-coast, for

3 the purpose of deceiving and misleading masters of vessels, and  
 4 thereby to put them in danger of shipwreck, shall be guilty of a  
 5 felony, and upon conviction shall be imprisoned in the peniten-  
 6 tiary for not less than four months nor more than ten years.

**Sec. 1413. False pretence and false token, cheating by.**

If any person shall knowingly and designedly, by means of any  
 2 forged or counterfeited paper, in writing or in print, or by any  
 3 false token, or other false pretence whatsoever, obtain from any  
 4 person or corporation within the state any money, goods, prop-  
 5 erty, or other thing of value, or any bank-note, check, or order for  
 6 the payment of money, issued by, or drawn on, any bank or other  
 7 society or corporation within this state or any of the United States,  
 8 or on any treasury warrant, debenture, certificate of stock, or pub-  
 9 lic security, or any order, bill of exchange, bond, promissory note,  
 10 or other obligation, either for the payment of money or for the de-  
 11 livery of specific articles, with intent to cheat or defraud any per-  
 12 son or corporation of the same, such person shall be guilty of a  
 13 misdemeanor for fraud and deceit, and being thereof convicted,  
 14 shall be imprisoned in the penitentiary not less than four months  
 15 nor more than ten years, and fined, in the discretion of the court.  
 16 *Provided always*, that if, on trial of any one indicted for such mis-  
 17 demeanor, it shall be proved that he obtained the property in such  
 18 manner as to amount to larceny, he shall not, by reason thereof,  
 19 be entitled to be acquitted of the misdemeanor; and no person  
 20 tried for such misdemeanor shall be liable to be afterwards pros-  
 21 ecuted for larceny upon the same facts: *Provided also*, that it shall  
 22 be sufficient in any indictment for obtaining or attempting  
 23 to obtain any such property by false pretences, to allege that the  
 24 party accused did the act with intent to defraud, without alleging  
 25 an intent to defraud any particular person, and without alleging  
 26 any ownership of the chattel, money or valuable security; and, on  
 27 the trial of any such indictment, it shall not be necessary to prove  
 28 an intent to defraud any particular person, but it shall be suffi-  
 29 cient to prove that the party accused did the act charged with an  
 30 intent to defraud.

R. C., c. 34, s. 67.  
 1811, c. 814, s. 2.

24, 25 Vict., c. 96, s.  
 88.

See 33 Hen. VIII, c. 1, ss. 1, 2; 30 Geo. II, c. 24, s. 1; 52 Geo. III, c. 64, s. 1; 7 and 8 Geo. IV, c. 29, s. 53; 24 and 25 Vict., c. 96, s. 88, A. D. 1861; *State v. Simpson*, 3 Hawks., 620; *State v. Pautto*, 4 Haw., 348; *State v. Justice*, 2 Dev., 199; *State v. Burrows*, 11 Ire., 477; *State v. Phifer*, 65—320; *State v. Jones*, 70—75; *State v. Johnson*, 75—123; *State v. Fitzgerald*, 1 D. & B., 408; *State v. Gillespie*, 80—396; *State v. Reese*, 83—367; *State v. Allred*, 84—749; *State v. Heffner*, 84—751.

**Sec. 1414. False pretence, obtaining signature by.**

Every person who, with intent to defraud or cheat another, shall  
 2 designedly, by color of any false token or writing, or by any other  
 3 false pretence, obtain the signature of any person or persons to any  
 4 written instrument, the false making of which would be punisha-  
 5 ble as forgery, or obtain from any person or persons any money,

1871-'2, c. 92.



6 goods, wares, merchandise or other property or valuable thing  
 7 whatsoever, shall, on conviction thereof, be punishable by fine not  
 8 less than one hundred dollars nor more than one thousand dollars,  
 9 or by imprisonment in the penitentiary for a term not less than  
 10 one year nor more than five years, or both, at the discretion of the  
 11 court.

State v. Phifer, 65—321; State v. Young, 76—258; State v. Pickett, 78—459; State v. Munday, 78—460; State v. Austin, 79—624; State v. Lambreth, 80—393; State v. Gillespie, 80—396; State v. Holmes, 82—607; State v. Reese, 83—637; State v. Allred, 84—749; State v. Heffner, 84—751.

**Sec. 1415. False pretence; obtaining advances upon representation of ownership of property, and promising to apply the same to payment of the debt, and failing to do so.**

1879, cs. 185, 186.

If any person shall obtain any advances in money, provisions,  
 2 goods, wares or merchandise of any description, from any other  
 3 person or corporation, upon any written representation that the  
 4 person making the same is the owner of any article of produce,  
 5 or of any other specific chattel, or personal property, which  
 6 said property, or the proceeds of which, the said owner in said  
 7 representation thereby agrees to apply to the discharge of the  
 8 debt so created as aforesaid, and the said owner shall fail to  
 9 apply said produce or other property, or the proceeds thereof,  
 10 in accordance with said agreement, or shall dispose of the same in  
 11 any other manner than is so agreed upon by the parties to the  
 12 transaction, the person so offending shall be deemed guilty of a  
 13 misdemeanor, whether he shall or shall not have been the owner  
 14 of any such property at the time such representation was made.  
 15 This offence shall be punishable as in the preceding section.

**Sec. 1416. Forcible entry and detainer.**

R. C., c. 49, s. 1.  
 5 Rich. II, c. 8.

No one shall make entry into any lands and tenements, or term for  
 2 years, but in case where entry is given by law; and in such case, not  
 3 with strong hand nor with multitude of people, but only in a  
 4 peaceable and easy manner; and if any man do the contrary, he  
 5 shall be guilty of a misdemeanor.

State v. Fort & Gause, 4 D. & B., 192; State v. Smith, 2 Ire., 127; State v. Prigden, 8 Ire., 84; State v. Whitfield, 8 Ire., 315; Jordan v. Rouse, 1 Jon., 119; State v. Bordeaux, 241; State v. Eason, 70—88; State v. Yarborough, 70—250; R. R. v. Sharpe, 70—509; Perry v. Shepherd, 78—33; State v. Shepard, 82—614.

**Sec. 1417. Forgery, how punished.**

R. C., c. 34, s. 59.  
 1801, c. 572.

If any person, of his own head and imagination, or by false con-  
 2 spiracy or fraud with others, shall wittingly and falsely forge and  
 3 make, or shall cause or wittingly assent to be forged or made, or  
 4 shall show forth in evidence, knowing the same to be forged, any  
 5 deed, lease or will, or any bond, writing obligatory, bill of ex-  
 6 change, promissory note, indorsement or assignment thereof; or  
 7 any acquittance, or receipt for money or goods; or any receipt, or  
 8 release for any bond, note, bill, or any other security for the pay-  
 9 ment of money; or any order for the payment of money or deliv-

10 ery of goods, with intent, in any of said instances, to defraud any  
11 person or corporation, and thereof shall be duly convicted, the per-  
12 son so offending shall be punished by imprisonment in the peniten-  
13 tiary or county jail not less than four months nor more than ten  
14 years, and fined, in the discretion of the court.

See stat. 5 Eliz., c. 14, ss. 2, 3, &c.; 21 Jac. I., c. 26, (A. D. 1623.) *State v. Dalton*, 1 Haw., 3; *State v. Daurden*, 2 Dev., 443; *State v. Britt*, 3 Dev., 122; *State v. Morgan*, 2 Dev. & Bat., 348; *State v. Batemon*, 3 Ire., 474; *State v. Thornburg*, 6 Ire., 79; *State v. Gherkin*, 7 Ire., 293; *State v. Weaver*, 13 Ire., 491; *State v. Lytle*, 64—255; *State v. Lamb*, 65—419; *State v. Thorn*, 66—644; *State v. Leak*, 80—403; *State v. Lane*, 80—407.

**Sec. 1418. Forgery and counterfeiting of bank-notes, checks and other securities.**

If any person shall falsely make, forge or counterfeit, or cause or  
2 procure the same to be done, or willingly aid or assist therein, any  
3 bill or note in imitation of, or purporting to be, a bill or note of  
4 any incorporated bank in this state, or in any of the United States,  
5 or in any of the territories of the United States; or any order or  
6 check on any such bank or corporation, or on the cashier thereof;  
7 or any of the securities purporting to be issued by or on behalf of  
8 the state, or by or on behalf of any corporation with intent to in-  
9 jure or defraud any person, bank or corporation, or the state, the  
10 person so offending shall be guilty of felony, and on conviction  
11 thereof in the superior court shall be punished in like manner  
12 as if he had been convicted under the preceding section.

R. C., c. 34, s. 60.  
1819, c. 994, s. 1.

*State v. Twitty*, Haw., 22, 248; *State v. Ward*, Haw., 443, 8 Jones, 19; *State v. Jones*, Busbee, 214.

**Sec. 1419. Forgery and counterfeiting, passing, or attempting to pass, notes forged or counterfeited.**

If any person, directly or indirectly, whether for the sake  
2 of gain or with intent to defraud or injure any other person, shall  
3 utter or publish any such false, forged or counterfeited bill, note,  
4 order, check, or security, as is mentioned in the preceding  
5 section; or shall pass, or deliver, or attempt to pass, or deliver  
6 any of them to another person, (knowing the same to be falsely  
7 forged or counterfeited), the person so offending shall, on con-  
8 viction thereof in the superior court, be punished by imprison-  
9 ment in the county jail or penitentiary, not less than four months  
10 nor more than ten years.

R. C., c. 34, s. 61.  
1819, c. 994, s. 2.

5 Ire., 287.

**Sec. 1420. Forgery and counterfeiting of certificates of stock by officer or agent of a corporation.**

If any officer or agent of a corporation shall, falsely and with a  
2 fraudulent purpose, make with the intent that the same shall be  
3 issued and delivered to any other person by name or as holder or  
4 bearer thereof, any certificate or other writing, whereby it is  
5 certified or declared that such person, or holder, or bearer, is enti-  
6 tled to or has interest in the stock of such corporation, when in  
7 fact such person, or holder, or bearer, is not so entitled, or is not  
8 entitled to the amount of stock in such certificate or writing speci-

R. C., c. 31, s. 62<sup>a</sup>

9 fied ; or if any officer or agent of such corporation, or other per-  
 10 son, knowing such certificate or other writing to be false or untrue,  
 11 shall transfer, assign, or deliver the same to another person, for  
 12 the sake of gain, or with the intent to defraud the corporation, or  
 13 any member thereof, or such person to whom the same shall be  
 14 transferred, assigned or delivered, the person so offending shall,  
 15 on conviction, suffer the same punishment as is prescribed in the  
 16 preceding section.

Sec. 1421. Forgery and counterfeiting, selling forged judgments, bonds or other securities.

R. C., c. 34, s. 63. ]

If any person shall sell, by delivery, indorsement, or otherwise,  
 2 to any other person, any judgment for the recovery of money pur-  
 3 porting to have been rendered by a justice of the peace, or any  
 4 bond, promissory note, bill of exchange, order, draft, or liquidated  
 5 account purporting to be signed by the debtor, (knowing the same  
 6 to be forged,) the person so offending shall, on conviction, be pun-  
 7 ished by imprisonment in the penitentiary or county jail, for not  
 8 less than four months nor more than ten years.

State v. Davis, 84—787.

Sec. 1422. Forgery and counterfeiting of foreign coin, passing or attempting to pass such coin.

R. C., c. 34, s. 64.  
 1811, c. 814, s. 3.

If any person shall falsely make, forge, or counterfeit, or cause  
 2 or procure to be falsely made, forged, or counterfeited, or willingly  
 3 aid or assist in falsely making, forging, or counterfeiting the re-  
 4 semblance or similitude or likeness of a Spanish milled dollar, or  
 5 any foreign coin of gold or silver, which is in common use and  
 6 received in the discharge of contracts by the citizens of the state;  
 7 or shall pass, utter, publish, or sell, or attempt to pass, utter, pub-  
 8 lish, or sell, or bring into the state from any other place, with in-  
 9 tent to pass, utter, publish or sell as true, any such false, forged, or  
 10 counterfeited coin, knowing the same to be false, forged, or coun-  
 11 terfeited, with intent to defraud any corporation, or any person  
 12 whatsoever, every person so offending shall be guilty of a misde-  
 13 meanor, and on conviction thereof in the superior court shall be  
 14 punished by imprisonment in the penitentiary or county jail, for  
 15 not less than four months nor more than ten years.

Sec. 1423. Forgery and counterfeiting, having in possession instruments for counterfeiting foreign coin.

R. C., c. 34, s. 65.  
 1811, c. 814, s. 4.

If any person shall have in his possession any instrument for  
 2 the purpose of making any counterfeit similitude or likeness of a  
 3 Spanish milled dollar, or other foreign coin made of gold or silver,  
 4 which is in common use and received in discharge of contracts by  
 5 the citizens of the state, and shall be duly convicted thereof in  
 6 any superior court, the person so offending shall suffer as pre-



7 scribed in the preceding section, and shall be further liable to  
 8 be fined, at the discretion of the court, not more than five hundred  
 9 dollars, and be imprisoned not more than twelve months.

State v. Collins, 3 Haw., 191.

**Sec. 1424.** Forgery and counterfeiting, fraudulently connecting different parts of several genuine bank notes, or other instruments.

If any person shall fraudulently connect together different parts  
 2 of two or more bank notes, or other genuine instruments, in such  
 3 a manner as to produce another note or instrument, with intent to  
 4 pass all of them as genuine, the same shall be deemed a forgery,  
 5 and the instrument so produced a forged note, or forged instru-  
 6 ment, in like manner as if each of them had been falsely made or  
 7 forged. R. C., c. 34, s. 66.

**Sec. 1425.** Forgery and counterfeiting of private marks, stamps or labels.

Every person who shall knowingly and wilfully forge, or coun-  
 2 terfeit or cause or procure to be forged or counterfeited, the private  
 3 marks, tokens, stamps or labels of any mechanic, manufacturer or  
 4 other person being a resident of this state or of the United States,  
 5 with intent to deceive and defraud the purchasers, mechanics or  
 6 manufacturers of any goods, wares or merchandise whatsoever,  
 7 upon conviction thereof shall be punished by a fine of not less than  
 8 fifty dollars and not exceeding one thousand dollars, or by impris-  
 9 onment of not less than thirty days or more than five years, or both  
 10 fine and imprisonment, at the discretion of the court. 1870-'1, c. 253, s. 1.

**Sec. 1426.** Forgery and counterfeiting, penalty for selling merchandise with forged or counterfeited marks, stamps or labels.

Every person who shall vend any goods, wares or merchandise  
 2 having thereon any forged or counterfeited marks, tokens, stamps or  
 3 labels purporting to be the marks, tokens, stamps or labels of any  
 4 person being a resident of the state or of the United States, know-  
 5 ing the same at the time of the purchase thereof by him to be  
 6 forged or counterfeited, shall upon conviction be guilty of a mis-  
 7 demeanor, and shall be punished by imprisonment in the county  
 8 jail not exceeding six months, or by a fine not exceeding one  
 9 hundred dollars, or by both fine and imprisonment, at the discre-  
 10 tion of the court. 1870-'1, c. 253, s. 2.

**Sec. 1427.** Forgery and counterfeiting, fraudulent use of brands.

If any person shall knowingly use the mark or brand of any  
 2 other person on any sack, or shall knowingly impress on any sack  
 3 the mark or brand of another person, with intent to defraud or for  
 4 the purpose of enhancing the value of his own property, the person  
 5 so offending shall be guilty of a misdemeanor, and shall be pun-  
 6 ished as if convicted of larceny. 1874-'5, c. 225.

**Sec. 1428. Fornication and adultery.**

R. C., c. 34, s. 45.  
1805, c. 684.

If any man and woman, not being married to each other, shall  
2 lewdly and lasciviously associate, bed and cohabit together, they  
3 shall be guilty of a misdemeanor: *Provided, however,* that the ad-  
4 missions or confessions of one shall not be received in evidence  
5 against the other.

State v. Cox, N. C. T. R., 165; State v. Aldridge, 3 Dev. 331; State v. Dickenson, 1 Dev. & Bat., 349; State v. Jolly, 3 Dev. & Bat., 110; State v. Fore, 1 Ire., 378; State v. Waters, 3 Ire., 455; State v. Cowell, 4 Ire., 231; State v. Hooper, 5 Ire., 201; State v. Mainor, 6 Ire., 340; State v. Poteet, 8 Ire. 23; State v. Parham 5 Jones, 416; State v. Lyerly, 7 Jon., 153; State v. Melton, Busb., 49; State v. Schlachter, Phil., 520; State v. Hairston, 63—451; State v. Reinhardt, 63—547; State v. Custer, 65—339; State v. Adams, 65—537; State v. Folly, 74—322; State v. Phipps, 76—203; State v. Ross, 76—242; State v. Kennedy, 76—251; State v. Ballard, 79—627; State v. Waller, 80—401; State v. Lashley, 84—754.

**Sec. 1429. Gambling, betting at cards in tavern or retail house, a misdemeanor.**

F. C., c. 34, s. 75.  
1799, c. 526.  
1801, c. 581.  
1831, c. 26.

If any person shall bet money, property, or other thing of value,  
2 whether the same be in stake or not, at any game of cards which  
3 shall be played in any ordinary, tavern, or house of entertainment,  
4 or in any house wherein spirituous liquors are retailed, or on any  
5 part of the premises occupied with such ordinary, tavern, house of  
6 entertainment, or house wherein spirituous liquors are sold as  
7 aforesaid, or shall play at such game of cards; the person so of-  
8 fending shall be guilty of a misdemeanor, and any fine imposed  
9 on the offence shall not be less than ten dollars.

State v. Terry, 4 D. & B., 185; State v. Smitherman, 1 Ire., 14; State v. Black, 9 Ire., 378; State v. Keisler, 6 Jon., 73; State v. Brannen, Jon., 208.

**Sec. 1430. Gambling, keeper of tavern or liquor shop, allowing cards to be played in his house, guilty of a misdemeanor.**

R. C., c. 34, s. 76.  
1799, c. 526.  
1801, c. 581.  
1831, c. 26.

If any keeper of an ordinary, or house of entertainment, or of a  
2 house wherein liquors are retailed, shall knowingly suffer any  
3 game of cards, at which money or property, or anything of value,  
4 is bet, whether the same be in stake or not, to be played in any  
5 such house, or on any part of the premises occupied therewith; or  
6 shall furnish persons so playing or betting with drink or other  
7 thing for their comfort or subsistence during the time of play, he  
8 shall be guilty of a misdemeanor, and on conviction shall be fined  
9 not less than ten dollars, and be imprisoned not more than thirty  
10 days.

State v. Keisler, 6 Jon., 73.

**Sec. 1431. Gambling, faro-banks and tables prohibited.**

R. C., c. 34, s. 71.  
1848, c. 34.  
1856-7, c. 25.

If any person shall open, establish, use, or keep a faro-bank or  
2 a faro-table, with the intent that games of chance may be played  
3 thereat, or shall play or bet thereat any money, property, or thing  
4 of value, whether the same be in stake or not, he shall be guilty of  
5 a misdemeanor, and on conviction shall be fined at least two hun-  
6 dred dollars and imprisoned not less than three months.

State v. Keisler, 6 Jon., 73; State v. Brannen, 8 Jon., 208; State v. Bryant, 74—207.

**Sec. 1432. Gambling, gaming tables of every kind prohibited.**

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 thirty days; 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 guilty of a misdemeanor, and any fine imposed on the offender shall not be less than ten dollars.

R. C., c. 34, s. 72.  
1791, c. 336.  
1798, c. 502, s. 2.

State v. Bishop, 8 Ire., 266; State v. Gupton, 8 Ire., 271; State v. Bryant, 74—207.

**Sec. 1433. Gambling, person allowing gaming-tables on his premises indictable.**

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 shall also be guilty of a misdemeanor, and on conviction shall be fined and imprisoned.

R. C., c. 34, s. 73.  
1798, c. 502, s. 3.  
1800, c. 552.

State v. Keisler, 6 Jon., 73.

**Sec. 1434. Gambling, lotteries forbidden.**

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, real estate, or any goods or chattels, cash, or written evidence of debt, or certificates of claims, or anything of value whatsoever; every person so offending shall be guilty of a misdemeanor, and be fined not exceeding two thousand dollars, or imprisoned not exceeding six months, or both, in the discretion of the court. Any person or society, association, company or organization of persons whatsoever, who engage in disposing of any species of property whatsoever, money evidences of debt, or in any manner distribute gifts or prizes upon tickets or certificates sold for that purpose, shall be held liable to indictment and prosecution under this section.

R. C., c. 34, s. 69.  
1834, c. 19, s. 1.  
1874-75, c. 96.

State v. Krebs, 64—604; State v. Bryant, 74—207; State v. Morris, 77—512.

**Sec. 1435. Gambling, sale of lottery tickets forbidden.**

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 any wise 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 guilty of a misdemeanor, and be punished as in the preceding section.

R. C., c. 34, s. 70.  
1834, c. 19, s. 2.



Sec. 1436. Gambling, justices of the peace and other officers directed to destroy gaming tables.

R. C., c. 34, s. 74.  
1791, c. 336.  
1798, c. 502, s. 2.

All justices of the peace, sheriffs, constables, and commissioners  
2 of police are hereby authorized and directed, on information made  
3 to them on oath, that any gaming table, prohibited to be used by  
4 this chapter, is in the possession or use of any person within the  
5 limits of their jurisdiction, to destroy the same by every means in  
6 their power; and they shall call to their aid all the good citizens  
7 of the county, if necessary to effect their destruction.

Sec. 1437. Gambling, justices and other judicial officers authorized to summon witnesses touching the whereabouts of gaming tables.

1858-'9, c. 34, s. 1.

All justices of the peace, intendants and magistrates of police,  
2 mayors of towns, and judges of the supreme or superior court, who  
3 shall have good reason to believe that any person within their  
4 jurisdictions has knowledge of the existence and establishment of  
5 any faro-bank or faro-table, or gambling tables, prohibited by this  
6 chapter, in any town or county within their several jurisdictions,  
7 and such person not being minded to make voluntary information  
8 thereof on oath, then it shall be lawful for such justice of the peace,  
9 intendant and magistrate of police, mayor of town, or judge of  
10 supreme or superior court, to issue to the sheriff of the county, or  
11 any constable of the town or township in which said faro-bank or  
12 faro-table, or gaming table or tables are supposed to be, a subpœna  
13 *capias ad testificandum*, or summons in writing, commanding such  
14 person to appear immediately before said justice of the peace,  
15 intendant or magistrate of police, mayor or judge, and give evi-  
16 dence on oath as to what he may know touching the existence,  
17 establishment and whereabouts of said gaming table or tables, faro-  
18 bank or faro-table, and the names and personal description of the  
19 keepers thereof; and such evidence when obtained shall be consid-  
20 ered and held in law as an information on oath, and said justice,  
21 intendant, magistrate, mayor or judge, may thereupon proceed to  
22 seize and arrest said keepers and destroy said tables, or issue pro-  
23 cess therefor, in like manner as they may do by authority of the  
24 preceding section.

Sec. 1438. Gambling, money or property bet at any prohibited game liable to be seized.

R. C., c. 34, s. 77.  
1798, c. 502, s. 3.

All moneys, or other property or thing of value exhibited for the  
2 purpose of alluring persons to bet at any prohibited game, or act-  
3 ually staked or bet on such game, shall be liable to be seized  
4 by any justice of the peace, or by any person acting under his  
5 warrant. And the moneys or other property or thing, which shall  
6 be so seized, shall belong one half to the person seizing them, and  
7 the other half to the use of the poor.

**Sec. 1439.** Gambling, persons opposing destruction of gaming tables or seizure of moneys staked on forbidden games, how punished.

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 guilty of a misdemeanor.

R. C., c. 34, s. 78.  
1798, c. 502, s. 4.

**Sec. 1440.** Ginseng, penalty for digging, between April and September.

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.

1866-7, c. 60.

**Sec. 1441.** Highways and public roads, penalty for failure to work on.

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 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 so offending shall for every such offence be guilty of a misdemeanor. The punishment for this offence shall not exceed a fine of fifty dollars or imprisonment for thirty days: *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.

1870-71, c. 74, s. 1.  
1879, c. 92.

State v. Cauble, 70—62; State v. James, 74—393; State v. Luther, 77—492; State v. Craig, 81—588; State v. Craig, 82—668.

**Sec. 1442.** Highways and public roads, overseer of, neglecting his duty.

Every overseer of a road, who shall wilfully neglect any of the duties imposed on him by law, shall be guilty of a misdemeanor.

R. C., c. 34, s. 39.  
1786, c. 256, s. 4.

State v. Everit, 2 Car. L. R., 633; State v. Nicholson, 2 Murph., 135; State v. Small, 11 Ire., 511; State v. Long, 76—254; State v. Long, 81—563; State v. McDowell, 84—793.

**Sec. 1443.** Homicide, manslaughter, punishment therefor.

Every person who shall commit the crime of manslaughter shall be punished by imprisonment in the county jail or penitentiary not less than four months nor more than twenty years.

1879, c. 255.

See R. C., c. 34, s. 24; 4 Hen. VII, c. 13; 1816, c. 918.

**Sec. 1444. Homicide, manslaughter, punishment for second offence.**

R. C., c. 34, s. 25.

Every person who, having been convicted of the crime of man-  
2 slaughter and sentenced thereon, shall be convicted of a second  
3 crime of the like nature, shall be imprisoned in the penitentiary  
4 not less than five nor more than sixty years; and in every such  
5 case of conviction for such second offence, the prior conviction of  
6 the same person and sentence thereon may be shown to the court.

**Sec. 1445. Homicide, murder, its punishment.**

1868-'9, c. 167, s. 1.

Every person who is convicted, in due course of law, of any wil-  
2 ful murder of malice prepense, shall suffer death.

See *passim*, R. C., c. 34, s. 2; 1. Edw. VI, c. 12, s. 10; 23 Hen. VIII, c. 1, s. 3; 25 Hen. VIII, c. 3;  
8 Eliz., c. 4; 18 Eliz., c. 7, s. 1. State v. King, 64—419.

**Sec. 1446. Hunting for deer by fire-light.**

R. C., c. 34, s. 95.  
1784, c. 212, ss. 1, 3.  
1801, c. 595.  
1856-'7, c. 21.  
1879, c. 92.

If any person shall hunt for deer with a gun or guns in the  
2 woods in the night-time, by fire-light, the person so offending shall  
3 be guilty of a misdemeanor, and on conviction shall pay a fine not  
4 exceeding fifty dollars, or be imprisoned not exceeding thirty  
5 days.

**Sec. 1447. Hunting by fire-light, accomplices.**R. C., c. 34, s. 96.  
1774, c. 103.

When more persons than one are engaged in committing the  
2 offence of fire-hunting, any one may be compelled to give evidence  
3 against all others concerned; and the witness, upon giving such  
4 information, shall be acquitted and held discharged from all pen-  
5 alties and pains to which he was subject by his participation in  
6 the offence.

**Sec. 1448. Incest, carnal intercourse between grand parent and grand child, parent and child, brother and sister, a felony.**

1879, c. 16, s. 1.

In all cases of carnal intercourse between grand parent and grand  
2 child, parent and child, and brother and sister, of the half or whole  
3 blood, the parties shall be guilty of felony, and on conviction  
4 thereof shall be punished for every such offence by imprisonment  
5 in the county jail or penitentiary for a term not exceeding five  
6 years, in the discretion of the court.

State v. Keesler, 78—469.

**Sec. 1449. Incest, carnal intercourse between uncle and niece, nephew and aunt, a misdemeanor.**

1879, c. 16, s. 2.

In all cases of carnal intercourse between uncle and niece, and  
2 nephew and aunt, the parties shall be guilty of a misdemeanor,  
3 and upon conviction thereof shall be punished for each such  
4 offence by fine or imprisonment, in the discretion of the court.

**Sec. 1450. Injuries to houses, churches and fences.**

R. C., c. 34, s. 103.

If any person shall, by any other means than burning or at-  
2 tempting to burn, unlawfully and wilfully demolish, destroy, de-



3 face, injure, or damage any of the houses or buildings previously  
 4 mentioned in this chapter; or shall unlawfully and wilfully burn,  
 5 demolish, pull down, destroy, deface, damage, or injure any church,  
 6 uninhabited house, outhouse, or other house or building not men-  
 7 tioned before in this chapter; or shall unlawfully and wilfully  
 8 burn, destroy, pull down, injure, or remove any fence, wall, or other  
 9 inclosure, or any part thereof surrounding or about any yard, gar-  
 10 den, cultivated field or pasture, or about any church, grave-yard,  
 11 factory, or other house in which machinery is used, every person  
 12 so offending shall be guilty of a misdemeanor.

State v. Upchurch, 9 Ire., 451; State v. Allen, 13 Ire., 36; State v. Mason, 13 Ire., 341; State v. Hedrick, 3 Jon., 375; State v. Clark, 7 Jon., 167; State v. Williams, Busb., 197; State v. Perry, 64—305; State v. Mace, 65—344; State v. Roseman, 66—631; State v. Hovis, 76—117; State v. McMinn, 81—585; State v. Padgett, 82—544.

#### Sec. 1451. Injuries, landmarks, penalty for altering or removing.

If any person shall wilfully or fraudulently remove, alter or  
 2 deface any landmark, in anywise whatsoever, such person shall  
 3 be guilty of a misdemeanor, and shall be punished accordingly,  
 4 upon conviction: *Provided, however,* that this section shall not apply to  
 5 such landmarks as creeks and other small streams, which the in-  
 6 terest of agriculture may require to be altered or turned from their  
 7 channels. 1858-'9, c. 17.

#### Sec. 1452. Larceny or robbery of bank notes and other securities.

If any person shall feloniously steal, take and carry away, or  
 2 take by robbery, any bank note, check, or order for the payment  
 3 of money issued by, or drawn on any bank, or other society or  
 4 corporation within this state, or within any of the United States,  
 5 or any treasury warrant, debenture, certificate of stock, or other  
 6 public security, or certificate of stock in any corporation, or any  
 7 order, bill of exchange, bond, promissory note, or other obligation,  
 8 either for the payment of money or for the delivery of specific  
 9 articles, being the property of any other person, or of any corpora-  
 10 tion, (notwithstanding any of the said particulars may be termed  
 11 in law a chose in action,) such felonious stealing, taking and carry-  
 12 ing away, or taking by robbery, shall be felony of the same nature  
 13 and degree, and in the same manner as it would have been if the  
 14 offender had feloniously stolen, or taken by robbery, money, goods,  
 15 or property of any value, and such offender for every such  
 16 offence, shall suffer such punishment, and be subject to the same  
 17 pains, penalties and disabilities as he should or might have suf-  
 18 fered, if he had feloniously stolen or taken by robbery money,  
 19 goods, or other property of value. R. C., c. 34, s. 20.  
 1811, c. 814, s. 1.

State v. Rout, 3 Haw., 618; State v. Brown, 8 Jon., 443; State v. Fulford, Phil., 563; State v. Banks, Phil., 577; State v. Thomason, 71—146; State v. Carter, 72—99; State v. Collins, 72—144; State v. Freeman, 72—521; State v. Dill, 75—257.

## Sec. 1453. Larceny, by servant of master's goods.

R. C., c. 34, s. 18.  
21 Hen. VIII, c. 7,  
ss. 1, 2.

If any servant or employee, to whom any money, goods, or other  
2 chattels, or any of the articles, securities, or choses in action men-  
3 tioned in the preceding section, by his master shall be delivered safely  
4 to be kept to the use of his master, shall withdraw himself from his  
5 master, and go away with the said money, goods, or other chattels,  
6 or any of the articles, securities, or choses in action mentioned as  
7 aforesaid, or any part thereof, with intent to steal the same and de-  
8 fraud his master thereof, contrary to the trust and confidence in him  
9 reposed by said master; or if any servant, being in the service of his  
10 master, without the assent of his master, shall embezzle such money,  
11 goods, or other chattels, or any of the articles, securities, or choses in  
12 action mentioned as aforesaid, or any part thereof, or otherwise con-  
13 vert the same to his own use, with like purpose to steal them, or de-  
14 fraud his master thereof, the servant so offending shall be fined or  
15 imprisoned in the penitentiary or county jail, not less than four  
16 months nor more than ten years, at the discretion of the court:  
17 *Provided, however,* that nothing in this section contained shall ex-  
18 tend to apprentices, or servants, within the age of eighteen years.

State v. Higgins, Mart., 62 (59); State v. Jarvis, 63—566. See *passim*, 39 Geo. III, c. 85; 7, 8 Geo. IV, c. 29, s. 47; 24, 25 Vict., c. 93, s. 68.

## Sec. 1454. Larceny, horse-stealing.

1868, c. 37, s. 1.  
1879, c. 234, s. 2.

Every person who shall steal any horse, mare, gelding or mule,  
2 and shall thereof be convicted according to the due course of law,  
3 shall suffer imprisonment at hard labor for not less than five nor  
4 more than twenty years, at the discretion of the judge.  
5 A count under this section may be joined in a bill of indict-  
6 ment with a count under the succeeding section.

State v. Adams, 1 Haywood, 463 (534); State v. Putney, Phil., 543; State v. Evans, 69—40; State v. Bryant, 74—124; State v. Johnson, 75—123; State v. Lawrence, 81—126. See 1866-'7, c. 62.

## Sec. 1455. Larceny, stealing horse for temporary use or purpose.

1879, c. 234, s. 1.

If any person shall unlawfully take and carry away any horse,  
2 gelding, mare, or mule, the property of another person, secretly  
3 and against the will of the owner of said property, with intent to  
4 deprive the owner of said property of the special or temporary  
5 use of the same, or with the intent to use said property for a  
6 special or temporary purpose, the person so offending shall be  
7 guilty of larceny, and upon conviction shall be punished by im-  
8 prisonment in the penitentiary or county jail, not less than four  
9 months nor more than ten years, and fined, in the discretion of  
10 the court: *Provided,* this section shall not be construed to repeal or  
11 in any way effect the preceding section.

## Sec. 1456. Larceny, the felonious injury to, or pursuit of, live stock, with intent to appropriate the same, a misdemeanor.

1866, c. 57.

If any person shall pursue, kill or wound any horse, mule, ass,  
2 jenny, cattle, hog, sheep or goat, the property of another, with the

3 intent unlawfully and feloniously to convert the same to his own  
 4 use, he shall be guilty of a misdemeanor, and on conviction shall  
 5 be punishable, in all respects, as if convicted of larceny, though  
 6 such animal may not have come into the actual possession of the  
 7 person so offending. And all persons commanding, counseling,  
 8 advising, aiding or abetting any of such unlawful acts shall be  
 9 punished in like manner, and may be prosecuted alone, or with  
 10 the principal actor.

State v. Butler, 65—309.

**Sec. 1457. Larceny of growing crops or vegetables.**

If any person shall steal or feloniously take and carry away any  
 2 maize, corn, wheat, rice or other grain, or any cotton, tobacco, po-  
 3 tatoes, peanuts, pulse or any fruit, vegetable or other product cul-  
 4 tivated for food or market, growing, standing or remaining un-  
 5 gathered, in any field or ground, he shall be guilty of larceny and  
 6 punished accordingly.

1811, c. 816.  
 R. C., c. 34, s. 21.  
 1868-'9, c. 251.

State v. Cherry, 72—123; State v. Graham, 76—195; State v. Liles, 78—496; State v. Foy,  
 82—679.

**Sec. 1458. Larceny of wood or other property, growing or being upon land.**

If any person, not being the present owner or *bona fide* claimant  
 2 thereof, shall wilfully and unlawfully enter upon the lands of an-  
 3 other and carry off or be engaged in carrying off any wood or other  
 4 kind of property whatsoever, growing or being thereon, the same  
 5 being the property of the owner of the premises, or under his con-  
 6 trol, keeping or care, such person shall, if the act be done with  
 7 felonious intent, be guilty of larceny, and punished as for that  
 8 offence. And if not done with such intent, shall be guilty of a  
 9 misdemeanor.

1866, c. 60.

State v. Crosset, 81—579.

**Sec. 1459. Larceny or obliteration of public records, or fraudulent removal of registration book; not necessary to allege ownership or value.**

If any person shall steal or, for any fraudulent purpose, shall take  
 2 from its place of deposit for the time being or from any person  
 3 having the lawful custody thereof, or shall unlawfully and mali-  
 4 ciously obliterate, injure or destroy any record, writ, return, panel,  
 5 process, interrogatory, deposition, affidavit, rule, order or warrant  
 6 of attorney or any original document whatsoever, of or belonging  
 7 to any court of record, or relating to any matter civil or criminal  
 8 begun, pending or terminated in any such court, or any bill, an-  
 9 swer, interrogatory, deposition, affidavit, order or decree or any  
 10 original document whatsoever, of or belonging to any court  
 11 or relating to any cause or matter begun, pending or termi-  
 12 nated in any such court, every such offender shall be guilty of a  
 13 misdemeanor; and in any indictment for such offence it shall not  
 14 be necessary to allege that the article, in respect to which the

R. C., c. 34, s. 31.  
 8 Hen. VI, c. 12.  
 1881, c. 17.



15 offence is committed, is the property of any person or that the  
 16 same is of any value. And if any person shall steal or for any  
 17 fraudulent purpose shall take from the register's office, or from any  
 18 person having the lawful custody thereof, or shall unlawfully and  
 19 wilfully obliterate, injure or destroy any book wherein deeds or  
 20 other instruments of writing are registered, or any other book of  
 21 registration, or record required to be kept by the register of deeds,  
 22 or shall unlawfully destroy, obliterate, deface or remove any rec-  
 23 ord of proceedings of the board of county commissioners, or unlaw-  
 24 fully and fraudulently abstract any record, receipt, order or voucher  
 25 or other paper writing required to be kept by the clerk of the  
 26 board of commissioners of any county, he shall be guilty of a mis-  
 27 demeanor.

**Sec. 1460. Larceny, fraudulent concealment or destruction of wills.**

R. C., c. 34, s. 32.

If any person, either during the life of the testator or after his  
 2 death, shall steal or for any fraudulent purpose destroy or conceal  
 3 any will, codicil or other testamentary instrument, he shall be  
 4 guilty of a misdemeanor.

**Sec. 1461. Larceny, fraudulent disposition by clerk, or other custodian of the public laws, reports of supreme court or other public documents, a misdemeanor.**

1881, c. 151.

It shall be the duty of the clerk of the superior court of each  
 2 county, and every other person to whom the acts of the general  
 3 assembly, supreme court reports, or other public documents, are  
 4 transmitted or deposited for the use of the county or the state, to  
 5 safely keep the same in their respective offices; and if any such  
 6 person having the custody of such books and documents, for the  
 7 uses aforesaid, shall negligently and wilfully dispose of the same,  
 8 by sale or otherwise; or refuse to deliver over the same to his suc-  
 9 cessor in office, he shall be guilty of a misdemeanor, and on con-  
 10 viction thereof shall be punished by fine or imprisonment, or  
 11 both, at the discretion of the court.

**1462. Larceny, receivers of stolen goods, punishment of.**

R. C., c. 34, s. 56.  
 1797, c. 485, s. 2.

If any person shall receive any chattel, property, money, valua-  
 2 ble security, or other thing whatsoever, the stealing or taking  
 3 whereof shall amount to larceny or felony, either at common law  
 4 or by virtue of any statute made or hereafter to be made, such  
 5 person knowing the same to have been feloniously stolen or taken,  
 6 every such receiver shall be guilty of a misdemeanor, and may be  
 7 indicted and convicted, whether the felon stealing and taking  
 8 such chattels, property, money, valuable security, or other thing,  
 9 shall or shall not have been previously convicted, or shall or shall  
 10 not be amenable to justice; and any such receiver may be dealt  
 11 with, indicted, tried, and punished in any county in which he  
 12 shall have, or shall have had, any such property in his possession,

13 or in any county in which the thief may be tried, in the same  
 14 manner as such receiver may be dealt with, indicted, tried and  
 15 punished in the county where he actually received such chattel,  
 16 money, security, or other thing; and on conviction, such receiver  
 17 shall be punished as one convicted of larceny.

State v. Ives, 13 Ire., 338; State v. Minton, Phil., 196; State v. Beatty, 52; State v. Phelps,  
 65—450; State v. Rushing, 69—29; State v. Brite, 73—26; State v. Caveness, 78—484; State v  
 Lawrence, 81—522; State v. Jones, 82—685.

**Sec. 1463. Larceny, distinction between grand and petit larceny abolished.**

All distinctions between petit and grand larceny, where the same R. C., c. 34, s. 26.  
 2 hath had the benefit of clergy, is abolished; and the offence of fe-  
 3 lonious stealing, where no other punishment shall be specifically  
 4 prescribed therefor by statute, shall be punished as petit larceny  
 5 is: *Provided, however*, that in cases of much aggravation, or of har-  
 6 dened offenders, the court may, in its discretion, sentence the of-  
 7 fender to the penitentiary for a period not exceeding ten years.

State v. Minton, Phil., 196; State v. Haughton, 63—491; State v. Ratts, 63—503; State v  
 Brite, 73—26; State v. Gaston, 73—96; State v. Lawrence, 81—525; State v. Tyler, 85—569.

**Sec. 1464. Liquor selling, retailing without license.**

If any person shall retail spirituous liquors by the small meas- R. C., c. 34, s. 94,  
 2 ure in any other manner than is prescribed by law, he shall be 1825, c. 1272, s. 5.  
 3 guilty of a misdemeanor, and shall be fined or imprisoned, or both, 1874—5, c. 39.  
 4 in the discretion of the court.

State v. Shaw, 2 Dev., 193; State v. Morrison, 3 Dev., 299; State v. Faucett, 4 D. & B., 107;  
 State v. Kirkham, 1 Ire., 334; State v. Moore, 1 Jon., 276; Commissioners of Raleigh v. Kane,  
 2 Jon., 288; State v. Bell, 2 Jon., 337; State v. Gerhardt, 3 Jon., 178; State v. McNeely, 1 Winst.,  
 234; State v. Dobson, 65—346; State v. Simmons, 66—622; State v. Stamey, 71—202; State v. Wray,  
 72—253; State v. Lowry, 74—121; State v. Hampton, 77—526; State v. Packer, 80—439; State v.  
 Joyner, 81—534; State v. McMinn, 83—668. See, *passim*, 1798, c. 501; 1816, c. 906.

**Sec. 1465. Liquor selling to minors forbidden.**

It shall be unlawful for any dealer of intoxicating drinks or 1881, c. 242.  
 2 liquors to sell, or in any manner to part with for a compensation  
 3 therefor, either directly or indirectly, or to give away such drinks  
 4 or liquors, to any unmarried person under the age of twenty-one  
 5 years, knowing the said person to be under the age of twenty-one  
 6 years: *Provided*, that such sale or giving away shall be *prima facie*  
 7 evidence of such knowledge. Any person who keeps on hand in-  
 8 toxicating drinks or liquors for the purpose of sale or profit, shall  
 9 be considered a dealer within the meaning of this section. And  
 10 any person violating this section shall be guilty of a misdemeanor.

See 1873—4, c. 68.

**Sec. 1466. Liquor selling to minors; the father, mother, guardian and employer of minor may sue liquor dealer for damages.**

The father, or if he be dead, the mother, guardian or employer 1881, c. 242, s. 2.  
 2 of any minor to whom a sale or gift shall be made in violation of  
 3 the preceding section, shall have a right of action in a civil suit  
 4 against the person or persons so offending by such sale or gift,

5 and upon proof of such illicit sale or gifts, shall recover from such  
6 party or parties so offending, such exemplary damages as a jury  
7 may assess: *Provided*, that such assessment shall not be less than  
8 twenty-five dollars.

See 1873-'4, c. 68.

**Sec. 1467. Liquor selling within two miles of public political speakings prohibited.**

1879, c. 212.

It shall be unlawful for any person to sell or to give away, either  
2 directly or indirectly, any spirituous liquors, wine, or bitters con-  
3 taining alcohol, within two miles of any place at which political  
4 public speaking shall be advertised to take place, and does take  
5 place, this prohibition to continue only during the day on which  
6 said public political speaking shall take place. And any person  
7 who shall violate this section shall be guilty of a misdemeanor,  
8 and on conviction shall be fined not less than ten dollars nor  
9 more than twenty dollars, or imprisoned not exceeding twenty  
10 days. Justices of the peace shall have original jurisdiction of this  
11 offence, upon view, or written information duly sworn to.

**Sec. 1468. Maiming with malice aforethought.**

R. C., 34, s. 14.  
1751, c. 56.  
1791, c. 339, s. 1.  
1831, c. 12.

If any person shall, of malice aforethought, unlawfully cut out  
2 or disable the tongue or put out an eye of any person, with intent  
3 to murder, maim or disfigure the person so offending, his counsel-  
4 ors, abettors and aiders, knowing of and privy to the offence, shall,  
5 for the first offence, be punished by imprisonment in the peniten-  
6 tiary or county jail not less than four months nor more than ten  
7 years, and be fined, in the discretion of the court; and for the second  
8 offence shall be imprisoned in the penitentiary not less than five  
9 nor more than sixty years.

See 22 & 23 Car. II, c. 1, A. D. 1670, (called the Coventry Act.)

**Sec. 1469. Malicious injury to real property.**

R. C., c. 34, s. 111.  
1873-'4, c. 176, s. 5.

If any person shall maliciously commit any damage, injury or  
2 spoil upon any real property whatsoever, either of a public or pri-  
3 vate nature, for which no punishment is provided by any existing  
4 law, every person so offending shall be guilty of a misdemeanor:  
5 *Provided always*, that nothing herein contained shall extend to any  
6 case where the party trespassing or doing the injury acted under a  
7 fair and reasonable belief that he had a right to do the act com-  
8 plained of, nor to any trespass, not being wilful and malicious, com-  
9 mitted in hunting, fishing or the pursuit of game. When the  
10 owner or one of the owners of an estate in possession, the property  
11 injured, shall complain of the injury before a justice of the peace  
12 of the county in which the offence is charged to have been com-  
13 mitted before the regular term of the superior court next after the  
14 commission of the offence, and shall fail to state in his complaint  
15 that the damage exceeds ten dollars, the punishment, upon con-



16 viction of the offence, shall not exceed a fine of fifty dollars or im-  
 17 prisonment for thirty days.

State v. Ross, 4 Jon., 315; State v. Batchelor, 72—468.

**Sec. 1470. Malicious injury to personal property.**

If any person shall wilfully injure the personal property of an- 1876-'7, c. 18.  
 2 other, through malice to the owner, he shall be guilty of a misde-  
 3 meanor, whether the property be destroyed or not, and on convic-  
 4 tion thereof shall be punished by fine or imprisonment, or both,  
 5 in the discretion of the court.

**Sec. 1471. Marriages, unlawful with female under fifteen years of age without consent of father.**

If any person shall marry a female under the age of fifteen years, R. C., c. 34, s. 46.  
 2 he shall be guilty of a misdemeanor; *Provided*, that this section shall 1820, c. 1041, ss. 1, 2.  
 3 not extend to cases in which the father of the female may be liv-  
 4 ing, and previously and up to the marrying, shall have consented  
 5 thereto in writing.

State v. Watts, 10 Ire., 369.

**Sec. 1472. Marriages, unlawful between whites and negroes.**

All marriages between a white person and a negro, or between a  
 2 white person and a person of negro descent to the third generation Const., Art. XIV,  
 3 inclusive, are forever prohibited, and shall be void. And any per- s. 8.  
 4 son violating this section shall be guilty of an infamous crime, R. C., c. 68, s. 7.  
 5 and on conviction shall be punished by imprisonment in the 1834, c. 24.  
 6 county jail or penitentiary, not less than four months nor more 1838-'9, c. 24.  
 7 than ten years, and may also be fined in the discretion of the court.

State v. Fore and Chestnut, 1 Ire., 378; State v. Walters, 3 Ire., 455; State v. Hooper, 5 Ire.,  
 201; State v. Melton and Byrd, Busb., 49; State v. Hairston, 63—451; State v. Reinhardt, 63—547;  
 State v. Ross, 76—242; State v. Kennedy, 76—251.

**Sec. 1473. Marriages, unlawful for register of deeds, clergyman and justice of the peace forbidden to consent to the marriage of a negro to a white person.**

If any register of deeds shall knowingly issue any license for R. C., c. 34, s. 80.  
 2 marriage between any person of color and white person; or if any 1830, c. 4, s. 2.  
 3 clergyman, minister of the gospel, or justice of the peace shall  
 4 knowingly marry any such person of color to a white person, the  
 5 person so offending shall be guilty of a misdemeanor.

**Sec. 1474. Mills, owners of, to keep up bridges over ditches, drains and canals.**

Every owner of a water-mill, situated on any public road, and R. C., c. 34, s. 40.  
 2 also every person whose duty it is to keep up and repair bridges 1819, c. 941, s. 3.  
 3 built across any ditch, drain, or canal, in the chapter entitled  
 4 "Roads, Ferries and Bridges," who shall refuse or neglect to keep  
 5 up and repair, or who shall suffer to remain out of repair for the  
 6 space of ten days, any bridge which by law he may be required to  
 7 keep up and repair, shall be guilty of a misdemeanor.

State v. Yarrell, 12 Ire., 130.

**Sec. 1475.** Mills, the destruction or obstruction of dams, canals or water channels, connected with a mill, factory, or machine works, indictable.

1866, c. 48.

Any person who shall cut away, destroy, or otherwise injure any dam, or part 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 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.

State v. Tomlinson, 77—528.

**Sec. 1476.** Monuments and tombstones, unlawful to deface or remove.

R. C., c. 34, s. 102.  
1840, c. 6.

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 guilty of a misdemeanor.

**Sec. 1477.** Mortgaged property, unlawful to dispose of.

1873-'4, c. 31.  
1874-'5, c. 215.

If any person, after executing a chattel mortgage, deed in trust or other lien for a lawful purpose shall, after the execution thereof, make any disposition of any personal property embraced in such mortgage, deed in trust or lien, with intent to hinder, delay or defeat the rights of any person to whom or for whose benefit such deed was made, every person so offending and every person with a knowledge of the lien buying the property embraced in any such deed or lien, and every person assisting, aiding or abetting the unlawful disposition of such property, with intent to hinder, delay or defeat the rights of any person to whom or for whose benefit any such deed or lien was made, shall be guilty of a misdemeanor, and upon conviction shall be punished by fine or imprisonment, or both, in the discretion of the court.

State v. Pickens, 79—652; State v. Burns, 80—376.

**Sec. 1478.** Officers failing to discharge their duties, may be indicted and removed from office.

R. C., c. 34, s. 119.  
1777, c. 115, s. 4.

If any clerk of the superior court, sheriff, justice of the peace or any other officer, 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 guilty of a misdemeanor. And if it

7 shall be proved, that any such officer, after his qualification, shall  
 8 have violated his said oath, and willingly and corruptly have  
 9 done anything contrary to the true intent and meaning thereof,  
 10 such officer, upon conviction, shall be guilty of misbehaviour in  
 11 office, and shall be punished by removal therefrom under the sen-  
 12 tence of the court as a part of the punishment for the offence;  
 13 and shall also be fined and imprisoned, in the discretion of the  
 14 court.

*Mitchell v. Ward*, 6 Jon. Eq., 69; *State v. Powers*, 75—281; *State v. Furguson*, 76—197; *State v. Hawkins*, 77—494; *State v. Norman*, 82—688; *State v. Snuggs*, 85—541.

#### Sec. 1479. Peddling without license.

If any person shall unlawfully hawk or peddle any goods, wares  
 2 or merchandise, or shall fail, upon the application of the sheriff or  
 3 his deputy, or any justice of the peace, to show his license as re-  
 4 quired by law, he shall be guilty of a misdemeanor.

R. C., c. 34, s. 44.  
 1835, c. 17, s. 3.

#### Sec. 1480. Perjury, its punishment.

If any person shall wilfully and corruptly commit perjury on  
 2 his oath or affirmation, in any suit, controversy, matter or cause  
 3 depending in any of the courts of the state, or in any deposition or  
 4 affidavit taken pursuant to law, or in any oath or affirmation duly  
 5 administered of, or concerning any matter or thing, whereof such  
 6 person is lawfully required to be sworn or affirmed, every person  
 7 so offending shall be guilty of a misdemeanor, and being convicted  
 8 thereof, shall be fined not exceeding one thousand dollars, and im-  
 9 prisoned in the county jail or penitentiary, not less than four  
 10 months nor more than ten years.

R. C., c. 34, s. 49.  
 1791, c. 338, s. 1.

*State v. Alexander*, 4 Haw., 182; *State v. Hoyle*, 6 Ire., 1; *State v. Ledford*, 6 Ire., 5; *State v. Groves*, Busb., 402; *State v. Knox*, Phil., 312; *State v. Davis*, 84—787.

#### Sec. 1481. Perjury, subornation of.

If any person shall, by any means, procure another person to  
 2 commit such wilful and corrupt perjury as is mentioned in the pre-  
 3 ceding section, the person so offending shall be punished in like  
 4 manner as the person committing the perjury.

R. C., c. 34, s. 50.  
 1791, c. 338, s. 2.

#### Sec. 1482. Political societies, secret, prohibited.

If any person, for the purpose of compassing or furthering any  
 2 political object, or aiding the success of any political party or or-  
 3 ganization, or for resisting the laws, shall join or in any way con-  
 4 nect or unite himself with any oath-bound secret political or mili-  
 5 tary organization, society or association of whatsoever name or  
 6 character, or shall form or organize, or combine and agree with any  
 7 other person or persons to form or organize any such organization,  
 8 or as a member of any secret political or military party or organi-  
 9 zation shall use, or agree to use, any certain signs or grips or pass-  
 10 words, or any disguise of the person or voice, or any disguise what-

1870-'71, c. 133, s.



11 soever for the advancement of its object, and shall take or admin-  
 12 ister any extra-judicial oath, or any secret solemn pledge, or any  
 13 like secret means, or if any two or more persons for the purpose of  
 14 compassing or furthering any political object, or aiding the suc-  
 15 cess of any political party or organization, or for circumventing  
 16 the laws, shall secretly assemble, combine or agree together, and  
 17 the more effectually to accomplish such purposes, or any of them,  
 18 shall use any certain signs, or grips, or pass words, or any disguise  
 19 of the person or voice, or other disguise whatsoever; or shall take  
 20 or administer any extra-judicial oath or other secret solemn pledge,  
 21 or if any persons shall band together and assemble to muster, drill  
 22 or practice any military evolutions except by virtue of the author-  
 23 ity of an officer recognized by law, or of an instructor in institu-  
 24 tions or schools in which such evolutions form a part of the course  
 25 of instruction, or if any person shall knowingly permit any of the  
 26 acts and things herein forbidden to be had, done or performed on  
 27 his premises, or on any premises under his control, or if any per-  
 28 son being a member of any such secret political or military organ-  
 29 ization, shall not at once abandon the same and separate himself  
 30 entirely therefrom, every person so offending shall be guilty of a  
 31 misdemeanor, and upon conviction thereof shall be fined not less  
 32 than ten nor more than two hundred dollars, or be imprisoned, or  
 33 both, at the discretion of the court.

See 1868-'9, c. 267; 1871-'2, c. 143.

#### Sec. 1483. Punishments for felonies not specified.

R. C., c. 34, s. 27

Every person who shall be convicted of any felony for which no  
 2 specific punishment is prescribed by statute, shall be imprisoned  
 3 in the county jail or penitentiary not exceeding two years, and be  
 4 fined, in the discretion of the court, or if the offence be infamous,  
 5 the person offending shall be imprisoned in the county jail or pen-  
 6 itentiary, not less than four months nor more than ten years, and  
 7 be fined.

State v. Bailey, 65—426; State v. Driver, 78—423.

#### Sec. 1484. Punishments for misdemeanors not specified.

R. C., c. 34, s. 120.

Offences made misdemeanors by statute, where a specific punish-  
 2 ment is not prescribed, shall be punished as misdemeanors at com-  
 3 mon law; but if the offence be infamous, or done in secrecy and  
 4 malice, or with deceit and intent to defraud, the offender shall be  
 5 punished by imprisonment in the county jail or penitentiary, not  
 6 less than four months nor more than ten years, and be fined.

*In re Schenck*, 74—607; *State v. McNeill*, 75—15; *State v. Driver*, 78—423; *State v. Jackson*, 82—565; *State v. Norman*, 82—687.

#### Sec. 1485. Railroads, plank roads, turnpikes and canals, maliciously destroying, obstructing and injuring, penalty when death ensues, and when not.

R. C., c. 34, ss. 99,  
 100; 1838, c. 38,  
 1879, c. 255, s. 2.

If any person shall wilfully and maliciously put or place any  
 2 matter or thing upon, over, or near any railroad track; or shall

3 wilfully and maliciously destroy, injure, or remove the road-bed,  
4 or any part thereof, or any rail, sill, or other part of the fixture ap-  
5 purtenant to, or constituting or supporting any portion of the track  
6 of such railroad; or shall wilfully and maliciously do any other  
7 thing with intent to obstruct, stop, hinder, delay, or displace the  
8 cars traveling on such road, or to stop, hinder or delay the passen-  
9 gers or others passing over the same; or shall wilfully and mali-  
10 ciously injure the road-bed or the fixtures aforesaid, or any part  
11 thereof, with any other intent whatsoever, such person so offending  
12 shall be guilty of a misdemeanor, and on conviction thereof in the  
13 superior court shall be fined not exceeding one thousand dollars  
14 nor less than two hundred dollars, and be imprisoned in the peni-  
15 tentiary or county jail, not less than four months nor more than  
16 ten years, and shall be committed to jail till he find surety for his  
17 good behavior, for a space of time not less than three nor more than  
18 seven years. And if it shall happen that by reason of the commis-  
19 sion of the offences aforesaid, or any of them, any engine or car  
20 shall be displaced from the tract, or shall be stopped, hindered or  
21 delayed, so that any one thereby be instantly killed, or so wounded  
22 or hurt as to die therefrom in six calendar months thereafter, or  
23 shall thereby be maimed or be disabled in the use of any limb or  
24 member, then, and in every such case, the party so offending,  
25 his counselors, aiders and abettors, on conviction, shall suffer death,  
26 if the persons were killed, and shall be imprisoned in the peniten-  
27 tiary not less than five nor more than sixty years, if the persons  
28 were maimed or disabled. And if any person shall maliciously  
29 destroy or injure any plank road, turnpike or canal, or any appur-  
30 tenance or fixture belonging thereto, or used therewith, or shall  
31 maliciously destroy or injure any lock, dam or sluice, the same  
32 being a part of any work erected or made for the purposes of nav-  
33 gation, or improving the navigation of any water, the person so  
34 offending shall be guilty of a misdemeanor, and on conviction  
35 thereof shall suffer the like punishment as in this section provided  
36 for maliciously injuring a railroad.

**Sec. 1486. Railroads, wilful injury to, without malice.**

If any person, unlawfully and on purpose, but without malice, R. C., c. 34, s. 101.  
2 shall commit any of the offences mentioned in the preceding sec-  
3 tion, he shall be guilty of a misdemeanor. And if it shall happen  
4 that by reason of the commission of any such offence any person  
5 shall be instantly killed, or so wounded or hurt as to die therefrom  
6 in six calendar months thereafter, or shall thereby be maimed or  
7 disabled in the use of any limb or member, then, and in every  
8 such case, the party so offending, his counselors, aiders and abet-  
9 tors, shall be imprisoned not less than twelve months, and fined,  
10 at the discretion of the court.

**Sec. 1487. Railroads, shooting at or throwing into cars, locomotives or trains, punishment.**

1876-'7, c. 4.

If any person shall cast, or throw, or shoot, any stone, rock, bullet, shot, pellet, or other missile, at, against or into, any railroad car, locomotive or train, while the said car or locomotive shall be in progress from one station to another, or while the said car, locomotive or train shall be stopped for any purpose, with intent to injure said car or locomotive, or any person therein or thereon, the person so offending shall be guilty of a misdemeanor, and upon conviction shall be punished by fine or imprisonment in the county jail or penitentiary, at the discretion of the court.

State v. Hinson, 82-597; State v. Boyd, 86-634.

**Sec. 1488. Rape punished with death.**

R. C., c. 34, s. 5.  
18 Eliz., c. 7.  
1868-'9, c. 167, s. 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.

State v. Farmer, 4 Ire., 224; State v. Jefferson, 6 Ire., 805; State v. Clark, 7 Jon., 167; State v. Peter, 8 Jon., 19; State v. Gray, 8 Jon., 170; State v. Sam, Winst., 300; State v. Hodges, Phil., 231; State v. Smith, Phil., 302; State v. Storkey, 63-7; State v. Hargrave, 65-466; State v. King, 69-419; State v. Brooks, 76-1.

**Sec. 1489. Rape, assault with intent to commit, a misdemeanor.**

1868-'9, c. 167, s. 3.

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 penitentiary not less than five nor more than fifteen years.

See R. C., c. 107, s. 44; 1823, c. 1229. State v. Jim, 1 Dev., 142; State v. Martin, 3 Dev., 329; State v. Jesse, 2 D. & B., 297; State v. Boon, 13 Ire., 244; State v. Tom, 2 Jon., 414; State v. Ellick, 7 Jon., 68; State v. Peter, 8 Jon., 19; State v. McDaniel, Winst., 249; State v. Sam, Winst., 300; State v. Scott, 72-461; State v. Neely, 74-425; State v. Johnston, 76-209; State v. Perkins, 82-631; State v. Dancy, 83-608; State v. Massey, 86-658.

**Sec. 1490. Rape, carnal knowledge of married woman by fraud in personating her husband is not, but declared to be felony.**

1881, c. 89, s. 1.

Every person who shall have carnal knowledge of any married woman by fraud in personating her husband, shall be guilty of a felony, and on being convicted thereof shall be punished by imprisonment in the penitentiary at hard labor not less than ten nor more than twenty years.

State v. Brooks, 76-1.

**Sec. 1491. Rape, assault with intent to have carnal knowledge of married woman by fraud in personating her husband, how punished.**

1881, c. 89, s. 2.

Every person convicted by due course of law of an assault upon any married woman, with intent to have knowledge of her by fraud in personating her husband, shall be punished by imprisonment in the penitentiary at hard labor not less than five nor more than fifteen years.



**Sec. 1492. Rape and buggery, what proof sufficient in.**

It shall not be necessary upon the trial of any indictment for 1860-'61, c. 30.  
 2 the offences of rape, carnally knowing and abusing any female  
 3 child under ten years of age, and buggery, to prove the actual  
 4 emission of seed in order to constitute the offence, but the offence  
 5 shall be completed upon proof of penetration only.

State v. Gray, 8 Jon., 170; State v. Hodges, Phil., 231; State v. Storkey, 63—7; State v. Hargrave, 65—466; State v. Johnston, 76—209.

**Sec. 1493. Rebellion or insurrection against the state, a high crime.**

If any person shall incite, set on foot, assist or engage in a rebel- 1868, c. 60, s. 2.  
 2 lion or insurrection against the authority of the state of North  
 3 Carolina or the laws thereof, or shall give aid or comfort thereto,  
 4 every person so offending in any of the ways aforesaid, shall be  
 5 guilty of a high crime, and upon conviction thereof shall be pun-  
 6 ished by imprisonment at hard labor for not more than fifteen  
 7 years, and be fined not more than ten thousand dollars.

See 1861, c. 18; 1866, c. 54; Const., Art., IV, s. 5.

**Sec. 1494. Rebellion or insurrection, conspiracy to destroy the government of the state by.**

If two or more persons shall conspire together to overthrow or 1868, c. 60, s. 1.  
 2 put down, or to destroy by force, the government of North Caro-  
 3 lina, or to levy war against the government of this state, or to op-  
 4 pose by force the authority of said government, or by force, or by  
 5 threats, to intimidate, or to prevent, hinder or delay the execution  
 6 of any law of the state of North Carolina, or by force or fraud to  
 7 seize or take possession of any fire arms or property of the state  
 8 aforesaid, against the will or contrary to the authority of said state,  
 9 every person so offending in any of the ways aforesaid, shall be  
 10 guilty of a high crime, and upon conviction thereof in any court  
 11 having jurisdiction, shall be imprisoned not more than ten years,  
 12 and be fined not exceeding five thousand dollars.

State v. Jackson, 82—565.

**Sec. 1495. Seamen, enticing from vessels, a misdemeanor.**

Any person who shall induce any seaman, in the employment 1879, c. 219, s. 1.  
 2 of any domestic or foreign vessel, in any of the ports of North 1881, c. 256, s. 1.  
 3 Carolina, to leave any such vessel before his term of service shall  
 4 have expired, shall be guilty of a misdemeanor, and fined not ex-  
 5 ceeding fifty dollars, or imprisoned not exceeding thirty days.

**Sec. 1496. Seamen, unlawful to secrete or harbor those who have deserted.**

Any person who shall secrete or harbor any such seaman, who 1879, c. 219, s. 2.  
 2 has deserted from any domestic or foreign vessel, knowing that 1881, c. 256, s. 2.  
 3 such seaman has deserted, shall be guilty of a misdemeanor, and  
 4 be fined not exceeding fifty dollars or imprisoned not exceeding  
 5 thirty days; and if such seaman be found concealed or secreted by  
 6 any person on his premises, such concealment and secretion shall  
 7 be deemed *prima facie* evidence that such person knew that such  
 8 seaman was a deserter.

Sec. 1497. Seamen, justices of the peace authorized to issue search warrants for those who have deserted.

1881, c. 256, s. 3.

If any credible witness shall prove, upon oath before any justice of the peace, that any person has concealed on his premises any seaman who has deserted from any such domestic or foreign vessel, it shall be lawful for such justice to grant a search warrant to be executed within the limits of his county to any proper officer, authorizing him to search for such seamen, and to arrest the person on whose premises he may be found, and the person on whose premises such seaman shall be found shall be adjudged to pay the costs of such search warrant, if on examination it shall appear that such seaman was secreted or concealed by such person; otherwise the costs shall be paid by the party making the complaint.

Sec. 1498. Seamen, either party may appeal to justice to reduce to writing testimony of all material witnesses, and return to appellate court; fees of justice.

1881, c. 256, ss. 4, 5.

In all cases arising under the three preceding sections, if any appeal is prayed by either party at the time of the trial, it shall be granted; but no appeal shall be granted by any justice at any time after the final hearing of the case; in case an appeal is prayed at the trial, it shall be the duty of the justice to immediately proceed to reduce the testimony of any witness whose testimony is material to writing; if such witness shall be master, officer, or seaman on board of any vessel in the presence of the adverse party, who may cross-question such witness, which testimony shall be subscribed by such witness and returned by the justice with the papers in the case; and on the hearing in the appellate court, the testimony so taken and reduced to writing by such justice shall be read, heard and accepted as the true and lawful testimony of such witness, as if such person were in person present to give evidence. For reducing such testimony to writing the justice shall receive the same fees as are now allowed by law for taking depositions.

Sec. 1499. Sheriffs, constables or other officers failing to execute process, making a false return thereon, or refusing to discharge any other duties, indictable.

R. C., c. 34, s. 118.  
1818, c. 980, s. 3.  
1827, c. 20, s. 4.

Any sheriff, constable, or other officer, whether state or municipal, 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 any such officer, 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 guilty of a misdemeanor.

Fentriss v. Brown, Phil., 373.

Sec. 1500. Slander of women by charge of incontinency, penalty.

1879, c. 156.

If any person shall attempt, in a wanton and malicious manner,

2 to destroy the reputation of an innocent woman, by words written  
3 or spoken, which amount to a charge of incontinency, every per-  
4 son so offending shall be guilty of a misdemeanor, and on convic-  
5 tion thereof shall be fined or imprisoned in the discretion of the  
6 court.

State v. McDaniel, 84—803.

**Sec. 1501. Springs, wells and cisterns, wilful injuring, penalty.**

1 If any person shall wilfully put into the well, spring or cistern  
2 of water of any other person, any substance or thing, whereby such  
3 well, spring or cistern may be endamaged, or the water thereof be  
4 made less wholesome or fit for use, he shall be guilty of a misde-  
5 meanor.

R. C., c. 34, s. 97.  
1850, c. 104.

**Sec. 1502. Sunday, hunting on, prohibited; penalty.**

1 If any person whomsoever shall be known to hunt in this state  
2 on the Lord's day, commonly called Sunday, with a dog or dogs, or  
3 shall be found off of his own lands on Sunday, having a shot gun,  
4 rifle or pistol, every person so offending shall be subject to indict-  
5 ment; and upon conviction shall pay a fine not to exceed fifty dol-  
6 lars, at the discretion of the court, two-thirds of such fine to enure  
7 to the benefit of the free public schools in the county of which such  
8 convict is a resident, the remainder to the informant.

1868-'9, c. 18, s. 1.

State v. Drake, 64—589; State v. Howard, 67—24; State v. Ricketts, 74—187; State v. Wilson, 84—777.

**Sec. 1503. Sunday, sale of intoxicating liquors on, a misdemeanor.**

1 If any person shall sell spirituous, or malt, or other intoxicating  
2 liquors on Sunday, except on the prescription of a physician, and  
3 then only for medical purposes, the person so offending shall be  
4 guilty of a misdemeanor, and on conviction thereof shall be pun-  
5 ished by fine, or imprisonment, or both, in the discretion of the  
6 court.

1876-'7, c. 38.

State v. Packer, 80—439.

**Sec. 1504. Telegraph poles or wires, injury to, a misdemeanor.**

1 Any person who shall wilfully injure, or destroy, or pull down  
2 any telegraph pole, wire, insulator, or any other fixture or appa-  
3 ratus attached to a telegraph line, shall be guilty of a misdemeanor,  
4 and may be fined and imprisoned, at the discretion of the court.

1881, c. 4.

**Sec. 1505. Treasurer of the state, fraudulent entries and statements by, a misdemeanor.**

1 If the treasurer of the state shall willingly or falsely make, or  
2 cause to be made, any false entry or charge in any book kept by  
3 him as treasurer, or shall wittingly or falsely form, or procure to  
4 be formed, any statement of the treasury, to be by him laid before  
5 the governor, the general assembly, or any committee thereof, or

R. C., c. 34, s. 68.



6 to be by him used in any settlement which he is required to make  
 7 with the auditor, with intent, in any of said instances, to defraud  
 8 the state or any person, such treasurer shall be guilty of a misde-  
 9 meanor, and upon conviction thereof in any of the superior courts  
 10 of the state shall be fined at the discretion of the court, not ex-  
 11 ceeding three thousand dollars, and imprisoned not exceeding  
 12 three years.

**Sec. 1506. Trespass on lands without a license, after being forbidden, a misde-  
 meanor.**

1866, c. 60.

If any person, after being forbidden to do so, shall go or enter  
 2 upon the lands of another, without a license therefor, he shall  
 3 be guilty of a misdemeanor, and on conviction, shall be fined  
 4 not exceeding fifty dollars, or imprisoned not more than thirty  
 5 days: *Provided, however,* that if any person shall make a written  
 6 affidavit before a justice of the peace of the county, that any of his  
 7 cattle or other live stock, (which shall be specially described and  
 8 set forth in such affidavit) has strayed away, and he has good rea-  
 9 son to believe that it is on the lands of another person, then such  
 10 justice may, in his discretion, allow such person to enter on said  
 11 premises with one or more servants, without fire-arms, in the day  
 12 time (Sunday excepted,) between the hours of sunrise and sunset,  
 13 and make search for his estray for such limited time as to said jus-  
 14 tice shall appear reasonable; but the only effect of such license  
 15 shall be to protect the persons entering from indictment therefor,  
 16 and then only, provided the license shall have been made *bona fide*,  
 17 and without any damages except such as was necessary to conduct  
 18 the search.

*State v. Hanks, 66—612; State v. Ellen, 68—281; State v. Whitehurst, 70—85; State v. Yarborough, 70—250; State v. Hause, 71—518; State v. Presley, 72—204; State v. Bullard, 72—445; State v. Batchelor, 72—468; State v. Edney, 80—360; State v. Crosset, 81—579; State v. Bryson, 81—595; State v. Dudley, 83—660; State v. Whitaker, 85—566.*

**Sec. 1507. Trespass on public lands, penalty therefor.**

R. C., c. 34, s. 42,  
 1823, c. 1190,  
 1842, c. 36, s. 4.

If any person shall erect a building on any public lands, before  
 2 the same shall have been sold or granted by the state, or any lands  
 3 belonging to the state board of education before the same shall  
 4 have been sold and conveyed by them, or cultivate or remove tim-  
 5 ber from, any of said lands, such person shall be guilty of a misde-  
 6 meanor; and, when any person shall be in possession of any part  
 7 of said land, it shall be the duty of the sheriff of the county in  
 8 which the land is situated, and he is hereby required, to give no-  
 9 tice in writing to such person, commanding him to depart there-  
 10 from forthwith; and if the person in possession, upon being so no-  
 11 tified, shall not, within two weeks after the time of notice, remove  
 12 therefrom, the sheriff is required to remove him immediately, and  
 13 if necessary, shall summon the power of the county to assist him  
 14 in so doing.

Sec. 1508. Trout, unlawful to catch mountain trout with seine at all times; the taking by shooting or otherwise between the fifteenth day of October and the thirtieth day of December, a misdemeanor.

It shall be unlawful to catch mountain trout by seining at all 1869-'70, c. 142.  
2 times. And there shall be no taking of said fish by shooting, or  
3 otherwise, between the fifteenth day of October and the thirtieth  
4 day of December. Any person violating this section shall be  
5 guilty of a misdemeanor, and on conviction shall be fined or im-  
6 prisoned, in the discretion of the court. One half of the fine shall  
7 be paid over to the informant, and the other to the county treas-  
8 urer for the use of the free public schools therein.

Sec. 1509. Water courses, obstruction of, penalty.

If any person shall wilfully fell any tree, or wilfully put any 1872-'3, c. 107, ss. 1,  
2 obstruction, except for the purposes of utilizing water as a motive 2.  
3 power, in any branch, creek, or other natural passage for water,  
4 whereby the natural flow of water through such passage is lessened  
5 or retarded, or whereby the navigation of such course by any raft  
6 or flat may be impeded, delayed or prevented, the person so offend-  
7 ing shall be guilty of a misdemeanor, and on conviction shall be  
8 fined not to exceed fifty dollars, or imprisoned not to exceed thirty  
9 days. Nothing contained in this section shall prevent the erection  
10 of fish dams or hedges which do not extend across more than two-  
11 thirds of the width of any stream where erected, but if extending  
12 over more than two-thirds of the width of any stream, the said  
13 penalties shall attach.

State v. Pool, 74—402; State v. Tomlinson, 77—523.

## CHAPTER THIRTY-SEVEN.

### CRIMINAL PROCEEDINGS.

#### SECTION.

- 1510. Persons present at breaches of the peace to arrest offenders.
- 1511. Persons summoned by officer must assist in the arrest.
- 1512. Peace officers shall arrest without warrant in certain cases.
- 1513. Houses may be broken open to prevent a felony therein.
- 1514. Officers may break open doors to arrest persons charged with high crimes.
- 1515. Persons in whose presence an infamous crime is committed, may arrest the offender.
- 1516. Persons arrested without warrant entitled to have an immediate hearing.
- 1517. Felons fleeing from justice, outlawed.
- 1518. Who may issue criminal process.

#### SECTION.

- 1519. Duty of magistrate on complaint being made to him of the commission of a crime.
- 1520. Duty of magistrate to issue his warrant for the arrest of the accused.
- 1521. Where warrant to run.
- 1522. How warrant may be indorsed.
- 1523. Magistrate not liable to indictment or action for improperly indorsing warrant.
- 1524. Persons arrested to be taken before some magistrate of the county where offence was committed.
- 1525. Magistrate shall take bail, if the offence be not a capital one.
- 1526. Duty of magistrate granting bail.

## SECTION.

1527. If bail is not allowed, or is not given, the accused to be taken before a magistrate of the county where the warrant was issued.
1528. In capital cases the prisoner must be brought before a magistrate of the county where the warrant was issued or before some judge of the supreme or superior court.
1529. Before what magistrate warrant to be returnable.
1530. Duty of the examining magistrate.
1531. The examination; prisoners to be allowed time to advise with counsel and to cross examine witnesses against them.
1532. Prisoner shall be informed that he may refuse to answer any questions.
1533. Answer of prisoner shall be reduced to writing.
1534. Prisoner may examine witnesses and have the assistance of counsel.
1535. The prisoner shall not be examined in the presence of the witnesses; witnesses may be examined separately.
1536. The testimony of witnesses to be reduced to writing.
1537. When prisoner shall be discharged.
1538. When prisoner shall be bound over.
1539. Magistrate need not take the examination of a prisoner charged with a misdemeanor.
1540. Witnesses may be required to give security for their appearance.
1541. Witness not giving the security required may be committed to prison.
1542. When bail shall be allowed.
1543. Examinations and recognizances to be certified to the court by the committing magistrate.
1544. Penalty on magistrate failing to make the required return.
1545. The magistrate may associate with himself another.
1546. Who may bail persons charged with crime but not imprisoned.
1547. Who may let to bail persons charged with crime and in prison.
1548. When a prisoner is bailed, the recognizance taken by the officer shall be filed with the clerk of the court.
1549. What every commitment shall state.
1550. To what jail prisoners shall be committed.
1551. Fugitives from justice, who may arrest.
1552. Magistrate to keep record of the proceedings and transmit copy to the governor.
1553. Duty of the governor.
1554. Every sheriff or jailer shall surrender the fugitive upon the order of the governor.
1555. Governor may employ agent or offer reward for apprehension of fugitives charged with capital offences.
1556. Governor may draw on the state treasurer for money necessary to pay expenses of arresting fugitives from justice.
1557. Of search warrants.
1558. Search warrant, its form and the proceedings thereon.

## SECTION.

1559. Of costs in proceedings before judges and magistrates.
1560. Persons to be imprisoned in county jail; exception as to a sheriff.
1561. No person to be arrested on a presentment, nor tried, except on indictment.
1562. Names of witnesses and grand jurors to be indorsed on presentment.
1563. Indictments for misdemeanors to be commenced in two years, exceptions thereto.
1564. Criminal proceedings to issue and be returnable at any time; proceedings as heretofore.
1565. Sheriff to indorse on process and subpoenas day of receipt and execution.
1566. Sheriff to take bail in bailable offences; not to become bail himself.
1567. Court to allow bail pending appeal.
1568. The accused allowed counsel.
1569. Formal objections or stay of judgment shall not quash indictments, informations and impeachments.
1570. Substance of proceedings to be set forth in indictments, &c.
1571. Indictment for perjury; what to set forth.
1572. Indictment for subornation of perjury; what to set forth.
1573. Indictment for second offence; how first conviction to be stated.
1574. Indictment, how stated, when ownership of property is held in common.
1575. Indictment, certain defects of, not to vitiate.
1576. In indictments for larceny of money, treasury notes or bank notes, sufficient to describe such money or notes, simply as money, without specifying the kind.
1577. Intent to defraud, what statement and proof sufficient; in same indictment, defendant may be charged with counts for receiving stolen goods and with larceny.
1578. Party whose name is forged a competent witness.
1579. Crimes committed on waters dividing counties, where tried.
1580. Improper venue, to be taken advantage of by plea in abatement; on issue joined, what judgment rendered in misdemeanors, what in felonies.
1581. In indictment for libel, defendant may give the truth in evidence.
1582. In cases where an assault followed by death in another county, indictment to be found in county where assault was made.
1583. Assault in this state and death out of it, trial to be had in this state.
1584. Plea of "not guilty" entered for defendant, who stands mute.
1585. In capital cases, defendants may challenge twenty-three jurors, in other cases four; allowed aid of counsel.
1586. In capital cases state may challenge four jurors, in others two.
1587. On conviction for robbing or stealing, the person robbed is entitled to the restitution of his property.
1588. New trial to defendants.



## SECTION.

1589. Superior and inferior courts to set a day for the trial of crimes; witnesses not to attend until such day.
1590. Pay of witnesses in state cases; court to direct the prosecutor to pay costs in certain cases.
1591. Judges may lessen or remit recognizances at any time.
1592. Clerk to refund remitted forfeitures paid into office.
1593. County treasurer to refund when paid to him.
1594. Execution not to issue until the issuing of the notice.
1595. Joint notice to issue on forfeited recognizances.
1596. How notices executed.
1597. Convicted person must pay the costs.
1598. Penalties not specially given may be recovered by any person who will sue for the same.
1599. Suits on penalties, unless otherwise provided, may be brought in the name of the state.
1600. Prosecuting attorneys to direct *post mortem* examinations.
1601. Persons participating in unlawful gaming compelled to testify of the gaming, not to be prosecuted therefor.
1602. Officers who are authorized to keep the peace.
1603. Duty of magistrate on complaint being made.
1604. When warrant to issue.
1605. To whom the warrant shall be directed.
1606. Duty of magistrate on return of warrant.
1607. When party complained of discharged and when imprisoned.
1608. How discharged subsequently.
1609. Recognizance to be returned to next term of court.
1610. Persons committing breach of the peace in presence of the court may be required to give security or imprisoned.
1611. Proceedings on recognizances.

## SECTION.

1612. If complainant does not appear, the accused shall be discharged, otherwise court to hear the proofs, and decide accordingly.
1613. Recognizance, when deemed broken.
1614. When there is evidence of breach, court shall order recognizance prosecuted.
1615. Term of court expiring during progress of trial, court shall continue it.
1616. Bail may arrest and surrender principal before final judgment; bail not thereby discharged after recognizance forfeited.
1617. Persons surrendered may give other bail; sheriff allowing a release liable to be amerced and indicted.
1618. Sheriff or other officer having prisoner in custody may take bail.
1619. Matter of defence which is good for principal is good for bail.
1620. Appeals by defendant to supreme court.
1621. Convicted persons may appeal without giving security for costs.
1622. Judge to grant appeal and require defendant to give security for his appearance.
1623. Appeal by state; in what cases recognized.
1624. What the commitment shall set forth.
1625. Duty of solicitors to prosecute certain criminal cases in the United States courts.
1626. Compensation of solicitors in such cases.
1627. Concurrent jurisdiction of inferior and superior courts in certain criminal cases, with a view to a speedy trial of criminals.
1628. Pending cases remaining untried to be transferred to succeeding court, whether inferior or superior.
1629. The execution of capital offenders to be private, unless the board of county commissioners shall otherwise order.
1630. Sheriff may admit, to witness the execution, two physicians and necessary assistants.

**Sec. 1510. Persons present at breaches of the peace to arrest offenders.**

Every person present at any riot, rout, affray or other breach of  
 2 the peace, shall endeavor to suppress and prevent the same, and if  
 3 necessary for that purpose, shall arrest the offenders.

1868-'9, c. 178, sub  
 chap. 1, s. 1.

State v. Belk, 76—10.

**Sec. 1511. Persons summoned by officer must assist in the arrest.**

Every person summoned by a judge, justice, mayor, intendant,  
 2 chief officer of any incorporated town, sheriff, coroner or constable,  
 3 to aid in suppressing any riot, rout, unlawful assembly, affray or  
 4 other breach of the peace, or to arrest the persons engaged in the  
 5 commission of such offences, or to prevent the commission of any  
 6 felony or larceny which may be threatened or begun, shall do so.

1868-'9, c. 178, sub  
 chap. 1, s. 2.

State v. Belk, 76—10.

**Sec. 1512. Peace officers shall arrest without warrant in certain cases.**

1868-'9, c. 178, sub  
chap. 1, s. 3.

Every sheriff, coroner, constable, officer of police, or other officer,  
2 entrusted with the care and preservation of the public peace, who  
3 shall know or have reasonable ground to believe that any felony  
4 or larceny has been committed, or that any dangerous wound has  
5 been given, and shall have reasonable ground to believe that any  
6 particular person is guilty, and shall apprehend that such person  
7 may escape if not immediately arrested, shall arrest him without  
8 warrant, and may summon all bystanders to aid in such arrest.

State v. Belk, 76—10.

**Sec. 1513. Houses may be broken open to prevent a felony therein.**

1868-'9, c. 178, sub  
chap. 1, s. 4.

All persons are authorized to break open and enter a house to  
2 prevent a felony about to be committed therein.

**Sec. 1514. Officers may break open doors to arrest persons charged with high crimes.**

1868-'9, c. 178, sub  
chap. 1, s. 5.

If a felony or other infamous crime has been committed, or a  
2 dangerous wound has been given, and there is reasonable ground  
3 to believe that the guilty person is concealed in a house, it shall  
4 be lawful for any sheriff, coroner, constable, or police officer, admit-  
5 tance having been demanded and denied, to break open the door  
6 and enter the house and arrest the person against whom there  
7 shall be such ground of belief.

**Sec. 1515. Persons in whose presence an infamous crime is committed, may arrest the offender.**

1868-'9, c. 178, sub  
chap. 1, s. 6.

Every person in whose presence a felony or other infamous crime  
2 has been committed may arrest the person whom he knows or has  
3 reasonable ground to believe to be guilty of such offence, and it  
4 shall be the duty of every sheriff, coroner, constable or officer of  
5 police, upon information, to assist in such arrest.

**Sec. 1516. Persons arrested without warrant entitled to have an immediate hearing.**

1868-'9, c. 178, sub  
chap. 1, s. 7.

Every person arrested without warrant shall be either imme-  
2 diately taken before some magistrate having jurisdiction to issue  
3 a warrant in the case, or else committed to the county prison, and,  
4 as soon as may be, taken before such magistrate, who, on proper  
5 proof, shall issue a warrant and thereon proceed to act as may be  
6 required by law.

**Sec. 1517. Felons fleeing from justice, outlawed.**

1866, c. 62.  
1868-'9, c. 178, sub  
chap. 1, s. 8.

In all cases where any two justices of the peace, or any judge of  
2 the supreme, superior or criminal courts, shall, on written affidavit,  
3 filed and retained by such justice or judge, receive information  
4 that a felony has been committed by any person, and that such  
5 person flees from justice, conceals himself and evades arrest, and  
6 service of the usual process of the law, the said judge, or the said

7 two justices, being justices of the county wherein such person is  
 8 supposed to lurk or conceal himself, are hereby empowered and  
 9 required to issue proclamation against him reciting his name, if  
 10 known, and thereby requiring him forthwith to surrender him-  
 11 self; and also, when issued by any judge, empowering and requir-  
 12 ing the sheriff of any county in the state in which said fugitive  
 13 shall be, and when issued by two justices empowering and requir-  
 14 ing the sheriff of the county of said justices, to take such power  
 15 with him as he shall think fit and necessary for going in search  
 16 and pursuit of, and effectually apprehending such fugitive from  
 17 justice, which proclamation shall be published at the door of the  
 18 court house of any county in which such fugitive is supposed to  
 19 lurk or conceal himself, and at such other places as the judge or  
 20 justices shall direct; and if any person against whom proclama-  
 21 tion hath been thus issued, continue to stay out, lurk and conceal  
 22 himself, and do not immediately surrender himself, any citizen of  
 23 the state may capture, arrest and bring him to justice, and in case  
 24 of flight or resistance by him, after being called on and warned  
 25 to surrender, may slay him without accusation or impeachment of  
 26 any crime.

**Sec. 1518. Who may issue criminal process.**

The following persons respectively shall have power to issue  
 2 process for the apprehension of persons charged with any offence,  
 3 and to execute the powers and duties conferred in this chapter,  
 4 namely: the chief justice and the associate justices of the supreme  
 5 court, the judges of the superior court, judges of criminal court,  
 6 presiding officers of inferior courts, justices of the peace, mayors  
 7 of cities, or other chief officers of incorporated towns.

1868-'9, c. 178, sub  
chap. 3, s. 1.

State v. James, 80—370.

**Sec. 1519. Duty of magistrate on complaint being made to him of the commission of a crime.**

Whenever complaint shall be made to any such magistrate, that  
 2 a criminal offence has been committed within this state, or without  
 3 this state and within the United States, and that a person charged  
 4 therewith is in this state, it shall be the duty of such magistrate to  
 5 examine on oath the complainant and any witnesses who may be  
 6 produced by him.

1868-'9, c. 178, sub  
chap. 3, s. 2.

State v. James, 80—370; State v. Bryson, 84—780.

**Sec. 1520. Duty of magistrate to issue his warrant for the arrest of the accused.**

If it shall appear from such examination that any criminal of-  
 2 fence has been committed, the magistrate shall issue a proper war-  
 3 rant under his hand, with or without seal, reciting the accusation,  
 4 and commanding the officer, to whom it shall be directed, forth-  
 5 with to take the person accused of having committed such offence,

1868-'9, c. 178, sub  
chap. 3, s. 3.



6 and to bring him before a magistrate, to be dealt with according  
7 to law.

State v. James, 78—455; State v. Bryson, 84—780.

**Sec. 1521. Where warrant to run.**

1868-'9, c. 173, sub  
chap. 3, s. 4.

Warrants issued by any justice of the supreme court, or by any  
2 judge of the superior court, or of a criminal court, may be execu-  
3 ted in any part of this state; warrants issued by a justice of the  
4 peace, or by the chief officer of any city or incorporated town, may  
5 be executed in any part of the county of such justice, or in which  
6 such city or town is situated, and on any river, bay or sound form-  
7 ing the boundary between that and some other county, and not  
8 elsewhere, unless indorsed as prescribed in the section next follow-  
9 ing.

**Sec. 1522. How warrants may be indorsed.**

1868-'9, c. 173, sub  
chap. 3, s. 5.

If the person against whom any warrant granted by any such  
2 justice of the peace or chief officer of a city or town shall be issued,  
3 shall escape, or be in any other county out of the jurisdiction  
4 of such justice or chief officer, it shall be the duty of any justice of  
5 the peace, or any other magistrate named in this chapter within  
6 the county where such offender shall be, or shall be suspected to  
7 be, upon proof of the handwriting of the magistrate issuing the  
8 warrant, to indorse his name on the same, and thereupon the per-  
9 son, or officer to whom the warrant was directed, or any officer of  
10 the county in which it was indorsed, to whom it may be delivered,  
11 may arrest the offender in that county.

State v. James, 80—370.

**Sec. 1523. Magistrate not liable to indictment or action for improperly indorsing warrant.**

1868-'9, c. 173, sub  
chap. 3, s. 6.

No magistrate shall be liable to any indictment, action for tres-  
2 pass or other action for having indorsed any warrant pursuant to  
3 the provisions of the last section, although it should afterward ap-  
4 pear that such warrant was illegally or improperly issued.

**Sec. 1524. Person arrested to be taken before some magistrate of the county where offence was committed.**

1868-'9, c. 173, sub  
chap. 3, s. 7.

It shall be the duty of the officer making the arrest to take the  
2 person charged with the offence before some magistrate of the  
3 county in which the offence is charged to have been committed, or  
4 before any judge of the supreme, superior or criminal court.

**Sec. 1525. Magistrate shall take bail, if the offence be not a capital one.**

1868-'9, c. 173, sub  
chap. 3, s. 8.  
1871-'2, c. 37, s. 1.

If the offence charged in the warrant be not punishable with  
2 death, such magistrate may take from the person so arrested a re-  
3 cognizance with sufficient sureties for his appearance at the next  
4 term of the court having jurisdiction, to be held in the county  
5 where the offence shall be alleged to have been committed.

**Sec. 1526. Duty of magistrate granting bail.**

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.

1868-'9, c. 178, sub chap. 3, s. 9.

**Sec. 1527. If bail is not allowed, or is not given, the accused to be taken before a magistrate of the county where the warrant was issued.**

If such magistrate refuse 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.

1868-'9, c. 178, sub chap. 3, s. 10.

**Sec. 1528. In capital cases the prisoner must be brought before a magistrate of the county where the warrant was issued or before some judge of the supreme or superior court.**

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.

1868-'9, c. 178, sub chap. 3, s. 11.

**Sec. 1529. Before what magistrate warrant to be returnable.**

Persons arrested under any warrant issued for any offence, where no provision is otherwise made, shall 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 indorsed thereon and signed by the officer or person making the arrest, shall be delivered to such magistrate.

State v. James, 78—455.

1868-'9, c. 178, sub chap. 3, s. 12.

**Sec. 1530. Duty of the examining magistrate.**

The magistrate, before whom any such person shall be brought, shall proceed, as soon as may be, to examine the complainant, and the witnesses 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.

1868-'9, c. 178, sub chap. 3, s. 13.

State v. James, 78—455.

**Sec. 1531. The examination; prisoner to be allowed time to advise with counsel and to cross-examine witness against him.**

The magistrate shall then proceed to examine the prisoner in relation to the offence charged. Such examination shall not be

1868-'9, c. 178, sub chap. 3, s. 14.

3 on oath; and before it is commenced, the prisoner shall be in-  
 4 formed of the charge made against him, and shall be allowed a  
 5 reasonable time to send for and advise with counsel. If desired  
 6 by the person arrested, his counsel shall be present during the ex-  
 7 amination of the complainant and the witnesses on the part of the  
 8 prosecution, and during the examination of the prisoner; and the  
 9 prisoner or his counsel shall be allowed to cross-examine the com-  
 10 plainant and the witnesses for the prosecution.

State v. Needham, 78—474.

**Sec. 1532.** Prisoner shall be informed that he may refuse to answer any ques-  
 tions.

1868-'9, c. 178, sub  
 chap. 3, s. 15.

At the commencement of the examination, the prisoner shall be  
 2 informed by the magistrate that he is at liberty to refuse to answer  
 3 any question that may be put to him, and that his refusal to an-  
 4 swer shall not be used to his prejudice in any stage of the pro-  
 5 ceedings.

State v. Matthews, 66—106; State v. Rone, 74—148; State v. Needham, 78—474.

**Sec. 1533.** Answer of prisoner shall be reduced to writing.

1868-'9, c. 178, sub  
 chap. 3, s. 16.

The answer of the prisoner to the several interrogatories shall be  
 2 reduced to writing by the magistrate, or under his direction: they  
 3 shall be read to the prisoner who may correct or add to them; and  
 4 when made conformable to what he declares is the truth, shall be  
 5 certified and signed by the magistrate.

**Sec. 1534.** Prisoner may examine witnesses and have the assistance of counsel.

1868-'9, c. 178, sub  
 chap. 3, s. 17.

After the examination of the prisoner is complete, his witnesses,  
 2 if he have any, shall be sworn and examined, and he may have  
 3 the assistance of counsel in such examination.

**Sec. 1535.** The prisoner shall not be examined in the presence of witnesses; wit-  
 nesses may be examined separately.

1868-'9, c. 178, sub  
 chap. 3, s. 18.

The witnesses produced on the part either of the prisoner or of  
 2 the prosecution shall not be present at the examination of the  
 3 prisoner; and while any witness is under examination the magis-  
 4 trate may exclude from the place in which such examination is  
 5 had all witnesses who have not been examined, and may cause the  
 6 witnesses to be kept separate and prevented from conversing with  
 7 each other until they shall have been examined.

**Sec. 1536.** The testimony of witnesses to be reduced to writing.

1868-'9, c. 178, sub  
 chap. 3, s. 19.

The evidence given by the several witnesses examined shall be  
 2 reduced to writing by the magistrate or under his direction, and  
 3 shall be signed by the witnesses respectively.

State v. Valentine, 7 Ired., 225.



**Sec. 1537. When prisoner shall be discharged.**

If, upon examination of the whole matter, it shall appear to the  
2 magistrate either that no offence has been committed by any per-  
3 son or that there is no probable cause for charging the prisoner  
4 therewith, he shall discharge such prisoner.

1868-'9, c. 178, sub  
chap. 3, c. 20.

**Sec. 1538. When prisoner shall be bound over.**

If it shall appear that an offence has been committed, and that  
2 there is probable cause to believe the prisoner to be guilty thereof,  
3 the magistrate shall bind by recognizances the prosecutor and all  
4 the material witnesses against such prisoner to appear and testify  
5 at the next term of the court having jurisdiction for the county in  
6 which the offence is alleged to have been committed.

1868-'9, c. 178, sub  
chap. 3, s. 21.

**Sec. 1539. Magistrate need not take the examination of a prisoner charged with a misdemeanor.**

Nothing contained in the preceding sections of this chapter shall  
2 be construed to require any magistrate, before whom a prisoner  
3 charged with a misdemeanor shall be brought, to take the exam-  
4 ination of such prisoner, except where such magistrate shall deem  
5 it material so to do, or where such examination shall be required  
6 by the prisoner.

1868-'9, c. 178, sub  
chap. 3, s. 22.

**Sec. 1540. Witnesses may be required to give security for their appearance.**

Whenever such magistrate shall be satisfied by the proof that  
2 there is good reason to believe that any such witness will not fulfill  
3 the conditions of such recognizance unless security be required, he  
4 may order such witness to enter into a recognizance with such  
5 sureties as he shall deem meet for his appearance at such court.

1868-'9, c. 178, sub  
chap. 3, s. 23

**Sec. 1541. Witness not giving the security required may be committed to prison.**

If any witness so required to enter into a recognizance, either  
2 with or without sureties, shall refuse to comply with such order, it  
3 shall be the duty of such magistrate to commit him to prison until  
4 he shall comply with such order, or be otherwise discharged ac-  
5 cording to law.

1868-'9, c. 178, sub  
chap. 3, s. 24.

**Sec. 1542. When bail shall be allowed.**

If the offence with which the prisoner is charged be bailable,  
2 and the prisoner offer sufficient bail, such bail shall be taken and  
3 the prisoner discharged; if no bail be offered, or the offence be not  
4 bailable, the prisoner shall be committed to prison.

1868-'9, c. 178, sub  
chap. 3, s. 25.

**Sec. 1543. Examinations and recognizances to be certified to the court by the committing magistrate.**

All examinations and recognizances taken pursuant to the pro-  
2 visions of this chapter shall be certified by the magistrate taking  
3 the same to the court at which the witnesses are bound to appear,

1868-'9, c. 178, sub  
chap. 3, s. 26.

4 on the first day of the sitting thereof; and the examinations taken  
5 and subscribed as herein prescribed, may be used as evidence be-  
6 fore the grand jury, and on the trial of the accused, provided he  
7 was present at the taking thereof and had an opportunity to hear  
8 the same and to cross examine the deposing witness, if such wit-  
9 ness be dead or so ill as not to be able to travel, or by procurement  
10 or connivance of the defendant, hath removed from the state or is  
11 of unsound mind.

**Sec. 1544. Penalty on magistrate failing to make the required return.**

1868-'9, c. 178, sub  
chap. 3, s. 27.

If any magistrate shall refuse or neglect to return to the proper  
2 court any such examination of recognizance by him taken, he may  
3 be compelled by rule of court forthwith to return the same, and  
4 in case of disobedience of such rule, may be proceeded against by  
5 attachment as for contempt of court as provided by law.

**Sec. 1545. The magistrate may associate with himself another.**

1868-'9, c. 178, sub  
chap. 3, s. 28.

It shall be lawful for any magistrate, to whom any complaint  
2 may be made, or before whom any prisoner may be brought, as  
3 hereinbefore provided, to associate with himself any other magis-  
4 trate of the same county; and the powers and duties herein men-  
5 tioned may be executed by such two magistrates so associated.

**Sec. 1546. Who may bail persons charged with crime but not imprisoned.**

1868-'9, c. 178, sub  
3, s. 29.  
1871-'2, c. 37.

Officers before whom persons charged with crime but who have  
2 not been committed to prison by an authorized magistrate shall  
3 be brought, shall have power to take bail as follows:  
4 (1) Any justice of the supreme court, or a judge of a superior  
5 court, or of a criminal court;  
6 (2) Any justice of the peace or chief magistrate of any incor-  
7 porated city or town, in all cases of misdemeanor, and in all cases  
8 of felony not capital.

**Sec. 1547. Who may let to bail persons charged with crime and in prison.**

1868-'9, c. 178, sub  
chap. 3, s. 30.

Any justice of the supreme court or any judge of a superior  
2 court or of a criminal court, shall have power to bail persons com-  
3 mitted to prison charged with crime in all cases; any justice of  
4 the peace or chief magistrate of any incorporated city or town  
5 shall have the same power, in all cases where the punishment is  
6 not capital.

**Sec. 1548. When a prisoner is bailed, the recognizance taken by the officer shall be filed with the clerk of the court.**

1868-'9, c. 178, sub  
chap. 3, s. 31.

Whenever any prisoner shall be bailed by any officer under the  
2 preceding section, such officer shall immediately cause the recogni-  
3 zance taken by him to be filed with the clerk of the court of the  
4 county to which the prisoner is recognized.

Sec. 1549. What every commitment shall state.

Every commitment to prison of a person charged with crime shall state: 1868-9, 'c. 178, sub chap. 3, s. 32.

- 2 (1) The name of the person charged ;
- 3 (2) The character of the offence with which he is charged ;
- 4 (3) The name and office of the magistrate committing him ;
- 5 (4) The manner in which he may be discharged : if upon giving recognizance or bail, the amount of said recognizance, the condition on the performance of which it shall be discharged, and the persons or magistrate before whom the bail may justify ;
- 6 (5) The court before which the prisoner shall be sent for trial.

State v. James, 78—455.

Sec. 1550. To what jail prisoner shall be committed.

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 jailer 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. 1868-9, c. 178, sub chap. 3, s. 33

Sec. 1551. Fugitives from justice, who may arrest.

Any justice of the supreme court, or any judge of the superior court or of any 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 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, pursuant 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. 1868-9, c. 178, sub chap. 3, s. 34.

State v. Shelton, 79—605.

Sec. 1552. Magistrate to keep record of the proceedings and transmit copy to the governor.

Every magistrate committing any person under the preceding section, shall keep a record of the whole proceedings before him, and immediately transmit a copy thereof to the governor for such action as he may deem fit therein under the law. 1868-9, c. 178, sub chap. 3, s. 35.



**Sec. 1553. Duty of the governor.**

1868-'9, c. 178, sub  
chap. 3, s. 36.

The governor shall immediately inform the governor of the state  
2 or territory in which the crime is alleged to have been committed,  
3 or the president of the United States, if it be alleged to have been  
4 committed within the District of Columbia, of the proceedings had  
5 in such case.

**Sec. 1554. Every sheriff or jailer shall surrender the fugitive upon the order of the governor.**

1868-'9, c. 178, sub  
chap. 3, s. 37.

Every sheriff or jailer, in whose custody any person so com-  
2 mitted shall be, upon the order of the governor, shall surrender  
3 him to the person named in such order.

**Sec. 1555. Governor may employ agent or offer reward for the apprehension of fugitives charged with capital offences.**

R. C., c. 35, s. 4.  
1800, c. 561.  
1866, c. 28.  
1868-'9, c. 52.  
1870-'1, c. 15.  
1871-'2, c. 29.

The governor, on information made to him of any person hav-  
2 ing committed an offence of a capital nature within the state, and  
3 of having fled out of the jurisdiction thereof, or who conceals  
4 himself within the state to avoid arrest, or who having been con-  
5 victed has escaped and cannot otherwise be apprehended, may  
6 either employ a special agent, with a sufficient escort, to pursue  
7 and apprehend such fugitive, or issue his proclamation, and therein  
8 offer a reward, not exceeding four hundred dollars, according to  
9 the nature of the case, as in his opinion may be sufficient for the  
10 purpose, to be paid to him who shall apprehend and deliver the  
11 fugitive to such person and at such place as in the proclamation  
12 shall be directed; and he may from time to time issue his war-  
13 rants on the state treasurer for sufficient sums of money for such  
14 purpose.

**Sec. 1556. Governor may draw on the state treasurer for money necessary to pay expenses of arresting fugitives from justice.**

1870-'1, c. 82.

In all cases where the governor of the state has made a requi-  
2 sition on the governor of another state for any fugitive from justice  
3 and has sent an agent to receive said fugitive, it shall be lawful for  
4 the governor to issue a warrant on the state treasurer for the  
5 amount of money necessary to pay the expenses of said agent and  
6 other costs in the arresting of said fugitives from justice, to be paid  
7 by the treasurer of the state.

**Sec. 1557. Of search warrants.**

1868-'9, c. 178, sub  
chap. 3, s. 38.

If any credible witness shall prove, upon oath, before any justice  
2 of the peace, or mayor of any city, or chief magistrate of any in-  
3 corporated town, that there is a reasonable cause to suspect that  
4 any person has in his possession, or on his premises, any property  
5 stolen, or any false or counterfeit coin resembling, or apparently in-  
6 tended to resemble, or pass for, any current coin of the United  
7 States, or of any other state, province or country, or any instru-

8 ment, tool or engine whatsoever adapted or intended for the coun-  
 9 terfeiting of any such coin; or any false and counterfeit notes,  
 10 bills or bonds of the United States, or of the state of North Caro-  
 11 lina, or of any other state or country, or of any county, city or incor-  
 12 porated town; or any instrument, tool or engine whatsoever, adapted  
 13 or intended for the counterfeiting of such note, bill or bond, it shall  
 14 be lawful for such justice, mayor or chief magistrate of any incor-  
 15 porated town, to grant a warrant, to be executed within the limits  
 16 of his county or of the county in which such city or incorporated  
 17 town is situated, to any proper officer, authorizing him to search  
 18 for such property, and to seize the same, and to arrest the person  
 19 having in possession, or on whose premises may be found, such  
 20 stolen property, counterfeit coin, counterfeit notes, bills or bonds,  
 21 or the instruments, tools or engines for making the same, and to  
 22 bring them before any magistrate of competent jurisdiction, to be  
 23 dealt with according to law.

**Sec. 1558. Search warrant, its form and the proceedings thereon.**

Such search warrant shall describe the article to be searched for  
 2 with reasonable certainty, and by whom the complaint is made,  
 3 and in whose possession the article to be searched for is supposed  
 4 to be; it shall be made returnable as other criminal process is by  
 5 law required to be, and the proceedings thereupon shall be as is  
 6 required in other cases of criminal complaint.

1868-'9, c. 178, sub  
 chap. 3, s. 39.

**Sec. 1559. Of costs in proceedings before judges and magistrates.**

In all cases of criminal complaints before justices of the supreme  
 2 court, judges of the superior and criminal courts, justices of the  
 3 peace and other magistrates having jurisdiction of such com-  
 4 plaints, the officers entitled by law to receive fees for issuing or  
 5 executing process, shall not be entitled to demand them in ad-  
 6 vance. Such officers shall indorse the amounts of their respective  
 7 fees on every process issued or executed by them, and return the  
 8 same to the court to which the same is returnable.

1868-'9, c. 178, sub  
 chap. 2, s. 40.

**Sec. 1560. Persons to be imprisoned in county jail; exception as to a sheriff.**

No person shall be imprisoned by any judge, court, justice of  
 2 the peace, or other peace officer, except in the common jail of the  
 3 county: *Provided*, that whenever the sheriff of any county shall  
 4 be imprisoned, he may be imprisoned in the jail of any adjoining  
 5 county.

R. C., c. 35, s. 3.  
 5 Hen. IV, c. 10.

**Sec. 1561. No person to be arrested on a presentment, nor tried, except on indictment.**

No person shall be arrested on a presentment of the grand jury,  
 2 or put on trial before any court, but on indictment found by the  
 3 grand jury.

R. C., c. 35, s. 6.  
 1797, c. 474, s. 3.  
 1879, c. 12.

State v. Cain, 1 Haw., 352; State v. Roberts, 2 D. & B., 540; State v. Allen, 83—680; State v. Hines, 84—810.

**Sec. 1562. Names of witnesses and grand jurors to be indorsed on presentment.**

R. C., c. 35, s. 7.  
1797, c. 474, s. 2.

When a presentment shall be made of any offence by a grand jury, upon the knowledge of any of their body, or upon the testimony of witnesses, the names of such grand jurors and witnesses shall be indorsed thereon.

**Sec. 1563. Indictments for misdemeanors to be commenced in two years, exceptions thereto.**

R. C., c. 35, s. 8.  
1826, c. 11.

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.

State v. Tomlinson, 3 Ire., 32; State v. Cox, 6 Ire., 440; State v. Watts, 10 Ire., 369; State v. Christianbury, Busb., 46.

**Sec. 1564. Criminal proceedings to issue and be returnable at any time; proceedings as heretofore.**

R. C., c. 35, s. 9.  
1777, c. 115, s. 15.

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.

**Sec. 1565. Sheriff to indorse on process and subpoenas day of receipt and execution.**

R. C., c. 35, s. 10.  
1850, c. 57.

Every sheriff shall indorse on all process and subpoenas issuing in criminal cases, whether for the state or defendant, the day when such process and subpoenas came to hand, and also the day of their execution; and on failure of any sheriff to perform either of said duties, he shall forfeit and pay the sum of ten dollars for every case of neglect, to be recovered for the use of the state, in the same manner as forfeitures are recovered against sheriffs by parties in civil suits, for failure to make due return of process delivered to them.

**Sec. 1566. Sheriff to take bail in bailable offences; not to become bail himself.**

R. C., c. 35, s. 11.  
1797, c. 474, s. 4.

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



5 sufficient bail in the nature of a recognizance for his appearing at  
 6 the next succeeding court of the county where he ought to answer,  
 7 which recognizance shall be returned with the *capias*; and the  
 8 sheriff shall in no case become bail himself.

**Sec. 1567. Court to allow bail pending appeal.**

When any person convicted of a misdemeanor, and sentenced by  
 2 the court, shall appeal, the court shall allow such person to give  
 3 bail pending appeal.

R. C., c. 35, s. 12.  
 1850, c. 2.

**Sec. 1568. The accused allowed counsel.**

Every person, accused of any crime whatsoever, shall be enti-  
 2 tled to counsel in all matters which may be necessary for his de-  
 3 fence.

R. C., c. 35, s. 13.  
 1777, c. 115, s. 85.

State v. Collins, 70—241; State v. Sykes, 79—618.

**Sec. 1569. Formal objections or stay of judgment shall not quash indictments, informations and impeachments.**

Every criminal proceeding by warrant, indictment, information,  
 2 or impeachment, shall be sufficient in form for all intents and  
 3 purposes, if it express the charge against the defendant in a plain,  
 4 intelligible, and explicit manner; and the same shall not be  
 5 quashed, nor the judgment thereon stayed, by reason of any infor-  
 6 mality or refinement, if in the bill or proceeding, sufficient matter  
 7 appears to enable the court to proceed to judgment.

R. C., c. 35, s. 14.  
 37 Hen. VIII, c. 8.  
 1784, c. 210, s. 2.  
 1811, c. 809.

State v. Carter, Conf. R., 210; State v. Newmans, 2 C. L. R., 74 (171); State v. Cherry, 3 Mur., 7; State v. Sexton, 3 Haw., 184; State v. Brown, 1 Dev., 137; State v. Pool, 2 Dev., 202; State v. Moses, 2 Dev., 452; State v. Fore, 1 Ire., 378; State v. Gallion, 2 Ire., 372; State v. Lane, 4 Ire., 113; State v. Tribalt, 10 Ire., 151; State v. Noblett, 2 Jon., 418; State v. Boon, 4 Jon., 463; State v. Perry, 5 Jon., 252; State v. Morgan, Winst. L., 248; State v. Beatty, Phil., 52; State v. Smith, 63—234; State v. Bell, 65—313; State v. Phelps, 65—450; State v. Parker, 65—453; State v. Sprinkle, 65—463; State v. Wise, 66—120; State v. Station, 66—640; State v. Purdie, 67—326; State v. Wilson, 67—456; State v. Henderson, 68—348; State v. Evans, 69—40; State v. Davis, 69—495; State v. Simons, 70—336; State v. Rinehart, 75—58; State v. Underwood, 77—502; State v. Davis, 80—384; State v. Reel, 80—442; State v. Joyner, 81—534; State v. Williamson, 81—540; State v. Davis, 84—787.

**Sec. 1570. Substance of proceedings to be set forth in indictments, &c.**

In every indictment, information, or impeachment in which, by  
 2 the common law, it may be necessary to set forth at length the  
 3 judicial proceedings had in any case then or formerly pending in  
 4 any court, civil or military, or before any justice of the peace, it  
 5 shall be sufficient to set forth the substance only of said proceed-  
 6 ings, or the substance of such part thereof as make, or help to  
 7 make, the offence prosecuted.

R. C., c. 35, s. 15.

State v. Haney, 67—467; State v. Evans, 69—40; State v. Davis, 69—495; State v. Simons, 70—336.

**Sec. 1571. Indictment for perjury; what to set forth.**

In every indictment for wilful and corrupt perjury, it shall be  
 2 sufficient to set forth the substance of the offence charged upon  
 3 the defendant, and by what court, or before whom, the oath was

R. C., c. 35, s. 16.  
 1842, c. 49, s. 1.

4 taken, (averring such court or person to have competent authority  
5 to administer the same,) together with the proper averments  
6 to falsify the matter wherein the perjury is assigned, without  
7 setting forth the bill, answer, information, indictment, declara-  
8 tion, or any part of any record or proceedings, either in law or  
9 equity, other than aforesaid, and without setting forth the com-  
10 mission or authority of the court or person before whom the per-  
11 jury was committed.

State v. Bryson, 1 C. L. R., 503; State v. Ammons, 3 Mur., 125; State v. Gallimore, 2 Ire., 372;  
State v. Bell, 3 Ire., 506; State v. Hoyle, 6 Ire., 1; State v. Davis, 69—495; State v. Davis, 84—787;  
State v. Knight, 84—789; State v. Collins, 85—511.

**Sec. 1572. Indictment for subornation of perjury; what to set forth.**

R. C., c. 35, s. 17.  
1842, c. 49, s. 2.

In every indictment for subornation of perjury, or for corrupt  
2 bargaining or contracting with others to commit wilful and cor-  
3 rupt perjury, it shall be sufficient to set forth the substance of the  
4 offence charged upon the defendant, without setting forth the bill,  
5 answer, information, indictment, declaration or any part of any  
6 record or proceedings, either in law or equity, and without setting  
7 forth the commission or authority of the court, or person or persons  
8 before whom the perjury was committed or was agreed or promised  
9 to be committed.

**Sec. 1573. Indictment for second offence; how first conviction to be stated.**

R. C., c. 35, s. 18.

In any indictment for an offence which, on the second convic-  
2 tion thereof, is punished with other or greater punishment than on  
3 the first conviction, it shall be sufficient to state that the offender  
4 was, at a certain time and place, convicted thereof, without other-  
5 wise describing the previous offence; and a transcript of the rec-  
6 ord of the first conviction, duly certified, shall, upon proof of the  
7 identity of the person of the offender, be sufficient evidence of the  
8 first conviction.

**Sec. 1574. Indictment; how stated, when ownership of property is held in common.**

R. C., c. 35, s. 19.

In any indictment wherein it shall be necessary to state the own-  
2 ership of any property whatsoever, whether real or personal, which  
3 shall belong to, or be in the possession of more than one person,  
4 whether such persons be partners in trade, joint-tenants, or tenants  
5 in common, it shall be sufficient to name one of such persons, and  
6 to state such property to belong to the person so named; and an-  
7 other or others as the case may be: and whenever, in any such in-  
8 dictment it shall be necessary to mention, for any purpose whatso-  
9 ever, any partners, joint-tenants, or tenants in common, it shall be  
10 sufficient to describe them in the manner aforesaid; and this pro-  
11 vision shall extend to all joint-stock companies and trustees.

State v. Harper, 64—129; State v. Capps, 71—93; State v. Hill, 79—656.

**Sec. 1575. Indictment, certain defects of, not to vitiate.**

No judgment upon any indictment for felony or misdemeanor, R. C., c. 35, s. 20.  
 2 whether after verdict, or by confession, or otherwise, shall be stayed,  
 3 or reversed for the want of the averment of any matter unnecessary  
 4 to be proved, nor for omission of the words "as appears by the rec-  
 5 ord," or of the words "with force and arms," nor for the insertion  
 6 of the words "against the form of the statutes" instead of the words  
 7 "against the form of the statute," or *vice versa*; nor for omission of  
 8 the words "against the form of the statute" or "against the form  
 9 of the statutes," nor for omitting to state the time at which the of-  
 10 fence was committed, in any case where time is not of the essence  
 11 of the offence, nor for stating the time imperfectly, nor for stating  
 12 the offence to have been committed on a day subsequent to the  
 13 finding of the indictment, or on an impossible day, or on a day  
 14 that never happened; nor for want of a proper and perfect venue,  
 15 when the court shall appear by the indictment to have had juris-  
 16 diction of the offence.

State v. Roach, 2 Hay., 352; State v. Shepherd, 8 Ire., 195; State v. Abernathy, Busb., 428; State v. Noblett, 2 Jon., 418; State v. Storkey, 63—7; State v. Caudle, 63—30; State v. Smith, 63—234; State v. Wise, 66—120; State v. Purdie, 67—326; State v. Haney, 67—467; State v. Simons, 70—336; State v. Davis, 80—334; State v. Jones, 80—415; State v. Parker, 81—531; State v. Joyner, 81—534; State v. Taylor, 83—601.

**Sec. 1576. In indictments for larceny of money, treasury notes or bank notes, sufficient to describe such money or notes simply as money without specifying the kind.**

In every indictment in which it shall be necessary to make any 1876—7, c. 68.  
 2 averment as to the larceny of any money, or United States treasury  
 3 note, or any note of any bank whatsoever, it shall be sufficient to  
 4 describe such money, or treasury note, or bank note, simply as  
 5 money, without specifying any particular coin, or treasury note,  
 6 or bank note; and such allegation, so far as regards the descrip-  
 7 tion of the property, shall be sustained by proof of any amount of  
 8 coin, or treasury note, or bank note, although the particular spe-  
 9 cies of coin, of which such amount was composed, or the particular  
 10 nature of the treasury note, or bank note, shall not be proven.

State v. Collins, 72—144; State v. Reese, 83—637.

**Sec. 1577. Intent to defraud, what statement and proof sufficient; in same indictment, defendant may be charged with counts for receiving stolen goods and with larceny.**

In any case, where an intent to defraud is required to constitute R. C., c. 35, s. 21.  
1852, c. 87, s. 2.  
1874—5, c. 62.  
 2 the offence of forgery, or any other offence whatever, it shall be  
 3 sufficient to allege, in the indictment, an intent to defraud, without  
 4 naming therein the particular person or body corporate intended  
 5 to be defrauded; and on the trial of such indictment, it shall be  
 6 sufficient, and shall not be deemed a variance, if there appear to be  
 7 an intent to defraud the United States, or any state, county, city,  
 8 town, or parish, or body corporate, or any public officer, in his offi-  
 9 cial capacity, or any co-partnership or member thereof, or any par-



10 ticular person. The defendant may be charged in the same in-  
 11 dictment in several counts with the separate offences of receiving  
 12 stolen goods, knowing them to be stolen, and larceny.

State v. Bailey, 73—70; State v. Leak, 80—403; State v. Lawrence, 81—522.

**Sec. 1578. Party whose name is forged a competent witness.**

R. C., c. 35, s. 22.

No person shall be deemed to be an incompetent witness by rea-  
 2 son of any interest which such person may have, or be supposed to  
 3 have in respect to any deed, writing, instrument, or other matter  
 4 whatsoever, in support of any prosecution, wherein shall be ques-  
 5 tioned the fact of forging such deed, writing, instrument, or other  
 6 matter whatsoever, or the fact of uttering, showing forth in evi-  
 7 dence, or disposing thereof, knowing the same to be forged.

**Sec. 1579. Crimes committed on waters dividing counties, where tried.**

R. C., c. 35, s. 24.

When any offence shall be committed on any water, or water-  
 2 course, whether at high or low water, which said water or water-  
 3 course, or the sides or shores thereof, shall divide counties, such  
 4 offence may be dealt with, inquired of, tried and determined, and  
 5 punished at the discretion of the court, in either of the two coun-  
 6 ties which may be nearest to the place where the offence was com-  
 7 mitted.

**Sec. 1580. Improper *venue* to be taken advantage of by plea in abatement; on issue joined, what judgment rendered in misdemeanors, what in felonies.**

R. C., c. 35, s. 25.

And because the boundaries of many counties are either undeter-  
 2 mined, or unknown, by reason whereof high offences go unpun-  
 3 ished; therefore, for the more effectual prosecution of offences com-  
 4 mitted on land, near the boundaries of counties, in the prosecution  
 5 of all offences, it shall be deemed and taken as true, that the of-  
 6 fence was committed in the county, in which by the indictment it  
 7 is alleged to have taken place, unless the defendant shall deny the  
 8 same by plea in abatement, the truth whereof shall be duly verified  
 9 on oath, or otherwise, both as to substance and fact, wherein shall  
 10 be set forth the proper county in which the supposed offence, if  
 11 any, was committed: whereupon the court may, on motion of the  
 12 state, commit the defendant, who may enter into recognizance, as  
 13 in other cases, to answer the offence in the county averred by his  
 14 plea to be the proper county; and, on his prosecution in that county,  
 15 it shall be deemed, conclusively, to be the proper county. But  
 16 if the state, upon the plea aforesaid, will join issue, and the matter  
 17 be found for the defendant, he shall be required to enter into re-  
 18 cognizance as in other cases to answer the offence in the county  
 19 averred by his plea to be the proper county, provided the offence  
 20 be bailable; and, if not bailable, he shall be committed for trial in  
 21 the county; and, if it be found for the state, the court in all offences  
 22 or misdemeanors shall proceed to pronounce judgment against the  
 23 defendant, as upon conviction; and, in all cases of felony, the de-

24 fendant shall be at liberty to plead to the indictment, and be tried  
25 on his plea of not guilty.

State v. Adams, Mart., 30 (21); State v. Outerbridge, 82—617; State v. Mitchell, 83—674.

**Sec. 1581.** In indictment for libel, defendant may give the truth in evidence.

Every defendant who shall be charged by indictment with the  
2 publication of a libel may prove on the trial for the same the truth  
3 of the facts alleged in the indictment; and if it shall appear to the  
4 satisfaction of the jury that the facts are true, the defendant shall  
5 be acquitted of the charge.

R. C., c. 35, s. 26  
1893, c. 632.

**Sec. 1582.** In cases where an assault followed by death in another county, indictment to be found in the county where assault was made.

In all cases of felonious homicide, when the assault shall have  
2 been made in one county within the state, and the person assaulted  
3 shall die in any other county thereof, the offender shall be indicted  
4 and punished for the crime in the county wherein the assault was  
5 made.

R. C., c. 35, s. 27  
1831, c. 22, s. 1.

**Sec. 1583.** Assault in this state and death out of it, trial to be held in this state.

In all cases of felonious homicide, when the assault shall have  
2 been made within this state, and the person assaulted shall die  
3 without the limits thereof, the offender shall be indicted and pun-  
4 ished for the crime in the county where the assault was made, in  
5 the same manner, to all intents and purposes as if the person as-  
6 saulted had died within the limits of this state.

R. C., c. 35, s. 28  
1831, c. 22, s. 2.

State v. Fisher, 3 Ire., 111; State v. Dunkley, 3 Ire., 116.

**Sec. 1584.** Plea of "not guilty" entered for defendant who stands mute.

If any person, being arraigned upon or charged in any indict-  
2 ment for any crime, shall stand mute of malice or will not answer  
3 directly to the indictment, the court shall order the plea of "not  
4 guilty" to be entered on behalf of such person; and the plea so  
5 entered shall have the same force and effect as if such person had  
6 pleaded the same.

R. C., c. 35, s. 29.  
R. S., c. 35, s. 16.

State v. Pollard, 83—598.

**Sec. 1585.** In capital cases, defendants may challenge twenty-three jurors, in other cases four; allowed aid of counsel.

Every person on joint or several trial for his life, may make a  
2 peremptory challenge of twenty-three jurors and no more; and in  
3 all joint or several trials for crimes and misdemeanors, other than  
4 capital, every person on trial shall have the right of challenging  
5 peremptorily, and without showing cause, four jurors and no more.  
6 And to enable defendants to exercise this right, the clerk in all  
7 such trials shall read over the names of the jurors on the panel, in  
8 the presence and hearing of the defendants and their counsel before  
9 the jury shall be impaneled to try the issue; and in all trials

R. C., c. 35, s. 32.  
1871-'2, c. 39]

10 whether for capital or inferior offences, the defendants may have  
11 the aid and assistance of counsel in making challenges to the jury.

See R. S., c. 35, ss. 19, 21; 1777, c. 115, s. 85; 1812, c. 833; 1801, c. 592, s. 1; 1826, c. 9; 22 Hen. VIII, c. 14; State v. Benton, 2 D. & B., 196; State v. Morgan, 2 D. & B., 348; State v. Smith, 2 Ire., 402; State v. Creasman, 10 Ire., 395; State v. Dove, 10 Ire., 469; State v. Cadwell, 1 Jon., 289; State v. Patrick, 3 Jon., 443; State v. Davis, 80—384.

**Sec. 1586. In capital cases state may challenge four jurors, in others two.**

R. C., c. 35, s. 83.  
33 Edw. I, stat. 4,  
1827, c. 10.

In all capital cases, the prosecuting officer on behalf of the state  
2 shall have the right of challenging peremptorily four jurors :  
3 *Provided*, said challenge is made before the juror is tendered to the  
4 prisoner ; and if he will challenge more than four jurors he shall  
5 assign for his challenge a cause certain ; and in all other cases of  
6 a criminal nature, a challenge of two jurors shall be allowed in  
7 behalf of the state, and challenges also for a cause certain ; and in  
8 all cases of challenge for cause certain, the same shall be inquired  
9 of according to the custom of the court.

**Sec. 1587. On conviction for robbing or stealing, the person robbed is entitled to the restitution of his property.**

R. C., c. 35, s. 34.  
21 Hen. VIII, c. 11.

Upon the conviction of any felon for robbing or stealing any  
2 money, goods, chattels, or other estate of any description whatever,  
3 the person from whom such goods, money, chattels or other estate  
4 were robbed or stolen, shall be entitled to restitution thereof ; and  
5 the court may award restitution of the articles so robbed or stolen,  
6 and make all such orders and issue such writs of restitution or oth-  
7 erwise, as may be necessary for that purpose.

**Sec. 1588. New trial to defendants.**

R. C., c. 35, s. 35.  
1815, c. 895, amend-  
ed.

The courts may grant new trials in criminal cases when the de-  
2 fendant is found guilty, under the same rules and regulations as  
3 in civil cases.

**Sec. 1589. Superior and inferior courts to set a day for the trial of crimes ; witnesses not to attend till such day.**

R. C., c. 35, s. 36.  
1822, c. 1133, ss. 2,  
3, 4.

The courts shall appoint a special day in their respective terms,  
2 on which the business of the state shall be taken up, and the court  
3 may proceed therewith till the whole is finished ; and no witness  
4 recognized or summoned to attend on indictment found shall be  
5 entitled to compensation for attending previous to the day so ap-  
6 pointed : *Provided*, nevertheless, that in capital cases witnesses and  
7 other persons may be required on the day preceding the day ap-  
8 pointed as aforesaid ; and the clerk of the court in which a day is  
9 thus appointed shall give notice thereof at the court house door  
10 and at three or more public places in the county, and shall issue  
11 subpoenas and take recognizances for attendance on such day.

See C. C. P., s. 229.



**Sec. 1590.** Pay of witnesses in state cases; court to direct the prosecutor to pay costs in certain cases.

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 shall 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, the court may, nevertheless, order the prosecutor to pay the attendance of such unnecessary witnesses, if it appear that they were summoned at his special request.

R. C., 35, s. 37.  
1800, c. 558, s. 1.

*State v. Lumbrick*, 1 C. L. R., 543; *State v. Cockerham*, 1 Ire., 381; *State v. Lupton*, 63—483; *State v. Darr*, 63—516; *Lewis v. Com'rs of Wake*, 74—194; *Bunting v. Com'rs of Wake*, 74—633; *Pegram v. Com'rs of Guilford*, 75—120; *State v. Cronet*, 81—579; *State v. Hugh*, 83—665; *State v. Norwood*, 84—794. See 1879, c. 49; c. 92, s. 3; 1881, c. 176.

**Sec. 1591.** Judges may lessen or remit recognizances at any time.

The judges of the superior, criminal and the presiding officers of the inferior courts may hear and determine the petition of all persons, who shall conceive they merit relief on their recognizances forfeited; and may lessen, or absolutely remit the same, and do all and any thing therein, as they shall deem just and right and consistent with the welfare of the state and the persons praying such relief, as well before, as final judgment entered and execution awarded.

R. C., c. 35, s. 38.  
1788, c. 292, s. 1.

*State v. Moody*, 74—73.

**Sec. 1592.** Clerk to refund remitted forfeitures paid into office.

The clerk of the superior, criminal or inferior courts, 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.

R. C., c. 35, s. 39.  
1795, c. 442, s. 1.

*Moore v. Commissioners of Alamance*, 70—340.

**Sec. 1593.** County treasurer to refund, when paid to him.

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.

R. C., c. 35, s. 40.  
1795, c. 442, s. 2.

*State v. Moody*, 74—73.

**Sec. 1594.** Execution not to issue until the issuing of the notice.

No execution shall issue upon a forfeited recognizance, or to col-

R. C., c. 35, s. 43.  
1777, c. 115, s. 48.

2 lect a fine imposed *nisi*, until a notice has issued against the person  
3 and his sureties, who has forfeited his recognizance or upon whom  
4 the fine has been imposed.

State v. Mills, 2 D. & B., 552.

**Sec. 1595. Joint notice to issue on forfeited recognizances.**

R. C., c. 35, s. 44.  
1812, c. 836, s. 1.

When any recognizance, acknowledged by a principal and sure-  
2 ties, shall be forfeited by two or more of the recognizers, the notice  
3 issued thereon shall be jointly against them all, designating which  
4 of them are principals and which sureties, and when they are  
5 bound in different sums, stating the amount forfeited by each one:  
6 and the clerk shall have no greater fee on such notice than is due  
7 when it is issued against one defendant.

**Sec. 1596. How notices executed.**

R. C., c. 35, s. 45.  
1812, c. 836, s. 2.

All notices issuing upon forfeited recognizances shall be execu-  
2 ted by leaving a copy with each of the defendants, or at his present  
3 place of abode. And in case he cannot be found, and has no  
4 known place of abode, and the matter be returned, then a notice  
5 shall issue, and on the like return, the same shall be deemed duly  
6 served.

**Sec. 1597. Convicted person must pay the costs.**

R. C., c. 35, s. 46.

Every person convicted of an offence, or confessing himself  
2 guilty, or submitting to the court, shall pay the costs of prosecu-  
3 tion.

State v. Mooney, 74—98; Lewis v. Com'rs of Wake, 74—194.

**Sec. 1598. Penalties not specially given may be recovered by any person who may sue for same.**

R. C., c. 35, s. 47.

Where a penalty may be imposed by any law passed or hereafter  
2 to be passed, and it shall not be provided by the law to what per-  
3 son the penalty is given, it may be recovered by any one who will  
4 sue for the same, and for his own use.

Norman v. Dunbar, 8 Jon., 319.

**Sec. 1599. Suits on penalties, unless otherwise provided, may be brought in name of the state.**

R. C., c. 35, s. 48

Whenever any penalty shall be given by statute, and it is not  
2 prescribed in whose name suit therefor may be commenced, the  
3 same shall be brought in the name of the state.

Norman v. Dunbar, 8 Jon., 319.

**Sec. 1600. Prosecuting attorneys to direct *post mortem* examinations.**

R. C., c. 35, s. 49

In all cases of homicide, any officer prosecuting for the state  
2 may, at any time, direct a *post mortem* examination of the deceased  
3 to be made by one or more physicians to be summoned for the  
4 purpose; and the physicians shall be paid a reasonable compensa-

5 tion for such examination, the amount to be determined by the  
6 court and taxed in the costs, and if not collected out of the defen-  
7 dant, the same shall be paid by the county.

**Sec. 1601.** Persons participating in unlawful gaming compelled to testify of the gaming; not to be prosecuted therefor.

No person shall be excused, on any prosecution, from testifying  
2 touching any unlawful gaming done by himself or others; but no  
3 discovery, made by the witness upon such examination, shall be  
4 used against him, in any penal or criminal prosecution, and he  
5 shall be altogether pardoned of the offence so done, or participated  
6 in by him. R. C., c. 35, s. 50.

**Sec. 1602.** Officers who are authorized to keep the peace.

The following magistrates shall have power to cause to be kept  
2 all the laws made for the preservation of the public peace, and in  
3 execution of that power to require persons to give security to keep  
4 the peace, in the manner provided in this chapter, namely: The  
5 chief justice and associate justices of the supreme court, the judges  
6 of the superior and criminal courts, and of any special courts  
7 which may be hereafter created, the justices of the peace, the may-  
8 ors or other chief officers of all cities and towns. 1868-'9, c. 178, sub  
chap. 2, s. 1.

**Sec. 1603.** Duty of magistrate on complaint being made.

Whenever complaint shall be made in writing, and upon oath  
2 to any such magistrate that any person has threatened to commit  
3 any offence against the person or property of another, it shall be  
4 the duty of such magistrate to examine such complainant and any  
5 witnesses who may be produced on oath, to reduce such examina-  
6 tion to writing, and to cause the same to be subscribed by the par-  
7 ties so examined. 1868-'9, c. 178, sub  
chap. 2, s. 2.

**Sec. 1604.** When warrant to issue.

If it shall appear from such examination that there is just rea-  
2 son to fear the commission of any such offence by the person com-  
3 plained of, it shall be the duty of the magistrate to issue a warrant  
4 under his hand, with or without a seal, reciting the complaint, and  
5 commanding the officer to whom it is directed forthwith to appre-  
6 hend the person so complained of, and bring him before such  
7 magistrate or some other magistrate authorized to issue such war-  
8 rant. 1868-'9, c. 178, sub  
chap. 2, s. 3.

**Sec. 1605.** To whom the warrant shall be directed.

The warrant shall be directed to the sheriff, coroner or any con-  
2 stable, each of whom shall have power to execute the same within  
3 his county; and if no sheriff, coroner or constable can conveniently  
4 be found, the warrant may be directed to any person whatever, who 1868-'9, c. 178, sub  
chap. 2, s. 4.



5 shall have power to execute the same within the county in which  
6 it is issued. No justice of the peace, or mayor, or other chief officer  
7 of any city or town shall direct his warrant to any officer outside  
8 of the county of said justice or chief officer.

**Sec. 1606. Duty of magistrate on return of warrant.**

1868-'9, c. 178, sub  
chap. 2, s. 5.

Upon the person complained of being brought before the magis-  
2 trate, he may be required to enter into a recognizance, payable to  
3 the state of North Carolina, in such sum not exceeding one thou-  
4 sand dollars, as such magistrate shall direct, with one or more  
5 sufficient sureties, to appear at the next term of the court having  
6 jurisdiction in the county in which the offence is charged to have  
7 been committed, and not to depart the same without leave, and in  
8 the meanwhile to keep the peace and be of good behavior towards  
9 all the people of this state, and particularly towards the person re-  
10 quiring such security.

**Sec. 1607. When party complained of discharged and when imprisoned.**

1868-'9, c. 178, sub  
chap. 2, s. 6.

If such recognizance shall be given, the party complained of  
2 shall be discharged; if such person shall fail to find such security,  
3 it shall be the duty of the magistrate to commit him to prison un-  
4 til he shall find the same, specifying in the *mittimus* the cause of  
5 commitment and the sum in which such security was required.

**Sec. 1608. How discharged subsequently.**

1868-'9, c. 178, sub  
chap. 2, s. 7.

Any person committed for not finding sureties of the peace as  
2 above provided, may be discharged by any magistrate upon giving  
3 such security as was originally required of such person, or by a  
4 justice of the supreme court, or judge of the superior or criminal  
5 court, by giving such other security as may seem sufficient.

**Sec. 1609. Recognizance to be returned to next term of court.**

1868-'9, c. 178, sub  
chap. 2, s. 8.

Every recognizance taken pursuant to the foregoing provisions  
2 shall be transmitted by the magistrate taking the same to the next  
3 term of the superior, criminal or inferior court for the county in  
4 which the offence is charged to have been committed.

**Sec. 1610. Persons committing breach of the peace in presence of the court may be required to give security, or be imprisoned.**

1868-'9, c. 178, sub  
chap. 2, s. 9.

Every person who, in the presence of any magistrate above spec-  
2 ified, or in the presence of any court of record, shall make any  
3 affray, or threaten to kill or beat another, or to commit any offence  
4 against his person or property; and all persons who, in the presence  
5 of such magistrate or court, shall contend with hot and angry  
6 words, may be ordered by such magistrate or court, without any  
7 other proof, to give such security as above specified, and in case of  
8 failure so to do, may be committed as above provided.

**Sec. 1611. Proceedings on recognizances.**

Every person who shall have entered into a recognizance to  
 2 keep the peace, shall appear according to the obligation thereof;  
 3 and if he fail to appear, the court shall forfeit his recognizance and  
 4 order it to be prosecuted, unless reasonable excuse for his default be  
 5 given.

1868-'9, c. 178, sub  
 chap. 2, s. 10.

**Sec. 1612. If complainant does not appear, the accused shall be discharged, otherwise court to have the proofs and decide accordingly.**

If the complainant does not appear, the party recognized shall  
 2 be discharged, unless good cause be shown to the contrary. If the  
 3 respective parties appear, the court shall hear their allegations and  
 4 proofs, and may either discharge the recognizance taken, or they  
 5 may require a new recognizance, as the circumstances of the case  
 6 may require, for such time as may appear necessary, not exceeding  
 7 one year.

1868-'9, c. 178, sub  
 chap. 2, s. 11.

**Sec. 1613. Recognizance, when deemed broken.**

No recognizance taken under this chapter shall be deemed to be  
 2 broken except in the case provided for in the next two preceding  
 3 sections, unless the principal in such recognizance be convicted of  
 4 some offence amounting in judgment of law to a breach of such  
 5 recognizance.

1868-'9, c. 178, sub  
 chap. 2, s. 12.

**Sec. 1614. Where there is evidence of breach, court shall order recognizance prosecuted.**

Whenever evidence of such conviction shall be produced in the  
 2 court in which the recognizance is filed, it shall be the duty of  
 3 such court to order the recognizance to be prosecuted, and the solic-  
 4 itor shall cause the proper proceedings to be thereupon taken.

1868-'9, c. 178, sub  
 chap. 2, s. 13.

**Sec. 1615. Term of court expiring during progress of trial, court shall continue it.**

In case the term of a court shall expire while a trial for felony,  
 2 or for any offence punishable by imprisonment in a penitentiary,  
 3 or by any greater punishment, shall be in progress, and before  
 4 judgment shall be given therein, the judge shall continue the term  
 5 as long as in his opinion it shall be necessary for the purposes of  
 6 the case.

C. C. P., s. 397.

See R. C., c. 31, s. 16; 1830, c. 22; State v. Bullock, 63—570; State v. Adair, 66—298; State v. Jefferson, 66—309; State v. Taylor, 76—64; State v. Monroe, 80—373; State v. McGimsey, 80—377; State v. Howard, 82—623.

**Sec. 1616. Bail may arrest and surrender principal before final judgment; bail not thereby discharged after recognizance forfeited.**

The bail shall have liberty, at any time before execution awarded  
 2 against him, to surrender to the court from which the process is-  
 3 sued, or to the sheriff having such process to return, during the  
 4 session, or in the recess of such court, the principal, in discharge  
 5 of himself; and such bail shall, at any time before such execution

R. C., c. 11, s. 5.  
 1777, c. 115, s. 20.  
 1848, c. 7.

6 awarded, have full power and authority to arrest the body of his  
 7 principal, and secure him, until he shall have an opportunity to  
 8 surrender him to the sheriff or court as aforesaid: and the sheriff  
 9 is hereby required to receive such surrender, and hold the body of  
 10 the defendant in custody, as if bail had never been given: *Pro-*  
 11 *vided, however,* that, in criminal proceedings, the surrender by the  
 12 bail, after the recognizance forfeited, shall not have the effect to  
 13 discharge the bail, but the forfeiture may be remitted in the man-  
 14 ner provided for.

**Sec. 1617.** Persons surrendered may give other bail; sheriff allowing a release liable to be amerced and indicted.

R. C., c. 11, s. 6.  
 1827, c. 40.

Any person surrendered in the manner specified in the preceding  
 2 section, shall have liberty, at any time, before final judgment  
 3 against him, to give bail; and in case of such surrender, the sheriff  
 4 shall take the bail-bond or recognizance to the succeeding court;  
 5 and in case the sheriff shall release such person without bail, or  
 6 the bail returned be held insufficient, on exception taken the same  
 7 term to which such bail-bond shall be returned, and allowed by  
 8 the court, the sheriff, having due notice thereof in criminal cases,  
 9 shall forfeit to the state the sum of one hundred dollars, to be re-  
 10 covered on motion in like manner as forfeitures for not returning  
 11 process, and be subject to be indicted for misdemeanor in office;  
 12 and it shall be the duty of the prosecuting officer to collect the for-  
 13 feiture; and, in case of a release, the sheriff shall be liable for an  
 14 escape, and may be prosecuted and punished as provided for in the  
 15 chapter entitled "crimes and punishments."

**Sec. 1618.** Sheriff or other officer having prisoner in custody may take bail.

R. C., c. 11, s. 8.

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

**Sec. 1619.** Matter of defence which is good for principal is good for bail.

R. C., c. 11, s. 9.

Every matter which would entitle the principal to be discharged  
 2 from arrest, may be pleaded by the bail in exoneration of his lia-  
 3 bility.

**Sec. 1620.** Appeals by defendant to supreme court.

R. C., c. 4, s. 21.  
 1818, c. 962, s. 4.

In all cases of conviction in the superior or criminal courts for  
 2 any criminal offence, the defendant shall have the right to appeal,  
 3 on giving adequate security to abide the sentence, judgment or de-  
 4 cree of the supreme court.

State v. Dixon, 71—204; State v. Swepson, 82—541.



**Sec. 1621. Convicted persons may appeal without giving security for costs.**

In all such cases of conviction in the said courts, the defendant shall have the right to appeal without giving security for costs, upon filing an affidavit that he is wholly unable to give security for the costs, and is advised by counsel that he has reasonable cause for the appeal prayed, and that the application is in good faith.

State v. Divine, 69—390; State v. Dixon, 71—204; State v. Hawkins, 72—180; State v. Patrick, 72—217; State v. Spurtin, 80—362; State v. Gaylord, 85—551.

**Sec. 1622. Judge to grant appeal and require defendant to give security for his appearance.**

It shall be the duty of the judge on filing the affidavit required in the preceding section, to grant the appeal without security for costs, and for any bailable offence shall require the defendant to enter into recognizance in a reasonable sum to make his appearance at the first term of the superior or criminal court to be held in the county and to further answer the charge preferred.

State v. Spurtin, 80—362; State v. Hinson, 82—540; State v. Swepson, 83—531; State v. Moore, 84—724; State v. Gaylord, 85—551.

**Sec. 1623. Appeal by state; in what cases recognized.**

An appeal to the supreme court may be taken by the state in the following cases, and no other. Where judgment has been given for the defendant—

- (1) Upon a special verdict;
- (2) Upon a demurrer;
- (3) Upon a motion to quash;
- (4) Upon arrest of judgment.

State v. Lane, 78—547; State v. Moore, 84—724.

**Sec. 1624. What the commitment shall set forth.**

The commitment to the county prison shall set forth—

1868-'9, c. 178, sub chap. 4, s. 17.

- (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.

**Sec. 1625. Duty of solicitors to prosecute certain criminal cases in the United States courts.**

It shall be the duty of the solicitors of this state, in whose jurisdiction the circuit and district courts of the United States are held, having first obtained the permission of the judges of said courts,

1874-'5, c. 164, s. 1.

4 to prosecute, or assist in the prosecution of, all criminal cases in  
 5 said courts, where the defendants are charged with violations of  
 6 the laws of this state, and have moved their cases from the state to  
 7 the federal courts under the provisions of the various acts of con-  
 8 gress on such subjects.

**Sec. 1626. Compensation of solicitors in such cases.**

1874-'5, c. 164, §. 2.

For every such case in which the solicitor shall appear and pros-  
 2 ecute, or assist in prosecuting, he shall be allowed twenty dollars;  
 3 and if he cannot appear himself, by reason of a conflict of the  
 4 time of holding his courts, or other good cause, he may appoint  
 5 some one to act in his stead, who shall receive like compensation,  
 6 and the prosecuting attorney shall be paid said fee by the treasurer  
 7 of the state, upon the warrant of the auditor.

**Sec. 1627. Concurrent jurisdiction of inferior and superior courts in certain criminal cases, with a view to a speedy trial of criminals.**

1879, c. 302, §. 1.

Wherever in any county of the state inferior courts have been  
 2 or shall hereafter be established, the said inferior court and the  
 3 superior court for such county shall have equal power and juris-  
 4 diction to inquire of, try, hear and determine all criminal cases of  
 5 which jurisdiction is given to said inferior courts, or of which juris-  
 6 diction may hereafter be given to them, whether such cases have  
 7 been returned to the said superior court or to the said inferior  
 8 court.

**Sec. 1628. Pending cases remaining untried to be transferred to succeeding court whether inferior or superior.**

1879, c. 302, §. 3.

All such cases pending in either the inferior or the superior  
 2 court of any county which shall not have been tried and deter-  
 3 mined at any term of said inferior or superior court shall be trans-  
 4 ferred by the clerk of such court to the next succeeding court  
 5 whether the same be an inferior or superior court, and shall be  
 6 proceeded in the same manner and with like power and jurisdic-  
 7 tion to said court (to which they are transferred) to hear, try and  
 8 determine as if the bill of indictment therein had been originally  
 9 found by the grand jury of the same: *Provided*, that this section  
 10 shall apply only to those cases in which the defendants or accused  
 11 are confined in jail: *And provided further*, that in such cases the  
 12 handing over of the papers by the clerk of one court to the clerk  
 13 of the other court where the trial is to take place, and the docket-  
 14 ing of the cases, with the receipt of the latter on the docket of the  
 15 former, shall be deemed and held a sufficient transfer of any such  
 16 case from one court to another.

**Sec. 1629. The execution of capital offenders to be private, unless the county commissioners shall otherwise order.**

1868, c. 21, ss. 1, 2.  
 1879, c. 221.

As the ends of justice, public morals and the preservation of or-

2 der, demand that the execution of all capital offenders should be  
3 made private and invested with the solemnity appropriate to the  
4 final act of penal law, any sheriff on whom shall devolve the exe-  
5 cution of a sentence of death on a public offender, shall be required  
6 to provide for the execution of such criminal within the jail yard  
7 inclosure, and as much removed from public view as the means  
8 within his control will allow: *Provided, however,* that, for reasons  
9 which may be deemed good and sufficient, the board of county  
10 commissioner shall otherwise order.

**Sec. 1630.** Sheriff may admit to witness the execution two physicians and neces-  
sary assistants.

The sheriff, after having provided for the private execution of 1868, c. 21, s. 3.  
2 the criminal, may admit by ticket, in addition to the required  
3 guard, two physicians and necessary assistants, not more than thir-  
4 ty-six nor less than eighteen respectable citizens to witness for the  
5 state, the due observance of the law.

CHAPTER THIRTY-EIGHT.

CRUELTY TO ANIMALS.

- SECTION.
1631. Cruelty to animals forbidden.
1632. Bear-baiting, &c., prohibited.
1633. Failure to provide impounded animals with food, a misdemeanor.
1634. Any person may lawfully supply food to impounded animals.
1635. Misdemeanor to carry in a conveyance any animal in a cruel manner.
1636. Misdemeanor to instigate or engage in any cruelty to animals.
1637. The sale of animals having glanders forbidden.
1638. Animals with glanders to be killed.
1639. Agents of the society to prevent cruelty to animals authorized to make arrests.

- SECTION.
1640. Misdemeanor to obstruct any such agent in the discharge of his duty.
1641. Such agents may kill certain diseased or injured animals.
1642. Such agents may take charge of certain vehicles, when the driver has been arrested.
1643. Fines to inure to society to prevent cruelty to animals.
1644. Duty of magistrate in regard to issuing warrants relating to the punishment of those violating this chapter.
1645. Construction of certain words.

**Sec. 1631.** Cruelty to animals forbidden.

If any person shall overdrive, overload, wound, injure, torture, 1881, c. 34, s. 1; c.  
2 torment, deprive of necessary sustenance, or cruelly beat, or need- 368, s. 1.  
3 lessly mutilate, or kill, or cause or procure to be overdriven, over-  
4 loaded, wounded, injured, tortured, tormented, or deprived of nec-  
5 essary sustenance, or to be cruelly beaten, needlessly mutilated, or  
6 killed as aforesaid, any useful beast, fowl or animal, every such  
7 offender shall for every such offence be guilty of a misdemeanor.

**Sec. 1632.** Bear-baiting, &c., prohibited.

Any person who shall keep, or use, or in any way be connected 1881, c. 368, s. 2.



2 with, or interested in the management of, or shall receive money  
3 for the admission of any person to, any place kept or used for the  
4 purpose of fighting, or baiting any bull, bear, dog, cock, or other  
5 animal; and any person who shall encourage, aid or assist therein,  
6 or who shall permit or suffer any place to be so kept or used, shall,  
7 upon conviction thereof, be guilty of a misdemeanor.

**Sec. 1633. Failure to provide impounded animals with food, a misdemeanor.**

1881, c. 368, s. 3.

Any person who shall impound, or cause to be impounded in  
2 any pound or other place, any animal, shall supply to the same  
3 during such confinement a sufficient quantity of good and whole-  
4 some food and water, and in default thereof shall, upon conviction,  
5 be guilty of a misdemeanor.

**Sec. 1634. Any person may lawfully supply food to impounded animals.**

1881, c. 368, s. 4.

In case any animal shall be at any time impounded as aforesaid,  
2 and shall continue to be without necessary food and water for more  
3 than twelve successive hours, it shall be lawful for any person  
4 from time to time, and as often as it shall be necessary to enter  
5 into and upon any such pound or other place, in which any ani-  
6 mal shall be so confined, and to supply it with necessary food and  
7 water so long as it shall remain so confined: such person shall  
8 not be liable to any action for such entry, and the reasonable cost  
9 of such food and water may be collected by him of the owner of  
10 such animal: said animal shall not be exempt from levy and sale  
11 upon execution issued upon a judgment therefor.

**Sec. 1635. Misdemeanor to carry in conveyance any animal in a cruel manner.**

1881, c. 368, s. 5.

If any person shall carry or cause to be carried in or upon any  
2 vehicle, or other conveyance, any animal in a cruel or inhuman  
3 manner, he shall be guilty of a misdemeanor, and whenever he  
4 shall be taken into custody therefor by any officer, such officer  
5 may take charge of such vehicle or other conveyance and its con-  
6 tents, and deposit the same in some safe place of custody, and nec-  
7 essary expenses which may be incurred for taking charge of and  
8 keeping and sustaining the same shall be a lien thereon, to be paid  
9 before the same lawfully recovered, or the said expenses, or any  
10 part thereof remaining unpaid, may be recovered by the person  
11 incurring the same of the owner of said animal in an action  
13 therefor.

**Sec. 1636. Misdemeanor to instigate or engage in any act of cruelty to animals.**

1881, c. 368, s. 6.

Any person who shall wilfully set on foot, or instigate, or move  
2 to carry on, or promote, or engage in, or do any act towards the  
3 furtherance of any act of cruelty to any animal, shall be guilty of  
4 a misdemeanor.

**Sec. 1637. The sale of animals having glanders forbidden.**

Any person who shall sell, or offer for sale, or who shall use, or  
2 expose, or cause or procure to be sold or offered for sale, or to be  
3 used or exposed, any horse or other animal having the disease  
4 known as glanders or farcy, or any other contagious or infectious  
5 disease known by such person to be dangerous to life, or which  
6 shall be diseased past recovery, shall be guilty of a misdemeanor. 1881, c. 368, s. 7.

**Sec. 1638. Animals with glanders to be killed.**

Every animal having the glanders or farcy shall at once be de- 1881, c. 368, c. 8.  
2 prived of life by the owner or person having charge thereof upon  
3 discovery or knowledge of its condition, and any such owner or  
4 person omitting or refusing to comply with the provisions of this  
5 section shall be guilty of a misdemeanor.

**Sec. 1639. Agents of the society to prevent cruelty to animals authorized to make arrests.**

The agents of any society which shall be incorporated for the 1881, c. 368, s. 9.  
2 prevention of cruelty to animals, upon being appointed thereto by  
3 the president of such society in any county in this state, may within  
4 such county make arrests and bring before any court or magistrate  
5 thereof having jurisdiction offenders found violating the provisions  
6 of this chapter.

**Sec. 1640. Misdemeanor to obstruct any such agent in the discharge of his duty.**

Any officer, agent or member of such society may lawful inter- 1881, c. 368, s. 10.  
2 fere to prevent the perpetration of any act of cruelty upon any  
3 animal in his presence. Any person who shall interfere with or  
4 obstruct any such officer, agent, or member, in the discharge of his  
5 duty, shall be guilty of a misdemeanor.

**Sec. 1641. Such agents may kill certain diseased or injured animals.**

Any agent or officer of such society may lawfully destroy or 1881, c. 368, s. 11.  
2 cause to be destroyed any animal found abandoned or otherwise not  
3 properly cared for, appearing, in the judgment of two reputable  
4 citizens called by him to view the same in his presence, to be glan-  
5 dered, injured or diseased beyond recovery for any useful purpose.

**Sec. 1642. Such agents may take charge of certain vehicles when the driver has been arrested.**

When any person arrested is, at the time of such arrest, in charge 1881, c. 368, s. 12.  
2 of any vehicle drawn by or containing any animal, any agent of  
3 such society may take charge of such animal and of such vehicle  
4 and its contents and deposit the same in a safe place of custody or  
5 deliver the same into the possession of the sheriff of the county  
6 wherein such arrest is made, who shall thereupon assume custody  
7 thereof.

**Sec. 1643. Fines to inure to society to prevent cruelty to animals.**

1881, c. 368, s. 13.

All fines, penalties and forfeitures imposed and collected in any  
2 county in this state, under the provisions of every act passed, or  
3 which may be passed, relating to or in anywise affecting animals,  
4 shall inure to such society in aid of the purpose for which it was  
5 incorporated, and no injunction or restraining order shall be  
6 granted against such society or any of its officers or agents except  
7 upon motion, petition or complaint after due notice and hearing  
8 thereof.

**Sec. 1644. Duty of magistrate in regard to issuing warrants relating to the punishment of those violating this chapter.**

1881, c. 368, s. 14.

Upon complaint, under oath or affirmation, to any magistrate  
2 authorized to issue warrants in criminal actions that the complain-  
3 ant has just and reasonable cause to suspect that any of the pro-  
4 visions of law relating to or in anywise affecting animals are being  
5 or about to be violated in any particular building or place, such  
6 magistrate shall immediately issue and deliver a warrant to any  
7 person authorized by law to make arrests for such offender or of-  
8 fenders, authorizing and directing him to enter and search such  
9 building or place and to arrest any person there present violating  
10 any of said laws and to bring such person before the nearest mag-  
11 istrate of competent jurisdiction, to be dealt with according to law.

**Sec. 1645. Construction of certain words.**

1881, c. 368, s. 15.

In this chapter, and in every law in this state enacted, or which  
2 may be enacted, relating to or affecting animals, the singular shall  
3 include the plural, the words animal or dumb animal shall be held  
4 to include every living creature; the words torture, torment or  
5 cruelty, shall be held to include every act, omission, or neglect,  
6 whereby unjustifiable physical pain, suffering, or death is caused  
7 or permitted; and the words owner and person shall be held to  
8 include corporations as well as individuals; but nothing in this  
9 chapter shall be construed as prohibiting the shooting of birds, deer,  
10 and other game for the purpose of human food.



## CHAPTER THIRTY-NINE.

## CURRENCY.

## SECTION.

1646. Currency of the United States currency of state, public accounts, &c., kept in it.  
 1647. Banks not to draw checks, &c., payable otherwise than in specie.  
 1648. Issue of due bills, notes and all kinds of circulation forbidden unless expressly allowed; misdemeanor.  
 1649. Such due bills, notes, &c., not to be circulated under pain of misdemeanor.

## SECTION.

1650. Scale of depreciation of Confederate currency.  
 1651. At what time to apply.  
 1652. Consideration may be shown in contracts for Confederate currency.  
 1653. Consideration may be proved before justice; proviso.

**Sec. 1646. Currency of the United States currency of state; public accounts, &c., kept in it.**

The currency of the United States shall be the lawful currency  
 2 of this state, and all records, fee bills of officers, official accounts,  
 3 accounts for moneys collected by officers, accounts required to be  
 4 returned to court, and all other proceedings and papers of a public  
 5 nature shall be kept in dollars and cents.

R. C., c. 36, s. 1.  
 R. S., c. 36.  
 1825, c. 1284, ss. 1, 2.

State v. Matthews, 3 Jones, 451; Charlotte Bank v. Davidson, 70—118.

**Sec. 1647. Banks not to draw checks, &c., payable otherwise than in specie.**

If any bank shall issue any bill, note, check, or draft, redeemable  
 2 ble or payable in any other manner than by payment in specie,  
 3 the same shall be deemed to be due and demandable in specie at  
 4 the place where it was issued; and on demand and refusal to pay  
 5 the same, the money therein expressed shall draw interest, till  
 6 paid, at the rate of twelve per cent. per annum.

R. C., c. 36, s. 2.

Fort v. Cape Fear Bank, Phil., 417.

**Sec. 1648. Issue of due bills, notes and all kinds of circulation forbidden unless expressly allowed; misdemeanor.**

No person or corporation, unless the same be expressly allowed  
 2 by law, shall issue any bill, due bill, order, ticket, certificate of de-  
 3 posit, promissory note or obligation, or any other kind of security,  
 4 whatever may be its form or name, with the intent that the same  
 5 shall circulate or pass as the representative of, or as a substitute  
 6 for, money, on pain of forfeiting and paying for each offence the  
 7 sum of fifty dollars; and if the party offending be a corporation,  
 8 of also being deemed to have violated its charter. And every per-  
 9 son offending against this section, or aiding or assisting therein,  
 10 shall likewise be guilty of a misdemeanor.

R. C., c. 36, s. 5.

State v. Humphreys, 2 Dev. & Bat., 555.

**Sec. 1649. Such due bills, notes, &c., not to be circulated under pain of misdemeanor.**

No person or corporation shall pass or receive, as the representa-  
 2 tive of, or as the substitute for, money, any such bill, check, certifi-

R. C., c. 36, s. 6,

3 cate, promissory note, or other security of the kind mentioned in  
4 this chapter, whether the same were issued within or without the  
5 state. And any person or corporation, and the officers and agents of  
6 such corporation aiding therein, who shall offend against this sec-  
7 tion, shall for every such offence forfeit and pay five dollars, and  
8 shall, moreover, be guilty of a misdemeanor.

State v. Fayetteville Bank, 3 Jones, 450.

Ordinance of Con-  
vention, 1865.

WHEREAS, by an ordinance of the convention, entitled "an or-  
2 dinance declaring what laws and ordinances are in force, and for  
3 other purposes," ratified on the eighteenth day of October, in the  
4 year of our Lord, one thousand eight hundred and sixty-five, it is  
5 made the duty of the general assembly to provide a scale of depre-  
6 ciation of the Confederate currency, from the time of its first issue  
7 to the end of the war; and it is further therein declared that "all  
8 executory contracts, solvable in money, whether under seal or not,  
9 made after the depreciation of said currency before the first day of  
10 May, one thousand eight hundred and sixty-five, and yet unfilled  
11 (except official bonds and penal bonds payable to the state,) shall  
12 be deemed to have been made with the understanding that they  
13 were solvable in money of the value of said currency," subject,  
14 nevertheless, to evidence of a different intent of the parties to the  
15 contract. Therefore,

Farmer v. Willard, 71—284; Wooten v. Sherrard, 71—374; Holt v. Patterson, 74—650; Green  
v. Barbee, 84—69; Melvin v. Stevens, 84—78; Brickell v. Bell, 54—82; Wilson v. Powell, 86—230.

Sec. 1650. Scale of depreciation of Confederate currency established.

Acts of 1866, c. 39,  
s. 1.

The following scale of depreciation be and the same is hereby  
2 adopted and established as the measure of value of one gold dollar  
3 in Confederate currency, for each month, and the fractional parts  
4 of the month of December, one thousand eight hundred and sixty-  
5 four, from the first day of November, one thousand eight hundred  
6 and sixty-one, to the first day of May, one thousand eight hundred  
7 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		
"    1st to 10th, inclusive.....				35.00	
"    10th to 20th, inclusive.....				42.00	
"    20th to 30th, inclusive.....				49.00	

Cobb v. Gray, 78—94; Drake v. Drake, 82—443; Palmer v. Love, 82—478; Green v. Barbee,  
84—69.

**Sec. 1651. At what time to apply.**

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. 1866-'7, c. 44, s. 1.

**Sec. 1652. Consideration may be shown in contracts for Confederate currency.**

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. 1866, c. 33, s. 2.

Robeson v. Brown, 63—554; Garrett v. Smith, 64—93; Cherry v. Savage, 64—103; Green v. Brown, 64—553; Summers v. McKay, 64—555; Howard v. Beatty, 64—550; Alexander v. Rintles, 64—634; Terrell v. Walker, 66—244; McKesson v. Jones, 66—259; Alexander v. Summey, 66—577; McCombs v. Griffith, 67—83; Sanders v. Jarman, 67—86; Williams v. Monroe, 67—133; Alexander v. A., T. & O. Railroad Co., 67—198; Cable v. Hardin, 67—472; McRae v. McNair, 69—12; Cowles v. Hayes, 71—230; Farmer v. Willard, 71—284; Palmer v. Love, 75—163; Davis v. Green, 76—427; Johnson v. Miller, 76—439; Cobb v. Gray, 78—94; Norment v. Brown, 79—363; Duke v. Williams, 84—74; Melvin v. Stevens, 84—78.

**Sec. 1653. Consideration may be proved before justice; proviso.**

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 warrant shall be issued by a justice of the peace, upon any claim, which will, according to a scale of depreciation of Confederate currency, after judgment exceed one hundred dollars: 1866 c. 33, s. 3



## CHAPTER FORTY.

## DEEDS AND CONVEYANCES.

## SECTION.

1654. Deeds proved and registered in county where land lies within two years, good without livery.

1655. Deeds, how proved.

(1) Where grantor, &c., reside in county where land is situate.

(2) Where grantor, &c., reside in the state, but not in the county where the land is situate.

(3) When the grantor, maker or subscribing witness resides outside the state, but within the United States.

(4) Where grantor and witness live out of the United States.

(5) Priy examination of married women, by whom taken and how certified.

(6) Private examination to be required if married woman be a party.

(7) Form of the certificate.

(8) When grantor or witness out of the state.

(9) Where no witness, and the maker non-resident, or dead.

(10) Where witness is dead.

1656. How proved when land lies in two or more counties.

1657. Powers of attorney, how proven in the state, how proved out of the state.

1658. Deed to be proved before commissioners of affidavits in other states.

1659. Copies of registered deeds evidence unless original required.

1660. Deeds of gift to be proved and registered.

1661. Deeds, &c., proved and registered in wrong county, copy may be registered in proper county.

1662. Mortgages and trust deeds good against creditors only from registration.

1663. Property of corporations not exempt from certain liabilities on account of mortgages.

## SECTION.

1664. Deeds by husband and wife, how executed, proved and registered.

1665. Conveyance under power of attorney from husband and wife to pass lands.

1666. The clerk may issue commissions for taking probate in another state.

1667. Certain probates and registrations validated.

1668. Applicable to all conveyances.

1669. Contracts to sell land and leases required to be in writing, must be registered.

1670. Infant trustees, how to convey.

1671. Errors in registration of deeds, &c., corrected on petition; appeal allowed.

1672. Deeds, how made when sheriff who sells dies or removes from the state.

1673. Witnesses to deeds may be summoned to prove them.

1674. Marriage settlements registered, otherwise void as to creditors.

1675. What marriage settlements good against creditors, how deficiency in property settled, made up.

1676. Deeds of trust and mortgages, how discharged and released.

1677. Mortgages to secure purchase money need not be executed by wife.

1678. Form of chattel mortgage.

1679. Deed of trust under preceding section good when registered.

1680. In what cases clerks of the superior court to appoint trustee.

1681. Certain probate and registrations validated.

1682. Consolidation of surveys; proviso, common surveys may be recorded.

1683. Donations to persons while in slavery.

1684. Time extended for registering grants of land and other instruments.

1685. All conveyances of real estate to be construed to be in fee, unless otherwise expressly set forth.

**Sec. 1654.** Deeds proved and registered in county where land lies within two years, good without livery.

No conveyance of land nor contract to convey, nor lease of land  
2 for more than three years, shall be good and available in law un-  
3 less the same shall be acknowledged by the grantor or proved on  
4 oath by one or more witnesses in the manner hereinafter directed,  
5 and registered in the county where the land shall lie within two  
6 years after the date of the said deed; and all deeds so executed and  
7 registered shall be valid, and pass estates in land without livery of  
8 seizin, attornment or other ceremony whatever.

Morris v. Ford, 2 Dev. Eq., 412; Walker v. Coltraine, 6 Ire. Eq., 79; Doak v. State Bank, 6 Ire., 309; Osborne v. Ballew, 7 Ire., 415; Walston v. Braswell, 1 Jones Eq., 137; Freeman v. Hatley, 3 Jones, 115; Williams v. Griffin, 4 Jones, 31; Johnson v. Pendergrass, 4 Jones, 479; Latham v. Bowen, 7 Jones, 337; Salms v. Martin, 63—608; Linker v. Long—64—296; Levy v. Griffs, 65—236; Hogan v. Strayhorn, 65—279; Ivey v. Granberry, 66—223; Isler v. Foy, 66—547; Paul v. Car-

R. C., c. 37, s. 1.  
1715, c. 7, s. 1.  
1756, c. 58, s. 3.  
1777, c. 115, s. 2.  
1818, c. 963, s. 2.

penter, 70—502; Starke v. Etheridge, 71—240; Holmes v. Marshal, 72—37; Wilson v. Sparks, 72—208; Triplett v. Witherspoon, 74—475; Buie v. Carver, 75—559; Hare v. Jernigan, 76—471; Mayo v. Jones, 78—402; Riggan v. Green, 80—236; King v. Portis, 81—382; Henley v. Wilson, 81—405; Mauney v. Crowell, 84—314; Davis v. Inscoc, 84—396.

Sec. 1655. Deeds, how proved.

All deeds conveying lands, letters of attorney or other instruments requiring registration must be offered for probate or a certified copy thereof must be exhibited before the clerk of the superior court of any county in the manner following:

C. C. P., s. 429.  
1866, c. 30, s. 1.  
1868—9, c. 277, s. 15.  
1876—7, c. 161.  
1879, c. 22.  
1879, c. 77.  
1879, c. 128.  
1881, c. 334.  
1881, c. 341.

(1) WHERE GRANTOR, &c., RESIDE IN THE COUNTY WHERE LAND IS SITUATE.

When the grantor or maker, or subscribing witness resides in the county wherein the land lies, the deed, letter of attorney or other instrument requiring registration must be acknowledged by such grantor or maker, or proved by the oath of such subscribing witness, before the clerk of the superior or of the inferior court, or before a notary public or justice of the peace of such county, who shall enter his certificate thereon; and such deed, letter of attorney or other instrument with the certificate thereon, on exhibition to the clerk of the superior court of said county, shall, if in due form, be admitted by him to probate and ordered to be registered with the certificates thereto attached.

Starke v. Etheridge, 71—240; Holmes v. Marshall, 72—37; Rollins v. Henry, 78—342; Mayo v. Jones, 78—402.

(2) WHERE GRANTOR, &c., RESIDE IN THE STATE, BUT NOT IN THE COUNTY WHERE THE LAND IS SITUATE.

When the grantor, maker or subscribing witness resides in the state, but not in the county wherein the land lies, such deed, letter of attorney, or other instrument requiring registration must be acknowledged by such grantor, or maker, or proved by the oath of such subscribing witness before a judge of the supreme or of the superior court, or before the clerk of the superior court, or the inferior court, or a notary public or justice of the peace of the county wherein the grantor, maker, or subscribing witness resides; and if such acknowledgment or proof shall be had before a justice of the peace, the clerk of the superior court of the county of such justice shall certify upon such deed, letter of attorney or instrument the fact of such acknowledgment or proof, and the further fact that such justice was at the time of taking such acknowledgment or proof an acting justice of said county. And the clerk of the superior court of the county wherein the land lies, upon the exhibition to him of such deed, letter of attorney or other instrument, together with the said certificates, or with the certificate of a judge of the supreme or of the superior court, or notary, shall adjudge the said deed, letter of attorney or other instrument to be duly acknowledged or proved in the same manner as if taken or made before

36 him, and order the same, with his certificate and the other certifi-  
37 cates attached, to be registered.

Holmes v. Marshall, 72—37.

(3) WHEN THE GRANTOR, MAKER OR SUBSCRIBING WITNESS RESIDES OUTSIDE  
THE STATE, BUT WITHIN THE UNITED STATES.

38 Where the grantor, maker or subscribing witness resides outside  
39 of the state, the deed, letter of attorney or other instrument re-  
40 quiring registration in the state may be acknowledged or proved  
41 by the grantor, maker or subscribing witness before a judge, clerk  
42 of a court of record, notary public having notarial seal, mayor of  
43 a city having a seal, or justice of the peace of the state in which  
44 said grantor, maker or subscribing witness resides; and the cer-  
45 tificate of said judge, clerk of a court of record under the seal of  
46 said court, mayor of a city or notary public under their respective  
47 seals, touching the acknowledgment or proof of such persons shall,  
48 if adjudged to be in due form by the clerk of the superior court  
49 of the county in which the land is situate, or the letter of attorney  
50 or other instrument is required to be registered, be ordered by said  
51 clerk to be registered as deeds made by grantors and makers re-  
52 siding within the state are required by law to be registered. If the  
53 acknowledgment or proof of the execution of said deed, letter of  
54 attorney, or other instrument requiring registration, be had before  
55 a justice of the peace of another state, then the clerk of the court  
56 of record of the county in which such justice resides shall certify  
57 under the seal of his court that said justice was at the time of  
58 taking the said acknowledgment or proof, an acting justice of the  
59 peace of said county and state, and that the signature of said jus-  
60 tice was in his own proper handwriting; and if said certificate shall  
61 be adjudged to be in due form by the clerk of the superior court of  
62 the county in which the land is situate, or letter of attorney, or  
63 other instrument, is required to be registered, then the said clerk  
64 of said superior court shall order the same to be registered, as deeds  
65 made by grantors or makers residing within this state are required  
66 to be registered.

Whissett v. Forehand, 79—230; Todd v. Outlaw, 79—235.

(4) WHERE GRANTOR AND WITNESS LIVE OUT OF THE UNITED STATES.

67 Where the grantor or maker and the subscribing witness reside  
68 beyond the limits of the United States, the deed or other instrument  
69 may be personally acknowledged by such grantor or maker, or  
70 proved on the oath of such subscribing witness, before the chief  
71 magistrate of any city in the country where the grantor or witness  
72 is resident; or before any ambassador, minister, consul, or commer-  
73 cial agent of the United States, and where such proof, or acknowl-  
74 edgment is certified under the corporate seal of such chief magis-  
75 trate, or under the official seal of such ambassador, minister, con-  
76 sul, or commercial agent, and where such certificate is affixed to



77 the deed or other instrument, and the same is exhibited before the  
78 clerk of the superior court having jurisdiction, he shall adjudge  
79 that such deed, or other instrument, is duly proved or acknowl-  
80 edged, and order it, with his certificates and the accompanying  
81 certificates, to be registered.

Starkie v. Etheridge, 71—240.

(5) PRIVY EXAMINATION OF MARRIED WOMEN, BY WHOM TAKEN AND HOW CERTIFIED.

82 When the privy examination of any married woman is neces-  
83 sary to be taken, the persons authorized to take the acknowledgment  
84 of any grantor or maker or proof of the execution of any deed, let-  
85 ter of attorney or other instrument requiring registration, are  
86 hereby empowered to take the privy examination of any married  
87 woman touching her free assent to such deed, letter of attorney or  
88 other instrument to which her assent is or may be necessary, and  
89 to certify the fact of such privy examination in the same manner  
90 as they are authorized to take and certify the acknowledgment of  
91 any grantor or maker of such deed, letter of attorney or other in-  
92 strument. And the clerk of the superior court of the county in  
93 which the land is situate or of the county where the deed, letter of  
94 attorney or other instrument is required to be registered, upon the  
95 exhibition of said letter of attorney or other instrument, with the  
96 certificates, to him, if he shall adjudge the same to be in due form,  
97 shall admit the said deed, letter of attorney or other instrument to  
98 probate and order it with his certificate and the accompanying cer-  
99 tificates to be registered.

(6) PRIVATE EXAMINATION TO BE REQUIRED IF MARRIED WOMAN BE A PARTY.

100 When the proof or acknowledgment of a conveyance, power of  
101 attorney or other instrument concerning the interest of a married  
102 woman in lands, is taken as in this chapter directed, no clerk of  
103 the superior court shall adjudge such conveyance or other instru-  
104 ment to be duly proved or acknowledged unless the private exam-  
105 ination of such married woman is taken according to the laws of  
106 this state and a certificate thereof attached to the deed or other in-  
107 strument.

(7) FORM OF THE CERTIFICATE.

108 For the purposes of this chapter the certificates of probate or ac-  
109 knowledgment shall be substantially as follows:

STATE OF ..... }  
..... County. }

I, A. B., (here give name of officer, as the case may be,) do hereby certify that (here give name of grantor, and if acknowledged by wife, her name, and add *his wife*,) personally appeared before me this day and acknowledged the due execution of the foregoing (or annexed) deed of conveyance (or other instrument) and (if the wife is a signer) the said (here give wife's name) 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 (private or official, as the case may be) this (day of month) A. D. (year.)

Signature of officer, [seal.]

110 And when such proof or acknowledgment has been had or taken  
111 by a justice of the peace, the clerk of the court of record shall use  
112 substantially the following form of certificate :

STATE OF..... }  
..... County. }

The foregoing (or annexed) certificate of A. B., a justice of the peace of ..... county,  
is adjudged to be correct. Let the deed (or other instrument), with the certificates, be regis-  
tered.

Signature of the clerk. [SEAL]  
(of the court.)

113 If the acknowledgment, or proof, of privy examination be taken  
114 out of the county where the land is situate, or the instrument is  
115 required to be registered or beyond the limits of the state, then in  
116 addition to the first certificate before mentioned, the clerk of the  
117 superior court of the county, or the clerk of the court of record  
118 in the county and state in which the person taking the examina-  
119 tion, acknowledgment or proof, resides, shall certify substantially .  
120 as follows :

STATE OF ..... }  
..... County. }

I hereby certify that A. B. (insert the name of the officer taking the proofs, &c.), was, at  
the time of signing the foregoing certificate, a (justice of the peace) in and for the county of  
..... and state of ....., and that his signature thereto is in his own proper  
handwriting. In witness whereof I hereunto set my hand and seal of office this ..... day  
of ....., 18...

(Signature of clerk.)

(Seal of office.)

(8) WHEN GRANTOR OR WITNESS OUT OF THE STATE.

121 Whenever the subscribing witness to any instrument required  
122 or allowed to be registered, shall be a non-resident or shall be  
123 dead, and the maker shall also be a non-resident or dead, the  
124 proof of the handwriting of such witness and that of the maker  
125 before the clerk of the superior court of the county where the  
126 instrument is sought to be registered, shall be sufficient evidence  
127 of the execution thereof to admit the same to registration, and  
128 in case such maker shall have subscribed with a mark only, the  
129 proof of the signature of such witness shall be sufficient.

(9) WHEN NO WITNESS AND THE MAKER NON-RESIDENT OR DEAD.

130 Whenever any such instrument shall not have a witness, and  
131 the maker thereof shall be non-resident or dead, proof of his  
132 handwriting shall be sufficient to admit the same to registration.

Rollins v. Henry, 78—342; Black v. Justice, 86—504.

(10) WHERE WITNESS IS DEAD.

133 In all cases of the probate of any deed or other instrument re-  
134 quired or allowed to be registered, having a subscribing witness  
135 who may be dead, satisfactory proof of his handwriting, or of the  
136 handwriting of the grantor or maker when there is no subscrib-

137 ing witness, shall be deemed sufficient proof for the purpose of  
138 allowing the registration thereof.

Rollins v. Henry, 78—342; Black v. Justice, 86—504.

**Sec. 1656. How proved when land lies in two or more counties.**

Where real estate is situate in two or more counties, probate of C. C. P., s. 430.  
2 the deed or other instrument conveying or concerning the same,  
3 made before the clerk of the superior court of any of said counties,  
4 is sufficient.

**Sec. 1657. Powers of attorney, how proved in the state, how proved out of the state.**

Every power of attorney, wherever made or concerning whatso- R. C., c. 37, s. 14.  
2 ever matter, may be registered on acknowledgment or probate of 1798, c. 514, ss. 3, 4.  
3 the same in the county wherein the property or estate may be 1846, c. 68, ss. 2, 3.  
4 situate, if it concern the conveyance thereof; and if the same do  
5 not concern the conveyance of any estate or property, then in the  
6 county where the attorney may reside or the business is to be  
7 transacted. And such powers of attorney as do not concern the  
8 conveyance of land by a *feme covert*, whereof it may be necessary  
9 to take the acknowledgment or probate out of the state, may,  
10 besides the other modes provided in this chapter, be acknowl-  
11 edged or proved before any mayor or presiding magistrate of any  
12 city, or a clerk of a court of record; and such acknowledgment or  
13 probate being duly taken and certified under the seal of office of  
14 such officer shall, on the same being produced before the clerk of  
15 the superior court of the proper county, be ordered by him to be  
16 registered, and shall be registered.

Freeman v. Hatley, 3 Jones, 115.

**Sec. 1658. Deed to be proved before commissioners of affidavits in other states.**

Where the acknowledgment or proof of any deed or other in- C. C. P., s. 429.  
2 strument is taken or made in the manner directed by the laws of 1879, c. 77.  
3 this state before any commissioner of affidavits for the state of  
4 North Carolina, appointed by the governor thereof, in any of the  
5 states or territories of the United States or in the District of Colum-  
6 bia; and where such acknowledgment or proof is certified by such  
7 commissioner, the clerk of the superior court having jurisdiction,  
8 upon the same being exhibited to him, shall adjudge such deed or  
9 other instrument to be duly acknowledged or proved in the same  
10 manner as if made or taken before him. Every clerk of a court of  
11 record in any other state shall have as full power as a commis-  
12 sioner of affidavits and deeds as is vested in regularly appointed  
13 commissioners of affidavits and deeds of the state.

Starke v. Etheridge, 71—240; Todd v. Outlaw, 79—235.

**Sec. 1659. Copies of registered deeds evidence unless original required.**

The registry or duly certified copy of the record of any deed, R. C., c. 37, s. 16.  
63 1846, c. 68, s. 1.



2 power of attorney or other instrument required or allowed to be  
 3 registered or recorded, may be given in evidence in any court, and  
 4 shall be held to be full and sufficient evidence of such deed, power  
 5 of attorney or other instrument, although the party offering the  
 6 same shall be entitled to the possession of the original, and shall  
 7 not account for the non-production thereof, unless by a rule or order  
 8 of the court, made upon affidavit suggesting some material variance  
 9 from the original in such registry or other sufficient grounds, such  
 10 party shall have been previously required to produce the original,  
 11 in which case the same shall be produced or its absence duly ac-  
 12 counted for according to the course and practice of the court.

Bobanan v. Shelton, 1 Jones, 370; Latham v. Bowen, 7 Jones, 337; Hughes v. Debnam, 8 Jones, 127; Gudgey v. Hensley, 82—481; Mauney v. Crowell, 84—314.

**Sec. 1660. Deeds of gift to be proved and registered.**

R. C., c. 37, s. 18,  
 1789, c. 315, s. 2.

All deeds of gift of any estate of whatever nature shall within  
 2 two years after the making thereof be proved in due form and reg-  
 3 istered, or otherwise shall be void.

**Sec. 1661. Deeds, &c., proved and registered in wrong county, copy may be registered in proper county.**

1858-'9, c. 18, s. 2.

A duly certified copy of any deed or writing required or allowed  
 2 to be registered, may be registered in any adjoining county; and  
 3 the registry or duly certified copy of any deed or writing so regis-  
 4 tered may be given in evidence in any court of the state.

**Sec. 1662. Mortgages and trust deeds good against creditors only from registration.**

R. C., c. 37, s. 22,  
 1829, c. 20, s. 1.

No deed of trust or mortgage for real or personal estate shall be  
 2 valid at law to pass any property as against creditors or purchasers  
 3 for a valuable consideration from the donor, bargainor or mort-  
 4 gageor, but from the registration of such deed of trust or mort-  
 5 gage in the county where the land lieth; or in case of personal  
 6 estate where the donor, bargainor or mortgageor resides; or in  
 7 case the donor, bargainor or mortgageor shall reside out of the  
 8 state, then in the county where the said personal estate, or some  
 9 part of the same, is situate; or in case of choses in action, where  
 10 the donee, bargainee or mortgagee resides.

Smith v. Washington, 1 Dev. Eq., 318; Skinner v. Cox, 4 Dev., 59; Moore v. Collins, 4 Dev., 384; McKinnon v. McLean, 2 Dev. & Bat., 79; Metts v. Bright, 4 Dev. & Bat., 173; Norwood v. Marrow, 4 Dev. & Bat., 442; Saunders v. Ferrell, 1 Ire., 97; Halcombe v. Ray, 1 Ire., 340; Dewey v. Littlejohn, 2 Ire. Eq., 495; Doak v. State Bank, 6 Ire., 309; DeCoursey, Lafourcade & Co. v. Barr, Busb. Eq., 181; Leggett v. Bullock, Busb., 283; Barnett v. Barnett, 1 Jones Eq., 221; Simpson v. Morris, 3 Jones, 411; Barrett v. Cole, 4 Jones, 40; Green v. Korngay, 4 Jones, 66; Dukes v. Jones, 6 Jones, 14; Johnson v. Malcolm, 6 Jones Eq., 120; Parker v. Scott, 64—118; Robinson v. Willoughby, 70—358; Edwards v. Thompson, 74—177; Starke v. Etheridge, 71—240; Moore v. Ragland, 74—343; Blevins v. Barker, 75—436; Beaman v. Simmons, 76—43; King v. Portis, 77—25; Capehart v. Biggs, 77—261; Purnell v. Vaughan, 77—263; Todd v. Outlaw, 79—285; Harris v. Jones, 83—317; Moring v. Dickerson, 85—466.

Sec. 1663. Property of corporations not exempt from certain liabilities on account of mortgages.

Mortgages of incorporate companies upon their property or earnings, whether in bonds or otherwise, hereafter issued, shall not have power to exempt the property or earnings of such incorporations from execution for the satisfaction of any judgment obtained in courts of the state against such incorporation for labor performed nor for material furnished such incorporation, nor for torts committed by such incorporation, its agent or employees, whereby any person is killed or any person or property injured, any clause or clauses in such mortgage to the contrary notwithstanding. 1879, c. 101.

Sec. 1664. Deeds by husband and wife, how executed, proved and registered.

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 executed by such married woman and her husband; and due proof or acknowledgment thereof must be made as to the husband and as to the wife; and the privy examination of the wife touching her voluntary assent to such conveyance, power of attorney, or other instrument requiring registration, shall be taken separate and apart from her husband, and such acknowledgment or proof and privy examination shall be taken and certified as hereinbefore provided in this chapter. And such conveyance, power of attorney, or other instrument, shall be valid in law to pass the estate, right and title of the wife to all such lands, tenements or hereditaments so conveyed or to be conveyed. C. C. P., s. 420. 1868-'9, c. 277, s. 15.

Woodburn v. Gorrell, 66—82; Rountree v. Gay, 74—447; Johnes v. Cohen, 82—75; Hollingsworth v. Harman, 83—153; Scott v. Battle, 85—184; Holmes v. Holmes, 86—205.

Sec. 1665. Conveyance under power of attorney from husband and wife to pass lands.

All conveyances which may be made by any person under a power of attorney from any *feme covert* by her freely executed with her husband, shall be valid to all intents and purposes to pass the estate, right and title which such *feme covert* may have in such lands, tenements, and hereditaments as are mentioned or included in such power of attorney. R. C., c. 37, s. 11. 1798, c. 510.

Sec. 1666. The clerk may issue commissions for taking probate in another state.

Whenever it shall appear to the clerk of the superior court of any county that any person non-resident of this state is desirous of acknowledging to be proved a power of attorney, deed or other conveyance touching any real estate situated in the county of said clerk, 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 1869-'70, c. 185, s. 1.

9 her assent to any power of attorney, deeds or other conveyances,  
 10 touching real estate in said county. The commissioner shall make  
 11 certificate of the acknowledgments or proof and privy examination  
 12 made by him, and shall return the same to the clerk of the supe-  
 13 rior court whereupon he shall adjudge that such conveyance,  
 14 power of attorney or other instrument is duly acknowledged or  
 15 proved, and that such examination is in due form, and shall order  
 16 the same to be registered.

**Sec. 1667. Certain probates and registrations validated.**

1869-'70, c. 185, s. 2.

All probate examinations and registrations heretofore had in  
 2 accordance with the foregoing provisions, are declared valid and  
 3 sufficient.

**Sec. 1668. Applicable to all conveyances.**

1869-'70, c. 185.

The provisions of the two preceding sections shall apply to all  
 2 conveyances of whatever kind required or allowed to be registered.

*Holmes v. Marshall*, 72—37.

**Sec. 1669. Contract to sell land and leases required to be in writing, must be registered.**

R. C., c. 37, s. 26.

All contracts to sell or convey any lands, tenements or here-  
 2 ditaments, or any interest in or concerning them, and all leases  
 3 required to be put in writing upon due proof or acknowledgment  
 4 thereof in the manner in this chapter provided for the conveyance  
 5 of lands, shall be registered in the proper county within two years  
 6 from the date of such contracts or leases.

*Green v. N. C. Railroad Co.*, 73—524; *Todd v. Outlaw*, 79—235; *Mauney v. Crowell*, 84—314.

**Sec. 1670. Infant trustees, how to convey.**

R. C., c. 37, s. 27.  
 1821, c. 1116, ss. 1, 2.

Whenever any infant shall be seized or possessed of any estate  
 2 whatever in trust, whether by way of mortgage or otherwise, for  
 3 another person who may be entitled in law to have a conveyance  
 4 of such estate, or may be declared to be so seized or possessed, in  
 5 the course of any proceeding in the superior court, the court may  
 6 decree that the infant shall convey and assure such estate, in such  
 7 manner as it may direct, to such other person; and every convey-  
 8 ance and assurance made in pursuance of such decree shall be as  
 9 effectual in law as if made by a person of full age.

**Sec. 1671. Errors in registration of deeds, &c., corrected on petition; appeal allowed.**

R. C., c. 37, s. 28.  
 1790, c. 326, ss. 2, 3,  
 4.

Every person who discovers that there is an error in the regis-  
 2 tration of his grant, conveyance, bill of sale or other instrument  
 3 of writing, may prefer a petition to the clerk of the superior court  
 4 of the county in which said writing is registered, in the same man-  
 5 ner as is directed for petitioners to correct errors in grants or pat-  
 6 ents, and if on hearing the same before said clerk, it appears that



7 errors have been committed, the clerk shall order the register of  
8 the county to correct such errors and make the record conforma-  
9 ble to the original: *Provided*, that such petitioner shall have noti-  
10 fied his grantor and every person claiming title to, or having  
11 lands adjoining those mentioned in the petition, thirty days pre-  
12 vious to preferring the same: *And provided also*, that any person  
13 dissatisfied with the judgment may appeal to the judge of the su-  
14 perior court as in other cases.

Jones v. Physioc, 1 Dev. & Bat., 173; Oldham v. Bank, 85—240.

**Sec. 1672. Deeds, how made when sheriff who sells dies or removes from the state.**

Whenever any sheriff or coroner in virtue of his office shall have  
2 sold any real or personal estate, and shall go out of office before  
3 executing a proper conveyance therefor, he may execute the same  
4 after his term of office shall have expired; and whenever such  
5 officer shall die or remove from the state before executing the  
6 same, his successor in office shall execute such conveyance, and  
7 all conveyances thus executed shall be as valid as if made by the  
8 sheriff or coroner who may have made the sale: *Provided*, that  
9 nothing herein contained shall be construed to apply to the execu-  
10 tion of conveyances of lands sold for taxes.

R. C., c. 37, s. 30.  
1838, c. 37.

Harris v. Irwin, 7 Ire., 432; Taylor v. Allen, 67—346; Millsaps v. McCormick, 71—531; Edwards v. Tipton, 77—222.

**Sec. 1673. Witnesses to deeds may be summoned to prove them.**

The grantee in any deed, bill of sale, mortgage or other instru-  
2 ment requiring or allowing of registration may, at his own ex-  
3 pense, on motion before the clerk of the superior court of the  
4 county where the same is required to be registered, obtain a sum-  
5 mons for any one of the subscribing witnesses to such convey-  
6 ance, signed by the said clerk and directed to the sheriff, com-  
7 manding him to summon such witness to appear at a certain time  
8 therein named, and give evidence concerning the execution of the  
9 conveyance or other writing, under the penalty of forty dollars;  
10 and the sheriff shall execute the same at least five days before the  
11 time to which it is returnable, and make due return thereof; and  
12 if any witness so summoned shall fail to appear, the clerk shall  
13 give judgment and award execution against him for the penalty  
14 aforesaid, for the use of the party summoning him, in the like  
15 manner and under the same rules as are prescribed in the cases of  
16 other witnesses defaulting.

R. C., c. 37, s. 31.  
1756, c. 58, s. 4.

**Sec. 1674. Marriage settlements registered, otherwise void as to creditors.**

All marriage settlements and other marriage contracts, whereby  
2 any money or other estate shall be secured to the wife or husband,  
3 shall be proved or acknowledged and registered in the same man-

R. C., c. 37, s. 24.  
1785, c. 238, s. 1.

4 ner as deeds for lands within six months after the making thereof,  
5 otherwise they shall be void against creditors.

Johnson v. Malcolm, 6 Jones Eq., 120; Latham v. Bowen, 7 Jones, 337; Charles v. Kennedy, 64—422; Teague v. Downs, 69—280.

Sec. 1675. What marriage settlements good against creditors; how deficiency in property settled, made up.

R. C., c. 37, s. 25.  
1785, c. 238, s. 2.

No marriage settlement or marriage contract shall be good  
2 against creditors where a greater value is secured to the intended  
3 wife and children of the marriage, or either of them, than the  
4 portion actually received with the wife in marriage, and such  
5 estate as the husband at the time of his marriage shall be possessed  
6 of, after deducting the just debts by him then due and owing; and  
7 in case of a suit upon any such marriage contract, where a cred-  
8 itor shall be a party, the burden of the proof shall lie upon the  
9 person claiming under such marriage contract: *Provided always*,  
10 that if any legacy shall be given to the wife in general words, and  
11 not in trust, or a distributive share of any intestate's estate shall  
12 fall to her during her coverture, and he shall become entitled  
13 thereto, such legacy and distributive share (in case the estate of  
14 the husband and wife shall not at the time of the marriage be of  
15 sufficient value to make good the marriage contract) shall be held  
16 deemed and taken as part of the portion received with the wife,  
17 and shall be secured to those claiming under such marriage con-  
18 tract.

Smith v. Garey, 2 Dev. & Bat. Eq., 42; Teague v. Downs, 69—280.

Sec. 1676. Deeds of trust and mortgages, how discharged and released.

1870-'1, c. 217, s. 1.

Any deed of trust or mortgage which hath been or which here-  
2 after may be registered in the manner required by this and the  
3 preceding sections, may be discharged and released in the follow-  
4 ing manner, to-wit: the trustee or mortgagee or his or her legal  
5 representative, or the duly authorized agent or attorney of such  
6 trustee, mortgagee or legal representative may, in the presence of  
7 the register of deeds, acknowledge the satisfaction of the provis-  
8 ions of such trust or mortgage, whereupon it shall be the duty of  
9 the register forthwith to make upon the margin of the record of  
10 such trust or mortgage an entry of such acknowledgment of satis-  
11 faction, which shall be signed by the said trustee, mortgagee, legal  
12 representative or attorney, and witnessed by the register, who shall  
13 also affix his name thereto, and every such entry thus acknowl-  
14 edged and witnessed shall operate and have the same effect to  
15 release and discharge all the interest of such trustee, mortgagee or  
16 representative in such deed or mortgage, as if a deed of release or  
17 re-conveyance thereof had been duly executed and recorded.

Hare v. Jernigan, 76—471.

**Sec. 1677. Mortgages to secure purchase money need not be executed by wife.**

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 as well as himself, without requiring her to join in the execution of such mortgage deed.

Etheridge v. Vernoy, 71—184.

**Sec. 1678. Form of chattel mortgage.**

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:

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.]

Cotten v. Willoughby, 83—75; Harris v. Jones, 83—317.

**Sec. 1679. Deed of trust under next preceding section good when registered.**

Such deed of trust shall be good to all intents and purposes when the same shall be duly registered according to law: *Provided nevertheless*, the probate fee of the clerk of the superior court 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.

**Sec. 1680. In what cases clerks of the superior court to appoint trustee.**

When 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, the clerk of the superior court of the county wherein the said deed of trust was executed be authorized and empowered, upon proceedings to which all persons interested shall be made parties, 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: *Provided*, that in all actions or proceedings had under this section prior to February fourteenth, one thousand eight hundred and seventy-four, before the clerks of the superior court in which any trustee was appointed to execute a deed in trust 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



16 trust, whether such appointment of such trustees by order or de-  
 17 cree, or otherwise, was made upon the application or petition of  
 18 any person or persons *ex parte*, or whether made in proceedings  
 19 where all the proper parties were made, be and are hereby in all  
 20 things confirmed and made valid so far as regards the parties to  
 21 said actions and proceedings to the same extent as if all proper  
 22 parties had originally been made in such actions or proceedings.

Guion v. Melvin, 69—242.

**Sec. 1681. Certain probates and registrations validated.**

1871-'2, c. 200, s. 1.]

Wherever the judges of the supreme or the superior court, or  
 2 the deputy clerks of the superior court, mistaking their powers,  
 3 have essayed previously to the twelfth day of February, one thou-  
 4 sand eight hundred and seventy-two, to take the probate of deeds  
 5 and the privy examination of *femes covert*, whose names are signed  
 6 to such deeds, and have ordered said deeds to registration, and the  
 7 same have been registered, all such probates, privy examinations  
 8 and registrations so taken and had, shall be as valid and binding  
 9 to all intents and purposes as if the same had been taken before  
 10 or ordered by the clerk of the superior court, or other proper officer  
 11 having jurisdiction thereof.

**Sec. 1682. Consolidation of surveys; proviso; common surveys may be recorded.**

1869-'70, c. 34, ss. 1,  
 2.

Whenever any person owns several tracts of land which are con-  
 2 tiguous or adjoining, but held under different deeds and different  
 3 surveys, it may be lawful for any such person to have all such  
 4 bodies of land included in one common survey by running around  
 5 the lines of the outer tracts, and thereupon the possession of any  
 6 part of said land covered by such common survey shall be deemed  
 7 and held in law as a possession of the whole and every part thereof:  
 8 *Provided*, that nothing in this section shall be construed to affect  
 9 the right or claims of persons which have already accrued to any  
 10 part of said land. In all cases where such common surveys are  
 11 made as directed by this chapter, the same may be recorded and  
 12 registered as in cases of deeds, and shall be evidence in like  
 13 manner.

**Sec. 1683. Donations to persons while in slavery.**

1869-'70, c. 77, s. 1.

Whenever it is made to appear that any gift or conveyance has  
 2 been made to any person, while a slave, of any lands or tenements,  
 3 whether the same shall have been conveyed by deed or parol, and  
 4 the bargainee or donee has been placed into actual possession of  
 5 the same, then and in that case such gift or conveyance shall  
 6 have the force and effect of transferring the legal title to the said  
 7 lands and tenements to such bargainee or donee: *Provided*, such  
 8 possession shall have continued for the term of ten years prior to  
 9 the ninth day of March, one thousand eight hundred and seventy:

10 *Provided further*, that any absence from the premises from the first  
 11 day of May, one thousand eight hundred and sixty-one, to the  
 12 first day of January, one thousand eight hundred and sixty-six,  
 13 shall not be held as an abandonment or discontinuance of the  
 14 possession: *Provided further*, that this section shall not affect the  
 15 interest of a *bona fide* purchaser for value from the grantor or bar-  
 16 gainor of the lands or tenements in dispute.

Buie v. Carver, 75—559.

**Sec. 1684. Time extended for registering grants of land and other instruments.**

All grants of land in the state, all deeds of conveyance of the 1870-'1, c. 180, s. 1.  
 2 same, all powers of attorney, and every other instrument in writing,  
 3 which is required by law to be registered within or by a given  
 4 time, and has not been proved and registered within or by such  
 5 time, may be proved and registered within two years after the  
 6 passage of this chapter, under the same rules and regulations as  
 7 heretofore required by law; and when so proved and registered,  
 8 shall be as good and valid to every intent and purpose as if they  
 9 had been duly proved and registered: *Provided*, that nothing  
 10 herein contained shall be so construed as to extend to mortgages  
 11 and deeds in trust and to marriage settlements.

**Sec. 1685. All conveyances of real estate to be construed to be in fee unless otherwise expressly set forth.**

When real estate shall be conveyed to any person, the same shall 1879, c. 148.  
 2 be held and construed to be a conveyance in fee, whether the word  
 3 "heirs" shall be used or not, unless such conveyance shall, in  
 4 plain and expressive words, show, or it shall be plainly intended  
 5 by the conveyance or some part thereof, that the grantor meant to  
 6 convey an estate of less dignity.

## CHAPTER FORTY-ONE.

### DESCENTS.

**SECTION.**

1686. Inheritances shall descend as follows:

**RULE.**

1. Lineal descent.
2. Females to inherit with males, younger with older children, children advanced to account for the same.
3. Lineal descendants to represent ancestor.
4. Collateral descent of inheritance, when derived from an ancestor.
5. When not derived from an ancestor or his blood extinct.
6. Half blood to inherit with whole; parent to inherit from child.

**RULE.**

7. None to inherit unless alive or born within ten months.
8. When widow taken as heir.
9. Illegitimate children to inherit from mother.
10. Illegitimate children to inherit from each other; legitimate may inherit from them; dying without issue mother to be heir.
11. Estates for life not devised, to be inheritances.
12. Seizin defined.
13. Issue of certain colored persons to inherit.

**Sec. 1686. Inheritances shall descend as follows:**

R. C., c. 33, s. 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:

**Rule 1. Lineal descent.**

R. C., c. 38, s. 1,  
Rule 1.  
1808, c. 739.

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.

McKay v. Hendon, 3 Murphy, 209; Jones v. Edwards, 8 Jones, 336.

**Rule 2. Females to inherit with males, younger with older children; children advanced in real or personal estate to account for advancements.**

R. C., c. 38, s. 1,  
Rule 2.  
1784, c. 204, s. 2.  
1808, c. 739.  
1841, c. 51, ss. 1, 2.

Females shall inherit equally with males, and younger with older children: *Provided*, that whenever a parent shall die intestate, having in his or her lifetime settled upon or advanced to any of his or her children, any real or personal estate, such child so advanced in real estate shall be utterly excluded from any share in the real estate descended from such parent, except so much thereof as will, when added to the real estate advanced, make the share of him who is advanced equal to the share of those who may not have been advanced, or not equally advanced. And any child so advanced in personal estate shall be utterly excluded from any share in the personal estate of which the parent died possessed, except so much thereof as will, when added to the personal estate advanced, make the share of him who is advanced equal to the share of those who may not have been advanced, or not equally advanced. And in case any one of the children shall have been advanced in real estate of greater value than an equal share thereof which may come to the other children, he or his legal representatives shall be charged in the distribution of the personal estate of such deceased parent, with the excess in value of such real estate so advanced as 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.

Johnston v. Johnston, 4 Ire. Eq., 9; Donnell v. Mateer, 5 Ire. Eq., 7; Lamb v. Carroll, 6 Ire., 4; Headen v. Headen, 7 Ire. Eq., 159; Bridgers v. Hutchins, 11 Ire., 68; Meadows v. Meadows, 11 Ire., 148; Hardy v. Simpson, Busb., 325; McBride v. Patterson, 73—478; Melvin v. Bullard, 82—33.

**Rule 3. Lineal descendants to represent ancestor.**

R. C., c. 38, Rule 3.  
1808, c. 739.

The lineal descendants of any person deceased shall represent



2 their ancestor, and stand in the same place as the person himself  
3 would have done had he been living.

Clement v. Cauble, 2 Jones Eq., 82; Haynes v. Johnson, 5 Jones Eq., 121; Dozier v. Grandy, 66—484; Crump v. Faucette, 70—345.

**Rule 4. Collateral descent of inheritance when derived from an ancestor.**

On failure of lineal descendants, and where the inheritance has  
2 been transmitted by descent from an ancestor, or has been derived  
3 by gift, devise, or settlement from an ancestor, to whom the person  
4 thus advanced would in the event of such ancestor's death, have  
5 been the heir or one of the heirs, the inheritance shall descend to  
6 the next collateral relations; capable of inheriting, of the person  
7 last seized, who were of the blood of such ancestor, subject to the  
8 two preceding rules.

R. C., c. 38, Rule 4.  
1808, c. 739.

Bell v. Dozier, 1 Dev., 333; Felton v. Billups, 2 D. & B., 308; Wilkerson v. Bracken, 2 Ire., 315; Clement v. Cauble, 2 Jones Eq., 82; Osborne v. Widenhouse, 3 Jones Eq., 238; Cromartie v. Kemp, 66—332.

**Rule 5. When not derived from an ancestor or his blood extinct.**

On failure of lineal descendants, and where the inheritance has  
2 not been transmitted by descent or derived as aforesaid from an  
3 ancestor, or where, if so transmitted or derived, the blood of such  
4 ancestor is extinct, the inheritance shall descend to the next col-  
5 lateral relation, capable of inheriting, of the person last seized,  
6 whether of the paternal or maternal line, subject to the second and  
7 third rules.

R. C., c. 38, Rule 5.  
1808, c. 739.

University v. Brown, 1 Ire., 337; Gillespie v. Foy, 5 Ire. Eq., 280.

**Rule 6. Half blood to inherit with whole; parent to inherit from child.**

Collateral relations of the half blood shall inherit equally with  
2 those of the whole blood, and the degrees of relationship shall be  
3 computed according to the rules which prevail in descents at com-  
4 mon law: *Provided always*, that in all cases where the person last  
5 seized shall have left no issue capable of inheriting, nor brother,  
6 nor sister, nor issue of such, the inheritance shall vest in the  
7 father if living, and if not, then in the mother if living.

R. C., c. 38, Rule 6  
1808, c. 739.

Lawrence v. Pitt, 1 Jones, 344; McMichal v. Moore, 3 Jones Eq., 471; Murphy v. Jackson, 5 Jones Eq., 10; Dozier v. Grandy, 66—484.

**Rule 7. None to inherit unless alive or born within ten months.**

No inheritance shall descend to any person, as heir of the person  
2 last seized, unless such person shall be in life at the death of the  
3 person last seized, or shall be born within ten lunar months after  
4 the death of the person last seized.

R. C., c. 38, Rule 7.  
1823, c. 1219.

**Rule 8. When widow taken as heir.**

When any person shall die, leaving none who can claim as heir  
2 to him, his widow shall be deemed his heir, and as such shall in-  
3 herit his estate.

R. C., c. 38, Rule 8.  
1801, c. 575, s. 1.

Powers v. Kite, 83—156.

**Rule 9. Illegitimate children to inherit from their mother.**

R. C., c. 38, Rule 10.  
1799, c. 522.

When there shall be no legitimate issue, every illegitimate child  
2 of the mother, and the descendant of any such child deceased,  
3 shall be considered an heir, and as such shall inherit her estate;  
4 but such child or descendant shall not be allowed to claim, as re-  
5 sresenting such mother, any part of the estate of her kindred, either  
6 lineal or collateral.

Flintham v. Holder, 1 Dev. Eq., 345.

**Rule 10. Illegitimate children to inherit from each other; legitimate may inherit from them; dying without issue mother to be heir.**

R. C., c. 38, Rule 11.

Illegitimate children shall be considered legitimate as between  
2 themselves and their representatives, and their estates shall descend  
3 accordingly in the same manner as if they had been born in wed-  
4 lock. And in case of the death of any such child or his issue,  
5 without leaving issue, his estate shall descend to such person as  
6 would inherit if all such children had been born in wedlock: *Pro-*  
7 *vided always*, that when any illegitimate child shall die without is-  
8 sue, his inheritance shall vest in the mother in the same manner  
9 as is provided in rule six of this chapter.

Sawyer v. Sawyer, 6 Ire., 407; Ehringhaus v. Coatwright, 8 Ire., 39; McBryde v. Patterson, 78—412; Powers v. Kite, 83—156.

**Rule 11. Estates for life not devised, to be inheritances.**

R. C., c. 38, Rule 12.

Every estate for the life of another, not devised, shall be deemed  
2 an inheritance of the deceased owner, within the meaning and op-  
3 eration of this chapter.

**Rule 12. Seizin defined.**

R. C., c. 38, Rule 13.

Every person, in whom a seizin is required by any of the pro-  
2 visions of this chapter, shall be deemed to have been seized, if he  
3 may have had any right, title or interest in the inheritance.

**Rule 13. Issue of certain colored persons to inherit.**

1879, c. 73.

The children of colored parents born at any time before the first  
2 day of January, one thousand eight hundred and sixty-eight, of  
3 persons living together as man and wife, are hereby declared legit-  
4 imate children of such parents or either one of them, with all the  
5 rights of heirs-at-law and next of kin, with respect to the estate  
6 or estates of any such parents, or either one of them.

## CHAPTER FORTY-TWO.

## DIVORCE AND ALIMONY.

## SECTION.

1687. Superior court to have jurisdiction.  
 1688. What marriages may be declared void on application of the parties.  
 1689. What to be declared void at all times.  
 1690. For what causes marriages may be dissolved.  
 1691. What causes sufficient for divorce from bed and board.  
 1692. Affidavits to be filed with complaint; provisos.  
 1693. Material facts to be tried by a jury; provided if for divorce on ground of pregnancy of wife before marriage, either party may testify.

## SECTION.

1694. Venue in proceedings for divorce.  
 1695. Alimony on divorce from bed and board.  
 1696. Alimony *pendente lite*.  
 1697. When wife not suing for divorce is entitled to alimony.  
 1698. Court, power to issue writ where real estate assigned.  
 1699. Security for costs on application for divorce or alimony.  
 1700. Consequences of a divorce *a vinculo*, on the personal relations of parties.  
 1701. Consequences of divorce upon the right to the custody of the children.

**Sec. 1687. Superior court to have jurisdiction.**

The superior court 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. 1868-'9, c. 93, c. 45.

*Irby v. Wilson*, 1 D. & B. Eq., 568; *Williamson v. Williams*, 3 Jones Eq., 446; *Gilmore v. Gilmore*, 5 Jones Eq., 284; *Smith v. Morehead*, 6 Jones Eq., 360; *Webber v. Webber*, 83-280; *King v. King*, 84-32.

**Sec. 1688. What marriages may be declared void on application of the parties.**

The superior court in term time, on application made as by law provided, by either party to a marriage contracted contrary to the prohibitions contained in chapter seventy-four, or declared void by said chapter, may declare such marriage void from the beginning, subject, nevertheless, to the proviso contained in said chapter. 1871-'2, c. 193, s. 33.

**Sec. 1689. What to be declared void at all times.**

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. 1871-'2, c. 193, s. 34.

*White v. White*, 84-340.

**Sec. 1690. For what causes marriages may be dissolved.**

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: 1871-'2, c. 193, s. 35.  
1879, c. 132.



- 4 (1) If either party shall separate from the other and live in adul-
- 5 tery ;
- 6 (2) If the wife shall commit adultery ;
- 7 (3) If either party at the time of the marriage was and still is
- 8 naturally impotent.
- 9 (4) If the wife at the time of the marriage be pregnant, and the
- 10 husband be ignorant of the fact of such pregnancy and be not the
- 11 father of the child with which the wife was pregnant at the time
- 12 of the marriage.

Long v. Long, 2 Hawks, 189; Collier v. Collier, 1 Dev. Eq., 352; Scroggins v. Scroggins, 3 Dev., 535; Moss v. Moss, 2 Ire., 55; Johnson v. Kincade, 2 Ire. Eq., 470; Crump v. Morgan, 3 Ire. Eq., 91; Wood v. Wood, 5 Ire., 674; Foy v. Foy, 13 Ire., 90; Smith v. Morehead, 6 Jones Eq., 380; Edwards v. Edwards, Phil., 534; Barringer v. Barringer, 69—179; Horne v. Horne, 72—530; *Ibid*, 72—101; Morris v. Morris, 75—168; Long v. Long, 77—304; Manning v. Manning, 79—293; Jones v. Jones, 80—246; Tew v. Tew, 80—316.

**Sec. 1691. What causes sufficient for divorce from bed and board.**

1871-'2, c. 193, s. 36.

The superior court may grant divorces from bed and board on application of the party injured, made as by law provided, in the following cases :

- 4 (1) If either party shall abandon his or her family ; or,
- 5 (2) Shall maliciously turn the other out of doors ; or,
- 6 (3) Shall by cruel or barbarous treatment endanger the life of
- 7 the other ; or,
- 8 (4) Shall offer such indignities to the person of the other as to
- 9 render his or her condition intolerable and life burdensome ; or,
- 10 (5) Shall become an habitual drunkard.

McKinnon v. McDonald, 4 Jones Eq., 1; Little v. Little, 63—22; Davis v. Davis, 63—180; Smith v. Smith, 72—139; Taylor v. Taylor, 76—433; Miller v. Miller, 78—102; Pain v. Pain, 80—322; McQueen v. McQueen, 82—471; Muse v. Muse, 84—35; White v. White, 84—340; Scoggins v. Scoggins, 85—347.

**Sec. 1692. Affidavit to be filed with complaint ; provisos.**

1868-'9, c. 93, s. 46.  
1869-'70, c. 184.

The plaintiff in a complaint seeking either divorce or alimony, 2 or both, shall file with his or her complaint an affidavit that the 3 facts set forth in the complaint are true to the best of the affiant's 4 knowledge and belief, and that the said complaint is not made out 5 of levity or by collusion between husband and wife; and if for di- 6 vorce, not for the mere purpose of being freed and separated from 7 each other, but in sincerity and truth for the causes mentioned in 8 the complaint ; and the plaintiff shall also set forth in such affida- 9 vit, either that the facts set forth in the complaint, as grounds for 10 divorce, have existed to his or her knowledge at least six months 11 prior to the filing of the complaint; or, if the wife be the plain- 12 tiff, that the husband is removing, or about to remove his property 13 and effects from the state, whereby she may be disappointed in her 14 alimony, and that complainant has been a resident of the state for 15 two years next preceding the filing of the complaint. *Provided*, 16 if any wife shall file in the office of the superior court clerk of the 17 county where she resides an affidavit, setting forth the fact that

18 she intends to file a petition or bring an action for divorce against  
19 her husband, and that she has not had knowledge of the facts upon  
20 which his said petition or action will be based for six months,  
21 then and in that case it shall be lawful for such wife to reside  
22 separate and apart from her said husband, and to secure for her  
23 own use the wages of her own labor during the time she shall so  
24 remain separate and apart from her said husband: *Provided further*,  
25 that if such wife shall fail to file her petition or bring her action  
26 for divorce within thirty days after the six months shall have ex-  
27 pired since her knowledge of the facts upon which she intends to  
28 file her said petition or bring her said action, then she shall not  
29 be entitled any longer to the benefit of this section.

Anonymous, 1 Hay., 347; Spiller v. Spiller, 1 Hay., 482; Whittington v. Whittington, 2 D. & B., 64; Wilson v. Wilson, 2 D. & B., 377; Foy v. Foy, 13 Ire., 90; Schonwald v. Schonwald, 2 Jones Eq., 367; Everton v. Everton, 5 Jones, 202; Edwards v. Edwards, Phil., 534; State v. Lytle, 64—255; Scroggins v. Scroggins, 80—318; Pain v. Pain, 80—322; McQueen v. McQueen, 82—471; Scoggins v. Scoggins, 85—347.

**Sec. 1693.** Material facts to be tried by a jury; proviso, if for divorce on grounds of pregnancy, either party may testify.

The material facts in every complaint asking for a divorce shall  
2 be deemed to be denied by the defendant, whether the same shall  
3 be actually denied by pleading or not, and no judgment shall be  
4 given in favor of the plaintiff in any such complaint until such  
5 facts have been found by a jury, and on such trial neither the  
6 husband or wife shall be a competent witness to prove the adultery  
7 of the other, nor shall the admissions of either party be received  
8 as evidence to prove such fact. *Provided*, that on the trial of any  
9 action for divorce on the ground of the pregnancy of the wife at  
10 the time of the marriage, either party may testify as to any facts  
11 material to such issue.

1868-'9, c. 93, s. 47.  
1879, c. 132.

Taylor v. Taylor, 76—433; Long v. Long, 77—304; White v. White, 84—340.

**Sec. 1694.** Venue in proceedings for divorce.

In all proceedings for divorce, the summons shall be returnable  
2 to the court of the county in which the applicant resides.

1871-'2, c. 193, s. 40.

Schonwald v. Schonwald, 2 Jones Eq., 367; Smith v. Morehead, 6 Jones Eq., 360.

**Sec. 1695.** Alimony on divorce from bed and board.]

When any court shall adjudge any two married persons divorced  
2 from bed and board, it may also decree to the party upon whose  
3 application such judgment was rendered, such alimony as the cir-  
4 cumstances of the several parties may render necessary; which,  
5 however, shall not in any case exceed the one third part of the net  
6 annual income from the estate, occupation or labor of the party  
7 against whom the judgment shall be rendered.

1871-'2, c. 193, s. 37.

Rogers v. Vines, 6 Ire., 293; Simmons v. Simmons, Phil. Eq., 63; Schonwald v. Schonwald Phil. Eq., 215; Wood v. Wood, Phil., 538; Little v. Little, 63—22; Sparks v. Sparks, 69—319; Hodges v. Hodges, 82—122.

**Sec. 1696. Alimony *pendente lite*.**

1871-'2, c. 193, s. 38.

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 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.

Earp v. Earp, 1 Jones Eq., 118; Gaylord v. Gaylord, 4 Jones Eq., 74; Everton v. Everton, 5 Jones, 202; Shearin v. Shearin, 5 Jones Eq., 233; Lynch v. Lynch, Phil. Eq., 46; Simmons v. Simmons, Phil. Eq., 6e; Schonwald v. Schonwald, Phil. Eq., 215; Wood v. Wood, Phil., 538; Little v. Little, 63-22; Sparks v. Sparks, 69-319; Miller v. Miller, 75-70; Webber v. Webber, 79-572; Scroggins v. Scroggins, 80-318; Pain v. Pain, 80-322; Hodges v. Hodges, 82-122; Reeves v. Reeves, 82-348; Muse v. Muse, 84-35.

**Sec. 1697. When wife not suing for divorce is entitled to alimony.**

1871-'2, c. 193, s. 39.

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.

Joyner v. Joyner, 6 Jones, 822; Hodges v. Hodges, 82-122; Reeves v. Reeves, 82-348.

**Sec. 1698. Court, power to issue writ where real estate is assigned.**

1868-'9, c. 123, s. 1.

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.

**Sec. 1699. Security for costs on application for divorce or alimony.**

1871-'2, c. 193, s. 41.

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 in any such proceeding is pending, both before and



5 after judgment therein, may at any time in his discretion, make  
6 any order respecting the payment of such costs as may be incurred  
7 by the wife, either by the husband or by her from her separate  
8 estate.

Sec. 1700. Consequences of a divorce *a vinculo* on the personal relations of the parties.

After a judgment of divorce from the bonds of matrimony, all 1871-'2, c. 193, s. 43.  
2 rights arising out of the marriage shall cease and determine, and  
3 either party may marry again: *Provided*, that no judgment of di-  
4 vorce shall render illegitimate any children *in esse*, or born of the  
5 body of the wife during coverture.

Sec. 1701. Consequences of divorce upon the right to the custody of the children.

After the filing of a complaint in any proceeding for divorce, 1871-'2, c. 193, s. 46.  
2 whether from the bonds of matrimony, or from bed and board,  
3 both before and after final judgment therein, it shall be lawful for  
4 the judge of the court, in which such application is or was pend-  
5 ing, to make such orders respecting the care, custody, tuition and  
6 maintenance of the children of the marriage as may be proper,  
7 and from time to time to modify or vacate such orders: *Provided*,  
8 that no order respecting the children shall be made on the appli-  
9 cation of either party without five days' notice to the other party,  
10 unless it shall appear that the party having the possession or con-  
11 trol of such children has removed or is about to remove the chil-  
12 dren, or himself, beyond the jurisdiction of the court.

CHAPTER FORTY-THREE.

DOGS.

SECTION.	SECTION.
1702. Penalty and liability for damages in not killing a dog bitten by a mad dog.	1704. Penalty for permitting bitches to run at large at certain times.
1703. Penalty for keeping a sheep-killing dog; misdemeanor.	1705. Dogs listed for taxation the subject of larceny; tax.

Sec. 1702. Penalty and liability for damages in not killing a dog bitten by a mad-dog.

Whenever the owner of any dog shall know, or have good reason R. C., c. 67.  
2 to believe, that his dog, or any dog belonging to any person under 1817, c. 945.  
3 his control, has been bitten by a mad dog, and shall neglect or re- 1874-'5, c. 108, s. 1.  
4 fuse immediately to kill the same, he shall forfeit and pay the sum  
5 of fifty dollars to him who will sue therefor; and the offender  
6 shall be further liable to pay all damages which may be sustained

7 by any one in his property or person, by the bite of any dog, be-  
 8 longing as aforesaid, and shall be further guilty of a misdemeanor,  
 9 and upon conviction thereof shall be fined not more than fifty dol-  
 10 lars or imprisoned not more than thirty days.

Wallace v. Douglas, 10 Ire., 79.

**Sec. 1703. Penalty for keeping a sheep-killing dog ; misdemeanor.**

1862-'3, c. 41, s. 1.  
 1874-'5, c. 108, s. 2.

Any person owning or having any dog or dogs that kill sheep,  
 2 upon satisfactory evidence of the same being made before any  
 3 justice of the peace of the county, and the owner duly notified  
 4 thereof, if the owner of said dog or dogs refuses to kill it or them,  
 5 or refuses to have the same done after such evidence has been  
 6 made, and shall permit said dog or dogs to go at liberty, he shall  
 7 be guilty of a misdemeanor, and upon conviction thereof shall  
 8 be fined not more than fifty dollars or imprisoned not more than  
 9 thirty days, and the said dog or dogs may be killed by any one if  
 10 found going at large.

Mowery v. Salisbury, 82—175.

**Sec. 1704. Penalty for permitting bitches to run at large at certain times.**

1862-'3, c. 41, s. 2.

Any person or persons owning or having any bitch or bitches,  
 2 and permitting them knowingly to run at large during the erratic  
 3 stage or copulation, shall forfeit and pay twenty-five dollars for  
 4 each and every offence, to be recovered by warrant before any jus-  
 5 tice of the peace of the county, one-half to the use of the informer,  
 6 the other half to the use of the county.

**Sec. 1705. Dogs listed for taxation the subjects of larceny ; tax.**

1881, c. 302.

Dogs listed for taxation annually, at the usual time of listing  
 2 taxes, shall be the subjects of larceny ; and the tax on each dog so  
 3 listed shall be one dollar annually, said tax to be applied to the  
 4 common school fund.

State v. Latham, 13 Ire, 33; State v. House, 65—315; State v. Holder, 81—527.

## CHAPTER FORTY-FOUR.

### DRAINING AND DAMMING LOWLANDS.

**SECTION.**

1706. Mode of proceeding, by petition for  
 draining or damming lowlands; court  
 to appoint three commissioners.  
 1707. Duty of commissioners.  
 1708. Shall report to court on payment of dam-  
 ages and costs; easement to vest in fee;  
 no canal, ditch or dam made through  
 yard, &c., or to injure mill, or to create  
 nuisance by stagnant water, &c.

**SECTION.**

1709. Fences or paths across canal, ditch or  
 embankment made by proprietor, when.  
 1710. Earth for dam, how taken; owner of  
 land may adjoin his own dam, when.  
 1711. Commissioners to designate width of  
 land for use of canal, &c.; width of dam  
 not to exceed five times its base.  
 1712. Earth excavated for canal, removed or  
 leveled.

## SECTION.

1713. Proprietor of land not to open drain within thirty feet of canal.
1714. Mode of proceeding to drain into a canal, &c.
1715. Commissioners to assess and apportion labor for repairing canals, &c.; report, when confirmed, to stand as a judgment against the parties, &c.
1716. Mode of proceeding for joint repairs of canals.
1717. Persons failing to work, how recovered against.
1718. Assignees, &c., bound to repair as original owners.
1719. All persons interested to contribute to repair dams, &c.; mode of proceeding.
1720. In addition to foregoing sections, and to provide for drainage on a large scale, canals, &c., may be cut.

## SECTION.

1721. Court shall appoint commissioners to examine and report.
1722. Commissioners may appoint surveyor.
1723. When court to confirm report of commissioners.
1724. Proprietors declared a corporation.
1725. Corporate name and officers.
1726. Owners and shares.
1727. Obedience to laws, &c.; proviso.
1728. Payment of dues, &c.
1729. Privileges of infants.
1730. Damage to land.
1731. Court may dissolve corporation.
1732. Court to regulate costs.
1733. Proceeding, a special proceeding.

**Sec. 1706. Mode of proceeding, by petition for draining or damming lowlands; court to appoint three commissioners.**

Any person owning pocosin, swamp or flat lands, or owning  
 2 lowlands subject to inundation, which cannot be conveniently  
 3 drained or embanked so as to drain off or dam out the water from  
 4 such lands, except by cutting a canal or ditch, or erecting a dam  
 5 through or upon the lands of other persons, may by petition ap-  
 6 ply to the superior court of the county, in which the lands sought  
 7 to be drained or embanked, or some part of such lands lie, setting  
 8 forth the particular circumstances of the case, the situation of the  
 9 land to be drained or embanked, to what outlet and through  
 10 whose land he desires to drain, or on what lands he would erect  
 11 his dam, and who are the proprietors of said lands; whereupon a  
 12 summons shall be served on each of the proprietors, and, on the  
 13 hearing of the petition, the court shall appoint three persons as  
 14 commissioners, who shall be duly sworn to do justice between the  
 15 parties.

Collins v. Haughton, 4 Ire., 420; Stanly v. Watson, 11 Ire., 124; Skinner v. Nixon, 7 Jones, 342; Shaw v. Burfoot, 8 Jones, 341; Brooks v. Tucker, Phil., 309; Brown v. Keener, 74—714; Gamble v. McCrady, 75—509; Pool v. Trexler, 76—297; Durden v. Simmons, 84—555.

R. C., c. 40, s. 1.  
 1795, c. 436, s. 1.  
 1852, c. 57, ss. 1, 2.

**Sec. 1707. Duty of commissioners.**

The commissioners, or a majority of them, on a day of which  
 2 each proprietor of land aforesaid is to be notified at least five days,  
 3 shall meet on the premises and view the lands to be drained or  
 4 embanked, and the lands through or on which the drain is to pass  
 5 or the embankment to be erected, shall determine and report  
 6 whether the lands of the petitioner can be conveniently drained or  
 7 embanked except through or on the lands of the defendants or some  
 8 of them; and if they are of opinion that the same cannot be con-  
 9 veniently done except through or on such lands, they shall decide  
 10 and determine the route of the canal, ditch or embankment, the  
 11 width thereof and the depth or height, as the case may be, and the  
 12 manner in which the same shall be cut or thrown up, considering

R. C., c. 40, s. 2.  
 1795, c. 436, s. 1.  
 1852, c. 57, ss. 1, 2.



13 all the circumstances of the case, and providing as far as possible  
 14 for the effectual drainage or embankment of the water from the pe-  
 15 titioner's land, and also securing the defendant's lands from inun-  
 16 dation, and every other injury to which the same may be probably  
 17 subjected by such canal, ditch or embankment; and they shall as-  
 18 sess, for each of the defendants, such damage as in their judgment  
 19 will fully indemnify him for the use of his land in the mode pro-  
 20 posed; but in assessing such damages, the benefit shall be deducted.

*Durden v. Simmons*, 84—555.

**Sec. 1708.** Shall report to court on payment of damages and costs; easement to vest in fee; no canal, ditch or dam made through yard, &c., or to injure mill, or to create nuisance by stagnant water, &c.

R. C., c. 40, s. 3.  
 1795, c. 436, s. 2.  
 1835, c. 7.  
 1852, c. 57, ss. 1, 2.

The commissioners shall report in writing, under their hands,  
 2 the whole matter to the court, which shall confirm the same, unless  
 3 good cause be shown to the contrary; and on payment of the dam-  
 4 ages and costs of the proceedings, the court shall order and decree  
 5 that the petitioner may cut the canal or ditch, or raise the embank-  
 6 ment in the manner reported and determined by the commis-  
 7 sioners; and thereupon the petitioner shall be seized in fee-simple  
 8 of the easement aforesaid: *Provided, however*, that, without the con-  
 9 sent of the proprietor, such canal, ditch or embankment shall  
 10 not be cut or raised through or on his yard or curtilage, nor be  
 11 allowed when the same shall injure any mill, by cutting off or  
 12 stopping the water flowing thereto; nor said dam be allowed so as  
 13 to create a nuisance by stagnant water, or cut off the flow of such  
 14 useful springs or necessary streams of water, or stop any ditches of  
 15 such proprietor when there is no freshet.

*Collins v. Haughton*, 4 Ire., 420; *Skinner v. Nixon*, 7 Jones, 342; *Brooks v. Tucker*, Phil., 309; *Norfleet v. Cromwell*, 64—1; *Norfleet v. Cromwell*, 70—634.

**Sec. 1709.** Fences or paths across canal, ditch or embankment, made by proprietor, when.

R. C., c. 40, s. 4.  
 1795, c. 436, s. 2.  
 1835, c. 7.  
 1852, c. 57, ss. 1, 2.

Any proprietor, through or on whose land such canal may be  
 2 cut and embankment raised, may put a fence or make paths across  
 3 the same, provided the usefulness thereof be not impaired; and  
 4 the owner of the canal, ditch or dam, his heirs and assigns, shall  
 5 at all times have free access to the same, for the purpose of making  
 6 and repairing them; doing thereby no unnecessary damage to the  
 7 lands of the proprietors.

**Sec. 1710.** Earth for dam, how taken; owner of land may adjoin his own dam, when.

R. C., c. 40, s. 5.

The earth necessary for the erection of a dam may be taken from  
 2 either side of it, or wherever else the commissioners may designate  
 3 and allow. And such dam may be removed by the proprietor of  
 4 the land, his heirs or assigns, to any other part of his lands, and  
 5 he may adjoin any dam of his own thereto, if allowed by the court

6 on a petition and such proceedings therein as are provided in this  
 7 chapter, as far as the same may apply to his case: *Provided, always,*  
 8 that the usefulness of the dam will not be thereby impaired or en-  
 9 dangered.

Sec. 1711. Commissioners to designate width of land for use of canal, &c.; width of dam not to exceed five times its base.

The commissioners, when they may deem it necessary, shall des- R. C., c. 40, s. 6.  
 2 ignate the width of the land to be left on each side of the canal,  
 3 ditch or dam, to be used for the protection and reparation thereof,  
 4 which land shall be altogether under the control and dominion of  
 5 the owner of the canal, ditch or dam, except as aforesaid: *Provi-*  
 6 *ded, however,* that in no case shall a greater width of land on both  
 7 sides, inclusive of a dam, be taken than five times the base of such  
 8 dam.

Sec. 1712. Earth excavated for canal, removed or leveled.

The earth excavated from the canal or ditch shall be removed R. C., c. 40, s. 7.  
 2 away or leveled as nearly as may be with the surface of the adja-  
 3 cent land, unless the commissioners shall otherwise specially allow.

Sec. 1713. Proprietor of land not to open drain within thirty feet of canal.

The proprietor of any swamp or flat lands, through which a R. C., c. 40, s. 8.  
 2 canal or ditch passes shall not have a right to open or cut any  
 3 drain within thirty feet thereof, but by the consent of the owner.  
 4 Such proprietor, however, and other persons may cut into such  
 5 canal or ditch in the manner hereinafter provided.

Brooks v. Tucker, Phil., 309.

Sec. 1714. Mode of proceeding to drain into a canal, &c.

Any person desirous of draining into the canal or ditch of R. C., c. 40, s. 9  
 2 another person as an outlet, may do so in the manner hereinbefore  
 3 provided, and in addition to the persons directed to be made par-  
 4 ties, all others shall be parties through whose lands canals or  
 5 ditches the water to be drained may pass till it shall have  
 6 reached the furthest artificial outlet. And the privilege of cutting  
 7 into such canal or ditch may be granted under the same rules  
 8 and upon the same conditions and restrictions as are provided  
 9 in respect to cutting the first canal or ditch: *Provided, however,*  
 10 that no canal or ditch shall be allowed to be cut into another, if  
 11 thereby the safety or utility of the latter shall be impaired or  
 12 endangered: *And provided further,* that if such impairing and  
 13 danger can be avoided by imposing on the petitioner duties or  
 14 labor in the enlarging or deepening such canal or ditch, or other-  
 15 wise, the same may be done; but no absolute decree for cutting  
 16 such second canal or ditch shall pass till the said duties or work so  
 17 imposed shall be performed and the effect thereof is seen, so as to

18 enable the commissioners to determine the matter whether such  
19 second canal or ditch ought to be allowed or not.

Brooks v. Tucker, Phil., 309.

**Sec. 1715.** Commissioners to assess and apportion labor for repairing canals, &c.; report, when confirmed, to stand as a judgment against the parties, &c.

R. C., c. 40, s. 10.

Besides the damages which the commissioners may assess against  
2 the petitioner for the privilege of cutting into such canal or ditch,  
3 they shall assess and apportion the labor which the petitioner and  
4 defendants shall severally contribute towards repairing the canal  
5 or ditch into or through which the petitioner drains the water  
6 from his lands, and report the same to court; which when con-  
7 firmed shall stand as a judgment of the court against each of the  
8 parties, his executors and administrators, heirs and assigns.

Brooks v. Tucker, Phil., 309.

**Sec. 1716.** Mode of proceeding for joint repairs of canals.

R. C., c. 40, s. 11.

Whenever the canals or ditches for the reparation of which more  
2 than one person shall be bound under the provisions of the pre-  
3 ceding section, shall need to be repaired, any of the persons so  
4 bound may notify the others thereof, and of the time he proposes  
5 to repair the same; and thereupon each of the persons shall jointly  
6 work on the same and contribute his proportion of labor, till the  
7 same be repaired or the work cease by consent.

**Sec. 1717.** Persons failing to work, how recovered against.

R. C., c. 40, s. 12.

In case the person so notified shall make default, any of the  
2 others may perform his share of labor and recover against him  
3 the value thereof, on a notice to be issued for such default; in  
4 which shall be stated on oath made before the clerk the value of  
5 such labor; and unless good cause to the contrary be shown on  
6 the return of the notice, the court shall render judgment for the  
7 same with interest and costs.

**Sec. 1718.** Assignees, &c., bound to repair as original owners.

R. C., c. 40, s. 13.

All persons to whom may descend, or who may otherwise own  
2 or occupy lands drained by any canal or ditch, for the privilege  
3 of cutting which any labor for repairing is assessed, shall contrib-  
4 ute the same, and shall be bound therefor to all intents and pur-  
5 poses, and in the same manner and by the same judgment, as the  
6 original party himself would be if he occupied the land.

**Sec. 1719.** All persons interested to contribute to repair dams, &c.; mode of proceeding.

R. C., c. 40, s. 14

Whenever there shall be a dam, canal, or ditch, in the repair-  
2 ing and keeping up of which, two or more persons shall be inter-  
3 ested and receive actual benefit therefrom, and the duties and pro-  
4 portion of labor which each one ought to do and perform therefor



5 shall not be fixed by agreement, or by the mode already in this  
6 chapter provided for assessing and apportioning such labor, any  
7 of the parties may have the same assessed and apportioned by pe-  
8 tition to the superior court of the county in which such duties and  
9 labor, or some part thereof, are to be performed, and the proceed-  
10 ings therein shall be by commissioners, in the manner in this  
11 chapter already provided.

Sec. 1720. In addition to the foregoing sections, and to provide for drainage on a  
larger scale, canals, &c., may be cut.

Any proprietor in fee of swamp lands, which cannot be drained 1868-'9, c. 464, s. 2.  
2 except by cutting a canal through the lands of another, or other  
3 proprietor in fee, situated at a lower level and which would also  
4 be materially benefited by the cutting of such canal, who desires  
5 that said canal be cut on the terms on which it is hereinafter al-  
6 lowed, may apply by petition, setting forth the facts to the superior  
7 court of the county in which any of the lands through which the  
8 canal will pass, may lie.

Shaw v. Burfoot, 8 Jones, 344; Canal Co. v. McAlister, 74—159; Brown v. Keener, 74—714;  
Gamble v. McCrady, 75—509; Pool v. Trexler, 76—297; Bunting v. Stancill, 79—130; Durden v.  
Simmons, 84—555.

Sec. 1721. Court shall appoint commissioners to examine and report.

On the establishment by the petitioner of his allegations, the 1868-'9, c. 164, s. 3.  
2 court shall appoint three persons as commissioners who, having  
3 been duly sworn, shall examine the premises and inquire and re-  
4 port:  
5 (1) Whether the lands of the petitioner can be conveniently  
6 drained, otherwise than through those of some other person;  
7 (2) Through the lands of what other persons a canal to drain  
8 the lands of the petitioner should properly pass, considering the  
9 interests of all concerned;  
10 (3) A description of the several pieces of lands through which  
11 the canal would pass; and the present values of such portions of  
12 said pieces of lands as would be benefited by it; and the reasons  
13 for arriving at the conclusion as to the benefit;  
14 (4) The route and plan of the canal, including its breadth, depth  
15 and slope, as nearly as they can be calculated, with all other par-  
16 ticulars necessary for calculating its cost;  
17 (5) The probable cost of the canal and of a road on its bank,  
18 and of such other works, if any, as may be necessary for its profit-  
19 able use;  
20 (6) The proportion of the benefit, (after a deduction of all dam-  
21 ages,) which each proprietor would receive by the proposed canal  
22 and a road on its bank if deemed necessary, and in which each  
23 ought, in equity and justice, to pay toward their construction and  
24 permanent support.  
25 (7) With their report they shall return a map explaining, as ac-

26 curately as may be, the various matters required to be stated in  
27 their report.

**Sec. 1722. Commissioners may appoint surveyor.**

1868-'9, c. 164, s. 4.

The said commissioners may employ a surveyor to prepare the  
2 map required to accompany their report.

**Sec. 1723. When court to confirm report of commissioners.**

1868-'9, c. 164, s. 5.

If it appear that the lands on the lower level will be increased  
2 in value twenty-five per cent. or upwards by the proposed improve-  
3 ment, within one year after the completion thereof, and that the  
4 cost of making such improvement will not exceed three-fourths of  
5 the present estimated value of the land to be benefited, and that  
6 the proprietors of at least one-half in value of the land to be affected,  
7 consent to the improvement, the court may confirm such report,  
8 either in full, or with such modifications therein as shall be just  
9 and equitable.

**Sec. 1724. Proprietors declared a corporation.**

1868-'9, c. 164, s. 6.

Upon a final adjudication, confirming the report, the proprietors  
2 of the several pieces of land adjudged to be benefited by the im-  
3 provement, shall be declared a corporation of which the capital  
4 stock shall be double the estimated cost of the improvements, and  
5 in which the several owners of the land adjudged to be benefited,  
6 shall be corporators, holding shares of stock in the proportions in  
7 which they are adjudged liable for the expense of making and keep-  
8 ing up the improvement.

**Sec. 1725 Corporate name and officers.**

1868-'9, c. 164, s. 7.

The person assessed to pay the highest sum shall be president  
2 of the company, until another shall be elected; he shall, or in case  
3 of his refusal or an unreasonable delay, any other stockholder, may  
4 call a meeting of the corporators. The corporators shall choose a  
5 a corporate name, elect a president and such other officers  
6 as may be necessary, and make all by-laws and regulations  
7 not contrary to law, which may be necessary or proper for ef-  
8 fecting the purposes of the corporation; they shall fix the  
9 number of shares of stock, and assign to each proprietor his proper  
10 number; they shall assess the same which shall be payable by  
11 each proprietor, and to ascertain the time and mode of payment,  
12 in every meeting each proprietor shall vote once for each share  
13 owned by him.

**Sec. 1726. Owners and shares.**

1868-'9, c. 164, s. 8.

The ownership of the shares of stock is indissolubly annexed to  
2 the ownership of the pieces of land adjudged to be benefited by  
3 the improvement; and such shares, or a part thereof proportion-  
4 ate to the area of such land that may descend or be conveyed, for

5 any longer time than three years, shall, upon such descent or con-  
 6 veyance, descend and pass with the land, even although such  
 7 shares be not mentioned in the deed of conveyance, and although  
 8 their transfer be forbidden by such deed so that every owner of  
 9 said land in possession, except tenant for a term of years, not ex-  
 9 ceeding three, and every owner in reversion or remainder after a  
 10 term not exceeding three years, shall, during his ownership, be  
 11 entitled to all the rights and privileges and be subject to all the  
 12 obligations and burdens of a corporator. Every attempted sale  
 13 of shares otherwise than as annexed to the land shall be void.

**Sec. 1727. Obedience to laws, &c.; proviso.**

Every corporator shall be bound to obey the lawful by-laws of 1868-'9, c. 164, s. 9.  
 2 the company, and pay all dues lawfully assessed on him: *Provided*,  
 3 he shall in no case pay more than his proportion of the expenses  
 4 as fixed by this chapter; and such dues may be collected in the  
 5 corporate name in any court having jurisdiction; and every as-  
 6 sessment duly docketed in the county where the land to be af-  
 7 fected lies, shall be a lien on the lands of the debtor which are  
 8 connected with the corporation from the date of such docketing.

**Sec. 1728. Payment of dues, &c.**

Every corporator, paying his dues legally assessed without re- 1868-'9, c. 164, s. 10.  
 2 gard to the number of his shares, shall be entitled to the full and  
 3 free use of said canal for drainage and navigation, and of the road  
 4 for passage and transportation. By-laws may be made to regulate  
 5 these rights, but not so as to produce an inequality.

**Sec. 1729. Privileges of infants.**

If any proprietor whose lands are adjudged to be benefited by a 1868-'9, c. 164, s. 11.  
 2 canal shall be an infant, no process shall be issued against him  
 3 during his minority, or within twelve months thereafter, to enforce  
 4 payment of any assessment, and he may, at any time within such  
 5 twelve months, apply to have any order, judgment or decree made  
 6 against him, set aside as to him. If the infant or his guardian  
 7 shall, during his minority, and the twelve months next thereafter,  
 8 pay the dues assessed on him, he shall have all the rights and  
 9 privileges of a corporator to be exercised through his guardian.  
 10 If the infant shall fail to pay, he shall not have any such rights,  
 11 but if no action to set aside the judgment of the court creating  
 12 the corporation shall have been brought by him as aforesaid, or  
 13 upon the decision of such action against him, he shall be entitled  
 14 to receive his proper share of stock and to possess all the rights  
 15 and be bound by all the liabilities of a corporator, including a lia-  
 16 bility for assessments made during his minority, but not for inter-  
 17 est on such, nor for any penalty for their prior non-payment.



**Sec. 1730. Damage to lands.**

1868-'9, c. 164, s. 12.

If any proprietor of lands shall be damaged by any improvement proposed, the commissioners shall so report, and he shall be entitled to be compensated as may be just by the proprietor whose lands are benefited in proportion to the benefit to them respectively; but in estimating such damage the benefit shall be deducted, and such proprietor shall be entitled to all the rights and privileges of a corporation as respects the use of the improvement, but shall not be entitled to a vote, or be bound for the assessment.

**Sec. 1731. Court may dissolve corporation.**

1868-'9, c. 164, s. 13.

If, from any cause, the canal or other improvement shall become, or shall prove to be valueless, any corporator may apply as is provided in other cases of special proceedings, and the court may dissolve the corporation created in connection with it.

**Sec. 1732. Court to regulate costs.**

1868-'9, c. 164, s. 14.

In all proceedings under this chapter, the costs, including one dollar and fifty cents *per diem* to each commissioner, shall be in the discretion of the court, unless otherwise herein provided.

**Sec. 1733. Proceeding, a special proceeding.**

The proceeding under this chapter shall be the same as prescribed in other cases of special proceeding.

## CHAPTER FORTY-FIVE.

## EDUCATION.

## LITERARY FUND.

## SECTION.

- 1734. State board of education incorporated, its name and corporate powers.
- 1735. Officers, quorum, meetings; proviso.
- 1736. Proceedings to be recorded, &c.
- 1737. To succeed to powers, &c., of president and directors of literary fund; authorized to legislate, &c., for government of public schools, &c., subject to revision and repeal of general assembly; to succeed to property of literary fund.
- 1738. Treasurer to keep account of receipts, &c., and report to general assembly.
- 1739. Duty of board in having swamp lands surveyed, drained, &c.
- 1740. Written consent of owners to vest title in corporation.
- 1741. When owners refuse, how corporation to proceed.

## SECTION.

- 1742. Lands of persons improved by canals, &c., to pay a proportion of expense.
- 1743. Board may appoint an engineer, surveyor, &c.
- 1744. May enter any lands for surveying, &c.; titles to swamp lands not registered vested in corporation; proviso.
- 1745. May sell reclaimed lands; proceeds of, and entry money to become principal.
- 1746. Shall expend no money to reclaim lands unless, &c.
- 1747. May employ counsel and compromise suits.
- 1748. May buy or exchange lands.
- 1749. Turnpike from Plymouth to Pungo river.

## SECTION.

- 1750. Amount appropriated; contractor to give bond; how land may be condemned for road.
- 1751. Board may contribute lands for a canal from Waccamaw to Little river.
- 1752. Appropriation of five thousand dollars to open ground prairie.
- 1753. Forfeitures of land by persons failing to pay tax.
- 1754. Agent of swamp lands appointed.
- 1755. His duties.
- 1756. Agent may be removed; compensation.
- 1757. Board may procure others to prosecute suits and share recovery.
- 1758. Presumption of title in favor of board of education or their assigns.
- 1759. Board barred by time only when state is.
- 1760. How sales to be made.

## SECTION.

- 1761. No loan to be made except by direction of general assembly.
- 1762. Board of education directed to distribute the proceeds of United States bonds, and the cash on hand during 1881.
- 1763. To distribute the proceeds of the North Carolina bonds, and other funds which may accumulate on their hands during 1882.
- 1764. Board to make no further investment of school funds, but to distribute the same from time to time.
- 1765. Distributions, how made.
- 1766. Board authorized to sell, &c., when.
- 1767. Certain powers to be reserved to the state, &c.
- 1768. Lands held by board of education in certain counties subject to entry, &c.
- 1769. Price of land.

## PUBLIC SCHOOLS.

## SECTION.

- 1770. Apportionment of school fund.
- 1771. Auditor to keep separate account of public school fund.
- 1772. When and how warrant issued for school fund due any county.
- 1773. State treasurer to hold school funds as a special deposit; when and how paid out.
- 1774. Board to recommend text books, to be used in public schools for three years; proviso.
- 1775. Duties of superintendent of public instruction.
- 1776. Duty of superintendent to direct operation of system of public schools, &c.
- 1777. Duty of superintendent to learn and supply educational wants, &c.; expenses allowed, not exceeding five hundred dollars *per annum*.
- 1778. Funds appropriated for establishing and maintaining system of free schools to be paid into the state treasury.
- 1779. Funds so appropriated to be paid into county school fund.
- 1780. County board of education; officers.
- 1781. Duties of county board of education.
- 1782. Meetings; proviso; books of county treasurer to be examined, &c.
- 1783. Office of county examiner abolished.
- 1784. County superintendent of public instruction, term of office; election biennial; vacancies; secretary to report name, &c., to state superintendent.
- 1785. School districts.
- 1786. Convenience of residents to be consulted in formation of districts; separate schools for the two races.
- 1787. County board of education to apportion county school fund among districts; sums so apportioned subject to order of school committee.
- 1788. Basis of annual apportionment of public school moneys.
- 1789. School committee, their duties; vacancies, &c.
- 1790. County treasurer to receive and disburse school fund; his bond; misdemeanor, &c.

## SECTION.

- 1791. Orders, how issued upon treasurer of county board of education; proviso; payments for building or repairing school houses.
- 1792. Duties of treasurer of county board of education.
- 1793. Treasurer to furnish blank deeds to school committees.
- 1794. Treasurer to make report to county board of education.
- 1795. Treasurer to produce books, vouchers, &c., when required by board.
- 1796. Compensation of treasurer.
- 1797. Treasurer to make report to state superintendent of public instruction.
- 1798. Treasurer to keep account of public school moneys.
- 1799. Treasurer to report to said superintendent; guilty of misdemeanor.
- 1800. Sheriff to pay annually in money to treasurer of county board amount of state and county taxes levied for school purposes, &c.; misdemeanor; penalty; action on bond.
- 1801. Sheriff to take duplicate receipts, &c.
- 1802. Duties of secretary of county board of education.
- 1803. Examination of applicants for teachers' certificates by county superintendent of public instruction; grades of certificates valid for one year in county where issued; what to be taught in public schools; proviso.
- 1804. Teachers' institutes; teachers required to attend.
- 1805. County superintendent to have charge of institute, &c.
- 1806. Duties of county superintendent of public instruction; powers; suspension of teachers.
- 1807. County superintendent to distribute blanks, &c.
- 1808. County superintendent to countersign orders on treasurer of county board for payment of teachers' salaries.

## SECTION.

- 1809. County superintendent to deliver to county board catalogue of teachers, &c.
- 1810. County superintendent to report to state superintendent number, &c., of teachers, schools, &c.
- 1811. County superintendent to file copy of report to state superintendent in office of secretary of county board; to turn over to secretary census reports, &c.
- 1812. Compensation of county superintendent.
- 1813. Oath of school committeemen.
- 1814. Meeting of school committee; chairman; clerk; record to be kept.
- 1815. School committee to be a body politic; name.
- 1816. School committee to take annual census of children; to report number of school houses to county superintendent, &c.
- 1817. School committee authorized to employ and dismiss teachers, and to fix their pay.
- 1818. Teachers to render statement of number of pupils, &c., to school committee; when order for payment of teachers to be given.
- 1819. School committee empowered to receive gifts, &c.; deed, how executed; proceeds of sale; to have care of school house, &c., and to sell the same, &c.

## SECTION.

- 1820. Empowered to receive sites for school houses by donation or purchase; in case of purchase, approval of chairman and secretary of county board necessary; title; proceeding to condemn land for school house site.
- 1821. School committee to deliver deeds to treasurer of county board.
- 1822. Duties of teachers; dismissal of pupil.
- 1823. Teachers to keep daily records concerning pupils; grades in scholarship, in deportment; report to be made to county superintendent.
- 1824. School year.
- 1825. Every school receiving aid under this chapter to be a public school.
- 1826. Tax of twelve and a half cents on every one hundred dollars of property and credits to be levied for support of public schools; poll tax of thirty-seven and a half cents.
- 1827. If taxes insufficient to maintain public schools for four months, board of commissioners to levy special tax; how collected, &c.
- 1828. Misdemeanor to wilfully disturb any school, &c.
- 1829. State superintendent of public instruction authorized to employ clerk; his salary, how paid.

## UNIVERSITY OF NORTH CAROLINA.

[CONST., ART. IX, §§ 6, 7, 14, 15.]

## SECTION.

- 1830. Incorporation of the University.
- 1831. Authority of trustees.
- 1832. Treasurer and his duties.
- 1833. Trustees to appoint president and faculty, and confer degrees.
- 1834. Property exempt from taxation.
- 1835. Governor, *ex officio*, president.
- 1836. Meetings of trustees.
- 1837. Vacancies in offices of secretary and treasurer, how filled.
- 1838. Trustees may at their annual meeting limit business at special meeting.
- 1839. Trustees may vacate appointment of trustee for improper conduct.
- 1840. Number of trustees, and their election.
- 1841. To meet in thirty days; classes.
- 1842. Vacancies, how filled.
- 1843. Rules and regulations.
- 1844. Executive committee.
- 1845. Eight additional trustees of the University.
- 1846. Endowed with escheats.
- 1847. When personal property paid to University.
- 1848. Unclaimed dividends to go to University.
- 1849. Certain personal property deemed derelict and paid to University.
- 1850. Receipts from all sources to be applied to maintenance of University.
- 1851. Land scrip transferred to the trustees of the University.
- 1852. Trustees to dispose of the same and establish two professorships.

## SECTION.

- 1853. Board of commissioners of each county to select annually one native resident for gratuitous instruction in the University.
- 1854. Who eligible to appointment as county student; revocable by board; when trustees to ask board to revoke appointment; student obtaining county appointment without being entitled liable for tuition, &c.
- 1855. Student receiving free tuition to promise in writing to teach after leaving University.
- 1856. Certificate of indebtedness to issue.
- 1857. Special tax bonds to be burned.
- 1858. Annual apportionment of five thousand dollars, to University payable in semi-annual installments.
- 1859. Manner in which appropriation shall be used.
- 1860. License to retail at Chapel Hill, &c., void.
- 1861. Places in four miles of, &c., for sale of liquors, forbidden.
- 1862. No person without written permit to sell liquor to be used in four miles of Chapel Hill.
- 1863. Electioneering treats within four miles forbidden.
- 1864. Also billiard and gaming tables in five miles.
- 1865. Also exhibitions in five miles without license.



SECTION.

1866. Violation of preceding sections a misdemeanor.  
1867. Contracts with minor students without permission, void.

SECTION.

1868. Shall be avoided by plea.  
1869. Incapable of confirmation.

NORMAL SCHOOLS.

SECTION.

1870. Normal schools in connection with the University.  
1871. Normal schools for colored persons.  
1872. State board of education to establish normal schools other than those at Fayetteville and the University.

SECTION.

1873. Young persons educated at normal schools.

GRADED SCHOOLS.

SECTION.

1874. Graded schools.  
1875. Tax for graded schools.  
1876. Principal of graded school; his salary, &c.  
1877. Townships not included.  
1878. Sense of voters to be taken as to the propriety of establishing public schools, &c.  
1879. Election of school commissioners, one from each ward; ten days' notice of election to be given.  
1880. Commissioners with mayor to constitute board of management; fine for failure of duty.

SECTION.

1881. Statement of amount of appropriation to be annually furnished school commissioners.  
1882. Additional tax for educational purposes authorized.  
1883. Treasurer of corporation to act as treasurer of school fund.  
1884. Clerk of corporation to be secretary of board of school commissioners.  
1885. Enumeration of white children required.  
1886. Quarterly statement required.  
1887. Commissioners may hold and dispose of real and personal property in trust.

Sec. 1734. State board of education incorporated, its name and corporate powers.

The governor, lieutenant-governor, secretary of state, treasurer, 1881, c. 200, s. 1.  
2 auditor, superintendent of public instruction and attorney-general  
3 shall constitute the state board of education, and by the name "the  
4 state board of education," they are hereby and in pursuance of the  
5 constitution created a body politic and corporate, and by that name  
6 may sue and be sued, plead and be impleaded, in all courts of jus-  
7 tice according to their respective jurisdiction; may have a common  
8 seal and alter the same at pleasure; may acquire, receive and hold  
9 real, personal and mixed property by purchase, gift, devise or oth-  
10 erwise, and may sell, dispose of and convey the same according to  
11 law; and may contract and be contracted with for the purposes  
12 provided in this chapter and for such other purposes as may  
13 now or hereafter be prescribed by law, and to that end to make  
14 such by-laws for its government and the exercise of its powers, and  
15 to alter the same from time to time in their discretion, as shall  
16 not be in conflict with the laws of this state and of the United  
17 States.

Sec. 1735. Officers, quorum, meetings; proviso.

Of the said board, the governor shall be president, the superintendent 1881, c. 200, s. 2.  
2 ent of public instruction shall be secretary, and the treasurer of the  
3 state shall be treasurer, and a majority of the board shall consti-  
4 tute a quorum for the transaction of business. The said board

5 shall hold its meetings in the executive office, and shall meet at  
6 such times as a majority of the members may appoint: *Provided*,  
7 that the governor may call a meeting at any time.

**Sec. 1736. Proceedings to be recorded, &c.**

1881, c. 200, s. 3.

All the proceedings of said board shall be recorded in a well  
2 bound and suitable book, which shall be kept in the office of the  
3 superintendent of public instruction.

**Sec. 1737. To succeed to powers, &c., of president and directors of literary fund ; authorized to legislate, &c., for government of public schools, &c., subject to revision and repeal of general assembly ; to succeed to property of literary fund.**

1881, c. 200, s. 4.

The state board of education shall succeed to all the powers and  
2 trusts of the "president and directors of the literary fund of North  
3 Carolina," and shall have and are hereby clothed with full power to  
4 legislate and make all needful rules and regulations for the gov-  
5 ernment of the public schools and for the management of the state  
6 educational fund. But all such acts, rules and regulations of the  
7 said board may be altered, amended or repealed by the general as-  
8 sembly, and when so altered, amended or repealed shall not be re-  
9 enacted by the said board ; and the said board shall likewise suc-  
10 ceed to and have all the property of every kind and use, powers,  
11 rights, privileges and advantages which in anywise belonged or  
12 appertained to the said "president and directors of the literary  
13 fund of North Carolina," and may, in its own name, assert, use,  
14 apply and enforce the same.

**Sec. 1738. Treasurer to keep account of receipts, &c., and report to general assembly.**

R. C., c. 66, s. 4.  
1825, c. 1268, ss. 1, 2,  
3, 4.

The state treasurer shall keep a fair and regular account of all  
2 the receipts and disbursements of the literary fund, and shall re-  
3 port the same to the general assembly, at the same time when he  
4 makes his biennial account of the ordinary revenue ; and the state  
5 board of education shall report to the general assembly the man-  
6 ner in which the fund has been applied or invested, with such rec-  
7 ommendations for the improvement of the same, as to them shall  
8 seem expedient.

**Sec. 1739. Duty of board in having swamp lands surveyed, drained, &c.**

R. C., c. 66, s. 5.  
R. S., c. 67, s. 5.

The state board of education shall be invested with full power  
2 to adopt all necessary ways and means for causing so much of the  
3 swamp lands to be surveyed as they may think capable of being  
4 reclaimed ; and after said lands, or any part of them, shall be sur-  
5 veyed, to contract for the construction of canals, ditches, and other  
6 works necessary for the purpose of reclaiming the same, upon such  
7 terms and conditions as may be prescribed by the corporation, the  
8 contractor giving bond with security for the faithful performance  
9 of the agreement.

**Sec. 1740. Written consent of owners to vest title in corporation.**

Whenever it shall be necessary to construct any of said works  
2 on the lands of any individual proprietor, his written consent,  
3 without any formal deed of conveyance of the lands necessary to  
4 the work and its future enjoyment, shall vest the title thereof in  
5 the corporation forever; and when any infant or person *non com-*  
6 *pos mentis* or *feme covert* shall be owner thereof, his guardian shall  
7 be authorized to give such consent; and the *feme covert* and her  
8 husband may do so, without any private examination; and the  
9 consent so given shall be valid to all intents and purposes.

R. C., c. 66, s. 6.  
R. S., c. 67, s. 6.

**Sec. 1741. When owners refuse, how corporation to proceed.**

Whenever the consent of the proprietor shall be withheld, the  
2 corporation or their agents may enter on the lands and lay off so  
3 much as may be necessary to be used in said work, the value of  
4 which shall be assessed to the proprietor according to law; and,  
5 upon the payment thereof, the title shall be vested in the corpora-  
6 tion forever: *Provided*, that, in the assessment of valuation the ben-  
7 efit that will accrue to the proprietor by reason of the improve-  
8 ment may be likewise reckoned and set off against the damages.

R. C., c. 66, s. 7.  
R. S., c. 67, s. 7.

**Sec. 1742. Lands of persons improved by canals, &c., to pay a proportion of expense.**

When there are lands owned by individuals which can be re-  
2 claimed by reason of the canals, ditches or other works of the cor-  
3 poration, the same shall be assessed to contribute an equitable pro-  
4 portion of the costs of said works; which assessment shall be made  
5 by the board, or a board of commissioners appointed by them, and  
6 the same shall be charged on the lands: *Provided, however*, that the  
7 corporation, by contract with individual proprietors, may agree  
8 upon the assessment, and accept payment thereof in labor or money.

R. C., c. 66, s. 8.  
R. S., c. 67, s. 8.

**Sec. 1743. Board may appoint an engineer, surveyor, &c.**

The state board of education may appoint an engineer and sur-  
2 veyor, and other servants, to plan the works; they may enact all  
3 necessary rules and regulations for surveying and reclaiming the  
4 swamp lands; for assessing the lands of individuals which may be  
5 improved by the works, and for collecting assessments; and the  
6 assessments shall be published weekly for five weeks in one of the  
7 newspapers published in Raleigh, and also filed in the office of the  
8 clerk of the superior court of the county wherein the lands assessed  
9 are situate. If no objections are filed at the court next after such  
10 advertisement, the assessments shall be confirmed by the court and  
11 the lands adjudged liable for the amount, and execution may be  
12 issued for the sale thereof to satisfy the same, on motion to the  
13 court for that purpose; and if any reasons be shown against the  
14 assessments, they shall be heard and determined by the court, and

R. C., c. 66, s. 9.  
R. S., c. 67, s. 9.



15 the assessments shall be increased or diminished as the court shall  
16 adjudge.

**Sec. 1744.** May enter any lands for surveying, &c.; titles to swamp lands not registered vested in corporation; proviso.

R. C., c. 66, s. 10.  
R. S., c. 67, s. 10.  
1850, c. 102, s. 1.

The state board of education, and their officers or agents, shall  
2 have a right to enter upon the lands of all persons whomsoever,  
3 for the purpose of surveying; and all the grants and deeds for  
4 swamp lands, heretofore made, shall be proved and registered in  
5 the county where the lands are situate, within twelve months; and  
6 every such grant or deed, not being so registered within the time  
7 aforesaid, shall be utterly void and of no effect, and the title of  
8 the proprietor in said lands shall revert to the state: *Provided, how-*  
9 *ever,* that the provisions of this section, relating to the registration  
10 of grants and deeds, shall be applicable to the swamp lands only  
11 which have been surveyed or taken possession of by, or are vested  
12 in the state board of education, or their agents.

**Sec. 1745.** May sell reclaimed lands; proceeds of, and entry money to become principal.

R. C., c. 66, s. 11.  
R. S., c. 67, s. 11.  
1844, c. 36, s. 1.

The state board of education may sell and convey any part of  
2 the lands which may be reclaimed, for the best price that can be  
3 obtained, and the proceeds, as also money received on entries of  
4 vacant land, shall become a part of the principal of the literary  
5 fund; but they shall not sell any canal by them constructed under  
6 this chapter.

**Sec. 1746.** Shall expend no money to reclaim lands, unless, &c.

R. C., c. 66, s. 12.

The state board of education shall not expend any part of the  
2 moneys, stocks, or property herein vested in them, for the purpose  
3 of reclaiming the said lands, but by direction of the general as-  
4 sembly; and the money received on entries of vacant land shall  
5 also be added to the principal of the fund.

**Sec. 1747.** May employ counsel and compromise suits.

R. C., c. 66, s. 13.

The board may employ counsel learned in the law to aid and  
2 assist them in the investigation and prosecution of their title to  
3 any of their swamp lands; and they may compromise upon such  
4 terms as to them shall seem reasonable and just, for the title, so as  
5 to secure the corporation an indefeasible right in said lands.

**Sec. 1748.** May buy or exchange lands.

R. C., c. 66, s. 14.

Whenever, in the process of draining, it may be necessary, in  
2 order to prevent a sacrifice of the interests of the state, to purchase  
3 small tracts owned by individuals, the board may buy them, or  
4 exchange for them some other portions of the swamp lands; and  
5 the lands thus acquired shall be held by them as other swamp  
6 lands.

## Sec. 1749. Turnpike from Plymouth to Pungo river.

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.

R. C., c. 66, s. 15.  
1848, c. 88, s. 1.  
1848, Resolution.  
1850, c. 158, ss. 1, 2,  
3.  
1852, Resolution.

## Sec. 1750. Amount appropriated; contractor to give bond; how land may be condemned for road.

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.

R. C., c. 66, s. 16.  
1848, c. 8, ss. 2, 3.

## Sec. 1751. Board may contribute lands for a canal from Waccamaw to Little river.

Whenever a canal shall be opened from Waccamaw river to Lit-

R. C., c. 66, s. 17.  
1848, c. 56.

2 the river, near where the latter empties into the ocean, and it shall  
 3 have been clearly ascertained that any valuable portion of the  
 4 said swamp lands have been drained by the said canal, and have  
 5 been made more valuable thereby, the board may allow to the in-  
 6 dividuals opening the canal such of the public lands thus drained,  
 7 and convey the same by deed, as the board may consider just and  
 8 reasonable.

R. C., c. 66, s. 18.  
 1850, Resolution.

**Sec. 1752. Appropriation of five thousand dollars for Open Ground Prairie.**

The board shall inquire into the practicability and expediency  
 2 of draining certain lands in Carteret county known as the Open  
 3 Ground Prairie; and should they deem it advantageous to do so,  
 4 may commence the draining thereof; and for that purpose five  
 5 thousand dollars are appropriated from the literary fund.

R. C., c. 66, s. 19.  
 1842, c. 36.

**Sec. 1753. Forfeitures of land by persons failing to pay tax.**

Any person, his heirs or assigns, having at any time obtained a  
 2 grant from the state for any swamp lands which have been sur-  
 3 veyed or taken possession of by the state board of education or  
 4 their agents, and shall not have regularly listed the same for tax-  
 5 ation and paid the taxes due thereon to the persons entitled to re-  
 6 ceive the same, such grantee, and his heirs or assigns, shall forfeit  
 7 and lose all right, title and interest in the said swamp lands, and  
 8 the same shall *ipso facto* revert to the state, and be vested in the  
 9 said board upon the same trusts as they hold other swamp lands;  
 10 unless such person, his heirs or assigns shall have paid to the  
 11 sheriff of the county in which said lands lie, prior to the twenty-  
 12 first day of January, one thousand eight hundred and forty-four,  
 13 all the arrearages of taxes due on said lands, with interest thereon,  
 14 from the time the taxes ought to have been paid.

R. C., c. 66, s. 20.  
 1854, c. 43.

**Sec. 1754. Agent of swamp lands appointed.**

The board of education may annually appoint an agent to su-  
 2 perintend and supervise all the swamp lands belonging to the  
 3 board.

R. C., c. 66, s. 21.

**Sec. 1755. His duties.**

The agent shall devote his entire attention to the business; aban-  
 2 don all prior engagements that may conflict with the interest of  
 3 the board; aid and assist counsel in the preparation and trial of  
 4 all suits that may be directed by the board; collect information as  
 5 to the location and value of all said lands; survey or have sur-  
 6 veyed such tracts of said lands, or such other lands necessary to  
 7 ascertain the location of lands belonging to the board, as he may  
 8 deem necessary, under the direction of the board. He shall make  
 9 reports from time to time to the board, of all the information he  
 10 obtains, with such suggestions as he may deem proper; and shall



11 prepare a statement of each tract of land owned by the board, and  
 12 its location, quantity, as well as ascertained and probable value  
 13 distinguishing between those tracts the title to which is doubtful,  
 14 or good; and this statement shall be recorded by him in a book to  
 15 be kept by the board, and in a manner, by index or otherwise, easy  
 16 for reference.

**Sec. 1756. Agent may be removed; compensation.**

The agent may be removed by the board at any time, and another appointed to supply the vacancy, the agent removed being paid a *pro rata* compensation. The agency may be continued in the discretion of the board. The compensation of the agent shall not exceed one thousand dollars; and, besides his salary, he shall receive no other compensation for what he is required to do or have done as aforesaid, except that the necessary incidental expenses of surveys required as aforesaid, (not including surveyor's fees) shall be paid by the board.

R. C., c. 66, s. 22.

**Sec. 1757. Board may procure others to prosecute suits and share recovery.**

The board of education 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.

R. C., c. 66, s. 23.  
 1854, c. 48.

**Sec. 1758. Presumption of title in favor of board of education or their assigns.**

In all controversies and suits for any of the swamp lands, to which the said board of education or their assigns shall be a party, the title to the said lands shall be taken and deemed to be in the said board or their assigns until the other party shall show that he hath a good and valid title to the said lands in himself.

R. C., c. 66, s. 24.  
 1842, c. 36, s. 3.

**Sec. 1759. Board barred by time only when the state is.**

No statute of limitation shall affect the title or bar the action of the said board of education or their assigns unless the same would protect the person holding and claiming adversely against the state.

R. C., c. 66, s. 25.  
 1842, c. 36, s. 5.

**Sec. 1760. How sales to be made.**

No sale of lands shall be made by the board of education, except upon six weeks' public advertisement, and upon the receipt of sealed proposals for such land, and for not less than a minimum price of ten cents per acre.

1872-'3, c. 194, s. 2.

**Sec. 1761. No loan to be made except by direction of general assembly.**

Hereafter it shall not be lawful for the board of education to loan any amount of the public funds under their control, or ex-

1870-'1, c. 279.

pend the same for any purpose whatever, except by the direction of the general assembly.

**Sec. 1762.** Board of education directed to distribute the proceeds of United States bonds and the cash on hand during 1881.

1881, c. 82, s. 1.

The state board of education is hereby authorized and directed to distribute during the year one thousand eight hundred and eighty-one the proceeds of the sale of the United States four per cent. bonds and the money on hand which has not been heretofore invested.

**Sec. 1763.** To distribute the proceeds of the North Carolina bonds and other funds which may accumulate on their hands during 1882.

1881, c. 82, s. 2.

During the year one thousand eight hundred and eighty-two it shall be the duty of the said board to sell the ninety-nine thousand two hundred and fifty dollars of four per cent. state bonds, and to distribute during that year the proceeds thereof, with all other funds that may have accumulated at the time of the distribution.

**Sec. 1764.** Board to make no further investment of school funds, but to distribute the same from time to time.

1881, c. 82, s. 3.

It shall be the duty of the said board to distribute from time to time all funds belonging to the school fund, instead of making any further investments.

**Sec. 1765.** Distributions, how made.

1881, c. 82, s. 4.

All distributions shall be made among the several counties according to the number of school children in each county entitled to the benefits of the common schools.

**Sec. 1766.** Board authorized to sell, &c., when.

1869-'70, c. 79.

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.

**Sec. 1767.** Certain powers to be reserved to the state, &c.

1872-'3, c. 118.

In any sale which shall be made by the board of education under the preceding section, 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 benefited by those canals for their repair, and which shall not be closed ;

10 (3) That the navigation of the canals shall be free to all persons,  
11 subject to a right in the state to impose tolls, which shall be spent  
12 exclusively in repairing or enlarging said canals to Pungo river  
13 from the mouth of the Pungo lake canal downwards to Leach-  
14 ville;

15 (4) That all land owners on the canals may drain into them,  
16 subject only to such general regulations as now are or hereafter  
17 may be made by the general assembly in such cases;

18 (5) That the roads along the banks of the canals shall be public  
19 roads.

20 *And provided*, that the sale authorized by this section shall in no  
21 manner affect the titles of persons who occupy any of said lands  
22 under grants from the state, and in all cases where entries have  
23 been made, grants shall be issued as now provided.

**Sec. 1768. Lands held by board of education in certain counties subject to entry, &c.**

It shall be lawful for any and all persons to enter any land 1881, c. 150, s. 1.  
2 known as the lands belonging to the board of education in the  
3 counties of Jones, Craven, Onslow, Tyrrell, Carteret and Dare under  
4 the same laws pertaining to entry and patent of state lands.

**Sec. 1769. Price of land.**

The price of said lands shall be agreed upon between the parties 1881, c. 150, s. 2.  
2 purchasing or entering said lands and the state board of education.

#### PUBLIC SCHOOLS.

**Sec. 1770. Apportionment of school fund.**

The state board of education shall, on the first Monday in August 1881, c. 200, s. 5.  
2 of each and every year, apportion among the several counties of the  
3 state all the school funds which may be then in the treasury of  
4 the said board, and order a warrant for the full apportionment to  
5 each county, which said apportionment shall be made on the basis  
6 of the school population.

**Sec. 1771. Auditor to keep separate account of public school fund.**

The state auditor shall keep a separate and distinct account of 1881, c. 200, s. 6.  
2 the public-school funds, and of the interest and income thereof,  
3 and also of such moneys as may be raised by state, county and capi-  
4 tation tax, or otherwise, for school purposes.

**Sec. 1772. When and how warrent issued for school fund due any county.**

Upon the receipt of the requisition of the treasurer of any county, 1881, c. 200, s. 7.  
2 duly approved by the chairman and secretary of the county board  
3 of education, for the school fund which may have been apportioned  
4 to said county, the state board of education shall issue its warrant  
5 on the state auditor for the sum due said county; whereupon the



6 said auditor shall draw his warrant on the treasurer of the state  
7 board of education in favor of such county treasurer for the  
8 amount set forth in the warrant of the said state board.

**Sec. 1773. State treasurer to hold school funds as a special deposit; when and how paid out.**

1881, c. 200, s. 8.

The state treasurer shall receive and hold as a special deposit all  
2 school funds paid into the treasury, and pay them out only on the  
3 warrant of the state auditor, issued on the order of the state board  
4 of education in favor of a county treasurer, duly indorsed by the  
5 county treasurer in whose favor it is drawn, and it shall be the  
6 only valid voucher in the hands of the state treasurer for the dis-  
7 bursement of school funds.

**Sec. 1774. Board to recommend text books to be used in public schools; proviso.**

1881, c. 200, s. 9.

The state board of education shall recommend a series of text  
2 books to be used in the public schools for a term of three years,  
3 and until otherwise ordered: *Provided*, that the county board of  
4 education shall take care that changes from books now in use to  
5 those recommended, do not work great inconvenience or expense  
6 to parents, guardians or pupils: *Provided further*, that no sectarian  
7 or political books shall be used in the public schools: *Provided*  
8 *further*, that the prices of the books recommended be fixed by the  
9 state board of education for the whole term for which they shall  
10 be used.

**Sec. 1775. Duties of superintendent of public instruction.**

1881, c. 200, s. 10.

The superintendent of public instruction shall have the school  
2 laws published in pamphlet form and distributed on or before the  
3 first day of April of this year; shall have printed all the forms  
4 necessary and proper for the purposes of this chapter and shall  
5 look after the school interest of the state at large, and report to  
6 the governor on or before the first Monday of January of every  
7 year, which report shall give information and statistics of the pub-  
8 lic schools, and recommend such improvement in the school law  
9 as may occur to him. He shall keep his office at the seat of gov-  
10 ernment, and shall sign all requisitions on the auditor for the pay-  
11 ment of money out of the state treasury for school purposes.  
12 Copies of his acts and decisions, and of all papers kept in his  
13 office and authenticated by his signature and official seal, shall be  
14 of the same force and validity as the original. He shall be fur-  
15 nished with such room, fuel and stationery as shall be necessary for  
16 the efficient discharge of the duties of his office.

**Sec. 1776. Duty of superintendent to direct operations of system of public schools, &c.**

1881, c. 200, s. 11.

The superintendent of public instruction shall direct the opera-

2 tions of the system of public schools and enforce the laws and regula-  
 3 tions in relation thereto. It shall be his duty to correspond with  
 4 leading educators in other states, and to investigate the systems of  
 5 public schools established in other states, and, as far as practicable,  
 6 render the results of educational efforts and experiences available  
 7 for the information and aid of the legislature and state board of  
 8 education.

**Sec. 1777.** Duty of superintendent to learn and supply educational wants, &c.; expenses allowed, not exceeding five hundred dollars *per annum*.

It shall be the duty of the superintendent of public instruc- 1881, c. 200, s. 12.  
 2 tion to acquaint himself with the peculiar educational wants of  
 3 the several sections of the state, and he shall take all proper means  
 4 to supply said wants, by counseling with county boards of educa-  
 5 tion and county superintendents, by lectures before teachers' insti-  
 6 tutes, and by addresses to public assemblies on subjects relating to  
 7 public schools and public school work, and shall be allowed his  
 8 additional expenses while engaged in this duty, not to exceed the  
 9 sum of five hundred dollars *per annum*.

**Sec. 1778.** Funds appropriated for establishing and maintaining system of free schools to be paid into state treasury.

The proceeds of all lands that have been or may hereafter be 1881, c. 200, s. 13.  
 2 granted by the United States to this state, and not otherwise ap-  
 3 propriated by this state or the United States, also all moneys,  
 4 stocks, bonds and any other property now belonging to any state  
 5 fund, for the purposes of education, also the net proceeds of sales of  
 6 swamp lands belonging to the state, and all other grants, gifts or  
 7 devises that have been made or hereafter may be made to this  
 8 state, and not otherwise appropriated by this state or by the terms  
 9 of the grant, gift or devise, shall be paid into the state treasury,  
 10 and, together with so much of the ordinary revenue of the state as  
 11 may be set apart for that purpose, shall be faithfully appropriated  
 12 for establishing and maintaining a system of free public schools, as  
 13 established in pursuance of the constitution.

**Sec. 1779.** Funds so appropriated to be paid into county school fund.

All moneys, stocks, bonds and other property belonging to a 1881, c. 200, s. 14.  
 2 county school fund, also the net proceeds from sales of estrays, also  
 3 the clear proceeds of all penalties and forfeitures, and of all fines  
 4 collected in the several counties for any breach of the penal or  
 5 military laws of the state; and all moneys which shall be paid by  
 6 persons as equivalent for exemption from military duties; also the  
 7 net proceeds of any tax imposed on licenses to retailers of wines,  
 8 cordials or spirituous liquors and to auctioneers, shall belong to  
 9 and remain in the several counties and shall be faithfully appro-  
 10 priated for establishing and maintaining free public schools in the  
 11 several counties as established in pursuance of the constitution:

12 *Provided*, that the amount collected in each county shall be reported  
13 annually to the state superintendent of public instruction.

**Sec. 1780. County board of education ; officers.**

1881, c. 200, s. 15.

The board of county commissioners of each county shall constitute a board of education for the county. The chairman of the board of county commissioners shall be the chairman, the register of deeds the secretary, and the county treasurer the treasurer of the county board of education, and a majority of the board shall constitute a quorum for the transaction of business.

*Com'rs of Wake v. Magnin, 78—181; Clifton v. Wynne, 80—145.*

**Sec. 1781. Duties of county board of education.**

1881, c. 200, s. 16.

The county board of education shall be, and is hereby charged with the general management 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.

*Com'rs of Wake v. Magnin, 78—181; Clifton v. Wynne, 80—145.*

**Sec. 1782. Meetings ; proviso ; books of county treasurer to be examined, &c.**

1891, c. 200, s. 17.

The county board of education of each county shall hold two regular meetings every year, namely, on the first Mondays of June and December, 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 to 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.

**Sec. 1783. Office of county examiner abolished.**

1881, c. 200, s. 18.

The office of county examiner is hereby abolished, to take effect on the first Monday in June, one thousand eight hundred and eighty-one.

**Sec. 1784. County superintendent of public instruction, term of office ; election biennial ; vacancies ; secretary to report name, &c., to state superintendent.**

1881, c. 200, s. 19.

The county board of education and the county board of magistrates, in joint session, shall, on the first Monday in June, anno Domini, one thousand eight hundred and eighty-one, elect by ballot one resident of their county, of good moral character and of liberal education, who shall be styled the county superintendent of public instruction. He shall hold his office until the first Monday in December, anno Domini, one thousand eight hundred and eighty-two, and until his successor is elected and qualified. On the first Monday in August, anno Domini, one thousand eight hundred and eighty-two, and biennially thereafter, the said joint boards,



11 hereinbefore mentioned, shall elect one resident of their county,  
12 having the qualifications required by this chapter, county super-  
13 intendent of public instruction, who shall hold his office for a term  
14 of two years and until his successor is elected and qualified: *Pro-*  
15 *vided*, that if a vacancy should at any time occur, the same shall  
16 be filled by said joint boards. Immediately after the election of  
17 said superintendent, the secretary of the county board of education  
18 shall report to the state superintendent the name and address of  
19 the person elected.

**Sec. 1785. School districts.**

The county board of education shall lay off their respective 1881, c. 200, s. 20.  
2 counties into convenient school districts, consulting as far as prac-  
3 ticable the convenience of the neighborhood and having due re-  
4 gard to the township boundaries. They shall designate the dis-  
5 tricts by number, as school district number one, school district  
6 number two, in the county of ....., as the case may be.

**Sec. 1786. Convenience of residents to be consulted in formation of districts;  
separate schools for the two races.**

The county board of education shall consult the convenience of 1881, c. 200, s. 21.  
2 the white residents in settling the boundaries of districts for the  
3 white schools, and of colored residents in settling boundaries for  
4 colored schools. The schools of the two races shall be separate;  
5 the districts the same in territorial limit, or not, according to the  
6 convenience of the parties concerned. In cases where there are  
7 two sets of districts in a county, they shall be designated as school  
8 district number one, two, three, &c., for white schools, or school  
9 district number one, two, three, &c., for colored schools (as the case  
10 may be) in the county of .....

**Sec. 1787. County board of education to apportion county school fund among dis-  
tricts; sums so apportioned subject to order of school committees.**

The county board of education of every county shall, on the 1881, c. 200, s. 22.  
1881, c. 201.  
2 first Monday of March, of each year, apportion among the several  
3 districts in the county, according to the number of children in  
4 each, between the ages of six and twenty-one years, (which num-  
5 ber shall be ascertained by a census to be taken by the school com-  
6 mittees and reported to the county board of education) all school  
7 funds, except such as may be raised by the special tax provided  
8 for in section eighteen hundred and twenty-seven, specifying how  
9 much thereof is apportioned to the children of each race, and give  
10 notice thereof to the school committees of the several districts of  
11 the county, and shall publish the same by advertisement posted on  
12 the court house door of each county, and furnish the county treas-  
13 urer with the amounts thus apportioned among the several school  
14 districts and the amount to which each district is entitled. The

15 sums thus apportioned to the several districts shall be subject to the  
16 orders of the school committees thereof for payment of the school ex-  
17 penses mentioned in this chapter: *Provided, however*, that in no case  
18 shall the school fund thus apportioned to either race be expended for  
19 the education of the other race: *And provided further*, that so much  
20 of said school fund as shall not be expended in any school district  
21 for the education of the race for which it was apportioned in any  
22 year, shall remain to the credit of said race in said school district  
23 for the year next ensuing. As far as practicable, the county board  
24 of education shall require all the schools to begin on the same  
25 day.

**Sec. 1788. Basis of annual apportionment of public school moneys.**

1881, c. 200, s. 23.

The annual apportionment of public school moneys, required  
2 by the preceding section shall be based upon the amounts  
3 actually received by the county treasurer from all sources and re-  
4 ported by him to the county board of education as required by this  
5 chapter. But a sufficient amount of money shall be left unappor-  
6 tioned to pay the general school expenses of the county authorized  
7 by this chapter.

**Sec. 1789. School committee, their duties; vacancies, &c.**

1881, c. 200, s. 24.

For each school district there shall be elected biennially by the  
2 county board of education of the respective counties, on the Tues-  
3 day after the first Monday in December, a school committee of  
4 three persons, whose duties shall be as prescribed in this chapter.  
5 If a vacancy should at any time occur it shall be the duty of the  
6 county board of education to appoint a suitable resident of the  
7 school district to fill such vacancy, and the person thus appointed  
8 shall exercise all the powers and duties of a school committeeman  
9 until his successor is elected and qualified. For sufficient cause,  
10 after one month's formal notice, the county board of education  
11 may remove a school committeeman and proceed at once to fill the  
12 vacancy thus created.

**Sec. 1790. County treasurer to receive and disburse school fund; his bond; mis-  
demeanor, &c.**

1881, c. 200, s. 25.

The county treasurer of each county shall receive and disburse  
2 all public school funds; but, before entering upon the duties of his  
3 office, he shall execute a justified treasurer's bond, with security in  
4 double the amount of all public school moneys received by him or  
5 by his predecessor during the previous year, conditioned for the  
6 faithful performance of his duties as treasurer of the county board  
7 of education, and for the payment over to his successor in office of  
8 any balance of school moneys that may be in his hands unexpended,  
9 and the county board of education may, from time to time, if  
10 deemed necessary, require him to strengthen said bond, and in de-

11 fault thereof the county board of education shall be guilty of a mis-  
12 demeanour; and for any breach of said bond, action shall be brought  
13 by the county board of education.

Commissioners of Wake v. Magnin, 78—181; Clifton v. Wynne, 80—145; Commissioners of Wake v. Magnin, 86—285.

**Sec. 1791. Orders, how issued upon treasurer of county board of education; proviso; payments for building or repairing school houses.**

All orders upon the treasurer of the county board of education  
2 for school money for the payment of teachers, duly countersigned  
3 by the county superintendent of public instruction, and all orders  
4 for the purchase of sites for school houses and for the cost of build-  
5 ing, repairing and furnishing school houses, shall be signed by the  
6 school committee of the district in which the school is taught, or  
7 in which the site or school house is situated, which orders, duly  
8 indorsed by the person to whom the same are payable, shall be  
9 the only valid vouchers in the hands of the treasurer of the county  
10 board of education, to be paid out of the funds apportioned to the  
11 district in which the school house is erected: *Provided*, that the  
12 said treasurer shall not pay any school money for building or re-  
13 pairing any school house, unless the site on which it is located has  
14 been donated to or purchased by the school committee of the dis-  
15 trict in which said house is located; which shall appear by deed,  
16 regularly executed to said committee and their successors in office,  
17 probated, registered in the office of register of deeds for the county,  
18 and delivered to the treasurer of the county board of education, to  
19 be by him safely deposited with his valuable official papers, and  
20 surrendered to his successor in office, and for default thereof he  
21 shall be liable on his official bond for any sum thus illegally paid.

1881, c. 200, s. 26.

**Sec. 1792. Duties of treasurer of county board of education.**

It shall be the duty of the treasurer of the county board of edu-  
2 cation to keep a book in which he shall open an account with  
3 each public school district in the county, showing the amount ap-  
4 portioned to said district, distinguishing the moneys due to the  
5 whites and the colored districts, the dates of all payments of school  
6 moneys, the name of the person to whom paid and the several  
7 amounts. He shall balance the accounts of each district annually  
8 on the thirtieth day of November in each and every year, and shall  
9 report by letter or printed circular, to each school committee the  
10 amount apportioned to the respective districts for the year, together  
11 with the balance which may be due any of the said districts from  
12 the preceding year.

1881, c. 200, s. 27.

**Sec. 1793. Treasurer to furnish blank deeds to school committees.**

It shall be the duty of the treasurer of the county board of edu-  
2 cation to furnish school committeemen with blank deeds for  
3 school house sites.

1881, c. 200, s. 28



**Sec. 1794. Treasurer to make report to county board of education.**

1881, c. 200, s. 29.

The treasurer of the county board of education shall, on the 2 first Monday in December in each year, report to said board the 3 amount of money received from the sheriff for public school purposes, said report to show in detail the amounts received respectively from property tax, poll tax, liquor licenses, auctioneers, and 6 from such other sources as may be taxed by the general assembly 7 for school purposes. He shall also report, at the same time, the 8 amount of moneys received by him from fines, forfeitures and 9 penalties and from the state treasurer and other sources for public 10 school purposes.

**Sec. 1795. Treasurer to produce books, vouchers, &c., when required by board.**

1881, c. 200, s. 30.

The treasurer of the county board of education shall, when required so to do by said board, produce his books and vouchers for 2 examination, and shall also exhibit all moneys due the public 3 school fund of the county at each settlement required by the provisions of this chapter.

**Sec. 1796. Compensation of treasurer.**

1881, c. 200, s. 31.

The treasurer of the county board of education of each county 2 shall receive as a compensation in full for all services required of 3 him by law as such treasurer, such a *per centum* not exceeding two 4 and a half per centum on account of receipts and disbursements of 5 school funds as the county board of education may deem adequate 6 and proper.

**Sec. 1797. Treasurer to make report to state superintendent of public instruction.**

1881, c. 200, s. 32.

The county treasurer of each county shall report to the state 2 superintendent of public instruction on the first day of December 3 of each year, the entire amount of school money received by him 4 during the preceding school year, the several sources from which 5 it was derived and the disbursements thereof made by him, designating the sums paid to teachers for the white and colored children 7 respectively and for school houses and school house sites, in the 8 several districts. He also shall report to the state superintendent 9 of public instruction, specifically, and in detail by items, the 10 amounts paid out for other purposes.

**Sec. 1798. Treasurer to keep account of public school moneys.**

1881, c. 200, s. 33.

The treasurer of the county board of education shall keep a book 2 in which shall be entered a full and detailed account of all public 3 school moneys received by him, the name of each person paying 4 him school money, the source from which the same may have been 5 derived, and the date of such payment: *Provided*, that, in his settlement with the sheriff or other collecting officer of public school 7 taxes or other school fund, the said treasurer shall receive money 8 only.

**Sec. 1799. Treasurer to report to said superintendent; guilty of misdemeanor.**

Any treasurer of a county board of education failing to make  
2 the report required of him by section seventeen hundred and 1881, c. 200, s. 34.  
3 ninety-seven at the time and in the manner prescribed shall be  
4 guilty of a misdemeanor, and upon conviction thereof in any court  
5 of record having criminal jurisdiction of his county shall be fined  
6 not less than fifty dollars and not more than two hundred dollars,  
7 or imprisoned not less than thirty days nor more than six months  
8 in the discretion of the court.

**Sec. 1800. Sheriff to pay annually in money to treasurer of county board, amount of state and county taxes levied for school purposes, &c.; misdemeanor; penalty; action on bond.**

The sheriff of each county shall pay annually in money to the  
2 treasurer of the county board of education thereof, on or before the 1881, c. 200, s. 35.  
3 thirty-first day of December of each year, the whole amount levied 1881, c. 201.  
4 less such sum or sums as may be allowed on account of insolvents for  
5 the current year, both state and county, for school purposes; and,  
6 on failure so to do, shall be guilty of a misdemeanor, and, on con-  
7 viction, shall be fined not less than two hundred dollars and shall  
8 also be liable to an action on his official bond for his default in  
9 such sum as will fully cover such default, said action to be brought  
10 to the next ensuing term of the superior court and upon the rela-  
11 tion of the board of county commissioners for and in behalf of the  
12 state.

**Sec. 1801. Sheriff to take duplicate receipts, &c.**

The sheriff or other collecting officer shall take duplicate receipts 1881, c. 200, s. 36.  
2 of the treasurer of the county board of education for such pay-  
3 ments as he may make under this chapter, one copy of which shall  
4 be transmitted to the auditor of the state.

**Sec. 1802. Duties of secretary of county board of education.**

The secretary shall record all of the proceedings of the county 1881, c. 200, s. 37.  
2 board of education, issue all notices and orders that may be made  
3 by said board pertaining to the public schools, school houses, sites  
4 or districts, (which notices or orders it shall be the duty of the sec-  
5 retary to serve by mail, or by personal delivery without cost), and  
6 record all school statistics, which shall be reported to the county  
7 board of education by the county superintendent of public in-  
8 struction. The county board of education shall provide the secre-  
9 tary with a suitable book in which to make the records required  
10 by this section.

**Sec. 1803. Examination of applicants for teachers' certificates by county superintendent of public instruction; grades of certificates valid for one year in county where issued; what to be taught in public schools; proviso.**

The county superintendent of public instruction of each county 1881, c. 200, s. 38.

2 shall examine all worthy applicants for teachers' certificates at the  
3 court house in the county, on the second Thursdays of July, Octo-  
4 ber, January and April of each and every year, and continue the  
5 examination from day to day, during the remainder of the week,  
6 if necessary, till all applicants are examined. The grade of the  
7 certificate to which the applicants may be entitled shall conform  
8 to the following standard of excellence: that is, one hundred  
9 being the maximum, a certificate shall not issue to any applicant  
10 who makes less than fifty *per centum* in any one branch, or whose  
11 general average is less than seventy *per centum*. A general aver-  
12 age of ninety *per centum* and over shall entitle an applicant to a  
13 first grade certificate; a general average of eighty *per centum* or  
14 more shall entitle the applicant to a second grade certificate; and  
15 a general average of seventy *per centum* or more shall entitle an  
16 applicant to a third grade certificate; but a third grade certificate  
17 may be issued if the applicant is proficient in spelling, reading,  
18 writing and the four fundamental rules of arithmetic. The certif-  
19 icates shall be valid for one year from their dates and only in the  
20 county in which they were issued. No branches shall be taught  
21 in the public schools except spelling, defining, reading, writing,  
22 arithmetic, English grammar, geography, and the history of the  
23 state and United States: *Provided*, that the school committee may  
24 make special arrangements to allow other branches to be taught.

**Sec. 1804. Teachers' institutes; teachers required to attend.**

1881, c. 200, s. 39.

The board of education of any county may appropriate an  
2 amount not exceeding one hundred dollars out of the school funds  
3 of the county for the purpose of conducting one or more teachers'  
4 institutes for said county; or the county commissioners of two or  
5 more adjoining counties may, if in their judgment deemed proper,  
6 donate an amount not exceeding one hundred dollars to each  
7 county, to some convenient and satisfactory point for the purpose  
8 of conducting a teachers' institute for said counties, and the pub-  
9 lic school teachers of the said county or counties are hereby re-  
10 quired to attend said institutes, which latter shall be open also to  
11 any teachers in the county or counties who may be desirous to  
12 attend them.

**Sec. 1805. County superintendent to have charge of institute, &c.**

1881, c. 200, s. 40.

A county teachers' institute, under the foregoing provision of  
2 this chapter, shall be under the supervision of the county superin-  
3 tendent of public instruction. In the event of a joint county  
4 teachers' institute, the supervision thereof shall be vested in a  
5 president to be elected by the institute from among the county  
6 superintendents present.



**Sec. 1806. Duties of county superintendent of public instruction ; powers; suspension of teacher.**

It shall be the duty of the county superintendent of public in-struction to visit and inspect the public schools of his county regularly ; he shall advise with the teachers as to the best methods of instruction and government, and to that end he shall keep himself thoroughly posted as to the progress of education in other counties, cities and states ; he shall have authority and is hereby invested with the same, to correct abuses, and to this end he may suspend any teacher who may be guilty of any immoral or disreputable conduct, or who may prove himself incompetent to discharge efficiently the duties of a public school teacher, or who may be persistently neglectful of said duties. Upon suspending a teacher under the provisions of this section, the county superintendent shall at once notify the school committee of the fact, advising them at the same time as to the cause of his action in the premises, whereupon the school committee shall take the case under advisement, and its decision, upon the hearing of the facts, shall be final.

1881, c. 200, s. 41.

**Sec. 1807. County superintendent to distribute blanks, &c.**

It shall be the duty of the county superintendent of public instruction to distribute to the various school committees of his county all such blanks as may be furnished by the state superintendent of public instruction for reports of school statistics for the several districts ; also blanks for teachers' reports and for orders on the treasurer of the county board of education for teachers' salaries ; he shall also distribute to the school committees school registers for their respective districts ; he shall advise with said committees as to the best methods of gathering the school statistics contemplated by such blanks, and, by all proper means, shall seek to have such statistics fully and promptly reported.

1881, c. 200, s. 42.

**Sec. 1808. County superintendent to countersign orders on treasurer of county board for payment of teachers' salaries.**

It shall be the duty of the county superintendent of public instruction to countersign all orders given by the several school committees upon the treasurer of the county board of education in payment of teachers' salaries, and it shall not be lawful for the said treasurer to pay such orders unless the same have been countersigned by the county superintendent of public instruction : *Provided*, that the said county superintendent shall not have authority to countersign any such order until the teacher, in whose favor it is drawn, shall have made the reports to the county superintendent required by the provisions of this chapter.

1881, c. 200, s. 43.

**Sec. 1809. County superintendent to deliver to county board catalogue of teachers, &c.**

The county superintendent of public instruction shall deliver to

1881, c. 200, s. 44.

2 the county board of education, on or before the first Monday in  
3 December in each and every year, a catalogue of all the teachers  
4 to whom he gave certificates during the year.

Sec. 1810. County superintendent to report to state superintendent number, &c.,  
of teachers, schools, &c.

1881, c. 200, s. 45.

It shall be the duty of the county superintendent of public in-  
struction of each county, on or before the first Monday in Decem-  
ber of every year, to report to the state superintendent of public  
instruction an abstract statement of the number, grade, race and  
sex of the teachers examined and approved by him during the  
year; also the number of public schools taught in the county du-  
ring the year for each race; the number of pupils of each race en-  
rolled in said schools; their average attendance; the number of  
females; the average length of the terms of said schools and the  
average salary, respectively, of the white and colored teachers; also  
full and accurate statistics of the number of school children in the  
county, giving race and sex; the number of school districts for  
each race and the number of public school houses and the value of  
public school property for each race; the number of teachers' in-  
stitutes held and the number of teachers that attended such insti-  
tutes; together with such suggestions as may occur to him promo-  
tive of the school interests of the county.

Sec. 1811. County superintendent to file copy of report to state superintendent in  
office of secretary of county board; to turn over to secretary census reports, &c.

1881, c. 200, s. 46.

The county superintendent of public instruction shall file a copy  
of his annual report to the state superintendent of public instruc-  
tion in the office of the secretary of the county board of education,  
and he shall also turn over to the said secretary the census reports  
and school statistics as reported to him by the school committees  
of the several districts, to be recorded by said secretary in pursu-  
ance of the provisions of this chapter.

Sec. 1812. Compensation of county superintendent.

1881, c. 200, s. 47.

Each county superintendent of public instruction who shall  
comply with the provisions of this chapter shall receive, as compen-  
sation for his services three dollars per day for all days necessarily  
engaged in the discharge of the duties of his position, of which  
said service he shall present, monthly, to the county board of ed-  
ucation, a certified account, whereupon it shall be the duty of the  
chairman and secretary of said board to draw an order on the  
treasurer of the county board of education for the amount due the  
county superintendent by virtue of this section. This order shall  
be paid by the said treasurer out of the school funds: *Provided*,  
that his salary shall not exceed five per centum of the school fund  
apportioned in the county.

**Sec. 1813. Oath of school committeemen.**

Before entering upon the duties of their office the school com- 1881, c. 200, s. 48  
2 mitteemen shall take an oath before a justice of the peace for the  
3 faithful discharge of the duties of that office.

**Sec. 1814. Meeting of school committee; chairman; clerk; record to be kept.**

The school committee of each school district, within fifteen days 1881, c. 200, s. 49  
2 after their election or appointment, shall meet at some convenient  
3 point within the school district, and organize by electing one of  
4 their number chairman, and another of their number clerk, of the  
5 school committee, and the said clerk shall keep a record of the  
6 proceedings of said committee in a book provided for that purpose.

**Sec. 1815. School committee to be a body corporate; name.**

The school committee of each school district shall be a body cor- 1881, c. 200, s. 50  
2 porate by the name and style of "The school committee of district  
3 number ....., in the county of ....., " and in that name shall  
4 be capable of purchasing and holding real and personal estate, and  
5 of selling and transferring the same for school purposes, and of  
6 prosecuting and defending suit for or against the corporation. All  
7 conveyances to school committees shall be to them and their suc-  
8 cessors in office.

Clifton v. Wynne, 80—145.

**Sec. 1816. School committee to take annual census of children; to report number of school houses to county superintendent, &c.**

It shall be the duty of the school committee of each district to 1881, c. 200, s. 51  
2 take and return to the county superintendent of public instruc-  
3 tion, on or before the first day of September in every year, a full  
4 and accurate census of the children between the ages of six and  
5 twenty-one, designating the race and sex. And the said commit-  
6 tee shall also report to the said county superintendent the number  
7 of public school houses and the value of all public school prop-  
8 erty for each race, separately.

**Sec. 1817. School committee authorized to employ and dismiss teachers, and to fix their pay.**

The school committee shall have authority to employ and dis- 1881, c. 200, s. 52  
2 miss teachers of the schools within their respective districts, and  
3 shall determine the pay per month to be paid to teachers in said  
4 schools: *Provided*, that no teacher shall be employed who does not  
5 produce a certificate from the county superintendent of public in-  
6 struction, dated within the time prescribed by this chapter: *And*  
7 *provided further*, that teachers of the third grade shall not receive  
8 out of the school fund more than fifteen dollars per month; of the  
9 second grade not more than twenty-five dollars per month, and  
10 teachers of the first grade shall receive such sum as may be deter-  
11 mined by the committee, subject to the approval of the county



12 board of education; but no teacher shall receive any compensation  
 13 for a shorter term than one school month of twenty days, unless  
 14 providentially hindered. No committeeman shall be a teacher,  
 15 nor shall he in any way be interested, by contract or otherwise, in  
 16 the erection or repairing of any school house in his district.

**Sec. 1818.** Teachers to render statement of number of pupils, &c., to school committee; when order for payment of teachers to be given.

1881, c. 200, s. 53.

At the end of every term of a public school, the teacher or principal of the school shall exhibit to the school committee of the district a statement of the number of pupils, male and female; the average daily attendance, the length of term and the time taught. If the committee are satisfied that the provisions of this chapter have been complied with, they shall give an order on the treasurer of the county board of education, payable to said teacher, for the full amount due for services rendered.

**Sec. 1819.** School committee empowered to receive gifts, &c.; deed, how executed; proceeds of sale; to have care of school house, &c., and to sell the same, &c.

1881, c. 200, s. 54.

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 jurisdictions, 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 site or other public school property, has become unnecessary for public school purposes, they shall sell the same at public auction, after advertisement for twenty days at three public places in the county. 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 treasurer of the county board of education for the school expenses in said school district.

**Sec. 1820.** Empowered to receive sites for school houses by donation or purchase; in case of purchase, approval of chairman and secretary of county board necessary; title; proceeding to condemn land for school house site.

1881, c. 200, s. 55.

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 treasurer of the county board of education for the purchase money, 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

9 to obtain a suitable site for a school by gift or purchase, they shall  
10 report to the county board of education, and the latter shall there-  
11 upon appoint three disinterested citizens, who shall lay off not  
12 more than one acre, and assess the cash value thereof and report  
13 their proceedings to the county board of education. If said report  
14 is confirmed by the said board, the chairman and secretary thereof  
15 shall approve the order which the district school committee shall  
16 give on the treasurer of the county board of education in favor of  
17 the owner of the land thus laid off, and upon payment or offer of  
18 payment of this order, the title to said land shall vest in the school  
19 committee and their successors in office; *Provided*, that improved  
20 land shall not be condemned under the provisions of this section:  
21 *And, provided, further*, that any person aggrieved by the action of  
22 said board may appeal to the superior court of the county in which  
23 said land is situate, upon giving bond to secure said board against  
24 such costs as they may incur on account of said appeal not being  
25 prosecuted with effect.

**Sec. 1821. School committee to deliver deeds to treasurer of county board.**

The school committee in each district shall deliver to the treas- 1881, c. 200, s. 56.  
2 urer of the county board of education all deeds for school house sites  
3 and other school property, to be recorded, if not already recorded,  
4 and deposited with said treasurer for safe-keeping as provided in  
5 this chapter.

**Sec. 1822. Duties of teachers; dismissal of pupil.**

It shall be the duty of all teachers of free public schools to main- 1881, c. 200, s. 57.  
2 tain good order and discipline in their respective schools, to en-  
3 courage morality, industry and neatness in all of their pupils, and  
4 to teach thoroughly all the branches which they are required to  
5 teach. If any pupil shall wilfully and persistently violate the  
6 rules of school, such pupil may be dismissed by the teacher for the  
7 current term.

**Sec. 1823. Teachers to keep daily records concerning pupils; grades in scholarship, in deportment; report to be made to county superintendent.**

Every teacher or principal of a school to which aid shall be 1881, c. 200, s. 58.  
2 given under the provisions of this chapter shall keep a daily record  
3 of all absences of pupils and of the grade in scholarship and de-  
4 portment of each. The grade in scholarship shall be indicated by  
5 the numbers 1, 2, 3, 4 and 5, 1 representing the highest or first  
6 grade and 5 the lowest, and the three intermediate numbers the  
7 three intermediate grades. The grades in deportment shall be  
8 represented by the same numbers and in the same order. At the  
9 end of every term every principal or teacher of a public school  
10 shall report to the county superintendent of public instruction the  
11 length of term of school, the race for which it was taught, the num-

12 ber sex and average daily attendance of the pupils, and the num-  
13 ber of the district in which the school was taught.

**Sec. 1824. School year.**

1881, c. 200, s. 59.

The school year shall begin on the first Monday in December.

**Sec. 1825. Every school receiving aid under this chapter to be a public school.**

1881, c. 200, s. 60.

Every school to which aid shall be given under the provisions  
2 of this chapter shall be a public school, to which children living  
3 within the district between the ages of six and twenty-one years  
4 shall be admitted free of charge for tuition: *Provided*, that the ad-  
5 mission of pay students shall be under the direction of the com-  
6 mittee.

**Sec. 1826. Tax of twelve and a half cents on every one hundred dollars of prop-  
erty and credits to be levied for support of public schools; poll-tax of thirty-  
seven and a half cents.**

1881, c. 200, s. 61.

In addition to the state and county capitation taxes, appropri-  
2 ated by the constitution, and other revenues for the support of the  
3 public schools, there shall be levied and collected every year for  
4 the maintenance and support of the public schools twelve and a  
5 half cents on every one hundred dollars' worth of property and  
6 credits in the state, and thirty-seven and a half cents on every poll  
7 in addition to the taxes in the revenue law.

**Sec. 1827. If taxes insufficient to maintain public schools for four months, board  
of commissioners to levy special tax; how collected, &c.**

1881, c. 200, s. 62.

If the tax levied in this chapter for the support of the public  
2 schools shall be insufficient to maintain one or more schools in  
3 each school district for the period of four months, then the board  
4 of county commissioners of each county shall levy annually a  
5 special tax to supply the deficiency for the support and main-  
6 tenance of said schools for the said period of four months. The  
7 said taxes shall be collected by the sheriff, in money, and he shall  
8 be subject to the same liabilities for the collection and accounting  
9 for said tax as he is or may be by law in regard to other county taxes.  
10 The said tax shall be levied on all property, credits and polls of  
11 the county, and in the assessment of the amount upon each, the  
12 commissioners shall observe the constitutional equation of taxa-  
13 tion; and the fund thus raised shall be appropriated in the county  
14 in which it is collected, in such manner as the county board of  
15 education may find necessary to continue the schools four months  
16 *per annum*.

**Sec. 1828. Misdemeanor to wilfully disturb any school, &c.**

1881, c. 200, s. 63.

Every person who shall wilfully interrupt or disturb any public  
2 or private school, or any meeting lawfully and peacefully held for  
3 the purpose of literary or scientific improvement, either within or



4 without the place where such meeting or school is held; or injure  
 5 any school building, or deface any school furniture, apparatus or  
 6 other school property, shall be guilty of a misdemeanor, and on  
 7 conviction thereof, shall be fined not exceeding fifty dollars, or im-  
 8 prisoned not more than thirty days, at the discretion of the court.

Sec. 1829. State superintendent of public instruction authorized to employ clerk;  
 his salary, how paid.

The state superintendent of public instruction is hereby author-  
 2 ized and empowered to employ a clerk at a salary of six hundred  
 3 dollars *per annum*, which shall be paid quarterly by the state treas-  
 4 urer on the warrant of the auditor, out of any funds which may  
 5 be in the treasury not otherwise appropriated.

1881, c. 200, s. 64.

#### UNIVERSITY OF NORTH CAROLINA.

Const., Art. IX, ss. 6, 7, 14, 15.

Sec. 1830. Incorporation of University.

WHEREAS, in all well-regulated governments, it is the indispen-  
 2 sable duty of every legislature to consult the happiness of a rising  
 3 generation, and endeavor to fit them for an honorable discharge of  
 4 the social duties of life, by paying the strictest attention to their  
 5 education; and whereas, an university supported by permanent  
 6 funds, and well endowed, would have the most direct tendency to  
 7 answer the above purpose: The trustees of the University shall be  
 8 a body politic and corporate, to be known and distinguished by  
 9 the name of The University of North Carolina, and by that name  
 10 shall have perpetual succession and a common seal; and that they,  
 11 the trustees and their successors, by the name aforesaid, or a ma-  
 12 jority of them, shall be able and capable in law to take, demand,  
 13 receive and possess all moneys, goods and chattels that shall be  
 14 given them for the use of the said University, and the same apply  
 15 according to the will of the donors, and by gift, purchase or devise  
 16 to take, have, receive, possess, enjoy and retain to them and their  
 17 successors forever, any and all real and personal estate and funds, of  
 18 whatsoever kind, nature or quality, the same may be, in special  
 19 trust and confidence, that the same, or the profits thereof, shall be  
 20 applied to and for the use and purposes of establishing and en-  
 21 dowing the said University.

R. S., vol II, p. 424.  
 1789.

Sec. 1831. Authority of trustees.

The said trustees and their successors, or a majority of them, by  
 2 the name aforesaid, shall be able and capable in law to bargain,  
 3 sell, grant, devise, alien or dispose of and convey and assure to the  
 4 purchasers, any and all such real and personal estate and funds  
 5 aforesaid, when the condition of the grant to them, or the will of  
 6 the deviser, does not forbid it. And further, that they the said  
 7 trustees, and their successors forever, or a majority of them, shall

R. S., vol. II, p.  
 425.  
 1789.

8 be able and capable in law, by the name aforesaid, to sue and im-  
 9 plead, be sued and impleaded, answer and be answered in all courts  
 10 of record whatsoever; and they shall have power to open and re-  
 11 ceive subscriptions, and in general they shall and may do all such  
 12 things as are usually done by bodies corporate and politic, or such  
 13 as may be necessary for the promotion of learning and virtue.

**Sec. 1832. Treasurer and his duties.**

R. S., vol. II, p.  
 426.  
 1789.

The trustees shall elect and commission some person to be treas-  
 2 urer for the said University during the term of two years, and un-  
 3 til his successor shall be elected and qualified; which treasurer  
 4 shall enter into bond, with sufficient securities, payable to the state  
 5 of North Carolina, in the sum of not less than ten thousand dol-  
 6 lars, conditioned for the faithful discharge of his office, and the  
 7 trust reposed in him; and that all moneys and chattels belonging  
 8 to the said corporation that shall be in his hands at the expiration  
 9 of his office, shall then be immediately paid and delivered into the  
 10 hands of the succeeding treasurer; and every treasurer shall re-  
 11 ceive all moneys, donations, gifts, bequests and charities whatso-  
 12 ever, that may belong or accrue to the said University during his  
 13 office, and at the expiration thereof shall account with the trustees  
 14 for the same, and the same pay and deliver over to the succeeding  
 15 treasurer; and on his neglect or refusal to pay and deliver as  
 16 aforesaid, the same method of recovery may be had against him,  
 17 as is or may be provided for the recovery of moneys from sheriffs  
 18 or other persons chargeable with public moneys.

**Sec. 1833. Trustees to appoint president and faculty, and confer degrees.**

R. S., vol. II, p.  
 427.  
 1789.

The trustees shall have the power of appointing a president of  
 2 the University and such professors, tutors and other officers as to  
 3 them shall appear necessary and proper, whom they may remove  
 4 for misbehavior, inability or neglect of duty; and they shall have  
 5 the power to make all such laws and regulations for the govern-  
 6 ment of the University and preservation of order and good mor-  
 7 als therein, as are usually made in such seminaries, and as to them  
 8 may appear necessary; provided the same are not contrary to the  
 9 inalienable liberty of a citizen, or to the laws of the state. And  
 10 the faculty of the University, that is to say, the president and pro-  
 11 fessors, by and with the consent of the trustees, shall have the  
 12 power of conferring all such degrees or marks of literary distinc-  
 13 tion, as are usually conferred in colleges or universities.

**Sec. 1834. Property exempt from taxation.**

R. S., vol. II, p.  
 428.  
 1789.

The lands and other property belonging to the University afore-  
 2 said, shall be exempt from all kinds of public taxation.

**Sec. 1835. Governor, *ex officio*, president.**

The governor, for the time being, shall be president of the board  
 2 of trustees of the University, and as such shall preside at all the  
 3 meetings of the said board at which he may be present; and if,  
 4 by indisposition or other cause, the governor shall be absent from  
 5 any meeting of the board, he may appoint, in writing, some other  
 6 person, being a trustee, to act as president for the time being, and  
 7 who shall preside accordingly; and if, at any time the governor  
 8 shall be absent at the meeting of the board, and shall not have  
 9 appointed as aforesaid a president, it shall be lawful for the board  
 10 to appoint a president for the time being who shall preside as such.

R. S., vol. II, p.  
 432.  
 1821.

**Sec. 1836. Meetings of trustees.**

There shall be an annual meeting of the board of trustees du-  
 2 ring the session of the general assembly, in the city of Raleigh,  
 3 and at such time and place as the president of the board may ap-  
 4 point; and at any of the annual meetings of the board any num-  
 5 ber of trustees, not less than ten, shall constitute a quorum and be  
 6 competent to exercise full power and authority to do the business  
 7 of the board, and the said board or the president thereof shall have  
 8 power to appoint special meetings of the trustees at such time and  
 9 place as, in their opinion, the interest of the institution may re-  
 10 quire; but no special meeting shall have power to revoke or alter  
 11 any order, resolution or vote of an annual meeting.

R. S., vol. II, p.  
 433.  
 1821.

**Sec. 1837. Vacancies in offices of secretary and treasurer, how filled.**

In case the office of secretary or treasurer of the board of trustees  
 2 of the University shall be vacant from any cause whatever, in the  
 3 recess of the board the president shall appoint a suitable person to  
 4 fill the same until the annual meeting of the board of trustees, at  
 5 which time the said board shall elect a proper person to fill the  
 6 said vacancy.

R. S., vol. II, p.  
 433.  
 1821.

**Sec. 1838. Trustees may at their annual meeting limit business of special meeting.**

The board of trustees at their annual meeting may, by resolu-  
 2 tion, vote or ordinance, from time to time, as to them shall seem  
 3 meet, limit, control and restrain the business to be transacted, and  
 4 the power to be possessed and exercised by special meetings of the  
 5 board, called according to law, and the powers of such special  
 6 meetings, shall be limited, controlled and restrained accordingly.  
 7 And every order, vote, resolution or other acts done, made or  
 8 adopted by any special meeting, contrary to any order, resolution,  
 9 vote or ordinance of the board, at an annual meeting, shall be ab-  
 10 solutely, to all intents and purposes, null and void.

R. S., vol. II, p.  
 433.  
 1824.

**Sec. 1839. Trustees may vacate appointment of trustee for improper conduct.**

The board of trustees shall have power to vacate the appoint-  
 2 ment and remove a trustee for improper conduct, stating the cause

R. S., vol. II, p.  
 432.  
 1821.



3 of such removal on their journal: *Provided*, that the same shall be  
 4 done at an annual meeting of the board, and that there shall be  
 5 present at the doing thereof at least twenty of the members of the  
 6 board.

**Sec. 1840. Number of trustees and their election.**

873-'4, c. 64, s. 1.

There shall be sixty-four trustees of the University of North Car-  
 2 olina elected by joint ballot of both houses of the general assem-  
 3 bly on the twenty-ninth day of January one thousand eight hun-  
 4 dred and seventy-four, whose term of office shall be eight years  
 5 from and after December first, one thousand eight hundred and  
 6 seventy-three, and in whom, when chosen, shall be vested all the  
 7 rights, privileges, franchises and endowments thereof, in anywise  
 8 granted to or conferred upon the trustees of said University.

Trustees v. McIver, 72—76.

**Sec. 1841. To meet in thirty days; classes.**

1873-4, c. 64, s. 2.

The first meeting of the trustees shall be held within thirty days  
 2 after their election, and at this and every subsequent meeting ten  
 3 shall constitute a quorum. The trustees at their first meeting shall  
 4 be divided into four classes. The seats of the first class shall be  
 5 vacated at the expiration of two years; of the second class at the  
 6 expiration of four years; of the third at the expiration of six years;  
 7 of the fourth at the expiration of eight years, so that one-fourth  
 8 may be chosen every second year.

**Sec. 1842. Vacancies, how filled.**

1873-'4, c. 64, s. 3.

Whenever any vacancy or vacancies shall happen in the said  
 2 board, it shall be the duty of the secretary of the board of trustees  
 3 to communicate to the general assembly the said vacancy or va-  
 4 cancies, and thereupon they shall elect by joint ballot of both houses  
 5 a suitable person or persons to fill the same.

**Sec. 1843. Rules and regulations.**

1873-'4, c. 64, s. 4.

The board of trustees shall have power to make such rules and  
 2 regulations for the management of the University as they may  
 3 deem necessary and expedient, not inconsistent with the constitu-  
 4 tion and laws of the state.

**Sec. 1844. Executive committee.**

1873-'4, c. 64, s. 5.

The board of trustees shall have power to appoint from their  
 2 own number an executive committee which shall be clothed with  
 3 the powers delegated to the executive committee under the preced-  
 4 ing organization of the University.

**Sec. 1845. Eight additional trustees of the University.**

1876-'7, c. 121, ss.  
 1, 2.

There shall be elected, by joint ballot of the general assembly,  
 2 eight trustees of the University, from points conveniently accessible

3 to the seat of government and the University, in addition to the  
 4 sixty-four now authorized, whose term shall commence with De-  
 5 cember first, one thousand eight hundred and seventy-seven. Two  
 6 of said trustees shall hold office for two years; two for four years;  
 7 two for six years, and two for eight years; and at the expiration of  
 8 their terms of service, their places shall be filled, from time to time,  
 9 in like manner, for eight years, so that one-fourth shall be elected  
 10 every two years, and vacancies in the office of the trustees under  
 11 this section are to be filled as provided in this chapter for other  
 12 trustees.

**Sec. 1846. Endowed with escheats.**

All the real estate which has escheated or may escheat to the  
 2 state, which has not been reduced into possession by the state or  
 3 the president and directors of the literary fund, shall be and hereby  
 4 is vested in the University of North Carolina.

R. C., c. 113, s. 11.  
 1789, s. 2.

*Gilmour v. Trustees of University*, 2 Hay., 108; *Trustees v. Foy*, 2 Hay., 310; *Trustees v. Foy*, 2 Hay., 374; *University v. Foy*, 1 Murph., 58.

**Sec. 1847. When personal property paid to University.**

All sums of money or other estate of whatever kind, which shall  
 2 remain in the hands of any executor, administrator or collector  
 3 for five years after his qualification, unrecovered or unclaimed by  
 4 suit, by creditors, next of kin or others entitled thereto, shall be  
 5 paid by the executor, administrator or collector, to the University  
 6 of North Carolina; and the University of North Carolina is author-  
 7 ized to demand, sue for, recover, and collect such moneys or other  
 8 estate of whatever kind, and hold the same without liability for  
 9 profit or interest, until a just claim therefor shall be preferred by  
 10 creditors, next of kin or others entitled thereto; and if no such  
 11 claim shall be preferred within ten years after such money or  
 12 other estate be received by the said University, then the same shall  
 13 be held by it absolutely.

1868-'9, c. 113, s. 76.

*University v. Maultsby*, 8 Ire. Eq., 257.

**Sec. 1848. Unclaimed dividends to go to University.**

All dividends heretofore declared, or which shall hereafter be de-  
 2 clared by any corporation, company or association, whether char-  
 3 tered or not, which shall not be recovered or claimed by suit by  
 4 the parties entitled thereto for five years after the same were or  
 5 shall be declared, shall be paid by the corporation, company or as-  
 6 sociation to the University of North Carolina, and the said Univer-  
 7 sity is authorized to demand, sue for, recover and collect such divi-  
 8 dends, and hold the same without liability for profit or interest  
 9 until a just claim therefor shall be preferred by the parties entitled  
 10 thereto, and if no such claim shall be preferred within ten years

1874-'5, c. 236, s. 1.

11 after such dividend shall be received by the said University, then  
 12 the same shall be held by it absolutely.

University v. N. C. R. R. Co., 76—103.

**Sec. 1849. Certain personal property deemed derelict and paid to University.**

Personal property of every kind, including dividends of corpo-  
 2 rations, or of joint-stock companies, or associations, choses in action,  
 3 and sums of money in the hands of any person, which shall not be  
 4 recovered or claimed by the parties entitled thereto, for five years,  
 5 after the same shall become due and payable, shall be deemed dere-  
 6 lict property, and shall be paid to the University of North Carolina  
 7 and held by it, as is provided in the preceding section.

**Sec. 1850. Receipts from all sources to be applied to maintenance of University.**

1874-'5, c. 236, s. 2.

All receipts heretofore had or hereafter to be had from dividends,  
 2 escheated property, derelict property, money or other property, in  
 3 the hands of executors, administrators or collectors, and from  
 4 any source whatever under authority of the state, and all in-  
 5 terest thereon, shall be exclusively devoted by said trustees to the  
 6 re-establishment and revival of the said University and the main-  
 7 tenance of the same. And the said University shall have power  
 8 to receive donations from any source whatever, to be exclusively  
 9 devoted to the aforesaid purposes or according to the terms of do-  
 10 nation.

**Sec. 1851. Land scrip transferred to the trustees of the University.**

1866-'7, c. 2, s. 1.

The land scrip given by the United States to the state of North  
 2 Carolina, for establishing an agricultural college, is hereby trans-  
 3 ferred to the University of North Carolina, for the purpose of effect-  
 4 ing the object of the grant: *Provided*, that the University shall  
 5 comply with the act of congress and make its leading object to  
 6 teach such branches of learning as are related to agriculture and  
 7 the mechanic arts, without excluding other scientific studies and  
 8 including military tactics.

**Sec. 1852. Trustees to dispose of the same, and establish two professorships.**

1866-'7, c. 2, s. 2.

The trustees of the University are hereby instructed to dispose  
 2 of the same as they may think best, and with the proceeds to es-  
 3 tablish, in addition to the course of instruction prescribed in the  
 4 regular curriculum of the University, two professorships, in which  
 5 the leading object shall be, without excluding other scientific and  
 6 classical studies, and including military tactics, to teach such  
 7 branches of learning as are related to agriculture and the me-  
 8 chanic arts, in such manner as the general assembly may pre-  
 9 scribe, in order to promote the liberal and practical education of



10 the industrial classes in the several pursuits and professions in  
11 life.

**Sec. 1853.** Board of commissioners of each county to select annually one native resident for gratuitous instruction in the University.

It shall be the privilege of the board of commissioners in each  
2 county in this state, forever to select annually one native of the  
3 state, resident in said county, of good moral character and capacity  
4 for usefulness, without the requisite means to defray the necessary  
5 expenses of education, who shall be admitted to any classes in the  
6 University, for which he may be prepared, free of all charges for  
7 tuition and room rent, so that each county may always have one  
8 representative at the institution. 1866-'7, c. 2, s. 3.

**Sec. 1854.** Who eligible to appointment as county student; revokable by board; when trustees to ask board to revoke appointment; student obtaining county appointment without being entitled liable for tuition, &c.

No person shall be appointed as a county student in the Uni- 1881, c. 141, s. 3.  
2 versity of North Carolina, unless it shall be proved to the satisfac-  
3 tion of the board of commissioners of said county, by the oaths of  
4 the applicant and of one or more credible witnesses, which shall be  
5 by affidavit, to be kept in the office of said board, that neither  
6 said applicant, nor his guardian, or parents, have the requi-  
7 site means to pay his tuition and room rent at the University, that  
8 he is a citizen of the state and a resident of said county, and that  
9 he is of good moral character and capacity for usefulness. The  
10 said appointment shall be revokable, if at any time the board shall  
11 be satisfied that the facts sworn to are untrue, or that the appli-  
12 cant, his guardian or parents shall have become able to pay such  
13 tuition and room rent. If the faculty of the University shall be-  
14 come satisfied that said student is not really entitled, they shall,  
15 after ten days' notice given to the said student, bring the facts to  
16 the attention of the board, and ask that his appointment be re-  
17 voked, which it shall be the duty of the board to do, if satisfied of  
18 the truth of the allegations. If any student shall obtain the  
19 county appointment as aforesaid without being entitled thereto,  
20 he shall be liable to pay tuition and room rent to the same ex-  
21 tent as if the appointment had not been made, and if he is a minor;  
22 his father or guardian shall be liable to pay the same.

**Sec. 1855.** Student receiving free tuition to promise in writing to teach after leaving the University.

The trustees shall require each student who may receive tuition 1881, c. 141, s. 4.  
2 free of charge at the University, to promise in writing to teach in  
3 some school in the state after leaving the University, for a period  
4 of time of at least half the length of that during which he may  
5 receive such free tuition at the University.

**Sec. 1856. Certificate of indebtedness to issue.**

1874-'5, c. 352, s. 1.

Whereas, the investment made by the late board of trustees of the University of North Carolina of one hundred and twenty-five thousand dollars of the fund derived from the land scrip donated by congress to this state for the establishment of one or more agricultural colleges was made in great part in worthless securities; and whereas, the state is bound by the conditions of the act of congress making said donation to restore the losses in said fund and to establish said college or pay back said fund to the United States; therefore, the state treasurer is directed to issue to the trustees of said University a certificate of indebtedness for one hundred and twenty-five thousand dollars, bearing interest from the first days of January, one thousand, eight hundred and seventy-five, with interest at six per cent., payable semi-annually, on the first days of July and January in each year, which shall be paid out of any moneys in the treasury not otherwise appropriated, said interest to be used by said trustees for the purpose of establishment of at least one college in accordance with the provisions of the aforesaid act of congress.

**Sec. 1857. Special tax bonds to be burned.**

1874-'5, c. 252, s. 2.

The bonds reported as in the hands of said trustees, commonly called "special tax bonds," being void and worthless, shall be burned by the said trustees, and the bonds not special tax bonds reported by them shall be held subject to the disposition of the general assembly.

**Sec. 1858. Annual appropriation of five thousand dollars to University payable in semi-annual installments.**

1881, c. 141, s. 1.

Whereas, the constitution of this state, by section six, chapter nine, provides that the general assembly shall have authority to provide for the maintenance and management of the University of North Carolina;

And whereas, by article nine and section seven of the constitution it is made the duty of the general assembly, as soon as practicable, to provide that the benefits of the University shall be extended to the youth of the state free of charge for tuition;

And whereas, by article nine, section fourteen of the constitution it is made the duty of the general assembly "to establish and maintain, in connection with the University, a department of agriculture, of mechanics, of mining and of normal instruction;"

And whereas, twelve years having elapsed since the adoption of the foregoing provisions of the constitution, in the opinion of the general assembly it is now practicable, and it therefore becomes their duty to the extent hereinafter mentioned to carry the same into effect;

And whereas, an efficient system of public schools cannot be ob-

19 tained without competent teachers for the same, and as it is of vast  
 20 importance to the well being of the state that its young men of all  
 21 pursuits shall be able to secure the advantages of higher education  
 22 as cheaply as possible; therefore,

23 The sum of five thousand dollars shall be appropriated out of  
 24 any moneys in the treasury not otherwise appropriated, payable to  
 25 the treasurer of the trustees of the University of North Carolina, in  
 26 equal semi-annual installments, on the first days of April and Oc-  
 27 tober of each and every year, beginning on the first day of April,  
 28 one thousand eight hundred and eighty-one.

**Sec. 1859. Manner in which appropriation shall be used.**

It shall be the duty of the trustees of the University to use said 1881, c. 141, s. 2.  
 2 appropriation, as far as may be practicable, in carrying into effect  
 3 the above recited sections of the constitution, and particularly they  
 4 shall provide such advanced instruction as may enable their stu-  
 5 dents to learn the art of teaching in the University normal school,  
 6 and to be well qualified to become teachers of the schools of the  
 7 state.

**Sec. 1860. License to retail at Chapel Hill, &c., void.**

Any license granted to retail spirituous or malt liquor, wine or 1879, c. 232, s. 1.  
 2 cordials at Chapel Hill, or within four miles thereof, shall be void.

**Sec. 1861. Places in four miles of, &c., for sale of liquors, forbidden.**

No person shall erect, keep, maintain, or have at Chapel Hill, or 1879, c. 232, s. 1.  
 2 within four miles thereof, any tippling house, establishment, or  
 3 place, for sale of wine, cordials, spirituous or malt liquor.

**Sec. 1862. No person without written permit to sell liquor to be used in four miles of Chapel Hill.**

It shall be unlawful for any person to sell or deliver, or offer to 1827, c. 4, s. 1.  
 2 sell or deliver, or directly or indirectly receive any compensation 1879, c. 232, s. 3.  
 3 for any spirituous or malt liquors, bitters or any intoxicating  
 4 drinks, for the purpose of being used, or with knowledge that the  
 5 same will be used at Chapel Hill, or within four miles thereof, by  
 6 any student of the University, without permission in writing from  
 7 the president of the University, or some member of its faculty.

**Sec. 1863. Electioneering treats within four miles forbidden.**

No person, at or within four miles of Chapel Hill, shall give or 1879, c. 113, s. 4.  
 2 furnish any electioneering treat or entertainment.

**Sec. 1864. Also billiard and gaming tables in five miles.**

No person shall set up, keep or maintain at Chapel Hill, or 1794, c. 429, amend-  
 2 within five miles thereof, any public billiard-table or other public  
 3 table of any kind at which games of chance or skill, by whatever



4 name called, may be played. Nor shall he keep, within said five  
5 miles, any house, place, ten-pin alley, or any implement, at which,  
6 or by means of which, any game of chance or hazard may be  
7 played.

**Sec. 1865. Also exhibitions in five miles without license.**

R. C., c. 113, s. 6.  
1824, c. 1252.

No person, without permission in writing obtained therefor from  
2 the president of the University or some member of its faculty seven  
3 days before hand, shall exhibit at Chapel Hill, or within five miles  
4 thereof, any theatricals, sleight of hand, or equestrian perform-  
5 ances, or any dramatic recitations or representations, or any rope  
6 or wire-dancing, natural or artificial curiosities, or any concert,  
7 serenade, or performance in music, singing or dancing.

**Sec. 1866. Violations of preceding sections a misdemeanor.**

R. C., c. 113, s. 7.  
1879, c. 232, s. 3.

Any person violating the provisions of the six preceding sec-  
2 tions shall be guilty of a misdemeanor, and upon conviction be-  
3 fore any justice of the peace having jurisdiction, shall be fined not  
4 less than ten dollars nor more than fifty dollars, or be imprisoned  
5 not less than ten days nor more than thirty days: *Provided*, that if  
6 the offender is not brought to trial before some justice of the peace  
7 within six months after the commission of the offence, the superior  
8 court in term for the county in which the offence was committed  
9 may take jurisdiction of the same and punish the offender at the  
10 discretion of the said court. *And provided further*, that no person  
11 shall be excused or incapacitated from confessing or testifying  
12 touching the violation of any of said six preceding sections, by  
13 reason of his having been a participant in the offences; but the  
14 confession or testimony of such person shall not be used against  
15 him in any criminal prosecution on account of such participation.

**Sec. 1867. Contracts with minor students without permission, void.**

R. C., c. 113, s. 8.

Every contract or agreement by any student of the University,  
2 being then a minor, with any shopkeeper, merchant, trader, or  
3 other person, upon the sale of any wine, cordial, spirituous or malt  
4 liquor, or of any goods, wares, or merchandise, or any article of  
5 trade, or with the keeper of any livery stable, shall be void, unless  
6 the same, if made at or within two miles of Chapel Hill, be made  
7 under the written permission of the president of the University or  
8 some member of its faculty; or, if made at a greater distance from  
9 Chapel Hill, under the written consent of the person who may have  
10 the control and authority over such student.

**Sec. 1868. Shall be avoided by plea.**

R. C., c. 113, s. 9.

Every contract made with a student of the University contrary  
2 to the provisions of the preceding section, shall be void, and may  
3 be avoided on account of any of the matters therein contained, on

4 the plea of the general issue. On the trial whereof, if it appear  
5 that the defendant was at the time of the alleged contract a student  
6 of the University, it shall be presumed that he was at the making  
7 thereof a minor.

**Sec. 1869. Incapable of confirmation.**

Every such contract shall be incapable of being confirmed; and R. C., c. 113, s. 10.  
2 any promise or obligation given by such student after his arrival  
3 at full age shall be void.

**NORMAL SCHOOLS.**

**Sec. 1870. Normal schools in connection with the University.**

It shall be lawful for the state board of education to establish a 1876-'7, c. 234, s. 1.  
1879, c. 54, ss. 1, 2.  
1881, c. 91, s. 1.  
2 normal school in connection with the University, for the purpose  
3 of teaching and training young men and women, of the white  
4 race for teachers of the common schools of the state; and to aid  
5 in defraying the expense of carrying on such normal school, the  
6 state board of education is authorized and instructed to draw upon  
7 the treasury for an amount not to exceed two thousand dollars  
8 annually, until the general assembly shall otherwise provide, to  
9 be paid out of any money in the treasury other than the school  
10 fund, not otherwise appropriated, to be used for the purpose herein  
11 stated, and for no other.

**Sec. 1871. Normal schools for colored persons.**

It shall be lawful for the state board of education to establish a 1876-'7, c. 234, s. 2.  
1879, c. 54, ss. 1, 2.  
1881, c. 91, s. 1.  
2 normal school at any place they may deem most suitable, either in  
3 connection with one of the colored schools of high grade in the  
4 state, or otherwise, for teaching and training young men and  
5 women of the colored race, from the age of fifteen to twenty-five  
6 years, for teachers in the common schools of the state for the col-  
7 ored race; and to aid in defraying the expense of carrying on such  
8 normal school the state board of education is authorized and in-  
9 structed to draw upon the treasury for an amount not to exceed  
10 two thousand dollars annually until the general assembly shall  
11 otherwise provide, to be paid out of any money in the treasury,  
12 other than the school fund, not otherwise appropriated, to be used  
13 for the purpose herein stated, and for no other: *Provided*, that a  
14 preparatory department may be established in connection with the  
15 colored normal school.

**Sec. 1872. State board of education to establish normal schools other than those at Fayetteville and the University.**

The state board of education is directed to establish other nor- 1881, c. 141, s. 5.  
2 mal schools than those at Fayetteville and the University, and  
3 the sum of two thousand dollars *per annum* is hereby appropriated  
4 for such schools for white teachers, and the sum of two thousand  
5 dollars for such schools for colored teachers authorized by this

6 chapter, in addition to the appropriation heretofore made for nor-  
 7 mal schools: *Provided, however,* that the number of schools shall  
 8 not be less than four for each color.

**Sec. 1873. Young persons educated at normal schools.**

1876-'7, c. 234, s. 3.

It will be required and expected of all young, of both races,  
 2 who may be thus taught and trained for teachers of common schools  
 3 at the cost of the state to apply themselves, as far as practicable, to  
 4 the occupation of teaching, within the borders of this state, for a  
 5 term of not less than three years after leaving school.

**GRADED SCHOOLS.**

**Sec. 1874. Graded schools.**

1876-'7, c. 285, s. 1.

In every township or every city or town having two thousand  
 2 inhabitants and upwards, any one hundred respectable citizens  
 3 thereof, freeholders therein, may apply by petition in writing to  
 4 the board of commissioners of the county in which said township,  
 5 city or town is situated, asking that an annual tax be levied  
 6 therein for the support of one or more graded schools in such town-  
 7 ship, whereupon on or before the next regular meeting of said  
 8 board, but not oftener than once a year, they shall order and direct  
 9 that the question whether such tax shall be levied be submitted to  
 10 the vote of the qualified voters of such township, city or town at  
 11 the different wards and election places therein, as prescribed in  
 12 chapter forty-six.

**Sec. 1875. Tax for graded schools.**

1876-'9, c. 285, s. 2.

In case a majority of the qualified voters at such election are in  
 2 favor of such tax, the same shall be levied and appropriated in such  
 3 township, city or town in the manner prescribed for the levy and  
 4 appropriation of other school funds. *Provided,* that the taxes so  
 5 levied and collected shall in no case exceed one-tenth of one per  
 6 centum on the value of property and thirty cents on the poll.

**Sec. 1876. Principal of graded school, his salary, &c.**

1876-'7, c. 285, s. 3.

The qualified principal of such graded schools and any other  
 2 teachers therein shall not be subject to the restrictions and limita-  
 3 tions of salary imposed in this chapter as to teachers of public  
 4 schools, but may be employed and paid such salary as the town-  
 5 ship, city or town school committee may deem just and reasonable.

**Sec. 1877. Townships not included.**

1876-'7, c. 285, s. 4.  
 1879, c. 309.

This chapter shall not apply to the townships in which are situ-  
 2 ated the cities of New Berne, Wilmington or Charlotte: *Provided,*  
 3 the provisions of this chapter shall extend to Cross Creek township,  
 4 in the county of Cumberland, provided the application for the  
 5 election shall be made by two hundred of the qualified voters of



6 said township who shall be freeholders therein; and at least one-  
7 half of such petitioners shall be of the white race.

Sec. 1878. Sense of voters to be taken as to the propriety of establishing public schools, &c.

The mayor, intendant or other chief officer of any city or incor- 1866-'7, c. 14, s. 1.  
2 porated town of the state shall be authorized to take the sense of  
3 those qualified to vote in the town or city elections, as to the pro-  
4 priety of establishing one or more public schools, to be supported  
5 by the taxes collected or authorized to be collected for corporation  
6 purposes; and the said mayor, intendant or other chief officer,  
7 shall give public notice of said election in the papers published in  
8 the corporation, and if there be none, by posters in three public  
9 places in each ward, at least twenty days before the election. And  
10 the mayor, intendant or other chief officer, shall make known the  
11 result of said vote, by public proclamation, and shall cause the  
12 whole proceedings to be recorded by the clerk of the corporation.

Sec. 1879. Election of school commissioners, one from each ward; ten days' notice of election to be given.

If a majority of the votes given in any election, held as above, 1866-'7, c. 14, s. 2.  
2 shall be in favor of public schools, the mayor, intendant or other  
3 chief officer of the corporation, shall cause an election to be held  
4 for school commissioners, one of whom shall be chosen for each  
5 ward of the corporation, and from those entitled to vote in the elec-  
6 tions of the corporation; of which election the mayor or other chief  
7 officer shall give ten days' notice, in three public places in each  
8 ward, and the said commissioners, after the first election, shall hold  
9 their offices until the succeeding day for the election of town offi-  
10 cers and until their successors are chosen, and every succeeding  
11 election for school commissioners shall be on the day for the elec-  
12 tion of mayor or intendant, and for one year, and until their suc-  
13 cessors are chosen.

Sec. 1880. Commissioners with mayor to constitute board of management; fine for failure of duty.

The commissioners so elected, with the mayor, intendant or other 1866-'7, c. 14, s. 3.  
2 chief officer of the corporation, shall constitute a board of whom  
3 the mayor or other chief officer of the corporation shall be *ex-officio*  
4 chairman, whose duty it shall be to manage the whole system of  
5 public schools of the corporation, to select and engage buildings  
6 for the said schools, to determine the number and character of the  
7 schools, to employ teachers, appoint visitors, and to do such other  
8 acts as are necessary to the success of the schools and consistent  
9 with the purposes of this chapter. And every such commissioner,  
10 who shall accept an appointment, as such, and fail to discharge the  
11 duties of his office, shall forfeit and pay a fine of ten dollars, to be

12 collected as other penalties, and paid to the town treasurer, for the  
13 use of the public schools.

**Sec. 1881. Statement of amount of appropriation to be annually furnished school commissioners.**

1866-'7, c. 14, s. 4.

In every town or city, voting in favor of public schools, the  
2 mayor, intendant or other chief officer, shall call a meeting of the  
3 authorities of said corporation, and cause to be prepared, for the  
4 board of school commissioners, a statement of the amount appro-  
5 priated by said authorities for public schools, and such a statement  
6 shall be annually furnished to the board of school commissioners  
7 within five days from their election.

**Sec. 1882. Additional tax for educational purposes authorized.**

1866-'7, c. 14, s. 5.

The authorities of cities and incorporated towns, establishing  
2 public schools, according to the provisions of this chapter, shall be  
3 required to set apart all the funds of said corporation that can be  
4 spared from other purposes, required by their charters and laws,  
5 passed in accordance herewith, for educational purposes, and in  
6 addition to the powers of taxation, with which they are already  
7 invested, they shall be authorized to levy and collect a poll tax on  
8 every white male inhabitant of the corporation, over twenty-one  
9 years old, of not more than two dollars, to be wholly appropriated  
10 to the use of the public schools.

**Sec. 1883. Treasurer of corporation to act as treasurer of school fund.**

1866-'7, c. 14, s. 6.

The treasurer of a corporation establishing a system of public  
2 schools, according to this chapter, shall be treasurer of the school  
3 fund, liable on his bond for it, shall keep said fund and its ac-  
4 counts separate and shall make an annual report in regard to the  
5 receipts and disbursements of school moneys, at the time and under  
6 the regulations in force when he renders his statements of other  
7 public funds, and all payments for the schools shall be made on  
8 drafts signed by the chairman of the board of commissioners, coun-  
9 tersigned by the clerk or secretary.

**Sec. 1884. Clerk of corporation to be secretary of board of school commissioners.**

1866-'7, c. 14, s. 7.

The clerk of the town or city, establishing a system of public  
2 schools, shall be *ex officio* secretary of the board of school commis-  
3 sioners, and shall discharge the duties of such under a penalty of  
4 ten dollars for every failure, to be collected as other fines, and paid  
5 to the school fund; and if there be no such clerk of the corpora-  
6 tion, the board of school commissioners shall elect one of their  
7 own number secretary, and it shall be the duty of the secretary to  
8 attend all meetings of the board, to record its proceedings in a book  
9 kept for that purpose, to issue notices, countersign warrants, and  
10 have his records open to the public inspection. And he may re-  
11 ceive for his services such compensation as the board may allow.

**Sec. 1885. Enumeration of white children required.**

It shall be the duty of the board of school commissioners of every town or city to number the white children of the corporation between the ages of six and twenty-one, and as soon as they receive a statement of the amount of money appropriated for schools for any one year, to provide first for primary schools for all the children who need them, and if, after such provision, there be other funds they may be used for schools of higher grade, and all the white children of the corporation, between the ages of six and twenty-one, shall be entitled to attend the public schools which they are qualified to enter: *Provided*, That the grades in the school shall regularly ascend, and the board shall be required to establish the lowest first, and next the schools of the next higher grade, and so on upward.

**Sec. 1886. Quarterly statement required.**

The board of school commissioners of each corporation shall make a quarterly statement to the town or city authorities of the condition of the schools, to be filed with the corporation records, and annually one month before the expiration of their term of office shall make a detailed report of all their operations, stating the number of white children in the corporation between the ages of six and twenty-one, the sums expended for school purposes, the number and grade of the schools, the attendance on each, the salaries paid teachers, and such other facts concerning the schools as may be important, which report shall be published, before the next election, in the papers of the corporation, and if there be none such, in pamphlets or hand-bills, and a copy shall be filed with the secretary of the board, and one, authenticated by the seal of office of the clerk of the county court, sent to the governor.

**Sec. 1887. Commissioners may hold and dispose of real and personal property in trust.**

The authorities of every corporation establishing a system of public schools shall be authorized to receive, buy, lease, sell and convey, for school purposes, real and personal property, to hold such property in trust for the schools, and to sue for injuries of trespass on the same.



## CHAPTER FORTY-SIX.

## ELECTIONS REGULATED.

## SECTION.

- 1888. State, legislative and county officers.
- 1889. Clerk of the superior court.
- 1890. Township constable.
- 1891. The board of commissioners of each county authorized to establish polling places.
- 1892. Secretary of state shall furnish suitable registration books.
- 1893. Books to be provided by the commissioners in certain cases.
- 1894. The board of commissioners shall select the registrars; candidates not eligible.
- 1895. Duty of registrars.
- 1896. Elector to vote in his own precinct.
- 1897. Registration books open to inspection; right of challenge.
- 1898. Judges of election, their duties.
- 1899. Persons who are not allowed to register or vote.
- 1900. Qualifications of electors; residence of electors; fraudulent registration or voting punishable by fine and imprisonment.
- 1901. Persons offering to register must be sworn; oath of electors.
- 1902. No registration allowed on the day of election except in certain cases.
- 1903. When electors or judges shall challenge.
- 1904. Oath of persons challenged; when vote to be rejected; challenge to be recorded; powers of judges of election.
- 1905. When polls to be opened and closed; manner of voting.
- 1906. Judges to deposit registration books with register of deeds.
- 1907. How officers shall be voted for; ballots to be on white paper and without device.
- 1908. County commissioners to provide ballot boxes; description of boxes; who to keep them.
- 1909. How boxes to be opened and the ballots counted; what tickets to be void.
- 1910. Delivery of the election returns.
- 1911. The board of county commissioners.
- 1912. A majority to constitute a quorum.
- 1913. The meeting of the board of county canvassers.
- 1914. The board of county canvassers to open and canvass the returns.
- 1915. An abstract of the votes to be made.
- 1916. Separate abstracts to be signed by the members of the board and filed.
- 1917. Contents of the abstract of the vote for county officers.
- 1918. Original returns to be filed with clerk of the superior court and recorded; duplicate to be sent to secretary of state.

## SECTION.

- 1919. Person having highest vote to be declared elected.
- 1920. Result of election to be proclaimed at the court house.
- 1921. Returning officers of senatorial districts, when and where to meet; penalty for failing to make returns; returns, how examined and compared.
- 1922. Certificate of election, when and how furnished.
- 1923. Return for state officers, when, by whom and how made; certificate of sheriff; to whom statement to be sent, delinquent returning officer, &c.
- 1924. Secretary of state to prepare and transmit forms.
- 1925. Returns for state officers, how and by whom opened and published; in cases of defective returns, who to be declared elected; tie votes; contested elections.
- 1926. An abstract of the returns to be made by the clerks, and signed by the presiding officers of the general assembly, and filed with secretary of state.
- 1927. Penalty on officers for non-performance of duty under this chapter.
- 1928. Wilful or malicious neglect of officers to perform their duties.
- 1929. Penalty for fraudulent registration or voting.
- 1930. Penalty for corruptly taking the oath prescribed for voters.
- 1931. Secretary of state to furnish copies of the election law to the board of commissioners of each county.
- 1932. Armed men not to muster on day of election.
- 1933. Breaking up or staying elections.
- 1934. Treating at elections.
- 1935. Intimidation of voters.
- 1936. Bribery at elections.
- 1937. Betting on elections.
- 1938. Congressional elections.
- 1939. Representation in congress; districts.
- 1940. Congressman from the state at large; when there shall be such, and how elected.
- 1941. Time and manner of conducting congressional elections.
- 1942. Vacancies in representation, how filled.
- 1943. Representatives in congress commissioned by the governor.
- 1944. Compensation of registrars, returning officers and the members of the board of state canvassers.

## BOARD OF STATE CANVASSERS.

## SECTION.

- 1945. Board of state canvassers, who shall constitute.
- 1946. Returns not received in time, secretary of state shall obtain original abstracts.

## SECTION.

- 1947. Abstracts to be opened, when and by whom.
- 1948. Records of the returns to be kept by the secretary of state.

## SECTION.

1949. Certificate of election, when, how and to whom furnished.
1950. Statement of votes cast for officers of the executive department to be published by state canvassers.

## SECTION.

1951. Who shall be commissioned by the governor; when term of office shall begin.

## MISCELLANEOUS.

## SECTION.

1952. Illegal registration.
1953. Persons having been convicted of an infamous crime, may be challenged and required to answer; convicted person not allowed to vote unless restored to the rights of citizenship.
1954. Powers and duties of judges of election in regard to the examination of voters.
1955. Powers of the judges of election, and the various boards of canvassers.

## SECTION.

1956. Official vacancies, how filled.
1957. How vacancies in the general assembly to be filled.
1958. Elections ordered by the governor shall be conducted as other elections.
1959. Qualification of voters in municipal elections.
1960. Intoxicating liquors not to be given away or sold on day of election.
1961. On what day elections shall be held.

## ELECTORS OF PRESIDENT AND VICE-PRESIDENT OF THE UNITED STATES.

## SECTION.

1962. When election to be held.
1963. Names of electors to be on each ballot; how electors allotted.
1964. Election to be as in case of state.
1965. Meeting of county canvassers, their duties; sheriff to send certificates of election to secretary of state.
1966. Secretary of state to deliver returns to board of state canvassers; duties of the board; organization of the electors.
1967. College of electors to proceed in conformity to the constitution and laws of the United States.

## SECTION.

1968. Vacancies in offices of president and vice-president; governor to order another election for electors.
1969. Electors failing to attend; officers making false returns; refusal by register of deeds or clerk of the superior court to furnish certified copies of the returns; penalties.
1970. Compensation and privileges of electors.

## Sec. 1888. State, legislative and county officers.

On the Tuesday next after the first Monday in November, in the 2 year of our Lord one thousand eight hundred and eighty, and 3 every four years thereafter, an election shall be held in the several 4 election precincts in each county for the following officers: First, 5 governor; second, lieutenant governor; third, secretary of state; 6 fourth, auditor; fifth, treasurer; sixth, superintendent of public 7 instruction; seventh, attorney general. And on said Tuesday next 8 after the first Monday in November in the year aforesaid, and 9 every two years thereafter, an election shall be held for members 10 of congress in the several districts; members of the general assem- 11 bly for their respective counties and districts; a register of deeds, 12 county surveyor, coroner and sheriff for their respective counties; 13 and in such counties as have one, a county treasurer.

1876-'7, c. 275, s. 1.

Rhodes v. Lewis, 80—136; Kilburn v. Latham, 81—312; see 1871-'2, c. 185; 1873-'4, c. 132; 1874-'5, c. 237; 1876-'7, c. 141, s. 2; 1879, c. 152.

## Sec. 1889. Clerk of the superior court.

On the Tuesday next after the first Monday in November, in the 2 year of our Lord one thousand eight hundred and eighty-two, and

1879, c. 152, s. 1.

3 on said day every four years thereafter, an election shall be held  
4 in each county for the office of clerk of the superior court.

Threadgill v. C. C. R'y Co., 73—178.

**Sec. 1890. Township constable.**

1879, c. 152, s. 1.

On the Tuesday next after the first Monday in November, in the  
2 year of our Lord one thousand eight hundred and eighty, and on  
3 said day every two years thereafter, an election shall be held in  
4 each township for the office of constable.

**Sec. 1891. The board of commissioners of each county authorized to establish polling places.**

1871-'2, c. 185, s. 2.  
1876-'7, c. 275, s. 4.  
1879, c. 152, s. 1.

The board of commissioners of each county, a majority being  
2 present, shall have power to establish, alter, discontinue or create  
3 such separate places of election in their respective counties as they  
4 may deem expedient, giving thirty days' notice thereof by ad-  
5 vertisement in some public journal, if there be one published in  
6 the county, or in lieu thereof in three places in such county, and  
7 at the court house thereof; but there shall be at least one polling  
8 place in every township, as nearly central as possible, and there  
9 shall be a polling place open in each ward of a city numbering  
10 over three thousand inhabitants.

**Sec. 1892. Secretary of state shall furnish suitable registration books.**

1876-'7, c. 275, s. 3.

The secretary of state shall provide for and forward to the boards  
2 of commissioners of counties, on their requisition, suitable regis-  
3 tration books, whenever needed, for each election precinct as estab-  
4 lished heretofore, and for any new precincts which may be estab-  
5 lished under the preceding section.

See 1871-'2, c. 185, s. 3; 1874-'5, c. 237, s. 3.

**Sec. 1893. Books to be provided by the commissioners in certain cases.**

1871-'2, c. 185, s. 4.  
1876-'7, c. 275, s. 4.

If the boards of county commissioners do not receive a sufficient  
2 number of registration books, as provided in the preceding section,  
3 they are authorized and directed to provide the same for their re-  
4 spective counties at the expense of the state.

**Sec. 1894. The board of commissioners shall select registrars; candidates not eligible.**

1876-'7, c. 275, s. 5.  
1879, c. 152, s. 1.

The board of commissioners of the several counties shall select,  
2 on or before the first Monday of the month preceding each elec-  
3 tion, one or more persons for each election precinct, who shall act  
4 as registrars of voters for such precinct. Said board shall make  
5 publication of the names of the persons so selected, at the court  
6 house door, immediately after such appointment, and shall cause  
7 a notice to be served upon said persons by the sheriff. If any  
8 registrar shall refuse or neglect to perform his duties, the justices  
9 of the peace for the township may remove him and appoint an-



11 other in his place. And no person who is a candidate for any  
12 office shall be a registrar or judge or inspector of an election.

See 1871-'2, c. 185, s. 5; 1874-'5, c. 230.

**Sec. 1895. Duty of registrars.**

Registrars shall be furnished with a registration book, and it  
2 shall be their duty to revise the existing registration books of their  
3 precinct or township in such manner that said books shall show  
4 an accurate list of electors previously registered in such precinct  
5 or township, and still residing therein, without requiring such  
6 electors to be registered anew; and such registrars shall also, be-  
7 tween the hours of sunrise and sunset on each day, (Sundays ex-  
8 cepted), for thirty days preceding each election, keep open said  
9 books for the registration of any electors residing in such precinct  
10 or township, and entitled to registration, whose names have never  
11 before been registered in such precinct or township, or do not ap-  
12 pear in the revised list. But the board of commissioners for each  
13 county may, upon giving thirty days' notice in each township, if  
14 they shall think proper, direct that there shall be an entirely new  
15 registration of voters before any election, instead of the revision of  
16 the registration lists, as above provided.

1876-'7, c. 275, s. 6.

Peebles v. Com'rs of Davie, 82—385. See 1871-'2, c. 185, s. 6.

**Sec. 1896. Elector to vote in his own precinct.**

No elector shall be entitled to register or vote in any other pre-  
2 cinct or township than the one in which he is an actual and *bona*  
3 *fide* resident on the day of election, and no certificates of registra-  
4 tion shall be given.

1871-'2, c. 185, s. 7.  
1876-'7, c. 275, s. 7.

**Sec. 1897. Registration books open to inspection; right of challenge.**

It shall be the duty of the registrars and judges of election to at-  
2 tend at the polling place of their township or precinct with the reg-  
3 istration books on the Saturday preceding the election, from the  
4 hour of nine o'clock, a. m., till the hour of five o'clock, p. m., when  
5 and where the said books shall be open to the inspection of the  
6 electors of the precinct or township, and any of said electors shall  
7 be allowed to object to the name of any person appearing on said  
8 books. In case of any such objection, the registrar shall enter upon  
9 his books, opposite to the name of the person so objected to, the  
10 word "challenged," and shall appoint a time and place, on or be-  
11 fore the election day, when he, together with said judges of elec-  
12 tion, shall hear and decide said objection, giving due notice to the  
13 voter so objected to: *Provided*, that nothing in this section con-  
14 tained shall be construed to prohibit the right of any elector to  
15 challenge or object to the name of any person registered or offering  
16 to register at any time other than that above specified. If any per-  
17 son challenged or objected to shall be found not duly qualified, as

1871-'2, c. 185, s. 8.  
1876-'7, c. 275, s. 8.

18 provided in this chapter, or as provided in the constitution; the  
19 registrar shall erase his name from the books.

*Peebles v. Commissioners of Davie*, 82—385.

**Sec. 1898. Judges of election, their duties.**

1871-'2, c. 185, s. 9.  
1876-'7, c. 275, s. 9.  
1879, c. 152, s. 1.

The board of commissioners for each county, on or before the  
2 first Monday of the month next preceding the month in which  
3 each election is held, shall appoint four judges or inspectors of  
4 election, two of whom shall be of a different political party, where  
5 possible, from the registrars, at each place of holding election in  
6 their respective counties. The said judges of election shall attend  
7 at the places for which they are severally appointed on the day of  
8 election, and they, together with the registrars for such precinct or  
9 township, who shall attend with the registration books, after being  
10 sworn by some justice of the peace, or other person authorized to  
11 administer oaths, to conduct the election fairly and impartially  
12 according to the constitution and laws of the state, shall open the  
13 polls and superintend the same until the close of the election.  
14 They shall keep poll books, in which shall be entered the name of  
15 every person who shall vote, and at the close of the election the  
16 judges of election shall certify the same over their proper signa-  
17 tures, and deposit them with the register of deeds for safe-keeping.  
18 And said poll books shall, in any trial for illegal or fraudulent vot-  
19 ing, be received as evidence. The board of commissioners shall,  
20 immediately after the appointment of the judges of election, as  
21 herein provided, furnish a list of the names of such judges to the  
22 sheriff of their county, who shall, within ten days, serve notice of  
23 such appointment upon the said judges; and if, for any cause, any  
24 person appointed judge of election shall fail to attend, the registrars  
25 of such township shall appoint some discreet person to act as such,  
26 who shall be by him sworn before acting, and shall be of the same  
27 political party as the absent judge or judges.

*Peavey v. Robbins*, 3 Jon., 339.

**Sec. 1899. Persons who are not allowed to register or vote.**

1876-'7, c. 275, s. 10.

The following classes of persons shall not be allowed to register  
2 or vote in this state, to-wit: First, persons under twenty-one years  
3 of age; second, idiots and lunatics; third, persons who, upon  
4 conviction or confession in open court, shall have been adjudged  
5 guilty of felony or other crime infamous by the laws of this state,  
6 committed after the first day of January, in the year of our Lord  
7 one thousand eight hundred and seventy-seven, unless they shall  
8 have been legally restored to the rights of citizenship in the man-  
9 ner prescribed by law.

*Perry v. Whitaker*, 71—475. See Const., Art. VI, s. 1; 1871-'2, c. 185, s. 10.

**Sec. 1900. Qualification of electors; residence of electors; fraudulent registration or voting punishable by fine and imprisonment.**

Subject to the foregoing exceptions, every male person born in 1876-'7, c. 275, s. 11.  
 2 the United States, and every male person who has been natural-  
 3 ized, twenty-one years of age, who shall have resided in the state  
 4 twelve months next preceding the election, and ninety days in the  
 5 county in which he offers to vote, shall be deemed a qualified  
 6 elector in the precinct or township in which he resides; and all  
 7 electors shall register and vote in the election precinct of their res-  
 8 idence. The residence of a married man shall be where his fam-  
 9 ily resides, and that of a single man where he boards and sleeps;  
 10 and should any single man board in one ward or precinct and  
 11 sleep in another, then his residence shall be in the ward or pre-  
 12 cinct in which he sleeps, and he shall not register or vote in any  
 13 other ward or precinct. But no elector shall be allowed to regis-  
 14 ter in any ward or precinct to which he shall have removed for  
 15 the mere purpose of being a voter therein, nor unless his residence  
 16 therein is actual and *bona fide*. And it shall be the duty of the  
 17 registrar or judge of election, when requested by any bystander,  
 18 to swear any person offering to register or vote, as to his residence,  
 19 and to have placed in writing opposite his name the word "sworn,"  
 20 and any person knowingly and fraudulently registering or voting  
 21 at any other place than that of his *bona fide* residence shall be guilty  
 22 of a crime infamous by the laws of this state, and on conviction  
 23 thereof shall be punished by a fine not exceeding one thousand  
 24 dollars, or imprisoned at hard labor not exceeding two years, or  
 25 both, in the discretion of the court.

Peavey v. Robbins, 3 Jones, 339; Perry v. Whitaker, 71—475. See Const., Art. VI, s. 1; 1871-'2,  
 c. 185, s. 10.

**Sec. 1901. Persons offering to register must be sworn; oath of electors.**

Every person who shall present himself for registration shall 1876-'7, c. 275, s. 12.  
 2 state under oath how long he has continuously resided in this state  
 3 and in the county in which he offers to vote; whether he is an  
 4 alien or native born; when he became twenty-one years of age;  
 5 whether married or single, and where or with whom he resides.  
 6 Upon the request of any elector the registrar shall require the ap-  
 7 plicant to prove his identity or age and residence by the testimony  
 8 of at least one elector, under oath. And if an elector has pre-  
 9 viously been admitted to registration in any ward, township or  
 10 precinct in the county in which he resides he shall not be allowed  
 11 to register again in another ward, precinct or township in the same  
 12 county until he produces a certificate of the registrar of the former  
 13 township, ward or precinct, that said elector has removed from said  
 14 township, ward or precinct, and that his name has been erased  
 15 from the registration books of the ward, township or precinct from  
 16 which he has removed; and the identity of any person claiming a



17 right to be registered in any precinct of the same county by virtue  
 18 of such certificate, with the person named therein, shall be proved  
 19 by the oath of the claimant, and, when required by the registrar,  
 20 by the oath of at least one other elector. Every person found quali-  
 21 fied shall take the following oath :

"I, ....., do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the state of North Carolina; that I have been a resident of the state of North Carolina for twelve months, and of the county of ..... for ninety days; that I am a duly qualified elector, 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 (or precinct). So help me God."

22 And thereupon said person shall be permitted to register, and  
 23 the date of his registration shall be noted opposite his name in the  
 24 registration book.

**Sec. 1902.** No registration allowed on the day of election except in certain cases.

1871-'2, c. 185, s. 11.  
 1876-'7, c. 275, s. 13.

No registration shall be allowed on the day of election; but if  
 2 any person shall give satisfactory evidence to the judges of the  
 3 election that he has become of the age of twenty-one years on the  
 4 day of election, or has for any other reason on that day become  
 5 entitled to register, he shall be allowed to register and vote.

**Sec. 1903.** When electors or judges shall challenge.

1871-'2, c. 185, s. 12.  
 1876-'7, c. 275, s. 14.

On the day of election any elector may, and it shall be the duty  
 2 of the judges of election to challenge the vote of any person who  
 3 may be known or suspected not to be a duly qualified voter.

**Sec. 1904.** Oath of persons challenged; when vote to be rejected; challenge to be recorded; powers of judges of election.

1871-'2, c. 185, s. 13.  
 1876-'7, c. 275, s. 15.

When any person is so challenged, the judges shall explain to  
 2 him the qualifications of an elector, and shall examine him as to  
 3 his qualifications, and if the person insists that he is qualified, and  
 4 shall prove his identity with the person in whose name he offers  
 5 to vote, or his continued residence in the precinct since his name  
 6 was placed upon the registration list, as the case may be, by the  
 7 testimony, under oath, of at least one other elector, one of the  
 8 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 ninety 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 have been ever since you were so registered, 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 other polling place. So help you God."

9 And if he refuses to take such oath, his vote shall be rejected;  
 10 if, however, he does take the oath when tendered, his vote shall  
 11 be received: *Provided*, that after such oath shall have been taken,

12 the judges may, nevertheless, refuse to permit such person to vote  
13 if they be satisfied from record evidence, or their own knowledge,  
14 or other legal testimony adduced before them, that he is not a  
15 legal voter; and they are hereby authorized to administer the  
16 necessary oaths or affirmations to all witnesses brought before them  
17 to testify to the qualifications of a person offering to vote. When-  
18 ever any person's vote shall be received after having taken the  
19 oath prescribed in this section, it shall be the duty of the clerks of  
20 the election to write on the poll books at the end of such person's  
21 name the word "sworn." The same powers as to the administra-  
22 tion of oaths and the examination of witnesses, as in this section  
23 granted to judges of elections, may be exercised by the registrars  
24 in all cases where the names of persons registered or offering to  
25 register are objected to.

State v. Colbert, 75—338.

**Sec. 1905. When polls to be opened and closed; manner of voting.**

The polls shall be opened on the day of election from seven  
2 o'clock in the morning until sunset of the same day, and no longer;  
3 and each voter whose name may appear registered, and who shall  
4 not be challenged and rejected, shall hand in his ballots to the  
5 judges, who shall carefully deposit the ballots in the ballot boxes.

1871-'2, c. 185, s. 14.  
1876-'7, c. 275, s. 16

**Sec. 1906. Judges to deposit registration books with the register of deeds.**

Immediately after any election the judges of election shall de-  
2 posit the registration books for their respective precincts with the  
3 register of deeds of their respective counties.

1871-'2, c. 185, s. 15.

See R. C., c. 52, s. 18; 1777, c. 116, s. 19.

**Sec. 1907. How officers shall be voted for; ballots to be on white paper and without device.**

The state officers, viz: governor, lieutenant governor, secretary  
2 of state, auditor, treasurer, superintendent of public instruction,  
3 and attorney general shall be voted for on one ballot. The mem-  
4 bers of congress for their respective districts shall be voted for on  
5 one ballot. The member or members of congress for the state at  
6 large, if there be such, shall be voted for on one ballot. The jus-  
7 tices of the supreme court, judges of the superior court and solici-  
8 tors shall be voted for on one ballot. The members of the general  
9 assembly for their respective counties and districts shall be voted  
10 for on one ballot. The county officers for the respective counties,  
11 viz: clerk of the superior court, treasurer, register of deeds, sur-  
12 veyor, coroner and sheriff shall be voted for on one ballot. The  
13 ballots shall be on white paper, and may be printed or written, or  
14 partly written and partly printed, and shall be without device.

1871-'2, c. 185, s. 16

Wilson v. Peterson, 69—113.

**Sec. 1908. County commissioners to provide ballot boxes; description of boxes; who to keep them.**

1871-'2, c. 185, s. 17.  
1876-'7, c. 275, s. 19.

The board of county commissioners, or upon their failure the 2 inspectors of election, shall provide for each election precinct in 3 their respective counties, ballot boxes for each class of officers to 4 be voted for, in which to deposit the ballots for such officers re- 5 spectively. Each of said boxes shall have an opening through 6 the lid of sufficient size to admit a single folded ballot, and no 7 more. The said ballot boxes shall be kept by the judges of elec- 8 tion for the use of their several election precincts respectively. 9 And said judges of election, before the voting begins, shall care- 10 fully examine the ballot boxes and see that there is nothing in 11 them.

**Sec. 1909. How boxes to be opened and the ballots counted; what tickets to be void.**

1871-'2, c. 185, s. 18.

When the election shall be finished, the registrars and judges of 2 election, in presence of such of the electors as may choose to at- 3 tend, shall open the boxes and count the ballots, reading aloud 4 the names of the persons who shall appear on each ticket; and if 5 there shall be two or more tickets rolled up together, or any ticket 6 shall contain the names of more persons than such elector has a 7 right to vote for, or shall have a device upon it, in either of these 8 cases such tickets shall not be numbered in taking the ballots, but 9 shall be void, and the said counting of votes shall be continued 10 without adjournment until completed and the result thereof de- 11 clared.

Perry v. Whitaker, 71—475.

**Sec. 1910. Delivery of the election returns.**

1876-'7, c. 275, s. 21.

The judges of election in each township, ward or precinct shall 2 appoint one of their number to attend the meeting of the board 3 of county canvassers, as a member thereof, and shall deliver to 4 the member who shall have been so appointed the original return 5 or statement of the result of the election in such township, ward 6 or precinct; and it shall be the duty of the members of the several 7 townships, wards or precinct boards of election, who shall have 8 been so appointed, to attend the meeting of the board of county 9 canvassers for such election in the county in which they shall have 10 been appointed as members thereof.

See 1871-'2, c. 185, s. 19.

**Sec. 1911. The board of county canvassers.**

1876-'7, c. 275, s. 22.

The members of the several township boards of election to whom 2 the original returns or statements of the result of the election in 3 the precincts or townships to which they respectively belong shall 4 have been delivered, as directed in the next preceding section, shall 5 constitute the board of county canvassers for such election in the 6 county in which such precinct or township shall be situated; and



7 the register of deeds of such county shall be the clerk of such  
8 board, unless the board shall prefer to elect another person in his  
9 place.

**Sec. 1912. A majority to constitute a quorum.**

A majority of the members of the several precinct boards of elec-  
2 tion who shall have been appointed to attend the meeting of the  
3 board of county canvassers as members thereof, shall be sufficient  
4 to constitute such board.

1876-'7, c. 275, s. 23

**Sec. 1913. The meeting of the board of county canvassers.**

The board of county canvassers shall meet on the second day  
2 next after every election, at twelve o'clock, noon, of that day, at  
3 the court house of the county, and at that hour, without delay, the  
4 members of such board who shall be then present, shall proceed  
5 to choose one of their number, who shall be the chairman thereof:  
6 *Provided*, that the board of county canvassers of Carteret, Hyde and  
7 Dare, shall meet on the seventh day after the election; and as soon  
8 as such chairman shall be appointed, it shall be the duty of such  
9 chairman to administer to each of the other members, and of each  
10 of the other members to take an oath or affirmation in the follow-  
11 ing form: "You do swear (or affirm) that you will faithfully and  
12 impartially execute the duties of the board of canvassers according  
13 to law." And thereupon one of the members of such board, to be  
14 appointed by such board for that purpose, shall administer to such  
15 chairman, and such chairman shall take an oath or affirmation in  
16 the same form as that taken by the other members of the board.  
17 And before proceeding to canvass and estimate the votes in such  
18 county, the chairman of the board shall administer to the clerk  
19 thereof an oath or affirmation in the following form: "You do  
20 swear (or affirm) that you will faithfully execute the duties of  
21 clerk of this board according to law."

1876-'7, c. 275, s. 24.

Moore v. Jones, 76—182. See 1871-'2, c. 185, s. 19.

**Sec. 1914. The board of county canvassers to open and canvass the returns.**

The board of county canvassers shall, at their said meeting, in  
2 the presence of the sheriff and of such electors as choose to attend,  
3 open and canvass and judicially determine the returns, and make  
4 abstracts, stating the number of legal ballots cast in each precinct  
5 for each office, the name of each person voted for, and the number  
6 of votes given to each person for each different office, and shall  
7 sign the same.

1876-'7, c. 275, s. 25]

Moore v. Jones, 76—182; O'Hara v. Powell, 80—103; Swain v. McRae, 80—111; Peebles v.  
Com'rs of Davie, 82—385. See 1871-'2, c. 185, s. 19.

**Sec. 1915. An abstract of the votes to be made.**

1876-'7, c. 275, s. 26.

The abstract of the votes for each of the following classes shall  
2 be made on a different sheet:

3 (1) Governor and all state officers;

4 (2) Representatives in congress;

5 (3) Senators and representatives in the general assembly;

6 (4) Justices of the supreme court, judges of the superior court,  
7 and solicitors.

8 (5) County officers.

O'Hara v. Powell, 80—103.

**Sec. 1916. Separate abstracts to be signed by the members of the board and filed.**

1876-'7, c. 275, s. 27.

Three abstracts of all the votes cast for any state officer, for rep-  
2 resentatives in congress, for justices of the supreme court, for judges  
3 of the superior court, and for solicitor, shall be made and signed by  
4 the chairman of the board of county canvassers, one of which shall  
5 be delivered to the sheriff of the county, one filed with the register  
6 of deeds, to be registered in his office, and one forwarded by mail  
7 in a registered letter to the secretary of state at Raleigh. Also  
8 two separate abstracts of all the votes cast for state senators when  
9 the senatorial district consists of more than one county, one of  
10 which shall be filed with the register of deeds, to be registered in  
11 his office, and the other furnished to the sheriff of the county or  
12 other returning officer.

O'Hara v. Powell, 80—103.

**Sec. 1917. Contents of the abstract of the vote for county officers.**

1876-'7, c. 275, s. 28.

Each abstract of the votes cast for such officers as the county  
2 alone elects shall contain an accurate statement of all the persons  
3 voted for and the number of legal votes cast for each.

**Sec. 1918. Original returns to be filed with clerk of the superior court and recorded; duplicate to be sent to secretary of state.**

1876-'7, c. 275, s. 29.

When the canvass is concluded the board shall deliver the orig-  
2 inal returns to the clerk of the superior court to be filed in his of-  
3 fice, and shall cause each of the abstracts mentioned in the two  
4 preceding sections to be recorded in a book to be called "the elec-  
5 tion book," to be kept in the office of said clerk. And said clerk  
6 shall also transmit by mail to the secretary of state duplicates of  
7 the abstracts mentioned in section nineteen hundred and sixteen,  
8 each abstract to be sealed up in a separate envelope.

**Sec. 1919. Person having highest vote to be declared elected.**

R. S., c. 52, s. 8.  
1840, c. 27, s. 1.  
1876-'7, c. 275, s. 30.

The person having the greatest number of legal votes for any  
2 office is to be declared elected. But if two or more candidates,  
3 having the greatest number of votes, shall have an equal number,

4 the board of commissioners of the county shall determine which  
5 shall be elected.

Moore v. Jones, 76—182; Swain v. McRae, 80—111.

**Sec. 1920. Result of election to be proclaimed at the court house.**

When the board of county canvassers have thus completed the  
2 comparison of the polls, they shall determine the result and pro- 1876-7, c. 275, § 31.  
3 claim the same at the court house door, of the election in their  
4 county for all persons voted for and the number of votes cast for  
5 each.

Swain v. McRae, 80—111.

**Sec. 1921. Returning officers of senatorial districts, when and where to meet; penalty for failing to make returns; returns, how examined and compared.**

The sheriff or other returning officers in the various senatorial  
2 districts composed of more than one county, after receiving the re- 1876-7, c. 275, s. 32.  
3 turns from the board of county canvassers, shall meet one week af-  
4 ter the election, at the following places in their respective districts,  
5 for the purpose of comparing the polls: In the first district, at  
6 Hertford, in the county of Perquimans; in the second district, at  
7 Plymouth, in the county of Washington; in the third district, at  
8 Roxabel, in the county of Bertie; in the seventh district, at Nash-  
9 ville, in the county of Nash; in the ninth district, at Pollocksville,  
10 in the county of Jones; in the tenth district, at Mount Olive, in the  
11 county of Wayne; in the eleventh district, at Kinston, in the  
12 county of Lenoir; in the twelfth district, at Wilmington, in the  
13 county of New Hanover; in the thirteenth district, at Northwest, in  
14 the county of Brunswick; in the fifteenth district, at Lennon's cross-  
15 roads, near Francis Lennon's, in Columbus county; in the sixteenth  
16 district, at Fayetteville, in the county of Cumberland; in the  
17 twentieth district, at Hillsboro, in the county of Orange; in the  
18 twenty-second district, at Pittsboro, in the county of Chatham; in  
19 the twenty-fifth district, at Brower's Mill, in the county of Ran-  
20 dolph; in the twenty-sixth district, at John Webb's, on the plank-  
21 road, in the county of Richmond; in the twenty-seventh district,  
22 at Mulcohy, in the county of Anson; in the twenty-eighth district,  
23 at Mount Pleasant, in the county of Cabarrus; in the thirtieth dis-  
24 trict, at Foard's Mill, in the county of Rowan; in the thirty-sec-  
25 ond district, at Germantown, in the county of Stokes; in the thir-  
26 ty-third district, at Rockford, in the county of Surry; in the thirty-  
27 fourth district, at Taylorsville, in the county of Alexander; in the  
28 thirty-fifth district, at Jefferson, in the county of Ashe; in the thir-  
29 ty-sixth district, at Marion, in the county of McDowell; in the  
30 thirty-seventh district, at Early Grove, in the county of Catawba;  
31 in the thirty-eighth district, at Cherryville, in the county of Gaston;  
32 in the thirty-ninth district, at Rutherfordton, in the county of Ruth-  
33 erford; in the fortieth district, at Asheville, in the county of Bun-  
34 combe; in the forty-first district, at Brevard, in the county of



35 Transylvania; in the forty-second district, at Franklin, in the  
36 county of Macon. If for any cause any of said sheriffs or returning  
37 officers are prevented from meeting at said places respectively, on  
38 the aforesaid seventh day after the election, the returns of such  
39 officers shall be waited for and received if they arrive on the fol-  
40 lowing day; and the returning officer failing to attend at the time  
41 and place required as aforesaid, shall forfeit and pay one thousand  
42 dollars, to be recovered in the superior court of his county by any  
43 person who may sue for the same, and moreover shall be guilty of  
44 a misdemeanor; but if the returns of all the counties in the dis-  
45 trict be not in by noon of the day appointed, then the returning  
46 officers shall adjourn from day to day until the returns from all the  
47 counties be received, and in the meantime shall despatch a compe-  
48 tent person, under oath, to the county of the delinquent returning  
49 officer for a certified copy of the vote of that county, which shall be  
50 furnished by the register of deeds of said county, and when re-  
51 ceived shall be counted; and when the sheriffs shall be convened  
52 as aforesaid the polls for the different counties shall by them, in  
53 the presence of one justice and five electors, to be summoned by  
54 the sheriff of the county where they shall meet, be examined and  
55 compared; a certificate, under the hands and seals of the return-  
56 ing sheriffs shall be given to the candidate in each district for  
57 whom the greatest number of votes shall have been given; but if  
58 two or more candidates shall have an equal number of votes the  
59 said officers shall determine which shall be a senator, and if no  
60 decision shall be made by them they shall determine the same by  
61 lot.

See 1871-'2, c. 185, s. 20; 1876-'7, c. 220.

**Sec. 1922. Certificate of election, when and how furnished.**

1871-'2, c. 185, s. 22.  
1876-'7, c. 275, s. 33.

The sheriff of each county shall furnish, within ten days, the  
2 member or members elected to the house of representatives and to  
3 the senate, where the district is not composed of more than one  
4 county, a certificate of election under his hand and seal; he shall  
5 also immediately notify all persons elected in the county to meet  
6 at the court house on the first Monday in the ensuing month to be  
7 qualified.

Jones v. Jones, 80—127.

**Sec. 1923. Returns for state officers; when, by whom and how made; certificate of sheriff; to whom statement to be sent; delinquent returning officer, &c.**

1876-'7, c. 275, s. 34.

The sheriff or other returning officer of every county shall, on  
2 or before the third day after the election, transmit by mail, in a  
3 registered letter, or otherwise, to the speaker of the house of repre-  
4 sentatives, a separate statement of the votes taken in his county for  
5 each of the state officers, to-wit: governor, lieutenant governor,  
6 secretary of state, auditor, treasurer, superintendent of public in-

7 struction and attorney general, which statement, in each case, shall  
8 be in the following or some similar form, viz :

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

I, ....., sheriff of ..... county, do hereby certify that at the election held in the  
said county to elect a governor (or other officers, as the case may be,) for four years, from the  
first day of ..... next, at the places appointed by law for holding elections for said county,  
on the ..... day of ....., A. D. one thousand eight hundred and ....., ..... votes were given  
for ....., and ..... votes for .....

Given under my hand, this ..... day of ....., 18.....

....., Sheriff.

9 If said statements are transmitted by mail, they shall be directed  
10 in sealed packets to the speaker of the house of representatives, in  
11 care of the secretary of state, and if by messenger, it shall be sent  
12 direct to the speaker of the house of representatives, sealed as  
13 aforesaid: *Provided*, that no messenger bringing said statement or  
14 any other abstracts or election returns shall receive compensation  
15 therefor. Any sheriff or other returning officer failing or neglect-  
16 ing to perform the duties required in this section, shall forfeit and  
17 pay two thousand dollars, to be recovered in the superior court of  
18 his county by any person who shall sue for the same, and more-  
19 over shall be guilty of a misdemeanor, and upon conviction thereof  
20 shall be imprisoned at hard labor in the penitentiary for twelve  
21 months: *Provided further*, that the sheriffs of the counties of Car-  
22 teret, Hyde and Dare shall have until the eighth day after the  
23 election to comply with the provisions of this section.

See 1871-'2, c. 185, s. 23.

Sec. 1924. Secretary of state to prepare and transmit forms of returns.

The secretary of state shall cause proper forms of returns to be  
2 prepared and printed, and send copies thereof, with plain direc-  
3 tions as to the manner of indorsing, directing and transmitting the  
4 same to the seat of government, to all the returning officers of the  
5 state, at least thirty days before the time of holding any election.  
6 He shall also furnish to the register of deeds of each county all  
7 such printed blanks as may be necessary for making the county  
8 returns.

1871-'2, c. 185, s. 24.  
1876-'7, c. 275, ss  
35, 76.

Sec. 1925. Returns for state officers, how and by whom opened and published; in  
cases of defective returns, who to be declared elected; tie votes; contested elec-  
tions.

The speaker of the house of representatives, in the presence of a  
2 majority of the members of both houses of the general assembly,  
3 shall open and publish the returns for governor, lieutenant gov-  
4 ernor, secretary of state, auditor, treasurer, superintendent of in-  
5 struction, and attorney general, at twelve, M., on the first Tuesday  
6 after the organization of both houses of the general assembly. And  
7 if for any cause there be no return from any county of the state, or

Const. Article III,  
s. 3.  
1871-'2, c. 185, s. 25.  
1876-'7, c. 5.  
1876-'7, c. 275, s. 36.

8 if any return be defective, a proper return shall be had in such  
 9 manner as the two houses in joint session may direct; and in either  
 10 case the publication of the result may be postponed to such time as  
 11 the joint session of the two houses may deem best. The person  
 12 having the highest number of votes for each office respectively  
 13 shall be declared duly elected thereto, but if two or more be equal  
 14 and highest in votes for the same office, then one of them shall be  
 15 chosen by joint ballot of both houses of the general assembly.  
 16 Contested elections shall be determined by a joint vote of both  
 17 houses of the general assembly in the same manner and under the  
 18 same rules and regulations as are prescribed in cases of contested  
 19 elections of members of the general assembly.

Sec. 1926. An abstract of the returns to be made by the clerks, and signed by the  
 presiding officers of the general assembly, and filed with secretary of state.

1881, p. 623.  
 Resoluti'n of Jan.  
 13th.

An abstract of the returns of votes for state officers shall be made  
 2 by the clerks of the two houses of the general assembly, showing  
 3 the number of ballots cast for each candidate, the names of all per-  
 4 sons voted for, the offices for which they received such votes, and  
 5 the number of votes cast for each person, and the persons ascer-  
 6 tained by the canvass to be elected to the several offices; and said  
 7 abstract shall be signed by the presiding officers of the two houses  
 8 and delivered to the secretary of state, who shall record it in the  
 9 election book kept in his office, and then file it. Said abstract  
 10 shall also be printed in the journals of the two houses, and in the  
 11 legislative documents.

Sec. 1927. Penalty on officers for non-performance of duty under this chapter.

R. C., c. 34, s. 113.  
 1842, c. 29; c. 33, s. 4.  
 1871-'2, c. 185, s. 29.  
 1876-'7, c. 275, s. 38.

Any registrar or judge of election appointed under the provis-  
 2 ions of this chapter, or any county canvasser or commissioner,  
 3 register of deeds, clerk or sheriff, failing or neglecting to make the  
 4 returns and perform the duties required of him by this chapter, for  
 5 the non-performance of which no penalty has been hereinbefore  
 6 imposed, shall be fined not less than five hundred nor more than  
 7 one thousand dollars, or imprisoned not more than six nor less  
 8 than two months, at the discretion of the court; and every such  
 9 officer for every such offence shall forfeit and pay the sum of five  
 10 hundred dollars, to be recovered in the name and to the use of the  
 11 state, on motion of the attorney general in the superior court of  
 12 Wake county, ten days' previous notice in writing of such intended  
 13 motion having been given to such officer by the secretary of state.  
 14 The proceeding thereon shall be summary, and if any matter of  
 15 fact shall be in issue, the same shall be tried at the first term; and  
 16 on such trial, or for any other purpose in the prosecution of such  
 17 motion to judgment, the certificate of the secretary of state, or of  
 18 the governor, as the case may be, of the particular default on  
 19 which the motion is founded, shall be received as competent *prima*  
 20 *facie* evidence to prove the same.



**Sec. 1928. Wilful or malicious neglect of officers to perform their duties.**

If any sheriff, 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, of representatives in congress, of justices of the supreme court, of judges of the superior court, of solicitors, or of the electors for president and vice-president of the United States, the person so offending shall be guilty of a 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 preceeding section directed.

R. C., c. 34, s. 114 -  
1842, c. 30, s. 5.

**Sec. 1929. Penalty for fraudulent registration or voting.**

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, or any person who shall illegally vote at any election, shall be guilty of an infamous crime, 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.

1871-'2, c. 185, s. 30.  
1876-'7, c. 275, s. 39.

See R. C., c. 34, s. 98.

**Sec. 1930. Penalty for corruptly taking the oath prescribed for voters.**

Any person who shall falsely and corruptly take the oath prescribed for voters, shall be guilty of perjury, and upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars, and be imprisoned at hard labor in the penitentiary not less than two nor more than five years.

1871-'2, c. 185, s. 31.  
1876-'7, c. 275, s. 40.

**Sec. 1931. Secretary of state to furnish copies of the election law to the commissioners of each county.**

The secretary of state shall, at least sixty days before each election, furnish the board of county commissioners of each county with a sufficient number of copies of this chapter, as it will always read with the latest amendments incorporated with it, to supply each county canvasser, commissioner, register of deeds, sheriff, registrar of voters, and judges of election with one copy thereof.

1871-'2, c. 185, s. 32,  
1876-'7, c. 275, s. 41.

**Sec. 1932. Armed men not to muster on day of election.**

It shall not be lawful to call or direct any regimental, battalion

R. C., c. 52, s. 21.  
1795, c. 431.  
1876-'7, c. 275, s. 44.

2 or company muster on election days, or to assemble armed men on  
 3 the day of election, at any place appointed by law to hold elections  
 4 for electors, governor, members of congress or members of the gen-  
 5 eral assembly, under the penalty of one thousand dollars, to be re-  
 6 covered of any person who shall call such muster, or assemble such  
 7 armed men, one-half to go to the use of the informer, and the other  
 8 half to the use of the state.

**Sec. 1933. Breaking up or staying elections.**

R. C., c. 34, s. 37.  
 1793, c. 382, s. 2.

If any person, by force and violence, shall break up or stay any  
 2 election, by assaulting the officers thereof, or depriving them of  
 3 the ballot boxes, or by any other means, such person, his aiders  
 4 and abettors, shall be guilty of a misdemeanor; and upon con-  
 5 viction, shall be imprisoned three months, and pay such fine as  
 6 the court shall adjudge, not exceeding one hundred dollars.

**Sec. 1934. Treating at elections.**

R. C., c. 52, s. 23.  
 1801, c. 580, s. 3.  
 1876-7, c. 275, s. 46.

If any person shall treat with either meat or drink, on any day  
 2 of election, or on any day previous thereto, with an intent to influ-  
 3 ence the election, he shall forfeit and pay two hundred dollars, the  
 4 one-half for the use of the county, and the other to the use of the  
 5 person who shall sue for the same.

**Sec. 1935. Intimidation of voters.**

1868, c. 62, s. 4.

Any person who shall discharge from employment, withdraw  
 2 patronage from, or otherwise injure, threaten, oppress, or attempt  
 3 to intimidate any qualified voter of this state, because of the vote  
 4 such voter may, or may not have cast in any election, shall be guilty  
 5 of a misdemeanor.

**Sec. 1936. Bribery at elections.**

R. C., c. 52, s. 22.  
 1777, c. 116, s. 11.  
 1868-9, c. 176, s. 1.  
 1876-7, c. 275, s. 45.

If any person shall, at any time before or after an election, either  
 2 directly or indirectly, give, or promise to give, any money, property,  
 3 or reward to any elector, or to any county or district, in order to be  
 4 elected, or to procure any other person to be elected a member of  
 5 the general assembly, or to any office under the laws of this state,  
 6 every person so offending shall forfeit and pay four hundred dollars  
 7 to any person who will sue for the same, and shall be guilty  
 8 of a misdemeanor; and any person who shall receive or agree to  
 9 receive any such bribe shall also be guilty of a misdemeanor.

See 1868, c. 62, ss. 1, 3.

**Sec. 1937. Betting on elections.**

1858-'9, c. 49.

Any person who shall bet or wager any money or other thing of  
 2 value upon any election held in this state shall be guilty of a mis-

3 demeanor, and, on conviction, shall be fined or imprisoned at the  
4 discretion of the court.

*Bettis v. Reynolds*, 12 Ire., 344.

**Sec. 1938. Congressional elections.**

(For senators and their mode of election, see act of congress of  
2 the twenty-fifth of July, one thousand eight hundred and sixty-  
3 six, fourteenth statutes at large, two hundred and forty-three.)

Rev. Stat., U. S., ss. 14, 19.

**Sec. 1939. Representation in congress; districts.**

For the purpose of selecting representatives in the congress of  
2 the United States, the state of North Carolina shall be divided  
3 into ... .. districts, as follows: .....

**Sec. 1940. Congressmen from the state at large; when there shall be such, and how elected.**

Whenever by a new apportionment of representatives among  
2 the several states, the number of representatives in the congress of  
3 the United States from North Carolina shall be either increased or  
4 decreased, and neither the congress nor the general assembly shall  
5 provide for the election of the same, then if the said representa-  
6 tives shall be increased, the increased number shall be elected by  
7 the qualified voters of the whole state and shall be voted for on  
8 one ballot; and the representatives from the several congressional  
9 districts shall be elected by the voters of the said districts respect-  
10 ively, and shall each be voted for on another ballot. But if the  
11 number of said representatives shall be decreased as aforesaid, in  
12 that event all the representatives in congress shall be elected by  
13 the qualified voters of the whole state, and shall be voted for on  
14 one ballot.

**Sec. 1941. Time and manner of conducting congressional elections.**

The election shall be held at the same time and places as pre-  
2 scribed for holding elections for members of the general assembly,  
3 on the Tuesday next after the first Monday in November, in the  
4 year of our Lord one thousand eight hundred and seventy-eight,  
5 and on said day every two years thereafter, and shall be conducted  
6 by the sheriffs, or by other persons appointed therefor, in like man-  
7 ner as elections for members of the general assembly.

R. C., c. 52, s. 4.  
1819, c. 1000.  
1830, c. 35.  
1832, c. 18.  
1876-7, c. 275, s. 49.

**Sec. 1942. Vacancies in representation, how filled.**

If, at any time after the expiration of any congress, and before  
2 another election, or if at any time after an election, there shall be a  
3 vacancy in the representation in congress, the governor shall issue  
4 a writ of election, and by proclamation shall require the voters to  
5 meet in the different townships in their respective counties at such  
6 time as may be appointed therein, and at the places established by

R. C., c. 52, s. 5.  
1777, c. 116, s. 2.  
1876-7, c. 275, s. 50.



7 law, then and there to vote for a representative in congress to fill  
 8 the vacancy; and the election shall be conducted in like manner  
 9 as regular elections.

**Sec. 1943. Representatives in congress commissioned by the governor.**

1871-'2, c. 185, s. 26.  
 1876-'7, c. 275, s. 51.

Every person duly elected a representative to congress, upon ob-  
 2 taining a certificate of his election from the secretary of state, shall  
 3 procure from the governor a commission, certifying his appoint-  
 4 ment as a representative of the state, which the governor shall is-  
 5 sue on such certificate being produced.

**Sec. 1944. Compensation of registrars, returning officers, and the members of the board of state canvassers.**

1871-'2, c. 185, s. 28.  
 1876-'7, c. 275, ss.  
 37, 52.  
 1879, c. 152, s. 8.  
 1881, p. 625.  
 Resoluti'n of Jan-  
 uary 18th.

The registrar shall receive one cent for each named copied from  
 2 the original registration book, and three cents for each new name  
 3 registered. Every sheriff, or other returning officer, shall be al-  
 4 lowed two dollars and fifty cents per day for the time actually em-  
 5 ployed, and ten cents per mile for distance traveled, for making the  
 6 returns for senators, and sixty cents for each notice served upon  
 7 the county officers elect, and sixty cents for giving certificates to  
 8 representatives to the general assembly and to the senators whose  
 9 district is a single county, all to be paid by the county treasurer,  
 10 upon the affidavit of the returning officer. Clerks and registers of  
 11 deeds shall also be allowed the usual record and registration fees  
 12 for recording or making duplicates of the election returns, to be  
 13 paid by the county. The senatorial members of the board of state  
 14 canvassers, while engaged in the discharge of their duties, shall  
 15 receive the same *per diem* and mileage as members of the general  
 16 assembly. The said board may employ two clerks at a compensa-  
 17 tion of four dollars per day each during the sessions of the board.

**BOARD OF STATE CANVASSERS.**

**Sec. 1945. Board of state canvassers, who shall constitute.**

1876-'7, c. 275, s. 53.

The governor, secretary of state, attorney general, and two mem-  
 2 bers of the state senate, one of each political party, to be selected by  
 3 the governor, shall constitute the board of state canvassers, but no  
 4 member thereof shall take part in canvassing the votes for any of-  
 5 fice for which he himself is a candidate. But in every such case  
 6 the other members of the board shall select some other person to  
 7 act in the place of such candidate.

O'Hara v. Powell, 80—103.

**Sec. 1946. Returns not received in time, secretary of state shall obtain original abstracts.**

1876-'7, c. 275, s. 54.

If the abstracts or returns from any county shall not be received  
 2 at the office of the secretary of state by the third Monday after the  
 3 day of election, the said secretary is authorized to obtain from the  
 4 register of deeds, or clerk of the superior court of such county, at

5 the expense of such county, the original abstracts or returns, or if  
6 they have been forwarded, then to obtain copies of them.

**Sec. 1947. Abstracts to be opened, when and by whom.**

The board of state canvassers shall open the abstracts transmitted  
2 to the secretary of state on the Thursday following the third Mon-  
3 day after the day of election, and examine the returns, if they shall  
4 have been received from all the counties, and if not all received,  
5 they may adjourn not exceeding twenty days for the purpose of  
6 obtaining the returns from all the counties, and when these are  
7 received shall proceed with the canvass; such canvass shall be con-  
8 ducted publicly in the hall of the house of representatives. They  
9 shall make an abstract, stating the number of legal ballots cast for  
10 each candidate, the names of all the persons voted for, for what office  
11 they respectively received the votes, and the number of votes each  
12 received, and stating whom they ascertain and judicially deter-  
13 mine by the count to be elected to the office, which abstract shall  
14 be signed by the board of canvassers, in their official capacity as  
15 state canvassers, and have the seal of the state affixed thereto.

1876-'7, c. 275, ss.  
55, 56.

O'Hara v. Powell, 80—103.

**Sec. 1948. Records of the returns to be kept by the secretary of state.**

The secretary of state shall record the abstract or abstracts in a  
2 book to be kept by him for recording the result of elections, and  
3 to be called the "election book," and shall also file the abstract or  
4 abstracts.

1876-'7, c. 275, s. 57.

**Sec. 1949. Certificate of election, when, how and to whom furnished.**

A certificate shall be prepared for each person elected, and signed  
2 by the secretary of state, and shall be delivered to the person  
3 elected, when he shall demand the same.

1876-'7, c. 275, s. 58.

O'Hara v. Powell, 80—103.

**Sec. 1950. Statement of votes cast for officers of the executive department to be published by state canvassers.**

The board of state canvassers shall estimate the votes cast for of-  
2 ficers of the executive department, from the abstracts forwarded to  
3 the secretary, and shall publish a statement of the result of such  
4 calculation, but this statement shall be for information of the pub-  
5 lic only, and shall not have the effect to determine what candidates  
6 have been elected to such offices. Their election shall be ascer-  
7 tained and declared according to the provisions of section three,  
8 article three, of the constitution.

1876-'7, c. 275, s. 59.

O'Hara v. Powell, 80—103.

**Sec. 1951. Who shall be commissioned by the governor; when term of office shall begin.**

Justices of the supreme court, judges of the superior court, and

1876-'7, c. 275, s. 60.

2 solicitors, shall be commissioned by the governor, and their terms  
3 of office shall begin on the first day of January next succeeding  
4 their election.

O'Hara v. Powell, 80—103.

#### MISCELLANEOUS.

##### Sec. 1952. Illegal registration.

1876-'6, c. 275, s. 61.

Any person who shall cause or procure his name to be regis-  
2 tered in more than one election ward or precinct, or shall cause or  
3 procure his name, or that of any other person, to be registered,  
4 knowing that he or the person whose name he has procured to be  
5 registered, is not entitled to vote in the ward or election precinct  
6 wherein such registration is made, at the ensuing election to be  
7 held therein, or who shall falsely personate any registered voter,  
8 shall be guilty of a crime infamous by the laws of the state, and  
9 shall be punished for each and every such offence by a fine not  
10 exceeding one thousand dollars, or imprisonment at hard labor for  
11 a term not exceeding two years, or both, in the discretion of the  
12 court.

##### Sec. 1953. Persons having been convicted of an infamous crime may be challenged and required to answer; convicted person not allowed to vote unless restored to the rights of citizenship.

1876-'7, c. 275, s. 62

If any person be challenged as being convicted of any crime  
2 which excludes him from the right of suffrage, he shall be required  
3 to answer any questions in relation to such alleged convictions;  
4 but his answer to such questions shall not be used against him in  
5 any criminal prosecution, but if any person so convicted shall vote  
6 at any election, without having been legally restored to the rights  
7 of citizenship, he shall be guilty of an infamous crime, and, on  
8 conviction thereof, shall be punished by a fine not exceeding one  
9 thousand dollars, or imprisoned at hard labor not exceeding two  
10 years, or both.

##### Sec. 1954. Powers and duties of judges of election in regard to the examination of voters.

1876-'7, c. 275, s. 63.

The judges of election shall in no case receive the vote of any  
2 person unless they shall be satisfied that such person is in all  
3 respects qualified and entitled to vote; and for the purpose of satis-  
4 fying themselves as to the right of any person who shall claim a  
5 right to vote, they shall have power to examine such person, and  
6 any other person or persons, under oath or affirmation, touching  
7 such right. And if any judge of election shall receive, or assent  
8 to receive, the vote of any person challenged, without requiring  
9 such person to take the oath or affirmation hereinbefore prescribed,  
10 and if such person shall not be qualified and entitled to vote, such  
11 judge of election so receivtng or assenting to receive such vote,  
12 shall be deemed to have received the same knowing it to be illegal.



**Sec. 1955. Powers of the judges of election, and the various boards of canvassers.**

The judges and inspectors of election in each ward or precinct, 1876-'7, c. 275, s. 64,  
2 the board of county canvassers of each county, and the board of  
3 state canvassers shall respectively possess full power and authority  
4 to maintain regularity and order, and to enforce obedience to their  
5 lawful commands during their sessions, respectively, and shall be  
6 constituted inferior courts for that purpose; and if any such person  
7 shall refuse to obey the lawful command of any such judge or inspec-  
8 tor of election, or board of county canvassers, or board of state can-  
9 vassers, or by disorderly conduct in their hearing or presence, shall  
10 interrupt or disturb their proceedings, they may by an order in  
11 writing, signed by their chairman, and attested by their clerk, com-  
12 mit the person so offending to the common jail of the county for  
13 a period of not exceeding thirty days, and such order shall be exe-  
14 cuted by any sheriff or constable to whom the same shall be deliv-  
15 ered, or if a sheriff or constable shall not be present, or shall refuse  
16 to act, by any other person who shall be deputed by such township  
17 or precinct board of election, or board of county canvassers, or  
18 board of state canvassers, in writing, and the keeper of such jail  
19 shall receive the person so committed, and safely keep him for such  
20 time as shall be mentioned in the commitment. "

**Sec. 1956. Official vacancies, how filled.**

Whenever any vacancies shall exist by reason of death, resigna- 1876-'7, c. 275, s. 65.  
2 tion or otherwise, in any of the following offices, to-wit, secretary  
3 of state, auditor, treasurer, superintendent of public instruction,  
4 attorney general, solicitor, justices of the supreme court, and judges  
5 of the superior court, the same shall be filled by elections, to be  
6 held in the manner and places, and under the same regulations  
7 and rules as prescribed for general elections, at the next regular  
8 election for members of the general assembly which shall occur  
9 more than thirty days after such vacancy, except as otherwise pro-  
10 vided for in the constitution.

Cloud v. Wilson, 72--155.

**Sec. 1957. How vacancies in the general assembly to be filled.**

When a vacancy occurs in the general assembly by death, resig- 1868, c. 23, s. 1.  
2 nation or otherwise, it shall be the duty of the sheriff of the county 1876-'7, c. 275, s. 42  
3 in which the late member resided, provided the general assembly  
4 shall not be in session, to notify the governor of such vacancy, and  
5 in case the general assembly shall be in session when such vacancy  
6 occurs, it shall be the duty of the presiding officer of the house in  
7 which the vacancy occurs to notify the governor of the same, who  
8 shall thereupon issue a writ of election to the sheriff or sheriffs of  
9 the district or county represented by the late member, said elec-  
10 tion to be held at such time as the governor may designate, and in  
11 such manner as may be prescribed by law.

**Sec. 1958. Elections ordered by the governor shall be conducted as other elections.**

R. C., c. 52, s. 17.  
1777, c. 116, s. 8.  
1876-'7, c. 275, s. 43.

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.

**Sec. 1959. Qualifications of voters in municipal elections.**

1876-'7, c. 275, s. 66.

All qualified electors who shall have resided for ninety days immediately preceding an election within the limits of any ward of a city or town, and not otherwise, shall have the right to vote in such ward for mayor and other city or town officers.

See *People v. Canady*, 73—198.

**Sec. 1960. Intoxicating liquors not to be given away or sold on day of election.**

1868, c. 28, ss. 1, 2.

Any person who shall give away, or sell, any intoxicating liquors except for medical purposes and upon the prescription of a practicing physician, at any place within five miles of the polling place, at any time within twelve hours next preceding or succeeding any public election, whether general, local or municipal, or during the holding thereof, shall be guilty of a misdemeanor, and on conviction shall be fined not less than one hundred, nor more than one thousand dollars.

**Sec. 1961. On what day elections shall be held.**

1876-'7, c. 275, s. 77.

Unless otherwise provided by law, all general elections shall be held on the Tuesday next after the first Monday in November of the year in which there shall be an election.

*Rhodes v. Lewis*, 80—136; *Kilburn v. Latham*, 81—312.

**ELECTORS OF PRESIDENT AND VICE-PRESIDENT OF THE UNITED STATES.****Sec. 1962. When election to be held.**

1876-'7, c. 275, s. 67.

On the Tuesday next after the first Monday in the month of November, in the year of our Lord one thousand eight hundred and eighty, and every four years thereafter, or on such days as the congress of the United States shall have directed, 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, and the persons so chosen shall be and are hereby declared to be electors for the state as aforesaid.

See 1868, c. 45, c. 1,

**Sec. 1963. Names of electors to be on each ballot; how electors allotted.**

The names of the electors to be chosen shall be written or printed  
2 on each ballot, and each ballot shall contain the name of at least  
3 one inhabitant of each congressional district into which the state  
4 may be divided, and against the name of each person shall be  
5 designated the number of the congressional district to which he  
6 belongs.

1868, c. 45, s. 2.  
1876-'7, c. 275, s. 68.

**Sec. 1964. Election to be as in case of state officers.**

The election shall be conducted, and the returns made, as nearly  
2 as may be, directed in relation to the election of state officers, ex-  
3 cept as herein otherwise expressed.

1868, c. 45, s. 3.  
1876-'7, c. 275, s. 69.

**Sec. 1965. Meeting of county canvassers, their duties; sheriff to send certificate of election to secretary of state.**

The county canvassers shall meet in the court house of their re-  
2 spective counties as hereinbefore provided, and shall ascertain and  
3 determine, by faithful addition, the number of legal votes for every  
4 person who shall have been voted for as an elector within the  
5 the county, and shall certify the same under their hands, in the  
6 manner and form following, to-wit:

1876-'7, c. 275, s. 70.

" We, the county canvassers for ..... county, do hereby certify that an election was held on the day and at the places fixed by law within said county, for electors of president and vice-president of the United States, and that the number of votes hereinafter specified, opposite the names of the several persons following, was given for such persons as electors for the state of North Carolina, of president and vice-president of the United States, namely: D. G. F. (here state the number of votes for D. G. F.) For J. M. L., (here state the number of votes for J. M. L., and so on until the list of persons voted for, and the number of votes shall be complete.) Given under our hands this ..... day of ..... in the year A. D. ....

7 And three fair copies of such certificate and return shall be made  
8 by the board of county canvassers, under their hands, and one of  
9 the same shall be immediately delivered to the sheriff of the county,  
10 whose duty it shall be to attend at the meeting of said canvassers,  
11 and who shall forthwith make proclamation and read the same  
12 through at the court house door; and the said sheriff shall imme-  
13 diately thereafter seal up said copy in an envelope, and transmit  
14 the same by mail, in a registered letter, or otherwise, to the secre-  
15 tary of state, at the capitol at Raleigh, so that he shall receive the  
16 same within twelve days after the day of said election; and one of  
17 said copies, together with the original precinct returns, shall be  
18 delivered to the clerk of the superior court, who shall record the  
19 said copy in the "election book," and file the originals of said copy  
20 in his office. And one copy shall be delivered to the register of  
21 deeds, to be registered in his office. The clerk of the superior court  
22 shall, immediately after the same shall have been delivered to him,  
23 send a copy of the certificate of the board of county canvassers,  
24 sealed with the seal of his office, to the secretary of state at Raleigh,  
25 so that he may receive the same within twelve days after said elec-



tion. And in case of failing to make such returns within the time herein prescribed, such sheriff or other officer whose duty it shall be so to do, shall forfeit and pay to the state the sum of five hundred dollars, to be recovered by the attorney general, in the superior court for the county of Wake.

**Sec. 1966.** Secretary of state to deliver returns to board of state canvassers; duties of the board; organization of the electors.

1876-'7, c. 275, s. 71.

The secretary of state, within three days after the expiration of the time hereinbefore provided for the delivery to him of said certificates and returns, shall deliver the same to the board of state canvassers, whose duty it shall be to then attend, in the presence of such other persons as may choose to attend, in the hall of the house of representatives in the capitol, open the certificates and returns and proceed to canvass the same, and ascertain and determine the result: *Provided*, that if the return from any county shall not, by that time, have been received by the secretary of state from the sheriff or clerk of the superior court, then the board of state canvassers shall order and compel a duplicate return from the clerk of the superior court, or register of deeds, or both, in such manner as they may think best; and for that purpose may adjourn from day to day not to exceed ten days. The board of state canvassers in canvassing said returns shall merely add up the returns, as certified by the county canvassers, but it shall be their duty to disregard any such apparent clerical error or any such technical informality as may not render it reasonably uncertain who was the person intended to be designated as voted for, and what was the number of votes actually received by any candidate. At the conclusion of the canvass, the board shall make an abstract of all the votes cast, and shall deliver the same to the secretary of state, together with the original returns from the several counties, to be filed in his office. The secretary of state shall copy said abstracts in the "election book," directed in this chapter to be kept in his office, and shall, under his hand and the seal of his office, certify to the governor the names of as many persons receiving the highest number of votes for electors of president and vice-president as the state may be entitled to in the electoral college. The governor shall thereupon immediately issue his proclamation and cause the same to be published in such daily newspapers as may be published in the city of Raleigh, wherein he shall set forth the names of the persons duly elected as electors, and warn each of them to attend at the capitol in the city of Raleigh, at noon, on the Tuesday preceding the first Wednesday of December next after his election, at which time said electors shall meet, and in case of the absence or ineligibility of any elector chosen, or if the proper number of electors shall for any cause be deficient, those present shall forthwith elect from the citizens of the state so many persons as will supply

40 the deficiency, and the persons so chosen shall be electors to vote  
41 for president and vice-president of the United States. And the  
42 governor shall, on or before the said first Wednesday in December;  
43 make out three lists of the names of the said ten persons so elected  
44 and appointed electors, and cause the same to be delivered to them,  
45 as directed by the act of congress.

**Sec. 1967. College of electors to proceed in conformity to the constitution and laws of the United States.**

The persons so elected and appointed as electors of president and  
2 vice-president of the United States, shall assemble on the said first  
3 Wednesday in December, at the capitol in the city of Raleigh, and  
4 then and there give their votes on behalf of the state of North  
5 Carolina, for president and vice-president of the United States, and  
6 proceed in relation thereto in all things conformably to the consti-  
7 tution of the United States and the act of congress in that behalf. 1876-'7, c. 275, s. 72.

**Sec. 1968. Vacancies in offices of president and vice-president; governor to order another election for electors.**

Whenever the offices of president and vice-president of the Uni- 1876-'7, c. 275, s. 73.  
2 ted States shall both become vacant, the governor, upon receiving a  
3 notification of such vacancy from the secretary of state of the United  
4 States, shall forthwith issue his proclamation directing the sheriffs  
5 of the several counties, or other proper officers, to hold elections  
6 within their respective counties for the appointment of electors of  
7 president and vice-president of the United States, on the days of  
8 the year in which such vacancy may happen, as is herein pre-  
9 scribed for holding the regular and stated elections: *Provided*, that  
10 there shall be a space of two months between the date of such noti-  
11 fication and the said first Wednesday of December; but if there  
12 should not be such space, the governor shall specify in his procla-  
13 mation that the electors shall be elected in the year next ensuing  
14 the date of such notification, on the day aforesaid; and the elec-  
15 tors appointed, in the manner by this section directed, shall meet  
16 at the capitol, in the city of Raleigh, and proceed, as hereinbefore  
17 provided, for electors of president and vice-president, chosen at a  
18 regular election for the same.

**Sec. 1969. Electors failing to attend; officers making false returns; refusal by register of deeds, or clerk of the superior court, to furnish certified copies of the returns; penalties.**

Each elector chosen, with his own consent previously signified, 1876-'7, c. 275, s. 74.  
2 failing to attend and vote for a president and vice-president of the  
3 United States, at the time and place herein directed (except in case  
4 of sickness or other unavoidable accident), shall forfeit and pay to  
5 the state five hundred dollars, to be recovered by the attorney gen-  
6 eral in the superior court of Wake county. And any person mak-  
7 ing, or signifying, or delivering, or transmitting a false return of

8 an election, held hereunder, or making any erasure or alteration in  
 9 the poll books, shall be guilty of an infamous crime, and on con-  
 10 viction shall be imprisoned not less than one year, and shall, in  
 11 addition, forfeit and pay five hundred dollars, one half to the use  
 12 of the person who will sue for the same, and the other half to the  
 13 use of the state. Any officer who shall refuse to permit any can-  
 14 didate, or person qualified to vote, at his own expense, to have a  
 15 copy of the poll books, shall forfeit and pay two hundred dollars,  
 16 one half to the person who shall sue for the same, and the other  
 17 half to the use of the state. Any register of deeds, or clerk of the  
 18 superior court, who shall refuse to make and give to any person a  
 19 duly certified copy of the returns of an election, or of a tabulated  
 20 statement of an election hereinbefore directed to be deposited in his  
 21 office, upon the tender of the fees therefor, shall be guilty of a mis-  
 22 demeanor, and upon conviction, ousted of his office, and impris-  
 23 oned for one year.

**Sec. 1970. Compensation and privileges of electors.**

1876-'7, c. 275, s. 75.

The electors shall be allowed for their traveling expenses to and  
 2 from the city of Raleigh, and their attendance, the same compen-  
 3 sation as may be allowed members of the general assembly, and  
 4 shall be entitled to the same privileges.

See R. C., c. 41, s. 7; 1815, c. 886, s. 6.

## CHAPTER FORTY-SEVEN.

### ENTRIES AND GRANTS.

**SECTION.**

- 1971. What lands subject to entry; lands covered by water; swamp lands.
- 1972. Every person owning lands covered by navigable water may establish fisheries thereon.
- 1973. Persons improving such lands shall have prior right to the use thereof; penalty for damaging owner.
- 1974. Entries may be made by *bona fide* residents of the state, whether citizens or not.
- 1975. Unauthorized entries and grants are void.
- 1976. Entry taker, how elected.
- 1977. In case of a vacancy the register of deeds shall act until another entry taker is elected.
- 1978. Bond of entry taker.
- 1979. Office of entry taker shall be kept at the court house.
- 1980. Oath of office and fees of entry taker.
- 1981. Irregular entries validated.
- 1982. County surveyor to give bond.
- 1983. Surveyors may appoint deputies.

**SECTION.**

- 1984. Price at which lands may be entered.
- 1985. Entries and warrants, how made and issued.
- 1986. When entry fees to be paid.
- 1987. Enterer failing to pay, subsequent enterer entitled to a grant.
- 1988. In case of lapse same person not to re-enter within one year.
- 1989. Surveys, how made and returned; chain-carriers to be sworn; special surveyor, when appointed.
- 1990. Surveys to be according to priority of entry.
- 1991. When warrant of survey lost, duplicate may be issued.
- 1992. Entry taker dying or resigning, successor to issue warrants.
- 1993. How entry takers may make entries for themselves.
- 1994. How surveyors may have surveys made for themselves.
- 1995. Entry takers to make annual returns to secretary of state.



SECTION.

- 1996. Penalty for failure to make return; how recovered.
- 1997. State treasurer to receive entry money.
- 1998. Grant to be issued by secretary of state on certificate of auditor.
- 1999. Grants, how authenticated; must be registered.
- 2000. Enterer dying, grant to issue in heirs' name.
- 2001. Seal of grant lost, may be renewed.
- 2002. Certain grants issued to surveyors confirmed.

SECTION.

- 2003. Certain other grants validated.
- 2004. Grants on entries extending into two or more counties confirmed.
- 2005. Mistakes of surveyor and secretary of state; application to be made within three years of date of grant.
- 2006. Persons aggrieved by issuing of grants or patents, how to proceed.
- 2007. Judgment in such cases; to be recorded in the office of the secretary of state.
- 2008. Action, when and how brought by the attorney general to vacate letters patent.

**Sec. 1971. What lands subject to entry; lands covered by water; swamp lands.**

All vacant and unappropriated lands, belonging to the state, shall be subject to entry by any citizen thereof, in the manner hereinafter provided, except:

R. C., c. 42, s. 1.  
R. S., c. 42, ss. 1, 2,  
3, 8.  
1846, c. 36.  
1854-'5, c. 21.

(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.

(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.

Jones v. Jones, 1 Hay., (489) 563; McKenzie v. Hewlett, N. C. T. R., 181; Strother v. Cathey, 1 Mur., 162; Murray v. Sermon, 1 Haw., 56; Tatam v. Sawyer, 2 Haw., 226; 4 Dev., 596;

O'Kelly v. Clayton, 2 D. & B., 246; Hough v. Dumas, 4 Dev. & B., 328; Hatfield v. Grimstead, 7 Ire., 139; Stanmire v. Powell, 13 Ire., 312; Com'rs of Beaufort v. Duncan, 1 Jon., 234; Harry v. Graham, 6 Jon., 460; Hoover v. Thomas, Phil., 184; Skinner v. Hetrick, 73—58; Hall v. Hollifield, 76—476; Wilson v. W. N. C. Land Co., 77—445.

**Sec. 1972.** Every person owning lands covered by navigable water may establish fisheries thereon.

1874-'5, c. 183, ss. 1,  
6.

Whenever any person shall acquire title to lands covered by navigable water under the provisions of the preceding section, the owner or person so acquiring title shall have the right to establish fisheries upon said lands; but this right shall not exempt any person from punishment for the obstruction of navigation.

**Sec. 1973.** Persons improving such lands shall have prior right to the use thereof; penalty for damaging owner.

1874-'5, c. 183, ss. 2,  
3, 4.

Whenever the owners of such lands shall improve the same by clearing off and cutting therefrom logs, roots, stumps or other obstructions, so that the said land may be used for the purpose of drawing or hauling nets or seines thereon for the purpose of taking or catching fish, then and in that case the person who makes or causes to be made the said improvements, his heirs and assigns, shall have prior right to the use of the land so improved, in drawing, hauling, drifting or setting nets or seines thereon, and it shall be unlawful for any person, without the consent of such owner, to draw or haul nets or seines upon the land so improved by the owner thereof for the purpose of drawing or hauling nets or seines thereon. The provisions of this section shall apply where the owner of such lands shall erect, or shall have erected, platforms or structures of any kind thereon to be used in fishing with nets and seines. And any person who shall wilfully destroy or injure the said platform or structures, or shall interfere with or molest the owner in the use of any such lands, or in any other manner shall violate the provisions of this section, shall be guilty of a misdemeanor.

**Sec. 1974.** Entries may be made by bona fide residents of the state, whether citizens or not.

1869-'70, c. 19, s. 1.

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.

Mockridge v. Howerton, 72—221; Wilson v. W. N. C. Land Co., 77—445.

**Sec. 1975. Unauthorized entries and grants are void.**

Every entry made, and every grant issued, for any lands not  
 2 herein authorized to be entered or granted, shall be void.

R. C., c. 42, s. 2.  
 R. S., c. 42, s. 1.

Clemmons v. Fore, 2 Ire. Eq., 312; Maxwell v. Wallace, 3 Ire. Eq., 593.

**Sec. 1976. Entry taker, how elected.**

The board of commissioners of the several counties shall elect  
 2 one person to receive entries of claims for lands within each county;  
 3 and such entry taker shall hold his office for four years.

1868-'9, c. 173, s. 1.

See 1868-'9, c. 100, s. 6.

**Sec. 1977. In case of a vacancy the register of deeds shall act until another entry taker is elected.**

When a vacancy exists in the office of entry taker, the register  
 2 of deeds shall act as entry taker until such vacancy is filled by an  
 3 election by the commissioners. The register of deeds, in such  
 4 case, shall take charge of the books belonging to the office, shall  
 5 discharge all the duties and receive the emoluments, and shall be  
 6 subject to the rules, regulations and penalties prescribed by law  
 7 for entry takers.

1868-'9, c. 173, s. 2.

See 1868-'9, c. 100, s. 2.

**Sec. 1978. Bond of entry taker.**

Every entry taker shall enter into bond in the sum of five hun-  
 2 dred dollars, payable to the state, with sufficient security to be ap-  
 3 proved by the county commissioners, for the faithful discharge of  
 4 the duties of his office.

1868-'9, c. 173, s. 3.

**Sec. 1979. Office of entry taker shall be kept at the court house.**

The entry taker shall keep his office at the court house of his  
 2 county, or within one mile thereof, on pain of forfeiting one hun-  
 3 dred dollars to the county, to be sued for by the county treasurer.

1868-'9, c. 173, s. 4.

**Sec. 1980. Oath of office and fees of entry taker.**

The entry taker shall take the oath of office and receive the fees,  
 2 and no other, prescribed in the chapters respectively entitled  
 3 "Oaths" and "Salaries and Fees."

1868-'9, c. 173, s. 5.

**Sec. 1981. Irregular entries validated.**

Wherever persons have irregularly entered lands and have paid  
 2 the fees required by law to the secretary of state, and have obtained  
 3 grants for such lands duly executed, then and in that case the title  
 4 to the said lands shall not be affected by reason of such irregular  
 5 entries; and the said grants are hereby declared to be as good and  
 6 valid, as if such entries had been properly made.

1874-'5, c. 48, s. 1.

See 1868-'9, c. 100, s. 4; c. 173, s. 6.



**Sec. 1982. County surveyor, to give bond.**

R. C., c. 42, s. 5.  
R. S., c. 42, s. 6.  
1777, c. 114, s. 13.  
1881, c. 144.

The county surveyor of each county shall enter into bond in the  
2 sum of one thousand dollars payable to the state of North Carolina,  
3 with sufficient security for the faithful discharge of the duties of his  
4 office.

**Sec. 1983. Surveyors may appoint deputies.**

R. C., c. 42, s. 6.  
1779, c. 140, s. 5.

Every surveyor may appoint deputies, who shall, previous to  
2 entering on the duties of their office, be qualified in a similar  
3 manner with the surveyor; and the surveyor making such ap-  
4 pointment shall be liable for the conduct of such deputies, as for  
5 his own conduct in office.

**Sec. 1984. Price at which lands may be entered.**

R. C., c. 42, s. 7.  
1883, c. 11.

Twenty-five cents shall be paid to the state treasurer for every  
2 acre of land that may be entered: *Provided*, that no person shall  
3 enter more than one hundred acres within any one year at that  
4 price; and if any person shall enter more than one hundred acres  
5 in the same survey or in any one year, he shall pay fifty cents for  
6 every acre he may enter.

Plemmons v. Fore, 2 Ire. Eq., 212; Wilson v. W. N. C. L. Co., 77—445.

**Sec. 1985. Entries and warrants, how made and issued.**

R. C., c. 42, s. 11.  
1777, c. 114, s. 5.  
1783, c. 185, s. 11.

The claimant of land shall produce to the entry-taker a writing,  
2 signed by such claimant, setting forth where the land is situated,  
3 the nearest water-course, mountains and remarkable places, and  
4 such water-courses and remarkable place as may be therein, the  
5 natural boundaries and the lines of any other person, if any, which  
6 divide it from other lands; and every such writing shall be on one  
7 quarter sheet of paper at least, and be indorsed by the entry-taker  
8 with the name of the claimant, the number of acres claimed, and  
9 date of the entry; and a copy thereof shall be entered in a book,  
10 well bound, and ruled with a large margin into spaces of equal  
11 distance, each space to contain one entry only, and every entry to  
12 be made in the order of time in which it shall be received,  
13 and numbered in the margin. The entry-taker shall thereupon  
14 cause to be posted at the court house door of the county, in which  
15 the land is situated, a copy of such entry, which copy shall remain  
16 posted for ten days; and for this service the entry-taker shall be  
17 entitled to a fee of twenty-five cents, to be paid by the applicant.  
18 If any person shall claim title to or an interest in the land covered  
19 by the entry, or any part thereof, he shall, within the time the copy  
20 is posted as before provided, file his protest in writing with the  
21 entry-taker against the issuing of a warrant thereon; and upon  
22 the filing of such protest the entry-taker shall certify copies of the  
23 entry and protest to the superior court, and thereupon a notice  
24 shall be issued by the clerk of said court to the claimant, com-

25 manding him to appear at the next term of said court and show  
 26 cause why his entry shall not be declared inoperative and void.  
 27 In case no protest is filed, or where the protest is filed, and the  
 28 right of the claimant to make the entry is sustained, the entry-  
 29 taker shall deliver to the party a copy of the entry, with its pro-  
 30 per number and a warrant to the surveyor to survey the same,  
 31 which warrant shall contain a copy of the entry with its num-  
 32 ber and date, and a certificate that notice has been given as here-  
 33 inabove provided, and that no protest has been filed, or that protest  
 34 has been filed and that the court has decided in favor of the claim-  
 35 ant. Each warrant shall be delivered to the surveyor in the order  
 36 of time in which the entry was made.

*Terrell v. Mauney*, 2 Mur., 375; *Harris v. Ewing*, 1 D. & B. Eq., 369; *Horton v. Cook*, 1 Jon. Eq., 270; *Currie v. Gibson*, 4 Jon. Eq., 25; *Ashley v. Sumner*, 4 Jon. Eq., 121; *Stanly v. Biddle*, 4 Jon. Eq., 333; *McDiarmid v. McMillan*, 5 Jon. Eq., 29.

**Sec. 1986. When entry fees to be paid.**

All entries of land, made in the course of any one year, shall, in  
 2 every event, be paid for, on or before the thirty-first day of Decem-  
 3 ber, which shall happen, in the second year thereafter; and all en-  
 4 tries of land, not thus paid for, shall become null and void, and  
 5 may be entered by any other person.

R. C., c. 42, s. 8.  
 1854-'5, c. 49, s. 1.

*Plemmons v. Fore*, 2 Ire. Eq., 312; *Wilson v. W. N. C. Land Co.*, 77-445.

**Sec. 1987. Enterer failing to pay, subsequent enterer entitled to a grant.**

Whenever an entry of land shall be made in any entry taker's  
 2 office, and the enterer shall fail to pay the price for the same, within  
 3 the time limited by law, any person who may have made a subse-  
 4 quent entry for the same land may pay the price and have a grant.

R. C., c. 42, s. 9.  
 1809, c. 771.

*Stanly v. Biddle*, 4 Jon. Eq., 333.

**Sec. 1988. In case of lapse, same person not to re-enter within one year.**

No lands entered on the books of the entry takers, the entry of  
 2 which shall be suffered to lapse by non-payment of the price thereof,  
 3 shall be re-entered within one year after the time at which such  
 4 entry shall lapse, by the person in whose name such entry was  
 5 made, but such re-entry shall be void.

R. C., c. 42, s. 10.  
 R. S., c. 42, s. 12.

**Sec. 1989. Surveys, how made and returned; chain-carriers to be sworn; special surveyor, when appointed.**

Every county surveyor, upon receiving the copy of the entry and  
 2 order of survey for any claim of lands, shall, as soon as may be,  
 3 lay off and survey the same, agreeably to this chapter; and make  
 4 thereof two fair plots, the scale whereof shall be mentioned on such  
 5 plots; and shall set down in words the beginning, angles, distances,  
 6 marks and water-courses, and other remarkable places crossed or  
 7 touched by or near to the lines of such lands, and also the quan-  
 8 tity of acres; and land lying on any navigable water shall be sur-

R. C., c. 42, s. 12.  
 1777, c. 114, s. 10;  
 1844, c. 27.  
 1846, c. 36.

9 veyed in such manner that the water shall form one side of the  
 10 survey, and the land be laid off back from the water; and he shall  
 11 transmit the plots to the office of the secretary of state, or deliver  
 12 them to the claimant, within one year, together with the warrant  
 13 or order of survey; one of which, with the warrant, shall be filed  
 14 by the secretary, and the other annexed to the grant; and no sur-  
 15 vey shall be made without chain-carriers, who shall actually meas-  
 16 ure the land surveyed, and shall be paid by the party for whom  
 17 the survey shall be made; and such chain-carriers shall be sworn  
 18 to measure justly and truly, and to deliver a true account thereof  
 19 to the surveyor, which oath the surveyor is empowered and author-  
 20 ized to administer: *Provided, however*, that when the office of county  
 21 surveyor is vacant, the county commissioners may appoint a special  
 22 surveyor to survey any lands that may be entered; and the plots  
 23 and certificates of such special surveyor, accompanied by a copy of  
 24 the order of the county commissioners appointing him, shall be  
 25 held valid, as if done by a county surveyor duly elected.

Harris v. Ewing, 1 D. & B. Eq., 369.

**Sec. 1990. Surveys to be according to priority of entry.**

R. C., c. 42, s. 13.  
 1787, c. 279, s. 1.

The surveyor shall survey all entries of land according to the  
 2 priority of such entry, paying due respect to the number of each  
 3 warrant; and every grant obtained by any subsequent entry, other-  
 4 wise than is by this chapter directed, shall be void: *Provided, never-*  
 5 *theless*, that nothing herein contained shall be construed to prevent  
 6 any person who shall make a subsequent entry from surveying and  
 7 obtaining a grant, as the law directs, for all such surplus land as  
 8 shall remain, after the enterer of such land hath surveyed his entry  
 9 as aforesaid.

Stanly v. Biddle, 4 Jon. Eq., 387.

**Sec. 1991. When warrant of survey lost, duplicate may be issued.**

R. C., c. 42, s. 14.  
 1814, c. 878, s. 1.

When any person shall duly make an entry of lands which shall  
 2 not have become void by lapse of time, and upon which the entry  
 3 taker shall issue his warrant of survey, and the same be lost by  
 4 accident, the entry taker, on due proof being made to his satisfac-  
 5 tion, by affidavit of the claimant or the surveyor or deputy sur-  
 6 veyor, may issue a duplicate warrant of survey, of the same tenor  
 7 and date, taking care to set forth, on the face of said warrant, that  
 8 the same is a duplicate; in which case such warrant shall be made  
 9 as valid as the original.

**Sec. 1992. Entry taker dying or resigning, successor to issue warrants.**

R. C., c. 42, s. 15.  
 1835, c. 19.

In all cases where an entry shall be made, and the entry taker  
 2 shall die or resign before a warrant shall be issued thereupon, his  
 3 successor shall issue a warrant.



**Sec. 1993. How entry takers may make entries for themselves.**

If any entry taker shall desire to make an entry in his own  
 2 name, the same shall be made in its proper place, before a justice  
 3 of the peace of the county, not being a surveyor or assistant;  
 4 which entry the justice shall return to the next meeting of the  
 5 board of county commissioners, who shall insert it; and every en-  
 6 try made by or for such entry taker, in any other manner, shall  
 7 be void.

R. C., c. 42, s. 16.  
 1777, c. 114, s. 17.

**Sec. 1994. How surveyors may have surveys made for themselves.**

When a county surveyor shall wish to have lands surveyed in a  
 2 county where he acts as principal surveyor, for the purpose of ob-  
 3 taining a grant, the board of county commissioners of said county  
 4 shall appoint some person to make the survey, and the entry taker  
 5 shall direct his warrant of survey to such person; and all certifi-  
 6 cates, surveys and plots of the same shall be made under the same  
 7 regulations as prescribe the duty of the county surveyor in similar  
 8 cases.

R. C., c. 24, s. 17.  
 1828, c. 23, s. 1.

**Sec. 1995. Entry takers to make annual returns to secretary of state.**

Every entry taker shall make return to the secretary of state  
 2 annually, on the first day of January, of all lands entered with  
 3 him, under a penalty of two hundred dollars.

R. C., c. 42, s. 18.  
 1796, c. 455, s. 9.  
 1821, c. 1107, s. 1.  
 1833, c. 15, s. 2.  
 1881, c. 265.

**Sec. 1996. Penalty for failure to make return, how recovered.**

The secretary of state shall furnish the attorney general, at every  
 2 spring term of the superior court of Wake county, with a certificate  
 3 of failure in every case where an entry taker shall fail to make re-  
 4 turn according to law; and the attorney general shall move for  
 5 judgment against such entry taker and his sureties, and the court  
 6 shall give judgment accordingly.

R. C., c. 42, s. 19.  
 1833, c. 15, s. 1.

**Sec. 1997. State treasurer to receive entry money.**

The state treasurer shall receive the money for vacant and un-  
 2 appropriated lands upon the presentation to him of the certificate  
 3 of the secretary of state, setting forth the number and date of the  
 4 entry, and the quantity of acres found by the surveyor to be va-  
 5 cant, as the same may appear by the returns made to him from the  
 6 surveyor or entry taker, or from the entry taker's warrant, or the  
 7 plots of survey.

R. C., c. 42, s. 20.  
 1827, c. 23, s. 1.  
 1829, c. 30.

*Buchanan v. Fitzgerald*, 6 Ire. Eq., 123.

**Sec. 1998. Grant to be issued by secretary of state on certificate of auditor.**

No grant shall issue on the treasurer's receipt for the money; but  
 2 the auditor shall make out and deliver to the secretary of state a  
 3 certificate, conformable to each receipt by him countersigned, on  
 4 which the secretary shall issue the grant.

R. C., c. 42, s. 21.  
 1799, c. 525, s. 4.

See *Knight v. Bogan*, 1 Hay., 176; *Terrell v. Mauney*, 2 Mur., 375; *Reddick v. Leggett*, 3 Mur., 539; *Stanmire v. Powell*, 13 Ire., 312; *Lovingood v. Burgess*, Bus., 407.

**Sec. 1999. Grants, how authenticated ; must be registered.**

R. C., c. 42, s. 22.  
1783, c. 185, s. 14.  
1796, c. 455, s. 1.  
1799, c. 525, s. 2.

The secretary, on application of claimants, shall make out grants  
2 for all surveys returned to his office, which grants shall be authen-  
3 ticated by the governor, countersigned by the secretary and re-  
4 corded in his office. The date of the entry shall be inserted in  
5 every grant, and no grant shall issue upon any survey, unless the  
6 same be signed by the surveyor of the county; and every person  
7 obtaining a grant for lands shall, within two years after such grant  
8 shall be perfected as aforesaid, cause the same to be registered in  
9 the county where the land shall lie; and any person may cause to  
10 be there registered any certified copy of a grant from the office of  
11 the secretary of state, which shall have the same effect as if the  
12 original had been registered. Upon certificate from the entry taker,  
13 that the claimant has assigned his interest under the entry, a grant  
14 shall be issued in the name of the assignee: *Provided*, that the said  
15 assignee is a citizen and resident of this state, or shall have come  
16 into the state with the *bona fide* intent of becoming a resident and  
17 citizen thereof.

McKay v. Hendon, 3 Mur., 21; Hunter v. Williams, 1 Haw., 221; Lunsford v. Bostian, 1 Dev. Eq., 483; Van Pel v. Pugh, 1 D. & B., 210; Hill v. Jackson, 9 Ire., 333.

**Sec. 2000. Enterer dying, grant to issue in his name.**

R. C., c. 42, s. 23.  
1715, c. 4, s. 6.  
1798, c. 493, s. 6.

In case of the death of any person having made an entry of  
2 lands, pending the same or before making out the grant, the secre-  
3 tary shall issue the grant in the name of the decedent; and those  
4 interested, as heirs at law, devisees, tenants in dower, by the cour-  
5 tesy or otherwise, shall have the same estate as if the land had  
6 been granted during the life of the decedent.

**Sec. 2001. Seal of grant lost, may be renewed.**

R. C., c. 42, s. 24.  
1807, c. 727.

In all cases where the seal annexed to a grant is lost or destroyed,  
2 the governor may, on the certificate of the secretary of state that  
3 the grant was fairly obtained, cause the seal of the state to be af-  
4 fixed thereto.

**Sec. 2002. Certain grants issued to surveyors confirmed.**

R. C., c. 42, s. 25.  
1828, c. 23, s. 2.

Grants of land made by the state to surveyors and deputy sur-  
2 veyors, prior to the first day of January, one thousand eight hun-  
3 dred and twenty-nine, upon surveys, plots, and certificates of the  
4 same, made by them for themselves respectively, without other  
5 illegality, and without fraud or partiality, the certificates in all  
6 cases being signed by the principal surveyor, are confirmed and  
7 declared to be good and valid.

**Sec. 2003. Certain other grants validated.**

R. C., c. 42, s. 26.  
1828, c. 46.

All grants issued by the secretary of state, previous to the year  
2 one thousand eight hundred and twenty, on surveys made fairly

3 and without fraud, and signed by the deputy surveyor only, shall  
 4 be good and effectual to pass all the right of the state in and to  
 5 said land, in as full and ample a manner as if such returns had  
 6 been made in due form: *Provided, nevertheless*, that nothing herein  
 7 contained shall affect any entries made, or grants obtained on legal  
 8 returns for such lands, previous to the year one thousand eight  
 9 hundred and twenty-nine.

**Sec. 2004. Grants on entries extending into two or more counties, confirmed.**

Whereas, many citizens of the state, on making entries of lands  
 2 near the lines of the county wherein they reside, either for want of  
 3 proper knowledge of the land laws of the state, or not knowing  
 4 the county lines, have frequently made entries and extended their  
 5 surveys on such entries into other counties than those wherein  
 6 they were made, and obtained grants on the same; and whereas,  
 7 doubts have existed with respect to the validity of the titles to lands  
 8 situated as aforesaid, so far as they extend into other counties than  
 9 those where the entries were made; for remedy whereof, it is hereby  
 10 declared, that all grants issued on entries made for lands situated  
 11 as aforesaid, when the money has been paid into the state treas-  
 12 ury, shall be good and valid against any entries hereafter made or  
 13 grants issued thereon.

R. C., c. 42, s. 27.  
 1805, c. 675.  
 1834, c. 17.

Avery v. Strother, Conf. R., 434; Lunsford v. Bostian, 1 Dev. Eq., 483.

**Sec. 2005. Mistakes of surveyor and secretary of state; application to be made within three years of date of grant.**

Whenever there may be an error by the surveyor in plotting or  
 2 making out the certificate for the secretary's office, or the secretary  
 3 shall mistake in making out the courses agreeable to said returns,  
 4 or misname the claimant, or make other mistake, so as such claim-  
 5 ant shall be injured thereby, the claimant may prefer a petition to  
 6 the superior court of the county in which the land lies, setting forth  
 7 the injury which he might sustain in consequence of such error or  
 8 mistake, with all the matters and things relative thereto; and the  
 9 said court may hear testimony respecting the truth of the allega-  
 10 tions set forth in the petition; and if it shall appear by said testi-  
 11 mony, from the return of the surveyor or the error of the secre-  
 12 tary, that the patentee is liable to be injured thereby, the court shall  
 13 direct the clerk to certify the facts to the secretary of state, who  
 14 shall file the same in his office, and correct the error in the patent,  
 15 and likewise in the records of his office. The costs of such suit  
 16 shall be paid by the petitioner, except when any person may have  
 17 made himself a party to prevent the prayer of the petitioner being  
 18 granted, in which case the costs shall be paid as the court may  
 19 decree. The benefits granted by this section to the patentees of  
 20 land shall be extended in all cases to persons claiming by, from, or  
 21 under their grants, by descent, devise, or purchase. When any  
 22 error is ordered to be rectified, and the same has been carried

R. C., c. 42, s. 23.  
 1790, c. 326.  
 1798, c. 504.  
 1804, c. 655.  
 1814, c. 876.



23 through from the grant into mesne conveyances, the court shall  
 24 direct a copy of the order to be recorded in the register's books of  
 25 the county: *Provided*, that no such petition shall be brought, but  
 26 within three years after the date of the patent; and if brought  
 27 after that time, the court shall dismiss the same, and all proceed-  
 28 ings had thereon shall be null and of no effect: *And provided also*,  
 29 that nothing herein contained shall affect the rights or interests of  
 30 any person claiming under a patent issued between the period of  
 31 the date of the grant alleged to be erroneous, and the time of filing  
 32 the petition, unless such person shall have had due notice of the  
 33 filing of the petition, by service of a copy thereof, and an oppor-  
 34 tunity of defending his rights before the court according to the  
 35 course of the common law.

**Sec. 2006.** Persons aggrieved by the issuing of grants or patents, how to proceed.

R. C., c. 42, s. 29.  
1798, c. 7.

When any person claiming title to lands under a grant or pat-  
 2 ent from the king of Great Britain, any of the lords proprietors of  
 3 North Carolina, or from the state of North Carolina, shall consider  
 4 himself aggrieved by any grant or patent issued or made since the  
 6 fourth day of July, one thousand seven hundred and seventy-six, to  
 7 any other person, against law or obtained by false suggestions, sur-  
 8 prise or fraud, the person aggrieved may bring a civil action in the  
 9 superior court for the county in which such land may be, together  
 10 with an authenticated copy of said grant or patent, briefly stating  
 11 the grounds whereon such patent should be repealed and vacated,  
 12 whereupon the grantee, patentee, or the person, owner or claimant  
 13 under such grant or patent shall be required to show cause why  
 14 the same shall not be repealed and vacated.

Terrell v. Mauney, 2 Mur., 375; Johnson v. Baker, 3 Mur., 319; Person v. Carter, 3 Mur., 322;  
 Greenlee v. Tate, 1 Dev., 300; Bradley v. Souther, 1 Dev., 427; Crow v. Holland, 1 Dev., 431; 4  
 Dev., 417; 4 Dev., 495; O'Kelly v. Clayton, 2 Dev. & Bat., 246; Miller v. Twitty, 3 Dev. & Bat., 14;  
 Hoyt v. Rich, 4 Dev. & Bat., 533.

**Sec. 2007.** Judgment in such cases to be recorded in the office of the secretary of state.

R. C., c. 42, s. 30.  
1798, c. 7.

If, upon verdict or demurrer the court believe that the patent or  
 2 grant was made against law or obtained by fraud, surprise, or upon  
 3 untrue suggestions, they may vacate the same; and a copy of such  
 4 judgment, after being recorded at large, shall be filed by the peti-  
 5 tioner in the secretary's office, where it shall be recorded in a book  
 6 kept for that purpose; and the secretary shall note in the margin  
 7 of the original record of the grant the entry of the judgment,  
 8 with a reference to the record in his office.

**Sec. 2008.** Action, when and how brought by the attorney general to vacate letters patent.

C. C. P., s. 367.

An action may also be brought by the attorney-general, in the

2 name of the state, for the purpose of vacating or annulling letters  
3 patent granted by the state, in the following cases :  
4 (1) When he shall have reason to believe that such letters patent  
5 were obtained by means of some fraudulent suggestion or conceal-  
6 ment of a material fact, made by the person to whom the same  
7 were issued or made, or with his consent or knowledge; or  
8 (2) When he shall have reason to believe that such letters patent  
9 were issued through mistake, or in ignorance of a material fact; or  
10 (3) When he shall have reason to believe that the patentee, or  
11 those claiming under him, have done or omitted an act, in viola-  
12 tion of the terms and conditions on which the letters patent were  
13 granted, or have by any other means forfeited the interest acquired  
14 under the same.

Crow v. Holland, 4 Dev., 417; McDowell v. Asbury, 66—444; Ray v. Castle, 79—580.

CHAPTER FORTY-EIGHT.

ESTATES.

SECTION.

- 2009. Estates in tail converted into fee simple.
- 2010. In joint tenancy, the share of deceased co-tenant not to vest in survivor; proviso as to partners in trade.
- 2011. Certain contingent limitations in deeds or wills, how construed, if made since the fifteenth of January, one thousand eight hundred and twenty-eight.
- 2012. Infant unborn may take by deed, &c.
- 2013. Limitation to the heirs of a living person to be to his children.
- 2014. In conveyance to uses, possession transferred to use without livery.

SECTION.

- 2015. Grantees of reversions to have such rights against tenants for life or years, as grantors had.
- 2016. Such tenants to have same rights against grantees or reversions, as against the grantors.
- 2017. Buying and selling pretended rights or titles prohibited.
- 2018. Collateral and certain other warranties made void; to stand as covenants only.
- 2019. Property held in trust; so held not liable for debts; proviso.

Sec. 2009. Estates in tail converted into fee simple.

Every person seized of an estate in tail shall be deemed to be  
2 seized of the same in fee simple; and all sales and conveyances,  
3 made *bona fide* and for valuable consideration, since the first day of  
4 January, in the year of our Lord one thousand seven hundred and  
5 seventy-seven, by any tenant in tail in actual possession of any real  
6 estate where such estate hath been conveyed in fee simple, shall  
7 be good and effectual in law to bar any tenant in tail and in re-  
8 mainder, of and from all claim, action and right of entry whatso-  
9 ever, of, in, and to such entailed estate, against any purchaser, his  
10 heirs, or assigns, now in actual possession of such estate, in the same  
11 manner as if such tenant in tail had possessed the same in fee  
12 simple.

R. C., c. 43, s. 1.  
1784, c. 204, s. 5.

Lane v. Davis, 1 Hay., 277 (319); Minge v. Gilmour, 1 Hay., 279 (322) Moore v. Bradley, 2 Hay., 142; Wells v. Newbold, Taylor, 166—(Ed., 1802.)

Sec. 2010. 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.  
1784, c. 204, s. 6.

In all estates, real or personal, held in joint tenancy, the part or 2 share of any tenant dying shall not descend or go to the surviving 3 tenant, but shall descend or be vested in the heirs, executors, or 4 administrators, or assigns respectively of the tenant so dying, in the 5 same manner as estates held by tenancy in common: *Provided, al-* 6 *ways,* that estates held in joint tenancy for the purpose of carrying 7 on and promoting trade and commerce, or any useful work or man- 8 ufacture, established and pursued with a view of profit to the par- 9 ties therein concerned, shall be vested in the surviving partner, in 10 order to enable him to settle and adjust the partnership business, 11 or pay off the debts which may have been contracted in pursuit of 12 the said joint business; but as soon as the same shall be effected, 13 the survivor shall account with, and pay, and deliver to the heirs, 14 executors, administrators and assigns respectively of such deceased 15 partner, all such part, share, and sums of money as he may be en- 16 titled to by virtue of the original agreement, if any, or according 17 to his share or part in the joint concern, in the same manner as 18 partnership stock is usually settled between joint merchants and 19 the representatives of their deceased partners.

Wangh v. Mitchell, 1 D. & B. Eq., 510; Baird v. Baird, 1 D. & B. Eq., 524; Motley v. White-  
more, 2 D. & B., 537; Ellison v. Andrews, 12 Ire., 188; Todd v. Zachary, Busb. Eq., 286; Vass v.  
Freeman, 3 Jones Eq., 221; Bond v. Hilton, 6 Jones, 180; Patton v. Patton, Winst. Eq., 20; Sum-  
mery v. Patton, Winst. Eq., 52; Stroud v. Stroud, Phil., 525; Powell v. Allen, 75—450; Ross v.  
Henderson, 77—170; McCaskill v. Lancashire, 83—393; Blair v. Osborne, 84—417; Powell v. Mor-  
ris, 84—421; Mendenhall v. Benbow, 84—646.

Sec. 2011. Certain contingent limitations in deeds or wills, how construed, if made since the fifteenth of January, one thousand eight hundred and twenty-eight.

R. C., c. 43, s. 3.  
1827, c. 7.

Every contingent limitation in any deed or will, made to depend 2 upon the dying of any person without heir or heirs of the body, or 3 without issue or issues of the body, or without children, or off- 4 spring, or descendant, or other relative, shall be held and inter- 5 preted a limitation to take effect, when such person shall die, not 6 having such heir, or issue, or child, or offspring, or descendant or 7 other relative (as the case may be) living at the time of his death, 8 or born to him within ten lunar months thereafter, unless the in- 9 tention of such limitation be otherwise, and expressly and plainly 10 declared in the face of the deed or will creating it: *Provided,* that 11 the rule of construction contained in this section shall not extend 12 to any deed or will made and executed before the fifteenth of Janu- 13 ary, one thousand eight hundred and twenty-eight.

Tillman v. Sinclair, 1 Ire., 183; Moore v. Barrow, 2 Ire., 436; Brown v. Brown, 3 Ire., 134;  
Swain v. Roscoe, 3 Ire., 200; Robards v. Jones, 4 Ire., 53; State v. Skinner, 4 Ire., 57; Garland v.  
Watt, 4 Ire., 287; Brantley v. Whitaker, 5 Ire., 225; Cox v. Marks, 5 Ire., 361; Hollowell v. Kor-  
negay, 7 Ire., 261; Weatherly v. Armfield, 8 Ire., 25; Folk v. Whitley, 8 Ire., 133; Gibson v. Gib-  
son, 4 Jon., 427; Miller v. Churchill, 78—372; Hathaway v. Harris, 84—96; King v. Utley, 85—59.



**Sec. 2012. Infant unborn may take by deed, &c.**

An infant unborn, but in *esse*, shall be deemed a person capable  
 2 of taking by deed or other writing, any estate whatever in the same  
 3 manner as if he were born. R. C., c. 43, s. 4.

**Sec. 2013. Limitation to the heirs of a living person to be to his children.**

Any limitation by deed, will, or other writing, to the heirs of a  
 2 living person, shall be construed to be to the children of such per-  
 3 son, unless a contrary intention appear by the deed or will. R. C., c. 43, s. 5.

*Miller v. Churchill*, 73—372; *King v. Utley*, 85—59; *Patrick v. Morehead*, 85—62.

**Sec. 2014. In conveyance to uses, possession transferred to use without livery.**

By deed of bargain and sale, or by deeds of lease and release, or  
 2 by covenant to stand seized to use, or deed operating by way of  
 3 covenant to stand seized to use, or otherwise, by any manner or  
 4 means whatsoever it be, the possession of the bargainor, releasor,  
 5 or covenantor shall be deemed to be transferred to the bargainee,  
 6 releasee, or person entitled to the use, for the estate or interest  
 7 which such person shall have in the use, as perfectly as if the bar-  
 8 gainee, releasee or person entitled to the use had been enfeoffed  
 9 at common law with livery of seizin of the land, intended to be  
 10 conveyed by such deed or covenant. R. C., c. 43, s. 6.  
27 Hen. VIII, c. 10.

*Hogan v. Strayhorn*, 65—279; *Ivey v. Granberry*, 66—223; *Bruce v. Faucett*, 4 Jones, 391;  
*Wilder v. Ireland*, 8 Jones, 85.

**Sec. 2015. Grantees of reversions to have such rights against tenants for life or years as grantors had.**

Whenever a conveyance shall be made by any person, of any  
 2 reversion in lands, rents, tenements, or hereditaments, which at  
 3 the time of such conveyance, shall be held by any other person for  
 4 a term of life or years, such grantee, his heirs, executors, admin-  
 5 istrators, and assigns, shall have the like advantages against the  
 6 tenant for life, and against the tenant for years, his executors, ad-  
 7 ministrators, and assigns, by entry for non-payment of rent and for  
 8 doing of waste, and the same benefit and advantage and remedies  
 9 by action for the not performing of other conditions, covenants, or  
 10 agreements, contained and expressed in the indentures, by which  
 11 such tenant for life or years hold the same lands, tenements, rents  
 12 or hereditaments against said tenant for life or for years, his exec-  
 13 utors, administrators and assigns, as the grantor or lessor himself  
 14 or his heirs might have. R. C., c. 43, s. 17.  
32 Hen. VIII, c.  
34, s. 1.

**Sec. 2016. Such tenants to have same rights against grantees or reversions as against the grantors.**

Lessees and grantees of lands, rents, tenements and heredita-  
 2 ments for term of years or life, their executors, administrators and  
 3 assigns, shall have like action, advantage and remedy against  
 4 every person, his heirs and assigns, who shall have any conveyance R. C., c. 43, s. 8.  
32 Hen. VIII, c.  
34, s. 2.

5 from any person of the reversion of the same lands, rents, tene-  
 6 ments and hereditaments, so let or any parcel thereof, for any con-  
 7 dition, covenant or agreement contained or expressed in the inden-  
 8 ture of their leases, as the same lessees, or any of them, might and  
 9 should have had against the said lessor and grantor, and his heirs.

**Sec. 2017. Buying and selling pretended rights or titles prohibited.**

R. C., c. 43, s. 9.  
 32 Hen. VIII, c. 9,  
 ss, 2, 4.

No person shall buy, sell or obtain any pretended right or title,  
 2 or take a promise or covenant to have any right or title of any  
 3 person, in or to any lands or tenements, (except such person as  
 4 shall sell, covenant or promise the same, or they by whom they  
 5 claim, have been in possession of the same or of the reversion or  
 6 remainder thereof, or taken the rents and profits thereof one year  
 7 next before the bargain made,) upon pain that both he that shall  
 8 make any such sale, promise or covenant, and the buyer, knowing  
 9 the same, shall forfeit the value of the said lands—the one-half to  
 10 the use of the county where the lands are situated, the other half  
 11 to the person suing for the same: *Provided*, that any person being  
 12 in the lawful possession, by taking the rents and profits of any  
 13 tenements, may buy the pretended right of any other person to  
 14 such tenements.

**Sec. 2018. Collateral and certain other warranties made void; to stand as cove-  
 nants only.**

R. C., c. 43, s. 10.  
 4 Anne, c. 16, s. 21.  
 1852, c. 16.

All collateral warranties are abolished; and all warranties made  
 2 by any tenant for life of lands, tenements or hereditaments, the  
 3 same descending or coming to any person in reversion or remain-  
 4 der shall be void; and all such warranties, as aforesaid, shall be  
 5 deemed covenants only, and bind the covenantor in like manner  
 6 as other obligations.

Johnson v. Bradley, 9 Ire., 362; Moore v. Parker, 12 Ire., 123; Myers v. Craig, Busb., 169;  
 Southland v. Stout, 68—446.

**Sec. 2019. Property held in trust; so held not liable for debts; proviso.**

1871-2, c. 204, s. 1.

It shall and may be lawful for any person by deed or will to  
 2 convey any property to any other person in trust to receive and  
 3 pay the profits annually or oftener for the support and mainten-  
 4 ance of any child, grandchild or other relation of the grantor, for  
 5 the life of such child, grandchild or other relation, with remain-  
 6 der as the grantor shall provide; and the property so conveyed  
 7 shall not be liable for or subject to be seized or taken in any man-  
 8 ner for the debts of such child, grandchild or other relations,  
 9 whether the same be contracted or incurred before or after the  
 10 grant: *Provided*, nevertheless, that this section shall apply only to  
 11 grants or conveyance where the property conveyed does not yield  
 12 at the time of the conveyance a clear annual income exceeding five  
 13 hundred dollars.

CHAPTER FORTY-NINE.

EVIDENCE, DEPOSITION, WITNESSES.

SECTION.

- 2020. Evidence necessary to support title under H. E. McCulloch.
- 2021. Grant or copy from proprietor sufficient evidence of title under him.
- 2022. Evidence of the laws of other states, territories and countries.
- 2023. Statutes, how proved.
- 2024. Other evidence of some acts.
- 2025. Copy of survey from office of secretary of state good evidence.
- 2026. Copies of official writings competent evidence.
- 2027. Records of administrations or letters testamentary in other states, how certified.
- 2028. Wills or deeds in other states proved by certified copies.
- 2029. In suits on bonds of officers or trustees, evidence against principals, admissible against sureties.
- 2030. Evidence in land suits in Haywood and Henderson counties.
- 2031. Variance between execution and judgment not to affect title of purchaser.
- 2032. Deeds registered and lost and the registry also destroyed presumed to have been in due form.
- 2033. Evidence of counsel in cases of fraud where the state is concerned.
- 2034. No witness incapacitated by interest or crime.
- 2035. Evidence of parties admissible.
- 2036. Defendants in criminal proceedings competent in their own behalf at their own request; husband or wife of the defendant competent for defendant.
- 2037. Incompetent evidence, what.
- 2038. Rules for summoning witnesses; subpoena, how issued and served.
- 2039. Witnesses to attend from term to term till discharged; penalty for non-attendance; entitled to pay till discharged; no executions to issue against defaulting witness until after notice.

SECTION.

- 2040. Depositions, how taken.
- 2041. What depositions may be read on the trial.
- 2042. Depositions in civil actions before a justice of the peace.
- 2043. Depositions not to be quashed after a trial has begun.
- 2044. The objection must be made before trial.
- 2045. Powers of commissioners.
- 2046. Attendance before commissioners, how enforced.
- 2047. Default of witness before commissioner.
- 2048. Witness appearing before a jury of view or commissioner paid as for attending court.
- 2049. Subpœnas to be issued by clerk in cases not provided for.
- 2050. Witness while attending court exempt from arrest in civil cases.
- 2051. Witnesses not entitled to their fees in advance.
- 2052. Witness to prove attendance at each court; may recover pay for attendance.
- 2053. Tickets to be filed with clerk and taxed as costs; only two witnesses allowed to prove same fact.
- 2054. After removal of cause subpoenas and commissions to take depositions may issue from either court.
- 2055. When a subpoena *duces tecum* may issue.
- 2056. Courts may order parties to produce books or papers; plaintiff failing non-suited; defendant failing judgment rendered against him.

Sec. 2020. Evidence necessary to support title under H. E. McCulloch.

In all actions or suits, wherein it may be necessary for either  
 2 party to prove title, by virtue of a grant or grants made by the  
 3 king of Great Britain or Earl Granville to Henry McCulloch, or  
 4 Henry Eustace McCulloch, it shall be sufficient for such party, in  
 5 the usual manner, to give evidence of the grant or conveyance from  
 6 the king of Great Britain or Earl Granville to the said Henry Mc-  
 7 Culloch, or Henry Eustace McCulloch, and the mesne conveyances  
 8 thereafter, without giving any evidence of the deed or deeds of re-  
 9 lease, relinquishment or confirmation of Earl Granville to the said  
 10 Henry McCulloch, or Henry Eustace McCulloch, or the power or  
 11 powers of attorney, by which the conveyances from the said Henry

R. C., c. 44, s.  
 1819, c. 1021.



12 McCulloch, or Henry Eustace McCulloch, purport to have been  
13 made.

**Sec. 2021. Grant or copy from proprietor, sufficient evidence of title under him.**

R. C., c. 44, s. 2.  
1807, c. 724.

In all trials where the titles of either plaintiff or defendant shall  
2 be derived from Henry Eustace McCulloch, or Henry McCulloch,  
3 out of their tracts number one and three, it shall not be required  
4 of such party to produce, in support of his title, either the original  
5 grant from the crown to the proprietors, or a registered copy thereof;  
6 but in all such cases, the grant or deed executed by such re-  
7 puted proprietors, or by his or their lawful attorney, or a certified  
8 copy thereof, shall be deemed and held sufficient proof of the title  
9 of such proprietors, in the same manner as though the original  
10 grants were produced in evidence.

**Sec. 2022. Evidence of the laws of other states territories and countries.**

A printed copy of a statute, or other written law, of another state,  
2 or of a territory, or of a foreign country, or a printed copy of a  
3 proclamation, edict, decree or ordinance, by the executive thereof,  
4 contained in a book or publication, purporting or proved to have  
5 been published by the authority thereof, or proved to be com-  
6 monly admitted as evidence of the existing law, in the judicial  
7 tribunals thereof, shall be evidence of the statute, law, proclama-  
8 tion, edict, decree, or ordinance. The unwritten, or common law  
9 of another state, or of a territory, or of a foreign country, may be  
10 proved as a fact by oral evidence. The books of the reports of  
11 cases, adjudged in the courts thereof, shall also be admitted as evi-  
12 dence of the unwritten or common law thereof. And either party  
13 may also exhibit a copy of the law of such state, territory, or for-  
14 eign country, duly certified by the secretary of state of this state as  
15 having been copied from a printed volume of the laws of such  
16 state, territory or country, on file in the state library, or in the  
17 offices of the governor or secretary of state.

R. C., c. 44, s. 3; 1823, c. 1193, ss. 1, 3; C. C. P., s. 360; State v. Twitty, 2 Haw., 441; State v. Welsh, 3 Haw., 403; State v. Jackson, 2 Dev., 563; McDougald v. Smith, 11 Ire., 576.

**Sec. 2023. Statutes, how proved.**

All statutes, or joint resolutions, passed by the general assembly,  
2 may be read in evidence from the printed statute book.

See R. C., c. 44, s. 4.

**Sec. 2024. Other evidence of some acts.**

R. C., c. 44, s. 5  
1826, c. 7, s. 2.

Any private act published by Francis X. Martin, in his collec-  
2 tion of private acts, or a copy of any act of the general assembly  
3 certified by the secretary of state, shall be received in evidence in  
4 every court.

**Sec. 2025. Copy of survey from office of secretary of state good evidence.**

Copies of the plots and certificates of survey, or their accompanying warrants, and all abstracts of grants, 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.

R. C., c. 44, s. 6.  
1822, c. 1154.

Tolson v. Mainor, 85—235.

**Sec. 2026. Copies of official writings competent evidence.**

Copies of all official bonds, writings, papers, or documents, recorded or filed as records in any court, or public office, or lodged in the office of the governor, treasurer, auditor, secretary of state, attorney general 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.

R. C., c. 44, s. 8.  
1871-2, c. 91, s. 1.

See 1792, c. 368, s. 11; Governor v. McAfee, 2 Dev., 15; Clarke v. Diggs, 6 Ire., 159; McLean v. Buchanan, 444.

**Sec. 2027. Records of administrations, or letters testamentary in other states, how certified.**

When letters testamentary or of administration on the goods and chattels of any person deceased, being an inhabitant in another state or territory, have 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 an 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 or by the proper officer of the said state or territory, shall be allowed as evidence in all the courts.

R. C., c. 44, s. 7.  
1834, c. 4.

See R. S. (U. S.), ss. 905, 906.

**Sec. 2028. Wills or deeds in other states proved by certified copies.**

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, or by the proper officer of the said state or territory, shall be read as evidence in all courts.

R. C., c. 44, s. 9.  
1802, c. 623.

Knight v. Wall, 2 Dev. & Bat., 125; Miazza v. Calloway, 74—81.

**Sec. 2029. In suits on bonds of officers or trustees, evidence against principal admissible against sureties.**

In actions brought upon the official bonds of clerks of courts, sheriffs, coroners, constables, or other public officers, and also upon

R. C., c. 44, s. 10.  
1881, c. 8.

3 the bonds of executors, administrators, collectors or guardians,  
 4 when it may be necessary for the plaintiff to prove any default of  
 5 the principal obligors, any receipt or acknowledgment of such ob-  
 6 ligors, or any other matter or thing which, by law would be ad-  
 7 missible and competent for or toward proving the same as against  
 8 him, shall in like manner be admissible and competent as pre-  
 9 sumptive evidence only, against all or any of his sureties who  
 10 may be defendants with or without him in said actions.

1844, c. 33, s. 1; State v. Woodside, 8 Ire., 101; State v. Cauble, 70—62; State *ex rel.* Brown v. Pike, 74—531; Lewis v. Fort, 75—251; Badger v. Daniel, 79—372.

**Sec. 2030. Evidence in land suits in Haywood and Henderson counties.**

R. C., c. 44, s. 11.  
 1842, c. 60.

In all legal controversies touching lands in the counties of Hay-  
 2 wood and Henderson, in which either party shall claim title under  
 3 any sale for taxes alleged to have been due and laid, in and for  
 4 the year one thousand seven hundred and ninety-six, or any pre-  
 5 ceding year, the recital contained in the deed or assurance, made  
 6 by the sheriff or other officer conveying or assuring the same, of  
 7 the taxes having been laid and assessed, and of the same having  
 8 remained due and unpaid, shall be held and taken to be *prima facie*  
 9 evidence of the truth of each and every of the matters so recited.

**Sec. 2031. Variance between execution and judgment not to affect title of purchaser.**

R. C., c. 44, s. 13.  
 1848, c. 53.

Whenever property may have been sold by an officer by virtue  
 2 of any execution or other process commanding the sale thereof, no  
 3 variance between the execution and the judgment whereon the  
 4 same was issued, in the sum due, in the manner in which it is due,  
 5 or in the time when it is due shall invalidate or affect the title of  
 6 the purchaser of such property.

Lyerly v. Wheeler, 11 Ire., 288; Green v. Cole, 13 Ire., 425.

**Sec. 2032. Deeds registered and lost, and the registry also destroyed, presumed to have been in due form.**

R. C., c. 44, s. 14.  
 1854, c. 17.

Whenever it shall be shown, in any judicial proceeding, that a  
 2 deed or conveyance of real estate has been lost or destroyed, and  
 3 that the same had been registered, and that the register's book  
 4 containing the copy has been destroyed by fire or other accident,  
 5 so that a copy thereof cannot be had, it shall be presumed and  
 6 held, unless the contents be shown to have been otherwise, that  
 7 such deed or conveyance transferred an estate in fee-simple, if the  
 8 grantor was entitled to such an estate at the time of conveyance;  
 9 and that it was made upon sufficient consideration.

**Sec. 2033. Evidence of counsel in cases of fraud where the state is concerned.**

1874-'5, c. 213.

In cases where fraud upon the state is charged it shall not be a  
 2 sufficient cause to excuse any one from imparting any evidence or  
 3 information legally required of him, because he came into the pos-



4 session of such evidence or information by his position as counsel  
5 or attorney before the consummation of such fraud, and any per-  
6 son refusing for such cause to answer any question when legally  
7 required so to do shall be guilty of contempt, and punished at the  
8 discretion of the court or other body demanding such information:  
9 *Provided*, that it shall not be competent to introduce any admis-  
10 sions thus made on the trial of any person making the same.

**Sec. 2034. No witness incapacitated by interest or crime.**

No person offered as a witness shall be excluded by reason of  
2 incapacity from interest or crime, from giving evidence either in  
3 person or by deposition, according to the practice of the court, on  
4 the trial of any issue joined, or of any matter or question, or on  
5 any inquiry arising in any suit or proceeding, civil or criminal, in  
6 any court, or before any judge, justice, jury or other person having,  
7 by law, authority to hear, receive and examine evidence; and every  
8 person so offered shall be admitted to give evidence, notwithstand-  
9 ing such person may or shall have an interest in the matter in  
10 question, or in the event of the trial of the issue, or of the suit  
11 or other proceeding in which he is offered as a witness. This sec-  
12 tion shall not be construed to apply to attesting witnesses to wills.

1866, c. 43, ss. 1, 4.  
1869-70, c. 177.  
1871-2, c. 4.

State v. Rose & Vaughan, Phil., 406; Rice v. Keith, 63-319; State v. Adair, 63-63; State v. Phipps, 76-203.

**Sec. 2035. Evidence of parties admissible.**

On the trial of any issue, or of any matter or question, or on any  
2 inquiry arising in any action, suit or other proceeding in court, or  
3 before any judge, justice, jury or other person having, by law,  
4 authority to hear and examine evidence, the parties themselves  
5 and the person in whose behalf any suit or other proceeding may  
6 be brought or defended, shall, except as hereinafter provided, be  
7 competent and compellable to give evidence, either *viva voce*, or by  
8 deposition, according to the practice of the court, in behalf of either  
9 or any of the parties to said action, suit or other proceeding.  
10 Nothing contained in this section shall be construed to apply to  
11 any action or other proceeding in any court instituted in conse-  
12 quence of adultery, or to any action for criminal conversation, or  
13 for breach of promise of marriage.

1866, c. 43, ss. 2, 3, 4

State v. Ludwick, Phil., 404; State v. Rose & Vaughan, Phil., 406; State v. Prince, 63-529; Boykin v. Boykin, 70-262; Isler v. Dewey, 71-14; State v. Phipps, 76-203.

**Sec. 2036. Defendants in criminal proceedings competent in their own behalf at their own request; husband or wife of defendant competent for defendant.**

In the trial of all indictments, complaints or other proceedings  
2 against persons charged with the commission of crimes, offences  
3 and misdemeanors in any of the courts of this state, the person so  
4 charged shall at his own request, but not otherwise, be a competent

1881, c. 110, ss. 2, 3

5 witness, and his failure to make such request shall not create any  
 6 presumption against him. The husband, or wife of the defendant,  
 7 in all criminal actions or proceedings, shall be a competent witness  
 8 for the defendant; but the failure of such witness to be examined  
 9 shall not be used to the prejudice of the defence. But every such  
 10 person examined as a witness shall be subject to be cross-examined  
 11 as other witnesses.

State v. Efler, 85—585; see 1881, c. 89, s. 3.

**Sec. 2037. Incompetent evidence, what.**

1856-7, c. 23.  
 1866, c. 43, s. 3.  
 1868-9, c. 209, s. 4.

Nothing contained in this chapter shall render any person, who  
 2 in any criminal proceeding is charged with the commission of a  
 3 criminal offence competent, or compellable, to give evidence against  
 4 himself, nor shall render any person compellable to answer any  
 5 question tending to criminate himself, nor shall in any criminal  
 6 proceeding render any husband competent or compellable to give  
 7 evidence against his wife, nor any wife competent or compellable  
 8 to give evidence against her husband: *Provided, however*, that in all  
 9 criminal prosecutions of a husband for an assault and battery upon  
 10 the person of his wife, or for abandoning his wife, or for neglecting  
 11 to provide for her support, it shall be lawful to examine the wife  
 12 in behalf of the state against the said husband.

State v. Ludwick, Phil., 401; State v. Rose & Vaughan, Phil., 406; State v. Mooney, 64—54;  
 State v. Davidson, 77—522; State v. Parrott, 79—615; Tabor v. Ward, 83—291.

**Sec. 2038. Rules for summoning witnesses; subpoena, how issued and served.**

R. C., c. 31, s. 59.  
 1777, c. 115, s. 36.

In obtaining the testimony of witnesses in causes depending in  
 2 the superior, criminal and inferior courts, the following rules shall  
 3 be observed in practice, to-wit:  
 4 In suits where witnesses are to appear at any court, the clerk at  
 5 the instance of the party shall issue a subpoena, directed to the  
 6 sheriff or other officer of the county where such witnesses reside,  
 7 mentioning the time and place for their appearance, the names of  
 8 the parties to the suit wherein the testimony is to be given, and  
 9 the party at whose instance they are summoned.  
 10 Every subpoena made returnable immediately, shall be issued  
 11 only in term time, and shall be personally served on the witness  
 12 therein named.  
 13 A copy of every subpoena issued by the clerk in vacation, in case  
 14 any witness therein named is not to be found, may be left at his  
 15 usual place of residence; and such copy, certified by the sheriff or  
 16 other officer, and left as aforesaid, shall be deemed a legal sum-  
 17 mons, and the person therein named shall be bound to appear in  
 18 the same manner as if personally summoned.

**Sec. 2039. Witnesses to attend from term to term till discharged; penalty for non-attendance; entitled to pay until discharged; no execution to issue against defaulting witness until after notice.**

R. C., c. 31, ss. 60,  
 61, 62.  
 1777, c. 115, ss. 37,  
 38, 43.  
 1799, c. 528.  
 1801, c. 591.

Every witness, being summoned to appear in any of the said  
 2 courts, in manner before directed, shall appear accordingly, and

3 continue to attend from term to term until discharged; when sum-  
 4 moned in a civil suit, by the court or the party at whose instance  
 5 such witness shall be summoned; or when summoned in a crimi-  
 6 nal prosecution, until discharged by the court, the prosecuting  
 7 officer, or the party at whose instance he was summoned; and in  
 8 default thereof shall forfeit and pay, in civil cases, to the party at  
 9 whose instance the subpoena issued, the sum of forty dollars, to be  
 10 recovered by motion in the cause, and shall be further liable to his  
 11 action for the full damages which may be sustained for the want  
 12 of such witness's testimony; or if summoned in a criminal pros-  
 13 ecution shall forfeit and pay eighty dollars for the use of the state,  
 14 or the party summoning him.

15 *Provided, however,* that if the civil suit shall, in the vacation, be  
 16 accommodated and settled between the parties, and the party at  
 17 whose instance such witness was summoned should omit to dis-  
 18 charge him from further attendance, and for want of such dis-  
 19 charge, he shall attend at the next term, in that case the witness,  
 20 upon oath made of the facts, shall be entitled to a ticket from the  
 21 clerk in the same manner as other witnesses, and shall recover from  
 22 the party, at whose instance he was summoned, the allowance  
 23 which is given to witnesses for their attendance, with costs.

24 *And provided, further,* that no execution shall issue against any  
 25 defaulting witness for the forfeiture aforesaid, but after notice made  
 26 known to him to show cause against the issuing thereof; and if  
 27 sufficient cause be shown of his incapacity to attend, execution  
 28 shall not issue, and the witness shall be discharged of the forfeit-  
 29 ure without costs; but otherwise the court shall, on motion, award  
 30 execution for the forfeiture against the defaulting witness.

Eller v. Roberts, 3 Ire., 11; Kinzey v. King, 6 Ire., 76; Icehour v. Martin, Busb., 478; Ward  
 v. Bell, 7 Jones, 79; Fite v. Lander, 7 Jones, 247; State v. Gywn, Phil., 445.

#### Sec. 2040. Depositions, how taken.

Any party in a civil action or special proceeding may take the  
 2 depositions of persons whose evidence he may desire to use, with-  
 3 out any special order therefor. Written notice of the time and  
 4 place of taking a deposition, specifying the name of the witness  
 5 and the person before whom it will be taken, must be served by  
 6 the party at whose instance it is taken upon the attorney for the  
 7 adverse party. The time for serving such a notice must be, at the  
 8 least, three days before the deposition is taken, and one day in ad-  
 9 dition for each one hundred miles, by the usual route of travel,  
 10 between the residence of the attorney for the adverse party and the  
 11 place where the deposition is to be taken. Depositions shall be  
 12 taken on commission, issuing from the court and under the seal  
 13 thereof, by one or more commissioners, who shall be of kin to nei-  
 14 ther party, and shall be appointed by the clerk. Depositions shall  
 15 be subscribed and sealed up by the commissioners, and returned  
 16 to the court, the clerk whereof shall open and pass upon the same,

R. C., c. 31, s. 63.  
 1881, c. 279.



17 after having first given the parties or their counsel not less than  
 18 one day's notice; and all such depositions, when passed upon and  
 19 allowed by the clerk, without appeal, or by the judge upon appeal  
 20 from the clerk's order, shall be deemed legal evidence, if the wit-  
 21 ness be competent.

See *Harris v. Peterson*, 2 C. L. R., 471; *State v. Webb*, 1 Hay., 104; *English v. Camp*, 1 Hay., 358; *Ridge's Orphans v. Lewis*, Conf. R., 483; *Ward v. Ely*, 1 Dev., 372; *Bedell v. State Bank*, 1 Dev., 483; *Harris v. Yarborough*, 4 Dev., 166; *Barton v. Morphis*, 4 Dev., 240; *Duncan v. Hill*, 2 D. & B., 291; *Sloan v. Williford*, 3 Ire., 307; *Beasley v. Downay*, 10 Ire., 284; *McDougald v. Smith*, 11 Ire., 576; *Alexander v. Walker*, 13 Ire., 13; *Kea v. Robinson*, 4 Ire. Eq., 427; *Sehorn v. Williams*, 6 Jon., 575; *Hix v. Fisher*, 2 Winst., 84; *Hill v. Bell*, Phil., 132; *State ex rel. Tidline v. Hickerson*, 72—421; *Macay, ex parte*, 84—63.

#### Sec. 2041. What depositions may be read on the trial.

R. C., c. 31, s. 63.  
 1777, c. 115, ss. 39,  
 40, 41.  
 1803, c. 633.  
 1828, c. 24, ss. 1, 2.  
 1836, c. 30.  
 1850, c. 189.  
 1869-70, c. 227, s. 11.  
 1881, c. 279, ss. 1, 3.

Every deposition taken and returned as prescribed in the next  
 2 preceding section, may be read on the trial of the action or pro-  
 3 ceeding, or before any referee, in the following cases, and not oth-  
 4 erwise:

5 (I) If the witness is dead, or has become insane since the dep-  
 6 osition was taken;

7 (II) If the witness is a resident of a foreign country, or of an-  
 8 other state, and is not present at the trial;

9 (III) If the witness is confined in a prison outside the county in  
 10 which the trial takes place.

11 (IV) If the witness is so old, sick or infirm as to be unable to  
 12 attend court.

13 (V) If the witness is the president of the United States, or the  
 14 head of any department of the federal government, or a judge, dis-  
 15 trict attorney, or clerk of any court of the United States, and the  
 16 trial shall take place during the term of such court.

17 (VI) If the witness is the governor of the state, or the head of  
 18 any department of the state government, or the president of the  
 19 university, or the head of any other incorporated college in the  
 20 state.

21 (VII) If the witness is a justice of the supreme court, or a judge,  
 22 presiding officer, clerk or solicitor of any court of record, and the  
 23 trial shall take place during the term of such court.

24 (VIII) If the witness is a member of the congress of the United  
 25 States, or a member of the general assembly, and the trial shall  
 26 take place during a session of the body of which he is a member.

27 (IX) If the witness has been duly summoned, and at the time  
 28 of the trial, is out of the state, or is more than seventy-five miles by  
 29 the usual public mode of travel from the place where the court is  
 30 sitting, without the procurement or consent of the party offering  
 31 his deposition.

#### Sec. 2042. Depositions in civil actions before a justice of the peace.

1872-'3, c. 33.

Any party in a civil action before a justice of the peace may take  
 2 the depositions of all persons whose evidence he may desire to use

3 in the action; and to do so, he may apply to the clerk of the supe-  
 4 rior court for a commission to take the same, and shall proceed in  
 5 all things in taking such depositions as if such action was pending  
 6 in the superior court. When any such depositions are returned to  
 7 the clerk, they shall be opened and passed upon by the clerk, and  
 8 delivered to the justice of the peace, before whom the trial is to be  
 9 had; and the reading and using of said depositions shall conform  
 10 to the rules of the superior court.

**Sec. 2043. Depositions not to be quashed after a trial has begun.**

No deposition shall be quashed, or rejected, on objection first  
 2 made after a trial has begun, merely because of an irregularity in  
 3 taking the same, provided it shall appear that the party objecting  
 4 had notice that it had been taken, and it was on file long enough  
 5 before the trial to enable him to present his objection.

Carson v. Mills, 69—32; Katzenstein v. R. & G. R. R. Co., 78—286.

**Sec. 2044. The objection must be made before trial.**

At any time before the trial, or hearing of an action or proceed-  
 2 ing, any party may make a motion to the judge or court to reject  
 3 a deposition for irregularity in the taking of it, either in whole or  
 4 in part, for scandal, impertinence, the incompetency of the testi-  
 5 mony, for insufficient notice, or for any other good cause. The  
 6 objecting party shall state his exceptions in writing.

Street v. Bryan, 65—619; Carson v. Mills, 69—32; Kerchner v. Reilly, 71—171; Katzenstein v.  
 R. & G. R. R. Co., 78—286; Wassom v. Linster, 83—375.

**Sec. 2045. Powers of commissioners.**

Commissioners to take depositions, appointed by the courts of  
 2 this state, or by the courts of the states or territories of the United  
 3 States, arbitrators, referees, and all persons acting under a commis-  
 4 sion issuing from any court of record in this state, are hereby em-  
 5 powered, they or the clerks of the courts respectively in this state,  
 6 to which such commission shall be returnable, to issue subpoenas,  
 7 specifying the time and place for the attendance of witnesses be-  
 8 fore them, and to administer oaths to said witnesses, to the end  
 9 that they may give their testimony. And any witness, appearing  
 10 before any of the said persons, and refusing to give his testimony  
 11 on oath touching such matters as he may be lawfully examined  
 12 unto, shall be committed, by warrant of the person before whom  
 13 he shall so refuse, to the common jail of the county, there to re-  
 14 main until he may be willing to give his evidence; which war-  
 15 rant of commitment shall recite what authority the person hath  
 16 to take the testimony of such witness, and the refusal of the wit-  
 17 ness of the witness to give it.

**Sec. 2046. Attendance before commissioner, how enforced.**

The sheriff of the county where the witness may be, shall exe-  
 2 cute all such subpoenas, and make due return thereof before the

R. C., c. 31, s. 65.  
 1848, c. 66, s. 2.  
 1850, c. 188, ss. 1, 2.

3 commissioner, or other person, before whom the witness is to ap-  
 4 pear, in the same manner, and under the same penalties, as in  
 5 case of process of a like kind returnable to court; and when the  
 6 witness shall be summoned five days before the time of his re-  
 7 quired attendance, and shall fail to appear according to the pre-  
 8 cept and give evidence, the default shall be noted by the commis-  
 9 sioner, arbitrator, or other person aforesaid; and in case the default  
 10 be made before a commissioner acting under authority from courts  
 11 without the state, the defaulting witness shall forfeit and pay to  
 12 the party at whose instance he may be summoned fifty dollars,  
 13 and on the trial for such penalty, the summons issued by the com-  
 14 missioner, or other person as aforesaid, with the indorsement  
 15 thereon of due service by the officer serving the same, together  
 16 with the default noted as aforesaid and indorsed on the summons,  
 17 shall be *prima facie* evidence of the forfeiture, and sufficient to en-  
 18 title the plaintiff to judgment for the same, unless the witness may  
 19 show his incapacity to have attended.

**Sec. 2047. Default of witness before commissioner.**

R. C., c. 31, s. 66.  
 1850, c. 188, s. 2.

But in case the default be made before a commissioner, arbitra-  
 2 tor, referee or other person, acting under a commission or authority  
 3 from any of the courts of this state, then the same shall be certi-  
 4 fied under his hand, and returned with the subpoena to the court  
 5 by which he was commissioned or empowered to take the evidence  
 6 of such witness; and thereupon the court shall adjudge the default-  
 7 ing witness to pay to the party at whose instance he was sum-  
 8 moned, the sum of forty dollars; but execution shall not issue  
 9 therefor until the same be ordered by the court, after such proceed-  
 10 ings had as shall give said witness an opportunity to show cause,  
 11 if he can, against the issuing thereof.

**Sec. 2048. Witnesses appearing before a jury of view, or commissioner, paid as for attending court.**

R. C., c. 31, s. 67.  
 1805, c. 685, ss. 1, 2.  
 1848, c. 66, s. 1.  
 1850, c. 188, s. 3.

Witnesses summoned to appear at any survey, or before any jury  
 2 of view, or before any commissioner, arbitrator, referee, or other per-  
 3 son authorized to require their attendance, shall be entitled to the  
 4 same fees as for similar attendance at the court of the county, and  
 5 may prove, by their own oath, their attendance, mileage, and fer-  
 6 riage before such person, who is hereby authorized to administer the  
 7 oath: and when they shall attend on any commission issuing from  
 8 without the state, they may recover the fees for attendance against  
 9 the party summoning them, or his agent or attorney directing them  
 10 to be summoned; and when they shall attend under a commission  
 11 or authority from any court in this state, the fees for attendance  
 12 shall be proved as aforesaid, and be certified to the proper court  
 13 and taxed as if the witness had attended the court, among the costs  
 14 of the cause; but nevertheless, such fees may be immediately  
 15 recovered against the party summoning.



**Sec. 2049. Subpœnas to be issued by clerk in cases not provided for.**

In all cases not otherwise provided for, when witnesses are required to attend any court, commission, 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.

R. C., c. 31, s. 68.  
1805, c. 685, s. 1, 2.

**Sec. 2050. Witnesses, while attending court, exempt from arrest in civil cases.**

Every witness shall be exempt from arrest in civil cases during his attendance at any court, or before a commissioner, arbitrator, referee or other person authorized to command the attendance of such witness; and during the time such witness 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.

R. C., c. 31, s. 70.  
1777, c. 115, s. 44.

Hammerkold v. Rose, 7 Jones, 629; Fentriss v. Brown, Phil., 373.

**Sec. 2051. Witnesses not entitled to their fees in advance.**

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.

1868-'9, c. 279, sub  
chap. 11, ss. 3, 4.

Moore v. Commissioners of Alamance, 70—340; Lewis v. Commissioners of Wake, 74—194.

**Sec. 2052. Witness to prove attendance at each court; may recover pay for attendance.**

Every person summoned, who shall attend as a witness in any suit, shall, before the clerk of the court, or before the referee or officer taking the testimony, ascertain by his own oath or affirmation the sum due for traveling to and from court, attendance and mileage, which shall be certified by the clerk; and on failure of the party, at whose instance such witness was summoned, (witnesses for the state excepted,) to pay the same previous to the departure of the witness from court, such witness may at any time sue for and recover the same from the party summoning him; and the certificate of the clerk shall be sufficient evidence of the debt: *Provided*, 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.

R. C., c. 31, s. 73.  
1777, c. 115, s. 46.  
1796, c. 458, s. 1.

See 1868-'9, c. 279, s. c. 11, s. 2; Moore v. Isler, Mart., 78; Thompson v. Hodges, 3 Haw., 318; Carter v. Wood, 11 Ire., 22; Deaver v. Commissioners of Buncombe, 80—116; Belden v. Snead, 84—243.

**Sec. 2053.** Tickets to be filed with clerk, and taxed as costs; only two witnesses allowed to prove same fact.

R. C., c. 31, s. 74.  
1783, c. 189, s. 3.  
1796, c. 458, s. 2.

At the court, where the cause shall be finally determined, the 2 party recovering judgment shall file in the clerk's office the wit- 3 ness tickets; the amount whereof shall be taxed in the bill of costs, 4 to be levied and recovered for the benefit of said party: *Provided*, 5 that the party cast shall not be obliged to pay for more than two 6 witnesses to prove a single fact.

Holmes v. Johnson, 11 Ire., 55; Woolly v. Robinson, 7 Jones, 30; Belden v. Snead, 84—243.

**Sec. 2054.** After removal of cause, subpoenas and commissions to take depositions may issue from either court.

R. C., c. 31, s. 72.  
1810, c. 787.  
1832, c. 8.

When any cause shall be removed from the superior court of 2 one county to that of another, after the order of removal, deposi- 3 tions may be taken in the case, and subpoenas for the attendance 4 of witnesses and commissions to take depositions may issue from 5 either of the said courts, under the same rules as if the case had 6 been originally commenced in the court from which the subpoenas 7 or commissions issued.

**Sec. 2055.** When a subpoena *duces tecum* may issue.

R. C., c. 31, s. 81.  
1797, c. 476.

In all causes depending in any court, in which the production of 2 an original paper, lodged in any of the public offices of the state, 3 or in any office of any court, shall become necessary, the court may 4 issue the process of subpoena *duces tecum*, requiring such persons 5 who hold said offices to attend the court with such original paper, 6 in like manner and under the same penalties as witnesses are re- 7 quired in cases of subpoena to testify.

**Sec. 2056.** Courts may order parties to produce books or papers; plaintiff failing, non-suited; defendant failing, judgment rendered against him.

R. C., c. 31, s. 82.  
1821, c. 1095.  
1828, c. 7.

The courts shall have full power, on motion and due notice 2 thereof given, to require the parties to produce books or writings 3 in their possession or control which contain evidence pertinent to 4 the issue; and if a plaintiff shall fail to comply with such order, 5 and shall not satisfactorily account for his failure, the court, on 6 motion, may give the like judgment for the defendant, as in cases 7 of non-suit; and if a defendant shall fail to comply with such 8 order, and shall not satisfactorily account for his failure, the court, 9 on motion as aforesaid, may give judgment against him by default.

Graham v. Hamilton, 3 Ire., 381; McGibbcney v. Mills, 13 Ire., 162; Branson v. Fentress, 13 Ire., 165; Fuller v. McMillan, Busb., 206; Ward v. Simmons, 1 Jon., 404; Murchison v. McLeod, 2 Jones, 239; Maxwell v. McDowell, 5 Jones, 391; Justice v. Bank, 83—8; McLeod v. Bullard, 84—515; Commissioners of Forsyth v. Lemly, 85—341.

## CHAPTER FIFTY.

## EXECUTORS AND ADMINISTRATORS.

## SECTION.

- 2057. When clerk of the superior court has jurisdiction of the estate.
- 2058. Clerk first acquiring jurisdiction to have exclusive jurisdiction.
- 2059. Letters of administration, to whom granted.
- 2060. Disqualifications.
- 2061. Joining persons not entitled.
- 2062. Renunciation of persons having prior right.
- 2063. Persons having prior right disqualified or absent.
- 2064. When person entitled to administration deemed to have renounced.
- 2065. What must be shown on application.
- 2066. Contested administration.
- 2067. Letters of collection, when to issue and to whom.
- 2068. Qualifications, &c.
- 2069. Authorities, &c.
- 2070. Authority, when to cease, &c.
- 2071. Oaths, &c., to be taken.
- 2072. Administrator, &c., to give bond; proviso.
- 2073. Public administrator, how appointed.
- 2074. His bond.
- 2075. When bond to be enlarged.
- 2076. Bond, when to be renewed.
- 2077. Oath of public administrator.
- 2078. When public administrator to obtain letters.
- 2079. Powers and duties; proviso; penalty.
- 2080. Inventory to be returned, when.
- 2081. Compelling inventory.
- 2082. New assets.
- 2083. Annual accounts.
- 2084. Failure to account.
- 2085. Vouchers.
- 2086. Final accounts.
- 2087. Trust estate in personalty deemed personal assets.
- 2088. What proceeds of sale of real property deemed personal assets.
- 2089. What proceeds deemed real assets.
- 2090. Distinction between legal and equitable assets abolished.
- 2091. Crops, when gathered at decease, deemed personal assets.
- 2092. Power of executor or administrator to sell personal property.
- 2093. Same as to collector.
- 2094. Sales, how to be made.
- 2095. To sell for cash, when.
- 2096. Sale of evidences of debt.
- 2097. Proceeds of sale, how secured.
- 2098. Hours of sale.
- 2099. Powers under wills.
- 2100. Order of payment.
- 2101. Rate of payment.
- 2102. No preference allowed.
- 2103. Debts not due.
- 2104. Debts due executor, &c.

## SECTION.

- 2105. Advertising for claims; notice for six weeks.
- 2106. If no paper in county, advertisement to be made at court house, &c.
- 2107. How advertisements to be proved.
- 2108. Notice may be served personally.
- 2109. Affidavits may be required.
- 2110. Referring claim.
- 2111. Limitations of actions on disputed claims.
- 2112. Omission to present claim within twelve months.
- 2113. Costs against executors, &c., when allowed.
- 2114. Undevised real estate first chargeable with debts.
- 2115. Debtor named executor not discharged.
- 2116. No lien created by commencement of suit.
- 2117. To what estates applicable; proviso.
- 2118. In case of *bona fide* administration prior to July, 1869.
- 2119. Administrators may sell certain evidences of debt.
- 2120. Application to sell real property.
- 2121. Contents of petition.
- 2122. Heirs and devisees to be parties.
- 2123. Infant defendants.
- 2124. When issue joined.
- 2125. Issue as to title.
- 2126. Conveyance by heir or devisee void when.
- 2127. Power of clerk.
- 2128. Order of sale; what to contain.
- 2129. Notice of sale.
- 2130. What real estate subject to sale.
- 2131. Judgment in case of fraudulent conveyance.
- 2132. Creditors may bring a special proceeding.
- 2133. By what rules governed.
- 2134. Summons, when and where returnable.
- 2135. On issuing of summons clerk to advertise.
- 2136. Where published and for what time.
- 2137. Creditors to name an agent to receive notices, &c.
- 2138. How demands filed shall be evidenced.
- 2139. Representative to file list of demands made on him.
- 2140. Clerk to exhibit list of demands, &c., to representative.
- 2141. Representative to admit or deny demands within five days.
- 2142. What clerk to do when issues joined.
- 2143. Who shall pay costs of issues.
- 2144. Failure of representative to appear, what may be done.
- 2145. Clerk to proceed to state account.
- 2146. Clerk to prepare and sign final report.
- 2147. Times of notice, &c., may be enlarged by clerk or judge.



## SECTION.

- 2148. Of appeals to superior court, what required.
- 2149. Clerk to file papers on appeal.
- 2150. Creditors in prior classes may docket their judgments, &c.
- 2151. If assets sufficient to pay any class of debts.
- 2152. If assets insufficient to pay all claims in any class of debts.
- 2153. What judgments to declare.
- 2154. No judgments to fix assets unless, &c.
- 2155. Form and effect of execution.
- 2156. Report evidence of assets on day only to which it relates.
- 2157. Affidavit of assets afterwards come to hand, proceedings on.
- 2158. If personal assets insufficient, may proceed against land.
- 2159. Proceedings on return of summons.
- 2160. Chapter not to apply to probates, &c., had before July, 1869.
- 2161. Proceedings on probates, &c., before July 1st, 1869.
- 2162. Intestates' estates, how distributed.
- 2163. Husband to administer on the estate of a wife who dies intestate.
- 2164. Right of administrator lost upon a dissolution of the marriage, &c.
- 2165. Elopement and adultery of wife forfeits her right to administer on husband's estate, &c.
- 2166. Husband's right to administer, &c., upon wife's estate, when and how lost.
- 2167. Advancements to be accounted for.
- 2168. Children advanced to render schedule.
- 2169. Children refusing to account not entitled.
- 2170. Illegitimate children next of kin to their mothers, when.
- 2171. Illegitimate children next of kin to each other.
- 2172. Executors, &c., to pay over at the end of two years.
- 2173. Sums to be reserved.
- 2174. Gifts to issue; dying and leaving issue.
- 2175. Child born after parents' will executed.
- 2176. Rights of action survive to and against personal representative.
- 2177. Exceptions; rights which die with the person.
- 2178. Deeds may be made by executor, &c., in certain cases.
- 2179. Land devised to be sold by executors, who may sell.
- 2180. Who chargeable as executor *de son tort*.
- 2181. Devastavit by executors or administrators of executors, &c.
- 2182. Payments of executors, &c., deemed valid, when.
- 2183. Right of action to survive to executor of executor, &c.
- 2184. Action for wrongful act or neglect causing death.
- 2185. Measure of damages.
- 2186. How recovery to be applied.
- 2187. Recovery of assets and possession of real property, &c.
- 2188. Executors, &c., to hold in joint tenancy.
- 2189. Sales of real property under wills.
- 2190. When property paid to University.
- 2191. Bidding in real property.

## SECTION.

- 2192. Promises, to charge executor, &c., personally to be in writing.
- 2193. All actions to be in representative capacity.
- 2194. Appearance by one of several executors, &c.
- 2195. Actions against executors, &c., by a creditor.
- 2196. Legacies and distributive shares, how recoverable.
- 2197. Actions against executors, administrators, &c.
- 2198. Judge or court to have power to adjudge payment of legacies and distributive shares.
- 2199. Right of succeeding executor, &c., to issue execution.
- 2200. Actions continued in case of revocation of letters.
- 2201. When executor to give bond.
- 2202. Remedy on bond.
- 2203. Bond to be prosecuted on revocation of letters.
- 2204. Requiring new bonds or new sureties.
- 2205. Surety in danger of loss, &c., entitled to relief.
- 2206. Revocation of letters for failure to comply.
- 2207. Appointment of successor; interlocutory order.
- 2208. Administering before letters granted; penalty.
- 2209. Service on absent executor, how made.
- 2210. Commissions allowed executor; proviso.
- 2211. Executors, &c., may file petition for settlement.
- 2212. Payment of legacy or distributive share due absentee or minor.
- 2213. Liability and compensation of clerk.
- 2214. Heirs, &c., jointly liable for debts, &c.
- 2215. Limit of liability.
- 2216. Apportionment of recovery; costs.
- 2217. Priority of debts.
- 2218. Defence; other debts of equality or priority.
- 2219. Debts paid estimated as if unpaid, when.
- 2220. How to compel contributions among devisees and legatees.
- 2221. Specific devisee, when entitled to contribution.
- 2222. Of what lands an after-born child's share to be allotted.
- 2223. Of what personalty such child's share to be allotted.
- 2224. Intestate estate to be applied in exoneration of estate devised or bequeathed.
- 2225. Decree of contribution.
- 2226. After-born child deemed devisee and legatee, when.
- 2227. How executor to proceed if no petition be filed.
- 2228. Cases of sale of real estate, &c.; final orders, not made before the present constitution, may be transferred to superior court.
- 2229. Executor or administrator authorized after twelve months from qualification to pay into clerk's office moneys belonging to legatees or distributees of estate.
- 2230. Clerk to receive moneys and give receipt.

**Sec. 2057. When clerk of the superior court has jurisdiction of the estate.**

The clerk of the superior court of each county has jurisdiction, C. C. P., s. 433.

2 within his county, to take proof of wills and to grant letters testa-  
3 mentary, letters of administration with the will annexed, and in  
4 cases of intestacy, in the following cases:

5 (1) Where the decedent at, or immediately previous to, his death  
6 was domiciled in the county of such clerk, in whatever place such  
7 death may have happened;

8 (2) Where the decedent at his death had his fixed place of domi-  
9 cile in more than one county the clerk of any such county has juris-  
10 diction;

11 (3) Where the decedent, not being domiciled in this state, died  
12 out of the state, leaving assets in the county of such clerk, or assets  
13 of such decedent thereafter come into the county of such clerk;

14 (4) Where the decedent, not being domiciled in this state, died  
15 in the county of such clerk, leaving assets in the state or assets of  
16 such decedent thereafter come into the state.

Leake v. Gilchrist, 2 Dev., 73; Smith v. Munroe, 1 Ire., 345; Johnson v. Corpening, 4 Ire. Eq., 216; Ballard v. Kilpatrick, 71—281.

**Sec. 2058. Clerk first acquiring jurisdiction to have exclusive jurisdiction.**

The clerk who first gains and exercises jurisdiction under this C. C. P., s. 434.

2 chapter thereby acquires sole and exclusive jurisdiction over the  
3 decedent's estate.

**Sec. 2059. Letters of administration, to whom granted.**

Letters of administration, in case of intestacy, shall be granted C. C. P., s. 453.

2 to the persons entitled thereto and applying for the same, in the  
3 following order:

4 (1) To the husband or widow, except as hereinafter provided;

5 (2) To the next of kin in the order of their degree, where they  
6 are of different degrees; if of equal degree, to one or more of them,  
7 at the discretion of the clerk;

8 (3) To the most competent creditor who resides within the state,  
9 and proves his debt on oath before the clerk;

10 To any other person legally competent.

Pearce v. Castrix, 8 Jones, 71; Armstrong v. Stowe, 77—360.

**Sec. 2060. Disqualifications.**

The clerk shall not issue letters of administration to any person, C. C. P., s. 457.

2 who, at the time of appearing to qualify, is

3 (1) Under the age of twenty-one years;

4 (2) An alien, who is a non-resident of this state;

5 (3) A person who has been convicted of an infamous crime;

6 (4) Who, on proof, is adjudged by the clerk incompetent to exe-  
7 cute the duties of such trust, by reason of drunkenness, improvi-  
8 dence or want of understanding;

9 (5) Who fails to take the oath or give the bond required by law.

Walls v. Walls, 1 Winst., 78.

**Sec. 2061. Joining persons not entitled.**

C. C. P., s. 458.

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 clerk shall file the same.

**Sec. 2062. Renunciation of persons having prior right.**

C. C. P., s. 459.

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 clerk.

Smith v. Munroe, 1 Ire., 345; Hill v. Alsbaugh, 72—402.

**Sec. 2063. Persons having prior right, disqualified or absent.**

C. C. P., s. 460.

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.

Hill v. Alsbaugh, 72—402.

**Sec. 2064. When person entitled to administration deemed to have renounced.**C. C. P., s. 460 (a).  
1868-'9, s. 203.

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 clerk, 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 clerk must enter an order accordingly, and proceed to grant letters to some other person.

Hill v. Alsbaugh, 72—402.

**Sec. 2065. What must be shown on application.**

C. C. P., s. 461.

On application for letters of administration, the clerk 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 administration, 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 inquiry, 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 clerk.



**Sec. 2066. Contested administration.**

Any person interested in the estate may, on complaint filed and  
2 notice to the applicant, contest the right of such applicant for let-  
3 ters of administration, and on any issue of fact joined, or matter  
4 of law arising on the pleadings, the cause may be transferred to  
5 the superior court for trial, or an appeal be taken, as in other cases  
6 provided in this chapter. C. C. P., s. 462.

**Sec. 2067. Letters of collection, when to issue and to whom.**

Whenever, for any reason, a delay is necessarily produced in the  
2 admission of a will to probate, or in granting letters testamentary,  
3 letters of administration, or letters of administration with the will  
4 annexed, the clerk may issue to some discreet person or persons at  
5 his option, letters of collection, authorizing the collection and  
6 preservation of the property of the decedent. C. C. P., s. 463.

**Sec. 2068. Qualifications, &c.**

Every collector shall have the qualifications and give the bond  
2 prescribed by law for an administrator. C. C. P., s. 464.

**Sec. 2069. Authority, &c.**

Every collector has authority to collect the personal property,  
2 preserve and secure the same, and collect the debts and credits of  
3 the decedent; and for these purposes he may commence and main-  
4 tain or defend suits, and he may sell, under the direction and order  
5 of the clerk, any personal property for the preservation and bene-  
6 fit of the estate. He may be sued for debts due by the decedent;  
7 and he may pay funeral expenses and other debts. C. C. P., s. 465.

*Lee v. Lee, 74—70.*

**Sec. 2070. Authority, when to cease, &c.**

When letters testamentary, letters of administration or letters of  
2 administration with the will annexed are granted, the powers of  
3 such collector shall cease, but any suit brought by the collector  
4 may be continued by his successor, the executor or the administra-  
5 tor in his own name. Such collector must, on demand, deliver to  
6 the executor or administrator all the property, right and credits of  
7 the decedent under his control, and render an account, on oath, to  
8 the clerk of all his proceedings. Such delivery and account may  
9 be enforced by citation, order or attachment. C. C. P., s. 466.

**Sec. 2071. Oaths, &c., to be taken.**

Before letters testamentary, letters of administration with the  
2 will annexed, letters of administration or letters of collection are  
3 issued to any person, he must take and subscribe an oath or affirm-  
4 ation before the clerk that that he will faithfully and honestly dis- C. C. P., s. 467.

5 charge the duties of his trust, which oath must be filed in the office  
6 of the clerk.

Armstrong v. Stowe, 77—360.

**Sec. 2072. Administrators, &c., to give bond ; proviso.**

1870-'71, c. 93.  
C. C. P., s. 468.

Every executor from whom a bond is now required by law, and  
2 every administrator and collector, before letters are issued, must  
3 give a bond payable to the state, with two or more sufficient sure-  
4 ties, to be approved by the clerk, conditioned that such executor,  
5 administrator or collector shall faithfully execute the trust reposed  
6 in him and obey all lawful orders of the clerk or other court touch-  
7 ing the administration of the estate committed to him. The pen-  
8 alty of such bond must be at least double the value of all the per-  
9 sonal property of the deceased; such value to be ascertained by the  
10 clerk by examination on oath of the applicant or of some other  
11 competent person: *Provided*, that if the personal property of any  
12 decedent shall be insufficient to pay his debts and the charges of  
13 administration, and it shall become necessary for his executor or  
14 administrator to apply for the sale of real estate for assets, and the  
15 bond previously given is not double the value of both the real and  
16 personal estate of the deceased, such executor (if bond is required  
17 of him by law) or administrator shall, before or at the time of fil-  
18 ing his petition for such sale, give another bond payable and con-  
19 ditioned as the one above prescribed and with like security, in  
20 double the value of the real estate for the sale of which application  
21 shall be made.

**Sec. 2073. Public administrator, how appointed.**

1868-'9, c. 113, s. 1.

There may be a public administrator in every county, appointed  
2 by the clerk of the superior court for the term of eight years.

**Sec. 2074. His bond.**

1868-'9, c. 113, s. 2.

The public administrator shall enter into bond, with three or  
2 more securities, approved by the clerk, in the penal sum of eight  
3 thousand dollars, payable to the state of North Carolina, condi-  
4 tioned faithfully to perform the duties of his office, and obey all  
5 lawful orders of the clerk or other court touching the administra-  
6 tion of the several estates that may come into his hands.

*In re Brinson*, 73—278.

**Sec. 2075. When bond to be enlarged.**

1868-'9, c. 113, s. 3.

Whenever the aggregate value of the real and personal property  
2 belonging to the several estates in the hands of the public adminis-  
3 trator shall exceed the one-half of his bond, the clerk shall require  
4 him to enlarge his bond in amount so as to cover, at all times, at  
5 least the double of such aggregate.

**Sec. 2076. Bond, when to be renewed.**

The public administrator shall renew his bond every two years. 1868-'9, c. 113, s. 4.

**Sec. 2077. Oath of public administrator.**

The public administrator shall take and subscribe an oath (or 1868-'9, c. 113, s. 5.  
2 affirmation) faithfully and honestly to discharge the duties of his  
3 trust; and the oath so taken and subscribed must be filed in the  
4 office of the clerk of the superior court.

**Sec. 2078. When public administrator to obtain letters.**

The public administrator shall apply for and obtain letters on 1868-'9, c. 113, s. 6.  
2 the estates of deceased persons in the following cases :  
3 (1) When the period of six months has elapsed from the death  
4 of any decedent, and no letters testamentary, or letters of adminis-  
5 tration or collection, have been applied for and issued to any per-  
6 son ;  
7 (2) When any stranger, or person without known heirs, shall  
8 die intestate in any county ;  
9 (3) When any person entitled to administration shall request,  
10 in writing, the clerk to issue the letters to the public adminis-  
11 trator.

**Sec. 2079. Powers and duties; proviso; penalty.**

The public administrator shall have, in respect to the several es- 1868-'9, c. 113, s. .  
2 tates in his hands, all the rights and powers, and be subject to all 1876-'7, c. 239.  
3 the duties and liabilities of other administrators. On the expira-  
4 tion of the term of office of a public administrator or his resigna-  
5 tion, he may continue to manage the several estates committed to  
6 him prior thereto until he shall have fully administered the same :  
7 *Provided*, that the provisions of this section shall not apply to such  
8 administrator until he shall enter into bond payable to the state  
9 of North Carolina with two or more sufficient sureties to be ap-  
10 proved by the clerk or other authority having jurisdiction thereof,  
11 conditioned that he shall faithfully execute the trust reposed in  
12 him and obey all lawful orders of the clerk or other lawful au-  
13 thority touching the administration of the several estates so com-  
14 mitted to him. The penalty of such bond shall be double the  
15 value of the personal property unadministered of the said several  
16 estates, and also of the real estate and he shall be authorized to  
17 sue for assets.

**Sec. 2080. Inventory to be returned, when.**

Every executor, administrator and collector, within three months 1868-'9, c. 113, s. 8.  
2 after his qualification, shall return to the clerk, on oath, a just,  
3 true and perfect inventory of all the real estate, goods and chattels  
4 of the deceased, which have come to his hands, or to the hands of



5 any person for him, which inventory shall be signed by him and  
6 be recorded by the clerk.

7 He shall also return to the clerk, on oath, within three months  
8 after each sale made by him, a full and itemized account thereof,  
9 which shall be signed by him and recorded by the clerk.

*Ochiltree v. Wright*, 1 D. & B. Eq., 338; *Graham v. Davidson*, 2 D. & B. Eq., 155; *Nichols v. Dunn*, 2 D. & B. Eq., 287; *Kerr v. Kirkpatrick*, 8 Ire. Eq., 137.

#### Sec. 2081. Compelling inventory.

1868-'9, c. 113, s. 9.

If the inventory and account of sale specified in the preceding  
2 section are not returned as therein prescribed, the clerk must issue  
3 an order requiring the executor, administrator or collector to file  
4 the same within the time specified in the order, which shall not be  
5 less than twenty days, or to show cause why an attachment should  
6 not be issued against him. If, after due service of the order, the ex-  
7 ecutor, administrator or collector does not, on the return day of the  
8 order, file such inventory or account of sale, or obtain further time  
9 to file the same, the clerk shall have power to vacate the office of  
10 administrator, executor or collector, and such executor, adminis-  
11 trator or collector shall be subject to prosecution for a misdemeanor,  
12 and fined and imprisoned at the discretion of the court.

*Taylor v. Biddle*, 71-1; *Pearce v. Lovinier*, 71-248; *Armstrong v. Stowe*, 77-360; *Neighbors v. Hamlin*, 78-42; *Barnes v. Brown*, 79-401; *McFadgen v. Council*, 81-195.

#### Sec. 2082. New assets.

1868-'9, c. 113, s. 10.

Whenever further property of any kind, not included in any  
2 previous return, shall come to the hands or knowledge of any  
3 executor, administrator or collector, he must cause the same to be  
4 returned, as hereinbefore prescribed, within three months after the  
5 possession or discovery thereof; and the making of such return of  
6 new assets, from time to time, may be enforced in the same man-  
7 ner as in the case of the first inventory.

#### Sec. 2083. Annual accounts.

C. C. P., s. 478.  
1871-'2, c. 46.

Every executor, administrator and collector shall, within twelve  
2 months from the date of his qualification or appointment, and an-  
3 nually, so long as any of the estates remains in his control, file, in  
4 the office of the clerk of the superior court, an inventory and ac-  
5 count, under oath, of the amount of property received by him, or  
6 invested by him, and the manner and nature of such investment,  
7 and his receipts and disbursements for the past year in the form of  
8 debit and credit. He must produce vouchers for all payments.  
9 The clerk may examine on oath such accounting party, or any  
10 other person, concerning the receipts, disbursements or any other  
11 matter relating to the estate; and, having carefully revised and  
12 audited such account, if he approve the same, he must indorse his  
13 approval thereon, which shall be deemed *prima facie* evidence of

14 correctness. Each clerk must annex or attach a copy of this sec-  
 15 tion to all letters issued by him.

*Hellig v. Foard*, 64—710; *McFadgen v. Council*, 81—195; *Gregory v. Ellis*, 82—225.

#### Sec. 2084. Failure to account.

If any executor, administrator or collector omits to account, as C. C. P., s. 479.  
 2 directed in the preceding section, or renders an insufficient and  
 3 unsatisfactory account, the clerk shall forthwith order such execu-  
 4 tor, administrator or collector to render a full and satisfactory ac-  
 5 count, as required by law, within twenty days after service of the  
 6 order. Upon return of the order, duly served, if such executor,  
 7 administrator or collector fail to appear or refuse to exhibit such  
 8 account, the clerk may issue an attachment against him for a con-  
 9 tempt and commit him till he exhibit such account, and may like-  
 10 wise remove him from office.

#### Sec. 2085. Vouchers.

Vouchers are presumptive evidence of disbursement, without C. C. P., s. 480  
 2 other proof, unless impeached. If lost, the accounting party must,  
 3 if required, make oath to that fact, setting forth the manner of  
 4 loss, and state the contents and purport of the voucher.

*Drake v. Drake*, 82—443; *McNeill v. Hodges*, 83—504.

#### Sec. 2086. Final accounts.

An executor, or administrator, may be required to file his final C. C. P., s. 481.  
 2 account for settlement in the office of the clerk of the superior court  
 3 by a citation directed to him, at any time after two years from his  
 4 qualification, at the instance of any person interested in the estate;  
 5 but such account may be filed voluntarily at any time; and,  
 6 whether the accounting be voluntary or compulsory, it shall be  
 7 audited and recorded by the clerk.

*Rowland v. Thompson*, 64—714; *Rowland v. Thompson*, 65—110.

#### Sec. 2087. Trust estate in personalty deemed personal assets.

If any trustee, or any person interested in any trust estate, shall 1868-'9, c. 113, s. 11.  
 2 die leaving any equitable interest in personal estate which shall  
 3 come to his executor, administrator or collector, the same estate  
 4 shall be deemed personal assets.

#### Sec. 2088. What proceeds of sale of real property deemed personal assets.

All proceeds arising from the sale of real property, for the pay- 1868-'9, c. 113, s. 12.  
 2 ment of debts, as hereinafter provided, shall be deemed personal  
 3 assets in the hands of the executor, administrator or collector, and  
 4 applied as though the same were the proceeds of the personal estate;  
 5 and bonds and other obligations in which the ancestor has bound  
 6 his heirs shall not be put in suit against the heirs or devisees of  
 7 the deceased, but shall be paid as other debts of the same class in  
 8 the manner provided in this chapter.

**Sec. 2089. What proceeds deemed real assets.**

1868-'9, c. 113, s. 13.

All proceeds from the sale of real estate, as hereinafter provided,  
2 which may not be necessary to pay debts and the charges of the  
3 administration, shall, notwithstanding, be considered real assets,  
4 and as such shall be paid by the executor, administrator or collec-  
5 tor, to such persons as would have been entitled to the land had it  
6 not been sold.

Smith v. Fortescue, Busb. Eq., 127; Latta v. Russ, 8 Jones, 111.

**Sec. 2090. The distinction between legal and equitable assets abolished.**

1868-'9, c. 113, s. 14.

The distinction between legal and equitable assets is abolished,  
2 and all assets shall be applied in the discharge of debts in the man-  
3 ner prescribed by this chapter.

**Sec. 2091. Crops ungathered at decease deemed personal assets.**

1868-'9, c. 113, s. 15.

The crops of every deceased person, remaining ungathered at  
2 his death, shall, in all cases, belong to the executor, administrator  
3 or collector, as part of the personal assets, and shall not pass to  
4 the widow with the land assigned as dower, nor to the devisee by  
5 virtue of any devise of the land, unless such intent be manifest  
6 and specified in the will.

Flynt v. Conrad, Phil. 1—90; Thomas v. Lines, 83—191.

**Sec. 2092. Power of executor or administrator to sell personal property.**

1868-'9, c. 113, s. 16.

Every executor and administrator shall have power in his dis-  
2 cretion and without any order, except as hereinafter provided, to  
3 sell, as soon after his qualification as practicable, all the personal  
4 estate of his decedent.

**Sec. 2093. Same as to collector.**

1868-'9, c. 113, s. 17.

All sales of personal property by collectors shall be made only  
2 upon order obtained, by motion, from the clerk of the superior court,  
3 who shall specify in his order a descriptive list of the property to be  
4 sold.

**Sec. 2094. Sales, how to be made.**

1868-'9, c. 113, s. 18.

All sales of personal estate by an executor, administrator or col-  
2 lector, shall be publicly made on a credit of six months or for cash,  
3 after twenty days' notification posted at the court house and four  
4 other public places in the county.

Wynns v. Alexander, 2 Dev. & B. Eq., 53; Polk v. Robinson, 7 Ire. Eq., 235.

**Sec. 2095. To sell for cash, when.**

1868-'9, c. 113, s. 19.

To sell for cash, executors, administrators and collectors must  
2 obtain an order from the clerk, for reasons to be filed in the office  
3 of the court. When any person interested either as creditor or  
4 legatee on the day of sale, objects to the completion of such cash  
5 sale, on account of the insufficiency of the amount bid, before



6 passing title to property so disposed of, the clerk, at his discretion,  
7 shall confirm the sale.

**Sec. 2096. Sale of evidences of debt.**

Every executor, administrator and collector, at any time after 1868-'9, c. 113, s. 20  
2 one year from the grant of letters, shall be authorized to sell at  
3 public auction, in the manner prescribed in this chapter, all bills,  
4 bonds, notes, accounts, or other evidences of debt belonging to the  
5 decedent, which he has been unable to collect or which may be  
6 deemed insolvent. Before offering such evidences of debt at pub-  
7 lic sale he shall file with the clerk a descriptive list thereof, and  
8 obtain an order of sale therefor from the clerk, and shall make  
9 return of the proceeds of such sale as in other cases of assets.

Gray v. Armistead, 6 Ire. Eq., 74, and cases there cited.

**Sec. 2097. Proceeds of sale, how secured.**

The proceeds of all sales of personal estate and rentings of real 1868-'9, c. 113, s. 21.  
2 property by public auction, shall be secured by bond and good  
3 personal security; and such proceeds shall be collected as soon as  
4 practicable, otherwise the executor, administrator or collector shall  
5 be answerable for the same.

Lee v. Lee, 74—70.

**Sec. 2098. Hours of sale.**

All sales or rentings provided for in the preceding section, shall 1868-'9, c. 113, s. 22.  
2 be between the hours of ten o'clock a. m., and four o'clock p. m.,  
3 of the day on which the sale or renting is to be made; and every  
4 executor, administrator or collector, who otherwise makes any sale  
5 or renting, shall forfeit and pay two hundred dollars to any person  
6 suing for the same.

**Sec. 2099. Powers under wills.**

Nothing contained in this chapter shall be construed to affect 1868-'9, c. 113, s. 23.  
2 the discretionary powers, trusts and authorities of an executor or  
3 other trustee acting under a will: *Provided*, thereby creditors be  
4 not delayed, nor the order changed in which by law they are en-  
5 tled to be paid.

**Sec. 2100. Order of payment.**

The debts of the decedent must be paid in the following order: 1868-'9, c. 113, s. 24.  
2 FIRST CLASS.—Debts which by law have a specific lien on prop-  
3 erty to an amount not exceeding the value of such property.  
4 SECOND CLASS.—Funeral expenses.  
5 THIRD CLASS.—Taxes assessed on the estate of the deceased pre-  
6 vious to his death.  
7 FOURTH CLASS.—Dues to the United States and to the state of  
8 North Carolina,

9 FIFTH CLASS.—Judgments of any court of competent jurisdiction  
10 within this state, docketed and in force, to the extent to which  
11 they are a lien on the property of the deceased at his death.

12 SIXTH CLASS—Wages due to any domestic servant or mechan-  
13 ical or agricultural laborer employed by the deceased, which claim  
14 for wages shall not extend to a period of more than one year next  
15 preceding the death; or if such servant or laborer was employed for  
16 the year current at the decease, then from the time of such em-  
17 ployment; for medical services within the twelve months preceding  
18 the decease.

19 SEVENTH CLASS.—All other debts and demands.

Jenkins v. Carter, 70—500; Murchinson v. Williams, 71—135; Lee v. Eure, 82—428.

**Sec. 2101. Rate of payment.**

1868-'9, c. 113, s. 25. Every debt must be paid *pro rata*, equally in its class.

**Sec. 2102. No preference allowed.**

1868-'9, c. 113, s. 26. No executor, administrator or collector shall give to any debt  
2 any preference whatever, either by paying it out of its class or by  
3 paying thereon an undue proportion in its class.

**Sec. 2103. Debts not due.**

1868-'9, c. 113, s. 27. Debts not due may be paid on a rebate of interest thereon for  
2 the time unexpired.

**Sec. 2104. Debts due executor, &c.**

1868-'9, c. 113, s. 28. No property or assets of the decedent shall be retained by the  
2 executor, administrator or collector in satisfaction of his own debt,  
3 in preference to others of the same class; but such debt must be  
4 established upon the same proof and paid in like manner and or-  
5 der as required by law in case of other debts.

**Sec. 2105. Advertising for claims; notice for six weeks.**

1868-'9, c. 113, s. 29.  
1881, c. 278, s. 2. Every executor, administrator and collector, within twenty days  
2 after the granting of letters, shall notify all persons having claims  
3 against the decedent, to exhibit the same to such executor, admin-  
4 istrator or collector, at or before a day to be named in such notice;  
5 which day must be twelve months from the day of the first publica-  
6 tion of such notice. The notice shall be published once a week, for  
7 six weeks in a newspaper, (if any there be) published in the county:  
8 *Provided*, that the cost thereof shall in no case exceed two dollars  
9 and fifty cents.

Lee v. Patrick, 9 Ire., 135; Gilliam v. Willey, 1 Jones Eq., 128; Flemming v. Flemming, 85—127.

**Sec. 2106. If no paper in county, advertisement to be made at court house, &c.**

If there shall be no newspaper published in the county, then the  
2 notice required in the preceding section shall be posted at the court  
3 house, and four other public places in the county.

**Sec. 2107. How advertisements to be proved.**

A copy of the advertisement, directed to be posted or published 1868-'9, c. 113, s. 31.  
2 in pursuance of the preceding sections with an affidavit, taken be-  
3 fore some person authorized to administer oaths, of the proprietor,  
4 editor or foreman of the newspaper wherein the same appeared, to  
5 the effect that such notice was published for six weeks in said news-  
6 paper, or an affidavit, stating that such notices posted, were filed  
7 in the office of the clerk by the executor, administrator or collec-  
8 tor. The copy so verified or affidavit shall be deemed a record of  
9 the court and a copy thereof, duly certified by the clerk, shall be  
10 received as conclusive evidence of the fact of publication in all the  
11 courts of this state.

Flemming v. Flemming, 85—127.

**Sec. 2108. Notice may be served personally.**

The executor, administrator or collector may cause the said notice 1868-'9, c. 113, s. 32.  
2 to be personally served on any creditor; who shall, thereupon,  
3 within six months after personal service thereof, exhibit his claim,  
4 or be forever barred from maintaining any action thereon.

Flemming v. Flemming, 85—127.

**Sec. 2109. Affidavits may be required.**

Upon any claim being presented against the estate, the executor, 1868-'9, c. 113, s. 33.  
2 administrator or collector may require the affidavit of the claim-  
3 ant or other satisfactory evidence that such claim is justly due,  
4 that no payments have been made thereon, and that there are no  
5 off-sets against the same, to the knowledge of the claimant; or if  
6 any payments have been made, or any off-sets exist, their nature  
7 and amount must be stated in such affidavit.

Flemming v. Flemming, 85—127.

**Sec. 2110. Referring claim.**

If the executor, administrator or collector doubt the justness of 1868-'9, c. 113, s. 34.  
2 any claim so presented, he may enter into an agreement, in writing,  
3 with the claimant, to refer the matter in controversy, whether the  
4 same be of a legal or equitable nature, to one or more disinterested  
5 persons, not exceeding three; whose proceedings shall be the same  
6 in all respects as if such reference had been ordered in an action.  
7 Such agreement to refer, and the award thereupon, shall be filed in  
8 the clerk's office where the letters were granted, and shall be a lawful  
9 voucher for the personal representative: the same may be impeached  
10 in any proceeding against the personal representative, for fraud  
11 therein: *Provided*, that the right to refer claims under this section  
12 shall extend to claims in favor of the estate as well as those against it.

Graham v. Tate, 77—120; Flemming v. Flemming, 85—127.

**Sec. 2111. Limitations of action on disputed claims.**

If a claim is presented to and rejected by the executor, adminis- 1868-'9, c. 113, s. 35.  
2 trator or collector, and not referred as provided in the preceding sec-



tion, the claimant must, within six months after due 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.

Graham v. Tate, 77—120; Flemming v. Flemming, 85—127.

**Sec. 2112. Omission to present claim within twelve months.**

1868-'9, c. 113, s. 37.

In an action brought on a claim which was not presented within twelve months from the first publication of the general notice to creditors, 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.

**Sec. 2113. Costs against executors, &c., when allowed.**

1868-'9, c. 113, s. 38.

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, in which cases the court may award such costs against the defendant personally, or against the estate, as may be just.

May v. Darden, 83—237; Flemming v. Flemming, 85—127.

**Sec. 2114. Undevised real estate first chargeable with debts.**

1868-'9, c. 113, s. 39.

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.

**Sec. 2115. Debtor named executor, not discharged.**

1868-'9, c. 113, s. 40.

The appointing of any person executor shall not be a discharge of any debt or demand due from such person to the testator.

Ferebee v. Doxey, 6 Ire., 448; Moore v. Miller, Phil. Eq., 359.

**Sec. 2116. No lien created by commencement of suit.**

1868-'9, c. 113, s. 41.

No lien shall be created by the commencement of a suit against an executor, administrator or collector.

**Sec. 2117. To what estates applicable; proviso.**

1869-'70, c. 53, s. 1.

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

7 law as it existed just prior to the said date, and it is hereby declared  
 8 that such is the true intent and meaning of this chapter: *Provided*,  
 9 *however*, that nothing herein contained shall be construed to pre-  
 10 vent the application of the chapter so far as it relates only to the  
 11 courts having jurisdiction of any action or proceeding for the settle-  
 12 ment of an administration or to the practice and procedure therein.

Badham v. Cox, 11 Ire., 456; Giles v. Palmer, 4 Jones, 386; Moore v. Byers, 65—240; Taylor v. Biddle, 71—1; Brandon v. Phelps, 77—44.

**Sec. 2118. In case of *bona fide* administration prior to July, 1869.**

If any person shall have *bona fide* administered any estate 1869-'70, c. 58, s. 2.  
 2 or any part of the estate of any deceased person whereof orig-  
 3 inal administration was granted prior to said first day of July,  
 4 under the said act of one thousand eight hundred and sixty-  
 5 eight and one thousand eight hundred and sixty-nine, he shall not  
 6 be deemed guilty of a *devastavit*.

**Sec. 2119. Administrators may sell certain evidences of debt.**

Executors and administrators who qualified and entered upon 1869-'70, c. 58, s. 3.  
 2 the administration of their estates before the first day of July, one  
 3 thousand eight hundred and sixty-nine, may sell such evidences  
 4 of debt as are mentioned and provided in this chapter.

**Sec. 2120. Application to sell real property.**

When the personal estate of a decedent is insufficient to pay all 1868-'9, c. 113, s. 42.  
 2 his debts, including the charges of administration, the executor,  
 3 administrator or collector may, at any time after the grant of let-  
 4 ters, apply to the superior court of the county where the land or  
 5 some part thereof is situated by petition to sell the real property  
 6 for the payment of the debts of such decedent.

Rhem v. Tull, 13 Ire., 57; Knight v. Knight, 6 Jones Eq., 134; Thompson v. Cox, 8 Jones, 311;  
 Wiley v. Wiley, Phil., 131; Evans v. Singletary, 63—205; Wadsworth v. Davis, 63—251; Finger  
 v. Finger, 64—183; Pike v. Green, 64—665; Hardee v. Williams, 65—56; Hyman v. Jarnigan,  
 65—96; Vaughn v. Deloatch, 65—378; Bland v. Harstoe, 65—204; Pelletier v. Saunders, 67—261;  
 Hinton v. Whitehurst, 68—316; Latham v. Bell, 69—135; Humphrey v. Wade, 70—280; Carlton  
 Byers, 70—691; Ballard v. Kilpatrick, 71—281; Stafford v. Harris, 72—198; Haywood v. Haywood,  
 79—42; Shields v. McDowell, 82—137; Williams v. Williams, 85—313.

**Sec. 2121. Contents of the petition.**

The petition, which must be verified by the oath of the appli- 1868-'9, c. 113, s. 43.  
 2 cant, shall set forth, as far as can be ascertained—  
 3 (1) The amount of debts outstanding against the estate;  
 4 (2) The value of the personal estate, and the application thereof;  
 5 (3) A description of all the legal and equitable real estate of the  
 6 decedent, with the estimated value of the respective portions or  
 7 lots;  
 8 (4) The names, ages and residences, if known, of the devisees  
 9 and heirs at law of the decedent.

Hinton v. Whitehurst, 68—316; Haywood v. Haywood, 79—42; Shields v. McDowell, 82—137;  
 Stradley v. King, 84—635.

**Sec. 2122. Heirs and devisees to be parties.**

1868-'9, c. 113, s. 44.

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 chapter entitled Code of Civil Procedure.

Thompson v. Cox, 8 Jones, 311; Williams v. Williams, 85—313.

**Sec. 2123. Infant defendants.**

1868-'9, c. 113, s. 45.

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.

Stradley v. King, 84—635.

**Sec. 2124. When issue joined.**

1868-'9, c. 113, s. 46.

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.

McBryde v. Patterson, 73—478; Jones v. Hemphill, 77—42.

**Sec. 2125. Issue as to title.**

1868-'9, c. 113, s. 47.

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.

**Sec. 2126. Conveyance by heir or devisee void, when.**

1868-'9, c. 113, s. 105.

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.

Thompson v. Cox, 8 Jones, 311; Badger v. Jones, 66—305; Donoho v. Patterson, 70—649; Hinton v. Whitehurst, 71—66; Brandon v. Phelps, 77—44; Badger v. Daniel, 79—372; Winfield v. Burton, 79—388; Renan v. Banks, 83—483.

**Sec. 2127. Power of clerk.**

1868-'9, c. 113, s. 48.

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.

Thompson v. Cox, 8 Jones, 311.



**Sec. 2128. Order of sale, what to contain.**

The court may decree a sale of the whole or any specified parcel 1868-'9, c. 113, s. 49.  
 2 of the premises, in such a manner as to size of lots, place of sale,  
 3 terms of credit, and security for payment of purchase money, as  
 4 may be most advantageous to the estate, and upon the coming in  
 5 of the report of the sale and the confirmation thereof, title shall be  
 6 made by such person, and at such time as the court may prescribe.

Floyd v. Herring, 64—409; Hyman v. Jernigan, 65—96; Shearin v. Hunter, 72—493; McLean v. Patterson, 84—427; Fouches v. Durham, 84—56.

**Sec. 2129. Notice of sale.**

Notice of sale under this proceeding shall be the same as for the 1868-'9, c. 113, s. 50.  
 2 sale of real estate by sheriffs on execution.

**Sec. 2130. What real estate subject to sale.**

The real estate subject to sale under this chapter shall include all 1868-'9, c. 113, s. 15.  
 2 the deceased may have conveyed with intent to defraud his cred-  
 3 itors, and all rights of entry and rights of action and all other  
 4 rights and interests in lands, tenements and hereditaments which  
 5 he may devise, or by law would descend to his heirs: *Provided*, that  
 6 lands so fraudulently conveyed shall not be taken from any one  
 7 who purchased them for a valuable consideration and without a  
 8 knowledge of the fraud.

Wagh v. Blevins, 68—167; Paschal v. Harris, 74—335; Mannix v. Ihrle, 76—299; Heck v. Williams, 79—437.

**Sec. 2131. Judgment in case of fraudulent conveyance.**

Whenever an executor, administrator or collector shall file his 1868-'9, c. 113, s. 52.  
 2 petition to sell land, which may have been fraudulently conveyed,  
 3 and of which there may have been a subsequent *bona fide* sale,  
 4 whereby he cannot have a decree of sale of the land, the court may  
 5 give judgment in favor of such executor, administrator or collector  
 6 for the value of the land, against all persons who may have fraudu-  
 7 lently purchased the same; and if the whole recovery shall not be  
 8 necessary to pay the debts and charges, the residue shall be re-  
 9 stored to the person of whom the recovery was made.

**Sec. 2132. Creditors may bring a special proceeding.**

Any creditor of a deceased person may, within the times pre- 1871-'2, c. 213, s. 1.  
 2 scribed by law, prosecute a special proceeding or a civil action be- 1876-'7, c. 241, s. 6.  
 3 fore the judge in his own name and in behalf of himself and all  
 4 other creditors of the deceased without naming them, against the  
 5 personal representative of the deceased, to compel him to an ac-  
 6 count of his administration, and to pay the creditors what may be  
 7 payable to them respectively.

Wadsworth v. Davis, 63—251; Ransom v. McClees, 64—17; Herring v. Outlaw, 70—334; Jer-  
 kins v. Carter, 70—500; Overman v. Grier, 70—693; Ballard v. Kilpatrick, 71—281; Patterson v.  
 Miller, 72—516; Wadsworth v. Davis, 75—159; Isler v. Murphy, 76—52; Graham v. Tate, 77—120;  
 Haywood v. Haywood, 79—42; Bratton v. Davidson, 79—423; Shields v. Payne, 80—291; South-  
 all v. Shields, 81—28; McFadgen v. Council, 81—195; Pegram v. Armstrong, 82—326; Oates v.  
 Lilly, 84—643; Flemming v. Flemming, 85—127; Long v. Bank, 85—355.

**Sec. 2133. By what rules governed.**

1871-'2, c. 213, s. 2.

The said special proceeding shall be governed by the rules of  
2 practice prescribed for special proceedings, except so far as the  
3 same are modified by this chapter.

**Sec. 2134. Summons, when and where returnable.**

1871-'2, c. 213, s. 3.

The summons in said special proceeding shall be returnable be-  
2 fore the clerk of the superior court of the county in which letters  
3 testamentary or administration were granted, and on a day not  
4 less than forty nor more than one hundred days from the issuing  
5 thereof, and not less than twenty days after the service thereof.

**Sec. 2135. On issuing of summons, clerk to advertise.**

1871-'2, c. 213, s. 4.

On issuing of the summons, the clerk shall advertise for all  
2 creditors of the deceased to appear before him on or before the re-  
3 turn day and file the evidences of their claims.

**Sec. 2136. Where published, and for what time.**

1871-'2, c. 213, s. 5.

The advertisement shall be published at least once a week for  
2 not less than six weeks in some newspaper which may be thought  
3 by the clerk the most likely to inform all the creditors, and shall  
4 also be posted at the court house door for not less than thirty days.  
5 If, however, the estate does not exceed three thousand dollars in  
6 value, and the creditors are supposed by the clerk all to reside  
7 within the county or to be known, publication in a newspaper may  
8 be omitted, and in lieu thereof the advertisement shall be posted  
9 at four public places in the county, besides the court house door.  
10 Proof of personal service on a creditor or that a copy of the adver-  
11 tisement was sent to him by mail at his usual address, shall be as  
12 to him equivalent to publication.

**Sec. 2137. Creditors to name an agent to receive notices, &c.**

1871-'2, c. 213, s. 6.

The creditors of the deceased on or before the required day shall  
2 file with the clerk the evidences of their demands, and every cred-  
3 itor on filing such claim shall indorse thereon or otherwise name  
4 some person or place within the town in which the court is held,  
5 upon whom or where notices in the cause may be served or left,  
6 otherwise he shall be deemed to have notice of all motions, orders  
7 and proceedings in the cause filed or made in the clerk's office.

**Sec. 2138. How demands filed shall be evidence.**

1871-'2, c. 213, s. 7.

If the evidence of the demand be other than a judgment, or  
2 some writing signed by the deceased, it shall be accompanied by  
3 the oath of the creditor, or if he be non-resident or infirm or ab-  
4 sent, or in any other proper case, of some witness of the transac-  
5 tion, or of some agent of the creditor, that to the best of his

6 knowledge and belief the claim is just, and that all due credits have  
7 been given.

Isler v. Murphy, 76—52; Long v. Bank, 85—354.

**Sec. 2139. Representative to file list of demands made on him.**

On the day of his appearance the personal representative shall  
2 on oath give to the clerk a list of all claims against the deceased  
3 of which he has received notice or has any knowledge, with the  
4 names and residences of the claimants to the best of his knowledge  
5 and belief; and if any person so named shall have failed to file  
6 evidence of his claim, the clerk shall immediately cause a notice  
7 requiring him to do so to be served on him, which may be done by  
8 posting the same directed to him at his usual address.

Flemming v. Flemming, 85—127.

**Sec. 2140. Clerk to exhibit list of demands, &c., to representative.**

On the day fixed for the appearance of the personal representa-  
2 tive, the clerk shall exhibit to him a list of all the claims filed in  
3 his office with the evidences thereof.

Flemming v. Flemming, 85—127.

**Sec. 2141. Representative to admit or deny demands within five days.**

Within five days thereafter the defendant shall state in writing  
2 on said list, or on a separate paper, which of said claims he disputes  
3 in whole or in part. The clerk shall then notify the creditor, as  
4 above provided, that his claim is disputed, and the creditor shall  
5 thereupon file in the office of the clerk a complaint founded on his  
6 said claim, and the pleadings shall be as in other cases.

Wadsworth v. Davis, 75—159; Graham v. Tate, 77—120; Oates v. Lilly, 84—643; Flemming v. Flemming, 85—127.

**Sec. 2142. What clerk to do when issues joined.**

If the issues joined be of law, the clerk shall send the papers to  
2 the judge of the superior court for trial, as is provided for by the  
3 Code of Civil Procedure in like cases. If the issues shall be of fact,  
4 the clerk shall send so much of the record as may be necessary to  
5 the next term of the superior court for trial.

Wadsworth v. Davis, 75—159; Graham v. Tate, 77—120; Oates v. Lilly, 84—643.

**Sec. 2143. Who shall pay costs of issues.**

If any personal representative shall deny the liability of his de-  
2 ceased upon any claim evidenced as is provided in this chapter,  
3 and the issue shall finally be decided against him, the costs of the  
4 trial shall be paid by him personally, and not allowed out of the  
5 estate, unless it shall appear that he had reasonable cause to con-  
6 test the claim and did so *bona fide*.



**Sec. 2144. Failure of representative to appear, what may be done.**

1871-'2, c. 213, s. 13.

If the personal representative shall fail to appear on the return  
2 day, the clerk or judge of the superior court may permit him  
3 afterward to appear and plead on such terms as may be just.

**Sec. 2145. Clerk to proceed to state account.**

1871-'2, c. 213, s. 14.

Immediately after the return day the clerk or judge shall pro-  
2 ceed to hear such evidence as shall be brought before him, and to  
3 state an account of the dealings of the personal representative  
4 with the estate of his deceased according to the course of his court.

**Sec. 2146. Clerk to prepare and sign final report.**

1871-'2, c. 213, s. 15.

After the clerk shall have stated the account and prepared his  
2 report, he shall notify all the parties to examine and except to the  
3 same. Any party may then except to the same in whole or in  
4 part. The clerk shall then pass on the exceptions and prepare  
5 and sign his final report and judgment, of which the parties shall  
6 have notice.

**Sec. 2147. Times of notice, &c., may be enlarged by clerk or judge.**

1871-'2, c. 213, s. 16.

If no length of notice, or no time for the doing of an act, is  
2 stated in this chapter, the time shall be reasonable, and in any  
3 case it may be enlarged by the clerk from time to time, or by the  
4 judge of the superior court, on application to him or on appeal to  
5 him from the clerk.

**Sec. 2148. Of appeals to superior court, what required.**

1871-'2, c. 213, s. 17.

Any party may appeal from a final judgment of the clerk to the  
2 judge of the superior court in term time, on giving an undertaking  
3 with surety, or making a deposit, to pay all costs which shall be  
4 recovered against him. If any creditor shall appeal and give such  
5 security, his appeal shall be deemed an appeal by all who are  
6 damaged by the judgment, and no other creditor shall be required  
7 to give any undertaking.

**Sec. 2149. Clerk to file papers on appeal.**

1871-'2, c. 213, s. 18.

On an appeal the clerk shall file his report and judgment and  
2 all the papers in his office as clerk of the superior court, and enter  
3 the case on his trial docket for the next term.

**Sec. 2150. Creditors in prior classes may docket their judgments, &c.**

1871-'2, c. 213, s. 19.

If the exceptions and questions, from the decision on which the  
2 appeal is taken affect only the creditors in one or more classes, the  
3 creditors in the prior classes by the leave of the clerk, or of the  
4 judge of the superior court, may docket their judgments and issue  
5 execution thereon.

**Sec. 2151. If assets sufficient to pay any class of debts.**

If upon taking the account it shall be admitted, or be found 1871-'2, c. 213, s. 20.  
2 without appeal, that the defendant has assets sufficient, after the  
3 deduction of all proper costs and charges, to pay all the claims  
4 which have been presented of any one or more of the classes, the  
5 clerk shall give judgment in favor of the creditors whose debts of  
6 such classes have been admitted, or adjudged by any competent  
7 court; and if any claim in any preferred class be in litigation,  
8 the amount of such claim, with the probable costs of the litigation,  
9 shall be left in the hands of the personal representative, and not  
10 carried to the credit of any subsequent class until the litigation is  
11 ended.

**Sec. 2152. If assets insufficient to pay all claims in any class of debts.**

If the assets be insufficient to pay in full all the claims of any 1871-'2, c. 213, s. 21.  
2 class, the amounts thereof having been found or admitted as afore-  
3 said, the clerk may adjudge payment of a certain part of such  
4 claims, proportionate to the assets applicable to debts of that class.

**Sec. 2153. What judgments to declare.**

All judgments given by judge or clerk of the superior court 1871-'2, c. 213, s. 22.  
2 against a personal representative for any claim against his deceased  
3 shall declare :  
4 (1) The certain amount of the creditor's demand ;  
5 (2) The amount of assets which the personal representative has  
6 applicable to such demand. Execution may issue only for this last  
7 sum with interest and costs.

**Sec. 2154. No judgments to fix assets unless, &c.**

No judgment of any court against a personal representative shall 1871-'2, c. 213, s. 23.  
2 fix him with assets, except a judgment of the judge or clerk, ren-  
3 dered as aforesaid, or the judgment of some appellate court ren-  
4 dered upon an appeal from such judgment. All other judgments  
5 shall be held merely to ascertain the debt, unless the personal rep-  
6 resentative by pleading expressly admit assets.

Vaughn v. Stephenson, 69—212; Ballard v. Kilpatrick, 71—281; Dunn v. Barnes, 73—273;  
Holmes v. Foster, 78—35; Flemming v. Flemming, 85—127.

**Sec. 2155. Form and effect of execution.**

All executions issued upon the order or judgment of the judge 1871-'2, c. 213, s. 24.  
2 or clerk or of any appellate court against any personal representa-  
3 tive, rendered as aforesaid, shall run against the goods and chat-  
4 tels of the deceased, and if none, then against the goods and chat-  
5 tels, lands and tenements of the representative. And all such judg-  
6 ments docketed in any county shall be a lien on the property for  
7 which execution is adjudged as fully as if it were against him per-  
8 sonally.

Williams v. Green, 80—76.

**Sec. 2156. Reports, evidence of assets only on day to which it relates.**

1871-'2, c. 213, s. 25.

The account and report and adjudication by the judge, clerk or  
 2 any appellate court shall not be evidence as to the assets except on  
 3 the day to which such adjudication relates.

**Sec. 2157. Affidavit of assets afterwards come to hand, proceedings on.**

1871-'2, c. 213, s. 26.

Any creditor may afterwards, on filing an affidavit by himself  
 2 or his agent, that he believes that assets have come to the hands of  
 3 the personal representative since that day, and on giving an un-  
 4 dertaking, with surety, or making a deposit for the costs of the per-  
 5 sonal representative, may sue out a summons against him alleging  
 6 subsequent assets, and the proceedings thereon shall be as herein-  
 7 before prescribed, so far as the same may be necessary.

**Sec. 2158. If personal assets insufficient, may proceed against land.**

1871-'2, c. 213, s. 27.

If it shall appear at any time during, or upon, or after the tak-  
 2 ing of the account of a personal representative that his personal  
 3 assets are insufficient to pay the debts of the deceased in full, and  
 4 that he died seized of real property, it shall be the duty of the judge  
 5 or clerk, at the instance of any party, to issue a summons in the  
 6 name of the personal representative or of the creditors generally,  
 7 to the heirs, devisees and others in possession of the lands of the  
 8 deceased, to appear and show cause why said lands should not be  
 9 sold for assets.

Wood v. Skinner, 79—92.

**Sec. 2159. Proceedings on return of summons.**

1871-'2, c. 213, s. 28.

Upon the return of the summons the proceedings shall be as is  
 2 directed in other like cases.

**Sec. 2160. Chapter not to apply to probates, &c., before July, 1869.**1871-'2, c. 213, s. 29.  
1872-'3, c. 179.

This chapter shall apply only to cases where the grant of letters  
 2 of collection or of probate or of administration shall have issued  
 3 on or after the first day of July, one thousand eight hundred and  
 4 sixty-nine, except in case of administrations *de bonis non* upon  
 5 estates where the former letters of administration or letters testa-  
 6 mentary were granted prior to the first of July, one thousand eight  
 7 hundred and sixty-nine, in all which cases estates shall be admin-  
 8 istered, closed up and settled according to the law as it existed just  
 9 prior to the first of July, one thousand eight hundred and sixty-  
 10 nine.

Latham v. Bell, 69—135; Carlton v. Byers, 70—691; Brandon v. Phelps, 77—44.

**Sec. 2161. Proceedings on probates, &c., before July 1st, 1869.**

871-'2, c. 213, s. 30.

Proceedings against other personal representatives shall be regu-  
 2 lated by the existing law. In all cases where an action has been  
 3 or shall be brought against a personal representative to recover a  
 4 claim against his deceased; if in the superior court, that court shall



5 proceed according to its course; if before a justice of the peace,  
 6 and the representative has pleaded or shall plead that he has fully  
 7 administered, the justice shall find the debt and return the papers  
 8 to the next term of the superior court in order that the issue in  
 9 respect to the assets may be there tried and determined according  
 10 to the course of the court.

*Hooks v. Moses*, 8 Ire., 88; *Anderson v. Young*, Busb., 408; *Hare v. Parham*, 4 Jones, 412.

**Sec. 2162. Intestate's estates, how distributed.**

The surplus of the estate, in case of intestacy, shall be distribu- 1868-'9, c. 113, s. 53.

2 ted in the following manner, except as hereinafter provided :

3 (1) If there are not more than two children, one-third part to  
 4 the widow of the intestate, and all the residue by equal portions to  
 5 and among the children of the intestate and such persons as legally  
 6 represent such children as may then be dead ;

7 (2) If there are more than two children, then the widow shall  
 8 share equally with all the children and be entitled to a child's part ;

9 (3) If there be no child nor legal representative of a deceased  
 10 child, then one-half the estate shall be allotted to the widow, and  
 11 the residue be distributed equally to every of the next of kin of  
 12 the intestate, who are in equal degree, and to those who legally  
 13 represent them ;

14 (4) If there be no widow, the estate shall be distributed, by equal  
 15 portions, among all the children, and such persons as legally rep-  
 16 resent such children as may be dead ;

17 (5) If there be neither widow nor children, nor any legal repre-  
 18 sentative of the children, the estate shall be distributed equally to  
 19 every of the next of kin of the intestate, who are in equal degree,  
 20 and those who legally represent them ;

21 (6) But if, after the death of the father and in the lifetime of the  
 22 mother, any of his children shall die intestate, without wife or  
 23 children, every brother or sister, and the representatives of them,  
 24 shall have an equal share with the mother of the deceased child.

*Williamson v. Smart*, Conf. Rep., 268 (146); *Grant v. Bustin*, 1 D. & B. Eq., 77; *Gillespie v. Foy*, 5 Ire. Eq., 280; *Headen v. Headen*, 7 Ire. Eq., 159; *Hunter v. Husted*, Busb. Eq., 97; *Credle v. Credle*, Busb., 225; *Alvany v. Powell*, 1 Jones Eq., 35; *Skinner v. Wynne*, 2 Jones Eq., 41; *Worth v. McNeill*, 4 Jones Eq., 272; *Johnston v. Chesson*, 6 Jones Eq., 146; *Nelson v. Blue*, 63-659; *Arrington v. Dortch*, 77-367.

**Sec. 2163. Husband to administer on the estate of a wife who dies intestate.**

If any married woman shall die wholly or partially intestate, 1871-'2, c. 193, s. 32.  
 2 the surviving husband shall be entitled to administer on her per-  
 3 sonal estate, and shall hold the same, subject to the claims of her  
 4 creditors and others having rightful demands against her, to his  
 5 own use, except as hereinafter provided. If the husband shall  
 6 die after his wife, but before administering, his executor or admin-  
 7 istrator or assignee shall receive the personal property of the said  
 8 wife, as a part of the estate of the husband, subject as aforesaid, and  
 9 except as hereinafter provided.

**Sec. 2164. Right of administration lost upon a dissolution of the marriage, &c.**

1871-'2, c. 193, s. 42.

When a marriage shall be dissolved *a vinculo*, the parties respectively shall thereby lose all his or her right to administer on the estate of the other, and to a distributive share in the personal property of the other, and every right and estate in the personal estate of the other.

**Sec. 2165. Elopement and adultery of wife forfeits her right to administer on husband's estate, &c.**

1871-'2, c. 193, s. 44.

If any married woman shall elope with an adulterer, and shall not be living with her husband at his death, she shall thereby lose all right to a distributive share in the personal property of her husband, and all right to administer on his estate.

**Sec. 2166. Husband's right to administer, &c., upon wife's estate, when and how lost.**

1871-'2, c. 193, s. 45.

If any husband shall separate himself from his wife, and be living in adultery at her death, or if she shall have obtained a divorce *a mensa et thoro*, and shall not be living with her husband at her death, or if the husband shall have abandoned his wife, or shall have maliciously turned her out of doors, and shall not be living with her at her death, he shall thereby lose all his right and estate of whatever character in, and to her personal property, and all right to administer on her estate.

**Sec. 2167. Advancements to be accounted for.**

1868-'9, c. 113, s. 54.

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.

Donnell v. Mateer, 5 Ire. Eq., 7; Webb v. Lyon, 5 Ire. Eq., 67; Henderson v. Womack, 6 Ire. Eq., 437; Hicks v. Forest, 6 Ire. Eq., 528; Walton v. Walton, 7 Ire. Eq., 138; Hanner v. Winburn, 7 Ire. Eq., 142; Headen v. Headen, 7 Ire. Eq., 159; Bridgers v. Hutchins, 11 Ire., 68; Taylor v. Bond, Busb. Eq., 5; Hunter v. Husted, Busb. Eq., 97; Credle v. Credle, Busb., 225; Davis v. Haywood, 1 Jones Eq., 253; Skinner v. Wynne, 2 Jones Eq., 41; Shiver v. Brock, 2 Jones Eq., 137; Worth v. McNeil, 4 Jones Eq., 272; Hollister v. Attmore, Jones Eq., 373; Banks v. Shan-nonhouse, Phil., 284; Hagler v. McCombs, 66—345; Bason v. Harden, 72—281; James v. James, 76—331; Bradsher v. Cannady, 76—445; Arrington v. Dortch, 77—367; Melvin v. Bullard, 82—33.

**Sec. 2168. Children advanced to render schedule.**

1868-'9, c. 113, s. 55.

Where any parent shall die intestate, who had in his or her lifetime given to, or put in 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 par-

6 ticulars by him or her received of the intestate in his or her life-  
7 time.

Bradsher v. Cannady, 76—445.

**Sec. 2169. Children refusing to account not entitled.**

In case any child who had, in the lifetime of the intestate, re-  
2 ceived a part of said intestate, shall refuse to give such inventory,  
3 he shall be considered to have had and received his full share of  
4 the deceased's estate, and shall not be entitled to receive any further  
5 part or share.

Bradsher v. Cannady, 76—445.

1868-'9, c. 113, s. 56.

**Sec. 2170. Illegitimate children next of kin to their mother, when.**

Every illegitimate child of the mother dying intestate, or the  
2 issue of such illegitimate child deceased, shall be considered among  
3 her next of kin, and as such shall be entitled to a share of her per-  
4 sonal estate as prescribed in this chapter.

Kimborough v. Davis, 1 Dev. Eq., 71.

1868-'9, c. 113, s. 57.

**Sec. 2171. Illegitimate children next of kin to each other.**

Illegitimate children, born of the same mother, shall be consid-  
2 ered legitimate as between themselves and their representatives,  
3 and their personal estate shall be distributed in the same manner  
4 as if they had been born in lawful wedlock. And in case of the  
5 death of any such child or his issue, without leaving issue, his  
6 estate shall be distributed among his mother and all such persons  
7 as would be his next of kin, if all such children had been born in  
8 lawful wedlock.

Kimborough v. Davis, 1 Dev. Eq., 71; Earp v. Earp, 1 Jones Eq., 243.

1868-'9, c. 113, s. 58.

**Sec. 2172. Executors, &c., to pay over at the end of two years.**

No executor, administrator or collector, after two years from his  
2 qualification, shall hold or retain in his hands more of the de-  
3 ceased's estate than amounts to his necessary charges and disburse-  
4 ments and such debts as he shall legally pay; but all such estate  
5 so remaining shall, immediately after the expiration of two years,  
6 be divided and be delivered and paid to such person to whom the  
7 same may be due by law or the will of the deceased.

Whitted v. Webb, 2 D. & B. Eq., 442; McKinder v. Littlejohn, 1 Ire., 66; Hobbs v. Craigie, 1  
Ire., 332; State v. McAleer, 5 Ire., 632; Allen v. Smitherman, 6 Ire. Eq., 341; Turnage v. Turnage,  
7 Ire. Eq., 127.

1868-'9, c. 113, s. 59.

**Sec. 2173. Sums to be reserved.**

But if, on a final accounting before the judge or clerk, it appears  
2 that any claim exists against the estate which is not due or on  
3 which suit is pending, the judge or clerk shall allow a sum suffi-  
4 cient to satisfy such claim, or the proportion to which it may be  
5 entitled, to be retained in the hands of the executor, administrator  
6 or collector, for the purpose of being applied to the payment when

1868-'9, c. 113, s. 60.



7 due or when recovered, with the expense of contesting the same.  
 8 The order allowing such sum to be retained must specify the  
 9 amount and nature of the claim.

**Sec. 2174. Gifts to issue dying and leaving issue.**

1868-'9, c. 113, s. 61.

When any person, being a child or other issue of the testator, to  
 2 whom any real or personal estate shall be devised or bequeathed  
 3 for any estate or interest not determinable at or before the death  
 4 of such person, shall die in the lifetime of the testator, leaving  
 5 issue, and any such issue of such person as shall be living at the  
 6 death of the testator, such devise or bequest shall not lapse, but  
 7 shall take effect and vest a title to such estate in the issue sur-  
 8 viving, if there be any, in the same manner, proportions and  
 9 estates as if the death of such person had happened immediately  
 10 after the death of the testator, unless a contrary intention shall ap-  
 11 pear by the will.

*Hester v. Hester*, 2 Ire. Eq., 330; *Lindsay v. Pleasants*, 4 Ire. Eq., 320; *Williamson v. Williamson*, 4 Jon. Eq., 281; *Smith v. Smith*, 5 Jones Eq., 305; *Scales v. Scales*, 6 Jones Eq., 163; *Leffer v. Rowland*, Phil. Eq., 143; *Whitehead v. Thompson*, 79—450; *Gordon v. Pendleton*, 84—98.

**Sec. 2175. Child born after parent's will executed.**

1868-'9, c. 113, s. 62.

Children born after the making of the parent's will, and whose  
 2 parent shall die without making any provision for them, shall be  
 3 entitled to such share and proportion of said parent's estate as if  
 4 he or she had died intestate, and the rights of any such after-born  
 5 child shall be a lien on every part of the parent's estate, until his  
 6 several share thereof is set apart in the manner prescribed in this  
 7 chapter.

*Johnson v. Chapman*, *Busbee's Eq.*, 213; *Windley v. Gaylord*, 7 Jones, 55.

**Sec. 2176. Rights of action survive to and against personal representative.**

1868-'9, c. 113, s. 63.

Upon the death of any person, all demands whatsoever, and  
 2 rights to prosecute or defend any action or special proceeding, ex-  
 3 isting in favor or against such person, except as hereinafter pro-  
 4 vided, shall survive to and against the executor, administrator or  
 5 collector of his estate.

*Rippey v. Miller*, 11 Ire., 247; *Butner v. Keelhn*, 6 Jon., 60; *Collier v. Arrington*, Phil., 356; *Peebles v. N. C. Railroad Co.*, 63—238; *Shuler v. Millsaps*, 71—297; *Shields v. Lawrence*, 72—43; *Sledge v. Reid*, 73—440; *Price v. Cox*, 83—261.

**Sec. 2177. Exceptions; rights which die with the person.**

1868-'9, c. 113, s. 64.

The following rights in action do not survive :

- 2 (1) Causes of action for libel and for slander, except slander of
- 3 title;
- 4 (2) Causes of action for false imprisonment, assault and battery,
- 5 or other injuries to the person, where such injury does not cause
- 6 the death of the injured party;

7 (3) Causes of action accruing against a husband by reason of his  
8 marriage, for the debts of the wife contracted by her before mar-  
9 riage;

10 (4) Cases where the relief sought could not be enjoyed, or grant-  
11 ing it would be nugatory after death.

Rippey v. Miller, 11 Ire., 247; Butner v. Keelhn, 6 Jones, 60; Collier v. Arrington, Phil., 356;  
Peebles v. N. C. Railroad Co., 63—238; Shuler v. Millsaps, 71—297; Shields v. Lawrence, 72—43;  
Sledge v. Reid, 73—440; Price v. Cox, 83—261.

**Sec. 2178. Deeds may be made by executor, &c., in certain cases.**

When any deceased person shall have *bona fide* sold any lands,  
2 and shall have given a bond or other written contract to the pur-  
3 chaser to convey the same, and the bond or other written contract  
4 hath been duly proved and registered in the county where the lands  
5 are situated, if within the state, or, if not in the state, shall be  
6 proved before the clerk of the superior court and registered in the  
7 county where the obligee lives or obligor died, his executor, admin-  
8 istrator or collector may execute a deed to the purchaser convey-  
9 ing such estate as shall be specified in the bond or other written  
10 contract; and such deed shall convey the title as fully as if it had  
11 been executed by the deceased obligor: *Provided*, that no deed shall  
12 be made but upon payment of the price, if that be the condition  
13 of the bond or other written contract.

1868-'9, c. 113, s. 65,  
1874-'5, c. 251.

Hodges v. Hodges, 2 D. & B. Eq., 72; Lindsay v. Coble, 2 Ire. Eq., 602; McCraw v. Gwin, 7  
Ire. Eq., 55; Osborne v. McMillan, 5 Jones, 109; White v. Hooper, 6 Jones Eq., 152.

**Sec. 2179. Land devised to be sold by executors, who may sell.**

When any of the executors of a person making a will of lands, to  
2 be sold by his executors, die or refuse to take upon them the ad-  
3 ministration; or, when all the executors die, or refuse to take upon  
4 them the administration; or, when there is no executor named in  
5 a will devising lands to be sold; in every such case, such executors  
6 as qualify, or having qualified, do survive, or the administrator  
7 with the will annexed, may sell such lands; and all conveyances,  
8 made by such executors or administrators, shall be effectual to con-  
9 vey the title to the purchaser of the estate so devised to be sold.

1868-'9, c. 113, s. 66.

**Sec. 2180. Who chargeable as executor *de son tort*.**

Every person who shall receive goods or debts of any person dy-  
2 ing intestate, or any release of a debt due the intestate, upon a  
3 fraudulent intent, or without such valuable consideration as shall  
4 amount to the value or thereabout, (except it be in the satisfaction  
5 of some debt, of the same goods or debts to him owing by the intes-  
6 tate at the time of his decease,) shall be chargeable as executor of  
7 his own wrong, so far as such debts and goods, coming to his hands,  
8 or whereof he is released, will satisfy, deducting all just debts ow-  
9 ing to him by the intestate, and all other payments made by him.

1868-'9, c. 113, s. 67.

Norfleet v. Riddick, 3 Dev., 221; McMorine v. Storey, 4 D. & B., 189; Bailey v. Miller, 5 Ire.,  
444; Sturdivant v. Davis, 9 Ire., 365; Francis v. Welch, 11 Ire., 215; Bridgers v. Moye, Busbee's  
Eq., 170; Israel v. King, 69—373; Winchester v. Grady, 72—115.

**Sec. 2181. Devastavit by executors or administrators of executors, &c.**

1868-'9 c. 113, s. 68.

The executors and administrators of persons, who, as rightful  
2 executors in their own wrong, or as administrators, shall waste or  
3 convert to their own use any estate or assets of any person deceased,  
4 shall be chargeable in the same manner as their testator or intestate  
5 might have been.

**Sec. 2182. Payments of executors, &c., deemed valid, when.**

1869-'70, c. 150, s. 1.

Where any executor or administrator has paid any debt of his  
2 testator or intestate before all the debts of higher dignity have been  
3 paid and satisfied, and the estate of such testator or intestate was  
4 at the time of such payment solvent, but has since been rendered  
5 insolvent by the emancipation of the slaves, or the insolvency of  
6 the debtors of the estate, or other cause, without any fault or want  
7 of diligence on the part of the executor or administrator, or when  
8 any creditor has refused to accept payment of his debt in Confeder-  
9 ate currency, and such currency was afterwards used by the execu-  
10 tor or administrator in payment of debts of the estate, or it became  
11 of no value by the termination of the war, in all such cases pay-  
12 ments thus made shall be deemed and held valid in law, and shall  
13 be allowed to such executor or administrator in all suits by cred-  
14 itors of the estate seeking to charge such executor or administrator  
15 with assets of the estate or with *devastavit* thereof without regard to  
16 the dignity of the debt thus paid, or on which such suit may be  
17 brought.

**Sec. 2183. Right of action to survive to executor of executor, &c.**

1868-'9, c. 113, s. 69.

Executors and administrators, and executors of executors, shall  
2 have actions in like manner as the first testator or intestate might  
3 have had against any person, his executors and administrators, in  
4 all cases, except where such actions, being commenced, are not  
5 allowed by statute to be revived on the death of any party.

Thompson v. Badham, 70—141.

**Sec. 2184. Action for wrongful act or neglect causing death.**

1868-'9, c. 113, s. 70.

Whenever the death of a person is caused by a wrongful act, neg-  
2 lect or default of another, such as would, if the injured party had  
3 lived, have entitled him to an action for damages therefor, the per-  
4 son or corporation that would have been so liable, and his or their  
5 executors, administrators, collectors or successors, shall be liable to  
6 an action for damages, to be brought within one year after such  
7 death, by the executor, administrator or collector of the decedent;  
8 and this notwithstanding the death, and although the wrongful  
9 act, neglect or default, causing the death, amount in law to a felony.

Burton v. W. &amp; W. Railroad Co., 82—504.



**Sec. 2185. Measure of damages.**

The plaintiff in such action may recover such damages as are a 1868-'9, c. 113, s. 71.  
2 fair and just compensation for the pecuniary injury resulting from  
3 such death.

*Collier v. Arrington*, Phil., 356; *Kesler v. Smith*, 66—154; *Burton v. W. & W. Railroad Co.*, 82—504; *Burton v. W. & W. Railroad Co.*, 84—192.

**Sec. 2186. How recovery to be applied.**

The amount recovered in such action is not liable to be applied 1868-'9, c. 113, s. 72  
2 as assets, in the payment of debts or legacies, but shall be disposed  
3 of as provided in this chapter for the distribution of personal prop-  
4 erty in case of intestacy.

**Sec. 2187. Recovery of assets and possession of real property, &c.**

Executors, administrators or collectors may maintain any appro- 1868-'9, c. 113, s. 73.  
2 priate action or proceeding to recover assets, and to recover posses-  
3 sion of the real property of which executors are authorized to take  
4 possession by will; and to recover for any injury done to such  
5 assets or real property at any time subsequent to the death of the  
6 decedent.

**Sec. 2188. Executors, &c., to hold in joint tenancy.**

Every estate vested in executors, administrators or collectors, as 1868-'9, c. 113, s. 74.  
2 such, shall be held by them in joint tenancy.

**Sec. 2189. Sales of real property under wills.**

Sales of real property made pursuant to authority given by will, 1868-'9, c. 113, s. 75.  
2 unless the will otherwise directs, may be public or private, and on  
3 such terms as, in the opinion of the executor, are most advanta-  
4 geous to those interested therein.

*Worth v. McAden*, 1 Dev. & Bat. Eq., 199.

**Sec. 2190. When property paid to the University.**

All sums of money, or other estate of whatever kind, which shall 1868-'9, c. 113, s. 76;  
2 remain in the hands of any executor, administrator or collector for  
3 five years after his qualification, unrecovered or unreclaimed by  
4 suit, by creditors, next of kin, or others entitled thereto, shall be  
5 paid by the executor, administrator or collector to the trustees of  
6 the University of North Carolina; and the said trustees are author-  
7 ized to demand, sue for, recover and collect such moneys or other  
8 estate of whatever kind, and hold the same without liability for  
9 profit or interest, until a just claim therefor shall be preferred by  
10 creditors, next of kin, or others entitled thereto; and if no such  
11 claim shall be preferred within ten years after such money or other  
12 estate be received by the said trustees, then the same shall be held  
13 by them absolutely.

*Oliveira v. The University*, Phil. Eq., 69.

**Sec. 2191. Bidding in real property.**

1868-'9, c. 113, s. 77.

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.

State v. Hanner, 64—668.

**Sec. 2192. Promises to charge executor, &c., personally, to be in writing.**

1868-'9, c. 113, s. 78.

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.

Sleighter v. Harrington, 2 Murphy, 332; Williams v. Chaffin, 2 Dev., 333; Smithwick v. Shepherd, 4 Jones, 196; Norton v. Edwards, 66—367.

**Sec. 2193. All actions to be in representative capacity.**

1868-'9, c. 113, s. 79.

All actions and proceedings brought by or against executors, 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.

**Sec. 2194. Appearance by one of several executors, &c.**

1868-'9, c. 113, s. 81.

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.

**Sec. 2195. Actions against executors, &c., by a creditor.**

1868-'9, c. 113, s. 82.

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.

Heilig v. Foard, 64—710; Vaughn v. Stephenson, 69—212; Grayham v. Tate, 77—120; Shields v. Payne, 80—291; Hoover v. Berryhill, 84—132; Greer v. Cagle, 84—385; Long v. Bank, 85—354.

**Sec. 2196. Legacies and distributive shares, how recoverable.**

1868-'9, c. 113, s. 83.

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 qual-

4 ification, unless the executor, administrator or collector shall sooner  
5 file his final account for settlement. The suit shall be commenced  
6 and the proceedings therein conducted as prescribed in other cases  
7 of special proceedings.

*Williams v. Williams*, 71—427; *Hendrick v. Mayfield*, 74—626; *Ham v. Kornegay*, 85—119.

**Sec. 2197. Actions against executors, administrators, &c.**

In addition to the remedy by special proceeding, actions against  
2 executors, administrators and collectors may be brought originally  
3 to the superior court at term time; and in all such cases it shall be  
4 competent to the court in which said actions shall be pending to  
5 order an account to be taken by such person or persons as said  
6 court may designate, and to adjudge the application or distribu-  
7 tion of the fund ascertained, or to grant other relief, as the nature  
8 of the case may require.

*Hunt v. Sneed*, 64—176; *Hellig v. Foard*, 64—710; *Miller v. Barnes*, 65—67; *Williams v. Williams*, 70—665; *Williams v. Williams*, 71—427; *Hendrick v. Mayfield*, 74—626; *Haywood v. Haywood*, 79—42; *Bratton v. Davidson*, 79—423; *Devereux v. Devereux*, 81—12; *Pegram v. Armstrong*, 82—326.

**Sec. 2198. Judge or court to have power to adjudge payment of legacies and distributive shares.**

It shall be in the power of the judge or court, on petition or  
2 action, within two years from the qualification of an executor, ad-  
3 ministrator or collector, to adjudge the payment in full or partially,  
4 of legacies and distributive shares, on such terms as the court shall  
5 deem proper, when there shall be no necessity for retaining the fund.

*Hobbs v. Craig*, 1 *Ire.*, 332; *Turnage v. Turnage*; 7 *Ire. Eq.*, 127;

**Sec. 2199. Right of succeeding executor, &c., to issue execution.**

Any executor, administrator or collector may have execution  
2 issued on any judgment recovered by any person who preceded him  
3 in the administration of the estate, or by the decedent, in the same  
4 cases and the same manner as the original plaintiff might have  
5 done.

*Durham v. Bostwick*, 72—353.

**Sec. 2200. Actions continued in case of revocation of letters.**

In case the letters of an executor, administrator or collector are  
2 revoked, pending an action to which he is a party, the adverse  
3 party may, notwithstanding, continue the action against him in  
4 order to charge him personally. If such party does not elect so  
5 to do, within six months after notice of such revocation, the action  
6 may be continued against the successor of the executor, adminis-  
7 trator or collector in the administration of the estate, in the same  
8 manner as in case of death.



**Sec. 2201. When executor to give bond.**

1863-'9, c. 113, s. 86.

Executors shall give bond as prescribed by law, in the following  
2 cases:

3 (1) Where the executor resides out of the state and no foreign  
4 executor has any authority to intermeddle with the estate until he  
5 shall have entered into bond, which must be done within the space  
6 of one year after the death of the testator, and not afterwards;

7 (2) When a man marries a woman who is an executrix, and if  
8 the husband in such case fail to give bond, the clerk, on applica-  
9 tion of any creditor or other party interested in the estate, shall re-  
10 voke the letters issued to the wife and grant administration with  
11 the will annexed to some other person;

12 (3) Where an executor, other than such as may have already  
13 given bond, obtains an order to sell any portion of the real estate  
14 for the payment of debts, as hereinbefore provided; and the court  
15 or clerk to whom application is made shall require, before granting  
16 any order of sale, such executor to enter into bond.

Barnes v. Brown, 79—401.

**Sec. 2202. Remedy on bond.**

1863-'9, c. 113, s. 87.

Every person injured by the breach of any bond given by an  
2 executor, administrator or collector may put the same in suit and  
3 recover such damages as he may have sustained.

Williams v. Hicks, 1 Murphy, 437; Mayo v. Mayo, 2 Hawks, 329; Carrington v. Carrington,  
3 Dev., 529; State v. McKay, 6 Ire., 397; Smith v. Fortescue, Busbee's Eq., 127; Latta v. Russ, 8  
Jones, 111; Neal v. Becknell, 85—299.

**Sec. 2203. Bond to be prosecuted on revocation of letters.**

1868-'9, c. 113, s. 88.

Whenever the letters of an executor, administrator or collector  
2 are revoked, his bond may be prosecuted by the person or persons  
3 succeeding to the administration of the estate, and a recovery may  
4 be had thereon to the full extent of any damage not exceeding the  
5 penalty of the bond sustained by the estate of the decedent by the  
6 acts or omissions of such executor, administrator or collector, and  
7 to the full value of any property received and not duly adminis-  
8 tered. Moneys so recovered shall be assets in the hands of the per-  
9 son recovering them.

Latham v. Bell, 69—135; Carlton v. Byers, 70—691.

**Sec. 2204. Requiring new bonds or new sureties.**

1868-'9, c. 113, s. 89.

If complaint be made on affidavit to the clerk of the superior  
2 court that the surety in any bond of an executor, administrator or  
3 collector is insufficient, or that one or more of such sureties is or  
4 is about to become a non-resident of this state, or that the bond is  
5 inadequate in amount, the clerk must issue an order requiring the  
6 principal in the bond to show cause why he should not give a new  
7 bond, or further surety, as the case may be. On the return of the  
8 order duly executed, if the objections in the complaint are found

9 valid, the clerk shall make an order requiring the party to give  
10 further surety or a new bond in a larger amount, within a reason-  
11 able time.

**Sec. 2205. Surety in danger of loss, &c., entitled to relief.**

Any surety on the bond of an executor, administrator or collec- 1863-'9, c. 113, s. 90.  
2 tor, who is in danger of sustaining loss by his suretyship, may  
3 exhibit his petition on oath to the clerk of the superior court  
4 wherein the bond was given, setting forth particularly the circum-  
5 stances of his case, and asking that such executor, administrator or  
6 collector be removed from office, or that he give security to indem-  
7 nify the petitioner against apprehended loss, or that the petitioner  
8 be released from responsibility on account of any future breach of  
9 the bond. The clerk shall issue a citation to the principal in the  
10 bond, requiring him, within ten days after service thereof, to answer  
11 the petition. If, upon the hearing of the case, the clerk deem the  
12 surety entitled to relief, he may grant the same in such manner  
13 and to such extent as may be just. And if the principal in the  
14 bond gives new or additional security, to the satisfaction of the  
15 clerk, within such reasonable time as may be required, the clerk  
16 may make an order releasing the surety from liability on the bond  
17 for any subsequent act, default or misconduct of the principal.

Governor v. Gowan, 3 Ire., 342; Hunt v. Sneed, 64—176; Hunt v. Sneed, 64—180; Neighbors v. Hamlin, 78—42; Barnes v. Brown, 79—401.

**Sec. 2206. Revocation of letters for failure to comply.**

If any person required to give a new bond, or further security, 1863-'9, c. 113, s. 91.  
2 or security to indemnify, under the two preceding sections, fails  
3 to do so within the time specified in any such order, the clerk  
4 must forthwith revoke the letters issued to such person, whose right  
5 and authority, respecting the estate, shall thereupon cease.

**Sec. 2207. Appointment of successor; interlocutory order.**

In all cases of the revocation of letters, the clerk must imme- 1863-'9, c. 113, s. 92.  
2 diately appoint some other person to succeed in the administration  
3 of the estate; and pending any suit or proceeding between parties  
4 respecting such revocation, the clerk is authorized to make such  
5 interlocutory order as, without injury to the rights and remedies  
6 of creditors, may tend to the better securing of the estate.

Taylor v. Biddle, 71—1; *In re Brinson*, 73—278.

**Sec. 2208. Administering before letters granted; penalty.**

No person shall enter upon the administration of any decedent's 1863-'9, c. 113, s. 93.  
2 estate until he has obtained letters therefor, under the penalty of  
3 one hundred dollars, one-half to the use of the informer and the  
4 other half to the state; but nothing herein contained shall prevent  
5 the family of the deceased from using so much of the crop, stock

6 and provisions on hand as may be necessary, until the widow's  
7 year's support is assigned therefrom, as prescribed by law.

Israel v. King, 69—373.

**Sec. 2209. Service on absent executor, how made.**

1868-'9, c. 113, s. 94.

Whenever process may issue against an executor who has not  
2 given bond, and the same cannot be served upon him by reason of  
3 his absence or concealment, service of such process may be made  
4 by publication in the manner prescribed in the chapter entitled  
5 Code of Civil Procedure.

**Sec. 2210. Commissions allowed executor; proviso.**

1868-'9, c. 113, s. 95.  
1869-'70, c. 189.

The clerks of the superior court are authorized and directed to  
2 allow commissions to executors, administrators and collectors on  
3 filing their final accounts for settlement, not exceeding five per  
4 cent. upon the amount of receipts and expenditures, which shall  
5 appear to be fairly made in the course of administration; and  
6 such allowance may be retained out of the assets against creditors  
7 and all other persons claiming an interest in the estate. And the  
8 clerk, in making such allowance, shall consider the trouble and  
9 time expended in the management of the business: *Provided, how-*  
10 *ever,* that in sales of land, for payment of debts, commissions shall  
11 not be allowed on any larger amount of the proceeds than the sum  
12 actually applied in payment of debts: *And provided also,* that noth-  
13 ing in this section contained shall prevent any executor, adminis-  
14 trator or collector from retaining for necessary charges and dis-  
15 bursements in the management of the estate. And any judge of  
16 the superior court or any commissioner appointed by said court, to  
17 take and state an account of the assets of any deceased person in  
18 the hands of an executor, administrator or collector, upon any plea  
19 of fully administered, shall have power and be authorized and di-  
20 rected to allow such executor, administrator or collector not ex-  
21 ceeding five per cent. upon the amount of receipts and expendi-  
22 tures which shall appear upon the trial of said cause or taking of  
23 such account to have been fairly made in the course of adminis-  
24 tration.

Finch v. Ragland, 2 Dev. Eq., 137; Peyton v. Smith, 2 D. & B. Eq., 325; Walton v. Avery, 2 Dev. & Bat. Eq., 405; Whitted v. Webb, 2 Dev. & B. Eq., 442; Lynch v. Johnson, 11 Ire., 224; Morris v. Morris, 1 Jones Eq., 326.

**Sec. 2211. Executors, &c., may file petition for settlement.**

1868-'9, c. 113, s. 96.

An executor, administrator or collector, who has filed his final  
2 account for settlement may, at any time thereafter, file his peti-  
3 tion against the parties interested in the due administration of the  
4 estate, in the superior court of the county in which he qualified,  
5 or before the judge in term time, setting forth the facts, and pray-  
6 ing for an account and settlement of the estate committed to his  
7 charge. The petition shall be proceeded on in the manner pre-



8 scribed by law; and, at the final hearing thereof, the judge or clerk  
9 may make such order or decree in the premises as shall seem to be  
10 just and right.

Bumpass v. Chambers, 77—357; Houston v. Howie, 84—349.

**Sec. 2212. Payment of legacy or distributive share due absentee or minor.**

When any balance of money or other estate, which is due an 1868-'9, c. 113, s. 97.  
2 absent defendant or infant without guardian, is found in the hands  
3 of an executor, administrator or collector who has preferred his  
4 petition for settlement, the judge may direct such money or other  
5 estate to be paid and delivered to the clerk of the superior court,  
6 to be invested upon interest, or otherwise managed under the  
7 direction of the judge, for the use of such absent person or infant.

**Sec. 2213. Liability and compensation of clerk.**

Every clerk of the superior court who may be intrusted with 1868-'9, c. 113, s. 98  
2 money or other estate in such case shall be liable on his official  
3 bond for the faithful discharge of the duties enjoined upon him by  
4 the judge in relation to said estate, and he may receive such com-  
5 pensation for his services as the judge may allow.

**Sec. 2214. Heirs, &c., jointly liable for debts, &c.**

All persons succeeding to the real or personal property of a dece- 1868-'9, c. 113, s. 99.  
2 dent, by inheritance, devise, bequest or distribution, shall be liable  
3 jointly, and not separately, for the debt of such decedent.

**Sec. 2215. Limit of liability.**

No person shall be liable, under the preceding section, beyond the 1868-'9, c. 113, s. 100.  
2 value of the property so acquired by him, or for any part of a debt  
3 that might by action or other due proceeding have been collected  
4 from the executor, administrator or collector of the decedent, and  
5 it is incumbent on the creditor to show the matters herein re-  
6 quired to render such person liable.

**Sec. 2216. Apportionment of recovery; costs.**

In any such action the recovery must be apportioned in propor- 1868-'9, c. 113, s. 101.  
2 tion to the assets or property received by each defendant, and judg-  
3 ment against each must be entered accordingly. Costs in such ac-  
4 tions must be apportioned among the several defendants, in pro-  
5 portion to the amount of the recovery against each of them.

**Sec. 2217. Priority of debts.**

Every person who is liable for the debts of a decedent must ob- 1868-'9, c. 113, s. 102.  
2 serve the same preferences in the payment thereof as are estab-  
3 lished in this chapter; nor shall the commencement of an action by  
4 a creditor give his debt any preference over others.

**Sec. 2218. Defence ; other debts of equality or priority.**

1868-'9, c. 113, s. 103.

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.

Hellig v. Foard, 64—710.

**Sec. 2219. Debts paid, estimated as if unpaid, when.**

1868-'9, c. 113, s. 104.

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.

**Sec. 2220. How to compel contributions among devisees and legatees.**

1868-'9, c. 113, s. 106.

The remedy to compel contribution shall be by petition or action in the superior court or before the judge in term time against the personal representatives, devisees, legatees and heirs also of the decedent, if any part of the real estate be undeviseed, 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 ; and the costs therein shall be within the discretion of the court.

**Sec. 2221. Specific devisee, when entitled to contribution.**

1868-'9, c. 113, s. 107.

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 this chapter, shall be regarded as specific devisees in such contribution.

**Sec. 2222. Of what lands an after-born child's share to be allotted.**

1868-'9, c. 113, s. 108.

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 undeviseed, or not enough, then the whole share, or the deficiency, as the case may be, shall be made up of the lands devised ; and so much thereof shall be taken from the several devisees according to their respective values, as near as may be convenient, as will make the proper share of such child.

Johnson v. Chapman, Busbee's Eq., 213 ; Johnson v. Chapman, 1 Jones Eq., 130.

**Sec. 2223. Of what personalty such child's share to be allotted.**

The share of an after-born child in the personal estate shall be 1868-'9, c. 113, s. 109.  
2 paid and delivered to him out of any such estate not bequeathed,  
3 if there be enough for that purpose; and if there be none undisposed  
4 of, or not enough, then the whole share, or the deficiency, as the  
5 case may be, shall be made up from the estate bequeathed; and so  
6 much shall be taken from the several legacies, according to their  
7 respective values, as will make the proper share of such child.

Johnson v. Chapman, Busbee's Eq., 213; Johnson v. Chapman, 1 Jones Eq., 130.

**Sec. 2224. Intestate estate to be applied in exoneration of estate devised or bequeathed.**

If, after satisfaction of the child's share of real estate out of un- 1868-'9, c. 113, s. 110.  
2 devised lands, there be a surplus of such lands, and there be no  
3 personal estate undisposed of, or not enough to make up his share  
4 of such estate, then the surplus of undevised land, or as much as  
5 may be necessary, shall be sold and the proceeds applied to mak-  
6 ing up his share of personal estate. And if, after satisfaction of  
7 the child's share of personal estate out of property undisposed of  
8 by the will, there be a surplus of such property, then the surplus  
9 thereof shall be applied, as far as it will go, in exoneration of land,  
10 both devised and descended; and the same shall be set apart and  
11 secured as real estate to such child, if an infant, *non compos* or *feme*  
12 *covert*.

**Sec. 2225. Decree of contribution.**

Upon the allotment to such child of any real estate in the man- 1868-'9, c. 113, s. 111.  
2 ner aforesaid, he shall thenceforth be seized thereof in fee simple;  
3 and the court shall give judgment severally, in favor of such of  
4 the devisees and legatees, of whose lands and legacies more has  
5 been taken away than in proportion to the respective values of  
6 said lands and legacies, against such of said devisees and legatees,  
7 of whose lands and legacies a just proportion has not been taken  
8 away, for such sums as will make the contribution on the part of  
9 each and every of them equitable, and in the ratio of the values of  
10 the several devises and legacies.

**Sec. 2226. After-born child, when deemed devisee and legatee.**

An after-born child after such decrees shall be considered and 1868-'9, c. 113, s. 112.  
2 deemed in law a legatee and devisee as to his portion, shall be  
3 styled as such in all legal proceedings, and shall be liable to all  
4 the obligations and duties by law imposed on such: *Provided always*,  
5 that all judgments or decrees, *bona fide*, obtained against the dev-  
6 isees and legatees previously to the preferring of any petition, and  
7 which were binding upon, or ought to operate upon, the lands and  
8 chattels devised or bequeathed, shall be carried into execution and  
9 effect notwithstanding, and the petitioner shall take his portion



10 completely subject thereto: *And provided also*, that any suit insti-  
 11 tuted against the devisees and legatees previously to such petition  
 12 shall not be abated or abateable thereby, nor by the decree thereon,  
 13 but shall go on as instituted, and the judgment and decree, unless  
 14 obtained by collusion, be carried into execution; but on the filing  
 15 of the petition, during the pendency of such suit, the petitioner,  
 16 by guardian if an infant, may become a defendant in the suit.

**Sec. 2227. How executor to proceed if no petition be filed.**

1868-'9, c. 113, s. 113.

In case no petition shall be filed within two years, as herein  
 2 prescribed, the executor or administrator with the will annexed,  
 3 before he shall pay or deliver the legacies in the will given, or be-  
 4 fore paying to the next of kin of the testator any residue undis-  
 5 posed of by the will, shall call upon the legatees, devisees, heirs  
 6 and next of kin, and the said after-born child, by petition in the  
 7 superior court, to litigate their respective claims, and shall pray  
 8 the court to ascertain the share to which said child shall be enti-  
 9 tled, and to apportion the shares and sums to which the legatees,  
 10 devisees, heirs or next of kin shall severally contribute toward the  
 11 share to be allotted to said child, and the court shall adjudge and  
 12 decree accordingly.

*Johnson v. Chapman, Busbee's Eq., 213; Johnson v. Chapman, 1 Jones Eq., 130.*

**Sec. 2228. Cases of sale of real estate, &c.; final orders not made before the present constitution may be transferred to superior court.**

1871-'2, c. 161.

All cases for the sale of real estate for assets heretofore in the  
 2 county courts, in which only final orders for collection and appli-  
 3 cation or distribution of purchase money and making titles were  
 4 not made before the adoption of the present constitution, may, at  
 5 the instance of any person interested, be transferred, as other cases,  
 6 to the superior court of the county where such proceeding was  
 7 pending, and such court shall have full authority to make all  
 8 necessary orders to complete the same.

**Sec. 2229. Executor or administrator authorized, after twelve months from qualification, to pay into clerk's office moneys belonging to legatees or distributees of estate.**

1881, c. 305, s. 1.

It shall be competent for any executor, administrator or collector,  
 2 at any time after twelve months from the date of letters testament-  
 3 ary or of administration, to pay into the office of clerk of the supe-  
 4 rior court of the county where such letters were granted, any  
 5 moneys belonging to the legatees or distributees of the estate of  
 6 his testator or intestate, and such payment shall have the effect to  
 7 discharge such executor, administrator or collector and his sureties  
 8 on his official bond to the extent of the amount so paid.

**Sec. 2230. Clerk to receive moneys and give receipt.**

1881, c. 305, s. 3.

It shall be the duty of the clerk, in the cases provided for in the

2 preceding section, to receive such money from any executor, ad-  
3 ministrator or collector, and to execute a receipt for the same under  
4 the seal of his office.

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## CHAPTER FIFTY-ONE.

### EXPRESS COMPANIES.

#### SECTION.

2231. Articles not called for within a specified  
time may be sold; application of pro-  
ceeds of sale.

Sec. 2231. Articles not called for within a specified time may be sold; application  
of proceeds of sale.

Whenever any express company, exercising the right and privi- 1871-'2, c. 179.  
2 lege of transportation for hire, shall have received at the place desig-  
3 nated for delivery any articles of property, and the same shall not  
4 be called for and delivered according to the terms upon which such  
5 company may have agreed to carry them, within six months from  
6 and after the time of receiving them at said place of delivery, then  
7 and in that case it shall be lawful for such company to sell for cash  
8 the said articles at public auction at such place as may be designa-  
9 ted by the company, after having duly advertised the time, place  
10 and terms of sale for the space of thirty days in some newspaper  
11 published in the county, or as near thereto as may be, wherein such  
12 sale is intended to be made; the proceeds of such sale shall be ap-  
13 plied in the first place to the payment of all costs and charges of  
14 carriage due to such company, together with all expenses incident  
15 to the making of such sale, and the residue, if any, shall be depos-  
16 ited in some convenient national bank, located in the state, to be  
17 selected by the company, for the use and benefit of such person as  
18 may be entitled thereto.

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## CHAPTER FIFTY-TWO.

### FAIRS.

#### SECTION.

2232. Fairs appointed by board of county  
commissioners.

2233. Board to appoint commissioners to regu-  
late fairs.

2234. Inhabitants to have free liberty of fairs.

2235. Appointment of police.

2236. Policeman to be sworn; their powers.

#### SECTION.

2237. Duties of police.

2238. Violation of rules of society a misde-  
meanor.

2239. Exemption from seizure under execu-  
tion.

2240. Society may appoint an auctioneer.

**Sec. 2232. Fairs appointed by board of county commissioners.**

R. C., c. 47, s. 1.  
1794, c. 421, ss. 1, 4.

The board of county commissioners, a majority being present,  
2 may appoint fairs in their respective counties, at such places as  
3 they may judge most proper for the convenience of the inhabi-  
4 tants, so as to give encouragement to industry, by collecting the  
5 inhabitants for the purpose of bartering and selling all such arti-  
6 cles as they may wish to dispose of.

**Sec. 2233. Board to appoint commissioners to regulate fairs.**

R. C., c. 47, s. 2.  
1794, c. 421, ss. 2, 4.

When any board of county commissioners may resolve to estab-  
2 lish a fair, they shall appoint commissioners, a majority of whom  
3 may regulate and conduct the same by a system of by-laws for the  
4 government thereof, to be approved by the board and entered of  
5 record; and such rules, being consistent with the law of the land,  
6 shall be as valid and effectual as if they had been expressed by act  
7 of assembly.

**Sec. 2234. Inhabitants to have free liberty of fairs.**

R. C., c. 47, s. 3.  
1794, c. 421, s. 3.

The inhabitants of any county wherein a fair may be established  
2 shall have free liberty to attend the same, dispose of and buy or  
3 barter the articles brought thereto, subject, nevertheless, to such  
4 rules as the commissioners may form for the regulation thereof.

**Sec. 2235. Appointment of police.**

1870-'71, c. 184, s. 1.

The agricultural, horticultural or other society for the encour-  
2 agement of agriculture or mechanical or other industrial art or  
3 business, incorporated by any law of this state or acting under a  
4 general law, shall, for the preservation of order and the protection  
5 of exhibitions, have power by their executive committee or other  
6 authorized officers, to appoint policemen with the powers and du-  
7 ties hereafter mentioned.

**Sec. 2236. Policemen to be sworn; their powers.**

1870-'71, c. 184, s. 2.

Such policemen shall be sworn to the performance of their duty  
2 before a judge, mayor or other chief officer of any city or town, or  
3 any justice of the peace, whereupon they shall have the same  
4 power and duties for the arrest of criminals and disorderly persons  
5 as are possessed by the constables or policemen of any city or town,  
6 within the fair grounds or within one hundred yards thereof, and  
7 such power and authority shall continue for a period extending  
8 from Friday before the week of the fair to Tuesday after the same,  
9 both inclusive.

**Sec. 2237. Duties of police.**

1870-'71, c. 184, s. 3.

It shall be the duty of such policemen to assist in carrying into  
2 effect the rules and regulations adopted by the lawful authorities  
3 of such agricultural or other societies as aforesaid, and any drunken



4 or disorderly person, or any person who shall, after being warned,  
 5 continue to break the rules or regulations of the society, may be  
 6 excluded or removed from the fair grounds, and if after being so  
 7 excluded, he shall offer to enter the same without the permission  
 8 of the society, he shall be guilty of a misdemeanor.

**Sec. 2238. Violation of rules of society a misdemeanor.**

If any person shall, without license of the owner, or any agricul- 1870-'71, c. 184, s. 4.  
 2 tural or other society as aforesaid, unlawfully carry away, remove,  
 3 destroy, mar, deface or injure anything animate or inanimate,  
 4 while on exhibition on the grounds of any such society, or going  
 5 to or returning from the same, he shall be guilty of a misdemeanor.  
 6 It shall be sufficient in any indictment for any such offence, or for  
 7 the larceny of any such thing, animate or inanimate as aforesaid,  
 8 to charge that the thing so carried away, destroyed, marred, injured  
 9 or feloniously stolen, is the property of the society to which the  
 10 said thing shall be forwarded for exhibition.

**Sec. 2239. Exemption from seizure under execution.**

Anything animate or inanimate shall not be liable to seizure 1870-'71, c. 184, s. 5.  
 2 under execution, attachment or other process of law, while on ex-  
 3 hibition on any fair grounds of any such society as aforesaid, or  
 4 going to or returning from any such grounds, such exemption  
 5 being only for a period of five days before, and five days after any  
 6 fair.

**Sec. 2240. Society may appoint an auctioneer.**

Any agricultural society shall have power to appoint an auc- 1870-'71, c. 184, s. 6.  
 2 tioneer to sell at auction things animate or inanimate, which have  
 3 been exhibited at any fair on the fair grounds, and such sales being  
 4 made during the week of the fair, shall not be liable to taxation,  
 5 nor shall such auctioneer, selling only as aforesaid, be liable to pay  
 6 a license tax.

## CHAPTER FIFTY-THREE.

### FENCES AND STOCK LAW.

**SECTION.**

2241. Planters to keep sufficient fences.  
 2242. How common fence shall be made and  
 maintained.  
 2243. Fence erected on dividing line by one  
 owner only.

**SECTION.**

2244. Controversy about fence on dividing  
 line; value of fence, how ascertained  
 and adjusted.  
 2245. Report of jurors about the kind of fence  
 to be kept up.

## SECTION.

2246. Report to be returned to register of deeds.  
 2247. Final judgment binding on the owners of the lands.  
 2248. Remedy against delinquent owner.  
 2249. How owner may relieve himself of liability.  
 2250. How water-course may be made a lawful fence; notice required.  
 2251. Board of county commissioners may declare any water-course a lawful fence.  
 2252. Unlawful for live stock to run at large within the limits of a county, township or district, which shall adopt the provisions of the stock law as in this chapter provided.  
 2253. County elections.  
 2254. Township election.  
 2255. District or territorial election.  
 2256. Elections, how held and conducted.  
 2257. Stock running at large to be impounded.  
 2258. Owner of impounded stock to be notified; sale of stock; application of proceeds.

## SECTION.

2259. Misappropriation of money by impounder.  
 2260. Penalty for receiving or releasing impounded stock.  
 2261. Penalty for injuring fences or leaving open gate.  
 2262. Land adjoining stock law territory, how enclosed; neighborhood stock law.  
 2263. Definition of word "stock."  
 2264. Fence to be built around "stock law" territory.  
 2265. Fence may be built by assessment upon land owners.  
 2266. Land of persons objecting to fence may be condemned.  
 2267. Powers and duties of the board of commissioners.  
 2268. Persons living within stock law territory allowing stock to run at large beyond the limits of said territory, misdemeanor.

R. C., c. 48, s. 1.  
 1777, c. 121, s. 2.  
 1791, c. 354, s. 1.

**Sec. 2241. Planters to keep sufficient fences.**

Every planter shall make a sufficient fence about his cleared  
 2 ground under cultivation, at least five feet high, unless where there  
 3 shall be some navigable stream or deep water-course that shall be  
 4 sufficient, instead of such fence, and unless his lands shall be situ-  
 5 ated within the limits of a county, township or district, wherein  
 6 the stock law may be in force.

State v. Bell, 3 Ire., 506; State v. Lamb, 8 Ire., 229; State v. Perry, 64—305; State v. Taylor, 69—543; Burgwyn v. Whitfield, 81—261.

**Sec. 2242. How common fence shall be made and maintained.**

1868-'9, c. 275, s. 1.

Where two or more persons shall have lands adjoining, which  
 2 shall be either cultivated or used as a pasture for stock, the respect-  
 3 ive owners of each piece of land shall make and maintain the one-  
 4 half of the fence upon the dividing line.

**Sec. 2243. Fence erected on dividing line by one owner only.**

1868-'9, c. 275, s. 2.

Where the owner of one piece shall have chosen neither to cul-  
 2 tivate his land, nor to pasture, nor to permit his stock to run on it,  
 3 if he shall afterwards do either, without so enclosing such stock  
 4 that they cannot enter on the lands of such adjoining owner, he  
 5 shall refund to such owner one-half the value at that time of any  
 6 fence erected by him on the dividing line.

**Sec. 2244. Controversy about fence on dividing line; value of fence, how ascertained and adjusted.**

1868-'9, c. 275, s. 3.

The value of fence shall be ascertained as follows: Either owner  
 2 may summon the other to appear before any justice of the peace  
 3 of the township in which the dividing line is situated; or if it be  
 4 situated in more than one township, then before any justice of  
 5 the peace of any township in which any part of it is situated.  
 6 In his summons he shall name a day certain, not less than five  
 7 days after the summons, for the appearance of the defendant;

7 it shall also state the purpose of the summons to be the adjustment  
8 of all matters in controversy respecting the dividing fence between  
9 the parties. The justice shall hear the complaint and defence. If  
10 the facts be found such as to entitle either party to demand contri-  
11 bution of the other, the justice shall call on the complainant to  
12 name an indifferent person, qualified to act as juror of the town-  
13 ship, and if the complainant refuse the justice shall name one for  
14 him. The justice shall then call on the defendant to name an in-  
15 different person, qualified to act as juror of the township, and if  
16 the defendant refuse the justice shall name one for him. The jus-  
17 tice shall then name a third indifferent person qualified to act as  
18 juror. These three persons, qualified to act as jurors, or any two  
19 of them, shall view the premises and decide all matters in contro-  
20 versy between the parties, relating to a fence on the dividing line.  
21 They shall make a written report to the justice, who shall give  
22 judgment thereon, and for the costs, which shall be paid by the  
23 owners of the several pieces of land equally. The persons quali-  
24 fied to act as jurors shall receive each one dollar per day. The  
25 fees of the justice and constable shall be as in other cases. Either  
26 party may appeal as is provided for in other cases of justice's judg-  
27 ment.

**Sec. 2245. Report of jurors about the kind of fence to be kept up.**

The report of the persons qualified to act as jurors shall also state 1868-'9, c. 275, s. 4.  
2 the sort of fence which ought to be kept up, and assign to each  
3 owner, in such manner as that it may be identified, the part which  
4 he shall keep up.

**Sec. 2246. Report to be returned to register of deeds.**

The justice shall return the report, together with a transcript 1868-'9, c. 275, s. 5.  
2 of the proceedings, to the register of deeds of his county for regis-  
3 tration. The justice shall collect from the parties the fees of the  
4 register, and pay the same to him.

**Sec. 2247. Final judgment binding on the owners of the lands.**

The final judgment upon the report of the persons qualified to 1868-'9, c. 275, s. 6.  
2 act as jurors shall be binding on the owners of the respective lands  
3 and their assigns, so long as such ownership shall continue, or until  
4 the same shall be set aside, modified or reversed.

**Sec. 2248. Remedy against delinquent owner.**

If any person who is liable to build or keep up a part of any di- 1868-'9, c. 275, s. 8.  
2 vision fence, shall fail at any time to do so, the owner of the adjoin-  
3 ing land, after notice, may build or repair the whole, and recover  
4 of the delinquent the one-half of the cost before any court having  
5 jurisdiction.



**Sec. 2249. How owner may relieve himself of liability.**

1868-'9, c. 275, s. 8.

If any owner of land liable to contribute for the keeping up of a  
2 division fence, shall determine neither to cultivate his land nor to  
3 permit his stock to run thereon, he may give the adjoining owner  
4 six months' notice of his determination; and in that case, at any  
5 time after the expiration of such notice, and between the first day  
6 of January and the first day of March, but at no other time, he  
7 may remove the half of the fence kept up by him; and shall be no  
8 longer liable to keep up the same.

**Sec. 2250. How watercourse may be made a lawful fence; notice required.**1872-'3, c. 112, ss. 1,  
2.

Any five electors, residents of the same county, may apply to the  
2 board of commissioners in their respective counties, at any regular  
3 meeting of the same, by written petition praying that any water-  
4 course, or any part of any water-course in their respective counties,  
5 may be made a lawful fence. Notice of such petition shall be  
6 posted forty days at the court house door, by the clerk of the board  
7 before such petition shall be acted upon.

**Sec. 2251. Board of county commissioners may declare any water-course a lawful fence.**1872-'3, c. 112, ss. 3,  
4.

Upon the hearing of such petition, the board of county commis-  
2 sioners which shall hear the same, is hereby authorized and em-  
3 powered to declare any water-course or any part of any water-course  
4 to which the petition applies, a lawful fence. Any order made  
5 under this section shall be of record and signed by the chairman,  
6 and may be rescinded by the board of commissioners at any regu-  
7 lar meeting.

**Sec. 2252. Unlawful for live stock to run at large within the limits of a county, township or district, which shall adopt the provisions of the stock law as in this chapter provided.**

It shall be unlawful for any live stock to run at large within the  
2 limits of any county, township or district, if the qualified voters of  
3 such county, township or district shall adopt the provisions of this  
4 chapter relating to the stock law as herein provided; and no person  
5 living within the limits of such stock law territory shall permit  
6 any of his live stock to go or enter upon the lands of another with-  
7 out having obtained leave from the owner of such lands. Any  
8 person violating this section shall be guilty of a misdemeanor.

**Sec. 2253. County elections.**

Upon the written application of one-fifth of the qualified voters  
2 of any county made to the board of commissioners thereof, it shall  
3 be the duty of said commissioners from time to time to submit the  
4 question of said "stock law" or "no stock law" to the qualified  
5 voters of said county. And if at any such election a majority of

6 the votes cast shall be in favor of said stock law, then the provis-  
7 ions of this chapter shall be in force over the whole of said county.

**Sec. 2254. Township election.**

Upon the written application of one-fifth of the qualified voters  
2 in any township, made to the board of commissioners of the county  
3 wherein said township is situated, it shall be the duty of said com-  
4 missioners to submit the question of said "stock law" or "no stock  
5 law" to the qualified voters of said township; and if at any such  
6 township election a majority of the votes cast shall be in favor of  
7 said "stock law," then the provisions of this chapter relating to the  
8 "stock law" shall be in force in said township.

**Sec. 2255. District or territorial election.**

Upon the written application of one-fifth of the qualified voters  
2 of any district or territory, whether the boundaries of said district  
3 follow township lines or not, made to the board of county commis-  
4 sioners at any time, and setting forth well defined boundaries of  
5 said district, it shall be the duty of the said commissioners to sub-  
6 mit the question of said "stock law" or "no stock law" to the  
7 qualified voters of said district, and if, at any such election, a ma-  
8 jority of the votes cast shall be in favor of said stock law, then the  
9 provisions of this chapter relating to the "stock law" shall be in  
10 force over the whole of said district.

*Newsom v. Earnheart, 86.*

**Sec. 2256. Elections, how held and conducted.**

Every election under this chapter shall be held and conducted  
2 under the same rules and regulations and according to the same  
3 penalties provided by law for the election of members of the gen-  
4 eral assembly: *Provided*, that no such county, township or district  
5 election shall be held oftener than once in any one year.

**Sec. 2257. Stock running at large to be impounded.**

It shall be lawful for any person to take up any live stock run-  
2 ning at large within any township or district wherein this act  
3 shall be in force and impound the same; and such impounder may  
4 demand fifty cents for each animal so taken up and twenty-five  
5 cents for each animal for every day such stock is kept impounded,  
6 and may retain the same, with the right to use it under proper  
7 care until all legal charges for impounding said stock and for dam-  
8 ages caused by the same are paid, said damages to be ascertained by  
9 two disinterested freeholders, to be selected by the owner and said  
10 impounder, said freeholders to select an umpire, if they cannot  
11 agree, and their decision to be final.

**Sec. 2258. Owner of impounded stock to be notified; sale of stock; application of proceeds.**

If the owner of said stock be known to such impounder he shall  
2 immediately inform such owner where his stock is impounded, and  
3 if said owner shall for two days after such notice wilfully refuse or  
4 neglect to redeem his stock, then the impounder, after ten days'  
5 written notice posted at three or more public places within the  
6 township where said stock is impounded, and describing the said  
7 stock and stating place, day and hour of sale, or if the owner be  
8 unknown, after twenty days' notice in the same manner, and also  
9 at the court house door, shall sell the stock at public auction, and  
10 apply the proceeds in accordance with the preceding and suc-  
11 ceeding sections, and the balance he shall turn over to the owner  
12 if known; and if the owner be not known, to the county commis-  
13 sioners for the use of the school fund of the district wherein said  
14 stock was taken up and impounded, subject in their hands for six  
15 months to the call of the legally entitled owner.

**Sec. 2259. Misappropriation of money by impounder.**

Any impounder wilfully misappropriating money that he may  
2 receive under this chapter, or in any manner wilfully violating  
3 any of its provisions, shall be guilty of a misdemeanor.

**Sec. 2260. Penalty for receiving or releasing impounded stock.**

Any person unlawfully receiving or releasing any impounded  
2 stock, or unlawfully attempting to do so, shall be guilty of a mis-  
3 demeanor.

**Sec. 2261. Penalty for injuring fences or leaving open gate.**

Any person wilfully tearing down, or in any manner breaking  
2 a fence or gate, or leaving open a gate erected around a "stock  
3 law" territory, or wilfully breaking any enclosure within any  
4 township, district or county where a "stock law" is in force, and  
5 wherein any stock is confined, so that the same may escape there-  
6 from, shall be guilty of a misdemeanor.

**Sec. 2262. Land adjoining stock law territory, how enclosed; neighborhood stock law.**

Any person, or any number of persons, owning land in a county,  
2 district or township, which shall not adopt the stock law, or adjoin-  
3 ing any county, township or district where a stock law prevails,  
4 may have his or their lands enclosed within any fence built in  
5 pursuance of this chapter. All such adjacent lands, when so en-  
6 closed, shall be subject to all the provisions of law with respect to  
7 live stock running at large within the original district so enclosed,  
8 as if it were a part of the township, county or district with which  
9 it is hereby authorized to be enclosed. Any number of land-  
10 owners, whose lands are contiguous, may at any time build a com-



11 mon fence around all their lands, with gates across all public high-  
12 ways; and it shall be unlawful for any live stock to run at large  
13 within any such enclosure, subject to all the pains and penalties  
14 prescribed in this chapter.

**Sec. 2263. Definition of word "stock."**

The word "stock" in this chapter shall be construed to mean  
2 horses, mules, colts, cows, calves, sheep, goats, jennets, and all neat  
3 cattle and swine.

**Sec. 2264. Fence to be built around "stock law" territory.**

The "stock law" authorized by this chapter shall not be enforced  
2 until a fence shall have been erected around any territory proposed  
3 to be enclosed, with gates on all the public roads passing into and  
4 going out of said territory: *Provided*, that all streams which are or  
5 may be declared to be lawful fences shall be sufficient boundaries,  
6 in lieu of fences: *And provided further*, that no fence shall be  
7 erected along the boundary lines of any county, township or dis-  
8 trict where a stock law prevails.

**Sec. 2265. Fence may be built by assessment upon land owners.**

For the purpose of building stock-law fences, the board of com-  
2 missioners of the county may levy and collect a special assessment  
3 upon all real property, taxable by the state and county, within the  
4 county, township or district which may adopt this stock law, but  
5 no such assessment shall be greater than one-fourth of one per  
6 centum on the value of said property.

*Simpson v. Commissioners, 84—158.*

**Sec. 2266. Land of persons objecting to fence may be condemned.**

If the owner of any land shall object to the building of any  
2 fence herein allowed, his land, not exceeding twenty feet in width,  
3 shall be condemned for the fence-way as land is now condemned  
4 for railroad purposes by the North Carolina Railroad Company.

**Sec. 2267. Powers and duties of the board of commissioners.**

The board of commissioners of the county may provide for a new  
2 registration of voters, designate places for holding elections, and  
3 make all regulations, and do all other things necessary to carry  
4 into effect the provisions of this chapter relating to the "stock law."

**Sec. 2268. Persons living within stock law territory allowing stock to run at large beyond the limits of said territory, misdemeanor.**

Any person having stock within the limits of a stock law terri-  
2 tory, and allowing the same to run at large beyond the boundaries  
3 of said territory, shall be guilty of a misdemeanor.

## CHAPTER FIFTY-FOUR.

## FRAUDS AND FRAUDULENT CONVEYANCES.

## SECTION.

2269. Conveyances of lands or goods made to defraud creditors, void.
2270. Conveyances of lands, &c., to defraud purchasers, void.
2271. Voluntary conveyances not deemed fraudulent as to creditors, merely because of indebtedness of donors; indebtedness evidence only of fraud to be left to jury.
2272. *Bona fide* conveyances upon good consideration, valid.
2273. *Bona fide* purchases without notice, under deeds made on illegal consideration, valid.
2274. Purchasers of estates fraudulently conveyed to have relief.

## SECTION.

2275. Persons removing debtors to hinder, delay or defraud creditors, liable for their debts.
2276. Contracts charging executors, &c., personally, or any person with the debt, &c., of another to be in writing.
2277. Contracts with Cherokee Indians to be in writing, subscribed by two witnesses.
2278. Contracts for the sale of land void unless in writing.
2279. Ordinary keeper or retailer not to credit for liquors over ten dollars.

## Sec. 2269. Conveyances of lands or goods made to defraud creditors void.

R. C., c. 50, s. 1.  
50 Edw. 111, c. 6.  
13 Eliz., c. 5, s. 2.  
1715, c. 7, s. 4.

For avoiding and abolishing feigned, covinous and fraudulent  
2 gifts, grants, alienations, conveyances, bonds, suits, judgments and  
3 executions, as well of lands and tenements as of goods and chat-  
4 tels, which may be contrived and devised of fraud, to the purpose  
5 and intent to delay, hinder and defraud creditor and others of their  
6 just and lawful actions and debts, every gift, grant, alienation, bar-  
7 gain and conveyance of lands, tenements and hereditaments, goods  
8 and chattels, by writing or otherwise, and every bond, suit, judg-  
9 ment and execution, at any time had or made, to or for any intent  
10 or purpose last before declared and expressed, shall be deemed and  
11 taken (only as against that person, his heirs, executors, administra-  
12 tors and assigns, whose actions, debts, accounts, damages, penalties  
13 and forfeitures, by such covinous or fraudulent devices and prac-  
14 tices aforesaid, are, shall or might be in anywise disturbed, hin-  
15 dered, delayed or defrauded,) to be utterly void and of no effect;  
16 any pretence, color, feigned consideration, expressing of use, or any  
17 other matter or thing to the contrary notwithstanding.

Sherman v. Russell, 1 Car. L. Rep., 467; Blount v. Blount, 2 Car. L. Rep., 587; Hoke v. Henderson, 3 Dev., 12; Leadman v. Harris, 3 Dev., 144; O'Daniel v. Crawford, 4 Dev., 197; Purcell v. McCallum, 1 D. & B., 221; Jones v. Young, 1 D. & B., 352; Shober v. Hauser, 4 D. & B., 91; Newsum v. Roles, 1 Ire., 179; Hafner v. Irwin, 1 Ire., 490; Gowing v. Rich, 1 Ire., 553; Worth v. Northam, 4 Ire., 102; Hafner v. Irwin, 4 Ire., 529; Mebane v. Mebane, 4 Ire. Eq., 131; Hawkins v. Alston, 4 Ire. Eq., 137; Rich v. Marsh, 4 Ire. Eq., 396; Markham v. Shannnonhouse, 4 Ire. Eq., 411; Springs v. Hanks, 5 Ire., 30; Buie v. Kelly, 5 Ire., 169; Thomas v. Orrell, 5 Ire., 569; Toole v. Dardep, 6 Ire. Eq., 394; Jones v. Gorman, 7 Ire. Eq., 21; Flynn v. Williams, 7 Ire., 32; Smith v. Reavis, 7 Ire., 341; Lee v. Flannagan, 7 Ire., 471; Jackson v. Hampton, 8 Ire., 457; Hardy v. Skinner, 9 Ire., 191; Sturdivant v. Davis, 9 Ire., 365; Brannock v. Brannock, 10 Ire., 428; Harris v. DeGraffenreid, 11 Ire., 89; Foster v. Woodfin, 11 Ire., 339; Young v. Booe, 11 Ire., 347; Rhem v. Tull, 13 Ire., 57; Hardy v. Simpson, 13 Ire., 132; Satterwhite v. Hicks, Busbee, 105; Bridges v. Moye, Busbee Eq., 170; Brittain v. Quiet, 1 Jones Eq., 323; Jenkins v. Peace, 1 Jones, 413; Gilmer v. Earnhardt, 1 Jones, 559; McGill v. Harman, 2 Jones Eq., 179; McCorkle v. Hammond, 2 Jones, 444; Grimsley v. Hooker, 3 Jones Eq., 4; Garrison v. Brice, 3 Jones, 85; Jessup v. Johnston, 3 Jones, 335; Potts v. Blackwell, 3 Jones Eq., 449; Potts v. Blackwell, 4 Jones Eq., 58; Green v. Kornegay, 4 Jones, 66; Black v. Caldwell, 4 Jones, 150; Felton v. White, 4 Jones, 301; Palmer v. Giles, 5 Jones Eq., 75; Newlin v. Osborne, 6 Jones, 123; Stone v. Marshall, 7 Jones, 300; London v. Parsley, 7 Jones, 313; Bank of Fayetteville v. Spurling, 7 Jones, 398; Winchester v. Reid

8 Jones, 377; Powell v. Inman, 8 Jones, 436; Johnson v. Murchison, 1 Winston, 232; Rose v. Coble, Phillips, 517; Devries v. Phillips, 63—53; Powell v. Howell, 63—233; Carr v. Fearington, 63—560; Salms v. Martin, 63—608; Houston v. Potts, 64—39; Carter v. Cocke, 64—239; Lassiter v. Davis, 64—498; Hogan v. Strayhorn, 65—279; McNeill v. Riddle, 66—290; Isler v. Foy, 66—547; Young v. Lathrop, 67—63; Reiger v. Davis, 67—185; Humphrey v. Wade, 70—280; N. C. Endowment Fund v. Satchwell, 71—111; McCanless v. Reynolds, 74—301; Sharpe v. Williams, 76—87; Cheatham v. Hawkins, 76—335; Cansler v. Cobb, 77—30; Holmes v. Marshall, 78—262; Morris v. Pearson, 79—253; (overrules 7 Jones, 300, above cited); Cheatham v. Hawkins, 80—161; York v. Merritt, 80—285; Hilliard v. Phillips, 81—99; Boone v. Hardie, 83—470; Rollins v. Henry, 84—569; Buxton v. Farinhalt, 86—260; Rencher v. Wynne, 86—268.

**Sec. 2270. Conveyances of lands, &c., to defraud purchasers, void.**

Every conveyance, charge, lease or incumbrance of any lands or  
2 hereditaments, goods and chattels, if the same be made with the  
3 actual intent in fact to defraud such person as hath purchased or  
4 shall purchase in fee simple or for lives or years the same lands or  
5 hereditaments, goods and chattels, or to defraud such as shall pur-  
6 chase any rent or profit out of the same, shall be deemed utterly  
7 void against such person and others claiming under him who shall  
8 purchase for the full value thereof the same lands or hereditaments  
9 or rents or profits out of the same, without notice before and at the  
10 time of his purchase of the conveyance, charge, lease or incum-  
11 brance, by him alleged to have been made with intent to defraud;  
12 and possession taken or held by or for the person claiming under  
13 such alleged fraudulent conveyance, charge, lease or incumbrance  
14 shall be always deemed and taken as notice in law of the same.

R. C., c. 50, s. 2.  
27 Eliz., c. 4, s. 2.  
1840, c. 28, ss. 1, 2.

Ingles v. Donaldson, 2 Haywood, 57; Bell v. Blaney, 2 Murphy, 171; McCree v. Houston, 3 Murphy, 429; Fullenwider v. Roberts, 4 D. & B., 278; Hiatt v. Wade, 8 Ire., 340; Garrison v. Brice, 3 Jones, 85; Long v. Wright, 3 Jones, 290; Barwick v. Wood, 3 Jones, 306; Potts v. Blackwell, 3 Jones Eq., 449; Green v. Kornegay, 4 Jones, 66; Potts v. Blackwell, 4 Jones Eq., 58; Jones v. Hall, 5 Jones Eq., 26; Dukes v. Jones, 6 Jones, 14; Salms v. Martin, 63—608; Young v. Lathrop, 67—63; Triplett v. Witherspoon, 70—589; Ward v. Wooten, 75—413; Gulley v. Macy, 84—434; Bynum v. Miller, 86—559.

**Sec. 2271. 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.**

No voluntary gift or settlement of property by one indebted shall  
2 be deemed or taken to be void in law, as to creditors of the donor  
3 or settler prior to such gift or settlement, by reason merely of such  
4 indebtedness, if property, at the time of making such gift or settle-  
5 ment, fully sufficient and available for the satisfaction of his then  
6 creditors, be retained by such donor or settler; but the indebted-  
7 ness of the donor or settler at such time shall be held and taken,  
8 as well with respect to creditors prior as creditors subsequent to  
9 such gift or settlement, to be evidence only from which an intent  
10 to delay, hinder or defraud creditors may be inferred; and in any  
11 trial at law, shall, as such, be submitted by the court to the jury,  
12 with such observations as may be right and proper.

R. C., c. 50, s. 3.  
1840, c. 28, ss. 3, 4.

Houston v. Bogle, 10 Ire., 496; Thacker v. Saunders, Busbee Eq., 145; Black v. Sanders, 1 Jones, 67; Creedle v. Carrawan, 64—422; Pullen v. Hutchins, 67—428.



**Sec. 2272. *Bona fide* conveyances upon good consideration valid.**

R. C., c. 50, s. 4.  
13 Eliz., c. 5, s. 6.  
1715, c. 7, s. 6.

Nothing contained in the preceding sections shall be construed  
2 to impeach or make void any conveyance, interest, limitation of  
3 use or uses, of or in any lands or tenements, goods or chattels, *bona*  
4 *fide* made, upon and for good consideration, to any person not  
5 having notice of such fraud.

Wall v. White, 3 Dev., 105; Martin v. Cowles, 1 D. & B., 29; Dobson v. Erwin, 4 D. & B., 201; Latta v. Morrison, 1 Ire., 149; Freeman v. Lewis, 5 Ire., 91; Hiatt v. Wade, 8 Ire., 340; Wade v. Hiatt, 10 Ire., 302; Harris v. DeGraffenreid, 11 Ire., 89; White v. White, 13 Ire., 265; Uzzle v. Wood, 1 Jones Eq., 226; Potts v. Blackwell, 3 Jones Eq., 449; Young v. Lathrop, 67—68; Reiger v. Davis, 67—185; Glenn v. Farmer's Bank of N. C., 70—191; Triplett v. Witherspoon, 70—589; London v. Headen, 76—72; Worthy v. Caddell, 76—82; Sharpe v. Williams, 76—87; Cansler v. Cobb, 77—30.

**Sec. 2273. *Bona fide* purchasers without notice, under deeds made on illegal consideration, valid.**

R. C., c. 50, s. 5.  
1840, c. 70.

No conveyance or mortgage, made to secure the payment of any  
2 debt or the performance of any contract or agreement, shall be  
3 deemed void as against any purchaser for valuable or other good  
4 consideration of the estate or property conveyed, sold, mortgaged  
5 or assigned, by reason that the consideration of such debt, contract  
6 or agreement shall be forbidden by law, if such purchaser, at the  
7 time of his purchase, shall not have had notice of the unlawful  
8 consideration of such debt, contract or agreement.

Hiatt v. Wade, 8 Ire., 300; McCorkle v. Earnhardt, Phil., 300; Coor v. Spicer, 65—401; McNeill v. Riddle, 66—290; Triplett v. Witherspoon, 70—589.

**Sec. 2274. Purchasers of estates fraudulently conveyed to have relief.**

R. C., c. 50, s. 6.

Purchasers of estates previously conveyed in fraud of creditors  
2 or purchasers shall have like remedy and relief as creditors might  
3 have had before the sale and purchase.

Morrison v. McNeill, 6 Jones, 450; Morrison v. McNeill, 8 Jones, 45.

**Sec. 2275. Persons removing debtors to hinder, delay or defraud creditors, liable for their debts.**

R. C., c. 50, s. 14.  
1820, c. 1063.

If any person shall remove or shall aid and assist in removing  
2 any debtor out of any county in which he shall have resided for  
3 the space of six months or more, with the intent, by such remov-  
4 ing, aiding or assisting to delay, hinder or defraud the creditors or  
5 any of them of such debtor, the person so removing, aiding or as-  
6 sisting therein, and his executors or administrators, shall be liable  
7 to pay all the debts which the debtor removed and may justly owe  
8 in the county from which he was so removed; and the same may  
9 be recovered by the creditors, their executors or administrators by  
10 a civil action.

Gardiner v. Sherrod, 2 Hawks, 173; Barker v. Munroe, 4 Dev., 412; Erwin v. Greenlee, 1 D. & B., 39; Godsey v. Bason, 8 Ire., 280; March v. Wilson, Busbee, 143; Booe v. Wilson, 1 Jones, 182; Wiley v. McRee, 2 Jones, 349; Moore v. Rogers, 3 Jones, 90; Moss v. Peoples, 6 Jones, 140; Moore v. Rogers, 6 Jones, 297; Moffitt v. Burgess, 8 Jones, 342; Baker v. Harris, 1 Winst., 277.

**Sec. 2276. Contracts charging executors, &c., personally, or any person with the debt, &c., of another, to be in writing.**

R. C., c. 50, s. 15  
1826, c. 10.

No action shall be brought whereby to charge an executor or  
2 administrator upon a special promise to answer damages out of

3 his own estate or to charge any defendant upon a special prom-  
 4 ise to answer the debt, default or miscarriage of another person,  
 5 unless the agreement upon which such action shall be brought,  
 6 or some memorandum or note thereof, shall be in writing, and  
 7 signed by the party charged therewith or some other person there-  
 8 unto by him lawfully authorized.

Sleighter v. Harrington, 2 Murphy, 332; Mosby v. Chaffin, 2 Dev., 333; Cooper v. Chambers, 4 Dev., 261; Miller v. Irvine, 1 D. & B., 103; Adcock v. Fleming, 2 Dev. & Bat., 225; Hall Robinson, 8 Ire., 56; Draughan v. Hunting, 9 Ire., 10; Hill v. Doughty, 11 Ire., 195; Rice v. Carter, 11 Ire., 298; Stanly v. Hendricks, 13 Ire., 86; Smithwick v. Shepherd, 4 Jones, 196; Hockaday v. Parker, 8 Jones, 16; Hicks v. Critcher, Phil., 353; Combs v. Harshaw, 63—198; Norton v. Edwards, 66—367; Threadgill v. McLendon, 76—24; Fickey v. Merrimon, 79—535; Morrison v. Baker, 81—76; Rowland v. Bares, 81—234; Mason v. Wilson, 84—51.

**Sec. 2277. Contracts with Cherokee Indians to be in writing, subscribed by two witnesses.**

All contracts and agreements of every description made after the  
 2 eighteenth day of May, one thousand eight hundred and thirty-  
 3 eight, with any Cherokee Indian, or any person of Cherokee In-  
 4 dian blood within the second degree, for an amount equal to ten  
 5 dollars or more, shall be void, unless some note or memorandum  
 6 thereof be made in writing and signed by such Indian or person  
 7 of Indian blood, or some other person by him authorized, in the  
 8 presence of two witnesses, who shall also subscribe the same.

Lovingood v. Smith, 7 Jones, 601; State v. Ta-cha-na-tah, 64—614.

**Sec. 2278. Contracts for the sale of land void unless in writing.**

All contracts to sell or convey any lands, tenements or heredita-  
 2 ments or any interest in or concerning them shall be void and of  
 3 no effect, unless such contract or some memorandum or note  
 4 thereof shall be put in writing and signed by the party to be  
 5 charged therewith or by some other person by him thereto law-  
 6 fully authorized.

Graves v. Carter, 2 Haw., 576; Smith v. Executor of Amls, 3 Haw., 469; Ellis v. Ellis, 1 Dev. Eq., 180; Ellis v. Ellis, 1 Dev., Eq., 341; Choat v. Wright, 2 Dev., 239; Anders v. Anders, 2 Dev., 529; Tate v. Greenlee, 4 Dev., 149; Miller v. Irvine, 1 D. & B., 103; Oliver v. Dix, 1 D. & B. Eq., 158; Baker v. Carson, 1 D. & B. Eq., 381; Neely v. Torian, 1 D. & B., 410; Trice v. Pratt, 1 D. & B. Eq., 626; Albea v. Griffin, 2 D. & B. Eq., 9; Turner v. King, 2 Ire. Eq., 132; Allen v. Chambers, 4 Ire. Eq., 125; Vannoy v. Martin, 6 Ire. Eq., 169; Reed v. Cox, 6 Ire. Eq., 511; Ingram v. Dowdle, 8 Ire., 455; Rice v. Carter, 11 Ire., 298; Osborne v. Horner, 11 Ire., 359; Simms v. Killian, 12 Ire., 252; Ledford v. Ferrell's Adm'r, 12 Ire., 285; Clement v. Clement, 1 Jon. Eq., 184; Briggs v. Morris, 1 Jon. Eq., 193; Barnes v. Teague, 1 Jon. Eq., 277; Love v. Neilson, 1 Jon. Eq., 339; Lea v. McKenzie, 3 Jon. Eq., 232; Gwynn v. Setzer, 3 Jon., 382; Johnson v. Sikes, 4 Jon., 70; Mizell v. Burnett, 4 Jon., 249; Capps v. Holt, 5 Jon. Eq., 153; Blacknall v. Parish, 6 Jon. Eq., 70; Riggs v. Swann, 6 Jon., 118; Richardson v. Thornton, 7 Jon., 458; Edwards v. Kelly, 8 Jones, 69; Smith v. Smith, 2 Wins., 30; Cherry v. Long, Phil., 466; Brown v. Commissioners of Washington, 63—514; Ferguson v. Haas, 64—772; Pope v. Whitehead, 68—191; Farmer v. Willard, 71—284; Barnes v. Brown, 71—507; Faw v. Whittington, 72—321; Gwathney, Day & Co. v. Carson, 74—5; Wetherell v. Gorman, 74—603; Medlin v. Steele, 75—154; Daniel v. Crumpler, 75—184; Hinsdale v. Thornton, 75—381; Mayer & Morgan v. Adrian & Volliers, 77—83; Green v. N. C. R. R. Co., 77—95; Wade v. City of New Berne, 77—460; McKee v. Vail, 79—194; Bonham v. Craig, 80—224; Morrison v. Baker, 81—76; Young v. Young, 81—91; Brown v. Morris, 83—251; Winberry v. Koonce, 83—351; Davis v. Inscoe, 84—396; Gulley v. Macy, 84—434; Young v. Griffith, 84—715.

**Sec. 2279. Ordinary keeper or retailer not to credit for liquors over ten dollars.**

No keeper of an inn, tavern or ordinary, or retailer of liquors by

R. C., c. 79, s. 4.  
 1798, c. 501, s. 6.

2 the small measure shall sell to any person on credit, liquors to a  
 3 greater amount than ten dollars, unless the person credited sign a  
 4 book or note, in the presence of a witness, in acknowledgment of  
 5 the debt, under the penalty of losing the money so credited; and  
 6 in any action brought for recovery of such debt the matter of  
 7 defence allowed by this section may be set up in the answer and  
 8 given in evidence.

Kizer v. Randleman, 5 Jones, 423.

## CHAPTER FIFTY-FIVE.

### GAME—HUNTING—WILD FOWLE.

#### SECTION.

2280. Penalty for hunting on land of another after advertisement forbidding it.  
 2281. Penalty for hunting or killing deer during certain months.  
 2282. School committee can sue for damages.  
 2283. Unlawful to kill, &c., certain birds within certain dates.  
 2284. Unlawful to export quail or partridges from the state.  
 2285. Unlawful to take or destroy eggs of quail or partridges; misdemeanor; penalty.

#### SECTION.

2286. Restrictions on hunting wild fowl on Sunday, at night, &c.  
 2287. Penalty for violation of the preceding section; fines to go to school fund of county; justices of the peace to issue warrants.  
 2288. Hunting with fire prohibited; penalty; informer to receive half of fine.

#### Sec. 2280. Penalty for hunting on land of another after advertisement forbidding it.

R. C., c. 16, s. 4.  
 1784, c. 212, ss. 5, 7,  
 amended.

If any person shall hunt, with gun or dogs, on the lands of  
 2 another, without leave obtained from the owner, he shall for every  
 3 offence forfeit and pay ten dollars to the party aggrieved: *Provided,*  
 4 that no such recovery shall be had, unless the owner of the land,  
 5 by advertisement posted up at the court house door of the county,  
 6 and at two or more public places in the county where the land is  
 7 situate, have forbidden the person so hunting, by name, or all per-  
 8 sons generally, to hunt on his land. And the person hunting after  
 9 having been so forbidden shall be guilty of a misdemeanor, and,  
 10 upon conviction, shall be fined not exceeding ten dollars, or im-  
 11 prisoned not exceeding ten days for each and every offence.

#### Sec. 2281. Penalty for hunting or killing deer during certain months.

1871-'2, c. 68, s. 1.  
 1876-'7, c. 30.

If any person shall hunt for with gun, or chase with a dog, or  
 2 shall kill or destroy any deer running wild in the woods, between  
 3 the fifteenth day of February and the fifteenth day of August next  
 4 thereafter ensuing, unless in an inclosure surrounded by a suf-  
 5 ficient fence, at least five feet high, and where such person shall  
 6 have a lawful right so to do, the person so offending shall pay a  
 7 penalty of fifty dollars for each and every offence to any person or  
 8 persons suing for the same, one-half for his use and the other for



9 the use of the public school or schools of the school district or dis-  
 10 tricts wherein the offence is committed, and the offender shall be  
 11 guilty of a misdemeanor, and, on conviction, shall pay a fine of  
 12 not less than ten dollars, or be imprisoned, or both, at the discre-  
 13 tion of the court.

**Sec. 2282. School committee can sue for damages.**

In the event that no one has brought a prior suit, and prosecuted  
 2 the same in good faith for the penalty prescribed in the preceding  
 3 section, it shall be the duty of the school committee of any town-  
 4 ship where the said offence shall be committed, to sue for the same,  
 5 and the whole of their recovery shall be to themselves for the use  
 6 of their school district. And it shall further be their duty to cause  
 7 any person so offending to be prosecuted by indictment for such  
 8 offence.

1871-'2, c. 68, s. 2.

**Sec. 2283. Unlawful to kill, &c., certain birds within certain dates.**

It shall be unlawful to kill or shoot, trap or net any partridges,  
 2 quail, doves, robins, lark, mocking-birds or wild turkeys, between  
 3 the first day of April and the fifteenth day of October in each and  
 4 every year; and the person so offending shall be guilty of a mis-  
 5 demeanor, and, on conviction thereof, shall be fined not exceeding  
 6 ten dollars for each and every offence.

1874-'5, c. 195.  
 1881, c. 254.

**Sec. 2284. Unlawful to export quail or partridges from the state.**

It shall be unlawful for any person to export from the state any  
 2 quail or partridges, whether dead or alive, and any person vio-  
 3 lating the provisions of this section shall be guilty of a misde-  
 4 meanor, and, upon conviction thereof before any justice of the  
 5 peace, shall be fined not exceeding fifty dollars nor imprisoned  
 6 more than thirty days for each offence.

1876-'7, c. 195.  
 1880, c. 57.

**Sec. 2285. Unlawful to take or destroy eggs of quail or partridges; misdemeanor; penalty.**

It shall be unlawful at any time to take or destroy the eggs of  
 2 partridges or quail; and any person violating the provisions of this  
 3 section shall be guilty of a misdemeanor, and, upon conviction,  
 4 shall be punished by a fine of not more than fifty dollars or by  
 5 imprisonment for not more than thirty days.

1881, c. 220, ss. 2, 3.

**Sec. 2286. Restrictions on hunting wild fowl on Sunday, at night, &c.**

It shall be unlawful for any person to hunt or shoot wild fowl on  
 2 the Lord's day, commonly called Sunday; or hunt or shoot them  
 3 on any day of the week after the hour of sunset and before the  
 4 hour of daylight, with gun or fire, or to use any gun other than  
 5 can be fired from the shoulder.

1870-'1, c. 27, s. 2.  
 1874-'5, c. 259.

Sec. 2287. Penalty for violation of the preceding section; fines to go to school fund of the county; justices of peace to issue warrants.

1870-'1, c. 27, ss. 4,  
5, 6,  
1874-'5, c. 259.

Any person violating the provisions of the preceding section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than one hundred dollars or imprisoned not less than thirty days, at the discretion of the court. And all fines collected or imposed under the provisions of this section shall go to the common school fund of the county: *Provided*, any person giving information of the violation of said preceding section to the proper persons shall, upon conviction of the parties, be entitled to receive one-half of said fine.

It shall be the duty of the justice of the peace, upon information of the violation of the preceding section, to issue his warrant for the arrest of the offender, and, if found guilty by him, he shall bind him over in such sum as he thinks proper, (provided that such amount shall not exceed two hundred and fifty dollars,) to the next term of any court having jurisdiction.

Sec. 2288. Hunting with fire prohibited; penalty; informer to receive half of fine.

1868-'9, c. 250, ss. 1.  
1874-'5, c. 235.

Any person hunting wild fowl with fire shall be guilty of a misdemeanor, and, upon conviction, 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; and 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 section, shall be entitled, upon conviction of the defendant, to receive one-half of said fine.

## CHAPTER FIFTY-SIX.

### GAMING CONTRACTS.

#### SECTION.

2289. Gaming or betting contracts void.

2290. Contracts or judgments thereon to repay or secure money or property lent for betting are void.

2291. Players and betters competent witnesses.

Sec. 2289. Gaming or betting contracts void.

R. C., c. 51, s. 1.  
1788, c. 284.  
1810, c. 796.

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.

Wood v. Wood, 3 Mur., 172; Forest v. Hart, 3 Mur., 458; Bettis v. Reynolds, 12 Ire., 344.

Sec. 2290. Contracts or judgments thereon to repay or secure money or property lent for betting are void.

All contracts, judgments, conveyances and assurances to repay  
2 or secure any money, or property, or thing in action, lent or ad-  
3 vanced for the purpose of such wagering, betting, or staking as  
4 aforesaid, shall be void.

R. C., c. 51, s. 2.  
1788, c. 284.  
1810, c. 796.

Turner v. Peacock, 2 Dev., 303; Hudspeth v. Wilson, 2 Dev., 372; Dunn v. Holloway, 1 Dev. Eq., 322; Teague v. Perry, 64—39.

Sec. 2291. Players and betters competent witnesses.

No person shall be excused or incapacitated from confessing or  
2 testifying touching any money or property, or thing in action, so  
3 waged, bet or staked, or lent for such purpose, by reason of his  
4 having won, played, betted or staked upon any game, lot or chance,  
5 casualty, or unknown or contingent event aforesaid; but the con-  
6 fession or testimony of such person shall not be used against him,  
7 in any criminal prosecution, on account of such betting, wagering  
8 or staking.

R. C., c. 51, s. 3.

## CHAPTER FIFTY-SEVEN.

### GENERAL ASSEMBLY.

#### SECTION.

- 2292. Apportionment of members of the senate.
- 2293. Apportionment of members of the house of representatives.
- 2294. Members of the general assembly, securing their election by bribery or corrupt practices, to be expelled.
- 2295. Members shall convene at the time and place appointed.
- 2296. Penalty on members failing in their duties.
- 2297. Members to have freedom of speech and be protected from arrest.
- 2298. How to contest the seat of a member.
- 2299. Depositions in contested elections; penalty on witnesses failing to testify; elector compelled to discover for whom he voted.
- 2300. Persons offering bribe to a member, indicted and punished for felony; legislator accepting bribe to forfeit his seat and be punished as for felony.
- 2301. Powers of committees of investigation.
- 2302. Penalty for failure to give evidence.
- 2303. Any committeeman may administer oaths.
- 2304. Penalty for false swearing.
- 2305. How to appear before a committee in person or by counsel.
- 2306. Committee denying request of applicant to be heard he may appeal to the general assembly.

#### SECTION.

- 2307. Pay of witnesses giving testimony.
- 2308. Private act ought not to be passed, unless notice of an application for the enactment has been previously advertised.
- 2309. Acts of the general assembly, when to take effect.
- 2310. Term of office of door-keeper.
- 2311. State treasurer to furnish the general assembly estimates of the expenses of the state government.
- 2312. Directors of the asylums and of the penitentiary, and the state treasurer shall submit with their respective reports to the general assembly bills for the support of their departments.
- 2313. Report and bills to be presented and submitted to the general assembly, with the governor's message.
- 2314. Journals of general assembly deposited in office of secretary of state.
- 2315. The principal clerks to index the journals; compensation.
- 2316. Secretary of state to have the laws printed without delay.
- 2317. Principal clerks to hold offices until successors are appointed.
- 2318. Two door-keepers appointed by keeper of the capitol to place the legislative halls in order for the general assembly.
- 2319. Mileage and *per diem* of the clerks and door-keepers of the general assembly.



## SECTION.

2320. Employees of the senate and house, how paid.

2321. Grave-stones provided for members of the general assembly interred in Raleigh.

## Sec. 2292. Apportionment of members of the senate.

1881, c. 296.

Until another 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, Hyde and Pamlico 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 and Pender 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 two senators.

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 and Alamance shall elect one senator.

Twenty-third district—Rockingham shall elect one senator.

Twenty-fourth district—Guilford shall elect one senator.

Twenty-fifth district—Randolph and Moore shall elect one senator.

Twenty-sixth district—Richmond and Montgomery shall elect one senator.

- 42 Twenty-seventh district—Anson and Union shall elect one sena-  
 43 tor.  
 44 Twenty-eighth district—Cabarrus and Stanly shall elect one  
 45 senator.  
 46 Twenty-ninth district—Mecklenburg shall elect one senator.  
 47 Thirtieth district—Rowan and Davie shall elect one senator.  
 48 Thirty-first district—Davidson shall elect one senator.  
 49 Thirty-second district—Stokes and Forsyth shall elect one senator.  
 50 Thirty-third district—Surry and Yadkin shall elect one senator.  
 51 Thirty-fourth district—Iredell, Wilkes and Alexander shall elect  
 52 two senators.  
 53 Thirty-fifth district—Alleghany, Ashe and Watauga shall elect  
 54 one senator.  
 55 Thirty-sixth district—Caldwell, Burke, McDowell, Mitchell and  
 56 Yancey shall elect two senators.  
 57 Thirty-seventh district—Catawba and Lincoln shall elect one  
 58 senator.  
 59 Thirty-eighth district—Gaston and Cleveland shall elect one  
 60 senator.  
 61 Thirty-ninth district—Rutherford and Polk shall elect one sena-  
 62 tor.  
 63 Fortieth district—Buncombe and Madison shall elect one senator.  
 64 Forty-first district—Haywood, Henderson and Transylvania  
 65 shall elect one senator.  
 66 Forty-second district—Jackson, Swain, Macon, Cherokee, Clay  
 67 and Graham shall elect one senator.

**Sec. 2293. Apportionment of members of the house of representatives.**

Until the general assembly shall make another apportionment, as  
 2 provided by the constitution and laws of North Carolina, the house  
 3 of representatives shall be composed of members elected from  
 4 the counties in the following manner, to-wit: The county of Wake  
 5 shall elect four members; the county of Mecklenburg shall elect  
 6 three members; the counties of Buncombe, Chatham, Cumberland,  
 7 Davidson, Edgecombe, Franklin, Granville, Guilford, Halifax, Ire-  
 8 dell, Johnston, New Hanover, Northampton, Orange, Pitt, Ran-  
 9 dolph, Robeson, Rockingham, Sampson, Warren and Wayne shall  
 10 elect two members each; and the counties of Alamance, Alexan-  
 11 der, Alleghany, Anson, Ashe, Beaufort, Bertie, Bladen, Brunswick,  
 12 Burke, Cabarrus, Caldwell, Camden, Carteret, Caswell, Catawba,  
 13 Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Currituck,  
 14 Dare, Davie, Duplin, Forsyth, Gaston, Gates, Graham, Greene,  
 15 Harnett, Haywood, Henderson, Hertford, Hyde, Jackson, Jones,  
 16 Lenoir, Lincoln, McDowell, Macon, Madison, Martin, Mitchell,  
 17 Montgomery, Moore, Nash, Onslow, Pamlico, Pasquotank, Pender,  
 18 Perquimans, Person, Polk, Richmond, Rowan, Rutherford, Stanly,  
 19 Stokes, Surry, Swain, Transylvania, Tyrrell, Union, Washington,

1, c. 291.

20 Watauga, Wilkes, Wilson, Yadkin and Yancey shall elect one  
21 member each.

Sec. 2294. Members of the general assembly securing their election by bribery or corrupt practices, to be expelled.

R. C., c. 52, s. 24.  
1801, c. 580, s. 2.

If any person elected a member of the general assembly shall, by  
2 himself or any other person, directly or indirectly, give, or cause  
3 to be given, any money, property, reward or present whatsoever;  
4 or give, or cause to be given by himself or another, any treat or  
5 entertainment of meat or drink, at any public meeting or collec-  
6 tion of the people, to any person for his vote or to influence him  
7 in his election, such person shall, on due proof, be expelled from  
8 his seat in the general assembly.

Sec. 2295. Members shall convene at the time and place appointed.

R. C., c. 52, s. 27.  
1787, c. 277, s. 1.

Every person, elected to represent any county or district in the  
2 general assembly shall appear at such time and place as may be  
3 appointed for the meeting thereof, on the first day, and attend to  
4 the public business as occasion shall require.

Sec. 2296. Penalty on members for failing in their duties.

R. C., c. 52, s. 28.  
1787, c. 277, s. 2.

If any member shall fail to appear, or shall neglect to attend to  
2 the duties of his appointment, he shall forfeit and pay for not ap-  
3 pearing ten dollars, and two dollars for every day he may be absent  
4 from his duty during the session, to be deducted from his pay as a  
5 member: *Provided*, that a majority of the members of either house  
6 of the general assembly may remit the fines and forfeitures afore-  
7 said, or any part thereof, where it shall appear that the person hath  
8 been prevented from attending his duty by sickness or other suf-  
9 ficient cause.

Sec. 2297. Members to have freedom of speech and be protected from arrest.

R. C., c. 52, s. 29.  
1787, c. 277, s. 3.

The members shall have freedom of speech and debate in the  
2 general assembly, and shall not be liable to impeachment or  
3 question, in any court or place out of the general assembly, for  
4 words therein spoken; and shall be protected, except in cases of  
5 crime, from all arrest and imprisonment, or attachment of prop-  
6 erty, during the time of their going to, coming from or attending  
7 the general assembly.

Sec. 2298. How to contest the seat of a member.

R. C., c. 52, s. 31.  
1796, c. 466, s. 1.

No person shall be allowed to contest the seat of any member of  
2 the general assembly unless he shall have given to the member  
3 thirty days' notice thereof in writing, which must state the partic-  
4 ular grounds of such contest. If the seat is contested on account  
5 of the reception of illegal votes, the notice must set forth the num-  
6 ber of such votes, by whom given, and the supposed disqualifica-



7 tions; and if the same is contested on account of the rejection of  
8 legal votes, the notice must give the names of the persons whose  
9 votes were rejected. No evidence shall be admitted to show that  
10 the contestant received illegal votes, unless he shall also have been  
11 notified the same number of days, and in the same manner. The  
12 same notice of time and place required in taking depositions at law  
13 shall be required and proved on the investigation.

**Sec. 2299.** Depositions in contested elections; penalty on witness failing to testify;  
elector compelled to discover for whom he voted.

Any justice of the peace, or any person duly authorized to take  
2 depositions to be read before courts of law, may take depositions  
3 to be used on the investigation, and may issue subpoenas for wit-  
4 nesses, which shall be executed by any officer authorized to execute  
5 process. And if any witness shall fail to appear and give his depo-  
6 sition according to the subpoena, he shall forfeit and pay to the  
7 party causing him to be summoned, forty dollars. And on such  
8 investigation no witness in this, or in the case of any other con-  
9 tested election, shall be excused from discovering whether he voted  
10 at such election, or his qualification to vote, except as to his con-  
11 viction for any offence which would disqualify him. And if he  
12 was not a qualified voter, he shall be compelled to discover for  
13 whom he voted; but any witness making such discovery shall not  
14 be subject to criminal or penal prosecution for having voted at such  
15 election.

See 1868-'9, c. 270, s. 12.

R. C., c. 52, s. 32  
1800, c. 557, s. 1.

**Sec. 2300.** Persons offering bribe to a member, indicted and punished for felony;  
legislator accepting bribe to forfeit his seat and be punished as for felony.

Any person who shall directly or indirectly promise, offer or  
2 give, or cause, or procure to be promised, offered or given, any  
3 money, goods, bribe, present or reward, or any promise, contract,  
4 undertaking, obligation or security for the payment or delivery of  
5 any money, goods, right in action, bribe, present or reward, or any  
6 other valuable thing whatever, to any member of the senate or  
7 house of representatives of this state after his election as such mem-  
8 ber, and either before or after he shall have qualified and taken  
9 his seat, with intent to influence his vote or decision on any ques-  
10 tion, matter, cause or proceeding which may then be pending be-  
11 fore the general assembly, or which may come before him for action  
12 in his capacity as a member of the general assembly, and shall  
13 thereof be convicted, said person or persons so offering, promising  
14 or giving, or causing or procuring to be promised, offered or given  
15 any such money, goods, bribe, present or reward, or any bond, con-  
16 tract, undertaking, obligation or security for the payment or de-  
17 livery of any money, goods, bribe, present or reward, or other val-  
18 uable thing whatever, and the member elect who shall, in any  
19 wise accept or receive the same or any part thereof shall be liable

1863-'9, c. 176, s. 51

20 to an indictment as for a felony, and shall, upon conviction thereof,  
21 be fined not exceeding double the amount so offered, promised or  
22 given, and imprisoned in the penitentiary not exceeding five years,  
23 and the person convicted of so accepting or receiving the same or  
24 any part thereof shall forfeit his seat in the general assembly and  
25 be forever disqualified to hold any office of honor, trust or profit  
26 under this state.

**Sec. 2301. Powers of committees of investigation.**

1869-'70, c. 50, s. 1.

Any committee of investigation raised either by joint resolution  
2 or resolution of either house of the general assembly has full power  
3 to send for persons and papers, and, if necessary, to compel attend-  
4 ance and production of papers by attachment or otherwise.

**Sec. 2302. Penalty for failure to give evidence.**

1869-'70, c. 5, s. 2.

\* Any person or persons wilfully failing or refusing to attend or  
2 produce papers, in accordance with the provisions of the preceding  
3 section, on summons of any committee of investigation, either se-  
4 lect or committee of the whole, shall be guilty of a misdemeanor,  
5 and on conviction in the superior court of the county in which  
6 such witness may reside or be found, shall be fined not less than  
7 five hundred dollars nor more than one thousand dollars, and shall  
8 be subject to imprisonment at the discretion of the court.

**Sec. 2303. Any committeman may administer oaths.**

1869-'70, c. 5, s. 3.

The chairman of any committee or any person in his presence,  
2 shall have competent power and authority to administer oaths.

**Sec. 2304. Penalty for false swearing.**

1869-'70, c. 5, s. 4.

Any person who shall wilfully and corruptly swear falsely to any  
2 fact material to the investigation of such committee, shall be sub-  
3 ject to all the pains and penalties of wilful and corrupt perjury,  
4 and, on indictment and conviction in the superior court of Wake  
5 county, shall be confined in the penitentiary of the state for the  
6 time now prescribed by law for perjury.

**Sec. 2305. How to appear before a committee, in person or by counsel.**

1868-'9, c. 270, s. 10.

Every person desiring to appear either in person or by attorney  
2 to introduce testimony, or to offer argument for or against the pas-  
3 sage of an act or resolution, before any committee of either house  
4 of the general assembly, shall first make application to said com-  
5 mittee, stating in writing his object, the number and names of his  
6 witnesses, and the nature of their testimony. If the committee  
7 consider the information likely to be important, or the interest of  
8 the applicant to be great, they shall appoint a time and place for  
9 hearing the same, with such limitations as may be deemed neces-  
10 sary.

**Sec. 2306.** Committee denying request of applicant to be heard, he may appeal to the general assembly.

If any committee shall refuse to grant the request of any citizen  
2 to be heard before them in a matter touching his interests, he may  
3 appeal to the house of which the committee is a part; and if he  
4 show good reason for his request the house shall order it to be  
5 granted.

1868-'9, c. 270, s. 11.

**Sec. 2307.** Pay of witnesses giving testimony.

Any witness appearing and giving testimony, shall be entitled  
2 to receive from the person at whose instance he was summoned,  
3 ten cents for every mile traveling to and from the place and his  
4 ferriages, to be recovered before any justice of the peace upon the  
5 certificate of the commissioner.

R. C., c. 52, s. 33.  
1800, c. 557, s. 2.

**Sec. 2308.** Private act ought not to be passed, unless notice of an application for the enactment has been previously advertised.

Any person who may desire the passage of a private law, shall  
2 give notice of his intention to make application, by advertisement  
3 in some newspaper of the state which circulates in the county  
4 where the applicant resides, or in which such private law will ope-  
5 rate; or by advertisement at the door of the court house and three  
6 other public places in such county, for at least thirty days before  
7 the application; and, when any private bill shall be introduced, a  
8 copy of such advertisement, with due proof of its having been so  
9 published, shall be produced, before the second reading thereof.

R. C., c. 52, s. 34  
1796, c. 466, s. 2.  
1835, c. 15.

See Const., Art. 2, s. 12; Gatlin v. Town of Tarboro, 78—119.

**Sec. 2309.** Acts of the general assembly, when to take effect.

Acts of the general assembly shall be in force only from and after  
2 thirty days after the adjournment of the session in which they shall  
3 have passed, unless the commencement of the operation thereof be  
4 expressly otherwise directed.

R. C., c. 52, s. 35.  
1799, c. 527.

Hamlet v. Taylor, 5 Jon., 37; Isler v. Colgrove, 75—334; 1868-'9, c. 270, s. 21.

**Sec. 2310.** Term of office of doorkeeper.

The term of office of the doorkeeper of each house shall be two  
2 years, and until his successor is appointed.

1868-'9, c. 270, s. 7.

**Sec. 2311.** State treasurer to furnish the general assembly estimates of the expenses of the state government.

It shall be the duty of the state treasurer to furnish the general  
2 assembly, at the commencement of each session, with estimates of  
3 the expenses of the state for the two years next succeeding the close  
4 of the last fiscal year, and with a scheme in the form of a complete  
5 revenue bill to sustain such estimates.

1856-'7, c. 30.



**Sec. 2312.** Directors of asylums and of the penitentiary, and the state treasurer shall submit with their respective reports to the general assembly, bills for the support of their departments.

1881, c. 272, s. 1.

It shall be the duty of the state treasurer and of the boards of  
2 directors of the several asylums and of the penitentiary to submit  
3 to the general assembly, with their respective reports, bills pro-  
4 viding for the support and management of their respective de-  
5 partments.

**Sec. 2313.** Reports and bills to be printed and submitted to the general assembly with the governor's message.

1881, c. 272, s. 2.

Three hundred copies of each of said reports and bills, and also  
2 of the auditor's report, shall be printed and submitted to the gen-  
3 eral assembly with the message of the governor.

**Sec. 2314.** Journals of general assembly deposited in office of secretary of state.

R. C., c. 52, s. 36.  
1819, c. 1020.

The principal clerks of the senate and house of representatives, as  
2 soon as may be practicable after the close of each session, shall de-  
3 posit in the office of the secretary of state the journals of the general  
4 assembly; and the secretary of state shall make and certify copies of  
5 any part or entry of said journals, and may take for the copy of  
6 each entry made and certified the same fee as for the copy of a  
7 grant.

**Sec. 2315.** The principal clerks to index the journals; compensation.

1866-'7, c. 71.

The principal clerks of the two houses of the general assembly  
2 shall provide full and complete indexes for the journals of their re-  
3 spective houses, and the said clerks shall each be allowed one hun-  
4 dred dollars as a compensation therefor.

**Sec. 2316.** Secretary of state to have the laws printed without delay.

1868-'9, c. 270, s. 14.

The secretary of state, within thirty days after the termination  
2 of each session of the general assembly, shall cause to be published  
3 by the state printer all the laws and joint resolutions passed at  
4 such session; and each volume shall contain his certificate that it  
5 was printed under his direction, from enrolled copies on file in his  
6 office. In the printing he shall omit the certificate required to be  
7 indorsed upon the original bills; but he shall insert immediately  
8 after the title of each law the word "passed," adding the day,  
9 month and year.

Brown v. Turner, 70—93.

**Sec. 2317.** Principal clerks to hold offices until successors appointed.

R. C., c. 52, s. 37.  
1846, c. 63, s. 1.

The principal clerk of each house of the general assembly shall  
2 hold his office for the term of two years, or until another is ap-  
3 pointed; shall be present at such time and place as may be fixed  
4 for the meeting of the general assembly, and on the first day  
5 thereof, and perform the duties of his office.

Sec. 2318. Two doorkeepers appointed by the keeper of the capitol to place the legislative halls in order for the general assembly.

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 doorkeepers can be regularly appointed. And the persons so employed, shall be allowed, as a compensation, the sum of four dollars each for their daily attendance and services.

R. C., c. 52, s. 38.  
1846, c. 63, s. 5.

Sec. 2319. Mileage and *per diem* of the clerks and doorkeepers of the general assembly.

The principal and assistant clerks, the enrolling and engrossing clerks, and the doorkeepers and assistant doorkeepers, shall each receive five dollars per day, during the session of the general assembly, and the same mileage as members of the general assembly.

Sec. 2320. Employees of the senate and house, how paid.

The auditor is 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 and of the speaker of the house of representatives, that such services have been rendered for which the account is presented, and that the amount as stated in said account is reasonable, just and proper.

Res. 1870-'71, p. 508.

Sec. 2321. Grave-stones provided for members of the general assembly interred in Raleigh.

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.

R. C., c. 52, s. 39.  
1844, Res.

## CHAPTER FIFTY-EIGHT.

### GUARDIAN AND WARD.

#### SECTION.

- 2322. Public guardian may be appointed in every county.
- 2323. Bond of public guardian.
- 2324. Bond to be enlarged.
- 2325. Bond to be renewed every two years.
- 2326. Oath to be taken and subscribed.
- 2327. Public guardian to apply for letters; when letters to be revoked on application; powers and duties of public guardian.

#### SECTION.

- 2328. Father may appoint guardian by deed or will, or if father be dead, mother may appoint.
- 2329. Effect of such appointment.
- 2330. Powers and liabilities of guardians by deed or will.
- 2331. Jurisdiction of clerks of superior court.
- 2332. May appoint tutor of person and guardian of estate.

## SECTION.

- 2333. May allow yearly sums for support and education.
- 2334. What disbursements and commissions allowed.
- 2335. In cases of divorce who to have custody of children.
- 2336. In cases of divorce how guardian of estate appointed.
- 2337. Guardian of estate when father is alive.
- 2338. Guardian not to receive property until security given.
- 2339. Bond to be given by guardian to be increased on sale of property.
- 2340. Action on bond.
- 2341. When wards have property in common, one bond.
- 2342. Return within three months.
- 2343. Compelling return.
- 2344. Return to be made of new assets.
- 2345. Annual account.
- 2346. Bond to be renewed.
- 2347. Guardian failing to renew bond, duty of clerk.
- 2348. Power and duty of clerks over guardians abusing their trusts.
- 2349. Action to be brought by solicitor, when.
- 2350. Receiver to be appointed, when.
- 2351. Compensation of solicitor.
- 2352. Property, how obtained from receiver when guardian appointed.
- 2353. Guardian to take charge of ward's estate.
- 2354. Guardian to sell goods and chattels of ward liable to perish, &c.
- 2355. Sales and rentings, how made.
- 2356. Guardian may lease lands, when.
- 2357. Notes taken by guardian to bear compound interest.
- 2358. Liability of guardian for debts.
- 2359. How guardian may invest.
- 2360. Guardian liable for lands forfeited for taxes.
- 2361. When guardian may sell timber.
- 2362. Plate to be kept.

## SECTION.

- 2363. Foreign guardian may have ward's estate removed, how.
- 2364. What petition must show.
- 2365. Who may be made defendants.
- 2366. Petition to be proceeded with as in other cases of special proceedings.
- 2367. Estates of ward, how and when sold.
- 2368. Property substituted for that sold to remain of the same character as that sold.
- 2369. When ward is indebted, how property sold.
- 2370. Proceeds to be assets in guardian's hands for payment of creditors.
- 2371. Sureties of guardian in danger of loss, how relieved.
- 2372. Interlocutory order pending controversy.
- 2373. Guardian may resign, when.
- 2374. Duty of grand jury regarding orphans without guardians.
- 2375. Estates of orphans without guardians, how secured.
- 2376. Fees and costs in certain cases, by whom paid.
- 2377. Guardian allowed disbursements and expenses.
- 2378. Commissions allowed.
- 2379. Liability of clerk taking insufficient security.
- 2380. Liability of clerk for other defaults.
- 2381. Guardians heretofore appointed.
- 2382. Annual accounts.
- 2383. Failing to account, clerk to order an account, and an attachment may issue.
- 2384. Vouchers presumptive evidence.
- 2385. When guardian may be required to file final account.
- 2386. Proceedings on application for guardianship.
- 2387. Letters of guardianship to issue.
- 2388. Executor or administrator of deceased guardian authorized to pay into office of clerk moneys, &c., belonging to wards.

**Sec. 2322. Public guardian may be appointed in every county.**

1874-'5, c. 221, s. 1.

There may be in every county in the state a public guardian to  
2 be appointed by the clerk of the superior court for a term of eight  
3 years.

**Sec. 2323. Bond of public guardian.**

1874-'5, c. 221, s. 2.

The public guardian shall enter into bond with three or more  
2 securities, approved by the clerk of the superior court, in the penal  
3 sum of six thousand dollars, payable to the state of North Caro-  
4 lina, conditioned faithfully to perform the duties of his office and  
5 obey all lawful orders of the superior or other courts touching said  
6 guardianship of all wards, money or estate that may come into  
7 his hands.

**Sec. 2324. Bond to be enlarged.**

1874-'5, c. 221, s. 3.

Whenever the aggregate value of the real and personal estate  
2 belonging to his several wards shall exceed one-half the bond



3 herein required the clerk of the superior court shall require him  
4 to enlarge his bond in amount so as to cover at least double the  
5 aggregate amount under his control as guardian.

**Sec. 2325. Bond to be renewed every two years.**

The public guardian as aforesaid shall renew his official bond 1874-'5, c. 221, s. 4.  
2 every two years.

**Sec. 2326. Oath to be taken and subscribed.**

The public guardian shall take and subscribe an oath (or affirma- 1874-'5, c. 221, s. 5.  
2 tion) faithfully and honestly to discharge the duties imposed upon  
3 him; the oath so taken and subscribed shall be filed in the office  
4 of the clerk of the superior court.

**Sec. 2327. Public guardian to apply for letters; when letters to be revoked on application; powers and duties of public guardian.**

The public guardian shall apply for and obtain letters of guar- 1874-'5, c. 221, ss. 6,  
2 dianship in the following cases:

3 (1) When the period of six months has elapsed from the discov-  
4 ery of any property belonging to any minor, idiot, lunatic, insane  
5 person or inebriate, without guardian;

6 (2) When any person entitled to letters of guardianship shall  
7 request in writing the clerk of the superior court to issue the let-  
8 ters to the public guardian: *Provided*, it shall be lawful and the  
9 duty of the clerk of the superior court to revoke said letters of  
10 guardianship at any time after the issuing the same when upon  
11 application in writing by any person entitled to qualify as guar-  
12 dian, setting forth a sufficient cause for such revocation. The  
13 powers and duties of said public guardian shall be the same as  
14 other guardians, and shall be subject to the duties and liabilities  
15 as other guardians under the existing laws; said guardian shall  
16 receive such compensation as other guardians.

**Sec. 2328. Father may appoint guardian by deed or will; or if father be dead, mother may appoint.**

Any father, though he be a minor, may, by deed executed in R. C., c. 54, s. 1.  
2 his lifetime or by his last will and testament in writing, dispose 1762, c. 69, s. 2.  
3 of the custody and tuition of any of his infant children, being un- 1868-'9, c. 201, s. 1.  
4 married and whether born at his death or in *ventre sa mere*, for such 1881, c. 64.  
5 time as the children may remain under twenty-one years of age, or  
6 for any less time.

7 Or in case such father shall be dead and shall not have exercised  
8 his said right of appointment, then the mother, whether of full age  
9 or a minor, may do so; and whenever any such mother may have  
10 heretofore made such appointment by will and died leaving minor  
11 children who have not since had a guardian appointed by law,

12 then such appointment by will shall be as valid and binding as if  
13 this section had been in existence at the time of her decease.

*Peyton v. Smith*, 2 D. & B. Eq., 325; *Williamson v. Jordan*, Busb. Eq., 46; *Armfield v. Brown*, 70—27; *Harris v. Harrison*, 78—202.

**Sec. 2329. Effect of such appointment.**

R. C., c. 54, s. 1.  
1762, c. 69, s. 2.  
1868-'9, c. 201, s. 2.

Every such appointment shall be good and effectual against any  
2 person claiming the custody and tuition of such child or children.

**Sec. 2330. Powers and liabilities of guardians by deed or will.**

R. C., c. 54, s. 1.  
1762, c. 69, s. 2.  
1868-'9, c. 201, s. 3.

Every guardian by deed or will shall have the same powers and  
2 rights and be subject to the same liabilities and regulations as  
3 other guardians.

**Sec. 2331. Jurisdiction of clerks of the superior court.**

R. C., c. 54, s. 2.  
1762, c. 69, ss. 5, 7.  
1868-'9, c. 201, s. 4.

The clerks of the superior court within their respective counties  
2 shall have full power from time to time, to take cognizance of all  
3 matters concerning orphans and their estates and to appoint guar-  
4 dians in all cases of infants, idiots, lunatics and inebriates, except  
5 where otherwise prescribed by law.

*Mills v. McAllister*, 1 Hay., 303; *Grant v. Whittaker*, 1 Murphy, 231; *Long v. Rhymes*, 2 Murphy, 122; *West v. Kittrell*, 1 Hawks, 493; *Harris v. Richardson*, 4 Dev., 279; *Bath v. Vick*, 4 Dev., 294; *Cooke v. Beale*, 11 Ire., 36; *Moore v. Askew*, 85—199.

**Sec. 2332. May appoint tutor of person and guardian of estate.**

R. C., c. 54, s. 3.  
1840, c. 31, ss. 1, 2.  
1868-'9, c. 201, s. 5.

Instead of granting general guardianship to one person, the  
2 clerk of the superior court may commit the tuition and custody of  
3 the person to one and the charge of his estate to another, when-  
4 ever and at any time during minority, idiocy or lunacy, it appears  
5 most conducive to the proper care of the orphan's, idiot's or luna-  
6 tic's estate and to his suitable maintenance, nurture and education.

**Sec. 2333. May allow yearly sums for support and education.**

R. C., c. 54, s. 3.  
1840, c. 31, ss. 1, 2.  
1868-'9, c. 201, s. 6.

In such cases the clerk must order what yearly sums of money  
2 or other provisions shall be allowed for the support and education  
3 of the orphan, or for the maintenance of the idiot, lunatic or ine-  
4 briate, and must prescribe the time and manner of paying the  
5 same; but such allowance may, upon application and satisfactory  
6 proof made, be reduced or enlarged, or otherwise modified, as the  
6 ward's condition in life and the kind and value of his estate may  
7 require.

**Sec. 2334. What disbursements and commissions allowed.**

R. C., c. 54, s. 3.  
1840, c. 31, ss. 1, 2.  
1868-'9, c. 201, s. 7.

All payments made by the guardian of the estate to the tutor of  
2 the person, according to any such order, shall be deemed just dis-  
3 bursements and be allowed in the settlement of his accounts; but  
4 for the payment thereof by the one and the receipts thereof by the  
5 other merely, no commissions shall be allowed to either, though

6 commissions may be allowed to the tutor of the person on his dis-  
7 bursements only.

Burke v. Turner, 85—500.

**Sec. 2335. In cases of divorce, who to have custody of children.**

When parents, divorced from the bonds of matrimony, or from  
2 bed and board, have any child under twenty-one years, the court  
3 granting the divorce may commit his custody and tuition to the  
4 father or mother as may be thought best; or the court may com-  
5 mit the custody and tuition of such infant child, in the first place,  
6 to one parent for a limited time, and after the expiration of that  
7 time, then to the other parent; and so alternately.

R. C., c. 54, s. 4.  
1838, c. 16, ss. 1, 2.  
1868-'9, c. 201, s. 8.

**Sec. 2336. In cases of divorce, how guardian of estate appointed.**

In cases provided for by the preceding section, where such child  
2 is entitled to any estate, the court granting the divorce must certify  
3 that fact to the superior court, to the end that the clerk thereof may  
4 appoint a fit and proper person to take the care and management  
5 of such estate, whose powers and duties shall be the same in all re-  
6 spects as other guardians, except that a guardian so appointed shall  
7 not have any authority over the person of such child, unless the  
8 guardian be the father or mother.

R. C., c. 54, s. 4.  
1838, c. 16, ss. 1, 2.  
1868-'9, c. 201, s. 9.

**Sec. 2337. Guardian of estate, when father is alive.**

The clerk of the superior court may appoint a guardian of the  
2 estate of any minor, although the father of such minor be living.  
3 And the guardian so appointed shall be governed in all respects  
4 by the laws relative to guardians of the estate in other cases, but  
5 shall have no authority over the person of such minor.

R. C., c. 54, ss. 4, 7.  
1806, c. 707, s. 1.  
1838, c. 16, ss. 1, 2.  
1868-'9, c. 201, s. 10.

**Sec. 2338. Guardian not to receive property until security given.**

No guardian appointed for an infant idiot, lunatic, insane per-  
2 son, or inebriate, shall be permitted to receive property of the in-  
3 fant idiot, lunatic, insane person or inebriate until he shall have  
4 given sufficient security, approved by a judge, or the court to ac-  
5 count for and apply the same under the direction of the court.

C. C. P., s. 355.

**Sec. 2339. Bond to be given by guardian; to be increased on sale of property.**

Every guardian of the estate, before letters of appointment are  
2 issued to him, must give a bond payable to the state, with two or  
3 more sufficient sureties, to be acknowledged before and approved  
4 by the clerk of the superior court, and to be jointly and severally  
5 bound. The penalty in such bond must be double, at least, the  
6 value of all personal property, and the rents and profits issuing  
7 from the real estate of the infant; which value is to be ascertained  
8 by the clerk of the superior court by the examination, on oath, of  
9 the applicant for guardianship, or of any other person. The bond

R. C., c. 54, s. 5.  
1762, c. 69, s. 7.  
1825, c. 1285, s. 2.  
1833, c. 17.  
1868-'9, c. 201, s. 11.  
1874-'5, c. 214.



10 must be conditioned that such guardian shall faithfully execute  
 11 the trust reposed in him as such, and obey all lawful orders of the  
 12 clerk or judge, touching the guardianship of the estate com-  
 13 mitted to him: *Provided*, if on application by the guardian by  
 14 petition the court or judge shall decree a sale for any of the causes  
 15 set forth in section twenty-three hundred and sixty-seven, the  
 16 property of such infant, idiot, lunatic or insane person, before such  
 17 sale be confirmed, the guardian shall be required to file a bond as  
 18 now required in double the amount of the real property so sold.

Barrett v. Munroe, 4 D. & B., 191; Shutt v. Carlross, 1 Ire. Eq., 232; Horton v. Horton, 4 Ire. Eq., 54; Boyett v. Hurst, 1 Jones Eq., 166; Matthews v. Downs, 1 Jones Eq., 331; State v. Brown, 67—475; Moore v. Askeew, 85—199.

#### Sec. 2340. Action on bond.

R. C., c. 54, s. 5.  
 1762, c. 69, s. 7.  
 1825, c. 1285, s. 2.  
 1833, c. 17.  
 1868-'9, c. 201, s. 12.

The bond so taken shall be recorded in the office of the clerk of  
 2 the superior court appointing the guardian; and any person in-  
 3 jured by a breach of the condition thereof, may prosecute a suit  
 4 thereon, as in other actions.

McKinnon v. McKinnon, 81—201. See also cases under previous section.

#### Sec. 2341. When wards have property in common, one bond.

R. C., c. 54, s. 8.  
 1822, c. 1161, ss. 1, 2.  
 1868-'9, c. 201, s. 13.

When the same person is appointed guardian to two or more  
 2 minors, idiots, lunatics or insane persons possessed of one estate in  
 3 common, the clerk of the superior court may take one bond only  
 4 in such case, upon which each of the minors, or persons for whose  
 5 benefit the bond is given, or their heirs or personal representatives,  
 6 may have a separate action.

#### Sec. 2342. Return within three months.

R. C., c. 54, s. 11.  
 1762, c. 69, s. 9.  
 C. C. P., s. 477.  
 1868-'9, c. 201, s. 14.

Every guardian, within three months after his appointment,  
 2 shall exhibit an account, upon oath, of the estate of his ward, to  
 3 the clerk of the superior court; but such time may be extended by  
 4 the clerk of the superior court, on good cause shown, not exceed-  
 5 ing six months.

Saunderson v. Saunderson, 79—369.

#### Sec. 2343. Compelling return.

R. C., c. 54, s. 12.  
 1762, c. 69, s. 15.  
 1816, c. 905, ss. 1, 2.  
 1868-'9, c. 201, s. 15.

In cases of default to exhibit the return required by the preced-  
 2 ing section, the clerk of the superior court must issue an order re-  
 3 quiring the guardian to file such return forthwith, or to show cause  
 4 why an attachment should not issue against him. If, after due  
 5 service of the order, the guardian does not, on the return day of  
 6 the order, file such return, or obtain further time to file the same,  
 7 the clerk of the superior court shall issue an attachment against  
 8 him, and commit him to the common jail of the county, till he  
 9 files such return.

Branch v. Arrington, 2 Car. L. Rep., 252; Harrison v. Ward, 3 Dev., 417; Harris v. Harrison, 78—202; Saunderson v. Saunderson, 79—369.

**Sec. 2344. Return to be made of new assets.**

Whenever further property of any kind, not included in any  
2 previous return, comes to the hands or knowledge of any guardian,  
3 he must cause the same to be returned as directed in section twenty-  
4 three hundred and forty-two, within three months after the posses-  
5 sion or discovery thereof; and the making of such return of new  
6 assets, from time to time, may be enforced in the same manner as  
7 prescribed in the preceding section.

1868-'9, c. 201, s. 16.

**Sec. 2345. Annual account.**

Every guardian shall annually exhibit his account to the clerk  
2 of the superior court, as hereinafter prescribed.

R. C., c. 54, s. 11.  
1762, c. 69, s. 9.  
1868-'9, c. 201, s. 17.

Moore v. Askew, 85—190.

**Sec. 2346. Bond to be renewed.**

Every guardian shall renew his bond before the clerk of the  
2 superior court every three years, during the continuance of the  
3 guardianship.

R. C., c. 54, s. 10.  
1820, c. 1039, ss. 1, 2.  
1824, c. 1246.  
1868-'9, c. 201, s. 18.

Jones v. Hays, 3 Ire. Eq., 502; Butler v. Durham, 3 Ire. Eq., 589; Jones v. Blanton, 6 Ire. Eq.,  
115; Jones v. Biggs, 1 Jones, 364; State v. Lowe, 64—500.

**Sec. 2347. Guardian failing to renew bond, duty of clerk.**

The clerk of the superior court shall issue a citation against  
2 every guardian failing to renew his bond, as directed in the pre-  
3 ceding section, requiring such guardian to renew his bond within  
4 twenty days after service of the citation; and on return of the cita-  
5 tion duly served and failure of the guardian to comply therewith,  
6 the clerk shall remove him and appoint a successor.

R. C., c. 54, s. 12.  
1762, c. 69, s. 15.  
1816, c. 905, ss. 1, 2.  
1868-'9, c. 201, s. 19.  
1869-'70, c. 144.

Jones v. Bigg, 1 Jon., 364.

**Sec. 2348. Power and duty of clerks over guardians abusing their trust.**

The clerks of the superior court shall have power, on informa-  
2 tion or complaint made, at all times to remove guardians and ap-  
3 point successors, to make and establish rules for the better order-  
4 ing, managing and securing infants' estates, and for the better ed-  
5 ucation and maintenance of wards; and it shall be their duty to  
6 do so in the following cases:  
7 (1) Where the guardian wastes or converts the money or estate  
8 of the ward to his own use;  
9 (2) Where the guardian in any manner mismanages the estate;  
10 (3) Where the guardian is about or intends to marry any ward  
11 in disparagement.  
12 (4) Where the guardian neglects to educate or maintain the ward  
13 in a manner suitable to his or her degree;  
14 (5) Where the guardian is legally disqualified to act as a person  
15 would be to be appointed administrator under the chapter con-  
16 cerning executors and administrators.

R. C., c. 54, ss. 2, 13.  
1762, c. 69, ss. 4, 5,  
6, 9, 16.  
1868-'9, c. 201, s. 20.  
C. C. P., s. 457.

17 (6) Where the guardian or his sureties are likely to become in-  
18 solvent or non-residents of the state.

Bray v. Brumsey, 1 Murphy, 227; Cook v. Beale, 11 Ire., 36; Link v. Brooks, Phil., 499; State v. Harrison, 75—432; Moore v. Askew, 85—199.

**Sec. 2349. Action to be brought by solicitor, when.**

R. C., c. 54, s. 14.  
1844, c. 41, s. 1.  
1868-'9, c. 201, s. 21.

\* Whenever any guardian is removed, and no person is appointed  
2 to succeed in the guardianship, the clerk of the superior court  
3 shall certify the name of such guardian and his sureties to the so-  
4 licitor of the judicial district, who shall forthwith institute an  
5 action on the bond of the guardian in the superior court, for se-  
6 curing the estate of the ward.

State v. Harrison, 75—432; Harris v. Harrison, 78—202; Kerr v. Brandon, 84—123.

**Sec. 2350. Receiver to be appointed, when.**

R. C., s. 54, s. 15.  
1844, c. 41, s. 2.  
1868-'9, c. 201, s. 22.

The judge of the superior court, before whom such action is  
2 brought, shall have power to appoint the clerk of the superior  
3 court or some discreet person as a receiver to take possession of the  
4 ward's estate, to collect all moneys due to him, to secure, loan, in-  
5 vest or apply the same for the benefit and advantage of the ward,  
6 under the direction and subject to such rules and orders in every  
7 respect as the said judge may from time to time make in regard  
8 thereto; and the accounts of such receiver shall be returned, au-  
9 dited and settled as the judge may direct. The receiver shall be  
10 allowed such amounts for his time, trouble and responsibility as  
11 seem to the judge reasonable and proper; and such receivership  
12 may be continued until a suitable person can be procured to take  
13 the guardianship.

State v. Harrison, 75—432; Kerr v. Brandon, 84—123; Timberlake v. Green, 84—658; Rogers v. Odom, 86—432.

**Sec. 2351. Compensation of solicitor.**

R. C., c. 54, s. 16.  
1846, c. 41, s. 3.  
1868-'9, c. 201, s. 23.

The solicitor shall prosecute the action directed to be brought in  
2 section twenty-three hundred and forty-nine, and take all neces-  
3 sary orders therein, and for his services shall be allowed such rea-  
4 sonable compensation as may be just.

Harris v. Harrison, 78—202; Timberlake v. Green, 84—658.

**Sec. 2352. Property, how obtained from receiver when guardian appointed.**

R. C., c. 54, s. 17.  
1845, c. 44, s. 4.  
1868-'9, c. 201, s. 24.

When another guardian is appointed, he may apply by motion,  
2 on notice, to the judge of the superior court for an order upon the  
3 receiver to pay over all the money, estate and effects of the ward;  
4 and if no such guardian is appointed, then the ward, on coming  
5 of age, or in case of his death, his executor, administrator or col-  
6 lector, and the heir or personal representative of the idiot, lunatic  
7 or insane person, shall have the like remedy against the receiver.

Timberlake v. Green, 84—658.



**Sec. 2353. Guardian to take charge of ward's estate.**

Every guardian shall take possession, for the use of the ward,  
2 of all his estate, and may bring all necessary actions therefor.

R. C., c. 54, s. 21.  
1762, c. 69, s. 3.  
1868-'9, c. 201, s. 25.

**Sec. 2354. Guardian to sell goods and chattels of ward, liable to perish, &c.**

Every guardian shall sell, by order of the clerk of the superior  
2 court, all such goods and chattels of his ward as may be liable to  
3 perish or be the worse for keeping. Every such order shall be en-  
4 tered in the order record of the superior court and must contain a  
5 descriptive list of the property to be sold, with the terms of sale.

R. C., c. 54, s. 22.  
1762, c. 69, s. 10.  
1793, c. 391, s. 1.  
1816, c. 925.  
1868-'9, c. 201, s. 26.

**Sec. 2355. Sale and rentings, how made.**

All sales and rentings shall be made and conducted by guar-  
2 dians in the same manner, upon like terms and notice, and under  
3 the same rules and regulations and the same penalties as pre-  
4 scribed for sales made by executors, administrators and collectors.

R. C., c. 54, s. 26.  
1794, c. 413, ss. 1, 2.  
1868-'9, c. 201, s. 27.

**Sec. 2356. Guardian may lease lands, when.**

The guardian may lease the lands of an infant for a term not  
2 exceeding the end of the current year in which the infant shall  
3 come of age, or die in non-age. But no guardian, without leave  
4 of the clerk of the superior court, shall lease any land of his ward  
5 without impeachment of waste, or for a term of more than three  
6 years, unless at a rent not less than three per centum on the as-  
7 sessed taxable value of the land.

R. C., c. 54, s. 25.  
1762, c. 69, s. 13,  
amended.

Melton v. McKesson, 13 Ire., 475.

**Sec. 2357. Notes taken by guardian to bear compound interest.**

When the profits of any ward's estate is more than sufficient to  
2 maintain and educate him, the guardian shall lend the surplus  
3 upon bond with sufficient security, to be repaid with interest an-  
4 nually, and all the bonds, notes or other obligations which he shall  
5 take as guardian, shall bear compound interest, for which he must  
6 account, and he may assign the same to the ward on settlement  
7 with him.

R. C., c. 54, s. 23.  
1762, c. 69, s. 10.  
1793, c. 391, s. 1.  
1816, c. 925.  
1868-'9, c. 201, s. 29.

Dowell v. Vannoy, 3 Dev., 43; Powell v. Jones, 1 Ire. Eq., 337; Fox v. Alexander, 1 Ire. Eq., 340; Lockhart v. Phillips, 1 Ire. Eq., 342; State v. Arrington, 3 Ire., 99; Gary v. Cannon, 3 Ire. Eq., 64; Christmas v. Wright, 3 Ire. Eq., 549; Exum v. Bowden, 4 Ire. Eq., 281; Newsom v. Newsom, 5 Ire. Eq., 122; Goodson v. Goodson, 6 Ire. Eq., 238; Ford v. Vandyke, 11 Ire., 227; Williamson v. Williams, 6 Jones Eq., 62; Hurdle v. Leath, 63-597; Smith v. Gilmer, 64-546; State v. Foy, 65-285; Little v. Anderson, 71-190; Rowland v. Thompson, 73-504.

**Sec. 2358. Liability of guardian for debts.**

Every guardian shall diligently endeavor to collect, by all law-  
2 ful means, all bonds, notes, obligations or moneys due his ward  
3 when any debtor or his sureties are likely to become insolvent, on  
4 pain himself of being liable for the same.

R. C., c. 54, s. 23.  
1762, c. 69, s. 10.  
1793, c. 391, s. 1.  
1816, c. 925.  
1868-'9, c. 201, s. 30.

**Sec. 2359. How guardians may invest.**

1870-'71, c. 197, s. 1.

Guardians, trustees and others acting in a fiduciary capacity,  
 2 having surplus funds of their wards and *cestui que trusts* to loan,  
 3 may invest in United States bonds, or any securities whereof the  
 4 United States are responsible, now or hereafter to be issued, and in  
 5 all settlements by guardians, trustees and others, acting in a fidu-  
 6 ciary capacity, such bonds or other security of the United States  
 7 shall be deemed cash, including the premium, if any paid for such  
 8 bonds or other securities, and may be paid as such by the transfer  
 9 thereof to the persons entitled.

**Sec. 2360. Guardian liable for lands forfeited for taxes.**

R. C., c. 54, s. 27.  
 1762, c. 69, s. 14.  
 1868-'9, c. 201, s. 32.

If any guardian suffer his ward's lands to lapse or become for-  
 2 feited or be sold for non-payment of taxes or other dues, he shall  
 3 be liable to answer for the full value thereof to his ward.

**Sec. 2361. When guardian may sell timber.**

R. C., c. 54, s. 27.  
 1762, c. 69, s. 14.  
 1868-'9, c. 201, s. 33.

In case the land cannot be rented for enough to pay the taxes  
 2 and other dues thereof, and there is not money sufficient for that  
 3 purpose, the guardian, with the consent of the clerk of the superior  
 4 court, may annually dispose of, or use so much of the light wood,  
 5 and box or rent so many pine trees, or sell so much of the timber  
 6 on the same, as may raise enough to pay the taxes and other dues  
 7 thereon and no more.

Evans v. Williamson, 79—86.

**Sec. 2362. Plate to be kept.**

1868-'9, c. 201, s. 34.

All plate shall be preserved and delivered to the ward at age, in  
 2 kind, according to weight and quantity.

**Sec. 2363. Foreign guardian may have ward's estate removed, how.**

R. C., c. 54, s. 29.  
 1820, c. 1044, s. 1.  
 1842, c. 38, ss. 1, 2.  
 1868-'9, c. 201, s. 35.  
 1873-'4, c. 168.

Where any ward, idiot, lunatic or insane person, residing in an-  
 2 other state or territory, or in the District of Columbia, is entitled  
 3 to any personal estate in this state, or personal property substituted  
 4 for realty by decree of court, or to any money arising from the sale  
 5 of real estate, whether the same be in the hands of any guardian  
 6 residing in this state, or of any executor, administrator or other  
 7 person holding for the ward, idiot, lunatic or insane person, or if  
 8 the same (not being adversely held and claimed) be not in the law-  
 9 ful possession or control of any person, the guardian of the ward,  
 10 idiot, lunatic or insane person, duly appointed at the place where  
 11 such ward, idiot, lunatic or insane person resides, may apply to  
 12 have such estate removed to the residence of the ward, idiot,  
 13 lunatic or insane person by petition filed in the superior court of  
 14 the county in which the property or some portion thereof is situa-  
 15 ted.

**Sec. 2364. What petition must show.**

The petitioner must show to the court a copy of his appointment  
2 as guardian and bond duly authenticated, and must prove to the  
3 court that the bond is sufficient as well in the ability of the sure-  
4 ties as in the sum mentioned therein, to secure all the estate of the  
5 ward wherever situated.

R. C., c. 54, s. 30.  
1820, c. 1044, s. 2.  
1842, c. 38, s. 2.  
1868-'9, c. 201, s. 36.

**Sec. 2365. Who may be made defendants.**

Any person may be made a party defendant to the proceeding  
2 who is specified in section five hundred and forty-nine.

R. C., c. 54, s. 30.  
1820, c. 1044, s. 2.  
1842, c. 38, s. 2.  
1868-'9, c. 201, s. 7.

**Sec. 2366. Petition to be proceeded with as in other cases of special proceedings.**

The petition shall be proceeded on as prescribed in other cases  
2 of special proceedings, and every necessary decree made, to the  
3 end that the guardian may obtain possession of all the estate of  
4 the ward in case the judge shall order such removal.

1868-'9, c. 201, s. 38.

**Sec. 2367. Estates of ward, how and when sold.**

On application of the guardian by petition, verified upon oath,  
2 to the superior court, showing that the interest of the ward would  
3 be materially promoted by the sale of any part of his estate, real  
4 or personal, the proceeding shall be conducted as in other cases of  
5 special proceedings; and the truth of the matter alleged in the  
6 petition being ascertained by satisfactory proof, a decree may there-  
7 upon be made that a sale be had by such person, in such way and  
8 on such terms as may be most advantageous to the interest of the  
9 ward; but no sale shall be made until approved by the judge of  
10 the court, nor shall the same be valid, nor any conveyance of title  
11 made, unless confirmed and directed by the judge, and the pro-  
12 ceeds of the sale shall be exclusively applied and secured to such  
13 purposes and on such trusts as the judge shall specify.

R. C., c. 54, ss. 32,  
33.  
1827, c. 33, ss. 1, 2.  
1868-'9, c. 201, s. 39.

Harrison v. Bradley, 5 Ire. Eq., 136; Troy v. Troy, Busb. Eq., 85; Douglas v. Caldwell, 6 Jon. Eq., 20; Houston v. Houston, Phil. Eq., 95; *ex parte* Dodd, Phil. Eq., 97; Rowland v. Thompson, 73-504; George v. High, 85-113; Sutton v. Schonwald, 86-198.

**Sec. 2368. Property substituted for that sold to remain of the same character as that sold.**

Whenever, in consequence of any sale under the preceding sec-  
2 tion, the real or personal property of the ward is saved from de-  
3 mands to which in the first instance it may be liable, the final  
4 decree shall declare and set apart a portion of the personal or real  
5 estate thus saved, of value equal to the real and personal estate  
6 sold, as property exchanged for that sold; and in all such cases  
7 of sale, whereby real is substituted by personal, or personal  
8 by real property, the beneficial interest in the property acquired  
9 shall be enjoyed, alienated, devised or bequeathed, and shall descend  
10 and be distributed, as by law the property sold might and would  
11 have been, had it not been sold, until it be re-converted from the

R. C., c. 54, s. 33.  
1827, c. 33, s. 2.  
1868-'9, c. 201, s. 40.



12 character thus impressed upon it by some act of the owner, and  
13 restored to its character proper.

**Sec. 2369. When ward is indebted; how property sold.**

R. C., c. 54, s. 34.  
1789, c. 311, s. 5.  
1868-'9, c. 201, s. 41.

When a guardian has notice of a debt or demand against the  
2 estate of his ward, he may apply by petition, setting forth the facts  
3 to the superior court wherein the guardianship was granted, for an  
4 order to sell so much of the personal or real estate as may be suffi-  
5 cient to discharge such debt or demand; and the order of the court  
6 shall particularly specify what property is to be sold and the terms  
7 of sale; but no real estate shall be sold under this section, in any  
8 case, without the revision and confirmation of the order therefor  
9 by the judge of the superior court.

Leary v. Fletcher, 1 Ire., 259; Marchant v. Sanderlin, 3 Ire., 501; Duckett v. Skinner, 11 Ire., 431.

**Sec. 2370. Proceeds to be assets in guardian's hands for payment of creditors.**

R. C., c. 54, s. 34.  
1789, c. 311, s. 5.  
1868-'9, c. 201, s. 42.

The proceeds of sale under the preceding section shall be con-  
2 sidered as assets in the hands of the guardian for the benefit of the  
3 creditors, in like manner as assets in the hands of a personal rep-  
4 resentative; and the same proceedings may be had against the  
5 guardian with respect to such assets as might be taken against an  
6 executor, administrator or collector in similar cases.

**Sec. 2371. Sureties of guardian in danger of loss, how relieved.**

R. C., c. 54, s. 35.  
1762, c. 69, ss. 21, 22.  
1868-'9, c. 201, s. 43.

Any surety of a guardian, who is in danger of sustaining loss by  
2 his suretyship, may file his complaint in the superior court where  
3 the guardianship was granted, setting forth the circumstances of  
4 his case and demanding relief; and thereupon the guardian shall  
5 be required to answer the complaint within twenty days after ser-  
6 vices of the summons. If, upon the hearing, the clerk of the supe-  
7 rior court deem the surety entitled to relief, the same may be  
8 granted by compelling the guardian to give a new bond, or to in-  
9 demnify the surety against apprehended loss, or by the removal of  
10 the guardian from his trust; and in case the guardian fail to give  
11 a new bond or security to indemnify, when required to do so within  
12 reasonable time, the clerk of the superior court must enter a per-  
13 emptory order for his removal, and his authority as guardian shall  
14 thereupon cease.

Justices of Hyde Co. v. Bell, 1 D. & B., 475; Bell v. Jasper, 2 Ire. Eq., 597.

**Sec. 2372. Interlocutory order, pending controversy.**

1868-'9, c. 201, s. 44.

In all cases where the letters of a guardian are revoked, the clerk  
2 of the superior court may, from time to time, pending any contro-  
3 versy in respect to such removal, make such interlocutory orders  
4 and decrees as will tend to the better securing the estate of the  
5 ward, or other party seeking relief by such revocation.

**Sec. 2373. Guardian may resign, when.**

Any guardian wishing to resign his trust may apply in writing 1868-'9, c. 201, s. 45.  
2 to the superior court, setting forth the circumstances of his case.  
3 If, at the time of making the application, he also exhibits his final  
4 account for settlement, and if the clerk of the superior court is sat-  
5 isfied that the guardian has been faithful and has truly accounted,  
6 and if a competent person can be procured to succeed in the guar-  
7 dianship, the clerk of the superior court may accept the resigna-  
8 tion of the guardian and discharge him from the trust. But the  
9 guardian so discharged and his sureties are still liable in relation  
10 to all matters connected with the trust before the resignation.

Ellis v. Scott, 75—108; Luton v. Wilcox, 83—20.

**Sec. 2374. Duty of grand jury regarding orphans without guardians.**

The grand jury of every county is charged with, and shall pre-  
2 sent to the superior court the names of, all orphan children that  
3 have no guardians or are not bound out to some trade or employ-  
4 ment. They shall further inquire of all abuses, mismanagement  
5 and neglect of all such guardians as are appointed by the clerk of  
6 the superior court. The clerk of the superior court, shall, at each  
9 term of the superior court lay before the grand jury a list of all the  
10 guardians acting in his county or appointed by him. R. C., c. 54, s. 18.  
1762, c. 69, s. 17.  
1868-'9, c. 201, s. 46.

**Sec. 2375. Estates of orphans without guardians, how secured.**

Whenever an orphan, having any estate, is presented by a grand  
2 jury, for whom no suitable person will become guardian, the clerk  
3 of the superior court must give notice thereof forthwith to the so-  
4 licitor of the state for the judicial district, who shall apply in be-  
5 half of the orphan to the judge of the superior court of the county  
6 where such presentment was made, to the end that the estate of  
7 such orphan may be secured and managed as directed in section  
8 twenty-three hundred and fifty. R. C., c. 54, s. 19.  
1846, c. 48.

Rogers v. Odom, 86—432.

**Sec. 2376. Fees and costs in certain cases, by whom paid.**

All fees and costs of the superior court for issuing orders, cita-  
2 tions, summons or other process against guardians for their sup-  
3 posed defaults, shall be paid by the party found in default. 1868-'9, c. 201, s. 48.

**Sec. 2377. Guardian allowed disbursements and expenses.**

Every guardian may charge in his annual account all reasona-  
2 ble disbursements and expenses; and if it appear that he hath  
3 really and *bona fide* disbursed more in one year than the profits of  
4 the ward's estate, for his education and maintenance, the guardian  
5 shall be allowed and paid for the same out of the profits of the  
6 estate in any other year; but such disbursements must, in all cases,  
R. C., c. 54, s. 28.  
1762, c. 69, ss. 18, 19.  
1799, c. 536, s. 2.  
1868-'9, c. 201, s. 49.

7 be suitable to the degree and circumstances of the estate of the  
8 ward.

Ryan v. Blount, 1 Dev. Eq., 382; Hodge v. Hawkins, 1 D. & B. Eq., 564; Graham v. Davidson, 2 D. & B. Eq., 155; Walker v. Crowder, 2 Ire. Eq., 478; Harrison v. Bradley, 5 Ire. Eq., 136; Goodson v. Goodson, 6 Ire., Eq., 238; State v. Cordon, 8 Ire., 179; Hussey v. Roundtree, Busb., 110; Ledford v. Vandyke, Busb., 480; Boyett v. Hurst, 1 Jon. Eq., 166; Burke v. Turner, 85—500.

#### Sec. 2378. Commissions allowed.

R. C., c. 54, s. 28.  
1762, c. 69, ss. 18, 19.  
1799, c. 536, s. 2.  
1868-'9, c. 201, s. 50.

The superior court shall allow commissions to the guardian for  
2 his time and trouble in the management of the ward's estate, in  
3 the same manner and under the same rules and restrictions as  
4 allowances are made to executors, administrators and collectors.

Walton v. Erwin, 1 Ire. Eq., 136; Long v. Norcom, 2 Ire. Eq., 354; Burke v. Turner, 85—500.

#### Sec. 2379. Liability of clerk taking insufficient security.

R. C., c. 54, s. 2.  
1762, c. 69, ss. 5, 6.  
1868-'9, c. 201, s. 51.

If any clerk of the superior court shall commit the estate of an in-  
2 fant, idiot, lunatic, insane person or inebriate to the charge or guar-  
3 dianship of any person without taking good and sufficient security  
4 for the same as directed by law, such clerk shall be liable, on his  
5 official bond, at the suit of the party aggrieved, for all loss and dam-  
6 ages sustained for want of security being taken; but if the sureties  
7 were good at the time of their being accepted, the clerk of the  
8 superior court shall not be liable.

Mills v. McAllister, 1 Hay, 306; Davis v. Somerville 4 Dev., 382; Jones v. Biggs, 1 Jones, 364.

#### Sec. 2380. Liability of clerk for other defaults.

1868-'9, c. 201, s. 52.

If any clerk of the superior court shall wilfully or negligently  
2 do, or omit to do, any other act prohibited, or other duty imposed  
3 on him by law, by which act or omission the estate of any ward  
4 suffers damage, he shall be liable therefor as in the preceding sec-  
5 tion directed.

#### Sec. 2381. Guardians heretofore appointed.

1868-'9, c. 201, s. 54.

All guardians heretofore appointed by the late county or supe-  
2 rior courts, or courts of equity, and now acting, shall be deemed  
3 and taken as fully within the provisions of this chapter, as if they  
4 were or had been appointed by the clerks of the superior court as  
5 in this chapter provided.

#### Sec. 2382. Annual accounts.

R. C., c. 54, ss. 11,  
12.  
1762, c. 69, ss. 9, 15.  
1816, c. 905, ss. 1, 2.  
C. C. P., s. 478.

Every guardian shall, within twelve months from the date of his  
2 qualification or appointment, and annually, so long as any of the  
3 estate remains in his control, file, in the office of the clerk of the  
4 superior court, an inventory and account, under oath, of the amount  
5 of property received by him, or invested by him, and the manner  
6 and nature of such investment, and his receipts and disbursements  
7 for the past year in the form of debit and credit. He must produce  
8 vouchers for all payments. The clerk of the superior court may  
9 examine on oath such accounting party, or any other person, con-



cerning 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 indorse his approval thereon, which shall be deemed *prima facie* evidence of correctness.

Sanderson v. Sanderson, 79—369; Moore v. Askew, 85—199.

**Sec. 2383. Failing to account, clerk to order an account, and may issue an attachment.**

If any guardian omits to account, as directed in the preceding section, or renders an insufficient and unsatisfactory account, the clerk of the superior court 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 clerk of the superior court may issue an attachment against him for contempt and commit him till he exhibits such account, and may likewise remove him from office.

Sanderson v. Sanderson, 79—369.

**Sec. 2384. Vouchers presumptive evidence.**

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.

Drake v. Drake, 82—443; McNeill v. Hodges, 83—504; Robertson v. Wall, 85—283.

**Sec. 2385. When guardian may be required to file final account.**

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 clerk of the superior court.

Rowland v. Thompson, 64—715; Rowland v. Thompson, 65—110.

**Sec. 2386. Proceedings on application for guardianship.**

On application to any clerk of the superior court for the custody and guardianship of any infant, it is the duty of such clerk 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 clerk 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

12 or refuse the application, or commit the guardianship to some  
13 other person as he may think best for the interest of the infant.

**Sec. 2387. Letters of guardianship to issue.**

C. C. P., s. 475.

The clerk of the superior court must issue to every guardian ap-  
2 pointed by him a letter of appointment, which shall be signed by  
3 him and sealed with the seal of his office.

**Sec. 2388. Executor or administrator of deceased guardian authorized to pay into office of clerk moneys, &c., belonging to wards.**

1881, c. 305, s. 2.

In all cases where a guardian of any minor children or of an  
2 idiot, lunatic, inebriate or insane person shall die, it shall be com-  
3 petent for the executor or administrator of such deceased guardian,  
4 at any time after the grant of letters testamentary or of adminis-  
5 tration, to pay into the office of the clerk of the superior court of  
6 the county where such deceased guardian was appointed, any  
7 moneys belonging to any such minor child, idiot, lunatic, insane  
8 person or inebriate, any such payment shall have the effect to dis-  
9 charge the estate of said deceased guardian and his sureties upon  
10 his guardian bond to the extent of the amount so paid.

## CHAPTER FIFTY-NINE.

### HABEAS CORPUS.

#### SECTION.

- 2389. In what cases application may be made.
- 2390. When the application may be denied.
- 2391. By whom application may be made.
- 2392. Mode of making the application.
- 2393. What application must contain.
- 2394. When the writ must be granted.
- 2395. Defect of form.
- 2396. When the writ sufficient.
- 2397. Penalty for refusal to grant the writ.
- 2398. Writ may issue without application, when.
- 2399. The return, and what to contain.
- 2400. Notice to parties interested.
- 2401. Notice to district solicitor.
- 2402. Production of the body.
- 2403. Attachment on failure to obey the writ.
- 2404. Penalty for refusing attachment.
- 2405. Where a sheriff fails to return.
- 2406. Precept to bring up party detained.
- 2407. Penalty for refusing to grant the precept.
- 2408. Penalty for conniving, &c., at any insufficient return, &c.
- 2409. Power of the county.
- 2410. Proceedings on return of the writ.
- 2411. Party to be discharged, when.
- 2412. Party to be remanded, when.
- 2413. Party to be bailed or remanded, when.
- 2414. Proceedings in case of illness of the party.

#### SECTION.

- 2415. Penalty for disobedience to order of discharge.
- 2416. Officer not liable civilly for obedience.
- 2417. Penalty for committing for same cause.
- 2418. Penalty for neglecting to obey the writ, or for refusing copy of process.
- 2419. False return a misdemeanor.
- 2420. Penalty for concealing party.
- 2421. Aiders and abettors.
- 2422. Writs returnable, when.
- 2423. By whom served and manner of service.
- 2424. Persons committed for capital offences, when to be tried or discharged.
- 2425. Subpoenas for witnesses.
- 2426. Costs.
- 2427. Custody and disposition of infants in certain cases.
- 2428. When custody of children contested, either party may appeal.
- 2429. *Habeas corpus ad testificandum*.
- 2430. Justices of the peace and superior court clerks.
- 2431. Application, what to contain.
- 2432. Writ, how and by whom served.
- 2433. Fees and bond on service.
- 2434. Duty of officers.
- 2435. Prisoner to be remanded.

**Sec. 2389. In what cases application may be made.**

Every person imprisoned or restrained of his liberty within this 1868-'9, c. 116, s. 1.  
 2 state, for any criminal or supposed criminal matter, or on any pre-  
 3 tence whatsoever, except in cases specified in the succeeding sec-  
 4 tion, may prosecute a writ of *habeas corpus*, according to the provis-  
 5 ions of this chapter, to inquire into the cause of such imprison-  
 6 ment or restraint, and if illegal to be delivered therefrom.

*Ex parte* Summers, 5 Ire., 249; *Mustgrove v. Kornegay*, 7 Jones, 71; in the matter of J. C. Bryan and others, 1 Winston, 1—76; in the matter of Huie and others, 1 Winston, 165—197; *Walton v. Gatlin*, 1 Winston, 318; in the matter of Walton, 1 Winston, 425; in the matter of Roseman and others, 1 Winston, 443; *Cox v. Gee*, 2 Winston, 131; in the matter of Cain and others, 2 Winston, 141; in the matter of Hughes, Phil., 57; in the matter of Harriet and Eliza Ambrose, Phil., 91; *ex parte* Moore and others, 64 N. C., 802-834; *ex parte* Moore and others, 65 N. C., 349-368; *Thompson v. Thompson*, 72—82.

**Sec. 2390. When the application may be denied.**

Application to prosecute the writ shall be denied in the follow- 1868-'9, c. 116, s. 2.  
 2 ing cases:

3 (1) Where the persons are committed or detained by virtue of  
 4 process issued by a court of the United States, or a judge thereof,  
 5 in cases where such courts or judges have exclusive jurisdiction  
 6 under the laws of the United States, or shall have acquired exclu-  
 7 sive jurisdiction by the commencement of suits in such courts;

8 (2) Where persons are committed or detained by virtue of the  
 9 final order, judgment or decree of a competent tribunal of civil or  
 10 criminal jurisdiction, or by virtue of an execution, issued upon  
 11 such final order, judgment or decree;

12 (3) Where any person has wilfully neglected, for the space of  
 13 two whole terms after his imprisonment, to apply for the writ to  
 14 the superior court of the county in which he may be imprisoned,  
 15 such person shall not have a *habeas corpus* in vacation time for his  
 16 enlargement;

17 (4) Where no probable ground for relief is shown in the appli-  
 18 cation.

*Ex parte* Summers, 5 Ire., 149; *in re* Schenck, 74—607.

**Sec. 2391. By whom application may be made.**

Application for the writ may be made either by the party for 1868-'9, c. 116, s. 3.  
 2 whose relief it is intended, or by any person in his behalf.

**Sec. 2392. Mode of making the application.**

Application for the writ shall be made in writing, signed by the 1868-'9, c. 116, s. 4.  
 2 applicant:

3 (1) To any one of the justices of the supreme court;

4 (2) To any one of the superior court judges, either at term time  
 5 or in vacation.

**Sec. 2393. What application must contain.**

The application must state in substance, as follows:

2 (1) That the party, in whose behalf the writ is applied for, is 1868-'9, c. 116, s. 5.



3 imprisoned or restrained of his liberty, the place where, and the  
 4 officer or person by whom he is imprisoned or restrained, naming  
 5 both parties, if their names are known, or describing them if they  
 6 are not known ;

7 (2) The cause or pretence of such imprisonment or restraint,  
 8 according to the knowledge or belief of the appellant ;

9 (3) If the imprisonment is by virtue of any warrant or other  
 10 process, a copy thereof shall be annexed, or it shall be made to  
 11 appear that a copy thereof has been demanded and refused, or that  
 12 for some sufficient reason a demand of such copy could not be  
 13 made ;

14 (4) If the imprisonment or restraint be alleged to be illegal,  
 15 the application must state in what the alleged illegality consists ;  
 16 and that the legality of the imprisonment or restraint has not been  
 17 already adjudged, upon a prior writ of *habeas corpus*, to the knowl-  
 18 edge or belief of the applicant.

19 (5) The facts set forth in the complaint must be verified by the  
 20 oath of the applicant, or by that of some other credible witness,  
 21 which oath may be administered by any person authorized by law  
 22 to take affidavits.

*In re Schenck*, 74—607.

**Sec. 2394. When the writ must be granted.**

1868-'9, c. 116, s. 6.

Any court or judge empowered to grant the writ, to whom such  
 2 application may be presented, shall grant the writ without delay,  
 3 unless it appear from the application itself or from the documents  
 4 annexed that the person applying or for whose benefit it is in-  
 5 tended is, by the provisions of this chapter, prohibited from pros-  
 6 ecuting the writ.

**Sec. 2395. Defect of form.**

1868-'9, c. 116, s. 7.

No writ of *habeas corpus* shall be disobeyed on account of any de-  
 2 fect of form.

**Sec. 2396. When the writ sufficient.**

1868-'9, c. 116, s. 8.

It shall be sufficient :

2 (1) If the person having the custody of the party imprisoned or  
 3 restrained be designated either by his name of office, if he have  
 4 any, or by his own name, or if both such names be unknown or  
 5 uncertain, he may be described by an assumed appellation, and  
 6 any one who may be served with the writ shall be deemed the per-  
 7 son to whom it is directed, although it may be directed to him by  
 8 a wrong name, or description, or to another person ;

9 (2) If the person who is directed to be produced be designated  
 10 by name, or if his name be uncertain or unknown, he may be de-  
 11 scribed by an assumed appellation or in any other way, so as to  
 12 designate the person intended.

**Sec. 2397. Penalty for refusal to grant the writ.**

If any judge authorized by the provisions of this chapter to  
2 grant writs of *habeas corpus* shall refuse to grant such writ when  
3 legally applied for, every such judge shall forfeit to the party ag-  
4 grieved two thousand five hundred dollars. 1868-'9, c. 116, s. 9.

**Sec. 2398. Writ may issue without application, when.**

Whenever the supreme or superior court, or any judge of either,  
2 shall have evidence from any judicial proceeding before such court  
3 or judge, that any person within this state is illegally imprisoned  
4 or restrained of his liberty, it shall be the duty of said court or  
5 judge to issue a writ of *habeas corpus* for his relief, although no ap-  
6 plication be made for such writ. 1868-'9, c. 116, s. 10.

*In re Schenck*, 74—607; *State v. Applewhite*, 75—229.

**Sec. 2399. The return, and what to contain.**

The person or officer on whom the writ is served, must make a  
2 return thereto in writing, and, except where such person shall be  
3 a sworn public officer, and shall make his return in his official  
4 capacity, it must be verified by his oath. The return must state  
5 plainly and unequivocally— 1868-'9, c. 116, s. 11.

6 (1) Whether he have or have not the party in his custody or  
7 under his power or restraint;

8 (2) If he have the party in his custody or power, or under his  
9 restraint, the authority and the cause of such imprisonment or re-  
10 straint, setting forth the same at large;

11 (3) If the party be detained by virtue of any writ, warrant, or  
12 other written authority, a copy thereof shall be annexed to the  
13 return; and the original shall be produced and exhibited on the  
14 return of the writ to the court or judge, before whom the same is  
15 returnable;

16 (4) If the person or officer upon whom such writ is served, shall  
17 have had the party in his power or custody, or under his restraint,  
18 at any time prior or subsequent to the date of the writ, but has  
19 transferred such custody or restraint to another, the return shall  
20 state particularly to whom, at what time, for what cause and by  
21 what authority such transfer took place.

**Sec. 2400. Notice to parties interested.**

When it appears from the return of the writ that the party  
2 named therein is in custody on any process, or by reason of any  
3 claim of right, under which any other person has an interest in  
4 continuing his imprisonment or restraint, no order shall be made  
5 for his discharge, until it shall appear that the person so interested  
6 or his attorney, if he have one, shall have had reasonable notice of  
7 the time and place at which such writ is returnable. 1868-'9, c. 116, s. 12.  
1870-'71, c. 221, s. 1.

**Sec. 2401. Notice to district solicitor.**

1868-'9, c. 116, s. 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.

**Sec. 2402. Production of the body.**

1868-'9, c. 116, s. 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.

**Sec. 2403. Attachment on failure to obey the writ.**

1868-'9, c. 116, s. 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.

**Sec. 2404. Penalty for refusing attachment.**

1870-'71, c. 221, s. 2.

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.

**Sec. 2405. Where a sheriff fails to return.**

1868-'9, c. 116, s. 16.

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.



**Sec. 2406. Precept to bring up party detained.**

The court or judge, by whom any such attachment may be issued, 1868-'9, c. 116, s. 17.  
 2 may also at the same time, or afterwards, direct a precept to any  
 3 sheriff, coroner, or other person to be designated therein, com-  
 4 manding him to bring forthwith, before such court or judge, the  
 5 party, wherever to be found, for whose benefit the writ of *habeas*  
 6 *corpus* has been granted.

**Sec. 2407. Penalty for refusing to grant the precept.**

If any judge shall refuse to grant the precept provided for in 1870-'71, c. 221, s. 3.  
 2 the preceding section, he shall be liable to impeachment, and more-  
 3 over shall forfeit to the party aggrieved twenty-five hundred dol-  
 4 lars.

**Sec. 2408. Penalty for conniving, &c., at any insufficient return, &c.**

<sup>a</sup>If any judge shall grant the attachment provided for in section 1870-'71, c. 221, s. 4.  
 2 twenty-four hundred and three, or the precept provided for in sec-  
 3 tion twenty-four hundred and six, and shall give the officer or other  
 4 person charged with the execution of the same verbal or written in-  
 5 structions not to execute the same, or to make any evasive or in-  
 6 sufficient return, or any return other than that provided by law ;  
 7 or shall connive at the failing to make any return or any evasive or  
 8 insufficient return, or any return other than that provided by law,  
 9 he shall be liable to impeachment, and moreover shall forfeit to  
 10 the party aggrieved twenty-five hundred dollars.

**Sec. 2409. Power of the county.**

In the execution of any attachment, precept or writ, under sec- 1878-'9, c. 116, s. 18.  
 2 tions twenty-four hundred and three, twenty-four hundred and  
 3 four and twenty-four hundred and five, the sheriff, coroner, or other  
 4 person to whom it may be directed, may call to his aid the power  
 5 of the county, as in other cases.

**Sec. 2410. Proceedings on the return of the writ.**

The court or judge before whom the party is brought on a writ 1868-'9, c. 116, s. 19.  
 2 of *habeas corpus*, shall, immediately after the return thereof, exam-  
 3 ine into the facts contained in such return, and into the cause of  
 4 the confinement or restraint of such party, whether the same shall  
 5 have been upon commitment for any criminal or supposed crimi-  
 6 nal matter or not ; and if issue be taken upon the material facts  
 7 in the return, or other facts are alleged to show that the impris-  
 8 onment or detention is illegal, or that the party imprisoned is en-  
 9 titled to his discharge, the court or judge shall proceed, in a sum-  
 10 mary way, to hear the allegations and proofs on both sides, and to  
 11 do what to justice shall appertain in delivering, bailing or remand-  
 12 ing such party.

**Sec. 2411. Party to be discharged, when.**

1868-'9, c. 116, s. 20.

If no legal cause be shown for such imprisonment or restraint, 2 or for the continuance thereof, the court or judge shall discharge 3 the party from the custody or restraint under which he is held. 4 But if it appear on the return to the writ, that the party is in cus- 5 tody by virtue of civil process from any court legally constituted, 6 or issued by any officer in the course of judicial proceedings be- 7 fore him, authorized by law, such party can be discharged only in 8 one of the following cases :

9 (1) Where the jurisdiction of such court or officer has been ex- 10 ceeded, either as to matter, place, sum or person ;

11 (2) Where, though the original imprisonment was lawful, yet by 12 some act, omission or event, which has taken place afterwards, the 13 party has become entitled to be discharged ;

14 (3) Where the process is defective in some matter of substance 15 required by law, rendering such process void ;

16 (4) Where the process, though in proper form, has been issued 17 in a case not allowed by law ;

18 (5) Where the person, having the custody of the party under 19 such process, is not the person empowered by law to detain him ;

20 (6) Where the process is not authorized by any judgment, order 21 or decree by any court, nor by any provision of law.

**Sec. 2412. Party to be remanded, when.**

1868-'9, c. 116, s. 21.

It shall be the duty of the court or judge forthwith to remand 2 the party, if it appear that he is detained in custody, either,

3 (1) By virtue of process issued by any court or judge of the Uni- 4 ted States, in a case where such court or judge has exclusive juris- 5 diction ;

6 (2) By virtue of the final judgment or decree of any competent 7 court of civil or criminal jurisdiction, or of any execution issued 8 upon such judgment or decree ;

9 (3) For any contempt specially and plainly charged in the com- 10 mitment by some court, officer or body, having authority to com- 11 mit for the contempt so charged ;

12 (4) That the time during which such party may be legally de- 13 tained has not expired.

*In re Schenck*, 74—607.

**Sec. 2413. Party to be bailed or remanded, when.**

1868-'9, c. 116, s. 22.

If it appear that the party has been legally committed for any 2 criminal offence, or if it appear by the testimony offered with the 3 return of the writ, or upon the hearing thereof, that the party is 4 guilty of such an offence, although the commitment be irregular, 5 the court or judge shall proceed to let such party to bail, if the 6 case be bailable and good bail be offered ; if not, the court or judge 7 shall forthwith remand such party to the custody or place him

8 under the restraint from which he was taken: *Provided*, the person  
9 or officer, under whose custody or restraint he was, be legally enti-  
10 tled thereto; if not so entitled the court or judge shall commit  
11 such party to the custody of the officer or person legally entitled  
12 thereto.

**Sec. 2414. Proceedings in case of sickness of the party.**

Whenever, from the illness or infirmity of the person directed to  
2 be produced by a writ of *habeas corpus*, such person cannot, with-  
3 out danger, be brought before the court or judge, where the writ is  
4 made returnable, the party in whose custody he is may state the  
5 fact in his return to the writ; and if the court or judge be satisfied  
6 of the truth of the allegation and the return be otherwise sufficient  
7 the court or judge shall proceed to decide on such return and to  
8 dispose of the matter in the same manner as if the body had been  
9 produced. 1868-'9, c. 116, s. 23.

**Sec. 2415. Penalty for disobedience to order of discharge.**

Obedience to a judgment order for the discharge of a prisoner  
2 or person restrained of his liberty, pursuant to the provisions of  
3 this chapter, may be enforced by the court or judge by attachment  
4 in the same manner and with the same effect as for a neglect to  
5 make return to a writ of *habeas corpus*; and the person found  
6 guilty of such disobedience shall forfeit to the party aggrieved two  
7 thousand five hundred dollars, besides any special damages which  
8 such party may have sustained. 1868-'9, c. 116, s. 24.

**Sec. 2416. Officer not liable civilly for obedience.**

No officer or other person shall be liable to any civil action for  
2 obeying such judgment or order of discharge. 1868-'9, c. 116, s. 25.

**Sec. 2417. Penalty for committing for same cause.**

No person who has been set at large upon any writ of *habeas cor-*  
2 *pus* shall be again imprisoned or detained for the same cause by  
3 any person whatsoever other than by the legal order or process of  
4 the court wherein he shall be bound by recognizance to appear or  
5 of any other court having jurisdiction in the case, under the pen-  
6 alty of two thousand five hundred dollars to the party aggrieved  
7 thereby; and every officer or other person who shall knowingly  
8 offend against the provisions of this section shall be guilty of a  
9 misdemeanor. 1868-'9, c. 116, s. 26.

**Sec. 2418. Penalty for neglecting to obey the writ, or for refusing copy of process.**

If any person, to whom a writ of *habeas corpus* is directed, shall  
2 neglect or refuse to make due return thereto, or to bring the body  
3 of the party detained, according to the command of the writ with-  
4 out delay; or shall not, within six hours after demand made there- 1868-'9, c. 116, s. 27.



5 for, deliver a copy of the commitment or cause of detainer, such  
 6 person shall, upon conviction by indictment, be fined one thou-  
 7 sand dollars, or imprisoned not exceeding twelve months, and if  
 8 such person be an officer, shall moreover be removed from office.

**Sec. 2419. False return a misdemeanor.**

1868-'9, c. 116, s. 28.

Every person making a false return to a writ of *habeas corpus*,  
 2 shall be guilty of a misdemeanor.

**Sec. 2420. Penalty for concealing party.**

1868-'9, c. 116, s. 29.

Any one having in his custody, or under his power, any party,  
 2 who, by the provisions of this chapter, would be entitled to a writ  
 3 of *habeas corpus*, or for whose relief such writ shall have been is-  
 4 sued, who shall, with intent to elude the service of such writ or to  
 5 avoid the effect thereof, transfer the party to the custody, or put  
 6 him under the power or control of another, or shall conceal or  
 7 change the place of his confinement, shall be guilty of a misde-  
 8 meanor.

**Sec. 2421. Aiders and abettors.**

1868-'9, c. 116, s. 30.

Every person who shall knowingly aid or abet in the violation  
 2 of the preceding section, shall be guilty of a misdemeanor.

**Sec. 2422. Writs returnable, when.**

1868-'9, c. 116, s. 31.

Writs of *habeas corpus* may be made returnable at a certain time,  
 2 or forthwith, as the case may require. If the writ be returnable at a  
 3 certain time, such return shall be made and the party shall be pro-  
 4 duced at the time and place specified therein.

**Sec. 2423. By whom served, and manner of service.**

1868-'9, c. 116, s. 32.

The writ of *habeas corpus* may be served by any qualified elector  
 2 of this state, thereto authorized by the court or judge allowing  
 3 the same. It may be served by delivering the writ, or a copy  
 4 thereof, to the person to whom it is directed; or, if such person  
 5 cannot be found, by leaving it, or a copy, at the jail, or other  
 6 place in which the party for whose relief it is intended is confined,  
 7 with some under officer or other person of proper age; or, if none  
 8 such can be found, or if the person attempting to serve the writ  
 9 be refused admittance, by affixing a copy thereof in some conspic-  
 10 uous place on the outside, either of the dwelling house of the  
 11 party to whom the writ is directed, or of the place where the party  
 12 is confined for whose relief it is sued out.

**Sec. 2424. Persons committed for capital offences, when to be tried or discharged.**

1868-'9, c. 116, s. 33.

When any person who has been committed for treason or felony,  
 2 plainly and specially expressed in the warrant of commitment,  
 3 upon his prayer in open court to be brought to his trial, shall not

4 be indicted some time in the next term of the superior court en-  
 5 suing such commitment, the judge of the court, upon notice in  
 6 open court on the last day of the term, shall set at liberty such  
 7 prisoner upon bail, unless it appear upon oath that the witnesses  
 8 for the state could not be produced at the same term; and if such  
 9 prisoner, upon his prayer as aforesaid, shall not be indicted and  
 10 tried at the second term of the court, he shall be discharged from  
 11 his imprisonment.

**Sec. 2425. Subpœnas for witnesses.**

Any party to a proceeding on a writ of *habeas corpus* may pro- 1868-'9, c. 116, s. 34.  
 2 cure the attendance of witnesses at the hearing, by subpœna, to be  
 3 issued by the clerk of any superior court, under the same rules,  
 4 regulations and penalties prescribed by law in other cases.

**Sec. 2426. Costs.**

The costs on a writ of *habeas corpus* may be awarded at the dis- 1868-'9, c. 116, s. 35.  
 2 cretion of the court or judge who shall hear the same; and he  
 3 may direct what officer shall tax such costs; and execution may  
 4 issue therefor as in other cases.

**Sec. 2427. Custody and disposition of infants in certain cases.**

When a contest shall arise on a writ of *habeas corpus* between any 1858-'9, c. 53.  
 2 husband and wife, who are living in a state of separation, without 1868-'9, c. 116, s. 36.  
 3 being divorced, in respect of the custody of their children, the  
 4 court or judge, on the return of such writ, may award the charge  
 5 or custody of the child or children so brought before it either to  
 6 the husband or to the wife, for such time, under such regulations  
 7 and restrictions, and with such provisions and directions as will,  
 8 in the opinion of such court or judge, best promote the interest  
 9 and welfare of the children. At any time after the making of such  
 10 orders the court or judge may, on good cause shown, annul, vary  
 11 or modify the same.

Thompson v. Thompson, 72—32.

**Sec. 2428. When custody of children contested, either party may appeal.**

In all cases of *habeas corpus*, where a contest shall arise in respect 1858-'9, c. 53, s. 2.  
 2 to the custody of minor children, either party may appeal to the  
 3 supreme court from the final judgment.

Musgrove v. Kornegay, 7 Jones, 71.

**Sec. 2429. Habeas corpus ad testificandum.**

Every court of record shall have power, upon the application of 1868-'9, c. 116, s. 37.  
 2 any party to any suit or proceeding, civil or criminal, pending in  
 3 such court, to issue a writ of *habeas corpus*, for the purpose of bring-  
 4 ing before the said court any prisoner, who may be detained in  
 5 any jail or prison within the state, for any cause, except such pris-

6 oner be under sentence for a felony, to be examined as a witness in  
7 such suit or proceeding, in behalf of the party making the appli-  
8 cation.

State v. Adair, 68—68; Harris, *ex parte*, 73—65.

**Sec. 2430. Justices of the peace and superior court clerks.**

1868-'9, c. 116, s. 38.

Such writ of *habeas corpus* may be issued by any justice of the  
2 peace or clerk of the superior court upon application as provided  
3 in the preceding section, to bring any person confined in the jail or  
4 prison of the same county where such justice or clerk may reside,  
5 to be examined as a witness before such justice or clerk. And in  
6 cases where the testimony of any prisoner is needed in a proceed-  
7 ing before a justice of the peace, or a clerk, and such person be  
8 confined in a county in which such justice or clerk does not reside,  
9 application for *habeas corpus* to testify may be made to any judge  
10 of the supreme or superior court.

**Sec. 2431. Application, what to contain.**

1868-'9, c. 116, s. 39.

The application for the writ shall be made by the party to the  
2 suit or proceeding in which the writ is required, or by his agent or  
3 attorney. It must be verified by the applicant, and shall state:

4 (1) The title and nature of the suit or proceeding in regard to  
5 which the testimony of such prisoner is desired;

6 (2) That the testimony of such prisoner is material and neces-  
7 sary to such party on the trial or hearing of such suit or proceed-  
8 ing, as he is advised by counsel and verily believes.

**Sec. 2432. Writ, how and by whom served.**

1868-'9, c. 116, s. 40.

The writ of *habeas corpus* to testify shall be served by the same  
2 person, and in like manner in all respects, and enforced by the  
3 court or officer issuing the same as prescribed in this chapter for  
4 the service and enforcement of the writ of *habeas corpus cum causa*.

**Sec. 2433. Fees and bond on service.**

1868-'9, c. 116, s. 41.

The service of the writ shall not be complete, however, unless  
2 the applicant for the same shall tender to the person in whose cus-  
3 tody the prisoner may be, if such person be a sheriff, coroner, con-  
4 stable or marshal, the fees and expenses allowed by law for bring-  
5 ing such prisoner, nor unless he shall also give bond, with suffi-  
6 cient security, to such sheriff, coroner, constable or marshal, as the  
7 case may be, conditioned that such applicant will pay the charges  
8 of carrying back such prisoner.

**Sec. 2434. Duty of officers.**

1868-'9, c. 116, s. 42.

It shall be the duty of the officer to whom the writ is delivered  
2 or upon whom it is served, whether such writ be directed to him  
3 or not, upon payment or tender of the charges allowed by law, and  
4 the delivery or tender of the bond herein prescribed, to obey and  
5 return such writ according to the exigency thereof upon pain, on



- 6 refusal or neglect, to forfeit to the party, on whose application the  
7 same shall have been issued, the sum of five hundred dollars.

**Sec. 2435. Prisoner to be remanded.**

After having testified, the prisoner shall be remanded to the 1903-'9, c. 116, s. 43.  
2 prison from which he was taken.

## CHAPTER SIXTY.

### HEALTH AND QUARANTINE.

#### HEALTH.

##### SECTION.

2436. North Carolina board of health.  
2437. Duties of board; secretary to make annual report.  
2438. Term of office; vacancy, how filled.  
2439. Officers, their compensation.  
2440. County boards of health; county superintendent, duties of.  
2441. Compensation of superintendent.  
2442. Compensation of state board; meetings.  
2443. County superintendent to make monthly return of vital statistics; penalty for failure.  
2444. Inland quarantine.  
2445. Abatement of nuisances; proviso.  
2446. Vaccination; small-pox.  
2447. Diseases dangerous to public health; duties of state board; expenses.

##### SECTION.

2448. Special meetings; annual meeting.  
2449. Analyses for hygienic purposes to be made by state chemist.  
2450. Two hundred dollars appropriated; printing to be done by public printer, and stationery furnished.  
2451. Persons listing property for taxation to make a statement of vital statistics; diseases.  
2452. Board of health to furnish proper blanks to boards of county commissioners to be distributed to township assessors.  
2453. Township assessors to return blanks filled to clerk of the board of commissioners; clerk to forward to secretary of state, secretary of state to secretary of board of health.

#### QUARANTINE.

##### SECTION.

2454. 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.  
2455. Vessel coming from infected place to anchor at quarantine ground; coming into port without permission, master or pilot indictable.  
2456. Such vessel to be removed.  
2457. Port physicians appointed.  
2458. Penalty on passengers or crew breaking quarantine.  
2459. On person going on board without leave and on masters allowing it; such person to remain on board.  
2460. Persons breaking quarantine arrested and sent back.  
2461. Penalty for landing articles.  
2462. Affidavit of health required of master; penalty for false statement.  
2463. Provisions furnished vessels, &c.  
2464. Penalties, how recovered and applied.  
2465. Penalty on pilots bringing in vessels without certificate, &c.  
2466. Commissioners of navigation may appoint harbor-master and health-officer, and enact by-laws, &c.  
2467. Of seaport towns, where no commissioners of navigation, to have like authority.  
2468. Nuisances in seaports, what deemed so.

##### SECTION.

2469. Lots in, kept drained at certain seasons; penalty for neglect; commissioners may abate nuisance at owner's expense.  
2470. Officers of police to provide against contagious diseases.  
2471. Hospitals established by county commissioners and commissioners of towns.  
2472. Proviso to the foregoing sections.  
2473. Quarantine station established at mouth of Cape Fear river.  
2474. Governor to designate medical quarantine officer; quarantine officer to advertise regulations; to make monthly report of receipts and disbursements.  
2475. To be furnished with boat; to employ crew, &c.  
2476. Hospital to be established.  
2477. Every vessel to pay a fee of five dollars; fee of patient; vessel liable for fee; what vessels liable to inspection.  
2478. Pilots to bring vessels to visiting station; penalty for violation of law by pilots.  
2479. By master of vessel.  
2480. Further penalties; one half to informer.  
2481. Quarantine officer may issue warrant for arrest.  
2482. Compensation of officer; of crew.  
2483. Sum of \$1,000 appropriated for buildings and boat; how to be expended.

## HEALTH.

**Sec. 2436. North Carolina board of health.**

1879, c. 117, s. 1.

The medical society of North Carolina shall choose from its active members, by ballot, six members, and the governor shall appoint three other persons, (one of whom shall be a civil engineer,) and these shall constitute the North Carolina board of health.

**Sec. 2437. Duties of board; secretary to make annual report.**

1879, c. 117, s. 2.

The North Carolina board of health shall take cognizance of the health interest of the citizens of the state; shall make sanitary investigations and inquiries in respect to the people; the causes of diseases dangerous to the public health, especially epidemics; the sources of mortality; the effects of locations, employments and conditions upon public health. They shall gather such information upon all these matters for distribution among the people, with the especial purpose of informing them about preventable diseases. They shall be considered the medical advisers of the state, and are herein specially provided for, and shall advise the government in regard to the location, sanitary construction and management of all public institutions, and shall direct the attention of the state to such sanitary matters as in their judgment affect the industry, prosperity, health and lives of the citizens of the state. The secretary of the board shall make annually to the general assembly, through the governor, a report of their work for the year.

**Sec. 2438. Term of office; vacancy, how filled.**

1879, c. 117, s. 3.

The members of the board of health as elected by the state medical society shall be chosen to serve, two for six years, two for four years, two for two years. Those appointed by the governor shall serve two years. In case of death or resignation the board will elect new members to fill the unexpired terms.

**Sec. 2439. Officers, their compensation.**

1879, c. 117, s. 4.

The state board shall have a president and a secretary, who shall be treasurer, to be elected from the members comprising the board. The president shall serve two years, and the secretary and treasurer six years. The secretary and treasurer shall receive..... a year for his services, but the other members of the board shall receive no pay, except that while on actual duty at the meetings of the board, or on duty during the time special investigations are being pursued, that each member shall receive two dollars a day and necessary traveling expenses. These sums shall be paid by the treasurer on duly authenticated requisitions signed and approved by the president of the board.

**Sec. 2440. County boards of health; county superintendent, duties of.**

1879, c. 117, s. 5.

There shall be an auxiliary board of health in each county. These boards shall be composed of the physicians eligible to mem-

3 bership in the state medical society, the mayor of county town,  
4 the chairman of the board of county commissioners, and the  
5 city surveyor where there is such an officer, otherwise the county  
6 surveyor. From this number one physician shall be chosen by  
7 ballot to serve two years, with the title of superintendent of  
8 health. His duties shall be to gather vital statistics upon a plan  
9 designated by the state board of health. He shall make the med-  
10 ico-legal *post mortem* examinations for coroners' inquests, and at-  
11 tend prisoners in jails, poor houses and work houses. Their reports  
12 shall be made regularly as advised by the state board through their  
13 secretary, and they shall receive and carry out as far as practicable  
14 such work as may be directed by the state board of health.

**Sec. 2441. Compensation of superintendent.**

The salary of the county superintendent of health is to be paid 1879, c. 117, s. 6.  
2 out of the county treasury, upon requisition and proper voucher,  
3 as follows: The salary of the superintendent of health shall not  
4 exceed the amount paid by the city or county in the year one thou-  
5 sand eight hundred and seventy-eight, for services rendered by the  
6 city or county for medical services to sick in jail, work house and  
7 poor house, and medical examinations for coroner's inquests.

**Sec. 2442. Compensation of state board; meetings.**

The biennial meetings for the election of officers, shall be for the 1879, c. 117, s. 7.  
2 county boards on the first day of January, and of state board of  
3 health on the first day of the annual meeting of the medical so-  
4 ciety of North Carolina.

**Sec. 2443. County superintendent to make monthly return of vital statistics; penalty for failure.**

Monthly returns of vital statistics upon a plan to be devised by 1879, c. 117, s. 8.  
2 the state board of health, shall be made by the county superintend-  
3 ents, and a failure to report by the tenth of the month, for the pre-  
4 ceding month, shall subject the delinquent superintendent to a fine  
5 of one dollar for each day of delinquency.

**Sec. 2444. Inland quarantine.**

Inland quarantine shall be under the control of the county super- 1879, c. 117, s. 9.  
2 intendent of health, who, acting by the advice of the local board,  
3 shall see that diseases dangerous to the public health, viz: small-  
4 pox, scarlet fever, yellow fever and cholera, shall be properly quar-  
5 antined or isolated, at the expense of the city or town in which it  
6 occurs. Any violation of the rules made on this subject by the  
7 superintendent of health shall subject the offender to a fine of  
8 twenty-five hundred dollars and imprisonment for not longer than  
9 twenty days in the county jail. In case the offender be stricken  
10 with disease for which he is quarantinable, he will be subject to



11 the penalty on recovery, without, in the opinion of the superin-  
12 tendent, it should be remitted. Quarantine of ports shall not be  
13 interfered with, but the officers of the local and state boards shall  
14 render all aid in their power to quarantine officers in discharge of  
15 their duties upon request of the latter.

**Sec. 2445. Abatement of nuisances; proviso.**

1879, c. 117, s. 10.

Wherever and whenever a nuisance upon premises shall exist,  
2 which in the opinion of the county superintendent of health is  
3 dangerous to the public health, it shall be his duty to give a writ-  
4 ten notification to the parties occupying the premises, (or the owner  
5 of the premises if not occupied), of its existence, its character,  
6 and the means of abating it. Upon this notification the parties  
7 shall proceed to abate the nuisance, but failing to do this shall pay  
8 a fine of one dollar a day dating from twenty-four hours after the  
9 notification has been served: *Provided, however,* that if the party  
10 notified shall make oath or affirmation before a magistrate of his  
11 or her inability to carry out the directions of the superintendent,  
12 it shall be done at the expense of the town or city. In the latter  
13 case the limit of the expense chargeable upon the town or city  
14 shall not be more than one hundred dollars in any case.

**Sec. 2446. Vaccination; small-pox.**

1879, c. 117, s. 11.

The secretary of the state board of health shall keep a supply of  
2 fresh animal vaccine virus at his command, and he shall issue  
3 quantities, in value not to exceed one dollar for one requisition, to  
4 county superintendents in case of a threatened outbreak of small  
5 pox. The county superintendents shall vaccinate and re-vaccinate  
6 all applying for such service, free of charge, the virus for such pur-  
7 poses to be furnished by the secretary of the state board of health  
8 at market rates. The county superintendent shall vaccinate every  
9 person admitted into a public institution, (jail, work house, poor  
10 house, public school), as soon as practicable, without he is satisfied  
11 upon examination the person is already successfully vaccinated.  
12 On the appearance of a case of small-pox in a neighborhood, all  
13 due diligence shall be used by the superintendent that warning  
14 shall be given, and all persons not able to pay, to be vaccinated  
15 free of charge by him. The vaccine for this purpose shall be paid  
16 for by the corporation in which the superintendent serves.

**Sec. 2447. Diseases dangerous to public health; duties of state board; expenses.**

1879, c. 117, s. 12.

Bulletins of the outbreak of diseases dangerous to the public  
2 health shall be issued by the state board whenever necessary, and  
3 such advice freely disseminated to prevent and check the invasion  
4 of disease into any part of the state. It shall also be the duty of  
5 the board to inquire into any outbreak of disease, by personal  
6 visits or by any method the board shall direct. The compensation

7 of members on such duty shall be five dollars a day, and the neces-  
8 sary travelling expenses.

**Sec. 2448. Special meetings; annual meeting.**

Special meetings of the state board of health may be called by 1879, c. 117, s. 13.  
2 the president through the secretary. The regular annual meet-  
3 ings shall be held at the same time and place of the state medical  
4 society, at which time the secretary shall submit his annual re-  
5 port.

**Sec. 2449. Analyses for hygienic purposes to be made by state chemist.**

Analyses for purposes connected with the hygienic duties of the 1879, c. 117, s. 14.  
2 superintendent of health shall be made by the state chemist, upon  
3 requisition signed and approved by the secretary of the state board  
4 of health. Such analyses will include soil, drinking water, articles  
5 of food, air, &c., to be packed for transmission by direction of the  
6 chemist of the agricultural station.

**Sec. 2450. Two hundred dollars appropriated; printing to be done by public printer, and stationery furnished.**

For carrying out the provisions of this chapter, two hundred 1879, c. 117, s. 15.  
2 dollars is hereby annually appropriated, to be paid on requisition  
3 signed by the treasurer and president of the state board of health,  
4 and the printing and stationery necessary annually for the board  
5 be furnished on requisition upon the state printer. A yearly  
6 statement shall be made to the general assembly of all moneys re-  
7 ceived and expended in pursuance of this chapter.

**Sec. 2451. Persons listing property for taxation to make a statement of vital statistics; diseases.**

It shall be the duty of each person, annually, at the time when 1881, c. 73, s. 1.  
2 he shall list property for taxation, to make out and sign and de-  
3 liver to the township assessor, on a blank prepared and furnished  
4 as hereafter provided, a statement as follows, to-wit:

5 (1) Whether married, unmarried, widow or widower;  
6 (2) Number of births in the family within the year immediately  
7 preceding;

8 (3) Number of deaths in the family within the same time and  
9 the names of the diseases causing the deaths, as far as known;

10 (4) Whether any cases of the following diseases have occurred  
11 in the family for the year immediately preceding: Small-pox,  
12 scarlet fever, diphtheria, yellow fever, cholera.

**Sec. 2452. Board of health to furnish proper blanks to boards of county commissioners to be distributed to township assessors.**

It shall be the duty of the state board of health annually to pre- 1881, c. 73, s. 2.  
2 pare and furnish to the boards of commissioners of each county, at  
3 thirty days before the time appointed by law for the listing of least

4 taxes, a sufficient number of blank forms or lists, on which each  
 5 tax-payer or lister shall make out the statement required by sec-  
 6 tion twenty-four hundred and fifty-one, which said blanks shall  
 7 be distributed by the boards aforesaid to the township assessors  
 8 at least five days before the time appointed by law for the listing  
 9 of taxes. The form of said blanks shall be prescribed by the  
 10 secretary of the state board of health, and may be accompanied  
 11 by a circular from said officer giving instructions in regard to  
 12 filling out the same and information desired, and for every one  
 13 hundred blanks filled and returned the tax lister shall receive ten  
 14 cents.

**Sec. 2453.** Township assessors to return blanks when filled to clerk of the board of commissioners; clerk to forward to secretary of state, secretary of state to secretary of board of health.

The blanks so made out and delivered to the assessors, as pro-  
 2 vided in section twenty-four hundred and fifty-one, shall be for-  
 3 warded by them to the clerk of the board of commissioners in  
 4 each and every county at the same time required for the return of  
 5 the abstract of the tax list to said clerk; and it shall be the duty  
 6 of said clerk to forward at once all of said blanks so returned to  
 7 him to the secretary of state, who, after noting the same for record  
 8 in his office, shall forward them to the secretary of the state board  
 9 of health.

#### QUARANTINE.

**Sec. 2454.** 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.

R. C., c. 94, s. 1.  
 1783, c. 194, s. 12.  
 1793, c. 379, s. 1.  
 1802, c. 624.

The commissioners of navigation in the respective ports and in-  
 2 lets of the state, and where there are no such commissioners, any  
 3 three justices of the peace convenient to said ports or inlets, or the  
 4 commissioners of any sea-port town, shall meet together and ap-  
 5 point such place or places, as they may think proper, for vessels to  
 6 perform quarantine; and when a vessel shall arrive at any of the  
 7 said ports or inlets, having an infectious distemper on board, or  
 8 which came from any place that was at the time of her sailing, or  
 9 shortly before, infected with any malignant disorder, the master  
 10 and pilot of the vessel shall anchor her at the place so appointed,  
 11 and give immediate information thereof to the commissioners of  
 12 navigation, or to the commissioners of the sea-port town; or, where  
 13 there are no commissioners, to the nearest justices of the peace,  
 14 who, with two others to be summoned by him, or any three of the  
 15 commissioners aforesaid, or any one commissioner and two justices,  
 16 or any one justice and two commissioners, shall thereupon cause  
 17 such vessel and her crew to be examined by at least one experi-  
 18 enced physician, when to be had; upon whose report in writing,



19 (which said physician is required to make,) and on other informa-  
20 tion they may receive, any three of such commissioners, and where  
21 there are no commissioners, any three neighboring justices, or any  
22 one commissioner and two justices, or any one justice and two  
23 commissioners, or the commissioners of the town to which such  
24 vessel is bound, may order and command the master of the vessel,  
25 crew and passengers to perform quarantine, as by them shall be  
26 deemed most proper and requisite, to check or prevent any infec-  
27 tious distemper from spreading in the state; and every person on  
28 board such vessel directed to perform quarantine, shall, from time  
29 to time, during such quarantine, obey all orders given by the au-  
30 thority of the said commissioners or justices, respecting the vic-  
31 tualling, purifying and cleansing of such vessel, and all persons  
32 and articles on board, and the intercourse of the said persons with  
33 the inhabitants of the state, the receiving any persons on board,  
34 or the putting them on shore; and if the pilot or master neglect to  
35 give such information as above required, the pilot, for such neglect,  
36 shall forfeit and pay one hundred dollars, and the master, for the  
37 like neglect, shall forfeit and pay two hundred dollars. And in  
38 case the master of any vessel, so ordered to perform quarantine,  
39 shall refuse to comply with, or fail to fulfil the orders, for perform-  
40 ing quarantine with his vessel as aforesaid, he shall forfeit and pay  
41 two hundred dollars for each day he shall fail to perform the quar-  
42 antine; for which forfeiture the property of the captain, with the  
43 vessel and cargo, shall be liable, if it shall appear that the breach  
44 of the order was by the consent of the owner or consignee; but if  
45 the owner or consignee did not consent, then the master of such  
46 vessel only shall be liable.

**Sec. 2455.** Vessel coming from infected place to anchor at quarantine ground;  
coming into port without permission, master or pilot indictable.

If any vessel shall be brought into the state from a place, which  
2 at the time of her departure was infected with the yellow fever,  
3 small pox, or other infectious disorder; or if any vessel, arriving  
4 in the state, shall have the small-pox or yellow fever or other infec-  
5 tious disorder on board, or shall have had such disorder on board  
6 during her passage to the state, such vessel shall be anchored at  
7 the place appointed for quarantine, and there remain, until per-  
8 mitted to remove by the commissioners of navigation, or by the  
9 commissioners of the town to which the vessel is bound, or by the  
10 justices aforesaid; and if any such vessel shall come to such town,  
11 or into its harbor, without permission obtained as aforesaid, the  
12 pilot or master, conducting the vessel, or ordering or permitting  
13 her to be conducted to such town or harbor, shall be subject to in-  
14 dictment; and, upon conviction, shall be fined not less than one  
15 thousand dollars, and imprisoned not exceeding one year.

R. C., c. 94, s. 2.  
1817, c. 946, s. 1.

**Sec. 2456. Such vessel to be removed.**

R. C., c. 94, s. 3.  
1817, c. 946, s. 2.

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.

**Sec. 2457. Port physicians appointed.**

R. C., c. 94, s. 4.  
1802, c. 624, s. 2.

The commissioners of navigation in the several ports of the state, and, where there are no such commissioners, the commissioners of the several sea-port 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.

**Sec. 2458. Penalty on passengers or crew breaking quarantine.**

R. C., c. 94, s. 5.  
1793, c. 379, s. 2.

When a vessel shall be directed to perform quarantine, and any seaman or passenger shall, contrary to the order and direction of the commissioners or justices as aforesaid, leave the vessel and land on any other place than they shall allow of, every person so offending shall forfeit and pay two hundred dollars for each offence; and when he shall have left the vessel with the master's consent, the master shall pay a like penalty of two hundred dollars for every such offence of any of his passengers or seamen.

**Sec. 2459. On person going on board without leave and on masters allowing it; such person to remain on board.**

R. C., c. 94, s. 6.  
1793, c. 379, s. 3.

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.

**Sec. 2460. Persons breaking quarantine arrested and sent back.**

The commissioners or justices aforesaid, or a majority of them, 2 respectively, may issue their warrant to any sheriff or other officer, 3 commanding him to take the body of any person that may have 4 left any vessel ordered to ride quarantine, and carry him on board 5 of said vessel; and the said officer may summon such persons to 6 assist him in the execution of the warrant as he may see fit.

R. C., c. 94, s. 7.  
1793, c. 379, s. 4.

**Sec. 2461. Penalty for landing articles.**

If any master of a vessel ordered to ride quarantine shall con- 2 vey, or cause, or permit to be conveyed, any article of goods, wares 3 and merchandise from his vessel on any other lands, or into any 4 other boat or vessel than the said commissioners or justices shall 5 authorize, he shall forfeit and pay two hundred dollars for every 6 such offence. And any other person so conveying, or causing to 7 be conveyed, any article as above mentioned, shall be liable to the 8 like penalty.

R. C., c. 94, s. 8.  
1793, c. 379, s. 5.

**Sec. 2762. Affidavit of health required of master; penalty for false statement.**

The said commissioners or justices may, whenever they think 2 proper, require the master of a vessel, on his arrival in the state, 3 to declare on oath the state of the health of himself, crew and pas- 4 sengers, and the place whence he came. And if any master shall 5 give a false declaration, or any physician shall wilfully give a false 6 certificate of the health of the persons on board any such vessel, 7 he shall forfeit and pay two thousand dollars.

R. C., c. 94, s. 9.  
1793, c. 379, s. 6.

**Sec. 2463. Provisions furnished vessels, &c.**

The commissioners or justices are empowered and directed to 2 furnish any vessel, ordered to ride quarantine, with a sufficient 3 quantity of good wholesome provisions, for the expense of which 4 the master, vessel and cargo shall be liable.

R. C., c. 94, s. 10.  
1793, c. 379, s. 7.

**Sec. 2464. Penalties, how recovered and applied.**

All penalties and forfeitures imposed or allowed to be imposed 2 by this chapter, may be recovered and applied, one half to the 3 use of the informer, the other half by the commissioners of navi- 4 gation, for the use and benefit of the navigation of the port, within 5 whose jurisdiction the penalty or forfeiture may have been in- 6 curred.

R. C., c. 94, s. 11.  
1793, c. 379, s. 8.

**Sec. 2465. Penalty on pilots bringing in vessels without certificate, &c.**

If any pilot shall bring any vessel beyond the place fixed and 2 limited by the commissioners of navigation, without a certificate 3 of the health-officer declaring that there is no danger to be appre- 4 hended from any infectious disease on board said vessel, such pi- 5 lot shall forfeit his branch or commission, and thence be deemed 6 incapable to act as a pilot in any port of the state.

R. C., c. 94, s. 12.  
1797, c. 486, s. 2.



Sec. 2466. Commissioners of navigation may appoint harbor-master and health-officer, and enact by-laws.

R. C., c. 94, s. 13.  
Amendment.

The commissioners of navigation of the several sea-port towns in  
2 the state shall have power to appoint a harbor-master and health-  
3 officer; to prescribe their duties and authority; to make rules and  
4 regulations for their government; allow them a reasonable com-  
5 pensation for their services, and determine how such compensa-  
6 tion is to be paid. And they shall have power to pass such by-  
7 laws, (not inconsistent with the laws of the land,) for the better  
8 regulation of the quarantine to be performed by vessels, arriving  
9 from ports infected, or suspected to be infected, with any infectious  
10 disease, and for preventing all intercourse between such vessels and  
11 persons on shore, as to them may seem meet and proper, and to  
12 enforce obedience to such by-laws, by imposing such penalties as  
13 they may think proper.

Sec. 2467. Of sea-port towns, where no commissioners of navigation, to have like authority.

R. C., c. 94, s. 14.  
Amendment.

The commissioners of the several sea-port towns, and towns hav-  
2 ing a port of entry, where there are no commissioners of naviga-  
3 tion, shall have the same power and authority and be subject to  
4 the same duties, as are herein directed and prescribed for the com-  
5 missioners of navigation, in relation to the quarantine of vessels,  
6 in the ports of their respective towns; and all persons offending  
7 against the regulations of the commissioners of such towns shall  
8 be subject to the same fines, penalties and forfeitures, as though the  
9 said regulations had been made by commissioners of navigation.

Sec. 2468. Nuisances in sea-ports, what deemed so.

R. C., c. 94, s. 15.  
1815, c. 893, s. 1.

All ponds of stagnant water, all cellars and foundations of houses,  
2 whose bottoms contain stagnant and putrid water, all dead and  
3 putrefied animals lying about the docks, streets, lanes, alleys, va-  
4 cant lots, or yards, all privies that have no wells sunk under them,  
5 all slaughter-houses, all docks whose bottoms are alternately wet  
6 and dry by the ebbing and flowing of the tide, all accumulations  
7 of vegetable and animal substances undergoing putrefactive fer-  
8 mentation, in any of the sea-port towns of the state, are hereby de-  
9 clared common nuisances, productive of offensive vapors and nox-  
10 ious exhalations, the causes of disease, and ought to be restrained,  
11 regulated and removed.

Sec. 2469. Lots in, kept drained at certain seasons; penalty for neglect; commis-  
sioners may abate nuisance at owner's expense.

R. C., c. 94, s. 16.  
1815, c. 893, s. 2.

Every person, possessed of a lot in any sea-port town, which  
2 from its low or sunken situation, is liable to retain tide, or rain  
3 water, or on which cellars or foundations for buildings may be  
4 dug, (whether a tenement be erected over the same or not,) shall  
5 during the months of June, July, August, September and October,

6 preserve and keep the said lot, cellars, and foundations dry and  
7 free from stagnant or putrid waters and other filth ; and any per-  
8 son offending herein shall forfeit and pay five dollars for the use  
9 of the town, for every week he shall suffer such stagnant or putrid  
10 water, or other filth, to remain therein. And if the said owner  
11 shall, notwithstanding the above provisions, neglect to remove  
12 such stagnant or putrid water or other filth, the commissioners of  
13 the town may employ any person, upon such terms as to them may  
14 seem reasonable and just, to remove such filth or stagnant or pu-  
15 trid waters ; and the expense shall be considered as a further fine  
16 for not complying with the provisions of this section, and shall be  
17 collected accordingly, and shall also be a lien upon the lot upon  
18 which the same has been expended.

**Sec. 2470. Officers of police to provide against contagious diseases.**

When an infectious disease shall be raging in any part of the  
2 state or in any part of the United States, the officers of police of  
3 any incorporated town, who may have well-founded apprehensions  
4 that their town is in danger of being visited by such disease, may  
5 take such precautionary measures and provide such penalties for  
6 the breach of them as may seem necessary and proper, the expense  
7 of which they are authorized to defray out of any money, at the  
8 time, in their town treasury ; or, if that should not be in a situation  
9 to sustain the expense, to borrow such sum as may be necessary to  
10 defray the same, and afterwards to raise the amount by tax on the  
11 inhabitants of such town, over and above the ordinary taxes levied  
12 for the current expenses of the town.

R. C., c. 94, s. 17.  
1824, c. 1232, s. 1.

**Sec. 2471. Hospitals established by boards of county commissioners and commissioners of towns.**

The boards of county commissioners may establish public hos-  
2 pitals for the county, and the commissioners of every incorporated  
3 town may do the same for the town ; and the said board of county  
4 commissioners and the commissioners of such town may make all  
5 such rules, regulations and by-laws as they may deem needful for  
6 preventing the spread of contagious and infectious diseases and  
7 taking care of the afflicted, the same not being inconsistent with  
8 the law.

R. C., c. 94, s. 18.

**Sec. 2472. Proviso to the foregoing sections.**

Nothing contained in this chapter shall be construed to lessen  
2 or impair the power and authority of the commissioners of the  
3 sea-port towns, or the commissioners of navigation or other officers,  
4 under the quarantine laws of the state, to prevent the introduc-  
5 tion of diseases by vessels arriving at or near said sea-port towns:

R. C., c. 94, s. 19.  
1824, c. 1232, s. 2.

**Sec. 2473. Quarantine station established at mouth of Cape Fear river.**

1868, c. 33, s. 1.  
1879, c. 123.

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; and the rules and regulations so prescribed shall be made from time to time as circumstances may require by the quarantine medical officer and two physicians of skill and experience, residing in the city of Wilmington, who shall be designated by the president of the state board of health, and they shall meet annually on the first Monday in May, or as soon thereafter as practicable, and organize for the purposes before mentioned by the election of a president and secretary; and it shall be the duty of the president to call meetings whenever any special emergency shall arise requiring new quarantine rules and regulations, and of the secretary to keep a record of all such proceedings; and they shall be entitled to compensation for their services at the rate of five dollars per day and their actual traveling expenses to and from such meetings: *Provided*, said physicians shall not receive per diem for more than six days in the year, unless in case of prevailing epidemic.

**Sec. 2474. Governor to designate medical quarantine officer; quarantine officer to advertise regulations; to make monthly report of receipts and disbursements.**

1863, c. 33, s. 2.

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.

**Sec. 2475. To be furnished with boat; to employ crew, &c.**

1868, c. 33, s. 3.

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.



**Sec. 2476. Hospital to be established.**

There shall be established at the nearest convenient station upon 1868, c. 33, s. 4.  
 2 the shore, a hospital sufficient for the accommodation of such  
 3 sick persons as the quarantine medical officer may direct to be re-  
 4 moved from vessels for better nursing and attendance, and the  
 5 medical officer shall employ such attendants as may be necessary  
 6 to take care of the sick, and may purchase such articles of food as  
 7 they may require.

**Sec. 2477. Every vessel to pay a fee of five dollars; fee of patient; vessel liable for fee; what vessels subject to inspection.**

Every vessel subject to visit and inspection shall pay a fee of 1868, c. 33, s. 5.  
 2 five dollars, which shall be collected and accounted for by the med-  
 3 ical officer, and every sick person taken to the hospital shall pay a  
 4 fee not exceeding three dollars per day, until discharged by the  
 5 medical officer, for the payment of which the vessel shall be re-  
 6 sponsible, and only such vessel shall be subject to visit and inspec-  
 7 tion as may be from posts designated, from time to time, by the  
 8 medical officer, except that all vessels having sickness on board  
 9 shall be brought to the visiting station for examination.

**Sec. 2478. Pilots to bring vessels to visiting station; penalty for violation of law by pilots.**

It shall be the duty of all pilots to bring vessels to the visiting 1868, c. 33, s. 6.  
 2 station, as they may be required from time to time by the quaran-  
 3 tine officer, and they shall not take any vessel subject to quaran-  
 4 tine or visitation, past the station, until released by the quarantine  
 5 officer, and any pilot who shall wilfully violate any quarantine  
 6 regulation shall forfeit his branch or commission, and thence be  
 7 incapable to act as a pilot in any port in the state.

**Sec. 2479. By master of vessel.**

Any master of a vessel who shall refuse to obey the quarantine 1868, c. 33, s. 7.  
 2 regulations, shall forfeit and pay a fine of two hundred dollars for  
 3 each day he shall refuse to obey the same, for which forfeiture the  
 4 property of the captain, together with the vessel and cargo, shall  
 5 be held responsible.

**Sec. 2480. Further penalties; one-half to informer.**

Any person who shall violate the quarantine regulations, as pre- 1868, c. 33, s. 8.  
 2 scribed from time to time, by the medical officers, shall forfeit and  
 3 pay the sum of two hundred dollars for each and every offence;  
 4 and all penalties and forfeitures imposed by any of the provisions  
 5 of this chapter, may be recovered before any jurisdiction having  
 6 cognizance of the sum due and applied, one-half to the informer,  
 7 the other half to the payment of the expenses of the quarantine  
 8 establishment.

**Sec. 2481. Quarantine officer may issue warrant for arrest.**

1868, c. 33, s. 9.

The quarantine medical officer may issue a warrant to any sheriff  
2 or other officer, commanding him to arrest the body of any person  
3 violating the quarantine, and have him without delay before some  
4 competent jurisdiction for trial.

**Sec. 2482. Compensation of officer; of crew.**

1868, c. 33, s. 10.

The compensation of the quarantine medical officer shall be six  
2 hundred dollars per year, and the compensation of the boat's crew  
3 shall be twenty dollars per month each, while regularly employed,  
4 provided that one of the crew may be designated by the quaran-  
5 tine officer, to take care of the buildings, boats and materials at an  
6 extra compensation of ten dollars per month while so employed.

**Sec. 2483. Sum of four thousand dollars appropriated for buildings and boat; how to be expended.**

1868-'9, c. 33, s. 11.

For the purchase of a site and for the erection of suitable hos-  
2 pital buildings and for a boat and necessary materials and expenses  
3 for quarantine service, the sum of four thousand dollars is hereby  
4 appropriated from any moneys in the state treasury not otherwise  
5 appropriated, to be expended under the direction of the quarantine  
6 officer, and a commissioner shall be appointed by the governor:  
7 *Provided*, the said commissioner shall receive no compensation for  
8 his services.

## CHAPTER SIXTY-ONE.

**IDIOTS, LUNATICS AND INEBRIATES.****SECTION.**

- 2484. Inquisition of lunacy.
- 2485. Who deemed an inebriate.
- 2486. Proceeding on application for guardianship.
- 2487. Property of inebriate to be restored him upon his reformation.
- 2488. How to proceed in case of persons confined in lunatic asylum.
- 2489. Letters of appointment.
- 2490. Person and estate may be committed to different persons.
- 2491. Sale of their estates.
- 2492. How and for what purpose clerks may order a sale of their estates; heirs and next of kin to be parties; proceeds, how applied and secured; how descend, &c.
- 2493. Estates without guardian, managed by clerk of superior court.
- 2494. Surplus income of insane persons may be advanced in certain cases to next of kin.

**SECTION.**

- 2495. Purposes for which such advancements may be made; to whom paid.
- 2496. All persons interested made parties.
- 2497. Rule to be observed by the clerk.
- 2498. Clerk may select the persons to be advanced.
- 2499. Advancements secured against waste.
- 2500. Appeal and removal to superior court allowed.
- 2501. Of what kind of insane persons advancements to be made of their estates.
- 2502. Decrees for advancements suspended on restoration to sanity.
- 2503. What may be done when lunatic *feme covert* is abandoned by her husband.
- 2504. Real estate belonging to the wife of a lunatic, how sold.

**Sec. 2484. Inquisition of lunacy.**

Any person, in behalf of one who is deemed an idiot, inebriate, C. C. P., s. 473.  
 2 or lunatic, or incompetent from want of understanding to manage  
 3 his own affairs by reason of the excessive use of intoxicating  
 4 drinks, or other cause, may file a petition before the clerk of the  
 5 superior court of the county where such supposed idiot, inebriate  
 6 or lunatic resides, setting forth the facts, duly verified by the oath  
 7 of the petitioner; whereupon such clerk shall issue an order, upon  
 8 notice to the supposed idiot, inebriate or lunatic, to the sheriff of  
 9 the county, commanding him to summon a jury of twelve men to  
 10 inquire into the state of such supposed idiot, inebriate or lunatic.  
 11 The jury shall make return of their proceedings under their hands  
 12 to the clerk, who shall file and record the same; and he shall pro-  
 13 ceed to appoint a guardian of any person so found to be an idiot,  
 14 inebriate or lunatic, by inquisition of a jury, as in cases of orphans!

Armstrong v. Arrington, 1 Haw., 11; Spack v. Long, 1 Ire. Eq., 426; Bethea v. McLennon,  
 1 Ire., 523; Brooks v. Brooks, 3 Ire., 389; Christmas v. Mitchell, 3 Ire. Eq., 535; Rippy v. Gant,  
 4 Ire. Eq., 443; Patton v. Thompson, 2 Jones Eq., 411; Parker v. Davis, 8 Jones, 460.

**Sec. 2485. Who deemed an inebriate.**

Any person who habitually, whether continuously or periodi- 1879, c. 329, s. 1.  
 2 cally, indulges in the use of intoxicating liquors to such an extent  
 3 as to stupefy his mind and to render him incompetent to transact  
 4 ordinary business with safety to his estate, shall be deemed an ine-  
 5 briate within the meaning of this chapter; *Provided*, the habit of  
 6 so indulging in such use shall have been at the time of inquisition  
 7 of at least one year's standing.

**Sec. 2486. Proceeding on application for guardianship.**

On application to any clerk of the superior court for the custody C. C. P., s. 474.  
 2 and guardianship of any idiot, inebriate or lunatic, it is the duty  
 3 of such clerk to inform himself of the circumstances of the case  
 4 on the oath of the applicant or of any other person; and if none of  
 5 the relatives of the idiot, inebriate or lunatic are present at such  
 6 application the clerk must assign, or for any other good cause  
 7 he may assign, a day for the hearing; and he shall thereupon di-  
 8 rect notice thereof to be given to such of the relatives and to such  
 9 other persons, if any, as he may deem it proper to notify. On the  
 10 hearing he shall ascertain, on oath, the amount of property, real  
 11 and personal, of the idiot, inebriate or lunatic, and the value of the  
 12 rents and profits of the real estate, and he may grant or refuse the  
 13 application or commit the guardianship to some other person, as  
 14 he may think best for the idiot, inebriate or lunatic.

**Sec. 2487. Property of inebriate to be restored him upon his reformation.**

Whenever an inebriate for whom a guardian shall have been 1879, c. 329, s. 4.  
 2 appointed shall become a sober person, and capable of managing  
 3 his own affairs, the clerk who appointed such guardian is hereby



4 authorized to remove him and restore to said inebriate all his prop-  
 5 erty, to manage and control in as full and ample a manner as he  
 6 held the same prior to his having been adjudicated an inebriate.

**Sec. 2488. How to proceed in case of persons confined in lunatic asylum.**

1860-'61, c. 22.

If any person be confined in any asylum for lunatics and insane  
 2 persons, the certificate of the superintendent of such asylum de-  
 3 claring such person to be of insane mind and memory, which cer-  
 4 tificate shall be sworn to and subscribed before the clerk of the  
 5 superior court of the county in which such asylum is situated, and  
 6 certified under the seal of court, shall be sufficient evidence to au-  
 7 thorize the clerk to appoint a guardian for such idiot, lunatic or  
 8 person of insane memory.

**Sec. 2489. Letters of appointment.**

C. C. P., s. 475.

The clerk of the superior court must issue to every guardian  
 2 appointed by him under this chapter, a letter of appointment,  
 3 which shall be signed by him, and sealed with the seal of his office.

**Sec. 2490. Person and estate may be committed to different persons.**

R. C., c. 57, s. 3.

The guardianship of such nonsane or inebriate person and his  
 2 estate may be committed to different persons, whenever the clerk  
 3 shall deem it advisable, as in cases of orphans; and, when thus  
 4 separated; provision may be made for his support in like manner.

**Sec. 2491. Sale of their estate.**

R. C., c. 57, s. 4.  
 1801, c. 589.

Whenever it shall appear to any clerk of the superior court by re-  
 2 port of the guardian of any idiot, inebriate or lunatic, that his per-  
 3 sonal estate has been exhausted, or is insufficient for his support, and  
 4 that he is likely to become chargeable on the parish, the clerk may  
 5 make an order for the sale or renting of his personal or real estate,  
 6 or any part thereof, in such manner and upon such terms as he  
 7 may deem advisable. Such order shall specify particularly the  
 8 property thus to be disposed of, with the terms of renting or sale,  
 9 and shall be entered at length on the records of the court; and all  
 10 sales and rentings made under the provisions of this section, shall  
 11 be valid to convey the interest and estate directed to be sold, and  
 12 the title thereof shall be conveyed by such person as the clerk may  
 13 appoint on confirming the sale; or the clerk may direct the guar-  
 14 dian to file his petition for such purpose.

**Sec. 2492. How and for what purpose clerks may order a sale of their estates;  
 heirs and next of kin to be parties; proceeds, how applied and secured; how  
 descend, &c.**

R. C., c. 57, s. 5.  
 1773, c. 100, s. 3.  
 1803, c. 766.  
 1816, c. 907.

Whenever it shall appear to the clerk, upon the petition of the  
 2 guardian of any idiot or lunatic, that a sale of any part of his real  
 3 or personal estate is necessary for his maintenance, or for the dis-

4 charge of debts unavoidably incurred for his maintenance; or,  
 5 whenever the clerk shall be satisfied that the interest of the idiot  
 6 or lunatic would be materially and essentially promoted by the  
 7 sale of any part of such estate; or whenever any part of his real  
 8 estate is required for public purposes, the clerk may order a sale  
 9 thereof to be made by such person, in such way and on such terms  
 10 as he shall adjudge: *Provided, however*, that the clerk, if it be deemed  
 11 proper, may direct to be made parties to such petition the next of  
 12 kin or presumptive heirs of such nonsane person. And if on the  
 13 hearing the clerk shall order such sale, the same shall be made  
 14 and the proceeds applied and secured, and shall descend and be dis-  
 15 tributed, in like manner as is provided for the sale of infants' es-  
 16 tates decreed in like cases to be sold on application of their guar-  
 17 dians, as directed in the chapter entitled "Guardian and Ward."

Allison v. Campbell, 1 Dev. & Bat. Eq., 152; Latham v. Wiswall, 2 Ire. Eq., 294; In the matter of Latham, 4 Ire. Eq., 231; Latham *ex parte*, 6 Ire. Eq., 406; Howard v. Thompson, 8 Ire., 367; Blake v. Respass, 77—193; Smith v. Pipkin, 79—569; Riggan v. Green, 80—126; Adams v. Thomas, 81—296; Adams v. Thomas, 83—521.

**Sec. 2493. Estates without guardian managed by clerk of the superior court.**

Whenever any person is declared to be of nonsane mind, and  
 2 for whom no suitable person will act as guardian, the clerk shall  
 3 secure the estate of such person according to the provisions of the  
 4 law relating to orphans whose guardians have been removed.

R. C., c. 57, s. 6.  
 1846, c. 43, s. 1.

**Sec. 2494. Surplus income of insane persons may be advanced in certain cases to next of kin.**

Whenever any nonsane person, of full age, and not having made  
 2 a valid will, shall have children or grandchildren, (such grand-  
 3 children being the issue of a deceased child,) and shall be possessed  
 4 of an estate, real or personal, whose annual income shall be more  
 5 than sufficient abundantly and amply to support himself, and to  
 6 support, maintain and educate the members of his family, with all  
 7 the necessities and suitable comforts of life, it may be lawful for  
 8 the clerk of the superior court for the county in which such person  
 9 shall have his residence to order from time to time, and so often as  
 10 may be judged expedient, that fit and proper advancements be  
 11 made, out of the surplus of such income, to any such child, or  
 12 grandchild, not being a member of his family and entitled to be  
 13 supported, educated and maintained out of the estate of such per-  
 14 son.

R. C., c. 57, s. 9.

**Sec. 2495. Purposes for which such advancements may be made; to whom paid.**

Such advancements shall be ordered only for the better promo-  
 2 tion in life of such as are of age, or married, and for the mainte-  
 3 nance, support and education of such as are under the age of  
 4 twenty-one years and unmarried; and in all cases, the sums or-  
 5 dered shall be paid to such persons as, in the opinion of the clerk,

R. C., c. 57, s. 10.

6 will most effectually execute the purpose of the advancement:  
 7 *Provided, however, that, in case the child, or grandchild, be a feme*  
 8 *covert, the sum advanced shall be paid or secured to her, for her*  
 9 *sole and separate use.*

**Sec. 2496. All persons interested made parties.**

R. C., c. 57, s. 11.

In every application for such advancements, the guardian of  
 2 the nonsane person, and all such other persons shall be parties, as  
 3 would at that time be entitled to a distributive share of his estate,  
 4 if he were then dead.

**Sec. 2497. Rule to be observed by the clerk.**

R. C., c. 57, s. 12.

The clerk in ordering such advancements shall as far as practica-  
 2 ble so order the same, as that, on the death of the nonsane person,  
 3 his estate shall be distributed among his distributees in the same  
 4 equal manner, as if the advancements had been made by the per-  
 5 son himself; and on his death, every sum advanced to a child, or  
 6 grandchild, shall be deemed an advancement, and shall bear inter-  
 7 est from the time it may be received.

**Sec. 2498. Clerk may select the persons to be advanced.**

R. C., c. 57, s. 13.

When the surplus aforesaid shall not be sufficient to make dis-  
 2 tribution among all the parties, the clerk may select and decree  
 3 advancements to such of them as may most need the same, and  
 4 may apportion the sum decreed in such amounts as shall be  
 5 deemed expedient and proper.

**Sec. 2499. Advancements secured against waste.**

R. C., c. 57, s. 14.

It shall be the duty of the clerk to withhold advancements from  
 2 such persons as will probably waste them, or so to secure the same  
 3 when they may have families, that it may be applied to their sup-  
 4 port and comfort, but any sum so advanced shall be regarded as  
 5 an advancement to such persons.

**Sec. 2500. Appeal and removal to superior court allowed.**

R. C., c. 57, s. 15.

Any person made a party may appeal from any order of the  
 2 clerk; or may, when the pleadings are finished, require that all  
 3 further proceedings shall be had in the superior court.

**Sec. 2501. Of what kind of insane persons advancements to be made of their estates.**

R. C., c. 57, s. 16.

No such application shall be made under the provisions of this  
 2 chapter but in cases of such permanent and continued insanity, as  
 3 that the nonsane person shall be judged by the clerk to be incapa-  
 4 ble, notwithstanding any lucid intervals, to make advancements  
 5 with prudence and discretion.



**Sec. 2502. Decrees for advancements suspended on restoration to sanity.**

Upon such insane person being restored to sanity, every order R. C., c. 57, s. 17.  
 2 made for advancements shall cease to be further executed, and his  
 3 estate shall be discharged of the same.

**Sec. 2503. What may be done when lunatic *feme covert* is abandoned by her husband.**

Whenever any *feme covert* lunatic shall be abandoned by her 1858-'9, c. 52, s. 1.  
 2 husband, she may, by her guardian, or next friend in case there  
 3 be no guardian, apply to the clerk of the superior court for sup-  
 4 port and maintenance, which the clerk may decree as in cases of  
 5 alimony, out of any property or estate of her husband.

**Sec. 2504. Real estate belonging to the wife of a lunatic, how sold.**

Where the wife of a lunatic owns in her own right real estate, 1881, c. 361.  
 2 the sale of which will promote her interest, a sale of the same may  
 3 be made upon the order of the clerk of the superior court of the  
 4 county where the land lies, upon the petition by the wife of said  
 5 lunatic and the guardian of the lunatic husband, and the proceeds  
 6 of said sale shall be paid to the wife of said lunatic.

## CHAPTER SIXTY-TWO.

### IMPEACHMENT.

**SECTION.**

- 2505. Senate is the court for trial.
- 2506. Majority of members a quorum.
- 2507. Impeachment to be delivered by house of representatives to presiding officer of the senate; proceedings thereon.
- 2508. Powers of the court.
- 2509. Powers of presiding officer; when chief justice to preside.
- 2510. Notice to the accused to appear and answer.
- 2511. Accused to have counsel.
- 2512. Time and place to be fixed after issue joined for trial.

**SECTION.**

- 2513. Oath to be administered by presiding officer to members of the court.
- 2514. Vote necessary to convict.
- 2515. What judgment upon conviction.
- 2516. Officer impeached suspended until acquitted.
- 2517. What to be done when president of the senate is impeached.
- 2518. Person convicted liable to indictment and punishment.
- 2519. For what offences officers may be impeached.

**Sec. 2505. Senate is the court for trial.**

The court for the trial of impeachments shall be the senate. 1868-'9, c. 163, s. 1.

**Sec. 2506. Majority of the members a quorum.**

A majority of the members shall be necessary to constitute a 1868-'9, c. 163, s. 1.  
 2 quorum.

**Sec. 2507.** Impeachment to be delivered by house of representatives to presiding officer of the senate; proceedings thereon.

1868-'9, c. 168, ss. 2,  
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:

"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  
....."

4 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.

**Sec. 2508.** Powers of the court.

1868-'9, c. 168, s. 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.

**Sec. 2509.** Powers of presiding officer, when chief justice to preside.

1868-'9, c. 168, ss. 5,  
6.

The presiding officer of the senate shall have power:

- 2 (1) To direct all necessary preparations in the senate chamber;
- 3 (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;
- 5 (3) To direct all the forms of procedure during the trial not otherwise specially provided for;
- 7 (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.
- 11 (5) 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 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.

**Sec. 2510. Notice to the accused to appear and answer.**

The senate, upon the presentation of articles of impeachment and  
2 its organization as a court, shall forthwith cause the person im- 1868-'9, c. 168, s. 7.  
3 peached to appear and answer the articles exhibited either in per-  
4 son or by attorney; he shall be entitled to a copy of the impeach-  
5 ment and have a reasonable time to answer the same.

**Sec. 2511. Accused to have counsel.**

The person accused is entitled on the trial of the impeachment, 1868-'9, c. 168, s. 8.  
2 to the aid of counsel.

**Sec. 2512. Time and place to be fixed after issue joined for trial.**

When issue is joined in the trial of an impeachment, the court 1868-'9, c. 168, s. 9.  
2 shall fix a time and place for the trial thereof.

**Sec. 2513. Oath to be administered by presiding officer to members of the court.**

At the time and place appointed, and before the commencement 1868-'9, c. 168, s. 10.  
2 of the trial, the presiding officer of the senate shall administer to  
3 each member of the court then present, and to other members as  
4 they appear, an oath or affirmation, truly and impartially to try  
5 and determine the charge in question, under the constitution and  
6 laws, according to the evidence. No member of the court shall sit  
7 or give his vote upon the trial until he shall have taken such oath  
8 or affirmation.

**Sec. 2514. Vote necessary to convict.**

No person shall be convicted, on an impeachment, without the 1868-'9, c. 168, s. 11.  
2 concurrence of two-thirds of the senators present.

**Sec. 2515. What judgment upon conviction.**

Upon a conviction of the person impeached, judgment may be 1868-'9, c. 168, s. 12.  
2 given that he be removed from office; or that he be disqualified to  
3 hold any office of honor, trust or profit, under this state, or both.

**Sec. 2516. Officer impeached suspended until acquitted.**

Every officer impeached shall be suspended from the exercise of 1868-'9, c. 168, s. 13.  
2 his office until his acquittal.

**Sec. 2517. What to be done when president of the senate is impeached.**

If the president of the senate be impeached, notice thereof shall 1868-'9, c. 168, s. 14.  
2 immediately be given to the senate by the house of representatives,  
3 in order that another president may be chosen.

**Sec. 2518. Person convicted liable to indictment and punishment.**

Every person convicted on impeachment shall, nevertheless, be 1868-'9, c. 168, s. 15.  
2 liable to indictment and punishment according to law.



**Sec. 2519. For what offences officers may be impeached.**

1868-'9, c. 168, s. 16.

Every officer in this state shall be liable to impeachment for:

- 2 (1) Corruption or other misconduct in his official capacity;
- 3 (2) Habitual drunkenness;
- 4 (3) Intoxication while engaged in the exercise of his office;
- 5 (4) Drunkenness in any public place;
- 6 (5) Mental and physical incompetence to discharge the duties of
- 7 his office;
- 8 (6) Any criminal matter, the conviction whereof would tend to
- 9 bring his office into public contempt.

People v. Heaton, 77—18; In the matter of W. W. Holden, Session of 1870-'71.

## CHAPTER SIXTY-THREE.

## INFAMOUS PERSONS.

## SECTION.

2520. Persons convicted of infamous crimes, how restored to rights of citizenship.

2521. Depositions not to be read.

2522. Petition filed in county of conviction; no person restored more than once.

## SECTION.

2523. Petition not to be filed within four years after conviction.

**Sec. 2520. Persons convicted of infamous crimes, how restored to rights of citizenship.**R. C., c. 58, s. 1.  
1840, c. 36.

Any person who may have been convicted of an infamous crime,

- 2 whereby the rights of citizenship are forfeited, may be restored to
- 3 the same, under the following rules and regulations :
- 4 (1) He shall file his petition in the superior court, setting forth
- 5 his conviction and the punishment inflicted, and shall state therein
- 6 his place or places of residence, and his occupation since his con-
- 7 viction, and shall also state the meritorious causes, which, in his
- 8 opinion, entitle him to be restored to his forfeited rights;
- 9 (2) Upon filing the petition the clerk of the court shall adver-
- 10 tise the substance thereof, at the court house door of his county, for
- 11 the space of three months next before the court when the petitioner
- 12 proposes that the same shall be heard ;
- 13 (3) At the hearing, the court, on being satisfied of the truth of
- 14 the facts set forth in the petition, and on its being proved by five
- 15 respectable witnesses who have been acquainted with the peti-
- 16 tioner's character for three years next preceding the filing of his
- 17 petition, that his character for truth and honesty during that time
- 18 has been good, shall decree his restoration to the lost rights of
- 19 citizenship, and the petitioner shall accordingly be restored thereto.

**Sec. 2521. Depositions not to be read.**

At the hearing, no deposition relating to the character of the  
 2 petitioner shall be read; and the court shall examine all proper  
 3 testimony which may be offered either by the petitioner, or any,  
 4 who may oppose the grant of his prayer.

R. C., c. 58, s. 2.  
 1840, c. 36.

**Sec. 2522. Petition filed in county of conviction; no person restored more than once.**

The petition shall be filed in the superior court of the county  
 2 at term where the indictment was found, upon which the convic-  
 3 tion took place; and in case the petitioner may have been con-  
 4 victed of an infamous crime more than once, and indictments for  
 5 the same may have been found in different counties, the petition  
 6 shall be filed in the superior court of that county where the last  
 7 indictment was found; and no person shall be entitled to be re-  
 8 stored to the lost rights of citizenship more than once.

R. C., c. 58, s. 3.  
 1840, c. 36.

**Sec. 2523. Petition not to be filed within four years after conviction.**

No petition for the purposes aforesaid shall be filed within less  
 2 than four years after conviction.

R. C., c. 58, s. 4.  
 1840, c. 36.

## CHAPTER SIXTY-FOUR.

## INSOLVENT DEBTORS.

## SECTION.

- 2524. Insolvent debtor may file petition.
- 2525. Schedule and affidavit.
- 2526. Schedule, what to contain.
- 2527. Order for creditors to show cause.
- 2528. Notice of the order.
- 2529. Summary proceedings before clerk.
- 2530. Creditor may suggest fraud.
- 2531. Issue of fraud, how tried.
- 2532. Order of discharge, its terms and effect.
- 2533. Who entitled to the benefit of this chapter.
- 2534. In what court petition to be filed.
- 2535. What petition to set forth.
- 2536. Oath annexed to petition.
- 2537. Notice of the time and place of filing petition to be served on creditor bringing suit.
- 2538. Creditor may suggest fraud.
- 2539. When no fraud is suggested debtor discharged.
- 2540. Debtor may give bond for his appearance.
- 2541. Debtor giving bond prevented by sickness or death from attending court, case continued.
- 2542. Order of discharge; its terms and effect.
- 2543. If fraud found, judgment of imprisonment.
- 2544. Issue of fraud made up; debtor not discharged except by trial and verdict.
- 2545. Surety on any bond for appearance may surrender principal.

## SECTION.

- 2546. Debtor swearing falsely, penalty.
- 2547. Creditor liable for prison fees in certain cases.
- 2548. Who may take prison bounds.
- 2549. Who may be discharged from prison under this chapter.
- 2550. How application to be made.
- 2551. Applicant to serve notice on sheriff or other officer by whom he was committed.
- 2552. Warrant to bring prisoner.
- 2553. Proceedings before court on return of warrant.
- 2554. Oath to be taken.
- 2555. Who may suggest fraud.
- 2556. When and by whom application to be made in case debtor confined.
- 2557. To whom application must be made; trustee appointed, when.
- 2558. Duty of trustee.
- 2559. General power and duty of trustees under this chapter.
- 2560. When trustee is to make returns and when his accounts are to be settled.
- 2561. Oath of trustee.
- 2562. More than one may be appointed trustee.
- 2563. In case of death, &c., of trustee, court may appoint another in his place.

**Sec. 2524. Insolvent debtor may file petition.**

1858-'9, c. 162, s. 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 exempt from arrest or imprisonment, on account of any judgment previously rendered, or of any debts previously contracted.

Houston v. Walsh, 79—35.

**Sec. 2525. Schedule and affidavit.**

1868-'9, c. 162, s. 2.

On presenting such petition, every insolvent shall deliver there- with 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."

Ballard v. Waller, 7 Jones, 84.

**Sec. 2526. Schedule, what to contain.**

1868-'9, c. 162, s. 3.

The insolvent's schedule shall contain:

- (1) A full and true account of 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;
- (2) A full and true inventory of 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 and personal, claimed by him as exempt from sale under execution.

**Sec. 2527. Order for creditors to show cause.**

1868-'9, c. 162, s. 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.

**Sec. 2528. Notice of the order.**

1868-'9, c. 162, s. 5.

Notice of the contents of the order shall be posted by the clerk at the court house door and three other public places in the county where the application is made for four successive weeks; or, in lieu thereof, shall be published for three successive weeks in any newspaper published in said county, or in an adjoining county.



**Sec. 2529. Summary proceedings before clerk.**

If no creditor oppose the discharge of the insolvent, the clerk of  
 2 the superior court before whom the hearing of the petitioner is  
 3 had shall enter an order of discharge and appoint a trustee of all  
 4 the estate of such insolvent.

1868-'9, c. 162, s. 6.

**Sec. 2530. Creditor may suggest fraud.**

Every creditor opposing the discharge of the insolvent may sug-  
 2 gest fraud and set forth the particulars thereof in writing, verified  
 3 by his oath; but the insolvent shall not be compelled to answer  
 4 the suggestions of fraud in more than one case, though as many  
 5 creditors as choose may make themselves parties to the issues in  
 6 such cases.

1868-'9, c. 162, s. 7.

**Sec. 2531. Issue of fraud, how tried.**

In every case where an issue of fraud is made up, the case shall  
 2 be entered in the trial docket of the superior court, and stand for  
 3 trial as other causes; and upon a finding by the jury in favor of  
 4 the petitioner the judge shall enter the order and make the ap-  
 5 pointment directed in section twenty-five hundred and twenty-nine.

1868-'9, c. 162, s. 8.

**Sec. 2532. Order of discharge, its terms and effects.**

The order of discharge shall declare that the person of such in-  
 2 solvent shall forever thereafter be exempted from arrest or impris-  
 3 onment on account of any judgment, or by reason of any debt due  
 4 at the time of such order, or contracted for before that time, though  
 5 payable afterwards. But no debt, demand, judgment or decree  
 6 against any insolvent, discharged under this chapter, shall be  
 7 affected or impaired by such discharge, but the same shall remain  
 8 valid and effectual against all the property of such insolvent ac-  
 9 quired after his discharge and the appointment of a trustee; and  
 10 the lien of any judgment or decree upon the property of such in-  
 11 solvent shall not be in any manner affected by such discharge.

1868-'9, c. 162, s. 9.

**Sec. 2533. Who entitled to the benefit of this chapter.**

The following persons are entitled to the benefit of this chapter:  
 2 (1) Every person taken or charged on any order of arrest for  
 3 default of bail, or on surrender of bail in any action.  
 4 (2) Every person taken or charged in execution of arrest for any  
 5 debt or damages rendered in any action whatever.

1868-'9, c. 162, s. 10.

Moore v. Mullen, 77—327.

**Sec. 2534. In what court petition to be filed.**

Every person taken or charged as in the preceding section spe-  
 2 cified, may, at any time after his arrest or imprisonment, petition  
 3 the court from which the process issued on which he is arrested or  
 4 imprisoned, for his discharge therefrom, on his compliance with  
 5 the provisions of this chapter.

R. C., c. 59, s. 3.  
1868-'9, c. 162, s. 11.

**Sec. 2535. What petition to set forth.**

R. C., c. 59, s. 3.  
1868-'9, c. 162, s. 12.

The petition shall set forth the cause of the imprisonment,  
2 with the writ or process and complaint on which the same is  
3 founded, and shall have annexed to it a just and true account of  
4 all his estate, real and personal, and of all charges affecting such  
5 estate, as they exist at the time of filing his petition, together with  
6 all deeds, securities, books or writings whatever relating to the  
7 estate and the charges thereon; and also what property, real and  
8 personal, the petitioner claims as exempt from sale under execu-  
9 tion.

Griffin v. Simmons, 5 Jones, 145; State v. Carroll, 6 Jones, 458; Purvis v. Robinson, 4 Jon., 96.

**Sec. 2536. Oath annexed to petition.**

R. C., c. 59, s. 3.  
1868-'9, c. 162, s. 13.

The petition shall have annexed to it an oath or affirmation,  
2 subscribed by the petitioner and taken before any person author-  
3 ized by law to administer oaths, to the effect following:

"I, ....., the within named petitioner, do swear (or affirm) that the within pe-  
tition 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."

**Sec. 2537. Notice of the time and place of filing petition to be served on creditor bringing suit.**

R. C., c. 59, ss. 3,  
20,  
1773, c. 100, sec. 8,  
amended.  
1868-'9, c. 162, s. 14.

Twenty days' notice of the time and place at which the petition  
2 will be filed, together with a copy of such petition and the account  
3 annexed thereto, shall be personally served by such debtor on the  
4 creditor or creditors at whose suit he is arrested or imprisoned, and  
5 such other creditors as the debtor may choose, or their personal  
6 representatives or attorneys; and if the person to be notified reside  
7 out of the state, and have no agent or attorney therein, the notice  
8 may be served on the officer having the claim to collect, or by two  
9 weekly publications in any newspaper in the state.

**Sec. 2538. Creditor may suggest fraud.**

R. C., c. 59, s. 13.  
1822, c. 1131, s. 4.  
1835, c. 12,  
1868-'9, c. 162, s. 15.

Every creditor upon whom the notice directed in the preced-  
2 ing section is served may suggest fraud upon the hearing of the  
3 petition, as prescribed in section twenty-five hundred and thirty,  
4 and if the case be in a court of a justice of the peace the issues  
5 made up respecting the fraud shall be returned into the office  
6 of the clerk of the superior court and stand for trial, as in other  
7 cases; and the proceeding in the superior court shall be as pre-  
9 scribed in section twenty-five hundred and thirty-one.

Folsome v. Gregory, 1 Dev., 233; Wright v. Roberts, 6 Ire., 119; Hutton v. Self, 6 Ire., 285.

**Sec. 2539. When no fraud is suggested, debtor discharged.**

If no creditor suggest fraud or oppose the discharge of the debtor,  
 2 the justice of the peace or the clerk of the superior court before  
 3 whom the petition is heard, shall forthwith discharge the debtor,  
 4 and, if he surrender any estate for the benefit of his creditors, shall  
 5 appoint a trustee of such estate. The order of discharge and ap-  
 6 pointment shall be entered in the docket of the court, and if  
 7 granted by a justice of the peace a copy thereof shall be certified  
 8 by him to the clerk of the superior court, where the same shall be  
 9 recorded, and filed.

Griffin v. Simmons, 5 Jones, 145; State v. Davis, 82—610.

R. C., c. 59, s. 1.  
 1773, c. 100.  
 1808, c. 746, s. 2.  
 1810, c. 797—c. 802.  
 1830, c. 33.  
 1838, c. 23.  
 1840, cs. 33, 34.  
 1852, c. 49.  
 1868-'9, c. 162, s. 16.

**Sec. 2540. Debtor may give bond for his appearance.**

Every debtor entitled to the provisions of this chapter may, at  
 2 the time of filing his application for a discharge or at any time  
 3 afterwards, tender to the sheriff or other officer having his body in  
 4 charge, a bond, with sufficient surety, in double the amount of the  
 5 sum due any creditor or creditors at whose suit he was taken or  
 6 charged, conditioned for the appearance of such debtor before the  
 7 court where his petition is filed, at the hearing thereof, and to  
 8 stand to and abide by the final order or decree of the court in the  
 9 case. If such bond be satisfactory to the sheriff, he shall forthwith  
 10 release such debtor from custody.

Williams v. Yarborough, 2 Dev., 12; Mooring v. James, 2 Dev., 245; Arrington v. Bass, 3 Dev., 95; Page v. Winningham, 1 D. & B., 113; Smallwood v. Wood, 2 D. & B., 356; Woodland v. Dean, 2 D. & B., 490; Winslow v. Anderson, 3 D. & B., 9; Reynolds v. Boyd, 1 Ire., 106; Wall v. Jarrott, 3 Ire., 42; Williams v. Bryan, 11 Ire., 613; Robinson v. McDougald, 12 Ire., 136; Phillips v. Allen, 13 Ire., 10; Bryan v. Brooks, 6 Jones, 580; Wood v. Wood, Phil., 533.

R. C., c. 59, s. 27.  
 1813, c. 904.  
 1868-'9, c. 162, s. 17.

**Sec. 2541. Debtor giving bond prevented by sickness or death from attending court, case continued.**

Whenever it appears to the court that any debtor, who may have  
 2 given bond for his appearance under this chapter, is prevented  
 3 from attending court by sickness or other sufficient cause, the case  
 4 shall be continued to another day, or to the next term, when the  
 5 same proceedings shall be had as if the debtor had appeared ac-  
 6 cording to the condition of his bond, and, in the event of his death  
 7 in the meantime, his bond shall be discharged.

Williams v. Yarborough, 2 Dev., 12; Arrington v. Bass, 3 Dev., 95; Speight v. Wooton, 3 Dev., 327; Crain v. Long, 3 Dev., 371; Page v. Winningham, 1 D. & B., 113; Buis v. Arnold, 8 Jon., 233.

R. C., c. 59, s. 10.  
 1822, c. 1131, s. 1.  
 1834, c. 8, s. 2.  
 1868-'9, c. 162, s. 18.

**Sec. 2542. Order of discharge, terms and effect.**

The order of discharge under this chapter, whether granted  
 2 upon a non-suggestion of fraud or upon the finding of a jury in  
 3 favor of the debtor, or otherwise, shall be in like terms and have  
 4 like effect as prescribed in section twenty-five hundred and thirty-  
 5 two; except that the body of such debtor shall be free from arrest  
 6 or imprisonment at the suit of every creditor, and as to him only,  
 7 to whom the notice required in section twenty-five hundred and

R. C., c. 59, s. 11  
 1822, c. 1131, s. 4  
 1835, c. 12.  
 1868-'9, c. 162 s.



8 thirty-seven may have been given; and the notices, or copies  
9 thereof, shall in all cases be filed in the office of the superior court  
10 clerk.

*Watson v. Willits*, 2 Ire., 17; *Johnson v. McDougald*, 5 Jones, 305; *Rountree v. Waddill*, 7 Jones, 309.

**Sec. 2543. If fraud found, judgment of imprisonment.**

R. C., c. 59, s. 14.  
1822, c. 1131, s. 4.  
1835, c. 12.  
1868-'9, c. 162, s. 20.

If, on the trial, the jury find that there is any fraud or conceal-  
2 ment, the judgment shall be that the debtor be imprisoned until a  
3 full and fair disclosure on account of all the money, property or  
4 effects be made by the debtor.

*Banting v. Wright*, Phil., 295.

**Sec. 2544. Issue of fraud made up, debtor not discharged except by trial and verdict.**

R. C., c. 59, s. 17.  
1868-'9, c. 162, s. 21.

After an issue of fraud or concealment is made up, the debtor  
2 shall not discharge himself as to the creditors in that issue, except  
3 by trial and verdict in the same, or by a discharge by consent.

*Houston v. Walsh*, 79—35.

**Sec. 2545. Surety in any bond for appearance may surrender principal.**

R. C., c. 59, s. 24.  
1793, c. 100, s. 7.  
1793, c. 380, s. 1.  
1822, c. 1131, s. 4.  
1868-'9, c. 162, s. 22.

The surety in any bond conditioned for the appearance of any  
2 person under this chapter, may surrender the principal, or such  
3 principal may surrender himself, in discharge of the bond, to the  
4 sheriff or other officer of any court where such principal is bound  
5 to appear, in the manner provided in chapter twenty-one.

**Sec. 2546. Debtor swearing falsely; penalty.**

R. C., c. 59, s. 25.  
1793, c. 100, s. 10.  
1868-'9, c. 162, s. 23.

If any insolvent or imprisoned debtor take any oath prescribed  
2 in this chapter falsely and corruptly, and upon indictment of per-  
3 jury be convicted thereof, he shall suffer all the pains of wilful  
4 perjury, and he shall never after have any of the benefits of this  
5 chapter, but may be sued and imprisoned as though he had never  
6 been discharged.

**Sec. 2547. Creditor liable for prison fees in certain cases.**

R. C., c. 69, s. 5.  
1773, c. 100, ss. 8, 9.  
1821, c. 1103,  
amended.  
1868-'9, c. 162, s. 24.

When any debtor is actually confined within the walls of a  
2 prison, or an order of arrest in default of bail or otherwise, the  
3 jailor must furnish him with necessary food during his confine-  
4 ment, if the prisoner require it, for which the jailor shall have the  
5 same fees as for keeping other prisoners. If the debtor be unable  
6 to discharge such fees, the jailor may recover them from the party  
7 at whose instance the debtor was confined. And when the debtor  
8 has remained in jail for twenty days, the sheriff or jailor may give  
9 notice thereof to the plaintiff, his agent or attorney, and demand  
10 security of him for the prison fees that accrue after such notice,

11 and if the plaintiff fail to give such security, then the sheriff may  
12 discharge the debtor out of custody.

*Veal v. Flake*, 10 Ire., 417; *Phillips v. Allen*, 13 Ire., 10; *Faucett v. Adams*, 13 Ire., 235; *Bunting v. McIlhenny*, Phil., 579.

**Sec. 2548. Who may take prison bounds.**

Any imprisoned debtor may take the benefit of the prison  
2 bounds by giving security, as required by law, except as follows:

- 3 (1) A debtor against whom an issue of fraud is found;
- 4 (2) Any debtor who, for other cause, is adjudged to be impris-
- 5 oned until he make a full and fair disclosure or account of his
- 6 property.

*R. C.*, c. 59, s. 27.  
1818, c. 964.  
1868-9, c. 162, s. 25.

**Sec. 2549. Who may be discharged from prison under this chapter.**

The following persons may be discharged from imprisonment  
2 upon complying with the provisions of this chapter:

- 3 (1) Every putative father of a bastard committed for a failure to
- 4 give bond, or to pay any sum of money ordered to be paid for its
- 5 maintenance;
- 6 (2) Every person committed for the fine and costs of any crim-
- 7 inal prosecution.

*R. C.*, c. 59, s. 1.  
1773, c. 100, s. 1.  
1808, c. 746, s. 2.  
1810, c. 797, c. 802.  
1830, c. 33.  
1838, c. 23.  
1840, chap's 33, 34.  
1852, c. 49.  
1868-9, c. 162, s. 26.

*State v. Bryan*, 83-611.

**Sec. 2550. How application to be made.**

Every such person, having remained in prison for twenty days,  
2 may apply by petition to the court, where the judgment against  
3 him was entered, praying to be brought before such court at a time  
4 and place to be named in the petition, and to be discharged upon  
5 taking the oath hereinafter prescribed.

*R. C.*, c. 59, s. 1.  
1773, c. 100, s. 1.  
1808, c. 746, s. 2.  
1810, c. 797, c. 802.  
1830, c. 33.  
1838, c. 33.  
1840, chap's 33, 34.  
1852, c. 49.  
1868-9, c. 162, s. 27.  
1873-4, c. 90.

**Sec. 2551. Applicant to serve notice on sheriff or other officer by whom he was committed.**

The applicant shall cause ten days' notice of the time and place  
2 of filing the petition to be served on the sheriff or other officer, by  
3 whom he was committed.

*R. C.*, c. 59, s. 1.  
1773, c. 100, s. 1.  
1808, c. 746, s. 2.  
1810, c. 797, c. 802.  
1830, c. 33.  
1838, c. 23.  
1840, chap's 33, 34.  
1852, c. 49.  
1868-9, c. 162, s. 28.  
1874-5, c. 11.

*State v. Bryan*, 83-611.

**Sec. 2552. Warrant to bring prisoner.**

The clerk of the superior court, or justice of the peace before whom  
2 such petition is presented, shall forthwith issue a warrant to the  
3 sheriff, or keeper of the prison, requiring him to bring the prisoner  
4 before the court, at the time and place named for the hearing of  
5 the case, which warrant every such sheriff or keeper shall obey.

*R. C.*, c. 59, s. 1.  
1773, c. 100, s. 1.  
1808, c. 746, s. 2.  
1810, c. 797, c. 802.  
1830, c. 33.  
1838, c. 23.  
1840, chap's 33, 34.  
1852, c. 49.  
1868-9, c. 162, s. 29.

**Sec. 2553. Proceedings before court, on return of the warrant.**

R. C., c. 59, s. 1.  
 1773, c. 100, s. 1.  
 1808, c. 746, s. 2.  
 1810, c. 797, c. 802.  
 1830, c. 33.  
 1838, c. 23.  
 1840, chap's 33, 34.  
 1852, c. 49.  
 1868-'9, c. 162, s. 30.

At the hearing of the petition, if such prisoner have no visible  
 2 estate, and take and subscribe the oath or affirmation prescribed in  
 3 the succeeding section, the clerk of the superior court, or justice of  
 4 the peace before whom he is brought, shall administer said oath  
 5 or affirmation to him, and discharge him from imprisonment; of  
 6 which an entry shall be made in the docket of the court, and,  
 7 where the proceeding is before a justice of the peace, the justice  
 8 shall return the petition and orders thereon into the office of the  
 9 clerk of the superior court to be filed.

**Sec. 2554. Oath to be taken.**

R. C., c. 59, s. 1.  
 1773, c. 100, s. 1.  
 1808, c. 746, s. 2.  
 1810, c. 797, c. 802.  
 1830, c. 33.  
 1838, c. 23.  
 1840, chap's 33, 34.  
 1852, c. 49.  
 1868-'9, c. 162, s. 31.  
 1881, c. 76.

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 fifty dollars in any worldly substance, in debts, money or otherwise whatsoever, 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."

State v. Davis, 82—610; State v. Bryan, 83—611.

**Sec. 2555. Who may suggest fraud.**

1868-'9, c. 162, s. 32.

The chairman of the board of commissioners, and every officer  
 2 interested in the fee bill taxed against such prisoner, may oppose  
 3 his taking the oath prescribed in the preceding section; and file  
 4 particulars of the suggestion in writing, when the same shall be  
 5 returned to and stand for trial in the superior court as prescribed  
 6 in this chapter, in other cases of fraud or concealment.

**Sec. 2556. When and by whom application to be made in case of debtors confined.**

1868-'9, c. 162, s. 40.

Whenever any debtor is imprisoned in the penitentiary for any  
 2 term whatever, or in a county jail for any term more than twelve  
 3 months, application by petition may be made by any creditor, the  
 4 debtor, or by his wife, or any of his relatives, for the appointment  
 5 of a trustee to take charge of the estate of such debtor.

**Sec. 2557. To whom application must be made; trustee appointed, when.**

1868-'9, c. 162, ss. 41,  
 42.

The application must be made to the superior court of the county  
 2 where the debtor was convicted; and upon producing a copy of  
 3 the sentence of conviction of such debtor, duly certified by the  
 4 clerk of the court, together with an affidavit of the applicant that  
 5 such debtor is actually imprisoned under such sentence, and is in-  
 6 debted in any sum whatever, the clerk of the court or the judge  
 7 thereof may immediately appoint a trustee of the estate of such  
 8 debtor.

**Sec. 2558. Duty of trustee.**

1868-'9, c. 162, s. 43.

Every trustee under this chapter is required to pay the debts of  
 2 the imprisoned debtor in the manner directed in the succeeding



3 section; and after paying such debts, the trustee shall apply the  
 4 surplus, from time to time, to the support of the wife and children  
 5 of such debtor, under the direction of the superior court; and  
 6 whenever such imprisoned debtor is lawfully discharged from his  
 7 imprisonment, the trustee so appointed shall deliver up to him all  
 8 the estate, real and personal, of such debtor, after retaining a suffi-  
 9 cient sum to satisfy the expenses incurred in the execution of the  
 10 trust and lawful commission therefor.

**Sec. 2559. General power and duty of trustees under this chapter.**

Any trustee appointed under the provisions of this chapter, in  
 2 the several cases therein contemplated, is hereby declared a trustee  
 3 of the estate of the debtor, in respect to whose property such trust-  
 4 tee is appointed for the benefit of creditors, and is invested, from  
 5 the time of appointment, with all the powers and authorities, and  
 6 subject to the control, obligations and responsibilities prescribed  
 7 by law in relation to personal representatives over the estates of  
 8 deceased persons; but all debts shall be paid by the trustees *pro rata*  
 9 equally.

R. C., c. 59, ss. 21,  
 22.  
 1773, c. 100, ss. 5, 6.  
 1827, c. 44.  
 1830, c. 26, s. 2.  
 1868-'9, c. 162, s. 44.

**Sec. 2560. When trustee is to make returns and when his accounts are to be settled.**

Such trustee shall make his returns and have his accounts  
 2 audited and settled by the clerk of the superior court of the  
 3 county where the proceeding was had, in like manner as provided  
 4 for personal representatives.

1868-'9, c. 162, s. 45

**Sec. 2561. Oath of trustee.**

Before proceeding to the discharge of his duty, such trustee shall  
 2 take and subscribe an oath, well and truly to execute his trust ac-  
 3 cording to his best skill and understanding; which oath must be  
 4 filed with the clerk of the superior court.

1818-'9, c. 162, s. 46

**Sec. 2652. More than one may be appointed trustee.**

The court shall have power, when deemed necessary, to appoint  
 2 more than one person trustee under any of the provisions of this  
 3 chapter; but in reference to the rights, authorities and duties  
 4 conferred herein, all such trustees shall be deemed one person in  
 5 law.

1868-'9, c. 162, s. 47

**Sec. 2563. In case of death, &c., of trustee, court may appoint another in his place.**

In case of the death, removal, resignation or other disability of  
 2 a trustee, the court making the appointment may from time to  
 3 time supply the vacancy; and all proceedings may be continued  
 4 by the successor in office in like manner as in the first instance.

1868-'9, c. 162, s. 48

## CHAPTER SIXTY-FIVE.

## INSPECTIONS.

## SECTION.

- 2564. Former places of landing and inspection continued; board of county commissioners may appoint others.
- 2565. To appoint inspectors and to try them for misbehavior in office, and to remove them; proviso in relation to Wilmington; proviso as to inspectors in county of Craven; 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 and to regulate certain prices.
- 2566. When warehouse burnt, inspector not liable.
- 2567. To attend at times and places appointed.
- 2568. Exporting merchant not to be inspector; penalty.
- 2569. Not to have deputies; proviso for flour-inspectors.
- 2570. Inspectors of naval stores when appointed for the city of Wilmington.
- 2571. Vacancies, how filled between meetings of board; assistants in certain cases; principal liable for their acts.
- 2572. Inspectors of tobacco, duty of.
- 2573. To give a manifest of each hogshead.
- 2574. Condemned tobacco re-inspected, when.
- 2575. None exported before inspection.
- 2576. Penalty for falsely branding hogshead.
- 2577. Forgery of stamp, note, &c., of inspector of tobacco.
- 2578. Manner of proceeding when a note is lost.
- 2579. Proceedings of one demanding his tobacco injured since inspection.
- 2580. Owners may turn up, &c., their tobacco.
- 2581. No inspector to buy tobacco.
- 2582. Inspectors of tobacco for Fayetteville.
- 2583. Inspectors to designate quality.
- 2584. To take for inspection lugs from each break.
- 2585. Inspectors of flour to keep blank book, &c.
- 2586. Inspectors of flour not to trade in flour, nor to buy flour condemned by them; penalty.
- 2587. Grades of flour.
- 2588. Barrel of flour to weigh one hundred and ninety-six pounds, net; what flour to pass inspection.
- 2589. Penalty on miller, manufacturer or seller, violating the foregoing provisions.
- 2590. Inspectors may, in certain cases, unpack flour.
- 2591. Seller of barrels deficient in quantity liable, &c.
- 2592. Casks of flour, how inspected.
- 2593. Owner dissatisfied, how to obtain a re-examination.
- 2594. Penalty for exporting flour not passed by inspection.

## SECTION.

- 2595. Penalty on shipper receiving uninspected flour; proviso.
- 2596. Flour not liable to re-inspection in sixty days.
- 2597. Cask not condemned in certain cases if it contain one hundred and ninety-six pounds.
- 2598. Penalty for packing flour in a branded cask.
- 2599. Penalty for altering inspector's brand.
- 2600. Penalty on inspector of flour neglecting his duty.
- 2601. Uninspected flour sold in Fayetteville.
- 2602. "Barrel" or "cask" to include half barrel.
- 2603. Inspectors of beef, pork, rice, &c., to attend to and discharge his duty; penalty for misconduct.
- 2604. Beef and pork, how inspected.
- 2605. Hog's lard, how inspected.
- 2606. Rice, how inspected.
- 2607. Board of county commissioners to appoint inspectors of fish; duties of inspectors; commissioners to prescribe their duties; powers and fees of inspectors; not to apply to fishermen selling fish to packers and shippers.
- 2608. Size of barrels and halfbarrels regulated; penalty, &c.
- 2609. Salted mullet to be packed in certain barrels and packages; to be of a certain size stamped; who a packer; name and place of packer to be stamped on; penalty; proviso as to broken packages; proviso as to fisherman.
- 2610. Barrels of turpentine and tar, of what weight; and of pitch, &c.; of what size, &c.; water not a fraudulent mixture in tar; allowance where barrels weigh more than standard quantity.
- 2611. Turpentine barrels to be branded; penalty on inspector failing.
- 2612. Makers of tar, pitch and turpentine to brand with initials of their names; inspector to keep a book and enter maker's name.
- 2613. Inspectors of naval stores to gauge spirits of turpentine; other persons prohibited; penalty.
- 2614. Penalty for selling or buying tar otherwise than by weight; proviso.
- 2615. Beef, &c., re-inspected if not exported in sixty days; tar, pitch and turpentine in twenty days.
- 2616. No cooper to make barrels for sale but as directed by this chapter.
- 2617. Seller or exporter of beef, &c., to produce inspector's certificate, &c.; penalty for refusal.
- 2618. Penalty on master's receiving without inspection.
- 2619. Proviso as to New Berne.
- 2620. Shingles, of what size.

## SECTION.

2621. Lumber, how inspected.  
 2622. Inspectors of saw-mill lumber near Wilmington appointed.  
 2623. Lumber and tun timber, how inspected in Cape Fear river; penalty for inspecting by other rules.  
 2624. Steam mill lumber, how inspected.  
 2625. Saw-mill lumber and tun-timber, how measured.  
 2626. Shingles, board, &c., to be culled.  
 2627. No inspector to buy cullings, &c.  
 2628. Misdemeanor to act falsely as inspector of any articles.  
 2629. Fines, &c., how applied.  
 2630. Disputes about extra cooperage, &c., in Wilmington, how determined.  
 2631. Sale of firewood in towns to be by cord.  
 2632. Inspectors of wood for New Berne.  
 2633. Inspectors of provisions and forage appointed by any county.

## SECTION.

2634. Duty of inspectors of provisions and forage; may appoint deputies.  
 2635. Inspectors, the bond to be given; their fee.  
 2636. Penalty for selling provisions and forage uninspected.  
 2637. Fees of inspectors, by whom paid; penalty for extortion.  
 2638. Cotton, weighing of, and deduction from weight; penalty.  
 2639. Weigher's oath filed with register; penalty.  
 2640. Cotton sold in Wilmington to be weighed.  
 2641. Who to weigh.  
 2642. Board of county commissioners to fix the fee.  
 2643. Cotton shipped from Wilmington, unless sold in the town, exempt from inspection.

**Sec. 2564. Former places of landing and inspection continued; board of county commissioners may appoint others.**

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 board of 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.

R. C., c. 60, s. 1.  
 1784, c. 206, s. 4.  
 1789, c. 303.  
 1790, c. 331, s. 3.  
 1793, c. 386.  
 1822, c. 1139, s. 2.  
 1869, c. 20, s. 8, sub sec. 29.

**Sec. 2565. To appoint inspectors and to try them for misbehavior in office, and to remove them; proviso in relation to Wilmington; proviso as to inspectors in the county of Craven; 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 and to regulate certain prices.**

The several boards of county commissioners, except when herein otherwise directed, may appoint not more than six inspectors in any town or city, who shall take the oaths prescribed by law, and 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 board may appoint, for the purpose of inspecting timber, such number of inspectors as they consider necessary: *Provided*, that the provisions of this section 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,

R. C., c. 60, ss. 2, 3, 20, 27.  
 1777, c. 120, ss. 6, 9, 10.  
 1787, c. 265, ss. 3, 5.  
 1779, c. 159, ss. 2, 3, 4.  
 1793, c. 386.  
 1811, c. 807, s. 6.  
 1811, c. 812.  
 1850, c. 69, ss. 1, 5.



17 one thousand eight hundred and sixty-eight, entitled "An act  
18 concerning inspectors for the city of Wilmington:" *Provided*;  
19 *however*, that inspectors of turpentine and naval stores in the county  
20 of Craven, for the places of inspection provided by the county  
21 commissioners, shall be elected by the citizens of the county quali-  
22 fied to vote for members of the house of representatives, at the time  
23 of the election of members of congress, in the year one thousand  
24 eight hundred and seventy-four, and at the same time every two  
25 years thereafter; and the polls shall be opened and held under the  
26 same rules and regulations as polls for members of the general as-  
27 sembly; and the sheriff or other officer qualified to hold such elec-  
28 tions, shall, at the court house, declare the persons having the  
29 highest number of votes duly elected inspectors as aforesaid, who  
30 who shall continue in office for two years next after their qualifi-  
31 cation and until their successors shall be elected and quali-  
32 fied; and if two persons shall have an equal number of votes  
33 the sheriff shall make the election as provided for members of the  
34 general assembly. If a vacancy shall occur by death or otherwise  
35 the county commissioners may appoint some suitable person to fill  
36 the unexpired term. The county commissioners shall appoint not  
37 exceeding ten persons, where there may be an inspection of to-  
38 bacco established, to turn up and cooper tobacco. The turners-up  
39 shall hold their appointments during good behavior, but the in-  
40 spectors shall be judges of their behavior; and if the inspectors  
41 find them deficient in duty they shall report them to the commis-  
42 sioners, who shall examine the charge alleged, and if the turners-  
43 up are found guilty, the commissioners shall remove them and ap-  
44 point others. The commissioners shall appoint, where any public  
45 inspection of tobacco is established, two persons skilled in tobacco,  
46 to be pickers, and may authorize one of the pickers to act in the  
47 room of an inspector who is unable to attend to his duties, and in  
48 such case the picker shall take the oath of an inspector and re-  
49 ceive his allowance; and the pickers may be called on to give  
50 the casting vote should the inspectors disagree in the inspection of  
51 any tobacco: *Provided*, that the picker by whose voice any tobacco  
52 shall be condemned shall not be allowed to have the picking  
53 thereof, and that when the picker is so appointed by the board he  
54 shall have the power of inspector, in case of inability of any in-  
55 spector, until the next meeting of the board or until the inspector  
56 can be present. Upon complaint made against any picker, the  
57 commissioners shall inquire into the nature thereof, and if such  
58 picker has been guilty of any misbehavior in the execution of his  
59 duty they shall remove him and appoint another in his stead.  
60 The commissioners may, at the expense of the county, purchase or  
61 rent ground, build or rent warehouses, provide scales and weights  
62 for a tobacco inspection, and allow such salaries to the inspectors  
63 as they judge proper, to be paid as a county charge; and also order

64 and limit the times for the attendance of the inspectors at their re-  
 65 spective warehouses. The commissioners shall from time to time  
 66 regulate what shall be paid as warehouse rent for each hoghead of  
 67 tobacco, and shall appoint some fit person to receive such moneys,  
 68 who shall be accountable to them for the same; and the inspector's  
 69 books shall be proof as to the number of hogsheds received; and  
 70 they shall, as occasion may require, appropriate any part of said  
 71 moneys in repairing or rebuilding their warehouses. The rules  
 72 and regulations aforesaid shall obtain with respect to warehouses  
 73 built by persons on their own lands, and at which a public inspec-  
 74 tion has been established, as to the warehouse rent for each hogs-  
 75 head of tobacco.

**Sec. 2566. When warehouse burnt, inspector not liable.**

If any warehouse, at any of the tobacco inspections, shall happen  
 2 to be burned and tobacco therein destroyed, no inspector shall be  
 3 sued by reason of any notes or receipts by him given for tobacco  
 4 so burned.

R. C., c. 60, s. 24.  
 1777, c. 120, s. 9.

**Sec. 2567. To attend at times and places appointed.**

The several inspectors shall attend, at the times and places by  
 2 law established and directed, to inspect, according to the nature of  
 3 their several appointments, all such tobacco, beef, pork, rice, tar,  
 4 pitch, turpentine, fish, flour, butter, flaxseed, sawed lumber, tun  
 5 timber, and shingles, as shall be exposed to sale for exportation  
 6 within their respective counties.

R. C., c. 60, s. 4.  
 1777, c. 120.  
 1784, c. 206, s. 2.

**Sec. 2568. Exporting merchant not to be inspectors; penalty.**

No merchant, who shall be concerned in the trade and purchase  
 2 of produce for exportation required to be inspected, shall be ap-  
 3 pointed inspector. And if any person, receiving such appoint-  
 4 ment, shall be concerned as a merchant in the exportation of such  
 5 produce, he shall forfeit the sum of sixty dollars, and be removed  
 6 from office by the board of county commissioners on motion made  
 7 by the solicitor of the district, on producing the record of the re-  
 8 covery of the said penalty.

R. C., c. 60, s. 5.  
 1805, c. 681, ss. 1, 2.

**Sec. 2569. Not to have deputies; proviso for flour inspectors.**

No inspector shall appoint a deputy, (except when herein other-  
 2 wise directed,) under the penalty of two hundred dollars: *Provided*,  
 3 that if the quantity of flour, brought to any place of inspection,  
 4 should at any time be so great that the inspector cannot examine  
 5 the same with sufficient dispatch, or if, by reason of sickness he  
 6 should be incapable of discharging the duties of his office, he may  
 7 appoint one or more persons, of good repute and skilled in the  
 8 quality of flour, to assist him in the execution of his office; who  
 9 after having taken the oaths prescribed by law for the inspectors

R. C., c. 60, s. 7.  
 1796, c. 462.  
 1811, c. 807, s. 2.

10 of flour, shall be authorized to inspect and brand flour in the same  
 11 manner as the inspector: *Provided*, that the inspector shall be lia-  
 12 ble for all misconduct in office of his deputies.

**Sec. 2570. Inspectors of naval stores when appointed for the city of Wilmington.**

R. C., c. 60, s. 8.  
 1854, c. —.

All inspectors shall hold their offices during good behavior, un-  
 2 less otherwise directed. Inspectors of naval stores and lumber for  
 3 the town of Wilmington shall be appointed by the county com-  
 4 missioners of New Hanover, every two years, at the first meeting  
 5 held after the first day of March; and where any inspector shall  
 6 be guilty of neglect, malpractice, or misbehavior in office, on com-  
 7 plaint made to the board, they shall summon him to appear before  
 8 them at the ensuing meeting, and, if he is found guilty by the  
 9 verdict of a jury, they shall remove him from office, and appoint  
 10 another in his stead. Two inspectors, whose duties shall be to in-  
 11 spect flour, provisions, and forage for the town of Wilmington,  
 12 shall be appointed by the commissioners of the town of Wilming-  
 13 ton, said commissioners having the right to specify the articles to  
 14 be inspected, the mode of inspection, and the fees to be paid for  
 15 the same, and the length of time that said inspectors shall hold  
 16 their office, and if any such inspectors shall be guilty of neglect,  
 17 malpractice or misbehavior in office, said commissioners shall have  
 18 power to remove him from office and appoint another in his stead.

**Sec. 2571. Vacancies, how filled between meetings of board; assistants in certain cases; principal liable for their acts.**

R. C., c. 60, s. 9.  
 1784, c. 206, s. 3.  
 1793, c. 386.  
 1799, c. 539, s. 2.  
 1811, c. 807, s. 6.  
 1811, c. 812.

Whenever there shall be a vacancy in the office of inspector,  
 2 while the county commissioners are not in session, any three jus-  
 3 tices may appoint some other fit person, until the next succeeding  
 4 meeting of the board; or if any inspector shall be rendered inca-  
 5 pable of performing his duty by sickness, or other accident, he  
 6 may with the consent of three justices, appoint some other person  
 7 as assistant during his sickness or other disability; which consent  
 8 shall be certified under their hands, and lodged with the clerk of  
 9 the board of commissioners, and such assistant shall take the same  
 10 oaths as inspectors; and the inspector shall be liable to the same  
 11 fines and penalties for the assistant's misbehavior as for his own.

**Sec. 2572. Inspectors of tobacco; duty of.**

R. C., c. 60, s. 11.  
 1777, c. 120, s. 3.  
 1789, c. 302, s. 1.  
 1817, c. 942, s. 1.

Inspectors of tobacco shall examine well and carefully, by break-  
 2 ing in at one or more places, every hogshead, cask, or parcel of  
 3 tobacco brought to their respective warehouses for inspection; and  
 4 such tobacco as they shall find good, sound, and merchantable,  
 5 and fit for exportation, they shall cause to be immediately headed  
 6 and hooped, and the number, net weight, and tare, with the name  
 7 of the warehouse, stamped or marked thereon; and for all tobacco  
 8 passed by them in crop hogsheads, they shall give to the owner a



9 receipt or note containing the warehouse, number, gross, tare, and  
 10 net weight, and the kind of tobacco, and therein oblige themselves  
 11 to deliver such tobacco to the owner or his order, when demanded ;  
 12 and for all such tobacco as they shall pass in parcels, they shall  
 13 give the owner a transfer note ; and all such parcels they shall  
 14 immediately pack and prize into hogsheads, of at least one thou-  
 15 sand net weight, to be by them paid in discharge of such transfer  
 16 notes to the persons who shall be possessed of them, deducting  
 17 therefrom when returned to them, at the rate of two per cent. for  
 18 the first month, and one per cent. for every month after one,  
 19 for shrinkage ; and may also charge out of such notes, thirty  
 20 pounds of tobacco for the cask ; and where tobacco is offered for  
 21 inspection, and it appears that part thereof only is fit to pass, the  
 22 owner may separate the good tobacco from the bad ; and where  
 23 the inspectors at any warehouse shall disagree in their opinion of  
 24 the quality of any hogshead of tobacco, or where the tobacco is  
 25 the property of one of the inspectors, then another sworn inspector  
 26 from the nearest warehouse, or a justice of the peace, shall be called  
 27 and decide, and receive or reject the same.

**Sec. 2573. To give a manifest of each hogshead.**

Where any tobacco shall be delivered out of a warehouse, the  
 2 inspectors shall give a separate manifest of each hogshead deliv-  
 3 ered, in which shall be inserted the marks, number, and weight.

R. C., c. 60, s. 12.  
 1789, c. 425.

**Sec. 2574. Condemned tobacco re-inspected, when.**

The proprietor of condemned tobacco shall have the privilege of  
 2 letting it remain in the warehouse six months after inspection, and  
 3 shall be entitled to have the same re-inspected, if he think proper.

R. C., c. 60, s. 13.  
 1794, c. 425.

**Sec. 2575. None exported before inspection.**

No tobacco shall be exported out of the state, until the same has  
 2 been carried to some place of inspection, and there viewed, passed,  
 3 and stamped according to the directions of this chapter.

R. C., c. 60, s. 14.  
 1777, c. 120, s. 5.

**Sec. 2576. Penalty for falsely branding hogshead.**

If any person shall brand, or cause to be branded, any hogshead  
 2 of tobacco, which the inspectors have not examined and branded,  
 3 with a view to induce a belief that such hogshead had been law-  
 4 fully inspected, he shall forfeit and pay one hundred dollars.

R. C., c. 60, s. 15.  
 1789, c. 302, s. 4.

**Sec. 2577. Forgery of stamp, note, &c., of inspector of tobacco.**

If any person shall forge or counterfeit the stamp, note or re-  
 2 ceipt of any inspector of tobacco, or shall offer for sale or payment,  
 3 or demand of any inspector, tobacco on any such forged note or  
 4 receipt, knowing it to be forged, or shall produce to an inspector  
 5 as aforesaid any forged certificate, knowing the same to be forged,

R. C., c. 60, s. 16.  
 1777, c. 120, s. 8.  
 1817, c. 942, s. 2.

6 or shall cause to be exported any hogshead or cask of tobacco  
 7 stamped with a forged or counterfeit stamp, knowing the same, or  
 8 shall take any staves, plank or heading out of any hogshead of to-  
 9 bacco stamped by an inspector as by law directed, after such hogs-  
 10 head shall have been delivered, from any of the public warehouses,  
 11 with a fraudulent intent, the person so offending shall be guilty of  
 12 a felony, and punished as prescribed in section.....of this  
 13 code.

**Sec. 2578. Manner of proceeding when a note is lost.**

R. C., c. 60, s. 17.  
 1777, c. 120, s. 8.  
 1817, c. 942, s. 2.

If any inspector's note shall be lost or destroyed, the owner, on  
 2 making oath before some justice of the peace, of the quantity of to-  
 3 bacco mentioned in the same, and that the note is lost or destroyed,  
 4 and that he is the lawful owner thereof, and entitled to receive the  
 5 tobacco therein mentioned, may obtain a certificate from the jus-  
 6 tice and shall thereby be entitled to receive the tobacco for which  
 7 the lost note was given: *Provided*, that in all such cases the owner  
 8 before obtaining another note for the same, shall give bond with  
 9 approved security to the inspector, who gave the lost or destroyed  
 10 note, or his successor, in double the amount of the value of the to-  
 11 bacco to indemnify the person, who may thereafter produce the  
 12 original note, the value by him paid for the same; the bond taken  
 13 shall be assignable by the inspector taking the same to the person  
 14 producing the original note, who may maintain an action there-  
 15 upon, and such assignment shall exonerate the inspector from any  
 16 claim or demand against him by virtue of the original note.

**Sec. 2579. Proceedings of one demanding his tobacco; injured since inspection.**

R. C., c. 60, s. 18.  
 1777, c. 120, s. 10.

When any person demands tobacco of any inspector on his note,  
 2 and shall have cause to doubt the same hath received damage after  
 3 inspection, three justices of the county (not being merchants) where  
 4 the tobacco is, shall, on the application of the person demanding  
 5 the tobacco, repair immediately to the warehouse, and there (being  
 6 first sworn by some other justice, who is empowered to administer  
 7 such oath) well and carefully view and examine the tobacco in dis-  
 8 pute, and give their opinion whether the same ought to pass or be re-  
 9 jected, according to the best of their judgment and consciences, with-  
 10 out favor or affection; and if in their judgment it is good, sound, and  
 11 fit for exportation, the tobacco passed shall be a sufficient tender to  
 12 the party demanding on the note for the same; and in that case  
 13 the party calling a review shall pay the justices attending eighty  
 14 cents each; but if they reject the tobacco the inspector shall pay  
 15 the said justices, and shall be liable to the owner of the note for  
 16 the value of the tobacco so rejected, and such damages as he may  
 17 sustain by lying out of the same from the time of demanding.

**Sec. 2580. Owners may turn up, &c., their tobacco.**

Any person bringing tobacco to any of the said inspectors may  
2 turn up, pick, prize and cooper his own tobacco, and have free  
3 access to any of the prizes erected by the county for the purpose of  
4 prizing the same. And if any dispute should arise between the  
5 persons bringing tobacco to any warehouse the right of preference  
6 to the prizes shall be determined by the inspectors.

R. C., c. 60, s. 20.  
1787, c. 265, s. 3.

**Sec. 2581. No inspector to buy tobacco.**

No inspector shall, directly or indirectly, buy, or receive by way  
2 of barter, loan or exchange, any tobacco whatsoever, (payments for  
3 his own rents excepted,) under the penalty of forfeiting his office.

R. C., c. 60, s. 22.  
1777, c. 120, s. 10.

**Sec. 2582. Inspectors of tobacco for Fayetteville.**

The board of county commissioners of Cumberland, at the first  
2 meeting after the first day of February, one thousand eight hun-  
3 dred and eighty-three, and every two years thereafter, shall ap-  
4 point one or more inspectors of tobacco; and no person shall in-  
5 spect tobacco in the town of Fayetteville unless so appointed.

R. C., c. 60, s. 28.  
1842, c. 41, s. 1.

**Sec. 2583. Inspectors to designate quality.**

Such inspectors shall designate four qualities of tobacco, to be  
2 known as follows; first, second and third qualities, and refused or  
3 unmerchantable; and they shall mark it according to the quality,  
4 and give notes, designating the same.

R. C., c. 60, s. 29,  
1842, c. 41, s. 2.

**Sec. 2584. To take for inspection lugs from each break.**

The inspectors in Fayetteville shall take from each break not  
2 less than four nor more than six hands, or lugs of tobacco, and  
3 deliver one-half to the owner or consignee, and retain the other  
4 half, marked according to the quality, and keep the same for the  
5 inspection of any person who may wish to examine it, until the  
6 tobacco is shipped or sold.

R. C., c. 60, s. 30.  
1842, c. 41, s. 3.

**Sec. 2585. Inspectors of flour to keep blank books, &c.**

It shall be the duty of all inspectors of flour in this state to keep  
2 a blank book and register therein the number of barrels inspected  
3 by him or his deputy each day, the name or names of the person  
4 or persons for whom the inspection was made, with the different  
5 grades or qualities of each lot inspected by him, and the said book  
6 or books shall be kept open by him for review or inspection of the  
7 public.

1858-'9, c. 56.

**Sec. 2586. Inspectors of flour not to trade in flour, nor to buy flour condemned by them; penalty.**

No inspector of flour or his deputies shall, directly or indirectly,  
2 trade in flour, bread or other articles made of flour, under the pen-  
3 alty of two hundred dollars; and every inspector so offending and

R. C., c. 60, s. 31.  
1810, c. 790, s. 11.  
1811, c. 807, s. 5.



4 thereof convicted, shall be disqualified for acting in his office; and  
 5 no inspector of flour shall, directly or indirectly, purchase any  
 6 flour by him condemned; nor any other flour than for his own  
 7 use, under the penalty of seven dollars for every barrel by him  
 8 purchased.

**Sec. 2587. Grades of flour.**

R. C., c. 60, s. 32.  
 1813, c. 852, s. 3.  
 1852, c. 135, s. 1.

The several grades of flour shall be distinguished as follows,  
 2 namely: family, superfine, fine, and cross middling; and inspectors  
 3 of flour shall conform their inspection, as near as may be, to the  
 4 inspection observed and in use in the adjacent states.

**Sec. 2588. Barrel of flour to weigh one hundred and ninety-six pounds net; what flour to pass inspection.**

R. C., c. 60, s. 33.  
 1791, c. 345, ss. 1, 2.  
 1807, c. 728, s. 1.  
 1810, c. 790, ss. 4, 5,  
 6.

Each barrel of flour, exposed to sale in or exported from the  
 2 state, by land or water, shall contain one hundred and ninety-six  
 3 pounds; and each half barrel, ninety-eight pounds of net flour,  
 4 well ground, bolted, and packed, merchantable and of due fineness,  
 5 without any mixture of coarse flour, or flour of any other grain  
 6 than wheat; and every barrel shall be made of good seasoned  
 7 wood, tightened with ten hoops, sufficiently nailed with flour nails  
 8 in each chine-hoop and three nails in each upper bilge hoop; and  
 9 the dimensions shall be as follows, namely: the staves shall be  
 10 twenty-seven inches in length, and the head seventeen and one-  
 11 half inches in diameter; and the half barrel shall be of the follow-  
 12 ing dimensions, namely: the staves twenty-three inches in length,  
 13 and the head twelve and one-half inches in diameter; and every  
 14 miller or manufacturer of flour for sale or exportation shall provide  
 15 and keep a distinguishing mark or brand, containing the initials of  
 16 his Christian name, and his surname at length, with which he shall  
 17 brand every cask of flour, and mark thereon the net and tare  
 18 weight, before the same shall be removed from the place where it  
 19 was bolted; and every miller or manufacturer shall receive the  
 20 sum of ten cents for bolting, packing and nailing every barrel of  
 21 flour bolted, and that only.

**Sec. 2589. Penalty on miller, manufacturer or seller, violating the foregoing provisions.**

R. C., c. 60, s. 34.  
 1791, c. 345, s. 2.  
 1807, c. 728, s. 1.  
 1810, c. 790, ss. 5, 6.

Every miller or manufacturer of flour, not complying with the  
 2 provisions of the preceding section, shall pay two dollars for every  
 3 cask of flour not hooped, marked, branded, and nailed as afore-  
 4 said, to be recovered from the miller, or from the person who shall  
 5 bring such flour to any of the places aforesaid for sale; and in  
 6 case said penalty should be recovered from the person bringing  
 7 such flour for sale, he may recover the same from the miller, or  
 8 bolter from whom he purchased or received the same: *Provided*, that  
 9 he gave notice to the miller or bolter that he intended to carry the  
 10 same to one of the places aforesaid for sale or exportation, and

11 that he requested said miller or bolter to secure and brand the bar-  
 12 rels. And every miller or manufacturer, putting into any cask a  
 13 less quantity than herein directed, shall forfeit and pay for the de-  
 14 ficiency of each pound the sum of ten cents.

**Sec. 2590. Inspectors may, in certain cases, unpack flour.**

The inspector, upon his suspicion, or at the request of the pur-  
 2 chaser, shall unpack any cask of flour; and if there shall be a less  
 3 quantity than above directed, the miller, bolter, or seller shall pay  
 4 the charges of unpacking and repacking, besides the penalties afore-  
 5 said; but otherwise, they shall be paid by the inspector, or by the  
 6 purchaser, if the trial be made at his request.

R. C., c. 60, s. 35.  
 1810, c. 790, s. 7.

**Sec. 2591. Seller of barrels deficient in quantity liable, &c.**

When any person shall sell a barrel of flour not containing the  
 2 full quantity, the purchaser, unless there shall be a special con-  
 3 tract to the contrary, shall be allowed to recover the value of the  
 4 deficiency in a civil action for money had and received.

R. C., c. 60, s. 36.  
 1807, c. 728, s. 2.

**Sec. 2592. Casks of flour, how inspected.**

Every inspector shall inspect and try each cask brought to him  
 2 to be inspected, by boring through the cask from one head, with  
 3 an instrument not exceeding half an inch in diameter and equal  
 4 in length with a barrel of flour, to be by him provided for the pur-  
 5 pose; and if he shall judge that the same is well packed and mer-  
 6 chantable, he shall plug up the hole and brand the cask in the  
 7 quarter, with the name of the place in which he is inspector, with  
 8 a public brand to be by him provided; and shall also brand and  
 9 mark the degree of fineness which he shall determine the same to  
 10 be of; for which trouble the inspector shall receive from the owner  
 11 five cents for every barrel; and no inspector shall pass any flour  
 12 which shall be unmerchantable, but shall cause the same to be  
 13 marked on the bilge "*condemned*"; or secure it for further exam-  
 14 ination if required; and the inspector may receive from the owner  
 15 the same fees as if it had been passed; and every inspector shall,  
 16 if required, give the owner of the flour inspected and branded, a  
 17 certificate of the same, and shall keep a record or book of inspec-  
 18 tion of all flour inspected and branded as aforesaid, setting forth  
 19 the owner of the flour and miller's name, with the quality of each  
 20 cask.

R. C., c. 60, s. 37.  
 1791, c. 345, s. 3.  
 1810, c. 790, s. 8.  
 1813, c. 852, s. 3.  
 1852, c. 135, s. 2.

**Sec. 2593. Owner dissatisfied how to obtain a re-examination.**

Whenever any person may think himself aggrieved by the de-  
 2 cision of any inspector of flour, the owner or his agent may secure  
 3 it for further examination, which shall be made within sixty days  
 4 by applying to a justice, who shall issue a warrant directed to three

R. C., c. 60, s. 38.  
 1811, c. 807, s. 1.

5 indifferent persons, well skilled in the manufacture of flour, one of  
 6 whom shall be named by the owner of the flour, one by the in-  
 7 spector, and the third by the magistrate; which persons, having  
 6 first taken the oath directed for inspectors, shall carefully examine  
 9 the flour, and if they, or any two of them, shall differ from the in-  
 10 spector as to the quality, the inspector shall brand and mark the  
 11 same according to their judgment, and he moreover shall pay all  
 12 costs attending the examination; but if they shall be of opinion  
 13 that the judgment of the inspector is correct, the owner shall pay  
 14 costs.

**Sec. 2594. Penalty for exporting flour not passed by inspector.**

R. C., c. 60, s. 39,  
 1810, c. 790, s. 8.

No person shall export, or lade on board of any ship or vessel for  
 2 exportation out of the state, any barrel of flour marked "*condemned*,"  
 3 by an inspector, or any barrel of flour not inspected or branded as  
 4 aforesaid, on pain of forfeiting ten dollars for every barrel of flour  
 5 exported, or put on board of any ship or vessel for exportation.

**Sec. 2595. Penalty on shipper receiving uninspected flour; proviso.**

R. C., c. 60, s. 40,  
 1811, c. 807, s. 3,  
 1813, c. 852, s. 2,  
 1844, c. 49, s. 3.

If any master, owner, or commander of a ship, vessel, boat or  
 2 craft shall receive any barrel of flour on board for exportation or  
 3 transportation from one town or port, being a place of inspection,  
 4 to another, which is not inspected and branded as herein directed,  
 5 he shall forfeit and pay five dollars for every barrel so received:  
 6 *Provided*, that the provisions of this section shall not extend to the  
 7 transportation of flour from Fayetteville to Wilmington.

**Sec. 2596. Flour not liable to re-inspection in sixty days.**

R. C., c. 60, s. 41,  
 1811, c. 807, s. 4.

Any cask of flour, which has been inspected and branded at any  
 2 one place of inspection in the state, shall not be subject to re-ex-  
 3 amination and inspection in another, unless, after such inspection,  
 4 it shall have remained for sixty days before it is exported; and  
 5 the certificate of the inspector shall be conclusive evidence of the  
 6 time when the flour was inspected.

**Sec. 2597. Cask not condemned in certain cases, if it contain one hundred and ninety-six pounds.**

R. C., c. 60, s. 42,  
 1828, c. 84, s. 2,  
 amended.

No inspector of flour shall condemn any flour cask for not being  
 2 precisely of the dimensions required by this chapter: *Provided*,  
 3 such cask shall come within one-half inch of the length of the  
 4 stave, and one-half inch in the diameter of the head, of the meas-  
 5 urement required, and shall contain one hundred and ninety-six  
 6 pounds of flour.

**Sec. 2598. Penalty for packing flour in a branded cask.**

R. C., c. 60, s. 43,  
 1810, c. 790, s. 9.

If any person shall pack for sale flour or meal of any kind what-  
 2 ever in a cask which has been inspected and branded with the  
 3 name of a miller, he shall forfeit and pay twenty dollars for every



4 barrel, one half to the informer, the other half to the miller, and  
5 be further liable to the action of the party aggrieved.

**Sec. 2599. Penalty for altering inspector's brand.**

If any person shall alter the mark branded on any cask of flour  
2 by an inspector, or shall mark or brand any cask of flour which  
3 has not been inspected, with any mark or brand similar to, or in imi-  
4 tation of any inspector's mark or brand, or after an inspector shall  
5 have passed any cask of flour as merchantable, shall pack into  
6 said cask any other flour, or after any cask of flour shall be branded  
7 "*condemned*," shall unpack and repack the same in other casks for  
8 exportation, he shall forfeit and pay seven dollars for every cask,  
9 and be guilty of a misdemeanor.

R. C., c. 60, s. 44.  
1791, c. 345, s. 4.  
1810, c. 790, s. 12.

**Sec. 2600. Penalty on inspector of flour neglecting his duty.**

Every inspector of flour, failing to perform the duties herein  
2 mentioned, shall forfeit and pay ten dollars for every offence.

R. C., c. 60, s. 45.  
1791, c. 345, s. 5.

**Sec. 2601. Uninspected flour sold in Fayetteville.**

Any person may sell flour in the town of Fayetteville, either in  
2 casks or otherwise, without submitting the same to inspection.

R. C., c. 60, s. 46.  
1835, c. 91.

**Sec. 2602. "Barrell" or "cask of flour" to include half-barrel.**

Wherever the term barrel or cask of flour may be used in this  
2 chapter, it shall be construed to include a half-barrel, unless the  
3 same be repugnant to the enactment.

R. C., c. 60, s. 47.

**Sec. 2603. Inspectors of beef, pork, rice, &c., to attend to and discharge his duty ; penalty for misconduct.**

Every inspector of beef, pork, rice, flaxseed, fish, tar, pitch, and  
2 turpentine, shall constantly attend at the places for which he shall  
3 be appointed, and shall provide an iron to brand any of the said  
4 commodities, bearing the name of the inspector and his place of  
5 residence, and shall find laborers equally with the owners to assist  
6 in weighing the several commodities he shall inspect and weigh;  
7 and also shall find and provide proper steelyards or scales of the  
8 lawful standard; and if any inspector shall neglect his duty, or  
9 brand or stamp any of the commodities contrary to this chapter,  
10 or brand any empty barrels, or lend his brand to any person, he  
11 shall forfeit and pay for every such offence twenty dollars; and for  
12 branding any empty barrel, or lending his brand, two hundred  
13 dollars; and every other person that shall brand, or procure to be  
14 branded, any cask or barrel, otherwise than by the inspector or by  
15 his assistant, shall forfeit and pay for every offence the same fines  
16 and penalties as inspectors are by this section liable to pay for  
17 similar breaches of duty or misbehavior.

R. C., c. 60, s. 48.  
1784, c. 206, s. 7.

**Sec. 2604. Beef and pork, how inspected.**

R. C., c. 60, s. 49.  
1784, c. 206, s. 8.  
1784, c. 221, s. 5.  
1791, c. 349, s. 1.

All beef or pork, packed for sale or exportation, shall be put in  
2 good and sufficient new, white oak, turkey or water oak casks,  
3 which shall not contain, each barrel, more than twenty-eight gal-  
4 lons, wine measure, and fifteen gallons, each half-barrel; and such  
5 cask shall be made of timber, seasoned at least six months after  
6 the riving, the staves not less than half an inch thick when  
7 wrought, the head not less than three quarters of an inch thick,  
8 and well dowelled, twelve good substantial hoops on each cask, and  
9 the whole to be tight, fit to hold pickle, and made in a workman-  
10 like manner; and each barrel shall contain at least two hundred  
11 pounds of good, sound and clean merchantable meat, well salted  
12 and cured, with at least half a bushel of salt to each barrel, and  
13 nailed and packed, with no more than two heads, and without any  
14 boar's flesh, in any barrel of pork, and without any heads or bull's  
15 flesh, or more than two shins in any barrel of beef; and each half-  
16 barrel shall contain one hundred pounds of salted meat, and if  
17 beef, not more than one shin, and if pork, not more than one head.

**Sec. 2605. Hog's lard, how inspected.**

R. C., c. 60, s. 50.  
1784, c. 221, s. 5.

All hog's lard, exported in casks, shall be inspected respecting  
2 the quality thereof, for which the inspectors shall be entitled to  
3 fees similar to those allowed for pork, respect being had to the size  
4 of the cask; and hog's fat or lard shall not be exported unless in  
5 cypress, white oak, or juniper casks, and inspected under the pen-  
6 alties inflicted for exporting uninspected pork.

**Sec. 2606. Rice, how inspected.**

R. C., c. 60, s. 51.  
1784, c. 206, s. 8.

Every cask of rice, intended for sale or exportation, shall be  
2 filled with sound and well cleaned rice; and after the same has  
3 been inspected and found good and merchantable, it shall be  
4 branded as aforesaid, and a certificate thereof given to the owner,  
5 bearing date, in words at length, the same day such commodity  
6 was inspected and passed.

**Sec. 2607. Board of county commissioners to appoint inspectors of fish; duties of inspectors; commissioners to prescribe their duties; powers and fees of inspectors; not to apply to fishermen selling fish to packers and shippers.**

1881, c. 119 s. 2.

The board of county commissioners of every county where fish  
2 are packed for sale or shipment, shall appoint and qualify one or  
3 more sworn "inspectors of fish" at or near all packing localities,  
4 whose duty it shall be to inspect all fish packed for sale or ship-  
5 ment; and all barrels, half-barrels and packages of fish inspected  
6 and approved by them shall be branded with the word "inspected"  
7 and the name of the inspector. Said board shall regulate and pre-  
8 scribe the duties, powers and fees of said inspector, which fees shall  
9 not exceed ten cents per barrel and five cents per half-barrel and

9 smaller packages, to be paid by the shipper. This section shall  
 10 not apply to fishermen who may sell their fish to packers and  
 11 shippers by weight, or otherwise as they may agree.

**Sec. 2608. Size of barrels and half-barrels regulated; penalty, &c.**

All fish packed for market shall be packed in half-barrels, of the  
 2 following dimensions, to-wit: thirteen inches in diameter at the  
 3 head on the inside of the staves, which staves shall be twenty-five  
 4 inches in length and confined by at least ten hoops to each barrel,  
 5 and shall contain not less than one hundred pounds of sound fish,  
 6 net, with sufficient quantity of salt. Firkins, tubs, kits and smaller  
 7 packages other than half-barrels, shall be sold at their net weight,  
 8 which shall be marked on said package; and any person packing  
 9 or offering for sale fish in barrels or half-barrels of less dimensions  
 10 than is provided for in this section or fraudulently marking the  
 11 weight of said smaller packages, shall for each offence be guilty of  
 12 a misdemeanor, and on conviction thereof shall be fined not more  
 13 than fifty dollars or imprisoned not more than thirty days, or both,  
 14 at the discretion of the court: *Provided*, the penalties of this sec-  
 15 tion shall not apply to the packers and shippers of mullet.

R. C., c. 60, s. 52.  
 1784, c. 206, s. 9.  
 1784, c. 221, s. 3.  
 1796, c. 462, s. 2.  
 1831, c. 16.  
 1879, 3, 189.  
 1881, c. 119.

**Sec. 2609. Salted mullet to be packed in certain barrels and packages; to be of a certain size, stamped; who a packer; name and place of packer to be stamped; proviso as to broken packages; proviso as to fisherman.**

Each package of salted mullet packed and offered for sale by the  
 2 package shall contain certain net weight as follows: Oak barrels,  
 3 two hundred pounds; oak half barrels, one hundred pounds; oak  
 4 quarter barrels, fifty pounds; pine barrels, one hundred and sixty  
 5 pounds; pine half barrels, eighty pounds; pine quarter barrels,  
 6 forty pounds, and all other kinds of barrels shall contain the same  
 7 number of pounds as pine barrels, half and quarter barrels, and  
 8 each package shall be stamped as follows: Two inch mullets and  
 9 over, number one; one and a half inch mullets, number two; one  
 10 inch mullets and under, number three; and fish of different  
 11 lengths and kinds mixed, and any person who shall pack fish as  
 12 principal, or shall have the same done by others for him, shall be  
 13 deemed the packer and shall stamp his name and place of packing  
 14 together with net weight and size of fish as prescribed in this sec-  
 15 tion, on the head of each package before offering for sale or ship-  
 16 ment, and on failure to pack and stamp as herein prescribed, or to  
 17 pack or stamp said package falsely so as to misrepresent the  
 18 weight, or the quality or size of the fish in said package shall be  
 19 deemed guilty of a misdemeanor and upon conviction shall be  
 20 fined not less than five or more than fifty dollars for each and  
 21 every offence, and may be imprisoned at the discretion of the court  
 22 not to exceed one month: *Provided*, that the provisions of this  
 23 section shall not apply to broken packages of fish: *Provided further*,

1873-'4, c. 171.  
 1874-'5, c. 55.



24 that the provisions of this section shall not apply to fishermen  
 25 themselves or those directly engaged with nets and seines, but shall  
 26 apply only to merchants and others who may be classed as packers  
 27 within the proper meaning of the term.

Sec. 2610. Barrels of turpentine and tar of what weight; and of pitch, &c., of what size, &c.; water not a fraudulent mixture in tar; allowance where barrels weigh more or less than standard quantity.

R. C., c. 60, s. 53.  
 1784, c. 206, s. 10.  
 1784, c. 221, ss. 1, 2.  
 1823, c. 1215, ss. 1, 2.  
 1846, c. 57, s. 1.  
 1848, c. 41.  
 1850, c. 72.

Every barrel of soft turpentine or tar shall be of the weight of  
 2 two hundred and eighty pounds gross; every barrel of hard tur-  
 3 pentine, of the weight of two hundred and forty pounds gross;  
 4 every barrel of pitch, shall contain thirty-two gallons; and every  
 5 barrel of turpentine, tar or pitch shall be free of any fraudulent  
 6 mixture, and put in good and sufficient casks made of good sea-  
 7 soned staves, three quarters of an inch thick, and not exceeding  
 8 five inches wide, and not less than thirty nor more thirty-two inches  
 9 long, and heads not less than one nor more than one inch and a  
 10 half thick, and secured with twelve good hoops, except hard tur-  
 11 pentine, which shall be secured with ten good hoops, and the joint  
 12 of the head shall be placed perpendicularly to the bung; and if  
 13 turpentine, tar or pitch shall be fraudulently mixed, the same shall  
 14 be condemned by the inspector, and delivered to the owner on de-  
 15 mand. And forasmuch as it is difficult in warm and rainy weather,  
 16 to separate tar from water, *it is hereby declared*, that water shall not  
 17 be accounted a fraudulent mixture in tar; but in such case the  
 18 barrel shall not be branded by the inspector until the same is as  
 19 free from water as it can be made. And forasmuch as it is diffi-  
 20 cult for the makers of turpentine and tar so to regulate the size of  
 21 their barrels that every barrel shall weigh the number of pounds  
 22 required by this section, *it is provided*, that the inspector shall make  
 23 out two fair bills of the same, the one for the seller and the other  
 24 for the buyer, in which he shall designate the quantity and quality  
 25 of the same, making a proportional allowance to the seller, when  
 26 the barrel shall weigh more than the standard number of pounds  
 27 established by this section, and the same allowance to the buyer,  
 28 when the barrel shall weigh less.

Sec. 2611. Turpentine barrels to be branded; penalty on inspector failing.

R. C., c. 60, s. 54.  
 1821, c. 1081.  
 1833, c. 172.  
 1844, c. 63.  
 1846, c. 57, s. 2.

Every barrel of turpentine, after the same shall be inspected,  
 2 weighed, found clean, and in merchantable order, shall be branded  
 3 or marked by the inspector; the soft with the letter S., and the  
 4 hard with the letter H. And if any inspector shall inspect any  
 5 turpentine or tar, contrary to the directions of this chapter, or  
 6 shall give any bill contrary to the same, he shall forfeit and pay  
 7 fifty dollars for each offence.

Sec. 2612. Makers of tar, pitch and turpentine, to brand with initials of their names; inspector to keep a book and enter maker's name.

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.

R. C., c. 60, s. 55.  
1784, c. 206, s. 11.  
1846, c. 57, s. 2.

Sec. 2613. Inspectors of naval stores to guage spirits of turpentine; other persons prohibited; penalty.

Hereafter inspectors of naval stores, appointed for the town of Wilmington, in New Hanover county, are authorized and required to guage 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 guaged, 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 guage said article of spirits of turpentine in said town of Wilmington, under the penalty of one hundred dollars for each violation.

1856-7, c. 27, ss. 1,  
2.

Sec. 2614. Penalty for selling or buying tar otherwise than by weight; proviso.

If any person shall sell or buy tar in any other manner than by weight, such person shall pay five dollars to any person informing, to be recovered to the use of the person informing before any justice of the peace having jurisdiction of the place of contract upon written information supported by affidavit: *Provided*, he shall not apply when tar is sold in less quantity than one barrel.

1879, c. 145, s. 3.

Sec. 2616. Beef, &c., re-inspected if not exported in sixty days; tar, pitch and turpentine, in twenty days.

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.

R. C., c. 60, s. 56.  
1784, c. 206, s. 12.

**Sec. 2616. No cooper to make barrels for sale but as directed by this chapter.**

R. C., c. 60, s. 57.  
1784, c. 206, s. 15.

No cooper, or any person making casks, shall expose for sale any  
2 barrel or half-barrel for the holding of pork or beef, other than  
3 such as are by this chapter directed to be made for this use, under  
4 the penalty of two dollars; and every such person, before he ex-  
5 poses the same for sale, shall set his proper brand upon them, which  
6 brand shall be recorded in the office of the register of deeds of the  
7 county where he shall reside, under the penalty of twenty dollars  
8 for every neglect.

**Sec. 2617. Seller or exporter of beef, &c., to produce inspector's certificate, &c.; penalty for refusal.**

R. C., c. 60, c. 58.  
1784, c. 206, s. 16.

Every seller or exporter of beef or other commodity directed to  
2 be inspected, shall produce the certificate of the inspector who in-  
3 spected the same, and make oath, if required, before a justice of  
4 the peace, on the delivery of the goods sold or exported, that the  
5 several commodities by him to be sold or exported, are the same  
6 that were inspected and passed, and do contain the full quantity  
7 mentioned in such certificate, without embezzlement, to his knowl-  
8 edge, which oath the justice shall certify on the back of the certifi-  
9 cate, which certificate the seller shall deliver to the buyer of such  
10 commodities, and the person exporting them shall deliver the  
11 certificate to the master of the ship or vessel on board which the  
12 same shall be shipped, and if the seller or exporter shall re-  
13 fuse to make oath, he shall for every such offence forfeit and pay  
14 the sum of two hundred dollars.

**Sec. 2618. Penalty on master receiving without inspection.**

R. C., c. 60, s. 59.  
1784, c. 206, s. 6.

No master or commander of any vessel shall take on board any  
2 such cask or barrel or other inspectable commodity as aforesaid,  
3 without being inspected and branded as required, under the pen-  
4 alty of two hundred dollars for each offence.

**Sec. 2619. Proviso as to NewBerne.**

R. C., c. 60, s. 60.  
1842, c. 39.

*Provided, however,* that the provisions of the four next preceding  
2 sections shall not extend to the town of NewBerne, so far as relates  
3 to tar, pitch and turpentine.

**Sec. 2620. Shingles, of what size.**

R. C., c. 60, s. 61.  
1784, c. 206, ss. 13,  
14.  
1822, c. 1157.  
1826, c. 33.

Shingles shall not be less than eighteen inches long, four inches  
2 broad, and five-eighths of an inch thick; should they be larger  
3 they shall not for that reason be considered unmerchantable.

**Sec. 2621. Lumber, how inspected.**

R. C., c. 60, s. 62.  
1784, c. 206, s. 14.

Boards of plank shall be deemed merchantable, and passed by  
2 any inspector, that are free from splits not more than twelve inches  
3 long, have no edge less than half an inch thick, and as near as  
4 may be of an equal thickness at each end; and every board, plank,



5 piece of scantling, or other square timber, being marked with the  
 6 number of more superficial feet than are contained therein, shall  
 7 be forfeited to the county for the use of the poor: *Provided, never-*  
 8 *theless*, that no shingles, boards, plank or scantling, shall be in-  
 9 spected, unless required by the purchaser.

**Sec. 2622. Inspectors of saw-mill lumber near Wilmington appointed.**

The board of commissioners of the county of New Hanover shall,  
 2 at the meeting at which they appoint inspectors for the town of  
 3 Wilmington, also appoint one inspector for each of the saw-mills  
 4 in the vicinity of said town, for the inspection of lumber only; and  
 5 if any such inspector shall fail, when called upon by the proprie-  
 6 tors or their agents, promptly and faithfully to discharge his duties,  
 7 he shall for every failure forfeit and pay to the party aggrieved  
 8 fifty dollars.

R. C., c. 60, s. 63.  
 1838, c. 30, ss. 1, 2.

**Sec. 2623. Lumber and tun-timber, how inspected in Cape Fear river; penalty for inspecting by other rules.**

The inspection of saw-mill and other lumber and tun-timber on  
 2 the Cape Fear river, and at the several ports belonging to the same,  
 3 shall be governed by the following rules, to-wit: All sound boards  
 4 and planks, with square edges and showing heart one-half the  
 5 length, and as near an equal thickness at both ends as may be,  
 6 and split not more than one-third of the length; all sound scant-  
 7 ling with square edges, and as near the same dimensions at both  
 8 ends as may be, and all sound scantling with square edges two-  
 9 thirds of their length, and the bark not more than one inch wide,  
 10 and as near the same dimensions as may be at both ends; and all  
 11 sound tun-timber squaring eleven inches and upwards, and show-  
 12 ing heart one-half the length, shall be merchantable; and all saw-  
 13 mill or other lumber or tun-timber, not being of such description,  
 14 shall be refused. And all sound timber hereafter inspected and  
 15 refused by reason of not showing heart and not squaring eleven  
 16 inches, shall be culled and the refuse separated from the merchant-  
 17 able, except there be an agreement between the purchaser and the  
 18 seller that the same shall not be done. The purchaser or pur-  
 19 chasers, receiving such timber, sold and inspected on the Cape  
 20 Fear river, shall pay the seller or owner of such timber one-half  
 21 the price for the refuse which may be stipulated to be paid for the  
 22 merchantable. Any inspector who shall inspect saw-mill lumber  
 23 by any rules different from those prescribed by this section, shall  
 24 forfeit and pay the sum of one hundred dollars for every offence.

R. C., c. 60, s. 64.  
 1824, c. 1254, ss. 1, 2.  
 1838, c. 30, ss. 2, 3.  
 1840, c. 41.  
 1850, c. 70, s. 1.

**Sec. 2624. Steam mill lumber, how inspected.**

All steam mill lumber, not herein otherwise provided for, show-  
 2 ing heart one-half the length, shall be merchantable; and no in-  
 3 spector, having a stated salary from the proprietor of a steam mill,  
 4 shall inspect any timber brought to the mill, unless by consent of  
 5 the seller, under the penalty of fifty dollars.

R. C., c. 60, s. 65.  
 1828, c. 26.

**Sec. 2625. Saw-mill lumber and tun-timber, how measured.**

R. C., c. 60, s. 66.

All tun and square timber and saw-mill lumber at the several  
2 markets and mills in the state shall be measured by superficial or  
3 board measure; and any person who shall sell such timber by any  
4 other measure shall pay ten dollars for every offence.

**Sec. 2626. Shingles, boards, &c., to be culled.**R. C., c. 60, s. 67.  
1824, c. 1254, s. 4.  
1830, c. 32.

All shingles, boards, plank and scantling inspected shall be  
2 culled, and the refuse separated from the merchantable, except  
3 there be an agreement otherwise between the purchaser and seller.

**Sec. 2627. No inspector to buy cullings, &c.**R. C., c. 60, s. 68.  
1784, c. 206, s. 19.

No inspector shall purchase any cullings, or other articles that  
2 do not pass inspection, upon pain of forfeiting one hundred dol-  
3 lars.

**Sec. 2628. Misdemeanor to falsely act as inspector of any articles.**R. C., c. 60, s. 69.  
1824, c. 1254, s. 3,  
amended.

If any person, who is not a legal or sworn inspector of lumber or  
2 other articles, presume to act as such, he shall forfeit and pay one  
3 hundred dollars, and be guilty of a misdemeanor.

**Sec. 2629. Fines, &c., how applied.**R. C., c. 60, s. 70.  
1784, c. 206, s. 18.

The several penalties and forfeitures by this chapter inflicted,  
2 unless otherwise provided, shall be applied one-half to the use of  
3 the prosecutor, and the other half to the county wherein such pen-  
4 alty shall be incurred.

**Sec. 2630. Disputes about extra cooperage, &c., in Wilmington, how determined.**R. C., c. 60, s. 71.  
1829, c. 50.  
1842, c. 40.

In case the purchaser and seller cannot agree as to the amount  
2 to be allowed for extra cooperage and defective barrels in the  
3 town of Wilmington, any inspector of naval stores and provisions  
4 in the town, at the instance of either, shall establish the amount  
5 to be allowed therefor, and such estimate shall be conclusive; and  
6 if such inspector refuse to make the estimate when called on, he  
7 shall forfeit and pay twenty-five dollars to any person who will  
8 sue for the same.

**Sec. 2631. Sale of fire-wood in towns to be by cord.**R. C., c. 60, s. 72.  
1784, c. 211.

All fire-wood sold in incorporated towns shall be sold by the  
2 cord and not otherwise; and each cord shall contain eight feet in  
3 length, four feet in height and four feet in breadth; and shall be  
4 corded by the seller, under the penalty of two dollars for each of-  
5 fence, to the use of the informer.

**Sec. 2632. Inspectors of wood for NewBerne.**R. C., c. 68, s. 73.  
1846, c. 198, ss. 1, 2,  
2.

The board of commissioners for the county of Craven may ap-  
2 point one or more inspectors of fire-wood for the town of New-  
3 Berne, who shall reside therein and inspect all such wood as may

4 be carried to the town for sale ; and before entering upon their du-  
 5 ties they shall take the oaths and give the bonds required of other  
 6 inspectors, and shall receive, for inspecting each cord of wood, four  
 7 cents, to be paid by the purchaser.

**Sec. 2633. Inspectors of provisions and forage appointed by any county.**

The board of county commissioners may appoint for their county  
 2 an inspector of provisions and forage, who shall hold his office for  
 3 the term of five years after his appointment.

R. C., c. 60, s. 74.  
 1848, c. 43, s. 1.

**Sec. 2634. Duty of inspectors of provisions and forage ; may appoint deputies.**

Such inspector, when any article of provision or forage is im-  
 2 ported from any place out of the state, such as beef, pork, fish,  
 3 flour made of wheat, buckwheat or rye, (said articles being in bar-  
 4 rels, half-barrels or kegs) ; butter by the firkin ; cheese by the box ;  
 5 hay or fodder pressed in bales or bundles ; or hogsheads of bacon,  
 6 shall be compelled, when such articles are offered for sale, to in-  
 7 spect, examine and brand them according to such rules and regu-  
 8 lations as may be established by the county commissioners : *Pro-*  
 9 *vided, however,* that when any of said articles shall have been before  
 10 inspected by any inspector of the state they shall not be subject to  
 11 re-inspection. Any such inspector, whenever the business may re-  
 12 quire it, may appoint a deputy, who shall take an oath of office, and  
 13 for his official duty and penalties incurred by him the inspector  
 14 shall be liable.

R. C., c. 60, ss. 75,  
 78.  
 1848, c. 43, s. 2.  
 1850, c. 74, ss. 1, 3, 4.

**Sec. 2635. Inspectors, the bond to be given ; their fees.**

The said inspector shall enter into bond in the sum of five hun-  
 2 dred dollars, payable to the state of North Carolina, conditioned  
 3 for the faithful performance of the duties of his office, which bond  
 4 the board shall take ; and he shall be entitled to such fees as may  
 5 be prescribed by the board.

R. C., c. 60, s. 76.  
 1848, c. 43, s. 3.

**Sec. 2636. Penalty for selling provisions and forage uninspected.**

If any person shall sell any article of forage or provisions afore-  
 2 said, without the same having been inspected, contrary to the true  
 3 intent and meaning of this chapter, he shall, for every offence,  
 4 forfeit and pay one hundred dollars.

R. C., c. 60, s. 77.  
 1850, c. 74, s. 2.

**Sec. 2637. Fees of inspectors, by whom paid ; penalty for extortion.**

The fees of inspectors shall be paid by the purchaser or exporter  
 2 of the articles inspected, and if any inspector shall receive any  
 3 greater fees than are by law allowed, he shall forfeit and pay ten  
 4 dollars for every offence to any person suing for the same.

R. C., c. 60, s. 79.  
 1784, c. 206, s. 14.  
 1824, c. 1254, ss. 1, 2.

**Sec. 2638. Cotton, weighing of ; and deductions from weight ; penalty.**

It shall be unlawful for any purchaser or weigher of cotton to  
 2 make any deduction from the weight of any bag, bale or package

1874-'5, c. 58, ss. 1, 3



3 of lint cotton for or on account of the draft, turn or break of the  
 4 scales, steelyards or other implement used in weighing the same,  
 5 or for any other cause except as hereinafter allowed, but said  
 6 weigher may make a proper deduction as shall be agreed on by  
 7 him and the seller or his agent, for water, dirt or other such for-  
 8 eign substance in or on such bag, bale or package of cotton, or for  
 9 other just cause. Any person violating this section shall, on con-  
 10 viction before any judge of the superior court of this state, be fined  
 11 three hundred dollars for every offence.

**Sec. 2639. Weigher's oath filed with register; penalty.**

1874-'5, c. 58, s. 2.

Every public weigher of cotton shall, before entering on the  
 2 duties of his office, make and subscribe the following oath before  
 3 some person entitled to administer it, viz:

"I, ..... , public weigher for the city of ..... , (or as the case may be), do sol-  
 emnly swear that I will justly, impartially and without any deduction except as may be al-  
 lowed by law, weigh all cotton that may be brought to me for that purpose, and tender a true  
 account thereof to the parties concerned if required so to do; so help me God."

4 Such oath when made shall be filed in the office of the register of  
 5 deeds for the county in which the person acts as weigher, and said  
 6 register shall make a note of the same, and any person acting as  
 7 weigher without making and filing the above or some equivalent  
 8 oath, shall be guilty of a misdemeanor, and upon conviction before  
 9 any justice of the peace, be fined twenty-five dollars for every bag,  
 10 bale, or package of cotton weighed.

**Sec. 2640. Cotton sold in Wilmington to be weighed.**

1856-'7, c. 41, s. 1.

All cotton sold in the town of Wilmington shall be weighed,  
 2 under the penalty of one hundred dollars for any bale sold with-  
 3 out being weighed by the proper officer.

**Sec. 2641. Who to weigh.**

1856-'7, c. 41, s. 2.

Cotton shall be weighed by the inspectors of flour and provis-  
 2 ions, who have been, or who may be, from time to time, appointed  
 3 by the board of county commissioners of New Hanover.

**Sec. 2842. Board of county commissioners to fix the fee.**

1856-'7, c. 41, s. 3.

The board of county commissioners of said county shall, from  
 2 time to time, fix the fee, not to exceed ten cents per bale, for the  
 3 weighing of the aforesaid articles, and until said board shall deter-  
 4 mine said fee, the inspector shall be entitled to receive the following  
 5 fee, viz: for every bale of cotton weighed, ten cents.

Sec. 2643. Cotton shipped from Wilmington, unless sold in the town, exempt from inspection.

All cotton shipped from the port of Wilmington, without being  
2 first sold in said town, shall be exempted from inspection and all  
3 charges therefor: *Provided*, that if cotton shipped is weighed it  
4 shall be done by the regular inspectors.

1856-'7, c. 41, s. 4.

## CHAPTER SIXTY-SIX.

### INSURANCE.

#### SECTION.

- 2644. Foreign stock companies; amount of stock required.
- 2645. Foreign mutual companies; amount of assets required.
- 2646. Agent to accept service required; secretary of state to make appointment in certain cases.
- 2647. Companies to make annual statement; how attested; what statement shall show.
- 2648. Annual tax when paid exempt from county and corporation tax.
- 2649. General agent; license fee, when paid.
- 2650. North Carolina stock companies, capital required; mutual companies, assets required; annual statements required; statements of mutual companies.
- 2651. Statements examined by secretary of state; when to be approved; publication thereof; certificate to be given to companies; new statement and examination, when required; license revoked.
- 2652. Statements to be kept on file; companies failing to pass an approved examination.

#### SECTION.

- 2653. Statement of taxes and licenses to be furnished to auditor; paid to treasurer.
- 2654. Fire insurance companies required to deposit ten thousand dollars with state treasurer; provisos.
- 2655. Failure of company to pay judgment recovered by citizen on policy issued in the state, treasurer to raise sufficient amount upon deposit to discharge judgment; notice to company; deposit increased to ten thousand dollars, &c.
- 2656. Treasurer's fee.
- 2657. Applicable to companies against which final judgments have been obtained.
- 2658. How deposits may in part be withdrawn.
- 2659. How deposits may be altogether withdrawn; when no policies are in force and all losses paid by re-insurance.
- 2660. Limit of actions against insurance companies.
- 2661. Action against defaulting agents.
- 2662. Penalties.

Sec. 2644. Foreign stock companies; amount of stock required.

No insurance company, association or partnership, organized  
2 under the laws of any other state, and having a specific capital,  
3 shall, by its agent in this state, insure property therein or contract  
4 for insurance with any residents in this state unless its capital stock  
5 amounts to one hundred thousand dollars, all of which sum shall  
6 have been paid in cash and invested; nor unless the company is  
7 restricted by its charter or otherwise from incurring greater haz-  
8 ard in one risk than one-tenth of its unimpaired capital; nor un-  
9 less the company has complied with the laws of this state.

1876-'7, c. 157, s. 1.

Sec. 2645. Foreign mutual companies; amount of assets required.

Any mutual insurance company, association or partnership, lo-  
2 cated in any other state, possessed of the one hundred thousand  
3 dollars in cash or security, invested in available assets, may be ad-  
4 mitted to take risks and transact business in this state: *Provided*,  
5 it shall comply with all the other requirements of the laws of this  
6 state relating to companies of other states.

1876-'7, c. 157, s. 2.

Sec. 2646. Agent to accept service required; secretary of state to make appointment in certain cases.

1876-'7, c. 157, s. 3.

No insurance company, association or partnership, not incorporated by the laws of this state, shall, directly or indirectly, issue policies, take risks or transact business in this state until it shall have appointed an agent residing in this state, who shall act in that capacity until a successor be duly appointed and upon whom any civil process may be served, and such service shall be binding and shall be personal service upon the company appointing him; a certificate of such appointment under the seal of the company shall be filed with the secretary of state, and copies certified by him shall be sufficient evidence; and this certificate shall contain a stipulation that in case of the death, absence or removal from the state of such agent, the company shall forthwith appoint another agent in his stead, and failing to do so the secretary of state shall make such appointment, notifying the company thereof; and if such company withdraw from or cease to do business in this state, service upon such agent shall nevertheless be binding and deemed a personal service upon such company so long as any liability remains outstanding against the company in this state.

Sec. 2647. Companies to make annual statement; how attested; what statement shall show.

1876-'7, c. 157, s. 4.

Every insurance company, association or partnership, not incorporated by the laws of this state, before being admitted to do business in this state, and on or before the first day of February in each year, shall transmit to the secretary of state, and file in his office in such form as he shall prescribe, a statement of its business standing and affairs on the preceding thirty-first day of December, signed and sworn to by the president, vice-president or secretary of the company before the secretary of state, or before a commissioner of affidavits of North Carolina, which statement shall set forth the liabilities and assets of said company, how and in what manner their assets are invested, and shall give the "reserve," if any, of said company as calculated by an expert actuary, and the number of judgments, if any, not fully paid and satisfied against the company in this state, in what court and at what time they were obtained, the amount due on the same and to whom due, and whether or not an appeal has been taken by the said company from the said judgment or judgments, and also the total amount of insurance in the state, the losses incurred and the losses paid, the claims litigated and in process of litigation.

Sec. 2648. Annual tax when paid exempt from county and corporation tax.

1876-'7, c. 157, s. 6.

Every such company, association or partnership shall pay an annual tax of two per centum to the secretary of state upon the gross receipts derived from the premiums charged for insurance



4 obtained therein, unless the company shall exhibit to the secre-  
5 tary of state a sworn statement of investments in real property,  
6 situated in this state, on loans secured by mortgage to citizens of  
7 this state of an amount equal to one-half of such gross receipts,  
8 when the tax shall be one per centum, said tax to be paid semi-  
9 annually within thirty days after the first day of January and  
10 July of each year. Each general agent shall be required on the  
11 above-named days to make a statement to the secretary of state,  
12 under oath, that the amount by him returned is a full and correct  
13 statement of the year: *Provided*, that no county or corporation shall  
14 be allowed to add any additional tax; *Provided, further*, that the  
15 tax required shall not be in addition to that prescribed in the rev-  
16 enue act.

**Sec. 2649. General agent; license fee, when paid.**

Every such company shall be required to appoint a general 1876-'7, 157, s. 6.  
2 agent, who shall obtain license from the secretary of state before  
3 transacting any business in this state; and before any such license  
4 is granted the applicant shall show to the secretary of state his ap-  
5 pointment as general agent under the seal of the company, and  
6 thereupon the license shall be granted by the payment of one hun-  
7 dred dollars, and such license shall be renewed annually by the  
8 payment of said sum. And any agent or other person found so-  
9 liciting insurance without such license shall be guilty of a misde-  
10 meanor and be fined not less than one thousand dollars and im-  
11 prisoned not less than ninety days. The license herein provided  
12 for shall be paid on or before the first day of April of each year,  
13 and shall be for the next ensuing twelve months from the first day  
14 of April; and the secretary of state is authorized to receive from  
15 companies after the first day of April so much of said license fee  
16 as may be due for the remainder of the year.

**Sec. 2650. North Carolina stock companies, capital required; mutual compa-  
nies, assets required; annual statements required; statements of mutual com-  
panies.**

Every insurance company, association or partnership, having a 1876-'7, c. 157, s. 7.  
2 specific capital, hereafter chartered by this state, shall have a cap-  
3 ital stock of one hundred thousand dollars paid in and invested:  
4 *Provided*, that no purely mutual insurance company applying for  
5 charter from this state shall be granted a charter or license to do  
6 business, until it has satisfied the secretary of state that it has at  
7 least fifty thousand dollars in good and approved notes deposited  
8 in the hands of the treasurer of such company, subject to assess-  
9 ment by the officers of the company, if necessary to pay losses, or  
10 suit on the part of the policy holders in order to receive claims;  
11 the said notes of fifty thousand dollars are only to be assessed  
12 when the cash premiums in the hands of the company are inade-

13 quate to pay losses, and the same may be retired when the com-  
14 pany shall show that it has a cash surplus on hand sufficient to  
15 replace the same; and all insurance companies, associations or  
16 partnerships chartered by this state shall, on or before the first  
17 day of March in each year, render to the secretary of state a state-  
18 ment signed and sworn to by its president or secretary, of its con-  
19 dition upon the preceding thirty-first day of December, which  
20 shall include a detailed statement of its assets and liabilities on  
21 that day, the amount and character of business transacted, moneys  
22 received and expended during the year, the total amount of insur-  
23 ance in this state, the losses incurred and the losses paid, the claims  
24 litigated and in process of litigation, and such other information  
25 as the secretary of state may deem necessary: *Provided*, that the  
26 statements required of purely mutual companies, taking notes in  
27 whole or in part for premiums, which notes are liable to assess-  
28 ments, shall be in such form as the secretary of state may pre-  
29 scribe, adapted to the use of such companies. And any insurance  
30 company, association or partnership, incorporated or doing busi-  
31 ness or which may hereafter be authorized to do business under  
32 the laws of this state, failing to make and file the statements re-  
33 quired by this chapter for the space of thirty days after the expi-  
34 ration of the time fixed by this chapter, shall be deemed insolvent,  
35 and the license of such company shall be forthwith annulled.

**Sec. 2651.** Statements examined by secretary of state; when to be approved; publication thereof; certificate to be given to companies; new statement and examination when required; license revoked.

1876-'7, c. 157, s. 8.

It shall be the duty of the secretary of state to receive and thor-  
2 oughly examine the statements required by this chapter, and  
3 fully investigate the business affairs and finances of such company,  
4 association or partnership making the same; and if, upon such  
5 examination, such company, association or partnership, shall ap-  
6 pear to be doing business upon sound principles, and within the  
7 provisions of its charter, and in compliance with the laws of North  
8 Carolina, then the secretary of state shall approve the report made  
9 aforesaid: *Provided*, that the said secretary of state shall not ap-  
10 prove the statement as aforesaid of any fire or marine companies  
11 doing business in this state, unless they show by the said state-  
12 ment a reserve of at least fifty per centum of the premiums; of  
13 any mutual life companies, unless they show by the said statement  
14 a re-insurance reserve calculated on a basis of four and one-half  
15 per centum; of any stock companies, unless they show by their  
16 statement a re-insurance reserve calculated on a basis of at least  
17 six per centum; and the said secretary of state shall not approve  
18 the statement of any of said companies, associations or partnerships  
19 that have a judgment against them in any of the courts of this state  
20 from which no appeal has been granted, for which examination and  
21 investigation he shall be paid by such companies, associations or

22 partnerships the sum of twenty-five dollars. When such state-  
23 ments shall have been approved, as aforesaid, the secretary of state  
24 shall publish the same in one of the newspapers published in the  
25 city of Raleigh, to be agreed upon by the secretary of state and  
26 the general agent of the company, at the expense of the company:  
27 *Provided*, that the agent of any marine insurance company may se-  
28 lect some newspaper published in this state, in which the report of  
29 such company shall be published; and it shall be the duty of the  
30 secretary of state, at his own expense, to publish the names of all  
31 companies that refuse to send in their statements as required by  
32 this chapter; also the names of such companies as have failed in  
33 business, and the names of all companies that failed to pass an ap-  
34 proved examination; and the secretary of state is hereby required  
35 to give to all such companies as shall comply with the provisions  
36 of this chapter a certificate that they have complied with the pro-  
37 visions thereof, and such company, association or partnership is  
38 forbidden to do business without such certificate; and any agent  
39 or manager of such company, association or partnership who  
40 shall attempt to transact the business of the same without having  
41 first obtained a certificate as aforesaid, shall be guilty of a misde-  
42 meanor, and upon conviction thereof shall be fined not less than  
43 five hundred dollars nor more than one thousand dollars and im-  
44 prisoned at the discretion of the court. The attorney-general is  
45 hereby empowered to enforce the provisions of this section upon  
46 information furnished by the secretary of state. It shall be the  
47 duty of any officer having in his possession or control any books,  
48 accounts or papers of any company, association or partnership of  
49 which he is an officer, to exhibit the same to the secretary of state  
50 on demand, and to give him all necessary information to enable  
51 him to make a full and correct report; and any such officers fail-  
52 ing or refusing so to do, or who shall knowingly or wilfully make  
53 any false statement respecting the affairs of the company of which  
54 he is an officer shall be guilty of a misdemeanor, and upon convic-  
55 tion thereof shall be fined or imprisoned, or both, at the discretion  
56 of the court. And if, at any time, during any year, the secretary  
57 of state shall have cause to believe that any of the said companies,  
58 associations or partnerships that have reported to him as aforesaid  
59 and have passed an approved examination, could not at that time  
60 pass the said examination, the secretary of state shall order the  
61 said company to make to him a new report; and when the secre-  
62 tary of state shall become satisfied that the statement upon which  
63 a license was granted is fraudulent, or that the capital of the com-  
64 pany since the granting of the license has become impaired, he  
65 shall have authority to revoke and cancel the same.



Sec. 2652. Statements to be kept on file; companies failing to pass an approved examination.

1876-'7, c. 157, s. 9.

It shall be the duty of the secretary of state to keep on file in his office, for the inspection of the public, a copy of all the reports received by him, and the secretary of state, upon demand therefor, shall forward to the clerks of the superior court of each and every county, under the seal of his office, a statement of each company that shall have passed an approved examination, and he shall also furnish to the said clerks a certified list of all such companies as may have failed in business, and the names of all such companies that failed to pass an approved examination, and the names of all such companies as have failed to send in their statement as required by this chapter. It shall be the duty of the clerks aforesaid, upon the receipt of such certified statement, to cause to be copied the same in a book kept for the purpose, furnished by the secretary of state, which book shall be open to the inspection of the public, and for which service each clerk shall be entitled to a fee of two dollars, to be paid by the secretary of state.

Sec. 2653. Statement of taxes and licenses to be furnished to auditor; paid to treasurer.

1876-'7, c. 157, s. 10.

The secretary of state shall furnish to the auditor, on the first of each month, a statement in detail of the taxes and license fees received by him from insurance companies during the previous month, and shall pay to the treasurer the amount in full of such taxes and fees.

Sec. 2654. Fire insurance companies required to deposit ten thousand dollars with state treasurer; provisos.

1879, c. 222, s. 1.

It shall not be lawful for any fire insurance company or association to transact any business or receive any premium upon risk against loss by fire until it shall have deposited with the treasurer of this state ten thousand dollars in United States bonds: *Provided*, that this section shall not apply to those companies or associations that invest all their assets in this state: *Provided*, that this chapter shall not be construed so as to deprive any company making such deposits of bonds from using the coupons or such bonds while they are so deposited.

Sec. 2655. Failure of company to pay judgment recovered by citizen on policy issued in this state, treasurer to raise sufficient amount upon deposit to discharge judgment; notice to company; deposit increased to ten thousand dollars, &c.

1879, c. 222, s. 2.

Upon the failure of any defendant company to satisfy and pay any final judgment recovered by any citizen of this state upon any policy of insurance issued in this state within ninety days after the rendition of such final judgment, then, upon the filing with the state treasurer of a transcript of such judgment, he shall raise upon such securities deposited by such defendant company by sale or

7 otherwise, a sufficient sum to discharge such judgment, interest and  
8 costs, which he shall so apply; that he shall thereupon notify  
9 such defendant company of the amount by which its deposits have  
10 been so reduced, and thereafter it shall not be lawful for such com-  
11 pany to transact any other business in this state until it shall have  
12 increased its deposits to the required sum.

**Sec. 2656. Treasurer's fee.**

Each company making deposits under this chapter shall, on 1879, c. 222, s. 3.  
2 doing so, pay to the state treasurer a fee of ten dollars, and the  
3 like sum whenever any additional deposits shall be made with  
4 him as is above provided.

**Sec. 2657. Applicable to companies against which final judgments have been obtained.**

This chapter shall apply to fire insurance companies and their 1879, c. 222, s. 1.  
2 deposits against which final judgments have been obtained in any  
3 of the courts of this state.

**Sec. 2658. How deposits may in part be withdrawn.**

Any insurance company making deposit of bonds or other se- 1876-'7, c. 157, s. 12.  
2 curities shall be authorized to withdraw any part of such deposit  
3 upon application to the secretary of state: *Provided*, that the same  
4 may be immediately replaced by other bonds or other securities  
5 possessing an equal market value.

**Sec. 2659. How deposits may be altogether withdrawn; when no policies are in force and all losses paid by re-insurance.**

Whenever any insurance company that has deposited bonds or 1876-'7, c. 157, s. 13.  
2 other securities with the treasurer as required by this chapter, de-  
3 sires to retire from business in this state, and withdraw its bonds  
4 or other securities deposited as aforesaid, then  
5 (1) It may file the affidavit of its president, managing agent  
6 or other chief officer with the secretary of state, to the effect that it  
7 has no policies outstanding, nor has any losses unpaid in this state,  
8 and thereupon the secretary of state shall give an order for  
9 such company, its agents or assigns, upon the treasurer for the  
10 delivery of such bonds or other securities, and the said bonds or  
11 other securities shall be delivered to said company or its assigns:  
12 *Provided*, that if the secretary of state has good reason for believing  
13 such affidavit is untrue, he shall cause a satisfactory investigation  
14 to be made, the cost of which shall be payable by said company,  
15 and be a lien upon the bonds in the hands of the treasurer.  
16 (2) Such company so desiring to withdraw its bonds may  
17 file with the secretary of state a duly executed contract of re-  
18 insurance, whereby some other insurance company in good stand-  
19 ing, doing business in this state, shall undertake to pay all losses  
20 on policies heretofore issued by the company so retiring; where-  
21 upon the secretary of state shall give an order on the treasurer as

22 above required for the bonds or other securities for the retiring  
 23 company as aforesaid: *Provided*, that such company so making the  
 24 re-insurance shall have on deposit, with the treasurer, bonds or  
 25 other securities of equal value with those sought to be withdrawn:  
 26 *And provided, further*, that the policy-holders in said company resi-  
 27 dent in this state shall assent in writing to the transfer of their  
 28 policies to the company so making the re-insurance, and the secre-  
 29 tary of state shall be entitled to twenty-five dollars for his services  
 30 in performing any duty imposed upon him by this section.

**Sec. 2660. Limit of actions against insurance companies.**

1876-'7, c. 157, s. 14.

No insurance company, association or partnership doing busi-  
 2 ness in this state, shall limit the term within which any suit shall  
 3 be brought against such company to a period less than one year  
 4 from the time when the loss insured against shall accrue.

**Sec. 2661. Action against defaulting agents.**

1876-'7, c. 157, s. 15.

Any insurance agent doing business in this state, who shall un-  
 2 lawfully withhold or expend the funds of any insurance company,  
 3 shall, upon conviction thereof, be guilty of felony, and punished  
 4 accordingly.

**Sec. 2662. Penalties.**

-77, c. 157, s. 16.

Every person who shall violate any provision of this chapter, for  
 2 which no other penalty is provided or provision is made, shall be  
 3 fined not less than one hundred dollars, nor more than five hun-  
 4 dred dollars.

## CHAPTER SIXTY-SEVEN.

### INTERNAL IMPROVEMENTS.

**SECTION.**

- 2663. Board of internal improvements, who; corporate name.
- 2664. Sessions of board and pay of members and secretary.
- 2665. Board may make rules and by-laws.
- 2666. Board to have charge of state's interest in railroads, canals, &c.
- 2667. To keep record of proceedings and report to the general assembly,
  - (1) Condition of buildings, repairs, &c.
  - (2) Condition of railroads, canals, &c.
  - (3) Character of state's interest.
  - (4) Financial condition of railroads, &c.
  - (5) Extent, capacity and business.
  - (6) Names of all persons failing to report.
- 2668. Presidents of railroads, &c., to report to board; report, what to contain; penalty.
- 2669. Funds of board deposited in banks.

**SECTION.**

- 2670. State treasurer to keep account of bonds; board to examine them yearly; clerk to aid treasurer; his compensation.
- 2671. Duty of board in making contracts.
- 2672. State to be stockholder in companies to the amount advanced.
- 2673. Railroad and other companies may enter on lands to build their works, &c.
- 2674. Cannot agree, proceedings to assess damages.
- 2675. Report of commissioners, what to contain.
- 2676. Dwelling-houses, &c., not to be condemned.
- 2677. Company may take material from adjacent lands.
- 2678. Whom to assess value.
- 2679. Proceedings to have them valued.
- 2680. Justice may administer oaths.



SECTION.

- 2681. Appeal allowed.
- 2682. Width of land condemned for railroads.
- 2683. Width of land for plank-roads, canals, &c.
- 2684. Quantity condemned for station or depot.
- 2685. Railroad, &c., crossing other roads, not to obstruct them.
- 2686. Company may turn roads, &c.
- 2687. Damages allowed owners on whose lands roads are turned.
- 2688. New roads made good as former ones.
- 2689. Incorporated companies to furnish board with maps, &c., of improvements.
- 2690. Railroads and other companies to keep account of produce carried, and to report to governor.

SECTION.

- 2691. Commissioners and freeholders paid; costs paid by company except in certain cases.
- 2692. No railroad, plank-road, &c., to be established but by law; penalty and misdemeanor therefor.
- 2693. Board to appoint state proxies.
- 2694. Governor authorized to have the affairs of railroads in which the state has an interest investigated by members of board of internal improvements.
- 2695. Authority to administer oaths, &c.
- 2696. Sheriff to execute writs issued by board; penalty for failure or refusal to obey summons, or answer questions.

Sec. 2663. Board of internal improvements; who; corporate name.

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 commissions to be appointed biennially by the governor, with the advice of the senate; any two of whom shall constitute a board for the transaction of business; and in case of vacancies occurring in the board, the same shall be filled by the other members. The governor and said members shall be a corporate body, under the name and style of "the president and directors of the board of internal improvements," and shall have all the rights, powers, and privileges of a corporation which may be necessary to enable it to discharge the duties imposed on it and no more.

R. C., c. 61, s. 1.  
1819, c. 989, s. 3.  
1836, c. 22, s. 2.  
1874-'5, chap's 83,  
202.

Sec. 2664. Sessions of board, and pay of members and secretary.

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 traveling expenses, for the time they may be employed in the public service.

R. C., c. 61, s. 2.  
1819, c. 989, s. 7.  
1836, c. 22, s. 4.  
1874-'5, chap's 83,  
202.

Sec. 2665. Board may make rules and by-laws.

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.

R. C., c. 61, s. 3.  
1819, c. 989, s. 9.  
1874-'5, chap's 83,  
202.

Sec. 2666. Board to have charge of state's interest in railroads, canals, &c.

The board shall have charge of all the state's interest in all railroads, canals and other works of internal improvement, and also, all public buildings, which are the property of the state.

1868-'9, c. 270, s. 97.  
1774-'5, c. 83.

Sec. 2667. To keep record of all proceedings, and report to the general assembly, (1) condition of buildings; (2) condition of railroads, canals, &c.; (3) character of state's interest; (4) financial condition of railroads, &c.; (5) extent, capacity and business; (6) names of all persons failing to report.

R. C., c. 61, s. 4.  
1819, c. 989, s. 12.  
1868-'9, c. 270, s. 98.  
1874-'5, chap's 83,  
202, s. 3.

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.

(1) The condition of all public buildings in his charge, repairs which have been made since the last report, the repairs or modifications which he deems necessary, with his estimates for the same, and the expenditure on each during the year past.

(2) The condition of all railroads, canals, or other works of internal improvement, owned or operated exclusively by the state, and he shall at the same time suggest such improvement, enlargement or extension of such work as he shall deem proper, and such new works of similar nature as shall seem to him to be demanded by the growth of trade or the general prosperity of the state.

(3) The amount, condition and character of the state's interest in other roads, canals or other works of internal improvement in which the state has taken stock, to which she has loaned money, or whose bonds she holds as security.

(4) The condition of such roads or other corporate bodies, as are referred to in the previous section, in detail, giving their entire financial condition, the amount and market value of the stock, receipts and disbursements for the previous year or since the last report. The amount of real and personal property of such corporations, its estimated value, and such suggestions with regard to the state's interest in the same as may to him seem warranted by the status of the corporation.

(5) The condition, extent, capacity and business of all other railroads in this state in tabular form, as provided in the succeeding section. To recommend such legislation as he may deem expedient in regard to any or all of the above matters.

(6) And also the names of all persons, failing or refusing to report, as required by the succeeding section; and this report the governor shall transmit to the general assembly with his message.

Sec. 2668. President of railroads, &c., to report to board; report, what to contain; penalty.

1868-'9, c. 270, s. 100.  
1874-'5, c. 202, s. 2.

Every president or other chief officer of every railroad, canal or other public work of internal improvement in which the state owns an interest shall, on or before the first day of October in each year, make or cause to be made to the board of internal improvements a written report of his company for that year, showing

(1) Number of shares of stock owned by the state.

(2) Number of shares of stock owned otherwise.

(3) Face value of each of said shares.

- 9 (4) Market value of each of said shares.
- 10 (5) Amount of "bonded debt" and for what purpose contracted.
- 11 (6) Amount of other debt and how incurred.
- 12 (7) Has interest on bonded debt been punctually paid as agreed;
- 13 if not, how much is in arrears.
- 14 (8) Amount of "gross receipts" for past year and from what
- 15 sources derived.
- 16 (9) An itemized account of expenditures for past year.
- 17 (10) Any lease of property of said company, or any part thereof,
- 18 to whom made, for what consideration, and for what length of
- 19 time.
- 20 (11) Suits at law pending against his company concerning its
- 21 bonded debt, or in which title to whole or any part of said road
- 22 or canal is concerned.
- 23 (12) Any sales of stock owned by the state, by whose order
- 24 made, and disposition of the proceeds.
- 25 Any person failing to report as required by this section shall be
- 26 guilty of a misdemeanor, and on conviction before any judge of
- 27 superior court of this state, be fined not less than one nor more
- 28 than five thousand dollars, and imprisoned not less than one nor
- 29 more than five years at hard labor in the penitentiary; and it
- 30 shall be the duty of the attorney general to bring suit against all
- 31 persons so failing to report in the superior court of Wake county
- 32 on application of board of internal improvements.

**Sec. 2669. Funds of board deposited in banks.**

All the moneys which may be appropriated to the fund for internal improvement, unless otherwise ordered, shall be deposited in the banks of the state, to the credit of the treasurer, subject to the orders of the board, certified by the secretary, and countersigned by the president.

R. C., c. 61, s. 5  
1836, c. 22, s. 5.  
1874-5, c. 83.

**Sec. 2670. State treasurer to keep account of bonds; board to examine them yearly; clerk to aid treasurer; his compensation.**

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.

R. C., c. 61, s. 6.  
1819, c. 989, s. 10.  
1836, c. 22, s. 4.  
1874-5, c. 83.

**Sec. 2671. Duty of board in making contracts.**

Whenever the general assembly shall direct any public improvement, the board shall let the same out by contract, and take from

R. C., c. 61, s. 7.  
1825, c. 1296.  
1874-5, c. 83.



3 the contractor a bond with sufficient security, payable to the state  
 4 of North Carolina in double the sum paid or contracted to be paid,  
 5 with the condition that he will faithfully perform his contract, ac-  
 6 cording to the plans or specifications agreed on.

**Sec. 2672. State to be stockholder in companies to the amount advanced.**

R. C., c. 61, s. 8.  
 1819, c. 989, s. 12.  
 1874-'5, c. 83.

Whenever an appropriation shall be made by the state to any  
 2 work of internal improvement, conducted by a corporation, the  
 3 state shall be considered, unless otherwise directed, a stockholder  
 4 in such corporation, and shall have as many shares as may cor-  
 5 respond with the amount of money appropriated; and the accept-  
 6 ance of such money shall be deemed to be a consent of the cor-  
 7 poration to the terms herein expressed.

**Sec. 2673. Railroad and other companies may enter on lands to build their works, &c.**

R. C., c. 61, s. 9.  
 1852, c. 92, s. 1.  
 1874-'5, c. 83.

Every railroad, plank-road, tram-road, turnpike, and canal com-  
 2 pany, for the purpose of constructing their road or canal, may at  
 3 any time enter upon the lands through which they may desire to  
 4 conduct their road or canal, and lay out the same as they may de-  
 5 sire; and they may also enter on such contiguous land along the  
 6 route as may be necessary for depots, ware-houses, engine-sheds,  
 7 work-shops, water-stations, toll-houses, and other buildings neces-  
 8 sary for the accommodation of their officers, servants, and agents,  
 9 horses, mules, and other cattle, and for the protection of their prop-  
 10 erty: and shall pay to the proprietors of the land, so entered on,  
 11 such sum as may be agreed on between them.

**Sec. 2674. If cannot agree, proceedings to assess damages.**

R. C., c. 61, s. 10.  
 1874-'5, c. 83.

If such corporation cannot agree with the owner of the land  
 2 which is entered on, or is desired by the corporation for the pur-  
 3 poses aforesaid, in the price to be paid for the same, then either  
 4 the company or the owner, may proceed to have the same con-  
 5 demned and damages assessed as is provided in chapter one hundred  
 6 and one of this code, entitled "Railroads and Telegraphs."

**Sec. 2675. Report of their proceedings made and subscribed; form of report.**

R. C., c. 61, s. 17.  
 1874-'5, c. 83.

When the commissioners shall have assessed the damages, they  
 2 shall forthwith make and subscribe a written report of their pro-  
 3 ceedings, 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 ..... (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, we  
 have estimated and do assess the damages aforesaid at the sum of ..... Given under  
 our hands, the .. .... day of ....., A. D.....

**Sec. 2676. Dwelling-houses, &c., not to be condemned.**

No such corporation shall be allowed to have condemned to its  
 2 use, without the consent of the owner, his dwelling-house, yard,  
 3 kitchen, garden or burial ground.

R. C., c. 61, s. 21.  
 1852, c. 92, s. 1.  
 1874-'5, c. 83.

**Sec. 2677. Company may take material from adjacent ground.**

For the purpose of constructing its works and necessary appur-  
 2 tenances thereto, or of repairing them after they shall have been  
 3 made, or of enlarging or otherwise altering them, the company  
 4 may, at any time, enter on any adjacent lands, and cut, dig, and  
 5 take therefrom any wood, stone, gravel or earth, which may be  
 6 deemed necessary: *Provided, however,* that they shall not, without  
 7 the consent of the owner, destroy or injure any ornamental or fruit  
 8 trees.

R. C., c. 61, s. 22.  
 1874-'5, c. 83.

**Sec. 2678. Whom to assess value.**

If for the value of the damages done to the owner by reason of  
 2 the acts in the preceding section mentioned, the parties may be un-  
 3 able to agree, the same shall be valued by any three freeholders of  
 4 the county.

R. C., c. 61, s. 23.  
 1874-'5, c. 83.

**Sec. 2679. Proceedings to have them valued.**

Either party, for that purpose, may apply to the clerk of the su-  
 2 perior court of the county wherein the damage is done, who shall  
 3 thereupon appoint said freeholders, and they being duly sworn to  
 4 impartially and truly assess the damage, shall, after hearing such  
 5 proper evidence as may be laid before them, report the value  
 6 thereof to the said clerk. And on the return to him of the report  
 7 he shall render judgment for the damages and costs against the  
 8 company, and issue execution therefor.

R. C., c. 61, s. 24.  
 1874-'5, c. 83.

**Sec. 2680. Justice may administer oaths to freeholders, &c.**

Any justice may administer all proper oaths to the freeholders  
 2 and witnesses.

R. C., c. 61, s. 25.  
 1874-'5, c. 83.

**Sec. 2681. Appeal allowed.**

Either party may appeal from such judgment as in other cases,  
 2 and under the same rules.

R. C., c. 61, s. 26.  
 1874-'5, c. 83.

**Sec. 2682. Width of land condemned for railroads.**

The width of the land condemned for any railroad shall not be  
 2 less than eighty feet nor more than one hundred, except where the  
 3 road may run through a town, when it may be of less width; or  
 4 where there may be deep cuts or high embankments, when it may  
 5 be of greater width.

R. C., c. 61, s. 27.  
 1874-'5, c. 83.

**Sec. 2683. Width of land for plank-roads, canals and turnpikes.**

R. C., c. 61, s. 28.  
1852, c. 92.  
1874-'5, c. 83.

No greater width of land than sixty feet shall be condemned for  
2 the use of any plank-road, tram-road, canal or turnpike.

**Sec. 2684. Quantity condemned for station or depot.**

R. C., c. 61, s. 29.  
1874-'5, c. 83.

No greater quantity of land than two acres, contiguous to any  
2 railroad, plank-road, tram-road, turnpike or canal, shall be con-  
3 demned at one place for a depot or station.

**Sec. 2685. Railroad, &c., crossing other roads, not to obstruct them.**

R. C., c. 61, s. 30.  
1874-'5, c. 83.

Whenever, in their construction, the works of any of said cor-  
2 porations shall cross established roads or ways, the corporation  
3 shall so construct its works as not to impede the passage or trans-  
4 portation of persons or property along the same.

**Sec. 2686. Company may turn roads, &c.**

R. C., c. 61, s. 31.  
1874-'5, c. 83.

In order to prevent the frequent crossing of such roads or ways,  
2 or in cases where it may be necessary to occupy the same, the cor-  
3 poration may change the roads and ways so as to avoid such cross-  
4 ing and occupation, and to such points as may be deemed expe-  
5 dient.

**Sec. 2687. Damages allowed owners on whose land roads are turned.**

R. C., c. 61, s. 32.  
1874-'5, c. 83.

For any injury done to the lands of persons by taking them un-  
2 der the preceding section, the value thereof shall be assessed in  
3 like manner as is provided for assessing damages to real estate as  
4 is provided in section..... of this code.

**Sec. 2688. New roads made good as former one.**

R. C., c. 61, s. 33.  
1874-'5, c. 83.

Before any part of an established road or way shall be impeded  
2 by any of said corporations, the new road or way shall be prepared  
3 and made equally good with the portion proposed to be discon-  
4 tinued; and then the same shall be deemed a part of the original  
5 road or way, and shall be kept up and repaired as before the  
6 change.

**Sec. 2689. Incorporated companies to furnish board with maps, &c., of improve-ments.**

R. C., c. 61, s. 34.  
1850, Resolution.  
1852, c. 92, s. 6.  
1874-'5, c. 83.

Every company, incorporated for the purpose of improving the  
2 internal condition of the state, by railroad, plank-road, tram-road,  
3 turnpike, canal, or other means, shall furnish to the board a cor-  
4 rect map or profile of the contemplated improvements, drawn to a  
5 uniform horizontal scale of four hundred feet to one inch. And all  
6 such charts and documents of a like character, as may be furnished  
7 to the state, shall be deposited for safe keeping in said bureau, un-  
8 der charge of the state librarian, or state engineer, in case there  
9 should be such an officer.



**Sec. 2690.** Railroad and other companies to keep account of produce carried; to report to governor.

The president and directors of canal, railroad, plank-road and  
2 turnpike companies, whether wholly or partly in this state, are re-  
3 quested to keep an account of all the products of this state in-  
4 tended for sale abroad, by them transported out of the state, or to  
5 any shipping port therein; and report the same to the governor at  
6 each session of the general assembly.

R. C., c. 61, s. 35.  
1854, Resolution.  
1874-'5, c. 83.

**Sec. 2691.** Commissioners and freeholders paid; costs paid by company, except in certain cases.

Each commissioner and freeholder attending for the purpose of  
2 assessing damages to the owner of land for purposes of repairs  
3 shall be entitled to one dollar a day while engaged in the business;  
4 and the same, with all other costs of the case, shall be paid by the  
5 corporation, unless when the petition of the owner shall be dis-  
6 missed, when he shall pay the costs; or unless in case of exception  
7 taken to the report, or of appeal, when the court may adjudge by  
8 whom, and in what proportion, the costs shall be paid.

R. C., c. 61, s. 36.  
1852, c. 92, ss. 3, 5.  
1874-'5, c. 83.

**Sec. 2692.** No railroad, plank-road, &c., to be established, but by law; penalty and misdemeanor therefor.

If any person or corporation, not being expressly authorized  
2 thereto, shall make or establish any canal, turnpike, tram-road,  
3 railroad or plank road, with the intent that the same shall be used  
4 to transport passengers other than such persons, or the members  
5 of such corporation; or to transport any productions, fabrics or  
6 manufactures other than their own, the person or corporation so  
7 offending, and using the same for any such purpose, shall forfeit  
8 and pay fifty dollars for every person and article of produce so  
9 transported; and shall, moreover, be guilty of a misdemeanor, they  
10 and all persons aiding therein, and shall be indicted therefor in  
11 the superior court.

R. C., c. 61, s. 37.  
1874-'5, c. 83.

**Sec. 2693.** Board to appoint state proxies.

The president and directors of the board of internal improve-  
2 ments shall appoint, on behalf of the state, all such officers or  
3 agents, as, by any act incorporating a company for the purpose of  
4 internal improvement, are allowed to represent the stock or other  
5 interests which the state may have in such company; and such  
6 person or persons shall cast the vote to which the state may be en-  
7 titled in all the meetings of the stockholders of such company.

R. C., c. 61, s. 38.  
1874-'5, c. 83.

**Sec. 2694.** Governor authorized to have affairs of railroads in which the state has an interest investigated by member of board of internal improvements.

The governor is authorized and empowered, whenever he may  
2 think the public service requires it, to have the affairs of any rail-  
3 road in which the state has an interest investigated by a member

1879, c. 281, s. 1.

4 of the board of internal improvements, and to take such action  
5 concerning any matter reported, upon as the said board may deem  
6 to the interest of the state.

**Sec. 2695. Authority to administer oaths, &c.**

1879, c. 281, s. 2.

The member of the board appointed for the investigation men-  
2 tioned in the preceding section, shall have power to administer  
3 oaths, send for persons and papers, and all powers granted to a  
4 committee of investigation appointed by the general assembly.

**Sec. 2696. Sheriff to execute writs issued by board; penalty for failure or refusal to obey summons or answer questions.**

1879, c. 281, s. 3.

Sheriffs shall execute writs of such member of the board of in-  
2 ternal improvements as they would for a judicial officer of the  
3 state, and shall be allowed the same compensation therefor. Any  
4 person failing or refusing to obey any summons of, or to answer  
5 questions when required so to do, by such members of the said  
6 board, shall be guilty of a misdemeanor and punished by fine and  
7 imprisonment at the discretion of the court before whom his case  
8 may be brought.

## CHAPTER SIXTY-EIGHT.

### JURORS.

**SECTION.**

- 2697. Jurors shall be selected.
- 2698. List of names to be made out.
- 2699. Commissioners to insert names in jury list.
- 2700. Commissioners to examine jury list, and may examine any person on oath.
- 2701. Names to be put in box.
- 2702. How jury shall be drawn.
- 2703. Jurors who have suits pending.
- 2704. Case of death or removal from the county.
- 2705. How drawing of jury to continue.
- 2706. In case of a special term.
- 2707. When commissioners fail to draw a jury.
- 2708. Jurors to be summoned, and to attend until discharged by court; tales jurors, how summoned and qualifications.
- 2709. Jurors not attending fined twenty dollars; to have until next term to make excuse; tales jurors fined two dollars.

**SECTION.**

- 2710. Exempt from service of process.
- 2711. Jury in charge of an officer to be furnished with accommodation as court may order.
- 2712. Pay of tales jurors in capital cases.
- 2713. In capital cases, judge may issue a special venire.
- 2714. Special venire, how drawn and summoned.
- 2715. Penalty on sheriff not executing writ, and on jurors not attending.
- 2716. Exceptions to jurors, when to be taken.
- 2717. Foreman of grand jury to administer oaths.

**Sec. 2697. Jurors shall be selected.**

1868, c. 9, s. 1.

The commissioners for the several counties at their regular meet-  
2 ing on the first Monday of September in each year shall cause  
3 their clerks to lay before them the tax returns of the preceding  
4 year for their county, from which they shall proceed to select the

5 names of such persons only as have paid tax for the preceding  
6 year and are of good moral character and of sufficient intelligence.

Lee v. Lee, 71—139; State v. Haywood, 73—437; State v. Griffice, 74—316; State v. Wincroft, 76—38; State v. Heaton, 77—505; State v. Martin, 82—672.

**Sec. 2698. List of names to be made out.**

A list of the names thus selected shall be made out by the clerk <sup>1868, c. 9, s. 2.</sup>  
2 of the board of commissioners, and shall constitute the jury list:  
3 *Provided*, that no practicing physician, regular minister of the gos-  
4 pel, keepers of public grist mills, or regularly licensed pilots, mem-  
5 bers of fire companies and of the state guard, shall be required to  
6 serve as jurors.

**Sec. 2699. Commissioners to insert names in jury lists.**

If the list so made out does not contain the names of all the in- <sup>1868, c. 9, s. 3,</sup>  
2 habitants who are qualified as provided to serve as jurors, the  
3 commissioners shall insert the names of such inhabitants in the  
4 jury list.

**Sec. 2700. Commissioners to examine jury list, and may examine any person on oath.**

At each regular meeting on the first Monday in September, in <sup>1868, c. 9, s. 4.</sup>  
2 each year, the commissioners shall carefully examine the jury lists  
3 as already made out, compare the same with the tax returns, and  
4 diligently inquire whether any persons qualified to be jurors as  
5 provided are omitted, and whether any persons not qualified to be  
6 jurors, as therein provided, have been inserted, and if any have  
7 been inserted not possessing the requisite qualifications, they shall  
8 strike such names from the jury lists, and in order to obtain full  
9 information on the subject the commissioners may examine on  
10 oath any person they think proper.

**Sec. 2701. Names to be put in box.**

The commissioners shall cause the names on their jury list to <sup>1868, c. 9, s. 5.</sup>  
2 be written on small scrolls of paper of equal size and put into a  
3 box procured for that purpose, which must have two divisions  
4 marked Nos. 1 and 2, and two locks, the key of one to be kept by  
5 the sheriff of the county, the other by the chairman of the board  
6 of commissioners, and the box by the clerk of the board.

**Sec. 2702. How jury shall be drawn.**

At least twenty days before the regular fall and spring term of  
2 the superior court in each year, the commissioners shall cause to <sup>1868, c. 9, s. 6.  
1868-'9, c. 175.</sup>  
3 be drawn from the jury box out of the partition marked No. 1 by  
4 a child not more than ten years of age, thirty-six scrolls, and the  
5 persons whose names are inscribed on said scrolls shall serve as  
6 jurors at the fall and spring terms of the superior court to be held



7 for the county respectively ensuing such drawing, and the scrolls  
8 so drawn to make the jury shall be put into the partition marked  
9 No. 2. The said commissioners shall at the same time and in the  
10 same manner draw the names of eighteen persons who shall be  
11 summoned to appear and serve during the second week of the term  
12 of said court, unless the judge thereof shall sooner discharge all  
13 jurors from further service; and the trial jury which has served  
14 during the first week, shall be discharged by the judge at the  
15 close of said week, unless the said jury shall be then actually en-  
16 gaged in the trial of a case, and then they shall not be discharged  
17 until the trial is determined.

**Sec. 2703. Jurors having suits pending.**

1868, c. 9, s. 7.

If any of the jurors drawn have a suit pending and at issue in  
2 the superior court, the scrolls with their names must be returned  
3 into partition No. 1 of the jury box.

*State v. Liles, 77—496; State v. Smith, 80—410.*

**Sec. 2704. Case of death or removal from the county.**

1868, c. 9, s. 8.

If any of the persons drawn to serve as jurors be dead or re-  
2 moved out of the county, the scrolls with the names of such per-  
3 sons must be destroyed, and in such cases other persons shall be  
4 drawn in their stead.

**Sec. 2705. How drawing of jury to continue.**

1868, c. 9, s. 9.

The drawing out of partition marked No. 1 and putting the  
2 scrolls drawn into partition No. 2, shall continue until all the  
3 scrolls in partition No. 1 are drawn out, when all the scrolls shall  
4 be returned into partition No. 1 and drawn out again as herein  
5 directed.

**Sec. 2706. In case of a special term.**

1868, c. 9, s. 10.

Whenever a special term of the superior court is ordered for the  
2 county, the commissioners, fifteen days before the holding of such  
3 special term, shall draw eighteen jurors to attend said court as  
4 herein provided for drawing jurors of the regular terms thereof.

**Sec. 2707. When commissioners fail to draw a jury.**

1868, c. 9, s. 11.

If the commissioners for any cause fail to draw a jury for any  
2 term of the superior court, regular or special, the sheriff of the  
3 county and the clerk of the commissioners in the presence of, and  
4 assisted by two justices of the peace of the county, shall draw such  
5 jury in the manner above prescribed; and if a special term shall  
6 continue for more than two weeks, then for the weeks exceeding  
7 two, a jury or juries may be drawn as in this section provided.

**Sec. 2708.** Jurors to be summoned, and to attend until discharged by court; tales jurors, how summoned, and qualifications.

The clerk of the board of county commissioners shall, within 2 five days from the drawing, deliver the list of the jurors drawn for 3 the superior court to the sheriff of the county, who shall summon 4 the persons therein named to attend as jurors at such court, 5 which summons shall be served, personally, or by leaving a copy 6 thereof at the house of the juror, at least five days before the sit- 7 ting of the court to which he may be summoned; and jurors shall 8 appear and give their attendance until duly discharged; and, that 9 there may not be a defect of jurors, the sheriff shall by order of 10 court summon, from day to day, of the bystanders, other jurors, 11 being freeholders, within the county where the court is held, to 12 serve on the petit jury, and on any day the court may discharge 13 those who have served the preceding day: *Provided*, that it shall be 14 a disqualification and ground of challenge to any tales juror that 15 such juror has acted in the same court as grand, petit or tales juror 16 within two years next preceding such terms of the court.

R. C., c. 31, s. 29.  
1779, c. 156, ss. 6, 9.  
1806, c. 694, s. 1.  
1830, c. 42.  
1868, c. 9, s. 12.  
1879, c. 200.  
1881, c. 226.

Lee v. Lee, 71—139; State v. Ragland, 75—12; State v. Wincroft, 76—38; State v. Outerbridge, 82—617; State v. Cooper, 83—671.

**Sec. 2709.** Jurors not attending fined twenty dollars; to have until next term to make excuse; tales jurors fined two dollars.

Every person on the original *venire* summoned to appear as a 2 juror, who shall fail to give his attendance until duly discharged, 3 shall forfeit and pay for the use of the county the sum of twenty 4 dollars, to be imposed by the court: *Provided*, that each delinquent 5 jurymen shall have until the next succeeding term to make his 6 excuse for his non-attendance, and, if he shall render an excuse 7 deemed sufficient by the court, shall be discharged without costs. 8 And every person summoned of the bystanders, who shall not 9 appear and serve during the day as a juror, shall be fined in the 10 sum of two dollars, unless he can show sufficient cause to the court; 11 and the clerk shall forthwith issue an execution against the estate 12 of the delinquent tales juror for such amercement and costs.

R. C., c. 31, s. 30.  
1779, c. 157, ss. 4, 9.  
1783, c. 189, ss. 2, 4.  
1804, c. 664.

State v. Jones, 67—285.

**Sec. 2710.** Exempt from service of process.

No sheriff or other officer shall arrest under civil process any 2 juror during his attendance or going to and returning from any 3 court of record. All such service shall be void, and the defend- 4 ant on motion shall be discharged.

R. C., c. 31, s. 31.  
1779, c. 157, s. 10.

**Sec. 2711.** Jury in charge of officer to be furnished with accommodation as court may order.

When any jury, impaneled to try any cause, shall fail to agree 2 upon a verdict, and shall be put in charge of an officer of the court, 3 the said officer shall furnish said jurors with such accommodation

1876-'7, c. 173.

4 as the court may order, and the same shall be paid for by the party  
5 cast or by the county, under the order and in the discretion of the  
6 judge of said court.

**Sec. 2712. Pay of tales jurors in capital cases.**

1866-'7, c. 65.

In all indictments for capital felonies, the tales jurors who may  
2 be summoned to try and who do try such actions shall receive the  
3 the same pay as the regular panel of jurors receive for their ser-  
4 vices.

**Sec. 2713. In capital cases judge may issue a special venire.**

R. C., c. 35, s. 30.  
1839, c. 27, s. 1.

Whenever a judge of the superior court shall deem it necessary  
2 to a fair and impartial trial of any person charged with a capital  
3 offence, he may issue to the sheriff of the county in which the trial  
4 may be, a special writ of *venire facias*, commanding him to summon  
5 such number of the freeholders of said county as the judge may  
6 deem sufficient, (such number being designated in the writ,) to ap-  
7 pear on some specified day of the term as jurors of said court; and  
8 the sheriff shall forthwith execute the writ and return it to the  
9 clerk of the court on the day when the same shall be returnable,  
10 with the names of the jurors summoned.

State v. Perry, Busb., 330.

**Sec. 2714. Special venire, how drawn and summoned.**

Whenever a judge shall deem a special *venire* necessary, he may  
2 at his discretion, issue an order to the clerk of the board of com-  
3 missioners for the county, commanding him to bring into open  
4 court forthwith the jury boxes of the county, and he shall cause  
5 the number of scrolls as designated by him to be drawn from box  
6 No. 1, by a child under ten years of age. And the names so drawn  
7 (being freeholders) shall constitute the special *venire*, and the clerk  
8 of the superior court shall insert their names in the writ of *venire*,  
9 and deliver the same to the sheriff of the county, and the persons  
10 named in the writ and no others shall be summoned by the said  
11 sheriff. If the special *venire* is exhausted before the petit jury is  
12 chosen, the judge in his discretion may order another special  
13 *venire* to be drawn and summoned in like manner as the first,  
14 until the jury has been chosen. The scrolls, containing the names  
15 of the persons drawn as jurors from box No. 1 shall, after the jury  
16 is chosen, be placed in box No. 2; and if box No. 1 is exhausted  
17 before the jury is chosen, the drawing shall be completed from box  
18 No. 2, after the same shall have been well shaken.

**Sec. 2715. Penalty on sheriff not executing writ, and on jurors not attending.**

R. C., c. 35, s. 31.  
1839, c. 27, s. 2.

If any sheriff shall fail duly to execute and return such writ of  
2 *venire facias*, he shall be fined by the court not exceeding one hun-  
3 dred dollars; and all jurors so summoned shall attend until dis-



- 4 charged by the court, under the same rules and penalties as are
- 5 prescribed for other jurors.

**Sec. 2716. Exceptions to jurors, when to be taken.**

- All exceptions to grand jurors for and on account of their dis-
- 2 qualifications, shall be taken before the jury is sworn and impan-
- 3 eled to try the issue, by motion to quash the indictment, and if not
- 4 so taken the same shall be deemed to have been waived.

*Passim*, State v. Boon, 80—461; State v. Cooper, 83—671.

**Sec. 2717. Foreman of grand jury to administer oaths.**

- The foreman of every grand jury duly sworn and impaneled in 1879, c. 12
- 2 any of the courts shall have power to administer oaths and affirma-
- 3 tions to persons to be examined before it as witnesses: *Provided*,
- 4 that the said foreman shall not administer such oath or affirmation
- 5 to any persons except those whose names are indorsed on the bill
- 6 of indictment by the officer prosecuting in behalf of the state, or
- 7 by direction of the court: *Provided further*, that the foreman of the
- 8 grand jury shall mark on the bill the names of the witnesses
- 9 sworn and examined before the jury.

State v. Hines, 84—810.

## CHAPTER SIXTY-NINE.

### LANDLORD AND TENANT.

**SECTION.**

2718. When lease shall be in writing.
2719. Lessors not partners with lessees unless they so contract.
2720. Formal demand of rent not necessary to create a forfeiture when there is a proviso for re-entry.
2721. Right to recover for use and occupation, when.
2722. Rents apportioned when the estate of the lessor terminates.
2723. When person entitled to rents, &c., limited in succession dies, to whom payment made.
2724. Where lease of farming land determines during a current year, tenant to hold to end of year in lieu of emblements.
2725. What length of notice required to terminate a tenancy.
2726. Tenant not liable for damages for accidental fire.
2727. Agreement to repair, how construed.
2728. In case of accidental damage, lessee may surrender his estate.
2729. Possession of crops deemed vested in lessors; preference of lessor's lien.
2730. Rights of lessee.

**SECTION.**

2731. How to proceed in case of any controversy between the parties; undertaking to be given by lessee.
2732. Lessee failing to give said undertaking, possession of the property passes to lessor upon his giving an undertaking.
2733. Provision in case neither party gives the undertaking.
2734. Removal of crop by lessee without notice, a misdemeanor.
2735. Chapter to apply to lease of turpentine trees.
2736. Lessors for mining and for getting timber entitled to the remedies given in this chapter.
2737. On conveyance of the reversion, &c., no attornment necessary.
2738. Rights of grantees of reversions and of tenants of particular estates.
2739. Tenants who hold over may be dispossessed, when.
2740. When summons shall issue; oath of lessor.
2741. Officer to serve summons, how.
2742. What justice to do if defendant fails to appear or admit allegation.

## SECTION.

2743. What to be done if both parties require a jury-trial.  
 2744. Powers of justices the same as on other trials.  
 2745. Either party may appeal; the undertaking.  
 2746. What done if defendant tenders rent in arrear and costs.  
 2747. If proceedings quashed, judgment of restitution.  
 2748. Damages may be recovered for occupation to time of trial.

## SECTION.

2749. Defendant may recover damages for his removal from possession.  
 2750. Remedy given to the lessor when the tenant deserts premises.  
 2751. Costs to successful party.  
 2752. What forms sufficient.  
 2753. Forms of proceeding before a justice of the peace, for the summary ejectment of a tenant holding over.

**Sec. 2718. When lease shall be in writing.**

1868-'9, c. 156, s. 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.

Wade v. City of New Berne, 77-460; Krider v. Ramsay, 79-354.

**Sec. 2719. Lessors not partners with lessees unless they so contract.**

1868-'9, c. 156, s. 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.

Reynolds v. Pool, 84-37; Curtis v. Cash, 84-41.

**Sec. 2720. Formal demand of rent not necessary to create a forfeiture, when there is a proviso for re-entry.**

1868-'9, c. 156, s. 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.

**Sec. 2721. Right to recover for use and occupation, when.**

1868-'9, c. 156, s. 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.

**Sec. 2722. Rents apportioned, when the estate of the lessor terminates.**

If a lease of land, in which rent is reserved, payable at the end 1868-'9, c. 156, s. 6.  
 2 of the year or other certain period of time, be determined by the  
 3 death of any person during one of the periods in which the rent  
 4 was growing due, the lessor or his personal representative may re-  
 5 cover a part of the rent which becomes due after the death, pro-  
 6 portionate to the part of the period elapsed before the death, sub-  
 7 ject to all just allowances; and if any security shall have been  
 8 given for such rent it shall be apportioned in like manner.

**Sec. 2723. When person entitled to rents, &c., limited in succession dies, to whom payment made.**

In all cases where rents, rent charges, annuities, pensions, divi- 1868-'9, c. 156, s. 7.  
 2 dends, or any other payments of any description, are made paya-  
 3 ble at fixed periods to successive owners under any instrument, or  
 4 by any will, and where the right of any owner to receive payment  
 5 is terminable by a death or other uncertain event, and where  
 6 such right shall so terminate during a period in which a payment  
 7 is growing due, the payment becoming due next after such termi-  
 8 nating event, shall be apportioned among the successive owners  
 9 according to the parts of such periods elapsing before and after the  
 10 terminating event.

**Sec. 2724. Where lease of farming land determines during a current year, tenant to hold to end of year in lieu of emblements.**

Where any lease for years of any land let for farming on which 1868-'9, c. 156, s. 8.  
 2 a rent is reserved shall determine during a current year of the  
 3 tenancy, by the happening of any uncertain event determining  
 4 the estate of the lessor, the tenant in lieu of emblements shall con-  
 5 tinue his occupation to the end of such current year, and shall  
 6 then give up such possession to the succeeding owner of the land,  
 7 and shall pay to such succeeding owner a part of the rent accrued  
 8 since the last payment became due, proportionate to the part of  
 9 the period of payment elapsing after the termination of the estate  
 10 of the lessor, to the giving up such possession, and the tenant in  
 11 such case shall be entitled to a reasonable compensation for the  
 12 tillage and seed of any crop not gathered at the expiration of such  
 13 current year from the person succeeding to the possession.

**Sec. 2725. What length of notice required to terminate a tenancy.**

A tenancy from year to year may be terminated by a notice to 1868-'9, c. 156, s. 9.  
 2 quit given three months or more before the end of the current  
 3 year of the tenancy; a tenancy from month to month by a like  
 4 notice of fourteen days; a tenancy from week to week, of two days.



**Sec. 2726. Tenant not liable for damage for accidental fire.**

1868-'9, c. 156, s. 10.

A tenant for life, or year, or for a less term, shall not be liable  
2 for damage occurring on the demised premises accidentally, and  
3 notwithstanding reasonable diligence on his part; unless he so  
4 contract.

**Sec. 2727. Agreement to repair, how construed.**

1868-'9, c. 156, s. 11.

An agreement in a lease to repair a demised house shall not be  
2 construed to bind the contracting party to rebuild or repair in case  
3 the house shall be destroyed or damaged to more than one-half its  
4 value, by accidental fire not occurring from the want of ordinary  
5 diligence on his part.

**Sec. 2728. In case of accidental damage, lessee may surrender his estate.**

1868-'9, c. 156, s. 12.

If a demised house, or other building, be destroyed during the  
2 term, or so much damaged that it cannot be made reasonably fit  
3 for the purpose for which it was hired, except at an expense ex-  
4 ceeding one year's rent of the premises, and the damage occur  
5 without negligence on the part of the lessee or his agents or ser-  
6 vants, and there be in the lease no agreement respecting repairs,  
7 or providing for such a case, and the use of the house damaged  
8 was the main inducement to the hiring, the lessee may surrender  
9 his estate in the demised premises by a writing to that effect de-  
10 livered or tendered to the landlord within ten days from the dam-  
11 age, and by paying or tendering at the same time all rent in arrear,  
12 and a part of the rent growing due at the time of the damage,  
13 proportionate to the time between the last period of payment and  
14 the occurrence of the damage, and the lessee shall be thenceforth  
15 discharged from all rent accruing afterwards; but not from any  
16 other agreement in the lease. This section shall not apply if a  
17 contrary intention appear from the lease.

Harrison v. Ricks, 71-7.

**Sec. 2729. Possession of crops deemed vested in lessors; preference of lessor's lien.**

1876-'7, c. 283, s. 1.

When lands shall be rented or leased by agreement, written or  
2 oral, for agricultural purposes, or shall be cultivated by a crop-  
3 per, unless otherwise agreed between the parties to the lease or  
4 agreement, any and all crops raised on said land shall be deemed  
5 and held to be vested in possession of the lessor or his assigns at  
6 all times, until the rents for said lands shall be paid and until all  
7 the stipulations contained in the lease or agreement shall be per-  
8 formed, or damages in lieu thereof, shall be paid to the lessor or  
9 his assigns, and until said party or his assigns shall be paid for all  
10 advancements made and expenses incurred in making and saving  
11 said crops. This lien shall be preferred to all other liens, and the  
12 lessor or his assigns shall be entitled against the lessee or cropper  
13 or the assigns of either who shall remove the crop or any part

14 thereof from the land without the consent of the lessor or his as-  
 15 signs, or against any other person who may get possession of said  
 16 crop or any part thereof, to the remedies given in an action upon  
 17 a claim for the delivery of personal property.

State v. Burwell, 63—661; Alsbrook v. Shields, 67—333; Harrison v. Ricks, 71—7; Haywood  
 v. Rogers, 73—320; Neal v. Bellamy, 73—334; State v. Surles, 74—330; Threadgill v. McLendon,  
 76—24; Foster v. Penry, 76—131; Avera v. McNeill, 77—50; Durham v. Speek, 82—87; Slaughter  
 v. Winfrey, 85—159,

**Sec. 2730. Rights of lessee.**

Whenever the lessor or his assigns shall get the actual posses- 1876-'7, c. 283, s. 2.  
 2 sion of the crop or any part thereof otherwise than by the mode  
 3 prescribed in the preceding section, and said lessor or his assigns  
 4 shall refuse or neglect, upon a notice, written or oral, of five days,  
 5 given by the lessee or cropper or the assigns of either, to make a  
 6 fair division of said crop, or to pay over to such lessee or cropper  
 7 or the assigns of either, such part thereof as he may be entitled to  
 8 under the lease or agreement, then and in that case the lessee or  
 9 cropper or the assigns of either shall be entitled against the lessor  
 10 or his assigns to the remedies given in an action upon a claim for  
 11 the delivery of personal property to recover such part of the crop  
 12 as he, in law and according to the lease or agreement, may be en-  
 13 titled to. The amount or quantity of such crop claimed by said  
 14 lessee or cropper or the assigns of either, together with a statement  
 15 of the grounds upon which it is claimed, shall be fully set forth in  
 16 an affidavit at the beginning of the action.

**Sec. 2731. How to proceed in case of any controversy between the parties; un-  
 undertaking to be given by lessee.**

Where any controversy shall arise between the parties, and nei- 1876-'7, c. 283, s. 3.  
 2 ther party avails himself of the provisions of this chapter, it shall  
 3 be competent for either party to proceed at once to have the mat-  
 4 ter determined in the court of a justice of the peace, if the amount  
 5 claimed be two hundred dollars or less, and in the superior court  
 6 of the county where the property is situate if the amount so  
 7 claimed shall be more than two hundred dollars. But in case  
 8 there shall be a continuance or an appeal from the justice's decisi-  
 9 on to the superior court, the lessee or cropper, or the assigns of  
 10 either, shall be allowed to retain possession of said property upon  
 11 his giving an undertaking to the lessor or his assigns, or the ad-  
 12 verse party, in a sum double the amount of the claim, if such claim  
 13 does not amount to more than the value of such property, other-  
 14 wise to double the value of such property, with good and sufficient  
 15 security, to be approved by the justice of the peace or the clerk of  
 16 the superior court, conditioned for the faithful payment to the ad-  
 17 verse party of such damages as he shall recover in said action.

**Sec. 2732.** Lessee failing to give said undertaking, possession of the property passes to lessor upon his giving an undertaking.

1876-'7, c. 283, s. 4.

In case the lessee or cropper, or the assigns of either, shall, at 2 the time of the appeal or continuance mentioned in the preceding 3 section, fail to give the undertaking therein required, then the 4 constable or other lawful officer shall deliver the property into the 5 actual possession of the lessor or his assigns, upon the lessor or his 6 assigns giving to the adverse party an undertaking in double the 7 amount of said property, to be justified as required in the next 8 preceding section, conditioned for the forthcoming of such prop- 9 erty, or the value thereof, in case judgment shall be pronounced 10 against him.

**Sec. 2733.** Provision in case neither party gives the undertaking.

1876-'7, c. 283, s. 5.

If neither party gives the undertaking described in the two 2 preceding sections, it shall be the duty of the justice of the peace 3 or the clerk of the superior court, to issue an order to the consta- 4 ble or sheriff, or other lawful officer, directing him to take into 5 his possession all of said property, or so much thereof as shall be 6 necessary to satisfy the claimant's demands and costs, and to sell 7 the same under the rules and regulations prescribed by law for the 8 sale of personal property under execution, and to hold the pro- 9 ceeds thereof subject to the decision of the court upon the issue or 10 issues pending between the parties.

*Slaughter v. Winfrey*, 85—159.

**Sec. 2734.** Removal of crop by lessee without notice, a misdemeanor.

876-'7, c. 283, s. 6.

Any lessee or cropper, or the assigns of either, or any other per- 2 son, who shall remove said crop, or any part thereof, from such 3 land without the consent of the lessor or his assigns, and without 4 giving him or his agent five days' notice of such intended removal, 5 and before satisfying all the liens held by the lessor or his assigns, 6 on said crop, shall be guilty of a misdemeanor.

*State v. Sears*, 71—205; *Varner v. Spencer*, 72—381; *State v. Long*, 78—571.

**Sec. 2735.** Chapter to apply to lease of turpentine trees.

1876-'7, c. 283, s. 7.

The provisions of this chapter shall apply to all leases or con- 2 tracts to lease turpentine trees, and the parties thereto shall be fully 3 subject to the provisions and penalties of this chapter.

**Sec. 2736.** Lessors for mining and for getting timber entitled to the remedies given in this chapter.

1863-'3, c. 156, s. 16.

If, in a lease of land for mining, or of timbered land for the 2 purpose of manufacturing the timber into goods, rent shall be re- 3 served, and if it shall be agreed in the lease that the minerals, tim- 4 ber or goods, or any portion thereof shall not be removed until the 5 payment of the rent, in such case the lessor shall have the rights 6 and be entitled to the remedy given by this chapter.



**Sec. 2737. On conveyance of the reversion, &c., no attornment necessary.**

Every conveyance of any rent, reversion, or remainder in lands, 1868-'9, c. 156, s. 17.  
 2 tenements or hereditaments, otherwise sufficient, shall be deemed  
 3 complete without attornment by the holders of particular estates  
 4 in said lands: *Provided, however,* no holder of a particular estate  
 5 shall be prejudiced by any act done by him as holding under his  
 6 grantor, without notice of such conveyance.

**Sec. 2738. Rights of grantees of reversions, and of tenants of particular estates.**

The grantee in every conveyance of reversion in lands, tene- 1868-'9, c. 156, s. 18.  
 2 ments or hereditaments, shall have the like advantages and reme-  
 3 dies by action or entry, against the holders of particular estates in  
 4 such real property, and their assigns, for non-payment of rent,  
 5 and for the non-performance of other conditions and agreements  
 6 contained in the instruments by the tenants of such particular es-  
 7 tates held, as the grantor or lessor or his heirs might have; and  
 8 the holders of such particular estates, and their assigns, shall have  
 9 the like advantages and remedies against the grantee of the rever-  
 10 sion, or any part thereof, for any conditions and agreements con-  
 11 tained in such instruments, as they might have had against the  
 12 grantor or his lessor or his heirs.

**Sec. 2739. Tenants who hold over may be dispossessed, when.**

Any tenant or lessee of any house or land, and the assigns, un- 1868-'9, c. 156, s. 19.  
 2 der the tenants or legal representatives of such tenants or lessee,  
 3 who shall hold over and continue in the possession of the demised  
 4 premises, or any part thereof, without the permission of the land-  
 5 lord, and after demand made for its surrender, may be removed  
 6 from such premises in the manner hereinafter prescribed in either  
 7 of the following cases:  
 8 (1) Whenever a tenant in possession of real estate holds over  
 9 after his term has expired;  
 10 (2) When the tenant or lessee, or other person under him, has  
 11 done or omitted any act by which, according to the stipulations of  
 12 the lease, his estate has ceased.

\* *Creedle v. Gibbs*, 65—192; *Calloway v. Hamby*, 65—631; *Turner v. Lowe*, 66—413; *McCombs v. Wallace*, 66—481; *McMillan v. Love*, 72—18; *Abbott v. Cromartie*, 72—292; *Greer v. Wilbar*, 72—592; *Forsythe v. Bullock*, 74—135; *Garrett v. Com'rs of Edenton*, 74—388; *Medlin v. Steele*, 75—154; *Riley v. Jordan*, 75—180; *Heyer v. Beatty*, 76—28; *Green v. N. C. Railroad Co.*, 77—95; *Foster v. Penry*, 77—160; *Sanders v. Ellington*, 77—255; *Wilson v. James*, 79—349; *Meroney v. Wright*, 81—390; *Johnson v. Hauser*, 82—375; *Davis v. Davis*, 83—71; *Parker v. Allen*, 84—466; *Hughes v. Mason*, 84—472.

**Sec. 2740. When summons shall issue; oath of lessor.**

When the lessor or his assigns, or his or their agent or attorney, 1868-'9, c. 156, s. 20.  
1869-'70, c. 212.  
 2 shall make oath in writing, before any justice of the peace of the  
 3 county in which the demised premises are situated, stating such  
 4 facts as constitute one of the cases above described, and describing  
 5 the premises, and asking to be put in possession thereof, the jus-  
 6 tice shall issue a summons reciting the substance of the oath, and

7 requiring the defendant to appear before him or some other justice  
8 of the county, at a certain place and time, (not to exceed five days  
9 from the issuing of the summons, without the consent of the plain-  
10 tiff or his agent or attorney) to answer the complaint. The plain-  
11 tiff or his agent or attorney may in his oath claim rent in arrears,  
12 and damage for the occupation of the premises since the cessation  
13 of the estate of the lessee: *Provided*, the sum claimed shall not ex-  
14 ceed two hundred dollars; but if he shall omit to make such claim,  
15 he shall not be thereby prejudiced in any other action for their re-  
16 covery.

Medlin v. Steele, 75—154; Nesbitt v. Turrentine, 83—535.

**Sec. 2741. Officer to serve summons, how.**

1868-'9, c. 156, s. 21.

The officer receiving such summons shall immediately serve it  
2 by the delivery of a copy to the defendant or by leaving a copy at  
3 his usual or last place of residence, with some adult person, if any  
4 such be found there; or, if the defendant have no usual place of  
5 residence in the county and cannot be found therein, by fixing a  
6 copy on some conspicuous part of the premises claimed.

**Sec. 2742. What justice to do if defendant fail to appear or admit allegation.**

1868-'9, c. 156, s. 22.

The summons shall be returned according to its tenor, and if on  
2 its return it shall appear to have been duly served, and if the de-  
3 fendant shall fail to appear or shall admit the allegations of the  
4 complaint, the justice shall give judgment that the defendant be  
5 removed from, and the plaintiff be put in, possession of the de-  
6 mised premises; and if any rent or damages for the occupation of  
7 the premises after the cessation of the estate of the lessee, not ex-  
8 ceeding two hundred dollars, be claimed in the oath of the plain-  
9 tiff as due and unpaid, the justice shall inquire thereof, and give  
10 judgment as he may find the fact to be.

**Sec. 2743. What to be done if both parties require a jury-trial.**

1868-'9, c. 156, s. 23.

If the defendant by his answer shall deny any material allega-  
2 tion in the oath of the plaintiff, the justice shall hear the evidence  
3 and give judgment as he shall find the facts to be. If either party  
4 shall demand a trial by jury, and shall deposit with the justice a  
5 sum of money equal to the costs of such jury, the justice shall im-  
6 mediately cause to be summoned twelve lawful jurors, from whom  
7 a jury of six shall be obtained and impaneled as is prescribed in  
8 other cases of trial by jury before a justice, who shall decide upon  
9 the issues of fact joined between the parties, and if rent or dam-  
10 ages be claimed as aforesaid shall assess the same. The justice  
11 shall record the verdict and render judgment accordingly; and if  
12 the jury shall find that the allegation in the plaintiff's oath, which  
13 entitles him to be put in possession, is true, the justice shall give  
14 judgment that the defendant be removed from, and the plaintiff

15 put in possession of the demised premises, and also for such rent  
16 and damages as shall have been assessed by the jury and for costs;  
17 and shall issue his execution to carry the judgment into effect.

**Sec. 2744. Powers of justices the same as on other trials.**

On trials under this chapter the justice shall have the powers 1863-'9, c. 156, s. 24.  
2 given him in other cases of trials before him, and be subject to  
3 like duties.

*Heyer v. Beatty*, 76—28.

**Sec. 2745. Either party may appeal; the undertaking.**

Either party may appeal from the judgment of the justice, as is 1863-'9, c. 156, s. 25.  
2 prescribed in other cases of appeal from the judgment of a jus-  
3 tice; but no execution commanding the removal of a defendant  
4 from the possession of the demised premises, shall be suspended  
5 until the defendant shall have given an undertaking in an amount  
6 not less than one year's rent of the premises, with sufficient surety,  
7 who shall justify and be approved by the justice, to be void if the  
8 defendant shall pay any judgment which in that or any other ac-  
9 tion the plaintiff may recover for rent, and for damages for the  
10 detention of the land.

*Steadman v. Jones*, 65—388; *Critcher v. Hodges*, 68—22; *Heyer v. Beatty*, 76—28; *Rollins v. Henry*, 76—289; *Rollins v. Henry*, 77—467; *Lane v. Morton*, 78—7.

**Sec. 2746. What done if defendant tenders rent in arrear and costs.**

If, in any action brought to recover the possession of demised 1863-'9, c. 156, s. 26.  
2 premises upon a forfeiture for the non-payment of rent, the tenant,  
3 before judgment given in such action, shall pay or tender the rent  
4 due and the costs of the action, all further proceedings in such  
5 action shall cease; or if the plaintiff shall further prosecute his  
6 action, and the defendant shall pay into court for the use of the  
7 plaintiff a sum equal to that which shall be found to be due, and  
8 the costs, to the time of such payment, or to the time of a tender  
9 and refusal, if one has occurred, the defendant shall recover from  
10 the plaintiff all subsequent costs; the plaintiff shall be allowed to re-  
11 ceive the sum paid into court for his use, and the proceedings shall  
12 be stayed.

**Sec. 2747. If proceedings quashed, judgment of restitution.**

If the proceedings before the justice shall be brought before a 1863-'9, c. 156, s. 27.  
2 superior court and quashed, or judgment be given against the  
3 plaintiff, the superior or other court in which final judgment shall  
4 be given, shall, if necessary, restore the defendant to the possession,  
5 and issue such writs as shall be proper for that purpose.

*Perry v. Tupper*, 70—538; *Perry v. Tupper*, 71—385; *Meroney v. Wright*, 81—390; *Meroney v. Wright*, 84—336.



**Sec. 2748. Damages may be recovered for occupation to time of trial.**

1868-'9, c. 156, s. 28.

On appeal to the superior court, the jury trying the issue joined,  
 2 shall assess the damages of the plaintiff for the detention of his  
 3 possession to the time of the trial in that court, and judgment for  
 4 the rent in arrear and for the damages assessed may, on motion,  
 5 be rendered against the sureties to the appeal.

Nesbitt v. Turrentine, 83—535.

**Sec. 2749. Defendant may recover damages for his removal from possession.**

1868-'9, c. 156, s. 30.

If, by order of the justice, the plaintiff shall be put in posses-  
 2 sion, and the proceedings shall afterwards be quashed or reversed,  
 3 the defendant may recover damages of the plaintiff for his re-  
 4 moval.

**Sec. 2750. Remedy given to the lessor, when the tenant deserts premises.**

1868-'9, c. 156, s. 32.

If any tenant or lessee of lands or tenements, being in arrear for  
 2 rent, or having agreed to cultivate the demised premises and to pay  
 3 a part of the crop to be made thereon as rent, or who shall have  
 4 given to the lessor a lien on such crop as a security for the rent,  
 5 shall desert the demised premises, and leave them unoccupied and  
 6 uncultivated, the lessor shall have the like remedies to be put in  
 7 possession, as are given to lessors against tenants who hold over.

**Sec. 2751. Costs to successful party.**

1868-'9, c. 156, s. 39.

In cases under this chapter, the successful party shall recover  
 2 costs.

**Sec. 2752. What forms sufficient.**

1868-'9, c. 156, s. 33.

The following forms, or any substantially similar, shall be suffi-  
 2 cient in proceedings for the summary ejectment of tenants holding  
 3 over, and others, under sections twenty-seven hundred and thirty-  
 4 nine to twenty-seven hundred and fifty-two, both inclusive.

**Sec. 2753. Forms of proceeding before a justice of the peace for the summary ejectment of a tenant holding over.**

[No. 1.]

## FORM OF THE OATH OF PLAINTIFF.

1868-'9, c. 165, s. —.  
1869-'70, c. 212.

NORTH CAROLINA, .....County.

A. B., Plaintiff,  
     *against*  
 C. D., Defendant. } Summary proceedings in ejectment.

The plaintiff (his agent or attorney) maketh oath that the defendant entered into the pos-  
 session 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 other-  
 wise, 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 plaintiffs 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....., 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 } Summary proceedings in ejectment.  
C. D., Defendant. }

A. B., (his agent or attorney,) having made and subscribed before me the oath, a copy of which is annexed, you are required 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.

A. B., Plaintiff, }  
against } Summary proceedings in ejectment for (describe the premises.)  
C. D. Defendant. }

Oath of plaintiff (his agent or attorney) filed on the ..... 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-seven hundred and forty-one, and returns it to the justice with the oath of the plaintiff, and with his return indorsed.

[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, }  
*against* } Summary proceedings in ejectment.  
 C. D., Defendant. }

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 admit 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,) demand 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 impaneled, to wit: (here state the names of the six jurors impaneled,) 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 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 the case may be) prayed an appeal to the next superior court of said county, which is allowed.

## [No. 9.]

## FORM OF BOND TO BE GIVEN BY DEFENDANT TO SUSPEND EXECUTION.

We, the undersigned, ..... and ....., acknowledge ourselves indebted to ..... in the sum of ..... dollars: Witness our hands and seals, this the ..... day of ....., A. D. 18.....

Whereas on the ..... day of ....., A. D. 18....., before ..... a justice of the peace for ..... county, A. B. recovered a judgment against C. D. for ..... dollars damages for the detention of said real estate from the ..... day of ....., A. D. 18....., to the ..... day of ....., A. D. 18.....; and whereas, the said ..... ha... prayed an appeal to the superior court from said judgment, and also asks that execution on said judgment shall be suspended: now, therefore, if the said ..... shall pay any judgment, which, in this or in any other action, the said ..... may recover for the rent of said premises, and for damages for detention thereof, then this obligation shall be void, otherwise to remain in full force and virtue.

..... [SEAL]  
 ..... [SEAL]  
 ..... [SEAL]



## [No. 10.]

## FORM OF EXECUTION ON A JUDGMENT FOR THE PLAINTIFF.

A. B., Plaintiff, }  
*against*  
 C. D., Defendant. } ..... County.

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 describe it as in the oath of 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 thereon, before me. (State when and where according to general law respecting justices' executions.)

Witness, my hand and seal, this ..... day of ....., 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 v. 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, v. 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 SEVENTY.

## LIENS.

## SECTION.

2754. Liens on buildings.  
 2755. Liens on crops.  
 2756. Personal property subject to lien.  
 2757. Claims, where filed.  
 2758. To be brought before justice of the peace in case of disagreement.  
 2759. What rights not affected.  
 2760. Costs allowed to either party.  
 2761. Defendant entitled to set-off.  
 2762. When notice of the lien shall be filed; clerk to keep book of liens; clerk's fee.  
 2763. Proceedings to enforce lien; in what courts and in what time.  
 2764. Executions to issue as upon other judgments.  
 2765. Order in which liens are to be paid.  
 2766. How liens discharged.  
 2767. No execution issued by justice of the peace against real estate.  
 2768. When remedy by attachment.  
 2769. Laborer's share of crop not liable to execution against employer.

## SECTION.

2770. Owners of stud-horses, &c., to have a lien on colts.  
 2771. Colt not exempt from execution.  
 2772. Liens on crops in favor of those making advances.  
 2773. Warrant to sheriff to seize the crops on affidavit that the lien is about to be defeated.  
 2774. Lien given to sub-contractors, laborers, and persons furnishing material for improvements upon real estate; proviso.  
 2775. Notice to be given to owner; liability of owner.  
 2776. Lien, how enforced.  
 2777. Liens on vessels for labor in loading and discharging cargo, &c.  
 2778. Liens, how filed; notice to master, &c.  
 2779. Lien, how enforced.  
 2780. Judgment against contractor, &c., to be judgment against the master, &c.  
 2781. Liens due sub-contractors, &c., not to exceed amount due contractor, &c.

## Sec. 2754. Liens on buildings.

1869-'70, c. 206, s. 1.

Every building built, rebuilt, repaired or improved, together  
 2 with the necessary lots on which said building may be situated,  
 3 and every lot, farm or vessel, or any kind of property, real or per-  
 4 sonal, not herein enumerated, shall be subject to a lien for the  
 5 payment of all debts contracted for work done on the same, or  
 6 material furnished.

Wilkie v. Bray, 71—205; Gray v. Nash, 73—100; Lanier v. Bell, 81—337; Whitaker v. Smith, 81—340; Reynolds v. Pool, 84—37.

## Sec. 2755. Liens on crops.

1869-'70, c. 206, s. 2.

The lien for work on crops or farms or materials given by this  
 2 chapter shall be preferred to every other lien or incumbrance,  
 3 which attached upon the property subsequent to the time at which  
 4 the work was commenced or the materials were furnished.

Warren v. Woodard, 70—382; Reynolds v. Pool, 84—37; Curtis v. Cash, 84—41.

## Sec. 2756. Personal property subject to lien.

1869-'70, c. 206, s. 3.

Any mechanic or artisan who shall make, alter or repair any  
 2 article of personal property at the request of the owner or legal  
 3 possessor of such property, shall have a lien on such property so  
 4 made, altered or repaired for his just and reasonable charge for  
 5 his work done and material furnished, and may hold and retain  
 6 possession of the same until such just and reasonable charges shall  
 7 be paid; and if not paid for within the space of thirty days, pro-  
 8 vided it does not exceed fifty dollars, if over fifty dollars, ninety  
 9 days, after the work shall have been done, such mechanic or arti-  
 10 san may proceed to sell the property so made, altered or repaired

11 at public auction, by giving two weeks' public notice of such sale  
12 by advertising in some newspaper in the county in which the work  
13 may have been done, or if there be no such newspaper, then by  
14 posting up notice of such sale in three of the most public places in  
15 the county, town or city in which the work may have been done,  
16 and the proceeds of the said sale shall be applied first to the dis-  
17 charge of the said lien and the expenses and costs of keeping and  
18 selling such property, and the remainder, if any, shall be paid over  
19 to the owner thereof.

**Sec. 2757. Claims where filed.**

All claims against personal property, of two hundred dollars  
2 and under may be filed in the office of the nearest justice of the  
3 peace; if over two hundred dollars or against any real estate or in-  
4 terest therein, in the office of the superior court clerk in any county  
5 where the labor has been performed or the materials furnished;  
6 but all claims shall be filed in detail, specifying the materials fur-  
7 nished or labor performed, and the time thereof. If the parties in-  
8 terested make a special contract for such labor performed, or if  
9 such material and labor are specified in writing, in such cases it  
10 shall be decided agreeably to the terms of the contract, provided  
11 the terms of such contract do not affect the lien for such labor per-  
12 formed or materials furnished.

1869-'70, c. 206, s. 4.  
1876-'7, c. 53, s. 1.

Boyle v. Roberts, 71—130; Chadbourn v. Williams, 71—444; Wray v. Harris, 77—77; Lanier v. Bell, 81—337.

**Sec. 2758. To be brought before justice of the peace in case of disagreement.**

In case of any disagreement between the parties interested in  
2 any such contract it may be brought before the nearest justice of  
3 the peace by the plaintiff or defendant for arbitration or otherwise,  
4 as the said justice may decide, provided the amount claimed does  
5 not exceed two hundred dollars; if over that amount, all claims  
6 must be filed with the clerk of the superior court and entered on  
7 the calendar, so as to be brought before the court at the first term  
8 after the filing of any claims. The judges of the superior court  
9 may appoint referees to ascertain the proper value of any labor  
10 performed on any building or farm or any material furnished or  
11 specified in the application at the time of plaintiff or defendant  
12 filing his petition.

1869-'70, c. 206, s. 5.

**Sec. 2759. What rights not affected.**

Nothing contained in this chapter shall be construed to affect  
2 the rights of any person to whom any debt may be due for any  
3 work done for which priority of claims are filed with the proper  
4 officer.

1869-'70, c. 206, s. 6.



**Sec. 2760. Costs allowed to either party.**

1869-'70, c. 206, s. 7.

Costs are allowed to either party upon the rules established by  
2 law in actions arising on contracts, made under this code.

**Sec. 2761. Defendant entitled to set-off.**

1869-'70, c. 206, s. 8.

The defendant in any suit to enforce the lien shall be entitled to  
2 any set-off or claim arising between the contractors during the  
3 performance of the contract.

**Sec. 2762. When notice of the lien shall be filed; clerk to keep book of liens; clerk's fee.**

1868-'9, c. 117, s. 4.  
1876-'7, c. 53, s. 2.  
1881, c. 65.

Notice of the lien shall be filed, as hereinbefore provided, at any  
2 time within six months of the completion of the labor, or the final  
3 furnishing the materials, or the gathering of the crops: *Provided*,  
4 that in cases of liens on real estate, or any interest therein, given  
5 by this chapter, the notice shall be filed in the office of the supe-  
6 rior court clerk within six months after the completion of the la-  
7 bor or the final furnishing of the materials. And the clerk of the  
8 superior court shall keep a book in which he shall enter all notices  
9 of liens filed in his office. He shall provide an index thereto of  
10 the names of the claimant and the party against whom it is filed;  
11 and for his services, the clerk's fee shall be ten cents in each case.

**Sec. 2763. Proceedings to enforce lien; in what courts and in what time.**

1868-'9, c. 117, s. 7.  
1876-'7, c. 250.

Proceedings to enforce the lien created, must be commenced in  
2 the court of justices of the peace, and in the superior court, ac-  
3 cording to the jurisdiction thereof, within six months from the  
4 date of filing the notice of the lien: *Provided*, that if the debt be  
5 not due within six months but becomes due within twelve months,  
6 suit may be brought or other proceedings instituted to enforce the  
7 lien in thirty days after it is due, and this shall apply to existing  
8 liens and proceedings.

Boyle v. Roberts, 71—130; Gay v. Nash, 84—333.

**Sec. 2764. Executions to issue as upon other judgments.**

1868-'9, c. 117, s. 9.

Upon judgment rendered in favor of the claimant, an execution  
2 for the collection and enforcement thereof, shall issue in the same  
3 manner as upon other judgments in actions arising on contract  
4 for the recovery of money only, except that the execution shall direct  
5 the officer to sell the right, title and interest which the owner had  
6 in the premises or the crops thereon, at the time of filing no-  
7 tice of the lien, before such execution shall extend to the gen-  
9 eral property of the defendant.

Boyle v. Roberts, 71—130.

**Sec. 2765. Order in which liens are to be paid.**

1868-'9, c. 117, s. 11.

The liens created and established by this chapter shall be paid  
2 and settled according to the priority of the notice of the lien filed  
3 with the justice or the clerk.

**Sec. 2766. How liens discharged.**

All liens created by this chapter may be discharged as follows: 1868-'9, c. 117, s. 12.

- 2 (1) By filing with the justice or clerk a receipt or acknowledg-  
3 ment that the lien has been paid or discharged, signed by the  
4 claimant;
- 5 (2) By depositing with the justice or clerk money equal to the  
6 amount of the claim, which money shall be held by said officer  
7 for the benefit of the claimant;
- 8 (3) By an entry in the lien docket that the proceedings on the  
9 part of the claimant to enforce the lien have been dismissed, or a  
10 judgment rendered against the claimant in such action;
- 11 (4) By a failure of the claimant to commence an action for the  
12 enforcement of the lien within six months from the notice of lien  
13 filed.

**Sec. 2767. No execution issued by justice of the peace against real estate.**

No execution issued by a justice of the peace, under this chapter, 1868-'9, c. 117, s. 13.  
2 shall be enforced against real estate or any interest therein, but  
3 justice's judgments may be docketed on judgment docket of supe-  
4 rior court for the purpose of selling such estate or any interest  
5 therein.

**Sec. 2768. When remedy by attachment.**

In all cases where the owner or employer attempts to remove 1868-'9, c. 117, s. 14.  
2 the crop, houses or appurtenances from the premises, without the  
3 permission, or with the intent to defraud the laborer of his lien,  
4 the claimant may have a remedy by attachment.

*Brogden v. Privett, 67—45.*

**Sec. 2769. Laborer's share of the crop not liable to execution against employer.**

Whenever servants and laborers in agriculture shall by their 1866-'7, c. 59.  
2 contracts in writing, already or hereafter made, be entitled, for  
3 wages, to a part of the crops cultivated by them, such part shall  
4 not be subject to sale under executions against their employers, or  
5 the owners of the land cultivated.

**Sec. 2770. Owners of stud-horses, &c., to have a lien on colts.**

In all cases where the owner or any agent for or employee of 1872-'3, c. 94, s. 1.  
2 the owner of any mare or jennett shall turn the same to a stud-  
3 horse or jackass for the purpose of raising colts, the price charged  
4 for the season of the stud-horse or jackass shall be constituted a  
5 lien on the colt until the price so charged for the season is paid by  
6 the owner of the colt, his agent or employee.

**Sec. 2771. Colt not exempt from execution.**

The colt shall not be exempt from execution for the payment of 1872-'3, c. 94, s. 2.  
2 said season price by reason of the operation of the homestead ex- 1879, c. 47.

3 emption: *Provided, however*, that the person or persons claiming  
4 such lien on the colt shall close the same within twelve months  
5 from the foaling of the colt.

Sec. 2772. Lien on crops in favor of those making advances.

1866-'7, c. 1, s. 1.  
1872-'3, c. 133, s. 1.

If any person or persons shall make any advance or advances,  
2 either in money or supplies, to any person or persons, who are en-  
3 gaged in, or about to engage in the cultivation of the soil, the per-  
4 son or persons so making such advance or advances shall be enti-  
5 tled to a lien on the crops which may be made during the year  
6 upon the land in the cultivation of which the advances so made  
7 have been expended, in preference to all other liens existing or  
8 otherwise, to the extent of such advance or advances: *Provided*, an  
9 agreement in writing shall be entered into before any such advance  
10 is made to this effect, in which shall be specified the amount to be  
11 advanced, or in which a limit shall be fixed beyond which the ad-  
12 vance, if made from time to time during the year, shall not go;  
13 which agreement shall be recorded in the office of the register of  
14 the county in which the person to whom the advances are made  
15 resides, within thirty days after its date.

Warren v. Woodard, 70—382; Harrison A. Ricks, 71—7; Clarke v. Farrar, 74—686; Thomas v. Campbell, 74—787; Gay v. Nash, 78—100; Womble v. Leach, 83—84; Ray v. Pearce, 84—485; Cottingham v. McKay, 86—241; Patapsco v. Magee, 86—350.

Sec. 2773. Warrant to sheriffs to seize the crops on affidavit that the lien is about to be defeated; proviso.

1866-'7, c. 1, s. 2.  
1872-'3, c. 133, s. 2.

If the person making such advances shall make an affidavit be-  
2 fore the clerk of the superior court of the county in which such  
3 crops are, that the person to whom such advances have been made,  
4 is about to sell or dispose of his crop, or in any other way is about  
5 to defeat the lien hereinbefore provided for, accompanied with a  
6 statement of the amount then due, it shall be lawful for him to  
7 issue his warrant, directed to any of the sheriffs of this state, re-  
8 quiring them to seize the said crop, and, after due notice, sell the  
9 same for cash and pay over the net proceeds thereof, or so much  
10 thereof as may be necessary in the extinguishment of the amount  
11 then due: *Provided, however*, that if the person to whom such ad-  
12 vances have been made, shall, within thirty days after such sale  
13 has been made, give notice in writing to the sheriff, accompanied  
14 with an affidavit to this effect, that the amount claimed is not  
15 justly due, then it shall be the duty of the said sheriff to hold  
16 the proceeds of such sale subject to the decision of the court, upon  
17 an issue which shall be made up and set down for trial at the  
18 next succeeding term of the superior court for the county in which  
19 the person to whom such advances have been made resides: *Provided*  
20 *vided further*, that the lien provided in this and the preceding sec-  
21 tion shall not affect the rights of landlords to their proper share of  
22 rents.

Harrison v. Ricks, 71—7; Gay v. Nash, 78—100; Gay v. Nash, 84—333; Cottingham v. McKay, 86—241.



**Sec. 2774.** Lien given to sub-contractors, laborers and persons furnishing material for improvements upon real estate; proviso.

All sub-contractors and laborers who are employed to furnish or  
2 who do furnish material for the building, repairing or altering any  
3 house or other improvement on real estate, shall have a lien on  
4 said house and real estate for the amount of such labor done or  
5 material furnished, which lien shall be preferred to the mechanics'  
6 lien now provided by law, when notice thereof shall be given as  
7 hereinafter provided: *Provided*, that the sum total of all the  
8 liens due sub-contractors and material men shall not exceed the  
9 amount due the original contractor at the time of notice given. 1880, c. 44, s. 1.

**Sec. 2775.** Notice to be given to owner; liability of owner.

Any sub-contractor, laborer or material man, who claims a lien  
2 as provided in the preceding section, may give notice to the owner  
3 or lessee of the real estate who makes the contract for such build- 1880, c. 44, s. 2.  
4 ing or improvement at any time before the settlement with the  
5 contractor, and if the said owner or lessee shall refuse or neglect  
6 to retain out of the amount due the said contractor under the con-  
7 tract as much as shall be due or claimed by the sub-contractor, la-  
8 borer or material man, the sub-contractor, laborer or material man  
9 may proceed to enforce his lien as is now provided by law, and  
10 after such notice is given no payment to the contractor shall be a  
11 credit on or discharge of the lien herein provided.

**Sec. 2776.** Lien, how enforced.

The lien given by the two preceding sections may be enforced as  
2 provided for other liens in this chapter, except when it is other- 1880, c. 44, s. 3.  
3 wise provided in said sections.

**Sec. 2777.** Liens on vessels for labor in loading or discharging cargo, &c.

Every vessel, her tackle, apparel and furniture shall be subject  
2 to a lien for all labor done by contractors or others in loading or 1881, c. 356, s. 1.  
3 discharging the cargo of such vessel, and also for all labor done by  
4 any sub-contractor or laborer employed in discharging or loading  
5 any such vessel, when such labor is done under contract with a  
6 contractor or stevedore who may be employed by the master, agent  
7 or owner of such vessel.

**Sec. 2778.** Liens, how filed; notice to master, &c.

The liens provided for in this chapter shall be filed as is now  
2 provided by law for other liens: the sub-contractor or laborer may 1881, c. 356, s. 2.  
3 give notice to the master, agent or owner of such vessel, that the  
4 contractor or stevedore is or will become indebted to him, when it  
5 shall be the duty of such master, agent or owner of such vessel to  
6 retain out of the amount due to such contractor or stevedore un-  
7 der his contract, as much as shall be due or claimed by the per-

8 son giving the notice, and after such notice is given no payment  
9 to the contractor or stevedore shall be a credit on or a discharge of  
10 the lien herein provided.

**Sec. 2779. Liens, how enforced.**

1881, c. 356, s. 3.

The enforcement of such lien shall be by summons against the  
2 contractor or stevedore, and also against the master, agent or owner  
3 of such vessel, who made the contract with such contractor or  
4 stevedore, if over two hundred dollars, to be issued by the clerk of  
5 the superior court, and if under two hundred dollars, by a justice  
6 of the peace.

**Sec. 2780. Judgment against contractor, &c., to be a judgment against the master, &c.**

1881, c. 356, s. 4.

The judgment against the contractor or stevedore shall also be a  
2 judgment against the master, agent or owner of such vessel, and  
3 also against such vessel itself, her tackle, apparel and furniture,  
4 which shall be seized, held and sold under execution for the satis-  
5 faction of such judgment.

**Sec. 2781. Liens due sub-contractors, &c., not to exceed amount due contractor, &c.**

1881, c. 356, s. 5.

The sum total of all the liens due to different sub-contractors  
2 and laborers, performed for any contractor or stevedore under any  
3 contract with any master, agent or owner of any vessel, shall not  
4 exceed the amount due to such contractor or stevedore at the  
5 time of notice given to such owner, agent or master, or the amount  
6 due to such contractor or stevedore at the time of the service of  
7 summons upon such master, agent or owner when no notice has  
8 been given.

## CHAPTER SEVENTY-ONE.

### LIGHT-HOUSES.

**SECTION.**

2782. United States may purchase lands to  
erect light-houses and life-saving sta-  
tions; proviso.  
2783. Deed to be registered.

**SECTION.**

2784. Exemption from taxation.  
2785. Officers of the state may execute process  
on such lands.  
2786. Conditions of consent; proviso.

**Sec. 2782. United States may purchase lands to erect light-houses; proviso.**

1870-'71, c. 41, s. 1.  
1872-'3, c. 201.

It shall be lawful for the government of the United States, or  
2 any person under authority of the same, to purchase any tract,  
3 piece or parcel of land from any individual or individuals, bodies  
4 politic or corporate within the boundaries or limits of this state,

5 and hold the same for the purpose of erecting thereon light-houses,  
6 light-keepers' dwellings, life-saving stations, buoys and coal depots,  
7 and buildings connected therewith: *Provided*, that no one tract,  
8 piece or parcel shall contain more than twenty acres.

**Sec. 2783. Deed to be registered.**

All deeds, conveyances or other title papers for the same shall  
2 be recorded, as in other cases, in the office of the register of deeds  
3 of the county in which the lands so conveyed may lie, in the same  
4 manner and under the same regulations as other deeds and con-  
5 veyances are now recorded, and in like manner may be recorded a  
6 sufficient description by metes and bounds, courses and distances,  
7 of any tract or tracts, or legal division of any public land belong-  
8 ing to the United States, which may be set apart by the general  
9 government for the purpose before mentioned, by an order, patent  
10 or other official document or papers so describing such land.

1870-'71, c. 44, s. 2.  
1872-'3, c. 201.

**Sec. 2784. Exemption from taxation.**

The lots, parcels or tracts of land so selected, together with the  
2 tenements and appurtenances for the purpose before mentioned,  
3 shall be exempt from taxation by the state of North Carolina.

1870-'71, c. 44, s. 3.

**Sec. 2785. Officers of the state may execute process on such lands.**

Nothing herein contained shall be so construed as to debar or  
2 hinder any of the officers of this state from executing any process, or  
3 levying any execution within the limits of any tract or parcel of  
4 land so held and purchased by the government of the United  
5 States in the same manner as if this chapter had never been passed.

1870-'71, c. 44, s. 4.

**Sec. 2786. Conditions of consent; proviso.**

The consent herein and hereby given is in accordance with the  
2 seventeenth clause of the eighth section of the first article of the  
3 constitution of the United States, and with the acts of congress in  
4 such cases made and provided, and in consideration of the United  
5 States building light-houses on the tracts or parcels of land so  
6 purchased, or that may be purchased: *And provided also*, that the  
7 title to said land so conveyed to the United States shall escheat to  
8 the state unless the construction of a light-house be completed  
9 thereon within ten years from the date of the conveyance from  
10 said grantor.

1870-'71, c. 44, s. 5.



## CHAPTER SEVENY-TWO.

## LIMITED PARTNERSHIPS.

## SECTION.

2787. Limited partnerships may be formed.  
 2788. General may unite with special partners, and who are special partners.  
 2789. Certificate to be signed; what it must show.  
 2790. Certificate must be acknowledged and registered.  
 2791. When to be registered.  
 2792. Oaths to be made of the sums contributed.  
 2793. Certificate and affidavit essential.  
 2794. Effect of false statement.  
 2795. The terms of partnership must be published.  
 2796. Affidavits of publication to be filed.  
 2797. Renewals and continuances must be certified.

## SECTION.

2798. Alterations in names, &c., work a dissolution.  
 2799. Name of firm, what to be.  
 2800. Actions, how to be conducted.  
 2801. Special stock not to be withdrawn.  
 2802. When special stock to be returned.  
 2803. Special partner may examine into business.  
 2804. Partners liable to account with each other.  
 2805. Effect of fraud by partner.  
 2806. Effect of bankruptcy.  
 2807. How partnership to be dissolved.  
 2808. Clerk's and register's fees.

## Sec. 2787. Limited partnerships may be formed.

1860-'61, c. 28, s. 1.

Limited partnerships for the transaction of any mercantile, 2 manufacturing or mechanical business within the state may be 3 formed by two or more persons, upon the terms and with the 4 rights and powers and subject to the conditions and liabilities in 5 this chapter; but its provisions must not be construed to author- 6 ize any such partnership for the conducting of a banking or insur- 7 ance business.

## Sec. 2788. General may unite with special partners, and who are special partners.

1860-'61, c. 28, s. 2.

Such partnerships may consist of one or more persons, who are 2 general partners, and are jointly and severally responsible as part- 3 ners are now by law, and of one or more persons, who contribute 4 in actual cash payments a specific sum as capital to the common 5 stock, who are called special partners, and who are not liable for 6 the debts of the partnership beyond the funds so contributed to 7 the capital.

## Sec. 2789. Certificate to be signed; what it must show.

1860-'61, c. 28, s. 3.

The persons desirous of forming such partnership must make 2 and severally sign a certificate containing: first, the name or firm 3 under which such partnership is to be conducted; second, the gen- 4 eral nature of the business to be transacted; third, the names of 5 all the general and special partners interested therein, distinguish- 6 ing which are general and which are special partners, and their 7 respective places of residence; fourth, the amount of capital which 8 each special partner has contributed to the common stock; fifth, 9 the period at which such partnership is to commence and termi- 10 nate.

**Sec. 2790. Certificate must be acknowledged and registered.**

The certificate must be acknowledged by the several persons 1860-'61, c. 28, s. 4.  
2 signing the same before a judge of the supreme or superior court,  
3 or before the clerk of the superior court of the county in which  
4 the principal place of business of such partnership is situated;  
5 and the said judge or clerk shall indorse said acknowledgment, and  
6 order the certificate to be registered.

**Sec. 2791. When to be registered.**

The certificate and acknowledgment and order for registration 1860-'61, c. 28, s. 5.  
2 must be registered in the county in which the principal place of  
3 business of such partnership is situated. If the partnership has  
4 places of business in different counties, a transcript of the certifi-  
5 cate and acknowledgment certified by the register must be regis-  
6 tered and filed in the register's office of each of such counties.

**Sec. 2792. Oaths to be made of the sums contributed.**

At the time of the acknowledgment of the certificate, an affidavit 1860-'61, c. 28, s. 6.  
2 of one or more of the general partners shall be made on oath be-  
3 fore the judge or clerk taking such acknowledgment, stating that  
4 the sums specified in the certificate to have been contributed by  
5 each of the special partners to the common stock have been ac-  
6 tually in good faith paid in cash, and the said affidavit so made  
7 shall be registered with the original certificate.

**Sec. 2793. Certificate and affidavit essential.**

No such partnership shall be deemed to have been formed until 1860-'61, c. 28, s. 7.  
2 such certificate and affidavit have been made, acknowledged and  
3 registered as required in the preceding section.

**Sec. 2794. Effect of false statement.**

If any false statement is made in such certificate or affidavit, all 1860-'61, c. 28, s. 8.  
2 the persons interested in such partnership shall be liable as general  
3 partners.

**Sec. 2795. The terms of partnership must be published.**

The terms of the partnership must be published immediately 1860-'61, c. 28, s. 9  
2 after its formation for six successive weeks, in at least one  
3 newspaper in the same county or near the place of said partner-  
4 ship business, and if such publication be not made, the partnership  
5 shall be deemed general.

**Sec. 2796. Affidavits of publication to be filed.**

Affidavits of such publication made by the proprietor of such 1860-'61, c. 28, s. 10.  
2 newspaper in which the same is published, may be filed with the  
3 clerk of the superior court of the county in which such business is  
4 conducted, and shall be evidence of the fact.

**Sec. 2797. Renewals and continuances must be certified.**

1860-'61, c. 28, s. 11.

Every renewal or continuance of such partnership beyond the 2 time originally fixed for its duration must be certified, acknowl- 3 edged and registered, and an affidavit of a general partner made 4 and filed, and notice given by publication as required for its origi- 5 nal formation, and every such partnership which is otherwise con- 6 tinued must be deemed a general partnership: *Provided*, that the 7 affidavit herein required may state that the amount of cash therein 8 specified had been originally paid in good faith, and that it is rep- 9 resented by goods or merchandise then on hand, and has not been 10 impaired in the course of trade.

**Sec. 2798. Alterations in names, &c., work a dissolution.**

1860-'61, c. 28, s. 12.

Every alteration which is made in the names of the partners, in 2 the nature of the business, in the capital or shares thereof or in 3 any other matter specified in the original certificate, must be 4 deemed a dissolution of the partnership; and any such partner- 5 ship which is in any manner carried on after such alteration has 6 been made must be deemed a general partnership, unless renewed 7 as a special partnership, according to the provisions of the preced- 8 ing sections.

**Sec. 2799. Name of firm, what to be.**

1860-'61, c. 28, s. 13.

The business of the partnership must be conducted under a firm 2 in which the names of the general partners only are inserted, with- 3 out the addition of the word "company" or any other general 4 term; and if the name of any special partner is used in the firm 5 with his privity, he shall be deemed a general partner.

**Sec. 2800. Actions, how to be conducted.**

1860-'61, c. 28, s. 14.

Suits in relation to the business of the partnership may be 2 brought and conducted by and against the general partner in the 3 same manner as if there was no special partner.

**Sec. 2801. Special stock not to be withdrawn.**

1860-'61, c. 28, s. 15.

No part of the sum which any special partner has contributed 2 to the capital stock must be withdrawn or paid by him in the shape 3 of dividends, profits or otherwise, at any time during the continu- 4 ance of the partnership; but any partner may annually receive 5 lawful interest on the sum so contributed by him, if the payment 6 of such interest does not reduce the original amount of such capi- 7 tal; and if, after the payment of such interest, any profits remain 8 to be divided, he may receive his portion of such profits.

**Sec. 2802. When special stock to be returned.**

1860-'61, c. 28, s. 16.

If it appears by the payment of interest or profits to any special 2 partner the original capital has been reduced, the partner receiv-



3 ing the same is bound to restore the amount necessary to make  
4 good his share of the capital without interest.

**Sec. 2803. Special partner may examine into business.**

A special partner may, from time to time, examine into the 1860-'61, c. 28, s. 17.  
2 state and progress of the partnership concerns; may advise as to  
3 their management and act as attorney at law, but must not trans-  
4 act any other of the partnership business, nor be employed for that  
5 purpose as agent or otherwise; and if he interfere contrary to the  
6 provisions of this section he is deemed a general partner.

**Sec. 2804. Partners liable to account with each other.**

The general partners are liable to account to each other, and to 1860-'61, c. 28, s. 18.  
2 the special partners for their management of the partnership, as  
3 other partners.

**Sec. 2805. Effect of fraud by partner.**

Any partner who is guilty of any fraud in the affairs of the part- 1860-'61, c. 28, s. 19.  
2 nership is liable civilly to the party injured to the extent of the  
3 damage, and is also guilty of a misdemeanor.

**Sec. 2806. Effect of bankruptcy.**

In case of the bankruptcy or insolvency of the partnership, no spe- 1860-'61, c. 28, s. 20.  
2 cial partner, under any circumstances, is to be allowed to claim as  
3 a creditor until the claims of all the other creditors of the partner-  
4 ship are satisfied.

**Sec. 2807. How partnership to be dissolved.**

No dissolution of such partnership by the acts of the parties 1860-'61, c. 28, s. 21  
2 must take place before the time specified in the certificate of its  
3 formation, or in the certificate of its renewal, until a notice of its  
4 dissolution has been recorded in the register's office in which the  
5 original certificate was recorded, and published once a week for  
6 four successive weeks in the nearest newspaper to each of the places  
7 where the partnership transacts its business.

**Sec. 2808. Clerks' and registers' fees.**

The clerk of the superior court and register of deeds shall be 1860-'61, c. 28, s. 22.  
2 entitled to the following fees for services rendered under this chap-  
3 ter; For each acknowledgment and probate the clerk shall be al-  
4 lowed fifty cents; for recording the original certificates and ac-  
5 knowledgments and each transcript of the same, the register shall  
6 be allowed one dollar; for recording each affidavit, twenty-five  
7 cents; making out transcripts and certifying the same, fifty cents;  
8 and the same fees on the renewal or continuance of the partnership.

## CHAPTER SEVENTY-THREE.

## LOCAL OPTION, LIQUORS AND WINE.

## SECTION.

2809. The manufacture of domestic wines encouraged.

2810. Local prohibitory laws, or acts repealing such laws, not to be passed without notice.

2811. The question of prohibition in certain localities to be decided by a vote of the people.

2812. Elections may be held on the question of the sale of liquors on the first Monday in May of any year.

## SECTION.

2813. Rules for holding the election.

2814. All qualified electors entitled to vote; form of ballots.

2815. The effect of the election, if in favor of prohibition.

2816. The effect of a county election in favor of license.

2817. Duty of board of county commissioners.

**Sec. 2809. The manufacture of domestic wines encouraged.**

1874-'5, c. 208.

All wines made from grapes, blackberries, currants, gooseberries, 2 raspberries and strawberries manufactured in this state from fruit 3 raised in the state, may be sold in bottles corked or sealed up, and 4 not to be drunk on the premises, in any quantity whether greater 5 or less than one quart: *Provided*, that nothing herein contained 6 shall authorize any person to sell any of the said wines to any per- 7 son who is a minor; but this section shall not apply to wines 8 which contain any foreign admixture of spirituous liquors, and 9 shall only apply to such wines as derive their ardent spirit from 10 vinous fermentation.

**Sec. 2810. Local prohibitory laws, or acts repealing such laws, not to be passed without notice.**

1874-'5, c. 158, s. 1.

Notice of all applications to the general assembly to prohibit the 2 sale of spirituous liquors, or to repeal any law prohibiting the sale 3 of spirituous liquors, within the limits therein specified, shall be 4 posted at four public places within the specified limits for at least 5 thirty days before said application or petition shall be forwarded 6 to the general assembly, and evidence that notice has been posted 7 as required shall accompany the petition.

**Sec. 2811. The question of prohibition in certain localities to be decided by a vote of the people.**

1874-'5, c. 158, s. 2.

In all cases when prohibition is asked for a greater distance from 2 a common centre than two miles, the question shall be decided by 3 the qualified voters of the interested district at an election held 4 according to the provisions of this chapter.

State v. Midgett, 85—538.

**Sec. 2812. Election may be held on the question of the sale of liquors on the first Monday in May of any year.**

1873-'4, c. 138, s. 1.

It shall be the duty of the board of commissioners of any county, 2 upon petition of one-fourth of the qualified voters of any county

3 or township in their respective counties, to order an election to be  
4 held on the first Monday in May in any year, to ascertain whether  
5 or not spirituous liquors may be sold in said county or township.

See 1874-'5, c. 95; 1876-'7, c. 221.

**Sec. 2813. Rules for holding the election.**

Such county or township election, when so ordered, shall be 1873-'4, c. 133, s. 2.  
2 held, and returns made, under the same rules and regulations as  
3 prescribed by law for holding elections for members of the general  
4 assembly so far as the same may be applicable, except as herein  
5 modified.

**Sec. 2814. All qualified electors entitled to vote; form of ballots.**

Any person allowed by law to vote for members of the general 1873-'4, c. 133, s. 3.  
2 assembly shall have the right to vote at such elections at the place  
3 where he is allowed by law to vote, and every such voter who  
4 favors the prohibition of the sale of spirituous liquors in the  
5 county or township, as the case may be, shall vote a ticket on  
6 which shall be written or printed the word "Prohibition," and  
7 every such voter who favors such sale shall vote a ticket on which  
8 shall be written or printed the word "License."

**Sec. 2815. The effect of the election if in favor of prohibition.**

If a majority of the votes cast at any such election in any 1873-'4, c. 133, s. 5.  
2 county, town or township, shall have written on them the same 1876-'7, c. 221, s. 2.  
3 word "Prohibition," then and in that case it shall not be lawful 1881, c. 359.  
4 for the board of commissioners to license the sale of spirituous  
5 liquors, or for any person to sell any spirituous liquors within  
6 such county, town or township, until another election be held re-  
7 versing said election, and if any person shall sell any spirituous  
8 liquor within such county, town or township, such person offend-  
9 ing shall be guilty of a misdemeanor, and, on conviction of such  
10 offence, shall be fined not exceeding fifty dollars, or imprisoned  
11 not exceeding thirty days; but if a majority of the votes so cast  
12 shall have written or printed on the same word "License," then  
13 spirituous liquors may be sold in such county, town or township,  
14 as provided by law, and not otherwise: *Provided*, that nothing  
15 herein contained shall affect localities in which the sale of spirit-  
16 uous liquors are prohibited by law.

**Sec. 2816. The effect on a county election in favor of license.**

Should a majority of the votes cast in a county election be in 1881, c. 262, s. 3.  
2 favor of "License," the result shall not operate to permit the sale of  
3 spirituous or malt liquors in any township, city, or town, where  
4 the sale of such liquors is prohibited by law, unless in such county  
5 election such city, town or township, shall have cast a majority of  
6 votes in favor of "license."



**Sec. 2817. Duty of county commissioners.**

Whenever any county, township, city or town, shall vote in favor of "license," the board of commissioners of the county shall grant licenses for the sale of spirituous liquors to all persons applying for the same according to law.

## CHAPTER SEVENTY-FOUR.

## MARRIAGE AND MARRIAGE SETTLEMENTS, AND THE CONTRACTS OF MARRIED WOMEN.

## SECTION.

- 2818. Who may contract a marriage.
- 2819. Who may not contract a marriage.
- 2820. Degree of kinship within which persons may not lawfully marry.
- 2821. What necessary to a valid marriage.
- 2822. Ministers not to celebrate marriage unless a license be delivered.
- 2823. License, when to be issued by register of deeds.
- 2824. Form of license; particulars of form.
- 2825. Penalty on register for issuing license unlawfully.
- 2826. Penalty on minister or officer marrying without a license.
- 2827. Register of deeds to keep a book of marriages.
- 2828. Penalty on register for failure to record license and return.
- 2829. Marriage settlements void as to existing creditors.
- 2830. Marriage settlements void except from registration.
- 2831. Husband does not become liable for wife's debts.
- 2832. The liability of wife continues.
- 2833. In actions against wife, summons served on husband.
- 2834. Husband may be ordered to pay costs, or discharged from defence.
- 2835. Wife not capable of contracting without her husband, unless a free trader.
- 2836. Married woman may become a free trader, how; written form of the free traders.
- 2837. A free trader from date of registration.

## SECTION.

- 2838. Copy from register's books, evidence.
- 2839. How she may cease to be a free trader; public notification given.
- 2840. Woman living separate from her husband may be a free trader; wives of idiots or lunatics made free traders.
- 2841. Wife abandoned by her husband, &c., a free trader.
- 2842. Husband jointly liable with wife for torts, &c., committed by wife.
- 2843. What leases, &c., by wife valid, and what not, without private examination.
- 2844. What contract between husband and wife not to be valid unless with sanction of judge.
- 2845. What contracts between husband and wife valid.
- 2846. Savings from separate estate of wife, her separate property.
- 2847. Husband tenant by the courtesy, when.
- 2848. Power of married woman to make a will.
- 2849. Real estate of wife not to be sold or leased without her consent; husband's interest exempt from execution.
- 2850. Wife may insure her husband's life for her separate use.
- 2851. Persons, formerly slaves, when deemed to have been married.
- 2852. Consequences of a divorce *a vinculo* on the property of the parties.
- 2853. Consequences of an elopement with an adulterer.
- 2854. Consequences of a husband separating from his wife and living in adultery.

**Sec. 2818. Who may contract a marriage.**

1871-'2, c. 193, s. 1.

All unmarried male persons of sixteen years, or upwards, of age, 2 and all unmarried females of fourteen years, or upwards, of age, 3 may lawfully marry, except as hereinafter forbidden.

**Sec. 2819. Who may not contract a marriage.**

1871-'2, c. 193, s. 2.

All marriages between a white person and a negro or Indian, or 2 between a white person and a person of negro or Indian descent,

3 to the third generation, inclusive, or between any two persons  
 4 nearer of kin than first cousins, or between a male person under  
 5 sixteen years of age and any female, or between a female person  
 6 under fourteen years of age and any male, or between persons either  
 7 of whom has a husband or wife living at the time of such marriage,  
 8 or between persons either of whom is at the time physically im-  
 9 potent, or is incapable of contracting from want of will or under-  
 10 standing, shall be void: *Provided*, that no marriage followed by  
 11 cohabitation and the birth of issue shall be declared void after  
 12 the death of either of the parties for any of the causes stated  
 13 in this section, except for that one of the parties was a white per-  
 14 son and the other a negro or Indian, or of negro or Indian descent  
 15 to the third generation inclusive, and for bigamy.

*Brinegar v. Chaffin*, 3 Dev., 108; *Irby v. Wilson*, 1 D. & B. Eq., 568; *Johnson v. Kincade*, 2 Ire. Eq., 470; *State v. Watters*, 3 Ire., 455; *State v. Hooper*, 5 Ire., 201; *Gathings v. Williams*, 5 Ire., 287; *State v. Hairston*, 63—451; *State v. Ross*, 76—242; *State v. Kennedy*, 76—251.

**Sec. 2820. Degree of kinship within which persons may not lawfully marry.**

Whenever the degree of kinship shall be estimated with the 1879, c. 78.  
 2 view to ascertain the right of kinspeople to marry, the half-blood  
 3 shall be counted as the whole-blood; *Provided, however*, that noth-  
 4 ing herein contained shall be so construed as to invalidate any  
 5 marriage heretofore contracted in case where by counting the half-  
 6 blood as the whole-blood the persons contracting such marriage  
 7 would be nearer of kin than first cousins; but in every such case  
 8 the kinship shall be ascertained by counting relations of the half-  
 9 blood as being only half so near kin as those of the same degree  
 10 of the whole blood.

**Sec. 2821. What necessary to a valid marriage.**

The consent of a male and female person who may lawfully 1871-'2, c. 193, s. 3.  
 2 marry, presently to take each other as husband and wife, freely,  
 3 seriously and plainly expressed by each in the presence of the  
 4 other, and in the presence of an ordained minister of any re-  
 5 ligious denomination or of a justice of the peace, and the conse-  
 6 quent declaration by such minister or officer that such persons are  
 7 man and wife, shall be a valid and sufficient marriage; *Provided*,  
 8 that the right of marriages among the Society of Friends, accord-  
 9 ing to a form and custom peculiar to themselves shall not be inter-  
 10 fered with by the provisions of this or any other section of this  
 11 chapter.

*Weaver v. Cryer*, 1 Dev., 337; *State v. Patterson*, 2 Ire., 346; *State v. Robbins*, 6 Ire., 23; *State v. Bray*, 13 Ire., 289; *Cunninggim v. Mallett*, 1 Winst., 467; *Cooke v. Cooke*, Phil., 583; *State v. Ta-cha-na-tah*, 64—614; *Jones v. Reddick*, 79—290.

**Sec. 2822. Ministers not to celebrate marriage unless a license be delivered.**

No minister or officer mentioned in the preceding section shall 1871-'2, c. 193, s. 4.  
 2 perform a ceremony of marriage between any two persons, or  
 3 shall declare them to be man and wife, until there shall be deliv-

4 ered to him a license for the marriage of the said persons, signed  
5 by the register of deeds of the county in which the marriage is in-  
6 tended to take place, or by his lawful deputy.

Drake v. McMinn, 5 Ire., 639.

**Sec. 2823. License, when to be issued by register of deeds.**

1871-'2, c. 193, s. 5.

Every register of deeds shall, upon application, issue a license  
2 for the marriage of any two persons: *Provided*, it shall appear to  
3 him probable that there is no legal impediment to such marriage:  
4 *Provided, nevertheless*, that where either party to the proposed mar-  
5 riage shall be under eighteen years of age, and shall reside with  
6 the father, or mother, or uncle, or aunt, or brother, or elder sister,  
7 or shall reside at a school, or be an orphan and reside with a guard-  
8 ian, the register shall not issue a license for such marriage until  
9 the consent in writing of the relation with whom such infant re-  
10 sides, or, if he or she resides at a school, of the person by whom  
11 said infant was placed at school, and under whose custody and  
12 control he or she is, shall be delivered to him, and such written  
13 consent shall be filed and preserved by the register.

State v. Snuggs, 85—541.

**Sec. 2824. Form of license; particulars of form.**

1871-'2, c. 193, s. 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 hereof, 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 forfeiture 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 of ..... county."*

Certificate to be filled up and signed by the minister or officer cel-  
2 ebrating the marriage, and also to be signed by one or more wit-  
3 nesses present at the marriage, who shall add to their names their  
4 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.

Witnesses present at the marriage:

S. T., of " (here give the residence.)

N. O.



**Sec. 2825. Penalty on register for issuing license unlawfully.**

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 twenty-eight hundred and twenty-three, shall forfeit and pay two hundred dollars to any person who shall sue for the same.

Holt v. McLean, 75—347; State v. Snuggs, 85—541; Norman v. Dunbar, 8 Jones, 317.

**Sec. 2726. Penalty on minister or officer marrying without a license.**

Every minister or officer mentioned in section twenty-eight hundred and twenty-one, 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 guilty of a misdemeanor.

Norman v. Dunbar, 8 Jones, 317.

**Sec. 2827. Register of deeds to keep a book of marriages.**

Every register of deeds shall keep a book (which shall be furnished on demand by the board of 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.

**Sec. 2828. Penalty on register for failure to record license and return.**

„ Any register of deeds who shall fail to record, in the manner above prescribed, the substance of any marriage license issued by

3 him, or who shall fail to record, in the manner above prescribed,  
 4 the substance of any return made thereon, within ten days after  
 5 such return made, shall forfeit and pay two hundred dollars to any  
 6 person who shall sue for the same.

Norman v. Dunbar, 8 Jones, 317.

**Sec. 2829. Marriage settlements void as to existing creditors.**

1871-'2, c. 193, s. 11.

Every contract and settlement of property made by any man and  
 2 woman, in consideration of a marriage between them, for the ben-  
 3 efit of such man or woman, or of their issue, whether the same be  
 4 made before or after marriage, shall be void as against creditors of  
 5 the parties making the same respectively, existing at the time of  
 6 such marriage, if the same is ante-nuptial, or at the time of mak-  
 7 ing such contract or settlement, if the same is post-nuptial.

Hardy v. Holly, 84—661.

**Sec. 2830. Marriage settlements void except from registration.**

1871-'2, c. 193, s. 12.

Every such contract and settlement of property shall be void  
 2 as against the creditors of or purchasers from the husband and  
 3 wife respectively, as to any lands, tenements or hereditaments, and  
 4 chattels real, conveyed or agreed to be conveyed thereby, except  
 5 from the registration thereof in the county in which such lands,  
 6 tenements, hereditaments or chattels real lie, and as to any personal  
 7 property conveyed or agreed to be conveyed thereby, except from  
 8 the registration in the county in which such husband and wife at  
 9 the marriage, or at the making thereof if after the marriage, shall  
 10 reside.

**Sec. 2831. Husband does not become liable for wife's debt.**

1871-'2, c. 193, s. 13.

No man by marriage shall incur any liability for any debts  
 2 owing, or contracts made, or for wrongs done by his wife before  
 3 the marriage.

**Sec. 2832. The liability of wife continues.**

1871-'2, c. 193, s. 14.

The liability of a *feme sole* for any debts owing, or contracts  
 2 made, or damages incurred by her before her marriage, shall not  
 3 be impaired or altered by such marriage.

**Sec. 2833. In actions against wife, summons to be served on husband.**

1871-'2, c. 193, s. 15.

In all actions brought against a married woman, who is not a  
 2 free trader, (as hereinafter provided for,) the summons shall be  
 3 served upon the husband also, and on motion to the court in which  
 4 the action is pending, he may be allowed, with her consent, to de-  
 5 fend the same in her name and behalf, but no judgment shall be  
 6 given against him, upon any liability claimed against her arising  
 7 before the marriage or upon any contract made by her alone after  
 8 her marriage.

Rowland v. Perry, 64—578; Vick v. Pope, 81—22; Gulley v. Macy, 81—356; Nicholson v. Cox,  
 83—44; Nicholson v. Cox, 83—48; Hollingsworth v. Harman, 83—153.

**Sec. 2834. Husband may be ordered to pay costs or discharged from defence.**

Whenever any husband shall be allowed to defend for his wife, 1871-'2, c. 193, s. 16.  
 2 he may be ordered to pay costs for any misconduct, and may be  
 3 discharged from the conduct of her defence, if it shall appear to  
 4 the court that his defence is not *bona fide* in her interest.

**Sec. 2835. Wife not capable of contracting without the husband unless a free trader.**

No woman during her coverture shall be capable of making any 1871-'2, c. 193, s. 17.  
 2 contract to affect her real or personal estate, except for her neces-  
 3 sary personal expenses, or for the support of the family, or such  
 4 as may be necessary in order to pay her debts existing before mar-  
 5 riage, without the written consent of her husband, unless she be a  
 6 free trader, as hereinafter allowed.

Sutton v. Askew, 66—172; Harris v. Jenkins, 72—183; Baker v. Jordan, 73—145; Pippin v. Wesson, 74—437; Rountree v. Gay, 74—447; Atkinson v. Richardson, 74—455; Cooper v. Landis, 75—526; Huntly v. Whitner, 77—392; Kirkman v. Greensboro Bank, 77—394; Holliday v. McMillan, 79—315; Vick v. Pope, 81—22; Hall v. Short, 81—273; O'Connor v. Harris, 81—279; Johnston v. Cochrane, 84—447; George v. Heigh, 85—99.

**Sec. 2836. Married woman may become a free trader, how; written form of free traders.**

Every married woman of the age of twenty-one years or upwards, 1871-'2, c. 193, ss  
 2 with the consent of her husband, may become a free trader in the 18, 19.  
 3 manner following:  
 4 (1) By ante-nuptial contract, proved and registered, as herein-  
 5 after required; or,  
 6 (2) She and her husband shall sign a writing in the following or  
 7 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....."

8 The said writing may be proved by the subscribing witness or  
 9 acknowledged by the parties before any officer authorized to take  
 10 the probate of deeds, and shall be filed and registered in the office  
 11 of the register of deeds for the county in which the woman pro-  
 12 poses to have her principal or only place of business.

Manning v. Manning, 79—300.

**Sec. 2837. A free trader from date of registration.**

From the time of the registration of the writing mentioned in 1871-'2, c. 193, s. 20.  
 2 the preceding section, the married woman therein mentioned shall  
 3 be a free trader, and authorized to contract and deal as if she were  
 4 a *feme sole*.

Manning v. Manning, 79—300.



**Sec. 2838. Copy from register's books evidence.**

1871-'2, c. 193, s. 21.

A copy of such writing, duly proved and registered, and certified  
2 by the register of the county in which the same is registered, shall  
3 be admissible in evidence as certified copies of registered deeds  
4 are, or may be allowed to be.

Manning v. Manning, 79—300.

**Sec. 2839. How she may cease to be a free trader; public notification given.**

1871-'2, c. 193, s. 22.

The right of a married woman to act as a free trader may be  
2 ended at any time by an entry by her, or by her attorney, in the  
3 margin of the registration of the writing above mentioned, to the  
4 effect that from the date of such marginal entry, she ceases so to  
5 act, and by publication to that effect weekly for three weeks in  
6 some newspaper published in the county in which she had her  
7 principal or only place of business, or if there shall be none so  
8 published, then in any other convenient newspaper. But such  
9 entry and publication shall not impair any liabilities incurred  
10 previously thereto, nor prevent such married woman from becom-  
11 ing liable afterwards to any person whom she may fraudulently  
12 induce to deal with her as a free trader.

**Sec. 2840. Woman living separate from her husband may be a free trader; wives of idiots or lunatics made free traders.**1871-'2, c. 193, s. 23.  
1880, c. 35.

Every woman who shall be living separate from her husband,  
2 either under a judgment of divorce by a competent court, or under  
3 a deed of separation, executed by said husband and wife, and reg-  
4 istered in the county in which she resides, or whose husband shall  
5 have been declared an idiot or a lunatic, shall be deemed and held,  
6 from the docketing of such judgment, or from the registration, or  
7 from the date of such idiocy or lunacy and during its continuance,  
8 a free trader, and shall have power to convey her personal estate  
9 and her real estate without the assent of her husband.

Rountree v. Gay, 74—447.

**Sec. 2841. Wife abandoned by her husband, &c., a free trader,**

1871-'2, c. 193, s. 24.

Every woman whose husband shall abandon her, or shall mali-  
2 ciously turn her out of doors, shall be deemed a free trader, so far  
3 as to be competent to contract and be contracted with, and to  
4 bind her separate property, but the liability of her husband for  
5 her reasonable support shall not thereby be impaired, and she  
6 shall have power to convey her personal estate and her real estate  
7 without the assent of her husband.

Rountree v. Gay, 74—447.

**Sec. 2842. Husband liable jointly with wife for torts, &c., committed by wife.**

1871-'2, c. 193, s. 25.

Every husband living with his wife shall be jointly liable with  
2 her for all damages accruing from any tort committed by her and

3 for all costs and fines incurred in any criminal proceeding against  
4 her.

**Sec. 2843. What leases, &c., by wife valid, and what not, without private examination.**

No lease or agreement for a lease or sub-lease or assignment by 1871-'2, c. 193, s. 28.  
2 any married woman, not a free trader, of her lands or tenements,  
3 or chattels real, to run for more than three years, or to begin in  
4 possession more than six months after its execution, or any con-  
5 veyance of any freehold estate in her real property, shall be valid,  
6 unless the same be executed by her and her husband, and proved  
7 or acknowledged by them, and her free consent thereto, appear on  
8 her examination separate from her husband, as is now or may  
9 hereafter be required by law in the probate of deeds of *femes covert*.

Pippin v. Wesson, 74—437; Towles v. Fisher, 77—437; Manning v. Manning, 79—293; Jeffries v. Green, 79—330.

**Sec. 2844. What contract between husband and wife not to be valid, unless with sanction of judge.**

No contract between a husband and wife made during coverture 1871-'2, c. 193, s. 27.  
2 shall be valid to affect or change any part of the real estate of the  
3 wife or the accruing income thereof, for a longer time than three  
4 years next ensuing the making of such contract, or to impair or  
5 change the body or capital of the personal estate of the wife, or  
6 the accruing income thereof, for a longer time than three years  
7 next ensuing the making of such contract, unless such contract  
8 shall be in writing, and be duly proved as is required for convey-  
9 ances of land; and upon the examination of the wife separate and  
10 apart from her husband, as is now or may hereafter be required  
11 by law in the probate of deeds of *femes covert*, it shall appear to  
12 the satisfaction of such officer that the wife freely executed such  
13 contract, and freely consented thereto at the time of her separate  
14 examination, and that the same is not unreasonable or injurious  
15 to her. The certificate of the officer shall state his conclusions,  
16 and shall be conclusive of the facts therein stated: *Provided*, that  
17 the same may be impeached for fraud as other judgments may be.

Hollingsworth v. Harman, 83—153; George v. High, 85—99.

**Sec. 2845. What contracts between husband and wife valid.**

Contracts between husband and wife not forbidden by the pre- 1871-'2, c. 193, s. 28.  
2 ceding section and not inconsistent with public policy are valid,  
3 and any persons of full age about to be married, and subject to the  
4 preceding section, any married persons may release and quit claim  
5 dower, tenancy by the courtesy, and all other rights which they  
6 might respectively acquire or may have acquired by marriage in  
7 the property of each other; and such releases may be pleaded in  
8 bar of any action or proceeding for the recovery of the rights and  
9 estates so released.

Hollingsworth v. Harman, 83—153; George v. High, 85—99.

**Sec. 2846. Savings from separate estate of wife, her separate property.**

1871-'2, c. 193, s. 29.

The savings from the income of the separate estate of the wife, 2 are her separate property. But no husband who, during the cov- 3 erture (the wife not being a free trader under this chapter,) has re- 4 ceived, without objection from his wife, the income of her separate 5 estate, shall be liable to account for such receipt, for any greater 6 time than the year next preceding the date of a summons issued 7 against him in an action for such income, or next preceding her 8 death.

Baker v. Jordan, 73—195; State v. Matthews, 76—41; State v. Wincroft, 76—33; Manning v. Manning, 79—309; Shinn v. Smith, 79—310; Holliday v. McMillan, 79—315; Ceell v. Smith 81—285; George v. High, 85—99.

**Sec. 2847. Husband tenant by the courtesy, when.**

1871-'2, c. 193, s. 30.

Every man who hath married, or shall marry a woman, and by 2 her have issue born alive, shall after her death, he surviving, be 3 entitled to an estate as tenant by the courtesy during his life, in all 4 the lands, tenements and hereditaments, whereof his said wife was 5 beneficially seized in deed during the coverture, wherein the said 6 issue was capable of inheriting, whether the said seizin was of a 7 legal or of an equitable estate; except that when the wife shall have 8 obtained a divorce *a mensa et thoro*, and shall not be living with her 9 husband at her death, or when the husband shall have abandoned 10 his wife, or shall have maliciously turned her out of doors, and 11 they shall not be living together at her death; or if the husband 12 shall have separated himself from his wife, and be living in adul- 13 tery at her death, he shall not be tenant by the courtesy of her 14 lands, tenements and hereditaments.

Teague v. Downs, 69—280; Hunt v. Satterwhite, 85—73.

**Sec. 2848. Power of married woman to make a will.**

1871-'2 c. 193, s. 31.

Every married woman shall have power to devise and bequeath 2 her real and personal estate as if she were a *feme sole*; and her will 3 shall be proved as is required of other wills: *Provided, nevertheless*, 4 that no will made by any married woman shall be held to deprive 5 her husband, surviving, of his estate in her real property, as tenant 6 by the courtesy, as defined in the preceding section, except in the 7 cases therein excepted.

**Sec. 2849. 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.  
1848, c. 41.

No real estate belonging at the time of marriage to females, 2 married since the third Monday of November, one thousand 3 eight hundred and forty-eight, nor any real estate by them subse- 4 quently acquired, nor any [real estate acquired on and since 5 the first day of March, one thousand [eight hundred and forty- 6 nine, by *femes covert*, who were such on the said third [Monday 7 of November, one thousand eight hundred and forty-eight.



8 shall be subject to be sold or leased by the husband for the term of  
 9 his own life or any less term of years, except by and with the con-  
 10 sent of his wife, first had and obtained, to be ascertained and  
 11 effectuated by deed and privy examination, according to the rules  
 12 required by law for the sale of lands belonging to *femes covert*. And  
 13 no interest of the husband whatever in such real estate shall  
 14 be subject to sale to satisfy any execution obtained against him;  
 15 and every such sale is hereby declared null and void.

Adams v. Gillespie, 2 Jones Eq., 244; Hamlet v. Taylor, 5 Jones, 36; Houston v. Brown, 7 Jones, 161; Long v. Graeber, 64—431; Rowland v. Perry, 64—578; Teague v. Downs, 69—280; Wilson v. Arentz, 70—670; Lyon v. Akin, 73—258; Manning v. Manning, 79—293; Cecil v. Smith, 81—285; Young v. Greenlee, 82—346.

**Sec. 2850. Wife may insure her husband's life for her separate use.**

Any *feme covert*, in her own name or in the name of a trustee  
 2 with his assent, may cause to be insured for any definite time the  
 3 life of her husband, for her sole and separate use, and she may dis-  
 4 pose of the interest in the same by will, notwithstanding her cov-  
 5 erture.

Conigland v. Smith, 79—303.

R. C., c. 56, s. 2.  
 1850, c. 90.

**Sec. 2851. Persons formerly slaves, when deemed to have been married.**

Persons, both or one of whom were formerly slaves, who have  
 2 complied with the provisions of section five, chapter forty, of the  
 3 act of the general assembly, ratified March tenth, one thousand  
 4 eight hundred and sixty-six, shall be deemed to have been lawfully  
 5 married.

1866, c. 40, s. 5.

State v. Samuel, 2 D. & B., 177; Cooke v. Cooke, Phil., 583; State v. Harris, 63—1; State v. Adams, 65—537.

**Sec. 2852. Consequences of a divorce *a vinculo* on the property of the parties.**

When a marriage shall be dissolved *a vinculo*, the parties respect-  
 2 ively, shall thereby lose all his or her right to an estate by the  
 3 courtesy, or dower, and all right to any year's provisions or dis-  
 4 tributive share in the personal property of the other, and all right  
 5 to administer on the estate of the other, and every right and es-  
 6 tate in the real or personal estate of the other party, which by set-  
 7 tlement before or after marriage, was settled upon such party in  
 8 consideration of the marriage only.

1871-'2, c. 193, s. 42.

**Sec. 2853. Consequences of an elopement with an adulterer.**

If any married woman shall elope with an adulterer, and shall  
 2 not be living with her husband at his death, she shall thereby lose  
 3 all right to dower in the lands and tenements of her husband, and  
 4 also all right to a year's provision, and to a distributive share from  
 5 the personal property of her husband, and all right to administra-  
 6 tion on his estate, and also all right and estate in the property of  
 7 her husband, settled upon her upon the sole consideration of the  
 8 marriage, before or after marriage; and such elopement may be

1871-'2, c. 193, s. 44.

8 pleaded in bar of any action, or proceeding, for the recovery of  
10 such rights and estates: *Provided*, the husband shall have com-  
11 menced an action for divorce during his life time.

Cook v. Sexton, 79—305.

**Sec. 2854. Consequences of a husband separating from his wife and living in adultery.**

1871-'2, c. 193, s. 45.

If any husband shall separate himself from his wife and live in  
2 adultery he shall lose all right and estate of whatever character, in  
3 and to her personal property, as administrator, or otherwise; and  
4 also any right and estate in the property of his wife, which may  
5 have been settled upon him solely in consideration of the mar-  
6 riage, by any settlement before or after marriage; and such separa-  
7 tion, and living in adultery, may be pleaded in bar of any action  
8 or proceeding for the recovery of such right or estates.

## CHAPTER SEVENTY-FIVE.

### MASTER AND SERVANT.

#### SECTION.

2855. Persons enticing servant from employer  
may be sued.

#### SECTION.

2856. Additional penalty.

**Sec. 2855. Persons enticing servant from employer may be sued.**

1866, c. 58.  
1881, c. 303.

If any person shall entice, persuade and procure any servant by  
2 indenture, or any servant who shall have contracted in writing or  
3 orally to serve his employer, to unlawfully leave the service  
4 of his master or employer; or, if any person shall knowingly and  
5 unlawfully harbor and detain, in his own service and from the  
6 service of his master or employer, any servant who shall unlaw-  
7 fully leave the service of such master or employer; then, in either  
8 case, such person and servant may be sued, singly or jointly, by  
9 the master, and, on recovery, he shall have judgment for the act-  
10 ual double value of the damages assessed.

Haskins v. Royster, 70—601; State v. Rice, 76—194.

**Sec. 2856. Additional penalty.**

1866-'7, c. 124.

In addition to the remedy given in the preceding section  
2 against the person and servant violating the provisions of the  
3 above section, such person and servant shall also pay a penalty  
4 of one hundred dollars to any person suing for the same, singly or  
5 jointly, one-half to his use and the other to the use of the poor of  
6 the county where suit is brought, and the offender shall moreover  
7 be guilty of a misdemeanor and fined at the discretion of the court,  
8 not exceeding one hundred dollars and imprisoned not exceeding  
9 six months.

## CHAPTER SEVENTY-SIX.

**MEDICAL SOCIETY—PHARMACEUTICAL ASSOCIATION—  
DENTISTRY.****MEDICAL SOCIETY.**

## SECTION.

2857. Medical society of the state a body politic.  
 2858. Who may practice.  
 2859. Board of physicians to consist of seven.  
 2860. Duty of the board.  
 2861. Temporary license.  
 2862. How appointed.  
 2863. Where and when to assemble.

## SECTION.

2864. Officers, &c.  
 2865. The board to keep a record.  
 2866. License.  
 2867. The board; their compensation.  
 2868. Practicing without license.  
 2869. May rescind license.  
 2870. Secretary.

**PHARMACEUTICAL SOCIETY.**

## SECTION.

2871. A body politic; its name and corporate powers.  
 2872. Objects of incorporation.  
 2873. Unlawful for person other than registered pharmacist to conduct pharmacy, &c.; proviso.  
 2874. Qualifications for membership.  
 2875. Qualifications for membership on account of practical experience, &c.; proviso; licentiates in pharmacy.  
 2876. Board of pharmacy; its duties, oath of members, examination fee; officers, their terms of office, vacancies and meetings; quorum and examinations.  
 2877. Secretary, his duties; fee for registration, his salary; compensation of members of board; duty of board to investigate complaints, &c.; rules, &c.

## SECTION.

2878. Responsibility for quality of drugs, &c., sold or dispensed; misdemeanor to intentionally adulterate, &c.; penalty; fee for renewal of certificate of registration; misdemeanor.  
 2879. Unlawful to retail certain poisons without label; poison not to be sold, unless purchaser knows its poisonous nature, &c.; entry to be made in book; exception.  
 2880. Business of practitioner who does not keep open shop, &c., not interfered with.  
 2881. Misdemeanor to permit compounding of medicines by person not registered, &c.; penalty.  
 2882. Board of pharmacy, how appointed; term of office; vacancies.  
 2883. Penalties, how recovered.

**DENTISTRY.**

## SECTION.

2884. Who entitled to commence the practice of dentistry.  
 2885. Board of examiners, vacancies.  
 2886. Meetings of the board.  
 2887. Board to grant certificates, &c.; proviso.  
 2888. Board to keep record of persons to whom certificates granted; evidence.

## SECTION.

2889. Quorum.  
 2890. Misdemeanor to practice dentistry without obtaining certificate, &c.; provisos.  
 2891. Fines appropriated to school fund.  
 2892. Chapter not to apply to persons now practicing dentistry.

**MEDICAL SOCIETY.****Sec. 2857. Medical society of the state a body politic.**

The association of regularly graduated physicians, calling themselves "The State Medical Society," is hereby declared to be a body politic and corporate, to be known and distinguished by the name and style of "The Medical Society of the State of North Carolina."

Private Laws.  
 1858-'9, c. 258, s. 1.

**Sec. 2858. Who may practice.**

"No person shall practice medicine or surgery, nor any of the branches thereof, nor in any case prescribe for the cure of diseases

1858-'9, c. 258, s. 2.



3 for fee or reward, unless he shall have been first licensed so to do  
4 in the manner hereinafter provided: *Provided*, That no person who  
5 shall practice in violation of this chapter shall be guilty of a mis-  
6 demeanor.

**Sec. 2859. Board of physicians to consist of seven.**

1858-'9, c. 258, ss. 3,  
4.

In order to the proper regulation of the practice of medicine and  
2 surgery, there shall be established a board of regularly graduated  
3 physicians, to be known by the name and title of "The Board of  
4 Medical Examiners of the State of North Carolina," which shall  
5 consist of seven regularly graduated physicians.

**Sec. 2860. Duty of the board.**

1858-'9, c. 258, s. 5.

It shall be the duty of the said board to examine all applicants  
2 for license to practice medicine or surgery, or any of the branches  
3 thereof, on the following branches of medical science, viz: anatomy,  
4 physiology, surgery, pathology, medical hygiene, chemistry, phar-  
5 macy, materia medica, therapeutics, obstetrics and the practice of  
6 medicine, and if on such examination they be found competent,  
7 to grant to each applicant a license or diploma, authorizing him to  
8 practice medicine and surgery, or any of the branches thereof:  
9 *Provided*, that five members of the board shall constitute a quorum  
10 and that four of those present shall be agreed as to the qualifica-  
11 tion of the applicant.

**Sec. 2861. Temporary license.**

1858-'9, c. 258, s. 7.

To prevent delay and inconvenience, two members of the board  
2 of medical examiners may grant a temporary license to any appli-  
3 cant and make report thereof to the next regular meeting of the  
4 board for confirmation: *Provided*, that such temporary license shall  
5 not continue in force longer than the next regular meeting of the  
6 board, and that such temporary license shall in no case be granted  
7 after the applicant has been refused a license by the board of med-  
8 ical examiners.

**Sec. 2862. How appointed.**

1858-'9, c. 258, s. 9.

The Medical Society shall have power to appoint the board of  
2 medical examiners.

**Sec. 2863. Where and when to assemble.**

1870-'71, c. —, s. 11.

The board of medical examiners shall assemble at the same  
2 times and places, when and where the medical society assembles,  
3 which society shall assemble at least once in each and every year  
4 at such time and place as the said society, at its next preceding  
5 meeting, shall have fixed; and the said board shall remain in ses-  
6 sion from day to day until all applicants who may present them-  
7 selves for examination within the first five days after its meeting  
8 shall have been examined and disposed of.

**Sec. 2864. Officers, &c.**

The board of medical examiners are authorized to elect all such 1858-'9, c. 258, s. 11.  
2 officers, and to frame all such by-laws as may be necessary, and in  
3 the event of any vacancy by death, resignation or otherwise, of  
4 any member of said board, the board, or a quorum thereof, is em-  
5 powered to fill such vacancy.

**Sec. 2865. The board to keep a record.**

The board of examiners shall keep a regular record of its pro- 1858-'9, c. 258, s. 12.  
2 ceedings in a book kept for that purpose, which shall always be  
3 open for inspection, and shall cause to be entered on a book kept  
4 for the purpose the name of each applicant for license, and the  
5 name of each applicant licensed to practice medicine and surgery,  
6 and the time of granting the same, together with the names of the  
7 members of the board present, and shall publish the names of  
8 those licensed in two of the newspapers published in the city of  
9 Raleigh within thirty days after the granting of the same.

**Sec. 2866. License.**

The board shall have power to demand of each and every appli- 1858-'9, c. 258, s. 13.  
2 cant thus licensed the sum of ten dollars before issuing a license or  
3 diploma, and the sum of five dollars for each temporary license, to  
4 be paid by the secretary of the board.

**Sec. 2867. The board; their compensation.**

The members of the said board shall receive as a compensation 1870-'71, c. —, s. 14.  
2 for their services four dollars each per day during the time of  
3 their session and in addition thereto their traveling expenses to  
4 and from their places of meeting, by the most direct route from  
5 their respective places of residence, to be paid by the secretary of  
6 the board out of any moneys in his hands, upon the certificate of  
7 the president of the board of medical examiners.

**Sec. 2868. Practicing without license.**

Any person who shall practice medicine or surgery without hav- 1858-'9, c. 258, s. 15  
2 ing first applied for and obtained license from the said board of  
3 examiners, shall not be entitled to sue for or recover before any  
4 court any medical bill for services rendered in the practice of med-  
5 icine or surgery or any of the branches thereof.

**Sec. 2869. May rescind license.**

The said board shall have the power to rescind any license 1858-'9, c. 258, s. 16.  
2 granted by them when upon satisfactory proof it shall appear that  
3 any physician thus licensed has been guilty of grossly immoral  
4 conduct.  
5 "

**Sec. 2870. Secretary.**

1858-'9, c. 258, s. 17.

The secretary of the board of medical examiners shall give bond-  
 2 with good surety, to the president of the board, for the safe-keep-  
 3 ing and proper payment of all moneys that may come into his  
 4 hands.

**PHARMACEUTICAL ASSOCIATION.****Sec. 2871. A body politic, its name and corporate powers.**

1881, c. 355, s. 1.

E. M. Nadal, S. J. Hinsdale, Wm. Simpson, E. H. Meadows, T.  
 2 C. Smith; John S. Pescud, and such other persons as may be asso-  
 3 ciated with them under the provisions of this chapter, are hereby  
 4 made a body corporate under the name and style of the North  
 5 Carolina Pharmaceutical Association, and by said name shall have  
 6 the right to sue and be sued, to plead and be impleaded, to pur-  
 7 chase and hold real estate and grant the same, to have and to use a  
 8 common seal, and to do such other things and perform such other  
 9 acts as appertain to bodies corporate and politic, not inconsistent  
 10 with the constitution and laws of this state.

**Sec. 2872. Object of incorporation.**

1881, c. 355, s. 2.

The object of said association is to unite the pharmacists and  
 2 druggists of this state for mutual aid, encouragement and im-  
 3 provement, to encourage scientific research, develop pharmaceuti-  
 4 cal talent, to elevate the standard of professional thought, and ulti-  
 5 mately restrict the practice of pharmacy to properly qualified  
 6 druggists and apothecaries.

**Sec. 2873. Unlawful for person other than registered pharmacist to conduct pharmacy, &c.; proviso.**

1881, c. 355, s. 3.

It shall be unlawful, except as hereinafter provided, for any per-  
 2 son unless a registered pharmacist within the meaning of this  
 3 chapter, to open or conduct any pharmacy or store for retailing  
 4 dispensing, or compounding medicines or poisons, or for any one  
 5 not a registered pharmacist to prepare physicians' prescriptions,  
 6 except under the supervision of a registered pharmacist: *Pro-*  
 7 *vided*, that nothing herein contained shall prevent the sale of pat-  
 8 ent or proprietary medicines, quinine, epsom salts, castor oil, es-  
 9 sence of peppermint, paregoric, laudanum in original package, cal-  
 10 omel, camphor, or sweet oil.

**Sec. 2874. Qualifications for membership.**

1881, c. 355, s. 4.

Any person, in order to be registered, shall be a graduate of  
 2 some college in pharmacy, recognized by the North Carolina Phar-  
 3 maceutical Association, or shall have had three years' practical ex-  
 4 perience in the preparation of physicians' prescriptions, and in  
 5 compounding and vending medicines and poisons, or shall be a  
 6 licentiate of pharmacy of the board of pharmacy of North Caro-  
 7 lina, or one who is or has been a regular practicing physician as  
 8 hereinafter provided.



Sec. 2875. Qualifications for membership on account of practical experience, &c.; proviso; licentiates in pharmacy.

Pharmaceutists claiming the right of registration under the 1881, c. 355, s. 5.  
2 preceding section, on account of practical experience, shall, within  
3 ninety days, show to the satisfaction of the board of pharmacy,  
4 created by this chapter, that they have had three years' practical  
5 experience in the preparation of physicians' prescriptions, and in  
6 compounding and vending medicines and poisons: *Provided*, noth-  
7 ing in this section shall apply to any person in business on his  
8 own account, nor to those who are, have been, or may hereafter  
9 be regular practicing physicians. Licentiates in pharmacy must  
10 have had three years' experience in stores where prescriptions of  
11 medical practitioners have been prepared, and shall have passed  
12 an examination before the board of pharmacy. The board of phar-  
13 macy may register, without further examination, the licentiates of  
14 such other boards of pharmacy as they may deem proper.

Sec. 2876. Board of pharmacy, its duties, oath of members, examination fee; officers, their terms of office, vacancies and meetings; quorum and examinations.

This association shall elect ten of its members, from whom the 1881, c. 355, s. 6.  
2 governor selects five, who shall compose the board of pharmacy.  
3 The board is empowered to transact all business relating to the  
4 legal practice of pharmacy; to examine into and adjudicate upon  
5 all cases of abuse, fraud, adulteration, substitution or malpractice,  
6 and to enforce all the provisions of the law, and to render an an-  
7 nual account to the proper state authorities and to the association.  
8 Any one examined by the board shall pay a fee of five dollars. In  
9 case of failure to pass a satisfactory examination, he shall be  
10 granted a second examination without the payment of a further  
11 fee. It shall be the duty of the members of the board, after re-  
12 ceipt of notification of their appointment, to appear before the  
13 clerk of the county in which they individually reside, and make  
14 and subscribe to an oath properly and faithfully to discharge the  
15 duties of their office, and within thirty days thereafter meet and  
16 organize by the election of a president and secretary of said board.  
17 The secretary shall be elected to serve for the term of five years,  
18 and the term of office of the other members shall be determined  
19 by lot. Vacancies in the board shall be filled as provided in sec-  
20 tion twenty-eight hundred and eighty-two. The board shall hold  
21 meetings at least once annually or oftener as the business of the  
22 board may require. The secretary shall give each member of the  
23 board not less than ten days' notice of each meeting. Three mem-  
24 bers shall constitute a quorum. It shall be the duty of the board  
25 to examine all persons applying for examination in proper form,  
26 and to register such as shall establish their rights to registration  
27 in accordance with the provisions of this chapter.

Sec. 2877. Secretary; his duties; fee for registration; his salary; compensation of members of the board; duty of the board to investigate complaints, &c.; rules, &c.

1881, c. 355, s. 7.

It shall be the duty of the secretary of the board of pharmacy to keep a book of registration at some convenient place, of which due notice shall be given through the public press, in which shall be entered under the supervision of the board the names and places of business of all persons coming under the provisions of this chapter, and a statement to be signed by the person making the application of such facts in the case as he may claim to justify his application. The fee of the registration for proprietors shall not exceed two dollars, and for those in the employ of others shall not exceed one dollar. The secretary shall give receipts for all moneys received by him, which moneys shall be used for the purpose of defraying the expenses of the board of pharmacy, and any surplus shall be for the benefit of said association. The salary of the secretary shall be fixed by the board, and shall be paid out of the fees for examination and registration. Each member of the board of pharmacy shall receive the sum of five dollars for every day engaged in the service of the board. It shall be the duty of the board to investigate all complaints of disregard, non-compliance or violation of the provisions of this chapter and to bring the same to the notice of the proper prosecuting officer whenever there appears to the board reasonable grounds of complaint. The board is hereby empowered to make such rules and regulations as it shall find necessary for carrying into effect the provisions of this law not inconsistent with the purpose and spirit of the same.

Sec. 2878. Responsibility for quality of drugs, &c., sold or dispensed; misdemeanor to intentionally adulterate, &c.; penalty; fee for renewal of certificate of registration; misdemeanor.

1881, c. 355, s. 8.

Every person shall be held responsible for the quality of all drugs, chemicals and medicines he may sell or dispense, with the exception of those sold in the original packages of the manufacturers, and also those known as "patent medicines;" and should he intentionally adulterate or cause to be adulterated, or expose to sale, knowing the same to be adulterated, such drugs, chemicals or medical preparations, he shall be guilty of a misdemeanor, and, upon conviction thereof, be liable to a penalty not exceeding one hundred dollars, and in addition thereto his name shall be stricken from the register. Every registered pharmacist who desires to continue the practice of his profession, shall annually thereafter, within thirty days preceding the annual meeting of the board of pharmacy, pay to the secretary of said board a registration fee of fifty cents, for which he shall receive a renewal of said certificate of registration. Any registered pharmacist failing to renew his registration as required by this section, and continuing in the exercise of his profession, shall be guilty of a misdemeanor.

Sec. 2879. Unlawful to retail certain poisons without label; label; poison not to be sold unless purchaser knows its poisonous nature, &c.; entry to be made in book; exception.

It shall be unlawful for any person under a penalty of twenty- 1881, c. 355, s. 9.  
2 five dollars for each and every offence, except as provided herein,  
3 to retail any poison enumerated in schedules A and B, as follows,  
4 to-wit:

#### SCHEDULE A.

5 Arsenic and its preparations, corrosive sublimate, white precipi-  
6 tate, red precipitate, biniodide of mercury, cyanide of potassium,  
7 hydrocyanic acid, strychnine, and essential oil of bitter almonds.

#### SCHEDULE B.

8 Aconite, belladonna, colchicum, conium, nux vomica, henbane,  
9 savin, ergot, cotton root, cantharides, creosote, digitalis, and their  
10 pharmaceutical preparations, croton oil, chloroform, chloral hy-  
11 drate, sulphate of zinc, carbolic acid, oxalic acid, opium and its  
12 preparations, except paregoric and other preparations of opium  
13 containing less than two grains to the ounce, and other deadly  
14 poisons, without distinctly labelling the bottle, box, vessel or paper  
15 in which said poison is contained, with the name of the article, the  
16 word "poison," a vignette representing a skull and bones, and the  
17 name and place of business of the seller; nor shall it be lawful for  
18 any person to sell or deliver any poison enumerated in said sched-  
19 ules A and B, unless upon due inquiry it be found that the pur-  
20 chaser is aware of its poisonous nature, and represents that it is to  
21 be used for a legitimate purpose; nor shall it be lawful for any  
22 person to sell any poison included in schedule A without, before  
23 delivering the same to the purchaser, causing an entry to be made  
24 in a book kept for that purpose, stating the date of the sale, the  
25 name and address of the purchaser, the name and quantity of  
26 the poison sold, the purpose for which it is represented by the pur-  
27 chaser to be required, and the name of the dispenser, such book to  
28 be always open to proper authorities for inspection. The provis-  
29 ions of this section shall not apply to the dispensing of poison in  
30 usual doses and by physicians' prescriptions.

Sec. 2880. Business of practitioner who does not keep open shop, &c., not inter-  
ferred with.

Nothing contained in the preceding section shall apply to, or 1881, c. 355, s. 10.  
2 interfere with the business of any practitioner of medicine, who  
3 does not keep open shop for the retailing of medicines and poi-  
4 sons; nor with the business of wholesale dealers, excepting section  
5 twenty-eight hundred and seventy-nine, and the penalties for its  
6 violation.



**Sec. 2881. Misdemeanor to permit compounding of medicines by persons not registered, &c.; penalty.**

1881, c. 355, s. 11.

Any person who shall permit by wilful neglect the compounding and dispensing of prescriptions in his store or place of business by any person or persons not registered, except under the supervision of a registered pharmacist, or any person not registered who shall keep open shop for the retailing or dispensing of medicines or poisons, or who shall fraudulently represent himself to be registered, or any registered pharmacist or any dealer in medicines who shall fail to comply with the regulations and provisions of this chapter, in relation to retailing and dispensing of poisons, shall for every such offence be guilty of a misdemeanor, and, upon conviction thereof, be liable to a penalty not exceeding twenty-five dollars.

**Sec. 2882. Board of pharmacy, how appointed; term of office; vacancies.**

1881, c. 355, s. 12.

The governor shall appoint five reputable and practicing pharmacists doing business within the state, from ten of said pharmacists recommended to him by the North Carolina Pharmaceutical Association. Said pharmacists so appointed shall constitute the board of pharmacy of the state of North Carolina, and shall hold office for the term of one, two, or three, four or five years, respectively, as herein provided, and until their successors have been duly appointed and qualified. The North Carolina Pharmaceutical Association shall annually thereafter recommend five pharmacists, from which number the governor shall fill the vacancy annually occurring in said board. In case of death, resignation or removal from the state of any member of said board, the governor shall appoint in his place a pharmacist from the names last submitted to him, to serve as a member of the board for the remainder of the term.

**Sec. 2883. Penalties, how recovered.**

1881, c. 355, s. 13.

The penalties prescribed by this chapter shall be recovered by suit in the name of the people of the state, to be prosecuted by the proper officers of the counties respectively where the violations of the provisions of this chapter may be committed.

**DENTISTRY.**

**Sec. 2884. Who entitled to commence the practice of dentistry.**

1879, c. 139, s. 1.

It shall be unlawful for any person except regularly authorized physicians and surgeons to commence the practice of dentistry, unless said person has been graduated and received a diploma from the faculty of a reputable institution where this specialty is taught, and chartered under the authority of some one of the United States, or of a foreign government acknowledged as such, or

7 shall have obtained a certificate from a board of examiners duly  
8 appointed and authorized by the provisions of this chapter to issue  
9 such certificate.

**Sec. 2885. Board of examiners; vacancies.**

The said board of examiners hereinbefore provided for shall consist of six members of the North Carolina Dental Society, to be elected by the said society at its next annual meeting and shall hold office as follows: two for one year, two for two years, and two for three years, or until their successors are elected. The said board shall also have power to fill all vacancies for unexpired terms, and they shall be responsible to said state society for their acts. 1879, c. 139, s. 2.

**Sec. 2886. Meetings of the board.**

The board of examiners shall meet annually at the time and place of the meeting of the North Carolina Dental Society, and at such other times and places as the said board or any four members thereof shall agree upon, to conduct the examination of applicants, thirty days' notice of said meeting being given by advertising in at least three newspapers published in this state. 1879, c. 139, s. 3.

**Sec. 2887. Board to grant certificates, &c.; proviso.**

Said board shall grant a certificate of proficiency in the knowledge and practice of dentistry to all applicants who shall undergo a satisfactory examination, and who shall receive a majority of votes of said board upon such proficiency, which certificate shall be signed by the members of the board conducting said examination, and shall bear the seal of the said North Carolina Dental Society: *Provided*, that any person wishing to engage in the practice of dentistry at any time prior to the regular meeting of said board may be examined by any one member of said board, and if competent may receive a temporary certificate, which shall be in force only until the next regular meeting, and no member of said board shall grant a temporary certificate a second time to the same person. 1879, c. 139, s. 4.

**Sec. 2888. Board to keep record of persons to whom certificates granted; evidence.**

Said board shall keep a book in which shall be entered the names and proficiency of all persons to whom certificates shall be granted under the provision of this chapter, and the date of granting said certificate, and the book so provided, shall be deemed a book of record, and a transcript of any such entry therein, certified to under the hand of the secretary and seal of the North Carolina Dental Society, shall be admitted as evidence in any court when the same shall be otherwise competent. 1879, c. 139, s. 5.

Sec. 2889. Quorum.

1879, c. 139, s. 6.

Four members of said board shall constitute a quorum thereof  
2 for the transaction of business, and should a quorum not be pres-  
3 ent on the day appointed for the meeting of said board, those  
4 present may adjourn from day to day until a quorum is present.

Sec. 2890. Misdemeanor to practice dentistry without obtaining certificate, &c.;  
provises.

1879, c. 139, s. 7.

Any person who shall practice dentistry in this state without  
2 having first stood the examination and obtained the certificate  
3 hereinbefore provided, shall be guilty of a misdemeanor, and upon  
4 conviction shall be fined twenty-five dollars: *Provided*, that any  
5 person so convicted shall not be entitled to sue for, or recover any  
6 fee or charge for dental service in any court, and any sum of money  
7 paid to a person so convicted for dental services rendered, may be  
8 recovered by the person so paying the same, or his legal represent-  
9 ative: *Provided*, that no one applying for a license to practice  
10 dentistry shall be denied such license on account of race, color or  
11 previous condition of servitude.

Sec. 2891. Fines appropriated to school fund.

1879, c. 139, s. 8.

All fines and penalties so recovered shall be appropriated to the  
2 school fund of the county in which the same shall have been re-  
3 covered.

Sec. 2892. Chapter not to apply to persons now practicing dentistry.

1878, c. 139, s. 9.

Nothing in this chapter shall apply to any person engaged in  
2 the practice of dentistry before the seventh day of March, one  
3 thousand eight hundred and seventy-nine, nor to prevent any one  
4 from extracting teeth.

CHAPTER SEVENTY-SEVEN.

MILITIA, STATE GUARD AND MILITARY SCHOOLS.

MILITIA.

[See CONSTITUTION, ART. XII.]

SECTION.

- 2893. Of whom composed; exemption.
- 2894. How divided.
- 2895. How governed.
- 2896. Adjutant general to be appointed.
- 2897. Officers, by whom appointed and com-  
missioned.
- 2898. Officers to take oath.
- 2899. White and colored militia in distinct  
companies.

SECTION.

- 2900. Who exempt from militia duty.
- 2901. Members of fire companies exempted;  
also persons of conscientious scruples.
- 2902. Further exemptions from militia duty.
- 2903. Officers to enroll and make return of  
exempts.
- 2904. Persons enrolled to equip themselves;  
forfeitures for neglect to do so.
- 2905. How infantry shall be divided,



SECTION.

2906. Regiments, brigades and divisions, how distinguished.
2907. Officers of infantry, their grade and how appointed.
2908. Governor may appoint four *aids-de-camp*.
2909. Uniform of officers.
2910. Officers to hold commissions three years and equip within twelve months; penalty.
2911. Officers to give notice of their absence.
2912. To deliver to their successors in office money and papers.
2913. Rules of discipline; adjutant-general to distribute Upton's tactics, and how.
2914. Captain's district, how laid off; boundary lines in regiments in same county, how altered.
2915. Regulations as to company musters.
2916. Company courts-martial; how to proceed; appeal allowed; executions from courts-martial, how and to whom issued; penalty on sheriff or constable for neglect.
2917. Company musicians, how appointed; their privileges.
2918. Road hands not to be ordered out on muster day.
2919. Captains to make returns, when.
2920. Regimental or battalion musters, when held; duty of colonel; penalty for neglect of duty.
2921. Penalty on officers failing to attend reviews or musters.
2922. Commandants of regiments, &c., to give notice of reviews, &c.
2923. Commissioned officers of regiments, &c., to exercise day before review; penalty for failure.
2924. Penalties on officers and privates for misbehavior.
2925. Persons on muster ground failing to do duty arrested.
2926. Persons attending musters exempt from arrest in civil actions; not to pay tolls or ferriages.
2927. Regimental and battalion courts-martial, their powers and duties.
2928. Duty of pay-masters.
2929. Oath of officers.
2930. Proceedings at courts-martial against delinquents.
2931. Courts-martial may adjourn.
2932. Duties of commanding officers as to fines; penalty on captains.
2933. Returns to be made by commandants of regiments.
2934. Duties of generals as to reviews.
2935. Returns to be made by brigadier and major-generals.
2936. Penalty on general officer, &c., for failure to review or muster, or to make returns, or to be equipped; no officer to be deprived of his commission without trial.
2937. Duty of adjutant-general.
2938. In certain cases, returns and orders sent through post-office.
2939. Governor may remit fines and penalties.
2940. Regiments of cavalry, how formed, officered and equipped.

SECTION.

2941. Troops of cavalry, when to muster, and how returns made; who to command when mustering with infantry.
2942. Field officers of cavalry to review and make returns.
2943. Cavalry courts martial to be held.
2944. Fines of cavalry officers and privates same as in infantry.
2945. How cavalry fines appropriated.
2946. Duties of adjutants of regiments.
2947. Certain sections of this chapter to apply to cavalry also.
2948. Who commissioned in cavalry.
2949. Volunteer companies of artillery, light infantry, grenadiers or riflemen may be formed.
2950. May select their uniform; to be under the commander of the regiment, and do duty as other companies.
2951. Regiments of volunteer companies may be formed; field officers, how chosen.
2952. Captains and other officers, how appointed.
2953. Company to muster once in three months; may adopt rules for their government.
2954. Officers of volunteer regiments to make returns.
2955. Volunteers, &c., not to return to infantry but by permission, &c.; shall serve in infantry until they equip.
2956. Officers of volunteer regiments to review.
2957. Vacancies in field offices of volunteer regiments, how filled.
2958. Certain sections concerning infantry to apply to artillery, &c.
2959. General courts-martial, how appointed and held.
2960. Officers how selected.
2961. Of what rank the officers shall be.
2962. Officers for courts-martial regularly detailed.
2963. Officers, how detailed.
2964. Courts-martial, how constituted.
2965. Officers of courts-martial, how to rank; to be sworn.
2966. Witnesses, how summoned.
2967. How sworn.
2968. Rules for government of courts-martial; penalty for officers failing to attend.
2969. Duty of judge-advocate.
2970. Proceedings against officers arrested; refusing to attend.
2971. Perjury before courts-martial.
2972. For what officer cashiered.
2973. Detachments of militia for United States service.
2974. Substitutes received.
2975. Vacancies in detachments, under rank of field officers, how supplied.
2976. A militia-man, after one term, exempt, &c., unless, &c.
2977. Penalty for refusing to do duty when ordered out by civil authority.
2978. Seven justices may call out militia in invasions or insurrections.
2979. Duty of commanding officer on such requisition.

## SECTION.

2980. Commanding officer called out to notify his superior; superior to notify the governor.  
 2981. Three justices may order out militia to suppress outlawed persons.  
 2982. Pay of militia in actual service.  
 2983. By whom paid.  
 2984. Pay of militia in service.  
 2985. Punishment on refusal to appear on call of alarm given.  
 2986. Punishment for desertion.

## SECTION.

2987. How volunteer companies may be incorporated.  
 2988. Privates, by ten years' service in such company, exempt from further duty.  
 2989. Commissioned officers exempt by eight years' service.  
 2990. Arms, how procured when brigadier general dead or absent.  
 2991. Private acts in relation to militia not repealed.

## STATE GUARD.

## SECTION.

2992. White and colored militia to be enrolled separately in state guard.  
 2993. State guard liable to active service.  
 2994. State guard to be composed of volunteers; enlistment for five years.  
 2995. Soldiers ordered out for active service not appearing, penalty.  
 2996. State to be divided into three districts; boundaries of each.  
 2997. What shall make a battalion under a major; under a lieutenant-colonel; regiments; brigades.  
 2998. Number of commissioned officers to each.  
 2999. Officers, how chosen; field officers; commissioned officers; non-commissioned officers.  
 3000. Governor shall commission.  
 3001. Officers to take an oath.  
 3002. Rank according to date of commission.  
 3003. Captains of companies to make yearly reports.  
 3004. Commander-in-chief to revoke commissions, and disband company.  
 3005. Discipline and organization.  
 3006. Companies failing to comply with the requirements of the law.

## SECTION.

3007. Uniform.  
 3008. Arms.  
 3009. Inspections of arms and equipments.  
 3010. Injury to arms or other military property.  
 3011. Duties of the adjutant-general; blanks to be furnished; military books; annual and biennial reports.  
 3012. Annual parades.  
 3013. Semi-monthly drills.  
 3014. Company rules.  
 3015. Courts-martial.  
 3016. Exemption from jury service.  
 3017. Certificate of membership.  
 3018. Contributing members of the company may be enrolled.  
 3019. Contributing members entitled to certificates, &c.  
 3020. In time of peace state guard limited in number; company standard.  
 3021. Election of field officers.  
 3022. Commander-in-chief to prescribe rules, &c.  
 3023. Commander-in-chief may order a certain number of men into camp.

## MILITARY SCHOOLS.

## SECTION.

3024. Military schools to be provided with arms.

## Sec. 2893. Of whom composed; exemptions.

1863, c. 22, s. 1.

The militia of North Carolina shall consist of those liable to 2 military duty, and every person so liable shall be required to 3 serve in the same unless he shall pay to the county treasurer a 4 yearly contribution of two dollars, or be exempted under the cer- 5 tificate of some practicing physician on account of bodily in- 6 firmity.

## Sec. 2894. How divided.

1863, c. 22, s. 2.  
 1870-'71, c. 34.

The militia shall consist of companies, regiments, brigades and 2 divisions, as now required by law.

**Sec. 2895. How governed.**

The regulations of the United States army shall be adhered to, 1868, c. 22, s. 3.

2 as near as practicable in organizing the militia of this state.

**Sec. 2896. Adjutant-general to be appointed.**

The governor shall appoint one adjutant-general, who shall re- 1868, c. 22, s. 4.

2 ceive a salary of three hundred dollars *per annum*.

**Sec. 2897. Officers, by whom appointed and commissioned.**

The governor shall appoint and commission all officers. 1868, c. 22, s. 5.

**Sec. 2898. Officers to take oath.**

All officers in the militia shall take and subscribe the oath re- 1869-'70, c. 164.

2 quired of officers by the constitution of the state of North Caro-

3 lina.

**Sec. 2899. White and colored militia in distinct companies.**

The white and colored militia shall be enrolled in separate and 1868, c. 22, s. 9.

2 distinct companies and shall never be compelled to serve in the

3 same companies.

**Sec. 2900. Who exempt from militia duty.**

The vice-president of the United States, the officers, judicial and R. C., c. 70, s. 2.

2 executive, of the United States, the members of both houses of 1806, c. 708, s. 2.

3 congress and their respective officers; the justices of the supreme 1812, c. 828, s. 7.

4 and judges of the superior courts, and justices of the peace; the 1823, c. 1218.

5 secretary of state, auditor, treasurer, the governor's private secre- 1838, c. 50.

6 tary, attorney-general, solicitors, the clerks of the several courts of 1844, c. 36, s. 31.

7 record, the state printer, sheriffs of the several counties, physicians 1848, c. 58, s. 9.

8 and surgeons, ordained ministers of the gospel of every denomi-

9 nation, all custom-house officers, postmasters, and stage-drivers or

10 mail-carriers, employed in the care and conveyance of the mail to

11 the post-offices of the United States, all ferrymen employed on any

12 ferry of a public road, provided the same shall not exceed one super-

13 intendent and one other to each ferry, all millers of public mills,

14 provided that this exemption shall extend as to each mill to one

15 person only subject to do military duty, whose occupation and

16 daily employment it is to attend and perform the duty of a public

17 miller, all inspectors of produce, all branch and licensed pilots, all

18 mariners actually employed in the sea service of the United States,

19 or of any merchant, all officers and students of the University

20 and all other seminaries of learning within the state, the lock-

21 keepers on the Dismal Swamp canal, superintendents of common

22 schools, members of the committee of examination of teachers

23 of common schools, teachers and pupils of common schools while

24 engaged as such, shall be exempted from military duty: *Pro-*

25 *vided always*, that nothing herein contained shall be so construed



26 as to exempt any person from performing duty in case of invasion  
27 or insurrection in the state.

**Sec. 2901. Members of fire companies exempted; also persons of conscientious scruples.**

R. C., c. 70, s. 3.  
1806, c. 708, s. 2.  
1829, c. 25.  
1833, c. 16.

The members of the several fire companies, so long as they shall  
2 continue such, that may be established in the state, shall be ex-  
3 empted from all militia duty, except in time of war, invasion or  
4 insurrection. The captain of every fire company, once a year,  
5 shall make a regular return to the colonel commandant of the reg-  
6 iment, by the fifteenth day of October, (under the penalties imposed  
7 on captains of militia companies for failure of making return,) in  
8 the limits of which the company exists, of all persons belong-  
9 ing to said company liable to muster, and the colonel of the regi-  
10 ment shall include them in his regular annual returns to the gen-  
11 eral of the brigade and adjutant-general. Persons having scru-  
12 ples of conscience against bearing arms, who shall produce to the  
13 captains of their respective districts, certificates, signed by the  
14 clerks of their respective churches, that they are regular members  
15 thereof, and shall make oath or affirmation before a justice of the  
16 peace that they are, from religious scruples, averse to bearing arms,  
17 and shall also produce a certificate from said justice that such oath  
18 or affirmation has been duly made, shall not be compelled to mus-  
19 ter or perform military duty, except in cases of insurrection or in-  
20 vasion, or pay any tax for exemption; but they shall be subject to  
21 taxation in time of insurrection, invasion or war, and also to fur-  
22 nish their quota of men or pay an equivalent.

**Sec. 2902. Further exemptions from militia duty.**

1869-'70, c. 164, s. 4.

Any citizen of the state who has faithfully served as an active  
2 fireman in this state in an organized fire company for a period of  
3 seven consecutive years may obtain exemption from jury duty,  
4 and, except in time of insurrection or invasion, from militia duty,  
5 by procuring a certificate of the facts aforesaid from the principal  
6 officer of the company in which the service was rendered, or if the  
7 company has been disbanded, then on affidavit of the facts of  
8 such service by some officer or member of the late company in  
9 which such service was rendered shall be sufficient to entitle the  
10 holder thereof to such exemption.

**Sec. 2903. Officers to enrol and make return of exempts.**

R. C., c. 70, s. 4.  
1832, c. 7.

The captain or commandants of companies shall enrol and keep  
2 enroled all within the limits of their respective districts who are  
3 exempt from performing militia duty by law except in time of in-  
4 vasion or insurrection, and shall return the number of exempts in  
5 their annual returns to the commandants of regiments, who shall  
6 make a like return of all exempts in their respective regiments

7 in their annual returns to the brigadier and adjutant-generals,  
8 regulations for which annual reports are hereinafter prescribed.

**Sec. 2904. Persons enroled to equip themselves; forfeitures for neglect to do so.**

Every citizen enroled and notified, as is directed in this chap-  
2 ter, shall, within six months thereafter, provide himself with a  
3 good musket, smooth-bored gun or good rifle, shot-pouch and pow-  
4 der-horn, and shall appear so armed and accoutered when called  
5 out to exercise or in actual service; the commissioned officers shall  
6 severally be armed with a sword, or hanger, or an esponton; and  
7 every citizen so enroled and providing himself with arms and ac-  
8 couterments as herein directed, shall hold the same exempt from  
9 all suits, executions or sales for debts, or for the payment of taxes;  
10 and if he shall fail to provide himself with arms and accouter-  
11 ments, as herein directed, and if the commissioned officers of his  
12 company shall deem him in sufficient circumstances to equip him-  
13 self he shall forfeit and pay for want of a good, serviceable musket,  
14 gun or rifle, fifty cents. And all parents and masters shall furnish  
15 those of the militia, who shall be under their care or command,  
16 with the arms and equipments above mentioned, under the like  
17 penalty for each neglect. If the company court-martial, after ex-  
18 amination on oath, shall adjudge any person enroled to be inca-  
19 pable of providing himself with arms and accouterments, as  
20 herein required, they shall make report thereof to the next regi-  
21 mental or battalion court-martial, as the case may be, who may, if  
22 it shall appear necessary, exempt such person from the fines here  
23 imposed until such arms and accouterments shall be provided and  
24 delivered to him by the court-martial, who shall take security for  
25 the safe-keeping of such arms and accouterments to be returned  
26 when required.

R. C., c. 70, s. 6.  
1806, c. 708, ss. 1, 3,  
9.

**Sec. 2905. How infantry shall be divided.**

The infantry shall be divided into divisions, brigades, regiments,  
2 battalions, and companies; each division shall consist of at least  
3 two brigades; each brigade of at least four regiments, each county  
4 forming at least one regiment; each regiment, when convenient,  
5 shall consist of at least two battalions, each battalion of five com-  
6 panies, and each company of forty-five privates.

R. C., c. 70, s. 7.  
1806, c. 708, s. 3.  
1848, c. 58, s. 12.

**Sec. 2906. Regiments, brigades and divisions, how distinguished.**

The following are declared to be the regiments, brigades and

1866, c. 23, s. 1.

2 divisions of the infantry, to be known and distinguished as here  
3 designated, namely :

BRIGADES.	COUNTIES.	No. REGIMENT.	HOW DISTINGUISHED IN COUNTIES WHERE MORE THAN ONE REGIMENT.
1st.....	Currituck .....	1	
	Camden .....	2	
	Perquimans.....	3	
	Pasquotank.....	4	
2nd.....	Chowan.....	5	
	Hertford.....	6	
	Gates.....	7	
	Bertie.....	8	
	" .....	9	
3rd.....	Martin.....	10	
	Washington.....	11	
	Fyrell.....	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 Coharie.
	" .....	25	West of " "
7th.....	Duplin.....	26	
	Wayne.....	27	Upper.
	" .....	28	Lower.
	Greene.....	29	
8th.....	Edgecombe.....	30	Upper.
	" .....	31	Lower.
	Nash.....	32	
	Wilson.....	33	
9th.....	Hallifax.....	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.
	Person.....	44	
	Orange.....	45	Hillsboro.
	" .....	46	Hawfield.
12th.....	Caswell.....	47	
	Alamance.....	48	
	Chatham.....	49	Upper.
	" .....	50	Lower.
13th.....	Moore.....	51	
	Harnett.....	52	
	Cumberland.....	53	Upper.
	" .....	54	Lower.
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.....	Gulford.....	67	West.
	" .....	68	East.
	Rockingham.....	69	Lower.
	Forsyth.....	70	Upper.
	" .....	71	



BRIGADES.	COUNTIES.	No. REGIMENT.	HOW DISTINGUISHED IN COUNTIES WHERE MORE THAN ONE REGIMENT.
18th.....	Stokes.....	72	North. South.
	Surry.....	73	
	".....	74	
	Yadkin.....	75	
19th.....	Rowan.....	76	North of South Yadkin. South of South Yadkin.
	Davie.....	77	
	Iredell.....	78	
	".....	79	
20th.....	Anson.....	80	East. West.
	Union.....	81	
	".....	82	
	Stanly.....	83	
21st.....	Cabarrus.....	84	North. South.
	Mecklenburg.....	85	
	".....	86	
	Gaston.....	87	
22nd.....	Lincoln.....	88	Upper. Lower.
	Catawba.....	89	
	Cleveland.....	90	
	".....	91	
23rd.....	Wilkes.....	92	Lower. Upper.
	".....	93	
	Alexander.....	94	
	Caldwell.....	95	
24th.....	Alleghany.....	96	
	Ashe.....	97	
	Watauga.....	98	
	Mitchell.....	99	
25th.....	Burke.....	100	North. South.
	".....	101	
	McDowell.....	102	
	Rutherford.....	103	
26th.....	Rutherford.....	104	South.
	Polk.....	105	
	Henderson.....	106	
	Transylvania.....	107	
27th.....	Buncombe.....	108	North. South.
	".....	109	
	Madison.....	110	
	Yancy.....	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, 22d, 23rd and 24th "

Seventh " " " 25th, 26th, 27th and 28th "

Sec. 2907. Officers of infantry, their grade, and how appointed.

The officers of the infantry shall be as follows : To each division 2 there shall be one major-general, and two aids-de-camp with the 3 rank and pay of major ; one division inspector, and one division 4 quartermaster with the rank and pay of lieutenant-colonel, to be 5 appointed by the major-general and commissioned by the gov- 6 ernor ; to each brigade one brigadier-general, and one aid-de-camp 7 with the rank and pay of major ; one brigade inspector with the 8 rank and pay of major ; one hospital surgeon and two mates, and 9 one assistant deputy quartermaster-general with the rank and pay 10 of a captain, to be appointed by the brigadier-general and commis- 11 sioned by the governor ; to each regiment one colonel and lieuten- 12 ant-colonel and one major. There shall also be to each regiment

R. C., c. 70, s. 9.  
1806, c. 708, s. 3.  
1814, c. 867.  
1816, c. 924.  
1842, c. 57, s. 1.

13 one adjutant and one quartermaster, who shall be commissioned  
 14 officers with the rank of lieutenant; one paymaster, one surgeon and  
 15 one surgeon's mate, one sergeant-major, one drum-major and one  
 16 fife-major, all to be appointed by the commanding officer of the  
 17 regiment; and the adjutant shall, when necessary, discharge the  
 18 duties heretofore assigned to the brigade inspectors within his reg-  
 19 iment, for which services he shall be allowed by the court-martial  
 20 a reasonable compensation, if they think proper, to be paid out of  
 21 the fines collected. To each company there shall be one captain,  
 22 three lieutenants, one ensign, four sergeants, four corporals, one  
 23 drummer and one fifer. All commissioned officers of the same  
 24 rank shall take precedence on command according to the date of  
 25 their commissions; and where two or more of the same grade bear  
 26 an equal date, then their rank shall be determined by lot, to be  
 27 drawn by them before the commanding officers of the division,  
 28 brigade, regiment, battalion, company or detachment. The gen-  
 29 eral and field officers and all other commissioned officers shall re-  
 30 side within the division, brigade, regiment, battalion or company  
 31 district which they respectively command.

**Sec. 2908. Governor may appoint four aids-de-camp.**

R. C., c. 70, s. 9.  
 1806, c. 708, s. 3.  
 1814, c. 867.  
 1816, c. 924.  
 1842, c. 57, s. 1.

The governor shall be entitled to four aids-de-camp, whom he  
 2 may appoint and commission with the rank of colonel. The com-  
 3 missions hereby authorized and directed to be granted to the sev-  
 4 eral aids-de-camp of the governor, major-generals, and brigadier-  
 5 generals, to division inspectors, division quartermasters, brigade  
 6 inspectors, hospital surgeons and mates, and assistant deputy  
 7 quartermaster-generals, shall be held during the pleasure of the  
 8 governor, or the generals, to whom such aids-de-camp and the  
 9 other aforesaid officers may be attached.

**Sec. 2909. Uniform of officers.**

R. C., c. 70, s. 10.  
 1813, c. 850, s. 13.  
 1846, c. 38, s. 9.

The uniform, prescribed for the officers of the regular army of  
 2 the United States, shall be the uniform to be worn by the commis-  
 3 sioned officers of the same rank in the militia of this state.

**Sec. 2910. Officers to hold commissions three years and equip within twelve months; penalty.**

R. C., c. 70, s. 11.  
 R. S., c. 73, s. 11.  
 1840, c. 42, ss. 1, 2.  
 1846, c. 38, ss. 1, 3,  
 13.  
 1848, c. 58, s. 6.  
 1850, c. 89, s. 5.

All officers who may accept military commissions shall hold and  
 2 continue to discharge the duties of their respective offices for three  
 3 years from the date of their commission, unless a resignation should  
 4 be rendered necessary by promotion, removal, or disease; and they  
 5 shall equip themselves according to law, within twelve months,  
 6 and any officer who shall fail to comply with the above require-  
 7 ments shall forfeit and pay, if as high as the grade of a field  
 8 officer, fifty dollars, of a captain, twenty-five dollars, and of a lieu-  
 9 tenant or ensign, twenty dollars; to be sued for and recovered

10 by the adjutant, in the name of the state, and to be accounted  
 11 for to the paymaster and applied as other militia fines. When  
 12 any commission for a major-general or a brigadier-general is is-  
 13 sued by the governor, under the provisions of this section, it  
 14 shall be the duty of the adjutant-general to have the same pub-  
 15 lished in one of the papers of the city of Raleigh.

**Sec. 2911. Officers to give notice of their absence.**

When any officer commanding a division, brigade, or regiment,  
 2 shall have occasion to be absent from his usual residence two  
 3 months or more, he shall notify the officer next entitled to the  
 4 command, of his intended absence, and also his next superior  
 5 officer in command.

R. C., c. 70, s. 12.  
 1806, c. 708, s. 18.

**Sec. 2912. To deliver to their successors in office, money and papers.**

All officers who shall have in their hands either money or pa-  
 2 pers received by virtue of their appointments, shall, when they  
 3 leave their office, pay and deliver the same to their successors in  
 4 office, under the penalty of one hundred dollars, to be recovered  
 5 in the name of the governor, and applied as hereinafter directed.

R. C., c. 70, s. 13.  
 1806, c. 708, s. 19.

**Sec. 2913. Rules of discipline ; adjutant-general to distribute Upton's tactics, and how.**

The rules of discipline and system of tactics, which may be ap-  
 2 proved and prescribed by congress, shall be established as the rules  
 3 for discipline of militia in this state, except such alterations as  
 4 shall be rendered necessary by unavoidable circumstances. The  
 5 adjutant-general shall procure Upton's tactics, and shall furnish  
 6 to each major-general and brigadier-general five copies ; and to  
 7 each colonel of a regiment a number of copies equal to the num-  
 8 ber of companies and field officers in each regiment, for distribu-  
 9 tion among the officers of the militia as the general and colonel  
 10 may think proper. Upon the resignation or removal of any field  
 11 officer or company officer, he shall deliver to his successor in office  
 13 the copies of military tactics with which he has been furnished ;  
 14 and in case of his death while in office, his executor or adminis-  
 15 trator shall deliver the same as aforesaid ; and upon a failure to  
 16 do so, the said officer, or his executor or administrator, as the case  
 17 may be, shall forfeit and pay the sum of three dollars, to be col-  
 18 lected by his successor in office, and applied as other militia fines.

R. C., c. 70, s. 14.  
 1806, c. 708, s. 5.  
 1848, c. 38, ss. 10, 14.

**Sec. 2914. Captain's district, how laid off ; boundary lines in regiments of same county, how altered.**

The regimental or battalion courts-martial shall have power so to  
 2 lay off the several captains' districts, as to render them as conve-  
 3 nient to the inhabitants as a due regard to the requisite number of  
 4 persons liable to perform military duty will permit ; and they may

R. C., c. 70, s. 15.  
 1831, c. 8.



5 at any subsequent court-martial so alter, enlarge, or consolidate  
 6 their respective districts as to create new ones, or unite portions of  
 7 districts together so as to form other and separate districts; and all  
 8 allotments or alterations shall be duly recorded by the judge advo-  
 9 cate in the books of the regiment or battalion; where a small  
 10 number of inhabitants are so detached, by water-courses or moun-  
 11 tains, as to render their attendance inconvenient at any place  
 12 where they have been accustomed to muster, and where such de-  
 13 tached sections contain a population of thirty-six men, liable to  
 14 perform military duty, the regimental or battalion court-martial  
 15 shall lay that section off into a separate captain's district, and ap-  
 16 point officers in the same manner as in other districts; and where  
 17 there shall be two or more regiments in any county, a majority  
 18 of the officers composing such regiments shall have full power to  
 19 alter and regulate the boundary lines of their regiments, and in  
 20 the event the officers should not agree with respect to said lines,  
 21 the county commissioners shall establish the said lines; and when  
 22 so fixed, the judge advocate of each regiment shall spread the same  
 23 on their journals.

Sec. 2915. Regulation as to company musters.

R. C., c. 70, s. 16.  
 1806, c. 708, ss. 8, 24.  
 1827, c. 11.  
 1829, c. 31, s. 2.  
 1832, c. 5, s. 3.

Every captain or commanding officer of a company shall, at  
 2 least twice a year, at such place as may be designated by a major-  
 3 ity of his company, and agreeable to the order of the commanding  
 4 officer, muster, train, and exercise such company, and shall cause  
 5 them to remain under arms at least two hours on every day, by  
 6 himself, or one of his lieutenants, or his ensign, and then and there  
 7 to teach them the manual exercise and the proper company ma-  
 8 nœuvres, at which muster the officers and privates shall appear  
 9 armed and equipped as hereinbefore required. The captains shall  
 10 not call their men together without their consent, for the purpose  
 11 of company musters, more than twice in each year, except in cases  
 12 of insurrection or invasion: *Provided*, that this section shall not  
 13 apply to volunteer companies: *And provided further*, that when any  
 14 person enters into the rank in the extra musters he shall be sub-  
 15 ject to the same discipline and governed by the same rules and  
 16 penalties as govern them in their regular musters. If any captain  
 17 or commanding officer of a company shall fail or neglect to mus-  
 18 ter his company as herein directed, he shall forfeit and pay six  
 19 dollars, to be adjudged by the next regimental court-martial; and  
 20 if he or any commissioned officer of the company shall fail to ap-  
 21 pear equipped, as directed, at the said muster, the officer so failing  
 22 shall pay four dollars; and if a non-commissioned officer or private  
 23 shall fail to attend at a company muster, he shall forfeit and pay a  
 24 sum not exceeding two dollars nor less than one dollar, and if he  
 25 attend without being armed and accoutered, he shall pay a sum  
 26 not exceeding one dollar nor less than fifty cents, which sum shall

27 be adjudged by the company court-martial, according to the  
 28 circumstances of the delinquent: *Provided*, that every absentee,  
 29 shall be allowed until the next succeeding company muster to  
 30 make his excuse, which shall always be on oath, the officer highest  
 31 in rank present being authorized to administer the same. When  
 32 companies consist principally of persons residing within any town,  
 33 and the muster ground is at or within one mile of said town, all  
 34 fines imposed by this section for not appearing at reviews and  
 35 musters, or, if appearing, not being properly armed and accoutered,  
 36 shall be doubled.

**Sec. 2916.** Company courts-martial, how to proceed; appeal allowed; executions from courts-martial, how and to whom issued; penalty on sheriff or constable for neglect.

The commissioned officers of the company, or any two of them,  
 2 after every muster of the company, shall, on the same day, meet  
 3 in court martial, and proceed to try and determine on all cases  
 4 which may come before them; and, on conviction of any delin-  
 5 quent, the officer highest in rank present shall enter up judgment  
 6 and issue writs of execution against the goods and chattels and  
 7 body of the delinquent, as on judgment in civil cases. The right  
 8 of appeal shall be allowed from a company to a battalion or regi-  
 9 mental court-martial, but no appeal shall be granted unless the  
 10 person praying the same shall give security, to be approved by  
 11 the captain or presiding officer of the company court-martial, to  
 12 abide by the decision of the battalion or regimental court-martial;  
 13 which appeal shall be taken in like manner as appeals from jus-  
 14 tices of the peace to the superior court, and shall be proceeded on  
 15 in like manner by the battalion or regimental courts-martial.  
 16 Every execution issuing upon a judgment entered up before any  
 17 court-martial, shall be directed to a constable or to the sheriff of the  
 18 county; and the officer to whom such execution may be directed  
 19 and delivered, shall proceed to collect the same in the manner and  
 20 under the rules established in civil cases, and shall be allowed the  
 21 same fees for his services; he shall make his return to the next  
 22 sitting of the court-martial from which the execution issued, under  
 23 a penalty of twenty dollars for every neglect of duty, to be recov-  
 24 ered by suit on the official bond of such constable or sheriff, in the  
 25 name of the state, to the use of the presiding officer of the court-  
 26 martial from which such execution issued. Any penalty so recov-  
 27 ered shall be appropriated as other militia fines; and in case the  
 28 presiding officer of any court-martial shall fail in any such suit,  
 29 he is authorized to use so much of the fines of his company, bat-  
 30 talion or regiment, as the case may be, as shall be necessary to de-  
 31 fray the expense of such suit.

R. C., c. 70, s. 17.  
 1806, c. 708, s. 12.  
 1813, c. 850, s. 4.  
 1812, c. 57, s. 3.  
 1846, c. 38, s. 7.  
 1848, c. 58, s. 10.

**Sec. 2917. Company musicians, how appointed; their privileges.**

R. C., c. 70, s. 18.  
1812, c. 828, s. 14.

For the encouragement of military music, the captain of each  
2 military company of infantry may select from among the persons  
3 enroled in his company one fifer and one drummer, each being  
4 properly qualified for their appointment, which selection shall be  
5 made under the direction and with the approbation of the field  
6 officers belonging to the regiment to which such company is at-  
7 tached; and when such selection of musicians is made, the field  
8 officers shall grant a certificate to such musicians of their appoint-  
9 ment, and the commissioners of the county shall exempt and dis-  
10 charge such musicians so selected during their continuance in ap-  
11 pointment, from serving on all juries, from working on the roads,  
12 and from the payment of poll-taxes. Such musicians shall be remov-  
13 able at the pleasure of the field officers of the regiment to which  
14 they severally belong, and shall attend every muster of their re-  
15 spective companies and also the muster of the officers and perform  
16 the duties of their appointment, under the penalty of four dollars  
17 for every neglect, to be collected and applied in the same manner  
18 that other fines are.

**Sec. 2918. Road hands not to be ordered out on muster-day.**

R. C., c. 70, c. 19.  
1812, c. 828, s. 12.

No overseer of a road shall order the hands under him to work  
2 on the days previously appointed for musters by the captain of  
3 the company to which such hands belong.

**Sec. 2919. Captains to make returns, when.**

R. C., c. 70, s. 20.  
1806, c. 708, s. 10.

The captains shall, at the several musters, or within thirty days  
2 after being required so to do, or immediately, if required at a reg-  
3 imental or battalion muster, make a return of their respective  
4 companies to the commanding officer of the regiment or battalion,  
5 under penalty of ten dollars in the first case, or disobedience of  
6 orders in the second case.

**Sec. 2920. Regimental or battalion musters, where held; duty of colonel; penalty for neglect of duty.**

R. C., c. 70, s. 21.  
1806, c. 708, s. 6.  
1846, c. 38, s. 11.

There shall be in every year at least one regimental or battalion  
2 muster, to be ordered by the commandant of such regiment or bat-  
3 talion, at such place as may have been designated, or may hereaf-  
4 ter be designated by a majority of the commissioned officers of  
5 such regiment or battalion, at which such commanding officer  
6 shall cause the militia to be exercised at least two hours on each  
7 day. The battalion muster shall be held as near the centre of each  
8 battalion district as is possible to find a suitable place for said  
9 muster. The colonel shall attend at such battalion muster on the  
10 days of drill, and the days of review, and drill and instruct the  
11 officers and men in their duties; and if he fails to discharge said  
12 duty, he shall be fined not less than ten, nor more than twenty



13 dollars, unless he renders to a court-martial a sufficient excuse for  
14 such failure: said court-martial to be called by the brigadier-gen-  
15 eral, upon information to him by the adjutant, and to consist of at  
16 least five commissioned officers, one of whom shall be of as high  
17 rank as colonel, and the others of at least as high rank as captain.

**Sec. 2921. Penalty on officers failing to attend reviews or musters.**

If any officer shall fail to attend at any review, regimental or  
2 battalion muster, or, attending, be not armed as required by this  
3 chapter, he shall, on conviction before a court-martial, forfeit and  
4 pay, if a field officer, the sum of twenty dollars; if a commissioned  
5 officer under that grade, the sum of ten dollars; and every non-  
6 commissioned officer or private, who shall fail to attend such re-  
7 view or muster, shall, on conviction, pay such sum as shall be ad-  
8 judged against him by the commissioned officers of the company  
9 to which he belongs, not exceeding four dollars, nor less than one  
10 dollar, to be ascertained at the next company muster, and, when  
11 collected, to be accounted for with the court-martial; or, if appear-  
12 ing, be not armed as by law directed, shall, for such default, forfeit  
13 and pay a sum not more than one dollar and fifty cents, nor less  
14 than fifty cents, to be adjudged and accounted for as aforesaid.

R. C., c. 70, s. 22.  
1806, c. 708, s. 8.

**Sec. 2922. Commandants of regiments, &c., to give notice of reviews, &c.**

The commanding officer of each regiment or battalion shall give  
2 to the commanding officers of the companies under his command  
3 not less than ten days' notice of the battalion or regimental mus-  
4 ters or reviews, which may at any time be ordered.

R. C., c. 70, s. 23.  
1813, c. 850, s. 7.

**Sec. 2923. Commissioned officers of regiments, &c., to exercise day before review; penalty for failure.**

Every commissioned and non-commissioned officer of the infan-  
2 try, by appointment of the commanding officer of each regiment,  
3 shall meet the day before that on which the commanding officer  
4 of such regiment or battalion has appointed for holding reviews  
5 or regimental musters, where the said officers of the infantry shall  
6 be exercised by the adjutant or by the commanding officer of such  
7 regiment or battalion, at least three hours, when and where they  
8 shall be instructed in all matters of field exercise and discipline,  
9 according to the system which may be established by law. And  
10 any commissioned or non-commissioned officer, who shall fail or  
11 neglect to appear at the time and place so appointed by the com-  
12 mandant of his regiment or battalion, or, if appearing, be not  
13 armed and equipped as by this chapter directed when at any re-  
14 view or parade, such commissioned officer, so failing and neglect-  
15 ing, shall forfeit and pay the same sum which such officer would  
16 be compelled to pay in cases of failure and neglect at any regi-  
17 mental or battalion reviews or parades, and such non-commis-

R. C., c. 70, s. 24.  
1806, c. 708, s. 16.  
1846, c. 88, s. 11.

18 sioned officer shall be fined for such failure two dollars, unless he  
 19 furnish a sufficient excuse to the regimental court-martial; and  
 20 the same shall be recovered in the same manner and the money  
 21 applied, as in other like cases directed by this chapter, and such  
 22 officer shall in every instance whatever, be subject to the same  
 23 punishment for neglect of duty or disobedience of his superior  
 24 officers, as such officer would be subject to when in actual military  
 25 service.

**Sec. 2924. Penalties on officers and privates for misbehavior.**

R. C., c. 70, s. 25.  
 1806, c. 708, ss. 8, 9.  
 1842, c. 57, s. 4.

If any commissioned officer shall suffer himself to be intoxica-  
 2 ted on parade or drill, or behave in a riotous or disorderly manner  
 3 when on duty, or disobey the orders of his commanding officer, he  
 4 may be ordered in arrest by said commanding officer until the  
 5 parade or drill is over, and shall be subject to trial by a court-mar-  
 6 tial, and by them fined not to exceed twenty five dollars, or, at  
 7 their discretion, shall be reprimanded publicly or cashiered. If  
 8 any non-commissioned officer or private shall, during the time of  
 9 muster, or whilst on duty, behave in a disorderly manner, or resist  
 10 or refuse to obey his commanding officer, he may be ordered in  
 11 arrest by such commanding officer during the time of muster or  
 12 duty, and fined at the discretion of the court-martial, not to exceed  
 13 five dollars: *Provided*, the said court-martial be regularly detailed  
 14 as prescribed in this chapter.

**Sec. 2925. Persons on muster ground failing to do duty, arrested.**

R. C., c. 70, s. 26.  
 1806, c. 708, s. 25.

If any person, liable to perform duty, shall appear at or near  
 2 the parade ground, during the time of any review or muster, and  
 3 shall not take his proper station and perform the duties required  
 4 of him by law, or behave himself in a disorderly manner while on  
 5 parade, the commanding officer of the regiment or corps shall order  
 6 the said person under guard, there to be detained during the time  
 7 of exercise of the service then performing, and until the militia are  
 8 discharged, and such person shall further be fined at the discretion  
 9 of the court-martial.

**Sec. 2926. Persons attending musters exempt from arrest in civil actions; not to pay tolls or ferriages.**

R. C., c. 70, s. 27.  
 1806, c. 708, s. 21.

No officer or soldier directed by this chapter to appear and mus-  
 2 ter as aforesaid, shall be liable to be taken or arrested in any civil  
 3 action or process whatever, on the day such person is directed to  
 4 appear, or in a reasonable time either in going to, continuing at,  
 5 or returning from the place appointed to muster or appear, but  
 6 every such arrest shall be void. Every person required to attend  
 7 musters and reviews, going to or returning from the same, shall be  
 8 suffered to pass over any toll-bridge or toll causeway, and shall be  
 9 put over any ferry without delay, free from any charge whatever.

10 If any ferryman or proprietor of a toll-bridge shall demand pay,  
 11 or refuse to put over such person, he shall forfeit and pay for every  
 12 such offence four dollars to the sole use of the informer.

**Sec. 2927. Regimental and battalion courts-martial, their power and duties.**

The commanding officer of each regiment or battalion shall  
 2 order a court-martial to be held, at the place appointed for the  
 3 muster of the same, on the day after the regimental or battalion  
 4 muster, or on the same day, if convenient, which court shall con-  
 5 sist of a majority of the officers of the regiment or battalion, one of  
 6 whom shall be a field officer and two of the grade of captain, and  
 7 the highest officer in rank present shall be president. The court  
 8 shall be notified of their duty by the adjutant of the regiment or  
 9 battalion, by a roster to be kept by him; and the said court, when  
 10 convened, shall appoint a judge advocate, who shall himself, in the  
 11 presence of the court, take the following oath:

R. C., c. 70, s. 29.  
 1806, c. 708, s. 11.  
 1817, c. 955.

"I, ....., do swear that I will well and truly perform the duties of judge advo-  
 cate of this court, according to the best of my skill and ability; so help me God."

12 And the judge advocate shall administer the following oath to the  
 13 to the members of the court-martial:

"You, ....., 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 re-  
 ceived, 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."

14 They shall inquire into the age and ability of all persons that come  
 15 before them by appeal, and exempt such as may be excused on  
 16 account of age or be adjudged incapable of service; also try and de-  
 17 cide on all persons charged with omission or commission, as well  
 18 by officers as by privates. The said regimental or battalion court-  
 19 martial shall hear and determine all appeals from the company  
 20 court-martial, and order or dispose of all fines, for buying drums,  
 21 fifes, and other implements of war, for the use of the company,  
 22 where the same shall arise, and for supplying the militia with  
 23 arms and accouterments, and for other purposes that will promote  
 24 the good thereof. The judge advocate shall be allowed a reason-  
 25 able salary, to be paid out of the fines for his services; his duty  
 26 shall be to write at length the proceedings of the said court; for  
 27 all fines which may be imposed by the court-martial, he is author-  
 28 ized to enter up judgment and issue execution.

**Sec. 2928. Duty of paymasters.**

The paymaster shall demand and receive of the adjutants, ser-  
 2 geants, constables, and others, who may have collected them, all  
 3 fines and forfeitures, and distribute the same agreeably to the di-  
 4 rections of the court-martial, and settle his accounts annually with

R. C., c. 70, s. 30.  
 1806, c. 708, s. 12.



5 the judge advocate; and the paymaster shall, before he enters on  
 6 the duties of his office, give bond and sufficient security, in the  
 7 sum of two hundred dollars, payable to the commanding officer of  
 8 the regiment and his successors in office, for the faithful account-  
 9 ing, agreeable to law, for all sums of money which may come into  
 10 his hands by virtue of his appointment; and the commanding  
 11 officer aforesaid, under the penalty of two hundred dollars, shall  
 12 sue for and recover the same, and when received by him, apply it  
 13 as is already by law directed; and the several paymasters shall be  
 14 allowed a reasonable compensation for their services by the court-  
 15 martial. In case there shall be no paymaster appointed by the  
 16 commandant of any regiment, then each commandant shall per-  
 17 form and execute the duties of paymaster, as above required.

**Sec. 2929. Oath of officers.**

R. C., c. 70, s. 31.  
 1806, c. 708, s. 13.  
 1808, c. 749, s. 3.

Every officer shall take the following oath, to be administered  
 2 in open court-martial by the judge advocate, or, if a company offi-  
 3 cer, it may be taken before the commanding officer of the regi-  
 4 ment:

"You, ....., do solemnly swear, that you will execute the office of ..... ac-  
 cording to the rules of military discipline and the laws of the state to the best of your knowl-  
 edge and ability, and that you will support the constitution of the United States and of this  
 state; and that you will, at the court-martial of the company to which you belong, duly ad-  
 minister justice, and apply fines and penalties according to law and to the best of your abil-  
 ity, without favor, affection or partiality: so help you God."

5 No officer shall be allowed to sit in a regimental, battalion or  
 6 company court-martial, unless he shall have taken the oath afore-  
 7 said.

**Sec. 2930. Proceedings at courts-martial against delinquents.**

R. C., c. 70, s. 32.  
 1806, c. 708, s. 14.

If, at any regimental, battalion or company court-martial, or  
 2 company of the officers, there shall be any delinquents, either for  
 3 non-attendance or not being properly armed and accoutered, or for  
 4 disorderly conduct, proclamation shall be made by the captain or  
 5 commanding officer, calling the names of all delinquents enroled,  
 6 that they attend the trial of the following company court-martial,  
 7 which shall be deemed a legal notice; if field officers, or officers  
 8 of the regimental staff, such notice shall be given by the com-  
 9 manding officer or adjutant of the regiment or battalion, or to the  
 10 officers assembled; and if any officer or private has an excuse to  
 11 offer to the court-martial, he may send his affidavit taken before a  
 12 civil magistrate, or produce a witness, or he may personally apply  
 13 and make oath to the cause of his delinquency; and in all cases,  
 14 whether from neglect or failure of the officers and privates at regi-  
 15 mental or battalion musters, or of appeals from the company courts-  
 16 martial, and of all other cases of which the regimental courts-mar-  
 17 tial have jurisdiction, their determination shall be final.

**Sec. 2931. Courts-martial may adjourn.**

The several courts-martial shall have power to adjourn from day 2 to day, or to some future day, when the officers entitled to compose 3 the same shall attend, under the penalties by law established in 4 other like cases for non-attendance, and at which time the unfinished business of the court may be acted upon; if there should 6 not be a sufficient number at the place of adjournment to form a 7 quorum, the officer ordering the same shall have power to continue its adjournments.

R. C., c. 70, s. 33.  
1806, c. 708, s. 15.

**Sec. 2932. Duties of commanding officers as to fines; penalty on captains.**

Every commanding officer of a regiment shall exact and enforce 2 regular settlements of all fines, collected under the militia laws, 3 from the several persons, charged with the collection thereof within 4 his regiment, which fines shall be appropriated as directed by law; 5 and each captain or commanding officer of a company shall report 6 in writing, once in every six months to the commanding officer of 7 the regiment, to which he belongs, the amount of fines assessed in 8 his company within that period; and if he shall neglect to make 9 such report and account for such fines, he shall forfeit for every 10 such neglect the sum of ten dollars, unless he renders to the regimental court-martial a sufficient excuse therefor.

R. C., c. 70, s. 34.  
1812, c. 828, s. 4.  
1842, c. 38, s. 3.

**Sec. 2933. Returns to be made by commandants of regiments.**

Every commandant of a regiment shall, at least once in every 2 year, on or before the twenty-fifth of October, make a return to the 3 brigadier-general of the brigade to which such regiment belongs; 4 and shall transmit a duplicate of the same to the adjutant-general, 5 on or before the fifteenth day of November in every year, at the 6 bottom of which he shall report whether or not his regiment was 7 reviewed by the major or brigadier-general, and at what time.

R. C., c. 70, s. 35.  
1806, c. 708, s. 10.  
1808, c. 749, s. 2.

**Sec. 2934. Duties of generals as to reviews.**

Every major-general shall review his division once in every three 2 years, and a brigadier-general shall review his brigade once in 3 every two years; the several corps composing a division or brigade 4 to meet by order of the reviewing general, by regiments, at such 5 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 8 their regiments or brigades, of the time of the review, previous to 9 such review taking place. Any major or brigadier-general, failing 10 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 12 which recovery is had and the other half to the use of the person suing for the same.

R. C., c. 70, s. 36.  
1817, c. 943, ss. 1, 2.  
1832, c. 5, s. 1.

**Sec. 2935. Returns to be made by brigadier and major-generals.**

R. C., c. 70, s. 37.  
1806, c. 708, ss. 10,  
22.

The brigadier-general shall make a return of his brigade to the  
2 major-general of his division on or before the tenth day of Novem-  
3 ber in every year, and shall transmit a duplicate of the same to  
4 the adjutant-general on or before the fifteenth day of November,  
5 in which he shall state when his brigade was last reviewed by the  
6 major-general of his division. The major-general shall make a  
7 return of his division to the adjutant-general, annually, on or be-  
8 fore the fifteenth day of November.

**Sec. 2936. Penalty on general officer, &c., for failing to review or muster, or to make returns, or to be equipped; no officer to be deprived of his commission without trial.**

R. C., c. 70, s. 38.  
1832, c. 5, ss. 1, 2.  
1844, c. 88, s. 12.

If any general officer or commandant of a regiment shall fail to  
2 review his division or brigade, or muster his regiment, or to make  
3 an annual return of his division, brigade or regiment; or, if any  
4 major or brigadier-general shall fail to equip himself, the gov-  
5 ernor shall cause the adjutant-general to give such delinquent  
6 officer thirty days' notice of his neglect of duty; and if such de-  
7 linquent officer does not, within forty days thereafter, render a sat-  
8 isfactory excuse for such neglect, by showing to the governor that  
9 such delinquency happened in consequence of indisposition, ab-  
10 sence from the state or other sufficient cause, the governor shall  
11 strike his name from the list of officers, and communicate the  
12 same to the adjutant-general, who shall have it published in some  
13 newspaper within the state, and issue proper notices to supply the  
14 vacancy: *Provided, however,* that no commissioned officer shall be  
15 deprived of his rank or rights as such without a regular trial before  
16 some court-martial, detailed for that purpose in manner prescribed  
17 in this chapter.

**Sec. 2937. Duty of adjutant-general.**

R. C., s. 70, s. 39.  
1806, c. 708, s. 7.  
1808, c. 749, s. 2.

The adjutant-general shall distribute all orders from the com-  
2 mander-in-chief of the state to the several corps; attend public re-  
3 views, if required, when the commander-in-chief of the state shall  
4 review the militia, or any part thereof; obey all orders from him  
5 relative to carrying into execution and perfecting the system of  
6 military discipline established by law; furnish blank forms of dif-  
7 ferent returns that may be required, and explain the principles  
8 upon which they shall be made; and also furnish blanks of such  
9 returns, shall demand and receive from the several officers of the  
10 different corps throughout the state, returns of the militia under  
11 their command, reporting the actual situation of the arms and  
12 accouterments, and their delinquencies, and every other thing  
13 which relates to the advancement of good order and discipline;  
14 all which the several officers of the divisions, brigades, regiments  
15 and battalions are required to make, in the manner herein directed,  
16 that the adjutant-general may be duly furnished therewith, pre-



17 vious to the biennial meeting of the general assembly, from all  
18 which returns he shall make proper extracts, and lay the same,  
19 with a report of the general state of the militia, magazines, and  
20 military stores, and such improvements as he may think necessary  
21 for the advancement of discipline and benefit of the militia, bien-  
22 nially before the general assembly, or the commander-in-chief of  
23 the state, who is required to lay the same without delay before the  
24 said assembly. And the adjutant-general shall also annually  
25 make a return of all the militia of the state to the president of the  
26 United States. In failure of which recited duties he shall suffer  
27 the following fines and penalties: for not attending all public re-  
28 views, when required by the governor, fifty dollars; for not fur-  
29 nishing blank forms as required by this chapter, ten dollars for  
30 each neglect, one-half to the use of the informer and the other  
31 half to the use of the state; for not distributing all orders from  
32 the commander-in-chief of the state, or for not making returns as  
33 required by this chapter, upon conviction of either before a gen-  
34 eral court-martial, to be ordered by the governor, he shall be cash-  
35 iered; he shall be compensated for the expense of all the blank  
36 forms of returns, necessarily required in his department; and the  
37 postage of all letters to and from him in his capacity as adjutant-  
38 general, shall be paid to him by the treasurer of the state, on the  
39 adjutant-general producing a stated account of the same by him  
40 certified; he shall keep a roster of the names and dates of the  
41 commissions of each major and brigadier-general in the state,  
42 likewise the counties under each of their commands respectively,  
43 designating therein the numbers of each division, brigade and  
44 regiment ready at all times for immediate inspection; shall at  
45 least once in every three years transmit a copy of this roster, cer-  
46 tified by him, to the president of the United States, to the governor  
47 of the state, and to the general assembly; and he shall, from time  
48 to time, make a report to the general assembly of what shall be  
49 done by him in virtue of his appointment, and accompany such  
50 report with such remarks as may by him be deemed necessary for  
51 the better regulation and improvement of the militia discipline  
52 throughout the state.

**Sec. 2938.** In certain cases, returns and orders sent through post office.

If no immediate opportunity offers for forwarding orders or re-  
2 turns, the certainty of which insures a speedy delivery thereof,  
3 which can be easily ascertained and proved, then the officer issu-  
4 ing the order or making the return (as the case may be) shall lodge  
5 the same, properly directed, in the post office, marked on the back  
6 "public service," under which he shall write his name and grade,  
7 and a return thus made shall be sufficient and good in law.

R. C., c. 70, s. 40,  
1813, c. 850, s. 3.

**Sec. 2939. Governor may remit fines and penalties.**

R. C., c. 70, s. 41.  
1813, c. 850, s. 6.

The governor may mitigate or remit all fines and penalties  
2 which may be recovered in any of the courts of justice against  
3 any general or field officer, arising under the militia laws of the  
4 state.

**Sec. 2940. Regiments of cavalry, how formed, officered and equipped.**

R. C., c. 70, s. 42.  
1806, c. 709, ss. 1, 7,  
12.  
1824, (bound with  
Acts 1826, p. 24.)  
1842, c. 33.  
1842, c. 57, s. 9.  
1846, c. 38, s. 5.

There shall be, in each brigade of the militia in the state, one  
2 regiment of cavalry; there shall be to each regiment of cavalry  
3 one colonel, one lieutenant-colonel, and one major, to be appointed  
4 and commissioned in like manner as such officers are appointed  
5 and commissioned in the infantry; and out of the militia enroled  
6 there may be formed, out of each battalion that has a separate  
7 muster, at least one troop of cavalry, to be formed of volunteers,  
8 which shall be uniformly clothed in regimentals at their own ex-  
9 pense, the color and fashion to be determined by the field officers  
10 of cavalry of the regiment or battalion to which they belong; to  
11 each troop one captain, two lieutenants, one cornet, four sergeants,  
12 four corporals, one saddler, one farrier, one trumpeter, and no less  
13 than twenty-four dragoons, the commissioned officers to furnish  
14 themselves with good horses at least fourteen and a half hands  
15 high, to be armed with a sword and pair of pistols, the holsters of  
16 which shall be covered with bear skin; and each dragoon shall  
17 furnish himself with a serviceable horse at least fourteen and a  
18 half hands high, a good saddle, bridle, breastplate, cruppers and  
19 valise, a pair of boots and spurs, one pair of pistols and holsters,  
20 (the holsters to be covered with bear skin,) a sword, and cartouch  
21 box to hold twelve cartridges, for pistols; and the field officers  
22 and commissioned officers shall reside within the brigade, regi-  
23 mental or troop district in which they respectively command.  
24 There shall also be to each regiment of cavalry one adjutant, one  
25 quartermaster, one paymaster, one surgeon with the rank and pay  
26 of a first lieutenant, and one surgeon's mate with the rank and pay  
27 of a second lieutenant, to be appointed by the commanding officer  
28 of each regiment; the commissioned officers of troops of cavalry  
29 shall be recommended by the field officers of the regiment to which  
30 they belong, and commissioned by the governor: *Provided, how-*  
31 *ever,* that whenever a troop of cavalry shall be formed in any brig-  
32 ade where there is not a sufficient number of troops to form a reg-  
33 iment, the officers of such troop shall be recommended by the  
34 brigadier-general and commissioned by the governor. All non-  
35 commissioned officers of each troop shall be appointed by the cap-  
36 tain of such troop. All commissioned officers shall take rank ac-  
37 cording to the date of their commissions; and when two or more  
38 of equal grade bear the same date, then their rank shall be deter-  
39 mined by lot, to be drawn by them before the commanding offi-  
40 cer of the regiment to which they belong.

**Sec. 2941.** Troops of cavalry, when to muster, and how returns made; who to command, when mustering with infantry.

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.

R. C., c. 70, s. 43.  
1806, c. 709, s. 4.  
1844, c. 38, s. 6.

**Sec. 2942.** Field officers of cavalry to review and make returns.

The field officers of cavalry, once in every two years, shall review the troops of cavalry, composing their regiments, at some place most convenient in the brigade, to be designated by a majority of the commissioned officers of the regiment, at such time as the commanding officer of the regiment shall appoint; of which at least thirty days' notice shall be given to the commanding officers of the several troops. The commanding officer of each regiment of cavalry shall once in every year, on or before the first day of October, make a just and full return, after the form prescribed by the adjutant-general, of all officers and dragoons under his command, and their equipments, to the brigadier-general to whose brigade the said regiment belongs; and shall also transmit to the adjutant-general, on or before the fifteenth day of November in every year, a duplicate of such returns, and at the bottom of the same shall state when his regiment or the several troops composing it were last reviewed by the brigadier and major-generals.

R. C., c. 70, s. 44.  
1832, c. 5, s. 9.

**Sec. 2943.** Cavalry courts-martial to be held.

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,

R. C., c. 70, s. 45.  
1806, c. 709, s. 6.



10 at the troop court-martial next succeeding such regimental muster  
 11 or review; and the troop courts-martial shall make returns to the  
 12 next succeeding regimental court martial of their proceedings, and  
 13 of all moneys by them caused to be made, to be disposed of as  
 14 herein directed.

**Sec. 2944. Fines of cavalry officers and privates same as in infantry.**

R. C., c. 70, s. 46.  
 1806, c. 709, s. 13.

The fines of officers, non-commissioned officers and privates of  
 2 the troops and regiments of cavalry, for not holding musters, not  
 3 attending musters, parades and reviews, or not being armed and  
 4 equipped as required by law, shall be the same as hereinbefore  
 5 prescribed for officers, non-commissioned officers and privates of  
 6 the infantry in similar cases.

**Sec. 2945. How cavalry fines appropriated.**

R. C., c. 70, s. 47.  
 1806, c. 709, s. 17.

All fines and forfeitures incurred by the cavalry officers or pri-  
 2 vates, and not herein particularly appropriated, shall be applied to  
 3 the purposes of first buying trumpets, and then at the disposal of  
 4 the regimental courts-martial, to the use and benefit of the troop  
 5 whence the same arose. Those fines, paid by the field and staff  
 6 officers, and not particularly appropriated, shall be equally divided  
 7 among the troops composing the regiment to which they respect-  
 8 ively belong; all other fines and forfeitures shall be appropriated  
 9 and divided, at the discretion of the regimental courts-martial, for  
 10 the promotion and advancement of military discipline.

**Sec. 2946. Duties of adjutants of regiments.**

R. C., c. 70, s. 48.  
 1806, c. 709, s. 9.

The adjutant of the regiment shall attend the regimental parade,  
 2 and receive and execute such orders as the commanding officer  
 3 may deem expedient; and the said adjutant shall take an oath of  
 4 office, in open court-martial, and from time to time call upon and  
 5 bring suit against all delinquent captains, and other commissioned  
 6 officers below the grade of captain, for fines and penalties by them  
 7 incurred, and which are not otherwise especially provided for in  
 8 this chapter, and shall receive and account for the same annually  
 9 with the paymaster of the regiment; for which services the adju-  
 10 tant shall be allowed a reasonable compensation, to be paid out of  
 11 the fines so collected, by order of the court-martial; and in case  
 12 any adjutant shall fail to attend and perform his duty as herein  
 13 required, he shall forfeit and pay the sum of one hundred dollars.

**Sec. 2947. Certain sections of this chapter to apply to cavalry also.**

R. C., c. 70, s. 49.  
 1806, c. 709, s. 11.

The following sections of this chapter in relation to the infantry,  
 2 are declared to apply to cavalry, namely:

**Sec. 2948. Who commissioned in cavalry.**

No person shall be commissioned in any troop of cavalry, unless  
2 the number is such as shall be prescribed by this chapter.

R. C., c. 70, s. 50.  
1823, c. 1216, s. 4.  
1842, c. 57, s. 8.

**Sec. 2949. Volunteer companies of artillery, light infantry, grenadiers or riflemen may be formed.**

Out of the militia there may be enroled as many volunteer  
2 companies of artillery, light infantry, grenadiers, or riflemen as  
3 may see fit to form themselves into such, each company to consist  
4 of thirty-two privates, four sergeants, four corporals, one captain,  
5 three lieutenants (the third lieutenant to be the ensign); and per-  
6 sons subject by law to be enroled in the militia may join any  
7 volunteer company in a regiment adjoining that in which they  
8 reside.

R. C., c. 70, s. 51.  
1806, c. 710.  
1842, c. 57, s. 5.

**Sec. 2950. May select their uniform; to be under the commander of the regiment, and do duty as other companies.**

The said companies shall be clothed in regimentals, to be fur-  
2 nished by themselves, of their own choice and fashion, and shall  
3 attend battalion and regimental reviews, parades and drills when-  
4 ever ordered by the colonel of the county or commanding officer  
5 of the regiment to which they respectively belong; shall be sub-  
6 ject to his orders, and liable to the same fines and penalties for the  
7 non-performance of military duty, misdemeanors in office, or dere-  
8 liction of duty, as the militia are subject to by law.

R. C., c. 70, s. 52.  
1806, c. 710.

**Sec. 2951. Regiments of volunteer companies may be formed; field officers, how chosen.**

Whenever there may be a sufficient number of volunteer com-  
2 panies, in any one brigade, to form a regiment, containing as many  
3 companies as five, the commissioned officers of such companies  
4 may meet together, at such time and place as a majority of them  
5 may designate, and proceed to elect (a majority of said commis-  
6 sioned officers being present) a colonel, lieutenant-colonel and  
7 major, the result of said election to be certified by the senior officer  
8 present at said meeting, (who shall also preside thereat,) to the  
9 brigadier-general of said brigade, who shall lay said result before  
10 the governor, and he shall forthwith issue commissions to said offi-  
11 cers.

R. C., c. 70, s. 53.  
1806, c. 710.  
1829, c. 3.

**Sec. 2952. Captains and other officers, how appointed.**

The captains and lieutenants of said companies shall be elected  
2 by a majority of the members of their respective companies, and  
3 the non-commissioned officers of said companies shall be appointed  
4 by the commissioned officers thereof.

R. C., c. 70, s. 54.  
1806, c. 710.

**Sec. 2953. Company to muster once in three months, may adopt rules for their government.**

R. C., c. 70, s. 55.  
1806, c. 710.

The captain or commanding officer of each company of artillery, 2 light-infantry, grenadiers or riflemen, shall, at least once in three 3 months, muster his men at such time as he may direct, and at 4 such place as may be agreed on by a majority of the company; and 5 each company may adopt rules and regulations for their own gov- 6 ernment, not inconsistent with the laws and constitution of the 7 state and of the United States.

**Sec. 2954. Officers of volunteer regiments to make returns.**

R. C., c. 70, s. 56.  
1806, c. 710.  
1829, c. 3.

Whenever a regiment of volunteers shall be formed and officered, 2 as hereinbefore required, annual returns shall be made to the 3 brigadier-general and adjutant-general, as required to be made by 4 the field officers of infantry.

**Sec. 2955. Volunteers, &c., not to return to infantry but by permission, &c., shall serve in infantry until they equip.**

R. C., c. 70, s. 57.  
1806, c. 710.  
1802, c. 57, s. 7.  
1846, c. 38, s. 6.

No person who shall procure himself to be enroled in any com- 2 pany of artillery, light-infantry, grenadiers, or riflemen, in any 3 troop of cavalry or in any volunteer company, shall be permitted 4 to return to the infantry, except by the consent of the field officers 5 of the regiment, or by removal out of the county, regiment, or 6 battalion, wherein such person was enroled; and it shall be suffi- 7 cient for any person to be enroled and approved by the captain 8 of said volunteer company or troop of cavalry, without the inter- 9 vention of any other officer: *Provided, nevertheless*, that any person 10 enrolling himself with any captain of a volunteer company or 11 troop of cavalry, shall be subject to perform all the duties and ex- 12 ercises in the infantry, and under the officers thereof, until such 13 person so enrolling himself shall fully and completely equip him- 14 self with clothing and arms required and settled on for such com- 15 pany or troop, and a certificate to that effect procured from the 16 captain with whom he has enroled, and produced to the captain 17 under whom such person so served before such enrolment, of his 18 successor in office.

**Sec. 2956. Officers of volunteer regiments to review.**

R. C., c. 70, s. 58.  
1806, c. 710.  
1829, c. 3.

Whenever there may be formed a regiment of volunteers, as 2 hereinbefore provided, the commanding officer shall review his 3 regiment as often as the colonel or commanding officers of infantry 4 may be required to do by law.

**Sec. 2957. Vacancies in field officers of volunteer regiments, how filled.**

R. C., c. 70, s. 59.  
1806, c. 710.

Whenever a vacancy shall occur by death, resignation or other- 2 wise, among the field officers of said regiment, the officer highest 3 in command shall notify the brigadier-general thereof, who shall 4 call the commissioned officers of said regiment together at some



5 convenient place, for the purpose of electing some one to fill said  
6 vacancy; and may either detail some officer to superintend said  
7 election, or may make it the duty of the officer highest in rank  
8 that may be present to attend thereto, and transmit to him the re-  
9 turns of said election; and the said general shall transmit the  
10 result of said election to the governor, who shall forthwith com-  
11 mission the officer so elected.

**Sec. 2958. Certain sections concerning infantry to apply to artillery, &c.**

Every section of this chapter relative to the infantry which can  
2 be applied to the government and disciplining of the artillery,  
3 light infantry, grenadiers, or riflemen, or which can, by construc-  
4 tion, be applied to them or either of them, shall be in force for the  
5 government and disciplining of the artillery, light infantry, grena-  
6 diers, and riflemen respectively.

R. C., c. 70, s. 60.  
1813, c. 850, s. 11.

**Sec. 2959. General courts-martial, how appointed and held.**

The governor shall appoint general courts-martial for the trial  
2 of major-generals; major-generals, each within his own division,  
3 shall appoint division courts-martial for the trial of brigadier-gen-  
4 erals; brigadier-generals, each within his own brigade shall ap-  
5 point brigade courts-martial for the trial of all officers above the  
6 grade of captain; and in like manner the colonel or commandant  
7 of each regiment or battalion shall appoint regimental or battalion  
8 courts-martial, for the trial of all commissioned officers, under the  
9 grade of a field officer: in every case the officer ordering the court-  
10 martial shall cause the officer accused to be arrested, to be fur-  
11 nished with a copy of the charges against him, and to be notified  
12 of the time and place appointed for his trial.

R. C., c. 70, s. 61.  
1817, c. 955, s. 1.

**Sec. 2960. Officers, how selected.**

When a court-martial is ordered, the officer ordering it shall  
2 appoint the president, judge advocate, and provost-marshal, and, if  
3 it be a general court-martial, orders shall be issued to such divis-  
4 ions as in the opinion of the governor may most conveniently fur-  
5 nish the members thereof; if it be a division court-martial, orders  
6 shall be issued to such brigades as in the opinion of the officer  
7 ordering it may most conveniently furnish the members thereof;  
8 if it be a brigade court-martial, orders shall be issued to such regi-  
9 ments in the brigade as in the opinion of the officer ordering it  
10 may most conveniently furnish the members of it; and if it be a  
11 regimental court-martial, the officer ordering it shall appoint the  
12 members.

R. C., c. 70, s. 62.  
1817, c. 955, s. 2.

**Sec. 2961. Of what rank the officers shall be.**

The president of a general court-martial shall not be under the  
2 rank of a major-general; and the court shall be composed of two

R. C., c. 70, s. 63.  
1817, c. 955, s. 3.

3 brigadier-generals and ten field officers as members, six of whom  
 4 shall be of different divisions; the president of a division court-  
 5 martial shall not be under the grade of a brigadier-general, and  
 6 the court shall be composed of twelve field officers as members, six  
 7 of whom shall be of a different brigade; the president of a brigade  
 8 court-martial shall not be under the rank of a colonel, and the  
 9 court shall be composed of twelve officers as members, to be taken  
 10 from the brigade, none of whom shall be under the rank of cap-  
 11 tain; the president of a regimental court-martial shall not be  
 12 under the grade of a field officer, and the court-martial shall be  
 13 composed of a majority of the officers of the regiment as members.

**Sec. 2962. Officers for courts-martial regularly detailed.**

R. C., c. 70, s. 64.  
 1817, c. 955, s. 4.

Whenever the commanding officer of a division, brigade, regi-  
 2 ment or battalion shall be ordered to furnish any officer as a mem-  
 3 ber or supernumerary of a court-martial, such officer shall be  
 4 regularly detailed from the roster of the division, brigade, regiment  
 5 or battalion, by the commanding officer thereof, forthwith, after  
 6 receiving orders therefor: *Provided*, that in case of sickness, ina-  
 7 bility, or absence of any officer whose turn it may be to serve on a  
 8 court-martial, the detailing officer shall certify such circumstance  
 9 to the officer who ordered the court-martial, and detail the officer  
 10 next in succession.

**Sec. 2963. Officers, how detailed.**

R. C., c. 70, s. 65.  
 1817, c. 955, s. 5.

Officers ordered to be detailed to serve on courts-martial shall be  
 2 detailed in the following manner: Brigadier-generals, by the major-  
 3 generals of divisions, from the division rosters; colonels, lieutenant-  
 4 colonels, and majors, by the commanding officers of brigades, from  
 5 the brigade rosters; captains and subalterns, by the commanding  
 6 officers of regiments and battalions, from the regimental or battal-  
 7 ion rosters.

**Sec. 2964. Courts-martial, how constituted.**

R. C., c. 70, s. 66.  
 1817, c. 955, s. 6.

All courts-martial for the trial of officers shall be constituted of  
 2 a president, judge-advocate, and provost-marshal, together with the  
 3 number of members prescribed by the provisions of this chapter;  
 4 and the officer ordering a court-martial may, at his discretion, or-  
 5 der a number of officers to be detailed as supernumeraries, in addi-  
 6 tion to those intended to serve as members, to attend the organiza-  
 7 tion thereof, and in case there should be any vacancy, the judge-  
 8 advocate shall fill such vacancy from the supernumeraries, begin-  
 9 ning with the highest in grade and proceeding in regular rotation.

**Sec. 2965. Officers of courts-martial, how to rank, to be sworn.**

R. C., c. 70, s. 67.  
 1817, c. 955, s. 7.

All officers on a court-martial shall take rank by seniority of  
 2 commission, without regard to corps; and before any court-martial

- 3 shall proceed to the trial of any officer, the judge advocate shall
- 4 administer to the president and each of the members the following
- 5 oath:

"You, ....., 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 prisoner 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."

- 6 And the president shall administer to the judge advocate the
- 7 following oath:

"You, ....., 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."

#### Sec. 2966. Witnesses, how summoned.

- The judge advocate of any court-martial, constituted according
- 2 to the provisions of this chapter, may issue a summons, in the
- 3 nature of a subpoena in criminal cases, directed to the provost-
- 4 marshal, to summon witnesses for the state, and the accused; and
- 5 the persons summoned by him shall be bound to attend and give
- 6 evidence before the court-martial, under the penalty of forty-dol-
- 7 lars, to be recovered by the party aggrieved, unless the witness can
- 8 prove his inability to attend.

R. C., c. 70, s. 88.  
1817, c. 955, s. 8.

#### Sec. 2967. How sworn.

- All witnesses shall be sworn by the judge advocate, before they
- 2 give their evidence, as in criminal cases, according to the follow-
- 3 ing form:

R. C., c. 70, s. 69.  
1817, c. 955, s. 9.

"You, ....., do swear, that the evidence you will give to 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."

#### Sec. 2968. Rules for government of courts-martial; penalty for officers failing to attend.

- All trials by court-martial shall be carried on in the day-time,
- 2 between the hours of ten o'clock in the morning and five o'clock
- 3 in the evening; and when the votes shall be called for on any
- 4 question, the judge advocate shall begin with the youngest in com-
- 5 mission, and proceed regularly to the oldest. And at all courts-
- 6 martial, unless two-thirds of the members agree that the accused
- 7 is guilty, the judge advocate shall record his acquittal. And all
- 8 courts-martial, authorized and appointed in pursuance of the mil-
- 9 itary laws of the state, shall have full power and authority to pre-

R. C., c. 70, s. 70.  
1817, c. 955, s. 10;  
1846, c. 38, s. 4.



10 serve order during their session, and may imprison in the county  
11 jail, for the space of eight hours, all persons who shall, in the  
12 presence of the court-martial, behave in a disorderly and con-  
13 temptuous manner. None but a commissioned officer shall sit in  
14 any court-martial, and if any officer shall fail to attend any court-  
15 martial, when notified so to do, he shall be fined, and if above the  
16 rank of colonel, not less than twenty dollars; if of the rank of col-  
17 onel and above that of captain, not less than fifteen dollars; if of  
18 the rank of captain and under, not less than ten dollars, unless he  
19 renders a sufficient excuse, to be judged of by the court-martial  
20 from which he may be absent; and if any officer shall take his  
21 seat in court-martial without being in uniform, he shall be fined,  
22 at the discretion of the court, not to exceed five dollars, unless he  
23 furnishes said court a sufficient excuse for such delinquency.

**Sec. 2969. Duty of judge advocate.**

R. C., c. 70, s. 71.  
1817, c. 955, s. 11.

The judge advocate, upon all trials shall state impartially to the  
2 court the evidence, both for and against the accused; shall take in  
3 writing the evidence, both for and against the accused, and min-  
4 ute down the proceedings of the court, all of which, with the judg-  
5 ment or sentence of the court thereupon, authenticated by his sig-  
6 nature and that of the president of the court, with the papers read  
7 at the trial or copies thereof certified by him, he shall transmit  
8 under seal to the officer who ordered the court; and all motions  
9 and objections to evidence, whether on the part of the state or the  
10 accused, and the opinion of the judge advocate on questions of law,  
11 made at the trial, shall be stated in writing, and the statement of  
12 the complaint and the defence shall be made in writing, so that a  
13 full view of the trial may be had by the officer whose duty it is to  
14 approve or disapprove the proceedings; and all the original pro-  
15 ceedings and judgments or sentences of all courts-martial, ap-  
16 pointed according to the provisions of this chapter, after having  
17 been approved or disapproved by the officer ordering them, shall  
18 by him, as soon thereafter as convenient, be transmitted to the ad-  
19 jutant-general of the state, to be deposited and preserved in his  
20 office; and the party tried by any court-martial, as aforesaid, upon  
21 request by himself or by any person properly authorized, at the  
22 adjutant-general's office, shall be entitled to a copy of the original  
23 record, certified as aforesaid, of the proceedings and sentence of the  
24 court, he paying reasonably for the same.

**Sec. 2970. Proceedings against officers arrested, refusing to attend.**

R. C., c. 70, s. 72.  
1817, c. 955, s. 12.

When any officer shall be arrested and notified to attend any  
2 court-martial which may be ordered for his trial, and shall refuse  
3 or neglect to attend the same, the said court shall take up the  
4 charges and specifications alleged against him, provided he has

5 been served with a copy thereof, and proceed to trial in the same  
6 manner as if he were present.

**Sec. 2971. Perjury before courts-martial.**

If any person shall wilfully and corruptly swear falsely before  
2 any court-martial, touching and concerning any matter or thing  
3 cognizable before such court-martial, he shall, on conviction  
4 thereof, be liable to the pains and penalties of perjury; and in all  
5 cases, to delinquents and witnesses, oaths shall be administered  
6 by the judge-advocate or presiding officer of said court-martial.

R. C., c. 70, s. 73.  
1812, c. 828, s. 3.

**Sec. 2972. For what, officer cashiered.**

Dishonest or ungentlemanly conduct in an officer shall be pun-  
2 ished by cashiering, and disabling him from ever holding a mili-  
3 tary commission.

R. C., c. 70, s. 74.  
1808, c. 749, s. 1.

**Sec. 2973. Detachments of militia for United States service.**

Upon any requisition by the United States for a detachment of  
2 the militia from this state, every captain of infantry shall enter  
3 upon his roll all able-bodied men, between the ages of twenty-one  
4 and forty years, except such as are exempted by the second section  
5 of the act of congress of one thousand seven hundred and ninety-  
6 two, and except the judges of the superior court, and ministers of  
7 the gospel, regularly ordained, within his company district, and  
8 they shall be subject to draft: *Provided*, that nothing in this chap-  
9 ter shall be understood to subject persons, heretofore exempted, to  
10 perform ordinary militia duty: and nothing herein contained shall  
11 be construed to conflict with the provisions of this chapter.

R. C., c. 70, s. 75.  
1814, c. 867, s. 3.

**Sec. 2974. Substitutes received.**

Each captain or commanding officer of a company of militia,  
2 detached as part of the requisition under the authority of the United  
3 States, shall receive and enrol in the place and stead of any person  
4 drafted to serve in such company, any able-bodied citizen to serve  
5 as a substitute for such person so drafted.

R. C., c. 70, s. 76.  
1812, c. 828, s. 8.

**Sec. 2975. Vacancies in detachments under rank of field officers, how supplied.**

If any commissioned officer, under the grade of a field-officer,  
2 appointed to command in any detachment from this state, under  
3 the authority of the United States, shall die, resign, or move out  
4 of the regiment to which he belongs, the colonel commandant of  
5 the regiment, to which such officer belonged, shall recommend a  
6 proper person, resident within the bounds of such regiment, to be  
7 commissioned by the governor to fill such vacancy.

R. C., c. 70, s. 77.  
1812, c. 828, s. 9.

**Sec. 2976. A militia-man, after one term exempt, &c., unless, &c.**

R. C., c. 70, s. 78.  
1814, c. 367, s. 1.

In all cases where a militia-man shall have performed a term of  
2 service, either as a volunteer or drafted militia-man, whether upon  
3 the requisition of the United States or of this state, he shall not  
4 be liable to stand a second draft, until the whole of the militia  
5 within his company district shall have performed a like term of  
6 duty.

**Sec. 2977. Penalty for refusing to do duty when ordered out by civil authority.**

R. C., c. 70, s. 79.  
1822, c. 1167, s. 2.

When militia-men are ordered out on duty in aid of the civil  
2 authority, either to guard a jail or for any other purpose, and shall  
3 neglect or refuse to attend, agreeable to orders, each man shall be  
4 fined at the discretion of his company court-martial, not exceed-  
5 ing five dollars for each day he shall fail to do duty.

**Sec. 2978. Seven justices may call out militia in invasions or insurrections.**

R. C., c. 70, s. 80.  
1831, c. 32, s. 1.

In all cases of insurrection in any county of this state, or in an  
2 adjoining state, or in case of invasion, seven justices of the peace,  
3 deeming the emergency to require it, may at their discretion re-  
4 quire in writing of the commanding officer of their county to call  
5 out the militia under his command, and any volunteer company  
6 or companies in said county, in the absence of the officer who is  
7 entitled to the command, to suppress or repel such insurrection or  
8 invasion, or to protect the inhabitants of their county from the  
9 danger apprehended; and may again require of the said officer to  
10 dismiss his men when they think the danger is over, and the com-  
11 manding officer may dismiss in like manner.

**Sec. 2979. Duty of commanding officer on such requisition.**

R. C., c. 70, s. 81.  
1831, c. 32, s. 2.

The commanding officer forthwith shall order out the militia, in  
2 the way he shall judge best to effect the purpose desired; he may  
3 make such contracts, as he may think most to the interest of the  
4 state, for the requisite ammunition, and appoint some one a com-  
5 missary to provide the necessary rations for the subsistence of the  
6 men while in service, and immediately on the discharge of the  
7 men, the commanding officer may dispose of any surplus ammuni-  
8 tion or provisions, for the benefit of the state; and all expenses  
9 hereby incurred shall be properly certified by said officer and for-  
10 warded to the governor, and shall be paid by the state after under-  
11 going an examination and approval by the governor, treasurer,  
12 and auditor, who shall be a board for that purpose.

**Sec. 2980. Commanding officer called out, to notify his superior, superior to notify the governor.**

R. C., c. 70, s. 82.  
1831, c. 32, s. 3.

The commanding officer of any regiment, as he has called out  
2 the militia under the provisions of the preceding section, shall  
3 immediately send an express to the brigadier or major-general of



4 his brigade or division, informing him of that fact, and of any  
5 other official facts he may be in possession of, and continue to do  
6 so from time to time; and the brigadier or major-general shall  
7 immediately apprise the governor, either by express or mail, as he  
8 may judge the emergency requires, of all the circumstances; in  
9 the mean time such general officer shall pursue the most effectual  
10 measures for repelling such invasion, or suppressing such insur-  
11 rection, and the militia thus called out shall be armed according  
12 to law.

**Sec. 2981. Three justices may order out militia to suppress outlawed persons.**

When there may be outlawed persons, committing depredations,  
2 or in any way alarming the citizens of any county, or where the  
3 guarding of a jail is necessary, three justices of the peace, certify-  
4 ing the same in writing and requesting the officer in command of  
5 their county, such officer shall effect the object set forth in said  
6 request of the justices, and the expenses of the militia so called  
7 out, shall be paid by the county commissioners, who may lay a  
8 sufficient tax to pay said militia, at the same rates as the regular  
9 troops of the United States are by law entitled to, when in actual  
10 service.

R. C., c. 70, s. 83.  
1831, c. 32, s. 4.  
1869-70, c. 164.

**Sec. 2982. Pay of militia in actual service.**

The provisions for paying the militia contained in the preceding  
2 section shall be construed to apply to all cases when the militia  
3 has been and may hereafter be called into actual service by the  
4 governor or any superior court judge or any local civil officer ac-  
5 cording to existing laws.

1869-70, c. 164, s. 1.

**Sec. 2983. By whom paid.**

When the militia or any portion thereof shall be or may hereto-  
2 fore have been called into actual service according to law to serve  
3 any county of the state, guarding the jail of such county on account  
4 of prisoners from some other county being imprisoned in such  
5 jail, the county commissioners of the county from which said pris-  
6 oners may be or may have been taken shall audit the account of  
7 said militia and draw a warrant upon the county treasurer for the  
8 same, and the county treasurer shall pay the same out of any  
9 county funds not otherwise appropriated.

1869-70, c. 164, s. 3.

Board of Commissioners of Macon Co. v. Board of Commissioners of Jackson Co., 75-240.

**Sec. 2984. Pay of militia in service.**

The militia of the state, both officers and soldiers, when called  
2 into the service of the state shall receive the same pay and rations  
3 as when called into the service of the United States.

R. C., c. 70, s. 84.  
1813, c. 850, s. 5.

**Sec. 2985. Punishment on refusal to appear on call of alarm given.**

R. C., c. 70, s. 85.  
1806, c. 708, s. 20.

Every officer who shall refuse or neglect, on call or alarm given, 2 to appear at such times and places as shall be appointed by his 3 commanding officer, shall, on conviction before a court-martial, be 4 cashiered and rendered incapable of ever after holding a military 5 appointment, and be further liable to pay the sum of forty dollars, 6 to be collected as herein directed; and if a non-commissioned offi- 7 cer or private he shall forfeit and pay the sum of ten dollars. If 8 any person do not march against the enemy, when commanded, 9 by himself or substitute, or shall refuse or neglect to do his duty 10 or perform the services he is requested to perform by his officer, or 11 quit his post, desert or mutiny, the commanding officer of the reg- 12 iment or corps shall order a court-martial for the trial of such 13 offender. The members when met shall individually, before they 14 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 15 the offender, according to the articles of war established for the 16 regulation of the army: *Provided*, such punishment shall not ex- 17 tend to sentence of death, except in case of desertion to an enemy, 18 or mutiny. 19

**Sec. 2986. Punishment for desertion.**

R. C., c. 70, s. 86.  
1813, c. 850, s. 12.

If any non-commissioned officer or private militia-man, while in 2 the pay and service of the state, shall wilfully desert the service or 3 abandon the post assigned to him, without being regularly dis- 4 charged, or permitted by an officer duly authorized for that pur- 5 pose, such non-commissioned officer or private, being thereof con- 6 victed by a court-martial having jurisdiction of the offence, shall 7 be adjudged to have forfeited the pay and emoluments due to him 8 at the time of his desertion, and be subject to a fine not less than 9 twenty and not exceeding fifty dollars, and imprisonment not ex- 10 ceeding six nor less than one month, at the discretion of the court- 11 martial; and, furthermore, turned over to serve as a private sol- 12 dier in the regular army of the United States, at the discretion of 13 the court-martial, not exceeding double the term of time which he 14 had been called out to serve in the militia of the state.

**Sec. 2987. How volunteer companies may be incorporated.**

R. C., c. 70, s. 91.  
1848, c. 58, s. 3.

Whenever any volunteer company may be formed, consisting of 2 the number required by law for the formation of volunteer com- 3 panies, the captain of such company shall make known in writing 4 such fact to the colonel commandant of the regiment in which 5 such company may be formed; and if the colonel shall be satisfied 6 that the statement made by said captain is true, and that said com-

7 pany is uniformed and equipped in all respects as required by law,  
 8 except as to arms, he shall give such captain a certificate in writ-  
 9 ing, setting forth the fact; and every such company shall be en-  
 10 titled to make all such by-laws, rules, and regulations for their  
 11 government as may be deemed necessary, not inconsistent with the  
 12 constitution of the state or of the United States; and shall be  
 13 vested with all the rights, powers, and privileges usually incident  
 14 to and belonging to volunteer companies which are incorporated:  
 15 *Provided*, such company shall, as such, perform military duty at  
 16 least four times every year.

**Sec. 2988.** Privates, by ten years' service in such company, exempt from further duty.

Any person, between the ages of eighteen and thirty-five, who  
 2 shall join any regularly constituted company of volunteers, whether  
 3 of infantry, cavalry, grenadiers, artillery or riflemen, and shall  
 4 serve as a volunteer in such company, for a period of ten years,  
 5 shall thereafter be exempt from military duty, except in cases of  
 6 insurrection or invasion.

R. C., c. 70, s. 92.  
 1848, c. 53, s. 4.

**Sec. 2989.** Commissioned officers exempt by eight years' service.

Every commissioned officer (major and brigadier-general ex-  
 2 cepted) who shall equip himself as the law directs, and shall per-  
 3 form military duty as a commissioned officer, for the period of  
 4 eight years, shall thereafter be exempt from military duty, except  
 5 in cases of insurrection or invasion.

R. C., c. 70, s. 93.  
 1848, c. 53, s. 5.

**Sec. 2990.** Arms, how procured when brigadier-general dead or absent.

In the absence or death of the brigadier-general of any brigade,  
 2 the certificate of the highest officer in command of the militia of  
 3 any county where there may formed a volunteer company, shall be  
 4 lawful for the purpose of enabling the governor to supply such  
 5 company with arms and accouterments, under the same rules and  
 6 regulations as are now in force.

R. C., c. 70, s. 94.  
 1854, c. 29.

**Sec. 2991.** Private acts in relation to militia not repealed.

Nothing herein contained shall be construed to repeal any pri-  
 2 vate act of the general assembly, incorporating, granting privi-  
 3 leges to, or regulating particular corps, whether of the volunteers  
 4 or of the ordinary militia.

R. C., c. 70, s. 95.  
 R. S., c. 73, s. 87.

**Sec. 2992.** White and colored militia to be enroled separately in state guard.

The white and colored militia shall be separately enroled in the  
 2 state guard, and shall never be compelled to serve in the same com-  
 3 panies, battalions or regiments.

1876-77, c. 272, s. 1.



**Sec. 2993. State guard liable to active service.**

1876-'7, c. 272, s. 2.

The state guards hereinafter mentioned shall be liable at all times to be ordered into active service, and shall first be called on by the commander-in-chief on all occasions for military service. In time of war, invasion, rebellion, insurrection or riot, or reasonable apprehension thereof, the commander-in-chief may order out for active service such further portion of the militia as he may deem necessary, designating the same by draft if a sufficient number shall not volunteer, and may organize the same and appoint and commission officers therefor, and when so ordered out for service the militia shall be subject to like regulations and receive from the state like compensation as that prescribed for the army of the United States.

**Sec. 2994. State guard to be composed of volunteers; enlistments for five years.**

1876-'7, c. 272, s. 3.

The active militia shall be designated "The State Guard," and consist of volunteers, and shall be subject at all times to the orders of their officers. All enlistments therein shall be for five years, and made by signing duplicate enlistment papers in such forms as may be prescribed by the adjutant-general, one to be forwarded to him forthwith by the enlisting officer and one to be filed with the records of the company in which such enlistment is made.

**Sec. 2995. Soldiers ordered out for actual service not appearing; penalty.**

1876-'7, c. 272, s. 4.

Every soldier ordered out for active duty, or who shall volunteer or be drafted, who does not appear at the time and place ordered, or who has not some able-bodied and proper substitute at such time and place, or does not furnish a reasonable excuse for such non-appearance, shall be liable to such punishment as a court-martial may determine.

**Sec. 2996. State to be divided into three districts; boundaries of each.**

1876-'7, c. 272, s. 5.

The commander-in-chief shall divide the state into three military districts, each of which shall be commanded by a brigadier-general. The first district shall consist of the territory embraced within the first, second and fourth congressional districts; the second district shall consist of the territory embraced within the third and sixth congressional districts; the third district shall consist of the territory embraced within the fifth, seventh and eighth congressional districts.

**Sec. 2997. What shall make a battalion under a major; under a lieutenant-colonel; regiments; brigades.**

1876-'7, c. 272, s. 6.

Two or more white companies, or two or more colored companies, organized in any military district, may form a battalion and elect a major and other battalion officers. Five or more white, or five or more colored companies, organized in any military district,

5 may form a battalion and elect a lieutenant-colonel, major, and  
 6 other battalion officers. Ten white, or ten colored companies, or-  
 7 ganized in any military district, may form a regiment and elect a  
 8 colonel, lieutenant-colonel, major, and other regimental officers.  
 9 Where two battalions or two regiments shall be organized in a  
 10 military district, they may form a brigade, which shall take the  
 11 number of the district in which it is formed, and it shall be the  
 12 duty of the commander-in-chief to organize the companies of the  
 13 state guard, in each military district, into battalions, regiments  
 14 and brigades, as rapidly as they form, each regiment or battalion  
 15 to be designated by number, and each company by letter, at the  
 16 formation, and a record thereof made in the office of the adjutant-  
 17 general. And whenever the commander-in-chief shall form a bat-  
 18 talion, or regiment of the state guard, he shall order at the same  
 19 time an election to be held for the field officer or officers of such  
 20 battalion or regiment, such election to be conducted as hereinafter  
 21 provided.

**Sec. 2998. Number of commissioned officers to each.**

To each brigade, regiment, battalion and company, there shall  
 2 be the same commissioned and non-commissioned officers required  
 3 by the regulations of the United States army. 1876-'7, c. 272, s. 7

**Sec. 2999. Officers, how chosen; field officers, commissioned officers, non-commis-  
 sioned officers.**

The officers of the state guard shall be chosen as follows: Briga- 1876-'7, c. 272, s. 8.  
 2 dier-general, by the commander-in-chief; field officers of regiments  
 3 and battalions, annually, by the written votes of the commissioned  
 4 officers of the companies of the respective regiments or battalions;  
 5 commissioned officers of companies, annually, by the written votes  
 6 of the non-commissioned officers and privates of the respective com-  
 7 panies; non-commissioned officers of the companies, annually, by  
 8 the respective captains, who shall forthwith return the same in  
 9 writing to the commanding officers of the regiment or battalion.

**Sec. 3000. Governor shall commission.**

The governor shall commission all officers, returned as elected 1876-'7, c. 272, s. 9.  
 2 on returns of election made through the adjutant-general.

**Sec. 3001. Officers to take an oath.**

Every commissioned officer, before he enters upon the duties of 1876-'7, c. 272, s. 10.  
 2 his office, or exercising any command, shall take and subscribe  
 3 before a justice of the peace the oath prescribed by the constitution  
 4 of North Carolina.

**Sec. 3002. Rank according to date of commission.**

Commissioned officers shall take rank according to the date of 1876-'7, c. 272, s. 11.

2 their commissions. The day of appointment or election of an offi-  
3 cer shall be expressed in his commission and considered as the  
4 date thereof. Whenever an officer shall be re-commissioned within  
5 six months after the expiration or revocation of his original com-  
6 mission, in the same grade in which he has served in the state  
7 guard, his new commission shall bear date even with, and he shall  
8 take rank from, the date provided for in his former commission.

**Sec. 3003. Captains of companies to make yearly reports.**

1876-'7, c. 272, s. 12.

Each captain of a company shall make out each year a full and  
2 complete report of the number of men in his company, the number  
3 of parades in which the company shall have participated during  
4 the preceding year, also the amount of ordnance and ordnance  
5 stores received from the state and in possession of the company,  
6 and transmit the same through regimental or battalion and brig-  
7 ade commanders of his military district, on or before the first day  
8 of April in each year, and if there be no such regimental or brig-  
9 ade commanders in his district, he shall transmit said report di-  
10 rect to the adjutant-general of the state, under pain of a forfeiture  
11 of his commission and dishonorable discharge from the state  
12 guard.

**Sec. 3004. Commander-in-chief to revoke commissions and disband company.**

1876-'7, c. 272, s. 13.

The commander-in-chief shall have full power and authority, at  
2 any time hereafter, to revoke any commission, or to disband any  
3 company or companies now organized, whenever in his judgment  
4 it shall be necessary or expedient for the public good or the good  
5 of the service, and —.

**Sec. 3005. Discipline and organization.**

1876-'7, c. 272, s. 14.

The organization of the state guard shall conform generally to  
2 the provisions of the laws of the United States, and the system of  
3 discipline and exercise shall conform as nearly as may be to that  
4 of the army of the United States, excepting that the minimum  
5 standard of a company shall be forty-five commissioned officers,  
6 non-commissioned officers and privates.

**Sec. 3006. Companies failing to comply with the requirements of the law.**

1876-'7, c. 272, s. 15.

If it appears to the commander-in-chief that a company of the  
2 state guard has failed to comply with the requirements of the law  
3 in matter of uniform, equipment, numbers and discipline, such  
4 company shall be disbanded by the commander-in-chief.

**Sec. 3007. Uniform.**

1876-'7, c. 272, s. 16.

All commissioned officers, non-commissioned officers and pri-  
2 vates in the state guard shall provide themselves with uniforms  
3 complete, of their own choice and fashion, subject to such restric-



4 tions, limitations and alterations as the commander-in-chief may  
5 order. General, staff and field officers and their staffs shall ap-  
6 pear mounted on all days of review or parade.

**Sec. 3008. Arms.**

Each company of the state guard, on application by the com- 1876-'7, c. 272, s. 17.  
2 mander thereof to the adjutant-general, through his regimental  
3 and brigade commanders, if there be such, and producing satisfac-  
4 tory evidence that the law in relation to the distribution of pub-  
5 lic arms has been fully complied with, shall be furnished with  
6 such appropriate arms and equipments as shall be determined by  
7 the commander-in-chief, upon such terms and under such condi-  
8 tions as the law prescribes.

**Sec. 3009. Inspection of arms and equipments.**

The adjutant-general shall annually inspect the arms and equip- 1876-'7, c. 272, s. 18.  
2 ments in possession of the active militia, or of any schools, persons  
3 or associations, and shall cause to be returned to the state arsenal  
4 all such property which he at any time shall find to be damaged  
5 by neglect or improper use. The expenses of such inspection shall  
6 be paid by the state.

**Sec. 3010. Injury to arms or other military property.**

Every person who shall wantonly or wilfully injure or destroy 1876-'7, c. 272, s. 19.  
2 any arm, equipment, or other military property of the state, and  
3 refuse to make good such injury or loss, or who shall sell, dispose  
4 of, secrete or remove the same with intent to sell or dispose thereof,  
5 shall be fined not more than one hundred dollars, or imprisoned  
6 not more than six months, or both.

**Sec. 3011. Duties of the adjutant-general; blanks to be furnished; military books; annual and biennial reports.**

The adjutant-general shall issue all orders of the commander-in- 1876-'7, c. 272, s. 20  
2 chief to the militia, and shall keep a record of the proceedings of  
3 his office. The records of the brigades, and of each regiment, bat-  
4 talion and company, shall be kept by its proper officers in such  
5 form as he shall prescribe; he shall also furnish, at the expense of  
6 the state, all proper blank books, blanks and forms, and such mil-  
7 itary instruction books as the commander-in-chief shall approve,  
8 and annually report to the commander-in-chief the condition of  
9 the state guard, with a roster of all the commissioned officers, and  
10 such other matters relating to the militia as he may deem expedi-  
11 ent; and on or before the first Monday in January, annually, make  
12 a return of the militia of the state, their arms, accouterments and  
13 ammunition, to the president of the United States. He shall also re-  
14 port biennially, to the general assembly, the condition of the state  
15 guard, together with such suggestions for its improvement as he

16 may deem proper. He shall be allowed the necessary stationery,  
17 printing, clerk hire, and suitable books for the preservation of the  
18 records of his office.

**Sec. 3012. Annual parades.**

1876-'7, c. 272, s. 21.

The state guard shall parade for drill one day annually, in May,  
2 by company, battalion or regiment, as ordered by the brigadier-  
3 general, and may encamp for drill and instruction six successive  
4 days, annually, by battalions, regiments or brigades, as ordered  
5 by the commander-in-chief. The places of said encampments shall  
6 be designated by the proper commanding officers, subject to ap-  
7 proval by the commander-in-chief. The commanding officer of  
8 any encampment or parade may cause those under his command  
9 to perform any field or camp duty he shall require, and may put  
10 under arrest during such encampment or parade any member of  
11 his command who shall disobey a superior officer, or be guilty of  
12 disorderly or unmilitary conduct.

**Sec. 3013. Semi-monthly drills.**

1876-'7, c. 272, s. 22.

The commandant of each battalion or regiment may order semi-  
2 monthly evening drills by any company of his command, from  
3 October to April inclusive, of not less than one hour each, and  
4 shall inspect at least one evening drill of each company during  
5 said period, or detail a field officer for such inspection.

**Sec. 3014. Company rules.**

1873-'7, c. 272, s. 23.

Each company may adopt rules and regulations for their own  
2 government not inconsistent with the laws and constitution of the  
3 state and of the United States.

**Sec. 3015. Courts-martial.**

1876-'7, c. 272, s. 24.

Courts-martial shall be formed and governed according to the  
2 rules and regulations of the United States.

**Sec. 3016. Exemption from jury service.**

1881, c. 366, s. 1.

All officers, musicians and privates of the state guard who com-  
2 ply with all their military duties as prescribed by law, shall be  
3 exempt from all jury service of every character and description.

**Sec. 3017. Certificate of membership.**

1881, c. 366, s. 2.

The commanding officer of every company shall, on the appli-  
2 cation of any officer, musician or private of his command, deliver  
3 to him a certificate stating that such person is a member of his  
4 command and whether he is uniformed, armed and equipped ac-  
5 cording to law, and whether he has complied with all the military  
6 duties as prescribed by law. Such certificate when dated within

7 six months shall be deemed for all purposes presumptive evidence  
8 of the matter therein stated.

**Sec. 3018. Contributing members of company may be enrolled.**

Each company may, besides its regular and active members, en- 1881, c. 366, s. 3.  
2 rol twenty-five contributing members on payment in advance by  
3 each person desiring to become such contributing member, of not  
4 less than ten dollars per annum, which money shall be paid into  
5 the company treasury, and be applied to the purchase of uniforms  
6 for the rank and file of the active members of the company, or to  
7 such purposes as may be authorized by the laws of such company.

**Sec. 3019. Contributing members entitled to certificates, &c.**

Each contributing member of every legally organized company 1881, c. 366, s. 4.  
2 shall be entitled to receive from the commanding officer thereof a  
3 certificate of membership, which certificate of membership shall ex-  
4 empt but not disqualify the person therein named from jury duty  
5 for the period of one year from the date of his said certificate.

**Sec. 3020. In time of peace, state guard limited in number; company standard.**

The state guard shall, in time of peace, be restricted to five 1881, c. 366, s. 5.  
2 thousand, four hundred men. The minimum standard of a com-  
3 pany shall be thirty-two, and the maximum standard, ninety-six  
4 commissioned officers, non-commissioned officers and privates.

**Sec. 3021. Election of field officers.**

Field officers of battalions and regiments shall be elected bien- 1881, c. 366, s. 6.  
2 nially, on the first Thursday in December, by the written votes of  
3 the commissioned officers of the companies of the battalion or reg-  
4 iment, and at such places as may be designated by the adjutant-  
3 general.

**Sec. 3022. Commander-in-chief to prescribe rules, &c.**

The commander-in-chief is hereby authorized to establish and 1881, c. 366, s. 7.  
2 prescribe such rules, regulations, forms and proceedings as he may  
3 think proper for the use, government and instruction of the militia.

**Sec. 3023. Commander-in-chief may order a certain number of men into camp.**

The commander-in-chief is hereby authorized and empowered, 1881, c. 366, s. 8.  
2 in his discretion, to order such regiments, battalions or companies,  
3 or such portions thereof as he shall deem proper, not, however,  
4 exceeding two thousand men in any one year, into a camp or  
5 camps to be designated by him, for a period not exceeding ten days  
6 in any one year, for instruction.



## MILITARY SCHOOLS.

## Sec. 3024. Military schools to be provided with arms.

1873-'4, c. 96.

The adjutant-general, under the direction of the governor, is  
 2 hereby empowered and directed to furnish the military schools of  
 3 the state with such arms and accouterments as may be in the state  
 4 arsenal, upon requisition of the principals of said schools, and  
 5 upon such security as will insure the state against loss.

## CHAPTER SEVENTY-EIGHT.

## MILLS.

## SECTION.

3025. What shall be public mills.  
 3026. Millers to grind according to turn.  
 3027. Measures to be kept.  
 3028. How persons wishing to build a water-mill to proceed.  
 3029. Court to appoint three commissioners.  
 3030. The third commissioner to notify meeting and preside.  
 3031. Duty of commissioners.  
 3032. What their report to contain.  
 3033. When mill shall not be allowed.  
 3034. Power of court, on return of report.  
 3035. Duty of persons to whom leave is granted.

## SECTION.

3036. Time to build or repair water-mill.  
 3037. Injury done by the erection of mills.  
 3038. Dams, when abated as nuisances.  
 3039. When judgment for plaintiff of an annual sum for damages, said sum binding for five years.  
 3040. When yearly damages as high as twenty dollars.  
 3041. When judgment against plaintiff; when not.  
 3042. Pay of commissioners.

## Sec. 3025. What shall be public mills.

R. C., c. 71, s. 1.  
1777, c. 122, s. 1.

Every water grist-mill, steam mill, or wind mill, that shall grind  
 2 for toll, shall be a public mill.

Eason v. Perkins, 2 Dev. Eq., 38; Benbow v. Robbins, 71—333; Hyatt v. Myers, 73—232; State v. Jaynes, 73—504.

## Sec. 3026. Millers to grind according to turn.

R. C., c. 71, s. 6.  
1777, c. 122, s. 10.  
1793, c. 402.

All millers of public mills shall grind according to turn, and  
 2 shall well and sufficiently grind the grain brought to their mills,  
 3 if the water will permit, and shall take no more toll for grinding  
 4 than one-eighth part of the Indian corn and wheat, and one-four-  
 5 teenth part for chopping grain of any kind; and every miller and  
 6 keeper of a mill making default therein shall, for each offence,  
 7 forfeit and pay five dollars to the party injured: *Provided, neverthe-*  
 8 *less,* that the owner may grind his own grain at any time.

Hyatt v. Myers, 73—232.

## Sec. 3027. Measures to be kept.

R. C., c. 71, s. 7.  
1777, c. 122, s. 11.

All millers shall keep in their mills the following measures,  
 2 namely, a half-bushel and peck of full measure, and also proper

3 toll-dishes for each measure; and every owner, by himself or ser-  
 4 vant, keeping any mill, who shall keep any false toll-dishes, con-  
 5 trary to the true intent and meaning of this chapter, shall be  
 6 guilty of a misdemeanor.

*State v. Perry, 5 Jones, 252; State v. Nixon, 5 Jones, 257; Hyatt v. Myers, 73—232,*

**Sec. 3028. How persons wishing to build a water-mill to proceed.**

Any person wishing to build a water-mill, who hath land on 1868-'9, c. 153, s. 1.  
 2 only one side of a stream, shall issue a summons returnable to the  
 3 superior court of the county in which the land sought to be con-  
 4 demned, or some part of it, lies, against the persons in possession  
 5 and the owners of the land on the opposite side of the stream, and  
 6 against such others as are required to be made defendants by sec-  
 7 tion five hundred and forty-nine; and the procedure shall be as is  
 8 provided in other special proceedings, except so far as the same  
 9 may be modified by this chapter. All persons may be made de-  
 10 fendants who are permitted to be by said section.

*Sumner v. Miller, 64—688; Benbow v. Robbins, 71—338; Burnett v. Nicholson, 72—334.*

**Sec. 3029. Court to appoint three commissioners.**

If no just cause should be shown against the building of such 1868-'9, c. 153, s. 2  
 2 mill, the court shall appoint three freeholders, one of whom shall  
 3 be chosen by the plaintiff, another by the defendants, and the third  
 4 by the court, or if the plaintiff or defendants shall refuse or fail, or  
 5 unreasonable delay to name a commissioner, the court shall name  
 6 one in lieu of such delinquent party; these commissioners may be  
 7 changed from time to time by permission of the court for just  
 8 cause shown.

**Sec. 3030. The third commissioner to notify meeting and preside.**

The third commissioner shall cause the others to be notified of 1868-'9, c. 153, s. 3,  
 2 the time and place of meeting, and shall preside at their meetings;  
 3 they may, if necessary, summon and examine witnesses, who shall  
 4 be sworn by the presiding commissioner; any commissioner named  
 5 by or for either of the parties, who, without just cause, shall fail to  
 6 attend any meeting notified by the president, shall forfeit and pay  
 7 to the opposite party fifty dollars; and if the president shall, in  
 8 like manner, unreasonably delay to notify of a meeting, or fail to  
 9 attend one that is appointed, he shall forfeit and pay to the plaintiff  
 10 fifty dollars, and to the defendant a like sum.

**Sec. 3031. Duty of commissioners.**

The commissioners shall be sworn by some officer qualified to 1868-'9, c. 153, s. 4  
 2 administer an oath, to act impartially between the parties, and to  
 3 perform the duties herein imposed on them honestly and to the  
 4 best of their ability. They shall view the premises where the  
 5 mill is proposed to be built, and shall lay off and value a portion

6 of the land of the plaintiff, not to exceed one acre in area, and an  
 7 equal area of the land of the defendants opposite thereto, and re-  
 8 port their proceedings to the court within a reasonable time, not  
 9 exceeding sixty days.

**Sec. 3032. What their report to contain.**

1868-'9, c. 158, s. 5.

The report of the commissioners shall set forth :

- 2 (1) The location, quantities and value of the several areas laid  
 3 off by them ;
- 4 (2) Whether either of them includes houses, garden, orchards or  
 5 other immediate conveniences ;
- 6 (3) Whether the proposed mill will overflow another mill or  
 7 create a nuisance in the neighborhood ;
- 8 (4) Any other matter upon which they shall have been directed  
 9 by the court to report, or which they may think necessary to the  
 10 doing of full justice between the parties.

*Burnett v. Nicholson*, 72—334.

**Sec. 3033. When mill shall not be allowed.**

1868-'9, c. 158, s. 6.

If the area laid off on the land of either party take away houses,  
 2 gardens, orchards, or other immediate conveniences; or if the mill  
 3 proposed will overflow another mill, or will create a nuisance in  
 4 the neighborhood, the court shall not allow the proposed mill to  
 5 be built.

*Burgess v. Clark*, 13 Ire., 109.

**Sec. 3034. Power of court on return of report.**

1868-'9, c. 158, s. 7.

If the report be in favor of building the proposed mill, and is  
 2 confirmed, then the court may, in its discretion, allow either the  
 3 plaintiff or defendant to erect such mill at the place proposed, and  
 4 shall order the costs, and the value of the opposite area, to be paid  
 5 by the party to whom such leave shall be granted ; and upon such  
 6 payment, the party to whom such leave shall be granted shall be  
 7 vested with title in fee to the opposite area. Such payment may  
 8 be made into court for the use of the parties entitled thereto.

**Sec. 3035. Duty of persons to whom leave is granted.**

1868-'9, c. 158, s. 8.

The person to whom leave shall be granted shall, within one  
 2 year, begin to build such water-mill, and shall finish the same  
 3 within three years ; and thereafter keep it up for the use and ease  
 4 of such as shall be customers to it: otherwise, the said land shall  
 5 return to the person from whom it was taken, or to such other  
 6 person as shall have his right, unless the time for finishing the  
 7 mill, for reasons approved by the court, be enlarged.



**Sec. 3036. Time to build or repair water-mill.**

If any water-mill belonging to any person, not being of age, 1868-'9, c. 158, s. 9.  
 2 a married woman, or of unsound mind, or imprisoned, falls, burns,  
 3 or is otherwise destroyed, such person and his heirs shall have  
 4 three years to rebuild and repair the same, and any person under  
 5 any disability aforesaid, shall have three years from the removal  
 6 of the disability.

**Sec. 3037. Injury done by the erection of mills.**

Any person conceiving himself injured by the erection of any 1876-'7, c. 197, s. 1.  
 2 grist-mill, or mill for other useful purposes, may issue his sum-  
 3 mons returnable before the judge of the superior court of the  
 4 county where the endamaged land, or any part thereof lies, against  
 5 the persons required to be made parties defendant by section five  
 6 hundred and forty-nine, in his complaint he shall set forth in what  
 7 respect and to what extent he is injured, together with such other  
 8 matters as may be necessary to entitle him to the relief demanded.  
 9 The court shall then proceed to hear and determine all the ques-  
 10 tions of law and issues of fact arising on the pleadings as in other  
 11 civil actions.

Fellow v. Fulgham, 3 Mur., 254; Wilson v. Myers, 4 Haw., 73; Purcell v. McCallum, 1 Dev. & Bat., 222; Gilbert v. Jones, 1 D. & B., 339; Bridgers v. Purcell, 1 D. & B., 492; Pugh v. Wheeler, 2 D. & B., 50; Bridgers v. Purcell, 1 Ire., 232; Waddy v. Johnson, 5 Ire., 333; Cochran v. Wood, 6 Ire., 194; Howcott v. Warren, 7 Ire., 20; Howcott v. Coffield, 7 Ire., 24; Pace v. Freeman, 10 Ire., 103; Beatty v. Connnor, 12 Ire., 341; Kimel v. Kimel, 4 Jones, 121; Wright v. Stowe, 4 Jones, 516; Shaw v. Etheridge, 7 Jones, 225; Little v. Stanback, 63—285; Powell v. Lash, 64—456; Austin v. Helms, 65—560; Jenkins v. Conley, 70—353; Benbow v. Robbins, 71—338; Daughtry v. Warren, 85—136.

**Sec. 3038. Dams, when abated as nuisances.**

When damages shall be recovered in final judgment in such 1876-'7, c. 197, s. 3.  
 2 civil actions and execution shall issue and be returned unsatisfied,  
 3 and the plaintiff is not able to collect the same either from the in-  
 4 solvency of the defendant or by reasons of the exemptions allowed  
 5 to defendant, the judge shall, on the facts being made to appear  
 6 before him by affidavit or other evidence, order that the dam, or  
 7 portion of the dam, or other cause creating the injury, shall be  
 8 abated as a nuisance, and he shall have power to make all neces-  
 9 sary orders to effect this purpose.

Daughtry v. Warren, 85—136.

**Sec. 3039. When judgment for plaintiff of an annual sum for damages, said sum binding for five years.**

A judgment giving to the plaintiff an annual sum by way of 1868-'9, c. 158, s. 12.  
 2 damages, shall be binding between the parties for five years from  
 3 the issuing of the summons, if the mill is kept up during that  
 4 time, unless the damages shall be increased by raising the water or  
 5 otherwise.

Gillet v. Jones, 1 D. & B., 339; Pugh v. Wheeler, 2 D. & B., 50; Bridgers v. Purcell, 1 Ire., 232; Cochran v. Wood, 6 Ire., 194; Burnett v. Nicholson, 72—334.

**Sec. 3040. When yearly damages as high as twenty dollars.**

1868-'9, c. 158, s. 14.

In all cases where the final judgment of the court shall assess  
 2 the yearly damage of the plaintiff as high as twenty dollars, noth-  
 3 ing in this chapter contained shall be construed to prevent the  
 4 plaintiff, his heirs or assigns, from suing as heretofore, and in such  
 5 case, the final judgment aforesaid shall be binding only for the  
 6 year's damage preceding the issuing of the summons.

Gilliam v. Cannady, 11 Ire., 106; Hester v. Broach, 84—251.

**Sec. 3041. When judgment against plaintiff, when not.**

1868-'9, c. 158, s. 15.

If the final judgment of the court shall be that the plaintiff hath  
 2 sustained no damage, he shall pay the costs of his proceeding; but  
 3 if the final judgment shall be in favor of the plaintiff, he shall have  
 4 execution against the defendant for one year's damage, preceding  
 5 the issuing of the summons, and for all costs: *Provided*, that if the  
 6 damage adjudged do not amount to five dollars, the plaintiff shall  
 7 recover no more costs than damages. And if the defendant do not  
 8 annually pay the plaintiff, his heirs or assigns, before it falls due,  
 9 the sum adjudged as the damages for that year, the plaintiff may  
 10 sue out execution for the amount of the last year's damage, or any  
 11 part thereof which may remain unpaid.

Hester v. Broach, 84—251.

**Sec. 3042. Pay of commissioners.**

1868-'9, c. 158, s. 16.

Each commissioner appointed under this chapter shall be en-  
 2 titled to two dollars per day to be paid and taxed as the other costs  
 3 provided in this chapter.

## CHAPTER SEVENTY-NINE.

**MINES.****SECTION.**

- 3043. Lessors of mines not partners with their lessees, unless they so contract.
- 3044. Conveyance of water for mining purposes; application made to justices of the peace.
- 3045. The petition, character of.
- 3046. Jurors appointed to assess damages.

**SECTION.**

- 3047. Oath administered.
- 3048. Right of application.
- 3049. Registration of assessment.
- 3050. Compensation of appraiser.
- 3051. Procedure.
- 3052. Obstruction of drains a misdemeanor; penalty.

**Sec. 3943. Lessors of mines not partners with their lessees, unless they so contract.**R. C., c. 72.  
1830, c. 46.

No lessor of property, real or personal, for mining purposes,  
 2 although the lessor may receive a sum uncertain of the proceeds  
 3 or net profits, or any other consideration, which, though uncertain  
 4 at first, may afterwards become certain, shall be held as a partner  
 5 of the lessee; nor shall any of the legal or equitable relations or

- 6 liabilities of copartners exist between them, unless it be so stipu-  
7 lated in the contract between the lessor and lessee.

**Sec. 3044. Conveyance of water for mining purposes ; application made to justice of the peace.**

Any person or body corporate engaged or about to engage in 1871-'2, c. 158, s. 1.  
2 mining, who may find it necessary for the furtherance of his opera-  
3 tions to convey water either to or from his mine or mines over the  
4 lands of any other person or persons, may make application by  
5 petition in writing to the clerk of the superior court of the county  
6 in which the lands to be affected or the greater part thereof are  
7 situate, for the right so to convey the said water.

**Sec. 3045. The petition, character of.**

The petition shall specify the lands to be affected thereby, the 1871-'2, c. 158, s. 3.  
2 name of the owner of said lands, and the character of the ditch or  
3 drain intended to be made; and said owner shall be made party  
4 defendant.

**Sec. 3046. Jurors appointed to assess damages.**

Upon the hearing of the petition, if the prayer thereof be granted, 1871-'2, c. 158, s. 4.]  
2 the clerk shall appoint three disinterested persons qualified to act  
3 as jurors, and not connected either by blood or marriage with the  
4 parties, appraisers to assess the damage, if any, that will accrue to  
5 said lands by the contemplated work, and shall issue a notice to  
6 them to meet upon the premises at a day specified, not to exceed  
7 ten days from the date of said notice.

**Sec. 3047. Oath administered.**

The appraisers having met, shall take an oath before some offi- 1871-'2, c. 158, s. 5.  
2 cer qualified to administer oaths, to faithfully perform their duty  
3 and to do impartial justice in the case, and shall then examine all  
4 the lands in any way to be affected by the said work, and assess  
5 the damage thereto, and make report thereof under their hands and  
6 seals to the clerk from whom the notice issued, who shall have  
7 power to confirm the same.

**Sec. 3048. Right of application.**

After the return of the assessment and confirmation thereof, the 1871-'2, c. 158, s. 7.  
2 petitioner shall have full right and power to enter upon such lands  
3 and make such ditches, drains or other necessary work: *Provided*,  
4 he has first paid or tendered the damages assessed as above to the  
5 owner of such lands or his known and recognized agent, if he be a  
6 resident of this state, or have such agent in this state. If the owner  
7 be a non-resident and have no known agent in this state, the  
8 amount so assessed shall be paid by the petitioner, into the office



9 of the clerk of the superior court of the county for the use of such  
10 owner.

**Sec. 3049. Registration of assessment.**

1871-'2, c. 153, s. 8.

The petitioner, or any other person interested, may have the said  
2 assessment registered upon the certificate of the clerk, and shall  
3 pay the register a fee of twenty-five cents therefor.

**Sec. 3050. Compensation of appraiser.**

1871-'2, c. 153, s. 9.

Each appraiser shall be entitled to a fee of one dollar for each  
2 day actually employed in making said assessment, to be paid by  
3 the petitioner.

**Sec. 3051. Procedure.**

The procedure under this chapter shall be a special proceeding,  
2 and shall be conducted as other special proceedings.

**Sec. 3052. Obstruction of drains a misdemeanor; penalty.**

1871-'2, c. 153, s. 12.

Any person who shall obstruct any drain or ditch constructed  
2 under the provisions of this chapter shall be guilty of a misde-  
3 meanor, and on conviction thereof be punished by fine or im-  
4 prisonment, or both, at the discretion of the court.

## CHAPTER EIGHTY.

### MONEY REMAINING IN HANDS OF CLERKS AND OTHERS.

**SECTION.**

3053. Clerks, &c., of all courts to make state-  
ment 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.  
3054. Moneys to be paid to certain public offi-  
cers.  
3055. Clerks failing to render account, &c., to  
be sued; penalty \$100; where suit brought.

**SECTION.**

3056. Clerks, &c., admitting money in hand,  
and failing to pay, how proceeded  
against.  
3057. Sheriff to account for such moneys in  
like manner as clerks.  
3058. Moneys may be used by the public till  
called for by owners.

**Sec. 3053. 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.  
1823, c. 1186, s. 1.  
1831, c. 3, ss. 1, 3.

Every clerk of the superior court, inferior court, criminal court  
2 and clerk of the supreme court, at the first session of the court of  
3 which he is clerk, which shall be after the first day of August in  
4 every year, shall produce to said court a statement, on oath, of all  
5 moneys remaining in his hands, which may have been paid into  
6 his office three years or more previous thereto, and shall have  
7 come into his hands either directly from parties, or from his pred-

8 ecessor in office, and is not detained in his custody by special  
9 order of the court, specifying therein the amount of each claim, and  
10 the name of the person to whom the same is payable, a copy of which  
11 statement he shall forthwith post up in his office, and at the court-  
12 house door; and if there be no such moneys in his hands, he shall  
13 make affidavit of the same, which statement or affidavit, if made  
14 by a clerk of the supreme court, the court shall cause to be trans-  
15 mitted to the state treasurer and auditor; if made by a clerk of the  
16 superior court, the judge, inferior or criminal, or presiding justice  
17 of the court before whom it is made shall cause the same to be  
18 transmitted to the officer appointed to receive and disburse the  
19 county funds on or before the first day of January in the next year.

Summey v. Johnston, Winst., 98.

**Sec. 3054. Moneys to be paid to certain public officers.**

The said officers shall, on or before the first day of January in  
2 every year after the foregoing statements, are made, account with  
3 and pay to the persons entitled to receive the same, all such bal-  
4 ances reported as aforesaid to be in their hands; that is, the clerk  
5 of the supreme court shall pay to the state treasurer, and the  
6 other clerks shall pay to the receivers of the county funds of their  
7 respective counties.

R. C., c. 73, s. 2.  
1823, c. 1186, s. 2.  
1831, c. 3, ss. 1, 3

**Sec. 3055. Clerks failing to render account, &c., to be sued; penalty \$100; where suit brought.**

If any clerk shall fail to comply with the duties herein enjoined,  
2 he shall be liable to be sued for the moneys in his hands, and,  
3 moreover, shall forfeit and pay for every offence one hundred dol-  
4 lars, to be recovered in the name of the state and for the use of the  
5 county, by the receiver of the county funds; except that in the  
6 case of the default of the clerk of the supreme court, suit shall be  
7 brought by the state treasurer in the superior court of Wake county,  
8 and the recovery shall go to the state treasury.

R. C., c. 73, s. 3.  
1823, c. 1186, s. 3.  
1831, c. 3, s. 2.

**Sec. 3056. Clerks, &c., admitting money in hand, and failing to pay, how proceeded against.**

If any of the said officers shall fail to pay any such money, by  
2 him admitted to be due, on or before the first day of January in  
3 every year as aforesaid, such officer shall be proceeded against by  
4 the state treasurer in any court of record in the state; or by the  
5 proper county officer, in the courts of his own county, in the like  
6 manner as against defaulting revenue officers.

R. C., c. 73, s. 4.  
1823, c. 1186, s. 4.  
1831, c. 3, s. 2.

**Sec. 3057. Sheriff to account for such moneys in like manner as clerks.**

Every sheriff, at the same time and in like manner as is required  
2 of clerks, shall render and publish an account of moneys which  
3 may have been in his hands for the period of one year, and account  
4 for and pay the same to the receiver of county funds, under the

R. C., c. 73, s. 5.  
1823, c. 1186, s. 6.  
1831, c. 3, ss. 1, 2.

5 same penalties for default, and recoverable in like manner, as are  
6 provided in respect of said clerks.

**Sec. 3058.** Moneys may be used by the public until called for by owners.

R. C., c. 73, s. 6.  
1828, c. 41, s. 1.

The money aforesaid, while held by the clerks and sheriffs, shall  
2 be paid on application, to the persons entitled thereto; and after  
3 it shall cease to be so held, it may be used as other revenue, subject,  
4 however, to the claim of the rightful owner.

## CHAPTER EIGHTY-ONE.

### NAMES.

#### SECTION.

3059. Names changed by the superior court. |

**Sec. 3059.** Names changed by the superior court.

R. C., c. 74.  
R. S., c. 77, s. 1.

Any person desirous of changing his name, may have it done  
2 by petition in any superior court; and the court at the time of  
3 filing the petition, or afterwards, may decree the same.

## CHAPTER EIGHTY-TWO.

### NAVIGATION.

#### SECTION.

3060. Lumbermen required to remove ob-  
structions in Albemarle Sound and its  
tributaries; penalty for failure. |

**Sec. 3060.** Lumbermen required to remove obstructions in Albemarle Sound and  
its tributaries; penalty for failure.

1880, c. 37, ss. 1, 2.

Lumbermen shall be required to remove all obstructions which  
2 they place in the waters of Albemarle Sound and its tributaries, as  
3 soon as practicable, after they have ceased to use them for the pur-  
4 pose for which they were placed in said waters. Said obstruc-  
5 tions shall be removed from all places where the water is not less  
6 than two feet deep, and also, from all landing places on both sides,  
7 for the space of sixty feet from the shore outward; and any one  
8 failing to comply with the provisions of this chapter, shall be  
9 guilty of a misdemeanor, and on conviction shall be fined not less  
10 than one dollar, nor more than fifty dollars, at the discretion of  
11 the court.



## CHAPTER EIGHTY-THREE.

## NOTARIES.

## SECTION.

3061. Notaries appointed by governor; qualified in superior court.

3062. Duplicate commissions issued; one part filed in office of clerk.

3063. Clerks may act as notaries and certify under seal of office.

## SECTION.

3064. Notaries may take probate of deeds, &c., and act as commissioners of affidavits.

3065. Fees of notaries.

**Sec. 3061. Notaries appointed by governor; qualified in superior court.**

The governor may, from time to time, at his discretion, appoint  
2 one or more fit persons in every county, to act as notaries; who  
3 shall hold their appointment for two years from and after the date  
4 of their qualification; and on exhibiting their commission to the  
5 clerk of the superior court of the county in which they are to act,  
6 shall be duly qualified, by taking before said clerk an oath of office,  
7 and the oaths prescribed for officers.

R. C., c. 75, s. 1.  
1777, c. 118, s. 1.  
1881, c. 317.

**Sec. 3062. Duplicate commissions issued; one part filed in office of clerk.**

The governor shall issue to each a duplicate commission, one  
2 part whereof shall be deposited with the clerk of the court, and  
3 filed among the records, and he shall note on his minutes the  
4 qualification of the notary.

R. C. [c. 75, s. 2.

**Sec. 3063. Clerks may act as notaries, and certify under seal of office.**

The clerks of the superior court may act as notaries-public, in  
2 their several counties, by virtue of their office as clerks, and may  
3 certify their notarial acts under the seals of their respective courts,  
4 whenever it may be desired.

R. C., c. 75, s. 3.  
1833, c. 7, ss. 1, 2.

**Sec. 3064. Notaries may take probate of deeds, &c., and act as commissioners of affidavits.**

Notaries public shall have power to take and certify the ac-  
2 knowledgment or proof of powers of attorney, mortgages, deeds  
3 and other instruments of writing to take depositions and to ad-  
4 minister oaths and affirmations in matters incident or belonging  
5 to the duties of their office, and to take affidavits to be used before  
6 a court, judge or other officer, within the state, and shall have  
7 power to take the privy examination of *femes covert*.

1866, c. 30, s. 1.  
1879, c. 128.

Benedict v. Hall, 76—113.

**Sec. 3065. Fees of notaries.**

The fees of notaries public, for each certificate and seal, shall be  
2 fifty cents, and in other matters shall be as regulated by the chap-  
3 ter entitled "Salaries and Fees."

1866, c. 30, s. 2.

## CHAPTER EIGHTY-FOUR.

## OATHS.

## SECTION.

3066. Oaths, how administered.

3067. Persons scrupulous of laying hands on the scriptures, sworn with uplifted hand.

3068. Quakers, Moravians, Dunkers and Menonists affirmed.

3069. Oaths or affirmations to support the constitutions of the United States and of this state, taken by all officers.

## SECTION.

3070. Oath to support the constitution of the United States.

3071. County surveyors and deputies empowered to administer oaths in making partition of lands.

3072. Oaths of sundry persons.

3073. Deputies to administer oaths in like cases as 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.

## Sec. 3066. Oaths, how administered.

R. C., c. 76, s. 1.  
1777, c. 108, s. 2.

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 gospel, as a seal of confirmation to the said engagements.

Shaw v. Mocre, 4 Jones, 25; Rowland v. Thompson, 65—110; State v. Davis, 69—383; State v. Owen, 72—605; State v. Knight, 84—789.

## Sec. 3067. Persons scrupulous of laying hands on the scriptures, sworn with uplifted hand.

R. C., c. 76, s. 2.  
1777, c. 108, s. 3.

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," &c., as the words of the oath may be.

State v. Whisenhurst, 2 Hawks, 458; State v. Davis, 69—383.

**Sec. 3068. Quakers, Moravians, Dunkers and Mennonists affirmed.**

The solemn affirmation of Quakers, Moravians, Dunkers, and  
 2 Mennonists, made in the manner heretofore used and accustomed,  
 3 shall be admitted as evidence in all civil and criminal actions;  
 4 and in all cases where they are required to take an oath to support  
 5 the constitution of the state, or of the United States, or an oath of  
 6 office, they shall make their solemn affirmation, in the words of  
 7 the oath beginning after the word "swear"; which affirmation  
 8 shall be as good and effectual to all intents and purposes, as if they  
 9 had taken the oaths aforesaid.

State v. Davis, 69—383.

R. C., c. 76, s. 3.  
 1777, c. 108, s. 4.  
 1777, c. 115, s. 42.  
 1819, c. 1019.  
 1821, c. 1112.

**Sec. 3069. Oaths or affirmations to support the constitutions of the United States, and of this state, taken by all officers.**

Every member of the general assembly, and every person who  
 2 shall be chosen or appointed to hold any office of trust or profit in  
 3 the state, shall, before taking his seat or entering upon the execu-  
 4 tion of the office, take and subscribe to the following oath or  
 5 affirmation :

R. C., c. 76, s. 4.  
 1781, c. 342, s. 1.

"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.

6 Where such person shall be of the people called Quakers, Mora-  
 7 vians, Mennonists or Dunkers, he shall take and subscribe the fol-  
 8 lowing 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."

Worthy v. Barrett, 63—199.

**Sec. 3070. Oath to support the constitution of the United States.**

All members of the general assembly, and all officers who shall  
 2 be elected or appointed to any office of trust or profit within the  
 3 state, shall, agreeable to act of congress, take the following oath or  
 4 affirmation :

R. C., c. 76, s. 5.  
 1791, c. 342, s. 2.

"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;"

6 Which oath shall be taken before they enter upon the execution  
 7 of the duties of the office.

Worthy v. Barrett, 63—199.



**Sec. 3071. County surveyors and deputies empowered to administer oaths in making partition of land.**

1881, c. 144.

The county surveyors of the several counties of this state and  
2 their authorized deputies, are empowered to administer oaths to  
3 all such persons as are required by law to be sworn in making  
4 partition of real estate in laying off widows' dowers, in procession-  
5 ing land lines and in surveying vacant lands under warrants.

**Sec. 3072. Oaths of sundry persons.**

R. C., c. 76, s. 6.

The oaths of office to be taken by the several persons hereafter  
2 named, shall be in the words following the names of said persons  
3 respectively:

ADMINISTRATOR.

(1) You swear (or affirm) that you believe A. B. died without leaving any last will and testament; that you will well and truly administer all and singular the goods and chattels, rights and credits of the said A. B., and a true and perfect inventory thereof return 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.

(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.

(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.

(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 ALLOTING A YEAR'S PROVISIONS.

(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 ALLOTING 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.

## 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.

## 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.

## 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.

## 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.

## 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.

(13) I, A. B., do 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 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 ARTICLES OTHER THAN TOBACCO AND 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.

(15) You, as foreman of this grand inquest for the body of this county, shall diligently inquire and true presentment make of all such matters and things as shall be given you in charge; the state's counsel, your fellows' and your own, you shall keep secret; you shall present no one for envy, hatred or malice; neither shall you leave any one unrepresented for fear, favor or affection, reward or the hope of reward; but you shall present all things truly, as they come to your knowledge, according to the best of your understanding: so help you, God.

## 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 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.

## 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.

## 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 the evidence: so help, you God.

## JURY, IN CRIMINAL CASES NOT CAPITAL.

(20) You and each of you swear (or affirm) that you will well and truly try all issues in criminal actions which shall come before you during this term, and true verdicts give according to the evidence thereon: so help you, God.

[The same oath to talesmen, by using the word "day" instead of "term."]

## JURY, IN CIVIL CASES.

(21) The original panel thus: You and each of you swear (or affirm) that you will well and truly try all civil actions which shall come before you during this term, and true verdicts give according to the evidence: so help you, God.

[The same oath to talesmen, by using the word "day" instead of "term."]

## JURY, LAYING OFF DOWER.

(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.

(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.



## PROCESSIONER.

(24) 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, according to the test of my skill and ability, without favor or partiality, to any person or persons whatsoever: so help me, God.

## RANGER.

(25) I, A. B., do solemnly 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.

(26) I, A. B., do solemnly swear (or affirm) that I will faithfully and truly, according to the best of my skill and ability, execute the duties of the office of register for the county of ....., in all things according to law: so help me, God.

## STANDARD KEEPER.

(27) I, A. B., do 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.

## ESTRAY VALUERS.

(28) 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.

## SURVEYOR FOR THE COUNTY.

(29) The same, *mutatis mutandis*, with that of entry-taker.

## TOBACCO PICKER.

(30) 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.

## TREASURER FOR A COUNTY.

(31) 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 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.

## WITNESS TO DEPOSE BEFORE THE GRAND JURY.

(32) 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.

(33) 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 IN A CRIMINAL ACTION.

(34) You swear (or affirm) that the evidence you shall give to the court and jury, in this action, 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.

(35) 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. D. defendant, shall be the truth, the whole truth, and nothing but the truth: so help you, God.

## WITNESS TO PROVE A WILL.

(36) 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 execution was acknowledged,) he was, in your opinion, of sound mind and disposing memory: so help you, God.

(37) 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 duties of the office of ..... according to the best of my skill and ability, according to law: so help me, God.

**Sec. 3073. Deputies to administer oaths in like cases as principals may.**

R. C., c. 76, s. 7.  
1836, c. 27, s. 2.

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 EIGHTY-FIVE.

## OFFICERS.

## SECTION.

3074. No person to hold office contrary to the constitution.  
3075. Contracts for the purchase or sale of an office, void.  
3076. Persons holding office to be deemed as doing so lawfully, and shall hold until their successors have qualified.

## SECTION.

3077. All officers to take the oaths before acting; penalty five hundred dollars and ejection from office.

**Sec. 3074. No person to hold office contrary to the constitution.**

R. C., c. 77, s. 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.

Worthy v. Barrett, 63—199; see R. S., c. 80, s. 1; 1790, c. 319; 1792, c. 366; 1793, c. 393; 1796, c. 450; 1811, c. 811.

**Sec. 3075. Contracts for the purchase or sale of office void.**

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.

R. C., c. 77, s. 2.  
5 and 6 Edw. VI,  
c. 16, s. 3.

**Sec. 3076. Persons holding office to be deemed as doing so lawfully, and shall hold until their successors have qualified.**

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 courts, and registers of deeds, shall continue in their respective offices, until their successors shall have been elected or appointed, and shall have been duly qualified.

R. C., c. 77, s. 3.  
1844, c. 38, s. 2.  
1848, c. 64, s. 1.

See *State v. Long*, 76—254; see *Const.*, Art. IV, s. 25; *Worley v. Smith*, 81—304; *King v. McLure*, 84—153.

**Sec. 3077. All officers to take the oaths before acting; penalty \$500, and ejection from office.**

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 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.

R. C., c. 77, s. 4.

*Worthy v. Barrett*, 63—199; *Moore v. Bondinot*, 64—191; *State v. Cansler*, 75—442.

## CHAPTER EIGHTY-SIX.

### OFFICIAL BONDS.

**SECTION.**

- 3078. Official bonds to be renewed annually.
- 3079. Vacancy on failure to renew bonds.
- 3080. Surety on official bonds to justify.
- 3081. Approval, execution and custody of official bonds.
- 3082. Clerk to record yeas and nays of commissioners voting on approval of official bonds.
- 3083. Commissioners liable as surety, when.
- 3084. Commissioners also liable to indictment.
- 3085. Record of the board conclusive evidence of the facts stated therein.

**SECTION.**

- 3086. Penalty on officers acting without giving bond.
- 3087. Suits on official bonds.
- 3088. Complaint must show in whose behalf suit brought.
- 3089. When official bond insufficient; judge may require a good one to be given.
- 3090. Appointee to give bond.
- 3091. When vacancy declared, judge shall file statement of his proceeding with clerk of board of commissioners; commissioners not to be surety on official bonds.



## SECTION.

3092. Sheriff, or other officer, liable for whole debt, in case of negligence.

3093. Summary remedy on official bond in superior court.

## SECTION.

3094. Damages of twelve per cent. against officers on money unlawfully detained.

3095. Irregularity in taking, or in the form of bonds, not to invalidate them.

**Sec. 3078. Official bonds to be renewed annually.**

1869-'70, c. 169, s. 1.  
1876-'7, c. 276, s. 5.

Every clerk, treasurer, sheriff, coroner, register of deeds, surveyor, and every other officer of the several counties who is required by law to give a bond for the faithful performance of the duties of his office, shall regularly renew his official bond before the board of commissioners of the county who shall approve the same, on the first Monday of December 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.

Fagan v. Williamson, 8 Jon., 433; Fell v. Porter, 69—140; Worley v. Smith, 81—304; Kilburn v. Latham, 81—312.

**Sec. 3079. Vacancy on failure to renew bond.**

1869-'70, c. 169, s. 2.

Upon the failure of any such officer to make such regular annual renewal of his bond, it is the duty of the board of commissioners, by an order to be entered of record 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 board of commissioners; but if otherwise, the said board shall immediately inform the proper person having the power of appointment of the fact of such vacancy.

63—255; Vann v. Pipkin, 77—408; Worley v. Smith, 81—304.

**Sec. 3080. Surety on official bonds to justify.**

1869-'70, c. 169, s. 3.  
1879, c. 207, s. 1.

Every surety on an official bond required by law to be taken or renewed and approved by the board of commissioners, shall take and subscribe an oath before the chairman of the board or before the clerk of the superior court, 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.

**Sec. 3081. Approval, execution and custody of official bonds..**

1869-'70, c. 169, s. 4.  
1879, c. 207, s. 2.

The approval of all official bonds taken or renewed by the board of commissioners 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 board of commissioners, or before the clerk of the superior court, 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 indorsed thereon and certified by their chairman,

9 shall be deposited with the clerk of the superior court, except the  
10 bond of said clerk, which shall be deposited with the register of  
11 deeds for safe-keeping.

**Sec. 3082. Clerk to record yeas and nays of commissioners voting on approval of official bonds.**

It is the duty of the clerk of the board of commissioners to 1869-'70, c. 169, s. 5.  
2 record in the proceedings of the board the names of those com-  
3 missioners who are present at the time of the approval of any offi-  
4 cial bond, and who shall vote for such approval, and every clerk  
5 neglecting to make such record is guilty of a misdemeanor and  
6 beside other punishment shall forfeit his office.

See R. C., c. 78, s. 7; 1790, c. 327; 1809, c. 777.

**Sec. 3083. Commissioner's liability as surety, when.**

Every commissioner who approves an official bond, which he 1869-'70, c. 169, s. 6.  
2 knows or believes to be insufficient in the penal sum, or in the  
3 security thereof, shall be liable as if he were a surety thereto, and  
4 may be sued accordingly by any person having a cause of action  
5 on said bond.

**Sec. 3084. Commissioner also liable to indictment.**

Every commissioner liable as in the last section prescribed shall 1869-'70, c. 169, s. 7.  
2 be moreover liable to a criminal action, and, on conviction, shall  
3 be removed from office and forever disqualified from holding or  
4 enjoying any office of honor, trust or profit under the state.

**Sec. 3085. Record of the board conclusive evidence of the facts stated therein.**

In all actions under the two preceding sections, a copy of the pro- 1869-'70, c. 169, s. 8.  
2 ceedings of the board of commissioners in the particular case, certified  
3 by their clerk under his hand and seal of the county, shall be con-  
4 clusive evidence of the facts in such record alleged and set forth,  
5 but any commissioner may cause his written dissent to be entered  
6 on the records of the board.

**Sec. 3086. Penalty on officers acting without giving bond.**

Every person or officer of whom an official bond is required, who 1869-'70, c. 169, s. 9  
2 shall presume to discharge any duty of his office before executing  
3 such bond in the manner prescribed by law, is liable to a forfeiture  
4 of five hundred dollars to the use of the state for each attempt so  
5 to exercise his office, and is moreover liable to a criminal action,  
6 upon conviction, in which he shall be ejected from office and be  
7 forever disqualified from holding or enjoying any office of honor,  
8 trust or profit under this state.

See R. C., c. 78, s. 8; *State v. McEntyre*, 3 Ire., 171; *Burke v. Elliott*, 4 Ire., 355; *Gilliam v. Reddick*, 4 Ire., 368; *Mabry v. Turrentine*, 8 Ire., 201; *Hoell v. Cobb*, 4 Jon., 258.

## Sec. 3087. Suits on official bonds.

R. C., c. 73, s. 1.  
1793, c. 384, s. 1.  
1833, c. 17.  
1825, c. 1226.  
1869-'70, c. 169, s. 10.

Every person injured by the neglect, misconduct, misbehavior  
2 in office of any clerk of the superior court, register, entry-taker,  
3 surveyor, sheriff, coroner, constable, county treasurer, or other  
4 officer, may institute a suit or suits against said officer or any of  
5 them and their sureties upon their respective bonds for the due  
6 performance of their duties in office in the name of the state to  
7 whom the said bonds are made payable without any assignment  
8 thereof; and no such bond shall become void upon the first re-  
9 covery, or if judgment shall be given for the defendant, but may  
10 be put in suit and prosecuted from time to time until the whole  
11 penalty shall be recovered, and every such officer, and the sureties  
12 on his official bond, shall be liable to the person injured for all acts  
13 done by said officer by virtue or under color of his office.

Guess v. Barbee, 6 Ire., 279; Robeson County v. McAlpin, 6 Ire., 347; Miller v. Davis, 7 Ire., 198; Pool v. Cox, 9 Ire., 69; Boger v. Bradshaw, 10 Ire., 229; Fagan v. Williams, 8 Jones, 433; Fell v. Porter, 69—140; 75—347; Havens v. Lathone, 75—505; Cox v. Blair, 76—78; Vann v. Pipkin, 77—408; 78—174, 181; City of Wilmington v. Nutt, 80—265.

## Sec. 3088. Complaint must show in whose behalf suit brought.

R. C., s. 73, s. 2.  
1793, c. 384, ss. 2, 3.  
1869-'70, c. 169, s. 11.

Any person who may bring suit in manner aforesaid shall state  
2 in his complaint on whose relation and in whose behalf the suit is  
3 brought, and he shall be entitled to receive to his own use the  
4 money recovered, but nothing herein contained shall prevent such  
5 person from bringing at his election an action against the officer  
6 to recover special damages for his injury.

Fagan v. Williams, 8 Jon., 423.

## Sec. 3089. When official bond insufficient, judge may require a good one to be given.

1874-'75, c. 120, s. 1.

Whenever oath shall be made before any judge of the superior  
2 court by five respectable citizens of any county within his district  
3 that after diligent inquiry made they verily believe that the bond  
4 of any officer of such county, which has been accepted by the board  
5 of commissioners, is insufficient either in the amount of the penalty  
6 or in the ability of the sureties, it shall be the duty of such judge  
7 to cause a notice to be served upon such officer requiring him to  
8 appear at some stated time and place and justify his bond by evi-  
9 dence other than that of himself or his sureties. And if this evi-  
10 dence so produced shall fail to satisfy the judge that the bond is  
11 sufficient, both in amount and the ability of the sureties, he shall  
12 give time to the officer, not exceeding twenty days, to give another  
13 bond, the judge fixing the amount of the new bond, when there is  
14 a deficiency in that particular. And upon failure to give a good  
15 bond to the satisfaction of the judge within the twenty days, he shall  
16 declare the office vacant, and if the appointment be with himself,  
17 he shall immediately proceed to fill the vacancy; and if not, he  
18 shall notify the persons having the appointing power, that they  
19 may proceed as aforesaid.

Mitchell v. Kilburn, 74—483; Mitchell v. Hubbs, 74—484; Mitchell v. West, 74—485.



**Sec. 3090. Appointee to give bond.**

The person so appointed shall give bond before the judge, and  
 2 the bond so given shall in all respects be subject to the require-  
 3 ments of the law in relation to official bonds; and all official bonds  
 4 shall be considered debts and liabilities.

**Sec. 3091. When vacancy declared, judge shall file statement of his proceeding with clerk of commissioners; commissioner not to be surety on official bond.**

Whenever a vacancy shall be declared by the judge, he shall  
 2 file a written statement of all his proceedings with the clerk of the  
 3 board of commissioners, to be recorded by him. And any bond  
 4 declared insufficient shall not be put in suit except for breaches  
 5 previously committed. No member of the board of commissioners,  
 6 or any other person authorized to take official bonds of any county,  
 7 shall sign as surety on any official bond, upon the sufficiency of  
 8 which the board, of which he is a member, may have to pass.

**Sec. 3092. Sheriff, or other officer, liable for whole debt, in case of negligence.**

When a claim shall be placed in the hands of any sheriff, coro-  
 2 ner or constable for collection, and he shall not use due diligence  
 3 in collecting the same, he shall be liable for the full amount of the  
 4 claim notwithstanding the debtor may have been at all times and  
 5 is then able to pay the amount thereof.

*Williams v. Williamson*, 6 Ire., 231; *Hubbard v. Wall*, 9 Ire., 20; *Nixon v. Bagby*, 7 Jon., 5; *McLaurin v. Buchanan*, Winst. L., 93; *Lipscomb v. Cheek*, Phil., 333.

**Sec. 3093. Summary remedy on official bond in superior court.**

Whenever a sheriff, coroner, constable, clerk, county or town  
 2 treasurer, or other officer, shall have collected or received any  
 3 money by virtue or under color of his office, and on demand shall  
 4 fail to pay the same to the person entitled to require the payment  
 5 thereof, the person thereby aggrieved may move for judgment in  
 6 the superior court against such officer and his sureties for any sum  
 7 demanded; and the court shall try the same and render judgment  
 8 at the term when the motion shall be made, but ten days' notice  
 9 in writing of the motion must have been previously given.

*State Bank v. Davenport*, 2 D. & B., 45; *Guess v. Barbee*, 6 Ire., 279; *Martin v. Long*, 8 Ire., 415; *Ellis v. Long*, 8 Ire., 513; *Butts v. Brown*, 11 Ire., 141; *O'Leary v. Harrison*, 6 Jon., 333; *Broughton v. Haywood*, Phil., 380; *Fell v. Porter*, 69-140; *State ex rel. Bryan v. Rousseau & Brown*, 71-194; *Cooper v. Williams*, 75-94; *Smith v. Moore*, 79-82; *Curtis' Heirs, ex parte*, 82-435; *Wall v. Covington*, 83-144; *Kerr v. Brandon*, 84-123.

**Sec. 3094. Damages of twelve per cent. against officers on money unlawfully detained.**

Whenever money received as aforesaid shall be unlawfully de-  
 2 tained by any of said officers, and the same shall be sued for in any  
 3 mode whatever, the plaintiff shall be entitled to recover, besides  
 4 the sum detained, damages at the rate of twelve per centum per  
 5 annum from the time of detention until payment.

*Broughton v. Haywood*, Phil., 380.

**Sec. 3095. Irregularity in taking or in the form of bonds, not to invalidate them.**

R. C., c. 78, s. 9.  
1842, c. 61.  
1869-70, c. 169, s. 2.

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.

Jordan v. Pool, 5 Ire., 105; Merrill v. McMinn, 7 Ire., 344; Murray v. Jones, 7 Ire., 359; Hoell v. Cobb, 4 Jon., 253; Hunter v. Routledge, 6 Jon., 216; Grier v. Hill, 6 Jon., 572; Shipman v. McMinn, Winst. L., 122; Barnes v. Lewis, 73-133; Prairie v. Jenkins, 75-545.

## CHAPTER EIGHTY-SEVEN.

## OFFICERS OF STATE.

## SECTION.

- 3096. Public officers of the state.
- 3097. Legislative officers.
- 3098. Executive officers, civil and military.
- 3099. Contested elections; powers and duty of governor.
- 3100. Governor to send copies of statutes and reports to other states.
- 3101. Governor to keep certain records.
- 3102. Records and applications to be preserved
- 3103. Governor may employ counsel.
- 3104. Governor's residence to be at Raleigh.
- 3105. Governor's mansion; private secretary.
- 3106. Letter book to be carefully preserved in executive office.
- 3107. Great seal of the state and court seals.
- 3108. New seals, how to be provided.
- 3109. The cost of procuring seals to be paid by state treasurer.
- 3110. The seal of the state may be put upon papers more than once.
- 3111. Day of thanksgiving to be appointed.
- 3112. Council of state to be convened by governor.
- 3113. Applications for pardon, what to contain.
- 3114. Secretary of state charged with custody of statutes and records.

## SECTION.

- 3115. Bond of secretary of state.
- 3116. Office hours of secretary of state.
- 3117. Duties of the secretary of state.
- 3118. Secretary of state to purchase stationery lights and fuel.
- 3119. Accounts for expenses, how allowed and paid.
- 3120. Statutes, joint resolutions and public documents, the secretary of state to have bound and indexed.
- 3121. Statutes and documents transmitted by secretary of state at the expense of the state.
- 3122. Secretary of state to furnish blank books to state and county officers.
- 3123. Books furnished the counties at cost.
- 3124. Secretary of state to furnish blank forms for estimates.
- 3125. Auditor and treasurer to review estimates.
- 3126. Sealed proposals to be advertised for.
- 3127. Auditor, his duties.
- 3128. Money paid into treasury by mistake, how repaid to owner.
- 3129. Real property mortgaged to state; foreclosure, sale, distribution of surplus.
- 3130. Office hours and room of auditor.

## SECTION.

3131. Banks having state deposits, to transmit monthly statements to auditor.  
 3132. Bank not to disburse state funds except on check of treasurer, countersigned by auditor.  
 3133. Duties of state treasurer.  
 3134. Bond of treasurer.  
 3135. Deputy treasurer, powers and duties.  
 3136. Treasurer may sue for and collect moneys and property of the state.  
 3137. Annual accounts of treasurer, when to be closed.  
 3138. Commissioners to examine vouchers.  
 3139. Office hours and office room of treasurer.  
 3140. Attorney general, his duties.  
 3141. Superintendent of public instruction; office, where kept; duties.  
 3142. Common schools under control of superintendent; annual report to governor.

## SECTION.

3143. What report to contain.  
 3144. Superintendent to correspond with educators abroad and investigate school systems of other countries.  
 3145. Duty to acquaint himself with educational wants of each section of the state.  
 3146. Apportionment of school moneys.  
 3147. Forms for reports to be printed and distributed to school officers and teachers.  
 3148. Printed and manuscript reports to be filed.  
 3149. Superintendent of public instruction to deliver property and records of his office to successor.  
 3150. Costs of actions by or against state officers to be paid by the state.

**Sec. 3096. Public officers of the state.**

The public officers of the state are :

1868-'9, c. 270, ss. 1,  
2.

- 2 (1) Legislative;  
 3 (2) Executive;  
 4 (3) Judicial.

5 But this classification shall not be construed as defining the le-  
 6 gal powers of either class.

**Sec. 3097. Legislative officers.**

The legislative officers are :

1868-'9, c. 270, s. 3.

- 2 (1) Fifty senators;  
 3 (2) One hundred and twenty members of the house of represent-  
 4 atives;  
 5 (3) A speaker of the house of representatives;  
 6 (4) A clerk and assistants in each house;  
 7 (5) A doorkeeper and assistants in each house;  
 8 (6) As many subordinates in each house as may be deemed nec-  
 9 essary.

**Sec. 3098. Executive officers, civil and military.**

Executive officers are either :

1868-'9, c. 270, ss. 24,  
25, 26.

- 2 (1) Civil;  
 3 (2) Military.  
 4 Civil executive officers are :  
 5 (1) General, or for the whole state;  
 6 (2) Special, or for special duties in different parts of the state;  
 7 (3) Local, or for a particular part of the state.  
 8 The general civil executive officers of this state are as follows:  
 9 (1) A governor;  
 10 (2) A lieutenant-governor;  
 11 (3) A private secretary for the governor;  
 12 (4) A secretary of state;  
 13 (5) An auditor;



- 14 (6) A treasurer ;
- 15 (7) An attorney-general ;
- 16 (8) A superintendent of public instruction ;
- 17 (9) The members of the governor's council.

**Sec. 3099. Contested elections ; powers and duties of governor.**

1868-'9, c. 270, s. 27.  
1870-'71, c. 111.

In addition to those prescribed by the constitution, the governor has powers and duties prescribed in this and the following sections :

- 4 (1) He has to supervise the official conduct of all executive and ministerial officers ;
- 6 (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 ;
- 10 (3) He is to make the appointments and supply the vacancies not otherwise provided for by law in all departments ;
- 12 (4) He is the sole official organ between the government of this state and other states, or the government of the United States ;
- 14 (5) He has the custody of the seal of the state, a description whereof must be deposited with the secretary of state ;
- 16 (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 ;

**Sec. 3100. Governor to send copies of statutes and reports to other states.**

1868-'9, c. 270, s. 28.

The governor, as soon as published, shall transmit to the executive of every state and territory 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 and territories. When the statutes of any state or territory 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.

**Sec. 3101. Governor to keep certain records.**

1868-'9, c. 270, s. 29.  
1870-'71, c. 111.

The governor shall cause to be kept the following records :

- 2 (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 ;
- 5 (2) 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.

**Sec. 3102. Records and applications to be preserved.**

These records and the originals of all applications, petitions and  
2 recommendations, and reports therein mentioned, shall be pre-  
3 served in the office of the governor, but when applications for of-  
4 fices are refused, he may, in his discretion, return the papers refer-  
5 ring to the application. 1868-'9, c. 270, s. 30.

**Sec. 3103. Governor may employ counsel.**

In every case, civil or criminal, in any court in the state, or in  
2 any other state or territory, or in any United States court, if the  
3 state of North Carolina is interested therein, the governor shall be  
4 authorized to employ such counsel as he may deem proper or  
5 necessary to represent the interest of the state, and he may draw  
6 his warrant upon the state treasurer to compensate said counsel. 1873-'4, c. 160, s. 2.

See 1866, Res., p. 223; 1868-'9, c. 270, s. 6.

**Sec. 3104. Governor's residence to be at Raleigh.**

The governor shall reside permanently in the city of Raleigh  
2 during his continuance in office. 1868-'9, c. 270, s. 32.

**Sec. 3105. Governor's mansion; private secretary.**

A convenient and commodious dwelling-house, together with  
2 such out-houses as shall be necessary, shall be provided for his  
3 accommodation. Until such dwelling-house shall be provided the  
4 rent of the property known as governor's mansion shall be paid to  
5 the governor. He shall appoint a private secretary, who shall  
6 enter in books kept for that purpose, all such letters, written by  
7 and to the governor, as are official and important, and such other  
8 letters as the governor shall think necessary. 1868-'9, c. 270, s. 33.  
1876-'7, Res., p. 616.

**Sec. 3106. Letter-book to be carefully preserved in executive office.**

The letter-book shall be deposited in the office of the executive  
2 by the private secretary, and there carefully preserved; and the  
3 governor shall produce his letter-books before the general assembly,  
4 whenever requested. 1868-'9, c. 270, s. 34.

**Sec. 3107. Great seal of the state and court seals.**

The governor shall procure for the state a seal, which shall be  
2 called the great seal of the state of North Carolina, to be used for  
3 attesting and authenticating grants, proclamations, commissions  
4 and other public acts, in such manner as may be directed by law,  
5 and the usage established in the public offices; also a seal for every  
6 court of record of the state, for the purpose of authenticating the  
7 papers and records of such court. 1868-'9, c. 270, s. 35.

**Sec. 3108. New seals, how to be provided.**

Whenever the great seal of the state, or any seal of a court of 1868-'9, c. 270, s. 36.

2 record shall be lost, or so worn or defaced as to render it unfit for  
3 use, the governor shall provide a new one, and when new seals are  
4 provided, the former ones shall not be used.

**Sec. 3109. The cost of procuring seals to be paid by state treasurer.**

1868-'9, c. 270, s. 37.

The treasurer shall pay the expense of procuring said seals upon  
2 warrant of the governor countersigned by the auditor; and the  
3 same shall be delivered to the proper officers, who shall give a re-  
4 ceipt therefor and be accountable for their safe keeping.

**Sec. 3110. The seal of the state may be put upon papers more than once.**

1868-'9, c. 270, s. 38.

In all cases where any person may find it necessary to have the  
2 seal of the state put again to any public paper, other than a grant  
3 for lands, he may prefer his petition to the governor and council,  
4 who shall if they deem the same proper, direct the secretary to put  
5 the seal thereto.

**Sec. 3111. Day of thanksgiving to be appointed.**

1868-'9, c. 270, s. 39.

The governor is directed to set apart a day in every year, and  
2 by proclamation give notice thereof, as a day of solemn and public  
3 thanksgiving to Almighty God for past blessings and of supplica-  
4 tion for his continued kindness and care over us as a state and a  
5 nation.

**Sec. 3112. Council of state to be convened by governor.**

1868-'9, c. 270, s. 40.

The governor may convene his council for consultation there-  
2 with, whenever he may deem it proper.

**Sec. 3113. Application for pardon, what to contain.**

1869-'70, c. 171, s. 1.  
1870-'71, c. 61, s. 1.

Every application for pardon must be made to the governor in  
2 writing, signed by the party convicted, or by some person in his  
3 behalf. And every such application shall contain the grounds  
4 and reasons upon which the executive pardon is asked, and shall  
5 be in every case accompanied by a certified copy of the indictment,  
6 and the verdict and judgment of the court thereon.

State v. Alexander, 76—231.

**Sec. 3114. Secretary of state charged with custody of statutes and records.**

1868-'8, c. 270, s. 41.

The secretary of state is charged with the custody of all statutes  
2 and joint resolutions of the legislature, all documents which pass  
3 under the great seal, and of all the books, records, deeds, parch-  
4 ments, maps and papers now deposited in his office, or which may  
5 hereafter be there deposited pursuant to law, and he shall from  
6 time to time make all necessary provisions for their arrangement  
7 and preservation.

See R. C., c. 104, s. 105; 1873-'4, c. 129.



**Sec. 3115. Bond of secretary of state.**

The secretary of state shall give bond with sufficient security,  
2 approved by the governor and auditor, for the sum of twenty  
3 thousand dollars, payable to the state, and conditioned for the  
4 faithful performance of his duties. And the bond of the secretary  
5 of state shall be deposited in the treasurer's office for safe keeping;  
6 and he shall take the oath prescribed for public officers.

1868-'9, c. 270, ss. 42,  
43.

**Sec. 3116. Office hours of secretary of state.**

The secretary of state shall attend at his office, in the city of  
2 Raleigh, between the hours of nine o'clock, a. m., and two o'clock  
3 a. m., on every day of the year, Sundays and legal holidays ex-  
4 cepted. He shall be allowed such office room as may be necessary.

1868-'9, c. 270, s. 44.  
1870-'71, c. 111.

**Sec. 3117. Duties of the secretary of state.**

It is the duty of the secretary of state :

- 2 (1) To attend at every session of the legislature for the purpose  
3 of receiving bills which shall have become laws, and to perform  
4 such other duties as may then be devolved upon him by resolu-  
5 tion of the two houses, or either of them ;
- 6 (2) To attend the governor, whenever required by him, for the  
7 purpose of receiving documents which have passed the great seal ;
- 8 (3) To receive and keep all conveyances and mortgages belong-  
9 ing to the state ;
- 10 (4) To receive and record, in proper books, the depositions made  
11 or furnished him, or required by law, by resident aliens desirous  
12 to make and hold real property ;
- 13 (5) To distribute annually the statutes, the legislative journals  
14 and documents, and the reports of the supreme court ;
- 15 (6) To distribute the acts of congress received at his office in the  
16 same manner as the statutes of the state ;
- 17 (7) To keep a receipt book, in which he shall take from every  
18 person to whom a grant shall be delivered, a receipt for the same ;  
19 but he may inclose grants by mail in a registered letter at the ex-  
20 pense of the grantee, unless otherwise directed, first entering the  
21 same upon the receipt book.

1868-'9, c. 270, s. 45.  
1881, c. 63.

**Sec. 3118. Secretary of state to purchase stationery, lights and fuel.**

The secretary of state shall purchase suitable stationery and  
2 lights for the offices of the executive department and for the gen-  
3 eral assembly, the supreme court and state library, upon the best  
4 terms the same can be procured. And he shall contract with the  
5 lowest bidder, under sealed proposals, for the necessary fuel for the  
6 general assembly and the public offices in the capitol.

R. C., c. 104, s. 6.  
1842, c. 48; c. 68.  
1873-'4, c. 129.

**Sec. 3119. Accounts for expenses, how allowed and paid.**

The accounts of the secretary for the expenditures aforesaid, and  
2 all other expenses which he may incur, the payment whereof is

R. C., c. 104, s. 7.  
1842, c. 48, s. 1; c.  
68, s. 3.  
1873-'4, c. 129.

3 not otherwise provided, shall be passed on, and, if allowed by the  
4 governor and council of state, shall be paid by the treasurer, on a  
5 proper certificate of allowance.

**Sec. 3120.** Statutes, joint resolutions, and public documents, the secretary of state to have bound and indexed.

1868-'9, c. 270, s. 46.

The original statutes and joint resolutions passed at each session  
2 of the general assembly, the secretary of state shall immediately  
3 thereafter cause to be bound in volumes of convenient size. He  
4 shall compare with this original, a copy of the printed statutes;  
5 and having noted therein at the end of each statute or resolution  
6 any error in the printed copy, deposit the same with the original  
7 volume in his office. Each such volume shall be lettered on the  
8 back with its title and the date of its session. He shall also cause  
9 full and complete indexes to the statutes and legislative documents,  
10 to be prepared as soon as practicable after each session of the legis-  
11 lature and deliver them to the printer of the statutes.

See 1876-'7, Res., p. 609; 1866-'7, c. 71.

**Sec. 3121.** Statutes and documents transmitted by secretary of state at the expense of the state.

1868-'9, c. 270, s. 48.

The statutes, journals and documents for the use of each county,  
2 and for members of the general assembly and other officers therein,  
3 shall be transmitted in boxes to the register of deeds of each county,  
4 and the rest in such manner as the secretary may think best: the  
5 statutes to be transmitted within ninety days after the adjournment  
6 of the general assembly; all to be transmitted at the expense of  
7 the state. He shall also put up in boxes the laws directed to be  
8 sent by the governor to the several states in the Union, and shall  
9 transmit the same at the expense of the state in such manner as  
10 the governor shall direct, and he shall offer for sale, at an advance  
11 not exceeding ten *per centum*, such number of copies as the senate  
12 and assembly may, by joint resolution, direct.

**Sec. 3122.** Secretary of state to furnish blank books to state and county officers.

1869-'70, c. 141, s. 1.  
1869-'70, c. 234, s. 5.

The secretary of state shall also be required to furnish all blank  
2 books for record purposes in the departments above named, and  
3 all blank books needed by the county commissioners in their sev-  
4 eral offices, and by registers of deeds, clerks of the superior court,  
5 county treasurers, and dockets for justices of the peace. He shall,  
6 also, as soon as practicable after requisition is made on him, pur-  
7 chase such books as are herein mentioned, and as may be required  
8 by the several counties of the state; and shall forward them to the  
9 several registers of deeds, with an invoice enclosed, who shall re-  
10 ceipt for the same, and distribute to the proper parties.

**Sec. 3123.** Books furnished the counties at cost.

1869 '70, c. 234, s. 7.

All blank books shall be supplied to the counties at actual cost.

**Sec. 3124. Secretary of state to furnish blank forms for estimates.**

It shall be the duty of the secretary of state on or before the first 2 day of August in each year, to send to the executive, treasurer, 3 auditor, superintendent of public instruction, clerk of supreme 4 court, state librarian, and to the clerks of the houses of the general 5 assembly, a blank estimate of the amount or quantity and kind of 6 stationery, as allowed by this chapter, that will be required in their 7 several offices for official use during the next succeeding year, which 8 shall be properly filled and certified and returned to the secretary 9 of state by the tenth day of September following. He shall at the 10 time these estimates are examined submit an estimate of stationery 11 for his own official use in his own office.

1869-'70, c. 234, ss. 8, 9.

**Sec. 3125. Auditor and treasurer to review estimates.**

Immediately upon the receipt of these requisitions, the secretary 2 of state shall summon the auditor and treasurer to attend his office 3 and inspect the amounts of each of said requisitions, and if the 4 requisitions of any officer shall appear to the said board of in- 5 spectors excessive and unreasonable, it shall then and there be re- 6 duced as in their judgment may be deemed just and proper.

1869-'70, c. 234, s. 12.

**Sec. 3126. Sealed proposals to be advertised for.**

When the inspectors have passed upon and approved or amended 2 the various requisitions, the secretary shall prepare a list of the 3 various kinds of stationery required, and the amount of each 4 and the time at which it is required to be delivered, and shall invite 5 sealed proposals to supply the same by advertising at least twice in 6 two weekly issues of four papers in the state. Said sealed pro- 7 posals must be forwarded to the secretary of state previous to the 8 first day of November, marked on the back of the envelope, 9 "sealed proposals for furnishing stationery," which shall be 10 opened on said day of November, at twelve o'clock, by the secre- 11 tary of state, in the presence of the auditor and treasurer, and not 12 elsewhere or otherwise; and the lowest bidder for each class, offer- 13 ing sufficient security, to be determined by the officer named in 14 this section, shall be awarded the contract to supply the same; each 15 award thus made shall be signed at the same time by the secretary 16 of state, and no account for stationery furnished shall be audited 17 or paid except on presentation of such award.

1868-'9, c. 270, s. 60.  
1869-'70, c. 234, s. 11.

**Sec. 3127. Auditor; his duties.**

It is the duty of the auditor:

- 2 (1) To superintend the fiscal concerns of the state;
- 3 (2) To report to the general assembly, annually, a complete state- 4 ment of the funds of the state, of its revenues and of the public 5 expenditures during the preceding fiscal year, and, as far as prac- 6 ticable, an account of the same down to the termination of the

1868-'9, c. 270, ss. 63, 64, 65.



7 current calendar year, together with a detailed estimate of the ex-  
8 penditures to be defrayed from the treasury for the ensuing fiscal  
9 year, specifying therein each object of expenditure and distinguish-  
10 ing between such as are provided for by permanent or temporary  
11 appropriations, and such as must be provided for by a new statute,  
12 and suggesting the means from which such expenditures are to be  
13 defrayed;

14 (3) To suggest plans for the improvement and management of  
15 the public revenue;

16 (4) To keep and state all accounts in which the state is interested;

17 (5) To examine and settle the accounts of all persons indebted  
18 to the state, and to certify the amount of balance to the treasurer;

19 (6) To direct and superintend the collection of all moneys due  
20 the state;

21 (7) To examine and liquidate the claims of all persons against  
22 the state, in cases where there is sufficient provision of law for the  
23 payment thereof; and where there is no sufficient provision, to ex-  
24 amine the claim and report the fact, with his opinion thereon, to  
25 the general assembly;

26 (8) To require all persons who have received any moneys be-  
27 longing to the state, and have not accounted therefor, to settle their  
28 accounts;

29 (9) To draw warrants on the treasurer for the payment of all  
30 moneys directed by law to be paid out of the treasury; but no war-  
31 rant shall be drawn unless authorized by law, and every warrant  
32 shall refer to the law under which it is drawn;

33 (10) To keep in his office all leases, mortgages, bonds and other  
34 securities for money given to the people of the state, unless other-  
35 wise specially directed;

36 (11) To keep and preserve the certificates of stock of any kind,  
37 owned by the people of the state;

38 (12) To procure from the books of the banks in which the treas-  
39 urer makes his deposits, monthly statements of the moneys re-  
40 ceived and paid on account of the treasurer;

41 (13) To countersign and enter all checks drawn by the treasurer,  
42 and all receipts for money paid to the treasurer, and no such re-  
43 ceipts shall be evidence of payment, unless so countersigned;

44 (14) To keep an account between the state and the treasurer, and  
45 therein charge the treasurer with the balance in the treasury when  
46 he came into office, and with all moneys received by him, and  
47 credit him with all warrants drawn or paid by him;

48 (15) To examine carefully on the first Tuesday of every month,  
49 or oftener if he deems it necessary, the accounts of the debts and  
50 credits in the bank book kept by the treasurer, and if he discovers  
51 any irregularity or deficiency therein, unless the same be rectified  
52 or explained to his satisfaction, to report the same forthwith, in  
53 writing, to the governor;

54 (16) To require, from time to time, all persons who have re-  
55 ceived moneys or securities, or have had the disposition or man-  
56 agement of any property of the state, of which an account is kept  
57 in his office, to render statements thereof to him; and all such per-  
58 sons shall render such statement at such time and in such form as  
59 he shall require;

60 (17) To require any person presenting an account for settle-  
61 ment, to be sworn before him and to answer orally as to any facts  
62 relating to its correctness.

Boner v. Adams, 65—639.

**Sec. 3128. Money paid into treasury by mistake; how repaid to owner.**

Whenever the governor and council of state are satisfied that 1868-'9, c. 270, s. 66.  
2 moneys have been paid into the treasury through mistake, they  
3 may direct the auditor to draw his warrant therefor on the treas-  
4 urer, in favor of the person who made such payment; but this pro-  
5 vision shall not extend to payments on account of taxes nor to  
6 payments on bonds and mortgages.

**Sec. 3129. Real property mortgaged to state; foreclosure sale, distribution of surplus.**

Whenever any real property mortgaged to the people of this 1868-'9, c. 270, s. 68.  
2 state, or bought in for the benefit of the state, of which a certificate  
3 shall have been given to a former purchaser, is sold by the attorney-  
4 general on a foreclosure by notice, or under a judgment, for a  
5 greater sum than the amount due to the state, with costs and ex-  
6 pense, the surplus money received into the treasury, after a con-  
7 veyance has been executed to the purchaser, shall be paid to the  
8 person legally entitled to such real property at the time of the fore-  
9 closure on the forfeiture of the original contract; but the auditor  
10 shall not draw his warrant for surplus money, unless upon satis-  
11 factory proof by affidavit or otherwise, of the legal rights of such  
12 person.

**Sec. 3130. Office hours and room of auditor.**

The auditor shall keep his office at the city of Raleigh, and shall 1868-'9, c. 270, ss.  
2 attend thereat between the hours of nine o'clock a. m., and two 69, 70.  
3 o'clock p. m., Sundays and legal holidays excepted. He shall be  
4 allowed such office room as may be necessary.

Boner v. Adams, 65—639.

**Sec. 3131. Banks having state deposits to transmit monthly statements to auditor.**

The banks having state deposits shall every month transmit to 1868-'9, c. 270, s. 72.  
2 the auditor a statement of the moneys which have been received  
3 and paid by them on account of the treasury.

**Sec. 3132. Bank not to disburse state funds except on check of treasurer, countersigned by auditor.**

1868-'9, c. 270, s. 73.

The treasurer shall not draw, nor shall such bank pay, any  
2 moneys on account of the treasury, except by checks subscribed by  
3 him as treasurer and countersigned by the auditor.

**Sec. 3133. Duties of state treasurer.**

1868-'9, c. 270, s. 71.

It is the duty of the treasurer :

- 2 (1) To receive all moneys which shall, from time to time, be  
3 paid into the treasury of this state.
- 4 (2) To keep a bank book; in which shall be entered his account  
5 of deposits in bank, and moneys drawn therefrom, and to exhibit  
6 the same to the auditor for his inspection on the first Tuesday in  
7 every month, and oftener if required.
- 8 (3) To pay all warrants legally drawn on the treasurer by the  
9 auditor, and no moneys shall be paid out of the treasury except  
10 on the warrant of the auditor; to report to the general assembly at  
11 its annual session the exact balance in the treasury to the credit  
12 of the state, with a summary of the receipts and payments of the  
13 treasury during the preceding fiscal year, and so far as practicable,  
14 an account of the same down to the termination of the current  
15 calendar year.

**Sec. 2134. Bond of treasurer.**

1868-'9, c. 270, s. 74.  
1870-'71, c. 111.

The treasurer shall, within ten days after he receives notice of  
2 his election, and before he enters upon the execution of the duties  
3 of his office, give a bond to the state in the sum of two hundred  
4 and fifty thousand dollars, with not less than four sufficient sure-  
5 ties, to be approved by the president of the senate and speaker of  
6 the house of representatives, conditioned that he will faithfully ex-  
7 ecute the duties of his office, which bond shall be deposited in the  
8 office of secretary of state, and shall be deemed to extend to the  
9 faithful execution of the office of treasurer by the person elected  
10 thereto, until a new election of treasurer be made, and a new bond  
11 given by the person elected.

**Sec. 3135. Deputy treasurer; powers and duties.**

1868-'9, c. 270, s. 76.

The chief clerk of the treasurer may perform any duties of the  
2 treasurer except signing checks. The treasurer is responsible for  
3 the conduct of his clerks.

**Sec. 3136. Treasurer may sue for and collect moneys and property of state.**

1866, c. 46, s. 1.

The treasurer is authorized to demand, sue for, collect and re-  
2 ceive all money and property of the state not held by some person  
3 under authority of law, and to sell said property at such time and  
4 place, and under such terms as he may deem best.



**Sec. 3137. Annual accounts of treasurer, when to be closed.**

The accounts of the treasurer shall be annually closed on the 1868-'9, c. 270, s. 77.  
 2 thirteenth of September, and examined during the months of Octo-  
 3 ber, November and December by commissioners appointed for that  
 4 purpose by the general assembly at each session, to consist of two  
 5 senators and three representatives.

**Sec. 3138. Commissioners to examine vouchers.**

The commissioners shall examine the accounts and vouchers re- 1868-'9, c. 270, ss.  
 2 lating to all moneys received into and paid out of the treasury dur- 78, 79.  
 3 ing the preceding fiscal year, and shall certify and report to the  
 4 legislature at its next session the amount of moneys received and  
 5 the amount of moneys paid out of the treasury during such year,  
 6 by virtue of warrants drawn on the treasury by the auditor, the  
 7 amount of moneys received by the treasurer when he entered his  
 8 office, and the balance in the treasury at the close of the fiscal year.  
 9 They shall also compare the warrants drawn by the auditor on the  
 10 treasury during such fiscal year, with the several laws under which  
 11 the same purport to have been drawn, and shall in like manner  
 12 certify and report whether the auditor had power to draw such  
 13 warrant; and if any are found which, in the opinion of the com-  
 14 missioners, he had no power to draw, they shall be specified, with  
 15 the reasons for the opinion. The majority of the committee may  
 16 perform all its duties. Whenever the treasurer dies or resigns dur-  
 17 ing his term or is succeeded at the expiration of his term by an-  
 18 other, these commissioners shall examine his accounts. They shall  
 19 be governed in their examination, certificate and report, by the pro-  
 20 visions of the preceding section.

**Sec. 3139. Office hours and office room of treasurer.**

The treasurer shall keep his office at the city of Raleigh, and 1868-'9, c. 270, ss.  
 2 shall attend there between the hours of nine o'clock, a. m., and 80, 81.  
 3 two o'clock, p. m., Sundays and legal holidays excepted. He shall  
 4 be allowed such office room as may be necessary.

**Sec. 3140. Attorney-general, his duties.**

It shall be the duty of the attorney-general :

- 2 (1) To defend all actions in the supreme court in which the 1868-'9, c. 270, s. 82,  
 3 state shall be interested, or is a party; and shall also when re- 1871-'2, c. 112, s. 2,  
 4 quested by the governor or either branch of the general assembly,  
 5 appear for the people of this state, in any other court or tribunal,  
 6 in any cause or matter, civil or criminal, in which the people of  
 7 this state may be a party or interested.
- 8 (2) At the request of the governor, secretary of state, auditor,  
 9 or superintendent of public instruction, he shall prosecute and  
 10 defend all suits relating to matters connected with their departments.

- 11 (3) To consult with and advise the solicitors, when requested by  
 12 them, in all matters pertaining to the duties of their offices.  
 13 (4) To give, when required, his opinion upon all questions of  
 14 law submitted to him by the general assembly, or by either branch  
 15 thereof, or by the governor, auditor, treasurer, or any other state  
 16 officer.  
 17 (5) To pay all moneys, received for debts due or penalties to  
 18 people of this state, immediately after the receipt thereof, into the  
 19 treasury.  
 20 (6) To report the decisions of the supreme court.

**Sec. 3141. Superintendent of public instruction, office where kept; duties.**

1868-'9, c. 270, s. 85.  
 1870-'71, c. 111.

The superintendent of public instruction shall keep his office at  
 2 the seat of government. He shall provide a seal for his office; and  
 3 copies of his acts and decisions, and of papers kept in his office,  
 4 and authenticated by his signature and official seal, shall be of the  
 5 same force and validity as the original. He shall sign all requisitions on the auditor for the payment of money out of the state  
 6 treasury for school purposes. He shall be furnished with such  
 7 office room as may be necessary.

**Sec. 3142. Common schools under control of superintendent; annual report to governor.**

1868-'9, c. 270, ss.  
 87, 88.

The superintendent of public instruction shall direct the opera-  
 2 tions of the system of common schools and enforce the regulations  
 3 and laws in relation thereto. He shall report to the governor an-  
 4 nually on the first of November. The governor shall transmit  
 5 such report to the legislature.

**Sec. 3143. What report to contain.**

1868-'9, c. 270, s. 89.

Said report shall contain a statement of the condition of the  
 2 public schools in the state; full statistical tables by counties, show-  
 3 ing among other statistics the number of school children in the  
 4 state; the number attending public schools, and the average at-  
 5 tendance; the number attending private schools, and the number  
 6 not attending any school; the amount of state school fund, the  
 7 sources from which derived and how apportioned, the amount  
 8 raised by county and district taxes, and from other sources of rev-  
 9 enue for school purposes; the amount expended for salaries of  
 10 teachers, for building, improving and preserving school houses; a  
 11 statement of plans for the management and improvement of schools  
 12 and school buildings; of the condition of the state normal schools,  
 13 of the state agricultural college, of all incorporated literary institu-  
 14 tions required to report to him; of the educational department of  
 15 the state penitentiary; of the asylum for the deaf and dumb and  
 16 the blind, and of all other educational institutions to which state  
 17 appropriations may be made.

**Sec. 3144.** Superintendent to correspond with educators abroad, and investigate school systems of other countries.

It shall be the duty of the superintendent of public instruction 1868-'9, c. 270, s. 90.  
2 to correspond with educators abroad and to investigate the system  
3 of free schools established in other states and countries, and as per-  
4 fectly as possible render the results of educational efforts and ex-  
5 periences available for the information and aid of the legislature  
6 and board of education.

**Sec. 3145.** Duty to acquaint himself with educational wants of each section of the state.

It shall be the duty of the superintendent of public instruction 1868-'9, c. 270, s. 91.  
2 to acquaint himself with the peculiar educational wants of each sec-  
3 tion of the state, and he shall take all proper means to supply them  
4 by visiting schools, advising teachers, counseling with boards of  
5 county commissioners and superintendents, by lectures before in-  
6 stitutes and addresses to public assemblies on subjects pertaining  
7 to public schools.

**Sec. 3146.** Apportionment of school moneys.

The superintendent of public instruction, after the state auditor 1868-'9, c. 270, s. 92.  
2 reports to him as required in this chapter, shall apportion to the  
3 several counties the school moneys to which each may be entitled,  
4 and shall furnish to the state auditor, to each county treasurer and  
5 to the commissioners of each county an abstract of such apportion-  
6 ment, and shall draw his order on the state auditor in favor of each  
7 county treasurer for the amount of state school fund to which such  
8 county is entitled, and shall take each treasurer's receipt for the  
9 same.

**Sec. 3147.** Forms for reports to be printed and distributed to school officers and teachers.

The superintendent of public instruction shall prepare and cause 1868-'9, c. 270, s. 93.  
2 to be printed, suitable forms for making all reports and conduct-  
3 ing all necessary proceedings under this chapter, and shall trans-  
4 mit them to the local school officers and teachers, who shall be  
5 governed in accordance therewith.

**Sec. 3148.** Printed and manuscript reports to be filed.

The superintendent of public instruction shall file, arrange and 1868-'9, c. 270, s. 94.  
2 cause to be bound in a substantial form all valuable printed and  
3 manuscript reports in his office.

**Sec. 3149.** Superintendent of public instruction to deliver property and records of his office to successor.

The superintendent of public instruction shall, at the expiration 1868-'9, c. 270, s. 96.  
2 of his term of office, deliver, on demand, to his successor all prop-



3 erty, books, documents, maps, records, reports and other things be-  
4 longing to his office.

Sec. 3150. Costs of actions by or against state officers to be paid by the state.

1874-'5, c. 154.

In all civil actions depending, or which may be instituted, by  
2 any of the officers of the state, or which have been, or shall be in-  
3 stituted against them, when any such action is brought or defended  
4 pursuant to the advice of the attorney-general, and the same shall  
5 be decided against such officers, the costs thereof shall be paid by  
6 the state upon the warrant of the auditor for the amount thereof as  
7 taxed.

## CHAPTER EIGHTY-EIGHT.

### OVERSEERS.

#### SECTION.

3151. Overseer leaving his employer to forfeit wages.

Sec. 3151. Overseer leaving his employer to forfeit wages.

R. C., c. 80.  
1741, c. 35, s. 22.

If any person shall contract to serve as an overseer upon wages  
2 or a share of the produce and shall absent himself or depart from  
3 the service of his employer before the time mentioned in his agree-  
4 ment or contract shall be expired, he shall forfeit all right to wages  
5 or share of the produce.

Steed v. McRae, 1 D. & B., 435; Smith v. Cameron, 11 Ire., 572; Hobbs v. Riddick, 5 Jon., 80;  
Hendrickson v. Anderson, 5 Jon., 246; Fly v. Armstrong, 5 Jon., 339; Lane v. Phillips, 6 Jon.,  
455; Woodley v. Bond, 66—396.

## CHAPTER EIGHTY-NINE.

### OYSTERS AND OTHER FISH.

#### SECTION.

3152. Penalty for using drag-nets in Pamlico  
sound to catch terrapins, or instruments  
except tongs to take oysters, unless, &c.  
3153. When unlawful to take diamond-back  
terrapins, what size they must be, un-  
lawful to destroy their eggs; misde-  
meanor, penalty, proviso; possession  
*prima facie* evidence of guilt; duty of  
sheriff and other officers, &c.  
3154. Net, &c., not to be used in half a mile of  
marshes between Croatan and Pamlico  
sounds.  
3155. Non-residents forbidden to fish for profit  
in waters of the state.

#### SECTION.

3156. Penalty therefor.  
3157. In what direction nets to be set in Pam-  
lico sound.  
3158. Fishing stakes in Pamlico and Albe-  
marle sounds, &c., to be removed by  
June.  
3159. Dutch and pod nets prohibited in Roan-  
oke, Cashie and Middle rivers, &c.  
3160. Right to establish fisheries, prior right;  
platforms, and penalty for damaging  
them.  
3161. Masters of vessels wantonly injuring  
seines or nets, penalty on.

SECTION.

- 3162. Fish offal not to be cast into navigable waters, &c.
- 3163. Penalty for setting nets across navigable streams, or obstructing passage of fish.
- 3164. For erecting stand, &c., in waters left open for passage of fish, or not keeping slopes open.
- 3165. Offences herein created indictable.
- 3166. How oyster and clam beds may be planted.
- 3167. Superior court may grant license to make oyster and clam beds.
- 3168. Injuring such beds a misdemeanor.
- 3169. Penalties for injuring such beds.
- 3170. To promote the growth of oysters in New river.
- 3171. Regulating the size of the meshes of drag-nets and seines to be used in Neuse and Trent rivers and their tributaries.
- 3172. Regulating fishing in the waters of Pamlico and Tar rivers.
- 3173. Prohibiting the use of drift-nets in certain waters.
- 3174. Prohibiting the use of pod or dutch-nets in the waters of the Neuse and the Trent and their tributaries.
- 3175. To prevent the obstruction of the passage of fish in Hiwassee river.
- 3176. Preventing the hauling of seines and drag-nets in Hiwassee, Notly and Valley rivers, in Cherokee county, in certain seasons.

SECTION.

- 3177. Prohibiting the obstruction of the waters of Little river.
- 3178. Preventing the destruction of fish in Nantahali river and its tributaries.
- 3179. Fish-ways on Haw river in the county of Chatham.
- 3180. Protection of the fish interest in the Cape Fear river.
- 3181. To protect fish in Lumber river in the counties of Columbus and Robeson.
- 3182. Misdemeanor to use dynamite cartridge.
- 3183. To remove the obstructions to the passage of fish and to provide fish-ways.
- 3184. To protect fish in Tyrrell county.
- 3185. To protect fish in the Scuppernong river in Tyrrell county.
- 3186. To prevent the destruction of fish in the waters of Black river and Six Runs, in the counties of New Hanover, Sampson and Cumberland, and in the waters of the Cape Fear and its branches.
- 3187. To protect the fish interest in North Carolina.
- 3188. Sluice-ways to be constructed, penalty for failure; to be kept open, penalty for failure, &c.
- 3189. All obstructions to be opened; penalty for failure.
- 3190. Fines and penalties collected under this chapter.

**Sec. 3152. Penalty for using drag-nets in Pamlico sound to catch terrapins; or instruments except tongs to take oysters, unless, &c.**

If any person, who is not a citizen of the state, shall use drag-nets 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 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.

R. C., c. 81, s. 3.  
1822, c. 1134, s. 4.

**Sec. 3153. When unlawful to take diamond-back terrapins, what size they must be, unlawful to destroy their eggs; misdemeanor, penalty, proviso; possession *prima facie* evidence of guilt; duty of sheriff and other officers, &c.**

It shall be unlawful for any person to take or catch diamond-back terrapins between the fifteenth day of April and the fifteenth day of August in each year, or any diamond-back terrapins, at any time, of a less size than five inches in length upon the bottom shell, or to interfere with, or in any manner destroy any eggs of the diamond-back terrapin; and any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction before any justice of the peace, shall be fined not less than five dollars, nor more than ten dollars, for each and every diamond-back terrapin so taken or caught, and a like sum for each and every egg interfered with or destroyed: *Provided,* This section shall not ap-

1881, c. 115, ss. 1, 6.

12 ply to parties empowered to propagate the said diamond-back ter-  
 13 rapin; and the possession of any diamond-back terrapin between  
 14 the fifteenth days of April and August shall be *prima facie* evidence  
 15 that the person having the same has violated the provisions of  
 16 this section. It shall be the duty of all sheriffs and constables to  
 17 give immediate information to some justice of the peace, of any  
 18 violation of the provisions of this section.

**Sec. 3154. Net, &c., not to be used in a half a mile of marshes between Croatan and Pamlico sounds.**

R. C., c. 81, s. 4.  
 1844, c. 40, s. 3.

No person, for the purpose of taking fish between the first day  
 2 of February and the first day of May, of the same year, shall use  
 3 or cause to be used, at or within half a mile of the marshes sepa-  
 4 rating the waters of Croatan and Pamlico sounds, any weir, hedge,  
 5 net, or seine.

**Sec. 3155. Non-residents forbidden to fish for profit in waters of the state.**

R. C., c. 81, s. 5.  
 1844, c. 40, s. 1.  
 1876-77, c. 33.

No person shall use, or cause to be used, in any of the navigable  
 2 waters of the state, any weir, hedge, net, or seine, for the purpose  
 3 of taking fish for sale or exportation, or any tongs or drags for the  
 4 purpose of taking oysters, unless he shall have resided continuously  
 5 in the state at least twelve months next preceding the day on  
 6 which he shall begin to take fish or oysters; nor shall any person  
 7 assist in using, or be interested in using or causing to be used, in  
 8 any of such waters for the purpose aforesaid, any weir, hedge, net,  
 9 seine, tongs or drags in the use of which any such non-resident  
 10 person may have an interest: *Provided*, that nothing herein con-  
 11 tained shall prevent any person from fishing with seines hauled to  
 12 the shore at any fishery, the title to which fishery or any interest  
 13 therein may have been acquired by such person by purchase or  
 14 inheritance: *And provided further*, that this section shall not extend  
 15 to servants employed to fish by any person allowed to fish in the  
 16 navigable waters of the state.

**Sec. 3156. Penalty therefor.**

R. C., c. 81, s. 6.  
 1844, c. 40, s. 2.

Any person, who shall violate any of the provisions of the pre-  
 2 ceding section, shall, for every offence, forfeit one hundred dollars;  
 3 one-half to the use of the person suing for the same, and the other  
 4 half to the common school fund of the county where the offence is  
 5 committed.

**Sec. 3157. In what direction nets to be set in Pamlico sound.**

R. C., c. 81, s. 7.  
 1844, c. 40, s. 6.

Every net, (unless the same be a dragnet and hauled to the  
 2 shore,) which may be used for catching shad in that portion of the  
 3 waters of Pamlico sound, lying between a line drawn eastwardly  
 4 from Stumpy Point, and the southern side of Long Shoal in said  
 5 sound, shall be set and fixed in said waters, in a direction from



6 north to south, and shall not be used in any other manner; and  
7 any person offending against this section, shall, for every offence,  
8 forfeit five dollars.

**Sec. 3158. Fishing stakes in Pamlico and Albemarle sounds, &c., to be removed by June.**

Every person who may set or use, in any of the navigable waters  
2 of Pamlico, Croatan, Currituck, and Albemarle sounds, or their  
3 tributaries, any fishing stake or pole, shall remove the same by the  
4 first day of June; and every person offending against this section,  
5 shall, for every stake not so removed, forfeit and pay five dollars.

R. C., c. 81, s. 8.  
1844, c. 40, s. 7.  
1852, c. 13.

**Sec. 3159. Dutch and pod nets prohibited in Roanoke, Cashie and Middle rivers, &c.**

It shall be unlawful for any person to set or fish a dutch net or  
2 pod net in Roanoke river, Cashie or Middle rivers, or within two  
3 miles of the mouth of said rivers, or within one mile of the mouth  
4 of any other river emptying into Albemarle sound; and it shall  
5 be unlawful for any person to set or fish with a dutch net or pod  
6 net within half a mile to the eastward or westward of the outside  
7 windlasses or snatch-blocks of any seine fishery in operation on said  
8 sound; and any such net set or fished within one mile of such  
9 windlasses or snatch-blocks of any seine fishing in operation shall  
10 run in a due north and south course from the shore, and shall not ex-  
11 tend further into the sound from the water's edge than the distance  
12 from such windlasses or snatch-blocks to the line of such net; and  
13 all persons who shall set or fish any such net in said sound shall  
14 pull up and remove the stakes used for the same by the first day  
15 of June next succeeding the fishing season, and if any person shall  
16 set or fish any dutch net or pod net in said sound in violation of  
17 this section he shall be guilty of a misdemeanor, and on conviction  
18 thereof shall be fined or imprisoned in the discretion of the court,  
19 and be subject to a further penalty of three hundred dollars, to be  
20 recovered by any person in the superior court of the county in  
21 which the offence shall be committed. And the sheriff of such  
22 county shall, when requested, remove any portion of such nets set  
23 or fished in violation of this section at the cost of the violator.

1874-'5, c. 115, ss. 1,  
2, 3, 4.

Tatum v. Sawyer, 2 Hawks., 226; Collins v. Benbury, 3 Ire., 277; Collins v. Benbury, 5 Ire.,  
118; Hatfield v. Grimstead, 7 Ire., 139; Jackson v. Keeling, 1 Jon., 299; Ward v. Willis, 6 Jon.,  
183; Skinner v. Hettrick, 73-53; Hettrick v. Page, 82-65.

**Sec. 3160. Right to establish fisheries, prior right; platforms, and penalty for damaging them.**

Whenever any person shall acquire title to lands covered by  
2 navigable water under the provisions of the chapter entitled "En-  
3 tries and Grants," the owner or person so acquiring title shall have  
4 the right to establish fisheries upon said lands; and whenever the  
5 owners of such lands shall improve the same by clearing off and  
6 cutting therefrom logs, roots, stumps or other obstructions, so that

1874-'5, c. 183, ss. 1,  
2, 3, 4, 6.

7 the said land may be used for the purpose of drawing or hauling  
 8 nets or seines thereon for the purpose of taking or catching fish,  
 9 then and in that case the person who makes or causes to be made  
 10 the said improvements, his heirs and assigns, shall have prior right  
 11 to the use of the land so improved, in drawing, hauling, drifting  
 12 or setting nets or seines thereon, and it shall be unlawful for any  
 13 person, without the consent of such owner, to draw or haul nets or  
 14 seines upon the land so improved by the owner thereof for the pur-  
 15 pose of drawing or hauling nets or seines thereon; and this section  
 16 shall apply where the owner of such lands shall erect platforms or  
 17 structures of any kind thereon to be used in fishing with nets and  
 18 seines; and every person who shall wilfully destroy or injure  
 19 the said platform or structures, or shall interfere with or molest the  
 20 owner in the use of such lands as aforesaid, or in any other man-  
 21 ner shall violate the provisions of this section, shall be guilty of a  
 22 misdemeanor: *Provided*, this section shall not be so construed as to  
 23 relieve any person from punishment for the obstruction of naviga-  
 24 tion.

Tatum v. Sawyer, 2 Hawks., 226; Collins v. Benbury, 3 Ire., 277; Collins v. Benbury, 5 Ire., 118; Hatfield v. Grimstead, 7 Ire., 139; Jackson v. Keeling, 1 Jon., 299; Ward v. Willis, 6 Jon., 183; Skinner v. Hettrick, 73—53; Hettrick v. Page, 82—65.

**Sec. 3161. Masters of vessels wantonly injuring seines or nets, penalty on.**

R. C., c. 81, s. 9.  
 1848, c. 61, ss. 1, 2.

Any master or other person having the management or control  
 2 of a vessel or boat of any kind, in the navigable waters of the  
 3 state, who shall wilfully, wantonly, and unnecessarily do injury to  
 4 any seine or net, which may be lawfully hauled, set or fixed in  
 5 said waters for the purpose of taking fish, shall forfeit and pay to  
 6 the owner of such seine or net, or other person injured by such  
 7 act, one hundred dollars.

**Sec. 3162. Fish offal not to be cast into navigable waters, &c.**

R. C., c. 81, s. 10.  
 1844, c. 40, s. 4.

No person shall throw, or cause to be thrown, into the channel  
 2 of any of the navigable waters of the state, any fish offal, in any  
 3 quantity that shall be deemed likely to hinder or prevent the pas-  
 4 sage of fish along such channel.

**Sec. 3163. Penalty for setting nets across navigable streams or obstructing passage of fish.**

R. C., c. 81, s. 11.  
 1796, c. 454, ss. 1, 2,  
 3.

No person shall set a net of any description across the main  
 2 channel of any navigable river or creek, or shall erect, so as to  
 3 extend more than three-fourths of the distance across such chan-  
 4 nel, any stand, dam, weir, hedge, or other obstruction to the pas-  
 5 sage of fish; and every person so offending shall forfeit and pay  
 6 forty dollars.

Sec. 3164. For erecting stand, &c., in waters left open for passage of fish, or not keeping slopes open.

Every person who shall erect any stand, dam, weir, or hedge, in  
 2 such part of any river or creek that may be left open for the pas-  
 3 sage of fish, or who having erected any dam where the same was  
 4 allowed, and shall not make and keep open such slope, as the com-  
 5 sioners appointed as prescribed in the chapter entitled "Rivers  
 6 and Creeks" may judge necessary, shall forfeit and pay ten dol-  
 7 lars for every twenty-four hours he shall not keep open, or shall  
 8 obstruct, such passage or slope.

R. C., c. 81, s. 12.  
 1787, c. 272, s. 2.  
 1844, c. 66.

Sec. 3165. Offences herein created, indictable.

Every person who shall commit any of the offences in this chap-  
 2 ter created shall be guilty of a misdemeanor.

R. C., c. 81, s. 13.

Sec. 3166. How oyster and clam beds may be planted.

Any inhabitant of this state may make beds and plant oysters  
 2 and clams in any of the waters of this state, having first obtained  
 3 license as hereinafter directed, from the superior court of the county  
 4 in which such beds may be, and may stake out the grounds so as  
 5 to include any lot, farm or bed of any number of acres not ex-  
 6 ceeding ten in any such lot, farm or bed upon which he desires to  
 7 make such beds, with good and substantial stakes, set at suitable  
 8 distances, whereby the boundaries thereof may be clearly known  
 9 and distinguished, and of such length as to be at least two feet  
 10 above high water mark, and every such person who shall obtain  
 11 such license shall hold the same and have exclusive privilege  
 12 thereof to him, his heirs and assigns: *Provided*, That nothing  
 13 herein contained shall affect the rights of any owner or proprietor  
 14 of lands in which there may be creeks or inlets, or which may be  
 15 adjacent to any navigable waters; and nothing herein contained  
 16 shall be so construed as to authorize any person to appropriate to  
 17 his own use, or to stake off and inclose any natural oyster or clam  
 18 bed, or in any wise to infringe the common right of the citizens of  
 19 the state to any natural oyster or clam bed, or to obstruct the free  
 20 navigation of the waters aforesaid.

1858-'9, c. 33, s. 1.  
 1871-'2, c. 184.

Sec. 3167. Superior court may grant license to make oyster and clam beds.

The superior court is hereby authorized, in its discretion, to  
 2 grant license to any inhabitant of the state to make oyster and  
 3 clam beds, who shall apply to the court by petition in writing, de-  
 4 scribing therein particularly the place upon which he desires to  
 5 make such beds, not including therein more than ten acres, and  
 6 the said license shall be forfeited by the failure to use such beds, or  
 7 to keep them properly designated by stakes for the space of two  
 8 years.

1858-'9, c. 33, s. 2  
 1871-'2, c. 214.



**Sec. 3168. Injuring such beds a misdemeanor.**

1858-'9, c. 33, s. 3.

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.

**Sec. 3169. Penalties for injuring such beds.**1858-'9, c. 33, s. 4.  
1871-'2, c. 181, s. 4.

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 from the owner 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 penalties 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 before a justice of the peace, shall be fined not exceeding fifty dollars and imprisoned not exceeding thirty days: *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 Morehead City.

**Sec. 3170. To promote the growth of oysters in New river.**

1881, c. 46, ss. 1, 2.

It shall be unlawful for any person to remove oysters from natural oyster beds in New river from the fifteenth day of May to the first day of September in each year; and any person violating the provisions of this section, shall be guilty of a misdemeanor, and on conviction, shall be fined not less than twenty-five dollars for each and every offence.

**Sec. 3171. Regulating the size of the meshes of drag-nets and seines to be used in Neuse and Trent rivers and their tributaries.**

1881, c. 146, ss. 1, 2.

It shall be unlawful for any person to use any drag-net or seine with meshes of a less size than one and a quarter inch in the Neuse and Trent rivers, or in any of the tributaries thereof: *Provided*, however, that any person may use drag nets and seines with meshes of a less size, from the fifteenth day of January to the fifteenth day of May for the purpose of catching herring: *Provided, further*, that the provisions of this section shall not apply to the waters of the Neuse and its tributaries above the Wayne and Johnston county lines, and any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five nor more than fifty dollars for each and every offence.

**Sec. 3172. Regulating fishing in the waters of Pamlico and Tar rivers.**

For the purpose of regulating fishing in the waters of Pamlico 1881, c. 180, ss. 1, 2,  
2 and Tar rivers, the following lay days, or embargo days, to be in 3, 4, 5, 6.  
3 operation from the fifteenth day of February to the first day of  
4 May of each year, are hereby established, viz:  
5 It shall be unlawful for any person to fish with seines or nets of  
6 any kind, name or class, for shad or herring, from the tenth of  
7 May to the first day of June in each and every year. It shall be  
8 unlawful for any person, from the fifteenth day of February to the  
9 first day of May, to fish from twelve o'clock meridian of Saturday  
10 to sunrise of Monday morning of each week, any seine, set net,  
11 drift net, skim net, dip net, pod net, dutch net, or any other net of  
12 any name or kind whatsoever, or to leave open for the entrance of  
13 fish any pod or dutch net. It shall be unlawful for any person to  
14 set or drift a net in any seine-hole in use. It shall be unlawful  
15 for any person to rob any gill net or fish weir. Any person violating  
16 any of the provisions of this section shall be guilty of a misde-  
17 meanor, and, upon conviction, shall be fined not more than fifty  
18 dollars, (one half to go to the county, the other half to the informer,)  
19 or be imprisoned not more than thirty days.

**Sec. 3173. Prohibiting the use of drift nets in certain waters.**

It shall be unlawful to drift or fish any drift nets between the 1881, c. 274, ss. 1, 2.  
2 first day of February and the first day of May of each year, within  
3 two miles of the mouth of any river emptying into Albemarle  
4 sound, or within three miles of any seine-beach on the Albemarle  
5 or Croatan sounds while being fished, or within ten miles of Ocea-  
6 coke, Hatteras, Oregon or New inlets, or within ten miles of the  
7 Roanoke marshes, and any one violating the provisions of this sec-  
8 tion shall be guilty of a misdemeanor, and upon conviction thereof,  
9 shall be fined not less than fifty dollars or imprisoned not less than  
10 thirty days.

**Sec. 3174. Prohibiting the use of pod or dutch nets in the waters of the Neuse and Trent and their tributaries.**

It shall be unlawful for any person to use any pod or dutch 1881, c. 371, ss. 1, 2  
2 net in any of the waters of the Neuse or the Trent river, or their  
3 tributaries, and any person violating the provisions of this section  
4 shall be guilty of a misdemeanor, and shall be fined not less than  
5 five dollars nor more than fifty dollars, or imprisoned not more  
6 than thirty days for each day said net shall remain in said waters.

**Sec. 3175. To prevent the obstruction of the passage of fish in Hiwassee river.**

It shall be unlawful for any person to make, construct or build 1881, c. 11, ss. 1, 2, 3.  
2 any dam, drag-net or seine across more than three fourths of Hi-  
3 wassee River, so as to prevent or hinder the free passage of fish in  
4 said river, and any person making or using any dam, drag-net or

5 seine in said river, shall leave open and unobstructed to the free  
6 passage of fish at least one-fourth of said river, in width, on the  
7 side most favorable to the passage of fish. Any person offending  
8 against the provisions of this section, shall be guilty of a misde-  
9 meanor, and upon conviction, shall be fined not more than ten  
10 dollars for each twenty-four hours said river is so obstructed, one-  
11 half to the use of the school fund, the other half to the use of the  
12 county in which such violation occurs.

**Sec. 3176. Preventing the hauling of seines and drag-nets in Hiwassee, Nolley and Valley rivers in Cherokee county in certain seasons.**

1881, c. 12, ss. 1, 2.

It shall be unlawful to fish with seines or drag-nets in the Val-  
2 ley river, Nolley and Hiwassee rivers, in the county of Cherokee,  
3 from the fifteenth of March to the first day of June in each year,  
4 and any person violating the provisions of this section shall be  
5 guilty of a misdemeanor, and upon conviction, shall be fined not  
6 less than ten, nor more than fifty dollars, or imprisoned not less  
7 than ten, nor more than thirty days, at the discretion of the court.

**Sec. 3177. Prohibiting the obstruction of the waters of Little river.**

1881, c. 18, ss. 1.

It shall be unlawful for any person to place any obstruction in  
2 Little river, dividing the counties of Pasquotank and Perquimans,  
3 and allow it to remain for a longer time than ten days, and the  
4 person so doing shall be guilty of a misdemeanor, and upon con-  
5 viction shall be fined not less than five dollars, nor more than ten  
6 dollars, at the discretion of the court: *Provided*, that nothing in  
7 this section shall be so construed as to prohibit citizens from fish-  
8 ing with dip-nets in said river during the months of March and  
9 April in each and every year.

**Sec. 3178. Preventing the destruction of fish in Nantahali river and its tributaries.**

1881, c. 30, ss. 1, 3.

It shall be unlawful for any person to use any drag-net, basket  
2 or seine for the purpose of catching fish in Nantahela river or its  
3 tributaries, and any person or persons violating this section shall  
4 be guilty of a misdemeanor, and upon conviction, shall be fined not  
5 less than five nor more than twenty dollars for each offence, one-  
6 half to go to the school fund of the county where such offence is  
7 tried, the other half to the informer; and whenever the Nantahela  
8 river forms the dividing line between any counties, persons offend-  
9 ing against the the provisions of this section may be prosecuted  
10 and punished in the courts of any of the counties between which  
11 the said river constitutes the dividing line.

**Sec. 3179. Fish-ways on Haw river, in the county of Chatham.**

1881, c. 343, ss. 1, 2,

All persons maintaining dams across Haw river, in the county  
2 of Chatham shall, upon thirty days' notice from the board of com-  
3 missioners of said county, establish fish-ways in said dams; and if  
4 said fish-ways shall not be made within three months from the



5 service of the notice, the said persons so offending shall be guilty  
6 of a misdemeanor, and fined at the discretion of the court.

**Sec. 3180. Promotion of the fish interest in the Cape Fear river.**

Catching shad in the Cape Fear river from the fifteenth day of 1881, c. 288, s. 1.  
2 May to the first day of January in seines or nets shall be a misde-  
3 meanor, and any person convicted of the same shall be fined not  
4 less than ten dollars nor more than fifty dollars, or imprisoned not  
5 less than ten nor more than thirty days in the discretion of the court.

**Sec. 3181. To protect fish in Lumber river in the counties of Columbus and Robeson.**

It shall be unlawful for any person to use any seine, net or gig, 1881, c. 282, ss. 1, 2.  
2 or by muddying the water or by shooting, to catch, take or kill fish  
3 in the Lumber river or the waters tributary thereto, by any means  
4 except the ordinary rod, line and hook, from the first day of March  
5 to the first day of November in each and every year; and any per-  
6 son violating the provisions of this section shall be guilty of a mis-  
7 demeanor, and, upon conviction, shall pay a fine of forty dollars  
8 or be imprisoned not more than twenty days.

**Sec. 3182. Misdemeanor to use dynamite cartridge.**

Any person using the dynamite cartridge, or any other explosive 1879, c. 259, s. 1.  
2 agent that destroys both old and young fish alike, shall be guilty  
3 of a misdemeanor and upon conviction shall be fined not less than  
4 five dollars nor more than twenty-five dollars for every time such  
5 explosive agent is used.

**Sec. 3183. To remove the obstructions to the passage of fish, and to provide fish-ways.**

No person or corporation shall place or allow to remain in the 1879, c. 244, ss. 1, 2.  
2 South Fork river, from its mouth in Gaston county to its forks in 1881, c. 90.  
3 Catawba county, any obstruction to the free passage of fish up  
4 said stream; *Provided*, That this section shall not apply to mill  
5 dams where the owners thereof shall construct a sufficient fish-  
6 way over said dams at least ten feet wide which will allow fish to  
7 pass over said dams. *Provided further*, That this section shall not  
8 apply to dams in existence, or which may be erected for manufac-  
9 turing or milling purposes. The violation of this section shall be  
10 a misdemeanor, punishable by fine and imprisonment.

**Sec. 3184. To protect fish in Tyrrell county.**

No person shall throw or cause to be thrown into the waters 1881, c. 70, ss. 1, 2.  
2 known as the "Frying Pan," tributary to the Great Alligator river,  
3 in Tyrrell county, any fish offal in any quantities whatsoever, and  
4 every person offending against the provisions of this section shall  
5 also be guilty of a misdemeanor, and, on conviction, shall be fined  
6 a sum not to exceed fifty dollars or imprisonment not to exceed  
7 thirty days.

**Sec. 3185. To protect fish in the Seuppernong river in Tyrrell county.**

1881, c. 168, ss. 1, 2.

No person shall set any kind of a fish weir or pod net or fish net in the Seuppernong river using more than one-half of the channel of said river, nor within one-fourth of a mile of the public bridges at Columbia and the Cross Landing crossing said river, and every person offending against the provisions of this section shall be guilty of a misdemeanor, and on conviction shall be fined a sum not to exceed fifty dollars, or imprisoned not to exceed thirty days. All fines collected shall be applied to the school fund of the county.

**Sec. 3186. To prevent the destruction of fish in the waters of Black river and Six Runs, in the counties of New Hanover, Sampson, Cumberland, and in the waters of the Cape Fear and its branches.**

1871-'2, c. 152, ss. 1,  
2.  
1879, c. 283.  
1881, c. 369.

It shall be unlawful for any person to catch or destroy with seines, nets, firearms, bows and arrows, or by muddying or stirring the waters, or by striking any fish of any kind in the waters of Black or South rivers, in the counties of New Hanover, Sampson, Cumberland and Harnett, and of the waters of Six Runs in the counties of New Hanover and Sampson, and of the waters of the Cape Fear river in the counties of New Hanover and Brunswick, and of the north-east branch of the Cape Fear river in the county of New Hanover, between the fifteenth days of May and August of each year, and any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction before any justice of the peace in the county where the offence was committed, shall be fined not to exceed five dollars, which fine shall be paid to the treasurer of the county where the offence was committed, for the benefit of the school fund.

**Sec. 3187. To protect the fish interest in North Carolina.**

1880, c. 32.  
1880, c. 34, s. 1.  
1881, c. 21.  
1881, c. 250.  
1881, c. 320.

No person shall place or allow to remain in the Chowan river between Holliday's island and the Virginia line; in the Meherrin river between its mouth and the Virginia line; in the Roanoke river from the mouth of Cashie river to the Virginia line; in the Dan river from the crossing of the state line to a point nearest Danbury; in the Tar river from Washington to Louisburg; in the Neuse river from New Berne to Neuse station in Wake county; in Contentnea creek from its junction with the Neuse to the junction of Turkey and Moccasin creeks; in the Cape Fear river from Wilmington to the junction of Haw and Deep rivers and thence in Haw river to the line of Chatham and Alamance counties, and also in Deep river to the Randolph and Chatham line; in Rocky river from its mouth to the crossing of the Pittsboro and Ashboro road; in the New Hope river from its mouth to the Orange county line; in North East Cape Fear river from Wilmington to South Washington; in Black river from its mouth to the junction of the Co-

17 heras; in the South river from its junction with the Black river to  
 18 the crossing of the Fayetteville and Warsaw public road; in Lum-  
 19 ber river from the state line to the northern boundary of Robeson  
 20 county; in the Yadkin river from the state line to Patterson's fac-  
 21 tory; in Elk creek, a tributary of the Yadkin river, from its mouth  
 22 to Daniel Wheeler's in Watauga county; in Ararat river from its  
 23 mouth to the bridge at Mount Airy; in Linville river from its  
 24 mouth to Linville falls; in North Fork of Catawba from its mouth  
 25 to Turkey Cove; in Broad river from the state line to Reedy Patch  
 26 creek; in Green river from its mouth to its junction with North  
 27 Pacolet; in the Tennessee river from the state line to its junction  
 28 with the Nantahela; in Pigeon river from the state line to the  
 29 Forks of Pigeon; in the French Broad river from the state line to  
 30 Brevard's and in the Swannanoa river; in Toe river from the state  
 31 line to the confluence of the North and South Forks of Toe; in  
 32 New river from the state line to the point of divergence from the  
 33 western boundary line of Alleghany county; in Little river in  
 34 Johnston county from its junction with Neuse river in Wayne  
 35 county to the Wake county line; Cain river from the mouth of  
 36 same to mouth of Bolling creek in Yancey county, also Old Fields  
 37 of Toe on N. Toe river in Mitchell county; John's river from its  
 38 mouth to the forks of said river near Carrell Moore in Caldwell  
 39 county, any dam for mill or factory purposes unless the owner  
 40 thereof shall construct thereon at his own expense a sluice-way for  
 41 the free passage of fish, of a width not less than three feet nor more  
 42 than ten feet: *Provided*, that such sluice-way shall be constructed  
 43 according to plans and specifications to be furnished by the board  
 44 of agriculture, and shall not injure the water power of such owner:  
 45 *And provided further*, that in order to ascertain whether sluice-ways  
 46 will or will not injure the water power aforesaid the owner of such  
 47 dam may select two disinterested persons and the board of agricul-  
 48 ture two others who may select the fifth person to aid in the arbi-  
 49 tration and settlement of such complaint: *And provided further*,  
 50 this section shall not apply to Pigeon river in Haywood county.  
 51 *Provided further*, that it shall be lawful for any person to remove any  
 52 obstruction in the main channel of the Cape Fear river to the  
 53 width of one hundred feet, for the free passage of fish in the county  
 54 of Harnett. This proviso, however, shall not apply to any dam or  
 55 obstruction placed or kept up on said river by the Cape Fear iron  
 56 and steel company.

Sec. 3188. Sluice-ways to be constructed, penalty for failure; to be kept open,  
 penalty for failure, &c.

Such sluice-ways shall be constructed and placed upon such dams  
 2 by the owner thereof within sixty days after notice has been given  
 3 by the board of agriculture, under a penalty of one hundred dol-  
 4 lars per day for each day thereafter that such dam shall remain

1880, c. 34, s. 2.



5 without such sluice-way, and shall be kept open by him during  
6 the months of February, March, April, May, June, October and  
7 November, and at all other times when there is sufficient water to  
8 supply both the water-power and the sluice-way, a fine of fifty dol-  
9 lars per day for each day said sluice-way shall be allowed to re-  
10 main closed, and any person who shall fish with net, trap, hook  
11 and line, or who shall take in any way whatsoever, any fish within  
12 two hundred feet of said sluice-way shall be subject to a fine of one  
13 dollar for each fish so taken, or a fine of fifty dollars for each of-  
14 fence or imprisonment for thirty days.

**Sec. 3189. All obstructions to be opened, penalty for failure.**

1880, c. 34, s. 3.

No other obstruction to the passage of fish shall exist or be built  
2 between the designated points in the streams hereinbefore mentioned  
3 unless an opening of not less than twenty-five feet, and not more  
4 than seventy-five feet, embracing the main channel of said streams,  
5 shall be made by the owner of such obstructions within twenty days  
6 after notice from the board of agriculture to make such opening  
7 under penalty of fifty dollars per day for each day such obstruction  
8 shall remain unopened. Said notice shall be served by the sher-  
9 iff of the county, and his return shall be *prima facie* evidence of  
10 notice in any suit for such penalty.

**Sec. 3190. Fines and penalties collected under this chapter.**

1880, c. 34, s. 5.

One-half of the fines and penalties collected for violation of any of  
2 the provisions of the two preceding sections shall go to the informer  
3 and the other half to the public school fund of the county where  
4 suit is brought.

## CHAPTER NINETY.

### PARTITION.

**SECTION.**

- 3191. Appointment of commissioners.
- 3192. Oath of commissioners.
- 3193. Duty of commissioners.
- 3194. May employ a surveyor.
- 3195. Report of commissioners.
- 3196. Decree of confirmation, effect of.
- 3197. Where land lies in several counties.
- 3198. Sums to bear interest.
- 3199. Sums charged on minors, when payable.
- 3200. Compensation of commissioners; pen-  
alty.
- 3201. Costs, how paid.
- 3202. Sale of real estate; application, how  
made.
- 3203. When sale to be ordered, and terms.

**SECTION.**

- 3204. Notice of sale.
- 3205. Who authorized to sell.
- 3206. Lands required to be sold for public pur-  
poses; procedure.
- 3207. Proceeds to be secured to certain persons.
- 3208. Dower may be apportioned.
- 3209. Compensation of person appointed to  
sell.
- 3210. Proceedings when lands lie partly in this  
state and partly in another.
- 3211. Court may decree partition.
- 3212. Commissioners to be appointed, their  
duty; final decree; court shall compel  
parties to execute and deliver deeds;  
when court to declare decree conclusive.

SECTION.

- 3213. Decree for partition in another state, when enforced in this.
- 3214. Judge to decide in reference to law passed by another state.
- 3215. Pay of commissioners.
- 3216. Partition of personal property, how made.

SECTION.

- 3217. Confirmation of report.
- 3218. When sale ordered.
- 3219. Notice of sale, &c.
- 3220. Confirmation and effect of deed.
- 3221. Compensation of commissioners.
- 3222. Procedure as in special proceedings.

**Sec. 3191. Appointment of commissioners.**

The superior courts on petition of one or more persons claiming 1868-'9, c. 122, s. 1.  
 2 real estate as tenants in common, shall appoint three disinterested  
 3 commissioners to divide and apportion such real estate, or so much  
 4 thereof as the court may deem best, among the several tenants in  
 5 common.

Maxwell v. Maxwell, 8 Ire. Eq., 25; Holmes v. Holmes, 2 Jones Eq., 334; Watson v. Watson, 3 Jones Eq., 400; Purvis v. Purvis, 5 Jones, 22; Hinton v. Whitehurst, 68—316; Gregory v. Gregory, 69—522; Hinton v. Whitehurst, 71—66; Collins *ex parte*, 71—236; Keener v. Den, 73—132; Covington v. Covington, 73—168; Hinton v. Whitehurst, 73—157; McBryde v. Patterson, 73—478; Williams v. Hassell, 74—434; Medlin v. Steele, 75—154; Hinton v. Whitehurst, 75—178; McEachern v. Gilchrist, 75—196; Parks v. Siler, 76—191; Justice v. Guion, 76—442; Neely v. Neely, 79—478; Bell v. Adams, 81—118; Wahab v. Smith, 82—229; Pope v. Matthis, 83—169; Simpson v. Wallace, 83—477; Kelly v. McCallum, 83—563; Finch v. Baskerville, 85—205; Capps v. Capps, 85—408; see also R. C., c. 82, cases there cited.

**Sec. 3192. Oath of commissioners.**

The commissioners shall be sworn by a justice of the peace, or 1868-'9, c. 122, s. 2.  
 2 other person authorized to administer oaths, to do justice among  
 3 the tenants in common, in respect to such partition, according to  
 4 their best skill and ability.

**Sec. 3193. Duty of commissioners.**

The commissioners who shall be summoned by the sheriff, or 1868-'9, c. 122, s. 3;  
 2 any constable, must meet on the premises and partition the same  
 3 among the tenants in common, according to their respective rights  
 4 and interests therein, by dividing the land into equal shares in  
 5 point of value as nearly as possible, and for this purpose they are  
 6 empowered to sub-divide the more valuable tracts as they may  
 7 deem best, and to charge the more valuable dividends with such  
 8 sums of money as they may think necessary, to be paid to the div-  
 9 idends of inferior value, in order to make an equitable partition.

Wynne v. Tunstall, 1 Dev. Eq., 23; Samuel v. Zachery, 4 Ire., 377; Twitty v. Camp, Phil. Eq., 61; Pope v. Whitehead, 68—191; Pullen v. Heron Mining Co., 71—563; Collett v. Henderson 80—337; Waring v. Wadsworth, 80—345; Simmons v. Foscue, 81—86; Halso v. Cole, 82—161.

**Sec. 3194. May employ a surveyor.**

The commissioners are authorized to employ the county sur- 1868-'9, c. 122, s. 4;  
 2 veyor, or in his absence, or if he be connected with the parties,  
 3 some other surveyor, who shall make out a map of the premises  
 4 showing the quantity, courses and distances of each share, which  
 5 map shall accompany and form a part of the report of the com-  
 6 missioners.

**Sec. 3195. Report of commissioners.**

1868-'9, c. 122, s. 5.

The commissioners, within a reasonable time, not exceeding 2 sixty days after the notification of their appointment, shall make 3 a full and ample report of their proceedings, under the hands of 4 any two of them, specifying therein the manner of executing their 5 trust and describing particularly the land or parcels of land 6 divided, and the share allotted to each tenant in severalty, with 7 the sum or sums charged on the more valuable dividends to be 8 paid to those of inferior value. The report shall be filed in the 9 office of the superior court clerk, and if no exception thereto be 10 filed within twenty days, the same shall be confirmed: *Provided*, 11 *however*, That any party after confirmation may impeach the pro- 12 ceedings and decrees for mistake, fraud or collusion, by petition in 13 the cause.

Nicelar v. Barbrick, 1 D. & B., 257; Ashbee v. Cowell, Busb. Eq., 158; Bost *ex parte*, 3 Jones Eq., 482; Archibald v. Davis, 4 Jones, 133; in the matter of Yates, 6 Jones Eq., 306; Baird v. Baird, Phil. Eq., 317; Wood v. Parker, 63—379; Ruffin v. Cox, 71—253; University v. N. C. Railroad, 76—103; Blue v. Blue, 79—69; Pritchard v. Askew, 80—88; Waring v. Wadsworth, 80—345; Simmons v. Foscue, 81—86; White *ex parte*, 82—377; Alexander v. Robinson, 85—275; Thompson v. Peebles, 85—418.

**Sec. 3196. Decree of confirmation, effect of.**

1868-'9, c. 122, s. 6.

Such report when confirmed, together with the decree of con- 2 firmation, shall be enroled and certified to the register, and reg- 3 istered in the office of the county where such real estate is situated, 4 and shall be binding among and between the claimants, their 5 heirs and assigns.

Mills v. Witherington, 2 D. & B., 433; Stewart v. Mizell, 8 Ire. Eq., 242; Wright v. McCormick, 69—14; Wright v. McCormick, 77—158; Latta v. Vickers, 82—501; Cheatham v. Crews 83—313; Ivey v. McKinnon, 84—651.

**Sec. 3197. Where land lies in several counties.**

1868-'9, c. 122, s. 7.

In cases where the real estate lies in several counties, the peti- 2 tion may be exhibited in the superior court of any one of such 3 counties, in which a part thereof is situated.

**Sec. 3198. Sums to bear interest.**

1868-'9, c. 122, s. 8.

The sums of money due from the more valuable dividends shall 2 bear interest until paid.

Turpin v. Kelly, 85—399.

**Sec. 3199. Sums charged on minors, when payable.**

1868-'9, c. 122, s. 9.

When a minor to whom a more valuable dividend shall fall is 2 charged with the payment of any sum, the general guardian, if 3 there be one, must pay such sum whenever assets shall come into 4 his hands, and in case the general guardian shall have assets 5 which he did not so apply, he shall pay out of his own proper es- 6 tate any interest that may have accrued in consequence of such 7 failure.

Jones v. Cameron, 81—154; Turpin v. Kelly, 85—3 .



**Sec. 3200. Compensation of commissioners ; penalty.**

The commissioners shall be allowed, each of them, the sum of 1868-'9, c. 122, s. 10.  
 2 one dollar *per diem* for their services, and if, after accepting the  
 3 trust, they or any of them unreasonably delay or neglect to execute  
 4 the same, every such delinquent commissioner shall be liable to  
 5 the penalty of fifty dollars, to be recovered by action by the peti-  
 6 tioners.

**Sec. 3201. Costs, how paid.**

The compensation of the commissioners, the expenses incurred 1868-'9, c. 122, s. 11.  
 2 for surveying, and all fees and costs of the proceeding shall be paid  
 3 as the court may direct.

**Sec. 3202. Sale of real estate, application, how made.**

Application for the sale of real estate held in common may be 1868-'9, c. 122, s. 12.  
 2 made by petition preferred in the superior court of the county  
 3 where such real estate or some part thereof lies, by one or more of  
 4 the parties interested therein.

Holmes v. Holmes, 2 Jones Eq., 334; Gregory v. Gregory, 69—522; Keener v. Den, 73—132;  
 Allen v. Chappell, 78—238; Trull v. Rice, 85—327; Capps v. Capps, 85—408.

**Sec. 3203. When sale to be ordered, and terms.**

Whenever it appears by satisfactory proof that an actual parti- 1868-'9, c. 122, s. 13.  
 2 tion of the lands cannot be made without injury to some or all of  
 3 the parties interested, the court shall order a sale of the property  
 4 described in the petition, or any part thereof, on such terms as to  
 5 size of lots, place or manner of sale, time of credit and security for  
 6 payment of purchase money, as may be most advantageous to the  
 7 parties concerned, and, on the coming in of the report of sale and  
 8 confirmation thereof, and payment of the purchase money, the title  
 9 shall be made to the purchaser or purchasers at such time and by  
 10 such person as the court may direct.

Stewart v. Mizell, 8 Ire. Eq., 242; Long v. Holt, 68—53; Gregory v. Gregory, 69—522; McBryde  
 v. Patterson, 73—478; Williams v. Hassell, 74—434; Parks v. Siler, 76—191; Jones v. Hemphill,  
 77—42; Brandon v. Phelps, 77—44; Lord v. Beard, 79—5; Lord v. Meroney, 79—14; Hoff v. Craf-  
 ton, 79—592; Burgin v. Burgin, 82—193; Macay *ex parte*, 84—59; Trull v. Rice, 85—327; Kemp v  
 Kemp, 85—491.

**Sec. 3204. Notice of sale.**

The notice of sale, under this proceeding, shall be the same as 1868-'9, c. 122, s. 14.  
 2 required by law on sales of real estate by sheriffs on execution.

**Sec. 3205. Who authorized to sell.**

The court may authorize any officer thereof, or any other com- 1868-'9, c. 122, s. 15.  
 2 petent person, to be designated in the decree of sale, to sell the real  
 3 estate under this proceeding. Such officer or person shall file his  
 4 reports of sale, giving full particulars thereof, within ten days after  
 5 the sale in the office of the clerk of the superior court, and if no  
 6 exception thereto is filed within twenty days, the same shall be

7 confirmed: *Provided, however,* that any party, after the confirma-  
 8 tion, shall be allowed to impeach the proceedings and decrees for  
 9 mistake, fraud or collusion, by petition in the cause.

*The Judges v. Deans*, 2 Hawks., 93; *McNeil v. Morrison*, 63—508; *Havens v. Lathene*, 75—505;  
*Cox v. Blair*, 76—78; *Kerr v. Brandon*, 84—128; *McLean v. Patterson*, 84—127.

**Sec. 3206. Lands required to be sold for public purposes; procedure.**

1868-'9, c. 122, s. 16.

When the lands of joint tenants or tenants in common are re-  
 2 quired for public purposes, one or more of such tenants, or their  
 3 guardians for them, may file a petition verified by oath, in the  
 4 superior court of the county where the lands, or any part of them  
 5 lie, setting forth therein that the lands are required for public pur-  
 6 poses, and that their interests would be promoted by a sale thereof;  
 7 whereupon the court, all proper parties being before it, and the  
 8 facts alleged in the petition being ascertained to be true, shall  
 9 order a sale of such lands, or so much thereof as may be necessary,  
 10 in the manner and on the terms it deems expedient. And the ex-  
 11 penses, fees and costs of this proceeding shall be paid in the discre-  
 12 tion of the court.

**Sec. 3207. Proceeds to be secured to certain persons.**

1868-'9, c. 122, s. 17.

When a sale is made under this chapter, and any party to the  
 2 proceedings be an infant, a married woman, *non compos*, impris-  
 3 oned, or beyond the limits of the state, it shall be the duty of the  
 4 court to decree the share of such party, in the proceeds of sale, to  
 5 be so invested or settled that the same may be secured to such  
 6 party or his real representative.

*Scull v. Jernigan*, 2 D. & B. Eq., 144; *Gillespie v. Foy*, 5 Ire. Eq., 280; *Dudley v. Winfield*,  
*Busb. Eq.*, 81; *Bateman v. Latham*, 3 Jones Eq., 35; *Jones v. Edwards*, 8 Jones, 336; *Allison v.*  
*Robinson*, 78—222; *Hall v. Short*, 81—273; *Burgin v. Burgin*, 82—196.

**Sec. 3208. Dower may be apportioned.**

1868-'9, c. 122, s. 18.

When there is dower or right of dower on any land, petitioned  
 2 to be sold under this chapter, the woman entitled to dower or right  
 3 of dower therein, may join in the petition; and on a decree of sale,  
 4 the interest of one-third of the proceeds shall be secured and paid  
 5 to her annually; or, in lieu of such annual interest, the value of  
 6 an annuity of six per cent. on such third, during her probable life,  
 7 shall be ascertained and paid out of the preeceeds to her absolutely.

**Sec. 3209. Compensation of person appointed to sell.**

1868-'9, c. 122, s. 19.

In sales of real estate under this chapter, the allowance for ser-  
 2 vices, in making sale and title, to the officer or person appointed  
 3 to sell, shall be as follows: For sales of five hundred dollars or  
 4 less, not more than ten dollars; for sales of two thousand and not  
 5 less than five hundred dollars, not more than two per centum;  
 6 and, when the allowance shall amount to forty dollars, any addi-  
 7 tional compensation shall not exceed the rate of one per centum.

**Sec. 3210. Proceedings, when lands lie partly in this state and partly in another.**

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 court in this state.

1868-'9, c. 122, s. 20.

**Sec. 3211. Court may decree partition.**

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.

1868-'9, c. 122, s. 21.

**Sec. 3212. Commissioners to be appointed, their duty; final decree; court shall compel parties to execute and deliver deeds; when court to declare decree conclusive.**

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 charge the more valuable dividends with money to be paid to the tenants of a less valuable dividend to

1868-'9, c. 122, s. 22.



13 make equality of partition, and they shall report their proceedings  
14 as they may be directed, and the report shall contain a valuation  
15 of all the estate in this and other states, and the division among  
16 the co-tenants, according to such valuation; and the court may  
17 confirm such report, or on sufficient cause shown, may correct and  
18 alter, or set it aside and order a new commission; and where any  
19 sum is charged upon a more valuable dividend, the court may di-  
20 rect, if the tenant taking such a dividend be an infant, that  
21 the sum charged shall not be paid till a future day, and the  
22 same shall bear interest at a rate not greater than allowed in this  
23 state: *Provided*, that the tenant of the larger dividend may dis-  
24 charge himself from accruing interests by paying the whole  
25 amount due at any time; and the sum due from the greater  
26 dividend shall be a charge on the land into whose hands so-  
27 ever it may come, although it may be taken without notice; and  
28 the court shall, upon the confirmation of any report of the com-  
29 missioners, make a final decree. And where all the parties are  
30 within the jurisdiction of this court, the court shall, by the usual  
31 proceedings, direct and compel the parties to execute and deliver  
32 deeds and assurances, sufficient, by the laws of this state and other  
33 states, to give the partition full force and validity in all the states;  
34 and in case any of the parties are under such disabilities that they  
35 cannot execute such assurances, or are without the jurisdiction of  
36 the court, then the court, upon receiving evidence from the plain-  
37 tiff, that, by a law of the other state in which lie the parts of the  
38 lands described in the petition to be without this state, the decree  
39 can have effect thereon, shall direct the decree to be enroled, and  
40 a copy of it shall be registered in the register's office of all the  
41 counties within this state, where any of the lands lie; and a copy  
42 shall also be furnished to the plaintiff or other party interested,  
43 duly certified to the end that, as to the lands without this state, it  
44 may be carried into effect in the state in which the said lands may  
45 be, in such manner as said state may direct; and on satisfactory  
46 evidence being made to the court in this state that the decree may  
47 have full effect by the law of such other state, the court in this  
48 state shall by its decree declare the partition in the land in this  
49 state to be final and conclusive; and the decree shall be firm and  
50 irreversible, as hereinafter provided; and shall, on registration as  
51 aforesaid, pass to the tenants the title in severalty to the lands in  
52 this state, in the same manner as if all the lands mentioned in the  
53 decree were situate within this state.

**Sec. 3213. Decree for partition in another state when enforced in this state.**

1868-'9, c. 122, s. 23.

Where real estate may be partly in this state and partly in an-  
2 other state, and the deceased person from whom it was derived by  
3 decent or devise, was, at the time of his death, a resident of some  
4 other state, or was a resident of none of the states in which he held

5 lands, and in this last case, the land of which he was seized in  
6 this state were of less value than the lands of which he was seized  
7 in another state, the courts of the state in which such deceased per-  
8 son had his residence at his death, or in which he held lands of  
9 greater value than those he held in this state shall have full power  
10 and authority, under any law passed by the legislature of such  
11 state, substantially in accordance with the provisions herein made  
12 on this subject, to decree partition of the lands in this state, to-  
13 gether with those within such other state, in the same manner as  
14 if the whole real estate were within the jurisdiction of such court,  
15 and in the same manner as the courts in this state are directed and  
16 authorized to do by the preceding section, as to the lands of de-  
17 ceased persons resident here at their death, or having lands of  
18 greater value here than in any other state, and in case of any per-  
19 son having an interest in the final decree, made as aforesaid in an-  
20 other state, as to lands in this state, shall, within twelve months  
21 after the same may be entered up in the courts of said state, pro-  
22 duce the records and proceedings of such courts of record duly  
23 certified to a superior court of any county in this state, where any  
24 of the lands of this state lie, the court, on petition *ex parte* in such  
25 case, shall order such proceedings to be entered of record in the  
26 court of this state, and order that the said decree shall be of the  
27 same force and validity as if it had been a decree of the court in  
28 this state in which the petition is filed, upon a petition and regu-  
29 lar proceedings had thereon, and the decree of the court of such  
30 other state, and the proceedings on it by petition in the supe-  
31 rior court in this state confirming it and giving it validity, being  
32 enroled in the said court of this state and registered in all the  
33 counties where the lands lie, shall pass the lands in this  
34 state according to the decree, and shall vest estates in sever-  
35 alty therein declared, as to said lands in the same manner and  
36 with the same effect in law, as if the lands in this state had been  
37 so allotted on a petition for partition, according to the provisions  
38 of the former sections of this chapter.

**Sec. 3214. Judge to decide in reference to law passed by another state.**

Where a copy of a decree and proceedings of a suit in any other  
2 state shall be produced, as in the preceding section, and also when  
3 it is necessary for a superior court to be certified that its decree of  
4 a partition of lands without this state and within the territory of  
5 another state, can have effect therein, it shall be competent for the  
6 judge of the superior court before which the existence of a law in  
7 such other state is to be proved, to decide whether any act of the  
8 legislature of such state has been passed. 1868-'9, c. 122, s. 24.

**Sec. 3215. Pay of commissioners.**

The commissioners appointed to divide lands lying in this and 1868-'9, c. 122, s. 26.

2 another state, shall be entitled to three dollars per day for their  
3 services; which, with all fees, expenses and costs, shall be paid as  
4 the court may direct.

**Sec. 3216. Partition of personal property, how made.**

1868-'9, c. 122, s. 27.

When any persons entitled as tenants in common of personal  
2 property, desire to have a division of the same, they, or either of  
3 them, may file a petition in the superior court for that purpose;  
4 and the court, if it think the petitioners entitled to relief, shall ap-  
5 point three disinterested commissioners, who, being first duly  
6 sworn, shall proceed within twenty days after notice of their ap-  
7 pointment, to divide such property as nearly equal as possible  
8 among the tenants in common.

Powell v. Hill, 64—169; Grim v. Wicker, 80—343.

**Sec. 3217. Confirmation of report.**

1868-'9, c. 122, s. 28.

The commissioners shall report their proceedings under the  
2 hands of any two of them, and file their report in the office of the  
3 clerk of the superior court within five days after the petition was  
4 made, and if no exception thereto be filed within twenty days, the  
5 same shall be confirmed: *Provided, however,* that any party, after  
6 confirmation, shall be allowed to impeach the proceedings and de-  
7 crees for mistake, fraud or collusion, by petition in the cause.

**Sec. 3218. When sale ordered.**

1868-'9, c. 122, s. 29.

If a division of such personal property cannot be had without  
2 injury to some of the parties interested, and a sale thereof be  
3 deemed necessary, the court shall order a sale to be made by some  
4 officer of the court or other competent person; who shall file his  
5 report of sale in the office of the clerk of the court within ten days  
6 after sale, and if no exception thereto be filed within twenty days,  
7 the same shall be confirmed: *Provided, however,* that any party, af-  
8 ter confirmation, shall be allowed to impeach the proceedings and  
9 decrees for mistake, fraud or collusion, by petition in the cause.

Powell v. Hill, 64—169; Miller v. Feezor, 82—192; Kerr v. Brandon, 84—128.

**Sec. 3219. Notice of sale, &c.**

1868-'9, c. 122, s. 30.

The sale shall be made after twenty days' notice, by advertise-  
2 ment in three or more public places in the county, and shall be on  
3 such terms as the court may direct.

**Sec. 3220. Confirmation and effect of deed.**

1863-'3, c. 122, c. 31.

Upon confirmation of the report, the court shall secure to each  
2 tenant in common his ratable share in severalty of the proceeds of  
3 sale; and the deed of the officer or person appointed to sell, when  
4 such deed is directed to be made, shall convey to the purchaser  
5 such title and estate in the property as the tenants in common had.



**Sec. 3221. Compensation of commissioners.**

The commissioners nominated to make a division, and the officer  
 2 or person appointed to make a sale of personal property held in  
 3 common, shall receive for their services a sum to be fixed by the  
 4 court and taxed in the bill of fees and costs, all of which shall be  
 5 paid by the parties in such manner as the court may decree.

1868-'9, c. 122, s. 32.

**Sec. 3222. Procedure as in special proceedings.**

The procedure in all cases by petition, under this chapter, shall  
 2 be the same, in all respects, as prescribed by law in other special  
 3 proceedings, except as modified by this chapter.

1868-'9, c. 122, s. 33.

## CHAPTER NINETY-ONE.

**PENITENTIARY, PRISONERS AND CONVICTS.**

## SECTION.

3223. Penitentiary governed by a board of five directors; term of office of directors; compensation.
3224. Convicts to be conveyed from place of conviction to place where they are to be worked, under the direction of the board.
3225. Unlawful for directors to furnish supplies or materials for building of penitentiary or support of convicts.
3226. How lands for construction of penitentiary may be condemned.
3227. Labor of convicts to be utilized so as to lessen public expense.
3228. Within what time sheriff shall send convict to the penitentiary.
3229. Farming out of convicts; guard to be provided; bond for safe keeping.
3230. Compensation for apprehending escaped convicts.
3231. Compensation to sheriffs for bringing convicts to penitentiary.
3232. Sheriff to be paid by state treasurer on warrant of auditor.
3233. Sheriff to file copy of verified account with the board of commissioners of his county.
3234. State not liable for expense of maintaining convicts until they are received at penitentiary.
3235. When lunatic convict may be transferred to insane asylum.
3236. Spirituous liquors forbidden to be sold within the penitentiary.
3237. Penalty for persons conveying weapons to prisoner.
3238. Recaptured convicts to serve out their full term.
3239. Convicts attempting to escape, or resisting guard, to be disciplined.
3240. Rules and regulations for enforcing discipline.

## SECTION.

3241. Every infraction of the rules to be recorded in a book to be kept for that purpose.
3242. Divine service to be provided for the convicts.
3243. Children of convicts, how provided for.
3244. County and municipal authorities may farm out convicts.
3245. County and municipal authorities empowered to contract with directors of penitentiary for employment of convict labor.
3246. Board of directors of penitentiary required to hire convicts to such authorities in certain cases; expenses of such convicts, how paid; penalty for permitting convicts to escape.
3247. Hire of convicts, when and how paid; penalty for failing to pay according to contract.
3248. County and municipal authorities may appoint and remove agents to superintend the construction and improvements of streets and highways; taxes may be levied.
3249. Convicts so hired out to be under the control of the sheriff or other state officer.
3250. Party hiring convicts may use means to prevent their escape.
3251. Prisoner escaping to be guilty of a misdemeanor.
3252. Keepers of jails to receive and keep prisoners of United States; fees same as for state prisoners.
3253. When jail destroyed prisoners sent to jail of adjoining county.
3254. Or if there be no jail, or an unsafe one, courts may commit to jail of an adjoining county.
3255. Authority and liability of ministerial officers and jailers.

## SECTION.

3256. Sheriff apprehending an escape, how to obtain guard; compensation of guard.  
 3257. Prisoners for crime to pay jail charges.  
 3258. Expense of guarding and removing prisoners, by what county paid.  
 3259. Prisoners may buy necessities; penalty on jailers for injuring prisoners.  
 3260. Jailer to cleanse jail and furnish diet to prisoners.  
 3261. Suitable bed-clothing provided for prisoners.  
 3262. Prison bounds for health of prisoners, laid out by county commissioners; bond to keep bounds.

## SECTION.

3263. Bond in criminal cases returned to court and deemed a recognizance.  
 3264. In civil cases on *mesne process* to stand as security for final judgment.  
 3265. In case of imprisonment of final process, bond deemed a judgment; on breach of bond, debtor excluded from bounds.  
 3266. Prisoners, how transferred to sheriffs' successors.  
 3267. Prisoners to be confined in proper apartments; penalty for confining otherwise.

**Sec. 3223. Penitentiary governed by a board of five directors; term of office of directors; compensation.**

1879, c. 333, s. 2.  
 1881, c. 289, s. 3.

The penitentiary and convicts shall be under the direction of a board of five directors to be appointed by the governor, with the advice and consent of the senate; and the members of said board shall hold office for four years, and shall receive as compensation the sum of three hundred dollars per annum: *Provided, however,* that some one of said board shall visit and inspect convicts employed outside the penitentiary as often as practicable, and receive such compensation therefor as the board may fix.

*People ex rel. Welker v. Bledsoe*, 68—457.

**Sec. 3224. Convicts to be conveyed from place of conviction to place where they are to be worked under the direction of the board.**

1879, c. 233, s. 5.  
 1881, c. 289, s. 2.

The board of directors shall as far as practicable make arrangements for the conveying of convicts from the places where convicted, direct to the place where they are to be worked, when it would be to the interest of the state so to do.

**Sec. 3225. Unlawful for directors to furnish supplies or materials for building of penitentiary, or support of convicts.**

1870-'71, c. 191, s. 9.  
 1873-'4, c. 158, s. 20.  
 1879, c. 333, s. 6.

It shall be unlawful for any of the directors to furnish any of the supplies or materials, directly or indirectly, for the building of the penitentiary or the support of the convicts, or for the use of the penitentiary.

**Sec. 3226. How lands for construction of penitentiary may be condemned.**

1868-'9, c. 238, s. 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 board of directors at a valuation made by five disinterested persons, or a majority of them, to be appointed by the board of 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

11 either party to this proceeding may have an appeal to the superior  
12 court. The award shall, on its final settlement, be paid by the  
13 board of directors.

**Sec. 3227. Labor of convicts to be utilized so as to lessen the public expense.**

The board of directors shall in every instance where possible, 1863-'9, c. 238, s. 6.  
2 make use of the labor of the convicts in the preparation of the ma-  
3 terial and the erection of the cells and wall, in order to lessen the  
4 public expense, and that they be allowed to use all proper and  
5 humane means to prevent their escape.

**Sec. 3228. Within what time sheriff shall send convict to the penitentiary.**

The sheriff, having in charge any prisoners sentenced to the pen- 1869-'70, c. 180, s. 3  
2 itentiary shall proceed to send the same to the penitentiary or  
3 place of assignment, within five days after the adjournment of the  
4 court at which they were sentenced: *Provided*, that no appeal has  
5 been taken to the supreme court.

*State v. Miller, 75—73; State v. McNeill, 75—15; State v. Driver, 78—423.*

**Sec. 3229. Farming out of convicts; guard to be provided; bond for safe keeping.**

The board of directors is authorized and directed to farm out to 1871-'2, c. 202, s. 8.  
2 railroad companies or other public corporations, every able-bodied  
3 convict who cannot be employed to advantage within the peniten-  
4 tiary, on such terms as will best promote the interest of the state,  
5 for consideration not less than food and clothing. And the party  
6 so hiring shall provide a good and sufficient guard to prevent the  
7 escape of such convicts, and shall give bond for their safe keeping  
8 and proper treatment and return to the penitentiary on the termi-  
9 nation of the contract: *Provided*, That no convict shall be farmed  
10 out who has been sentenced on a charge of murder, manslaughter,  
11 rape, attempt to commit rape, or arson.

**Sec. 3230. Compensation for apprehending escaped convicts.**

The board of directors is authorized to recommend a reasonable 1871-'2, c. 202, s. 11.  
2 compensation to any one for the apprehension and return of any  
3 escaped convict to the penitentiary, on which recommendation the  
4 governor is authorized to give his warrant on the treasurer for the  
5 amount so recommended.

**Sec. 3231. Compensation to sheriffs for bringing convicts to penitentiary.**

The sheriffs of the several counties shall be allowed two dollars 1874-'5, c. 107, s. 1.  
2 per day, and actual necessary expenses for conveying convicts to  
3 the penitentiary or place of assignment; also one dollar per day  
4 and actual necessary expenses for each guard, not to exceed one  
5 guard for every three prisoners, as the sheriff upon affidavit before  
6 the clerk of the superior court of his county shall swear to be  
7 necessary for the safe conveyance of said convicts.

*Taylor v. Adams, 66—338.*



**Sec. 3232. Sheriff to be paid by state treasurer on warrant of auditor.**

1874-'5, c. 107, s. 2.

Upon filing such affidavit with the auditor, together with a fully itemized account, to be sworn to before the auditor, of the number of days requisite for coming and returning, and of the actual expenses for conveying said convicts and of the guard necessary for their safe keeping, the auditor shall be required to audit such verified claims of the sheriff, and the treasurer to pay all such warrants properly drawn upon him out of any moneys in the treasury not otherwise appropriated.

**Sec. 3233. Sheriff to file copy of verified account with the board of commissioners of his county.**

1874-'5, c. 107, s. 3.

The sheriff shall file with the board of commissioners of his county a copy of his affidavit as to necessary guard, together with a copy of his itemized account of expenses, both certified to by the auditor as true copies of those on file in his office, or be guilty of a misdemeanor.

**Sec. 3234. State not liable for expense of maintaining convicts until they are received at penitentiary.**

1870-'1, c. 124, s. 3.

The state shall not be held liable for the expense of maintaining convicts until they shall have been received by the penitentiary authorities, nor shall any moneys be paid out of the treasury for support of convicts prior to such reception.

**Sec. 3235. When lunatic convict may be transferred to insane asylum.**

1871-'2, c. 212.

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.

**Sec. 3236. Spirituous liquors forbidden to be sold within the penitentiary.**

1873-'4, c. 158, s. 11.

Any person who shall bring into or sell within the penitentiary enclosure any spirituous liquors, not authorized by the physician for the use of the hospital, and every overseer, guard or officer employed in or about the prison, who shall suffer it knowingly to be brought in or sold, contrary to the foregoing provision, shall be guilty of a misdemeanor, and, on conviction thereof before any justice of the peace of the county of Wake, shall be fined not less than twenty-five dollars or imprisoned more than thirty days, and if an officer or employee of the institution, shall be dismissed.

**Sec. 3237. Penalty for persons conveying weapons to prisoner.**

Any person who shall convey to or from any convict any letters or  
 2 oral messages, who shall convey to them any weapon or instrument  
 3 by which to effect an escape, or that will aid them in an assault or in-  
 4 surrection, or who shall trade with a convict for his clothing or  
 5 stolen goods, or who shall sell to him any article forbidden them  
 6 by prison rules, shall be guilty of an offence, and on conviction  
 7 thereof in a court of justice be imprisoned or fined at the discre-  
 8 tion of the court: *Provided, however,* that when murder, an assault  
 9 or an escape is effected, with means furnished the convicts, the per-  
 10 son convicted of furnishing the means shall be sentenced to not  
 11 less than four years' hard labor in the penitentiary. 1873-'4, c. 153, s. 12.

**Sec. 3238. Recaptured convicts to serve out their full term.**

Any convict who shall effect an escape shall, on his recapture, be  
 2 required to make up the full term for which he was sentenced, and  
 3 shall in no case be discharged until he has served in the prison the  
 4 full term of his sentence. 1873-'4, c. 153, s. 13.

**Sec. 3239. Convicts attempting to escape, or resisting guard, to be disciplined.**

When a convict or several combined shall offer violence to any  
 2 officer, overseer or guard, or to any convict, or attempt to do any  
 3 injury to the prison building or the workshops, or shall attempt to  
 4 escape or shall resist or disobey any lawful command, the officer,  
 5 overseer or guard, shall use any means necessary to defend him-  
 6 self, to enforce the observance of discipline, to secure the person of  
 7 the offender and to prevent an escape. 1873-'4, c. 153, s. 14.

**Sec. 3240. Rules and regulations for enforcing discipline.**

The board of directors are authorized to adopt such rules and  
 2 regulations for enforcing discipline as their judgment may indi-  
 3 cate, not inconsistent with the constitution of the state. And they  
 4 shall print and post the same with the following section, in the  
 5 cells of the convicts, and the same shall be read to every convict  
 6 in the penitentiary, when received. 1873-'4, c. 153, s. 15

**Sec. 3241. Every infraction of the rules to be recorded in a book kept for that purpose.**

The board of directors shall require to be kept a book in which  
 2 shall be entered a record of every infraction of the published rules  
 3 of discipline with the name of the prisoner so guilty, and the pun-  
 4 ishment inflicted therefor, which record shall be submitted to the  
 5 directors at their monthly meeting, and every prisoner who may  
 6 have been sentenced for a term of years, who shall at the end of  
 7 each month have no infraction of the discipline so recorded against  
 8 him, shall for the first month be entitled to a diminution of one  
 9 day from the time he was sentenced to the penitentiary; and if at 1873-'4, c. 153, s. 16.

10 the end of the next month no infraction of the discipline is re-  
 11 corded against him, he shall be entitled to two additional days'  
 12 diminution from his sentence, and if he shall continue to have no  
 13 such record against him a third month, his time shall be shortened  
 14 three additional days, and he shall be entitled to three days dimi-  
 15 nution of time from his sentence for each subsequent month he  
 16 shall so continue in his good behavior, and for every ten days he  
 17 shall thus become entitled, he shall have a further reward of one  
 18 dollar placed to his credit, with the warden, to be paid to him on  
 19 his discharge or sent to his family as he may elect; and for every  
 20 five dollars of commutation he shall be entitled to five additional  
 21 days diminution; and it shall be the duty of the warden to discharge  
 22 such convict from the penitentiary when he shall have served the  
 23 time of his sentence less the number of days he may be entitled to  
 24 have deducted therefrom, in the same manner as if no deduction  
 25 had been made: *Provided*, if such convict shall be guilty of a vio-  
 26 lation of the printed and published rules of the prison after he  
 27 shall, as provided in this section, have become entitled to a dimi-  
 28 nution of his term of service to which he has been sentenced, the  
 29 directors shall have the power to deprive, at their discretion, such  
 30 convict of a portion or all (according to the flagrance of such vio-  
 31 lation of discipline) of the diminution of term of sentence or com-  
 32 mutation to which he had previously been by this section entitled.  
 33 Any convict who shall make an assault on any officer, overseer or  
 34 guard, or who shall be engaged in an insurrection, or make an at-  
 35 tempt to escape, shall not be entitled to the benefits of this section.

**Sec. 3242. Divine service to be provided for the convicts.**

1873-'4, c. 158, s. 18.

The board of directors is authorized to provide for divine service  
 2 for the convicts each Sunday if possible, and to secure the visits of  
 3 some minister at the hospital to administer to the spiritual wants  
 4 of the sick, and an appropriation of not more than five hundred  
 5 dollars *per annum* may be made for these purposes.

**Sec. 3243. Children of convicts, how provided for.**

1873-'4, c. 153, s. 19.

Any children who may be born of a convict in the penitentiary  
 2 that shall not be taken in charge when arrived at an age suitable  
 3 to be separated from the mother by some of its kindred or other  
 4 responsible party shall, on the application of the deputy warden  
 5 to the clerk of the superior court of the county of Wake, be dis-  
 6 posed of as the law provides in the case of other children whose  
 7 parents are dead or unable to provide for them.

**Sec. 3244. County and municipal authorities may farm out convicts.**

1876-'7, c. 196, s. 1.  
 1879, c. 218.

The boards of commissioners of the several counties, within their  
 2 respective jurisdictions, or such other county authorities therein as  
 3 may be established; and also the mayor and intendant of the sev-



4 eral cities and towns of the state, shall have power to provide under  
 5 such rules and regulations as they may deem best for the employ-  
 6 ment on the public streets, public highway, public works, or other  
 7 labor for individuals or corporations, of all persons imprisoned in  
 8 the county jails of their respective counties, cities and towns, upon  
 9 conviction of any crime or misdemeanor, or who may be commit-  
 10 ted to jail for failure to enter into bond for keeping the peace or  
 11 for good behaviour, and who fails to pay all the costs which he is  
 12 adjudged to pay, or to give good and sufficient security therefor:  
 13 *Provided, however,* That such prisoner or convict shall not be de-  
 14 tained beyond the time fixed by the judgment of the court. *Pro-*  
 15 *vided further,* That the amount realized from hiring out such per-  
 16 sons shall be credited to them for the fine and bill of costs in all  
 17 cases of conviction. *And provided further,* That it shall not be law-  
 18 ful to farm out any such convicted person who may be imprisoned  
 19 for the non-payment of a fine, or as punishment imposed for the  
 20 offence of which he may have been convicted, unless the court  
 21 before whom the trial is had shall in its judgment so authorize.

State v. Shaft, 78—464; see 1866-'7, c. 30; 1872-'3, c. 174, s. 10; 1874-'5, c. 113.

**Sec. 3245. County and municipal authorities empowered to contract with direc-  
 tors of penitentiary for employment of convict labor.**

If shall be lawful for the board of commissioners of any county, 1881, c. 127, s. 1.  
 2 and likewise for the corporate authorities of any city or town, to  
 3 contract in writing with the board of directors of the penitentiary  
 4 for the employment of such convicts as by existing laws may be  
 5 hired to railroad companies, upon the highways or any of them,  
 6 or the streets or any of them, for the construction or improvement  
 7 of the same, of the county, city or town whose authorities shall so  
 8 hire such convicts.

**Sec. 3246. Board of directors of penitentiary required to hire convicts to such  
 authorities in certain cases; expenses of such convicts, how paid; penalty for  
 permitting convicts to escape.**

Upon application to them it shall be the duty of the board of 1881, c. 127, s. 2.  
 2 directors of the penitentiary to hire to the board of commissioners  
 3 of any county, and to the corporate authorities of any city or  
 4 town, for the purpose specified in the preceding section, such con-  
 5 victs as may lawfully be hired for service outside the penitentiary,  
 6 as shall not at the time of such application be hired for service  
 7 outside the penitentiary; but the convicts hired for service upon  
 8 the highways and streets shall be fed, clothed and quartered while  
 9 so employed, by the board of directors or managers of the peniten-  
 10 tiary as in case of the hiring convicts to railroad companies under  
 11 existing laws, and if any person charged in any way with the con-  
 12 trol or management of such convicts, or any of them, shall negli-  
 13 gently permit them to escape, or shall maltreat them, or any of  
 14 them, every person so offending shall be guilty of a misdemeanor,

15 and upon conviction in the superior court, shall be fined or im-  
16 prisoned in the discretion of the court; but this provision shall  
17 not be held to relieve any person from any criminal liability under  
18 existing laws: *Provided*, that nothing in this section shall be con-  
19 strued to authorize the board of directors to reduce the number of  
20 convicts now allowed by law to the railroads of the state in which  
21 the state has an interest.

**Sec. 3247. Hire of convicts, when and how paid; penalty for failing to pay according to contract.**

1881, c. 127, s. 3.

The board of commissioners of any county, and the corporate au-  
2 thorities of any city or town so hiring such convicts, shall pay into  
3 the treasury of the state for the labor of any convict so hired a sum of  
4 money equal to the average cost in money of feeding, clothing,  
5 guarding and transporting such convicts to and from the place of  
6 employment for the town of such hiring, and the money so to be  
7 paid at such times as may be agreed upon in the contract of hire,  
8 and if any such county, city or town shall fail to pay the money  
9 due for such hiring, the same shall bear interest from the time it  
10 shall become due until paid, at the rate of six *per centum per annum*,  
11 if such rate is agreed upon in such written contract, and an action  
12 to recover any sum of money so due and imposed may be brought  
13 by the attorney-general in the superior court of the county of Wake,  
14 in the name of the state.

**Sec. 3248. County and municipal authorities may appoint and remove agents to superintend the construction and improvement of streets and highways; taxes may be levied.**

1881, c. 127, s. 4.

The board of commissioners of any county, and the corporate  
2 authorities of any city or town so hiring such convicts, shall have  
3 power to appoint and remove at will all such necessary agents to  
4 superintend the construction or improvement of such highways  
5 and streets as they may deem proper, and to pay the costs and ex-  
6 penses incident to such hiring, may levy taxes and raise money as  
7 in other respects.

**Sec. 3249. Convicts so hired out to be under control of the sheriff or other state officer.**

1876-'7, c. 196, s. 2.

All convicts hired out by the county or other municipal author-  
2 ities shall, at all times, be under the supervision and control,  
3 as to their government and discipline, of the sheriff, or his deputy,  
4 of the county in which he was so convicted and imprisoned, and  
5 the sheriff, or his deputy, shall be deemed a state officer for the  
6 purpose of this section.

**Sec. 3250. Party hiring convicts may use means to prevent their escape.**

The party in whose service said convicts may be, may use the  
 2 necessary means to hold and keep them in custody, and to prevent  
 3 their escape.

1876-'7, c. 196, s. 3.

**Sec. 3251. Prisoner escaping to be guilty of a misdemeanor.**

Any prisoner who shall be removed from the prison of the re-  
 2 spective counties, cities and towns under the provisions of this  
 3 chapter, and who shall escape from the person or company having  
 4 him in custody, shall be guilty of a misdemeanor, and, upon con-  
 5 viction thereof, shall be imprisoned at hard labor for not more  
 6 than thirty days, or fined not more than fifty dollars.

1876-'7, c. 196, s. 4.

**Sec. 3252. Keepers of jails to receive and keep prisoners of United States; fees same as for state prisoners..**

When a prisoner shall be delivered to the keeper of any jail by  
 2 the authority of the United States, such keeper shall receive the  
 3 prisoner, and commit him accordingly : and every keeper of a jail  
 4 refusing or neglecting to take possession of a prisoner delivered to  
 5 him by the authority aforesaid, shall be subject to the same pains  
 6 and penalties as for neglect or refusal to commit any prisoner de-  
 7 livered to him under the authority of the state. And the allow-  
 8 ance for the maintenance of any prisoner committed as aforesaid,  
 9 shall be equal to that made for prisoners committed under the  
 10 authority of the state.

R. C., c. 87, s. 1.  
1870, c. 322, ss. 1, 2.**Sec. 3253. When jail destroyed prisoner sent to jail of adjoining county.**

Whenever the jail of any county shall be destroyed by fire or  
 2 other accident, any justice of the peace of such county may cause  
 3 all prisoners who may then be confined therein, to be brought be-  
 4 fore him; and upon the production of the process, under which  
 5 any prisoner was confined, shall order his commitment to the jail  
 6 of any adjacent county; and the sheriff, constable or other officer  
 7 of the county, deputed for that purpose, shall obey the order; and  
 8 the sheriff or keeper of the common jail of such adjacent county  
 9 shall receive such prisoners upon the order aforesaid, and in case of  
 10 neglect shall be guilty of a misdemeanor, and held as for an escape.

R. C., c. 87, s. 2.  
1835, c. 2, s. 1.**Sec. 3254. Or if there be no jail, or an unsafe one, courts may commit to jail of adjoining county.**

Whenever it shall happen that there shall be no jail, or an unfit  
 2 or insecure jail, in any county, the superior court judges, justices  
 3 of the peace, and all judicial officers of such county may commit  
 4 all persons who may be brought before them, whether in a crimi-  
 5 nal or civil proceeding, to the jail of any adjoining county, for the  
 6 same causes, and under the like regulations that they might have  
 7 ordered commitments to the usual jail; and the sheriffs, consta-

R. C., c. 87, s. 3.  
1835, c. 2, s. 2.



8 bles, and other officers of such county, in which there may be no  
9 jail, or an unfit one, and the sheriffs or keepers of the jails of the  
10 adjoining counties, shall obey any order of commitment, so made,  
11 under pain of being guilty of a misdemeanor.

**Sec. 3255. Authority and liability of ministerial officers and jailers.**

R. C., c. 87, s. 4.  
1835, c. 2, s. 3.

The sheriffs, constables, and other ministerial officers of any  
2 county, in which there may be no jail, shall have authority to con-  
3 fine any prisoner arrested on process, civil or criminal, and held in  
4 custody for want of bail, in the jail of any adjoining county, until  
5 bail be given or tendered. And any sheriff or jailer having a  
6 prisoner in his custody, by virtue of any mode of commitment  
7 provided in this chapter, shall be liable, civilly and criminally, for  
8 his escape, in the same manner as if such prisoner had been con-  
9 fined in the prison of his proper county.

**Sec. 3256. Sheriff apprehending an escape, how to obtain guard; compensation of guard.**

R. C., c. 87, s. 5.  
1795, c. 433, s. 8.

Whenever the sheriff of the county, or keeper of the jail, shall  
2 apprehend that there is danger of a prisoner's escaping, through  
3 the insufficiency of the jail or other cause, it shall be his duty,  
4 without delay, to make information thereof to a judge of the supe-  
5 rior court, the attorney-general, or a solicitor, if any of those offi-  
6 cers be in the county, and if not, then to three justices of the peace,  
7 and they are authorized, if they deem it advisable, to furnish the  
8 sheriff or keeper of the jail with an order in writing, addressed to  
9 the commanding officer of the county, setting forth the danger,  
10 and requiring him forthwith to furnish such guard as to him may  
11 appear to be suitable for the occasion. For which service the per-  
12 sons ordered on guard shall receive such compensation, as militia-  
13 men in actual service for defence of the state; and on application  
14 for pay, the letter to the commanding officer, on which the guard  
15 was ordered, and the certificate of such officer, countersigned by  
16 the sheriff or jailer, together with the deposition of the officer of  
17 the guard, stating the time of service, and that it was faithfully  
18 performed, shall be sufficient to authorize the payment of the same.

Commissioners of Macon v. Commissioners of Jackson, 75—240.

**Sec. 3257. Prisoners for crime to pay jail charges.**

R. C., c. 87, s. 6.  
1795, c. 433, s. 7.

Every person committed by lawful authority, for any crim-  
2 inal offence or misdemeanor against the state, shall bear all rea-  
3 sonable charges for guarding and carrying him to jail, and also  
4 for his support therein until released; and all the estate, which  
5 such person possessed at the time of committing the offence, shall  
6 be subject to the payment of such charges and other prison fees, in  
7 preference to all other debts and demands; and if there be no visi-

8 ble estate whereon to levy such fees and charges, the amount shall  
9 be paid by the county.

*State v. Peter, 8 Jon., 346.*

**Sec. 3258. Expense of guarding and removing prisoners, by what county paid.**

The expense for guarding prisons shall be paid by the county  
2 wherein the prison is situated; and for conveying prisoners, as  
3 also the expense attending such prisoners while in jail, when the  
4 same may be chargeable on the county, shall be paid by the county  
5 from which the prisoner is removed.

*R. C., c. 87, s. 7.  
1898, c. 757, s. 2.*

*Commissioners of Macon v. Commissioners of Jackson, 75—240.*

**Sec. 3259. Prisoners may buy necessities; penalty on jailers for injuring prisoners.**

Prisoners shall be allowed to purchase and procure such neces-  
2 saries, in addition to the diet furnished by the jailer, as they may  
3 think proper; and to provide their own bedding, linen and cloth-  
4 ing, without paying any perquisite to the jailer for such indul-  
5 gence; and if the keeper of a jail shall do, or cause to be done, any  
6 wrong or injury to the prisoners committed to his custody, con-  
7 trary to the intention of this chapter, he shall not only pay treble  
8 damages to the person injured, but shall be guilty of a misde-  
9 meanor.

*R. C., s. 87, s. 8.  
1795, c. 433, s. 6.*

**Sec. 3260. Jailer to cleanse jail and furnish diet to prisoners.**

The sheriff or keeper of any jail shall, every day, cleanse the  
2 room of the prison in which any prisoner shall be confined, and  
3 cause all filth to be removed therefrom; and shall also furnish the  
4 prisoner a plenty of good and wholesome water, three times in  
5 every day; and shall find each prisoner fuel, one pound of whole-  
6 some bread, one pound of good roasted or boiled flesh, and every  
7 necessary attendance.

*R. C., c. 87, s. 9.  
1815, c. 889.  
1816, c. 911, s. 2.*

*Long v. Commissioners of Richmond, 76—276; Lewis v. City of Raleigh, 77—229.*

**Sec. 3261. Suitable bed-clothing provided for prisoners.**

The board of county commissioners, from time to time, as may  
2 be necessary, shall order the sheriff of their county to pur-  
3 chase, for the use of their jail, a certain number of good warm  
4 blankets or other suitable bed-clothing, which shall be securely  
5 preserved by the jailer, and furnished to the prisoners for their use  
6 and comfort, as the season or other circumstances may require;  
7 and the sheriff, at least once in every year, shall report to the  
8 board of commissioners the condition and number of such blank-  
9 ets and bed-clothing.

*R. C., c. 87, s. 10.  
1822, c. 1136.*

*Commissioners of Macon v. Commissioners of Jackson, 75—240; Lewis v. City of Raleigh,  
77—229.*

**Sec. 3262.** Prison bounds for health of prisoners laid out by county commissioners; bond to keep bounds.

R. C., c. 87, s. 11.  
1741, c. 33, s. 3.

For the preservation of the health of such persons as shall be committed to jail, the board of commissioners of each county shall mark out such a parcel of the land as they shall think fit, not exceeding six acres, adjoining 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.

Brown v. Frazier, 1 Mur., 421; Minor Huntington's case, 2 Mur., 369; Howard v. Pasteur, 3 Mur., 270; Mann v. Vick, 1 Haw., 427; Bradley's case, 4 Ire., 543; Northam v. Terry, 8 Ire., 175; Whitley v. Gaylord, 3 Jon., 286.

**Sec. 3263.** Bond in criminal cases returned to court, and deemed a recognizance.

R. C., c. 87, s. 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 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.

Lea v. Brown, 5 Jon. Eq., 379.

**Sec. 3264.** In civil cases on *mesne process*, to stand as security for final judgment.

R. C., c. 87, s. 13.

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 succeeding section, for obtaining judgment against persons confined on final process.

**Sec. 3265.** In case of imprisonment on final process, bond deemed a judgment; on breach of bond, debtor excluded from bounds.

R. C., c. 87, s. 14.  
1759, c. 65, ss. 2, 3.

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



7 any prison, as aforesaid, shall escape out of the same, before he  
8 shall have paid the debt or damages and costs according to the  
9 condition of his bond, the court where the bond is lodged, upon  
10 motion of the assignee thereof, shall award execution against such  
11 person and his sureties for the debt or damages and costs, with in-  
12 terest from the time of escape till payment; and no person com-  
13 mitted to jail on such execution shall be allowed the rules of  
14 prison: *Provided, however,* that the obligors have ten days' previous  
15 notice of such motion, in writing; but they shall not be admitted  
16 to deny the making of the bond in their answer, unless by affida-  
17 vit, they prove the truth of the plea.

Brown v. Frazier, 1 Mur., 421.

**Sec. 3266. Prisoners, how to be transferred to sheriff's successor.**

The delivery of prisoners, by indenture between the late and  
2 present sheriff, or the entering on record in court the names of the  
3 several prisoners, and the causes of their commitment, delivered  
4 over to the present sheriff, shall be sufficient to discharge the late  
5 sheriff from all liability for any escape that shall happen.

R. C., c. 87, s. 15.  
1777, c. 118, s. 12.

**Sec. 3267. Prisoners to be confined in proper apartments; penalty for confining otherwise.**

The sheriff or jailer shall confine those committed to his custody  
2 in the apartment, provided and designated by law, for persons of  
3 the description of the prisoner; and if a sheriff or jailer, wantonly,  
4 or unnecessarily otherwise confine prisoners in his custody, it shall  
5 be a misdemeanor in office.

R. C., c. 87, s. 16.  
1785, c. 433, s. 4.

CHAPTER NINETY-TWO.

PENSIONS.

SECTION.

3268. Pensions allowed persons disabled in the militia service.  
3269. Governor to make contracts for artificial limbs for disabled soldiers.  
\*3270. Commutation in money allowed officers and soldiers who have procured artificial limbs at their own expense.  
3271. Board of commissioners of county authorized to levy taxes for the relief of destitute disabled soldiers.

SECTION.

3272. County committee for the relief of blind and married soldiers.  
3273. Persons who lost their sight or limbs in the Confederate service to make proof before the committee.  
3274. Disabled Confederate soldiers allowed sixty dollars per annum.  
3275. Clerk to certify list of blind and married soldiers to governor; how money to be paid.

**Sec. 3268. Pensions allowed persons disabled in militia service, and their widows and orphans; mode of procuring the same.**

Every person who may have been disabled by wounds in the  
2 militia service of the state, or rendered incapable thereby of pro-

R. C., c. 84.

3 curing subsistence for himself and family, and the widows and  
 4 orphans of such persons who may have died, may apply to the  
 5 court of the county in which such person, widow or orphan shall  
 6 reside, and the court shall certify to the general assembly their  
 7 distresses; and thereupon, such person shall have an allowance by  
 8 the general assembly sufficient for one year's relief; and the al-  
 9 lowance shall be continued from year to year, so long as the court  
 10 shall certify that such person, widow or orphan continues under  
 11 the description aforesaid, which certificate of court, countersigned  
 12 by the speakers of the general assembly, during the year of its  
 13 meeting, and in every other year, by the governor, shall be a suf-  
 14 ficient voucher in settling his public accounts, to any sheriff, col-  
 15 lector or treasurer who may pay the same: *Provided*, that this sec-  
 16 tion shall not extend to any person or persons, or to the widows or  
 17 orphans of such person or persons who were engaged in the late  
 18 civil war.

**Sec. 3269. Governor empowered to make contracts for artificial limbs for disabled soldiers.**

Res. Jan. 29, '66.

The governor is empowered to make contracts with manufactur-  
 2 ers of artificial limbs to supply all officers and soldiers from North  
 3 Carolina engaged, upon her call, in the late civil war, who have  
 4 lost their limbs in the service. And to this end the governor is  
 5 empowered to adopt such rules as may be deemed by him most  
 6 expedient to ascertain the extent of the need, and the best mode  
 7 of supplying the said officers and soldiers with proper fitting arti-  
 8 ficial limbs.

**Sec. 3270. Commutation in money allowed officers and soldiers, who have procured artificial limbs at their own expense.**

Res. March 12, '66.

Whenever any such officer or soldier has, at his own proper  
 2 charge, procured and paid for an artificial leg or arm, for his own  
 3 use, and the same shall be made to appear on satisfactory evidence  
 4 to the governor, it shall be his duty, instead of the limbs to which  
 5 said party would be entitled, to cause to be paid to him a sum  
 6 equal to that which shall have been paid by the governor for simi-  
 7 lar limbs.

**Sec. 3271. The board of commissioners of the county authorized to levy taxes for the relief of destitute disabled soldiers.**

Res. March 10, '66.

The boards of commissioners of the several counties, a majority  
 2 of the justices being present, are hereby authorized to levy and col-  
 3 lect, as taxes, such amounts of money as may by them be deemed  
 4 necessary for the relief of the destitute disabled soldiers of their  
 5 respective counties; said money to be distributed under the direc-  
 6 tion of the board of commissioners in each county.

**Sec. 3272. County committee for the relief of blind and maimed soldiers.**

The clerk of the superior court, sheriff and county commissioners of each county shall constitute a board, to be styled a committee for the relief of the blind and maimed. 1879, c. 193, s. 1.

**Sec. 3273. Persons who lost their sight or limbs in the Confederate service to make proof before the committee.**

It shall be the duty of the clerks of the superior court to notify all persons in their respective counties who lost their sight, or both hands, or both feet, in the Confederate service, to appear at the court house before said committee with proof as to how he or they lost their sight or limbs. 1879, c. 193, s. 2.

**Sec. 3274. Disabled Confederate soldiers allowed sixty dollars per annum.**

All disabled Confederate soldiers entitled to the benefit of this chapter shall receive from the state treasury sixty dollars per annum for the term of their natural life, to be paid monthly by the clerk of the superior court of the county. 1879, c. 193, s. 3.

**Sec. 3275. Clerk to certify list of blind and maimed soldiers to governor; how money paid.**

The clerk of the superior court under his seal of office shall certify to the governor, giving the name and the number of the blind and maimed soldiers examined in his county, upon which the governor is authorized to issue his warrant to the treasurer to pay the sum of sixty dollars annually for each blind and maimed person named in the certificate, and the said clerk shall pay out such money monthly to the persons entitled to the same. 1879, c. 193, s. 4.

## CHAPTER NINETY-THREE.

## PILOTS.

## SECTION.

- 3276. Commissioners of navigation, how appointed, by mayor, &c., of Wilmington.
- 3277. How styled; to fill vacancies and appoint a clerk; to establish, &c., fees of pilots; to have authority concerning navigation of the river, &c.
- 3278. Harbor master; appointment and fees.
- 3279. Pilot stations and pilotage regulated by commissioners.
- 3280. Pilots appointed by board.
- 3281. When board shall grant license to pilots.
- 3282. Three classes of licenses to be granted.
- 3283. Bond given by pilots.
- 3284. Permission granted to pilots to run regularly on steamers.
- 3285. Number of pilots regulated.

## SECTION.

- 3286. Board may cancel license; pilot absent for more than six months to surrender his branch.
- 3287. Disputes between masters and pilots; warrant for pilotage, forfeiture, &c., issued by a commissioner; jurisdiction not to exceed sixty dollars; may summon witnesses and administer oaths.
- 3288. Stay of execution on judgment not allowed; parties may appeal.
- 3289. Rates of pilotage fixed by commissioners of navigation.
- 3290. When apprentice not to act as pilot.
- 3291. Rate of pilotage when vessel is detained.
- 3292. When master of vessel need not take pilot.



## SECTION.

- 3293. Notice given when rates of pilotage altered.
- 3294. Number of boats prescribed for pilots.
- 3295. Rights of pilots as to Main and New inlet bars of Cape Fear.
- 3296. Apprentices to be kept by pilots.
- 3297. Penalty on pilots not attending when requested.
- 3298. Pilots refused entitled to full pilotage.
- 3299. One-third fees to be paid to pilots in certain cases.
- 3300. Pilotage, when vessel deepened or lightened.
- 3301. Pilot entitled to full pay though refused, when.
- 3302. Vessels of sixty tons coming into Cape Fear river for coal exempt, if they hoist a prescribed flag; outward bound coal vessels also; penalty for falsely hoisting flag of coal vessels.
- 3303. Penalty on coal vessels not raising flag.
- 3304. Regulations concerning pilotage not to be altered.
- 3305. Commissioners of navigation for New-Berne, Washington, and Edenton, yearly appointed; mode of appointment; vacancies, how filled.
- 3306. Powers of the commissioners.
- 3307. Commissioners of Washington a body corporate; their name and powers; may purchase lands and erect houses for receiving persons in quarantine, and may employ physicians, &c.
- 3308. Commissioners of navigation for port of Hatteras inlet; commissioners for port of Ocracoke inlet; duties; offices of boards; dues from pilots; vacancies; commissioners to keep journal and to take an oath of office; expiration of branch.
- 3309. Pilots required to give bond.
- 3310. To whom branches may be granted.
- 3311. Commissioners of navigation for Carteret and Onslow; Topsail inlet, Bogue inlet, &c.; vacancies, how filled; powers of boards.
- 3312. Bonds given by pilots.

## SECTION.

- 3313. Pilots to have a telescope or spy-glass.
- 3314. Pilots may be removed for misconduct, &c.; penalty for acting after removal; notice of removal published.
- 3315. Penalty for acting as pilot without license.
- 3316. Pay to pilots for detention; pay when driven off coast, after boarding.
- 3317. Penalty for neglecting to go to a vessel with a signal, &c.
- 3318. Pilots, when refused, to be paid.
- 3319. No pilotage on ships under sixty tons; exception.
- 3320. Rates of pilotage for Edenton, Washington, New-Berne, Ocracoke, and Hatteras.
- 3321. Vessels required to pay pilotage only as agreed between pilots and commanders of vessels, when the latter produce certificates from boards of navigation of certain towns that they are competent pilots, &c.; applies to Hatteras, Ocracoke and Beaufort inlets.
- 3322. Harbor masters and clerks appointed by boards of navigation.
- 3323. Commissioners of navigation for Beaufort and Morehead City, how elected.
- 3324. Powers, &c., of board.
- 3325. How far authority to extend.
- 3326. Harbor master for Beaufort.
- 3327. Charges, &c., of branch pilots of Topsail inlet.
- 3328. New rates to be posted.
- 3329. Commissioners and their powers.
- 3330. Commissioners to take an oath of office.
- 3331. Rates of pilotage at Old Topsail inlet.
- 3332. Rates of pilotage at Bogue inlet.
- 3333. Fees of pilots to be annexed to their commissions.
- 3334. Boards to designate where ballast, trash, &c., may be cast; penalty for throwing ballast, stone, &c., into navigable water, or pulling down beacons, &c.
- 3335. Penalty on pilots for not giving information of unlawful acts.
- 3336. Penalties and fines, how disposed of; annual report made thereof.

**Sec. 3276. Commissioners, how appointed, by mayor, &c., of Wilmington.**

The mayor and aldermen of the city of Wilmington shall, at one  
 2 of their regular meetings in the month of June of each and every  
 3 year, appoint five suitable persons to serve as commissioners of navigation and pilotage for the Cape Fear river and bars, who shall  
 5 enter upon their duties on the first Monday in July of each and  
 6 every year: *Provided*, that the mayor and commissioners of the town  
 7 of Smithville shall at the same time appoint two suitable persons  
 8 to serve as commissioners of navigation and pilotage: *Provided*, that  
 9 the commissioners appointed by the city of Wilmington and town  
 10 of Smithville shall have power to do and perform all acts heretofore authorized by law to be done by the board of commissioners  
 12 of navigation and pilotage.

**Sec. 3277.** How styled; to fill vacancies and appoint a clerk; to have authority concerning navigation of the river, &c.

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 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 in 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.

R. C., c. 85, s. 2.  
R. S., c. 88, s. 2.  
1848, c. 47, s. 3.

**Sec. 3278.** Harbor-master, appointment and fees.

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.

R. C., c. 85, s. 8.  
1802, c. 626, s. 5.

**Sec. 3279.** Pilot stations and pilotage regulated by the commissioners.

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.

R. C., c. 85, s. 4.  
1786, c. 202, s. 2.  
1802, c. 626, s. 4.

**Sec. 3280.** Pilots appointed by board.

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

R. C., c. 85, s. 5.  
1802, c. 626, s. 5.

6 be found qualified: *Provided*, that at no one time shall there be  
7 over sixty-five bar and river pilots in commission for the Cape  
8 Fear river.

**Sec. 3281. When board shall grant licenses to pilots.**

1858-'9, c. 23, s. 2.

Before the commissioners of navigation shall grant a commission  
2 or license to pilot vessels on Cape Fear river or its bars, it shall be  
3 the duty of the board to require the applicant to prove by at least  
4 three nautical men under oath, his competency to manage or work  
5 vessels, and such knowledge of the Cape Fear river and its bars as  
6 may be necessary to qualify him to pilot vessels.

**Sec. 3282. Three classes of license to be granted.**

1858-'9, c. 23, s. 3.

The commissioners shall issue three classes of license, as fol-  
2 lows:

3 (1) A license to pilot vessels whose draught of water does not  
4 exceed nine feet, to such applicants above the age of twenty-one  
5 years, who have served as apprentices for at least three years, and  
6 complied with the provisions of this chapter;

7 (2) A license to pilot vessels whose draught of water does not  
8 exceed twelve feet, to those who have served at least three years  
9 under a license of the first class;

10 (3) An unlimited or full license to those who have served at least  
11 three years under a license of the second class, to pilot vessels of  
12 any draught of water.

**Sec. 3283. Bond given by pilots.**

R. C., c. 85, s. 6.  
1784, c. 207, s. 3.

Every person, before he obtains a commission or a branch to be  
2 a pilot, shall give bond with two sufficient sureties payable to the  
3 state of North Carolina, in the sum of five hundred dollars, with  
4 condition for the due and faithful discharge of his duties, and the  
5 duties of his apprentices; and the board may, from time to time,  
6 and as often as they may deem it necessary, enlarge the penalty  
7 of the bond, or require new and additional bonds to be given; and  
8 every bond taken of a pilot shall be filed with, and preserved by,  
9 the said board of commissioners in trust for every person that  
10 shall be injured by the neglect or misconduct of such pilot, or his  
11 apprentices; who may severally bring suit thereon for the damage  
12 by each one sustained.

**Sec. 3284. Permission granted to pilots to run regularly on steamers.**

1869-'70, c. 235, s. 5.

The commissioners shall have power to grant permission in  
2 writing to any pilot in good standing and authorized to pilot  
3 vessels, to run regularly as pilot on steamers running between the  
4 port of Wilmington and other ports in the United States, said pilot  
5 to have all the rights and emoluments that belong to the river and  
6 bar pilots.



**Sec. 3285. Number of pilots regulated.**

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.

1869-'70, c. 235, s. 6.

**Sec. 3286. Board may cancel license; pilot absent for more than six months to surrender his branch.**

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, and any pilot who has been absent from the state for a longer period than six months, shall, upon his return, surrender his branch to the board of commissioners, or they may declare the same null and void.

1869-'70, c. 235, s. 7.  
1881, c. 261, s. 2.**Sec. 3287. Disputes between masters and pilots; warrant for pilotage, forfeiture, &c., issued by a commissioner; jurisdiction not to exceed \$60; may summon witness and administer oaths.**

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 themselves, respecting the pilotage of vessels; and any one of them may issue a warrant 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 agreeably 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.

R. C., c. 85, s. 7.  
1802, c. 626, s. 2.  
1858-9, c. 23.**Sec. 3288. Stay of execution on judgment not allowed; parties may appeal.**

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

R. C., c. 85, s. 8.  
1802, c. 626, s. 3.

5 or master of a vessel, by a pilot or master of a vessel, in virtue of  
 6 any act of the general assembly, or by law made in pursuance  
 7 thereof; but appeals shall be allowed in such cases under the rules  
 8 which regulate appeals from the judgments of justices of the peace :  
 9 *Provided, however,* that, if on the appeal of any defendant, the re-  
 10 covery shall not be lessened, and it shall be the opinion of the  
 11 court that the appeal was obtained for the purpose of delay, the  
 12 court shall adjudge the defendant to pay twenty per cent. on the  
 13 amount of the original judgment, which shall be added thereto,  
 14 and execution shall issue for the whole amount.

**Sec. 3289. Rates of pilotage fixed by commissioners of navigation.**

1858-'9, c. 23, s. 4.  
 1869-'70, c. 235, s. 3

The commissioners of navigation shall fix the rates of pilotage  
 2 for vessels in the following manner, viz: vessels whose draught of  
 3 water is six feet, seven feet, eight feet, nine feet, ten feet, eleven feet,  
 4 twelve feet, thirteen feet, fourteen feet, fifteen feet, sixteen feet; and  
 5 the commissioner of navigation shall not reduce the rates of pilot-  
 6 age below the rates established in the year one thousand eight  
 7 hundred and sixty-nine. It shall be the duty of the commission-  
 8 ers to establish rates of pilotage for all vessels drawing odd inches  
 9 over the even feet prescribed in this section *pro rata* with the rates  
 10 for even feet established in the year one thousand eight hundred  
 11 and sixty-nine by the commissioners of navigation and pilotage.

**Sec. 3290. When apprentice not to act as pilot.**

1858-'9, c. 23, s. 6.

No apprentice shall hereafter be authorized by the board to pilot  
 2 any vessel of more than six feet draught of water.

**Sec. 3291. Rate of pilotage when vessel is detained.**

1858-'9, c. 23, s. 7.

Every master of a vessel who shall detain a pilot at the time ap-  
 2 pointed, so that he cannot proceed to sea, though wind and weather  
 3 should permit, shall pay to such pilot three dollars per day during  
 4 the time of his actual detentions.

**Sec. 3292. When master of vessel need not take pilot.**

1858-'9, c. 23, s. 8.

No master of a vessel shall be required to take or keep a pilot on  
 2 board, or pay for pilotage in the river or over the bars, who is or  
 3 has been a full branch pilot or employs a full branch pilot as first  
 4 mate of his vessel.

**Sec. 3293. Notice given when rates of pilotage altered.**

R. C., c. 85, s. 9.  
 1796, c. 470, s. 5.

When the commissioners aforesaid shall alter the rates of pilot-  
 2 age, they shall cause the new rates to be set up in the office of the  
 3 collector of the port; and shall also cause them to be annexed to  
 4 the several pilot's branches, certified under their hands.

**Sec. 3294. Number of boats prescribed for pilots.**

The commissioners aforesaid shall determine and make known,  
2 as far as occasion may require, to the pilots, how many decked  
3 boats are necessary for the attendance on the bars respectively; in  
4 which decked boats any number of said pilots, not exceeding five,  
5 may act and be concerned as partners and joint owners.

R. C., c. 85, s. 10.  
1796, c. 470, c. 3.

**Sec. 3295. Rights of pilots as to Main and New Inlet bars of Cape Fear.**

The pilots having branches to pilot over the Main bar, or New  
2 Inlet bar, of Cape Fear river, shall be entitled to pilot and navi-  
3 gate vessels into port over either bar; and the pilot who shall bring  
4 a vessel into port over either bar, shall be entitled, exclusively, to  
5 navigate the same vessel out of port over either bar: *Provided, al-*  
6 *ways,* when any vessel shall be ready to go out of port, and such  
7 pilot does not attend to navigate the same, the captain or master  
8 may employ any other pilot for that purpose, such other pilot being  
9 a branch or commissioned pilot for the bar over which the vessel  
10 is to be navigated out; and every pilot who shall navigate a vessel  
11 out of port contrary to the meaning of this section, shall for every  
12 such offence forfeit and pay forty dollars to the pilot or pilots, who,  
13 by this chapter, would have been entitled to navigate said vessel  
14 out of port.

R. C., c. 85, s. 11.  
1797, c. 486, s. 1.

**Sec. 3296. Apprentices to be kept by pilots.**

Every pilot, commissioned as aforesaid, shall keep at least one,  
2 but not more than two apprentices, and instruct them in the art  
3 and mystery of a pilot; which said apprentices, upon being author-  
4 ized by the board, may pilot any vessel, which their several mas-  
5 ters are entitled to pilot, for the behoof and emolument of their  
6 masters without let or molestation, subject however to the same  
7 regulations as the pilots are.

R. C., c. 85, s. 12.  
1786, c. 262, s. 4.

**Sec. 3297. Penalty on pilots not attending when requested.**

When any pilot shall have notice from the master of any vessel  
2 to attend in piloting such vessel, and shall not without delay go on  
3 board for that purpose, he shall forfeit and pay to the master ten  
4 dollars, (unless he shall, at the time of such notice have the actual  
5 and personal charge of some other vessel,) for each day's delay,  
6 caused by his neglect, of the vessel which he had notice to attend,  
7 and the further sum of one day's expense of such vessel, to be re-  
8 covered by a warrant under the hand of any one of the commis-  
9 sioners, on oath being made of the fact, (which oath any of the  
10 commissioners may administer): *Provided,* that no pilot shall be  
11 considered as obliged to take charge of any vessel outward bound,  
12 in order to pilot her over either of the bars, until the pilotage be  
13 previously paid him, or satisfactory security for the payment  
14 thereof be given him.

R. C., c. 85, s. 13.  
1784, c. 207, s. 5.  
1796, c. 470, s. 4.



**Sec. 3298. Pilots refused entitled to full pilotage.**

R. C., c. 85, s. 14,  
1784, c. 207, s. 8.

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.

**Sec. 3299. One-third fees to be paid to pilots in certain cases.**

R. C., c. 85, s. 15,  
1786, c. 262, s. 6.

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.

**Sec. 3300. Pilotage, when vessel deepened or lightened.**

R. C., c. 85, s. 16,  
1793, c. 320, s. 1.

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.

**Sec. 3301. Pilot entitled to full pay though refused, when.**

R. C., c. 85, s. 17,  
1813, c. 866,  
1823, c. 1222, ss. 1, 2,  
1831, c. 65,  
1840, c. 48,  
1856-7, c. 1.

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.

**Sec. 3302. Vessels of sixty tons coming into Cape Fear river for coal exempt if they hoist prescribed flag; outward bound coal vessels also; penalty for falsely hoisting flag of coal vessel.**

R. C., c. 85, s. 18,  
1850, c. 116, ss. 1, 3

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 white ground, with a black ball in the center of not less than a foot in diameter. And all vessels in the river of

11 like burden, outward bound and ladened with coal, shall also be  
12 exempt from pilotage: *Provided*, they hoist said flag as soon as they  
13 come in sight of, and keep it flying till they pass New Inlet or  
14 Main bar: *Provided, however*, that no vessel of sixty tons burden or  
15 upwards, having on board any merchandise or freight, except coal,  
16 shall be entitled to exemption from pilotage: *And provided further*,  
17 that if any vessel of the burden last mentioned, coming into the  
18 Cape Fear river through New Inlet or Main bar, or going out of  
19 the river to sea, shall hoist said flag under false pretences, to avoid  
20 paying pilotage, the master, captain and owner thereof shall pay  
21 double pilotage to some of the pilots, for the equal benefit of them  
22 all.

**Sec. 3303. Penalty on coal vessels for not raising flag.**

All vessels of such burden engaged in the transportation of coal  
2 on the coast of North Carolina, whenever they appear within sight  
3 of any pilot station, shall raise said flag, to the end that pilots may  
4 know that their services are not required, under the penalty of ten  
5 dollars, to be paid by the master or owner to any one of the pilots  
6 who may first sue for the same.

R. C., c. 85, s. 19.  
1850, c. 116, s. 5.

**Sec. 3304. Regulations concerning pilotage not to be altered.**

The board of commissioners shall not alter the rules and regu-  
2 lations concerning pilotage, prescribed in the two preceding sec-  
3 tions.

R. C., c. 85, s. 20.  
1850, c. 116, s. 4.

**Sec. 3305. Commissioners of navigation for NewBerne, Washington and Edenton appointed yearly; mode of appointment; vacancies; how filled.**

Five persons who shall be residents of the towns, respectively,  
2 and possessed of a freehold therein, shall be annually appointed  
3 commissioners of navigation, for each of the ports of NewBerne,  
4 Washington and Edenton. Those for the ports of Edenton and  
5 NewBerne shall be chosen by the freemen of said towns respect-  
6 ively, who are entitled to vote for commissioners of the towns, at  
7 the same time and in the like manner as are elected the commis-  
8 sioners of the respective towns: and those for the port of Wash-  
9 ington shall be appointed by the county commissioners of Beau-  
10 fort, at their first meeting of each year; and all vacancies in said  
11 boards, whether by a refusal to act, resignation or otherwise, shall  
12 be filled by the remaining commissioners, until the same shall be  
13 filled, (which is hereby directed to be done) at the regular period  
14 of election.

R. C., c. 85, s. 21.  
1783, c. 194.  
1801, c. 600.  
1812, c. 65, s. 1.

**Sec. 3306. Powers of the commissioners.**

The said commissioners shall have power to contract with proper  
2 persons to examine from time to time the situation of the Swash,  
3 and keep the same and all other channels leading from Ocracoke

R. C., c. c. 85, s. 22.  
1783, c. 194, ss. 1, 2.

4 bar to NewBerne, Washington, Edenton, Plymouth and Elizabeth  
 5 City, well and sufficiently staked out, and to cause buoys and bea-  
 6 cons to be placed where the commissioners shall think most con-  
 7 venient for the safety of vessels.

Sec. 3307. Commissioners of Washington a body corporate; their name and powers; may purchase lands and erect houses for receiving persons in quarantine, and may employ physician, &c.

R. C., c. 85, s. 52.  
 1842, c. 65, ss. 2, 3.

The commissioners of the port of Washington shall be a body  
 2 corporate, under the name of "The Commissioners of Navigation  
 3 for the Port of Washington," and have all the powers of a corpora-  
 4 tion, concerning the subjects placed under their control; and they  
 5 shall have authority in all matters that concern the navigation of  
 6 Pamlico river from Willow Point downwards, and may purchase  
 7 and sell and buy again, at their discretion, at or near the port of  
 8 Washington, a piece of land and erect thereon suitable houses for  
 9 the reception of persons on board any vessel which, by the laws of  
 10 the state, might be compelled to perform quarantine, and to have  
 11 over such persons, when landed, the same control as if performing  
 12 quarantine in the accustomed mode. Also, to employ a physician  
 13 to attend the persons landed; to furnish them with such articles  
 14 of provision, clothing, or other necessities, as their situation may  
 15 demand during their continuance there. And both the vessel and  
 16 the persons so landed shall, in all things and to every intent what-  
 17 ever, be considered, while remaining on said piece of land, to be in  
 18 a state of quarantine, and subject, both they and all persons, to the  
 19 same penalties for leaving or visiting said place, for breaking or  
 20 violating such quarantine in any respect whatever, as if the said  
 21 persons so landed had remained on the vessel.

Sec. 3308. Commissioners of navigation for port of Hatteras inlet; commissioners for port of Ocracoke inlet; duties; officers of boards; dues from pilots; vacancies; commissioners to keep journal and to take oath of office; expiration of branch.

R. C., c. 35, s. 24.  
 1871-'2, c. 134.  
 1879, c. 216, s. 1.

John W. Robinson, R. R. Quidley, George L. Styron, William  
 2 Balance and Charles L. Odine shall constitute a board of commis-  
 3 sioners of navigation for the port of Hatteras inlet, of the county  
 4 of Dare; David Tolson, W. H. Balance and Christopher O'Neal, of  
 5 the county of Hyde, and William Dixon and Solomon Dixon, of  
 6 the county of Carteret, shall constitute a board of navigation for  
 7 the port of Ocracoke inlet, whose duty it shall be to meet at Hat-  
 8 teras and Ocracoke respectively three times in each year, or a ma-  
 9 jority of the respective boards, after giving at least twenty days'  
 10 notice of each meeting, and when any person is desirous of be-  
 11 coming a pilot at Hatteras or Ocracoke inlets, over the Swashes  
 12 through Pamlico and Albemarle sounds, he shall be examined by  
 13 said board, and when found competent to take charge of any ship



14 or vessel as a pilot the board shall issue to him a branch and take  
 15 the bond prescribed by law, and no person shall be prescribed to  
 16 act as a bar or swash pilot unless he shall have a branch from said  
 17 boards. The said boards shall have their offices at Hatteras and  
 18 Ocracoke respectively, in which shall be filed the bonds of the  
 19 pilots, and every pilot receiving a branch from said boards shall  
 20 pay to the board from which he receives such branch, two dollars  
 21 and fifty cents, of which sum the commissioners of Ocracoke who  
 22 live in Carteret shall receive ten cents per mile traveling to and  
 23 from the meeting of said board, and the residue shall be divided  
 24 between all the members of said board, and the commissioners  
 25 shall belong to each board respectively. When a vacancy shall  
 26 occur in either board by death, resignation or refusal to act, a ma-  
 27 jority thereof of each board shall appoint some suitable person  
 28 thereto, whose residence shall be at the same place where the va-  
 29 cancy occurred; said commissioners shall keep a regular journal  
 30 of their proceedings, and before entering on the duties of the office  
 31 they shall take and subscribe before any justice of the peace of the  
 32 counties of Dare, Carteret or Hyde, the following oath:

"I do solemnly swear that I will truly and faithfully and impartially examine every person who shall apply to me for a branch, to the best of my ability: so help me, God."

33 The branch shall expire in three years from the date thereof.

**Sec. 3309. Pilots required to give bond.**

Every pilot licensed by said boards shall give such bond, perform  
 2 such duties, receive such fees or emoluments, have such remedies  
 3 and be subject to such penalties and liabilities as are prescribed  
 4 by this chapter.

1871-'2, c. 134, s. 3.  
 1879, c. 216, s. 2.

**Sec. 3310. To whom branches may be granted.**

The said boards shall not issue or grant any branch to pilot ves-  
 2 sels through Hatteras inlet to any person who does not reside in  
 3 Hatteras precinct, which precinct extends from Cape Hatteras  
 4 light-house to Hatteras inlet. And the said boards shall not issue  
 5 or grant a branch to pilot vessels through or over Ocracoke inlet  
 6 to any person who does not reside upon the island of Ocracoke or  
 7 in the precinct of Portsmouth.

1856-'7, c. 29.  
 1879, c. 216, s. 3.

**Sec. 3311. Commissioners of navigation for Carteret and Onslow; Topsail inlet, Bogue inlet, &c.; vacancies, how filled; powers of boards.**

Each of the boards of commissioners of the counties of Car-  
 2 teret and Onslow shall, if not already done, appoint five com-  
 3 missioners of navigation; those appointed by the board of Carteret  
 4 to be a board for Old Topsail inlet and the waters thereof; those  
 5 appointed by the board of Onslow to be a board for Bogue inlet  
 6 and its waters. And when vacancies occur in any of the boards,

R. C., c. 85, s. 25.  
 1783, c. 194.  
 1784, c. 208, s. 2.  
 1879, c. 216, s. 4.

7 by refusal to act, by resignation or otherwise, the remaining mem-  
 8 bers of such board shall fill the same until the same be supplied  
 9 by the appointing board, which is directed to be done at the first  
 10 meeting after the vacancy occurs. And the said boards, respectively,  
 11 shall have the same powers and authorities as to pilots and  
 12 pilotage, as to staking out the respective channels, and as to placing  
 13 buoys and beacons, of their several and respective inlets and waters,  
 14 as are given to the commissioners of navigation for the ports of  
 15 NewBerne, Washington and Edenton.

See 1783, c. 194; 1784, c. 208, s. 2.

**Sec. 3312. Bonds given by pilots.**

R. C., c. 85, s. 26.  
 1783, c. 194, s. 4.

All pilots appointed by the commissioners of navigation for  
 2 NewBerne, Washington, Edenton, Ocracoke, Old Topsail and  
 3 Bogue inlets, shall give bond, with sufficient security, for the  
 4 amount, and in the manner prescribed for the bonds of the Cape  
 5 Fear pilots, in this chapter, and be subject to the same rules, regu-  
 6 lations, and right of recovery as is there specified.

**Sec. 3313. Pilots to have a telescope or spy-glass.**

R. C., c. 85, s. 27.  
 1790, c. 320, s. 3.

Every pilot, within such convenient time as the commissioners  
 2 may direct who have control over the waters within which he acts,  
 3 shall furnish himself with a good telescope or spy-glass, under the  
 4 penalty of fifty dollars, to be paid to the commissioners.

**Sec. 3314. Pilots may be removed for misbehavior, &c.; penalty for acting after removal; notice of removal published.**

R. C., c. 85, s. 28.  
 R. S., c. 88, ss. 7,  
 31, 35.  
 1784, c. 207, s. 4.  
 1800, c. 1025, s. 4.  
 1819, c. 565.  
 1876-7, c. 22.  
 1881, c. 261, s. 1.

Whenever any pilot appointed by any board by this chapter au-  
 2 thorized to appoint, shall, on trial, be found to be incompetent, or  
 3 shall be guilty of improper conduct by intoxication or otherwise,  
 4 or of any misbehavior in his office, or shall absent himself from the  
 5 state for a period of ten days, the pilot so offending may be re-  
 6 moved from his office by the board of commissioners under whose  
 7 authority he is acting, by a notice to him in writing; and if after  
 8 such removal he shall attempt to take charge of any vessel, he shall  
 9 forfeit and pay two hundred dollars for the use of said board. And  
 10 it shall be the duty of the board to put up a written notice of the  
 11 removal, in the public places within the port, or publish it in some  
 12 convenient newspaper. But no pilot for the navigation of Hat-  
 13 teras inlet shall be required to surrender or forfeit his branch by  
 14 reason of absence from the state for a period less than six months.

**Sec. 3315. Penalty for acting as pilot without license.**

R. C., c. 85, s. 29.  
 1783, c. 194, s. 3.  
 1784, c. 208, s. 4.

If any person shall presume to act as pilot, who is not qualified  
 2 and licensed in the manner herein prescribed, he shall forfeit and  
 3 pay, for the use of the commissioners, forty dollars for every at-  
 4 tempt at piloting: *Provided, nevertheless, that should there be no*

5 pilot in attendance, any person may conduct into port any vessel  
6 in danger from stress of weather, or in a leaky condition.

Gerrish v. Johnson, 1 Jon., 335.

**Sec. 3316. Pay to pilots for detention; pay when driven off coast after boarding.**

If the master of any vessel shall send for or take on board any  
2 pilot to conduct his vessel from her station to any other place, and  
3 shall afterwards neglect or delay to remove such vessel, (wind and  
4 weather permitting,) he shall pay to the pilot two dollars for at-  
5 tending each day he shall be so detained; and if any vessel, which  
6 shall be boarded by a pilot, without or within any of the inlets,  
7 shall by violence of the weather or otherwise be driven to sea, the  
8 master or owner of such vessel shall allow and pay the pilot two  
9 dollars per day for every day he shall be on board, besides the fees  
10 of pilotage.

R. C., c. 85, s. 30.  
1783, c. 194, s. 3.  
1784, c. 207, s. 6.  
1784, c. 208, s. 4.

**Sec. 3317. Penalty for neglecting to go to a vessel having a signal, &c.**

When any pilot shall see any vessel on the coast, having a signal  
2 for a pilot or shall hear a gun of distress fired off the coast, and  
3 shall neglect or refuse to go to the assistance of such vessel, such  
4 pilot shall forfeit and pay one hundred dollars, to be recovered in  
5 the name of the state, one half to the use of the informer, and the  
6 other half to the master of the vessel; unless such pilot is then  
7 actually in charge of another vessel.

R. C., c. 85, s. 31.  
1784, c. 207, s. 10.  
1790, c. 320, s. 2.  
1783, c. 194, s. 3.  
1784, c. 208, s. 4.

**Sec. 3318. Pilots, when refused, to be paid.**

If a branch pilot shall go off to any vessel bound in, and offer  
2 to pilot her over the bar, the master or commander of such vessel,  
3 if he refuse to take such pilot, shall pay to such pilot, if not pre-  
4 viously furnished with one, the same sum as is allowed by law  
5 for conducting such vessel in, to be recovered before a justice of the  
6 peace, if the sum be within his jurisdiction: *Provided*, that the first  
7 pilot who shall speak such vessel so bound in shall be entitled to  
8 the pay provided for in this section and no other.

Gerrish v. Johnson, 1 Jon., 335.

R. C., c. 85, s. 32.  
1783, c. 194, s. 3.  
1784, c. 208, s. 4.  
1871-2, c. 117.

**Sec. 3319. No pilotage on ships under sixty tons; exception.**

No pilot, acting under the authority of the commissioners of  
2 navigation for NewBerne, Edenton, Washington, or Old Topsail  
3 inlet, shall be entitled to pilotage for any vessel under sixty tons  
4 burden, unless such vessel shall have given a signal for a pilot, or  
5 otherwise shall have required the assistance of a pilot.

Gerrish v. Johnson, 1 Jon., 335.

R. C., c. 85, s. 33.  
1801, c. 600, s. 3.  
1806, c. 711, s. 1.

**Sec. 3320. Rates of pilotage for Edenton, Washington, NewBerne, Ocracoke and Hatteras.**

Branch pilots of Edenton, Washington, NewBerne, Ocracoke or  
2 Hatteras, shall be entitled to receive of the commander of such

R. C., c. 85, s. 34.  
1794, c. 426.  
1806, c. 711.  
1846, c. 49, ss. 1, 2, 3.



3 vessel as they may have in charge the following pilotage, namely:  
 4 for every vessel of sixty and not over one hundred and forty tons  
 5 burden, from the other side of the bar, at any place within the  
 6 limits of the pilot ground, to Beacon Island road, or Wallace's  
 7 channel, ten cents for each ton, and the further sum of two and a  
 8 half cents for each ton over one hundred and forty, and two dol-  
 9 lars for each vessel over either of the swashes, (that is, over said  
 10 swashes either to or from Beacon Island road, or Wallace's chan-  
 11 nel, or over any shoal lying intermediate between either of said  
 12 swashes and Beacon Island road or Wallace's channel); for  
 13 every ship or vessel from the mouth of the swash to either of  
 14 the ports of NewBerne or Washington, one dollar per foot, and  
 15 for every ship or vessel from the same\*place to the port of Eden-  
 16 ton, twelve dollars; and to the port of Elizabeth City, ten dollars;  
 16 and the same allowances down as up, and outwards as inwards.

Gerrish v. Johnson, 1 Jon., 335.

**Sec. 3321.** Vessels required to pay pilotage only as agreed between pilots and commanders of vessels, when the latter produce certificates from boards of navigation of certain towns, that they are competent pilots, &c.; applies to Hatteras, Ocracoke and Beaufort inlets.

1881, c. 147, s. 1.

No vessels sailing in or out of the inlets at Hatteras, Ocracoke or  
 2 Beaufort shall be required to pay pilotage in or out of said inlets  
 3 or over the swashes thereof, except upon stipulations or agree-  
 4 ments of pilots with the commanders of such vessels, whenever  
 5 said commander shall produce a certificate from the board of navi-  
 6 gation of the towns of Beaufort, NewBerne, Washington, Elizabeth  
 7 City or Edenton, or the commissioners of navigation at Hateras  
 8 inlet, setting forth that the said commander is a competent pilot  
 9 for said inlet through which such vessel is about to pass.

**Sec. 3322.** Harbor masters and clerks appointed by boards of navigation.

R. C., c. 85, s. 35.  
 1846, c. 69.

The several boards of commissioners of navigation may appoint  
 2 a harbor master for their respective ports. They shall appoint a  
 3 clerk to keep books, in which shall be recorded all their proceed-  
 4 ings.

**Sec. 3323.** Commissioners of navigation for Beaufort and Morehead City; how elected.

1868-'9, c. 208, s. 1.  
 1870-'1, c. 168, s. 1.

There shall be annually elected, by the qualified voters of the  
 2 towns of Beaufort and Morehead City at the time and in the same  
 3 manner as commissioners of the said towns are elected, five elec-  
 4 tors, who shall act as commissioners of navigation and pilotage  
 5 for the port of Beaufort and old Topsail inlet for the term of one  
 6 year, or until their successors are qualified. Three of said com-  
 7 missioners shall be chosen by the electors of the town of Beaufort,  
 8 and two of said commissioners shall be chosen by the electors of  
 9 Morehead City.

**Sec. 3324. Powers, &c., of board.**

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. 1868-'9, c. 208, s. 2.

**Sec. 3325. How far authority to extend.**

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. 1868-'9, c. 208, s. 3.

**Sec. 3326. Harbor master for Beaufort.**

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. 1868-'9, c. 208, s. 4.

**Sec. 3327. Charges, &c., of branch pilots of Topsail inlet.**

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 thirty-three hundred and thirty-one, 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. 1868-'9, c. 208, s. 5.

**Sec. 3328. New rates to be posted.**

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. 1868-'9, c. 208, s. 6.

**Sec. 3329. Commissioners and their powers.**

1868-'9, c. 208, s. 7.

The commissioners aforesaid shall have all the powers conferred  
2 on commissioners of navigation and pilotage, in this chapter.

**Sec. 3330. Commissioners to take an oath of office.**

1868-'9, c. 208, s. 8.

Before the commissioners aforesaid shall enter upon the duties  
2 of their office, they shall take oath before the clerk of the superior  
3 court, or a justice of the peace, to faithfully discharge the duties of  
4 commissioners of navigation and pilotage for the port of Beaufort,  
5 North Carolina.

**Sec. 3331. Rates of pilotage at Old Topsail inlet.**

R. C., c. 85, s. 36.  
1794, c. 426.  
1798, c. 515.  
1806, c. 711.

The branch pilots for Old Topsail inlet shall be entitled to re-  
2 ceive of the commander of such vessel as they may have charge  
3 of, the following pilotage, namely: for every vessel of sixty tons  
4 burden, from the outside of the inlet, at any place within the limits  
5 of pilot ground, into Bogue road or Shackleford road, at the option  
6 of the commander, six dollars; for vessels drawing eight feet water  
7 and less than twelve, one dollar per foot; for all vessels drawing  
8 twelve feet and upwards, one dollar and twenty-five cents per foot;  
9 and the same fees for piloting outwards as inwards.

**Sec. 3332. Rates of pilotage at Bogue inlet.**

R. C., c. 85, s. 37.  
1792, c. 372, s. 2.

The branch pilots for Bogue inlet shall be entitled to receive of  
2 the commander of such vessel, as they may have charge of, the  
3 following pilotage, namely: for bringing any vessel into the said  
4 inlet, drawing less than seven feet, from the outside of the bar to  
5 the anchorage before the town, or the customary place in Hill's  
6 channel, fifty cents per foot; for a vessel drawing more than seven  
7 feet, seventy-five cents per foot; and the same fees for pilotage out-  
8 wards as inwards.

**Sec. 3333. Fees of pilots to be annexed to their commissions.**

R. C., c. 85, s. 38.  
1784, c. 208, s. 4.

The commissioners of navigation for the several ports of this state  
2 shall annex to the branch or commission, by them given to each  
3 pilot, a copy of the fees to which such pilot is entitled.

**Sec. 3334. Boards to designate where ballast, trash, &c., may be cast; penalty for throwing ballast, stone, &c., into navigable water, or pulling down beacons.**

R. C., c. 85, s. 40.  
R. S., c. 88, ss. 23,  
24, 45.  
1811, c. 839.  
1833, c. 146, ss. 1, 2, 3.  
1842, c. 65, s. 4.  
1846, c. 60, s. 3.

The several boards of commissioners established by this chap-  
2 ter, may designate the places whereat, within the waters under their  
3 several and respective control, may be cast and thrown ballast,  
4 trash, stone, and such like matter; and if any person shall cast or  
5 throw from any vessel, into the navigable waters of Carteret or  
6 Onslow counties, of Tar or Pamlico river, or into the navigable  
7 waters of the Cape Fear, or any other river in the state, or into any  
8 channel of navigable water elsewhere than in a river, any ballast,



9 stone, shells, earth, trash or other substance likely to be injurious  
10 to the navigation of such waters, rivers, or channel; or if any per-  
11 son shall wilfully pull down any beacon, stake or other mark,  
12 erected or placed in virtue of this chapter, or any by-law, order or  
13 regulation, passed or ordained in pursuance thereof; the person so  
14 offending shall be guilty of a misdemeanor, and may be indicted  
15 therefor: and, moreover, shall forfeit and pay two hundred dollars,  
16 to be recovered for the use of the commissioners in whose waters  
17 the offence was committed.

Sec. 3335. Penalty on pilots for not giving information of unlawful acts.

If any pilot shall knowingly suffer any such unlawful act to be  
2 done, and shall not within ten days thereafter give to the said com-  
3 missioners, or one of them, information thereof, such pilot shall  
4 likewise be guilty of a misdemeanor; and, besides the usual pun-  
5 ishment of such offence, on conviction, shall be forever incapable  
6 of acting as a pilot in the state: *Provided, always,* that it shall be  
7 the especial duty of the commissioners to enforce the penalties im-  
8 posed in every section of this chapter, which, or part of which,  
9 are given to the commissioners.

R. C., c. 85, s. 41.  
1784, c. 206, s. 11.  
1833, c. 146, ss. 4, 5.

Sec. 3336. Penalties and fines, how disposed of; annual report made thereof.

One-half of all the penalties, fines, and forfeitures, imposed in  
2 this chapter, which, or any part of which, are to be recovered by  
3 the commissioners, shall belong to the board, within whose jurisdic-  
4 tion the same may have been incurred, and shall be applied to the  
5 defraying of the expenses of the board; and the other half shall be  
6 applied to the improvement of the navigation of the waters, within  
7 the same jurisdiction. And an annual report of the last-mentioned  
8 half of such receipts, and the objects on which the same may have  
9 been expended, shall be made to the board of internal improve-  
10 ment.

R. C., c. 85, s. 42.  
1783, c. 194, s. 10.

CHAPTER NINETY-FOUR.

POOR.

SECTION.  
3337. Board of county commissioners to provide for the support of the poor.  
3338. Paupers chargeable to the county to be maintained at the poor house.  
3339. Paupers not to be hired out at auction.  
3340. Paupers in the poor house, how supported.

SECTION.  
3341. Legal settlements, how acquired :  
(1) By one year's residence;  
(2) Married women to have the settlement of their husbands;  
(3) Legitimate children to have the settlement of their father;  
(4) Illegitimate children that of their mother;  
(5) Settlement to continue until new one acquired.

## SECTION.

3342. Paupers to be removed to their settlements unless sick or disabled; charges of removal to be paid by the county of settlement; housekeepers entertaining paupers to notify board of commissioners.

## SECTION.

3343. Families of poor militiamen in service to be supported by county.  
3344. Indigent persons owning property.

**Sec. 3337. Board of county commissioners to provide for the support of the poor.**

1868, c. 20, s. 8, sub  
section 24.

The board of commissioners of each county is authorized to provide by taxation for the maintenance, and to do all such matters and things as may be deemed expedient, for the comfort and well ordering of the poor; to employ biennially some competent person as overseer of the poor, with power to remove him for cause; to institute proceedings 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.

State v. Hawkins, 77—494.

**Sec. 3338. Paupers chargeable to the county to be maintained at the poor house.**

1876-'7, c. 277, s. 1.

All paupers who may become chargeable to any county shall be maintained at the county poor house, or at such place or places as the board of commissioners may select or agree upon.

**Sec. 3339. Paupers not to be hired out at auction.**

1876-'7, c. 277, s. 2.

No such paupers shall be let out at public auction, but the board of commissioners may make such arrangements for the support of paupers with their friends or other persons, when not maintained at the county poor house, as may be deemed best.

**Sec. 3340. Paupers in the poor house, how supported.**

1876-'7, c. 277, s. 3.

The board of commissioners may provide for the support of the paupers in the poor house by employing an overseer at a certain sum, or by paying a specified sum for the support of such paupers to any one who will take charge of the poor house and paupers as said board may deem for the best interest of the county and the cause of humanity.

**Sec. 3341. Legal settlements, how acquired.**

R. C., c. 86, s. 12.  
1777, c. 117, s. 16.

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:

Ferrell v. Boykin, Phil., 9; State v. Elam, Phil., 460; State v. McQuaig, 63—550.

4 (1) BY ONE YEAR'S RESIDENCE.

5 Every person, who shall have resided continuously in any county  
6 for one year, shall be deemed legally settled in that county.

7 (2) MARRIED WOMEN TO HAVE THE SETTLEMENT OF THEIR HUS-  
8 BANDS.

9 A married woman shall always follow and have the settlement  
10 of her husband, if he have any in the state; otherwise, her own at  
11 the time of her marriage, if she then had any, shall not be lost or  
12 suspended by the marriage, but shall be that of her husband, till  
13 another is acquired by him, which shall then be the settlement of  
14 both.

15 (3) LEGITIMATE CHILDREN TO HAVE SETTLEMENT OF FATHER.

16 Legitimate children shall follow and have the settlement of their  
17 father, if he have any in the state, until they gain a settlement of  
18 their own; but if he have none, they shall, in like manner, follow  
19 and have the settlement of their mother, if she have any.

20 (4) ILLEGITIMATE CHILDREN, THAT OF THEIR MOTHER.

21 Illegitimate children shall follow and have the settlement of  
22 their mother, at the time of their birth, if she then have any in  
23 the state. But neither legitimate nor illegitimate children shall  
24 gain a settlement by birth, in the county in which they may be  
25 born, if neither of their parents had any settlement therein.

26 (5) SETTLEMENT TO CONTINUE UNTIL NEW ONE ACQUIRED.

27 Every legal settlement shall continue till it shall be lost or de-  
28 feated by acquiring a new one, within or without the state: and  
29 upon acquiring such new settlement, all former settlements shall  
30 be defeated and lost.

**Sec. 3342.** Paupers to be removed to their settlements, unless sick or disabled;  
charges of removal to be paid by county of settlement; housekeepers entertain-  
ing paupers to notify board of commissioners.

Upon complaint made by the chairman of the board of county  
2 commissioners, before a justice of the peace, that any person has  
3 come into the county, who is likely to become chargeable thereto,  
4 the justice by his warrant shall cause such poor person to be re-  
5 moved to the county where he was last legally settled; but if such  
6 poor person be sick or disabled, and cannot be removed without  
7 danger of life, the board of commissioners shall provide for his  
8 maintenance and cure at the charge of the county; and after his  
9 recovery shall cause him to be removed, and pay the charges of  
10 his removal; and the county, wherein he was last legally settled,  
11 shall repay all charges occasioned by his sickness, maintenance,  
12 cure, and removal, and all charges and expenses whatever, if such  
13 person shall die before removal. And if the board of commission-  
14 ers of the county, to which such poor person belongs, shall refuse  
15 to receive and provide for him when removed as aforesaid, every  
16 commissioner so refusing shall forfeit and pay forty dollars, for the

R. C., c. 86, s. 13.  
1777, c. 117, s. 17.  
1834, c. 21.



17 use of the county whence the removal was made; moreover, if the  
 18 board of commissioners of the county, where such person was legally  
 19 settled, shall refuse to pay the charges and expenses aforesaid, they  
 20 shall be liable for the same, by action in the superior court; and  
 21 if any housekeeper shall entertain such poor person, and shall not  
 22 give notice thereof to the board of commissioners of his county, or  
 23 one of them, within one month, the person so offending shall for-  
 24 feit and pay ten dollars.

Prue v. Hight, 6 Jon., 265; State v. McQuaig, 63—550.

**Sec. 3343. Families of poor militiamen in service to be supported by county.**

R. C., c. 86, s. 14.  
 1779, c. 152.

When any citizen of the state is absent on service as a militia-  
 2 man, and his family are unable to support themselves during his  
 3 absence, the board of commissioners of his county, on application,  
 4 shall make towards their maintenance such allowance as may be  
 5 deemed reasonable.

**Sec. 3344. Indigent persons owning property.**

1866, c. 49.

Whenever any indigent person becomes chargeable to a county  
 2 for maintenance and support in accordance with the provisions  
 3 of this chapter, owning any estate, it shall be the duty of the board  
 4 of commissioners of any county liable to pay the expenses of such  
 5 indigent person, to cause the same to be sold for its indemnity or  
 6 reimbursement in the manner provided in the chapter entitled  
 7 Idiots and Lunatics.

## CHAPTER NINETY-FIVE.

### PROCESSIONING.

**SECTION.**

3345. Processioners of land appointed by board  
 of county commissioners.  
 3346. Oath and term of office.  
 3347. Owners to file petition.  
 3348. Processioner to make report and return  
 it to clerk, &c., to be recorded.  
 3349. When line disputed, and processioner  
 forbidden to proceed, he shall report to  
 court; five freeholders then appointed  
 with processioner.

**SECTION.**

3350. Person having land processioned deemed  
 owner; who not bound by procession-  
 ing.  
 3351. Appeal allowed.  
 3352. Surveyors deemed processioners; their  
 powers.

**Sec. 3345. Processioners of land appointed by board of county commissioners.**

R. C., c. 88, s. 1.  
 1792, c. 365, ss. 1, 2,  
 4.  
 1804, c. 670, s. 2.  
 1869-'70, c. 30.

The board of county commissioners shall appoint one or more  
 2 persons capable of surveying to act as processioner in their respec-  
 3 tive counties, and any processioner, when there are several, may  
 4 act alone.

**Sec. 3346. Oath and term of office.**

Every proccessioner 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.

R. C., c. 88, s. 2.  
1792, c. 365, s. 3.

**Sec. 3347. Owners to file petition.**

The proprietor of any land, who may desire to have it processioned, shall file his petition in the superior court of the county in which some part of the land may be situated, setting forth the line or lines in dispute, and making defendants all persons whose lands adjoin his; the clerk shall thereupon issue a summons to the defendants as in other cases of special proceeding. Upon return of the summons served, the clerk shall issue an order to a proccessioner or county surveyor of his county to procession said land according to the provisions of this chapter. Before the proccessioner shall act, the petitioner shall cause to be served on each defendant a written notice of the time when the proccessioner will attend to procession said land, which shall be served five days prior thereto; a copy of said notice, signed by the person serving it, shall be delivered to the proccessioner.

**Sec. 3348. Proccessioner to make report and return it to clerk, &c.; to be recorded by clerk.**

The proccessioner shall make a plot of each tract of land processioned, and a report which shall contain the claimant's name, the quantity of acres, the corners, length, and course of each line, and which 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 proccessioner is appointed, and unless exception thereto be filed within ten days, the same shall be confirmed; and the same, with the plot, 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 proccessioner and clerk shall be paid by the proprietor of the land.

R. C., c. 88, s. 5.  
1792, c. 365, ss. 6, 7,  
8.

Willson v. Shufford, 3 Murphy, 504; Cansler v. Hoke, 3 Dev., 238; Carpenter v. Whitworth, 3 Ire., 204; Matthews v. Matthews, 4 Ire., 155; Hoyle v. Wilson, 7 Ire., 467.

**Sec. 3349. How proccessioner to proceed in cases of disputed lines.**

When a line is disputed and the proccessioner is forbidden by any person interested in the event of the proccessioning, to proceed further in running and marking the same, he shall within ten days report the matter, stating truly all the circumstances of the case, with the name of the person who forbade further proceeding, to the superior court of the county, and the said court shall thereupon as well as when exception shall be filed as provided in the preceding section, appoint five respectable freeholders, a majority of whom shall appear with the proccessioner on the line or lines so disputed and proceed, after being sworn by the proccessioner or some justice of the peace to do equal right and justice between the con-

1874-'5, c. 40.

12 tending parties to establish such disputed line or lines as shall ap-  
13 pear to them right, and procession the same and make report of  
14 their proceeding within thirty days to the superior court, and un-  
15 less exception thereto be filed within ten days, the same shall be  
16 confirmed and recorded as above directed: *Provided, nevertheless,*  
17 that either party may call in any other surveyor to act with the  
18 processioner, and complete such survey, and the party against  
19 whom the decision is made shall pay all costs.

Carpenter v. Whitworth, 3 Ire., 204; Miller v. Heart, 4 Ire., 23; Robbins *ex parte*, 63—309;  
Britt v. Benton, 79—177.

Sec. 3350. Person having land processioned, deemed owner; who not bound by  
processioning.

R. C., c. 88, s. 7.  
1723, c. 14, ss. 1, 2.

Every person whose lands shall be processioned to him, accord-  
2 ing to the directions of this chapter, shall be deemed and adjudged  
3 to be the sole owner thereof; and, upon any suit commenced for  
4 such lands, the party in possession may plead, and give the pro-  
5 ceedings under this chapter in evidence: *Provided always,* that the  
6 processioning of the lands of a tenant for life shall not bar or pre-  
7 clude the heir, or other person in reversion or remainder; neither  
8 shall any processioning bar or preclude *femes covert*, persons under  
9 age, *non compos mentis*, imprisoned, or out of the state; but all such  
10 persons may sue for, and dispute the title and bounds of any such  
11 lands, if they will commence and prosecute their suit within the  
12 time limited by law, after the removal of such disability.

Sec. 3351. Appeal allowed.

Any party shall have the right of appeal as in other cases of  
2 special proceeding.

Sec. 3352. Surveyors deemed to be processioners; their powers.

1872-'3, c. 57, ss. 1, 2.

The county surveyors of the several counties shall be proces-  
2 sioners in their respective counties, and shall have all the powers,  
3 and shall be subject to all the rules, regulations and restrictions of  
4 processioners, as provided in this chapter.

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CHAPTER NINETY-SIX.

PUBLIC ARMS.

SECTION.

- 3353. Public arms to be deposited in public  
arsenals, &c.
- 3354. Keeper of arms at arsenals appointed  
by adjutant-general.
- 3355. Volunteer companies, how to obtain  
arms.

SECTION.

- 3356. A town or senior colonel may, on giving  
bond.
- 3357. Treasurer to pay freight on.
- 3358. Arms distributed on invasion, &c.
- 3359. Duty of officers receiving arms.
- 3360. Not keeping arms in order, penalty.



SECTION.

- 3361. Selling, buying or embezzling public arms, misdemeanor.
- 3362. On death, &c., of the private, his arms delivered to successor.
- 3363. Officers to demand public arms of persons not entitled.
- 3364. Detachments in service may have arms, when.

SECTION.

- 3365. Arms kept in arsenals, when allowed schools.
- 3366. When adjutant-general fails to draw arms specified, what arms sent.
- 3367. To exchange muzzle-loading muskets.

Sec. 3353. Public arms to be deposited in public arsenals, &c.

All the public arms of every description, belonging to the state,  
 2 which may not be distributed among the militia according to law  
 3 shall, under the direction of the adjutant-general, be deposited and  
 4 kept in the public arsenals established at Raleigh and Fayetteville,  
 5 and the depot of arms in the town of NewBerne or its vicinity, in  
 6 such proportion as the governor may prescribe.

R. C., c. 89, s. 1.  
 1820, c. 1058.  
 1822, c. 1168.  
 1828, c. 31.  
 1846, c. 3.

Sec. 3354. Keeper of arms at arsenals appointed by adjutant-general.

The adjutant-general shall, at each place where an arsenal or  
 2 depot of arms is established, appoint some suitable person keeper  
 3 of the same, who shall be allowed not exceeding sixty dollars per  
 4 annum; and the superintendent of the depot of arms in the town  
 5 of NewBerne or its vicinity, for his services and the rent of a build-  
 6 ing, shall receive one hundred and fifty dollars yearly; the one-  
 7 half thereof to be paid semi-annually. The adjutant-general may  
 8 make regulations respecting the duty of the superintendent; may  
 9 require bond and security for the faithful discharge of his duty;  
 10 and at the pleasure of the adjutant-general he may be removed,  
 11 and another appointed in his place. The governor may make such  
 12 provisions as he may think necessary for guarding and protecting  
 13 the arsenals and depots of arms, and for the purpose of defraying  
 14 the expenses incurred under this and the preceding section, he  
 15 may, upon the certificate of the adjutant-general, from time to time  
 16 draw on the state treasurer for such sums as may be necessary.

R. C., c. 89, s. 2.  
 1822, c. 1168.  
 1828, c. 31.  
 1830, c. 21, s. 5.  
 1846, c. 3.  
 1848, c. 6.  
 1852, c. 52.

Sec. 3355. Volunteer companies, how to obtain public arms.

Whenever any volunteer company of infantry, light-infantry, or  
 2 riflemen, artillery, or cavalry may be formed out of the militia, and  
 3 it shall appear to the governor, by a certificate from the brigadier-  
 4 general of the brigade in which such company is formed; or in  
 5 case of his death or absence, by the certificate of the highest officer  
 6 in command of the militia of any county where such company  
 7 may be formed, that the said corps has enroled as members the  
 8 number of officers and men required for such a company, and is  
 9 otherwise equipped except as to arms and accouterments, then the  
 10 governor may direct such portion of the arms as may be necessary  
 11 for the company, to be delivered to the commanding officer, tak-  
 12 ing his receipt for the same, but no such officer shall be allowed to  
 13 draw the arms before he shall have given bond, with two good se-

R. C., c. 89, s. 3.  
 1819, c. 1027.  
 1822, c. 1168.  
 1846, c. 2.  
 1851.

14 curities, if required, in double the appraised value of the arms, con-  
 15 ditioned for the safe-keeping, cleaning and returning thereof,  
 16 whenever the company shall be dissolved, or the governor shall  
 17 direct.

**Sec. 3356. A town or senior colonel may, on giving bond.**

R. C., c. 89, s. 4.  
 1830, c. 21, s. 2.

In case the public authority of any town, or the senior colonel  
 2 of any county, shall petition the governor for any number not ex-  
 3 ceeding sixty-five stand of the public arms, he is authorized to  
 4 furnish them: *Provided*, bond be given with approved security if  
 5 required for the safe keeping, preservation and return of the same:  
 6 *And provided*, that no one county shall receive a greater number  
 7 than sixty-five, unless in case of insurrection or invasion.

**Sec. 3357. Treasurer to pay freight on.**

1784-'5, c. 21.

The auditor of the state is hereby authorized and directed to  
 2 issue his warrant upon the state treasurer for the payment of such  
 3 sums as may be certified by the adjutant-general and governor,  
 4 and as may be actually necessary to pay the freight and drayage  
 5 upon the public arms received as the quota of North Carolina from  
 6 the United States government, under the acts making provision  
 7 for the arming of the militia of the several states and territories,  
 8 or returned to the arsenals of the United States for exchange under  
 9 the act of congress of one thousand eight hundred and seventy-  
 10 three.

**Sec. 3358. Arms distributed on invasion, &c.**

R. C., c. 89, s. 5.  
 1830, c. 21, s. 3.

In case of insurrection or invasion, or a probability thereof, the  
 2 governor is authorized to distribute the public arms and send them  
 3 to such places as he may deem necessary and expedient, and to  
 4 draw warrants on the treasurer of the state for the sums necessary  
 5 for that purpose.

**Sec. 3359. Duty of militia officers receiving arms.**

R. C., c. 89, s. 6.  
 1831, c. 45, s. 3.

When public arms shall be delivered to any colonel command-  
 2 ant, for distribution in his county, he shall take receipts of the cap-  
 3 tains in whose hands they may be placed, and give the necessary  
 4 orders for keeping the same safe and in good order; and the cap-  
 5 tains, when they distribute the arms to their respective companies,  
 6 shall take from each man a receipt at full length under seal, in the  
 7 muster book of their companies, in double the value of the arms,  
 8 conditioned for the safe-keeping and returning thereof, when called  
 9 for by the colonel commandant; which muster or receipt book  
 10 shall be carefully kept, and be subject to the inspection of the colo-  
 11 nel whenever he may desire it; and on the death, resignation or  
 12 removal of the captain, the book shall be handed over to the officer  
 13 who may be appointed to command the company.

**Sec. 3360. Not keeping arms in order, penalty for.**

Every non-commissioned officer and private belonging to any company equipped with public arms, shall keep and preserve his arms and accouterments 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 accouterments, and bestow them on some other company of his regiment, under the regulations aforesaid.

R. C., c. 89, s. 7.  
1831, c. 45, s. 4.

**Sec. 3361. Selling, buying or embezzling public arms misdemeanor.**

If any person to whom shall be confided public arms or accouterments, 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 guilty of a misdemeanor, and on conviction shall be fined or imprisoned, or both, at the discretion of the court.

R. C., c. 89, s. 8.  
1831, c. 45, s. 5.

**Sec. 3362. On death, &c., of a private, his arms delivered to successor.**

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 accouterments 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.

R. C., c. 89, s. 9.  
1831, c. 45, s. 6.

**Sec. 3363. Officers to demand public arms of persons not entitled.**

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 guilty in like manner, and punished in like manner, as for selling or embezzling public arms.

R. C., c. 89, s. 10.  
1831, c. 45, s. 7.

**Sec. 3364. Detachments in service may have arms, when.**

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.

R. C., c. 89, s. 11.  
1831, c. 45, s. 8.



**Sec. 3365. Arms kept in arsenal, when allowed schools.**

1873-'4, c. 96, s. 2.

The said arms shall be kept in the arsenal at Raleigh, and upon  
 2 the application of the principal of any military school setting forth  
 3 the number of students and the number of arms required, and  
 4 giving the bond, as now required by law, it shall be the duty of  
 5 the adjutant-general, under the direction of the governor, to issue  
 6 the number so required, and take the receipt from the principal,  
 7 which shall be filed as similar receipts are now filed.

**Sec. 3366. When adjutant-general fails to draw arms specified, what arms sent.**

1873-'4, c. 96, s. 3.

Should the adjutant-general, under the direction of the gover-  
 2 nor, fail to draw the arms specified, then it shall be his duty upon  
 3 application as aforesaid, to issue to said principal any arms which  
 4 may now be in the said arsenal.

**Sec. 3367. To exchange muzzle-loading muskets.**

1873-'4, c. 96, s. 4.

The adjutant-general, under the direction of the governor, is  
 2 hereby empowered and directed to exchange the muzzle-loading  
 3 arms now on hand to the number of two hundred for the same  
 4 number of breech-loading Springfield regulation arms now in use  
 5 or adopted for the use of the army of the United States, at a differ-  
 6 ence not to exceed three dollars per stand, and if the exchange  
 7 cannot be made on these terms, then he shall exchange such num-  
 8 ber of muzzle-loaders for two hundred and fifty of breech-loaders  
 9 of the above description as may be necessary to do in order to get  
 10 the number of breech-loaders as aforesaid, and shall issue the  
 11 breach-loaders so obtained to the military schools of the state upon  
 12 requisition, and such security as will insure the interest of the  
 13 state.

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## CHAPTER NINETY-SEVEN.

**PUBLIC DEBT.****SECTION.**

3368. Bonds and certificates transferable; mode of transfer.  
 3369. In what manner state bonds shall be executed, &c.; coupons of interest attached; money, where payable; no bonds under one thousand dollar to issue.  
 3370. Memorandum of state bonds, with numbers, &c., to be kept.  
 3371. What state bonds exempt from taxation.  
 3372. Title of the act or date of the chapter to be recited in the bond.  
 3373. Chief clerk authorized to transfer and make indorsements in certain cases.

**SECTION.**

3374. State treasurer to register coupon bonds.  
 3375. Enumeration of fundable bonds; bonds issued before the twentieth of May, one thousand eight hundred and sixty-one, exception; under acts 1865, c. 3; 1866-'7, c. 56; 1866, c. 37; 1868, c. 32; registered certificates, issued under act 1866-'7, c. 68, to be surrendered to treasurer; treasurer to issue new bonds.  
 3375. Denomination of bonds; how signed, &c.  
 3377. Exempt from taxation; coupons receivable in payment of taxes.

## SECTION.

3378. Rates of exchange:

- (1) Bonds exchangeable at forty per cent.;
- (2) Bonds exchangeable at twenty-five per cent.;
- (3) Bonds exchangeable at fifteen per cent.; proviso.

3379. Form of bonds.

3380. Taxes applicable to payment of interest.

3381. Excess of fund accruing from taxes to be applied to purchase of bonds.

3382. Treasurer to keep descriptive list of bonds surrendered; surrendered bonds to be destroyed.

3383. Treasurer to keep a descriptive list of bonds issued.

3384. Executors, &amp;c., authorized to exchange bonds.

3385. Limitation of this chapter.

3386. Interest to be paid out of state treasury in case of insufficiency of fund accruing from taxes.

3387. Contingent bonds issued for payment of interest in case of insufficiency of fund accruing from taxes and deficit in treasury; treasurer authorized to issue bonds; when payable; description of bond, how signed, &amp;c.; exempt from taxation; coupons.

3388. Treasurer authorized to sell contingent bonds; proviso.

3389. Provisions of this chapter for payment of interest, applicable to payment of interest on contingent bonds.

3390. Appropriations to carry out provisions of this chapter.

3391. Treasurer to give notice.

3392. Governor authorized to appoint commissioners to negotiate with the holders of the construction bonds of the North Carolina railroad; terms to be approved by governor and treasurer.

## SECTION.

3393. Commissioner authorized, with consent of governor and treasurer, to contract for renewal of old bonds.

3394. Commissioners to issue certificates to persons surrendering bonds.

3395. Commissioners empowered to sell new bonds, and invest proceeds in purchase of old bonds; proviso.

3396. Treasurer to issue new bonds upon presentation of certificates; description thereof.

3397. To be coupon bonds; denominations; how signed; coupons receivable in payment of taxes.

3398. Treasurer to keep account and descriptive list of bonds; to cancel certificates.

3399. Bonds exempt from taxation; to stand in place of old bonds; to have same lien on state stock in North Carolina railroad as old bonds; dividends on stock to be applied in payment of coupons.

3400. Executors, &amp;c., authorized to exchange bonds as provided; empowered to invest trust funds in new bonds.

3401. Commissioners to hold old bonds in trust for payment of new ones; to collect dividends; amounts received paid to treasurer and applied to payment of interest on new bonds; when and how old bonds to be canceled.

3402. Commissioners to give bond, &amp;c.; compensation.

3403. Vacancy.

## Sec. 3368. Bonds and certificates transferable; mode of transfer.

All bonds or certificates of debt of the state, which now are or

- 2 hereafter may be issued on behalf of the state, shall be transferable:
- 3 such as are payable to bearer, by delivery; and such as are pay-
- 4 able to the holder by name alone, may be transferred by the holder
- 5 or his agent, in a book to be kept for that purpose by the state
- 6 treasurer, on surrendering for cancelation the outstanding bond or
- 7 certificate; and in this latter case of transfer, a new bond or certifi-
- 8 cate for the same amount shall be issued.

R. C., c. 90, s. 2.  
1848, c. 37, s. 5.  
1850, c. 58, s. 4.  
1852, c. 11.

## Sec. 3369. In what manner state bonds shall be executed, &amp;c.; coupons of interest attached; money, where payable; no bonds under one thousand dollar to issue.

All bonds or certificates of debt of the state, hereafter to be issued

- 2 as originals, or as substitutes for such as may be surrendered for
- 3 transfer, by virtue of any act now or to be hereafter passed, shall
- 4 be signed by the governor, and countersigned by the state treas-
- 5 urer, and sealed with the great seal of the state, and shall be made
- 6 payable to such person by name as may be the purchaser, or to

R. C., s. 90, s. 3.  
1848, c. 89, s. 22.  
1852, chaps. 9, 10, s.  
1.

7 bearer; and the principal shall be made payable by the state, at a  
 8 day named in the bond or certificate. And coupons of interest,  
 9 in such form as may be prescribed by the state treasurer, shall be  
 10 attached to the certificate, and the certificates and coupons attached  
 11 thereto shall be made payable at such bank or place in the city of  
 12 New York as the state treasurer may designate, or at the office of  
 13 the state treasurer at Raleigh, if preferred by the purchaser: *Pro-*  
 14 *vided, however,* that if the purchaser or holder so may desire, the  
 15 bond or certificate shall be payable to him alone, and not to bearer:  
 16 *And provided further,* that no certificate shall issue for a less sum  
 17 than one thousand dollars, unless the same be issued for a surren-  
 18 dered bond of less amount: nor shall any original bond or certifi-  
 19 cate of debt of the state be sold for a sum less than par value: nor  
 20 shall any such bond or certificate, issuing in lieu of a transferred  
 21 bond or certificate, be payable elsewhere than may be the original,  
 22 except by the consent of the holder, it may be made payable at the  
 23 state treasury.

**Sec. 3370. Memorandum of state bonds, with numbers, &c., to be kept.**

R. C., c. 90, s. 4.  
 1852, c. 10, s. 2.

The state treasurer shall enter in a book to be kept for that pur-  
 2 pose, a memorandum of every bond, or certificate of debt of the  
 3 state, issued or to be issued under any act whatever, together with  
 4 the numbers, dates of issue, when and where payable; at what pre-  
 5 mium, and to whom the same may have been sold or issued.

**Sec. 3371. What state bonds exempt from taxation.**

R. C., c. 90, s. 5.  
 1852, c. 10, s. 4.

The original bonds or certificates of debt of the state, which  
 2 have been issued since the first day of January, one thousand eight  
 3 hundred and fifty-three, or which may hereafter be issued under  
 4 the authority of any act whatever; as likewise the bonds and cer-  
 5 tificates substituted for such original bonds and certificates, shall  
 6 be, they and the interest accruing thereon, exempt from taxation.

**Sec. 3372. Title of the act or date of the chapter to be recited in the bond.**

R. C., c. 90, s. 6.  
 1852, c. 90, s. 2.

In every bond or certificate of debt issued by the state, and in  
 2 the body thereof, shall be set forth the title of the act, with the  
 3 year of its enactment, under the authority of which the same may  
 4 be issued; or reference thereto shall be made by the number of the  
 5 chapter, and the year of the legislative session.

**Sec. 3373. Chief clerk authorized to transfer and make indorsements in certain cases.**

1864-'5, c. 24.

In all cases where the state treasurer may be absent from his of-  
 2 fice by sickness or other cause, and coupon bonds may be presented  
 3 for registration or transfer, the chief clerk, during such absence of  
 4 the treasurer, may make such indorsements, and witness the same,



5 and also such transfers of the said bonds as by law the treasurer  
6 himself is now authorized to do.

**Sec. 3374. State treasurer to register coupon bonds.**

1853, c. 16.  
2 Holders of the coupon bonds of the state may bring them to the  
3 state treasurer, who, in such cases, shall be required to register the  
4 names of the said holders in a book kept for that purpose, together  
5 with the number, amount, and date of the bonds, and shall also  
6 indorse on such bonds that they are transferable only at his office  
7 by written indorsement on the bonds, witnessed by him. The state  
8 treasurer shall witness indorsements on such bonds made in his  
9 office, and shall register the names of the persons to whom indorsed,  
10 and the date of the indorsement, and shall keep the book contain-  
11 ing these records in the vault of the treasury. The registry of said  
12 bonds shall be received as evidence of their existence, amount, and  
13 when due, and payable, in all cases, when the original is lost or  
destroyed, or cannot be obtained.

**Sec. 3375. Enumeration of fundable bonds; bonds issued before the twentieth day of May, one thousand eight hundred and sixty-one, exception; under acts one thousand eight hundred and sixty-five, chapter three; one thousand eight hundred and sixty-six and one thousand eight hundred and sixty-seven, chapter fifty-six; one thousand eight hundred and sixty-six, chapter thirty-seven; one thousand eight hundred and sixty-eight, chapter thirty-two; registered certificates issued under acts one thousand eight hundred and sixty-six and one thousand eight hundred and sixty-seven, chapter sixty eight, to be surrendered to treasurer; treasurer to issue new bonds.**

1879, c. 98, s. 1.  
2 When any person holding and owning any bond or bonds of  
3 the state, issued in pursuance of any act of assembly, passed at any  
4 time before the twentieth day of May, one thousand eight hundred  
5 and sixty-one, exclusive of bonds issued for the construction of the  
6 North Carolina railroad, or in pursuance of the act of the general  
7 assembly passed at its session in one thousand eight hundred and  
8 sixty-five, it being chapter three of the laws of one thousand eight  
9 hundred and sixty-five, or in pursuance of an act passed by the  
10 general assembly at its session in one thousand eight hundred and  
11 sixty-seven, it being chapter fifty-six of the laws of one thousand  
12 eight hundred and sixty-seven, or in pursuance of an act entitled  
13 "An act to provide for the payment of the state debt contracted  
14 before the war," ratified on the tenth day of March, one thousand  
15 eight hundred and sixty-six, or in pursuance of an act entitled  
16 "An act to provide for funding the matured interest on the public  
17 debt," ratified the tenth day of August, Anno Domini one thousand  
18 eight hundred and sixty-eight; or any registered certificate or cer-  
19 tificates belonging to the board of education, issued in pursuance  
20 of an act of the general assembly of one thousand eight hundred  
21 and sixty-seven, shall surrender and deliver such bond or bonds,  
22 with the coupons attached thereto, or registered certificate or cer-  
tificates, to the treasurer of the state, then and in that case it shall

23 be the duty of the treasurer to issue and deliver to the person sur-  
 24 rendering such bond or bonds, certificate or certificates, a new  
 25 bond or bonds of the state, due and payable thirty years from the  
 26 first day of July, one thousand eight hundred and eighty, bearing  
 27 interest from date at the rate of four per cent. per annum, payable  
 28 semi-annually, on the first days of January and July in each suc-  
 29 cessive year, at the office of the state treasurer.

**Sec. 3376. Denomination of bonds; how signed, &c.**

1879, c. 98, s. 2.

The said bonds to be issued in place of the bonds surrendered  
 2 are to be coupon bonds of the denomination of fifty dollars, one  
 3 hundred dollars, five hundred dollars and one thousand dollars,  
 4 and are to be numbered from one upwards, in accordance with the  
 5 order of issue. They shall be signed by the governor and treas-  
 6 urer, and sealed with the great seal of the state; but the coupons  
 7 thereon may be signed by the treasurer alone, or have a *fac simile*  
 8 of his signature printed, engraved or lithographed thereon.

**Sec. 3377. Exempt from taxation; coupons receivable in payment of taxes.**

1879, c. 98, s. 3.

The said bonds shall be exempt from all state, county or corpo-  
 2 rate taxation or assessment direct or indirect, general or special,  
 3 whether imposed for the purposes of general revenue or otherwise.  
 4 The said coupons shall be receivable in payment of any and all  
 5 state taxes, and the same shall be expressed on the face of each  
 6 coupon; the coupon shall bear the same number as the bonds to  
 7 which they are attached, and in addition be numbered from one  
 8 upwards, in accordance with the date of their maturity.

**Sec. 3378. Rates of exchange.**

1879, c. 98, s. 4

These bonds shall be exchanged for the old bonds of the state,  
 2 mentioned in section thirty-three hundred and seventy-five, at the  
 3 following rates:

4 CLASS (1) BONDS EXCHANGEABLE AT FORTY PER CENT.

5 For the bonds issued before the twentieth day of May, eighteen  
 6 hundred and sixty-one, forty *per cent.* of the principal of the bond  
 7 or bonds so surrendered.

8 CLASS (2) BONDS EXCHANGEABLE AT TWENTY-FIVE PER CENT.

9 For the bonds issued since the close of the war, by authority of  
 10 acts passed before the war to aid in the construction of the Western  
 11 North Carolina railroad and the bonds issued in pursuance of the  
 12 said act of assembly of eighteen hundred and sixty-five, chapter  
 13 three; and act of assembly, eighteen hundred and sixty-seven,  
 14 chapter fifty-six; the bonds issued October first, eighteen hundred  
 15 and sixty-one, by authority of act of eighteen hundred and sixty-  
 16 one, chapter one hundred and thirty-seven, for Western (Coalfield)

17 railroad; the bonds issued October first, eighteen hundred and  
 18 sixty-one, by authority of the act of eighteen hundred and  
 19 fifty-four and fifty-five, chapter two hundred and twenty-eight, sec-  
 20 tion thirty-five; and resolution September the twelfth, eighteen  
 21 hundred and sixty-one, and the said registered certificates of the  
 22 literary fund, for the bonds issued July the first, eighteen hundred  
 23 and sixty-two, by authority of act of eighteen hundred and sixty  
 24 and sixty-one, chapter one hundred and forty-two, for the construc-  
 25 tion of the Wilmington, Charlotte and Rutherford railroad, twenty-  
 26 five per cent. of the principal of the bonds or certificates so surren-  
 27 dered.

28 CLASS (3) BONDS EXCHANGEABLE AT FIFTEEN PER CENT.; PROVISIO-  
 29 And those issued in pursuance of the said funding acts of March  
 30 the tenth, eighteen hundred and sixty-six; and August the twen-  
 31 tieth, eighteen hundred and sixty-eight, fifteen per cent. of the  
 32 principal of the bond or bonds so surrendered: *Provided*, that all  
 33 bonds issued in exchange for the new bonds shall be surrendered  
 34 with all the coupons attached.

#### Sec. 3379. Forms of bonds.

The bonds so to be issued shall be in the usual form of bonds of 1879, c. 98, s. 5.

2 this state, except as modified and provided by this chapter, and  
 3 shall have printed on the face of the same the words:

"Issued in pursuance of an act entitled an 'act to compromise, commute and settle the state debt,' ratified the ..... day of ....., Anno Domini one thousand eight hundred and seventy-nine, and in large red letters, 'The Consolidated Debt of the State.'"

#### Sec. 3380. Taxes applicable to payment of interest.

All state taxes levied and collected from professions, trades, in- 1879, c. 98, s. 6.  
 2 comes, merchants, dealers in cigars, and three-fourths of all the  
 3 taxes collected from wholesale and retail dealers in spirituous, vin-  
 4 ous and malt liquors, shall be held and applied to the payment of  
 5 the interest on said bonds, and the provisions of this section shall  
 6 be deemed and taken to be a material part of the consideration for  
 7 which the bonds of the state shall or may be surrendered.

#### Sec. 3381. Excess of fund accruing from taxes to be applied to purchase of bonds.

If the whole fund raised by such taxes shall not in any one year 1879, c. 98, s. 7.  
 2 be required to pay such accruing interest, then and in that case it  
 3 shall be the duty of the treasurer, with the sanction of the gover-  
 4 nor and the auditor, to buy with the surplus of such of the consol-  
 5 idated bonds as he can buy at the lowest price after thirty days'  
 6 advertisement in at least two papers published in Raleigh, and he  
 7 shall forthwith cancel any such bonds so purchased.



**Sec. 3382. Treasurer to keep descriptive list of bonds surrendered ; surrendered bonds to be destroyed.**

1879, c. 98, s. 8.

The treasurer shall provide a substantially bound book for the purpose, in which he shall make a correct descriptive list of the bonds so surrendered, which list shall embrace the number, date and amount of each, and the purpose for which the same was issued, when this can be ascertained, and the names of the persons surrendering the same, and after such list shall be made, such surrendered bonds being ascertained to be present, shall be consumed by fire in the presence of the governor, the treasurer, the auditor, the attorney-general, the secretary of state and superintendent of public instruction, who shall each certify under his hand respectively in such book that he saw such described bonds so consumed and destroyed.

**Sec. 3383. Treasurer to keep a descriptive list of bonds issued.**

1879, c. 98, s. 9.

The treasurer shall provide a well bound book, in which shall be kept an accurate account and descriptive list of the new bonds to be issued, and such descriptive list shall embrace the date, number and amount of such bond or bonds, for which the same issued and the name of the person to whom issued.

**Sec. 3384. Executors, &c., authorized to exchange bonds.**

1879, c. 98, s. 10.

It shall be lawful for any executor, administrator, guardian, trustee, director of any corporation, and any and all other persons acting in a fiduciary capacity holding bonds of the state, to make the exchange provided in this chapter, and they shall be absolved from all liability on account of said exchange.

**Sec. 3385. Limitations of this chapter.**

1879, c. 98, s. 11.

The provisions of this chapter for the exchange and issue of bonds shall continue in force until the first day of January, one thousand eight hundred and eighty-four.

**Sec. 3386. Interest to be paid out of state treasury in case of insufficiency of fund accruing from taxes.**

1879, c. 98, s. 12.

As a further provision for the purpose of paying the interest on these said new bonds, if the taxes for any one year upon the subjects of taxation hereinbefore mentioned shall be insufficient to pay said interest, then and in that case the state treasurer shall be authorized to apply any funds in the treasury not otherwise appropriated to that purpose.

Sec. 3387. Contingent bonds issued for payment of interest in case of insufficiency of fund accruing from taxes and deficit in treasury; treasurer authorized to issue bonds; when payable; description of bond, how signed, &c.; exempt from taxation; coupons.

In the event that the taxes collected in any one year upon the 1879, c. 98, s. 13.  
 2 aforesaid subjects of taxation, and the funds not otherwise appro-  
 3 priated in the treasury when added together shall be inadequate  
 4 to pay said interest, then, in order to provide for the deficiency,  
 5 the state treasurer is authorized to issue coupon bonds of the de-  
 6 nomination of five hundred dollars, bearing date the first day of  
 7 October or April of the year of the issue, according as one or the  
 8 other of said dates shall be nearest in point of time to the date of  
 9 the issue. Said bonds shall be payable forty years after date, but  
 10 redeemable after ten years at the option of the state, with interest  
 11 at the rate of six per centum per annum, payable semi-annually  
 12 on the first days of April and October. Said bonds shall bear upon  
 13 their face in red letters the words "Contingent Bonds," and shall  
 14 be numbered from one upwards in accordance with the order of  
 15 their issue. They shall be signed by the governor and treasurer  
 16 and sealed with the great seal of the state; but the coupons thereon  
 17 may be signed by the treasurer alone, or have a *fac similit* of  
 18 his signature printed, engraved or lithographed thereon. The  
 19 said bonds and coupons shall be exempt from all state, county or  
 20 corporate taxation or assessment, direct or indirect, general or  
 21 special, whether imposed for purposes of general revenue or other-  
 22 wise, and they shall be lawful investments by all executors, ad-  
 23 ministrators, guardians and fiduciaries generally. The coupons  
 24 on said bonds shall bear the same number as the bonds to which  
 25 they are attached, and shall in addition be numbered from one  
 26 upwards in accordance with the date of their maturity, and they  
 27 shall be and shall so express upon their face that they are receiv-  
 28 able at and after maturity in payment of all taxes, debts, demands  
 29 and dues to the state of every nature and kind whatsoever.

Sec. 3388. Treasurer authorized to sell contingent bonds; proviso.

The state treasurer shall be authorized to sell so many of said 1879, c. 98, s. 14.  
 2 bonds at par as shall be necessary to provide for the deficiencies  
 3 aforesaid; *Provided, however*, that he shall not issue and sell in the  
 4 aggregate more than six hundred of these bonds.

Sec. 3389. Provisions of this chapter for payment of interest applicable to pay-  
 ment of interest on contingent bonds.

All the provisions of this chapter for paying the interest on the 1879, c. 98, s. 15.  
 2 consolidated bonds shall apply as well to the payment of the inter-  
 3 est of these said contingent bonds.

**Sec. 3390. Appropriation to carry out provisions of this chapter.**

1879, c. 98, s. 16.

For the purpose of carrying out the provisions of this chapter in  
2 relation to the furnishing of proper blank bonds and coupons, the  
3 state treasurer is authorized, with the approval of the governor, to  
4 use any funds not otherwise appropriated in the treasury, not ex-  
5 ceeding the sum of five thousand dollars.

**Sec. 3391. Treasurer to give notice.**

1879, c. 98, s. 17.

The state treasurer is authorized to give public notice of this  
2 plan for a settlement of the state's indebtedness by advertising in  
3 such newspapers as he may select.

**Sec. 3392. Governor authorized to appoint commissioners to negotiate with the holders of the construction bonds of the North Carolina railroad, terms to be approved by governor and treasurer.**

1879, c. 138, s. 1.

In order to renew and adjust a portion of the state debt incurred  
2 to aid in the construction of the North Carolina railroad, and ob-  
3 tain an extension of time of paying the same and reduce the rate  
4 of interest thereon, the governor is hereby authorized to appoint  
5 three commissioners for the purpose of negotiating with the hold-  
6 ers of said bonds and contracting with them for a renewal of the  
7 said debt on terms which may be advantageous to the state, and  
8 which shall be approved by the governor and state treasurer.

**Sec. 3393. Commissioners authorized, with consent of governor and treasurer, to contract for renewal of old bonds.**

1879, c. 138, s. 2.

The said commissioners are hereby authorized, with the advice  
2 and consent of the governor and state treasurer, to contract and  
3 agree with holders of said old bonds for the renewal of the same  
4 with new bonds, to be issued under the provisions of the succeeding  
5 sections upon such terms as may be agreed on by and between the  
6 said commissioners and the holders of said bonds.

**Sec. 3394. Commissioners to issue certificates to persons surrendering bonds.**

1879, c. 138, s. 3.

The said commissioners shall issue to each and every person de-  
2 livering to them such old bonds in accordance with the terms of  
3 renewal which may be agreed on, a certificate which shall state the  
4 date, amount and number of the bonds and coupons delivered to  
5 them by each person, and number and amount of the new bonds  
6 which such person may be entitled to receive in renewal thereof.  
7 They shall file a copy of said certificate with the state treasurer  
8 immediately after the issue thereof.

**Sec. 3395. Commissioners empowered to sell new bonds, and invest proceeds in purchase of old bonds; proviso.**

1879, c. 138, s. 4.

The said commissioners, with the advice and consent of the gov-  
2 ernor and state treasurer, shall have power to sell said new bonds  
3 at par and invest the proceeds thereof in the purchase of the said



4 old bonds: *Provided*, that no sale of such new bonds shall be made  
 5 by said commissioners unless the proceeds thereof can be immedi-  
 6 ately invested in the purchase of said old bonds at a rate not greater  
 7 than that at which they are being exchanged for new bonds, and  
 8 not more than fifty thousand dollars of said bonds shall be sold at  
 9 the same time, nor shall a future sale of bonds be made until the  
 10 proceeds of previous sales have been invested in the purchase of  
 11 bonds as aforesaid. Upon the sale of such bonds the commission-  
 12 ers shall issue a certificate to the purchaser thereof, stating the  
 13 number and amount of such bonds to which such purchaser is en-  
 14 titled.

**Sec. 3396. Treasurer to issue new bonds upon presentation of certificates; description thereof.**

Upon presentation of said certificate to the state treasurer he 1879, c. 138, s. 5.  
 2 shall deliver to the owner thereof the number and amount of state  
 3 bonds to which he may be entitled according to said certificate,  
 4 and for the purpose of effecting the renewal of said bonds, the state  
 5 treasurer is hereby authorized and directed to issue bonds of the  
 6 state, payable forty years from the first day of April, one thousand  
 7 eight hundred and seventy-nine, bearing interest from the first  
 8 day of April, one thousand, eight hundred and seventy-nine, at  
 9 such rate as may be agreed upon, not to exceed six per cent. per  
 10 annum, payable semi-annually on the first days of April and Octo-  
 11 ber of each and every year until the principal shall be due.

**Sec. 3397. To be coupon bonds; denominations; how signed; coupons receivable in payment of taxes.**

The said bonds shall be coupon bonds of the denomination of 1879, c. 138, s. 6.  
 2 fifty, one hundred, five hundred, and one thousand dollars each,  
 3 and shall be signed by the governor and state treasurer, and shall  
 4 be sealed with the great seal of the state; the coupons thereon may  
 5 be signed by the treasurer alone, or have a *fac simile* of his signa-  
 6 ture printed, engraved or lithographed thereon, and the said bonds  
 7 and coupons shall in all other respects be in such form as the  
 8 treasurer may direct, and shall express on their face that they are  
 9 issued in renewal of said bonds; and the coupons thereon shall  
 10 after maturity be receivable in payment of all taxes, debts, dues,  
 11 licenses, fines and demands due the state, of every kind whatso-  
 12 ever, which shall be expressed on the face thereof.

**Sec. 3398. Treasurer to keep account and descriptive list of bonds; to cancel certificates.**

The state treasurer, before delivering any of said bonds, shall re- 1879, c. 138, s. 7.  
 2 cord in a well bound book an accurate account and descriptive list  
 3 of the said bonds, which shall embrace the date, amount and num-  
 4 ber thereof, and the name of the person to whom issued, and shall  
 5 receive and cancel the certificate issued by said commissioners on

6 which such bonds are issued by him ; but no bonds shall be issued  
7 by the treasurer but in execution of the provisions of this chapter.

Sec. 3399. Bonds exempt from taxation; to stand in place of old bonds; to have same lien on state stock in North Carolina railroad as old bonds; dividends on stock to be applied in payment of coupons.

1879, c. 138, s. 8.

The said new bonds and coupons shall be exempt from all taxation whatsoever, state, county and municipal, general and special, and the same shall be expressed on the face thereof; and shall in all respects stand in the place of and be entitled to the same securities as are the old bonds and coupons aforesaid, and shall have the same lien on the stock of the state in the said railroad company which the said old bonds and coupons now have; and the state treasurer shall apply the dividends received by the state on its stock in said company to the payment of the coupons on said new bonds.

Sec. 3400. Executors, &c., authorized to exchange bonds as provided; empowered to invest trust funds in new bonds.

1879, c. 138, s. 9.

It shall be lawful for any executor, administrator, guardian, trustee, and all persons acting in a fiduciary character, holding any of the bonds hereby authorized to be exchanged, to make the exchange for the bonds herein authorized to be issued; and they shall be absolved from liability or responsibility to any person having any interest in such bonds on account of such transfer and exchange; and they shall have the power to invest any trust fund held by them in the bonds authorized to be issued, and the same shall be taken and regarded in all the courts as a good, legal and valid investment of such trust funds by such fiduciary.

Sec. 3401. Commissioners to hold old bonds in trust for payment of new ones; to collect dividends; amounts received paid to treasurer and applied to payment of interest on new bonds; when and how old bonds to be canceled.

1879, c. 138, s. 10.

The said commissioners shall hold all the bonds and coupons delivered to or purchased by them in trust for the payment of the principal and interest on the said new bonds, and shall collect and receive all payments and dividends paid and made on said old bonds and coupons so held by them from any person authorized to pay the same; and said commissioners shall pay the amounts thus received to the state treasurer, and they shall be applied by him to the payment of the interest on the new bonds issued in pursuance of this chapter. The said old bonds shall not be canceled, but shall remain in force until the governor shall direct the same to be delivered to the state treasurer for cancelation, at which time the said bonds shall be canceled by the state treasurer in the presence of the governor; and they shall certify under their hands the number, amount and date of bonds and coupons canceled by them, which certificate shall be safely kept in the office of the state treasurer.

**Sec. 3402. Commissioners to give bond, &c.; compensation.**

The commissioners hereby authorized to be appointed shall enter  
 2 into bonds, payable to the state, in the penal sum of fifty thousand  
 3 dollars, with good security, to be accepted by the state treasurer,  
 4 and conditioned for the faithful performance of their duties, and  
 5 shall receive as compensation for their services a commission of  
 6 one-half of one per cent. on the amounts of all bonds purchased by  
 7 them, to be paid by the person or persons from whom the same  
 8 may be purchased, and shall in no case receive any compensation  
 9 from the state.

1879, c. 138, s. 11.

**Sec. 3403. Vacancy.**

In case of the death, resignation or removal of the said commis-  
 2 sioners, or either of them, the governor shall have power to appoint  
 3 other persons to fill such vacancies.

1879, c. 138, s. 12.

## CHAPTER NINETY-EIGHT.

## PUBLIC DOCUMENTS.

## SECTION.

3404. Public documents of Federal govern-  
ment, how and by whom distributed.3405. Secretary of state to furnish documents  
to New York Historical Society.

## SECTION.

3406. Library of documents established.

3407. Acts of general assembly to be furnished  
the different departments of the Federal  
government.**Sec. 3404. Public documents of federal government, how and by whom distrib-  
uted.**

The laws of congress, and all the other public printed documents  
 2 transmitted to this state by the general government, shall be dis-  
 3 tributed by the secretary of state in the following manner, to-wit:  
 4 two copies to each of the counties, which shall be deposited in the  
 5 offices of the superior court in each county for the use of the  
 6 courts; one copy to every justice of the supreme court, and judge of  
 7 the superior court; one to the attorney-general; one to each solici-  
 8 tor; one in each of the offices of governor, secretary of state, treas-  
 9 urer and auditor; three copies in the library of the university, and  
 10 three copies to be retained in the state library, for the use of the  
 11 members of the assembly and other public functionaries.

R. C., c. 91, s. 1.  
1828, c. 1, s. 1.**Sec. 3405. Secretary of state to furnish documents to New York Historical So-  
ciety.**

The secretary of state shall furnish to the agent or order of the  
 2 New York Historical Society one bound set of all official docu-  
 3 ments, including the decisions of the supreme court and the laws  
 4 and journals of the general assembly of the state, which may be  
 5 published under the laws, or by order of the general assembly.

R. C., c. 91, s. 2.  
1842, Resolution.



**Sec. 3406. Library of documents established.**

R. C., c. 91, s. 3.  
1854, c. 24.

The principal clerks of each house of the general assembly shall  
2 collect such printed documents as have been, or shall hereafter be  
3 ordered to be printed by the general assembly, to the number of  
4 three copies of each document for each house, and cause the same  
5 to be bound in convenient form, and keep them on shelves which  
6 they shall cause to be erected in their offices, for the use of the  
7 members of their several houses.

**Sec. 3407. Acts of general assembly to be furnished the different departments of the federal government.**

Res. Feb. 2d, 1857,  
p. 75.

The governor shall supply the different departments of the gen-  
2 eral government with copies of the acts, both public and private,  
3 of the general assembly.

See 1856-7, p. 75.

## CHAPTER NINETY-NINE.

## PUBLIC PRINTING.

## SECTION.

- 3408. Contracts for public printing; rates of printing.
- 3409. Printer to give bond with approved security.
- 3410. How bills for printing to be charged and audited.
- 3411. No account to be audited until examined and approved by two practical printers; violation by auditor a misdemeanor.
- 3412. The printer to cause the binding to be done at reasonable rates.
- 3413. Paper to be furnished printer by secretary of state.
- 3414. Secretary of state to copy statutes and deliver the same to the printer.
- 3415. Principal clerks to hasten preparation of their journals for printer.
- 3416. Clerks to send journals promptly to secretary of state.
- 3417. Printer to call on secretary of state daily during each session of the general assembly.
- 3418. Printer to do his work with expedition.
- 3419. Public and private laws to be noted by the secretary of state, and bound in the same volume.
- 3420. Distribution of the laws; number of copies to be printed.

## SECTION.

- 3421. How the volumes of the laws shall be bound.
- 3422. Distribution of the supreme court reports; price fixed at two dollars a volume.
- 3423. Printing and distribution of the senate and house journals.
- 3424. Printing and distribution of public documents.
- 3425. Printing and binding to be done speedily.
- 3426. Printer to deliver public laws and documents to secretary of state within ninety days after adjournment of legislature.
- 3427. Secretary of state to transmit copies of the laws and reports to judges, clerks and solicitors.
- 3428. Secretary of state to distribute the other laws, reports and documents as soon as received by him.
- 3429. Secretary of state may sell the residue of the laws and public documents.
- 3430. Secretary of state to sell supernumerary volumes annually.
- 3431. Bills and other documents of general assembly, in what manner printed.
- 3432. Secretary of state to keep a record of the names of all justices of the peace.
- 3433. Blank book and forms to be printed for state officers.

**Sec. 3408. Contract for public printing; rates of printing.**

1870-'71, c. 3.  
1871-'2, c. 180, s. 1.  
1872-'3, c. 8.  
1879, c. 5, s. 1.

The joint committee on printing are directed and instructed, on  
2 the part of the state of North Carolina, to make, execute and de-  
3 liver a contract for the public printing at the following rates: For

4 every one thousand ems of plain work, forty cents; for every one  
 5 thousand ems of rule and figure work, eighty cents. For every  
 6 token of two hundred and forty impressions, twenty-five cents, and  
 7 for all other work ordered by the state, except binding, the usual  
 8 customary rates charged by printers for such work, to be approved  
 9 by the auditing committee herein provided for.

Brown v. Turner, 70—93.

**Sec. 3409. Printer to give bond with approved security.**

The party to whom said committee may award the public print- 1871-'2, c. 182, s. 2.  
 2 ing shall give bond with approved security, payable to the state of  
 3 North Carolina, in the sum of five thousand dollars, conditioned  
 4 for the faithful performance of his duties and undertakings under  
 5 the contract and under the provisions of this chapter. The surety or  
 6 the sureties herein required shall justify before some person au-  
 7 thorized to administer oaths.

**Sec. 3410. How bills for printing to be charged and audited.**

Each bill against the state for printing shall be charged by the 1871-'2, c. 180, s. 3.  
 2 "quad em" and token, and shall be approved by two practical 1879, c. 5, s. 33.  
 3 printers of integrity entirely disinterested in the matter, who shall  
 4 be selected one by the auditor and the other by the public printer.  
 5 Said practical printers so chosen shall, before entering upon any  
 6 examination by this section required, qualify before some magis-  
 7 trate to impartially examine said printing and determine both the  
 8 manner of its execution and the correctness of the account ren-  
 9 dered for the same; but neither the two practical printers as afore-  
 10 said, nor the state auditor, shall approve the accounts of the public  
 11 printer oftener than twenty-four times in any one year; for each  
 12 of which auditings the said practical printers shall severally receive  
 13 the sum of two dollars.

**Sec. 3411. No account to be audited until examined and approved by two practical printers; violation by auditor a misdemeanor.**

No account rendered for public printing under the contract 1871-'2, c. 180, s. 4.  
 2 herein directed to be made, shall be audited until the work charged  
 3 for shall have been examined and the account shall have been ap-  
 4 proved by two practical printers, as provided in the preceding sec-  
 5 tion, who shall certify that the workmanship of said printing is  
 6 properly executed, and the accounts for the same are just and ac-  
 7 curate. Any violation of this section shall be a misdemeanor, and  
 8 the auditor on conviction thereof shall be fined and imprisoned at  
 9 the discretion of the court.

**Sec. 3412. The printer to cause the binding to be done at reasonable rates.**

The party contracting to do the public printing shall also agree 1871-'2, c. 180, s. 5.  
 2 to cause all necessary binding for the state, to be done at the fol- 1879, c. 5, s. 3.

3 lowing rates: for full sheep binding, sixty cents per volume; and  
4 for half-binding, twenty cents per volume. But accounts for bind-  
5 ing must be approved by the auditor, who may in his discretion  
6 call on two disinterested printers or binders to examine the work,  
7 and, under oath, certify to the fairness and accuracy of the accounts.

**Sec. 3413. Paper to be furnished printer by secretary of state.**

1871-'2, c. 180, s. 7.

It shall be the duty of the secretary of state to furnish the public  
2 printer, on his requisition and receipt for the same, such printing  
3 paper as may be necessary in executing the public printing.

**Sec. 3414. Secretary of state to copy statutes and deliver the same to the printer.**

1872-'3, c. 45, s. 1.  
1870-'1, c. 65, s. 105.

It shall be the duty of the secretary of state, immediately upon  
2 the receipt of any ratified act or resolution, to copy or cause the  
3 same to be copied forthwith, and affix thereto the usual marginal  
4 notes, to the end that the copy may be held in readiness for the  
5 public printer and that the same may be bound for distribution as  
6 the law requires.

**Sec. 3415. Principal clerks to hasten preparation of their journals for printer.**

1872-'3, c. 45, s. 2.

It shall be the duty of the principal clerks of the two houses of  
2 the general assembly to hasten the preparation of their journals  
3 for the public printer, so that in no case at any time shall the  
4 journal of either house of any one day's proceedings remain un-  
5 prepared for the printer by the clerk for a longer period than six  
6 days after its approval.

**Sec. 3416. Clerks to send journals promptly to secretary of state.**

1872-'3, c. 45, s. 3.

The clerks aforesaid shall, immediately after the preparation  
2 aforesaid of any and every day's proceedings of their respective  
3 houses, send the same to the office of the secretary of state.

**Sec. 3417. Printer to call on secretary of state daily during each session of the general assembly.**

1872-'3, c. 45, s. 4.

It shall be the duty of the printer aforesaid, in person or by  
2 agent, to call on the secretary of state or his chief clerk at the office  
3 of said secretary daily, within office hours, during each and every  
4 session of the general assembly, and apply for certified copies of  
5 the acts and resolutions of said assembly, and for such proceedings  
6 of the two houses as have been filed by the clerks aforesaid in the  
7 office of said secretary. And these applications shall be continued  
8 daily by the public printer until all of the acts, resolutions and  
9 proceedings aforesaid of the session have been received by him.

**Sec. 3418. Printer to do his work with expedition.**

1872-'3, c. 45, s. 5.

It shall further be the duty of the public printer at all times,  
2 immediately upon receiving from the secretary of state a sufficient



3 quantity of the acts, resolutions or proceedings aforesaid in manu-  
 4 script to make sixteen pages of printed matter, to cause the same  
 5 to be printed forthwith in such numbers as are prescribed in this  
 6 chapter, and at once send them to the binder.

**Sec. 3419. Public and private laws to be noted by the secretary of state, and bound in the same volume.**

The secretary of state shall determine which are public and  
 2 which are private laws and resolutions, and it shall be his duty at  
 3 the time of making marginal notes aforesaid to mark on the up-  
 4 per right hand corner of each act and resolution the word "pub-  
 5 lic" or "private," and bills thus marked shall not be mixed by the  
 6 printer in making up a form. The public and private laws shall  
 7 be bound in the same volume.

1872-'3, c. 45, ss. 6, 7.

**Sec. 3420. Distribution of the laws; number of copies to be printed.**

Of the public and private laws there shall be printed four thou-  
 2 sand five hundred copies, to be distributed as follows: To the gov-  
 3 ernor, lieutenant-governor, treasurer, secretary of state, auditor,  
 4 superintendent of public instruction, attorney-general, superintend-  
 5 ent of the insane asylum, of the deaf and dumb and blind asy-  
 6 lum, of the penitentiary, justices of the supreme court, judges of  
 7 the superior and criminal courts, the judges of the United States  
 8 courts, the several solicitors and district attorneys, the clerks of  
 9 the superior, criminal, inferior and federal courts, the sheriffs of  
 10 the several counties, the several justices of the peace, registers of  
 11 deeds, members and clerks of the general assembly, and county  
 12 commissioners, one copy each; to the state library, ten copies; to  
 13 the senate library, twenty copies; to the house library, twenty  
 14 copies; to the library of the university, three copies; to the su-  
 15 preme court library, five copies; to the library of the supreme  
 16 court of the United States, one copy; to the several states and ter-  
 17 ritories in the Union, including the District of Columbia, one copy  
 18 each, and two copies to be deposited in the office of each depart-  
 19 ment of the state government.

1870-'71, c. 111, s. 2.  
 1872-'3, c. 45, ss. 7, 8.  
 1879, c. 271, s. 1.  
 1881, c. 107, s. 1.

See R. C., c. 93, s. 8.

**Sec. 3421. How the volumes of the laws shall be bound.**

Of the volumes to be printed under the preceding section, fifteen  
 2 hundred shall be bound in full sheep and three thousand in half  
 3 sheep. The latter shall be for distribution among justices of the  
 4 peace and county commissioners.

1872-'3, c. 45, s. 9.  
 1879, c. 271.

**Sec. 3422. Distribution of the supreme court reports; price fixed at two dollars per volume.**

Of the supreme court reports, there shall be printed as many  
 2 copies as, in the opinion of the attorney-general and secretary of  
 3 state, may be sufficient to supply the demand, (said number not to

1873-'4, c. 34, s. 2.  
 1876-'7, c. 164, s. 2.  
 1881, c. 104, s. 2.  
 1881, c. 107.

4 be less than seven hundred and fifty) to be distributed by the secre-  
 5 tary of state, and sold at the cash price of two dollars per volume,  
 6 and the secretary of state shall pay to the treasurer, monthly, the  
 7 moneys arising from said sales less five per cent., which he may  
 8 retain for his services. The said reports shall be distributed as fol-  
 9 lows: To the governor, lieutenant-governor, attorney-general,  
 10 treasurer, secretary of state, auditor, superintendent of public in-  
 11 struction, the justices of the supreme court, judges of the superior  
 12 and criminal courts, the judges of the federal courts residing in the  
 13 state, the clerks of the supreme, superior and criminal courts, and  
 14 of the United States courts for North Carolina, one copy each; to  
 15 the supreme court library, five copies; to the state library, ten  
 16 copies; to the library of the supreme court of the United States,  
 17 one copy; to the library of the university, three copies; to each  
 18 state and territory in the Union, including the District of Colum-  
 19 bia, one copy.

**Sec. 3423. Printing and distribution of the senate and house journals.**

1872-'3, c. 45, s. 10.  
 1881, c. 16.

Of the senate and house journals, of each of these there shall be  
 2 printed four hundred and fifty copies, bound in full sheep, to be  
 3 distributed as follows: one each to the governor, lieutenant-gov-  
 4 ernor, secretary of state, auditor, treasurer, attorney-general, super-  
 5 intendent of public instruction, each senator, representative, prin-  
 6 cipal, assistant, engrossing and enrolling clerks; to the state library,  
 7 twenty copies; to the senate library, ten copies; to the house  
 8 library, twelve copies; to the library of the university, three copies.

**Sec. 3424. Printing and distribution of public documents.**

1872-'3, c. 45, s. 11.  
 1881, c. 16.

Of the public documents there shall be printed of each six hun-  
 2 dred and eighty-five copies, seventy of which, stitched when neces-  
 3 sary, shall be delivered to the secretary of the senate, as soon as  
 4 printed, for the use of the senate, and one hundred and fifty to the  
 5 clerk of the house, for the use of the house, and the residue of said  
 6 copies, three hundred and sixty-five, shall be bound in volumes in  
 7 full sheep and distributed as follows: to the governor, lieutenant  
 8 governor, treasurer, attorney-general, secretary of state, auditor,  
 9 superintendent of public instruction, of the insane asylum, of the  
 10 deaf and dumb asylum, of the penitentiary, and each clerk of the  
 11 superior court, and to each representative and senator, and each  
 12 judge of the supreme and superior courts, one copy each; to the  
 13 state library, ten copies; to the senate library, ten copies; to the  
 14 house library, twelve copies; to the supreme court library, five  
 15 copies; to the library of the university, three copies.

**Sec. 3425. Printing and binding to be done speedily.**

1872-'3, c. 45, s. 12.

It shall be the duty of the public printer to have the laws, docu-  
 2 ments and journals printed and bound with the utmost expedition,

3 giving precedence to the laws, as far as may be, delivering to the  
 4 secretary of state each day such copies as the binders may have  
 5 finished.

**Sec. 3426.** Printer to deliver public laws and documents to secretary of state within ninety days after adjournment of legislature.

It shall further be the duty of the printer aforesaid to have all  
 2 the copies of the laws, documents and journals printed and bound  
 3 (which are to be bound under the provisions of this chapter) and  
 4 delivered to the secretary of state within ninety days after the final  
 5 adjournment of any session of the general assembly, and for failure  
 6 to do so the auditor of state shall deduct from the account of said  
 7 printer the sum of fifty dollars for each and every day's delay.

1872-'3, c. 45, s. 13.  
 1871-'5, c. 232.

**Sec. 3427.** Secretary of state to transmit copies of the laws and reports to judges, clerks and solicitors.

The secretary of state, immediately upon the receipt of the first  
 2 bound copies of the laws and reports, shall transmit the same by  
 3 mail, at once, one each to the justices of the supreme court, and the  
 4 judges, solicitors and clerks of the superior court.

1872-'3, c. 45, s. 14.

**Sec. 3428.** Secretary of state to distribute the other laws, reports, and documents, as soon as received by him.

The residue of the laws, reports, documents and journals, as soon  
 2 as they are delivered to the secretary of state, shall be transmitted  
 3 and distributed by him according to the provisions of this chapter,  
 4 by express or otherwise, as he may deem best.

1872-'3, c. 45, s. 15.

**Sec. 3429.** Secretary of state may sell the residue of the laws and public documents.

Of such laws, journals and documents, as may be printed under  
 2 the provisions of this chapter in excess of the number ordered for  
 3 distribution, the secretary of state may sell at such price as he may  
 4 deem reasonable, not exceeding the sum of one dollar and fifty  
 5 cents for full bound copies of the public laws; and he shall pay the  
 6 proceeds into the treasury, and in his annual report give an account  
 7 of number sold and number on hand.

1872-'3, c. 45, s. 16.  
 1881, c. 104, s. 1.

**Sec. 3430.** Secretary of state to sell supernumerary volumes annually.

Annually, during the first week in July in each and every year,  
 2 after advertisement in one or two newspapers for one month, the  
 3 secretary of state may sell at public auction such volumes of the  
 4 laws, documents and journals and other matter and worthless  
 5 manuscript, as may have been on hand for one year; report to be  
 6 made and sales accounted for as other sales in the preceding  
 7 section.

1872-'3, c. 45, s. 17.



Sec. 3431. Bills and other documents of general assembly, in what manner printed.

R. C., c. 93, s. 3.

The bills and all other documents ordered to be printed by 2 either branch of the general assembly shall be printed in octavo 3 form without a title page. But the first page shall be printed as 4 follows: at the head of the page there shall be four rules, one 5 double, two single, and one parallel, extending across the page. 6 Between said rules shall be printed, first, the name of the house 7 where the bill originated, with the year and date of the session, 8 the name of the introducer, and the name of the printer; after 9 leaving a space the width of two line pica, a synopsis, or caption 10 of the bill, or report of the committee, or whatever it may be, shall 11 be set up with pica capitals. After such heading, the said docu- 12 ment to follow immediately, commencing with a paragraph, allow- 13 ing a space the width of small pica between the heading and com- 14 mencement of the same.

Sec. 3432. Secretary to keep a record of the names of all justices of the peace.

R. C., c. 93, s. 9.  
1896, c. 38, s. 11.

The secretary of state shall record in a book kept for that pur- 2 pose, the names of all the justices of the peace for the several coun- 3 ties of the state; and whenever a vacancy occurs it shall be entered 4 therein, and the clerks of the superior court shall, on the third 5 Monday of November, one thousand eight hundred and seventy- 6 four, and every two years thereafter, furnish the secretary of state 7 with a correct list of the justices of the peace of their several coun- 8 ties, and by this list shall the public laws and journals be dis- 7 tributed.

Sec. 3433. Blank-book and forms to be printed for state officers.

R. C., c. 93, s. 10.  
1873-'4, c. 174.

The governor, secretary of state, auditor, treasurer, superintend- 2 ent of public instruction, attorney-general and adjutant-general, 3 may have printed and prepared for their several offices such blank- 4 books, blank forms and other necessary printing as may be suita- 5 ble and proper to enable them to discharge their official duties; 6 they shall also be allowed all necessary postage and express 7 charges; and the auditor and treasurer shall each have one hun- 8 dred copies of their respective reports printed for the use of their 9 offices. The printing herein authorized shall be done by the pub- 10 lic printer according to the rates prescribed by law; and charges 11 for all other items shall be approved by the board composed of the 12 governor, secretary of state, auditor, treasurer and superintendent 13 of public instruction.

CHAPTER ONE HUNDRED.

PUBLIC LIBRARIES.

SECTION.

- 3434. Librarian to be biennially appointed; salary.
- 3435. Hours of public library; libraries of senate and house of representatives.
- 3436. Appointment of trustees of the supreme court library; governor and one justice a quorum; clerk of supreme court to have charge of library; remuneration.
- 3437. Five hundred dollars yearly appropriated for increase of public library.
- 3438. Trustees of public library authorized to publish records, &c., belonging to state, and bearing date prior to the year one thousand seven hundred and eighty-one; proviso; printing and binding to be done by public printer and binder at rates fixed by law; how paid.
- 3439. Trustees authorized to sell volumes printed under the preceding section.
- 3440. Governor, superintendent of instruction and secretary of state made trustees of public libraries, state papers, &c.; two may constitute a quorum.

SECTION.

- 3441. License tax to be applied to library of supreme court.
- 3442. Governor to designate documents to be preserved and bound; what books to be bound and labeled.
- 3443. Penalty for injuring books.
- 3444. State librarian to be librarian of senate and house of representatives.
- 3445. Records, documents, &c., where to be kept.
- 3446. Librarian to furnish library with documents, &c.
- 3447. Secretary of state to furnish copies of future supreme court reports and acts of assembly to colleges, &c., having libraries of not less than five thousand volumes.

Sec. 3434. Librarian to be biennially appointed, salary.

A librarian shall be biennially appointed by the governor, at a salary not exceeding seven hundred and fifty 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 he shall hold his place until his successor shall be appointed and qualified.

People v. McKee, 68—429; People v. Bledsoe, 68—457; People v. McGowan, 68—520.

Sec. 3435. Hours of public library, libraries of senate and house of representatives.

The library shall be kept open during such hours as the trustees may prescribe; and the librarian shall also keep the libraries of the senate and house of representatives locked, except during the session of the general assembly.

1870—71, c. 70, s. 2.  
1881, c. 352.

Sec. 3436. Appointment of the trustees of the supreme court library; governor and one justice a quorum; clerk of supreme court to have charge of library, remuneration.

The governor and justices 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 justices or a majority thereof, or the governor and one of the justices, 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

1871—2, c. 160, s

8 rules and regulations, and entitled to such remuneration as the  
9 trustees may prescribe to be paid from the funds appropriated to  
10 said library.

Sec. 3437. Five hundred dollars yearly appropriated for increase of public library.

R. C., c. 92, s. 1.  
1841, c. 46.

The sum of five hundred dollars is annually appropriated for the  
2 increase of the public library of the state.

Sec. 3438. Trustees of public library authorized to publish records, &c., belonging  
to state, and bearing date prior to the year one thousand seven hundred and  
eighty-one, 'proviso; printing and binding to be done by public printer and  
binder at rates fixed by law; how paid.

1881, c. 88, s. 1.

The trustees of the public library are hereby authorized to pub-  
2 lish such number of volumes of suitable size, of the records, papers,  
3 documents and manuscripts as they may deem proper, bearing  
4 date prior to the year one thousand seven hundred and eighty-  
5 one, belonging to the state of North Carolina; *Provided*, that the  
6 printing and binding shall be done by the public printer and  
7 binder at the rates fixed by law, and paid for out of the fund ap-  
8 propriated in the preceding section for the increase of the public  
9 libraries of the state.

Sec. 3439. Trustees authorized to sell volumes printed under the preceding sec-  
tion.

1881, c. 88, s. 2.

The said trustees shall have authority to sell, on such terms as  
2 they may deem proper, any volume printed under the preceding  
3 section, that may not be reserved for the use of the said public  
4 libraries.

Sec. 3440. Governor, superintendent of public instruction and secretary of state  
made trustees for public libraries, state papers, &c.; two may constitute a quo-  
rum.

1871-'2, c. 169, s. 3.

The governor, superintendent of public instruction and secretary  
2 of state, and their respective successors in office, are appointed trus-  
3 tees of the public libraries, documents and all books, papers and  
4 manuscripts belonging to the state of North Carolina; and under  
5 their direction all moneys appropriated shall be expended, whether  
6 to the increase of the library or other purposes, except the salary of  
7 the librarian, which shall be the same as specified in section thirty-  
8 four hundred and thirty-four. Any two of the trustees may con-  
9 stitute a quorum for the purpose of transacting any business; and  
10 the board of trustees shall make rules and regulations by which the  
11 librarian shall be governed for the protection and preservation of  
12 the books and library.

Sec. 3441. License tax to be applied to library of supreme court.

Res., 1872-'3.

The clerk of the supreme court, under the direction of the jus-  
2 tices of said court, is authorized, empowered and directed to ex-



3 pend annually the amount paid in by applicants for license to  
4 practice law, who are examined by the court, in the purchase of  
5 such law books as may be necessary to keep the supreme court  
6 library well appointed, and no other appropriation shall be allowed  
7 for that purpose.

**Sec. 3442. Governor to designate documents to be preserved and bound; what books to be bound and labeled.**

The governor shall designate such portions of the documents, R. C., c. 92, s. 4.  
1840, c. 46, s. 6.  
1842, c. 68, s. 3.  
2 journals and acts of the congress of the United States as he may  
3 deem proper to be preserved in the library; may designate which  
4 of them are to be bound, of such pamphlets, acts and journals of  
5 the general assembly, works of periodical literature, laws of other  
6 states and documents of the general assembly that may be added  
7 to the library; and the librarian shall have them bound. And  
8 all the books belonging to the library, or which may be added  
9 thereto, shall be labeled in gilt letters with the words "State Li-  
10 brary;" and the governor may draw upon the treasurer for such  
11 sums as may be necessary to defray the expenses thereof.

**Sec. 3443. Penalty for injuring books.**

Any person who shall damage, deface or mutilate any book R. C., c. 92, s. 5.  
1842, c. 68, s. 1.  
2 which he may be allowed to withdraw from the library, or who  
3 shall return any book so damaged, defaced, or mutilated while in  
4 his possession, shall forfeit and pay the full amount of the damage;  
5 which amount shall be determined by the librarian, but in no case  
6 to exceed double the value of the book; and the fines and forfeit-  
7 ures accruing under this section shall be sued for and recovered  
8 by the librarian in the name of the state, before any justice of the  
9 peace; and the librarian shall be a competent witness to prove  
10 any fact material to the issue; and the fines and forfeitures re-  
11 covered shall be added to the fund for the increase of the library.

**Sec. 3444. State librarian to be librarian of senate and house of representatives.**

The state librarian shall be the librarian of the senate and house 1858-'9, c. 41, s. 1.  
2 of representatives, and he shall collect and arrange in the archives  
3 of the senate and house of representatives all the records and  
4 papers belonging thereto, wherever they may be found. He shall  
5 also collect and have bound, or otherwise suitably preserved for  
6 the library of the senate and house of representatives, such acts of  
7 our general assembly, reports and documents to the number of  
8 three copies each, at least, together with such reports and docu-  
9 ments as are or may hereafter be printed by the several internal  
10 improvement companies, and other companies or associations  
11 within the state; and also such reports, documents and papers as  
12 have been printed by the federal government and the states and  
13 territories of the Union, as may be proper to place therein, and

14 which have not already been obtained, under the act of the year  
15 one thousand eight hundred and fifty-four, establishing a library  
16 of documents.

**Sec. 3445. Records, documents, &c., where to be kept.**

1858-'9, c. 41, s. 2.

For the better preservation of the records, documents and other  
2 papers by this chapter authorized to be collected, the state librarian  
3 shall cause to be erected in the offices of the clerk of the senate  
4 and the house of representatives and in the ante and committee  
5 rooms adjoining the chambers of the senate and house of repre-  
6 sentatives, such cases and shelves as will protect the same, and pro-  
7 cure such furniture therefor as is necessary for the accommodation  
8 of persons using said libraries.

**Sec. 3446. Librarian to furnish library with documents, &c.**

1858-'9, c. 41, s. 3.

The state librarian is hereby directed to furnish the libraries of  
2 the senate and house of representatives and of the university with  
3 such documents, reports and other publications as are required by  
4 this chapter to be collected for the use thereof, and which may be  
5 in the state library or in the libraries of any of the departments:  
6 *Provided*, the same can be done without diminishing the number  
7 necessary, in his opinion, or the opinion of the heads of the depart-  
8 ments from which the same are taken, to be kept in each respect-  
9 ively; and the documents now required to be furnished to the libra-  
10 ries of the senate and house of representatives, shall be arranged  
11 and bound under the direction of the librarian thereof.

**Sec. 3447. Secretary of state to furnish copies of future supreme court reports and acts of assembly to colleges, &c., having libraries of not less than five thousand volumes.**

1881, c. 277.

The secretary of state, upon application made by the president of  
2 the university, or of any chartered institution of learning in the  
3 state which has a library or libraries of not less than five thousand  
4 volumes, shall furnish to each of said institutions, to be kept in the  
5 college library, a copy of all future supreme court reports and acts  
6 of the general assembly, and journals of both houses, whenever the  
7 same shall be ready for distribution.

## CHAPTER ONE HUNDRED AND ONE.

## RAILROAD AND TELEGRAPH COMPANIES.

## RAILROADS.

## SECTION.

3448. 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.
3449. Stock must be subscribed before articles are filed; affidavit made by directors, and payment of fifty dollars to secretary of state for common school purposes.
3450. Presumptive evidence of incorporation.
3451. Directors to open books of subscription.
3452. President and directors; term of office; vote by shares; vacancies; qualification of officers; title acquired; when a corporation.
3453. Officers appointed by the president, &c.
3454. Payment by instalments; stock forfeited.
3455. Insufficiency of stock to be increased; meeting of stockholders; time, place and object of meeting to be publicly notified.
3456. Liabilities of stockholders; execution against stockholders.
3457. Stockholders liable for their wards.
3458. Indebtedness of laborers, how collected; time specified for action.
3459. Right to acquire title to real estate.
3460. Petition presented, character of; names and places of residence to be given; copy of petition must be sent to the superior court;
- (1) Persons residing in this state must have service personally;
  - (2) Non-residents having agents, public notice to be given;
  - (3) Guardians notified for infants;
  - (4) Respecting idiots;
  - (5) Parties unknown are publicly notified by papers in the state;
  - (6) Duty of court to appoint guardian for persons of unsound mind; security required;
  - (7) Cases not provided for must be directed by superior court.
3461. Allegations made against petition; freeholders appointed to appraise estate.
3462. Commissioners to be qualified; to issue subpoenas, administer oaths, to adjourn, to appraise and report under hands and seals; either side may file exceptions before clerk; may appeal; upon payment of sum appraised, company to enter and take possession during appeal; final judgment; court to have power to enforce judgment; land to belong to company during its corporate existence; possession of land not condemned to be surrendered to owner, &c.; costs at the discretion of judge or court.

## SECTION.

3463. Court may adjudge rights of conflicting claimants.
3464. Attorney appointed by court to protect the rights of parties unknown or non-residents.
3465. Court must take cognizance of all proceedings not provided for in this chapter.
3466. Change of ownership not to affect appraisal.
3467. Defective title, how remedied.
3468. 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.
3469. 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; compensation for lands.
3470. Highways, turnpikes, &c., to prove no obstruction to railroads.
3471. Power of secretary of state and town authorities in certain cases to grant land.
3472. Superior court empowered to authorize guardians to sell land of insane persons for corporate purposes; court may appoint special guardian; terms of sale, &c.; report to court.
3473. Corporate powers:
- (1) To cause survey, &c.;
  - (2) Voluntary grants;
  - (3) Holding property;
  - (4) Grade of road;
  - (5) Obstructions not allowable;
  - (6) Crossing, intersecting, &c., of railroads;
  - (7) Right to carry persons and property;
  - (8) Erection of necessary buildings;
  - (9) Regulation of time and manner of transportation;
  - (10) Manner of raising funds.
3474. Railroad servants to wear a badge.
3475. Annual report to be made, verified and filed in the secretary of state's office; statements to be made.
3476. Penalty for failing to report.
3477. General assembly may reduce profits upon a road.
3478. Passengers violating rules of corporation may be ejected.
3479. Rules for transportation.
3480. Railroads, &c., to receive and forward freights; penalty for refusal.
3481. To keep a list of freight charges posted; not to be increased without notice; penalty.
3482. Discrimination in freight unlawful; penalty; special contracts may be made.



## SECTION.

3483. Freight unshipped for five days; penalty.  
 3484. Pooling freights and rebates forbidden; penalty.  
 3485. Attorney-general to institute suits in certain cases.  
 3486. Check and duplicate for baggage; corporation liable for loss of baggage.  
 3487. How trains to be arranged; penalty.  
 3488. Engineer intoxicated, a misdemeanor.  
 3489. Railroad companies prohibited from loading or unloading freight cars on Sunday, and also from running locomotives or cars, except such as shall be run for carrying passengers or the mails.  
 3490. Injuries to railroad, misdemeanor.  
 3491. How actions may be brought.  
 3492. Chart of railroad to be made and filed.  
 3493. Injury to passengers not complying with regulations.  
 3494. Railroads formed under this chapter not completed in specified time, corporate existence ceases.  
 3495. General assembly may annul corporation formed under this chapter.  
 3496. Rights and privileges.  
 3497. Railroads embracing the same location of line.  
 3498. Location of railroad in an adjoining state.  
 3499. Unclaimed freight, publication thereof.  
 3500. Unclaimed freight perishable, what done.

## SECTION.

3501. Unclaimed funds to go to the University.  
 3502. Police force may be established.  
 3503. Governor to appoint police.  
 3504. Policemen to take oath.  
 3505. Badge of policemen.  
 3506. Compensation.  
 3507. Dismissal of police.  
 3508. Transfer of capital stock; certificate to be filed in office of secretary of state.  
 3509. Directors of various railroads authorized to make arrangements to give through freight and travel.  
 3510. Subscription to stock may be made by board of county commissioners.  
 3511. Manner in which subscriptions by board is to be made; proviso.  
 3512. Elections, how held.  
 3513. Interests on bonds, how paid.  
 3516. Taxes, how paid.  
 3515. Officers of railroads to account to their successors; penalty for failure or refusal.  
 3516. Governor may make a requisition upon other states.  
 3517. Penalty for delaying or defeating the execution of section 3515.  
 3518. To whom the provisions of sections 3515 and 3517 are applicable.  
 3519. Two hundred and fifty dollars must be paid before bill to incorporate or to amend railroad charter can be instituted.  
 3520. Company dissolved, &c., owner or purchaser to be a new corporation, and property, &c., taxed.

## TELEGRAPHS.

## SECTION.

3521. Telegraph lines, who may maintain.  
 3522. May contract for right of way.  
 3523. Entitled to right of way, upon just compensation.  
 3524. Proceedings to be by petition; facts to be stated.  
 3525. Copy of petition and notice to be served on persons claiming lands, &c.

## SECTION.

3526. Proceedings for condemnation; appointment of commissioners, their report; exceptions thereto; appeal; final judgment, &c., to be as provided in this chapter in condemning, &c., for railroads.  
 3527. Commissioners may inspect the premises.  
 3528. Unlawful to wilfully injure, &c., any telegraph pole, &c.; a misdemeanor.

**Sec. 3448.** 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.

1871-'2, c. 138, s. 1.

Any number of persons, not less than twenty-five, may form a  
 2 company for the purpose of constructing, maintaining and op-  
 3 erating a railroad for public use in the conveyance of persons and  
 4 property, or for the purpose of maintaining and operating any  
 5 unincorporated railroad already constructed for the like public  
 6 use; and for that purpose may make and sign articles of association,  
 7 in which shall be stated the name of the company, the number of  
 8 years the same is to continue, the places from and to which the  
 9 road is constructed or maintained and operated, the length of such  
 10 road as near as may be, and the name of each county in this state  
 11 through or into which it is made or intended to be made, the  
 12 amount of the capital stock of the company, which shall not be  
 13 less than five thousand dollars for every mile of road constructed

14 or proposed to be constructed, and the number of shares of which  
 15 said capital stock shall consist, and the names and places of resi-  
 16 dence of six directors of the company, who shall manage its affairs  
 17 for the first year, and until others are chosen in their places. Each  
 18 subscriber to such articles of association shall subscribe thereto his  
 19 name, place of residence, and the number of shares of stock he  
 20 agrees to take in said company. On compliance with the provis-  
 21 ions of the succeeding section, such articles of association may be  
 22 filed in the office of the secretary of state, who shall indorse  
 23 thereon the day they are filed, and record the same in a book to  
 24 be provided by him for that purpose; and thereupon the persons  
 25 who have so subscribed such articles of association, and all persons  
 26 who shall become stockholders in such company, shall be a cor-  
 27 poration by the name specified in such articles of association, and  
 28 shall possess the powers and privileges granted to corporations by  
 29 this chapter.

**Sec. 3449.** Stock must be subscribed before articles are filed; affidavit made by directors; and payment of fifty dollars to secretary of state for common school purposes.

Such articles of association shall not be filed and recorded in the 1871-'2, c. 138, s. 2.  
 2 office of the secretary of state until at least one thousand dollars of  
 3 stock for every mile of railroad proposed to be made is subscribed  
 4 thereto, and five per cent. paid thereon in good faith, and in cash,  
 5 to the directors named in said articles of association; nor until  
 6 there is indorsed thereon or annexed thereto an affidavit made by  
 7 at least three of the directors named in said articles, that the amount  
 8 of stock required by this section has been in good faith subscribed  
 9 and five per cent. paid in cash thereon as aforesaid, and that it is  
 10 intended in good faith to construct or to maintain and operate the  
 11 road mentioned in such articles of association, which affidavit shall  
 12 be recorded with the articles of association, as aforesaid; nor until  
 13 said directors shall pay to the secretary of state the sum of fifty  
 14 dollars, which said sum shall be paid by the secretary of state to  
 15 the state treasurer, and by him placed to the credit of the public  
 16 school fund.

**Sec. 3450.** Presumptive evidence of incorporation.

A copy of any articles of association filed and recorded in pur- 1871-'2, c. 138, s. 3.  
 2 suance with this chapter or of the record thereof with a copy of  
 3 the affidavit aforesaid indorsed thereon or annexed thereto, and  
 4 certified to be a copy by the secretary of this state or his deputy,  
 5 shall be presumptive evidence of the incorporation of such com-  
 6 pany, and of the facts therein stated.

**Sec. 3451.** Directors to open books of subscription.

When such articles of association and affidavit are filed and re- 1871-'2, c. 138, s. 4.

2 corded in the office of the secretary of state, the directors named in  
 3 said articles of association may, in case the whole of the capital stock  
 4 is not before subscribed, open books of subscription to fill up the  
 5 capital stock of the company in such places and after giving such  
 6 notice as they may deem expedient, and may continue to receive  
 7 subscriptions until the whole of the capital stock is subscribed; at  
 8 the time of subscribing every subscriber shall pay to the directors  
 9 five per cent. on the amount subscribed by him in money, and no  
 10 subscription shall be received or taken without such payment.

**Sec. 3452. President and directors, term of office; vote by shares; vacancies; qualification of officers; title acquired; when a corporation.**

1871-'2, c. 138, s. 5.

There shall be a board of six directors and a president of every  
 2 corporation formed under this chapter to manage its affairs; and  
 3 said directors and president shall be chosen annually by a major-  
 4 ity of the votes of the stockholders voting at such election, in such  
 5 manner as may be prescribed in the by-laws of the corporation,  
 6 and they may and shall continue in office until others are elected  
 7 in their places. In the election of directors and president each  
 8 stockholder shall be entitled to one vote personally or by proxy on  
 9 every share held by him thirty days previous to any such election  
 10 and vacancies in the board of directors shall be filled in such man-  
 11 ner as shall be prescribed by the by-laws of the corporation. The  
 12 inspectors of the first election of directors shall be appointed by  
 13 the board of directors named in the articles of association. No  
 14 person shall be a director or president unless he shall be a stock-  
 15 holder owning stock absolutely in his own right and qualified to  
 16 vote for directors at the election at which he shall be chosen; and  
 17 at every election of directors the books and papers of such com-  
 18 pany shall be exhibited to the meeting if a majority of the stock-  
 19 holders present shall require it. And whenever the purchaser or  
 20 purchasers of real estate, track and fixtures of any railroad corpo-  
 21 ration which has heretofore been sold or may be hereafter sold by  
 22 virtue of any mortgage executed by such corporation or execution  
 23 issued upon any judgment or decree of any court shall acquire ti-  
 24 tle to the same in the manner prescribed by law, such purchaser or  
 25 purchasers may associate with him and them any number of per-  
 26 sons, and make and acknowledge and file articles of association as  
 27 prescribed in this chapter; such purchaser or purchasers and their  
 28 associates shall thereupon be a new corporation with all the pow-  
 29 ers, privileges and franchises, and be subject to all the provisions  
 30 of this chapter.

**Sec. 3453. Officers appointed by the president, &c.**

1871-'2, c. 138, s. 6.

The president and directors shall appoint a treasurer and secre-  
 2 tary and such other officers and agents as shall be prescribed by  
 3 the by-laws.



**Sec. 3454. Payment by instalments; stock forfeited.**

The directors may require the subscribers to the capital stock of 1871-'2, c. 138, s. 7.  
2 the company to pay the amount by them respectively subscribed  
3 in such manner and in such instalments as they may deem proper.  
4 If any stockholder shall neglect to pay any instalment as required  
5 by a resolution of the board of directors, the said board shall be  
6 authorized to declare his stock and all previous payments thereon  
7 forfeited for the use of the company, but they shall not declare it  
8 so forfeited until they shall have caused a notice in writing to be  
9 served on him personally, or by depositing the same in the post-  
10 office, properly directed to him at the post-office nearest his usual  
11 place of residence, stating that he is required to make such pay-  
12 ment at the time and place specified in said notice, and that if he  
13 fails to make the same, his stock and all previous payments thereon  
14 will be forfeited for the use of the company, which notice shall be  
15 served as aforesaid at least sixty days previous to the day on which  
16 payment is required to be made.

**Sec. 3455. Insufficiency of stock to be increased; meeting of stockholders; time, place and object of meeting to be publicly notified.**

In case the capital stock of any railroad company is found to be 1871-'2, c. 138, s. 9.  
2 insufficient for constructing and operating its road, such company  
3 may, with the concurrence of two-thirds in amount of all its stock-  
4 holders, increase its capital stock from time to time to any amount  
5 required for the purposes aforesaid. Such increase must be sanc-  
6 tioned by a vote in person or by proxy of two-thirds in amount of  
7 all the stockholders of the company, at a meeting of such stock-  
8 holders called by the directors of the company for that purpose, by  
9 a notice in writing to each stockholder, to be served on him per-  
10 sonally or by depositing the same, properly folded and directed to  
11 him, at the post-office nearest his usual place of residence, in the  
12 post-office at least twenty days prior to such meeting. Such notice  
13 must state the time and place of the meeting and its object and the  
14 amount to which it is proposed to increase the capital stock. The  
15 proceedings of such meeting must be entered on the minutes of  
16 the proceedings of the company, and thereupon the capital stock  
17 of the company may be increased to the amount sanctioned by a  
18 vote of two-thirds in amount of all the stockholders of the com-  
19 pany as aforesaid.

**Sec. 3456. Liabilities of stockholders; execution against stockholders.**

Each stockholder of any such company shall be individually 1871-'2, c. 138, s. 10.  
2 liable to the creditors of such company, to an amount equal to the  
3 amount unpaid on the stock held by him, for all the debts and  
4 liabilities of such company until the whole amount of the capital  
5 stock so held by him shall have been paid to the company, and all  
6 the stockholders of any such company shall be jointly and severally

7 liable for the debts due or owing to any of its laborers and ser-  
8 vants, other than contractors, for personal services for thirty days'  
9 service performed for such company, but shall not be liable to an  
10 action therefor before an execution shall be returned unsatisfied in  
11 whole or in part against the corporation, and the amount due on  
12 such executions shall be the amount recoverable with costs against  
13 such stockholders; before such laborer or servant shall charge such  
14 stockholder for such thirty days' services he shall give him notice  
15 in writing within twenty days after the performance of such service  
16 that he intends so to hold him liable and shall commence such  
17 action therefor within thirty days after the return of such ex-  
18 ecution unsatisfied as above mentioned; and every such stock-  
19 holder, against whom any such recovery by such laborer or servant  
20 shall have been had, shall have a right to recover the same of the  
21 other stockholders in said corporation in ratable proportion to the  
22 amount of the stock they shall respectively hold with himself.

**Sec. 3457. Stockholders liable for their wards.**

4871-'2, c. 138, s. 11.

No person holding stock in any such company as executor, ad-  
2 ministrator, guardian or trustee, and no person holding such stock  
3 as collateral security, shall be personally subject to any liability as  
4 stockholders of such company; but the person pledging such stock  
5 shall be considered as holding the same, and shall be liable as a  
6 stockholder accordingly; and the estates in the hands of such ex-  
7 ecutor, administrator, guardian or trustee, shall be liable in like  
8 manner and to the same extent as the testator or intestate or the  
9 ward or person interested in such trust fund would have been if  
10 he had been living and competent to act and hold the same stock  
11 in his own name.

**Sec. 3458. Indebtedness of laborers, how collected; time specified for action.**

1871-'2, c. 138, s. 12.

As often as any contractor for the construction of any part of a  
2 railroad which is in progress of construction shall be indebted to  
3 any laborer for thirty or less number of days' labor performed in  
4 constructing said road, such laborer may give notice of such in-  
5 debtedness to said company in the manner herein provided, and  
6 said company shall thereupon become liable to pay such laborer  
7 the amount so due him for such labor, and an action may be  
8 maintained against said company therefor. Such notice shall be  
9 given by said laborer to said company within twenty days after  
10 the performance of the number of days' labor for which the claim  
11 is made. Such notice shall be in writing, and shall state the  
12 amount and number of days' labor, and the time when the labor  
13 was performed for which the claim is made, and the name of the  
14 contractor from whom due, and shall be signed by such laborer,  
15 or his attorney, and shall be served on an engineer, agent or super-  
16 intendent employed by said company having charge of the section

17 of the road on which such labor was performed, personally, or by  
18 leaving the same at the office or usual place of business of such  
19 engineer, agent or superintendent, with some person of suitable  
20 age. But no action shall be maintained against any company,  
21 under the provisions of this section, unless the same is commenced  
22 within thirty days after notice is given to the company by such  
23 laborer as above provided.

**Sec. 3459. Right to acquire title to real estate.**

In case any company formed under this chapter, or by special 1871-'2, c. 133, s. 13.  
2 act of the general assembly, is unable to agree for the purchase of  
3 any real estate required for the purposes of its incorporation, it  
4 shall have the right to acquire title to the same in the manner and  
5 by the special proceedings prescribed in this chapter.

**Sec. 3460. Petition presented; character of; names and places of residence to be given; copy of petition must be sent to superior court.**

For the purpose of acquiring such title the said company, or the 1871-'2, c. 133, s. 14  
2 owner of the land sought to be condemned, may present a peti-  
3 tion praying for the appointment of commissioners of appraisal to  
4 the superior court of the county in which the real estate described  
5 in the petition is situated. Such petition shall be signed and ver-  
6 ified according to the rules and practice of such court; and if filed  
7 by the company, it must contain a description of the real estate  
8 which the company seeks to acquire; and it must, in effect, state  
9 that the company is duly incorporated, and that it is the intention  
10 of the company in good faith to construct and finish a railroad  
11 from and to the places named for that purpose in its articles of as-  
12 sociation, or in its charter; that the whole capital stock of the com-  
13 pany has been in good faith subscribed, as required by this chap-  
14 ter, or by the terms of its charter; that the company has surveyed  
15 the line or route of its proposed road, and made a map or survey  
16 thereof, by which such route or line is designated, and that they  
17 have located their said road according to such survey, and filed  
18 such certificates of such location, signed by a majority of the direc-  
19 tors of the company, in the clerk's office of the several counties  
20 through or into which the said road is to be constructed; that the  
21 land described in the petition is required for the purpose of con-  
22 structing or operating the proposed road; and that the company  
23 has not been able to acquire title thereto, and the reason of such  
24 inability. The petition, whether filed by the company or the owner  
25 of the land, must also state the names and places of residence of  
26 the parties, so far as the same can by reasonable diligence be ascer-  
27 tained, who own or have, or claim to own or have, estates or inter-  
28 ests in the said real estate; and if any such persons are infants,  
29 their ages, or as near as may be, must be stated; and if any such  
30 persons are idiots or persons of unsound mind or are unknown,



31 that fact must be stated, together with such other allegations and  
32 statements of liens or incumbrances in said real estate as the com-  
33 pany may see fit to make. A copy of such petition, with a notice  
34 of the time and place, when and where, the same shall be heard by  
35 the superior court, must be served on all persons whose interests  
36 are to be affected by the proceedings, at least ten days prior to the  
37 hearing of the same by the said court.

38 (1) PERSONS RESIDING IN THIS STATE MUST HAVE SERVICE PER-  
39 SONALLY.

40 If the person on whom such service is to be made resides in this  
41 state, and is not an infant, idiot or person of unsound mind, ser-  
42 vice of a copy of such petition and notice must be made on him or  
43 his agent or attorney, authorized to contract for the sale of the real  
44 estate described in the petition, personally or by leaving the same  
45 at the usual place of residence of the person on whom service must  
46 be made as aforesaid, with some person of suitable age;

47 (2) NON-RESIDENTS HAVING AGENTS, PUBLIC NOTICE TO BE GIVEN.

48 If the person on whom such service is to be made resides out of  
49 the state, and has an agent residing in this state, authorized to  
50 contract for the sale of the real estate described in the petition,  
51 such service may be made on such agent or on such person per-  
52 sonally, out of the state, or it may be made by publishing the  
53 notice, stating briefly the object of the application, and giving a  
54 description of the land to be taken, in a paper, if there be one,  
55 printed in the county, in which the land to be taken is situate,  
56 once in each week for one month next previous to the presentation  
57 of the petition, and if there be no paper printed in said county,  
58 then in some paper published in the city of Raleigh. And if the  
59 residence of such person residing out of this state, but in any of  
60 the United States or any of the British colonies in North America  
61 is known, or can by reasonable diligence be ascertained, the com-  
62 pany must, in addition to such publication as aforesaid, deposit a  
63 copy of the petition and notice in the post-office, properly folded  
64 and directed to such person at the post-office nearest his place of  
65 residence, at least thirty days before presenting such petition to  
66 the court, and pay the postage chargeable thereon in the United  
67 States;

68 (3) GUARDIANS NOTIFIED FOR INFANTS.

69 If any person on whom such service is to be made is under the  
70 age of twenty-one years and resides in this state, such service shall  
71 be made as aforesaid, on his general guardian; or if he has no such  
72 guardian, then on such infant personally, if he is over the age of

73 fourteen years; and if under that age, then on the person who has  
74 the care of, or with whom such infant resides;

75 (4) RESPECTING IDIOTS.

76 If the person on whom such service is to be made is an idiot or  
77 of unsound mind, and resides in this state, such service may be  
78 made on the committee of his person or estate; or if he has no  
79 such committee, then on the person who has the care and charge  
80 of such idiot or person of unsound mind.

81 (5) PARTIES UNKNOWN ARE PUBLICLY NOTIFIED BY PAPERS IN  
82 THE STATE.

83 If the person on whom such service is to be made is unknown,  
84 or his residence is unknown and cannot by reasonable diligence  
85 be ascertained, then such service may be made under the direction  
86 of the court, by publishing a notice, stating the time and place the  
87 petition will be presented, the object thereof, with a description of  
88 the land to be affected by the proceedings, in a paper, if there be  
89 one, printed in the county where the land is situate, once in each  
90 week for one month previous to the presentation of such petition,  
91 and if there be no paper printed in said county, then in a newspa-  
92 per printed in the city of Raleigh.

93 (6) DUTY OF COURT TO APPOINT GUARDIAN FOR PERSONS OF  
94 UNSOUND MIND; SECURITY REQUIRED.

95 In case any party to be affected by the proceedings is an infant,  
96 idiot, or of unsound mind, and has no general guardian or com-  
97 mittee, the court shall appoint a special guardian or committee to  
98 attend to the interests of such person in the proceedings, but if a  
99 general guardian or committee has been appointed for such per-  
100 son in this state, it shall be the duty of such general guardian or  
101 committee to attend to the interests of such infant, idiot, or person  
102 of unsound mind, and the court may require such security to be  
103 given by such general or special guardian or committee as it may  
104 deem necessary to protect the rights of such infant, idiot, or per-  
105 son of unsound mind, and all notices required to be served in  
106 the progress of the proceedings may be served on such general or  
107 special guardian or committee.

108 (7) CASES NOT PROVIDED FOR, MUST BE DIRECTED BY SUPERIOR  
109 COURT.

110 In all cases not herein otherwise provided for, services of orders,  
111 notices, and other papers in the special proceedings authorized by  
112 this chapter, may be made as the superior court shall direct.

**Sec. 3461.** Allegations made against petition; freeholders appointed to appraise estate.

1871-'2, c. 138, s. 15.

On presenting such petition to the superior court as aforesaid, 2 with proof of service of a copy thereof, and notice as aforesaid, all 3 or any of the persons whose estates or interests are to be affected 4 by the proceedings, may answer such petition and show cause 5 against granting the prayer of the same, and may disprove any of 6 the facts alleged in it. The court shall hear the proofs and alle- 7 gations of the parties, and if no sufficient cause is shown against 8 granting the prayer of the petition, it shall make an order for the 9 appointment of three disinterested and competent freeholders who 10 reside in the county where the premises are to be appraised, for 11 the purposes of the company, and shall fix the time and place for 12 the first meeting of the commissioners.

Raleigh and Augusta Air.-Line v. Wicker, 74—220; Holloway v. A. R. R. Co., 85—452.

**Sec. 3462.** Commissioners to be qualified to issue subpoenas, administer oaths, to adjourn, to appraise and report under hands and seals; either side may file exceptions before clerk; may appeal; upon payment of sum appraised, company to enter and take possession during appeal; final judgment; court to have power to enforce judgment; land to belong to company during its corporate existence; possession of land not condemned to be surrendered to owner, &c.; costs at the discretion of judge or court.

1871-'2, c. 138, ss. 16,  
17, 18.

The commissioners, before entering upon the discharge of their 2 duties shall take and subscribe an oath that they will fairly and 3 impartially appraise the lands mentioned in the petition. Any 4 one of them may issue subpoenas, administer oaths to witnesses, 5 and any two of them may adjourn the proceedings before them 6 from time to time, in their discretion. Whenever they meet, ex- 7 cept by the appointment of the court or pursuant to adjournment, 8 they shall cause ten days' notice of such meeting to be given to the 9 parties who are to be affected by their proceedings, or their at- 10 torney or agent. They shall view the premises described in the 11 petition, and hear the proofs and allegations of the parties, and re- 12 duce the testimony, if any is taken by them, to writing; and after 13 the testimony is closed in each case, and without any unnecessary 14 delay, and before proceeding to the examination of any other claim, 15 a majority of them all being present and acting, shall ascertain 16 and determine the compensation which ought justly to be made 17 by the company to the party or parties owning or interested in the 18 real estate appraised by them; and in determining the amount of 19 such compensation they shall not make an allowance or deduction 20 on account of any real or supposed benefits which the parties in 21 interest may derive from the construction of the proposed railroad. 22 They shall report the same to the court under their hands and 23 seals, and within twenty days after filing the same any person in- 24 terested in the said land may file exceptions to said report, and 25 upon the determination of the same by the court, either party to



26 the proceedings may appeal to the court at term, and thence, after  
27 judgment to the supreme court. The court or judge on the hear-  
28 ing may direct a new appraisal, modify or confirm the report, or  
29 make such order in the premises as to him shall seem right and  
30 proper. If the said company, at the time of the appraisal, shall  
31 pay into court the sum appraised by the commissioners, then and  
32 in that event the said company may enter, take possession of,  
33 and hold said lands, notwithstanding the pendency of the ap-  
34 peals, and until the final judgment rendered on said appeal or ap-  
35 peals. And if there shall be no appeal, or if the final judg-  
36 ment rendered upon said petition and proceedings, shall be in  
37 favor of the company, and upon the payment, by said company of  
38 the sum adjudged, together with the costs and counsel fees allowed  
39 by the court, into the office of the clerk of the superior court, then  
40 and in that event, all persons who have been made parties to the  
41 proceedings shall be divested and barred of all right, estate and  
42 interest in such real estate during the corporate existence of the  
43 company aforesaid. A certified copy of said judgment under the  
44 seal of the court shall be registered in the county where the land  
45 is situate, and a copy of the same, or the original certified, may be  
46 given in evidence in all actions and proceedings, as deeds for land  
47 are now allowed to be read in evidence. All real estate acquired  
48 by any company under and pursuant to the provisions of this  
49 chapter, for the purpose of its incorporation, shall be deemed  
50 to be acquired for the public use. But if the court shall re-  
51 fuse to condemn the land, or any portion thereof, to the use of  
52 said company, then, and in that event, the money paid into court  
53 or so much thereof as shall be adjudged, shall be refunded to said  
54 company. And the company shall have no right to hold said land  
55 not condemned, but shall surrender the possession of the same on  
56 demand, to the owner or owners, or his or their agent or attorney.  
57 And the court or judge shall have full power and authority to  
58 make such orders, judgments and decrees, and issue such execu-  
59 tions and other process as may be necessary to carry into effect the  
60 final judgment rendered in such proceedings. The costs in this  
61 proceeding shall be paid by either party as the judge or court in  
62 its discretion shall adjudge. The commissioners shall each be en-  
63 titled to three dollars per day for each day they are engaged in  
64 the performance of their duties, and the same shall be taxed in  
65 the bill of costs.

Raleigh and Augusta Air-Line v. Wicker, 74—220; C. C. Railway Co. v. Phillips, 78—49; Telegraph Co. v. W. C. and A. R. R. Co., 83—420; Holloway v. R. R. Co., 85—452; Commissioners v. Cook, 86—18.

**Sec. 3463. Court may adjudge rights of conflicting claimants.**

If there are adverse and conflicting claimants to the money, or  
2 any part of it, to be paid as compensation for the real estate taken,  
3 the court may direct the money to be paid into the said court by

1871-2, c. 138, s. 19

4 the company, and may determine who is entitled to the same and  
5 direct to whom the same shall be paid, and may in its discretion  
6 order a reference to ascertain the facts on which such determina-  
7 tion and order are to be made.

**Sec. 3464. Attorney appointed by court to protect the rights of parties unknown or non-residents.**

1871-'2, c. 138, s. 20.

The court shall appoint some competent attorney to appear for  
2 and protect the rights of any party in interest who is unknown or  
3 whose residence is unknown, and who has not appeared in the  
4 proceedings by an attorney or agent, and shall make an allowance  
5 to said attorney for his services, which shall be taxed in the bill of  
6 costs. The court shall also have power at any time to amend any  
7 defect or informality in any of the special proceedings authorized  
8 by this chapter as may be necessary, or to cause new parties to be  
9 added and to direct such further notices to be given to any party  
10 in interest as it deems proper; and also to appoint other commis-  
11 sioners in place of any who shall die, refuse, neglect to serve or be  
12 incapable of serving.

**Sec. 3465. Court must take cognizance of all proceedings not provided for in this chapter.**

1871-'2, c. 138, s. 21.

In all cases of appraisal under this chapter where the mode or  
2 manner of conducting all or any of the proceedings to the ap-  
3 praisal and the proceedings consequent thereon are not expressly  
4 provided for by the statute, the courts before whom such proceed-  
5 ings may be pending shall have the power to make all the neces-  
6 sary orders and give the proper directions to carry into effect the  
7 object and intent of this chapter, and the practice in such cases  
8 shall conform as near as may be to the ordinary practice in such  
9 courts.

**Sec. 3466. Change of ownership not to affect appraisal.**

1871-'2, c. 138, s. 22.

When any proceedings of appraisal shall have been commenced,  
2 no change of ownership by voluntary conveyance or transfer of  
3 the real estate or any interest therein or of the subject matter of  
4 the appraisal, shall in any manner affect such proceedings, but the  
5 same may be carried on and perfected as if no such conveyance or  
6 transfer had been made or attempted to be made.

**Sec. 3467. Defective title, how remedied.**

1871-'2, c. 138, s. 23.

If at any time after an attempt to acquire title by appraisal of  
2 damages or otherwise, it shall be found that the title thereby at-  
3 tempted to be acquired is defective, the company may proceed  
4 anew to acquire or perfect such title in the same manner as if no  
5 appraisal had been made, and at any stage of such new proceed-  
6 ings the court may authorize the corporation, if in possession, to

7 continue in possession, and if not in possession, to take possession  
8 and use such real estate during the pendency, and until the final  
9 conclusion of such new proceedings, and may stay all actions or  
10 proceedings against the company on account thereof, on such com-  
11 pany paying into court a sufficient sum or giving security as the  
12 court may direct to pay the compensation therefor when finally  
13 ascertained, and in every such case the party interested in such  
14 real estate may conduct the proceedings to a conclusion if the  
15 company delays or omits to prosecute the same.

**Sec. 3468.** 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.

Every company, before constructing any part of their road into  
2 or through any county named in their articles of association, shall  
3 make a map and profile of the route intended to be adopted by such  
4 company in such county, which shall be certified by the president  
5 and engineer of the company or a majority of the directors and  
6 filed in the office of the clerk of each county through which the  
7 road is to be made. The company shall give a written notice to  
8 all actual occupants of the land over which the route of the road  
9 is so designated and which has not been purchased by or given to  
10 the company of the route so designated. Any party feeling ag-  
11 grieved by the proposed location may, within fifteen days after re-  
12 ceiving notice as aforesaid, apply to the superior court by petition  
13 duly verified, setting forth his objections to the route designated,  
14 and the said court may, if it considers sufficient cause therefor to  
15 exist, appoint three disinterested persons, one of whom must be a  
16 practical engineer, commissioners to examine the proposed route,  
17 and after hearing the parties, to affirm or alter the same as may be  
18 consistent with the just rights of all parties and the public, but no  
19 alteration of the route shall be made except by the concurrence of  
20 the commissioner who is a practical civil engineer. The determi-  
21 nation of the commissioners shall within thirty days after their  
22 appointment be made and certified by them and the certificate  
23 filed in the office of the county clerk. Said commissioners shall  
24 each be entitled to three dollars per day for their expenses and  
25 services, to be paid by the person who applied for their appoint-  
26 ment, and if the proposed route of the road is altered or changed  
27 by the commissioners, the company shall refund to the applicant  
28 the amount so paid. 1871-'2, c. 138, s. 24.

**Sec. 3469.** 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 corporators thereof; compensation for lands.

The directors of every company may by a vote of two-thirds of  
2 their whole number at any time alter or change the route or any 1871-'2, c. 138, s. 25.



3 part of the route of their road if it shall appear to them that the line  
4 can be improved thereby; and they shall make and file in the clerk's  
5 office of the proper county a survey, map and certificate of such  
6 alteration or change; and shall have the same right and power  
7 to acquire title to any lands required for the purposes of the com-  
8 pany in such altered or changed route, as if the road had been  
9 located there in the first instance; and no such alteration shall be  
10 made in any city or village after the road shall have been constructed,  
11 unless the same is sanctioned by a vote of two-thirds of the corpor-  
12 ate authorities of said city or trustees of said village; and in case  
13 of any alteration made in the route of any railroad after the com-  
14 pany has commenced grading, compensation shall be made to all  
15 persons for injury so done to any lands that may have been do-  
16 nated to the company. All the provisions of this chapter relative  
17 to the first location and to acquiring title to land shall apply to  
18 every such new or altered portion of the route.

N. C. R. R. v. Carolina Central, 83—489.

**Sec. 3470. Highways, turnpikes, &c., to prove no obstruction to railroads.**

1871-'2, c. 148, s. 26.

Whenever the track of a railroad constructed by a company  
2 shall cross a railroad, a highway, turnpike or plankroad, such  
3 highway, turnpike or plankroad may be carried under or over the  
4 track as may be found most expedient; and in cases where an em-  
5 bankment or cutting shall make a change in the line of such high-  
6 way, turnpike or plankroad desirable, with a view to a more easy  
7 ascent or descent, the said company may take such additional  
8 lands for the construction of such road, highway, turnpike or  
9 plankroad on such new line as may be deemed requisite by the  
10 directors. Unless the lands so taken shall be purchased for the  
11 purposes aforesaid, compensation therefor shall be ascertained in  
12 the manner prescribed in this chapter for acquiring title to real  
13 estate, and duly made by said corporation to the owners and per-  
14 sons interested in such lands. The same when so taken shall  
15 become a part of such intersecting highway, turnpike or plank-  
16 road in such manner and by such tenure as the adjacent parts of  
17 the same highway, turnpike or plankroad may be held for high-  
18 way purposes.

**Sec. 3471. Power of secretary of state and town authorities in certain cases to grant land.**

1871-'2, c. 138, s. 27.

The secretary of state shall have power to grant to any railroad  
2 company, any land belonging to the people of this state which  
3 may be required for the purposes of their road, on such terms as  
4 may be agreed on by them, or such company may acquire title  
5 thereto by appraisal, as in the case of lands owned by individuals;  
6 and if any land belonging to a county or town is required by any  
7 company for the purposes of the road, the county or town officers

8 having the charge of such land may grant such land to such com-  
9 pany for such compensation as may be agreed upon.

**Sec. 3472.** 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.

In case any title or interest in real estate acquired by any com- 1871-'2, c. 138, s. 28.  
2 pany for the purpose of its corporation, shall be vested in any  
3 trustee not authorized to sell, release, and convey the same, or in  
4 any infant, idiot, or person of unsound mind, the superior court  
5 shall have power, by a special proceeding, on petition, to author-  
6 ize and empower such trustee or the general guardian or committee  
7 of such infant, idiot, or person of unsound mind, to sell and con-  
8 vey the same to such company for the purpose of its incorporation,  
9 on such terms as may be just; and in case any such infant, idiot  
10 or person of unsound mind has no general guardian or committee,  
11 the said court may appoint a special guardian or committee for  
12 the purpose of making such sale, release or conveyance, and may  
13 require such security from such general or special guardian or com-  
14 mittee as said court may deem proper. But before any conveyance  
15 or release authorized by this section shall be executed, the terms  
16 on which the same is to be executed shall be reported to the court  
17 on oath; and if the court is satisfied that such terms are just to the  
18 party interested in such real estate, the court shall confirm the re-  
19 port and direct the proper conveyance or release to be executed,  
20 which shall have the same effect as if executed by an owner of said  
21 land, having legal power to sell and convey the same.

**Sec. 3473.** Corporate powers.

Every railroad corporation shall have power

1871-'2, c. 138, s. 29.

(1) To CAUSE SURVEY, &c.

2 To cause such examination and surveys for its proposed railroad  
3 to be made as may be necessary to the selection of the most advan-  
4 tageous route; and for such purpose, by its officers or agents and  
5 servants, to enter upon the lands or waters of any person, but sub-  
6 ject to responsibility for all damages which shall be done thereto;

7 (2) VOLUNTARY GRANTS.

8 To take and hold such voluntary grants of real estate and other  
9 property as shall be made to it to aid in the construction, mainten-  
10 ance and accommodation of its railroad; but the real estate re-  
11 ceived by voluntary grant shall be held and used for the purposes  
12 of such grant only;

13 (3) HOLDING PROPERTY.

14 To purchase, hold and use all such real estate and other property  
15 as may be necessary for the construction and maintenance of its

16 railroad and the station and other accommodations necessary to  
17 accomplish the object of its incorporation ;

18 (4) GRADE OF ROAD.

19 To lay out its road not exceeding one hundred feet in width,  
20 and to construct the same, and for the purpose of cuttings and em-  
21 bankments to take as much more land as may be necessary for the  
22 proper construction and security of the road, and to cut down any  
23 standing trees that may be in danger of falling on the road, mak-  
24 ing compensation therefor as provided in this chapter for lands  
25 taken for the use of the company ;

26 (5) OBSTRUCTIONS NOT ALLOWABLE.

27 To construct their road across, along, or upon any stream of wa-  
28 ter, watercourse, street, highway, plank road, turnpike or canal  
29 which the route of its road shall intersect or touch, but the com-  
30 pany shall restore the stream or watercourse, street, highway,  
31 plank road and turnpike road thus intersected or touched, to its  
32 former state or to such state as not unnecessarily to have impaired  
33 its usefulness. Nothing in this chapter contained shall be con-  
34 strued to authorize the erection of any bridge or any other obstruc-  
35 tions across, in, or over any stream or lake navigated by steam or  
36 sail-boats, at the place where any bridge, or other obstructions may  
37 be proposed to be placed, nor to authorize the construction of any  
38 railroad not already located in, upon, or across any streets in any  
39 city without the assent of the corporation of such city ;

40 (6) CROSSING, INTERSECTING, &C., OF RAILROADS.

41 To cross, intersect, join and unite its railroad with any other rail-  
42 road before constructed, at any point on its route, and upon the  
43 grounds of such other company, with the necessary turnouts, sid-  
44 ings and switches and other conveniences in furtherance of the  
45 objects of its connections. And every company whose railroad is  
46 or shall be hereafter intersected by any new railroad shall unite  
47 with the owners of such new railroad in forming such intersections  
48 and connections and grant the facilities aforesaid, and if the two  
49 corporations cannot agree upon the amount of compensation to be  
50 made therefor, or the points and manner of such crossings and  
51 connections, the same shall be ascertained and determined by com-  
52 missioners to be appointed by the court as is provided in this  
53 chapter in respect to acquiring title to real estate ;

54 (7) RIGHT TO CARRY PERSONS AND PROPERTY.

55 To take and convey persons and property on their railroad by  
56 the power or force of steam or animals, or by any mechanical power,  
57 and to receive compensation therefor ;



## 58 (8) ERECTION OF NECESSARY BUILDINGS.

59 To erect and maintain all necessary and convenient buildings,  
60 stations, fixtures and machinery for the accommodation and use of  
61 their passengers, freight and business;

## 62 (9) REGULATION OF TIME AND MANNER OF TRANSPORTATION.

63 To regulate the time and manner in which passengers and  
64 property shall be transported and the compensation to be paid  
65 therefor; and such compensation for any passenger and his ordi-  
66 nary baggage shall not exceed five cents per mile;

## 67 (10) MANNER OF RAISING FUNDS.

68 From time to time to borrow such sums of money as may be  
69 necessary for completing and finishing or operating their railroad,  
70 and to issue and dispose of their bonds for any amount so bor-  
71 rowed, and to mortgage their corporate property and franchises to  
72 secure the payment of any debt contracted by the company for the  
73 purposes aforesaid, and the directors of the company may confer  
74 on any holder of any bond issued for money borrowed, as afore-  
75 said, the right to convert the principal due or owing thereon into  
76 stock of said company at any time not exceeding ten years from  
77 the date of the bond, under such regulations as the directors may  
78 see fit to adopt.

## Sec. 3474. Railroad servants to wear a badge.

Every conductor, baggage master, engineer, brakeman, or other 1871-'2, c. 138, s. 30.  
2 servant of any railroad corporation employed in a passenger train,  
3 or at stations for passengers, shall wear upon his hat or cap a badge  
4 which shall indicate his office and the initial letters of the title of  
5 the corporation by which he is employed. No conductor or col-  
6 lector without such badge shall be entitled to demand or receive  
7 from any passenger any fare or ticket, or to exercise any of the  
8 powers of his office; and no officer or servant without such badge  
9 shall have authority to meddle or interfere with any passenger,  
10 his baggage or property.

## Sec. 3475. Annual report to be made, verified and filed in the secretary of state's office; statements to be made.

Every railroad corporation shall make an annual report to the 1871-'2, s. 138, s. 31.  
2 governor of the operations of the year ending on the thirtieth  
3 day of September, which report shall be verified by the oaths of  
4 the treasurer or president and acting superintendent of operations  
5 and be filed in the office of the secretary of state by the fifteenth  
6 day of November in each year, and shall state—

- 7 (1) The amount of capital as by charter;
- 8 (2) The amount of stock subscribed;
- 9 (3) The amount paid in as by last report;

- 10 (4) The total amount now of capital stock paid in ;
- 11 (5) The funded debt by last report ;
- 12 (6) The total amount now of funded debt ;
- 13 (7) The floating debt as by last report ;
- 14 (8) The amount now of floating debt ;
- 15 (9) The total amount now of funded and floating debt ;
- 16 (10) The average rate per annum of interest on funded debt.

## COST OF ROAD AND EQUIPMENT.

- 17 (11) For graduation and masonry by last report ;
- 18 (12) The total amount now expended for the same ;
- 19 (13) The amount for bridges by last report ;
- 20 (14) The total amount now expended for the same ;
- 21 (15) The total amount for superstructure, including iron, by last
- 22 report ;
- 23 (16) Total amount now expended for the same ;
- 24 (17) For passenger and freight stations, building and fixtures,
- 25 by last report ;
- 26 (18) Total amount now expended for the same ;
- 27 (19) For engine and car houses, machine shops, and machinery
- 28 and fixtures, by last report ;
- 29 (20) Total amount now expended for the same ;
- 30 (21) For land, damages and fences by last report ;
- 31 (22) Total amount now expended for the same ;
- 32 (23) For locomotives and fixtures and snow plows by last report ;
- 33 (24) Total amount now expended for the same ;
- 34 (25) For passenger and baggage cars by last report ;
- 35 (26) Total amount now expended for the same ;
- 36 (27) For freight cars as by last report ;
- 37 (28) Total amount now expended for the same ;
- 38 (29) For engineering and agencies by last report ;
- 39 (30) Total amount now expended for the same ;
- 40 (31) Total cost of road and equipment.

## CHARACTERISTICS OF ROAD.

- 41 (32) Length of road ;
- 42 (33) Length of track laid ;
- 43 (34) Length of double track, including sidings ;
- 44 (35) Length of branches owned by the company laid ;
- 45 (36) Length of double track on the same ;
- 46 (37) Weight of rail by yard on main track ;
- 47 (38) The number of engine houses and shops, of engines and
- 48 cars, and their character.

## DOINGS OF THE YEAR IN TRANSPORTATION AND TOTAL MILES RUN.

- 49 (39) Miles run by passenger trains ;  
50 (40) Miles run by freight trains ;  
51 (41) The rate of fare for passengers charged for the respective  
52 classes per mile ;  
53 (42) Number of passengers carried in cars ;  
54 (43) Number of miles traveled by passengers ;  
55 (44) Number of tons, of two thousand pounds, of freight carried  
56 in cars ;  
57 (45) Number of miles carried or total movement of freight in  
58 miles, all to be accurately compiled from the daily records of evi-  
59 dences of earnings, manifests and way bills ;  
60 (46) Average rate of speed adopted by ordinary passenger trains,  
61 including stops ;  
62 (47) Average rate of speed adopted by ordinary passenger trains  
63 when in motion ;  
64 (48) Average rate of speed adopted by express trains, includ-  
65 ing stops ;  
66 (49) Average rate of speed adopted by express trains when in  
67 motion ;  
68 (50) Average rate of speed adopted by freight trains, includ-  
69 ing stops ;  
70 (51) Average rate of speed adopted by freight trains when in  
71 motion ;  
72 (52) Average weight in tons, of two thousand pounds, of passen-  
73 ger trains exclusive of passengers and baggage ;  
74 (53) Average weight in tons of freight trains exclusive of freight.  
75 (54) The amount of freight, specifying the quantity in tons, of  
76 the products of the forest, of animals, of vegetable food, other agri-  
77 cultural products, manufactures, merchandise and other articles.

## EXPENSES OF MAINTAINING THE ROAD OR REAL ESTATE OF THE CORPORATION.

- 78 (55) For repairs of road bed and railway, excepting cost of iron,  
79 which shall be the cost of labor and materials used during the year,  
80 also use and cost of engines engaged in ballasting, also the renewal  
81 and repairs of gravel and stone cars and all items of cost con-  
82 nected with keeping the road in order ;  
83 (56) For depreciation of way ;  
84 (57) Length, in feet, of iron used in renewals, with weight and  
85 cost ;  
86 (58) Repairs of buildings ;  
87 (59) Repairs of fences and gates ;  
88 (60) Taxes on real estate ;  
89 (61) Total expenses of maintaining road or real estate for the  
90 year ;



- 91 (62) Expenses of machinery or personal property of the corpo-  
92 ration ;  
93 (63) Repairs of engines and tenders ;  
94 (64) Depreciation of engines and tenders ;  
95 (65) Repairs of passenger and baggage cars ;  
96 (66) Depreciation of passenger and baggage cars ;  
97 (67) Repairs of freight cars ;  
98 (68) Depreciation of freight cars ;  
99 (69) Repairs of tools and machinery in shops ;  
100 (70) Incidental expenses, including fuel, oil, clerks, watchmen  
101 about shops ;  
102 (71) Total expenses of repair of machinery ;  
103 (72) Office expenses, stationery ;  
104 (73) Agents and clerks ;  
105 (74) Labor, handling freight, loading and unloading ;  
106 (75) Porters, watchmen and switchmen ;  
107 (76) Wood and water station attendants ;  
108 (77) Conductors, baggage and brakemen ;  
109 (78) Enginemen and firemen ;  
110 (79) Fuel, first cost and labor preparing for use ;  
111 (80) Oil and waste for engines and tenders ;  
112 (81) Oil and waste for freight cars ;  
113 (82) Oil and waste for baggage and passenger cars ;  
114 (83) Loss and damage of goods and baggage ;  
115 (84) Damages for injuries to persons ;  
116 (85) Damages to property, including damages by fire and cattle  
117 killed on the road ;  
118 (86) General superintendence ;  
119 (87) Contingencies ;  
120 (88) Total expenses of operating road ;  
121 (89) The above statements are to be made without reference to  
122 the sums actually received or paid during the year.  
123 The following statement of the earnings and cash receipts and  
124 payments are required :  
125 (90) From passengers ;  
126 (91) From freight ;  
127 (92) From other sources ;  
128 (93) The above to be stated without reference to the amount  
129 actually collected.  
130 (94) Receipts during the year from freight ;  
131 (95) From passengers ;  
132 (96) From other sources, specifying what in detail ;  
133 (97) Payment for transportation expenses ;  
134 (98) For interest ;  
135 (99) Dividends on stock, amount and rate per cent. ;  
136 (100) Payment to surplus fund and total amount to said fund ;  
137 (101) The number of persons injured in life and limb, and the

138 cause of the injury, and whether passengers or persons employed;  
139 whether any such accidents have arisen from carelessness or  
140 negligence of any person in the employment of the corporation,  
141 and whether such person is retained in the service of the cor-  
142 poration ;

143 (102) It shall be the duty of the proper state officer to arrange  
144 the information contained in such reports in a tabular form and  
145 compare the same together with the said reports in a single docu-  
146 ment for printing for the use of the general assembly and report  
147 the same to the general assembly on the first day of its session in  
148 each year ;

149 (103) All the items under the heads of expenses of maintaining  
150 the road or real estate of the corporation ; expenses of machinery,  
151 of personal property of the corporation ; expenses of use of road  
152 and machinery or operating the road, shall be carried out under  
153 two heads, the one showing the cost of freight transportation, the  
154 other the cost of passenger transportation ;

155 (104) The provisions of this section shall apply to all existing  
156 railroad corporations, and the report of the said existing railroad  
157 corporations, made in pursuance of the provisions of this section,  
158 shall be deemed to be a full compliance with any existing law or  
159 resolution requiring annual reports to be made by such cor-  
160 poration.

**Sec. 3476. Penalty for failing to report.**

Any such corporation which shall neglect to make the report as 1871-'2, c. 138, s. 32.  
2 is provided in the preceding section shall be liable to a penalty of  
3 five hundred and fifty dollars, to be sued for in the name of the  
4 state of North Carolina for their use, in the superior court of Wake  
5 county.

**Sec. 3477. General assembly may reduce profits upon a road.**

The general assembly may, when any such railroad shall be 1871-'2, c. 138, s. 33.  
2 opened for use, from time to time alter or reduce the rate of freight,  
3 fare, or other profits upon such road, but the same shall not, with-  
4 out the consent of the corporation, be so reduced as to reduce said  
5 profits less than six per cent. per annum on the capital actually  
6 expended, nor unless on an examination of the amounts received  
7 and expended, to be made by the auditor, they shall ascertain that  
8 the net income derived by the company from all sources for the  
9 year then last past shall have exceeded an annual income of six  
10 per cent. upon the capital of the corporation actually expended.

Richmond and Danville Railroad Co. v. Board of Commissioners of Orange, 74—506; Rich-  
mond and Danville Railroad Co. v. Governor, 74—707.

**Sec. 3478. Passengers violating rules of corporation may be ejected.**

If any passenger shall refuse to pay his fare, or violate the rules 1871-'2, c. 138, s. 34.  
2 of the corporation, it shall be lawful for the conductor of the train

3 and the servants of the corporation to put him and his baggage  
4 out of the cars, using no unnecessary force, at any usual stopping  
5 place or near any dwelling-house, as the conductor shall elect, on  
6 stopping the train.

**Sec. 3479. Rules for transportation.**

1871-'2, c. 138, s. 35.

Every railroad corporation shall start and run their cars for the  
2 transportation of passengers and property at regular times to be  
3 fixed by public notice, and shall furnish sufficient accommodation  
4 for the transportation of all such passengers and property as shall,  
5 within a reasonable time previous thereto, be offered for transpor-  
6 tation at the place of starting and the junction of other railroads  
7 and at usual stopping places established for receiving and dis-  
8 charging way passengers and freights for that train, and shall  
9 take, transport and discharge such passengers and property at,  
10 from and to such places on the due payment of the freight or fare  
11 legally authorized therefor, and shall be liable to the party ag-  
12 grieved, in an action for damages, for any neglect or refusal in the  
13 premises.

**Sec. 3480. Railroads, &c., to receive and forward freights; penalty for refusal.**

1879, c. 182, s. 1.

Agents or other officers of railroads and other transportation com-  
2 panies whose duties it is to receive freights shall receive all articles  
3 of the nature and kind received by such company for transporta-  
4 tion whenever tendered at a regular depot, station, wharf or boat  
5 landing, and shall forward the same by the route selected by the  
6 person tendering the freight under existing laws; and the trans-  
7 portation company represented by any person refusing to receive  
8 such freight shall be liable to a penalty of fifty dollars, and  
9 each article refused shall constitute a separate offence.

**Sec. 3481. To keep a list of freight charges posted; not to be increased without notice; penalty.**

1879, c. 182, s. 2.

It shall be the duty of all railroad and other transportation com-  
2 panies to keep posted in a conspicuous place in their depots or  
3 places where freight is received for shipment a list of its charges  
4 for carrying freight, specifying name of place, class of freight and  
5 charge for carrying the same. Such charges shall not be increased  
6 without giving fifteen days' notice, and the company represented  
7 by any agent refusing to comply with this section shall be liable  
8 to a penalty of not less than fifty nor more than one hundred dol-  
9 lars.

**Sec. 3482. Discrimination in freight unlawful; penalty; special contracts may be made.**

1874-'5, c. 240.  
1879, c. 237, s. 1.

It shall be unlawful for any railroad corporation operating in  
2 this state to charge for the transportation of any freight of any de-



3 scription over its road a greater amount as toll or compensation  
 4 than shall at the same time be charged by it for the transportation  
 5 of an equal quantity of the same class of freight transported in the  
 6 same direction over any portion of same railroad of equal distance,  
 7 and any railroad company violating this section shall forfeit and  
 8 pay the sum of two hundred dollars for each and every offence to  
 9 any person suing for the same. Nothing in this chapter shall be  
 10 taken in any manner as abridging the right of any railroad com-  
 11 pany from making special contracts with shippers of large quanti-  
 12 ties of freight, to be of not less in quantity or bulk than one car  
 13 load.

Branch v. W. and W. R. R. Co., 77—347.

**Sec. 3483. Freight unshipped for five days; penalty.**

It shall be unlawful for any railroad company operating in this  
 2 state to allow any freight they may receive for shipment to remain  
 3 unshipped for more than five days unless otherwise agreed between  
 4 the railroad company and the shipper, and any company violating  
 5 this section shall forfeit and pay the sum of twenty-five dollars for  
 6 each day said freight remains unshipped, to any person suing for  
 7 the same. 1874-'5, c. 240, s. 2.

Branch v. W. and W. R. R. Co., 77—347; Katzenstein v. R. R. Co., 84—688; Keeler v. W. and  
 W. R. R. Co., 86—346.

**Sec. 3484. Pooling freights and rebates forbidden; penalty.**

It shall be unlawful for railroad companies to pool freights or to  
 2 allow rebates on freights; and all persons whether railroad officials  
 3 or others, who shall be concerned in pooling freights or who shall  
 4 directly or indirectly allow or accept rebates on freights shall be  
 5 guilty of a misdemeanor, and on conviction shall be fined not less  
 6 than one thousand dollars or imprisoned not less than twelve  
 7 months. 1879, c. 237, s. 2.

**Sec. 3485. Attorney-general to institute suits in certain cases.**

In the event of any contract having been entered into by any  
 2 railroad company in this state with any person or company,  
 3 whereby preferences or exclusive rights of transportation, either in  
 4 priority or in arrangements, is given to such person or company  
 5 the attorney-general is hereby instructed to institute proceedings  
 6 against such railroad company for a forfeiture of its charter. 1865-'6, Resolution  
 ratified Dec. 14,  
 1865.

**Sec. 3486. Check and duplicate for baggage; corporation liable for loss of baggage.**

A check shall be affixed to every parcel of baggage when taken  
 2 for transportation by the agent or servant of such corporation, if  
 3 there is a handle, loop or fixture so that the same can be attached  
 4 upon the parcel or baggage so offered for transportation, and a  
 5 duplicate thereof given to the passenger or person delivering the  
 1872-'2, c. 138, s. 36.

6 same on his behalf; and if such check be refused on demand the  
 7 corporation shall pay to such passenger the sum of ten dollars to  
 8 be recovered in a civil action; and further, no fare or toll shall be  
 9 collected or received from such passenger, and if such passenger  
 10 shall have paid his fare the same shall be refunded by the con-  
 11 ductor in charge of the train, and on producing said check if his  
 12 baggage shall not be delivered to him, he may himself be a wit-  
 13 ness in any suit brought by him to prove the contents and value of  
 14 said baggage.

**Sec. 3487. How trains to be arranged; penalty.**

1871-'2, c. 133, s. 37.

In forming a passenger train, baggage, freight, merchandise or  
 2 lumber cars shall not be placed in rear of the passenger cars; and  
 3 if they or any of them shall be so placed, the officer or agent who  
 4 so directed or knowingly suffered such an arrangement, and the  
 5 conductor of the train, shall be guilty of a misdemeanor and be  
 6 punished accordingly.

**Sec. 3488. Engineer intoxicated a misdemeanor.**

1871-'2, c. 133, s. 38.

If any person shall, while in charge of a locomotive engine run-  
 2 ning upon the railroad of any such corporation or while acting as  
 3 the conductor of a car or train of cars on any such railroad, be in-  
 4 toxicated, he shall be guilty of a misdemeanor.

**Sec. 3489. Railroad companies prohibited from loading or unloading freight cars on Sunday, and also from running locomotives or cars, except such as shall be run for carrying passengers or the mails.**

1879, chaps. 97, 203.

No railroad company shall permit the loading or unloading of  
 2 any freight car on Sunday; nor shall permit any car, train of cars,  
 3 or locomotive to be run on Sunday on any railroad, except such  
 4 as may be run for the purpose of transporting the United States  
 5 mails, either with or without passengers, and except such as shall  
 6 be run for carrying passengers exclusively: *Provided*, that the  
 7 word Sunday in this section shall be construed to embrace only  
 8 that portion of the day between sunrise and sunset; and that trains  
 9 *in transitu*, having started on Saturday, may, in order to reach the  
 10 terminus or shops, run until nine o'clock a. m. on Sunday, but not  
 11 later, nor for any other purpose than to reach the terminus or  
 12 shops. And any railroad company violating this section shall be  
 13 guilty of a misdemeanor in each county in which such car, train  
 14 of cars or locomotive shall run, or in which any such freight car  
 15 shall be loaded or unloaded; and upon conviction shall be fined  
 16 not less than five hundred dollars for each offence; the fine when  
 17 collected to be paid to the state treasurer for the use of the public  
 18 schools.

**Sec. 3490. Injuries to railroad a misdemeanor.**

If any person or persons shall wilfully do or cause to be done, 1871-'2, c. 138, s. 39.  
2 any act or acts whatever whereby any building, construction or  
3 work of any railroad corporation, or any engine, machine or struc-  
4 ture or any matter or thing appertaining to the same shall be  
5 stopped, obstructed, impaired, weakened, injured or destroyed, the  
6 person or persons so offending shall be guilty of a misdemeanor,  
7 and shall forfeit and pay to the said corporation treble the amount  
8 of damages sustained by means of such offence.

**Sec. 3491. How actions may be brought.**

All penalties imposed by this chapter may, unless otherwise pro- 1871-'2, c. 138, s. 40.  
2 vided, be sued for in the name of the state; and if such penalty be  
3 for a sum not exceeding one hundred dollars, then such suit may  
4 be brought before a justice of the peace, and may be commenced  
5 by serving a summons on any director of such company.

**Sec. 3492. Chart of railroad to be made and filed.**

Every corporation shall, within a reasonable time after their 1871-'2, c. 138, s. 41.  
2 road shall be constructed, cause to be made a map and profile  
3 thereof, and of the land taken or obtained for the use thereof, and  
4 file the same in the office for registering deeds in each county  
5 through which such parts of said roads shall pass. Every such  
6 map shall be drawn on a scale and on paper, to be designated by  
7 the secretary of state, and certified and signed by the president or  
8 engineer of such corporation.

**Sec. 3493. Injury to passengers not complying with regulations.**

In case any passenger on any railroad shall be injured while on 1871-'2, c. 138, s. 42.  
2 the platform of a car or on any baggage, wood or freight car, in  
3 violation of the printed regulations of the company posted up at  
4 the time in a conspicuous place inside its passenger cars then in  
5 the train, such company shall not be liable for the injury: *Pro-*  
6 *vided*, said company at the time furnish room inside its passen-  
7 ger cars sufficient for the proper accommodation of its passengers.

**Sec. 3494. Railroads formed under this chapter not completed in specified time, corporate existence ceases.**

If any corporation shall not within two years after its articles of 1871-'2, c. 138, s. 43.  
2 association are filed and recorded in the office of the secretary of  
3 state, or the passage of its charter, begin the construction of its  
4 road, and expend thereon ten per cent. of the amount of its capi-  
5 tal, or shall not finish the road and put it in operation in ten years  
6 from the time of filing its articles of association as aforesaid, its  
7 corporate existence and powers shall cease.



**Sec. 3495. General assembly may annul corporation formed under this chapter.**

1871-'2, c. 138, s. 44.

The general assembly may at any time annul or dissolve any corporation; 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.

North Carolina Railroad v. Carolina Central, 83—489.

**Sec. 3496. Rights and privileges.**

1871-'2, c. 138, s. 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 of this chapter not inconsistent with their charters.

North Carolina Railroad v. Carolina Central, 83—489.

**Sec. 3497. Railroads embracing the same location of line.**

1871-'2, c. 138, s. 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 an agreement, the company that is not to construct the part of the line which is common to both, may terminate its line at the point of intersection, and may reduce its capital to a sum of not less than five thousand dollars for each mile of the road proposed to be constructed.

**Sec. 3498. Location of railroad in an adjoining state.**

1871-'2, c. 138, s. 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 considered a connected line, and the directors may reduce the capital specified 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.

**Sec. 3499. Unclaimed freight, publication thereof.**

1871-'2, c. 138, s. 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

7 first publication of notice of such sale in a state paper and also in  
8 a newspaper published at or nearest the place at which such freight  
9 was directed to be left, and also at the place where such sale is to  
10 take place; and said notice shall contain a description of such  
11 freight, the place at which and the time when the same was left, as  
12 near as may be, together with the name of the owner or person to  
13 whom consigned, if known, and expenses incurred for advertising  
14 shall be a lien upon such freight in a ratable proportion, according  
15 to the value of each article, package or parcel, if more than one.

**Sec. 3500. Unclaimed freight perishable, what done.**

In case such unclaimed freight shall in its nature be perishable, 1871-'2, c. 133, s. 49.  
2 then the same may be sold as soon as it can be on giving the notice  
3 required in the preceding section, after its receipt at the place  
4 where it was directed to be left.

**Sec. 3501. Unclaimed funds to go to the University.**

Such railroad company shall make an entry of the balance of 1871-'2, c. 133, s. 50.  
2 the proceeds of the sale, if any, of each parcel of freight owned by  
3 or consigned to the same person, as near as can be ascertained, and  
4 at any time within five years thereafter shall refund any surplus  
5 so retained to the owner of such freight, his heirs or assigns, on  
6 satisfactory proof of such ownership; if no person shall claim such  
7 surplus within five years, said surplus shall be paid the University.

**Sec. 3502. Police force may be established.**

Any railroad corporation on which road steam is used as the 1871-'2, c. 133, s. 51.  
2 motive power may apply to the governor to commission such per-  
3 sons as the said corporation may designate to act as policemen for  
4 said corporation.

**Sec. 3503. Governor to appoint police.**

The governor upon such application may appoint such persons 1871-'2, c. 133, s. 52.  
2 or so many of them as he may deem proper to be such policemen,  
3 and shall issue to such person or persons so appointed a commis-  
4 sion to act as such policemen.

**Sec. 3504. Policemen to take an oath.**

Every policeman so appointed shall, before entering upon the 1871-'2, c. 133, s. 53.  
2 duties of his office, take and subscribe the usual oath; such oath  
3 with a copy of the commission shall be filed with the secretary of  
4 state and a certificate thereof by said secretary be filed with the  
5 clerk of each county through or into which the railroad for which  
6 such policeman is appointed may run and in which it is intended  
7 he shall act, and such policemen shall severally possess within the  
8 limits of the county all the powers of policemen in the several

9 towns, cities and villages in which they shall be so authorized to  
10 act as aforesaid.

**Sec. 3505. Badge of policemen.**

1871-'2, c. 138, s. 54.

Such railroad police shall, when on duty, severally wear a metallic  
2 shield with the words "Railway Police," and the name of the cor-  
3 poration for which appointed inscribed thereon, and said shield  
4 shall always be worn in plain view except when employed as de-  
5 tectives.

**Sec. 3506. Compensation.**

1871-'2, c. 138, s. 55.

The compensation of such police shall be paid by the companies  
2 for which the policemen are respectively appointed as may be  
3 agreed on between them.

**Sec. 3507. Dimissal of police.**

1871-'2, c. 138, s. 56.

Whenever any company shall no longer require the services of  
2 any policeman so appointed as aforesaid, they may file a notice to  
3 that effect in the several offices in which notice of such appoint-  
4 ment was originally filed, and thereupon the power of such officer  
5 shall cease and be determined.

**Sec. 3508. Transfer of capital stock ; certificate to be filed in office of secretary of state.**

1871-'2, c. 138, s. 57.

Any railroad corporation or its successors, now being the lessee  
2 of the road of any other railroad corporation, may take a surrender  
3 or transfer of the capital stock of the stockholders or any of them,  
4 in the corporation whose road is held under lease, and issue in ex-  
5 change therefor the like additional amount of its own capital  
6 stock at par, or on such other terms and conditions as may be  
7 agreed upon between the two corporations; and whenever the  
8 greater part of the capital stock of any such corporation shall have  
9 been so surrendered or transferred, the directors of the corporation  
10 taking such surrender or transfer shall thereafter, on a resolution  
11 electing so to do to be entered on their minutes, become *ex-officio*  
12 the directors of the corporation whose road is so held under lease,  
13 and shall manage and conduct the affairs thereof as provided by  
14 law; and whenever the whole of said capital stock shall have been  
15 so surrendered or transferred, and a certificate thereof filed in the  
16 office of the secretary of state under the common seal of the cor-  
17 poration to whom such surrender or transfer shall have been made,  
18 the estate, property, rights, privileges and franchises of the said  
19 corporation whose stock shall have been so surrendered or trans-  
20 ferred, shall thereupon vest in and be held and enjoyed by the said  
21 corporation to whom such surrender or transfer shall have been  
22 made, as fully and entirely and without charge or dimunition as  
23 the same were before held and enjoyed, and be managed and con-



24 trolled by the board of directors of the said corporation to whom  
25 such surrender or transfer of the said stock shall have been made  
26 in the corporate name of such corporation. The rights of any  
27 stockholder not so surrendering or transferring his stock shall not  
28 be in any way affected thereby, nor shall existing liabilities or the  
29 rights of creditors of the corporation where stock shall have been  
30 so surrendered or transferred be in any way affected or impaired  
31 by this section.

**Sec. 3509.** Directors of various railroads authorized to make arrangements to give through freight and travel.

The directors representing the stock held in the various railroad  
2 corporations are hereby authorized and empowered to enter into  
3 such agreements and terms with each other as to secure through  
4 freight and travel without the expense of transfer of freight, or  
5 breaking the bulk thereof, at different points along the lines, and  
6 for this purpose may use the road or roads of said corporations or  
7 companies, and rolling stock thereof, on such terms as may be  
8 agreed upon by the directors of said corporations or companies. 1866-'7, c. 105, s. 1.

**Sec. 3510.** Subscription to stock may be made by board of county commissioners.

The boards of commissioners of the several counties shall have  
2 power to subscribe stock to any railroad company or companies,  
3 when necessary to aid in the completion of any railroad in which  
4 the citizens of the county may have an interest. 1868-'9, c. 171, s. 1.

**Sec. 3511.** Manner in which subscriptions by board is to be made; proviso.

The board of commissioners of any county proposing to take  
2 stock in any railroad company shall meet and agree upon the  
3 amount to be subscribed, and if a majority of the board shall vote  
4 for the proposition, this shall be entered of record, which shall  
5 show the amount proposed to be subscribed, to what company,  
6 and whether in bonds, money or other property, and thereupon  
7 the board shall order an election, to be held on a notice of not less  
8 than thirty days, for the purpose of voting for or against the prop-  
9 osition to subscribe the amount of stock agreed on by the board of  
10 county commissioners. And if a majority of the qualified voters  
11 of the county shall vote in favor of the proposition, the board of  
12 county commissioners, through their chairman, shall have power  
13 to subscribe the amount of stock proposed by them, and submitted  
14 to the people subject to all the rules, regulations and restrictions of  
15 other stockholders in such company or companies: *Provided, also,*  
16 that the counties, in the manner aforesaid, shall subscribe from  
17 time to time such amounts, either in bonds or money, as they may  
18 think proper. 1868-'9, c. 171, s. 2.

Caldwell v. Justices of Burke, 4 Jones Eq., 323; Manly v. City of Raleigh, 4 Jones Eq., 370;  
Cain v. Commissioners, 86—8.

**Sec. 3512. Elections, how held.**

1868-'9, c. 171, s. 3.

All elections ordered under the preceding section shall be held  
2 by the sheriff under the laws and regulations provided for the  
3 election of members of the general assembly. The votes shall be  
4 compared by the boards of county commissioners, who shall make  
5 a record of the same.

*Simpson v. Commissioners of Mecklenburg*, 84—156; *Norment v. Charlotte*, 85—378; *Cain v. Commissioners*, 86—8.

**Sec. 3513. Interest on bonds, how paid.**

1868-'9, c. 171, s. 4.

In case the county shall subscribe the amount proposed in bonds,  
2 the board of commissioners shall have power to fix the rate of in-  
3 terest, not to exceed the rate of eight per cent., when the interest  
4 on said bonds shall be payable, and at what place, and shall also  
5 fix the time and places of paying the interest, and shall also deter-  
6 mine the mode and manner of the same; and also to raise by tax-  
7 ation, from year to year, the amount necessary to meet the in-  
8 terest on said bonds.

**Sec. 3514. Taxes, how paid.**

1868-'9, c. 171, s. 5.

The taxes authorized by the three preceding sections to be raised  
2 for the payment of interest or principal, shall be collected by the  
3 sheriff in like manner as other state taxes, and be paid into the  
4 hands of the county treasurer, to be used by the chairman of the  
5 board of county commissioners as directed by this chapter.

**Sec. 3515. Officers of railroads to account to their successors; penalty for failure or refusal.**

1870-'71, c. 72, s. 1.

The president and directors of the several railroads, and all per-  
2 sons acting under them, are hereby required upon demand to ac-  
3 count with the president and directors elected or appointed to suc-  
4 ceed them, and shall transfer to them forthwith all the money,  
5 books, papers, choses in action, property and effects of every kind  
6 and description belonging to such company, and any one refusing  
7 or failing to account for and transfer all the money, books, papers,  
8 choses in action, property and effects, as herein required, shall be  
9 guilty of a misdemeanor, and upon conviction in the superior  
10 court, shall be punished by imprisonment in the penitentiary for  
11 not less than one nor more than five years, and by fine at the dis-  
12 cretion of the court.

**Sec. 3516. Governor may make a requisition upon other states.**

1870-'71, c. 72, s. 2.

The governor is hereby authorized, at the request of the presi-  
2 dent, directors and other officers of any railroad company, to make  
3 requisition upon the governor of any other state for the appre-  
4 hension of any such president failing to comply with the provis-  
5 ions of the preceding section.

**Sec. 3517.** Penalty for delaying or defeating the execution of section thirty-five hundred and fifteen.

All persons conspiring with any such president, directors or their  
2 agents to defeat, delay or hinder the execution of section thirty-five  
3 hundred and fifteen shall be guilty of a misdemeanor, and on con-  
4 viction in the superior court shall be punished as in that section  
5 provided. 1870-'71, c. 72, s. 3.

**Sec. 3518.** To whom the provisions of preceding sections are applicable.

The provisions of the three preceding sections shall apply to all 1871-'71, c. 72, s. 4.  
2 presidents and directors and their agents who have not settled in  
3 full with their successors in office prior to the fifteenth day of Feb-  
4 ruary, one thousand eight hundred and seventy-one.

**Sec. 3519.** Two hundred and fifty dollars must be paid before bill to incorporate or to amend railroad charter can be instituted.

No bill to incorporate any railroad company, or to alter, amend,  
2 change or modify any act of incorporation of any railroad com-  
3 pany, other than one in which the state is a stockholder, shall be  
4 introduced into either house of the general assembly unless ac-  
5 companied by the receipt of the state treasurer for two hundred  
6 and fifty dollars; and the same shall be placed to the credit of the  
7 public school fund by the said treasurer.

*Passim* Proctor v. Railroad Co., 72-579; State v. Richmond and Danville Railroad Co.,  
73-527.

**Sec. 3520.** Company dissolved, &c.; owner or purchaser to be a new corporation and property, &c., taxed.

When any railroad corporation shall be dissolved, or its property  
2 sold and conveyed under any execution, deed of trust, mortgage or  
3 other conveyance, the owner or purchaser shall constitute a new  
4 corporation, and the property, franchises and profits of said new  
5 corporation shall be taxed as other like property, franchises and  
6 profits are taxed by the general assembly.

#### TELEGRAPHS.

**Sec. 3521.** Telegraph lines, who may maintain.

Any telegraph company chartered or incorporated by this or any 1874-'5, c. 203, s. 2.  
2 other state shall have the right to construct, maintain and operate  
3 lines of telegraph along any railroad or other public highway in  
4 the state of North Carolina, but such lines of telegraph shall be so  
5 constructed and maintained as not to obstruct or hinder the usual  
6 travel on such railroad or other highway.

**Sec. 3522.** May contract for right of way.

Such telegraph company shall have power to contract with any 1874-'5, c. 203, s. 3.  
2 person or corporation, the owner of any lands or of any franchise  
3 or easement therein, over which such line of telegraph is proposed



4 to be erected for the right of way for planting, repairing and  
 5 preservation of its telegraph poles or other property, and for the  
 6 erection and occupation of offices at suitable distances for the pub-  
 7 lic accommodation.

**Sec. 3523. Entitled to right of way upon just compensation.**

1874-'5, c. 203, s. 4.

Such telegraph company shall be entitled to the right of way  
 2 over the lands, privileges and easements of other persons and cor-  
 3 porations, and the right to erect poles and to establish offices, upon  
 4 making just compensation therefor.

**Sec. 3524. Proceedings to be by petition; facts to be stated.**

1874-'5, c. 203, s. 5.

Whenever such telegraph company shall fail on application  
 2 therefor to secure by contract or agreement such right of way for  
 3 the purposes aforesaid over the lands, privilege or easement of an-  
 4 other person or corporation, it shall be lawful for such telegraph  
 5 company, first giving security for costs, to file its petition before  
 6 the superior court for the county in which said lands are situate,  
 7 or into or through which such easement, privilege or franchise ex-  
 8 tends, setting forth and describing the parcels of land, privilege  
 9 or easement over which the way, privilege or right of use is claimed,  
 10 the owners of the land, easement or privilege, and their place of  
 11 residence, if known, and if not known that fact shall be stated, and  
 12 such petition shall set forth the use, easement, privilege or other  
 13 right claimed, and must be sworn to, and in such petition the use  
 14 or right sought to be over or upon an easement or right of way, it  
 15 shall be sufficient to give jurisdiction of the person or corporation  
 16 owning the easement or right of way be made a party defendant:  
 17 *Provided*, that only the interest of such parties as are brought be-  
 18 fore the court shall be condemned in any such proceedings, and if  
 19 the right claimed be over or upon an easement or right of way  
 20 which extends into or through more counties than one, the whole  
 21 right and controversy may be heard and determined in one county  
 22 into or through which such easement or right of way extends.

*Telegraph Co. v. Railroad Co.*, 88—420.

**Sec. 3525. Copy of petition and notice to be served on persons claiming lands, &c.**

1874-'5, c. 203, s. 6.

A copy of such petition, with a notice of the time and place the  
 2 same will be presented to the superior court, must be served on the  
 3 person or persons whose interests are to be affected by the proceed-  
 4 ings at least ten days prior to the presentation of the same to the  
 5 said court. If the person on whom the service is to be made be a  
 6 corporation, it shall be sufficient if notice be served on an officer  
 7 or agent of the corporation found in the county in which the land  
 8 or easement is situated, or upon any other officer of the corpora-  
 9 tion.

Sec. 3526. Proceedings for condemnation, appointment of commissioners, their report, exceptions thereto; appeal, final judgment, &c., to be as provided in this chapter in condemning, &c., for railroads.

The proceedings for the condemnation of lands, or any easement, 2 or interest therein, for the use of telegraph companies, the ap- 3 praisal of the lands, or interest therein, the duty of the commis- 4 sioners of appraisal, the right of either party to file exceptions, the 5 report of commissioners, the mode and manner of appeal, the 6 power and authority of the court or judge, the final judgment, and 7 the manner of its entry and enforcement, and the rights of the 8 company pending the appeals, shall be as prescribed in this chap- 9 ter for condemning lands to the use of railroads.

Sec. 3527. Commissioners may inspect the premises.

In considering the question of damages when the interest sought 1874-5, c. 203, s. 9.  
2 is over an easement, privilege or right of way, the commissioners 3 may inspect the premises or rest their finding on testimony as to 4 them may be satisfactory, and the costs of the proceedings shall 5 be paid by the petitioner, unless in the opinion of the superior 6 court the defendant improperly referred to the privilege, use or 7 easement demanded, in which case the costs must be adjudged as 8 to the court may appear equitable and just.

Sec. 3528. Unlawful to wilfully injure, &c., any telegraph pole, &c.; a penalty.

Any person who shall wilfully injure or destroy or pull down 1881, c. 4, s. 1.  
2 any telegraph pole, wire, insulator, or other fixture or apparatus 3 attached to a telegraph line, shall be guilty of a misdemeanor, and 4 may be fined and imprisoned at the discretion of the court.

CHAPTER ONE HUNDRED AND TWO.  
REGISTER OF DEEDS.

SECTION.  
3529. When and before whom to qualify.  
3530. Bond to be given.  
3531. Vacancy to be filled by county commis-  
sioners.  
3532. Office, where kept.  
3533. Times of attendance may be fixed.  
3534. Clerk to hand over deeds and pay fees.  
3535. Penalty on clerk for failure.  
3536. Within what time to register.  
3537. Omitted duties, how to be supplied.  
3538. Clerk of board of commissioners.  
3539. Register of deeds to send notices by  
mail; actual expenses of mailing to be  
paid; not to apply to counties where  
mail facilities are insufficient.

SECTION.  
3540. Tax list.  
3541. Marriage licenses.  
3542. Penalty for neglect of duty.  
3543. Penalty on register for failure.  
3544. Alphabetical files of original deeds.  
3545. Books transcribed and indexed.  
3546. General index.  
3547. Registers to keep indexes.

**Sec. 3529. When and before whom taken.**

1868, c. 35, s. 2.

The register of deeds shall take the oath of office on the first  
2 Monday of December next after his election, before the board of  
3 county commissioners.

**Sec. 3530. Bond to be given.**1868, c. 35, s. 3.  
1876-7, c. 276, s. 5.

He shall give bond with sufficient surety, to be approved by the  
2 board of county commissioners, in the penalty of five thousand  
3 dollars, payable to the state, and conditioned for the safe-keeping  
4 of the books and records, and for the faithful discharge of the  
5 duties of his office, and shall renew his bond annually on the first  
6 Monday in December.

*Crumpler v. Governor*, 1 Dev., 52; *State v. Long*, 8 Ire., 415; *Eaton v. Kelly*, 72-110; *Holt v. McLean*, 75-347.

**Sec. 3531. Vacancy to be filled by board of county commissioners.**

1868, c. 35, s. 4.

When a vacancy occurs from any cause in the office of register  
2 of deeds, the board of county commissioners shall fill such vacancy  
3 by the appointment of a successor for the unexpired term, who  
4 shall qualify and give bond as prescribed in the preceding section.

**Sec. 3532. Office, where kept.**

1868, c. 35, s. 5.

The register shall keep his office at the court house unless the  
2 board of county commissioners shall deem it impracticable.

**Sec. 3533. Times of attendance may be fixed.**

1868, c. 35, s. 6.

The board of county commissioners may fix by order, to be en-  
2 tered on their records, what days of each week, and at what hours  
3 of each day, the register of deeds shall attend at his office in per-  
4 son or by deputy, and he shall give his attendance accordingly.

**Sec. 3534. Clerk to hand over deeds and pay fees.**

1868, c. 35, s. 7.

The register of deeds shall at least once a week apply to the  
2 clerk of the superior court of his county for all instruments of  
3 writing admitted to probate and then remaining in the office of  
4 such clerk for registration, and also for all fees for registration due  
5 thereon; which fees the clerk of the superior court shall receive  
6 for the register.

**Sec. 3535. Penalty on clerk for failure.**

1868, c. 35, s. 8.

In case the clerk fail to deliver such instruments of writing, and  
2 pay over such fees as are prescribed in the preceding section, on  
3 application of the register, the clerk shall forfeit and pay to the  
4 register one hundred dollars for every such failure; for which sum  
5 judgment may be entered at any time by the judge of the superior  
6 court, on motion in behalf of the register, on a notice of ten days  
7 thereof to the clerk.



**Sec. 3536. Within what time to register.**

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 indorse on each deed in trust and mortgage, the day on which it is presented to him for registration, and such indorsement 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 are presented to him. 1863, c. 35, s. 9.

*Metts v. Bright*, 4 D. & B., 173; *Moore v. Ragland*, 74—343.

**Sec. 3537. Omitted duties, how to be supplied.**

Whenever, upon the termination for any cause of the term of office of the register of deeds, it appears that he has failed to perform any of the duties of his office, the board of 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 county commissioners, by suit on his official bond. 1863, c. 35, s. 14.

**Sec. 3538. Clerk of the board of commissioners.**

The register of deeds is *ex officio* clerk of the board of county commissioners, and as such shall perform the duties imposed by law or by order of the said board. 1863, c. 35, s. 15.

**Sec. 3539. Register of deeds to send notices by mail; actual expenses of mailing to be paid; not to apply to counties where mail facilities are insufficient.**

The register of deeds shall serve by mail all notices issued by the board of county commissioners to justices of the peace, road overseers and school committeemen, in lieu of the service by the sheriff, and shall receive as his compensation his actual expenses for mailing and nothing more: *Provided*, that this section shall not apply to any county where the mail facilities are insufficient. 1879, c. 323, ss. 1, 3.

**Sec. 3540. Tax list.**

The register shall make out the tax lists as directed by law, under the supervision of the board of county commissioners. 1863, c. 35, s. 16.

**Sec. 3541. Marriage licenses.**

The register of deeds is authorized to issue marriage licenses as prescribed in chapter seventy-four. 1863, c. 35, s. 17.

**Sec. 3542. Penalty for neglect of duty.**

1868, c. 35, s. 18.

If any register of deeds fails to perform any of the duties imposed or authorized by this chapter, he shall be guilty of a misdemeanor, and on conviction, besides other punishments at the discretion of the court, he shall be removed from office.

Holt v. McLean, 75—347; State v. Snuggs, 85—541.

**Sec. 3543. Penalty on register for failure.**

1868, c. 35, s. 10.

In case of his failure to register any deed or other instrument within the time and in the manner required by the preceding section, the register shall be liable in an action to the party injured by such delay on his official bond.

**Sec. 3544. Alphabetical files of original deeds.**

1868, c. 35, s. 11.

The register shall keep in files alphabetically labeled, 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.

**Sec. 3545. Books transcribed and indexed.**

1868, c. 35, s. 12.

The board of county commissioners, when 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 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.

**Sec. 3546. General index.**

1868, c. 35, s. 13.

The board of county 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.

**Sec. 3547. Registers to keep indexes.**

1876-'7, c. 93, s. 1.

The register of deeds shall provide and keep in his office full and complete alphabetical indexes of the names of the parties to all liens, grants, deeds, mortgages, bonds and other instruments of writing required to be registered; said indexes to be kept in well-bound books, and shall state in full the names of all the parties, whether grantors, grantees, vendors, vendees, obligors or obligees, and shall be indexed and cross-indexed, so as to show the name of each party under the appropriate letter of the alphabet; and ref-

9 erence shall be made opposite each name to the page, title or num-  
10 ber of the book in which is registered any such lien, deed, bond,  
11 conveyance or other instrument.

## CHAPTER ONE HUNDRED AND THREE.

### RELIGIOUS SOCIETIES.

#### SECTION.

- 3548. Donations to religious societies to vest in them or their trustees.
- 3549. Houses of worship on vacant lands to belong to the society, &c.
- 3550. Societies may appoint trustees to hold their property; yearly value of lands, a church or society may hold.
- 3551. Trustees may be removed, &c.; to be accountable.
- 3552. Penalty for stopping way to places of worship, springs, &c.

#### SECTION.

- 3553. Stone-horses, curiosities, &c., not to be exhibited in half a mile of congregation; exception as to towns, &c.
- 3554. Sale of liquor and goods within a mile forbidden; exception; penalty.
- 3555. Penalties for intoxication or disorder during worship.
- 3556. Penalty under this chapter to be for the poor.

#### Sec. 3548. Donations to religious societies to vest in them or their trustees.

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.

R. C., s. 97, s. 1.  
1776, c. 107.  
1796, c. 457, s. 4.

McKeithan v. Ray, 71—166; Lord v. Hardle, 82—241.

#### Sec. 3549. Houses of worship on vacant lands to belong to society erecting them.

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.

R. C., c. 97, s. 2.  
1778, c. 132, s. 6.



Sec. 3550. 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.  
1796, c. 457, s. 1.  
1844, c. 47.  
1848, c. 76.

The conference, synod, convention or other ecclesiastical body, 2 representing any church or religious denomination within the 3 state, as also the religious societies and congregations within the 4 state, may from time to time and at any time, appoint in such man- 5 ner as such body, society or congregation may deem proper, a suit- 6 able number of persons as trustees for such church, denomination, 7 religious society, or congregation, who and their successors shall 8 have power to receive donations, and to purchase, take and hold 9 property, real and personal, in trust for such church or denomina- 10 tion, religious society or congregation: *Provided, however*, that be- 11 sides such lands and lots may be specially set apart and appropri- 12 ated to divine worship, no church or denomination by virtue of 13 this chapter, shall have to their own use lands of a greater yearly 14 value than six thousand dollars; and no single congregation or 15 society, lands of a greater yearly value than four hundred dollars; 16 and said lands shall be subject to taxation.

Trustees v. Dickenson, 1 Dev., 189; McAuley v. Wilson, 1 Dev. Eq., 276; White v. White, 1 D. & B., 260; Holland v. Peck, 2 Ire. Eq., 255; White v. University, 4 Ire. Eq., 19; Bridges v. Pleasants, 4 Ire. Eq., 23; Walker v. Fawcett, 7 Ire., 44; Lord v. Hardie, 82—241.

Sec. 3551. Trustees may be removed, &c.; to be accountable.

R. C., c. 97, s. 4.  
1796, c. 457, ss. 2, 3.  
1844, c. 47.

The body appointing may remove such trustees or any of them, 2 and fill all vacancies caused by death or otherwise; and the said 3 trustees and their successors may sue and be sued in all proper 4 actions, for or on account of the donations and property so held or 5 claimed by them, and for and on account of any matter relating 6 thereto. And they shall be accountable to the said churches, de- 7 nominations, societies and congregations for the use and manage- 8 ment of said property, and shall surrender it to any person author- 9 ized to demand it.

Perry v. Tupper, 74—722; Lord v. Hardie, 82—241.

Sec. 3552. Penalty for stopping way to places of worship, springs, &c.

R. C., c. 97, s. 5.  
1785, c. 241.

If any person shall maliciously stop up or obstruct the way lead- 2 ing to any place of public worship, or to any spring or well com- 3 monly used by the congregation, he shall, for every such offence, 4 forfeit and pay twenty dollars.

Sec. 3553. Stone-horses, jacks, curiosities not to be exhibited within a half a mile of congregation; exception as to towns, &c.

R. C., c. 97, s. 6.  
1809, c. 779, s. 1.

If any person shall bring within half a mile of any place where 2 the people are assembled for divine worship, and stop for exhibi- 3 tion, any stone-horse or jack, or shall bring within that distance any 4 natural or artificial curiosities, and there exhibit them, he shall 5 forfeit and pay to any one who will sue therefor, the sum of twenty 6 dollars, and shall also be guilty of a misdemeanor: *Provided*, that 7 nothing herein contained shall be construed to prohibit such ex-

8 hibions at any time, if made within the limits of any incorporated  
 9 town, or without such limits, if made before the hour of ten o'clock  
 10 in the forenoon, or after three o'clock in the afternoon.

**Sec. 3554. Sale of liquor and goods within a mile forbidden; exception; penalty.**

No person, licensed keepers of taverns and retailers excepted,  
 2 (and they only when they shall sell at their taverns or shops,) 1800, c. 564, ss. 1, 2.  
 3 during the progress of religious exercises, at any place where 1808, c. 761, s. 1.  
 4 divine service may then be celebrated, shall sell within one mile 1809, c. 779, s. 2.  
 5 of such place, any spirituous liquor, or any liquor of which  
 6 spirituous liquor shall be the chief ingredient. Nor shall any per-  
 7 son, the keepers of licensed stores only excepted, during such time,  
 8 and within that distance of such place, be engaged in the occupa-  
 9 tion of selling or offering to sell any article of traffic, prepared food  
 10 and provender only excepted. And if any person shall offend against  
 11 this or the preceding section, he shall forfeit and pay, to any one  
 12 who will sue therefor, twenty dollars, and shall also be guilty of a  
 13 misdemeanor.

See B. R., c. 32, s. 10; R. C., c. 34, s. 109; Trustees v. Dickenson, 1 Dev., 189; State v. Muse, 4 D. & B., 319; White v. University, 4 Ire. Eq., 19; Walker v. Fawcett, 7 Ire., 44; State v. Joyner, 81—534.

**Sec. 3555. Penalty for intoxication or disorder during worship.**

If any person shall be intoxicated, or shall quarrel, fight or be  
 2 guilty of any other disorderly behavior at a church or other place  
 3 appointed for divine worship, during the time the people shall be  
 4 there assembled for such worship, he shall, for each offence, forfeit  
 5 and pay twenty dollars.

R. C., c. 97, s. 8.  
 1807, c. 729, s. 2.

**Sec. 3556. Penalties under this chapter for the poor.**

The penalties incurred for offences created by this chapter shall  
 2 be for the use of the poor of the county; if not otherwise provided;  
 3 and on information thereof before any justice of the peace of the  
 4 county wherein they may be committed, he shall issue a summons  
 5 against the offender for the penalty incurred; and if there shall  
 6 be an appeal from the judgment thereon, the case shall be prose-  
 7 cuted by the proper officer of the state.

R. C., c. 97, s. 9.  
 1800, c. 564, s. 1.  
 1807, c. 729, s. 2.  
 1807, c. 779, s. 4.  
 1816, c. 922.

## CHAPTER ONE HUNDRED AND FOUR.

## REVENUE AND TAXATION.

## SECTION.

3557. Assessment of taxes.  
 3558. Poll tax to be devoted to educational purposes and the support of the poor; may be collected by attachment.  
 3559. Form of attachment to collect poll tax.  
 3560. Tax on bank stock, how paid; stock of non-residents.  
 3561. Laws relating to the exemption of corporate property from taxation repealed.  
 3562. Fines and penalties to be paid by collecting officer to board of education; embezzlement by officer.  
 3563. Unlisted land; back taxes to be assessed and collected.  
 3564. Commissioners may exempt from payment of poll tax; certificate of exemption; sheriff to be credited.  
 3565. The tax list and order of collection to sheriff, same force as a judgment and execution.  
 3566. Lien of taxes on real and personal property.  
 3567. Lien on stock of bank or other corporation; stock not transferable until tax is paid.  
 3568. Bank or corporation may pay taxes due from share-holders.  
 3569. Taxes, when due and payable; sheriff to give receipt; duty of sheriffs and tax-collectors.  
 3570. How sheriff to collect taxes.  
 3571. Personal property to be first levied on and sold.  
 3572. Insolvent taxes; when allowed to sheriff on settlement.

## SECTION.

3573. Real estate, how levied on and sold; delinquent to be notified; lands of minors and lunatics exempt from sale, but property of guardian liable.  
 3574. Form of levy.  
 3575. How taxes collected from property in another county.  
 3576. How real estate shall be offered for sale, and by whom purchased.  
 3577. When sheriff to bid in property for county; sheriff to execute deed to county; deed to be registered.  
 3578. Delinquent may redeem land sold for taxes within twelve months.  
 3579. Delinquent failing to redeem, sheriff to execute deed to purchaser.  
 3580. Land purchased by county; redemption; to be sold if not redeemed in one year.  
 3581. Tenants for life, by courtesy, dower, husband in right of wife, and guardians, executors and trustees liable to pay taxes on lands held by them.  
 3582. Failure of life-tenant to pay the taxes, or redeem the land sold for taxes; estate to be forfeited to remainderman; right of remainderman to redeem.  
 3583. Persons having liens on lands may pay the taxes; amount paid a preferred lien.  
 3584. Retail liquor dealers; how to obtain license.  
 3585. Penalty for practising a trade, profession or franchise without having obtained a license.

## Sec. 3557. Assessment of taxes.

1872-'3, c. 144, s. 1.

Taxes are payable in the existing national currency, and shall  
 2 be assessed and collected under the rules and regulations prescribed  
 3 by law.

Pullen v. Commissioners of Wake, 66—361; Wade v. Commissioners of Craven, 74—81.

## Sec. 3558. Poll tax to be devoted to educational purposes and the support of the poor; may be collected by attachment.

1872-'3, c. 144, s. 2.  
 1881, c. 116, s. 2.

The proceeds of the tax on polls shall be devoted to purposes of  
 2 education, and the support of the poor, as may be prescribed by  
 3 law, not inconsistent with the apportionment established by sec-  
 4 tion two of article five of the constitution. If any poll tax shall  
 5 not be paid within sixty days after the same shall be demandable,  
 6 it shall be the duty of the sheriff, if he can find no property of the  
 7 person liable, sufficient to satisfy the same, to attach any debt or  
 8 other property incapable of manual delivery, due or belonging to  
 9 the person liable, or that may become due to him before the ex-



10 piration of the calendar year; and the person owing such debt, or  
 11 having such property in possession, shall be liable for said tax.

**Sec. 3559. Form of attachment to collect poll tax.**

For the purpose of carrying into effect the provisions of this 1881, c. 116, s. 3.

2 section, the following form shall be used as an attachment, to-wit :

To A. B. : Take notice that this is to attach any debt that is now due, or may become due to C. D., a delinquent in poll tax for the year 18....., and you are hereby summoned to appear before E. F., an acting justice of the peace for ..... county, and disclose any indebtedness which is or may be due said delinquent by you during the present calendar year, and to show cause why judgment should not be rendered against you for said delinquent tax, and cost of this proceeding.

..... day of ....., 18.....

G. H.,

*Sheriff, or Tax Collector.*

**Sec. 3560. Tax on bank stock, how paid; stock of non-residents.**

The taxes imposed upon the shares of stock in any bank or bank-  
 2 ing association (whether state or national) shall be paid by the  
 3 cashier of such bank or banking association directly to the state  
 4 treasurer, within thirty days after the first day of July in each  
 5 year, and charged by such bank against the individual stockhold-  
 6 ers; and the list-takers and board of commissioners of the county  
 7 in which such stockholder resides shall assess against his share of  
 8 stock only the tax imposed by the state for school purposes and  
 9 those imposed for county purposes. But the shares of stock be-  
 10 longing to non-residents of the state shall be assessed for taxation  
 11 for support of school and county purposes in the county in which  
 12 such bank is located, and shall be paid by the cashier of such bank  
 13 or banking association.

1876-'7, c. 156, sub  
chap. 1, s. 2.

*Lilly v. Cumberland County, 69—300; Kyle v. Commissioners of Fayetteville, 75—445; Buile v. Commissioners of Fayetteville, 79—267.*

**Sec. 3561. Laws relating to the exemption of corporate property from taxation repealed.**

Whenever in any law, or act of incorporation, granted either  
 2 under the general law or by special act before or since the fourth of  
 3 July, one thousand eight hundred and sixty-eight, there is any  
 4 limitation or exemption of taxation, the same is hereby repealed,  
 5 and all the property and effects of all such corporations shall be  
 6 liable to full taxation like property owned by individuals.

1876-'7, c. 156,  
1879, c. 2, s. 70.

**Sec. 3562. Fines and penalties to be paid by collecting officers to the board of education; embezzlement by officer.**

Whenever any officer receives or collects a fine, penalty or for-  
 2 feiture in behalf of the state, or any tax imposed on licenses to re-  
 3 tailers of wines, cordials, or spirituous liquors, and auctioneers, he  
 4 shall, within thirty days after such reception or collection, pay  
 5 over and account for the same to the treasurer of the county board  
 6 of education for the benefit of the fund for common schools in such

1872-'3, c. 144, sched-  
ule 6, ss. 6, 7.

7 county. Any officer convicted of violating this section, or of ap-  
 8 propriating to his own use, the state, county, school, city or  
 9 town taxes, shall be guilty of embezzlement, and may be pun-  
 10 ished not exceeding five years in the penitentiary, and may also  
 11 be fined at the discretion of the court.

**Sec. 3563. Unlisted land; back taxes to be assessed and collected.**

1879, c. 71, s. 22.

In all cases where the board of commissioners shall have omitted,  
 2 or in any future year shall omit to enter upon the duplicate of  
 3 their county any land or town lots situated within their county,  
 4 subject to taxation, it shall be their duty, when they enter the  
 5 same on the duplicate of the next succeeding year, to add to the  
 6 taxes of the current year the simple taxes of each and every pre-  
 7 ceding year in which such land or town lots shall so have escaped  
 8 taxation, with twenty-five per cent. in addition thereto, as far back  
 9 as the said lands have escaped taxation. Where no assessment has  
 10 been made for the years in which said property has so escaped  
 11 taxation, the board shall be authorized to value and assess the  
 12 same for those years.

**Sec. 3564. Commissioners may exempt from payment of poll tax; certificate of exemption; sheriff to be credited.**

1872-'3, c. 115, s. 20.  
 1879, c. 71, s. 24.

The board of commissioners shall have power to exempt any  
 2 person from the payment of a poll tax on account of either poverty  
 3 or infirmity, and when such persons have been once exempted  
 4 they shall not be required to renew their application unless said  
 5 board shall revoke the exemption. When such exemption shall  
 6 have been made, the clerk of the board shall furnish the person  
 7 with a certificate of such action, and upon exhibiting said certifi-  
 8 cate to the list-taker annually, the person to whom it was issued  
 9 shall not be required to list his poll; but the list-taker shall enter  
 10 in the column intended for the poll the word "exempt," and the  
 11 poll shall not be charged in computing the list. The clerk shall  
 12 deliver to the sheriff a list of all persons so exempted, with the  
 13 amount of taxes charged against him, and the sheriff shall be en-  
 14 titled to a deduction of such taxes in any settlement he may be  
 15 required to make.

**Sec. 3565. The tax list and order of collection to sheriff, same force as in judgment and execution.**

1872-'3, c. 115, s. 21.  
 1876-'7, c. 155, s. 22.

The board of commissioners shall cause to be made out two  
 2 copies of the tax list of each township as revised and settled by  
 3 them, according to a form furnished them by the auditor of the  
 4 state. Such form shall show, in different columns, the sums due  
 5 by each tax-payer to the state and to the county; one of said  
 6 copies shall remain in the office of the clerk of the board, the other  
 7 shall be delivered to the sheriff or tax collector on or before the

8 first Monday in September in each year, and he shall receipt for  
9 the same. The clerk shall indorse on the copies given the sheriff an  
10 order to collect the taxes therein mentioned, and such order shall  
11 have the force and effect of a judgment and execution against the  
12 property of the person charged in such list. In such list the clerk  
13 shall note all appeals from the judgment of the board which have  
14 been perfected by giving a bond. Said order shall be in the fol-  
15 lowing or some similar form :

STATE OF NORTH CAROLINA— ..... County.  
Office Board of Commissioners ..... County.

To the Sheriff of ..... County :

You are hereby commanded to collect the taxes herein mentioned, according to the pro-  
visions and requirements of the existing law.

In witness whereof, I hereunto set my hand and seal, ..... day of ....., 18.....

.....  
Clerk Board of Commissioners.

Huggins v. Hinson, Phil., 126; Perry v. Campbell, 63—257; State v. Lutz, 65—502.

Sec. 3566. Lien of taxes on real and personal property.

The lien of the state, county and municipal taxes levied for all 1879, c. 71, s. 28.

2 purposes in each year, shall attach to all real property subject to  
3 such taxes, on the first day of June annually, and shall continue  
4 until such taxes, with any penalty which shall accrue thereon,  
5 shall be paid ; all personal property subject to taxation shall be  
6 liable to be seized and sold for taxes, and the personal property of  
7 any deceased person shall be liable in the hands of any executor  
8 or administrator, for any tax due on the same by any testator or  
9 intestate.

Sec. 3567. Lien on stock of bank or other corporation ; stock not transferable  
until tax is paid.

Any tax assessed on any shares of stock, or the value thereof, 1879, c. 71, s. 26.

2 of any bank or banking association, or any corporation, shall be a  
3 lien on such shares from the first day of June in each year until  
4 such taxes are paid ; and in case of the non-payment of such taxes at  
5 the time required by law by any shareholder, and after notice re-  
6 ceived from the county treasurer, of the non-payment of such taxes,  
7 it shall be unlawful for the cashier or other officer of such bank or  
8 banking association or corporation, to transfer or permit to be  
9 transferred the whole or any portion of said stock until the de-  
10 linquent taxes thereon, together with the costs and penalties, shall  
11 be paid in full ; and no dividend shall be paid on any stock so  
12 delinquent so long as such taxes, penalties and costs, or any part  
13 thereof, remain due and unpaid.

Kyle v. Commissioners of Fayetteville, 75—445; Buie v. Commissioners of Fayetteville  
79—267.

Sec. 3568. Bank or corporation may pay taxes due from shareholders.

It shall be lawful for any such bank or banking association or 1879, c. 71, s. 27,



2 other corporation to pay the treasurer, sheriff or tax collector of  
 3 the county in which such bank or banking association or corpor-  
 4 ation may be located, the taxes that may be assessed upon its shares  
 5 as aforesaid, in the hands of its shareholders respectively, and de-  
 6 duct the same from any dividends that may be due or may thereaf-  
 7 ter become due on any such shares, or deduct the same from any  
 8 funds in its possession belonging to any shareholder as aforesaid.

**Sec. 3569. Taxes, when due and payable; sheriff to give receipt; duty of sheriffs and tax collectors.**

1872-'3, c. 115, s. 126.  
 1876-'7, c. 155, s. 27.

All taxes shall be due on the first Monday in September in each  
 2 year. When paid, the sheriff or tax collector shall note on the  
 3 tax list, against the name of the party, the date of payment and  
 4 the amount paid; he shall also give a receipt to the parties stating  
 5 the amount of the state and county tax separately, and the date of  
 6 payment, and for failure to give such receipt stating the state and  
 7 county tax separately, he shall be guilty of a misdemeanor, and on  
 8 conviction be fined at the discretion of the court: *Provided*, the  
 9 sheriff or tax collector shall not collect the taxes for any year until  
 10 he shall have settled in full with the state and county for the taxes  
 11 of the previous year (if he was the sheriff or tax collector) and  
 12 given the bonds required by law. Before receiving the tax list he  
 13 shall produce the receipts of the state and county (if he was the  
 14 sheriff or tax collector for the previous year) to the clerk of the  
 15 board of commissioners, and in the event the sheriff fails to pro-  
 16 duce the aforesaid receipt or give the required bonds, the board of  
 17 commissioners shall appoint a tax collector, who shall give bond,  
 18 as required of the sheriff, to faithfully collect and pay over the  
 19 taxes according to law. When the sheriff shall collect by his  
 20 deputies, they shall, before the clerk of the board, or before a jus-  
 21 tice of the peace of the county, take and subscribe an oath faith-  
 22 fully and honestly to account for the same with the sheriff or other  
 23 person authorized to receive the same. Said oath shall be filed  
 24 with the clerk and kept in the office of the board, and for failure  
 25 of any deputy sheriff to pay over such taxes as he may collect, he  
 26 shall be guilty of a misdemeanor.

**Sec. 3570. How sheriff to collect taxes.**

1872-'3, c. 115, s. 28.

Whenever the taxes shall be due and unpaid, the sheriff shall  
 2 immediately proceed to collect them as hereinafter prescribed.

**Sec. 3571. Personal property to be first levied on and sold.**

If the party charged have personal property of a value equal to  
 2 the tax charged against him, the sheriff shall seize and sell the  
 3 same as he is required to sell other property under execution, and  
 4 his fees for such levy or sale shall be the same as on other execu-  
 5 tions.

**Sec. 3572. Insolvent taxes, when allowed to sheriff on settlement.**

No insolvent's taxables shall be credited to the sheriff in the settlement with the auditor, except such as shall be allowed by the board of commissioners, a list whereof, containing the names and amounts and subscribed by the sheriff, shall be returned by the sheriff to the board, and the same shall be allowed only on his making oath that he has been at the dwelling house, or usual place of abode of each of the tax payers, and could not there or elsewhere in the county, find property wherewith to discharge his taxes, or such part thereof as is returned unpaid, and that the persons contained in the list were insolvent at and during the time when, by law, he ought to have endeavored to collect the taxes; such list shall be recorded in the board's book of records and a copy thereof shall be returned to the auditor on or before the day of the settlement of the sheriff with the treasurer.

**Sec. 3573. Real estate, how levied on and sold; delinquent to be notified; lands of minors and lunatics exempt from sale, but property of guardian liable.**

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. For issuing execution the clerk's fee shall be fifteen cents. The sheriff shall notify the delinquent of such levy, and of the day and place of sale, by service of a notice stating these 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 four other public places, and also in some newspaper, if there be such published in the county where the land is situate. The notice shall be served or published as aforesaid at least thirty days before the sale of the land, upon proof of the due service or publication, and mailing of the said notice, the clerk of the superior court shall thereupon issue execution in the name of the state, upon relation of the sheriff or tax collector commanding the sale of so much of the real estate of the delinquent as may be sufficient to pay the tax due and cost. 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 the sale of real estate 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

1853-9, c. 60.  
1872-3, c. 115, s. 28

30 sheriff, within one month after sale, shall mail to him notice of the  
31 sale and date thereof, of the name and address of the purchaser, of  
32 the sum bid, and the amount of taxes and cost to be paid by him  
33 as a condition of its redemption. And it is expressly declared that  
34 the lands"of a minor, lunatic, or a person *non compos mentis*, shall  
35 in no case be liable to be sold for taxes, but should any guardian,  
36 trustee, or receiver of the estate of such person not pay the taxes  
37 on the property of such person when due, the tax list in the hands  
38 of the sheriff, charging him as guardian, trustee, or receiver, shall  
39 be an execution to be satisfied out of his individual property, or  
40 out of the personal property of such ward.

Taylor v. Allen, 67—346; Whitehurst v. Gaskill, 69—449; Macay *ex parte*, 84—63; Hays v. Hunt, 85—303; Busbee v. Lewis, 85—332.

Sec. 3574. Form of levy.

876-'7, c. 155, s. 29

The following or any substantially similar form shall be sufficient  
2 for the levy :

STATE OF NORTH CAROLINA, }  
On relation of ..... }  
Sheriff of ..... County, }  
vs. }  
..... }

Levy on lands of ....., adjoining the lands of ....., for default in pay-  
ment of taxes.

Sec. 3575. How taxes collected from property in another county.

1872-'3, c. 115, s. 28.

If any person liable for taxes not having property in the county  
2 where such taxes are due, shall have property in any other county  
3 or shall remove from his county after the day of listing or carrying  
4 his property therefrom, the soliciting officer shall return the fact  
5 to the board of commissioners of the county, who shall, through  
6 their clerk, make an abstract of the same under their corporate  
7 seal, which abstract shall have the force of a tax list regularly in-  
8 dorsed for collection in any county in the state. The collecting  
9 officer shall forward the same to the proper collecting officer of the  
10 county where the person or property may be, who shall collect the  
11 amount due thereon, with three per cent. added, which per centage  
12 he may retain to his own use, the residue to be forwarded imme-  
13 diately to the officer from whom he received it, to be accounted for  
14 as other public taxes. It shall be the duty of the officer to whom  
15 such abstract shall be forwarded, to make return of his action on  
16 the same within thirty days; and said abstract, or duly certified  
17 copy, may be sent for collection to the same or some other county  
18 until the amount due shall be collected.

Sec. 3576. How real estate shall be offered for sale, and by whom purchased.

R.C., c. 98, s. 91, (4).

The whole tract or contiguous body of land belonging to a de-  
2 linquent person or company shall be set up for sale at the same  
3 time, and the bid shall be struck off to him who will pay the



4 amount of taxes with all the expenses, for the smallest part of the  
5 land.

Taylor v. Allen, 67—346.

Sec. 3577. When sheriff to bid in property for county; sheriff to execute deed to county; deed to be registered.

If no one will or shall offer to pay the amount of taxes for a less  
2 number of acres than the whole number of acres in said tract,  
3 then the sheriff shall bid off the property for the county, and upon  
4 proving the fact and tendering to the chairman of the board of  
5 commissioners a deed to the county for the property, duly proven  
6 before the clerk of the superior court of the county, shall have  
7 credit for the amount of such tax and fee paid for registration.  
8 The deed shall be deposited without delay by the said chairman  
9 with the register of deeds and recorded by him, for which he shall  
10 be allowed a fee of twenty-five cents. The property so purchased  
11 by the county shall be under the control of the board, but may be  
12 redeemed as hereinafter prescribed; and the said board shall order  
13 the sheriff to pay the state treasurer the state tax due thereon out  
14 of the county funds in his hands, and on the payment thereof the  
15 said treasurer shall issue his certificate to the said sheriff; and  
16 the said board shall cause an allowance to be made to the sheriff  
17 in his settlement with the treasurer of the county for the amount  
18 of state tax and costs.

1881, c. 117, s. 36.

Sec. 3578. Delinquent may redeem land sold for taxes within twelve months.

The delinquent, his agent or attorney, may retain possession of  
2 the property for twelve months after sale, and within that time re-  
3 deem it by paying or tendering the purchaser the amount paid by  
4 him, and twenty-five per cent. in addition thereto. If the pur-  
5 chaser shall accept the sum so tendered, he shall give a receipt  
6 therefor. If he shall refuse, or cannot be found in the county, the  
7 delinquent may pay the same to the clerk of the superior court for  
8 the use of the purchaser, and the clerk shall give a receipt there-  
9 for. Such payment shall be equivalent to payment to the pur-  
10 chaser. The delinquent, his agent or attorney, may cause the re-  
11 ceipt of the purchaser or of the clerk to be registered, and the reg-  
12 ister of deeds shall refer to such registration on the margin of his  
13 registration of the receipts from the sheriff to the purchaser. After  
14 the payment to the purchaser or to the clerk for his use, as afore-  
15 said, all rights under the purchase shall cease. No sale of property  
16 by the purchaser or by the delinquent, his agent or attorney,  
17 within twelve months, shall convey to their respective vendees any  
18 other rights or estates than the parties themselves possess.

1872-'3, c. 115, s. 31.

**Sec. 3579. Delinquent failing to redeem, sheriff to execute deed to purchaser.**

1872-'3, c. 115, s. 32.

If the delinquent, his agent or attorney, shall fail to redeem, as prescribed in the preceding section, the sheriff shall execute a fee simple deed to the purchaser, and if the purchaser is dead, to his heirs at law or assigns, for the quantity of land for which the said purchaser agreed to pay the amount of the taxes with all the expenses, and for said service the sheriff shall be entitled to two dollars to be paid by the purchaser. The deed from the sheriff to the purchaser shall be registered within six months, and when so registered shall convey to the grantee all the estate in the quantity of land for which the said purchaser bid, which the delinquent, his agent or attorney, had at the time of the sale for taxes; and such deed shall, in any action at law, for the recovery of the land, be *prima facie* evidence that the sheriff has complied with all requirements of the law in making the sale for taxes.

Taylor v. Allen, 67—346; Whitehurst v. Gaskill, 69—449; Macay *ex parte*, 84—63; Hays v. Hunt, 85—303; Busbee v. Lewis, 85—332.

**Sec. 3580. Land purchased by county; redemption; to be sold if not redeemed in one year.**

1881, c. 117, s. 39.

In case the county becomes the purchaser, then, within two months after the sale, the delinquent may pay the county treasurer the amount due for state and county taxes together with the cost allowed the sheriff in his settlement, with twenty-five per cent. added thereto; and upon the presentation of the said treasurer's receipt to the register of deeds, that officer shall indorse upon the deed conveying the property to the county these words:

"Taxes and cost paid, delinquent restored to his rights,"

and sign the said indorsement, and shall deliver the deed to delinquent or his agent, and he shall enter the same on the margin of that page of the county record in which is registered the deed, charging fifteen cents therefor; and such indorsement, delivery and marginal entry shall have the effect of re-investing the delinquent with all his rights in the premises. But should the said delinquent fail to redeem the said land within twelve months from the day of sale thereof, then the said board of commissioners shall order the said sheriff, after notice given as hereinbefore prescribed, to sell the land to the highest bidder for cash and to pay the proceeds of sale, less five per cent. for his commissions, to the county treasurer, the one-half of the net proceeds thereof to the common school fund and the other half to the county fund. Every deed made to the county authorities for land sold for taxes shall be *prima facie* evidence in any action at law for said land, that the sheriff in making sale of the land, has complied with all the requirements of the law.

Sec. 3581. Tenants for life, by courtesy, dower, husband in right of wife, and guardians, executors and trustees liable to pay taxes on lands held by them.

Every person shall be liable to pay the taxes for the lands of 1879, c. 71, s. 53.  
2 which he or she may stand seized for life, by courtesy, dower, or  
3 by a husband in right of his wife, or may have the care of, as guar-  
4 dian, executor, or as agent, trustee, receiver or attorney, having  
5 funds of the principal in his or her hands.

Sec. 3582. Failure of life-tenant to pay the taxes or redeem the land sold for taxes; estate to be forfeited to remainderman; right of remainderman to redeem.

If any person who shall be seized of lands as tenant by courtesy 1879, c. 71, s. 54.  
2 or dower, or who shall be seized of lands for life or in right of his  
3 wife, shall neglect to pay the taxes thereon so long that such lands  
4 shall be sold for the payment of taxes, and shall not within one  
5 year after such sale redeem the same according to law, such per-  
6 son shall forfeit to the person or persons next in title to such lands in  
7 remainder or reversion, all the estate which he or she so neglecting  
8 as aforesaid, may have in said lands, and the remainderman or re-  
9 versioner may redeem said lands in the same manner that other  
10 lands may be redeemed after having been sold for taxes within  
11 one year after such forfeiture, and moreover, the person so neg-  
12 lecting as aforesaid shall be liable in an action to the person next  
13 in title to the estate for all damages such person may have sus-  
14 tained by such neglect.

Sec. 3583. Persons having liens on land may pay the taxes; amount paid a preferred lien.

Any person having a lien upon real estate may pay the taxes 1879, c. 71, s. 55.  
2 thereon in so far as the same are a lien upon such real estate, and  
3 the amount of taxes so paid shall, from the time of payment, op-  
4 erate as a lien upon such real estate in preference to all other liens,  
5 and the money so paid may also be recovered by action for moneys  
6 paid to his use against the person or persons legally liable for the  
7 payment of such taxes.

Sec. 3584. Retail liquor dealers; how to obtain license.

Every person desiring to sell spirituous or malt liquors, wines, 1881, c. 116, s. 26.  
2 cordials or bitters, in quantities less than a quart, shall, before en-  
3 gaging in said sale, file his petition, stating the place and house in  
4 which he proposes to retail, and obtain an order to the sheriff from  
5 the board of commissioners of the county to grant him a license to  
6 retail at that place, which order they shall grant to all properly  
7 qualified applicants; and if granted, he may take out license and  
8 shall pay the tax therefor in advance; and every retail dealer of  
9 malt liquors shall also pay the license tax in advance, and no license  
10 shall be issued for a shorter time than twelve months. Any grocer,  
11 druggist, dealer or other person who shall sell spirituous or malt  
12 liquors, wines or cordials, in any quantity, if the same or any por-



tion thereof shall at any time be drunk upon the premises where-  
such liquors, wines or cordials are sold, shall be considered a re-  
tail dealer within the meaning of this section: *Provided*, this sec-  
tion shall not be construed to repeal or alter the provisions of any  
special act prohibiting or regulating the sale of liquors in any par-  
ticular locality.

**Sec. 3585. Penalty for practising a trade, profession or franchise, without having obtained a license.**

1876-'7, c. 156, s. 31.

Every person who shall practice any trade or profession, or use  
any franchise, taxed by law, without having first paid the tax and  
obtained a license as required, shall be guilty of a misdemeanor,  
and shall also forfeit and pay to the state a penalty not exceeding  
twenty dollars, at the discretion of the court, and in default of the  
payment of such fines, he may be imprisoned for not more than  
thirty days, 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 otherwise specially pro-  
vided; which penalty the sheriff shall cause to be recovered before  
any justice of the peace of the county.

State v. Cohen, 84—771.

## CHAPTER ONE HUNDRED AND FIVE.

### RIVERS AND CREEKS.

#### SECTION.

- 3586. County commissioners may appoint commissioners to examine streams and make improvements.
- 3587. Overseers to be yearly appointed by county commissioners; their duty.
- 3588. County commissioners may direct flats, &c., to be procured.
- 3589. Power of county commissioners of Johnston, Wayne, &c., as to Neuse river.
- 3590. Streams to be laid off into districts; one-fourth to be left open for passage of fish.
- 3591. Obstructing boats by felling trees, &c., misdemeanor.

#### SECTION.

- 3592. Duty of commissioners to examine streams and lay off gates, &c., in dams.
- 3593. Report made and confirmed.
- 3594. Gates, &c., how discontinued.
- 3595. Penalty on owner of dam for failing to make gates, &c.
- 3596. Authority to repair breaks.
- 3597. Entry on another's land; proviso.
- 3598. Misdemeanor; penalty.
- 3599. Owners of boats authorized to construct draws in bridges; draws to be constructed and maintained by owners of boats.

**Sec. 3586. County commissioners may appoint commissioners to examine streams and make improvements.**

R. C., c. 160, s. 1  
1784, c. 227, s. 16.  
1785, c. 242, s. 1.  
1796, c. 460, s. 1.  
1790, c. 331, s. 2.  
1868-'9, c. 20, s. 27.

Where any inland river or stream shall run through the  
county, or be a line of their county, the board of 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 expedi-  
ent, they may appoint and authorize the commissioners to proceed

8 in the most expeditious manner, in opening and clearing the same,  
 9 by taking such hands from the public roads, as the board of county  
 10 commissioners shall permit, and direct to be allotted to such work;  
 11 which hands shall be placed under overseers in companies, every  
 12 overseer and company to have a distinct portion of such river or  
 13 stream to be laid off by the board of commissioners.

Brown v. Keener, 74—714.

**Sec. 3587. Overseers appointed yearly by board of county commissioners; their duty; subject to same rules as overseers of roads.**

Every overseer shall be appointed by the board of county com-  
 2 missioners; and the clerk shall issue a notice, expressing therein  
 3 the name of the stream, the distance he is to work thereon, and the  
 4 hands appointed under him, and the sheriff shall serve the same  
 5 upon him, under the same rules as notices are served upon overseers  
 6 of roads; and the overseer and hands, upon receiving three days'  
 7 previous notice from the commissioners, shall proceed to work upon  
 8 and clear out such river or stream, subject to the same rules and  
 9 double the penalties imposed by law upon overseers and hands  
 10 working upon public roads; and no overseer or hands appointed  
 11 to open and clear out navigable rivers and streams shall be com-  
 12 pelled to work on public roads. And the board of county commis-  
 13 sioners thereafter shall annually appoint overseers, and assign such  
 14 hands as they may judge proper, to work on the rivers and creeks,  
 15 and keep in repair any slopes erected or to be erected; and such  
 16 overseers and the hands assigned, for a failure of duty shall be  
 17 subject to all the penalties imposed by law upon overseers of roads  
 18 and the hands liable to work thereon.

R. C., c. 100, s. 2.  
 1784, c. 227, s. 16.  
 1796, c. 460, s. 2.  
 1809, c. 782, s. 3.  
 1812, c. 845, ss. 1, 2,  
 3.  
 1813, c. 859, ss. 1, 2.  
 1844, c. 66.

**Sec. 3588. Board of county commissioners may direct flats, &c., to be procured.**

The board of county commissioners appointing the commis-  
 2 sioners may direct them to purchase or hire a flat with a windlass  
 3 and the appurtenances necessary to remove loose rock and other  
 4 things, which may by such means be more easily removed, and  
 5 allow the same to be paid for out of the funds.

R. C., c. 100, s. 3.  
 1785, c. 242, s. 2.

**Sec. 3589. Power of board of commissioners of Johnston, Wayne, &c., as to Neuse river.**

The boards of commissioners of the counties of Johnston,  
 2 Wayne, Lenoir and Craven at the first meeting which shall be  
 3 held for their respective counties after the first day of July, may  
 4 yearly appoint and lay off, in convenient districts, all the inhabi-  
 5 tants of their counties, respectively, resident above Spring Garden  
 6 on both sides of Neuse river, within such distances of the river as  
 7 the said boards of county commissioners shall appoint; and for  
 8 each district appoint some person as overseer, who shall cause all  
 9 persons, within the district allotted to him, liable to work on pub-  
 10 lic roads, to work at least six days in every year on the river, un-

R. C., c. 100, s. 4.  
 1823, c. 1197.

11 less the boards of county commissioners shall otherwise direct ; du-  
 12 ring which time he shall cause them to be employed in remov-  
 13 ing all logs, brush and other obstructions to navigation ; and  
 14 for neglect he shall be guilty of a misdemeanor ; and every  
 15 person liable to work as aforesaid, or send hands, who shall fail  
 16 when warned, (as hands are for working on roads) to appear and  
 17 work, with such tools as the overseer shall direct, shall pay for  
 18 each day one dollar, to be recovered and applied in the same man-  
 19 ner as fines for failing to work on public roads : *Provided, however,*  
 20 that nothing contained in this section shall abridge, or interfere  
 21 with, the rights and privileges of the Neuse River Navigation  
 22 Company.

State v. Dibble, 4 Jones, 107.

**Sec. 3590. Streams to be laid off into districts ; one-fourth to be left open for the passage of fish.**

R. C., c. 100, s. 5.  
 1787, c. 272, s. 1.

The board of county commissioners may appoint commissioners  
 2 to examine and lay off the rivers and creeks in their county ; and  
 3 where the stream is a boundary between two counties, may lay off  
 4 the same on their side ; in doing so they shall allow three-fourths  
 5 for the owner of the stream for erecting slopes, dams and stands ;  
 6 and one-fourth part, including the deepest part, they shall leave  
 7 open for the passage of fish, marking and designating the same in  
 8 the best manner they can ; and if mills are built across such  
 9 stream, and slopes may be necessary, the commissioners shall lay  
 10 off such slopes, and determine the length of time they shall be  
 11 kept open ; and such commissioners shall return to their respec-  
 12 tive boards of county commissioners a plan of such slopes, dams  
 13 and other parts of streams viewed and surveyed.

**Sec. 3591. Obstructing boats by felling trees, &c., a misdemeanor.**

R. C., c. 100, s. 6.  
 1786, c. 460, s. 2.

If any person shall obstruct the free passage of boats, by felling  
 2 trees, or by any other means whatever, he shall be guilty of a  
 3 misdemeanor.

State v. Pool, 74—402.

**Sec. 3592. Duty of commissioners to examine streams and lay off gates and dams.**

1858-'9, c. 26, s. 1. §

The commissioners appointed by the board of county commis-  
 2 sioners to examine and lay off the rivers and creeks within the  
 3 county, or where the stream is a boundary between counties, shall  
 4 have power to lay off gates, with slopes attached thereto, upon any  
 5 mill dam built across such stream, of such dimensions and con-  
 6 struction as shall be sufficient for the convenient passage of float-  
 7 ing logs and other timber, in cases where it may be deemed neces-  
 8 sary by the said board of county commissioners ; and they shall re-  
 9 turn to the board of county commissioners appointing them a plan  
 10 of such gates, slopes and dams in writing.



**Sec. 3593. Report made and confirmed.**

Upon the confirmation of the report made by the commissioners, 1858-'9, c. 26, s. 2.  
2 and notice thereof give to the owner or keeper of said mill, it shall  
3 be his duty forthwith to construct, and thereafter to keep and  
4 maintain, at his expense, such gate and slope, for the use of per-  
5 sons floating logs and other timber as aforesaid, so long as said  
6 dam shall be kept up, or until otherwise ordered by the board of  
7 county commissioners.

**Sec. 3594. Gates, &c., in dams, how discontinued.**

The commissioners at any time thereafter appointed as afore- 1858-'9, c. 26, s. 3.  
2 said, when they may deem such gate and slope no longer neces-  
3 sary, may report the fact to their respective boards of county com-  
4 missioners, and said boards of county commissioners may order the  
5 same to be discontinued.

**Sec. 3595. Penalty on owner of dam for failing to make gates, &c.**

Any owner or keeper of a mill, whose dam is across any such 1858-'9, c. 26, s. 4.  
2 stream, and who shall fail to build a gate and slope therein, or  
3 thereafter to keep and maintain the same as required under this  
4 chapter, shall be guilty of a misdemeanor.

**Sec. 3596. Authority to repair breaks.**

Wherever any stream of water which is used to propel machin- 1879, c. 53, s. 1.  
2 ery shall be by freshet or otherwise diverted from its usual chan-  
3 nel so as to impair its power as used by any person, such person  
4 shall have power to repair the banks of such stream at the place  
5 where the break occurs, so as to cause the stream to return to its  
6 former channel.

**Sec. 3597. Entry on another's land; proviso.**

In case the break occurs on the lands of a different person from 1879, c. 53, s. 2.  
2 the one utilizing the stream, the person utilizing the stream shall  
3 have power to enter upon the lands of such other person to repair  
4 the same, and in case such person objects, the clerk of the superior  
5 court of the county in which the break occurs shall, upon applica-  
6 tion of the party utilizing the stream, appoint three disinterested  
7 freeholders, neither of whom shall be related to either party, who  
8 after being duly sworn shall lay off a road if necessary by which  
9 said person may pass over the lands of such other person to the  
10 break, and repair said break from time to time as often as may be  
11 necessary, so as to cause the said stream to return to its original  
12 channel, and assess any damage which may thereby be occasioned:  
13 *Provided*, the party upon whose land the work is proposed to be  
14 done shall have five days' notice in writing served on him or left  
15 at his place of residence: *Provided further*, that it shall be the duty  
16 of said commissioners to assess the damages of any one on whose

17 land shall be laid off to be paid by the applicant for said road:  
 18 *And provided*, that either party shall have the right of appeal to the  
 19 superior court.

**Sec. 3598. Misdemeanor; penalty.**

1879, c. 53, s. 3.

If the owner of the lands shall prevent or in any wise hinder  
 2 the person utilizing the stream from passing over his lands after  
 3 the road is laid off and damages assessed as mentioned in the pre-  
 4 ceding section, he shall be guilty of a misdemeanor, and on con-  
 5 viction shall be fined not more than fifty dollars and imprisoned  
 6 not more than thirty days, or both, at the discretion of the court for  
 7 each offence.

**Sec. 3599. Owners of boats authorized to construct draws in bridges; draws to be constructed and maintained by owners of boats.**

1879, c. 279, ss. 1, 2.

Whenever the navigation of any river or creek, which, in the  
 2 strict construction of law, might not be considered a navigable  
 3 stream, obstructed by any bridge across said stream, it shall  
 4 be lawful for any person owning any boat plying on said  
 5 stream to make a draw in such bridge sufficient for the pas-  
 5 sage of such boat; and the party owning such boat shall con-  
 6 struct and maintain such draw at his own expense, and shall use  
 7 the same in such manner as to delay travel as little as possible.

## CHAPTER ONE HUNDRED AND SIX.

### ROADS, FERRIES AND BRIDGES.

**SECTION.**

3600. What shall be public roads and ferries; their supervision given to justices of the peace; board of supervisors of public roads and county commissioners to establish and discontinue ferries, roads and bridges.  
 3601. Meeting of board of supervisors; date of election, &c.  
 3602. Townships to be divided into sections and overseers appointed; boundaries to be designated; notice to overseers, &c.  
 3603. Who liable to work on roads; time compelled to work.  
 3604. No person exempt from working but by board of supervisors.  
 3605. When overseer to summon hands to work roads; notice; duty of persons summoned; proviso.  
 3606. Failure to attend and work misdemeanor; fine.  
 3607. Overseers competent to prove notice on hands.  
 3608. Overseers to report to board of supervisors; report to be verified; warrant to issue against road hand failing to perform duty.

**SECTION.**

3609. Overseers to report all moneys collected to supervisors; failure to discharge duties, misdemeanor; duty of chairman of board of supervisors.  
 3610. Jurisdiction of supervisors over cartways; jurisdiction of board of county commissioners over roads; proviso.  
 3611. Board of supervisors to report to superior court; clerk to deliver report to foreman of grand jury; misdemeanor; punishment.  
 3612. Not to apply to certain counties.  
 3613. Overseers of water courses; water courses to be kept open.  
 3614. Width of roads, cartways, bridges; proviso.  
 3615. Overseers may apportion road among hands, but still liable for default.  
 3616. Timber and earth taken from adjoining lands.  
 3617. Owners may petition board of supervisors.  
 3618. Footways and hollow-bridges made where supervisors may order; their order presumed after ten years' use.

## SECTION.

3619. Sign-posts at fork of roads to be set up by overseers; penalty for neglect.
3620. On persons removing or defacing posts or mile-marks.
3621. Overseer to measure and mile-mark roads.
3622. Penalty on overseer for general neglect of duty.
3623. Board of supervisors, &c., to erect bridges at county expense.
3624. Contracts to build bridges binding on county.
3625. Owners of mills and ditches on and across roads to keep up bridges; provisos.
3626. Penalty for neglect.
3627. Board may order how costs shall be paid; appeal; controversies concerning roads, &c., carried by appeal to the superior court to be tried by a jury.
3628. Roads, how laid out.
3629. When road changed, how received.
3630. Ferries and roads, how established, altered or discontinued.
3631. How persons may turn roads on their own lands.
3632. Board of supervisors in ten days to furnish constable with orders appointing overseers; constable to apply to board for orders and serve them within twenty days; penalty on board and sheriffs for neglect.
3633. Notice, how served.
3634. Toll-bridges allowed by board of commissioners, when; builders to keep them in repair or forfeit toll and be indicted.
3635. Tolls of ferry regulated by board of commissioners; penalty for refusing to keep it up.

## SECTION.

3636. Owner may build toll-bridge at his ferry; draw-bridge, when made.
3637. Bonds of owners of ferries and toll-bridges to be taken by board of commissioners; persons injured may recover damages.
3638. Penalty for keeping ferry, &c., without authority; proviso for mail carriers.
3639. Fastening vessels to float bridge; penalty.
3640. Railroad companies to keep draw-bridge.
3641. Owners of steam-boats, &c., to notify owners of bridges to construct draws; penalty for neglect.
3642. Counties to erect draws where necessary.
3643. Railroad companies, &c., to keep bridges over county roads; penalty for failure.
3644. Duty of solicitors to prosecute for injuries to bridges.
3645. Cart-ways, in what cases and how obtained; proceedings therefor.
3646. May be changed or discontinued, and gates and bars erected, &c.; penalty for injuring them.
3647. License to erect gates across highways, how obtained.
3648. Who exempt from working on roads.
3649. Expenses borne by whole people of county, when.
3650. Road-steamers may run upon public roads.
3651. Boards of supervisors to lay out, &c., church roads.
3652. Petition for the same.
3653. Manner of laying out roads.
3654. Obstruction of road, &c., a misdemeanor.

**Sec. 3600.** What shall be public roads and ferries; their supervision given to justices of the peace; board of supervisors of public roads and county commissioners to establish and discontinue ferries, roads and bridges.

All roads and ferries that have been laid out or appointed by  
 2 virtue of any act of assembly, or any order of court, are hereby de-  
 3 clared to be public roads and ferries; and from time, and at all  
 4 times the justices of the peace in each and every township shall  
 5 have the supervision and control of the public roads in their re-  
 6 spective townships. They shall, with respect to this work, consti-  
 7 tute and be styled the "Board of Supervisors of Public Roads" of  
 8 such township, and under that name, for the purposes aforesaid  
 9 they are hereby incorporated the "Board of Supervisors of Public  
 10 Roads," and the board of county commissioners, as hereafter  
 11 in this chapter set forth, shall have full power and authority within  
 12 their respective counties to appoint and settle ferries; to order the  
 13 laying out of public roads where necessary; to appoint where  
 14 bridges shall be made; to discontinue such roads and ferries as  
 15 shall be found useless; and to alter roads so as to make them more  
 16 useful.

R. C., c. 101, s. 1.  
 1784, c. 227, s. 1.  
 1868, c. 20, ss. 11, 16,  
 17, 18.  
 1868-'9, c. 185, s. 14.  
 1879, c. 82, s. 1.

Carr v. Hairston, 1 Car. L. Rep., 249; Beard v. Long, 2 Car. L. Rep., 69; Pipkin v. Wynns, 2 Dev., 402; Woolard v. McCullough, 1 Ire., 432; Baker v. Wilson, 3 Ire., 168; State v. Marble, 4



Ire., 318; State v. Hunter, 5 Ire., 369; State v. Johnson, 11 Ire., 647; State v. Cardwell, Busb. 245; Tarkington v. McRae, 2 Jones, 47; Davis v. Ramsay, 5 Jones, 236; State v. McDaniel, 8 Jones, 284; Burgwyn v. Lockhart, Winst., 269; Carrow v. Washington Toll Bridge Co., Phil., 118; Barrington v. Neuse River Ferry Co., 69—165; State v. Witherspoon, 75—222; Ashcraft v. Lee, 79—84; Ashcraft v. Lee, 81—135.

**Sec. 3601. Meeting of the board of supervisors; date of election, &c.**

1879, c. 82, s. 2.  
1880, c. 30, s. 1.

The said board of supervisors shall meet at some place in their  
2 respective townships to be agreed upon by themselves, or in the  
3 absence of such agreement, to be named by their chairman, on the  
4 first Saturday of February and August, for the purpose of con-  
5 sulting on the subject of the condition of the roads in their town-  
6 ship. They shall once in each year, during the week of their  
7 meeting in August, go over and personally examine all the roads  
8 in their township. They shall annually at their meeting in Feb-  
9 ruary elect some one of their number charman: *Provided, however,*  
10 that no supervisor shall receive any compensation for his services  
11 as supervisor of public roads.

**Sec. 3602. Townships to be divided into sections, and overseers appointed; boundaries to be designated; notice to overseers, &c.**

1879, c. 82, ss. 3, 7.  
1880, c. 30, s. 1.

The said board of supervisors shall annually at the meeting in  
2 February divide the roads of their townships into sections and ap-  
3 point overseers for said sections at said meetings. They shall at  
4 the same time allot the hands to said overseers, and shall also  
5 designate the boundaries or points to which each resident shall be  
6 liable to work on said section, and shall within five days after such  
7 meeting certify to each overseer written notice of his appointment,  
8 with a list of the hands assigned to his section: *Provided,* that the  
9 board of supervisors may at any time alter the sections or allot-  
10 ment, but shall give notice thereof to the overseer. Such overseer  
11 shall serve, and be liable as such for neglect of duty, until he shall  
12 be relieved by the board, which shall be done only upon his show-  
13 ing that his road is in good condition as prescribed by law. The  
14 overseer may resign after the expiration of twelve months, pro-  
15 vided his road shall be in good repair and the board of super-  
16 visors shall so find; and any overseer so resigning, and whose  
17 resignation has been accepted by the board, shall not without his  
18 consent be again appointed overseer until after the expiration of  
19 two years from the date of his resignation. When a public road  
20 shall be a dividing line between townships, the board of commis-  
21 sioners of the county shall determine as to how said road shall be  
22 divided, with notice as to the working of said road.

Cantrell v. Pinkney, 8 Ire., 436; Calvert v. Whittington, 11 Ire., 278; McBoyle v. Hanks, 1 Jones, 133; Tarkington v. McRea, 2 Jones, 47; State v. Long, 81—563.

**Sec. 3603. Who liable to work on roads; time compelled.**

1879, c. 82, s. 4.  
1880, c. 30, s. 2.

All able bodied male persons between the ages of eighteen years  
2 and forty-five years shall be required under the provisions of this

3 chapter to work on the public roads, except the members of the  
 4 board of supervisors of public roads, but no person shall be com-  
 5 pelled to work more than six days in any one year, except in case  
 6 of damage resulting from a storm: *Provided*, that ten days instead  
 7 of six days be the limit as to the counties west of the Blue Ridge.

**Sec. 3604. No person exempt from working but by board of supervisors.**

No persons, between the ages prescribed, shall be exempted from  
 2 working upon the public roads, except such as shall be exempted  
 3 by the general assembly, or by the board of supervisors of the town-  
 4 ship, on account of personal infirmity; of which the said board  
 5 shall be the sole judge.

R. C., c. 101, s. 12.  
 1784, c. 227, ss. 8, 9.  
 1826, c. 26, ss. 1, 2.

Forbes v. Hunter, 1 Jones, 231; State v. Cauble, 70—62.

**Sec. 3605. When overseer to summons hands to work roads; notice; duty of persons summoned; proviso.**

The overseer of the road shall, as often as the road shall require,  
 2 subject to the limitation in the preceding section, summon the  
 3 hands of his section to work on the road, but the said hands shall  
 4 not be required to work continuously for a longer time at any one  
 5 time than two days, and at least fifteen days shall intervene be-  
 6 tween workings, except in case of special damage to the road, re-  
 7 sulting from a storm. The notice shall be at least two days before  
 8 the day named for the work, and shall state the hour and the place  
 9 for the meeting of the hands, and what implement the hand shall  
 10 bring with him. Every person liable to work on the road who has  
 11 been so summoned shall appear at the time and place named, and  
 12 with the implement directed, and shall work on the road under  
 13 the direction of the overseer until discharged by him: *Provided*,  
 14 that no hand shall be required to work for a less time than seven  
 15 hours nor a longer time than ten hours in any one day. Any per-  
 16 son summoned as aforesaid who shall by twelve o'clock of the day  
 17 preceding the one appointed for work on the road pay to the over-  
 18 seer the sum of one dollar shall be relieved from working on the  
 19 road for one day. The money thus collected by the overseer shall  
 20 be by him applied on the working and repairing of the road: *Pro-*  
 21 *vided*, that any person who shall furnish one able-bodied hand as a  
 22 substitute, with the implement directed, shall be held to have com-  
 23 plied with the provisions of this chapter.

1879, c. 82, s. 5.  
 1880, c. 30, s. 3.

**Sec. 3606. Failure to attend and work misdemeanor; fine.**

Any person liable to work on the road who shall fail to attend  
 2 and work as hereinbefore provided when summoned so to do, un-  
 3 less he shall have paid the one dollar as aforesaid, shall be guilty  
 4 of a misdemeanor, and on conviction shall be fined not less than  
 5 two dollars nor more than five dollars, or imprisoned not exceed-  
 6 ing five days, or both.

1879, c. 82, s. 6.

State v. Cauble, 70—62; State v. James, 74—393; State v. Luther, 77—492.

**Sec. 3607. Overseers competent to prove notice on hands.**

R. C., c. 101, s. 11.  
1817, c. 935, s. 2.  
1825, c. 1237.

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.

**Sec. 3608. Overseers to report to board of supervisors; report to be verified; warrant to issue against road hand failing to perform duty.**

1879, c. 82, s. 7.  
1880, c. 30, s. 4.

Every overseer shall at each and every meeting of the board of supervisors of his township make report to them of the present condition of his road, of the number of days worked on his section since last meeting, of the number of hands who attended and worked each day, of the number and names of hands who failed to attend and work; whether or not they were legally summoned, and whether or not they paid the one dollar as provided. The said overseer shall before some person authorized to administer an oath make written affidavit that the report is true and correct. Upon this report sworn to as aforesaid, if it shall appear that any of the hands, after being legally summoned, have failed to attend and work on said road, and that they did not pay the one dollar, then it shall be the duty of the said justice of the peace, or any one of them, to issue a warrant for the arrest of any such hand or hands, and shall put him or them upon trial for the offence: *Provided*, that nothing herein contained shall prevent the overseer of the road from prosecuting at any time after the offence has been committed, any hand for failure to work on the road, and such cases of prosecution shall be stated in his report to the board of supervisors, that they may not prefer another prosecution for the same offence.

**Sec. 3609. Overseers to report all moneys collected to supervisors; failure to discharge duties, misdemeanor; duty of chairman of board of supervisors.**

1879, c. 82, s. 8.

The said overseers shall at the meeting of the supervisors in February make a report of all moneys collected by them from parties excused from work on the road for the preceding year, with a statement as to how the same was expended. If any overseer shall fail to discharge any one of the duties imposed by this chapter he shall be guilty of a misdemeanor, and on conviction shall be fined seven dollars, and in default of payment of fine and cost be imprisoned not exceeding five days. In case of failure of any overseer to make any report to the board of supervisors of public roads of his township, as provided in this chapter, then and in that case it shall be the duty of the chairman of such board immediately upon such failure to make a sworn statement of the fact before some justice of the peace of an adjoining township, who shall immediately issue his warrant for the arrest of the said overseer, and proceed to try him for the offence.



**Sec. 3610. Jurisdiction of supervisors over cartways; jurisdiction of board of county commissioners over roads; proviso.**

The board of supervisors shall have the right to lay out and dis- 1879, c. 82, s. 9.  
2 continue cartways, subject to all the rules and regulations now in  
3 force, and the board of commissioners of the county only shall have  
4 the right to lay out and establish and discontinue public roads,  
5 subject to the same rules and regulations: *Provided, however*, that in  
6 laying out and establishing roads and cartways, and for the pur-  
7 pose of assessing damage to property by reason of the same, no  
8 greater number of jurors than five shall be summoned or be re-  
9 quired, any provision in any other law to the contrary notwith-  
10 standing.

**Sec. 3611. Board of supervisors to report to superior court; clerk to deliver report to foreman of grand jury; misdemeanor; punishment.**

The board of supervisors shall annually make report to the first 1879, c. 82, s. 10.  
2 term of the superior court of their county after the first Monday in  
3 August of the condition of the roads of their township, and if the  
4 meetings provided for in this chapter have been held for said board,  
5 the judge holding such term of the superior court shall after  
6 his charge to the grand jury and before they shall retire to their  
7 room call upon the clerk of the court for such reports, and they  
8 shall then and there be delivered to the foreman of the grand jury;  
9 and if any board of supervisors shall fail to make said report or to  
10 discharge any other duty imposed by this chapter, they shall be  
11 guilty of a misdemeanor, and on conviction thereof shall be fined or  
12 imprisoned, or both, in the discretion of the court, and the indict-  
13 ment may be either against the board of supervisors, or against  
14 the individuals composing it as justices of the peace.

**Sec. 3612. Not to apply to certain counties.**

The foregoing sections of this chapter shall not apply to the 1880, c. 30, s. 8.  
2 counties of Jackson, Macon, Clay, Cherokee, Graham, Swain, Hay- 1881, c. 245.  
3 wood, Ashe, Transylvania, Alleghany, Mecklenburg, Watauga,  
4 McDowell, Forsyth, Yancey, Stokes, Henderson and Buncombe.

**Sec. 3613. Overseers of water courses; water courses to be kept open.**

Such water courses as are required by law to be kept open by the 1880, c. 30, s. 5.  
2 residents along such courses, shall have overseers appointed and  
3 hands allotted to the parts of such water courses lying in their re-  
4 spective townships by the board of supervisors at the time and  
5 under the same regulations as are provided for public roads. Said  
6 water courses are to be kept open for the purpose of navigation,  
7 and only so many hands as are necessary for this purpose shall be  
8 allotted by the boards of supervisors, and work beyond what is  
9 necessary for the purpose of keeping such water course open for  
10 navigation shall not be required of the overseers or the hands.

**Sec. 3614. Width of roads, causeways, bridges; proviso.**

R. C., c. 101, s. 14.  
1784, c. 227, s. 2.  
1880, c. 30, s. 6.

All roads except such as are causewayed or through cuts shall be not less than eighteen feet wide, clear of trees, logs and other obstructions to the passage of ordinary vehicles, and there shall be ten feet in width in the centre of the roadway, clear of stumps and runners. 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 they shall make, of the same width, necessary bridges through swamps and over small streams of water: *Provided*, this section shall not apply to the roads in those counties where there is by law a classification of the widths of the roads.

Small v. Eason, 11 Ire., 94; Collins v. Creecy, 8 Jones, 333.

**Sec. 3615. Overseers may apportion road among hands, but still liable for default.**

R. C., c. 101, s. 13.  
1784, c. 227, s. 10.

The overseer, if requested by a majority of the hands on the road assigned him, may, in his discretion, lay off the road in equal portions for the convenience of the laborers, who shall finish his or their part in a time agreed on between him and each 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.

Forbes v. Hunter, 1 Jones, 231.

**Sec. 3616. Timber and earth taken from adjoining lands.**

R. C., c. 101, s. 15.  
1786, c. 256, s. 1.  
1818, c. 976, s. 1.

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.

Collins v. Creecy, 8 Jones, 333.

**Sec. 3617. Owners may petition board of supervisors.**

R. C., c. 101, s. 16.  
1818, c. 976, s. 2.

The owner of the land or timber thus used may file his petition before the board of supervisors 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.

Collins v. Creecy, 8 Jones, 333.

**Sec. 3618.** Footways and hollow bridges made where supervisors may order; their order presumed after ten years' use.

Every overseer of the road, when the township board of supervisors 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.

Smith v. Harkins, 3 Ire. Eq., 613.

R. C., c. 101, s. 17.  
1817, c. 940, ss. 1, 2.

**Sec. 3619.** Sign-posts at forks of roads to be set up by overseers; penalty for neglect.

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.

R. C., c. 101, s. 18.  
1784, c. 227, s. 11.  
1812, c. 846.

**Sec. 3620.** On persons removing or defacing posts or mile-marks.

Any person, who shall wantonly remove, knock down, or deface the said posts, arms, or any mile-mark, shall, for every such offence, forfeit and pay to the state ten dollars; and, moreover, be guilty of a misdemeanor.

R. C., c. 101, s. 19.  
1784, c. 227, s. 11.  
1812, c. 846.

**Sec. 3621.** Overseer to measure and mile-mark roads.

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 supervisors 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.

R. C., c. 101, s. 20.  
1784, c. 227, s. 12.



**Sec. 3622. Penalty on overseer for general neglect of duty.**

R. C., c. 101, s. 21.  
1784, c. 227, s. 14.

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.

**Sec. 3623. Board of supervisors, &c., to erect bridges at county expense.**

R. C., c. 101, s. 23.  
1784, c. 227, s. 6.

When a bridge shall be necessary, and the overseer with his assistants cannot conveniently make it, the township board of supervisors, with the concurrence of the county commissioners, shall contract for the building, keeping and repairing thereof, provided the cost of the same does not exceed five hundred dollars, 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, provided the cost of the same does not exceed five hundred dollars; and the charge thereof shall be defrayed by both counties, in proportion to the number of taxable polls in each.

State v. Selby, 83—617.

**Sec. 3624. Contracts to build bridges binding on county.**

R. C., c. 101, s. 23.  
1784, c. 227, s. 6.

Every contract and order by the boards of township supervisors and county commissioners entered into or made as authorized by this chapter for or concerning the building, keeping or repairing bridges, in such manner as to them may seem most proper, shall be valid against the county.

**Sec. 3625. Owners of mills and ditches on and across roads to keep up bridges; provisors.**

R. C., c. 101, s. 24.  
1817, c. 941, s. 1.  
1849, c. 95, s. 1.  
1881, c. 290.

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, so long as they may be needed by any 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,

13 unless the road was laid off by the request of the owner of the mill :  
14 *And provided further*, that the duty hereby imposed on the owner  
15 of the mill, and on the person cutting the drain or canal, shall  
16 continue on all subsequent owners and occupiers of the mill, and  
17 on all subsequent owners and occupiers of the property, for the  
18 benefit of which the said ditch, drain or canal was cut: *And pro-*  
19 *vided further*, that when any ditch or drain originally constructed  
20 across any public road, and bridge for the convenience and safety  
21 of the traveling public, has been or may hereafter be enlarged by  
22 the owner of adjacent lands to drain his lands, it shall be the duty  
23 of such owner to keep up and in repair all bridges crossing such  
24 ditch, drain or canal, and that such charge shall be imposed upon  
25 all subsequent owners of the lands so drained, and that any per-  
26 son throwing a bank of dirt in the main road shall be compelled  
27 to spread the same.

Mulholland v. Brownigg, 2 Hawks, 349; Nobles v. Langly, 66—287.

**Sec. 3626. Penalty for neglect.**

Every person, who shall neglect to do his duty as directed by  
2 the preceding section, or shall leave out of repair any such  
3 bridge, for the space of ten days, unless prevented by unavoidable  
4 circumstances, shall be liable for such damages as may be sus-  
5 tained, and moreover shall be guilty of a misdemeanor, and, upon  
6 conviction thereof, shall be fined not exceeding fifty dollars.

R. C., c. 101, s. 25.  
1817, c. 941, s. 2.  
1876-'7, c. 90.  
1876-'7, c. 211.

**Sec. 3627. Board may order how costs shall be paid; appeal; controversies concern-  
ing roads, &c., carried by appeal to superior court to be tried before jury.**

In all such applications, the board may, under such judgments  
2 as they may think right and proper, decree how and by whom the  
3 costs shall be paid; and any person disappointed may appeal to  
4 the superior court at term time, and if any person shall appeal  
5 from the board on such petition, he shall give bond to the oppos-  
6 ing party as provided in other cases of appeal, and the superior  
7 court at term shall hear the whole matter anew; and where any  
8 proceeding is instituted to lay out, establish, alter or discontinue  
9 public roads or to appoint and settle ferries, and the said proceed-  
10 ings is carried to the superior court in term time by appeal or  
11 otherwise, the parties to said proceedings shall be entitled to have  
12 every issue of fact joined in said proceedings tried in the superior  
13 court in term time by jury, and from the judgment of the superior  
14 court either party may appeal to the supreme court as is provided  
15 in other cases of appeals in this code.

R. C., c. 101, s. 3.  
1813, c. 862, s. 1.  
1879, c. 258.

Ashcraft v. Lee, 79—34.

**Sec. 3628. Roads, how laid out.**

All roads shall be laid out by a jury of five freeholders, to the  
2 greatest advantage of the inhabitants, and with as little prejudice  
3 as may be, to lands and enclosures; which laying out, and such

R. C., c. 101, s. 4.  
1784, c. 227, s. 13.  
1813, c. 862, s. 1.  
1879, c. 82, s. 9.

4 damage as private persons may sustain, shall be done and ascer-  
 5 tained, by the same jury on oath; and all damages by them as-  
 6 sessed, shall be deemed a county charge.

*Ashcraft v. Lee*, 79—34.

**Sec. 3629. When road changed, how received.**

R. C., c. 101, s. 5.  
 1784, c. 227, s. 13.  
 1813, c. 862, s. 1.

Whenever, upon petition of any person, a road shall be changed  
 2 and, as a condition thereof, it shall be required by the board of  
 3 such petitioner, that he put the proposed road in good condition,  
 4 he may, at any time thereafter, tender the same to the overseer,  
 5 who shall receive it, if it be in such condition as is required for  
 6 highways; and if not, shall reject it; and in either case he shall  
 7 report and certify the fact to the board where the same may be  
 8 considered; and the board shall hear all persons interested in the  
 9 matter of receiving or rejecting the road; and the decision of the  
 10 board shall be conclusive as to the condition of the road; but the  
 11 old road shall not be closed until it be discontinued by order of  
 12 the board.

**Sec. 3630. Ferries and roads, how established, altered or discontinued.**

R. C., c. 101, s. 2.  
 1813, c. 862, s. 1.

The said boards of county commissioners shall not establish any  
 2 ferry, or order the laying out of any public road, or discontinue or al-  
 3 tersuch road or ferry, unless upon petition in writing. And unless it  
 4 appear to the board that every person, over whose lands the said  
 5 road may pass, or whose ferry shall be within two miles of the  
 6 place at which the other ferry is prayed to be established, shall  
 7 have twenty days' notice of the intention to file such petition, the  
 8 same shall be filed in the office of the clerk of the board until the  
 9 succeeding meeting of the board, and notice thereof be posted du-  
 10 ring the same period at the court house door; at which meeting  
 11 the board shall hear the allegations set forth in the petition; and  
 12 if sufficient reason be shown, the board shall appoint and settle or  
 13 discontinue the said ferry, or order the laying out, or discontinue  
 14 or alter the said road, as the case may be.

*Carr v. Hairston*, 1 Car. L. Rep., 249; *Harris v. Coltraine*, 3 Hawks, 312; *Little v. May*, 3 Hawks, 599; *State v. Spainhour*, 2 D. & B., 547; *Woolard v. McCullough*, 1 Ire., 443; *Piercy v. Morris*, 2 Ire., 168; *Leath v. Summers*, 3 Ire., 103; *State v. Shuford*, 6 Ire., 162; *Welch v. Piercy*, 7 Ire., 365; *Davis v. Hill*, 11 Ire., 9.

**Sec. 3631. How persons may turn roads on their own lands.**

R. C., c. 101, s. 6.  
 1834, c. 22.

In addition to the mode prescribed in the section of this chap-  
 2 ter, for turning roads, the following method may be observed by  
 3 any one who desires to change a road from one part of his land to  
 4 another part, namely: Such person shall lay out the same, and af-  
 5 ter putting it in such good condition as highways are directed to  
 6 be, shall apply to a justice of the peace, who thereupon shall notify  
 7 the overseer of the road, and summon two freeholders to meet on  
 8 the premises at a given day; and the said freeholders, being duly



9 sworn to that effect, shall, with the justice, view and examine care-  
 10 fully the road which is proposed in place of the other, and all mat-  
 11 ters and facts tending to show whether the change should be al-  
 12 lowed; and they shall report in writing subscribed by them, the  
 13 result of their consideration to the next meeting of the board,  
 14 which may confirm or reject their report: *Provided, always,* that  
 15 such justice and freeholders shall be disinterested in the land, and  
 16 not of kin or affinity to the applicant.

*State v. Spainhour*, 2 D. & B., 547; *Gatling v. Liverman*, 1 Ire., 63; *Kennedy v. Erwin*, Busb., 387; *Brodnax v. Groom*, 64--244.

**Sec. 3632.** Board of supervisors in ten days to furnish constable with orders appointing overseers; constable to apply to board for orders, and serve them within twenty days, penalty on board and sheriffs for neglect.

The board of supervisors of the township, within ten days after  
 2 the rise of the board, shall furnish the constable with two copies of  
 3 each order appointing overseers of roads, that may have been  
 4 made during the sitting of the board. And the constable shall  
 5 apply at the office of the board, within ten days after the rise of  
 6 every meeting of the board for such orders, and, on receiving them,  
 7 shall, within twenty days, serve each overseer of roads with a copy  
 8 of the order, or leave the same at his usual habitation; and the  
 9 other copy shall be returned to the next meeting of the board of su-  
 10 pervisors, with the date of its reception by him, and the date of the  
 11 service, indorsed thereon, or the date when it was left at the resi-  
 12 dence of the said overseer. And if either the board or constable  
 13 shall fail to perform any duty enjoined on him or them by this  
 14 section, he shall forfeit ten dollars to the county, to be recovered at  
 15 any time, by notice to show cause at the instance of the solicitor,  
 16 who shall prosecute the same in the name of the state.

R. C., c. 101, s. 8.  
 1812, c. 845, ss. 1, 2.  
 1813, c. 859, ss. 1, 2.

**Sec. 3633.** Notice, how served.

When an overseer shall not be able to personally notify the  
 2 hands three days before the day appointed for working the road,  
 3 he shall leave at the house of each hand a written summons, speci-  
 4 fying the day on which they are required to attend, the place of  
 5 the road to be worked, and the kind of tools to be brought or used;  
 6 and the said written summons, left as aforesaid, shall be deemed  
 7 sufficient notice to the hands required to be notified, to every in-  
 8 tent and purpose; and all penalties recovered by an overseer, for  
 9 default of working on the road, shall be applied by him to the re-  
 10 pair of the road of which he is, or may have been, overseer.

*State v. Everit*, 2 Car. L. Rep., 633; *Forbes v. Hunter*, 1 Jones, 231.

**Sec. 3634.** Toll-bridges allowed by board of commissioners, when; builders to keep them in repair, or forfeit toll and be indicted.

Whenever, from the rapidity or width of any stream, it may  
 2 be too burdensome to build and keep up a bridge across the same,

R. C., c. 101, s. 26.  
 1784, c. 227, s. 7.  
 1817, c. 939, s. 2.  
 1817, c. 940, s. 3.

3 at the expense of those who are taxable for that purpose, the board  
 4 of commissioners of the county, or counties, chargeable therewith,  
 5 may jointly and severally (as the case may be) contract for the  
 6 building thereof, by allowing the builder to take tolls, at such rate  
 7 and for such time, on all persons, horses, carriages, and other things  
 8 passing over the bridge, as may be agreed on between the board  
 9 of commissioners and the builder; which tolls shall be common to  
 10 all persons. And such bridges shall be built in the manner the  
 11 board or boards may direct, and shall be kept in good repair by  
 12 the builder, his heirs and assigns, during the time the tolls are to  
 13 be enjoyed; and in default of complying with the contract, the  
 14 builder, or others who may succeed to his rights and enjoy the  
 15 tolls, shall be guilty of a misdemeanor.

Smith v. Harkins, 3 Ire. Eq., 613.

**Sec. 3635. Tolls of ferry regulated by board of commissioners; penalty for refusing to keep it up.**

R. C., c. 101, s. 27.  
 1779, c. 10, ss. 8, 9.  
 Ire. Rev., c. 160, s.  
 2, new Rev.

The board of commissioners of each county shall, once a year, or  
 2 oftener if necessary, at the meeting to be held next after the first  
 3 day of January, rate the prices of such ferries as shall be kept  
 4 within their respective counties; and any ferry keeper who shall  
 5 ask, demand, or receive a greater price for ferriage than shall be  
 6 rated by the board of commissioners, shall forfeit and pay five dol-  
 7 lars for every offence to the party aggrieved. And every person  
 8 who owns a public ferry, and refuses to keep it up at the rates al-  
 9 lowed by the board, shall for every such offence forfeit five dollars.

Smith v. Harkins, 6 Ire. Eq., 613.

**Sec. 3636. Owner may build toll-bridge at his ferry; draw bridge, when made.**

R. C., c. 101, s. 28.  
 1806, c. 706.

In all cases, where the proprietor of a ferry shall prefer build-  
 2 ing a good and substantial bridge over any watercourse instead of  
 3 keeping a ferry, he may do so; and may claim and hold such  
 4 bridge under the same rights, and in the same manner, by which  
 5 the ferry is claimed and held, and under the same rules, regula-  
 6 tions, restrictions and penalties as other toll-bridges, allowed by  
 7 the preceding section of this chapter: *Provided, nevertheless*, that no  
 8 more toll shall be demanded for passing any such bridge than is  
 9 granted by law for the ferriage, unless by agreement with the board  
 10 of commissioners: *And provided further*, that, in all such bridges,  
 11 the proprietor shall erect a draw, where the free navigation of the  
 12 stream may require it.

Smith v. Harkins, 3 Ire. Eq., 613; Lea v. Johnston, 9 Ire., 15; Davis v. Jerkins, 5 Jones, 290.

**Sec. 3637. Bonds of owners of ferries and toll-bridges to be taken by board of commissioners; persons injured may recover damages.**

R. C., c. 101, s. 29.  
 1784, c. 227, s. 15.

The board of commissioners of each county shall compel every  
 2 person that may own a toll-bridge, or keep a public ferry, within  
 3 the county, to give bond with good security, in the sum of

4 one thousand dollars, payable to the state of North Carolina, con-  
 5 ditioned that he will constantly keep such bridge in good repair,  
 6 or, as the case may be, provide and keep good and sufficient boats,  
 7 or other proper craft, always to be well attended, for the passing of  
 8 travelers or other persons, their horses, carriages and effects; and  
 9 will indemnify and save harmless every person who may be en-  
 10 damaged, by reason of any default in his undertaking. And if  
 11 any person shall receive damage, because such ferryman or keeper  
 12 of a toll-bridge shall not have complied with the conditions of his  
 13 bond, he may bring suit thereon in the name of the state, and re-  
 14 cover his damages. And if any person shall be detained at any  
 15 public ferry, by reason of the ferryman not having sufficient boats  
 16 or other proper crafts and hands, or by his neglecting to do his duty  
 17 in any other respect, he may recover before a justice of the peace,  
 18 against such ferryman, the sum of ten dollars, as a penalty for  
 19 every such default or neglect.

**Sec. 3638. Penalty for keeping ferry, &c., without authority; proviso for mail carriers.**

If any unauthorized person shall pretend to keep a ferry or to  
 2 transport for pay any person or his effects, within ten miles of any  
 3 ferry on the same river or water, which theretofore may have been  
 4 appointed, he shall forfeit and pay two dollars for every such of-  
 5 fence, to the nearest ferryman: *Provided*, that any person who may  
 6 contract for carrying the mail, may keep a boat for the sole pur-  
 7 pose of transporting the same, and such passengers as may travel  
 8 in the coach therewith, across any ferry; but such contractor shall  
 9 not transport across such ferry any other passengers than such as  
 10 travel by the coach.

R. C., c. 101, s. 80.  
 1764, c. 72, s. 1.  
 1787, c. 273.

Taylor v. W. and M. R. R. Co., 4 Jones, 277; Carrow v. Washington Toll Bridge Co., Phil.,  
 118; Barrington v. Neuse River Ferry Co., 69—165.

**Sec. 3639. Fastening vessels to float-bridge; penalty.**

No person shall fasten any decked vessel to a float bridge, on  
 2 pain of forfeiting fifty dollars; which in the case of a bridge that  
 3 crosses a county line, may be recovered in either county.

R. C., c. 101, s. 31.  
 R. S., c. 104.  
 1858-'9, c. 53, s. 1.

**Sec. 3640. Railroad companies to keep draw in bridges.**

Railroad, plank-road, and turnpike companies, erecting bridges  
 2 across water-courses, shall attach and keep up good and sufficient  
 3 draws, by which vessels may be allowed conveniently to pass.

R. C., c. 101, s. 32.  
 1846, c. 51, ss. 1, 2.

**Sec. 3641. Owners of steamboats, &c., to notify owners of bridges to construct draws; penalty for neglect.**

Owners of steamboats or other craft, who may intend to navigate  
 2 any river or creek over which any person may have a bridge, may  
 3 give three months' notice thereof in one of the public journals of  
 4 the state, published nearest the river or creek intended to be navi-

R. C., c. 101, s. 33.  
 1864, c. 51, ss. 1, 2.



5 gated, and to the owner of said bridge, to construct a draw of suffi-  
 6 cient width to allow the passage of the boat which is to be used ;  
 7 and if the owner of said bridge shall not, within three months  
 8 from the date of the notice, construct the required draw, he shall  
 9 forfeit and pay the person so notifying, if he be thereby prevented  
 10 from navigating the water-course, fifty dollars ; and shall be fur-  
 11 ther subject to the like penalty, under like circumstances, for every  
 12 three months' default thereafter.

**Sec. 3642. Counties to erect draws where necessary.**

R. C., c. 101, s. 34.

The county or counties which may erect bridges shall, by their  
 2 boards of commissioners, provide and keep up draws in all such  
 3 bridges, where the same may be necessary to allow the convenient  
 4 passage of vessels.

**Sec. 3643. Railroad companies, &c., to keep bridges over county roads ; penalty for failure.**

R. C., c. 101, s. 35.  
 1838, c. 5, ss. 1, 2, 3,  
 4.

Railroad, plank-road, and turnpike companies, each, shall keep  
 2 up, at their own expense, all bridges on or over county, or incor-  
 3 porated roads, which they have severally made it necessary to be  
 4 built, in establishing their respective roads ; and on failure to do  
 5 so, shall be guilty of a misdemeanor, and, on conviction thereof, be  
 6 fined, and execution may issue for fine and costs ; and moreover  
 7 shall forfeit and pay twenty-five dollars to any person who may  
 8 sue for the same.

State v. Wilmington and Weldon Railroad Co., 74—143.

**Sec. 3644. Duty of solicitors to prosecute for injuries to bridges.**

R. C., c. 101, s. 36.  
 1846, c. 11, ss. 1, 2.

The solicitors of the superior court are authorized and directed  
 2 to institute suits in the name of the state, in the counties wherein  
 3 the injuries may be done, for the recovery of damages, against all  
 4 persons, who shall wilfully or negligently injure any public bridge  
 5 belonging to or situate in any county or counties, by forcibly run-  
 6 ning any decked vessel, boat or raft against the same ; by cutting  
 7 trees or timber in the rivers or creeks above such bridges, or by  
 8 any other manner or means whatsoever. In case the injury is done  
 9 to two counties, the action may be brought in either for the entire  
 10 damage ; and the damages which may be recovered shall be for  
 11 the use of the county or counties injured ; and if the plaintiff fail,  
 12 the costs shall be paid by the county or counties for whose use the  
 13 suit is brought, and in the same proportion in which the recovery  
 14 would be divided.

**Sec. 3645. Cart-ways, in what cases, and how obtained ; proceedings therefor.**

R. C., c. 101, s. 37.  
 1798, c. 508, s. 1.  
 1822, c. 1139, s. 1.  
 1879, c. 258.

If any person be settled upon or cultivating any land, to which  
 2 there is leading no public road, and it shall appear necessary,  
 3 reasonable and just that such person should have a private way to

4 a public road over the lands of other persons, he may file his pe-  
 5 tition before the board of supervisors of the township praying for  
 6 a cartway to be kept open across such other persons' lands, leading  
 7 to some public road, ferry, bridge or public landing; and upon  
 8 his making it appear to the board that the adverse party has had  
 9 twenty days' notice of his intention, the board shall hear the alle-  
 10 gations of the petitioner and the objections of the adverse party or  
 11 parties, and if sufficient reason be shown, shall order the constable  
 12 to summon a jury of five freeholders, to view the premises, and lay  
 13 off a cart-way not less than fourteen feet wide, and assess the dam-  
 14 ages the owner of such land may sustain thereby; which, with the  
 15 expense of making the way, shall be paid by the petitioner; and  
 16 the way shall be kept open for the free passage of all persons, on  
 17 foot or horseback, carts and wagons: *Provided*, that, if the notice  
 18 aforesaid shall not have been given, the board shall cause such  
 19 petition to be filed with their chairman until their next meeting,  
 20 when they shall proceed to hear and determine the same, and the  
 21 petitioner or the adverse party may appeal from the order of the  
 22 supervisors to the board of commissioners of the county, and from  
 23 the order of the board of commissioners to the superior court at  
 24 term, when the issues of fact shall be tried by a jury, and from the  
 25 judgment of the superior court to the supreme court, as in other  
 26 cases of appeal. And all costs accumulated after the order of the  
 27 board of supervisors shall be paid by either party, as the court may  
 28 direct.

*Lea v. Johnston*, 9 Ire., 15; *Caroon v. Doxey*, 3 Jones, 23; *Jacocks v. Newby*, 4 Jones, 266;  
*Burgwyn v. Lockhart*, Winst., 269; *Link v. Brooks*, Phil., 499; *Boyden v. Achenbach*, 79—139;  
*State v. Purify*, 86—681.

**Sec. 3646.** May be changed or discontinued and gates or bars erected, &c.; pen-  
 alty for injuring them.

Cart-ways, laid off according to the provisions of this chapter,  
 2 may be changed or discontinued upon application by any person  
 3 concerned, under the same rules of proceeding as they may be first  
 4 laid off, and upon such terms as to the board shall seem equitable  
 5 and just. And any person through whose land a cart-way may  
 6 pass, may erect gates or bars across the same; and if any person  
 7 shall leave open, break down, or otherwise injure such gates or  
 8 bars, he shall forfeit and pay, for every such offence, ten dollars to  
 9 the person erecting the same or his assigns of the land; and if the  
 10 offence shall be maliciously done, he shall be guilty of a misde-  
 11 meanor.

*R. C.*, c. 101, s. 33.  
 1798, c. 508, ss. 1, 2,  
 3.  
 1834, c. 16, s. 1.

*Jacocks v. Newby*, 4 Jones, 266; *Plimmons v. Frisby*, Winst., 201.

**Sec. 3647.** License to erect gates across highways, how obtained.

Any person desiring to erect a gate across a public road may file  
 2 his petition before the board of supervisors of the township where  
 3 the road lies; whereupon publication shall be made at the court

*R. C.*, c. 101, s. 39.  
 1834, c. 16, ss. 2, 3, 4

4 house until the next succeeding meeting, of such application, specifying the road, the place for the gate and name of the petitioner; 5  
6 and all persons interested in the convenient traveling or transportation on said road, shall have leave to appear and defend, demand, or plead to said petition; and if, at that meeting, it shall appear that such publication has been made, the supervisors may, at 9  
10 their discretion, authorize the petitioner, at his cost, to erect a gate 11 as prayed for.

**Sec. 3648. Who exempt from working on roads.**

R. C., c. 101, s. 40.

The following persons shall be exempt from working on roads, 2  
3 namely: justices of the peace, constables, ferrymen, keepers of public grist mills, county commissioners, teachers and pupils of schools 4 and lock-keepers on public canals.

**Sec. 3649. Expenses borne by whole people of county, when.**

1869-'70, c. 219.

The expense of building and keeping up public bridges in the 2  
3 several counties shall be borne by the whole people of each, and not by the people of the township separately, in which such bridges may 4  
5 be situated; and it shall be the duty of the commissioners to adjust this burden equally among the people of their respective counties, 6  
7 and they shall exercise a due supervision over the action of the respective boards of supervisors of the townships, so as to prevent the 8  
9 board of any township from establishing any unnecessary number of bridges in their respective townships.

State v. Selby, 83—617.

**Sec. 3650. Road steamers may run upon public roads.**

1870-'71, c. 162.

It shall be lawful for any person or persons to run and use traction engines and road steamers upon the public roads in North 2  
3 Carolina.

**Sec. 3651. Boards of supervisors to lay out, &c., church roads.**

1872-'3, c. 189, ss. 1, 5.

The board of supervisors in each township of the several counties 2  
3 are hereby authorized and empowered in their respective townships to order the laying out of any and all necessary roads to and 4  
5 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, and the 6  
7 right of way herein provided for shall terminate whenever the 8  
8 church or place of worship shall cease to be used as such.

**Sec. 3652. Petition for the same.**

1872-'3, c. 189, s. 2.

The said board of supervisors shall not order the laying out of 2  
3 any such road or discontinue or alter the same except upon petition, in writing, nor shall they hear any such petition, unless it 4  
4 may be made to appear that every person over whose lands the



5 said road may pass shall have had twenty days' notice of the in-  
6 tention to file such petition, by personal service of notice in writing,  
7 or if the owner be unknown or there be no owner, agent or at-  
8 torney of such owner resident in this state, then by notice thereof  
9 posted up at the court house door of the county in which the town-  
10 ship is situate and at two public places in the township for the  
11 space of twenty days; and upon the hearing of the petition, if suf-  
12 ficient reason be shown, the said board of supervisors shall order  
13 the laying out, shall discontinue or alter the said road as the case may  
14 be, and from their determination any party dissatisfied may appeal  
15 as is provided in this chapter in the section directing the laying  
16 off of cart-ways.

Sec. 3653. Manner of laying out roads.

All roads provided for in the two preceding sections shall be laid  
2 out to the greatest advantage of the inhabitants and with as little  
3 prejudice as may be to lands and enclosures within twenty days  
4 from the notification of their appointment by five disinterested  
5 freeholders, to be appointed by the said board of supervisors and  
6 such damage as any individuals may sustain shall be ascertained  
7 by the said freeholders, and a report thereof with the proceedings  
8 had by them, be made to the said board of supervisors; and all  
9 damages so assessed by the freeholders shall be paid by the peti-  
10 tioners, and until paid there shall be no confirmation of the report  
11 of the freeholders, and such laying out shall be of no effect.

1872-'3, c. 189, s. 3.

Sec. 3654. Obstruction of road, &c., a misdemeanor.

If any person shall wilfully alter, change or obstruct any road  
2 leading to and from any church or other place of public worship,  
3 whether the right of way thereto be secured in the manner herein  
4 provided for by purchase, donation or otherwise, such person shall  
5 be guilty of a misdemeanor, and upon conviction thereof shall be  
6 fined or imprisoned or both.

1872-'3, c. 189, s. 6.

Boyden v. Achenbach, 79—539.

CHAPTER ONE HUNDRED AND SEVEN.

SALARIES AND FEES.

SECTION.
3655. Governor's salary.
3656. Private secretary.
3657. Executive clerk.
3658. Treasurer.
3659. Secretary of state.

SECTION.
3660. Secretary of state authorized to have in- dexed all the records of his office, at an expense not to exceed eight hundred dollars per annum.

## SECTION.

3661. Fees to be collected by the secretary of state.  
 3662. Auditor.  
 3663. Superintendent of public instruction.  
 3664. Attorney-general and reporter of the supreme court.  
 3665. Attorney-general allowed clerical assistance.  
 3666. Adjutant-general.  
 3667. Salaries of state officers payable quarterly.  
 3668. Servants allowed to the various state departments; compensation.  
 3669. Justices of the supreme court.  
 3670. Judges of the superior court.  
 3671. Certificate of his attendance to be produced by judge or deduction made from his salary.  
 3672. Solicitors.  
 3673. Fees of solicitors.  
 3674. Clerk of the supreme court.  
 3675. Clerks of the superior court.  
 3676. Clerks required to keep posted the fee bill.  
 3677. Commissioners of affidavits.

## SECTION.

3679. Coroners.  
 3680. Entry takers.  
 3681. Inspectors.  
 3682. Jailers.  
 3683. Jurors.  
 3684. Justices of the peace.  
 3685. Notaries public.  
 3686. Rangers.  
 3687. Registers of deeds.  
 3688. Sheriffs.  
 3689. Standard keepers.  
 3690. Surveyors, processioners and chain-carriers.  
 3691. Tobacco pickers.  
 3692. Witnesses.  
 3693. Dates and figures, how reckoned in copy-sheet.  
 3694. Fees of officers, by whom and how payable.  
 3695. Fees on returns to secretary of state.  
 3696. How fees of officers collected.  
 3697. Clerks to furnish blank writs.  
 3698. Clerks may issue execution for fees in certain cases; bill of costs to be annexed.  
 3678. Fees of constables.

**Sec. 3655. Governor's salary.**

1879, c. 240, s. 1.

The salary of the governor shall be three thousand dollars per 2 annum.

**Sec. 3656. Private secretary.**R. C., c. 102, s. 12.  
1856-'7, p. 71, Res.

The private secretary of the governor shall be allowed the fol-  
 2 lowing fees, and no other, to be paid by the persons for whom the  
 3 services are rendered, namely: for the commission of a judge, so-  
 4 licitor, senator in congress, representative in congress, notary pub-  
 5 lic, two dollars each; for any commission for a place of profit, two  
 6 dollars; for a testimonial, one dollar; for affixing the seal to a  
 7 grant, twenty-five cents; and for affixing the great seal of the state  
 8 to state bonds, ten cents.

**Sec. 3657. Executive clerk.**1876-'7, p. 589, Res.  
1881, c. 218.

The governor is allowed six hundred dollars per annum, to be  
 2 expended for clerk hire in the executive office.

**Sec. 3658. Treasurer.**1879, c. 240, s. 2.  
1881, c. 128.

The salary of the treasurer shall be three thousand dollars. He  
 2 shall be allowed two clerks at salaries respectively of fifteen hun-  
 3 dred and seven hundred and fifty dollars per annum. He shall  
 4 be the treasurer of the asylums for the insane and of the deaf and  
 5 dumb and the blind, the penitentiary and the agricultural depart-  
 6 ment, and shall perform his duties as treasurer of these several insti-  
 7 tutions under such regulations as shall be prescribed in each case  
 8 by their respective boards of directors, with the approval of the  
 9 governor; and the said treasurer shall be responsible on his official  
 10 bonds for the faithful discharge of his duties as treasurer of each

11 of the several institutions aforesaid. The treasurer shall also be  
12 allowed the sum of eight hundred dollars per annum, to enable  
13 him to perform the duties devolving upon him as treasurer of said  
14 institutions.

**Sec. 3659. Secretary of state.**

The secretary of state shall receive a salary of two thousand dol-  
2 lars per annum, and one thousand dollars for clerical assistance.  
3 All fees received by said officer shall be paid into the treasury  
4 quarterly. The secretary of state shall also be allowed one thou-  
5 sand dollars per annum for additional clerical assistance in the  
6 discharge of the duties of his office, and the treasurer shall pay the  
7 same, upon the warrant of the auditor, out of the fees collected by  
8 the secretary of state and paid into the treasury.

1879, c. 240, s. 6.  
1881, p. 632, Res.

**Sec. 3660. Secretary of state authorized to have indexed all the records of his office, at an expense not exceeding eight hundred dollars per annum.**

The secretary of state shall be authorized to expend a sum not  
2 exceeding eight hundred dollars per annum, to be applied to copy-  
3 ing and indexing the mutilated records, and to indexing the  
4 other books and records of his office. And it shall be the duty of  
5 the secretary of state to have this work performed with diligence,  
6 skill and economy, to make a special report of the amount of work  
7 done, and of his progress towards the completion of the same to  
8 each regular session of the general assembly.

See 1873-'4, c. 27; 1874-'5, c. 35; 1879, c. 320.

**Sec. 3661. Fees to be collected by the secretary of state.**

The secretary of state shall collect the following fees namely :  
2 copying and certifying a will not exceeding two copy sheets, fifty  
3 cents, and for every additional copy sheet, ten cents; correcting an  
4 error, not made by himself, in a patent, fifty cents; copying and  
5 certifying the record of a grant or patent, containing not more  
6 than six hundred and forty acres, fifty cents; copying and certify-  
7 ing a grant or patent, or plot and survey, containing not more  
8 than six hundred and forty acres, fifty cents for each warrant con-  
9 tained in such grant, patent or plot, not to exceed five dollars for  
10 one copy; receiving surveyor's return, making out, recording, and  
11 indorsing grant, sixty cents; each certificate, ten cents; filing and  
12 recording a copy of the judgment vacating a grant, and all other  
13 services thereon, fifty cents; copying an entry from the journals of  
14 the assembly, forty cents; copying and certifying the laws of other  
15 states, twenty cents for each copy sheet; receiving articles of agree-  
16 ment, and filing and recording letters patent, one dollar; and in  
17 all cases not provided for above, the secretary of state shall receive  
18 the same fees for copies of records from his office, that are allowed  
19 by law to registers of deeds.

R. C., c. 102, s. 13.  
1870-'71, c. 81, s. 3.  
1881, c. 79.



**Sec. 3662. Auditor.**

1879, c. 240, s. 7.  
1881, c. 213.

The auditor shall receive a salary of fifteen hundred dollars per annum, and shall be allowed no fees or other compensation whatever. He shall be allowed one clerk at a salary of one thousand four dollars per annum. And he is authorized to employ additional clerical assistance in his office; and, for that purpose, shall be allowed the sum of five hundred dollars per annum.

**Sec. 3663. Superintendent of public instruction.**

1879, c. 240, s. 8.

The superintendent of public instruction shall receive an annual salary of fifteen hundred dollars.

**Sec. 3664. Attorney general and reporter of the supreme court.**

R. C., c. 102, s. 5.  
1870-'71, c. 81, s. 7.  
1873-'4, c. 34, s. 4.  
1879, c. 240, s. 9.

The attorney-general shall receive an annual salary of one thousand dollars; and also one hundred dollars for each term of the supreme court, which he shall attend. As reporter to the supreme court he shall be allowed one thousand dollars per annum. All fees received by him shall be covered into the treasury, but shall be appropriated for clerical assistance as prescribed in the succeeding section.

**Sec. 3665. Attorney-general allowed clerical assistance.**

1881, c. 214.

The sum of three hundred dollars, and the fees recovered in behalf of the attorney-general, on the affirmation of judgments by the supreme court against defendants in criminal actions, are annually appropriated to the employment of clerical assistance in copying the opinions of the supreme court, and preparing the cases decided, for publication in the reports, and the same shall be paid to the attorney-general on the warrant of the auditor.

**Sec. 3666. Adjutant-general.**

1879, c. 240, s. 10.

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.

Cotten v. Ellis, 7 Jon., 545.

**Sec. 3667. Salaries of state officers payable quarterly.**

1879, c. 240, s. 11.

All annual salaries allowed by this chapter shall be paid quarterly out of any money in the treasury not otherwise appropriated: *Provided, however*, that the clerks and servants of the several departments shall receive their pay monthly.

**Sec. 3668. Servants allowed to the various state departments; compensation.**

1881, c. 293.

The governor's office, the treasurer's office the auditor's office and the secretary of state's office, shall each be allowed one servant, and the office of the superintendent of public instruction and state librarian one together. Said servants shall receive as com-

5 pension five dollars per week, to be paid by the treasurer on the  
6 pay-rolls of the keeper of the capitol. The night watch and jani-  
7 tor shall each receive as compensation one dollar and a half per  
8 day for their services.

**Sec. 3669. Justices of the supreme court.**

Each justice of the supreme court shall be allowed an annual  
2 salary of twenty-five hundred dollars. 1868, c. 46, s. 4.  
1879, c. 240, s. 3.

**Sec. 3670. Judges of the superior court.**

The judges of the superior court shall each have an annual sal- 1868, c. 46, s. 6.  
1879, c. 240, s. 4.  
1881, c. 224.  
2 ary of twenty-five hundred dollars, in full compensation for all  
3 judicial duties assigned them by the general assembly; and for  
4 the holding of a special or additional term of the superior court,  
5 the judge presiding shall receive one hundred dollars for each  
6 week, to be paid by the county in which the special term is held,  
7 on the production of the certificate of the clerk of the court afore-  
8 said. The governor in assigning the judges to hold extra and  
9 special terms of said courts shall observe, as near as may be, an  
10 equal division of labor among the several judges.

**Sec. 3671. Certificates of attendance to be produced by judge or deduction made from his salary.**

Every judge of the superior court shall produce a certificate from R. C., c. 102, s. 4.  
1868, c. 46, s. 7.  
1879, c. 240, s. 5.  
2 the clerk of each county of his having held the court of the county  
3 according to law; and for every such certificate omitted to be pro-  
4 duced, there shall be a deduction from his salary of one hundred  
5 dollars, unless he shall be prevented by sickness or other una-  
6 voidable cause.

**Sec. 3672. Solicitors.**

The solicitors of the several judicial districts shall receive twenty 1879, c. 240, s. 12.  
2 dollars for each term of the superior court they shall attend, to be  
3 paid by the state treasurer upon a certificate of such attendance  
4 from the clerk of the court, and the fees as prescribed in the fol-  
5 lowing section.

**Sec. 3673. Fees of solicitors.**

The solicitors shall, in addition to the general compensation al- 1873-'4, c. 170.  
2 lowed them by the state, receive the following fees, and no other,  
3 namely: or every conviction upon an indictment which they  
4 may prosecute for a capital crime, twenty dollars; perjury, forgery,  
5 counterfeiting, passing or attempting to pass or sell any forged or  
6 counterfeited paper or evidence of debt; maliciously injuring or  
7 attempting to injure any railroad or railroad car, or any person  
8 traveling on such railroad car; stealing or obliterating records;  
9 stealing, concealing, destroying or obliterating any will; mali-

ciously burning or attempting to burn houses or bridges; misdemeanors of accessories after the fact to felonies, in each of the above cases, ten dollars; for larceny, receiving stolen goods, embezzlement, frauds, maims, deceits and escapes, five dollars; for all other offences, four dollars. The fees in all the above cases are to be taxed in the costs against the party convicted; but where the party convicted is insolvent, the solicitor's fees shall be one-half, to be paid by the county in which the indictment was found: *Provided, nevertheless*, that no larger fee 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.

*Cantwell v. Commissioners of New Hanover*, 71—154; *State v. Mooney*, 74—98; *State v. Tyler*, 85—569.

#### Sec. 3674. Clerk of the supreme court.

R. C., c. 102, ss. 25,  
26.  
1870-'71, c. 139, s. 7.

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 justices; 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 justices 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 justices; for entering an appeal, one dollar; a continuance, thirty cents; a *scire facias*, eighty cents; a *certiorari*, eighty cents; a determination, two dollars; a certificate, sixty cents; a *feri facias*, or other execution, fifty cents; a seal, twenty-five cents; a transcript, or copy of a record, twenty cents for each copy sheet; a rule given for service twenty-five cents; a rule not for service, fifteen cents; a subpoena, writ, or other process, one dollar; a commission, fifty cents; drawing a decree or judgment, by the copy sheet, forty cents; a search, ten cents; affixing the seal to any writing requiring it, twenty-five cents; and an affidavit, twenty cents.

*Martin v. Chasteen*, 75—96; *Clerk's office v. Commissioners of Richmond*, 79—598.

#### Sec. 3675. Clerk of the superior court.

1870-'71, c. 139, s. 11.  
1871-'2, c. 146.

The fees of the clerk of the superior court shall be the following, and no other, namely:

- 1 Affidavit, including *jurat* and certificate, twenty-five cents;
- 2 Appeal from justice of the peace, including docketing, fifty cents;
- 3 Appeal from the clerk to the judge, including docketing, fifty cents;
- 4 Appeal to supreme court, including certificate and seal, two dollars;



- 9 Appointing and qualifying justices of the peace, to be paid by  
10 the justice, twenty-five cents ;  
11 Apprenticing infant, including indenture, one dollar ;  
12 Attachment, order in, fifty cents ;  
13 Auditing account of executor, administrator, guardian, or other  
14 trustee required to render accounts, if not over three hundred dol-  
15 lars, fifty cents ; if over three hundred dollars and not exceeding  
16 one thousand dollars, eighty cents ; if over one thousand dollars,  
17 one dollar ;  
18 Auditing final settlement of any such trustee required to render  
19 accounts, one half of one per cent. of the amount on which com-  
20 missions are allowed to such trustee, for all sums not exceeding one  
21 thousand dollars ; and for all sums over one thousand dollars, one  
22 tenth of one per cent. on such excess ; but such fees shall not ex-  
23 ceed fifteen dollars, unless there be a contest, when the clerk shall  
24 have one per cent. on the said excess over one thousand dollars ;  
25 but in no instance shall his fees exceed twenty-five dollars ;  
26 Bill of costs, preparing same in criminal action, twenty-five cents ;  
27 Bond or undertaking, including justification, sixty cents ;  
28 *Capias*, each defendant, one dollar ;  
29 *Caveat* to a will, entering and docketing same for trial, one dol-  
30 lar.  
31 Certificate, except where it is a charge against the county, twenty-  
32 five cents ; and where it is a charge against the county, the fee  
33 shall be such sum not exceeding twenty-five cents, as the board of  
34 commissioners shall allow ;  
35 Commission, issuing, seventy-five cents ;  
36 Continuance, thirty cents ;  
37 Docketing laborer's lien, fifty cents ;  
38 Docketing *ex parte* proceedings, fifty cents.  
39 Docketing judgment, except as otherwise provided, twenty-five  
40 cents ;  
41 Execution and return thereon, including docketing, fifty cents ;  
42 and certifying return to clerk of any county where judgment is  
43 docketed, twenty-five cents ;  
44 Guardian, appointment of, including taking bond or undertak-  
45 ing and justification, one dollar ;  
46 Impaneling jury, ten cents ;  
47 Indictment, each defendant in the bill, sixty cents ;  
48 Injunction, order for, including taking bond or undertaking and  
49 justification, one dollar ;  
50 Judgment, final, in term-time, including docketing, in civil  
51 action, one dollar ;  
52 Judgment, final, against each defendant, including docketing,  
53 in criminal actions, one dollar ;  
54 Judgment, final, before the clerk, including docketing, fifty cents ;  
55 Judgment by confession, all services, three dollars ;

- 56 Judgment, in favor of widow for year's support, fifty cents;  
57 Judgment *nisi*, entering against a defaulting witness or juror, on  
58 bail bond or recognizance, twenty-five cents;  
59 Juror ticket, including *jurat*, ten cents.  
60 Justification of sureties on any bond or undertaking, except as  
61 otherwise provided, fifty cents;  
62 Letters of administration, including bond and justification of  
63 sureties, one dollar;  
64 Motions, entry and record of, twenty-five cents;  
65 Notices, twenty-five cents; and for each name over one, in same  
66 paper, ten cents additional;  
67 Notifying solicitors of removal of guardian, one dollar;  
68 Order enlarging time for pleading, and all interlocutory orders,  
69 in special proceedings and civil actions, twenty-five cents;  
70 Order of arrest, one dollar;  
71 Order for appearance of apprentice, on complaint of master, one  
72 dollar; for appearance of master on complaint of apprentice, one  
73 dollar;  
74 Order for the registration of a deed or other writing, which has  
75 been proved or acknowledged in another county, or before a jus-  
76 tice, except a chattel mortgage, twenty-five cents;  
77 Postage, actual amount necessarily expended;  
78 Presentment, each person presented, ten cents;  
79 Probate of a deed or other writing, proved by a witness, includ-  
80 ing the certificate, twenty-five cents;  
81 Probate of a deed or other writing, acknowledged by the signers  
82 or makers, including all except married women who acknowledge  
83 at the same time, twenty-five cents;  
84 Probate of a deed, or other writing, executed by a married wo  
85 man, for her acknowledgement and private examination, with the  
86 certificate thereof, twenty-five cents;  
87 Probate of a chattel mortgage, including the certificate, ten cents;  
88 Probate of will in common form and letters testamentary, one  
89 dollar;  
90 Qualifying justices of the peace to be paid by the justice, twenty-  
91 five cents;  
92 Qualifying members of the board of commissioners, to be paid  
93 by the commissioner, twenty-five cents;  
94 Recognizance, each party where no bond is taken, twenty-five  
95 cents;  
96 Recording, and copying papers, per copy sheet, ten cents;  
97 Resignation of guardian, relinquishment of right to administer,  
98 or to qualify as executor, receiving, filing and noting same, twenty-  
99 five cents;  
100 Seal of office, when necessary, twenty-five cents;  
101 Subpœna, each name, fifteen cents;

- 102 Summons, in civil actions or special proceedings, including all  
103 the names therein, and docketing, one dollar; and for every copy  
104 thereof, twenty-five cents;  
105 Transcript of judgment, twenty-five cents;  
106 Transcript of any matter of record or papers on file, per copy  
107 sheet, ten cents;  
108 Trial of any cause, or stating an account, as referee, pursuant to  
109 order of the judge, such allowance as the judge may make;  
110 Witness ticket, including *jurat*, ten cents;  
111 Five per cent. commissions shall be allowed the clerk on all  
112 fines, penalties, amercements and taxes paid the clerk by virtue  
113 of his office; and three per cent. on all sums of money placed in  
114 his hands by virtue of his office, except on judgments, decrees,  
115 and executions; and upon the excess over five hundred dollars  
116 of such sums, one per cent.

Brandon v. Commissioners of Caswell, 71—62; Patterson v. Miller, 72—516; Wall v. Covington, 76—150; Andrews v. Whisnant, 83—446.

**Sec. 3676. Clerks required to keep posted the fee bill.**

Every clerk shall keep posted in his office the fee bill for public  
2 inspection and reference, in some conspicuous place, under a pen-  
3 alty of one hundred dollars for such neglect, to be paid to any  
4 person who will sue for the same; and shall also be guilty of a  
5 misdemeanor.

**Sec. 3677. Commissioners of affidavits.**

Commissioners of affidavits, and those who are authorized by  
2 law to act as such, shall receive the following fees, and no other  
3 namely: for an affidavit taken and certified, forty cents; affixing  
4 his official seal, twenty-five cents.

R. C., c. 102, s. 35.  
1870-'71, c. 139, s. 3.

**Sec. 3678. Fees of constables.**

- Executing a summons, or any other writ or notice, simply by  
2 delivering a copy to the party or his attorney, forty cents;  
3 Arrest of a defendant in a civil action, and taking bail includ-  
4 ing attendance to justify, and all services connected therewith,  
5 fifty cents;  
6 Executing subpoena on a witness, fifteen cents;  
7 Collecting executions for money in civil actions, two and a half  
8 per cent. on the amount collected;  
9 Summoning a jury, for each person summoned, fifteen cents;  
10 Advertising a sale of property under an execution, at each pub-  
11 lic place required, ten cents;  
12 And for all other services, same as allowed sheriffs.

1870-'71, c. 139, s. 5



**Sec. 3679. Coroners.**

1870-'1, c. 139, s. 10.

Fees of coroners shall be the same as are or may be allowed  
2 sheriffs in similar cases:

3 For holding an inquest over a dead body, five dollars; if neces-  
4 sarily engaged more than one day, for each additional day, five  
5 dollars;

6 For burying a pauper over whom an inquest has been held, all  
7 necessary and actual expenses, to be approved by the board of  
8 county commissioners, and paid by the county;

9 It shall be the duty of every coroner, where he or any juryman  
10 shall deem it necessary to the better investigation of the cause or  
11 manner of death, to summon a physician or surgeon, who shall be  
12 paid for his attendance and services, ten dollars, and such further  
13 sum as the commissioners of the county may deem reasonable.

**Sec. 3680. Entry taker.**

R. C., c. 102, s. 32.  
1870-'71, c. 139, s. 3.

Entry takers shall receive the following fees, and no other  
2 namely: for an entry, including all services, forty cents; issuing  
3 each duplicate warrant, when thereto required, twenty-five cents.

Richardson v. Wicker, 80—172.

**Sec. 3681. Inspectors.**

R. C., c. 102, s. 39.

Inspectors shall receive the following fees, for the duties required  
2 of them, and no other, namely: for inspecting tun timber, twenty  
3 cents per thousand feet; inspecting, turning up, coopering, finding  
4 nails, hoops, and issuing a note for every hogshead of tobacco,  
5 seventy cents; inspecting transfer tobacco, at the rate of five cents  
6 per hundred pounds; inspecting a barrel of flour, five cents; a bar-  
7 rel of pork or beef, ten cents; a barrel of rice or butter, six and a  
8 fourth cents; a barrel of fish, three cents; each barrel of tar, pitch  
9 or turpentine, two and a half cents, to be paid by the purchaser;  
10 every two thousand shingles, two and a half cents; every thousand  
11 feet of boards, plank or scantling, thirty cents; every barrel of  
12 flax seed containing seven and a half bushels, ten cents.

**Sec. 3682. Jailers.**

R. C., c. 102, s. 33.  
1879, c. 87.

Jailers shall receive, for finding prisoner fuel, one pound of  
2 wholesome bread, one pound of good roasted or boiled flesh, and a  
3 sufficient quantity of water, with every necessary attendance, a  
4 sum not exceeding twenty-five cents per day, unless the board of  
5 commissioners of the county shall deem it expedient to increase  
6 the fees, which it may do provided such increase shall not exceed  
7 fifty per cent. on the above sum. But whatever sum may be fixed  
8 on by the commissioners shall be recorded, and shall not be  
9 altered within one year thereafter.

**Sec. 3683. Jurors.**

Jurors, per day, what shall be allowed by the commissioners of  
 2 the county, not exceeding one dollar and fifty cents; 1870-'71, c. 139, s. 6.  
1881, c. 53, s. 1.  
 3 Per mile of travel, going to and returning from court, not ex-  
 4 ceeding five cents, to be fixed by the county commissioners, and  
 5 such ferriage and tolls as they may have to pay;  
 6 The same pay shall be allowed to special jurors when sworn to  
 7 serve during the day, but no tolls, ferriage or mileage;  
 8 Jurors shall receive not exceeding one dollar and fifty cents for  
 9 each day's attendance at court or inquest, and mileage at the rate  
 10 of five cents per mile; they shall also be allowed such ferriage and  
 11 tolls as they may have necessarily incurred;  
 12 The same per diem shall be allowed to special jurors, or tales-  
 13 men who shall be summoned to serve and do serve; but they shall  
 14 not be entitled to receive any ferriage, tolls or mileage.

See R. C., c. 28, s. 15; Green v. Wynne, 66—530; Long v. Commissioners of Richmond, 76—273;  
 Young v. Commissioners of Buncombe, 76—316.

**Sec. 3684. Justices of the peace.**

Justices shall receive no fees whatever, except the following: for 1870-'71, c. 139, s. 9.  
1871-'2, c. 186.  
 2 attachment, twenty cents;  
 3 Transcript of judgment, ten cents;  
 4 Summons, twenty cents; if more than one defendant in same  
 5 case, for each, additional, ten cents;  
 6 Subpoena, for each witness, ten cents;  
 7 Trial of an issue and judgment, forty cents;  
 8 Taking an affidavit, bond or undertaking, ten cents;  
 9 For jury trial and entering verdict, forty cents;  
 10 Execution, twenty cents;  
 11 Renewal of execution, five cents;  
 12 Return to an appeal, thirty cents;  
 13 Order of arrest in civil action, twenty cents;  
 14 Warrant for arrest in criminal cases, or in bastardy, thirty cents;  
 15 Warrant of commitment, twenty cents;  
 16 Commissions to take depositions, fifteen cents;  
 17 Taking depositions on order or commission, per copy sheet, ten  
 18 cents;  
 19 Making necessary certificate and return to same, thirty-five cents;  
 20 For examination of women in case of bastardy, twenty-five cents;  
 21 For hearing petition for widow's year's allowance, and issuing  
 22 notice to commissioners, fifty cents.  
 23 For filing and docketing laborer's lien, fifty cents.

**Sec. 3685. Notaries public.**

Notaries public and other persons acting as such, shall be al- R. C., c. 102, s. 41.  
 2 lowed one dollar for all services on a protest for non-acceptance, or  
 3 for non-payment, or for both when done at the same time, of any  
 4 order, draft, note, bond, or bill, or any other thing necessary to be

5 protested. For other necessary services, where no fee is fixed, they  
 6 shall be allowed twenty cents for every ninety words: *Provided*,  
 7 *however*, that cases of protest concerning vessels or their cargoes  
 8 shall not be affected by this chapter.

#### Sec. 3686. Rangers.

R. C., c. 102, s. 34.  
 1870-'71, c. 139, s. 3.

Rangers shall receive the following fees, and no other, namely :  
 2 for entering each horse, mare, gelding, colt, mule, ass, or jenny,  
 3 including the certificate, fifty cents ; for entering each head of neat  
 4 cattle, twenty-five cents ; for entering each head of hogs or sheep,  
 5 ten cents ; for a bond, twenty cents ; for advertising such strays  
 6 as are required to be advertised, one dollar and fifty cents ; for a  
 7 search, ten cents.

#### Sec. 3687. Registers of deeds.

1870-'71, c. 139, s. 8.  
 1873-'74, c. 153.

The registers of deeds shall be allowed, while and when acting as  
 2 clerks to the boards of commissioners, such *per diem* as their several  
 3 boards may respectively allow, not exceeding two dollars ;  
 4 Registering any deed or other writing authorized to be regis-  
 5 tered or recorded by them, with certificate of probate or acknowl-  
 6 edgment and private examination of a married woman, containing  
 7 not more than three copy sheets, eighty cents ; and for every ad-  
 8 ditional copy sheet, ten cents ;  
 9 For a copy of any record or any paper in their offices, like fees  
 10 as for registering the same ;  
 11 For issuing each notice required by the county commissioners  
 12 including subpoenas for witnesses, fifteen cents ;  
 13 Recording each order of commissioners, ten cents, if over one  
 14 copy sheet, for every one over, ten cents ;  
 15 Making out original tax list, two cents for each name thereon ;  
 16 for each name on each copy required to be made, two cents ;  
 17 Issuing marriage license, one dollar.

Robinson v. Ezzell, 72—231.

#### Sec. 3688. Sheriffs.

R. C., c. 102, s. 21.  
 1870-'71, c. 139, s. 4.

Executing summons or any other writ of notice, by simply de-  
 2 livering a copy to the party or his attorney, sixty cents ;  
 3 Arrest of a defendant in civil action and taking bail, including  
 4 attendance to justify, and all services connected therewith, one  
 5 dollar ;  
 6 Arrest of a person indicted, including all services connected with  
 7 the taking and justification of bail, one dollar ;  
 8 Imprisonment of any person in a civil or criminal action, thirty  
 9 cents ; and release from prison, thirty cents ;  
 10 Executing subpoena on a witness, thirty cents ;  
 11 Conveying a prisoner to jail to another county, ten cents per  
 12 mile ;



13 For prisoner's guard, if any necessary, and approved by the  
14 county commissioners, going and returning, per mile for each, five  
15 cents;

16 Expenses of guard and all other expenses of conveying prisoner  
17 to jail, or from one jail to another for any purpose, or to any place  
18 of punishment, whatever sum may be allowed by the board of  
19 commissioners of the county in which the indictment was found  
20 on the affidavit of the officer in charge;

21 Providing prisoners in county jail with suitable beds, bedcloth-  
22 ing, other clothing and fuel, and keeping the prison and grounds  
23 cleanly, whatever sum shall be allowed by the commissioners of  
24 the county;

25 Collecting fine and costs from convict, two and a half per cent.  
26 on the amount collected;

27 Collecting executions for money in civil actions, two and a half  
28 per cent. on the amount collected; and the like commissions for  
29 all moneys which may be paid to the plaintiff by the defend-  
30 ant while the execution is in the hands of the sheriff, and after a  
31 levy has been made on property of the defendant capable of being  
32 sold under the execution;

33 Advertising a sale of property under execution at each public  
34 place required, fifteen cents;

35 Seizing specific property under order of a court, or executing any  
36 other order of a court or judge, not specially provided for, to be al-  
37 lowed by the judge;

38 Taking any bond, including furnishing the blanks, fifty cents;

39 The actual expense of keeping all property seized under process  
40 or order of court, to be allowed by the court on the affidavit of the  
41 officer in charge;

42 A capital execution, ten dollars, and actual expenses of burying  
43 the body;

44 Summoning a grand or petit jury, for each man summoned,  
45 thirty cents, and ten cents for each person summoned on a special  
46 *venire*;

47 For serving any writ or other process with the aid of the county,  
48 the usual fee of one dollar, and the expense necessarily incurred  
49 thereby, to be adjudged by the county commissioners, and taxed  
50 as other costs;

Matlock v. Harper, 4 Haw., 1; , 4 Dev., 38; Dibble v. Aycock, 5 Jon. Eq.,  
399; Durham v. Bostick, 72—353; Allen & Reid v. Spoon, 72—369; Dawson v. Graffin, 84—100;  
Bryan v. Commissioners, 84—105.

51 All just fees paid to any printer for any advertisement required  
52 by law to be printed by the sheriff;

53 Bringing up of a prisoner upon *habeas corpus*, to testify or an-  
54 swer to any court or before any judge, one dollar, and all actual  
55 and necessary expenses for such services, and ten cents per mile

- 56 by the route most usually traveled, and all expenses for any guard  
 57 actually employed and necessary ;  
 58 For summoning and qualifying appraisers, and for performing  
 59 all duties in laying off homesteads and personal property exemp-  
 60 tions, or either, two dollars, to be included in the bill of costs ;  
 61 For levying an attachment, one dollar ;  
 62 For attendance to qualify jurors to lay off dower, of commis-  
 63 sioners to lay off year's allowance, one dollar ; and for attendance  
 64 to qualify commissioners for any other purpose, seventy-five cents ;  
 65 Executing a deed for land or any interest in land sold under  
 66 execution, one dollar, to be paid by the purchaser ;  
 67 Service of writ of ejectment, one dollar ;  
 68 For every execution, either in civil or criminal cases, fifty cents.

**Sec. 3689. Standard keepers.**

R. C., c. 102, s. 37.  
 1870-'71, c. 139, s. 3.  
 1874-'5, c. 110.

Standard keepers shall be entitled to receive the following fees,  
 2 and no other, namely: for examining and adjusting a pair of steel-  
 3 yards, twenty-five cents ; every weight of half a pound and up-  
 4 wards, five cents ; every set of weights below half a pound, includ-  
 5 ing one piece of each denomination, five cents ; for a yard stick,  
 6 or other measure of cloth, five cents ; every bushel, half bushel,  
 7 peck, or other measure used in measuring grain, meal, or salt, ten  
 8 cents ; each measure for liquors or wines, three cents, and for extra  
 9 work on bushel and half bushel measures a sum not exceeding  
 10 twenty-five cents in any one case.

**Sec. 3690. Surveyors, processioners and chain-carriers.**

R. C., c. 102, s. 33.  
 1870-'71, c. 139, s. 3.

Surveyors appointed by courts to survey any lands, the bound-  
 2 aries of which may come in question in any suit or proceeding  
 3 pending therein, or called upon by the commissioners to assist  
 4 in surveying and dividing the lands of intestates or others, held in  
 5 common, shall receive the following fees, and no other, namely :  
 6 for every survey on an entry containing three hundred acres or  
 7 less, one dollar and sixty cents ; and for every hundred more than  
 8 that quantity, forty cents ; for surveying lands in dispute, by order  
 9 of court, traveling to and from the place, and performing the duty,  
 10 two dollars per day, or such greater sum as the court may allow ;  
 11 for assisting in surveying and dividing the lands of intestates, or  
 12 others, held in common, when called upon by the commissioners  
 13 appointed to make partition, or in laying off dower, traveling to  
 14 and from the place, and performing the duty, two dollars per day.  
 15 In all surveys made by order of the court, the chain-carriers shall  
 16 be allowed such compensation as the court may determine, not ex-  
 17 ceeding one dollar each per day ; and in matters of disputed bound-  
 18 ary, which may come in question, in any suit, the court may make  
 19 to the surveyor such allowance for plots as it may deem reasona-

20 ble, which, with the allowance to chain-carriers, shall be taxed as  
21 costs.

**Sec. 3691. Tobacco pickers.**

Tobacco pickers, for every one hundred pounds picked and R. C., c. 102, s. 40.  
2 prized, shall receive the fifteenth part.

**Sec. 3692. Witnesses.**

The fees of witnesses, whether attending at a term of court or 1870-'71, c. 139, s. 13  
2 before the clerk, or a referee, or commissioner, or arbitrator, shall  
3 be one dollar per day. They shall also receive mileage to be fixed  
4 by the county commissioners of their respective counties, at a rate  
5 not to exceed five cents per mile for every mile necessarily trav-  
6 eled from their respective homes in going to and returning from  
7 the place of examination by the ordinary route, and ferriage and  
8 toll paid in going and returning. If attending out of their coun-  
9 ties, they shall receive one dollar per day and five cents per mile  
10 going and returning by the ordinary route, and toll and ferriage  
11 expenses. *Provided*, that witnesses before magistrates' courts, shall  
12 receive fifty cents per day in civil cases; *Provided, further*, that ex-  
13 perts, when compelled to attend and testify, shall be allowed such  
14 compensation and mileage as the court may in its discretion order.

*Loftin v. Baxter*, 66—340; *State v. Dollar*, 66—616; *Moore v. Commissioners of Alamance*,  
70—340; *Lewis v. Commissioners of Wake County*, 74—194; *Young v. Commissioners of Bun-*  
*combe*, 76—316; *Deaver v. Commissioners of Buncombe*, 80—116; *Belden v. Snead*, 84—243.

**Sec. 3693. Dates and figures, how reckoned in copy sheet.**

A copy-sheet shall consist of one hundred words, and in reckon- R. C., c. 102, s. 42.<sup>1</sup>  
2 ing the number of words in a copy-sheet, every date, or amount of 1868-'9, c. 279, s. 556  
3 money, expressed in figures, as 1855, \$250.90, shall be estimated  
4 and charged as one word.

**Sec. 3694. Fees of officers, by whom and how paid.**

The several officers named in this chapter shall receive the fees C. C., P., s. 555.  
2 hereinbefore prescribed for them respectively, from the persons for 1868-'9, c. 279, s. 555.  
3 whom, or at whose instance, the service shall be performed, except  
4 persons suing as paupers; and no officer shall be compelled to per-  
5 form any service, unless his fees be paid or tendered, except in  
6 criminal actions. The said officers shall receive no extra allow-  
7 ance or other compensation whatever, unless the same shall be ex-  
8 pressly required by statute. In case the service shall be ordered  
9 by any proper officer of the state, or of a county, for the benefit of  
10 the state or county, the fees need not be paid in advance; but if  
11 for the state, shall be paid by the state, as other claims against it  
12 are; if for a county, by the board of commissioners, out of the  
13 county funds.

*Lute v. Reilly*, 65—20; *Jones v. Gupton*, 65—48; *Duncan v. Rhyne*, 65—530; *Vannoy v. Hay-*  
*more*, 71—128; *Brandon v. Commissioners of Caswell*, 71—62; *State v. Mooney*, 74—98; *Bunting v.*  
*Commissioners of Wake*, 74—633; *Andrews v. Whisnant*, 83—446.



**Sec. 3695. Fees on returns to secretary of state.**

C. C. P., s. 557.  
1868-'9, c. 279, s. 557.

All officers required by law to make returns to the secretary of  
2 state shall receive for such returns five cents per copy sheet, to be  
3 audited on the certificate of the secretary of state, and paid as  
4 other claims against the state are required to be.

**Sec. 3696. How fees of officers collected.**

C. C. P., s. 562.  
1868-'9, c. 279, s. 561.

If any officer, to whom fees are payable by any person, shall fail  
2 to receive them at the time the service is performed, he may have  
3 judgment therefor on motion to the court in which the action is or  
4 was pending, upon twenty days' notice to the person to be charged,  
5 at any time within one year after the termination of the action  
6 in which the same was performed; if the motion for judgment be  
7 in behalf of the clerk of the superior court, it shall be made to the  
8 judge of the court in or out of term.

Andrews v. Whisnant, 83—446.

**Sec. 3697. Clerks to furnish blank writs.**

C. C. P., s. 559.  
1868-'9, c. 279, s. 558.

Clerks of courts shall furnish to parties, printed copies of the  
2 formal parts of all writs required to be issued by them, with con-  
3 venient blank spaces for the insertion of written matter; and also  
4 the blank forms of such bonds and undertakings as are required to  
5 be taken by them.

**Sec. 3698. Clerks may issue execution for fees in certain cases; bill of costs to be annexed.**

C., c. 102, s. 24.

The clerks of the supreme, superior, inferior and criminal courts,  
2 where suits are determined and the fees are not paid by the party  
3 from whom they are due, shall sue out executions, directed to the  
4 sheriff of any county in the state, who shall levy them as in other  
5 cases; and to the said execution shall be annexed a bill of costs,  
6 written in words, so as plainly to show each item of costs, and on  
7 what account it is taxed; and all executions for costs, issuing with-  
8 out such a bill annexed, shall be deemed irregular, and may be  
9 set aside as to the costs, at the return term, at the instance of him  
10 against whom it is issued.

## CHAPTER ONE HUNDRED AND EIGHT.

## SHERIFFS.

## SECTION.

3699. Board of county commissioners to take bonds.
3700. Who ineligible to office of sheriff.
3701. Sheriff ineligible who fails to settle public dues.
3702. Who may not serve as sheriff.
3703. Sheriff shall renew bonds annually; failure, to create vacancy.
3704. Sheriff removed from office; duty of coroner in such case.
3705. Coroner to give bonds and take oaths when called to act as sheriff.
3706. Bond of sheriff; form of bond for execution of process.
3707. When board to require a justification of bonds, &c.; notice to sheriff; his failure to appear or justify, &c., board to elect another.
3708. Board of commissioners liable for loss.
3709. Sureties liable for fines, &c.
3810. May resign office to board.
3711. Sheriffs, &c., of Hyde and Carteret may serve process on shipboard between Ocracoke and Portsmouth.
3712. Sheriff to execute all process and writs from courts; penalty for neglect; penalty for false return.

## SECTION.

3713. To give receipt for process, which shall be evidence, &c.
3714. To take no obligation of any in custody but as payable to himself as sheriff, &c., not unlawful fees.
3715. Permitting escape of one in execution, liable in action for the debt.
3716. Not to farm his office.
3717. To have custody of jail.
3718. To diligently collect claims.
3719. To furnish grand jury with a list of retailers of spirituous liquors; penalty for omission.
3420. Outgoing sheriff subject to penalty for not executing precepts in certain cases.
3721. Bond of sheriff acting as county treasurer to cover liabilities as treasurer; may be increased by board of commissioners.
3722. "County treasurer," how construed.
3723. Compensation for bringing convicts to penitentiary.
3724. How paid.
3725. Duty of sheriff.
3726. Publication of delinquent tax-payers required.

[See Constitution, Art. 4, s. 30.]

**Sec. 3699. Board of county commissioners to take bonds.**

The board of county commissioners in every county shall take  
2 and approve the official bonds of the sheriffs, which they shall  
3 cause to be registered and the originals deposited with the clerk of  
4 the superior court for safe keeping. Said bond shall be taken on  
5 the first Monday of December next after the election of sheriffs.

McLean v. Buchanan, 8 Jones, 444; State v. Lowrance, 64—483; State v. Howell, 65—61.

1868, c. 20, s. 32.  
1876-7, c. 276, s. 5.**Sec. 3700. Who ineligible to office of sheriff.**

No person shall be eligible to the office of sheriff, who is not of  
2 the age of twenty-one years, and has not resided in the county in  
3 which he is chosen, for one year immediately preceding his  
4 election.

R. C., c. 105, s. 5.  
1829, c. 5, s. 6.  
1830, c. 25, s. 3.**Sec. 3701. Sheriff ineligible who fails to settle public dues.**

No person shall be eligible to the office of sheriff in any county,  
2 who theretofore has been sheriff of such county, and hath failed  
3 to settle with and fully pay up to every officer, the taxes which  
4 were due from him; nor shall any board permit such former sheriff  
5 to give bond for, or re-enter upon the duties of the office, until  
6 he has produced before the board the receipt in full of every officer  
7 for such taxes.

R. C., c. 105, s. 6.  
1806, c. 689, s. 2.  
1830, c. 25, s. 2.

State v. Dunn, 73—595.

**Sec. 3702. Who may not serve as sheriff.**

R. C., c. 105, s. 7.  
1777, c. 118, ss. 2, 4.

No member of the general assembly, nor any practicing attorney  
2 shall hold the office of sheriff.

**Sec. 3703. Sheriff shall renew bonds annually; failure, to create vacancy.**

R. C., c. 105, s. 9.  
1829, c. 5, s. 5.  
1876-7, c. 276, s. 5.

The sheriff shall renew his bonds annually on the first Monday  
2 in December, and produce the receipts in full from the state  
3 treasurer, county treasurer, and other persons, of all moneys by him  
4 collected, or which ought to have been by him collected, for the  
5 use of the state and county, and for which he shall have become  
6 accountable; and a failure of the sheriff elect to renew his bonds,  
7 or to exhibit the aforesaid receipts, shall create a vacancy.

Vann v. Pipkin, 77-408; Sneed v. Bullock, 80-132; Worley v. Smith, 81-304.

**Sec. 3704. Sheriff removed from office; duty of coroner in such case.**

R. C., c. 105, s. 11.  
1829, c. 5, s. 8.

If any sheriff shall be convicted of a misdemeanor in office, the  
2 court may at their discretion, as a part of his punishment, remove  
3 him from office; and on any vacancy in the office, created by this  
4 or any other means, the coroner of the county shall execute all  
5 process directed to the sheriff, until the first meeting of the county  
6 commissioners next succeeding such vacancy, when the board shall  
7 elect a sheriff to supply the vacancy for the residue of the term,  
8 who shall possess the same qualifications, enter into the same  
9 bonds, and be subject to removal, as the sheriff regularly elected;  
10 and should the board fail to fill such vacancy, the coroner shall  
11 continue to discharge the duties of sheriff until it shall be filled.

Mitchell v. Ward, 6 Jones Eq., 66; Worley v. Smith, 81-304.

**Sec. 3705. Coroner to give bonds and take oaths when called to act as sheriff.**

R. C., c. 105, s. 12.  
1829, c. 5, s. 9.

Any coroner called to discharge the duties of sheriff shall, be-  
2 fore he enters thereon, take the same oaths, and enter into the  
3 same bonds that may be required of sheriffs; and the first ap-  
4 pointed coroner in each county shall be considered the coroner to  
5 discharge the duties of the sheriff, and the proceeding shall be en-  
6 tered on record by the clerk of the board of county commissioners.

Yeargin v. Siler, 83-348.

**Sec. 3706. Bonds of sheriff; form of bond for execution of process.**

R. C., c. 105, s. 13.  
1777, c. 118, s. 1.  
1823, c. 1223.  
1879, c. 109, s. 1.

The sheriff shall execute three several bonds, payable to the state  
2 of North Carolina, as follows: one conditioned for the collection,  
3 payment and settlement of the county, poor, school and special  
4 taxes in a sum double the amount of said taxes for the previous  
5 year; one for the collection, payment and settlement of the public  
6 taxes, as required by law, in a sum double the amount of said taxes  
7 for the previous year: *Provided, however,* that the amount of neither  
8 of said bonds shall be required to be more than fifty thousand dol-  
9 lars. And the amount of the third bond, for the due execution  
10 and return of process, payment of fees and moneys collected, and



11 the faithful execution of his office as sheriff, shall be not less than  
 12 five thousand dollars nor more than fifteen thousand dollars, in  
 13 the discretion of the board of county commissioners, and shall be  
 14 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.

**Sec. 3707.** When board to require a justification of bonds, &c.; notice to sheriff; his failure to appear or justify, &c., board to elect another.

It shall be the duty of the board of county commissioners when- 1879, c. 109, s. 2.  
 2 ever they shall be of opinion that the bonds of the sheriff of their  
 3 county are insufficient, to notify said sheriff in writing to appear  
 4 within ten days and give other and better surety, or justify the  
 5 sureties on his bond; and in case such sheriff shall fail to appear  
 6 on notice, or fail to give sufficient bonds, or to justify his bond, it  
 7 shall be the duty of said board to elect forthwith some suitable  
 8 person in the county as sheriff for the unexpired term, and who  
 9 shall give proper and lawful bonds and be subject to like obliga-  
 10 tions and penalties.

State Bank v. Twitty, 2 Hawks, 5; Rhodes v. Vaughan, 2 Hawks, 167; Chambers v. Witherspoon, 3 Hawks, 42; Cameron v. Campbell, 3 Hawks, 285; Crumpler v. Governor, 1 Dev., 52; Governor v. Bart., 1 Dev., 65; Governor v. Eastwood, 1 Dev., 157; Governor v. Matlock, 1 Dev., 214; Governor v. McAfee, 2 Dev., 15; Slade v. Governor, 3 Dev., 365; White v. Miller, 3 D. & B., 55; Jones v. Montfort, 3 D. & B., 73; Governor v. Harrison, 4 D. & B., 461; State v. Roane, 2 Ire., 144; McLin v. Hardie, 3 Ire., 407; State v. McAlpin, 6 Ire., 347; State v. Woodside, 7 Ire., 296; State v. Long, 7 Ire., 379; State v. Woodsides, 8 Ire., 104; State v. Long, 8 Ire., 415; Ellis v. Long, 8 Ire., 513; State v. McIntosh, 9 Ire., 307; State v. Woodside, 9 Ire., 496; State v. Bradhurst, 10 Ire., 229; Lindsay v. Dozier, Busb., 275; McLean v. Buchanan, 8 Jones, 444; Huggins v. Hinson, Phil., 126; State v. Lowrance, 64—483; State v. Howell, 65—61; State v. Briggs, 65—159; State v. Tapscott, 68—300; Sikes v. Commissioners of Bladen, 72—34; Wood v. Cherry, 73—110; State v. Clarke, 73—255; Brumble v. Brown, 73—476; State v. McNeill, 74—535; People v. Green, 75—329; Prairie v. Jenkins, 75—545; Prince v. McNeill, 77—398; Commissioners of Green v. Taylor, 77—404; Vann v. Pipkin, 77—408; Cherry v. Wilson, 78—164; Cherry v. Wilson, 78—166; Prairie v. Worth, 78—169; Jackson v. Maulsby, 78—174; Dixon v. Commissioners of Beaufort, 80—118; Sneed v. Bullock, 80—132; Gamble v. Rhyne, 80—183; Worley v. Smith, 81—304.

**Sec. 3708.** Board of commissioners liable for loss.

If any board of county commissioners shall fail to comply in 1868-'9, c. 245, s. 3.  
 2 good faith with the provisions of this chapter, they shall be liable  
 3 for all losses sustained in the collection of taxes, on motion to be  
 4 made by the solicitor of the district, and also be guilty of a misde-  
 5 meanor in office, and, on conviction, shall be fined not less than  
 6 five hundred dollars, nor more than one thousand dollars.

**Sec. 3709.** Sureties liable for fines, &c.

The sureties to a sheriff's bond shall be liable for all fines and  
 2 amercements imposed on him, in the same manner as they are lia-  
 3 ble for other defaults in his official duty. R. C., c. 105, s. 14.  
 1829, c. 33.

**Sec. 3710. May resign office to board.**

R. C., c. 105, s. 15.  
1777, c. 118, s. 1.  
1808, c. 752.

Every sheriff may vacate his office by resigning the same to the  
2 board of county commissioners of his county; and thereupon the  
3 board may proceed to elect another sheriff.

**Sec. 3711. Sheriffs, &c., of Hyde and Carteret may serve process on shipboard between Ocracoke and Portsmouth.**

R. C., c. 105, s. 16.  
1846, c. 67.

The sheriffs, constables, and other officers of Hyde and Carteret  
2 counties, shall have power to execute process upon any person, on  
3 board any vessel lying in the waters between Ocracoke island in  
4 Hyde county, and the island of Portsmouth in Carteret county;  
5 and for every process so executed, the sheriff shall receive a fee of  
6 three dollars, and the constable, for like service, two dollars.

**Sec. 3712. Sheriff to execute all process and writs from courts; penalty for neglect; penalty for false return.**

R. C., c. 105, s. 17.  
1777, c. 218, s. 5.  
1821, c. 1110.  
1874-5, c. 33.

Every sheriff, by himself or his lawful deputies, shall execute all  
2 writs and other process to him legally issued and directed, within  
3 his county, or upon any river, bay, or creek adjoining thereto, or  
4 in any other place where he may lawfully execute the same, and  
5 make due return thereof, under the penalty of forfeiting one hun-  
6 dred dollars for each neglect, where such process shall be delivered  
7 to him twenty days before the sitting of the court to which the  
8 same is returnable; to be paid to the party aggrieved by order of  
9 the court, upon motion and proof of such delivery, unless such  
10 sheriff can show sufficient cause to the court, at the next succeed-  
11 ing term after the order: and for every false return, the sheriff  
12 shall forfeit and pay five hundred dollars, one moiety thereof to  
13 the party aggrieved, and the other to him that will sue for the same;  
14 and moreover be further liable to the action of the party aggrieved,  
15 for damages; and deputies, and every constable shall execute all  
16 writs and other process to him legally issued and directed from a  
17 justice's court within his county, and make due return thereof,  
18 under penalty of forfeiting one hundred dollars for each neglect or  
19 refusal, where such process shall be delivered to him ten days be-  
20 fore the return day thereof, to be paid to the party aggrieved by  
21 order of the said court, upon motion and proof of such delivery,  
22 unless such sheriff or constable can show sufficient cause to the  
23 court at a day within three months from the date of the entry of  
24 the judgment *nisi*, of which the said officer shall be duly notified.

Douglas v. Auld, 1 Car. L. Rep., 500 (112); Holding v. Holding, 2 Car. L. Rep., 440 (324); Crump-  
ler v. Glisson, N. C. T. Rep., 79 (516); Davis v. Lancaster, 1 Murphy, 255; Governor v. Matlock, 2  
Hawks, 366; Lindsay v. Armfield, 3 Hawks, 548; McKellar v. Howell, 4 Hawks, 34; Potter v.  
Sturges, 1 Dev., 79; Governor v. Twitty, 1 Dev., 153; Banner v. McMurray, 1 Dev., 219; Mitchell  
v. Durham, 2 Dev., 538; Dowell v. Vannoy, 3 Dev., 23; McRae v. Evans, 1 D. & B., 243; Spruill v.  
Bateman, 4 D. & B., 489; Governor v. Montford, 1 Ire., 155; Burgin v. Burgin, 1 Ire., 160; Burgin  
v. Burgin, 1 Ire., 453; McLin v. Hardie, 3 Ire., 407; Satterwhite v. Carson, 3 Ire., 549; Harper v.  
Miller, 4 Ire., 34; State v. Allen, 5 Ire., 36; Smith v. Law, 5 Ire., 197; State v. Woodside, 7 Ire.,  
296; Lemit v. Freeman, 7 Ire., 317; Wilson v. Hampton, 7 Ire., 333; Parks v. Alexander, 7 Ire.,  
412; Collais v. McLeod, 8 Ire., 221; Halcombe v. Rowland, 8 Ire., 240; Lemit v. Freeman, 8 Ire.,  
312; Sherrell v. Shuford, 10 Ire., 200; State v. Edwards, 10 Ire., 242; Patterson v. Britt, 11 Ire.,  
383; Sloan v. Stanly, 11 Ire., 627; Bowen v. Jones, 13 Ire., 25; Patton v. Mann, 13 Ire., 444; Patton

Marr, Busb., 377; Kea v. Melvin, 3 Jon., 243; Hyatte v. Allison, 3 Jon., 533; McDowell v. Roberson, 3 Jon., 535; Waugh v. Brittain, 4 Jon., 470; Martin v. Martin, 5 Jon., 346; Martin v. Martin, 5 Jon., 349; State v. Latham, 6 Jon., 233; Cockerham v. Baker, 7 Jon., 288; Hassell v. Latham, 7 Jon., 465; McLean v. Buchanan, 8 Jon., 444; Albright v. Tapscott, 8 Jon., 473; McKeithan v. Terry, 64—25; McDowell v. Clarke, 68—118; Bryan v. Hubbs, 69—423; Brumble v. Brown, 71—513; Peebles v. Newsom, 74—473; Edwards v. Tipton, 77—222; Churchill v. Lee, 77—341; Richardson v. Wicker, 80—172; Finley v. Hayes, 81—368; Boggs v. Davis, 82—27; Yeargin v. Wood, 84—326; Smith v. McMillan, 84—593.

**Sec. 3713. To give receipt for process, which shall be evidence, &c.**

Every sheriff, coroner or constable shall, when requested, give his  
 2 receipt for all original and mesne process placed in his hands for  
 3 execution, to the party suing out the same, his agent or attorney;  
 4 and such receipt shall be admissible as evidence of the facts  
 5 therein stated, against such officer and his sureties, in any suit, be-  
 6 tween the party taking the receipt and such officer and his sure-  
 7 ties.

R. C., c. 105, s. 18.  
 1848, c. 97.

**Sec. 3714. To take no obligation of any one in custody, but as payable to himself as sheriff, &c., nor unlawful fees.**

The sheriff, or his deputy, shall take no obligation of or from  
 2 any person in his custody, for or concerning any matter or thing  
 3 relating to his office, otherwise payable than to himself as sheriff,  
 4 and dischargeable upon the prisoner's appearance and rendering  
 5 himself at the day and place required in the writ, (whereupon he  
 6 was or shall be taken or arrested,) and his sureties discharging  
 7 themselves therefrom as special bail of such prisoner, or such per-  
 8 son keeping within the limits and rules of any prison; and every  
 9 other obligation taken by any sheriff in any other manner or form,  
 10 by color of his office, shall be void, except, in any special case, any  
 11 other obligation shall be, by law, particularly and expressly di-  
 12 rected: and no sheriff shall demand, exact, take or receive any  
 13 greater fee or reward whatsoever, nor shall have any allowance, re-  
 14 ward or satisfaction from the public, for any service by him done,  
 15 other than such sum as the court shall allow for *ex officio* services,  
 16 and the allowance given and provided by law.

R. C., c. 105, s. 19.  
 1777, c. 118, s. 8.

Rhodes v. Vaughan, 2 Hawks, 167; Denson v. Sledge, 2 Dev., 136; Clark v. Walker, 3 Ire., 181; Heilig v. Lemley, 74—250.

**Sec. 3715. Permitting escape of one in execution, liable in action for the debt.**

When any sheriff shall take or receive and have in keeping the  
 2 body of any debtor in execution, or upon attachment for not per-  
 3 forming a judgment for the payment of any sum of money, and  
 4 shall wilfully or negligently suffer such debtor to escape, the per-  
 5 son suing out such execution or attachment, his executors, or ad-  
 6 ministrators, shall have and maintain an action for the debt  
 7 against such sheriff and his sureties on his official bond, and in  
 8 case of his death, against his executors or administrators, for the

R. C., c. 105, s. 20.  
 13 Edw. I, c. 11.  
 1777, c. 118, ss. 10,  
 11.



9 recovery of all such sums of money as are mentioned in the said  
10 execution or attachment, and damages for detaining the same.

Ellis v. Gee, 1 Murphy, 445; Governor v. Matlock, 1 Haw., 425; Wilkes v. Slaughter, 3 Haw., 211; Dowd v. Seawell, 3 Dev., 185; Walker v. Vick, 2 D. & B., 99; Smallwood v. Wood, 2 D. & B., 356; Williams v. Floyd, 5 Ire., 649; Lash v. Ziglar, 5 Ire., 705; Jackson v. Hampton, 6 Ire., 34; Wright v. Roberts, 6 Ire., 116; Adams v. Turrentine, 8 Ire., 147; State v. Ellison, 9 Ire., 261; Whicker v. Roberts, 10 Ire., 485; Jackson v. Hampton, 10 Ire., 579; Currie v. Worthy, 2 Jon., 104; State v. McKee, 2 Jon., 379; Currie v. Worthy, 3 Jon., 315; Willey v. Eure, 8 Jon., 320; Lusk v. Falls, 63—188.

**Sec. 3716. Not to farm his office.**

R. C., c. 105, s. 21,  
23 Hen. VI, c. 9.

No sheriff shall let to farm in any manner, his county, or any  
2 part of it, under pain of forfeiting five hundred dollars; one-half  
3 to the use of the county, and the other half to the person suing for  
4 the same.

**Sec. 3717. To have custody of jail.**

R. C., c. 105, s. 22.

The sheriff shall have the care and custody of the jail in his  
2 county; and shall be, or appoint, the keeper thereof.

Turrentine v. Faucett, 11 Ire., 652; Bunting v. McIlhenny, Phil., 579.

**Sec. 3718. To diligently collect claims.**

R. C., c. 105, s. 23,  
1886, c. 28.

When a claim, within the jurisdiction of a justice of the peace,  
2 shall be placed in the hands of any sheriff, or his deputy, for col-  
3 lection, he shall diligently endeavor to collect the same.

State v. Long, 7 Ire., 379.

**Sec. 3719. To furnish grand jury with a list of retailers of spirituous liquors; penalty for omission.**

R. C., c. 105, s. 24,  
1825, c. 1272, s. 4,  
1850, c. 185.

The sheriff shall lay before the grand jury of his county, at each  
2 court, as soon as the grand jury shall be assembled, a list of all per-  
3 sons who may have obtained license to retail spirituous liquors by  
4 small measure, within two years previous to said court; which  
5 list the foreman of the grand jury, at the close of its session, shall  
6 deliver to the clerk for safe keeping; and any sheriff failing to  
7 perform the duty aforesaid, shall forfeit and pay to the state ten  
8 dollars, to be recovered by the prosecuting officer, in the same  
9 manner as the penalties against sheriffs for not returning process.

**Sec. 3720. Outgoing sheriff subject to penalty for not executing precepts in certain cases.**

C., c. 105, s. 25.

Any sheriff who shall have received a precept, and shall go out  
2 of office before the return day thereof, without having executed  
3 the same, shall forfeit and pay to the party at whose instance it was  
4 issued, the sum of one hundred dollars, if such precept shall have  
5 remained in his hands for such length of time wherein it might  
6 have been well executed by him; unless the same shall have been  
7 thereafter executed by the successor of such sheriff, and returned  
8 at the day and place commanded therein; or unless it shall have  
9 been delivered over to the succeeding sheriff time enough to have

10 allowed of its being executed by him; and the penalty aforesaid  
11 shall be recoverable by notice against such outgoing sheriff and  
12 his sureties.

**Sec. 3721.** Bond of sheriff acting as county treasurer to cover liabilities as treasurer; may be increased by board of commissioners.

In counties where the office of county treasurer has been or may  
2 hereafter be abolished, and where the sheriff is authorized to per- 1879, c. 202, s. 1.  
3 form the duties of county treasurer, the bond he gives as sheriff  
4 shall be construed to include his liabilities and duties as such county  
5 treasurer, and may be increased to such amount by the board of  
6 county commissioners as they may deem necessary to cover the  
7 trust funds coming into his hands.

**Sec. 3722.** "County treasurer," how construed.

Wherever the words "county treasurer" are used in any of the 1879, c. 202, s. 2.  
2 statutes now in force or hereafter to be passed, they shall be con-  
3 strued to refer to and include the person authorized to perform the  
4 duties of that office in any county if there be no county treasurer  
5 therein.

**Sec. 3723.** Compensation for bringing convicts to penitentiary.

The sheriffs of the several counties shall be allowed two dollars 1874-'5, c. 107, s. 1.  
2 per day and actual necessary expenses for conveying convicts to  
3 the penitentiary; also one dollar per day each and actual neces-  
4 sary expenses for such guard, not to exceed one guard for every  
5 three prisoners, as the sheriff upon affidavit before the clerk of the  
6 superior court of his county shall swear to be necessary for the safe  
7 conveyance of said convicts.

**Sec. 3724.** How paid.

Upon filing such affidavit with the auditor, together with a fully 1874-'5, c. 107, s. 2.  
2 itemized account, to be sworn to before the auditor, of the number  
3 of days requisite for coming and returning, and of the actual ex-  
4 penses for conveying said convicts and of the guard necessary for  
5 their safe keeping, the auditor shall be required to audit such veri-  
6 fied claims of the sheriff, and the treasurer to pay all such war-  
7 rants properly drawn upon him out of any moneys in the treasury  
8 not otherwise appropriated.

**Sec. 3725.** Duty of sheriff.

The sheriff shall file with the board of commissioners of his 1874-'5, c. 107, s. 3.  
2 county a copy of his affidavit as to necessary guard, together with  
3 a copy of his itemized account of expenses, both certified to by the  
4 auditor as true copies of those on file in his office, or be guilty of  
5 a misdemeanor.

**Sec. 3726. Publication of delinquent tax-payers required.**1876-'7, c. 78, ss. 1,  
2, 3.

Whenever any sheriff or tax-collector shall be credited on settlement with any tax or taxes, by him returned as insolvent, dead or removed, he shall forthwith make publication at the court house door, and at least one public place in each and every township in his county, of a complete list of the names of such insolvent, dead or removed delinquents, with the amount of the tax due from each, and the sum total so credited. Such list, by order of the board of commissioners, may also be published in any newspaper printed in the county; in which case, the expense of the advertisement, for such time as may be directed, shall be paid by the county. Any sheriff, or tax-collector failing to comply with the provisions of this section, shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than ten, nor more than one hundred dollars.

## CHAPTER ONE HUNDRED AND NINE.

## SLANDER OF WOMEN.

## SECTION.

3727. What words spoken of women shall be actionable.

**Sec. 3727. What words spoken of women shall be actionable.**R. C., c. 106.  
1808, c. 748.

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; therefore any words written or spoken of a woman, which may amount to a charge of incontinency, shall be actionable.

Watts v. Greenlee, 1 Dev., 210; Watts v. Greenlee, 2 Dev., 115; Hampton v. Wilson, 4 Dev. 468; McBrayer v. Hill, 4 Ire., 136; Sharpe v. Stephenson, 12 Ire., 348; Lucas v. Nichols, 7 Jones, 32.



CHAPTER ONE HUNDRED AND TEN.

STATUTES, REPEAL, AND CONSTRUCTION OF.

SECTION.

3728. Repeal of statutes not to affect action.

3729. 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."

SECTION.

(7) "Preceding" and "following."

(8) "Seal."

(9) "Will."

(10) "Written" and "in writing."

(11) "State" and "United States."

(12) "Imprisonment for one month," how construed.

3730. How parts of acts amended to be considered.

Sec. 3728. Repeal of statutes not to affect actions.

The repeal of a statute shall not affect any action brought before  
2 the repeal, for any forfeitures incurred, or for the recovery of any  
3 rights accruing under such statute.

R. C., c. 108, s. 1.  
1830, c. 44.  
1879, c. 163.  
1881, c. 48.

Governor v. Howard, 1 Murphy, 465; State v. Cress, 4 Jones, 421; State v. Nutt, Phillips, 20;  
Kessler v. Smith, 66—154; Kingsbury v. Chatham Railroad Company, 66—284; Wilson v. Jenkins, 72—5.

Sec. 3729. Rules for construing statutes.

In the construction of all statutes, the following rules shall be  
2 observed, unless such construction would be inconsistent with the  
3 manifest intent of the general assembly, or repugnant to the con-  
4 text of the same statute, that is to say:

R. C., c. 108, s. 2.

Parker v. Carson, 64—563; Haywood v. Rogers, 73—320; State v. Pool, 74—402.

5 (1) SINGULAR AND PLURAL NUMBER, MASCULINE GENDER, &C.

6 Every word, importing the singular number only, may extend  
7 and be applied to several persons or things, as well as to one person  
8 or thing; and every word importing the plural number only, may  
9 extend and be applied to one person or thing, as well as to several  
10 persons or things; and every word importing the masculine gender  
11 only, may extend and be applied to females as well as to males;

VonGlahn v. Harris, 73—323; VonGlahn v. Lattimer, 73—333.

12 (2) AUTHORITY OF PUBLIC OFFICERS, &C., EXERCISED BY MAJOR-  
13 ITIES, UNLESS, &C.

14 All words purporting to give a joint authority to three or more  
15 public officers or other persons, shall be construed as giving such  
16 authority to a majority of such officers or other persons, unless it  
17 shall be otherwise expressly declared in the law giving the author-  
18 ity;

Austin v. Helms, 65—530; Britt v. Benton, 79—177; Simmons v. Foscoe, 81—86.

19 (3) MONTH AND YEAR.

20 The word "month" shall be construed to mean a calendar month,  
21 unless otherwise expressed; and the word "year" a calendar year,

22 unless otherwise expressed ; and the word "year" alone shall be  
23 equivalent to the expression "year of our Lord."

State v. Upchurch, 72—146; Rives v. Gutherie, 1 Jones, 84; Satterwhite v. Burwell, 6 Jones, 92.

R. C., c. 31, s. 108.  
21 Hen. III.

24 (4) LEAP-YEAR, HOW COUNTED.

25 In every leap-year, the increasing day and the day before, in all  
26 legal proceedings, shall be counted as one day.

27 (5) "OATH" AND "SWORN."

28 The word "oath" shall be construed to include "affirmation,"  
29 in all cases, where by law an affirmation may be substituted for an  
30 oath, and in like cases, the word "sworn" shall be construed to in-  
31 clude the word "affirm."

32 (6) "PERSON."

33 The word "person" may extend and be applied to bodies poli-  
34 tic and corporate, as well as to individuals.

35 (7) "PRECEDING" AND "FOLLOWING."

36 The words "preceding" and "following," when used by way of  
37 reference to any section of the code, shall be construed to mean the  
38 section next preceding or next following that in which such refer-  
39 ence is made ; unless when some other section is expressly desig-  
40 nated in such reference.

41 (8) "SEAL."

42 In all cases in which the seal of any court or public office shall  
43 be required by law to be affixed to any paper issuing from such  
44 court or office, the word "seal" shall be construed to include an  
45 impression of such official seal, made upon the paper alone, as well  
46 as an impression made by means of a wafer or of wax affixed  
47 thereto.

48 (8) "WILL."

49 The term "will" shall be construed to include codicils as well as  
50 wills.

51 (10) "WRITTEN" AND "IN WRITING."

52 The words "written" and "in writing," may be construed to  
53 include printing, engraving, lithographing, and any other mode of  
54 representing words and letters: *Provided, however,* that in all cases  
55 where a written signature is required by law, the same shall be in  
56 a proper handwriting, or in a proper mark.

57 (11) "STATE" AND "UNITED STATES."

58 The word "state," when applied to the different parts of the Uni-  
59 ted States, shall be construed to extend to include the District of

59 Columbia and the several territories so called; and the words  
 60 "United States" shall be construed to include the said district and  
 61 territories.

62 (12) "IMPRISONMENT FOR ONE MONTH," HOW CONSTRUED.

63 The words "imprisonment for one month," wherever used in 1879, c. 92, s. 4.  
 64 any of the statutes, shall be construed to mean "imprisonment for  
 65 thirty days," by all the judges and courts.

State v. Upchurch, 72—146.

Sec. 3730. How parts of acts amended to be considered.

Where a part of a statute is amended it is not to be considered 1868-'9, c. 270, s. 22.  
 2 as having been repealed and re-enacted in the amended form; 1870-'71, c. 111.  
 3 but the portions which are not altered are to be considered as  
 4 having been the law since their enactment, and the new provisions  
 5 as having been enacted at the time of the amendment.

## CHAPTER ONE HUNDRED AND ELEVEN.

### STRAYS.

#### SECTION.

3731. Rangers appointed by board of county commissioners; justices of the peace *ex officio* rangers.  
 3732. Strays, how taken up and reclaimed.  
 3733. Reward allowed to taker-up.  
 3734. Appraisement of strays.  
 3735. Property of stray vested in person taking up same after six months.  
 3736. Stray not claimed in six months, two-thirds of its value paid to ranger; owner may reclaim of county.  
 3737. Taker-up to give bond, if value of stray exceeds ten dollars.  
 3738. Taker-up not answerable for death of stray.

#### SECTION.

3739. Ranger may administer oaths.  
 3740. Ranger to pay moneys to county treasurer.  
 3741. Rangers' books open to inspection of the public.  
 3742. Compensation to ranger.  
 3743. Receipts for strays delivered to owner to be given to taker-up and filed with the ranger.  
 3744. Proof of death of strays to be furnished ranger.  
 3735. Penalties for violating provisions of this chapter.

Sec. 3731. Rangers appointed by the board of county commissioners; justices of the peace *ex-officio* rangers.

The board of commissioners in each county shall appoint 1874-'5, c. 258, s. 1.  
 2 a ranger, who shall reside at the county town, and shall give 1879, c. 94, s. 1.  
 3 bond to the state in the sum of two hundred dollars, and shall hold 1881, c. 339.  
 4 his office during good behavior. And all justices of the peace shall  
 5 be legally qualified *ex officio* to act as rangers for their respective  
 6 townships in the county where they reside, and are hereby invested  
 7 with all the powers and authority conferred on rangers.

See R. C., c. 109, s. 1; 1868-'9, c. 100, s. 3.



**Sec. 3732. Strays, how taken up and reclaimed.**

1874-'5, c. 258, s. 2.

Any person who shall take up any stray horse, mare, colt, mule, 2 ass or jenny, neat cattle, hog or sheep, shall, (under a penalty of 3 twenty-five dollars, one-half to the state, and one-half to the in- 4 former for failing so to do within ten days after taking up such 5 stray,) inform the owner, if to him known, if not, he shall inform 6 the ranger of the supposed age, marks, brands and color of the stray, 7 and that the same was taken up at his plantation or place of abode: 8 whereupon the ranger shall record such information in a book 9 kept by him for that purpose, for which service the taker-up of 10 said stray or strays shall pay a fee of twenty-five cents, except for 11 hogs and sheep, for which the fee shall be ten cents: *Provided*, that 12 the owner of such stray may reclaim the same at any time before 13 appraisement as hereinafter provided, by paying to the taker-up the 14 ranger's fee, and the reward to the taker-up, with a fair compensa- 15 tion for keeping the same; *Provided, further*, that in cases where 16 the owner and taker-up cannot agree as to the last item, it shall be 17 decided as hereinafter provided.

**Sec. 3733. Reward allowed to taker-up.**

R. C., c. 109, s. 3.

The person taking any stray, for his trouble and expenses, may 2 demand and receive of the owner one dollar for each horse, 3 mare, gelding, colt or mule, ass or jenny, fifty cents for each head 4 of cattle and fifteen cents for each hog and sheep.

**Sec. 3734. Appraisement of strays.**

1874-'5, c. 258, s. 3.

Any person having taken up any stray shall, at the end of two 2 weeks from the time of said taking up, if still unclaimed, notify 3 the ranger, who shall issue his summons to any two freeholders of 4 the township, who after taking before the ranger the oath pre- 5 scribed for the faithful and impartial discharge of their duty, shall 6 view and appraise such stray, and make return thereof to the 7 ranger, which appraisement with a description of the marks, 8 brands, age and color as near as can be ascertained of such stray, 9 together with the time of taking up and place of abode of the per- 10 son taking it up, shall by such ranger be entered in a book kept 11 for that purpose; he shall immediately thereafter put up an ad- 12 vertisement at the court house describing therein the kind of 13 marks, brand and color of the stray, and if the stray be a horse, 14 mare, colt, mule, ass or jenny, the ranger shall likewise without 15 delay cause an advertisement to be published at least two weeks in 16 a paper in or nearest the county, containing an accurate descrip- 17 tion of the stray as entered on his books, the name and place of 18 abode of the taker-up; and for the purpose of making such adver- 19 tisement the taker-up shall pay the ranger two dollars, which the 20 owner shall pay to the taker-up at the time of receiving such stray,

21 or it shall be allowed him in his settlement with the ranger as  
22 hereinafter directed.

**Sec. 3735. Property of stray vested in person taking up same after six months.**

The property of every such stray, not proven by the owner 1874-'5, c. 258, s. 4  
2 within six months, after said appraisement, shall be vested in the  
3 person who takes up the same: *Provided, nevertheless*, that the  
4 former owner of any such stray at any time within six months  
5 after such appraisement and proving his property before the ranger  
6 by his own oath or otherwise, may demand and recover such stray,  
7 or the valuation thereof, first paying ranger's fees and the reward  
8 for taking up the stray: *Provided*, that where the taker-up shall  
9 have been at any expense for keeping and maintaining such stray  
10 he may retain the same until the owner shall pay all such ex-  
11 penses. When the parties cannot agree, to be ascertained in the  
12 following manner, namely: The taker-up shall obtain of the  
13 ranger a warrant empowering three freeholders, by the ranger to  
14 be named, to declare upon oath, upon view of the stray and ex-  
15 amination of witnesses, if necessary, how much the taker-up ought  
16 to have for keeping the stray, and such sum as shall by the said  
17 freeholders or any two of them be declared, he may demand and  
18 receive before surrendering the stray.

**Sec. 3736. Stray not claimed in six months, two-thirds of its value paid to ranger; owner may reclaim of county.**

After the expiration of six months from the time of appraise- 1874-'5, c. 258, s. 5  
2 ment, no property being proved by the owner, the taker-up shall  
3 account to and pay the ranger two-thirds of the appraised value  
4 after deducting the ranger's fees and the reward for the taking up  
5 the same; and any person failing to comply, shall forfeit double  
6 the value of the stray, said forfeiture to be sued for and collected  
7 by the ranger: *Provided, nevertheless*, if at any time the owner shall  
8 prove his property before the board of commissioners by the oath  
9 of one or more witnesses, the court shall direct the county treas-  
10 urer to pay the owner the net sum of money which the ranger may  
11 have paid to the treasurer, after deducting the treasurer's com-  
12 missions.

**Sec. 3737. Taker-up to give bond, if value of stray exceeds ten dollars.**

Any person having property appraised under this chapter shall 1874-'5, c. 258, s. 6.  
2 give bond in double the value of the stray with approved sureties  
3 for his faithful compliance with the duties enjoined by this chap-  
4 ter: *Provided*, that if the value of such stray shall not exceed ten  
5 dollars no bond shall be required.

See R. C., c. 109, s. 6.

**Sec. 3738. Taker-up not answerable for death of stray.**

If within six months after the taking up of any stray it should die, 1874-'5, c. 258, s. 7,

2 the taker-up shall not be answerable unless it may appear to have  
3 died by ill usage and abuse.

R. C., c. 109, s. 7.

**Sec. 3739. Ranger may administer oaths.**

1874-'5, c. 258, s. 8.

The ranger may administer the oath in all cases where it is re-  
2 quired to be taken before him under the provisions of this chapter.

R. C., c. 109, s. 9.

**Sec. 3740. Ranger to pay over moneys to county treasurer.**

1874-'5, c. 278, s. 9.

Every ranger shall pay the county treasurer all moneys that he  
2 may receive on account of unclaimed strays in January and June  
3 of each year.

**Sec. 3741. Ranger's books open to inspection of the public.**

1874-'5, c. 258, s. 10.

For the more speedy recovery of strays, any person may search  
2 the entry books of the ranger, first paying the ranger a fee of ten  
3 cents.

R. C., c. 109, s. 11.

**Sec. 3742. Compensation to ranger.**

1874-'5, c. 258, s. 11.

The ranger shall collect all sums that may be due from any stray  
2 entered and appraised, and on all such collections he shall be en-  
3 titled to receive ten per cent.

**Sec. 3743. Receipts for strays delivered to owner to be given to taker-up and filed with the ranger.**

1874-'5, c. 258, s. 12.

The taker-up of any stray may demand of the owner his receipt  
2 for the same, and the taker-up shall furnish the same to the ranger  
3 and in all cases where strays have been appraised and no receipt  
4 filed for twelve months, the ranger shall sue the taker-up in the  
5 name of the state for the use of the county for two-thirds of said  
6 appraisement.

**Sec. 3744. Proof of death of strays to be furnished ranger.**

1874-'5, c. 258, s. 13.

In case an appraised stray die, the taker-up shall furnish the  
2 ranger the proof thereof, or be liable for two-thirds its value.

**Sec. 3745. Penalties for violating provisions of this chapter.**

1874-'5, c. 258, s. 14.

Any penalty incurred by violation of any of the provisions of  
2 this chapter shall be recovered by the ranger or by the county  
3 treasurer, in the name of the state, for the use of the county or in-  
4 former, before a justice of the peace.

R. C., c. 109, s. 15.



## CHAPTER ONE HUNDRED AND TWELVE.

## SUNDAY AND HOLIDAYS.

## SECTION.

3746. No person to work on Sunday, under penalty of one dollar.

3747. Hunting on Sunday prohibited; penalty on failure to pay fine.

3748. Penalty for swearing before justice, &c.

3749. Public holidays, when falling on Sunday, succeeding Monday to be deemed a public holiday; papers due on Sunday, payable on Monday; due on Monday, payable Tuesday.

## SECTION.

3750. When holiday falls on Saturday, papers due on that day, when payable.

3751. When holiday falls on Monday, papers due on that day, when payable.

**Sec. 3746. No person to work on Sunday under penalty of one dollar.**

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 alone 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.

Sloan v. Williford, 3 Ire., 307; State v. Williams, 4 Ire., 400; State v. Brooksbank, 6 Ire., 73; Bland v. Whitfield, 1 Jones, 122; Melvin v. Easley, 7 Jones, 356; State v. Ricketts, 74—187; State v. White, 76—15; Branch v. W. and W. R. R. Co., 77—347; State v. McGimsey, 80—377; State v. Howard, 82—623.

R. C., c. 115, s. 1.  
1741, c. 30, s. 2.

**Sec. 3747. Hunting on Sunday prohibited; penalty on failure to pay fine.**

If any person shall be known to hunt on Sunday with a dog, or shall be found off his premises on Sunday, having with him a shot gun, rifle or pistol, he shall be guilty of a misdemeanor; and upon conviction, shall pay a fine not exceeding fifty dollars, two-thirds of such fine to inure to the benefit of the public schools in the county of which such convict is a resident, the remainder to the informant; and upon failure of such convict to pay the required fine, he shall be imprisoned at hard labor for not more than three months, as the court shall direct: *Provided*, that this section shall not apply to any person who may violate its provisions in defence of his own property.

1868-'9, c. 18, ss. 1, 2.

**Sec. 3748. Penalty for swearing before a justice, &c.**

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.

R. C., c. 115, s. 2.  
1741, c. 30, s. 3.

**Sec. 3749. Public holidays, when falling on Sunday, succeeding Monday to be deemed a public holiday; papers due on Sunday, payable on Monday; due on Monday, payable Tuesday.**

The first day of January, twenty-second day of February, tenth day of May, twentieth day of May, fourth day of July, and a day

1881, c. 294, s. 1.

3 appointed by the governor of North Carolina as a thanksgiving  
 4 day, and the twenty-fifth day of December of each and every year,  
 5 are hereby declared to be public holidays; and whenever any such  
 6 holiday shall fall upon Sunday, the Monday next following shall  
 7 be deemed a public holiday, and papers due on such Sunday shall  
 8 be payable on the Saturday preceding, and papers which would  
 9 otherwise be payable on said Monday shall be payable on the  
 10 Tuesday next thereafter.

Sec. 3750. When holiday falls on Saturday, papers due on that day, when payable.

1881, c. 294, s. 2.

Whenever either of the above-named days falls on Saturday, the  
 2 papers due on the Sunday following shall be payable on the Mon-  
 3 day next succeeding.

Sec. 3751. When holiday falls on Monday, papers due on that day, when payable.

1881, c. 294, s. 3.

Whenever either of the above-named days shall fall on Monday,  
 2 the papers which should otherwise be payable on that day shall be  
 3 payable on the Tuesday next succeeding.

## CHAPTER ONE HUNDRED AND THIRTEEN.

### SURETY AND PRINCIPAL.

#### SECTION.

3752. Summary remedy for surety against principal.  
 3753. Surety may sue co-surety for ratable part of debt paid for principal.  
 3754. May dissent from stay of execution, then not liable to surety for the stay; officer, how to collect in such case.  
 3755. Surety, paying debt of deceased principal, to have priority as the creditor had against the estate.

#### SECTION.

3756. Surety may cause written notice to be given to creditor; proviso.  
 3757. Negligence to operate as discharge; proviso.  
 3758. Notice to be in writing.  
 3759. Defendants may show they are sureties; jury or justice to find the facts.  
 3760. Property of principal to be first levied on and sold.

Sec. 3752. Summary remedy for surety against principal,

R. C., c. 110, s. 1.  
 1777, c. 487, s. 1.

Any person, who may have paid money for and on account of  
 2 those for whom he became surety, upon producing to the superior  
 3 court, or any justice of the peace having jurisdiction of the sum,  
 4 a receipt, and showing that an execution has issued, and he has  
 5 satisfied the same, and making it appear by sufficient testimony,  
 6 that he has laid out and expended any sum of money, as the  
 7 surety of such person, may move the court or justice of the peace,  
 8 as the case may be, for judgment against his principal, for the  
 9 amount which he has actually paid; a citation having previously  
 10 issued against the principal to show cause why execution should  
 11 not be awarded; and should not the principal show sufficient

12 cause, the court or justice shall award execution against the estate  
13 of the principal.

Shepherd v. Monroe, 2 Car. L. Rep., 624 (427); Woodman v. Mooring, 3 Dev., 237; Hodges v. Armstrong, 3 Dev., 253; Sherwood v. Collier, 3 Dev., 380; Sherrod v. Woodard, 4 Dev., 360; State Bank v. Locke, 4 Dev., 529; Eason v. Petway, 1 D. & B., 44; Gray v. Bowls, 1 D. & B., 437; Thompson v. Sanders, 4 D. & B., 404; Linn v. McLelland, 4 D. & B., 458; Wharton v. Woodburn, 4 D. & B., 507; Shaw v. McFarlane, 1 Ire., 216; Brisendine v. Martin, 1 Ire., 286; Davis v. Sanderlin, 1 Ire., 389; Pipkin v. Bond, 5 Ire. Eq., 91; Forbes v. Smith, 5 Ire. Eq., 369; Hall v. Whitaker, 7 Ire., 353; Ledbetter v. Forney, 11 Ire., 294; Ponder v. Carter, 12 Ire., 242.

**Sec. 3753. Surety may sue co-surety for ratable part of debt paid for principal.**

Where there are two or more sureties for the performance of a  
2 contract, and one or more of them may have been compelled to  
3 perform and satisfy the same, or any part thereof, and the princi-  
4 pal shall be insolvent, or out of the state, such surety may have  
5 and maintain an action against every other surety, for a just and  
6 ratable proportion of the sum which may have been paid as afore-  
7 said, whether of principal, interest or cost.

R. C., c. 110, s. 2.  
1807, c. 722.

Shepherd v. Monroe, 2 Car. L. Rep., 624 (427); Moore v. Moore, 4 Hawks, 358; Smith v. Smith, 1 Dev. Eq., 173; Gómez v. Lazarus, 1 Dev., 205; Norfleet v. Cotton, 3 Dev. Eq., 334; Sherrod v. Woodard, 4 Dev., 360; Moore v. Isley, 2 D. & B. Eq., 372; Hutchins v. McCauley, 2 D. & B. Eq., 399; Dawson v. Petway, 4 D. & B., 396; Thompson v. Sanders, 4 D. & B., 404; Osborn v. Cunningham, 4 D. & B., 423; Linn v. McClelland, 4 D. & B., 458; Brisendine v. Martin, 1 Ire., 286; Nowland v. Martin, 1 Ire., 307; Gregory v. Murrell, 2 Ire. Eq., 233; Rainey v. Yarborough, 2 Ire. Eq., 249; Bell v. Jasper, 2 Ire. Eq., 597; Foley v. Robards, 3 Ire., 177; Allen v. Wood, 3 Ire. Eq., 386; Jones v. Hays, 3 Ire. Eq., 502; Daniel v. Joyner, 3 Ire. Eq., 513; Long v. Barnett, 3 Ire. Eq., 631; Pool v. Ehringhaus, 4 Ire. Eq., 33; Dobson v. Prather, 6 Ire. Eq., 31; Jones v. Blanton, 6 Ire. Eq., 115; Hall v. Robinson, 8 Ire., 56; Godsey v. Bason, 8 Ire., 260; Pool v. Williams, 8 Ire., 286; Draughan v. Bunting, 9 Ire., 10; Brandon v. Medley, 1 Jon. Eq., 313; Reeves v. Bell, 2 Jones, 254; Leary v. Cheshire, 3 Jon. Eq., 170; Towe v. Newbold, 4 Jon. Eq., 212; Kearney v. Harrell, 5 Jon. Eq., 199; Sikes v. Quick, 7 Jon., 19; Miller v. Miller, Phil. Eq., 85; Derosssett v. Bradley, 63—17; Parham v. Green, 64—436; Clark v. Williams, 70—679; Haywood v. Daves, 80—338; Hughes v. Boone, 81—204; Craven v. Freeman, 82—361; Bright v. Lennon, 83—183; Pickens v. Miller, 83—543.

**Sec. 3754. May dissent from stay of execution, then not be liable to surety for the stay; officer, how to collect in such cases.**

Whenever any judgment shall be obtained before a justice,  
2 against a principal and his surety, and the principal debtor shall  
3 desire to stay the execution thereon, but the surety is unwilling  
4 that such stay shall be had, the surety may cause his dissent  
5 thereto to be entered by the justice, which shall absolve him from  
6 all liability to the surety, who may stay the same. And the con-  
7 stable or other officer, who may have the collection of the debt,  
8 shall make the money out of the property of the principal debtor,  
9 and that of the surety for the stay of execution, if he can, before  
10 he shall sell the property of the surety before judgment.

R. C., c. 110, s. 3.  
1829, c. 6, ss. 1, 2.

**Sec. 3755. Surety paying debt of deceased principal, to have priority as the creditor had against the estate.**

Whenever a surety, or his representative, shall pay the debt of  
2 his deceased principal, the claim thus accruing shall have such  
3 priority in the administration of the assets of the principal, as had  
4 the debt before its payment.

R. C., c. 110, s. 4.  
1829, c. 23.

Chaffin v. Hanes, 4 Dev., 103; Drake v. Coltrane, Busb., 300; Howell v. Reams, 73—391.



**Sec. 3756. Surety may cause written notice to be given to creditor; proviso.**

1868-'9, c. 232, s. 1.

In all cases where any surety or indorser 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 surety or indorser, 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 surety or indorser: *Provided*, nothing herein contained shall apply to official bonds, or bonds given by any person acting in a fiduciary capacity.

Cole v. Fox, 83—463; Goodman v. Litaker, 84—8.

**Sec. 3757. Negligence to operate as a discharge; proviso.**

1868-'9, c. 232, s. 2.

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 surety or indorser, such refusal or failure to sue, shall operate as a discharge of such surety or indorser, 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-surety who does not join in such notice, or who has not given a separate notice: *Provided further*, that this and the preceding section shall not apply to holders of such note, bond, bill, or obligation, who hold the same as collateral security or in trust.

Cole v. Fox, 83—463; Goodman v. Litaker, 84—8.

**Sec. 3758. Notice to be in writing.**

1868-'9, c. 232, s. 3.

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 courts.

**Sec. 3759. Defendants may show they are sureties; jury or justice to find the facts.**

R. C., c. 31, s. 124.

In the trial of actions 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.

Davis v. Sanderlin, 1 Ire., 389; Stewart v. Ray, 4 Ire., 269; Lowder v. Noding, 8 Ire. Eq., 208.

**Sec. 3760. Property of principal to be first levied on and sold.**

R. C., c. 31, s. 125.

When an execution, indorsed as aforesaid, shall come to the

2 hands of any officer for collection, he shall levy the same on the  
 3 property of the principal, or so much thereof as shall be necessary  
 4 to satisfy the execution, and for want of sufficient property of the  
 5 principal, also on the property of the surety, and make sale thereof:  
 6 *Provided, nevertheless*, that, in all such levies a sale shall first be had  
 7 of all the property of the principal levied on, before that of the  
 8 surety.

Eason v. Petway, 1 D. & B., 44; Shufford v. Cline, 13 Ire., 463.  
 [See Note from Revised Code, c. 110.]

## CHAPTER ONE HUNDRED AND FOURTEEN.

### TRAMPS AND VAGRANTS.

#### SECTION.

3761. Going about from place to place begging; penalty; proviso.  
 3762. Tramp entering dwelling-house; penalty.  
 3763. Wilful injury to person or property; penalty, imprisonment not to exceed three years.

#### SECTION.

3764. What is evidence of being a tramp.  
 3765. Tramps to be arrested.  
 3766. Chapter not applicable to woman or minor under fourteen years.  
 3767. Vagrancy, what and how punished.

#### Sec. 3761. Going about from place to place begging; penalty; proviso.

Any person going about from place to place begging, or subsist- 1879, c. 198, s. 1.  
 2 ing on charity, shall be taken and deemed a tramp, and shall be  
 3 punished by imprisonment in the county jail not more than six  
 4 months: *Provided*, that any person who shall furnish satisfactory  
 5 evidence of good character shall be discharged without cost.

#### Sec. 3762. Tramp entering dwelling house; penalty.

Any tramp who shall enter any dwelling house or kindle any 1879, c. 198, s. 2.  
 2 fire on the highway or on the land of another without the consent  
 3 of the owner or occupant thereof, or shall be found carrying any  
 4 fire arms or other dangerous weapon, or shall threaten to do any  
 5 injury to any person, or to the real or personal estate of another,  
 6 shall be punished by imprisonment at the discretion of the court,  
 7 not to exceed twelve months.

#### Sec. 3763. Wilful injury to person or property; penalty, imprisonment not to exceed three years.

Any tramp who shall wilfully and maliciously do any injury to 1879, c. 198, s. 3.  
 2 any person or to the real or personal estate of another, shall be  
 3 punished by imprisonment at the discretion of the court, not to  
 4 exceed three years.

**Sec. 3764. What is evidence of being a tramp.**

1879, c. 198, s. 4.

Any act of begging or vagrancy by any person, unless a well  
2 known object of charity, shall be evidence that the person com-  
3 mitting the same is a tramp within the meaning of this chapter.

**Sec. 3765. Tramps to be arrested.**

1879, c. 198, s. 5.

Any person upon a view of any offence described in this chap-  
2 ter shall cause the said offender to be arrested upon a warrant and  
3 taken before some justice of the peace, or may apprehend the of-  
4 fender and take him before a justice of the peace for examination,  
5 and on his conviction, shall be entitled to the same fee as a sheriff.

**Sec. 3766. Chapter not applicable to woman or minor under fourteen years.**

1879, c. 198, s. 6.

This chapter shall not apply to any woman or minor under the  
2 age of fourteen years, nor to any blind person.

**Sec. 3767. Vagrancy, what and how punished.**1866, c. 42.  
1873-'4, c. 176, s. 12.

Any person who may be able to labor and who has no apparent  
2 means of subsistence, and neglects to apply himself to some honest  
3 occupation for the support of himself and his family; or, if any  
4 person shall be found spending his time in dissipation, or gaming,  
5 or sauntering about without employment, or endeavoring to main-  
6 tain himself or his family by any undue or unlawful means, such  
7 person shall be deemed a vagrant, and guilty of a misdemeanor,  
8 and be punished by a fine not to exceed fifty dollars or by im-  
9 prisonment not to exceed thirty days, and the offence shall be cog-  
10 nizable only before a justice of the peace of the county in which it  
11 is committed, who may release the party on his giving a recog-  
12 nizance, with or without security, for his industrious and peaceable  
13 deportment for one year or less from the date thereof, or may also  
14 impose on him a punishment not to exceed that above mentioned.

State v. Custer, 339; see also R. C., c. 34, s. 44; 1840, c. 61; 1879, c. 198.

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## CHAPTER ONE HUNDRED AND FIFTEEN.

### TOWNS AND CITIES.

**SECTION.**

3768. Incorporated cities and towns may elect  
aldermen or commissioners, to be a  
body corporate.  
3769. When and how elections held and con-  
ducted.  
3770. Inspectors of elections; their duties.  
3771. Election tied, decided by lot.  
3772. Number of commissioners and time of  
election may be changed.  
3773. On change of time of, or failure to hold,  
election, incumbents to hold over.  
3774. Vacancy, how filled.

**SECTION.**

3775. Election of mayor or other chief officer;  
tie vote, how decided; term of office;  
vacancy; duties of mayor.  
3776. Registration of qualified voters to be  
made.  
3777. Qualification of officers.  
3778. Municipal elections to be held on first  
Monday in May.  
3779. Mayor to take the prescribed oaths.  
3780. Commissioners to take oath of office;  
their powers.



## SECTION.

3781. Powers and duties of commissioners enumerated.
3782. Markets; unlawful to tax vehicles selling farm products.
3783. Commissioners may abate nuisances.
3784. Streets and bridges to be kept in repair.
3785. Commissioners may enforce their by-laws by proper penalties.
3786. Baker's bread, its quality and weight regulated.
3787. Mayor authorized to enforce the collection of fines and penalties.
3788. List of taxables to be taken by Mayor; double tax, when paid; assessors of real estate.
3789. Town constable, his oath, power and duties.
3790. Constable's bond and power to collect taxes.
3791. Town constable authorized to serve civil process.
3792. Policemen may execute criminal process.
3793. Town officers refusing to qualify, liable to penalty of twenty-five dollars.
3794. Town and city collectors to make monthly settlements.

## SECTION.

3795. Failure of officers to settle with treasurer a misdemeanor.
3796. Tax on dogs, how enforced.
3797. Annual statement of taxes and expenditures to be published.
3798. Municipal authorities may purchase land for cemeteries.
3799. Criminal jurisdiction of mayors same as that of justices of the peace.
3800. Authority of the municipal court; appeals therefrom.
3801. Violation of ordinance a misdemeanor.
3802. How debts of municipal corporations shall be paid.
3803. Municipal officers to transfer books and property to successors; penalty for failure.
3804. Tax-lists may be corrected.
3805. Mayors and commissioners may sell corporate property.
3806. County commissioners may sell property of unincorporated towns and villages.
3807. Mayor authorized to make title to purchaser.
3808. Provisions of this chapter, to what places applicable; construction of the word "commissioners."

**Sec. 3768. Incorporated cities and towns may elect aldermen or commissioners to be a body corporate.**

Every incorporated town, for the better government thereof, may  
 2 annually elect by ballot, not more than seven, nor less than three  
 3 commissioners, who shall, they and their successors, be deemed a  
 4 body corporate with succession during the corporate existence of  
 5 the town, and shall be styled, "the commissioners of the town of  
 6 ———," (the same being the name of the town of which they are  
 7 commissioners.)

R. C., c. 111, s. 1.

Manly v. City of Raleigh, 4 Jon. Eq., 370; Keeler v. City of New Berne, 1 Phil., 505.

**Sec. 3769. When and how elections held and conducted.**

Every election for commissioners shall be held under the in-  
 2 spection of such persons, not exceeding three, as the board of town  
 3 commissioners may appoint; who shall advertise the elections at  
 4 three public places in the town, ten days before the same is held.  
 5 And in case the said board shall neglect at any time to appoint in-  
 6 spectors, the sheriff of the county shall summon two freeholders of  
 7 the town, who with him shall make such appointment. And said  
 8 inspectors shall make out two statements of the election so held,  
 9 and return one to the register of deeds of their county and return  
 10 the other to the secretary or clerk of the town in which the election  
 11 was held. And the return of every such election shall be duly re-  
 12 corded by said register and secretary or clerk.

R. C., c. 111, s. 4.  
 1868-'9, c. 11.

**Sec. 3770. Inspectors of elections; their duties.**

The inspectors shall be sworn by some justice of the peace, as in  
 2 elections for members of the general assembly, and they shall con-  
 3 duct the election in the like manner and during the same hours

R. C., c. 111, s. 5.

4 of the day, as elections for members of the general assembly. And,  
5 at the close of the poll they shall declare elected such persons as  
6 have the highest number of votes; and they shall, within ten days,  
7 notify the persons elected.

**Sec. 3771. Election tied, decided by lot.**

R. C., c. 111, s. 6.

If among the number voted for, there should be any two or more  
2 who may have an equal number of votes, and either would be duly  
3 elected but for the equal vote, the inspectors shall determine by  
4 lot the election between them.

**Sec. 3772. Number of commissioners and time of election may be changed.**

R. C., c. 111, s. 7.

After the first election the voters of the town may, whenever and  
2 as often as they choose, by a vote at the time of electing commis-  
3 sioners, and due notice given thereof by the commissioners then in  
4 authority, alter, by a concurring majority of all the votes cast, the  
5 number of commissioners, so that the number be not more than  
6 seven nor less than three; and thenceforth the number of commis-  
7 sioners agreed on shall be chosen.

**Sec. 3773. On change of time of, or failure to hold, election, incumbents to hold over.**

R. C., c. 111, s. 8.

Whenever the day of election shall be altered, the officers of the  
2 corporation elected or appointed before that day, shall hold their  
3 places till the day of election, and until other officers shall be  
4 elected or appointed and qualified. And they shall hold their  
5 offices in like manner, when there is any failure to make the an-  
6 nual election.

**Sec. 3774. Vacancy, how filled.**

R. C., c. 111, s. 9.

In case of a vacancy after election, in the office of commissioner  
2 the others may fill it until the next election.

**Sec. 3775. Election of mayor or other chief officer; tie vote, how decided; term of office; vacancy; duties of mayor.**

R. C., c. 111, s. 10.

In like manner, and at the same time when commissioners are  
2 elected, the voters may by ballot, under the inspection of the same  
3 persons and under the same rules and regulations, elect a mayor  
4 of the town; and the persons having the highest number of votes,  
5 shall be declared elected. If, among the number voted for, there  
6 should be any two or more who may have an equal number of  
7 votes, and either would be elected but for the equal vote, the elec-  
8 tion shall be determined as in the case of commissioners; and he  
9 shall be notified and hold his office for the same term as the com-  
10 missioners; and in case of a vacancy in the office, the commission-  
11 ers may fill the same. The mayor or other chief officer shall pre-  
12 side at the meetings of the commissioners, but shall have no vote

13 except in case of a tie; and in the event of his absence or sickness,  
14 the board of commissioners may appoint one of their number, *pro*  
15 *tempore*, to exercise his duties.

**Sec. 3776. Registration of qualified voters to be made.**

It shall be the duty of the corporate authorities of every city and 1870-'71, c. 24, s. 2.  
2 town to cause a registration to be made of all the qualified voters  
3 residing therein, under the same rules and regulations prescribed  
4 by law for the registration of voters for general elections.

**Sec. 3777. Qualification of officers.**

No person shall be a mayor, commissioner, intendant of police, 1870-'71, c. 24, s. 3.  
2 alderman or other chief officer of any city or town, unless he shall  
3 be a qualified voter therein.

**Sec. 3778. Municipal electors to be held on first Monday in May.**

The time for the regular election for municipal officers in the 1870-'71, c. 24, s. 6.  
2 cities, towns and incorporated villages of this state, shall be the  
3 first Monday in May in each year.

**Sec. 3779. Mayor to take the prescribed oaths.**

The mayor, before some justice of the peace, shall take the oaths R. C., c. 111, s. 11.  
2 prescribed for public officers, and an oath that he will faithfully  
3 and impartially discharge the duties imposed upon him by law.

**Sec. 3780. Commissioners to take oath of office; their powers.**

The commissioners shall take an oath before some justice of the R. C., c. 111, s. 12.  
2 peace, that they will faithfully and impartially discharge the duties  
3 of their office. They shall have power to make such by-laws, rules  
4 and regulations for the better government of the town, as they may  
5 deem necessary: *Provided*, the same be not inconsistent with the  
6 provisions of this chapter, or the laws of the land.

**Sec. 3781. Powers and duties of commissioners enumerated.**

Among the powers hereby conferred on them, they may, R. C., c. 111, s. 13.  
2 not oftener than annually, lay a tax on real and personal estate 1862, c. 51, (Consol.  
3 within the corporation; on such polls as are taxed by the general Acts.)  
4 assembly for public purposes; on all persons, apothecaries and  
5 druggists excepted, retailing or selling liquors or wines, of the meas-  
6 ure of a quart or less, a tax not exceeding twenty-five dollars; on all  
7 such shows and exhibitions for rewards as are taxed by the gen-  
8 eral assembly; on all dogs, and on swine, horses and cattle, running  
9 at large within the town. They may also lay taxes for municipal  
10 purposes, on all persons, property, privileges and subjects within  
11 the corporate limits, which are liable to taxation for state and  
12 county purposes. They may appoint a town constable, and such  
13 other officers and agents as may be necessary to enforce their by-



14 laws and regulations, keep their records, and conduct their affairs ;  
 15 may determine the amount of their salaries or compensation ; and  
 16 also the compensation or salary of the mayor ; may impose oaths of  
 17 office upon them, and require bonds from them payable to the  
 18 state, in proper penalties for the faithful discharge of their duties.

*Wingate v. Shuder*, 6 Jon., 552; *Commissioners of Concord v. Patterson & Kesler*, 8 Jon., 182;  
*Wilson v. City of Charlotte*, 74—748; *Cobb v. Elizabeth City*, 75—1; *Holland v. Isler*, 77—1;  
*Moore v. Commissioners of Fayetteville*, 80—154.

**Sec. 3782. Markets; unlawful to tax vehicles selling farm products.**

R. C., c. 111, s. 14.  
 1879, c. 176.

They may establish and regulate their markets, and prescribe  
 2 at what place, within the corporation, shall be sold marketable  
 3 things, in what manner, whether by weight or measure, may be  
 4 sold grain, meal, or flour, if the flour be not packed in barrels,  
 5 fodder, hay, or oats in straw ; may erect scales for the purpose of  
 6 weighing the same, appoint a weigher, fix his fees, and direct by  
 7 whom they shall be paid. And it shall not be lawful for the com-  
 8 missioners or other authorities of any town to impose any tax  
 9 whatever on wagons or carts selling farm products, garden truck,  
 10 fish and oysters on the public streets thereof.

**Sec. 3783. Commissioners may abate nuisances.**

R. C., c. 111, s. 15.

They may pass laws for abating or preventing nuisances of any  
 2 kind, and for preserving the health of the citizens.

*Hill v. City of Charlotte*, 72—55.

**Sec. 3784. Streets and bridges to be kept in repair.**

R. C., c. 111, s. 15.

They shall provide for keeping in proper repair the streets and  
 2 bridges in the town, in the manner and to the extent they may  
 3 deem best ; may cause such improvements in the town to be made  
 4 as may be necessary, and may apportion the same equally among  
 5 the inhabitants, by assessments of labor or otherwise, and the citi-  
 6 zens shall not be liable to work on the public roads without the  
 7 limits of the town. When they determine to repair or improve by  
 8 labor, they may appoint an overseer and compel such persons as  
 9 are liable to perform duty on the public roads, to work on the  
 10 streets, in the same manner and under the same penalties, as are  
 11 provided by-law for the reparation of the public roads. They may  
 12 appoint a town watch or patrol, to be regulated by such rules as  
 13 the commissioners may provide.

*City of Wilmington v. Yopp*, 71—76; *Young v. Town of Henderson*, 76—420.

**Sec. 3785. Commissioners may enforce their by-laws by proper penalties.**

R. C., c. 111, s. 16.

They may enforce their by laws and regulations, by imposing  
 2 penalties on such as violate them ; and compel the performance of  
 3 the duties they impose upon others, by suitable penalties.

*State v. Parker*, 75—249; *State v. Merritt*, 83—677; *State v. Edens*, 85—522.

**Sec. 3786. Baker's bread, its quality and weight regulated.**

They shall have power to make all such laws and regulations as  
2 they may deem necessary to protect the citizens of the town from  
3 imposition and fraud in the manufacture, weight and sale therein  
4 of baker's bread, and to prevent fraudulent mixtures of other sub-  
5 stances therewith; so as to insure that the bread shall be good and  
6 wholesome, and of full weight.

R. C., c. 111, s. 18.

**Sec. 3787. Mayor authorized to enforce the collection of fines and penalties.**

In all cases where judgments may be entered up against any  
2 person or persons, for fines or penalties, according to the laws and  
3 ordinances of any incorporated town, and the person or persons  
4 against whom the same is so adjudged refuses or is unable to pay  
5 such judgment, it may and shall be lawful for the mayor or chief  
6 officer before whom such judgment is entered, to order and require  
7 such person or persons, so convicted, to work on the streets or  
8 other public works, until, at fair rates of wages, such person or per-  
9 sons shall have worked out the full amount of the judgment and  
10 costs of the prosecution.

1866-'7, c. 13.

**Sec. 3788. List of taxables to be taken by mayor; double tax, when paid; assessors of real estate.**

The mayor, or other suitable person, shall, by order of the com-  
2 missioners, take the list of taxables in the town, in such manner  
3 and at such time as the commissioners shall prescribe. If any per-  
4 son fail to list his taxables within the time prescribed by the com-  
5 missioners, he shall be liable to a double tax.

R. C., c. 111, s. 19.

**Sec. 3789. Town constable, his oath, power and duties.**

The town constable shall, before some justice of the peace, take  
2 the oaths prescribed for public officers, and an oath that he will  
3 faithfully and impartially discharge the duties of his office accord-  
4 ing to law. As a peace-officer, he shall have within the town all  
5 the powers of a constable in the county: and as a ministerial offi-  
6 cer, he shall have the same power as a constable in the county, to  
7 execute all process that may be issued by the mayor, and to enforce  
8 the ordinances and regulations of the commissioners as they may  
9 direct.

R. C., s. 111, s. 20.

State v. Parker, 75—249; State v. Belk, 76—10.

**Sec. 3790. Constable's bond and power to collect taxes.**

He shall have the same power to collect the taxes imposed by the  
2 commissioners, as sheriffs have to collect the taxes imposed by the  
3 county commissioners; and he may be required by the commis-  
4 sioners to give bond, with sufficient surety, payable to the state of  
5 North Carolina, in such sum as the commissioners may prescribe,  
6 to account for the same; upon which suit may be brought by the

R. C., c. 111, s. 21.

7 commissioners, as suits are brought upon the bonds of other offi-  
8 cers. The bond of the constable shall be duly proved, before the  
9 mayor and commissioners, and registered in the office of the regis-  
10 ter of deeds.

**Sec. 3791. Town constables authorized to serve civil process.**

1879, c. 266.

It shall be lawful for city and town constables to serve all civil  
2 process that may be directed to them for any court within their re-  
3 spective counties, under the same regulations and penalties as pre-  
4 scribed by law in the case of other constables.

**Sec. 3792. Policemen may execute criminal process.**

A policeman shall have the same authority to make arrests and  
2 to execute criminal process, within the town limits, as is vested by  
3 law in a sheriff.

**Sec. 3793. Town officers refusing to qualify liable to penalty of twenty-five dol-  
lars.**

R. C., c. 111, s. 22.

Every person elected or appointed commissioner, mayor, town  
2 constable, or assessor of real estate, who, after being duly notified,  
3 shall neglect or refuse to qualify and perform the duties of his  
4 office or appointment, shall pay twenty-five dollars, one half to the  
5 use of the town, and the other half to the use of any person who  
6 will sue for the same.

*London v. Headen*, 76—72; *State v. Heaton*, 77—505.

**Sec. 3794. Town and city collectors to make monthly settlements.**

1879, c. 194, s. 1.

Each town and city constable, or any other officer authorized by  
2 any town or city to collect taxes, fines or penalties shall make a  
3 monthly settlement of all moneys coming into his hands with the  
4 town treasurer or other officer authorized to receive the same.

**Sec. 3795. Failure of officers to settle with treasurer a misdemeanor.**

1879, c. 194, s. 2.  
1881, c. 37.

Any constable or collector of taxes for any town or city, or any  
2 other officer, who shall fail to make settlement and full return of  
3 all moneys, penalties and fines coming into his hands each month  
4 with the town or city treasurer, or other officer authorized to re-  
5 ceive the same, shall be guilty of a misdemeanor, and upon con-  
6 viction therefor shall be fined or imprisoned at the discretion of  
7 the court.

**Sec. 3796. Tax on dogs, how enforced.**

R. C., c. 111, s. 24.

If any person residing in town shall have therein any dog, and  
2 shall not return it for taxation, and shall fail to pay the tax ac-  
3 cording to law, the commissioners, at their option, may fine the  
4 person so failing double the tax, or may treat such dog as a nuis-  
5 ance, and order his destruction.

*Mowery v. Town of Salisbury*, 82—175.



**Sec. 3797. Annual statement of taxes and expenditures to be published.**

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.

R. C., c. 111, s. 25.

**Sec. 3798. Municipal authorities may purchase land for cemeteries.**

It shall be lawful for the commissioners or other municipal authorities of any town or incorporated village to buy and hold either within or without such corporation as much land, not exceeding twenty-five acres, as in the opinion of such commissioners or other municipal authority may be sufficient for the purpose of a cemetery.

1870-'71, c. 33, s. 1.

**Sec. 3799. Criminal jurisdiction of mayors same as that of justices of the peace.**

The mayor or chief officer of every city or incorporated town is hereby constituted an inferior court, to be called a municipal court, and as such court said mayor or chief officer shall be a magistrate and conservator of the peace, and within the corporate limits of any city or town shall have the jurisdiction of a justice of the peace in all criminal matters arising under the laws of the state, or under the ordinances of said city or town. The rules of law regulating proceedings before a justice of the peace shall be applicable to proceedings before such mayor or chief officer, and the said mayor or chief officer shall be entitled to the same fees which are allowed to justices of the peace.

1876-'7, c. 243, s. 1.

See 1871-'2, c. 195, s. 1; State v. White, 76—15; Town of Washington v. Hammond, 76—33; City of Greensboro v. Shields, 78—417; State v. Merritt, 83—677.

**Sec. 3800. Authority of the municipal court; appeals therefrom.**

As such court said mayor or chief officer shall have authority to hear and determine all cases that may arise upon the ordinances of said city or town; to enforce penalties by issuing execution upon any adjudged violation thereof and to execute the laws and rules that may be made and provided by the board of aldermen of said city or town, for the government and regulation of the said city or town, but in all cases any person dissatisfied with the judgment of said mayor or chief officer, may appeal to the superior court as in case of a judgment rendered by a justice of the peace.

1876-'7, c. 243, s. 2.

**Sec. 3801. Violation of ordinance a misdemeanor.**

Any person or persons violating any ordinance of any city or town of this state shall be guilty of a misdemeanor, and shall be subject to the provisions of this chapter.

1871-'2, c. 195, s. 2.

Hendersonville v. McMin, 82—532; State v. Merritt, 83—677.

**Sec. 3802. How debts of municipal corporations shall be paid.**

1870-'71, c. 99, s. 1.

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 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.

*Belo v. Commissioners of Forsyth, 76—489; Hawley v. Commissioners of Fayetteville, 82—22.*

**Sec. 3803. Municipal officers to transfer books and property to successors; penalty for failure.**

1870-'71, c. 177, s. 1.

All municipal officers, mayor, aldermen, commissioners 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 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.

**Sec. 3804. Tax lists may be corrected.**

1870-'71, c. 177, s. 2.

All tax lists, either county or municipal, which may 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 guilty of a misdemeanor, and, upon conviction, be subject to the penalties imposed by the preceding section.

**Sec. 3805. Mayor and commissioners may sell corporate property.**

1872-'3, c. 112, s. 2.

The mayor and commissioners of any incorporated town 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.

Sec. 3806. County commissioners may sell property of unincorporated towns and villages.

In any town not incorporated, or where there is no mayor or 1872-'3, c. 112, s. 2.  
2 commissioners, the board of county commissioners shall have the  
3 power given in the preceding section.

Sec. 3807. Mayor authorized to make title to purchaser.

The mayor of any town or the chairman of any board of com- 1872-'3, c. 112, s. 3.  
2 missioners, town or county, is fully authorized to make title to the  
3 purchaser of any property sold under this chapter.

Sec. 3808. Provisions of this chapter, to what places applicable; construction of the word "commissioners."

The provisions of this chapter shall apply to all incorporated R. C., c. 111, s. 23.  
2 cities, towns and villages, where the same shall not be inconsistent  
3 with the provisions of special acts of incorporation, or special laws  
4 in reference thereto, and the word "commissioners" shall also be  
5 construed to mean "aldermen," or other municipal authorities.

Wingate v. Sluder, 6 Jon., 552.

## CHAPTER ONE HUNDRED AND SIXTEEN.

### USURY.

#### SECTION.

3809. Six per cent. the legal rate of interest; proviso.

#### SECTION.

3810. Charging a greater rate of interest than allowed by law a forfeiture of the entire interest; proviso.

Sec. 3809. Six per cent. the legal interest; proviso.

The legal rate of interest shall be six per cent. per annum for 1876-'7, c. 91, s. 2.  
2 such time as interest may accrue, and no more: *Provided, however,*  
3 that upon special contract in writing, signed by the party to be  
4 charged therewith, or by his agent, so great a rate as eight per  
5 cent. may be allowed.

Sec. 3810. Charging a greater rate of interest than allowed by law a forfeiture of the entire interest; proviso.

The taking, receiving, reserving, or charging a rate of interest 1876-'7, c. 91, s. 3.  
2 greater than is allowed by the preceding section, when knowingly  
3 done shall be deemed a forfeiture of the entire interest which the  
4 note, or other evidence of debt, carries with it, or which has been  
5 agreed to be paid thereon; and in case a greater rate of interest  
6 has been paid, the person by whom it has been paid, or his legal  
7 representative, may recover back, in an action in the nature of an



8 action of debt, twice the amount of interest paid: *Provided*, such  
 9 action shall be commenced within two years from the time the  
 10 usurious transaction occurred.

Ballinger v. Edwards, 4 Ire. Eq., 449; Houston v. Potts, 65—41; Coor v. Spicer, 65—401; Bledsoe v. Nixon, 69—89; Little v. Anderson, 71—190; Simonton v. Lanier, 71—498; Merchant's Bank v. Myers, 74—514; Coble v. Shoffner, 75—42; Mills v. Salisbury Building and Loan Association, 75—292; Beard v. Bingham, 76—285; Cox v. Brookshire, 76—314; Latham v. Washington Building and Loan Association, 77—145; Purnell v. Vaughan, 77—268; Commissioners of Craven v. Atlantic and North Carolina Railroad Co., 77—289; Hanner v. Greensboro Building and Loan Association, 78—188; Long v. Bank, 81—41; Kidder v. McIlhenny, 81—123; Bank v. Lutterloh, 81—142; Grant v. Morris, 81—150; Purnell v. Vaughan, 82—134; Cobb v. Morgan, 83—211; Bank v. Lineberger, 83—454; Moore v. Woodward, 83—531; Oldham v. Bank, 85—240.

## CHAPTER ONE HUNDRED AND SEVENTEEN.

### WEIGHTS AND MEASURES.

#### SECTION.

3811. Weights and measures to be used.  
 3812. Standard weights and measures to be provided by board of county commissioners.  
 3813. Keeper of weights and measures under direction of governor, to furnish to counties at prime cost weights and measures in preceding section; to contract for manufacture of plain sealed weights and measures; proviso.  
 3814. Standard keeper appointed; his oath and bond.  
 3815. Weights and measures to be tried by standard keeper, once in two years, and certificate given; penalty for not having them examined.

#### SECTION.

3816. For selling or buying by, when not branded or marked.  
 3817. Acre of land, of what measure to be.  
 3818. To appoint a standard keeper; in case of vacancy, keeper of capitol to be *ex officio* keeper of weights and measures.  
 3819. Compensation of standard keeper.  
 3820. Standard keeper shall supply counties.  
 3821. Standard keeper to keep record.  
 3822. Standard keeper shall destroy balances that cannot be adjusted.  
 3823. Thirty pounds of cotton seed to constitute one bushel; proviso.  
 3824. Weight of bushel of grain; penalty for taking greater weight.

#### Sec. 3811. Weights and measures to be used.

R. C., c. 117, s. 1.  
 1741, c. 32, s. 2.  
 1866—7, c. 125.

No trader or other person shall buy or sell, or otherwise use in  
 2 trading, any other weights and measures than are made and used  
 3 according to the standard prescribed by the congress of the United  
 4 States: *Provided*, that the provisions of this chapter shall not pre-  
 5 vent the citizens of the state from buying and selling grain by  
 6 measure as may be agreed upon between the parties.

#### Sec. 3812. Standard weights and measures to be provided by board of county commissioners.

1881, c. 199, s. 1.

The board of commissioners of each county shall, at the  
 2 charge of their county, procure standard sealed weights of half  
 3 hundred, quarter hundred, ten pounds, five pounds, two pounds  
 4 and one pound, one-half pound, one-quarter pound, two ounces,  
 5 one ounce, one-half ounce, guaging rod and — sticks; yard stick,  
 6 half bushel, peck, half peck, quarter peck, and one-eighth peck;  
 7 gallon, half gallon, quart, pint, half pint, and gill measure, of the  
 8 United States standard, sealed and branded "N. C."

Sec. 3813. Keeper of weights and measures under direction of governor, to furnish to counties at prime cost, weights and measures in preceding section; to contract for manufacture of plain sealed weights and measures; proviso.

It shall be the duty of the keeper of weights and measures under the direction of the governor, to procure and furnish at prime cost, to any of the counties, upon an order of the board of county commissioners, any of the weights and measures mentioned in the preceding section, and he is hereby authorized by and with the approval of the governor, to contract for the manufacture of plain sealed weights substantially made of iron, steel or brass, as the county ordering may direct; yard stick made of substantial wood, each end neatly covered with metal, sealed, marked and stamped "N. C.," half bushel, peck, half peck, quarter peck, and one-eighth peck, made of substantial, well seasoned wood, with secure metallic binding and casing; gallon, half gallon, quart, pint, half pint, and gill measure, made of light sheet copper with iron handles: *Provided*, the keeper of weights and measures shall procure and furnish as herein provided to the board of commissioners of any county ordering the same, dry and liquid sealed measures and yard stick made of brass or copper. 1881, c. 199, s. 2.

Sec. 3814. Standard keeper appointed; his oath and bond.

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 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 weights and measures, stamps and brands aforesaid, and for the faithful performance of the duties of his office. R. C., c. 117, s. 4.  
1741, c. 32, s. 3.  
1816, c. 901, s. 2.  
1827, c. 22, s. 3.

Sec. 3815. Weights and measures to be tried by standard keeper once in two years, and certificate given; penalty for not having them examined.

Every person using weights or measures, shall bring all his weights and measures and steelyards, embracing balances 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, steelyards, balances and other instruments used in weighing, to be examined 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, steelyards, balances and other instruments used in weighing found or made to agree with the standard, and shall give a certificate of such examination and R. C., c. 117, s. 5.  
1741, c. 32, ss. 4, 5.  
1818, c. 965, s. 1.  
1823, c. 1262.  
1867, c. 126, s. 3.

14 adjustment, stating the weights, measures, steelyards, balances and  
 15 other instruments used in weighing by him examined and ad-  
 16 justed; and every person using, buying, or selling by weights and  
 17 measures, who shall neglect to comply with the requisites of this  
 18 section, shall forfeit fifty dollars, to be recovered at the instance of  
 19 the standard keeper; one half to his use and the other half to the  
 20 use of the county wherein the offence is committed.

**Sec. 3816. For selling or buying by, when not branded or not stamped.**

R. C., c. 117, s. 6.  
 34 Edw. III, c. 5.  
 1741, c. 32, s. 1.  
 1797, c. 160, s. 1.

If any person shall buy, sell, or barter by any weight or measure  
 2 which shall not be tried by the standard, and sealed or stamped  
 3 as aforesaid, he shall, for every such offence, forfeit and pay forty  
 4 dollars; and if any person shall sell and deliver by less measure  
 5 than the standard, he shall forfeit and pay for each offence forty  
 6 dollars to the person suing therefor.

**Sec. 3817. Acre of land, of what measure to be.**

R. C., c. 117, s. 7.  
 33 Edw. I, stat. 6.

The measure of an acre of land shall be equal to a rectangle of  
 2 sixteen poles or perches in length and ten in breadth, and shall  
 3 contain one hundred and sixty square perches or poles, or four  
 4 thousand eight hundred and forty square yards; six hundred and  
 5 forty such acres being contained in a square mile.

**Sec. 3818. To appoint a standard keeper; in case of vacancy, keeper of capitol to be *ex officio* keeper of weights and measures.**

1867, res., p. 228.  
 1881, c. 199, s. 3.

The governor is further authorized to appoint a suitable person  
 2 to take care of such balances, weights and measures, and perform  
 3 the duties relating to weights and measures, now imposed on the  
 4 governor, and such other duties as the governor may prescribe,  
 5 touching said balances and weights and measures; and he shall  
 6 take from such person a bond with surety, to be approved by the  
 7 governor, in the penal sum of five hundred dollars for the  
 8 safe keeping of said weights and measures, and for the per-  
 9 formance of all his duties. And in case the governor fails to  
 10 appoint, or the person appointed fails to qualify or discharge said  
 11 duties, the keeper of the capitol shall be *ex officio* keeper of weights  
 12 and measures, and discharge the duties and receive the compen-  
 13 sation provided.

**Sec. 3819. Compensation of standard keeper.**

1867, res., p. 228.  
 1881, c. 199, s. 4.

Such person shall be allowed such compensation for his services  
 2 as the governor shall deem adequate, not exceeding one hundred  
 3 dollars a year to be paid quarterly, on the warrant of the governor.

**Sec. 3820. Standard keeper shall supply counties.**

1867, c. 126, s. 1

It shall be the duty of the state standard keeper to supply to  
 2 each county, which shall call for the same, such standard weights  
 3 as the standard keeper of such county shall demand, duly sealed,



4 such county paying to the state treasurer the actual cost of such  
5 weights, upon the certificate of the state standard keeper.

Sec. 3821. Standard keeper to keep record.

It shall be the duty of the state standard keeper to keep a book, 1867, c. 126, s. 2.  
2 in which he shall keep an accurate account of all the weights and  
3 measures by him delivered, and the expenses incurred by him in  
4 the purchase of such weights and measures, subject to the inspec-  
5 tion of the state treasurer and the general assembly.

Sec. 3822. Standard keeper shall destroy balances that cannot be adjusted.

In every instance where the standard keeper shall have before 1867, c. 126, s. 4.  
2 him for adjustment, or shall find in the possession of any person,  
3 intending to use the same, any weight or measure that cannot be  
4 adjusted so as to meet the requirements of the law, it shall be the  
5 duty of the standard keeper to destroy the same.

Sec. 3823. Thirty pounds of cotton seed to constitute one bushel; proviso.

Thirty pounds of cotton seed by the standard weight shall con- 1881, c. 19.  
2 stitute one bushel: *Provided*, the provisions of this section shall not  
3 prevent the citizens of this state from buying and selling cotton  
4 seed by measure as may be agreed upon between the parties.

Sec. 3824. Weight of bushel of grain; penalty for taking greater weight.

The bushel of wheat shall be sixty pounds; of rice, forty-four 1856-'7, c. 38, ss. 1, 2.  
2 pounds; of rye, fifty-six pounds; of Indian corn, fifty-four pounds;  
3 of buckwheat, fifty pounds; of barley, forty-eight pounds; of oats,  
4 thirty pounds; of flax seed, fifty-five pounds; of clover, seed sixty-  
5 four pounds; of peas, fifty pounds; of corn meal, forty-six pounds;  
6 and if any person shall take any greater quantity by weight for  
7 one bushel of the several articles mentioned in this section, than  
8 the weight prescribed, he shall forfeit and pay the sum of twenty  
9 dollars to any person who may sue for the same.

CHAPTER ONE HUNDRED AND EIGHTEEN.

WIDOWS.

SECTION.

3825. To what dower a widow is entitled; consequences of an elopement with an adulterer.  
3826. Subject to the provision in the preceding section, widows of intestates, and widows dissenting from will, entitled to a third in value of her husband's estate, including dwelling-house, &c.

SECTION.

3827. Dower not liable to be sold under execution.  
3828. Dower and land in lieu thereof not subject to debts.  
3829. Alienation of husband passes only two-thirds.  
3830. When dower barred.  
3831. Widow may dissent from husband's will.

## SECTION.

3832. Effect of dissent.  
 3833. When dower assigned by heir or devisee with consent of widow.  
 3834. How dower may be applied for.  
 3835. Who must be parties.  
 3836. How dower assigned.  
 3837. Notices to such parties.  
 3838. *Bona fide* conveyances not affected, when.  
 3839. What widows entitled to a year's support; her year's allowance.  
 3840. From what assigned.  
 3841. Value of the allowance.  
 3842. Family defined.  
 3843. Duty of the administrator, &c., to assign.  
 3844. How value of articles assigned, to be ascertained.  
 3845. Upon application of widow, personal representative to apply to justice of the township, &c.; proviso.

## SECTION.

3846. Duty of the commissioners.  
 3847. Appeal may be taken to superior court.  
 3848. Duty of appellant.  
 3849. Sum allowed widow, to be credited to executor, &c., unless impeached for fraud.  
 3850. When above allowance shall be in full.  
 3851. When allowance not full.  
 3852. Application to be made by summons, &c.  
 3853. What to be set forth in complaint.  
 3854. What judgment shall be given.  
 3855. Duty of commissioners, how report returned.  
 3856. Party interested may except.  
 3857. If the report confirmed, what judgment and execution.  
 3858. Costs, how paid.  
 3859. Fees of commissioner, sheriff and justice.

**Sec. 3825.** To what dower a widow is entitled; consequences of an elopement with an adulterer.

1868-'9, c. 93, s. 32.  
 1871-'2, c. 193, s. 44.

Widows shall be endowed as at common law as in this chapter 2 defined: *Provided, however*, if any married woman shall elope with 3 an adulterer, and shall not be living with her husband at his death, 4 she shall thereby lose all right to dower in the lands and tene- 5 ments of her husband; and any such elopement may be pleaded 6 in bar of any action or proceeding for the recovery of dower.

Walters v. Jordan, 12 Ire., 170; Walters v. Jordan, 13 Ire., 361; Cook v. Sexton, 79—305.

**Sec. 3826.** Subject to the provision in the preceding section, widows of intestates and widows dissenting from will entitled to a third in value of her husband's estate, including dwelling house, &c.

R. S., c. 121, s. 3.  
 1827, c. 46.  
 1869-'70, c. 176, s. 1.

Subject to the provision in the preceding section every married 2 woman, upon the death of her husband intestate, or in case she 3 shall dissent from his will, shall be entitled to an estate for her life 4 in one-third in value of all the lands, tenements and hereditaments 5 whereof her husband was seized and possessed at any time during 6 the coverture, in which third part shall be included the dwelling 7 house in which her husband usually resided, together with offices, 8 out houses, buildings and improvements thereunto belonging or 9 appertaining; she shall in like manner be entitled to such an 10 estate in all legal rights of redemption and equities of redemption 11 or other equitable estates in lands, tenements and hereditaments 12 whereof her husband was seized in fee at any time during the 13 coverture, subject to all valid incumbrances existing before the 14 coverture or made during it with her free consent lawfully appear- 15 ing thereto. The jury summoned for the purpose of assigning 16 dower to a widow, shall not be restricted to assign the same in 17 every separate and distinct tract of land, of which her husband 18 may die seized and possessed; but may allot her portion of the

19 whole in one or more tracts, having a due regard to the interest of  
 20 the heirs as well as to the right of the widow.

Harrison v. Wood, 1 D. & B. Eq., 437; Potter v. Everett, 7 Ire. Eq., 152; Mitchener v. Atkinson, Phil. Eq., 23; Royster v. Royster, Phil. L., 226; Stroud v. Stroud, Phil. L., 525; Ramsour v. Ramsour, 63—231; Webb v. Boyle, 63—271; Caroon v. Cooper, 63—386; Rose v. Rose, 63—391; Smith v. Gilmer, 64—546; Reitzel v. Eckard, 65—673; Sutton v. Askew, 66—172; Wesson v. Johnson, 66—189; Bunting v. Foy, 66—193; Felton v. Elliott, 66—195; Williams v. Munroe, 67—164; Hughes v. Merritt, 67—386; Creecy v. Pearce, 69—67; Gregory v. Gregory, 69—522; Ruffin v. Cox, 71—253; McAfee v. Bettis, 72—28; State v. Cunningham, 72—469; Gwathmey v. Pearce, 74—398; Holliday v. McMillan, 79—315; Bruce v. Strickland, 81—267; O'Connor v. Harris, 81—279; Askew v. Bynum, 81—350; Jenkins v. Jenkins, 82—208; O'Kelly v. Williams, 84—281.

**Sec. 3827. Dower not liable to be sold under execution.**

Dower, or right of dower, shall, in no case, be subject to seizure  
 2 on execution for the payment of any debt of the husband during  
 3 the term of the life of the wife.

Avery *ex parte*, 64—113.

**Sec. 3828. Dower and land in lieu thereof not subject to debts.**

The dower of a widow, and also such lands as may be devised to  
 2 her by his will, if such lands do not exceed the quantity she would  
 3 be entitled to by right of dower, shall not be subject to the pay-  
 4 ment of debts due from the estate of her husband, during the  
 5 term of her life.

Gully v. Holloway, 63—84; Avery *ex parte*, 64—113; Simonton v. Houston, 78—408.

**Sec. 3829. Alienation of husband passes only two-thirds.**

No alienation of the husband alone, with or without covenant  
 2 of warranty, shall have any other or further effect than to pass his  
 3 interest in such estate, subject to the dower right of his wife: *Pro-*  
 4 *vided*, that a mortgage or trust deed by the husband to secure the  
 5 purchase money, or any part thereof, of land bought by him,  
 6 shall, without the wife executing the deed, be effectual to pass the  
 7 whole interest according to the provisions of the said deed.

Harrison v. Wood, 1 D. & B. Eq., 437; Potter v. Everett, 7 Ire. Eq., 152; Rose v. Rose, 63—391; Avery *ex parte*, 64—113; Sutton v. Askew, 66—172; Felton v. Elliott, 66—195; Williams v. Munroe, 67—164; Hughes v. Merritt, 67—386; Holliday v. McMillan, 79—315; Bruce v. Strickland, 81—267; O'Connor v. Harris, 81—279; Askew v. Bynum, 81—350; Jenkins v. Jenkins, 82—208; O'Kelly v. Williams, 84—281.

**Sec. 3830. When dower barred.**

The right to dower under this chapter shall pass and be effec-  
 2 tual against any widow or person claiming under her upon the  
 3 wife joining with her husband in the deed of conveyance and being  
 4 privately examined as to her consent thereto in the manner pre-  
 5 scribed by law.

Gwathmey v. Pearce, 74—398.

**Sec. 3831. Widow may dissent from husband's will.**

Every widow may dissent from her husband's will before the  
 2 clerk of the superior court of the county in which such will is  
 3 proved, at any time within six months after the probate. The dis-



4 sent may be in person, or by attorney, authorized in writing, exe-  
 5 cuted by the widow and attested by at least one witness and duly  
 6 proved. The dissent, whether in person or by attorney, shall be  
 7 filed as a record of court. If the widow be an infant or insane, she  
 8 may dissent by her guardian.

*Hinton v. Hinton*, Phil. L., 410; *Simonton v. Houston*, 78—408.

**Sec. 3832. Effect of dissent.**

1868-'9, c. 93, s. 33.

Upon such dissent, the widow shall have the same rights and  
 2 estates in the real and personal property of her husband as if he  
 3 had died intestate.

*Arrington v. Dortch*, 77—367.

**Sec. 3833. When dower assigned by heir or devisee with consent of widow.**

1868-'9, c. 93, s. 39.

If the personal property of a decedent be sufficient to pay his  
 2 debts and charges of administration, the heir or devisee with the  
 3 widow may, by deed, agree to an assignment of her dower.

**Sec. 3834. How dower may be applied for.**

1868-'9, c. 93, s. 40.

If no such agreement be made, a widow may apply for assign-  
 2 ment of dower by the petition in the superior court as in other cases  
 3 of special proceedings.

*Askew v. Bynum*, 81—350.

**Sec. 3835. Who must be parties.**

1868-'9, c. 93, s. 41.

The heirs, devisees and other persons in possession of, or claim-  
 2 ing estates in the lands, shall be parties to such proceeding.

*Ramsour v. Ramsour*, 63—231; *Moore ex parte*, 64—90; *Lowery v. Lowery*, 64—110; *Avery ex parte*, 64—113; *Corney v. Whitehurst*, 64—426; *Bunting v. Foy*, 66—193; *Gregory v. Gregory*, 69—522; *Askew v. Bynum*, 81—350.

**Sec. 3836. How dower assigned.**

1868-'9, c. 93, s. 42.

If dower be adjudged, it shall be assigned by a jury of five per-  
 2 sons qualified to act as jurors, unless one of the parties demand a  
 3 greater number, not exceeding twelve, who shall be summoned by  
 4 the sheriff to meet on the premises or some part thereof, and being  
 5 duly sworn by the sheriff or other person authorized to adminis-  
 6 ter oaths, shall proceed to allot and set apart to the widow her  
 7 dower in said premises according to law and make report of their  
 8 proceedings under their hands within five days to the clerk of the  
 9 superior court.

*Askew v. Bynum*, 81—350.

**Sec. 3837. Notices to such parties.**

1868-'9, c. 93, s. 43.

The parties, or their attorneys, to such proceeding, if within the  
 2 county, shall be notified of the time and place of meeting of the  
 3 jury appointed to assign dower, at least five days before the meeting.

**Sec. 3838. *Bona fide* conveyances not affected, when.**

The provisions of the act of the general assembly entitled "An 1869-'70, c. 153.  
 2 act restoring to married women their common law rights of dower,"  
 3 chapter fifty-four, ratified on the second day of March, one thou-  
 4 sand eight hundred and sixty-seven, shall not be so construed as  
 5 to affect the right or title of any person claiming real estate under  
 6 a conveyance made within thirty days after the passage of the said  
 7 act, but all such conveyances shall have the like force and effect as  
 8 if the said act had been enacted to take effect at the end of thirty  
 9 days after the passage of the same.

**Sec. 3839. What widows entitled to a year's support; her year's allowance.**

Every widow of a deceased intestate, or of a testator from whose 1868-'9, c. 93, s. 8.  
 2 will she has dissented, shall be entitled, besides her distributive 1871-'2, c. 193, s. 44.  
 3 share in her husband's personal estate, to an allowance therefrom, 1880, c. 42.  
 4 for the support of herself and her family for one year after his de-  
 5 cease, and said allowance shall be exempt from any lien, by judg-  
 6 ment or execution acquired against the property of her said hus-  
 7 band: *Provided, however*, if any married woman shall elope with  
 8 an adulterer, and shall not be living with her husband at his  
 9 death, she shall thereby lose all right to a year's provision, and to  
 10 a distributive share from the personal property of her husband,  
 11 and such elopement may be pleaded in bar of any action or pro-  
 12 ceeding for the recovery of such rights and estates.

Rogers *ex parte*, 63—110; Dunn *ex parte*, 63—137; Bolin v. Baker, 75—47; James v. James, 76—331; Cook v. Sexton, 79—305; Grant v. Hughes, 82—216.

**Sec. 3840. From what assigned.**

Such allowance shall be assigned from the crop, stock, and pro- 1868-'9, c. 93, s. 9.  
 2 visions of the deceased in his possession, at the time of his death,  
 3 if there be a sufficiency thereof in value, and if there be a suf-  
 4 ficiency, it shall be made up by the personal representative from  
 5 the personal estate of the deceased.

**Sec. 3841. Value of the allowance.**

Except in cases in which a larger allowance is hereinafter pro- 1868-'9, c. 93, s. 10.  
 2 vided for, the value of a year's allowance shall be three hundred  
 3 dollars, and one hundred dollars in addition thereto for every  
 4 member of the family besides the widow.

Cook v. Sexton, 79—305.

**Sec. 3842. Family defined.**

The family of the deceased, for the purposes of this chapter, shall 1868-'9, c. 93, s. 11.  
 2 be deemed to be, besides the widow, every child, either of the  
 3 deceased or of the widow, and every other person to whom the de-  
 4 ceased or widow stood in place of a parent, who was residing with  
 5 the deceased at his death, and whose age did not then exceed fif-  
 6 teen years.

**Sec. 3843. Duty of the administrator, &c., to assign.**

1868-'9, c. 93, s. 12.

It shall be the duty of every administrator, collector, or executor, or executor of a will, from which the widow of a testator has dis-  
sented, on application in writing, signed by the widow of such in-  
testate 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.

Cook v. Sexton, 79—305.

**Sec. 3844. How value of articles assigned to be ascertained.**

1868-'9, c. 93, s. 13.

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 is granted or the will was proved.

**Sec. 3845. Upon application of widow, personal representative to apply to justice of the township, &c.; proviso.**

1870-'71, c. 260.

Upon the application of the widow, the personal representative  
of the deceased shall apply to the justice of the peace of the town-  
ship in which the deceased resided, or 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 defini-  
tion given in section three thousand eight hundred and forty-two,  
and examine his stock, crop and provisions on hand, and assign to  
the widow so much thereof as will not exceed the value limited  
in this chapter, subject to the deduction prescribed in sec-  
tion three thousand eight hundred and forty-three: *Provided*,  
*however*, that in case there shall be no administration upon said  
estate, or if the widow shall be the personal representative, she may  
make the application, and it shall be the duty of the justice to pro-  
ceed in the same manner as though the application had been made  
by the personal representative: *Provided, further*, that in all cases,  
if there be no crop, stock or provisions on hand, or not a sufficient  
amount, the commissioners may allot to the widow any articles of  
personal property of the deceased, and also any debt or debts  
known to be due him, and such allotment shall vest in the widow  
said property, and the right to collect the debts thus allotted.

Irvin v. Hughes, 82—210.

**Sec. 3846. Duty of the commissioners.**

1868-'9, c. 93, s. 15.

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  
representative. One of these lists shall be delivered to the widow,  
one to the personal representative and one returned by the justice,



6 within twenty days after the assignment to the superior court of  
7 the county, and the clerk shall file and record the same and enter  
8 judgment against the personal representative, to be paid when as-  
9 sets shall come into his hands, for any residue found in favor of the  
10 widow.

*Irvin v. Hughes*, 82—210; \**Long v. Long*, 85—415.

**Sec. 3847. Appeal may be taken to superior court.**

The personal representative, or the widow, or any creditor, leg- 1868-'9, c. 93, s. 16.  
2 atee or distributee of the deceased, may appeal from the finding of  
3 the commissioners to the superior court of the county, and cite the  
4 adverse party to appear before such court on a certain day, within  
5 ten days from the assignment.

**Sec. 3848. Duty of appellant.**

At or before the day named, the appellant shall file with the 1868-'9, c. 93, s. 17.  
2 clerk a copy of the assignment and a statement of his exceptions  
3 thereto, and the issues thereby raised shall be decided as other is-  
4 sues are directed to be; when the issues shall have been decided,  
5 judgment shall be entered accordingly, if it may be without injus-  
6 tice, without remitting the proceedings to the commissioners.

**Sec. 3849. Sum allowed widow to be credited to executor, &c., unless impeached for fraud.**

Upon the settlement of the accounts of the personal represent- 1868-'9, c. 93, s. 18.  
2 ative, he shall be credited with the articles assigned, and the value  
3 of the deficiency assessed as aforesaid, if the same shall have been  
4 paid, unless the allowance be impeached for fraud or gross negli-  
5 gence in him.

**Sec. 3850. When above allowance shall be in full.**

If the estate of a deceased be insolvent, or if his personal estate 1868-'9, c. 93, s. 19.  
2 does not exceed two thousand dollars, the allowance for the year's  
3 support of his widow and her family shall not, in any case, exceed  
4 the value prescribed above; and the allowance made to her as  
5 above prescribed, shall preclude her from any further allowance.

*Cook v. Sexton*, 79—305.

**Sec. 3851. When allowance not in full.**

It shall not, however, be obligatory on a widow to have her sup- 1868-'9, c. 93, s. 20.  
2 port assigned as above prescribed, without applying to the personal  
3 representative of her deceased husband; or, after an allowance  
4 shall have been made to her on her application in manner afore-  
5 said, she may, at any time within one year after the death of her  
6 husband, apply to the superior court of the county in which the  
7 will was proved, or administration granted, to have a year's sup-  
8 port for herself and her family assigned to her.

*Cook v. Sexton*, 79—305.

**Sec. 3852. Application to be made by summons, &c.**

1868-'9, c. 93, s. 21.

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.

**Sec. 3853. What to be set forth in complaint.**

1868-'9, c. 93, s. 22.

In her complaint the widow shall set forth, besides 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.

Cook v. Sexton, 79—305.

**Sec. 3854. What judgment shall be given.**

1868-'9, c. 93, s. 23.

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 her.

**Sec. 3855. Duty of commissioners; how report returned.**

1868-'8, c. 93, s. 24.

The said commissioners shall be sworn by the justice and shall proceed as prescribed in sections thirty-eight hundred and forty-four and thirty eight hundred and forty-five, 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 aforesaid in this chapter; but the value allowed shall not in any case exceed the one half of the annual net income of the deceased for three years next preceding his death. Their report shall be returned by the justice to the court.

**Sec. 3857. Party interested may except.**

1868-'9, c. 93, s. 25.

The personal representative, or any creditor, distributee or lega-

2 tee of the deceased, within twenty days after the return of the re-  
3 port, may file exceptions thereto; the plaintiff shall be notified  
4 thereof and cited to appear before the court on a certain day, within  
5 twenty, and not less than ten days after service of the notice and  
6 answer the same, the case shall thereafter be proceeded in, heard,  
7 and decided as provided in special proceedings between parties.

**Sec. 3857. If the report confirmed, what judgment and execution.**

1 If the report shall be confirmed, the court shall so declare, and 1868-'9, c. 93, s. 26.  
2 execution shall issue to enforce the judgment as in like cases.

**Sec. 3858. Costs, how paid.**

1 If the widow shall recover final judgment for a value greater 1868-'9, c. 93, s. 27.  
2 than that mentioned in section three thousand eight hundred  
3 and forty-one, for an additional value after having received the  
4 value therein mentioned, it shall be in the discretion of the  
5 court to adjudge the whole or any part of the costs against the  
6 widow or the personal representative of the party excepting as may  
7 seem just: but if the widow shall fail to recover more than the  
8 value allowed by said section three thousand eight hundred and  
9 forty-one, computing as part of her recovery any value which may  
10 have been assigned her on application to the personal representa-  
11 tive, she shall pay the whole costs of the proceeding. If the personal  
12 representative shall have failed for thirty days after the widow's  
13 application, to have her year's support assigned to her, he shall  
14 pay the whole costs of her proceeding personally.

**Sec. 3859. Fees of commissioner, sheriff and justice.**

1 The fees of the justice, and commissioners, and sheriff, each, shall 1868-'9, c. 93, s. 28.  
2 be one dollar for the assignment; the other fee and costs shall be  
3 as prescribed in other cases.

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CHAPTER ONE HUNDRED AND NINETEEN.

WILLS AND TESTAMENTS.

SECTION.

3860. Wills of real and personal estate, how executed.  
3861. Ages of testators and executors.  
3862. Wills of married women, how and where proved.  
3863. Appointment by will executed as wills; valid, though other required forms be not observed.  
3864. All property, rights and interests may be disposed of by will.  
3865. Wills to speak at the death of testator.

SECTION.

3866. Lapsed and void devises to pass under residuary clause.  
3867. A general gift to include estates which testator has power to appoint.  
3868. Executor competent witness.  
3869. Devises, &c., to witnesses void.  
3870. When clerk of superior court has jurisdiction of the estate.  
3871. Clerk first acquiring jurisdiction to have exclusive jurisdiction.  
3872. How wills admitted to probate.



## SECTION.

3873. Proofs and examinations in writing.  
 3874. Probate, how far conclusive.  
 3875. Who may apply for probate.  
 3876. Who may apply when executor does not.  
 3877. What to be shown on application.  
 3878. Production of will compelled by process.  
 3879. Will made without the state, how proved.  
 3880. Will of citizen or subject of another country, how allowed and recorded in this state.  
 3881. Will of citizen of this state proved elsewhere, how proved and recorded here.  
 3882. Caveat.  
 3883. Transfer to superior court, when.  
 3884. Order to suspend proceedings.  
 3885. Costs, how paid.  
 3886. Who is disqualified to serve as executor.  
 3887. Executor may renounce.  
 3888. When executor deemed to have renounced.  
 3889. Executor under disqualification of age or absence.  
 3890. Letters of administration with the will annexed to be granted, when and to whom.

## SECTION.

3891. Qualifications, &c., of such administrators.  
 3892. Will of testator to be observed.  
 3893. Oaths, &c.  
 3894. Revocation of letters on proof of will, &c.  
 3895. Revocation on ground of disqualification or default.  
 3896. Letters, how issued and tested.  
 3897. Wills filed in clerk's office.  
 3898. No will effectual without probate; probate conclusive, when.  
 3899. Copies of wills evidence.  
 3900. Written wills, how revoked.  
 3901. Revoked by marriage.  
 3902. Not by altered circumstances.  
 3903. Nor by conveyances after will executed.  
 3904. Devises construed to be in fee, unless the contrary appear.  
 3905. Copies of wills in the office of secretary to be evidence; proviso.  
 3906. Registry of wills recorded in wrong county evidence.  
 3907. Copy of lost or destroyed wills evidence, when.

## Sec. 3860. Wills of real and personal estate, how executed.

No last will or testament shall be good or sufficient, in law, to  
 2 convey or give any estate, real or personal, unless such last will  
 3 shall have been written in the testator's lifetime, and signed by  
 4 him, or by some other person in his presence and by his direction,  
 5 and subscribed in his presence by two witnesses at least, no one of  
 6 whom shall be interested in the devise or bequest of the said estate.  
 7 Or, unless such last will and testament be found among the valua-  
 8 ble papers and effects of any deceased person, or shall have been  
 9 lodged in the hands of any person for safe-keeping, and the same  
 10 shall be in the handwriting of such deceased person, with his name  
 11 subscribed thereto, or inserted in some part of such will; and if  
 12 such handwriting shall be proved, by three credible witnesses, who  
 13 verily believe such will and every part thereof is in the handwrit-  
 14 ing of the person whose will it appears to be, then such will shall  
 15 be sufficient to give and convey real and personal estate.

Rogers v. Briley, 1 Hay., 256; Eelbeck v. Granberry, 2 Hay., 232; Rhea v. Executors, 2 Hay., 342; Bateman v. Masiner, 1 Murphy, 176; Jiggitts v. Maney, 1 Murphy, 258; Harrison v. Burgess, 1 Hawks, 384; Martin v. Hough, 2 Hawks, 368; Allison v. Allison, 4 Hawks, 141; Galloway v. Yates, 1 Dev., 266; Thompson v. McDonald, 2 D. & B. Eq., 463; Lunsford v. Alexander, 3 D. & B., 40; Ragland v. Huntington, 1 Ire., 561; St. John's Lodge v. Callender, 4 Ire., 335; Murray v. Oliver, 6 Ire. Eq., 55; Trexler v. Miller, 6 Ire. Eq., 248; Battle v. Speight, 9 Ire., 288; Graham v. Graham, 10 Ire., 219; Bynum v. Bynum, 11 Ire., 632; Love v. Johnston, 12 Ire., 355; Pridgen v. Pridgen, 13 Ire., 259; Kirby v. Kirby, Busb., 454; Outlaw v. Hurdle, 1 Jon., 150; Cox's Will, 7 Jon., 321; Jones v. Tuck, 3 Jon., 202; Gunter v. Gunter, 3 Jon., 441; Bristol v. Beaver, 3 Jon., 516; Malloy v. McNair, 4 Jon., 297; Galther v. Ballew, 4 Jon., 488; Little v. Lockman, 4 Jon., 494; Grigg v. Williams, 6 Jon., 518; Sawyer v. Sawyer, 7 Jon., 134; Cornelius v. Cornelius, 1 Jon., 563; Adams v. Clard, 8 Jon., 56; Hill v. Bell, Phil., 122; Wood v. Sawyer, Phil., 251; Smith v. Smith, 63—637; Smithdeal v. Smith, 64—52; Hughes v. Smith, 94—498; Belcher's Will, 66—51; Winstead v. Bowman, 68—170; Donoho v. Patterson, 70—649; Mayo v. Jones, 78—402.

## Sec. 3861. Ages of testators and executors.

No person shall be capable of disposing of real or personal estate

R. C., c. 119, s. 1.  
 1784, c. 204, s. 11.  
 1784, c. 225, s. 5.  
 1840, c. 62.  
 1846, c. 54.

R. C., c. 119, s. 2.  
 1811, c. 820.

2 by will, nor be allowed to qualify as executor of a will, until he  
3 shall have attained the age of twenty-one years.

*Williams v. Baker*, 2 Car. L. Rep., 599.

**Sec. 3862. Wills of married women, how and when proved.**

When a married woman, under any will, deed, settlement, or  
2 articles, shall have power, by an instrument in nature of a will, to  
3 appoint or dispose of any property, real or personal, and she shall  
4 execute such instrument, the same may be admitted to probate, as  
5 in case of other wills.

R. C., c. 119, s. 3.  
1844, c. 88, s. 8.

*Newlin v. Freeman*, 1 Ire., 514; *Whitfield v. Hurst*, 3 Ire. Eq., 242; *Whitfield v. Hurst*, 9 Ire., 170.

**Sec. 3863. Appointments by will executed like wills; valid though other required forms be not observed.**

No appointment, made by will in exercise of any power, shall be  
2 valid, unless the same be executed in the manner by law required  
3 for the execution of wills; and every will, executed in such man-  
4 ner, shall, so far as respects the execution and attestation thereof,  
5 be a valid execution of a power of appointment by will, notwith-  
6 standing it shall have been expressly required, that a will made in  
7 exercise of such power should be executed with some additional or  
8 other form of execution or solemnity.

R. C., c. 119, s. 4.  
1844, c. 88, s. 9.

**Sec. 3864. All property, rights and interests may be disposed of by will.**

Any testator, by his will duly executed, may devise, bequeath,  
2 or dispose of all real and personal estate, which he shall be entitled  
3 to at the time of his death, and which, if not so devised, bequeathed,  
4 or disposed of, would descend or devolve upon his heirs at law, or  
5 upon his executor or administrator; and the power hereby given  
6 shall extend to all contingent, executory, or other future interest  
7 in any real or personal estate, whether the testator may or may not  
8 be the person or one of the persons, in whom the same may be-  
9 come vested, or whether he may be entitled thereto under the in-  
10 strument by which the same was created, or under any disposition  
11 thereof by deed or will; and also to all rights of entry for condi-  
12 tions broken, and other rights of entry; and also to such of the  
13 same estates, interests, and rights respectively, and other real and  
14 personal estate, as the testator may be entitled to, at the time of  
15 his death, notwithstanding that he may become entitled to the  
16 same subsequently to the execution of his will.

R. C., c. 119, s. 5.  
1844, c. 88, s. 1.

*Champion and others ex parte*, Busb. Eq., 246.

**Sec. 3865. Wills to speak as at death of testator.**

Every will shall be construed, with reference to the real and  
2 personal estate comprised therein, to speak and take effect, as if it  
3 had been executed immediately before the death of the testator,  
4 unless a contrary intention shall appear by the will.

R. C., c. 119, s. 6.  
1844, c. 88, s. 3.

*Williams v. Davis*, 12 Ire., 21; *Champion and others ex parte*, Busb. Eq., 246; *Robbins v. Windly*, 3 Jon. Eq., 286; *Nooe v. Vannoy*, 6 Jon. Eq., 185; *Radford v. Elmore*, 84—424.

**Sec. 3866. Lapsed and void devises to pass under residuary clause.**

R. C., c. 119, s. 7.  
1844, c. 88, s. 4.

Unless a contrary intention shall appear by the will, such real  
2 estate or interest therein, as shall be comprised, or intended to be  
3 comprised, in any devise in such will contained, which shall fail  
4 or be void by reason of the death of the devisee in the lifetime of  
5 the testator, or by reason of such devise being contrary to law or  
6 otherwise incapable of taking effect, shall be included in the resi-  
7 duary devise (if any) contained in such will.

**Sec. 3867. A general gift to include estates which testator has power to appoint.**

R. C., c. 119, s. 8.  
1844, c. 88, s. 5.

A general devise of the real estate of the testator, or of his real  
2 estate in any place or in the occupation of any person mentioned  
3 in the will, or otherwise described in a general manner, shall be  
4 construed to include any real estate, or any real estate to which  
5 such description shall extend, (as the case may be,) which he may  
6 have power to appoint in any manner he may think proper; and  
7 shall operate as an execution of such power, unless a contrary in-  
8 tention shall appear by the will: and in like manner a bequest of  
9 the personal estate of the testator, or any bequest of personal prop-  
10 erty, described in a general manner, shall be construed to include  
11 any personal estate, or any personal estate to which such description  
12 shall extend, (as the case may be,) which he may have power to  
13 appoint in any manner he may think proper, and shall operate as  
14 an execution of such power, unless a contrary intention shall ap-  
15 pear by the will.

**Sec. 3868. Executor a competent witness.**

R. C., c. 119, s. 9.

No person, on account of being an executor of a will, shall be in-  
2 competent to be admitted a witness to prove the execution of such  
3 will, or to prove the validity or invalidity thereof.

Paunell v. Scoggin, 8 Jon., 408.

**Sec. 3869. Devise and bequests to witnesses void.**

R. C., c. 119, s. 10.

If any person shall attest the execution of any will, to whom or  
2 to whose wife or husband any beneficial devise, estate, interest,  
3 legacy, or appointment of or affecting any real or personal estate  
4 shall be thereby given or made, such devise, estate, interest, legacy,  
5 or appointment shall, so far only as concerns such person attesting  
6 the execution of such will or the wife or husband of such person,  
7 or any person claiming under such person, or wife or husband, be  
8 void; and such person so attesting, shall be admitted as a witness  
9 to prove the execution of such will, or the validity or invalidity  
10 thereof.

McLean v. Elliott, 72—70.

**Sec. 3870. When clerk of the superior court has jurisdiction of the estate.**

C. C. P., s. 433.

The clerk of the superior court of each county has jurisdiction



2 within his county to take proof of wills and to grant letters testa-  
3 mentary, letters of administration with the will annexed, and in  
4 cases of intestacy, in the following cases:

5 (1) Where the decedent at, or immediately previous to his death,  
6 was domiciled in the county of such clerk, in whatever place such  
7 death may have happened;

8 (2) Where the decedent at his death had fixed places of domicile  
9 in more than one county, the clerk of the superior court of any  
10 such counties has jurisdiction;

11 (5) Where the decedent, not being domiciled in this state, died  
12 out of the state, leaving assets in the county of such clerk of the  
13 superior court, or assets of such decedent thereafter come into the  
14 county of such clerk;

15 (4) Where the decedent, not being domiciled in this state, died  
16 in the county of such clerk, leaving assets in the state, or assets of  
17 such decedent thereafter come into the state.

**Sec. 3871. The clerk first acquiring jurisdiction to have exclusive jurisdiction.**

The clerk of the superior court who first gains and exercises C. C. P., s. 434.  
2 jurisdiction under sub-divisions two and three of the preceding  
3 section, thereby acquires sole and exclusive jurisdiction over the  
4 decedent's estate.

**Sec. 3872. How wills admitted to probate.**

Wills and testaments must be admitted to probate only in the C. C. P., s. 435.  
2 following manner:

3 (1) In a case of a written will, with witnesses, on the oath of at  
4 least two of the subscribing witnesses, if living; but when any one  
5 or more of the subscribing witnesses to such will are dead, or re-  
6 side out of the state, or are insane or otherwise incompetent to tes-  
7 tify, then such proof may be taken of the handwriting, both of the  
8 testator and of the witness or witnesses so dead, absent, insane or  
9 incompetent, and also of such other circumstances as will satisfy  
10 the judge of probate of the genuineness and the due execution of  
11 such will.

12 (2) In case of a holograph will, on the oath of at least three  
13 credible witnesses, who state that they verily believe such will and  
14 every part thereof is in the handwriting of the person whose will  
15 it purports to be, and whose name must be subscribed thereto, or  
16 inserted in some part thereof. It must further appear on the oath  
17 of some one of said witnesses, or of some other credible person,  
18 that such will was found among the valuable papers and effects of  
19 the decedent, or was lodged in the hands of some person for safe  
20 keeping.

21 (3) In case of a nuncupative will, where the estate exceeds two  
22 hundred dollars, on the oath of at least two credible witnesses

23 present at the making thereof, who state that they were specially  
 24 required to bear witness thereto by the testator himself. It must  
 25 also be proved that such nuncupative will was made in the testa-  
 26 tor's last sickness, in his own habitation, or where he had been  
 27 previously resident for at least ten days, unless he died on a jour-  
 28 ney or from home. No nuncupative will shall be proved by the  
 29 witnesses after six months from the making thereof, unless it was  
 30 put in writing within ten days from such making; nor shall it be  
 31 proved till a citation has been first issued or publication been made  
 32 for six weeks in some newspaper published in the state, to call in  
 33 the widow and next of kin to contest such will if they think proper.

*Wester v. Wester*, 5 Jon., 95; *Leatherwood v. Boyd*, Winst., 123; *Smith v. Smith*, 63—637;  
*Smithdeal v. Smith*, 64—52; *Belcher's Will*, 66—51.

**Sec. 3873. Proofs and examinations in writing.**

C. C. P., s. 437.

Every clerk of the superior court shall take in writing the proofs  
 2 and examinations of the witnesses touching the execution of a will;  
 3 and he shall embody the substance of such proofs and examina-  
 4 tions, in case the will is admitted to probate, in his certificate of  
 5 the probate thereof, which certificate must be recorded with the  
 6 will. The proofs and examinations as taken must be filed in the  
 7 office.

*Etheridge v. Corprew*, 3 Jon., 14.

**Sec. 3874. Probate, how far conclusive.**

C. C. P., s. 438.

Such record and probate is conclusive in evidence of the validity  
 2 of the will, until it is vacated on appeal or declared void by a com-  
 3 petent tribunal.

*Maoo v. Jones*, 78—402.

**Sec. 3875. Who may apply for probate.**

C. C. P., s. 439.

Any executor named in a will may, at any time after the death  
 2 of the testator, apply to the clerk of the superior court, having  
 3 jurisdiction, to have the same admitted to probate.

**Sec. 3876. Who may apply when executor does not.**

C. C. P., s. 440.

If no executor apply to have the will proved within sixty days  
 2 after the death of the testator, any devisee or legatee named in the  
 3 will, or any other person interested in the estate, may make such  
 4 application, upon ten days' notice thereof to the executor.

**Sec. 3877. What to be shown on application.**

C. C. P., s. 441.

On application to the clerk of the superior court, he must ascer-  
 2 tain by affidavit of the applicant:

3 (1) That such applicant is the executor, devisee or legatee named  
 4 in the will, or is some other person interested in the estate, and  
 5 how so interested.

6 (2) The value and nature of the testator's property, as near as  
7 can be ascertained.

8 (3) The names and residence of all parties entitled to the testa-  
9 tor's property, if known, or that the same on diligent inquiry can-  
10 not be discovered; which of said parties in interest are minors, and  
11 whether with or without guardians, and the names and residence  
12 of such guardians, if known. Such affidavit shall be recorded with  
13 the will and the certificate of probate thereof, if the same is admit-  
14 ted to probate.

**Sec. 3878. Production of will compelled by process.**

Every clerk of the superior court having jurisdiction, on appli- C. C. P., s. 442.  
2 cation by affidavit setting forth the facts, shall, by summons, com-  
3 pel any person in the state, having in possession the last will of  
4 any decedent, to exhibit the same in his court for probate; and  
5 whoever being duly summoned, refuses in contempt of the court,  
6 to produce such will, or (the same having been parted with by him)  
7 refuses to inform the court on oath where such will is, or in what  
8 manner he has disposed of it, shall, by order of the clerk of the  
9 superior court, be committed to the jail of the county, there to  
10 remain without bail till such will be produced or accounted for,  
11 and due submission made for the contempt.

**Sec. 3879. Will made without the state, how proved.**

Whenever it is suggested to the clerk of the superior court, by C. C. P., s. 443.  
2 affidavit or otherwise, that a will has been made without the state,  
3 disposing of or charging land or other property within the state, the  
4 clerk of the superior court of the county where the property is  
5 situated may issue a commission to such person as he may select,  
6 authorizing the commissioner to take the examination of such wit-  
7 nesses as may be produced, touching the execution thereof, and  
8 upon return of such commission, with the examination, he may  
9 adjudge the said will to be duly proved or otherwise, as in cases on  
10 the oral examination of witnesses before him, and if duly proved,  
11 such will shall be recorded.

**Sec. 3880. Will of citizen or subject of another country, how allowed and re-  
corded in this state.**

Whenever any will, made by a citizen or subject of any other C. C. P., s. 444.  
2 state or country, is duly proved and allowed in such state or coun-  
3 try, according to the laws thereof, a copy or exemplification of such  
4 will, duly certified and authenticated, when produced or ex-  
5 hibited before the clerk of the superior court of any county  
6 wherein any property of the testator may be, shall be allowed,  
7 filed and recorded in the same manner as if the original, and not  
8 the copy, had been produced, proved and allowed before such  
9 clerk. But when any such will contains any devise or disposition



10 of real estate in this state, such devise or disposition shall not  
 11 have any validity or operation, unless the will is executed ac-  
 12 cording to the laws of this state; and that fact must appear  
 13 affirmatively in the certified probate or exemplification of the will;  
 14 and if it do not so appear, the clerk before whom the copy is ex-  
 15 hibited, shall have power to issue a commission for taking proofs,  
 16 touching the execution of the will, as prescribed in the preceding  
 17 section; and the same may be adjudged duly proved, and shall be  
 18 recorded as therein provided.

**Sec. 3881. Will of citizen of this state proved elsewhere; how proved and re-  
 corded here.**

C. C. P., s. 445.

When a will, made by a citizen of this state, is proved and al-  
 2 lowed in some other state or country, and the original will cannot  
 3 be removed from its place of legal deposit in such other state or  
 4 country, for probate in this state, the clerk of the superior court  
 5 of the county where the testator had his last usual residence or  
 6 has any property, upon a duly certified copy or exemplification of  
 7 such will being exhibited to him for probate, shall take every  
 8 order and proceeding for proving, allowing and recording said  
 9 copy as by law might be taken upon the production of the original.

**Sec. 3882. Caveat.**

C. C. P., s. 446.

At the time of application for the probate of any will, or at any  
 2 time thereafter, as prescribed by law, any person entitled under  
 3 such will or interested in the estate, may appear in person or by  
 4 attorney before the clerk of the superior court, and enter a caveat  
 5 to the probate of such will.

**Sec. 3883. Transfer to superior court, when.**

C. C. P., s. 447.

Upon any caveator giving bond, with sufficient surety to be ap-  
 2 proved by the clerk, in the sum of two hundred dollars, payable to  
 3 the propounder of the will, conditioned to pay all costs which may  
 4 be adjudged against such caveator in the superior court, by reason  
 5 of his failure to prosecute his suit with effect, the clerk shall trans-  
 6 fer the cause to the superior court for trial; and he shall also forth-  
 7 with issue a citation to all devisees, legatees or other parties in in-  
 8 terest within the state, and cause publication to be made, for six  
 9 weeks, in some newspaper printed in the state, for non-residents to  
 10 appear at the term of the superior court, to which the proceeding  
 11 is transferred, and to make themselves proper parties to the said  
 12 proceeding, if they choose.

King v. Kinsey, 71—407.

**Sec. 3884. Order to suspend proceedings.**

C. C. P., s. 448.

Where a caveat is entered and bond given, as directed in the two  
 2 preceding sections, the clerk of the superior court shall forthwith  
 3 issue an order to any personal representative, having the estate in

4 charge, to suspend all further proceedings in relation to the estate,  
5 except the preservation of the property and the collection of debts,  
6 until a decision of the issue is had.

*Syme v. Broughton*, 86—153.

**Sec. 3885. Costs, how paid.**

The costs in all cases of caveated wills and testaments shall be 1861, c. 61.  
2 paid as the court may in its discretion direct.

*Mayo v. Jones*, 78—402.

**Sec. 3886. Who is disqualified to serve as executor.**

The clerk of the superior court shall not issue letters testament- C. C. P., s. 449.

2 ary to any person who, at the time of applying to qualify, is

3 (1) Under the age of twenty-one years;

4 (2) A person convicted of an infamous crime;

5 (3) Who, on proof, is adjudged by the clerk incompetent to  
6 execute the duties of such trust, by reason of drunkenness, im-  
7 providence, or want of understanding;

8 (4) Who fails to take the oath or to give bond in cases where  
9 executors are required by law to give bond;

10 (5) Who has renounced his executorship.

**Sec. 3887. Executor may renounce.**

Any person appointed an executor may renounce the office by a C. C. P., s. 450.

2 writing signed by him, and on the same being acknowledged or  
3 proved to the satisfaction of the clerk of the superior court, it shall  
4 be filed.

**Sec. 3888. When executor deemed to have renounced.**

If any person appointed an executor does not qualify or renounce C. C. P., s. 451.

2 within sixty days after the will is admitted to probate, the clerk of  
3 the superior court, on the application of any other executor named  
4 in the same will, or any party interested, shall issue a citation to  
5 such person to show cause why he should not be deemed to have  
6 renounced. If, upon service of the citation, he does not qualify or  
7 renounce within such time, not exceeding thirty days, as is al-  
8 lowed in the citation, an order must be entered by the clerk de-  
9 creeing that such person has renounced his appointment as ex-  
10 ecutor.

**Sec. 3889. Executor under disqualification of age or absence.**

Where an executor named in the will is under the disqualifica- C. C. P., s. 452.

2 tion of non-age, specified in section three thousand eight hundred  
3 and eighty-six, or is temporarily absent from the state, such ex-  
4 ecutor is entitled to six months, after coming of age or after his re-  
5 turn to the state, in which to make application to qualify and take  
6 letters testamentary.

**Sec. 3890.** Letters of administration with the will annexed to be granted, when and to whom.

C. C. P., s. 453.

If there is no executor appointed in the will, or if, at any time, 2 by reason of death, incompetency adjudged by the clerk of the su- 3 perior court, renunciation, actual or decreed, or removal by order 4 of the court, or on any other account there is no executor qualified 5 to act, the clerk of the superior court may issue letters of adminis- 6 tration, with the will annexed, to some suitable person or persons, 7 in the order prescribed in the chapter entitled "Executors and Ad- 8 ministrators."

**Sec. 3891.** Qualifications, &c., of such administrators.

C. C. P., s. 454.

Administrators (in cases prescribed in the preceding section) 2 shall have the same qualifications and give the same bond as other 3 administrators.

**Sec. 3892.** Will of testator to be observed.

C. C. P., s. 455.

In all cases, where letters of administration with the will an- 2 nexed, are granted, the will of the testator must be observed and 3 performed by the administrator with the will annexed, both in re- 4 spect to real and personal property, and an administrator with the 5 will annexed has all the rights and powers, and is subject to the 6 same duties as if he had been named executor in the will.

**Sec. 3893.** Oaths, &c.

C. C. P., s. 467.

Before letters testamentary, letters of administration with the 2 will annexed, letters of administration or letters of collection, are 3 issued to any person, he must take and subscribe an oath or affir- 4 mation, before the clerk of the superior court that he will faithfully 5 and honestly discharge the duties of his trust, which oath must be 6 filed in the office of the clerk.

**Sec. 3894.** Revocation of letters on proof of will, &c.

C. C. P., s. 469.

If, after letters of administration are issued, a will is subse- 2 quently proved and letters testamentary are issued thereon; or, if 3 after letters testamentary are issued, a revocation of the will, or a 4 subsequent testamentary paper revoking the appointment of exec- 5 tors, is proved and letters are issued thereon, the clerk of the su- 6 perior court must thereupon revoke the letters first issued, by an 7 order in writing to be served on the person to whom such first 8 letters were issued; and, until service thereof, the acts of such per- 9 son, done in good faith, are valid.

**Sec. 3895.** Revocation on ground of disqualification or default.

C. C. P., s. 470.

If, after any letters have been issued, it appears to the clerk, or 2 if complaint is made to him on affidavit, that any person to whom 3 they were issued, is legally incompetent to have such letters, or that 4 such person has been guilty of default or misconduct in the due



5 execution of his office, or that the issue of such letters was obtained  
 6 by false representations made by such person, the clerk shall issue  
 7 an order requiring such person to show cause why the letters  
 8 should not be revoked. On the return of such order, duly exe-  
 9 cuted, if the objections are found valid, the letters issued to such  
 10 person must be revoked and superseded, and his authority shall  
 11 thereupon cease.

Taylor v. Biddle, 71—1.

**Sec. 3896. Letters, how issued and tested.**

All letters must be issued in the name of the state, and tested in  
 2 the name of the clerk of the superior court, signed by him, and  
 3 sealed with his seal of office.

Taylor v. Biddle, 71—1.

**Sec. 3897. Wills filed in clerk's office.**

All original wills shall remain in the clerk's office, among the  
 2 records of the court, where the same shall be proved, and to the  
 3 said wills any person may have access, as to the other records.

Taylor v. Biddle, 71—1.

**Sec. 3898. No will effectual without probate; probate conclusive, when.**

No will shall be effectual to pass real or personal estate, unless it  
 2 shall have been duly proved and allowed in the probate court;  
 3 and the probate of a will devising real estate shall be conclusive as  
 4 to the execution thereof, against the heirs and devisees of the tes-  
 5 tator, whenever the probate thereof, under the like circumstances,  
 6 would be conclusive against the next of kin and legatees of the  
 7 testator.

Sumner v. Roberts, 2 Dev., 527; Moffit v. Witherspoon, 10 Ire., 185; Marshall v. Fisher, 1 Jon., 111; Floyd v. Flenning, 64—409.

**Sec. 3899. Copies of, evidence.**

Copies of wills, duly certified by the proper officer, may be given  
 2 in evidence in any proceeding wherein the contents of the will  
 3 may be competent evidence.

**Sec. 3900. Written wills, how revoked.**

No will or testament in writing, or any clause thereof, shall be  
 2 revocable, otherwise than by some other will or codicil in writing,  
 3 or other writing declaring the same, or by burning, canceling, tear-  
 4 ing, or obliterating the same, by the testator himself, or in his  
 5 presence and by his direction and consent: but all wills or testa-  
 6 ments shall remain and continue in force, until the same be burnt,  
 7 canceled, torn, or obliterated by the testator, or in his presence and  
 8 by his consent and direction; or unless the same be altered or  
 9 revoked by some other will or codicil in writing, or other writing  
 10 of the testator, signed by him, or some other person in his presence

11 and by his direction, and subscribed in his presence by two wit-  
 12 nesses at least; or unless the same be altered or revoked by some  
 13 other will or codicil in writing, or other writing of the testator, all  
 14 of which shall be in the handwriting of the testator, and his name  
 15 subscribed thereto or inserted therein, and lodged by him with  
 16 some person for safe-keeping, or left by him in some secure place,  
 17 or among his valuable papers and effects, every part of which will  
 18 or codicil or other writing shall be proved to be in the handwriting  
 19 of the testator, by three witnesses at least.

Bethell v. Moore, 2 D. & B., 311; Bennett v. Sherrod, 3 Ire., 303; Hise v. Fincher, 10 Ire., 139;  
 White v. Casten, 1 Jon., 197; *In re Zollicoffer's Will*, 5 Jon., 310; Sawyer v. Sawyer, 7 Jon., 134.

#### Sec. 3901. Revoked by marriage.

R. C., c. 119, s. 23.  
 1844, c. 88, s. 10.

Every will made by a man or woman, shall be revoked by his or  
 2 her marriage, except a will made in exercise of a power of appoint-  
 3 ment, when the real or personal estate, thereby appointed, would  
 4 not in default of such appointment, pass to his or her heirs, execu-  
 5 tor or administrator, or the person entitled as his or her next of  
 6 kin, under the statute of distributions.

Winslow v. Copeland, Busb., 17; Sawyer v. Sawyer, 7 Jon., 134.

#### Sec. 3902. Not by altered circumstances.

R. C., c. 119, s. 24.  
 1844, c. 88.

No will shall be revoked by any presumption of an intention, on  
 2 the ground of an alteration in circumstances.

#### Sec. 3903. Nor by conveyances after will executed.

R. C., c. 119, s. 25.  
 1844, c. 88, s. 2.

No conveyance or other act made or done subsequently to the  
 2 execution of a will of, or relating to any real or personal estate  
 3 therein comprised, except an act by which such will shall be duly  
 4 revoked, shall prevent the operation of the will with respect to any  
 5 estate or interest in such real or personal estate as the testator shall  
 6 have power to dispose of, by will, at the time of his death.

Sawyer v. Sawyer, 7 Jon., 134; Wood v. Cherry, 73—110.

#### Sec. 3904. Devises construed in fee unless contrary intention appear.

R. C., c. 119, s. 26.  
 1784, c. 204, s. 12.

When real estate shall be devised to any person, the same shall  
 2 be held and construed to be a devise in fee-simple, unless such  
 3 devise shall, in plain and express words, show, or it shall be plainly  
 4 intended by the will, or some part thereof, that the testator in-  
 5 tended to convey an estate of less dignity.

Alexander v. Cunningham, 5 Ire., 430; Riley v. Buchanan, 2 Winst., 90; Gibson v. Gibson,  
 4 Jon., 425; Williamson v. Williamson, 4 Jon. Eq., 281; Swann v. Myers, 79—101.

#### Sec. 3905. Copies of wills in the office of secretary of state to be evidence.

R. C., c. 44, s. 12.  
 1852, c. 172.  
 1856—7, c. 22.

Copies of wills filed or recorded in the office of the secretary of  
 2 state, attested by the secretary, may be given in evidence in any  
 3 court, and shall be taken as sufficient proof of the devise of real  
 4 estate, and are declared good and effectual to pass the estate therein

5 devised: *Provided*, that no such will may be given in evidence in  
6 any court nor taken as sufficient proof of the devise unless a cer-  
7 tificate of probate appear thereon.

Stephens v. French, 3 Jon., 359.

Sec. 3906. Registering of wills recorded in wrong counties, evidence.

WHEREAS, By reason of the uncertainty of the boundary lines of 1858-'9, c. 18.  
2 many of the counties of the state, wills have been proved, recorded  
3 and registered in the wrong county, whereby titles are become in-  
4 secure; for remedy whereof:  
5 The registry or duly certified copy of the record of any will, duly  
6 recorded, may be given in evidence in any of the courts of this  
7 state.

Sec. 3907. Copy of lost or destroyed wills evidence, when.

When any will which may have been proved and ordered to be 1856-'7, c. 127.  
2 recorded, shall have been destroyed during the late war, before it  
3 was recorded, a copy of such will, so entitled to be admitted to  
4 record, though not certified by any officer, shall, when the court  
5 shall be satisfied with the genuineness thereof, be ordered to be  
6 recorded, and shall be received in evidence whenever the original  
7 or duly certified exemplification would be; and such copies may  
8 be proved and admitted to record under the same rules, regulations  
9 and restrictions as are prescribed in the chapter entitled "Burnt  
10 and Lost Records."

CHAPTER ONE HUNDRED AND TWENTY.

WRECKS.

SECTION.

- 3908. Wreck districts in certain counties, how laid off.
- 3909. Commissioner of wrecks appointed by governor; his bond and oath.
- 3910. To reside in the district; not to be pilot or officer under United States.
- 3911. Their duty when ships in danger; salvors to be paid; amount ascertained by referees, if parties disagree; superior court may examine award.
- 3912. Commissioners to take charge of, sell, &c., wrecked property; to render account of sales; compensation.
- 3913. Sales advertised, how long and where; how to proceed when property is damaging.
- 3914. Commissioner not to take salvage; no person to interfere with his rights.
- 3915. 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 state treasury.

SECTION.

- 3916. Finders of wrecked property to notify commissioner; penalty for concealing it.
- 3917. Finders, concealing stranded goods, guilty of larceny.
- 3918. Embezzlers, or receivers of such goods, punished as for larceny, &c.
- 3919. Penalty on commissioners for abuse of trust.
- 3920. On persons refusing to aid in saving vessels, &c.; summons proved by him.
- 3921. Finder of wrecked property at sea, to deliver it to commissioner.
- 3922. Penalty on commissioner for violation of this chapter.



## Sec. 3908. Wreck districts in certain counties, how laid off.

R. C., c. 120, s. 1.  
 1817, c. 953.  
 1818, c. 975.  
 1831, c. 47.  
 1831, c. 28.  
 1841, c. 58, ss. 1, 7.  
 1871-'5, c. 226.  
 1881, c. 260.

The counties of Dare, Currituck, Carteret, Onslow, New Hanover, Brunswick and Hyde are divided into the following wreck districts, namely: First district to extend from the dividing lines of Currituck and Dare counties southward to the north point of Oregon inlet. Second district to extend from the north point of Oregon inlet to the south point of New inlet. Third district to extend from the south point of New inlet to the south Ground hill. Fourth district to extend from the south Ground hill to Long Point. Fifth district to extend from Long Point to Crecil's hill. Sixth district to extend from Crecil's hill to the dividing line of Dare and Hyde counties. The county of Currituck into three districts; the first from the Virginia line to Judy's Cove; the second from Judy's Cove to Josephus Baum's fish house; the third from Josephus Baum's fish house to the county line of Dare. The county of Carteret into five districts; the first from the Hyde county line to Ocracoke inlet; the second from Ocracoke inlet to a due south-east line drawn from Harbor island to the sea; the third from said line to a due south-east line drawn from Shell point, on Harker's island, to the sea; the fourth from the last-mentioned line to Old Topsail inlet; the fifth from Old Topsail inlet to the Onslow county line. The county of Onslow into two districts; the first from Bogue inlet to New River inlet; the second from New River inlet to the New Hanover line. The county of New Hanover into two districts; the first from the Onslow county line to Deep inlet; the second from Deep inlet to the Brunswick county line. The county of Brunswick into two districts; the first from New inlet to Lockwood's Folly; the second from Lockwood's Folly to the South Carolina line. And the county 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.

## Sec. 3909. Commissioner of wrecks appointed by governor; his bond and oath.

1868, c. 18, s. 1.  
 1881, c. 99.  
 1881, c. 310.

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 the date of appointment, and shall, at the time of his appointment, enter into bond with good surety in the sum of four 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

11 commissioner shall, before the clerk of the superior court, or any  
12 officer qualified to administer an oath, take the oath.

**Sec. 3910. To reside in district; not to be pilot or officer under the United States.**

Each commissioner shall reside in the district for which he is  
2 appointed, unless separated by navigable waters, and then at a  
3 distance not exceeding three miles from such district; and no  
4 person who shall hold any office or deputation under the United  
5 States, or who is a pilot, shall act as a commissioner of wrecks;  
6 *Provided*, that the restriction herein imposed as to the distance of  
7 the residence of the commissioner from the district for which he is  
8 appointed shall not apply to Hyde county.

R. C., c. 120, s. 3.  
1817, c. 953.  
1801, c. 599.  
1805, c. 689, s. 2.  
1828, c. 18.  
1833, c. 17.  
1834, c. 28.  
1869-70, c. 104, s. 1.

**Sec. 3911. Their duty when vessels in danger; salvors to be paid; sum ascertained by referees if parties disagree; superior court may examine award.**

The commissioners, on earliest intelligence given, that any ship  
2 or other vessel is stranded, or in danger of being stranded, shall  
3 command any sheriff or constable nearest the coast where such  
4 ship or other vessel shall be, to summon as many men as shall be  
5 thought necessary to the assistance of such ship or vessel, who  
6 shall be under the direction of the master or owner; and all per-  
7 sons, except commissioners, who shall assist in preserving any ship  
8 or other vessel in distress, or their cargoes, shall, within forty days,  
9 be paid a reasonable reward by the commander or owner of the  
10 ship or vessel in distress, or by the merchant whose vessel or goods  
11 shall be saved; and, in default thereof, the vessel or goods shall  
12 remain in the custody of the commissioners or salvors until all  
13 reasonable charges be paid, or security given for that purpose to  
14 the satisfaction of the parties; and in case the parties shall dis-  
15 agree touching the amount of reward to be paid to the persons em-  
16 ployed, the commander of the vessel saved, or the owner of the  
17 goods, or merchant interested, or his agent, shall choose one indif-  
18 ferent person, and also the salvors shall nominate one other, who  
19 shall adjust and ascertain the same; and if the persons thus chosen  
20 cannot agree, they shall choose one other indifferent person as um-  
21 pire to decide between them; and if such adjustment shall be un-  
22 satisfactory to either party, he shall declare his dissent, and there-  
23 upon the said award shall be returned to the next superior court  
24 of the county where the same was made, and the court may cause  
25 the same to be re-examined, and pronounce such judgment thereon  
26 as they may deem just; and in the meantime, the commissioner  
27 of wrecks shall retain in his hands, in order to satisfy said judg-  
28 ment, the amount awarded by the referees or umpire.

R. C., c. 120, s. 4.  
1801, c. 599, s. 1.  
1827, c. 21.  
1844, c. 58, s. 3.

**Sec. 3912. Commissioner to take charge of, sell, &c., wrecked property; to render account of sales; compensation.**

The commissioner shall be the only proper person to take charge  
2 of, advertise, or sell, any vessel, cargo, or other wrecked property

R. C., c. 120, s. 5.  
1805, c. 689, s. 1.  
1844, c. 58, s. 4.

3 that may be stranded or cast on shore in his district: *Provided*, that  
 4 the captain, owner, merchant, or consignee, or his agent, may, du-  
 5 ring the absence of the commissioner, or if he refuse to act, take  
 6 charge of, or sell or remove such vessel, cargo or other wrecked  
 7 property; and each commissioner shall provide himself with books,  
 8 and shall record in them all such sales by him made; and every  
 9 commissioner shall receive for selling any wrecked property, five  
 10 per cent. on the amount of sales; and in case of the removal of  
 11 any wrecked property by the owner, merchant, consignee or his  
 12 agent, from the custody of any commissioner, without a sale, then  
 13 such commissioner shall receive two and a half per cent. on the  
 14 amount of the value of such property so removed; which amount  
 15 shall be ascertained in the same manner as the amount of the re-  
 16 ward to be paid to the salvors as provided in the preceding section.

*Etheridge v. Jones*, 8 Ire., 100; *Hetfield v. Baum*, 13 Ire., 394.

**Sec. 3913.** Sale advertised, how long and when, provisos; how to proceed when party is damaging.

1851-7, c. 42.  
 1853, c. 18, s. 2.

When a commissioner shall undertake to sell any wrecked or  
 2 stranded property, he shall advertise the sale thereof, not less than  
 3 twenty nor exceeding thirty days, at the court house door, and at  
 4 other public places in three townships in his county, and should  
 5 said property be adjudged above the value of one thousand dol-  
 6 lars, he shall advertise the same in some newspaper, if any, and  
 7 at one other public place of the towns in the judicial district of  
 8 which his county forms part: *Provided, however*, that the commis-  
 9 sioners of the first, second, third and fourth wreck districts in the  
 10 county of Currituck may advertise when practicable in some news-  
 11 paper published in Norfolk, Virginia, in cases where they are re-  
 12 quired to advertise in a newspaper: *Provided, further*, that in case  
 13 the property is in a damaged state, the commissioner may appoint  
 14 two disinterested merchants to survey the same, and upon their  
 15 recommendation may sell, by advertising for ten days; and the  
 16 commissioner shall pay the merchants so appointed a reasonable  
 17 compensation, to be retained by him out of the proceeds of the sale.  
 18 And if any portion of the damaged cargo be grain or provisions  
 19 may sell by advertising five days, if the sale be ordered by two  
 20 disinterested merchants, and they shall be paid for their services  
 21 from the amount of said sales by the wreck-masters.

**Sec. 3914.** Commissioner not to take salvage; no person to interfere with his right.

R. C., c. 120, s. 7.  
 1844, c. 58, s. 5.

No commissioner shall, in any case, be entitled to salvage on  
 2 property saved; and for the discharge of all the duties which may  
 3 be imposed on him, he shall be entitled to receive only the com-  
 4 missions allowed him by this chapter. And any person who shall  
 5 interfere with the rights and privileges of any commissioner, shall  
 6 be liable to him for such damages as he shall sustain by reason of



7 such interference: *Provided*, that the commissioner, when such per-  
8 son may have been employed in his absence, or in case of his re-  
9 fusal to act, shall tender to the person thus engaged a reasonable  
10 compensation for the trouble and expense the person thus em-  
11 ployed may have incurred.

Sec. 3915. 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 state treasurer.

If any vessel or other property be cast ashore, within the limits  
2 of any district, no person being present to claim the same as owner,  
3 the commissioner of such district shall take possession thereof, and  
4 cause a true description of the marks, numbers, and kinds of such  
5 goods to be advertised in one or more public gazettes, for the space  
6 of eight weeks; and if no person shall claim the same within  
7 twelve months, public sale shall be made thereof, but if perishable,  
8 the goods shall be sold after being advertised as hereinbefore  
9 directed; and after commissions and all reasonable charges are  
10 deducted, the residue of the money, with an account of the whole,  
11 he shall transmit to the clerk of the superior court of the county  
12 in which such vessel may be stranded or goods saved, and the  
13 clerk shall make a record and keep an account of the same, for the  
14 benefit of the owner, who, upon proof of his property, to the satis-  
15 faction of the commissioner associated with two justices, shall, by  
16 their warrant or order, receive the same, paying to the clerk of  
17 said court one per cent. for his trouble; and should no person  
18 claim the same within a year and a day from the date of the ad-  
19 vertisement, then the clerk, holding such money, shall transmit  
20 the same, after deducting one per cent. for his trouble, to the treas-  
21 urer of the state, for the use of the state.

R. C., c. 120, s. 8.  
1801, c. 599, s. 4.  
1868, c. 18, s. 3.

Sec. 3916. Finders of wrecked property to notify commissioner; penalty for con-  
cealing it.

When any person shall find any stranded property on or near  
2 the sea-shore, and no owner appears to claim the same, he shall, as  
3 soon as possible after saving it, give information to the nearest  
4 commissioner of wrecks, and to him deliver the same, for which  
5 he shall be entitled to his reasonable salvage, to be ascertained in  
6 manner before directed; and should any person finding stranded  
7 goods or other property as aforesaid, conceal them, or convert the  
8 same to his own use, or fail, for ten days thereafter, to give informa-  
9 tion thereof to the nearest commissioner of wrecks for his county,  
10 he shall pay to the commissioner, discovering the same, five times  
11 the value of such property, to be recovered before any court hav-  
12 ing jurisdiction thereof.

R. C., c. 120, s. 9.  
1801, c. 599, s. 5.

**Sec. 3917. Finders, concealing stranded goods, guilty of larceny.**

R. C., c. 120, s. 10.  
1801, c. 599, s. 6.

If any person shall find any stranded goods or property on or  
2 near the sea-shore, and shall, secretly, or without notice of such find-  
3 ing given to the commissioner, take the same into his possession  
4 with the intent to defraud the owner or other person of the said  
5 property, or any interest therein; or if, having taken possession of  
6 such goods or property, without such intent, he shall afterwards,  
7 with such fraudulent intent conceal the same, or fail to give notice  
8 to the commissioner, he shall be deemed to have stolen the same  
9 goods or other property; and the said goods and property shall be  
10 deemed and held, as to all persons and for all purposes, to have  
11 been stolen.

**Sec. 3918. Embezzlers or receivers of goods punished as for larceny, &c.**

R. C., c. 120, s. 11.  
1801, c. 599, s. 6.

If any person shall embezzle, steal, or receive, knowing the same  
2 to have been embezzled or stolen, any such goods or property, he  
3 shall forfeit five times the value of the same to the commissioner;  
4 and on conviction thereof shall suffer as if convicted of larceny.

**Sec. 3919. Penalty on commissioners for abuse of trust.**

R. C., c. 120, s. 12.  
1801, c. 599, s. 7.

If any commissioner, by fraud or wilful neglect, abuse the trust  
2 reposed in him, he shall forfeit and pay treble damages to the  
3 party aggrieved thereby, to be recovered by action; and shall there-  
4 after be incapable of acting as a commissioner.

**Sec. 3920. Persons refusing to aid in saving vessels, &c.; summons proved by commissioner.**

R. C., c. 120, s. 13.  
1801, c. 599, s. 7.

If any sheriff, constable or other person, summoned as hereinbe-  
2 fore provided, shall refuse or neglect to give the assistance required  
3 for saving any vessel or her cargo, he shall forfeit and pay the  
4 sum of ten dollars to the commissioner ordering such duty. And  
5 such commissioner, on trial for the recovery of the same, may, by  
6 his own oath, prove the summons of such person.

**Sec. 3921. Finder of wrecked property at sea, to deliver it to commissioner.**

R. C., c. 120, s. 14.  
1828, c. 18, s. 3.

Whenever any property shall be found on board any vessel at  
2 sea, which has been wrecked, or has been abandoned by the crew,  
3 and the property is afterwards brought into the state, the person  
4 in whose possession the same may be, shall deliver it to the com-  
5 missioner of wrecks of the district into which said property may  
6 be brought, to be disposed of as stranded property.

**Sec. 3922. Penalty for violation of law.**

1868, c. 18, s. 4.

Any commissioner of wrecks who shall wilfully violate the pro-  
2 visions of this chapter shall, on conviction thereof, in the superior  
3 court, forfeit and pay a fine not less than one hundred dollars  
4 nor more than two thousand dollars, and be imprisoned for not  
5 less than one month nor more than two years, at the discretion of  
6 the court.

## CHAPTER ONE HUNDRED AND TWENTY-ONE.

## CONCERNING THE CODE.

## SECTION.

3923. When the Code to take effect.

3924. Public statutes not contained in the Code repealed.

3925. Repeal not to affect rights accrued, or suits commenced.

3926. Offences and penalties not affected.

3927. Pending suits or prosecutions not affected.

## SECTION.

3928. Acts heretofore repealed not affected.

3929. Effect of repeal on persons holding offices.

3930. What acts not repealed.

3931. Number of copies to be published.

3932. Compensation of the commissioners.

3933. Ratifying clause.

**Sec. 3923. When Code to take effect.**

All the provisions, chapters and sections contained in this Code  
2 shall be in force from and after the first day of March, in the year  
3 of our Lord one thousand eight hundred and eighty-three, except  
4 only such parts thereof, as to which a different provision is ex-  
5 pressly made therein.

**Sec. 3924. Public statutes not contained in the Code repealed.**

All public and general statutes not contained in this Code are  
2 hereby repealed, with the exceptions and limitations hereinafter  
3 mentioned.

**Sec. 3925. Repeal not to affect rights accrued or suits commenced.**

The repeal of the statutes mentioned in the preceding section  
2 shall not affect any act done, or any right accruing, or accrued or  
3 established, or any suit or proceeding had or commenced in any  
4 case before the time when such repeal shall take effect; but the  
5 proceedings in every such case shall be conformed when necessary  
6 to the provisions of this Code.

**Sec. 3926. Offences and penalties not affected.**

No offence committed, and no penalties or forfeitures incurred,  
2 under any of the statutes hereby repealed, and before the time  
3 when such repeal shall take effect, shall be affected by the re-  
4 peal, except that when any punishment, penalty or forfeiture shall  
5 have been mitigated by the provisions of this Code, such provisions  
6 may be extended and applied to any judgment to be pronounced  
7 after the repeal.

**Sec. 3927. Pending suits or prosecutions not affected.**

No suit or prosecution pending at the time of the repeal, for any  
2 offence committed, or for the recovery of any penalty, or forfeiture  
3 incurred, under any of the statutes hereby repealed, shall be af-  
4 fected by such repeal, except that the proceedings in such suit or  
5 prosecution shall be conformed, when necessary, to the provisions  
6 of this Code.



**Sec. 3928. Acts heretofore repealed not affected.**

No statute, or law, which has heretofore been repealed, shall be  
2 revived by the repeal contained in any of the sections of this Code.

**Sec. 3929. Effect of repeal on persons holding offices.**

All persons who at this time shall hold any office under any of  
2 the acts hereby repealed, shall continue to hold the same according  
3 to the tenure thereof.

**Sec. 3930. What acts not repealed.**

No act of a private or local nature; no act relating to fisheries  
2 in any particular section of the state; no act relating to the bound-  
3 aries of the state, or of any county; no act ceding the lands of this  
4 state to the general government; and no act relative to the cor-  
5 porate powers of the trustees of the university shall be construed  
6 to be repealed by any section of this Code.

**Sec. 3931. Number of copies to be published.**

There shall be published of this Code — thousand copies, the  
2 copy-right whereof shall be secured to the state by the commis-  
3 sioners; and the expense of preparing, printing, supervising, pub-  
4 lishing, binding and distributing said copies, shall be paid by the  
5 state treasurer on the warrant of the governor, founded on requi-  
6 sitions made from time to time by the commissioners.

**Sec. 3932. Compensation of the commissioners.**

The Code shall be published as speedily as practicable; and,  
2 when completed and delivered to the order of the governor, the  
3 commissioners and their clerk shall receive such compensation as  
4 to the governor shall seem just and reasonable, to be paid by the  
5 state treasurer upon his warrant.

**Sec. 3933. Ratifying clause.**

This act, known as the Code, shall be in force from and after the  
2 first day of March, in the year of our Lord, one thousand eight  
3 hundred and eighty-three.

# INDEX.

---

## ADOPTION OF MINOR CHILDREN.

- Adoption, letters of, 2; effect of order of, 3; to be recorded, 5.
- Bond given, if orphan minor have property, 4.
- Court grants letters of, 2.
- Effect of order of, 3.
- Guardian or parent party of record, 6.
- Minor child, adopted how, 1.
- Petition for, filed in superior court, 1.

## AGRICULTURE AND GEOLOGY.

- Agents of transportation companies furnish monthly statements of fertilizers shipped, 19.
- Agricultural Society, 34; what property, may hold, 34; funds, how appropriated, 43.
  - officers, 35; provide annual fairs, 37; alter by-laws, 38.
  - yearly allowance of \$1,500, 38; applied, how, 39.
- Agricultural station established, 20.
- Agriculture, department of, 7; expenditures, how defrayed, 31.
  - fix salary of geologist, 30; have specimens of fertilizers on hand, 27.
  - hand-book of information, prepared, 23.
  - keep land and mining registry, 25; powers of, 18.
- Annual fairs ordered, 37; premiums, 39.
- Board of Agriculture, 7; duties of, 13; forms and blanks prescribed by, 11.
  - business and compensation of, 8; powers, 10.
- Chemist, analyzes soils, water, etc., 21; analyzes soils, water, etc., for geologist, 22.
  - duties of, 20; hygienic analyses made by, 2449.
- Commissioner, duties of, 9; labels, etc., of fertilizers filed with, 15.
- County societies, amount of property held by, and how formed, 40.
  - annual statement of money, sent state treasurer, 44; of experiments, reports, etc., 45.
  - funds for premiums, 43; organization of, and how continued, 41.
  - one in each county; certificate of organization, etc., 42.
  - statements of experiments, reports, etc., published yearly, 46.
- Expenditures of department, how defrayed, 31.
- Fertilizers, indictable to offer to sell unstamped; merchant fined who sells unstamped, etc., 17.
  - labeled before shipment, 15.
  - monthly statement of amount shipped; failure a misdemeanor, 19.
  - proceedings to condemn; order of seizure; bond of defendant and judgment, 16.
  - specimens of, sent department, 27.
  - tax on; seizure, etc., of, offered for sale, etc., 14.
- Fines, forfeitures, etc., paid state treasurer, 23.
- Fish, non-residents must have license to take, 26, 3155, 3156.
- Food, soils, water, etc., analyzed by chemist, 21.
- Geologist, appointment and removal, 29, compensation, 30.
  - delivers lectures at University, 22.
  - makes abstracts of surveys; illustrations of state industries, etc., 22.
- Immigration and statistics, 7; agents of, 24.
- Land and mining registry, department to establish, 25.
- Secretary records proceedings, 46.

## ALIENS.

- Take and hold lands, 47.
- prior contracts validated, 48.

## APPRENTICES.

- Apprentices are bound by indenture, 49; for what time, 52.
  - action of, on indenture, 50.
  - compelled to serve, how, 55.
- Clerks bind who, as apprentices, 51.
  - duty of, 54.
- Masters, duty of, 53; misconduct of, 56.

**ASYLUMS--Deaf and Dumb and the Blind.**

Admission; questions to be answered, 61; of those from other states, 62.  
 Clothing and traveling expenses of indigent applicants paid by state, etc., 68.  
 Corporation, to remain a, name, etc., 57.  
 Employees, their compensation, 67; executive committee, etc., 59.  
 Lot in front of colored asylum used as a garden, etc., 69.  
 Officers, removal of; notice thereof; vacancies, how filled, 66, 64.  
 Principal, etc., 59; duties, qualifications, etc.; officers, etc., when elected, 64.  
 Trustees, board of, 53; meetings, 60; confer degrees, 63; report of; treasurer of, etc., 65.

**Insane, Eastern.**

Board of charities, visitors to the asylum, duties, etc., 180.  
 Board of directors authorized to compromise claims for board of patients, 176.  
     books, clerk and records, 179; by-laws, etc., 160; classification, term of office, etc., 151.  
     determine questions of admission in doubtful cases, 166; regulate admissions, 177.  
     duties of, traveling expenses allowed, 153; meetings and report, 154, 161; regulate salaries, etc., 158.  
 Corporate powers, name, etc., of asylum, 150.  
 Discharge of insane person from asylum by order of the judge; bond, action on, etc., 171, 172.  
 Dues to asylum payable to state treasurer, 174.  
 Executive committee, their powers, etc., 152.  
 Fiscal year, its close, 181.  
 Lunatic convict transferred to asylum, when, 32, 35.  
 Money of asylum payable to state treasurer, donations, etc., 175; how drawn, 174.  
 Physician, assistant, term of office and removal, 156.  
 Proceedings to procure admission to asylum, 164; justices report to clerk; questions sent board, etc., 165.  
     to secure transfer to asylum of dangerous lunatic who is solvent, 168; how and when conveyed, 169.  
     justice sends copy of above to clerk who makes order concerning expenses, 170.  
 Removal of incurable insane from asylum, 167.  
     insane colored persons confined for crime, 163; confined otherwise than for crime, 162.  
 Steward, officers, etc., duties, removal, etc., 157, 159; exempt from jury service, 178.  
 Superintendent, qualifications, term of office and removal, 155.  
     controls other officers, 159; disbursements made on warrant of, 174.

**North Carolina.**

Appropriations for, how drawn from state treasury, 96; donations, funds, etc., 94, 97.  
 Board of charities *ex officio* visitors, duties of, etc., 100.  
 Board of directors arrange salaries, etc., 78; duties and powers of, 73.  
     meetings of, and their report, 74; questions and answers forwarded, 85; quorum, etc., 71.  
     record their proceedings, their clerk, etc., 99.  
     regulate admissions, 95; term of office of, etc., 71.  
 Criminals confined in jail and insane sent to asylum; order of judge, etc., 82.  
 Executive committee, 72.  
 Fiscal year closes December 31st, 101.  
 Incorporation of the asylum, acquires and holds property, 70; by-laws, etc., published, etc., 80.  
 Insane, bonds for restraint of; action on, 91; form of bond, 92, 93.  
     confined in jail, how removed to asylum, 81.  
     guardian sells land of, when, 84, 72.  
     incurable, in certain cases returned, 87.  
     indigent, have priority of admission, 107.  
     solvent, when brought before justice of the peace, 88; process issued to sheriff, etc., 89.  
     lunatic convict taken to asylum, when, 82, 35.  
 Officers and employees exempt from jury duty, etc., 93.  
 Persons discharged by order of judges, etc.; bonds for restraint, etc., 91.  
 Physician, assistant; qualifications, term of office and removal, 76.  
 Proceedings to obtain admission to asylum, etc., 83; justice reports to clerk of the court, 84.  
     to place solvent insane in asylum outside the state, 102.  
     custodian of solvent estate to supply necessary funds, 103; justice reports to clerk, etc., 104.  
     clerk presents proceedings to judge, 105.  
     certified copy with approval of judge a warrant to authorize said removal, 106.  
 Questions and answers to be forwarded the board, 85.  
 Steward, matron and engineer; terms of office and removal, 77.  
 Superintendent controls subordinate officers, etc., 79; qualifications and removal, 75.  
     refers doubtful cases to the board, 86.



**Western North Carolina.**

- Asylum, board regulates admissions to, 133; buildings to be completed, 109
  - incorporated, acquires and holds property, 108.
  - lunatic convict taken to, when, 32, 35.
  - money of, paid into state treasury, 133; how drawn out, 137.
  - supported by appropriations, 135.
  - when ready, patients received from North Carolina Asylum, 121.
- Board of charities *ex officio* visitors to asylum, 141.
- Board of county commissioners orders discharge of insane person not in asylum, when, 143.
- Board of directors, by-laws, reports, publications, etc., 119.
  - classification, quorum, term of office, etc., 110; clerk, etc., 140.
  - determine question of admission in doubtful cases, 127.
  - duties of, traveling expenses allowed, 112.
  - meetings of, and their report, 113; regulate admissions to asylum, 136.
  - proceedings of, to be recorded, their books, clerk, and his compensation, 140.
- Executive committee, powers of, etc., 111.
- Fiscal year closes December 31st, 142.
- Insane discharged from asylum, how; bond for safe keeping; action on, 132; form of bond, 133.
  - incurable removed from asylum; expenses of removal, 128.
  - indigent have priority of admission, 149.
  - removal to asylum of those confined for crime, 123; confined otherwise, 122.
  - re-sent to asylum, not re-discharged on bond of defaulting obligor, 131.
  - solvent, how removed to asylum, 129, 130.
- Officers appointed, how, 120; board fixes their salaries, etc., 117.
  - exempt from jury service, etc., 139.
  - steward, matron and other; terms of office and removal, 116.
- Physician, assistant; term of office and removal, 115.
- Proceedings to secure admission to asylum, 124; justices of the peace to report to clerk, 125.
  - questions and answers submitted to the board, 126; who determine questions of admission in doubtful cases, 127.
  - to place insane of sufficient income in asylum outside the state, 144.
  - custodian of estate supplies necessary funds, 145; justices report to clerk, 146.
  - clerk lays same before judge, 147; certified copy warrants removal to designated asylum, 148.
- Superintendent controls other officers, 118; salary, 117.
  - report of, to be published, 119; qualification, term of office, removal, 114.

**ATTORNEYS AT LAW.**

- Attorneys, clerks cannot practice as, 192, 193.
  - disbarred, how, 190, 193L.
  - guilty of fraud, pays double damages, 183.
  - judgment against, failing to pay over collections, 189.
  - justices of the peace cannot act as, 191.
  - licensed by the supreme court, 182.
  - non-residents licensed, when, 183.
  - oath of, 184.
  - pays cost of suit dismissed by failing to file complaint, 187.
  - power of attorneys, etc., 194; right to speak, 195; tax of, 185.

**AUCTIONEERS.**

- Appointed, 196.
  - cannot act without appointment, 198.
  - duties of, etc., 197; fees of, etc., 200.
- Auction tax, what sales exempt from, 199.

**BANKS.**

- Actions by, 202.
  - general duties and liabilities of, 201.
  - notes of, a set off, etc., 202.
  - suits against, barred, when, 541.

**BASTARDY.**

- Affidavit of commissioner, warrant issued on, 203.
- Allowance and fine, 207.
- Appeal, etc., 204.
  - parties and witnesses recognized on, 205.

**BASTARDY--Continued.**

Bastards legitimated, how, 211; effect of, 212.  
 Complaint of mother, warrant issued on, 203.  
 Examination taken within three years, 208.  
 Execution for maintenance, 209.  
 Issue of paternity, 204.  
     case continued, when, 206.  
 Jurisdiction, magistrates have, 203.  
 Putative father apprenticed, etc., when, 210.  
     making default, issue tried, 205.  
     recognized, when, 206.

**BILLS, BONDS AND PROMISSORY NOTES.**

Bills, bonds, etc., bear interest from time of payment, 219.  
     indorsee may sue when obligee may, 113.  
     interest on, when to accrue, 216.  
     negotiable as inland bills of exchange, 213.  
     payable on demand, bear interest, 217.  
     protested, damages on, 220.  
     suable in name of state, when, 223.  
 Contracts to deliver, etc., bear interest as moneyed contracts, 218.  
 Days of grace, etc., 215.  
 Drawer liable on written orders, etc., 214.  
 Indorsee may sue when obligee may, 213.  
 Negotiable securities, indorsers of, liable as sureties, 222.  
 Protest of clerk, etc., evidence of demand, 221.

**BOATS AND CANOES.**

Trespass on; damage and penalty, 224; do not extend, when, 225.  
 Owners of boats can construct drawers in bridges, 3599.

**BOUNDARIES OF STATE.**

Arbitrators appointed, in case of disagreement, 228.  
     disagreement of, reported to general assembly, 229.  
 Commissioners to re-run and re-mark state line, etc., 226.  
     survey sent to general assembly; and adopted by them, 230.  
 Expenses of survey, when and how paid, 227.

**BUILDING AND LOAN ASSOCIATIONS.**

Associations authorized, etc., 231  
     advances, may make to members, 236.  
     articles of, and tax deposited with clerk of court, 231.  
     alterations in, certified and recorded, 232.  
     classes formed, etc., 235.  
     dues, can compel payment of, 234.  
     new members, put on footing with old, how, 235.  
     shares of, etc., number of, etc., 233.

**BURNING WOODS.**

No one can fire woods, except his own, and then gives notice, 238.  
     misdemeanor and penalty therefor, 239.  
 Wagoners must put out their camp-fires, 240.

**BURNT AND LOST RECORDS.**

Burnt and destroyed instruments are evidenced by certified copies, 241.  
 Color of title, determined, how, 247.  
 Conveyances replaced, how, 250.  
 Resurveys of real estate, etc., 242.  
 Deeds, etc., script-evidence of, prior to destruction, is *prima facie* evidence, 255.  
     received as evidence of recitals, 256.  
 Judgments destroyed, how perpetuated, 246.  
 Official bonds, actions on, how prosecuted, 248.

**BURNT AND LOST RECORDS.--Continued.**

- Records of courts anywhere, prove existence of destroyed instruments, 251.
- copies of same can be recorded, 252, and then, of force as originals, 254.
- to what, chapter applies, 257.
- Rules observed in motions and petitions under chapter, 253.
- Wills, contents of, established, how, 245.
- copy of, admitted to probate, 243; is evidence, 244.
- records of courts, etc., admissible to prove, 251.
- Witness tickets made good, how, 249.

**CAPITOL, BUILDINGS AND GROUNDS.**

- Accounts for fuel, etc., sworn to before secretary of state, 267, 268.
- Amount used in case of grounds, 266.
- Board appointed, 258.
- has charge of public buildings, etc., 260.
- keeps walks and grounds in repair, etc., 274.
- Capitol, disorderly conduct in, prohibited and punished, 264, 265.
- keeper of, elected, 253; bond, 263.
- duties, powers, etc., 260, 274.
- has charge of arsenal, etc., 259.
- supervisor of public lots, 270.
- rooms in, assigned, etc., 262; not used as bed-rooms, 261.
- Executive mansion leased and repaired, 269.
- Public lots, free access to, allowed, 273.
- Moore and Nash squares ornamented, etc., 272.
- trespass on, 271.

**CATTLE AND OTHER LIVE STOCK.**

- Cattle distempered cannot run in range, 280, 281.
- driven from one place to another, health certificate required, 279, 282.
- into the highlands, when, 278.
- state, when; exempt from penalty, 277.
- killing in woods, and not showing head and hide, 279.
- owner of, has brand to be recorded, 275.
- Reference, endamaged party proposes, before indictment, 289.
- Railroads, stock killed on, misdemeanor, when, 286, 287.
- evidence of negligence, 285, 288.
- justice of peace has jurisdiction, 284.
- Stone-horses and mules cannot go at large, when, 283.

**CHARITIES--PRIVATE AND PUBLIC.**

- Charities, private, 301.
- Trustees of, account to clerk, when, 301.
- mismanaging trust, action instituted, 302.
- solicitor sues, when, 303; allowed fees, 304.
- Charities, public, 290.
- Board of, elected, compensation, duties, etc., etc., 290, 291, 292.
- county commissioners report to, 298.
- furnish circulars, etc., 298.
- give specific attention to causes of insanity, etc., 293.
- remove insane to asylum, when, 295.
- require reports and visits, 294, 296.
- report to general assembly, 297.
- County commissioners require reports from township justices, 299.
- report to board of charities, 298, 300.

**CHEROKEE LANDS.**

- Agent to be appointed to reside in Macon or Cherokee, to receive money due from purchasers, 372.
- state treasurer to place bonds in his hands, 373.
- treasurer to take receipt from, 374.
- releases, how proved, to certify, 383.
- duties of, 388.
- how to proceed, when part of tract sold, 393.
- not to receipt for, until whole amount paid, 398.
- to return statement, 399.



**CHEROKEE LANDS.--Continued.**

- Agent to suspend further collection of debts due on Cherokee bonds, 401.
  - to appoint overseers to superintend making of road, 430.
  - duty of, in collecting Cherokee bonds, 433.
  - must pay amount to state treasurer, 434.
  - how to collect said sum, 435.
- Board, surrendered lands sold under valuation of, 339.
  - governor to appoint, 404.
  - when and where to meet, 406.
  - their oath, 407.
- Bonds, to be filed with treasurer, 318.
  - commissioner giving, shall proceed to sell, 360.
  - to be placed in agent's hands by treasurer, 373.
  - treasurer to take receipt for, 374.
  - solvent, how paid, 384.
  - how payable, 390.
  - until paid, grant withheld, 398.
  - of, to be cancelled, 409.
  - persons entering lands to file, with entry taker, 425.
- Cherokee lands reserved to Indians, 305; contracts with, in writing and signed by two witnesses, 22, 77.
  - penalty for entering, such, void, 306.
  - lands, governor to direct sale of, 330.
  - laid off into districts, qualities and prices of, 357.
  - no transfer allowed, 368.
  - cutting timber, indictable, 369.
  - agent to reside in, to receive money due from purchasers, 372.
  - collections suspended, 375.
  - agent to suspend collection due on, bonds, 401.
  - extends the pre-emption right to residents in, 417.
  - office of entry taker established in, 423.
  - surveyor elected for, 428.
  - duty of agent collecting bonds, 433.
  - subject to entry as other lands, 437.
- Commissioners appointed by governor, 309.
  - to make return to the comptroller, 320.
  - governor to appoint, to sell lands, 324.
  - to postpone sale if lands do not command proper price, 331.
  - to ascertain what lands in dispute between Indians and those claiming under the state, 332.
  - to bid for the state in certain cases, 334.
  - governor to appoint two to contract with Indians, 335.
  - to report to the next general assembly, 337.
  - appointed to effect contract, 341.
  - conveyances and releases to be taken from the parties, 342.
  - to report to the governor, 344.
  - governor to appoint, their duty, 345.
  - lands for sale to be classed by, sale postponed in certain cases, 346.
  - empowered to sell lots in the town of Franklin, 348.
  - governor authorized to direct sale and to appoint a commissioner, 351.
  - governor to appoint, of sale, who upon giving bond shall sell, 360.
  - to pay over moneys, 363.
  - shall deposit bonds with treasurer, 364.
  - light lots to be sold by, 370.
  - one to be appointed by governor, duties, 381.
  - to take oath, 385.
  - compensation, 386.
  - when original purchaser has not paid, duty of, 396.
  - lowest valuation, 405.
  - not allowed to be a purchaser, 410.
  - to value land, etc., 411.
  - to furnish agents and occupants with certificates, 412.
- Comptroller, commissioners to make return to, 320.
  - duty of, 400.
  - to furnish statement, 408.
- County, temporary jurisdiction of, 321.
  - sale of reservations in Macon, name of, site, 371.
  - agent to reside in, of Macon or Cherokee, 372.
  - vacant lands in, of Macon and Haywood, may be entered, 427.

**CHEROKEE LANDS.--Continued.**

- Ejectment, purchasers may institute action of, 366.
  - of ejectment, 395.
  - occupants may be, by purchasers, 323.
- Entry of Cherokee lands void, penalty, 306.
  - land which sells at fifty cents an acre, not to be entered, 313.
  - when, how and at what price, lands may be, 424.
  - persons heretofore entering lands, must file bonds, if not, others may enter, 436.
  - Cherokee lands may be entered as other lands, 437.
- Entry-taker, office of, established in Cherokee, 423.
  - persons entering lands to file their bonds with, 425.
- Evidence, copies of certain papers filed in secretary of state's office is, 402.
  - grant, on which to issue, 403.
  - certificate of state treasurer, of payment, 319.
  - in land suits in Haywood and Henderson counties, 2030.
- For the benefit of those already settled, 347.
- Governor to appoint commissioners, 309.
  - to give notice of sale, etc., 314.
  - to appoint commissioners to sell land, 324.
  - to direct the sale of Cherokee lands, 330.
  - to appoint two commissioners to contract with Indians, 335.
  - commissioners to report to, 314.
  - to appoint other commissioners, their duty, 345.
  - authorized to direct a sale and to appoint a commissioner for that purpose, 351.
  - to convey certain lands to Haywood county justices, 353.
  - shall appoint commissioners and surveyor, 359.
  - upon giving bond, shall proceed to sell, 360.
  - board appointed by, and court to sell insolvent's land, 389.
  - if persons surrendering do not comply, agent to sell or report to, 391.
  - to advertise, 392.
  - to appoint board to value surrendered lands, 404.
  - may sign what grants, 426.
- Grant, when to issue, 317.
  - certificate of state treasurer, evidence on which to issue, 319.
  - certificate and, how given, 362.
  - to issue to surety, secretary's duty, 397.
  - not to issue till whole amount of bond paid, 393.
  - evidence on what to issue, 403.
  - what, governor may sign, 426.
- Haywood, contract to be registered in, 343.
  - evidence in land suits in, county, 2030.
  - governor to convey certain lands to justices of, county court, 353.
  - vacant lands in, may be entered, 427.
- Indians, lands reserved to, 305.
  - penalty for entering said lands, entries void, 306.
  - purchases of, void, penalty for, 307.
  - unlawful to hunt, range or drive stock on said lands, 308.
  - fine for disobedience, 327.
  - white men may extinguish right of, to said lands, 328.
  - penalty for buying from, remitted, 329.
  - commissioners to ascertain what lands are in dispute between, and those claiming under state, 332.
  - governor to appoint two commissioners to contract with, 335.
  - to ascertain whether said, have sold their titles to individuals, 338.
- Insolvents shall surrender lands purchased and be released, 382.
  - purchasers, provisions extended to securities of, 337.
- Justices of the peace, governor to convey certain lands to, of Haywood county court, 353.
  - to dispose of said lands, 354.
- Macon, what section of land under jurisdiction of, 367.
  - sale of reservations in, and of lands already surveyed, name of county site, 371.
  - an agent appointed to reside in, to receive money from purchasers, 372.
  - surveyed lands in, embraced, 414.
  - pre-emption to extend to settlers on vacant lands in, 415.
  - fine for locating, etc., limited, etc., 416.
  - certificates, 418.
  - advance payments, 419.
  - vacant lands in, may be entered, 427.
  - lots in Franklin may be surveyed and sold, 352.

**CHEROKEE LANDS.--Continued.**

- Morris, contract ratified except as to the claim of, 339.
  - to be enrolled and printed with state laws, 340.
  - commissioners appointed to effect contract, 341.
  - releases and conveyances to be taken from the parties, 342.
  - contract to be registered in Haywood, 343.
- Occupants may be ejected by purchasers, 323.
  - entitled to crops, 325.
  - two occupants, 420.
  - of state lands, rights and privileges of, 432.
- Pre-emption right to extend to settlers only, 394.
  - on certain conditions, 413.
  - to extend to settlers on vacant lands in Macon, 415.
  - fine for locating, etc., limited, etc., 416.
  - extended to residents in Cherokee, 417.
  - time of privilege limited, 421.
  - taxes, 422.
- Public buildings, site for, 312.
  - site for, to be fixed upon, 356.
- Sale, terms of, 315.
  - minimum of price, postponed, 316.
  - month's notice of, by advertisement, 333.
  - bidders not complying with terms of, to forfeit bid, etc., 348.
- Secretary of state to issue grant on affidavit of purchaser, 349.
  - duty of, to grant issue to surety, 397.
  - certain papers in office of, evidence, 402.
- Surveyed lands in Macon embraced, 414.
  - how to be sold, 429.
- Surveyor, his duties, deputy chain carrier, etc., 310.
  - duty in noting mines, etc., three plots of whole land to be made, 311.
  - governor shall appoint, 355.
  - to lay off lands in tracts and districts, qualities, prices, etc., 357.
  - what shall note, maps to be made, 358; for Cherokee elected, 428.
- Toll, penalty for breaking through gates to avoid, 431.
- Treasurer of state, bonds for purchase filed with, 313.
  - certificate of, may be evidence of payment, 349.
  - to place bonds in hand of agent, 373.
  - to take receipts from agent for the same, 374.
  - to make out statement of amount due on bonds, etc., 378.
  - amount agent must pay to, 431.
- Who shall not be entitled to the benefits of this chapter, 376.

**CLERK OF THE SUPERIOR COURT.**

- Clerk, accounts of, how audited, 472.
  - appoints deputies, 441.
- bond, 438; approval of, 439; deposits mortgage in place of, 437.
  - failure to give, 442; renewal of, 443.
- books kept by, 449.
  - furnished by boards of commissioners, 478.
- cannot act as an attorney, 475, 492.
- certifies affidavits, 1004.
- certifies to secretary of state appointees to office of justice of peace, 445.
- court means, when, 497.
- disqualification to act, 469; waiver of, 470.
- duty of, failure in, 466; in relation to pleadings, etc., 617-622.
- fees of, etc., 3675.
- fee bill of, to be posted, 3676.
- going out of office transfers records, etc., to successor, 439.
- issues of fact joined before, transferred to court, appeals, etc., 431.
- jurisdiction of, 468.
- money judgments of, entered on judgment docket, 451.
- office, where kept, 446.
  - of probate judge abolished, 467; business attended to by clerk, 479, 430.
- papers in each action kept separate and filed, 452.
- powers of, enumeration, 473.
- punishments of, etc., 488.
  - see further "clerks" under "crimes."
- qualification of, 440; acting without, 445.
- receipts for money paid, produced before bond renewed, 443.



**CLERKS OF THE SUPERIOR COURT---Continued.**

- Clerk receives official papers, 447.
  - records kept by, 448, 477; examined by solicitor, 454.
  - reports yearly of all funds, etc., 456; failure, 458.
    - approved and registered, 457.
  - resignation of, 444.
  - special proceedings before, 644, 655.
- Costs, bills of, itemized statement inserted, 459.
  - statement of, made in thirty days, 460.
- Fines, itemized statement of, made, etc., 461.
  - appropriated to common schools, 465.
  - collected heretofore paid to treasurer, 464.
  - paid to county treasurer, 462, 463.
- Mortgage, any one can deposit in place of bond, 485; affidavit, etc., 486.
  - clerk may deposit, 487.
  - deposited in lieu of prosecution bond, 482.
  - executors, officers, etc., deposit, when, 483, 484.
- Removal of proceedings, 471.
  - clerk cannot act as attorney, 475.
  - papers, etc., filed, 476.
  - party appears, how, 474.
  - records kept by clerk, 477.
  - special proceedings before, 644, 655.

**CODE OF CIVIL PROCEDURE---Actions, civil, appeal in.**

- Appeal, court compels plaintiff to secure costs on, from justice's judgment, 936.
  - entered by clerk on judgment docket, 931.
  - from justice's judgment tried at first term, 937.
  - in forma pauperis*, 924.
  - intermediate orders affecting judgment, reviewed on, 934.
  - in what cases taken, 919; when taken, execution not suspended, 920.
  - judgment on, 935.
  - perishable property sold, notwithstanding, 932.
  - plaintiff appealing and not recovering greater sum, he shall not recover, but be liable for costs, 938.
  - security given on, or deposit made unless waived, 923.
  - substituted for writs of error, 915.
  - undertakings on, and writs of *certiorari*, 935.
  - who may, 918.
- Clerk makes copy of judgment roll and sends, to supreme court, 922.
- Judgment against party cast and his sureties, 937.
  - amount of, how ascertained in case of default, 937.
  - for money, security to stay execution, 925.
  - intermediate order affecting, reversed on appeal, 934.
  - on appeal, restitution, etc., 935.
    - from justices, court may compel plaintiff to secure costs, 936.
  - to deliver documents, etc., same deposited or security given, 926.
    - real property or for mortgage sale, security, 928.
  - execute conveyance; same executed and deposited, 927.
- Orders made out of court, how vacated or modified, 917.
- Proceedings stayed on security given, 929.
- Undertaking filed with clerk, 933.
  - in one instrument or several, 930.
  - new, when sureties first become insolvent, 925.
  - of no effect, unless sureties justify, 931.
  - on appeals and writs of *certiorari*, 935.
- Writs of *certiorari*, *recordari* and *supersedeas*, 916.
  - undertakings on, 935.
  - error abolished and appeals substituted, 915.

**ACTIONS, CIVIL, COSTS IN.**

- Costs against assignee after action brought, 910.
  - infant plaintiff, 905.
  - allowed defendant, when, 897.
    - either party in the courts discretion, 893.
    - plaintiff, 897.
- in action by or against executor, trustee of express trust, etc., 906.
  - by state for private persons, 908.

**ACTIONS, CIVIL, COSTS IN--Continued.**

- Costs in action, civil, by state, 907.
  - appeals by state to supreme court of United States, 909.
  - special proceedings, 912.
  - inserted in judgment, how, 903.
  - interlocutory, adjusted, 903.
  - judgment for, against plaintiff and sureties failing to maintain action, 914.
  - on appeals from justices of the peace, 913.
  - on appeals generally, 911.
  - what costs allowed, 899.
- Fee bill of attorneys abolished, 895.
  - of referees, 904.
- Interest allowed, when, 900.
  - ascertained by clerk in judgments by default final, 902.
  - jury distinguish principal from, 901.
  - on contracts, except penal bonds, and on all judgments, 901.

**ACTIONS, CIVIL, GENERAL PROVISIONS.**

- distinction between actions at law and suits in equity abolished, 498.
- feigned issues abolished, 500.
- forms of actions, 498.
- parties designated plaintiff and defendant, 499.

**ACTIONS, CIVIL, TIME OF COMMENCING.**

- Acknowledgment by partner, etc., after dissolution, 536.
  - or new promise to be in writing, 537.
- Action by aliens; time of war not counted, 530.
  - commenced, when, 526.
  - death of person entitled to bring, before limitation expires, 529.
  - disability must exist, when right of, accrued, 534.
  - on claims filed by executors, etc., admitted not barred; applicable to claims already filed, 529.
  - plaintiff commences new, when judgment reversed, 531.
  - time during controversy about probate of will not counted, 533.
    - for commencement of, against defendant out of state, 527.
    - of stay by injunction, etc., not counted, 532.
  - title does not affect, against directors, etc., of moneyed corporations, 540.
    - to enforce payment of bills, etc., 539.
- Co-tenants, when some barred, others not, 538.
- Disabilities must exist, when right of action accrued, 534.
  - persons under, 528.
  - several, all to be removed, 535.
- Judgment reversed, plaintiff may commence new action, 531.
  - time to enforce against defendant out of state, 527.
- Suits, certain, against banks barred, 541.
- Title does not affect actions against directors, etc., of moneyed corporations, etc., 540.
  - limitations in such cases prescribed, 540.
  - to enforce payment of bills, etc., 539.

**ACTIONS, CIVIL, MANNER OF COMMENCING.**

- Action against executors and administrators, 581.
  - joint and several debtors; partners, 588.
  - for foreclosure of mortgage, 587.
  - parties not summoned in, on joint contract, may be, after judgment, 589.
- Answer and reply verified as in an action, 592.
  - of defendant, 573; reply to, 574.
- Complaint, filing of, 572.
- Counsel, court assigns, 577.
- Defendant allowed to defend before and after judgment, 586.
- Jurisdiction, appearance; notice of *lis pendens*, 595.
- Parties apply for relief in vacation or in term, 596.
- Pauper has counsel assigned, 577.
  - recovers no cost or fees, 578.
  - sues how, 576.
- Reply and answer verified as in action, 592.
  - to answer, 574.
- Sheriff returning defendant not found, plaintiff issues *alias* or *pluries*, 571.

**ACTIONS, CIVIL, MANNER OF COMMENCING--Continued.**

- Summons, civil actions commenced by, 565.
- clerk takes undertaking, before issuing, 575.
- contents of, 579.
- in same action, may issue to several counties at same time, 570.
- returnable when, 567; to regular term of court, 566.
- service of, 580; by publication, 584; manner of, 585.
  - compelled when, 593.
  - manner of service, 583.
  - proof of service, 594.
- to be attested, 569.
- when issued more than ten days before succeeding term, 568.
- plaintiff may issue *alias* or *pluries*, 571.

**ACTIONS, CIVIL, NOT FOR RECOVERY OF REAL PROPERTY.**

- Account current, action upon, when cause accrues, 525.
- Actions by state, limitations to apply to, 521.
- Ten years
  - for foreclosure of mortgage, 517.
  - for redemption of mortgage, 517.
  - for other relief within ten years, 523.
  - upon a judgment of any court of the state or United States, 517.
  - a sealed instrument, 517.
- Seven years,
  - against a personal or real representative, 518.
  - on a justice's judgment, 518.
- Six years,
  - against executor, administrator or guardian, on bond, 519.
  - for injury to an incorporeal hereditament, 519.
  - on official bond of public officer, 519.
- Three years,
  - against bail, 520.
    - sureties of administrator, etc., on official bond of principal, 520.
  - criminal conversation or other injury not arising on contract, 520.
  - fees due officer by judgment, 520.
  - for any contract or obligation not embraced in s. 519, 520, (1).
    - conversion of goods, etc., or for specific recovery thereof, 520.
    - liability created by statute, other than a penalty, 520.
    - relief on the ground of fraud or mistake, 520.
    - trespass upon real property, 520.
- One year,
  - against sheriff, etc., for trespass under color of office, 521.
    - representative of deceased person by creditor, 521.
    - sheriff or other officer, for escape, 521.
  - libel, assault, battery or false imprisonment, 521.
  - upon a statute for a penalty or forfeiture, 521.
- Six months for slander, 522.

**ACTIONS, CIVIL, PARTIES TO.**

- Action by and against a married woman, 543; executor, trustee, etc., 544.;
  - chose in, assignment of, 542.
  - to be by party in interest; by grantee of land adversely held, 542.
  - when not to abate, 553.
- Court may determine controversy and interpleader, 554.
  - Defendants, who are, 549.
- Guardian *ad litem* to file answer, 547.
- Infant defends by guardian *ad litem*, 546; sues by guardian or next friend, 545.
- Joint contracts of co-partners, 552.
- Parties to be joined, 550; to bills, notes, etc., 551.
- Plaintiffs, who are, 548.

**ACTIONS, CIVIL, RECOVERY OF REAL PROPERTY.**

- Action after entry, 510.
- Adverse possession for twenty years, 509.
- Disabilities, cumulative, 514; persons under, 513.
- Landlord and tenant, relation of, 512.



**ACTIONS, CIVIL, RECOVERY OF REAL PROPERTY--Continued.**

- Possession, adverse, for twenty years, 500.
  - presumed; occupation when deemed under legal title, 511.
  - valid against claimants under the state, 505.
- Proviso, in case judgment for plaintiff reversed, etc., 507.
- Railroads, etc., not barred, 515.
- Seizin within twenty years, when necessary, 508.
- When person having title must sue, 506.
  - state will not sue, 504.

**ACTIONS IN GENERAL.**

- Chapter extends to what, 501.
- Limitation, period of, objection taken by answer, 503.
- Time between 20th of May and 1st of January, 1870, not counted, 502.

**ANSWER.**

- What to contain, 609.
- Counter-claim, 610.
- Defences, several, 611; sham and irrelevant, 613.
- Demurrer and answer, 612.

**ARREST AND BAIL.**

- Arrest, defendant before judgment, may apply on motion to vacate order of, 683.
  - confined for lack of bail, may give, 684.
  - how discharged, 664.
  - order of, and affidavits; sheriff to have; copies given defendant, 662.
    - before judgment, defendant may move to vacate, 682.
    - how executed, 663.
    - in what cases allowed, 657.
    - motion to vacate, made on affidavit, 683.
    - obtained on affidavit; to what actions applicable, 659.
    - plaintiff may oppose motion by affidavit or other proof, 683.
    - time when to issue; form; time to answer or move to vacate, 661.
    - undertaking required, before issuing, 660.
    - whence obtained, 658.
- Arrested, no person, except as prescribed, 656.
- Bail adjudged sufficient, examination certified and sheriff exonerated, 674.
  - defendant held for lack of, may give; bond returned to next court, 684.
  - how exonerated, 669.
  - instead of, defendant may make deposit with sheriff, 675, 677.
  - may arrest defendant, 667.
  - notice of justification of, 671, 673.
  - not discharged by amendment of process, 686.
  - on judgment for plaintiff, deposit applied to payment thereof, 678.
  - pays cost in certain cases, 685.
  - proceeded against by action, 668.
  - qualifications of, 672.
  - sheriff, liable as, when, 679.
  - substituted for deposit, deposit refunded, 677.
  - undertaking of, delivered clerk; notice to plaintiff; accepted or rejected by him, 670.
  - when liable to sheriff, 681.

**ATTACHMENT.**

- Actions, appearance in, on defendant's property, etc., returned him, 738.
  - in what, attachment issued, 712.
  - to recover notes, etc., of defendant, prosecuted by plaintiff in action in which attachment issued, 736.
- attachment, how executed on property incapable of manual delivery, 728.
  - of justices levied on land, what to be done, 719.
  - property claimed by third party, may interplead, 740.
- certificate of defendant's interest to be furnished, 734.
- defendant may replevy before sale, 726.
  - on discharge of attachment, property, etc., returned defendant on his appearance in action, 733.
- exception and jurisdiction of sureties, 743.

**ATTACHMENT--Continued.**

- Actions, garnishee, articles confessed by, valued, and judgment for value, 732.
  - denying property, issue made up, 731.
  - failing to appear, proceedings against, 730.
  - judgment against, summons to answer on oath, 729.
  - when judgment conditioned against, 733.
  - interest in corporations, etc., liable to, 727.
  - in what actions issued, 712.
  - undertaking of defendant on appearance to discharge property, 739.
  - warrant, action in which, issued, 736.
    - by whom served, 716.
    - certificate of defendant's interest to be furnished, 734.
    - exception to, and justification of sureties, 743.
    - how executed, 724; how served, 717.
    - issued by justice, publication made, 715.
    - judgment, how satisfied, 735.
    - motion to vacate or modify, or to increase security, 742.
    - to whom directed, and what to require, 722.
    - undertaking before issuing, 722.
    - what shown, to procure, 714.
    - when granted by justice of the peace, 718.
    - sheriff to return, with proceedings thereon, 741.

**CLAIM AND DELIVERY OF PERSONAL PROPERTY.**

- Affidavit and requisites, 688; when, where filed, 699.
- Delivery of property, undertaking of plaintiff, 690.
  - to be claimed when summons issued, 687.
- Property concealed in building, how taken, 695.
  - fiat* of clerk to sheriff to deliver, 689.
  - sheriff not bound to keep; may give to claimant, 698.
  - to be claimed when summons issues, 687.
  - when taken, claimed by third party, 697; how kept, 996.
- Sureties, justification of defendant's, 693; qualifications of, 694.
- Undertaking; exceptions to, 691; where filed, 699.
  - of defendant to retain property, 692.
  - plaintiff for delivery of property, 690.

**CLERK, DUTIES AND POWERS, in relation to Pleadings and Collateral matters.**

- Appeal, any one may, from clerk, 618.
  - duty of clerk on, prayed, 620.
  - judge on, 621.
- judgment from matters of law may be, from, 622.
- jurisdiction of clerk on pleadings, 617.
- taken, by whom and when, 619.

**COMPLAINT.**

- Answer denying debt was contracted for purchase of land, issue submitted to jury, 601.
- Complaint contains, what, 599.
  - what set forth, in action to recover debt contracted for purchase of land, 600.
- Defendant files bond in action for real property, 603.
- Judgment and execution, form of, upon judgment for plaintiff, 602.
- Pleadings, form of, 597.

**COMPROMISE, OFFER OF DEFENDANT TO, WHOLE OR PART OF ACTION.**

- Defendant may disclaim title and plead tender in bar, in trespass on real property, 949.
  - may offer to liquidate damages conditionally, 947.
  - effect of, generally, 946.
    - acceptance or refusal of, 948.
- Offer of compromise, 945.

**COMPUTATION OF TIME.**

- Time, how computed, 968.
  - for publication of notices, 975.

**CONTROVERSY, SUBMITTING WITHOUT ACTION.**

Controversy, how submitted without action, 939.  
 Judgment, how enforced and appealed from, 941.  
 Judgment roll, 940.

**COURT, TRIAL BY.**

Exceptions, how and when taken, 784.  
 Proceedings upon judgment on issue of law, 785.  
 Trial by court, judgment, how given, 783.  
     jury, how waived, 782.

**DEFINITIONS AND DIVISIONS, GENERAL.**

Actions, 491; civil, 495; criminal, 494; division of, 493.  
 Court means clerk, when, 497.  
 Remedies, 490; not merged, 496.  
 Special proceedings, 492.

**DEMURRER.**

Defendant to answer or demur; when to demur, 604, 605.  
 Demurrer specifies grounds of objection, 606.  
 Objections not appearing on complaint, 607.  
     when deemed waived, 608.

**EXAMINATION OF PARTIES.**

Action for discovery abolished, 951.  
 Effect of refusal to testify, 956.  
 Examination of co-plaintiff or co-defendant, 959.  
     persons for whom action brought or defended, 958.  
 Husband and wife witnesses, 960.  
 Party, how compelled to attend, 954.  
     may be examined as a witness, except in certain cases, 952.  
     such examination allowed before trial, 953.  
 testimony of, may be rebutted, 955.  
     not responsive to inquiries, rebutted by oath of party calling him, 957.

**EXAMINATION OF WITNESSES.**

Book accounts, how proved by executors, etc., 964.  
     copies are evidence, unless notice given to produce original, 965.  
     proved in what actions, for sums, and within what time, 963.  
 Interest does not exclude a witness, 961.  
 Party examined, when; when not, 962.

**EXECUTION.**

Bond forthcoming, may be taken for personal property, 832.  
     how to proceed on, if condition broken, 834.  
     surety furnished with a list of the property, 833.  
 Clerk, costs on execution satisfied, paid to, 841.  
     issues execution within six months; penalty, 839.  
     pays money to party entitled, 805.  
     sends copies of payments on judgment in certain cases, 811.  
 Equity of redemption, on sale of, what sheriff sets forth in deed, 820.  
 Execution, after judgment, party may pay same, though no, issued, 804.  
     after three years, issued by leave of court; how obtained, 806.  
     against decedent's property, 816; leave to issue, how obtained, 817.  
     married woman, 809.  
     surviving judgment debtors, 818.  
     the person in what cases, 813.  
     clerks issue, within six weeks; penalty, 839.  
     costs on, paid to clerks, 841.  
     defendant dying in, debt not discharged, 833.  
     different kinds of, 808.  
     form of, 814.  
     issues from court in which judgment rendered; return made, 810.



**EXECUTION.--Continued.**

- Execution issues, to what counties, 809.
  - not levied on growing crops, 822.
  - officer makes out account and files with, 836.
  - returns on, noted on judgment docket, 811.
  - sale days under, or by order, 823.
    - may be postponed from day to day; not more than three, 824.
  - purchaser recovers of defendant, when title disputed, 837.
  - sheriff makes due returns on, 842.
  - tested as of preceding term; and returnable to next, 815.
  - what may be sold under, 819.
  - within three years of course, 803.
- Judgment, after, party may pay same, though no execution has issued, 804.
  - debtors, execution against surviving, 818.
  - docket, returns on executions, noted on, 811.
  - how enforced, 807.
  - nisi*, notice of, how given, 812.
- Officer allowed pay for keeping horses, etc., 835.
  - how to proceed on bond, if condition broken, 834.
  - makes out account and files with execution, 836.
  - prepares deeds for property sold, 840.
- Sale, advertisement of, 825.
  - all private acts allowing land sold, repealed, 827.
  - contrary to law; penalty, 830.
  - days under execution or by order, 823.
  - execution, purchaser recovers of defendant, when title disputed, 837.
  - may be postponed from day to day; not more than three, 824.
  - no, for lack of bidders; what officer shall state, 831.
  - notice of, served on defendant; on governor, when, 826.
  - of equity of redemption; what sheriff to set forth in deed, 820.
  - personal property under execution; when, where advertised, 829.
  - property; officer prepares deeds, 840.
  - trust estates; purchaser holds discharged of trust, 821.
  - time of commencing, 828.
- Trust estate sold, purchaser holds, discharged of trust, 821.

**EXECUTION, DEFENDANTS' CLAIM FOR IMPROVEMENTS BEFORE ISSUING.**

- Action, brought by mortgagee; chapter does not apply to, 851.
- Defendant, balance due, constitutes a lien till paid, 849.
  - claiming allowance, plaintiff values estate without improvements, 852.
  - evicted by better title, may recover of plaintiff, 857.
  - not liable for more than three years, unless improvements claimed, 845.
  - value of, estimated, 846.
  - verdict, jury find balance for either, 848.
- Improvements balance rents, 847.
  - defendant claiming allowance, plaintiff values his estate without, 852.
  - unless defendant claims, not liable but for three years, 845.
  - value of, estimated, 846.
- Jury assess damage and allowance, 843.
  - estimate annual value of land, 844.
  - render verdict for balance for plaintiff or defendant, 848.
- Payments made in court; not made, land sold, 855.
- Petition filed by claimant; execution suspended; jury assess damages and allowance, 843.
- Plaintiff claiming less estate, and paying defendant allowance, recovers from remainder, 850.
  - defendant recovers from, when evicted by better title, 857.
  - elects to let defendant take premises at valuation, 854.
  - has defendant's estate valued without improvements, when defendant claims allowance, 852.
  - jury find for, or defendant, 848.
  - when, is a *feme covert*, minor or insane, what done with proceeds, 856.
- Value of premises, how made, 853.

**EXECUTION, PROCEEDINGS SUPPLEMENTARY TO.**

- Affidavit, execution issued on, not returned, order to issue upon, 853, (2).
  - execution issued and returned upon, order issues to any one having property of judgment debtor, or to any one indebted to him over ten dollars, to appear, etc., 860.
- Clerk files order, records it and provides receiver with copy, 865; order, where filed, 866.

**EXECUTION, PROCEEDINGS SUPPLEMENTARY TO--Continued.**

- Corporations answer by an officer, 862.
- Debtor leaving state, or concealing himself, when arrested and bail required, 863.
- Disobedience to order, 870.
- Execution issued and returned upon affidavit, order issues to any one having property of, etc., 860.
  - issued, any debtor of judgment debtor may pay sheriff, 859.
  - not returned, order to issue upon affidavit, 858 (2).
- property of debtor not exempt from, applied to payment of judgment, 863.
- returned unsatisfied, order to answer concerning property, 858 (1).
- Judge appoints receiver, 868.
  - forbids transfer of property, 858.
  - orders a reference, to report the evidence or facts, 863.
- Receiver appointed; no more than one, 864.
  - brings action, when debt denied or property claimed, 867.
  - clerk provides him with copy of order, 865.
- Reference ordered to report evidence or facts, 868.
  - party or witness appear before referee, and compelled to answer, 832.
- Witness required to testify as on trial of an issue, 861.

**EXECUTION, PROPERTY EXEMPT FROM, AND PROCEEDINGS TO, &c.**

- Appraisal or assessment set aside, for what, 893.
  - set aside for what, 893.
- Appraisers, duty of, 873.
  - elect, when no election, 876; fees of, 878.
  - levy to be made on the excess, 875.
  - liability of, conspiring with creditor, 888; with debtor, 887.
  - make return, 874; oath of, 878.
  - personal property, how appraised; return made, 877; to be registered; forms, 894.
  - sheriff summons, 872.
- Assessors, liability of, conspiring with creditor, 888; with debtor, 887.
  - set apart personal property, and return to register of deeds, 883.
- Exemptions in force at time debt contracted, or action arose, set aside, 871.
  - on debts contracted before Feb. 25th, 1867, 871 (1).
    - since Feb. 25th, 1867, and before April 24th, 1868, 871 (2).
    - April 24th, 1868, and before May 1st, 1877, 871 (3).
    - May 1st, 1877, 871 (4).
- set off upon petition, 881.
  - when made or re-allotted on petition; objection thereto, how made, 890.
- Homestead, costs, how taxed and paid, 880.
  - judgment creditor dissatisfied, how to proceed, 889.
  - liability of officer neglecting to lay off, 886.
  - may include tracts not contiguous, 879.
  - not set apart, who may, when person entitled dead, 884.
  - set off upon petition, 881; petition filed and advertisement made, 885.
  - when made or re-allotted on petition, objection, how made, 890.
- Register indorses on return, date and registers the same, 883.

**INJUNCTION.**

- As a provisional remedy abolished and by order substituted, 700.
- What judge grants, and restraining orders, 701.
- Before what judge returnable, 702.
- In what cases allowed, 703.
- At what time granted, copy of affidavit served, 704.
- After answer, allowed upon notice, 705.
- Undertaking upon, damages, how ascertained, 706.
- Order to show cause; restraint in the mean time, 707.
- To suspend business of a corporation, not granted, unless, etc., 708.
- Without notice, vacated or modified upon notice, 709.
- Application to modify or vacate upon affidavit, opposed by affidavit, 710.
- Motion, what has preference; not granted for more than twenty days, without notice, 711.

**INSPECTION OR ADMISSION OF WRITINGS.**

- How obtained, 950.

**ISSUES AND MODE OF TRIAL.**

- Different kinds of, defined, 756; law, 757; fact, 758; of fact, when tried, 765.
  - of both law and fact, former tried first, 759.
  - order of business, 768.

**ISSUES.--Continued.**

- Different, when and by whom made up, 760.
  - should be in concise and direct terms, 761.
- How tried, 763; other issues tried by court or judge, 764.
- Trial, how defined, 762.
  - postponed by judge in term, when, 767; or clerk before trial term on notice, when, 766.

**JUDGMENT, CONFESSION OF, WITHOUT ACTION.**

- Confessed for debt due on contingent liability, 942.
- Execution and, 944.
- Statement in writing and form of, 943.

**JUDGMENT, MANNER OF ENTERING.**

- Damages, rates of, where recoverable, 796.
- Judgment against a married woman, 790.
  - complaint dismissed for neglect to prosecute action, 790.
  - copy of evidence, 794.
  - docketed and indexed; at same term held docketed, when, 799, 801.
  - in certain cases a conveyance of title, 792.
    - action for recovery of personal property, 797.
  - in supreme court docketed in superior; when transcript had, 802.
  - judgment roll, 800.
  - lien of, 802.
  - may grant defendant affirmative relief, 790.
  - may be for or against any of the parties, 790.
  - regarded as a deed and registered, 793.
  - registered as deeds, 795.
  - secured on appeal, 801.
  - what judge approves, orders and decrees, 798.
  - when and how docketed, 801.

**JUDGMENT ON FAILURE TO ANSWER.**

- Against infants in certain cases validated, 752.
- By default final, in what cases, 750.
- Defined, 749.
- In actions to recover real property or possession thereof, 755.
- all other actions upon failure to answer, by default and enquiry, 751.
- Justices of the peace, provisions herein, applicable to, 754.
- On frivolous demurrer, answer or reply, 753.

**JURY, TRIAL BY.**

- Challenge, right of, 771.
- Instructions, counsel put their prayers for, in writing, 781.
  - judge puts his, in writing, 780.
- Judge directs a special finding, 775.
  - explains law, but does not express opinion on facts, 779.
  - furnished with a copy of pleadings, etc., 778.
  - motion for new trial on minutes of, 778.
  - puts instructions in writing, 780.
- Jury assess defendant's damages in certain cases, 777.
  - challenge, 771; drawn, how, 769.
  - names of, called before impaneled; challenge, 771.
  - on special finding with general verdict, former controls, 776.
  - petit, sworn in civil cases; defaulting persons fined, 770.
  - render general or special verdict, when, 775.
  - separate trials, 772.
- Trial, motion for new, on judge's minutes, 778; separate, 772.
- Verdict, entry of; 778.
  - general and special, defined, 774.
  - jury may render either, when, 775.
  - on special finding with general, former controls, 776.

**MANDAMUS.**

- Application for writs of, 995.
- Manner in which summons for, shall issue, 996.

**NOTICES AND PAPERS, FILING AND SERVICE OF.**

- Chapter does not apply, when, 970.
- How served; subpoenas for witnesses, 969.



**PLEADINGS AND AMENDMENTS, MISTAKES IN.**

- Amendments after allowance of demurrer, 638.
  - by order, 639.
- Errors or defects, not substantial, disregarded, 642.
- Failure of proof, when, 637.
- Relief in case of mistake, surprise or excusable neglect, 640.
- Supplemental pleadings, 643.
- Variance, immaterial, 636; material, 635.
- When plaintiff ignorant of defendant's name, 641.

**PLEADINGS, GENERAL RULES OF.**

- Account, items of, particulars when to be furnished, 625.
- Complaint, allegations not denied, when deemed true, 634.
  - libel and slander, how stated in, 631.
    - answer in such cases, 632.
  - what causes of action may be joined in, 633.
- Pleadings, conditions precedent, how pleaded, 630.
  - construed, how, 626.
  - items of account; when particulars furnished, 625.
  - irrelevant or redundant; indefinite or uncertain, 627.
  - judgments, how pleaded, 628.
  - slander and libel, how pleaded, 631.
    - answer in such cases, 632.
  - statutes, private, how pleaded, 630.
  - subscribed and verified, 623; how verified, 624.

**PROCEEDINGS, SPECIAL PROCEDURE IN.**

- Complaint, when filed, 647.
  - plaintiff failing to file, within time for defendant's appearance, non-suited, 648.
- Special proceedings, provisions of code applicable, 644; commenced, how, 653.
  - no reports set aside for trivial defects, 655.
  - orders, etc., signed by judge, 654.
  - plaintiff failing to file complaint, when non-suited, 648.
  - summons in, contains what, 645; return of, 646.
  - time of filing pleadings, enlarged, 649.
  - when all ask same relief, 650.
    - clerk may hear summarily, 651.
    - petitioners are infants, judge reviews order, 652.

**PROCEEDINGS SUPPLEMENTAL, 858.****PROVISIONS MISCELLANEOUS.**

- Paper, lost or withheld, copy used, 973.
- Time for publication of notices, how computed, 975.
- Undertakings, where filed, 974.

**RECEIVERS, APPOINTMENT OF, AND OTHER PROVISIONAL REMEDIES.**

- Judge may punish disobedience to order, 740.
- Judgment for sum admitted due, 747.
- Receiver, appointment of, 744.
  - gives security, 748.
- Trustees, property held by, 745.

**REFEREES, TRIAL BY.**

- Reference, when compulsorily ordered, 787.
- Referees, chosen how, and who may be, etc., 789.
  - issues referable by consent, 786.
  - powers of, 792; report of, 789; effect of report, 788.
  - trial, mode of; review, 788.
- Reply, demurrer to, 616.
  - answer to demurrer, 614.
    - motion for judgment on, 615.

**SCIRE FACIAS, QUO WARRANTO, ACTION IN PLACE OF.**

- Action against several persons claiming office or franchise, 987.
  - attorney-general brings, to annul a corporation, how, when, 978; leave, how obtained, 979.
    - vacate charter of corporation, when, 977.
    - grants leave to private relator to bring, when, 981.

**SCIRE FACIAS, QUO WARRANTO, ACTIONS IN PLACE OF--Continued.**

- Action for forfeiture of property to state, 994.
  - usurping office; complaint and arrest of defendant, 982.
    - judgment in such case, 983.
  - upon information or complaint, 980.
- Corporation, action to annul, how brought; 978; leave, how obtained, 979.
  - copy of judgment roll, where filed, 993.
  - costs against, how collected, 991.
  - judgment of forfeiture against, 990, 993.
  - restraining a, and appointing a receiver, 992.
- Office, assumption of, by relator, when judgment in his favor, 984.
  - or franchise claimed by several, one action against all, 987.
  - penalty for usurping, how awarded, 983.
  - proceedings against defendant, refusing to give up books, papers, etc., 985.
    - damages, how recovered, 986.
  - trials, expedited, 989.
  - usurpation of; complaint and arrest of defendant, 982.
    - judgment in such actions, 983.
- Relator, assumption of office by, when judgment in his favor, 984.
  - attorney-general allows, to bring an action, when, 981.
- Scire facias*, and *quo warranto* abolished; this chapter a substitute, 976.

**SHERIFF AND CORONER, DUTIES OF.**

- duties in serving or executing process; enforced, how; returned by mail, 971.

**TRIAL, PLACE OF.**

- Action against executors, etc., and on official bonds, 553.
  - foreign corporations, how, where brought, 559.
- criminal, how removed, 563.
- removal of, what sent with transcript, 564.
- tried where cause of, arose, 556.
  - party or parties reside, 557.
  - subject matter situate, 555.
- Change of place of trial, 560.
- Judges authorized to remove causes from one to another county, 561.
  - on removal, what sent with transcript, 564.
  - removal of criminal action, 563.
  - requisites to authorize removal, 562.

**WASTE AND NUISANCE, ACTIONS FOR.**

- Actions by tenant against co-tenant, 1000.
  - for and against whom, 998.
  - heirs shall have, 1001.
  - tenant for life aliening, still liable, 999.
- Remedies for injuries heretofore remediable by writ of nuisance, 1003.
- Waste, how remediable, 997.
  - judgment for treble damagee and place wasted, 1002.

**COMMISSIONERS OF AFFIDAVITS.**

- Clerk of court of record in other state, a commissioner, 1013.
  - takes and certifies affidavits, 1004.
- Commissioners appointed, for other countries, etc., 1005.
  - authority, oath, etc., 1006; fees of, etc., 3677.
  - recorded by secretary of state, etc., 1007.
  - secretary of state prepares list of, 1003.
    - printed in acts of assembly, 1009, 1010.
    - conclusive evidence, 1111.
  - of revocations likewise printed, 1012.

**COMMON LAW,**

- declared to be in force, 1014.

**CONCERNING THE CODE, 3923.****CONSTABLES.**

- Constables, city and town serve civil process, etc., 1019.
  - bond of, registered; copy of, evidence, 1021.
  - duty of, 1016; fees of, 1021; oath of, 1015.
  - execute notices in matters in justices' jurisdiction, etc., 1017.

**CONSTABLES.--Continued.**

Constable's fees, etc., of, 3678.  
 power of, 1016; special, appointed by justices, 1018.  
 vacancies filled by commissioners, 1020.

**CONTEMPT.**

Court may punish summarily, 1024.  
 constitution of, 1022; appearance and cause shown, 1027.  
 justice may commit profane person for, etc., 3748.  
 proceedings as for, 1029; what necessary to sustain, 1030.  
 punished by commissioners, 1026; punishment for, 1023.  
 who may punish, 1025.

**CORONER.**

Coroner acts in place of sheriff, 1033.  
 duty of, 971, 1032; bonds, etc.; oath, 1036, 1037.  
 fees, of, etc., 3679.  
 Inquest, jurors allowed compensation, 1034.  
 mileage and *per diem* proved by coroner, 1035.  
 physician summoned at request of, 1032.

**CORPORATIONS.**

Actions against foreign, where and by whom brought, 559.  
 Articles of agreement, corporations to enter into; what set forth, 1052.  
 to be proved and recorded; book kept for that purpose; index made; amount  
 clerk to collect for school fund, etc., 1053.  
 substance of, clerk to issue notice, setting forth, 1054.  
 Attorney-general may bring action to restrain corporation from exercising powers not  
 granted, and to bring officers to account, 1061.  
 Charter, two years non-user a forfeiture, 1063; action to vacate, 977-981.  
 after expiration of, corporation to continue three years, to close up affairs,  
 etc., 1042.  
 Clerk, amount to collect for school fund, 1053.  
 to issue letters declaring incorporation; to be published, 1054.  
 fees of, 1055.  
 Corporations, general powers of, 1038.  
 by-laws to determine manner of calling and conducting meetings, etc., 1039.  
 costs against, how collected, 991.  
 first meeting, how notified, when not specially provided for, 1040.  
 land held and consigned by, 141.  
 continuance of three years after charter expires to close out, 1042.  
 on expiration, receivers and trustees appointed, 1043.  
 liabilities of, to continue after sale, 1051.  
 how certain business and other corporations formed, 1052.  
 no dividend, if debts exceed two-thirds of assets, 1056.  
 copies of letters evidence, and *prima facie* of incorporation, 1057.  
 contracts exceeding two hundred dollars to be in writing, 1058.  
 such corporations forbidden to bank, 1059.  
 how to convey by deed, void as to existing creditors, 1060.  
 how restrained from exercising, etc., powers not granted; attorney-general  
 to bring action, 1061.  
 how long to exist; dissolution does not destroy debts, 1062.  
 two years non-user, forfeits charter, 163; judgment of forfeiture, 990.  
 shares are personal estate, 1064.  
 may not hold over thirty years; when lands forfeited to state, 1065.  
 lands, how sold, etc., 1067.  
 existing corporations affected, 1068.  
 how dissolved, 1050; how summons in such cases served, 1070.  
 tax on bills of incorporation presented to general assembly, 1071.  
 sales under deeds of trust, 1072.  
 corporation created by sale to succeed to rights, etc.; expiration, property  
 to pay debts, 1073.  
 tax collectors to seize property of corporations, etc., whether in the hands  
 of receiver or not, 1074.  
 not necessary to obtain order of court for payment of tax, if property in  
 hands of a receiver, 1075.  
 provisions of this chapter to apply to all corporations, unless, etc., 1076.  
 Executions, what may issue, what not, 1046.  
 levied on personal property; property sold independent of the franchise  
 and real property belonging to such corporation, 1047.  
 who deemed the highest bidder, 1048.



**CORPORATIONS.--Continued.**

- Franchise, officer selling, to convey right and possession of property connected with, 1049
- property sold independent of, 1047.
- purchaser of, to have same remedies as corporation for damages, 1050.
- Grand jury, duty of, 1066.
- Injunction to suspend business of, not granted, unless undertaking given, 708.
- Receivers, to be appointed when corporations expire, 1043; on judgment against, receiver appointed, 992.
- jurisdiction over, 1044.
- to pay debts and distribute surplus, 1045.
- property in hands of, may be seized by tax collector, 1074.
- not necessary to have order of court for tax payment, if property in hands of, 1075.
- Solicitor, duty of, 1066.
- Tax collectors to levy upon and take possession of property of corporation, etc., 1074.
- Trustees, when corporations expire receivers or, appointed, 1043.
- jurisdiction over, 1044.

**COUNTIES, COUNTY COMMISSIONERS AND COUNTY GOVERNMENT.**

- Board of commissioners, clerk, compensation of, 1085; duty of, 1087, 1088, 1089.
- compensation of, 1084.
- copies of records of, evidence, 1090.
- county indebtedness, to purchase, 1093; officers, 1082, (28) (29).
- election of, 1091.
- meetings of, 1081.
- neglect of duty by, 1086.
- powers of, 1082.
- accounts, to audit, (6).
- auctioneers, to license, (27).
- bridges, to construct, etc., (10).
- chairman of, authorized to issue subpoenas, (30).
- commissioners to open creeks, etc., appointed, (24).
- corporate property, orders respecting, to make, (5).
- debt, to provide for payment of, (3); to submit proposition to contract, to voters, (4).
- districts, to divide county into, (13).
- highways, to raise money for, (12) to appoint inspector of, (16); to lay out, alter, etc., (15).
- hospitals, to establish, (22).
- house of correction, to provide, (17).
- inspectors, etc., to appoint, (26); of highways, (16).
- money, to borrow, (11); for highways, (12).
- officers, to require under oath, report from, (29); to induct into office and approve bonds of, (28).
- peddlers and retailers, to license, (25).
- poor, to provide for, (21).
- prisoners, to provide employment for, (18).
- property corporate, to make orders about, (5); real, to lease or sell, (20).
- proxies to represent county, to appoint, (19).
- public buildings, to purchase property for, (7); to designate site for, (8); to repair, etc., (9).
- retailers, to license, (25).
- seal for county, to adopt, (31).
- tax, when and how levied, etc., (1); in some cases to exempt from, (2).
- townships, to erect, alter, etc., (14).
- weights and measures, to procure, (23).
- qualification of, etc., 1083.
- to be sworn, and how paid, 1097.
- vacancies in, how filled, 1094; certain vacancies to be filled by, 1095.
- Clerk of board of commissioners, compensation of, 1085.
- duty of, 1087; to publish annual statement, 1088; neglect a misdemeanor, 1089.
- County a body politic, 1077; books furnished at cost, 3123.
- corporate powers of, 1079; how exercised, 1078.
- disputed lines between, how settled, 1096.
- indebtedness, purchase of, 1093.
- proceedings by or against, 1080.
- Justices of the peace, meetings of, 1092.
- to fill vacancies in county boards, 1094.

**COUNTY REVENUE AND CHARGES, AND COSTS IN CRIMINAL PROCEEDINGS.**

- Account shall not be audited unless itemized and audited by claimant, 1129.
  - penalty on officers failing to make, and, etc., 1139.
  - to be numbered, 1130.
- Claims against county numbered and copy furnished board, 1126.
  - against county, etc., must be presented in two years after maturity, 1131.
  - against municipal corporation must be presented and refused before action, 1132.
- Clerks to keep itemized statement of fines, etc., 1100.
  - failure of, to pay over funds, etc., 1139, 1140.
- Costs, bills of, in criminal actions, itemized and audited, 1108.
  - justices to make out itemized, 1109.
  - to be open to public, 1110.
  - confession of judgment to secure, discharges not original judgment, 1124.
  - county pays, in certain cases, 1114.
  - county wherein offence committed, to pay, 1116.
  - defendant failing to pay may be again arrested, 1125.
  - incurred by county in prosecuting bribery in certain cases paid by state, 1117.
  - prosecutor pays in certain cases, 1112; when imprisoned for non-payment of, 1113.
  - statement of for which county is liable filed with board, 1111.
- County, claims against, numbered and copy furnished board, 1126.
  - claims against, presented in two years, 1131.
  - costs incurred by, in prosecuting bribery, when paid by state, 1117.
  - costs paid by, when, 1114.
  - costs paid by, wherein offence committed, 1116.
  - defendant's witnesses, when paid by, 1122.
  - funds of, commissioners may dispose of, 1128.
  - officers of, failure to perform duty, 1139, 1140.
  - revenue and charges of, yearly publication made, 1127.
  - state witnesses, when paid by, 1115.
  - statement of, costs for which, is liable, filed with board, 1111.
  - taxes collected by sheriff, 1098.
- Criminal actions, bills of costs in, itemized and audited, 1108.
  - tax fees in, set apart for payment of jurors, 1107.
- Finance committee, 1133.
  - may send for persons and papers, 1134.
  - oath of members of, 1137.
  - to publish statement, 1136.
- Fines, clerks and justices of peace to keep itemized statement of, 1100.
  - confession of judgment to secure, discharges not original judgment, 1124.
  - county wherein offence committed to receive, 1116.
  - defendant failing to pay, may be again arrested, 1125.
  - forfeitures and penalties paid treasurer, 1099; paid within sixty days, 1101.
  - treasurer to file certified statement of, with clerk, 1102.
- Grand jury, when witnesses before, to be paid for attendance, 1118.
  - tax fees in criminal actions, set apart for payment of jurors, 1107.
- Justices of the peace to keep itemized statement of fines, etc., 1112.
  - on appeal from, in criminal action, two witnesses bound over, 1120.
  - to make out itemized bills of cost, 1109; to be open to public, 1110.
- Officers to make yearly report of public funds to board, 1103.
  - failure to report, 1105.
  - penalty for, failing to settle after ten days' notice, 1135.
  - falsely swearing to report, 1106.
  - report of, registered if approved by board, 1104.
- Prosecutor, costs paid by, in certain cases, 1112.
  - when imprisoned for non-payment of costs, 1113.
- Sheriff to collect county, as he does state taxes, 1098.
- Solicitor to discharge witnesses; to file certificate of attendance with clerk, 1121.
  - witness not entitled to fees, unless name is included in said certificate, 1123.
- Tax fees in criminal actions set apart for payment of jurors, 1107.
- Treasurer, fines, forfeitures and penalties paid to, 1099; paid within sixty day, 1101.
  - to file his statement certified, with clerk, 1102; penalties against, 1139, 1140, 1151.
- Witnesses, appeal in criminal action before justice, only two bound over, 1120.
  - discharged by solicitor; attendance certified to clerk, 1121.
  - not entitled to fees, unless name is included in solicitor's certificate to clerk, 1123.
  - when court to order county to pay defendants, 1122.
  - paid for attendance before grand jury, 1118.
  - on trial of criminal action; not more than two paid in misdemeanor, 1119.
  - state's, paid by county, 1115.

## COUNTY TREASURER.

The board of commissioners bring action on bond of, 1146.  
 shall audit claims against county, 1152.  
 treasurer to exhibit to, amount and condition of all trust funds and property, 1156.  
 to keep record of same in treasurer's hands, 1155.  
 County claims, treasurer not to speculate in, 1147.  
 Examining committee, compensation of, 1149.  
 Justices of peace may abolish office of treasurer, 1143.  
 Officers, penalty for refusal to account, etc., 1150.  
 Sheriff, bond of, when acting as treasurer, to cover liabilities of such, 1144.  
 Treasurer, board to audit all claims against county, before paid by, 1152.  
 bond of, 1141; action on, brought by board, 1146.  
 county claims, cannot speculate in, 1147.  
 duties of, call on county officers for funds on hand, 1148 (3); exhibit books and  
 accounts, 1148, (4).  
 keeps county moneys, 1148 (1); keep true accounts, 1148, (2).  
 failure to perform; penalty, 1150; includes person acting as such, 1145.  
 justices of the peace may abolish office of, 1143; papers, etc., delivered to suc-  
 cessor, 1142.  
 trust property of county, held, etc., by, 1153, 1154; exhibits amount, etc., of, to  
 board, 1156.  
 record of the same to be kept by the board, 1155.

## COURT HOUSES, PRISONS AND WORK HOUSES.

Board of commissioners to appoint treasurer of buildings; his duty, bond and compen-  
 sation, 1161.  
 bonded manager appointed by; duties, etc., 1163.  
 bonds to establish work houses, issued by, 1174.  
 chairman of, to notify governor, when work house established, 1175.  
 directors appointed by, duties, etc., 1165.  
 suits brought in name of, 1176.  
 work houses established by, 1164; bonds to establish, issued by, 1174.  
 when established, governor notified by, 1175; two or more counties  
 may establish, 1177.  
 Bonds to establish work houses issued by board, 1174.  
 Counties, two or more may jointly establish work houses, 1177.  
 Court houses built and kept up by board, 1157.  
 Directors, appointed by board, duties, etc., 1165.  
 general board of, appointed, 1178.  
 term of office of, 1173.  
 Grand jury to visit jail at each court, 1160.  
 Jails built and kept up by board, 1157.  
 to have separate apartments, 1158.  
 to be heated by stoves or furnaces, 1159.  
 to be visited by grand jury at court, 1160.  
 Manager appointed by board, his duties, 1166.  
 compensation of, 1167.  
 general board of directors to appoint a general manager, 1179.  
 offenders assigned employment by, 1172.  
 Penalties incurred by absconding offenders, 1169.  
 Public buildings, board to appoint treasurer of; duty, bond, etc., 1161.  
 treasurer of, to yearly settle accounts, etc., penalty, 1162.  
 Sheriff, duty of, 1171.  
 Taxes, board empowered to levy, 1168.  
 Treasurer of public buildings appointed, etc., 1161.  
 to settle accounts yearly, etc., 1162.  
 recommending repairs, what to be done, 1163.  
 Vagrants may be released, 1170.  
 Work houses established by board, 1164.  
 bonds issued by board to establish, 1174.  
 chairman of board to notify governor, when one is established, 1175.  
 two or more counties may jointly establish, 1177.

## COURTS--INFERIOR.

Attorney, justices shall elect an, 1192.  
 Court, inferior, established, 1180.  
 adjournment from day to day, when business can not sooner be transacted, 1183.  
 when majority of, not present, 1184.  
 appeals, practice, pleadings, etc., 1187.  
 clerk elected by justices, 1190.  
 issues of fact, 1188.



**COURTS--INFERIOR.--Continued.**

- Court, jurisdiction of, 1186.
  - jurors provided as for superior, 1189.
  - justices may decline to elect justices of, 1181.
  - orders of may be enforced, 1195.
  - presiding justice; compensation, 1193.
  - process continued, 1185.
  - terms of, how often held, 1182.
  - vacancies, how filled, 1194.
- Notices, summons, executions and other process, 1191.

**COURTS--JUSTICES OF THE PEACE.**

- Action dismissed, when, 1214; when sum demanded exceeds two hundred dollars, 1212.
  - another may be brought, when, 1215.
  - criminal, disposed of by justices, returned to clerk, etc., 1284.
  - removable from one justice to another upon affidavit; proviso, 1284.
- Answer, where title to real estate is brought in issue, 1213.
- Appeal by either party; trial *de novo* in superior court, 1277.
  - docketed by clerk of supreme court, 1256.
  - does not prevent issuing of execution, 1251.
  - heard on original papers, 1257.
  - justices to transmit papers to appellate court; what return to state, 1278.
  - order of restitution of property, 1262.
  - return of, justices to, appellate court in ten days, 1254, 1278.
  - undertaking may be given by appellant, 1259, 1260, 1261, 1262.
  - when appellant not to give written notice, 1253.
  - when appeal to be taken, 1252.
- Arrest, affidavit to obtain order of, 1228.
  - by whom made, 1227.
  - in what cases allowed, 1226.
- Attachment, provisions of Code of Civil Procedure applicable, 1229.
- Claim and delivery of personal property, 1265; when claimed, 1266; sufficiency of sureties, 1267.
- Clerk, certificate of, necessary, when process issued to another county, 1249.
  - dockets of justices to be filed with, 1204.
  - justices to transmit papers to, of appellate court, etc., 1278.
  - returns of all criminal actions disposed of by justices to be sent to, 1283.
  - to docket appeal, 1256.
- Costs and fines not paid, justices to imprison guilty party, 1281; must pay before discharged, 1282.
- Dockets, civil and criminal furnished each justice, 1208.
  - delivery of unfilled, to successor, 1205.
  - filing with clerks, 1204; filing and delivery, how enforced, 1206.
- Execution of judgment, how stayed, 1258.
  - lien, on what, and from what time, 1218.
  - stay of, granted by justice, 1219; security on stay of, 1220.
- Judgment of justice, docketing, 1216; former judgment, 1221; how removed to another county, 1223.
- Jurisdiction, 1211, 1212; criminal, of justices, 1268.
  - justice not having final, must commit or recognize to next term of court that has, 1273.
  - satisfied that he has, must determine case, 1274.
  - peace warrant, bastardy, etc., 1269.
  - where property does not exceed fifty dollars, 1263.
- Jury, adjournment, after return of, 1246.
  - allowed, if wanted, 1275.
  - challenge, 1237.
  - drawn, and trial postponed, 1234.
  - fees, deposit of, 1245.
  - for the trial of the cause, 1236.
  - serving on trial, 1244; not compelled to serve out of township, 1243.
  - summoning of, 1235; of tales, 1239.
  - sworn and impaneled, verdict, 1240.
  - when less than six may compose a, 1242.
  - when trial by, demanded or waived, 1233.
- Jury box, justice to keep, 1231.
  - names of jurors to be deposited in, 1232; what names returned to or destroyed, 1233.
- Jury list furnished each justice, 1230.
- Justices, action dismissed by, when sum demanded exceeds \$200, 1212.

**COURTS--JUSTICES OF THE PEACE.--Continued.**

- Justices, actions, how removed from one, to another, 1284.
- appeal from, returned to appellate court in ten days, 1254.
- application for rehearing, 1222; attorneys, cannot act as, 191.
- docketing judgments of, 1216.
- dockets of, filed with clerks, 1204.
  - filing and delivery, how enforced, 1206.
- fine and costs not paid, guilty one imprisoned, 1281; to pay, before discharged, 182.
  - furnished with a civil and a criminal, 1208.
  - unfiled, to be delivered to successor, 1205.
- executions, on what, and from what time a lien, 1218.
- fees, etc., of, 3634.
- finding and sentence, pleaded in bar of indictment, 1280.
- how elected; additional ones for cities, etc., etc., 1197.
- jurisdiction, 1211; additional, 1269; criminal, 1268.
  - where property exceeds not \$50, 1263; recovery of damages to real estate, 1264.
  - when he has, must determine case, 1274.
  - when, not final, must commit or recognize, 1273.
- may issue process, and try causes, where, 1201.
- office under the United States, 1202.
- papers transmitted to clerk of appellate court, what to show, 1278.
- party paying fees, entitled to copy of complaint, etc., 1279.
- proceeding on peace warrant, 1270; bastardy warrant, when to issue, 1271.
  - rules of, in courts of, 1217.
- process not issued by, outside his county, 1247.
  - not quashed for lack of form, 1285; forms used in, courts, 1286.
  - when issued from one county to another, how validated, 1248.
- punishment of, on conviction of crime, 1203.
- qualify, within what time to, 1198.
- removal six months out of township forfeits office, 1199.
- resignation, 1200.
- summons issued by, 1210.
- to make return of all cases disposed of, to clerks, etc., 1283.
- Peace warrant, proceedings on, 1170.
- Process, justices may issue, where, 1201; exception, 201.
  - lack of form, does not quash, 1285.
  - no, served under ten days' notice, 1250.
  - not issued by, outside his county, 1247.
  - when issued by one, to another in another county, how validated, 1248.
- Recovery of damages to real estate, 1264.
- Summons, 1207; by whom issued, 1209; service and return of, 1210.
- Undertaking, appellant may give, etc., 1259, 1260.
- Witnesses, etc., 1224.

**COURT, SUPERIOR.**

- Certificate of attendance, 1295.
- Constable, attending juries to be sworn, etc., 1314.
- Courts, adjourned if judge not present, when, 1313.
  - certain cases pending in, of equity, transferred, 1332.
  - death between verdict and judgment, not error, if, etc., 1326.
  - disputed boundary, surveys ordered and taxed as costs, 1327.
  - districts, nine, how, opened and held, 1287.
  - exchange of, 1290.
  - judges, rotation of, 1288; notification of ridings, 1289.
  - jurisdiction of, appellate, 1310; original, 1309.
  - leap-year day, how counted, 1323.
  - minutes of preceding day read each day, 1312.
  - non-suit not allowed after verdict, 1324.
  - party in execution not discharged on *habeas corpus*, 1325.
  - payment, etc., may be pleaded in suits on bond and judgment, etc., 1320.
  - penal bonds, suits, sum due, etc., being in court, penalty discharged, 1321.
    - judgment stands till reversed, 1322.
  - suit, defendant in, pleading former judgment in, plaintiff may reply fraud, etc., 1319.
- relief may be applied for in vacation, 1299.
- return of notice, evidence, 1328.
- special terms, 1290, 1291.
  - certificate of attendance, 1295; all bound to attend as on regular terms; no process except subpoenas returnable thereto, 1296.
  - notice to chairman, 1292; powers, etc., 1293; how long to last, 1294.

**COURT--SUPERIOR.--Continued.**

Courts, speedy collection of proceeds of judicial sales, by motion, 1329.  
 Defendant in penal suit, pleading former judgment, plaintiff may reply fraud, etc., 1319.  
 Evidence, return on notice is, 1328.  
 Grand juries, none allowed at special terms, unless governor orders, 1298.  
 Judge to fix time of session, etc., 1302.  
     if not present, court adjourned, when, 1313.  
     notification of ridings, 1289; rotation of, 1288.  
     oaths of, and where returned, 1311.  
 Judgment to stand till reversed, 1322.  
     death between verdict and, not error when, 1326.  
     if defendant in penal suit plead former, plaintiff may reply fraud, etc., 1319.  
     payment or satisfaction may be pleaded in suits on bond and, etc., 1320.  
 Judicial sales, purchasers under, protected; deemed legal owners, 1330.  
     speedy collection of proceeds of, by motion, 1329.  
 Jurisdiction, appellate, 1310; original, 1309.  
 Leap year day, how counted, 1323.  
 Payment may be pleaded in suits on bond and judgment, 1320.  
 Parties in execution, not discharged on *habeas corpus*, 1325.  
 Penal bonds, in suits on, sum, etc., in court, penalty discharged, 1321.  
 Process, none except subpoenas returnable to special terms, 1296; subpoenas, 1297.  
     not executed on Sunday, 1315; officer not executing, directed to sheriff of another county, 1316.  
     sheriff executing out of county has extra pay, 1318.  
     when, to issue to sheriff of adjoining county, 1317.  
 Quakers may wear hats in court, 1331; affirmed, 3068.  
 Surveys ordered in case of disputed lines, how made and paid for, 1327.  
 Terms, special, 1290, 1291; how long to last, 1291.  
 Verdict, non-suit not allowed after, 1324.

**COURT, SUPREME.**

Appeals from interlocutory judgment, etc., none entered; opinion with instructions, certified below, 1350.  
 Attorney-general absent, court to appoint state counsel, 1357.  
 Claims against state, 1335; manner of prosecuting, 1336.  
 Clerk, his bond, oath, office, etc., 1346; offices assigned, 262.  
     library, has charge of, 3436.  
     opinion of court delivered to, before execution issues, 1352.  
     records such proceedings as court directs, 1347.  
     services of, how paid, 1348.  
 Court adjourns if no justice attends first week, 1342.  
     amends proceedings, allows other testimony, may make parties, 1353.  
     appoints counsel for state, when, 1357.  
     appoints marshal, etc., 1338.  
     attorneys' license tax applied to library of, 3441.  
     cases, how taken to, 1334.  
     convenes on first Mondays in February and October, 1341.  
     fixes compensation of servant, 1339.  
     jurisdiction of, 1333.  
     renders judgment on view of record, etc., in criminal cases, decision certified below, etc., 1345.  
     rooms set aside for records of, 1340.  
     sits till business dispatched, 1342.  
 Decisions sent to court below on rise of, etc., 1356.  
 Exhibits in cases proved by witnesses examined by, and rules in such cases, 1351.  
 Justices appoint marshal, servant, and counsel in certain cases, 1338, 1339, 1357.  
     deliver their opinions in writing, etc., 1352.  
     make rules of practice for supreme and superior courts, 1349.  
     not attending first week. court adjourned, 1342.  
     take and subscribe oaths, filed, etc., 1343.  
     take probate of deeds, etc., 1337.  
     two, in case of illness, hold court, 1344.  
 Petition to rehear final judgment, filed, etc., 1354.  
 Suits may be dismissed for failure to prosecute after notice, 1355.

**CRIMES AND PUNISHMENTS.**

Abandonment of family by husband, 1358.  
     failure to provide support, presumptive evidence of, 1359.



## CRIMES AND PUNISHMENTS.--Continued.

- Abduction of children, 1361; conspiracy for, 1362.
- Abortion, to administer medicines, etc., to pregnant woman, 1363.
  - procuring miscarriage, 1364.
- Accessories, felonies before the fact, 1335; how punished, 1363.
  - after the fact, 1366; principal not attained, 1367.
- Adequate support, failure of husband to provide, 1360.
- Adultery, 1128.
- Adulterated liquors, making or selling, 1370.
  - poisonous, 1371; receipts for, 1372.
- Advertisements and legal notices, destruction, etc., of, 1369.
- Agriculture, board of, violation of rules of, 13.
- Animals, cock-fighting, 1632.
  - conveying in a cruel manner, 1635.
  - cruelty, any act of, 1636.
  - food for impounded, failure to provide, 1633.
  - glandered, sale of, 1637; to be killed, 1633.
  - money for impounded, misapplication of, 2259.
  - molestation of society's agent, 1640.
  - releasing impounded, 2260; torturing, etc., 1631.
- Arms, public, buying, selling, etc., 3361.
- Arson and other burnings, 1373.
- Assault, punishment, 1374.
- Bigamy, defined, punishment, 1374.
- Birds cannot be killed, when, 2283.
  - partridges and quail not exported, 2284; nor their eggs destroyed, 2285.
  - wild fowl, hunting at night and on Sunday, 2286.
- Blackmailing by accusation, etc., 1376.
- Board of supervisors failing to report, 3611.
- Boats, obstructing with timber, etc., 3591.
- Bribery of jurors, 1377; offering a bribe, 1379.
  - officers receiving, a felony, 1378.
- Bridges, toll, failing to repair, 3634.
  - mill owners failing to keep up, 3626.
  - railroads must build, etc., 3643.
- Buoys, mooring vessels to, 1380.
- Burglary, 1381; intent to commit, 1384.
  - breaking into certain houses, 1383.
  - out of dwelling in night, 1382.
- Burning woods without notice, 238.
- Buying and selling offices, 1385.
- Castration, with malice aforethought, 1386; without, 1387.
- Cattle and stock, distempered, going at large, 230.
  - injuring, in unlawful enclosure, 1390; feloniously, 1456.
  - killed on railroad, sometimes indictable, 236.
  - mismarking, 1388.
  - stock law territory, not to range in, 2252; in, not to range out, 2263.
  - wilful killing in range, etc., 1389.
- Child and parent, intercourse between, felony, 1443.
  - abandonment of, 1358; evidence of, 1359.
  - abduction of, 1361; conspiracy for, 1362.
  - adequate support for, failure to provide, 1360.
  - concealing birth of, 1392.
  - marriage with female, under fifteen, wrong, when, 1471.
- Clerks acting before qualification, 445.
  - corruption or mal-practice of, 488.
  - failing to give certified copy of election return, 1969.
    - records, etc., to successor, 447.
  - failure of duty, 466; to post his fee bill, 3676.
    - to collect license tax from corporation, 1053.
  - false swearing to report, 458.
  - forbidden to practice law, 192.
  - of boards of commissioners publish yearly statements, 1089.
    - failing in duty, 1140.
- Commissioners, etc., must not be contractors, 1399.
  - neglect of duty by, 1086.
  - taking insufficient bonds from sheriff, 3708.
- Concealed weapons cannot be carried, 1393.
- Concealing birth of child, 1392.
- Conspiracy to destroy state government, 1491.

**CRIMES AND PUNISHMENTS.--Continued.**

- Conspiracy to steal child, 1362.
- Contempt, how punished, 1022.
- Cotton, sale of, in certain hours, 1394.
  - weigher's oath, 1396.
  - weighing, regulated, 1395; deduction of weight, 2638.
- Counterfeiting bank notes, checks, etc., 1418.
  - certificates of stock by officer, etc., 1420.
  - connecting different parts of several genuine notes, etc., 1424.
  - counterfeited stamps, labels, etc., selling merchandise with, 1426.
  - foreign coin, or attempting to pass, 1422.
  - fraudulent use of brands, etc., 1427.
  - having in possession instruments for, 1423.
  - private marks, labels, etc., 1425.
- County claims, speculation in, 1397.
  - officers swearing falsely to reports, 1106, 1140.
- Crime against nature, 1398.
- Dam, owner of, failing to make gate, etc., 3594.
- Defendant in penal suit, swearing falsely, 1319.
  - refusing to deliver books, papers, etc., 985.
- Directors, etc., cannot be contractors, 1399.
- Dog bitten by mad dog to be killed, 1702.
  - fight, 1632; sheep-killing, killed, 1703.
  - listed for taxation, subject of larceny, 1703.
- Dueling, 1400; death following, murder, 1401.
- Election, betting on, 1937; breaking up, 1933.
  - bribes given or taken, 1933.
  - intimidating voters, 1935.
  - registration, fraudulent, a crime, 1900, 1929.
- Embezzlement by officer of railroad, 1406.
  - treasurer of benevolent, etc., institution, 1405.
  - conspiracy with officer of railroad, 1407.
  - state bonds, etc., 1403; trust funds by public officers, 1404.
  - punished as larceny, 1402; sufficiency, of indictment, 1403.
- Escape, prison breach by inmate, 1409.
  - duty of solicitor in such cases, 1411.
  - officer indictable for, what to prove, 1410.
- Executors and administrators failing to return inventory, 2086.
- Fairs, persons removed from grounds, must not return, 2237.
  - violation of, rules, 2238.
- False lights, holding out on coast, 1412.
  - pleading by defendant, 1319.
  - pretence, false token, cheating by, 1413.
    - obtaining advances upon, 1415; signature by, 1414.
- Felony, bribery of general assemblyman, given or taken, 2300.
  - carnal knowledge of married woman, etc., 1490.
  - forging tobacco inspector's stamp, 2577.
  - insurance agent appropriating funds, 2661.
- Fences, injuring, etc., 2261.
- Fertilizers, agents of transportation make monthly statement of shipments, 19.
  - offering to sell condemned, 17, 19; unlicensed, 14.
- Firing woods without notice, 238.
- Fish, non-residents must have license to take, etc., 26.
  - packing or selling in unlicensed measure, 2608.
  - trout, mountain, cannot catch, when, 1508.
- Fisheries, private, molesting, 1973, 3160.
- Forcible entry and detainer, 1416.
- Forgery, how punished, 1417.
  - counterfeiting bank notes, checks, etc., 1418.
    - certificates of stock, by officer, etc., 1420.
    - foreign coin, or attempting to pass, 1422.
    - marks, labels, etc., 1425.
  - fraudulent use of brands, 1425.
  - fraudulently connecting different pieces of notes, etc., 1424.
  - having in possession instruments for, etc., 1423.
  - passing or attempting, 1419.
  - selling forged judgments, bonds, etc., 1421.
  - merchandise with stamps, etc., 1426.
- Fornication and adultery, 1428.

**CRIMES AND PUNISHMENTS.--Continued.**

- Gambling, all gaming tables prohibited, 1432.
  - betting at cards in tavern or retail house, 1429.
  - faro-banks and tables, 1431.
  - justices and other officers summon witnesses, 1437.
  - keeper of tavern or liquor shop, how guilty, 1430.
  - lotteries forbidden, 1434; sale of tickets, 1435.
  - money or property staked, seized, 1433.
  - persons allowing tables, 1433.
    - opposing officers in discharge of above duties, 1439.
- Gates, etc., across cartways, injuring, etc., 3646.
- General assembly, bribery of member of, etc., 2300.
  - investigating committee of, failing to testify before, 2302.
  - false oath before, 2304.
- Ginseng, can not dig, when, 1440.
- Habeas corpus, concealing party, 2420; aiders and abettors, 2421.
  - refusing copy of process, 2418.
  - writ, false return to, 2417; neglect to obey, 2418.
- Highways, failing to work on, 1441.
  - overseer, neglecting duty, 1442.
- Homicide, manslaughter, 1443; second offence, 1444.
  - murder, 1445.
- Horse-stealing, 1454; for temporary purpose, 1455.
- Hunting, deer, 1446; in certain season, 2281.
  - by firelight, 1447; with fire, 2283.
  - on land of another forbidding, 2280.
  - Sunday, 1502.
- Impeachment subjects one to indictment, 2518.
- Incest, 1449; what, a felony, 1448.
- Injuries to churches, etc., 1450; landmarks, etc., 1451.
  - monuments, tombstones, etc., 1476.
- Inspector acting falsely, 2623.
  - altering brand of flour, 2599.
  - forging stamp of tobacco, 2577.
- Insurance agent appropriating funds, 2661.
  - general agent, license fee, 2649.
- Jurors, bribery of, 1377.
- Justices of the peace can not practice law, 191.
  - granting health certificate to cattle drover without affidavit, etc., 279.
  - six months' absence from township disqualifies, 1199.
- Land, trespass on, 1506; on state land, 1507.
  - entering another's, to repair break, etc., 3598.
- Larceny by servant of master's goods, 1453.
  - concealment or destruction of wills, 1460.
  - disposition by clerk, etc., of public laws, etc., 1461.
  - distinction between grand and petit, abolished, 1463.
  - dogs listed for taxation, subjects of, 1705.
  - felonious injury and pursuit of live stock, etc., 1456.
  - or obliteration of public records, 1459.
  - of bank notes, etc., 1452; growing crops, 1457.
    - horse, 1454; for temporary purpose, 1455.
    - or obliteration of public records, 1459.
  - wood, etc., growing on land, etc., 1458.
- Liquor selling, retailing without license, 1464.
  - to minors, 1464; who may sue dealer, 1466.
  - University, at or near, 1860—1863.
  - within two miles of public speakings, etc., 1467.
- Lotteries forbidden, 1434; also sale of tickets, 1435.
- Maiming with malice aforethought, 1468.
- Malicious injury to property, personal, 1470; real, 1469.
- Manslaughter, 1443; second offence, 1444.
- Marriages between whites and blacks, 1472.
  - register of deeds cannot consent to said, 1473.
  - with women under fifteen, unless father consents, 1471.
- Mills, destruction or obstruction of dams, etc., 1475.
  - owners keep bridges over canals, ditches, etc., 1474, 3626.
- Monuments and tombstones, defacing, etc., 1476.
- Mortgaged property cannot be disposed of, 1477.
- Municipal officers failing to give up property, etc., to successors, 3803.
  - failing to settle with treasurer, 3795.
  - ordinances, violation of, 3801.
- Murder, 1445.



**CRIMES AND PUNISHMENTS.--Continued.**

- Navigation, obstruction to, 3069.
- Notes, bills, etc., circulating, 1649; issuing, 1643.
- Offices, action for usurpation of, etc., defendant, etc., 935.
  - buying and selling, 1385.
- Officers failing to discharge duties, etc., 1478.
  - execute process, etc., 1499.
  - falsely swearing to reports, 1106, 1140.
  - not paying fines and penalties to board of education, 3562.
- Oysters, fish, etc., see 3165.
- Peddling without license, 1479.
- Perjury, corruptly taking voter's oath, 1930.
  - punishment for, 1480.
  - subornation of, 1481.
  - swearing falsely before investigating committee of general assembly, 2304.
- Political societies, secret, 1482.
- Printing, public, account proved before audited, 3411.
- Practicing trade, profession, etc., without license, 3535.
- Punishment, felonies not specified, 1483.
  - misdemeanors not specified, 1484.
- Quarantine, master, etc., not going into, 2455.
- Railroads, etc., agents, etc., furnish statement of guano shipped, 19.
  - cattle killed on, a misdemeanor, when, 236.
  - driver intoxicated, 3488.
  - failing to build bridges, etc., 3643.
  - freights, loading and unloading on Sunday, 3489.
    - pooling and rebates on, 3484.
  - injuries to, 3490.
  - obstruction to, when death results, when not, 1485.
  - officers account to successors, 3515, 3517.
    - failing to report to board of improvement, 2668, (12).
  - train of cars, made up, how, 3487; shooting or throwing into, etc., 1487.
  - wilful injury to, without malice, 1486.
- Rape, punished, death, 1488; assault with intent, 1489.
  - assault with intent to know married woman, etc., 1491.
  - carnal ken of married woman, etc., 1490.
  - proof, sufficiency of, 1492.
- Rebellion against the state, 1493.
  - conspiracy to destroy government by, 1494.
- Register of deeds failing in duty, 3542.
- Roads, canals, etc., obstructions in; when death comes, when not, 1486.
  - failing to work, 3606, 3608.
  - obstructing, leading to churches, 3654.
  - overseers failing in duty, 3609.
- Robbery of bank notes, etc., 1452.
- Schools, wilful disturbance of, 1828.
- Seamen, enticing from vessels, 1495.
  - justices issue search warrants for, 1497; either party appeals, 1498.
  - unlawful to harbor or secrete, 1496.
- Sheriff failing to execute process, 1499; to pay over taxes, etc., 3569.
  - failing in duties, etc., 3725.
  - pays tax levied for schools to county treasurer, 1800.
  - publishes list of delinquent tax payers, 3726.
- Signboards, mile marks, etc., injuring, 3620.
- Slander of women, 1500.
- Springs, wells, etc., injuring, 1501.
- Sunday, hunting on, 1502, 3747.
  - process for treason, felony, etc., issued on, 1315.
  - selling liquor on, 1503.
- Tax collector failing to give up lists on demand, 3804.
- Telegraph lines, etc., injuring, 1504, 3523.
- Terrapins and their eggs, regulations, 3153.
- Timber, firing without notice, 238.
  - state, can not be cut, 369.
- Treasurer, county, failure of duty, 1151.
  - state, fraudulent entries by, 1535.
- Tramps entering dwelling, 3762.
  - wilful injury to person, property, 3763.
- Trespass on land, 1506; state land, 1507; state lots in Raleigh, 271.
- Trout, can not seine for; when unlawful to take, 1508.
- University, billiard and gaming tables, 1864.
  - exhibitions in five miles of, 1865.
  - liquor selling, etc., 1860—1863.

**CRIMES AND PUNISHMENTS.--Continued.**

- Vagrancy punished, 3767.
- Water courses, obstructing, 1509.
- Wife, abandonment of, 1358; evidence of, 1359, 2087.
  - adequate support, failure to provide, 1360.
  - carnal knowledge of, 1490.
- Wood, cutting upon state lands, 369.
  - firing without notice, 238.
- Woman, abortion, 1463; miscarriage, 1464; slander of, 1509.
- Worship, curiosities, etc., to interfere with, 3553.
  - selling liquor within a mile of places of, etc., exception, 3554.
- Wrecks, commissioner of, failing in duty, 3922.
  - concealing stranded goods, 3917.
  - receivers of, etc., 3918.

**CRIMINAL PROCEEDINGS.**

- Appeal by defendant to supreme court, 1620.
  - by state, when recognized, 1623.
  - convicted persons may, without security for costs, 1621.
  - court allows bail, pending, 1567.
  - judge to grant, and defendant to give security for appearance, 1622.
- Assault in state and death elsewhere, trial in state, 1583.
  - followed by death in another county, indictment found where assault made, 1582
- Bail, allowed when, 1512.
  - court allows, pending appeal, 1567.
  - defence good for principal, is good for, 1619.
  - may arrest and surrender principal before final judgment, etc., 1616.
  - person surrendered may give other, etc., 1617.
  - prisoner let to, recognizance filed with clerk, 1548.
  - sheriff having prisoner, may take, 1618; to, in bailable offences; not to become, him-  
self, 1506.
  - who may, person charged with crime and jailed, 1547.
  - who may, person charged with crime but not jailed, 1546.
- Breach of the peace in presence of court, security required, or person jailed, 1610.
  - complainant not appearing, accused discharged, etc., 1612.
  - recognizance, when deemed broken, 1613.
    - prosecuted, when court has evidence of a, 1614.
    - proceedings on, 1611.
- Capital cases, defendants in, can challenge twenty-three, 1585.
  - state may challenge four, 1586.
- Commitments, what to set forth, 1549, 1624.
- Costs, convicted persons must pay, 1597.
  - convicted person may appeal without security, 1621.
- Counsel, accused allowed, 1563.
- Crimes committed on waters dividing counties, where tried, 1579.
  - courts to set a day for trial of, 1589.
  - improper *venue*, on joinder of issue, what judgment in felonies, 1580.
  - solicitor prosecutes certain, in federal court, 1625.
  - who bails those charged with, but not jailed, 1546; those jailed, 1547.
- Examinations certified to court by committing magistrate, 1543.
  - prisoners allowed time to advise with counsel and cross-examine wit-  
nesses against them, 1531.
  - prosecuting attorneys direct *post mortems*, 1600.
- Executions do not issue, until issuing of the notice, 1594; notices, how executed, 1596.
  - of capital offenders private unless, etc., 1629; sheriff may admit witnesses, 1630.
- Forfeitures, clerk to refund remitted, paid into office, 1592.
  - treasurer to refund, when paid to him, 1593.
- Governor in arresting fugitives from justice, copy of proceedings sent to, 1552; duty of, 1553.
  - may employ agent or offer reward for apprehension of fugitives, etc., 1555.
  - may draw on treasurer to pay necessary expenses, 1556.
  - officer to surrender on order of, 1554.
- House broken open to prevent felony, 1513.
- Indictment, certain defects of, not to vitiate, 1575.
  - death happening from assault elsewhere, found where assault made, 1582.
  - formal objections or stay of judgment, does not quash, 1569.
  - how stated when ownership is in common, 1574.
  - libel, defendant may give truth in evidence, 1581.
  - larceny of money, etc., described as money, 1576; of fair property, what set  
forth, 2238.
  - may charge larceny and receiving stolen goods in same, 1577.
  - magistrate not liable to, for improperly indorsing warrant, 1523.

**CRIMINAL PROCEEDINGS.--Continued.**

- Indictment, misdemeanor, commenced in two years, exception, 1563.
  - no one tried, except on, 1561.
  - perjury, what to set forth, 1571; subornation of, 1572.
  - second offence, how conviction stated, 1573.
  - substance of proceedings set forth in, 1570.
- Jurisdiction, concurrent, of courts in certain cases, to speedily try criminals, 1572.
- Justice, felons fleeing from, outlawed, 1517.
  - fugitives from, who may arrest, 1551.
  - governor may offer reward, etc., for apprehension of fugitive, 1553; draws on treasury for same, 1556.
  - officer must surrender fugitive from, on governor's order, 1554.
- Justice of the peace, bail not given or allowed accused taken before, of county where warrant issued, 1527.
  - certifies examinations, etc., to court, 1543; on failure, penalty, 1544.
  - costs in proceedings before, 1559.
  - duty of, on complaint of breach of peace, 1603; return of warrant for same, 1606.
  - duty of, on complaint of crime committed, 1519; to issue warrant, 1520.
  - in capital cases, accused taken before, of county where warrant issued, 1528.
  - warrant returned before what, 1529; duty of examining, 1530.
  - may associate another, with him, 1545.
  - not indictable for improperly indorsing warrant, 1523.
  - records proceedings on warrant for fugitive, and sends governor a copy, 1552.
  - shall take bail, if offence not capital, 1525; duty of, granting bail, 1526.
- Misdemeanor, justice of the peace need not take examination of one, charged with, 1539.
  - on issue joined—improper *venue*—what judgment in, 1580.
- New trial to defendants, 1588.
- Officers break open doors to arrest those charged with high crimes, 1514.
  - break open houses to prevent felony, 1513.
  - peace, arrest without warrant, when, 1512.
  - who are authorized to keep the peace, 1602.
- Penalties not specially given, recovered by any one suing for same, 1598.
  - suits on, unless otherwise provided, brought in name of state, 1599.
- Pending cases untried, transferred to succeeding court, whether superior or inferior, 1623.
- Person arrested to be taken before justice of county where offence committed, 1524.
  - arrested without warrant to have immediate hearing, 1516.
  - can not be arrested on presentment, nor tried but on indictment, 1561.
  - charged with crime and jailed, who to bail, 1547.
  - charged with crime, not jailed, who to bail, 1546.
  - committing breach of the peace in presence of the court, gives security or jailed, 1610.
  - complained of, when discharged, when not, 1607.
    - how subsequently discharged, 1608.
    - recognizance returned to next term of court, 1609.
  - convicted, appeals without securing costs, 1621.
  - convicted, pays costs, 1597.
  - engaged in gaming, must testify, but not prosecuted therefor, 1601.
  - in whose presence infamous crime committed, arrests offender, 1515.
  - imprisoned in county jail, exception, 1560.
  - on conviction, robbed, entitled to property, 1587.
  - present at breaches of the peace, arrest offenders, 1510.
  - suing for penalties, may recover same, 1598.
  - summoned by officer, must arrest, 1511.
  - surrendered, may give bail, 1617.
- Presentment, names of witnesses, etc., indorsed on, 1562.
  - no one arrested on a, 1561.
- Prisoner, answer of, reduced to writing, 1533.
  - can examine witnesses, etc., 1534.
  - committed to what jail, 1550.
  - informed that he can refuse to answer, etc., 1532.
  - justice need not take examination of, charged with misdemeanor, 1539.
  - not to be examined in presence of witnesses, 1535.
  - officer having, may take bail, 1618.
  - when bound over, 1538; when discharged, 1537.
- Proceedings, criminal, to issue and be returnable at any time, 1564.
  - costs in, before judges and justices, 1559.
- Process, who may issue criminal, 1518.
- Prosecutor pays costs in certain cases, 1590.
- Recognizance certified to court by committing justice, 1543.
  - bail not discharged after forfeiture of, 1616.
  - deemed broken, when, 1613.



# **CRIMINAL PROCEEDINGS.--Continued.**

- Recognizance filed with clerk, 1548.
  - joint notices to issue on forfeited, 1595.
  - judges lessen or remit, 1591.
  - proceedings on, 1611.
  - prosecuted on evidence of breach, 1614.
  - returned to next term of court, 1609.
- Search warrant, 1557; form and proceedings thereon, 1558.
- Solicitor prosecutes certain cases in federal court, 1625; compensation for, 1626.
- Terms of court expiring during progress of trial, court continues it, 1615.
- Warrant, accused taken before justice of county, where, issued, 1527.
  - before what justice returned, 1529.
  - justice issues, for arrest of accused, 1520.
    - not indictable for improper indorsement, 1523.
  - person arrested without, to be heard at once, 1516.
  - prisoner in capital cases brought before justice of county whence, issued, 1523.
  - when peace, issued, 1601; to whom directed, 1605; duty of justice on return of, 1606.
  - where to run and how indorsed, 1521, 1522.
- Witnesses cross-examined by prisoner, 1531.
  - give security for their appearance, 1540; on failure, jailed, 1511.
  - not to attend till day set for criminal docket, 1539.
  - pay of, in state cases, 1590.
  - party whose name is forged, a competent, 1578.
  - persons engaged in gaming, made, 1601.
  - testimony of, reduced to writing, 1536.

# **CRUELTY TO ANIMALS.**

- Agents of society to prevent cruelty to animals, to make arrests, 1639.
  - may kill certain injured or diseased animals, 1641.
  - misdemeanor to interfere with, 1640.
  - take charge of vehicle, when driver arrested, 1642.
- Animals, any one can supply food to impounded, 1634; failure to do so, 1633.
  - cruelty to, forbidden, 1631, 1636.
  - must not convey, in a cruel manner, 1635.
- Bear baiting, etc., prohibited, 1632.
- Construction of certain words, 1645.
- Fines to go to society to prevent cruelty to, 1643.
- Glanders, sale of animals with, forbidden, 1637; to be killed, 1633.
- Warrants for arrest of those violating above sections, duty of justice in issuing, etc., 1644.

# **CURRENCY.**

- Banks not to draw checks, etc., payable otherwise than in specie, 1647.
- Consideration proved before justice, etc., 1653.
  - may be shown in contracts for Confederate currency, 1652.
- Currency of United States is currency of state, public accounts, etc., so kept, 1646.
  - depreciation of Confederate, scale, 1650; when to apply, 1651.
- Due bills, notes, etc., issue of, forbidden, unless allowed, 1648; not to be circulated, 1649.

# **DEEDS AND CONVEYANCES.**

- Clerk, in what cases to appoint trustee, 1689.
  - may issue commissions for taking probate in another state, 1666.
- Contracts to sell land and leases required to be in writing, to be registered, 1669.
- Corporations, property of, not exempt from liabilities on account of mortgages, 1663.
- Deeds, all conveyances, etc., construed in fee, unless otherwise expressed, 1635.
  - by husband and wife, how executed, proved and registered, 1664.
  - copies of, evidence, unless original required, 1650.
  - errors of registration, corrected on petition, appeal, 1671.
  - of gift, proved and registered, 1660; if in wrong county, copy registered in right, 1661.
  - of trust, good against creditors from registration only, 1662.
    - form of chattel mortgage, 1678; good when registered, 1679.
    - how discharged and released, 1676.
    - liabilities on account of mortgages, etc., corporations not exempt from, 1663.
    - to secure purchase money, need not be signed by wife, 1677.
  - proof of, when land lies in two or more counties, 1656.
  - proved before commissioner of affidavits in another state, 1658.
  - proved and registered in county where land lies in two years, good without livery, 1654.

**DEEDS AND CONVEYANCES.--Continued.**

- Deeds, proved, how, form of certificate, 1655, (7).
  - grantor, etc., in United States, but out of state, 1655, (3) (8).
  - grantor, etc., out of the United States, 1655, (4).
  - grantor, etc., in state but not in county, 1655, (2).
  - grantor, etc., in county, 1655, (1).
  - privy examination of married woman, how taken and certified, 1655, (5)
  - required if she is a party, 1655, (6).
  - witness, none, and maker non-resident or dead, 1655, (9); if witness dead, 1655, (10).
- sheriff who sells, dies or leaves, how made, 1672.
- witnesses summoned to prove them, 1673.
- Donations to persons while in slavery, 1683.
- Grants of land, time for registering, extended, 1684.
- Husband and wife, deeds by, how executed, proved and registered, 1664.
  - conveyance under power of attorney from, to pass lands, 1655.
- Infant trustees, how to convey, 1670.
- Marriage settlements, what good against creditors, etc., 1675.
  - registered, otherwise void as to creditors, 1674.
- Power of attorney, conveyance under, from husband and wife, to pass lands, 1665.
  - how proven in state, how out, 1657.
- Surveys, consolidation of; proviso; common, may be recorded, 1682.

**DENTISTRY.**

- Board of examiners grant certificates, 2886.
  - meetings of, 2887; quorum, 2889.
  - record names of licent'ates, 2888.
- Fines appropriated to school fund, 2891.
- Practice, does not apply to those in, 2892.
  - misdemeanor to, without certificate, 2890.
  - who entitled to, dentistry, 2884.

**DESCENTS.**

- Inheritances shall descend as follows, 1686.
- Collateral descent, when derived from ancestor, IV; exception, V.
- Estates for life not devised, are inheritances, XI.
- Females inherit with males, younger with older; those advanced to account, II.
- Half blood inherits with whole; parent from child, VI.
- Illegitimate from each other; legitimate may inherit from them; mother does, in certain cases, X.
  - to inherit from mother, IX.
- Issue of certain colored persons to inherit, XIII.
- Lineal descent, I; to represent ancestors, III.
- No one inherits unless alive or born within ten months, VII.
- Seizin defined, XII.
- When not derived from ancestor, or his blood extinct, V.
- Widow taken as heir, when, VIII.

**DIVORCE.**

- Affidavits filed with complaints; provisos, 1692.
- Alimony on divorce from bed and board, 1695; *pendente lite*, 1696.
  - security for costs on application for, 1699.
  - when wife not suing for divorce entitled to, 1697.
- Court, power to issue writ where real estate assigned, 1698.
  - superior, has jurisdiction, 1687.
- Divorce, alimony on, *a mensa et thoro*, 1695.
  - causes sufficient for, *a mensa et thoro*, 1691.
  - consequences of, *a vinculo*, on personal relation of parties, 1700.
    - on right to custody of children, 1701.
  - facts tried by jury; if on charge of pregnancy of woman before marriage, either can testify, 1693.
  - security for costs on application for, 1699; *venue* in proceedings for, 1694.
  - wife not suing for, entitled to alimony, when, 1697.
- Marriages, what void, 1689; what void on application of parties, 1688; how dissolved, 1690.

**DOGS.**

- Bitches not to run at large at certain times, 1704.
- Bitten by mad dogs, killed, 1702.
- Listed for taxation, subjects of larceny, 1705.
- Sheep-killing, penalty for keeping, 1703.
- Tax on, how enforced, 3796.

**DRAINING AND DAMMING LOWLANDS.**

- Canals, dams and ditches, all interested, to assist in repairing, 1719.
  - assignees bound to repair as owners, 1718.
  - commissioners assess and apportion labor for repairing, 1715.
    - designate width of land for use of, 1711.
  - drainage of, on a large scale, 1720.
  - earth excavated for, removed or leveled, 1712.
    - for dam, how taken; owner of land may adjoin his own, 1710.
  - fences, paths, etc., across, made by owner, when, 1709.
  - manner of proceeding for joint repairs of, 1716; failure to work, etc., 1717.
  - no, through yards, etc., nor to create a nuisance in any way, 1708.
  - owner of land not to drain within thirty feet of, 1713.
  - proceeding to drain into, etc., 1714.
- Commissioners appoint an overseer, 1722.
  - assess and apportion labor for repairs, etc., 1714.
  - court appoints three, 1706, 1721; duty of, in general, 1707.
    - confirms report of, when, 1723.
  - designate width of land for canal, etc., 1711.
  - report to court on payment damages, costs, etc., 1708.
- Corporations, corporate name and officers, 1725; court may dissolve, 1731.
  - obedience to laws, etc., proviso, 1727.
  - owners and shares, 1726.
  - proprietors declared a, 1724.
- Court appoints three commissioners, 1706; to examine and report, 1721.
  - confirms report of commissioners, when, 1723.
  - dissolves corporation, when, 1731.
  - regulates cost, 1732.
- Damage to land, 1730.
- Infants, privileges of, 1729.
- Proceedings, a special proceeding, 1733.

**EDUCATION, LITERARY FUND, &c.**

- Agent of swamp lands, appointed, 1754; his duties, compensation, etc., 1755, 1756.
- Anditor keeps separate account of school fund, 1771.
- County board of education, 1780.
  - abolishes office of school examiner, 1783.
  - apportions school fund among districts, 1787.
  - approves school house sites, etc., 1820.
  - duties of, 1781; books, etc., examined, 1782; duties of secretary of, 1802.
  - requires treasurer to produce books, etc., 1795.
  - superintendent delivers catalogue of teachers, etc., to, 1809.
    - files with secretary of, copy of report sent to state superintendent, 1811.
- County commissioners yearly select a student for free instruction at University, 1853.
  - may revoke appointment, 1854.
- County school committee a body politic, name, etc., 1815; duties, etc., 1789; oath of, 1813.
  - deliver deeds for school house sites to treasurer of county board, 1821.
  - employ and dismiss teachers and fix their pay, 1817.
  - judge of school house sites, etc., 1820.
  - meeting of, chairman, clerk, record kept, etc., 1814.
  - receive gifts, donations, etc., care for school houses, and dispose of the same, 1819.
  - teachers render account to, of number of pupils, etc., 1818.
  - take yearly statement of number of children, of school houses, etc., 1816.
- County superintendent, compensation of, 1812; duties, powers, etc., 1806.
  - countersigns orders on treasurer for teacher's salary, 1808.
  - delivers to county board, catalogue, etc., of teachers, 1809.
  - distributes blanks, etc., 1807.
  - examines applicants for teachers' certificates, which are good for one year, 1803.
  - files copy of his report to state superintendent with secretary of county board, 1811.
  - has charge of institutes, etc., 1805.
  - receives report of number of school houses, etc., 1816.
  - reports, etc., to state superintendent, 1810.
  - suspends teachers, etc., 1806.
  - teachers to report, etc., to, 1823.
  - term of office, election biennial, vacancies; secretary to report name, etc., to state superintendent, 1784.



**EDUCATION, LITERARY FUND, &c.--Continued.**

- County treasurer, compensation, of, 1796; duties, etc., 1792; bond, 1790.
  - furnishes blank deeds to school committees, 1793; committees deliver deeds to, etc., 1821.
  - keeps account of public school moneys, 1798.
  - orders on, for payment of teachers, 1808.
  - orders on, how issued, etc., 1791.
  - produces books, vouchers, etc., when required, 1795.
  - receives and disburses school fund, bond, etc., 1790.
  - receives from sheriff taxes levied for school purposes, 1800.
  - reports to county board of education, 1794.
  - reports to state superintendent, 1797; failure a misdemeanor, 1799.
- Graded schools, 1874; principal, salary etc., 1876; tax for, 1875; what townships not included, 1877.
- Normal schools established at University, 1870; for colored persons, 1871.
  - board of education establishes others, etc., 1872; persons established at, 1873.
- Public schools, board recommend books to be used in, 1774.
  - enumeration of white children required, 1885.
  - funds for establishing, etc., paid into state treasury, 1778.
  - houses, proceedings to condemn land for, 1820; payments for, 1791.
  - reported to superintendent, 1816; who cares for, 1819.
  - misdemeanor to disturb, 1828.
  - sense of voters taking for establishing, 1878.
  - separate for the races, 1786.
  - sheriff pays treasurer taxes for, 1800.
  - such as receive aid a, 1825.
  - taxes for support of, 1826; special, when, 1827.
  - treasurer furnishes blanks to committees, 1793.
  - what taught in, 1803; year, what, 1824.
- School commissioners, clerk of corporation is secretary of, 1884; election of commissioners, 1879.
  - hold and dispose of real property in trust, 1887.
  - quarterly statements required of, 1886.
  - statements of yearly appropriation furnished, 1881.
  - with mayor, constitute the board of management, 1880.
- School districts, 1785; convenience of residents consulted in forming, etc., 1786.
- School fund, auditor keeps separate account of, 1771.
  - apportionment of, 1770; county board apportions, 1787; basis of apportionment, 1783.
  - appropriations for, paid into treasury, 1778, 1779.
  - county treasurer disburses, 1790.
  - state treasurer holds as a special deposit, 1773.
  - treasurer of corporation acts as treasurer of, 1833.
  - warrant, when and how issued for, 1772.
- Sheriff yearly pays taxes levied for school purposes to treasurer of county board, 1800.
  - takes duplicate receipts, 1801.
- State board of education, authorized to sell, etc., 1766; buy or exchange lands, 1748; price of land, 1769.
  - certain powers reserved to the state, 1767.
  - contribute lands for a canal from Waccamaw to Little River, 1751.
    - to Open Ground Prairie, 1752.
  - distributes proceeds of U. S. bonds, and cash on hand, etc., 1762, 1763; how made, 1765; no further distribution of school fund, etc., 1764.
  - employ counsel and compromise suits, 1747; others to prosecute suits, etc., 1757.
  - forfeiture of land by those failing to pay tax, 1753.
  - incorporation, name, etc., 1734; general powers, 1737; officers, meetings, etc., 1735; proceedings, etc., 1736.
  - lands held in certain counties by, subject to entry, 1768.
  - may sell reclaimed lands, etc., 1745, 1746, 1760.
  - no loan made but by advice of general assembly, 1761.
  - presumption of title in favor of, 1758; barred when state is, 1759.
  - sales, how made, 1760.
  - swamp lands may survey and drain, 1739, 1744.
    - agent, appointed by, 1754, 1755; removal of, 1756.
    - engineer appointed by, 1743.
    - written consent of owners vests title in, 1740; on refusal, how, proceed, 1741.
  - treasurer to account for receipts and report to general assembly, 1738.
  - turnpike from Plymouth to Pungo, 1740, 1750.
- State treasurer accounts for receipts, and reports to general assembly, 1738.
  - funds for free schools paid to, 1778.
  - holds school fund as a special deposit, 1773.

**EDUCATION, LITERARY FUND, &c.--Continued.**

- Superintendent of public instruction, county superintendent reports to, 1810.
  - duties of, 1775, 1776, 1777.
  - employs clerk, salary, how paid, 1829.
  - how much, 3663.
  - treasurer reports to, 1797, 1799.
- Taxes, additional, authorized for educational purposes, 1882.
  - forfeitures of land by those failing to pay, 1753.
  - insufficient, board of commissioners levy special, 1827.
  - levied for support of school; poll, 1826.
  - property of University exempt from, 1834.
  - special, bonds burned, 1857.
- Teachers, county superintendent has charge of, institutes, 1805.
  - county superintendent reports to state superintendent number of, 1810.
  - daily record of grade, department, etc., of pupils required of, 1823.
  - duties of, 1822.
  - institutes, attendance on, required, 1804, 1805.
  - render statement of pupils, etc., to school commissioners, 1818.
  - school commissioners employ, dismiss and fix pay of, 1817.
  - suspension of, 1806.
- University, 1830; Const., Art. IX, §§ 67, 14, 15.
  - annual appropriation of \$5000 paid to, 1858; how used, 1859.
  - contracts with minor students of, forbidden, 1867; how avoided, 1868; incapable of confirmation, 1869.
  - county students educated at, 1853, 1854; promises to teach after leaving, 1855; certificate of indebtedness issues, 1856.
  - endowed with escheats, 1846.
  - governor *ex officio* president of, 1835.
  - land scrip transferred to, 1851.
  - lectures delivered by state geologist, 22.
  - personal property, when paid to, 1847.
  - property of, exempt from taxation, 1834.
  - receipts from all sources, from escheats, etc., paid to, 1850.
  - special tax bonds burned, 1857.
  - unclaimed dividends go to, 1848; funds go to, etc., 3501.
  - vacancies in offices of secretary and treasurer, how filled, 1837.
  - when personal property deemed derelict, and paid to, 1849, 2190.
- Chapel Hill, in four miles of, election treats forbidden, 1863; and license to retail, 1861, 1862.
  - billiard and gaming tables not allowed in five miles of, 1864; nor exhibitions, 1865.
  - license to retail at, forbidden, 1860.
  - violation of above, a misdemeanor, 1866.
- County commissioners, boards of, send yearly a student to, 1853.
  - may revoke, etc., their appointment, 1854.
- Executive committee, 1844.
- Treasurer, duties of, 1832; vacancy in, how filled, 1837.
- Trustees, appoint faculty and confer degrees, 1833.
  - at annual meeting may limit business of special meeting, 1838.
  - authority of, 1831.
  - classes of, and when to meet, 1841.
  - dispose of land scrip, and establish two professorships, 1852.
  - meetings of, 1836.
  - number of, and their election, 1840; eight additional, 1845.
  - rules and regulations of, 1843.
  - vacancies in, how filled, 1842.
  - vacate appointment of trustee for improper conduct, 1839.

**ELECTIONS.**

- Abstract of returns made by clerks and when filed, 1926.
  - not received in time, secretary of state obtains original, 1940.
  - records of, kept by secretary of state, 1948.
  - to be opened, when, and by whom, 1947.
- Ballots are on white paper and without device, 1907; how counted, 1909.
  - names of electors on each, 1903.
- Boards of commissioners, 1911; quorum, etc., 1912.
  - establish polling places, 1891.
  - provide ballot-boxes, 1908; provide registration books, 1893.
  - select registrars; candidates not eligible, 1894.
- Boxes, description of, and whom to keep, 1908.
  - how opened and ballots counted, 1909.
- Canvassers, county, compensation, 1944; duties, 1965; meetings, 1913, 1935; powers of, 1955.
  - open and canvass returns, 1914.
  - separate abstracts signed by, and filed, 1916.

**ELECTIONS.--Continued.**

- Canvassers, state, constituted how, 1945; duties of, 1966; powers of, 1955.  
publish votes cast for executive department, 1950.  
secretary of state delivers returns to, 1966.
- Challenge, convicts challenged and required to answer, 1953.  
oath of those challenged; vote rejected, challenge recorded, 1904.  
right of, 1897; when electors or judges, 1903.
- Clerk of the superior court, 1839; original returns filed with, etc, 1918; penalty against, 1969.
- Congress, elections, 1938; time and manner of conducting, 1941.  
-man from the state at large, 1940.  
representations in, districts, 1939.  
representatives in, how commissioned, 1943.  
vacancies in, how filled, 1942.
- Constables of townships, 1890.
- Districts, state divided into, 1939; senatorial, officers of, where to meet, with returns, 1921.
- Elections, armed men not to muster on day of, 1932.  
betting on, 1937.  
breaking up or staying, 1933; bribery at, 1936.  
certificate of, when and how furnished, 1922, 1949.  
congressional, when and where held, 1938, 1941.  
contested, how determined, 1925.  
law of, furnished boards of commissioners, 1931.  
liquor not given away or sold on days of, 1950.  
municipal, qualification of voters in, 1959.  
of presidential electors, like state, 1964; when held, 1962.  
ordered by governor, conducted as other, 1958.  
result of, proclaimed at court house door, 1920.  
sheriff sends certificate of presidential electors to secretary of state, 1965.  
time of holding, 1961; treating at, 1934.  
vacancies in office of president, etc., governor orders another, 1968.
- Electors, college of, conforms to constitution, 1967.  
compensation and privileges of, 1970.  
failing to attend, 1969; governor orders election for, when, 1968.  
names of, on each ballot, how allotted, 1933; oath of, 1901; organization of, 1966.  
qualification, etc., of, 1900; votes in his own precinct, 1896.
- Governor commissions congressional representatives, 1943; who commissioned, 1951.  
elections ordered by, 1958.
- Judges of election, challenge, when, 1903; duties and powers of, 1898, 1904, 1954, 1955.  
deposit registration books with register of deeds, 1906.
- Liquors not to be given away or sold on election day, 1960.
- Penalties, corruptly taking oath of voters, 1930; fraudulent registration and voting, 1929  
officers failing in duty, 1921, 1927, 1969.
- Persons convicted of crime, challenged, etc., 1953.  
offering to register, must be sworn, 1901.  
what, not allowed to register or vote, 1899.
- Polls, when opened and closed, 1905.
- Polling places established by boards of commissioners, 1901.
- Registration books deposited with register of deeds, 1906.  
furnished by secretary of state, 1892; by commissioners, when, 1893.  
open to inspection, etc., 1897.  
day of election, on, not allowed; exceptions, 1902.  
fraudulent, how punished, 1900; penalty for, 1929.  
illegal, what is, 1952.  
persons desiring, must be sworn, 1901.
- Registrars, candidates who are not eligible as, and who elect, 1894.  
compensation of, 1944; duty of, 1895; penalty for failure in, 1927, 1928.
- Returning officers of senatorial districts, when and where to meet, returns, etc., 1921.
- Returns, abstract of, made by clerks, and where filed, 1926.  
delivery of election, 1910; false, penalty for, 1921, 1969.  
for state officers, how, by whom and when made, etc., 1923.  
opened and published, how, etc., 1925.  
original, filed with clerks, recorded, and duplicate sent secretary of state, 1918.  
penalty on officers of senatorial districts for false, 1921.
- Secretary of state, abstract of returns filed with, 1926.  
delivers returns to state canvassers, 1966.  
furnishes copy of election law to county commissioners, 1931.  
suitable registration books, 1892.  
keeps record of returns, 1943.  
obtains original abstracts, when returns not sent in time, 1946.  
prepares and transmits forms, 1924.  
sheriff sends certificate of election to, 1965.
- State, legislative and county officers, 1883; how voted for, etc., 1907.
- Tickets, what are void, 1909.



**ELECTIONS.--Continued.**

- Vacancies, in general assembly, 1957; official, 1956; presidential, etc., 1968.
- Voters, examination of, 1954; intimidation of, 1935.
  - qualifications of, in municipal elections, 1959.
- Votes, abstract of, made, 1915; separate abstract signed by board and filed, 1916.
  - contents of abstract of, for county officers, 1917.
  - elector, in his own precinct, 1896.
  - highest, elects, 1919; tie, how decided, 1925.

**ENTRIES AND GRANTS: Page 590.**

- Action, when and where brought by attorney-general to vacate letters patent, 2008.
- Entry taker, bond of, 1978; oath and fees of, 1980; office, etc., 1979; how elected, 1976.
  - dying or resigning, successor issues warrants, 1992.
  - entries made for, how, 1993.
  - failure, etc., 1996.
  - makes annual returns to secretary of state, 1995.
  - vacancy in office of, register of deeds acts, 1977.
- Entries, entry taker makes, for himself, how, 1993.
  - fees, when paid, 1986; failure to pay, subsequent enterer entitled to grant, 1987.
  - irregular, validated, 1981.
  - lapse, same one cannot make, in one year, 1988.
  - made and issued how, 1985; money for, paid to secretary of state, 1997.
  - made by *bona fide* residents, whether citizens or not, 1974.
  - price at which land may be, 1934.
  - unauthorized, are void, 1975; what lands subject to, 1971.
- Grants, application to be made in three years of issuing of, 2006.
  - authenticated, how; registered, 1999.
  - issued in heir's name, when enterer dead, 2000.
  - issued by secretary of state, on certificate of auditor, 1998.
  - issued to surveyors confirmed, when, 2002.
  - on entries extending into two or more counties, confirmed, 2004.
  - other, validated, 2003.
  - proceedings by persons aggrieved by issuing of, 2006; judgment, etc., when recorded, 2007.
  - seals of, lost, may be renewed, 2001.
- Lands covered by water; subject to entry, etc., 1971.
  - persons owning, covered by navigable water can establish fisheries, 1972; have prior right, when, 1973.
  - price at which, may be entered, 1984.
- Surveyors appointed deputies, 1983; grants issued to, confirmed, when, 2002.
  - give bond, 1982; mistakes of, etc., 2005.
  - special, appointed, when, 1989; surveys made for, when, 1994.
- Surveys, according to priority of entry, 1990.
  - made and returned, when, 1989.
  - warrant of, lost duplicates issue, 1991.
- Warrants, entry taker dying, successor issues, 1992.
  - made and issued, how, 1985.

**ESTATES. Page 601.**

- Collateral and certain other warranties made void; stand as covenants only, 2018.
- Conveyance to uses, possession transferred to use without livery, 2014.
- Estates in joint tenancy, share of deceased does not vest in survivor, proviso, 2010.
  - in tail converted into fee simple, 2009.
- Infant unborn takes by deed, etc., 2012.
- Limitations, certain contingent, in deeds, etc., how construed, etc., if made, etc., 2011.
  - to heirs of living person, to be to his children, 2013.
- Pretended rights, buying and selling, prohibited, 2017.
- Property held in trust not liable for debts, etc., 2019.
- Reversions, grantees of, have same rights against life tenants, etc., as grantors had, 2015.
  - tenants have same rights against grantees, etc., as against grantors, 2016.

**EVIDENCE, DEPOSITIONS, WITNESSES. Page 605.**

- Copies, certified, of wills or deeds in other states are proof, 2028.
  - of official writings, competent evidence, 2026.
  - of surveys from office of secretary of state, good evidence, 2025.
- Court may order parties to produce books or papers; result of failure on part of plaintiff or defendant.
- Deeds registered and lost and registry lost, presumed in good form, 2032.
- Defendant failing to produce books, etc., judgment against him, 2056.

**EVIDENCE, DEPOSITIONS, WITNESSES.--Continued.**

- Defendant, husband or wife of, competent witness for, 2036.
  - in criminal proceedings competent witness in own behalf, 2036.
- Depositions, commissioners to take, power of, 2015.
  - attendance before, how enforced, 2046.
  - default of witnesses before, 2047; witnesses, how paid, 2048.
  - how taken, 2040.
  - in civil actions before justice of the peace, 2042.
  - not quashed after trial begun, 2043; objection taken before trial, 2044.
  - what, may be read on trial, 2041.
- Evidence, copies of official writings, is competent, 2026.
  - surveys from office of secretary of state, good, 2035.
  - incompetent, what, 2037; in land suits in Haywood and Henderson, 2030.
  - of counsel in case of fraud, where state is concerned, 2033.
  - of laws of other states, territories and countries, 2022.
  - of parties admissible, 2035.
  - of some other acts, 2024.
- Grants or copy from proprietor, sufficient evidence of title under him, 2021.
- Husband or wife of defendant, competent for, 2036.
- Officers or trustees, suits on bonds of, evidence against principals, admissible against sureties, 2029.
- Records of administrators or letters testamentary in other states, how certified, 2027.
- Statutes, how proved, 2023.
- Subpœnas, after removal of cause, may issue from either court, 2051.
  - duces tecum* may issue, when, 2055.
  - how issued and served, 2038.
  - issued by clerk, where not otherwise provided, 2049.
- Variance between execution and judgment does not effect title of purchaser, 2031.
- Witnesses, appeal from justice, only two, bound over, 1120.
  - appearing before commissioners or jury of view, paid as on court, 2048.
  - attending court, not arrested in civil cases, 2050.
  - attend from term to term till discharged, etc., 2039.
  - before grand jury, when paid, 1118.
  - crime or interest does not incapacitate, 2034.
  - default of, before commissioner, 2047.
  - defendant's, county pays, when, 1122.
  - not entitled to fees in advance, 2051, 3692.
  - prove attendance at each court, 2052.
  - tickets filed with clerk and taxed as costs, 2053.
  - rules for summoning, 2038.
  - state, when paid by county, 1115.
  - two, only allowed to prove same fact, 2053; in misdemeanor, 1119.

**EXECUTORS AND ADMINISTRATORS.**

- Administration, application, what must be shown on, 2065.
  - before letters granted, etc., 2208.
  - contested, 2066; bond, etc., 2072.
  - disqualifications, 2060; granted to whom, 2059.
  - having prior right, disqualified, absent, etc., 2063; renunciation of, 2062.
  - inventory returned, when, 2080.
  - joining those not entitled, 2061.
  - persons entitled to deemed renounced, when, 2064.
  - renunciation of those having prior right, 2062.
  - right of husband, on wife's estate, 2163; lost how, 2164, 2166.
  - wife forfeits, how and when, 2165.
- Administrator, public, appointment, 2073.
  - bond, 2074; enlarged, when, 2075; renewed, etc., 2076.
  - duties and powers of, 2079.
  - oath of, 2077; obtains letters, when, 2078.
- Advancements accounted for, 2167.
  - children having, render schedule, 2168.
  - refusing to account, not entitled, 2169.
- Assets, crops ungathered are personal, 2091.
  - distinction between equitable and legal abolished, 2090.
  - proceeds of land; personal, when, 2088.
  - real, when, 2089.
  - trust estates in personalty are personal, 2087.
- Bastards are next of kin to mother, when, 2170; to each other, 2171.
- Chapter applicable to what estates, 2117, 2118.
  - to probate since July, 1869, 2160; proceedings on, before 1869, 2161.
- Child born after will executed, 2175.

## EXECUTORS AND ADMINISTRATORS.--Continued.

- Child, decree of contribution, 2225.
  - of what lands, share allotted, 2222; of what personalty, 2223.
  - when deemed devisee and legatee, 2226.
- Claims, advertisement for, 2105.
  - affidavit may be required, 2109.
  - limitation of action on, disputed, 2111.
  - made at court house, where no county paper, 2106.
  - notice may be personally served, 2108.
  - omission to present, in twelve months, 2112.
  - proved, how, 2107; referring, etc., 2110.
- Clerk first acquiring jurisdiction, has exclusive, 2058.
  - has jurisdiction, when, 2057.
  - liability and compensation of, 2213.
  - receives moneys for legatees, etc., and gives executor receipt, 2230.
- Collection, letters of, issued when and to whom, 2067.
  - authority, 2069; ceases, when, 2070.
  - oaths, etc., taken, 2071; bond, 2072.
  - powers of, to sell personalty, 2093; sale, how made, 2094.
  - qualifications, 2068.
- Contribution compelled among devisees and legatees, how, 2220.
  - decree of, 2225.
  - specific legatee, entitled to, when, 2221.
- Debts, application to sell land, to pay, 2120.
  - certain evidences of, can be sold, 2119.
  - debtor named executor does not discharge, 2115; no lien created by suit commenced, 2116.
  - defence, others of equality and priority, 2218.
  - heirs, etc., jointly liable for, 2214; limit of liability, 2215, 2216.
  - paid, estimated as unpaid, when, 2219.
  - priority of, 2217.
  - undivided land chargeable first, 2114.
- Executors, administrators, collectors, etc., 2065.
  - accounts of, annual, 2083; failure to make, 2084; final, 2086.
  - action against, 2197; by a creditor, 2195.
  - continued when letters revoked, 2200.
  - for wrongful act, etc., causing death, 2184.
    - measure of damages, 2185.
    - recovery, how applied, 2186.
  - in representative capacity, 2193.
  - survives to and against, 2176; exceptions, 2177.
    - executor of executor, 2183.
  - appearance by one of several, 2194.
  - appointment of successor; interlocutory order, 2207.
  - bond, etc., 2072; given, when, 2201; remedy on, 2202.
    - mortgage deposited in lieu of 483, 484.
  - prosecuted on letters revoked, 2203; requiring new, 2204.
  - costs against, allowed when, 2113.
  - deeds made by, in certain cases, 2178.
  - de son tort*, who chargeable as, 2180.
  - devastavit*, etc., 2181.
  - inventory compelled, 2081; return of, when, 2080; new assets, 2082.
  - joint-tenancy, hold in, 2188.
  - lands devised, sold by; who sells, 2179.
  - pay clerks in twelve months, moneys of legatees, etc., 2223.
    - legacies or distributive shares due absentees or minors, 2212.
  - over, etc., at the end of two years, 2172; exception, 2173.
  - payments of, valid, when, 2182.
  - petition filed for settlement, 2211.
  - powers of, to sell personalty, 2092; sale, how made, 2093.
    - hours of sale, 2097.
    - proceeds of, secured how, 2096.
    - sell for cash, when, 2095.
    - under wills, 2098.
  - proceed how, if no petition filed, 2227.
  - promises to charge, etc., personally, to be in writing, 2192.
  - recovery of assets and possession of real property, etc., 2187.
  - right of succeeding, etc., to issue execution, 2199.
  - service on absent, 2210.
  - settlement, file petition for, 2211.
  - sureties, new, required, when, 2204.



**EXECUTORS AND ADMINISTRATORS.--Continued.**

- Executors, administrators, collectors, etc., 2085.
  - sureties in danger of loss, how to proceed, 2205.
  - letters revoked on failing to comply, 2206.
- Gifts to issue, dying and leaving issue, 2174.
- Heirs, etc., jointly liable for debts, etc., 2214.
  - limit of liability, 2215; apportionment, etc., of recovery, 2216.
- Intestate's estate distributed, how, 2162.
  - applied in exoneration of estate bequeathed, devised, etc., 2224.
- Legacies and distributive shares, recoverable, how, 2196.
  - judge can adjudge payment of, 2198.
- Payments, order of, 2100.
  - debts due himself, 2104; not due, 2103.
  - preferences not allowed, 2102; rate of, 2101.
- Proceeding, etc., on probates before July, 1869, 2161.
- Sale, petition for, what to contain, 2121.
  - bidding in real property, 2139.
  - conveyance by heir or devisee, when void, 2126.
    - in case of fraudulent, judgment, etc., 2131.
  - final orders for, not made before present constitution, transferred to court, 2228.
  - heirs and devisees are parties, 2122.
  - infant defendants appear by guardian, 2123.
  - issue, when joined, 2124; as to title, 2125.
  - notice of, 2129; order of, contains what, 2128.
  - power of clerk, 2127.
  - real property, subject to, 2130; under wills, 2189.
- Special proceedings brought by creditors, 2132.
  - appeals, clerk files papers on, 2149; what required, 2148.
    - creditors in prior classes may docket, etc., 2150.
  - assets, affidavit of, afterwards to hand; proceedings on, 2157.
    - insufficient to pay any class of debts, 2152.
    - judgments do not fix, unless, etc., 2154.
    - personal, land proceeded against, 2158.
    - report evidence of, only on day to which it relates, 2156.
    - sufficient to pay any class of debts, 2151.
  - summons issued, clerk advertises, 2135.
    - returnable, when, where, 2134.
    - publication, how, where made, 2136.
    - proceedings on return, 2159.
  - creditors name an agent to receive notices, etc., 2137.
  - demands filed, evidenced how, 2138.
  - representative files list of, made on him, 2139.
  - clerk shows list of, etc., to representative, 2140.
  - representative admits or denies, in five days, 2141.
  - issue joined, what clerk to do, 2142.
    - who pays cost of, 2143.
  - representative failing to appear, what done, 2144.
  - clerk proceeds to state account, 2145.
    - prepares and signs final account, 2146.
  - time of notice, etc., may be enlarged, 2147.
  - creditors in prior classes docket judgments, etc., 2150.
  - judgment declares what, 2153.
    - do not fix assets, unless, etc., 2154.
  - execution, form and effect of, 2155.
  - reports, evidence of assets only on day to which it relates, 2156.
  - personal assets insufficient, land proceeded against, 2158.
  - proceedings on return of the summons, 2159.
- University, property, when paid to, 2190.

**EXPRESS COMPANIES.**

- May sell articles not called for, when, 2231.

**FAIRS.**

- Appointed by boards of commissioners, 2232.
- Appointment of police, 2235; sworn, their power, 2236; duty, 2237.
- Appointment of auctioneer, 2240.
- Board appoint commissioners to regulate fairs, 2235.
- Exemption from seizure under execution, 2239.
- Inhabitants have free liberty of fairs, 2234.
- Violation of rules of society, a misdemeanor, 2238.

## FENCES AND STOCK LAW.

- Boards of commissioners may declare any watercourse a lawful fence, 2251; powers, etc., of, 2267.
- Elections, county, 2253; district, 2255, township, 2254; how held and conducted, 2256.
- Fences, board of commissioners can declare any watercourse lawful, 2251.
  - built around stock-law territory, 2264; by assessment, 2265.
  - common, made and how kept up, 2242.
  - controversy about, on line, how adjusted, etc., 2214.
  - erected on dividing line by one owner only, 2243.
  - injury to, penalty, 2261.
  - land condemned for, etc., 2263.
  - planters to keep sufficient, 2241.
  - watercourses made lawful, how, 2250.
- Jurors, final judgment of, binding on land owners, 2247.
  - remedy against delinquent owner, 2248; how to relieve himself from liability, 2249.
  - report of, about fence to be kept up, 2245; returned to register of deeds, 2246.
- Live stock, definition of, 2263.
  - misappropriation of money by empounder, 2259.
  - penalty for releasing or receiving empounded, 2260.
  - running at large, empounded, 2257; owner notified thereof, etc., 2258.
  - unlawful for, to run at large in stock law territory, 2252.
- Stock law, fence built around, territory, 2264.
  - land adjoining, territory, how enclosed, 2262.
  - persons living within, not to let stock run beyond, 2268.

## FRAUDS AND FRAUDULENT CONVEYANCES.

- Bona fide* conveyances on good consideration, valid, 2272.
  - purchases without notice, under deeds made on illegal consideration, valid, 2273.
- Contracts charging executors, etc., personally, or any person with debts, etc., in writing, 2276.
- Contracts for sale of land void unless in writing, 2278.
  - with Cherokee Indians to be in writing subscribed by two witnesses, 2277.
- Conveyances *bona fide*, on good consideration, are valid, 2272.
  - of lands, etc., to defraud creditors are void, 2239.
  - to defraud purchasers are void, 2270.
  - purchasers of estates through fraudulent, have relief, 2274.
  - voluntary, not deemed fraudulent, etc., when, 2271.
- Keeper of ordinary, etc., not to credit for liquors over ten dollars, 2279.
- Persons removing debtors to hinder, etc., creditors liable for debts, etc., 2275.
- Purchasers of estates fraudulently conveyed have relief, 2274.

## GAME, HUNTING, WILD FOWL.

- Birds, cannot destroy eggs of quail or partridge, 2285.
  - cannot export quail or partridge from state, 2284.
  - cannot kill certain, within certain season, 2283.
  - restriction on hunting wild fowl on Sunday, at night, etc., 2286.
- Deer can not hunt or kill, during certain months, 2281.
- Hunting with fire prohibited, 2288.
  - on land of another after being forbidden by advertisement, 2280.
- Penalties go to school fund of county, and school committee sue for same, 2282, 2287.

## GAMING CONTRACTS.

- Are void, 2289.
- Contracts or judgments thereon to secure or repay money, etc., lent for betting, are void, 2290.
- Players and betters competent witnesses, 2291.

## GENERAL ASSEMBLY.

- Clerks hold office until successors are appointed, 2317.
  - index journals, etc., compensation of, 2315.
  - mileage and *per diem* of, 2319.
- Committees of investigation, powers of, 2301.
  - applicant denied hearing before, can appeal to general assembly, 2306.
  - failure to testify before, 2302.
  - false swearing before, 2304.
  - member of, can administer oath, 2303.
  - pay of witnesses before, 2307.
- Door keeper, term of office of, 2310; mileage and *per diem* of, 2319.
  - two, appointed by keeper of capitol to arrange halls, etc., 2318.

**GENERAL ASSEMBLY.--Continued.**

- General assembly, applicant denied hearing before a committee, appeals to, 2306.
- apportionment of members of, 2292, 2293.
- employees of, how paid, 2320.
- members of, bribe offered to, punished; accepting, seat forfeited, 2300; elected by, expelled, 2294.
- convene at time and place appointed, 2295.
- duties, etc., of, 2296.
- have freedom of speech, and are free from arrest, 2297.
- seat of, how contested, 2298; deposition in contested elections, etc., 2299.
- treasurer furnishes estimates of expenses to, 2311.
- Graves stones provided for members interred in Raleigh, 2321.
- House of Representatives, apportionment of members of 2293.
- Journals deposited in office of secretary of state, 2314.
- indexed by principal clerks, 2315.
- Reports of directors, officers, etc., submitted to, 2312, 2213.
- Secretary of state prints laws without delay, 2316.
- Senate, apportionment of members of, 2292.

**GUARDIAN AND WARD.**

- Clerk of superior court allowed disbursements and commissions, 2331.
- allows yearly sum for support, etc., of orphans, etc., 2333.
- appoints tutor of person and guardian of estate, 2332.
- guardian failing to account, ordered to account to, 2333.
- jurisdiction of, 2331.
- liability of, taking insufficient security, etc., 2379, 2380.
- power and duty over guardian abusing trust, 2348.
- Divorce, in case of, how guardian appointed, 2336; who has custody of children, 2335.
- Father appoints guardian by will, etc., or mother can, 2323; effect of, 2329.
- alive, guardian of estate, 2337.
- Guardians account yearly, 2382, 2345; failure, etc., 2383, 2384; final account, when filed, 2385.
- allowed disbursements, expenses, commissions, etc., 2377, 2378.
- application for, proceedings on, 2336; letters of, 2387.
- appointed by will, etc., of father or mother, 2323; effect of, 2329; power and liability of, 2330.
- appointed, how property taken from, received, 2352.
- bond given by, increased when property sold, 2339; action on, 2340; one, when property in common, 2341.
- bond renewed, when, 2346; failure to renew, 2347.
- do not take property, until security is given, 2338.
- executors or administrators of, pay ward's money, etc., into court, 2388.
- foreign, remove estate, how, 2333; petition, what to show, 2364, 2366; who defendants, 2365.
- lease land, when, 2356; liability of, for debts, 2353.
- liability of, for land forfeited for taxes, 2360.
- notes taken by, bear compound interest, 2357.
- petition of, to sell, when ward is indebted, 2369; proceeds of sale, assets to pay creditors, 2370.
- resign, when, 2373; return to be made by, in three months, 2342; of new assets, 2344; compelling return, 2343.
- sell perishable property, 2354; timber, when, 2361; sales, etc., how made, 2355.
- sureties of, in danger of loss, how relieved, 2371.
- take charge of estate, 2353; how to invest, 2359.
- Interlocutory order pending controversy, 2372.
- Plate of ward to be kept, 2362.
- Property sold when ward indebted, by petition to court, 2369.
- substituted for that sold remains of the same character as that sold, 2368.
- Public guardian applies for letters; when revoked; duties and power of, 2327.
- appointed in every county when needed, 2322.
- bond of, 2323; enlarged, when, 2324; renewed every two years, 2325.
- oath to be taken by, etc., 2326.
- Receiver appointed, when, 2350; how property got from, by guardian, 2352.
- Solicitor brings action, when, 2349; his compensation therefor, 2351.
- Wards, estates of, how and when sold, 2367; when indebted, 2369; proceeds of, pay creditors, 2370.
- removed by petition, 2363; petition, 2364, 2366; who to be defendants, 2365.
- taken in charge by guardians, 2353.
- having property in common, guardian gives but one bond, 2341.
- perishable property of, sold by guardian, 2354.
- without guardians, duty of grand jury, 2374; estates, how secured, 2375.



**HABEAS CORPUS.**

- Application for writ contains what, 2393, 2431; by whom made, 2391; in what cases made, and how, 2389, 2392.
  - denied, when, 2390; writ may issue without, when, 2398.
- Attachment on failure to obey writ, 2403; penalty for refusing, 2404.
- Habeas corpus ad testificandum*, 2429; application for, what to contain, 2431; by whom issued, 2430.
  - duty of officers, 2434; fees and bond on service, 2433.
  - writ, how and by whom served, 2432; prisoner remanded, 2435.
- Infants, custody and disposition of, in certain cases, 2427; custody contested, either party appeals, 2428.
- Notice to parties interested, when writ applied for, 2400; to solicitor, 2401.
- Officer not liable civilly for obedience, 2416.
- Party bailed, when, 2413; committed for capital offence, 2421; concealment of, 2420; orders, etc., 2421.
  - discharged, when, 2411; illness of, proceedings, 2414; remanded, when, 2412.
- Penalties, concealing party, 2420; committing for same cause, 2417; conniving at insufficient return, etc., 2408.
  - disobeying order of discharge, 2415; neglecting to obey writ, etc., 2418; refusal to grant, 2397.
  - refusing attachment, 2404; refusing to grant precept, 2407.
- Power of the county, 2409.
- Precept to bring up party detained, 2406, 2407.
- Production of the body, 2402.
- Return, false, a misdemeanor, 2419; insufficient, 2403; of writs, when, 2422.
  - proceeding on, 2410; sheriff failing to, 2405; what to contain, 2399.
- Subpœnas for witnesses, 2425; costs, etc., 2426.
- Writ, attachment on, failure to obey, 2403; defect of form, 2395; granted, when, 2394; refused, when, 2397.
  - issues without application, when, 2393; refusal to obey, etc., 2418.
  - returnable, when, 2422; return of, proceedings on, 2410.
  - served, how and when, 2423, 2432; sufficient in form, when, 2396.

**HEALTH.**

- Analyses made by state chemist, 2449.
- Board of, county, county superintendent, duties, etc., 2440.
  - compensation of, 2441; superintendent makes monthly return of vital statistics, etc., 2443.
- Board of, state, 2436; duties of, etc., 2437, 2447; terms of office, etc., 2438; officers, compensation, etc., 2439, 2442.
  - furnish blanks to county boards to distribute to township assessors, 2452.
  - meetings, annual and special, 2448.
  - persons listing property for taxation make statement of vital statistics, diseases, etc., 2451.
- Diseases dangerous to health, duties of board, etc., 2447.
- Nuisances abated, etc., 2445.
- Persons listing taxable property make statement of vital diseases, etc., 2451; duty of assessors, 2453.
- Printing done by state printer, appropriation, etc., 2450.
- Quarantine, inland, 2444; vaccination, etc., 2446.

**IDIOTS, LUNATICS AND INEBRIATES.**

- Advancement, appeal and removal to superior court, 2500.
  - clerk selects to take, 2498; decree for, suspended when person sane, 2502.
  - made of estates of what insane persons, 2501; made for what purposes, 2495.
  - of surplus income of insane paid to next of kin, when, 2494.
  - persons interested made parties, 2496; rule to be observed by clerk, 2497.
  - secured against waste, 2499.
- Guardianship, application for, proceedings, 2486; letters of appointment, 2489.
- Inebriate, property of, restored on reformation, 2487; who is an, 2485.
- Lunacy, inquisition of, 2481; confined in asylum for, proceedings, 2488.
  - land belonging to wife of lunatic, how sold, 2504.
  - lunatic wife abandoned by husband, what done, 2503.
  - person and estate may be committed to different persons, 2490; sale of estate, 2491
  - sale ordered by clerk, when, 2492.
  - when no guardian, clerks manage estate of lunatics, etc., 2493.

**IMPEACHMENT.**

- Accused has counsel, 2511; notice to, to appear and answer, 2510.
- Conviction, judgment upon, 2515; upon, liable to indictment, etc., 2518.  
vote necessary for, 2514.
- Impeachment delivered by house to presiding officer of senate, etc., 2507.  
of officer, for what offences, 2519; suspends him until acquitted, 2516.  
president of the senate, what to be done, 2517.
- Senate is the court of trial, 2505; oath administered to members of, etc., 2513.  
powers of, 2508; powers of presiding officer; when chief justice presides, 2509.  
quorum, etc., 2506.
- time and place of trial fixed after issue joined, 2512.

**INFAMOUS PERSONS.**

- Convicted of crimes, how restored to citizenship, 2520, 2522.
- Depositions not to be read, 2521.
- Petition filed in county of conviction, 2522.  
not to be filed within four years after conviction, 2523.

**INSOLVENT DEBTORS.**

- Application by creditor for appointment of trustee, 2556; to whom made, 2557.  
for discharge, how made by debtor, 2550.  
notice on sheriff, etc., by whom committed, 2551.  
Creditor may suggest fraud, when, 2530, 2538; liable for prison fees in certain cases, 2547.  
order for, to show cause, 2527.
- Debtor discharged when no fraud suggested, 2539; order of, 2542; gives bond for appearance, 2540; case continued, when, 2541.  
false swearing, penalty, 2546; fraud found, judgment of imprisonment, 2543.  
issue of fraud made up, not discharged except by trial and verdict, 2544.  
may file petition, etc., 2524—2529.  
surety may surrender, etc., 2545.
- Fraud, creditor may suggest, 2530, 2538; who may suggest, 2555.  
found, judgment of imprisonment, 2543.  
issue of, how tried, 2531; made up, debtor not discharged except by trial and verdict, 2544.  
no, suggested, debtor discharged, 2539.
- Petition, debtor may file, 2524; schedule, etc., 2525; contents, 2526; oath annexed to, 2536.  
filed in what court, 2534; notice of time and place of filing, served on creditor bringing suit, 2537.  
order for creditor to show cause, 2527; notice of order, 2528.  
summary proceeding before clerk, 2529.
- Prison bounds, who may take, 2548.  
application for discharge, how made, 2550.  
discharged from, who may be, 2549; notice served, 2551; warrant to bring prisoner, 2552; return, oath, etc., 2553, 2554.  
fees, creditor liable for, in certain cases, 2547.
- Summary proceedings before clerk, 2529.
- Surety on any bond for appearance may surrender principal, 2545.
- Trustee, accounts settled and returns made, when, 2560.  
death of, court can appoint another, 2563; can appoint more than one, 2562.  
duties and general powers of, 2558, 2559; oath of, 2561.
- Who entitled to the benefit of this chapter, 2533.

**INSPECTIONS.**

- Barrels, cooperage, disputes about, in Wilmington, determined, how, 2630.  
cooper makes, as directed in this chapter, 2616; fish, size regulated, 2600.  
flour, weight, size, etc., 2588; turpentine, etc., weight, size, etc., 2610.
- Boards of commissioners appoint inspectors, try them, etc., etc., 2565.  
landing places, and of inspections, 2564.
- Cotton seed, bushel, weight, how much, 3323.  
shipped from Wilmington, unless sold in town, free from inspection, 2643.  
sold in Wilmington, weighed, 2640; who to weigh, 2641; fee fixed, 2642.  
weigher's oath filed with register of deeds, etc., 2639.  
weighing, and deduction of weight, 2638.
- Fire-wood, inspectors of, for New Berne, 2632; sale of, in towns to be by the cord, 2631.
- Fish barrels and half-barrels, size, etc., regulated, 2608.  
inspectors of; duties, fees, powers, etc.; exception, 2607.  
salt mullets, how packed; packers of, etc., 2609.
- Flour, "cask" or "barrel" includes half-barrel, 2602; cask not condemned, when, 2597.

**INSPECTIONS.--Continued.**

- Flour, cask of, how inspected, 2592; owner dissatisfied, gets a re-examination, 2593.
  - cask with brand on, not to be used, 2593.
  - grades of, 2587; what grades and weight pass inspection, 2583.
  - inspector of, 2585; altering brand of, 2599; duties of, and neglect, 2600.
  - not to trade in, or buy, which he has condemned, 2586.
  - inspectors of, unpacks, when, 2590.
  - not liable to re-inspection in sixty days, 2596.
  - sellers of barrels, deficient in quantity, liable, etc., 2591.
  - sold in Fayetteville, 2601.
  - to be observed by millers, etc., 2589.
  - uninspected, not to be exported, etc., 2594; penalty on shipper, 2595.
- Grain, bushel of, weighs, what, 3824.
- Inspectors appointed, 2565; fees of, 2637, 2631; misdemeanor to act falsely, etc., 2623.
  - of fish, 2607; hog's lard, 2605; meats, 2603; naval stores, 2570, 2571; duties, 2613;
  - saw mill lumber, 2622; tobacco, 2585; provisions, 2633; duties, 2634; bond,
  - etc., 2635; rice, 2603; wood, 2632.
- Lumber, how inspected, 2621; inspection of steam mill, 2624.
  - inspection of tun timber in Cape Fear river, 2623.
  - tun timber and saw mill, how measured, 2625.
- Meats, beef, pork, etc., inspector of, 2603, 2605; inspection of, 2604.
  - certificate of inspector of, shown by seller, exporter, etc., 2617.
  - penalty on master, etc., receiving without inspection, 2618.
  - re-inspected if not exported in sixty days, 2615.
- Naval stores, inspectors of, 2570, 2571; guage spirits of turpentine, 2613.
- Provisions and forage, inspectors, 2633; bond and, 2635; duties, deputies, etc., 2634.
  - penalty to sell uninspected, 2636.
- Rice, how inspected, etc., 2603, 2606.
- Shingles, board, etc., to be culled, 2626; inspector must not buy cullings, 2627.
  - of what size, 2620.
- Tar, pitch and turpentine, barrels of, branded, etc., 2611; size, etc., of barrels, 2610.
  - makers of, brand with their initials, etc., 2612.
  - re-inspected if not exported within twenty days,
  - 2615.
  - tar sold by weight, penalty, 2614.
  - turpentine, how and by whom guaged, 2613.
  - water not a fraudulent mixture in tar, etc., 2610.
- Tobacco, branding hogshead of, falsely, 2576; condemned, re-inspected, when, 2574.
  - inspectors of, duty, 2572; for Fayetteville, 2532; pickers, 3691; turners-up of,
  - warehouses, etc., 2565; attend at place, etc., appointed, 2567.
  - cannot buy, 2581; cannot export, 2568; designate quality, etc., 2583.
  - deputies not allowed, 2569; forging stamp of, 2577; give manifest of
  - hogsheads, 2573.
  - lugs taken by, from each break, 2584; not liable, when warehouse
  - burns, 2566.
  - no, exported before inspection, 2575; owners may turn up, 2580.
  - proceedings for demand of, injured since inspection, 2579; when note lost, 2578.

**INSURANCE.**

- Action against defaulting agents, 2661; limit of, against insurance companies, 2660.
- Agent accepts service required, 2646; general, 2649; defaulting, action against, 2661.
- Chapter applicable to companies against which final judgments are obtained, 2657.
- Companies failing to pass approved examination, 2652.
  - failing to pay judgment on policy issued, etc., 2655.
  - fire insurance, deposit required, etc., 2654.
  - foreign stock, stock, etc., required, 2644; foreign mutual, assets required, 2645.
  - make annual statement, attested, etc., 2647.
  - mutual, assets and statement required, etc., 2650.
  - North Carolina stock, capital required, 2650.
  - state a stockholder in, when, 2672.
- Deposits required of insurance companies, 2654; withdrawn in part, 2658; in whole, 2659.
  - chapter applicable to companies, and their, against which judgments are ob-
  - tained, 2657.
- Penalty for violation of chapter, 2662.
- Secretary of state appoints agent in certain cases, 2646; examines statements, etc., re-
- quired, 2651.
- Statements, annual, of companies, required; attested, etc., 2647, 2650.
  - examined and approved; certificate and publication, 2651; kept on file, 2652.
  - of licenses and taxes furnished auditor, 2653.
- Treasurer, deposits of companies made with, 2654; his fees, 2656.



**INTERNAL IMPROVEMENTS.**

- Board of, appoints state proxies, 2693; cares for state's interest in railroads, etc., 2666, 2694.
  - corporate name, 2663; duty of regarding contracts, 2671.
  - funds of, deposited in tanks, 2669; issues writs, etc., 2696.
  - railroads report to, 2668.
  - record and report to the general assembly, character of state's interest, 2667, (1);
    - condition of buildings and repairs, 2667 (2); condition of railroads, etc., 2667 (3); financial condition of, 2667 (5); extent, capacity, business, etc., 2667 (4); and name of those failing to report, 2667 (6).
  - rules and by-laws of, 2665; sessions of, and pay of members, 2664.
- Condemnation of dwellings, etc., not allowed, 2676; of land for railroads, stations, etc., 2682, 2684; for canals, etc., 2683.
- Oaths, authority for board to administer, 2695; justice administers, when, 2680.
- Plank-roads, etc., land condemned for, 2633; not established but by law, 2692.
- Railroads account to governor of all shipments, etc., 2690.
  - affairs of, in which state has interest, investigated by governor, 2694.
  - crossing other roads, not to obstruct them, 2685.
  - enter lands to build works, etc., 2673; disagreement, damages assessed, 2674;
    - report, what to contain, 2675.
  - established by law alone, 2692; furnish board maps of improvement, etc. 2689.
  - new made, as good as old ones, 2683.
  - report through their president to board; report, what to contain, 2668.
  - take material from adjacent lands, 2677; value assessed, 2678; valuation, 2679;
    - appeal allowed, 2681.
  - turn their roads, when, 2686; damages allowed owner of land, etc., 2687.
- State a stockholder in companies to the amount advanced, 2672.

**JURORS.**

- Boards of commissioners select juries, 2697; list, how made, 2698; insert names in, 2699;
  - examine list, etc., 2700.
  - failing to draw a jury, 2707.
- Jury, commissioners failing to draw, 2707; death or removal from county, 2704.
  - exception to, when taken, 2716; exempt from service of process, 2710.
  - foreman of grand, administers oaths, 2717.
  - in charge of officer, accommodated, 2711.
  - list made, 2698; put in box, 2701; how drawn, 2702, 2705; special term of court, 2706.
  - suit pending by juror, disqualifies him, 2703.
  - summoned to attend until discharged, 2708; disobedience, fine, etc., 2709.
  - tales, how summoned, etc., 2708; pay of, in capital cases, 2712.
- Special venire ordered in capital cases, when, 2713; how drawn and summoned, 2714.
  - sheriff failing to execute writ, and jurors failing to attend; penalty, 2715.

**LANDLORD AND TENANT.**

- Agreement to repair, how construed, 2727.
- Attornment unnecessary, on conveyance of the reversion, etc., 2737.
- Costs to successful party, 2751.
- Crops, possession of, vested in lessor, 2729; removal of, by the lessee without notice, 2734.
- Damage, accidental, by fire, tenant not liable, 2723; surrenders possession, when, 2728.
  - defendant recovers for dispossession, 2749.
  - recovered for occupation to time of trial, 2748.
- Forms of proceeding for summary ejectment, etc., 2753; what sufficient, 2752.
- Jury trial demanded by parties, what to be done, 2743.
- Justices do what, if defendant fails to appeal or admits allegation, 2742.
  - either party can appeal from, 2745; powers of, 2744.
- Lease, chapter applies to, of turpentine trees, 2725.
  - determining during current year, tenant holds to end of year in lieu of emblements, 2724.
  - to be in writing, when, 2718.
- Lessee removing crops without notice, misdemeanor, 2734; rights of, 2730.
  - undertaking of, 2731; failing to give, possession passes to lessor, etc., 2732.
  - given by neither, 2733.
- Lessor, crops vested in, 2729; estate of, terminating, rents apportioned, 2722.
  - mining, etc., entitled to remedies herein, 2736; not partner unless, etc., 2719.
  - oath of, on summons issued, 2740; remedy of, when tenant deserts, 2750.
- Notice required to terminate tenancy, length, 2725.
- Rent apportioned, when lessor's estate terminates, 2722.
  - demand of, unnecessary to create forfeiture, when there is a clause of re-entry, 2720
  - in arrear and costs tendered by defendant, what done, 2746; restitution, etc., 2747.
  - persons entitled to, dying, to whom paid, 2723.
- Right of grantee of reversion, etc., 2733; to recover for use and occupation, when, 2721.

**LANDLORD AND TENANT.--Continued.**

- Summons issues, when, 2740; how served, 2741.  
defendant does not appear, etc., what done, 2742.
- Tenant holding over, dispossessed, when, 2739.  
not liable for accidental damage, etc., 2726.

**LIENS.**

- Claims, when filed, 2757; where brought, 2753; rights not affected, 2759; costs to either, 2760; set off, 2761.
- Execution, colt not exempt from, for stand of stud, 2771.  
issued as on other judgments, 2764.  
justice does not issue, against land, 2767.  
laborer's share of crop not liable to, against employer, 2769.
- Lien on building, 2754; colt, 2770, 2771; claims filed, where, 2757; when, 2762.  
crops, 2755; advances on, 2772, 2773; discharged, how, 2766.  
personal property, 2756, 2757, 2762; proceedings to enforce, 2763; paid, how, 2765.  
sub-contractors, etc., 2774; notice required, 2775; enforced, how, 2776; lien of, exceeds not amount due contractor, 2781; judgment against, is against master, 2780.  
vessels, 2777; notice, 2778; enforcement, 2779.
- Remedy by attachment, 2768.

**LIGHT HOUSES.**

- Lands purchased by the United States to erect, 2782; deeds registered, 2783; not to be taxed, 2784.
- Officers of state execute process on said lands, 2785; conditions of consent, 2786.

**LIMITED PARTNERSHIPS.**

- Actions, how conducted, 2890.
- Affidavits of publication filed, 2796.
- Alterations in names, etc., work a dissolution, 2798.
- Certificate signed, what to contain, 2789; acknowledged and registered, 2790; where, 2791.  
affidavit essential with, 2793; effect of false statement, 2794; of renewal, 2797.
- Clerks' and registers' fees, 2803.
- Name of firm, what to be, 2799.
- Oaths made of the sums contributed, 2792.
- Partnerships formed, 2787; liable to account with each other, 2804; dissolved, how, 2807;  
effect of fraud, 2805; of bankruptcy, 2806.
- Special partners, general can unite with, 2788; terms published, 2795; examine business, 2803.  
stock not withdrawn, 2801; returned, when, 2802; renewals and continuances, certified, 2797.

**LOCAL OPTION, LIQUORS AND WINE.**

- Election held on question of liquor or no liquor, when, 2812; effect of, 2815; effect of local, 2816.  
qualified electors entitled to vote, 2814; rules for, 2813; duty of commissioners, 2817.
- Local prohibitory laws, etc., not passed without notice, 2810.
- Manufacture of domestic wines encouraged, 2809.
- Prohibition in certain places, decided by vote of the people, 2811.

**MARRIAGE AND MARRIAGE SETTLEMENTS AND CONTRACTS OF MARRIED WOMEN.**

- Consequences of a divorce *a vinculo* on the property of the parties, 2852.  
elopement with an adulterer, 2853; husband separating and living in adultery, 2854.
- Contracts between husband and wife, what valid, 2845; what voidable, 2844.
- Free traders, wives become, how, 2836; date of registration, 2837; evidence, what, 2838.  
cease to be, how, 2839; who may be, 2840, 2841.
- Husband, interest of, in wife's land, exempt from execution, 2849.  
liable for *torts* of wife, 2842; not liable for her debts, 2831.  
ordered to pay costs, or discharged from defence, 2834.  
summons served on, in actions against wife, 2833.  
tenant by the courtesy, when, 2847.  
wife cannot contract without consent of; exception, 2835.
- Leases, what, of wife valid and void without private examination, 2843.
- License delivered before marriage celebrated, 2822; penalty, 2826.  
issued by register of deeds, when, 2823; form of, 2824; unlawfully, 2825,  
recorded by register, penalty for failure, 2828.

## MARRIAGE AND MARRIAGE SETTLEMENTS AND CONTRACTS OF MARRIED WOMEN.--Continued.

- Marriages, book of, kept by register of deeds, 2827.
  - degree of kinship within which, cannot be celebrated, 2820.
  - license required before, can be celebrated, 2822.
  - necessaries to valid, 2821; who may contract, 2818; who, not, 2819; see §§ 1688—1690.
  - validation of marital compacts between negroes, 2851.
- Settlements void as to existing creditors, 2829; void except from registration, 2830, 1674.
- Wife, actions against, summons served on husband, 2833.
  - becomes a free-trader, how, 2836.
  - cannot contract without her husband; exception, 2835.
  - insures her husband's life for her separate use, 2850.
  - land of, not sold without her consent, 2849.
  - leases of; what valid, what not, 2846.
  - liability of *feme sole* continues after marriage, 2832.
  - power of, to make a will, 2848.
  - torts* committed by, husband jointly liable, 2842.

## MASTER AND SERVANT.

- Enticing servant from master, actionable, 2855; additional penalty, 2856.

## MEDICAL SOCIETY.

- A body corporate, 2857.
- Board of medical examiners, 2859; appointment of, 2862; assemble, when, etc., 2863; compensation, 2867.
  - duty of, 2860; grant and rescind licenses, 2858, 2866, 2869.
  - record kept by, 2865; secretary, 2870; officers, 2864.
- Temporary license, 2861; who may practice, 2858; practicing without license, 2868.

## MILITARY SCHOOLS.

- Provided with arms, 3024.

## MILITIA AND STATE GUARD.

- Arms, how procured, when brigadier-general dead or absent, 2990.
- Artillery, certain sections concerning infantry apply to, 2958.
- Cavalry, certain sections apply to, 2947; commissions in, 2948.
  - field officers of, review and make returns, 2942.
  - finer, what, and how appropriated, 2944, 2945.
  - muster when, and returns, how made; with infantry, who commands, 2941.
  - regiments formed, officered and equipped, 2940.
- Courts martial, cavalry to be held, 2943.
  - company, appeal, executions, proceedings, etc., 2916.
  - constituted, 2964; government of, 2968.
  - general, appointed and held, 2959.
  - oath and rank of officers, 2965; judge advocate, duty of, 1969.
  - officers and rank, 2960, 2961; officers detailed, 2962, 2963.
  - proceedings at, against delinquents, 2930; adjournments, 2931; perjury, 2971.
  - regimental and battalion duties and powers, 2927.
  - witnesses, summoned and sworn, 2966, 2967.
- Discipline, rules of, Upton's tactics distributed, etc., 2913.
- District of captain laid off; boundary regimental lines in same county, how altered, 2914.
- Exempts, commissioned officers by eight years' service, 2989.
  - conscientious scruples and members of fire companies, 2901, 2902.
  - privates by ten years' service, 2988.
- Governor may remit fines and penalties, 2939.
- Infantry, how divided, 2905; mustering with cavalry, who commands, 2941.
  - officer of, grade and rank, 2907; regiments, brigades, etc., how distinguished, 2906.
  - volunteers do not return to, but by permission; served until equipped, 2955.
- Militia, arms for, how procured, when general dead, etc., 2990.
  - detachments for United States service, 2973, 2975; substitutes received, 2974.
  - exempts from duty, 2900, 2976; from service, 2988, 2989; return of exempts, 2904.
  - families of poor militiamen in service, how cared for, 3343.
  - of whom composed, exemption, 2893; how divided, 2894; how governed, 2895.
  - pay of, in actual service, 2982, 2983, 2984.
  - private costs in relation to, not repealed, 2991.
  - punishment for desertion, 2986; refusal to answer call of alarm, 2985.
  - seven justices call out, in invasions, etc., 2978; duty of officers, 2979, 2980.
  - three justices call out, to suppress outlaws, 2981.
  - volunteer companies, 2986; white and colored in distinct companies, 2899, 2992.



**MILITIA AND STATE GUARD.--Continued.**

- Musicians, company, how appointed, privileges, etc., 2917.†  
 Musters, company, regulated, 2915; road hands not ordered out on day of, 2918.  
     persons on, ground failing in duty, arrested, 2925; exempt from arrest in civil actions, 2926.  
     regimental or battalion, when held; colonel, duties, etc., 2920; penalty for non-attendance, 2921.  
 Officers, adjutant-general appointed, 2896; distributes Upton's tactics, 2913; duties of, 2937.  
     *aids-de-camp*, governor may appoint four, 2908.  
     appointed and commissioned, 2897, 2952; enroll and return exempts, 2903, captains make returns, etc., 2919; colonel, duty, etc., 2920.  
     commandants of regiments, etc., give notice of reviews, 2922.  
     commanding, duties as to fines, etc., 2932; returns to be made, 2933, 2935, 2954.  
     commissioned for three years, and equip in twelve months, 2910, 2936; exercise day before review, 2923, 2936.  
     deliver money and papers to successors, 2912.  
     failing to attend musters, reviews, etc., 2921, 2936, 2956.  
     give notice of their absence, 2911; misbehavior of, 2924.  
     oaths of, 2898, 2929; of generals, 2934; of paymasters, 2928.  
     of infantry, appointment and grade, 2907.  
     penalty for refusing to do duty when ordered out by civil authority, 2977.  
     rules of discipline, 2913; uniform, 2909.  
 Returns and orders sent through post office in certain cases, 2938.  
 State guard, adjutant-general, books, duties and reports of, 3011.  
     arms, 3008; inspection of, 3009; injury to, 3010; courts martial, 3015; drills, 3013; parades, 3012; rules, 3014; uniform, 3007.  
     battalions, what constitute, 2997; officers to each, 2998.  
     captains of companies make yearly reports, etc., 3003.  
     commander-in-chief disbands company and revokes commissions, 3004.  
         orders certain number of men into camp, when, 3023;  
         prescribes rules, etc., 3022.  
     companies failing to comply with legal requirements, 3006.  
     composed of volunteers who enlist for five years, 2994; certificate of membership, 3017.  
     contributing members of company enrolled, 3018; entitled to certificate of membership, 3019.  
     discipline of, and organization, 3005; exempt from jury service, 3016.  
     in time of peace, limited in number; standard, etc., 3020; liable to active service, 2993.  
     officers commissioned to each battalion, 2998; how commissioned, 3000, 3004.  
         chosen, how, etc., 2994; election of, 3021; oath of, 3001; rank, how, 3002.  
     penalty for not appearing, when ordered out for active service, 2995.  
     state divided in districts; boundaries, etc., 2996.  
     white and colored militia enrolled separately in, 2992.  
 Volunteer companies, etc., formed, 2949, 2951; incorporation of, 2987.  
     appointment of officers, 2951, 2952; returns of, 2954; to review, 2956;  
     vacancies in, filled, 2957.  
     muster once in three months; adopt rules for their government, 2953.  
     not to return to infantry but by permission, and serve in infantry until equipped, 2955.  
     select uniform, do duty as other companies, and are under the commander of the regiment, 2950.

**MILLS.**

- Court appoints three commissioners, 3029, 3030; duty of, 3031, pay of, 3042; report of, 3032.  
     power of, on return of report, 3034; duty of persons, to whom leave granted, 3035.  
 Damages, judgment for plaintiff for annual sum, binding for five years, 3039.  
     judgment against plaintiff, when not, 3041.  
     when yearly, as high as twenty-five dollars, 3040.  
 Dams, abatable nuisances, when, 3038.  
 Millers grind according to turn, 3026; measures to be kept, 3027.  
 Mills, injury done by erection of, 3037; not allowed, when, 3033.  
     water, how person wishing to build, proceeds, 3028; time to build or repair, 3036.  
     what shall be public, 3025.

**MINES.**

- Conveyance of water for mining purposes; application made to justices of the peace, 3044.  
     petition, character of, 3045; damages assessed, 3046; registration of assessment, 3049; oath, 3047; right of application, 3048.  
     compensation of appraiser, 3050; procedure, 3051.

**MINES.--Continued.**

Lessors of mines not partners with lessees, unless so contracted, 3043.  
Obstruction of drains a misdemeanor, 3052.

**MONEY REMAINING IN HANDS OF CLERKS, &c.**

Clerks, etc., admitting money in hand and failing to pay, how proceeded against, 3056.  
failing to render account, etc., sued; suit where brought, penalty, 3055.  
of courts make statement of moneys, etc.; to whom statement sent; publication, 3053.  
Sheriff accounts for such moneys in like manner as clerks, 3057.  
Moneys may be used by the public till called for by owners, 3058.  
paid to certain public officers, 3054.

**NAMES.**

Changed by the superior court, 3059.

**NAVIGATION.**

Lumbermen required to remove obstructions in Albemarle sound, etc., 3060.  
Nets must not be set across navigable streams, 3163.  
Offal not to be cast into navigable water, 3162.

**NOTARIES.**

Appointed by governor, qualified, how, 3061; fees of, 3065, 3085; duties and power of, 3064.  
Clerks act as, and certify under seal of office, 3063.  
duplicate commissions issued; one part filed in office of, 3062.

**OATHS.**

Administered, how, 3066; in support of constitutions, 3069, 3070; of sundry persons, 3072.  
County surveyors and deputies administer, in partitionment of lands, 3071; deputies administer, 3073.  
Persons scrupulous of laying hands on Bible, how sworn, 3067.  
Quakers, Moravians, Dunkers and Mennonists affirmed, 3068; Quakers can wear hats in court, 1331.

**OFFICES.**

Contracts for purchase or sale of, void, 3075.  
Not to be held contrary to the constitution, 3074.  
Officers take oaths of, before acting, penalty and ejection, 3077.  
Persons holding, deemed as doing so lawfully; hold until successors qualify, 3076.

**OFFICIAL BONDS.**

Board liable as surety, when, 3083; also to indictment, 3084.  
not to be surety on official bonds, 3091.  
record of, conclusive evidence of facts stated therein, 3085.  
voting on approval of bonds, clerk to record yeas and nays, 3082.  
Official bonds annually renewed, 3078; failure, creates a vacancy, 3079.  
appointee to give, 3090; approval, execution and custody of, 3081.  
insufficient, judge requires good one given, 3089.  
irregularity in form of, does not invalidate, 3095.  
suits on, 3087; complaint must show in whose behalf suit brought, 3088.  
summary remedy on, in superior court, 3093; damages against officers, etc., 3094.  
surety on, to justify, 3080.  
Penalty on officers acting without giving bond, 3086.  
Sheriff, etc., liable for whole debt in case of negligence, 3092.  
Vacancy declared, judge files statement of his proceeding with clerk of board, 3091.

**OFFICERS OF STATE.**

Actions, cost of, by or against state, paid by state, 3150.  
Applications for pardon, what to contain, 3113.  
Apportionment of school moneys, 3146.  
Attorney-general, his duties, 3140; fees, etc., 3664.  
has a clerk, 3665.  
Auditor, banks having state deposits, make monthly statements to, 3131.  
duties of, 3127; fees of, etc., 3662; office hours and room of, 3130.  
rooms assigned, 262.  
Banks disburse state funds on check of treasurer, countersigned by auditor, 3132.  
having state deposits transmit monthly statements to auditor, 3132.  
Books furnished the counties at cost, 3123.

**OFFICERS OF STATE.--Continued.**

- Commissioners examine vouchers, 3138.
- Contested elections; power and duty of governor, 3099.
- Council of state convened by governor, 3112.
- Governor, applications for pardon, what to contain, 3113; recorded, 3101; preserved, 3102.
  - clerk allowed, 3657.
  - convenes council of state, 3112.
  - duties of, in contested elections, 3099; employs counsel, 3103.
  - keeps certain records, 3101; letter book preserved in office of, 3106.
  - office, where, 262.
  - private secretary of, 3105; fees, etc., 3656.
  - residence of, at Raleigh, 3104; mansion, 3105.
  - salary of, etc., 3655.
  - seals of court and state, procured by, 3107.
  - sends copies of reports and statutes to other states, 3100.
  - thanksgiving day appointed by, 3111.
- Officers, executive, 3098; legislative, 3097; public officers of state, 3096.
- Real property mortgaged to state; foreclosure, sale, distribution of surplus, 3129.
- Sealed proposals advertised for, 3126.
- Seals of court and state, 3107; cost of, how paid, 3109.
  - provision for new, 3108; state, put on papers more than once, when, 3110.
- Secretary of state accounts for state expenses, how allowed, 3119.
  - bond of, 3115; custodian of records and statutes, 3114.
  - duties of, 3117; office hours of, 3116; rooms of, 262.
  - furnishes blank books to county and state officers, 3122.
  - furnishes blank forms for estimates, 3124.
  - how reviewed, 3128.
  - public documents, reports, etc., bound and indexed by, 3120, 3121.
  - purchases fuel, lights and stationery, 3118.
- Superintendent of public instruction acquaints himself with educational wants, etc., 3145,
  - annual report of, to governor, 3142; contents of report, 3143.
  - controls common schools, etc., 3142.
  - delivers property and records to successor, 3149.
  - distributes forms for reports, 3147.
  - corresponds with foreign educators, investigates their systems, etc., 3144.
  - duties of, and office, 3141, 262; files manuscript and printed reports, 3148.
- Thanksgiving day appointed by governor, 3111.
- Treasurer, annual accounts of, when closed, 3137; bond of, 3134.
  - deputy, his duties and power, 3135; duties of, 3133.
  - money paid to, by mistake, how recovered, 3128.
  - office hours and room of, 3139; rooms of, 262.
  - pays for seals, 3109; sues for, and collects state property, 3136.

**OYSTERS AND OTHER FISH.**

- Dynamite shell used to destroy fish a misdemeanor, 3182.
- Fines and penalties collected under this chapter, 3190; offences herein created indictable, 3165.
- Fish, nets must not be set to obstruct passage of, 3163.
  - non-residents forbidden to, in state waters for profit, 3155; penalty, 3156; license, 26.
  - obstructing passage of, in Hiwassee river, 3175; waters of Little river, 3177.
  - obstructions to be all opened; penalty for failure, 3189.
  - offal not to be cast into navigable waters, 3162.
  - preventing destruction of, in Black river and Six Runs in New Hanover, etc., 3186.
    - destruction of, in Nantahali river, etc., 3178.
    - erection of stand, etc., in waters left open for passage of, 3164.
  - protection of, interest in North Carolina, 3187; in Cape Fear river, 3180.
    - one-fourth of all streams left open for, 3590.
    - in Lumber river in Columbus and Robeson, 3181; in Scuppernon river, 3185.
    - in Tyrrell county, 3184, 3185.
  - regulating fishing in Pamlico and Tar rivers, 3172.
  - removing obstructions to passage of, and providing fish ways, 3183; right to establish fisheries, 3160.
  - slopes, penalty for not keeping open, 3164.
  - stakes in Albemarle and Pamlico sounds removed by June, 3158.
  - ways on Haw river in Chatham, 3179.
- Nets, seines, weirs, etc., drift, in certain waters prohibited, 3173.
  - erecting stand, etc., in waters left open for fish-way, 3164.
  - not used in one half mile of marshes between Croatan and Pamlico sounds, 3154.
  - preventing, to obstruct fish ways in Hiwassee river, 3175.



**OYSTERS AND OTHER FISH.--Continued.**

- Nets, preventing hauling of, in Hiwassee, Notly and Valley rivers in Cherokee, 3176.
  - prohibited in Cashie, Middle and Roanoke rivers, etc., 3159.
    - in Neuse, Trent, etc., 3174.
  - regulating size of meshes of, used in Neuse, Trent, etc., 3171.
  - setting across navigable streams, 3163; in what direction, set in Pamlico sound, 3157
  - stakes in Albemarle and Pamlico sounds removed by June, 3158.
  - wanton injury to, by masters of vessels, etc., 3161.
- Oysters, clams, etc., beds, license for, 3167; planted, how, 3166.
  - growth of, in New river encouraged, 3170.
  - instruments to take, except tongs, unlawful; exception, 3152.
  - injuring beds, unlawful misdemeanor, 3168; penalty, 3169.
- Sluice-ways constructed and kept open; penalties, 3158.
- Terrapin, diamond-back; eggs; evidence; size; taken, when, etc., etc., 3153.
  - in Pamlico sound can not be caught with drag-nets, 3152.

**PARTITION.**

- Commissioners, appointment of, 3191; compensation of, costs, etc., 3200, 3201, 3215, 3221.
  - duty of, 3193; employ a surveyor, 3194; oath of, 3192; their report, 3195.
- Decree of confirmation, effect of, 3196; court may, a partition, 3211, 3213.
- Dower may be apportioned, 3203.
- Land, compensation of person selling, 3209.
  - lying in several counties, 3197; in this state and in another; procedure, 3210.
  - required to be sold for public purposes; procedure, 3206; proceeds secured, 3207.
- Partition, court may decree, 3211; decree for, in another state, when enforced here, 3213.
  - commissioners, duty, decree, when conclusive; deeds to be made, 3212.
  - confirmation of report, 3217; sale ordered, when, 3218.
  - judge decides law passed by another state, 3214.
  - of personal property, how made, 3216.
- Procedure as in special proceedings, 3222; where lands sold for public purposes, 3206.
- Proceedings when lands lie partly in this state, and in part elsewhere, 3210—3221.
- Sale, confirmation of, and effect of deed, 3220.
  - of real estate; application, how made, 3202; when ordered, and terms of, 3203, 3218.
  - notice of, 3204, 3219; who authorized to sell, 3205.
- Sums bear interest, when, 3198; charged on minors, payable, when, 3199.

**PENITENTIARY, PRISONERS, CONVICTS.**

- Board of directors cannot furnish materials or supplies for building or support, 3225.
  - compensation of, 3223; convicts conveyed to and from places of work under erection of, 3224.
  - govern the penitentiary, 3223; hire out convicts, 3246; term of office, etc, 3223.
- Compensation, apprehending escaped convicts, 3230.
  - sheriffs bringing convicts to penitentiary, 3231.
- Convicts, apprehension of escaped, compensation, 3230.
  - attempting to escape, disciplined, 3239.
  - board hires out, in certain cases, 3246.
  - children of, provided for, 3243.
  - farming out, 3244; bond for safe keeping, guard, etc., 3229, 3250.
  - hired, how and when paid for, etc, 3247; controlled by sheriff, 3249.
  - labor of, utilized for public good, 3227.
  - lunatic, sent to asylum, when, 3235.
  - movement of, directed by board, 3224.
  - re-captured, serve out full term, 3238.
  - religious service provided for, 3242.
  - resisting guard, disciplined, 3239.
  - sheriff carries, to penitentiary, compensation, 3231; what time to take, 3223.
  - state not liable for support of, until received, 3234.
  - weapons conveyed to, penalty, 3237.
- County pays expense of guard and removal of prisoners, 3253.
- County and municipal authorities appoint, etc., agents, etc., for streets, etc., 3248.
  - contract with board for employment of convict labor, 3245, 3242, 3247.
- Guard, convicts resisting, disciplined, 3239.
  - expense of, by what county paid, 3253.
  - provided for convicts hired out, 3229.
  - sheriff fearing escape, obtains, how; compensation of, 3256.
- Jails, authority and liability of keepers of, etc., 3255.
  - cleansed and good diet given inmates, 3260; bed clothing, etc., 3261.
  - criminals pay charges, etc., of, 3557.

**PENITENTIARY, PRISONERS, CONVICTS.--Continued.**

- Jails, destroyed, inmates sent to adjoining county, 3253, 3254.
  - grand jury visit, each court, 1160.
  - have separate apartments, 1158.
  - heated and made comfortable, 1159.
  - keepers of, receive federal prisoners; fees the same, 3252.
  - penalty on keepers for injuring inmates, 3259.
- Land condemned for construction of penitentiary, how, 3226.
- Penalties conveying weapons, 3237; escape of convicts, 3246.
  - failure to pay for hire of convicts as contracted, 3247.
  - improper confinement, 3267; injuring prisoners, 3259.
- Prison bounds laid out by boards of commissioners; bond to keep, 3262.
  - breach of bond, debtor excluded from, 3265.
  - who may take, 2548.
- Prisoners, bed-clothing, 3261, and diet, 3260, furnished.
  - buy necessities, 3259; confined in proper apartments, 3267.
  - escaping, guilty of misdemeanor, 3251.
  - expense of guard, etc., what county pays, 3258.
  - federal, received in county jails, etc., 3252.
  - for crime, pay jail charges, 3257.
  - prison bounds for health of, bond to keep, 3262.
    - in civil cases on *mesne process*, stands as security for final judgment, 3264.
    - on final process, bond a judgment, and breach excludes debtor, 3265.
    - in criminal cases, returned and deemed a recognizance, 3263.
    - sent to adjoining county if jail destroyed or insecure, 3253, 3254.
    - transferred to sheriff's successor, how, 3266.
- Rules and regulations to enforce discipline, 3240.
  - infractions of, recorded in book, etc., 3241.
- Sheriff apprehending an escape, gets guard, how, 3256.
  - compensation of, conveying convicts to penitentiary, 3231.
  - convicts hired out, under control of, etc., 3249.
  - files copy of verified account with his board of commissioners, 3233.
  - paid by treasurer on auditor's warrant, 3232.
  - sends convicts to penitentiary within what time, 3228.
- Spirituous liquors forbidden to be sold in penitentiary, 3236.

**PENSIONS.**

- Artificial limbs for disabled soldiers, governor contracts for, 3269.
  - commutation in cash allowed those who have provided themselves, 3270.
- Disabled soldiers, blinded in service make proof before county committee, 3273.
  - blind and maimed, relieved by county committee, 3272.
  - boards of commissioners levy tax to relieve, 3271.
  - clerk certifies list of blind and maimed, to governor, 3275.
  - sixty dollars a year allowed, 3274; how paid, 3275.
- Service, Confederate, persons disabled in, make proof thereof, 3273.
  - militia, persons disabled in, pensioned, 3268.

**PHARMACEUTICAL SOCIETY.**

- Board of pharmacy appointed, duties, 2882, 2876, 2877.
  - examinations, fees, meetings, oath, officers, quorum, vacancies, etc., 2876, 2877, 2882.
- Drugs, adulteration of, a misdemeanor, 2878.
  - compounding of, by unregistered person, misdemeanor, 2881.
  - poisonous, unlawful to sell without label, entry, etc., 2879.
  - quality of, dispenser responsible for, 2878.
- Incorporation, a body corporate, name, etc., 2871.
  - objects of, 2872.
- Membership, fee for, 2878; licentiates in pharmacy, 2875.
  - practical experience, etc., 2875; qualification for, 2874.
- Penalties, how recovered, 2883.
- Pharmacy, unlawful for other than registered one to conduct, 2873.
- Poisons, person must know its nature, label, entry, etc., 2879.
- Practitioner, business of, who does not keep open shop, not molested, 2880.
- Secretary of board, duties, salary, etc., 2877.

**PILOTS.**

- Apprentices kept by pilots, 3296; when not to act as, 3290.
- Branch, charges, etc., of, pilots of Topsall inlet, 3327.
  - granted, to whom, 3310.
- Commissioners of navigation appoint harbor masters, etc., 3322; health officer, 2466, 2467.
  - appoint pilots; 3280; regulate pilotage rates, stations, etc., 3279, 3289.

**PILOTS.--Continued.**

- Commissioners appointed by mayor, etc., of Wilmington, 3276; duties and powers, 3277.
  - for Beaufort and Morehead, 3323, 3224, 3329; authority, 3325; oath, 3330.
  - for Bogue, Carteret, Onslow, Topsail, powers, etc., 3311.
  - for Edenton, New Berne, Washington, etc., 3305; powers, 3306, 3307.
  - for Hatteras and Ocracoke; dues, duties, powers, etc., 3308.
- license pilots, when, 3281; cancel license, when, 3286.
- Harbor master appointed, how, 2322.
  - appointment and fees of, 3278.
  - for Beaufort, 3326.
- Penalties and fines, annual report of, made; disposal of, 3336.
- Penalty on pilots bringing in vessel without certificate, 2464.
- Pilotage, coal vessels exempt from, etc., 3202.
  - on ships under sixty tons, none, 3319.
  - pilots refused, entitled to, 3293.
  - rates of, commissioners fix, 3289; altered, notice required, 3293; posted, 3328.
    - at Bogue, 3332; at Old Topsail, 3331.
    - Edenton, Hatteras, New Berne, Ocracoke, Washington, 3320.
    - when vessel detained, 3291.
  - regulation of, not altered, 3304; notice posted, etc., 3328.
  - vessels pay, as agreed between master and pilot, 3321.
  - warrant for, forfeiture, etc., 3287.
  - when vessel deepened or lightened, 3300.
- Pilots absent more than six months, forfeit branch, 3286.
  - acting without license, 3315.
  - appointed by commissioners, 3280; bond given, 3283.
  - apprentice does not act as, when, 3290; kept by, 3296.
  - boats, number of, kept by, etc., 3294; bond given by, 3283, 3309, 3312.
  - bring vessels to visiting stations, 2478.
  - disputes between, and master, etc., 3287, 3288.
  - dues from, 3308; fees of, annexed to commissions, 3333.
  - indictable, when, 2455.
  - license, acting without, 3315; canceled, when, 3286.
    - granted, when, 3281; grades of, 3282.
  - master of vessel need not take, when, 3292.
  - number of, regulated, 3285.
  - one third fees paid, when, 3299.
  - pay of, when detained, driven off, etc., 3316.
  - penalties, bringing in vessel uncertified, 2465.
    - not attending, when required, 3297, 3317.
    - informing unlawful acts, 3335.
  - permission to, to regularly run on steamers, 3284.
  - refused, entitled to full pilotage, when, 3298, 3301, 3318.
  - removed for misconduct, etc., 3314.
  - report health of vessels, 2454.
  - rights of, as to Main and New Inlet, 3295.
  - spy-glass or telescope to be kept by, 3313.
- Vessels, coal exempt from pilotage, when, 3302, 3303.
  - coming from infected place, quarantine, 2455, 2456.
  - deepened or lightened, pilotage on, 3300.
  - health of, reported, 2454.
  - masters of, need not take pilot, when, 3292.
  - pay pilotage as agreed between commander and pilot, etc., 3321.
  - under sixty tons need no pilot, 3319.

**POOR.**

- Families of poor militiamen in service supported by county, 3343.
- Indigent persons owning property, 3344.
- Paupers, chargeable on county, kept at poor house, 3333; supported, how, 3340.
  - county commissioners provide for, 3337.
  - not hired out at auction, 3339.
  - removed to legal settlement, etc., etc., 3342.
- Settlement, how acquired, 3341.
  - continues till new one acquired, 3341, (5).
  - illegitimates have, of mother, 3341, (4).
  - legitimates have, of father, 3341, (3).
  - wives have, of husband, 3341, (2).
  - year's residence makes a legal, 3341, (1).



**PROCESSIONING.**

- Line disputed and procession forbidden to proceed, what done, 3349.
- Person having land processioned, deemed owner, etc., 3350; petition filed, 3347.
- Processioners appointed by boards of commissioners, 3345.
  - oath and term of office, 3346; report of, etc., 3348; appeal from, allowed, 3351.
  - surveyors deemed, when; powers, etc., 3352.

**PUBLIC ARMS.**

- Adjutant-general failing to draw, what sent, 3366.
- Allowed schools, when, 3365.
- Applied for by town or senior colonel, 3356.
- Buying, embezzling or selling, etc., 3361.
- Demanded of those not entitled, 3363.
- Deposited in arsenals, 3353, 3365.
- Detachments in service may have, when, 3364.
- Distributed on invasion, 3358.
- Duty of officers receiving, 3359.
- Keeper of, appointed, 3354.
- Muzzle loading, exchanged, 3367.
- Penalty for not keeping in order, 3360.
- Private's, on his death, go to successor, 3362.
- Volunteers obtain, how, 3355.

**PUBLIC DEBT.**

- Bonds and certificates transferable, etc., 3368; executed, how, 3369.
  - chapter of act recited in, 3372.
  - contingent, issued, 3387; treasurer can sell, 3388.
  - coupon, registered, etc., 3374.
  - denomination of, how signed, 3376.
  - executors, etc., can exchange, 3384, 3400.
  - exempt from taxation, 3371, 3377.
  - form of, 3379.
  - fundable, enumeration of, 3375.
  - interest on, how paid, 3380, 3386, 3389.
  - memorandum, number, etc., must be kept, 3370.
  - rates of exchange, 3378.
  - treasurer keeps list of, 3382, 3383.
- Chapter, appropriations to carry out provisions of, etc., 3390.
  - limitations of, 3385; provisions of, etc., 3389.
- Commissioners appointed to negotiate with holders of construction bonds, etc., 3392.
  - contract for renewal of old bonds, 3393.
  - coupon bonds, denomination, etc., 3397.
  - executors, etc., authorized to make exchange, 3400.
  - exempt from taxation, etc., 3399.
  - give bond; compensation of, 3402; vacancy, 3403.
  - hold old bonds in trust for new, etc., 3401.
  - issue certificates to those surrendering bonds, 3394, 3396, 3398.
  - sell new, and invest in old bonds, 3395.
- Taxes applicable to payment of interest on bonds, 3380.
  - coupons receivable in payment of, 3377, 3397.
  - excess of fund accruing from, purchases bonds, 3381, 3386, 3387.
- Treasurer, clerk of, makes indorsements and transfers, when, 3377.
  - keeps descriptive list of bonds issued, 3383, 3398.
  - registers coupon bonds, 3374.
  - sells contingent bonds, 3383.

**PUBLIC DOCUMENTS.**

- Acts of assembly furnished different departments of federal government, 3407.
- Library of documents established, 3406.
- Public documents of federal government distributed, how, 3404.
- Secretary of state sends documents to New York Historical Society, 3405.

**PUBLIC PRINTING.**

- Accounts for, not audited until examined and approved, 3411.
- Bills for, audited and charged, how, 3410.
  - how printed, 3431.
- Blank books and forms printed for state officers, 3433.
- Contracts for, rates, etc., 3408.
- Distribution, laws, 3420; public documents, 3424.
  - reports, price, etc., 3422; senate and house journals, 3423.

**PUBLIC PRINTING.--Continued.**

- Journals, preparation of, hastened for printer, 3415, 3416.
- Laws, bound, how, 3421; private and public together, 3419.
  - copies of, sent judges, etc., 3427.
  - distributed as soon as received, 3428.
  - remaining on hand, sold by secretary of state, 3429, 3430.
  - sent to certain colleges, 3447.
- Paper for, furnished by secretary of state, 3413.
- Printer calls on secretary of state daily during sessions of legislature, 3417.
  - causes binding to be done reasonably, 3412.
  - expedites his work, 3418, 3425.
  - finishes work in ninety days after adjournment, 3426.
  - gives bond, etc., 3409.
  - statutes copied by secretary of state and delivered to, 3414.

**PUBLIC LIBRARIES.**

- Secretary of state sends laws and reports to certain colleges, 3447.
- Senate and house library, 3435.
  - state librarian cares for, 3444.
- State library, appropriation for, 3437; books, injuring, 3443.
  - documents furnished by librarian, 3446; governor designates what, bound, etc., 3442.
  - kept, where, 3445.
  - hours when, opened, 3335.
  - librarian, duties, salary, etc., 3434, 3444, 3446.
  - trustees of, who are, 3440; authorized to publish certain records, 3438.
  - sell the same when published, 3439.
- Supreme court library, trustees, quorum, etc., 3436.
  - attorney's license tax applied to, 3441.

**QUARANTINE.**

- Commissioners of navigation to appoint harbor master and health officer, 2466, 2467.
  - abate nuisances in seaports, 2468.
  - drain lots in seaports, 2469.
- Contagion, police provide against, 2470.
- Hospitals established by commissioners of county or town, 2471, 2472.
  - medical officer establishes quarantine, 2476.
  - patient cared for pays a fee, 2477.
- Penalties, how recovered and applied, 2464, 2480.
- Physicians appointed, 2457.
- Quarantine directed by whom, 2454.
  - crew or passengers must not break, 2458, 2460.
  - inland, 2444.
  - officer appointed, compensation, 2482; regulations, etc., 2474.
    - boat and crew furnished, 2475, 2483.
    - hospital established, 2476.
    - issues warrant for arrest, etc., 2481.
  - station established at mouth of Cape Fear, 2473.
  - vessel from infected place, anchors at, ground, 2455.
- Vessel, affidavit of health required, 2462.
  - articles landed from, etc., 2461.
  - can not come in port without permission, 2455, 2456.
  - certificate to bring in, 2465.
  - fee paid by, 2477.
  - from infected place, anchors at quarantine, 2455.
  - going on board without leave, can not leave board, 2459.
  - health of, reported, 2454.
  - liable to inspection, 2477.
  - pilots carry, to visiting station, 2478.
  - provisions, etc., furnished, etc., 2463.

**RAILROADS.**

- Directors, affidavit made by, etc., to secretary of state before incorporation, 3449.
  - and officers, shares, etc., etc., 3452.
  - arrange through freight and travel, 3509.
  - change route of road if necessary, etc., 3469.
  - names of, homes of, and number of shares held, recorded, 3448.
  - open books of subscription, etc., 3451.
- Freight, charges posted; notice, when increased, 3481.
  - discrimination in, unlawful, 3482.
  - pooling and rebates forbidden, 3484.

**RAILROADS.--Continued.**

- Freight received and forwarded, etc., 3480.
  - special contracts may be made, 3482.
  - unclaimed perishable, etc., 3500, 3501; publication made, 3499.
- Laborers, indebtedness of, how collected; time for action, 3458.
- Officers account to their successors, 3515, 3516, 3517, 3518.
  - appointed by president, 3453; qualifications, 3452.
- Passengers' baggage, check and duplicate given, liable for loss, 3486.
  - injury to, not complying with regulations, 3493.
  - rules for transportation, 3479.
  - violating rules, may be ejected, 3478.
- Police force established, 3502.
  - appointed by governor, 3503.
  - badge, 3505; compensation, 3506.
  - dismissal, 3505; and oath of, 3504.
- Railroad, articles of incorporation filed with secretary of state, 3448, 3519.
  - affidavit by directors and payment to secretary of state, 3448, 3519.
  - annual report made, verified and filed with secretary of state, 3475, 3476.
  - attorney-general institutes suits against, when, 3485.
  - corporate powers of, 3473; cease, when, 3491.
    - cause surveys, etc., 3473, (1).
    - crossing, intersecting, etc., of railroads, 3473, (6).
    - erection of necessary buildings, 3473, (8).
    - grade of road, 3473, (4).
    - hold property, 3473, (3).
    - manner of raising funds, 3473, (10).
    - regulate transportation, 3473, (9).
    - right to carry person and property, 3473, (7).
    - voluntary grants, 3473, (2).
  - dissolution of, purchaser a new corporation, 3520.
  - embracing same location of line, etc., 3497, 3498.
  - evidence, presumptive, of incorporation, 3450.
  - guardians can sell land of insane for corporate purposes, when, 3472.
  - highways do not obstruct, etc., 3470.
  - officers, etc., account to successors, etc., 3515, 3516, 3517, 3518.
  - profits of, reduced by general assembly, 3477.
  - rights and privileges, etc., 3496.
  - right to acquire title to real estate, 3459.
    - petition presented, character of, etc., 3460.
      - cases not provided for, directed by court, 3460, (7).
      - court appoints guardians of insane persons, etc., 3460, (6).
      - guardians notified for infants, 3460, (3).
      - non-residents having agents, public notice given, 3460, (2).
      - parties unknown, publicly notified through newspapers, 3460, (5).
      - residents have personal service, 3460, (1).
      - respecting idiots, 3460, (4).
    - allegations against; appointees to appraise, 3461; duties and powers, 3462.
    - change of ownership does not affect appraisal, 3465.
    - court adjudges rights of conflicting claimants, 3463.
      - appoints attorney for non-residents and unknown, 3464.
      - takes cognizance of proceedings not provided for, 3465.
  - route of, 3448.
    - directors can change, etc., 3469.
    - maps, etc., made, etc., 2468, 3492.
    - objectionable, what done to change, 3468.
  - rules for forming, companies, etc., 3448.
  - servants of, wear a badge, 3474.
  - sum paid, before bill to incorporate or amend, 3519.
  - university, unclaimed funds from freight sales, etc., go to, 3501.
- Stock, capital, 3448.
  - forfeited, if not paid by required instalments, 3454.
  - insufficient, increased, 3455.
  - subscribed before articles are filed, 3449.
  - subscription to, can be made by boards of county commissioners, 3510--3514.
  - transfer of, certificate filed, 3508.
- Stockholders, executions against, 3456.
  - liabilities of, 3456; for their wards, 3457.
  - meetings of, etc., objects, etc., 3455.



**REGISTER OF DEEDS.**

Bond of, 3530; qualifies, 3529; tax list, 3540.  
 Books transcribed and indexed, 3545.  
 Clerk hands over deeds, and pays fees to, 3534, 3535.  
 County commissioners fill vacancy in office, 3531.  
     fix time of attendance on office, 3533.  
     is clerk of board of, 3538.  
 Files of original deeds alphabetized, 3544.  
 Indexes kept, 3547; general index, 3546.  
 Instruments registered, when, 3536.  
 Marriage licenses issued, 3541.  
 Office, where kept, 3532.  
 Omitted duties, how supplied, 3537.  
 Penalties against, 3542, 3543.  
 Sends notices by mail, etc., etc., 3539.

**RELIGIOUS SOCIETIES.**

Churches, curiosities, etc., exhibited in half a mile of, etc., 3553.  
     selling liquors, goods, etc., in mile of, exception, 3554.  
 Poor, penalties of chapter go to, 3556.  
 Religious societies, donations to, vest in trustees of, 3548.  
     accountability and removal of trustees, 3551.  
     trustees appointed to hold property, 3550.  
     value of lands, trustees may hold, etc., 3550.  
 Worship, houses of, on vacant lands belong to, etc., 3549.  
     intoxication, etc., during, 3555.  
     roads leading to; springs, etc., interfering with, etc., 3552.

**REVENUE AND TAXATION.**

Fines and penalties paid by collector to board of education, etc., 3562.  
 Land, delinquent redeems in twelve months, 3578.  
     failing, deed made to purchaser, 3579.  
     levied on and sold, how, 3573; form of levy, 3574.  
     lien holder may pay tax on; a preferred lien, 3583.  
     life tenants, etc., liable for taxes, 3581.  
     failing to pay or redeem, estate goes to remainderman, 3582.  
     offered for sale and how sold, 3576.  
     of guardian liable for taxes of wards, 3573.  
     lunatic, minor, etc., exempt, 3573.  
     purchased by county; redemption; sold if not redeemed, 3580.  
     sheriff bids in, for county, when; deeds, etc.; registration, 3577.  
     unlisted; back taxes assessed and collected, 3563.  
 License before practicing trade, calling, etc., 3585.  
     retail liquor dealer, how to obtain, 3584.  
 Sheriff and collectors, duties of, 3569, 3570.  
 Taxes, assessment of, 3557.  
     bank, etc., can pay, due from shareholders, 3568.  
     on stock, how paid; of non-residents, 3560; lien on, 3567.  
     collected from property in another county, how, 3575.  
     due and payable, when, 3569.  
     insolvent, allowed sheriff on settlement, when, 3572.  
     laws exempting corporations from paying, repealed, 3561.  
     lien of, on bank stock; not transferable till paid, 3567.  
     on property personal and real, 3566.  
     list and order of collection to sheriff is a judgment and execution, 3565.  
     personal property first levied on and sold, 3571.  
     polls can be collected by attachment, etc., 3553; form of attachment, 3559.  
     payment of, exemption from, etc., 3564.  
     sheriff receipts for, 3569; duties of, etc., 3570.

**RIVERS AND CREEKS.**

Boats, obstructing, etc., by felling trees, etc., 3591.  
     owners of, can construct and maintain drawers in bridges, 3599.  
 Breaks, authority to repair, 3596.  
 Commissioners appoint commissioners to examine streams, etc., 3586.  
     overseers yearly; duties, etc., 3587.  
     examine streams and lay off gates, etc., 3592.  
     of Johnston and Wayne counties, 3589.  
     procure flats, etc., 3588; report of, 3593.

**RIVERS AND CREEKS.--Continued.**

- Gates, dam owners must construct, 3595.
- discontinued, how, 3594.
- examined, etc., by county boards, 3592.
- Land, entry on, of another, etc., 3597, 3593.
- Streams, commissioners appointed to examine, 3586.
- laid off into districts; fish passages, etc., 3590.

**ROADS, FERRIES AND BRIDGES.**

- Board of supervisors discontinue and establish roads, etc., 3600.
- election and meeting of, 3601.
- erect bridges at county expense, 3623.
- exempt persons from working on, etc., 3604.
- furnish constables in ten days with names of those appointed overseers, etc., 3632, 3633.
- jurisdiction, etc., of, 3610.
- lay out, etc., church roads, 3651.
- order how costs paid, etc., 3627.
- overseers report to, 3608, 3609.
- report to superior court, 3611, 3612.
- Bridges, contracts to build, binding on county, 3624.
- draw, kept by railroads, etc., 3640.
- constructed, when, 3641.
- county constructs, when necessary, 3642.
- erected at county expense, 3623.
- established and discontinued, how, 3600.
- float, fastening vessels to, forbidden, 3639.
- hollow, made, when; order for, when presumed, 3618.
- injuries to, solicitors prosecute, 3644.
- mill owners, etc., keep up, across roads, etc., 3625, 3626.
- railroads keep up, over county roads, 3643.
- toll, allowed, when; builders must keep up, 3634.
- owner of ferry may build, 3636.
- bonds given, damages to injured, etc., 3637.
- width of, etc.; proviso, 3614.
- Cartways changed or discontinued, 3646.
- in what cases and how obtained; proceeding, 3645.
- jurisdiction over, 3610; width of, 3614.
- Ferries, authority to keep, penalty, etc., 3638.
- established, altered and discontinued, how, 3600, 3630.
- owners of, can build toll-bridge, 3636; gives bond, 3637.
- tolls of, regulated, etc., 3635.
- Gates, license to erect, across highways, 3647.
- penalty for injuring, 3646.
- Roads, altered, discontinued, established, etc., 3600, 3623, 3629, 3630, 3653.
- controversies concerning, carried by appeal to court, etc., 3627.
- expenses of, paid by county, when, 3649.
- foot-ways, order for, presumed, when, 3618.
- hands exempted from work, how, 3604; exempts, 3648.
- failing to work, 3606; warrant issued, 3608.
- obstructing, etc., a misdemeanor, 3654.
- overseers appointed; notice to, etc., 3603.
- apportion work among hands, etc., 3615.
- competent to prove notice on hands, 3607.
- duties, etc., of, 3609, 3622.
- measure and mile mark, etc., 3621.
- of water courses, 3613.
- report to board; report verified, 3608.
- moneys collected, etc., 3609.
- summon hands to work; notice; requirements, etc., 3605.
- sign-boards, etc., set up at forks, 3619, 3620.
- steamers may run on public, 3650.
- timber and earth taken from adjoining lands, 3616.
- owners of, can petition board of supervisors, 3617.
- townships divided into sections; boundaries, etc., 3602.
- turned on one's own land, how, 3631.
- width of, etc., 3614.
- Water courses, overseers of; to be kept open, 3613.

## INDEX.

### SALARIES AND FEES.

Adjutant-general, 3666; attorney-general, etc., 3684.  
clerk of, 3665.  
Auditor, 3662.  
Commissioner of affidavits, 3677.  
Constables, 3678; coroner, 3679.  
Copy sheet, dates, etc., how reckoned, 3693.  
Court, superior, clerk of, 3675; fee bill of, posted, 3676.  
furnish blank writs, 3697.  
issue executions for fees, when, etc., 3698.  
Judges of, 3670.  
certificate of attendance produced by, 3671.  
supreme, clerk, 3674; justices of, 3669.  
Entry taker, 3680.  
Fees, by whom, and how payable, 3694.  
collected, how, 3696.  
on returns to secretary of state, 3695.  
Governor, 3655; clerk, 3657; secretary, 3656.  
Inspectors, 3681; jailers, 3682; jurors, 3683.  
Justices of the peace, 3684.  
Notaries public, 3685.  
Rangers, 3686; register of deeds, 3687.  
Secretary of state, 3659.  
fees collected by, 3661.  
indexes all official records, etc., 3660.  
Sheriffs, 3688; standard keeper, 3689.  
Solicitors, 3672; fees, 3673.  
State officers allowed servants, etc., 3668.  
salaries of, paid quarterly, 3667.  
Superintendent of public instruction, 3663.  
Surveyors, chain carriers, etc., 3690.  
Tobacco pickers, 3691.  
Treasurer, 3658.  
Witnesses, 3692.

### SHERIFFS.

Board of county commissioners liable for loss, when, 3715.  
Sheriff, bond of, annually renewed; failing, a vacancy, 3703.  
acting as county treasurer, covers liabilities as such, etc., 3721.  
county commissioners take, from, 3699.  
form of, for executing process, 3706.  
justification of, etc., when required; failure, a forfeiture, 3707.  
collects claims with diligence, 3718.  
compensation of, for taking convicts to penitentiary, 3722.  
duty in such cases, 3724; how paid, 3723.  
"county treasurer" construed, how, 3721.  
custodian of jail, 3717.  
executes process and writs of court, neglect, 3712.  
false returns of, 3712; fees of, 3688.  
furnishes grand jury a list of liquor dealers, 3719.  
gives receipt for process; is evidence, 3713.  
ineligible, who fails in settlements, 3701.  
of Carteret and Hyde serve process on shipboard, etc., 3711.  
office not to be farmed, 3716.  
outgoing, liable in certain cases for not executing precepts, 3720.  
publishes list of delinquent tax-payers, 3726.  
removed from office, coroner assumes, etc., 3704.  
coroner gives like bonds and oaths, etc., 3705.  
resigns office to board, 3710.  
sureties of, liable for fines, etc., 3709.  
takes obligation of no one in custody, except payable to him as, 3714.  
no unlawful fees, 3714.  
who ineligible to office, 3700.  
may not serve as, 3702.

### SLANDER OF WOMEN.

What words spoken of, are actionable, 3727.



## STATUTES, CONSTRUCTION AND REPEAL OF.

- Action not affected by statutes repealed, 3728.
- Acts amended, considered, how, 3730.
- Rules for construing, 3729.
  - authority of public officers, etc., exercised by majorities, unless, etc., 3729, (1).
  - "county treasurer," how construed, 3722.
  - "family," how construed, 3808.
  - "imprisonment for one month," how construed, 3729, (12).
  - leap year day, how counted, 3729, (4).
  - "month," and "year," 3729, (3).
  - "oath" and "sworn," 3729, (5).
  - "person," 3729, (6).
  - "preceding" and "following," 3729, (7).
  - "seal," 3729, (8).
  - singular and plural number, gender, etc., 3729 (1).
  - "state" and "United States," 3729, (11).
  - "will," 3729, (9).
  - "written" and "in writing," 3729, (10).

## STRAYS.

- Penalties for violating provisions of chapter, 3745.
- Rangers administer oaths, 3739.
  - appointed by board of commissioners, 3731.
  - books of, open to inspection, 3741.
  - compensation, 3742; fees, etc., of, 3686.
  - justices of the peace *ex officio*, 3731.
  - pay money to county treasurer, 3740.
  - proof of stray's death furnished, 3744.
  - receipt for strays filed with, 3743.
- Strays, appraisement of, 3734.
  - not claimed in six months, two-thirds value paid ranger, etc., 3736.
  - proof of death of, furnished ranger, 3744.
  - taken up, and reclaimed, 3732.
  - taker-up of, gives bond, when, 3737.
    - not answerable for death of, 3738.
    - property of, vests in, after six months, 3735.
    - receipts for, given, 3743.
    - reward allowed, 3733.

## SUNDAY AND HOLIDAYS.

- Holidays, what are public, etc., etc., 3749, 3750, 3751.
- Sunday, cars cannot run on; exception, 3489.
  - hunting on, prohibited, 3747.
  - papers due on, when paid, 3749.
  - work on, prohibited, 3746.

## SURETY AND PRINCIPAL.

- Principal, property of, first levied on and sold, 3760.
- Surety causes written notice to be given to creditor, 3756.
  - negligence operates as discharge; exception, 3757.
  - notice to be in writing, 3758.
- defendants may show they are, etc., 3759.
- dissents from stay of execution; not liable for stay, etc., etc., 3754.
- paying debt of dead principal, has priority as creditor had, 3755.
- sues co-surety for ratable part of debt paid, etc., 3753.
- summary remedy for, against principal, 3752.

## TELEGRAPHS.

- Companies contract for right of way, 3522; entitled to, when, 3523.
  - injuries to, lines or poles, 3528.
  - proceedings by petition; facts stated, 3524.
    - copy of, and notice served on land owners, 3525
  - same as for condemning lands for railroads, 3526, 3459, *et seq.*

## TOWNS AND CITIES.

- Boards of commissioners of counties sell property of incorporated towns, 3806.
- Chapter, provisions of, applicable to what places, 3808.
- Incorporated cities and towns a body politic, 3768.
  - annual statement of expenditures and taxes published, 3797.
  - authorities purchase land for cemeteries, 3708.

**TOWNS AND CITIES.--Continued.**

- Incorporated, collectors failing to settle with treasurer, 3795.
  - make monthly settlements, 3794.
- commissioners abate nuisances, 3783.
  - construction of word "commissioner," 3808.
  - elections for, conducted and held, 3769.
    - failure to hold, incumbents hold over, 3773.
    - inspectors of, their duties, 3770.
    - tied, decided by lot, 3771.
    - time of, etc., changed, if, etc., 3772.
  - enforce by-laws by proper penalties, 3785.
  - incorporated cities and towns elect, 3768.
  - keep streets and bridges in repair, 3784.
  - number of, may be changed, 3772.
  - oaths and powers of, 3780.
  - sell corporate property, etc., 3805.
  - vacancies, how filled, 3774.
- constables, bond of, and power to collect taxes, 3790.
  - duties, oath and powers, 3789.
  - serve civil process, 3791.
- courts, municipal; appeals; authority of, 3800.
- debts of, how paid, 3802.
- dog tax, how enforced, 3796.
- double tax, when paid, 3788.
- elections, when and how held, 3778.
- markets, baker's bread, quality and sale regulated, 3786.
  - vehicles selling farm products, not to be taxed, 3782.
- mayor, criminal jurisdiction, same as that of justice of the peace, 3799.
  - duties, etc., 3775.
  - enforces collection of fines and penalties, 3787.
  - oaths of, etc., 3779.
  - sells corporate property, 3805, and makes title, 3807.
  - takes list of taxables, 3783.
- officers, qualifications of, 3777; refusing to qualify, 3793.
  - transfer books and corporate property to successors, etc., 3803.
- ordinances, violation of, 3801.
- policemen of, execute criminal process, 3792.
- qualified voters, registration of, made, 3776.
- streets, etc., to be kept in repair, 3784.

**TRAMPS AND VAGRANTS.**

- Begging from place to place, 3761.
- Chapter not applicable to woman, nor to minor under fourteen, 3766.
- Tramp arrested, 3765.
  - entering a dwelling, etc., 3762.
  - evidence of being a, 3764.
  - injuring person or property, 3763.
- Vagrants punished, 3767.
  - released from work-houses, etc., 1170.

**USURY.**

- Charging greater than legal interest forfeits entire interest, 3810.
  - six per cent. is legal interest; proviso, 3809.

**WEIGHTS AND MEASURES.**

- Acre of land, what measure, 3817.
- Weights and measures, buying and selling by, unstamped, etc., 3816.
  - keeper of, appointed, etc., contracts for and furnishes, 3813.
  - provided by board of commissioners, 3812.
  - standard keeper appointed, 3814.
    - bond and oath, 3814.
    - compensation of, etc., 3819, 3839.
    - destroys unaccommodating balances, 3822.
    - keeps record, 3821.
    - supplies counties, 3820.
  - to be used, 3811.
  - tried by standard every two years, 3815.
- Weight of cotton seed per bushel, 3823.
  - grain per bushel, 3824.

**WIDOWS.**

- Conveyances *bona fide*, not affected, when, 3838.
- Dower, alienation of husband does not defeat, 3829.
  - application for, how made, 3834; parties, 3835; notice to, etc., 3837.
  - assignment of, 3836.
  - assigned by heir or devisee with consent of widow, 3833.
  - not liable to be sold under execution, 3827.
  - nor subject to debts, 3828.
- Widow dissenting from will entitled to one-third of husband's estate, etc., 3826.
  - dissent of, made in what time, 3831; effect of, 3832.
  - years' allowance of, whom entitled, etc., 3839.
    - application for, duty of personal representative, 3845.
      - made by summons, 3852.
        - complaint, what to contain, 3853.
        - judgment, what to be, 3854.
        - report and duties of com'rs, 3846, 3855.
          - exceptions thereto, when filed, 3856.
          - if confirmed, what judgment and execution, 3857.
          - payment of costs, 3858.
          - sheriff, justice and com'rs—fees, 3859.
    - "family" defined, 3842.
    - from what assigned, 3840; who assigns, 3843.
    - value of, 3841; how ascertained, 3844, 3855.
      - when to be in full, 3850; when not, 3851.
      - sum allowed, unless fraudulently impeached, credited to personal representative, 3849.
      - appeal taken to superior court, 3847.
      - appellant, duty of, 3849.
      - duty of the commissioners, 3846.
- Wife, consequences of elopement and adultery of, 3825.

**WILLS AND TESTAMENTS.**

- Age of testators, 3861.
- Clerk first acquiring jurisdiction of estate, has exclusive, 2058.
  - has jurisdiction, when, 2057.
- Devises construed to be in fee unless contrary intent appears, 3904.
  - lapsed and void, pass under residuary clause, 3866.
  - to witnesses are void, 3860.
- Executor, age of, 3861.
  - competent witness, 3868.
  - deemed to have renounced, when, 3888.
  - disqualified by age or absence, 3889.
  - disqualifications to serve as, 3886.
  - renunciation of, 3887.
- General gift includes estates which testator has power to appoint, 3867.
- Letters of administration with the will annexed, granted, etc., 3890.
  - issued and tested, how, 3896.
  - oaths, etc., 3893.
  - qualifications, etc., of such administrator, 3891.
  - revocation of, on ground of default or disqualification, 3895.
  - on proof of will, 3894.
  - will of testator to be observed, 3892.
- Wills admitted to probate, how, 3872.
  - proof and examination to be in writing, 3873.
  - how far conclusive, 3874.
  - who may apply for, 3875; when executor does not, 3876.
  - what shown on application, 3877.
  - production compelled by process, 3878.
  - appointment by will, executed as, valid though required forms unobserved, 3863.
  - caveat, 3882.
    - costs, how paid, 3885.
    - order to suspend proceedings, 3884.
    - transfer to superior court, when, 3883.
  - conclusive, when, 3898.
  - evidence, copies of, are, 3899.
    - copies of, destroyed or lost, are, 3907.
    - in secretary's office are, 3905.
    - registry of, recorded in any county, are, 3906.
  - filed in clerk's office, 3897.
  - made outside the state, how proved, 3879.
  - not effectual without probate; conclusive, when, 3898.



**WILLS AND TESTAMENTS.--Continued.**

- Wills of citizens, etc., of another state, etc., allowed and recorded here, how, 3880.
- of this state elsewhere proved, how proved and recorded here, 3881.
- married woman, how, where proved, 3802.
- real and personal estate, how executed, 3860.
- property, rights and interests disposed of, by, 3884.
- speak at the death of testators, 3895.
- written, how revoked, 3900; by marriage, 3901.
- not by altered circumstances, 3902.
- nor by conveyances after execution of, 3903.

**WRECKS.**

- Wreck, commissioner of, appointed, etc., 3909.
- abusing trust, penalty, 3919.
- can not be pilot, etc, 3910.
- compensation of, 3912.
- duty, etc., of, 3911; falling in, 3922.
- notified of wrecked property, 3916.
- receives the same, 3921.
- resides in his district, 3910.
- sells wrecked property and accounts for sales, 3912.
- takes no salvage, 3911.
- districts, how laid off, 3908.
- finders concealing stranded goods, notify commissioner, 3917.
- deliver property to commissioner, 3921.
- notify commissioner of wrecked goods found, 3916.
- receiving stranded goods, how punished, 3918.
- persons refusing to aid distressed vessel, 3920.
- proceedings when there is a wreck, and no claimant, 3915.
- sales to be advertised, 3913.
- property damaged, how to proceed, 3913.
- salvors paid; disagreement, referees adjust, 3911.



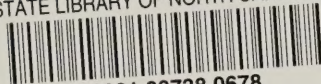








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